



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

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INDEX: SEQ 18/2019

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

In the matter between

JOHAN WESSEL BOOYSEN

Witness

And

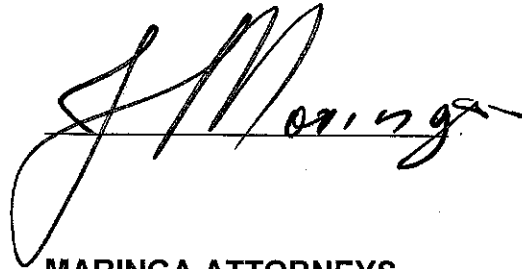
COLONEL MHLONGO

Implicated (Respondent)

Filing Notice

DOCUMENTS TO BE FILED: Original of the Notice of application to lead evidence (Numbered 13-14) as well as accompanying affidavit and Annexures (numbered 15-25 and 26-28 respectively)

TAKE FURTHER NOTICE THAT: a copy of the attached original was filed on Friday the 10th of May 2019 as per paragraph 6.3 of our application for condonation. The filing of the original is in compliance with paragraph 6.4 of the above application for condonation



MARINGA ATTORNEYS

(Attorney for the implicated persons)

201 SEDIBA HOUSE

173 BOSMAN STREET

Mobile: 061 775 4962/082 753 6719

Tel : 012 752 9473

EMAIL: Joelma@vodamail.co.za

REF : MJ MARINGA

The secretary of the Commission

Commission of inquiry into State Capture

2nd floor Hillside house

17 Empire road

Johannes burg

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

TO: ACTING-SECRETARY OF THE COMMISSION

MR P PEDLAR

2ND FLOOR, HILLSIDE HOUSE

17 EMPIRE ROAD, PARKTOWN

JOHANNESBURG, 2193

DATE: 07 MAY 2019

NOTICE OF APPLICATION TO LEAD EVIDENCE

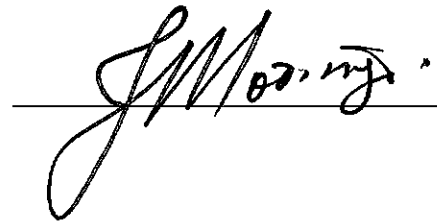
BE PLEASED TO TAKE NOTICE THAT:

1. Colonel Welcome Sithembiso Mhlongo herewith applies for leave to adduce evidence, in response to the evidence of General Johan Booyen, on the backdrop of a notice served upon on 09 April 2019, in terms of Rule 3.3 of the Rules of the Commission.
2. The nature and extent of the evidence to be adduced by Colonel Welcome Sithembiso Mhlongo is set out in an affidavit attached to this notice as **Annexure AA1**.

WSM
LIA M

14

DATED AND SIGNED ON THIS 07 MAY 2019, AT PRETORIA.

A handwritten signature in black ink, appearing to read 'J. Maringa', is written over a horizontal line.

MARINGA ATTORNEYS

(Attorney for Mhlongo)

201 SEDIBA HOUSE

173 BOSMAN STREET

Mobile: 061 775 4962/082 753 6719

Tel: 012 752 9473

EMAIL: Joelma@vodamail.co.za

REF: MJ MARINGA

W8M
Liam

AFFIDAVIT

I, the undersigned:

WELCOME SITHEMBISO MHLONGO

Hereby state as follows, under oath:

1. I am an adult person with full legal capacity, employed as Colonel in the Directorate for Priority Crime Investigation ("DPIC"), commonly known as HAWKS. I am currently stationed at the Provincial unit for Serious Organized Crime as Provincial Commander in KZN
2. The facts deposed to hereunder are within my personal knowledge and are, to the best of my belief both true and correct.
3. I have been invited as in accordance with paragraph 5 of the notice served upon me, dated 9 April 2019 to exercise an option in terms of Rule 3.3.6 of the Rules governing proceedings of the Judicial Commission of inquiry into allegations of state capture, to either make an application for

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leave to cross-examine, General Booyesen or to lead evidence on matters raised in his testimony as witness or to have another person do so on my behalf.

4. I have made a decision to only limit my participation to leading evidence on the narrow issues brought to my attention by the Secretary of the Commission.
5. I do not intent to set-forth historical background related to the evidence of General Booyesen. I will confine my evidence to the paragraphs to which, my attention has be drawn, by the Commission.

INTRODUCTION

6. I have been advised, per notice from the Commission, to which I have alluded to above, that the allegations in the evidence of General Booyesen could implicate me in, amongst others, the enabling of the capture of the Criminal Justice System.
7. The factual basis advanced in support of the foregoing conclusion appears to be that:

7.1 I had Links with Panday who was being investigated for crimes relating to corruption and Bribery

W.S.M.
L.T.M.

