

IN THE SOUTH GAUTENG HIGH COURT

(HELD IN JOHANNESBURG)

CASE NO: 32657/13

In the application of:

ZWELINZIMA VAVI

Applicant

In the Main Application:

NATIONAL UNION OF METALWORKERS OF SOUTH AFRICA First Applicant

FOOD & ALLIED WORKERS UNION Second Applicant

SOUTH AFRICAN FOOTBALL PLAYERS UNION Third Applicant

And

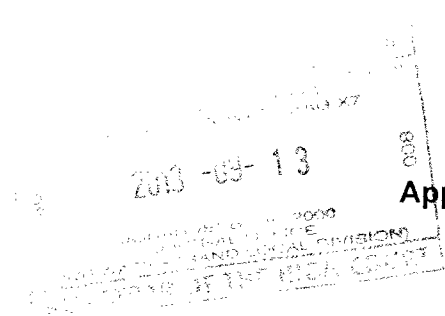
CONGRESS OF SOUTH AFRICAN TRADE UNIONS First Respondent

POLICE AND PRISONS CIVIL RIGHTS UNION Second Respondent

NATIONAL UNION OF MINEWORKERS Third Respondent

SOUTH AFRICAN TRANSPORT AND APPLIED WORKERS' UNION Fourth Respondent

SOUTH AFRICAN DEMOCRATIC TEACHERS' UNION Fifth Respondent



**NATIONAL EDUCATION HEALTH AND ALLIED WORKERS UNION Sixth Respondent**

**CHEMICAL ENERGY PAPER PRINTING WOOD AND ALLIED WORKERS UNION Seventh Respondent**

**THE FINANCE UNION**

**Eighth Respondent**

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**NOTICE OF MOTION**

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**BE PLEASED TO TAKE NOTICE** that the applicant herein intends to make application to this Court on Wednesday, 25 September 2013, at 10h00, or so soon thereafter as counsel may be heard, for an order in the following terms:

1. Dispensing with the forms and service and ordinary time periods provided in the Rules and dealing with this application as one of urgency in terms of Rule 6(12).
2. Directing that the applicant in this application be joined as fourth applicant in the main application in Case No. 32567/13 ("**the main application**").
3. Directing the applicant herein to file any further affidavit/affidavits he may wish to file in the main application within by Monday, 30 September 2013.
4. Costs in the event that any of the parties oppose the relief sought in this application.
5. Further and/or alternative relief.

**TAKE FURTHER NOTICE** that the affidavit of **ZWELINZIMA VAVI** and annexures thereto will be used in support of this application.

**TAKE FURTHER NOTICE** that if you intend opposing this application you are required:

1. to notify the applicant's attorneys by telephone, facsimile or e-mail on or before Wednesday, 18 September 2013;
2. to file any opposing affidavits, on or before 16h00 on Friday, 20 September 2013.

**TAKE FURTHER NOTICE** that the applicant herein has appointed Fasken Martineau, Building 2, Inanda Greens, 54 Wierda Road West, Sandton, as the address at which he will accept notice and service of all process in these proceedings.

Signed at Johannesburg on 13 September 2013



**Fasken Martineau**

(incorporated in South Africa as Bell Dewar Inc.)

Applicant's Attorneys

Building 2

Inanda Greens

54 Wierda Road West

Sandton

Ref: Nigel Carman/Eric van Den Berg

Tel: 011 586 6017

Fax: 011 586 6117

e-mail: [ncarman@fasken.com/evandenbergh@fasken.com](mailto:ncarman@fasken.com/evandenbergh@fasken.com)

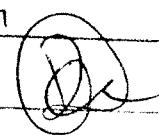
To: The Registrar of the South Gauteng High Court, Johannesburg

To: **VASCO DE OLVIERA ATTORNEYS**  
**First to Third Applicants'**  
**Attorneys**  
 37 St George Street  
 Kensington B  
 Randburg  
 Ref: Mr V de Oliveira  
 Tel: 011 781 6138  
 Fax: 086 650 5798  
**c/o MANUGENI INCORPORATED**  
 Suite 806 – 8<sup>th</sup> Floor  
 Mansion House Building  
 132 Cnr Market and Von Brandis  
 Streets  
 Johannesburg  
 Ref: Mr M Manugeni

