



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

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**IN THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE  
CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING  
ORGANS OF STATE, HELD AT JOHANNESBURG ON 29 JULY 2020**

***IN RE:*** APPLICATION OF DR J P PRETORIUS SC (“THE APPLICANT”),  
FOR POSTPONEMENT IN TERMS OF RULES 11.1 READ WITH  
RULE 3.5 OF THE RULES GOVERNING PROCEEDINGS OF THE  
JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF  
STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC  
SECTOR INCLUDING ORGANS OF STATE (“*THE RULES OF THE  
COMMISSION*”)

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**NOTICE OF MOTION**

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**KINDLY TAKE NOTICE THAT** that the abovementioned Applicant intends making  
an application in the following terms:

1. That:
  - 1.1. Non-compliance with the notice period stipulated in Rule 11.1 of the Rules  
be and is hereby condoned;
  - 1.2. The hearing of the Applicant’s testimony in terms of Rule 3.3.6.1 and  
cross-examination, in terms of Rule 3.3.6.3, of Mr John Robert McBride  
(“McBride”) and Major General Johan Booyesen (“Booyesen”), Humbulani

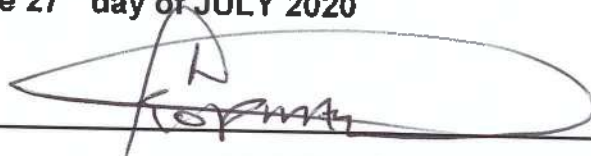
Innocent Khuba ("Khuba") and Matthews Sesoko ("Sesoko") be and is hereby postponed *sine die*.

1.3. The Applicant be granted leave to supplement his affidavit to the condonation application to extensively deal with the allegations levelled against him by McBride and Booysen.

2. Further and or alternative relief.

**KINDLY TAKE FURTHER NOTICE THAT** the affidavit of **JACOBUS PETRUS PRETORIUS** attached hereto will be used in support of this application.

**DATED at JOHANNESBURG on the 27<sup>th</sup> day of JULY 2020**



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**Ref: 5857/2019/Z16/mp**

**TO: MS KB SHABALALA**  
**ACTING SECRETARY**  
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IN THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE  
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SECTOR INCLUDING ORGANS OF STATE (*"THE RULES OF THE  
COMMISSION"*)

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FOUNDING AFFIDAVIT

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I, the undersigned,

**JACOBUS PETRUS PRETORIUS**

do hereby declare under oath and state that: -

1. I am an adult male Senior Advocate of the High Court of South Africa, duly admitted on 4 May 1982, in the employment of the National Prosecuting Authority c/o the State Attorney, Pretoria, 316 Thabo Sehume Street, SALU Building, Pretoria.



S.m.

2. At the time, when the events that form part of the allegations made against me in these proceedings, I was the Acting Special Director of Public Prosecutions and Acting Head: Priority Crimes Litigation Unit (“PCLU”), having been so appointed with effect from 1 October 2015. I was enjoined to manage and direct investigations and prosecutions relating to all the offences specified in the Prosecution Policy Directives relating to the PCLU and any other matters which the National Director refers to the PCLU. In support thereof, I refer to annexure “JPP1” hereto.
3. Save where otherwise stated, or where the contrary appears from the context, the facts contained in this affidavit are within my personal knowledge and are to the best of my knowledge and belief both true and correct.
4. Where I rely on facts and/or statements made by third parties, I do so based on the belief that same is true and correct and insofar as same is necessary I annex to this affidavit the statements, affidavits and/or confirmatory affidavits of the relevant persons. The confirmatory affidavit of my instructing attorney, Mr Luyanda Kopman (“Kopman”), on which reliance is also placed, is attached hereto, marked as annexure “JPP2”.
5. Where I make legal submissions, I do so on the advice of my legal representatives which advice I believe to be both true and correct.
6. The Chairperson of the Commission (“the Chairperson”) is requested to read the contents of the annexures attached to this affidavit as if specifically incorporated into this affidavit.

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### PURPOSE OF THE COMMISSION

7. The purpose of this Commission is more fully set out in the terms of reference gazetted in Government Notice No 41403, Government Gazette 25 January 2018.
8. In essence, the purpose of the Commission is to unearth the truth, to make findings and to recommend the appropriate remedial steps to be taken as a result of its findings.
9. In carrying out its duties and obligations, the Commission is bound to observe the relevant provisions of the Constitution of the Republic of South Africa, Act 108 of 1996 ("the Constitution"), the Rules of the Commission, any applicable legal prescripts, the principle of *audi alteram* rule, fairness and, in particular, to the persons implicated in wrongdoing and, most importantly, to afford such implicated persons an opportunity to present their case dealing and/or regarding the allegations made against them. Absent any or all of the aforesaid, will severely prejudice the rights of such affected person and amount to a miscarriage of justice.

### OVERVIEW

10. The purpose of this application is to seek the relief as set out in the Notice of Motion to which this affidavit is attached and to afford me an opportunity to bring a substantive condonation application for the cross-examination of



Innocent Humbulani Innocent Khuba ("Khuba") and Matthews Sesoko ("Sesoko"). In the event that the application is granted, the Commission will not suffer any prejudice. The granting of the leave will be for the benefit of the Commission in that it will have an opportunity of hearing my version and, at the same time, affording the evidence leaders the opportunity to cross-examine me.

11. The late institution of the application to cross-examine Khuba and Sesoko is entirely based on the fact that I was not served with the required notice in terms of Rule 3.3, indicating that Khuba and Sesoko would lead evidence, implicating me in wrongdoing in carrying out my duties and obligations. I was only informed that reliance will be placed on Khuba and Sesoko's testimony on 20 July 2020 when my legal representatives made certain enquiries with the Commission's evidence leader. I elaborate on this later in this affidavit.
12. The evidence of McBride, for whose evidence I was served with the Rule 3.3 notice, was not in compliance with the Rules of the Commission as detailed below.
13. The evidence of McBride is inextricably linked to the evidence of both Khuba and Sesoko. I am not in a position to deal with the evidence of McBride without making reference to the evidence of Khuba and Sesoko. In the event that I refer to such evidence, the evidence leaders are entitled to cross-examine me about the evidence of Khuba and Sesoko, and also using the relevant documentations pertaining to them. Were I to testify as indicated above, without having been granted permission to cross-examine Khuba and Sesoko,



it will mean that their evidence should be regarded as unchallenged with prejudicial consequences for me.

14. For the reasons set out above, it will be prejudicial for me to be subjected to cross-examination based on the allegations made by Khuba and Sesoko against me, either directly in their affidavits and/or oral evidence or indirectly through the testimony of McBride, in his affidavits and/or oral evidence.
15. I set out below exactly how this evidence is intertwined.

#### **BACKDROP TO THE FAILURE TO COMPLY WITH RULE 3.3**

16. The facts that I set out below indicates the unfairness and prejudice with which I was treated by not being timeously or at all informed of evidence that may implicate me, will be led.
17. I was served with the Rule 3.3 notice pertaining to the evidence of McBride on the 9<sup>th</sup> of April 2019 and informed that his evidence that may implicate me, will be led on the 11<sup>th</sup> of April 2019. This was clearly not a reasonable period as envisaged by Rule 3.3. I immediately informed the relevant official of the Commission about this in writing. I attach hereto a copy of my initial affidavit which I sent to the said official, marked as annexure "JPP3". The issue relating to the short service of the Notice is also fully dealt with in my affidavit relating to the condonation application and cross-examination of McBride.
18. In the said Rule 3.3 notice, I was informed that should I wish to participate in the proceedings, I have to apply in writing for leave to so participate within



nine (9) calendar days. Again, this nine (9) days given is in contrast to the two week period (fourteen days) afforded persons implicated as set out in Rule 3.3.6. I objected to this truncated time period and similarly as at the time I drafted my application to cross examine McBride, there was no response to my objection.

19. I have personally applied for the cross-examination of McBride and Booysen, which permission was granted. I settled the application which, in hindsight, I should not have done, despite my experience. The application should have been drafted by another Counsel. My current legal team have advised me that the contents of the condonation application does not address all the issues and allegations levelled against me. I wholeheartedly embrace such advice. Further I have been advised that were I not to supplement my initial affidavit, applying the **Plascon Evans** rule, an adverse inference may be drawn against me.
20. The purpose of requesting leave to supplement my initial affidavit, is to address the shortcomings in my first founding affidavit. I have been advised by my legal team that a discussion took place on the 26<sup>th</sup> of July 2020 between Adv T F Mathibedi SC ("Mathibedi") and Adv G Hulley SC ("Hulley") during which an agreement was reached that I supplement my affidavit relating to the matters set out in an e-mail dated the 26<sup>th</sup> of July 2020, attached hereto marked as annexure "**JPP4**".

