



Oath taking viewed Biblically and perjury by South African Politicians

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'I swear to tell the truth, the whole truth, and nothing but the truth...So help me God'

Abstract

As it is the case with many other countries around the world, South Africa has a unique and strong tradition of religious devotion, encompassed by belief in God which is even expressed in the constitution's preamble invoking the presence of God. To ensure that the judicial system carries out its duties responsibly and upholds the fair administration of justice, courts of law, judicial authority and commissions of inquiry discourage perjury by requiring witnesses or the accused to take an oath or certify that the content of their testimony is true and accurate. The recent lenient sentencing whereby the former Minister of Social Development, Ms Bathabile Dlamini was found guilty of perjury has certainly set a bad precedent and created the impression that anyone with more money can lie under oath and buy their way out of the transgression. The case of Ms Bathabile Dlamini is significant both from the perspective of the judicial system and perhaps more importantly from the perspective of the broader religious teachings in general and the Christian teachings in particular, as it points to a society that has lost its Christian ethics and is somewhat polluted by individuals, especially political figures who are conducting themselves as though they are not obliged to take the practice of oath seriously, thus inadvertently seriously questioning the religious doctrines of oaths and even the consequences of lying under oath. This paper will highlight the impact of perjury on both the religious and judicial integrity in a society like South Africa. It argues that the punishment of perjury should firstly, reflect differences in the seriousness of the offense that gave rise to the perjury and, secondly, take into account the public standing of the offender in relation to the extent of his or her influence on society. It then concludes with a plea that, on the one hand, the religious communities, especially Christianity, should strengthen their teachings about taking an oath. On the other hand, the courts must increase the punishment for perjurers, especially if these individuals hold public office.

Keywords: Lying, Oath, Perjury, Religious integrity, Judicial integrity,

Introduction

Several scriptures in the Bible, including Zechariah 8:16-17, Isaiah 48:1, Exodus 20:16, and many others, discourage believers from bearing false testimonies and wilfully desecrating the name of God by falsely testifying under oath. In fact, Leviticus states it more clearly: 'You shall not swear falsely by My name, so as to profane the name of your God; I am the Lord' (Leviticus 19:12). The words: 'I swear to tell the truth, the whole truth, and nothing but the truth' are somewhat popular across the world in legal environments where witnesses are required by authorized courts to expressly undertake to tell the truth during testimony. Perjury can be defined as an intentional act of lying, withholding the truth, intentional disregard for the truth, administering false testimony, misrepresentation of evidences, swearing or any act done with the intent of deception or misleading the legal system or process. To constitute perjury the



person making a statement / submission must have knowledge of the fact that he is making a false statement and or believes what he/she is stating is not true (Tidwell, 1983:45). In this regard, perjury refers to purposeful transgression toward God and injustice toward a fellow human being.

In South Africa just as it is the case with many other countries across the world, before carrying out their public service duties, a President, Deputy President, Minister, Deputy Minister, Members of Parliament, Provincial Premiers, their Members of Executive Councils (MECs) and including judicial officers are first sworn in by an oath or solemn affirmation that they will remain loyal to the Republic of South Africa and will honourably obey, respect and uphold the Constitution, even promising to carry out the functions of their office conscientiously and to the best of their ability. In case of an oath, this commitment is then buttressed by the phrase: 'So help me God' (RSA Constitution, 1996:128-130). It is not uncommon to witness leaders in South Africa to either violate their oath of office or even lying freely under oath, despite the fact that the public offices they hold require a greater commitment to ethical conduct. They are doing so in breach of their ethical duties under Section 96(2)(b) of the Constitution, which prohibits cabinet members from acting contrary to their oath of office. Examples of this behaviour include the former President of South Africa (2009-2018), Jacob Gedleyihlekisa Zuma, who has been repeatedly prosecuted by courts for corrupting his oath of office or even wilfully lying under oath (Claymore, 2016; Hunter, 2019; Masondo, 2016), Malusi Gigaba during his tenure as Home Affairs Minister (2004-2010, 2018) whom the Pretoria High Court in 2017 found that he had lied under oath, with Judge Neil Tuchten concluding that: 'there is no escaping of the conclusion that ... the Minister has deliberately told untruths under oath' (De Vos, 2018; Mabuza, 2018) and possibly many other public figures in South Africa. Perhaps what Harris (1996) said about the American legal system then can be said about the South African legal system today, namely that the courts are aware of the fact that perjury infection continues to fill courtrooms and are even aware of the destruction it causes on a society, but few, if any, perpetrators of such a serious crime are ever brought to justice (Harris, 1996:1777).

Accordingly, this paper will highlight the impact of perjury on both the religious and judicial integrity in a society like South Africa by focusing upon several instances whereby the former Minister of Social Development in South Africa, Ms Bathabile Dlamini was found by the courts of law to have committed perjury by lying under oath. It will then argue that in order for ordinary South Africans to revere this sacred religious rite, punishment for perjury should reflect, first, differences in the seriousness of the offense that gave rise to perjury, and second, the offender's public position regarding the extent of its impact on society. This is accomplished by first presenting the broader meaning of the oath, providing biblical perspectives on the oath, outlining several instances where Ms Bathabile Dlamini violated her oaths, and finally focusing on perjury and its appropriate sentence.

