

URGENT

POLICE REFERENCE: CAS BROOKLYN 437/02/2015

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF PRETORIA HELD AT PRETORIA

SUBPOENA IN TERMS OF SECTION 205 ACT 51/1977

A TO: CRO Mr Krishen Sukday (Full names)

(Company and Address) Government Pensions Administration Agency, 34 Hamilton Street, Arcadia, Pretoria

1. Whereas it appears to me that you are the person who can furnish material or relevant information to wit: (Nature of the information required) See annexure A

2. You are hereby required to appear in person before me or any other Magistrate in Court A at the Pretoria Magistrates Court, Cnr Sophia De Bruyn and Francis Baard Streets on the 10 day of November 2016 at 09H30 to be examined by the Public Prosecutor duly authorized thereto and to testify about all that you know about the alleged offence to wit: suspected to have been committed the offence of Contravening of Regulation of Interception of Communication Act, 2002, Contravention of the National Strategic Intelligence Act, 1994, Corruption Act 12 of 2004, and Contravention of Public Finance Management Act 1 of 1999.

3. Provided that if you have furnished the required information to the satisfaction of the Public Prosecutor or Investigating Officer to wit Captain Magazi Freddy Sowele with contact particulars 071 481 2406 on or before 21/10/2016 prior to the date on which you are required to appear before me or another Magistrate, you shall be under no further obligation to appear before me or another Magistrate.

4. WARNING: Failure to comply with this subpoena may result in a warrant for your arrest being issued. Such failure may also constitute an offence in terms of Section 180(1) read with sections 170(2), 169 and Section 205 of the Criminal Procedure Act 51 of 1977.

B. To the authorised official: Serve this subpoena on the named person and report back to the authorised Senior/Control/Public Prosecutor on what you have done in this regard.

SIGNED BY ME AT PRETORIA ON THIS 20 DAY OF AUGUST 2016

OCTOBER 2016

J.P. NORTON

MAGISTRATE PRETORIA

2016-10-20

Luveth M. Mphahlele

Senior/Control/Public Prosecutor, with the National Prosecuting Authority duly

authorised in writing by the National Director/ Director of Public Prosecutions to request a Magistrate to issue subpoenas in terms of the provisions of 205 of the Criminal Procedure Act 51/1977, confirm that I have submitted a formal request for the above subpoena on a separate document that now forms part of the record of proceedings in respect of this application.

Signature, Authorised Prosecutor

[Handwritten signature]

Date

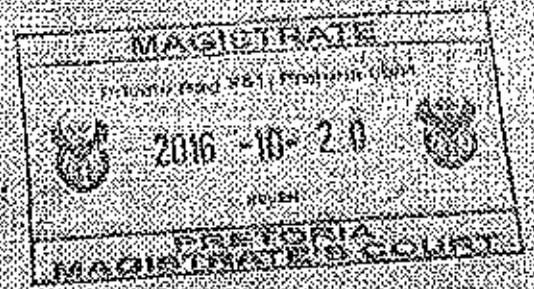
PROSECUTION
2016-10-20

BROOKLYN CAS 427/05/2015: INVESTIGATING OFFICER: CAPTAIN MT SEWEL: 0714812408

URGENTI

ANNEXORE A

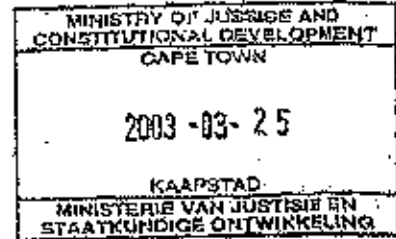
KINDLY SUPPLY US WITH THE FOLLOWING INFORMATION:



1. Copies of the statistics (Appendix A) attached to the South African Revenue Service memorandum dated 12 August 2010 in respect of the early retirement of Deputy Commissioner Mr Ivan Pillay with full benefits as well as an affidavit explaining the approval of 3000 requests from various government departments for staff members who retired before the age of 60 with full benefits for period between 12 August 2005 and 12 August 2010.
2. Copies of Appendix B for five requests of staff members who retired before the age of 60 with full benefits as approved by the Finance Ministers for period between 12 August 2008 and 12 August 2010.
3. In the affidavit the following must be clarified:
 - 3.1 Whether GEPI approves requests from various departments for staff members who retire before the age of 60 with full benefits.

G.K.S. 01072400

2192
(01072400)



PROCLAMATION
BY THE
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

No., 2003

NATIONAL PROSECUTING AUTHORITY ACT, 1998

Determination of Powers, Duties and Functions of a Special Director of Public Prosecutions

Under section 13(1)(c) of the National Prosecuting Authority Act, 1998(Act No. 32 of 1998) I hereby confer, impose and assign the following powers, duties and functions on or to Advocate ANTON ROSSOUW ACKERMAN SC, a Special Director of Public Prosecutions, appointed in terms of the said provisions:

To exercise the powers, carry out the duties and perform the functions necessary, within the Office of the National Director of Public Prosecutions as directed by the National Director and—

- (a) in particular, to head the Priority Crimes Litigation Unit and to manage and direct the investigation and prosecution of crimes contemplated in the Implementation of the Rome Statute of the International Criminal Court Act, 2002(Act No. 27 of 2002), and serious national and international crimes, which include acts of terrorism and sabotage committed under the Internal Security Act, 1982(Act No. 74 of 1982), high treason, sedition, foreign military crimes committed by mercenaries, or such other priority crimes to be determined by the National Director; and
- (b) generally, giving such advice or rendering such assistance to the National Director as may be required to exercise the powers, carry out the duties and perform the functions which are conferred or imposed on or assigned to him by the Constitution or any other law.

Given under my Hand and the Seal of the Republic of South Africa at... **PRETORIA**on this... **24th**day of... **MARCH**Two Thousand and Three.

T. M. Mbeki
T. M. MBEKI
President

P. M. Maduna
P. M. MADUNA
Minister of the Cabinet

[Handwritten signature]

Wesley Timm

From: Wesley Timm
Sent: 01 November 2016 13:09
To: 'presidentrsa@presidency.gov.za'; 'president@po.gov.za';
'president@presidency.gov.za'; 'ntoeng@presidency.gov.za';
'nmajake@presidency.gov.za'
Cc: 'skabrahams@npa.gov.za'; 'hzwart@npa.gov.za'; 'kbenjamin@npa.gov.za';
'jppretorius@npa.gov.za'; Vlad Movshovich; Dylan Cron; Pooja Dela; Daniel Rafferty; Tayla Dye
Subject: RE: Impropriety and unfitness for office of the National Director of Public Prosecutions
Attachments: Annex A part 3.PDF

I attach part 3 of annex A.

