

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

In the matter between :

MICHAEL MABUYAKHULU

APPLICANT

and

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

THE COMMISSION

APPLICATION IN TERMS OF RULE 3.3.6.3

TAKE NOTICE THAT the Applicant applies to the Chairperson of the Commission in terms of Rule 3.3.6.3 for an order in the following terms:-

1. That the Applicant is granted the authority and opportunity to cross examine witness Trevor Sean White;
2. That the Applicant is granted the authority and opportunity to cross examine witness Colonel Petrus Johannes Du Plooy;
3. Granting further and / or alternative relief.

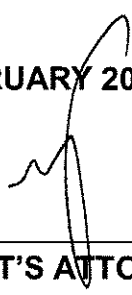
TAKE NOTICE FURTHER THAT should any party wish to oppose this application he or she should notify the Acting Secretary of the Commission and the Applicant thereof, and at the same time deliver an affidavit to them setting out the grounds of such opposition and the facts relevant thereto.

TAKE NOTICE FURTHER THAT the Applicant has appointed PKX Attorneys of Suite 36, 3 on Cascades Crescent, Montrose, Pietermaritzburg, KwaZulu-Natal as his representative in this matter, and that he will accept notice and service of all processes in these proceedings at the address of his Attorneys.

TAKE NOTICE FURTHER THAT that the Applicant is prepared to accept service on all subsequent document and notices in the action in a manner other than a physical or postal address, with their preference being service by electronic mail to mail@pkx.co.za and joanne@pkx.co.za.

KINDLY TAKE FURTHER NOTICE that the Affidavit of **MICHAEL MABUYAKHULU** is attached in support of this application.

DATED AT PIETERMARITZBURG ON THIS 10th DAY OF FEBRUARY 2020.



APPLICANT'S ATTORNEYS
PKX ATTORNEYS

Suite 36, 3 on Cascades Crescent
Montrose
Pietermaritzburg
3201
Tel : 033 347 5354
Email : mail@pkx.co.za
(Ref : M Potgieter)

TO : **Judicial Commission of Enquiry into
Allegations of State Capture, Corruption
and Fraud in the Public Sectors including
Organs of State**
2nd Floor, Hillside House
17 Empire Road
Parktown
JOHANNESBURG
Email : inquiries@sastatecapture.org.za

**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE
CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING
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In the matter between :

MICHAEL MABUYAKHULU

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**JUDICIAL COMMISSION OF INQUIRY INTO
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CORRUPTION AND FRAUD IN THE PUBLIC
SECTORS INCLUDING ORGANS OF STATE**

THE COMMISSION

AFFIDAVIT OF MICHAEL MABUYAKHULU

I, the undersigned,

MICHAEL MABUYAKHULU

do hereby make oath and say :-

1. I am an adult male businessman resident at 16 Agena Crescent, Empangeni, KwaZulu-Natal.
2. The facts deposed to in this affidavit are within my personal knowledge, except where the contrary is indicated, and arise from documents and personnel under

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my control, and such facts are true and correct to the best of my knowledge and belief.

A. THE PURPOSE OF THIS APPLICATION

3. This is an application to cross examine Trevor Sean White and Colonel Petrus Johannes Du Plooy.
4. On or about 9 January 2020 I received notification from the Commission in terms of Rule 3.3 that the Commission intends to present the evidence of Mr White and Colonel Du Plooy and that their evidence may implicate me in various criminal acts.
5. There evidence concerned criminal charges that had been brought against me during 2011 and thereafter withdrawn in 2012.
6. Based on the documents provided to me my preliminary view was that I wished to cross examine both Mr White and Colonel Du Plooy. However I was reluctant to make a final decision at that time without sight of annexure TSW16 (which the Commission stated would be made available to me by way of a download link), and a further affidavit of Mr White referred to in the statement provided to me. I also preferred to defer my final decision until after I became aware of the actual evidence given by Mr White and Colonel Du Plooy to the Commission.
7. Copies of the relevant documentation were requested from the Commission on 13 and 17 January 2020 and the transcript of Mr White's evidence was only received sometime later.

