

INT 1

J 484



**the doj & cd**

Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

OFFICE OF THE DIRECTOR-GENERAL  
Private Bag X 81, PRETORIA, 0001 • SALU Building, corner of Thabo Sehume and  
Frances Baard Streets, PRETORIA  
Tel (012) 406 4701/4718

Enquiries: Mr B Masekwa  
Telephone: 012 406 4701/18  
Email: BMasekwa@justice.gov.za

Adv. K van Rensburg  
Chief Executive Officer  
National Prosecuting Authority  
Private Bag X 762  
PRETORIA  
0001

Dear Adv. Van Rensburg

**SETTLEMENT AGREEMENT : MR NXASANA**

Please find herewith the attached document for your urgent attention and processing.

It would be appreciated if you can process same urgently for relevant authorities approval, noting the time lines that are set out therein.

Your assistance in this regard will be greatly appreciated.

Kind regards

**MS T N SINDANE**  
**DIRECTOR-GENERAL**  
**DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**  
DATE: 3.06.2015

2

IN THE NORTH GAUTENG HIGH COURT, PRETORIA

CASE NO 59160/14

In the matter between:

**NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**

Applicant

And

**THE PRESIDENT OF REPUBLIC OF SOUTH AFRICA**

First  
Respondent

**MINISTER OF JUSTICE AND CORRECTIONAL SERVICES**

Second  
Respondent

---

**SETTLEMENT AGREEMENT**

---

**WHEREAS**

1. On 4 July 2014, the President informed the Applicant (National Director of Public Prosecutions herein after referred to as the NDPP) of his decision to institute an enquiry in terms of section 12 (6) (a)(iv) of the National Prosecuting Authority Act 32 of 1998 (the Act).
2. On 30 July 2014, the President gave Notice of Intention to suspend the NDPP in terms of section 12 (6) (a) of the Act.
3. The NDPP brought an urgent application in the North Gauteng High Court to interdict the President from suspending him until the President has provided the NDPP with the requested particularity of the allegations

T.M. [Signature]

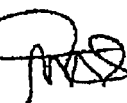
levelled against him, and which allegations were to constitute the subject matter of the enquiry.

4. These proceedings now stand adjourned and the parties subsequently entered into discussions and negotiations in an attempt to resolve the matter.
5. The parties recognize that a protracted litigation process will not be in the interests of the office of the National Director of Public Prosecutions, the functioning of the National Prosecuting Authority nor the Republic of South Africa.
6. The parties are also mindful that the public glare brought on by the holding of an enquiry, whilst necessary for transparency in our democracy, has unintended consequences.
7. The parties are fully cognizant of the costs implications for litigating and/or conducting the enquiry which resources may be better applied given the challenges our country faces.

**RECOGNISING** the important and pivotal role which the National Prosecuting Authority occupies in our constitutional democracy and the functioning of the rule of law and the desire to bring certainty and preserve the dignity of both the NDPP and the NPA

**IT IS AGREED THAT**

1. The parties understand that this agreement is to be regarded as a "no-fault" settlement, and, as such, this agreement is not intended and will not be construed to constitute an admission or statement by either party as to the validity or invalidity of any legal or factual contention advanced in this matter.

THS 

- 4
2. The President recognizes that the NDPP is professionally competent, sufficiently experienced and conscientious and has the requisite Integrity to hold a senior public position both in the public and private sector.
  3. The NDPP shall relinquish his post as National Director of Public Prosecutions as from 1 June 2015.
  4. In lieu of this, the NDPP shall receive the sum of R 17 357 233,00 within 60(sixty) days of signature of this agreement in full and final settlement of all claims of whatsoever nature arising out of his employment as National Director of Public Prosecutions.
  5. The settlement amount shall be subject to taxation, pension benefits, leave benefits, medical aid benefits and resettlement benefits, where ordinarily applicable to the NDPP in terms of his conditions of employment under the legislation and regulations.
  6. The NDPP will withdraw his application in the North Gauteng High Court under case number 59160/14 upon signature of this settlement agreement.
  7. The President will cease the holding of an enquiry into the fitness of the NDPP to hold such office.
  8. The government has paid and will continue to pay the NDPP's legal costs including the cost of this application as well as the holding of the enquiry.
  9. In the event that any disputes arises with respect to the Agreement, the party who believes there may be a breach shall contact the other party in writing setting forth the reason(s) for said belief and shall give the party five (5) business days to remedy the matter.

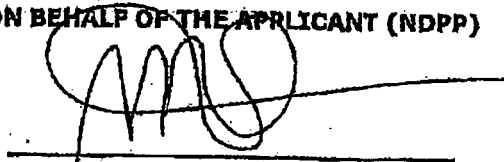
TM  
MS

10. By signing this Agreement, the parties acknowledge that they have read the Agreement in its entirety and are possessed with the full knowledge and understanding of the Agreement's contents.

11. This agreement shall become effective and enforceable upon signature by both parties.

SIGNED AT WATHMGA ON 09 MAY 2015

FOR AND ON BEHALF OF THE APPLICANT (NDPP)



SIGNED AT LAPE TOWN ON 14 MAY 2015

FOR AND ON BEHALF OF THE FIRST AND SECOND RESPONDENTS





Payment No.

Office

SALARIES

## NATIONAL PROSECUTING AUTHORITY

Capture by: [redacted]  
 Date capture: [redacted]  
 Pre-Authorised by: [redacted]  
 Date authorised: [redacted]  
 Final Authorised by: [redacted]  
 Date authorised: [redacted]

Sundry payment approved



8/6/2015

Description	SETTLEMENT
Initials	MSO
Surname/ Supplier	NDASANA 28895102
Address	
Postal code	

<input type="checkbox"/> Receipt cheque	Purchase order no		Settlement details
<input checked="" type="checkbox"/> Invoice	Source doc No.	002378	Settlement date
<input checked="" type="checkbox"/> Sundry	Source doc. date	18/06/2015	Discount %
<input type="checkbox"/> Credit note	Ref No.		Discount Date

<input type="checkbox"/> System cheque	Cheque No.		Bank acc No	10011627922
<input type="checkbox"/> Manual cheque	Cheque date		Branch code	580105
<input checked="" type="checkbox"/> EBT			Bank acc type	INVESTEC

Line Description		
Fund/Vote	VOTED FUNDS	
Responsibility	NATIONAL DIRECTOR & SUPP STAFF	
Objective	PROSECUTION SERVICES	
Item	Specialised Services	BUDGET
Projects	NO PROJECTS	
Assets	NON-ASSETS RELATED	2015-06-08
Regional Indicator	NAT FUNCTION:WHOLE COUNTRY DOM	
Infrastructure	NON INFRASTRUCTURE	
Matching Field 2	Trans C	
Matching Field 3	NATIONAL PROSECUTING AUTHORITY	
Allocation Amount	R	10 240 767.47
Total amount to be paid	R	10 240 767.47

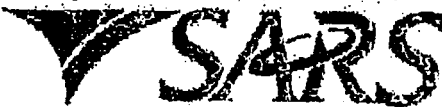
MOSES		
FC	SSA	GO
8	8	2015
06	06	2015
8	8	2015

NAT PROSECUTING AUTHORITY
Name of Sign
Date Invoiced Received
Received By
Signature

FA 1358335 rejected by National Treasury  
 (Safety Net) Banking details differ.  
 11 June 2015

Certified  
 Correct  
 08/06/2015

Printed in accordance with SARS recommended format

**INCOME TAX****Employees' tax deduction directive**

Enquiries should be addressed to:

