

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO 52883/2017

In the matter between :

**SOUTH AFRICAN RESERVE BANK**

Applicant

and

**PUBLIC PROTECTOR**

First Respondent

**SPECIAL INVESTIGATING UNIT**

Second Respondent

**THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**

Third Respondent

**ABSA BANK LIMITED**

Fourth Respondent

**MINISTER OF FINANCE**

Fifth Respondent

**NATIONAL TREASURY**

Sixth Respondent

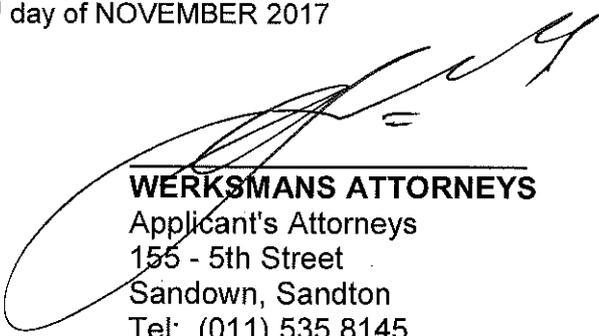
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**FILING SHEET**

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PRESENTED HEREWITH FOR FILING: **ANSWERING AFFIDAVIT**

DATED at SANDTON on this 13<sup>TH</sup> day of NOVEMBER 2017



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TO: **THE REGISTRAR OF THE ABOVE HONOURABLE COURT,  
PRETORIA**

AND TO:  
**THE PUBLIC PROTECTOR**  
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SERVED BY EMAIL ON 13 NOVEMBER 2017

AND TO:  
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AND TO:  
**THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**  
Third Respondent  
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AND TO:  
**ABSA BANK LIMITED**  
Fourth Respondent  
Head Office  
7th Floor, Barclays Towers West  
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**C/O WEBBER WENTZEL ATTORNEYS**  
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AND TO:  
**MINISTER OF FINANCE**  
Fifth Respondent  
**c/o THE STATE ATTORNEY**  
SALU Building  
255 Francis Baard Street  
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E-mail: TNhlanzi@justice.gov.za

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AND TO:  
**NATIONAL TREASURY**  
Sixth Respondent  
40 Church Square  
Pretoria Central  
Pretoria

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**SARB'S ANSWERING AFFIDAVIT IN POSTPONEMENT APPLICATION**

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I, the undersigned,

**MAMANYOGA PAUL CORLETT MANAKA**

do hereby make the following statements under oath:

- 1 I am an adult male attorney practicing as such, and a director of Werksmans Incorporated, the Reserve Bank's attorneys of record in this matter.



2 I am duly authorised to represent the Reserve Bank in this application and to depose to this affidavit on its behalf.

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 Johannes Jurgens de Jager, the General Counsel of the Reserve Bank, who deposed to the founding affidavit and the supplementary founding affidavit in this matter, has deposed to a confirmatory affidavit which is attached as "SARBAA1" and in which he confirms all aspects of this affidavit which relate to the Reserve Bank.

5 I have read the founding affidavit deposed to by the Public Protector, Ms Busisiwe Mkhwebane, in which she seeks a postponement of the hearing of the consolidated review applications and an order allowing her to file her answering affidavit on 28 January 2018. I do not intend to deal with the averments in her affidavit in sequence; I shall address them thematically. Any averment in the founding affidavit that is inconsistent with what is set out herein is denied.

6 The law is clear. Postponements are not merely for the taking.

7 There is a settled list of factors that a court will take into account when it exercises its discretion whether to grant a postponement. These are:

7.1 Whether the application was timeously made;

7.2 Whether the explanation for the postponement is full and satisfactory;



- 7.3 The prejudice to the other parties;
- 7.4 The public interest.
- 8 The Public Protector's postponement application fails on every one of these factors.
- 8.1 It was not made timeously. In fact, it was brought, on the Public Protector's own version, a full month after her legal representatives informed her that they would not be able to meet the deadline stipulated in the Deputy-Judge President's directions.
- 8.2 The explanation offered is not candid nor adequate. Key information relevant to the explanation is left out. No explanation at all is given as to why the Public Protector must have until the end of January 2018 to file an answering affidavit. No explanation is provided of what work has in fact been done by her former or current legal representatives, since the review applications were launched. No reference is made to the fact that on 31 October 2017, the review applicants, in an endeavour to accommodate the Public Protector, made a proposal to the Public Protector for an amended timetable for the filing of her answering affidavit that would have given her until 10 November 2017 to file it, so that the hearing dates of 5 to 7 December 2017 could be maintained. No mention is made of the fact that this proposal was dismissed out of hand by the Public Protector.
- 8.3 The postponement would cause severe prejudice. This derives, in the first place, from the serious impact that the impugned Report had on the South African markets and their financial stability. The delay in the resolution of this matter

continues to have a negative effect on financial stability. The Report undermines the role that the Reserve Bank plays as lender of last resort. This is a key function that the Reserve Bank performs in order to ensure financial stability within the Republic. Rating agencies regard the role of the Reserve Bank and its independence as a key indicator of stability in the market. The attack made on the Reserve Bank in the Report creates uncertainty in the market. The Reserve Bank's review in this matter has always been urgent. It therefore approached the Deputy Judge President for directions on the matter even before it launched the application in order to ensure that the case would be governed by a timetable that facilitated a hearing in as short a period as possible. I rely, in referring to these facts, on the Governor of the Reserve Bank's founding affidavit in the first urgent review that the Reserve Bank launched immediately after the release of the Report. These facts are common cause. The Public Protector did not dispute in that application, that the South African markets suffered immediately upon the release of her Report.

8.4 The postponement will not serve the public interest. It will merely give the Public Protector an unwarranted amount of time to answer an application that she has said publicly since June of this year, she is ready to answer.

9 I address each of these factors in more detail below. However, before doing so, I set out some important background to this application to place it in its proper context. The Public Protector's conduct prior to the appointment of her latest set of legal representatives evidences a determination not to have this matter heard on the appointed dates in December 2017.

## Background

- 10 The Public Protector's attempts to have the hearing in December 2017 postponed did not begin with this application.
- 11 The parties met with the Deputy Judge President for the first time in this matter on 24 July 2017. At that meeting, a timetable for the consolidated hearing of ABSA's, the Minister of Finance's and the Reserve Bank's review applications was agreed between the parties.
- 12 The timetable allowed the Reserve Bank to launch its review on 31 July 2017. It gave the Public Protector four weeks to file the record. It gave the applicants, four weeks to consider the record and supplement their founding papers. It then gave the Public Protector five weeks, after the filing of the supplementary affidavits, to file her answering affidavit. The replying affidavit and exchange of heads of argument were to follow with a Full Bench convened for the hearing of the matter on 5 to 7 December 2017. The parties, as requested by the DJP, recorded, in writing, the discussions held at the meeting of 24 July 2017 and all confirmed the correctness thereof. The DJP confirmed the timetable in a directive issued on 1 August 2017.
- 13 Notwithstanding the fact that the Public Protector's erstwhile counsel confirmed acceptance of the timetable at the meeting with the DJP on 24 July 2017, over the course of the following weeks, the Public Protector's erstwhile attorney sought to obtain the parties' agreement to postpone the hearing to 2018 because of the alleged non-availability of the Public Protector's counsel. The relevant correspondence in this regard is attached as "SARBAA2".

- 14 Despite these requests for the matter to be postponed, the Public Protector's public pronouncements indicated that she was ready for the review and that she would stick to the timetable set out in the DJP's directive. On 15 September 2017, ANN7 reported that, in an exclusive interview with the Public Protector, she said that she would be filing her answering affidavit in accordance with the DJP's directives. A copy of the transcript of the interview is attached as "SARBAA3".
- 15 The Public Protector also responded in the media to the supplementary founding affidavit that the Reserve Bank delivered on 11 September 2017. She, and her spokesperson, responded to the allegations made in that affidavit about meetings between her Office and the Presidency and the State Security Agency. The Public Protector was therefore content through-out this period to tell the public that she had an answer to the allegations made against her, to provide that answer in the media, and then to indicate that she remained committed to the timetable.
- 16 However, despite this public stance, she called for a further meeting with the Acting DJP in September 2017 to request that the December 2017 hearing dates be moved. The Acting DJP, having heard representations from the parties legal representatives, refused the request on 19 September 2017.
- 17 On 24 September 2017, the Public Protector's spokesperson told News24 that the "Public Protector does not intend to litigate through the media and will address all issues in her answering affidavit". A copy of this report is attached as "SARBAA4".
- 18 On 28 September 2017, the Public Protector's erstwhile attorneys of record, in a covering e-mail to her notice of withdrawal advised all the parties that "*the new attorneys will be*

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*on record before the end of business day."* A copy of the e-mail is attached as "SARBAA5".

19 On 1 October 2017, after the Public Protector's erstwhile lawyers withdrew from the matter, her spokesperson told eyewitness news that "in our opinion, because of the work that we've done so far, this will have no bearing or negative impact on the matter". A copy of this report is attached as "SARBAA6".

20 The Public Protector's affidavit does not refer to any of these events. As an applicant for a postponement and as an organ of state, she is obliged to conduct litigation with candour and by placing a full and fair account of the facts before the court.

21 She has not done so.

### **Timeous application**

22 An applicant for a postponement is required to move swiftly after the events giving rise to the need for a postponement. On the Public Protector's own version, the purported need for this postponement arose after she was told by her legal team on 6 October 2017 that they would not be able to prepare her answering affidavit by the deadline of 16 October 2017.

23 She ought to have brought the postponement application immediately and in any event shortly after her legal team told her on 6 October 2017 that they would not meet the 16 October 2017 deadline. She did not do so. Instead, she made requests of the other



parties to agree to a postponement. The other parties immediately refused her request; and yet, she still did not bring this application.

24 The Public Protector offers no explanation for why this application was not brought earlier. Since the 6<sup>th</sup> of October 2017, on her version, she knew that her legal team could not meet the deadline set by the DJP and yet she delayed for a full month before bringing the postponement application.

25 Instead of bringing the application, the Public Protector saw fit, yet again, to engage the media. In an interview with eNCA on 30 October 2017, the Public Protector said that she would meet the criticism levelled at her in these review applications in her answering affidavit. But she made no mention in the interview that, at the same time, she was trying to have the matter postponed so that she could have three more months to answer the case that she has claimed to be ready to meet since releasing the Report. A transcript of an excerpt from the interview is attached as "SARBAA7".

