**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

**PARLIAMENTARY QUESTION NO: 1002**

**DATE OF QUESTION: 18 MARCH 2022**

**DATE OF SUBMISSION: 01 APRIL 2022**

**Mr W Horn (DA) to ask the Minister of Justice and Correctional Services:**

With reference to his reply to question 3 on 2 March 2022 that he occasionally approves the temporary recruitment of specialists by the National Prosecuting Authority (NPA), specifically persons with suitable qualifications and experience, in terms of section 38 of the NPA Act, Act 32 of 1998, (a) who are the persons with whom agreements in terms of section 38 of the NPA Act are currently in place and (b) what are the details of the specific cases in which the aforesaid persons have been engaged to perform duties and functions for the NPA?

**NW1249E**

**REPLY:**

1. The details of the persons with whom the National Prosecuting Authority (NPA) has entered into agreements in terms of section 38 of the NPA Act are as follows:
2. **Adv. Z Matebese, SC** has been appointed to prosecute in the matter of **State versus R Mkhwebane**, which is a perjury case against the Public Protector opened as per Hillbrow CAS 536/08/2019. The perjury charges are based on the adverse factual findings by the Constitutional Court relating to the honesty and integrity of the Public Protector as per *Public Protector v South African Reserve Bank (CCT 107/2018) 2019 (6) SA 253 (CC).* At the heart of the allegations against the accused, is the false statements she made regarding the purpose of the meeting she had with Presidency on 7 June 2017, and the discussions she had with the Presidency regarding the remedial action in her final report in respect of an investigation into loan funds made available by the South African Reserve Bank to an entity called Bankorp Ltd, which was later taken over by Absa Bank Ltd. The matter is of a high-profile nature and involved an important Chapter 9 institution.
3. **Adv. Nazir Cassim, SC, Adv. Sandra Freese and Av Thabile Ngubeni** have been appointed in respect of a High Court Case in Bloemfontein *re* ***State versus N Mokhesi and 15 Others* (Case Number 45/2021).** The accused, during pre-trial proceedings, gave the State notice of their intention to file certain motion applications on various issues, including but not limited to inter alia that the evidence before the Zondo Commission be excluded in the criminal trial, as well as an application pertaining to the applicability of sections 27 and 34 of the Prevention and Combating of Corrupt Activities Act 12 of 2004, and allegations in respect of the infringement of various rights of the accused. The accused referred to allegations of impropriety on the part of the State and National Prosecuting Authority (NPA), including Senior State Advocate De Nysschen and the investigation team. The aforementioned counsel had dealt with similar applications for the State. They were appointed to provide services for the duration of the criminal proceedings under the aforesaid case number and any other related matters and appeal processes that may arise out of the criminal proceedings against the accused.
4. **Adv. Izak Pansegrouw** has been appointed in respect of a High Court Case in Johannesburg regarding the **State v Sylla Moussa.** The case emanates from the former DSO where advocates James De Villiers and Pansegrouw were seized with the matter. Both have since resigned. The accused is a Guinean national who, during June 2006, was charged with sixteen (16) counts of fraud, alternatively, three (3) counts of theft and three (3) counts of money laundering in terms of the provisions of the Prevention of Organised Crime Act (POCA), Act 121 of 1998.

The prosecution of Mr Sylla Moussa is the second longest outstanding matter on the High Court roll in Johannesburg. The matter has been dragging for more than twelve (12) years due to various and incessant interlocutory applications brought by the accused. The Judge President of Gauteng, Honourable Justice Mlambo has already on numerous occasions expressed his concern and displeasure with the apparent problems finalising the matter. He has already allocated a specific Judge to case manage the matter.