Receiver of Revenue DURBAN

P.O. BOX 921  
DURBAN  
4000

Tel: (031) 328 6000 Fax: (031) 332 2210

Always quote this reference number in  
correspondence with this office or during interviews

Reference number : 0076080142

Date : 2015/06/05

Tax Year : 2016

Directive Number : 18354440

Application number : 000000020963095

**A: Particulars of Employee / Member of Fund**Surname : nxasana  
Initials : mso  
First names : mxollisi  
Address : 54 bonne view  
midrand  
pretoria

Date of Birth : 1967/11/23

Identity number / Other : 6711235284086

Office where registered for Income Tax : DURBAN

Employee, Policy, Pension or Provident fund number : Employee Number - 28895102

**B: Directive information**

Employees' Tax reference number (PAYE) : 7530738295

Name of fund/employer : national prosecuting authority

Reason for directive : settlement

Date of accrual : 2015/05/31

Under the provisions of paragraphs 2 and 11 of the Fourth Schedule to the Income Tax act, you are  
required to comply with the directive as set out below, regarding the remuneration paid to the above-  
named employee or member of fund.Tax amounting to R 7116465.53 to be deducted from the gratuity / lump sum payment of R  
17357233.

This directive is valid for the period 2015/03/01 - 2016/02/29

**Please note:**

1. This directive is invalid if any alterations have been made thereto.
2. Please file this on the employee's file in your office.
3. This form must be retained for inspection purposes.
4. You may only act on an original directive issued to your business or institution. You may, therefore, not act upon a photocopy of this form.

10240767.47

08:47:34 Mon Jun 08, 2015

8

PF12=ACCOUNT HOLDER DETAILS

PERSAL BETP  
5.06.04 (02)

SALARY ENQUIRIES:NAT PROSECUTING AUTH  
HISTORY - BASIC INFORMATION

2015-06-08  
08:50:27.8  
C80581

PERSALNO....: 26895102 01	MSO NXASANA	NAS DIREC NDPP
PAY DATE.....: 20150529	NORMAL	
SAL-EFF-DAT...: 20150531		
ORGANISATION..: NAT PROSECUTING AUTH	SEC. ORGANISATION:	
STATUS.....: CURRENT	REG SERV COUNCIL.: 23	
STATUS REASON: CURRENT	RACE.....: AFRICAN	
STATUS DATE...:	GENDER.....: MALE	
PAY GROUP.....: TEMPORARIES P. SERV.	MARITAL STATUS...: NEVER MARRIED	
NOTCH/TARIFF.: 2081868.00 221	NOTCH DATE.....: 20140401	
PAY METHOD....: DEPOSIT - CURRENT	IDENTITY NUMBER..: 6711235284086	
INSTITUTION...: INVESTEC BANK LTD	NATURE OF APPT...: CONTRACT	
MAIN BRANCH...: 580105 INVESTEC BANK GRAYST	APPOINTMENT ACT..: NAT PROSECUTING ACT	
ACCOUNT NO....: 10011627922	F/P.: FULLT	
DATE OF BIRTH: 19671123	SALARY LEVEL.....: 17	
DAYS/HOURS....:	APPOINTMENT DATE.: 20131001	
DEDUCTIONS....: 64658.80	REGION/PAY POINT.: 0001 / 580000	
NET SALARY....: 87922.51	PROBATION PERIOD.:	
SCALE.....: 81868 - 81868	RANK TYPE.....: 9 SMS PROF. (70.00%)	

CHOICE: \_ (2=ALLOW.; 3=IRP5; 4=OBJECTIVE; 5=ADDITIONAL; 6=TAX; 7=DEPEND.; 8=MEDICAL)



08:47:47 Mon Jun 08, 2015

9

PERSAL BEEP  
5.06.04(06)

SALARY ENQUIRIES:NAT PROSECUTING AUTH  
HISTORY - OBJECTIVE INFORMATION

2015-06-08  
08:50:40.2  
C80581

PERSALNO....: 26895102 01 MSO NYASANA  
PAY DATE.....: 20150529 NORMAL  
SAL-EFF-DAT.....: 20150531  
ORGANISATION....: C8 NAT PROSECUTING AUTH  
COMPONENT.....: 580000 OFFICE OF THE NDPP  
SUBCOMPONENT....: 000001 NATIONAL PROSECUTING  
RESPONSIBILITY..: 4209 NAT DIR SUPP STAFF  
PROVINCE/DEPT...: 99C8 NATIONAL DEPARTMENTS / NPA  
OBJECTIVE 1.....: 012097  
OBJECTIVE 1 %....: 100.00  
OBJECTIVE 2.....:  
OBJECTIVE 2 %....:  
OBJECTIVE 3.....:  
OBJECTIVE 3 %....:  
OBJECTIVE 4.....:  
OBJECTIVE 4 %....:  
OBJECTIVE 5.....:  
OBJECTIVE 5 %....:

NAS DIREC NDPP

CHOICE: \_ (1-BASIC;2-ALLOWANCE;3-IRP5;5-ADDITIONAL;6-TAX;7-DEPEND.;8-MEDICAL)

**ADVICE OF APPOINTMENT/STAFF CHANGE**  
**KENNISGEWIG VAN AANSTELLING/PERSONEEL VERANDERING**

Dept/Adm. <b>NPA</b>	Tel No. ....	Ext. Bylyn <b>6182</b>
Reference number Verwysingsnommer <b>26896102</b>	Date Datum <b>05/06/2015</b>	

THE DIRECTOR-GENERAL, OFFICE OF THE PUBLIC SERVICE COMMISSION  
 DIE DIREKTUR-GENERAAL, KANTOOR VAN DIE STAATSDIENKOMMISSIE

THE/DIE **FINANCE**  
 THE/DIE .....

*Kindly note the following appointment/staff change/ Gelye van die volgende aanstelling/ personeelverandering kennis te neem:*

Surname Van <b>NXASANA</b>	Date of birth Geboortedatum	Conjugal state Huwelikstaat
First names Voornamies <b>MSO</b>		
Highest educational qualification Hoogste opvoekindige kwalifikasie		
Nature of change Aard van verandering <b>SETTLEMENT PAYMENT</b>		
Date of effect Datum van inwerkingtreding <b>31 MAY 2015</b>	PSC Ref. No. SDK Verw. No.	
	Before change/Voor verandering	Subsequent to change/Na verandering
Rank Rang		
Salary scale Salarieskaal		
Salary Salaris		
Allowance Toelae		
Increment date Verhogingsdatum		
Dept Adm		
Establishment Disposisie		
Seniority date - Actual Senioriteitsdatum - Werklik		
Seniority date - Normal Senioriteitsdatum - Nominaal		
Appropriate experience Toegewoone ondervinding	Year(s) Jaar	month(s) maand(e)
<b>PENSION DEDUCTIONS:</b> <b>PENSIOENAFREKKINGS:</b>		
Government Service Pension Fund.....%	From Vanaf	From Vanaf
Regatingsdienspensioenfondse	Temporary Employees Pension Fund.....%	Pensioenfonds vir Tydelike Werknemers
Arrears/Agtoregeling.....%	From/Vanaf.....	
Remarks/Opmerkings: <b>PLEASE PAY THE SETTLEMENT OF R17 357 233.00 AS MR MSO NXASANA'S LAST WORK DAY WAS 31 MAY 2015. P.S. THE ATTACHED</b>		
for Head of Department / vir Hoof van Departement		

FOR USE BY ACCOUNTANT/GEbruik DEUR REKENMEESTER

Noted/Aangeteken	Remarks/Opmerkings
Signature/Handtekening	Date/Datum

The image displays three sequential screenshots of a DOS-based application window titled "Book Number: 00000".

