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6 June 2023

To: Mr QR Dyantyi, MP

Dear Chairperson,

**RE: LEGAL REPRESENTATION**

1. Your letter dated 4 June 2023 addressed to Mr HM Chaane Attorneys refers.
2. As you must be aware Mr Chaane of HM Chaane Attorneys was hospitalised yesterday but will hopefully return to work as soon as the doctors so indicate.
3. Ideally the response to your letter should come from Mr Cha to whom your letter was correctly addressed. However and due to the unforeseen circumstances of ill health on the part of my only legal representative at this stage, I have deemed it necessary to deal with some of the allegations contained in your letter more particularly those which are specifically and regrettably directed at me personally. No doubt Mr Chaane, once fully recovered, will respond to the remarks and insults directed at him.

**A: Ad Paragraph 1**

4. It is not true that “*all impediments to the Enquiry proceeding had (sic) now been lifted*”. Any report to that effect was totally incorrect. It is also not true that the remaining impediments were brought to your attention for the first time in the eleventh hour or just before the sitting scheduled for 5 June 2023. In actual fact I have repeatedly raised the outstanding issues with you and/or PPSA on countless occasions in the past month or so. The issue surrounding the adequacy or otherwise of the R4 million cap, the adequacy and fairness of the programme, the condition that the legal team will only be paid at the end of the enquiry, to mention a few, have been raised with you ad nauseam in the recent past, with no intelligible response forthcoming.

**B: Ad paragraph 2**

5. At paragraph 32 of your letter you granted me until 14h00 on 6 June 2023 to make representations regarding the proposed change in procedure. Yet on 5 June you communicated a detailed decision on that matter. This is plainly absurd.
6. In any event I reject your proposal unilaterally to “*amend*” the directives so as to change the agreed sequence of questioning a witness to be different in my case from any other witness who has testified in the Committee. It is unheard of to allow for the piecemeal questioning of the witness by the Evidence Leaders and the tribunal of decision-makers, in the middle of a witness’ testimony in-chief. The very suggestion is patently absurd, more particularly given the illegal 6-day arguments presented by the Evidence Leaders in respect of the said evidence under the guise of “*empowering*” the Committee and before the opportunity of the witness to respond thereto.
7. In any event the Evidence Leaders did move an application to do as now proposed again and the Chairperson/Committee ruled against them. The Chairperson/Committee is therefore *functus officio* and not permitted to review and overturn his own ruling. The initial ruling was the legally correct one.
8. Incidentally your latest proposal is totally aligned to the information relayed to my husband by the late Ms Tina Joemat-Pettersson who stated that there

was a nefarious plan to deal with two topics already covered, in exactly the way you are now suggesting. This is ample proof that you are implementing decisions illegally taken outside of the Committee. If necessary, evidence to this effect will be presented to the Committee and/or other relevant institutions.

9. My rights are reserved in this regard. In the event that you insist on implementing such a blatant illegality, a court of law will be approached.

**C: Ad Paragraphs 3-10**

10. Save to confirm the list of outstanding issues, these paragraphs will be best dealt with by HM Chaane Attorneys.

**D: Ad Paragraph 11**

11. It is impossible to respond to this paragraph because its contents do not make any logical sense, more especially to the extent that there seems to be a suggestion that it is counsel who must brief attorneys when everybody knows that it works the other way round.

**E: Ad Paragraphs 12-14**

12. The issue of whether and to what extent an attorney can conceivably brief or give instructions to counsel without getting acquainted with that the case is all about, as per your suggestion, will be best dealt with by Mr Chaane. I can only recommend that you get proper advice as to the professional obligations of attorneys in South Africa.

**F: Ad Paragraph 15**

13. I can categorically confirm that your “*doubts*” that I never gave instructions as to how HM Chaane Attorneys may want to deal with the drop box or to familiarise himself with the brief are one hundred percent correct. I have neither the right or the inclination to interfere with the discharge of his

professional obligations especially in relation to such a senior and experienced attorney as Mr Chaane.

14. Accordingly all the insults directed at me in your letter which are based on the incorrect assumption that I gave such instructions are unjustified and ought to be withdrawn by you.

**G: Ad Paragraphs 19 - 23**

15. The insults directed at Mr Chaane and his colleagues, including your actually calling them names, such as "*johnny come lately attorneys*" will be best dealt with by them.
16. I am perplexed at how you expect me not to raise the issue of the illegal message contained in your own letter to the effect that if the funds get depleted, I will be personally responsible to pay for my own legal representation. If that possibility was remote then why did you raise it in your letter in the first place? And what right-thinking person would not want to know the exact details when faced with such a huge financial obligation? Your proposals that we are asking "*the wrong question*" is, in the circumstances, absurd in the extreme.

