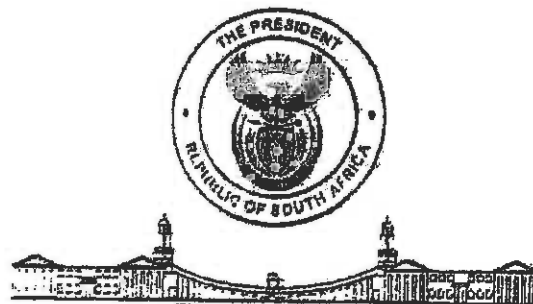


MH 6



08 August 2014

Dear Mr Nxasana

Reference is made to the plethora of correspondence addressed to me, the last of which is your letter dated 06 August 2014.

I have noted all the other issues highlighted in your response. The sole purpose of this letter is to clarify the nature of representations required from you at this stage.

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 well aware of the matters to which I refer.

As a result, I do not deem it appropriate to engage on the 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 16h00 on Wednesday 13 August 2014.

In the circumstances your request for an undertaking from me is unnecessary and accordingly denied.

Yours faithfully

Mr Jacob Gedleyihlekisa Zuma
President of the Republic of South Africa

Mr Nxasana
National Director of Public Prosecutions
Private Bag X752
PRETORIA
0001

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO:

In the matter between:

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Applicant

and

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

First Respondent

**THE MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES**

Second Respondent

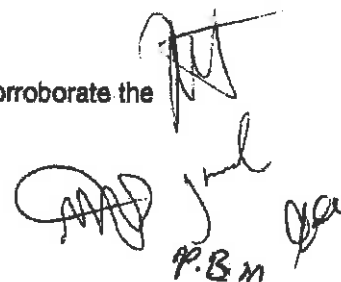
CONFIRMATORY AFFIDAVIT

I, the undersigned

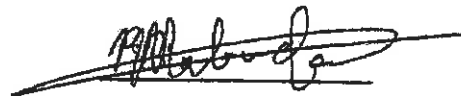
BUSANI MABUNDA

do hereby state under oath as follows:

- 1 I am the Applicant's attorney of record. I practise under the name of **Mabunda Incorporated of 2ND PROTEA ROAD, BEDFORDVIEW, 2008.**
- 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.
- 3 I have read the Applicant's Founding Affidavit. I confirm and corroborate the contents in so far as they relate to me.



Handwritten signatures and initials, including the name P.B.M. and other illegible marks.



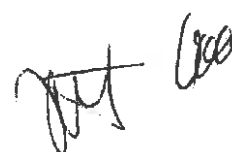
BUSANI MABUNDA

yes
H.B.M

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of his knowledge both true and correct. This affidavit was signed and sworn to before me at JOHANNESBURG on 8 AUGUST 2014, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, have been complied with.



yes
08312222
M. MABUNDA
COMMISSIONER OF OATHS
Full names: *LEON M. MABUNDA*
Address: *68 VAN BUREN ROAD*
Capacity: *SERGEANT*

Shirley Nemutandani

From: Shirley Nemutandani <shirleyn@mabundainc.co.za>
Sent: 08 August 2014 06:31 PM
To: 'michael@hulleyinc.co.za'; 'busani@mabundainc.co.za'; Mxolisi M. Nxasana (mnxasana@npa.gov.za); kmillard@law.co.za; 'ShAfrica@justice.gov.za'
Subject: NDPP // PRESIDENT OF THE REPUBLIC
Attachments: DOC (4)

Good evening,

Attached herewith find a copy of the Applicant's Notice of Motion and its Annexures for your Urgent attention.

The normal mode of service will be effected on you on Monday.

Respectfully,

**MS NEMUTANDANI F S
ATTORNEY**



2 Protea Road, Corner Riley, Bedfordview, 2008 :
 Tel(011) 450 1641/2284 Fax: (011) 450 1566
 PO BOX 61238, Marshalltown, 2107; DOCEX 424, JHB
 Email Address: shirleyn@mabundainc.co.za

[Handwritten signature]

Mail & Guardian

AFRICA'S BEST READ

Deadlock over golden handshake for NPA boss

17 OCT 2014 00:00 ANDISIWE MAKINANA

A R5m silver handshake is apparently not enough to make National Prosecuting Authority head Mxolisi Nxasana step down quietly. He wants R7.5m.



Four months after President Jacob Zuma announced an inquiry into prosecutions boss Mxolisi Nxasana's suitability for his position, the National Prosecuting Authority (NPA) is on the brink of paralysis while the two men remain deadlocked over a golden handshake.

The probe into Nxasana's fitness was prompted by the State Security Agency declining to grant the national director of public prosecutions security clearance because of charges, including murder, that were levelled against him years ago. He was acquitted of murder.

In terms of the NPA Act, the president can only fire the prosecutions head after such an inquiry and with the approval of MPs.

- Read: Editorial: Zuma skewers the NPA again

According to four independent sources close to the process, Nxasana demanded a R7.5-million settlement, the amount that was offered to one of his predecessors, Vusi Pikoli.

Zuma apparently offered R5-million because of Nxasana's short tenure. He was appointed just over a year ago. But Nxasana has not signed the offer, thus prolonging the stalemate.

Discussions over the golden handshake were triggered by the president's fear that he could lose the case in court. Nxasana has threatened to invoke the court's intervention to settle the matter.

He warned his staff three months ago, according to an NPA official who attended the staff meetings, that he would not leave without a fight and would challenge Zuma should the president remove him unprocedurally and unfairly.

Shown the door

Nxasana is the third prosecutions boss to be shown the door in the past five years after Menzi Simelane's appointment was invalidated by the Supreme Court of Appeal and Pikoli was fired by Zuma's predecessor, Kgalema Motlanthe.

Ironically, Nxasana and Simelane were brought in by Zuma amid negative public reaction partly because of Simelane's questionable track record and Nxasana's lack of prosecutorial experience.

Two weeks ago, presidential spokesperson Mac Maharaj avoided questions regarding the golden handshake. He was only prepared to say: "The president has recently met [Nxasana] and they agreed to meet again to take matters forward."

On Wednesday, Maharaj reiterated that Zuma is still in discussions with Nxasana.

NPA spokesperson Nathi Mncube confirmed two weeks ago that Nxasana had met Zuma "to provide information that [Nxasana] feels was never placed before the president when the decision to initiate the inquiry was taken". He said the process is ongoing.

He also evaded the *Mail & Guardian's* direct question on a "financial settlement".

On Thursday, Mncube initially said nothing had changed from his fortnight-old statement. "It's just the same response, except to say they are in discussions with the president. That's it; that is what I was going to add."

He later denied that a financial settlement is on the table but, interestingly, said that "we are not privy to the discussions and he would not disclose".

"You will have to ask the president, but there has been no settlement and no offer in terms of Mr Nxasana."

Awaiting Zuma's decision

Justice Minister Michael Masutha, who told the *M&G* in June that he would recommend that the president acts against Nxasana, said on Thursday he is not aware of any developments regarding the settlement and is also awaiting Zuma's decision.

Zuma told the National Assembly in August that he had met Nxasana and that the prosecutions boss had tabled certain issues to which he was "still applying my mind".

The Democratic Alliance this week marked 100 days since Zuma announced the inquiry.

