



Accountability • Integrity • Responsiveness

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Advocate Busisiwe Mkhwebane
The Public Protector of the
Republic of South Africa

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

Cc: Ephraimk@pprotect.org

Dear Advocate Mkhwebane

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

1. This letter serves to communicate the outcome of the discussions regarding the further funding of your legal fees and expenses for the section 194 Committee proceedings.
2. The section 194 Committee requested the Public Protector South Africa (PPSA) to make further funding available to cover your legal fees and expenses as stated above.
3. In my letter dated 1 March 2023, I communicated the PPSA's inability to continue to fund your legal fees for the purpose of the section 194 proceedings due to budgetary constraints, as these fees substantially exceeded the initial estimates as agreed upon with your legal representatives, Seanego Attorneys.
4. You may recall that the initial agreement to make funds available for your defence during the section 194 proceedings was based on an estimate of R4, 500 000 (four million five hundred thousand rand) from your attorneys of record, which was found to be reasonable and affordable. However, these costs escalated astronomically to expenditure in the amount of R30 428 522 (thirty million four hundred and twenty eight thousand five hundred and twenty two rand) to date and have become unaffordable to the PPSA.

5. It should also be borne in mind that the PPSA has no legal obligation to make funding available to you for the purpose of the section 194 proceedings. Nonetheless, the PPSA took a decision to support you within the available resources to ensure a fair process.
6. The Constitutional Court made it clear in, *inter alia*, the matter of the *Speaker of the National Assembly v Public Protector and Others; Democratic Alliance v Public Protector and Others (CCT 257/21;CCT 259/21) [2022] ZACC 1; 2022 (3) SA 1 (CC); 2022 (6) BCLR 744 (CC) (4 February 2022)* that the removal of a Chapter 9 institution office-bearer is a National Assembly process for Parliament to exercise its functions in terms of section 194 and 55(2)(b)(ii) of the Constitution.
7. The Constitution and the National Assembly Rules set out a broad framework for Parliament to exercise its functions and to govern the process for the removal from office of these office-bearers in terms of section 194 and in accordance with the provisions of the terms of reference of the Committee for the section 194 Enquiry.
8. Subsequent to engagements between Parliament, the National Treasury and the Department of Justice and Correctional Services, the PPSA was given two options; namely, to either fund the legal fees from its baseline allocation or to utilise the balance of the approved 2021/ 2022 retained surplus to cover these costs. The Chief Executive Officer (CEO) informed me that the PPSA is in no position to cover the section 194 legal fees from its baseline allocation for this financial year, which is earmarked to cater for expenditure on court orders already issued against it relating to various matters, including those that arose from the impeachment process as well as other legal services operational costs.
9. The CEO confirmed that the only funds that the PPSA is able to commit to the section 194 process is the balance of the 2021/ 2022 retained surplus, which may not exceed R4 000 000 (four million rand). It was further made clear that any further expenditure to be incurred in this matter should be subjected to strict conditions.
10. The CEO has therefore advised that the PPSA is in a position to commit an additional amount not exceeding R4 000 000,00 towards your legal costs for the continuation of the proceedings before the section 194 Enquiry to the effect that:–
 - a) The funding of any litigation or related activities will be excluded and will be for your own account - including preparation for or the tabling of any applications or objections, as well as costs relating hereto;
 - b) It is your responsibility to manage the amount not exceeding R4 million budgeted for, to provide for all the costs at the re-commencement of the proceedings, inclusive of disbursements (including travel and accommodation), where it is not possible to conduct proceedings virtually, or alternative arrangements cannot be made; and

- c) Payment on the verified invoices of your legal team for the services rendered during the proceedings will be made at the conclusion of the section 194 Enquiry.

11. I also wish to inform you that the PPSA has taken steps for urgent assistance to verify that all invoices received thus far and future invoices are in line with normal applicable legal counsel / attorney rates, read with the PPSA Tariff of Fees.

Yours sincerely,



ADV KHOLEKA GCALEKA
ACTING PUBLIC PROTECTOR OF
THE REPUBLIC OF SOUTH AFRICA
DATE: 02 MAY 2023

And to:

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

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

3. Ms Nosiviwe Noluthando Mapisa-Nqakula, MP

Speaker of the National Assembly

zngoma@parliament.gov.za; speaker@parliament.gov.za

Copy to:

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Chief Executive Officer:

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