

"SD2"
12

Sherylle Dass

From: Sherylle Dass
Sent: 18 January 2017 15:40
To: ichowe@justice.gov.za
Subject: Corruption Watch & Another vs The Arms Procurement Commission and 6 Others / Your ref: 8080/16/Z75/js

Dear Mr Chowe

Our telephonic conversation of even date refers.

We confirm having advised you that the dies for filing the record in the above proceedings have expired. We further enquired whether the State Attorney's office would be taking responsibility for obtaining the record from the Chairperson (Judge Seriti), as Judge Seriti is not opposing this matter.

We were accordingly advised by you that you have instructed the Department of Justice to compile the record. You advised further that due to the extent of the documentation that forms part of the record, there has been a delay in compiling same. You undertook to consult with the appropriate person from the Department of Justice to determine whether the collation of the record has been completed and/or compressed in electronic format.

Finally, you advised that you hoped to have the record available by the end of January but anticipate that this will more likely be available in the first week of February 2017.

We do appreciate that the record is voluminous and we acknowledge that it may take you more than the 30 days allowed for in Rule 53. We do, however have to point out that your offices have had more than 60 days to compile the record. In the premises, we impress upon to file the record with the Registrar as soon as reasonably possible or by least the first week in February as indicated in our telephonic conversation.

Kindly acknowledge receipt of this email and confirm whether the record will be filed in the first week of February 2017 (which would be on or before the **6 February 2017**).

Yours faithfully
Sherylle Dass



**HARRIS
NUPEN
MOLEBATS**

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03 FEBRUARY 2017

Enquires: K I CHOWE
Email: kichowe@justice.gov.za

My ref: 8080/2016/Z75
Your ref:

PER FAX: (011) 268 0470
Email: sherylle@hnmattorneys.co.za

Messrs Harris Nupen Molebatsi Inc
P O Box 411268
CRAIGHALL
JOHANNESBURG
2024

Dear Ms Dass

**RE: CORRUPTION WATCH AND THE RIGHT 2 KNOW // THE ARMS
PROCUREMENT COMMISSION AND SIX OTHERS
CASE NO: 81368/16**

We refer to the above matter and your email dated the 18th January 2017 in which we advised that we would be filing the record in the first week of February 2017.

We have since consulted with our clients and due to the volume of documents which are supposed to form part of the record, which will include the transcript of the hearing in its entirety, it will not be possible to deliver the record by next week as previously contemplated. We suggest that the legal representatives of the parties must hold a meeting and agree on ways of getting the relevant parts of

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the record filed and/or where possible request the office of the Deputy Judge President of the Pretoria High Court to allocate a Judge to schedule the matter on a Case Management roll.

We request you to consider our suggestion and revert to enable us to arrange for a meeting if you are amenable to our suggestion.

Yours faithfully



K. G. HOWE
FOR: STATE ATTORNEY (PRETORIA)



Sherylle Dass

From: Sherylle Dass
Sent: 20 February 2017 10:55
To: Chowe Isaac
Cc: Geoff Budlender; Basetsana Molebatsi
Subject: RE: corruption watch and the right 2 know
Attachments: Letter State Attorney 8 February 2017 Arms Procurement Commission Review.pdf

15

Tracking:	Recipient	Read
	Chowe Isaac	
	Geoff Budlender	
	Basetsana Molebatsi	Read: 20/02/2017 16:11

Dear Mr Chowe

Our letter dated 8 February 2017, attached hereto, has reference.

We wish to draw your attention to the following timelines. We requested that your client respond to us with proposals regarding practical arrangements to file the Rule 53 Record by the 10 February 2017 and we granted your clients a further indulgence to file the Rule 53 Record by the 17 February 2017.

Notwithstanding your acknowledgement of receipt of our aforesaid letter, your client has failed to provide us with any substantive response and failed to file the Rule 53 Record in this matter.

In the premises, our clients have no alternative but to bring an Application to Compel. In this application, they will unfortunately be obliged to cite not only your clients, but also Judge Seriti. It will be explained in the application that although your clients have undertaken to provide the Rule 53 record, and our clients will ask the Court to hold them to that undertaking, it is the Chairperson of the Commission who has the obligation under the Rule, and relief will also have to be sought against him.

Yours faithfully
 Sherylle Dass

Sherylle Dass

**RICHARD
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 ATTORNEYS**
INCORPORATED IN SOUTH AFRICA



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From: Chowe Isaac [mailto:IChowe@justice.gov.za]
Sent: 08 February 2017 10:40
To: Sherylle Dass <sherylle@hnmattorneys.co.za>
Cc: Sesana Johanna <JSesana@justice.gov.za>; gbudlender@capebar.co.za; Basetsana Molebatsi

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

Case No: 81368/16

In the matter between:

CORRUPTION WATCH

First Applicant

RIGHT 2 KNOW CAMPAIGN

Second Applicant

And

THE ARMS PROCUREMENT COMMISSION

First Respondent

WILLIE SERITI NO

Second Respondent

HENDRICK MMOLLI THEKISO MUSI NO

Third Respondent

**THE MINISTER OF JUSTICE AND CONSTITUTIONAL
DEVELOPMENT**

Fourth Respondent

**THE PRESIDENT OF THE REPUBLIC OF SOUTH
AFRICA**

Fifth Respondent

THE MINISTER OF DEFENCE

Sixth Respondent

THE MINISTER OF TRADE AND INDUSTRY

Seventh Respondent

NOTICE IN TERMS OF RULE 30A(1)

WHEREAS the Second Respondent has not complied with the Applicants' Notice of Motion (in terms of Uniform Rule 53) issued and served on the Respondents on 17 October 2016 by:

- 1.1. Failing to deliver to the Registrar of the abovementioned High Court, within thirty days of service of the notice, the Record of the proceedings (including all documents,

Ng
lcc

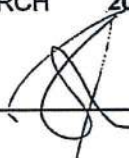
letters, memoranda, reports, minutes and other materials that were before the First, Second and Third Respondents and upon which the findings of the First Respondent were based), together with such reasons as the Second and Third Respondents are by law required or desire to give or make.

1.2. Failing to deliver the Record in electronic form to the Applicants.

AND WHEREAS the State Attorney, on behalf of the Fourth, Sixth, and Seventh Respondents, undertook on 18 January 2017 and again on 3 February 2017 to deliver the Record by the first week of February 2017, but has failed to do so to date.

KINDLY TAKE NOTICE that, in terms of Rule 30A(1), the Applicants hereby notify the Respondents that they intend, after the lapse of ten days, to apply for an order striking out the Respondents' defence, alternatively that the Respondents are ordered to comply with the Applicants' Notice in terms of Rule 53(1) within ten days, failing which the Applicants may apply for an order that the defence be struck out.

DATED at JOHANNESBURG on this the 8TH day of MARCH 2017.