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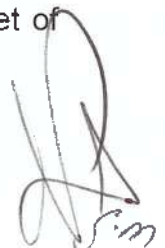
21. I have further been advised that by so doing, such an approach may identify common cause matters and issues to be addressed, which, to a certain extent may expedite the procedures and limit the evidence.
22. I did not apply for the cross-examination of Khuba and Sesoko, as I was not given the required notice. For me to be cross-examined about their versions and/or allegations when I was not given the required notice, and I would therefore be precluded from cross-examining Khuba and Sesoko, would be unfair and unjust and would amount to a miscarriage of justice.
23. I am advised that on the 9<sup>th</sup> of July 2020, Kopman received an e-mail from Hulley which was copied to Mathibedi, a copy of which is attached hereto, marked as annexure “JPP5” which stated

*“The chairperson of the Commission, the Honourable Deputy Judge President (sic) Zondo, has granted leave for your client, Adv. J. P. Pretorius, SC, to lead evidence and cross-examine Messrs R. McBride and I. Khuba. The hearing will take place on Wednesday, 29 July 2020...”*

24. My instructing attorney and I received an e-mail from an official of the Commission on the 14<sup>th</sup> of July 2020 at 09:20 attaching a notice of set down, dated the 13<sup>th</sup> of July 2020, attached hereto, marked as annexure “JPP6”, wherein I am advised that the 29<sup>th</sup> of July 2020 at 10:00 is a date on which I am “required to appear before the Commission to give evidence, answer

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29. Because the National Prosecuting Authority (“NPA”) appointed the same legal team for all NPA officials who are implicated in the proceedings of the Commission, they had, in preparation for settling the applications for Advocates George Baloyi (“Baloyi”) , Marshall Mokgathe (“Mokgathe”) and Anthony Mosing (“Mosing”), requested copies of the main affidavits of Khuba and Sesoko, as they could not find same on the Commission’s website.
30. I am advised that whilst preparing for the colleagues I mention herein, it came to their attention that the Chairperson had directed that supplementary affidavits of McBride, Khuba and Sesoko be prepared in order for them to deal with the Werksmans report that was commissioned by the then Minister of Police, Mr Nathi Nhleko, pertaining to the Werksmans investigation of the alleged alteration of the Independent Police Investigative Directorate (“IPID”) rendition report.
31. A letter requesting these affidavits and supplementary affidavit as well as the transcript of Colonel Du Plooy (“Du Plooy”), was sent to the Commission on the 1<sup>st</sup> of June 2020. A copy thereof is attached and marked “JPP8”. I am advised by Kopman that these documents were received on the 15<sup>th</sup> of July 2020, which is a day after the notice of set down pertaining to my evidence and application for cross-examination was served.
32. Since I drafted the application for cross-examination myself, the legal representatives did not have the full set of my application and only the affidavit pertaining to the cross-examination of General Booysen (“Booyesen”), excluding annexures. I arranged that my legal team receive the full set of

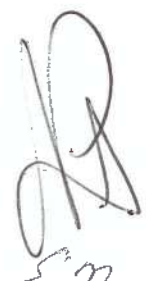
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*questions and cross-examine Mr. Robert John McBride and Major-General Johan Booysen."*


25. After receipt of the notice of set down, a consultation was arranged so that I may meet with my legal representatives. The consultation took place on the 20<sup>th</sup> of July 2020.
26. During the consultation, my legal team raised the issue of the discrepancy between annexure "JPP5" and "JPP6".
27. In order to clarify this discrepancy Mathibedi telephoned Hulley to establish the correct position. It was during that telephone conversation on the 20<sup>th</sup> of July 2020, nine days before the date of set down, that my legal representatives and I were, for the first time, made aware that the evidence leaders intends to rely, in leading my evidence and cross-examination, on the evidence of Khuba and Sesoko. Mathibedi raised concern with the state of affairs and mentioned that I was not served with a Rule 3.3. notice, relating to Khuba and Sesoko, and further that I was never served with a notice indicating that Sesoko and Khuba, during their evidence in chief, will implicate me in any wrongdoing.
28. On the same day, Kopman addressed a letter to Hulley, setting out the conversation between Mathibedi and Hulley, recording the prejudice that I will suffer should the evidence leaders proceed as intended. A copy of the letter dated the 20<sup>th</sup> of July 2020, from Kopman to Hulley is attached and marked "JPP7".



- papers, which they received on the 17<sup>th</sup> of July 2020 and the remainder on the 20<sup>th</sup> of July 2020, after our consultation.
33. In light of what my legal team learnt from the telephone conversation between Mathibedi and Hulley, the legal team realised that, in preparation for my hearing, they also need to consider the recently furnished affidavits of McBride, Khuba and Sesoko, as this evidence is intertwined. This is so because Khuba investigated the “rendition” matter with the assistance of Advocates Billy Moeletsi (“Moeletsi”) and Mosing, and Colonel Moukangwe (“Moukangwe”) from Crime Intelligence, allegedly to the exclusion of his supervisor, Sesoko, on the instruction of the then Executive Director of IPID, Ms Kukie Mbeki (“Mbeki”).
34. After Khuba submitted his signed report on the 22<sup>nd</sup> of January 2014 to Mosing, he sent same to the Director Public Prosecutions (“DPP”) South Gauteng for a decision on whether or not to prosecute the implicated persons. Before the decision was made, McBride instructed Khuba to retrieve the report and docket from the NPA, and McBride instructed Khuba and Sesoko to “review” the evidence and include what is alleged to have been outstanding.
35. The dispute with regard to this “review” of the docket and report is whether or not McBride instructed Khuba and Sesoko to alter the report in order for the report not to recommend the prosecution of Generals Dramat (“Dramat”) and Sibiya. I briefly point out the intertwined nature of this evidence further below in this affidavit.

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36. My role, in this whole narrative, is that in my memorandum to the then National Director of Public Prosecutions (“NDPP”) Advocate Shaun Abrahams (“Abrahams”) and the then Head of National Prosecution Service (“NPS”) Advocate Nomgcobo Jiba (“Jiba”), I noted the recommendations of Advocate Sello Maema (“Maema”) and agreed with his recommendation that criminal charges of fraud and defeating the ends of justice be preferred against McBride, Khuba and Sesoko.
37. Against such recommendation and other allegations, McBride alleges that I am part of the core group of Advocates who are and/or were captured, and have been at the forefront of enabling the capture of the criminal justice cluster through the prosecution of corruption fighters. This allegedly was done by protection of criminal suspects, by declining or delaying decisions to prosecute suspects investigated by the IPID where their subordinates had recommended prosecution, or working to interfere with the IPID’s oversight function of the police, as well as malicious prosecutions.
38. The Commission will no doubt understand that in order to gainsay these allegations, I need to make reference to the evidence of Khuba and Sesoko, and possibly the rendition docket, to show that the first report had been correct *vis-à-vis* the second report in light of the evidence that had been collected during Khuba’s investigation. I also need to deal with the report that was compiled by Precision Forensics in which Lt Col Ndanduleni Richard Madilonga (“Madilonga”) is sought to be discredited. It is critical to indicate at this stage that the report is undated, and it is critical that a forensic



investigation should be launched regarding the report filed by Precision Forensics.

39. It is apposite that I also bring it to the attention of the Chairperson that my legal representative and I were e-mailed the link to the dockets both for the rendition and the charges that were brought against McBride and others at 14:46 on the 24<sup>th</sup> of July 2020, five (5) days before the hearing. Again, this is prejudicial to the preparation of my evidence and cross-examination. The dockets are voluminous, well over two thousand pages. Both myself and my legal team need time to analyse, peruse and consider the contents of the dockets.
40. I feel compelled to place on record that, from the onset, when it comes to the notice and time period provided for the Rule 3.3 proceedings (in respect of McBride), the failure to timeously inform and/or serve me with the Rule 3.3 notice pertaining to the evidence of Khuba and Sesoko and/or that the Commission intends to place reliance on the affidavits of Khuba and Sesoko will greatly prejudice me if my evidence is led on 29 July 2020 whilst I have not been granted leave to cross examine them.