Received without prejudice  
**MANUGENI INCORPORATED**

DAY 13 MONTH 09 YEAR 2013

TIME: 10:17

RECEIVED BY 

Received copy hereof this the  
 day of 2013

\_\_\_\_\_  
 First to Third Applicants' Attorneys

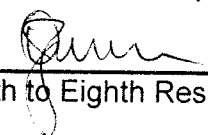
And to: **CHEADLE THOMPSON & HAYSOM**  
**INC**  
**First Respondent's Attorneys**  
 7<sup>TH</sup> Floor  
 Braamfontein Centre  
 23 Jorissen Street  
 Braamfontein, Johannesburg  
 Tel: 011 403 2765  
 Fax: 011 403 1764  
 Ref: S Gaibie/R Kalua/COS10238

RECEIVED WITHOUT  
 PREJUDICE  
 CHEADLE THOMPSON  
 & HAYSOM INC.  
 Signature: K. Jagger  
 Received copy hereof this the 13 SEPT 2013  
 Date: 13 day of SEPTEMBER 2013  
 Time: 9:45

\_\_\_\_\_  
 First Respondent's Attorneys

And to: **ALLARDYCE & PARTNERS**  
**Fourth to Eighth Respondent's**  
**Attorneys**  
 68A Richmond Avenue  
 Auckland Park  
 Johannesburg  
 Ref: Mr K Allardyce  
 Tel: 011 694 4060  
 Fax: 011 726 1305

Received copy hereof this the  
13 day of September 2013

  
 \_\_\_\_\_  
 Fourth to Eighth Respondents' Attorneys

RECEIVED ON 13.09.13  
 AT 09:25 WITHOUT  
 PREJUDICE

IN THE SOUTH GAUTENG HIGH COURT  
(HELD IN JOHANNESBURG)

CASE NO: 32657/13

In the application of:

ZWELINZIMA VAVI

Applicant

In the Main Application:

NATIONAL UNION OF METALWORKERS OF SOUTH AFRICA First Applicant

FOOD & ALLIED WORKERS UNION

Second Applicant

SOUTH AFRICAN FOOTBALL PLAYERS UNION

Third Applicant

And

CONGRESS OF SOUTH AFRICAN TRADE UNIONS

First Respondent

POLICE AND PRISONS CIVIL RIGHTS UNION

Second Respondent

NATIONAL UNION OF MINeworkERS

Third Respondent

SOUTH AFRICAN TRANSPORT AND APPLIED WORKERS' UNION

Fourth Respondent

SOUTH AFRICAN DEMOCRATIC TEACHERS' UNION

Fifth Respondent

NATIONAL EDUCATION HEALTH AND ALLIED WORKERS UNION

Sixth Respondent



CHEMICAL ENERGY PAPER PRINTING WOOD AND Seventh Respondent  
ALLIED WORKERS UNION

THE FINANCE UNION

Eighth Respondent

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APPLICANT'S AFFIDAVIT IN SUPPORT OF HIS APPLICATION FOR LEAVE TO  
INTERVENE


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I, the undersigned,


**ZWELINZIMA VAVI**

do hereby make oath and state:

1. I am an adult male residing in Johannesburg.
2. The facts set out herein fall within my own personal knowledge unless the context indicates otherwise and are to the best of my knowledge and belief true and correct.
3. I am the General Secretary of COSATU (first respondent, hereinafter referred to as "COSATU"). I am presently under suspension which suspension will be dealt with more fully hereafter.

ZV 

4. I am the applicant in this application for leave to intervene in the Application No. 32567/13 as the fourth applicant.
5. I will herein refer to the applicants and respondents as per the parties in the Main Application subsequent to the order of this Honourable Court made on 10 September 2013 in Case No. 32567/13, allowing the other respondents to intervene in the Main Application as second to eighth respondents.
6. Any legal submissions are made upon the advice of my legal representatives.
7. I have been advised that it is not necessary in this application for me to deal in-depth with each and every allegation contained in both the application papers and the papers of the respondents.
8. For the sake of brevity I will therefore deal mainly with the necessary allegations required for leave to intervene.
9. The contents hereunder respectfully show that:
  - 9.1 I have a direct and substantial interest in this matter and the outcome thereof;

ZV 

(This is common cause and undisputed. I respectfully refer to the COSATU affidavit paragraphs 53 to 60, and 2<sup>nd</sup> to 8<sup>th</sup> respondents' affidavit paragraph 28).

9.2 I have a *prima facie* case for the relief that I claim;

9.3 This application for leave to intervene is seriously made and not frivolous;  
and

9.4 My relief largely depends on the same questions of law and/or fact that the Main Application depends on.

10. The relief I shall seek, if admitted as an applicant, shall be:

10.1 an interim order interdicting and restraining first respondent from in any way enforcing, acting upon or putting into execution any decision purportedly taken at the COSATU Central Executive Committee meeting on 14 August 2013 to suspend me;

10.2 final relief to review and set aside the purported decision to suspend me and to institute disciplinary proceedings against me;

10.3 costs in relation to both the interim and final relief.

