

**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

CASE NO: 43769/17

In the matter between:

**SOUTH AFRICAN RESERVE BANK**

Applicant

and

**PUBLIC PROTECTOR**

First Respondent

**SPEAKER OF PARLIAMENT**

Second Respondent

**CHAIRPERSON OF THE PORTFOLIO COMMITTEE ON  
JUSTICE AND CORRECTIONAL SERVICES**

Third Respondent

**SPECIAL INVESTIGATING UNIT**

Fourth Respondent

**ABSA BANK LIMITED**

Fifth Respondent

**NATIONAL TREASURY**

Sixth Respondent

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**FILING NOTICE**

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PRESENTED HERewith FOR FILING:- **APPLICANT'S REPLYING AFFIDAVIT**

ON THE ROLL:

**01 AUGUST 2017**

DATED at PRETORIA on this

day of July 2017.

  
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PRETORIA**

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SERVED BY EMAIL ON 14 JULY 2017

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4<sup>th</sup> Respondent's Ref: 47/49/17/Z65/jb  
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**REPLYING AFFIDAVIT**

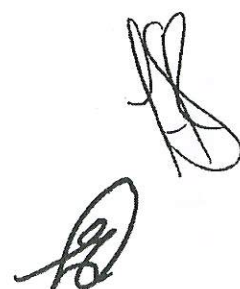
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I, the undersigned,

**LESETJA KGANYAGO**

do hereby make the following statements under oath:

- 1 I am the Governor of the South African Reserve Bank.





- 2 I deposed to the founding affidavit in this matter.
- 3 The facts to which I depose are within my personal knowledge except where it is apparent from the context that they are not.
- 4 I have read the first respondent's, the Public Protector's, answering affidavit and wish to respond thereto as set out below.
- 5 The submissions of law I make in this affidavit are made on the advice of the Reserve Bank's lawyers.

#### Introduction

- 6 On 10 July 2017, the Public Protector, filed an answering affidavit in which she consents to the order sought by the Reserve Bank and tenders the costs of the application up until the filing of her answering affidavit. The Reserve Bank accepts this tender of costs and will not seek the costs it has incurred after the filing of the Public Protector's answering affidavit.
- 7 Despite the Public Protector now conceding the merits of the case, she has filed an affidavit in which she seeks to explain "how and for what reasons" she "arrived at the remedial action in paragraph 7.2 of the Report" (paragraph 14 of the answering affidavit).
- 8 The Public Protector's impugned remedial action had immediate and damaging consequences for the country. It is clear from her answering affidavit that she had no regard to the inevitable and serious impact of her Report before releasing it. The Report

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was reckless. The Public Protector's explanation for it is based on a clear lack of understanding of the Constitution. It perpetuates a fundamental misunderstanding of the Bank's powers and functions.

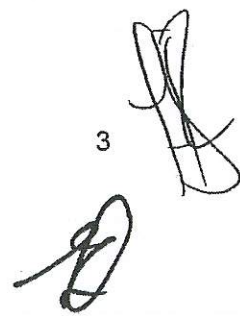
- 9 The Public Protector explains her remedial action in paragraphs 26 to 31 of her answering affidavit. She says three things:

9.1 First, she quotes sections 224(1) and 224(2) of the Constitution. These sections set out the primary object of the Reserve Bank and entrench its independence in the pursuit of that object. These are the sections that the Public Protector ordered Parliament to amend.

9.2 Second, she highlights that the mandate of the Reserve Bank is narrowly stated in section 224 of the Constitution and says that central banks around the world have broader mandates. She lists the central banks of China, India and the United Kingdom as having mandates other than just "price or currency stability".

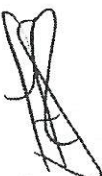

9.3 Third, she says that it appeared from her investigation that the decision to give the "lifeboat" to Bankorp did not adequately take into account the socio-economic well-being of South Africans. She therefore thought that the limited mandate of the Reserve Bank should be changed to prevent this from occurring again.

- 10 The Public Protector's lack of understanding of the ambit the Reserve Bank's powers is evident from this explanation.

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### **The Reserve Bank's constitutionally entrenched powers**

- 11 The Reserve Bank's mandate is not limited to "currency or price stability", but, as stated in section 224 of the Constitution, it must conduct its mandate in the interest of balanced and sustainable economic growth in the RSA. Section 225 of the Constitution, a section that does not appear anywhere in the Public Protector's Report or in her affidavit, gives the Reserve Bank all the powers and functions customarily exercised and performed by central banks. The section goes on to require these powers and functions to be enacted into legislation. This has been done in the South African Reserve Bank Act 90 of 1989 and the Banks Act 94 of 1990.
- 12 The basis for the Public Protector's remedial action was that the Reserve Bank's mandate is too narrow. But it is not. The Constitution vests in the Reserve Bank all the powers and functions customarily exercised and performed by central banks around the world. The Public Protector ostensibly misses this essential point about the ambit of the Reserve Bank's powers. Her explanation for the remedial action does not bear scrutiny on any reasonable basis. It fails to take into account the section of the Constitution that gives the Reserve Bank every one of the powers that other central banks customarily exercise.
- 13 This is a grave and rudimentary error. It is not befitting of a Chapter Nine institution, tasked with upholding the Constitution, to investigate a matter, prepare a Report, direct remedial action to be taken, all without even having come to grips with what the Constitution provides.



### The lender of last resort

- 14 The Public Protector's explanation also shows that she failed to take account of the detailed submissions that the Reserve Bank provided to her in February this year. In those submissions, the Bank explained the direct correlation between price stability and economic growth. It also explained that central banks routinely act as lenders of last resort to secure financial stability. This role is therefore performed by central banks in the general public interest because experience over more than a century has shown that the best way to guarantee economic growth and job creation is to have predictable monetary and financial stability policies conducted by a central bank that is accountable to society.
- 15 Both the Report and the Public Protector's answering affidavit display a fundamental lack of understanding of the monetary system and the role of central banks in it. It is an abuse of power for the Public Protector to assume that she should act in an area and direct fundamental change to it, while displaying a lack of understanding of the basic underlying principles.

### Conclusion

- 16 The markets responded with dismay to the Public Protector's Report. The Rand tumbled; R1,3 billion worth of South African government bonds were sold by non-resident investors; and ratings agencies threatened further downgrades. It is not good enough for the Public Protector to now concede the merits and say that she consents to her remedial action being set aside, when her explanation for her conduct, instead of offering a retraction and apology, perpetuates the damage.

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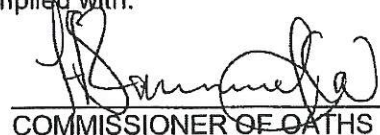


- 17 The only explanation that the Public Protector has offered for her clearly unlawful conduct exposes her own lack of competency. She does not appreciate the ambit of the Reserve Bank's powers or the fact that it does no less than other central banks around the world.
- 18 The mandate of the Reserve Bank should be left alone, unless the elected representatives of the people, through constitutionally ordained processes, wish to change it. It is not the place of the Public Protector to meddle in these matters.

WHEREFORE, the Reserve Bank persists in seeking an order in terms of the notice of motion, to which the Public Protector has consented.

  
DEPONENT

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me, Commissioner of Oaths, at ~~Pretoria~~ on this the 14<sup>th</sup> day of ~~August~~ 2017 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.

  
COMMISSIONER OF OATHS

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