HARRIS NUPEN AND MOLEBATSIS INC
Attorneys for Applicants

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Fax: 011 2680470
Email: sherylle@hnmattorneys.co.za

c/o Lawyers for Human Rights
Kutlwanong Democracy Centre
357 Visagie Street
Pretoria
0002

Ref: CET01/2016/E Temperman

**TO: THE REGISTRAR
GAUTENG DIVISION OF THE HIGH COURT**

**AND TO: THE ARMS PROCUREMENT COMMISSION (the Commission of Inquiry
into allegations of Fraud, Corruption, Impropriety or Irregularity in the
Strategic Defence Procurement Packages.)
The First Respondent
c/o The Minister of Justice and Constitutional Development
Momentum Centre
329 Pretorius Street (c/o Pretorius and Sisulu Streets)
PRETORIA**

**AND TO: WILLIE LEGOABE SERITI NO
C/O The Chief Registrar of the Supreme Court of Appeal
The Second Respondent
Cnr Elizabeth & President Brand Streets
BLOEMFONTEIN**

**AND TO: HENDRICK MMOLLI THEKISO MUSI NO
C/O The Registrar of the Free State High Court
The Third Respondent
20 President Brand Street
BLOEMFONTEIN**

**AND TO: THE STATE ATTORNEY
Fourth to Seventh Respondents' Attorneys
316 SALU Building
Cnr Francis Baard and Thabo Sehume Street
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24 MARCH 2017

Enquires: K I CHOWE
Email: ichowe@justice.gov.za

My ref: 8080/2016/275
Your ref:

PER HAND

THE CHIEF REGISTRAR
THE HIGH COURT OF SOUTH AFRICA
PRÉTORIA

Dear Sir

**RE: CORRUPTION WATCH AND THE RIGHT 2 KNOW // THE ARMS
PROCUREMENT COMMISSION AND SIX OTHERS
CASE NO: 81368/16**

We refer to the above matter and hereby file the Respondent's Record of Proceedings in terms of rule 53.

The documents which form part of the record are voluminous and we have copied them in a mass storage electronic devise (external hard drive with a connection cable). We will deliver the hard drive, the connection cable and a copy of the report of the Arms Procurement Commission for safe keeping in your office to avoid a possible misplacing of the hard drive and the applicants will have access to the filed documents at your office.

We will in due course after the applicants have identified the documents necessary for the review discuss the most practical way of making the hard copies available to court. We will also communicate with the office of the Deputy Judge President to give guidance with regards to the proceedings in general.


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We confirm further that we will deliver our office copy of the hard drive to the respondents to enable them to copy it electronically and return our copy. The hard copy of the Commission's Report will also be delivered to your office.

Yours faithfully


B. CHOWE
FOR: STATE ATTORNEY (PRETORIA)



RICHARD
ROSENTHAL
ATTORNEYS
IN ASSOCIATION WITH



HARRIS
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Our Ref: Sherylle Dass
Your Ref: 8080/2016/275

05 April 2017

Office of the State Attorney Pretoria
Private Bag X91
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By E-Mail lchowe@justice.gov.za

Dear Mr Chowe

RE : CORRUPTION WATCH AND RIGHT2KNOW / THE ARMS PROCUREMENT COMMISSION AND SIX OTHERS - CASE NO : 81368/16

The above matter refers.

We acknowledge receipt of the Record in accordance with Rule 53 served on our correspondent attorneys on the 24 March 2017. We are in the process of reviewing the Record and on a cursory inspection have noted that the Record may contain some omissions.

Accordingly, we will revert to you once we have completed the task of identifying such omissions.

Under the circumstances, and due to the length of the record, we would not be able to file our amended notice of motion and supplementary affidavit within the time prescribed by Rule 53.

We trust that you would grant us this indulgence and we will revert to you with an anticipated date for filing our amended papers in due course.

Yours faithfully

SHERYLLE DASS

HNM Directors Peter Harris BA LLB (Rhodes) LL.M (Warwick) | Charles Nupen BA LLB (KZN) | Busotwane Molebatsi BA LLB (Wits)
Consultants Richard Rosenthal | Lerato Molefe BA (Smriti) MA (Fletcher) JD (Harvard) Cape Town Sherylle Dass BA LLB (KZN)
Harris Nupen Molebatsi Inc. reg no 2013/064975/21 | 3rd Floor, 1 Bompos Road, Dunkeld West, Johannesburg
P O Box 411268, Craighail, Johannesburg, 2024 | Tel +27 (0) 11 017 3100

RICHARD ROSENTHAL ATTORNEYS
In association with

Hm HARRIS NUPEN MOLEBATS!

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Our Ref : Sherylle Dass
Your Ref : 8080/2016/Z75

18 April 2017

Office of the State Attorney Pretoria
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By E-Mail ichowe@justice.gov.za

Dear Mr Chowe

RE : CORRUPTION WATCH AND RIGHT2KNOW / THE ARMS PROCUREMENT COMMISSION AND SIX OTHERS - CASE NO : 81368/16

Previous correspondence herein, refers.

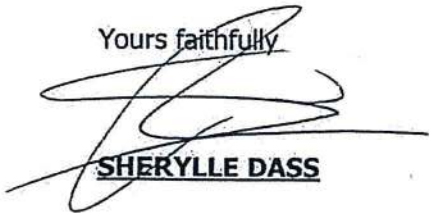
We have now reviewed the Record and as mentioned in our letter dated 5 April 2017, we hold the view that certain documents, that should have formed part of the Record, have been omitted.

We have taken the liberty of drawing up a concise list of the further documents that should have been filed with the Record, attached hereto marked Annexure "A".

We will further send a copy of this letter together with the list to the Second Respondent, Judge Seriti, who in accordance with Rule 53 has the obligation to file the Record of the proceedings and who we believe is not represented by the State Attorneys offices.

In the premises, we would naturally expect that you would file the further documents as referenced in Annexure "A" forthwith, in order to avoid any further delays in these proceedings and to avoid any unnecessary interlocutory applications.

Yours faithfully



SHERYLLE DASS

HNM Directors Peter Harris BA LLB (Rhodes) LLM (Warwick) | Charles Nupen BA LLB (KZN) | Basetsana Molebatsi BA LLB (Wits)
Consultants Richard Rosenthal | Lerato Molefe BA (Smith) MA (Fletcher) JD (Harvard) Cape Town Sherylle Dass BA LLB (KZN)
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**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 81368/16

In the matter between:

CORRUPTION WATCH First Applicant

RIGHT 2 KNOW CAMPAIGN Second Applicant

And

THE ARMS PROCUMENT COMMISSION First Respondent

WILLIE SERITI NO Second Respondent

HENDRICK MMOLLI THEKISO MUSI NO Third Respondent

**THE MINISTER OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT** Fourth Respondent

**THE PRESIDENT OF THE REPUBLIC OF SOUTH
AFRICA** Fifth Respondent

THE MINISTER OF DEFENCE Sixth Respondent

THE MINISTER OF TRADE AND INDUSTRY Seventh Respondent

INDEX: Documents not included in Rule 53 Record

M. O. O.

NO	DOCUMENT
1. Correspondence and Interactions with Foreign Law Enforcement Agencies and/or SDPP-related Companies	
1.1	All correspondence between the Commission and the UK Serious Fraud Office.
1.2	Minutes of all meetings between the Commission or its staff and the UK Serious Fraud Office.
1.3	All correspondence between the Commission or its staff and Sweden's National Anti-Corruption Unit.
1.4	Minutes of all meetings between the Commission or its staff and Sweden's National Anti-Corruption Unit.
1.5	All correspondence between the Commission or its staff and Swiss authorities (in particular the Attorney General of Switzerland, Michael Lauber, the Swiss Money Laundering Report Office, and Ms Schnebli of the office of the Federal Prosecutor in the Office of the Attorney General).
1.6	Minutes of all meetings between the Commission or its staff and Swiss authorities (in particular the Attorney General of Switzerland, Michael Lauber, the Swiss Money Laundering Report Office, and Ms Schnebli of the office of the Federal Prosecutor in the Office of the Attorney General).
1.7	All correspondence between the Commission or its staff and Judge Martin Nigg of the Court of Justice of Liechtenstein (or representatives of this office) and Dr Rober Wallner, the Prosecutor General of Liechtenstein (or representatives of this office).
1.8	Minutes of any and all meetings between the Commission or its staff and Judge Martin Nigg of the Court of Justice of