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11. In summary, my application for leave to intervene relies upon the following:

11.1 The “*decision*” to suspend me was made contrary to the provisions of clause 5.6 of COSATU's Constitution and therefore does not comply with the principle of legality;

11.1.1 there was no vote taken in this regard;

11.1.2 the provisions of clauses 5.6 and 11.4 of COSATU's Constitution have therefore clearly been violated and any “*decision*” to suspend me was unlawful and should be set aside;

11.1.3 the respondents' attempts to justify their willful disregard of the Constitution is a matter of grave concern, and adds to the urgency of this matter. (COSATU affidavit paragraph 76)

11.1.4 The allegations made in COSATU's answering affidavit as to which unions supported my suspension at the meeting of 14 August 2013 appear to be untrue and misleading, having regard to information furnished to me by individuals present at the meeting that neither SACCAWU nor SASAWU supported my suspension. I will endeavor to

ZV  
ADD

obtain confirmatory affidavits in that regard and have these served and filed as soon as possible.

11.2 The relevant issues on the agenda dealt with the –

“6. *Outcome of the grievance hearing against the General Secretary and the public statements attributed to COSATU General Secretary.*

7. *Way forward.*”

(Letter COSATU 6 August 2013 annexed as “A”).

At the grievance hearing all the allegations of sexual harassment or misconduct against me had been withdrawn, and the outcome of the hearing dealt only with my relationship with the complainant and her absence from work without leave. No other issue was on the CEC agenda of COSATU insofar as myself was concerned.

11.3 In its letter of 6 August 2013, annexure “A”, first respondent stated in paragraph 5.3.2.3 that –

*“The meeting may only discuss those issues which necessitated the calling of this meeting”.*

ZV 

It is clear from the agenda that the issues necessitating the CEC meeting were only those issues referred to in paragraphs 6 and 7 of the agenda and set out above.

11.4 Clause 11.2 of the Constitution is also clear that only issues on the agenda may be debated.

11.5 Any other considerations such as for instance the alleged irregular appointment of the complainant by me, were therefore not on the agenda and could not have been considered insofar as my suspension was concerned. Any such considerations were therefore also unlawful.

12. My relationship with the complainant in the grievance procedure has been fully admitted by me and is in fact correctly alleged by COSATU to be "*a matter of public record*". (Paragraph 94)

13. As such no in-depth investigation is necessary. The facts are all there and have been admitted by me. I can therefore not influence any procedures or decisions of the first respondent in this regard, and there existed therefore no objective justifiable reason to deny me access to my workplace. For this reason the suspension should therefore also be set aside.

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14. Any reliance by COSATU for my suspension on issues other than those referred to in the agenda was therefore also unconstitutional, unlawful and should have been disregarded.
15. I also rely on the implied contractual right of my employment with COSATU to have been given a hearing prior to the decision to suspend me.
16. I was given no hearing regarding any possible suspension.
17. The allegation in paragraph 95 of COSATU to the effect that a meeting was envisaged with me after the decision of the CEC to suspend me, in order to provide me an opportunity to be heard, is not only farfetched, but also shows that COSATU is now aware of its duty to have done so.
18. The decision to suspend me was taken by the CEC on 14 August 2013 and was conveyed to me in a covering email and letter the following day (annexure "B1" and "B2"). Only the CEC can reverse such a decision. How could an *ex post facto* hearing by the persons referred to have complied with the first respondent's duty to afford me a hearing prior to my suspension?
19. The statement in paragraph 95 of COSATU's affidavit is indicative of the contempt with which COSATU disregards my rights. How can it seriously be stated under


ZV 

oath that the purpose of the meeting on 15 August 2013 was to hold an *"informal pre-suspension hearing"*, when I had already been suspended on 14 August 2013!

20.

20.1 In their letter of 2 September 2013, a copy of which is annexed hereto as annexure "C", COSATU's attorneys confirm that it was the CEC's decision to suspend me and placed on what they call *"preventative suspension"*. It is also stated in clause 6.3 of the letter that I was given the opportunity to state a case to be heard before any final decision to suspend was made. They state that they sought to hold an informal pre-suspension hearing with me, that I declined to make any representations prior to my suspension and it was only after that and after a caucus with the NOB's and the Presidents of the affiliates that a decision was taken to suspend me. This is completely contrary to what occurred at the meeting and as admitted by COSATU under oath.