26 The Public Protector has not brought this application timeously.

#### **Explanation for delay**

27 The Public Protector's explanation for the postponement is neither full nor satisfactory.

28 The explanation commences on the 28<sup>th</sup> of September 2017. The Public Protector says that on this day her "erstwhile legal representative, Messrs Nomsa Sefanyetso filed a notice of withdrawal as attorneys of record" (paragraph 4.3 of the founding affidavit). At that stage, the Public Protector had a team of four counsel. She does not mention these



counsel in her founding affidavit. She does not explain what work they had done by this stage or whether an answering affidavit had been prepared. It would be reasonable to assume that this team had done some substantial work by the end of September because it had assisted the Public Protector in preparing the record and had received all the applicants' supplementary founding affidavits by mid-September. The Reserve Bank launched its review application on 31 July 2017 and the Public Protector's legal team had been working on the matter for at least two months before they withdrew. Their reason for withdrawing is never disclosed.

29 The Public Protector does not even explain when these counsel withdrew from the matter. Instead, one is required to read between the lines and infer that they withdrew at some point before 2 October 2017 because the affidavit goes on to state that the Public Protector's new attorneys then appointed counsel between 2 and 5 October (paragraph 4.5 of the founding affidavit).

30 According to the Public Protector, this new legal team met on 6 October 2017 and decided then that "they could not meet the deadline of 16 October 2017" (paragraph 4.9 of the founding affidavit). But the Public Protector does not explain the terms on which her new counsel team was briefed. Her new attorney, Mr Michael Motsoeneng Bill, also does not explain the terms on which he briefed counsel. He does not explain whether he told them that there was a directive from the DJP requiring the answering affidavit to be filed by 16 October 2017 or whether he ascertained their capacity to meet that deadline. This was clearly a relevant question to pose to the new counsel team. Mr Motsoeneng Bill is invited to reply to this affidavit to explain the terms on which he briefed the new counsel team and whether their capacity to meet the deadline was discussed and if so, what commitments were given. If he did not make these enquiries, then it is fair to infer

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that the decision not to meet the 16 October 2017 deadline had already been taken before the new counsel were briefed.

31 The Public Protector records in the founding affidavit that the legal team said they could not meet the deadline of 16 October 2017 for the filing of the answering affidavit "owing to the volume of the documents constituting the respective review applications" (paragraph 4.9 of the founding affidavit). The Public Protector then purports to record the volume of the documents in each application. Her count is wrong and misleading. The correct count is the following:

31.1 The ABSA application consists of many annexures that were already in the Public Protector's possession and which are copies of documents in the Rule 53 Record. These documents include, amongst others, the following:

31.1.1 the impugned Report (57 pages);

31.1.2 ABSA's response to the Provisional Report (approximately 727 pages) and which includes ABSA's annual financial statements from 1992 to 1998 (518 pages), various agreements between the Reserve Bank and Bankorp (65 pages) and submissions by Dr Stals to the Commission of Inquiry into the affairs of Tollgate Holdings (34 pages);

31.1.3 Various agreements between the Reserve and Bankorp (65 pages) which were already attached to the ABSA response to the Provisional Report;

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- 31.1.4 the CIEX report (62 pages);
  - 31.1.5 Judge Davis report (153 pages);
  - 31.1.6 ABSA's response to the Public Protector's request for information (159 pages);
  - 31.1.7 the Provisional Report (71 pages).
- 31.2 The Minister's founding affidavit is less than half of a lever arch file, and his supplementary affidavit consists of one lever arch file. It is incorrect that his application consists of approximately four arch lever files.
- 31.3 The Rule 53 record includes many documents that were already included as annexures to the founding affidavits, as well as documents that are duplicates and blank pages. When these duplicates and blank documents are omitted from the Record it runs to approximately 3000 pages. When the documents already annexed to the ABSA founding affidavit are also excluded from the record, it runs to approximately 1700 pages.
- 31.4 The Reserve Bank's application consists of 648 pages in total and annexes documents that are already included in the Rule 53 Record. Contrary to the Public Protector's claims, it does not comprise three lever arch files. The entire application fits into just over one lever arch file.

32 The Public Protector's claims about the volume of papers in this case is grossly exaggerated.

33 In any event, on 6 October 2017, the new counsel team still had ten days to work on the answering affidavit. I respectfully submit that the answering affidavit could have been prepared in that period having regard to the following facts:

33.1 The Public Protector herself and the team that conducted this investigation know all the documents well. They, after all, compiled the record themselves and the Public Protector purports to have considered the documents in preparing her Report. They could easily have taken the new legal team quite swiftly through the pertinent documents.

33.2 Since June 2017, the Public Protector has been saying publicly that she is ready for the review. Her Office and she, herself, have gone into the media and explained her version of events on at least three occasions.

33.3 The Public Protector's previous legal team must have addressed many of the issues raised in the applications in the almost two months they were on brief. This work would have formed a starting point for the work taken over by the new legal team.

33.4 The Reserve Bank's legal team took no more than six days to study the nine volume record of proceedings and to produce a supplementary founding affidavit. Although the Public Protector is required to answer three applications, there is substantial overlap between them. I therefore respectfully submit that the Public

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Protector's new legal team could have considered the papers and prepared an answering affidavit in the ten days leading up to the directed date for filing. But even if they could not do so within those ten days, they certainly could have done so in the five weeks that have elapsed since then.

34 No explanation is provided in the founding affidavit of precisely what work the Public Protector's new legal team has been doing on the matter for the whole of October 2017 and the first week of November 2017. The Public Protector is therefore invited to take the court into her confidence and make available to the court the invoices (suitably redacted to protect any confidential information in them) that she has received from her legal team. These invoices will clearly show how much time they have spent on the matter and will enable the court to interrogate the explanation that has been provided.

35 The invoices are important for another reason. The Public Protector's affidavit does not explain why her legal team needs until 28 January 2018 to file the answering affidavit. It also does not disclose how many meetings have been convened with the Public Protector in order for the legal team to be taken through the documents in the record. Against this glaring omission, she also fails to indicate on what possible basis her current legal team would require four months to prepare the answering affidavit. That is in addition to the two months which the Public Protector's previous legal team already had to prepare her answering affidavit. Six months, or even the four months which the new legal team allegedly requires, is far in excess of the time provided in the Uniform Rules for answering affidavits to be produced. It is excessive when considered against the public interest in having this matter heard and determined swiftly.

A

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- 36 The lack of any explanation for why the affidavit can only be prepared by 28 January 2018 must also be considered against the fact that on 31 October 2017, the review applicants proposed to the Public Protector that she file her answering affidavit on 10 November 2017. A copy of the proposal as it was set out in a letter from ABSA's attorneys is attached as "**SARBAA8**".
- 37 That proposal was flatly refused without explanation or a counter-proposal. The proposal would have given the Public Protector's new legal team five weeks since they came on board to prepare an answering affidavit to the applications. The Public Protector has never explained why these five weeks would not have been sufficient. She would struggle to do so because the original timetable that was agreed with the Public Protector's legal team gave them the exact same period after receipt of the supplementary founding affidavits to prepare an answer. The Public Protector does not explain why five weeks were deemed adequate in July of this year but the exact same period was suddenly inadequate in October.
- 38 In fact, all that the Public Protector's affidavit does is to say that her legal representatives told her on 6 October 2017 that they could not make the deadline of 16 October 2017. The affidavit fails thereafter to explain why a reasonable extension of that time, which would enable the December hearing dates to be maintained, was not adequate. This, again, is a significant omission.
- 39 The Public Protector's explanation of the need for the postponement is sketchy at best. It is neither full nor candid. It does not provide a proper basis for this court to grant her six months, from the date on which the Reserve Bank launched its application on 31 July 2017 to answer a case that she has said, since June 2017, she is ready to answer. The

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interposition of a new legal team from the end of September 2017 is not an adequate explanation for the requested postponement. To date, the new team has already been on brief for the same period that was originally agreed with the Public Protector, and directed by the DJP, would be an adequate time to answer these applications.

### **Prejudice**

- 40 The Public Protector is impervious to the significant prejudice that this late in the day application will cause to the parties. Her affidavit is unapologetic and fails to engage at all with the significant costs that will be incurred as a result of the postponement.
- 41 The costs are twofold. The ongoing uncertainty in the market about the impact of her Report and the manner in which it undermines the role of the Reserve Bank as a lender of last resort cannot be further perpetuated by the postponement sought. Finality is required, and required timeously. These costs to the public at large were what prompted the Reserve Bank to approach the DJP in July 2017 and to agree with all the parties to a timetable that would balance the importance of the determination of the issues with the proper management of the case.
- 42 There are also the legal costs to the Reserve Bank of opposing this application and consequent upon any postponement of the December hearing. Ordinarily, a party seeking a postponement will recognise this prejudice to the other parties who are ready to proceed and will make a tender of their costs occasioned by the postponement. The Public Protector has not done so. She ignores this obvious prejudice and, without more, says that the costs should be reserved. She clearly does not appreciate the impact of her conduct.



43 The Public Protector also mischaracterises the prejudice to the parties in her founding affidavit. She says that the respondents “will not suffer any prejudice which cannot wait until January 2018” (paragraph 4.14 of the founding affidavit). But the effect of this postponement will not be to shift the matter to January 2018. If the postponement is granted, the matter is likely only to be capable of being enrolled for hearing in the second half of next year. This is clear from the discussions with the Acting DJP on 19 September 2017 where the Public Protector made her earlier request for the hearing to be moved. The parties were told at that meeting that there were no dates available in the first terms of 2018 for a special allocation before a Full Bench. That meeting took place more than a month and a half ago and so it is reasonable to assume that space on the roll is now likely only to open up in the second half of 2018.

44 The prejudice to the review applicants is therefore not a prejudice that will end in January 2018. It is a prejudice that will endure until well into the second half of 2018. The Public Protector flatly fails even to engage with this prejudice in her founding affidavit.

#### **Public interest**

45 The Public Protector claims that there is a public interest in her not having to “place reliance on a legal team that has not had sufficient time to consider the papers, the facts and the law” (paragraph 5.17 of the founding affidavit). But her legal team has had sufficient time to consider this matter and prepare an answering affidavit. They have already been on brief for the same amount of time that the Public Protector originally agreed would be sufficient to answer this application.

- 46 The public interest favours the swift determination of this matter. The longer these applications remain unresolved, the greater the uncertainty in the market. This uncertainty is a product both of the attack made on the Reserve Bank's role as lender of last resort in the Report and the fact that the Public Protector has not taken steps to ensure that her remedial action is suspended pending the reviews.
- 47 It is trite that the Public Protector's remedial action is binding unless suspended or set aside by a court. Despite this, the Public Protector has now seen fit to indicate to the parties that she "would suspend the implementation of the remedial action in paragraph 8.1 of the Report" (paragraph 5.12 of the founding affidavit). The Public Protector, as she is fully aware, has no power unilaterally to suspend her remedial action. She has already, in writing, stated this fact. I refer in this regard to the letter that her erstwhile attorneys addressed to ABSA's legal representatives, attached as "SARBAA9". She must approach a court to suspend her remedial action. However, she has done nothing towards this end. Her remedial action therefore hangs as a constant threat that steps will be taken to implement it. This is an undesirable state of affairs that should be addressed as soon as possible. Preserving the December 2017 dates for the hearing will achieve this.
- 48 The Reserve Bank has complied with every one of the DJP's directives in the prosecution of this matter. It is committed to having the matter heard during the allocated dates in December 2017. To this end, it shall be filing, together with this affidavit, its heads of argument in the review. Under the DJP's 1 August 2017 directive, they are due on 13 November 2017 and will be filed on that date.



