

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA
(HELD IN BRAAMFONTEIN)**

Case No: CCT _____

In the matter between:

THE PUBLIC PROTECTOR OF SOUTH AFRICA	1st Applicant
BUSISIWE MKHWEBANE	2nd Applicant

and

THE SPEAKER OF THE NATIONAL ASSEMBLY	1st Respondent
---	----------------------------------

THE CHAIRPERSON OF THE SECTION 194 COMMITTEE	2nd Respondent
---	----------------------------------

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	3rd Respondent
--	----------------------------------

ALL POLITICAL PARTIES REPRESENTED IN THE NATIONAL ASSEMBLY	4th to 17th Respondents
---	--

OFFICE OF THE PUBLIC PROTECTOR	18th Respondent
---------------------------------------	-----------------------------------

THE MINISTER OF FINANCE	19th Respondent
--------------------------------	-----------------------------------

THE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT	20th Respondent
---	-----------------------------------

**NOTICE OF URGENT APPLICATION IN TERMS OF RULE 11,
READ WITH RULE 12 AND/OR RULE 18**

TAKE NOTICE that the abovenamed applicants intend to apply to this Honourable Court on **24 May 2023** or so soon thereafter as the Chief Justice may direct, for an order:

1. That this matter be heard on an urgent basis in terms of Rule 12;
2. That this matter be heard on the basis of exclusive jurisdiction, alternatively, direct access in terms of Rule 18;
3. Declaring the impugned conduct of the First and/or Second Respondents to be in violation of, inconsistent with and a failure to fulfil the constitutional obligations and/or duties as specified in:
 - 3.1. Section 7(2) of the Constitution, read with, *inter alia*, sections 1, 8, 9, 10, 22, 34 of the Constitution; and/or
 - 3.2. Sections 56, 57, 165 and/or 183 of the Constitution; and/or
 - 3.3. The order in paragraph 113 of the relevant Constitutional Court decision issued on 4 February 2022; and/or
 - 3.4. Rule 129 AD(2) and/or (3) of the Rules of the National Assembly;
4. Declaring that the conduct of the third respondent to be:-
 - 4.1. inconsistent with his constitutional obligations arising from, *inter alia*, sections 41, 83 and/or 181(3) of the Constitution; and/or
 - 4.2. in violation of sections 10, 22 and/or 23 of the Constitution; and/or
 - 4.3. in contempt of court and/or in breach of section 165 of the Constitution; and/or

- 4.4. irrational.
5. Declaring that the first, second and/or third respondents, alternatively the State, bears the legal obligation to provide resources for the legal representation of the applicant/s in the Section 194 enquiry;
6. Reviewing and setting aside:-
 - 6.1. the decision of the second respondent to proceed with the enquiry beyond 31 March 2023 under the guise of a "*committee meeting*" and/or at all;
 - 6.2. the decision of the first respondent refusing to intervene to stop the conduct of the second respondent;
 - 6.3. the decision of the third respondent refusing to reverse or uplift the suspension of the applicant;
7. Granting any further alternative, appropriate, just and/or equitable relief in terms of section 38 and/or 172(1)(b) of the Constitution; and/or
8. Costs on the attorney and client scale only in the event of opposition;

PLEASE TAKE NOTICE FURTHER that the attached affidavit of **BUSISIWE MKHWEBANE** will be used in support of the application.

PLEASE TAKE NOTICE FURTHER that the applicant has appointed the offices of her attorneys, **Ramushu Mashile Twala Inc.**, as set out hereinbelow, as the address at which she will accept all notices and processes in these proceedings.

PLEASE TAKE NOTICE FURTHER that you are required to indicate by no later than 5 days from service of the application on you of any intention to oppose this application and by no later than 11 May 2023 to file your answering affidavit/s, if any, alternatively on such date(s) as may be directed by the Chief Justice.

PLEASE TAKE NOTICE FURTHER that if no such notice of intention to oppose is given, the applicant will request that the Registrar place the matter before the Chief Justice to be dealt with in terms of rule 11(4), read with Rule 18, where applicable.

KINDLY SET THE MATTER DOWN ACCORDINGLY.

SIGNED at JOHANNESBURG on this the 5th day of MAY 2023


RAMUSHU MASHILE TWALA INC.

Attorneys for Applicants
171 Katherine Street
Liberty Life Office Park
2nd Floor, Block 2, Sandton
Tel: 011 444-3008
Fax: 011 444-3017

Ref: G Makhathini/TM/MAT14976

Email address: gcwali@rmtattorneys.africa
tawane@rmtattorneys.africa

**TO: THE REGISTRAR OF THE ABOVE
HONOURABLE COURT
BRAAMFONTEIN**

**AND TO: OFFICE OF THE STATE ATTORNEY, JOHANNESBURG
ATTORNEYS FOR 1ST TO 3RD AND 19TH TO 20TH RESPONDENTS
10TH FLOOR NORTH STATE BUILDING
95 MARKET STREET
JOHANNESBURG
TEL: 011 330 7600
EMAIL: MMobeng@justice.gov.za ; modikgale@justice.gov.za**

- AND TO: ALL THE POLITICAL PARTIES REPRESENTED IN
THE NATIONAL ASSEMBLY
C/O THE SPEAKER OF THE NATIONAL ASSEMBLY
PARLIAMENT BUILDING
ROOM E118
PARLIAMENT STREET
CAPE TOWN
PHONE: 021 403 2595
EMAIL: speaker@parliament.gov.za
FAX: 021 461 9462**
- AND TO: AFRICAN NATIONAL CONGRESS
4TH RESPONDENT
90 PLEIN STREET
PARLIAMENT OF SOUTH AFRICA
CAPE TOWN
Tel: 021 904 0393
EMAIL: krishn@mweb.co.za; info@anc1912.org.za;
eniandu@parliament.gov.za; ikmorolong@gmail.com;
mdikgale@parliament.gov.za; aseabi@parliament.gov.za;
minister@dac.gov.za**
- AND TO: MINDE, SCHAPIRO & SMITH ATTORNEYS
ATTORNEYS FOR THE 5TH RESPONDENT
BUILDING NUMBER 2
TYGER VALLEY OFFICE PARK
CNR WILLIE VAN SCHOOR & OLD OAK ROADS, BELLVILLE
REF: DEM16/0825/US40
EMAIL: elzanne@mindes.co.za; karin@mindes.co.za**
- AND TO: ECONOMIC FREEDOM FIGHTERS
6TH RESPONDENT
PARLIAMENT OF SOUTH AFRICA
CAPE TOWN
Email: Julius.Sello@gmail.com**
- AND TO: INKATHA FREEDOM PARTY
7TH RESPONDENT
MARKS BUILDING
M 106, 1ST FLOOR
90 PLEIN STREET
PARLIAMENT OF SOUTH AFRICA
CAPE TOWN
EMAIL: secretarygeneral@ifp.org.za; nsingh@parliament.gov.za;
info@ifp.org.za; bluthuli@parliament.gov.za**

**AND TO: FREEDOM FRONT PLUS
8TH RESPONDENT
GOOD HOPE BUILDING
DH 99/100
120 PLEIN STREET
CAPE TOWN
EMAIL: wanda@vfplus.org.za; PJGR@VODAMAIL.CO.ZA**

**AND TO: AFRICAN CHRISTIAN DEMOCRATIC PARTY
9TH RESPONDENT
GOOD HOPE BUILDING
GH 123, 1ST FLOOR
120 PLEIN STREET
CAPE TOWN
EMAIL: sswart@parliament.gov.za; abouwer@parliament.gov.za;
info@acdp.org.za**

**AND TO: MABUZA ATTORNEYS
ATTORNEYS FOR THE 10TH AND 11TH RESPONDENTS
MABUZA ATTORNEYS
83 CENTRAL STREET, FIRST FLOOR
HOUGHTON,
JOHANNESBURG
EMAIL: eric@mabuzas.co.za; rudolph@mabuzas.co.za;
lindiwe@mabuzas.co.za; matthews@mabuzas.co.za**

**AND TO: GOOD
12TH RESPONDENT
C/O JF LOUW
2ND FLOOR GENERAL BUILDING
42 BURG STREET
CAPE TOWN
EMAIL: jflou@iafrica.com; patriciadl@forgood.org.za**

**AND TO: NATIONAL FREEDOM PARTY
13TH RESPONDENT
90 PLEIN STREET
PARLIAMENT OF SOUTH AFRICA
CAPE TOWN
EMAIL: thwalan@kznleg.gov.za ; duduzilemhlango@ymail.com;
mshaik-emam@parliament.gov.za; mzwakhehlases@gmail.com**

- AND TO: AFRICAN INDEPENDENT CONGRESS**
14TH RESPONDENT
 ROOM V402
 OLD ASSEMBLY BUILDING
 90 PLEIN STREET
 PARLIAMENT OF SOUTH AFRICA
 EMAIL: ziona@parliament.go.za; ziona06@gmail.com
- AND TO: CONGRESS OF THE PEOPLE**
15TH RESPONDENT
 ROOM V380
 OLD ASSEMBLY BUILDING
 90 PLEIN STREET
 PARLIAMENT OF SOUTH AFRICA
 EMAIL: mlekota@parliament.gov.za
- AND TO: PAN AFRICANIST CONGRESS OF AZANIA**
16TH RESPONDENT
 ROOM V406
 OLD ASSEMBLY BUILDING
 90 PLEIN STREET
 PARLIAMENT OF SOUTH AFRICA
 EMAIL: mnyhontso@parliament.gov.za
mmampana@parliament.gov.za, admin@pacofazania.org.za
- AND TO: ALJAMA**
17TH RESPONDENT
 ROOM V409
 4TH FLOOR
 OLD ASSEMBLY BUILDING
 90 PLEIN STREET
 PARLIAMENT OF SOUTH AFRICA
 EMAIL: info@aljama.co.za; mhendricks@parliament.gov.za;
mgwanief@mweb.co.za; aallie-patel@parliament.gov.za
- AND TO: OFFICE OF THE PUBLIC PROTECTOR**
18TH RESPONDENT
 175 LUNNON STREET
 BROOKLYN
 PRETORIA
 EMAIL: ponatshegom@pprotect.org ; hombisac@pprotect.org
- AND TO: OFFICE OF THE STATE ATTORNEY**
ATTORNEYS FOR THE 19TH AND 20TH RESPONDENTS
 CNR FRANCIS BAARD & THABO SEHUME STREET

PRETORIA
0001

EMAIL: StateAttorneyPretoria@justice.gov.za

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA
(HELD IN BRAAMFONTEIN)**

Case No: CCT _____

In the matter between:

THE PUBLIC PROTECTOR OF SOUTH AFRICA 1st Applicant

BUSISIWE MKHWEBANE 2nd Applicant

and

THE SPEAKER OF THE NATIONAL ASSEMBLY 1st Respondent

THE CHAIRPERSON OF THE SECTION 194 COMMITTEE 2nd Respondent

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA 3rd Respondent

**ALL POLITICAL PARTIES REPRESENTED IN
THE NATIONAL ASSEMBLY** 4th to 17th Respondents

OFFICE OF THE PUBLIC PROTECTOR 18th Respondent

THE MINISTER OF FINANCE 19th Respondent

**THE MINISTER OF JUSTICE AND CONSTITUTIONAL
DEVELOPMENT** 20th Respondent

FOUNDING AFFIDAVIT



I, the undersigned,

BUSISIWE MKHWEBANE

do hereby make oath and state:

1. I am the Public Protector in terms of the Constitution of the Republic of South Africa 1996 ("the Constitution") and appointed as such in terms of section 1A(2) of the Public Protector Act 23 of 1994 ("the Public Protector Act"). I depose to and act in this application both in my official capacity and/or in my personal capacity as a citizen of South Africa and bearer of rights.
2. The facts contained in this affidavit are, unless the contrary appears from the context or is so stated, within my knowledge and are true and correct. Where I make submissions of a legal nature, I do so on the strength of legal advice which my legal advisers have provided to me.

A: THE PARTIES

3. I am the first and second applicant in this application in the aforesaid capacities.
4. The first respondent is the Speaker of the National Assembly, Nosiviwe Mapisa-Nqakula, who is cited in that capacity, elected to office in terms of Section 52 of the Constitution. Her official work address is at Parliament Building, Room E, 118 Parliament Street, Cape Town, care of the State Attorney, Johannesburg, 10th Floor, North State Building, 85 Albertina Sisulu Street, Johannesburg ("the State Attorney, Johannesburg).




5. The second respondent is the Chairperson of the ad hoc Section 194 Committee. It is common cause that the Section 194 Committee is a sub-committee and/or sub-structure of the National Assembly, which accordingly falls under the control of the Speaker, in terms of section 57(2) of the Constitution, read with sections 55(2), 56 and/or 57(2)(a) of the Constitution, care of the State Attorney, Johannesburg.
6. The third respondent is the President of the Republic of South Africa, who is the head of state and the national executive of the government of the Republic of South Africa, duly elected in accordance with section 86 of the Constitution and, the incumbent being His Excellency Cyril Matamela Ramaphosa, with his official seat and administrative offices at Tuynhys, Plein Street, Cape Town and The Presidency, Union Buildings, Pretoria, care of The State Attorney, Johannesburg.
7. The fourth to seventeenth respondents are all the political parties represented in the National Assembly of the Parliament of the Republic of South Africa, all with their offices situated at the Houses of Parliament at 120 Plein Street, Cape Town. They are listed in annexure "BMCC1" hereto in the order of their electoral size.
8. The eighteenth respondent is the Office of the Public Protector also known as Public Protector South Africa ("PPSA") whose head office is situated at Hillcrest Office Park, 175 Lunnon Street, Brooklyn, Pretoria.
9. The nineteenth respondent is the Minister of Finance, who is cited herein in his official capacity, care of The State Attorney, Johannesburg.

Handwritten signature and scribble.

10. The twentieth respondent is the Minister of Justice and Constitutional Development, who is cited herein in his official capacity, care of The State Attorney, Johannesburg.
11. The fourth to twentieth respondent are cited only in so far as they have an interest in the outcome of this application. No order for costs will be sought against them except in the event of entering a notice to oppose.

B: NATURE OF THE APPLICATION

12. This is an application for declaratory, review and/or contempt-of-court related relief pertaining to the ongoing process conducted in terms of section 194 of the Constitution in respect of my removal from my current office of the Public Protector of South Africa. It specifically concerns the proceedings of the section 194(1)(b) Committee which have stalled due to a lack of funding for my legal representation.
13. The matter concerns my denial of a fair hearing and/or the right to legal representation *per se*, as well as the illegal continuation of the proceedings in my absence and in the absence of my legal representatives, albeit under the guise of a purported "*committee meeting*" which is in substance part of the proceedings.
14. The aforesaid illegal and impugned conduct also takes place against the background of a Constitutional Court decision which ordered the Committee, the Speaker and/or Parliament "to afford (me) the right to be heard in (my) defence and to be assisted by a legal practitioner or other expert of (my) choice." The said conduct is therefore, *inter alia*, in flagrant, wilful and/or

8 

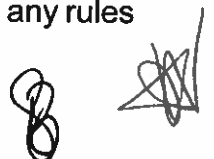
- malicious breach of the said binding court order. This amounts to contempt of court at worst and/or at best, the breach of section 165 of the Constitution.
15. The aforesaid conduct is also in violation of the rules of law as well as my rights to dignity (section 10 of the Constitution, to practice my chosen occupation (section 22 of the Constitution, to work (section 23) and/or to a fair and impartial resolution of the underlying dispute before an independent tribunal or forum (section 34 of the Constitution). In terms of section 7(2) of the Constitution, the state and its organs must respect, protect, promote and fulfil these rights.
 16. The conduct is also irrational and reviewable on the bases of the principle of legality.
 17. Furthermore, to subject me to further suspension from my work in the present circumstances is also conduct which is inconsistent with my aforesaid constitutional rights, on the part of the third respondent.
 18. A key dispute which is central to this application pertains to the question whether or not the state and/or any of its organs is responsible for the provision including the further funding required for my legal representation.
 19. Finally, the enquiry itself has consequentially and irretrievably collapsed and ought accordingly to be nullified *ab initio* alternatively with effect from the point at which it was allowed to continue in my absence and that of my legal representatives. That being so the question arises whether or not my suspension can remain extant and valid in such circumstances.

Handwritten signature and scribble at the bottom right of the page.

20. Despite demand having been made, including compliance with the requirements of section 41 of the Constitution, the first to third respondents have failed and/or refused to comply with their aforementioned constitutional duties as defined in the Constitution, the relevant statutes, the Committee Terms of Reference and/or the applicable Directives, as the case may be.
21. I therefore bring this application as a matter of urgency and on the basis of this Court's exclusive jurisdiction, alternatively, by seeking direct access in terms of the Constitution and the applicable Rules of this Court. The various constitutional and other legal grounds upon which the application is premised are set out under section D below.

C: RELEVANT FACTUAL BACKGROUND

22. The history of this matter is covered in some of the relevant and related judgments referred to below. Due to the extreme urgency of the application and the length of the history of this matter, it is not reasonably practicable or strictly necessary to detail every detail herein.
23. In a nutshell, it is now a matter of historical record that the Democratic Alliance was the only political party which voted against my appointment as Public Protector, *inter alia*, on the false ground that I am a "spy". Since then the party made several unsuccessful attempts to have me removed from office, dating as far back as 2017.
24. Some time in 2019 and following yet another such attempt I resorted to writing a very detailed letter to the Speaker in which, *inter alia*, I advised and pointed that it would be illegal to embark on any removal proceedings without any rules



governing such a process. This advice was in line with the relevant decision of the Constitutional Court colloquially known as the EFF (Impeachment) case delivered late in 2017.

25. Following such advice the NA indeed embarked on a drawn-out process to formulate the requisite Rules.
26. On 3 December 2019, the present Rules were passed by a majority mainly constituted of DA and ANC members present. Predictably and within 72 hours thereof Ms N Mazzone, then the Chief Whip of the DA submitted a motion, in terms of Rule 129R, for my removal. The motion was "*withdrawn*" by her on 21 February and she immediately "*resubmitted*" it on the same day in a transparent attempt to cure the fact that all the charges predated the promulgation date of the Rules and would have fallen foul of the rule against retrospectivity. I brought an application to declare parts of the Rules unconstitutional, including, notably the original Rule 129 AD(3) which provided that:-

"The Committee must afford the holder of a public office the right to be heard in his or her own defence and to be assisted by a legal practitioner or other expert of his or her choice, provided that the legal practitioner or other expert may not participate in the committee". (My emphasis)

27. To my surprise only the Speaker of Parliament, but not the DA, appealed this particular decision to afford me full legal representation directly to the Constitutional Court. The appeal was dismissed and the Constitutional Court



excised the offending words and ordered the new Rule to read as above but to exclude the words:-



"provided that the legal practitioner or other expert may not participate in the committee."

28. The history of the stubborn and unrepentant attitude of the Speaker and/or Parliament against my right to legal representation is very relevant to the issues which arise in the present application, approximately one year after the unanimous decision of this Honourable Court regarding that issue. Since then the attitude of the Chairperson and/or the Committee, both extensions or organs of Parliament has been characterised by conduct which maliciously seeks to undermine and defy the abovementioned decision of the Constitutional Court by repeatedly denying me my right to full legal representation, including but not limited to the recent events which have triggered the present urgent application.

