

## COURT ONLINE COVER PAGE

IN THE HIGH COURT OF SOUTH AFRICA  
Gauteng Division, Pretoria

CASE NO: 2025-240916

In the matter between:

**ORGANISATION UNDOING TAX ABUSE** Plaintiff / Applicant / Appellant  
**NPC**

and

**MINISTER OF HIGHER EDUCATION AND  
TRADING, MEMBERS OF THE INSETA  
ACCOUNTING  
AUTHORITY, DEPARTMENT OF HIGHER  
EDUCATION, INSURANCE SECTOR  
EDUCATION AND TRADING  
AUTHORITY, IGNATIA GUGU MKHIZE**  
Defendant / Respondent

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### Founding Affidavit

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ELECTRONICALLY SIGNED BY:

Registrar of High Court of South  
Africa , Gauteng Division, Pretoria

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case No: \_\_\_\_\_

In the matter between

**ORGANISATION AGAINST TAX ABUSE NPC**

Applicant

(Registration no: 2012/064213/08)

and



**MINISTER OF HIGHER EDUCATION AND TRAINING**

First Respondent

**MEMBERS OF THE INSETA ACCOUNTING AUTHORITY**

Second Respondent

**DEPARTMENT OF HIGHER EDUCATION  
AND TRAINING**

Third Respondent

**INSURANCE SECTOR EDUCATION AND  
TRAINING AUTHORITY**

Fourth Respondent

**IGNATIA GUGU MKHIZE**

Fifth Respondent

**FOUNDING AFFIDAVIT**

I, the undersigned,

**STEFANIE FICK**

do hereby make oath and say:

1. I am an adult female executive director of the applicant's Accountability Division with offices situated at Unit 4, Boskruin Village, Cnr President Fouche and Hawken Road, Bromhof, Johannesburg, Gauteng.
2. I hold an LLB degree from Unisa and am an admitted advocate (non-practising). Prior to joining OUTA in 2017, I served as a prosecutor for 17 years and was a member of the Johannesburg Society of Advocates for 5 years. I thus understand the legal submissions in this affidavit.
3. I am duly authorised by a resolution from the applicant's executive committee to represent the applicant in these proceedings, which has resolved to bring this application, and to depose to this affidavit on behalf of the applicant. The resolution is appended as annexure "FA1".
4. The facts deposed to below are within my personal knowledge. To the best of my belief, the contents of the affidavit are true and correct. The annexures appended to this application were not obtained from the respondents ("**the respondents**"), and these documents do not constitute the full record supporting the issue under review.
5. I have in my possession and under my control all documentation that is relevant and pertinent to the adjudication of this application, and with which documentation, and facts set forth herein, I am familiar.

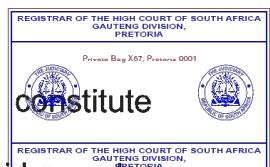


6. Apart from being legally trained, submissions of a legal nature are made on the advice of the applicant's legal representatives, which advice I considered and accept as correct.

7. To avoid prolixity, I respectfully request that the annexures affixed to this affidavit and the facts apparent therefrom be read and incorporated as if specifically restated in this affidavit and that same be regarded and dealt with accordingly.

8. Inasmuch as any reference to any event or the annexures may constitute hearsay evidence, the applicant requests that such hearsay evidence be admitted in terms of the provisions of section 3 (1) (c) of the Law of Evidence Amendment Act 45 of 1988.

  
REGISTRAR OF THE HIGH COURT  
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REGISTRAR OF THE HIGH COURT  
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## A PARTIES

9.

### Applicant

9.1. The applicant is the ORGANISATION UNDOING TAX ABUSE NPC (hereinafter also referred to as "**OUTA**"), a non-profit company duly registered in terms of the Company laws of the Republic of South Africa with registration number 2012/064213/08 and principal place of business at Unit 4, Boskruin Village, Cnr President Fouche Road and Hawken Avenue, Bromhof, Johannesburg, Gauteng.