From: Wesley Timm
Sent: 01 November 2016 13:08
To: 'presidentrsa@presidency.gov.za'; 'president@po.gov.za'; 'president@presidency.gov.za';
'ntoeng@presidency.gov.za'; 'nmajake@presidency.gov.za'
Cc: 'skabrahams@npa.gov.za'; 'hzwart@npa.gov.za'; 'kbenjamin@npa.gov.za'; 'jppretorius@npa.gov.za'; Vlad
Movshovich; Dylan Cron; Pooja Dela; Daniel Rafferty; Tayla Dye
Subject: RE: Impropriety and unfitness for office of the National Director of Public Prosecutions

I attach part 2 and annex A.

From: Wesley Timm
Sent: 01 November 2016 13:08
To: 'presidentrsa@presidency.gov.za'; 'president@po.gov.za'; 'president@presidency.gov.za';
'ntoeng@presidency.gov.za'; 'nmajake@presidency.gov.za'
Cc: 'skabrahams@npa.gov.za'; 'hzwart@npa.gov.za'; 'kbenjamin@npa.gov.za'; 'jppretorius@npa.gov.za'; Vlad
Movshovich; Dylan Cron; Pooja Dela; Daniel Rafferty; Tayla Dye
Subject: Impropriety and unfitness for office of the National Director of Public Prosecutions

Dear Sirs

I attach a letter for the attention of His Excellency, President JG Zuma.

The letter has two annexes, A and B. Due to the size of annex A, I will send this annex in several parts. Attached to this email are parts 1 and 4 of annex A as well as annex B. Parts 2 and 3 of annex A will follow in separate emails.

Yours faithfully

Wesley Timm
Associate

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 'jppretorius@npa.gov.za'; Vlad Movshovich; Dylan Cron; Pooja Dela; Daniel
 Rafferty; Tayla Dye
Subject: RE: Impropriety and unfitness for office of the National Director of Public
 Prosecutions
Attachments: Annex A part 2.PDF

I attach part 2 and annex A.

From: Wesley Timm
Sent: 01 November 2016 13:08
To: 'presidentrsa@presidency.gov.za'; 'president@po.gov.za'; 'president@presidency.gov.za';
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 Movshovich; Dylan Cron; Pooja Dela; Daniel Rafferty; Tayla Dye
Subject: Impropriety and unfitness for office of the National Director of Public Prosecutions

Dear Sirs

I attach a letter for the attention of His Excellency, President JG Zuma.

The letter has two annexes, A and B. Due to the size of annex A, I will send this annex in several parts. Attached to this email are parts 1 and 4 of annex A as well as annex B. Parts 2 and 3 of annex A will follow in separate emails.

Yours faithfully

Wesley Timm
 Associate

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 'jppretorius@npa.gov.za'; Vlad Movshovich; Dylan Cron; Pooja Dela; Daniel
 Rafferty; Tayla Dye
Subject: Impropriety and unfitness for office of the National Director of Public Prosecutions
Attachments: Letter to the President 01112016.pdf; Annex B.PDF; Annex A part 1.PDF; Annex A
 part 4.PDF

Dear Sirs

I attach a letter for the attention of His Excellency, President JG Zuma.

The letter has two annexes, A and B. Due to the size of annex A, I will send this annex in several parts. Attached to this email are parts 1 and 4 of annex A as well as annex B. Parts 2 and 3 of annex A will follow in separate emails.

Yours faithfully,

Wesley Timm
 Associate

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His Excellency, Mr JG Zuma
The President of the Republic of South Africa
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By email: presidentrsa@presidency.gov.za;
president@po.gov.za; president@presidency.gov.za;
ntoeng@presidency.gov.za; nmajaka@presidency.gov.za

Your reference

Our reference

Date

V Movshovich / P Dela / D Cron /
D Rafferty / W Timm / T Dye
3012607

1 November 2016

Dear Sir

Impropriety and unfitness for office of the National Director of Public Prosecutions ("NDPP")

1. We act for Freedom Under Law NPC and the Helen Suzman Foundation, non-governmental organisations concerned with, amongst other things, the promotion of the rule of law and the protection of our constitutional project ("our clients").
2. We address this letter on behalf of our clients acting in their own and in the public interest.

Background

3. As you must be aware, on 11 October 2016, summons no. 574/16 was served on the Honourable Minister of Finance, Mr Pravin Gordhan, MP ("the Minister"), Mr Visvanathan "Ivan" Pillay and Mr George "Oupa" Magashula (collectively, together with the Minister, "the accused persons"). In terms of the annexes to the summons ("the charge sheet");
 - 3.1 the accused persons were charged with fraud, alternatively theft, in relation to the alleged payment by the South African Revenue Service ("SARS") to the Government Employees' Pension Fund ("the Fund") of R1,141,178.11 on behalf of Mr Pillay (count 1 and the alternative to count 1 of the charge sheet);

Senior Partner: JC Ek Managing Partner: SJ Hutton Partners: RB Africa RG Alp GA Ansoole-Anti JL Appelboom AE Bennett DHL Booysse
 ML Davley EG Brandt JL Brink S Browne MS Burger RI Carrin T Cassin RS Coelne KC Calver KM Colman KE Coster X Couzys CR Davidow
 JH Davies PM Darya C de Bruyn JHB de Lange DW de Villiers DEC Diekman MA Dierckx DA Dreyer G Driver HJ du Preez GP du Toit
 SK Edmundson AE Esterhuizen NJA Evans AA Feleka GA Fichardt JB Foreman CP Gual RL Gweth MA Gibson SJ Gilmour H Remon CT Groves
 PD Grealy A Harvey JM Harvey MH Hathorn JS Henning KR Hillis XPC Hlatshwayo S Heckey CM Hatfield RM Holloway HF Hummel AV Ismail KA Jarvis
 NE Jarvis CN Janket S Jaoste LA Kahn R Kennedy A Keyser FN Kingston CJ Kok J Lamb L Harala S McCherry MC McIntosh SJ McKenzie
 N McLaren SP Holtzer SH Nethuka CE Meyer AJ Mills JA Milner D Ndu RP Ngomezulu S Magate J Noolman VM Movshovich H Mshah SP Nelcker
 RA Nelson BP Ngweni A Ngweni ZH Ntshona NB Ndumandla L Odendaal GJP Olivier H Paige AMF Pardon AS Ferry S Patel GR Penfold SE Phuyana
 MA Phillips D Ramjattan GJ Rapson NJA Robb DC Rudman H Sader JW Scholtz KE Shephard DM Simaan AJ Sisonzo N Singh P Singh
 MP Spalding L Stein PS Stein MW Swaenell LJ Swatic Z Swasepoel A Thakor A Tsofy PZ Van der Merwe SE van der Merwe A van Niekerk JE Veeran
 D Winter B Versfeld MG Versfeld TA Versfeld DM Visagie J Watson KL Williams K Witsell RJ Wilson H Yudaker Chief Operating Officers: SA Boyd

