



**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

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Mathopo Moshimane Mulangaphuma Incorporated T/A DM5 Incorporated		
Rule 3.4 application, dated 26 November 2020, for leave to cross-examine Mr Gavin John Craythorne .		
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**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE
CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
INCLUDING ORGANS OF STATE**

In the application to cross examine:

**MATHOPO MOSHIMANE MULANGAPHUMA INCORPORATED
T/A DM5 INCORPORATED**

Applicant

In re:

GAVIN JOHN CRAYTHORNE

NOTICE OF MOTION

KINDLY TAKE NOTICE that the abovenamed Applicant intends to make application to this Commission of Inquiry for an order in the following terms on a date to be determined by the Commission of Inquiry:

1. Granting the applicant access to cross examine the witness, Mr Gavin John Craythorne.

TAKE NOTICE FURTHER that the accompanying affidavit of **LERATO MATHOPO** together with annexures thereto will be used in support hereof.

DATED AT ILLOVO ON THIS THE 26TH DAY OF NOVEMBER 2020



MATHOPO MOSHIMANE MULANGAPHUMA INCORPORATED
t/a DM5 INCORPORATED
Applicant's Attorneys

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Ref: CHL/

**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE
CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING
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In the application to cross examine:

**MATHOPO MOSHIMANE MULANGAPHUMA INCORPORATED
T/A DM5 INCORPORATED**

Applicant

In re:

GAVIN JOHN CRAYTHORNE

FOUNDING AFFIDAVIT IN SUPPORT OF APPLICATION TO CROSS EXAMINE

I, the undersigned,

LERATO MATHOPO

do hereby make oath and declare state that:

1. I am an adult female admitted attorney of the High Court of South Africa and a director of the applicant whose office is located at 1st Floor, 27 Fricker, 27 Fricker Road, Illovo.
2. I depose to this affidavit in support of the relief reflected in the notice of motion, and I am duly authorised to depose hereto.

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3. The facts deposed to in this affidavit, save where the context indicates otherwise, are within my own personal knowledge and to the best of my belief both truly and correctly stated.

INTRODUCTION

4. On or about 12 November 2020, I received a Notice in terms of Rule 3.3 from the Secretary of the Commission in terms of which I was notified that an intended witness, Mr Gavin John Craythorne ("Craythorne"), had *inter alia* made reference to the applicant in an affidavit which had the effect of implicating the applicant in unlawful, illegal and improper conduct. A copy of this notice is attached as "LM1"
5. This is an application to afford the applicant access to cross examine the witness for the reasons set out in more detail below.
6. At the outset, I submit that I have never met Craythorne, nor is it clear to me the basis on which he makes the offensive and unfounded allegation about the applicant in this affidavit.
7. For the sake of clarity, I submit that the allegation made against the applicant is vehemently denied, and there exists no basis for Craythorne to have made it.
8. Apart from the applicant applying to the Commission to cross examine Craythorne to put him to the proof of the allegation made, the applicant will take the necessary steps to demand Craythorne withdraw the allegation, failing which the applicant reserves its rights to take the appropriate action

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against Craythorne as a result of the defamatory allegation made against the applicant.

THE EVIDENCE

9. The applicant is referred to only once in Craythorne's affidavit at paragraph 223 thereof:

"223 In our letter to the Minister we also stated that we had no faith in the forensic investigation that the Department of Public Enterprises launched to look into our grievances. Our lack of faith was vindicated when the Deputy Director General of Public Enterprises disclosed to the Portfolio Committee in Parliament on 7 November 2018 that the investigation had been abandoned under instructions from the Public Enterprises Minister, Pravin Gordhan because the forensic investigators, DM5 Incorporated, had themselves been implicated in state capture at PRASA"

THE INVESTIGATION

10. The applicant submitted a request for quotation issued by the Department of Public Enterprises to render the necessary investigatory services in respect of the investigation into Alexkor (Pty) Ltd during the course of 2018.
11. Subsequent to the submission, the applicant was duly appointed to render these services.
12. The applicant was involved in the initial consideration of documentation relative to the investigation, and attended initial meetings in this regard.

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13. During the latter part of 2018, the applicant was advised that the Department of Public Enterprises was concerned about the applicant's capacity and manpower to further continue with the investigation, in addition the applicant was told that as a result of it having advised PRASA in some of the transactions that were being investigated, and attracting negative media attention , the concern exists that the applicant's involvement with the Alexkor investigation could negatively impact the perception of the investigation.
14. Based on the aforementioned, the applicant agreed to withdraw from the investigation.
15. It is not clear from paragraph 223 of Craythorne's statement that he is quoting the Deputy Director General and as such, his statement constitutes unsubstantiated hearsay and therefore cannot be within Craythorne's personal knowledge. The applicant would like to be afforded an opportunity to cross examine Craythorne to test the veracity of this allegation, with the ultimate view to request the Commission strike it out, upon it becoming apparent that there exists no basis for Craythorne having made the statement in his affidavit.
16. In this regard, we will request access to the transcripts from Parliament of the day in question.
17. I submit that the statement is highly prejudicial to the applicant, and if it becomes part of the record of proceedings of the Commission, without the applicant having been afforded an opportunity to cross examine the witness, the reputational damage which the applicant will suffer will be immeasurable.

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18. The applicant renders legal services in both the public and private sector and any suggestion that the applicant has been implicated in State Capture, in instances where the witness has proffered no evidence in support thereof would result in dire harm for the applicant.