**Top Screenshot:** The "Book Number" field contains "00000" and the "Name" field contains "JALISCO REGION". The "Outstanding Copies" field is empty, and the "Outstanding Interest" field is empty.

**Middle Screenshot:** The "Book Number" field now contains "00001", while the "Name" field remains "JALISCO REGION". The "Outstanding Copies" field is empty, and the "Outstanding Interest" field is empty.

**Bottom Screenshot:** A dialog box is displayed in the center of the screen. The dialog box has a title bar and contains the text: "No data were found that meet the requested search criteria." Below the text are two buttons: "OK" and "Help".

**Dude**

Adm  
2015/06/08

SYSOP  
RP0026BS

DAS  
NAT: PROSECUTING AUTHORITY  
DISBURSEMENTS PER PAYEE

12  
DATE: 31/08/2015  
TIME: 15:49:47  
PAGE: 2

DISBURSMT NUMBER	ACTION DATE	PAYMENT METHOD	NICE/BBF NUMBER	BENEFICIARY	AUTHORISED BY	STATUS	PAYMENT TYPE/NO	AMOUNT
0000641599	11/06/2015 CT		693	MXASANA MSD	NGAKOAHAT	CANCEL	AP 01350335	10,240,767.47
TOTAL AMOUNT FOR DBNO: 000641599								10,240,767.47
0000641593	15/06/2015 CT		698	MXASANA MSD	NDIVHUMOP	PAID	AP	10,240,767.47
SOURCE DOC NUMBER : NOT APPLIC		SOURCE DOC NUMBER : 003378					01350374	10,240,767.47
TOTAL AMOUNT FOR DBNO: 000641593								10,240,767.47
TOTAL AMOUNT ISSUED EXCLUDING CANCELLED AND REVENUED PAYMENTS:								10,240,767.47

\* - REJECTED CREDIT TRANSFERS

\*\*\*\* END OF REPORT RP0026BS \*\*\*\*

**INT 2**

**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

Case no: 62470/15

In the matter between:

**CORRUPTION WATCH (RF) NPC  
FREEDOM UNDER LAW (RF) NPC**

First Applicant  
Second Applicant

and

**THE PRESIDENT  
THE MINISTER OF JUSTICE  
MXOLISI SANDILE OLIVER NXASANA  
SHAUN ABRAHAMS  
DIRECTOR-GENERAL: DEPARTMENT OF JUSTICE  
AND CONSTITUTIONAL DEVELOPMENT  
CHIEF EXECUTIVE OFFICER OF  
THE NATIONAL PROSECUTING AUTHORITY  
THE NATIONAL PROSECUTING AUTHORITY  
THE DEPUTY PRESIDENT**

First Respondent  
Second Respondent  
Third Respondent  
Fourth Respondent  
  
Fifth Respondent  
  
Sixth Respondent  
Seventh Respondent  
Eighth Respondent

---

**NOTICE TO ABIDE**

---


**BE PLEASED TO TAKE NOTICE** that the Third Respondent abides by the decision of the above Honourable Court herein.

**BE PLEASED TO TAKE NOTICE FURTHER** that the affidavit of **MXOLISI SANDILE OLIVER NXASANA** will be used to explain the position of the Third Respondent herein.

---

BE PLEASED TO TAKE NOTICE FURTHER that the Third Respondent's Attorneys are Delaney Attorneys, care of MacRobert Attorneys, MacRobert Building, 1062 Jan Shoba Street, Brooklyn, Pretoria, at which address they will accept notice and service of all documents in these proceedings.

DATED AT PRETORIA THIS 12 DAY OF APRIL 2017.

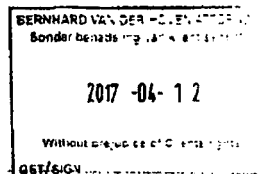
  
**DELANEY ATTORNEYS**  
 Third Respondent's Attorneys  
 6 Stafford St, Westdene, Johannesburg  
 Cell: 083 397 0057  
 Email: [simon@delaney.co.za](mailto:simon@delaney.co.za)  
 c/o MacRobert Attorneys  
 MacRobert Building  
 1062 Jan Shoba Street  
 Brooklyn  
 Pretoria

TO:

THE REGISTRAR OF THE ABOVE HONOURABLE COURT

AND TO:

**WEBBER WENTZEL**  
 Applicant's Attorneys  
 10 Fricker Road, Illovo Boulevard  
 Johannesburg, 2196  
 P O Box 61771, Marshalltown  
 Johannesburg, 2107  
 Tel: 011 530 5539  
 Fax: 011 530 6539  
 Email: [maray.hathorn@webberwentzel.com](mailto:maray.hathorn@webberwentzel.com)  
 Ref: M Hathorn 3001972  
 c/o Bernard van der Hoven Attorneys  
 2<sup>nd</sup> Floor, Parc Nouveaux Building  
 225 Veale Street  
 Brooklyn  
 Pretoria  
 Ref: Elmarie Robbertse  
 Tel: 012 346 4243  
 Fax: 086 584 3261  
 Email: [elmarie@bvdh.co.za](mailto:elmarie@bvdh.co.za)



Received by  
 on this 12 day of April 2017

Signed:  

AND TO:

**THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**  
First Respondent  
c/o State Attorney: Pretoria  
316 SALU Building  
Thabo Sehume Street  
Pretoria

Received by  
on this \_\_\_\_ day of \_\_\_\_ 2017

Signed: \_\_\_\_\_

AND TO:

**MINISTER OF JUSTICE AND CORRECTIONAL SERVICES**  
Second Respondent  
c/o State Attorney: Pretoria  
316 SALU Building  
Thabo Sehume Street  
Pretoria

Received by  
on this \_\_\_\_ day of \_\_\_\_ 2017

Signed: \_\_\_\_\_

AND TO:

**SHAUN ABRAHAMS**  
Fourth Respondent  
Victoria and Griffiths Mxenge Building  
123 Lake Avenue  
Silverton, Pretoria

Received by  
on this \_\_\_\_ day of \_\_\_\_ 2017

Signed: \_\_\_\_\_

AND TO:

**DIRECTOR-GENERAL: DEPARTMENT OF JUSTICE  
AND CONSTITUTIONAL DEVELOPMENT**  
Fifth Respondent  
c/o State Attorney: Pretoria  
316 SALU Building  
Thabo Sehume Street  
Pretoria

Received by  
on this \_\_\_\_ day of \_\_\_\_ 2017

Signed: \_\_\_\_\_

AND TO:

**CHIEF EXECUTIVE OFFICER OF THE NATIONAL PROSECUTING AUTHORITY**  
Sixth Respondent  
Victoria and Griffiths Mxenge Building  
123 Lake Avenue  
Silverton, Pretoria

Received by  
on this \_\_\_\_ day of \_\_\_\_ 2017

Signed: \_\_\_\_\_

AND TO:

**NATIONAL PROSECUTING AUTHORITY**  
Seventh Respondent  
Victoria and Griffiths Mxenge Building  
123 Lake Avenue  
Silverton, Pretoria

Received by  
on this \_\_\_\_ day of \_\_\_\_ 2017

Signed: \_\_\_\_\_

AND TO:

**THE DEPUTY PRESIDENT**  
Eighth Respondent  
c/o State Attorney: Pretoria  
316 SALU Building  
Thabo Sehume Street  
Pretoria

Received by  
on this \_\_\_\_ day of \_\_\_\_ 2017

Signed: \_\_\_\_\_



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**CASE NO.: 62470/15**

In the matter between:

**CORRUPTION WATCH (RF) NPC** First Applicant

**FREEDOM UNDER LAW (RF) NPC** Second Applicant

and

**PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** First Respondent

**MINISTER OF JUSTICE AND CORRECTIONAL  
SERVICES** Second Respondent

**MXOLISI SANDILE OLIVER NXASANA** Third Respondent

**SHAUN ABRAHAMS** Fourth Respondent

**DIRECTOR GENERAL: DEPARTMENT OF JUSTICE  
AND CONSTITUTIONAL DEVELOPMENT** Fifth Respondent

**CHIEF EXECUTIVE OFFICER OF THE  
NATIONAL PROSECUTING AUTHORITY** Sixth Respondent

**NATIONAL PROSECUTING AUTHORITY** Seventh Respondent

**DEPUTY PRESIDENT OF THE REPUBLIC OF  
SOUTH AFRICA** Eighth Respondent

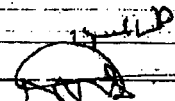
---

**EXPLANATORY AFFIDAVIT**

---

**BY THE THIRD RESPONDENT**

---



I, the undersigned,

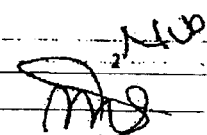
**MXOLISI SANDILE OLIVER NXASANA**

do hereby make oath and say that:

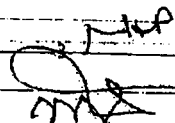
1. I am an adult male attorney and I am the third respondent in this matter.
2. The facts contained in this affidavit are both true and correct and are, unless the contrary is clearly indicated, within my own personal knowledge. Where I make submissions of a legal nature, I do so on the advice of my legal representatives.

**PURPOSE OF THIS AFFIDAVIT**

3. I depose to this explanatory affidavit in response to the application launched by the applicants, Corruption Watch (RF) NPC ("*Corruption Watch*") and Freedom Under Law (RF) NPC ("*FUL*"), in which they seek, primarily, to review the settlement agreement concluded between the first respondent ("*the President*"), the second respondent ("*the Minister*") and myself.
4. Although this explanatory affidavit is filed in response to the founding affidavits of Corruption Watch and FUL, I wish to record that I do not oppose the relief that they seek and file this affidavit to assist the Court with relevant and material factual information.



5. The purpose of this affidavit is thus to provide this Court with an account of the facts within my personal knowledge, which it has not been fully apprised of in the answering affidavits of the respondents that I have now seen and which are relevant to its consideration and determination of this matter.
6. To this end, I confirm the allegations made in Corruption Watch and FUL's affidavits, to the extent that they accord with what is set out below and in the contemporaneous correspondence regarding my tenure at the NPA, the circumstances of my premature departure from it and the state of the institution of which I was aware at that time.
7. I do not intend to address all of the allegations made in the answering affidavits filed by the President, the National Prosecuting Authority ("NPA") the fifth respondent, and the Minister paragraph-by-paragraph. To the extent that any of those allegations (to the extent that they concern me) conflict with what is set out below and in the paragraphs of the applicant's affidavits that I have confirmed, they are denied. My failure to address any specific allegations should not be construed as an admission as to their correctness.
8. This affidavit is structured as follows:
  - 8.1. I address the conclusion of the settlement agreement between myself, the Minister and the President and the basis on, and the understanding with, which I concluded it.



8.2. Thereafter, I address my reasons for leaving the NPA and the material and central fact that I never made a request to the President to vacate the office of the NDPP in terms of section 12(8) of the NPA Act, contrary to what is contained in the answering affidavits that I have now seen.

8.3. Finally, I address the Court on the reasons for, and seek condonation for, the late filing of this affidavit.

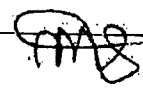
#### **BACKGROUND**

9. I was appointed as the National Director of Public Prosecutions ("NDPP") by the President with effect from 1 October 2013.

10. My appointment came about after the President's legal advisor Mr Michael Hulley met me at my office in Durban and he told me that my colleagues had recommended me to take up the position of NDPP. He asked if I was willing to serve as NDPP and I said yes I would. Following my appointment, I met Mr Hulley again as part of my transition to the office of NDPP.

11. In terms of section 179 of the Constitution read, with section 10 of the National Prosecuting Authority Act ("NPA Act"), my appointment was for a period of 10 years.

12. However, during my first year in the office, it became clear that my leadership of the NPA was resisted by National Deputy Director Advocate Jiba and the Special Director: Specialised Commercial Crime Unit



Advocate Mrwebi appeared determined to undermine my standing with the President. I later established that they had run a campaign to discredit me as a person fit and proper to hold the office of NDPP.

13. In addition, I believe that Advocates Jiba and Mrwebi advised the President that I intended to reinstate the criminal charges against him that my predecessor had withdrawn. The President informed me in one of our meetings that he had been told that I was apparently meeting former NDPP Mr Bulelani Ngcuka at a flat in Durban. He said: "Hey Mfanakithi, umuntu uma eke washo igama lalwomuntu angifuni nokuzwa lutho ngaye indlela angangifuni ngakhona, ngivesane nyihlanye." This can be roughly translated as "once they mention the name of Ngcuka I don't want to hear anything about that man - I simply go crazy." I told the President that I have never met Mr Ngcuka and that he was being misled.
14. I believe that Advocate Jiba was resentful when she was not appointed as NDDP as she had been acting in that position prior to my appointment. I do not have any reason to believe that Advocate Jiba and I were unable to work together professionally, but do believe that the campaign to have the President remove me was aimed at ensuring her continuing to act as, or even her permanent appointment as, the NDPP. I later discovered that Advocate Jiba had been recommended in a memorandum by former Minister of Justice and Constitutional Development, Mr Jeff Radebe, for permanent appointment as NDPP. This campaign was similar to that

NCP



which disqualified Mr Stanley Gumede who was widely tipped to be made NDPP before my appointment.

15. I believe that this campaign against me culminated in the President's establishment of the Inquiry into my continued service as NDPP.
16. Finally, I was concerned that this campaign was also used to influence some staff members against me and some staff members were used in pursuit of the campaign, which disrupted the operation of the organisation.
17. I had taken various steps to address the instability suffered by the NPA at this time. These included :

17.1. Obtaining a legal opinion from senior counsel regarding the findings of the High Courts and the Supreme Court of Appeal against Advocates Jiba, Mrwebi and Mzinyathi (the Director of Public Prosecutions : North Gauteng Division);

17.2. The appointment of the Commission headed by retired Constitutional Court Justice Yacoob to inquire into the instability within the NPA;

17.3. The preparation of the Memorandum, signed by Mr Willie Hofmeyr, addressed to the Minister for onward transmission to the President regarding the situation at the NPA;

17.4. Correspondence addressed to the Bar Council regarding Advocates Jiba, Mrwebi and Mzinyathi;

5 NLP  
MIA

17.5. Informal attempts to improve my relationship with Advocates Jiba, Mrwebi and Mzimyathi; and

17.6. Repeatedly requesting a meeting with the President, so as to request him to intervene and address the situation at the NPA by instituting disciplinary action Advocates Jiba, Mrwebi and Mzimyathi.

18. In July 2014, I was informed by the President that he had taken a decision to institute a commission of inquiry to determine whether I was fit and proper to hold office, in terms of section 12(6)(a)(iv) of the NPA Act.

19. At the end of that month, the President also informed me that he intended to suspend me with full pay pending the outcome of the inquiry and he gave me an opportunity to make submissions in that regard.

20. However, I was of the opinion that insufficient information had been provided to enable me to respond and to make meaningful submissions, and so I sought further information from the President, which was not forthcoming.