	Liechtenstein (or representatives of this office) and Dr Rober Wallner, the Prosecutor General of Liechtenstein (or representatives of this office).
1.9	All correspondence between the Commission or its staff and the US Department of Justice (including but not limited to the Fraud Section, Criminal Division).
1.10	Minutes of any and all meetings between the Commission or its staff and the US Department of Justice (including but not limited to the Fraud Section, Criminal Division).
1.11	All correspondence between the Commission or its staff and Bell Helicopter Textron (or its representatives) during the life of the Commission.
1.12	Minutes of all meetings between the Commission or its staff and Bell Helicopter Textron.
1.13	All correspondence between the Commission or its staff and all German Authorities as identified in Volume 1, Section B, Sub-Section 6, paragraphs 105 – 115 of the Commission's final report.
1.14	Minutes of all meetings between the Commission or its staff and all German Authorities as identified in Volume 1, Section B, Sub-Section 6, paragraphs 105 – 115 of the Commission's final report.
1.15	All correspondence between the Commission or its staff and French authorities, including but not limited to the offices of Ms Edith Boizette and Mr De Loire as identified in Volume 1, Section B, Sub-Section 7, paragraphs 117 - 118 of the Commission's final report.
1.16	All correspondence between the Commission or its staff and BAE Systems PLC.



1.17	Minutes of all meetings between the Commission or its staff and BAE Systems PLC or its representatives.
2. Research and other outputs of researchers and forensic auditors employed by the Commission	
2.1	<p>The products of the work of the forensic auditor appointed by the Commission, including but not limited to:</p> <ul style="list-style-type: none"> • Minutes of meetings between Commission or commission staff and the forensic auditor and/or his team; • All directions, research briefs and documents provided by the Commission or its staff to the forensic auditor; and • All research outputs of the forensic auditor, including minutes of all briefings, and all reports and other communication of the results of the work of the forensic auditor to the Commissioners or its staff or any witness appearing before the Commission.
2.2	<p>The products of the work of the Commission's internal legal and research team, including:</p> <ul style="list-style-type: none"> • Minutes of meetings between Commission staff and the internal legal and research team, or between members of the internal legal and research teams themselves; • All directions or research briefs or any other instructions provided by the Commission to the internal legal and research team; • All research outputs of the internal legal and research teams, including minutes of all briefings, reports and other communication of the results of the work of internal legal or research team to the Commissioners or staff of the Commission or any witness appearing before the Commission; and • All research reports and other briefings provided by the internal legal team to the Commissioners and to evidence leaders.

2.3	<p>The product of the work of forensic or consultant legal researchers or their teams, including:</p> <ul style="list-style-type: none"> • Professor R Palmer, Dr Z Hlophe, Advocate N Melville and Messers C Gevers and J Wessels; • Minutes of meetings between Commission staff and the internal legal and research team, or between members of the internal legal and research teams themselves; • All directions, research briefs and other instructions provided by the Commission to the internal legal and research team; • All research outputs of the internal legal and research teams, including minutes of all briefings, reports and other communications of the results of the work of internal legal or research team to the Commissioners or the Commission staff or any witness appearing before the Commission; and • All research reports and other briefings provided by the internal legal team to the Commissioners and to evidence leaders.
<p>3. Minutes of all meetings held by the Commissioners with evidence leaders</p>	
3.1	<p>The minutes of the meeting of 1 March 2013 referred to in the resignation letter of Adv Barry Skinner SC and Carol Sibiya.</p>
3.2	<p>The minutes of a meeting of 'internal professional staff' on 6 November 2012.</p>
3.3	<p>All directions and directive given by the Commission or its Chairperson to evidence leaders about the conduct of the process of hearing evidence, including but not limited to the Practice Guidelines issued on 16 August 2013.</p>
<p>4. Minutes of Briefings with the DSO and/or NPA</p>	

4.1	Minutes of the briefing given by members of the DSO and NPA to the Commission on 10 November 2012.
4.2	All reports, presentations and other documents (including electronic reports, presentations or documents) forming part of that briefing.
4.3	Minutes of the meeting between the Commission and any of its representatives and the representatives of DIPCI, namely, Col Johan Du Plooy, Maj Gen Hans Meiring and Brig Nicholas Van Graan on 11 and 12 August 2012.
4.4	All presentations, briefing documents or other information provided by representatives of DIPCI to the Commission or its representatives and staff.
5. The NPA's 16 Lever Arch Files	
5.1	The 16 lever-arch files provided by the NPA to the Commission, which were handed over on 20 July 2012.
6. Other Documents	
6.1	Draft versions of the reports of the Office of the Public Protector, National Prosecuting Authority and Office of the Auditor-General prepared for integration into the Joint Investigation Report, or and all other material relevant to the preparation of the Joint Investigation Report, including all minutes or records of all section 28 interviews handed to the Commission.
6.2	Minutes of all meetings between the Commission or its representatives and the Auditor-General, Mr Terence Nombembe and the former Auditor-General, Mr Shauket Fakie.

6.3	All material included on the hard drive provided by DIPCI to the Commission following a briefing between DIPCI representatives and representatives of the Commission on 11 and 12 August 2012.
6.4	All requests for information, including summonses, sent by the Commission to all financial institutions as identified in Volume 1, Chapter Two, Section A, Sub-Section 16, including: <ul data-bbox="574 627 989 851" style="list-style-type: none">• The South African Reserve Bank;• ABSA;• First National Bank;• Nedbank South Africa; and• Standard Bank.
6.5	All information provided to the Commission by all South African financial institutions as described at Volume 1, Chapter Two, Section A, Sub-Section 16, including: <ul data-bbox="574 1052 989 1276" style="list-style-type: none">• The South African Reserve Bank;• ABSA;• First National Bank;• Nedbank South Africa; and• Standard Bank.





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26th APRIL 2017

Enquires: MR K I CHOWE
Email: ichowe@justice.gov.za

My Ref: 8080/2016/Z75
Your Ref: Sherylle Dass

Harris Nupen Molebatsi Attorneys
4th floor Tamatave
49 Bellevue Street
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Per Email: info@hnmattorneys.co.za

Dear Ms Dass

**RE: CORRUPTION WATCH AND RIGHT2KNOW/ THE ARMS
PROCUREMENT COMMISSION AND SIX OTHERS-CASE NO: 81368/16**

We refer to the above matter and your letter of the 18th April 2017 and our email of the 19th April 2017.

The second and the third respondents, Judge Seriti and Judge Musi have instructed us to advise that, as you are aware, they are not any longer on duty for the execution of any functions of the Arms Procurement Commission. Judge Seriti has gone back to his sit in the Supreme Court of Appeal.

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Both Judge Seriti and Judge Musi do not have any documents in their possession or control over any documents pertinent to the current application. All the documents which have already been made available to you have been archived by the Department of Justice and Constitutional Development.

In light of the above, it cannot be expected that the second and third respondents should, after the commission has ceased to exist, still be in possession of, or have control over any documents utilized for the purpose of the commission.

