IN THE HIGH COURT OF SOUTH AFRICA (GAUTENG DIVISION, PRETORIA)

Case no: 62470/15

In the matter between:

CORRUPTION WATCH (RF) NPC FREEDOM UNDER LAW (RF) NPC First Applicant Second Applicant

and

First Respondent THE PRESIDENT Second Respondent THE MINISTER OF JUSTICE Third Respondent **MXOLISI SANDILE OLIVER NXASANA** Fourth Respondent SHAUN ABRAHAMS DIRECTOR-GENERAL: DEPARTMENT OF JUSTICE Fifth Respondent AND CONSTITUTIONAL DEVELOPMENT CHIEF EXECUTIVE OFFICER OF THE NATIONAL PROSECUTING AUTHORITY Sixth Respondent THE NATIONAL PROSECUTING AUTHORITY Seventh Respondent Eighth Respondent THE DEPUTY PRESIDENT

NOTICE TO ABIDE

BE PLEASED TO TAKE NOTICE that the Third Respondent abides by the decision of the above Honourable Court herein.

BE PLEASED TO TAKE NOTICE FURTHER that the affidavit of MXOLISI SANDILE OLIVER NXASANA will be used to explain the position of the Third Respondent herein:

BE PLEASED TO TAKE NOTICE FURTHER that the Third Respondent's Attorneys are Delaney Attorneys, care of MacRobert Attorneys, MacRobert Building, 1062 Jan Shoba Street, Brooklyn, Pretoria, at which address they will accept notice and service of all documents in these proceedings.

DATED AT PRETORIA THIS 12 DAY OF APRIL 2017.

DELANEY ATTORNEYS
Third Respondent's Attorneys
6 Stafford St, Westdene, Johannesburg
Cell: 083 397 0057
Email: simon@delaney.co.za
c/o MacRobert Attorneys
MacRobert Building
1062 Jan Shoba Street
Brooklyn
Pretoria

TO:

THE REGISTRAR OF THE ABOVE HONOURABLE COURT

AND TO:

WEBBER WENTZEL

Applicant's Attorneys 10 Fricker Road, Ilovo Boulevard Johannesburg, 2196 P O Box 61771, Marshalltown Johannesburg, 2107 Tel: 011 530 5539

Fax: 011 530 6539

Email: moray.hathorn@webberwentzel.com

Ref: M Hathorn 3001972

c/o Bernard van der Hoven Attorneys 2nd Floor, Parc Nouveaux Building 225 Veale Street

Brooklyn Pretoria

Ref: Elmari Robbertse

Tel: 012 346 4243 Fax: 086 584 3261

Email: elmari@bvdh.co.za

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Without prejudice of Clients rights

GET/SIGN

on this AL day of April 201

Signed:

AND TO:

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

First Respondent c/o State Attorney: Pretoria 316 SALU Building Thabo Sehume Street Pretoria

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AND TO:		Signed:	
SHAUN ABRAHAMS Fourth Respondent Victoria and Griffiths Mxenge Building 123 Lake Avenue Silverton, Pretoria			
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AND TO:			
DIRECTOR-GENERAL: DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT Fifth Respondent c/o State Attorney: Pretoria 316 SALU Building Thabo Sehume Street Pretoria			

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IN THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

CASE NO.: 62470/15

In the matter between:

CORRUPTION WATCH (RF) NPC

First Applicant

FREEDOM UNDER LAW (RF) NPC

Second Applicant

and

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA First Respondent

MINISTER OF JUSTICE AND CORRECTIONAL

SERVICES

Second Respondent

MXOLISI SANDILE OLIVER NXASANA

Third Respondent

SHAUN ABRAHAMS

Fourth Respondent

DIRECTOR GENERAL: DEPARTMENT OF JUSTICE

AND CONSTITUTIONAL DEVELOPMENT

Fifth Respondent

CHIEF EXECUTIVE OFFICER OF THE

NATIONAL PROSECUTING AUTHORITY

Sixth Respondent

NATIONAL PROSECUTING AUTHORITY

Seventh Respondent

DEPUTY PRESIDENT OF THE REPUBLIC OF

SOUTH AFRICA

Eighth Respondent

EXPLANATORY AFFIDAVIT

BY THE THIRD RESPONDENT

and and

I, the undersigned,

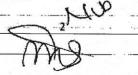
MXOLISI SANDILE OLIVER NXASANA

do hereby make oath and say that:

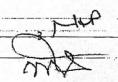
- 1. I am an adult male attorney and I am the third respondent in this matter.
- 2. The facts contained in this affidavit are both true and correct and are, unless the contrary is clearly indicated, within my own personal knowledge. Where I make submissions of a legal nature, I do so on the advice of my legal representatives.

