
AFFIDAVIT

I, the undersigned

JOHANNES (JOHANN) HENDRIKUS VAN LOGGERENBERG

do hereby make oath and say:

- 1 The contents of this affidavit are, unless the context indicates otherwise, within my personal knowledge and, to the best of my belief, are true and correct.
- 2 Where I make submissions of law I do so on the advice of my legal representatives, whose advice I accept.
- 3 I depose to this affidavit as a former employee of the South African Revenue Service ("SARS"), in terms of the Protected Disclosures Act, 26 of 2000 as amended, however inadequate and underdeveloped it may be, and I invoke all relevant and necessary protection provided to me in this law, the common law and the Constitution.
- 4 I submit this affidavit in the interests of justice and that of the South African public in pursuit of a better society for all.
- 5 What I depose to in this affidavit has never been as a result of my own choice but rather because of State Capture, various externally motivated events, situations and actions taken by various people which has had a direct effect on my rights, those of other innocent persons, state departments and the nation as a whole. At

1
CTM

all times I strived, within the limits and constraints upon me as an individual, to seek to serve justice and the interests of the public. I continue doing so now by way of submitting this affidavit to Parliament following a public invitation to do so.

- 6 This affidavit is therefore submitted specifically pursuant to the public invitation by the Parliament of the Republic of South Africa for any person willing to provide evidence in respect of the conduct of Ms Busisiwe Mkhwebane (“Ms Mkhwebane”) who serves as the current Public Protector (“PP”), in relation to an inquiry in terms of Section 194 of the Constitution of the Republic of South Africa. For ease of reference and record purposes, I attach hereto as “JVL1” a letter addressed by my attorneys in this respect, as well as “JVL2” which was a reply thereto.

BRIEF BACKGROUND


- 7 It is common cause between Ms Mkhwebane and I:
- 7.1 that I was an employee of SARS between November 1998 and February 2015 where I served in various capacities over the years from age 29 to 44, starting at a relatively junior level, and climbing the ranks over these years;
- 7.2 that my last job title at SARS prior to my resignation was Group Executive: Tax and Customs Enforcement Investigations: Projects, Evidence Management and Technical Support and that I managed five SARS investigative units in this role at the time of my resignation;
- 7.3 that I came to know of by way of hearing on the radio that the PP had issued Report No. 36 of 2019/20 dated 5 July 2019 following what I believe to be “complaints” by the Economic Freedom Fighters (“EFF”) political party and

T 2

SM

current and/or former South African Revenue Service ("SARS") officials and law enforcement and state intelligence and private intelligence operatives that are masquerading as "anonymous complainants";

- 7.4 that I then read the PP report as soon as it became available on the internet and then sought legal advice relating to the PP report;
- 7.5 that the Minister of Public Enterprises, Honourable Mr Pravin **Gordhan** ("Mr **Gordhan**"), and former SARS Commissioner Mr Oupa Magashula ("Mr **Magashula**") and former Deputy SARS Commissioner Ivan Pillay ("Mr **Pillay**") had brought various applications with respect to the PP Report and I followed these on livestream on the internet and on television to the extent they were being broadcast to the public;
- 7.6 that central to the findings in Report No. 36 of 2019/20 dated 5 July 2019 is an investigative unit that was established within SARS in relation to which Ms Mkhwebane, in her capacity as PP, made numerous adverse findings, conclusions and recommendations;
- 7.7 that this unit, existed between February 2007 and October 2014 when it was disbanded by the then SARS Commissioner, Mr Tom Moyane ("Mr **Moyane**") and at its height was staffed by no more than twenty-odd officials of SARS and by end 2009 with seven officials and by the time it was shut down consisted of a mere six SARS employees;
- 7.8 that this investigative unit was also known at various times as the "Special Projects Unit" ("**SPU**"), the "National Research Group" ("**NRG**") and the "High Risk Investigations Unit" ("**HRIU**");

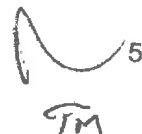

3
TM

- 7.9 that even before Report No. 36 of 2019/20 dated 5 July 2019, Ms Mkhwebane held the clear view that this unit, regardless of its official names at SARS, was in her view a "rogue unit" and she referred to it as "the rogue unit" publicly in her capacity as PP at various times;
- 7.10 that I had the most detailed intimate knowledge of the unit of anybody and am clearly the person most capable of confirming the accuracy and factual position relating to the unit as I was responsible for all management functions of the unit at all times from April 2008 until its closure in October 2014, except for a period of nine months in 2012 when I was assigned as advisor in the office of the Chief Officer: Tax and Customs Enforcement Investigations;
- 7.11 that I had approached the Office of the PP in 2016 already as a whistleblower in this regard of own will. To this extent, and after a daylong interview, two emails were sent to the office of the PP by me from my personal email address in 2016 at the request of the PP staff involved at the time in answer to questions posed to me. Appended to my emails were an array of documents relating specifically to, inter alia, efforts dating back to 2009, 2010 and 2014 to fraudulently brand the SARS investigative unit as a "rogue unit", planned efforts to "cause havoc" at SARS, targeted campaigns to discredit Mr Pillay, Mr Gordhan and me by way of a fake "dossier" titled "Project Snowman" and details of persons involved in various efforts of disrupting and capturing SARS. The PP acknowledged receipt of the emails and annexures on 24 August 2016;
- 7.12 In paragraph (x) of the Executive Summary to Report No. 36 of 2019/20 dated 5 July 2019 Ms Mkhwebane recorded that during the investigation

