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

I, the undersigned,

FUTANA SIMON TEBELE

do hereby make oath and say that:

1. I am an adult male. I was initially employed as a Senior Manager: Executive Support, based in the Private Office of the Public Protector ("PP") (hereinafter refer to as "*the private office*"), but now hold the position of Senior Manager: CEO Support in the Office of the Chief Executive Officer of the Public Protector of South Africa ("CEO").
2. The contents of this affidavit are true and correct and fall within my personal knowledge, unless otherwise stated or clear from the context.

A. BACKGROUND

3. Although I have a law degree, I opted not to practice as an attorney. At the beginning of my professional career I was a prosecutor for approximately eight months, whereafter I was employed at the Department of Finance ("*National Treasury*"), in the-then Inland Revenue Division, which became the now South

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African Revenue Service (SARS) . When the South African Revenue Service was created as a separate legal entity, I remained in the Department of Finance.

4. I applied for the aforementioned position in the office of the Public Protector South Africa ("PPSA"), in the private office, . I was appointed and joined the PPSA, and commenced work in the private office, on 1 June 2017.

(i) Senior Manager: Executive Support

5. The position of Senior Manager: Executive Support in the private office involves providing support to both the PP and the Deputy PP. When I refer to the PP herein, I am referring to Adv Mkhwebane. When I refer to "*the OPP*" I am referring to the Office of the Public Protector i.e. the constitutional institution, inclusive of all staff members.

In my capacity as the Senior Manager: Executive Support, I reported to the Acting Chief of Staff who was also based in the private office. I was in the private office from approximately June 2017 to October 2018. I was responsible for, inter alia, for coordinating meetings of the Executive Committee ("*Exco*"). My responsibilities also included quality assurance of documentation, and reports that were submitted to Private Office.

(ii) The Task Team

6. One of the OPP's monitoring of investigations was through the Task Team. Task Team meetings occurred every Friday and were chaired by the Public Protector. The main purpose of the meetings was to check on the progress in

producing reports and issuing notices in terms of s 7(9) of the Public Protector Act 23 of 1994 (*"the PP Act"*) i.e. notices to persons who may be adversely implicated by the outcome of an investigation, inviting such persons to make representations regarding any contemplated adverse findings. Initially the Task Team dealt only with investigations that reached the s7(9) process or report writing stage and required checking by the PP – it did not deal with investigations that were still in their early stages.

7. I was involved in the Task Team's quality-assurance processes. When the commitments of the Public Protector increased the then CEO, Mr Themba Dlamini, was delegated with the responsibility to chair Task Team meetings. Task Team meetings were operational in nature and would be attended by all the Executive Managers responsible for investigations.
8. Over time the Task Team meetings evolved into Task Register meetings chaired by the PP on Mondays.

(iii) My other positions in the OPP

9. In 2018 I was requested to act in the position of Executive Manager: Corporate Services, a position which was vacant and on the structure of PPSA. Although I acted, I was not paid an acting allowance due to financial constraints at the OPP. In that capacity as Acting Executive Manager- Corporate Services, the following units reported to me: Facilities Management, Information Communication Technology (ICT), Security Management, Communication, Knowledge Management, Human Resources and Legal Services.

10. I occupied that position from 2018 to March 2021, when I was moved to the position of Senior Manager: CEO Support to assist the current CEO when she took over her office.

B. MS MOLELEKOA AND ADV MATLAWE

11. Whilst I was working in the private office Quality Assurance, which was headed by Mr. Matlawe, was based in Private Office reporting to the Acting Chief of Staff, Ms Linda Molelekoa.
12. Reports and other general documents had to be submitted via Ms Molelekoa as the one heading staff in private office.
13. Adv Isaac Matlawe, who led the quality assurance process was not happy reporting to the Acting Chief of Staff who had no legal qualifications. This environment resulted in a strained work relations between Mr. Matlawe and Ms Molelekoa (the Acting Chief of Staff).
14. This souring was exacerbated when Adv Matlawe did not attend work over a weekend during which the PP had required quality assurance assistance in respect of the CIEX report. The PP then settled the report with other members of the quality assurance without the inputs of Mr Matlawe at that stage. Subsequent thereto Adv Matlawe was given an "audi letter" by the Acting Chief of Staff, Ms Molelekoa i.e. a letter inviting him to make representations as to why he should not be disciplined for misconduct.

15. As far as I can recall, the PP was not personally involved in the issuing of the audi letter.
16. Up until that point I was of the view that Adv Matlawe had a good relationship with the PP.
17. The Quality Assurance Unit and its functions were later moved from the private office to the respective Executive Managers responsible for investigations, and Ms Molelekoa was later moved from her position as Acting Chief of Staff in the private office to her original post of Manager- Customer Service.

