

Our Ref: G Makhathini/TM/MAT14976
Your Ref:
Date: 8 May 2023

To: Mr QR Dyantyi, MP

Attention: Mr QR Dyantyi, MP
By email: tngoma@parliament.gov.za
kvellem@parliament.gov.za

Dear Honourable Chairperson Dyantyi MP,

RE: PROPOSED RESUMPTION OF THE S194 ENQUIRY

1. I refer to the letter written on your behalf by the Secretary of the Section 194 Enquiry and received on Saturday 6 May 2023. I am instructed to respond as set out below.

A: Ad Paragraphs 2 to 5 of the letter

2. We have not “*substituted*” Seanego Inc to act on behalf of the Public Protector in the Section 194 Enquiry. That would be a legal impossibility and a breach of the PFMA seeing that RMT Attorneys is not on the panel of PPSA approved attorneys. We are advised that the system of procurement for attorneys was extensively explained to the Committee by two witnesses, Mr Sithole and Mr van der Merwe.
3. Our understanding is that the agreements and arrangements reached with Seanego Attorneys were, to your knowledge, terminated by PPSA with effect from 31 March 2023.
4. We act on behalf of Adv Mkhwebane principally in her personal capacity as a citizen and a bearer of the constitutional rights enshrined in the Constitution, some of which are being infringed by the Committee and other organs of state.



B: Ad paragraphs 6 to 9 thereof

5. As you repeat your request as to whether the Public Protector has taken any steps to ascertain from Mr Seanego as to his availability and the further availability of counsel (previously) on brief given that further funding has been secured, we also repeat our response that effectively you are asking the question to the wrong person. The question should be directed to PPSA as the organ which withdrew its funding commitments in March. The Public Protector has no obligation or power to engage with Mr Seanego or any other member of his erstwhile legal team. As indicated to the Committee on 31 March 2023, all formal engagements between the Public Protector and that team ended on that date, hence she appeared before the Committee on her own on 3 April 2023.
6. The Public Protector accordingly has not taken any steps to ascertain anything including the availability of any person, from Seanego. Please refer to the explanation which we give below.
7. In fairness it is clear that there is a need to explain further how the legal profession functions in South Africa.
8. Firstly, ours is a referral profession in that advocates must be briefed by attorneys who are in turn instructed by clients. In the present case, the client (PPSA) instructed the attorneys (Seanego Inc) to brief the advocate(s) (Adv Mpofu SC and his two Juniors, Adv Shabalala and Adv Matlhape). The arrangements, agreement, payment terms, etc reached between them had nothing to do with Adv Mkhwebane. Her only role was to indicate, as she must, the legal expert of her choice. Presumably the exact same process was followed once the Section 194 Committee indicated the counsel of its choice for Evidence Leaders.
9. Secondly and since there seems to be a lot of unnecessary confusion about the issue of availability, it would be appropriate that when it comes to legal practitioners (attorneys and/or counsel) the notion of “*availability*” is much broader than simply looking at dates in a diary. Availability may mean:
 - 9.1. whether a practitioner is willing and able to provide legal assistance or services in a particular matter. If this is the issue you are enquiring into, the answer is that, as far as Adv Mkhwebane knows, her previous legal team is available to assist. However, and to cater for the unlikely event that they may be otherwise engaged, she has taken the precautionary measure of requesting from PPSA the list of attorneys on its panel which was kindly provided to her on Friday. She will therefore await the guidance of PPSA on the next step;



- 9.2. whether a practitioner is available to render such assistance without being financially compensated. As previously indicated, the answer to that question was already posed to the members of the previous team in March and the answer was in the negative;
- 9.3. whether given the nature and amount of the work that needs to be done, against the financial and other resources offered, (in this case the capped amount of R4 million including overheads, travelling, accommodation, food, etc) the practitioner(s) are willing to provide legal services. To this question our client's answer is that she does not know. This is a question that can only be answered by those charged with the responsibility to conclude such arrangements. That exercise has, correctly so, never included her in the past and the same applies now; and/or
- 9.4. whether the legal practitioner is not otherwise engaged on the proposed dates and if so when they might be able to render effective legal services. Again if that is the sense in which "*availability*" is meant in your letter, then our client's obvious answer is that she does not know anything about the diaries of her former legal team members. In any event that issue would naturally also only arise after or in the course of the engagements between PPSA and the legal practitioners, assuming they would have reached agreement on the other terms of engagement.
10. We have taken the trouble to answer your question comprehensively and whatever possible meaning it might have been posed. Hopefully this now clarifies the issue once and for all and the matter of "*availability*" will be put to bed or duly referred to the correct persons to be addressed by them once all the necessary steps have been taken and communicated with me and you.
11. For the record, our client's own availability is completely guaranteed as always. The organs of state which are dutybound to do so must only afford her the rights to be heard in a fair process and to legal representation. How this may be secured is the business of the state. Our client's co-operation once that has been done, is a matter of public knowledge. As previously indicated, she will therefore be physical in attendance when the Committee sits today on 8 May 2023, so as to eliminate the possibility of her being unlawfully excluded and/or muted. She will also elaborate on some of the abovementioned issues if you allow her to do so, just as she wished to do on 4 April 2023, when you did not so allow her.
12. Please feel free to contact us should you require any further assistance.



Yours faithfully,

Electronically sent, thus unsigned

RMT Attorneys

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