



EXHIBIT Y 11

**TERENCE JOHN
JOUBERT**



**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

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Judicial Commission of Inquiry into Allegations of State Capture, Corruption and
Fraud in the Public Sector including Organs of State

AFFIDAVIT

I, the undersigned,

TERENCE JOHN JOUBERT

do hereby state under oath that:

1. All facts stated herein are, unless the context indicates otherwise, within my own personal knowledge and are to the best of my belief both true and correct.
2. I am an adult male 51years old with I.D no. 680728 5526 085, and residing at 32 Roosevelt Road, Padfield Park, Pinetown, 3610 with telephone number (031) 3345095, with cell number 076 596 6332. I am employed as a Risk Specialist for the National Prosecuting Authority of South Africa, with offices situated on the 1st Floor, Southern Life Building at 88 Field Street, Durban, 4001.
3. The purpose of this affidavit is to confirm my role and to give clarity on a number of issues in relation to the recording of a telephonic conversation between myself and Colonel Welcome Mhlongo, as well as the confirmation of affidavits submitted in this regard.
- 3.1 There is quite a number of incidents that have transpired about these documents and the recording and I would, in this affidavit, seek to provide



detailed clarity on how they came to being and all that happened thereafter.

This I would provide at the end of my affidavit.

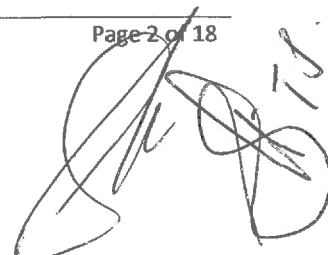
3.2 I would like to seek pardon herein on the matter of dates as I do not have actual dates except for those appearing in the documents but my recollection of all the events remain intact.

4. On 24 March 2020, I was approached by Mr Groenewald, an investigator at the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (**"The Commission"**), who presented me with a number of documents and information requesting clarity in regard to them.

4.1 An affidavit, purportedly deposed to me on 25 November 2013 which was Commissioned by Captain Edward Zuma (**"Captain Zuma"**), attached hereto marked **Annexure "TJJ1."** In this regard I comment as follows.

4.1.1 I confirm that I am the author and deponent of this affidavit. I

drafted the affidavit on my laptop computer containing facts within my personal knowledge at the time and thereafter, I approached a colleague, Captain Edward Zuma (**"Captain Zuma"**) who I know well, as being a Captain in the South African Police Service (**"SAPS"**) and employed at the Directorate for Priority Crimes Investigations (the **"DPCI"**), KwaZulu Natal. At that time, he occupied an office on the second Floor, Southern Life Building, 88 Field Street in Durban.



4.1.2 I specifically approached Captain Zuma as the statement that I had prepared was to be Commissioned by a Commissioner of Oaths, and Captain Zuma is by virtue of his appointment, a Commissioner of Oaths.

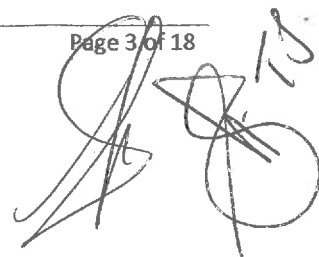
4.1.3 The affidavit was duly sworn to, by me, before Captain Zuma who correctly administered the Oath, and both he and I initialled each page of the affidavit and I signed the affidavit as the deponent, and he as the Commissioner of Oaths.

4.1.4 I confirm the accuracy and correctness of the facts contained in this affidavit in all respects, as these facts were within my personal knowledge.

4.1.5 As I have referred to in 3.1 above I would deal with the issue of the affidavits substantively below.

4.2 An email transmission receipt from myself to mxolisin@telkomsa.net, dated 25 November 2013, attached hereto marked **Annexure "TJJ2."**

4.2.1 Directly after the affidavit had been commissioned, I returned to my office where I scanned the affidavit to my computer at 03:40 PM. From there I emailed the affidavit at 03:55 PM from my computer and email address, to the National Director of Public Prosecutions ("**NDPP**") at the time, Mr Mxolisi Nxasana ("**Mr Nxasana**");

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4.2.2 I copied in Advocate Thulani TC Duma ("**Advocate Duma**") who at that stage was an Advocate in the employment of the NPA, stationed at MVG Building, in Pretoria, Head Office, on the email;

4.2.3 I confirm from the correctness of the transmission receipt as well as the content contained therein.

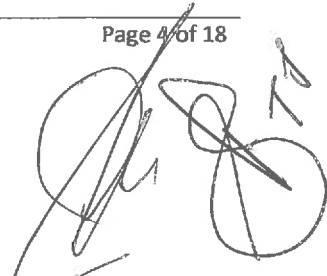
4.3 Transcripts of the audio recording between Colonel WS Mhlongo and I, attached hereto marked **Annexure "TJJ3."**

4.3.1 I have read the transcripts together with listening to the sound clip of the recoding between myself and Colonel WS Mhlongo and confirm that, where audible, this does not capture the core of what we were talking about.

4.3.2 This I do not attribute to anybody but I can only assume that the transcribers made the transcription without being sure as to who was talking to whom in the recording.

4.3.3 When I began the recording of our conversation Colonel Mhlongo had just received a phone call and he was responding to it and that was when I had the opportunity to take my recording device from a drawer and put it under the newspaper on the table.

4.3.4 As a result most of the conversation that starts the transcript are things that I do not know but were part of his conversation with another person on the other end of his line.

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4.3.5 It is unfortunate that I no longer have the copy of the recording but I believe that the Chairperson does have a copy of it and if it could be replayed I could assist in identifying the conversation between the Colonel and myself and that he had with the two callers that called during our conversation.

4.4 An affidavit deposed to by Queen Ncamisile Mhlongo to which reference has been made, I have the following to say:

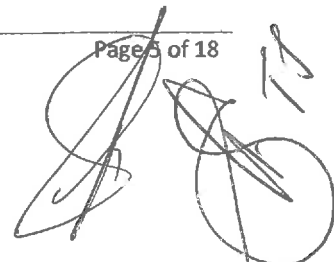
4.4.1 A reference, during our conversation with Advocate Groenewald, was made to an affidavit by one Queen Mhlongo and I have not yet seen this affidavit.

4.4.2 In our discussion on the subject of her affidavit we requested it and he said he would establish if he can give us a copy thereof and that we will communicate such in due course.

4.4.3 In the communication that we have had with Advocate Nicholson and in exchange of documents that we requested it appears on the list of the attachments but was never actually attached.

4.4.4 I therefore believe that it would be imprudent to comment on her affidavit having not seen it but I believe that the Commission will be able to provide me with same in order to deal with what is required of me as far as it is concerned.

4.4.5 I confirm that I know Queen Mhlongo, that she is a special Investigator attached to the Asset Forfeiture Unit, situated on the

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second Floor, Southern Life Building, 88 Field street in
Durban

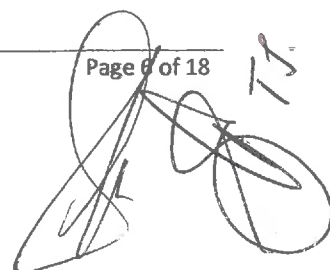
4.5 An affidavit deposed to by Mr Mxolisi Sandile Oliver Nxasana, before the Commission, dated 11 June 2019, attached hereto marked **Annexure "TJJ4."**

4.5.1 My attention was drawn, in particular, to pages 7 and 8 of Mr Nxasana's affidavit.

4.5.2 I confirm the contents of the affidavit where it is made in respect facts to which I have personal knowledge of, and in particular, paragraphs; 33 to 37 on pages 7 and 8 of the 28-page affidavit of Mr Nxasana but this excludes the contents of paragraph 36.3.

4.5.3 The contents of this paragraph does not reflect the contents of my affidavit as it appears in page 3 of my affidavit dated 25 November 2013, to which Mr. Nxasana is referring to, in that it was Colonel Mhlongo who said Mr. Nxasana does not like Adv. Jiba and Adv. Mrwebi and that he was sent by Adv. Jiba, as she was convinced that "this guy" (Mr. Nxasana) is not the right guy for the job and we should try and find something on him as they had done with Mr. Gumede.

4.5.4 That above is to explain that Adv. Mrwebi had nothing to do with the plot I recorded in my conversation with Colonel Mhlongo but was only mentioned as one person that Mr. Nxasana did not like.



4.6 A copy of the transcript of Mr Nxasana's evidence before the Commission on 19 August 2019, attached hereto marked **Annexure "TJJ5."**

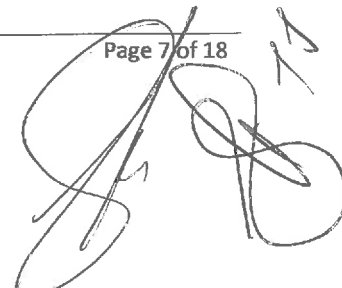
4.6.1 I confirm the correctness of the evidence in respect of where it relates to myself and my interaction with Colonel WS Mhlongo, and later between Mr Nxasana and I.

4.7 I am informed that Colonel Mhlongo has submitted an application to the Commission to cross question General Booyesen and Mr Nxasana. In his application Colonel Mhlongo has attached as annexures the affidavit now attached to my current affidavit as hereto marked **Annexure "TJJ1".**

4.8 He has further attached an affidavit, purportedly deposed to me on 1 February 2016, which was Commissioned by Warrant Officer Siphelele Patrick Magwaza (**"Warrant Officer Magwaza"**), attached hereto marked **Annexure "TJJ6."**

4.8.1 I note from the supporting documentation, allegedly annexed to his application to the Commission, by Colonel Mhlongo, and in particular from his affidavit dated 9 May 2019, from paragraph 7.2 to 11.2.9 where it concerns me, Colonel Mhlongo has made certain assumptions.

4.8.2 Without attending to the assumptions as made by Colonel Mhlongo in rebuttal of allegations by Colonel Booyesen on his activities in the employ of the NPA, as well as (in 11.2) his

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rebuttal of any involvement or orchestration of a plot to remove Mr. Nxasana as the NDPP, I have made reference in 3.1 above that i would deal with the issue of the two affidavits and since his affidavits seeks reference to them both I would deal with his affidavit at the same time with the affidavits, below.

4.8.3 I take note of paragraph 10 where Colonel Mhlongo states that:

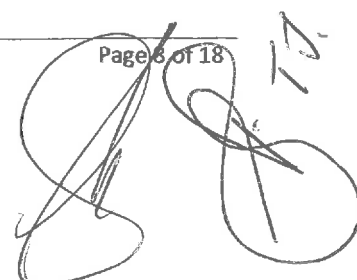
"10. I submit further that General Booysen's reliance on the alleged affidavit of Terrence John Joubert in tarnishing the Image of adv, Mxolisi Nxasana is questionable, since, the alleged deponent went public to dissociate himself from the affidavit Annexed and referred to as Annexure JWB2 by General Booysen in his statement".

4.8.4 This affidavit referred to by General Booysen (Annexure JWB2) is the attached to my current affidavit as hereto marked **Annexure "TJJ 1"**.

4.8.5 I take further note that, in his affidavit Colonel Mhlongo states further:

"11.2 PARTICIPATION IN FINDING DIRT AGAINST Mxolisi NXASANA

11.2.1 The source for grounding allegations of participation In finding dirt against Adv. Mxolisi Nxasana is the alleged affidavit by Terrence John Joubert



11.2.2 Terrence Joubert has denied any knowledge or association with the alleged affidavit set forth by General Booyesen in his statement. I attach herewith Annexure AA2 as confirmation to the effect that Terrence John Joubert rejected being the author and deponent of the alleged affidavit as alleged by General Booyesen.

11.2.3 The attached Annexure AA2 is date stamped 1st February 2016 and counters the alleged affidavit referred to by General Booyesen statement titled Annexure JWB2 and deemed to be deposed of on the 25th Nov 2013

11.2.4 The affidavit I refer to as Annexure AA2 is in Public Domain and General Booyesen should have known about it as it was published in both Sunday times and City press

11.2.5 I therefore deny participating in any manner in the persecution of adv. Mxolisi Nxasana

11.2.6 In paragraph 4 of attached Annexure AA2, John Joubert makes it clear that he denies any knowledge of the alleged instruction from anybody, including Jiba directing him to investigate anybody outside the scope of his duties

11.2.7 Terrence John Joubert concludes his Affidavit in paragraph 4 by stating that "the Information contained in the affidavit is fabricated"

11.2.8 I submit therefore that Joubert refers to General Booyesen's Annexure JWB2 as fabricated and calculated to mislead the Commission

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11.2.9 *The gist of Joubert 's Affidavit set out as AnnexureAA2 Implies that General Booysen's acquired copy of statement alleged to be that of John Joubert or Annexure JWB2 has no weight as evidence to the allegation In support of adv. Mxolisi Nxasana's persecution but meant to tarnish my image In various platforms and to mislead the commission"*

4.8.6 My comment herein shall be provided below.

4.9 I have also had sight of an affidavit submitted to the Commission dated 2 April 2019 deposed to by General Booysen where at paragraph 45 it is stated:

4.9.1 *"...Mhlongo was later implicated by Advocate Mxolisi Nxasana for attempting to find dirt on Nxasana at the behest of Advocate Nomgcobo Jiba. This was when Nxasana had succeeded Adv. Jiba as the National Director of Public prosecutions. I acquired a copy of the statement of Mr. Terrence John Joubert, a Risk Specialist contracted to the office of the NPA, which confirms this. A copy of Joubert's statement is attached "JWB2"*

4.10 The contents of paragraph 45 in Colonel Booysen's statement reflect to the recorded conversation between me and Colonel Mhlongo as well as the contents of my affidavit dated the 25th of November 2013. Affidavit of Colonel Booysen attached and marked "TJJ7"

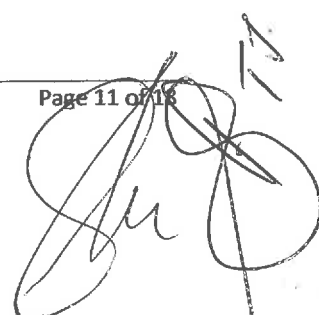
4.11 Though it is not clear how he acquired a copy of my affidavit as it was document carrying confidential information that was shared between

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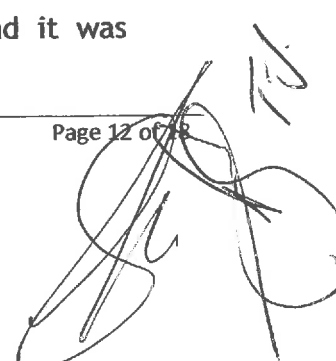
me, the Advisor to the NDPP and the NDPP himself. Notwithstanding, I confirm that his reflection to the content of my affidavit are indeed true.

5. THE RECORDING AND THE AFFIDAVIT DATED THE 25TH OF NOVEMBER 2013

- 5.1 As I have referred to in paragraph 2 above that I am employed by the National Prosecuting Authority as a Risk Specialist, my work focuses on the risks that ensue either to the work of the Directorate or the Risks that are within the Directorate itself, in operations, institutional integrity and all that can be associated with the risks inherent to the institution.
- 5.2 In the performance of my duties I am bound by secrecy as it is provided for in terms of Section 30 of the National Prosecuting Authority Act of 1998 ('the Act') and this bind provides no exception in its application to my work as an employee of the institution established in terms of Section 7 (1) of the Act.
- 5.3 I received a call from Advocate Knox Mollele (Adv. Mollele), the Special Director, who told me that he had received a phone call from one Colonel Mhlongo who said he was calling from one of the offices of the ANC (which he did not mention). I recognised and know Colonel Mhlongo as he was seconded from the SAPS to join the Directorate on specific tasks.
- 5.4 Adv Mollele told me that Colonel Mhlongo had asked him if he could assist (to facilitate vanishing) in a matter that was involving one Mr. Bobby Motaung who was somehow entangled in investigations and his involvement in the building of one of the Stadiums that were built in preparation of the 2010 World Cup. This matter apparently was indeed an existing investigation but it had nothing to with Adv Mollele's office.
- 5.5 Unsettled by this phone call Adv Mollele then called me and told me the story and asked me to speak to Colonel Mhlongo and advise him that we do not do things of this nature in our line of work and this could land him in deep trouble both with the office and the law.



- 5.6 It was after this phone call that I called Colonel Mhlongo to my office to address him on this issue and to warn him not to ever try to do these unethical interventions in ongoing investigations as this tarnishes the image and the integrity of the Directorate.
- 5.7 He came to my office and I communicated what I wanted to tell him and he confirmed to have understood what I was saying. Immediately after we had finished he then started a new topic which began with the new NDPP. I took a silent shock on the new subject and whilst I was trying to listen to what he was saying his phone rang. It was then when I decided that let me make a recording of whatever he is going to say because I could feel that his would be implicative in more than one ways.
- 5.8 Whilst he was on the phone I could reach my recording device in my desk, activated recording and I put it under the newspaper that was on the desk. When he finished with his phone call he then proceeded with what he wanted to say and, without elaborating, that is the contents of the recording.
- 5.9 After that I then contacted Advocate Thulani Duma (Adv Duma), who at the time was the advisor to the new NDPP Mr. Mxolisi Nxasana. I told him of what had transpired and that apart from the discussion that I had with Col Mhlongo I had also recorded our discussion.
- 5.10 During that week or the following day after contacting Adv Duma I was due to do some work at the Head Office in Pretoria (VGM Building) and Adv Duma advised that I should bring the recording with me and come see him in his office. I did as he requested and we both listened to the recording in his office. He was shocked by what he heard both in our conversation with Colonel Mhlongo and the conversations that he had in one of the phone calls that he received whilst he was in my office.
- 5.11 I left him with the copy of the recording and on the 25th of November 2013 he called me and asked me to write an affidavit in support of the information in the recording. I then drafted the affidavit and it was

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commissioned by Captain Zuma on the 25th of November 2013, and I transmitted it on the same day. (i.e. "TJJ1")

- 5.12 In our institutional operations we have what we call the Integrity Management Unit (IMU) which looks into matters and issues of integrity of the institutional operations and the behavioural integrity of all employees in general.
- 5.13 When I encountered what Colonel Mhlongo brought to my office it immediately fell into the territory of my work in that it posed risk to the NDPP but, in a more serious manner, it reflected on the issue of institutional integrity as it also reflected to unethical conduct that has been successfully undertaken against Mr. Gumede who was also a candidate to the position of the NDPP.
- 5.14 This called for the immediate attention of the IMU and the quickest way for it to get to the attention of the head of the IMU was to take it to the highest office, i.e. the office of the advisor to the NDPP. That is the primary reason why I communicated all this to the office of Adv Duma who was going to relate it to the office of the NDPP.
- 5.15 To my surprise and dismay I never heard anything of this matter, the affidavit or the recording either from the office of the advisor to the NDPP, the office of the NDPP or the IMU. The dismay was due to the fact that in this whole scenario I could see an evident institutional abating taking place and the silence to the information I had provided was nothing less than encouraging this to proceed in other fronts.
- 5.16 In giving attention to the affidavit of Colonel Mhlongo in paragraph 10 and 11.2.1 I would want to say the contents are both opportunistic and fallacious in that the reliance of Mr. Nxasana and Colonel Booysen are not misguided but are rather relying to the true state of events as they appear in my affidavit and can be listened to in the recording of our conversation. It is clear that he relies on the second affidavit (which is purported to be nullifying the first affidavit) and I am going to deal with

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that affidavit herein below but the most important part of it all is that their reliance to my affidavit dated 25.11.2013 is reliance to what actually transpired.