C. ALLEGATIONS OF LEAKING INFORMATION

18. I recall that the CEO, Mr Mahlangu, was agitated at the alleged leaking of the information relating to his vetting security clearance. He suspected Mr Baldwin Neshunzhi, then the Senior Manager: Security Management, of leaking the information relating to the outcome of his security clearance. According to the CEO, Mr Neshunzhi, in his capacity as the security personnel was the custodian of such information. Apparently the issue of Mr. Mahlangu security clearance was also being raised by the Public Services Association union representatives, including Mr. Matlawe, who was one of the union representatives.
19. Investigations ensued into the leakage of the information. Several employees laptops were confiscated for purposes of the investigation, including those of Mr. Tebogo Kekane (a Senior Investigator in the OPP), Mr. Matlawe, Mr

Neshunzhi, myself and others. As a consequence of these investigations, tensions and problems arose in the OPP.

20. To my recollection communications were found on Mr Kekane's laptop computer and based thereon he was charged and subsequently dismissed. This was managed by the Human Resources Department and did not, to my knowledge, involve the PP directly.

D. REPORTING, INVESTIGATIONS, BACKLOGS AND THE PP

21. The work environment at the OPP is highly charged and demanding. The PP made it clear to all the investigation team that she did not want an increase in the number of backlog cases facing the OPP. A course of action ensued to do away with backlog cases.
22. In my view, justifiable efforts were being made to get rid of the old cases in the OPP, as it was not a proper service being rendered by the OPP for complaints to remain unanswered or not dealt with after lengthy periods of time, for example, even complains received six (6) years ago.
23. The effect of the backlog-clearing initiative has created a lot of pressure on people within the OPP to work. Before the appointment of the Chief Operating Officer, the Executive Managers responsible for investigations reported directly to the PP and that might have exacerbated a highly pressurised atmosphere.

24. Investigators reported to the PP (directly and via their Executive Managers). There was lots of pressure on them to complete work with frequent and constant meetings being held to ascertain how far investigations were and what was being done in respect of reducing the backlog.
25. As I viewed it, because the PP had previously worked at the OPP she had a good understanding of the workload and the investigation methodology in general. She was of the view that investigators were not complying with service standards set in the standard operating procedures in respect of the periods of time within which certain steps had to be taken for the completion of investigation processes. What the PP indicated to the investigation team was that she wanted compliance with the service standards to avert creating a further backlog.
26. However, though I was in the private office I was not involved in all reports directly, For example, the Vrede Dairy report was worked on by Mr Kekane and Adv Raedani and I had no role to play in that report being finalised.
27. It was my understanding that the Vrede Dairy farm investigation had commenced in the Free State and had been dormant for a considerable period before being attended to further.
28. I have not seen the PP intimidate, harass or victimise employees at the OPP and I have not been intimidated, harassed or victimised by the PP or Mr Mahlangu, the erstwhile CEO.

29. During certain meetings I have seen the PP reprimand employees when deadlines they undertook to meet were not met, and at times the PP may very well have raised her voice – even when work was demanded from me. This was especially so when those in the employ of the OPP are not doing matters the way the PP wants, and do not have explanations for why they have been sitting on matters for such lengthy periods of time, or for why those who are subordinate to them have not reported back on investigations and the caseloads they are handling.
30. I do not regard the demands being made to Executive Managers who had senior investigators and investigators who reported to them, to be unreasonable. I accept that tempers were frayed because investigators had to put more time which may include not sleeping in an endeavour to complete reports for purposes of meeting deadlines.
31. During “*Dashboard meetings*” people who did not produce work timeously were also reprimanded. I regarded it as the PP seeking to raise the standards of the office in terms of the number of reports being issued and to do so was putting pressure on OPP staff to finalise matters and, in doing so, increasing the output levels of the OPP. I did not see this as victimisation, harassment or intimidation.
32. In my view her predecessor produced far fewer reports given the number of investigators in the OPP. As far as I can recall, roughly 160 investigators had, during the financial period prior to the current PP taking office, produced only

about 20 -25 reports (I have not confirmed these numbers and don't claim them to be exact).

