

**ANNEXURE B: MS MYENI'S UNTRUTHFUL AND MISLEADING STATEMENTS**

Claim	Ms Myeni's affidavits	Answer	Reply
<p><b>1. Lack of funds</b></p>	<p><b>Postponement FA p 47 para 34</b>  <i>"I was also unable to be present in court on the day the matter was set down for hearing as I had no means to come from Richards Bay to Pretoria."</i></p> <p><b>Postponement FA p 50 para 35.15</b>  <i>"[I]t is not easy for me to travel from KwaZulu- Natal to Gauteng without any funding."</i></p>	<p><b>Postponement AA p 93 para 32</b>  <i>"During her tenure at SAA, Ms Myeni earned substantial directors remuneration in excess of <b>R4,3 million.</b>"</i></p> <p><b>Postponement AA p 94 para 33</b>  <i>"Whilst a director at SAA, Ms Myeni was also a director of the Mhlathuze Water Board. She earned a further <b>R3,45 million</b> from that role."</i></p> <p><b>Postponement AA p 97 para 46</b>  <i>"Ms Myeni owns a property which is "currently mortgage bonds totalling <b>R4,2 million.</b> It follows that such encumbrance would attract a financial obligation in excess of <b>R40,000.00</b> per month."</i></p>	<p>None</p>
<p><b>2. Employment</b></p>	<p><b>Postponement FA p 50 paras 35.11</b>  <i>"[I]t is public information that I am unemployed, it is a fact."</i></p> <p><b>Postponement FA p 50 para 35.15</b>  <i>"I am currently unemployed"</i></p>	<p><b>Postponement AA p 95 – 96 paras 36 - 40</b>  <i>"36 ... Ms Myeni is in fact an active director of 4 entities. I attach a copy of the CIPC report, marked <b>Annexure HRH3.</b></i>  <i>....</i>  <i>38 I note that in Ms Myeni's explanation as to the status of her directorships, Ms Myeni studiously avoids any mention of Centlec and her current role on its Board. As such, Ms Myeni conveniently fails to take this Court into her confidence.</i>  <i>39 In this regard, I confirm that Centlec's website shows that Ms Myeni is currently the Deputy Chairperson of the Board. I attach a screenshot of the webpage marked <b>Annexure HRH4.</b></i>  <i>40 According to Centlec's 2017/18 Annual Report, Ms Myeni earned R274,364.00 in 2018 and R182,909.00 in 2017 respectively. I attach relevant extracts of this Annual Report marked <b>Annexure HRH5"</b></i></p>	<p>None</p>

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<p><b>3. Insurance claim</b></p>	<p><b>Postponement FA p 42 para 9</b>  <i>"This is an application for the postponement of court proceedings as set down by the above Honourable Court to a later date as may be deemed appropriate by the court to allow me to resolve the funding of the legal cost of this matter with the insurance which had covered liabilities of second Plaintiff's directors arising inter alia from the work they undertook as directors as it is the case with me in this matter."</i></p> <p><b>FA p 43 para 13</b>  <i>"[T]he said insurance had no problem to cover my legal fees when ENS were my attorneys of record , <u>this situation was not created by me and is beyond my control.</u>"</i></p> <p><b>FA p 49 para 35.10</b>  <i>"I am still waiting for the outcome of the Insurance claim."</i></p>	<p><b>Postponement AA pp 83 – 92</b>  <i>"there is no documentary evidence that Ms Myeni has submitted a properly motivated insurance claim to SAA and its insurers to provide funding for this litigation."</i></p> <p><b>Interlocutory AA pp 223 – 224 para 68 – 69</b>  <i>"Ms Myeni was the agent of her own misfortune, as she acted in breach of the insurance contract. After the withdrawal of ENS, she made no genuine attempts to secure funding. None of these facts were revealed to the Court at the time of Ms Myeni's postponement application. This again reflects Ms Myeni's attitude of negligent indifference"</i></p> <p><b>AIG letter Annex G 2 pp 322 – 325</b>  <i>"3. In respect of the Action, AIG recorded in its letter dated 18 May 2017 that:</i>  ...  <i>Ms Myeni and her attorneys were required to seek AIG's approval before they incurred any legal costs and to involve AIG's attorneys in every respect in relation to the opposition of the Action; and</i>  ...  <i>5. AIG expressly records that no consent has been sought nor given for any costs since the withdrawal of Ms Myeni's erstwhile attorneys, ENSAfrica on 7 June 2019. Furthermore, no updates have been provided to AIG concerning the status of the Action nor in respect of the appointment of legal representation for Ms Myeni following the withdrawal of ENSAfrica."</i></p>	<p><b>Reply p 336 para 31 – 32</b></p> <p>No response to the substance of the AIG letter, except to complain of alleged breaches of privacy.</p>