6. THE SECOND AFFIDAVIT DATED THE 1ST OF FEBRUARY 2016. i.e. "TJJ6"

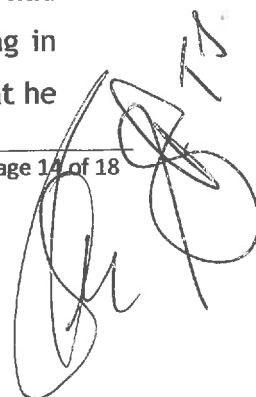
6.1 I understand that this part of explaining the second affidavit is somehow self incriminatory but I believe that to assist the work of the Commission to give due credence to other witnesses relying on my first affidavit is more important even though I have my reason of why and how this affidavit came to being.

6.2 The deafening silence on the first affidavit and the recording had overwhelmed me and passed and it was after a long time that I heard a reference to the affidavit. That was when I received a phone call from a journalist who told me that he was in possession of an affidavit that I had attested to and wanted me to confirm its contents. I asked where this affidavit came from and he said it was given to him by Advocate Willie Hofmeyer (Adv Hofmeyer).

6.3 On this response I took a first shock on the fact that I never gave the affidavit to Adv Hofmeyer and secondly, even if I had given it to him this was confidential institutional information and cannot be handed over to journalists under no circumstances.

6.4 A lot of things came into my mind about the whole situation, i.e. the silence by the NDPP after they received my affidavit, the non reaction by the IMU if the issue ever got to their attention and the overall silence as if nothing happened in my office on that day with Colonel Mhlongo.

6.5 As I have mentioned earlier that I know and understand the importance, the criticality and fragility of my work within the institution and that in all my operations and engagements I am bound by secrecy and that secrecy, in my standards, override a number of ordinary situations. I had to make the decision with the inquisitive journalist who was insisting in that I should make a statement of whether I know of this affidavit that he

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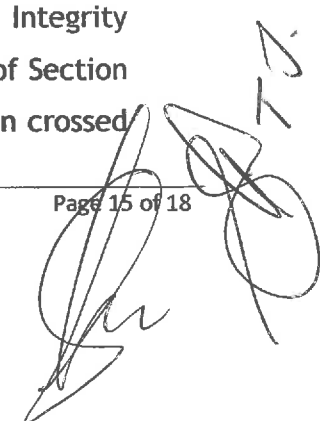
got from Adv Hofmeyer and if not I should rebut same in writing. There was no way that I would give him satisfaction of the truth as this would have had far reaching consequence for the institution.

6.6 During this time there were lots of fights within the institution amongst the heads of the institution. The institution was divided into some kind of warring camps where there was Adv Jiba and her team on the other end and Adv Hofmeyer and his team on the other end. This war ended up in the Mokgoro commission where an inquiry into Jiba and Mrwebi's fitness to hold office was the principal issue. It was in this Commission that Adv Hofmeyer presented my affidavit as evidence of Adv Jiba's unfit to hold office.

6.7 It was only then that I understood the silence after I had given the highest office the information on the deteriorating institution as perpetrated by the heads of the institution that I did not give them the information that they were willing or planning to give to the Integrity Management Unit but they took it for their own ammunition to fight their wars on the powers they all have over the institution. It was clear that the information that I had given them was only good for their personal use not for the purpose that I, as a Risk specialist of the Institution, had provided them with for.

6.8 I had to make a decision. The pressure was mounting and the questions were piling up, the print media was running with numerous stories and different allegations and my name was in all of them either as a conduit or an information peddler in all these warring camps and their different fighting platforms.

6.9 The fact that was more grinding to my considerations was that when I gave the recording and attested to the affidavit immediately the whole situation fell under the provisions of Section 27 of the Act and understanding that my operations within the institution fall under the persons referred to in Section 7.4 of the act (including the Integrity Management Unit) I knew that I am sworn into secrecy in terms of Section 30(1) (a-c) of the Act. Though it was clear that this line has been crossed

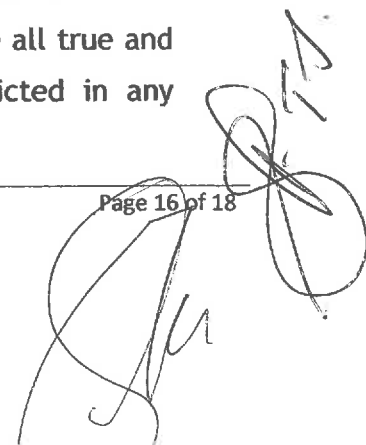
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by my superiors I was not willing to do the same as well. It was clear to me that I have been used to facilitate their sparring and whoever held my card was gaining ground to wherever they were heading.

6.10 It was under the above mentioned situations of pressure and ongoing pestering from all corners of media frames that I took a decision to depose to the second affidavit dated the 1st of February 2016. I knew that I was sacrificing the true and correct information by this affidavit but in my weighing of all the facts and circumstances the only way out was to perjure myself, first not to give journalist the satisfaction they wanted to authenticate from my first affidavit (as the information therein was extremely sensitive) and secondly to preserve the secrecy I am sworn to in terms of Section 30 (1) (a-c) of the Act as the information I had shared already fell under Section 27 of the Act and within the operations of the Directorate.

6.11 I knew that perjury is an offence and that I had committed it by attesting to the second affidavit. Though this affidavit is not entirely untrue, i.e. I really did not give the first affidavit to Adv Hofmeyer nor did I have any communications with him on the issue of the crime that was committed or about to be committed and unethical conduct of Colonel Mhlongo to the operations and integrity of the Directorate, in particular to the incumbent of the office of the NDPP, but I hereby admit, unreservedly that the second affidavit is not true in its contents and that the first affidavit is true and its contents, as supported by the recording, remains the truth of what I attested to on the 25th of November 2013.

6.12 It is on the basis of the above averments that I have made about the second affidavit that I have mentioned in paragraph 5.16 that the contents of the affidavit of Colonel Mhlongo, in particular paragraph 10 and 11.2.1, are both opportunistic and fallacious and I wish to state firmly that the allegations made against him relying in the contents of the affidavit that I attested to on the 25th of November 2013 are all true and correct and should not be viewed to have been contradicted in any manner by my second affidavit as it is untrue.

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- 6.13 I acknowledge that this admission to perjury that I had to commit for the reason I have set forth is not healthy for everything that I represent but the importance of the work of the Commission have a room in my conscience but I have a thorny concern which I have not been able to reconcile from the date I met with Adv Groenewald.
- 6.14 On the 24th of March when we met with Adv Groenewald at the offices of the NPA in Durban there was also a gentlemen (one Captain Ncwada) whom we met with before Adv Groenewald who came with a docket from Silverton where he was coming to ask to take my warning statement for a case of perjury on the two affidavits. This I did not discuss with Adv Groenewald and I did not discuss with him either (Ncwada) that I was meeting Adv Groenewald from the Commission pertaining the same affidavits but it became a conundrum in my thoughts on what are the new intentions and whose intentions are with these affidavits now. But I believe the work of the Commission is not entangled into all these intertwined sparring of power mongers and that is why it became no weight to provide the clarity that I have provided about the affidavits, including self incrimination.

I know and understand the contents of this declaration.

I have no objection to taking the prescribed oath.

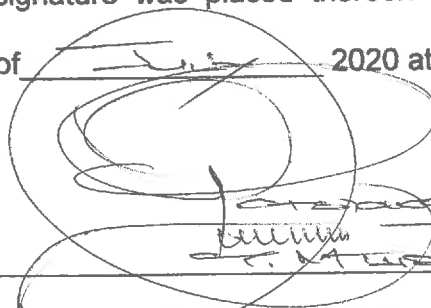
I consider the prescribed oath to be binding on my conscience.



TERENCE JOHN JOUBERT

I certify that the deponent has acknowledged that he knows and understands the contents of this declaration, which was sworn to before me and the deponent's

signature was placed thereon in my presence at Durban on this the 24 day
of July 2020 at 13 h 50.


T. MTHEMBU

COMMISSIONER OF OATHS:

FULL NAMES: T. MTHEMBU

DESIGNATION: D/O

AREA: MONTCLAIR

ADDRESS: 90 ROLAND
CHAMPAIN DRIVE
MONTCLAIR



Annexure “TJJ1”



AFFIDAVIT

I, the undersigned,

TERENCE JOHN JOUBERT,
States under oath in English:

1.

I am an adult male 45years old with I.D no. 680728 5526 085, and residing at 32 Roosevelt Road, Padfield Park, Pinetown, 3610 with telephone number (031) 3345095, with cell number 0765966332 and I am employed as a Risk Specialist for the National Prosecuting Authority of SA, 88 Field Street, 3RD Floor, Southern Life Building, Durban, 4001.

2.

I hereby make oath and say that the facts deposed to herein are within my own personal knowledge and belief unless otherwise stated and are true and correct.

3.

On the 2013-09-18, I was on duty and I was supposed to fetch Adv. Jiba from the Ushaka International Airport. After making the arrangements I got a call from Adv. Jiba's secretary to say that she would be fetched by Col. Mhlongo on instructions from the DPP-KZN. Col. Mhlongo is currently seconded to NPA's Missing Person's Unit, that is headed by Debra Quinn in the province and by Shawn Abrahams at VGM. Their job is to assist members of the NPA to obtain information by interviewing witnesses to conclude their investigations. Shortly after the meeting between Adv. Jiba and Col Mhlongo, he (Col. Mhlongo) came to me in my office and told me that the new guy (referring to the new NDPP Mr. Nxasana), does not like Adv. Jiba and Adv. Mrwebi. He is aware that I do have a great relationship with Adv. Mrwebi and he was playing on my emotions. I asked why he thought so, and he said that he was sent by Jiba, as she is convinced that this guy is not the right person for the job and that we should try and find something on him as they did against Mr. Gumede.

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AFFIDAVIT

4.

Mr. Gumede was the first person that we had heard about who would have been appointed the NDPP. The DPP had then insisted that Adv. Makhosi (prosecutor) make a statement against Mr. Gumede concerning the manner in which he (Mr. Gumede) had ill-treated her. This incident gave us indications as to the kind of people we were dealing with and to what lengths these people would go to get their way. Col. Mhlongo was instrumental in mobilizing people to gang up against Mr. Gumede.

5.

I then told him that this would be playing with fire as we are only small fries and when elephants fight the grass suffers was my comment to his suggestion. Col. Mhlongo assured me that their efforts would not be in vain as Jiba had said if this man (Mr. Nxasana) is removed, then she would be appointed again. The plan was not whether Mr. Nxasana is guilty but the mere fact that they wanted to embarrass him and insist that he be removed.

6.

On the 18th November 2013 we (Col. Mhlongo and I) had another meeting, but this time to discuss the fact that there are two unknown police officials occupying an office next to the DPP. When I raised this with the DPP, my executive manager, Mr. Ramahana flew down to Durban to inform me that the DPP complained about the manner in which I handled the issue of the police officials. I should leave those members as they are, and I should not ask too many questions. The police officials are said to be here to protect the DPP, but this is done without any TRA (Threat Risk Assessment) as per the security policy. We have requested secondment letters from SAPS but to date we have not received any correspondence from SAPS.

7.

Col Mhlongo then informed me that I should not worry about these two members as they were brought to work on the project against the NDPP. They went to Umlazi SAPS where they found people that could implicate Mr. Nxasana in a murder case. This case apparently happened in 1985/6 and his mother (who is a teacher) paid for the docket to disappear. The police

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AFFIDAVIT

officials interviewed people in the Umlazi area to see whether they could not get tangible evidence out of them. These two police members were given a vehicle from the Provincial Commissioner to do their investigations against the NDPP.

8.

Col. Mhlongo also asked that I must assist them with somebody that works at RAF (Road Accident Fund) because the information was that he, Mr. Nxasana had embezzled money from RAF. He also mentioned that Mr. Nxasana wife worked there. I told him that I would talk to people that I knew to see whether they could assist us. He then informed me that even if he is moved from the NPA to another place, he would continue his investigation from wherever he is.

9.

I know and understand the contents of this statement.
I have no objection to taking the prescribed oath.
I consider the prescribed oath to be binding to my conscience.


DATED AT DURBAN THIS DAY OF NOVEMBER 2013

TERENCE JOHN JOUBERT

The abovementioned statement was taken down by me and the deponent has acknowledged that he knows and understands the content of this statement. This statement was sworn to before me and the deponent's signature was placed thereon in my presence at Durban on 2013-11-25.

21

AFFIDAVIT

 0604268-6
Zuma: CAPT.

COMMISSIONER OF OATH

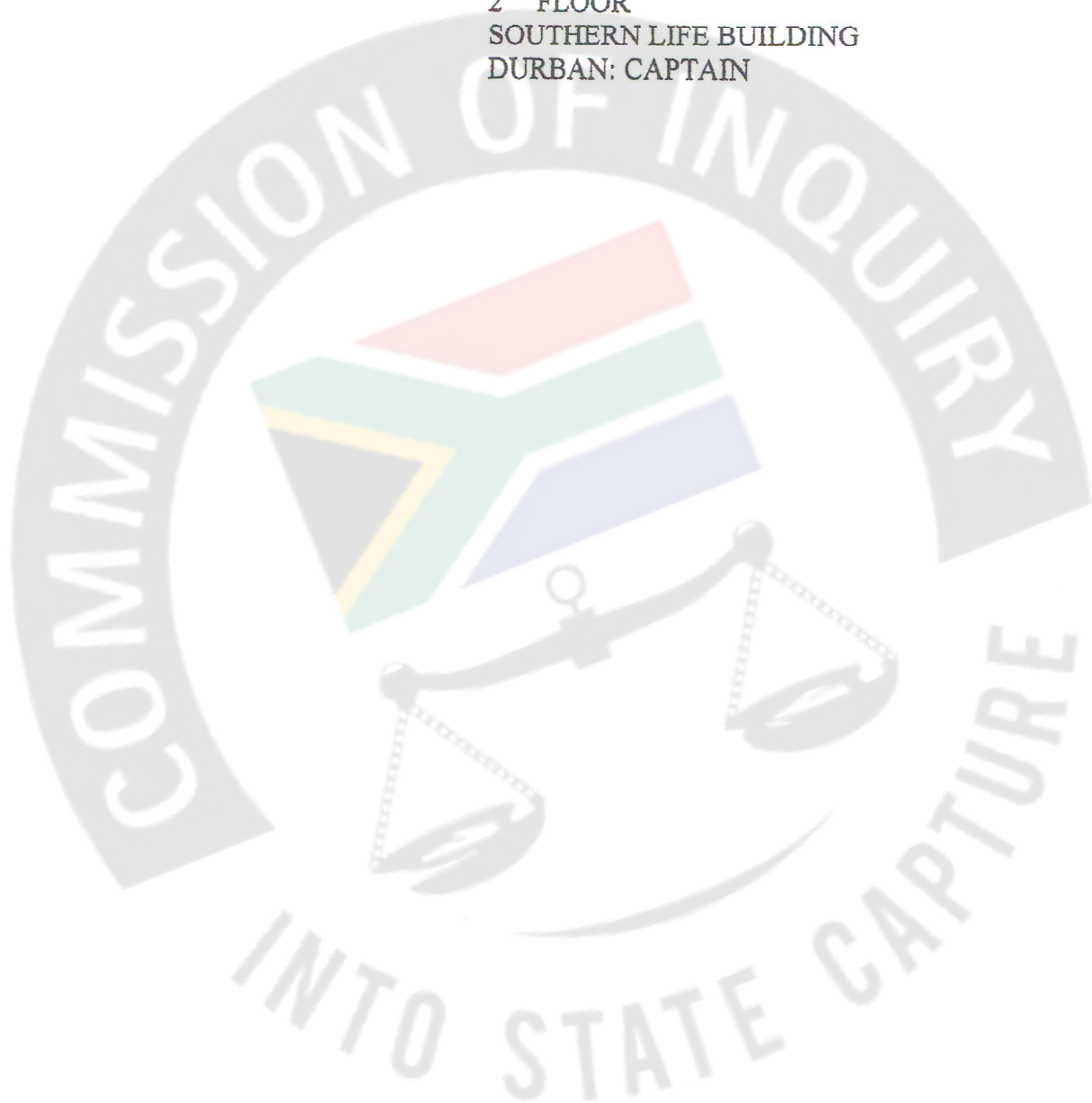
EDWARD ZUMA

SAPS

2ND FLOOR

SOUTHERN LIFE BUILDING

DURBAN: CAPTAIN



Annexure “TJJ2”



Thulani TC. Duma

From: Terence Joubert
Sent: 25 November 2013 03:55 PM
To: mxolisin@telkomsa.net
Cc: Thulani TC. Duma
Subject: FW: SIGNED AFFIDAVIT
Attachments: 20131125144001007.pdf

Dear NDPP

Attached please find a copy of my affidavit.