29. Two earlier instances occurred, despite my protestations and specific references to the Constitutional Court decision, more specifically:-

29.1. On 13 September 2022 when the Chairperson and/or the Committee decided to proceed with the enquiry hearing when I fell ill, in my absence and that of my legal representatives;

29.2. On 1 and 2 November when, again, the Committee and/or Chairperson decided to proceed with the examination-in-chief of a key witness, Adv Neels van der Merwe, in the absence of my chosen legal representatives, albeit in my presence and that of my attorney. This



was also in defiance of my protestations and demands for compliance with the relevant court order.

30. These instances of blatantly malicious and wilful defiance of the court order also formed part of separate litigation in respect of my application for the recusal of the chairperson and another member of the section 194 Committee which was recently dismissed by the Western Cape High Court on the technicality that the application was brought *in medias res* and ought accordingly to be brought at the end of the process. The court refrained from adjudicating the merits. I intend to appeal that judgment and an application for leave to appeal was duly lodged on 3 May 2023. Since it does not deal with the merits, that judgment has no direct bearing on the present urgent application. The judgment was delivered exactly 7 months after the first incident of the denial of my legal representation on 13 September 2022. Merely for the sake of completion, I annex hereto a copy of the Application for Leave to Appeal, marked "**BMCC2**".
31. In the same vein I may also mention that my related and illegal suspension by the President which was also declared to be unconstitutional by the Western Cape High Court and which ought to have resulted in the upliftment of that suspension and my return to work on 9 September 2022. However the DA, unsurprisingly, and the President, rather surprisingly, both instituted within 24 hours and 72 hours, respectively, urgent appeal and/or confirmation proceedings with the obvious and openly declared intention to ensure that I would not return to the office and specifically to bar me from dealing with the well-known Phalaphala scandal in my capacity as the duly appointed Public



Protector of South Africa. The idea was clearly to implement their preference that the Phalaphala matter should be dealt with by the Deputy Public Protector who is also acting as Public Protector purely because of my illegal suspension. That the intention was to stop me from "*coming anywhere near the Phalaphala matter*" was openly stated inside the Constitutional Court by senior counsel for the DA and senior counsel for the President on 24 November 2022 during the hearing of the matter. Unfortunately and although it was also an urgent application, the reserved judgment in that matter is also still outstanding some 7 months after my "*urgent*" reinstatement by the High Court against my suspension which took place more than 10 months ago.

32. The impugned and repeated conduct of the Committee and/or its Chairperson clearly amounts to interference with the functioning of the Public Protector which is a criminal offence in terms of section 11(1) of the Public Protector Act 23 of 1994. No court of law should countenance or tolerate such punishable conduct. The conduct is in double breach of both sections 165 and 181 of the Constitution.
33. Be that as it may, and against that unfortunate background, the related events which directly triggered the present application started on 1 March 2023 when, out of the blue, I received a letter from the Deputy/Acting Public Protector ("Adv Gcaleka") informing me of a 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. A copy of the self-explanatory letter is annexed hereto and marked "**BMCC3**".



34. The essential terms of the said agreement can be gleaned from correspondence received from PPSA in 2022. Sampled copies of such correspondences are annexed hereto and marked "BMCC4" and "BMCC5" respectively. The agreement also entailed, *inter alia*, the agreed and discounted rates which had been arranged between my former attorneys and counsel and subsequently endorsed by PPSA.
35. In the ensuing four weeks my time and that of my legal representatives was unfortunately consumed by the urgent need to deal with three consecutive and unplanned subpoenaed witnesses (namely Ms Mvuyana who is a Senior Investigator currently employed at PPSA, Mr Mataboge who is a Chief Investigator and Ms Thulisile Madonsela who is the former Public Protector who preceded me in that position), the demand for my witness statement covering all the charges and the impending appearance before the Full Court of the Western Cape High Court for the final leg of the recusal application referred to earlier. After the submission of the witness statement on 15 March 2023, I took ill and was booked off until 28 March 2023. It therefore only became possible at that stage to formulate a position after consultation with my legal team. All this was clearly communicated to the Chairperson who accepted the situation. With effect from 28 March until 31 March 2023 in the late afternoon, the Chairperson denied all my daily requests to discuss the issue during the enquiry. In the result only at that stage did I get an opportunity to communicate the position to the Committee. In the intervening period there had been some exchange of correspondence between me, my attorney and Adv Gcaleka concerning the way forward. I attach hereto copies of such

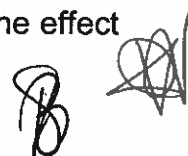


correspondence marked "BMCC6", "BMCC7", "BMCC8" and "BMCC9" respectively.

36. In a nutshell the position of PPSA and that of my legal representatives, remained unchanged. The former was unable to secure any funding and the latter could therefore not continue to represent me beyond 31 March 2023.
37. Upon eventually communicating the situation to the Committee, the Chairperson made an undertaking that the relevant issues would be "sorted out" over that weekend in such a way that we needed to proceed as normal on Monday 3 April 2023. I was understandably sceptical about this seemingly baseless optimism but I hoped that some breakthrough might miraculously happen.

C1: Events of 3 April 2023 to date

38. On Monday 3 April 2023 it became clear that the optimism of the past Friday had been unfounded as no progress or any communication had since been forthcoming from the Chairperson. At the proposal of Mr Bantu Holomisa MP, who is a member of the Committee, the Chairperson announced that the Enquiry would be adjourned *sine die* and until the funding crisis was resolved. This decision was, in the circumstances correct and inevitable. The Chairperson also proposed that a meeting of the Committee to deal with the situation be immediately convened or that the sitting be converted to such a Committee meeting. This too was to be expected.
39. However and surprisingly, the Chairperson also simultaneously announced the unilaterally taken and seemingly pre-agreed decision by him to the effect



that the Evidence Leaders would address the purported "*Committee meeting*" and "*clarify*" certain issues pertaining to the evidence I had given up until the emergence of the funding crisis. This was later described as a process to "*empower*" the members, seemingly at the initiative of the Chairperson.

40. What lies at the centre of this application are the decisions and/or conduct of:-

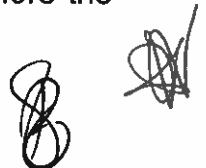
40.1. the first and/or second respondent/s in failing and/or refusing to afford me the right to be heard in my defence and/or the right to legal representation;

40.2. the third respondent in failing and/or refusing to reverse his suspension decision in the prevailing circumstances; and

40.3. the first and/or second respondents contempt of court, alternatively constructive contempt further alternatively breach of section 165(4) and/or (5) of the Constitution.

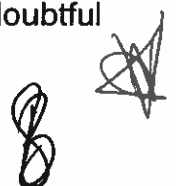
41. I objected to this on the grounds that it would be unfair and prejudicial to follow such a blatantly illegal and unauthorised route. The majority of members who spoke on the issue also rejected the idea.

42. However, the Chairperson unlawfully overruled all those objections and insisted on following his proposed way forward. It was only after Mr Zungula MP reminded him that there was no legally or procedurally acceptable reason for that decision that the Chair opened up the discussion and then ANC and DA members of the Committee predictably supported the Chairperson's proposal until he announced that the tally was now 4 to 3 and therefore the



proposal stood. This was a clearly contrived procedure to legitimate a decision which was already illegally made and clearly discussed with the Evidence Leaders in secret. The Evidence Leaders were clearly ready to immediately make the extensive and well prepared "*presentation*", purportedly aimed at "*empowering*" the members of the Committee with analysing my evidence and suggesting to them what questions to put to me when their turn to do so came as well as telegraphing what questions the Evidence Leaders were going to put to me when their own turn came to put questions to me, whenever I would have finished giving the rest of my testimony. I was known to everyone that I had reserved my rights to argument my evidence including on the topics identified for the proposed "*empowerment*" exercise.

43. Stripped of all the pretences, what the Evidence Leaders proposed to do and in fact subsequently did for a total of 6 days, was to present their closing legal arguments on the two topics I had largely covered namely the CR17 and "*Rogue Unit*" matters. There is no legal or procedural basis to do that at all but more particularly not in my absence and/or that of my legal representatives. The purported "*meeting*" was in actual fact and in substance a continuation of the Enquiry. To characterise it as a "*committee meeting*" would be the impermissible elevation of form over substance.
44. No notice had been given for the meeting. No agenda was formulated. The duration thereof was undefined. No specific invitation was extended to the Evidence Leaders save for the obvious prior arrangement between them and the Chairperson. In actual fact no members made any contributions or asked any questions for the 3 days duration of their purported "*meeting*". It is doubtful

Handwritten signature and scribble at the bottom right of the page.

if any minutes were taken or previous minutes considered as would be customarily done in a real committee meeting.

45. On 4 April 2023 when I briefly logged into the "*meeting*" with the aim to raise my objections to the ongoing illegality and to introduce the complaint letter I had just sent out to the Committee via its Chairperson, he recognised me and specifically stated that he would give me the platform to address the Committee as per my request to do so. Then suddenly he changed his tune mid-sentence and indicated that he would no longer so recognise me. Based on my previous experience he must have been responding to the non-verbalised objection of the Evidence Leaders. This phenomenon had happened a few times during the Enquiry and specifically during the delivery of my evidence. On at least one occasion I called it out.
46. In any event and for whatever reason, the Chairperson had changed his mind and he forbade me from speaking on the spurious grounds that the "*Committee meeting*" was only open to the participation of members of Parliament. When I sought to point out that the Evidence Leaders were not members of the Parliament or the Committee, the Chairperson suddenly grew inexplicable irritability and angrily shouted at me. In the process he gave an instruction to the operators of the information technology (Zoom) platform which I was utilising to "*Mute her! Just Mute her*". He also made other unnecessary and rude comments. I annex hereto a transcript of the exchange marked "**BMCC10**" and I will at the hearing, apply to play the short audio-visual presentation of that exchange.



47. At no stage did he acknowledge or explain why he changed his mind from his clearly articulated decision to give me the platform to speak. He only acknowledged this day later when it was pointed out to him in a television interview on SABC TV. He still failed adequately to explain his conduct. I invite him to do so to this Honourable court, failing which an adverse inference must invariably be drawn against him.
48. Given these developments, I was therefore left with no option but to release the letter of demand to the public, which I duly did shortly after being shouted down and muted by the Chairperson. A copy thereof is annexed hereto and marked "**BMCC11**".
49. The Chairperson, even after having received the letter took another unilateral decision to continue with the purported the "*Committee meeting*" not only for the rest of that day but also for a total of 5 more days.
50. At the end of proceedings on 5 April 2023 the Chairperson announced that upon resumption on Tuesday 11 April 2023, following the Easter Weekend, one of two things would happen. Either the continuation of the "*Committee meeting*" or the "*resumption*" of the Enquiry, depending on whether the funding impasse was resolved in the intervening period.
51. This decision was made in spite of it being obvious that the funding crisis could only be resolved subject to the agreement of my legal representatives of choice and/or their availability which was no longer guaranteed for obvious reasons. The decision was therefore in essence for the continuation of the

8 

prejudicial presentation of the Evidence Leaders. This on its own constitutes an illegality.

52. It is not reasonably practicable to traverse all the issues covered by the Evidence Leaders in their presentation which has gone on for several days. At the hearing of this application a transcript and/or audio-visual version of the presentation will be availed to this Honourable Court. Alternatively a shortened and/or mutually agreed edited version will be prepared for the convenience of the court. Suffice at this stage to point out that when properly examined, it will be clear that the presentation, *inter alia*,

52.1. amounts to or largely contains legal argument;

52.2. was preplanned;

52.3. was specifically intended to discredit my ongoing and unfinished testimony while I am still on the stand;

52.4. is severely prejudicial to me and does not even pretend to present a balanced picture or version;

52.5. was intended or would have the effect of poisoning the minds of the decision makers and/or members of the public against the version articulated in my affidavit and testimony;

52.6. was choreographed to feed into the hostile media and indeed did have that intended effect. I annex hereto for illustrative purposes 3 newspaper articles published in the mainstream media based on the impugned presentation;

Handwritten signature and scribble at the bottom right of the page.

- 52.7. is not illegal for being authorised in terms of any of the prescripts which govern the Committee proceedings; and/or
- 52.8. in respect of the conduct of the Evidence Leaders, falls below any professional or ethical standards or even the behaviour expected from a prosecutor.
53. On 5 April 2023 and when it became clear that the Chairperson and/or Committee were hellbent on proceeding with the illegal exercise, I wrote a joint letter to the Speaker of the National Assembly and the President demanding their separate intervention in the discharge of their specified constitutional obligations. A copy of the self-explanatory letter is annexed hereto and marked **"BMCC12"**.
54. Both letters sent out to the Chairperson, the Speaker and/or the President stipulated the deadline for responding as 13h00 on 6 April 2023. Both give further and sufficient grounds to demonstrate the illegality of the impugned exercise, which are specifically incorporated herein, to avoid unnecessary prolixity.
55. All these letters were also written in the discharge of my duties in terms of section 41 and in particular section 41(3) of the Constitution to exhaust all other remedies and avenues before approaching a court to resolve the present dispute.
56. As at 13h00 on 6 April 2023 I had received two responses from the President and the Speaker respectively attached hereto as **"BMCC13"** and **"BMCC14"**. The President's response asked for an indulgence and indicated that, due to



his schedule, he would most likely not respond in that week. The second respondent also.

57. On 11 April 2023 I received a response from the Speaker in which she essentially washed her hands of the disputed and pointed to the Committee as the ultimate decision maker. However she notably also:

57.1. disputed my assertion that Parliament had failed to fulfil its constitutional obligations to ensure a fair and constitutionally compliant process; and

57.2. asserted that "the judgment of the Constitutional Court did not extend to the issue of payments of costs for (my) legal assistance. Parliament was only directed to allow (me) to have (my) legal representative (to) participate in the Committee. "A copy of the said letter is annexed hereto and marked "**BMCC15**".

58. Later on 11 April 2023 I also received the response of the second respondent who also disputed any violation of the Constitution or any other law and effectively echoed the sentiments that I was not entitled to state funding for my legal representation. He went so far as to enquire as to what steps I had personally taken to secure funding.

59. On 20 April 2023 I finally received the final long-awaited response of the President, a copy of which is annexed hereto and marked "**BMCC16**".

60. In a nutshell the President stated that:-

60.1. the suspension letter and resolution did not provide any undertakings or assurances that legal expenses incurred by me would be paid, or as



to who would or should pay them. Accordingly, these disputed issues are open to and deserving of adjudication;

60.2. he does not have the power to extend those benefits to me as proposed in my letter;


60.3. he would not "interfere with the processes of Parliament;

60.4. as the proceedings of the Committee had "not been finalised his decision to suspend me stood; and

60.5. the decision of the Constitutional Court on the previous grounds of unlawfulness was still awaited.

61. Needless to say and for the avoidance of any doubt, I dispute the applicability or validity of each one of the reasons advanced by the President for his failure to act in accordance with his unique constitutional obligations as per my letter of demand. I am advised that the detailed legal grounds for such dispute will be dealt with in legal argument. Suffice to indicate that:-

61.1. the correct interpretation of the letter of suspension and accompanying resolution clearly embraces the usual benefits enjoyed by the Public Protector which include state-funded legal representation for any activity which falls within the course and scope of her appointment as such. This is how every person or organ of state correctly understood the situation, until the apparent drying up of funds. There can therefore be no honest doubt that the state, of which the President is the Head, carries the duty to provide me with legal representation. As to which agency of the state

8 

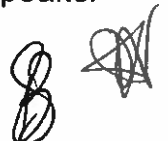
would be utilised to fulfil that duty, that is a matter for the state to resolve, not me as the recipient. A copy of the letter of suspension with the attached resolution taken in terms of the President's Act 116 of 2022, is attached hereto and marked "**BMCC17**";

61.2. on any reasonable reading of the suspension letter, it will be clear that the reasons advanced at paragraphs 6 and 7 for my suspension no longer exist or hold any water; and

61.3. more specifically, I wish to bring to the attention of this Honourable Court that with the Evidence Leaders and I having called all witnesses the reasons for my suspension related to potential intimidation of witnesses have fallen away. Neither am I expected to "*dedicate my full attention*" to an effectively non-existent enquiry. There are therefore no reasons to subject me to an irrational and illegal suspension any further.

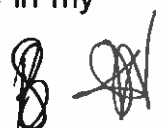
62. The resolution of these questions which have arisen since the states failure to provide the necessary funding to PPSA, has in the province of the President as Head of State. The resolution of that issue is a matter of constitutional obligation and does not conceivable amount to "interference with the processes of Parliament. It did not amount to such interference for the entire 8 months which preceded 31 March 2023.

63. The President, as the sole suspending authority, also carries the constitutional obligation to reconsider his 9 months old decision to suspend whenever material and new facts are brought to his attention. Failure to exercise that power amounts to illegal abdication in much the same way as the Speaker

Handwritten signature and initials in black ink, located at the bottom right of the page.

clearly abdicated her powers to the Committee and/or Chairperson. In both cases such abdication has resulted in the violation of my rights to, *inter alia*, dignity and equality.

64. The pending Constitutional Court decision has only tangential no relevance hereto because it raises different substantive legal issues from the present application. Its relevance is confined to context, and urgency as indicated elsewhere in this affidavit. If that previous decision is confirmed then one aspect of the present application may or may not be rendered moot. However, if the decision is not confirmed, the present application will stand unaffected.
65. In the circumstances the resultant disputed issues fall to be decided, one way or the other, by this Honourable Court.
66. Including the three previous occasions in 2022, the Committee and/or Chairperson has cumulatively denied me my right to legal representation over a period of 9 days which amounts to gross and grave injustice.
67. On 19 April 2023 and after a total of 6 days of making the impugned presentation, the Evidence Leaders finally ran out of steam and announced the end of the presentation of evidence.
68. The Chairperson then announced that the enquiry would "temporarily *pause*" until further notice and asked the members to be "*on stand-by*" as they could be recalled at any stage after the resolution of the funding impasse. There was no more mention of the "*meeting*" which has therefore not come to any ending or closure. This is further ample proof that the alleged "*committee meeting*" was nothing but a ruse for the illegal continuation of the proceedings in my



absence and the absence of my legal representatives. The damage done thereby is irreversible and fatal to the entire process.

69. On 3 May 2023 completely out of the blue and with no prior communication with me or my previous attorneys, the Chairperson (second respondent) sent me a letter announcing the purported "*resumption*" of the enquiry scheduled to take place within 3 working days or 5 calendar days on 8 May 2023 ostensibly because according to him "*the issue of (my) legal fees has been resolved*". A copy of the said letter is annexed hereto and marked as "**BMCC18**".