W 4
TM

process she "... also tried to subpoena information and documentation from Mr van Loggerenberg but to no avail as his last known residence has new occupants allegedly having relocated some years ago".

- 7.12.1 I pause to record:
- 7.12.2 Ms Mkhwebane had in her possession reams of evidence and documents already provided by me, including my contact details such as my personal email address and mobile phone number.
- 7.12.3 Secondly, the address appearing on the subpoena handed in by Ms Mkhwebane to the court as part of the Rule 53 records is non-existent. No confirmatory affidavits were provided by her in this regard.
- 7.12.4 Thirdly, despite communications received and acknowledged and responded to her, from my erstwhile attorneys (Webber Wentzel), she made no attempt to contact me or my erstwhile attorneys. I annex hereto "JVL3" and "JVL4" which makes up correspondence in this regard from which it is clear that Ms Mkhwebane was quite able to contact me if she so wished. The content also speaks to other aspects of her bias and conduct I deal with further herein.
- 7.12.5 Fourthly, my residential details have remained the same since 2010 and were easily accessible via any ordinary route Ms Mkhwebane had available to her as PP by virtue of her extensive investigative powers, such as, my phone number has been the same for over two decades and has been registered in my name, or alternatively from banks, or credit reports or any media house for that matter who had been

 5
TM

contacting me for many years, or even my former employer, SARS. I can think of a myriad of other easy ways in which she could have contacted me if she really wanted to.

7.13 that Report No. 36 of 2019/20 dated 5 July 2019 has since been reviewed and set aside by the Gauteng High Court, that a subsequent appeal by Ms Mkhwebane was denied by that court, as well as by the Supreme Court of Appeal and I believe the matter is now before the Constitutional Court;

7.13.1 In this regard, during these proceedings:

7.13.1.1 I filed a substantive affidavit in support of Mr Pillay's review application. I responded to every single one of the assertions made in the EFF's affidavit and set out a comprehensive rebuttal of the notion that the activities of the unit were rogue or unlawful in any conceivable respect.

7.13.1.2 I detailed my personal knowledge of many of the issues involved in Ms Mkhwebane's supposed "investigation", the history of the unit in question, and the matters that it dealt with. I further set out in detail the engagement I had with the office of the PP during August 2016 during which I was interviewed and detailed all documents sent to the office to which the receipt of these documents was acknowledged by the office of the PP on 24 August 2016. Neither Ms Mkhwebane nor the EFF challenged a single fact of my evidence before court in any manner or form and it thus stands uncontested.

W
SM

8 I resigned from SARS in February 2015 as a direct result of State Capture;

**WHAT I HOPE THE COMMITTEE WILL CONSIDER IN LIGHT OF THE CONDUCT
OF THE PP IN RELATION TO THE REPORT AND THE FACTS SET OUT ABOVE**

9 As a statutory prerequisite to hold office as PP, Ms Mkhwebane, is expressly required to be a fit and proper person at all times in executing her duties as PP.

10 Ms Mkhwebane as an officer of the Court and an admitted advocate, is expressly required to be a fit and proper person in the execution of her duties as PP.

10.1 For Ms Mkhwebane to have concluded her investigation in relation to the SARS unit, she would have had to be honest and factual. I cannot imagine even a very inexperienced investigator bestowed with the powers of the PP, to have taken a position before even concluding an investigation into the unit, that it was "rogue" as a *fait accompli*, and then announce this publicly at various times before she had even determined or established the facts. There was no way that she would have been able to conclude that investigation without having considered what I had already provided her office in 2016, in detail, and certainly not by having not interviewed me or asked me to respond to her in any manner on oath. Her claims not to have been able to contact me ring hollow. At best she displayed profound incompetence and lack of effort and elementary skills to conduct investigations and to do even the most basic thing to contact me, or at worst, she was deliberately dishonest and arguably may well have acted fraudulently by omission.

10.2 Even at the time, when I did have an opportunity to put facts up during the court proceedings for the first time post her issuance of her report, none of

 7
GM

these facts persuaded her to change her view at all. Instead, she simply did not respond to my evidence and has doggedly pursued her views ever since.