20.2 The following paragraphs and references are with respect very important in this regard:

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20.2.1 COSATU's affidavit paragraph 26: In this paragraph it is stated that the special CEC resolved to place me on leave of absence with immediate effect ....

20.2.2 COSATU's affidavit paragraph 38.5:

*"Following the CEC having resolved on 14 August 2013 to place Vavi on special leave of absence with immediate effect ...."*

20.2.3 COSATU's affidavit paragraph 51:

*"Only the CEC can revisit the matter again."*

20.2.4 COSATU's affidavit paragraph 95:

*"... in the light thereof I contacted Vavi again and convened a meeting with him, the NOB's and the Presidents of the affiliates on 15 August 2013 at 09h00 at the COSATU offices .... The purpose of the meeting was to hold a formal pre-suspension hearing ...."*

(My emphasis)

20.3 Clause 5.5 of the Constitution is also very important in this regard, as it makes clear in 5.5.1 that the NOB's, the chairperson and provincial secretary of each province have speaking rights but no voting rights. The

ZV NOB

Presidents and NOB's could therefore, on COSATU's own allegations and the Constitution, not have reversed the decision taken on the 14<sup>th</sup> August 2013 to suspend me with immediate effect.

21. Any so-called subsequent "*materially related matters*" referred to in paragraphs 105 and 106 are not relevant to my suspension, and merely constitute an attempt to colour and cloud the issues to my detriment. Subsequent issues cannot render an unlawful suspension on 14 August 2013 lawful *ex post facto*.

21.1 The respondents' actions are calculated and aimed at sidelining me by silencing me through the suspension, and thereby removing me from the political arena.

21.2 That would explain their flagrant disregard for the provisions of COSATU's Constitution, and their feeble attempts to justify and defend those actions.

21.3 The allegations in regard to the issue of a hearing, as referred to above in regard to the alleged subsequent "discoveries", are irrelevant to the present proceedings which deal only with the decision on 14 August 2013 to suspend me. The allegations are scandalous, vexatious and irrelevant.



- 21.4 The statements in paragraphs 105 and 106 of COSATU's affidavit are not stated as "allegations", and notwithstanding the sanctimonious statement that COSATU does not "... wish to prejudice the outcome ...", any reasonable person reading those allegations will regard them as fact. That is proven by the newspaper reports referred to hereunder.
- 21.5 The severe prejudice that I suffer through the illegal actions of certain members of COSATU can never be rectified.
- 21.6 Paragraphs 105 and 106 of COSATU's affidavit should therefore be struck out as irrelevant, scandalous and vexatious.
- 21.7 To emphasize the great urgency of this matter, I annex hereto as "D" the front page of the Sowetan newspaper of 12 September 2013 where it is stated, amongst other things, "Court documents claim he failed to act against free-spending lover" and on page 4 the headline on which reads: "Vavi and lover cheated COSATU". The prejudice that I suffer both personally and in my reputation is obvious and vast and I need with respect the protection of this Honourable Court against this vicious, unlawful and malicious campaign against me.

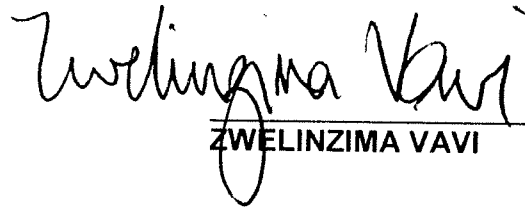
ZV 



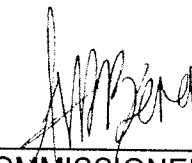
22. It is respectfully submitted that this application is urgent in that the Main Application will be heard in the next few weeks. Furthermore, I am suffering irreparable harm as a consequence of my suspension and the publicity surrounding it. As General Secretary of COSATU the adverse publicity is vast.
23. The present political environment is such that I am suffering severe personal and social consequences. My freedom to engage in my work severely affects my dignity, my self-esteem and my reputation. The prejudice that I suffer in the public opinion is irreversible. This grave injury to my reputation is not something that is capable of being meaningfully addressed by any other remedy or forum. It should be pointed out that I am an elected office-bearer elected as such by the National Congress.
24. I therefore deny that:
- 24.1 The decision to suspend me was taken in accordance with COSATU's Constitution;
- 24.2 That the matter is not urgent;
- 24.3 That the balance of convenience favours the respondents;

A handwritten signature in black ink, appearing to be 'ZV' followed by a stylized flourish.

- 24.4 That there is any effective alternative remedy available to me.
25. The matter is therefore indeed very urgent and I respectfully request an order as is set out in the notice of application pre-fixed hereto.
26. I will more fully deal with all the relevant allegations in the existing papers once given leave to intervene.

