

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

Case No: 2025-247443

In the matter between:

**PROETHICS PROPRIETARY LIMITED**

Applicant

and

**GROUNDUP**

First Respondent

**RAYMOND JOSEPH**

Second Respondent

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**ANSWERING AFFIDAVIT**

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I, the undersigned,

**NATHAN GEFFEN**

do hereby make sate under oath:

1. I am the editor of GroundUp, an online news organisation operated by a non-profit company, GroundUp News NPC, registration number 2020/428260/08. I am also a director of GroundUp News NPC.
2. I am duly authorised to depose to this affidavit on the Respondents' behalf and to oppose the application. I attach, marked "NG 1", a copy of a LexisNexis search report on GroundUp News NPC.

3. The contents in this affidavit are true and correct and, unless the context clearly indicates otherwise, within my personal knowledge.
4. Where I make statements or submissions of a legal nature I do so on the advice of my legal representatives who also represent the Respondents. I believe that advice to be correct.
5. Where appropriate, and for ease of reference, I will refer to the First and Second Respondents, as "GroundUp" and "Mr Joseph", respectively and in instances collectively as "the Respondents".

## OVERVIEW

6. The relief sought by the Applicant can be summarised as a request for an order:
  - 6.1 That the application be heard as a matter of urgency;
  - 6.2 That the Respondents are prohibited from publishing anything related to the Applicant concerning:
    - 6.2.1 A report produced by TSU Investigation Services Proprietary Limited ("TSU") to investigate irregular expenditure incurred by the National Lotteries Commission ("NLC").
    - 6.2.2 Allegations of irregularity relating to management fees or unauthorised payments (presumably charged by the Applicant or made to Applicant by the NLC).



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6.2.3 Proceedings by the NLC against the Applicant, presumably arising from 6.2.2 above.

6.2.4 The involvement of the Applicant in procurement irregularities or SIU mandated investigations.

6.2.5 Any assertions or allegations contained in the written questions sent to the Applicant by the Second Respondent on 15 December 2025.

6.3 The Applicant seeks costs on an attorney client scale.

7. The Applicant alleges that the relief sought is interim. However, the *actual* relief sought by the Applicant is final.
8. The Applicant essentially seeks, as a matter of urgency, that the Respondents be prohibited from publishing any "*report, story, commentary or statement concerning the Applicant*" in respect of a number of matters which include various investigations into the Applicant while it was contracted to the NLC. The relief sought amounts to an attempt to gag the Respondents from reporting what is clearly in the public interest. There is no basis, even on the Applicant's own version, for such wide ranging interdictory relief.
9. The fact of the matter is that the Applicant was appointed to the NLC to advise it in respect of proper and ethical governance. It was paid large amounts of money to do so and also disbursed funds on the NLC's behalf. The Applicant also held itself out as an entity which appreciated ethical and proper conduct – as one



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would expect. However, while the Applicant was contracted to the NLC there was widespread and serious fraud, mismanagement and corruption. That in itself would warrant investigation and the publication of articles relating to the Applicant.

10. What is apparent is that there are a number of investigations which have been conducted and are being conducted into the Applicant in respect of its relationship and contract with the NLC. It is clearly in the public interest that those matters be reported on as the Applicant has been the beneficiary of funds from the NLC which are public funds which should be properly utilised and accounted for.
11. That broader context makes the order sought by the Applicant even more puzzling. It should clearly not be permitted that the Applicant gag the Respondents from publishing articles concerning legitimate and newsworthy matters.
12. The Respondents submit that the application ought to be dismissed, for the following reasons, which will become apparent in this affidavit:
  - 12.1 The application is not urgent, and urgency is not appropriately justified in the founding affidavit.
  - 12.2 This is an application to impose a blanket prohibition on the publication of subject matter relating to the TSU report.

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- 12.3 The publication of an article based on the subject matter referred to in 6.2 above will be lawful. The content of such article will be true and made in the public interest; the publication will be reasonable; comments, where made, will be based on true facts and will be fair; in the instances where relevant and the subject matter will be subject to qualified privilege.
- 12.4 The only facts alleged by the Applicant to aver that the article is unlawful are the content of the Second Respondent's questions.

## **PRELIMINARY MATTERS**

### ***The relief is final***

13. The Applicant seeks final relief on an urgent basis. Although the Applicant contends in its founding affidavit that the relief is "*pending the final determination of the lawfulness of the impugned assertions*", and thus interim, in fact it is not for the following reasons:
  - 13.1 First, the notice of motion asks for final relief. For this reason alone, the application is for final relief.
  - 13.2 Second, the phrase "*pending the final determination of the lawfulness of the impugned assertions*" is open ended and indeterminable.
14. To succeed with an application for final relief the Applicant must prove that:

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*SKR*

- 14.1 it has, in its founding affidavit, established a clear right that will be infringed by the publication of any form of article, report, story, commentary, or statement concerning the Applicant relating to the subjects referred to in paragraphs 2.1 to 2.5 of its notice of motion.
- 14.2 a reasonable apprehension of harm arising from the publication; and
- 14.3 it has no alternative remedy.

15. The Applicant cannot succeed if it fails to prove that the publication of the proposed article will be wrongful or unlawful.
16. I respectfully submit that the Applicant has fallen well short of presenting evidence that any part of the content of the proposed article will be false, or that the publication thereof will not be in the public interest, or that the publication of the content will not be otherwise justified.
17. I have been advised that the Applicant's application must first be assessed to ascertain whether a case has been made out for the relief sought. If that is not the case the Court should assess the application in a similar manner to an exception in an action and dismiss it. This will be addressed further in argument.

***The relief is not urgent***

18. The relief sought by the Applicant is not urgent. Moreover, much of the publication that the Applicant now wishes to interdict, has been dealt with in previous publications and remain so published. An interdict, by definition and in

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its very nature, is not a remedy directed at past invasions of rights but is concerned with present or threatened future infringements.

19. The Respondents have published five previous articles between 4 May 2023 and 22 June 2025 which contain information referred to in paragraph 6.2. ("the impugned assertions"). The impugned assertions have been published and remain in the public domain. I address the five articles later in this affidavit and attach copies of the articles in that part of the affidavit.
20. The impugned assertions are already in the public domain published by parties other than the respondents. In this regard:
  - 20.1 One of the five previous GroundUp articles was published by Moneyweb at <https://www.moneyweb.co.za/news/south-africa/lottery-corruption-siu-investigation-hamstrung-by-red-tape/> and it remains published on the internet. I attach a copy of the Moneyweb article marked "**NG 2**"
  - 20.2 Another of the five previous GroundUp articles was published by the Citizen at <https://www.citizen.co.za/news/new-measures-to-prevent-lotto-looting/> and it remains published on the internet. I attach a copy of the Citizen article marked "**NG 3**".
  - 20.3 Yet, another of the five previous GroundUp articles was published by News24 (owned by Media24) at <https://www.news24.com/business/Companies/company-made-millions-advising-corruption-riddled-lottery-on-ethics-20230504> and it

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remains published on the internet. The same article was also published by Daily Maverick at

<https://www.dailymaverick.co.za/article/2023-05-04-ethics-firm-made-millions-advising-corruption-riddled-lottery/>, which also remains published on the internet. I attach copies of the News24 and Daily Maverick articles marked “**NG 4**” and “**NG 5**” respectively.

20.4 The Press Ombud ruling, referred to in the Applicant’s founding affidavit, repeats many of the alleged impugned assertions and is published on <https://presscouncil.org.za/2025/06/30/proethics-vs-groundup/>.

20.5 GG 53487 dd 10 October 2025- Proc 293 OF 2025 (“Proclamation 293”) published in Government Gazette, to which I refer later in this affidavit in detail, contains the impugned assertions. A copy of Proclamation 293 is attached marked “**NG 6**”.

21. The application attempts to create urgency out of the receipt, on 15 December 2025, of the questions from Mr Joseph. Whilst it is correct that Mr Joseph and GroundUp were anticipating possible publication, at the time of the questions no article could be finalised without the Applicants response.

22. Furthermore, two new elements were to be introduced into the article and publication would not take place without considering:

22.1 The NLC’s progress, or lack thereof, with executing claims arising from the TSU report; and

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22.2 The SIU's investigation in terms of Proclamation 293,

Impugned assertions in the anticipated article would have been included in the previous publications going back more than two and a half years. There is thus no reason to interdict the publication of the anticipated article as many of the assertions concerned have already been published.

