

SOUTH AFRICA / JUDGMENT

Independant Newspapers (Pty) Ltd and Others v African National Congress and Another (12164/11) [2012] ZAWCHC 4 (6 February 2012)

[2012] ZAWCHC 4**COURT**

Western Cape High Court, Cape Town

BEFORE

Griesel

CASE / FILE NUMBER

12164/11

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IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

Case No: 12164/11

In the matter between:

INDEPENDENT NEWSPAPERS (PTY)

LIMITED

.....First Applicant

GASANT ABARDERSecond Applicant

JOHN ALLEYNE YELDThird Applicant

and

THE AFRICAN NATIONAL CONGRESSFirst Respondent

GWEDE MANTASHESecond Respondent

Court: GRIESEL J Heard: 10 November 2011; 1 February 2012 Delivered: 6 February 2012

JUDGMENT (2) GRIESEL J:

Court: GRIESEL J

Heard: 10 November 2011; 1 February 2012

Delivered: 6 February 2012

JUDGMENT (2)

GRIESEL J:

Background

[1] On 29 November 2011 I handed down judgment herein ('the first judgment'), in which an interim order in the following terms was granted:

'(a) The respondents are directed, within 5 (five) court days from the date of this order, to make available to the court in terms of s 80(1) of the Promotion of Access to Information Act No 2 of 2000 a copy of the report of the internal inquiry headed by Mr Andries Nel MP, together with such ex parte representations in writing as it may wish to submit thereanent, as contemplated by s 80(3)(a) of the Act.

(b) All further proceedings in this matter will remain in abeyance pending compliance with the provisions of paragraph (a) above.'

[2] Before expiry of the deadline referred to above, there was an exchange of correspondence between the parties, in which the respondents sought an extension of the time period by a further ten days. By agreement between the parties, such extension was accordingly granted. The second deadline, however, coincided with the Christmas holiday period and, for various reasons, the respondents did not find it possible to comply with the terms of the interim order, as amended. This led to a request by them for a further extension, to January 2012. However, the applicants did not consent to a further extension and on 21 December 2011 I informed the parties that 'in the absence of agreement between the parties, I am not in a position to deal further with this matter on an informal basis via email. If any further extension beyond today's date is required, a formal application, supported by the necessary affidavit(s), must be brought after due notice to the applicants; alternatively, the consent in writing of the applicants' legal representatives must be obtained'.

[3] During midJanuary 2012 the report in question was duly delivered to my chambers, together with ex parte submissions on behalf of the respondents, as envisaged in the first judgment. This was followed by an application by the respondents, seeking condonation for their late filing of the report. The applicants do not oppose this application and I am satisfied that an adequate explanation for their failure has been furnished by the respondents. In the circumstances, the respondents' application for condonation is granted.

[4] I subsequently saw the legal representatives of the parties in chambers to canvass their views regarding the further conduct of the matter, but neither side sought to place any further material before me or to make any further submissions. Having perused the report in question, I accordingly proceed to deal with the question whether such report is to be disclosed to the applicants, either wholly or in part.

The report

[5] The report furnished to me is headed 'Interim Report of the Investigation into certain matters in the ANC Western Cape Province [Version 1.0: 16/12/2006: 20h00J'. It comprises eleven pages, including a 3page annexure with an 'index of documentation obtained and analysed'. It purports to emanate from 'Cdes. Andries Nel and Loraine

Mashiane' (referred to in the report as 'the team'). According to the introduction, it would appear that the team's terms of reference were

'1.1.1 To determine the status of Inkwenkwezi Media Strategists and Communicators (IMSC) in relation to the Western Cape Provincial

government in particular the Premier's Office;

1.1.2. Determine the authority of IMSC's appointment and the conditions thereof and the unusual payment arrangement, assuming that they were appointed on the 31/03/2005, resulting in the anomaly were such payment for work allegedly done was requested before the actual appointment date;

1.1.3. Determine how appointments of the nature are made and whether this appointment complied with the proper procedure;