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8. On 24 January 2020 my attorneys requested Mr White's forensic report (which had still not been provided to them) and certain other documents, and requested an extension of the fourteen-day period in terms of Rule 11.2. Thereafter the Commission granted a further fourteen-day period regarding the testimony of Mr White.
9. (I am aware that there is already considerable documentation before the Commission and that many of the documents that I will refer to in this affidavit are already before the Commission. For that reason and in order to avoid the unnecessary duplication of documentation I will not attach the documents referred to herein to this affidavit, but I can make these available in a separate bundle if requested to do so.)
10. Mr White has given evidence relevant to the allegations against me, and this appears from the transcript of the evidence of 21 and 22 January 2020 (days 202 and 203 of the Commission).
11. Colonel Du Plooy has not yet given evidence and his evidence has been delayed until the end of February or early March 2020, although I have not been advised of the specific dates on which he will resume giving evidence.
12. Both Mr White and Colonel Du Plooy have given evidence concerning criminal charges that were brought against me arising from the Intaka Water Project and the subsequent withdrawal of those charges.
13. Based on the documents provided to my attorneys by the Commission and the transcript of Mr White's evidence on days 202 and 203 of the Commission I

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hereby apply to cross examine Mr White and Colonel Du Plooy.

B. BRIEF BACKGROUND

14. This events in question occurred between 15 and 8 years ago and many of the background documents relevant to the events are no longer in my possession. I thus rely on my memory and the limited documents in my possession, although my recall may be imperfect or limited in certain circumstances.

B.1. The Intaka Water Project and the acquisition of the Water Plants

15. During 2005 I was the MEC responsible for the KwaZulu-Natal Department of Local Government and Traditional Affairs.
16. At that time the Department of Finance (Provincial Treasury) and the Department of Economic Development operated as separate departments with their own Heads of Department, with both departments falling under the then MEC for Finance and Economic Development, Dr Z L Mkhize. Trade and Investment KZN (TIKZN) is a provincial public entity under the control of the Department of Economic Development.
17. I was only peripherally involved in the Intaka Water Project: The project originated in the Provincial Treasury and the Department of Economic Development. In addition as MEC I was not involved in matters relating to procurement or the project planning, determination and implementation.
18. I do not have a copy of the letter in question but to the best of my recollection during July 2005 I received a copy of a letter from MEC Mkhize (the then MEC

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for Finance and Economic Development) informing me that the Departments of Finance and Economic Development and a public entity known as Trade and Investment KZN (TIKZN) had been investigating the purchase of water purification and processing plants to provide potable water supplies to drought prone areas and proposing the involvement of the Department of Local Government and Traditional Affairs. I recommended that our respective Heads of Department deal with the relevant technical and administrative issues relating to the proposal and thereafter report to us thereon.

19. In due course the Head of the Provincial Treasury, Mr S D Shabalala, sent a memorandum to MEC Mkhize and me on 10 October 2005 setting out the details of the proposal. A copy of the memo is annexed hereto marked "MM1".
20. It is evident from the memorandum that the Departments of Finance and Economic Development and TIKZN had been investigating the purchase of water purification and processing plants at a cost of approximately R43 million. The motivation for the Project was to provide potable water supplies to drought prone areas and that the plants *"would make a significant impact on improving the quality of life and health of impoverished rural communities"*. A further benefit was that the manufacturer would establish a manufacturing plant in KwaZulu-Natal. The Project was to be funded by a reallocation of funds from unspent poverty alleviation funds.
21. The author of the memorandum proposed that three departments (Finance; Economic Development; and Local Government and Traditional Affairs) investigate and evaluate the project and make recommendations on the best

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way of implementing the Project.

22. It is evident from the memorandum that the Project had been the brainchild of the Department of Finance and Economic Development and TIKZN, and that neither I nor my department had originated or proposed the project. It is evident that the proposal was made by Mr Shabalala, supported by the Head of my department and the Acting Head of the Department of Economic Development, and thereafter approved by the MEC for Finance and Economic Development.
23. I too supported the Project as the aims and objectives of social upliftment and economic development were meritorious and because it appeared that there were funds for that purpose.
24. As MEC I was not thereafter involved in the day to day matters concerning the Project. The determination of Project aims and objectives, the day to day undertaking and implementation of the Project, and the procurement of the Water Plants were undertaken by officials in the Provincial administration. I would receive reports from time to time on the progress made with regard to the Project and I recall being at a meeting which discussed the municipal or traditional area that the Water Plants should be placed in and being concerned that the identified areas should have sustainable sources of water. However, I was not involved in determining the specific sites for the Plants and this was the role of officials.
25. I am however aware from documents which I have seen that the Provincial Central Procurement Committee authorised the waiver of normal tender procedures but subject to the requirement that the market price *"should be*

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tested". A copy of the approval is annexed hereto marked "**MM2**".