Yours faithfully



K. I. CHOWE

For: State Attorney (PRETORIA)



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

Case No: 81368/16

In the matter between:

CORRUPTION WATCH

First Applicant

RIGHT 2 KNOW CAMPAIGN

Second Applicant

And

THE ARMS PROCUREMENT COMMISSION

First Respondent

WILLIE SERITI NO

Second Respondent

HENDRICK MMOLLI THEKISO MUSI NO

Third Respondent

**THE MINISTER OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT**

Fourth Respondent

**THE PRESIDENT OF THE REPUBLIC OF SOUTH
AFRICA**

Fifth Respondent

THE MINISTER OF DEFENCE

Sixth Respondent

THE MINISTER OF TRADE AND INDUSTRY

Seventh Respondent

NOTICE IN TERMS OF RULE 30A(1)

WHEREAS the Second Respondent has not complied with the Applicants' Notice of Motion (in terms of Uniform Rule 53) issued and served on the Respondents on 17 October 2016 by:

- 1.1. Failing to deliver to the Registrar of the abovementioned High Court, within thirty days of service of the notice, the full Record of the proceedings (including all documents, letters, memoranda, reports, minutes and other materials that were before the First, Second and Third Respondents and upon which the findings of the First Respondent were based), together with such reasons as the Second and Third Respondents are by law required or desire to give or make.
- 1.2. Failing to deliver the Record in electronic format to the Applicants.

AND WHEREAS the State Attorney on behalf of the Fourth, Sixth, and Seventh Respondents, undertook on 18 January 2017 and again on 3 February 2017 to deliver the Record by the first week of February 2017;

AND WHEREAS the State Attorney failed to comply with that undertaking, by delivering only a part of the Record to the Applicants on 24 March 2017.

KINDLY TAKE NOTICE that, in terms of Rule 30A(1), the Applicants hereby notify the Respondents that they intend, after the lapse of ten days, to apply for an order striking out the Respondents' defence, alternatively that the Respondents are ordered to comply with the Applicants' Notice in terms of Rule 53(1) within ten days, failing which the Applicants may apply for an order that the defence be struck out.

DATED at CAPE TOWN on this the 2nd day of June 2017.



Per: S Dass

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Ref: CET01/2016/E Temperman

and

Webbers Attorneys
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Ref: Karin Collins

**TO: THE REGISTRAR
GAUTENG DIVISION OF THE HIGH COURT**

**AND TO: THE ARMS PROCUREMENT COMMISSION (the Commission of
Inquiry into allegations of Fraud, Corruption, Impropriety or
Irregularity in the Strategic Defence Procurement Packages.)
The First Respondent
c/o The Minister of Justice and Constitutional Development
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329 Pretorius Street (c/o Pretorius and Sisulu Streets)
PRETORIA

- AND TO: WILLIE LEGOABE SERITI NO**
C/O The Chief Registrar of the Supreme Court of Appeal
The Second Respondent
Cnr Elizabeth & President Brand Streets
BLOEMFONTEIN
- AND TO: HENDRICK MMOLLI THEKISO MUSI NO**
C/O The Registrar of the Free State High Court
The Third Respondent
20 President Brand Street
BLOEMFONTEIN
- AND TO: THE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**
C/O The State Attorney, Pretoria
The Fourth Respondent
SALU Building
316 Thabo Sehume Street (c/o Thabo Sehume and Francis Baard Streets)
PRETORIA
- AND TO: PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**
The Fifth Respondent
The Presidency
Union Building
Government Avenue
PRETORIA
- AND TO: MINISTER OF DEFENCE**
C/O The State Attorney, Pretoria
The Sixth Respondent
SALU Building
316 Thabo Sehume Street (c/o Thabo Sehume and Francis Baard Streets)
PRETORIA
- AND TO: MINISTER OF TRADE AND INDUSTRY**
C/O The State Attorney, Pretoria
The Seventh Respondent
SALU Building
316 Thabo Sehume Street (c/o Thabo Sehume and Francis Baard Streets)
PRETORIA

Macrobert Inc
Attorneys
51
Tel: (012) 425 - 3400

01

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

CASE NO: 81368/16

In the matter between:

CORRUPTION WATCH

RIGHT 2 KNOW CAMPAIGN

And

THE ARMS PROCUREMENT COMMISSION

WILLIE SERITI NO

HENDRICK MMOLLI THEKISO MUSI NO

**THE MINISTER OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT**

**THE PRESIDENT OF THE REPUBLIC OF SOUTH
AFRICA**

THE MINISTER OF DEFENCE

THE MINISTER OF TRADE INDUSTRY

REGISTRAR OF THE HIGH COURT OF
SOUTH AFRICA GAUTENG DIVISION, PRETORIA
PRIVATE BAG/PRIVAATSAK X57
PRETORIA 001
2017-08-22
N. C. NIKOSI
REGISTRAR'S CLERK
GRIFPER VAN DIE HOË HOF VAN
SUIDAFRIKA GAUTENG AFDELING, PRETORIA

First Applicant

Second Applicant

First Respondent

Second Respondent

Third Respondent

Fourth Respondent

Fifth Respondent

Sixth Respondent

Seventh Respondent

**NOTICE OF SET DOWN – UNOPPOSED MOTION ROLL
IN TERMS OF RULE 30A(2)**

WHEREAS a Notice in terms of Rule 30A(1) dated 02 June 2017 was served as follows:

On 02 June 2017 on the Second, Fourth, Fifth, Sixth and Seventh Respondents;

On 06 June 2017 on the Third Respondent.

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WHEREAS the State Attorney on behalf of the Fourth, Sixth and Seventh Respondents' have failed to comply with the Notice in terms of Rule 30A(1) dated 02 June 2017.

BE PLEASED TO TAKE NOTICE that the Applicants' intend making application to the above Honourable Court on 27TH NOVEMBER 2017 at 10H00 or soon thereafter as Counsel for the Applicants may be heard for an Order in the following terms :-

1. Striking out the Respondents' defence;
2. Alternatively that the Respondents' are ordered to comply with the Applicants' notice in terms of Rule 53(1) within 10 (ten) days from date of service of the Court Order;
3. Costs of Suit;
4. Further and/or alternative relief.

FURTHER TAKE NOTICE that the affidavit of SHERYLLE DELENE DASS annexed hereto will be used in support of this application.

Dated at PRETORIA on this 15th day of August 2017



HARRIS NUPEN MOLEBATSI INC
ATTORNEYS FOR APPLICANTS
3RD FLOOR 1 BOMPASS ROAD
DUNKELD WEST
JOHANNESBURG
PO BOX 411268, CRAIGHALL 2024
SOUTH AFRICA
TEL: (011) 017 3100
FAX: (011) 268 0470
REF.: MS B MOLEBATSI
C/O MACROBERT INCORPORATED
MACROBERT BUILDING



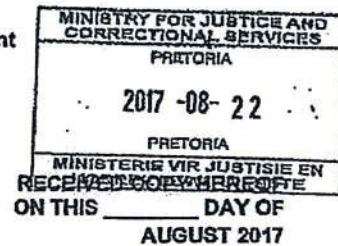
3

c/o JUSTICE MAHOMED
 & JAN SHOBA STREETS
 BROOKLYN
 PRETORIA
 TEL: 012 425 3400
 FAX: 012 425 3600
 EMAIL: asullman@macrobert.co.za
 REF: MR SULIMAN/00029324

TO:
 THE REGISTRAR
 GAUTENG DIVISION OF THE HIGH COURT

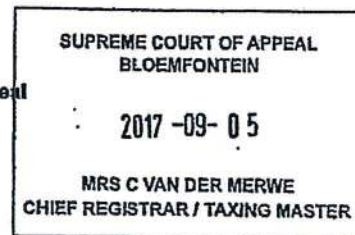
AND TO:
 THE ARMS PROCUREMENT COMMISSION (the Commission of Inquiry into allegations
 of Fraud, Corruption, Impropriety or Irregularity In the Strategic Defence Procurement
 Packages.)