- 7.1.1 General Booyesen alleges in paragraph 44 of his statement that he had good reason to suspects that I informed Panday where the files were kept.
- 7.1.2 The bases for General Booyesen 's suspicion allegedly rest on the alleged communication interception done during their investigation purportedly linking me with Panday
- 7.1.3 It is further alleged in paragraph 42 of General Booyesen statement that Panday somehow knew where the files were kept, hence, he approached warrant officer Mostert, who is a member at Cato Manor, to steal the files as well as the exhibits or set alight the building, where the files were kept and thereafter name the price. (apparently for the job done)
- 7.1.4 Paragraph 43 of General Booyesen 's affidavit assets an unsuccessful attempt to a sting operation in terms of section 252 (A) of the Criminal Procedure Act due to Panday 's failure

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LFA M

to engage further with warrant officer Mostert
when contacted telephonically

7.2 Affidavits by Terrence John Joubert

7.2.1 In paragraph 45 of his statement General Booyesen narrates how I was implicated by Adv Mxolisi Nxasana in an attempt to tarnish his image at the behest of Jiba.

7.2.2 An affidavit referred to as **Annexure JWB2** alleged to be attested to by Terrence Joubert is used in support of the allegation against me.

8. I am advised that the evidence of General Booyesen as set out above bears the consequence which implicates me to the extend wherefore

8.1 I sought to:-

8.1.1 Unduly interfere in the investigative independence of the National prosecuting Authority, the Directorate for Priority crimes investigations, commonly known as the Haws, and or the South African Police Service

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8.1.2 Unduly decline and or delay and or obstruct recommended prosecution

8.1.3 Participated in the undue persecution of officials of the NPA, the independent Police investigative Directorate and or DPCI and

8.1.4 Destabilize the NPA, the DPCI and /or the SAPS

9. My reading General Booyesen 's evidence is that there is no disclosure of the facts on which he relied, to arrive at the conclusion that I informed Panday where the exhibits and the files are kept. His finding is based on mere suspicion derived from an alleged communication interception for which I have no knowledge thereof. Furthermore I am not aware of how the alleged communication interception links me to Panday

10. I submit further that General Booyesen's reliance on the alleged Affidavit of Terrence John Joubert in tarnishing the image of adv. Mxolisi Nxasana is questionable, since , the alleged deponent went public to dissociate himself from the affidavit Annexed and referred to as Annexure JWB2 by General Booyesen in his statement

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11. I wish to place before the Commission objective factors to be taken into account in my defense to dispute statement (allegations) put forth before the Commission by General Booyesen

11.1 KNOWLEDGE OF WHERE THE PANDAY CASE FILES WERE KEPT

11.1.1 I was never involved in the investigation relating to the Panday's case. Thus I would not have known where the files or exhibits were kept.

11.1.2 At the time of Panday's investigation I was seconded to the NPA within the section of missing persons task team, thus I had no knowledge of anything having to do with files or exhibits of suspects being investigated.

11.1.3 From the onset I have never denied knowing Panday or communicating with him. My knowledge of him is limited to sharing common political views and I have never discussed any matter relating to his investigation with him.

WGM
LTKM

**11.2 PARTICIPATION IN FINDING DIRT AGAINST
MXOLISI NXASANA**

11.2.1 The source for grounding allegations of participation in finding dirt against Adv. Mxolisi Nxasana is the alleged affidavit by Terrence John Joubert

11.2.2 Terrence Joubert has denied any knowledge or association with the alleged affidavit set forth by General Booyesen in his statement. I attache herewith **Annexure AA2** as confirmation to the effect that Terrence John Joubert rejected being the author and deponent of the alleged affidavit as alleged by General Booyesen.

11.2.3 The attached **Annexure AA2** is date stamped 1st February 2016 and counters the alleged affidavit referred to by General Booyesen statement titled **Annexure JWB2** and deemed to be deposed of on the 25th Nov 2013

11.2.4 The affidavit I refer to as **Annexure AA2** is in Public Domain and General Booyesen should have

WBA
LHM

known about it as it was published in both Sunday times and City press

11.2.5 I therefore deny participating in any manner in the persecution of adv. Mxolisi Nxasana

11.2.6 In paragraph 4 of attached Annexure AA2, John Joubert makes it clear that he denies any knowledge of the alleged instruction from anybody ,including Jiba directing him to investigate anybody outside the scope of his duties

11.2.7 Terrence John Joubert concludes his Affidavit in paragraph 4 by stating that "the information contained in the affidavit is fabricated "

11.2.8 I submit therefore that Joubert refers to General Booyesen 's Annexure JWB2 as fabricated and calculated to mislead the Commission

11.2.9 The gist of Joubert 's Affidavit set out as Annexure AA2 implies that General Booyesen 's acquired copy of statement alleged to be that of John Joubert or **Annexure JWB2** has no weight as evidence to the allegation in support of adv. Mxolisi Nxasana 's persecution but meant to tarnish my image in various platforms and to mislead the commission

WGC
DAM

CONCLUSION

12. I am struggling to uncover reasons for General Booyesen desire to put my person to disgrace.
13. He uses statements which the alleged deponent denies any knowledge thereof.
14. I submit that it is trivial to allege that because I know Panday or rather as he puts it, that I communicated with Panday, then I am held accountable for informing him about the whereabouts of exhibits or files relating to his investigation. Moreover I was not within the Hawks but seconded to Missing persons Task team at the time General Booyesen carried out the investigation against Panday
15. My encounter at the memorial service
 - 15.1 On the 7 of February 2019 I met General Booyesen at a Memorial Service of a colleagues, warrant officer Siso Musa at Bluff Area in Durban.
 - 15.2 I was making a u turn heading to the exit of the church premises.
 - 15.3 General Booyesen came towards my car and leaned to the driver's window.

