
**AFFIDAVIT IN THE SECTION 194 INQUIRY INTO THE REMOVAL OF THE
PUBLIC PROTECTOR, ADV B MKHWEBANE**

I, the undersigned,

GUMBI TYELELA

do hereby make oath and say that:

1. I am currently the Acting Head: Corporate Services in the Office of the Public Protector ("*PPSA*").
2. By virtue of my position I have documentation under my control. Access to certain of the documentation has been provided to the evidence leaders, as requested. I detail herein, and attach where necessary, such documentation. As some of the documentation to which I refer, as advised by the evidence leaders, are already contained in the electronic bundles before the Committee, I do not annex such to the affidavit. I do not necessarily have personal knowledge of everything referred to in the documents but will endeavour to assist the Committee, in the event there are queries that I am unable to orally respond to, to confirm such information and revert in writing to the Committee in relation thereto.
3. Where the contents do fall within my personal knowledge I confirm that such contents are true and correct.

A. ORGANOGRAM

4. I am advised that the approved organisational structure for the PPSA for the respective financial years from 2018 have been uploaded to the electronic Bundles of evidence, as is also the case with the functional structure for the Private Office approved by the Public Protector (PP) on 17 April 2019. At the time the PP came into office, the PPSA was utilising an approved organisational structure (module 5), approved and consulted with National Treasury in August 2016. It was tabled at the National Assembly in April 2016. The PP amended the organisational structure to align it with the strategic objectives of the PPSA, which included capacitating the Private Office (i.e. the office for the PP and DPP), the establishment of the Security Management and Legal Services branches, culminating in the module 6 organisational structure.

B. POLICIES

5. I was asked by the evidence leaders in respect of policies in the PPSA and I provided them with a register of policies as well as policies that would have been in existence at the time the Motion was lodged. I have been advised that a number of these have been included in the Bundles already before the Committee and are not annexed hereto. These include, inter alia:

- 5.1. Policy on Disciplinary Code and Procedure;
- 5.2. Code of Conduct;
- 5.3. Policy on Harassment;
- 5.4. Policy on Leave;

- 5.5. Policy and Procedure on Grievances;
 - 5.6. Policy on Employer Health and Wellness;
 - 5.7. Policy on Acting Appointments and Payment of Acting Allowances;
 - 5.8. Policy on Conflict of Interest;
 - 5.9. Policy on Employment Equity;
 - 5.10. Policy on Long Service and Retirees' Award Policy;
 - 5.11. Policy on Recruitment and Selection;
 - 5.12. Policy of Bereavement;
 - 5.13. Policy on People Living with Disabilities and People with Special Needs;
 - 5.14. Policy on Probation;
 - 5.15. Policy on Registration and Payment of Fees to Professional Associations;
 - 5.16. Succession Planning Policy;
 - 5.17. Policy on Transfer; and
 - 5.18. Policy on Employment of Volunteers.
6. In addition, there are ICT Information Security Policies, dated 13 February 2019 and 28 January 2020, respectively.

C. AUSTERITY MEASURES

7. On 7 August 2018 the then CEO, Mr Vussy Mahlangu, issued a memorandum for the implementation of additional cost containment measures for the 2018/19 financial year, a copy of which is annexed marked "GT1"

8. During the 2019/2020 financial year, Mr Mahlangu, issued a further circular, dated 18 September 2019 (a copy of which is annexed marked "GT2" to inform employees of cost containment measures to be implemented.
9. I have not located any further circulars that were issued following on the one issued on 19 September 2019 by Mr Mahlangu. The Acting Chief Financial Officer was requested to ascertain if there were any further circulars and advised that it was the last issued, whereafter COVID came and almost stopped everything which included travelling and other expenditures from March 2020.
10. I was specifically asked about the existence of a circular issued by Mr Mahlangu dealing with the PPSA not opposing review applications. I have not come across such circular, nor am I am aware thereof. However, I am aware that such a decision was taken in an attempt to curb costs litigation. The legal services report to one of the management meetings stated that PPSA will not oppose all matters taken on review except those that challenge the mandate of the institution.