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<p><b>4. Blaming former attorneys</b></p>	<p><b>Amendment FA p 181 – 182 paras 21 - 23</b></p> <p><i>“21. The first issue that I seek to address in the amendments is factual errors in a number of admissions made. <u>I had all along been under the impression that my previous legal representative had accurately captured the essence of points discussed in consultations and had pleaded them correctly.</u></i></p> <p><i>22. As a non-legal person, I was none the wiser on the legal implications of how some of the admissions and denials had been framed in the plea. <u>I was not able to fully ascertain whether the plea was conveying my version of events and explanations as I had intended them to be. It is not my intention to cast aspersions on my previous legal previous legal representatives but I deem it apposite to state that I had in good faith relied on the competence, expertise and counsel of my previous legal representative in as far as having my defence properly pleaded. There was thus nothing until now that had warranted concern or any form of apprehension on my part over the accurateness and robustness of the plea as filed.</u></i></p> <p><i>23. <u>In this regard, I submit that some of the amendments seek to correct matters of fact that have erroneously been admitted or denied in the original plea.”</u></i></p> <p><b>Pre-trial minute p 259 para 2.1</b></p> <p><i>“2.1 Adv Buthelezi placed on record that the first respondent intends to:</i></p> <p><i><b>2.1.1 Amend the plea in its entirety, on the basis that the first defendant alleges that her previous attorneys of record did not follow her instructions in preparing the plea”</b></i></p>	<p><b>Mr Van Niekerk's affidavit pp 233 - 242</b></p> <p><b>See conclusion at p 242 paras 25 – 26</b></p> <p><i>“25 ... the content of the plea was canvassed with the Applicant in detail over an extensive period of time and on multiple occasions. In addition, she and her adviser Mr Linnell were given the opportunity to finally approve the plea before it was filed, and they gave that approval.</i></p> <p><i>26. Accordingly, I deny that there are "a number" of factual errors in the plea. The plea we filed accorded with the instructions which were given to us by the Applicant at the time.”</i></p>	<p>No response to Mr Van Niekerk's version of extensive consultations and Ms Myeni's confirmation of plea</p> <p><b>Reply p 334 para 24.3</b></p> <p><i>“[ENS] acted on a frolic of their own in certain instances where they pleaded to allegations where they had no information or instructions.”</i></p> <p><b>Reply p 335 para 26</b></p> <p>Seeks to strike-out of affidavits and correspondence from ENS</p>

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<p><b>5. The withdrawal of ENS</b></p>	<p>No disclosure of when ENS terminated their mandate.</p>	<p><b>AA Interlocutory pp 222 para 66</b></p> <p><i>“66 Mr Van Niekerk’s affidavit reveals that ENS in fact terminated its mandate on 29 January 2019. The reason that their notice of withdrawal as attorneys of record was delayed until June was because Ms Myeni delayed in providing the name of her new attorneys and her current address so that ENS could deliver the notice. Ms Myeni had known from end of January 2019 that she needed to instruct other attorneys, but took no steps to do so. Again, Ms Myeni entirely failed to mention this in her postponement application.”</i></p> <p><b>Mr Van Niekerk’s affidavit p 235 para 4</b></p> <p><i>“During the time that ENS acted for the Applicant, we took this matter up to the stage of discovery being complete. Accordingly, ENS acted for the Applicant when the plea was drafted, finalised and delivered. We formally terminated the mandate on 29 January 2019. We only filed a notice of withdrawal as attorneys of record in early June 2019 as we were unable to determine until then which firm of attorneys would replace us.”</i></p>	<p>None</p>