Glynnis Breytenbach, the party's spokesperson on justice and herself a former NPA official who was entangled in the factional battles at the institution, said: "I will therefore be writing to President Zuma to challenge him to end this dithering and announce the terms of reference that will inform this probe."

Meanwhile, the NPA is still rocked by infighting and is facing managerial paralysis as strategic meetings are said to be taking a back seat pending Zuma's decision.

"We never had our quarterly meetings to review our business. In most meetings, Nxasana appears noncommittal and tells his executives that he is uncertain about his future," said a source close to the organisation.

Two camps in limbo

The impasse has left the two camps – those loyal to Nxasana and Zuma's supporters – in limbo, affecting morale and intensifying hostilities.

Both sides seem to be frustrated by Zuma's inability to finalise the leadership matter, while Nxasana supporters are worried about the possible political interference should he agree to go without exposing "the real motivation behind the plot to oust him".

"An inquiry seems the best platform to display these conspiracies and lies," said an NPA official who spoke on condition of anonymity.

A government official who is close to Zuma and has intimate knowledge of the settlement told the *M&G* that "we cannot understand why the president is not going ahead and suspending [Nxasana].

"[Zuma] has shown his sincere willingness to negotiate and meet his ridiculous demands. It's about time he suspends him and proceeds with the inquiry. The terms of reference are ready and clear. Why did he announce the inquiry in the first place if he's such a coward to take a decision?" said the government official, adding that "the president is being misadvised by [his legal adviser Michael] Hulley".

It is understood that Hulley – who is also credited for recommending Nxasana to Zuma for the post of prosecutions head – advised against the suspension despite the NPA Act stating that the president can suspend him pending an inquiry.

Hulley refused to comment yesterday, referring all questions to Maharaj.

"I suggest that he is the appropriate person and, if I can make a further suggestion, if you send your questions through to him, I will liaise with him to the extent that he may need my input," he said.

The official's view of Hulley corresponds with that of some of Zuma's ministers and directors general, who are critical of his legal counsel regarding the NPA and the president's other political blunders.

Escalating tensions

While NPA employees continue to endure an ugly leadership tussle and instability, tensions between Nxasana and his deputy, Nomgcobo Jiba, are escalating.

Nxasana instituted a committee, chaired by retired Judge Zak Yacoob, to investigate factional squabbles and the leaking of information.

The *M&G* can reveal that Jiba – whose short tenure as acting prosecutions director was equally mired in controversy – has refused to co-operate with the committee.

She could not be reached for comment.

In terms of the law, Nxasana can neither suspend nor fire her. The process to remove a deputy director also involves a strenuous formal inquiry and the president's decision to axe her would have to be ratified by MPs.

A Jiba sympathiser says Nxasana's "refusal to take the settlement" is a delaying tactic to deal with his rivals, such as his deputy.

"He wants to clean the NPA before he leaves so that his people can reign supreme in his absence," said the source.

Nxasana's 'purge'

The source cited the decision to part ways with former NPA head of security Tshilidzi Ramahana, who is also seen as a Jiba loyalist, as an indication of Nxasana's "purge".

Ramahana was also offered a golden handshake after he was suspended in June for refusing to write to Zuma, on the instruction of NPA chief executive Karen van Rensburg, excusing Nxasana's failure to comply with security clearance procedure.

But the NPA's Mncube said two weeks ago that Ramahana was charged and a disciplinary hearing was underway. During the hearing, Ramahana indicated that he was prepared to consider a settlement.

"The terms of the settlement with Mr Ramahana are confidential and therefore both parties are bound by that confidentiality," Mncube added. – *Additional reporting by Moshoeshe Monare*

159

"CW 8"
CW8



Government Gazette SERIES NO. 38463

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 596

Pretoria, 9 February 2015
Februarie

No. 38463

*N.B. The Government Printing Works will
not be held responsible for the quality of
"Hard Copies" or "Electronic Files"
submitted for publication purposes*



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

Handwritten signature

IMPORTANT NOTICE

The Government Printing Works will not be held responsible for faxed documents not received due to errors on the fax machine or faxes received which are unclear or incomplete. Please be advised that an "OK" slip, received from a fax machine, will not be accepted as proof that documents were received by the GPW for printing. If documents are faxed to the GPW it will be the sender's responsibility to phone and confirm that the documents were received in good order.

Furthermore the Government Printing Works will also not be held responsible for cancellations and amendments which have not been done on original documents received from clients.

CONTENTS • INHOUD

No.

Page
No. Gazette
No.**GENERAL NOTICE**

Justice and Constitutional Development, Department of

General Notice

- 102 National Prosecuting Authority Act (32/1988): Enquiry into the fitness of Mr Mxolisi Nxasana to hold office of National Director of Public Prosecutions.....

3 38463



GENERAL NOTICE

NOTICE 102 OF 2015**ENQUIRY INTO THE FITNESS OF MR MXOLISI NXASANA TO HOLD OFFICE OF
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**

In terms of section 12(6)(a) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1988), I hereby establish an enquiry to determine the fitness of Mxolisi Sandile Oliver Nxasana to hold office as National Director of Public Prosecutions and appoint Advocate Nazeer Ahmed Cassim, SC as the chairperson of the enquiry and Advocate Lindi Nkosi-Thomas, SC and Advocate Stembiso Mdladla as additional members thereof.

Given under my Hand and the Seal of the Republic of South Africa at ~~PRETORIA~~
on this 5th day of FEBRUARY Two thousand and fifteen.

**PRESIDENT**

By Order of the President-in-Cabinet:

**MINISTER OF THE CABINET**

**TERMS OF REFERENCE OF THE ENQUIRY INTO THE FITNESS OF MR MXOLISI
NXASANA TO HOLD OFFICE AS NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**

WHEREAS section 9(1)(b) of the National Prosecuting Authority, 1998 (Act No. 32 of 1998) ("the NPA Act") provides that:

"Any person to be appointed as National Director, Deputy National Director or Director must....

(b) be a fit and proper person, with due regard to his or her experience, conscientiousness and integrity to be entrusted with the responsibility of the office concerned".

AND WHEREAS section 12(6) of the NPA Act provides that the President of the Republic of South Africa may institute an enquiry into the fitness of the National Director or a Deputy National Director to hold such office;


AND WHEREAS on 30 August 2013 the President appointed MR MXOLISI NXASANA as National Director of Public Prosecutions ("the NDPP");

AND WHEREAS certain facts have since come to light that raise real and important questions regarding Mr Nxasana's fitness and propriety to hold office;

NOW THEREFORE the President acting in terms of the power conferred by section 12(6) of the NPA Act hereby establishes an Enquiry to enquire into Mr Nxasana's fitness to hold the office of the NDPP.