70. The letter goes on to say, *inter alia*, that:

70.1. "*In any event we are faced with a constraint in that the PPSA has indicated they cannot commit to more than R4 000 000.00.*"

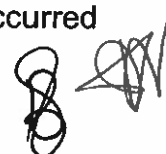
70.2. "*I have no doubt that the resumption of the hearings will be approached with a commitment from you and your legal team to see the process to its conclusion in the time-frame provided for. I intend ensuring that the proceedings are run according to the draft programme and will expect the members, staff, evidence leaders, yourself and your legal team to also make the necessary sacrifices and commitment to ensure this is the case. I have also indicated to the evidence leaders should either of them not be available on any of the days in the upcoming period that this is not to be an impediment to the hearings proceeding. I trust that you will ensure the same with your legal team.*"



- 70.3. I must respond on an unrealistic one-day deadline.
71. This letter or notice only serves to rub salt into the wound, more particularly in that, to the specific knowledge of the second respondent:-
- 71.1. I do not have a legal team and certainly none which is on call or retainer waiting to be "*recalled*" by him on 3 day's notice;
- 71.2. The agreement(s) which had been concluded between PPSA any my erstwhile legal team were terminated with effect from 31 March 2023 together with their mandate flowing from such agreement(s);
- 71.3. Since then, there is no legal team which has been appointed, re-appointed or in any other way engaged by any person representing the state or any of its organs;
- 71.4. My two constitutionally guaranteed right "*to be heard in (my) own defence and to be assisted by a legal practitioner of (my) choice*" cannot be conceivably afforded, exercised and/or enjoyed in such circumstances;
- 71.5. The proposed programme is unrealistic more particularly in that, *inter alia*, it gives unreasonably short notice and makes no provision for the promised opportunity to respond to the illegal 6-day presentation of the Evidence Leaders, as the Committee is duty bound to do. The said programme could never fly even if I had an idling legal team at my disposal, which I certainly do not have.



72. Furthermore, the cap placed on the amount to be spent which is in turn premised on the impossible, flawed and totally unrealistic programme is also a non-starter. It represents the surest way to guarantee that the present impasse will replay and repeat itself come the projected and totally improbable June 2023 end-date of the enquiry or the depletion of the capped funds, whichever will happen first.
73. These and other issues have been pertinently raised in my response letter dated 4 May 2023, a copy of which is annexed hereto and marked "**BMCC19**".
74. If anything the Chairperson's letter adds more fuel to the urgency of the need to resolve the disputes raised in this application and the need for direct access, if exclusive jurisdiction is refused. I am advised that further argument will be advanced at the hearing of the application in this regard.
75. What is self-evident is that there is no realistic or legally acceptable resolution of the original impasse and that the Chairperson's intervention is a contrivance which will only predictably result in further manifest unfairness, the violation of my rights and contempt of court. The situation has now been aggravated even more than before the receipt of the latest correspondence. The latest correspondence from the Chairperson has all the hallmarks of simply going through the motions as all pretence of a genuine, fair and constitutionally compliant section 194 Committee have clearly been abandoned.
76. Needless to say, the current stalemate operates to my prejudice and in violation of my relevant rights in that with every day that passes I remain suspended pending the conclusion of the enquiry which has in fact occurred



but is undeclared but caused by the illegal conduct of the relevant respondents. Only the timely intervention of this Honourable Court can unlock the stalemate demand, which said respondents have all failed and/or refused to do so.

D: THE APPLICABLE CONSTITUTIONAL AND REGULATORY FRAMEWORK

77. In this section I set out the key legal instruments relied upon in this application. The emphasis is mine.

D1: Constitutional provisions

78. Section 1 of the Constitution deals with the underlying values of our constitutional democracy including the supremacy of the Constitution, human dignity, equality, accountability, fairness, transparency and openness and importantly the rule of law.

79. Section 7(2) of the Constitution provides that:

“The state must respect, protect, promote and fulfil the rights in the Bill of Rights.”

80. Section 8(2) provides that:-

“The Bill of Rights applies to all law and binds the legislature, the executive, the judiciary and all organs of state.”

81. Section 9 outlaws irrational differentiation and arbitrary discrimination.

82. Section 10 provides that:-

"Everyone has inherent dignity and the right to have their dignity respected and protected."

83. Section 12(1) provides that:-

"Everyone has the right to freedom and security of the person which includes the right not to be deprived of freedom arbitrarily or without just cause ... and not to be treated or punished in a cruel, inhuman or degrading way."

84. Section 34 of the Constitution provides that:-

"Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum."

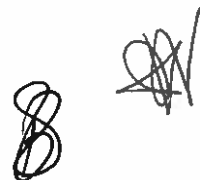
85. Section 41(3) of the Constitution provides that:-

"An organ of state involved in an intergovernmental dispute must make every reasonable effort to settle the dispute by means of mechanisms and procedures provided for that purpose and must exhaust all other remedies before it approaches a court to resolve the dispute."

86. Section 56(a) of the Constitution provides that:-

"The National Assembly or any of its committees may summon any person to appear before it to give evidence on oath or affirmation, or to produce documents;"

87. Section 59(2) provides that:-



"The National Assembly may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society."

88. Section 83(b) provides that:-

"The President must uphold, defend and respect the Constitution as the supreme law of the Republic."

89. Section 165 of the Constitution provides that:-

"(4) Organs of state, through legislative and other measures, must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts.

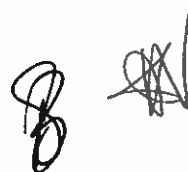
(5) An order or decision issued by a court binds all persons to whom and organs of state to which it applies."

90. Section 181 of the Constitution provides that:-

"(3) Organs of state, through legislative and other measures, must assist and protect (the Public Protector) to ensure the independence, impartiality, dignity and effectiveness of (the Public Protector).

(4) No person or organ of state may interfere with the functioning of (the Public Protector).

(5) (The Public Protector is) accountable to the National Assembly and must report on their activities and the performance of their functions to the Assembly at least once a year."



D2: Legislation: The Public Protector Act

91. Section 11(1) of the Public Protector Act provides that:

“(1) Any person who --- interferes with the functioning of the office of the Public Protector as contemplated in section 181(4) of the Constitution, shall be guilty of an offence.”

D3: The Rules of The National Assembly

92. The cornerstone of the work of the Committee is anchored in Rule 129AD(2) of the Rules of the National Assembly which states that:

“The Committee must ensure that the enquiry is conducted in a reasonable and procedurally fair manner, within a reasonable time frame”.

93. Rule 129AD(3) stipulates as follows:-

“The Committee must afford the holder of a public office the right to be heard in his or her own defence and to be assisted by a legal practitioner or other expert of his or her choice.”

D4: The Terms of Reference of the Section 194 Enquiry

94. Clause 4.5(b) of the Terms of Reference provides that:-

“the legal practitioner or expert has the right to participate, in their capacity as representatives of the PP, in the proceedings of the committee, including making opening and closing statements, cross-examining witnesses and raising any matter related to the process, subject to any reasonable time restrictions the chairperson may impose.”

Clause 5 of the Terms of Reference provides that:

“The enquiry is inquisitorial in nature and the Evidence Leaders does not act as a prosecutor. The role of Evidence Leader is limited to presenting the evidence and putting questions to the PP or other witnesses with the aim of empowering the committee to assess the merits of the evidence in line with its mandate. The format for questioning whether oral or by way of statement with a view to limiting issues in dispute will be determined by the Evidence Leader in consultation with the Chairperson”.

D5: The Directive issued by the Section 194 Committee

95. As mentioned herein above, the “Committee Meeting” wherein the Evidence Leaders are busy presenting legal argument, which they are not entitled to, is in violation of Clause 9.1 of the Directives which states as follows:

“Once all of the evidence has been led, the Public Protector will be afforded an opportunity to address the Committee orally in closing argument”.

96. There is no clause in the directive which empowers the Evidence Leaders to present legal argument. It therefore follows logically that, in any event, the Evidence Leaders cannot have any right to present legal or closing argument at any stage before all the evidence has been led.

D6: Key Judicial Authorities

97. Reliance will be placed on many applicable decisions of our courts but I wish to highlight a few of them namely:-

97.1. **EFF V Speaker of the National Assembly 2018 (2) SA 571 (CC);**

Handwritten signature and initials in the bottom right corner of the page.

97.2. **Speaker of the National Assembly v Public Protector 2022 (3) SA (1) (CC);**

97.3. **Secretary, Judicial Inquiry into Allegations of State Capture v Zuma 2021 (5) SA 327 (CC).**

E: ANALYSIS: APPLYING THE LAW TO THE RELEVANT FACTS

98. This matter primarily concerns declarations of unconstitutionality of certain conduct on the part of various respondents, accompanied by prayers for corresponding just and equitable remedies. It also includes declarations of breaches of the Bill of Rights in terms of section 38 of the Constitution, where applicable.

99. To the extent that this matter is being brought directly to the Constitutional Court and as a matter of urgency I will start by dealing with the requirements for the exclusive jurisdiction of this Honourable Court and/or direct access.

E1: Exclusive Jurisdiction (Prayer 2)

100. The Speaker is cited in these proceedings as the first respondent because:-

100.1. In terms of section 181(5) the Public Protector is accountable to the National Assembly and this is a specifically imposed obligation which is elaborated upon in the applicable Rules of the National Assembly;

100.2. In terms of the applicable Rules, the Speaker is the owner or custodian of the section 194 process; and/or

Handwritten signature and initials in the bottom right corner of the page.

- 100.3. The Chairperson of the section 194 Committee was at all material times hereto, acting at the behest of the National Assembly and/or the Speaker in the fulfilment of a constitutional obligation of the latter.
101. The President is cited in his own right and in his capacity as the person upon whom the obligations set out in section 83, 194(3)(a) and/or 181 rest.
102. This application principally concerns allegations of the non-fulfilment of constitutional obligations which are specifically assigned to the Speaker (Parliament) in terms of sections 181 and/or the President in terms of sections 83 and 194. These are not shared responsibilities or obligations.
103. It is indeed so that the matter also concerns constitutional duties which accrue to the respondents non-exclusively and upon other constitutional organs as well. However and for the sake of convenience and the avoidance of a multiplicity of actions, these disputes also fall to be determined in the present application due to their ancillarity to the causes of action in respect of which exclusive jurisdiction attaches.
104. That being the case the issue of direct access does not arise.
105. Alternatively and in the unlikely event that this Honourable Court finds that section 167(4)(e) of the Constitution does not apply to this application, then and alternatively the matter still deserves a hearing on the basis that it is in the interests of justice that if direct access be granted, upon the grounds set out below.



E2: Direct Access (Alternative Prayer 2)

106. I am advised that it will be argued at the hearing that this matter is of sufficient public importance and/or urgency that direct access is in the interests of justice, upon the grounds set out below in this section.
107. The matter involves a particularly egregious and unprecedented level of multiple counts of contempt of court. This is an automatically and inherently urgent matter. Accordingly this section must be read in conjunction with the urgency section in E3 below.
108. Failure by this Honourable Court to intervene directly and urgently will result in the perpetuation of a grave and ongoing injustice and flagrant violation of my constitutional rights.
109. There are hardly any factual disputes and this matter purely concerns multiple and serious violations of countless constitutional rights, provisions and fundamental values. This also contributes or paves the way to direct access.
110. To the extent that the matter involves intergovernmental disputes, section 41 of the Constitution has been complied with.
111. The interlocking issues of the ongoing illegal proceedings and my illegal suspension which has thus far subsisted for 10 months, are sufficient cause for the adjudication of this matter, in the interests of justice, directly by this Honourable Court. In determining the issue of direct access the factual allegations made above must be assumed to be true. The facts paint a very



grim and ugly picture of the serial and ongoing violations of my rights by various arms of the state.

112. In the totality of the circumstances this matter involves extremely exceptional circumstances presenting as threats to our democracy, to my rights, to the institutional rights of my office, to the public it is intended to protect against abuse and corruption and to the dignity and effectiveness of the courts, more particularly the highest court in the land.

E3: Urgency (Prayer 1)

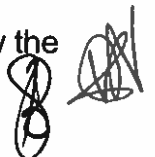
113. As we speak the stalemate is continuing. The funding crisis remains unresolved. The illegal "*committee meeting*" is ostensibly continuing and was "*in progress*" for the past 14 days. The first day of the "*meeting*" was 3 April 2023. No time limits have been imposed on the Evidence Leaders for delivering their presentation. They have absurdly spent 6 days of allegedly "*empowering*" committee members in respect of four days of my testimony thus far, which is yet to be completed. This is completely unheard of in any other quasi-judicial or disciplinary proceedings aimed at making finding of fact or law.
114. With every day that passes of this farcical "*meeting*" proceeding, my rights are being repeatedly violated and the Constitution and other applicable and binding instruments multiply breached.
115. All this being done at an enormous financial cost to the taxpayer.

Handwritten signature and initials in the bottom right corner of the page.

116. It is common cause that my non-renewable term of office is set to expire on 15 October 2023, less than 6 months away. Any redress which I could possibly get if the application is brought in due course, will be meaningless. It is in any event doubtful that I could obtain any redress in due course and before that expiry date. This will have a definite adverse effect not only on me as a person but on the office of the Public Protector and the public interest.
117. The urgency of this matter is by no means self-created. On the contrary I have left no stone unturned in making daily attempts and appeals for sanity to prevail. So have reasonable members of the Committee. However, they have all been subjected to the arrogance of power and tyranny of the majority whose view prevails irrespective of its patent illegality. This situation cries out for the urgent intervention of the judiciary which is the ultimate custodian and enforcer of the Constitution.
118. The last of the responses from my obligating letters of demand was only received on 20 April 2023, a few court days before the institution of this application.
119. It is unlikely that the present impasse in all its multiple dimensions, can ever be resolved without the adjudication of the question as to who bears the responsibility to ensure that I am afforded the right to be heard in my own defence, to be present during the proceedings, to object to the legality of what is going on and to legal representation of choice.



120. To the extent that the issue of alleged contempt of court is relevant and/or central to the underlying dispute, it is trite that contempt of court is automatically urgent.
121. An additional factor which aggravates the urgency of this matter is the inordinate and undue delay, currently standing at almost 6 months, in the delivery by the Constitutional Court of the judgment in the matter concerning the confirmation proceedings in respect of the declaration of the invalidity of my suspension by the Western Cape High Court on 9 September 2023 some 9 months ago. The suspension itself took effect on 9 June 2022, almost a year ago.
122. This delay is and of itself in violation of my rights to dignity and my rights to access justice more particularly in that the adverse impact of the one-year period of my potentially illegal suspension is irrecoverable. The initial application was urgent in nature as were the applications by the DA and the President which were respectively lodged within 5 hours and 72 hours of the 9 September judgment.
123. As it happens and due to the obvious urgency and seriousness of the matter both from a personal and public perspective, I wasted no time and instituted the urgent proceedings on 17 June 2022 only week after my retaliatory suspension which was driven by ulterior motives and also *ultra vires* the powers of the President. Yet today, a few weeks away from the first anniversary of my suspension, I still await the final word of our courts as to whether or not and if so how the underlying violation(s) of the Constitution may be remedied. Such a situation should never be countenanced. I now know the



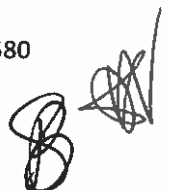
meaning of the adage that: "*Justice delayed is justice denied*" because the outcome of the matter has now clearly been overtaken by even the bigger and more harmful events dealt with in this application.

124. As a result of the above, I have now instructed my legal representatives to lodge a formal complaint with the Judicial Service Commission regarding the aforesaid undue delay more particularly given the nature of the case, the nature of the parties, and its oppressive impact on me as an individual citizen and on the public at large, to but a few factors. I need to emphasise that the said complaint will be pursued irrespective of whether the outcome is in my favour or against me. Either way the delay has caused untold and unnecessary human suffering.
125. Even in the most likely event that the judgment will be delivered shortly before the expiry of the 6-month threshold stipulated in the relevant Judicial Code of Conduct and guidelines, due to the special circumstances surrounding the matter, the complaint will still be pursued.
126. In my view, it is highly likely that had the judgment been delivered on time and/or within the 3-month period which applies to non-urgent matters and should therefore apply even greater forces to urgent matters, the present impasse would never have taken place. More specifically had my reinstatement been confirmed for whatever reason, the matter of the legal fees would have been handled differently, timeously and the impasse avoided or ameliorated.



127. There is a direct, undeniable and demonstrable relationship between the present funding crisis and impasse and my illegal and continuing suspension from office. Had I been back in office, as I should be, I would have certainly handled the matter and the engagements with the relevant members of the Executive very differently. There would most probably have been no need for this application alternatively the nature and content thereof would have been materially different.
128. It is certainly rare, unusual or unprecedented for an individual citizen's rights to be allegedly, seriously and simultaneously violated by the Legislature, the (Head of) the Executive and the Judiciary itself.
129. The thing which makes the so-called **EFF (Nkandla)**¹ case so unique, exceptional or unprecedented was the double-dose of constitutional violation being simultaneously perpetrated directly by the Head of the Executive and (vicariously) by the Head of the Legislature (the Speaker). This matter takes it even further and breaks new ground in that, here, the constitutional violations come in triple-dose, separately but simultaneously being served by the Head of the Legislature, the Legislature and even the Judiciary itself. It is this unfortunate feature which sets this application apart from the rest.
130. These and all the other related issues arising out of the factual complex, require the most urgent attention of this Honourable Court. The urgency of this application speaks for itself.

¹ Economic Freedom Fighters and Another v The Speaker of the National Assembly and Others 2016 (3) 580 (CC)



F: THE MERITS

131. Once the preliminary issues of exclusive jurisdiction (alternatively direct access) and urgency have been disposed of we need to turn to the merits of the relief sought in this application. It can be divided into five constituent, if interrelated, parts, namely:-

131.1. The declaratory relief;

131.2. The contempt of court relief;

131.3. The review relief;

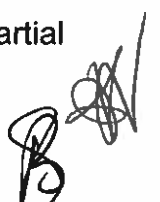
131.4. Remedies; and

131.5. Costs.

F1: Declaratory relief (Prayers 3, 4 and 5)

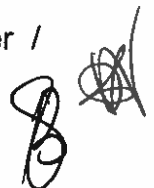
132. Our Constitution foreshadows two types of declaratory relief. Firstly and in terms of section 38 thereof, a declaration of rights may be granted once an infringement or violation has occurred or been threatened. Secondly and in terms of section 172(1)(a) a court deciding a constitutional matter must declare that any law or conduct inconsistent with the Constitution to be invalid to the extent of its inconsistency. This application invokes both sections 38 and 172.

133. To the extent that, particularly in my personal capacity as a citizen and bearer of rights, the impugned conduct clearly violates my rights to dignity, equality, freedom, the right to work, the right to practice my chosen profession or occupation and most importantly the right to access justice in an impartial



tribunal, this Honourable Court is called upon to make a declaration to that effect. Otherwise those rights enshrined in the Bill of Rights will be hollow and unenforceable decorations. This we shall refer to as the section 38 declaratory relief.

