
**AFFIDAVIT IN THE SECTION 194 INQUIRY INTO THE REMOVAL OF THE
PUBLIC PROTECTOR, ADV B MKHWEBANE**

I, the undersigned,

VUSSY SONNYBOY MAHLANGU

do hereby make oath and say that:

1. I am an adult male currently residing in Gauteng.
2. The contents of this affidavit are true and correct and fall within my personal knowledge, unless otherwise stated or clear from the context.
3. I was contacted by the evidence leaders and informed that there was a motion currently serving before Parliament and that in respect of one of the complaints under the heading Charge 4, I was named as a person who had intimidated, harassed and victimised a number of staff members whilst I was in the employ of the Public Protector South Africa ("PPSA") in the capacity of Chief Executive Officer ("CEO"). I was provided with a copy of an extensive record in excess of 10 000 pages which I have not fully traversed. The relevant allegations were pointed out to me and I agreed to meet with the evidence leaders. My position then was – and I made it clear to the evidence leaders at such meeting – that I was not prepared to appear before a Parliamentary Committee and give evidence in this matter.

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4. I do, however, make this affidavit for the purposes of clarifying the misconceptions that prevail, and in order to clear up misrepresentations that have been made in respect of myself and which have appeared in the public domain. I do so, though I have no wish to give evidence before a Parliamentary Committee. I will nevertheless by way of this affidavit provide information and answer any other questions as honestly as possible.

5. Let me at the outset say that I vehemently deny having intimidated, harassed or victimised any staff members whilst I was employed as the CEO at the PPSA, nor was I, as I am informed I am referred to, "the enforcer" of the Public Protector ("the PP"), Adv Busisiwe Mkhwebane ("Adv Mkhwebane"). It may also be appropriate for me at this juncture to point out that prior to my employment at the PPSA, I did not know Adv Mkhwebane.

A. BACKGROUND

6. I had previously been employed as the Deputy Director-General: Land Reform in the Department of Rural Development and Land Reform. This was so until 2016 when I faced allegations of misconduct. For the sake of transparency and openness and so that the context of my employment at the PPSA can be properly be elaborated upon, I attach the charges which I faced at the time, marked "VSM1".

7. Pursuant to the disciplinary hearing I was found guilty and I was summarily dismissed on the basis of having been found guilty of charges 1 to 5 as set out in the charge sheet, relating to the acquisition of the Bekendvlei Proactive Land Acquisition Strategy Project. I was not found guilty of corruption, nor

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was I found guilty of having misappropriated any funds, or having personally benefitted at all. I mention these specifically because in the narrative about me that is peddled either by the Public Servants Association (PSA) or the media, it is said that I was found guilty of such charges. This is not true.

8. I sought to have the findings of the disciplinary enquiry reviewed and set aside in the Labour Court. The review proceedings were filed on 12 April 2018. The proceedings were opposed.
9. There was an issue about the review having lapsed and an application had to be brought for the application to be reinstated. This was done and the Department's opposition thereto was unsuccessful. A copy of that judgment is annexed hereto, marked "VSM2". It was handed down on 12 August 2021, the application having been brought on 26 November 2020 already. There were hence delays, not of my doing, in having the review in the Labour Court determined. I am still awaiting a date for the hearing of these proceedings.

B. MY EMPLOYMENT AT THE PPSA

10. I applied in response to an advertisement for the position of CEO. As far as I was concerned, on the basis of my dismissal, I was not precluded under any statutory provision from being re-employed in the public service. The relevant statutory provision is annexed, marked "VSM3".
11. I was appointed as the CEO at the PPSA during the period 1 May 2018 to 31 January 2020, at which stage I resigned. My employment was initially for a few months at a time.