The Terms of Reference of the Enquiry are as follows:

1. To enquire into the fitness of Mr Nxasana to hold the office of the NDPP and



whether the facts and circumstances reflected below are consonant with the conscientiousness and integrity of an incumbent of the office of the NDPP as prescribed by law, regard being had to:

- a. His two previous separate convictions on charges of assault;
 - b. The complaints of professional misconduct laid against him with the Kwazulu-Natal Law Society;
 - c. His having faced criminal charges for acts of violence;
 - d. His arrest and detention on criminal charges;
 - e. Issuing and/or making media statements and/or causing media statements to be issued that undermine or bring the office of NDPP or the National Prosecuting Authority into disrepute;
 - f. Any other matter as may be relevant to the abovementioned issues and his fitness and propriety to hold the office of the NDPP as contemplated in section 9(1)(b) of the NPA Act.
2. To make findings, report on and make recommendations concerning the matters set out in paragraph 1 above.
 3. These terms of reference may be amended or varied at any stage prior to the conclusion of the enquiry, as may be required.
 4. The enquiry shall be completed within six (6) weeks from date commencement of the Enquiry. This period may be extended by the President on representation by the Chairperson.
 5. The Chairperson of the Enquiry shall submit a report and recommendations within



a period of two (2) weeks after the Enquiry completes its work. All documents filed during the enquiry shall form part of such report.

6. The Chairperson shall determine the rules of the enquiry.

A handwritten signature in black ink, appearing to be 'H. De...' or similar, located in the bottom right corner of the page.

GENERAL NOTICE

NOTICE 209 OF 2015

CASSIM INQUIRY

GENERAL NOTICE

INVITATION TO THE PUBLIC TO MAKE SUBMISSIONS TO THE CASSIM INQUIRY WHICH WILL LOOK INTO MR NXASANA'S FITNESS TO HOLD OFFICE OF THE NATIONAL DIRECTOR OF PUBLIC PROSECUTION

In terms of Proclamation No. 102 of 2015 by the President acting under section 84(2)(f) of the Constitution of the Republic of South Africa, 1996 and section 12(6)(a) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998) set up an Inquiry looking into the fitness of Mr Mxolisi Nxasana to hold office of the National Director of Public Prosecution.

Any interested person or institution who wishes to make submissions to the inquiry must do so before 27 March 2015.

All submissions and queries related to the proceedings may be directed to:

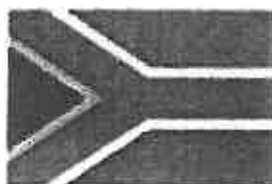
Mr Tshilidzi Ramathikhithi

Secretary for the Inquiry

Tel 012 622 6315/6302

Email: tramathikhithi@justice.gov.za

Handwritten signature



Media statement

11 May 2015

Inquiry Into the NDPP's fitness to hold office has been ceased

The Cassim Inquiry which was tasked with the responsibility to look into the fitness of the National Director of Public Prosecutions to hold office has been called off following the instruction from the Presidency. The Presidency will clarify its decision during the course of the week.

Issued by Cassim Inquiry spokesperson

Enquiries

Mr Andile Tshona

Cassim Inquiry Spokesperson

Cell: 073 566 3345

E-mail: ATshona@justice.gov.za

END

Handwritten signature

"CW11"



Update on the National Director of Public Prosecutions

11 May 2015

The President has today ceased the inquiry into the fitness of the National Director of Public Prosecutions, Mr Mxolisi Nxasana to hold such office.

The President has today ceased the inquiry into the fitness of the National Director of Public Prosecutions, Mr Mxolisi Nxasana to hold such office.

The President had during July 2014 informed Mr Nxasana of his decision to institute an enquiry in terms of Section 12(6)(a)(iv) of the National Prosecutions Authority Act 32 of 1998 in order to determine his fitness to continue to hold such office.



The President is currently engaging with Mr Nxasana with a view to taking decisions which are in the best interest of the National Prosecuting Authority, Mr Nxasana and the country at large.

The Presidency will communicate the outcome of such deliberations once they have been finalised, mindful of the need for certainty and confidence in the NPA.

Enquiries: Harold Maloka 082 847 9799 or harold@presidency.gov.za or maloka.harold@gmail.com

Issued by: The Presidency

Pretoria

IN THE NORTH GAUTENG HIGH COURT, PRETORIA

CASE NO 59160/14

In the matter between:

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS Applicant

And

THE PRESIDENT OF REPUBLIC OF SOUTH AFRICA First Respondent

MINISTER OF JUSTICE AND CORRECTIONAL SERVICES Second Respondent

SETTLEMENT AGREEMENT

WHEREAS

1. On 4 July 2014, the President informed the Applicant (National Director of Public Prosecutions herein after referred to as the NDPP) of his decision to institute an enquiry in terms of section 12 (6) (a)(iv) of the National Prosecuting Authority Act 32 of 1998 (the Act).
2. On 30 July 2014, the President gave Notice of Intention to suspend the NDPP in terms of section 12 (6) (a) of the Act.
3. The NDPP brought an urgent application in the North Gauteng High Court to interdict the President from suspending him until the President has provided the NDPP with the requested particularity of the allegations

TH
all

levelled against him, and which allegations were to constitute the subject matter of the enquiry.

4. These proceedings now stand adjourned and the parties subsequently entered into discussions and negotiations in an attempt to resolve the matter.
5. The parties recognize that a protracted litigation process will not be in the interests of the office of the National Director of Public Prosecutions, the functioning of the National Prosecuting Authority nor the Republic of South Africa.
6. The parties are also mindful that the public glare brought on by the holding of an enquiry, whilst necessary for transparency in our democracy, has unintended consequences.
7. The parties are fully cognizant of the costs implications for litigating and/or conducting the enquiry which resources may be better applied given the challenges our country faces.


RECOGNISING the important and pivotal role which the National Prosecuting Authority occupies in our constitutional democracy and the functioning of the rule of law and the desire to bring certainty and preserve the dignity of both the NDPP and the NPA

IT IS AGREED THAT

1. The parties understand that this agreement is to be regarded as a "no-fault" settlement, and, as such, this agreement is not intended and will not be construed to constitute an admission or statement by either party as to the validity or invalidity of any legal or factual contention advanced in this matter.

TR
MS
JH
Be

2. The President recognizes that the NDPP is professionally competent, sufficiently experienced and conscientious and has the requisite integrity to hold a senior public position both in the public and private sector.
3. The NDPP shall relinquish his post as National Director of Public Prosecutions as from 1 June 2015.
4. In lieu of this, the NDPP shall receive the sum of R 17 357 233,00 within 60(sixty) days of signature of this agreement in full and final settlement of all claims of whatsoever nature arising out of his employment as National Director of Public Prosecutions.
5. The settlement amount shall be subject to taxation, pension benefits, leave benefits, medical aid benefits and resettlement benefits, where ordinarily applicable to the NDPP in terms of his conditions of employment under the legislation and regulations.
6. The NDPP will withdraw his application in the North Gauteng High Court under case number 59160/14 upon signature of this settlement agreement.
7. The President will cease the holding of an enquiry into the fitness of the NDPP to hold such office.
8. The government has paid and will continue to pay the NDPP's legal costs including the cost of this application as well as the holding of the enquiry.
9. In the event that any disputes arises with respect to the Agreement, the party who believes there may be a breach shall contact the other party in writing setting forth the reason(s) for said belief and shall give the party five (5) business days to remedy the matter.

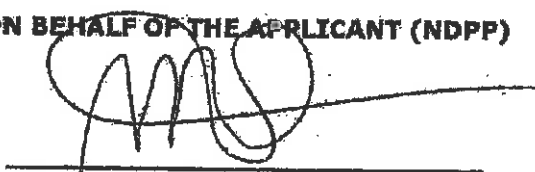
TM


10. By signing this Agreement, the parties acknowledge that they have read the Agreement in its entirety and are possessed with the full knowledge and understanding of the Agreement's contents.

