
SWORN STATEMENT OF VISVANATHAN PILLAY

I, the undersigned,

VISVANATHAN PILLAY

make oath and say:

- 1 I am an adult male, who was formerly in the employ of the South African Revenue Service ("**SARS**") in various positions, including as a Deputy Commissioner of SARS and as the Acting Commissioner of SARS.
- 2 The facts contained in this statement are, save where the context otherwise demonstrates, within my personal knowledge and such facts are, to the best of my knowledge and belief, true and correct.
- 3 I make this statement in response to the invitation to the public to furnish evidence to the Committee established by the National Assembly in relation to the Motion for the removal of the present incumbent, Advocate Busisiwe Mkhwebane, from her office as the Public Protector.
- 4 I believe that my statement will be of assistance to the Committee in carrying out its mandate.
- 5 I have been investigated by the Advocate Mkhwebane, in her capacity as the incumbent Public Protector, and found guilty by her of maladministration and misconduct in three matters on which she has published reports. In two of those



reports the evidence that I provided to her was either ignored or irrationally dismissed out of hand by her. With regard to the third report, which was recently published, I was not even informed by the Public Protector that I was implicated in an investigation by her and that she intended making adverse findings against me and order remedial action against me.

6 I believe that I am duty-bound to set out, as succinctly as possible, the Public Protector's conduct in each of these investigations and reports.

7 The Public Protector published a report on 24 May 2019 entitled "*Report on an investigation into allegations maladministration and impropriety in the approval of Mr Ivan Pillay's early retirement with full pension benefits and subsequent retention by the South African Revenue Service*" ("the First Report"). The following is significant in this regard:

7.1 In the First Report the Public Protector made a finding that I was a participant in and the beneficiary of a fraudulent scheme to enrich me when I took early retirement from SARS.

7.2 The First Report was not only riddled with material errors of law and fact, but it was very clear from its contents that the Public Protector was biased against me. The First Report was taken on review by Minister Pravin Gordhan to the High Court (under case number 36009/19). I intervened in the application, and I was admitted as a further applicant seeking the review and setting aside of the First Report in my own right. The First Report was ultimately reviewed and set aside by a full bench of the High Court. A copy of the High Court's judgment is attached marked "VP1".



8 On 5 July 2019 the Public Protector published a further report entitled "*Report on an investigation into allegations of violation of the Executive Ethics Code by Mr Pravin Gordhan, MP as well as allegations of maladministration, corruption and improper conduct by the South African Revenue Services*" (sic) ("the Second Report"). In this regard:

8.1 In the Second Report the Public Protector made findings that (i) SARS, under my guidance and management as General Manager: Enforcement and Risk Division, established an intelligence unit "*in violation of South African Intelligence prescripts*" and also (ii) that I was unqualified to be appointed as a deputy commissioner of SARS because I did not possess a matriculation certificate, let alone a degree. She also directed remedial action, which included directing the police and the National Prosecuting Authority to investigate and prosecute me.

8.2 The Second Report also contained many reviewable errors of law and fact. The Second Report was similarly taken on review by Minister Gordhan to the High Court (under case number 48521/19). Once again, I intervened in Minister Gordhan's application, and I was admitted as a further applicant seeking the review of the Second Report in my own right. The Second Report was ultimately reviewed and set aside by a full bench the High Court. A copy of the High Court's judgment is attached marked "VP2".

8.3 In the course of the Public Protector's investigation relating to the SARS investigative unit, I gave extensive evidence to the Public Protector and I provided her with comprehensive explanations and relevant documentation. This was all done under oath. The Public Protector simply



dismissed my evidence out of hand, preferring to rely on untested hearsay and gossip to make her findings. During the subsequent review proceedings, I again gave detailed evidence and I also provided the evidence on oath of Mr Johann van Loggerenberg, who was the head of the SARS investigative unit at all material times. This evidence was the only evidence provided to the Public Protector under oath which dealt directly with the activities of the SARS investigative unit. The Public Protector dismissed my evidence out of hand as simply being my "views" and "opinions". She did not deal at all with Mr Van Loggerenberg's evidence.