FURTHER CONSIDERATIONS

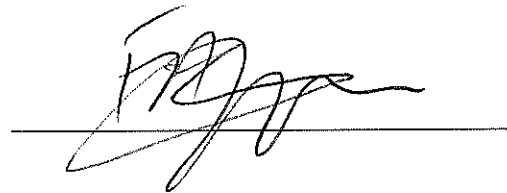
19. In addition to making this application to cross examine Craythorne, the applicant will address the necessary demand to Craythorne to immediately withdraw the untrue statement pertaining to the applicant, failing which the applicant will have no choice but to pursue the necessary civil and criminal action against Craythorne.
20. The applicant further respectfully submits to the Commission that this issue is capable of resolution without having to resort to cross examining Craythorne and will engage the Commission further in this regard.
21. I submit that the cross examination of Craythorne is a last resort for the applicant, as it will result in the incurrence of unnecessary legal costs for the applicant, and will burden the Commission's time unnecessarily.
22. The applicant will however take all steps necessary to protect its good name, and in the event that resolution of this issue is not possible without resorting to cross examination, the applicant persists in its request for the relief sought in the notice of motion to be granted.


LERATO MATHOPO

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I certify that on the 26th day of November 2020 in my presence the deponent signed the affidavit and declared that she:

- a. Knows and understands the contents thereof;
- b. Has no objection to taking this oath;
- c. Considers the oath to be binding on her conscience; and uttered the words "I swear that the contents of this affidavit are true, so help me God".



COMMISSIONER OF OATHS

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**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
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NOTICE IN TERMS OF RULE 3.3

TO : DM5 INC
TEL : 011 721 4800
EMAIL : info@dm5.co.za

IN TERMS OF RULE 3.3 OF THE RULES OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE (“THE COMMISSION”), YOU ARE HEREBY GIVEN NOTICE THAT:

- 1 The Commission’s Legal Team intends to present the evidence of **MR GAVIN JOHN CRAYTHORNE (“Mr Craythorne”)** at its hearing held at the Old Council Chamber of the Municipality of the City of Johannesburg, 158 Civic Boulevard Braamfontein, Johannesburg. The presentation of Mr Craythorne’s evidence will commence on a date to be confirmed at a later stage. The evidence in question implicates or may implicate you in unlawful, illegal or improper conduct in the respects set out below.
- 2 The allegations set out in the evidence of Mr Craythorne implicate or may implicate you in, *inter alia*, allegedly participating in various acts of fraud, corruption, maladministration money laundering and/or tax evasion.
- 3 The statement of Mr Craythorne which implicate or may implicate you in the above allegations is annexed hereto marked “A”. Your attention is drawn to **paragraph 223**.

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4 **Annexure GC103** to the statement of Mr Craythorne which implicates or may implicate you in the above allegations is annexed hereto marked "B".

5 Due to the fact that you are implicated or may be implicated by the evidence of Mr Craythorne, you are entitled to attend the hearing at which that evidence is being presented. You are also entitled to be assisted by a legal representative of your choice when that evidence is presented. The full statement of Mr Craythorne will be uploaded on the Commission's website as soon as he concludes his evidence. The transcript will be uploaded daily.

6 If you wish to:

6.1 give evidence yourself;

6.2 call any witness to give evidence on your behalf; or

6.3 cross-examine the witness

then you must apply, within fourteen (14) calendar days of this notice, in writing to the Commission for leave to do so.

7 An application referred to in paragraph 6 above must be submitted to the Secretary of the Commission. The application must be submitted with an affidavit from you in which you respond to the witness's statement insofar as it implicates you. The affidavit must identify what parts of the witness's statement are disputed or denied and the grounds on which they are disputed or denied.


8 If you wish to apply to cross-examine the witness, your application must follow the requirements of Rule 11.3. In other words, it must be a substantive application on affidavit accompanied by a notice of motion.

9 In the event that you believe that you have not been given a reasonable time from the issuance of this notice to the date on which the witness is to give evidence as set out above and you are prejudiced thereby, you may apply to the Commission in writing for such order as will ensure that you are not seriously prejudiced.

10 Please take note that even if you do not make an application under Rule 3.4:

- 10.1 in terms of Rule 3.10, the Chairperson may, at any time, direct you to respond in writing to the allegations against you or to answer (in writing) questions arising from the statement; and
- 10.2 in terms of Regulation 10(6) of the Regulations of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State GN 105 of 9 February 2018 published in Government Gazette 41436, as amended, the Chairperson may direct you to appear before the Commission to give evidence which has a bearing on a matter being investigated.
- 11 The witness statement and annexures provided to you are confidential. Your attention is drawn to Regulations 11(3) and 12(2)(c) governing the Commission, which make it a criminal offence for anyone to disseminate or publish, without the written permission of the Chairperson, any document (which includes witnesses' statements) submitted to the Commission by any person in connection with the Commission's inquiry.
- 12 Any response to or application in regard to this notice must be sent to Advocate André Lamprecht, Ms Shannon van Vuuren and Ms Rachel Niewenhuis at secretary@commissionsc.org.za.

DATED AT PARKTOWN ON THIS 11th DAY OF NOVEMBER 2020



PROF ITUMELENG MOSALA
Secretary
Judicial Commission of Inquiry into Allegations
of State Capture, Corruption and Fraud
in the Public Sector including Organs of State