Oath

The term oath may be connected or associated with a variety of words connecting any human solemn vow to the sanctity of deity or the holy name of God. Etymologically it is more derived from the Hebrew word: שְׁבוּעָה (she-vu-ah) meaning a token or sign (McBain, 2020:3; Greenberg, 1957:34-36). Although there is no obvious way to precisely define the historically significant concept such as Oath, as its meaning can differ from generation to generation (McBain, 2020:6-19). An oath can be described as a statement of fact or as a promise by a witness invoking the deity as an assurance of, or pledge to truthfulness. Types of oaths include but are not limited to an oath of allegiance (Bursell, 2015:295-305), an oath of office (Rutgers, 2010:428-444), the Hippocratic Oath (Hulkower, 2016:41-43), and many other types of oaths involving a solemn commitment to truthfulness on the part of the swearer. In agreement with Greenberg (1957), scholars such as Azeulos-Atias (2016), for instantly detectible purposes, describe an oath as: 'a self-curse made in conditional form that went into effect if the condition was fulfilled' (Azeulos-Atias, 2016:690; Greenberg, 1957:34-39). Naude (2013) equally defined that: 'an oath is a sacred or solemn voluntary and unconditional promise usually



involving the penalty of divine retribution for intentional falsity (Naude, 2013:979). Consistent with this broad understanding, McBain (2020) stated that this promise is made in the presence of and largely to the deity which essentially makes the deity a witness and the ultimate judge of a testimony (McBain, 2020:3). This can be substantiated by Azuelos-Atias (2016) underscoring that in the event that a witness does not receive an appropriate justice from the human judges, the deity or God to whom such witnessed called, becomes the ultimate judge (Azuelos-Atias, 2016:685). In other words, the oath binds the one who takes it to the sacred presence of the deity. Although Naude (2013) looks at binding promises from the perspective of vows, he points out that while such a promise or an oath can be taken voluntarily, once it is taken it becomes binding (Naude, 2013:976). What is here meant by binding can be explained restating the instruction from Numbers 30:2, where it says: 'When a man makes a vow to the Lord or takes an oath to obligate himself by a pledge, he must not break his word but must do everything he said'. The uniformity between vows and oaths is supported by Azuelos-Atias (2016) stating that: 'both swearing an oath and making a vow are similar speech acts as they have the same main performative function-making a commitment-and in both cases, God is a witness (that the commitment was made)' (Azuelos-Atias, 2016:687). Naude (2013) further emphasizes that the witness is bound by an unconditional promise to tell nothing but the truth or to refrain from any falsehood until the testimony is complete. In other words, from the beginning of the session to the conclusion of the testimony, divine vengeance remains in effect, as it is intended to guard against any wilful falsehood (Naude, 2013: 976,979).

The expression of the intention to tell the truth is often accompanied by evidentiary act such as lifting the right hand and placing the other on religious sacred text (McBain, 2020:4). Naude (2013) reasoned that the act of raising the hand is so important to authenticate the practice itself (Naude, 2020:978). It is perhaps possible that the idea of the right hand has some connection with the ancient practice of branding or tattooing the offender's hand with an ink that will not fade, and in the event that such a person appeared in court, they would be required to first raise their right hand in such a way as to cooperatively present it to the judge who will in turn assess and satisfy him/herself that the witness is credible (Jones, 1987:139-155; Kollmann, 2006:557-565), or perhaps the idea relates to the biblical perception of the right hand as designated in scriptures such as Isaiah 41:13; Psalm 73:23; Hebrews 1:3, 12:2; or even in Acts 7:55-56. Be that as it may, the raising of the right hand while the other is placed on the sacred text in taking the oath is significant enough as a certification of the oath itself.

According to Greenberg (1957) the custom of using the sacred text, particularly the Bible, was added at the later stage so as to make it clearer to the swearer that they are subjecting or attaching themselves and their testimony with the holy name of God (Greenberg, 1957:34). Although the sacred text has become the popular object used during the oath, other objects such as a sacred altar, ornaments, a cross, or other items believed to have sacred status within a particular religious community could be used so as to accompany the testimony with the deity (McBain, 2020:2).

It can therefore be argued that mentioning the deity and holding the sacred text at such an important moment is as good as declaring that the testimony itself is truly sacred, or at least derives its sanctity from the sacred presence of the deity or God. Perhaps this is exactly what Azuelos-Atias (2016) meant to suggest in outlining that there are instances where the act of taking an oath itself can be accepted as reliable testimony without even being put to a trial (Azuelos-Atias, 2016:696).