1.1.4. Determine whether the fees paid were commensurate with the services rendered and also whether any government financial procedures were breached. Further to determine the total amounts paid to IMSC;

1.1.5. Determine whether anybody involved in this appointment and the payments relating thereto are members of the ANC or were appointed to their respective positions by the ANC though not members;

1.1.6. To report to the ANC the findings of the Investigation and to recommend what action, if any, should be taken.'

[6] As indicated in the heading, the report was interim in nature and it mentions that 'no interviews have been conducted with those against whom the allegations have been made'. It concludes with 'interim recommendations' to the effect that the team be given until 14 January 2007 in order for it to complete its investigation by conducting outstanding interviews with certain named persons, including Mr Rasool and members of his office, regarding the allegations.

[7] In the ex parte submissions placed before me on behalf of the respondents, it is pointed out that 'the report was compiled as an internal report of the ANC which sought to get to the bottom of the divisions that threatened its Western Cape structures'. Further, 'the interim nature of the report is such that the majority of the findings stated therein are inconclusive. So are the issues relating to the evidence that was considered during the investigation'. The ANC submitted that 'its capacity to deal with its internal affairs must not be compromised simply by reason that it being a ruling party, in instances such as this, its divisions, dynamics and relations are intertwined with matters of the state'.

- [8] It is also reiterated on behalf of the respondents 'that there are persons who were interviewed upon agreement that their identity and participation shall be kept confidential. Their exposure would not only betray that confidentially, but would also place them in an invidious position since they still work within Government'. With specific reference to s 65 of the Act, the court was urged to exercise caution in disclosing the report as to do so may impact adversely upon the interest of those persons who agreed to participate and testify on condition of confidentiality.
- [9] The respondents further submitted that 'the right to freedom of the media, within the context of the report, is not affected in the manner contended by the applicants. The fact of the matter is that the report does contain or disclose anything which is not already known by the applicants as appears in their founding affidavit. For the foregoing reason and the fact that the report in itself was inconclusive and interim in nature, the mandatory disclosure contemplated in section 70 of the Act does not arise'.

Discussion

- [10] In the first judgment I held:

The respondents have not attempted to grapple with the specific provisions of PAIA so as to establish immunity from disclosure with

reference to the grounds for refusal of access to records recognised in chapter 4 of the Act.¹

Instead, they asserted in broad general terms that the applicants are not entitled to 'an internal document of a private body'

- a ground which does not enjoy protection from disclosure in terms of PAIA.²

- [11] In the ex parte submissions accompanying the report the respondents have to a large extent adhered to their earlier stance. However, even if the respondents' submissions are taken at face value, it is apparent from the terms of reference of the team led by Mr Nel that its inquiry was to be conducted so as to determine the relationship between Inkwenkwezi and the Western Cape Provincial government, in particular the Premier's office. It is thus clear to me that what had to be investigated and what is discussed in the report relate primarily to allegations of irregularities perpetrated by government officials and not to internal divisions within the ANC in the province. The question whether any of the officials concerned happen to be ANC members or were appointed by the ANC was of secondary importance to the team's investigation. It would be incorrect, therefore, to classify the investigation as purely a 'domestic ANC matter'; on the contrary, the investigation deals pertinently with matters relating to provincial government and the exercise of public power by government officials. As such, there can be no doubt that the information is required by the applicants for the exercise and protection of their rights. The fact that the report is inconclusive insofar as these aspects are concerned or that it does not contain anything 'new' cannot prevent disclosure thereof. The very inconclusive nature of the investigation itself is something that may call for further investigation and comment.

[12] The report also deals pertinently with the roles played by the journalists Smith and Aranes, who were erstwhile employees of The Argus. As such, it touches on the second right invoked by the applicants, namely the right to protect their reputation. It provides corroboration to the applicants that none of their other employees were implicated in the course of the ANC's investigation.