D. HUMAN RESOURCE MATTERS AND THE COSTS THEREOF

11. The evidence leaders requested in relation to the PPSA head office
 - 11.1. a list of the employee/labour related disputes from October 2016 to date;
 - 11.2. the progress/outcome in relation to those matters; and

- 11.3. the costs thereof to date to the PPSA in relation to both awards and legal costs and the institution's budget to which such costs have been attributed.
12. I tasked Ms Precious Manyike, the Manager: Labour Relations to provide a list of grievances and an update in relation thereto with brief details in relation to those matters. A copy thereof will be provided to the Committee. The financial information contained therein was confirmed from invoices rendered and information obtained from the finance department and Mr Sithole from Legal Services, and I was informed – and included in some emails – where such was provided to Mr Sithole to confirm. Some of the amounts not reflected will be included in the legal services costs schedule that is being prepared for the Committee.
13. I make no comment in relation to whether any of these matters relate to the Motion, but I do point out that a number of the labour grievances, dealt with internally, related to matters such as performance bonuses, job grades, leave policies, pay progression, grievances against managers or people who simply resigned and constitute ordinary labour disputes. In some matters some reference is made to workload, undue pressure from managers and working conditions.
14. The schedule was prepared as the evidence leaders sought to distinguish legal costs that emanate from labour related matters from the totality of legal costs incurred.

15. The labour related matters fall into 3 categories: grievances, disciplinary hearings (internal disciplinary officer, independent disciplinary officer or CCMA) and Labour Court proceedings. Grievances and some of the disciplinary disputes do not have cost implications because they are dealt with internally and there are no external service providers engaged, hence no costs incurred.

(i) Audi letters – a letter giving employees an opportunity to provide reasons why a staff member has not done what was expected of him/her

16. I was asked by the evidence leaders whether I issued *audi* letters to staff members, and if so, the context thereof. I indicated that from time to time I would get an instruction to do so but that I needed to explain how the organisation operated in the context of audi letters which are issued by the employer when he is not happy with something, usually, performance. It may well require that I explain how the organisation operated with regard to disciplinary matters

17. Further, I am not able to indicate precisely how many *audi* letters would have been issued within the PPSA or how common this practice is from CEO downwards as these notices are generally not provided to the HR Department but are dealt with by line managers. In most cases the HR department would only become involved once formal disciplinary steps are in fact taken and I am not apprised of the issuing of all such letters at the PPSA.

18. I can recall by way of example, where I was instructed by the PP to issue an *audi* letter to a senior investigator for failing to attend a meeting on the basis

that it amounted to insubordination and because the ACOO and ACEO had failed to deal with it. As I knew nothing about the matter, I contacted the line management who indicated that it was being dealt with at that level. I reverted to PP to indicate as such and was informed that the process was too slow. Notwithstanding, I did not carry through on the instruction leaving it to the management to deal with. As the matter was not raised again, I assume it had been dealt with.

19. I address hereinbelow matters relating to specific employees at the request of the evidence leaders based on information that fall within my own knowledge or arising from documents under my control.

(ii) Mr Baldwin Neshunzhi

20. At the time the post Senior Manager: Security Management became available in January 2017 it was a recently funded and prioritised post. There were 123 applicants of which five candidates were shortlisted.

21. The panel members who appointed Mr Baldwin Neshunzhi ("*Mr Neshunzhi*"), included Adv Mkhwebane, Mr Ndou and a representative from the State Security Agency, Mr Ntshavheni Prince Makhuthama.

22. Where the PP is a panel member I am the secretariat to the panel. I am usually part of the panel for senior posts and I ask HR related questions but am not a scoring member of the panel, though I am involved in the shortlisting.

23. The evidence leaders enquired whether Mr Neshunzhi had been moved from the position of Senior Manager: Security Management to Senior Manager: Intake Assessment and Customer Services (“IACS”) in 2018 pursuant to a recommendation contained in the Diale Mogashoa report to the effect that the PPSA should consider:

“overhaling (sic) the security department to ensure that it meets the needs of the institution. To this end, we suggest that the CEO should appoint a properly qualified and experienced expert on organizational design to determine whether the personnel in that department have the necessary skills, qualifications and capacity to occupy positions that they occupy.”

24. I was not involved in relation to this transfer and cannot comment in respect of the motivation that informed it. I was also not aware of a process embarked on at that time of transfers internally for purposes of matching skills to jobs.
25. From documents under my control and correspondence dated 23 July 2019 from Mr Vussy Mahlangu, the then CEO, informed Mr Neshunzhi that the investigation into the alleged leaking of confidential information had been finalised and the outcome would be communicated to him on his return to work. Further, that his garden leave had been uplifted with immediate effect and that he was required to report for duty on 25 July 2019. A copy of the letter is attached, marked “GT3”. The decision to place him on garden leave was that of Mr Mahlangu. I was not in favour of Mr Neshunzhi being afforded garden leave as apparent from the memo, which I am informed has already been attached to his affidavit before this Committee.