## Respondents

9.2. The first respondent is:

- 9.2.1. The Minister of Higher Education and Training ("**the Minister**"), cited herein in his official capacity as the political functionary responsible for certain functions set out in the Skills Development Act, No. 97 of 1998 ("**SDA**") having its principal place of business at 123 Francis Baard Street, Pretoria, c/o State Attorney, Salu Building, 316 Thabo Sehume Street, Pretoria.
- 9.2.2. Is the functionary empowered by Section 13B(1) of the SDA to appoint the Chief Executive Officer of the Insurance Sector Education and Training Authority based on a recommendation from the INSETA Accounting Authority.
- 9.2.3. Is the author of the administrative action that is the subject of this review application.

9.3. The second respondent:

- 9.3.1. Is the constituting members of the Accounting Authority ("**the AA**") of the INSETA, cited in their statutory capacity as the governing body of INSETA.
- 9.3.2. Is established in terms of Section 11(2) of the SDA. The AA is the body responsible for ensuring the SETA's compliance with the Public Finance Management Act, No. 1 of 1999 (PFMA),



and the SDA, where relevant. Crucially, the AA fulfils the mandatory precondition under Regulation 2(8) of the Regulations for the Conditions of Service and Appointment of the CEO of a SETA by being the body that is required to evaluate the CEO's performance and make a recommendation for a further term of office to the Minister.

9.3.3. Have their principal place of business at 18 Fricker Road, Illovo, Sandton, Gauteng.



9.4. The third respondent is the Department of Higher Education and Training ("the DHET"), a national governmental department of South Africa, cited herein in its capacity as the administrative arm of the First Respondent. The DHET is responsible for implementing the national policy and strategy for skills development and for providing the administrative and technical support for the Minister's decisions relating to SETA governance and CEO appointments. The DHET's principal place of business is 123 Francis Baard Street, Pretoria. The DHET is joined due to its direct material interest in the subject matter, including the custody of documentation relevant to the recommendation process.

9.5. The fourth respondent:

9.5.1. Is the Insurance Sector Education and Training Authority ("INSETA"), a Sector Education and Training Authority established in terms of Section 9(1) of the SDA. INSETA is a Schedule 3A Public Entity in terms of the PFMA.

9.5.2. Primary function is to implement the National Skills Development Strategy within the insurance sector.

9.5.3. Was re-established in terms of section 9(1)(b) of the SDA until 31 March 2030.

9.5.4. Is the employer of the fifth respondent.

9.5.5. Has its principal place of business at 18 Fricker Road, Illovo, Sandton.

9.6. The fifth respondent is Ms Ignatia Gugu Mkhize ("**Ms Mkhize**") and adult female, cited herein in her personal and official capacity as the incumbent CEO of INSETA having her employment address at 18 Fricker Road, Illovo, Sandton, whose re-appointment for a further term is the subject of this review application. Ms. Mkhize has a direct and substantial interest in the relief sought by the applicant and is cited for all necessary purposes.



## B PURPOSE

10.

10.1. OUTA seeks to declare the re-appointment of Ms Mkhize invalid and to have the decision by the Minister for her re-appointment set aside.

10.2. OUTA is also seeking that the process of nominating a CEO for the INSETA be set aside and be referred back to the AA, to follow due

process as prescribed in the SDA and its regulations for the appointment of a CEO.

10.3. The applicant contends that the correct and transparent process was not followed when the Minister re-appointed Ms Mkize during October 2025 and that Ms Mkize has not satisfied the requirements to be re-appointed, a crucial consideration which the Minister and the AA, when making the recommendation, failed to consider.



## C LOCUS STANDI

11.

11.1. OUTA derives its standing to bring this application from section 38 of the Constitution.

11.2. OUTA approached the Court in terms of section 38(a) (acting in its own interest) and 38(d) (acting the public interest).