134. The conduct is also inconsistent with the underlying value of fairness as embedded in the abovementioned provisions of the Constitution as well as the principle of equality of arms, more particularly in that the State continued to fund the Evidence Leaders and other related activities of the Enquiry even beyond 31 March 2023.
135. On the other hand and to the extent that the impugned conduct is, *per se*, inconsistent with the above and other specified constitutional provisions also found in the Constitution but outside of the Bill of Rights, it is peremptorily incumbent upon this Honourable court to declare such conduct to be unconstitutional and invalid whereafter the court has a discretion to grant any just and equitable remedies. This is the section 172 declaratory relief.
136. The impugned conduct of the Chairperson (which is legally attributable to the Speaker) in muting me on 4 March 2023, was also inconsistent with the provisions of section 59(2) of the Constitution in that, *inter alia*, it was of the designed to and had the effect of excluding me from a sitting of the Committee without any justification. This is more serious if one considers that the sole existence of this particular committee is to enquire into my alleged conduct and/or to hold me accountable. I am the reason for its very existence. I am also a member of the public in my own right. That I was excluded is common cause. The only remaining question, in respect of which the Speaker /

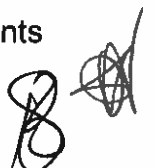


Chairperson bear the onus, is why such exclusion was reasonable and justifiable. I submit that it was neither reasonable nor justifiable. If so, the declarator must be granted.

137. The conduct is also in clear breach of the relevant provisions of the Terms of Reference and applicable Directive both of which derive their ultimate force from the Constitution.

138. The conduct of the President in refusing and/or failing to undo the suspension even when it was clear that the valid enquiry was no longer in place is inconsistent with his duty to uphold, defend and respect the Constitution in terms of section 83(b) of the Constitution. Once the inherent irregularities in the process were brought to his attention by me in my letter dated 5 April 2023 (Annexure "BMCC9" above), it was incumbent upon the President to investigate whether or not the jurisdictional requirements for the section 194(3)(a) suspension still obtained, failing which the suspension could no longer be sustained and had to be removed. Given the inherently oppressive consequences of such a suspension, any suspending authority is dutybound, when required to do so, to reconsider if the original rationale for the suspension still holds. Such enormous power must automatically go with the reciprocal or corresponding duty and obligation to "*unsuspend*" or uplift the suspension when lawfully called upon to do so.

139. The conduct of (both) the Speaker and/or the President was further inconsistent with the duties upon them, in terms of section 181(3) and/or (4) of the Constitution, to assist and protect the Public Protector to ensure her or its dignity and effectiveness. Furthermore, such conduct axiomatically amounts

Handwritten signature and scribble.

to interference with the functioning of the Public Protector in that it results in the denial of the rights of the Public Protector and her undue absence from her office with the obvious consequences to the person, the office and the public.

140. In terms of section 11(1) of the Public Protector Act 23 of 1994, such conduct also amounts to criminal offences. This is the clearest demonstration of its inherent constitutional repugnance or inconsistency.
141. In the totality of the circumstances, the relief sought at Prayers 3, 4 and 5 ought accordingly to be granted.
142. Furthermore, the disputed interpretation of the relevant court dealt with below, as to whether it includes or excludes a duty upon the state to provide the financial resources necessary to afford me my right to legal representation at the enquiry, also needs to be resolved by this Honourable Court one way or the other. I am advised that it will be argued that such an obligation goes hand in glove with the verbalised duty spelt out in the court order and the resultant revised Rule 129 AD (3). This issue specifically both talks to Prayers 3.1 and 5 of the Notice of Application.
143. In this regard, It is trite that the order is binding on the Speaker and/or the state broadly. What is in contention is only the scope and ambit of the order. This in turn depends on the (disputed) purposive and contextual interpretation of the court order in question.
144. To add insult to injury the Chairperson of the Committee has thrice 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:-



144.1. The first occasion was on 5 April 2023 in the afternoon when he 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."

144.2. The second occasion was still on 5 April, in the evening, when he 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."

144.3. Lastly and on 14 April 2023 during an interview on E-News Channel 403, he 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"

145. If denied the court will be provided with the relevant video links to these interviews, in the replying affidavit.

146. These utterances are completely illogical and senseless more particularly in that as a member of the Portfolio Committee Justice and Constitutional Affairs, the Chairperson knows or ought reasonably to know that I do not qualify for legal aid in respect of the enquiry firstly, because such an enquiry falls outside of the mandate of Legal aid South Africa and secondly, and more importantly, I do not fit into the means test threshold to qualify for legal aid. If necessary, this Honourable Court will be referred to the relevant statutory and regularly prescripts which govern legal aid in South Africa. He was therefore either deliberately misleading the public or acting in an inexplicable or illogical fashion.
147. The Chairperson ought reasonably to also know that the Enquiry is a Parliamentary initiated and owned process for whose existence I am not responsible.
148. To the extent that such misguided logic must have informed the conduct of the Chairperson and/or Committee or any other organ of state, it is *ipso facto* irrational on that basis alone.
149. As if all that were not enough, the Acting Public Protector has also more recently made it clear during a television interview she participated in on 27 April 2023 on Channel 405, 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*". A transcript of the relevant portion of the said interview is annexed hereto and marked "**BMCC20**".



150. From all of the above it seems obvious that, for all intents and purposes there is no solution in sight and that therefore the Enquiry and/or underlying process has effectively come to an end. That is the prevailing status *quo*.

F2: The contempt of court relief (Prayers 3.2 and 4.2)

151. Related to the above is the specific issue of the clear breach of the order granted by this Honourable Court at paragraph 113.3 of the decision in **Public Protector v Speaker** (*supra*).

152. It must be noted that the said order encompasses two distinct but overlapping rights and issues namely:-

152.1. my right to be heard in my own defence; and

152.2. my right to full legal representation during (and throughout) the enquiry proceedings.

153. In several ways both aspects of the court order have been violated more particularly in that:

153.1. the continuation of the enquiry sitting, albeit under the guise of a “*committee meeting*” infringes on my right to be heard, including my right to be present and to object to any unlawfully introduced material. The content of the Evidence Leaders’ presentation speaks for itself and calls for the reciprocal and instantaneous right of reply which cannot reasonably be exercised on some future, unknown, undefined and uncertain occasion. The agreed procedure also does not cater for



such conduct. It is therefore also illegal for being *ultra vires* the powers of the Committee and/or the National Assembly;

- 153.2. the fact that the continuation is taking place at a time when it is common cause that I have no legal representation, flies in the face of the court order; and
- 153.3. there can be no justifiable and honestly held doubt about who bears the responsibility to afford me the right to legal representation because both the relevant rule and the court order place that obligation on the Committee and by logical extension on the Speaker and/or the state as such.
154. If all the circumstances are taken into account, including the warnings given and the rude tone of the Chairperson, it cannot be seriously disputed that the impugned conduct was performed wilfully and in bad faith. The existence of the order, the respondent's awareness thereof and its breach are clearly not matters which can be sustainably disputed. The elements of contempt have therefore all been met.
155. However and in the unlikely event that any of the requirements of contempt may be found wanting, then the conduct is still unconstitutional in that it is in breach of the constitutional obligations referred to in sections 165(4) and (5) (as well as 181(3) and (4)) of the Constitution.
156. The relevant declarator specifically sought at Prayer 3.2 and 4.2 must accordingly be granted on the abovementioned grounds.



157. The declaratory relief is also importantly premised on the provisions of section 7(2) of the Constitution, in relation to each of the first to third respondents.

F3: The review relief (Prayer 6)

158. Turning to the review relief, relevance is placed for convenience, only on the principle of legality or so-called irrationality review.

159. The impugned decisions of the Speaker/Chairperson in proceeding with the enquiry in my absence and in the absence of my legal representatives is clearly and blatantly both irrational *per se* but also procedurally irrational.

160. It is also in breach of the empowering provisions in the form of both the Rules and the applicable Directives (including the Terms of Reference). This results in unlawfulness in the form of *ultra vires*.

161. Similarly, the decision of the President not to remove the suspension in the prevailing circumstances, quite apart from being motivated by bias, is irrational on the grounds that it is inconsistent with the letter and spirit of section 194(3)(a).

162. In the circumstances, the impugned decision(s) fall to be reviewed, nullified and set aside for being irrational. Such relief will also follow naturally from the declarations of illegality already discussed in respect of the related conduct.

163. I am advised that legal argument will be advanced at the hearing to support the legal conclusions proposed in this section.



G: REMEDIES (Prayer 7)

164. This Honourable Court is entitled to grant appropriate, just and equitable remedies which flow from the declaratory and/or review relief. Such relief will correspond with all the relevant declarators which will have been granted.
165. The total impact of the remedies sought above is to nullify the current Enquiry proceedings for non-compliance with the Constitution. It will then be open to the relevant respondents whether or not to restart the processes *de novo*, which would be inadvisable in the totality of the circumstances.
166. Given the serious and repeated violation of rights which have accompanied the Committee proceedings, it will be argued that the taint of illegality is so irreversible that the proceedings ought to be declared *void ab initio* or at worst, with effect from 3 April 2023. This talks, specifically to the review relief sought in Prayer 6.3. That prayer is premised on the unarticulated premise that the enquiry has reached a dead end.
167. It is equally open to the court to nullify the suspension for the reasons explained hereinabove. It may do so temporarily, pending the unlikely and real resolution of the funding impasse or permanently, depending on the interests of justice. What is certainly unjust is to keep me in a state of suspension when the enquiry is not proceeding or showing any realistic signs of resumption.

H: COSTS (Prayer 9)

168. What cannot be contested is that the current enquiry is fatally and incurably tainted by the impugned and unconstitutional conduct.

Handwritten signature and scribble in the bottom right corner of the page.

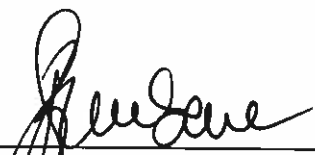
169. The mere fact that the enquiry proceeded in my absence and/or the absence of my legal representatives on 13 September 2022, 1 and 2 November 2022, 3 to 5 April 2023 and further, is sufficient to indicate that the legal flaws in the process are irreversible.
170. That the minds of the members of the Committee, who are the principal decision makers have already been poisoned against my testimony, in the course of an illegally held meeting, is a *fait accompli* which cannot be reversed.
171. The presentation of legal argument out of turn and in the middle of my testimony, fatally and irregularly taints the entire process. The fact that the presentation even strayed outside of my testimony only serves to underscore the grossness of the irregularity in question.
172. The latest still-born and ill fated attempt at a contrived resumption which has not been properly thought through, represents the last straw in the misbehaviour of the relevant respondents.
173. In the circumstances, I am advised that it will be argued that this is an appropriate case for this Honourable Court, under the discretionary rubric of just and equitable remedies, to nullify the entire current proceedings, to order the termination thereof and to visit the relevant opposing respondents with a punitive order of costs so as to discourage them from similar oppressive conduct. Further legal argument in this regard will be advanced at the hearing.

Handwritten signature and initials in the bottom right corner of the page.

I: CONCLUSION

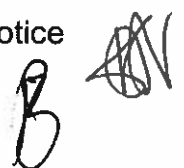
174. The facts of this case and the legal dynamics around it closely resemble the matter of **Secretary, Judicial Commission into Allegations of State Capture Commission v Zuma (supra)**.
175. To the extent that all the three legs of that application i.e. the declaration of contempt, the sentencing and the rescission legs, were correctly regarded as urgent and deserving of direct access and/or exclusive jurisdiction, this case is no different. Reliance will therefore be placed on that binding precedent, among others.
176. On the merits, the matter also equally raises unprecedented issues of considerable constitutional weight and immediate public importance.
177. Having suffered, to varying degrees multiple abuses at the hands of all three arms of the state, not to mention the executive minded and embedded media, this Honourable Court represents the last and only hope and avenue for the vindication of my violated rights.

WHEREFORE I pray that it may please the above Honourable Court to grant the relief sought in the Notice of Motion.




 DEPONENT

I **CERTIFY** that the deponent has acknowledged that she knows and understands the contents of this affidavit which was signed and sworn to, before me, at SANDTON on this the 04 day of **MAY 2023**, the Regulations contained in Government Notice



No. R.1258 dated 21 July 1972 (as amended), Government Notice No. R.1648 dated 19 August 1977 (as amended), Government Gazette R.1428 dated 11 July 1980 (as amended) and Government Notice No. R.774 dated 23 April 1982 having been complied with.



COMMISSIONER OF OATHS

COMMISSIONER OF OATHS
VUYISILE NANI
PRACTISING ATTORNEY
GWINA ATTORNEYS INCORPORATED
135 Daisy Street, Sandown, Sandton
P.O. Box 78178, Sandton, 2146



LIST OF 4TH TO 17TH RESPONDENTS

NO.	PARTY	RESPONDENT
1	African National Congress (ANC)	4 th Respondent
2	Democratic Alliance (DA)	5 th Respondent
3	Economic Freedom Fighters (EFF)	6 th Respondent
4	Inkatha Freedom Party (IFP)	7 th Respondent
5	Freedom Front Plus (FF Plus)	8 th Respondent
6	African Christian Democratic Party (ACDP)	9 th Respondent
7	United Democratic Movement (UDM)	10 th Respondent
8	African Transformation Movement (ATM)	11 th Respondent
9	GOOD (GOOD)	12 th Respondent
10	National Freedom Party (NFP)	13 th Respondent
11	African Independent Congress (AIC)	14 th Respondent
12	Congress of the People (COPE)	15 th Respondent
13	Pan Africanist Congress of Azania (PAC)	16 th Respondent
14	ALJAMA (ALJAMA)	17 th Respondent



"BMCC2"

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No:18882/2022

In the matter between:

THE PUBLIC PROTECTOR OF SOUTH AFRICA Applicant

and

THE CHAIRPERSON OF THE SECTION 194(1) COMMITTEE 1st Respondent

KEVIN MILEHAM 2nd Respondent

THE SPEAKER OF THE NATIONAL ASSEMBLY 3rd Respondent

**ALL POLITICAL PARTIES REPRESENTED IN
THE NATIONAL ASSEMBLY** 4th to 17th Respondents

NOTICE OF APPLICATION FOR AN URGENT APPEAL

TAKE NOTICE THAT the abovementioned applicant hereby applies for leave to appeal urgently to the Supreme Court of Appeal against the whole of the judgment and order of the abovementioned court (per Allie, Cloete and Savage JJ) delivered electronically on 13 April 2023, upon the grounds set out below: -

A: Grounds

1. The Learned Judges grossly erred and/or misdirected themselves in that they totally misconstrued, misunderstood and/or misdescribed the true nature, scope and ambit of the relief sought by the applicant in the application. More



specifically the Learned Judges, with respect, failed to take into account that the application in fact incorporated four and not two legs, based on :

- 1.1. the review relief based on PAJA;
 - 1.2. the review relief based on legality;
 - 1.3. the declaratory relief based on section 38 of the Constitution; and
 - 1.4. the declaratory relief based on section 172 of the Constitution.
2. As a result, the Learned Judges, erroneously only adjudicated the review relief referred to at 1.1 and 1.2 above and failed to adjudicate the stand alone and distinct declaratory relief referred to at 1.3 and 1.4 above. The implications of these omissions are far reaching and in breach of the applicant's rights as enshrined in section 34 of the Constitution to have a dispute brought before a court of law resolved by it, one way or the other.
3. In particular, the Leaned Judges, with respect, failed to appreciate that the technical defence of *in medias res* only applies to the review relief and cannot be applied to the declaratory relief. There can logically be no such thing as relief for the declaration of unconstitutionality being *in medias res*. Declaratory relief can be sought at any stage once a right has been allegedly infringed or threatened to be infringed (section 38 of the Constitution) or conduct inconsistent with the constitution has occurred (section 172 of the Constitution).
4. The technical defence, even if it was correctly upheld, which is denied, is accordingly not legally capable of being dispositive of the declaratory (and non-review) relief sought.



5. The application ought properly to be granted on this ground alone. However, and in the event that the court fails to uphold this ground, the grounds set out below ought also to suffice.

B: OTHER ISSUES NOT ADJUDICATED

6. The Leaned Judges also failed to adjudicate one way or the other, *inter alia*, the following issues pertinently raised by the parties:-
 - 6.1. separation of powers;
 - 6.2. whether the relief sought adequately covered both the Committee and/or the Chairperson;
 - 6.3. the allegations of contempt of court;
 - 6.4. the denial of legal representation on 1 and 2 November 2022;
 - 6.5. the non-adjudgment decision;
 - 6.6. the refusal to call crucial witnesses; and/or
 - 6.7. the non-recusal of Mr Mileham;
 - 6.8. legitimate expectations;
 - 6.9. *nemo iudex in re sua*; and/or
 - 6.10. *audi alteram partem*.
7. Such omissions, individually and/or cumulatively amount to violations of section 34 of the Constitution.

Handwritten signature and initials in the bottom right corner of the page.

C: The review relief

8. With specific reference to the review relief:

8.1. The Leaned Judges erred and/or grossly misdirected themselves in holding that the applicant had not shown the existence of grave injustice and/or that the harm in question was inevitable or irreversible if the Committee continued.

8.2. In doing so the Leaned Judges were effectively impermissibly overruling the judgment of the Constitutional Court to the effect that the consequences of an impeachment were per se grave. It follows logically then that the consequences of an impeachment tainted by the absence of legal representation is even graver, by definition.

8.3. The Leaned Judges erred in failing, without adequate and proper justification, to follow the binding decisions in **Dyantyi v Rhodes University and Others**¹ and **Bernert v Absa Bank**² and instead drawing unsustainable distinguishing factors in respect of each.

8.4. The Leaned Judges grossly erred and/or misdirected themselves in introducing a test of balance of convenience which has no place in proceedings such as the present which are for final declaratory and/or review relief.

9. Most seriously, the Leaned Judges further erred in holding that it was "*not necessary*" to adjudicate whether a case of bias had been made against the

¹ 2023 (1) SA 32 (SCA)

² 2011 (3) SA 92 (CC)



Chairperson or Mr Mileham when it was specifically necessary to do so because:-

- 9.1. the adjudication of the declaratory relief is peremptory as indicated by the words "*must*" in section 172(1)(a); and;
 - 9.2. in any event the principle in **S v Jordaan and Others**³ compels a court of first instance to deal with the merits and all other properly advanced legal challenges so as to avoid unnecessary delay in the disposal of the matter and the appeal court acting as a court of first instance in respect of the unadjudicated disputes.
10. Although it is not strictly relevant at this stage given the order granted, for the record, the Leaned Judges erred in holding that PAJA does not apply to the dispute or that the Committee and/or the officials in question were not performing a public function.
11. For all the grounds set out above the decision is vague and embarrassing in that it does not meet some of the most essential requirements of a court judgment as prescribed by the Constitutional Court.

D: COSTS

12. The Leaned Judges erred in mulcting the applicant with costs of three counsel in the particular circumstances of the case and where bias on the part of the respondents had not been ruled out.

³ 2002 (6) 642 (CC) at paragraph [21]; Followed with approval in Minister of Justice v Saripa 2017 (3) SA 95 (SCA) at paragraph [38]



13. The costs order is also incompetent in that it is in breach of the Biowatch principle.
14. The Leaned Judges further erred in awarding costs to the DA in the circumstances where it had no reason to oppose the application as no relief was sought against it.