PURPOSE OF THIS AFFIDAVIT

- 3. I depose to this explanatory affidavit in response to the application launched by the applicants, Corruption Watch (RF) NPC ("Corruption Watch") and Freedom Under Law (RF) NPC ("FUL"), in which they seek, primarily, to review the settlement agreement concluded between the first respondent ("the President"), the second respondent ("the Minister") and myself.
- 4. Although this explanatory affidavit is filed in response to the founding affidavits of Corruption Watch and FUL, I wish to record that I do not oppose the relief that they seek and file this affidavit to assist the Court with relevant and material factual information.



- 5. The purpose of this affidavit is thus to provide this Court with an account of the facts within my personal knowledge, which it has not been fully apprised of in the answering affidavits of the respondents that I have now seen and which are relevant to its consideration and determination of this matter.
- 6. To this end, I confirm the allegations made in Corruption Watch and FUL's affidavits, to the extent that they accord with what is set out below and in the contemporaneous correspondence regarding my tenure at the NPA, the circumstances of my premature departure from it and the state of the institution of which I was aware at that time.
- 7. I do not intend to address all of the allegations made in the answering affidavits filed by the President, the National Prosecuting Authority ("NPA") the fifth respondent, and the Minister paragraph-by-paragraph. To the extent that any of those allegations (to the extent that they concern me) conflict with what is set out below and in the paragraphs of the applicant's affidavits that I have confirmed, they are denied. My failure to address any specific allegations should not be construed as an admission as to their correctness.
- 8. This affidavit is structured as follows:
 - 8.1. I address the conclusion of the settlement agreement between myself, the Minister and the President and the basis on, and the understanding with, which I concluded it.



- 8.2. Thereafter, I address my reasons for leaving the NPA and the material and central fact that I never made a request to the President to vacate the office of the NDPP in terms of section 12(8) of the NPA Act, contrary to what is contained in the answering affidavits that I have now seen.
- 8.3. Finally, I address the Court on the reasons for, and seek condonation for, the late filling of this affidavit.

BACKGROUND

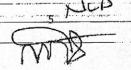
- I was appointed as the National Director of Public Prosecutions ("NDPP")
 by the President with effect from 1 October 2013.
- My appointment came about after the President's legal advisor Mr Michael Hulley met me at my office in Durban and he told me that my colleagues had recommended me to take up 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.
- 11. In terms of section 179 of the Constitution read, with section 10 of the National Prosecuting Authority Act ("NPA Act"), my appointment was for a period of 10 years.
- 12. However, during my first year in the office, it became clear that my leadership of the NPA was resisted by National Deputy Director Advocate

 Jiba and the Special Director: Specialised Commercial Crime Unit



Advocate Mrwebl 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.

- 13. In addition, I believe that Advocates Jiba and Mrwebi advised the President that I intended to reinstate the criminal charges against him that my predecessor had withdrawn. The President informed me in one of our meetings that he had been told that I was apparently meeting former NDPP Mr Bulelani Ngcuka at a flat in Durban. He said: "Hey Mfanakithi, umuntu uma eke washo igama lalowomuntu angifuni nokuzwa lutho ngaye indlela angangifuni ngakhona, ngivesane nyihlanye." This can be roughly translated as "once they mention the name of Ngcuka 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.
- 14. 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 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 Jeff Radebe, for permanent appointment as NDPP. This campaign was similar to that



which disqualified Mr Stanley Gumede who was widely tipped to be made NDPP before my appointment.