11.3. OUTA has further been approved as a public benefit organisation in terms of section 30(1) of the Income Tax Act 58 of 1962, with its principal objective as set out in clause 3.1 of its Memorandum of Incorporation ("MOI") as:

*“...the promotion and advocacy of human rights and democracy in South Africa through the advancement and protection of rights, values and principles enshrined in the Constitution of the Republic of South Africa.”*

MM

11.4. OUTA's Memorandum of Incorporation ("MOI") continues to define its objectives. In particular, clause 3.2 provides:

*"3.2 In particular the Company shall, through conducting Activities, focus on-*

*3.2.1 promoting Taxpayer's rights by —*

*3.2.1.1 legitimately challenging the unlawful squandering, maladministration and/or Government Funding; and*

*3.2.1.2 legitimately challenging laws, policies and regulations which are irrational or ineffective for their intended purposes."*



11.5. Not to cause unnecessary prolixity of the papers, I do not attach the complete and voluminous MOI and mission statement of OUTA, but only the relevant excerpt dealing with OUTA's objectives as annexure "FA2".

11.6. Lastly, OUTA is a civil action organisation that:

11.6.1. Investigates, exposes, and combats corruption, maladministration, and the abuse of taxes and public funds in the public sector;

11.6.2. Challenges irrational and unconstitutional government decisions, policies, and legislation;

11.6.3. Works to improve public administration and service delivery; and

11.6.4. Advocates for positive policy changes and holds those responsible for misconduct accountable.

## D POSITION OF THE CEO

### 12.

12.1. The AA constitutes the board of non-executives, who do not carry operational responsibilities. The AA, appointed by the Minister in terms of section 11 of the SDA, provides strategic direction to the INSETA and is tasked to ensure that the INSETA achieves its objectives and implements its mandate. The AA governs and oversees the affairs of INSETA.



12.2. The previous AA members were appointed from 1 April 2020 to 31 March 2025. The new AA members were apparently confirmed in their positions by the Minister as of 30 September 2025.

12.3. The AA, in terms of Section 56 of the Public Finance Management Act, 1999 ("PFMA"), delegated the management of the day-to-day operations to the CEO, including the supervision of staff and the management of resources within the INSETA. The applicant seeks to have the delegation of powers and authority made available by the respondents when the record is provided.

12.4. Section 13 of the SDA determines that the Minister must provide a constitution for every SETA which, subject to the SDA, must be in line with the standard constitution prescribed by the Minister.

12.5. The Minister approved a specific Constitution for the INSETA ("the **Constitution**" or "**INSETA Constitution**") (annexure "FA3").

12.6. The INSETA Constitution provides at paragraph 16 thereof for the duties of the INSETA CEO, which determines that the CEO must:-

- a) implement the decisions of the AA;
- b) execute the strategic and management operations of the SETA;
- c) attend the meetings of the AA and the Executive Committee;
- d) promote strategic planning and policy development;
- e) *ensure strict and responsible control of the finances of the SETA, in compliance with the financial management requirements of the PFMA;*
- f) supervise and direct the other employees of the SETA; and
- g) perform such other functions as determined by the AA or the Executive Committee.



12.7. The Constitution at paragraph 17(7) determines that:

- a) The AA must appoint at least three people, including the CEO, as signatories for each account of the SETA.
- b) At least two of the three signatories, which must include the CEO, *must be required to authorise any payment made by the SETA.*

## E BASIS FOR REVIEW

13.

13.1. The applicant seeks the review and setting aside of the decision taken by the Minister to re-appoint Ms Mkize as the INSETA's CEO for a further 5-year fixed term.

13.2. This decision constitutes "administrative action" as defined in Section 1 of the Promotion of Administrative Justice Act, 3 of 2000 ("PAJA"), *alternatively*, constitutes the exercise of public power, which is subject to review in terms of the principle of legality.