[13] In *President of the RSA v M & G Media*³, a judgment coincidentally handed down on the same day as the first judgment herein, the Constitutional Court, by a majority, also

invoked the provisions of s 80 of PAIA to allow a 'judicial peek' into the document in question. Ngcobo CJ, writing for the majority, inter alia said the following:

The role of section 80 in our constitutional democracy must be stressed. Its very purpose is to test the argument for nondisclosure by using the record in question to decide the merits of the exemption claimed and the legality of the refusal to disclose the record. In this sense,

it facilitates, rather than obstructs, access to information. The very existence of the court's power to examine the record should, in itself, deter frivolous claims of exemptions. If courts are hesitant to use this powerful tool to examine the record independently in order to assess the validity of claims to exemptions, this may very well undermine the constitutional right of access to information.

Quite apart from this, judicial access to the record in cases of this kind is a common feature of other open democracies with well developed and robust access to information jurisprudence.⁴

He emphasised, nonetheless, that 'section 80 should be used sparingly'.⁵ Ngcobo CJ also reaffirmed the importance of the constitutional right of access to information and, quoting from *Brummer*'s case,⁶ he reaffirmed the principle that 'access to information is crucial to accurate reporting and thus to imparting accurate information to the public'.⁷

[14] Having regard to the principles laid down in *M & G*'s case, it would appear that I may have been unduly lenient in favour of the respondents by invoking the provisions of s 80. Having done so, however, and having perused the report, I am satisfied that the applicants are entitled to a copy thereof.

[15] No reason has been suggested why the ordinary rule as to costs should not follow this result. I am not persuaded, however, that the application warranted the employment of two counsel.

Order

[16] In the circumstances, the following order is issued:

(a) The applicants are entitled to a copy of the report in question, which is attached to this judgment and marked "X" for purposes of identification.

- (b) The respondents are ordered jointly and severally to pay the applicants' costs of the application.

B M GRIESEL

Judge of the High Court

INTERIM REPORT OF THE INVESTIGATION INTO CERTAIN MATTERS IN THE ANC WESTERN CAPE PROVINCE [Version 1.0: 16/12/2006: 20h00]

1.

INTRODUCTION

AND OVERVIEW OF THE INVESTIGATION

1.1 On 26 January 2006 the Office of the Secretary General requested Cdes. Andries Nel and Loraine Mashiane to certain matters in the ANC Western Cape Province, in particular:

1.1.1. To determine the status of Inkwenkwezi Media Strategists and Communicators (IMSC) in relation to the Western Cape Provincial government in particular the Premier's Office;

1.1.2. Determine the authority of IMSC s appointment and the conditions thereof and the unusual payment arrangement, assuming that they were appointed on the 31/03/2005, resulting in the anomaly where such payment for work allegedly done was requested before the actual appointment date.

1.1.3. Determine how appointments of the nature are made and whether this appointment complied with the proper procedure.

1.1.4. Determine whether the fees paid were commensurate with the services rendered and also whether any government financial procedures were breached. Further to determine the total amounts paid to IMSC.

1.1.5. Determine whether anybody involved in this appointment and the payments relating thereto are members of the ANC or were appointed to their respective positions by^the ANC though not members.

1.1.6. To report to the ANC the findings of the investigation and to recommend what action, if any, should be taken.

2. In view of the sensitivity of the matter and the prevailing political conditions in the Western Cape in the run up to local government elections, it was agreed With the SGO that the team should not with its investigation until after the local government elections on 1 March 2006. The team effectively commenced its work on 16 March 2006.
3. The team had hoped to complete its investigation and to report to the SGO by midApril 2006. A number of factors have contributed to the delay in finalizing the investigation.