- 15. I believe that this campaign against me culminated in the President's establishment of the inquiry into my continued service as NDPP.
- 16. Finally, I was concerned that this campaign was also used to influence some staff members against me and some staff members were used in pursuit of the campaign, which disrupted the operation of the organisation.
- 17. I had taken various steps to address the instability suffered by the NPA at this time. These included:
 - 17.1. Obtaining a legal opinion from senior counsel regarding the findings of the High Courts and the Supreme Court of Appeal against Advocates Jiba, Mrwebi and Mzinyathi (the Director of Public Prosecutions: North Gauteng Division);
 - 17.2. The appointment of the Commission headed by retired Constitutional Court Justice Yacoob to Inquire into the instability within the NPA;
 - 17.3. The preparation of the Memorandum, signed by Mr Willie Hofmeyr, addressed to the Minister for onward transmission to the President regarding the situation at the NPA;
 - 17.4. Correspondence addressed to the Bar Council regarding Advocates Jiba, Mrwebi and Mzinyathi;



- 17.5. Informal attempts to improve my relationship with Advocates

 Jiba, Mrwebi and Mzimyathi; and
- 17.6. 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 Advocates Jiba, Mrwebi and Mzinyathi.
- 18. 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.
- 19. 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.
- 20. However, I was of the opinion that insufficient information had been provided to enable me to respond and to make meaningful submissions, and so I sought further information from the President, which was not forthcoming.
- 21. As a result, on 15 August 2014, I approached this Court on an urgent basis seeking to interdict my suspension by the President and to obtain the relevant information needed to respond fully to the allegations made against me in any inquiry.
- 22. I did not proceed with my urgent application since negotiations then commenced between myself and the President with a view to settling the

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dispute that had arisen regarding my continued service as head of the NPA.

- 23. On 5 February 2015, the President formerly appointed the commission of inquiry to inquire into my fitness to hold office
- 24. 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 and 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. Below I explain the circumstances that gave rise to the settlement agreement at issue in this application.

THE CONTEXT OF THE SETTLEMENT AGREEMENT

- 25. My reasons for concluding the settlement agreement are relevant in order to understand its context and purpose.
- 26. 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 Mr Radebe.
 - 26.1. 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 do not contend otherwise before this Court.

- 26.2. 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.
- 26.3. 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 Busisiwe Makhene, the Minister and the Minister of State Security, David Mahlobo, as set out below.
- 26.4. 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 this Court. I did so on the basis that the President and I were entitled to resolve disputes by reaching a settlement that is acceptable to all parties.
- 26.5. I was therefore of the view that the settlement agreement was concluded, not in terms of the NPA Act, but rather to settle this dispute.

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- 26.6. I have since been advised, and accept, that, as the applicant contends, the NPA Act regulates the terms of any early termination of my tenure as NDPP. Of course, it has no application to the litigation brought to interdict the inquiry into my continued service.
- 26.7. However, all of this does 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, and I will deal with this in greater detail below.
- 27. Second, I am also of the view that my entering into the settlement agreement was an attempt to protect the integrity of the office of the NDPP.
 - 27.1. The dispute between the President and I, and my difficulties with Advocates Jiba and Mrwebi of the NPA, had been ongoing and the President did not seem willing to intervene to resolve it.
 - 27.2. 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.
 - 27.3. My initiation of disciplinary action against Advocates Jiba, Mrwebi and Mzinyathi appeared not to be supported by the President and the Minister. 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 that are before this Court. At the NPA meeting at Emperors Palace in March 2015 referred to below, the Minister informed me that the President had agreed to intervene as I had requested. He failed to do so.

- 27.4. I was of the opinion that protracted and acrimonious litigation and disputes between myself and the President would further impair the standing of the NPA and the office of the NDPP.
- 27.5. It was my belief that it was in the best interests of the office of the NDPP and the institutional integrity of the NPA that the President and I settle our dispute, and that I relinquish my position as NDPP as a part of that settlement.
- 28. These reasons are expressly set out in the settlement agreement itself attached as "CW 12" to the founding affidavit. In this regard, I emphasise that the settlement agreement recorded that –

"both 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,"

29. It was further recorded at paragraphs 5 and 6 of the settlement agreement that -

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"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."

and

"the parties are equally cognizant of the cost implications for litigating and/or conducting an enquiry which resources may be better applied given the challenges our country faces".

- 30. Finally, whilst I knew that I would be found fit and proper by the inquiry, it remained open to doubt whether the findings of the inquiry would ultimately resolve the dispute regarding my leadership of the NPA. I also had seen what had happened to my predecessors as NDPP. They became involved in lengthy, acrimonious and expensive litigation and endured well-publicised personal attacks, all while their tenure as NDPP was made untenable. This adversely affected the integrity of the office of the NDPP, the stability of the NPA and them personally.
- 31. All of these factors resulted in me concluding the settlement agreement and relinquishing my position as NDPP in accordance with the provisions of the settlement agreement.