21. As a result, on 15 August 2014, I approached this Court on an urgent basis seeking to interdict my suspension by the President and to obtain the relevant information needed to respond fully to the allegations made against me in any inquiry.

22. I did not proceed with my urgent application since negotiations then commenced between myself and the President with a view to settling the

NLP

AM

dispute that had arisen regarding my continued service as head of the NPA.

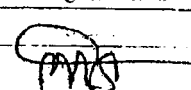
23. On 5 February 2015, the President formerly appointed the commission of inquiry to inquire into my fitness to hold office
24. During May 2015, the President, the Minister and I concluded a settlement agreement in terms of which I agreed to relinquish my position as NDPP and received a settlement amount equivalent to what I would have received as a salary had I served my full term as NDPP. In that agreement, the President acknowledged that I was a fit and proper person to hold office as the NDPP. Below I explain the circumstances that gave rise to the settlement agreement at issue in this application.

#### THE CONTEXT OF THE SETTLEMENT AGREEMENT

25. My reasons for concluding the settlement agreement are relevant in order to understand its context and purpose.
26. First, I entered into the settlement agreement to settle what I considered to be an intractable, undesirable and ongoing dispute between myself, the President and Mr Radebe.

26.1. The source of the dispute was the fact that the President wanted me to vacate the office of the NDPP and I did not want to leave office. A number of spurious and baseless grounds were raised for me to depart office, and I vehemently disagreed with those grounds. To this day I maintain that I am fit and proper to hold the

NEW





office of NDPP and would serve again. My fitness and propriety was agreed to and recorded by the President and Minister in the settlement agreement, and they do not contend otherwise before this Court.

26.2. In my position as the NDPP, I understood my relationship with the President as the appointing authority of the NDPP to be relevant to my employment status. This is based on his appointment powers in terms of section 179 of the Constitution. I further understood my tenure as NDPP to be contractual in nature and not exclusively regulated by the NPA Act.

26.3. While the dispute between the President and I remained unresolved, attempts were made to resolve it through negotiations between myself, the President's legal representatives, Michael Hulley and Busisiwe Makhene, the Minister and the Minister of State Security, David Mahlobo, as set out below.

26.4. In light of these negotiations, I ultimately accepted the terms of the settlement agreement so as to resolve the dispute that had arisen with the President and the pending litigation I had been forced to bring to this Court. I did so on the basis that the President and I were entitled to resolve disputes by reaching a settlement that is acceptable to all parties.

26.5. I was therefore of the view that the settlement agreement was concluded, not in terms of the NPA Act, but rather to settle this dispute.

XLP  
MS

26.6. I have since been advised, and accept, that, as the applicant contends, the NPA Act regulates the terms of any early termination of my tenure as NDPP. Of course, it has no application to the litigation brought to interdict the inquiry into my continued service.

26.7. However, all of this does not change the simple fact that the settlement agreement was not, and was never intended to be, concluded to constitute a request on my part to vacate office in terms of section 12(8) of the NPA Act, and I will deal with this in greater detail below.

27. Second, I am also of the view that my entering into the settlement agreement was an attempt to protect the integrity of the office of the NDPP.

27.1. The dispute between the President and I, and my difficulties with Advocates Jiba and Mrwebi of the NPA, had been ongoing and the President did not seem willing to intervene to resolve it.

27.2. There was also considerable media attention paid to the dispute and speculation on the issues at stake regarding the integrity and functionality of the NPA.

27.3. My initiation of disciplinary action against Advocates Jiba, Mrwebi and Mzinyathi appeared not to be supported by the President and the Minister. I had requested that the President intervene by taking disciplinary steps against Advocates Jiba, Mrwebi and Mzinyathi, and I had provided him with a file of relevant

documentation. This included the legal opinion, reports and memoranda that are before this Court. At the NPA meeting at Emperors Palace in March 2015 referred to below, the Minister informed me that the President had agreed to intervene as I had requested. He failed to do so.

27.4. I was of the opinion that protracted and acrimonious litigation and disputes between myself and the President would further impair the standing of the NPA and the office of the NDPP.

27.5. It was my belief that it was in the best interests of the office of the NDPP and the institutional integrity of the NPA that the President and I settle our dispute, and that I relinquish my position as NDPP as a part of that settlement.

28. These reasons are expressly set out in the settlement agreement itself – attached as "CW 12" to the founding affidavit. In this regard, I emphasise that the settlement agreement recorded that –

*"both parties recognize that a protracted litigation process will not be in the interests of the office of the National Director of Public Prosecutions, the functioning of the National Prosecuting Authority nor the Republic of South Africa,"*

29. It was further recorded at paragraphs 5 and 6 of the settlement agreement that –

NCP  
11  
[Signature]

"the parties are also mindful that the public glare brought on by the holding of an enquiry, whilst necessary for transparency in our democracy, has unintended consequences."

and

*"the parties are equally cognizant of the cost implications for litigating and/or conducting an enquiry which resources may be better applied given the challenges our country faces".*

30. Finally, whilst I knew that I would be found fit and proper by the inquiry, it remained open to doubt whether the findings of the inquiry would ultimately resolve the dispute regarding my leadership of the NPA. I also had seen what had happened to my predecessors as NDP. They became involved in lengthy, acrimonious and expensive litigation and endured well-publicised personal attacks, all while their tenure as NDP was made untenable. This adversely affected the integrity of the office of the NDP, the stability of the NPA and them personally.

31. All of these factors resulted in me concluding the settlement agreement and relinquishing my position as NDP in accordance with the provisions of the settlement agreement.

#### **I DID NOT REQUEST TO LEAVE OFFICE**

32. It was never my intention to make a request to vacate the office, nor did I ever make such a request to the President, in terms of section 12(e) of the NPA Act.

NDP  
NPA

33. I did not feel compelled to make such a request since I have at all times considered myself to be fit and proper to hold the office of the NDPP and I had no intention of leaving the office of the NDPP. As explained above, the settlement discussions were only commenced as a result of the ongoing dispute between myself and the President.

34. These intentions are plainly evident from the following excerpts from the contemporaneous correspondence.

35. My position was expressly articulated in the letter from my lawyers, Mabunda Incorporated, to the President on 10 December 2014, a copy of which is attached to this affidavit marked "MN 1". That letter explicitly records that:

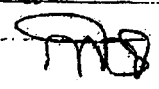
*"It has never been the NDPP's intention to resign from his position since he considers himself to be a fit and proper person to hold this position."*

36. My position is further made clear with reference to paragraph 4 of that letter which states:

*"the proposed settlement was triggered by the discussions which the NDPP had with the President following the latter's announcement of his decision to hold an enquiry into the NDPP's fitness to hold office and the possible suspension pending the enquiry."*

37. I also expressed my unwillingness to resign to the Minister during a meeting which he called me to and which was held at the Sheraton Hotel in Pretoria on or about 26 February 2015. Contrary to the Minister's answering affidavit, what transpired at that meeting was the following:

N/A



- 37.1. The Minister stated that he understood that I had reached an agreement with the President and that I would be leaving the NPA.
- 37.2. I advised the Minister that the opposite was in fact true, since I had never had any intention of leaving the NPA and I was discussing the issue further with Mr Hulley (the President's legal representative) with a view to resolving the dispute so that I may retain office.
- 37.3. I further expressed that I had, in any event, not consulted my family or my lawyers about the settlement proposed by the President.
- 37.4. The Minister appeared unaware of my discussions with Mr Hulley and indicated that he would need to get clarity from his principal on his (the Minister's) role in this matter. As a matter of fact, the Minister played no further role in the settlement negotiations.
38. In addition, when I next met the Minister at an NPA workshop at Emperors Palace on or about 10 March 2015, contrary to what is stated in his answering affidavit, we did not discuss the settlement negotiations. He did, however, advise me that the President had agreed to intervene to take the disciplinary steps I had requested against Advocates Jiba, Mrwebi and Mzinyathi.
39. My unwillingness to leave the office of the NDPP is further evidenced by a letter which I addressed to the President and in which I indicated that my preference was to resolve the dispute between us through a section 12 inquiry. A copy of this letter is annexed as "MN 2".