First Respondent
 c/o The Minister of Justice and Constitutional Development
 Momentum Centre
 329 Pretorius Street (c/o Pretorius and Sisulu Streets)
 PRETORIA



AND TO:

WILLIE LEGOABE SERITI NO
 C/O The Chief Registrar of the Supreme Court of Appeal
 Second Respondent
 Cnr Elizabeth & President Brand Streets
 BLOEMFONTEIN



AND TO:

HENDRICK MMOLLI THEKISO MUSI NO
 C/O The Registrar of the Free State High Court
 Third Respondent
 20 President Brand Street
 BLOEMFONTEIN



3

M. K. K.

04

AND TO:
THE STATE ATTORNEY
Fourth to Seventh Respondents' Attorneys
316 SALU Building
Cnr Francis Baard and Thabo Sehume Street
PRETORIA

8080/16/295/J5

RECEIVED COPY HEREOF
ON THIS _____ DAY OF
AUGUST 2017



M. Coor

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

05

Case No: 81368/16

In the matter between:

CORRUPTION WATCH	First Applicant
RIGHT 2 KNOW CAMPAIGN	Second Applicant
and	
THE ARMS PROCUREMENT COMMISSION	First Respondent
WILLIE SERITI NO	Second Respondent
HENDRICK MMOLLI THEKISO MUSI NO	Third Respondent
THE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT	Fourth Respondent
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Fifth Respondent
THE MINISTER OF DEFENCE	Sixth Respondent
THE MINISTER OF TRADE AND INDUSTRY	Seventh Respondent

AFFIDAVIT

1 | Page

Handwritten signature

I, the undersigned,

06

SHERYLLE DELENE DASS

do hereby make oath and say that:

1. I am an attorney, practising as such at Harris Nupen Molebatsi Incorporated. I am duly authorised to depose to this affidavit as the Applicant's attorney of record.
2. The facts deposed to herein are within my personal knowledge unless stated to the contrary or otherwise appears from the context and are to the best of my belief true and correct.
3. The main application in this matter is for inter alia an order reviewing and setting aside the Report of the Arms Commission, also known as the Seriti Commission.
4. The application was issued on 17 October 2016, and served on the various respondents as follows:
 - 4.1 On the First Respondent on 17 October 2016;
 - 4.2 On the Second and Third Respondents on 20 October 2016; and
 - 4.3 On the Fourth to Seventh Respondents on 21 October 2016.
5. The application is opposed by the Fourth, Fifth, Sixth and Seventh Respondents.
6. The Second Respondent is required to deliver the record of the proceedings in terms of Rule 53(1)(b) of the Uniform Rules of Court ("the Record") within 30 days of service of the application on them (i.e. 28 November 2016).

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7. The State Attorney has informed me that Second and Third Respondents instructed him to advise the Applicants that they are no longer on duty for the execution of any functions of the First Respondent; they no longer have the Record in their possession; and the Record has been archived by the Department of Justice and Constitutional Department (annexure SD1).
8. I submit that the Second Respondent is not absolved of his obligations in terms of Rule 53. He can fulfil his obligation by requiring the Fourth Respondent, as the political head of the Department of Justice and Constitutional Department, to provide it to the Applicants.
9. The State Attorney, who represents the Respondents, has accepted the responsibility to produce the Record. On 18 January 2017 and again on 3 February 2017, the State Attorney, on behalf of the Fourth, Sixth and Seventh Respondents, undertook to deliver the Record by the first week of February 2017 (SD2).
10. This undertaking was not honoured. I then had telephonic conversations and email correspondence with Mr Chowe of the State Attorney in this regard. The Record was still not produced.
11. The State Attorney failed to comply, and on 20 February 2017 I again wrote to Mr Chowe, placing him on terms to file the Record (SD3).
12. On 9 March 2017, the Applicants delivered a notice in terms of Rule 30A(1) requiring the Respondents to deliver the Record within ten days, failing which the Applicants would apply for an order striking out the Respondents' defence (SD4).

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13. On 3 April 2017, more than five months after the lapse of the prescribed time, the Respondents' attorneys delivered certain documents in electronic format, together with the notice from the First, Second and Third Respondents to abide the court's decision in the main application (the review application).
14. On 5 April 2017, I wrote to the Respondents' attorney requesting that he agree to extending the time limits for filing an amended notice of motion and supplementary affidavit, in the light of the length of the documents delivered. I stated further that the Applicants had established that the record provided was not complete, and that we were in the process of identifying the missing parts of the Record (SD5).
15. On 18 April 2017, I wrote to the Respondents' attorney identifying the missing parts of the Record. I requested that he deliver the outstanding documents to the Applicants as soon as possible (SD6).
16. The Respondents' attorney has not produced the missing parts of the Record, or any further documents at all.
17. On 2 June 2017 the Applicants therefore issued a further (second) notice in terms of Rule 30A(1), stating that unless the outstanding documents were produced within ten days, the Applicants would apply for an order striking out the Respondents' defence(SD7).
18. The Respondents have still not delivered the outstanding documents. They have not responded in any manner to the second Rule 30(1)(a) notice.
19. The Respondents have not complied with their obligations in terms of Rule 53(1)(b). Notice has been given in terms of Rule 30A(1), and the Respondents have still not complied.

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20. The Applicants are prejudiced by this persistent and continuing failure. They are deprived of crucial information which they need in order fully to make their case in the main application.
21. The Applicants have been patient with regard to timeframes, but the Respondents have been uncooperative and have persisted in their non-compliance with Rule 53(1).
22. There is now a stalemate. The Applicants have exhausted all the procedural steps in the Uniform Rules of Court. They have no other alternative remedy but to bring this application.
23. The Applicants therefore pray for an order as set out in the notice of the application to which this affidavit is attached.



SHERYLLE DELENE DASS

I certify that:

1. The deponent acknowledged to me that:
 - 1.1. She knows and understand the contents of this declaration;
 - 1.2. She has no objection to taking the prescribed oath;
 - 1.3. She considers the prescribed oath to be binding on her conscience.
2. The deponent thereafter uttered the words, "I swear that the contents of this declaration are true, so help me God";
3. The deponent signed this declaration in my presence at the address set out hereunder on this 16th day of AUGUST 2017.



COMMISSIONER OF OATH

ANTON SCOTT ROSKAM
 Practising Attorney
 Commissioner of Oaths
 3rd Floor 1 Bompas Road
 Dunkeld West, Johannesburg

5 | Page

NO
 120



Office of the State Attorney Pretoria

Private Bag X 91
PRETORIA
0001

316 Salu Building
Cnr Francis Baard & Thabo Sehume
Ground Floor
Pretoria

Tel: (Switchboard): (012) 309 1500
(Direct Line): (012) 309 1545
(Secretary): (012) 309 1539

Fax/Faks: (012) 309 1649/50
Direct Fax: 086 629 0146
Docex: 298

13 November 2017

Enquires: MR G P SELEKA
Email: PSeleka@justice.gov.za

My Ref: 8080/16/Z85/jb
Your Ref: MS B MOLEBATSI

FAX: 011 268 0470

CC: MESSRS MACROBERT INC
E-MAIL: asuliman@macrobert.co.za

Messrs Harris Nupen Molebatsi Inc
3rd Floor 4 Bompas Road
JOHANNESBURG

Dear Sir/Madam

RE: CORRUPTION WATCH / RIGHT TO KNOW/ ARMS PROCUREMENT COMMISSION & OTHERS

1. We refer to your application in terms of Rule 30A (2) served at our offices on 22 August 2017 and various correspondences exchanged between the parties.
2. We write this letter to be upfront about the difficult task our client has in producing the requested documents and the steps our office has now taken to help the process.