13.3. OUTA will seek the review of the Minister's decision in terms of PAJA and specifically in terms of section 6, subsections:-

13.3.1. 2(a)(iii) – bias or suspected bias;

13.3.2. 2(b) – a mandatory and material procedure or condition prescribed by an empowering provision was not complied with;

13.3.3. 2(e)(iii) – irrelevant considerations were taken into account or relevant considerations were not considered;

13.3.4. 2(e)(vi) – arbitrarily or capriciously;

13.3.5. 2(f)(ii)(bb) and (cc) – is not rationally connected to the purpose of the empowering provision, and the information before the Minister.

13.3.6. 2(i) – the action is otherwise unconstitutional or unlawful.

13.4. I reserve the right to supplement or amend the grounds, once the full record has been obtained from the respondents.

13.5. The Minister's power to affect the appointment of a SETA CEO is derived from Section 13B of the SDA, read with Regulation 2 of the "Regulations for the Conditions of Service and Appointment of the CEO of a SETA" (*the Regulations*) (annexure "FA4").

13.6. Before the Minister makes the appointment, the AA must, in terms of paragraph 16 of the INSETA Standard Constitution Regulations ("the Constitution"), nominate and present three suitable candidates to the Minister for consideration, and from which candidates the Minister must make the appointment.

13.7. This review is therefore premised on (i) that the AA did not follow due process when it nominated and presented the three candidates for appointment as INSETA CEO to the Minister and (ii) the Minister appointed Ms Mkize, where he was aware or should have been aware that she was not a suitable candidate for reappointment.

13.8. I will consequently deal with the governance failures referred to above.

## F GROUNDS FOR REVIEW

### FAILURE BY THE AA AND THE MINISTER TO COMPLY WITH THE PROCESS AND PROCEDURE PRESCRIBED IN THE REGULATIONS AND THE CONSTITUTION

14.

14.1. Regulation 2(6) determines that the AA must make a recommendation to the Minister within 6 months of taking office, *after following a transparent process*, recommend in writing three qualified, experienced and suitable candidates with knowledge in accounting, financial and senior management matters for appointment to the position of the CEO by the Minister.

14.2. Regulation 2(2)(e) provides that the Minister can appoint any one of the three candidates recommended by the AA, after consultation with Cabinet.

14.3. Of crucial importance is that before making a recommendation to the Minister, the AA "must" follow a recruitment process, place national advertisements to invite candidates to apply, have a shortlisting process by which shortlisted candidate can be interviewed, and have a selection committee to select candidates to be interviewed, as set out under regulation 2(a) to (d).

14.4. The re-appointment is specifically governed by Regulation 2(6) and (8), which permits a further term only "*subject to satisfactory performance*." This constitutes a mandatory and material precondition for the lawful exercise of the Minister's power.

14.5. It bears emphasis that the re-appointment of a CEO by the Minister in terms of regulations 2(6) and (8), read together, does not excuse the AA from following the process prescribed under regulation 2, considered in its entirety. The reappointment must still follow a *transparent process*, where candidates, before they are recommended, are to be evaluated in

terms of a structured process. Of relevance are regulations 2(3) to 2(5) in this regard.

14.6. The AA is not empowered to make a recommendation to the Minister for the reappointment of Ms Mkize as the CEO for a following term, without adhering to the processes set out under the regulation.

14.7. The regulation determines that a CEO may be reappointed by the Minister after the AA has followed a proper, transparent process, and where the incumbent CEO performed her duties satisfactorily. The reappointment of a CEO does not permit any shortcuts or circumvention of processes under the regulation.



14.8. OUTA is in possession of a document titled "ROUTE FORM: SUBMISSION TO THE MINISTER OF HIGHER EDUCATION AND TRAINING", which is appended as annexure "FA5". This unsigned document contains the record of the decision to, *inter alia*, reappoint Ms Mkize as the INSETA CEO for a further 5 years. It represents the Minister's approval to appoint the permanent and interim SETA CEO's referred to in the document.