Biblical Perspective of Oath Taking

It has been noted by several scholars that religious societies, including during Biblical times, reserved the practice of oath taking as an integral feature during the legal and ecclesiastical or constitutional and religious hearings proceedings (McBain, 2020:1). Generally speaking, the tendency of lying under oath is paramount to bringing the abomination of a lie into contact with the sacred name of God (Greenberg, 1957:34). Put differently, lying under oath is



paramount to contaminating or corrupting the sacredness of God. Although the Bible is exhausted of stories and teachings involving or relating to the solemn promises made to God, perhaps the foundational text for this practice is in the book of Numbers, where it says: 'When a man voweth a vow unto the Lord, or sweareth an oath to bind his soul with a bond, he shall not break his word; he shall do according to all that proceedeth out of his mouth' (Numbers 30:2).

The aforementioned text (Numbers 30:2) contains two types of vows or promises, a vow and an oath. Although some scholars distinguish their application, the two are often used interchangeably to refer generally to a promise made in binding terms. A vow refers to a promise to do something, partly relying on God as a witness in a contract between two parties (Genesis 16:5; Ruth 1:17; Romans 1:9), while an oath refers to a solemn request inviting God as an arbiter of justice and righteousness (Deuteronomy 6:13; Jeremiah 4:2), or a restrictive commitment to God guaranteed by a prohibition or promise of abstinence from engaging in an unjust conduct or even consuming anything deemed impure, such as wine or food (1 Samuel 14:24, Acts 23:21). In any case, the one who takes such a vow or oath must understand that he/she is bound by an unbreakable bond that essentially prevents him/her from breaking the promise. An emphasis of such an unbreakable bond is exemplified by the treatment of Joshua's oath which the Gibeonites acquired through deception. Once it became clear that Joshua was deceived to believe that the Gibeonites men came from a distant country, he could not have them killed simply because he had entered a covenant to let them live. Even when the Israelites themselves sought to protest against this, the leaders responded to them categorically stating that: 'We have sworn to them by the Lord, the God of Israel, and now we may not touch them' (Joshua 9:1-19).

As if to the contrary of the above stated, in the book of Matthew Jesus Christ seems to discourage oaths by instructing his disciples not to swear at all (Matthew 5:33-37). What cannot be ruled out in this regard is the possibility that this instruction is meant to reinforce the third commandment which primarily forbids perjury itself. It reads: 'Thou shalt not use, or take up, the name of God (as we do by an oath) in vain, or unto vanity, or a lie. He hath not lift up his soul unto vanity' (Exodus 20:7). It can be suggested that Jesus Christ was merely referring largely to everyday conversations (Mann, 1917:260-265). According to Mann (1917) there could have been instances whereby a person would ordinarily seek to emphasise his/her statement by expressions of asseveration invoking the deity as surety for his veracity (Mann, 1917:260). In fact, some scholars went to as far as suggesting that Jesus Christ only sought to discourage the habit of arbitrarily binding one's soul with vows, or even vowing by the life of a child even when it was not necessary.

McBain (2020) has pointed out that there is no real point in taking an oath unless such a person believes first in the practice itself and second in the presence of God during such witnessing (McBain, 2020:2). This can be evidenced by the command in the book of Deuteronomy, where it is written:

If you make a vow to the Lord your God, you shall not delay fulfilling it, for the Lord your God will surely require it of you, and you will be guilty of sin. But if you refrain from vowing, you will not be guilty of sin. You shall be careful to do what has passed your lips, for you have voluntarily vowed to the Lord your God what you have promised with your mouth (Deuteronomy 23:21-23).

Christians not only recognize their duty to spread the gospel of Christ, profess their faith, and devote their lives to the worship of God, but also understand their inherent duty to emulate Jesus Christ by living their whole lives in truth (1 John 2:6). In that regard, it is no coincident that one of the names that Jesus Christ took upon himself was the truth (John 14:6). To this, Stuntz et al (2003) stated: 'that places truth-seeking at the core of Christianity. In Christian terms, truth is not just propositional but personal, and to seek it is to seek life itself (Stuntz et al., 2003:1708). Effectively, this can be interpreted to mean that anyone who commits perjury



violates the core principle of Christianity, or better yet, anyone who violates truth as the core principle of Christianity is as good as guilty of perjury. In fact, as recorded in the New Testament books, Jesus himself alluded to the fact that obedience to the prohibition of falsehood contained in the Ten Commandments was a prerequisite for the eternal life of any Christian (Matthew 19:18; Mark 10:19; Luke 18:20). In other words, Christians must live lives virtuous enough to be immune or exempt from charges of perjury.

That being said, if the words are to be taken as oaths, then it is equally possible, considering that oaths are unfortunate or can result in unfortunate circumstances (Brant, 1997:3-19), Jesus Christ said so on the premise that the tenets of the Christian community preclude the need for oaths. In other words, being a Christian is enough to suggest that such a believer is sincere enough never to lie or deceive others, hence theirs should only be yes or no. Mann (1917) recited several scholars who substantiated this through stating that: 'Jesus' attack was not directed against oaths rendered by a court of justice, but against unnecessary swearing in ordinary speech (Mann, 1917:261). Therefore, it can be argued that from a biblical perspective, the one who takes an oath must first understand that it is binding and place the responsibility or obligation of telling the truth on their shoulders. Perhaps it is best to adhere strictly to the teaching of Jesus Christ in this regard, regardless of where testimony is required, whether in court or in religious settings. That is, if one does not want to fulfil such an obligation, it is best not to swear at all, otherwise the name of God will be misused and even the credibility of the courts will be insulted.