Access to Justice for All

Always quote my reference number

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- 3. We want to assure you at the outset that our office and our client have all the intentions of furnishing the requested documents. This is despite our view that some of the requests made are extremely wide.
- 4. While we fully understand your client's frustration with the delay in furnishing further portions of the record, we have found it necessary to explain the reasons for the delay in furnishing the documents and to further explain why it is highly unlikely that our client will not be able to find all the requested documents before the end of this year.
- 5. You would agree with the writer from the record we have already furnished that this is by no means an ordinary run of the mill record. We have so far delivered 1 terabyte of the record. This translates to thousands of documents.
- 6. We pause to mention that the files that our client has to sift through to identify each and every document requested can easily fill 1 or 2 shipping containers. These files are unfortunately unmarked. Our client's officials are forced to painstakingly go through each and every one of them to identify whether it contains one or more of the requested documents and then forward them to our office. This exercise is necessary as our client does not want to be accused of furnishing irrelevant

documents. The writer is not exaggerating by stating that looking for these documents is like looking for a needle in a haystack. So far, only two (2) officials have been performing the task of identifying the requested portions, not because our client does not want to make more people available for this task but simply because its staff is already stretched by its daily duties. The 2 officials referred to above have to also take time off their normal duties in the Department to perform this task.

7. The writer is himself unable to assist these officials because he is responsible for over 972 active files in his office. He simply has no capacity to assist in identifying the requested files.
8. Since June 2017, these officials have gone through hundreds of files but have identified approximately 30 of those as being possibly relevant. Our office has requested counsel to further assist in identifying the requested documents. Those found to be relating to your client's request will be delivered to your offices before the end of this week.
9. In order to speed up the process my client has now agreed to further enlist the services of 2 junior counsel whose responsibility will be to comb through the store rooms and help identify the requested files. They have already started identifying further documents but they will require more time due to the volume of documents they have to go through.



- 10. In order to show our bona fides, we suggest we get together to agree on time frames and a way forward. You would recall that in fact as early as 3 February 2017 Mr Chowe of our office transmitted a letter to your office emphasising that the documents are voluminous and even suggested that the legal representatives of the parties must hold a meeting and agree on ways of getting the relevant parts of the record. A copy such this letter is attached hereto marked "A" for ease of reference.

- 11. Our office, again through Mr Chowe, has already informed the Chief Registrar of the Pretoria High Court of the fact that the record is voluminous and also expressed his intention to communicate with the office of the Deputy Judge President for guidance. A copy of a letter dated 24 March 2017 transmitted to the Chief Registrar is attached hereto marked "B".

- 12. In view of what we state above, we are hopeful that your client can be more sympathetic and patient. The employment of junior counsel to assist the said officials will no doubt expedite the process. They will be delivering more files as and when they are identified. We propose to furnish you with these files on a monthly basis until all the relevant files have been found and furnished.

13. We anticipate that the earliest that this process is finalised will be end of March 2018. In our view, there is no point in arguing this matter on 27 November 2017 when the parties could meet and agree on a practical manner of dealing with this record.
14. We therefore propose that your application be postponed sine die or to a date in April 2018 on condition that we file monthly reports to yourselves and/or the court until the process is finalised.
15. Kindly indicate by no later than close of business on Friday 17 November 2017 whether your client is amenable to the above proposal failing which our client will be forced to file an opposing affidavit explaining its predicament to the Court.

Hoping that our request will be favourably considered.

Yours faithfully



G P SELEKA
For: State Attorney (PRETORIA)
8080/16/Z65/jb



Our Ref: Ms B Molebatsi

Date: 15 November 2017

Office of the State Attorney
316 Salu Building
Cnr Francis Baard & Thabo Sehume
Pretoria
Per email: PSeleka@justice.gov.za

Dear Mr GP Seleka,

Re: Corruption Watch and Right2Know / The Arms Procurement Commission and Six Others 81368/16

1. We refer to the above matter and your letter dated 13 November 2017.
2. We confirm that on 13 March 2017, you were served with the Notice in terms of Rule 30A (1), which notified you of the Applicants' intention to apply for an order striking out the Respondents' defence, in the event that the Respondents fail to comply with the Applicants' Notice in terms of Rule 53(1) within 10 (ten) days.
3. On 24 March 2017, you served upon us the External Hard Drive containing the Record of the proceedings. It should be noted that certain documents, which should have been part of the Record received from you, were omitted and, as such, we sent you a letter on 05 April 2017 requesting the further documentation.
4. We, further, took the liberty of drawing up a concise list of the documents that should have been filed with the Record, which was delivered to you on 18 April 2017, together with a letter, reiterating the importance of the matter and the need to avoid any further delays and interlocutory applications in these proceedings.
5. Notwithstanding the above, you failed to deliver to us or the Registrar of the High Court, the outstanding documents as per the letters to you dated 05 April 2017 and 18 April 2017. In addition, you failed to keep us abreast of all your efforts, if any, in locating the requested documents.



6. On 02 June 2017, you were served with the Notice in terms of Rule 30A (1), which notified you of the Applicants' intention to apply for an order striking out the Respondents' defence, in the event that the Respondents fail to comply with the Applicants' Notice in terms of Rule 53(1) within 10 (ten) days.
7. We have been advised by the State Attorney that you have delivered a Notice to Abide and that whilst you, in your capacity as Chairperson of the Arms Procurement Commission, has the obligation to file the Record in terms of Rule 53, they (the State Attorney's Office) have undertaken to ensure that the full Record is filed in accordance with Rule 53, ostensibly on your behalf.
8. In the circumstances, we write to advise you that the State Attorney's office has not filed the full Record as contemplated by Rule 53 and we have called upon them to forthwith deliver the documents referred to in "Annexure A". As the party responsible for filing the Rule 53 record we impress upon you to ensure that there aren't any further delays in these proceedings and that the full Record is filed as a matter of urgency.
9. We look forward to hearing from you.

Yours sincerely

Sherylle Dass

(sent electronically, unsigned)

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NUMBER: 81368/16

IN THE MATTER BETWEEN:

CORRUPTION WATCH	FIRST APPLICANT
RIGHT 2 KNOW CAMPAIGN	SECOND APPLICANT
AND	
THE ARMS PROCUREMENT COMMISSION	FIRST RESPONDENT
WILLIE SERITI NO	SECOND RESPONDENT
HENDRICK MMOLLI THEKISO MUSI NO	THIRD RESPONDENT
THE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT	FOURTH RESPONDENT
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	FIFTH RESPONDENT
THE MINISTER OF DEFENCE	SIXTH RESPONDENT
THE MINISTER OF TRADE AND INDUSTRY	SEVENTH RESPONDENT

FILING NOTICE

DOCUMENTS: FOURTH RESPONDENT'S ANSWERING AFFIDAVIT

ON ROLL:



FILED BY: **4th RESPONDENT'S ATTORNEY**
THE STATE ATTORNEY, PRETORIA
(Attorney with the right of appearance
in terms of section 4 (2) of Act 62 of 1995)
316 SALU BUILDING
CNR FRANCIS BAARD & THABO SEHUME STREET
GROUND FLOOR
PRIVATE BAG X 91
PRETORIA, 0001
REF: 8080/2017/Z65/jb
TEL: (012) 309 1545/1500
FAX: (012) 309 1649/50
DIRECT FAX: 086-629 0146
E-MAIL: Pseleka@justice.gov.za
ENQ: G P SELEKA