Regards,

Terence

-----Original Message-----

From: scan [<mailto:scan@npa.gov.za>]
Sent: 25 November 2013 03:40 PM
To: Terence Joubert
Subject:

This E-mail was sent from "RNPOE84C3" (Aficio MP 2500).

Scan Date: 25.11.2013 14:40:00 (+0100)
Queries to: scan@npa.gov.za

Annexure “TJJ3”





EXHIBIT EE 5

TRANSCRIPTIONS

DAY 111

12 JUNE 2019



**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

2nd floor, Hillside House
17 Empire Road,
Parktown
Johannesburg
2193

Tel: (010) 214-0651

Email: inquiries@sastatecapture.org.za

Website: www.sastatecapture.org.za

INDEX: EXHIBIT EE 5

Description	Pages
Transcriptions of Day 111, 12 June 2019	197 to 332

AFFIDAVIT

I, the undersigned,

LANCE POON

do hereby make oath and state that:

1. The facts herein contained are, unless otherwise stated or indicated, within my personal knowledge and are to the best of my belief both true and correct and I can and do swear positively thereto.

A. CREDENTIALS AND QUALIFICATIONS

2. I am a 40-year-old adult male with identity number 781114 5036 086. I own a consulting firm, EM Discovery (Pty) Limited, which specialises in Digital Forensic Investigations, Electronic Discovery (eDiscovery) and related services.
3. I have obtained the following academic qualifications:
 - 3.1 Bachelor of Commerce (Information Systems);
 - 3.2 Microsoft Certified Systems Engineer (MCSE);
 - 3.3 EnCase Certified Examiner (EnCE); and
 - 3.4 Certified Clearwell Administration.
4. I have more than 16 years' experience in the information systems and related fields comprising of:
 - 4.1 Director of EM Discovery (Pty) Limited (Est: 2019)



- 4.2 Four years as a Director at a Big Four auditing firm leading their Forensic Technology and Discovery practice;
 - 4.3 Nine years at another Big Four auditing firm responsible for their Digital Forensic and eDiscovery services; and
 - 4.4 Three years as a software developer at a multinational IT services company.
5. In addition to the abovementioned experience, I have also served on the Board of the Institute of Certified Forensic Practitioners for a period of four years.

B. BACKGROUND

6. I am currently contracted to the Commission of Inquiry into State Capture ("SCC") as a Digital Forensic Investigator, and more particularly, am affiliated to the SCC Forensic Data Centre.
7. As a Digital Forensic Investigator, I am, inter alia, tasked with the responsibility of gathering, preserving and analysing digital evidence.

C. CROPPING OF AUDIO FILE

8. On 14 June 2019 I responded to an email request from Salome Coetsee ("Coetsee"), a Forensic Investigator contracted to the SCC.
9. The email appeared to have originated from Amagugu Khanyile with email address of *AmaguguK@foskor.co.za*, and was sent to Lionel Groenwald ("Groenewald"), a Forensic Investigator contracted to the SCC; who in turn had sent it to Coetsee.



MSON199

10. The email contained a compressed zip file with filename VN-20131125-WA000.zip. A zip file is an electronic container file that is used to compress other electronic files for storage or transmission.
11. The zip file contained an audio file with filename VN-20131125-WA000.mp3.
12. Groenewald requested Coetsee, who in turn requested me to trim the audio file from time location 4min10sec to 9min40sec.
13. Using the built-in trim function of an audio file reader styled VLC, I trimmed the aforementioned audio file from time location 4min10sec to 9min40sec.
14. The resulting trimmed file contained audio of approximately 5min31sec in duration, and was saved as filename VN-20131125-WA000 - extraction.mp3.
15. I subsequently emailed the trimmed file to Coetsee and Groenewald.



Lance Poon

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at Pretoria on 21 JUNE 2019, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No 1648 of 19 August 1977, as amended, having been complied with.


 COMMISSIONER OF OATHS

Full names:

Business Address:

Office:

Colette van Wyk
 Commissioner of Oaths
 for the Republic of South Africa
 ISRAKHA INTEGRATED SOLUTIONS (Pty) Ltd
 874 Tlopi Street,
 Silverton 0184, Pretoria

COMMISSION OF INQUIRY INTO STATE CAPTURE

VIDEO RECORDING

DISCUSSION BETWEEN COLONEL WELCOME MHLONGO &

MR TERENCE JOUBERT

VIDEO RECORDING VN-20131125

COL WELCOME MHLONGO: Chose to take that way. Yes, yes, yes. He is okay, yes he is okay. He is okay, we sorted him out and I am truly grateful for your support. Hey, you know if you were not there that lady would have resigned. If you were not
5 there she would have resigned... [indistinct]. Imagine if she had resigned, all the information because I am not there when she is not here because she is not here when I am not there. Yes, yes. You have shown true brotherhood and he is also grateful in the way things are done and we, yes, it could be that. Yes, and address it too. Yes, my brother, thank you so much. Sure.

10 Yes, Bebe wanted to resign, he was very cross hey. There is this guy from TRC. They are going to complain about us that us we do things without consulting the TRC.

MR TERENCE JOUBERT: Who is TRC? Oh the, for the what's then, the exhumation.

15 **COL WELCOME MHLONGO:** They are... [indistinct] to do justice so now they are complaining that us we do things here, we do not, we do their things and we said to them and our job is to investigate and exhume and transport remains. This function things because the Premier said they need us. We must get involved.

MR TERENCE JOUBERT: Yes.

20 **COL WELCOME MHLONGO:** Like now we are saying... [indistinct] no look, speak to the Premier and tell the Premier not to use us. We do not just go and grab things. Olivia said no, us, you tell us... [indistinct] knows us. He will come and say no, no, I am not going to work with Justice to prove anything you hear. They must work through you. So they have turned things around. These people [indistinct].

25 **MR TERENCE JOUBERT:** Oh.



VIDEO RECORDING

COL WELCOME MHLONGO: So they wrote a stinking email... [indistinct]. I think was crying the whole day, Friday and wanted to resign and screaming [indistinct].

MR TERENCE JOUBERT: Oh man.

COL WELCOME MHLONGO: ... [indistinct] no Bongi you cannot because if you
5 leave... [indistinct].

MR TERENCE JOUBERT: Yes, if she leaves [indistinct] you will have to come here to rescue management. You know I was thinking I told Ramani when he was here. You know there is only one person... [intervenes].

COL WELCOME MHLONGO: Go over that lieutenant.

10 **MR TERENCE JOUBERT:** Yes.

COL WELCOME MHLONGO: [indistinct] They are not strong because people [indistinct] is a contract. It is having these people. It is a contract [indistinct].

MR TERENCE JOUBERT: Oh, okay.

COL WELCOME MHLONGO: It is a contract. They can voetsak... [indistinct] and his
15 contract gets released month by month but he is a head of all... [indistinct] permanent.

MR TERENCE JOUBERT: In the NPA yes.

COL WELCOME MHLONGO: So?

MR TERENCE JOUBERT: And where does, I thought it was this thing was under
20 Shaun.

COL WELCOME MHLONGO: Sean yes Shaun is here, but MPTT [indistinct].

MR TERENCE JOUBERT: Oh is Madelane, the one that was in the photo there with Debra?

COL WELCOME MHLONGO: Yes, that is the one and Madelane is on contract.

25 **MR TERENCE JOUBERT:** Oh man.



VIDEO RECORDING

COL WELCOME MHLONGO: So Madelane if they do not want to renew their contract.

MR TERENCE JOUBERT: They will say voetsak.

COL WELCOME MHLONGO: Voetsek.

5 **MR TERENCE JOUBERT:** Close you... [intervenes].

COL WELCOME MHLONGO: [Indistinct] wanted to do that.

MR TERENCE JOUBERT: Yes.

COL WELCOME MHLONGO: He wanted to do that until someone from MK said, hey you are you in charge of Walter Sisulu. Walter Sisulu was our commander in
10 chief and what do you want? And then he came back and said no, no, no, he wanted, I am sure he wanted to put his connection.

MR TERENCE JOUBERT: Yes, no, hey, hey, hey.

COL WELCOME MHLONGO: Yes, tomorrow chief if you need anything I am around. My car will be there. I will be, I mean for that day I am.

15 **MR TERENCE JOUBERT:** No I mean the whole, our whole point here is one collection, no, no, no. Our thing here with the boss, these guys from RAF tomorrow morning all I am going to do I will link you up with them so that you can get all the documentation. The thing that I do not want, is not I am just bringing A to B.

COL WELCOME MHLONGO: Yes.

20 **MR TERENCE JOUBERT:** These people of yours I do not want to know them. I do not want to know them, you see. I go to you, I say to you WS go and see so and so, that is it because if it comes back and this woman okay, she gets the post back... [indistinct] through these guys.

COL WELCOME MHLONGO: She will obviously know.

25 **MR TERENCE JOUBERT:** You see I mean she can know about it later on...



VIDEO RECORDING

[indistinct] but for now ... [intervenes].

COL WELCOME MHLONGO: For now yes... [indistinct] and she does not have a problem... [indistinct].

MR TERENCE JOUBERT: Yes, yes, no.

5 **COL WELCOME MHLONGO:** [Indistinct] fuck you and then... [indistinct]. I called dude somewhere and I said [indistinct] office.

MR TERENCE JOUBERT: Yes.

COL WELCOME MHLONGO: But he continues with it [indistinct].

MR TERENCE JOUBERT: Because there you are free. No one can tell you but my
10 thing is one. Another thing we have like this murder case of yours now, the uncle and all that, guys we must not sleep on top of information. We must, get whatever you can get your hands on. Brother we must hurry up because tomorrow as you say this woman is in a hurry even us we want to know where are we going because we do not want to stay here... [indistinct] and then... [intervenes].

15 **COL WELCOME MHLONGO:** I am struggling to eat from the drug addicts (amapara).

MR TERENCE JOUBERT: Yes, so from my side it is just that this whole thing of the visit and this party and all that up until Friday I will be up-down, up-down, but sure thing tomorrow I might say, hey man because I will not be using my phone. I will be
20 using another crook. Man, I am ready. Where can we meet? Okay Sir, come. Here is my man.

COL WELCOME MHLONGO: Take my thing.

MR TERENCE JOUBERT: You meet and then you will sort it out yourselves. Then you can send your guys to do the collection.

25 **COL WELCOME MHLONGO:** Yes, yes, yes.



VIDEO RECORDING

MR TERENCE JOUBERT: Yes, you see we will not know nor appear. That way at least she is sharp she is safe. But tomorrow, I mean on Thursday you see okay I trust Jebu, Sir is he my guy. Your ma'am I do not trust her I want to, I will just, I will stay out of her war path but I hope that you have cleared the way right now because I
5 do not want things that are... [intervenes].

COL WELCOME MHLONGO: No, I told her... [indistinct]. People will be like that because... [indistinct].

MR TERENCE JOUBERT: Yes.

COL WELCOME MHLONGO: Yes, and do not worry. I on the side, I have got my
10 [indistinct].

MR TERENCE JOUBERT: Yes.

COL WELCOME MHLONGO: When he told me hey there is a fire, he started to explain because I told her that when I said tell me there is a fire... [indistinct] then he said hey there is a fire I stop. I do not.

15 **MR TERENCE JOUBERT:** Ask questions.

COL WELCOME MHLONGO: There is understanding otherwise I should have not sitting on third floor. I said that is [indistinct] I am there, we know each other, we fight but we come he will come and fight with me, [indistinct] together.

MR TERENCE JOUBERT: Yes no I mean he must know this.

20 **COL WELCOME MHLONGO:** And understand.

MR TERENCE JOUBERT: He must not say the only thing that... [intervenes].

COL WELCOME MHLONGO: And we are not a sangoma. We do not get what is happening but if it is something that requires your call you will sensitise it and but if you are not briefed of those things [indistinct] if you are not briefed yourself
25 [indistinct]. They have to brief you otherwise we are going to charge [indistinct].



VIDEO RECORDING

MR TERENCE JOUBERT: Yes.

COL WELCOME MHLONGO: He said, yes you are right. I said exactly. It is what we are saying [laughing].

MR TERENCE JOUBERT: Yes, I mean that way I like the way you handled it but at
5 least now he must not want to beat me all the time

COL WELCOME MHLONGO: No, never

MR TERENCE JOUBERT: Because obviously here myself and Ramani we are not okay, you see.

COL WELCOME MHLONGO: No, even Ramani, is it not that Ramani wanted to beat
10 him?

MR TERENCE JOUBERT: Yes.

COL WELCOME MHLONGO: ... [indistinct] that boss I want to beat him...
[indistinct] he said no, no it is embarrassment.

MR TERENCE JOUBERT: Okay.

15 **COL WELCOME MHLONGO:** I have been complaining about it. I will make him an appearance. I will not go there but I don't know. What if he says that I do not know?

MR TERENCE JOUBERT: (Laughing).

COL WELCOME MHLONGO: That I cannot vouch for.

MR TERENCE JOUBERT: Yes, no, I know.

20 **COL WELCOME MHLONGO:** He will not tell that; I think he will give the boss.

MR TERENCE JOUBERT: Yes, no, no broer as long as we are sharp.

COL WELCOME MHLONGO: We are sharp yes.

MR TERENCE JOUBERT: In that ceremony I do not care about the rest of the...
[indistinct] as long as us... [intervenes].

25 **COL WELCOME MHLONGO:** Now Doctor Mnisi is still [indistinct]?



MR TERENCE JOUBERT: No, he is toeing the line for now.

COL WELCOME MHLONGO: Yes, he is toeing the line there is nothing more. There is no other way.

NO FURTHER AUDIO (from +- 09:45 to 12.30)

5

10

15

20

25

TRANSCRIBER'S CERTIFICATE**STATE // #**

I, the undersigned, hereby certify that **so far as it is audible to me**, the foregoing is a true and correct transcript of the proceedings recorded

5 by means of a digital recorder in the matter between:

CASE NUMBER : VN RECORDING 20131125
RECORDED AT : N/A
DATE HELD : 2013/11/25
10 NUMBER OF PAGES : 8

PROBLEMS EXPERIENCED WITH RECORDING

15 **Recording was clear but speakers were not distinct at all times because it was a conversation that seemed to have been recorded without the knowledge of the participants and they were relaxed. However, everything in the transcript is as per the audio file.**

20 TRANSCRIBER:  (SIGNATURE)
NAME

25

30

8099 PHALA STREET | PROTEA GLEN EXT 11 | SOWETO
P.O BOX 8099 | JOHANNESBURG | 1819
| Cell: +27658978935 |

35



Annexure “TJJ4”



AFFIDAVIT

I, the undersigned,

MXOLISI SANDILE OLIVER NXASANA

do hereby state under oath:

1. I am the former National Director of Public Prosecutions (NDPP) and was previously based at the head office of the National Prosecuting Authority (NPA), in Pretoria.
2. The facts deposed to below are within my personal knowledge, unless otherwise stated or indicated by the context, and they are, to the best of my belief, true and correct.
- A. **The NPA before my appointment (A pattern of political interference and instability?)**
3. Below is a brief timeline reflecting the various individuals who have held the position of NDPP:
 - 3.1. April 2001 – 31 August 2004: Bulelani Ngcuka
 - 3.2. August 2004 – January 2005: Dr Silas Ramaite (acting)
 - 3.3. 1 February 2005 – 17 February 2009: Vusi Pikoli (suspended and then removed / retired)
 - 3.4. 1 May 2009 – 31 October 2009: Mokotedi Mpshe (acting)
 - 3.5. 1 December 2009 – 8 May 2012: Menzi Simelane (December 2011 Simelane was suspended after the SCA judgement; 8 May 2012 Simelane dismissed pursuant to the Constitutional Court judgment).



- 3.6. 20 December 2011 – 30 September 2013: Advocate Nomgcobo Jiba in an acting capacity, including her maternity leave, which she took between early January and 17 May 2013.
- 3.7. 1 October 2013 – 31 May 2015: Mxolisi Nxasana
- 3.8. 18 June 2015 – 13 August 2018: Shaun Abrahams
- 3.9. 1 August 2018 – 31 January 2019: Dr Silas Ramaite (acting)
- 3.10. 1 February 2019 – present: Shamila Batoyi
4. Bulelani Ngcuka was the first NDPP. His term of office ended in 2004 following an enquiry into his fitness to hold office. He was alleged to have been an apartheid spy. He was cleared by Judge Hefer. He subsequently resigned in August 2004.
5. Vusi Pikoli succeeded him. He too was subjected to an enquiry into his fitness to hold office: The Ginwala enquiry. It was alleged that the relationship between him and the then Minister of Justice had broken down. He was cleared. The matter was referred to Parliament. He was 'voted' out of office. He had instituted charges against former President Zuma and Jackie Selebi, the Commissioner of Police. His term of office came to an end in February 2009.
6. During Pikoli's suspension Advocate Mpshe acted as NDPP. He was not permanently appointed. He withdrew charges against Zuma – after the Nicholson J judgement.
7. President Zuma then appointed Menzi Simelane as NDPP. His appointment was declared invalid by the Constitutional Court.
8. He was replaced by Advocate Jiba – in an acting position.
9. I was appointed in August 2013 with effect from 1 October 2013.



10. I am able to comment on this brief history of the NPA as follows:

- 10.1. Stability: None of the NDPP's before me lasted their full term of office (10 years).
- 10.2. Independence: There was political interference or outside interference in the decision-making in the NPA.
- 10.3. Parliamentary oversight: I will comment on the Vusi Pikoli case.