  
 \_\_\_\_\_  
 ZWELINZIMA VAVI

Signed before me at Sandton on this 12<sup>th</sup> day of SEPTEMBER 2013, the deponent having sworn that the contents of this affidavit are true, acknowledged that he knows and understands the contents of this affidavit, that he has no objection to taking the prescribed oath, and that he considers the prescribed oath to be binding on his conscience.

  
 \_\_\_\_\_  
 COMMISSIONER OF OATHS  
 Full names: ALYSON VAN DEN BERG  
 Business Address: MALAN SCHOLLES, INC.  
 85 CENTRAL STREET, Houghton  
 Designation: PRACTISING ATTORNEY, RSA  
 Area/Office: JOHANNESBURG

"A"



# COSATU

CONGRESS OF SOUTH AFRICAN TRADE UNIONS

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1-5 Leyds Street  
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Fax: + 27 + 11 + 339-5080 / 6940  
E-mail: [cosatu@w.n.apc.org](mailto:cosatu@w.n.apc.org)  
Internet: <http://www.cosatu.org.za>

06 August 2013

Attention: Affiliates' General Secretaries  
Provincial Secretaries

Cc: COSATU NOBs

Dear Comrades

Re: Notice of a Special Central Executive Committee Meeting

The COSATU National Office Bearers met in an ordinary NOBs meeting on Monday, 5th August 2013.

On among others the meeting discussed matters that had drew the attention of the media including the outcome of the grievance hearing, the public statements allegedly made by the COSATU General Secretary comrade Zwelinzima Vavi, some COSATU affiliates, members of the public and political commentators. The meeting also noted requests made by some affiliates that the NOBs convene a special CEC.

Having considered all these issues the NOBs serve this notice to invite affiliates to attend the Special Central Executive Committee on the **14 August 2013**, COSATU House at Elijah Barayi Boardroom.

This Special CEC is convened in terms of clause 5.3.2 of the COSATU Constitution on Special meetings which states as follows:

5.3.2.1. The NOB's or not less than 1/3 of the affiliates on requisition, can request a special meeting of the CEC.

5.3.2.2. The General Secretary must give not less than 7 days notice to the affiliate unions of the special meeting.

5.3.2.3. The meeting may only discuss those issues which necessitated the calling of this meeting.

We appeal to all our affiliates and structures to desist from making public statement on this sensitive matter which is currently being handled internally.

Yours Comradely

Bheki Ntshalintshali  
Deputy General Secretary

2V

Parliamentary Office  
10th Floor  
5 Church Street House  
Spin Street  
Cape Town  
8001  
P O Box 5622  
Cape Town  
8050  
Tel: (021) 461-3535  
Fax: (021) 461-4014  
E-mail: [cos@uro@w.n.apc.org](mailto:cos@uro@w.n.apc.org)

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near Okhahlal Street  
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Fax: (0431) 43-6134  
E-mail: [cos@w.n.apc.org](mailto:cos@w.n.apc.org)

"B1"

**Lameeze Jean-Pierre**

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**From:** Eric Van Den Berg  
**Sent:** Thursday, September 12, 2013 6:42 AM  
**To:** Lameeze Jean-Pierre  
**Subject:** FW: Message from KMBT\_C652DS  
**Attachments:** SKMBT\_C652D13081511440.pdf

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From: Zwelinzima Vavi [zweli@mail.ngo.za]  
Sent: 11 September 2013 22:57  
To: Eric Van Den Berg  
Subject: FW: Message from KMBT\_C652DS

----- Forwarded Message

From: Bheki Ntshalintshali <bheki@cosatu.org.za>  
Date: Thu, 15 Aug 2013 11:57:29 +0200  
To: Zwelinzima <zweli@mail.ngo.za>  
Subject: FW: Message from KMBT\_C652DS

Dear Comrade Zweli,

Please find the attached letter stipulating the decision of the special CEC yesterday. The NOBs and the Presidents had planned to discuss this with you at 9h00 as agreed, however you did not arrive at the meeting. After more than 2 hours of waiting they decided that this letter be emailed to you. They had hop to offer you an opportunity of stating why in your view you should not be placed on a special leave. Now that such opportunity has not been utilised they felt that you should know the decision regards Bheki On 2013/08/15 11:44 AM, "[minolta@cosatu.org.za](mailto:minolta@cosatu.org.za)" <[minolta@cosatu.org.za](mailto:minolta@cosatu.org.za)> wrote:

>

----- End of Forwarded Message

ZV  
[Handwritten signature]

"B2"