4. The team has conducted extensive interviews with: Benny Gool (Oryx Media); Roger Friedman (Oryx Media); Wewe Simelela (Oryx Media); Seth Maqetuka (former employee of the department of local government and housing, now employed by the City of Cape Town); Base Basson (Department of Community Safety); Nazeem Jamie (former employee in the Premier's Office); James Ngculu (ANC Provincial Chairperson); Randal van der Heever (Deputy Chairperson, ANC Western Cape Province); Mcebisi Skwatsha (Secretary, ANC Western Cape Province); Max

Ozinsky (Deputy Secretary, ANC Western Cape Province); Lynn Brown (Treasurer, ANC Western Cape Province)

5. Many of the interviews were conducted in an atmosphere of fear and many of those interviewed were very anxious and concerned regarding the possible impact their co operation with the team might have on their future prospects in the province. Many of those interviewed were also anxious not to be seen to be part of any faction, real or perceived, in the province, but stressed that they were cooperating because they are loyal and disciplined members of the ANC.
6. The team experienced significant difficulties and delays when Oryx Media, principal witnesses in the matter, indicated on 19 April 2006 that, "it would not be in our interest to interact with your investigation in the absence of assurances that our business and ourselves can be adequately protected." It was only late in May 2006 that Oryx indicated that they would be willing to cooperate with the investigation.
7. During the course of its investigation the team has amassed, and analysed, a large volume of documentation relating to various aspects of this matter. These documents are catalogued, chronologically, in Annexure A.
8. A further difficulty has been the fact that many of the questions that constitute the terms of reference of the investigation can only be answered with access to government documents.
9. In consultation with the SGO, this initial phase of the investigation has focused almost entirely on ascertaining the nature of the allegations. No interviews have been conducted with those against whom the allegations have been made. The team regards it as essential that this be done before concluding its work.
10. The investigating team has treated the investigation with the strictest discretion and confidentiality, and has tried to conduct its work with caution so as not to exacerbate any tensions that might exist in the province.

2. OVERVIEW OF ALLEGATIONS MADE / POLITICAL CONTEXT IN WESTERN CAPE

2.1. The team was asked to investigate the five specific areas mentioned in the terms of reference, to make findings and recommendations.

2.2. However, the team found it difficult to investigate the abovementioned areas outside of the context of the general allegations made and the overall political context in the Western Cape. Many of the interviews conducted and the documents received also focused more on the general political context in the Western Cape than on the specific areas covered by the terms of reference.

2.3. Below we try to summarise the allegations made by various comrades in the ANC Western Cape Province. The essence of these allegations is that the Office of the Premier of the Western Cape engaged a number of journalists, Joseph Aranes and Ashley Smith in particular, to write negative stories about other comrades in the province, and remunerated these journalists, directly or indirectly, using state resources.

2.4. More specifically it is alleged that Aranes and Smith received remuneration for their services, either by being given work directly by various provincial government departments, such as the Department of Community Safety in the case of Smith, or, indirectly, through work given to Inkwenkwezi Media Strategists and Communicators by departments such as the provincial Department of Local Government and Housing. It is also alleged that an attempt was made to channel funding to Aranes and Smith via Inkwenkwezi using another company, Oryx Media.

2.5. We try to set out these allegations as follows:

2.5.1. During 2004 rumors started circulating that Ashley Smith and Joey Aranes, both former journalists with the Cape Argus were involved in consulting work for the provincial government.

2.5.2. On 24 January 2006 the text of a pamphlet for the 2004/5 Safer Festive Season Campaign by the Department of Community Safety was exchanged by electronic mail between Ashley Smith and Alida Vorster, an employee of the Department of Community Safety.

2.5.3. Inkwenkwezi Media Strategists and Communicators (Pty) Ltd was registered as a company on 2 February 2006. Inkwenkwezi's directors were/are: Mogamat Zain Orrie, Joy van der Heyde, Dominique Celeste McLachlan (resigned). Joy van der Heyde is married to Ashley Smith, one of the journalists alleged to be doing consulting work for provincial government.

2.5.4. Benny Gool and Roger Friedman of Oryx Media state that they were walking in St Georges Mall during February 2005 and observed Joseph Aranes, Ashley Smith and a number of other people sitting at the House of Coffees. According to Gool and Friedman, Aranes said to them, "Oh, so you will be paying us at the end of the month." Aranes showed Friedman an SMS which he purported was from the Premier. The message was to the effect that: "Your payment will be sorted by Oryx". Aranes informed Gool and Friedman that he had organized a number of journalists in various publications to work for them.