26. I subsequently became aware of criticisms of the Project, the value obtained and the benefit received, and I have since seen correspondence dealing with concerns relating to the delivery and commissioning of the Plants and the location of the manufacturing plant (which we understood was to have been located in KwaZulu-Natal). I reiterate that I was not involved in operational activities concerning the procurement, ordering, delivery, detailed sites, commissioning, value testing, operationalising of the water plants. These were undertaken by the project team within my department. The issue of the location of the manufacturing plant was dealt with by the Department of Finance and Economic Development.

B.2. The donation to the ANC

27. During 2010 I provided an affidavit to the South African Police dealing with a donation of R1 million made to African National Congress (ANC) through Mr Shabalala. I understand the Commission has a copy of the affidavit, but a further copy is annexed hereto marked "**MM3**" for the sake of convenience.
28. I respectfully refer the Commission to the affidavit. I do not propose to repeat the information set out there but in summary:

28.1. I was the Provincial Treasurer for the ANC during 2008. In my capacity as such I made a call on members to fundraise for the ANC and in particular for the ANC Provincial Conference which was to be held in June 2008.

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28.2. Shortly before the conference I received an amount of R1 million from Mr Shabalala which he advised me he had received in the course of fund-raising. As far as I recall I received the funds from Mr Shabalala in June 2008.

28.3. As stated in the affidavit it is not the ANC policy to disclose where private donations are received from nor the name of the funders, nor is it our policy to disclose how the funds are spent or disbursed. I am advised that this was not unlawful.

29. I was initially requested to assist the South African Police in the course of an investigation against Mr Shabalala, but I was subsequently charged myself during 2011. The essence of allegations against me were that I was involved in criminal activity in the procurement of the Water Plants for which I accepted a financial gratification, and that I laundered these funds.

30. The charges were thereafter withdrawn against me in 2012.

C. THE BASIS FOR THIS APPLICATION

31. Both Mr White and Colonel Du Plooy have given evidence concerning criminal charges that were brought against me arising from the Intaka Water Project and the subsequent withdrawal of those charges. They imply that the charges were improperly withdrawn.

32. I deny these allegations and I apply to cross examine Mr White and Colonel Du Plooy based on the evidence they have given, or it appears Colonel Du Plooy

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will give based on the affidavit provided to me.

C.1. Colonel du Plooy

33. The essence of the allegations made by Colonel du Plooy in his affidavit are:

33.1. that he received a draft charge sheet from Advocate Dunywa which was to be used as the basis for criminal charges against me;

33.2. that Advocate Mrwebi informed Colonel du Plooy that he was withdrawing the charges against me and that he (Mrwebi) did not allow Colonel du Plooy and Mr White sufficient time to brief him on the case, the implication being that the withdrawal was irregular and done in haste.

C.2. Mr T S White

34. The portion of evidence given by Mr White which concerns me relates to the water purification plants procured from Intaka.

35. Mr White has stated that an amount of R1,053 million was paid into the trust account of Khuboni and Shezi.

36. Despite alleging that this amount was disbursed for the benefit of Mr Sipho Shabalala, Mr White concludes that that amount was "*spent/launched by Mr Shabalala and Mr Mabuyakhulu*". Mr White relies on a diagram with connecting arrows from Intaka to Khuboni and Shezi to Mr Shabalala, to me and finally to the ANC. (This is Mr White's annexure TSW19.)

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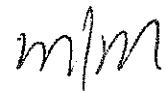
37. Thereafter Mr White implies that I received a donation of R1 million from Mr Shabalala on behalf of the ANC and that this was to persuade the NPA to withdraw charges against Mr Shabalala.
38. Mr White further alleges that the charges which had been brought against me in this regard were wrongfully withdrawn on the basis of undue pressure.

C.3. The reason for this application

39. As stated above, both Mr White and Colonel du Plooy imply that the charges against me were withdrawn for no good reason and that the prosecutor dealing with the matter was unhappy with the reason for this decision.
40. Both Mr White and Colonel du Plooy appear to be unaware that the Director of Public Prosecutions in KwaZulu-Natal has furnished reasons for the withdrawal and that the decision to withdraw the charges was taken following a two day meeting between the KwaZulu-Natal prosecuting team and senior officials from the National Director of Prosecutions during which the all evidence was re-assessed and at the end of this process the team (which included Advocate Dunywa) concluded that there was insufficient evidence for a successful prosecution of ten accused, including me. Arising from this assessment the charges were withdrawn against me
41. Mr White's evidence concerning the link between the conclusion of the Intaka contract, the payment of finds by Dr Savoi and the receipt by me of the R1 million donation is pure supposition and is not based on any evidence at all:

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- 41.1. Based on documents provided to me it appears that the Intaka contract was concluded with the Province in early 2006.
- 41.2. Dr Savoi paid R1,053 million into the Kuboni and Shezi trust account in March 2007.
- 41.3. Mr White's evidence is that the amount of R1,053 million *"was in fact disbursed from the Khuboni trust account for the benefit of Mr Shabalala and was never recorded in the accounting records of the ANC"*¹. (My emphasis.)
- 41.4. Mr White's forensic report traces that payments were made from the Khuboni trust account to Mr Shabalala's creditors during the period March to August 2007.
- 41.5. The R 1 million donation was made in or about June 2008.
- 41.6. On Mr White's evidence the amount received into the trust account was used in its entirety for Mr Shabalala's benefit and is no link with the R1 million subsequently received by me in my capacity as ANC Treasurer at that time.
- 41.7. There is therefore no basis for Mr White's evidence purportedly linking the amount paid by Intaka to Khuboni and Shezi with the funds ultimately received by me in my capacity as ANC Treasurer at that



¹ Page 46 of Mr White's Affidavit, dated 6 December 2019.

time. Mr White's evidence and the diagram TW19 are unsupported speculation.

42. It is evident from the memorandum of 10 October 2005 ("MM1") that the Intaka Water Project had been the brainchild of the Department of Finance and Economic Development and TIKZN (a public entity under the control of Economic Development), and neither I nor my department had originated or proposed the project.

WHEREFORE I pray for an order in terms of the relief sought in the Notice of Motion.



DEPONENT

SIGNED and SWORN to BEFORE ME, at Durban on this the 10 day of **FEBRUARY 2020**, by the Deponent who has acknowledged that he knows and understands the contents of this affidavit, and he has declared that he has no objections to taking the oath, that he regards the oath as binding on his conscience and he has uttered the following words : "I swear that the contents of this Affidavit are true, so help me God".



COMMISSIONER OF OATHS

9

FULL NAME :
ADDRESS :
CAPACITY :
AREA :

SHAUKAT ABDUL KARRIM NOOR MAHOMED
COMMISSIONER OF OATHS
PRACTISING ATTORNEY OF R.S.A
SUITE 2B, 2nd FLOOR, LINCOLN HOUSE
30 DULLAH OMAR ROAD
DURBAN



"MM1"

D7/9



PROVINCE OF KWAZULU-NATAL

MEMO

TO:

1. Dr ZL Mkhize, MEC
Minister: Finance and Economic Development
2. Mr M Mabuyakhulu, MEC
Minister: Local Government, Housing & Traditional Affairs

FROM:

1. DSD Shabalala
Head: Treasury
2. CG Gumbl-Masilele
Head: Local Government & Traditional Affairs
3. F Pupuma
Acting Head: Economic Development

CONTACT: 033 097 4556

DATE: 10 October 2005

SUBJECT: PROPOSAL TO ALLOCATE R43 M FROM POVERTY ALLEVIATION FUND TO DEPARTMENT OF LOCAL GOVERNMENT AND TRADITIONAL AFFAIRS TO PURCHASE WATAKA WATER PURIFICATION PLANTS

REF: MEC-RE

Background

1. The Departments of Finance and Economic Development, and Trade and Investment KZN, have been liaising with a Cape Town-based company, Intaka Investments Pty, on the potential benefits which would accrue to the province from the purchase of Wataka water purification and processing plants. It has been established that the purchase of 22 plants capable of each generating 50 000 litres of potable water per hour would cost a total of R43,230m.

2. The purchase of these water purification plants, which would be allocated to District Municipalities in the province, would make a significant impact on improving the quality of life and health of impoverished rural communities. Many of our rural communities have lacked access to clean and safe water in the past – one of the basic human rights underwritten by the Constitution. The lack of access to sufficient potable water supplies in this drought-prone province with huge backlogs in social infrastructure is in fact a recurring theme in virtually every impoverished rural community throughout the province – a fact confirmed time and again during the Cabinet's izimbizo visits. The need for more and better access to water, furthermore, invariably tops the list of community priorities in municipal IDPs across the province.