**Conclusion**

- 49 Declining the postponement in this matter will serve the public interest. It will enable the hearing to proceed in December and finality to be brought to issues that threaten the stability of our financial markets. The Public Protector's application is deficient. She brought the application inexcusably late and has not provided a frank and full account of why the postponement ought to be granted.
  
- 50 This is not conduct befitting an organ of state in litigation. It is also grounds for the application to be dismissed with costs on a punitive scale.

WHEREFORE, the Reserve Bank seeks an order dismissing the postponement application with costs on an attorney and client scale, including the costs of three counsel.

  
\_\_\_\_\_  
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 Sandton..... on this the 13<sup>th</sup> day of November 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.

Ex Officio Commissioner of Oaths  
by virtue of my Office as Manager of  
The Standard Bank of South Africa Limited  
Reg. No. 1962/000738/06  
SANDTON BRANCH  
  
.....  
Manager  
FINANCIAL PLANNER

  
\_\_\_\_\_  
COMMISSIONER OF OATHS  
FULL NAMES: Amos MUKOMBERANIWA  
ADDRESS: Cnr 5<sup>th</sup> & Freedom Dr  
EX OFFICIO: Financial Planner

"SARBAA1"

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

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and

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Fifth Respondent

**NATIONAL TREASURY**

Sixth Respondent

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**CONFIRMATORY AFFIDAVIT**

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I, the undersigned,

**JOHANNES JURGENS DE JAGER**

do hereby make the following statements under oath:

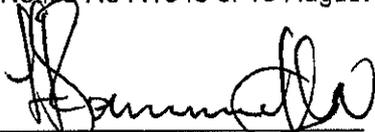
- 1 I am an admitted advocate of the High Court of South Africa. I hold the position of General Counsel in the Legal Services Department of the South African Reserve Bank.



- 2 The facts contained in this affidavit are within my personal knowledge and are both true and correct.
- 3 I have read the affidavit deposed to by **MAMANYOGA PAUL CORLETT MANAKA**, on behalf of the South African Reserve Bank, and confirm as true and correct the allegations contained therein insofar as they relate to the South African Reserve Bank.

  
\_\_\_\_\_  
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 **13<sup>th</sup>** day of **November** 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

FULL NAMES: **HANS DIMPANYANA RAMMUTLA**  
ADDRESS: **Suite 519 - 5th Floor, Premium Towers  
Cnr. Lillian Ngoyi & Pretorius Street  
Pretoria, 0002  
COMMISSIONER OF OATHS  
Practising Attorney, RSA**  
EX OFFICIO: .....

**Nzuzo Nzuzo**

"SARBAA2"

**From:** Duncan Wild <duncan.wild@webberwentzel.com>  
**Sent:** 24 July 2017 15:28  
**To:** Corlett Manaka; znogoma@parliament.gov.za; Chris Moraitis; vramaano@parliament.gov.za; nomsas@sefattorneys.co.za; Pseleka@justice.gov.za; TNhlanzi@justice.gov.za; eforbes@parliament.gov.za; TNdhlovu@justice.gov.za; Kate Hofmeyr; 'Gilbert Marcus' (gilbert@gilbertmarcus.com); Carol Steinberg (casteinberg@law.co.za); musandiwamr@rathogwa.co.za; tembeka.ngcukaitobi@gmail.com; vngalwana@vodamail.co.za; Chowe Isaac; speaker@parliament.gov.za; jwells@siu.org.za  
**Cc:** Dario Milo; Johann Scholtz; Nadia Padayachee; Bernadette Lotter  
**Subject:** URGENT: VARIOUS MATTERS - PUBLIC PROTECTOR AND OTHERS [WWA-WS\_JHB.FID1556490]  
**Attachments:** Draft Memorandum - Meeting with DJP 20170724.DOC

Dear All,

We attach a draft memorandum recording the matters agreed in the meeting with the Deputy Judge President this morning concerning the conduct of the various on-going litigation concerning Report 8 2017/2018 issued by the Public Protector on 19 June 2017.

Kindly indicate by 17h00 today whether you require any amendment to the attached memorandum. The final memorandum will be delivered to the Deputy Judge President tomorrow morning.

Kind regards,

**Duncan Wild**  
Partner

**WEBBER WENTZEL**

in alliance with > Linklaters

T: +27115305427 F: +27 11 530 6427 M: +27 73 312 9302

E: [duncan.wild@webberwentzel.com](mailto:duncan.wild@webberwentzel.com)

[www.webberwentzel.com](http://www.webberwentzel.com)

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**MEMORANDUM OF DIRECTIONS MADE AND AGREEMENTS REACHED AT A MEETING BETWEEN THE HONOURABLE AP LEDWABA DJP WITH THE LEGAL REPRESENTATIVES OF ABSA BANK LIMITED ("ABSA"), THE SOUTH AFRICAN RESERVE BANK ("SARB"), THE MINISTER OF FINANCE, NATIONAL TREASURY AND THE PUBLIC PROTECTOR ON 24 JULY 2017**

**1 URGENT APPLICATION – CASE NO: 43769/17**

- 1.1 The matter will be heard before a single judge on 1 August 2017.
- 1.2 The hearing should last for approximately one hour.
- 1.3 SARB and ABSA have filed short heads of argument. They are the only parties who will present oral argument.

**2 REVIEW APPLICATIONS**

2.1 Three review applications will be consolidated:

- ABSA: Case No 48123/17
- Minister of Finance: Case No 46255/17
- SARB: To be issued by Monday, 31 July 2017.

2.2 The following timetable was agreed upon:

14 August 2017: The Public Protector will file Rule 53 record in respect of the consolidated review



- 11 September 2017: The applicants file their supplementary founding affidavits, subject to caveat 3.1 below.
- 16 October 2017: The Public Protector files a consolidated answering affidavit in respect of all three applications
- 30 October 2017: The applicants file their replying affidavits
- 13 November 2017: The applicants file heads of argument, together with a practice note and chronology
- 27 November 2017: The Public Protector files heads of argument together with a practice note and chronology (if any).

2.3 The hearing is provisionally set down for 3 days, namely 5 - 7 December 2017, before a Full Court.

3 There are two caveats to this timetable:

3.1 The applicants will file their supplementary founding affidavits on 11 September, subject to their satisfaction with the completeness of the Rule 53 record.



- 3.2 The Public Protector will inform the parties on or before 31 August 2017 whether she will attempt to enforce the remedial action sets out in paragraphs 7.1.1 to 7.1.2 of the Public Protector's report 8 of 2017/2018 into the "Alleged Failure to Recover Misappropriated Funds" issued on 19 June 2017 pending the finalisation of the review. The parties (ABSA Bank Limited, the South African Reserve Bank, the Minister of Finance and National Treasury) put on record that should she so seek to enforce the aforementioned remedial action the parties reserve the right to approach the Court for urgent interdictory relief.
- 4 If required by the Public Protector, the parties will attempt to agree on a reasonable confidentiality regime concerning documents in the Rule 53 Record.

Handwritten signature and initials in the bottom right corner of the page.

Chris Moraitis

---

**From:** Nomsa Sefattorneys <nomsas@sefattorneys.co.za>  
**Sent:** 24 July 2017 17:22  
**To:** 'Duncan Wild'; Corlett Manaka; znogoma@parliament.gov.za; Chris Moraitis; vramaano@parliament.gov.za; Pseleka@justice.gov.za; TNhlanzi@justice.gov.za; eforbes@parliament.gov.za; TNdhlovu@justice.gov.za; 'Kate Hofmeyr'; 'Gilbert Marcus'; 'Carol Steinberg'; musandiwamr@rathogwa.co.za; tembeka.ngcukaitobi@gmail.com; vngalwana@vodamail.co.za; 'Chowe Isaac'; speaker@parliament.gov.za; jwells@siu.org.za  
**Cc:** 'Dario Milo'; 'Johann Scholtz'; 'Nadia Padayachee'; 'Bernadette Lotter'  
**Subject:** RE: URGENT: VARIOUS MATTERS - PUBLIC PROTECTOR AND OTHERS [WWA-WS\_JHB.FID1556490]

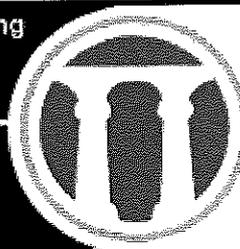
Nothing from our side. Apologies for the delayed response.

Regards.

PER: NU SEFANYETSO  
ATTORNEY & CONVEYANCER

1064 Arcadia Street, Unit G01, Metropolitan Life Building  
Hatfield, Pretoria, 0028  
Postnet Suite 152, Private Bag x15, Menlo Park, 0102

Tel: 012 942 8710  
Cell: 079 692 6494  
Fax: 086 536 2387



Sefany  
Attorn

---

**From:** Duncan Wild [<mailto:duncan.wild@webberwentzel.com>]  
**Sent:** 24 July 2017 3:28 PM  
**To:** [cmanaka@werksmans.com](mailto:cmanaka@werksmans.com); [znogoma@parliament.gov.za](mailto:znogoma@parliament.gov.za); [cmoraitis@werksmans.com](mailto:cmoraitis@werksmans.com); [vramaano@parliament.gov.za](mailto:vramaano@parliament.gov.za); [nomsas@sefattorneys.co.za](mailto:nomsas@sefattorneys.co.za); [Pseleka@justice.gov.za](mailto:Pseleka@justice.gov.za); [TNhlanzi@justice.gov.za](mailto:TNhlanzi@justice.gov.za); [eforbes@parliament.gov.za](mailto:eforbes@parliament.gov.za); [TNdhlovu@justice.gov.za](mailto:TNdhlovu@justice.gov.za); Kate Hofmeyr; 'Gilbert Marcus' ([gilbert@gilbertmarcus.com](mailto:gilbert@gilbertmarcus.com)); Carol Steinberg ([casteinberg@law.co.za](mailto:casteinberg@law.co.za)); [musandiwamr@rathogwa.co.za](mailto:musandiwamr@rathogwa.co.za); [tembeka.ngcukaitobi@gmail.com](mailto:tembeka.ngcukaitobi@gmail.com); [vngalwana@vodamail.co.za](mailto:vngalwana@vodamail.co.za); Chowe Isaac; [speaker@parliament.gov.za](mailto:speaker@parliament.gov.za); [jwells@siu.org.za](mailto:jwells@siu.org.za)  
**Cc:** Dario Milo; Johann Scholtz; Nadia Padayachee; Bernadette Lotter  
**Subject:** URGENT: VARIOUS MATTERS - PUBLIC PROTECTOR AND OTHERS [WWA-WS\_JHB.FID1556490]

Dear All,

We attach a draft memorandum recording the matters agreed in the meeting with the Deputy Judge President this morning concerning the conduct of the various on-going litigation concerning Report 8 2017/2018 issued by the Public Protector on 19 June 2017.