This is a very complex fraud matter and voluminous in nature. The preamble of the indictment reflects the following: The accused was in control of two (2) accounts held by corporate entities with ABSA bank. The said accounts were labeled “credit accounts” and bore no-risk status, which meant that the accused could immediately make withdrawals against cheque deposits made into the account. Electronic transfers can only be made from such an account if sufficient funds exist in that account, even if only by way of cheque deposits. The accused allegedly conducted “*cross fire fraud*” which is described in the preamble to the indictment as follows:

1. No value cheques or cheques of insufficient value (“facilitation cheques”) would be deposited into the beneficiary bank account at ABSA and drawn against the drawer’s account at ABSA.
2. The lack of funds in the drawer’s account to support the amount depicted as per face value of the facilitation cheques, resulted in an artificial credit being created in the beneficiary bank account.
3. The drawing and deposit of the facilitation cheques would be recorded as debit and credit entries respectively. The balances and credits recorded on the respective bank statements of the beneficiary and drawer bank account would therefore not be representative of the genuine or underlying funds created by such transactions, but would be artificial and designed to mislead Absa into accepting that the accused or the corporate entities were conducting *bona fide* transactions or were involved in genuine and *bona fide* arm’s length business transactions while they were not.
4. **Adv. Wim Trengove, SC, Adv. Andrew Breitenbach, SC,Adv Hephzibah Rajah and Adv. Ncumisa Mayosi** were appointed in respect of***STATE VERSUS JACOB G ZUMA AND THALES SOUTH AFRICA (PTY) LTD (CASE NUMBER CCD 30/2018)*** in the KZN High Court*.* The accused (Mr. JG Zuma) had on the first day of the criminal trial on 17 May 2021, given the State formal notice of his intention to file a special plea in terms of section 106(1)(h) of the CPA and section 35(3) of the Constitution, Act 108 of 1996, wherein he would seek a recusal of the lead prosecutor, Adv. Billy Downer, SC. In the light of the accused attack under oath against Adv. Downer personally, the latter had to file an answer on behalf of the State under oath. Counsel were required to settle such an answer and to argue the matter before the criminal court, as Adv. Downer would be disqualified from doing so himself. A substantial part of these allegations in the accused affidavit were strikingly similar to the allegations which Zuma made in his permanent stay application previously before court. The full court had either found the allegations to be without foundation or struck out the scandalous and vexatious allegations, including those against Adv. Downer personally, in the permanent stay ruling handed down on 11 October 2019. The counsel previously engaged, namely: Adv. Wim Trengove, SC, Adv. Andrew Breitenbach, SC, Adv. Hephzibah Rajah and Adv. Ncumisa Mayosi, had all worked on the preparation, drafting and arguing of the permanent stay application against Mr Zuma. They accordingly had an in-depth knowledge of the history of this matter and the relevant arguments he advanced in his special plea.
5. **Adv. C.J Mouton SC, Adv. G Wolmarans and Adv. Chuma Mcoseli** were appointed in respect of**THE DIRECTOR OF PUBLIC PROSECUTIONS GRAHAMSTOWN VERSUS TIMOTHY OMOTOSO & OTHERS** in the Eastern Cape High Court*.*

The accused in the aforementioned matter stands before Court on the following charges:

1. **COUNT 1**

Managing an enterprise conducted though a pattern of racketeering activity (contravention of section 2 (1) (f) of the Prevention of Organised Crime Act 121 of 1998 as amended)

1. **COUNT 2**

Participating in the conduct of an enterprise through a pattern of racketeering activity (contravening section 2(1)(e) of the Prevention of Organised Crime Act 121 of 1998 as amended)

1. **COUNT 3, 5, 9, 14, 16, 20, 23, 26, 30, 33, 35, 38, 41, 45, 46, 48, 49, 51, 54, 56, 57, 60 and 62**

Trafficking in persons for sexual purposes (contravening section 71 (1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 as amended).

Alternatively, Involvement in Trafficking in persons for sexual purposes (contravening section 71(2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 as amended).

1. **COUNT 4, 7, 8, 11, 15, 18, 22, 25, 32, 37, 40, 43, 44, 52, 53 and 59**

Rape (contravening section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 as amended)

1. **COUNT 6, 10, 13, 17, 21, 24, 27, 28, 29, 31, 34, 36, 47, 50, 55, 58, 61 and 63**

Sexual assault (contravening section 5(1) of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 as amended)

On 28 April 2021, the Defence filed an application in the Eastern Cape High Court for an order to declare a “mistrial” in the matter. When the Defence brought the said application, it became apparent that the allegations levelled against the prosecution team were quite serious and it became impossible for the State’s advocates seized with the criminal prosecution to continue dealing with the application in Court. In the circumstances, an application was made to the Honourable Minister of Justice and Correctional Services to approve the appointment of **Adv.** **C.J Mouton SC, Adv. G Wolmarans and Adv. Chuma Mcoseli** in terms of section 38(1) of the NPA Act 32 of 1998, since a determination had already been made that the matter should be opposed. The aforesaid section 38 Counsels have thus been appointed on behalf of the State to appear and argue the “mistrial” application.