2.5.5. Five days after the meeting with Aranes at House of Coffees in St. George's Mall, Friedman and Gool were called to a so-called "strategic meeting" at Leeuwenhof, the Premier's Residence. Present at the meeting were: Ebrahim Rasool, Clayton Wakeford, advisors, members of his department, the authors of the Home for All Campaign, a journalist from Die Burger and Joseph Aranes. The discussion was about the way forward. Friedman and Gool did not understand the purpose of the meeting and left after lunch time.

2.5.6. On 24 March 2005 an invoice (dated 22 March 2006) for R100 000.00 in respect of consultancy services rendered by Inkwenkwezi Media Strategists and Communicators to the Office of the Premier from 1 March to 21 March 2005 was sent to Oryx Media for attention of Roger Friedman. The invoice was sent from the Department of the Premier to Oryx Media by

Ramona Jacobs. In the covering note to the invoice Jacobs suggests that the service delivery requirement be referred to as "Specialised Media Services/Consultancy." 2.5.7. On 29 March 2005 Jacobs emailed Roger Friedman confirming that the documents regarding Inkwenkwezi had been faxed to Oryx Media. On the invoice the directors of Inkwenkwezi are listed as being Joy van der Heyde and Tshepiso Sello. 2.5.8. Shortly after 29 March 2005, Alan Roberts, Special Advisor to the Premier, met with Gool and Friedman at the offices of Oryx Media. Roberts raised the issue of payment for, "Ashley, Joe and them." He promised Gool and Friedman that they would be part of the inner circle and that they would receive many tenders. 2.5.9. According to Gool and Friedman, Roberts indicated to them that Rasool was likely to be a one term Premier and that it was necessary to capitalize on his incumbency because he would not be coming back and that his Home for All Campaign needed support. According to Gool and Friedman, Roberts indicated that the bogeymen were the "Africanists". According to them the whole discussion centered on the need for coloured people to keep African's out. According to them Roberts seemed to be proceeding on the basis that they shared these views and that Oryx had agreed. 2.5.10. According to Gool and Friedman, Roberts returned after a day or two to follow up on their previous discussion. According to Gool and Friedman they told him in no uncertain terms that they were not interested and requested him to leave their offices. According to them Roberts was quite disturbed that Oryx knew about the arrangement before he came to see them. When they told him that Aranes had showed them the SMS he is alleged to have said, "They are loose man." Gool and Friedman never saw Roberts again and have had not further contact with him or the Premier's office. 2.5.11. According to Gool and Friedman, their analysis of the media at the time led them to believe that a number of journalists were writing with the intention of advancing a certain agenda. 2.5.12. On 31 March 2005 Inkwenkwezi received a letter appointing them, from 1 April to 31 August 2005, at a maximum fee of R200 000.00, as consultants to assist the provincial Department of Local Government and Housing to, "initiate a highlevel strategy media and communication campaign." 2.5.13. Inkwenkwezi submitted invoices and were paid by the provincial Department of Local Government and Housing as follows: 19 April 2005 (R100 000.00); 18 May 2005 (R40 000.00); 25 July (R40 000.00) and 1 August 2005 (R40 000.00); 2.5.14. The Provincial Executive Committee of the ANC Western Cape Province discussed the very hostile coverage that the ANC was receiving in the Cape Argus and resolved that a delegation be sent to meet with the then Ivan Flynn (Editor), Joseph Aranes (Political Editor), David Chambers (Production Editor), Joe Thoele and another person. 2.5.15. The PEC raised a number of issues, including allegations that journalists on the Cape Argus were also doing work for the provincial government. Flynn, the editor, undertook to investigate the matter. 2.5.16. Independent Newspapers conducted an internal investigation into the matter that was led by Vuyo Bavuma (Political Editor of the Star). On or about 24 October 2005 Clayton Wakeford, Acting Provincial Head of Communications in the Office of the Premier, emailed Bavuma with a list all communications service providers for the period in question and indicated that, "We have never procured or made use of the services of Inkwenkwezi Communications Pty Ltd. 2.5.17. November 2005 Oryx received calls from the media enquiring about allegations that Oryx had laundered money for the Office of the Premier. 2.5.18. On 1 December 2005, Robin Carlisle (Democratic Alliance) released a media statement in which he alleged that Oryx Media had