26. Mr Neshunzhi's transfer from Complaints and Stakeholder Management ("CSM") to Provincial Investigations and Integrations ("PII") – Coastal Branch was with effect from 1 June 2020 and explained in the memorandum dated 22 May 2020, a copy of which is annexed marked "GT4"
 27. With Mr Neshunzhi's transfer the Senior Manager: Security position was subsequently advertised.
 28. A disclosure form is used in order that members of the interview panel disclose any conflicts. The form does not require details of the nature of the conflict of interest to be declared. As the appointment is the decision of the panel, a conflict does not necessarily require the recusal of a member of the panel, unless the nature of the relationship is of such a close nature that it obviously warrants such disclosure.
 29. The panel for the interview for this post included the PP, Mr Mahlangu, and Mr Futana Tebele, the then Acting Head of Corporate Services. I was the secretary. The requisite conflict of interest forms were completed by all of us. Further, both Mr Mahlangu and the PP duly disclosed a conflict of interest with the internal candidates as well as in relation to Mr Amos Skosana, who was appointed with effect from 2 January 2020 into the position.
- (iii) Adv Kevin Malunga: Deputy Public Protector
30. I was asked by the evidence leaders whether there was a job description for the Deputy Public Protector (DPP). I indicated that it was done by way of written delegations which are dealt with below. Adv Malunga served part of

his term with Adv Thuli Madonsela and part of his term with Adv Busisiwe Mkhwebane. The DPP obtains his allocated tasks from the PP's mandate as delegated by the PP. Apparent from the documents under my control with Adv Madonsela he had the following powers and functions delegated to him under section 2A(6)(vii) of the Public Protector Act 23 of 1994 (*the PP Act*):

- 30.1. Oversight role pertaining to operations of the Early Resolution Branch and related provincial activities;
 - 30.2. Oversight role on matters of quality assurance relating to adherence to approved operational business and government processes in all offices of the PPSA; and
 - 30.3. Oversight over the implementation of the organisational turnaround strategy for offices identified in the corporate plan.
31. This was over and above any duties and responsibilities afforded to him from time to time by Adv Madonsela.
32. According to the records under my control, on 20 December 2016, Adv Mkhwebane delegated some of her powers to him in terms of section 2A(6)(vii) of the PP Act with immediate effect. The letter, a copy of which is annexed marked "**GT5**", indicates that it included the following:
- 32.1. Oversight role pertaining to operations of the Administrative Justice and Service Delivery Branch, including provincial activities;

- 32.2. Oversight role on matters of quality assurance relating to adherence to approved operational business and governance processes in all offices of PPSA.
33. Further, that there would be other duties and responsibilities determined by Adv Mkhwebane her from time to time.
34. On 12 May 2017 the DPP's delegated powers and functions were amended with immediate effect for reasons apparent from the letter attached marked "GT6".
35. The DPP's delegated functions were revised as follows:

"That you champion learning, development and training in PPSA by:

1. *Implementing a training manual by conducting training for the following:*
 - 1.1. *Paralegal for admin assistants and other support employees working in the core business;*
 - 1.2. *Trainee investigator program;*
 - 1.3. *Investigators and senior investigators; and*
 - 1.4. *Develop a career path for employees in the core function.*
2. *Provide training on:*
 - 2.1. *Good governance – application of the law;*
 - 2.2. *Ethics.*
3. *Seek partnerships with the relevant SITA (with the support of the CEO) in terms of the training programs such as Governance, Ethics, etc.*

4. *Submit a report to the Public Protector on a quarterly basis on impact and any further training and development needs."*
36. It was further indicated that other duties and responsibilities as determined by the PP would be delegated to him.
 37. On 19 April 2018, attached marked "GT7", the DPP's delegation powers were again amended to include further delegations in addition to the foregoing the following additional tasks which included:
 - 37.1. Overseeing the backlog project of complaints which are two years or more from GGI, AJ, SD and PII (supported by the investigators);
 - 37.2. Chairing all Task Team meetings which deal with Think Tank files and critical files which need constant follow up (supported by Private Office staff);
 - 37.3. Having all draft reports and section 7(9)s notices being submitted to the DPP for quality checking before being submitted to the PP for approval (assisted by Senior Investigator: Quality Assurance).
 38. For the period 1 April 2018 to 31 March 2019 the PP concluded an agreement with the DPP for purposes of communicating her performance expectations, together with an accompanying workplan to assess whether the DPP met performance expectations applicable to his position. I have no knowledge as to whether the DPP met those standards as any assessment would have to have been conducted by the PP. I have no information in the HR file in relation

