
**AFFIDAVIT IN THE SECTION 194 INQUIRY INTO THE REMOVAL OF THE
PUBLIC PROTECTOR**

I, the undersigned,

KEVIN SIFISO MALUNGA,

do hereby state under oath and say that:

1. I am an adult male currently employed at Regenesys Business School as the head of its School of Law.
2. The facts herein contained fall within my personal knowledge, save where the context otherwise indicates, and are, to the best of my knowledge, understanding of this matter and belief, both true and correct.
3. I make this affidavit in the circumstances which I set out below.
4. I was appointed to the position of Deputy Public Protector ('DPP') from December 2012 and I served in that position until December 2019, when my seven-year term came to an end.
5. In January 2023, I received a letter, dated 26 January 2023 from the Chairperson of the Committee for the section 194 Enquiry into the removal of Advocate Busisiwe Mkhwebane as the Public Protector ('the Committee'), inviting me to provide information and records to the Committee.

K.M. Malunga

6. In the letter the Chairperson advised me that, in terms of section 56(a) of the Constitution, read with section 14(2)(b) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, No. 4 of 2004 ("the Act"), Parliament may summons any person to appear before it, or to produce evidence. Notwithstanding this power, the Chairperson nevertheless wished to first formally invite me to appear before the Committee to answer questions pertaining to my position as former DPP, and to furnish the Committee with any relevant documentary evidence in my possession. In his letter to me the Chairperson stated that my participation was sought insofar as same may be relevant to the Committee's assessment of the motion.

7. I was therefore invited to indicate in writing, by no later than 30 January 2023, whether I agreed to participate in the Enquiry voluntarily. After receipt of the Chairperson's letter, I duly informed the secretariat on 27 January 2023 that I would participate voluntarily and that therefore, there would be no need to summons me to appear. I was also willing to make a statement under oath for the purposes of setting out the information and records sought by the Committee, to the extent that these were in my possession and were relevant for the Committee's assessment of the motion.

8. I had a virtual meeting with the evidence leaders on Thursday 2 February 2023. For the sake of completeness, I wish to state that I had previously consulted with the evidence leaders on 7 June 2022 for the purposes of assessing whether or not I was in a position to assist the Inquiry in relation to the motion. As I understood it, the purpose of this second consultation with the evidence leaders was, firstly, once again to obtain information from me with reference to the motion, this time in light of the invitation extended to me by the Chairperson to provide information and records to the Committee, and, secondly, to assist me with drawing up a statement with reference to the motion and the contents of the letter from Seanego Incorporated. Prior to the consultation I had been furnished with a letter dated 13

December 2022 addressed by Seanego Incorporated to the Chairperson requesting that the Committee summon Adv Kholeka Gcaleka to appear before the Committee to give evidence that will assist it ('the Seanego request'). I was requested to consider the contents of the Seanego request, in order to determine whether or not I could assist Adv Mkhwebane in relation to the matters set out in that request and to the motion serving before the Committee.

9. During this consultation with the evidence leaders, we discussed in detail the motion, charge by charge, in order to ascertain whether I had any involvement in or personal knowledge of the matters alleged in each charge. We then also discussed the Seanego request.

The motion

10. **Charge 1** – I had no involvement in the matter which forms the subject matter of the first charge in the motion, which is the South African Reserve Bank ('SARB') matter. Although I knew of the existence of the investigation, I was never part of any consultations with third parties during the course of that investigation; I was not part of any internal meetings discussing the investigation; nor was I privy to the provisional or final reports that were produced from the investigation.
11. As far as I can recall, Advocate Madonsela worked almost exclusively with Advocate Tshivalule on the matter. Advocate Tshivalule used to be an investigator based in my office, and would have had first-hand knowledge of this matter. After he was moved to the former PP's office to assist her with the South African Reserve Bank investigation, another full time investigator, Mr Vusumuzi Dlamini, whom I believe is now the Chief Investigator - Good Governance and Integrity - was hired to replace him in my office.
12. I therefore do not have information, nor do I have in my possession any records relating to this investigation, and more pertinently the allegations made in paragraph 1.1 of Charge 1. I have no knowledge of the matters alleged therein.