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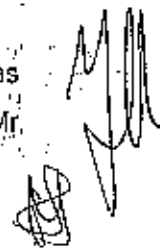
Page 2

- 3.2 Mr Pillay and Mr Magashula were charged with contravention of section 86 of the Public Finance Management Act, 1999 in that they failed to prevent SARS from incurring irregular, fruitless and wasteful and unauthorised expenditure (count 2 of the charge sheet);
- 3.3 Mr Pillay and Mr Magashula were charged with fraud, in that they represented to Human Resources of SARS that SARS was authorised to enter into an employment contract with Mr Pillay (count 3 of the charge sheet); and
- 3.4 the Minister and Mr Pillay were charged with fraud in relation to the re-hiring of Mr Pillay in or around April 2014 (count 4 of the charge sheet),

(collectively, "**the charges**").

4. Our clients launched an urgent application in the Gauteng Division of the High Court, Pretoria to review and set aside the charges which related to the Minister essentially as unlawful ("**the application**"). The notice of motion and founding affidavit are attached marked "A" ("**the founding papers**").
5. During a press conference on 31 October 2016 ("**the 31 October press conference**"), the charges were withdrawn by the NDPP. Though Mr Abrahams attempted to obfuscate his errors, which will be discussed in more detail below, by lengthy and irrelevant legal ramblings, Mr Abrahams was forced, in effect, to admit that the National Prosecuting Authority ("**the NPA**") never had sufficient evidence to prefer charges against the accused persons. This is despite the NDPP's vehement assertions, a mere 20 days before, that the NPA had a solid case against the accused persons.

Mr Abrahams

6. In light of the circumstances surrounding the preferring and withdrawal of the charges, Mr Shaun Abrahams has miscondacted himself and is not a fit and proper person to hold the office of the NDPP, in that he lacks the required conscientiousness and integrity to be entrusted with the responsibilities of the office of the NDPP. He has also brought the administration of justice and his high office into disrepute.
7. Mr Abrahams has plainly displayed his lack of conscientiousness and integrity, and has committed serious misconduct. In addition to the submissions made in respect of Mr. Abrahams' conduct in the founding papers, the following is noteworthy:
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Page 3

- 7.1 at a press conference held on 11 October 2016 ("the 11 October press conference"), Mr Abrahams violated the rights of the accused persons, and the Minister in particular and abused his position in an attempt to use the media to influence public opinion against the accused persons and the Minister in particular (see paragraph 72 of the founding affidavit);
- 7.2 Mr Abrahams stridently defended and justified the charges at the 11 October press conference including stating that any suggestion that the charges are groundless and constitute political mischief is "*as you will come to learn, that can be nothing further from the truth*" (see paragraph 73 of the founding affidavit). This was not only a vehement assertion of the validity of the charges, but, in effect, a personal assurance by Mr Abrahams as the NDPP. He reiterated that the charges were solid and fully sustainable a day later, in response to a question from a journalist, mentioning that "*the NPA do not take matters to court if they don't believe there are reasonable prospects of a prosecution ... I implore you to wait until the trial in respect of the matter, when the evidence is presented.*" Mr Abrahams now clearly believes that no such delay is necessary. So much for the earlier exhortation;
- 7.3 Mr Abrahams has since, at the 31 October press conference, admitted that he had never applied his mind to the charges prior to 11 October 2016 and that he had seen no documents to support them – and that he did not seek to call for or interrogate any documents in support of them. Assuming that Mr Abrahams' statement in this respect is true (which our clients do not concede), then, at best Mr Abrahams:
- 7.3.1 was reckless in the extreme;
- 7.3.2 showed a spectacular dearth of conscientiousness; and
- 7.3.3 in asserting facts as unequivocally true while he was aware that he had no knowledge of those facts or the documents to support them, was plainly dishonest;
- 7.4 there was every indication in the 11 October press conference that the decision to prefer charges was that of the NPA, and the NDPP clearly lent the imprimatur of his office to the charges. Only Mr Abrahams spoke during that press conference. If Mr Abrahams' version that he had nothing to do with the charges, and did not know the

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facts or the evidence, is correct, then Mr Abrahams' presentation and defence of the charges was misleading at best and potentially disingenuous;

7.5 the NDPP has the power, and in appropriate circumstances the duty, to review, supervise, control, correct or vary charges even before they are formally brought against any of the accused. The paradigm case where such a review should have been undertaken is the present matter, and before convening the 11 October press conference. The matter:

7.5.1 is of enormous public importance;

7.5.2 entails an investigation riddled with allegations of bad faith and ulterior purpose (by a broad range of stakeholders);

7.5.3 concerns a very high ranking member of the National Executive;

7.5.4 has national and international ramifications of the highest order; and

7.5.5 is not characterised by urgency and involves facts dating back to 2010, where there was no evidence of imminent irreparable harm in the future;

7.6 Mr Abrahams, however, consciously or recklessly ignored all of these signal features and proceeded to take a course of action, in the most public fashion, which he must have known would throw the South African economy into a tailspin;

7.7 had Mr Abrahams applied his mind to the facts and law pertaining to the charges, as any rational NDPP would have done before 11 October 2016, he would have realised that there was no basis, in law or in fact, for the charges and should not have persisted with them. His failure to do so, at best, shows a stupefying, disabling and disqualifying lack of competence; at worst, his failure betrays ulterior purpose and a lack of integrity;

7.8 the Priority Crimes Litigation Unit, which ostensibly investigated and preferred the charges, was not even legislatively mandated to deal with cases of fraud and theft and the charges are not within such Unit's specific expertise. The fact that this Unit handled the case, instead for instance of the Specialised Commercial Crimes Unit, which would ordinarily deal with charges such as these, is irregular and confounding; and