- thereto and do not know if any written assessment was conducted and provided to the DPP.
39. The agreement included a clause that if there was a non-agreement arising between the PP and the DPP in respect of matters regulated by this agreement, the services of an external mediator would be sought to resolve the matter. To the best of my knowledge, no such external mediator had ever been necessary.
40. The agreement provided for a mid-year assessment on 30 September 2018 and an annual assessment by 30 April 2019. A workplan was attached to this agreement, a copy of which is annexed marked "GT8". I have no knowledge as to whether such assessments were done.
41. On 26 November 2019, Adv Malunga submitted a closing report to the Portfolio Committee: Justice and Correctional Services, a copy of which is annexed marked "GT9".
- (iv) Mr Kennedy Kaposu (Former CFO of PPSA)
42. Mr Kaposu was issued with a final written warning for dereliction of duties. He referred his dispute to the CCMA, on the basis that it amounted to an unfair suspension and unfair discrimination. He was charged with dereliction of duties and suspended on 8 June 2017.

43. His suspension expired on 8 August 2017 and it was agreed that he would then be on special leave until his disciplinary matter was to be concluded. The internal disciplinary hearing was held on 4 August 2017.
44. The matter was to be referred to a senior Commissioner to chair the disciplinary hearing. Before this occurred Mr Kaposá's attorney proposed an amicable separation settlement, allowing him to be paid a 12-month salary and for any outstanding leave to be paid out as a settlement to dispose of the matter.
45. As Mr Kaposá could not obtain a top security clearance, as was required of all senior officials, he could not continue with his responsibilities as CFO.
46. All senior officials were required to obtain a top secret security clearance from the State Security Agency ("SSA"). Mr Kaposá would not be able to obtain such clearance as he was a naturalised South Africa and had not lived in South Africa for the requisite number of years. But he could also not be dismissed because of the security clearance issue given that the post had not been advertised with top secret security clearance being a requirement.
47. I was not consulted about the charge sheet or the charges brought against Mr Kaposá. It was done by external attorneys. I was only involved in the settlement reached.
48. This came about in that, given Mr Kaposá's attorneys' proposed offer and as there was no other commensurate positions at the PPSA at the level and salary demanded by Mr Kaposá, and we were likely facing lengthy legal

proceedings, settling the matter seemed the most practical and cost-effective solution for the PPSA. I recommended that it be accepted and that in mitigation the appointment of a new CFO to the institution would be delayed until at least the money paid to Mr Kaposi was recouped. In other words, the CFO position was not immediately filled. Ultimately the matter was settled on 8 months' remuneration and 2.5% in lieu of cost of living adjustments. The total amount to be paid to Mr Kaposi was R945 132.51 (inclusive of his leave credits). A separation agreement was concluded between the PP and Mr Kaposi. The termination was by mutual consensus.

(v) Mr Vussy Mahlanu (CEO)

49. The position of CEO had been vacant since December 2017 (when Mr Themba Dhlamini had left). The post was advertised. The post was advertised on a 5-year contract period to coincide with the PP's end of term.

50. To the best of my recollection Mr Mahlanu was the best interviewee for the job. He had the requisite qualifications. Initially the interview panel was agreed that an offer would only be made to him after his labour issues had been resolved.

51. However, after his interview, the Acting CEO became ill and the post of the CEO was vacant. There was a need for the CEO position to be filled and the PP instructed that Mr Mahlanu be offered a short-term contract from 1 May 2018 to 31 July 2018. The employment contract was made short-term because of the two outstanding matters that had to be finalised before a 5-year contract could be concluded, i.e. his top secret security clearance and

the outcome of a pending Labour Court case. (I don't recall it being known at that stage that the security clearance would be hampered by the Labour Court proceedings.)

52. The PP concluded a performance agreement with Mr Mahlangu for the period 1 May 2018 to 31 March 2019. The functions of the CEO are set out therein.
53. Mr Mahlangu's appointment letter reflected that his appointment was subject to him obtaining both a top secret security clearance certificate and that he succeeds in his pending Labour Court case.
54. After his appointment the issue of Mr Mahlangu's dismissal from another government department for reasons of misconduct was raised at the first staff meeting by Adv Matlawe. The staff was informed by the PP that the matter was pending at the Labour Court and that the court processes should be allowed to take its course. It was for that very reason that he was only appointed on a short-term contract.
55. It bears mentioning that the personal credential verification report also reflected initially that there was a criminal case pending. This was declared during his interview, and not regarded as an impediment.
56. The first short term contract was extended from 1 August 2018 to 31 July 2019. This was for a longer period in order to ensure continuity in the organisation. I was instructed by the PP to prepare a further fixed term ending 30 April 2023. Whilst it remained subject to Mr Mahlangu obtaining top secret security clearance, a failure of which would result in an automatic termination

of the contract. Further that should the Labour Court confirm Mr Mahlangu's dismissal the contract would terminate on the date of the court order, unless the PP decided otherwise after studying the judgment.