Oath Taking

The literature, including the excellent work of scholars such as Diagboya (2021), Farid (2005), Wilson (1948), Silving (1959), and possibly many others, has produced revealing details that illustrate the varied but related application of these practices. However, it is safe to mention that these two mechanisms are equally important in encouraging the witness to speak only the truth during testimony presentation.

Whenever a witness, accused or participant in any judicial proceeding is required to testify before the appropriate arbitrator, whether in court, a commission of inquiry or a legally binding platform, the taking of an oath or solemn affirmation is a procedural requirement to formally ensure credibility or trustworthiness both of the desired testimony as well as of the one who testifies. Similarly, affidavits are a written declaration made under oath and the contents of such statements are covered by the oath (Silving, 1959:1527; Tidwell, 1983:44). Given that the practice of taking the oath has its origins in the religious environment, Azuelos-Atias (2016) correctly acknowledged that the orientation of 'before the court' can be equated to 'before the Lord' (Azuelos-Atias, 2016:694). Perhaps this view can also be explained by underlining the authority accorded to judges of higher courts, since, similar to ecclesiastical authorities like bishops and priests, they are usually addressed with titles such as 'your honour', 'your worship', etc. (Bisson, 1995:743-759; Ozyumenko, 2020:137).

The difference between the option to take an oath and the option of solemn affirmation relates to whether the witness prefers to commit him/herself religiously by taking the oath or non-religiously by affirming the truthfulness of the testimony. In other words, the oath taking practice is about a vow taken in the presence of divine authority as a testament to the truthfulness of the testimony, which is why it is usually accompanied by evidentiary act of uplifting the right hand while placing on a Bible, Quran, or similar religious text relevant to the witness. The solemn affirmation, on the other hand, is a formal declaration of honour or a selfless commitment by a witness to make a credible testimony, in both cases the witnesses are made aware that the act of lying intentionally under oath or affirmation concerning any detail material to such proceeding is considered crime against justice or constitute criminal offence so to speak (Tidwell, 1983:44).

In relation to the recent case of Mrs Bathabile Dlamini, perhaps there is what one can call double perjury in relation to oath taking. As the next sections will demonstrate, primarily upon



occupying the public office as minister of Social Development, she was sworn in or made to swear an oath to preserve, protect and defend the Constitution of South Africa. This means she effectively remained under oath for as long as she occupied such an important office. Actually, this corresponds with Tidwell (1988) who equally argued that when a person is placed under oath by a party having legal authority to do so, any violation or corruption of such oath would arguably constitute perjury on its own (Tidwell, 1988:45). This means that anyone who takes an oath undertakes to act only in accordance with what the oath requires of them until they are formally released from the obligation that come with such an oath. Subsequently, when Ms. Bathabile Dlamini appeared before both the Constitutional Court and the constitutionally mandated inquiry into SASSA, she testified under oath through affidavits, promising not to tell anything but the truth. While the two overlap in one way or another, they are not necessarily related and accordingly could be viewed as double perjury, so to speak. However, this could potentially be a separate study for a different area, the focus of this section is simply to underline the two separate yet related instances where she was found to have lied under oath.

Lying under Oath

The next two sections attempts to briefly discuss two instances encompassing the manner in which Ms. Bathabile Dlamini initially dishonoured her oath of office and explicitly lied under oath at various but corresponding judicial proceedings.

First instance

Former Social Development Minister Ms Bathabile Olive Dlamini was born in Nquthu (a town in Umzinyathi district of KwaZulu-Natal province) and grew up in Nkandla, a town in uThungulu district in KwaZulu-Natal, also a home to the illustrious Private residence of the former fourth president (2009-2018) of democratic South Africa, Jacob Gedleyihlekisa Zuma. Despite her exhaustive list of positions she held within the ANC structures and the ANCWL in particular, Bathabile Dlamini became the Deputy Minister for Social Development from May 11, 2009 to October 31, 2010 and was appointed Minister of the same Department from November 01, 2010 to February 27, 2018.