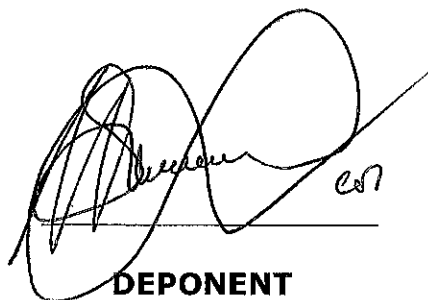
WSM
LIAM

- 15.4 He then informed me that he is going to tarnish my image at state capture inquiry and he left.
- 15.5 I never got worried as I had no reason on my part to enable state capture.
- 15.6 I now realize that he had already made up his mind to implicate me to the extent of using questionable evidence to implicate me.
16. In my capacity as colonel within the Directorate for priority crime and investigation as well as in my capacity of being seconded to the missing person section within the NPA, I submit that I did not enhance the Capture of the Criminal Justice System through:
- 16.1 Unduly interfering in the investigative independence of the NPA, DPCI and/or SAPS.
- 16.2 Unduly declining and/or delaying, and/or obstructing recommended prosecutions.
- 16.3 Participating in the undue persecution of officials of the NPA, IPID and/or the DPCI.
- 16.4 Destabilizing the NPA, DPCI and/or SAPS.

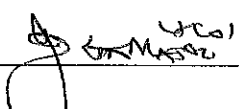
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LJAM

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17 I accordingly ask for leave to present the above evidence to the Commission.


DEPONENT

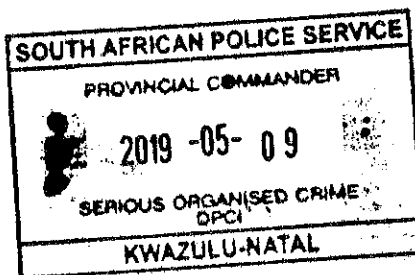
I hereby certify that the deponent declares that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at Durban on this 9th day of May 2019 and that the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.


COMMISSIONER OF OATHS

FULL NAMES: LINDWE MEMBESIKE AUBREY MASOZ

CAPACITY: G. Labonel

AREA: Durban



Annexure AA2
26

AFFIDAVIT

I, the undersigned;

TERENCE JOHN JOUBERT,

do hereby state under oath and say;

1.

I am employed by the National Prosecuting Authority of South Africa ["the NPA"] and am attached to the Security and Risk Management Unit on the 3rd Floor, Southern Life Building, 88 Joe Slovo Street, Durban.

2.

The facts contained herein are, unless stated otherwise, or the context indicates otherwise, are within my personal knowledge and to the best of belief true and correct.

3.

I wish to state that I dispute the affidavit that Advocate Willie Hofmeyr has submitted and is referring to.

My reasons are as follows:

T.J.
P.M.

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On, or about 22 JUNE 2014, I was contacted by a certain journalist who told me that he was in possession of an affidavit I had attested to and wanted me to confirm the content of the said affidavit. I requested a copy of the said affidavit and he emailed a copy to me. I perused the affidavit and saw that my details were contained in the document as well as a signature which closely resembled mine. I read the contents of the affidavit, and did not recognize any of the information contained therein. I did not associate myself with any of the information contained in the affidavit and, it was clear to me that I had not compiled the affidavit. I have absolutely no knowledge of writing anything contained in it. I suspect that my computer was accessed and my information was used to compile this document without my knowledge. An investigation was instituted to establish the authenticity of the said disputed affidavit. I have not been informed of the outcome of the investigation.

4.

I am rather shocked and surprised to see that the said affidavit is being used during court procedures when an investigation into its authenticity is still underway. I also take offence to the fact that I am being used to fight the personal battles of Advocate Hofmeyr against the National Prosecuting Authority. I hereby deny any knowledge of the alleged instruction from anybody, including Advocate Jiba for me to investigate anybody outside the scope of my duties. The allegations contained in the affidavit are, in my opinion, all fabricated.

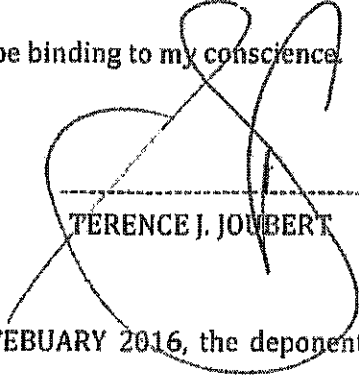
P. J.
29.11.14

5.

