

Office of the Director of Public Prosecutions



The National Prosecuting Authority of South Africa
Igunya Jikelele Labeshutshali boMzantsi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika

2 June 2015

Ref No: 9/2/4/1-502/15
Inq. Ms C Sonnenberg

The Chairperson
Kgoshi S Thobejane MP
Select Committee on Petitions and Executive Undertakings
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Sir

BRIEFING BY PETITIONER MS N G FUZANE: 3 JUNE 2015

Your letter dated 27-05-2015 refers.

Your request for the Senior Public Prosecutor Khayelitsha to attend a briefing at Parliament on 3 June 2015 has now come to my attention.

In the limited amount of time available to me I have also studied the police docket regarding the complaint of assault.

It appears that at a stage after her admission to hospital, the deceased's mother noticed certain marks on her body. These marks chiefly appear to be linear abrasions and the allegation is that unknown members of the nursing staff assaulted the patient during her stay in the hospital.

There is no evidence on which I can prosecute anybody. There is no specific suspect and there is no eyewitness to the assault. It is difficult to determine exactly where or when the injuries were sustained – the patient was admitted to the Khayelitsha Day Hospital and Groote Schuur Hospital – and it is indeed speculation about how they were caused. The private doctor to whom the patient was referred expressed the opinion in his report dated 14-02-2014 that there was a 'soft tissue injury – probably caused by continuous and extended pressure on crumpled bed linen.' It should also be noted that the deceased was overweight which may have made it difficult for the nursing staff to move her.

The ward accommodates a number of patients and there is no evidence that any other patient reported witnessing something untoward happening with the deceased.



I am also quite unable to prove beyond a reasonable doubt (as required in a criminal case) that the injuries (which do not appear to have been very serious) were caused by a particular person (or persons acting with a common purpose) and with the necessary criminal intent – i.e. that the person or person intended to hurt or injure the patient. The injuries may, on the speculative opinion of Dr Mawisa, have been accidental and therefore not unlawful.

I cannot take the matter any further from a criminal point of view.

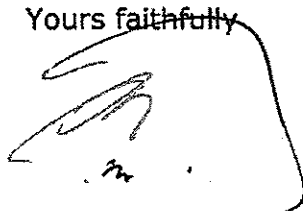
Insofar as it is necessary I confirm the prosecutor's decision not to institute a prosecution.

In general, I do not consider that it is appropriate for a prosecutor to be requested to attend a meeting of a parliamentary committee with regard to one particular matter. I refer you to section 33 of the National Prosecuting Authority Act, Act 21 of 1998. In terms of this section the Minister has final responsibility over the prosecuting authority. In terms of subsection (2) the National Director of Public Prosecutions must, at the request of the Minister, furnish a report to the Minister about any particular matter so that the Minister may exercise his final responsibility. In terms of section 35 of the Act, the prosecuting authority is accountable to Parliament 'in respect of its powers, functions and duties under this Act including decision regarding the institution of prosecutions.' To this end the National Director of Public Prosecutions submits a report to Parliament annually.

I must therefore decline the invitation to afford the prosecutor who took the decision not to prosecute and the Senior Public Prosecutor, Khayelitsha, the opportunity to attend the meeting of your committee on 3 June 2015.

I remain willing to discuss the matter further with you in order to resolve the matter.

Yours faithfully

A handwritten signature in black ink, appearing to be 'R.J. de Kock', enclosed within a hand-drawn rectangular box.

ADV. R.J. DE KOCK
DIRECTOR OF PUBLIC PROSECUTIONS: WESTERN CAPE