14.9. The submission to the Minister, which is subject to his approval, contains the following:

14.9.1. The employment contracts of SETA Chief Executive Officers expired on 31 March 2025 and were subsequently extended in terms of Regulation 16(1)(c) of the SETA Standard Constitution for a further six-month period, which ended on 30 September 2025 [*para 7 thereof*].

14.9.2. Acknowledge the process prescribed under section 13B of the SDA, which includes the following of a transparent process before the AA can recommend candidates to the Minister [*para 8 thereof*].

14.9.3. Acknowledge regulation 2(8) that a candidate recommended by the AA, may be reappointed by the Minister, subject to satisfactory performance [*para 9 thereof*].

14.9.4. That the new AA members were appointed on 30 September 2025 [*para 10 thereof*].



14.9.5. That the newly appointed AA, were “*directed*” on the same day of their appointment (30 September 2025) and prior to the expiry of the six-month transitional contracts of the SETA Chief Executive Officers, which include Ms Mkize’s contract extension, “*to urgently convene meetings to*”:

- a) “Identify three suitable candidates from the executive management team and submit recommendations for the Minister’s consideration and the appointment of Acting Chief Executive Officers; or
- b) Commence with the recruitment and selection process for the appointment of Chief Executive Officers in terms of section 13B(1) of the Act; or
- c) Submit recommendations, in terms of regulations 2(6) and (8) of the Conditions of Service and Appointment of

the CEO of a SETA, for the reappointment of the incumbent Chief Executive Officers for a further five-year fixed term ending on 31 March 2030" [para 10 thereof].

14.10. The submission document further states:

*"SETAs that intended to recommend Chief Executive Officers for a further five-year fixed term appointment ending on 31 March 2030*

*were directed to ensure that in their recommendation they indicate the satisfactory performance by submitting reports on the entity's performance (three financial years performance reports addressing*

*the APP targets) and the entity's governance (three financial year progress in improving the audit findings or three-year audit findings by the AGSA)." [paragraph 11 thereof].*

*"All recommendations, either for acting appointment or reappointment for a further term of office would require the SETAs to submit three names of recommended candidates for the Minister's consideration and decision making. While it might not be legally sound to consider three names in instances whereby a recommendation is submitted for reappointment of the outgoing CEO for a further term of office given that that such recommendation must be based on the satisfactory performance of the same incumbent as the CEO and it would be inappropriate to compare the incumbent with the other two internal candidates in the list, submitting a list of three names will assist the Minister to take any decision as deemed necessary including a decision of appointing an acting CEO should the Minister decide not*



*to approve a recommendation to reappoint the a CEO for a further term of office. Therefore, submission of three names is intended to ensure a seamless process and provide the Minister with options necessary for decision making.” [paragraph 12 thereof].*

*“On the appointment of SETA CEOs for a further five-year fixed term, FASSET, CHIETA, INSETA, MICTSETA, FP&MSETA, W&RSETA and MQA submitted recommendations with a list of three candidates. Each SETA recommendation was accompanied by a brief summary of candidates’ profiles, Board resolutions, three reports on performance and three audit reports on governance.” [paragraph 13 thereof]*



- 14.11. The submission document further makes reference to a legal opinion which was obtained from the Chief Directorate: Legal and Legislative Service regarding the interpretation and application of the cited regulations and Section 13B of the SDA, the opinion which is not in possession of OUTA.
- 14.12. It records that “some” AA’s submitted their recommendations prior to the expiry of the transitional fixed-term contracts. Consequently, the recommendation process was validly and lawfully executed within the parameters of regulations 2(6) and (8) of the Conditions of Service and Appointment of the CEO of a SETA”. [paragraph 17 thereof]. It is unclear whether INSETA ranks amongst these AA’s, which have already submitted their recommendations for CEO to the Minister. It is noted that this paragraph 17 contradicts what was stated under paragraph 10 of the submission, referred to above.