23. Since the application will only be heard on 20 January 2026, which is one month after the initial intended publication date, it should have been placed on the normal motion court roll. I am advised that the insistence of it being heard on the urgent roll amounts to an abuse of process.
24. Accordingly, the application is not urgent. It should be struck from the roll, alternatively dismissed, with an appropriate punitive costs order.

***The Applicant's alleged right to dignity***

25. The Applicant contends that one of its rights that will be infringed by the proposed publication is its right to *dignity*. The Applicant is a trading corporation. It does not have a right to dignity, which it can protect.
26. The Applicant has failed to identify the real right which it attempts to protect, and the application must fail on this ground as the Applicant has not established a clear right.



### ***Conclusion on preliminary points***

27. Based on the above, the Applicant has not made out a case against the Respondents. The application should be dismissed with costs, on these grounds alone.

### **RESPONSE ON THE MERITS**

28. In the remainder of this affidavit, I deal with the following issues:

- 28.1 the Respondents;
- 28.2 the relevant background facts;
- 28.3 the proposed article;
- 28.4 the Respondents' grounds of opposition to the application; and
- 28.5 *seriatim* response to Applicant's founding affidavit.

### **THE RESPONDENTS**

29. As I have stated above, the First Respondent "GroundUp" is an online news brand that operates as a news agency. Its content is available for re-publication for free by other media in terms of a Creative Commons license. It publishes news reports and opinions that are in the public interest with a focus on social justice stories in vulnerable communities.

30. The business of GroundUp is operated by a non-profit company, GroundUp News NPC. GroundUp News is a not-for-profit company. As such GroundUp



NPC cannot afford to waste its limited resources on litigation. GroundUp does not generate any profit and its funding is derived substantially from donor organisations. The opinions and news published by GroundUp are independent and free of political and commercial influence.

31. From time-to-time GroundUp investigates specific public interest projects. Two of the award-winning projects GroundUp conducted were the investigations into the NLC (in conjunction with the Second Respondent) and the exposure of the Thabo Bester escape.
32. The Second Respondent is Raymond Joseph, a freelance journalist. While Mr Joseph is not in the employ of GroundUp, he is a regular contributor to GroundUp and GroundUp has published over two hundred articles penned and co- authored by Mr Joseph about corruption at the NLC.
33. Mr Joseph has won several journalistic awards for investigative journalism, including the Nat Nakasa Award for Courageous Journalism in 2021, the Vodacom Journalist of the Year and Taco Kuiper Investigative Journalism Award in 2022 for his series of articles which exposed the corruption of grant funding at the NLC – an investigation he commenced in 2017. It has uncovered corruption estimated to be over two billion rand, leading to the replacement of implicated NLC top management and board, and continuing criminal investigations. The ongoing investigation involving the NLC was conducted in conjunction with GroundUp.

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## BACKGROUND

34. The background section is divided into four separate sub-sections, being relevant background in respect of: first the NLC corruption and mismanagement; second previous lotteries related articles; third the articles written about suppliers; fourth the Applicant and previous articles relating to it.
35. I respectfully submit that the justification for the current investigations into the conduct of the Applicant and determination whether publication based thereon will be wrongful or not, cannot occur without reference to the background facts.

### ***The NLC corruption and mismanagement investigations***

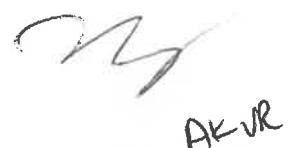
36. The NLC is an organ of state and the custodian of vast amounts raised in the national lottery for the purposes of assisting deserving non-profit organisations and public benefit organisations established for the benefit of sport development, education, and cultural development in South Africa. It distributes approximately R2 billion public funds to deserving charities and non-profit organisations and the management of its projects is a matter of public interest.
37. During 2017, Publish.org put out a public, worldwide call for Lotteries-related stories. Two pitches were accepted, one from Wisconsin in the USA and another from Bolivia. Publish.org is an international association which supports investigative journalism.
38. Publish.org provides independent freelance journalists with a forum to pitch stories to its editorial board, which then decides whether to commission any



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related investigation and report. If a proposal is accepted, the journalists are granted funding to help cover costs, including their time, travel and other expenses.

39. Mr Joseph, in his capacity at the time as a member of the editorial board of Publish.org, pitched the idea of lottery stories to Publish.org. He disclosed his involvement in the GamingTheLottery project, a worldwide investigation into the Lotteries Industry which is one of the projects of Publish.org. This project has involved over 60 journalists around the world. Publish.org endorsed this project in part because of the concern about corruption in lotteries across the world.
40. Mr Joseph commenced the work on the NLC project in 2017 as a freelance journalist, with the support of GroundUp. While most of the articles produced by Mr Joseph as part of this investigation were published by GroundUp, some NLC articles were also published by other mainstream media.
41. In 2020, following three years of exposés in the media, the Minister of Trade Industry and Competition ("the Minister"), who is the governmental head of the NLC, instructed the NLC to appoint investigators to investigate the allegations of fraud and corruption. The first investigators whitewashed the NLC's actions and blamed the media, GroundUp and Mr Joseph specifically, for false reporting. The Minister did not accept these reports.
42. In 2020, on the Minister's instructions, the NLC instructed SekaXabiso CA Inc ("SkX") to investigate specific allegations published by GroundUp and Mr Joseph. SkX produced their first report on 20 November 2020. This report made



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*prima facie* findings of extensive fraud and corruption, substantially confirming the articles previously published by the Respondents. I have a copy of the report, but to avoid prolixity I do not attach it. I submit that it is of background relevance only as it does not relate to Applicant.

43. The Minister then approached the President of South Africa, who, on 6 November 2020 passed Proclamation No R. 32 of 2020 in the Government Gazette No 43885 ("the Original Proclamation"). A copy of the Original Proclamation is attached marked "**NG 7**". The Original Proclamation authorised the Special Investigating Unit ("the SIU") to investigate serious allegations of corruption, malpractice and maladministration in the administration between 2014 and 2020.
44. During the period sanctioned by the proclamation, widespread fraud, theft, and corruption as well as serious contraventions of the Lotteries Act, by officials of the NLC, grant recipients, and suppliers to the NLC were discovered. Serious accusations were made against the top management and the board of the NLC at the time, including its chair, COO, and CEO. The most recent reports indicate that crimes and mismanagement involving over R2 billion are being investigated. I attach hereto, marked "**NG 8**" a copy of the 20 May 2025 summary report by the SIU to Parliament's Standing Committee on Public Accounts ("SCOPA"), which shows the depth of corruption uncovered by the SIU. The full report will be made available to the Court should it be required. In the summary it is stated that the SIU informed SCOPA that: "

*"The projected worth of the issues examined in the initial and subsequent phases is R279.7m and R246.6m, respectively. Phase three, currently*

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*in progress, holds an estimated worth of R905.9m. The value of contracts being examined for possible civil lawsuits is approximately R2bn. Nonetheless, the SIU has retrieved merely R9.5m of this amount. The Asset Forfeiture Unit has released preservation orders totalling R78.2 million, whereas the preservation orders from the Special Tribunal amount to R37.3 million. A minimum of R6.3 million in pension funds has been put on hold".*

45. In the Auditor General of South Africa's ("AGSA") report on the NLC dated 31 March 2022, it reported and identified possible irregular expenditure at the NLC. For the reasons stated earlier, I do not attach the full AGSA report. I attach, marked "**NG 9**", a copy of pages 1 to 7 and pages 77 and 81 of the AGSA report, the latter two pages wherein the Applicant is specifically named. The full report shall be made available should the Court so direct.
46. Arising from the AGSA report, on 3 October 2022, the Minister appointed TSU Investigation Services Proprietary Limited ("TSU") to investigate all irregular expenditure incurred by the NLC.
47. The draft report produced by the TSU was distributed to the relevant parties in April 2023. The draft report consisted of 999 pages. The draft report dealt extensively with the Applicant, amongst several other service providers to the NLC. The final TSU report was released on 27 November 2023 ("the TSU report"). The TSU report comprises 1424 pages. Later in this affidavit I will refer in more detail to the TSU report and attach portions of the TSU report. To avoid prolixity, I do not attach the entire report. A copy of the entire draft report has



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been filed in the Press Ombud case, to which the Applicant had access. I will make a copy of the report available to the parties and the Court if it is required.