**H: Ad Paragraphs 24 - 28**

17. Again I deny your assertion that I "*appear to have not instructed HM Chaane Attorneys to issue briefs to ensure that counsel is in attendance*". The mere suggestion is preposterous.
18. The suggestion of a waiver is rejected. I have not effected any such "*waiver*". In any event, you ought to know that constitutional rights cannot be waived.
19. The suggestion that I must "*ensure that (I) appear together with my counsel on Wednesday*" is impossible for me to comply with. I play no role in the briefing of counsel. My role is confined to identifying who the counsel of my choice is, as ordered by the Constitutional Court and referred to in Rule 129 AD(3). Anything beyond that is not in my province. The fact that counsel have not been briefed, due to legitimate outstanding questions, is no fault of mine.

**I: Ad Paragraphs 29 - 33**

20. I have no reason to delay the enquiry, deliberately or otherwise. The charges are spurious and baseless. This much I have amply demonstrated. The only way in which the charges can be established is via the corrupt and elaborate corrupt scheme to manipulate the evidence which the late Ms Joemat-Pettersson outlined to my husband and in which you are implicated.
21. I have never laid the current delays at the door of the Committee. To do so would be as absurd as your attempts to place such delays at my door. To your knowledge, neither I nor the Committee is responsible for the delays. The person responsible for the delays is Adv Gcaleka who wrote the letter dated 1 March 2023 indicating that my legal representation would no longer be funded beyond 31 March 2023. Until that date the enquiry was running smoothly as between me and the Committee.

**J: Ad Paragraphs 34 - 37**

22. The suggestion that an answer to the question legitimately raised by an elected public representative must be referred to a News24 encrypted article merely needs to be stated to be rejected. Neither can the amount spent on the Evidence Leaders to date, be determined by reference to an article written a year ago.
23. The malice in publicising the rates proposed by counsel, in the full knowledge of the sordid events of last November, was done in the knowledge that the biased and racist media would sensationalise the issue, which indeed has predictably happened. The same media has absolutely nothing to say about the hundreds of millions of rands spent on predominantly white male senior counsel in the multi-billion Zondo Commission. These issues were exhaustively raised at this Enquiry last year.

**K: Ad Paragraphs 38 - 39**

24. Regarding the allegations of corruption against you, Ms Joemat-Pettersson and the ANC Chief Whip, Ms Majodina your proposal that they should only be addressed in the media is both absurd and extremely self-serving.

Contrary to your labelling, these are no “*hearsay allegations*”. In fact there is incontrovertible evidence in the form of WhatsApp messages and other conversations, confirming the allegations beyond any question.

25. While it is indeed so that the allegations of criminality against you and Ms Joemat-Pettersson are the subject of a police investigation and the Ethics Committee, that does not remove their relevance to the work of the Committee. The obvious question is whether or not it is in keeping with the requirements of fairness for me to be subjected to an enquiry chaired by a criminal suspect and in which another suspect is a member? In such circumstances you should voluntarily recuse yourself.
26. Failing the above I intend to instruct my attorneys to move an application for your recusal. Your statement that “*no address will be permitted to occur before this Committee on this issue*” is therefore inappropriate, to say the least.
27. I therefore intend to address the corruption allegations to the Committee at the next available opportunity. In that regard please find attached hereto copies of the transcripts of the WhatsApp exchanges between my husband and Ms Joemat-Pettersson, in which she referred to “*the others*” which included the Chairperson of this Committee.

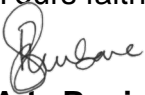
**L: DEMAND**

28. In view of all the above I hereby make the following demands:-
  - 28.1. That the enquiry be postponed until the outstanding issues pertaining my legal representation are resolved. This includes the recovery of my attorney from his current hospitalisation and the briefing of the counsel of my choice by my attorneys and/or the state attorney, whichever is appropriately mandated by PPSA.
  - 28.2. Failing the above, that suitable arrangements be made for the Committee to hear my application for the recusal of the Chairperson pending the investigation into his involvement in the corruption and bribery scandal involving him, the ANC Chief Whip and the late Ms

Tina Joemat-Pettersson as well as the circumstances of her alleged suicide to the extent that it is linked to the corruption allegations involving the Section 194 Committee.

29. I will be attending the sitting of the Committee tomorrow in order to address the issues raised in this letter for determination by the Committee.
30. Failure to comply with the above demands may result in my having to approach a court of law on an urgent basis and without any further notice to you.

Yours faithfully,



**Adv Busisiwe Mkhwebane**

Public Protector South Africa