3. In these circumstances the acquisition and equitable distribution throughout the province of water purification plants capable of generating a total of 24 million litres of potable water in every 24 hour cycle would have a hugely beneficial impact on the provincial goals of poverty alleviation and improving the quality of life. Specifically, the project would contribute measurably to the provincial target of providing all citizens with access to clean and safe water by 2010.

D7/16

4. An added benefit to the province in purchasing the water purification plants is that the company concerned has indicated that it would be prepared to establish a manufacturing plant in KZN if a contract of this size was concluded with the provincial government. This would result in job creation and skills transfer and would fit perfectly with the provincial economic growth and development strategy of attracting inward investment into the province. The potential for further growth and expansion of the manufacturing plant, with export opportunities to the rest of the country and into Africa, would be significant, with the attendant spin-off benefits to the province.

5. It was for these reasons that in July 2005 the provincial Cabinet gave approval in principle for the allocation of R43 m from the Poverty Alleviation Fund to purchase 22 purification plants – note that the Poverty Alleviation Fund is intended to fund exactly this type of social and community-related infrastructure.

6. The Departments of Treasury, Economic Development and Local Government and Traditional Affairs were accordingly tasked by the respective MECs with investigating and evaluating all aspects of the proposed project and making recommendations on the best way of implementing the project, bearing in mind that any decision to proceed with the proposal would however require close cooperation and formal agreements with all the municipalities involved, as they would be expected to meet the maintenance and running costs of the equipment.

Recommendations on process and contractual arrangements to implement Cabinet decision on water enhancement project in the province

7. Representatives from the three departments in question and TIKZN have met on several occasions between 26 September and 7 October to discuss and finalise recommendations on the optimum way of expediting and finalising the project in question, bearing in mind that six months of the financial year have already elapsed (see attached minutes of meetings in question). There is therefore considerable urgency to allocate and expend the funds in question, lest the province is left with unspent poverty alleviation funds at the financial year end – this would be a serious indictment on the province as a whole, and the service delivery performance of the departments in question in particular.

8. The following recommendations are therefore made on the optimum way of implementing and finalising the water purification plant project:

Commitments by Department of Local Government and Traditional Affairs

With a view to expediting implementation of the project, the Department commits to the following:

- Accepting responsibility for the implementation and management of the project to a successful conclusion;
- Conducting preliminary investigations with regard to:
 - Relative need of the District Municipalities/Water Service Authorities for water purification plants given availability, quantity, quality and reliability of currently available water resources (this investigation to be done in consultation with Department of Water Affairs)
 - Liaising with District Municipalities/water Service Authorities to obtain agreement in principle to accept the water purification plants and responsibility for ongoing maintenance costs
 - Reaching agreement on the optimum distribution and siting of the plants bearing in mind aspects such as reliability of water supply, proximity to needy communities, number of individuals benefiting, existing storage and reticulation facilities, transport implications etc

Deadline for completion of this phase: 24 October 2005

D7/11

- Compiling a Business Plan for the project in consultation with DWAF, and submission of same to Treasury, as a pre-condition for transfer of funds for the project, which Business Plan to contain the following as a minimum:
 - Outline of process to be followed in project implementation
 - Description of consultation process followed in reaching consensus with District Municipalities/Water Service Authorities on siting/placement of plants in designated municipalities
 - Summary of technical aspects of feasibility study (i.e. relative need, existing water resources and infrastructure, maintenance aspects etc)
 - Stipulation of timelines involved in various phases of project, bearing in mind requirement for completion by the end of the financial year
 - Contractual arrangements to be concluded with District Municipalities/Water Service Authorities (outline of Memorandum of Agreements)
 - Monitoring and Reporting arrangements during project implementation;

Deadline for completion of this phase: 30 October 2005
- Obtaining waiver of tender requirements approval from the CPC, with assistance of Treasury;

Deadline for completion of this phase: 15 November 2005
- Entering into a contract with the supplier to purchase 20 plants at price of original quotation, which contract to specify:
 - Counter-trade undertakings, i.e. agreement to relocate/establish manufacturing facility in KZN, indicating commitment to timelines, jobs created, skills transfer, BEE commitments etc.
 - Commitment to supply 22 plants by stipulated deadline,
 - Role of supplier in finalising siting of plants and concomitant installation
 - Contractual arrangements with District Municipalities/Water Service Authorities for ongoing maintenance, supply of spare parts and components