laundered money for the Office of the Premier. He was forced to retract the statement and apologise to Oryx after it threatened, through Qunta Incorporated, to take legal action against him. 2.5.19. In December 2005 Independent Newspapers appointed the law firm Lionel Murray, Schwormstedt and Louw to conduct an investigation into the activities of Joseph Aranes and Ashley Smith. The investigation was conducted by Jacques Louw. 2.5.20. In February 2006, Ivan Flynn, the editor of the Cape Argus, announced that he was resigning before the expiry of his contract. 2.5.21. The investigation led to formal disciplinary action against Aranes and Smith in March 2006. As a result of this action Smith resigned before the disciplinary hearing against him could be concluded. Aranes was reinstated but given a final warning. 2.6 The political context within which the above allegations have been made are set out in detail in the documents obtained by the investigating team, in particular the outline presented by Cdes. Ngculu, vd Heever, Skwatsha, Ozinsky and Brown. In its final report the investigating team will, to the extent that it is necessary, deal in greater detail with this context. The investigating team is also well aware that the SGO is very familiar with this context. The team must, however, convey the deep frustration voiced by many of those it interview with the current political situation in the ANC Western Cape Province. Many found attempts by some polarize organization along racial lines deeply disturbing. They would echo the sentiments expressed by President Mbeki after attending a meeting of the PEC in August 2006: "The greatest challenge that we face in the country with regard to... development of a nonracial society, is here in the Western Cape. What is being done here, and will be done here... is bigger than of provincial importance."

2.4. More specifically it is alleged that Aranes and Smith received remuneration for their services, either by being given work directly by various provincial government departments, such as the Department of Community Safety in the case of Smith, or, indirectly, through work given to Inkwenkwezi Media Strategists and Communicators by departments such as the provincial Department of Local Government and Housing. It is also alleged that an attempt was made to channel funding to Aranes and Smith via Inkwenkwezi using another company, Oryx Media.

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the invoice Jacobs suggests that the service delivery requirement be referred to as "Specialised Media Services/Consultancy."

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2.5.8. Shortly after 29 March 2005, Alan Roberts, Special Advisor to the Premier, met with Gool and Friedman at the offices of Oryx Media. Roberts raised the issue of payment for, "Ashley, Joe and them." He promised Gool and Friedman that they would be part of the inner circle and that they would receive many tenders.

2.5.9. According to Gool and Friedman, Roberts indicated to them that Rasool was likely to be a one term Premier and that it was necessary to capitalize on his incumbency because he would not be coming back and that his Home for All Campaign needed support. According to Gool and Friedman, Roberts indicated that the bogeymen were the "Africanists". According to them the whole discussion centered on the need for coloured people to keep African's out. According to them Roberts seemed to be proceeding on the basis that they shared these views and that Oryx had agreed.

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2.5.11. According to Gool and Friedman, their analysis of the media at the time led them to believe that a number of journalists were writing with the intention of advancing a certain agenda.

2.5.12. On 31 March 2005 Inkwenkwezi received a letter appointing them, from 1 April to 31 August 2005, at a maximum fee of R200 000.00, as consultants to assist the provincial Department of Local Government and Housing to, "initiate a highlevel strategy media and communication campaign."

2.5.13. Inkwenkwezi submitted invoices and were paid by the provincial Department of Local Government and Housing as follows: 19 April 2005 (R100 000.00); 18 May 2005 (R40 000.00); 25 July (R40 000.00) and 1 August 2005 (R40 000.00);

2.5.14. The Provincial Executive Committee of the ANC Western Cape Province discussed the very hostile coverage that the ANC was receiving in the Cape Argus and resolved that a delegation be sent to meet with the then Ivan Flynn (Editor), Joseph Aranes (Political Editor), David Chambers (Production Editor), Joe Thoele and another person.