Kindly indicate by 17h00 today whether you require any amendment to the attached memorandum. The final memorandum will be delivered to the Deputy Judge President tomorrow morning.

Kind regards,

Duncan Wild  
Partner

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in alliance with > Linklaters

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E: [duncan.wild@webberwentzel.com](mailto:duncan.wild@webberwentzel.com)

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A handwritten signature in black ink, appearing to be 'A.M.', located in the bottom right corner of the page.

## Nzuzo Nzuzo

**From:** Nomsa Sefattorneys <nomsas@sefattorneys.co.za>  
**Sent:** 28 July 2017 15:57  
**To:** 'Duncan Wild'; johann.scholtz@webberwentzel.com; dario.milo@webberwentzel.com  
**Cc:** jwells@siu.org.za; speaker@parliament.gov.za; TNdhlovu@justice.gov.za; eforbes@parliament.gov.za; TNhlanzi@justice.gov.za; Pseleka@justice.gov.za; vramaano@parliament.gov.za; Chris Moraitis; Corlett Manaka; 'Chowe Isaac'  
**Subject:** RE: MINISTER OF FINANCE / TREASURY VS PUBLIC PROTECTOR AND 5 OTHERS - CASE NO: 46255/17, ABSA BANK LIMITED / PUBLIC PROTECTOR AND 5 OTHERS- CASE NO: 48123/17 SOUTH AFRICAN RESERVE BANK / PUBLIC PROTECTOR AND OTHERS - CASE NO 43769/17 [WWA-WS\_JHB.FID155649]  
**Importance:** High

Good day all;

Further to the minute and the provisional date for hearing for the 5<sup>th</sup> – 7<sup>th</sup> December 2017, our SC has confirmed that he is not available during the said dates as he will be acting during that time. He is available from any date starting February 2018.

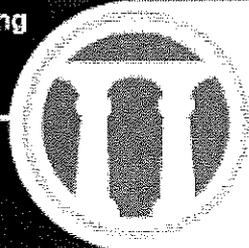
Kindly let us hear from you accordingly.

Regards.

PER: NU SEFANYETSO  
ATTORNEY & CONVEYANCER

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Hatfield, Pretoria, 0028  
Postnet Suite 152, Private Bag x15, Menlo Park, 0102

Tel: 012 942 8710  
Cell: 079 692 6494  
Fax: 086 536 2387



Sefanye  
Attorneys

**From:** Duncan Wild [mailto:duncan.wild@webberwentzel.com]  
**Sent:** 25 July 2017 8:49 AM  
**To:** KRamakoka@judiciary.org.za; Pmathunywa@judiciary.org.za  
**Cc:** jwells@siu.org.za; speaker@parliament.gov.za; TNdhlovu@justice.gov.za; eforbes@parliament.gov.za; TNhlanzi@justice.gov.za; Pseleka@justice.gov.za; nomsas@sefattorneys.co.za; vramaano@parliament.gov.za; cmoraitis@werksmans.com; cmanaka@werksmans.com; Chowe Isaac (IChowe@justice.gov.za)  
**Subject:** MINISTER OF FINANCE / TREASURY VS PUBLIC PROTECTOR AND 5 OTHERS - CASE NO: 46255/17, ABSA BANK LIMITED / PUBLIC PROTECTOR AND 5 OTHERS- CASE NO: 48123/17 SOUTH AFRICAN RESERVE BANK / PUBLIC PROTECTOR AND OTHERS - CASE NO 43769/17 [WWA-WS\_JHB.FID1556490] [

Dear All,

**RE: MINISTER OF FINANCE / TREASURY VS PUBLIC PROTECTOR AND 5 OTHERS - CASE NO: 46255/17,**

*Q Am*

**ABSA BANK LIMITED / PUBLIC PROTECTOR AND 5 OTHERS - CASE NO: 48123/17**  
**SOUTH AFRICAN RESERVE BANK / PUBLIC PROTECTOR AND OTHERS - CASE NO: 43769/17**

Please find attached a memorandum recording the meeting held between the parties in the above matters with the Deputy Judge President on 24 July 2017. The memorandum has been circulated between the parties and no objections have been received to its content or accuracy.

Best wishes,

**Duncan Wild**  
Partner

**WEBBER WENTZEL**  
in alliance with > Linklaters

T: +27115305427 F: +27 11 530 6427 M: +27 73 312 9302  
E: [duncan.wild@webberwentzel.com](mailto:duncan.wild@webberwentzel.com)  
[www.webberwentzel.com](http://www.webberwentzel.com)

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A handwritten signature in black ink, appearing to be 'J. Am' or similar, located in the bottom right corner of the page.

## Nzuzo Nzuzo

---

**From:** Nomsa Sefattorneys <nomsas@sefattorneys.co.za>  
**Sent:** 04 August 2017 12:58  
**To:** EGroenewald@judiciary.org.za; 'Precious Mathunywa'; Kramokoka@judiciary.org.za  
**Cc:** Corlett Manaka; Chris Moraitis; 'Dario Milo'; 'Duncan Wild'; 'Johann Scholtz';  
jwells@siu.org.za; Pseleka@justice.gov.za; TNhlanzi@justice.gov.za;  
TNdhlovu@justice.gov.za; vramaano@parliament.gov.za  
**Subject:** REVIEW APPLICATIONS - SARB/MINISTER OF FINANCE/ABSA / PUBLIC PROTECTOR  
**Attachments:** Letter to DJP 08 01 181.docx

Good day;

Kindly find correspondence for your attention.

Regards.

PER: NU SEFANYETSO  
ATTORNEY & CONVEYANCER

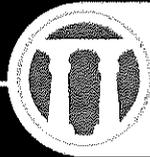
 1064 Arcadia Street, Unit G01, Metropolitan Life Building  
Hatfield, Pretoria, 0028  
 Postnet Sulte 152, Private Bag x15, Menlo Park, 0102

 Tel: 012 942 8710  
 Cell: 079 692 6494  
 Fax: 086 536 2387



Sefanye  
Attorneys

1064 Arcadia Street, Unit G01, Metropolitan Life Building,  
Hatfield, Pretoria, 0028  
Postnet Suite 152, Private Bag X15, Menlo Park, 0102



**Sefanyetso**  
Attorneys

Tel: +27 (0) 12 942 8710 | Fax: 086 536 2387  
Email: [Nomsas@sef attorneys.co.za](mailto:Nomsas@sef attorneys.co.za)

Date: 04 August 2017

Your ref:

Our Ref: NU SEFANYETSO/S82

OFFICE OF THE DEPUTY JUDGE PRESIDENT  
AP LEDWABA  
GAUTENG HIGH COURT BUILDING  
CNR VERMEULEN (MADIBA) & PAUL KRUGER STREETS  
ROOM 7.15  
PRETORIA  
EMAIL: [EGroenewald@judiciary.org.za](mailto:EGroenewald@judiciary.org.za)

Dear Sirs;

**RE: REVIEW APPLICATIONS – SOUTH AFRICAN RESERVE BANK; ABSA BANK LIMITED  
(CASE NO: 48123/2017); NATIONAL TREASURY // PUBLIC PROTECTOR AND 5 OTHERS,**

1. The above matter and the meeting held at your offices on 24 July 2017 in respect of which a minute was prepared, bears reference.
2. We refer to item 2.3 of the minutes of the meeting regarding a provisional date for the hearing of the above matter, which was agreed by the parties subject to confirmation of the availability of the Public Protector' senior counsel who was not able to attend the meeting due to prior commitment. Advocate NH Maenetje is the senior counsel on brief for the Public Protector. He was also on brief for the matter that was heard on 1 August 2017 involving the South African Reserve Bank and the Public Protector. He has indicated that he is not available in the December dates because he will be acting as a Judge in the last week of November and first week of December. Upon him informing us as such, we immediately engaged our opponents with a view of obtaining alternative dates. Accordingly the parties have confirmed their availability as follows:-

2.1 Week of 27 -29 March 2018.

3. We therefore request the Deputy Judge President, respectfully and if possible, to allocate any one of the above set of dates. The Public Protector has already invested time and money in the current team of counsel and would suffer prejudice if the December dates are kept.
4. We thank you and look forward to your response to our request. We have copied this letter to all the other parties in the matter.

**Yours Sincerely**



**SEFANYETSO ATTORNEYS**

**Per: NU SEFANYETSO.**

**AND TO: WERKMANS ATTORNEYS**

**155 5<sup>TH</sup> STREET**

**SANDTON**

**2196**

**PER ELECTRONIC MAIL TRANSMISSION: [cmanaka@werksmans.com](mailto:cmanaka@werksmans.com)**

**[cmoraitis@werksmans.com](mailto:cmoraitis@werksmans.com)**

**AND TO: WEBBER WENTZEL ATTORNEYS**

**90 RIVONIA ROAD**

**SANDTON**

**2196**

**PER ELECTRONIC MAIL TRANSMISSION: [Dario.milo@webberwentzel.com](mailto:Dario.milo@webberwentzel.com)**

**[Nadia.padayachee@webberwentzel.com](mailto:Nadia.padayachee@webberwentzel.com)**

**AND TO: STATE ATTORNEY PRETORIA**

**SECOND, THIRD & SIXTH RESPONDENT ATTORNEYS**

**SALU BUILDING**

**255 FRANCIS BAARD STREET**

**PRETORIA**

**EMAIL: [TNhhlazi@justice.gov.za](mailto:TNhhlazi@justice.gov.za)**



REF: 3335/16/Z32

AND TO: **SPECIAL INVESTIGATING UNIT**  
**FOURTH RESPONDENT**  
RENTMEESTER BUILDING, 2<sup>ND</sup> FLOOR  
74 WATERMEYER STREET  
WATERMEYER PARK  
PRETORIA  
EMAIL:

A handwritten signature in black ink, appearing to be 'QAM' or similar, located in the bottom right corner of the page.

## Nzuzo Nzuzo

---

**From:** Chris Moraitis  
**Sent:** 18 August 2017 12:13  
**To:** Nomsa Sefattorneys; Corlett Manaka; 'Dario Milo'; 'Duncan Wild'; 'Johann Scholtz'; jwells@siu.org.za; Pseleka@justice.gov.za; TNhlanzi@justice.gov.za; TNdhlovu@justice.gov.za; vramaano@parliament.gov.za  
**Cc:** 'Charlse Thamaga'  
**Subject:** RE: REVIEW APPLICATIONS - SARB/MINISTER OF FINANCE/ABSA / PUBLIC PROTECTOR

Dear all,

Whilst our client is prepared to try and accommodate the request for a change to the December dates, allocated by the DJP in his directive, to dates that are convenient to all, our client's position is that the matter should not extend beyond the first term of next year. In this regard we recall that the only date which was convenient to all counsel was the week of 26 March 2018 and more particularly the 27<sup>th</sup>, 28<sup>th</sup> and 29<sup>th</sup> March. It was for that reason that the Public Protector's attorney put these dates to the DJP.