8.4 The High Court, in its judgment reviewing and setting aside the Second Report, dealt extensively with my evidence and the manner in which I had been ignored by the Public Protector throughout the investigation and the subsequent review proceedings. The High Court concluded its lengthy analysis with the following:

"192. This is further evidenced in the way the Public Protector approached Mr Pillay's evidence in the review application. In her answering affidavit she adopted a dismissive attitude towards what she termed Mr Pillay's "views", and dealt almost exclusively with Mr Gordhan's various affidavits. This is clear from the following passage taken verbatim from her answering affidavit:

"The Public Protector was not bound by Mr Pillay's views on affidavit. She considered them but found that they were a defence of an indefensible establishment of a spying unit within the SARS."

193. She then set out a number of points on which she expressed that she was in disagreement with Mr Pillay's "views"



and dismissed the entirety of what was deposed to by Mr Pillay in his two affidavits dated 23 April 2019 and 18 June 2019 in the following terms:

"The rogue unit narrative is their coining which is irrelevant to the Public Protector. The views of Mr Pillay on State Capture are just that - views "

"Mr Pillay did not wish to candidly and openly deal with the issues that the Public Protector was interested in "

"His response was belligerent and displayed a lack of interest in giving the Public Protector coherent and straight answers to the questions asked "

"The allegations made by Mr Pillay were vague and speculative. They were riddled with political narratives totally irrelevant to the specific issues that required the Public Protector to investigate."

Mr Pillay attacked the investigation and questioned its legitimacy "based on his political theories of State Capture and false political narratives."

"I disagreed with Pillay on the legal basis for the establishment for the spying unit within SARS. His explanation sought to avoid giving credible and straight answers but windy and verbose."

"Mr Pillay waffled about the so-called rogue unit narrative and the capturing of SARS, giving no credible evidence."

194. It is important to note that no other party in these proceedings, including the Public Protector and the EFF, has sought to respond at all to what Mr Van Loggerenberg testified to in the affidavit deposed to by him. What he says thus stands entirely uncontradicted and unchallenged. The Public Protector has put up no facts or evidence, either in the Report or in her



affidavits filed in this matter that refutes the evidence provided by Mr Pillay (and now by Mr Van Loggerenberg). All that she has done in her answering affidavit is belabour evidence put up by Mr Pillay as simply his "views" and opinions, and that she was not bound by it.

195. This evidences the most egregious failure by the Public Protector to understand and honour the most basic requirements of the office she occupies. It is plain that the Public Protector has approached this investigation with an unwavering commitment to her own preconceived views and biases. The manner in which the Public Protector had, and continued, to simply ignore Mr Pillay's evidence, clearly demonstrates her manifest bias. We will return to the issue of bias herein below." (My emphasis)

8.5 In its judgment, the High Court also reflected at length on the manner in which the Public Protector had assailed my dignity, first by irrationally finding that I was unqualified to be appointed as a deputy commissioner of SARS, and second by going to the extreme of even denying me my matriculation certificate, in her campaign to impugn my dignity. The High Court had the following to say:

"227. In relation to the Public Protector's findings in the notice regarding Mr Pillay's qualifications to be appointed as the Deputy Commissioner of SARS, the issue, as defined by the Public Protector was "*Whether Mr Pillay was appointed to these positions whilst not in possession of the necessary qualifications required*". The Public Protector did not, however, state in the notice what the "*necessary qualifications*" for "*these positions*" in fact are.

228. Whilst recognising that the appointment of a Commissioner is regulated by the South African Revenue Services Act (which prescribes no particular qualifications for the appointment) the



Public Protector refers to section 195 of the Constitution and in particular that the Constitution requires that "*a high standard of professional ethics must be promoted and maintained*" in public administration. It is not clear why reference was made to section 195 of the Constitution, but it seems as if the Public Protector equate "*a high standard of professional ethics*" to the holding of a degree, as her analysis appears to be founded solely on the consideration that Mr Pillay does not hold a degree. This is also apparent from the conclusion the Public Protector reached in paragraph 14.5.30 of the notice where she stated that "*It is however apparent that SARS did not take the qualifications of Mr Pillay into consideration in the appointment of Mr Pillay as Deputy SARS Commissioner*".