2.5.15. The PEC raised a number of issues, including allegations that journalists on the Cape Argus were also doing work for the provincial government. Flynn, the editor, undertook to investigate the matter.

2.5.16. Independent Newspapers conducted an internal investigation into the matter that was led by Vuyo Bavuma (Political Editor of the Star). On or about 24 October 2005 Clayton Wakeford, Acting Provincial Head of Communications in the Office of the Premier, emailed Bavuma with a list all communications service providers for the period in question and indicated that, "We have never procured or made use of the services of Inkwenkwezi Communications Pty Ltd.

2.5.17. November 2005 Oryx received calls from the media enquiring about allegations that Oryx had laundered money for the Office of the Premier.

2.5.18. On 1 December 2005, Robin Carlisle (Democratic Alliance) released a media statement in which he alleged that Oryx Media had laundered money for the Office of the Premier. He was forced to retract the statement and apologise to Oryx after it threatened, through Qunta Incorporated, to take legal action against him.

2.5.19. In December 2005 Independent Newspapers appointed the law firm Lionel Murray, Schwormstedt and Louw to conduct an investigation into the activities of Joseph Aranes and Ashley Smith. The investigation was conducted by Jacques Louw.

2.5.20. In February 2006, Ivan Flynn, the editor of the Cape Argus, announced that he was resigning before the expiry of his contract.

2.5.21. The investigation led to formal disciplinary action against Aranes and Smith in March 2006. As a result of this action Smith resigned before the disciplinary hearing against him could be concluded. Aranes was reinstated but given a final warning.

2.6 The political context within which the above allegations have been made are set out in detail in the documents obtained by the investigating team, in particular the outline presented by Cdes. Ngculu, vd Heever, Skwatsha, Ozinsky and Brown. In its final report the investigating team will, to the extent that it is necessary, deal in greater detail with this context. The investigating team is also well aware that the SGO is very familiar with this context.

The team must, however, convey the deep frustration voiced by many of those it interview with the current political situation in the ANC Western Cape Province. Many found attempts by some polarize organization along racial lines deeply disturbing. They would echo the sentiments expressed by President Mbeki after attending a meeting of the PEC in August 2006: "The greatest challenge that we face in the country with regard to... development of a nonracial society, is here in the Western Cape. What is being done here, and will be done here... is bigger than of provincial importance."

3. PROVISIONAL FINDINGS REGARDING MATTERS CONTAINED TERMS OF REFERENCE 3.1. TO DETERMINE THE STATUS OF INKWENKWEZI MEDIA STRATEGISTS AND COMMUNICATORS (IMSC) IN RELATION TO THE WESTERN CAPE PROVINCIAL

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- (2) the need for and background to the expenditure, (3) motivation for the expenditure,
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the basic documentation.

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Director: Procurement (in this case Ramona Jacobs) would either support a recommendation or refer it back. Fourthly, the relevant

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4. INTERIM RECOMMENDATIONS The team requests that it be given until 14 January 2007 in order for it to complete its investigation in the following areas:

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23/05/2005: Letter from Max Ozinsky (Deputy Secretary: ANC Western Cape Province) to EH Linington (The Press Ombudsman): Complaint about racist article in Cape Argus, 3 May 2005.

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24/10/2005: Email from Moegsien Williams (The Star) to Benny Gool (Oryx

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02/12/2005: Media Statement by Robin Carlisle (Democratic Alliance) withdrawing allegations and apologizing to Oryx.

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¹See eg sees 6369 of the Act.

²Para 16.

³[2011]ZACC32.

⁴Para 52.

⁵Para 39.

⁶Brummer v Minister of Social Development 2009

(6) SA 323 (CC) para 63.

⁷Para 8.

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