In the circumstances, our client's position is that if a convenient alternative date cannot be agreed in the first term of next year and which is acceptable to the DJP, the matter should proceed on the dates in December and which have already allocated by the DJP, in his directive. This particularly as a result of the uncertainty relating to the remedial action, pending the review.

Regards

Chris



**Chris Moraitis**

Director

T: +27 11 535 8271 | F: +27 11 535 8771 | [cmoraitis@werksmans.com](mailto:cmoraitis@werksmans.com)

**Werksmans Attorneys**

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Private Bag 10015, Sandton, 2146, South Africa

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---

**From:** Nomsa Sefattorneys [<mailto:nomsas@sefattorneys.co.za>]  
**Sent:** 17 August 2017 19:49 PM  
**To:** Corlett Manaka; Chris Moraitis; 'Dario Milo'; 'Duncan Wild'; 'Johann Scholtz'; jwells@siu.org.za; Pseleka@justice.gov.za; TNhlanzi@justice.gov.za; TNdhlovu@justice.gov.za; vramaano@parliament.gov.za  
**Cc:** 'Charlse Thamaga'  
**Subject:** RE: REVIEW APPLICATIONS - SARB/MINISTER OF FINANCE/ABSA / PUBLIC PROTECTOR

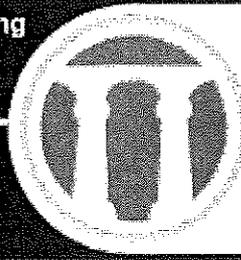
Further to my email below, all my counsels are available the week of the 12<sup>th</sup> of March 2018.

Regards.

PER: NU SEFANYETSO  
ATTORNEY & CONVEYANCER

1064 Arcadia Street, Unit G01, Metropolitan Life Building  
Hatfield, Pretoria, 0028  
Postnet Suite 152, Private Bag x15, Menlo Park, 0102

Tel: 012 942 8710  
Cell: 079 692 6494  
Fax: 086 536 2387



Sefanye  
Attorney

**From:** Nomsa Sefattorneys [<mailto:nomsas@sefattorneys.co.za>]

**Sent:** 17 August 2017 2:27 PM

**To:** 'Corlett Manaka'; 'cmoraitis@werksmans.com'; 'Dario Milo'; 'Duncan Wild'; 'Johann Scholtz'; 'jwells@siu.org.za'; 'Pseleka@justice.gov.za'; 'TNhlanzi@justice.gov.za'; 'TNdhlovu@justice.gov.za'; 'vramaano@parliament.gov.za'

**Cc:** 'Charlse Thamaga'

**Subject:** RE: REVIEW APPLICATIONS - SARB/MINISTER OF FINANCE/ABSA / PUBLIC PROTECTOR

**Importance:** High

Good day all;

I attended the DJP's office today to enquire on the allocation of a trial date. The dates already suggested are not available.

We checked the trial dates available and the following are available in the first term: 12-16 March 2018; 19 – 23 March 2018.

No allocation has been made in the 2<sup>nd</sup> term from mid-April, May and June 2018. In the event of no availability by our counsels in the 1<sup>st</sup> term, we request that you advise urgently on their availability in the 2<sup>nd</sup> term to enable us to inform Ms Groenewald accordingly.

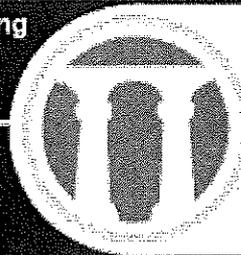
Regards.

PER: NU SEFANYETSO

ATTORNEY & CONVEYANCER

1064 Arcadia Street, Unit G01, Metropolitan Life Building  
Hatfield, Pretoria, 0028  
Postnet Suite 152, Private Bag x15, Menlo Park, 0102

Tel: 012 942 8710  
Cell: 079 692 6494  
Fax: 086 536 2387



Sefanye  
Attorney

**From:** Nomsa Sefattorneys [<mailto:nomsas@sefattorneys.co.za>]

**Sent:** 04 August 2017 12:58 PM

**To:** 'EGroenewald@judiciary.org.za'; 'Precious Mathunywa'; 'Kramokoka@judiciary.org.za'

**Cc:** 'Corlett Manaka'; 'cmoraitis@werksmans.com'; 'Dario Milo'; 'Duncan Wild'; 'Johann Scholtz'; 'jwells@siu.org.za'; 'Pseleka@justice.gov.za'; 'TNhlanzi@justice.gov.za'; 'TNdhlovu@justice.gov.za'; 'vramaano@parliament.gov.za'

**Subject:** REVIEW APPLICATIONS - SARB/MINISTER OF FINANCE/ABSA / PUBLIC PROTECTOR

Good day;

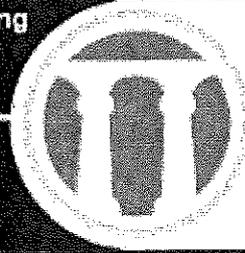
Kindly find correspondence for your attention.

Regards.

PER: NU SEFANYETSO  
ATTORNEY & CONVEYANCER

 1064 Arcadia Street, Unit G01, Metropolitan Life Building  
Hatfield, Pretoria, 0028  
 Postnet Suite 152, Private Bag x15, Menlo Park, 0102

 Tel: 012 942 8710  
 Cell: 079 692 6494  
 Fax: 086 536 2387



Sefanye  
Attorney

*ASM*

## Nzuzo Nzuzo

---

**From:** Chris Moraitis  
**Sent:** 28 August 2017 09:49  
**To:** Nomsa Sefattorneys; 'Dario Milo'  
**Cc:** Sarah Moerane; 'Nadia Padayachee'; Tina Dhevalall; Corlett Manaka; 'Johann Scholtz'; 'Duncan Wild'; Nzuzo Nzuzo  
**Subject:** RE: DATE OF HEARING

Dear all,

Our client's instructions remain that this matter must proceed without delay, particularly in light of the uncertainty relating to the remedial action, pending the review. In the circumstances the SARB's position is that this matter must proceed, in December 2017, in accordance with the requirements of the current directive of the DJP.

Regards

Chris



**Chris Moraitis**

Director

T: +27 11 535 8271 | F: +27 11 535 8771 | [cmoraitis@werksmans.com](mailto:cmoraitis@werksmans.com)

**Werksmans Attorneys**

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Private Bag 10015, Sandton, 2146, South Africa

T: +27 11 535 8000 | F: +27 11 535 8600 | [www.werksmans.com](http://www.werksmans.com)

---

**From:** Nomsa Sefattorneys [mailto:[nomsas@sefattorneys.co.za](mailto:nomsas@sefattorneys.co.za)]

**Sent:** 25 August 2017 12:31 PM

**To:** 'Dario Milo'

**Cc:** Sarah Moerane; 'Nadia Padayachee'; Tina Dhevalall; Corlett Manaka; Chris Moraitis; 'Johann Scholtz'; 'Duncan Wild'; Nzuzo Nzuzo

**Subject:** RE: DATE OF HEARING

Good day all;

Please note that I have been to the djp's office and was advised telephonically late yesterday by his clerk that he is unable to allocate the dates we requesting. All my counsels are not available in December 2017.

The next available dates are:23,24 & 25 April 2018.

I humbly request that we consider the above dates as it is going to be a mission and a cost to client to appoint a new team.

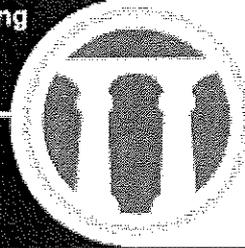
Your co-operation herein will be highly appreciated.

Regards.

PER: NU SEFANYETSO  
ATTORNEY & CONVEYANCER

1064 Arcadia Street, Unit G01, Metropolitan Life Building  
Hatfield, Pretoria, 0028  
Postnet Suite 152, Private Bag x15, Menlo Park, 0102

Tel: 012 942 8710  
Cell: 079 692 6494  
Fax: 086 536 2387



Sefanye  
Attorneys

**From:** Dario Milo [<mailto:dario.milo@webberwentzel.com>]  
**Sent:** 22 August 2017 1:00 PM  
**To:** Nomsa Sefattorneys  
**Cc:** Sarah Moerane; Nadia Padayachee; Tina Dhevalall; Corlett Manaka; Chris Moraitis; Johann Scholtz; Duncan Wild; Nzuzo Nzuzo  
**Subject:** Re: PP // ABSA: Confidentiality Agreement (2) [WWA-WS\_JHB.FID1556489] [IWOV-WS\_JHB.FID1556489]

Thabks very much

Sent from my iPhone

On 22 Aug 2017, at 12:46, Nomsa Sefattorneys <[nomsas@sefattorneys.co.za](mailto:nomsas@sefattorneys.co.za)> wrote:

Dear all;

Sorry for not responding yesterday and early today. Was in urgent court.

The files have already been dispatched with our messenger and should be reaching you before end of business day.

Regards

PER: NU SEFANYETSO  
ATTORNEY & CONVEYANCER  
<image003.png>

**From:** Dario Milo [<mailto:dario.milo@webberwentzel.com>]  
**Sent:** 22 August 2017 8:38 AM  
**To:** Nomsa Sefattorneys  
**Cc:** 'Sarah Moerane'; Nadia Padayachee; 'Tina Dhevalall'; 'Corlett Manaka'; 'Chris Moraitis'; Johann Scholtz; Duncan Wild; 'Nzuzo Nzuzo'  
**Subject:** RE: PP // ABSA: Confidentiality Agreement (2) [WWA-WS\_JHB.FID1556489] [IWOV-WS\_JHB.FID1556489]  
**Importance:** High

Dear Nomsa

In light of the signed agreement and undertaking provided to you yesterday, can you let our correspondents have the proposed confidential files during the course of the morning?

Warm regards

Dario

**Dario Milo**  
Partner

<image005.jpg>

**T:** +27115305232 **F:** +27 11 530 6232 **M:** +27 73 910 0156

**E:** [dario.milo@webberwentzel.com](mailto:dario.milo@webberwentzel.com)  
[www.webberwentzel.com](http://www.webberwentzel.com)

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---

**From:** Nadia Padayachee  
**Sent:** 21 August 2017 16:15  
**To:** Nomsa Sefattorneys  
**Cc:** 'Sarah Moerane'; 'Tina Dhevalall'; 'Corlett Manaka'; 'Chris Moraitis'; Johann Scholtz; Duncan Wild; Dario Milo; 'Nzuzo Nzuzo'  
**Subject:** RE: PP // ABSA: Confidentiality Agreement (2) [IWOV-WS\_JHB.FID1556489] [WWA-WS\_JHB.FID1556489]

Dear Nomsa

Further to our email below, please find attached the confidentiality agreement signed by Webber Wentzel.