11. This agreement shall become effective and enforceable upon signature by both parties.

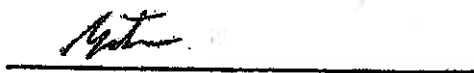
SIGNED AT WATHANSA ON 09 MAY 2015

FOR AND ON BEHALF OF THE APPLICANT (NDPP)



SIGNED AT LAKE TOWN ON 14 MAY 2015

FOR AND ON BEHALF OF THE FIRST AND SECOND RESPONDENTS



C 172

CW13

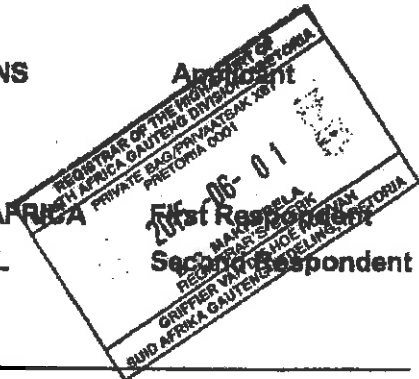
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, PRETORIA

CASE NO.: 59160/14

In the matter between:

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
and

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA
THE MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES



NOTICE OF WITHDRAWAL OF APPLICATION

KINDLY TAKE NOTICE THAT THE Applicant hereby withdraws his application against the First and Second Respondents having reached an agreement as per the settlement agreement annexed hereto and marked annexure "MN01"

DATED AT JOHANNESBURG ON THIS THE 01ST JUNE 2015.


MABUNDA INCORPORATED

(Defendant's Attorneys)

C/O TM CHAUKE INC

3RD FLOOR

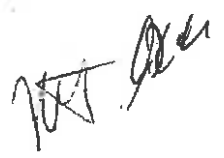
SAMMY MARKS SQUARE

PRETORIA

TEL: (011) 450 2282

FAX: (011) 450 1566

Ref: MR. MABUNDA



TO:

THE REGISTRAR OF THE ABOVE
HONOURABLE COURT

AND TO:

STATE ATTORNEY

Respondents' Attorneys

SALU BUILDING

316 THABO SEHUME STREET

PRETORIA

20160701/14/214



Received copy hereof on this the _____
day of _____ 2015

For: Respondents' Attorneys

[Handwritten signature]



Annual Report 2014/2015

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

IN TERMS OF THE NPA ACT 32 of 1998

Not for

In an ongoing effort to improve the perception of the CJS among the South African public, the NPA continues its contribution towards the backlog project by the DoJ&CD which began in 2006. As a result, the number of backlog cases in the lower courts has been significantly reduced. A number of the temporary backlog courts have become permanent courts.

In addition, a number of high profile matters – for example, the arrest of Radovan Krejčić on charges of dealing in drugs and attempted murder and the conviction and sentencing in the Channelle Henning murder case – have strengthened public confidence in the CJS and, in particular, in the NPA. The televising of the Oscar Pistorius trial has had both a positive and negative impact for the NPA. In general the public has a greater confidence in the system as a whole. However, individuals who may be required to testify in other cases have become more hesitant to participate in the belief that they may face the intensity of cross examination depicted during the Pistorius trial.

The lack of dedicated courts and staff in some of the SCCU regional offices continued to be a challenge, adversely impacting on the number of backlog cases in the unit. Long, drawn-out trials further continued to impact negatively on the number of backlog cases. Changes in magistrates in different regions also contributed to an increase in backlog cases.

High profile matters – NPA

In *Freedom Under Law versus National Director of Public Prosecutions and Others* 2014 (1) SACR 111 (GNP) April 2014), the North Gauteng High Court (per Murphy J) made certain unfavourable credibility findings against three senior members of the NPA, namely, Advocates Norngcobo Jiba, Sthembiso Lawrence Mrwebi, and Sibongile Mzinyathi. The judgment of Murphy J was confirmed by the Supreme Court of Appeal (SCA) in *National Director of Public Prosecutions versus Freedom Under Law* 2014 (4) SA 298 (SCA).

Following the above-mentioned decisions of the High Court and Supreme Court of Appeal, the NPA, via the office of the State Attorney, briefed senior counsel to furnish a legal opinion as to whether, among others, disciplinary steps ought to be taken against the abovementioned members of the NPA. The legal opinion was furnished to the State Attorney on 7 July 2014.

In his legal opinion, senior counsel in summary concludes that the findings of Murphy J in the High Court, as confirmed by Brand JA in the Supreme Court of Appeal, constitute compelling justification for disciplinary proceedings against Advocates Jiba, Mrwebi and Mzinyathi. The fact that they misled the Court and were prepared to lie under oath not only indicates a strong *prima facie* case of serious misconduct, but also casts grave doubt on their fitness to hold office. He consequently recommends that the President should, in terms of section 12(6)(a) of the NPA Act, consider provisionally suspending the mentioned senior NPA managers pending an inquiry into their fitness to hold the office of Deputy National Director of Public Prosecutions and Directors of Prosecutions, respectively, to be presided over by a retired judge of the High Court. He further recommends that a criminal investigation for perjury be opened against all three members of the NPA and that the findings against the mentioned NPA members made in the judgments be submitted to the General Council of the Bar as a matter of urgency to consider whether an application should be brought against them in terms of section 7 of the Admission of Advocates Act.

[Handwritten signatures]

National Director of Public Prosecutions

In a memorandum dated 18 July 2014 addressed to the Minister of Justice and Correctional Services, the NPA explained in detail to the Minister the NPA's motivation and arguments pertaining to a request that the President should provisionally suspend Advocates Jiba, Mrwebi and Mzinyathi from their respective offices. The Minister was requested to forward the contents of the memorandum to the President and request the President to provisionally suspend the three senior NPA members from their respective offices pending an enquiry into their fitness to hold such offices and the finalisation of the envisaged criminal investigations and outstanding inquiries and investigations and action of the General Council of the Bar.

In a memorandum dated 31 July 2014, the CEO of the NPA informed the Minister that the NPA had appointed a fact finding committee to investigate allegations that certain employees of the NPA, including senior members, had committed unethical and unprofessional conduct and to advise on appropriate remedies if contraventions had occurred. The Minister was informed that the nature of the allegations and the seniority of the officials allegedly involved necessitated the involvement of an outside committee of suitable credibility. Therefore, the CEO appointed retired Judge Zak Yacoob as the chairperson of the committee. He was assisted by Advocate TK Manyage, a member of the Johannesburg Bar. The committee has finalised its report. The committee, among others, also made certain unfavourable credibility findings against Advocates Nomgcobo Jiba, Sthernbiso Lawrence Mrwebi, and Sibongile Mzinyathi. On 27 February 2015 the CEO informed the Minister about the findings and recommendations of the committee.

During the beginning of September 2014, it came to the National Director's attention that the Minister had publicly indicated that he has not yet approached the President regarding the abovementioned recommendations of the National Director. The opinion was held that failure to bring these serious matters to the attention of the President is causing a credibility crisis within the NPA as a whole and that it was appropriate to urgently bring stability within the NPA and it is of utmost importance that the matter should be communicated to the President as a matter of urgency. Therefore, a decision has been taken to approach the President directly so as to bring the matter officially under the President's attention. Accordingly, in a letter dated 12 September 2014, the National Director wrote directly to the President and brought the matter to his personal attention. The National Director personally handed this letter to the President.