I know and understand the content of this statement.

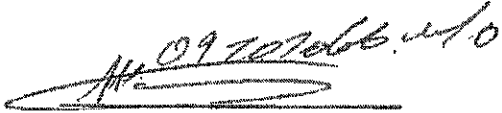
I have no objection to taking the prescribed oath.

I consider the prescribed oath to be binding to my conscience.

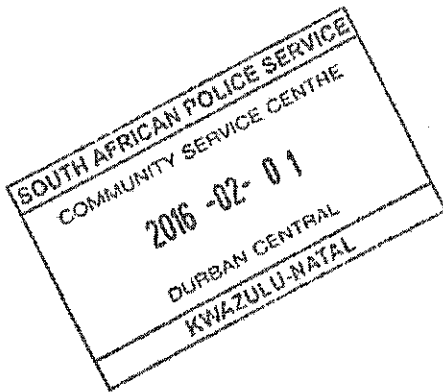


TERENCE J. JOUBERT

I certify that on this day of FEBUARY 2016, the deponent signed the affidavit in my presence and declared that he knows and understands its contents, that he has no objection to taking the prescribed oath and that he considers the oath to be binding on his conscience.



Commissioner of Oaths



Full Names: TERENCE JOUBERT

Designation: W/O

Area: Dbr

Address: NO. 50 Broad

Street Dbr

400

P. J.
P.M

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

TO: ACTING-SECRETARY OF THE COMMISSION

MR P PEDLAR

2ND FLOOR, HILLSIDE HOUSE

17 EMPIRE ROAD, PARKTOWN

JOHANNESBURG, 2193

DATE: 09 MAY 2019

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**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE
CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
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TO: ACTING-SECRETARY OF THE COMMISSION

MR P PEDLAR

2ND FLOOR, HILLSIDE HOUSE

17 EMPIRE ROAD, PARKTOWN

JOHANNESBURG, 2193

DATE: 07 May 2019

**EVIDENCE OF JOHAN WESSEL BOOYSEN AGAINST WS MHLONGO
APPLICATION FOR CONDONATION**

BE PLEASED TO TAKE NOTICE THAT:

- 2 Colonel Welcome Sibusiso Mhlongo, have appointed Maringa Attorneys, whose full particulars appear herein below, as his legal representative, in respect of matter arising from and/or incidental to the work of the Commission.
- 3 The above-named person have received notice, in terms of Rule 3.3 of the Rules of the Commission, to the effect that he has been implicated in the evidence of Johan Wessel Booysen

4 Colonel Welcome Mhlogo received notice as aforesaid on the 09 of April 2019

4.1 Rule 3.3.6, of the Rules of the Commission, directs that any person implicated in the testimony presented before the Commission may exercise any of the options available in terms of the sub-paragraph thereof, within a period two weeks from date of the notice.

4.2 Col Mhlongo received the notice, on 09 April 2019. As such the *dies* for step contemplated in terms of Rule 3.3.6, of the Rules of the Commission, expired on Wednesday, 23 April 2019.

4.3 In the period intervening from 09 April 2019 until 23 April 2019, the 4 (Four) days fell on the weekend and 2 (Two) days were public holidays, of a religious nature.

4.4 Thus, only 9 (Nine) days were effectively available for the formulation of requests contemplated in terms of Rule 3.3.6, of the Rules of the Commission.

4.5 In the 9 (Nine) days that were available, he had to apply, from his employer, for legal assistance. The applications for legal assistance was eventually approved and communicated to the State Attorney, who could only bring the implicated applicant 's request for legal assistant to the attention of the legal representative on the 02nd May 2019

4.6 It appears like the documents sent to state attorney were incomplete and some pages were secured directly from client by

appointed legal representative noting the urgency with which the matter had to be addressed

- 5 We advance the foregoing factors, in support of a request, for the extension of the time period prescribed in terms of Rule 3.3.6, of the Rules of the Commission.
- 6 We envisage that:
 - 6.1 Decision to exercise any or more of the options available in terms of Rule 3.3.6, of the Rules of the Commission, will be made by no later Friday, 05 May 2019.
 - 6.2 The formulation of the necessary application(s), including the compilation of the supporting annexure, will be completed by Wednesday, 08 May 2019.
 - 6.3 Copy of the application will thus be delivered to the Secretary of the Commission, by no later than 16h00, on Friday, 10 May 2019.
 - 6.4 Noting that Colonel Mhlongo is stationed in KZN and his legal re[representative is in Pretoria it is requested that the original affidavits be filed on 13 May 2019 to the secretary of the Commission
- 7 Thus, we ask for the variation of the period prescribed in terms of the notice, delivered in terms of Rule 3.3 of the Rules of the Commission, as set-out above in paragraph 4 subsection 4.1 above.