14.13. On 2 October 2025, the Minister published a press release, appended as annexure “FA6”, announcing “*the full constitution and appointment of Accounting Authorities (AAs) for all Sector Education and Training Authorities (SETAs), effective from 30 September 2025.*” He further announced that the AA’s “*have already initiated processes to commence the recruitment and selection process for permanent CEOs, in line with the provisions of the Skills Development Act and the SETA Standard Constitution.*”

14.14. After obtaining a copy of the submission document and  the press release referred to above, OUTA addressed a letter to the  Minister, dated 15 October 2025, which is appended as annexure “FA7”. It is requested that the contents of this letter be incorporated herein as if specifically mentioned.

14.15. In this letter, OUTA expressed concerns about the reappointment of Ms Mkize and records that the prescribed process in terms of the SDA and the regulations have not been followed and that Ms Mkize did not perform satisfactorily, to justify the reappointment.

14.16. On 21 October 2025, the Minister responded in a letter appended as annexure “FA8”, wherein the Minister does not address the concerns raised by OUTA in its letter of 15 October 2025 but rather criticises the applicant for relying on a document that has not been disclosed to the public.

14.17. The Minister is advised that the document was obtained from a whistleblower within the ranks of the respondents on or about 11/12/2025.

October 2025, who requested that his/ her identity be kept confidential and private for fear of retribution and victimisation.

14.18. The whistleblower indicated that he/ she was concerned about the processes followed by the INSETA and the Minister to have the various SETA CEO's reappointed, especially in view of the debacle which unfolded during May 2025, when the previous Minister unlawfully appointed chairperson's for the various accounting authorities across the SETAs, which chairpersons' appointments were withdrawn by the then Minister Nkabane on 16 May 2025, following a public outcry and questions raised by the relevant Parliamentary standing committee, and where it was found that the process was flawed and that the Minister may have misled the committee.

14.19. OUTA is concerned that the reappointment appears to be based on political cronyism and expediency, rather than recommending and appointing the best-qualified person to the position.

14.20. Even if it is shown that the Minister appropriately appointed the members of INSETA AA in terms of section 11 of SDA, it is public knowledge that the chairperson for the INSETA has not been appointed, raising concerns whether the INSETA AA as a board, is properly constituted to make any recommendations to the Minister as detailed under paragraph 10 of the submission document.

14.21. On 23 October 2025, the INSETA on their Facebook Page "celebrate[d] the reappointment of Ms. Gugu Mkhize for a second term

as *Chief Executive Officer of INSETA*." A copy of this posting is appended as annexure "FA9".

- 14.22. The INSETA made the posting, despite the Minister not having officially announced Ms Mkize's reappointment, *which can only be made after the Minister has consulted with Cabinet*.
- 14.23. There are also concerns that not all constituent members of the INSETA AA have been appointed by the Minister as directed in terms of section 11(2)(a) and (b) of the SDA.
- 14.24. If all the constituent AA members have not been appointed, any recommendation by the AA to the Minister would fall foul of the requirements of the SDA and its regulations regarding the appointment of Ms Mkize. We also call on the respondents to make available this record dealing with the appointment of the members of the AA.
- 14.25. The applicant is also in possession of a video recording, which will be submitted to the Court in terms of the Electronic Communications and Transactions Act, 2002, which allegedly shows that a "welcome back" event was held in October 2025.
- 14.26. At the time of deposing to this affidavit, the Minister has still not formally announced Ms Mkize's appointment. However, she is already occupying the role as permanently appointed CEO, and her reappointment is "*celebrated*" by the INSETA.

14.27. The evidence at the applicant's disposal at this stage suggests that the process to have Ms Mkize reappointed as permanent CEO is rife with procedural irregularities and not in conformance with the prescripts of the SDA and its regulations on the appointment of SETA CEOs.

#### FAILURE BY THE MINISTER TO COMPLY WITH THE SDA AND THE REGULATIONS FOR THE APPOINTMENT OF A SETA CEO



14.28. Apart from procedural irregularities referred to above, the Minister's decision, based on whatever recommendation he had received from the AA, did not take into account that it is a *precondition* for Ms Mkize's reappointment as permanent CEO that she should have performed satisfactorily in that role during her previous tenure.