Furthermore, in a letter dated 17 September 2014 the National Director responded to certain questions raised by the Minister; he informed the Minister about further instances of misconduct committed by and adverse findings made against Advocates Jiba and Mrwebi; informed the Minister about steps already taken by the NPA and steps to be taken against the three senior members of the NPA concerned; informed the Minister about the NPA's submission made directly to the President; and again requested the Minister to also engage with the President regarding the proposed suspension of the three senior members of the NPA as a matter of urgency. It was also pointed out to the Minister that after the High Court judgment in April 2014, the National Director requested reports from Advocate Jiba regarding the Mdluli corruption matter, which request was ignored. Further, the National Director has repeatedly requested an official handover report on matters being dealt with by Advocate Jiba, without any response. The National Director held the view that such insubordination is intolerable and makes it very difficult to perform his duties.

[Handwritten signature]

At the time of finalising this report, the position relating to the conduct of Advocates Jiba, Mrwebi and Mzinyathi was as follows:

- (a) The fact finding committee has finalised its work and submitted a report to the National Director. As indicated above, on 27 February 2015 the CEO informed the Minister about the findings and recommendations of the committee
- (b) The General Council of the Bar has already brought an application in the High Court, Gauteng Division, for an order striking the names of each of the respondents (Advocates Jiba, Mrwebi and Mzinyathi), from the roll of advocates, alternatively, to suspend them from practising as advocates for such period as the court may deem appropriate. Advocates Mrwebi and Mzinyathi have already indicated that they will oppose the application
- (c) Criminal proceedings have been instituted against Advocate Jiba in the Regional Court, Pretoria. The charges are fraud and perjury and the case has been postponed to 10 June 2015
- (d) Perjury charges have been laid against Advocates Jiba, Mrwebi and Mzinyathi. This case is still under investigation by the South African Police Service
- (e) Criminal proceedings are also outstanding against Advocate Mrwebi for contravening section 32(1)(b), read with sections 1, 20, 24, 25, 32(1)(a) and 41(1) of the NPA Act

In spite of the above-mentioned urgent requests directed to the Minister and the President, and the outstanding criminal proceedings against Advocates Jiba, Mrwebi and Mzinyathi, no feedback has been received from the Minister or the President. As emphasised by the High Court, *"the respondents are unbecoming of persons of such high rank in the public service, and especially worrying in the case of the (acting) NDPP, a senior officer of this court with weighty responsibilities 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."* Therefore, it is important for the Minister and the President to fulfil their constitutional mandate and to act as a matter of urgency.

Activities of the Deputy National Directors of Public Prosecutions

National Prosecutions Service (NPS)

Highlights of achievements

The NPA had set high aims for 2014/15 and through dedication and commitment, we managed to exceed expectations. Although not all annual targets as outlined in the annual performance plan were achieved, concerted efforts were made by all prosecutors to ensure improved performance even in the face of various challenges experienced by the courts during the year under review.

Some of the highlights achieved by the NPA during this year include:

Stakeholder collaboration and integration

The NPS participated in the National Joint Operational and Intelligence Structure (Natjoints) and relevant priority committees established to deal with priority issues. These include issues that affect stability and respect for law and order, the development and implementation of action plans to ensure safety and security of events, such as the elections and international events, and other practical priorities that relate to security and crime. The Natjoints reports to the JCPS cluster Directors-General (DGs) forum. There are also provincial Joints where the divisions are represented.

THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG PRETORIA)

Case

In the matter between:

CORRUPTION WATCH (RF) NPC

First Applicant

FREEDOM UNDER LAW (RF) NPC

Second Applicant

and

THE PRESIDENT

First Respondent

THE MINISTER OF JUSTICE

Second Respondent

MXOLISI SANDILE OLIVER NXASANA

Third Respondent

SHAUN ABRAHAMS

Fourth Respondent

DIRECTOR-GENERAL OF JUSTICE

Fifth Respondent

CHIEF EXECUTIVE OFFICER OF THE NPA

Sixth Respondent

NATIONAL PROSECUTING AUTHORITY

Seventh Respondent

THE DEPUTY PRESIDENT

Eighth Respondent

SECOND APPLICANT'S FOUNDING AFFIDAVIT

A1
NLC

I, the undersigned,

NICOLE FRITZ

make the following statement under oath:

INTRODUCTION

1. I am the Executive Officer of the second applicant, Freedom Under Law ("FUL"). It is a non-profit company incorporated in South Africa. Its South African head office is at PWC, 19 Oewer Park, Rokewood Avenue, Stellenbosch.
2. FUL has duly authorised me to make this affidavit and bring this application on its behalf.
3. I have personal knowledge of the facts traversed in this affidavit except where it is evident that I do not.

THIS APPLICATION

M
NLS

4. The parties to this application, the relief they seek and the facts and legal bases upon which they do so, are described in the founding affidavit of the first applicant, Corruption Watch, deposed to by Mr David Lewis. I have read his affidavit and confirm that FUL joins with Corruption Watch in seeking the relief set out in their notice of motion on the facts and legal bases set out in Corruption Watch's founding affidavit. I shall confine the remainder of this affidavit to matters peculiar to FUL.

FUL'S INTEREST AND STANDING

5. FUL was established in 2009 as a not-for-profit organisation to promote democracy under law and to advance understanding of and respect for the rule of law and the principle of legality in Southern Africa, principally by instituting or joining in litigation from time to time to combat and correct institutional conduct in conflict with the rule of law.
6. FUL further aims to advance the independence and skills of the legal profession in serving the courts and to enhance communication and understanding between the judiciary, the legal profession, academic lawyers, the media and society at large. It also wishes to promote legal education appropriate to the needs of constitutional democracy and to protect, promote and advance the freedom of speech and freedom of the media in relation to the administration of justice.

M
NLF

7. The members of FUL's board of directors are Judge Johann Kriegler, Elize Angula, Professor Hugh Corder, Ezra Davids, Jeremy Gauntlett SC, Abdool Rahim Khan, Dr Frederick Mostert, Beatrice Mtetwa and George Bizos SC.
8. It also has an international advisory board whose members are the Rt Hon the Lord Steyn, Shami Chakrabarti, Judge Nathaniel R Jones, Professor Jeffrey Jowell QC, Vernon E Jordan Jr, Sir Sidney Kentridge QC, Dr Mamphela Ramphele, the Hon Soli Sorabjee SC and Archbishop Emeritus Desmond Tutu.
9. FUL recognises that the National Director of Public Prosecutions is a vital strut in upholding the rule of law in South Africa. Critical to the performance of his or her functions, is that the independence of the NDPP be recognised, respected and upheld by all in accordance with s 179 of the Constitution and ss 9, 10, 12, 17, 20, 21, 22 and 32 of the National Prosecuting Authority Act 32 of 1998. It is particularly important that these provisions be scrupulously observed in the appointment, suspension and removal from office of the NDPP.
10. FUL submits that, in this case, these rules have been perverted. The President first sought to remove the NDPP from office by threat of dismissal. When it failed, he resorted to and ultimately succeeded with unlawful inducement. This unlawful conduct was symptomatic of the fact that the incumbent president has a close personal interest in ensuring that, if and when the NDPP has to decide whether to institute criminal proceedings against the President, he or she does

W
NLS

not take the decision "*without fear, favour or prejudice*" as required by s 179 of the Constitution.

