



**Committee for Section 194 Enquiry**

**Chairperson: Mr QR Dyantyi, MP**

Committee Secretary

Mr Thembinkosi Ngoma

Tel: 083 709 8407

Email: [tngoma@parliament.gov.za](mailto:tngoma@parliament.gov.za)

Executive Secretary

Mr Khaya Vellem

060 550 9758

[kvellem@parliament.gov.za](mailto:kvellem@parliament.gov.za)

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12 June 2023

Adv B Mkhwebane

Public Protector of South Africa

Copy: Mr. Chowe,

State Attorney, Pretoria

And: RMT Attorney's

Dear Madam, Public Protector, Adv. B Mkhwebane,

**REQUEST FOR MY 'VOLUNTRAY' RECUSAL**

1. I refer to your letter dated 6 June 2023 read with the letter I received from RMT Attorneys who have indicated that they are your personal attorneys (but whom you have not placed on record as your attorney of record before the s 194 Committee) on Friday, 9 June 2023 a few minutes prior to the meeting of the Committee commencing as well as your oral statements made in the Committee. I did not have regard to the RMT letter on that day.
2. I primarily deal with the issue of recusal in this letter and to the extent I do not deal with any other aspects this should not be construed as an admission thereof and I reserve to deal with it at a later stage if necessary.

3. At the last meeting, you refused to have the State Attorney, Pretoria as your attorneys of record though you instructed to him to place certain issues before the Committee. It was the State Attorney, Pretoria who received instructions from PPSA and briefed HM Chaane Attorneys as a correspondent to act for you. Nothing precluded you from giving the State Attorney an instruction to brief your counsel of choice to bring any application you deemed necessary, or to use and of the legal teams that are prepared to, and regularly act for you in court proceedings that you engage in. You have not been denied legal representation. You have instead refused to permit counsel to be briefed. In this regard I materially disagree with what is stated by RMT Attorneys, who in fact act for you in other s194 related litigation, that is not paid for by the PPSA.
4. It is also noted that there is a contradiction in the RMT letter in that on the one hand it is stated that you cannot bring a recusal application before the Committee because of a lack of legal representation but it appears that such legal representation is not lacking for purposes of bringing a court application on an urgent basis.
5. In your letter of 6 June 2023, you request my 'voluntary recusal' and state that if I refuse to accede to this request, you will instruct your attorneys to move an application for my recusal based on media articles and a copy of certain alleged WhatsApp communication between your husband and the late Ms Tina Joematt-Petterson. These WhatsApp communications were not attached to your letter but on request from the Secretariat were subsequently provided. Ex facie they appear to be incomplete, with text deleted, but be that as it may, I am not mentioned by name on the WhatsApp texts provided, nor do you indicate in your letter whether any steps had been taken by any independent entity to verify and authenticate the texts, prior to you placing any reliance on them.
6. You also indicated that you intend to address the Committee on this matter at the next available opportunity. You further demanded, in paragraph 28.2, that failing the indefinite postponement of the Enquiry until the issues of legal representation are resolved (including the briefing of Counsel of your choice by your attorneys or the State Attorney, whichever is mandated by the PPSA), that suitable arrangements must be made to hear the recusal application.
7. It has been made clear that Committee proceedings will not be indefinitely postponed, and I regard your demand, given the time available to complete the Committee's work, to be entirely inappropriate.

8. In my letter to Chaane Attorney's on 4 June 2023, I specifically noted your request to address the Committee on hearsay allegations of bribery and corruption that have been attributed to myself. I responded by informing you that the Committee is not seized with such allegations, nor does it have the mandate to deal with same. Indeed, these matters, as I indicated are, apparently the subject matter of a criminal investigation and as advised by the Speaker, has been referred to the Joint Committee on Ethics and Members' Interests ("Ethics Committee").
9. In regard to the above, I can confirm that the Ethics Committee has commenced with its processes, and I am co-operating fully in respect thereto. In the circumstances I indicated the Committee's time and the R4 million set aside for conclusion of the process will not be diverted to deal with allegations which are before appropriate forums and therefore no oral address will be permitted to occur before this Committee on this issue.
10. As I had indicated when you had brought the first application to have me recused, the decision of recusal is one that must be made by me and which I will duly consider on receipt of an application. Further, should the Committee wish to remove me as Chairperson, it may do so on its own initiative, it having duly elected me into this position.
11. I went a step further, following receipt of your letter given as it foreshadowed an application for recusal, and I determined a speedy time frame so that I could attend to it sooner rather than later. At no stage did I refuse to deal with a duly submitted written application and I fully intended to give it the same weighty attention that I did your previous application.
12. On the contrary, I specifically informed you in the meeting of 7 June 2023 that should you wish to make such an application you may do so by Friday, 9 June at 13h00 to allow me to respond thereto expeditiously by Monday, 5 June 2023 so that this matter can be dealt with urgently. You did not in that meeting indicate that you were not able to bring an application even though it had been known that the only attorney at Chaane Attorneys, capable of assisting you, had – as it was then indicated – been hospitalized for an indeterminable period of time.
13. To date, no written application has been made (as required by the Directives) and instead I received a letter from RMT Attorneys, acting on your instructions, just before the meeting on Friday, 7 June 2023 to once again demand that I voluntarily recusal myself and threatening urgent legal action, should I not do so. It is not clear what

prevented either yourself or RMT Attorneys from moving the application in writing on your behalf and attaching all the evidence as part of an application.