### **INTERRELATEDNESS OF EVIDENCE OF MCBRIDE, KHUBA AND SESOKO**

#### **McBride and Khuba in respect of the rendition report**

#### **McBride's main affidavit**

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41. In paragraph 18, McBride states that, after he was briefed by Khuba on the rendition matter, it became clear to him that the investigation had not been conducted independently and impartially in line with the Independent Police Investigative Directorate Act, No 1 of 2011 ("the IPID Act").
42. In paragraph 19, McBride states that as a result of his briefing, he was not satisfied that the evidence in the case file reliably established that Dramat and Sibiya were on the crime scene, as alleged, nor was he satisfied that the evidence contained in the file was fair and credible.

McBride's supplementary affidavit dealing with Werksmans report

43. In paragraph 9, McBride states that he was appointed to the office of the Executive Director of IPID on the 3<sup>rd</sup> of March 2014. The facts pertaining to what transpired prior to that date regarding IPID's investigation into the rendition of the Zimbabwean nationals and the preparation of the January 2014 report, are not in his personal knowledge.
44. In paragraph 22, McBride states that, in light of the facts attested by Khuba and Sesoko, and regardless of what Mosing, Moukangwe or Khuba may or may not have believe at the time, it is clear that the January 2014 report was not a "*final report*". In paragraph 63 of his main affidavit, Khuba makes a similar allegation. Khuba will have to explain as to why, on his version, if the report was not final, why recommendations were made for the prosecution of Dramat, Sibiya, Col Maluleke ("Maluleke"), Captain S E Nkosi ("Nkosi"), Constable Radebe ("Radebe") and Warrant Officer Makoe ("Makoe").



45. In paragraph 26, McBride states that IPID's Operating Procedures detail the procedure for the completion and closing of files and dockets. None of the internal requirements for the completion of files was followed prior to the referral of the January 2014 report to Mosing at the NPA.
46. In paragraph 30, McBride alleges that Khuba signed the January 2014 investigation report after being put under considerable pressure to do so by Mosing. In paragraph 26 of his main affidavit, Khuba makes a similar allegation.
47. In paragraph 35.1, McBride refers to Khuba's concerns over the involvement of SAPS' Crime Intelligence in gathering evidence, and Khuba also disclosed that his instructions were to report directly to Mbeki regarding the matter and not to involve Sesoko in the investigation, and to collaborate with Moukangwe secretly. Khuba makes a similar allegation in paragraph 15 of his main affidavit.
48. In paragraph 35.3, McBride alleges that Khuba did not convey to him that IPID had submitted any report to the NPA for a decision on prosecution.
49. In paragraph 38.5, McBride alleges that Khuba advised him that Khuba did not consider the January 2014 report to be the final report.
50. In paragraph 38.10, McBride alleges that Khuba advised McBride that the docket was with the NPA and that he intended to retrieve it in order to update the evidence and Khuba sought McBride's consent in that regard, which



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## McBride and Sesoko in respect of the rendition report

### Similarities in the affidavits of McBride and Sesoko

56. In paragraph 125, McBride lists names of prosecutors, including myself, and alleges that these prosecutors form a core group at the forefront of enabling the capture of the criminal justice cluster.
57. Sesoko, in paragraph 24 of his initial affidavit dated 16 July 2019, makes reference to “the reference group” and alleges that it comprised of private and public officials who advised the Minister of Police, Mr Nkosinathi Nhleko, on issues involving SAP. He further states that they included Advocate Raymond Mathenjwa from NPA who was also “part of the Advocates at the NPA who targeted General Booysen, Glynnis Breytenbach, the so-called SARS rogue unit, Pravin Gordhan and other prominent people”. It is common cause that I was managing the prosecutors involved in most, if not all, of these case and, unlike McBride, who mentions me, by implication, Sesoko implies that I “targeted” certain prominent people. McBride makes reference to the reference group at paragraphs 138 and 139.
58. Sesoko, in paragraph 19 and 20, states that when the erstwhile Executive Director of the IPID approved his recommendation that Khuba be the lead investigator, she instructed him that he must not report to, and that he work with Moukangwe of Crime Intelligence and keep same a secret. It was only after McBride’s appointment and briefing by Khuba with regard to the involvement of Crime Intelligence, that McBride directed that Khuba consult

with Sesoko to finalise the report. These statements are also set out in McBride's supplementary affidavit at paragraph 35.3 and 35.4.

59. At paragraph 20, Sesoko states that Khuba went to fetch the docket from the NPA and, whilst finalising the investigation, he would occasionally e-mail him reports and, on occasion, work on his computer to make changes to the draft report, as they discussed. Khuba and Sesoko allegedly finalised the report on the 18<sup>th</sup> of March 2014, and presented same to McBride for authorisation. Similar statements are made in Mr McBride's affidavit at paragraph 35.5. In paragraphs 43 and 44 of his supplementary affidavit, McBride states that Khuba and Sesoko worked together on finalising the report, and Khuba revised the report on Sesoko's computer and that, during these times, McBride had several meetings with Khuba and Sesoko to discuss progress in finalising the report. McBride, at paragraphs 46 and 47 of his supplementary affidavit states that Khuba and Sesoko finalised and signed the report on the 18<sup>th</sup> of March 2014, and McBride signed it on the 4<sup>th</sup> of April 2014. McBride then arranged for the report and docket to be delivered to the NDPP on the 13<sup>th</sup> of April 2014.
60. As such, Mr McBride cannot speak to the changes and the reasons thereof, as these changes were made by Khuba, as a result of his debates and consultation with Mr Sesoko, who then effectively took over the oversight of the finalisation of the investigation.
61. Sesoko, in paragraph 49 of his main affidavit, states that he, McBride and Khuba were arrested on the 16<sup>th</sup> of March 2016 and criminally charged for



fraud and defeating the ends of justice. Sesoko also states that the prosecutor in the matter was Maema, who was also responsible for the SARS rogue unit case and the Booysen matter. He further states at paragraph 51 that their arrest was part of a wider agenda to sterilise persons who were not compliant, in an effort to capture and control the law enforcement agencies and SARS.

### PREJUDICE

62. Taking into account the mandate of the Commission, I respectfully submit that it is important that the Chairperson should hear all the issues germane to matter. The Commission will not be prejudice by granting me the relief as prayed for in the Notice of Motion to which affidavit is attached.
63. The contrary is that if I were not to be granted such leave, I will be severely prejudiced. The purpose of this application is to enable me to place relevant information before the Commission to enable the Chairperson to make informed and just findings.
64. I have demonstrated the intertwined nature of the testimony of McBride, Khuba and Sesoko pertaining to the alteration of the rendition report and the necessity for me to demonstrate to the Chairperson that when I supported the arraignment of McBride, Khuba and Sesoko, I was not actuated by bad faith and/or as alleged being a core group of captured Advocates whose objective was to persecute corruption fighters.
65. In light of the intertwined nature of the evidence of McBride, Khuba and Sesoko, if the Chairperson orders that the hearing proceed, whilst I have not



been granted leave to cross examine Khuba and Sesoko, I will be deprived of the opportunity to have their versions tested *vis-à-vis* mine.

66. A further legal quagmire is that in leading my evidence, I have to make mention of the investigation conducted by Khuba, and may also make reference to Sesoko and, should I do so, the evidence leaders would be entitled to cross-examine me in respect of them, whilst I, on the other hand, am deprived of an opportunity to cross examine them and test their evidence. This is clearly prejudicial to me.

#### **IMPORTANCE OF THE MATTER**

67. This matter is of utmost importance to me as I have to clear my name and protect my reputation, which has already been severely tarnished by the unfounded and incorrect allegations made against me. Similarly, my version is important to the Commission, as it will assist the Chairperson in making appropriate findings.

#### **GOOD CAUSE**


68. The objective facts of this matter, as set out herein together with the annexures hereto, demonstrate that I made out a case for the relief prayed for as set out in the Notice of Motion to which this affidavit and annexures are annexed.

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**CONCLUSION**

69. I respectfully submit that I have made out a case for the relief as prayed for in the Notice of Motion to which this affidavit is attached.

**WHEREFORE** I pray for the relief as set out in the Notice of Motion to which this affidavit is attached.

  
 \_\_\_\_\_  
**JACOBUS PETRUS PRETORIUS**

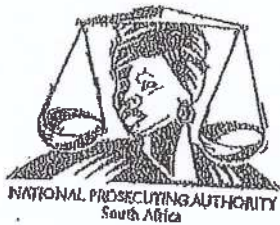
I hereby certify that the deponent declares that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at SILVERTON on this 27 day of **JULY 2020** and the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.