DATED AND SIGNED ON THIS 07 April 2019, AT PRETORIA.



A handwritten signature in black ink, appearing to read 'J. Maringa', is written over a horizontal line. The signature is stylized and cursive.

4

MARINGA ATTORNEYS

(Attorney for the implicated persons)

201 SEDIBA HOUSE

173 BOSMAN STREET

Mobile: 061 775 4962/082 753 6719

Tel : 012 752 9473

EMAIL: Joelma@vodamail.co.za

REF : MJ MARINGA

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

In the matter between

JOHAN WESSEL BOOYSEN

Witness

And

COLONEL MHLONGO

Implicated (Respondent)

**APPLICATION FOR LATE FILING OF STATEMENTS REQUIRED IN TERMS OF
RULE 5 OF THE RULES OF THE COMMISSION**

I, the undersigned

MASHABA JOEL MARINGA

Do hereby make an oath and say that:

1. I am an adult male Attorney of the High Court of South Africa practicing as such under the title of Maringa Attorneys, located at 173 Bosman Street, Office 201 Sediba House, Pretoria. I am the attorney of record to implicated Respondent in the statements of **Johan Wessel Booysen** before the Commission.

M.J.

2. I am authorised to depose to this affidavit, and to bring the present application on behalf of the implicated Respondent. The facts deposed to hereunder are within my personal knowledge, save where otherwise stated, and are to the best of my belief both true and correct.

3. This affidavit accompanies an application for condonation dated 07/05/2019 addressed to the Secretary of the Commission, for variation of the period prescribed for submission of statements on behalf of the implicated person to the commission as in accordance with Rule 3.3.6 read with Rule 3.4 of the Rules of the Commission.

THE DELAY

4. The Respondent is implicated in the testimony tendered before the above Commission, As such he had to exercise the option provided for in accordance with rule 3.3.6 within fourteen calendar days of receiving notices in terms of Rule 3.3 of the Rules of the Commission.

5. The affidavits would be filed 14 (fourteen) days after the lapse of the prescribed days. The reasons for the delay are addressed in the request attached hereto and marked as **Annexure AA0**,

M.S.

7

IMPORTANCE OF THE MATTER

8. The work of the Commission is of national importance. The allegations made against the Respondent are extremely serious, and will have devastating consequences for him, should they be accepted as they are.
9. The evidence to be tendered by the implicated Respondent will greatly assist the Commission in the execution of its task.
10. Witnesses will not be prejudiced should the application for condonation be granted. The statements to be filed are very brief and concise to the relevant issues.
11. On the other hand, if condonation were to be refused, the implicated Respondents will suffer irreparable prejudice, in that the rights in terms of Section 34 of the Constitution would have been suppressed.
12. I submit that the delay is minimal, particularly when compared with the gravity of the overall circumstances. The evidence of Johan Wessel Booyens was finalised on the 03 May 2019.

Wherefore I ask the late filling of the affidavits, together with the associate applications be condoned as requested in this affidavit, read together with its Annexure.

M.J.

J. Mores
DEPONENT

I CERTIFY that this affidavit was signed and sworn to before me at Pretoria on this 10th day of May 2019 by the deponent who acknowledged that he knows and understood the contents of this affidavit, had no objection to taking prescribed oath, Considers the oath to be binding on his conscience and uttered the following words "I swear that the contents of this affidavit are true, so help me God"

Commissioner of oaths

Name: *Mossese Mabetalale Masego Trevor*

Address: *518 Grootv Street, Hercules*

Capacity: *Constable*

| | |
|--|--|
| <p>Ek sertifiseer dat bostaande verklarings deur my gemaak is en dat verklaarder erken dat hy/sy vertrouwd is met die inhoud van hierdie verklaring en dit begryp. Hierdie verklaring is voor my teken en verklaarder se handtekening met die wettigheid is in my teenwoordigheid daarop aangebring.</p> | <p>I certify that the above statement was taken by me and that the deponent has acknowledged that he/she knows and understands the contents of this statement. This statement was sworn to and signed before me and the deponent's signature and thumbprint was placed thereon in my presence.</p> |
| <p>at <i>Hercules</i> op <i>2019-05-10</i> om <i>09:50</i></p> | |
| <p><i>Mabetalale Masego Trevor</i> <small>(ORIGINAL) COMMISSIONER OF OATHS</small></p> | |
| <p>FULL FIRST NAMES AND SURNAME IN BLOCK LETTERS <i>518 Grootv STR, Hercules</i> <small>SECTION: (PRETORIA) (MAY 2019)</small> BUSINESS ADDRESS (STREET ADDRESS) <i>Pretoria</i></p> | |
| <p><i>Constable</i> <small>RANG/RANK</small></p> | |
| <p><small>SA POLISIEDIENS</small> SA POLICE SERVICE</p> | |

SUID-AFRIKAANSE POLISIEDIENS
 STASIEKOMMISSARIS
 HERCULES

2019-05-10

CLIENT SERVICE CENTRE
 STATION COMMISSIONER
SOUTH AFRICAN POLICE SERVICE

**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE
CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
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TO: ACTING-SECRETARY OF THE COMMISSION

MR P PEDLAR

2ND FLOOR, HILLSIDE HOUSE

17 EMPIRE ROAD, PARKTOWN

JOHANNESBURG, 2193

DATE: 07 May 2019

**EVIDENCE OF JOHAN WESSEL BOOYSEN AGAINST WS MHLONGO
APPLICATION FOR CONDONATION**

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MS

MT9

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M.S.