40. That this was my intention is further supported by the urgent application I filed before this Court wherein I sought an order interdicting the President from suspending me until I was presented with sufficient particularity of the allegations levelled against me in order to respond to and rebut them fully. This is attached as "CW 5" and "CW 6" to the founding papers.
41. In light of the above, the allegation that I requested to vacate my office cannot be sustained. Indeed, I made repeated requests to the President to pursue a section 12 inquiry, and I even went so far as to launch urgent court proceedings seeking clarification of allegations so that I may clear my name and continue to perform my work and duties as the NDPP.
42. The plain facts set out above and in the contemporaneous documents are therefore inconsistent with the respondents' version that I requested to vacate office. I have always maintained that I am, and have always been, fit and proper to hold office and that no request was ever made by me to the President to leave office.
43. I have had regard to Corruption Watch and FUL's founding affidavits, deposed to by David Lewis on behalf of Corruption Watch and Nicole Fritz on behalf of FUL, as well as their supplementary affidavit in terms of Rule 53(4), deposed to by their legal representative, Mr Moray Hathorn.
44. I wish to confirm specifically the contents of paragraphs 40.1 to 40.12 of the supplementary affidavit filed by Corruption Watch and FUL. In particular, I wish to confirm applicants' conclusions that:

NUP

APD

- 44.1. I did not make a request to the President to be allowed to vacate office on the basis of discord in the NPA;
- 44.2. I expressed a preference for the matter to be resolved through a section 12 inquiry;
- 44.3. I entered into the settlement agreement in order to resolve the dispute between myself and the President for the reasons and on the basis set out above;
- 44.4. I instituted urgent legal proceedings in order to interdict my suspension and to obtain sufficient information from the President about the allegations and respond to them.
45. The President's version in this regard is false. The contemporaneous documentary evidence pointing to the contrary supports what I state above. To be crystal clear: I never requested that the President allow me to vacate the office of the NDPP in accordance with section 12(8) of the NPA Act, or on any other basis.
46. I have also reviewed the affidavit filed by the current NDPP, Advocate Shaun Abrahams. I disagree that staff morale deteriorated as a result of my leadership and that I would not be able to effectively lead the organisation if re-instated. I am able and willing to serve again as NDPP.

#### CONDONATION

47. At all material times, the President, the Minister and the President's legal representative, Mr Hulley, were aware that I did not intend to, and in fact



did not, request the President to allow me to vacate office in terms of section 12(8).

48. In this regard, I met with Mr Hulley after the conclusion of the settlement agreement and shortly after I was served with the papers in this application (issued out of this Court under case number 62470/15).

48.1. On 22 October 2015, I met with the Minister of State Security, David Mahlobo at the Beverley Hills Hotel in Durban at his request, and I drove him to Ebandia Hotel in Ballito where he was scheduled to speak at the opening of the "Integrity Leadership Summit", hosted by the Office of the then Premier of KwaZulu-Natal, Mr Senzo Mchunu.

48.2. I was acquainted with Minister Mahlobo from when we both attended university at the same time.

48.3. Minister Mahlobo instructed his Chief of Staff, Mr Maduna, to arrange a meeting between myself and Mr Hulley. That meeting took place the next day, on 23 October 2015, between myself, Mr Hulley and Mr Maduna, over breakfast at the Beverly Hills Hotel in Durban.

48.4. During that meeting, Mr Hulley enquired how I intended to approach this application by Corruption Watch and FUL. I advised him that I had not filed a notice of intention to oppose.

- 48.5. Mr Hulley proposed that I should work with the President on the matter and he offered to pay my legal costs, including the costs attendant on appointing a senior counsel.
- 48.6. I advised him that I could not accede to that request until I had seen the response which the President intended to file.
- 48.7. It was evident to me that Mr Hulley wanted me to say on oath that I had made a request to the President to vacate my office in terms of section 12(8) of the NPA Act. I advised Mr Hulley that I was not prepared to make that statement since that was not what had occurred factually. I reminded him that I was an officer of this Court and that I would not mislead the Court. I emphasised to him that there was correspondence between my legal representatives and the President that makes clear that I had never made such a request. I had drafted some of that correspondence personally.
- 48.8. I pause to note that, when I requested copies of this correspondence from my attorney following the meeting, I was informed that the files containing it had disappeared from my attorney's office.
- 48.9. I concluded by stating to Mr Hulley that I did not intend to oppose the application, but I would be required to file a response in the event that the President's answering affidavit contained any false representations of events. Mr Hulley advised me that the President's answering affidavit had already been prepared and

that no false averments as to the sequence of events were made  
in this regard.

48.10. Mr Hulley undertook to provide me with a copy of the draft affidavit.  
However, he never did so.

49. I only became aware of the content of the President's answering affidavit  
after it had been filed in February 2016.

50. Thereafter, I contacted Minister Mahlobo and complained about the  
version contained in the President's affidavit and Mr Hulley's conduct.  
Minister Mahlobo invited me to his official residence in Waterkloof. Mr  
Maduna was also present at that meeting. I advised Minister Mahlobo  
about my meeting with Mr Hulley, and in particular about Mr Hulley's  
undertaking to me to provide the President's affidavit to me before it was  
filed, which was not fulfilled.

50.1. I advised Minister Mahlobo that I was not happy about what had  
happened and the version in the affidavit, and I made it clear to  
him that even though I had not filed a notice of intention to oppose  
the application, I would consult with my legal representatives and  
advise them of what had happened. I explained to Mahlobo and  
Maduna that this application had now affected my reputation and  
I had to do something.

50.2. Minister Mahlobo then immediately telephoned the Minister, in my  
presence, although I did not speak to the Minister.

50.3. Minister Mahlobo explained to the Minister that the President had deposed to an affidavit in which he had stated that I had requested to vacate office, even though there was correspondence which clearly indicated that this was not correct.

50.4. Minister Mahlobo advised me that, according to the Minister, Mr Hulley had advised the Minister that I had agreed that I had made a request to vacate office. I disputed this with Minister Mahlobo.

51. Accordingly, to the knowledge of the President's legal representatives and the Minister, I have always denied that I made a request to the President to vacate the office of the NDPP in terms of section 12(8) or at all. This is supported by the irrefutable documentary evidence that has been placed before this Court by both the applicant and myself.

51.1. I provided much of this documentary evidence to the applicants here and it formed the basis of their Rule 30A application.

51.2. I did this to further assist the applicants and to place before the Court contemporaneous documentary evidence that I never requested to vacate the office of NDPP.

51.3. Now, in addition to assisting the Court by providing the applicants with documents relevant to the Rule 30A application, I wish to file this affidavit to further assist the Court.

