**MEDIA STATEMENT**

**Committee For Section 194 Declines Public Protector’s Application For Adjournment**

**Parliament, Thursday, 27 October 2022 –** The Committee for Section 194 Enquiry into Public Protector (PP) Adv Busisiwe Mkhwebane’s fitness to hold office today heard an application by the PP for the postponement of the proceedings to an unspecified date, pending the outcome of her intended review proceedings in the Western Cape High Court to challenge the decision by  the Chairperson, Mr Qubudile Dyantyi, Mr Kevin Mileham, and the committee to decline her application for the recusal of the Chairperson and Mr Mileham on grounds of alleged bias.

Adv Mpofu, SC informed the committee that the PP instructed her legal representatives to launch this application urgently, and it was anticipated that it would be brought by approximately 31 October 2022.  Today’s application sought to stop the committee’s work in the meantime.

Adv Mpofu, told the committee the basis of the application will be essentially to request the court to declare the non-recusal decision to be unlawful, unconstitutional and/or invalid coupled with the just and equitable remedy of setting aside or nullifying the said decisions.  Adv Mpofu approached his argument indicating to the committee that the PP anticipated that the application would be denied based on past experiences and also anticipated that this decision too would be part of the anticipated review application.

The basis for the application was what Adv Mpofu argued to be a “grave” injustice for the PP to be subjected to an enquiry,  as she may very well succeeed in court.   Moreover, Adv Mpofu argued that the committee would be in contempt of court were they to proceed knowing that a review application was imminent.

Ms Fatima Ebrahim, from Parliament’s Constitutional and Legal Services told the committee that there is no legal impediment that prevents the committee from continuing its work in the absence of an interdict or court order to that effect.  She said there is no legal obligation on a body such as the committee to cease discharging its functions merely because an affected person like the PP has indicated that she will be initiating a legal challenge.

That obligation can only arise if a competent court grants an interdict. She said under the Constitution, the committee is duty-bound to discharge its function of determining whether the PP has misconducted herself and or is  incompetent as alleged.

In the absence of a court order, it remains unclear what precisely the committee would be in contempt of. Ms Ebrahim said whilst the PP is at liberty to approach any court for any appropriate relief, such action on her part does not in and of itself oblige the committee to cease its constitutional functions, nor does it relieve the committee of its constitutional obligation to hold her to account.

Mr Dyantyi said in conclusion that the recusal applications were given close consideration and they gave detailed reasons why they would not recuse themselves and obtained a detailed legal opinion from an eminent senior counsel that no case for recusal has been made.  The committee also decided that no case had been made.

Mr Dyantyi said he is of the opinion that the adjournment application should not be granted but would leave the decision to the committee as he does not want to impose it on the committee. The committee after a lengthy deliberation resolved to dismiss the application. The EFF expressed its objection to the decision.

Shortly after the decision was announced, Adv Mpofu, informed the committee that the PP’s legal team is not able to take part in “any of the illegal activities” of the committee and that this was “as far as the legal team can take it.” He then left the meeting together with fellow counsels Adv Bright Tshabalala, Adv Hangwi Matlhape and the attorney, Ms Nafeesa Patel from the instructing law firm Seanego Attorneys.

The PP who remained in the meeting thereafter indicated that she would need to confer with her counsel and her attorney as to what had transpired as they “didn’t say they were terminating”. She said she would need to find out if they remain with her or if she would need to start afresh with a new legal team which would then delay proceedings.
The PP further explained that her understanding was that they would be moving ahead with the proceedings but she would need to confer with them on the “plan of action.” The PP indicated that she did not mandate her legal team to withdraw.

Mr Dyantyi informed the committee that at this stage, the scheduled meeting for tomorrow will continue unless notice to the contrary is provided.

The committee will continue tomorrow with its hearings. The committee was established by the National Assembly on 16 March 2021 to conduct a constitutional inquiry into the Public Protector’s fitness to hold office. Committee documents can be found at [Committee for Section 194 Enquiry - Parliament of South Africa](https://parliament.us15.list-manage.com/track/click?u=174940c63c5e06b60f5650bea&id=e804fc0f3b&e=da105e4f6a)

**ISSUED BY THE PARLIAMENTARY COMMUNICATION SERVICES ON BEHAL F OF THE CHAIRPERSON OF THE COMMITTEE FOR SECTION 194 ENQUIRY, MR QUBUDILE DYANTYI.**

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