**COSATU**

# COSATU

CONGRESS OF SOUTH AFRICAN TRADE UNIONS

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Internet: <http://www.cosatu.org.za>

15 August 2013

Mr Zwelinzima Vavi  
The General Secretary  
COSATU

Dear Comrade Zweli

### Outcome of Special CEC meeting

- As you are aware, the Special Central Executive Committee of COSATU ('the SCEC') met yesterday to discuss, the impact of recent events on the status, integrity, and reputation of COSATU and on the office of the General Secretary. These events include, in particular, your alleged involvement in a relationship with an employee at the office, during office hours.
- The Special CEC resolved, that it was necessary to place you on special leave of absence, with effect from today (15<sup>th</sup> August 2013) pending an investigation into this matter and a possible disciplinary hearing.
- It is the Special CEC's view that it is necessary to place you on such leave of absence in light of the nature and seriousness of your conduct in this matter, its consequential effects on the federation and the seniority of your position. In order to ensure a thorough and proper investigation of this matter, it is in our view necessary to place you on special leave to ensure that this process occurs freely and fairly.

Blantyre Office  
Plein Park Street  
1<sup>st</sup> Floor  
Plein Park Building  
Johannesburg  
Tel: (011) 461-3835  
Fax: (011) 461-4034  
E-mail: [blantyre@cosatu.org.za](mailto:blantyre@cosatu.org.za)

Free State  
2<sup>nd</sup> Floor  
African Building  
10 Elizabeth Street  
Bloemfontein  
P O Box 355  
Bloemfontein  
9700  
Tel: (051) 447-5492  
Fax: (051) 447-5603  
E-mail: [fs@cosatu.org.za](mailto:fs@cosatu.org.za)

North West  
2nd Floor  
NHS Building  
Chr Church & Baer  
Street  
Kimberley  
P O Box 11909  
Kimberley  
7900  
Tel: (018) 462-2496  
Fax: (018) 462-3993  
E-mail: [nw@cosatu.org.za](mailto:nw@cosatu.org.za)

Gauteng  
5<sup>th</sup> Floor  
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Braamfontein  
P O Box 1019  
Johannesburg  
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Tel: (011) 339-4911  
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E-mail: [info@cosatu.org.za](mailto:info@cosatu.org.za)

Mpumalanga  
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Witbank  
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4. In the circumstances, you are released from all of your duties as the General Secretary of COSATU, until further notification from us. This period of special leave is subject to your compliance with the following terms and conditions:
- 4.1. You will be required, during this period of special leave, to continue participating in the facilitated process arranged by COSATU which is aimed at building the unity of the Federation. You will be kept informed of all the arrangements in respect of this process;
  - 4.2. In so far as you may require any documentation or information from the federation during this period of special leave, you are requested to make such requests in writing to Deputy general Secretary;
  - 4.3. You may be required to make yourself available for any meetings or discussions pursuant to the proposed investigation;
  - 4.4. You are required to provide the Federation with all information or assistance necessary to ensure the smooth running of the office of the General Secretary.
5. Should you have any queries in relation to the contents of this letter or to any matter related thereto, kindly address such queries in writing to Deputy General Secretary.

Yours sincerely



BHEKI NTSHALINTSHALI  
On behalf of the CEC



"C"

Your ref:  
Our ref: S Gaibie/ R Kalua/ COS10238



2 September 2013

Mr Lunen Meyer  
Roelofse Meyer Inc

Per telefax: (041) 585 0010  
Pages: 2

Dear Sir

**Suspension of Mr Z Vavi**

- 1 We act on behalf of our client, the Congress of South African Trade Unions ("COSATU" or "our client").
- 2 Our client has provided us with a copy of your letter dated 26 August 2013 ("your letter").
- 3 Our client does not intend to respond to all of the allegations in your letter, but will do so to the extent that is necessary. Where the allegations in your letter are inconsistent with what is set out below, the allegations are denied. We are instructed to respond as follows:
  - 3.1 The Special Central Executive Committee ("the CEC") meeting held on 14 August 2013, was properly constituted and did not contravene the provisions of the COSATU Constitution;
  - 3.2 The decision taken to place the General Secretary on special leave was the decision of the CEC. Whatever personal opinions individuals expressed at the CEC remain that, personal opinions;
  - 3.3 As such we reject your client's view that the decision to place him on special leave "was made for an ulterior purpose or motive" and that it was "arbitrary, capricious and made in bad faith".
- 4 The CEC resolved that it was necessary to place the General Secretary on special leave of absence and investigate the allegations levelled against the General Secretary, which may lead to a disciplinary hearing.
- 5 Our client is not in a position to contravene or disregard the resolution of the CEC and will continue its investigation against the General Secretary whilst he is on special leave. Any decisions on whether or not to institute disciplinary charges against the General Secretary will be taken after the investigation is completed.

