



PUBLIC PROTECTOR
SOUTH AFRICA

Accountability • Integrity • Responsiveness
Justice • Good Governance
Mutsireledzi Wa Tshitshavha

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Honourable Thandi Modise
Speaker of the National Assembly
Parliament of the Republic of South Africa
Cape Town
Email: speaker@parliament.gov.za

Dear Speaker

REQUEST FOR PARLIAMENTARY INVESTIGATION INTO THE CONDUCT OF THE PUBLIC PROTECTOR AND THE OPERATIONS OF THE OFFICE OF THE PUBLIC PROTECTOR

I am addressing this letter to you, requesting your intervention and investigation into the conduct of the Public Protector, Advocate Busisiwe Mkhwebane and the financial mismanagement in the Public Protector SA. I have no other recourse but to take this step. Attached hereto please find my affidavit outlining my complaint, for your attention.

I trust this matter will receive your favourable attention.

Regards


S H SAMUEL
PROVINCIAL REPRESENTATIVE
PUBLIC PROTECTOR SA
FREE STATE
hamiltons@pprotect.org
071 222 0690

11 February 2020.

AFFIDAVIT

I, the undersigned

SPHELO HAMILTON SAMUEL

do hereby make an Oath and say that:

1.

THE DEPONENT:

- 1.1. I am an adult male person residing in Bloemfontein and employed by the Public Protector South Africa as a Provincial Representative of the Public Protector: Free State Province.
- 1.2. The contents of this affidavit are within my personal knowledge and belief, except where the context indicates otherwise, and are true and correct. I am deposing to this affidavit in order to bring to the attention of the Speaker of the National Assembly, certain information relating to the conduct of the current incumbent Public Protector, Advocate Busisiwe Mkhwebane and appeal for the assistance of Parliament in rescuing, protecting and safeguarding the institution of the Public Protector South Africa.
- 1.3. Where I refer to the Office of the Public Protector and to the Public Protector South Africa, I refer to the institution as a whole, and any reference to the Public Protector is with reference to the person of the incumbent, currently Advocate Busisiwe Mkhwebane.

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2.

BACKGROUND INFORMATION

- 2.1. I am an Attorney of the High Court of South Africa, having been so admitted after fulfilling the requirements for the admission of an Attorney in the Republic of South Africa, on the 20th April 1995. I hold a B. Proc degree from the University of KwaZulu-Natal (then University of Natal), Durban campus. I practiced law and worked briefly as Executive Officer for the then Law Society of the Free State (now the Free State Legal Practice Council) before I joined the Public Protector SA on the 1st December 2000 as Senior Investigator.
- 2.2. I held the position until May 2009, when I was appointed as the Provincial Representative of the Public Protector in Limpopo by the then Public Protector, Advocate Lawrence Mushwana from 1st June 2009 until the 31st March 2015. I was transferred at my request, by the then Public Protector, Adv Thulisile Madonsela, to the Free State Provincial Office in the same position, which I still hold in the Bloemfontein Office of the PPSA.
- 2.3. As can be deduced from the foregoing paragraphs, I am into my 20th year of service in the PPSA both in Middle Management (9 years) and at Senior Management (11 years). I have served under all the previous Public Protectors from Adv (now Justice) Selby Baqwa, Adv Lawrence Mushwana, Adv Thulisile Madonsela and now Adv Busisiwe Mkhwebane. I also worked with the latter during Justice Baqwa and Adv Mushwana's terms, both of us as Senior Investigators. I believe she was an aspirant State Prosecutor before she was seconded to the PPSA at the time, along with a number of other colleagues, some still in service at the PPSA and some having left over the years.

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- 2.4. While I was stationed at the Polokwane office, I was attacked and assaulted by a complainant in my office in December 2011, as a result of which the then Chief Executive Officer (CEO), Mr Themba Mthethwa, appointed the services of a Security Company to protect staff and property on the same day. At the advice of the CEO, I also laid a criminal charge against the assailant. I will elaborate on this later in the affidavit.

3.