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Page 5

- 7.9 in fact, after the shortcomings of the charges, and the lack of evidence in support of those charges, were pointed out to him in our clients' letter of 14 October 2016 (which is annexed to the founding papers), Mr Abrahams did not withdraw the charges as a conscientious NDPP of requisite integrity and objectivity would, but instead ordered further investigations after the fact (see the supplementary affidavit attached as "B"). These investigations were not competent and were, in any event, impermissibly aimed at finding new evidence which could sustain the then unsustainable charges. The NDPP's review should have been based on the contents of the docket as it stood at the time the charges were laid. Instead, Mr Abrahams clearly recognised the fatal deficiencies of the charges and the investigations appear to have been embarked on so as to rescue the charges from inevitably being set aside. Ultimately, even those desperate attempts were futile, since the charges were ill-conceived and stillborn from the outset. At best, this shows Mr Abrahams fundamentally misunderstood the laws applicable to his powers as NDPP, which in itself demonstrates a wanton lack of conscientiousness; at worst, this shows Mr Abrahams intentionally and unlawfully sought to prop up insupportable charges after the fact so as to rescue them from review.
8. It is important to recall that Mr Abrahams, as the NDPP, is no mere civil servant. He is entrusted with the independent exercise of immense public power; the type of public power which can be used to curtail the liberty of every person and entity in the Republic. This is a power that the NDPP is enjoined, constitutionally, to exercise without fear or favour. When the NDPP abuses this power, or even when he is perceived to be abusing this power, it fundamentally undermines the public confidence in the integrity of the Institution. Accordingly, Mr Abrahams' conduct in the above matter, even if his conduct was a *bona fide* blunder (which our clients deny), has brought the NPA into disrepute, continues on a daily basis to erode public confidence in law enforcement institutions, and casts a long shadow of doubt over Mr Abrahams' future conduct. Mr Abrahams is tasked with making dozens of critical, and potentially irreversible, decisions on a daily basis, which reinforce the potential for irreparable harm. Indeed, Mr Abrahams has alluded to potential future important investigations in the 31 October press conference.
9. Mr Abrahams is not a fit and proper person to continue to occupy his high office and should be suspended and disciplined urgently.




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Page 6

JP Pretorius SC and S Mzinyathi

10. It is plain that the prosecution of the charges was pursued either for ulterior purposes or in a breathtakingly reckless fashion, without proper investigation or any regard to the evidence and proper legal analysis. After the charges came to be publically criticised, and despite seeking the limelight for himself in announcing the charges at the press conference on 11 October, Mr Abrahams has shifted all responsibility to Dr JP Pretorius, SC and Sibongile Mzinyathi (collectively, "the Prosecutors") (with Dr Pretorius allegedly taking the decision in consultation with Mr Mzinyathi).
 11. The Prosecutors clearly failed in their fundamental constitutional and statutory duty to ensure that charges were properly grounded and to take an impartial, independent and objective view of all the facts, including taking account of the questionable investigative work performed by the Directorate of Priority Crime Investigation in this matter.
 12. In addition to what is stated above in relation to Mr Abrahams (which applies with equal force here), had the Prosecutors applied their mind to the facts and law relevant to the charges, as a rational and conscientious prosecutor of integrity would have done before the decision to prefer the charges was taken, they would have realised that there was no basis, in law or in fact, for the charges and would never have taken the decision to prefer charges.
 13. According to the 31 October press conference, the Prosecutors failed to take account, *inter alia*, of the most basic legal requirement for a successful prosecution of fraud or theft: the fraudulent or furtive intention. This is inexcusable. The Prosecutors' failures, at best, show a startling lack of competence; and at worst, betray ulterior motive and a lack of integrity. The seniority of the Prosecutors augments the case for ulterior purposes.
 14. The Prosecutors were obliged to take great care, in the interests of the integrity of the NPA, the execution of their official duties and the interests of the Republic, before theatrically broadcasting the scandalous allegations against the accused persons to the world. This was especially the case in the present circumstances, having regard to the factors set forth in 7.5 above. It would also have been especially incumbent upon them to do so in light of Mr Abrahams' proclaimed *modus operandi* in this matter (which is not conceded), namely, that he trusted his Prosecutors to do the work properly and would not apply his mind to the charges prior to his press conference on 11 October 2016 or see the documents to support them.
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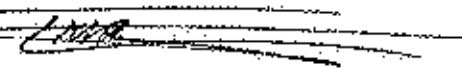
Page 7

15. Similarly to Mr Abrahams, as explained at 8 above, the Prosecutors bungling of this matter has severely undermined public confidence in the integrity of the NPA. It is thus imperative to restoring public confidence in Institution that they be suspended and disciplined as a matter of utmost urgency.
16. It is thus plain that the Prosecutors misconducted themselves and lack the conscientiousness (including competence) and integrity to continue to serve their official functions.

Conclusions

17. In light of the above, please confirm, in writing, by no later than 16:00 Monday, 7 November 2016, that you will provisionally suspend Mr Abrahams, JP Pretorius SC and S Mzinyathi from their office, pending enquiries into their fitness to hold office as contemplated in section 12(6)(a), read with, *inter alia*, section 14(3), of the National Prosecuting Authority Act, 1998, and that you will forthwith institute such enquiries.
18. Our clients also invite Mr Abrahams and the Prosecutors (who are copied on this letter) to resign from their offices without delay, so as not to harm our law enforcement institutions any further. This invitation should, however, in no way delay or influence the exercise of your powers under the above legislation.
19. Should you fail to suspend Mr Abrahams and the Prosecutors and institute enquiries into their fitness for office by 7 November 2016, our clients will assume that you have decided not to suspend the NDPP and the Prosecutors and/or initiate such enquiries. Our clients may then, without further notice, seek to exercise their rights in law on an urgent basis.

Yours faithfully


WEBBER WENTZEL**V Movshovich**

Direct tel: +27 11 530 6887

Direct fax: +27 11 530 6887

Email: vlad.movshovich@webberwentzel.com

Cc: The National Director of Public Prosecutions, by email: skabrahams@npa.gov.za; hzward@npa.gov.za

Dr JP Pretorius SC, by email: kbenjamin@npa.gov.za; jppretorius@npa.gov.za

Sibongile Mzinyathi, by email: skabrahams@npa.gov.za; hzward@npa.gov.za; kbenjamin@npa.gov.za; jppretorius@npa.gov.za





THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA
Private Bag X1000, Pretoria, 0001

Messrs Webber Wentzel

P O Box 61771

Marshalltown

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For Attention: V Movshovich

Dear Sirs,

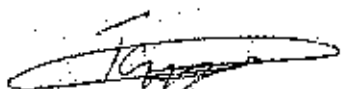
RE: IMPROPRIETY AND UNFITNESS FOR OFFICE OF THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS (NDPP)

1. The Presidency acknowledges receipt of your letter dated 01 November 2016, which was subsequently referred to the Legal & Executive Services Unit to liaise with your office regarding an extension.
2. Whilst we were obliquely aware of media reports pertaining thereto, your letter came to the attention of the President and his legal advisors only today due to the fact that the only correct addressee was Ntoeng@presidency.gov.za.
3. None of the purported addressees are authorised to receive correspondence for and on behalf of the President, nor does it fit into their portfolios and we suggest that you liaise with our office to provide you with the correct details so as to avoid a recurrence and the attendant delay.
4. In light of the above, the Presidency requests an extension until 21 November 2016. This will afford President Zuma a proper opportunity to address what no doubt is a serious matter with the effected parties in

IMPROPRIETY AND UNFITNESS FOR OFFICE OF THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS (NDPP)

anticipation of any action he may contemplate, after having considered such in its entirety.