Deadline for completion of this phase: 30 November 2005
- Compiling Memoranda of Agreements with District Municipalities prepared to accept plants, specifying:
 - Number of plants to be supplied and details of siting/location
 - Delivery schedule and role of respective parties;
 - Contractual arrangements (supporting MoAs) between District Municipalities and supplier with regard to ongoing maintenance and supply of spare parts,
 - Acceptance by DMs of responsibility for costs of downstream maintenance, indicating source of funding
 - Commitment by District Municipalities to maintain plants in working order
 - Reporting arrangements by Municipalities on output and performance of plants, number of beneficiaries served etc

Deadline for completion of this phase: 30 November 2005

Commitments by Provincial Treasury

The Provincial Treasury commits to the following to expedite the implementation of the project:

- Transferring an amount of R43m from the Poverty Alleviation Fund to the Department of Local Government and Traditional Affairs in the Adjustments Estimate for the 2005/06 financial year, subject to an approved Business Plan;
 - Ensuring that the Department of Local Government and Traditional Affairs obtains CPC approval for waiver of tender procedures
- Deadline for completion of this phase: 30 November 2005

D7/12

Commitments by Department of Economic Development

The Department of Economic Development commits to the following to see the project through to a successful conclusion:

- In consultation with TIKZN and the preferred municipality, liaising with the supplier on relocation arrangements, with a view to:
 - Identifying a suitable site for establishment of a manufacturing facility,
 - Investigating the possibility of obtaining special concessions/rebates from the municipality concerned,
 - Facilitating logistical arrangements for an early relocation against stipulated timelines;
- Securing a commitment from the supplier in terms of spin-off benefits, skills transfer and black economic empowerment (to be included in contract)

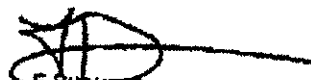
Deadline for completion of this phase: 30 November 2005

- Liaising with the supplier and assisting with market leads for the product to be marketed elsewhere in the country and in Africa so as to secure downstream orders and future expansion of the production capacity
- Regular reporting on the economic benefits of the project

Deadline for completion of this phase: 30 March 2006


D.S.D. Shabalala
Head of Department: Provincial Treasury

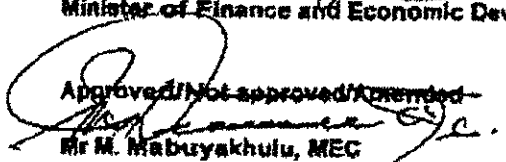

C.G. Gumbi-Masilela
Head of Department: Local Government and Traditional Affairs


F. Puthuma
Acting Head: Department of Economic Development

Approved/Not approved/Amended


Dr Z.L. Mkhiza, MEC
Minister of Finance and Economic Development

Approved/Not approved/Amended


Mr M. Mabuyakhulu, MEC
Minister of Local Government, Housing and Traditional Affairs

"MM2"



KwaZulu Natal Provincial Treasury

Enquiries: Ms Z. Mkhwanne

Ref: 12/1

Date: 12/12/2005

The Chairperson: Tender Award Committee
 Department of Traditional and Local Government Affairs
 Private Bag X 9078
 Pietermaritzburg
 3200

FAX NO.: 033-342 7303

ATTENTION: MR S RABICHAND

PURCHASE OF MOBILE WATER PURIFICATION PLANT

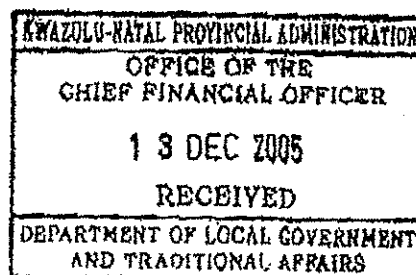
1. Your submission regarding the abovementioned matter has reference.
2. The Central Procurement Committee, has by way of "Round Robin", granted approval for the waiver of normal tender procedures for the procurement of 22 mobile water purification plant through the Poverty Alleviation Fund from Messrs Intaka Investments at a total cost of R 43 230 000.00. However, concerns were expressed that there is no problem with the waiver as an urgent but the market price should be tested.
3. Kind regards.

MAC,

For your attention please.

15/12/05.

MRS I NAIDOO
 ACTING GENERAL MANAGER: SCM
 For Head: Provincial Treasury



"MM3"

Page 1

AFFIDAVIT OF MICHAEL MABUYAKHULU

I, the undersigned,

MICHAEL MABUYAKHULU

do hereby state under oath

1. I am an adult male Member of the Executive Council for the Province of KwaZulu-Natal responsible for Economic Development and Tourism.
2. The facts contained in this affidavit are true and correct and within my own personal knowledge and belief, save where otherwise is indicated.