57. At the time the fixed term contract had been concluded the SSA had already indicated that the top secret security clearance would not be provided unless the Labour Court proceedings had been completed.
58. I cannot recall the exact date save that it was in the latter part of 2019, when I was called into a meeting with the PP, Adv Nyembe, Adv Sikhakane SC and another person whose identity I do not recall. I also do not recall if anyone from Legal Services was present. I was asked to explain how Mr Mahlangu came to be appointed. I indicated that Mr Mahlangu was recommended by the panel that had initially decided that he should not be appointed until his labour matter was resolved but that because of exigencies he was offered a short term contract, which came to be extended.
59. In December 2019 I received a call from the PP saying that I was going to receive a letter and that I had to draft a response for her. She did not specify the details. Mr Mahlangu tendered his resignation as CEO in a letter dated 23 December 2019. On receipt thereof I drafted a response for the PP, which she signed. A copy thereof is annexed marked "GT10", accepting the resignation.

(vi) Ms Cleopatra Mosana

60. I was asked to address the labour dispute relating to Ms Mosana as it was raised during the Committee's proceedings.

61. Ms Mosana was appointed as spokesperson for the PPSA, after advertising and applying for the job on 3 May 2017. Her contract was for the period from 1 June 2017 till 14 March 2023.

62. Ms Mosana's last working day was 30 April 2019, after providing service as spokesperson in the PP's office for one year and ten months. She left having given 24-hour notice.

63. The events preceding this unfolded as follows.

64. I recall it was on a Monday morning when I was called to the PP Boardroom, just after 8 am. Present was both Ms Mosana and the then Chief of Staff, Linda Molelekoa. The PP came in. She was upset and indicated that she no longer wanted to work with Ms Mosana as she did not want to be doing her work and that Ms Mosana was disrespecting her by calling her by her first name "*Busisiwe*". She indicated that Ms Mosana must go home and serve her notice from home. No details were provided as to what precisely in relation to Ms Mosana's work had brought this about.

65. I intervened and requested that Ms Mosana leave the room whereafter I informed the PP that what she had done was dismiss Mr Mosana without any process and that she could not do so. Apprised that she did not want to work

- with Ms Mosana any longer I requested that she allowed me to deal with the matter going forward.
66. Ms Mosana went home on that day. The then Acting Chief of Staff, the Head of Legal Services and I met with Ms Mosana indicating to her that PP no longer wanted to work with her. Ms Mosana was informed that will consider alternative options to address the situation, i.e. available positions in the PPSA to which she could be transferred or a pay-out of her contract.
 67. Given that her contract was at its infancy, there was no benefit to the PPSA to pay out her remaining contract. In any event the Acting CEO, Ms Motsitsi, indicated that she was not willing to sign off on such a large payout.
 68. It was agreed with the Acting CEO that Ms Mosana could be redeployed to the position of Senior Manager: Communications and Stakeholder Engagement, which was vacant.
 69. Not long thereafter the Acting CEO and I convened a meeting with Ms Mosana to discuss this option. The Acting CEO received a call from the PP and left the room. When she returned she indicated that she had done her part and gave Ms Mosana a letter reflecting that she was to be redeployed to the position of Senior Manager: Communications and Stakeholder Engagement.
 70. Ms Mosana did not want to be transferred. She wanted to remain in the private office. She wanted a meeting with PP to find out what she had done, but we cautioned her against this as the PP had clearly indicated that she no longer wanted to work with her.

71. Ms Mosana left the offices of the PPSA and we received communication from her lawyers complaining that the transfer amounted to an unfair labour practice as it constituted a demotion.
72. The matter was referred to the CCMA. During October 2018 the PPSA instructed attorneys to defend the matter at the CCMA. Ms Mosana obtained a favourable ruling on 19 March 2019. The PPSA was directed to pay Ms Mosana the equivalent of six months' remuneration amounting to approximately R529 536.56 by no later than 30 June 2019.
73. I recommended that it be paid as it was clear in terms of the CCMA award that it had been a demotion albeit that it was at the same salary level as Ms Mosana was no longer spokesperson for the PPSA – that on its own was a demotion.
74. A memo was sent to the CEO to advise him on the implementation of the award and the prospects of a successful review. The CEO instructed that the PPSA representatives must give a legal opinion of the interpretation and prospects of success. The attorneys interpreted the award and advised that there were no good prospects of successful review. A subsequent instruction was given to appoint senior counsel to give a legal opinion on the prospects of success on review. Senior counsel advised that the matter be reviewed although not providing a substantial position on the prospects of success. Counsel, in rendering the advice, cautioned that the outcome of the matter was the subject of the exercise of a discretion by a court and that the outcome of the proceedings may not be guaranteed with any degree of certainty.