TAKE NOTICE FURTHER THAT the applicant also relief on section 171(a)(ii) in that there are other compelling grounds why leave to appeal ought to be granted,

15. including:-

- 15.1. the devastating effect on our justice system if paragraphs 49, 50 and 58 of the judgment are left intact as representing South African law regarding claims of constitutional violations;
- 15.2. the court's remarkable failure to even address the allegations of gender based discrimination on the part of the Chairperson and/or the Committee in requiring to be informed of the nature of the illness from which the applicant was suffering on 13 September 2022;
- 15.3. the effective emasculaton of the preemptory force of section 172(1)(a) of the Constitution;
- 15.4. the undue overburdening of appellate courts if the approach in this matter is to be followed or encouraged;
- 15.5. the non-adjudication of disputes including alleged illegalities involving detailed multiple breaches of the rules of natural justice namely *nemo iudex* and the *audi alteram partem* rule as well as contempt of court;



- 15.6. the negation of binding authority of higher courts in breach of the sacrosanct stare decisis rule of law;
- 15.7. the public and unprecedented nature of the underlying proceedings which are likely to affect judges, presidents, premiers and other heads of Chapter 9 institutions in the future; and/or
- 15.8. the negation of the transformative nature of our constitutional dispensation especially in respect of gender based discrimination, the restoration of human dignity and justice for all.

TAKE NOTICE FURTHER THAT the applicant reserves her right, at the appeal stage, to apply for the introduction of new evidence regarding the current and subsequent denial of her legal right to legal representation as well as the current status of the proceedings, in the likely event that this Honourable Court refuses to take judicial notice thereof. The right to supplement the present grounds for leave to appeal is also hereby specifically reserved.

TAKE NOTICE FURTHER THAT in view of the urgent nature of the application, which is common cause, the applicant intends to approach the Honourable Acting Judge President for an expedited hearing date of this application.

KINDLY SET THE MATTER DOWN ACCORDINGLY.

SIGNED at SANDTON on this the 3rd day of MAY 2023



RAMUSHU MASHILE TWALA INC.
Attorneys for Applicant
171 Katherine Street
Liberty Life Office Park
2nd Floor, Block 2, Sandton



Tel: 011 444-3008

Fax: 011 444-3017

Ref: **G Makhathini/TM/MAT14973**

Email address: gcwali@rmtattorneys.africa

tawane@rmtattorneys.africa

C/O MAGUGA ATTORNEYS INC.

2201 GOLDEN ACRE

CNR STRAND & ADDERLEY STREET

CAPE TOWN

8001

TEL: 021 418 2563

EMAIL: mcebisi@magugaattorneys.co.za;

anita@magugaattorneys.co.za

**TO: THE REGISTRAR OF THE ABOVE
HONOURABLE COURT
CAPE TOWN**
Email: AMalindi1@judiciary.org.za
Miriam.matthews01@gmail.com
MMatthews@judiciary.org.za

**AND TO: OFFICE OF THE STATE ATTORNEY, CAPE TOWN
ATTORNEYS FOR FIRST AND SECOND RESPONDENTS
22 LONG STREET
CAPE TOWN
WESTERN CAPE PROVINCE
REF: 1184/22/P12
TEL: 021 441 9200
FAX: 021 421 9364
EMAIL: LManuel@justice.gov.za; CNewman@justice.gov.za**

**AND TO: OFFICE OF THE STATE ATTORNEY, CAPE TOWN
ATTORNEYS FOR THE THIRD RESPONDENT
22 LONG STREET
CAPE TOWN
REF: MR M OWEN (236/20/P7)
TEL: 021 441 9200
FAX: 021 421 9362
EMAIL: MOwen@justice.gov.za; mnowen@mweb.co.za;
BCook@justice.gov.za**

**AND TO: ALL THE POLITICAL PARTIES REPRESENTED IN
THE NATIONAL ASSEMBLY
C/O THE SPEAKER OF THE NATIONAL ASSEMBLY
PARLIAMENT BUILDING
ROOM E118**



PARLIAMENT STREET
CAPE TOWN
PHONE: 021 403 2595
FAX: 021 461 9462

**AND TO: AFRICAN NATIONAL CONGRESS
4TH RESPONDENT
90 PLEIN STREET
PARLIAMENT OF SOUTH AFRICA
CAPE TOWN
Tel: 021 904 0393
EMAIL: krishn@mweb.co.za; info@anc1912.org.za;
enjandu@parliament.gov.za; ikmorolong@gmail.com;
mdikgale@parliament.gov.za; aseabi@parliament.gov.za;
minister@dac.gov.za**

**AND TO: MINDE, SCHAPIRO & SMITH ATTORNEYS
ATTORNEYS FOR THE 5TH RESPONDENT
BUILDING NUMBER 2
TYGER VALLEY OFFICE PARK
CNR WILLIE VAN SCHOOR & OLD OAK ROADS, BELLVILLE
REF: DEM16/0825/US40
EMAIL: elzanne@mindes.co.za; karin@mindes.co.za**

**AND TO: ECONOMIC FREEDOM FIGHTERS
6TH RESPONDENT
PARLIAMENT OF SOUTH AFRICA
CAPE TOWN
Email: Julius.Sello@gmail.com**

**AND TO: INKATHA FREEDOM PARTY
7TH RESPONDENT
MARKS BUILDING
M 106, 1ST FLOOR
90 PLEIN STREET
PARLIAMENT OF SOUTH AFRICA
CAPE TOWN
EMAIL: secretarygeneral@ifp.org.za; nsingh@parliament.gov.za;
info@ifp.org.za; bluthuli@parliament.gov.za**

**AND TO: FREEDOM FRONT PLUS
8TH RESPONDENT
GOOD HOPE BUILDING
DH 99/100**



120 PLEIN STREET
CAPE TOWN
EMAIL: wanda@vfplus.org.za; PJGR@VODAMAIL.CO.ZA

AND TO: AFRICAN CHRISTIAN DEMOCRATIC PARTY
9TH RESPONDENT
GOOD HOPE BUILDING
GH 123, 1ST FLOOR
120 PLEIN STREET
CAPE TOWN
EMAIL: sswart@parliament.gov.za; abouwer@parliament.gov.za;
info@acdpc.org.za

AND TO: MABUZA ATTORNEYS
ATTORNEYS FOR THE 10TH AND 11TH RESPONDENTS
MABUZA ATTORNEYS
83 CENTRAL STREET, FIRST FLOOR
HOUGHTON,
JOHANNESBURG
EMAIL: eric@mabuzas.co.za; rudolph@mabuzas.co.za;
lindiwe@mabuzas.co.za; matthews@mabuzas.co.za

AND TO: GOOD
12TH RESPONDENT
C/O JF LOUW
2ND FLOOR GENERAL BUILDING
42 BURG STREET
CAPE TOWN
EMAIL: jflou@iafrica.com; patriciadl@forgood.org.za

AND TO: NATIONAL FREEDOM PARTY
13TH RESPONDENT
90 PLEIN STREET
PARLIAMENT OF SOUTH AFRICA
CAPE TOWN
EMAIL: thwalan@kznleg.gov.za ; duduzilemhongo@ymail.com;
mshaik-emam@parliament.gov.za; mzwakhehlases@gmail.com

AND TO: AFRICAN INDEPENDENT CONGRESS
14TH RESPONDENT
ROOM V402
OLD ASSEMBLY BUILDING
90 PLEIN STREET
PARLIAMENT OF SOUTH AFRICA



EMAIL: zjona@parliament.go.za; zjona06@gmail.com

**AND TO: CONGRESS OF THE PEOPLE
15TH RESPONDENT
ROOM V380
OLD ASSEMBLY BUILDING
90 PLEIN STREET
PARLIAMENT OF SOUTH AFRICA
EMAIL: mlekota@parliament.gov.za**

**AND TO: PAN AFRICANIST CONGRESS OF AZANIA
16TH RESPONDENT
ROOM V406
OLD ASSEMBLY BUILDING
90 PLEIN STREET
PARLIAMENT OF SOUTH AFRICA
EMAIL: mnyhontso@parliament.gov.za
mmampana@parliament.gov.za, admin@pacofazania.org.za**

**AND TO: ALJAMA
17TH RESPONDENT
ROOM V409
4TH FLOOR
OLD ASSEMBLY BUILDING
90 PLEIN STREET
PARLIAMENT OF SOUTH AFRICA
EMAIL: info@aljama.co.za; mhendricks@parliament.gov.za;
mgwanief@mweb.co.za; aallie-patel@parliament.gov.za**





"BMCC3"

PRIVATE OFFICE
175 Lunnon Street
Hillcrest Office Park
Pretoria, 0083

Private Bag X677
Pretoria, 0001

Toll Free: 0800 11 20 40

Tel: 012 366 7116

Email: PrudenceM@pprotect.org

Facebook: Public Protector South Africa

Twitter: @PublicProtector

Accountability • Integrity • Responsiveness

Adv. Busisiwe Mkhwebane
The Public Protector South Africa

Dear Adv. Mkhwebane

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

1. The above matter refers.
2. My previous communication to yourself as well as the Chief Executive Officer's (CEO) communication with your legal representatives and Attorney of record, Messrs Seanego Inc, dated 4 July 2022, 18 July 2022 and 13 September 2022, amongst others, have reference.
3. You would recall that the previous communications related to, *inter alia*, your request for continued access to the financial and legal resources of the PPSA during the period of your suspension, for the purposes of legal representation and/or legal assistance in relation to the section 194 proceedings as well as your suspension by the President.
4. In determining the PPSA's commitment and liability for the funding of your defence during the section 194 proceedings, consideration was given to, *inter alia*, the following:
 - 4.1 The Presidential Minute recording the decision by the President, as required by section 101(1) of the Constitution, which stated that you will continue to receive a salary, allowances and other benefits that are attached to the position of the Public Protector during the period of your suspension;
 - 4.2 The Constitutional Court finding in the matter of *Speaker of the National Assembly v Public Protector and Others; Democratic Alliance v Public Protector and Others* [2022] ZACC 1, that an

office-bearer is entitled to full legal representation at the stage of the section 194 enquiry, that is, during the enquiry before the committee established in terms of rule 129AA;

4.3 The judgement in the matter of the *Public Protector of SA v The Speaker of the National Assembly and Others 8500 / 2022* [2022] ZAWCHC 117 (10 June 2022), where the Western Cape Division of the High Court reiterated your legal rights, access to legal representation, as well as legal remedies as critical safeguards and guarantees in relation to both your suspension as well as the section 194 proceedings; and

4.4 That the commitment excludes any litigation in any other forum, such as a court of law, emanating from, or in relation to the proceedings, or any legal services in preparation for any legal action contemplated in respect of the proceedings.

5. It was noted that your conditions of service, as preserved in terms of the Presidential Minute containing the conditions of your suspension, do not contain any "benefits" that could be construed as a right or entitlement to legal representation and assistance by the PPSA from the public purse, particularly in pursuit of what is effectively, your personal interest in the post of Public Protector. Similarly, there is no judicial authority/precedent imposing an obligation on the PPSA to fund your right and access to legal representation in the section 194 proceedings, as envisaged in the above-mentioned judgements of the Constitutional Court and High Court.

6. PPSA nevertheless resolved, in order to support a fair and valid process before the section 194 Committee as far as its resources would allow, to commit to funding the reasonable costs of your defence in the impeachment proceedings, subject to confirmation by the accounting officer in terms of the PFMA and the Treasury Regulations that:-

- a) there is sufficient funding to cover the costs of legal services that you may require in relation to the section 194 process;
- b) any estimated legal costs are reasonable and budgeted for; and
- c) the commitment excludes any litigation in any other forum, such as a court of law, emanating from, or in relation to the proceedings, or any legal services in preparation of any legal action contemplated in respect of the proceedings.

7. It was therefore, imperative that the PPSA ascertain the likely financial implications of your legal representation at the section 194 proceedings as accurately and speedily as possible, to determine the extent of the PPSA's reasonable financial commitment on the matter. To this end, the PPSA requested, and was provided with the estimated costs for the provisioning of legal services to you during the section 194 proceedings, which included fees, charges, disbursements and other costs to the amount of R4 550 000.00 (four million and five hundred and fifty thousand Rand). Your legal team noted that the estimated costs were calculated for an expected period of 35 days, and that the

Handwritten initials 'B' and a signature.

"fees will be revised should the total number of days exceed the scheduled days due to any extensions by the National Assembly."

8. As you are aware, the section 194 proceedings have indeed exceeded the initial scheduled period and are still ongoing. The PPSA has already been billed and paid an amount in excess of R10 million (Ten million Rand), which is more than double the amount that it had originally committed, without the fee agreement being revised as per the undertaking between the parties. This amount excludes the costs for the period of October 2022 to date, for which the PPSA has not yet been billed.
9. Your legal team had, at some point, also approached the PPSA for additional mandates and instructions to provide you with legal services in other matters, which had to be declined. They were duly advised that the PPSA did not budget for the financial implications of the (extended) section 194 proceedings, and therefore cannot afford same.
10. I wish to reiterate that the budget of the PPSA is currently under severe pressure because of the escalating costs of the section 194 proceedings, as well as general litigation fees and costs, including expected bills of costs in matters where costs orders were issued against the PPSA. The current state of affairs has had a knock-on effect on other litigation matters, which had to be abandoned or where the PPSA is unable to consider the procurement of the services of external legal practitioners to assist with the defence and opposition of litigation against it, due to lack of funding.
11. The Public Finance Management Act, 1999 (PFMA) and the Treasury Regulations require the Accounting Officer (CEO) to ensure that there is sufficient funding for any expenditure that will be required to incur irrespective of the service to be rendered. I have already approached both the Department of Justice and Constitutional Development (DOJ) as well as the National Treasury for additional funding to cover the costs as outlined above. The commitment for financial assistance from the DOJ is not sufficient to avoid overspending on the budget, which may be classified as irregular and/or unauthorised expenditure.
12. In the circumstances, I wish to advise you that the PPSA will not be able 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.
13. Similarly, the PPSA is not in a position to continue to fund the legal costs for your legal representation in the criminal proceedings in the matter of S v Adv Busisiwe Mkhwebane – Hillbrow Cas436/08/2019, beyond the date of your last appearance in the Pretoria Regional Court on 31 August 2022. Your legal team will be advised that any mandate and instructions from the PPSA for the provisioning of legal services to you in respect of the said criminal matter at the expense of the PPSA, is henceforth terminated. The CEO has previously declined a request from your legal team to

Handwritten signature and initials in black ink, located at the bottom right of the page.

fund the civil proceedings in the Gauteng Local Division of the High Court, Pretoria under case number 2022/19628 to review the decision of the National Director of Public Prosecutions on the criminal matter against you.

14. Furthermore, since the costs have not been revisited as agreed, and the available budget has effectively been depleted, the PPSA implores on you and your legal team to ensure that the invoices for the period October 2022 to date, as well as for the remainder of the financial year, are limited to the essential services rendered strictly in accordance with the agreements and the tariff of fees of the PPSA, to avoid any dispute that may impact on the sec 194 proceedings.

Sincerely,



ADV. KHOLEKA GCALEKA
ACTING PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 1 MARCH 2023

COPY:

Mr QR Dyantyi, MP

Chairperson: Committee for Section 194 Enquiry

tnqoma@parliament.gov.za/ kvellem@parliament.gov.za/ febrahim@parliament.gov.za

Mr Gratitude Magwanishe, MP

Chairperson: Portfolio committee on Justice and Correctional Services

Email: smthonjeni@parliament.gov.za; vramaano@parliament.gov.za

Ms Nosiviwe Noluthando Mapisa-Nqakula, MP

Speaker of the National Assembly

znqoma@parliament.gov.za; speaker@parliament.gov.za

Ms T Sibanyoni

Chief Executive Officer

Public Protector South Africa

thandis@pprotect.org





CEO'S OFFICE

175 Lunnon Street
Hillcrest Office Park
Pretoria, 0083

Private Bag X677
Pretoria

Toll Free: 0800 11 20 40
Tel: 012 366 7134/7039
Fax: 086 720 1446

Mr T Seanego
Seanogo Attorneys Inc
Block B, Suit C
1st floor, 53 Kyalami Boulevard
Kyalami Business Park
MIDRAND
1684

Dear Mr Seanego

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

1. My letter of 12 July 2022 and our telephone conversation of 13 July 2022 have reference.
2. As you are aware, and as advised by the Chief Executive Officer of the Public Protector SA (CEO), in her letter dated 4 July 2022, as well as in communications between the Acting Public Protector and Adv Mkhwebane, the PPSA agreed in principle to incur the reasonable costs of the defence of Adv Mkhwebane in her impeachment proceedings the Committee for the Section 194 Enquiry. The commitment is subject to the submission of the cost estimate notice, in writing, specifying all particulars relating to the envisaged costs of the provisioning of legal services to Adv Mkhwebane for the purpose of and during the proceedings before (only). This request was repeated in my letter of 12 July 2022 and our conversation of 13 July 2022.
3. The proceedings have in the meanwhile started on 11 July 2022, and we have noted that Adv Mkhwebane is assisted and represented by your Firm as well as Counsel (Adv D Mpofo, Sc), and I have observed the presence of at least one Junior Advocate.
4. The current state of affairs, where your Firm is effectively acting without a written agreement in respect of the nature and extent of the PPSA's commitment and liability for the funding of Adv Mkhwebane's defence during the section 194 proceedings, is putting the PPSA at serious risk for a finding of irregular and/ or unauthorised expenditure on the costs implications of the legal services provided during the proceedings thus far. Furthermore, as you are aware, Public Finance Management Act, 1999(PFMA) and the

Treasury Regulations require the Accounting Officer (CEO) to ensure that there is sufficient funding for any expenditure that it will be required to fund in respect of the provision or procurement of legal and related services by the PPSA in relation to the the section 194 process, (which is a particular concern in the light of statements made during the proceedings thus far on the possible duration thereof.)

5. The reality is that the PPSA did not budget for the financial implications of (extended) section 194 proceedings, and the Chief Financial Officer and the CEO will raise the issue with National Treasury on this issue during the Medium Term Expenditure Framework engagements scheduled for this week. It is therefore imperative that we ascertain the likely financial implications of Adv Mkhwebane's legal representation at the section 194 proceedings as accurately and speedily as possible, to determine the extent of the PPSA's reasonable financial commitment on the matter.
6. By direction of the CEO and Accounting Officer of the PPSA I therefore implore on you to provide this office with a written notice confirming a legal instructions from Adv Mkhwebane as envisaged in section 37(7) of the Legal Practice Act 28 of 2014 (LPA), and giving a cost estimate for the rendering of such services. The written notice must include the following details:
 - a) The likely financial implications, including fees, charges, disbursements and other costs;
 - b) The hourly rate of the attorney and Counsel/ advocate(s);
 - c) A broad outline of the work to be done in respect of each stage of the proceedings; and
 - d) The total daily (estimated) costs for the provisioning of legal services to Adv Mkhwebane for the purpose of the section 194 proceedings- if a cost estimation cannot be provided for the duration of the entire proceedings.
7. Should the Office not receive the required Notice by the close of business on 19 July 2022, the PPSA will be obliged to finalise its offer on the reasonable expenditure for the provisioning of legal services to Adv Mkhwebane during the section 194 proceedings without the benefit of a cost estimation by your good selves, and advise you of the funding that the PPSA will be able to make available within budget.