1. **THE STATE VERSUS CLIFFORD BISHOP AND OTHERS**

The accused in the aforesaid matter are being prosecuted on a charge of arson, two (2) counts of murder and two (2) counts of attempted murder. **Adv. Glenn Gregory Turner** is prosecuting the matter. Adv. Turner has been on contract as a Senior State Advocate stationed at the Office of the Director of Public Prosecutions (DPP), Grahamstown. He was a member of the NPA for approximately 40 years. When his contract with the NPA expired on 30 June 2021, Adv. Turner requested his supervisor to complete the aforesaid matter, which at that stage was partly heard, in order to avoid inconvenience and costs.

1. **THE STATE VERSUS XOLANI ZUNGU AND THREE (3) OTHERS**

**Adv. Greef** was a Senior State Advocate attached to the Organised Crime Component, Durban. The aforesaid officer retired from the NPA with effect from 1 April 2021. She however declared to her supervisor willingness to return to complete the aforesaid matter without remuneration. The trial has been proceeding since April 2019, and the matter could not be finalised by the time Adv. Greef retired due to Covid-19 crisis.

The DPP held a view that it is in the interest of justice and expedient for Adv. Greef to continue prosecuting the matter, as she has been involved in the matter since its inception, and was *au fair* with all the challenges involved in the matter. The appointment of another prosecutor to continue with the matter would have potentially delayed the matter further, and involved unwarranted costs to the NPA.

1. The table below provides details of specific cases the aforementioned persons have been engaged to perform duties and functions for the NPA:

| **Name of Supplier** | **Business Unit** | **Description of Service** | **Ministerial Approval date** | **Cost** |
| --- | --- | --- | --- | --- |
| Adv. Nazeer Ahmed Cassim, SC | ID | Estina Dairy Farm | 19 May 2020 | R3 000/h |
| Adv. Isak Zirk Pansegrouw | DPP Gauteng South | State v Sylla Moussa | 21 May 2020 | R1 800/h |
| Adv. Wendy Greeff | DPP KZN | State v Xolani Zungu and 3 others | 31 Mar 2021 | R0 |
| Adv. Zinzile Zandisile Matebese, SC | NPS | State v Busisiwe Mkhwebane | 13 Apr 2021 | R2 350/h |
| Adv. Glenn Gregory Turner | DPP Grahamstown | State v Clifford Bishop and 2 others | 06 Sep 2021 | R0 |
| Adv. Andrew M Breitenbach, SC | NPS | State v J Zuma and Thales South Africa | 24 May 2021 | R3 600/h |
| Adv. Ncumisa Mayosi | NPS | State v J Zuma and Thales South Africa | 24 May 2021 | R1 900/h |
| Adv. Hephzibah Rajah | NPS | State v J Zuma and Thales South Africa | 24 May 2021 | R2000/h |
| Adv. Wim Trengove | NPS | State v J Zuma and Thales South Africa | 24 May 2021 | R4 800/h |
| Adv. Christiaan Johannes Mouton, SC | DDPP Port Elizabeth | State v Timothy Omotoso and others | 31 May 2021 | R3 200/h |
| Adv. Chuma Emily Mcoseli | DDPP Port Elizabeth | State v Timothy Omotoso and others | 31 May 2021 | R600/h |
| Adv. G Wolmarans | DDPP Port Elizabeth | State v Timothy Omotoso and others | 31 May 2021 | R2 200/h |
| Adv. Nazeer Ahmed Cassim, SC | DPP Bloemfontein | State v N Mokhesi and 15 others (Asbestos) | 17 December 2021 |  |
| Adv. Sandra Freese | DPP Bloemfontein | State v N Mokhesi and 15 others (Asbestos) | 17 December 2021 |  |
| Adv. Thabile Ngubeni | DPP Bloemfontein | State v N Mokhesi and 15 others (Asbestos) | 17 December 2021 |  |