

URGENT

4 May 2023

To: Mr QR Dyantyi, MP

Dear Mr Dyantyi,

RE: RESUMPTION OF THE S194 ENQUIRY

1. I refer to your correspondence dated 2 May 2023 about the purported resumption of the section 194 enquiry, together with the accompanying draft programme.
2. I reiterate my desire and eagerness to appear before the Section 194 Committee to complete my testimony and take the people of South Africa into my confidence about how I performed my duties. I will however do so only if my rights have been properly observed and respected.
3. Please be further advised that the Deputy/Acting Public Protector's decision to terminate the agreement concluded by PPSA with me and my erstwhile attorneys for the funding of my legal representation in the present Enquiry due to the depletion of funds available to PPSA, as stipulated in her letter dated 1 March 2023, coupled with your utterances regarding Legal Aid have left me with no legal team.

 **Adv. Busisiwe Mkhwebane**

 **Busisiwe.m.t@gmail.com**



4. You have on three occasions publicly pronounced that I bear the responsibility to provide the funding for my own legal representation or to approach Legal Aid South Africa to do so:-

4.1. The first occasion was on 5 April 2023 in the afternoon when you said the following during an interview on the Newzroom Channel 405:-

“The Concourt has been very clear that she must be given legal representation, but nowhere does it say who must pay that legal representatives, she could easily have Gone to the Legal Aid, to ask for those kind of resources which is a state institution.”

4.2. The second occasion was still on 5 April, in the evening, when you said during an interview on SABC News Channel 404:

“... whether she must go get funding from Legal Aid which is a state institution that all of us get supported by or whether the Justice Department can assist and from Monday up until to the end of as tomorrow that's what we're focusing on to ensure that those role players will play a role to assist.”

4.3. Lastly and on 14 April 2023 during an interview on E-News Channel 403, you said:-

“The Constitutional Court would have made the judgment that says any head of this Chapter 9 institution must have legal representation and it could even be herself doing that. She could opt to go to Legal Aid which is a state institution that all of us go to”

5. As a member of the Portfolio Committee on Justice and Correctional Services you are deemed to know that Legal Aid South Africa does not fund parliamentary enquiries and that in any event I do not qualify for such funding. Yet you repeated this false theory in

the public domain simply to wrongly portray me as the cause of the funding crisis which was triggered by Adv Gcaleka.

6. To add salt to injury, Adv Gcaleka, during an interview on Chanel 405 on 27 April 2023, i.e. only 5 days before your letter, made it abundantly clear that *“from the budget of the Office of the Public Protector for this (2023/2024) financial year, we will not be able to provide or make provision for the funding of the Public Protector’s legal fees”*. This was in addition to the stance communicated to me that PPSA was unable *“to extend its funding commitment for the provisioning of legal services for the purpose of the Section 194 proceedings, beyond the current financial year ending on 31 March 2023”*.
7. From all of the above, the message was loud and clear that no money would be availed for my legal representation. Out of the blue and on 3 days’ notice you now inform me, without any prior engagement or sufficient details that *“the funding issue has been resolved”* and demand my response within 24 hours.
8. Needless to say, the letter from the Deputy PP terminating my attorneys mandate as well as hers and your public utterances, completely stripped me of my right to legal representation, were in contempt of the Order of the Constitutional Court and constituted a clear indication to my previous legal team that their services would no longer be catered for.
9. From the beginning, I have always expressed my intention to be legally represented at the Enquiry and that is still my decision. As things stand, I am informing you that I have no legal team to represent me at the Enquiry.
10. Going forward, I need time to secure legal representation. I am not sure as to where will I get a legal team that will agree to your unrealistic and absurd terms dictating that the work to be undertaken must not exceed an amount of R4000 000.00 or a period of one month. It ought to be obvious that these are absurd and impossible conditions to impose given the nature and scope of all the outstanding items in the enquiry and the

real possibility of having to engage either the previous or a new legal practitioner of my choice.

11. Please take note of the fact that should my previous legal team not be able or willing to return, the new legal team, if agreeable to your capped fee, will still have to peruse the 65 000 page record excluding the transcript of the illegal "*Committee meeting*". This alone may take months. This would be so even if the other issues raised above regarding fairness were resolved, which is not the case at present. Either way, the conditions of service must be negotiated and agreed between PPSA, or any other appropriate organ of state, and my nominated legal team.
12. Still regarding the programme, you have conspicuously omitted to add the 6 days that are due to me as a result of your illegal continuation of the enquiry, albeit under the guise of a "*committee meeting*". You are on record saying that the Public Protector will be given a chance to respond to what the Evidence Leaders have presented. It now seems as if that was an empty promise. Kindly furnish me with the minutes and attendance statistics of the alleged "*committee meeting*" so as to enable me to exercise my rights including the right of reply. You have also allocated a totally unrealistic four days for the rest of my testimony which must cover the issues raised during the evidence of the majority of the 18 witnesses called by the Evidence Leaders in respect of the HR issues, the Vrede Dairy Farm issue, the CIEX issue, the issue of legal costs as well as the questions raised by the Evidence Leaders during the alleged "*committee meeting*".
13. The rest of the draft programme is also unrealistic. For example it is absurd to allocate only two days for the preparation of oral argument after such a long enquiry and so many witnesses. Worse still, you have allocated only one day for oral argument in respect of all the evidence led and all the charges levelled against me. In any event these and other related issues will be dealt with once a legal team has been duly appointed.

14. Please note I will prefer to appear personally before the Committee on 08 May 2023 for fear of you muting me again, in violation of my right to dignity and the right to be heard. I have however been advised that PPSA will no longer be paying for my security protectors which constitutes a further interference with my rights. This matter is being attended to with PPSA and you will be advised of the outcome.
15. Please be advised that, as indicated in my previous correspondence I will also be directly approaching the Constitutional Court on an urgent basis to seek relief from the current crisis in which I have been placed by, *inter alia*, your illegal conduct over the past month or so. The relevant court papers will have been duly delivered to the court and your attorney by the time you receive this letter. It will be prudent to await the outcome of that urgent application.
16. Lastly, I note that you refer to a letter from Adv Gcaleka regarding the provision of the amount referred to in your letter. I am not in possession of such a letter from Adv Gcaleka and am therefore in the dark as to what the relevant conditions might be. Kindly furnish me with a copy thereof. In the meantime I will write to Adv Gcaleka to seek clarity as to, *inter alia*, how the amount of R4 million was arrived at, the proposed breakdown and/or allocation of the amount, and whether or not any agreement has been reached with the relevant service providers, failing which, PPSA must engage with me to identify attorneys and/or counsel of my choice in respect of the way forward. It is obviously impossible for the enquiry to “*resume*” before all these issues have been properly and satisfactorily dealt with.

Yours Faithfully,



Adv Busisiwe Mkhwebane
Public Protector of South Africa