ZV  
[Handwritten signature]

- 6 Your client was placed on a '*preventative suspension*', which suspension meets the requirements of substantive and procedural fairness as:
  - 6.1 our client has a justifiable reason to believe, *prima facie* at least, that your client has engaged in serious misconduct. Your client is acutely aware of the allegations of misconduct on which the suspension is premised as knowledge of the allegations are apparent from the surrounding circumstances;
  - 6.2 there are objectively justifiable reasons to deny your client access to the workplace based on the integrity of any pending investigation into the alleged misconduct that would place the investigation and/or the interests of affected parties in jeopardy. The seriousness of the misconduct, on its own, suffice as a justifiable reason for denying your client access to the workplace. Further the seniority or the authority of your client will might impede the smooth running of our client's business. It reasonable and rational, that your client's continued presence at the workplace might jeopardise the process of the investigation, given that he is our client's general Secretary and his subordinates may have to give evidence in the investigation; and
  - 6.3 your client was given the opportunity to state a case or to be heard before any final decision to suspend was made. Our client sought to hold an informal pre-suspension hearing with your client, which was be a process of dialogue and reflection between the parties. Your client declined to make any representations prior to his suspension, it was only thereafter that our client, after a caucus with its NOBs and the Presidents of the affiliates, took the decision to suspend your client.
- 7 We are further instructed that our client is not in a position to provide you with the audio recordings of the CEC or the draft minutes of the CEC as you have not demonstrated a basis on which your require or are entitled to these documents. The discussions held during the CEC are confidential and as stated above, do not necessary reflect the views of the CEC but rather of individuals. The views of the majority of the affiliates becomes the decision of the CEC.
- 8 Copies of the attendance register and notices of the meeting will be made available to you.
- 9 We reserve all of our client's rights.

Yours faithfully



SHAMIMA GAIBIE/RIONA KALUA  
Cheadle Thompson & Haysom Inc






"0"

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# Cosatu probes

## Vavi's

FULL REPORTS ON PAGE 4

## 'corruption'



**Court documents claim he failed to act against free-spending lover**

**BRING BACK TWINS TO IDOLS - FANS**



PAGE 3

**Gran wins best student award**



PAGE 6

ZV [Handwritten signature]

# 'VAVI AND LOVER CHEATED COSATU'

## Funds not accounted for — papers

**Moipone Malefane**  
Political Editor

**THE junior employee who had sex with Cosatu boss Zwelinzima Vavi in her office allegedly failed to account for monies spent for booking Vavi's flights and hotel accommodation.**

Cosatu claims Vavi and the woman had a corrupt relationship.

The woman initially accused Vavi of rape, but dropped the complaint after Vavi questioned her during an internal inquiry about their previous sexual encounter at a hotel.

Vavi, according to Cosatu, failed to take action against the employee for failing to account for monies spent for his benefit.

The labour federation suspended Vavi last month pending an investigation into the sex scandal.

Cosatu claims the investigation into Vavi's misconduct with the married 26-year-old employee has found that the expenses incurred to benefit Vavi — for which she could not account — was "not a negligible sum".

The allegations are contained in papers Cosatu filed at the Johannesburg High Court.

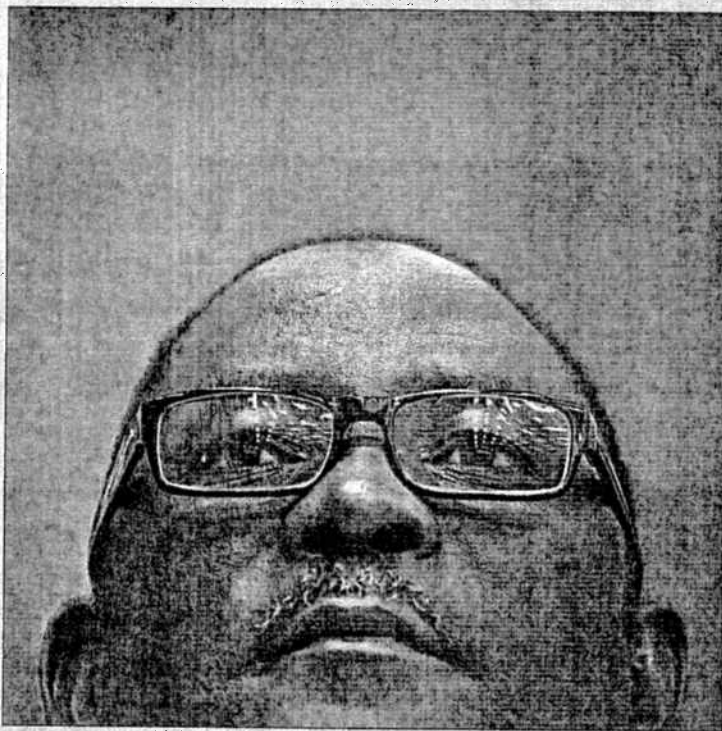
Cosatu is opposing the National Union of Metalworkers of SA's (Numsa) application to have Vavi's suspension lifted immediately.