In her capacity as Minister of Social Development, Bathabile Dlamini was charged with the responsibility to oversee what was then the government's plan to take over the payment of social grants by March 31, 2017 which was the date wherein the five year controversial contract involving the Social Security Agency (SASSA) which then fell under the ministry of Social Development and the Cash Paymaster Services (CPS) company as the agency's contracted distributor of grants to South Africans was due to expire (Du Toit, 2017). Public records are deplete with stories of controversy surrounding the nature of this contract (Du Toit, 2017; Karrim, 2020; Khumalo, 2019). What is important to mention here, is that ultimately the contract with CPS was renewed for another two years and consequently the mishandling or lack thereof this plan led to a situation whereby there was an impending concern that the welfare of about 15 million beneficiaries that could be faced with nonpayment as of April 01, 2017 or worse, be left in the hands of fraudulent financial service companies (Du Toit, 2017; PMG, 2017). This was surprising given the fact that Bathabile Dlamini had assured the public that this situation will not affect the distribution to payment of their grants (Ferreira, 2017; Ridge Times 2017). This led to her being criticised for the whole saga, her lack of action and incompetency to prioritize the livelihoods of beneficiaries.

More than anything, what made the circumstances leading up to this whole saga to appear complicated and bizarre is the fact that despite the reality that already on August 28, 2012 the North Gauteng High Court Judge, Elias Matojane had declared the aforementioned contract unlawful and further stating categorically that: 'the procedurally unfair conduct of SASSA is inconsistent with the constitution and is invalid in terms of section 172 (1)(a) of the Constitution (News24, 2013; Motojane, 2012:31). Similarly, the Constitutional Court of South Africa later on April 17, 2014 unanimously declared the contract to be constitutionally invalid and



subsequently ordering that Sassa should initiate a new process for the payment of social grants (Concourt, 2015:1-10; Froneman, 2014:34-35). Other than the fact that this whole saga threatened the social security of mainly poor beneficiaries of social grants, all facts and factors in this scenario when taken collectively, establish the existence of perjury in consideration of the fact that this happened while Ms Bathabile Dlamini was still sworn in as a minister of Social Development. This may seem far-fetched and complex at the same time, but if it is accepted that perjury refers to committing falsehood under oath, deviation from the commitment of oath or any act demeaning the oath commitment, then the logic will follow that her conduct was inconsistent with their oath of office, and thus constitute perjury. Indeed, this compares well with what the Constitutional Court has said regarding the behaviour of former President Jacob Zuma on March 31, 2016 wherein it was established that he had broken his oath of office (Ferreira, 2016). The precise words of the former Chief justice of South Africa on that day where: 'President's failure to comply with the remedial action taken against him by the Public Protector is inconsistent with his obligations to uphold, defend and respect the Constitution as the supreme law of the Republic' (Mogoeng, 2016:50-51). Be that as it may, even if this definition of perjury is not accepted, the test of this section is to show a tendency to disregard or subvert the oath either through words or behaviour.

Once a public figure publicly subverts the oath of office in one way or another, this indicates a propensity to subvert it even in court. The Constitutional Court then ruled that she had acted negligently on her oath of office by failing to monitor the payment of social grants entrusted to her office. It also said she would have to personally pay for some of the litigation charges resulting from the SASSA crisis (Zulu, 2022). On 02 August 2017 the constitutional court ordered that a section 38 inquiry in terms of the Superior Courts Act be held into the conduct of Ms Bathabile Dlamini. It appointed retired Judge, Bernard M. Ngoepe to chair a narrow inquiry that will seek to determine her role in the Sassa social grants scandal, whether or not she should be held personally responsible for the whole saga and even the details regarding evidence that she had set-up operations at the cost of R11-million, which undermined effectively the work of both SASSA and the department of Social Development, and even why she had not disclosed such information to the court (Bornman, 2018; Saba, 2018).

Second instance

The much-anticipated inquiry then began on January 22, 2018¹, when Ms. Bathabile Dlamini agreed to testify under oath in affidavits and was repeatedly reminded throughout the proceedings that she was testifying under oath² (Chabalala, 2021; De Vos 2018; Mabuza, 2022). According to Thamm (2018): 'For the first time, a political head was cross-examined in a public forum in an attempt to determine her personal culpability in a matter that almost plunged the country into a crisis in March 2017'. However, as indicated in Judge Bernard Ngoepe's report to the Constitutional Court, even though Ms Dlamini has a moderately good command of English, she was allowed to testify in her mother tongue (isiZulu) (Ngoepe, 2018:8), during the hearing she answered key questions with blanket I don't know/remember, I don't see it that way or at times even answered questions by asking questions, in other words, the judge believed that she was evasive rather than honest as she gave unnecessary replies to distract the forum from its mission and even render it inoperable (Denglinger, 2018; Ngoepe, 2018:9), so much that Judge Ngoepe had to reprimand her saying: 'You obviously have the right to answer questions the way you want, If they want information from you, let them get it from you. Don't over-volunteer information' (De Wet, 2018).