Yours faithfully



Mr Geoffrey Mphaphuli

Acting Head: Legal & Executive Services

Date: 07/11/2016

[Faint, illegible text]

[Faint, illegible text]

2

IMPROPRIETY AND UNFITNESS FOR OFFICE OF THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS (NDPP)



WEBBER WENTZEL

In alliance with > Linklaters



His Excellency, Mr JG Zuma
The President of the Republic of South Africa
Union Buildings
Government Avenue
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0001

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By email: presidentrsa@presidency.gov.za;
president@po.gov.za; president@presidency.gov.za;
ntoeng@presidency.gov.za; nmajake@presidency.gov.za;
Angeline@presidency.gov.za; geofrey@presidence.gov.za;
sello@presidency.gov.za

Your reference

Our reference

Date

V Movshovich / P Dela / D Cron /
D Rafferty / W Timm / T Dye
3012607

7 November 2016

Dear Sir

Impropriety and unfitness for office of the National Director of Public Prosecutions ("NDPP")

1. We act for Freedom Under Law NPC and the Helen Suzman Foundation ("our clients"), non-governmental organisations concerned with, amongst other things, the promotion of the rule of law and the protection of our constitutional project.
2. We refer to our clients' letter to the Presidency, dated 1 November 2016, and the reply thereto, received 7 November 2016 ("your letter").
3. The contents of your letter, respectfully, beggar belief. Without limitation, our clients point out that the email addresses used:
 - 3.1 appear from the Presidency's own website (where both presidentrsa@presidency.gov.za and president@presidency.gov.za are listed as email addresses for the President) (a printout of which is attached marked "A");
 - 3.2 appear from the National Government Directory dated 1 November 2016 (the relevant extracts of which are annexed marked "B");

Senior Partners: JC Els. Managing Partners: SJ Jullien. Partners: RB Mela NG Mpa OA Anupad-Adm RL Appelbaum AE Bennett DHL Beoyson AR Bowley EG Brandt JL Brink S Browne MS Burger RJ Carrim J Cassim RS Coelho XL Collier KA Collins KE Cooper K Cortzen CR Dawidow JH Davlis PH Deyo L de Bruyn JIB de Lange DW de Villiers BEC Dickson HA Diment DA Dingley G Driver HJ du Preez CP du Tull SK Edmondson AE Esterhuizen AJR Evans AA Faleks GA Fickardt JB Forman CP Gert KL Gwiltz MN Gibson SJ Gilmour H Goolam CI Gouws PO Grady A Harby JH Harvey HH Hahorn JS Henning KR Hillis MNC Hlatshwaye S Beckey CH Hatfield PH Holloway HF Human AV Ismail KA Jarvis HE Jarvis CH Junker S Jooste LA Kahn M Kennedy A Keyser PN Kingston CJ Kok J Lamb L Marais S McCafferty MC McIntosh SJ McKenzie M McLaren SJ Meltzer SM Mshula CS Meyer AJ Mills JA Miller O Mita NP Mngomezulu S Mngqhe J Noolman VM Movshovich M Mafisi SE Nelcker RA Nelson BP Ngqopa A Ngwenya ZH Nkomo NB Nkomo L Odendaal GJP Olivier N Palje APT Pardihi AS Purry S Patel GR Penfold SE Pngane HA Phillips O Ramjetton GJ Rapson NJA Robb DC Rudman H Soder JW Schultz KE Shopkari DJ Simaan AJ Simpson N Singh P Singh MP Spalding L Stein PS Stein MW Strauß LJ Swaine Z Swanepoel A Thakor A Toefy RZ Vande SE van der Meulen A van Niekerk JF Varran D Venier B Versfeld MG Versfeld TA Versfeld DM Visagie J Watson KL Williams K Wilson RJC Wilson M Yelaken Chief Operating Officers: SA Boyd

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Page 2

- 3.3 are addresses which have been used previously, without objection (and which have elicited an reply);
- 3.4 Include an email address (presidentrsa@presidency.gov.za) expressly identified, in correspondence by the Private Office of the President, as an address to which correspondence may be addressed for the attention of the President (the relevant email is annexed marked "C", which related to another recent matter of paramount public importance); and
- 3.5 at least in respect of ntoeng@presidency.gov.za, is conceded as being correct.
4. The allegations of non-delivery made in your letter are thus denied, as is the request for an extension. This conduct smacks not only of dilatory tactic, but is disingenuous in the extreme. Your letter, combined with the related release on the website of the Presidency, regretfully, fall short of the standard expected of the State and the leader of the nation.
5. Due to, *inter alia*, the urgency and national importance of the matter, our clients will be launching urgent proceedings to secure the suspension of Mr Abrahams, JP Pretorius SC and S Mzinyathi ("the Prosecutors") and have enquiries instituted into their fitness for office.
6. The urgency of the matter may require that papers be served electronically on your office after hours.
7. Please advise urgently, and by no later than 15:00 on Tuesday, 8 November 2016, if there are any additional email addresses (in addition to those identified in this letter) to which papers should be emailed.
8. Our clients will seek the urgent hearing of this matter on 22 November 2016 (which, our clients note, is after the date requested in your letter for the President to make a decision in this matter). Without committing to the below timeline, our clients envisage launching papers tomorrow; requiring all respondents (who elect) to answer by no later than Tuesday, 15 November 2016, so as to allow our clients to reply and prepare the court file by 12:00, 17 November 2016.



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Page 3

Yours faithfully

WEBBER WENTZEL

P.A.

