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**MINISTRY**

**JUSTICE AND CORRECTIONAL SERVICES**

**REPUBLIC OF SOUTH AFRICA**

**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

**PARLIAMENTARY QUESTION NO: 1005**

**DATE OF QUESTION: 24 MARCH 2023**

**DATE OF SUBMISSION: 11 APRIL 2023**

**Ms P Madokwe (EFF) to ask the Minister of Justice and Correctional Services:**

1. Whether he has been advised of the murder case of 31-year old Bassier van der Schyff, who was brutally stabbed 17 times by a friend the family had housed, only for the courts to release the perpetrator and say there is no case; if not, what is the position in this regard; if so,
2. Whether he intends to intervene and hold the magistrate and prosecutor who were involved accountable for their involvement in releasing the perpetrator without any prosecution; if not, why not; if so, what are the relevant details?

**NW1081E**

**REPLY:**

1. I have been informed by the National Prosecuting Authority that the 30-year-old deceased was stabbed and killed at his home in Athlone. When the matter was presented to the Prosecutor for enrollment, in respect of the merits of the matter, only the deceased’s mother’s statement had been filed in the police docket. The mother was not present when her son was stabbed and did not know what had led to the death of her son.

A criminal case may only be placed on the court roll if there is evidence under oath or affirmation upon which a successful prosecution can be based.

The Prosecutor held the view that there was insufficient evidence to enroll the matter. The accused was subsequently released pending the South African Police Service (SAPS) conducting further investigation in the matter.

The Investigating Officer has since filed additional statements that are circumstantial in nature but nevertheless point to the accused’s involvement in the offence. A lot of crucial investigation is however still outstanding. For example, the post-mortem examination report as to the cause of death and number of stab wounds sustained, the statements of the two (2) persons who were with the accused and deceased in the room at the time, and the accused’s version implying that he had acted in self-defense must still be investigated and filed in the docket.

As a result of the Investigating Officer filing additional statements, the matter will be enrolled pending further investigations that need to be finalised.

*2.*  No, I do not intend to intervene as I do not have such authority. As you are no doubt aware magistrates, as part of the judiciary authority, are independent and no person or organ of state may interfere with the functioning of the courts. The Magistrates Commission has the authority to investigate allegations of misconduct against a magistrate and the Honourable Member may approach the Commission in this regard. The National Prosecuting Authority must exercise its functions without fear, favour or prejudice and the National Director of Public Prosecutions may intervene in the prosecution process when policy directives are not complied with, or may review a decision to prosecute or not to prosecute after following the procedure provided for in section 179 in the Constitution of the Republic of South Africa, 1996.

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