B. The appointment of a NDPP

11. The appointment of the NDPP is governed by section 179 of the Constitution. It requires there to be a single NPA structured in terms of an Act of Parliament, consisting, *inter alia*, of a NDPP who is the NPA's head. The President appoints the NDPP in his capacity as head of the National Executive.
12. Section 179(2) of the Constitution provides that the NPA has the power to institute criminal proceedings on behalf of the State. Section 179(4) of the Constitution requires there to be national legislation to ensure that the NPA exercises its functions '*without fear, favour or prejudice*'.
13. In terms of Section 179(5) the NDPP must determine prosecution policy with the Minister of Justice's concurrence. Section 179(6) states that the Minister exercises final responsibility over the NPA.
14. Section 9 of the National Prosecuting Authority Act 32 of 1998 (NPA Act) sets out the requirements of a person appointed as NDPP. Such person must be:
 - a South African citizen;
 - possess legal qualifications that entitle him or her to practise in all courts in the Republic; and

G.E. *MD*

- be a fit and proper person, with due regard to his or her experience, conscientiousness and integrity, to be entrusted with the responsibilities of the office of the NDPP.

15. The suspension and removal from office of the NDPP are governed by Section 12 of the NPA Act.

C. My appointment as NDPP

16. I was appointed by the former President of the Republic of South Africa, the honourable Mr Zuma (the former President), as the National Director of Public Prosecutions (NDPP) with effect from 1 October 2013, in terms of section 84(e) of the Constitution.
17. In terms of section 179 of the Constitution read, with section 10 of the NPA Act, my appointment was for a period of 10 years.
18. During 2013 I was approached by Mr Hulley at my office in Durban where he requested to meet with me. The meeting took place at my office and lasted approximately 30 minutes. He had with him a list of 3 names whom I assumed were candidates for the post. I was not one of them.
19. Mr Hulley told me that my colleagues had recommended me to take up the position of NDPP. He asked if I was willing to serve as NDPP and I said "yes I would". Following my appointment, I met Mr Hulley again as part of my transition to the office of NDPP.
20. I was surprised when told I was being considered for the post as I had not applied for the post, had not sought it out, indicated to anyone that I was interested in it and I had no expectation of being appointed to the post.
21. In approximately August 2013 I met with the President, Mr Hulley, and the President's legal advisor, at the President's official residence in Pretoria. That too was a short meeting lasting no more than half an hour. The main concern



of the President was whether I had the necessary courage required of the post. I took that to mean that the President wanted to know whether I understood that a main requirement of the post was prosecutorial independence. He asked how I would cope under the pressure and demands of 'the job'. I said that if appointed, I would approach the job with the necessary courage, but also with the composure characteristic of the President's own performance.

- 21.1. As I was leaving the meeting with the President, Mr Hulley asked me if there was anything he should know. I told him that my father had been a trade unionist whom I understand had interacted politically with the President on occasion, a long time ago. I disclosed this information because it is not well known or public knowledge, and because I thought that I should disclose information about any connection between the President and my late father.
22. On 30 August 2013, Mr Hulley telephoned me and asked me to send him a copy of my CV, which I did. He told me that the President was going to announce his decision to appoint me as NDPP.
23. On 31 August 2013 the President announced his decision to appoint me as NDPP.
24. To the best of my knowledge the position was not advertised. I was not aware of any selection process other than what I have stated above.
 - 24.1. I was not interviewed (in a way ordinarily characteristic of a job interview) by the President or anyone on his behalf for the purpose of considering whether to appoint me;
 - 24.2. I was not required to complete any application form or similar document (except for my security clearance application which I completed on 4 December 2013 after I had already been appointed);

[Handwritten signatures]

- 24.3. The only document I completed and signed (apart from my security clearance application) was my employment contract.

D. What I found in the NPA

25. When I arrived at the NPA personnel were warm and receptive to me.
26. My view on arrival was that the NPA was a well-equipped and functional organization. This was so notwithstanding the challenges it faced at a leadership level.
27. There was no handing-over to me. There was clearly a reluctance and insubordination on the part of Jiba to do so. I instructed her to "hand-over". She refused.
28. I recall that I had not been informed of the Cato Manor investigations into General Booysen. I read about this in the newspaper, which published the judgement of Gorven J. This judgement was critical of Advocate Jiba's handling of the case.
29. I was also not briefed on the status of the President Zuma investigation.

E. Events leading to my suspension

30. During my first year in office, it became clear that my leadership of the NPA was resisted by National Deputy Director Advocate Nomgcobo Jiba (Advocate Jiba) and the Special Director Specialised Commercial Crime Unit Advocate Lawrence Mrwebi (Advocate Mrwebi). They appeared determined to undermine my standing with the President. I later established that they had run a campaign to discredit me as a person fit and proper to hold the office of NDPP.
31. Even before I assumed my position as NDPP, I was made aware of attempts from within the NPA to discredit me.



32. I grew up in Umlazi, in Durban. Although I no longer live there, I have family and friends who still do. Soon after my appointment was announced, they reported to me that unknown people had been asking questions about me, trying to dig up information about my past. In particular, they were asking questions about my background and my arrest and acquittal on charges of murder in 1985.
33. Almost Immediately after I was appointed, two NPA officials approached me (independently of each other) with information that Advocates Jiba and Mrwebi were plotting to oust me. They volunteered this information of their own accord.
34. One of the employees, Mr Terence Joubert (**Mr Joubert**), a Risk Specialist for the NPA, deposed to an affidavit in which he explained how he had been approached by Colonel Welcome Mhlongo (**Colonel Mhlongo**), a member of the Directorate of Priority Crimes Investigation (**DPCI**, commonly referred to as the "**Hawks**") for information about me. Colonel Mhlongo claimed to be acting on the authority of Ms Jiba.
35. I do not know Mr Joubert and the information that he sent me was unsolicited. Furthermore, I do not know why he decided to send me the information.
36. A copy of his affidavit is attached, marked **Annexure "MN 1."**. In his affidavit, Mr Joubert states the following under oath;
- 36.1. On 18 September 2013 he was meant to fetch Advocate Jiba from King Shaka International Airport.
- 36.2. Her secretary phoned him and told him that he did not need to fetch her. She said that arrangements had been made for Colonel Mhlongo to fetch Advocate Jiba instead.



- 36.3. Colonel Mhlongo disclosed to him that Advocate Jiba had told him that she did not think that I was the correct person for the job of NDPP. According to him, she told Colonel Mhlongo that "they" (presumably Colonel Mhlongo, Advocate Jiba and Advocate Mrwebi) should try to find some dirt on me as they had against Mr Stanley Gumede.
- 36.4. Mr Stanley Gumede is the Regional Court magistrate who had been tipped to become NDPP. His appointment was withdrawn following media reports that the Magistrates Commission was investigating numerous complaints against him.
- 36.5. Colonel Mhlongo disclosed to him that he was following up information that I had embezzled money from the Road Accident Fund.
37. Mr Joubert recorded his conversation with Colonel Mhlongo. He also sent me a copy of a voice recording of the conversation that he had with Colonel Mhlongo. I listened to and it confirmed what he stated in his affidavit.
38. In addition, I believe that Advocates Jiba and Mwebi advised the President that I intended to reinstate the criminal charges against him that my predecessor had withdrawn. I had in fact made no such decision.
39. The President informed me in one of our meetings that he had been told that I was apparently meeting former NDPP Bulelani Ngcuka at a flat in Durban. He said; *"Hey Mfanakiti, umuntu uma eke washo igama lalowomuntu angifuni nokuzwa lutho ngaye indlela angangifuni ngakhona ngivesane ngihlanye"*. This can be roughly translated as *"once they mention the name of this person I don't want to hear anything about that man - I simply go crazy."* I told the President that I have never met Mr Ngcuka and that he was being misled.
40. I believe that Advocate Jiba was resentful when she was not appointed as NDDP as she had been acting in that position prior to my appointment. I do not have any reason to believe that Advocate Jiba and I were unable to

P.5

MS

work together professionally, but do believe that the campaign to have the President remove me was aimed at ensuring her continuing to act as, or even her permanent appointment as, the NDPP. I later discovered that Advocate Jiba had been recommended in a memorandum by former Minister of Justice and Constitutional Development, Mr Jeffrey "Jeff" Thamsanqa Radebe (**Minister Radebe**), for permanent appointment as NDPP. This campaign was similar to that which disqualified Mr Stanley Gurnede who had been widely tipped to be made NDPP before my appointment.

41. I believe that this campaign against me culminated in the President's establishment of the inquiry into my continued service as NDPP.

42. Finally, I was concerned that this campaign was also used to influence some staff members against me. Some staff members were used in pursuit of the campaign, which disrupted the operation of the organisation.

43. I had taken various steps to address the instability suffered by the NPA at this time. These Included:

43.1. Obtaining a legal opinion from Senior Counsel Patrick Ellis, regarding the findings of the High Courts and the Supreme Court of Appeal against Advocates Jiba, Mrwebi and Advocate Sibongile Mzinyathi (**Mzinyathi**) the Director of Public Prosecutions North Gauteng Division

43.2. The appointment of a Commission of Inquiry headed by retired Constitutional Court Justice Yacoob to inquire into the instability within the NPA leadership. Advocates Jiba and Mrwebi refused to assist the commission despite my instructions to do so.

43.3. The preparation of a Memorandum by Advocate Gerhard Nel the Legal Advisor in my office. This was signed by Mr Willie Hofmeyr (**Mr Hofmeyr**). It was addressed to the Minister for onward transmission to the President. It dealt with the situation at the NPA. A copy of an affidavit attested to by



Mr Hofmeyr is attached as Annexure "MN 2." This affidavit deals with circumstances relevant to this memorandum.

- 43.4. Correspondence addressed to the General Council of the Bar regarding Advocates Jiba, Mrwebi and Mzinyathi.
- 43.5. Informal attempts to improve my relationship with Advocates Jiba, Mrwebi and Mzinyathi; and
- 43.6. Repeatedly requesting a meeting with the President, so as to request him to intervene and address the situation at the NPA by instituting disciplinary action against Advocates Jiba, Mrwebi and Mzinyathi.
- 43.7. My initiation of disciplinary action against Advocates Jiba, Mrwebi and Mzinyathi appeared not to be supported by the President and the then Minister of Justice, Minister Masutha. I had requested that the President intervene by taking disciplinary steps against Advocates Jiba, Mrwebi and Mzinyathi, and I had provided him with a file of relevant documentation. This included the legal opinion, reports and memoranda.
- 43.8. At the NPA meeting at Emperors Palace in March 2015 Minister Masutha informed me that the President had agreed to intervene as I had requested. He failed to do so.
44. In July 2014, I was informed by the President that he had taken a decision to institute a commission of inquiry to determine whether I was fit and proper to hold office, in terms of section 12(6)(a)(iv) of the NPA Act.
45. At the end of that month, the President also informed me that he intended to suspend me with full pay pending the outcome of the inquiry and he gave me an opportunity to make submissions in that regard.



F. My suspension

46. By letter dated 4 July 2014, the President informed me that, after careful consideration, he had taken a decision to institute an inquiry in terms of section 12(6)(a)(iv) of the NPA Act. Section 12(6)(a)(iv) provides that the President may provisionally suspend the NDPP from his office, pending an inquiry into his fitness to hold office. A copy of this letter is attached marked **Annexure "MN 3."**

47. The President advised me that the details regarding the establishment of the inquiry would be communicated to me shortly. The notice did not contain the terms of reference of such an inquiry. Nor did it list the allegations that the inquiry would investigate against me.

48. On 30 July 2014 I received a notice from the President informing me that he was considering suspending me on full pay pending the finalisation of the inquiry into whether I was fit and proper to hold the office of the NDPP. A copy of this notice is attached marked **Annexure "MN 4."** The notice reads:

"The enquiry will examine your fitness to hold the office as National Director of Public Prosecutions having regard to whether:

- 1. The criminal convictions which you possess for violent conduct;*
- 2. Reported comments in the media are unbecoming of a National Director of Public Prosecutions, divisive and have the effect of bringing the National Prosecuting Authority into disrepute;*
- 3. The lack of disclosure of the facts and circumstances of prosecutions which you faced.*


Are consonant with the conscientiousness and integrity of an incumbent to the office of the National Director of Public Prosecutions as required by the Act"

J. S. *MS*

49. The notice invited me to provide the President with written representations as to why I should not be suspended.

My rights to a fair hearing

50. Section 12(6)(a) of the NPA Act empowers the President to suspend me pending an enquiry into my fitness to hold office. Implicit in the statutory power to suspend is the right to a fair hearing before suspension.
51. The requirement of fairness required that I be given a fair hearing or a fair opportunity to be heard on why I should not be suspended. That meant that I should have been given sufficient or adequate time and sufficient or adequate particularity of the allegations against me to make proper representations. It is apparent from the President's letter of 30 July 2014 that I was not given sufficient or adequate essential particulars of the allegations against me.
52. The first bullet point of the President's notice of 30 July referred to the "criminal convictions I possess for violent conduct". The President did not give particulars of the criminal convictions to which this allegation referred.
53. In the second bullet point of the President's notice of 30 July I was told that the inquiry would investigate "reported comments in the media" which the President contended were unbecoming of an NDPP, were divisive, and had the effect of bringing the NPA into disrepute. The President did not give particulars of the comments reported in the media, the dates on which those comments were reported and the media in which they were reported.
54. The third bullet point informed me that the enquiry would consider whether I was fit to hold the office of NDPP in light of my lack of disclosure of facts and circumstances of prosecutions which I had faced. The President did not give particularity of the prosecutions, nor to whom and when I had failed to disclose the relevant prosecutions.



55. I could speculate, as I did in my representations of 1 August 2014. But to have required me to speculate about the essential particulars of the allegations against me was unfair.
56. Because I did not have the essential particulars of the allegations against me, I could not say whether they were true, or whether they were sufficiently serious to warrant suspension or whether they were such that it is not possible for me to interfere with an investigation into them or with witnesses who made them. These are all considerations relevant to suspension.
57. In his 8 August 2014 letter the President justified his refusal to provide me with particulars of the allegations by saying that:
- "It is my view that the details you require in paragraph 5 of your letter dated 30 July 2014 and repeated under paragraph 2 of your recent letter are matters that will be the subject of the enquiry that I advised I shall be instituting. The information which I have provided is sufficient for the purpose of the representations which you are invited to make. In any event, it appears apparent from your initial response that you are was aware of the matters to which I refer.*
- As a result, I do not deem it appropriate to engage on matters that will form the subject matter of the enquiry. My letter invites you to make representations as to why you believe I should not suspend you pending the finalisation of this enquiry and I await your supplementary representations by no later than the extended deadline of 16:00 on Wednesday 13 August 2014".*
58. I submit that it was unfair and unlawful to require me to respond to allegations as lacking in particularity as the allegations in the President's notice of 30 July 2014 were.



G. The Cassim Enquiry regarding the fitness of the NDPP to hold office:

Terms of Reference

59. By letter dated 5 February 2015 the President informed me that he had appointed Nazeer Cassim SC (Cassim) (assisted by LG Nkosi-Thomas and SKD Mdladla) to chair an inquiry.
60. The inquiry's Terms of Reference were published in Government Gazette No. 38453 on 9 February 2015.
61. The TOR directed the Chairperson to inquire into whether it was fit or proper for me to hold the office of the NDPP in light of the following:
- 61.1.1. My two previous separate convictions on charges of assault;
 - 61.1.2. The complaints of professional misconduct laid against me with the KwaZulu - Natal Law Society;
 - 61.1.3. My having faced criminal charges for acts of violence;
 - 61.1.4. My arrest and detention on criminal charges;
 - 61.1.5. Media statements either issued by me or on my instruction that undermined or brought the office of the NDPP or the NPA into disrepute;
 - 61.1.6. Any other matter as might be relevant to the abovementioned issues and my fitness and propriety to hold the office of the NDPP as contemplated in section 9 (1)(b) of the NPA Act.

The President's complaints

62. Submissions on behalf of the President and the Minister were filed on Monday 4 May 2015 at 18h30.
63. His complaints in the submissions were different to the complaints in the Terms of Reference.

The complaints in the submissions were the following:

- 63.1.1. Before my appointment I had failed to disclose to the President or his advisors that I had two previous convictions for assault.
- 63.1.2. I had failed to take steps to expedite the finalisation of a complaint to the Law Society by Mr Jabulani Mtshali against me in 2008.
- 63.1.3. In my security clearance application questionnaire, in answer to the question:
- "Have you ever been convicted or are there any pending cases for a criminal/departmental offence...?"*
- I failed to disclose the following:
- During 1985 I had been acquitted on a charge of murder;
 - During October 2012 I had been arrested, but not charged, for inconsiderate driving.
- 63.1.4. I had failed to disclose whether I had taken any steps to resolve my complaint against the two police officers who arrested me unlawfully (during October 2012) for inconsiderate driving.
- 63.1.5. I had made statements to the media that:
- were not in the public interest;
 - fuelled media speculation;
 - negatively affected the public's confidence in the NPA;
 - breached the Code of Conduct.



Complaints that did not fall within the TOR

64. The following complaints did not fall within the TOR:

64.1.1. The complaint identified in paragraph 63.1.1 above. The complaint in the first TOR was that my two previous convictions of assault meant that I was not fit and proper to hold the office of NDPP.

64.1.2. The complaint identified in paragraph 63.1.2. above. The complaint in the second TOR is that I am not fit and proper because of complaints of professional misconduct made against me with the KwaZulu-Natal Law Society,

64.1.3. The complaint identified in paragraph 63.1.3. The complaint in the third TOR is that I am not fit and proper because I faced criminal charges for acts of violence.

64.1.4. The complaint identified in paragraph 63.1.3 (bullet 2). The complaint in the fourth TOR was that I was not fit and proper because of my arrest and detention on criminal charges.