75. HR still maintained that the PPSA did not have good prospects of success to review the matter at the Labour Court and that the legal cost for review would outweigh the cost of compensation ordered. Already at that juncture the PPSA had spent an amount of R468 574.58 on the matter which amount excluded about three consultations and three days of arbitration, which invoice was still awaited. The memo dated 15 April 2019 is annexed marked “**GT11**”.
76. Though the award was paid for the sake of completeness I point out that there was a delay in payment resulting in the Sheriff seeking to attach moveable property. This was attended to swiftly.
77. After the CCMA proceedings, Ms Mosana returned to the PPSA and resigned. Her reasons are evident from her letter of resignation addressed to Mr Mahlangu, dated 30 April 2019, a copy of which is annexed marked “**GT 12**”.
78. During May 2019 Ms Mosana lodged a dispute of constructive dismissal with the CCMA.
79. The proceedings in the CCMA was opposed. The Commissioner awarded her six month's salary in the amount of **R529 536.56**, which amount had to be paid before 2 April 2021.
80. Legal advice was sought. Adv Kubone advised that a review process would cost in the region of R450 000.00, but that there was a reasonable prospect of success.

81. The PP was requested to consider the order as well as the memorandum from the legal representatives and to provide a way forward on how the matter should be dealt with and also take into cognisance that the amount projected for the review process is R100 000.00 less than the amount ordered for compensation. Legal services recommended that the amount be paid as security to avoid enforcement and execution and that the matter be taken on review.
82. The PP supported the payment of the security to avoid the attachment of PPSA assets again and that the matter be taken on review.
83. The decision to ultimately institute the review does not lie with HR, nor the choice of legal representatives.
84. Subsequently an authorisation memorandum approving review of the award was signed by the PP on 5 March 2021. A copy of the memorandum is annexed, marked "**GT13**". I also supported the institution of the review.
85. The PP approved the review of the matter and also to make an application for the compensation ordered in the award to be stayed. The PP was informed by the Manager: Legal Services, Senior Manager: HRM&D and CFO that security had to be paid to avoid enforcement of the award. This was so because section 145(7) of the Labour Relations Act, 66 of 1995 (*"the LRA"*) stated that the institution of review proceedings does not suspend the operation of an arbitration award unless the applicant furnishes security to the satisfaction of the Court.

86. Even if there is a pending review application, if the CCMA certified an arbitration award for purposes of the execution and issued a writ of enforcement, the applicant could still enforce the award through the Sheriff. In other words, it was advisable for the PPSA to pay security instead of filing an application to stay the award to avoid further interaction and execution.

87. The security amount was paid. The matter is still pending.

(vii) Mr Reginald Ndou

88. Mr Ndou resigned on 1 November 2018 from the position of Executive Manager: Provincial Investigations and Integration (“PII”). The PP was apprised hereof on 5 November 2018 and accepted his resignation.

89. His last working day at the PPSA was 30 November 2018.

90. By the time he had resigned there were no disciplinary charges pending against him and as far as I have been able to ascertain charges against him at the time of his resignation had not been finalised.

91. The chronology of events was as follows:

91.1. Allegations were made against him.

91.2. He was suspended in April 2017 pending investigation.

91.3. An external law firm was appointed to investigate the charges and did not recommend that he be charged. He was as such exonerated.

- 91.4. The then CEO, Temba Dlamini, informed the complainant on 4 August 2017 that pursuant to an investigation from a reputable law firm which specialised in labour law, the complaint was not sustained. The CEO indicated that the findings were accepted and that the grievance would be closed. The CEO similarly informed Mr Ndou on 3 August 2017 that the investigation had been concluded and that his suspension was lifted.
- 91.5. Under the Grievance Policy the complainant appealed to the PP in August 2017 as she was dissatisfied with the outcome of her grievance.
- 91.6. Under the Grievance Policy, the PP or delegated authority has ten days to consider and conclude the grievance and communicate the decision. The matter was not concluded within the ten days.
- 91.7. In October 2017 the PP sought the assistance of the Commission for Gender Equality (*the CGE*), which was provided. The CGE representative was to analyse the investigation report and the appeal memo and call any witnesses involved in the investigation process.
- 91.8. In December 2017 the CGE responded, having performed solely a desktop exercise, that there was a *prima facie* case to be answered and recommended that clause 4.4.2 of the Grievance Policy be followed to finalise the matter and if the complainant is still not satisfied, she should follow external dispute resolution mechanisms under the Labour Relations Act.