48. By the end of 2022, the entire board of directors of the NLC was replaced. Later, most of the senior management, including the COO, the Commissioner and the Company Secretary were suspended, or they resigned in the face of disciplinary action. Disciplinary proceedings against senior managers, including the COO and the Company Secretary were initiated. I will address one of these proceedings, against Advocate Nompumelelo Nene in greater detail later in this affidavit.
49. At present, the cleaning up of the NLC is progressing steadily since the appointment of the new board and management. In parallel the NLC and the state, with the assistance of the SIU and the National Directorate of Public Prosecutions, are in the process of recovering assets and money stolen or used as proceeds of corruption.

#### ***Previous NLC articles and their consequences***

50. During the investigations Mr Joseph and some fellow journalists uncovered evidence of systemic corruption and fraud. I attach, marked "NG 10", a list of over 220 articles that have been published by GroundUp, most under the by-line of Mr Joseph in respect of the NLC that covers a broad range of topics and investigations related to the NLC.
51. From the first publication by GroundUp of corruption at the NLC, GroundUp and Mr Joseph were met with strong frontal winds of opposition. In this regard,

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several Press Ombud complaints were made against GroundUp and Mr Joseph, jointly or separately. Two urgent applications were made in court against the Respondents. The first in this court by Mr Lesley Ramulifho, an attorney of this court under case number 23291/19 ("the Ramulifho case"). This matter is still pending before the court, but the initial application was struck from the roll in April 2019. The second was in the High Court Gauteng, Johannesburg Division. Philemon Letwaba, the former COO of the NLC, instituted a damages action against Mr Joseph and GroundUp in the High Court Western Cape, Cape Town. The action is pending. Over and above the actual litigation and referrals to the Press Council, GroundUp has also received several threats of litigation and Press Ombud reports relating to its publications.

52. Over and above threats and actual litigation, and until the change of the board and management at the NLC, the top officials at the NLC have also repeatedly maligned GroundUp and Mr Joseph. The NLC issued several press releases in which it stated that Mr Joseph and GroundUp had engaged in false and defamatory reporting. I provide two examples below:

52.1 On 22 March 2019, the NLC published a press release under the heading: **NLC Responds to Raymond Joseph's facetious allegations.** I attach a copy of the press release marked "**NG 11**". The NLC, an organ of state, refers to a report penned by Mr Joseph as "*frivolous*" and a "*mischievious personal vendetta that is disguised as journalism*". The statement further states that Mr Joseph's conduct "brings to question the credibility of Joseph's journalism and ethics."

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Later investigations by the SIU and StXt proved that the contents of the article were totally justified, as true and correct.

52.2 On 2 July 2020, the NLC published a press release under the heading: **NLC Response to the Continued Smear Campaign by GroundUp.**

In the press release the NLC stated that: *"The ongoing and false smear campaign against the NLC is that the distribution of funds to NPOs and a vast range of charities is corrupt and self-serving. This is grossly false and defamatory."* I attach, marked "NG 12", a copy of the press release.

53. GroundUp and Mr Joseph were also maligned in Parliament. For example, in the DTIC Parliamentary Portfolio Committee meeting on the NLC Quarter 2 performance, former Board chairman Professor Nevhutanda stated that data had been unlawfully stolen by *"two culprits in the Western Cape"*, implying criminal conduct on the part of the Respondents.

54. The full frontal attack on GroundUp and Mr Joseph continued until the appointment of the new board and management. The change in attitude was illustrated when Minister Ebrahim Patel, during a DTIC Portfolio Meeting recognised *"the role of a small but dedicated group of journalists that had blown the whistle, and enabled whistleblowers themselves to bring allegations to the attention of the public. The leading journalist had been Raymond Joseph, and though he worked for a small media house, the persistence and the detail that he had been able to document, were enormously helpful. There were other*



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*journalists, such as Anton van Zyl and Nathan Geffen.” I attach a summary of the Minister full opening remarks as “NG 13”.*

***Previous NLC articles referencing the Applicant***

55. Following the publication of the draft report of the TSU in April 2023, the draft report was leaked to Mr Joseph under condition of confidentiality of the source. Mr Joseph is not prepared to reveal the identity of the source. The draft report highlighted the conduct of several service providers, which included the Applicant being implicated in over R28 million worth of suspicious transactions.
56. On 4 May 2023, GroundUp published its first article about the Applicant under the headline: **Company made millions advising corruption-riddled Lottery on ethics**. In the article GroundUp reported on the fact that the Applicant had billed the NLC for more than R28-million for media monitoring and ethics-related “interventions” at a time when the NLC was overwhelmed with allegations of corruption, fraud and conflicts of interest. A copy of the article is attached marked “NG 14”. This article was also published by News24 and Daily Maverick and remains published (see NG4 and NG5).
57. In a follow-up article on 22 September 2023, the above statement was repeated by GroundUp in an article about the NLC’s attempts to clear up questionable procurement practices, published under the headline: **New measures to prevent Lotto looting**. The article stated that the NLC suspended the Applicant’s services and stopped payments, pending the outcome of an investigation. A copy of the article is attached marked “NG 15”.



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58. On 15 April 2024, GroundUp published an article under the headline: **How the Lottery used an ethics company to launder money**. The ethics company referred to in the article is the Applicant. A copy of the article is attached marked “**NG 16**”. The Applicant’s Janette Minnaar’s replies to the questions were included in the article.
59. The Applicant did not take any legal or quasi legal action against GroundUp or Mr Joseph in respect of the above articles.
60. On 18 February 2025, GroundUp published an article headed: **SIU applies to extend lottery corruption probe**. The article reported on the SIU seeking a mandate allowing it to investigate lottery-funded projects that fall outside the period covered by the original proclamation, since the NLC’s corruption continued after the proclamation was gazetted. The article further explained that the extension was intended to include investigations into questionable procurement practices, an area not covered by the original proclamation. The article referred to the April 2024 article and named the Applicant as one of the suppliers to the NLC involved in questionable procurement. A copy of the article is attached marked “**NG 17**”. GroundUp discovered one error after publication, which was corrected immediately upon our attention being drawn thereto. In respect of this article the Applicant complained to the Press Ombud.
61. The Press Ombud ruled on the complaint on 18 June 2025. The Press Ombud dismissed all the complaints, save for the reference to the words “*payment laundering*”. Whilst I found the Press Ombud’s assessment of the word “*laundering*” overly technical and narrow, I also noted that the Press Ombud



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found that the conduct of the applicant would "certainly be improper". His ruling was based on his view that the phrase "*money laundering*" requires an element of criminality to justify its use. The Press Ombud's ruling is attached to the applicant's founding affidavit as "**FA 5**". Notwithstanding my view that the Press Ombud erred in adopting the narrow approach on the meaning of the phrase *money laundering*, in light of the overwhelming rejection of the Applicant's other complaints, I decided to implement the Press Ombud's ruling and changed the phrase "*launder payments to service providers*" with "*circumvent procurement processes*". A copy of the implementation of the Press Ombud's ruling is attached marked "**NG 18**".

62. On 22 June 2025, GroundUp published an article under the headline **SIU investigation into lottery corruption hamstrung by red tape**. The article covered the frustration experienced by the SIU which delayed its attempts to expand the scope of its mandate to include service providers outside the period of the first proclamation. The Applicant was referenced as one of the examples in the following paragraph: *ProEthics, which advised the NLC on ethics when the organisation was overwhelmed by rampant corruption, was used to circumvent procurement processes. The NLC paid ProEthics over R28.4-million. The company, in turn, said it paid other service providers, which it had no part in appointing, on the NLC's instructions.* A copy of the article is attached marked "**NG 19**". This article was republished by Moneyweb and remains published (see NG2).

  
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63. The previous publications referencing the Applicant were lawful, factually correct and the publication thereof was in the public interest. The previous publications have also not been challenged or corrected. The final interdict sought by the Applicant in this application is bizarre in light of those publications. It is apparent that there have been extensive publications regarding the Applicant and to now seek a final interdict in this application is inappropriate and amounts to seeking to shut the stable door after the horse has bolted.