  
 \_\_\_\_\_  
**COMMISSIONER OF OATHS**



# ANNEXURE

JPP1



OFFICE OF THE NATIONAL DIRECTOR  
OF PUBLIC PROSECUTIONS

Victoria & Griffiths Mxenge Building  
173 Westlake Avenue, Westwind Park, Silverton,  
Pretoria, 0001

Private Bag X752, Pretoria, 0001

Contact number: 012 045 6758  
Email: ndpp@nppa.gov.za  
www.nppa.gov.za

INTERNAL MEMORANDUM

TO: ADV N. JIBA

COPY TO: DR. J.P. PRETORIUS, SC  
ACTING SPECIAL DIRECTOR OF PUBLIC PROSECUTIONS: PCLU

FROM: ADV S.K. ABRAHAMS  
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

REFERENCE: NDPP/JL/01/2016

DATE: 18 NOVEMBER 2015

SUBJECT: REFERRAL OF CASES TO THE PRIORITY CRIMES LITIGATION UNIT

Dear Adv Jiba,

1. By virtue of the appointment of Dr. J.P. Pretorius, SC as the Acting Special Director of Public Prosecutions and Head: Priority Crimes Litigation Unit (PCLU) with effect of 1 October 2015, he is enjoined to manage and direct investigations and prosecutions relating to all the offences specified in the Prosecution Policy Directives relating to the PCLU, which came into effect on 1 June 2015 and any other matter(s) which the National Director refers to the PCLU.
2. In addition to the above, the Acting Special Director, PCLU is mandated to manage and direct investigations and prosecutions relating to:
  - 2.1 The Implementation of the Geneva Conventions Act, No 8 of 2012; and
  - 2.2 The Prevention of Combating and Torture of Persons Act, No 13 of 2013 (limited solely to offences committed outside the territory of the Republic of South Africa as contemplated in section 6 of the Act).
3. I have now referred the following matters to the PCLU, which investigations and prosecutions must be managed and directed by the Acting Special Director:

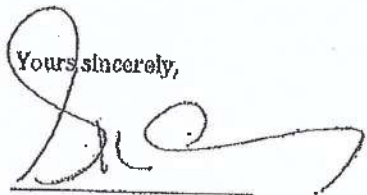
Justice in our society so that people can live in freedom and security

- 3.1 S v On-Point and Others;
- 3.2 S v McBride & Others (Defeating the ends of justice);
- 3.3 S v McBride
- 3.4 The SARS 'Rogue Unit' investigations;
- 3.5 The Nkandla investigation;
- 3.6 S v Breytenbach and Another (Deletion of information)
- 3.7 S v Breytenbach & Another (Corruption)
- 3.8 S v Booysen & Others (Gato Manor matter)
- 3.9 The South African Airways (SAA) matter
- 3.10 Investigations into alleged impropriety by NPA officials (SARS complaint re Selebi and Papparas matters).

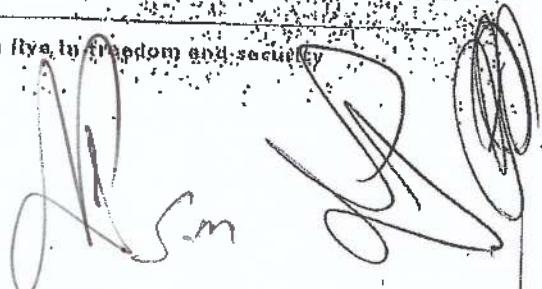
4. The PCLU should deal with all other offences in relation to the above as well as all prosecutorial functions incidental to the management of investigations and prosecutions relating to the above contraventions and specified matters.

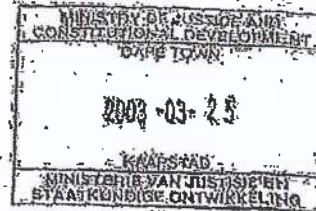
5. There are other matters that I am contemplating to refer to the PCLU as well. In this regard, I endeavor to advise you hereof in due course.

Yours sincerely,



ADV. S. K. ABRAHAMS  
 NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS:  
 DATE: 18 - 11 - 2015





PROCLAMATION BY THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

No. 2003

NATIONAL PROSECUTING AUTHORITY ACT, 1998

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

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

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

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

Given under my Hand and the Seal of the Republic of South Africa at PRETORIA on this 25th day of MARCH Two Thousand and Three.

T. M. MBEKI
President

P. M. MADUNA
Minister of the Cabinet

Handwritten signatures and initials at the bottom of the page.

No. 46, 2003

**NATIONAL PROSECUTING AUTHORITY ACT, 1998****Determination of Powers, Duties and Functions of a Special Director of Public Prosecutions**

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

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

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

Given under my Hand at **PRETORIA** on this 24<sup>TH</sup> day of March Two Thousand and Three.

**T. M. MBEKI**  
President

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

Annexure JPP2

IN THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE  
CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING  
ORGANS OF STATE, HELD AT JOHANNESBURG ON 29 JULY 2020

**IN RE:** APPLICATION OF DR J P PRETORIUS SC ("THE APPLICANT"),  
FOR POSTPONEMENT IN TERMS OF RULES 11.1 READ WITH  
RULE 3.5 OF THE RULES GOVERNING PROCEEDINGS OF THE  
JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF  
STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC  
SECTOR INCLUDING ORGANS OF STATE ("THE RULES OF THE  
COMMISSION")

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CONFIRMATORY AFFIDAVIT

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I, the undersigned,

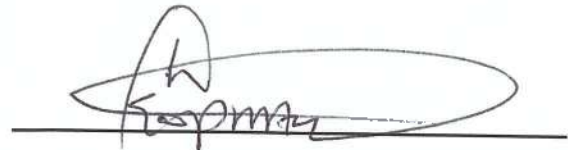
**LUYANDA KOPMAN**

do hereby declare under oath and state that: -

1. I am an adult male duly admitted Attorney, employed as such at the State Attorney, Pretoria, 316 Thabo Sehume Street, SALU Building, Pretoria.
2. The facts herein contained in this affidavit are within my personal knowledge and unless stated to the contrary or is evident from the context, are to the best of my knowledge and belief both true and correct.

LK M+U

3. I have read the founding affidavit deposed to by **JACOBUS PETRUS PRETORIUS** and confirm the contents thereof insofar as same relates to me.



**LUYANDA KOPMAN**

I hereby certify that the deponent declares that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at Pretoria on this 27<sup>th</sup> day of **JULY 2020** and the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.



**COMMISSIONER OF OATHS**

**MASIXOLE NGQUMSHE**  
Practising Attorney  
Commissioner Of Oath  
Office No N205 JSL Towers  
259 Pretorius Street  
Pretoria, 0001

JPP 3

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

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WITNESS STATEMENT IN TERMS OF RULE 3.4 OF THE RULES  
GOVERNING PROCEEDINGS OF THE JUDICIAL COMMISSION OF  
INQUIRY  
AFFIDAVIT: JACOBUS PETRUS PRETORIUS

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1.

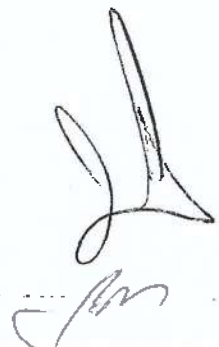
I, the undersigned

**JACOBUS PETRUS PRETORIUS**

do hereby state under oath as follows:

1.

1.1. I am an adult advocate employed by the NPA and presently working at the NPA Head Office at VGM building, Creswell street, Weavind Park, Pretoria.



- 2 -

- 1.2. The facts herein contained fall within my personal knowledge, unless otherwise indicated or appearing from the context, and are true and correct.

**A. INTRODUCTION:**

2.

I have been notified in terms of Rule 3.3 of the Rules of the Commission on the 9<sup>th</sup> of April 2019 that the Commission's legal team intend to present the evidence of Mr Robert John McBride during the proceedings on the 11<sup>th</sup> of April 2019 and further that his evidence implicates me or may implicate me. I have been informed further that I may attend the proceedings and that I may be assisted by legal representation when the witness gives evidence. This was not proper notice to me and I immediately informed the relevant official of the Commission about this in writing. I have received no answer from the official and/or the Commission. I have also been notified that I may decide to give evidence myself, call any witness to give evidence or cross-examine the witness (Mr Robert McBride). It has, however, been stated that should I wish to participate in the manner



Smy



- 3 -

aforesaid, I have to apply in 9 calendar days<sup>1</sup> in writing to the Commission for leave to do so. I was informed further that such an application has to be accompanied by a statement from me in response to the allegations of Mr Robert McBride in his statement.