- 10.3 None of what I have described is conduct that can be considered fit and proper. I accept that persons make errors from time to time, even among the best of experts, but in the whole conspectus of events, it is very clear to me that Ms Mkhwebane made no effort to seek facts from the very person most capable of providing her with such in her investigation. When I did get an opportunity to do so after the fact, it still failed to move her in any manner or form.
- 11 Ms Mkhwebane as PP is required by our Constitution to be independent and impartial, and the Constitution demands that she exercises her powers 'without fear, favour or prejudice'. Those words are not mere material for rhetoric, as words of that kind are often used. The words mean what they say. Fulfilling their demands will call for courage at times, but it will always call for vigilance and conviction of purpose.
- 11.1 I believe I have made out a proper case that in my experience, Ms Mkhwebane failed to act without prejudice. Instead, she accepted unsubstantiated claims and wild accusations with absolutely no evidence whatsoever and from people she had never even interviewed or asked to go on oath, as if fact, and then failed to engage with me to seek my side of their claims. She also ignored what I had already provided her office years prior. Had she engaged me, she would have saved not only a lot of time, effort and money and whatever resources that had gone into the investigation and its aftermath, but justice would have triumphed and she would have known the

8
TM

truth from the proverbial horse's mouth. So would the nation have known. Ms Mkhwebane failed the tests of courage, vigilance and conviction of purpose completely.

- 12 The PP is a state institution supporting constitutional democracy, established in terms of Chapter 9 of the Constitution, 1996. The PP has the power to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice; to report on that conduct; and take appropriate remedial action. It is a legal precedent upon Ms Mkhwebane as PP that at least one feature of an investigation by her must always exist – because it is one that is universal and indispensable to an investigation of any kind – which is that the investigation must have been conducted with an open and enquiring mind. An investigation that is not conducted with an open and enquiring mind is no investigation at all. That state of mind is one that is open to all possibilities and reflects upon whether the truth has been told. It is not one that is unduly suspicious but it is also not one that is unduly believing. It asks whether the pieces that have been presented fit into place. If at first they do not, then it asks questions and seeks out information until they do. It is also not a state of mind that remains static. If the pieces remain out of place after further enquiry then it might progress to being a suspicious mind. And if the pieces still do not fit then it might progress to conviction that there is deceit. How it progresses will vary with the exigencies of the particular case. One question might lead to another, and that question to yet another, and so it might go on. But whatever the state of mind that is finally reached, it must always start out as one that is open and enquiring.

h
TM

- 12.1 Quite clearly, on the simple facts set out herein, the report issued was not as a result of an investigation because what Ms Mkhwebane did was not conducted with an open and enquiring mind.
- 12.2 Ms Mkwhebanbe had already referred to the unit as "rogue" in her public statements well before she had even concluded the matter. I think this needs no elaboration. It is clear that she had a very closed mind.
- 12.3 All notions of basic human rights and natural justice were simply cast aside by her.

ADDITIONAL COMMENTS

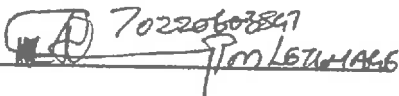
- 13 I have deliberately kept my affidavit very brief and to the point. If so required, I shall amplify and supplement it at any time with greater detail.
- 14 I have deliberately not expanded into the details and merits of the matters I have raised herein as these have all been well ventilated before various courts and those records are publicly available. Where I did so, I did so on oath. In the event that any of those records are required, I shall provide them upon request. In the event that I am required to expand on any of them, I shall do so upon request. I make this submission upon the presumption that the Committee and evidence leaders will have appraised themselves of those documents, records, evidence and facts as deemed necessary.
- 15 It will be remiss of me to not point out the irony in the fact that Ms Mkhwebane has been spending an awful lot of time, effort and taxpayer monies in order to ensure that she is afforded an opportunity to be heard and to be represented in this process. It stands a far cry from what she had bothered to afford me and many

others. She interviewed not one single member who was part of the unit over the years at any stage whatsoever. That alone speaks for itself.



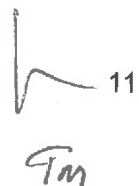
JOHANNES HENDRIKUS
VAN LOGGERENBERG

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit signed before me at Gardulu on this the 3rd day of JUNE 2022 and that the regulations contained in Government Notice No. 1258 of the 21st July 1972, as amended, have been complied with.


70220603847
J.M. LETWALLA

COMMISSIONER OF OATHS

SOUTH AFRICAN POLICE SERVICE
DARSBOROUGH
2022 -06- 03
COMMUNITY SERVICE CENTRE
SUID-AFRIKAANSE POLISDIENST


11
Gm