14. Notwithstanding your failure to submit a recusal application by the time I requested same, it is of course your right to bring an application for recusal at any point in the proceedings. In fact, I communicated the same to the ATM who made a similar request to me. If you do so I shall again issue a directive for the purpose of dealing with such application and will do so in a manner that does not disrupt any ongoing programme of the Committee.
15. As you are legally trained and given that you have already in these proceedings sought the recusal of myself and Mr Mileham MP, you would be aware that an application setting out the grounds is necessary prior to consideration of such a serious request. The latter cannot occur based on conjecture and speculation in the media and what I had previously referred to as hearsay evidence, despite your understanding of the weight to be placed on media reports. I was taken aback by your denial that you were relying on hearsay evidence as nothing contained in your correspondence appeared to indicate you to be seeking my recusal based on your own personal knowledge. It may well be that my understanding of what constitutes hearsay evidence and yours differs.
16. Due to such denial and so that it is clear, why such recusal is being sought, proper attention cannot be given to such a request, given its weighty implications for me, the Committee and Parliament, based on a few paragraphs in the correspondence received and media reports, the origins of which are not known, and what appeared to be an incomplete trail of WhatsApp communications. As a legally trained person, you would be aware that media statements and WhatsApp messages cannot reasonably be substitutes for recusal applications and I do not intend to have the Committee proceedings be determined by the media.
17. Accordingly in the absence of a written application I cannot consider a request that I voluntarily recuse myself and point out again that at no stage have you been impeded from bringing such written application fully setting out the reasons for such application and evidence to which consideration can be given.
18. The Committee operates in public domain. Evidence placed before the Committee becomes publicly available. You can be rest assured that should you make such a written application for recusal as set out in directives for my recusal, attaching the evidence to which you have referred to publicly and inexplicably, have not yet made

available, such would be shared with all the Members (and the public). So too would my written response to any recusal application as had been the case throughout the proceedings.

19. I reiterate that unless and until such time as the allegations on which Adv Mkhwebane seeks to have me recused, is properly placed before the Committee in an application for recusal, I am not in position to consider voluntarily recusing myself. The effect of what you seek is for me to abdicate from my parliamentary and constitutional obligations on the basis of no more than media reports and WhatsApp communication, the content of which does not even fall within your own personal knowledge.
20. As for the letter from RMT Attorneys, as previously indicated they are not your attorneys before the Committee, but their letter starts off from a premise that I have personal knowledge of having been implicated in "*allegations of criminal conduct involving extortion, bribery and corruption*" premised on the WhatsApp communications provided to the Committee – which does not mention me – and alleged audio recordings. In the absence of full details of the charges to which is being referred that I am alleged to have been implicated in I am unable to respond further to these averments.
21. It is dismaying that even RMT attorneys are unable to distinguish between media reports and proper and authenticated evidence. The former alone cannot be a basis on which elected public officials are stopped from carrying out their responsibilities.
22. To expect this would send government into disarray as trumped-up allegations would regularly be reported – which would form the basis of media reports as the media is entitled to do – only for such to be proven wrong – or simply disappear subsequently, whilst bringing public officials to a standstill in the performance of their obligations. Such cannot be countenanced, and it is precisely to protect the integrity of the Committee and the Enquiry and to ensure a fair process, that any recusal can only be properly considered based on evidence properly put in the form of a written recusal application.
23. I do not intend dealing with RMT's letter in detail given that they are not properly on record before the Committee, given the extent of conjecture contained therein and what appears to be a deliberate misinterpretation or lack of understanding of the ANC step-aside rule. As stated at the outset, I reserve my rights to do so should it in future be necessary.

24. Finally, I note the threat that a court application will be brought, presumably by legal representatives acting for you. Any such court application would be premature in the absence of an application for recusal before the Committee and my consideration of such request for my voluntary recusal which I am not able to do in the absence of an application setting out properly the basis on which such is being sought. Currently, all there is before the Committee are incomplete WhatsApp's and reference to uncorroborated averments in media articles.

Yours faithfully

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**Mr QR Dyantyi, MP**

**Chairperson: Committee for Section 194 Enquiry**