- 91.9. Clause 6.4(c) of the PPSA Grievance Policy provides that *"If the final decision does not yield the desired outcome, an employee has the right to utilise external dispute mechanisms in terms of the Labour Relations Act No. 66 of 1995"*.
- 91.10. I recall informing Mr Ndou that the matter was to be referred to the CGE.
- 91.11. On 10 January 2018, the PP decided to institute a formal disciplinary hearing, appointing an internal chairperson. This was relayed to the complainant on 15 January 2018, who was unhappy with the appointment of the internal chairperson, wanting an externally appointed chairperson.
- 91.12. HR was of the view, given the approach adopted, that the Grievance Policy had been applied and if the complainant was still dissatisfied, the matter should be pursued by her externally.
- 91.13. On 28 March 2018 the PP reiterated that formal disciplinary proceedings should be finalised.
- 91.14. On 10 August 2018 the PP appointed, as employer representative, a member of the Public Service Commission ("*PSC*") who was tasked with finalising a chargesheet and to present evidence during the disciplinary process.

- 91.15. By 14 November 2018 the appointed PSC representative indicated that charges were not yet finalised. Knowing that Mr Ndou had resigned on 1 November 2018, she indicated that charges would be ready by 23 November 2018 and that the hearing should be convened to take place on 26 to 28 November.
- 91.16. Charges were in fact finalised and a charge sheet was served on Mr Ndou on 16 November 2018.
- 91.17. The disciplinary proceedings did not occur as Mr Ndou was on sick leave at the time and it was postponed. It never came to fruition.
92. There are no documents under my control that reflect that Mr Ndou had been informed prior to his resignation that charges would be preferred against him. The last communication to Mr Ndou in respect of the matter appear to have been when he was apprised of the appeal in January 2019.
- (viii) Mr Tebogo Kekana
93. The Committee has already heard the evidence of Mr Kekane.
94. He launched a review of the disciplinary proceedings the outcome of which he was dismissed. This is pending with the Labour Court.
95. It is so that Mr Kekana was a shop steward and that employees raised grievances with him that he would then take up.

96. Further, when the PP travels, with or without the CEO, all staff are apprised hereof.

97. I confirm the contents paragraph 37 of the affidavit of Mr Tebogo Kekana dated 12 December 2019 insofar as it relates to me.

(ix) Ms Basani Baloyi

98. There were no complaints of her employment raised with me or by me. Ms Baloyi reported to the PP on investigations. I was not provided with any performance assessment for her HR file and I was not involved in her services being terminated.

99. Mr Mahlangu called me and informed that that he would not confirm Ms Baloyi's appointment. I told him that that was a surprise because I know Ms Baloyi to be a good employee, Mr Mahlangu indicated that that is not the only determination, and that there are other things. When I asked which things were he did not tell me. I also informed him that Ms Basani reports to PP functionally and I did not understand on what basis Mr Mahlangu could do so.

(x) Adv Isaac Matlawe

100. The charges raised against Adv Matlawe differed from those brought against Mr Kekana.

101. Mr Mahlangu was informed of the resignation of Adv Matlawe and he instructed that the disciplinary proceedings had to be proceeded with despite

the resignation. A copy of the memorandum provided to him in relation hereto, and on which he made comments, is annexed marked "GT14"

102. Pursuant thereto the hearing of the disciplinary enquiry was set down on 21 December in order for the disciplinary inquiry to be finalised prior to his term of employment coming to an end. The matter was postponed to 27 December, even though the offices were closed at the time and despite the PSA having indicated that they would not have a representative present to assist on that day.

(xi) Ms Ponatshego Mogaladi / Ms Lesedi Sekele / Mr Abongile Madiba

103. During October 2019, Mr Mahlangu, decided to take disciplinary steps against Ms Mogaladi, Ms Sekele and Mr Madiba on allegations of misconduct relating to the investigation of the Financial Sector Conduct Authority matter Report No. 46/2009, which was signed and released at a press conference by the Public Protector on 26 March 2019. The aforementioned were requested to make representations on the intended disciplinary action. There was no mention of any suspension in the letter.

104. On receipt of the letter, Ms Mogaladi was suspended on the same day of receipt of the letter. Ms Sekele responded on 18 October 2019 and was similarly suspended on 22 October 2019. Her letter had also not made any reference to any suspension.

105. The charges were served on 14 November 2019. The disciplinary enquiry was set down for 4 December 2019 and did not take place. It was then

rescheduled to 4 February 2020. Revised charges were served on 20 February 2020. The country went into lockdown in March 2020 as a result the disciplinary hearing only commenced on 14 September 2020. Ms Sekele and Ms Mogaladi pleaded not guilty on all charges.

