

Our Ref: G Makhathini/MAT14973
Your Ref:
Date: 09 June 2023

Dear Honourable Chairperson Dyantyi MP

By email: tngoma@parliament.gov.za
kvellem@parliament.gov.za

RE: DEMAND/REQUEST FOR YOUR VOLUNTARY RECUSAL FROM THE SECTION 194 COMMITTEE

1. As indicated our previous exchange of correspondence with you, we act for Adv Busisiwe Mkhwebane who is the Public Prosecutor of South Africa, in her personal capacity. You are also aware that the issue of her legal representation in the Committee and in her official capacity remains unresolved since the unilateral and illegal termination of the attorneys of her choice namely, HM Chaane Attorneys by PPSA and/or the State Attorney on 7 June 2023. The issue of our client's legal representation is, to your knowledge, also pending before the Constitutional Court in proceedings wherein a notice to oppose was filed on your behalf a few weeks ago.
2. You are also aware that you have been implicated in allegations of criminal conduct involving extortion, bribery and corruption in respect of your capacity as a member and/or the Chairperson of the section 194 Committee, made by the late Mrs Tina Joemat-Pettersson. These are contained, *inter alia* in WhatsApp conversations which have been provided to the Committee and audio recordings which have been provided to the police. In the WhatsApps you are referred to indirectly as "*one of them*", being a reference to you and Ms Pemmy Majodina, and in the audio recordings you are referred to directly as Richard Dyantyi whom Ms Joemat-Pettersson also describes as her "*guy*" and who has asked to be paid R200 000.00 to manipulate the outcome of the enquiry in favour of our client. Should it be deemed, necessary the relevant recordings will be played to the Committee to be considered together with the WhatsApps which are already in your possession.



3. Finally, you are also aware that the allegations of serious criminal conduct on your part and, among others, are a subject of two ongoing investigations by:
 - 3.1 the police and specifically the Hawks; and
 - 3.2 the Members Ethics Committee in Parliament.
4. It is against this background that in the past few days calls for your voluntary recusal from the Committee pending the outcome of such investigations have been made by our client and also by several members of the Committee including Honourable Holomisa, Honourable Zungula, Honourable Malema and Honourable Maotwe.
5. In your opening address on 7 June 2023, you indicated that our client “*or anyone*” must submit a written application for your recusal. Our client indicated that in the absence of legal representation in the Committee and the termination of her chosen attorneys’ mandate, she would obviously not have access to the required assistance. She has therefore approached us to advise her on what legal options are available to her.
6. In line with the legal advice we have given to her, we are instructed to inform you that:
 - 6.1 Even before there can be any need for a written application for your recusal you need to answer directly to the abovementioned several requests and/or demands for your voluntary recusal on the basis of allegations of criminality against you which make you unsuitable for the membership and/or Chairmanship of the Committee. In doing so you ought to rely on the following binding considerations:
 - (a) your conscience.
 - (b) the need to protect the integrity of the Committee and the Inquiry,
 - (c) the Constitution;
 - (d) the requirements of fairness in Rule 129AD2; and/or
 - (e) the underlying logic behind the step-aside rule of the African National Congress (ANC), the party by which you are deployed to Parliament in the first place, that those facing serious of corruption must step aside from the position of responsibility such as your office as Chairperson of the Section 194 Committee;



- 6.2 Should you step aside or recuse yourself voluntarily there will obviously be no need for a recusal application whether written or oral; and
- 6.3 Should you refuse to recuse yourself voluntarily our client demands that you furnish her with your formal reasons as soon as possible by no later than 17h00 on Monday 12 June 2023.
7. Depending on the content of such reasons our client reserves her right to approach a court of law on an urgent basis to declare you unfit Chair the proceedings pending the outcome of the criminal and parliamentary investigations.
8. For avoidance of any doubt and has been repeatedly articulated by our client and members of the Committee the required voluntary recusal on your part does not in any way constitute any admission of guilt on your part. That is an issue which is still being investigated. The demands are solely based on the need to protect the integrity of the process which you are chairing. In this regard we remind you of what was stated at paragraphs 25 and 26 of our client's letter to you dated 5 June 2023, namely:-
- "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 and that of Ms Joemat-Pettersson. Your statement that "no address will be permitted to occur before this Committee on this issue" is therefore inappropriate, to say the least."*
9. We look forward to your urgent response on or before the abovementioned deadline.



Yours faithfully,

(sent electronically, thus unsigned)

RMT Attorneys

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