14.29. Ms Mkize served as the permanent CEO of the INSETA from 1 April 2020 to 31 March 2025. Her tenure was subsequently extended by the Minister for a further six months, ending on 30 September 2025, in terms of paragraph 16(1)(c) of the INSETA Constitution. This last interim appointment is even questionable since the INSETA was not "re-established" at that juncture under section 9(1)(b) of the SDA, to which paragraph 16(1)(c) has reference.

14.30. It was a requirement of Ms Mkize's appointment as CEO in 2020, that she would satisfy predetermined key performance indicators, which included "*Financial acumen – Public funds management*", as is evident from the "Internal/External Advertisement" appended as

annexure "FA10". She responded to and was appointed as CEO following a recruitment process which was initiated by this advertisement. It was a requirement of her appointment, as advertised, that she would diligently and responsibly manage and report on the financial affairs of the INSETA. This has not materialised.

- 14.31. The INSETA's financial year for purposes of annual reporting is 1 April to 31 March.
- 14.32. The INSETA, under the effective day-to-day management of Ms Mkize since 2020 to 2025, received no less than 4 qualified audit reports under her tenure.
- 14.33. The *qualified audit reports by the Auditor General* pertain to the 2022, 2023, 2024 and 2025 financial years. The relevant audit report extracts from the INSETA annual financial statements for 2022 to 2025 are appended as annexures "FA10.1" to "FA10.4".
- 14.34. Only during the first year of Ms Mkize's tenure did the INSETA receive an unqualified audit. In the following years, matters deteriorated under the leadership of Ms Mkize, the AA and its chairperson. It is accepted that Ms Mkize alone is not responsible for the poor financial performance of the INSETA, where the AA and its chairperson play an equally vital part in ensuring that public funds are appropriately spent, accounted for and managed in accordance with the PFMA and its regulations. None of these parties can be divorced or separated from responsibility and accountability, since the CEO, the AA and the



chairperson of the AA, form the collective, managing and oversee the affairs of the INSETA.

14.35. As I have stated, the CEO is responsible and accountable for the day-to-day operations of the INSETA. In contrast, the AA provides strategic direction and oversight and is not operationally involved in the affairs of the INSETA.

14.36. What is significant from the audit reports is the recurring theme from year to year that *inter alia*:-

- a) There are significant internal control deficiencies that resulted in a bias for the qualified opinion.
- b) The INSETA did not implement proper record keeping ensuring that complete, relevant and accurate information was accessible and available in a timely manner to support financial and performance reporting.
- c) The INSETA developed an audit action plan to address internal control deficiencies, however, the plan was not adequately monitored to ensure that corrective measures were effectively implemented. As a result, there were recurring findings with similar root causes as those previously reported.
- d) Management did not prepare regular, accurate and complete financial and performance reports that were supported and evidenced by reliable information. This is evidenced by material

misstatements that were detected in the submitted annual financial statements and performance report during the audit.

- e) Management did not implement adequate controls over the daily processing/ recording of transactions, and month-end closure controls could not ensure that the financial records were complete and accurate.
- f) The controls in place did not prevent or detect internal control deficiencies, resulting in material misstatements and non-compliance.
- g) Management could not retrieve supporting evidence timeously due to a lack of systematic filing and record-keeping, which resulted in unforeseen delays in the audit process.
- h) The INSETA did not ensure that the financial statements and annual performance report were adequately reviewed and supported by complete and accurate supporting documents, resulting in material misstatements being identified during the audits.
- i) The INSETA did not implement adequate controls relating to daily and monthly processing and reconciliation of transactions. The controls that management put in place to ensure regular, accurate and complete financial reports did not always prevent and/ or detect material misstatements in the financial statements and annual performance report.