3.

The evidence of Mr McBride on the on the 11, 12 and 15<sup>th</sup> of April 2019 before the Commission confirmed my concerns and persuaded me that it is absolutely necessary to request the opportunity to participate in the proceedings, give evidence and cross-examine Mr Robert John McBride. I base my request on the following:

- 3.1 The untrue allegations by Mr Robert McBride continue to have very serious and detrimental consequences for me. It will not only destroy my reputation and dignity but will also have a very detrimental effect on my career and profession as a State Advocate in the employ of the NPA. It already has. In all probability if left

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<sup>1</sup> I have objected to this truncated time that was afforded to me which is similarly unacceptable. Once again no response was received in my written objection.



- 4 -

unchallenged it will give rise to investigation into my fitness to hold office and disciplinary proceedings against me.

- 3.2 I also deem it my duty as a citizen of the Republic of South Africa to assist this Commission to establish the true facts relating to issues of National interest that are being investigated. The true facts should be presented to the Commission and both sides should be heard. The audi alteram partem rule is a basic principle. This with respect should be coupled with cross-examination.

4.

It is clear that the only way to discover the truth is to have the evidence of Mr Robert John McBride tested by counsel properly instructed by client(s) who has/have personal knowledge of the factual allegations testified to by the relevant witness(es). There is clearly no more efficient way to test the reliability of the allegations by Mr McBride.

5.

My concern is that if the untested allegations of Mr McBride are accepted, my fundamental rights relating to my integrity and freedom of trade,



- 5 -

occupation and profession will be destroyed without ever having had the opportunity to defend myself. I am advised in this regard, and as a lawyer I know, that it will affect my right to be heard which is a basic pillar of my right to fair proceedings.

6.

I have decided to apply to the Commission to indeed cross-examine Mr McBride and give evidence.

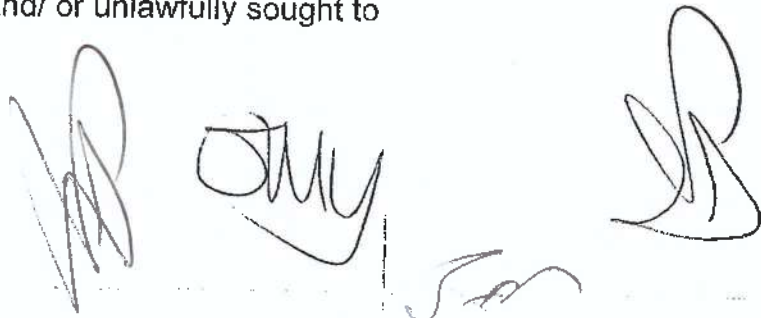
7.

I therefore provide the Commission with this statement in order to identify the material disputes and the grounds for such disputes between my version and the allegations put forward by Mr Robert John McBride in his statement.

**E. SPECIFIC ALLEGATIONS AGAINST ME IN SECTION RULE 3.3  
NOTICE AND ALLEGATIONS OF MR MCBRIDE IN REGARD TO  
ME:**

8.

I deny that I improperly and/ or unlawfully sought to

The bottom of the page features several handwritten signatures and initials. From left to right, there is a signature that appears to be 'MR', a signature that appears to be 'JMY', and a signature that appears to be 'JR'. There are also some faint, illegible marks and lines below these signatures.


- 6 -

- Unduly interfere in the investigative independence of the NPA, the Independent Police Investigative Directorate (IPID) and the Hawks Directorate for Priority Crime Investigations (DPCI)
- I deny that I unduly delayed recommended prosecutions. I have never delayed any prosecutions and was never involved in the delay of any prosecutions.
- I further deny that I unduly declined to prosecute suspects investigated by IPID. I was not involved in decisions to decline to prosecute suspects investigated by IPID as alleged.
- I further deny that I participated in the undue persecution of officials of the NPA, IPID, and/or the DPCI. I never persecuted anybody and in a proper structured fashion the docket of Mr McBride and others was presented to me and I *bona fide* decided the facts. The necessary checks and balances were part of the system and other person were also involved in evaluating the docket. I provided a copy of this docket to the nodal point with



- 7 -


the Commission adv C Macadam. At the same time that I decided the relevant docket, I also declined to prosecute in the specific instances of Mr McBride in another matter relating to the seizure and the removal of a Data 6 devise from a Fax machine which was fitted by Crime Intelligence at the Provincial offices of the Gauteng DPCI at Parktown which was headed by General Sibiya. The documents is attached hereto as annexure A. In regard to the inadmissible hearsay in that Mr McBride wants to act as conduit for inadmissible hearsay relating to the Breytenbach-, Ivan Pillay and or Booyesen prosecutions, it needs to be stated that these decisions were taken independently and properly with no ulterior motive and bona fide on the facts. I deny that these were unsustainable prosecutions. I deny that my actions were politically driven and that there were malicious prosecutions. Mr McBride presented a very one sided version of the alleged docket to the commission without providing the docket to the Commission.



- 8 -

I deny that I destabilized the NPA, IPID and/or the DPCI. On the contrary, I tried my utmost to do my job to the best of my abilities.

- It is stated in the notice that the evidence of Mr McBride which implicates or may implicate me is set out in paragraphs 125 to 128 of his statement. Firstly in regard to paragraph 123 I can state categorically that I have never been part of an orchestrated, relentless attempt to unjustly interfere with IPID core function of independent oversight of the police.
- The belief or opinion that I am part of a group that has lost all credibility (paragraphs 125), is the result of an unprecedented and unwarranted attack on the institution and especially the PCLU. See for instance the incessant flood of e mails I received from Mr Paul O Sullivan which is totally unbecoming and actually constitute a transgression of Section 32 1 b of the NPA act. (annexure B )



- 9 -

This above-mentioned belief and opinion is not correct and is done by interested parties to prevent legitimate prosecutions.

The opinion that there is a core group in the forefront of enabling the capture of criminal justice cluster through persecution of so called corruption fighters is denied, it is wrong and slanderous.  
(Paragraph 25 continued)

I was never involved in the protection of criminal suspects by declining and/or delaying decisions to prosecute suspects investigated by IPID in cases where their subordinates who are experienced prosecutors had recommended prosecution based on alleged abundant evidence but we the core group of advocates override those decisions. I gave statements in those specific dockets and was threatened with the legislation of IPID in this regard.

His belief or opinion about a core group of State Advocates at the NPA which had been working to interfere with IPID oversight function of the police is wrong. I deny that the it were



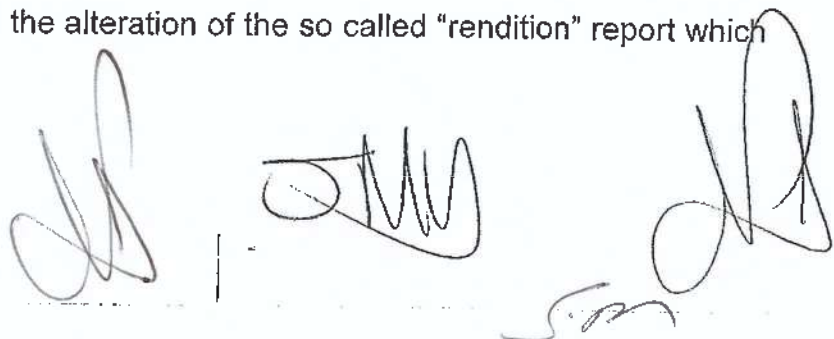
- 10 -

unsustainable prosecutions against General Dramat, and Sibiya and Booyesen. I deny that I ever attempted to destabilise IPID or DPCI. I was never involved in a malicious prosecution. I deny that any action that was taken by me was politically driven. ( ad paragraph 126)

Ad 127. I deny that I was involved in any malicious prosecution or any series of malicious prosecutions. I have never impeded the work of IPID by declining to prosecute suspects investigated by IPID. This impeding of the work of IPID allegedly happened where experienced prosecutors recommended prosecutions. With respect experienced managers cum prosecutors differed from the prosecutors preferred by Mr McBride. I don't know which "decisions were **regularly** overturned by this core group and require Mr McBride to produce evidence of "regularly overturning decisions."

