

29 March 2023

Dear Adv Gcaleka,

RE: LEGAL SERVICES TO ADV B. MKHWEBANE DURING THE PROCEEDINGS BEFORE THE SECTION 194 COMMITTEE

1. I refer to your letter dated 1 March 2023 regarding the abovementioned subject.
2. Needless to say I differ sharply with your interpretation of the legal obligations which arise from the High Court and Constitutional Court decisions regarding the funding of my legal representation in the ongoing section 194 Enquiry, as well as the meaning of the President's relevant decisions as articulated in both the letter of suspension and/or the accompanying Presidential Minute. No useful purpose can however be served by debating those issues in this letter. The position remains as was clearly understood by all, including PPSA, until such time that you apparently ran out of funds which seems to be the real trigger for your aforesaid letter.
3. For the record I did not invite or impose the Enquiry or, worse still, the illegal suspension upon myself. On the contrary and since February 2020 to date, PPSA and me have on countless occasions approached both the Committee itself and the Courts to halt the proceedings pending the resolution of several applications. All of

 **Adv. Busisiwe Mkhwebane**





these interim proceedings were either dismissed by the court after falling on deaf ears on the part of the Committee. Incidentally and in each case, the Part B application for the main relief sought, was found in my favour by the courts. This is with particular reference to the unconstitutionality of the rules and the illegality of my suspension. In respect of further litigation regarding the recusal of the Chairperson and another member of the Committee, judgment is still reserved.

4. In each case, my applications for the temporary suspension of proceedings was always mainly aimed at avoiding the unnecessary spending on legal fees which would accompany any ill-advised continuation with the process. Parliament had a different view and elected to forge ahead regardless of the financial consequences. It now seems as if the chickens have come home to roost.
5. Be that as it may, the purpose of this letter is to inform you that since the date of receiving your aforesaid letter I have naturally raised the issue of your decision to terminate the legal representation funding agreement to my legal team. As at the date of my unfortunate recent illness I had duly informed my team that as a result of your decision I will no longer be able to give them any instructions beyond the 31 March 2023 date indicated at paragraph 12 of your letter.
6. As was confirmed by the PPSA's Adv Van der Merwe under oath when testifying at the enquiry last November, my counsel are already charging heavily discounted rates in this matter. For example my Senior Counsel foregoes an amount of more than R20 000 for every single day that he attends or does the work of the Enquiry instead of charging his normal daily rate.
7. I further requested my current legal team to advise me on the contents of your letter and also to indicate any possible willingness to continue representing me without getting remunerated for their professional services. They have since understandably and expectedly indicated that on the currently available information, they are in no position to continue under the circumstances brought about by your letter and will accordingly not continue representing me beyond 31 March 2023. That is the first


harm predictably caused by your letter. The second and further consequential harm is that I am accordingly unable to participate meaningfully in the Enquiry without legal representation. The third harm is that my current legal representatives have therefore understandably accepted other professional engagements for the dates which fall beyond 31 March 2023.

8. In the intervening period a letter was also received from the Chairperson of the Committee, dated 23 March 2023, in which he, inter alia, requested to know what steps I had taken in respect of this issue, which I deal with above, and also informing me of unspecified “*endeavours under way (sic) to assist the PP’s legal team which will likely come to fruition next week*”. This was unfortunately followed by a disclaimer, in line with the sentiments expressed in your letter, in relation to my alleged legal non-entitlement to the funding of my legal representation by any state organ “*or any other 3rd party for that matter*”.
9. Such vaguely stated “*endeavours*” were clearly only initiated well after the developments described above between me and my current legal team. They were also not sufficiently firmly expressed to affect the situation one way or the other. In reality they are meaningless personal ruminations of the Chairperson and/or the Committee. By its own admission “the Committee does not have any legal standing to be drawn into this matter.” As at the time of writing this letter, 48 hours before the 31 March date, we remain in the dark.
10. As no further communication or letter has been received from you or any of the other interested parties duly copied in your letter of 1 March 2023, it is safe to assume that the position remains as articulated in that letter. On the other hand, the programme of the Enquiry has ironically been recently extended to 29 May 2023. As a matter of courtesy, I annex hereto marked “X”, the latest programme received on 23 March 2023 from the Chairperson.
11. In view of all the foregoing and at the risk of stating the obvious, I therefore hereby inform you and the other recipients of this letter indicated below, that as from 1 April

2023 I will be without any legal representation as a direct result of your aforesaid letter and/or the absence of any meaningful effort to address the position firmly pronounced or declared therein. For all intents and purpose these unfortunate developments seemingly mark the intended or inevitable end of the Enquiry.

12. Please do not hesitate to contact me for any further clarification of the issues raised above.

Yours faithfully,



Advocate Busisiwe.Mkhwebane

COPY:

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