MT'9

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 - 6.2 The formulation of the necessary application(s), including the compilation of the supporting annexure, will be completed by Wednesday, 08 May 2019.
 - 6.3 Copy of the application will thus be delivered to the Secretary of the Commission, by no later than 16h00, on Friday, 10 May 2019.
 - 6.4 Noting that Colonel Mhlongo is stationed in KZN and his legal representative is in Pretoria it is requested that the original affidavits be filed on 13 May 2019 to the secretary of the Commission
- 7 Thus, we ask for the variation of the period prescribed in terms of the notice, delivered in terms of Rule 3.3 of the Rules of the Commission, as set-out above in paragraph 4 subsection 4.1 above.

DATED AND SIGNED ON THIS 07 April 2019, AT PRETORIA.

MJ.

MTT



MARINGA ATTORNEYS

(Attorney for the implicated persons)

201 SEDIBA HOUSE

173 BOSMAN STREET

Mobile: 061 775 4962/082 753 6719

Tel : 012 752 9473

EMAIL: Joelma@vodamail.co.za

REF : MJ MARINGA

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

TO: **ACTING-SECRETARY OF THE COMMISSION**

MR P PEDLAR

2ND FLOOR, HILLSIDE HOUSE

17 EMPIRE ROAD, PARKTOWN

JOHANNESBURG, 2193

DATE: **07 MAY 2019**

NOTICE OF APPLICATION TO LEAD EVIDENCE

BE PLEASED TO TAKE NOTICE THAT:

1. Colonel Welcome Sithembiso Mhlongo herewith applies for leave to adduce evidence, in response to the evidence of General Johan Booyen, on the backdrop of a notice served upon on 09 April 2019, in terms of Rule 3.3 of the Rules of the Commission.
2. The nature and extent of the evidence to be adduced by Colonel Welcome Sithembiso Mhlongo is set out in an affidavit attached to this notice as **Annexure AA1**.

DATED AND SIGNED ON THIS 07 MAY 2019, AT PRETORIA.

A handwritten signature in black ink, appearing to read 'J. Maringa', is written over a horizontal line. The signature is stylized and cursive.

MARINGA ATTORNEYS

(Attorney for Mhlongo)

201 SEDIBA HOUSE

173 BOSMAN STREET

Mobile: 061 775 4962/082 753 6719

Tel: 012 752 9473

EMAIL: Joelma@vodamail.co.za

REF: MJ MARINGA

Annexure

AAI

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AFFIDAVIT

I, the undersigned:

WELCOME SITHEMBISO MHLONGO

Hereby state as follows, under oath:

1. I am an adult person with full legal capacity, employed as Colonel in the Directorate for Priority Crime Investigation ("DPIC"), commonly known as HAWKS. I am currently stationed at the Provincial unit for Serious Organized Crime as Provincial Commander in KZN
2. The facts deposed to hereunder are within my personal knowledge and are, to the best of my belief both true and correct.
3. I have been invited as in accordance with paragraph 5 of the notice served upon me, dated 9 April 2019 to exercise an option in terms of Rule 3.3.6 of the Rules governing proceedings of the Judicial Commission of inquiry into allegations of state capture, to either make an application for

WBM
KRM

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leave to cross-examine, General Booyesen or to lead evidence on matters raised in his testimony as witness or to have another person do so on my behalf.

4. I have made a decision to only limit my participation to leading evidence on the narrow issues brought to my attention by the Secretary of the Commission.
5. I do not intent to set-forth historical background related to the evidence of General Booyesen. I will confine my evidence to the paragraphs to which, my attention has be drawn, by the Commission.

INTRODUCTION

6. I have been advised, per notice from the Commission, to which I have alluded to above, that the allegations in the evidence of General Booyesen could implicate me in, amongst others, the enabling of the capture of the Criminal Justice System.
7. The factual basis advanced in support of the foregoing conclusion appears to be that:

7.1 I had Links with Panday who was being investigated for crimes relating to corruption and Bribery

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- 7.1.1 General Booyesen alleges in paragraph 44 of his statement that he had good reason to suspects that I informed Panday where the files were kept.
- 7.1.2 The bases for General Booyesen 's suspicion allegedly rest on the alleged communication interception done during their investigation purportedly linking me with Panday
- 7.1.3 It is further alleged in paragraph 42 of General Booyesen statement that Panday somehow knew where the files were kept, hence, he approached warrant officer Mostert, who is a member at Cato Manor, to steal the files as well as the exhibits or set alight the building, where the files were kept and thereafter name the price. (apparently for the job done)
- 7.1.4 Paragraph 43 of General Booyesen 's affidavit assets an unsuccessful attempt to a sting operation in terms of section 252 (A) of the Criminal Procedure Act due to Panday 's failure

WSM
LTA M

to engage further with warrant officer Mostert
when contacted telephonically

7.2 Affidavits by Terrence John Joubert

7.2.1 In paragraph 45 of his statement General Booyesen narrates how I was implicated by Adv Mxolisi Nxasana in an attempt to tarnish his image at the behest of Jiba.