I DID NOT REQUEST TO LEAVE OFFICE

32. It was never my intention to make a request to vacate the office, nor did I ever make such a request to the President, in terms of section 12(8) of the NPA Act.

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- 33. I did not feel compelled to make such a request since I have at all times considered myself to be fit and proper to hold the office of the NDPP and I had no intention of leaving the office of the NDPP. As explained above, the settlement discussions were only commenced as a result of the ongoing dispute between myself and the President.
- 34. These intentions are plainly evident from the following excerpts from the contemporaneous correspondence.
- 35. My position was expressly articulated in the letter from my lawyers, Mabunda Incorporated, to the President on 10 December 2014, a copy of which is attached to this affidavit marked "MN 1". That letter explicitly records that:

"it has never been the NDPP's intention to resign from his position since he considers himself to be a fit and proper person to hold this position."

36. My position is further made clear with reference to paragraph 4 of that letter which states:

"the proposed settlement was triggered by the discussions which the NDPP had with the President following the latter's announcement of his decision to hold an enquiry into the NDPP's fitness to hold office and the possible suspension pending the enquiry."

37. I also expressed my unwillingness to resign to the Minister during a meeting which he called me to and which was held at the Sheraton Hotel in Pretoria on or about 26 February 2015. Contrary to the Minister's answering affidavit, what transpired at that meeting was the following:

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- 37.1. The Minister stated that he understood that I had reached an agreement with the President and that I would be leaving the NPA.
- 37.2. I advised the Minister that the opposite was in fact true, since I had never had any intention of leaving the NPA and I was discussing the issue further with Mr Hulley (the President's legal representative) with a view to resolving the dispute so that I may retain office.
- 37.3. I further expressed that I had, in any event, not consulted my family or my lawyers about the settlement proposed by the President.
- 37.4. The Minister appeared unaware of my discussions with Mr Hulley and indicated that he would need to get clarity from his principal on his (the Minister's) role in this matter. As a matter of fact, the Minister played no further role in the settlement negotiations.
- 38. In addition, when I next met the Minister at an NPA workshop at Emperors
 Palace on or about 10 March 2015, contrary to what is stated in his
 answering affidavit, we did not discuss the settlement negotiations. He
 did, however, advise me that the President had agreed to intervene to
 take the disciplinary steps I had requested against Advocates Jiba,
 Mrwebi and Mzinyathi.
- 39. My unwillingness to leave the office of the NDPP is further evidenced by a letter which I addressed to the President and in which I indicated that my preference was to resolve the dispute between us through a section 12 inquiry. A copy of this letter is annexed as "MN 2".





- 40. That this was my intention is further supported by the urgent application I filed before this Court wherein I sought an order interdicting the President from suspending me until I was presented with sufficient particularity of the allegations levelled against me in order to respond to and rebut them fully. This is attached as "CW 5" and "CW 6" to the founding papers.
- 41. In light of the above, the allegation that I requested to vacate my office cannot be sustained. Indeed, I made repeated requests to the President to pursue a section 12 inquiry, and I even went so far as to launch urgent court proceedings seeking clarification of allegations so that I may clear my name and continue to perform my work and duties as the NDPP.
- 42. The plain facts set out above and in the contemporaneous documents are therefore inconsistent with the respondents' version that I requested to vacate office. I have always maintained that I am, and have always been, fit and proper to hold office and that no request was ever made by me to the President to leave office.
- 43. I have had regard to Corruption Watch and FUL's founding affidavits, deposed to by David Lewis on behalf of Corruption Watch and Nicole Fritz on behalf of FUL, as well as their supplementary affidavit in terms of Rule 53(4), deposed to by their legal representative, Mr Moray Hathorn.
- 44. I wish to confirm specifically the contents of paragraphs 40.1 to 40.12 of the supplementary affidavit filed by Corruption Watch and FUL. In particular, I wish to confirm applicants' conclusions that:

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- 44.1. I did not make a request to the President to be allowed to vacate office on the basis of discord in the NPA;
- 44.2. I expressed a preference for the matter to be resolved through a section 12 inquiry;
- 44.3. I entered into the settlement agreement in order to resolve the dispute between myself and the President for the reasons and on the basis set out above;
- 44.4. I instituted urgent legal proceedings in order to interdict my suspension and to obtain sufficient information from the President about the allegations and respond to them.
- 45. The President's version in this regard is false. The contemporaneous documentary evidence pointing to the contrary supports what I state above. To be crystal clear: I never requested that the President allow me to vacate the office of the NDPP in accordance with section 12(8) of the NPA Act, or on any other basis.
- 46. I have also reviewed the affidavit filed by the current NDPP, Advocate Shaun Abrahams. I disagree that staff morale deteriorated as a result of my leadership and that I would not be able to effectively lead the organisation if re-instated. I am able and willing to serve again as NDPP.

CONDONATION

47. 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

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did not, request the President to allow me to vacate office in terms of section 12(8).

- 48. 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 this application (issued out of this Court under case number 62470/15).
 - 48.1. On 22 October 2015, I met with the Minister of State Security. David Mahlobo at the Beverley Hills Hotel in Durban at his request, and 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.
 - 48.2. I was acquainted with Minister Mahlobo from when we both attended university at the same time.
 - 48.3. Minister Mahlobo instructed his Chief of Staff, Mr Maduna, to arrange a meeting between myself and Mr Hulley. That meeting took place the next day, on 23 October 2015, between myself, Mr Hulley and Mr Maduna, over breakfast at the Beverly Hills Hotel in Durban.
 - 48.4. During that meeting, Mr Hulley enquired how I intended to approach this application by Corruption Watch and FUL. I advised him that I had not filed a notice of intention to oppose.





- 48.5. 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.
- 48.6. I advised him that I could not accede to that request until I had seen the response which the President intended to file.
- 48.7. 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 makes clear that I had never made such a request. I had drafted some of that correspondence personally.
- 48.8. 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.
- 48.9. 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 representations of events. Mr Hulley advised me that the President's answering affidavit had already been prepared and





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

- 48.10. Mr Hulley undertook to provide me with a copy of the draft affidavit.

 However, he never did so.
- 49. I only became aware of the content of the President's answering affidavit after it had been filed in February 2016.
- 50. 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 Maduna 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 filled, which was not fulfilled.
 - 50.1. I advised Minister Mahlobo that I was not happy about what had happened and the version in the affidavit, and 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 Mahlobo and Maduna that this application had now affected my reputation and I had to do something.
 - 50.2. Minister Mahlobo then immediately telephoned the Minister, in my presence, although I did not speak to the Minister.

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- 50.3. 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.
- 50.4. 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.
- 51. 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 this Court by both the applicant and myself.
 - 51.1. I provided much of this documentary evidence to the applicants here and it formed the basis of their Rule 30A application.
 - 51.2. I did this to further assist the applicants and to place before the Court contemporaneous documentary evidence that I never requested to vacate the office of NDPP.
 - 51.3. Now, in addition to assisting the Court by providing the applicants with documents relevant to the Rule 30A application, I wish to file this affidavit to further assist the Court.





- 52. I acknowledge that this affidavit has been filed considerably out of time and at a point in time when the matter is already at quite an advanced stage.
- 53. However, I humbly request this Court to condone the late filing of this affidavit because I file it in order to assist the Court by placing relevant facts and evidence before this Court.
- 54. I submit further that it would be in the interests of justice to condone the late filing of this affidavit. The issues raised by the applicants are of considerable national importance and concern. This application, quintessentially, concerns the public's right to and interest in the proper administration of state institutions, and particularly the NPA and the office of the NDPP, which are established by the Constitution.
- The facts which I have set out above in this affidavit are, I hope, of 55. assistance to the determinations that this Court is called upon to make, and are facts which no other party who has full personal knowledge thereof has deemed appropriate to place before this Honourable Court.
- 56. I respectfully submit that in the light of the important constitutional issues which this Court is called upon to consider, together with the importance and relevance of the facts which I have sought to place before this Court, the late-filing of this affidavit cannot cause any serious prejudice the parties. All of the parties will have an adequate opportunity to address the facts raised, either by seeking leave from this Court to file further affidavits or in their heads of argument, which I am advised have not yet been filed.

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57. My attorney of record has written to all parties request their consent to our application for condonation for the late filing of this affidavit.