Please note, for ease of reference we have combined both the signed agreement and undertaking into one document.

Kind regards

**Nadia Padayachee**  
Associate

<image007.jpg>

**T:** +27115305521 **F:** +27 11 530 6521 **M:** +27 72 450 0823

**E:** [nadia.padayachee@webberwentzel.com](mailto:nadia.padayachee@webberwentzel.com)  
[www.webberwentzel.com](http://www.webberwentzel.com)

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---

**From:** Nadia Padayachee  
**Sent:** 21 August 2017 11:55



**To:** 'Nomsa Sefattorneys'  
**Cc:** 'Sarah Moerane'; 'Tina Dhevalall'; 'Corlett Manaka'; 'Chris Moraitis'; Johann Scholtz; Duncan Wild; Dario Milo; 'Nzuzo Nzuzo'  
**Subject:** RE: PP // ABSA: Confidentiality Agreement (2) [IWOV-WS\_JHB.FID1556489] [WWA-WS\_JHB.FID1556489]

Dear Nomsa

Please find attached for your records the confidential undertaking signed by Webber Wentzel.

Kind regards

**Nadia Padayachee**  
Associate

<image007.jpg>

T: +27115305521 F: +27 11 530 6521 M: +27 72 450 0823

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---

**From:** Nomsa Sefattorneys [<mailto:nomsas@sefattorneys.co.za>]  
**Sent:** 21 August 2017 09:37  
**To:** Dario Milo; 'Nzuzo Nzuzo'  
**Cc:** 'Sarah Moerane'; 'Tina Dhevalall'; 'Corlett Manaka'; 'Chris Moraitis'; Johann Scholtz; Duncan Wild; Nadia Padayachee  
**Subject:** RE: PP // ABSA: Confidentiality Agreement (2) [IWOV-WS\_JHB.FID1556489]

Morning all;

Agreed and attached for all to sign.

Regards.

PER: NU SEFANYETSO  
ATTORNEY & CONVEYANCER  
<image003.png>

---

**From:** Dario Milo [<mailto:dario.milo@webberwentzel.com>]  
**Sent:** 21 August 2017 9:24 AM  
**To:** [nomsas@sefattorneys.co.za](mailto:nomsas@sefattorneys.co.za); Nzuzo Nzuzo  
**Cc:** Sarah Moerane; Tina Dhevalall; Corlett Manaka; Chris Moraitis; Johann Scholtz; Duncan Wild; Nadia Padayachee  
**Subject:** RE: PP // ABSA: Confidentiality Agreement (2) [IWOV-WS\_JHB.FID1556489]  
**Importance:** High



Dear Madam

I refer to the edits to the confidentiality undertaking sent to you by Werksmans this morning. We enclose our additional proposals based on this version. We are happy with the confidentiality agreement as sent by you last Friday, which takes into our account our and Werksmans' comments.

Warm regards

Dario Milo

**Dario Milo**  
Partner

<image007.jpg>

T: +27115305232 F: +27 11 530 6232 M: +27 73 910 0156

E: [dario.milo@webberwentzel.com](mailto:dario.milo@webberwentzel.com)  
[www.webberwentzel.com](http://www.webberwentzel.com)

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---

**From:** Tina Dhevalall [<mailto:tdhevalall@werksmans.com>]  
**Sent:** 21 August 2017 09:07  
**To:** [nomsas@sefattoorneys.co.za](mailto:nomsas@sefattoorneys.co.za)  
**Cc:** Dario Milo; Sarah Moerane; Corlett Manaka; Nzuzo Nzuzza; Chris Moraitis  
**Subject:** FW: PP // ABSA: Confidentiality Agreement (2) [IWOV-WS\_JHB.FID1556489]

<image008.jpg>

This email and its attachments are private, confidential, may be subject to legal professional privilege and are only for the use of the intended recipient.

Dear Sir / Madam

The above matter refers.

Attached hereto please find the Confidentiality Undertaking with amendments effected in track for your consideration. Kindly confirm per return e-mail that the undertaking, as it stands hereto, meets with your approval so that we may submit signed copies thereof to you.

We look forward to hearing from you.

Kind regards



**Tina Dhevalall**

Secretary

T: +27 11 535 8499 | F: +27 11 535 8600 | [tdhevalall@werksmans.com](mailto:tdhevalall@werksmans.com)

<image009.png>

**Werksmans Attorneys**

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**DELIVERED BY EMAIL**

Office of the Deputy Judge President  
The Honourable Ledwaba DJP  
Gauteng Division, Pretoria

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YOUR REFERENCE:

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DIRECT PHONE: +27 11 535 8145  
DIRECT FAX: +27 11 535 8645  
EMAIL ADDRESS: [cmanaka@werksmans.com](mailto:cmanaka@werksmans.com)

29 August 2017

Dear Deputy Judge President

**RE: SOUTH AFRICAN RESERVE BANK vs PUBLIC PROTECTOR AND 5 OTHERS, CASE NO: 436769/2017**

- 1 The abovementioned matter refers.
- 2 On 24 July 2017 the parties held a meeting with the Honourable Deputy President where amongst others, the parties agreed that the hearing of this matter was urgent and would therefore be over a period of three days, before a Full Court and the Deputy Judge President indicated that the dates that were available were 5, 6 and 7 December 2017. A memorandum recording the issues discussed at the meeting of 24 July 2017, including the dates for hearing was confirmed by all the parties and sent to the Office of the Deputy Judge President.
- 3 On 28 July 2017 the Public Protector's legal representatives advised the parties that the Public Protector's Senior Counsel was now not available on the hearing dates provided and agreed upon. Possible alternative dates were discussed amongst the parties in an attempt to accommodate the Public Protector's Senior Counsel.



**Werksmans Inc. Reg. No. 1990/007215/21 Registered Office 155 5th Street Sandton 2196 South Africa**

**Directors** D Hertz (Chairman) AL Armstrong BA Aronoff DA Arteiro T Bata LM Becker JD Behr AR Berman NMN Bhengu Z Blieden HGB Boshoff GT Bossr TJ Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan JN de Villiers R Driman S Fodor SJ Gardiner D Gewer JA Gobetz R Gootkin ID Gouws GF Griessel J Hollesen MGH Honiball VR Hosiosky BB Hotz HC Jacobs TL Janse van Rensburg N Harduth G Johannes S July J Kallmeyer SLG Kayana A Kenny BM Kew R Killoran N Kirby HA Kotze S Krige PJ Krusche P le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabaso MPC Manaka H Masondo SM Moerane C Moraitis PM Mosebo KO Motshwane L Naidoo J Nickig JJ Niemand BPF Olivier WE Oosthuizen S Padayachy M Pansegrouw S Passmoor AV Pillay D Pisanti T Potter BC Price AA Pyzikowski RJ Raath A Ramdhan L Rood BR Roothman W Rosenberg NL Scott TA Sibidla LK Silberman JA Smit JS Smit BM Sono CI Stevens PO Steyn J Stockwell JG Theron JJ Truter KJ Trudgeon DN van den Berg AA van der Merwe HA van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield DC Walker L Watson D Wegierski G Wickins M Wiehahn DC Willans DG Williams E Wood BW Workman-Davies



- 4 On 1 August 2017, the Honourable Deputy Judge President issued a directive in this matter, which included the aforementioned hearing dates. The directive stipulated, amongst others, that *"None availability of counsel representing any of the parties shall simply not be allowed as a reason for the matter not to proceed on the date arranged with my office."*
- 5 Subsequent hereto, on 4 August 2017, a request was made to the Office of the Deputy Judge President, by the legal representatives of the Public Protector, for a possible alternative dates for hearing of the matter.
- 6 On 17 August 2017 the Office of the Deputy Judge President advised the Public Protector's attorney that the alternative dates proposed were not available. We understand that further discussions then ensued between the Public Protector's attorney and the Office of the Deputy Judge President regarding alternative dates.
- 7 We were finally advised by the Public Protector's attorney on Friday 25 August 2017 that the alternative dates proposed were not available and would not be allocated.
- 8 Werksmans advised that the Public Protector's attorney on Monday 27 August 2017 that the SARB position was that the matter must proceed without delay particularly in light of the uncertainty relating to the remedial action, pending a review. The matter should therefore continue to be heard by the Full Court on the dates in December 2017 as directed by the Honourable Deputy Judge President in the current directive.
- 9 As indicated at the meeting on 24 July 2017 the matter remains urgent.
- 10 In light of the above, kindly confirm that the matter will proceed in accordance with the current directive.

Yours sincerely

Mr Corlett Manaka  
Werksmans Attorneys

cc. Webber Wentzel Attorneys  
Attorneys for Fifth Respondent  
Email: [Dario.milo@webberwentzel.com](mailto:Dario.milo@webberwentzel.com)  
[Johann.scholtz@webberwentzel.com](mailto:Johann.scholtz@webberwentzel.com)

cc. PUBLIC PROTECTOR



First Respondent  
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- cc. SPEAKER OF PARLIAMENT  
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Email: [speaker@parliament.gov.za](mailto:speaker@parliament.gov.za)  
[zngoma@parliament.gov.za](mailto:zngoma@parliament.gov.za)
- cc. CHAIRPERSON OF THE PORTFOLIO COMMITTEE  
ON JUSTICE AND CORRECTIONAL SERVICES  
Honourable Dr Mathole Motshekga  
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[TNdhlovu@justice.gov.za](mailto:TNdhlovu@justice.gov.za)

"SABAA 3"

**TRANSCRIPT OF ANN7 | LIVE NEWS**

**15 SEPTEMBER 2017 | 19:34**

**PRESENTER | ANN7 NEWS REPORTER ("ANN7")**

**PUBLIC PROTECTOR RECORDINGS PLAYED IN BULLETIN | ("Mkhwebane")**

---

**ANN7:** Public Protector Advocate Busisiwe Mkhwebane has refuted allegations that she discussed changing the Reserve Bank's mandate during a meeting with the President's lawyer and the State Security Agency. In her statement the Public Protector said she did meet with the Presidency on the 7<sup>th</sup> of June but it did not relate to the proposed amendment of the South African Reserve Bank's mandate. The statement further says that the Public Protector would like to assure the public that the meeting between the Presidency and the SSA was part of the Public Protector's constitutional mandate to conduct an investigation.

Early this week the Reserve Bank accused Advocate Mkhwebane of colluding with the Presidency and the State Security Agency to attack the Reserve Bank and in an exclusive interview with ANN7 Advocate Busisiwe Mkhwebane says she will be answering the Absa and the Reserve Bank in an answering affidavit due on the 23<sup>rd</sup> of October. She also says she is concerned over the leaks over her meeting with the Presidency.