7.2.2 An affidavit referred to as **Annexure JWB2** alleged to be attested to by Terrence Joubert is used in support of the allegation against me.

8. I am advised that the evidence of General Booyesen as set out above bears the consequence which implicates me to the extend wherefore

8.1 I sought to:-

8.1.1 Unduly interfere in the investigative independence of the National prosecuting Authority, the Directorate for Priority crimes investigations, commonly known as the Haws, and or the South African Police Service

*MSM
LTM*

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- 8.1.2 Unduly decline and or delay and or obstruct recommended prosecution
- 8.1.3 Participated in the undue persecution of officials of the NPA, the Independent Police Investigative Directorate and or DPCI and
- 8.1.4 Destabilize the NPA, the DPCI and /or the SAPS
9. My reading General Booyesen 's evidence is that there is no disclosure of the facts on which he relied, to arrive at the conclusion that I informed Panday where the exhibits and the files are kept. His finding is based on mere suspicion derived from an alleged communication interception for which I have no knowledge thereof. Furthermore I am not aware of how the alleged communication interception links me to Panday
10. I submit further that General Booyesen's reliance on the alleged Affidavit of Terrence John Joubert in tarnishing the image of adv. Mxolisi Nxasana is questionable, since , the alleged deponent went public to dissociate himself from the affidavit Annexed and referred to as Annexure JWB2 by General Booyesen in his statement

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LFA M

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11. I wish to place before the Commission objective factors to be taken into account in my defense to dispute statement (allegations) put forth before the Commission by General Booyesen

11.1 KNOWLEDGE OF WHERE THE PANDAY CASE FILES WERE KEPT

11.1.1 I was never involved in the investigation relating to the Panday's case. Thus I would not have known where the files or exhibits were kept.

11.1.2 At the time of Panday's investigation I was seconded to the NPA within the section of missing persons task team, thus I had no knowledge of anything having to do with files or exhibits of suspects being investigated.

11.1.3 From the onset I have never denied knowing Panday or communicating with him. My knowledge of him is limited to sharing common political views and I have never discussed any matter relating to his investigation with him.

W. S. M.
L. R. M.

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**11.2 PARTICIPATION IN FINDING DIRT AGAINST
MXOLISI NXASANA**

11.2.1 The source for grounding allegations of participation in finding dirt against Adv. Mxolisi Nxasana is the alleged affidavit by Terrence John Joubert

11.2.2 Terrence Joubert has denied any knowledge or association with the alleged affidavit set forth by General Booyesen in his statement. I attach herewith **Annexure AA2** as confirmation to the effect that Terrence John Joubert rejected being the author and deponent of the alleged affidavit as alleged by General Booyesen.

11.2.3 The attached **Annexure AA2** is date stamped 1st February 2016 and counters the alleged affidavit referred to by General Booyesen statement titled **Annexure JWB2** and deemed to be deposed of on the 25th Nov 2013

11.2.4 The affidavit I refer to as **Annexure AA2** is in Public Domain and General Booyesen should have

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known about it as it was published in both Sunday times and City press

- 11.2.5 I therefore deny participating in any manner in the persecution of adv. Mxolisi Nxasana
- 11.2.6 In paragraph 4 of attached Annexure AA2, John Joubert makes it clear that he denies any knowledge of the alleged instruction from anybody ,including Jiba directing him to investigate anybody outside the scope of his duties
- 11.2.7 Terrence John Joubert concludes his Affidavit in paragraph 4 by stating that "the information contained in the affidavit is fabricated "
- 11.2.8 I submit therefore that Joubert refers to General Booyesen 's Annexure JWB2 as fabricated and calculated to mislead the Commission
- 11.2.9 The gist of Joubert 's Affidavit set out as Annexure AA2 implies that General Booyesen 's acquired copy of statement alleged to be that of John Joubert or **Annexure JWB2** has no weight as evidence to the allegation in support of adv. Mxolisi Nxasana 's persecution but meant to tarnish my image in various platforms and to mislead the commission

W&L
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CONCLUSION

12. I am struggling to uncover reasons for General Booyesen desire to put my person to disgrace.
13. He uses statements which the alleged deponent denies any knowledge thereof.
14. I submit that it is trivial to allege that because I know Panday or rather as he puts it, that I communicated with Panday, then I am held accountable for informing him about the whereabouts of exhibits or files relating to his investigation. Moreover I was not within the Hawks but seconded to Missing persons Task team at the time General Booyesen carried out the investigation against Panday
15. My encounter at the memorial service
 - 15.1 On the 7 of February 2019 I met General Booyesen at a Memorial Service of a colleagues, warrant officer Siso Musa at Bluff Area in Durban.
 - 15.2 I was making a u turn heading to the exit of the church premises.
 - 15.3 General Booyesen came towards my car and leaned to the driver's window.