64. When Janette Minnaar was asked prior to publication of the May 2023 article to comment on questions posed to her, she said: as quoted in the article:

64.1     *"The SLA (service level agreement) between ProEthics and the NLC contained a confidentiality clause; all information regarding material, costs, and service providers should therefore be obtained directly from the NLC.*

64.2     *"ProEthics was placed on an NLC panel of service providers of the NLC following a proper tender process and an SLA was signed. Appointment on projects was done through a thorough RFQ (request for quote) process and all services were rendered ethically and professionally. In rendering our services, we aim to assist our clients to build a culture of integrity. Where the project required services outside our scope of expertise the NLC appointed service providers from their panel to assist in the particular project."*



Janette Minnaar

64.3     “....should any defamatory statement be published or included in any press release we shall take all the necessary steps to hold you personally and *GroundUp* liable.”

65. In light of the seriousness of the threat, one must assume that the Applicant has not yet found any reason to hold the Respondents liable and no legal proceedings, other than this application and the complaint to the press ombud have been brought.

## **THE PROPOSED ARTICLE**

### ***Reasons for further publication relating to the Applicant and the NLC***

66. Several companies who were flagged by the AGSA 2022 report were investigated by the TSU. The TSU report deals with each of these companies and recommended that the NLC must recover irregular spending from these companies. The companies flagged in the AGSA report were Fundudzi Media, Arena Holdings/Media 24/Independent Media House, Board Effect, MSG Group Sales, The Regency Apartment Hotel and Ndila Transfers, NEO Solution, Edge Consulting, ProEthics (the Applicant), Workforce, SRSQS Quantity Surveyors, and Maluks Attorneys. *GroundUp* has already published about most of the companies named.

67. The TSU report was published in 2023. By the middle 2025, after more than two years passed since the publication of the report, Mr Joseph started posing questions to the NLC to enquire what they were doing to implement the recommendations of the TSU report. *GroundUp* and Mr Joseph were the media

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custodians of keeping up the reporting to the public on the developments at the NLC arising from the previous capture thereof.

68. In August 2025, Mr Joseph was informed by a highly placed source, a senior manager at the NLC, that counsel was appointed to provide the NLC with a memorandum outlining its cause of action and litigation strategy to recover money from service providers, including the Applicant, fingered in the TSU report. The source indicated that the memorandum would be forthcoming in mid-September 2025.
69. From mid-September 2025, Mr Joseph started nagging the source for an update. On 23 October 2025, Mr Lesedi Bohang, NLC's Executive Legal Manager sent to Mr Joseph the following message: *"Just when our legal team was to commence with legal proceedings against ProEthics and all involved in the matter, we learnt of the extended Proclamations. Then we were forced to stop our legal team with those legal proceedings as the Proclamation is to take precedence."* The "extended Proclamation" referred to is Proclamation 293, which is annexed previously.
70. Where I do not name sources in these proceedings, I do so because it would be breach of journalistic ethics and an agreement of confidentiality. However, I will be able to procure his/her testimony at a trial, whether by agreement or subpoena, if his evidence is disputed. I submit that it is not necessary for these proceedings.



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71. The Proclamation 293 was published on 10 October 2025. Publication of the proclamation was long overdue. GroundUp had published a previous article (see annexure NG 19) referencing the tardiness in government to publish the proclamation. This process had spanned three ministers of justice.
72. Proclamation 293 amends the Proclamation No. R. 32 of 2020 ("the original proclamation") by –
  - 72.1 Extending the end date of the original proclamation from 6 November 2020 to 10 October 2025. This would bring any transaction which is subject to the original proclamation after 6 November 2020 into the investigative focus of the SIU.
  - 72.2 Extending the scope of the SIU's investigative purview to include service providers to the NLC, including all those mentioned in paragraph 66 above and the Applicant. The SIU is to investigate whether, the procurement and appointed of the Applicant (and the others), and payments which were made in respect thereof were –
    - 72.2.1 not fair, equitable, transparent, competitive or cost-effective; or
    - 72.2.2 contrary to applicable procurement laws, regulations and policies; and

any related unauthorised, irregular or fruitless and wasteful expenditure



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incurred by the NLC or the State.

73. Applicant is specifically named in Proclamation 293. In the new paragraph 2 of the Schedule to the original proclamation in paragraph (p):

*(p) the appointment of ProEthics to provide services in relation to ethics*

74. In conclusion on this sub-section, the overriding public interest in the subject matter of the recovery of irregular expenditure by the NLC, as well as the fact that the SIU will now be involved in the investigation of the companies mentioned in the AGSA report, including the Applicant, justifies that GroundUp inform the public on the new developments.

***The Applicant: public interest***

75. The Applicant is a company controlled by Janette Henriëtta Minnaar as its sole director. I attach a copy of a LexisNexis company report depicting the details of the company marked “NG 19.1”.

76. On its promotional material on its website, the Applicant states about itself that:

76.1 It promotes “*professional ethics and business integrity*”. It empowers its “*clients to fight dishonest business practices and prevent losses resulting from crime and irregularities, by promoting an ethical culture and responsible organisational governance*”. It further is committed to combating economic crime and harmful business practices that could hurt the innocent, destroy profit and damage quality service delivery”.

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76.2 Its government clients include:

76.2.1 the Auditor General of South Africa, the Financial Services Conduct Authority;

76.2.2 The South African Parliament;

76.2.3 Several other Government departments and state owned entities.

76.3 Its private sector clients include ABSA Bank, Nedbank, Investec and Rand Merchant Bank.

77. The Applicant further says about Ms Minnaar that she:

77.1 Holds a doctorate in law from the University of Pretoria;

77.2 Consults to large corporations, government (local and national), tertiary institutions, as well as other African countries;

77.3 Has practised as an advocate since 1991;

77.4 Has expertise in the legal and ethical duties of leaders, ethics management, prevention of corruption and fraud, corporate governance, and compliance and risk management.

78. I attach hereto a curriculum vitae published on the Applicant's website as well as a copies of the "About" and "Client" pages published on the Applicant's website marked "NG 20", "NG 21" and "NG 22" respectively.

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79. The Applicant actively markets the virtues it extols on Facebook at <https://www.facebook.com/ProEthicsSA/> and on LinkedIn at <https://www.linkedin.com/company/proethics-sa/?originalSubdomain=za>.
80. Accordingly, the Applicant's market of big business and government and its own promotional material, places it in the public domain and justifies the media to report on anything that may alert the public to a deviation from virtues they claim. Furthermore, and due to the many public and government clients of the Applicant, the public would be entitled to, at the very least, be aware of how the public funds are being used. This is especially relevant to the present application and the NLC.
81. On 1 April 2021, the Mail & Guardian published an article which summarised a virtual conference on corruption. Ms Minnaar was specifically cited and where she presented on corruption and integrity. Importantly, she discusses governance extensively and, in the end, gave NLC "the thumbs up". The relevant portion of the article is attached hereto marked as "**NG 22.1**".

#### ***The Applicant and the NLC***

82. In the 2018/2019 financial year of the NLC, it used the services of the Applicant for training to employees, senior management and board of the NLC. The services continued after the end of the financial year (from 1 April 2019). A copy of a letter from the NLC confirming this is attached marked "**NG 23**". This appointment pre-dates the later appointment to the panel.



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83. The Applicant was appointed by the NLC to its “*Corporate Governance Advisors*” panel for a period of three years commencing on 13 November 2019. The termination date for the contract was 12 November 2022 to provide ethics training, develop an organisational ethics action plan, support and develop internal ethics communications campaigns, and assist with development of ethics statements and codes of conduct, training tools and e-learning training material. The Applicant charged a rate of R6 371.75 per hour for the work done in terms of the contract. The contract is attached to the Applicant’s founding affidavit as annexure FA 2.

84. The contract was summarily suspended by the NLC’s acting Commissioner, Lionel October, on 7 October 2022. I attach a copy of the memorandum headed “**FORENSIC INVESTIGATION – PRO ETHICS**” from the Commissioner to the company secretary and the acting Chief Financial Officer to this effect marked “**NG 24**”.

85. During the period from February 2019 to August 2022, the Applicant had submitted invoices to the NLC totalling R28,498,856.50 for fees and disbursements. The full amount was paid to the Applicant. I attach, marked “**NG 25**” pages 987 to 989 of the TSU report, which depicts a summary of the payments.