REASONS FOR DEPOSING TO THIS AFFIDAVIT

- 3.1. As indicated in paragraph 1.2 above, I am deposing to this affidavit to bring to the attention of the Speaker, Madam Thandi Modise in particular, and Parliament of the Republic of South Africa in general, some of the unhealthy working conditions the staff in the PPSA are subjected to, to seek assistance and intervention in rescuing this institution from the tyranny that Adv Mkhwebane is unleashing with a view to end what I and colleagues believe is an orchestrated plan to destroy the PPSA.
- 3.2. I am aware that the majority of my colleagues, across all categories and levels, including Managers, have similar concerns as I do about the state of the PPSA since Adv Mkhwebane took office in October 2016, but are afraid to speak out lest they be victimized, and put their jobs in jeopardy, as has been the case with a number of colleagues that have left the PPSA, with others on suspension. I have taken this step well aware that I will suffer victimization from the minute Adv Mkhwebane gets knowledge of this complaint, but I have chosen to speak out and suffer in truth and honour, than to keep silent and be perceived to have been an accomplice to the destruction of such a prestigious institution many colleagues, past and present, have worked hard to build and dedicated ourselves to the good

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cause of serving the public. It is a dedication most of us bought into as our continued contribution after fighting Apartheid and protecting the democracy that gave rise to the establishment of this institution.

- 3.3. Some of my colleagues have been forced into resigning as they could not continue to take the strain. I have also considered this option, but chose not to succumb to intimidation. I am also raising it as I take the Speaker and the role of Parliament over the PPSA and other institutions into my confidence. I come clean and state my case because I know that she will seek to project me as a monster that has been convicted by a court for allegedly assaulting a member of the public, which assault I deny. I deal with that in the paragraphs following.
- 3.4. As referred to above, while I was stationed in Polokwane, I was attacked by a complainant who barged into my office when I declined to see him immediately as he demanded. I was busy on my landline when he barged in and attacked me. I tried to push him out of my office and in the process we both fell as he was holding on to my shirt. I was rescued by my colleagues who wrestled him from me and he left. I reported the matter immediately to the CEO, who caused the deployment of a private security company on the very same day to protect staff and office property as we are constantly under threat from unhappy complainants that we find against in our investigations, as well as those government officials we investigate for corruption and other issues of maladministration.
- 3.5. I then filed an incident report as instructed by the CEO, which was discussed at the Executive Committee (Exco) meeting soon thereafter. As stated above, I also reported the matter to the police in Polokwane as instructed by the CEO, and it was registered under CAS 752/12/2011. When I attended at the police station to lay the charge, I found the complainant who had attacked me, at the police station also laying a charge against me. It was registered under CAS 753/12/2011. Both cases were

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ultimately thrown out of court by the Senior Public Prosecutor as he was of the view that the complainant had in fact attacked me in my office and I was not particularly interested in pursuing the case against an elderly man and I was way too busy in my line of work to be running to court on what I considered to be a minor incident. I put the matter behind me and went on with my life.

- 3.6. I was surprised when I was called and subsequently served with a subpoena by two female police officers in Bloemfontein sometime in 2017 where I had relocated in 2015, concerning the matter. It transpired that the Senior Public Prosecutor had received instructions to resuscitate the matter following the complainant's complaint. I started attending the case, having to travel from Bloemfontein to Polokwane on numerous occasions with my attorney from Vereeniging, Gauteng, only to have the case postponed each time. This was precisely the reason I did not want to pursue my complaint, as it was too minor and not worth pursuing considering the time and financial resources it would cost me to do so. I was ultimately found guilty of assault common and sentenced to 2 months imprisonment or Two Thousand Rand, half of which was suspended for a period of 5 years on condition that I am not found guilty of a similar offence. I lodged an application for leave to appeal and the magistrate granted it. My attorneys are still awaiting the allocation of the date of hearing of this appeal at the Polokwane High Court, which will be allocated as soon as the missing parts of the record are received by the Registrar from the trial court.
- 3.7. In the meantime, the complainant has issued summons against myself and the PPSA, wherein he is suing for R350 000 (Three Hundred and Fifty Thousand Rand. The matter is still to be heard in court.
- 3.8. I mentioned the above case because in my case, Adv Mkhwebane has sought to use it to pursue her agenda of purging me as she has done with a number of my colleagues. This is in spite of the fact that the previous Public

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Protector and her Exco absolved me from any wrongdoing. It is her *modus operandi* to tarnish the image of those that she is targeting by laying charges against them, just to have their names tarnished. This she does especially to Senior Managers who she perceives to be a threat to her intellectual and legal knowledge, which I submit she lacks considerably. She has also used this tactic to have colleagues who qualify and are interested in applying for positions like that of the Deputy Public Protector, disqualified as she will then raise the pending allegations in public and all forms of media, including social media to tarnish their reputations and have them disqualified.

