



Committee for Section 194 Enquiry

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1 March 2023

Mr T N Seanego

Seanego Incorporated

[REDACTED]

Dear Mr Seanego

TESTIMONY OF PROF MADONSELA

1. Having regard to your oral submission this morning and further confusion created by the tendering by Prof Madonsela of an “edited” statement minutes before we were due to commence, I indicated that I was willing to allow your client the latitude to lead Prof Madonsela on Saturday 3 March and Sunday 4 March or alternatively on Monday 5 March and Tuesday 6 March. This indulgence was granted notwithstanding that the corrected statement contained no material changes and the content and substance, save for minor cosmetic changes, remains the same.
2. However, Adv Mpofu, SC thereafter informed the Committee that he is not prepared to lead Prof Madonsela as your client does not regard Prof Madonsela as her witness, notwithstanding, that your client made a written application to subpoena her or that she appeared on your client’s witness list and your client has repeatedly communicated with her on a wide range of questions it wished to address to her (which I have been clear had been circumscribed based on relevance as previously communicated).

3. The Committee resolved, having regard to the statement of Prof Madonsela and the view of the Evidence Leaders that her oral evidence is not required for this Committee to do its work, it is not necessary to call Prof Madonsela to testify orally.
4. You thereafter indicated that you reserve the right to “subpoena” Prof Madonsela afresh. I am not clear as to what this will achieve or how it will change the status quo as that will only further cement the view that Prof Madonsela is a witness whose testimony is sought by your client- presumably to assist her in her defence of the charges. It is also not clear why your client does not wish to avail this opportunity to now put questions to her having raised on more than one occasion her wish to do so.
5. Adv Mpofu, SC raised the refusal of Prof Madonsela to consult with the Public Protector’s legal team and the fact that they did not assist her with her statement as the reason for the this. However, it ought to have been abundantly clear that a witness cannot be forced to consult or work together with the Public Protector or even the Evidence Leaders for that matter. This in itself cannot be a reason for the Public Protector not to lead Prof Madonsela. Indeed, the Evidence Leaders would know even less than the Public Protector as to what your client believes she ought to testify on in order to assist your client.
6. Witnesses who appear at the behest and request of your client ought rightly to be led by your client. Whilst your client rejects the notion that Mr Mataboge, who was led by the Evidence Leaders, is not distinguishable from Prof Madonsela, her assertion is not borne out by the facts.
7. Mr Mataboge was not led by your client because your client never requested that the Committee subpoena him nor did he avail himself on the request of your client. In that context the evidence leaders were compelled to lead him without any statement and your client too has commenced questioning him without even a statement. It was clear to the Committee, from the content of your client’s application to subpoena Ms Mvuyana, that her reluctance was due to the fact that she would not appear unless Mr Mataboge appeared and as he was the Chief Investigator to whom she reported it was understandable. In turn the Evidence Leaders were told that the Public Protector does not intend to call Mr Mataboge any longer, which is supported by the fact that he communicated that while he would avail himself voluntarily he did not wish to do so on behalf of the Public Protector but merely to assist the Committee. If the Public Protector did indeed wish to call him she would certainly have included him in the list of persons she requested the Committee to

subpoena in the applications made on 13 December 2022. It is therefore clear that your client abandoned her intention to call Mr Mataboge and the Committee then picked up the baton in that regard and naturally the Evidence Leaders led his evidence on behalf of the Committee.

8. As such I wish, yet again, to offer your client the opportunity to lead the evidence of Prof Madonsela on Monday and Tuesday next week being 6-7 March 2023. This will give you the time you indicated you require to prepare for her appearance as you would have had her statement by then for 8 full days (I reject that days must be counted from the amended statement which contains no substantive changes).
9. Should your client wish to accept that offer you are kindly requested to communicate same by no later than 2 March 2023 at 13h00 so that Prof Madonsela can be informed of same and the necessary arrangements can be made for the Committee to sit. In the interim I have requested Prof Madonsela to keep her diary clear for this purpose.
10. Alternatively, you may put questions in writing and the Committee will facilitate that questions on the CIEX and VREDE matters are answered by means of a sworn statement.
11. Should your client avail this opportunity, I will extend the deadline for the submission of the PP's own statement to 9 March 2023. In the event that your client chooses not to put questions to Prof Madonsela, the 7 March 2023 deadline as previously agreed to will stand.
12. I was given to understand that a lengthy statement was being expected from the PP given the size of the work in progress and that the Evidence Leaders hence required time to consider it before her oral evidence commences on 15 March 2023. In this regard I also note your comments in relation to being able to deal with the evidence of Prof Madonsela in the PP's statement. In this regard, should it be required the PP's statement could be submitted in two parts. The second part falling due on 14 March 2023. The logistics to be dealt with Secretariat.
13. I trust the above is in order.

Yours faithfully



Mr Qubudile Richard Dyantyi
Chairperson: Committee for Section 194 Enquiry