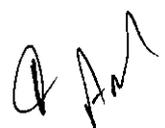
**Mkhwebane** This is not the first time that the office meets with somebody from the SSA. I indicated during the investigation, my predecessor interviewed Mr Billy Masetlha on this particular issue so I am uh I don't know why they are worried that I have met with them. Why is it problematic? Because um ... the Presidency was also - the President in fact actually was issued with a provisional report that section 7(9) because the original report, the provisional report had some remedial action which the President was supposed to action. Therefore they responded to a section 7(9) like any other person.

**ANN7** Absa filed an affidavit saying the Public Protector met with the Presidency and the SSA twice instead of once. The affidavit further says that in the meeting the Public Protector and the Presidency discussed the independence of the Reserve Bank before drafting her final CIEX Report and the Public Protector directed the SIU to reopen an investigation into Absa and recover an illegal R1,1 billion apartheid era lifeboat. It also alleges that the Public Protector met with the Presidency, the Security Agency and an unidentified economist regarding the remedial action against Absa and the Public Protector failed to afford similar opportunity to discuss her proposed remedial actions despite the requests. And the Reserve Bank in an affidavit alleged the following that the Public Protector's aim was to amend the Reserve Bank's mandate, deprive the Reserve Bank of its independent power to protect the value of the currency and the Public Protector did not accord similar meetings being held with parties affected by the remedial action.

AM

Mkhwebane: Hence I am concerned to say even the very same affidavit which is supposed not to be a matter of public um um deliberations but its out there in the public space. So, in this particular matter all the issues and which they have disputed the report on, will be deliberated in court therefore one cannot just discuss them willingly and that is done to protect the integrity of the judicial system. I mean they – the process is done in such a way that there is no external influence especially from the media or how things are being reported. So now unfortunately whoever leaked those affidavits, whether the intention as well is to cause that doubt in the minds of whoever is going to be hearing this matter – I don't know

ANN7: The ANC's Women's League has come out in support or rather in defence of the Public Protector. The League says the Reserve Bank has joined the smear campaign to discredit the Public Protector instead of complying with its remedial actions. The Reserve Bank is attempting to divert attention from the CIEX Report and they demand that the Reserve Bank stops the populous demagoguery stance of casting aspersions against Mkhwebane.



"SARBAA 4"



Weather Update: Fire warning for central SA, gale force winds in the Cape  
The week on Monday 6 November starts off with warm temperatures throughout most of the country and isolated

LAST UPDATED: 2017-11-06, 14:46

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# Public Protector denies BLF involvement in Absa investigation

2017-09-24 06:05

Abram Mashego - City Press

Public Protector Busisiwe Mkhwebane allegedly went out of her way to conceal the involvement of several key players – including Black First Land First (BLF) and South Africa's spy agency – in her investigation into the Absa-Bankorp bailout.

To this end, she allegedly withheld crucial documents and even denied in sworn legal papers that the BLF had submitted a complaint to her office, despite there being a record of this.

This is contained in documentation accompanying a supplementary affidavit filed by Barclays Africa chief executive Maria Ramos in the Pretoria High Court.

The bank wants the court to set aside the Public Protector's report, which found the bank had to repay R3.2bn in relation to the R1.25bn apartheid-era bailout of Bankorp by the SA Reserve Bank. Absa bought Bankorp in 1992.

According to court papers filed last week, Mkhwebane said there were no submissions and no minutes from any meetings held between her and the organisation. But documents before court show the BLF made an official submission to the Public Protector in February, through its leader Andie Mngxitama.

In the submission emailed directly to Mkhwebane and two of her staff members, the BLF recommends that "R3.2bn plus the loss in tax revenue, together with the interest that has been accumulated", be recovered from Absa. Those implicated should be criminally charged, it adds.

The BLF says the money should be split equally between providing "free quality decolonised education and benefiting unemployed black youth "trapped in poverty in the townships".

The BLF's submission in February followed an agreement reached at a meeting between the office of the Public Protector and the organisation, held on January 12.

But what will most likely be more devastating to Mkhwebane's attempts to distance herself from the BLF is correspondence between the protest movement, her office and the SA Revenue Service (Sars).

## "Deeply disturbed"

An email trail shows that, on the same day that Mkhwebane received the BLF's "submission of evidence", she forwarded it from her iPhone to two senior staffers in her office, Tebogo Kekana and Neels van der Merwe.

She included the instruction: "Neels, please get us some information on the tax implications of the gift to Bankorp."

On March 6, Mkhwebane acted on the BLF submission, writing to Sars commissioner Tom Moyane to enquire about the "tax implication of the [R1.25bn] donation that was received by Bankorp/Absa".

In a detailed reply two weeks later, Moyane gave Mkhwebane an elementary lesson on the Tax Administration Act's secrecy provisions and case law about the subject before stating: "It is our opinion that Sars is legally prohibited from providing the information requested..."



Public Protector Busisiwe Mkhwebane. (Pic: Network24)

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*Handwritten signature: J Am*

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in court papers. Absa lawyers Webber Wentzel accuse Mkhwebane of withholding submissions from the State Security Agency (SSA) and economist Chris Mallikane in court papers.

These submissions are believed to have influenced the Public Protector's remedial action that Absa should repay the money and that the constitutional mandate of the SA Reserve Bank be changed.

In correspondence to Mkhwebane's lawyers, Sefanyetso Attorneys, Webber Wentzel charges that, "despite being in possession of both the Mallikane submission and the SSA submission ... your client neglected to include these documents" in court papers and in the bundle exchanged between the firms.

In her supplementary affidavit, Ramos says that "it is wholly unclear" why the SSA and the unidentified economist (believed to be Mallikane) were discussing remedial action against Absa two weeks before the release of her final report.

"I am in particular deeply disturbed about why the State Security Agency should have any views at all on the remedial action being considered by the Public Protector against Absa," Ramos says.

In addition to these documents, Absa is seeking a trove of other records that the bank says are material to the investigation and the Public Protector's findings.

These records include interviews with prominent people who were involved in the original deal, the fallout that resulted from it, and who had a role in the original investigation into the loan by UK-based company Ciex and its founder Michael Oatley. However, many of these records simply could not be found, according to the Public Protector's responses.

Finding against Absa and imposing remedial action while failing or refusing to provide the bank with material records amounts to a violation of "procedural fairness", Ramos argues.

"The record confirms and strengthens both these submissions for the reasons set out below and gives rise to a further basis of review. There were five categories of documents that the Public Protector had failed to give to Absa timeously or at all in the course of this matter," the affidavit reads.

Mkhwebane's spokesperson Cleopatra Mosana said: "The Public Protector does not intend to litigate through the media and will address all issues in her answering affidavit in court."

Read more on: [public protector](#) | [absa](#) | [busisiwe mkhwebane](#) | [politics](#)

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**Nzuzo Nzuzo**

**From:** Nomsa Sefattorneys <nomsas@sefattorneys.co.za>  
**Sent:** 28 September 2017 12:31  
**To:** 'Nhlanzi Thembelihle'; 'Ndhlovu Thandeka'; 'Nadia Padayachee'; Nzuzo Nzuzo; Corlett Manaka; Chris Moraitjs; 'Duncan Wild'; 'Dario Milo'; 'Bernadette Lotter'  
**Cc:** 'Kgomotso Ramokoka'; Mtroskie@judiciary.org.za  
**Subject:** NOTICE OF WITHDRAWAL AS ATTORNEYS OF RECORD  
**Attachments:** NOTICE OF WITHDRAWAL AS ATTORNEYS OF RECORD .doc

Good day;

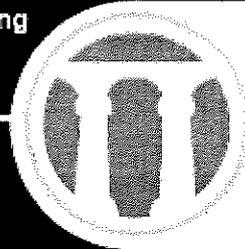
Kindly find herewith notice of withdrawal as attorneys of record for your attention. Please be advised further that the new attorneys will be on record before the end of business day.

Regards.

PER: NU SEFANYETSO  
 ATTORNEY & CONVEYANCER

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Sefanye  
 Attorneys

*Handwritten signature/initials*

"SARBAA 6"



EYEWITNESS NEWS

EXCLUSIVE: MKHWEBANE'S LEGAL TEAM DUMPS HER AHEAD OF ABSA COURT BATTLE

The Public Protector's Cleo Mosana says their attorney's withdrawal will not affect their case.



Public Protector Busisiwe Mkhwebane. Picture: Cindy Archillies/EWN

Public Protector Busisiwe Mkhwebane (http://ewn.co.za/Topic/Public-Protector-Busisiwe-Mkhwebane)
Katleho Sekhotho (http://ewn.co.za/Contributors/katleho-sekhotho) | about a month ago (36 days ago)

JOHANNESBURG -- Eyewitness News can reveal that Public Protector Busisiwe Mkhwebane's attorneys have dumped her as she prepares to go to court to defend the controversial report into the apartheid-era Absa bailout.

The advocate released the report in June which included the remedial action that the special investigating unit recovers more than a R1 billion from Absa.

Last week, Finance Minister Malusi Gigaba hit out at Mkhwebane over the report, saying she failed to conduct a diligent investigation as required by the law and the Constitution.

The review application is set down for three days in December.

The Public Protector's Cleo Mosana says their attorney's withdrawal will not affect their case.

"In our opinion, because of the work that we've done so far, this will have no bearing or negative impact on the matter."

She says they remain focused.

"One of the things that the Public Protector wants is that she wanted to ensure that she also beefs up her defence team."

Mosana says they don't know why their attorneys withdrew from this high profile case but are trying to find out.

(Edited by Leeto M Khoza)

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**TRANSCRIPT OF INTERVIEW | eNCA**  
**30 OCTOBER 2017**  
**REPORTER | KARYN MAUGHAN ("MAUGHAN")**  
**INTERVIEW | BUSISIWE MKHWEBANE ("MKHWEBANE")**  
**SUBJECT | MKHWEBANE TO SET RECORD STRAIGHT ON ABSA BAILOUT**

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Maughan: Did you have any idea what kind of experience you would have in your first year in office?

Mkhwebane: I had an idea because I was understanding that I am not going to be serving only a few uhm you know ... only a few people but I am going to be serving all the South Africans. I mean where I was working I used to work with asylum seekers and refugees so it was only few numbers but now coming here I knew it will be more responsibilities and I knew that there will be a lot of work to be done and especially an institution like a Public Protector which needs to lead by example and walk the talk and making sure that when we investigate maladministration we don't commit the same internally issues of not being accused of delaying to finalise complaints of which we've received.

Maughan: In this last year the big sort of bomb shell moment for you was that CIEX Absa report and ofcourse that addressed the kind of things that we've been talking about issues of poverty and the Reserve Bank. Looking back at how that report has had such profound consequences for you - where you've come under such attack - would you have done something different? What - what would you have done now with hindsight uhm that would be different in dealing with that whole investigation? If anything ...