**TO: THE REGISTRAR OF THE ABOVE
HONOURABLE COURT
PRETORIA**

AND
TO: APPLICANTS' ATTORNEY
HARRIS NUPEN MOLEBA INC
3RD FLOOR, 1 BOMPASS ROAD
DUNKELD WEST
JOHANNESBURG
P. O. BOX 411268
CRAIGHAAL 2024
TEL: (011) 017 3100
FAX: (011) 268 0470
C/O MACROBERTS INC
MACROBERT BUILDING
C/O JUSTICE MAHOMED & JAN SHOBA STREET
BROOKLYN, PRETORIA
TEL: (012) 425 3400
FAX: (012) 3600
E-MAIL: asuliman@macrobert.co.za
REF: MR SULIMAN/00029324



COPY HEREOF RECEIVED ON

DATE: 27-11-2017

TIME: 11:50



APPLICANT'S ATTORNEY

B. Molebat

Henns Nopen Molebat



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

case number:81368/16

In the matter between:

CORRUPTION WATCH
RIGHT 2 KNOW CAMPAIGN

First Applicant
Second Applicant

and

THE ARMS PROCUREMENT COMMISSION
WILLIE SERITI NO
HENDRICK MMOLLI THEKISO MUSI NO
THE MINISTER OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT
THE PRESIDENT OF THE REPUBLIC OF
SOUTH AFRICA
THE MINISTER OF DEFENCE
THE MINISTER OF TRADE AND INDUSTRY

First Respondent
Second Respondent
Third Respondent
Fourth Respondent
Fifth Respondent
Sixth Respondent
Seventh Respondent

ANSWERING AFFIDAVIT

I the undersigned,

GOSIAME PETER SELEKA

SP
DM
SP

Declare under oath as follows:

- 1.1. I am an Senior Assistant State Attorney employed by the State Attorney Pretoria, Department of Justice and Constitutional Development with its offices situated at SALU Building , Ground Floor, 316 Francis Baard Street, Pretoria and I am the Fourth Respondent's attorney of record;
- 1.2. I am duly authorised to depose to this affidavit on behalf of the Fourth Respondents.
- 1.3. I represented the Fourth Respondent during the hearings of the Arms Procurement Commission ("the Commission") and I have had constant consultations with officials of the Fourth Respondent. Consequently, the facts deposed to herein, unless stated otherwise or it appears from the context, falls within my personal knowledge and are both true and correct;

2.

INTRODUCTION

- 2.1. This affidavit is filed to mainly explain why it is not in the interest of justice to grant the orders sought in this application.
- 2.2. Firstly I make it plain in this affidavit that the Fourth Respondent has all the intentions of complying with its lawful duties of furnishing the requested documents.

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- 2.3. Secondly, I explain why the Fourth Respondent requires not less than 4 months to comply with a request for additional document by the applicant and why the order sought cannot be granted. The Fourth Respondent has due to lack of capacity in the State Attorney's office, recently engaged the services of 2 (two) junior counsel and requested them to avail themselves on a continuous basis and comb through the thousands of files to find the documents requested by the Applicant.
- 2.4. Thirdly, the Fourth Respondent proposes that this matter be referred to the office of the Deputy Judge President for proper case management and to avoid unnecessary court application by either party.

3.

CONDONATION FOR THE LATE FILING OF THE ANSWERING AFFIDAVIT AND REASONS FOR NON COMPLIANCE WITH THE RULE 30A(1) NOTICE

- 3.1. It ought to be borne in mind at the outset that what the Applicants seek in this application is not the record of the hearing of the Commission, that would have comprised of the transcript and documents that were handed in as part of the evidence at the hearing. That part of the record was already furnished to the applicant during March 2017.
- 3.2. The documents that the Applicants seek in this application relate to the investigation stage of the Commission, before the hearing could commence. These documents are part of tens of thousands of the documents contained

in a vast store room at the offices of the Department of Justice and Correctional Services. Because they were not handed in as part of the evidence, they are not clearly marked and therefore not easily identifiable. They are scattered in various files. To find them, one must painstakingly go through each of those files and try identify each document sought.

3.3. Given the nature of the record involved, the approach of the State Attorney, representing the Respondents, has, from the beginning, been that the legal representatives of the parties must meet and find practical ways of furnishing the records and should it be necessary, approach the DJP for case management.

3.4. I pause to mention that I have previously handled many high profile matters where documents are unusually voluminous. In most of those matters, just like in this case, it is impossible to keep to the normal dies in the Uniform Rules. The DJP assists the parties by appointing a Judge who will manage a particular case by having regular meetings and monitoring progress. I attach a copy of a letter written by the Acting State Attorney, Mr Isaac Chowe on 3 February 2017 making this proposal as annexure "A".

3.5. In line with this attitude, I wrote a letter to the Applicants' attorneys on 13 November 2017 explaining that the record sought is not a usual one and proposing practical ways of dealing with this matter. Of importance, I made it plain that if we agree, there will not be any need to file an opposing affidavit in this matter and in order to avoid unnecessary costs. I attach a copy of that

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letter as annexure "B".

3.6. I did not receive a response from this later. I consequently laboured under an impression that my proposal will be acceptable and the legal representatives of the parties will meet for the purpose of working out a practical arrangement. On Friday 24 November 2017, I phoned the offices of the Applicants' attorneys and spoke to Ms Dimakatso Munthali. She informed me that she did respond to my letter. I requested her to email me proof and gave her my proper email address. Upon receipt, I realised that she had initially emailed this response to the email address PSeleka@justice.gov.za. I did not receive this response because my email address is case sensitive and it is Pseleka@justice.gov.za.

3.7. It was only upon receipt of this letter that I became aware that the Applicants have rejected my proposal and have insisted that the Respondents file an opposing affidavit. It is for this reason that this affidavit was prepared over the weekend for filing.

3.8. This Honourable Court will note from what I have stated above that I did not deliberately disregard the rules of the above Honourable Court. I was and still am of the view that this is a matter in which the parties can find practical ways of managing the record or approach the DJP for assistance. I consequently ask for condonation for late filing of this affidavit.

4.

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STEPS TAKEN BY THE FOURTH RESPONDENT TO FACILITATE COMPLIANCE

- 4.1. I have already explain the sheer volume of documents that must be inspected to find the documents requested by the Applicants. I pause to mention that the request as contained in annexure "C" is quite wide and onerous. Yet the Fourth Respondent has taken an approach to rather make all the efforts to make these documents available, to be as helpful to the Applicants as reasonably possible and to avoid unnecessary interlocutory applications. Rule 30 A (2) was served on the office of the State attorney on 22 August 2017;
- 4.2. The reality of the situation as also explained in my letter referred to above is that neither I nor the Fourth Respondent has capacity to comb through the files in the store room to identify the sought documents. The officials of the Fourth Respondent tried since April 2017 but because they have other official duties they must perform and also have no experience of having practiced, they could not produce the desired results. I am also handling more than 900 active files. It is not humanly possible for me to perform this task. For the above reasons and upon advice of senior counsel, the Fourth Respondent has agreed to brief two (2) junior counsel who previously worked at the offices of the State Attorney in Pretoria to make themselves continuously available and trawl through the files in the said store room in order to identify the relevant files documents. They have already started with the process and have already made available almost 50 arch liver files that may potentially be relevant.
- 4.3. My suggestion is for the Applicants' attorneys to attend to the offices of the

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State Attorney to inspect these files and identify the documents they need for me to make copies thereof. Bearing in mind that there will still be hundreds of file to be inspected, this will help to avoid the mounting costs of making copies of documents that the Applicants may very well find to be irrelevant for their case. This will in my view help not only in keeping the costs in check but also in ensuring that only relevant documents in Rule 53(3) are ultimately before Court when the main application is ultimately heard. I reiterate that this is a case that requires practical and reasonable arrangements. I am however open to differing but reasonable and practical suggestions by the Applicants' attorneys.