Ad 129

I confirm that I was involved in the decision of the specific case relating to the alteration of the so called "rendition" report which



- 11 -

was altered and benefitted General Dramat and Sibiya by Mr McBride and his team. I deny doing so with ulterior motives and attached hereto documents which proof that at same time, another docket has been decided where the decision was not to prosecute Mr Robert John McBride even if the circumstances was suspicious. (Annexure C) A copy of the main docket was also made available by this office and provided to the Commission. The deliberate deletions in more than a dozen of instances of incriminating evidence was criminal *in casu* and this docket was provided to the Commission. There was enough evidence to substantiate a charge of fraud and defeating the ends of justice as the documents clearly demonstrate. The case was not proceeded with because the witnesses did not want to testify as is the usual case in cases relating to Mr McBride.

9.

The import of the evidence is far wider than the few paragraphs that were provided to me and also in the light of the leading of evidence by the evidence leader(s) and the opening remarks, it is clear that the reputation of the PCLU is attacked from the inception of this part of the proceedings.



- 12 -

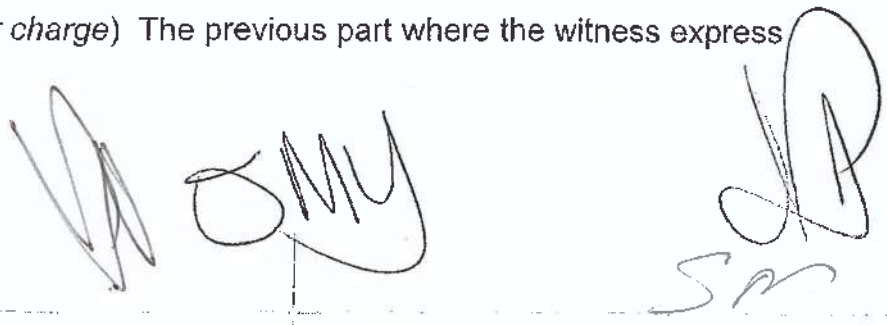
The detail of the "placement" of adv. Mathenjwa, adv. Maema and adv JJ Mlotswa is of utmost importance, and it will be explained why it was decided to accommodate these personnel at the PCLU.

10.

At that time I was acting as the Special director of the Priority Crime Litigation Unit and the advocates that were seconded to the PCLU for the Marikana matter (to which no objection is raised) had numerous challenges in regard to working with IPID on the Marikana matters. Initially there were enough investigators but it dwindled to a meagre 3. No resources were made available for the reconstruction of Scene 2 on the 16 August. The prosecution team was very frustrated in the manner in which IPID investigated the matter and the lack of resources attributed to investigating this matter.

11.

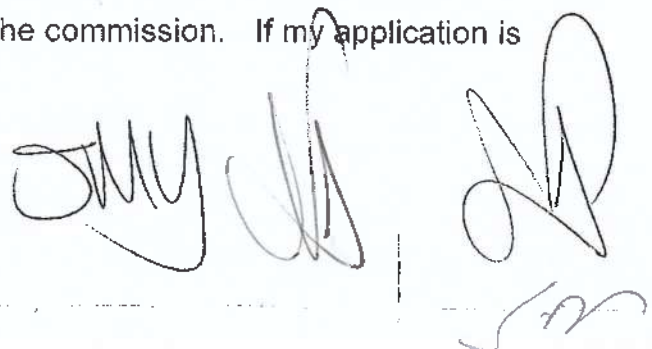
In paragraph 129 it is stated (*"I have already expressed my concern that advocate Sello Maema ("Maema") saw fit to prosecute us in respect of the rendition matter, as I know that there was not a shred of evidence to substantiate his decision to charge us with fraud and defeating the ends of justice (or any other charge)*) The previous part where the witness express



- 13 -

concern about the decision to prosecute the witness and others is not provided and up till today, the 13<sup>th</sup> May 20019 I did not receive the statement neither was it posted on the website.

- Rule 3.4 stipulates that an application in terms of sections 3.3.6 must be submitted in writing to the Secretary of the Commission within (14) fourteen calendar days form the date of the notice referred to in 3.3, and that the application must be accompanied by a statement from the implicated person responding to the witness's statement in so far as it implicates him.
- With respect my statement identified the parts of McBrides affidavit that are disputed and denied in regard to paragraph 126 - 129 and I also ventilated my version as the grounds on which those parts are disputed and denied. I am indeed an implicated person and in his viva voce evidence the witness also identified me as such on more than one occasion.
- It is submitted that my application to cross-examine Mr McBride is in the interest of the work of the commission. If my application is

The bottom of the page features three distinct handwritten signatures or sets of initials in black ink. The first signature on the left is a cursive 'JMY'. The middle signature is a more stylized, looped cursive. The signature on the right is also cursive and appears to be 'JMY' with a large flourish underneath. Below these signatures, there are some faint, illegible markings and a horizontal line.

- 14 -

granted the Commission will have both side of the incidents and it will enable the Chairmain to have a full picture of the position so that he can take into account the extent of divergence in the two versions. With respect a proper case for granting leave to cross examine Mr McBride has been made out at a time suitable to the Commission.

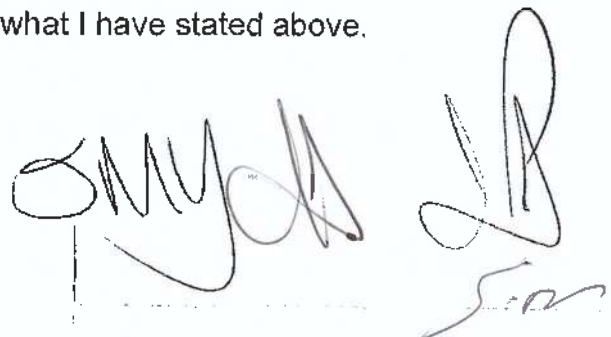
#### APPLICATION FOR CONDONATION

12.

Immediately when I received my notice that I would be an implicated person, I approach my employer to appoint counsel to represent me. Initially the response was positive but up till today 13 May 2019 nobody has been appointed. I know there is negotiations with the commission by Mr Marco Voller but no concrete concessions relating condonation has been made. Therefore I deem it my duty to apply to give evidence and cross examine the witness Mr McBride. I respectfully request condonation for the late filing of my affidavit and application but the reasons is as set out above for this unfortunate set of circumstances.

13.

I therefore wish to emphasize that I dispute any of the allegations by Mr McBride insofar as it is contradicted by what I have stated above.

The image shows two handwritten signatures in black ink. The signature on the left is written in a cursive style and appears to be 'Smyth'. The signature on the right is also cursive and appears to be 'J.P.' with a large loop at the top. Below the signatures, there are faint horizontal lines, possibly indicating a signature line or a date line.

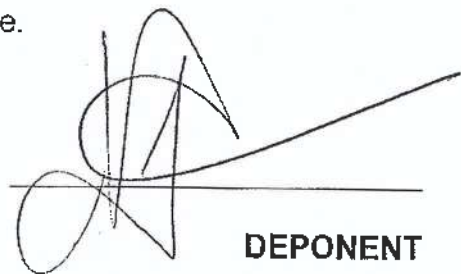
- 15 -

14.

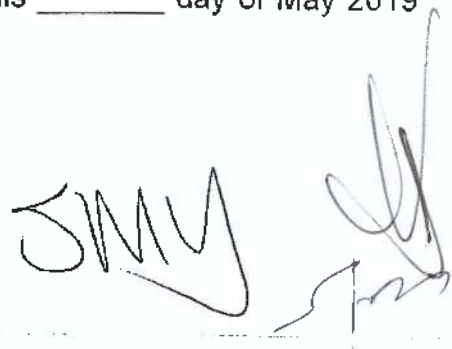
Notwithstanding that notice that I am a implicated person was not proper, and I still don't have the complete statement, I however request the condonation of the late filing of my affidavit and request. The moment I realized that still take a long time I crafted affidavit and got it commissioned.

15.

I therefore request the Honourable Commission to allow my participation in the process and to indeed allow myself or my legal representatives to cross-examine Mr McBride in order to test the veracity and reliability of his version insofar as his version differs from mine.

  
 \_\_\_\_\_  
**DEPONENT**

SIGNED and SWORN to at PRETORIA on this 13 day of May 2019  
 by the Deponent who stated that:



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1. He knows and understands the contents of the declaration; and
2. He has no objection to taking the prescribed oath; and
3. He considers the prescribed oath as binding on his conscience;

And Government Notice Regulation 1258 as amended by the Government Notice Regulation 1648, Government Notice Regulation 1428 and Government Notice Regulation 773 was fully complied with.