86. Ironically, the period between 2019 and 2022, coincided with the period, which commenced in 2016, during which the NLC management and board were implicated in mismanagement, fraud, and corruption, all attributed to a complete lack of ethics and corporate governance, involving billions of rands.



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87. After the new board and management were appointed at the NLC, it came to light that the NLC company secretary, Ms Nene, was deeply involved in the mismanagement and lack of governance at the NLC. Moreover, it came to light that the Applicant was used by Ms Nene in the furtherance of that scheme.
88. In October 2023, Ms Nene was charged by the new NLC Commissioner, Jodi-Lynne Scholtz with a multitude of offences. 53 of the charges related to Ms Nene unlawfully deleting information from the NLC systems. It is strongly suspected that the deletions were to cover up other mismanagement and fraud. Many of the deleted files related to fraud exposed previously by the Respondents.
89. 44 other charges against Ms Nene were contained under the heading: **CHARGES 99 – 143: GROSS MISCONDUCT IN THE APPOINTMENT OF PRO ETHICS FOR SPECIFIC PROJECTS TO PERFORM VARIOUS SERVICES AND IRREGULAR PAYMENTS TO THIRD PARTY SERVICE PROVIDERS.** I attach, marked “**NG 26**”, a copy of the pages of Ms Nene’s charge sheet dealing with the charges relating to the Applicant.
90. In this affidavit I do not analyse all the charges involving the Applicant. In the unlikely event that the Respondents are called to defend a claim for defamation, I submit that the Respondents will be able to procure documents and oral evidence to prove that the Applicant participated in highly irregular practices. Herein I will give two examples only.
91. **Example 1.** – In September 2020, the NLC scheduled the Live Streaming of Ethics Virtual Conference. The following facts relate to this conference:



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91.1 Ms Nene instructed a company called Digital Dynasty as a service provider. At the time Digital Dynasty was not an authorised service provider in terms of the NLC Supply Management Policies. Thus, Ms Nene on 30 August 2020 instructed Digital Dynasty to submit its invoice to the Applicant. Pursuant thereto, on 7 September 2020, Digital Dynasty submitted an invoice (dated 30 August 2020) in the amount of R1,242,000.00 for services to be rendered in respect of the event.

91.2 On 8 September 2020, Applicant made payment of R1,242,000.00 to Digital Dynasty.

91.3 The payment allowed of Digital Dynasty via the Applicant allowed Ms Nene to blatantly circumvent the NLC supply chain management policy and to incur fruitless and wasteful expenditure.

92. **Example 2.** – During November 2020 Ms Nene asked Digital Dynasty to provide a quote to the Applicant for the hosting of a virtual conference for the International Fraud Awareness Week 2020 for the NLC to be held on 18 November 2020. The following events occurred thereafter:

92.1 On 10 November 2020, Digital Dynasty submitted a quotation to the Applicant in the amount of R 2,535,750.00 (VAT inclusive) translating to R2,205,000 plus VAT.

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92.2 On 24 November 2020, the Applicant submitted an invoice to the NLC for the hosting of a virtual conference on 18 November 2020 in the amount of R 2,823,825.00 (VAT inclusive).

92.3 The Applicant paid the full Digital Dynasty quote and retained the balance of R288,075.00 which equals R250,500.00 plus VAT. The Applicant thus charged approximately 40 hours of work for the Fraud Awareness Week.

92.4 The Applicant thus was a party to a breach of the NLC SCM Policy, this amounted to fraud and corruption and constituted irregular and/or fruitless and wasteful expenditure.

93. The Applicant acted as a conduit for the irregular payments to several other unapproved service providers. These included, Elsiscope Digital Services, MSG Sales Power FM, Fundudzi Media, Kevin Malunga, and Ethics Monitor. I attach, marked “**NG26.1**”, a copy of an article that appeared in the Mail & Guardian Newspaper on 21 November 2021. The article is a paid-for advertorial produced by the NLC, but purports to be an article reporting on the Fraud Prevention Week conference held on 19 November 2021.

94. The Applicant’s Janette Minnaar co-hosted/spoke at the conference (for which the Applicant charged R89,796.00, she also invoiced for Development of e-learning ethics training material – using broadcasting communication tools (R1,803,282.00), professional support for internal ethics communications campaign (R180,328.20) and development of tailor-made communications



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content (R51,312.00). I attach, marked “**NG26.2**”, pages 915 to 917 of the TSU report which shows that the Applicant made third party payments to, amongst others, MSG and Elsiscope.

95. The irregular third party payments that were channelled through the Applicant to circumvent the SCM Policy of the NLC caused the total invoiced amount by the Applicant to the NLC over three years to exceed R28 million. However, in the RFP – and in terms of which interested parties were invited to submit proposals for inclusion on the Corporate Governance panel – it was estimated that there would be an expenditure of approximately R 7 million on Corporate Governance for advice from members of the panel over a three-year period. It was for this reason, having exceeded the limit of expenditure by more than 300% over three years, that the Applicant was flagged in the TSU report.
96. In terms of the Service Level Agreement the NLC is entitled to reclaim any amount wrongly charged. For this reason, the Respondents were duty bound, as investigative journalists, to ensure that the NLC follows up on its right and its duty to recover wasteful expenses.

#### ***The proposed article***

97. As mentioned earlier in this affidavit, at the time when the application was launched there was no article. The preparation of the article was in conceptual stage.
98. GroundUp’s editorial practice is an iterative process, which starts with the concept for an article being discussed with the journalist, go ahead is received

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from the Editor, investigations are reported to the Editor which leads to a rough draft. During the provisional editing process the rough draft will be developed and refined. At some point, the journalist will ask questions to a subject of critical reportage. This is a standard process that differs from one publication to another.

99. By Monday 15 December 2025, the conceptual article had developed to a point where Mr Joseph was instructed to send questions to the Applicant to provide comment on matters of critical reportage that may have been featured in the proposed article.
100. As indicated in earlier in this affidavit, the NLC had informed Mr Joseph that:
  - 100.1 It had briefed lawyers to recover payments to the Applicant in terms of the agreement; and
  - 100.2 The NLC stopped the legal process after the extension of the original proclamation to include procurement.
101. On Monday 15 December 2025, Mr Joseph sent a list of 14 questions to the Applicant. The questions can be categorised as:
  - 101.1 Questions 1 and 2 relate to the Applicant's knowledge of the NLC legal process (now abandoned).
  - 101.2 Questions 2 to 5 relate the Applicant's knowledge of the SIU investigation and its inclusion in the extended proclamation.



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101.3 Questions 6 to 10 relate to specific amounts which the TSU report highlighted as recoverable payments invoiced by the Applicant to the NLC.

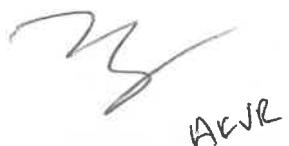
101.4 Questions 11 to 14 relate to the third party payments made by the Applicant to third party providers in breach of the NLC's SCM Policy.

102. The following sub-paragraphs provide the facts referenced in the evidence for each of the questions:

102.1 **Questions 1 and 2:** These questions were asked based on the following disclosure made by Mr Bohang (the NLC's Executive Legal Manager): *"Just when our legal team was [about] to commence with legal proceedings against ProEthics and all [the others] involved in the matter, we learnt of the extended proclamation. We were forced to stop our legal team with those legal proceedings as the proclamation takes precedence".*

102.2 **Questions 2 to 5:** These questions pertain to the fact of the publication of Proclamation 293 and are self-explanatory.

102.3 **Question 6:** This question relates to a recommendation made in the TSU Report in paragraph 10.65 on pages 195 and 196 that the NLC must claim R207,377.00 from the Applicant as it related to an invoice for services that were not allowed in terms of in terms of its Service Level Agreement with the NLC. I attach copies of the pages marked "NG 27".

  
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102.4 **Question 7:** In paragraph 10.66 of the TSU Report it is recommended that the amount calculated in terms of this question be recovered by the NLC from the Applicant.

102.5 **Question 8:** This question relates to the recommendation in paragraph 10.82 of the TSU Report which related to an invoice from the Applicant to the NLC for services that were not allowed in terms of in terms of its Service Level Agreement with the NLC. This conclusion is contained on page 198 of the TSU Report and a copy of the page is attached marked “**NG 28**”.