INTRODUCTION

3. I have been asked to comment on issues which took place some five years ago, and in certain instances I do not have a clear recollection of events or have had recourse to documents (where these exist) to refresh my memory.

BACKGROUND

4. I have been asked to comments on events which took place during the period between 2005 and 2009. During this period:-
 - 4.1. I was the MEC for Local Government, Housing and Traditional Affairs from 3 November 2004 until 11 May 2009.

M/m

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Page 2

- 4.2. I was Provincial Treasurer of the African National Congress ('the ANC') from 1998 until approximately 21 June 2008.
5. During my tenure as Provincial Treasurer I was, *inter alia*, responsible for fund raising for the ANC. During 2005 I made the call to the ANC leadership and members to fundraise on behalf of the ANC. The funds were required for the ANC's day to day administration and for the ANC Provincial Conference which was to take place at Ndumiso Training College during June 2008.
6. I recall that Mr Sipho Shabalala was one of those who undertook to raise funds on behalf of the ANC. Prior to the conference he informed me that he had fundraised and wished to pay funds to the ANC. I do not recall the exact date that he informed me of this but believe it was approximately two months or so before the Provincial Conference. Thereafter I received payment from Mr Shabalala in the amount of R1 million. To the best of my recollection I received the funds from Shabalala on or about 11 June 2008. The funds were received shortly before the Provincial Conference. I was still the ANC Provincial Treasurer at that time.
7. I confirm that it is not the ANC's policy to disclose where private donations are received from, nor is it our policy to disclose how the funds are spent or disbursed. These are private matters and not in the public domain. I can however state that the funds were used by me to defray expenses arising from the then upcoming June 2008 conference. The funds were used by me in my capacity as Provincial Treasurer at that time.

COMMENTS ON SPECIFIC DOCUMENTS

8. I have been asked to comment on specific documents. Given that the documents were written several years ago I do not have a clear and precise recollection of events or their precise sequence, but will endeavor to answer the questions to the best of my recollection:-



Page 3

9. RE: The Letter to me from the MEC for Finance and Economic Development dated 15 July 2005

9.1. I confirm that I received this letter. I note that it appears that it was received by the Ministry on 27 July 2005. Prior to receipt of this letter I had not been aware of the interaction between Trade and Investment KZN and the Cape Town based company. I have no knowledge of whether anyone else from the Provincial Government had been liaising with the Cape Town Company.

9.2. I do not wish to interpret the letter, which I believe speaks for itself. MEC Mkhize proposed a task team be formed comprising of the respective heads of the departments of Treasury; Economic Development; and Local Government, Housing and Traditional Affairs to investigate the purchase of the water plants to provide better access to water for rural communities, and to finalize a proposal to my colleague and I in this regard.

9.3. I cannot recall whether there were any documents attached to the letter, but note (on my reading thereof at the time of deposing to this affidavit) that at the end of paragraph 1 of the letter Dr. Mkhize states that certain information is attached. I however have no independent recollection of whether documents were attached to the letter in question.

10. RE: The Memorandum dated 10 October 2005 from the Heads of the Treasury, Local Government and Traditional Affairs and Economic Development to the MECs for Finance and Economic Development, and Local Government, Housing and Traditional Affairs

10.1. I recall receiving the memorandum in question and confirm signing the memorandum at the place provided for my signature. I do not recall when I



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did so. I had limited knowledge of Intaka Investments at that time and had not met anyone from Intaka Investments prior to receiving the memorandum.

- 10.2. I cannot comment on the issue of the added benefit which might arise from the company concerned establishing a manufacturing plant in KwaZulu-Natal if a contract was concluded with the Provincial Government. I point out that my portfolio concerned itself with local government matters (and hence the provisions of basic services) and that finance and provincial economic development fell under my colleague's portfolio.
- 10.3. I do not have a copy of the document detailing the in principle Cabinet approval (referred to in paragraph 5 of the letter), and have no specific recollection thereof, although I do not dispute that this occurred.
- 10.4. I decline to interpret the letter and suggest that any queries concerning the intention of the letter be directed to the drafters thereof. I however point out that there were national targets which had been established for 2009 for the provision of water as a basic service and human right. KwaZulu-Natal was behind in reaching for this target, and as water was a basic necessity we felt it appropriate to take urgent steps to provide access to water.
- 10.5. As an MEC I am not involved in the procurement of goods and services, and the approval of such processes is not the function of an MEC. These functions and any deviation therefrom lie with heads of departments and the departments. I understand that at that time the waiver of these requirements had to be obtained from the Central Procurement Committee. It is my understanding that the system has subsequently been changed.
- 10.6. The details of the contract and the specific terms thereof were dealt with by the operational staff members from the respective departments.

m/m

X

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10.7. I did not receive regular reports on the '*economic benefits of the project*'. This was not a matter which fell under my portfolio.