64.1.5. The complaint identified in paragraph 63.1.4. None of the TOR referred to a failure to disclose what steps I took to finalise my complaint against the South African Police Services (SAPS).

65. I further submitted that the only complaint contained in the submissions that should be adjudicated at the inquiry was the complaint identified in paragraph 63.1.5. Despite this, I responded to all of the allegations contained in the President's submissions.

My submission to the Cassim Enquiry

66. I prepared (but did not present) a detailed submission to the Cassim Enquiry wherein I dealt at length with the TOR of the Enquiry and the complaints against me.



67. My submission is attached hereto as **Annexure "MN 5."**
68. In my submission I raised my opinion that the complaints against me concerned the three requirements of Section 9(1)(b) as set out in 12.3 of my submission (paragraph 14 of this affidavit, above). Salient points raised in this regard are indicated in the excerpt below:
15. *Those three requirements mean the following:*
- 15.1 *Integrity includes the high standards of honesty and candour the law expects from all legal practitioners who may not compromise on standards of honesty and integrity.*
- 15.2 *Experience implies relevant knowledge and skill acquired over time from observing and from practical acquaintance.*
- 15.3 *Conscientiousness means hardworking, diligent, and reliable with a genuine concern for the quality of one's work.*
16. *The fit and proper test for appointment as NDPP is substantially similar to the fit and proper test for admission as an attorney or advocate; i.e. the same requirements and considerations apply. Consequently, the submission by the President that a higher test applies to the appointment of an NDPP is wrong in law (and in logic. There is no reason why the requirements of Integrity, experience and conscientiousness applicable to legal practitioners should be any different for the NDPP.)*
17. *The requirements of s9(1)(b) apply to the NDPP to ensure that he discharges his statutory and prosecutorial duties honestly, independently, diligently, without fear, favour or prejudice, in keeping with the professional status and standards associated with the post, while maintaining prosecutorial independence.*



18. *The question whether the NDPP is a fit and proper person is an objective inquiry. Whether the NDPP is fit and proper is not a question left to the discretion or indeed opinion or view of the President.*

H. Unlawful conduct of Advocates Jiba and Mrwebi and Public Perceptions of the NPA

69. I also dealt with this aspect in my submission to the Cassim Enquiry when dealing with the public's perception of the NPA, emanating from numerous media reports. The President later complained that my statements to the media damaged the public's perception of the NPA. While I agreed that public confidence in the NPA had been shaken, I disputed that it was because of anything that I had done.
70. Rather, it was because of the unlawful conduct of Advocates Jiba and Mrwebi. Both of them had abused their positions in the NPA and had acted unlawfully. Examples of this conduct include:
- 70.1. The involvement of Advocates Mrwebi and Jiba in withdrawing charges of fraud and corruption against the former head of crime intelligence, Major-General Richard Naggie Mdluli (**Major-General Mdluli**).
- 70.2. Both the High Court¹ and the Supreme Court of Appeal² found that there were grounds to review their decision to withdraw charges against Major-General Mdluli. The NPA was ordered to reinstate the charges against Major-General Mdluli.
- 70.3. In the High Court, Murphy J criticised the manner in which they had conducted the proceedings. He held³:

¹ *Freedom Under Law v The national Director of Public Prosecutions* (26912/12) [2013] ZAGPHHC 271; [2013] all SA657 (GNP); 2014 (1) SA 254 (GNP); 2014 (1) SA SACR 111 (GNP) (23 September 2013)

² *National Director of Public Prosecutions v Freedom Under Law* (67/2014; ZASCA 58; 2014 (4) SA 298 (SCA); 2014 (2) SACR 107 (SCA) (17 April 2014)

³ *FUL v NDPP*, op cit at [24]

"Suffice it to say that the conduct of the respondents is unbecoming of persons of such high rank in the public service and especially worrying in the case of the NDPP, a senior officer of this Court with weighty responsibility in the proper administration of justice. The attitude of the respondents signals a troubling lack of appreciation of the constitutional ethos and principles underpinning the offices they hold"

- 70.4. Murphy J found that Advocate Jiba had failed to disclose Glynnis Breytenbach's representations in the NPA's record of the decision. Advocate Jiba also made no mention of the representations made by Ms Glynnis Breytenbach urging her to review the decision not to pursue charges against Major-General Mdiuli⁴
- 70.5. In the SCA, Brand JA confirmed Murphy J's decision. He criticised Advocate Jiba's conduct.⁵
- 70.6. In the case of Major-General Johan Booysen v Acting National Director of Public Prosecutions,⁶ Gorven J found that Advocate Jiba had misled the court⁷.
71. In relation to Advocate Mrwebi, the following is relevant:
- 71.1. Murphy J found that Advocate Mrwebi's evidence lacked credibility, particularly in relation to his contention that he consulted with Mr Sibongile Mzinyathi before he decided to discontinue the prosecution against Major-General Mdluli.⁸

⁴ FUL v NDPP, op cit para 88

⁵ NDPP v FUL 2014 (4) SA 298 (SCA) at para [37]

⁶ (2014) 2 All SA 391 (KZD)

⁷ (2011) 32 ILJ 112 (LAC)

⁸ FUL v NDPP, op cit [56]



- 71.2. Advocate Mrwebi had failed to disclose relevant documents that formed part of the record of his decision to withdraw charges against Major-General Mdluli⁹.
- 71.3. Murphy J also rejected Advocate Mrwebi's contention that the decision to withdraw charges against Major-General Mdluli had been made in consultation with Mr Sibongile Mzinyathi. He also rejected Advocate Mrwebi's contention that investigations into the charges against Major-General Mdluli were defective, and his evidence that Ms Breytenbach had believed that the charges were defective, as improbable. He found his evidence unreliable¹⁰.
- 71.4. Murphy J's findings against Advocate Mrwebi were confirmed by the SCA¹¹.
72. As early as 18 July 2014 I had recommended to the Minister of Justice that the President pursue disciplinary action against, amongst others, both Advocate Mrwebi and Advocate Jiba.
73. In the memorandum to the Minister of Justice referred to above, it was pointed out that:
- 73.1. Section 195 (1) of the Constitution requires public administration to be governed by democratic values and principles enshrined in the Constitution. These values require public servants to conduct themselves with a high standard of professional ethics, to provide services impartially, fairly and equitably without bias, and to be accountable,
- 73.2. The Code of Conduct of the NPA was informed by the values and principles that are enshrined in the Constitution, the NPA Act and the United Nations Guidelines on the Role of Prosecutors. It emphasises the crucial role that

⁹ Booyesen v Action National Director of Public Prosecutions, op cit at para [32] and [34]

¹⁰ FUL v NDPP, op cit at paras [58]; [61]; [68]

¹¹ NDPP v FUL op cit at Fn6, paras [40] - [42]

prosecutors play in the administration of justice. It also stresses the need for prosecutors to be fair, effective and to act without fear, favour or prejudice.

- 73.3. I requested the President to suspend Advocates Jiba and Mrwebi pending an inquiry into their fitness to hold the offices of Deputy NDPP and Directors of Public Prosecutions. I suggested that the inquiry be chaired by a retired Judge of the High Court.
- 73.4. I pointed out that there were outstanding criminal proceedings against Advocate Mrwebi for defeating the ends of justice and for intimidation.
74. At the time I wrote that memorandum I was considering appointing a fact-finding inquiry to investigate allegations of unethical conduct by senior members of the NPA, including Advocates Jiba and Mrwebi.
75. On 31 July 2014 Justice Yacoob was appointed to investigate, establish and determine:
- 75.1. The alleged involvement of the NPA's employees, including senior officials, in the leaking of information to the media and other interested parties;
- 75.2. The alleged unethical and unprofessional conduct on the part of the NPA's employees.
- 75.3. Whether any member of the NPA committed an unlawful act.
76. Advocates Jiba and Mrwebi refused to cooperate with Justice Yacoob, despite my express instructions to them to do so.
77. Justice Yacoob completed his report.
78. Justice Yacoob made three recommendations, two of which were relevant to the Cassim inquiry. They were:
- 78.1. Criminal charges should be instituted or continued against certain members of the NPA;



- 78.2. The NPA should appoint a Judicial Commission of Inquiry with powers of compulsion to investigate allegations of impropriety in the NPA.
- 78.3. I handed a copy of Justice Yacoob's recommendations to the Minister of Justice and the President. They did not act on the recommendations.
79. The Mokgoro Commission was later appointed by President Ramaphosa.
- I. **The settlement agreement**
80. I had on 8 August 2014 submitted a founding affidavit to the High Court citing the President of the Republic of South Africa as the first Respondent and the Minister of Justice and Correctional Services as the Second Respondent, in an application to compel the President to furnish me with further particulars pursuant to his intention to hold an Inquiry into my fitness to remain in office. I did not proceed with my urgent application since negotiations then commenced between myself and the President with a view to settling the dispute that had arisen regarding my continued service as head of the NPA.
81. There were a number of reasons why I negotiated a settlement agreement with the President.
82. First, I entered into the settlement agreement to settle what I considered to be an intractable, undesirable and ongoing dispute between myself, the President and Minister Radebe.
- 82.1. The source of the dispute was the fact that the President wanted me to vacate the office of the NDPP and I did not want to leave office. A number of spurious and baseless grounds were raised for me to depart office, and I vehemently disagreed with those grounds. To this day I maintain that I am fit and proper to hold the office of NDPP and would serve again. My fitness and propriety was agreed to and recorded by the President and Minister in the settlement agreement, and they did not contend otherwise before Court.



- 82.2. In my position as the NDPP I understood my relationship with the President as the appointing authority of the NDPP to be relevant to my employment status. This is based on his appointment powers in terms of section 179 of the Constitution. I further understood my tenure as NDPP to be contractual in nature and not exclusively regulated by the NPA Act.
- 82.3. While the dispute between the President and I remained unresolved, attempts were made to resolve it through negotiations between myself, the President's legal representatives, Michael Hulley and Ms Busisiwe Makhene, (**Ms Makhene**) the Minister and the Minister of State Security, David Mahlobo (**Minister Mahlobo**).
- 82.4. In light of these negotiations, I ultimately accepted the terms of the settlement agreement so as to resolve the dispute that had arisen with the President and the pending litigation I had been forced to bring to the Court. I did so on the basis that the President and I were entitled to resolve disputes by reaching a settlement that was acceptable to all parties.
- 82.5. I was therefore of the view that the settlement agreement was concluded, not in terms of the NPA Act, but rather to settle a dispute. I later was advised, and accept, that the NPA Act regulated the terms of any early termination of my tenure as NDPP.
- 82.6. However, all of this did not change the simple fact that the settlement agreement was not, and was never intended to be, concluded to constitute a request on my part to vacate office in terms of section 12(8) of the NPA Act.
83. Second, I was also of the view that my entering into the settlement agreement was an attempt to protect the integrity of the office of the NDPP.
- 83.1. The dispute between the President and I, and my difficulties with Advocates Jiba and Mrwebl of the NPA had been ongoing and the President did not seem willing to intervene to resolve them.



- 83.2. There was also considerable media attention paid to the dispute and speculation on the issues at stake regarding the integrity and functionality of the NPA.
- 83.3. During May 2015, the President, the Minister and I concluded a settlement agreement in terms of which I agreed to relinquish my position as NDPP. I received a settlement amount equivalent to what I would have received as a salary had I served my full term as NDPP. In that agreement, the President acknowledged that I was a fit and proper person to hold office as the NDPP.
84. I then vacated my office as the National Director of Public Prosecutions, but not in terms of Section 12(6) of the NPA Act.
- J. **My refusal to vacate my Office in terms of section 12(6)**
85. At all material times, the President, the Minister and the President's legal representative Mr Hulley, were aware that I did not intend to, and in fact did not, request the President to allow me to vacate office in terms of section 12(6), me having informed them accordingly.
86. In this regard, I met with Mr Hulley after the conclusion of the settlement agreement and shortly after I was served with the papers in the application issued out of the Court under case number 62470/15 (the **Corruption Watch/ Freedom Under Law** application).
- 86.1. On 22 October 2015, I met with the Minister of State Security, David Mahlobo at the Beverley Hills Hotel in Durban, at his request. I drove him to Ebandla Hotel in Ballito where he was scheduled to speak at the opening of the "Integrity Leadership Summit", hosted by the Office of the then Premier of KwaZulu Natal, Mr Senzo Mchunu.
- 86.2. I was acquainted with Minister Mahlobo from when we had both attended university at the same time.



- 86.3. Minister Mahlobo instructed his Chief of Staff, Mr Maduma, to arrange a meeting between myself and Mr Hulley. That meeting took place on the next day, 23 October 2015, between myself, Mr Hulley and Mr Maduma, over breakfast at the Beverly Hills Hotel in Durban,
- 86.4. During that meeting, Mr Hulley enquired how I intended to approach this application by Corruption Watch and Freedom Under Law. I advised him that I had not filed a Notion of Intention to Oppose.
- 86.5. Mr Hulley proposed that I should work with the President on the matter and he offered to pay my legal costs, including the costs attendant on appointing a senior counsel.
- 86.6. I advised him that I could not accede to that request until I had seen the response which the President intended to file.
- 86.7. It was evident to me that Mr Hulley wanted me to say on oath that I had made a request to the President to vacate my office in terms of section 12(8) of the NPA Act. I advised Mr Hulley that I was not prepared to make that statement since that was not what had occurred factually. I reminded him that I was an officer of this Court and that I would not mislead the Court. I emphasised to him that there was correspondence between my legal representatives and the President that made it clear that I had never made such a request. I had drafted some of that correspondence personally.
87. I pause to note that, when I requested copies of this correspondence from my attorney following the meeting, I was informed that the files containing it had disappeared from my attorney's office. Fortunately, I had taken the precaution of keeping copies of the documents.
88. I concluded by stating to Mr Hulley that I did not intend to oppose the application, but I would be required to file a response in the event that the President's answering affidavit contained any false representation of events. Mr Hulley advised me that the Presidents answering affidavit had already



been prepared and that no false averments as to the sequence of events were made in this regard.

89. Mr Hulley undertook to provide me with a copy of the draft affidavit. However, he never did so.
90. I only became aware of the content of the President's answering affidavit after it had been filed in February 2016.
91. Thereafter, I contacted Minister Mahlobo and complained about the version contained in the President's affidavit and Mr Hulley's conduct. Minister Mahlobo invited me to his official residence in Waterkloof. Mr Maduma was also present at that meeting. I advised Minister Mahlobo about my meeting with Mr Hulley, and in particular about Mr Hulley's undertaking to me to provide the President's affidavit to me before it was filed, which was not fulfilled.
- 91.1. I advised Minister Mahlobo that I was not happy about what had happened and the version in the affidavit. I made it clear to him that even though I had not filed a notice of intention to oppose the application, I would consult with my legal representatives and advise them of what had happened. I explained to Minister Mahlobo and Mr Maduma that this application had now affected my reputation and I had to do something about it.
- 91.2. Minister Mahlobo then immediately telephoned the Minister, in my presence, although I did not speak to the minister.
- 91.3. Minister Mahlobo explained to the Minister that the President had deposed to an affidavit in which he had stated that I had requested to vacate office, even though there was correspondence which clearly indicated that this was not correct.



- 91.4. Minister Mahlobo advised me that, according to the Minister, Mr Hulley had advised the Minister that I had agreed that I had made a request to vacate office. I disputed this with Minister Mahlobo,
92. Accordingly, to the knowledge of the President's legal representatives and the Minister, I have always denied that I made a request to the President to vacate the office of the NDPP in terms of section 12(8) or at all. This is supported by the irrefutable documentary evidence that has been placed before Court.
- K. Conclusions**
93. Political and external interference in decision making in the NPA undermined its integrity and effectiveness and served to erode public confidence in the organisation.
94. The failure to act decisively against Advocates Jiba and Mrwebi harmed the organisation.
95. In my view the Parliamentary Committee on Justice did little or nothing to exercise appropriate oversight or intervene in the issues concerning Advocates Jiba and Mrwebi, at least while I was in office.

I know and understand the contents of this declaration.

I have no objection to taking the prescribed oath.

I consider the prescribed oath to binding on my conscience.