Above all, the report found that Ms Bathabile Dlamini was hiding her wrongdoing by blaming innocent public officials as an easy cover-up. More broadly, she sought to give an impression that she was all along not aware of the looming crisis while in fact she contributed greatly to its existence to start with. In support of the letter that SASSA's then Chief Executive Officer

¹ <https://www.youtube.com/watch?v=ucGiRN0uUPE&t=144s>

² https://www.youtube.com/results?search_query=Bathabile+dlamini+23+january+2018



(CEO), Mr. Thokozani Magwaza, sent to the Constitutional Court on April 3, 2017, he and Zane Dangor, former Director General of the Department of Social Development, testified at the inquest, that Ms Bathabile Dlamini had initiated the day-to-day work-stream team that reported directly to her in relation to the project towards meeting the constitutional court's deadline of 31 March 2017 to take over payments from CPS, parallel structures which effectively undermining the existing structures of both SASSA and the Department of Social Development (Mabuza, 2022). While she had initially insisted that the work-stream leaders did not report directly to her, she later contradicted herself, saying she was merely kept informed of progress at all times (Postman, 2018; Thamm, 2018).

Eventually, Judge Bernard Ngoepe observed that her testimony left much to be desired since it was clear that she concealed the truth about her role in the matter from the Constitutional Court, only to avoid being held personally responsible for a fraud that resulted in a huge financial loss, and even a devastating crisis that has robbed many poor people in South Africa who depend on welfare payments for their livelihoods. Correspondingly, the Constitutional Court in the end endorsed Judge Ngoepe's findings which indicated that Ms Bathabile Dlamini had concealed the extent of her involvement in the SASSA catastrophe and it charged her with perjury and furthered its judgement along with Judge Ngoepe's report to the The Director of Public Prosecutions (DPP) in the Gauteng Local Division, Advocate Andrew Chauke to determine whether to try or prosecute her for perjury (Mabuza, 2022).

Perjury judgement

On 09 March 2022, the Johannesburg magistrates Court found Ms Bathabile Dlamini guilty of perjury. In its closing arguments, the National Prosecuting Authority (NPA) Deputy of Public Prosecutions, Advocate Jacob Serepo stated before the magistrate that Ms Bathabile Dlamini had taken an oath at the inquiry promising to tell nothing but the truth, he said: 'At the time she confirmed the correctness of the statement, which was unsigned, to be a true reflection of what she was saying. She confirmed this under oath' (Mabuza, 2022). To this end, delivering her judgement on that same day, Magistrate Betty Khumalo stated that the State had proven beyond shadow of doubts that Ms Bathabile Dlamini had lied under oath at the inquiry (Mabuza, 2022). She was then charged with perjury, and on the other hand, the Violation of Section 38 (5)(b) the Superior Courts Act 10 of 2013 (lying under oath).

In addition, after delivering the judgment, the court was further presented with her previous conviction of fraud that was delivered by the Western Cape High Court in 2003, the State's Advocate Matthews Rampyapedi rightly argued that it was absurd enough that Ms Dlamini was once convicted of fraud and now of perjury, both offenses speaking to her dishonesty. On the other hand, her lawyer, Advocate Tshepiso Mphahlele, sought to downplay the nature of the offence by asking the court for leniency towards Ms Bathabile Dlamini, arguing that she survives on a R40,000 pension money from Parliament as a former Member of Parliament (MP) and the monthly salary of R70,000 she receives from the ANC Woman's League, to which he persuasively said: 'Out of this income, she needs to maintain herself, her household ... being a single parent. She is now paying tuition for two daughters who are at university.... Her parents are both still alive and she's responsible for them' (Njilo, 2022).

Finally, Judge Betty Khumalo, however, said it was in the interests of justice for her to consider both arguments and subsequently adjourned the matter to April 1 as the date when she would make a decision on whether Ms Bathabile Dlamini should pay a mere fine or be sentenced to a direct imprisonment. On 01 April 2022, firstly stated that:

It goes without saying that the accused's previous conviction and the current offence both have an element of dishonesty or misrepresentation. It cannot therefore be completely disregarded. But the court appreciates that 15 years has lapsed since then and that she made it to be a minister despite that previous conviction... When the Constitutional Court was at pains to seek clarity from her, instead of



being upfront, she withheld information for fear of exposure, which led to taxpayers' money being utilised for the inquiry and the department's taxpayers' money being used to get out of the quagmire she put it through ... She has not shown remorse for her conduct having caused serious impediments to the administration of justice and wasting not only taxpayers' money but the time which it took to unravel all these (Feketha, 2022).

Contrary to the gravity of this case as even acknowledged by Judge Betty Khumalo, or perhaps as expected by most South Africans, who seem to have lost confidence in the justice system, particularly when it comes to political leaders, Magistrate Betty Khumalo merely slapped Ms Bathabile Dlamini with the option of four years in prison or a R200,000 fine, with half of the sentence suspended for five years. In other words, she could choose to either spend 30 months in prison or pay a fine of R100, 000.

Understandably, this sentencing was quite disappointing for most South Africans, who were shocked by the leniency of the verdict and even attempted to criticize it, outlining the obvious injustice of the justice system by comparing it to that of the 31-year-old Walter Sisulu University student, Sibongile Mani, who has been sentenced to five years in prison by East London Regional Court after being found guilty of theft for spending over R800,000 out of R14 million which in June 2017 the Intellimali (service provide to the National Student Financial Aid Scheme –NSFAS) mistakenly paid into her student account instead of R1,400 which was due to her (Dayimani, 2022; Qukula, 2022; Reynolds, 2022).