- j) Further with reference to the annual financial statements, the Auditor General stated that the financial statements submitted for auditing were not prepared in accordance with the prescribed financial reporting framework, as required by section 55(1) (b) of the PFMA.
- k) Material misstatements of the statement of cash flows, contingent liabilities and discretionary projects identified by the auditors in the submitted financial statements were corrected and the supporting records were provided, but the uncorrected material misstatements resulted in the financial statements receiving a qualified opinion.
- l) In the 2021/2022 financial year, the Auditor General in respect of "Expenditure Management" found:

*"25. Effective and appropriate steps were not taken to prevent irregular expenditure amounting to R18 175 000 as disclosed in note 31 to annual financial statements, as required by section 51(1) (b) (ii) of the PFMA. The majority of the irregular expenditure was caused by non-compliance with supply chain management prescripts.*

*26. Effective steps were not taken to prevent fruitless and wasteful expenditure amounting to R768 000, as disclosed in note 30 to the financial statements, as required by section 51(1)(b)(ii) of the PFMA."*

14.37. The Auditor General's reports deal with systemic and perpetual failures of material financial misstatements, failure to observe the provisions of the PFMA, failure to manage expenses leading to irregular expenditure (caused by non-compliance with supply chain regulations), and failure to implement, enforce, and maintain sufficient internal financial controls. These are all the CEO's responsibilities.

14.38. The above is not intended to comprehensively address the fullness of the audit findings contained in the various audit reports. Still, it serves only as an extract of some relevant portions. The Court will be asked to consider the various Auditor General reports in *toto* when assessing the CEO's performance for the period 2022 to 2025.

14.39. Ms Mkize has failed to satisfactorily discharge her duties as set out under paragraph 16(5) of the INSETA Constitution. Her appointment letter and the advertised job specification will provide further details on the requirements of her role during her tenure as CEO. The respondents are also required to make this information available under Rule 53.

14.40. Based on the continuous financial and management failures identified by the Auditor General, the Minister could never have concluded that Ms Mkize's past performance as CEO met the threshold of competence, diligence and commitment to justify her reappointment.

14.41. The Minister preferred Ms Mkize over other candidates, which shows a clear bias. The Minister is aware of the INSETA's annual financial accounts and the accompanying negative audit findings referred to

above. If the Minister was not aware, he should have been aware, as is expected of a political head.

14.42. The SDA and the accompanying Regulations have as their goal the appointment of a competent and performing individual as CEO. For that reason, a rigorous process is prescribed. The Minister's decision to appoint a high-ranking public official must be based on objective criteria and must be rationally connected to the purpose of the empowering legislation.

14.43. The decision to reappoint a CEO of a public entity that has been flagged explicitly for repeated qualified audits is not rationally connected to the purpose of the SDA or the information before the decision-maker and is therefore unlawful.



## **G COSTS**

15.

OUTA is seeking an order that the first, second and fourth respondents pay the costs of this application on a party and party scale, including the costs of counsel on scale

C. The complexity and importance of the matter justify the costs order sought.

## **H CONCLUSION**

16.

16.1. The procedure followed, and the decision taken to have Ms Mkize reappointed, do not meet the constitutional requirements of administrative action, which is lawful, reasonable and procedurally fair as defined under PAJA. Neither does the appointment satisfy the requirement of legality as contemplated under 1(c) of the Constitution of the Republic of South Africa, 1996.

16.2. Subject to the applicant's right to supplement its papers as provided for under Uniform Rule 53, it is contended that OUTA has made out a case as set out in the notice of motion and will therefore seek an order in terms of the notice of motion.



**DEPONENT**

SIGNED AND SWORN to at Pretoria on this 3<sup>rd</sup> day of December 2025 the deponent having acknowledged that she knows and understands the contents of this affidavit and that it is true and correct and that she considers the oath to be binding on her conscience and that the regulations of R1258 of 21 July 1972 have been complied with.

**REINHARDT LOURENS**  
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**COMMISSIONER OF OATHS**

Full Names : \_\_\_\_\_