"The junior employee failed to account for and reconcile all expenses she incurred on behalf of Cosatu in respect of flight and accommodation bookings, many of which were made for the benefit of Vavi," the papers read.

"Despite Vavi having been told of the lack of accounting on the part of the junior employee, he did nothing to address the situation."

Cosatu argues that it is funded by subscriptions from affiliates, therefore any suggestion of financial mismanagement which may bear on Vavi should be thoroughly investigated.

The court papers, submitted by law firm Cheadle Thompson and Havson INC on behalf of



**EYE OF THE STORM:** Cosatu argues in court papers the reinstatement of general secretary Zwelinzima Vavi now would compromise a probe into his conduct. PHOTO: DANIEL BORN

Cosatu, state that should the court rule in favour of Numsa, Vavi's return to work would jeopardise the ongoing investigation.

The papers say there was little — if any — supervision by Vavi

### 'There was little supervision of the junior employee'

of the junior employee who reported directly to him even though she was supposed to report to the administration secretary and the national accountant.

"Should the relief be granted, it will effectively halt the current investigation, and with that send out the message that

Cosatu's general secretary has been restored to his position despite the existence of matters that require proper informed and independent determination," Cosatu says in the court papers.

"Even if the investigation were allowed to continue, there is a very real prospect that his reinstated presence at the workplace will jeopardise the investigation."

Vavi and the junior employee were suspended by Cosatu's special central executive committee meeting attended by leaders of affiliated unions.

Vavi admitted to being in a relationship with the woman and that he had sex with the woman in her office at Cosatu head office.

Cosatu did not seem satisfied with the admission. The court papers say the circumstances around her recruitment vio-

lated Cosatu's employment policies and practices.

"Vavi is alleged to have abused the powerful position that he occupies within the organisation. Permitting Vavi to return to the workplace under

### 'Permitting him to return now will send out wrong message'

these circumstances will send out the wrong message to its members."

The papers further say it would be difficult if not impossible for Vavi to discharge his duties and interact with the affiliate unions on a daily basis if the investigation was stopped.

## Vote may reverse suspension of federation boss

**Moipone Malefane**

THE National Union of Metalworkers of SA could use next week's central executive committee (CEC) meeting to reverse the suspension of Cosatu general secretary Zwelinzima Vavi.

This can happen if they have majority support in the meeting which is going to receive a progress report into the misconduct of Vavi and an employee he had sex with in the office.

"If a simple majority of people present were to vote in favour of reversing the decision taken on August 14 to suspend Vavi, that would be a competent procedure," according to the federation's Johannesburg High Court papers opposing Numsa application to have Vavi's suspension withdrawn.

But this seems impossible as Numsa has the support of five unions out of 19. The rest of the affiliates are in support of the suspension of Vavi and the junior employee.

This became evident on Tuesday when seven affiliates — Police and Prisons Civil Rights Union, National Union of Mineworkers, South African Transport and Allied Workers Union, South African Democratic Teachers Union, National Education, Health and Allied Workers Union, Chemical, Energy, Paper, Print-

ing, Wood and Allied Workers Union as well as South African Society for Bank Association supported Cosatu's application opposing Numsa.

The case has been postponed to next month.

Cosatu papers said Monday's CEC meeting would discuss Vavi and the junior employee's suspensions again for further consideration and debate.

The court papers reveal that with the exception of the applicants — Numsa, Food and Allied Workers Union and the South African Football Players Union — the majority of the affiliates resolved at the special CEC last month that Vavi be on suspension pending the outcome of the investigation.

Yesterday, Numsa said it was not surprised that the seven unions would support Cosatu's application as they had argued for Vavi's removal since February.

Numsa said its court application was to challenge officials of Cosatu for allowing the flouting of the federation's constitution by not granting affiliates the right to vote on Vavi's motions.

**SUPPORTER:**  
Irvin Jim  
PHOTO: GALLO IMAGES



Handwritten signatures and scribbles at the bottom right of the page.