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12. However, I concluded a fixed-term contract of employment with the PP, dated 24 June 2019 for the position of CEO with effect from 1 August 2019 to 30 April 2023. In terms thereof, *inter alia*, I was for the duration of the agreement, as well as after the termination thereof, not to disclose or make public to any third party confidential information as defined in the agreement and to keep such secret and confidential.
13. As CEO I was tasked to be an Accounting Officer and to provide support to both the PP and the Deputy PP.
14. At the time there were various ongoing cases involving the PPSA in the courts. I had no involvement in litigation decisions or strategy. The Senior Investigator in the PP's private office at the time was Mr Tebogo Kekana ("*Mr Kekana*") (responsible for Quality Assurance) and the person who dealt with litigation matters was the Senior Manager: Legal Services Mr Nemasisi who later resigned and replaced by Mr Alfred Mhlongo.
15. A public furore erupted about my appointment at the PP's office because the circumstances of my dismissal from the Department of Rural Development and Land Reform were linked to the responsible Minister, Mr Gugile Nkwinti. The Sunday Times had picked up on the story and published it, after which it was picked up by political parties in particular the Democratic Alliance (DA) and the PP was requested to investigate the then Minister Nkwinti.
16. In her report the PP made adverse findings with regard to Minister Nkwinti's role in the Bekendvlei Proactive Land Acquisition Strategy Project. Minister Nkwinti later applied for a review of the PP's report in the North Gauteng High

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Court, and was unsuccessful. A copy of the judgement is attached marked "VSM3A"

17. However, I had made a full disclosure of what had occurred in my previous employment when I was interviewed for the position at the PPSA. I passed the competency assessment and I had the requisite qualifications to occupy the position as CEO. I did not know anybody on the interview panel, nor did I have any ties or connections with Adv Mkhwebane before I joined the PPSA.
18. I was aware that I required security clearance. I believed that it was a prerequisite for employment for certain positions in the public service and it was not uncommon for positions of director upwards to require a security clearance. I had previously had the requisite security clearance. The level of security requirements, to the best of my knowledge, depended on the hierarchy one would occupy in the organisation and I was informed that as CEO I was required to have top secret security clearance.
19. To the best of my recollection I was not refused security clearance. I was informed by the State Security Agency responsible for conducting security clearance investigation and issuing relevant clearance certificates, that the requisite security clearance certificate would not be issued to me until such time as I had resolved my labour dispute then pending against the Land Affairs Department at the Labour Court, regarding my dismissal. A copy of this letter is annexed marked "VSM4". For the sake of completeness I point out that up until today I have not received a set-down date for the matter to be heard in the Labour Court, and this leaves me in an invidious position in relation to

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employment at my rank in the public service. I have not been able to secure employment in the public service since I left the PPSA, I believe because of the pending Labour Court matter and the 'dark cloud' hanging over me as a result of that unresolved matter.

20. I was well aware that if the Labour Court dismissed my review application, then I would no longer be eligible to be employed at the PPSA if that meant my security clearance would not be granted. It was a condition of my employment that I would obtain such security clearance. There was no issue in relation thereto on my part.
21. In the PPSA I attended monthly Executive meetings where case management was discussed and every Executive Manager ("EM") came. I also attended the Dashboard meetings, which to the best of my recollection occurred monthly and which dealt with case management. The reason I was at these meetings was to provide administrative support and at the Executive meetings I would present on administrative matters. Legal Services would deal with legal matters. The COO would present on investigations and the CFO on financial and procurement matters.
22. With reference to the persons referred to in the complaint that is currently before this Committee,
23. In relation to Mr Samuel I point out the following:
- 23.1. The issues relating to Mr Samuel were brought to my attention. The PPSA was being sued for R350 000.00 in Limpopo as a

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consequence of an altercation which had occurred between a civilian and Mr Samuel.

- 23.2. To the best of my recollection, the information available to me at the time indicated that Mr Samuel had paid an admission of guilt fine for assault, in the amount of R2000.00 in the criminal proceedings that ensued as a result of the altercation. This was brought to the attention of the Executive (i.e., the PP, DPP and CEO) given that this was not conduct to be associated with the PPSA. As I recall, it was recommended that appropriate disciplinary steps be taken against Mr Samuel.
- 23.3. To the best of my recollection I was not apprised of any steps having previously been taken, or Mr Samuel's assault charge and conviction having been discussed and resolved with the previous PP and her Exco as alleged by Mr Samuels in his affidavit to the Speaker; and there was nothing put before me to suggest that the matter had already been dealt with by the relevant authorities in the PPSA.
- 23.4. I no longer have access to any documentation at the PPSA. I cannot currently independently verify this.
- 23.5. I do not recall having directly dealt with Mr Samuel in that, given the hierarchy in the office, it would have been dealt with by the then Acting COO, who was either Mr Stoffel Fourie ("*Mr Fourie*") or Acting CEO, Mrs Nthoriseng Motsisi ("*Mrs Motsisi*") or the newly appointed

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COO, Ms Basani Baloyi ("Ms Baloyi"). I cannot recall who was then in that position.