Mkhwebane: Mmm remember that report is still valid. I only agreed that the remedial action 7.2 which was dealing with the amendment of the Constitution be set aside. The other one is still valid though it has been taken on judicial review. Uhm so what I would have done differently - again remember I indicated the crafting of that remedial action - hence I agreed that it be set aside. It was not the intention to have it like that and again there was no issues of bad faith to say I am doing this because I had the power. Again coming to the issue of an ombudsmanship - because you know before the Nkandla judgement the Public Protector recommendations er in fact all over a lot of ombudsman - you make recommendations, you work with the State to change whatever systems. So the issue or what I have learnt from that process is that going forward I can issue reports where it would be a recommendation and its purely a recommendation and is clearly indicated this is a recommendation its not a binding remedial action. So that's one thing which I would say it would be one thing I would take it going forward. Again internally making sure that we have very rigorous processes of quality assuring our work. Its just that with that report, remember we had a leakage of the section 7(9) and that was the challenge we were facing that it was only few people who were dealing with it and then when it was finalised that was the outcome of it. But that's what one would be doing. The report is still there. We will then

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have to deal with the details when I submit my affidavit uhm in court or answering affidavit.

Maughan: I mean the level of criticism that you faced not just over that issue of ... of seeking a Constitutional amendment with regard to the role of the Reserve Bank but I mean the Minister of Finance Malusi Gigabe, which is the affidavit that you are going to be responding to, saying that you relied on random documents, saying that the report showed very little thinking, that this was simply not good enough – I mean that must be quite a thing to face especially when its ... all of that is in the public eye and you facing that level of criticism from the Finance Minister?

Mkhwebane: Jaaa anyway uh that's uh that's why I am saying in my answering affidavit I will be dealing with all those issues and I will be clarifying a number of issues on what processes one has followed to investigate that matter ... and maybe out of that maybe let me raise the issue of co-operation and working relations with various government institutions. Remember during my interview I said I wouldn't be antagonistic or have that spirit of fighting because as a Constitutional institution I am there to strengthen various ministries, various government departments and stuff like that. Most of the time when one writes a letter to the Minister or that institution, you find that you don't engage with the Minister directly. The Minister will allocate that to the attorneys and now you find yourself having to receive a response from the attorneys which doesn't detail exactly what process has been followed whereas if you receive it from the accounting officer or the accounting authority – it will indicate – we followed the following process and this is what we've done to address the issue. The Public Protector is there to make sure that Constitutional democracy is strengthened and the very same Ministers, very same DGs, municipalities and everyone whose supposed to deliver service eh is following the processes according to the [audio not clear]. So hence I am saying in my answering affidavit I will detail the process which we followed, the responses, why certain information was not considered, why certain information has been considered.

Maughan: Ma'am I I I just wanna ask you because there was a lot of publicity around this so I am just trying to get your response on record. There were a lot of stories about the fact that it was presented as if you got a substantial amount of advice from Stephen Goodson, whose book you spoke about on twitter uhm and who is someone who allegedly denied the Holocaust and is a big fan of Hendrik Verwoed. Just on record, I know you engaged with him but did he have any impact on your on your reasoning or your findings in the CIEX report?

Mkhwebane: Mmmm I mean it was an issue of engaging with Stephen Goodson after the book where he knows the operations of the Reserve Bank. Because remember the that that illegal gift was given by the Reserve Bank and I must indicate - again to set the record straight – as the Public Protector – I can meet any person during my investigation. Remember how do I make sure that I apply my mind and that I get all the information to be able to say uhm is this report or this remedial action one has taken is taking all the facts are there. So again you know sometimes you'll be blamed by people who think you reason like them because if you think you can be influenced by meeting a person and take whatever they are saying then it will be a challenge. I mean in the position I am at we receive

number of information from all sources and when we analyse that information – remember they – whatever they – Goodson book or Goodson said during the engagement, it has nothing to do with the final product because remember I was investigating the South African Government. Why spend so much money and not have the product or the outcome out of that so it has nothing to do with whether who is this particular Goodson – as long as I want the information from you – you've provided – I've got other information to check against. So its so unfortunate that then that information will be perpetuated and people just believe whatever they are saying. But then again, the answering affidavit will give details on that particular issue.

Maughan: Did you know when you met him that he was a holocaust denialist and he was a big fan of Hendrik Verwoed? And if you didn't – if you had known – would it have changed your engagement with him in any way?

Mkhwebane: I was not meeting him as that. I was meeting him as this person who was the former director at the ... former .. what yes shareholder at the Reserve Bank.

Maughan: I think it was activist shareholder now

Mkhwebane: mmm ... so whether the person – I mean remember we've got the Constitution in this country. You cannot just conclude on a person I mean and just say I wouldn't be meeting this particular person. In my investigation, in my line of work Karyn Maughan will be said to be a this horrible person but again I need to hear your side of the story. I mean being the lawyer – you need to hear all the sides of the story before you can just go in the media and just label a person. So for me I was just interested on that particular aspect of his work.

**[END]**



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**URGENT**

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Your reference	Our reference	Date
MAT39	D Milo / J Scholtz / D Wild 2442116	31 October 2017

Dear Sir

**ABSA BANK LIMITED // PUBLIC PROTECTOR AND 5 OTHERS**

1. We refer to your letters of 10 and 18 October 2017, and our letter of 12 October 2017. We also refer to the meeting called by the Deputy Judge President for 15h15 on Tuesday, 31 October 2017.
2. We record that we received notice of the meeting with the DJP only during the afternoon of 30 October 2017, but note that representatives of our client will attend.
3. We are instructed that under no circumstances will our client agree to the postponement of the matter.
4. Our client is however prepared to agree a revised timetable to ensure that the matter is ripe for hearing on the dates for which the matter is set down - 5 to 7 December 2017. The proposed revised timetable is as follows:
  - 4.1 Public Protector to file answer by Friday 10 November 2017 (which allows an extension of over a month since the new legal team has indicated it came on board, and a period of over two months since the supplementary affidavits were filed);
  - 4.2 Applicants to file replying affidavits by Friday, 17 November 2017;
  - 4.3 Applicants to file heads of argument by Friday, 24 November 2017;
  - 4.4 Public Protector to file heads of argument by Wednesday, 29 November 2017; and

**Senior Partner:** JC Els **Managing Partner:** SJ Hutton **Partners:** BW Abraham RB Africa NG Alp OA Ampofo-Anti RL Appelbaum DC Bayman AE Bennett AP Blair DHL Booysen AR Bowley JL Brink S Browne MS Burger RI Carrim T Cassim SJ Chong A Christie KL Collier KM Colman KE Coster K Couzyn JJ Daniels CR Davidow JH Davies PM Daya L de Bruyn PU Deia JHB de Lange DW de Villiers BEC Dickinson MA Diemont DA Dingley G Driver HJ du Preez CP du Toit SK Edmundson AE Esterhuizen MJR Evans AA Fekelis GA Fichardt G Fitzmaurice JB Forman C Gabriel CP Gaul KL Gawith OH Geldenhuys MM Gibson SJ Gilmour H Goolam CI Gouws PD Grealy A Harley JM Harvey MH Hathorn JS Henning KR Hillis XNC Hlatshwayo S Hockey CM Hoffeld PM Holloway HF Human AV Ismail ME Jarvis CM Jonker S Jooste LA Kahn M Kennedy A Keyser M Kyle J Lamb L Marais S McCafferty MC McIntosh SJ McKenzie M McLaren SI Meltzer CS Meyer AJ Mills JA Milner D Milo NP Mngomezulu S Mogale M Moloi LE Mostert VM Movshovich RA Nelson BP Ngoepe A Ngubo ZN Ntshona MB Nzimande L Odendaal GJP Olivier N Paige AMT Pardini AS Parry S Patel GR Penfold SE Phajane TC Phala MA Phillips D Ramjattan GI Rapson Z Rawoot K Rew G Richards-Smith NJA Robb DC Rudman S Rugan M Sader H Samsodien JW Scholtz KE Shepherd AJ Simpson N Singh N Singh-Nogueira P Singh J Smit MP Spalding PS Stein MW Straeuli LJ Swaine JM Swanepoel Z Swanepoel A Thakor A Toefy PZ Vanda PP van der Merwe SE van der Meulen CS Vanmali JE Veeran D Venter B Versfeld MG Versfeld TA Versfeld DM Visagie J Watson DP Wild KL Williams K Wilson RH Wilson M Yudaken **Chief Operating Officer:** SA Boyd

- 4.5 The hearing will take place as set down from 5 to 7 December 2017
5. Counsel for our client have discussed this timetable with counsel for the South African Reserve Bank who have indicated that the time table is suitable, and are currently awaiting confirmation from counsel for the Minister of Finance.
  6. We will bring this letter and proposed timetable to the attention of the DJP at the meeting with him.
  7. We await your urgent response.
  8. Our client's rights are reserved

Yours faithfully

**WEBBER WENTZEL**

Johann Scholtz / Dario Milo / Duncan Wild  
Partner

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*Sent electronically without signature*

A handwritten signature in black ink, appearing to be 'D Milo' or similar, located in the bottom right corner of the page.

**cc: His Excellency, Mr JG Zuma**  
**The President of the Republic of South Africa**  
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lChowe@justice.gov.za

**cc: Special Investigating Unit**  
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**cc: The South African Reserve Bank**  
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**cc: Minister of Finance**  
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**cc: National Treasury**  
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**cc: The Speaker of Parliament**  
**Honourable Baleka Mbete**  
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**cc: Chairperson of the Portfolio Committee**  
**on Justice and Correctional Services**  
**Honourable Dr Mathole Motshekga**  
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## Nzuzo Nzuzo

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**Subject:** FW: URGENT: ABSA BANK LIMITED // PUBLIC PROTECTOR AND 5 OTHERS (CASE NO. 48123/17) [WWA-WS\_JHB.FID1556490] [IWOV-Commercial.FID531783]  
**Attachments:** 20171031 WW to MBA Public Protector.PDF

**From:** Duncan Wild [mailto:duncan.wild@webberwentzel.com]

**Sent:** 31 October 2017 09:40 AM

**To:** info@mbaincorporated.co.za; michael@mbaincorporated.co.za; caleb@mbaincorporated.co.za; admin@mbaincorporated.co.za; jwells@siu.org.za; slucas@siu.org.za; pseleka@justice.gov.za; Chowe Isaac; Corlett Manaka; Chris Moraitis; Sarah Moerane; Nzuzo Nzuzo; TNhlanzi@justice.gov.za; TNdhlovu@justice.gov.za; speaker@parliament.gov.za; zingoma@parliament.gov.za; eforbes@parliament.gov.za; vramaano@parliament.gov.za

**Cc:** Johann Scholtz; Dario Milo; Nadia Padayachee; Prathik Mohanlall; Bernadette Lotter

**Subject:** URGENT: ABSA BANK LIMITED // PUBLIC PROTECTOR AND 5 OTHERS (CASE NO. 48123/17) [WWA-WS\_JHB.FID1556490]

Dear All,

Please find urgent correspondence attached for your attention.

Regards,

**Duncan Wild**  
Partner

**WEBBER WENTZEL**

in alliance with > Linklaters

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