52. I acknowledge that this affidavit has been filed considerably out of time and at a point in time when the matter is already at quite an advanced stage.
53. However, I humbly request this Court to condone the late filing of this affidavit because I file it in order to assist the Court by placing relevant facts and evidence before this Court.
54. I submit further that it would be in the interests of justice to condone the late filing of this affidavit. The issues raised by the applicants are of considerable national importance and concern. This application, quintessentially, concerns the public's right to and interest in the proper administration of state institutions, and particularly the NPA and the office of the NDPP, which are established by the Constitution.
55. The facts which I have set out above in this affidavit are, I hope, of assistance to the determinations that this Court is called upon to make, and are facts which no other party who has full personal knowledge thereof has deemed appropriate to place before this Honourable Court.
56. I respectfully submit that in the light of the important constitutional issues which this Court is called upon to consider, together with the importance and relevance of the facts which I have sought to place before this Court, the late-filing of this affidavit cannot cause any serious prejudice the parties. All of the parties will have an adequate opportunity to address the facts raised, either by seeking leave from this Court to file further affidavits or in their heads of argument, which I am advised have not yet been filed.

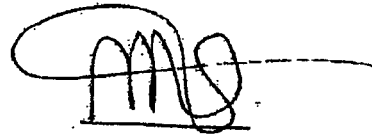
57. My attorney of record has written to all parties request their consent to our application for condonation for the late filing of this affidavit.

NCD

MAJ

**RELIEF**

58. I respectfully request that this Court condone my non-compliance with the time periods stipulated in the Rules for the filing of this affidavit.
59. In the event that the Court does not grant condonation, I submit that costs occasioned by the filing of this affidavit should not be awarded against me, since it is filed to assist the Court.
60. I do not oppose any of the relief sought by Corruption Watch/FUL in this application and I fully intend to abide by any decision that this Court makes.
61. I wish to confirm specifically that I am both willing and able to resume my position as NDPP, should this Court grant such relief. I am further willing to abide by and fulfil any other relief sought in the Notice of Motion that this Court may order.



**DEPONENT**

I HEREBY CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at SANDTON on this the 11<sup>th</sup> day of APRIL 2017, the regulations contained in the Government Notice No R1256 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

*N. D. D. D.*  
**COMMISSIONER OF OATHS**

*N. D. D. D.*  
**Nzwilisel L. Dvirakumunda**  
Ex Officio Commissioner of Oaths  
Practising Advocate of the High Court of SA  
Registered Legal Practitioner in Zimbabwe  
Rex Welsh House, Sandown Village  
Off Maude Street & Gwen Lane, Sandton

Full Name:

Business Address:

Designation:

Capacity:

"MN 1"



2 Protea Road, Corner Riley, Bedfordview, 2008, Tel: (011) 450 2284/1641 Fax: (011) 450 1566  
PO BOX 11234, Marshalltown, 2107 Email Address: info@mabundalaw.co.za DOCEX 424 JHB

THE PRESIDENCY  
REPUBLIC OF SOUTH AFRICA  
PRETORIA

10<sup>TH</sup> DECEMBER 2014

ATTENTION: BONISIWE MOKHENE  
Email: bonisiwe@presidency.gov.za

RE: NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS //  
PRESIDENT OF REPUBLIC OF SOUTH AFRICA

1. We refer to the above matter and particularly to the meeting we held on the 08<sup>th</sup> instant at Mahlabandlwane where it was discussed, advised and agreed as follows:

- 1.1 Following the settlement proposal that you presented to us, we requested you to furnish us with the NDPP's total unexpired term package in line with the annexure to the presentation.
- 1.2 You requested the NDPP to furnish you with information regarding:
  - 1.2.1 Leave balances; and
  - 1.2.2 Pension benefits (5.1.2 (8) to (11) of the NPA Act 32 of 1998 (NPA Act);
- 1.3. We will furnish you with the above information by no later than the close of business on Thursday the 11<sup>th</sup> December 2014.

2. Following our discussions of the 08<sup>th</sup> instant and the subsequent instructions from client regarding the proposed settlement, we would like to place the following on record:

- 2.1 We are of the firm view that the prescripts which you sought to rely on pertaining to settlement are not applicable in the present case for the following reasons:

Director: *Phisoaniso Bhebe* B Proc (UCT) LLB (Wits), LL.M (Labour Law) (UCT), Dip. Advanced Banking (RAU), Dip in Criminal Justice and Forensic Auditing (RAU), Certificate in Sports Law (UCT), Certificate in Admin & Comp Law (UCT)

Assisted by: *David Leonard Mkhomo* B Proc (RAU), LL.M (International Law) (UJ), Bachelor of Laws (Honours) LLB (UNIVEN), *Zoborga Innocentius Mkhomo* LLB (UJ), *Melanie Chanté Mkhomo* LLB (UJ), *Justine Lindie Mkhomo* LLB (WITS), *Compliance Management (UJ)*, *Marianne Ngobeni* LLB (UJ)

*LM*  
*MS*





2 Protea Road, Corner Riley, Bedfordview, 2008 Tel: (011) 450 2284/1041 Fax: (011) 450 1586  
PO BOX 61238, Marshfield, 2107 Email Address: info@mabundaino.co.za DOCEX 424 JH8

2.1.1 The provisions of the NPA Act which you seek to rely upon deal with a scenario where the NDPP is removed from office in terms of Section 12 (6) (a).

3. The procedure thereof is succinctly spelt out in Section 12 subsections 6,7,8 and 9 of and the NPA Act.

We would consequently like to draw the following to your attention:

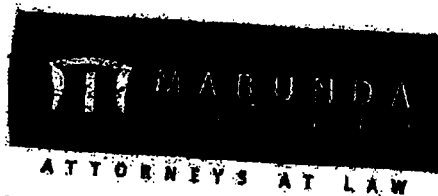
- 3.1 That it has never been the NDPP's intention to resign from his position since he considers himself to be a fit and proper person to hold this position.
4. The proposed settlement was triggered by the discussions which the NDPP had with the President following the latter's announcement of his decision to hold an enquiry into the NDPP's fitness to hold office and the possible suspension pending the enquiry.
5. Our instructions further are that the meeting between the NDPP and the President only took place after numerous attempts by the NDPP to seek audience with the President without success.
6. It must be remembered that the only time the President agreed to meet the NDPP was after the latter had lodged a court application, *inter alia*, interdicting the President from suspending the NDPP before the President provided further and sufficient particulars to enable the NDPP to respond or show cause why he should not be suspended.
7. We are advised that during the discussions the NDPP had with the President, the NDPP made it very clear that he will only consider stepping down from office if he is fully compensated for the remainder of his entire contract as head of the National Prosecuting Authority.
8. We reiterate that there is no factual or legal basis for our client to step down from his position.
9. It is our considered view, in light of the above that the Provisions of the NPA Act read with the Provisions of the Public Service Act, which you have alluded to, do not apply to this proposed settlement.

Director: **Princess Sibindi Mabunda: B Proc (LDW) LLB (Wits), LL.M (Labour Law) (UNW), Dip. Advanced Banking (RAU), Dip in Criminal Justice and Forensic Auditing (RAU), Candidate in Sports Law (UCT), Candidate in Admin & Const Law (UCT).**

Assisted by: **David L. Venter: B Proc (BAU), LL.M (International Law) (UJ), Shorter Potchefstroom Management LLB (UNW), Tobiashe Mphahlele: LLB (UJ), Makgona Charles Mphahlele LLB (UJ), Judith Lindwe Mphahlele LLB (WITS), Compliance Management (UJ), Makgona Mphahlele LLB (UJ).**

Ref No: 2008/00027841 - VAT Registration No: 4250183290 - Practice Number 6046

Handwritten initials: **MLD**  
**AMU**



2 Protea Road, Corner Riey, Bedfordview, 2008 Tel: (011) 450 2284/1841 Fax: (011) 450 1688  
PO BOX 51236, Marshalltown, 2107 Email Address: info@mabunda.co.za DOCEX 424 JH8

10. In the circumstances, our client will only consider the option of leaving office, as the President would want him to, if he is fully compensated for the remainder of his contract.
11. We confirm that the President advised us that the Minister of the State Security Agency (the Minister) has confirmed that he has upheld the NDPP's appeal against the refusal to grant him the security clearance and he has already issued it but he is waiting to hand it over to the NDPP upon finalisation of settlement between the parties.
12. While we do appreciate and welcome the Minister's decision to uphold the NDPP's appeal, it is our respectful view that the granting of the security clearance certificate to the NDPP is and/or should not be a condition for any proposed settlement.
13. We are accordingly bringing it to your attention that we are dispatching a letter to the Minister to release the Security Clearance Certificate to the NDPP.
14. We await to hear from you.