11. RE: The Letter from Ministry of Local Government, Housing and Traditional Affairs dated 27 November 2006

11.1. I have read this letter, and note the reference to a meeting held on 9 June 2006. I have no specific recollection of this meeting but do not dispute that it took place. I cannot recall who attended the meeting.

11.2. At this late stage I cannot recall the exact basis of the allocation of the water plants, but as far as I recall this was an evolving process which took place over a number of interactions between the head of the Department (Ms. G C Gumbi-Masilela), and I. As far as I can recall the basis on which the plants were to be allocated were the needs of the communities, whether those areas had been subject to drought or some other equivalent disaster, and / or were areas which had poor or limited access to potable water. This was determined by our own observations or from representations or information received from the rural communities. In addition the communities had to have a source of water for the plants and we wished to spread the resources as widely as possible.

12. RE: The Letter from Ngubane Wills Incorporated dated 2 February 2010

12.1. All ANC leaders were requested to raise funds. I wish to clarify the statement '*Mabuyakhulu authorized the receipt of the R1 million donation*'. Mr Shabalala informed me that he had received funds and that he wished to pay these over, as reported in paragraph 6 above. I do not know how and where Mr Shabalala raised funds. I only learnt of the funds when Mr Shabalala informed me that he had funds to pay over to the ANC. When he informed me of the funds it was arranged that I would meet him to receive them from him, and duly did so at

As.

M/M

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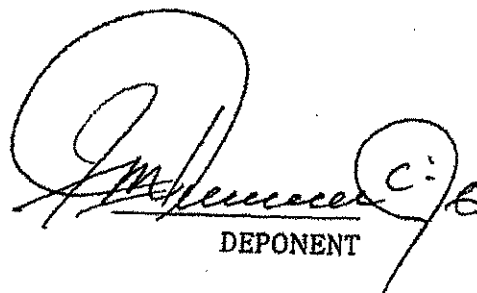
the dates set out above. I did not specifically authorize the receipt of specific funds, but fundraising in general. I confirm that the funds were received in cash, and were used by me to defray certain of the expenses of the conference (as stated above).

- 12.2. As stated above, I ceased to be Provincial Treasurer of the ANC immediately after the election of the new Provincial Treasurer during the June 2008 conference. I therefore was not responsible for the way that these were treated in the next financial statements (which were prepared sometime after March the following year). For that reason I cannot specifically say if the donation was included in the Treasurer's report to the Provincial General Council or in the globular amount of R7,227,707.00 listed as a donation in the income statement. This is simply because I was not the Provincial Treasurer or a member of the Provincial Executive of the ANC at the time in question.
- 12.3. My understanding of what the department would have received for R43,000,000.00 arises from the Memorandum from the heads of the various departments dated 10 October 2005 (being the twenty-two water plants), and from subsequent reports which were sent to me.
- 12.4. I do not have a specific independent recollection of the precise details of the funding of the water plants or the structure of the commercial transaction, apart from what appears in the memoranda and submissions which were made to me. Most of the decisions relating to VAT, delivery charges, commissioning, storage fee and the like would have fallen under the purview of the accounting authority, and not me as executing authority.
- 12.5. I have no knowledge of an invoice issued by Khuboni and Shezi. As stated above, the donation was received by me on behalf of the ANC on or about 11 June 2008. No receipt was issued therefor.

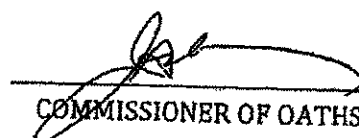


M/m

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DEPONENT

I certify that the deponent has acknowledged that he/she knows and understands the contents of this affidavit duly signed and sworn to before me at Durban on this 19 day of OCTOBER 2010, the regulations contained in Government Gazette No. R1258 dated 21 July 1972, as amended, having been complied with.


COMMISSIONER OF OATHS

Full name:
Address:
Designation:
Area:

edt intaka mbuguakulu affidavit
19 October 2010

JANITA ATHMANAND RUSSELL MAHARAJ
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