- 4.4. Should the parties not agree, then this is a matter that must be referred to the DJP for case management purposes. A joint letter can then be prepared by the parties and addressed to the DJP a meeting for case management.
- 4.5. I mention in passing that after receiving the initial record, the Applicants' attorneys wrote a letter on 5 April 2017 in which they made it clear that due to the volume of the delivered record, they will not be able to file in line with the dies in the rule. They inter alia said the following:

"Under the circumstances, and due to the length of the record, we would not be able to file our amended notice of motion and supplementary affidavit within the time prescribed by Rule 53."

- 4.6 I attached a copy of such a letter as annexure "D". I mention this letter to

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accentuate the point that normal dies in the rules will not be applicable in this case.

- 4.7. The office of the State attorney was prepared to grant the Applicants an indulgence and conveyed same in writing through a letter dated 7 April 2017. A copy of such a letter is attached hereto marked annexure "E".
- 4.8. I respectfully submit that it is clear from the afore-going that the Fourth Respondent and the State Attorney have acted *bona fide* and have taken further tangible and practical steps to ensure compliance with the Applicants' request. However, it is impossible to comply with the Applicants request within 10 days as contemplated in prayer 2 of the Notice of Motion. There are also no grounds for striking the defence of the Respondents in the circumstances of this case. I have already suggested how this matter can be taken forward without unnecessary interlocutory applications.

5.

I have read the founding affidavit of Sherylle Delene Dass and I intend to deal with it as follows:

AD PARAGRAPH 1 TO 5 THEREOF

The allegations contained herein are admitted.

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AD PARAGRAPH 6 THEREOF

- 7.1. Save to admit that the Second Respondent is required to deliver the record of the proceedings in terms of Rule 53 (1)(b) of the Uniform Rules of Court within 30 days of service of the application , I submit that it is practically impossible to adhere to the time period prescribed by the provisions of Rule 53;
- 7.2. I submit that it is imperative that the parties should enter into an agreement in respect of the time periods regarding the exchange of documents, in other words, the date of the filing of the complete record , the date of the filing of the supplementary affidavit by the Applicants (if any) as well as the date of the filing of the answering affidavit;
- 7.3. The proposed agreement will obviate the necessity of either party bringing any other interlocutory application to enforce compliance.

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AD PARAGRAPH 7 THEREOF

The allegations contained in this paragraph are admitted.

9.

AD PARAGRAPH 8 THEREOF

- 9.1. The Fourth Respondent has never insinuated at any stage that the Second Respondent is absolved from his obligations in terms of Rule 53;

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9.2. The Fourth Respondent is the custodian of all documents pertaining to the Arms Procurement Commission but it is important to accept that there are due processes which include consultative process which should ensue between the relevant parties and stake holders;

9.3. The Fourth Respondent accept that the duty to disclose the documents for purposes of review proceedings will now be casted on the Fourth Respondent forth with.

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AD PARAGRAPH 9 THEREOF

10.1. The allegations contained herein are admitted;

10.2. The Fourth Respondent reiterates the need to extend the prescribed time limits given the nature of the proceedings which the Applicants seek to review and set aside, the complexity of the matter as well as the voluminous nature of the documents.

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AD PARAGRAPH 10 THEREOF

11.1. I respectfully deny that the undertaking to produce the record was not honoured nor that it has not been produced despite telephonic conversations and email correspondence with our Mr Chowe of the State attorney;

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11.2. The Honourable Court would have gleaned in the preceding paragraph dealing with condonation that the Applicants were given a record of the proceedings which was served on the 24th March 2017 and they even acknowledged receipt thereof on 05 April 2017. I make this submission for the simple reason that at the time when this application was launched the record of the hearing was already served on the Applicants.

12.

AD PARAGRAPH 11 THEREOF

I admit that by 20 February 2017 the State attorney failed to comply with the Applicants' request and/or the provisions of Rule 53 but I submit that there was no deliberate intention on the part of the State attorney to do so.

13.

AD PARAGRAPH 12 THEREOF

The allegations contained herein are admitted.

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AD PARAGRAPH 13 THEREOF

14.1. I respectfully submit that the lapse of the 5 months period should not be construed as an unreasonable delay having regard to the factual information

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which has already been placed before Court;

14.2. Save for the foregoing, I admit the remainder of the allegations contained in this paragraph.

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AD PARAGRAPH 14 THEREOF

15.1. I admit the allegations contained herein;

15.2. I respectfully submit that the fact that the Applicants have already requested an extension of the time limits for filing an amended notice of motion and supplementary affidavit in the light of the length of the documents delivered, demonstrate the need for an extension of time to enable the office of the state attorney to furnish the Applicant with the document sought.

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AD PARAGRAPH 15 THEREOF

16.1. The allegations contained herein are admitted;

16.2. I submit that the Respondents are in a process of making available further documents to the Applicant.

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AD PARAGRAPH 16 THEREOF

I submit that the process is still unfolding and there is progress which has been made by the Respondents thus far.

18.

AD PARAGRAPH 17 THEREOF

The allegations contained herein are admitted.

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AD PARAGRAPH 18 THEREOF

Save to deny that we have not responded in any manner to the second Rule 30A (1) (a) notice as alleged , I respectfully submit that numerous correspondence referred to hereinabove between the parties read together with our letter dated 8 November 2017 , the contents thereof which are self-explanatory, should be construed as a response to the Rule 30A(1)(a) notice.

20.

AD PARAGRAPH 19 THEREOF

I specifically deny that the Respondents have not complied with their obligations in terms of Rule 53 (1)(b) in that there has been partial compliance by the Respondents and it can also be inferred from their conduct that there is intention to comply fully with their obligations.

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AD PARAGRAPH 20 THEREOF

21.1. I deny the entire allegations contained herein;

21.2. I will not burden the above Honourable Court with a repetition of the due processes which is unfolding at the present moment in order to ensure that the Applicants are given all the documents which may be in possession of the Fourth Respondent.

22.

AD PARAGRAPH 21 THEREOF

22.1. I specifically deny that the Respondents have been uncooperative nor that the Respondents have persisted with non-compliance with Rule 53 (1) ;

22.2. Furthermore, it appears that the Applicants have not been patient even though they have been informed at length about the circumstances pertaining to this matter.

23.

AD PARAGRAPH 22 THEREOF

23.1. I deny that the Applicants have exhausted all the procedural remedies in the Uniform Rules of Court nor that they have no other alternative remedy;

23.2. It is clear that a proposal for case management as well as to approach the Honourable Deputy Judge President is an alternative remedy which has not

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been exhausted by both parties and even the Applicants themselves prior to bringing this application. This aspect has already been canvassed before the application was launched.

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AD PARAGRAPH 23 THEREOF

I deny that the Applicants are entitled to the relief sought in the notice of the application.

WHEREFORE I humbly pray that the application be dismissed with costs alternatively that it be postponed sine die for the parties to negotiate a practical mechanism as suggested above. Further alternatively that this application be referred to the DJP for case management.



DEPONENT

I certify that the Deponent acknowledged that he knows and understands the contents of this affidavit, that he has no objection to the making of the prescribed oath and that he considers this oath to be binding on his conscience. I also certify that this affidavit was signed in my presence at PRETORIA on this

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27 day of NOVEMEBR 2017 and that the Regulations contained in Government Notice R1258 of 21 July 1972, as amended by Government Notice R1648 of 19 August 1977, have been complied with.



Mateu

COMMISSIONER OF OATH

DOROTHA MAEULELE
Admin work
28 Church Square
Pretoria
2002

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Boel