V Movshovich

Direct tel: +27 11 530 5867

Direct fax: +27 11 530 6867

Email: vlad.movshovich@webberwentzel.com

Cc: *The National Director of Public Prosecutions, by email: skabrahams@npa.gov.za; hzwardt@npa.gov.za*

Dr JP Pretorius SC, by email: kbenjamin@npa.gov.za; jppretorius@npa.gov.za

Sibongile Mzinyathi, by email: skabrahams@npa.gov.za; hzwardt@npa.gov.za; kbenjamin@npa.gov.za; jppretorius@npa.gov.za





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President Jacob Zuma at the Black Business Tribute Dinner

President Jacob Zuma at the Black Business Tribute Dinner hosted by Telkom Ltd in Sandton, Johannesburg

9 2 4 4 8

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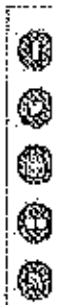
Molebo Sibisi

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Handwritten signatures and initials, including a large signature and the initials 'AP'.

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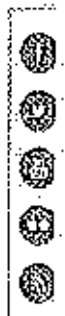


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Presidency (The)

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"PNS"

Chloë Woodin

Subject: FW: Attention: Hon JG Zuma (President)

From: Mike Louw [mailto:Mike@presidency.gov.za]
Sent: Monday, 19 September 2016 12:23 PM
To: Madeniyah Hendricks <[mailto:madeniyah@casac.org.za]>
Cc: Charmaine Fredericks <Charmaine@presidency.gov.za>; Robert Ngobeni <Robert@presidency.gov.za>; President RSA <PresidentRSA@presidency.gov.za>; Vukosi Nkuna <Vukosi@presidency.gov.za>
Subject: RE: Attention: Hon JG Zuma (President)

Dear Ms Hendricks,

We acknowledge with thanks, receipt of your correspondence addressed to the President of the Republic of South Africa, His Excellency, President Jacob Zuma.

The matter will receive the required attention and a response will be communicated soonest.

Please direct future correspondence to PresidentRSA@presidency.gov.za

Thank you

Michael Louw
Director, Support Services
Private Office of the President
West Wing, Union Buildings
PRETORIA

tel: +27 12 300 5200
fax: +27 86 683 5332
e-mail: mike@presidency.gov.za
web: www.thepresidency.gov.za



THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA

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From: Madeniyah Hendricks [mailto:madeniyah@casac.org.za]
Sent: 19 September 2016 11:59 AM
To: Mike Louw; Mike Louw
Subject: Attention: Hon JG Zuma (President)

Dear Mr Louw

Please see attached correspondence for the attention of President Zuma.

Please acknowledge receipt of email.

Thank you and kind regards

Madeniyah Hendricks
Senior Administrator
CASAC: Council for the Advancement of the South African Constitution
Tel: 021 685 8809
Fax: 021 685 8819
Cell: 078 785 2918
Email: madeniyah@casac.org.za
Website: www.casac.org.za

Email Disclaimer: <http://www.thepresidency.gov.za/pelbblc.asp?relink=97>

Handwritten signatures and initials in the bottom right corner of the page. There are three distinct marks: a large, stylized signature, a smaller signature below it, and a set of initials to the left.



THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA
Private Bag X11000, Pretoria, 0001

Ref: 9/30/1 Vol 194 (467948) 2016 (jm)

08 November 2016

Mr Wesley Timm
Associate: Webber Wentzel
90 Rivonia Road
Sandton
JOHANNESBURG
2196

Per E-mail: Wesley.Timm@webberwentzel.com

Dear Mr Timm

**IMPROPRIETY AND UNFITNESS FOR OFFICE OF THE NATIONAL DIRECTOR
OF PUBLIC PROSECUTIONS ("NDPP")**

We write to acknowledge with thanks, receipt of your letter addressed to the President of the Republic of South Africa, His Excellency, Mr Jacob G Zuma.

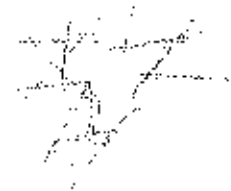
Kindly be advised that the content of your letter has been noted and will be brought to the President's attention.

Kind regards,


Mr Michael Louw
Director, Support Services

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**State Attorney
Mr NR Baloyi**
Attorney of the President of the Republic of South Africa and
the National Director of Public Prosecutions
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By email: RonBaloyi@justice.gov.za

URGENT

Your reference

Our reference

Date

V Movshovitch / P Dela / A De Meyer
3001134

19 September 2016

Dear Sir

Freedom Under Law (RF) NPC ("FUL") // National Director of Public Prosecutions ("the NDPP") / Nomcgobo Jiba ("Jiba") / President of the Republic of South Africa ("the President") / Lawrence Sithembiso Mrwebi ("Mrwebi") and others (GP case no: 89849/2015) ("the Application")

1. As you know, we act for FUL ("our client") in the Application.
2. You will also know that the matter between the General Council of the Bar of South Africa and Jiba and Mrwebi was heard on 30 May 2016 - 1 June 2016 (GP case no 23576/2015). Judgment in that matter was handed down on 15 September 2016 by the Honourable Legodi and Hughes JJ ("the Judgment") in terms whereof Jiba and Mrwebi were struck from the roll of advocates on the basis that they were not fit and proper. The effect of the Judgment, as set forth in section 9(1) of the National Prosecuting Authority Act, 1998 and para [23] of the Judgment, is that Jiba and Mrwebi may no longer occupy their positions within the National Prosecuting Authority ("NPA").
3. Over the weekend, it was reported that Jiba and Mrwebi have indicated that they would seek leave to appeal against the Judgment. It was also reported that, pursuant to Jiba and Mrwebi's requests, they have been placed on "special leave" by the NPA.
4. The Court found Jiba and Mrwebi to be dishonest and lack integrity and probity required of officers of court. The findings are damning and conclusive.
5. Pursuant to the Judgment, our client reiterates its position, as articulated in the Application, that Jiba and Mrwebi are not fit and proper to hold their high office. You will remember that the Application seeks for Jiba and Mrwebi to be suspended and disciplined under section 12(6) of the Act; and for the criminal charges against them to be reinstated.