*J. Murray Capt*  
**COMMISSIONER OF OATHS**

FULL NAMES:

BUSINESS ADDRESS:

AREA:

DESIGNATION:

*Jeanne-Marie Murray*  
*123 Hartley St, Neavind Park*  
*Pretoria*  
*Captain.*

*J.M.*

JPP 4

**Tebogo Mathibedi**

---

**From:** Garth Hulley <GarthH@commissionsc.org.za>  
**Sent:** Sunday, 26 July 2020 9:35 AM  
**To:** Tebogo Mathibedi; zuko.madlanga@gmail.com; Kgaogelo Ramaimela; Jacobus Pretorius; Marco MP. Voller; luyanda kopman  
**Cc:** Susan Wentzel  
**Subject:** ADV. J. P. PRETORIUS SC: HEARING DATE 29 JULY 2020

Hi Frank

Pursuant to our discussion this morning, I note your indication that you have instructions to bring an application for a postponement. As previously advised, it was our intention to oppose such an application if it were brought. I have since then been considering your concerns and the issues you have previously raised and how I might be of assistance to you. I have discussed it also with Susan. I wish to propose a way forward that may be mutually beneficial and, no doubt, may assist in reducing the issues in dispute and make it easier to get to the truth. First, a bit of background to my proposal.

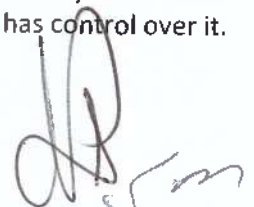
Adv. Pretorius, SC has been implicated by several people, including Messrs McBride, Sesoko and Khuba and Gen. Booyesen. I imagine he has been implicated by other people, as well, although I cannot identify all the people at this point in time. The essence (and without limiting this) of the allegations against him in respect of the aforesaid witnesses relates to Adv. Pretorius' role as the head of the Priority Crimes Litigation Unit and that Unit's role in prosecuting certain people. In a nutshell (and I merely give a short list, there may be more), the allegation is that the Unit was involved in the prosecution relating to:

1. The so-called SARS Rogue Unit.
2. The Cato Manor "hit squad" and particularly Gen. Booyesen.
3. McBride, Sesoko and Khuba on charges of Defeating the Ends of Justice, Fraud and Perjury and other charges.
4. Paul O'Sullivan and Sarah-Jane Trent.
5. Glynnis Breytenbach.
6. SAA.
7. The Rendition matter.

The Unit was also involved in many prosecutions where the investigations were conducted by Crimes Against the State (CATS).

Against this backdrop, what I propose is the following:

1. Adv. Pretorius file a new affidavit within a specified time period. I'm happy with 10 August 2020.
2. The affidavit should be specific and not vague. It should be prepared in the active voice and not the passive. In other words, if an allegation is made, it must be clear whether Adv. Pretorius is making the allegation or the allegation is made by somebody else. If he relies upon another person, he should state who that person is. He should provide corroboration for his assertions including documentary. If he knows of the existence of a document but does not have it, he must state where it is and who has control over it.



3. Where either McBride or Booysen has made an allegation that he feels is either vague, unsubstantiated or hearsay, he must nevertheless deal with it.

I trust this is of assistance to you.

Best regards,

Garth I. Hulley, SC

COMMISSION OF INQUIRY INTO STATE CAPTURE | Hillside House, 3<sup>rd</sup> Floor, 17 Empire Road, Parktown,  
Johannesburg, 2193 | Gauteng | South Africa |

mobile: (083) 442-8291 | email: [GarthH@commissionsc.org.za](mailto:GarthH@commissionsc.org.za) | [www.sastatecapture.org.za](http://www.sastatecapture.org.za)



A handwritten signature in black ink, appearing to be "G. Hulley", located in the bottom right corner of the page.

JPP5

**Brenda Mdakane**

---

**From:** luyanda kopman <kopmanluyanda@gmail.com>  
**Sent:** Sunday, 26 July 2020 11:02 AM  
**To:** Brenda Mdakane  
**Subject:** Fwd: J. P. PRETORIUS, SC  
**Attachments:** image001.jpg

Also print this email pls

----- Forwarded message -----

**From:** Garth Hulley <GarthH@commissionsc.org.za>  
**Date:** Thu, 09 Jul 2020, 17:13  
**Subject:** J. P. PRETORIUS, SC  
**To:** Kopman Luyanda <LKopman@justice.gov.za>, kopmanluyanda@gmail.com  
 <kopmanluyanda@gmail.com>, mathibedi@thulamelachambers.co.za  
 <mathibedi@thulamelachambers.co.za>, zuko.madlanga@gmail.com <zuko.madlanga@gmail.com>  
**Cc:** William Nicholson <WilliamN@commissionsc.org.za>, Susan Wentzel  
 <SusanW@commissionsc.org.za>

Dear Mr Kopman / Adv. Mathibedi SC

As discussed a moment ago, please note that the chairperson of the Commission, the Honourable Deputy Judge President Zondo, has granted leave for your client, Adv. J. P. Pretorius, SC, to lead evidence and cross-examine Messrs R. McBride and I. Khuba. The hearing will take place on Wednesday, 29 July 2020. I will be the evidence leader and will be assisted by Susan Wentzel and W. Nicholson, who are copied in on this email. Please feel free to contact any one of us should you require any assistance.

I understand that Adv. Tebogo Mathibedi, SC will be assisted by Advocates Zuko Madlanga and K. Ramaimela. I have copied Adv. Madlanga in on this email but have been unable to locate the details of Adv. Ramaimela. Please provide me with Adv. Ramaimela's details, please.

I will also make sure that you have all the documents and are prepared to proceed.

Yours faithfully,

Garth I. Hulley, SC



JPP 6



17 Empire Road  
Hillside House  
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2193  
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**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,  
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE  
("THE COMMISSION")**

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**NOTICE OF SET DOWN**

**ADVOCATE JACOBUS PETRUS PRETORIUS**

---

**13 July 2020**

To: Mr. Luyanda Kopman

**THE STATE ATTORNEY PRETORIA**

**Client: Advocate Jacobus Petrus "Torie" Pretorius** (hereinafter referred to as "your client")

Email: [LKopman@justice.gov.za](mailto:LKopman@justice.gov.za)

CC: [jppretorius@npa.gov.za](mailto:jppretorius@npa.gov.za)

Dear Sir

1. Please be advised that:

**Wednesday, 29 July 2020 at 10h00**

has been set down as the date on which your client is required to appear before the Commission to give evidence, answer questions and cross-examine Mr. Robert John McBride and Major-General Johan Booysen.

2. The Commission's hearing venue is located at:  
City of Johannesburg Old Council Chamber, 158 Civic Boulevard, Braamfontein.
  
3. Please contact the Secretariat of the Commission ([shannonv@commissionsc.org.za](mailto:shannonv@commissionsc.org.za)) and ([secretary@commissionsc.org.za](mailto:secretary@commissionsc.org.za)) regarding any queries relating to this matter.

Yours faithfully



---

Ms. Brigitte Shabalala

**Acting Secretary**

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

**COMMISSION OF INQUIRY INTO STATE CAPTURE** | Hillside House, 3<sup>rd</sup> Floor, 17 Empire Road,  
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Handwritten signature or initials.