Yours Sincerely



ADV N VD MERWE
ACTING SENIOR MANAGER: LEGAL SERVICES
Date: 18 July 2022

Copy to:

Ms T Sibanyoni
Chief Executive Officer
Public Protector South Africa



"BMCC5"



Block B, 1st Floor, Suite C
53 Kyalami Boulevard
Kyalami Business Park
Midrand
1684
Tel: (011) 466 0442/0169
Fax: (011) 466 6051
Email: info@seanego.co.za

Our Ref: TNS/PUB1/0028

19 July 2022

Your Ref: Adv van der Merwe

**PUBLIC PROTECTOR SOUTH AFRICA
(CEO'S OFFICE)**
175 LUNNON STREET
HILLCREST OFFICE PARK
PRETORIA
0083

Attention: Adv. van der Merwe

Per Email: Neelsvdm@pprotect.org

Dear Sirs,

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

1. We refer to your letter dated 18 July 2022, wherein you requested a written cost estimate notice in respect of the proceedings before the section 194 Committee.
2. More specifically, in your letter under reply you sought the following details pertaining to the cost estimate (as outlined in terms of section 35(7) of the Legal Practice Act 28 of 2014): -

a) The likely financial implications, including fees, charges, disbursements and other costs;

b) The hourly rate of the attorney and Counsel/ advocate(s);

Directors: Theophilus Noko Seanego BProc. LLM (Corporate Law); Maribe Malope BA Law, LLB, Dip. (Labour Law). **Senior Associate:** Phiwokuhle Mnyandu LLB, Dip. (Labour Law), LLM (International Commercial Law). **Associates:** Nqubeko Makhanya LLB; Nafeesa Patel LLB, LLM (International Commercial Law). **Candidate Attorneys:** Naquelle Chikamba BA Law, LLB; Rebecca Chimuka LLB, LLM (Tax Law); Aviwe Ngoma LLB. **Consultant/Conveyancer:** Sampson Shadung BProc. LLB.

c) A broad outline of the work to be done in respect of each stage of the proceedings; and

d) The total daily (estimated) costs for the provisioning of legal services to Adv Mkhwebane for the purpose of the section 194 proceedings- if a cost estimation cannot be provided for the duration of the entire proceedings.

3. We confirm that the Public Protector, Adv. Busisiwe Mkhwebane, is assisted and represented by ourselves, including counsel (one senior and two juniors) in the aforesaid proceedings.
4. In this regard, and in accordance with section 35(7) of the Legal Practice Act, our advice with regards to the estimated costs are indicated below under the relevant parts.

A: Financial implications, including fees, charges, disbursements and other costs

5. As you may be aware, the hearing of the section 194 Committee commenced from 11 July 2022. It is not certain at this stage when the hearing will be finalised. Therefore, it may be difficult to estimate the total costs that will be charged for the entire process. However, please be guided by the following financial implications inclusive of the fees and disbursements that shall be charged: -

5.1. The fees shall be calculated using the hourly rates and/or daily rates stipulated below for each professional;

5.2. Fees shall be charged for: -

5.2.1. Preparation and perusal of the record consisting of around 14 000 pages;

5.2.2. Consulting with witnesses and preparation of witness statements; and

5.2.3. Attending the hearing for purposes of cross-examining witness and leading of evidence;

Directors: Theophilus Noko Seanego BProc, LLM (Corporate Law); Maribe Malope BA Law, LLB, Dip. (Labour Law). **Senior Associate:** Phiwokuhle Mnyandu LLB, Dip. (Labour Law), LLM (International Commercial Law). **Associates:** Nqubeko Makhanya LLB; Nafeesa Patel LLB, LLM (International Commercial Law). **Candidate Attorneys:** Naquelle Chikamba BA Law, LLB; Rebecca Chimuka LLB, LLM (Tax Law); Aviwe Ngoma LLB. **Consultant/Conveyancer:** Sampson Shadung BProc, LLB.

5.3. Disbursements shall include travel (as per invoice), accommodation (as per invoice), meals and copies (R3.50 per page).

B: HOURLY RATE

6. The hourly rate (excluding VAT) for each professional is as follows: -

- 6.1. Adv. D Mpofu SC: R4 500.00;
- 6.2. Adv. B Shabalala: R2 700.00;
- 6.3. Adv. B H Matlhape: R1 800.00;
- 6.4. Mr. Seanego (of Seanego Attorneys Inc.): R2 500.00 (as per the SLA); and
- 6.5. Ms. Patel (of Seanego Attorneys Inc.): R1 500.00 (as per the SLA).

C: TOTAL DAILY (ESTIMATED) COSTS

7. The total estimated and discounted daily costs shall be equivalent to the hourly rate multiplied by 10 (ten) hours per day and is calculated as follows for each professional (excluding VAT): -

- 7.1. Adv. D Mpofu SC: R45 000.00;
- 7.2. Adv. B Shabalala: R27 000.00;
- 7.3. Adv. B H Matlhape: R18 000.00; and
- 7.4. Mr. Seanego (of Seanego Attorneys Inc.): R25 000.00; and
- 7.5. Ms. Patel (of Seanego Attorneys Inc.): R15 000.00.

8. We estimate that the total fees for representing and assisting Adv. Mkhwebane in the section 194 proceedings shall be an amount of **R4 550 000.00 (four million and five hundred and fifty thousand rand)** calculated as follows: -

Professional	Preparation and perusal of record	Interviewing of witnesses	Attending the hearing	Preparing Heads of Argument	Total
Adv D Mpofu (Daily rate:					35 days: R1 575 000.00

Directors: Theophilus Noko Seanego BProc, LL.M (Corporate Law); Maribe Malope BA Law, LL.B, Dip. (Labour Law). **Senior Associate:** Phiwokuhle Mnyandu LL.B, Dip. (Labour Law), LL.M (International Commercial Law). **Associates:** Nqubeko Makhanya LL.B; Nafeesa Patel LL.B, LL.M (International Commercial Law). **Candidate Attorneys:** Naquelle Chikamba BA Law, LL.B; Rebecca Chimuka LL.B, LL.M (Tax Law); Aviwe Ngoma LL.B. **Consultant/Conveyancer:** Sampson Shadung BProc, LL.B.

R45 000.00)					
Adv B Shabalala (Daily rate: R27 000.00)	10 days	4 days	18 days (as per the timetable of the National Assembly attached hereto)	3 days	35 days: R945 000.00
Adv B H Matlhape (Daily rate: R18 000.00)					35 days: R630 000.00
Mr. Seanego (Daily rate: R25 000.00)					35 days: R875 000.00
Ms. Patel (Daily Rate: R15 000.00)					35 days: R525 000.00
TOTAL					R4 550 000.00

9. Please note that the aforesaid fees will be revised should the total number of days exceed the scheduled days due to any extensions by the National Assembly.
10. We trust that the above addresses your request under reply adequately.
11. Please treat the information provided herein with the confidentiality it deserves.
12. Kindly do not hesitate to contact us should you require further clarification.

Yours faithfully



SEANEGO ATTORNEYS INC.

Directors: Theophilus Noko Seanego BProc, LL.M (Corporate Law); Maribe Malope BA Law, LL.B, Dip. (Labour Law). **Senior Associate:** Phiwokuhle Mnyandu LL.B, Dip. (Labour Law), LL.M (International Commercial Law). **Associates:** Nqubeko Makhanya LL.B; Nafeesa Patel LL.B, LL.M (International Commercial Law). **Candidate Attorneys:** Naquelle Chikamba BA Law, LL.B; Rebecca Chimuka LL.B, LL.M (Tax Law); Aviwe Ngoma LL.B. **Consultant/Conveyancer:** Sampson Shadung BProc, LL.B.



"BMCC6"



CEO'S OFFICE

175 Lunnon Street
Hillcrest Office Park
Pretoria, 0083

Private Bag X677
Pretoria

Toll Free: 0800 11 20 40
Tel: 012 366 7134/7039
Fax: 086 720 1446

MESSRS SEANEGO INCORPORATED

Per email: theo@seanego.co.za ; nafeesa@seanego.co.za

Dear Mr Seanego

RE: COST ESTIMATE FOR THE REMAINDER OF THE SECTION 194 INQUIRY

1. The provisioning of legal and related services to Adv B Mkhwebane for the purposes of the proceedings before the Committee for the Section 194 Inquiry (the Committee), has reference.
2. The Section 194 Committee requested the Public Protector South Africa (PPSA) to approach you as the instructing Attorney for Adv Mkhwebane's legal team to request you to urgently provide PPSA with a cost estimate for the legal costs for the remainder of the Section 194 proceedings.
3. Our understanding is that the cost estimate should only cover the legal fees and disbursements of Adv Mkhwebane's current legal team for the remaining proceedings on the Committee's draft programme, including: -
 - a) The conclusion of Adv Mkhwebane's oral evidence;
 - b) Cross-examination of Adv Mkhwebane by the evidence leaders;
 - c) Questioning of Adv Mkhwebane by members of the Committee; and
 - d) Closing arguments.
4. I wish to point out that the request does not change or affect the PPSA's position as communicated to Adv Mkhwebane, that it will not be able 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.



5. You are therefore requested to provide PPSA with the cost estimates for the remainder of the proceedings as indicated in paragraph 3 above by no later than 31 March 2023.

6. We await your response at your earliest convenience.

Yours sincerely,



.....

MS T SIBANYONI

CHIEF EXECUTIVE OFFICER

PUBLIC PROTECTOR SOUTH AFRICA

Date: 29/03/2023



"BMCC7"



1st Floor

76 Kyalami Boulevard

Kyalami Business Park

Midrand

1684

Tel: (011) 466 0442/0169

Fax: (011) 466 6051

Email: info@seanego.co.za

Your Ref: Ms T Sibanyoni

31 March 2023

Our Ref: TNS/PUB1/0028

PUBLIC PROTECTOR SOUTH AFRICA

CHIEF EXECUTIVE OFFICER

MS T SIBANYONI

Per Email: Dipuom@pprotect.org; ThandiS@pprotect.org

Dear Madam,

RE: COST ESTIMATE FOR THE REMAINDER OF THE SECTION 194 INQUIRY

1. We refer to your letter dated 29 March 2023.
2. It is not reasonably possible at this stage to give a fair estimate of the legal fees and disbursements going forward because the Public Protector's legal team and the Evidence Leaders were in the process of discussing final adjustments to the remaining programme until it became clear that no organ of state was prepared to shoulder the responsibility to pay for the Public Protector's legal representation. Secondly, the legal practitioners are also due to make their inflationary adjustments even to the discounted rates which are currently being used. Thirdly we note that your position, as communicated on 1 March 2023 to

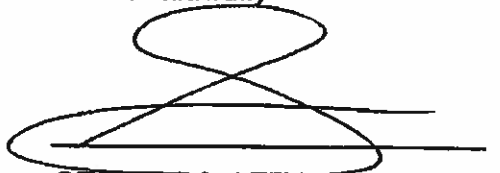
Directors: Theophilus Noko Seanego BProc, LL.M (Corporate Law); Maribe Malope BA Law, LLB, Dip. (Labour Law). **Senior Associate:** Phiwokuhle Mnyandu LLB, Dip. (Labour Law), LL.M (International Commercial Law). **Associates:** Nondumiso Nsibande LLB; Nqubeko Makhanya LLB; Nafeesa Patel LLB, LL.M (International Commercial Law). **Candidate Attorney:** Rebecca Chimuka LLB, LL.M (Tax Law). **Consultant/Conveyancer:** Sampson Shadung BProc, LLB.



Adv Mkhwebane, that PPSA will not be able to fund legal representation beyond today 31 March 2023, remains unchanged. Accordingly her position and ours also remains unchanged in that as a direct result of your letter she has been placed in the precarious and embarrassing position of being rendered unable to give instructions to her legal representatives beyond today.

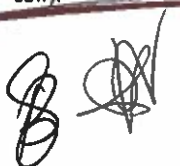
3. Thank you for your assistance up to this point. The invoice for services rendered to date will be sent out to you within the next week or so.

Yours faithfully



SEANEGO ATTORNEYS INC.

Directors: Theophilus Noko Seanego BProc, LL.M (Corporate Law); Maribe Malope BA Law, LLB, Dip. (Labour Law). **Senior Associate:** Phiwokuhle Mnyandu LLB, Dip. (Labour Law), LL.M (International Commercial Law). **Associates:** Nondumiso Nsibande LLB; Nqubeko Makhanya LLB; Nafeesa Patel LLB, LL.M (International Commercial Law). **Candidate Attorney:** Rebecca Chimuka LLB, LL.M (Tax Law). **Consultant/Conveyancer:** Sampson Shadung BProc, LLB.



"BMCC8"

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**

✉ **Busisiwe.m.t@gmail.com**



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:

1. Mr QR Dyantyi, MP;
Chairperson: Committee for Section 194 Enquiry
tngoma@parliament.gov.za / kvellem@parliament.gov.za / febrahim@parliament.gov.za
2. Mr Gratitude Magwanishe, MP;
Chairperson: Portfolio committee on justice and correctional Services
smthonieni@parliament.gov.za; vramaano@parliament.gov.za
3. Ms Nosiviwe Noluthando Mapisa-Nqakula, MP
Speaker of the National Assembly
tngoma@parliament.gov.za; speaker@parliament.gov.za
4. Ms T Sibanyoni
Chief Executive Officer
Public Protector South Africa
thandis@pprotect.org





**PUBLIC PROTECTOR
SOUTH AFRICA**

"BMCC9"

PRIVATE OFFICE
175 Lunnon Street
Hillcrest Office Park
Pretoria, 0083

Private Bag X677
Pretoria, 0001

Toll Free: 0800 11 20 40

Tel: 012 366 7116

Email: PrudenceM@pprotect.org

Facebook: Public Protector South Africa

Twitter: @PublicProtector

Accountability • Integrity • Responsiveness

Advocate Busisiwe Mkhwebane
The Public Protector
South Africa

Dear Advocate Mkhwebane

**LEGAL SERVICES TO ADV B MKHWEBANE DURING THE PROCEEDINGS BEFORE
THE SECTION 194 COMMITTEE**

1. My letter dated 1 March 2023 and your response received on 29 March 2023, have reference.
2. I have noted the contents of your letter, including your views on the legal obligations of the Public Protector South Africa (PPSA) arising from the relevant decisions of the High Court and Constitutional Court, which in my view dealt with your right to legal representation in the ongoing section 194 Enquiry, and not with the issue of funding, as stated.
3. The PPSA's position, as informed by its fiscal governance responsibilities and obligations, remains as communicated to you on 1 March 2023. Until persuaded otherwise, we cannot find any terms in your conditions of service, as preserved in terms of the Presidential Minute containing the conditions of your suspension that could be construed as a right or entitlement to legal representation by an incumbent in circumstances such as these and a corresponding funding liability on the PPSA from the public purse.
4. We have nevertheless been made aware of the current engagements between Parliament and National Treasury as alluded to in your letter, and was requested to obtain a further cost estimate from your Attorneys for the legal fees for the remainder of the section 194 Enquiry.
5. Should additional funding be advanced or made available to the PPSA, over and above the current budget allocation, for the purpose of the section 194 process, it will facilitate the utilisation of such funds, ring-fenced towards the legal fees and disbursements of your current legal team for the remaining proceedings on the Committee's draft programme.

Handwritten signature and initials in black ink.

6. Further communication in this regard should follow soon.

Sincerely,



ADV. KHOLEKA GCALEKA
ACTING PUBLIC PROTECTOR
REPUBLIC OF SOUTH AFRICA
DATE: 30 MARCH 2023

Copy:

Mr QR Dyantyi, MP

Chairperson: Committee for Section 194 Enquiry

Email: tnqoma@parliament.gov.za; Kvellem@parliament.gov.za; febrahim@parliament.gov.za;

Mr Gratitude Magwanishe

Chairperson: Portfolio committee on Justice and Correctional Services

Email: smthonjeni@parliament.gov.za; vramaano@parliament.gov.za

Ms Nosiviwe Noluthando Mapisa-Nqakula

Speaker of the National Assembly

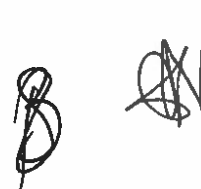
Email: znqoma@parliament.gov.za; speaker@parliament.gov.za

Ms T Sibanyoni

Chief Executive Officer:

Public Protector South Africa

Email: thandis@pprotect.org



"BMCC10"

Virtual Exchange between the Chairperson and Adv Mkhwebane on 04 April 2023.

Mr Dyantyi: Adv Mkhwebane, I see you have raised your hand and I'm going to hear you out, but I just want to explain that this is a Committee meeting and people who participate in it are members only. So, I wouldn't want to entertain any other person except the members. It's a Committee meeting, so I just want to indicate that that's I see you raised your hand I cannot take it. You'll have to find another way if you need to communicate with the Chair. It is a committee meeting. I'm only allowing members to participate.

Adv Mkhwebane: Evidence Leaders are not members Chairperson, I have written you an urgent letter

Mr Dyantyi: I will look at that letter,

Adv Mkhwebane: Evidence Leaders are not members, I have written you an urgent letter and it is not for you only, it is for the Committee.

Mr Dyantyi: I did not give you the platform, just mute her

Adv Mkwhebane: but chair

Mt Dyantyi: You're not going to repeat that , its for the Committee members, and unless you are a Committee member, mute her, just mute her, it's a Committee Meeting, you are completely out of order and I'm not going to take that attitude from you



"BMCC11"

4 April 2023

To: Mr QR Dyantyi, MP

Dear Honourable Dyantyi,

RE: ILLEGAL ONGOING ENQUIRY PROCEEDINGS DISGUISED AS A "COMMITTEE MEETING"

1. I write you this urgent letter to express my deepest concerns about the latest turn of events regarding the postponement of the enquiry proceedings only to be replaced by a "*committee meeting*" which is actually an opportunity given to the Evidence Leaders to present closing arguments regarding the merits of charges 11.3 and 11.4 of the Mazzone Motion.
2. Following the letter written by the Deputy Public Protector dated 1 March 2023 announcing the termination of funding in respect of my legal representation before the section 194 Committee, the Enquiry was correctly postponed until such time that the current issues regarding the resultant funding crisis triggered by the said letter, can be resolved.