Senior Partner: JC Els Managing Partner: SJ Hutton Partners: RB Africa RG Alp OA Anpelo-Anti RL Appelbaum DA Baillie JM Bellow AE Bennett DHL Booysse AR Bowley PG Bradshaw EG Brink JL Brink MS Burger RS Coelho KL Collier KM Cnmani KE Coster K Couzyn CR Davidow JH Davies ME Davis PM Daya JHB de Lange DW de Villiers DEC Dickinson MA Giermont DA Dingley KZ Duthi G Driver HT du Preez CP du Toit SK Edmundson AE Esterhuizen NJR Evans GA Richardt DT Fisher-Jeffes JB Forman MM Gibson SI Gonlam GI Gouws JP Gouws PJ Gredley A Harley VW Harrison JM Harvey MH Nathoo JS Howling KR Hillis NA Ifatshwayo XNC Ifatshwayo S Hackey CH Halfeld PM Holloway HF Hummer AV Ismail KA Jarvis ME Jarvis CM Jankor S Jooste LA Kahri M Kennedy A Keyser MD Kota J Lamb PSG Leon RG Leyden L Mantis S McCafferty MC McIntosh N McLaren SJ Meltzer SM Meluhla CS Meyer AJ Mills JA Mjokor D Molo NP Mngomezulu VS Moodaley LA Morphet VM Movshovitch M Mshali SP Nicker RA Nelson GP Ngepe ZN Ntshona MD Nzimande L Odenwazi GJP Olivier N Paige AMT Panfili AS Parry S Patel GR Penfold SE Rhajane MA Phillips C Pillay HK Potgieter S Rajah D Rengellu NJA Robb DC Rudman JW Scholtz KE Shepherd DMJ Simaan AJ Simpson J Simpaan N Singh AA Sourvas MF Spalding L Stein PS Stein U Swelha ER Swanepoel Z Swalepoel A Thakor A Tooley D Vulliamh PZ Vanda SE van der Meulen EP van der Vyver M van der Walt N van Dyk A van Niekerk MM van Schoorndorff JE Veeran D Verster B Versfeld HG Versfeld TA Versfeld DM Visagie J Watson JWL Westgate KL Williams K Wilson RH Wilson M Yutaken Chief Operating Officer SA Boyd

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6. It is imperative for Jiba and Mrwebi (even if they institute applications for leave to appeal against the Judgment) to have disciplinary processes instituted against them, as contemplated in section 12(6) of the Act, without any further delay. Such relief is sought in the Application. It is simply unacceptable for persons who have been found to be plainly unfit for office to continue for months or years to be classified as Deputy National Director of Public Prosecutions and Director of Public Prosecutions and to draw a salary. There must be a disciplinary process and it must happen immediately.
7. The prosecution into Jiba's misconduct, as contemplated in the Application, must likewise be reinstated without delay.
8. Our client calls on the President of the Republic of South Africa, the National Director of Public Prosecutions and the National Prosecuting Authority to confirm, by no later than 26 September 2016, that the steps in paras 6 and 7 above will be implemented forthwith, failing which our client will take steps to exercise its rights, including approaching the Honourable Deputy Judge President for the Application to be heard by way of special allocation as a matter of urgency.
9. The implementation of steps in paras 6 and 7 above may also obviate substantial time and costs in the Application, which would clearly be in the public interest. Should those steps not be implemented, our clients will supplement their papers to seek punitive costs orders against your clients in their individual capacities.

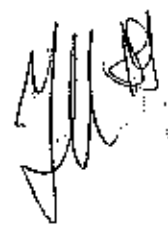
Yours faithfully

**WEBBER WENTZEL****V Movshovich**

Direct tel: +27 11 530 5867

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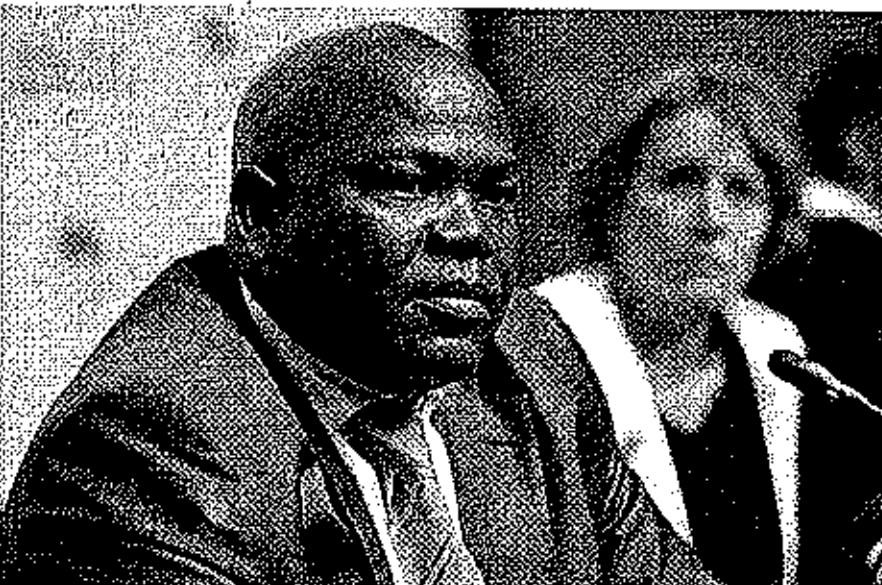
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NEWS NxASANA WILLING TO GIVE UP R17M TO GET BACK HIS JOB

Nxasana willing to give up R17m to get back his job

BY THANDI SKADE
November 4, 2016



CAPE TOWN, SOUTH AFRICA - OCTOBER 21: National Prosecuting Authority head Mxolisi Nxasana during a media briefing on the financial performance of the NPA on October 21, 2014 in Cape Town, South Africa. (Photo by Garlo Tragas / Foto21 / Laifia Media)

Former National Prosecuting Authority (NPA) head Mxolisi Nxasana says he won't oppose a court bid that seeks to recover the R17,3 million golden handshake he received to leave the organisation

Nxasana believes that he is fit and proper to hold the position of National Director of Public Prosecutions and he's willing to pay back some of the millions he received to step down if that's what it takes to get his old job back, Business Day reports.

"I would like to go back to my old job as head of the NPA. I believe that I am fit and I can do the work to the best of my ability. When I was removed it was clear that I was not removed because I could not do my job without fear or favour," he was quoted saying.

"In fact, I was pressured to go specifically because I was not malleable. I was threatened with a commission of inquiry into my fitness to hold office."

READ MORE: Presidency terminates Mxolisi Nxasana inquiry

Corruption Watch and Freedom Under Law have launched a court application to have the R17,3 million golden handshake declared invalid because the parties believe that the decision to authorise the deal was unlawful and unconstitutional.

They are also requesting the court to reinstate Nxasana to his old position because they argue that he was forced out of the organisation and for current NPA head Shaun Abrahams's appointment to be reversed on the grounds that the position was in fact not vacant at the time of his appointment

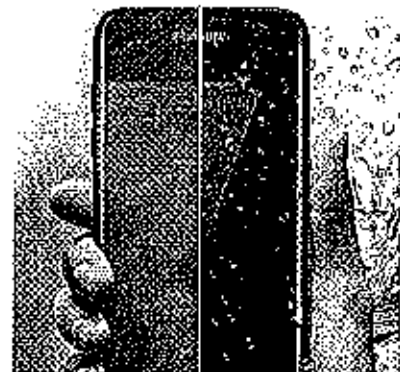
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Should their application be successful, the court could order that the full amount of the golden handshake or a portion of it be recovered and it could pave the way for Nxasana to return.