229. Firstly, there is no requirement that only the holder of a degree can be appointed as a Deputy Commissioner of SARS or hold an acting appointment as the Commissioner. Secondly, there is no rational basis for this conclusion as Mr Pillay's qualifications for appointment as Deputy Commissioner were clearly taken into account and it was found that he was suitably qualified for the appointment. What the Public Protector presumably meant by her statement is that the fact that Mr Pillay does not possess a degree was not taken into consideration. But inasmuch as the possession of a degree is not a precondition for the appointment as Deputy Commissioner, the Public Protector's reasoning is fallacious.

230. The Public Protector then proceeded to disparage the "*Goodness of Fit*" process that SARS carried out. Her basis for doing so is not rational. She states that "*The argument by Mr Gordhan that the decision to appoint Mr Pillay to the position of Deputy SARS Commissioner was solely based on Mr Pillay's previous experience and acquired skill is vague considering the level of the position*". By this single irrational sentence, the skills, equivalent experience and leadership experience that Mr Pillay has accumulated over a lifetime, including the leadership role he held during the armed struggle for the liberation of



South Africa, have been dismissed and negated by the Public Protector.

231. But the Public Protector, in the Report, proceeded to even deny that Mr Pillay had a school qualification. In paragraph 5.6.4 of the Report the Public Protector states that "*SARS in their response dated 05 February 2019 did not dispute that Mr Pillay did not have a degree and that he did not possess a Matric certificate.*" In paragraph 5.6.26 it is stated that "*SARS and Mr Gordhan conceded that Mr Pillay did not possess a Degree qualification nor a Matric certificate.*"

232. There are three difficulties with these statements. Firstly, it is doubtful that SARS would have stated that Mr Pillay did not matriculate, as that would have been a false statement, as Mr Pillay matriculated in 1970 having completed his secondary school studies at Merebank High School. Secondly, nowhere in Minister Gordhan's affidavit is it stated that Mr Pillay does not possess a matric certificate. What Minister Gordhan recorded was that "*Mr Pillay, like many other South African's who dedicated their lives to the struggle against apartheid, does not have any tertiary qualification.*" Thirdly, the statements are contradictory to the evidence the Public Protector had in her possession at the time of the release of the Report. Mr Pillay was in fact questioned about his qualifications by the Public Protector during an interview with him, under oath, on 25 March 2019, when she subpoenaed him regarding an investigation into the circumstances of his retirement from SARS.

233. In the course of this interview, the Public Protector also specifically asked Mr Pillay what his educational qualifications were and he stated that he had passed matric in 1970. She proceeded to specifically ask him to confirm that when he joined SARS in 1990 his highest qualification was a matric certificate. Mr Pillay confirmed that this was so. Accordingly, even before the investigation and the Report presently under review was made public, the Public Protector had ascertained directly from



Mr Pillay, under oath, that he had a matric certificate. For no apparent reason, the Public Protector disregarded his evidence. In fact, she doubled down on this issue by finding that Mr Pillay possessed neither a tertiary qualification nor a matric certificate. In her answering affidavit she blames, *inter alia*, Mr Pillay for her coming to this wholly wrong finding and at paragraph 334 of her answering affidavit she states the following:

"It is denied that the Public Protector made a malicious slur against Mr Pillay. The issue of the matric certificate could have simply been resolved by Mr Pillay providing that information to the Public Protector when he was asked to give information about his qualifications. He failed to do so, as SARS failed to answer questions on Mr Pillay's qualifications. In any event there is nothing in the report of the Public Protector to support the contention that she concluded that Mr Pillay had no matric. What the Public Protector said was that it was not denied by Gordhan or SARS that Mr Pillay did not possess a tertiary education including matric."

234. Counsel for the Public Protector in addition submitted during argument that Mr Pillay: *"In his long and verbose affidavit dated 14 April 2019, Mr Pillay does not disclose what his qualifications are except that he has some experience which amongst others come from the fact that he was in the struggle for the liberation of South Africa"*.