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RELIEF

- 58. I respectfully request that this Court condone my non-compliance with the time periods stipulated in the Rules for the filing of this affidavit.
- 59. In the event that the Court does not grant condonation, I submit that costs occasioned by the filing of this affidavit should not be awarded against me, since it is filed to assist the Court.
- 60. I do not oppose any of the relief sought by Corruption Watch/FUL in this application and I fully intend to abide by any decision that this Court makes.
- 61. I wish to confirm specifically that I am both willing and able to resume my position as NDPP, should this Court grant such relief. I am further willing to abide by and fulfil any other relief sought in the Notice of Motion that this Court may order.

DEPONENT

HEREBY CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and swom before me at SAND (and On this the 11 day of 12017, the regulations contained in the 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.

COMMISSIONER OF OATHS

Nzwisisai L. Dyirakumunda Ex Officio Commissioner of Oaths

Practising Advocate of the High Court of SA Registered Legal Practitioner in Zimbabwe Rex Welsh House, Sandown Village Gnr Maude Street & Gwen Lane, Sandton Full Names:

Business Address:

Designation:

Capacity:



2 Protes Road, Corner Riley, Badfordview, 2008 Tel; (011) 450 2284/1641 Fax: (011) 450 1566 PO BOX 81238, Marshalltown, 2107 Email Address: Info@mabundainc.co.ze DOCEX 424 JHB

THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA
PRETORIA

10TH DECEMBER 2014

ATTENTION: BONISIWE MOKHENE Email:bonisiwe@presidency.gov.za

RE: NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS //
PRESIDENT OF REPUBLIC OF SOUTH AFRICA

- We refer to the above matter and particularly to the meeting we held on the 08th instant at Mahlambandlomfu wherein it was discussed, advised and agreed as follows:
 - 1.1 Following the settlement proposal that you presented to us, we requested you to furnish us with the NDPP's total unexpired term package in line with the annexure to the presentation.
 - 1.2 You requested the NDPP to furnish you with information regarding:
 - 1,2.1 Leave balances; and
 - 1.2.2 Pension benefits (5.1.2 (8) cc (11) of the NPA Act 32 of 1998 (NPA Act);
 - We will furnish you with the above information by no later than the close of business on Thursday the 11th December 2014.
- Following our discussions of the 08th instant and the subsequent instructions from client regarding the proposed settlement, we would like to place the following on record:
 - 2.1 . We are of the firm view that the prescripts which you sought to rely on pertaining to settlement are not applicable in the present case for the following reasons:

Director:

Pritzman Busani Mabunda: 8 Proc (UDW) LLB (Wits), LLM (Labour Law) (URIN) Dip. Advanced Banking (RAU), Dip in Criminal Justice and Foreing's Auditing (RAU) Cartificate in Sports Law (UCT), Certificate in Admin & Const Law (UCT).

Assisted by:

Dawald Leonard Villoan: B Proc (RAU), LLM (International Law) (UJ), Shirtey Futuffield Namutandari; LLB (UNIVEN), Tabogo Innocanta Koloku: LLB (UJ), Makhura Charle Mushwana LLB (UL), Judith Lindiwa Nkosi: LLB (WITS), (Compliance Management (UJ), Mariana Ngoban, LLB (UL)

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- 2.1.1 The provisions of the NPA Act which you seek to rely upon deal with a scenario where the NDPP is removed from office in terms of Section 12 (6) (a).
- 3. The procedure thereof is succinctly spelt out in Section 12 subsections 6,7,8 and 9 of and the NPA Act.

We would consequently like to draw the following to your attention:

- 3.1 That it has never been the NDPP's intention to resign from his position since he considers himself to be a fit and proper person to hold this position.
- 4. The proposed settlement was triggered by the discussions which the NDPP had with the President following the latter's announcement of his decision to hold an enquiry into the NDPP's fitness to hold office and the possible suspension pending the enquiry.
- Our instructions further are that the meeting between the NDPP and the President only took place after numerous attempts by the NDPP to seek audience with the President without success.
- 6. It must be remembered that the only time the President agreed to meet the NDPP was after the latter had lodged a court application, inter alia, interdicting the President from suspending the NDPP before the President provided further and sufficient particularity to enable the NDPP to respond or show cause why he should not be suspended.
- 7. We are advised that during the discussions the NDPP had with the President, the NDPP made it very clear that he will only consider stepping down from office if he is fully compensated for the remainder of his entire contract as head of the National Prosecuting Authority.
- We reflerate that there is no factual or legal basis for our client to step down from his position.
- It is our considered view, in light of the above that the Provisions of the NPA Act read with the Provisions of the Public Service Act, which you have alluded to, do not apply to this proposed settlement.