MXOLISI SANDILE OLIVER NXASANA

The Deponent has acknowledged that he knows and understands the contents of this affidavit, which was sworn to before me and the deponent's signature was placed thereon in my presence at Pretoria on this the 11th day of June 2019, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

 89006-8
CST
COMMISSIONER OF OATHS

FULL NAMES:

Thabi' Eddie Ranyana

DESIGNATION:

CST



ADDRESS:

72 Dunderk Avenue
Parkview SAPS

Annexure “TJJ5”



COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

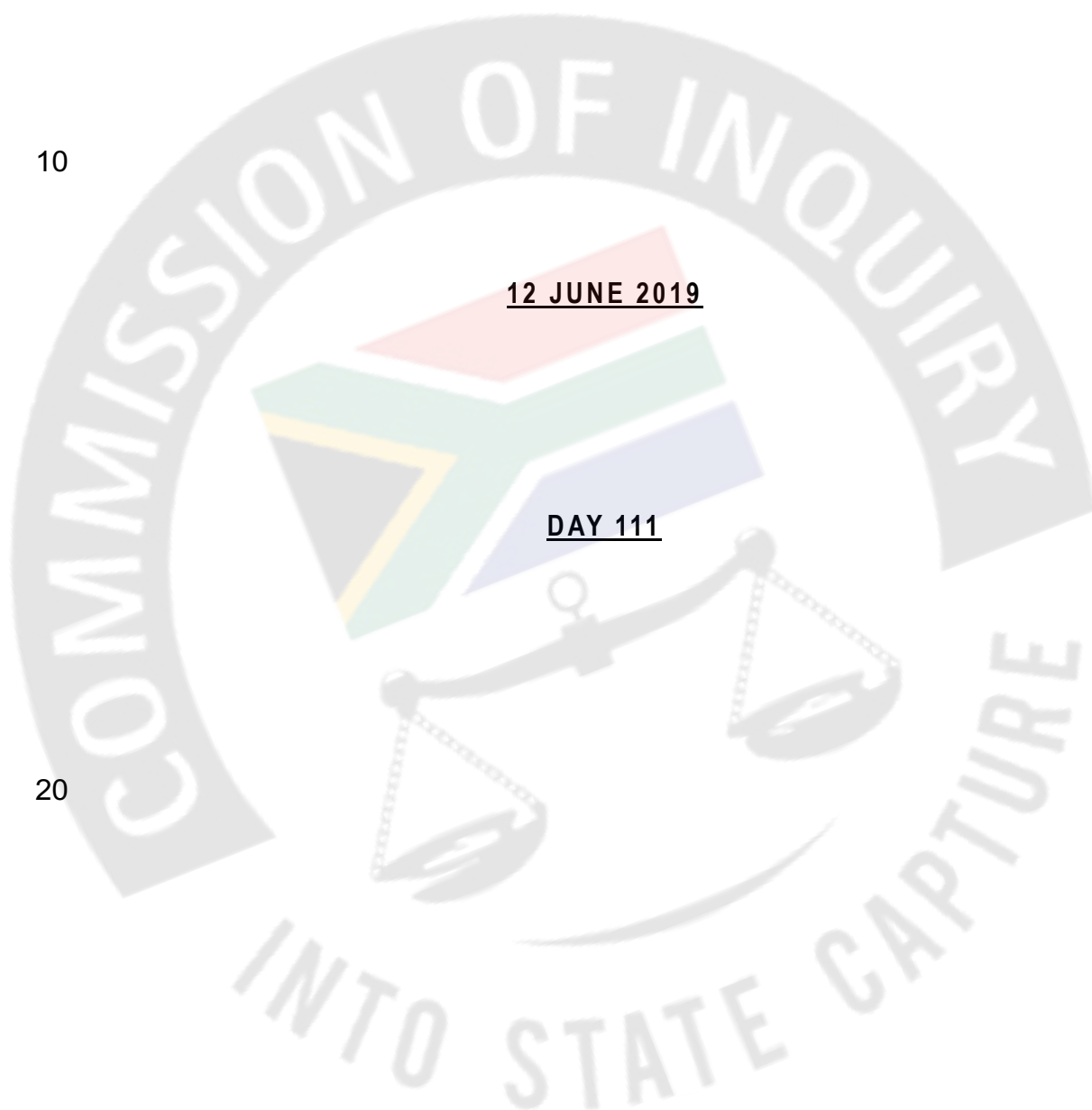
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know if I may mention the witness?

CHAIRPERSON: I think you may, I think we may have been told – I think we have been told yes.

MR MXOLISI SANDILE OLIVER NXASANA: They then produced the statement of a Mr Danikus he was a Greek national, it was an unsigned statement.

ADV PAUL JOSEPH PRETORIUS SC: Won't you spell that name please?

MR MXOLISI SANDILE OLIVER NXASANA: It's D-a-n-i-k-u-s,
 10 Danikus, Chair that was an unsigned statement, then when I asked for any statement implicating General Booysen they then produced a statement, I cannot remember the name but I will try to recollect it was a person who apparently was a security guard for a Stanger Taxi Association who, in his statement, was alleging that a Mr Mhlongo who was a member of the executive committee of Stanger Taxi Association was – had collected monies from the Association and told the Association in this security guard's presence that , that money was required by the General and that he was present when Mhlongo and the Chairperson at the time was Mr Zondi of the Stanger Taxi Association
 20 went to meet with the General at the gateway. Chair that is the General it doesn't even describe that it was General Booysen, that is the problem but he doesn't say that he overheard the conversation between even that General and Mhlongo, that was the only evidence that they said that it implicated General Booysen.

CHAIRPERSON: So this person who had signed this statement, you

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say he was a security guard simply said, he was present when somebody collected money and said it was for a certain General or the General...(intervention).

MR MXOLISI SANDILE OLIVER NXASANA: Wanted the money.

CHAIRPERSON: Wanted the money yes- wanted by the General.

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: He did not mention who the General was is that...(intervention).

MR MXOLISI SANDILE OLIVER NXASANA: No.

10 **CHAIRPERSON:** Yes and that he was present also – or that the Chairperson of the Taxi Association took it to meet with the General and that he was present when he met with the General or that didn't come out clearly?

MR MXOLISI SANDILE OLIVER NXASANA: It didn't come out clear but I think he was in the vehicle as the VIP protection.

CHAIRPERSON: Yes but also he didn't say who the General was?

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: Are those the only two documents they produced?

MR MXOLISI SANDILE OLIVER NXASANA: At the time yes.

20 **CHAIRPERSON:** And they did that in that meeting?

MR MXOLISI SANDILE OLIVER NXASANA: In that meeting.

CHAIRPERSON: In Ms Jiba's presence?

MR MXOLISI SANDILE OLIVER NXASANA: In Ms Jiba's presence.

CHAIRPERSON: And Ms Jiba didn't point to anything else she might have been told or shown in regard to what evidence there was.

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MR MXOLISI SANDILE OLIVER NXASANA: No.

CHAIRPERSON: Okay thank you.

MR MXOLISI SANDILE OLIVER NXASANA: Perhaps Chair, that is why if I follow the matter, I think when it came before you, if I'm not mistaken, I think that is why then subsequent I heard that Advocate Shaun Abrahams re-instated the charges, but I understand that people were sent to Greece to obtain a statement, again I'm told that, that statement is written in Greece and it was translated by someone here.

CHAIRPERSON: No I think it's important that, while you are here, we
10 get as much evidence as you have to inquire into these things – these matters because it's quite a serious suggestion or allegation when it is said that the NPA or certain people within the NPA abused their powers to charge people who should – against whom there was no evidence and that they were motivated by certain illegitimate considerations because if there is no evidence to support those allegations against those people or against the NPA then let us know but if there is evidence then let us know, the nation deserves to know exactly what the position is because the NPA is a very important institution in the country and in the fight against crime and the nation needs to know
20 exactly what the position is and if there are people who did that, we must know if there is evidence that shows that that's what they did and they will come before the Commission, put their side of the story and the Commission will make decisions and findings in due course and it was important that somebody like you comes before the Commission because you were – for a certain period of time occupying this very

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important position of NDPP and you left under certain circumstances and in the public domain there are all kinds of things that are said but also there are judgement, Court judgements that have dealt with that. It's important that somebody like you comes and tells the Commission exactly what you know and what happened while you were NDPP so that the Commission can have as full a picture as possible before, in due course, it makes findings.

MR MXOLISI SANDILE OLIVER NXASANA: Yes I appreciate that.

Sir – Chair can I make also this observation because – so that my
10 evidence here is not taken out of context.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: I haven't suggested that there was no evidence at all against General Booyesen's co-accused.

CHAIRPERSON: Yes, yes.

MR MXOLISI SANDILE OLIVER NXASANA: That – just to make that one very clear.

CHAIRPERSON: Yes, yes.

MR MXOLISI SANDILE OLIVER NXASANA: Yes
because...(intervention).

20 **CHAIRPERSON:** But you are saying with regard to the...(intervention).

MR MXOLISI SANDILE OLIVER NXASANA: To the racketeering charge against Booyesen, Chair there was not a shred of evidence.

CHAIRPERSON: Are you saying anything in regard to any other charges I can't remember whether that was the only charge he was facing, are you saying anything about any other charges he may have

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been facing other than the racketeering charge, I just can't remember if it was just racketeering charges.

MR MXOLISI SANDILE OLIVER NXASANA: Because in the main

Chair, perhaps just to unpack this matter Chair, you know I even suggested Chair that if I was prosecuting that matter or directing that matter I was going to – I said to them, you could have approached one of the co-accused and turn him a 204 witness because most of the evidence I said to them, you know, I'm based in Durban and come from Durban and all that you are telling me here is what is in the public
10 domain in Durban. We hear a lot of things about Cato Manor at the time and I told them that we would hear that when the members of the Cato Manor Unit had killed a person, they would plant a firearm and then General Booysen would come and take over the scene, so to say. Those were the allegations but then I said to them, these are just allegations and without the evidence in the docket you cannot prosecute because we don't prosecute with emotions and I tell you this is what I would also hear about the Cato Manor Unit and Chair, there was also evidence also, in the – there were allegations, not evidence in the docket that one member of the Cato Manor Unit shot and killed a
20 teenager at, I think, Empangeni (indistinct) when they were looking for a suspect, I don't know whether the suspect was related to this young man but I think they recklessly opened fire and killed an innocent young man. That's a simple investigation, I've never been an investigator in my life but, I mean you can take – collect evidence, match cartridges, spent cartridges, take the firearms for ballistic

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examination purposes and link the person or even use the adoption of common purpose to charge whoever, that is why I pointed out to them that they mustn't get carried away with this racketeering charge but of particular importance which I brought to their attention that, if you want to charge a person with racketeering you have to prove that there has been a pattern and this pattern has been continuously happening for a particular period and I said, if they want to allege that Cato Manor as the unit which was based at Cato Manor, Chair knows where Cato Manor is, in Durban, and my difficulty was that at the time General

10 Booyesen was not even a member of that unit because he was the head of the Hawks in Durban based, the now called (indistinct) building in Durban and then to allege that he was managing the enterprise when he was based there, they were not going to succeed.

CHAIRPERSON: Okay thank you.

ADV PAUL JOSEPH PRETORIUS SC: Just to explain the reference you made to Section 204, Section 204 is a Section of the Criminal Procedure Act, I understand, that is used to enable a co-accused to assist the prosecution and perhaps receive indemnity in the Court's discretion as a result.

20 **MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And that's what you were referring to.

MR MXOLISI SANDILE OLIVER NXASANA: That is what I was referring to.

ADV PAUL JOSEPH PRETORIUS SC: Earlier as having been as step

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that could and perhaps should have been taken.

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair, that is what I was suggesting.

ADV PAUL JOSEPH PRETORIUS SC: The time at which you took office, October 2013 was a time when the former President Zuma was still being investigated, is that correct?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair

ADV PAUL JOSEPH PRETORIUS SC: Were you briefed on the status of that investigation?

10 **MR MXOLISI SANDILE OLIVER NXASANA:** Not at all Chair, in fact Chair I've never even touched the docket relating to the former President Jacob Zuma. I understand that the docket was still in the possession of Advocate Jiba and Mr Hofmeyr, if I'm not mistaken.

ADV PAUL JOSEPH PRETORIUS SC: Alright.

CHAIRPERSON: Was – is it correct that the investigation was still going on at that time because remember in 2009 charges were withdrawn, did the investigation continue after they had been withdrawn?

20 **MR MXOLISI SANDILE OLIVER NXASANA:** Chair my response for the question of the investigation, I understand quite clearly that the investigations had ceased to – by then but I understand that the matter was pretty much very alive because there were challenges at the time. Then my response is in regard to that, that there were people still challenging the decision to withdraw charges against the former President Jacob Zuma.

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CHAIRPERSON: So in other words you are not necessarily saying there were investigators who were still continuing to investigate...(intervention).

MR MXOLISI SANDILE OLIVER NXASANA: No, no.

CHAIRPERSON: That you do not know?

MR MXOLISI SANDILE OLIVER NXASANA: No I'm not – I don't know Chair.

CHAIRPERSON: Ja you simply know that the matter...(intervention).

MR MXOLISI SANDILE OLIVER NXASANA: There were Court
10 challenges.

CHAIRPERSON: There were Court challenges relating to the dropping of the charges.

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: Yes perhaps my question should have been re-phrased to more accurately reflect what you say in paragraph 29 Mr Nxasana when you say you were not briefed on the status of the investigation rather on whether the investigation itself was continuing.

20 **MR MXOLISI SANDILE OLIVER NXASANA:** That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Right if we can move on then please to the events leading up to your own suspension. During your first year in office, it was not much more than a first year in office, but during that year, did you learn anything about the attitude towards you and the conduct towards you on the part of Advocates Jima and

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Mgwebi, that's Laurence Mgwebi and Nomgcobo Jiba?

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair, Chair as I

pointed out that I was appointed on the 31st of August 2013 with effect from the 1st of October 2013. In a sense it means that I had this whole month of September still in Durban to wrap up before I took office.

Chair I started to learn that during that period of September, because the announcement was made by the President that, there were people

that were running around, driving around in the township where I grew up from that is Umlazi in my area and that these people, many people

10 were stopping people, asking them about me, about my history especially about my involvement in a matter that was publicised of murder around 1985. It didn't puzzle me at first because I thought that it was part of the vetting process but this thing gained its momentum

until I got to the office. I then learnt there were members within NPA who were very much responsible also for that. I then subsequently received unsolicited statement in the form of an affidavit from one member of the NPA by the name of Terrence Joubert who was, at the

time, I don't know if he still is, a risk specialist at NPA he was based in Durban. He sent me an email and in the email there was an affidavit

20 that affidavit forms part of the bundle here where he then – where he was basically telling me that there was a campaign by Advocate Jiba that – to dig the dirt about me so that the intention, the whole purpose was to embarrass me so that the President will then remove me as the National Director of Public Prosecutions and she would then stand a chance of being considered to either continue to act or to be appointed

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permanently, it is there but it also – this affidavit – in this affidavit he also states that there were police – two police members that were assigned to the DPP, that's Deputy – Director of Prosecutions in KZN, Advocate Noko who was stationed there at his office who had received vehicles from the provincial office at the time the Commissioner was – Commissioner Mmamonye Ngobeni and that those people that were there, those two gentlemen they were then tasked with going around finding any dirt about me but he also went as far as recording this Colonel Mahlongo. Yesterday I tried to get this recording, I only
10 managed to get it very late because it happened in – I think 2013 or 2014 where basically I could hear the voice of Colonel Mahlongo and Terrence Joubert, Joubert was playing along. He did not – Colonel Mhlongo did not know that he was recording him. He was basically saying that Jiba had mandated him to go about digging dirt about me. They went so far as to that recording saying that I think Terrence Joubert had undertaken to hook him up with people from the Road Accident Fund because the allegation was that because I was practising as an attorney they were alleging that I had embezzled clients monies when I handled the Road Accident Fund claims and also
20 I do not know how they got it from and it is true that my wife at some stage was also – was employed at the – at the Road Accident Fund office in Durban. All of that it is there that my wife was also employed there and that Terence Joubert was going to hook him up with the gentleman at Road Accident Fund so that they could give them evidence implicating me in all of that. They also refer in the murder

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charge that Terence Joubert could hear him saying that that murder charge that you have in your position referring to Colonel Mhlongo that was – it is there – it is there I have it in the record here.

ADV PAUL JOSEPH PRETORIUS SC: Because these are serious allegations perhaps we should do you the favour of allowing to go through your evidence in the sequence you settled it in your statement. You talked about people in Umlazi informing you.

ADV MXOLISI SANDILE OLIVER NXASANA: That is...

ADV PAUL JOSEPH PRETORIUS SC: This was before your
10 appointment actually became confirmed or...

ADV MXOLISI SANDILE OLIVER NXASANA: It was confirmed.

ADV PAUL JOSEPH PRETORIUS SC: Before you took office.

ADV MXOLISI SANDILE OLIVER NXASANA: Yes, yes.

ADV PAUL JOSEPH PRETORIUS SC: After its confirmation but before you took office trying to as you put it dig up information about your past.

ADV MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: That is the one set of facts that you place before the Chair.

20 **ADV MXOLISI SANDILE OLIVER NXASANA:** That is correct.

ADV PAUL JOSEPH PRETORIUS SC: You also mentioned earlier in your evidence the approach to you of two NPA officials.

ADV MXOLISI SANDILE OLIVER NXASANA: Yes Chair.

ADV PAUL JOSEPH PRETORIUS SC: Now what did they tell you? That is in paragraph 33 of your statement.

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ADV MXOLISI SANDILE OLIVER NXASANA: That is the one that I am referring to. That approach I meant the – the affidavit that I received from **Mr Terence Joubert.**

ADV PAUL JOSEPH PRETORIUS SC: And the other person?

ADV MXOLISI SANDILE OLIVER NXASANA: The other person was Ms Queen Mlongo who was stationed at the – the NPA offices attached to the Asset Forfeiture Unit in Durban.

ADV PAUL JOSEPH PRETORIUS SC: What did she tell you?

ADV MXOLISI SANDILE OLIVER NXASANA: She told me that Colonel
 10 Mglongo was bragging saying that – in fact she also had recorded him unfortunately we have lost the phones now and the recordings but I listened to the recording myself. And in that recording he was bragging that he claimed to know me very well and he made a lot of false allegations about me in that recording but of importance is that he was saying that he had been promised the appointment of the Brigadier – he was accusing me of wanting to charge General Mdluli and that General Mdluli if he is not charged General Mdluli was going to make sure that he is appointed as the – he was going to be promoted as the Brigadier.

ADV PAUL JOSEPH PRETORIUS SC: Let us just take that slowly
 20 because that is a lot of information.

CHAIRPERSON: Maybe before you proceed Mr Pretorius just one line. At the time going back to **Mr Joubert's** affidavit – at the time you got that affidavit was **Mr Joubert** known to you?

ADV MXOLISI SANDILE OLIVER NXASANA: Chair no he was not known to me.

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CHAIRPERSON: So you received an affidavit from somebody that you had never met, that you did not know?

ADV MXOLISI SANDILE OLIVER NXASANA: Yes but he is an employee of the NPA.

CHAIRPERSON: Yes.

ADV MXOLISI SANDILE OLIVER NXASANA: And my details are there for them.

CHAIRPERSON: Yes. Okay.

10 **ADV MXOLISI SANDILE OLIVER NXASANA**: Because I received on the ...

CHAIRPERSON: On the email.

ADV MXOLISI SANDILE OLIVER NXASANA: Official NPA email.

CHAIRPERSON: Okay, Thank you.