Contrary to the above stated mood, for Ms Bathabile Dlamini and her supporters, the news that she could merely pay what can be covered by her one month income to avoid imprisonment was surely a gospel to their ears. This was evidenced by the fact that after the sentence was delivered, her supporters consisting largely by women dressed in ANC regalia, were seen rejoicing in relief outside the Johannesburg Magistrate's Court upon hearing that she had conveniently selected to pay a fine of R100, 000. In fact, Feketha (2022) observed that: 'Some of her supporters in ANC regalia wept and hugged each other in the court gallery after Khumalo imposed the sentence'. Her supporters included some senior political leaders such as suspended ANC Secretary General, Ace Magashule and former North West province Premier, Supra Mahumapelo, who is quoted as addressing the crowd happily saying: 'Today was the time for the sun to set on her. It was supposed to be a day of sadness. Some wanted her to go to prison' (Feketha, 2022; Sefuralo, 2022).

Consequently, it cannot be denied that what has been implied above in relation to the behaviours of the former President of South Africa, Mr Jacob Zuma, the former Home Affairs Minister, Mr Malusi Gigaba and analogously to the behaviour of Ms Bathabile Dlamini during her tenure as Minister for Social Development, her behaviour before various courts, the leniency of her judgment and also the reaction of her supporters, taken together are clear indications that the South African political space is populated by overconfident politicians who neither respect the importance of the tradition of taking the oath nor fear being accused of perjury, which makes it easy for them to lie under oath. Furthermore, this behaviour is destructive enough to turn the authenticity of God into a dead authoritarian concept set to be deserted by generations to come.

To that end, the penultimate section attempts to explain in simple terms how wrong it is for a country like South Africa to indulge in perjury, and even highlights the ill effects or bad precedents that such behaviour may have for the future of the nation. Above all, it will show how harmful this behaviour is for religious communities, especially Christians, who, in accordance with their Christian values and teachings, should at all costs avoid perjury.

Perjury and its penance

In light of the above discussions, it is clear that the very process of a trial is unambiguously designed to establish truth through the process of inquiry or examination of facts. However, if



those who are required to testify choose to lie despite the sworn statement, then they are guilty of perjury, since they have defiled the sanctity of the deity and violated the credibility of the court itself. According to McBain (2019), for the ancient Babylonian, Roman, Biblical, and Anglo-Saxon societies, anyone who dared to break their oath was often treated as a person of ill repute and was considered to be an outcast not worthy of enjoying the trust of the general public (McBain, 2019:3). According to Greenberg (1957), an oath itself is not only expressed to constitute or invoke the deity to witness the veracity or the authenticity of the testimony, but is expressed primarily with the intention of inducing punishment should the swearer testify falsely (Greenberg, 1975:34). In other words, more than the worth of the testimony or its validation, the primary purpose of an oath is, as it were, to summon divine punishment in the event of false testimony. This is consistent with the understanding of Azuelos-Atias (2016), which suggests that in the event of false testimony, the witness is held accountable to both the human court and the deity or God Himself (Azuelos-Atias, 2016:686).

Therefore, in any society where the custom of oath is practiced, it is important to ensure that the punishment of perjury is severe enough to discourage the members of such a society from lying before a human court first and even the holiness of God. As if to suggest a harsher penalty for perjury, Azuelos-Atias (2016) underlined that God, as the divine authority mentioned in the oath, can inflict harm on the oath taker in the form of disability, pain or even death, once the witness chooses to deviate from what was promised during the taking of the oath. This is further supported by the assumption that whoever commits this offense is not only guilty of lying to human beings, but such a person is guilty of violating the third commandment, as stipulated in Exodus 20:7 and Deuteronomy 5:11 that: 'the Lord will not acquit anyone who misuses his name' (Azuelos-Atias, 2016:691).

As scholars such as Orfield (1992) have noted, perjury is viewed by members of society as the primary factor limiting the restrictive effect of both the rule of law and the judicial system on offenders (Orfield, 1992:98). More than this, the problem of perjury can be further exacerbated by a lenient sentence or punishment that society considers too lenient compared to other punishments. Consistent with this view, Harris (1996) mentioned that the way perjury is handled says a lot about societal understanding of false testimony and the way in which it undermines the justice system, one may perhaps include religious values in the same equation. While it is good that perjury is treated as a criminal offense, there appear to be no specific retribution criteria, and once charges are brought before a judge, such a judge has a limited discretion to determine the penalty contained within the limits of up to five years or a mere fine to be paid by a guilty party. This approach becomes problematic in a situation where the conduct of an individual has resulted in a loss of huge amount of money and resources, which otherwise are meant to benefit the greater part of the society, as is the case with Mrs Bathabile Dlamini. Such a case has to be approached in a different way which takes into consideration the damage incurred by other parties in the process. In other words, any conviction for perjury must be case specific and reflect the harm caused by the guilty party's conduct in a society.