33. The PP wanted to make sure that the standards and quantity of reports were significantly improved, so she pressed for deadlines to be met and that quality assurance was the responsibility of all managers.
34. Whilst the pushing for reports to be completed could have resulted in a compromise on quality, I am not able to point to any specific report in this regard..
35. In my view this did not necessarily result in a sacrifice on quality or that quality could be overlooked, because there are structures in place like a Quality Assurance Unit that reported to the COO. This unit dealt with reports and provide quality assurance before reports could be issued.
36. In more recent times there is a structure called the "*full bench*" chaired by the PP, which evaluate the reports before they are signed off.
37. I am aware that all the reports that are provided are read by the PP and, if the reports are not in order, they are sent back to be brought up to standard / corrected.
38. Increasing litigation involving the OPP appears to have occurred because of the approach adopted by the Courts, making remedial action binding and hence increasing litigation because those who are obliged to comply with these remedial actions and recommendations seek to go to the courts to have

such set aside instead of complying with the remedial action . I got the impression that institutions sought to take OPP reports on judicial review rather than comply with particular remedial action. This would happen when those institutions were called on to indicate how they had complied with the prescribed remedial action i.e. when the remedial action was sought to be enforced. Such legal proceedings were sometimes initiated even years after the remedial action was supposed to have been actioned, and then only because the PP's office sought implementation of its recommendations. Even on what I regard as being "*bread and butter issues*", reports are now being taken on review, forcing the OPP to oppose litigation in order to defend reports that have been issued.

39. This was not how the reports of the PP had been dealt with prior to the court rulings that remedial action is binding. But even so there are more reports issued by the PP that remain in good standing.
40. The OPP does consider judgments that are handed down in respect of its reports, taking into account lessons learnt from court judgments as an organisation. Different persons review reports and consider proactive ways of improving matters.
41. The PP, as far as I am aware, as this occurred during my time in the private office, dealt away with the quality assurance mechanism that was in place, i.e. the "Think Tank", because the Think Tank meetings only occurred on a quarterly basis and turned out to be a costly innovation. It also meant that reports were only issued on a quarterly basis and that, if there were faults on

reports, it took much longer for the next Think Tank meeting to come around to review a report again. In other words, a much faster system was devised by the PP to quality assure the reports in each case.


42. Also before a report is provided at the Head Office of the OPP, it would have been signed off by an investigator, a senior investigator or chief investigator, a Provincial Representative and the relevant Executive Manager at Head office. In other words all of them would have had to be satisfied with the report before it is submitted to the PP for consideration.
43. Moreover, in respect of the employment related matters involving Ms Basani Baloyi, Ms Ponatshego Mogaladi, Ms Lesedi Sekele and the late Mr Abongile Madiba, I was not personally involved in these matters.
44. There was pressure in the OPP in an endeavour to finalise the backlog cases by the end of September 2021. And there was pressure on everybody given that the PP wanted to ensure that these backlog cases were closed. I do not dispute that the work demands may have been perceived to be unreasonable, however, this was not caused by the PP, but by the circumstances in wanting to ensure that complainants' complaints were reasonably and timeously dealt with.
45. The PP made it very clear that she did not want to leave this office with a backlog for any successor to have to deal with, and at the very least, matters preceding 2020 had to be finalised. Her main concern was: what explanation do you give a complainant if their complaint had not been dealt with within a five-year period?

46. One of the matters which exacerbated problems was that the PP had inherited a manual Case Management System and hence old cases and complaints could not easily be accounted for and could even be "hidden". Whilst these were reported years previously, it only came to light that these complaints were not dealt with when complainants raised their dissatisfaction with the PP. I understand that there has been a struggle to put an electronic case management system into place since 2017, but this had not occurred due to financial constraints in respect thereof.
47. It appears that service standards as to the time periods within which matters had to be closed were simply being ignored by investigators and, in an endeavour to ensure that the service standards were adhered to, the PP sought answers from her investigative teams relating to this non adherence.
48. It is my perception, given that under the previous PP very few (in comparison) reports were produced, a certain laxity had set in. Now there was a system in place to make sure that this was being eradicated, as oversight into investigations was being pursued. The pressure was being applied to everybody with that end goal in mind.

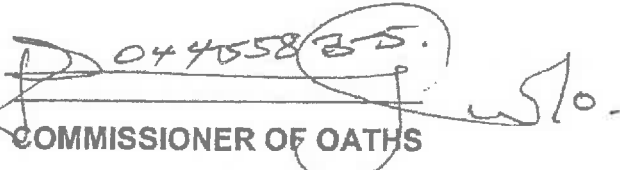
E. AUDI LETTERS

49. I have received an "audi letter" from the Acting Chief of Staff ,and I was not under the impression that this had been orchestrated by the PP at all as it related to me not having properly submitted a performance agreement). This was subsequently resolved.

50. As I saw it, when "audi letters" were issued it was because promised reports were not being delivered, deadlines were not being met, proper quality assurance was not taking place. The "audi letters" were received by employees because of what they were failing to achieve.


FUTANA SIMON TEBELE

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 BROOKLYN on this 07 day of **JULY 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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COMMISSIONER OF OATHS
J.S. SHABANE



J.S.