ADV PAUL JOSEPH PRETORIUS SC: Right. So you have said in your statement that almost immediately after you were appointed two NPA officials approached you. We will deal with Mr Joubert in a moment. The other person how do you spell her name?

ADV MXOLISI SANDILE OLIVER NXASANA: It is Queen. Queen Mhlongo. Mhlongo it is Mhlongo.

20 **ADV PAUL JOSEPH PRETORIUS SC**: Ngo. Right. Did she tell you anything about Advocates Jiba and Mwebe?

ADV MXOLISI SANDILE OLIVER NXASANA: Chair except that – I just see if I can refresh my memory.

ADV PAUL JOSEPH PRETORIUS SC: Yes please do. Look at paragraph 33 of your statement.

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ADV MXOLISI SANDILE OLIVER NXASANA: Yes, Yes Chair this is – that is the – the evidence that I have just given that paragraph 33 talks to that about the plot to oust me. That Colonel Mhlongo was the main person that was used by Advocate Jiba to run the campaign.

ADV PAUL JOSEPH PRETORIUS SC: And Advocate Mwebé?

ADV MXOLISI SANDILE OLIVER NXASANA: Both of them Chair.

CHAIRPERSON: Hm you talk about two officials of the NPA one of them I understand to have been Mr Joubert.

ADV MXOLISI SANDILE OLIVER NXASANA: Yes.

10 **CHAIRPERSON:** That you are talking about. Was the other one the person that you refer to as Queen Mhlogo?

ADV MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

CHAIRPERSON: Okay.

ADV MXOLISI SANDILE OLIVER NXASANA: She was – she was attached to the Asset Forfeiture Unit based in Durban at the time. But she is no longer with the NPA. She is the private...

CHAIRPERSON: Okay. Thank you.

ADV MXOLISI SANDILE OLIVER NXASANA: Sector now.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Did they approach you together as a team or did they approach you separately?

ADV MXOLISI SANDILE OLIVER NXASANA: No independent of each other Chair.

ADV PAUL JOSEPH PRETORIUS SC: These were two separate independent...

ADV MXOLISI SANDILE OLIVER NXASANA: Separate incidents.

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ADV PAUL JOSEPH PRETORIUS SC: Approaches to you?

ADV MXOLISI SANDILE OLIVER NXASANA: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Right.

CHAIRPERSON: Around about the same time?

ADV MXOLISI SANDILE OLIVER NXASANA: Around about the same time Chair.

CHAIRPERSON: Hm.

ADV MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: During the month of September before you – no, no
10 after you had commenced your duties as NDPP?

ADV MXOLISI SANDILE OLIVER NXASANA: Yes after I had commenced my duties yes.

CHAIRPERSON: Okay ja.

ADV MXOLISI SANDILE OLIVER NXASANA: And Chair I think I must also mention that both – I think they were – Terence Joubert and – although he was a Risk Officer Specialist. I think his office was also in the same building as the office where – of the Asset Forfeiture Unit of the NPA in Durban. That is the ...

CHAIRPERSON: Where Ms Queen Mhlongo...

20 **ADV MXOLISI SANDILE OLIVER NXASANA:** Yes.

CHAIRPERSON: Was working [indistinct]

ADV MXOLISI SANDILE OLIVER NXASANA: Yes it is – yes – it – at – is it 185 Building, Southern Life Building.

CHAIRPERSON: Hm.

ADV MXOLISI SANDILE OLIVER NXASANA: Yes.

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ADV PAUL JOSEPH PRETORIUS SC: Alright. These approaches to you at whose instance were they made? Did you call on them to speak to you? Did they come of their own accord? What was the case?

ADV MXOLISI SANDILE OLIVER NXASANA: No Chair they came of their own accord.

ADV PAUL JOSEPH PRETORIUS SC: And separately?

ADV MXOLISI SANDILE OLIVER NXASANA: And separately.

ADV PAUL JOSEPH PRETORIUS SC: Alright.

ADV MXOLISI SANDILE OLIVER NXASANA: In fact Chair what I have
 10 not mentioned here in the affidavit is I have referred earlier to an incident when I said I was warmly welcomed at the NPA and during that – I referred to a – to the day when Minister Radabe came to introduce me. I gave a speech also there. We were at the auditorium. Chair I then said – I remember saying that Minister I am no – NDPP has ever finished his term of office and I can assure you that I will finish my term of office. In fact the NPA Act even permits me to take an extra period of not more than two years and I am sure that I will be here for the period of 12 years. I was saying that in jest.

CHAIRPERSON: Yes.

20 **ADV MXOLISI SANDILE OLIVER NXASANA:** But what then happened is that later on I – a lady was then seconded to my office as my secretary and at a very late stage she then said to me that she related her story to me that she said she was present at the – when I gave that – at that welcoming event. Then she said there was a gentleman she was standing by the door and a second gentleman immediately passed

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a comment after I made those remarks and said you will be surprised that you will not even last for a period of three months. As we continued working together then in the office and she then happened to meet and know that apparently that person who made those comments was Mr Lawrence Mwebé.

CHAIRPERSON: So – so this lady who was employed by the NPA said a person who was standing behind her.

ADV MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: At...

10 **ADV MXOLISI SANDILE OLIVER NXASANA:** Or next to her.

CHAIRPERSON: Oh next to her?

ADV MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: At the time when you made the speech.

ADV MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: After being introduced by Minister Jeff Radabe at the NPA to the NPA staff.

ADV MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: Said you will be surprised that you will not even finish three months?

20 **ADV MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

CHAIRPERSON: And then that same lady later came back to you and said that person was Mr Lawrence Mwebé?

ADV MXOLISI SANDILE OLIVER NXASANA: Yes when she got to see him when we had interactions with them in my boardroom.

CHAIRPERSON: Yes. Okay.

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ADV MXOLISI SANDILE OLIVER NXASANA: And she identified him as Lawrence Mwebe.

CHAIRPERSON: Okay thank you.

ADV PAUL JOSEPH PRETORIUS SC: Alright. You have spoken then about the two NPA officials who approached your unsolicited and separately?

ADV MXOLISI SANDILE OLIVER NXASANA: Yes.

ADV PAUL JOSEPH PRETORIUS SC: With information.

ADV MXOLISI SANDILE OLIVER NXASANA: Yes.

10 **ADV PAUL JOSEPH PRETORIUS SC:** About what other people in the NPA were doing to unseat you?

ADV MXOLISI SANDILE OLIVER NXASANA: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Is that more or less an accurate summary I do not want to put words in your mouth unnecessarily. We are going to go to the detail in a moment.

ADV MXOLISI SANDILE OLIVER NXASANA: Ja but again also Chair perhaps this might also become relevant I – also during the – just to go back. During the – that September period of 2013 when the announcement had been made before I took office I received – I
20 remember I received a call from Advocate Mdladla commonly known as Advocate Sthembiso Mdladla commonly known as Sticks Mdladla. I know that he was then subsequently one of the members of the Cassim Commission of Inquiry he was also a member. He phoned me in the morning and said to me apparently he made mention of a Mr Mwebe. He said he understand Mr Mwebe wanted to speak to me because he

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fears or hears told him that – he has been told that when I came to NPA I will deal with him. Chair it took me by surprise as I pointed out earlier on that I did not even know him. I did not even met him I did not know anyone except the person that I later identified as Advocate Pinkie Mokgatlhe.

CHAIRPERSON: The information that the lady gave you about the gentleman that was standing next to her was that information solicited?

ADV MXOLISI SANDILE OLIVER NXASANA: No Chair.

CHAIRPERSON: Hm. Okay.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Right. You said that Mr Terence Joubert gave you an affidavit that is part of the bundle?

ADV MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: In summary what did Mr Joubert tell you in that affidavit? Or what did that affidavit say? You deal with that in paragraph 36.

ADV MXOLISI SANDILE OLIVER NXASANA: In summary Chair apparently Advocate Jiba was going to Durban. I think it was on the day that I met her. And the protocol is that Terence Joubert as the Risk Officer Specialist in Durban is – was responsible for security and risk. I
20 think he was the head in Durban. He was the one who was going to fetch Advocate Jiba from the King Shaka International Airport and drive to her destination. But then Mr Joubert says that he then subsequently when he had made arrangements to go and fetch Advocate Jiba he received a phone call from the Advocate Jiba's secretary advising him that he was not – he was no longer going to be – it was not going to be

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him who was going to fetch Advocate Jiba and it was now going to be Colonel Mhlongo. And then he said he found that very strange because he talks about the security, the protocol and the security risk attached to all of that. And then he made mention of a situation where – he then made mention of these two police officers that were deployed to the DPP's office in Durban Advocate Noko and that is when he challenged that because of the security risk and that they were not vetted apparently his boss from the head office a Mr Ramahana flew down and came down and castigated him for that. Then he in this affidavit he

10 then talks about the – the plot now that apparently Jiba was running a campaign to get me removed as the – he said to Mhlongo – or he said Mhlongo told him that ...

ADV PAUL JOSEPH PRETORIUS SC: Mhlongo told who?

ADV MXOLISI SANDILE OLIVER NXASANA: Oh sorry Mhlongo told Joubert.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

ADV MXOLISI SANDILE OLIVER NXASANA: That Jiba said to him – Jiba does not trust this guy the – who is the new NDPP Mr Nxasana and that Mhlongo must go out and get some – and dig some dirt about him.

20 So that...

ADV PAUL JOSEPH PRETORIUS SC: That is you?

ADV MXOLISI SANDILE OLIVER NXASANA: About me?

ADV PAUL JOSEPH PRETORIUS SC: Yes.

ADV MXOLISI SANDILE OLIVER NXASANA: The whole intention was to embarrass me and that she did not know me but the whole intention

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was to embarrass me so that the President will remove me or will fire me as the National Director and she will then be considered to either continue to act or to be considered on a – to be appointed on a permanent basis.

ADV PAUL JOSEPH PRETORIUS SC: So the affidavit of Mr Joubert talks of a conversation between Colonel Mhlongo and Mr Joubert?

ADV MXOLISI SANDILE OLIVER NXASANA: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: And relates what was told to Mr Joubert in that conversation by Colonel Mhlongo?

10 **ADV MXOLISI SANDILE OLIVER NXASANA:** That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And you have related some of that?

ADV MXOLISI SANDILE OLIVER NXASANA: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Was anything mentioned in that conversation according to Mr Joubert about the Road Accident Fund?

ADV MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And you have – is that what you have just told the Chair about?

ADV MXOLISI SANDILE OLIVER NXASANA: That is what I have just
20 told the Chair and also the – the issue about the cases that I had faced in about 2015.

ADV PAUL JOSEPH PRETORIUS SC: Alright.

ADV MXOLISI SANDILE OLIVER NXASANA: Sorry 1985.

ADV PAUL JOSEPH PRETORIUS SC: And what – was anything said about the example prior example of Mr Stanley Gumede would you

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explain that briefly to the Chair.

ADV MXOLISI SANDILE OLIVER NXASANA: Oh yes. Chair yes. In that affidavit also **Mr Joubert** refers to – he says that Colonel **Mhlongo** also told him that Mr Stanley Gumede who is the Regional Magistrate in Durban was the person who was considered for the position before myself. But that Advocate Jiba ran the campaign to discredit him and one of the things in that affidavit that which **Joubert** alleges is that Jiba or – Jiba then – they convinced a one advocate here – they call him Makosi in Durban to – to complain about the manner in which Mr

10 Gumede had treated her in court as a result Mr Gumede had to face a lot of complaints and he was investigated by the Magistrates Commission. The matter was all over the media and the President that [indistinct] the President not considering him as the candidate. Then he says that they were using the very same tactic that they used against – and he was responsible Mr – Colonel **Mhlongo** in that campaign authorised by Jiba.

ADV PAUL JOSEPH PRETORIUS SC: Now you have told the Chair that this conversation between **Mr Joubert** and Colonel **Mhlongo** was recorded?

20 **ADV MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: You informed the investigators that it had been recorded but as of yesterday we had not been or the investigators had not been able to obtain the recording?

ADV MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: You managed to obtain the

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CHAIRPERSON: Yes, yes, no thank you very much once again, you are excused.

We adjourn, and tomorrow we will start at – what time should we ...

INQUIRY ADJOURNS TO 13 MAY 2019



Annexure “TJJ6”



44

AFFIDAVIT

I, the undersigned;

TERENCE JOHN JOUBERT,

do hereby state under oath and say;

1.

I am employed by the National Prosecuting Authority of South Africa ["the NPA"] and am attached to the Security and Risk Management Unit on the 3rd Floor, Southern Life Building, 88 Joe Slovo Street, Durban.

2.

The facts contained herein are, unless stated otherwise, or the context indicates otherwise, are within my personal knowledge and to the best of belief true and correct.

3.

I wish to state that I dispute the affidavit that Advocate Willie Hofmeyr has submitted and is referring to.

My reasons are as follows:

T.J.
S.P.M.
W.S.M.

45

On, or about 22 JUNE 2014, I was contacted by a certain journalist who told me that he was in possession of an affidavit I had attested to and wanted me to confirm the content of the said affidavit. I requested a copy of the said affidavit and he emailed a copy to me. I perused the affidavit and saw that my details were contained in the document as well as a signature which closely resembled mine. I read the contents of the affidavit, and did not recognize any of the information contained therein. I did not associate myself with any of the information contained in the affidavit and, it was clear to me that I had not compiled the affidavit. I have absolutely no knowledge of writing anything contained in it. I suspect that my computer was accessed and my information was used to compile this document without my knowledge. An investigation was instituted to establish the authenticity of the said disputed affidavit. I have not been informed of the outcome of the investigation.

4.

I am rather shocked and surprised to see that the said affidavit is being used during court procedures when an investigation into its authenticity is still underway. I also take offence to the fact that I am being used to fight the personal battles of Advocate Hofmeyr against the National Prosecuting Authority. I hereby deny any knowledge of the alleged instruction from anybody, including Advocate Jiba for me to investigate anybody outside the scope of my duties. The allegations contained in the affidavit are, in my opinion, all fabricated.

WSM
SS.Mf.s.
SP.M

4.6

5.

I know and understand the content of this statement.

I have no objection to taking the prescribed oath.

I consider the prescribed oath to be binding to my conscience.

TERENCE J. JOUBERT

I certify that on this _____ day of FEBRUARY 2016, the deponent signed the affidavit in my presence and declared that he knows and understands its contents, that he has no objection to taking the prescribed oath and that he considers the oath to be binding on his conscience.

Commissioner of Oaths

Full Names: 11/11/11 11/11/11

Designation: 11/11/11

Area: DBN

Address: NO. 50 Broad

Street DBN

400



3

P.J.

W&M

P.M.

AFFIDAVIT

1.

I, Queen Ncamisile Mhlongo, ID 8008190150081 who resides at 51 Avocado Grove, Avoca Hills, 4051, employed as a Special Investigator at the National Prosecuting Authority, attached in the Asset Forfeiture Unit, business address 2nd Floor Southern Life Building, 88 Joe Slovo Street, Durban, contact numbers 031 334 5195 (work) and 0733333639 (cell), would like to state under oath that:

2.

On Friday, the 15th of November 2013 during the day I went to the 3rd floor in the Southern Life Building to see Col Welcome Sthembis Mhlongo as I usually do. We sat and we started talking about the appointment of Mxolisi Nxasana as the new NDPP and how happy I was as someone who is from Durban who happens to be a close person to me. I thought he was going to share the same sentiments as he knows Mxolisi as well. However he started saying that he hopes that Mxolisi can let Richard Mdluli off the hook as he has been promised to head the Intelligence Unit in the KZN if Mdluli is not re-charged. He also mentioned that the right candidate was Nomgcobo Jiba. I then thought this conversation was becoming serious and I decided I would record him and started a sort of interview to find out his true feelings.

3.

He started telling me that Mxolisi Nxasana was not a kind man as I thought and that he knew this from interviewing his relatives. At the time I didn't understand what was going on. He continued by telling that he knows Mxolisi Nxasana from a long time ago where they had had an altercation about a client of Nxasana whom he (Mhlongo) had arrested. He then continued to tell me that Nxasana has many properties around Durban; he mentioned Ntuzuma, Umlazi, Pinetown and Kloof amongst others. I was surprised because one would be privy to such information if one was conducting an investigation. He came across as a person who has a hidden agenda as he was trying to convince me that Mxolisi Nxasana was not suitable for this position and he was going to prove it. I cut the recording when a private dressed police official came in. I know this because "Mhlongo" introduced him as a police official. I then left his office.

5.

6.

Do you consider the prescribed oath to be binding on your conscience? Yes

20

Deponent

I hereby certify that the Deponent has acknowledged that she knows and understands the contents of this statement which was sworn to and signed before me at DURBAN on this 25th day of June 2014, the Deponent having declared that he has no objection to taking the prescribed oath which he considers to be binding on his conscience.

COMMISSIONER OF OATHS

NAMES: P. T. ... in ...

ADDRESS: 421 FRENCHES STREET

RANK: (A) 15-15-15

Annexure “TJJ7”



AFFIDAVIT

I the undersigned,

JOHAN WESSEL BOOYSEN

do hereby state under oath that:

1.

I am an adult male South African citizen residing in Pretoria, Gauteng Province.

2.

All facts stated herein are, unless the context indicates otherwise, within my own personal knowledge and are to the best of my belief both true and correct.

3.

I will attempt to keep my submission brief in order to avoid prolixity and to unnecessarily burden the Commission. I will seek to highlight key aspects, events and *dramatis personae*. Should it become necessary I will provide additional facts.

MY POLICE CAREER AND QUALIFICATIONS

4.

I was a career policeman having joined the South African Police in 1976. I was an officer before our democracy in 1995 and was part of the transformation process from a Police Force to a Police Service. I regard my integration into the new Police Service, including my promotion to the ranks of Colonel, Brigadier and Major-General subsequent to the democratic dispensation in South Africa, as one of my

premises. During the subsequent searches a number of incriminating documents were seized. One such document was the confidential Soobramoney progress report into the investigation, which I had provided to the Provincial Commissioner, Ngobeni, and Ntanjana. A copy of the progress report is attached as **Annexure "JWB 1."**

42.