11. FUL accordingly brings this application in two capacities. The first is in its own interest. The second is in the public interest. It seeks in both capacities to redress and prevent the unlawful appointment, suspension and removal of the NDPP. It does so in the interests of the administration of justice and ultimately to uphold the rule of law.

FUL'S CORRESPONDENCE

12. Once FUL had become aware of the settlement agreement between the NDPP, Mr Nxasana, the President and the Minister of Justice dated 14 May 2015, FUL decided to institute proceedings to have the settlement overturned. On 5 June 2015 it instructed its attorney, Mr Moray Hathorn of Webber Wentzel, to give the President, the Minister of Justice and the National Prosecuting Attorney notice of FUL's intention to take the settlement on review and to demand an undertaking that the settlement would not be implemented pending the review.
13. Mr Hathorn confirms in his accompanying affidavit, annexure "NF1", that the following correspondence followed between him and the respondents:
 - 13.1. On 15 June 2015, he notified the President, the Minister of Justice and the NPA of FUL's proposed application for review and demanded a

N1
NLS

written undertaking that they would not implement the settlement agreement pending the review. Annexure "NF2" is a copy of his letter.

13.2. The State Attorney replied on 18 June 2015 that the respondents could not give the required undertaking "*since terms of the settlement agreement in issue have already been implemented*". Annexure NF3 is a copy of their letter.

13.3. Mr Hathorn enquired of the State Attorney on 22 June 2015 what the respondents had done towards implementation of the settlement agreement. Annexure NF4" is a copy of his letter.

13.4. When he had not heard from the State Attorney by 1 July 2015, Mr Hathorn again repeated his request for information about the alleged implementation of the settlement agreement. Annexure "NF5" is a copy of his letter.

13.5. Mr Hathorn has never had any response to his letters of 22 June and 1 July 2015.

PRAYER

14. FUL asks for the relief sought in its notice of motion.

M
NW

M. Makuvha
Deponent

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me, Commissioner of Oaths, at ROSEBANK on this the 2nd day of AUGUST 2015 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.



716082-9
M. Makuvha (CST (F))
M. MAKUVHA

COMMISSIONER OF OATHS

FULL NAMES: MISHUNGU MAKUVHA

ADDRESS: 15 STURGE AVENUE, ROSEBANK

EX OFFICIO: ROSEBANK

CONSTABLE

**THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG PRETORIA)**

Case

In the matter between:

CORRUPTION WATCH (RF) NPC

First Applicant

FREEDOM UNDER LAW (RF) NPC

Second Applicant

and

THE PRESIDENT

First Respondent

THE MINISTER OF JUSTICE

Second Respondent

MXOLISI SANDILE OLIVER NXASANA

Third Respondent

SHAUN ABRAHAMS

Fourth Respondent

DIRECTOR-GENERAL OF JUSTICE

Fifth Respondent

CHIEF EXECUTIVE OFFICER OF THE NPA

Sixth Respondent

NATIONAL PROSECUTING AUTHORITY

Seventh Respondent

THE DEPUTY PRESIDENT

Eighth Respondent

CONFIRMATORY AFFIDAVIT

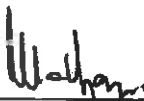
M
NLF

I, the undersigned,

MORAY HOWARD HATHORN

make the following statement under oath:

1. I am an adult and a duly admitted attorney of this Honourable Court and practising as a partner at Webber Wentzel attorneys, the attorneys of record for the Applicants in this matter.
2. I have personal knowledge of the facts traversed in this affidavit.
3. I have read the founding affidavit of the 2nd Applicant deposed to by Nicole Fritz and I confirm that it is true and correct in so far as it refers to me and Webber Wentzel.



Deponent

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me,

M
NHF

Commissioner of Oaths, at ROSEBANK..... on this the 3rd day of ..AUGUST 2015 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.

716882-9

~~Mishuno~~ (STCF)

M. MAKHUVHA

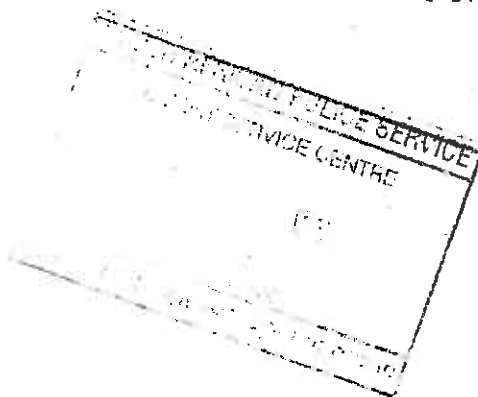
COMMISSIONER OF OATHS

FULL NAMES: MISHUNO MAKHUVHA

ADDRESS: 15 STURGE AVENUE, ROSEBANK

EX OFFICIO: ROSEBANK

CONSTABLE



M/
NKF

WEBBER WENTZEL

Advocates & Solicitors

The National Prosecuting Authority
VGM Building (Corner Westlake & Hartley)
123 Westlake Avenue
Weavind Park, Silverton
Pretoria, 0184

Fax: 012 804 7335

10 Fricker Road, Illovo Boulevard
 Johannesburg, 2196

PO Box 61771, Marshalltown
 Johannesburg, 2107, South Africa

Docex 26 Johannesburg

T +27 11 530 5000

F +27 11 530 5111

www.webberwentzel.co.za

The Minister of Justice and Correctional Services
SALU Building, 28th Floor, 316 Thabo Sehume Street
(c/o Thabo Sehume and Francis Baard Streets),
PRETORIA

Fax: 012 406 4661

The President of the Republic of South Africa

Union Buildings, Pretoria

Fax: 012 3238246

(Page 1 of 2 including this page)

Your reference

Our reference

Date

M Hathorn/ 3001742

15 June 2015

CONFIDENTIALITY NOTE: This fax contains confidential information intended only for the persons to whom it is addressed. Any other recipient is not entitled to read the rest of this fax or disclose its contents to any person, or take copies, and is requested to notify us immediately by fax or telephone at the numbers listed above and we will reimburse the costs of doing so.

Dear Sir / Madam

MXOLISI NXASANA

1. We act on behalf of Freedom Under Law ("FUL"), a non-profit company created in order to promote accountability and democracy under law and to advance respect for the rule of law and the principle of legality in South Africa.
2. We are instructed by FUL that:
 - 2.1 It has closely studied the agreement entered into between the President, the Minister of Justice and Mr Nxasana signed by Mr Nxasana on 9 May 2015. A copy of this agreement (referred to as 'the agreement to vacate') is annexed hereto for ease of reference and was filed by Mr Nxasana in the application instituted by him in the Pretoria High Court to prevent his unlawful suspension as NDPP.