JPP 7



Office of the State Attorney

**Pretoria**

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0001

Salu Building  
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Cnr Thabo Sehume & Francis Baard Str

Tel: (Switchboard): (012) 309 1500  
(Direct Line): (012) 309 1564  
(Secretary): (012) 309 1566  
Fax: (General) (012) 309 1649/50

20 July 2020

Enquires: MR L KOPMAN

My Ref: 5857/2019/Z16/mp

Email: [lkopman@justice.gov.za](mailto:lkopman@justice.gov.za)

Your Ref: RPS18/0193/WN

**Acting Secretary,**

Judicial Commission of Inquiry into allegations of State Capture, Corruption and  
Fraud in the Public Sector (*"the Commission"*)

2<sup>nd</sup> floor, Hillside House

Empire Road,

Parktown

Johannesburg

2193

Dear Ms. Brigitte Shabalala

**RE: HEARING OF 29 JULY 2020- DR PERTORIUS SC**

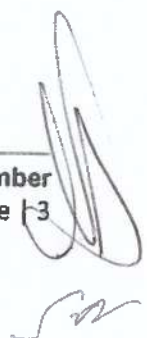
1. We refer to the abovementioned matter in particular the telephonic conversation between, the evidence leader, Adv Hulley SC and our lead counsel Adv Mathibedi SC of 20 July 2020.
2. The understanding of the legal team and that of our client is that the purpose of the Commission is to:

- 1.1 To determine the truth,
  - 1.2 To give implicated persons such as our client a proper and fair hearing,
  - 1.3 To ensure that the full process as set out in the Rules unfolds which *inter alia* includes the serving of the required notices,
  - 1.4 The giving of fair opportunity to cross examine the witnesses who implicated our client, and
  - 1.5 The application of the principle *audi alteram partem* rule.
3. Absent one or all of the aforesaid principles will amount to a miscarriage of justice. You have advised us that our client's evidence in chief, cross examination, the cross examination of Mr RJ McBride and Major General Booyesen will all be concluded on 29 July 2020. A perusal and analysing of the transcribed record demonstrate that the evidence in chief of RJ McBride took four (4) days namely 11, 12, 15 and 16 April 2019. The evidence of Major General Booyesen also took four (4) days namely 17, 18 April, 2 and 3 May 2019. In total the evidence of the aforesaid witnesses took eight (8) days and therefore it will be unjust, unfair and a miscarriage of justice to expect our clients evidence in chief, his cross examination, the cross examination of Mr McBride and Major General Booyesen to be concluded in one day. Our client's right in this regard are protected by section 33 and 34 of the Constitution of the Republic of South Africa, 1996 ("*the Constitution*").
4. With regard to the evidence of Messrs Khuba and Sesoko the notice of set down does not even deal with that. It came to the attention of the legal team and our client for



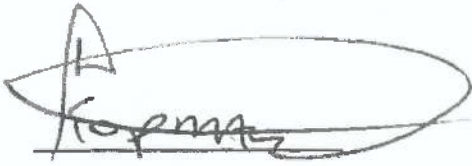
the first time today that reference of their evidence will be during the cross examination of our client.

5. Since receiving the notice of set down dated 13 July 2020, the legal team's preparation only focused on the evidence of Mr McBride and Major General Booyesen. It is very worrying that had the telephone conversation not been made the legal team together with our client were going embarrassed in an open forum relating to the evidence of Messrs Khuba and Sesoko which is intended to be put to our client.
6. It is not in the interest of justice and our client that litigation by ambush should be conducted. We are of the firm view that, the fact that, the Commission is under pressure to finalise its workings at the expense and detriment of our client is not in the interest of the Commission. Similarly, our client's rights should not be trumped by the fact that the workings of the Commission were affected by Covid-19. It is not only the Commission's workings that were affected by Covid-19. There are no reasons why a request is not be made to the President to extend the lifespan of the Commission in order to ensure that persons whose rights, like our client, are affected are given a proper and fair opportunity to present his case. It should be borne in mind that the evidence already led against our client has serious reputational, professional and personal implication. Not only is our client affected by such evidence but also hard working and dedicated career prosecutors.
7. Be advised that unless our client is given fair and proper hearing he reserves his rights not to take part in the proceedings, as such capped participation will not achieve the desired result.
8. Further be advised that despite request we have not be provided with the following documents:



- 7.1 The main affidavit of Messrs Khuba, Sesoko and Du Plooy. We have only been provided with the transcribed record of Du Plooy's evidence, the supplementary affidavits of Messrs Khuba and Sesoko.
9. We refer to the above-mentioned matter and in particular the telephonic conversation between yourself and Mathibedi SC. It was brought to your attention as set out in your email dated 09 July 2020 that it is indicated that the evidence of Adv JP Pretorius SC would be led and the cross examination of Messrs McBride and Khuba would take place. It was further brought to your attention that the Notice of set down dated 13 July 2020 only refers to our client and the cross examination of RJ McBride and Major General Johan Booysen. You indicated that during the cross examination of our client reference will be made to the affidavit of Mr Innocent Khuba and Mr Mathews Sesoko.
10. We wish to put it on record that our client did not bring a condonation application for the cross examination of both Messrs Khuba and Sesoko, in view of the fact that the required notices in terms of Rule 3.4 of the Rules of the Commission was not served on him.
11. In the premises it is unfair and unjustified:
- 10.1 to blame our client for not having made the application referred to above,
- 10.2 to deny our client the right to cross examine witnesses that implicated him despite the required notice not having been served on him, and
- 10.3 to cross examine our client on evidence tendered by such witnesses and their affidavits.
12. We await your urgent response in this regard.



A handwritten signature in black ink, appearing to read 'L Kopman', is enclosed within a large, hand-drawn oval.

**L KOPMAN**  
**For: State Attorney (PRETORIA)**

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**Access to Justice for All**

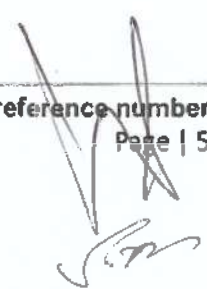
**Always quote my reference number**

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**Access to Justice for All**

**Always quote my reference number**

Page | 5

A handwritten signature in black ink, consisting of several stylized, overlapping strokes.

"JPP 8"



Office of the State Attorney

## Pretoria

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(Direct Line): (012) 309 1564  
(Secretary): (012) 309 1566  
Fax: (General) (012) 309 1649/50

01<sup>st</sup> JUNE 2020

Enquires: MR L KOPMAN

My Ref: 5857/2019/Z16/mp

Email: [lkopman@justice.gov.za](mailto:lkopman@justice.gov.za)

Your Ref:

### Acting Secretary,

Judicial Commission of Inquiry into allegations of State Capture, Corruption and Fraud in the Public Sector (*the Commission*)

2<sup>nd</sup> floor, Hillside House

Empire Road,

Parktown

Johannesburg

2193

Dear Ms. Brigitte Shabalala

### RE: NPA IMPLICATED OFFICIALS

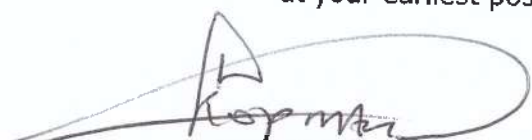
1. We refer to the above matter and your letter dated **22<sup>nd</sup> May 2020**, to our client Adv Anthony Mosing, a copy thereof is attached hereto for your easy reference.
2. Kindly be advised that our client advised us that he received the aforementioned letter on **27 May 2020** and forwarded same to us on the same day.

3. We will respond within 10 days as from the **27<sup>th</sup> May 2020**, we are still busy taking instructions.
4. Further be advised that we note from your letter date 30 January 2020, that our client is implicated by a further four witness (Mr Matthews Sesoko, Mr Humbulani Khuba, Mr Trevor White and Mr Petrus Duplooy), whilst we were initially only briefed in respect of two witness (i.e Mr Johan Booysen and Mr Robert McBride). The NPA has thus extended our mandate to also respond to the allegations made by the further four witnesses. We searched the website of the Commission for the affidavits and transcript of these four witnesses but could not find the affidavits and/or transcript in respect of all of them. In the premises we request that you kindly assist with the copies of the following documents:
  - 4.1 **Affidavit of Mr Mathews Sesoko;**
  - 4.2 **Affidavit of Mr Humbulani Khuba;**
  - 4.3 **Affidavit and transcript of Mr Petrus by Plooy.**
5. Whilst perusing the transcript of Khuba we noted the directive from the honourable Deputy Chief Justice Zondo ("*the Chairperson*") that the legal team of the Commission is directed to prepare further and or supplementary affidavits for Messrs. McBride, Sesoko and Khuba pertaining to the Werksmans report (which report deals with two reports submitted by the IPID to the NPA). We have reason to believe that these further affidavits may directly and or indirectly implicate our clients and to that end enquire whether the affidavits have been prepared, if so, that we kindly be furnished with copies thereof in order to address all allegations made against our client in one application.
6. We further noted from Mr McBride's affidavit that he relies mostly on allegations that he was informed by officials of the IPID, for example paragraph 64 where reference is made to Mr Maoka who we are informed



accompanied Mr Khuba to one of the interviews conducted by one of our clients. To that end, we are instructed to enquire whether further officials of the IPID, such as the said Mr Maoka are going to testify, if so, whether affidavits have been prepared on their behalf which affidavits may implicate one or more of our clients and that we be furnished with same.

7. We trust that you find the aforesaid in order and await to hear from you at your earliest possible convenience.



**L KOPMAN**

**For: State Attorney (PRETORIA)**