4.

EVENTS SINCE OCTOBER 2016


- 4.1. It is a matter of public knowledge that prior to the departure of Adv Madonsela at the end of her term in October 2016, the PPSA enjoyed respect and prestige as the champion of the rights of South Africans in that the office exposed corruption and rampant maladministration in government, including former president Jacob Zuma. One of the last reports issued by Adv Madonsela led to the establishment of the Commission of Enquiry into State Capture headed by Deputy Chief Justice Zondo. It is also public knowledge that the former president was implicated in the investigation that resulted in the formation of this commission of enquiry.
- 4.2. Adv Mkhwebane found in place at the PPSA, a peer review mechanism in the form of a Think Tank Committee (TT) comprising of all legally-qualified Senior Managers, including all 9 Provincial Representatives, and Senior Investigators who submitted draft investigation reports for scrutiny before she signs them off. The TT sat at least once every quarter, or as and when the need arose and the Public Protector determined it necessary, and was presided over by the Public Protector. All aspects of the report in terms of

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the facts, issues investigated, legal prescripts applicable, findings and remedial action necessary to redress the alleged wrong, would be looked into and where consensus is reached or the majority decision is supported by the facts and the law, the matter would then be approved for signature by the Public Protector. There would be cases, although few and far in-between, where the Public Protector would not agree with the majority view but would accept it and be part of the majority decision. Equally, there were few cases where she would differ with the majority but convince us that we go with her view. This we accepted as providing leadership and taking charge, as she would ultimately be responsible for the consequences as Public Protector. This was the case prior to October 2016, with Adv Madonsela.

- 4.3. Advocate Mkhwebane abolished this committee soon after presiding over a few of the sittings. It became clear to the majority if not all of us, that she was either overwhelmed by the legal arguments presented for and against the adoption of a particular report, or did it to pursue her agenda of excluding us in the process and therefore silence our views. I say this because in the few TT sessions she presided over before she abolished it, she would one minute agree with a particular view, and when another view is presented, would then go along with it, only to do the same with another differing view. This demonstrated her failure to provide leadership, guide and take charge of the TT and it exposed her lack of legal knowledge and the role she should be playing as leader of the PPSA. As a result, she abolished the TT sittings and decided to decide on reports on her own, with disastrous consequences. It also gave her the sole authority to chop and change reports submitted to her by Provincial Representatives and Chief Investigators to suit her and her political motives, and protect those she wanted to protect, without interference or objection from the rest of us. This is demonstrated in her continued reckless litigation and lack of knowledge

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of the practical application of the law and the growing applications for review of her reports, with dire financial consequences for the PPSA.

- 4.4. An example of this is the Vrede Dairy Project report which has been successfully reviewed and set aside by the High Court in Pretoria. It was subsequently queried by the Portfolio Committee on Justice and Correctional Services, through which the PPSA accounts to Parliament and Adv Mkhwebane undertook to reinvestigate the matter with specific focus on the role of politicians in the scheme, and interview the beneficiaries of the project. This investigation has been swept under the carpet despite some of the findings in respect of Messrs Magashule and Zwane being made in our final draft report submitted to her.
- 4.5. On her 50th Birthday celebration which she hosted on Saturday the 8th of February 2020, Mr Zwane was in attendance. This is the same person she is supposed to be investigating, attending a social function she is hosting. Yet another demonstration of either serious lack of appreciation for the legal implications of such conduct on her part, or reckless disregard for same.

5.

ATMOSPHERE REIGNING IN THE OFFICE

- 5.1 Adv Mkhwebane has introduced an unhealthy environment of fear, intimidation and mistrust among staff members. She has appointed compromised people into positions of authority so that they carry out her orders without question. One such example was the then Chief Executive Officer, Mr Vussy Mahlangu, who has now left the office amid pressure from the Public Servants Association (PSA) which is the majority union representing staff in the PPSA. I say Mr Mahlangu was compromised because he was appointed after he was reportedly dismissed from the Department of Rural Development and Land Affairs following a guilty

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finding on corruption-related charges in the internal disciplinary hearing of the Department. As a result, he was not supposed to be employed in an institution of integrity, the PPSA, which investigates and makes findings against such conduct against the state and state officials. I believe it was for the reason that he would do anything to have and retain a job as a discredited person, that she appointed him.