Letter To NDPP NPA And Minister Of Justice 14 June 2015.Docx

As For Authors: JC Els, Managing Partners: SJ Hutton, Partners: RB Africa, NG Alp, QA Ampofo-Anti, RL Appelbaum, BA Baillie, JM Beilew, AB Bennett, DHI Booyens, A Bowley, PG Bradshaw, EG Brandt, JL Brink, MS Burger, RS Coetho, KL Collier, KM Colman, KE Coster, K Cousyn, CR Davidow, JH Davies, ME Davis, PM Daya, JHB de Lange, DW de Villiers, BEC Dickinson, MA Diment, DA Dingley, KZ Dlotli, G Driver, HJ du Preez, CP du Toit, SK Edmundson, AE Esterhuizen, MJR Evans, AA Feleki, GA Richard, JB Forman, MM Gibson, H Goolam, CI Gouws, JP Gouws, PD Grealy, A Harley, VW Harrison, JH Harvey, MH Hathorn, JS Henning, KR Hills, NA Hlatshwayo, XSC Hlatshwayo, S Hockey, C: Hoffeld, PM Holloway, HF Human, AV Ismail, KA Jarvis, ME Jarvis, CM Jonker, S Jooste, LA Kahn, M Kennedy, A Keyser, MD Kota, J Lamb, PSG Leon, PG Leyden, L Marais, S McCafferty, JC McIntosh, M McLaren, SI Meltzer, SM Methula, CS Meyer, AJ Mills, JA Milner, D Milo, NP Mngomezulu, VS Moodaley, LA Morphet, VM Movshovich, F: Mshali, SP Naicker, RA Nelson, BP Ngoepe, ZN Ntshona, MB Nzimande, L Odendaal, GJP Olivier, N Paige, APT Pardini, AS Parry, S Patel, GR Penfold, SE Phetane, MA Phillips, C Pillay, HK Potgieter, S Rajah, D Ramjetan, NJA Robb, DC Rudman, JW Scholtz, KE Shepherd, DMJ Simaan, AJ Simpson, J Simpson, N Singh, HP Spalding, L Stein, PS Stein, LJ Swaine, ER Swanepoel, Z Swanepoel, A Thakor, A Toefv, D Vellabh, PZ Vanda, SE van der Meulen, ED van der Vyver, M van der Walt, N van Dyk, A van Ekerck, MM van Schwardenburgh, JE Veeran, D Venter, B Versfeld, MG Versfeld, TA Versfeld, DM Visagie, J Watson, JWL Westgate, KL Williams, K Wilson, RH Wilson, M Yudaken, **Coördinator: SA Boyd**

Webber Wentzel Advocates & Solicitors

27
 NF2

WEBER WENTZEL
ATTORNEYS-AT-LAW

Page 2

- 2.2 In terms of that agreement, which is specifically recorded to be a 'no-fault' settlement, the parties agreed that Mr Nxasana would "relinquish his post" as NDPP from 1 June 2015. The agreement further provides that "in lieu of this" Mr Nxasana would receive the sum of R17 357 233. In addition, the government undertook to pay Mr Nxasana's legal costs arising from the application proceedings before the Pretoria High Court as well as those incurred in the commission of inquiry established to look into his fitness to hold office.
- 2.3 In the agreement the President expressly and specifically recognised that Mr Nxasana is "professionally, competent, sufficiently experienced and conscientious and has the requisite integrity to hold a senior public position both in the public and private sector".
3. Having analysed the terms of the agreement as well as the facts and circumstances leading up to the conclusion of the agreement, FUL is of the view that the President's conduct in this matter constituted a barely veiled campaign to oust Mr Nxasana as NDPP. The terms of the *agreement to vacate* reveal that, in the absence of a proper substantive basis to remove Mr Nxasana as NDPP, the President resorted to offering Mr Nxasana the payment of an inordinate sum of public funds in order to lure him from his position as NDPP.
4. This conduct (and the consequent *agreement to vacate*) is unlawful for, *inter alia*, the following reasons:
 - 4.1 It is inconsistent with section 179 of the Constitution as well as section 32(1)(a) of the National Prosecuting Authority Act ("the NPA Act") which guarantees the independence of the NDPP;
 - 4.2 It is inconsistent with section 32(1)(b) of the NPA Act to the extent that it amounts to an improper interference by the President and/or the Minister of Justice and Correctional Services with the work of the NPA as well as the office of the NDPP;
 - 4.3 It violates the substantive and procedural provisions prescribed in the NPA Act which govern the removal of the NDPP as well as the manner in which he may seek to vacate office;
 - 4.4 It falls foul of section 3 and section 9(1) of the Prevention and Combatting of Corrupt Activities Act 12 of 2004.
5. FUL also takes the view that the various decisions by the President to enter into the *agreement to vacate* as well as to remove Mr Nxasana (alternatively to agree to him vacating office) are reviewable on the basis that these are unlawful, irrational and unreasonable.
5. In view of the above, FUL hereby gives notice that intends bringing an application in the Pretoria High Court by Friday 19 June, to interdict the further implementation of the

M
NLF

WEBBER WENTZEL

Page 3.

agreement to vacate pending the outcome of an application to review and set aside the settlement agreement (and the executive/administrative decisions underlying the agreement).

6. We request an undertaking in writing that pending finalisation of the application no further steps will be taken to implement the *agreement to vacate*. In particular, we specifically seek an undertaking that no monies will be paid to Mr Nxasana in terms of the settlement agreement pending the finalisation of the application to be instituted.
7. Should you fail to provide us with this undertaking by close of business on Wednesday, 17 June 2015, we will have no option but to approach the High Court for urgent relief.

Yours faithfully



WEBBER WENTZEL

Moray Hathorn

Direct tel: +27 11 530 5539/5288

Direct fax: +27 11 530 6539

Email: moray.hathorn@webberwentzel.com

M
NLS



Office of the State Attorney Pretoria

Private Bag X 91
PRETORIA
0001

Salu Building
Ground Floor
316 Thabo Sehume Street

Tel: (Switchboard): (012) 309 1500
(Direct Line): (012) 309 1672
(Secretary): (012) 309 1556

Fax/Faks: 086 644 5436

Docex: 298

18 June 2015

Enquires: MR O. LETSOKO
Email: mletsoko@justice.gov.za

Our ref: 4701/2014/Z14/vs
Your ref: M. Hathom/3001742

**WEBBER WENTZEL ATTORNEYS
JOHANNESBURG**

Att: Moray Hathom

email: moray.hathom@webberwentzel.com

Dear Madam / Sir

RE: MXOLISI NXASANA

We refer to your letter dated 15th June 2015.

It is our instructions from both Offices of the Presidency and Justice that it will not be possible to provide any undertaking requested under paragraph 6 of your aforementioned letter since terms of the settlement agreement in issue have already been implemented.

We apologize for the delayed response and any inconvenience caused thereby.

Yours faithfully

M. Letsoko
For: State Attorney (Pretoria)

WEBBER WENTZEL

Office of the State Attorney
Safu Building
Ground Floor
316 Thabo Sehume Street
Pretoria, 0184

Fax: 086 644 5436
mlsoko@justice.gov.za

10 Fricker Road, Illovo Boulevard
Johannesburg, 2196

PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa

Docex 26 Johannesburg

T +27 11 530 5000
T +27 11 530 5111

www.webberwentzel.co.za

(pages)

Your reference

M Letsoko
4701/2014/Z15/vs

Our reference

M Hathorn/ 3001742

Date

22 June 2015

CONFIDENTIALITY NOTE: This fax contains confidential information intended only for the person/s to whom it is addressed. Any other recipient is not entitled to read the rest of this fax or disclose its contents to any person, or take copies, and is requested to notify us immediately by fax or telephone at the numbers listed above and we will reimburse the costs of doing so.