Director:

Prizman Busani Habunda: B Proc (UDW) LLB (Wils), LLM (Labour Law) UNIN) Dip. Advanced Banking (RAU). Dip in Criminal Justice and Forensic Audiëng (RAU). Certificate in Sports Law (UCT), Certificate in Admin & Const Law (UCT).

Assisted by:

Dewald Leonard Villoen: B Proc (RAU), LLM (International Law) (U.I), Shirtey Futulhei o Nemutandani: LLB (UNIVEN)
Tebbgo Inrocentia Moloke: LLB (U.J., Makhuva Charlie Mishwana LLB (UL), Judith Lindiwe Nkosi: LLB (WITS),
(Compilance Management (U.J.; Mariana Ngobent LLB (UL).

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- In the circumstances, our client will only consider the option of leaving office, as the President would want him to, if he is fully compensated for the remainder of his contract.
- 11. We confirm that the President advised us that the Minister of the State Security Agency (the Minister) has confirmed that he has upheld the NDPP's appeal against the refusal to grant him the security clearance and he has already issued it but he is waiting to hand it over to the NDPP upon finalisation of settlement between the parties.
- 12. While we do appreciate and welcome the Minister's decision to uphold the NDPP's appeal, it is our respectful view that the granting of the security clearance certificate to the NDPP is and/or should not be a condition for any
- We are accordingly bringing it to your attention that we are dispatching a letter to the Minister to release the Security Clearance Certificate to the NDPP.
- 14. We await to hear from you.

Yours faithfully Mabunda Incorporated

Per: P.B MABUNDA

Director:

Pritzman Buseni Meblanda: B Proc (UDW) LLB (Wils), LLM (Lebour Law) UNIN) Dip. Advanced Benking (RAU), Dip In Criminal Justice and Forensic Audiling (RAU) Certificate in Sports Law (UCT), Certificate in Admin & Const Law (UCT),

Assisted by

Daweld Leonard Villoen: B Proc (RAU), LLM (International Law) (UJ), Shirley Fuluffield Nemutandari: LLB (UNIVEN), Tabogo Innoventia Moloke: LLB (UJ), Makhuva Charife Mushwana LLB (UL), Judith Lindiwa Nicosi: LLB (UJ), Mariana Northani: LLB (US), Makhuva Charife Mushwana LLB (UL), Judith Lindiwa Nicosi: LLB (UJ), Talife Nicosi: LLB (UJ), Talife

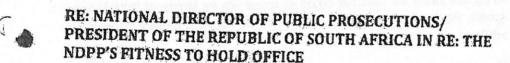
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3 November 2014

Dear Mr Hulley



We refer to the telephonic conversation between the writer hereof and yourself on the 30th October 2014.

We confirm that you have raised concerns about the inordinate time the matter is taking and that in your view the delay is attributable to our client.

You are in no doubt aware that the writer has been out of the country attending the International Bar Association (IBA) Conference between the 19th and 28th October 2014, as a result of which it had been difficult to get an opportunity to consult.

We have however urgently and subsequent to our telephonic conversation consulted with client who has instructed us to respond as follows:-

- 1. Client is willing to participate in the mediation process as your client has proposed,
- Although client would have preferred to have the matter resolved by way of enquiry, he is of the view that it is in the best interest of the NPA to have the matter finalised expeditiously by exploring the mediation route.
- If should be put on record that our client does not in any way waive any rights he
 has in law by agreeing to explore the mediation process and as such the
 proposals of the mediator shall not be binding on him unless expressly agreed to
 in writing.

Director

Prizzuan Busani Habunda: 8 Prio (UDW) LLB (Wils). LLM (Labour Law) UNIN) Dip. Advanced Banking (RAU). Dip'in Crimina. Justice and Forensis Audiang (RAU). Certificate in Sports Law (UCT). Certificate in Admin & Const Law (UCT).

Assisted by

Deweld Legnard Wilden: B Pict (RAU). LLM (Instruumes Law) (U1). Shirley Fututheld Nemdrandarf LLB (UK). Mekhuva Charle Mushwanz LLB (UL). Shirley Fututheld Nemdrandarf LLB (UK). Mekhuva Charle Mushwanz LLB (UL). Judith Lindiwe Nkosi: LLB (WI). (Compliance Maragement (UJ). Metiting Mobiler LLB (UL).