● **Adv. Busisiwe Mkhwebane**

✉ **Busisiwe.m.t@gmail.com**



3. I support the said postponement as a sensible step given the failure to resolve the current crisis directly and solely caused by the letter from Adv Gcaleka and which threatens to collapse the Enquiry at a crucial stage when I am in the process of stating my side of the story.
4. What was most puzzling was your unilateral and unsolicited decision to invite the Evidence Leaders to present an analysis of the evidence which was led by me thus far, to the Committee during what has been labelled as a Committee meeting but is in actual fact a backdoor enquiry thinly disguised as a "*meeting*".
5. All meetings of the Committee have hitherto been held with a clear agenda, reading of previous minutes and correspondence, the main issues and the like. What is currently taking place is no Committee meeting by any stretch of the imagination. Today the "*meeting*" is entering its second day.
6. What is actually happening is that the Evidence Leaders are presenting their closing oral arguments. To do so when the evidence is still being led, right in the middle of the testimony of a key witness, who is still on the stand in the physical absence of me and/or my legal team is a travesty of justice. I am accordingly most perturbed by what is clearly a flagrant violation.
7. There is nothing in any of the applicable legal instruments which allows the Chairperson and/or the majority of Committee Members, to conduct themselves in such a patently and grossly irregular manner.
8. On the contrary such conduct is:-
 - 8.1. in breach of the Constitution and PAJA, in that, *inter alia*, it violates the rule of law as well as my legitimate expectations;



- 8.2. in contempt of court, in that the Constitutional Court unanimously held that *"even judges are entitled to full legal representation during a hearing held by the Judicial Conduct Tribunal to determine whether a judge should be removed due to allegations of incapacity, gross incompetence or gross misconduct. Therefore I see no reason why Chapter 9 institutions office-bearers should be treated differently.*
- 8.3. in breach of the Rules in that it is unfair and unreasonable contrary to the provisions of Rule 129AD(2); and/or
- 8.4. in breach of the Directive, in that in terms of clause 9.1 thereof an oral closing argument is only permitted to me and even then, only *"once all the evidence has been led"*.
9. In this regard you will recall that when I required a deviation from the general rule that opening addresses must be given *"at the start of the Enquiry"* as provided in clause 4 of the Directive, I had to convince the Evidence Leaders and also the Committee to amend that clause to include the following words: *"The Public Protector shall be entitled to present a different and separate opening address before calling her first witness, if any"*.
10. Needless to say both the opening addresses and/or closing addresses can only be delivered in the simultaneous presence of counsel representing both the Committee and the Public Protector, as the case may be.
11. The only obvious objectives of this exercise are:-
- 11.1. to conduct a damage control exercise following the evidence I led in respect of the CR17 and *"Rogue Unit"* scandals;
- 11.2. for the sake of cheap publicity and without affording me or my legal representatives the opportunity to object, interject or respond on the spot, to



contradict and second guess the testimony given by me in my written statements and on the stand even before I finish testifying and/or have been asked questions by the Evidence Leaders and/or the members. This is obviously grossly prejudicial, unfair and unheard of in such punitive proceedings; and

- 11.3. to poison the minds of the members of the Committee and unsuspecting members of the public against me.
12. Such clearcut prejudice cannot be cured by affording me the "*right*" to refute the submissions presently being made by the Evidence Leaders in my absence, on some future unknown date and only if and when the funding impasse ever gets resolved. By then the damage will obviously be done, which is the very intended effect of the current exercise.
13. The excuse that the intention of the presentation is to "*empower*" the members of the Committee is false and laughable.
14. I am therefore advised to demand, as I hereby do, that you and/or the Committee must refrain from continuing with the ongoing alleged illegal "*Committee meeting*" forthwith. Failure to do so will result in the taking of whatever necessary steps are available to me without any further notice to you.
15. I await your urgent and immediate response which must reach me in writing by no later than 13h00 on Thursday 6 April 2023. In such a response please also furnish me with full and adequate reasons for any refusal to accede to this demand.

Yours faithfully,



ADVOCATE BUSISIWE MKHWEBANE

PUBLIC PROTECTOR OF SOUTH AFRICA



"BMCC12"

LETTER TO SPEAKER AND PRESIDENT

4 April 2023

Dear Honourable Speaker and President Ramaphosa,

RE: VIOLATION OF RIGHTS AND CONSTITUTIONAL OBLIGATIONS

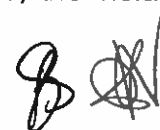
1. It is regrettable that I have to write this simultaneous letter to both of you as a matter of last resort to demand your separate and urgent intervention in the ongoing violation of my constitutional rights by the Chairperson of and/or the Section 194 Committee established to enquire into the veracity of the charges instituted by Ms Natasha Mazzone MP for my removal from the office of the Public Protector.
2. As you must be aware the current crisis was sparked or triggered by a letter addressed to me by the Deputy Public Protector Adv Kholeka Gcaleka on 1 March 2023 indicating the termination of funding for my legal representation in the said enquiry with effect from 31 March 2023. The letter was copied to among others, the Speaker.
3. As at Monday 3 April 2023 the non-funding issue had not been resolved with the result that I was in no position to give instructions for my legal team to continue representing me without any person or organ of state having assumed the responsibility to pay for their professional services.

● **Adv. Busisiwe Mkhwebane**

✉ **Busisiwe.m.t@gmail.com**



4. At the proposal of Mr B Holomisa MP, the Chairperson of the Committee correctly announced the postponement of the enquiry proceedings pending the resolution of the funding crisis. At the point of postponement I was still on the stand with some days to go before finalising my evidence-in-Chief.
5. However and to my surprise instead of adjourning the sitting and without any decision of the Committee to that effect, the Chairperson announced a decision to turn the sitting into a "*Committee meeting*" and to allow the Evidence Leaders to address the Committee in connection with the evidence which I had led up to that point. When members of the Committee pointed out the irregularity and illegality in such a procedure the Chairperson overruled them for no apparent reason.
6. I also voiced my strong objections to the procedure which also fell on deaf ears. At this point I was excused from the sitting resulting in the further proceedings taking place in the absence of both me and my legal representatives.
7. As we speak the alleged "*Committee meeting*" has gone into its second day. The Evidence Leaders are currently making what clearly amounts to closing arguments by discrediting my unfinished evidence and also giving evidence or commentary thereon. All this is being done out of turn, in my absence and in the absence of any legal representatives acting on my behalf. Such a procedure is unheard of.
8. This morning I addressed a self-explanatory letter to the Chairperson of the Committee outlining the illegality of the abovementioned conduct of the Chairperson and/or Committee. To avoid repetition and for ease of reference I annex hereto a copy of the aforesaid letter.
9. At the commencement of the proceedings this morning I raised my (electronic) hand in order to voice my objections and to place the letter on the record. The Chairperson prohibited me from speaking, rudely shouted me down and instructed the technical staff to mute me. This constituted further unwarranted abuse, the violation of my



dignity and a breach of section 181(3) of the Constitution, among others. The audio-visual version of the proceedings is available on YouTube under the reference "S194 Committee" for the relevant dates of 3 and 4 April 2023.

10. For all intents and purposes the above occurrences spell the collapse and end of the Enquiry. The intention now is clearly to poison the minds of the Committee members and the South African public via embedded media which has already and predictably taken over the distorted counter-narrative being concocted by the Evidence Leaders. Such conduct is also clearly in violation of my rights as set out in section 34 of the Constitution.
11. It is in respect of these ongoing violations that I hereby demand/request your urgent intervention.

The Speaker

12. In respect of the Speaker I hereby request that you intervene forthwith in order to:-
 - 12.1. stop the continuation of the enquiry proceedings disguised as a Committee meeting, or such meeting in order to fulfil the obligations set out in section 7(2) of the Constitution read with, *inter alia*, sections 1, 2 and 181(3) of the Constitution; and
 - 12.2. fulfil the obligations of Parliament and/or the Speaker as outlined in section 165(4) and 165(5) of the Constitution to refrain from acting in contempt of court.

A handwritten signature in black ink, consisting of a stylized 'S' followed by a series of loops and a final flourish.

The President

13. The President in his suspension letter dated 9 June 2022 stipulated that:-

13.1. the suspension was valid until "*the finalisation of the proceedings/inquiry initiated by the Committee of the National Assembly established in terms of section 194 of the Constitution*"; and

13.2. Adv Mkhwebane will continue to receive salary, allowances and other benefits that are attached to the position of the Public Protector during the period of her suspension.

14. In the circumstances outlined above the President is hereby requested:-

14.1. to ensure that the instruction to extend the benefits attached to the position of Public Protector, which must include the provision of Legal and other support while accounting to the National Assembly, are provided as a matter of urgency. This must be done in terms of section 7(2) of the Constitution, read with, *inter alia*, sections 1, 2, 83, 181(3);

14.2. to uplift the suspension in view of the halting of the proceedings, in terms of section 194(3)(a) of the Constitution.

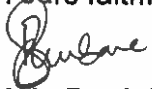
Timelines

15. Failure to fulfil the constitutional obligations separately outlined above, by no later than 13h00 on 6 April 2023, will result in my taking further legal steps in order to protect my violated rights including but not limited to approaching the appropriate court for appropriate, just and/or equitable remedies, without any further notice to the recipients of this letter of demand.



16. I look forward to your urgent response(s).

Yours faithfully,



Adv Busisiwe Mkhwebane
Public Protector South Africa



11:50

4G



"BMCC13"

From: Roshene Singh
[mailto:Roshene@presidency.gov.za]
Sent: Tuesday, 04 April 2023 16:37
To: Ephraim Kabinde
Subject: RE: Draft Letter to Speaker and President Ramaphosa

Good afternoon

I acknowledge receipt of correspondence which will be brought to the attention of President . Kindly note that we will most likely not be able to respond by 6 April due to the schedule of the President this week .

Thank you for your understanding

Warm Regards

Roshene Singh

DDG Private Office of President

From: Ephraim Kabinde
<Ephraimk@pprotect.org>
Sent: Tuesday, 04 April 2023 16:18
To: speaker@parliament.gov.za;
sedem@parliament.gov.za; Roshene Singh

11:52

4G

"BMCC14"

WhatsApp



From: Shaun Edem [mailto:sedem@parliament.gov.za]

Sent: Tuesday, 04 April 2023 16:40

To: Ephraim Kabinde

Subject: RE: Draft Letter to Speaker and President Ramaphosa

Dear Mr Kabinde

We acknowledge receipt of the said email it will be processed accordingly.

Thank you

Office of the Speaker

Sent from my Galaxy

----- Original message -----



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

"BMCC15"

THE SPEAKER
PO Box 15 Cape Town 800 Republic of South Africa
Tel: 27(21) 403 2595 Fax: 27(21) 461 9462
speaker@parliament.gov.za

Adv Busisiwe Mkhwebane

Per email: busisiwe.m.t@gmail.com

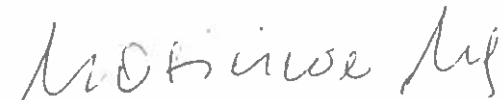
Dear Adv Mkhwebane

ALLEGED VIOLATION OF RIGHTS AND CONSTITUTIONAL OBLIGATIONS

1. I refer to your letter dated 4 April 2023 to myself and the President requesting, in particular, my intervention to:
 - 1.1. "stop the continuation of the enquiry proceedings disguised as a committee meeting" on the basis of s1, 2 and 181(3) of the Constitution- the latter section specifically dealing with the duty of Organs of State to assist and protect State Institutions Supporting Democracy in order to ensure its independence, impartiality, dignity and effectiveness; and
 - 1.2. "fulfill the obligations of Parliament and/or the Speaker as outlined in section 165(4) and 165(5) of the Constitution" which deals with the duty of Organs of State to assist and protect the Courts and which stipulates that the orders of courts are binding.
2. Firstly, I wish to remind you of my correspondence sent to you in September 2022, when you raised with me issues relating to the alleged unfair conduct of the Chairperson, and the request that he recuses himself or be removed from the Committee.
3. In that letter I informed you that *"Committees function independently within the confines of the Assembly Rules. I do not as Speaker interfere with or involve myself with the functioning of Committees except to the extent that I chair the National Assembly Programming Committee and am notified by Parties of the members that will represent each party in the various committees of the Assembly."*
4. Likewise, your current request that I put a stop to the work of the Committee, is not a matter that I am lawfully able to intervene in. It is my understanding, that the Committee agreed to the process currently underway which is aimed at capacitating members to unpack and consider the motion. The hearing stage of the enquiry is, I am informed, adjourned.

5. The Committee is accountable to the Assembly and its work will ultimately be reduced to a report which will be tabled and debated in the National Assembly and all members will have the opportunity to consider all relevant aspects in considering whether to support or reject the recommendations of the Committee.
6. Secondly, I must reject out of hand any insinuation that Parliament is not protecting the independence, impartiality, dignity and effectiveness of the Office of the Public Protector as a State Institution supporting Democracy. The s194 process is a process which is sanctioned by the Constitution for the very reason of safeguarding the institution.
7. Lastly, on the issue of costs, I note simply that the judgement of the Constitutional Court did not extend to the issue of payment of costs of your legal assistance. Parliament was directed only to allow you to have your legal representative participate in the Committee.
8. Accordingly, I am not in a position to accede to your requests. Nevertheless, I have shared your correspondence with the Chairperson for tabling in the Committee and I trust that the matter will receive further consideration.

Yours faithfully,



Ms Nosiviwe Mapisa-Nqakula

Speaker of the National Assembly

Date: 06 APRIL, 2023



LETTER TO SPEAKER AND PRESIDENT

4 April 2023

Dear Honourable Speaker and President Ramaphosa,

RE: VIOLATION OF RIGHTS AND CONSTITUTIONAL OBLIGATIONS

1. It is regrettable that I have to write this simultaneous letter to both of you as a matter of last resort to demand your separate and urgent intervention in the ongoing violation of my constitutional rights by the Chairperson of and/or the Section 194 Committee established to enquire into the veracity of the charges instituted by Ms Natasha Mazzone MP for my removal from the office of the Public Protector.
2. As you must be aware the current crisis was sparked or triggered by a letter addressed to me by the Deputy Public Protector Adv Kholeka Gcaleka on 1 March 2023 indicating the termination of funding for my legal representation in the said enquiry with effect from 31 March 2023. The letter was copied to among others, the Speaker.
3. As at Monday 3 April 2023 the non-funding issue had not been resolved with the result that I was in no position to give instructions for my legal team to continue representing me without any person or organ of state having assumed the responsibility to pay for their professional services

● Adv. Busisiwe Mkhwebane

✉ Busisiwe.m.t@gmail.com

Handwritten signature

4. At the proposal of Mr B Holomisa MP, the Chairperson of the Committee correctly announced the postponement of the enquiry proceedings pending the resolution of the funding crisis. At the point of postponement I was still on the stand with some days to go before finalising my evidence-in-Chief.
5. However and to my surprise instead of adjourning the sitting and without any decision of the Committee to that effect, the Chairperson announced a decision to turn the sitting into a "*Committee meeting*" and to allow the Evidence Leaders to address the Committee in connection with the evidence which I had led up to that point. When members of the Committee pointed out the irregularity and illegality in such a procedure the Chairperson overruled them for no apparent reason.
6. I also voiced my strong objections to the procedure which also fell on deaf ears. At this point I was excused from the sitting resulting in the further proceedings taking place in the absence of both me and my legal representatives.
7. As we speak the alleged "*Committee meeting*" has gone into its second day. The Evidence Leaders are currently making what clearly amounts to closing arguments by discrediting my unfinished evidence and also giving evidence or commentary thereon. All this is being done out of turn, in my absence and in the absence of any legal representatives acting on my behalf. Such a procedure is unheard of.
8. This morning I addressed a self-explanatory letter to the Chairperson of the Committee outlining the illegality of the abovementioned conduct of the Chairperson and/or Committee. To avoid repetition and for ease of reference I annex hereto a copy of the aforesaid letter.
9. At the commencement of the proceedings this morning I raised my (electronic) hand in order to voice my objections and to place the letter on the record. The Chairperson prohibited me from speaking, rudely shouted me down and instructed the technical staff to mute me. This constituted further unwarranted abuse, the violation of my

Handwritten signature and initials in the bottom right corner of the page.

dignity and a breach of section 181(3) of the Constitution, among others. The audio-visual version of the proceedings is available on YouTube under the reference "S194 Committee" for the relevant dates of 3 and 4 April 2023.

10. For all intents and purposes the above occurrences spell the collapse and end of the Enquiry. The intention now is clearly to poison the minds of the Committee members and the South African public via embedded media which has already and predictably taken over the distorted counter-narrative being concocted by the Evidence Leaders. Such conduct is also clearly in violation of my rights as set out in section 34 of the Constitution.
11. It is in respect of these ongoing violations that I hereby demand/request your urgent intervention.

The Speaker

12. In respect of the Speaker I hereby request that you intervene forthwith in order to:-
 - 12.1. stop the continuation of the enquiry proceedings disguised as a Committee meeting, or such meeting in order to fulfil the obligations set out in section 7(2) of the Constitution read with, *inter alia*, sections 1, 2 and 181(3) of the Constitution; and
 - 12.2. fulfil the obligations of Parliament and/or the Speaker as outlined in section 165(4) and 165(5) of the Constitution to refrain from acting in contempt of court.

Handwritten signature and scribble.

The President

13. The President in his suspension letter dated 9 June 2022 stipulated that:-

13.1. the suspension was valid until "*the finalisation of the proceedings/inquiry initiated by the Committee of the National Assembly established in terms of section 194 of the Constitution*"; and

13.2. Adv Mkhwebane will continue to receive salary, allowances and other benefits that are attached to the position of the Public Protector during the period of her suspension.


14. In the circumstances outlined above the President is hereby requested:-

14.1. to ensure that the instruction to extend the benefits attached to the position of Public Protector, which must include the provision of Legal and other support while accounting to the National Assembly, are provided as a matter of urgency. This must be done in terms of section 7(2) of the Constitution, read with, *inter alia*, sections 1, 2, 83, 181(3);

14.2. to uplift the suspension in view of the halting of the proceedings, in terms of section 194(3)(a) of the Constitution.

Timelines

15. Failure to fulfil the constitutional obligations separately outlined above, by no later than 13h00 on 6 April 2023, will result in my taking further legal steps in order to protect my violated rights including but not limited to approaching the appropriate court for appropriate, just and/or equitable remedies, without any further notice to the recipients of this letter of demand.



16. I look forward to your urgent response(s).

Yours faithfully,



Adv Busisiwe Mkhwebane

Public Protector South Africa



"BMCC16"



20 April 2023

RE: VIOLATION OF RIGHTS AND CONSTITUTIONAL OBLIGATIONS

I refer to your letter of 4 April 2023.

I respond to the requests you have directed to me. I do not respond to each of the assertions and allegations contained in your letter, and the failure to do so should not be understood as an admission of their correctness.

As you are aware, the letter of suspension referred only to the salary, allowances and benefits that are attached to the position of Public Protector. It did not provide any undertakings or assurances that legal expenses incurred by you would be paid, or as to who would or should pay them.

I do not have the power to extend those benefits in the manner you propose. The salary, allowances and benefits of the Public Protector are paid from the budget of the Office of the Public Protector. They are determined on the recommendation of the Independent Commission on the Remuneration of Public Office Bearers, and after approval by the National Assembly, in terms section 2(2) of the Public Protector Act, 1994.

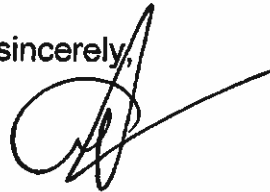
I may not and will not interfere with the processes of Parliament.

My decision to suspend you from office stands, as the proceedings initiated by the Committee of the National Assembly have not been finalised. There is no legal or factual basis for a decision to uplift your suspension.

Handwritten initials or a signature in the bottom right corner of the page.

As you are aware, the lawfulness of my decision to suspend you has been the subject of extensive litigation and the decision of the Constitutional Court is currently awaited.