In a country like South Africa, where leaders holding public office become instant millionaires through corrupt means (Myburgh, 2019; Onishi & Gebrekidan, 2018), R100,000, or even R200,000 at most, is in itself an insult to the sanctity of God's name and a complete disgrace to the judicial system. For this reason, the lenient maximum sentence of five years or a mere fine may no longer be a valid choice, especially when it comes to top politicians in high public offices.

Additionally, the problem of perjury has an overall negative impact on religious endeavours, particularly Christianity as the moral voice in a society that seeks to encourage people to live out their highest beliefs and principles. For the same reason, it damages the due process of the law itself and even undermines efforts to maintain social order in a country like South Africa. In other words, the crime of perjury is the reverse of truth which paradoxically is the objective of both judicial system and Christianity (Harris, 1996:1755). All in all, it is the view



of this paper that the way to overcome the potentially dire effects of this problem is to bar those who readily perjure themselves from public office. In the absence of such a harsher penalty for perjury to mitigate its impact on society, people like Ms. Bathabile Dlamini will continue their wrongdoing, knowing they have enough money to buy off penalties. Even more detrimentally, in a country like South Africa where ordinary people are expected to declare truthfulness of their statements through affidavits on a daily basis for various purposes, any imaginable failure to castigate perjury by harsh penalties, particularly when committed by public figures, will surely lead to a societal moral catastrophe.

Accordingly, the plea of this paper is that legal forums and legislators need to reconsider the perjury conviction in a way that gives judges more unconstrained leeway to decide on an appropriate sentencing that is proportional to the harm caused by the guilty party. As rightly noted in Harris (1996), countries such as the United States of America (USA) have introduced guidelines that allow judges to fortify convictions for perjury by upholding the crime originally charged along with perjury as an obstruction of justice. He goes even further and discusses other mechanisms for curbing the contagion of perjury. These mechanisms include the imposition of multiple charges of perjury and penalties for each false testimony regarding various facts, the enactment of codes of conduct that prohibit attorneys from testifying under perjury, and even forcing attorneys to report each other on suspicion of perjury (Harris, 1996:1760-1766). In fact, these views seem to support what both Muscat (1976) and Titus (2018) had said when discussing the legal profession in light of the law of Christ from the perspective of Christian theologians, particularly in relation to the duty of lawyers to disclose perjury. Muscat recited the view contained in the Canons of Professional Ethics adopted by the then Association of the Bar of the City of New York, which stated: 'The announced intention of a client to commit a (perjury) crime is not included within the confidence which the lawyer is bound to respect' (Muscat, 1976:65; Titus, 2018:14-20). In the case of Ms Bathabile Dlamini, this would essentially mean that she would be found guilty and sentenced for every wrongdoing committed while under oath of office and even for any concealment or false testimony presented before the courts of law. At the same time, their attorneys would face professional disciplinary action for their failure to protect the courts from perjury. Consequently, it is important that the conviction for perjury should, firstly, reflect differences in the seriousness of the crime giving rise to the perjury and, secondly, take into account the public standing of the perpetrator in relation to the extent of his or her influence in society. In summary, the crime of perjury must have different degrees of punishment and ramifications.

Conclusion

Accordingly, this paper highlighted the impact of perjury on both the religious and judicial integrity in a country like South Africa by concentrating upon several instances whereby the former Minister of Social Development, Ms Bathabile Dlamini was found by the courts of law to have committed lied under oath. It consequently argued that in order for ordinary South Africans to revere this sacred religious rite, punishment for perjury should reflect, first, differences in the seriousness of the offense that gave rise to perjury, and second, the offender's public position regarding the extent of its impact on society. This was accomplished by first giving the comprehensive meaning of the oath, providing biblical perspectives on the oath, delineating several instances whereby Ms. Bathabile Dlamini had violated her oath, and finally focusing on perjury and its penance.

The idea of leaders in public office deviating from their oath of office, or worse, lying under oath in court, remains difficult for the people of South Africa to accept, but seems undeniably enduring given the lenient penalties for those found guilty. The oath alone does not testify to the truth of the testimony, but obliges a witness to tell the truth; any departure from such an obligation by the oath taker, whether by altering or concealing truths, amounts to perjury. Perjury is a criminal offense denoting to the act of knowingly lying or making proven false statements about a material matter under oath or affirmations in court or in affidavits. A criminal act, it is not sufficient for the statement to be false to also be considered perjury; it



must be regarding a material fact—a fact relevant to the case. Those who intentionally give false testimony, especially in the form of perjury, should be sanctioned and excluded from giving evidence in court. It is bad enough for a high-ranking official to engage in conduct that violates his oath of office, but it becomes an open insult to religious ethics when the same official consciously chooses to lie under oath. It is therefore important that, on the one hand, religious communities, especially Christianity, strengthen its teachings on taking an oath and the critical importance thereof. On the other hand, it is important for the courts to increase the punishment of perjurers, especially when these individuals hold public office and should be exemplary role-models for all of us.

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