In a brazen attempt Panday approached a member of Cato Manor, Warrant-Officer Paul Mostert ("**Mostert**"), and requested him to either steal the exhibits or to set the building where the exhibits were kept alight. Panday told Mostert that he could name his price. Panday somehow knew exactly where the files were kept. This was told to me personally by Mostert.

43.

We attempted to set up a sting operation in terms of section 252(a) of the Criminal Procedure Act, but Panday must have suspected something as he did not engage further with Mostert when Mostert phoned him back.

44.

It later emerged during the investigation communication interceptions authorised in terms of Act 70 of Act 2002, that one of the Colonels at the HAWKS, Colonel Welcome S (WS) **Mhlongo** ("**Mhlongo**") had links with Panday and I therefore had good reason to suspect that **Mhlongo** had informed Panday where the files were kept.

45.

Mhlongo was later implicated by Advocate Mxolisi Nxasana for attempting to 'find dirt' on Nxasana at the behest of Advocate Nomgcobo Jiba ("**Jiba**"). This was when Nxasana had succeeded Jiba as the National Director of Public Prosecutions

("NDPP"). I acquired a copy of the statement of Mr Terence John Joubert ("Joubert"), a Risk Specialist contracted to the office of the NPA, which confirms this. A copy of Joubert's statement is attached Annexure "JWB 2."

46.

Further communications intercepted revealed that on the same day that Madhoe had been arrested, Panday had phoned Deebo Mzobe ("Mzobe") during the evening and complained to Mzobe that I set them up. I believe that Mzobe is the relative of former President Jacob Zuma ("Zuma"). During the intercepted discussion between Panday and Mzobe they commented that *"Booyesen had to be taken care of because Booyesen was standing in the way of everything and that Booyesen's wings must be clipped"*. The discussion related to the investigation against Panday who was a business partner of Mzobe, See attached Annexure "JWB 3." This is an example of one of the conversations that were recorded. The other recordings relating to the Panday investigation can be made available to the Commission's investigators, if so required.

47.

Panday also had close business ties with one of Zuma's sons, namely Mr Edward Zuma. During the investigation it came to light that Panday had already received approximately R45 million from SAPS and that a further R15 million was about to be paid to him. I immediately informed SAPS's financial services not to release the money to Panday until the corruption investigation had been concluded. Panday initially threatened me with legal action, however he did not pursue the threats.

230.10. *"It will take South Africa's criminal-justice sector years to recover from the disruptive impact of the Zuma era, during which good men were booted from their jobs for doing the right thing. The chilling impact this had on prosecutors and police officers is immeasurable. Those who were willing to bend the rules and apply two sets of rules, one for Zuma and his cronies and another for the rest of us, thrived".* Adriaan Basson & Pieter du Toit. In their book *"Enemy of the People"* page 95.

230.11. I was interviewed by researchers for *"State Capacity Research Project"* titled *"Betrayal of the Promise: How South Africa is being stolen"* published in May 2017. I have read the report. The chapter dealing with *"Securing a Loyal Intelligence and Security Apparatus"*, [pages 19 and 20] accurately chronicles some of the events I have described above. Pages 50 to 52 under the heading *"Investigations and prosecutions"* are also relevant. I attach an extract from this report as **Annexure "JWB 29."**

230.12. I have titled a book which I co-wrote with journalist Jessica Pitchford *"Blood on their Hands"* I sincerely believe that those who allowed themselves, for whatever reason, to become part of the captured factions at the NPA and in Law enforcement have done our country a grave disservice. They have blood on their hands.

231.

I know and understand the contents of this declaration.

I have no objection to take the prescribed Oath.

I consider the oath to be binding on my conscience.

JOHAN WESLEYSEN

I certify that the deponent who acknowledges that he knows and understands the contents of this affidavit; that it is the truth to the best of his knowledge and belief and that he has no objection to taking the prescribed oath and regards the same as binding on the deponent's conscience and the administration of the oath complied with the Regulations contained in Government Gazette No. R1258 of 21 July 1972, as amended. This affidavit is signed and sworn to before me at Centurion on this the 2nd Day of April 2019 at 14:32



[Signature]
COMMISSIONER OF OATHS

EX OFFICIO:

FULL NAMES:

Jean Jacques Martins

PHYSICAL ADDRESS:

CNR JEAN AVEUNE

OLIFANTHOUTBOOM CENTURION

DESIGNATION:

Colonel

Judicial Commission of Inquiry into Allegations of State Capture, Corruption and
Fraud in the Public Sector including Organs of State

CONFIRMATORY AFFIDAVIT

I, the undersigned,

SIPHELELE PATRICK MAGWAZA

do hereby state under oath that:

1. All facts stated herein are, unless the context indicates otherwise, within my own personal knowledge and are to the best of my belief both true and correct.
2. I am a Warrant Officer in the South African Police Service ("**SAPS**") with force number 0920706-6. I joined the SAPS in 1990 and during 2007 I was transferred to Durban Central police station, (formally known as CR Swart Square). During 2012, I was placed at the Community Service Centre (formally referred to as the Charge Office) at 50 Dr Yusaf Dadoo street (formally known as Broad street) where I currently still perform my duties.
3. My duties at the Community Service Centre entail assisting members of the public with regards to all police related matters. These include the obtaining of affidavits, commissioning of affidavits and certifying documentation as true copies of the originals. My virtue of my appointment as a police officer, I am appointed as a Commissioner of Oaths, and as such have the authority to Commission affidavits.

SP, 14

T R M

4. The purpose of this affidavit is to confirm my role in administering the Oath, and confirming my signature reflected on an affidavit deposed to by Mr Terrence John Joubert ("**Mr Joubert**") on 1 February 2016, where I commissioned his affidavit. A copy of the affidavit is attached hereto as **Annexure "SPM.1."**
5. On 11 February 2020 I was approached by Mr Groenewald, an investigator at the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State ("**The Commission**"), who presented me with an affidavit as described in paragraph 2 of this affidavit, and he asked to comment on the circumstances surrounding me Commissioning the affidavit. T.N.M.
6. From the outset I must state that during my performance of my duties I attend to hundreds of members of the public during the year, and I note that this affidavit was commissioned on 1 February 2016, some 4 years ago.
7. I therefore do not have an independent recollection of the circumstances surrounding me commissioning this affidavit save to say that:
- 7.1 I confirm that it is my signature and details reflected on page 3 of the affidavit as the Commissioner of Oaths;
- 7.2 I also initialled pages 1,2 and 3 of the affidavit;
- 7.3 The date stamp reflected on the document is that of the Community Service Centre;
- 7.4 I do not know Mr Terrence Joubert;

- 7.5 I would not have typed the affidavit so I can only presume that Mr Joubert bought me the typed version to sign;
- 7.6 In terms of administering the Oath, I would have asked Mr Joubert if he knew and understood the contents of the affidavit, whether he had any objection to taking the prescribed oath, if he considered the prescribed oath to be binding on his conscience. If he had not answered "yes", "no" and "yes to the questions put to him and uttered the words "So help me God", I would not have commissioned the affidavit. This confirmation is also included in paragraph 5 of his affidavit;
- 7.7 A further requirement is that the individual must sign the affidavit in the presence of the Commissioner of Oaths, so I presume that Mr Joubert would have signed the affidavit in my presence and initialled all pages of the affidavit; This certification is also contained in the affidavit between the signature of Mr Joubert and my signature as the Commissioner of Oaths, and is a confirmation by myself;
8. I know and understand the contents of this declaration.
I have no objection to taking the prescribed oath.
I consider the prescribed oath to be binding on my conscience.


SIPHELELE PATRICK MAGWAZA

I certify that the deponent has acknowledged that he knows and understands the contents of this declaration, which was sworn to before me and the deponent's

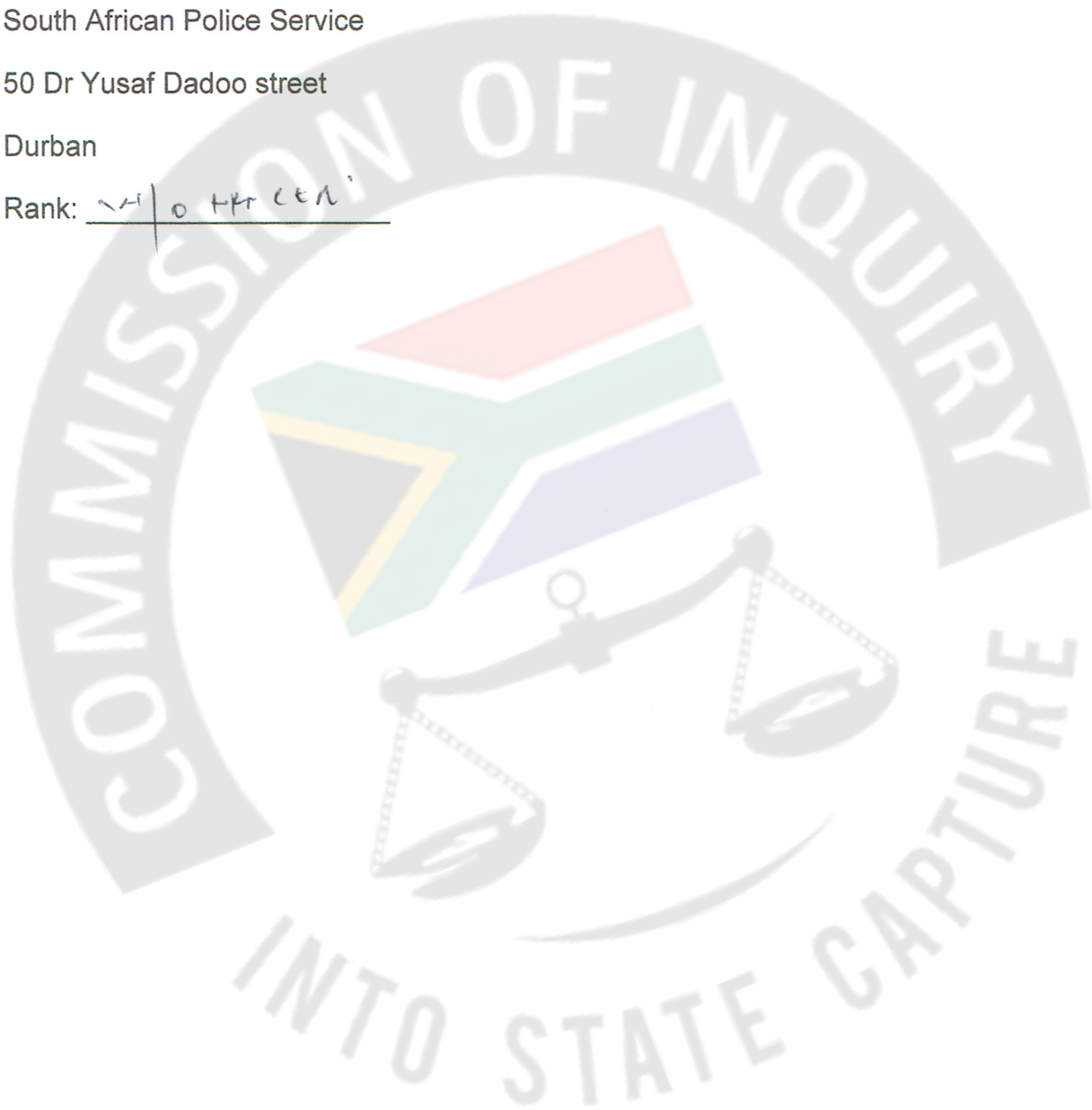
signature was placed thereon in my presence at Durban on this the 11th day of February 2020 at 09 h 05.

0488920 – 7
W/O MATHIBELA.T.R

COMMISSIONER OF OATHS

SOUTH AFRICAN POLICE SERVICE
COMMUNITY SERVICE CENTRE
2020 -02- 12
DURBAN CENTRAL
KWAZULU-NATAL

South African Police Service
50 Dr Yusaf Dadoo street
Durban
Rank: W/O MATHIBELA.T.R



SP. an

T. am

ANNEXURE SPM.1.



Dmcyrc

AAZ

26

AFFIDAVIT

I, the undersigned;

TERENCE JOHN JOUBERT,

do hereby state under oath and say;

1.

I am employed by the National Prosecuting Authority of South Africa ["the NPA"] and am attached to the Security and Risk Management Unit on the 3rd Floor, Southern Life Building, 88 Joe Slovo Street, Durban.

2.

The facts contained herein are, unless stated otherwise, or the context indicates otherwise, are within my personal knowledge and to the best of belief true and correct.

3.

I wish to state that I dispute the affidavit that Advocate Willie Hofmeyr has submitted and is referring to.

My reasons are as follows:

T.J.
SP.M

SP.M

T. J. M

27

On, or about 22 JUNE 2014, I was contacted by a certain journalist who told me that he was in possession of an affidavit I had attested to and wanted me to confirm the content of the said affidavit. I requested a copy of the said affidavit and he emailed a copy to me. I perused the affidavit and saw that my details were contained in the document as well as a signature which closely resembled mine. I read the contents of the affidavit, and did not recognize any of the information contained therein. I did not associate myself with any of the information contained in the affidavit and, it was clear to me that I had not compiled the affidavit. I have absolutely no knowledge of writing anything contained in it. I suspect that my computer was accessed and my information was used to compile this document without my knowledge. An investigation was instituted to establish the authenticity of the said disputed affidavit. I have not been informed of the outcome of the investigation.

4.

I am rather shocked and surprised to see that the said affidavit is being used during court procedures when an investigation into its authenticity is still underway. I also take offence to the fact that I am being used to fight the personal battles of Advocate Hofmeyr against the National Prosecuting Authority. I hereby deny any knowledge of the alleged instruction from anybody, including Advocate Jiba for me to investigate anybody outside the scope of my duties. The allegations contained in the affidavit are, in my opinion, all fabricated.

S.P.M.
SP.M

SP.M

T. N.M

28

5.

I know and understand the content of this statement.

I have no objection to taking the prescribed oath.

I consider the prescribed oath to be binding to my conscience.

TERENCE J. JOUBERT

I certify that on this day of FEBRUARY 2016, the deponent signed the affidavit in my presence and declared that he knows and understands its contents, that he has no objection to taking the prescribed oath and that he considers the oath to be binding on his conscience.

Commissioner of Oaths



Full Names: A. J. Joubert
Designation: SP-10
Area: DBM
Address: No. 50 Broad Street DBM
UPD

P. J.
SP-M

SP-M

T. A. M.

AFFIDAVIT

1.

I, Queen Ncamisile Mhlongo, ID 8008190150081 who resides at 51 Avocado Grove, Avoca Hills, 4051, employed as a Special Investigator at the National Prosecuting Authority, attached in the Asset Forfeiture Unit, business address 2nd Floor Southern Life Building, 88 Joe Slovo Street, Durban, contact numbers 031 334 5195 (work) and 0733333639 (cell), would like to state under oath that:

2.

On Friday, the 15th of November 2013 during the day I went to the 3rd floor in the Southern Life Building to see Col Welcome Sthembis Mhlongo as I usually do. We sat and we started talking about the appointment of Mxolisi Nxasana as the new NDPP and how happy I was as someone who is from Durban who happens to be a close person to me. I thought he was going to share the same sentiments as he knows Mxolisi as well. However he started saying that he hopes that Mxolisi can let Richard Mdluli off the hook as he has been promised to head the Intelligence Unit in the KZN if Mdluli is not re-charged. He also mentioned that the right candidate was Nomgcobo Jiba. I then thought this conversation was becoming serious and I decided I would record him and started a sort of interview to find out his true feelings.

3.

He started telling me that Mxolisi Nxasana was not a kind man as I thought and that he knew this from interviewing his relatives. At the time I didn't understand what was going on. He continued by telling that he knows Mxolisi Nxasana from a long time ago where they had had an altercation about a client of Nxasana whom he (Mhlongo) had arrested. He then continued to tell me that Nxasana has many properties around Durban; he mentioned Ntuzuma, Umlazi, Pinetown and Kloof amongst others. I was surprised because one would be privy to such information if one was conducting an investigation. He came across as a person who has a hidden agenda as he was trying to convince me that Mxolisi Nxasana was not suitable for this position and he was going to prove it. I cut the recording when a private dressed police official came in. I know this because "Mhlongo" introduced him as a police official. I then left his office.

4.

On Saturday, the 16th of November 2013, I met with Advocate Thulani Duma who is working in the National office of the NPA. He is a very close friend and a colleague in Kwa Mashu and I played the recording for him. He was also shocked and I transferred the recording to him via Bluetooth. I called the NDPP and I sent him the recording on the 17th of November 2014. Unfortunately I lost the phone with the recording on the 16th of December and I no longer have the recording but the NDPP and Adv Duma still have a copy.

5.

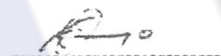
Amongst the people who heard the recording was Terrence Joubert who works in the Security and Risk department and he told me that he had recorded Col Mhlongo as well and I listened to his recording. The little that I remember from Terrence's recording is that Col Mhlongo wanted to find some "dirt" on Mxolisi from the Road Accident Fund and he was enquiring if Terrence knew anyone from the "RAF".

6.

Do you know and understand the contents of this statement? Yes

Do you have any objections taking the prescribed oath? No

Do you consider the prescribed oath to be binding on your conscience? Yes



Deponent

I hereby certify that the Deponent has acknowledged that she knows and understands the contents of this statement which was sworn to and signed before me at DURBAN on this 25th day of June 2014, the Deponent having declared that he has no objection to taking the prescribed oath which he considers to be binding on his conscience.


COMMISSIONER OF OATHS

NAMES: *Thulani Duma*

ADDRESS: *421 Phoenix Street
Durban*

RANK: *Commissioner*