K.M.W

13. **Charge 2** – This charge alleges misconduct on the part of the Adv Mkhwebane in relation to the Vrede Dairy matter.
14. I was aware of this investigation and would have interacted with it during file inspections at provincial level. However, let me clarify that this is not specific knowledge. As the leader of the Quality Assurance Team I sought to assist all investigators especially in the provinces to complete their investigations efficiently and intervene where necessary. I seem to recall having interacted with Ms Erika Cilliers and her team regarding the matter, during file inspection. The purpose of file inspection is to monitor the progress of an investigation, with a view to assisting the investigator in the event of challenges impeding an investigation. Ms Cilliers was the investigator in charge of Vrede. Since file inspections cover all investigations under the purview of an investigator, I cannot now recall how many file inspections I conducted in this or other matters, nor do I have any specific recollection of the content of any discussions with Ms Cilliers or any specific directions given to her. I also do not have any recollection as to when specifically those file inspections took place.
15. I therefore have no personal knowledge of the matters which it is alleged Adv Mkhwebane did or did not do in this investigation. I did not have sight of any provisional report. I am not aware if one had been finalised. I also did not have sight of the final report prior to its publication. Other than the file inspections which I referred to above, to the best of my recollection I was not party to any internal meetings such as, for instance Think Tank or Task Team meetings where the substance of the investigation and reports may have been discussed.
16. I therefore have no information, nor do I have in my possession any records relating to this investigation, and more pertinently the allegations made in paragraph 4 of Charge 2. As I have stated, I have no knowledge of the matters alleged therein.

K.M

17. **Charge 3** – My reading of charge 3 is that it alleges incompetence in relation to alleged actions or omissions on the part of Adv Mkhwebane in the SARB and Vrede investigations and reports.
18. As I have already stated, I have no personal knowledge of these investigations and therefore do not have any information relating to them. I was not involved with them, nor was I privy to the reports produced as a result of those investigations, and accordingly I do not possess any records relating to these investigations.
19. Similarly, I have no information relating to the Financial Sector Conduct Authority and Another v Public Protector litigation. I was not part of any decision taken relating to this litigation, of which I was not aware whilst I was at the PPSA.
20. I am not excluding that these cases could have been on the agenda or discussed at a meeting at which I may have been present. I simply do not remember such, nor to the best of my recollection was I furnished with draft reports in these matters.
21. I received no draft reports or section 7(9) notices for quality assurance in respect the matters referred to in the motion.
22. **Charge 4** - I have no information or records regarding the matters set out in charge 4.
23. I have no personal knowledge of these matters and to the best of my recollection I was not furnished with any reports in relation to any of them.
24. I turn now to deal with the Seanego request.

The Seanego request

25. I had regard to the Seanego request to the extent that I might be able to assist Adv Mkhwebane with any information and/or records from my stint as the DPP from 2012 to 2019, with reference to what is set out in the request from her attorneys.

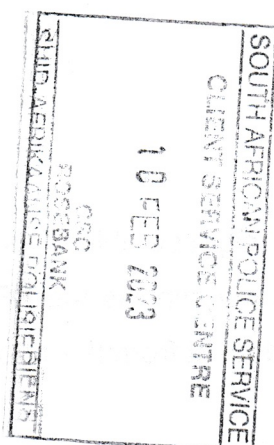
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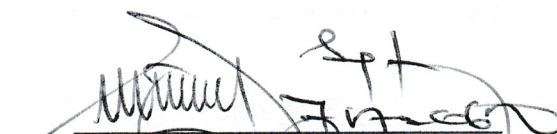
26. Paragraph 5 of the Seanego request describes the nature of the assistance sought from the current DPP, and the subject matter of the evidence sought from the DPP. Whilst this request was not directed at me, I nevertheless considered it in the event that there might be matters described therein that I could assist with.
27. However, the matters described in this paragraph, in relation which assistance is sought from the current DPP, post-date the period in which I was at the PPSA. Therefore I have neither information nor records in my possession in regard to the assistance sought as described in this paragraph.
28. If there are any additional questions that the Committee would have in relation to the foregoing that it would require me to address, in advance of or in lieu of giving oral evidence, I would be willing to do so in writing and under oath.



KEVIN SIFISO MALUNGA

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 Rueben on this 10 day of **FEBRUARY 2023**, 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.





COMMISSIONER OF OATHS
 15 Stumble Ave
 Rosebank
 011 798 4760