106. The PPSA led the evidence by calling two witnesses, i.e. Carina van Eeden, the senior investigator in the Office of the PPSA, and the attorney of record for the PPSA in that matter. The chairperson was Adv Kuboni. Ms Mogaladi was found guilty in respect of charges 2, 3, 4 and 6 and not guilty in respect of charges 1 and 5. Ms Sekele was found guilty in respect of charges 2, 3 and 5 and not guilty in respect of charges 1 and 4. In separate disciplinary proceedings arising from the same incident Mr Madiba was dismissed.
107. The Chairperson recommended in relation to Ms Mogaladi that she be suspended without pay for a period of three months, coupled with a final written warning for six months, such final written warning to commence after expiry of the suspension.
108. In respect of Ms Sekele, the Chairperson recommended a suspension of two months without pay, together with a final written warning of two months, and such final written warning to commence after expiry of the suspension.
109. The PP was not in agreement with the outcome of the disciplinary process seeking instead to have them dismissed. She elected not to implement the sanction imposed by the Chairperson, instead opting to impose a sanction of dismissal with immediate effect subject to the receipt of representations. Ms Mogaladi and Ms Sekele took the decision on review and returned to work.

The matter was pending at the Labour Court at the time the Public Protector was suspended.

(xii) Mr Nyembe

110. Mr Nyembe was initially appointed as a Special adviser for the period 1 April 2018 to 30 June 2018 and he left because his fixed term contract expired.

111. Ms Linda Molelekoa had been employed at Level 12 in Customer Services. She had been appointed as Acting Chief of Staff at a level 14. Her employment was one of the issues that had been raised by Adv Matlawe.

112. The post of Chief of Staff was advertised and Mr Nyembe applied for the post and was interviewed. I was present in the interview in my capacity as HR Representative and secretariat. The panel comprised the PP, the CEO and a representative from the Public Service Association.

113. There were 5 candidates shortlisted and Mr Nyembe was the successful candidate.

(xiii) Mr Sphelo Samuel

114. The issue relating to the assault that occurred at the Limpopo office came to the PPSA attention when the summons for R350 000 was served on our offices in late 2017. Prior thereto I was not aware of the incident.

115. I was not in the PPSA's employ in 2011 and there was nothing in Mr Samuel's human resource file in relation thereto. I accept – as I did during my evidence

in the disciplinary proceedings – if no steps were taken against Mr Samuel by management at the time because they concluded that he was not at fault then it is unlikely that there would have been anything in his file.

116. As far as I am aware the CEO did not contact Mr Themba Mthethwa. Ms Manyike made contact with employees at the Limpopo office who confirmed the event but only after the altercation had started and therefore could not provide information on who had started the altercation after the complainant had entered Mr Samuel's office. It was a case of Mr Samuel's version versus the complainant. There were no witnesses that could exonerate him or implicate him.
117. There was no evidence to gainsay what Mr Samuel had stated, save that he had paid the admission of guilt fine. Mr Samuel informed me hereof when I spoke to him and that he had done so to avoid imprisonment at the time but indicated that he was appealing both the conviction and sentence.
118. The decision to institute disciplinary action was taken by the CEO, Mr Mahlangu.
119. I was concerned about the timeline to institute disciplinary proceedings as the delay was unreasonable and the PPSA could not justify the cause of the delay. But there was also a concern that an assault was serious it could not just be left unattended.

(xiv) Annual leave

120. During 2021 the CEO informed me that PP indicated in one of the meetings that those involved in investigations could not take annual vacation leave until the backlog project had been finalised.

121. It has resulted in leave not being used and there is currently a submission pending for some employees to be paid out for leave as they were not permitted to take it.

(xv) Appointment of attorneys

122. There is a panel of attorneys. I am not involved in any determination as to which attorneys from the Panel gets appointed in relation to any matter. When HR requires legal advice it is channelled through legal services.

(xvi) Wellness during 2021

123. PPSA appointed a service provider on employee wellness to assist employees with their challenges, inter alia, stress, depression, loss. This had previously been in place and was now being embarked on again.


GUMBI TYELELA

I certify that the above signature is the true signature of the deponent and that he has acknowledged that he knows and understands the contents of this affidavit which affidavit was signed and sworn to before me in my presence at Hillcrest on this 11 day of **AUGUST 2022**, in accordance with Government Notice No R1258 dated 21 July 1972, as amended by Government Notice No R1648 dated 19 August 1977, as further amended by Government Notice No R1428 dated 11 July 1980, and by Government Notice No R774 of 23 April 1982.


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