- 5.2 Mr Mahlangu issued threats and intimidated staff, including Senior Managers, with disciplinary action and earned himself the nickname of "the PP's Henchman" among some staff members because of his relentless issuing of suspensions and disciplinary notices against staff members. Examples of colleagues who have suffered this purge, are Chief Investigators Mr Abongile Madiba and Ms Lesedi Sekele, Executive Manager Ms Pona Mogaladi who are on suspension and facing trumped-up charges, Chief Operations Officer Ms Basani Baloyi who was dismissed, Senior Investigators Teboho Kekana, who is also suspended and is being charged and Adv Isaac Matlawe who was charged by the CEO after he exposed his lies to staff members during their visit to the Free State Provincial Office. Many others have been forced to resign because they found the situation within the PPSA untenable. These are people that have the institutional memory of the office with them.
- 5.3 Adv Mkhwebane has plunged the PPSA into financial ruin as she is running the institution as her personal fiefdom. For instance, this office has for the current 2019/2020 financial year, budgeted R10 million for legal fees. This is a record high amount that has been budgeted for this line item since the inception of this office. As at the end of December 2019, the expenditure on legal fees amounted to just over R20 million, with R6.8 million committed already for the remaining quarter. This will result in the projected overspending of just over R17 million by the end of the financial year. This is happening because of Adv Mkhwebane's reckless litigation,

at office expense, on litigation that does not improve the jurisprudence of the PPSA, and does not enhance its effectiveness. Other programs in the office are suffering as a result.

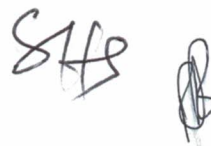
5.5 As stated in the preceding paragraphs, Adv Mkhwebane isolated the management of the office from decisions and opposition against her tyranny. This was done to isolate and divide the management team which used to meet once a quarter at Head Office for management meetings and the TT sittings. Only Adv Mkhwebane is allowed to travel anywhere she wants, doing useless and fruitless Roadshows while the rest of staff involved in the core function of the office, namely to investigate and report, is confined to the office and do desktop investigations by phone, which are ineffective and incomplete. For approximately two years now, the office investigators and Outreach Officers have been operating without vehicles. These are the two main programs that the office is constitutionally seized with.

5.6 In provinces where we have regional offices, like the one I have in Phuthaditjhaba, Qwaqwa which falls under the Maluti-a-Phofung Municipality, we have been reduced to running those offices from our desks, with no regular file inspections and guidance to investigators.

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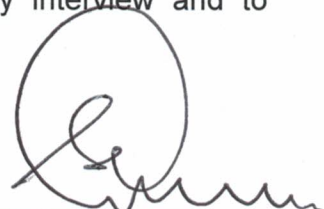
REQUEST FOR INTERVENTION FROM PARLIAMENT

6.1 As stated in the beginning paragraphs of this affidavit, I and a number of my colleagues, both in Senior and middle management, have been with this office long enough to consider ourselves committed and dedicated

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staff members to the mandate and role of the PPSA, and we cannot sit idly and be considered accomplices to an onslaught aimed at destroying what the office stands for. I have taken this step to request the intervention of Parliament, in taking any action necessary to safeguard the existence of this institution, and investigate the operations of the office and the conduct of Adv Mkhwebane. I am speaking with confidence when I say that the majority of staff that I interact with, especially in Management, have lost faith and trust in Adv Mkhwebane, and will be coming forward with more evidence on operational and other matters at the appropriate forum when it is established to deliberate on her fitness to hold office. The institution is now directionless and may not recover from the ruin it is destined for under the leadership of Adv Mkhwebane.

6.2 I am also willing and able to subject myself to any interview and to supplement this affidavit when required.



DEPONENT

I hereby certify that on the 11th day of ~~January~~^{February} 2020, in my presence at Bloemfontein, deponent signed this declaration, swore and acknowledged that he knows and understands the contents thereof, he has no objection to taking the prescribed oath and that he considers this oath to be binding on his conscience and uttered the words that "I swear that the contents of this declaration are true and correct, so help me God".



COMMISSIONER OF OATHS

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