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15.4 He then informed me that he is going to tarnish my image at state capture inquiry and he left.

15.5 I never got worried as I had no reason on my part to enable state capture.

15.6 I now realize that he had already made up his mind to implicate me to the extent of using questionable evidence to implicate me.

16. In my capacity as colonel within the Directorate for priority crime and investigation as well as in my capacity of being seconded to the missing person section within the NPA, I submit that I did not enhance the Capture of the Criminal Justice System through:

16.1 Unduly interfering in the investigative independence of the NPA, DPCI and/or SAPS.

16.2 Unduly declining and/or delaying, and/or obstructing recommended prosecutions.

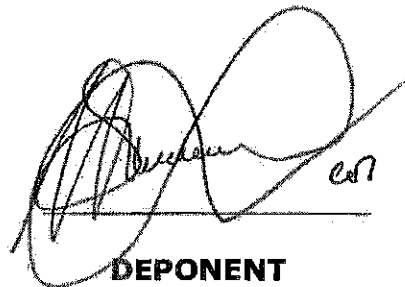
16.3 Participating in the undue persecution of officials of the NPA, IPID and/or the DPCI.

16.4 Destabilizing the NPA, DPCI and/or SAPS.

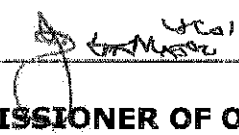
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17 I accordingly ask for leave to present the above evidence to the Commission.


DEPONENT

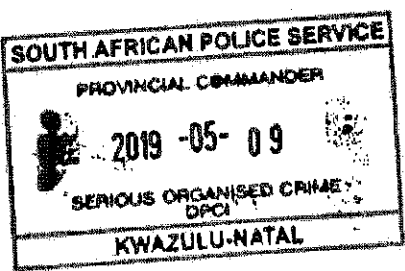
I hereby certify that the deponent declares that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at DURBAN on this 9th day of May 2019 and that the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.


COMMISSIONER OF OATHS

FULL NAMES: LINBINE THOMASIK AUBREY MASOZ

CAPACITY: Lt Colonel

AREA: DURBAN



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On, or about 22 JUNE 2014, I was contacted by a certain journalist who told me that he was in possession of an affidavit I had attested to and wanted me to confirm the content of the said affidavit. I requested a copy of the said affidavit and he emailed a copy to me. I perused the affidavit and saw that my details were contained in the document as well as a signature which closely resembled mine. I read the contents of the affidavit, and did not recognize any of the information contained therein. I did not associate myself with any of the information contained in the affidavit and, it was clear to me that I had not compiled the affidavit. I have absolutely no knowledge of writing anything contained in it. I suspect that my computer was accessed and my information was used to compile this document without my knowledge. An investigation was instituted to establish the authenticity of the said disputed affidavit. I have not been informed of the outcome of the investigation.

4.

I am rather shocked and surprised to see that the said affidavit is being used during court procedures when an investigation into its authenticity is still underway. I also take offence to the fact that I am being used to fight the personal battles of Advocate Hofmeyr against the National Prosecuting Authority. I hereby deny any knowledge of the alleged instruction from anybody, including Advocate Jiba for me to investigate anybody outside the scope of my duties. The allegations contained in the affidavit are, in my opinion, all fabricated.

P. J.
SP-M

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5.

I know and understand the content of this statement.

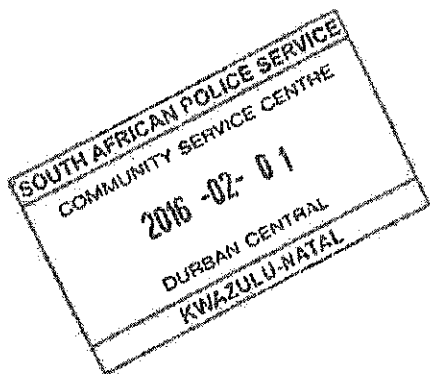
I have no objection to taking the prescribed oath.

I consider the prescribed oath to be binding to my conscience.

TERENCE J. JOUBERT

I certify that on this day of FEBRUARY 2016, the deponent signed the affidavit in my presence and declared that he knows and understands its contents, that he has no objection to taking the prescribed oath and that he considers the oath to be binding on his conscience.

Commissioner of Oaths



Full Names: A. J. Joubert
Designation: W/O
Area: Durban
Address: No. 50 Broad Street Durban
4700

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A. J.
P.M