Yours sincerely,



Mr Matamela Cyril Ramaphosa
President of the Republic of South Africa

Adv. Busisiwe Mkhwebane
Public Protector of South Africa
Pretoria
0001





"BMCC17"

Thursday, 09 June 2022

Dear Madam Public Protector,

RE: SECTION 194 PROCEEDINGS IN THE NATIONAL ASSEMBLY

1. Your submissions to me in relation to my powers in terms of section 194(3)(a) of the Constitution refer.
2. At the outset allow me to thank you for your response to my request for these submissions. Please accept that I have taken account of and carefully considered all the submissions you have made to my office (in your letters of 22 March 2022 and of 26 May 2022).
3. You had asked my office, through our respective attorneys, for an undertaking that I would defer any decision regarding your possible suspension pending a decision on Part B of your High Court application. I am not amenable to giving such an undertaking.
4. I have considered each and every element of your submissions carefully. I have also taken into account the nature of your office, and my own Constitutional obligations, including those applicable to how I ought to make decisions of this nature, and my obligations towards your office and towards the National Assembly.

A handwritten signature in black ink, consisting of stylized, overlapping letters.

5. I have decided that you ought to be suspended pending the finalisation of the process taking place in the National Assembly in terms of section 194 of the Constitution, for reasons that I detail below. I make this decision on the assumption and understanding that it will not in any way impede your ability to access information from the Office of the Public Protector that you may require for the purposes of your participation in the section 194 process.

6. The reasons for my decision are as follows:
 - 6.1. As I had indicated in my letter to you of 23 March 2022, I disagree that there is a **conflict of interest** that prevents me from exercising my powers in terms of section 194(3)(a) of the Constitution at this time.

 - 6.2. You have not demonstrated that any conflict of interest exists. I too am of the view that there is no such conflict of interests.

 - 6.3. No litigation is pending between ourselves and nor does pending litigation alone (without more) constitute a basis for a conflict of interest. I reiterate my view that the mere existence of a pending investigation does not in and of itself create a conflict of interest. This is evident from the fact that there are reports from your office in which allegations had initially been made against me that you concluded without making any findings against me, or which decided on remedial action that I am in agreement with.

 - 6.4. I reiterate that, should you be correct, the Public Protector could immunise herself against the processes envisaged by section 194 of the Constitution by initiating investigations against those organs of state or those individuals she considers to be a threat to her.

 - 6.5. The **pending litigation** that you refer to is neither relevant nor does it affect my power to make the decision to suspend you.

Handwritten signature and initials in the bottom right corner of the page.

- 6.6. I am not and have not been an active party to the matter in the **Constitutional Court** at present – I abided its decision, no relief was sought or granted against me. Furthermore, the rescission applications have no bearing on my powers under section 194(3)(a) of the Constitution, and I maintain that, at the time that I sent you the letter dated 17 March 2022, proceedings of a committee of the National Assembly for your removal had started. The Section 194 Committee informed me of this.
- 6.7. Before the **High Court** you have sought an interdict to stop a number of processes. You have not as yet obtained any such interdict. My courtesy to you in recent weeks is not and never was a change in my position that no such interdict ought to be granted. As will be outlined below my own constitutional obligations enjoin me to make this decision as soon as possible.
- 6.8. **Rule 89** of the **National Assembly** rules does not apply to me and my acting in terms of powers set out in section 194(3)(a) of the Constitution.
- 6.9. It is not, with respect, for me to dissect or question the National Assembly in the exercise of its powers. I have in any event considered this issue and I am satisfied that proceedings in terms of section 194 of the Constitution have started.
- 6.10. In your letter to me of 22 March 2022, you expressly asked me to consider your letter to the Speaker of 18 March 2022, which you had copied to me. At paragraph 8 of your letter to the Speaker you state that any *"refusal by [the Speaker] and/or the [section 194 ad hoc] Committee to accede to the requests made [that the letter of 10 March 2022 sent to the President be withdrawn and the Committee proceedings be halted pending determination of various court proceedings] will, inter alia, trigger the ... risk of suspension."* I understand from this sentence and the remainder of the letter that you accept that my powers are triggered by the decision of the National Assembly to proceed with the section 194 inquiry.

- 6.11. The decision of the National Assembly to go ahead with the investigation in terms of section 194 of the Constitution, and the report of the Panel on the basis of which that resolution was taken by the National Assembly, stand. The Committee that the National Assembly has tasked with this work is consistent that its work continues. There is no basis to argue that my taking the decision to suspend you is premature.
- 6.12. As regards your arguments on the National Assembly rules governing their internal processes in terms of section 194 of the Constitution, they are not for me to judge. Mine is to support the National Assembly in its endeavours and respect the separation of powers.
- 6.13. The Office of the Public Protector as a constitutionally created institution will and must continue to function without you or any other member of its leadership present. I cannot accept your insistence that its work will come to a halt or be jeopardised by your absence or that none of the work can be delegated or left to the Office, as an institution the Constitutional existence and mandate of which endures, beyond the tenure of its incumbent.
- 6.14. As you are no doubt aware, in terms of section 2A(7) of the Public Protector Act, whenever the Public Protector is, for any reason, unable to perform the functions of his or her office, or while the appointment of a person to the office of Public Protector is pending, the Deputy Public Protector shall perform such functions. It follows from this that if your office seeks to initiate or pursue any investigation against me (or any other person), your absence from office will not impede that process; the Deputy Public Protector may continue those functions.
- 6.15. Your submissions in relation to the imminent expiry of your term of office are unclear. The powers in section 194 are not fettered because your term of office is coming to an end in less than 2 years. Furthermore, the time taken between the filing of a complaint and the basis of which the section 194 process was triggered is not relevant to my decision – the proceedings have, in fact, started.

- 6.16. As for your submission that the motion that may or may not be brought to the National Assembly on your possible impeachment is unlikely to succeed, it is not a factor I should factor into my decision on how best to manage the process leading to this possible vote.
- 6.17. As for the allegations of judicial capture, I reject them. You are aware of this. You have furthermore not sent me any such complaint nor to my knowledge made any findings in their regard. The mere existence of such a complaint does not prevent me from acting as I do in this letter.
7. The Public Protector is not an employee. I cannot ignore the significance of the office you hold in making this decision. The complaint that the committee is investigating is detailed and complex. It is not, in my view for me to make a judgment on its merits, but to take into account: (a) the importance of your office; (b) the seriousness of the charges; and (c) the prima facie assessment that has been undertaken by the Panel at this stage. In this regard:
- 7.1. As a point of departure, I must emphasise that the position you hold as Public Protector is a critical one that is indispensable to our constitutional democracy. The integrity of the person who holds such office is fundamental to its operations.
- 7.2. I have had careful regard to the Report entitled "Preliminary Assessment and Recommendation of the Independent Panel Established in terms of the Rules of the National Assembly on the Removal from Office, in terms of section 194 of the Constitution, of a Holder of Public Office in a State Institution Supporting Constitutional Democracy" dated 24 February 2021 ("the Report") and authored by Justice Nkabinde, Adv Ntsebeza SC and Adv De Waal SC ("the Panel"). I accept that the Report was not to conduct a section 194 inquiry for your removal from office (that is a function that rests with the Section 194 Committee). Instead, its purpose was to conduct and finalise a preliminary assessment to determine whether, on the information made available, there is prima facie evidence showing that you committed misconduct or are

incompetent and to make recommendations to the Speaker. I readily accept that what is contained in the Report may or may not be confirmed in the full investigation. However, pending the outcome of that investigation, I cannot ignore the fact that: (a) the Report made a prima facie assessment; and (b) reached some conclusions which are of a serious nature. Irrespective of whether those conclusions are vindicated at a later stage, based on the information presently available to me, I cannot ignore them. They are serious and bear on whether you should be suspended.

7.3. I therefore had specific regard to and considered the following conclusions of the Panel to be high relevant to the question of your suspension:

7.3.1. As to the charge of incompetence, the Report concluded:

7.3.1.1. That the incidents of your incompetence stretched over a period of at least three years which, in the view of the Panel amounts to "sustained incompetence."

7.3.1.2. The courts have used epithets such as "patently wrong" in respect of some of the mistakes that you made, indicating a very high degree of incompetence.

7.3.1.3. The mistakes cover a wide range of areas and are not restricted to highly specialised legal fields.

7.3.1.4. That there is "substantial information" that constitutes prima facie evidence of incompetence, citing amongst the most glaring as being the prima facie evidence demonstrating that you grossly overreached and exceeded the bounds of your powers in terms of the Constitution and the Public Protector Act by unconstitutionally trenching on Parliament's exclusive authorities when you directed Parliament to initiate a process to amend the Constitution.

Handwritten signature and scribble in the bottom right corner of the page.

- 7.3.1.5. That you had made repeated errors of the same kind such as the incorrect interpretation of the law and other patent errors and that you lacked the ability and skill to perform the duties of a Public Protector effectively and efficiently.
- 7.3.2. As to the charge of misconduct, the Report concluded:
- 7.3.2.1. Each individual instance may well on its own rise to prima facie evidence of intentional or gross negligent failure to meet the standard of behaviour or conduct expected of a holder of a public office, but that that threshold "is certainly met when the instances are assessed in conjunction with one or more others."
- 7.3.2.2. That there is sufficient information that constitutes prima facie evidence of misconduct which relates, amongst others to your failure to reveal in the SARB Report that you had meetings with the President and the SSA and the failure to honour an agreement with SARB "thereby displaying non compliance with the high standard of professional ethics as required in terms of section 195(1)(a) of the Constitution."
- 7.3.2.3. The Vrede Dairy Report where, amongst other things, you altered the final report and gave the Premier, who was implicated, the discretion to determine who the wrongdoers were; you removed the referral to the SIU and the AG from the final report and provided "an untruthful explanation to the review court as to why this was done" and that you failed to investigate the third complaint in breach of your constitutional and statutory duties and functions in section 182 of the Constitution and section 7 of the Public Protector Act.

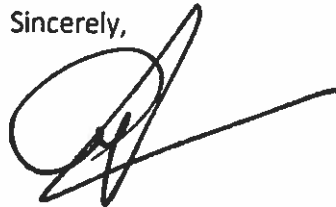
Handwritten signature and scribble in the bottom right corner of the page.

- 7.4. To the extent that the principles you list at your paragraph 33 are relevant, I refer to what I have already stated and add:
- 7.4.1.1. The complaint of misconduct or incompetence stems, among others, from multiple judgments of our courts. This alone suffices to make the charges you face very serious.
- 7.4.1.2. The judgments furthermore referred to the manner in which you conducted your work, and not just the conclusions you reached. I must assume this will require that members of your staff will be among the witnesses the Committee may call. You are their head. Your mere presence in the offices would potentially be intimidating.
- 7.4.1.3. As for my obligations to provide you with a fair hearing I believe I have fulfilled them by giving you time and the opportunity to make submissions.
- 7.5. In light of the position you hold there are a number of other factors that I am enjoined to consider:
- 7.5.1. The integrity of your office – and of every Chapter 9 institution – must be protected. There can be no doubt cast on the work it does, especially when its head is the subject of a section 194 process.
- 7.5.2. My obligation to do all in my power to safeguard the work of the National Assembly requires that I consider the impact of your suspension in that process. In my view the significance of the work of your office, the great workload you have alluded and the importance of the work of the National Assembly militate in favour of ensuring you can dedicate your full attention to the section 194 process while it is underway.

Handwritten signature and scribble in the bottom right corner of the page.

8. For the above reasons, you are suspended from office as Public Protector, in terms of section 194(3)(a) of the Constitution, as from the date upon which my office will have emailed an electronic copy of this letter to your office. The Presidential Minute recording this decision, as required by section 101(1) of the Constitution, accompanies this letter. You will remain suspended until the section 194 process in the National Assembly has come to its conclusion. During this period, the Deputy Public Protector will perform the functions of your office, as provided for in section 2A(7) of the Public Protector Act 23 of 1994.
9. We are both enjoined to act in the best interests of the country, in compliance with the Constitution, and cognisant of the need to protect all Constitutional institutions in their work. My decision as conveyed herein in in my view the best way to fulfil these obligations.

Sincerely,



Mr Matamela Cyril Ramaphosa
President of the Republic of South Africa

To: Adv. Busisiwe Mkhwebane
Public Protector of South Africa

And to: Adv. Kholeka Gcaleka
Deputy Public Protector of South Africa

And to: Hon. Nosiviwe Mapisa-Nqakula
Speaker of the National Assembly of the Parliament of South Africa



81/172488(Z 19E)



PRESIDENT'S ACT No. 116 of 2022

I hereby in terms of section 194(3)(a) of the Constitution of the Republic of South Africa, 1996 ("the Constitution"), suspend Adv. Busisiwe Mkhwebane from the office of the Public Protector pending the finalisation of the proceedings/inquiry initiated by the Committee of the National Assembly established in terms of section 194 of the Constitution.

Adv. Mkhwebane will continue to receive salary, allowances and other benefits that are attached to the position of the Public Protector during the period of her suspension.

Given under my Hand atPRETORIA..... on this09... day of
.....JUNE....., Two Thousand and Twenty Two.

A large, stylized handwritten signature in black ink, likely belonging to Cyril Ramaphosa, the President of South Africa.

PRESIDENT

Two small, handwritten marks or initials in the bottom right corner of the page, one appearing to be a stylized 'S' and the other a more complex scribble.



Committee for Section 194 Enquiry

"BMCC18"

Chairperson: Mr QR Dyantyi, MP

Committee Secretary

Mr Thembinkosi Ngoma

Tel: 083 709 8407

Email: tngoma@parliament.gov.za

Executive Secretary

Mr Khaya Vellem

060 550 9758

kvellem@parliament.gov.za

2 May 2023

Adv B Mkhwebane

Public Protector

Copy: Seanego Inc.

By email: busisiwe.m.t@gmail.com info@seanego.co.za; nafeesa@seanego.co.za;
theo@seanego.co.za

Dear Madam Public Protector, Adv. B Mkhwebane

RESUMPTION OF THE S194 ENQUIRY

1. I have no doubt that you are as pleased as I am to receive communication informing you that the issue of your legal fees has been resolved. Given that the Inquiry has been ongoing for several months with the first oral hearings having commenced on 11 July 2022, indications are that the PPSA has provided you with sufficient funding to complete the s194 Enquiry process. Whilst you have been requested to appear in person for purposes of giving oral evidence, once that is completed, and given the limitations on expenditure the remaining part of the Inquiry may proceed virtually as a cost saving mechanism.

2. I have noted your comments in the media (and indeed in the hearings itself) indicating your eagerness to complete your testimony and I am relieved that the issue of legal fees will no longer be an impediment to the continuation and conclusion of the hearings.
3. I have requested the Secretariat to work on the programme and factor in all of the final steps of the process. I attach a copy of the draft programme for your information.
4. You will note from the programme, that I intend to reconvene the hearings on 8 May 2023. Unfortunately, the programme is back to back as a valuable period of more than 1 month has unfortunately been lost due to matters out of the control of the Committee. However, the Committee remains duty bound to conclude its process within a reasonable time and to perform its work in a diligent manner without delay. In an ideal world I too would have liked to see the programme stretch for a few days longer but unfortunately the Committee has been besieged with delays and interruptions which have adversely affected its work and which have also contributed to the rising costs.
5. You will agree that I have to be alive to the fact that the issue of legal costs has not been resolved by the waving of a magic wand which will allow for uncapped expenditure. I am therefore extremely cognisant of the fact that the process must be concluded in a manner which does not attract criticism for wasteful or unnecessary expenditure of public funds- both on the side of Parliament and the PPSA. I do this mindful of your right to a fair process and I am firmly of the view that the draft programme is reasonable and fair and that you have been provided with sufficient funds to cover reasonable legal expenses to complete the process.
6. In any event we are faced with a constraint in that the PPSA has indicated they cannot commit to more than R4 000 000.00. I recall from our previous interactions on the issue of the non-payment of fees that this amount exceeds what was typically billed in a calendar month and I therefore am confident that there is no need for this amount to be exceeded, given the number of days required to complete the process. As per the letter from the Acting Public Protector, it remains your responsibility to properly manage the additional funding and I trust you will do so with the requisite austerity, obviously mindful of the terms of the contract and rates that had been concluded with your legal representatives by the PPSA. On the side of the Committee I intend ensuring that the remainder of the process unfolds smoothly



and uninterrupted so that there is no prejudice to you in the form of any delays occasioned by the Committee until its completion and have ensured that the programme reflects such.

7. I have no doubt that the resumption of the hearings will be approached with a commitment from you and your legal team to see the process to its conclusion in the time-frame provided for. I intend ensuring that the proceedings are run according to the draft programme and will expect the members, staff, evidence leaders, yourself and your legal team to also make the necessary sacrifices and commitment to ensure this is the case. I have also indicated to the evidence leaders should either of them not be available on any of the days in the upcoming period that this is not to be an impediment to the hearings proceeding. I trust that you will ensure the same with your legal team.
8. I look forward to welcoming you and your team back to the hearings. If there is anything you wish to bring to my attention before the resumption, kindly do so by no later than close of business on 4 May 2023.

Yours faithfully



Mr QR Dyantyi, MP

Chairperson: Committee for Section 194 Enquiry



"BMCC20"

ACTING PUBLIC PROTECTOR INTERVIEW WITH QOLI MGAMBI

NEWSROOM AFRICA

DATE: 27 April 2023

HOST: On the funding of the suspended Public Protector that's the person who you are acting on behalf of at least for now, was the last letter that you sent to her, the final take on the matter?

Adv Gcaleka: Okay, Firstly Xoli, I am not acting on her behalf, I am acting in line with the Public Protector Act which says that where there's a vacancy in the position of the Public Protector the Deputy Public Protector shall assume full powers of that position, but not those of the person. Well in this respect Xoli, really, I want to emphasize that the Section 194 process is not a Public Protector process, it is a parliamentary process. The office of the Public Protector in providing the funding in the previous financial year in this respect merely fulfilled firstly which was in operation, because the office had already provided for these funds but we were doing it really on provision that it is reasonable, it was budgeted for at the time and however it was not budgeted for to the extent to which it went into, hence we then had to write to the Speaker as well as to the Chairperson of the section 194 Committee and state our position that we will not be in a position in this financial year to make provision for the legal fees of the Public Protector. Therefore, our stance is still the same. We are not in a position to do so; Treasury did not adjust the budget of the office of the Public Protector. The budget at our disposal for this financial year is plainly for the operations of the office of the Public Protector.

Host: So, when you say that this has gone beyond what you had budgeted for, how much has been used?

Adv Gcaleka: Thus far the invoices that have been submitted are sitting at the R30 million.

Host: R30 million has been spent thus far in order to fund the legal fees of the Public Protector in this section 194 inquiry?



Gcaleka: Yes, and that includes some of the court processes that took place before the Public Protector's suspension.

Host: And so, at this stage your word is final, that no more funding will be channeled towards the legal fees of Ms Mkhwebane.

Adv Gcaleka: from the budget of the office of the Public Protector for this financial year we will not be able to provide or make provision for the funding of the Public Protector's legal fees.

Host: alright and that's where we're going to leave the conversation, Adv Kholeka Gcaleka, thank you very much for affording us your time

Handwritten signature or initials in the bottom right corner of the page.

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 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:-

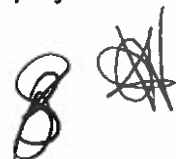
"The Constitutional Court would have made the judgment that says any head of this Chapter 9 institution must have legal representation and it could even be herself doing that. She could opt to go to Legal Aid which is a state institution that all of us go to"

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

Handwritten signature and initials in black ink, located at the bottom right of the page.

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 ClEX 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.

Handwritten signature and scribble.

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