"I am not going to oppose the application by Corruption Watch and Freedom Under Law simply because I believe that the commission by the president into my fitness to hold office would have cleared me," Nxasana said, adding that none of the decisions he had undertaken while at the NPA have been successfully challenged because they were all above board.

READ MORE: Nxasana faces the chip

According to legal counsel for Corruption Watch, President Jacob Zuma is in fact not in the position to hire or fire anyone to the post since the decision on whether to reinstate the 783 charges of fraud and corruption is still pending.

Section 96(2)(b) of the constitution provides that the president is not to act in a manner which exposes himself to any situation involving the risk of a conflict between his official responsibilities and his private interests. Learning Govindsamy told the newspaper.

Tags: Corruption Watch, Freedom Under Law, golden handshake, Mxolisi Nxasana, National Prosecuting Authority (NPA), R17.1 million, Shibus Abuabikwa



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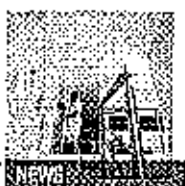
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Exclusive: Pravin to be charged again

2016-11-08 08:05

Abram Mashogo - City Press

Finance minister Pravin Gordhan is expected to be charged again next month.

And this time, a determined Hawks and National Prosecuting Authority (NPA) team want to make sure they have a strong case against him and his co-accused.

The new charges will relate to the establishment of the so-called rogue unit in 2007, when Gordhan was commissioner of the SA Revenue Service (Sars).

Two senior Hawks officials and an NPA executive close to the investigation have told City Press that Gordhan and his former Sars deputy, Ivan Pillay, will be charged "before Christmas".

"This is not overnight work. There is a lot that we still have to do, but they will be charged before Christmas," said a senior Hawks official this week.

Another senior Hawks officer said: "The charges laid against them will include fraud, defeating the ends of justice and contravention of the Regulation of Interception of Communications and Provision of Communication-Related Information Act."

City Press has learnt that the Hawks and the NPA are aiming to list Gordhan as "accused number 1" on the charge sheet.

National Director of Public Prosecutions Shaun Abrahams surprised many on October 11, when he announced charges against Gordhan, Pillay and former Sars commissioner Oupa Magashula.

He spent most of that press briefing speaking about the alleged illegal Sars unit – but opted instead to charge the three with fraud and contraventions of the Public Finance Management Act relating to Pillay's early retirement.

City Press has also established that the Hawks team investigating Sars' High Risk Investigation Unit, dubbed the rogue unit, has been beefed up with an additional two investigators as it scrambles for further evidence against Gordhan and several other former Sars employees, including former group executive for investigations Johann van Loggerenberg.

The Hawks detectives "recently" approached former deputy finance minister Jabu Molekoti for a statement, and asked him to provide information about the formation of the investigation unit, which he initially opposed.

According to a "secret" information note sent by the Hawks to State Security Minister David Makhoba on January 20, Molekoti had expressed misgivings about the unit's establishment in February 2007, when Gordhan approved it and then finance minister Trevor Manuel signed it off.

In the note, it states that Molekoti wrote on Gordhan's application: "Supported – however, this is a strange way of executing what I consider to be an economic mandate of NIA [the National Intelligence Agency]. It seems as though it is an add-on rather than part of NIA's mandate."

Molekoti yesterday confirmed he was approached to provide a statement to the Hawks.



Finance Minister Pravin Gordhan.

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A senior Hawks officer said the probe into the unit was a "prosecutorial-led investigation", and the NPA was providing the team with guidance and instructions.

The information note sent to Mahlobo by lead investigating officer Brigadier Nyameka Xaba alleges that Gordhan and Pillay were instrumental in the creation of the rogue unit. Xaba heads up a specialised Hawks unit, which has been set up to probe crimes against the state.

City Press has learnt that the NPA has allocated four prosecutors – all from the Priority Crimes Litigation Unit, which Abrahams used to head – to lead the investigation team.

Abrahams told Parliament during his grilling before the Justice portfolio committee on Friday that the investigation into the rogue unit was at an advanced stage, "and we will make sure we do not make the same mistakes here".

A senior prosecutor, based at the NPA's headquarters in Silverton in Pretoria, said it was the "first time I have seen four prosecutors being allocated to one case".

The prosecutor, who spoke on condition of anonymity, said Hawks detectives Xaba – as well as a Colonel H Maluleka, a Lieutenant Colonel S Palaza and a Captain M Sewale – were "regulars" in Abrahams' office.

"They always meet in Shaolin's office. Lately, they have been given access cards. They are no longer required to sign the visitors' registry and are no longer escorted through the building," the prosecutor said.

NPA spokesperson Luvuyo Mfaku said no decision to prosecute Gordhan had yet been taken, adding: "The investigation is still under way."

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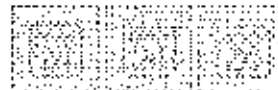
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IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO:

In the matter between:

HELEN SUZMAN FOUNDATION First Applicant

FREEDOM UNDER LAW NPC Second Applicant

and

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA First Respondent

SHAUN ABRAHAMMS Second Respondent

DR JP PRETORIUS SC Third Respondent

SIBONGILE MZINYATHI Fourth Respondent

THE NATIONAL PROSECUTING AUTHORITY Fifth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned

WESLEY JONATHAN TIMM

do hereby make oath and say that:

1. I am an attorney of this Honourable Court, practising as such as in the firm Webber Wentzel, the applicants' attorneys of record, whose principal place of business is at 90 Rivonia Road, Sandton, Johannesburg. I am duly authorised to depose to this affidavit on behalf of Webber Wentzel.


WT

- 2. The facts herein contained fall within my own personal knowledge, save where the contrary is stated or appears from the context, and are true and correct.
- 3. I have read the founding affidavit of Francis Antonie and I confirm the content thereof insofar as it relates to me and Webber Wentzel.

[Handwritten signature]

DEPONENT

I hereby certify that the deponent has acknowledged that the deponent knows and understands the contents of this affidavit, which was signed and sworn before me at Rosebank on 08 November 2016, the regulations contained in Government Notice no R1258 of 21 July 1972, as amended, and Government Notice no R1648 of 19 August 1977, as amended, having been complied with.

[Handwritten signature]

COMMISSIONER OF OATHS

Full names: Mabokela Malobe
 Address: 15 Sturdee Avenue
 Capacity: CPA