102.6 **Question 9:** The basis of this question is the following statement in the TSU report in paragraph 11.102: *“ProEthics did not provide an invoice indicating the hours spent on the project as required in terms of the SLA. The invoice for the roadshow was also submitted before rendering the services in contravention of the terms and conditions of the SLA. ProEthics also submitted an invoice for costs that they are not entitled to in terms of SLA, namely a project management fee of 10%, totalling R42 410,50 (excluding Vat)”. This statement appears on pages 239 and 240 of the TSU Report and a copy thereof is attached marked “**NG 29**”.*

102.7 **Question 10:** The question relates to the subject matter covered in paragraph 10.83 of the TSU Report, where it is stated that *“ProEthics director Dr Janette Minnaar informed the NLC that it had “already paid*

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*them R64 000 for corporate gifts and that they will give them a credit when they invoice".*

102.8 **Question 11:** The question relates to the matter covered in paragraphs 11.109 to 11.115 of the TSU Report and is also dealt with in the charge sheet against Ms Nene. I attach, marked "NG 30" the pages 244 to 247 of the TSU report.

102.9 **Question 12:** The question on these issues is covered in the recommendations contained in paragraph 10.84 of the TSU Report. Detailed evidence of these irregularities is also contained in the charge sheet of Ms Nene. Facts relating to the projects mentioned in this paragraph were also reported in the GroundUp article of 4 May 2023.

102.10 **Questions 13 to 14:** These questions relate to facts recorded in paragraph 9.419 of the TSU Report as well as the portion of the charge sheet against Ms Nene. The Applicant has repeatedly claimed that it acted as an innocent party in these payments that they were unaware that the channelling of money to third parties could be in contravention of the NLC's SCM Policy. This worrying see-no-evil attitude of the Applicant must be viewed in light of the Applicant's marketing itself as ethical and governance advisors to, amongst others, government.



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103. In conclusion on this section of the affidavit, each of the averments made in the questions of 15 December 2025 was based on and supported by documentary evidence. Furthermore, the anticipated article will be based on publications and information that is already in the public domain and the Applicant cannot claim to be unaware of the allegations against it.

## **GROUNDS OF OPPOSITION**

104. The Respondents oppose the application on its merits for the reasons that follow.

105. In sum, the allegations that will be made in the proposed article, based on the questions asked in the 15 December emailed to the Applicant, will be demonstrably true and their publication will certainly be in the public interest. Where the proposed article may comment on the Applicant's conduct, the comments will be based on true facts and will be fair. It will in any event be reasonable to publish the facts contained in the proposed article. The article will also contain reporting on the content of an official publication in the Government Gazette, namely the Original Proclamation and the extended Proclamation, and these statements will be published as based on a privileged occasion.

### ***True and in the public interest***

106. When regard is had to the facts set out above, it is clear that each allegation in the questions which the proposed article will be based on is in fact true.

107. There is furthermore a strong public interest in the subject matter of the proposed article as demonstrated by the following facts:

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107.1 The Applicant was a service provider to the NLC on ethics related training and development during a period when the NLC was riddled with ethical compromise. The NLC is a state-owned entity, whose affairs are subject to public scrutiny.

107.2 The services rendered by the Applicant and its procurement have been flagged by a Chapter 9 institution (the AGSA) in a report that is public.

107.3 Based on the AGSA report the NLC was instructed by the Minister to appoint investigators who produced an extensive report (the TSU Report).

107.4 The TSU Report findings, amongst other, led to the NLC's new management charging the company secretary with misconduct. 44 of the charges against the company secretary relate to millions of rands paid to third party service providers to the NLC *via* the Applicant, in direct contravention of the NLC SCM Policy.

107.5 The charge sheet against the NLC company secretary as well as evidence in the TSU Report is evidence of the conduct on the part Applicant that facilitated unethical and *prima facie* unlawful conduct at the NLC.

107.6 The Applicant markets its services to listed corporations and organs of state.

  
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108. As the statements that will be made in the proposed article are true and their publication will be in the public interest, I respectfully submit that the statements will be justified, not wrongful and lawful. Accordingly, they will not give rise to unlawful publication.

***Fair comment***

109. Where the proposed article will make comments, such comments will be based on established facts and will, in the circumstances be fair and made without malice.

110. GroundUp reported on conduct of the Applicant as reported in the TSU Report on five previous occasions. The comments contained in the proposed article will relate to this matter of the public interest.

111. The Applicant cannot oppose the publication of an article based on a complaint it had with a previous article, which was corrected.

***Qualified privilege***

112. To the extent that article refers to matters contained in the published AGSA report and the Original Proclamation as extended, the publication thereof will be justified by privilege. The statements in the proposed article concerning these publications will be substantially accurate and a fair reflection of these public documents.

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***Reasonable publication***

113. The Respondents also submit that it will be reasonable to publish the proposed article, having regard to the following facts:

- 113.1 the statements contained in the article will in essence be true.
- 113.2 the Respondents are unaware of the falsity of any averments in the proposed article and will include any answer that the Applicant provides to the questions asked on 15 December 2025, as well as previous answers it provided for previous articles, and the Applicant's responses to the Press Ombud.
- 113.3 the Respondents will not act negligently or recklessly in publishing the proposed article.
- 113.4 the information contained in the proposed article will be based partly on information received from the NLC.
- 113.5 publication of the proposed article will be objectively reasonable; and
- 113.6 the proposed article will concern matters of public interest.

114. Accordingly, the publication of the article will be reasonable.

115. For the sake of completeness, I attach marked "NG 31" a copy of the summary of the TSU Report relating to the Applicant, which are contained on pages 117 to 150 of the TSU Report.



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## **SERIATIM ANSWER**

116. I now deal with the averments made by the Applicant sequentially. Where I do not address any specific averment, it should be taken as denied to the extent that it is inconsistent with what is stated elsewhere in this affidavit. My response should of course also be read in conjunction with what is stated above.

### Ad paragraphs 1 and 2

117. I deny that the contents of the founding affidavit are entirely true and correct for the reasons set out in this affidavit.

118. Save for the description of the First Respondent, the Respondents admit the content of these paragraphs.

### Ad paragraph 3.1

119. For the reasons set out in 18 to 24 above, I deny that the application was urgent.

### Ad paragraphs 3.2 to 3.6

120. The full background of this application relating to urgency is the following:

120.1 On 15 December 2025, at 14:02, Mr Joseph sent the questions to Ms Minnaar by email.

120.2 Shortly afterwards Mr Joseph received an email from the Applicant which was an “out-of-office” notification. It stated that the Applicant’s offices were closed from 12 December 2025.

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120.3 Thus, at 14:38 Mr Joseph sent a WhatsApp messages (using the Meta WhatsApp messaging services) stating: "Good day Ms. Minnaar. *GroundUp intends to publish a story about TSU's investigations into ProEthics and its recommendations relating to your company. As you are probably aware, ProEthics was included in an amendment to the 2020 Presidential Proclamation mandating the TSU to investigate the NLC and several other entities. The story will be published on Thursday, December 19. Please respond to the attached questions by 12 pm on Thursday, December 19, so that your responses can be included in the story. I sent the same questions to your work email, but got an out-of-office until January response. Therefore, I am sending it again via your WhatsApp. Thanks, Raymond Joseph.*" I attach a copy of the full message's text marked "NG 32".

120.4 On 16 December 2025 (which was a public holiday) at 10:00, Mr Joseph received an email from Ms Minnaar. Ms Minnaar informed Mr Joseph that the answers he sought were contained in the Applicant's amended response to the Press Ombud dated 30 April 2025. Her response also answered questions 1 to 5. The email further stated that: "*Should we therefore not receive an undertaking by you and/or GroundUp before close of business today, to not publish an article implicating ProEthics in the above circumstances, ProEthics has no recourse but to instruct its attorneys to launch an urgent Application to be heard on Thursday, 18 December 2025. We will insist on a*

  
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*punitive order on the attorney and client scale for your intended failure to undertake."*

120.5 GroundUp receives many threats of urgent applications to stop publication. This was also not the first threat from the Applicant. Similar threats were made before we published the 4 May 2023 article. The Respondents saw no reason to respond to the threat by the deadline.