Dear Sir / Madam

MXOLISI NXASANA

We refer to your letter dated 18 June 2015. Kindly inform us what has been done to date in implementing in terms of the settlement agreement and when was this done. In particular we request to know what monies have been paid to Mr Nxasana in terms of the agreement and when?

Yours faithfully



WEBBER WENTZEL

Moray Hathorn

Direct tel: +27 11 530 5539/5288

Direct fax: +27 11 530 6539

Email: moray.hathorn@webberwentzel.com

679/772_1.Docx

Forster PA Innes JC Els Pienaar, P. P. M. P. S. J. Hutton P. P. M. P. S. RB Africa NG Alp OA Ampofo-Anti RL Appelbaum BA Ballie Jr. Bellew
AE Bennett DHL Booysse AR Bowley PG Bradshaw EG Brancu JL Brink TS Burger RS Coelho KI Collier KM Colman KE Coster K Couzyn
CR Davidson JH Davies F.E. Davis PM Daya JHB de Lange DW de Villiers BEC Dickinson MA Diemont DA Dingley KZ Dlothi G Diver HJ du Preez
CP du Toit SK Edmundson AE Esterhuizen M.R. Evans AA Feleke GA Fichardt JB Forman JM Gibson H Goolam CI Gouws JP Gouws PD Grealy
A Hadley VW Harrison JM Harvey RH Hathorn JS Henning KR Higgs NA Hlatshwayo XTC Hlatshwayo S Hockey CM Hofeld PM Holloway HF Human
AV Ismail KA Jarvis ME Jarvis G.J. Jonker S Jooste LA Kahn J. Kennedy A Keyser F.D. Kota J Lamb PSG Leon PG Leyden L Marais S. McCaffrey
JC McIntosh JJ McLaren S. Metzger SM Methula CS Meyer AJ Mills JA Milne D Milo JP Ngomezulu VS Hoodalay LA Morphet V. Movshovich
J. Nisibelli SP Walcker RA Nelson BP Ngoepe ZH Poshona FB Poshon L Odendaal GJP Olivier N Paige A.T. Pardin AS Parry S Patel GR Penfold
SE Phajane JA Phillips C Pillay HK Potgieter S Rajah D Ramjetan PJA Robb DC Rudman JW Scholtz KE Shepherd DMJ Simpa AJ Simpson
J Simpson R Singh MP Spalding L Stein PS Steyn LJ Swaine ER Swanepoel Z Swanepoel A Thakor A Toefy D Valleish PZ Vrede SE van der Heulen
ED van der Vyver N van der Walt K van Dyk A van Niekerk MC van Schaardenburgh JE Veeran D Venter B Versfeld HG Versfeld TA Versteeg
DF Visagie J Watson JWL Westgate KL Williams X Wilson RM Wilson N Yudaxen SA Boyd

M
NLF

► [Link to article](#)

ACKNOWLEDGMENTS

1 July 2015

CONFIDENTIALITY NOTE: This fax contains confidential information intended only for the person/s to whom it is addressed. Any other recipient is not entitled to read the rest of this fax or disclose its contents to any person, or take copies, and is requested to notify us immediately by fax or telephone at the numbers listed above and we will reimburse the costs of doing so.

MXOLISI NXASANA

1. In our letter dated 15 June 2015 we requested an undertaking in writing that pending finalisation of the application to be instituted no further steps be taken to implement the agreement. In particular, we specifically sought an undertaking that no monies would be paid to Mr Nxasana in terms of the settlement agreement pending the finalisation of the application to be instituted.
2. In your letter dated 18 June 2015 you stated that it would not be possible to provide any undertaking as requested since the terms of the settlement agreement had already been implemented.
3. In our letter dated 22 June 2015 we requested that you inform us of exactly which terms of the agreement had been implemented and when. In particular we asked what monies had been paid in terms of the settlement agreement and when. We have had no response. We asked these questions advisedly because the agreement on an ordinary grammatical interpretation means that not only did the President agree to pay Mr Nxasana R17 357 233 in terms of paragraph 4 thereof but that in addition in terms of paragraph 5 of the agreement he is to receive, inter alia, full medical aid benefits and full pension benefits going forward.
4. Accordingly we reiterate our request that you inform us of exactly what steps have been taken to implement the agreement and when such steps were taken. Please indicate what monies have been paid under the agreement to Mr Nxasana or for his benefit and when, and how such payments have been allocated. We request details of what further monies

20-3093 1 Back

AC Barnes, DHL Booysse, AJ Bowley, PG Bradshaw, EG Brant, JL Brink, S Burger, RS Coelho, KI Collier, KS Conner, F Coster, K Couzyn, CR Davidson, JH Davies, JE Davis, PM Daya, JHB de Lange, DW de Vries, BEC Dickinson, JA Diemont, DA Dingley, CT Dioeth, G Driver, HJ du Preez, CP du Toit, SC Edmundson, AE Esterhuizen, IJR Evans, AA Falekic, GA Fischer, JB Forman, JM Gibson, H Goolam, AT Gouws, PJ Gowus, PD Grealy, A Herley, VW Han, son, ZK Haave, YR Hathorn, JS Henning, KR Hillis, NA Hirschhorn, X-C Hirschhorn, S Horkey, C Holford, PH Howday, HF Human, AV Ismail, KA Jarvis, FE Jarvis, C Jonke, SJ Jooste, LA Kahn, N Kennedy, A Keyser, JD Kota, J Lamb, PSG Leon, PG Leyden, L Lardas, SF Cafferty, MC McIntosh, M Claren, S Eitelzer, SJ Methula, CS Meyer, AJ Mills, JA Mitner, D Milo, JF Ngomezutu, VS Noodeley, LA Orghet, V Potshaven, M Rashid, SP Seickler, RA Nelson, BP Ngepeze, ZN Nyshona, B Nzimande, L Odendaal, GJP Olivier, M Paliga, AT Paruni, AS Parsy, S Patel, GR Penfold, SE Phajane, JA Phillips, CK Rikley, HK Potgieter, S Rajah, D Ramjetjan, JJA Rees, DC Ruman, W Scholtz, ZE Shepherd, CJ Simaan, AJ Simpson, J Simpson, Singh NP Spalding, L Stein, PS Stein, LJ Swaine, ER Swanepoel, Z Swanepoel, A Theko, A Toofy, D Vallab, PZ Vanda, SE van der eulen, ED van de Vyver, J van der Walt, R van Dyk, A von Ecken, KH van Schaardenburg, JE Veeran, D Verzer, B Versfeld, AG Versfeld, TA Versfeld, DM Visagie, J Watson, JWL Westgate, KB Williams, K Wilson, RN Wolmar, N Yudelman, J Zandbergen, SA Boyd

11


WEBBER WENTZEL

Page 2

will still be paid under the agreement and when. We also request information of the tax paid on his benefits and when.

5. Unless we have a satisfactory answer by close of business this week, we will assume that the agreement has not been fully implemented and our client will launch urgent court proceedings as previously indicated.

Yours faithfully



WEBBER WENTZEL

Moray Hathorn

Direct tel: +27 11 530 5539/5288

Direct fax: +27 11 530 6539

Email: moray.hathorn@webberwentzel.com

M
NLF