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You are therefore requested to initiate the process and kindly advice in writing about the proposed mediator, the terms of reference for the mediation and all the logistics that come with it.

As you are aware, our client has lodged an appeal with the Minister of State Security Agency, the Honourable Mr David Mahlobo, MP with respect to the security clearance certificate.

Furthermore, our client further appeared before the said Minister and the Committee to make oral submission in amplification of the written appeal. Our client is still waiting for the Minister's decision, of which he undertook to communicate with client in due course.

This is a factor which should be taken into account, when addressing issues of the proposed mediation.

Kindly acknowledge receipt of this letter while we are awaiting your further advises.

Yours Faithfully

PR Mahrinda

Per email: michael@hulleyinc.co.za

Director

Prizznen Busani Mebunde, B. Proc (UDW) L. B. (Wite), L.M. (Lebour Lew), UNINI Dip. Advanced Banking (RAU): Dip in Crimm, Justice and Forensic Auditing (RAU): Dip in Crimm, Law, (UCT): Certificate or Admin & Const. Law, (UCT).

Assisted by

Deweid Leanard Villoen & Proc (RAU), LLM (International Law) (UI), Shirley Fuluthelo Nemutandant LLB (UNIVEN) Tabago Innocentia Motoke: LLB (UJ), Makhura Charle Mushwana LLB (UL), Judith Lindiwe Nkost LLB (WTB). (Compliance Management (UJ): Marines Régolam LLB (UL)

NUS

IN THE HIGH COURT OF SOUTH AFRICA (GAUTENG DIVISION, PRETORIA)

Case no: 62470/15

In the matter between:

CORRUPTION WATCH (RF) NPC FREEDOM UNDER LAW (RF) NPC First Applicant Second Applicant

and -

THE PRESIDENT First Respondent Second Respondent THE MINISTER OF JUSTICE **MXOLISI SANDILE OLIVER NXASANA** Third Respondent SHAUN ABRAHAMS Fourth Respondent DIRECTOR-GENERAL: DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT Fifth Respondent CHIEF EXECUTIVE OFFICER OF Sixth Respondent THE NATIONAL PROSECUTING AUTHORITY THE NATIONAL PROSECUTING AUTHORITY Seventh Respondent THE DEPUTY PRESIDENT Eighth Respondent

NOTICE TO ABIDE

BE PLEASED TO TAKE NOTICE that the Third Respondent abides by the decision of the above Honourable Court herein.

BE PLEASED TO TAKE NOTICE FURTHER that the affidavit of MXOLISI SANDILE

OLIVER NXASANA will be used to explain the position of the Third Respondent herein.

BE PLEASED TO TAKE NOTICE FURTHER that the Third Respondent's Attorneys are Delaney Attorneys, care of MacRobert Attorneys, MacRobert Building, 1062 Jan Shoba Street, Brooklyn, Pretoria, at which address they will accept notice and service of all documents in these proceedings.

DATED AT PRETORIA THIS 12 DAY OF APRIL 2017.

DELANEY ATTORNEYS
Third Respondent's Attorneys
6 Stafford St, Westdene, Johannesburg
Cell: 083 397 0057
Email: simon@delaney.co.za
c/o MacRobert Attorneys
MacRobert Building
1062 Jan Shoba Street
Brooklyn
Pretoria

TO:

THE REGISTRAR OF THE ABOVE HONOURABLE COURT

AND TO:

WEBBER WENTZEL

Applicant's Attorneys 10 Fricker Road, Ilovo Boulevard Johannesburg, 2196 P O Box 61771, Marshalltown Johannesburg, 2107 Tel: 011 530 5539

Tel: 011 530 5539 Fax: 011 530 6539

Email: moray.hathorn@webberwentzel.com

Ref: M Hathorn 3001972

c/o Bernard van der Hoven Attorneys 2nd Floor, Parc Nouveaux Building

225 Veale Street

Brooklyn Pretoria

Ref: Elmari Robbertse Tel: 012 346 4243

Fax: 086 584 3261

Email: elmari@bvdh.co.za

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THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

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Thabo Sehume Street
Pretoria

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