24. As far as the Manager: Security, Mr Baldwin Neshunzhi, was concerned, when steps were taken to put him on suspension, it related to the leakage of documentation or information received from the Office of the President which thereafter appeared in the media. After investigation it was found that no leak had taken place. After Mr Neshunzhi's return to the office, having been exonerated in the investigation, I briefed him on the outcome and he returned to his employment. There was nothing untoward or deliberate or personal in relation hereto. This leakage of documents was investigated by the Human Resources Department and not myself.
25. There was a further leak of documents from the PPSA in relation to the fact that I had not obtained security clearance from the SSA. This too was investigated by HR in conjunction with Legal Services, which obtained the services of a consultant to conduct the investigation. It was pursuant to this report that Mr Neshunzhi, who was found not to be at fault but lacked certain skills, was shifted from Security to Customer Services. He was not dismissed, nor did he earn less money.
26. With reference to the matters relating to Mr Kekana, I point out that by virtue of my position as CEO and given that the PP was a board member of the International Association of Ombudsman, when there was a sitting I was to be present together with the PP. The administrative process of obtaining the requisite travel authorisation was left in the hands of the PP's PA and Mine.

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In processing the travel authorisation, My PA erroneously sent the email to Mr Tebogo Kekana, who then publicised it as constituting fraud on the PPSA. It was not my doing as I was not completing the forms to obtain authorisation.

27. With reference to Mr Isaac Matlawe ("*Mr Matlawe*"), I did not know him prior to coming to the PPSA. He had read about my labour woes at my previous employment and pertinently raised the issue at a Staff meeting soon after my appointment. Mr Matlawe was clearly of the view that my appointment was irregular and he made it known at this meeting.
28. I did not charge Mr Matlawe with anything subsequent to this interaction. He came to be charged when there was a reason for him to be charged – for being complicit in the leakage of confidential documentation. As far as I was aware the trade union, the PSA, had initially indicated that they would assist him and subsequently declined to do so because, to the best of my recollection, it had been discovered that he had lied to them. As I recall, Mr Matlawe then left the employ of the PPSA before disciplinary proceedings could run to fruition. I cannot recall the specific dates involved.
29. The matters of Mr Kekana and Mr Matlawe were intertwined. Again, the actions taken against them were informed by external reports obtained by legal representatives engaged by the PPSA.
30. In relation to Ms Ponatshego Mogaladi, Mr Abongile Madiba and Ms Lesedi Sekele who are mentioned in the fourth complaint against the PP, this related to their negligence in respect of preparation of a Rule 53 record in the Financial Sector Conduct Authority (FSCA) matter involving Adv Tshidi, where they

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failed to acknowledge their culpability for the incomplete record. Again, the steps taken against them were consistent with appropriate labour standards. The dereliction that occurred in respect of the insufficient Rule 53 record caused huge embarrassment to the PPSA. As a result, the PPSA was unable to defend the review proceedings in that matter, and was advised by senior counsel that it had no prospects of success in doing so.

31. With specific reference to Ms Baloyi, she was employed with a probationary period of six months. A quarterly review process had taken place at eight months and not sixth months due to practicalities, as we were not able to meet prior thereto. She was not performing in her capacity as COO, which was apparent at the performance appraisal to determine whether her probation should be terminated and she should be employed permanently or whether her appointment should not be confirmed. The decision was taken that her appointment would not be renewed. The PP acted based on a recommendation made to her, as far as I can recall.
32. The foregoing was not of a personal nature and I did not intimidate, harass or victimise any of the aforementioned. I had no reason to do so, and I got no instructions from the PP to do so. The aforementioned matters were not related. It was, I suppose, pure coincidence that they occurred at around the same time period.

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**VUSSY SONNYBOY
MAHLANGU**

I certify that the above signature is the true signature of the deponent and that he has acknowledged that he knows and understands the contents of this affidavit which affidavit was signed and sworn to before me in my presence at Lyttelton on this 11 day of **JULY 2022**, in accordance with Government Notice No R1258 dated 21 July 1972, as amended by Government Notice No R1648 dated 19 August 1977, as further amended by Government Notice No R1428 dated 11 July 1980, and by Government Notice No R774 of 23 April 1982.

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