120.6 At 19:26 on 16 December 2025, the Respondents received an email from Ms Kayla Loots, a junior litigation typist at the Applicant's attorneys of record. The email contained an unissued notice of motion. Copies of the email and the attachment are attached marked "**NG 33**" and "**NG 34**" respectively. I forwarded the email to our attorney of record, Jacques Louw, at 20:23 on the same day.

120.7 On the morning of 17 December 2025, I instructed Mr Louw, who sent an email to the Applicant's attorneys of record, at 09:01, acknowledging receipt of the unissued notice of motion. Mr Louw further advised the attorney, Mr Gous that they should consider the potential conflict of interest, as they remain the attorneys of record in this court for the Respondents in the Ramulifho case. A copy of the email is attached marked "**NG 35**".

120.8 At 10:05 Mr Gous responded claiming that his firm had no record of the conflict of interest, to which Mr Louw responded to provide details

  
Mr. Louw

that may assist Mr Gous to track the open file at his offices. Copies of these two emails are attached marked "NG 36" and "NG 37".

120.9 At 11:09 on 17 December 2025, Ms Loots sent an email with the unissued notice of motion as well as the signed founding affidavit. She also attached an unissued notice of set down, setting the matter down for 10:00 on 18 December 2025.

120.10 Having had sight of the Applicant's case for the first time, as contained in the unissued papers, I instructed Mr Louw to inform the Applicant's attorneys that the case is not as urgent and make a proposal for a less truncated timeline. I attach, marked "NG 38", Mr Louw's letter to the Applicant's attorneys. In the letter, Mr Louw:

- 120.10.1 Provided the history of the above correspondence;
- 120.10.2 Informing the Applicant's attorney that publication of the proposed article was not envisaged for 2025;
- 120.10.3 Proposing to the Applicant that the case be postponed on 18 December 2025 to the timeline contained in the issued notice of motion herein.

120.11 At 14:28 on 17 December 2025, Mr Louw received an email from Ms Loots in which she said that the proposed timeline was accepted and stating that the Applicant would "*immediately proceed to amend the*



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*date on the Notice of Motion and upload same accordingly. A copy of the email is attached marked “NG 39”.*

120.12 At 15:01 on 17 December 2025, Mr Louw responded to Ms Loots's email expressing his surprise at the proposed amendment of the already served notice of motion. A copy of his email is attached marked “NG 40”.

120.13 By 10:10 on 18 December 2025, we had not received issued court papers for the matter that, at that stage, was set down for hearing at 10:00 that morning. Mr Louw sent a letter to Ms Loots setting out these facts and stating that we were left in an untenable position. A copy of the letter is attached marked “NG 41”. The letter concluded that, unless we received issued papers by 11:00, we would assume that there was no application.

120.14 At 10:33 on 18 December 2025, Mr Louw received an email with the issued application in its present form. He also received a letter in response to NG41. A copy of the letter is attached marked “NG 42”.

121. Accordingly, at the time of there was no imminent publication envisaged. That had been made clear in correspondence.

122. The Applicant's willingness to postpone the hearing of the application, is an indication of its acceptance that the matter is no longer urgent. No case has been made out in respect of urgency in the Applicant's own papers.

  
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Ad paragraph 4 generally

123. The full background of the Applicant's involvement at the NLC is contained in the paragraphs above. Where the Applicant's version of the background facts differ from the Respondents' version as set out above, the Applicant's version is denied.

Ad paragraphs 4.1 and 4.2

124. The Applicant was one of several candidates who responded to a tender invitation advertised on 29 March 2019 to be appointed to the panel of corporate governance advisors to the NLC.

125. The successful bidders were announced on 14 June 2019 and their letters of appointment were signed by the CEO of the NLC.

126. The Applicant and the NLC signed the SLA in November 2019, with the commencement date of the contract being 13 November 2019.

127. In terms of the SLA, the Applicant was appointed to provide the following services:

127.1 Conduct ethics relating training;

127.2 Develop organisational ethics plan;

127.3 Provide support for internal ethics communication campaigns by developing tailor made communication content;

127.4 Assist with developing ethics statement and codes of conduct;



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127.5 Assist with developing customised training communication tools; and

127.6 Assist with developing of e-learning training material.

128. It is denied that the Applicant rendered the services to the NLC strictly in accordance with the SLA. Applicant breached several provisions of the SLA, including:

128.1 Signing off a document required by Primedia on behalf of the NLC in direct contravention of clause 7 of the SLA.

128.2 Quoting for services outside the scope of paragraph 127 above or the Applicant's expertise on behalf of third parties as directed by the NLC.

128.3 Acting as an intermediary with third party providers to the NLC without directly contracting with the third party providers.

128.4 Charging commission to the NLC for the payments to third party providers. These commissions did not accord with the provisions of clause 9 of the SLA.

129. It is not clear what reliance the Applicant seems to place on the confidentiality provisions of the SLA. Suffice it to say that:

129.1 The confidentiality provision is not binding on the Respondents, should the Applicant rely on it, they may choose to do so, but this is not a prohibition of publication ; and



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129.2 The Applicant's conduct in its relationship with the NLC has been exposed in previous articles published by the Respondents and others, as well as in the TSU Report and to a more limited extent, in Proclamation 293.

Ad paragraph 4.3

130. The TSU Report has been fully dealt with earlier in this affidavit. The TSU was appointed on 3 October 2022 by the Minister to investigate irregular expenditure incurred by the NLC. The Applicant was one of the service providers specifically identified by the Minister which the TSU was called to investigate. The TSU Report published an initial draft report in April 2023 and its final report headed "**IRREGULAR EXPENDITURE – NLC – MAIN REPORT**" on 27 November 2023.

131. The objectives of the TSU Report were, amongst others, to:

- 131.1 quantify the irregular expenditure incurred by the NLC in terms of the contract concluded and any extensions of the initial contract; and
- 131.2 provide a detailed forensic report with clear and substantiated findings, supporting exhibits and recommendations.

132. As for legal advice, the report disclaims that: "*Although the work performed incorporates our understanding of the law as it stands, we do not express a legal opinion on the issue, but merely state the facts as brought to our attention.*"

133. I attach, marked "**NG 43**" a copy of the INTRODUCTION to the TSU Report, which sets out its scope.

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134. In the circumstances, I deny that the TSU Report is limited to the scope as the Applicant avers in this paragraph. In any event, the intended article does not make legal findings, it simply reports on the findings of the TSU Report, and other sources.

Ad paragraph 4.4

135. The narrow clarification of the procurement framework in FA 3 and FA 4 of the Applicant's founding affidavit is of no moment. First, the letters deal with narrow interpretations of the National Treasury SCM Policy guidelines and not with the conduct of the NLC relating to the Applicant. They merely address the narrow point of the appointment of a single supplier (the Applicant) in the circumstances described in paragraph 93 above. Second, the letters pre-dates the appointment of TSU by the Minister. Third, the instructions from the Minister in appointing TSU were to investigate matters that were wider than the narrow issues raised in the AGSA's notes.

136. The National Treasury letters were provided in clarification of specific limited qualification notes in the AGSA report and do not address the issues raised in the 15 December 2025 questions of the proposed article. In any event, the AGSA is a Chapter 9 body with authority that supersedes the National Treasury.

Ad paragraphs 4.5 to 4.8

137. I have dealt with the article (which is annexure NG 17) and the Press Ombud complaint and ruling earlier in this affidavit. Suffice it to repeat that the narrow finding of the Press Ombud on the technical meaning of "*launder*" and the

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dismissal of the remainder of the complaints do not accord with the spin that the Applicant endeavours to place on the Press Ombud proceedings in these paragraphs.

Ad paragraph 4.9

138. I would respectfully submit that, in light of the findings and evidence contained in the TSU Report and the naming of the Applicant in Proclamation 293, the South African Reserve Bank is acting responsibly in discontinuing the Applicant's services.

139. Furthermore, it is not only GroundUp which is responsible for the media coverage of the Applicant and the blame cannot be squarely place on the Respondents for the alleged harm. Furthermore, events from March 2025 can hardly justify a purportedly urgent application launched in December 2025, some nine months later.

Ad paragraphs 4.10 to 14.12

140. I dealt with the process of the conceptual article that led to the questions posed by Mr Joseph as well as the subsequent response from the Applicant above.