235. The contention in the answering affidavit and submissions made on behalf of the Public Protector that the Public Protector made no finding that Mr Pillay *"had no matric"* and that Mr Pillay did not provide the information about his qualifications when he was asked to do so, is disingenuous. Firstly, the *"conclusion"* that Mr Pillay had no degree and no matric was central to the Public Protector's finding that Mr Pillay was not qualified to be appointed as the Deputy Commissioner of SARS. Secondly, it is an indisputable fact that Mr Pillay made a full and accurate




disclosure of the extent of his academic qualifications as at the time when he first joined SARS when he testified under oath to the Public Protector on 24 March 2019. Thirdly, in the subpoena which was delivered to Mr Pillay by the Public Protector on 10 April 2019, Mr Pillay was called upon to respond to 12 complaints. Notably Mr Pillay was not required in the subpoena to deal with or to provide any information whatsoever on his qualifications.

236. Accordingly, at the time of the Report, the Public Protector well knew that Mr Pillay has a matric certificate. Her conclusion in the Report that Mr Pillay does not hold even that basic qualification, notwithstanding the fact that on 25 March 2019 she accepted that this was a matter of public record and was within her knowledge, is astounding. In doing this she has manifested clear bias against Mr Pillay and material irrationality in arriving at her findings. In her answering affidavit, the Public Protector has put up no evidence supporting her findings in this regard. We submit that this further demonstrates that the Public Protector closed her mind and adopted a process of irrational reasoning.” (My emphasis)

9 Despite the admonishments by both High Courts in the review applications referred to above, the Public Protector has now published a report on 29 April 2022 entitled “*Report on an investigation into allegations of maladministration and improper conduct relating to irregular procurement processes by the South African Revenue Services (SARS) in the appointment of Budge, Barone & Dominick (Pty) Ltd (BB&D) and continued extension of the same contract*” (“the Third Report”). Significantly:

9.1 In the entire course of her investigation which resulted in the Third Report, which included making serious adverse findings against me and directing severe remedial action, in the form of a criminal investigation by the



- Directorate for Priority Crime Investigation against me, the Public Protector has ignored entirely each and every right that I have under the provisions of the Public Protector Act 23 of 1994 (“**the PP Act**”) and the Constitution and has also infringed on my fundamental rights to dignity, equality and procedural fairness.
- 9.2 Unlike all the other implicated persons referred to in the Third Report, including all the previous commissioners of SARS since 2007 and the present commissioner, I received no notice of the investigation. I was not once asked for information or invited for an interview by the Public Protector. I received no subpoena from her, and I received no notice in terms of section 7(9) of the PP Act. By these intentional failures, the Public Protector denied me the right to be heard both on the subject matter of her investigation and on any remedial action that she contemplated ordering against me. This, I contend, is in breach of several of my fundamental Constitutional rights.
- 9.3 I have recently launched an application in the High Court, under case number 28240/22, for the review and setting aside of the Third Report to the extent that it relates to me. A copy of my latest review application is attached marked “**VP3**”. The application is presently pending.
- 10 I have been embroiled in endless litigation with the Public Protector for several years now, at great cost to me. The Public Protector has unsuccessfully sought leave to appeal from the Courts *a quo* and the Supreme Court of Appeal in regard to the judgments reviewing and setting aside the First Report and the Second Report. She has also been unsuccessful in applications to the President



of the Supreme Court of Appeal to reconsider the refusal of leave to appeal by the Supreme Court of Appeal in both matters. There are now two pending applications by the Public Protector to the Constitutional Court for leave to appeal. I have had to incur further legal costs in opposing these applications. I will also likely incur substantial legal costs in pursuing the pending application to review and set aside the Third Report.

11 I verily believe that the information in this statement ought to be earnestly considered by the Committee as evidence both of Advocate Mhkwebane's incompetence to hold the office of Public Protector and her misconduct in regard her holding of that office.

SWORN BY

Pillay

 VISVANATHAN PILLAY
 Stadsloket Nieuw-West

at *Amsterdam, Netherlands*

this *18* day of *June* 2022

Gemeente Amsterdam

*A 05279942
 (18-04-1953)*

Gezien voor legalisatie van de handtekening van: *V. PILLAY*

Datum: *08-06-2022*

Gemeente Amsterdam
 Stadsloket Nieuw-West
 Before me

De burgemeester van Amsterdam,
 namens deze,

A. UYAR - Kus

Notary Public

The mayor of Amsterdam is not responsible for the contents of this document but does declare the signature as genuine.

De burgemeester van Amsterdam is niet verantwoordelijk voor de inhoud van dit document, maar verklaart alleen dat de handtekening echt is.