141. The premise of the questions has also been fully discussed elsewhere in this affidavit. I submit that the questions as well as the grounds for asking questions and seeking the Applicant's responses are self-evident.



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Ad paragraph 4.13

142. It is correct that the Respondents did not provide the undertaking sought by the Applicant. The request for the undertaking, and the accompanying threat were unreasonable. It was not the first time the Applicant threatened action against the Respondents.

143. Moreover, the Respondents often receive threats from subjects whose comment is sought. The media cannot respond to each and every threat or heed such threats as doing so would impose a chilling effect on the media and be a severe imposition on the media's right to freedom of expression as guaranteed in Section 16 of the Constitution.

Ad paragraph 4.14

144. In this paragraph the Applicant makes the bald statement that the previous five articles published by the Respondents were inaccurate. The Applicant does not indicate which portion of the articles were inaccurate. The allegation of inaccuracy is denied. Save for the technical meaning of the word "launder" (an interpretation the Respondent's dispute is legally substantiated), no other "inaccuracy" has so far been highlighted by the Applicant.

145. As for the submission that the Applicant will suffer commercial harm, if such harm is provable, I submit that it will be self-inflicted and solely based on the conduct of the Applicant as evidenced in the TSU Report and Proclamation 293.

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146. Furthermore, the Applicant's admission that the facts are in dispute is destructive of the motion procedures followed by the Applicant and in particular where final relief is sought.

Ad paragraphs 5.1 and 5.2

147. The Press Code requires that the media shall seek, *if practicable, the views of the subject of critical reportage in advance of publication, except when they might be prevented from reporting, or evidence destroyed, or sources intimidated.*

148. The 15 December 2025 questions were asked in compliance with the Press Code.

149. As is evident from the analysis of the questions earlier in this affidavit, each question is factually supported by specific sources, which include the NLC's Executive Legal Manager, Proclamation 293, the TSU Report and the charge sheet against Ms Nene.

150. The questions were indeed asked on the basis that publication was possible on 19 or 20 December 2025. However, as is often the case, this deadline was based on the earliest possible date of publication and on the understanding that comments would likely be included in the article.

Ad paragraphs 5.3 to 5.5

151. Earlier in this affidavit I have provided a full analysis of the questions and provided the documented source for each question. I ask that this be read as incorporated in response to these paragraphs.

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152. I deny that the questions pre-judged any aspect of the Applicant's conduct. The questions nevertheless clearly indicated that these subjects were considered for discussion in the proposed article, which would include the Applicant's responses, where justified.

153. I repeat, all questions are based on public documents that make certain findings against the Applicant and it seeks to provide the Applicant with an opportunity to respond to such findings. In addition, the purpose of asking questions of the Applicant is simply to include a response to allegations and obtain comment. A response is not required in order to make a publication – only that a reasonable opportunity be given to respond. That has clearly happened.

Ad paragraph 5.6

154. I deny that the premises of the questions were factually incorrect.

155. In respect of the NLC's threatened legal action, the fact that the Applicant has not received letters or process from the NLC does not detract from the statement made by the Chief Legal Officer.

156. Findings have indeed been made by the TSU, an investigative firm appointed by the Minister. The fact that no findings have been made in a court or tribunal is of no consequence. The questions are not premised on court rulings, but on the underlying facts, which *prima facie* indicate wrongful conduct on the part of the Applicant and the NLC.

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Ad paragraphs 5.7 and 5.8

157. The Respondents are not bound by the Applicant's confidentiality undertakings.

158. The Applicant's attempt to hide behind the confidentiality clause must be judged in the following context:

158.1 The fact that each of the allegations relating to third party payments from the Applicant is mentioned in Ms Nene's charge sheet and the TSU Report. This includes the names and details of the payments to the third parties.

158.2 The Applicant has previously provided extensive answers to questions posed by the TSU. These answers include the questions that the TSU posed to the Applicant and which the Applicant answered comprehensively. (See pages 117 to 150 of the TSU Report.)

158.3 Some of the facts relating to payments to third parties have previously been placed in the public domain by the Respondents.

159. The confidentiality provisions in the SLA do not relate to the questions asked of the Applicant and do not preclude a response. Even if they did, that is not a matter which concerns the Respondents and the Applicant could have either sought permission from the NLC to make disclosures or simply indicated that it was not able to respond.



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Ad paragraphs 5.9 to 5.11

160. The content of these paragraphs is dealt with above, and the reasoning should be accepted as the same. The Applicant seems to create the impression that it is the first time it has heard of the allegations against it, and that it cannot respond.

161. The Applicant has responded to the same allegations for the TSU Report, and was granted a reasonable opportunity. The Applicant has been aware of the allegations against and was provided with an opportunity to respond by the Respondents.

162. It is clear that this application seeks to gag the Respondents and avoid further scrutiny and reporting regarding the Applicant. The Applicant has been afforded more than a reasonable opportunity to respond to the questions posed and it cannot interdict publications based on the ruse of requiring time to respond.

Ad paragraph 6:

163. The application of the confidentiality clause against the Respondents is discussed in detail above and I ask that this be read as incorporated in response to this paragraph.

164. The Applicant is notably silent in respect of any request made of the NLC to disclose information which it alleged is subject to the confidentiality clause of the SLA (which the Respondents deny applies). I can only assume that the Applicant has failed to make any such request. That will be dealt with further in argument.

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Ad paragraph 7

165. It is clear that the Applicant does not seek interim relief but final relief. Therefore, the Applicant must show a clear right and not a *prima facie* right.

166. The right to protect its reputation is not a substantive right that trumps all others and the Section 16 right that the Respondents hold should be weighed against the Applicant's rights which exist and have been established.

Ad paragraph 8

167. I have dealt with many of these aspects above.

168. The Applicant has not demonstrated that it will suffer any harm from the anticipated article let alone imminent and irreparable harm.

169. Any harm that the Applicant might experience, I submit if such harm is provable, it will be self-inflicted and solely based on the conduct of the Applicant as evidenced in the TSU Report and Proclamation 293.

170. The Applicant has been implicated in many reports and other articles, any reputational harm cannot be attributed solely to the Respondents.

Ad paragraph 9

171. As stated above the content of the article will be true and made in the public interest; the publication will be reasonable; comments, where made, will be based on true facts and will be fair; in the instances where relevant and the subject matter will be subject to qualified privilege.

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172. The balance of convenience does not favour the Applicant. The Applicant is not in a position to state when the "accuracy of the assertion can be tested" There is no such pending investigation. Nor has it been concluded that the content of the report and its investigations need to be tested.

173. Furthermore, the Applicant cannot provide the court or the Respondent with any indication of when the accuracy of the assertions will be tested, because it cannot.

174. Therefore, the relief is final and I submit that the Respondent should not be prevented from publishing material which implicates the Applicant in perpetuity,

Ad paragraph 10

175. The Applicant should have been aware that the ombud could not interdict publications and it is apparent that the Applicant delayed bringing this application unreasonably.

176. The Applicant can of course institute a defamation action against the Respondents in the event that it believes that it was defamed in publications which are anticipated. That is the appropriate remedy for its unfounded concerns. I have no doubt that the Applicant does not wish to pursue such a course of conduct as it would prefer to unreasonably and unlawfully gag the Respondents.



AKVR

Ad paragraph 11

177. I deny that the Applicant is seeking interim relief. This will be dealt with further in argument to the extent necessary.

**COSTS**

178. The Respondents have been forced to incur substantial costs in opposing this application which should never have been launched. It is apparent that this application has been launched in circumstances in which it was patently without merit and to obtain relief which the Applicant was not legitimately entitled to. For those reasons the Applicant should be ordered to pay the Respondents' costs on a punitive scale.

**CONCLUSION**

179. For all these reasons, the Respondents submit that the application should be dismissed with costs. Including costs of two counsel. The Applicant should be ordered to pay those costs on a punitive scale.



NATHAN GEFFEN

Thus deposed to and signed at CAPE TOWN on this 6<sup>th</sup> day of JANUARY 2026 the



Deponent having acknowledged:

- a. that he knows and understands the contents hereof;
- b. that he has no objection to taking the prescribed affirmation;
- c. that he considers the affirmation binding on his conscience.

Having uttered the following words, "I truly affirm that the contents hereof be true."



**COMMISSIONER OF OATHS**

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