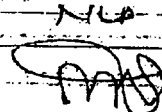
Yours faithfully  
Mabunda Incorporated

  
Per: P.B. MABUNDA

Director: Priscilla Bulawa Mabunda: B Proc (UDN), LLB (Wits), LL.M (Labour Law) (Wits), Dip. Advanced Banking (BAU), Dip. In Criminal Justice and Forensic Auditing (BAU), Certificate in Sports Law (UCT), Certificate in Admin & Genl Law (UCT).

Assisted by: David Leonard: B Proc (BAU), LL.M (International Law) (UJ), Shirley Puthucheary: LL.B (UNIVEN), Thabogo Mphahlele: LL.B (UJ), Makhanya Charles Mkhiseni: LL.B (UJ), Judith Lindwe Wess: LL.B (Wits), (Compliance Management) (UJ), Martine Npotent: LL.B (UJ).

Reg No. 2001/006236/21 - VAT Registration No. 9280193290 - Practice Number 6046



**FEI MARBODA**  
**ATTORNEYS AT LAW**

2 Prima Road, Corner Fly, Bedfordshire, 2008 Tel: (0111) 460 228/1341 Fax: (0111) 460 1666  
PO BOX 61238, Marshelkown, 2107 Email Address: info@netabundance.co.za DOCEX 424 J40

3 November 2014

Dear Mr Hulley

RE: NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS/  
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA IN RE: THE  
NDPP'S FITNESS TO HOLD OFFICE

We refer to the telephonic conversation between the writer hereof and yourself on the 30<sup>th</sup> October 2014.

We confirm that you have raised concerns about the inordinate time the matter is taking and that in your view the delay is attributable to our client.

You are in no doubt aware that the writer has been out of the country attending the International Bar Association (IBA) Conference between the 19<sup>th</sup> and 28<sup>th</sup> October 2014, as a result of which it had been difficult to get an opportunity to consult.

We have however urgently and subsequent to our telephonic conversation, consulted with client who has instructed us to respond as follows:-

1. Client is willing to participate in the mediation process as your client has proposed,
2. Although client would have preferred to have the matter resolved by way of enquiry, he is of the view that it is in the best interest of the NPA to have the matter finalised expeditiously by exploring the mediation route.
3. It should be put on record that our client does not in any way waive any rights he has in law by agreeing to explore the mediation process and as such the proposals of the mediator shall not be binding on him unless expressly agreed to in writing.

**Directors:** Professor Boman Malhotra: IPCT (UDY) LLB (WGL) LL.M (Labour Law 1999) Dip. Advanced Shipping (1981), Dip in Customs, Justice and Forensic Auditing (IAU) Contributor in Sports Law (UCT), Contributor in Asian & Coastal Law (UCT)

Assisted by: David Lennard Wilson, B Proc (RAIL), LLM (International Law) (U), Shirley Fudzhole Mordantshir, LLB (UNIVEN),  
Tellego Murewaniso Mubvumba, LLB (U), Mordantshir Charles Murewaniso, LLB (U), Justice Lindane Mphahleli, LLB (WITS),  
Compliance Management (U), Mordantshir Mphahleli, LLB (U).

AND



ATTORNEYS AT LAW

2 Protea Road, Corner Riley, Sandton, 2008 Tel: (011) 450 2284/841 Fax: (011) 450 1555  
PO BOX 51235, Maitland, 2107 Email Address: info@mabunda.co.za DOCEX 424 JH9

You are therefore requested to initiate the process and kindly advise in writing about the proposed mediator, the terms of reference for the mediation and all the logistics that come with it.

As you are aware, our client has lodged an appeal with the Minister of State Security Agency, the Honourable Mr David Mahlobo, MP with respect to the security clearance certificate.

Furthermore, our client further appeared before the said Minister and the Committee to make oral submission in amplification of the written appeal. Our client is still waiting for the Minister's decision, of which he undertook to communicate with client in due course.

This is a factor which should be taken into account, when addressing issues of the proposed mediation.

Kindly acknowledge receipt of this letter while we are awaiting your further advises.

Yours Faithfully

PB Mabunda

Per email: michael@hulleyinc.co.za

Director: **Priscilla Bhebe Mabunda**, B Proc (DPP) LLB (Hons), LL.M (Labour Law) UNISA Dip. Advanced Banking (BAU), Dip in Criminal Justice and Forensic Auditing (BAU), Certificate in Sports Law (UCT), Certificate of Admission & Court Law (UCT)

Assisted by: **Dawid Leonard Viljoen**, B Proc (BAU), LL.M (International Law) (UJ), Shirley Fajana Nkomo, LLB (UNISA), Tembisa Innocentia Ndlovu, LLB (UJ), Mphahlele Charity Mkhomo, LLB (UJ), Judith Lindani Nkomo, LLB (WITS), (Compliance Management - BUS), Mphahlele Ndlovu, LLB (UJ)

**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

Case no: 62470/15

In the matter between:

**CORRUPTION WATCH (RF) NPC  
FREEDOM UNDER LAW (RF) NPC**

First Applicant  
Second Applicant

and

**THE PRESIDENT  
THE MINISTER OF JUSTICE  
MXOLISI SANDILE OLIVER NXASANA  
SHAUN ABRAHAMS  
DIRECTOR-GENERAL: DEPARTMENT OF JUSTICE  
AND CONSTITUTIONAL DEVELOPMENT  
CHIEF EXECUTIVE OFFICER OF  
THE NATIONAL PROSECUTING AUTHORITY  
THE NATIONAL PROSECUTING AUTHORITY  
THE DEPUTY PRESIDENT**

First Respondent  
Second Respondent  
Third Respondent  
Fourth Respondent  
Fifth Respondent  
Sixth Respondent  
Seventh Respondent  
Eighth Respondent

---

**NOTICE TO ABIDE**

---


**BE PLEASED TO TAKE NOTICE** that the Third Respondent abides by the decision of the above Honourable Court herein.

**BE PLEASED TO TAKE NOTICE FURTHER** that the affidavit of **MXOLISI SANDILE OLIVER NXASANA** will be used to explain the position of the Third Respondent herein.

---

**BE PLEASED TO TAKE NOTICE FURTHER** that the Third Respondent's Attorneys are Delaney Attorneys, care of MacRobert Attorneys, MacRobert Building, 1062 Jan Shoba Street, Brooklyn, Pretoria, at which address they will accept notice and service of all documents in these proceedings.

DATED AT PRETORIA THIS 12 DAY OF APRIL 2017.

  
**DELANEY ATTORNEYS**  
 Third Respondent's Attorneys  
 6 Stafford St, Westdene, Johannesburg  
 Cell: 083 397 0057  
 Email: [simon@delaney.co.za](mailto:simon@delaney.co.za)  
 c/o MacRobert Attorneys  
 MacRobert Building  
 1062 Jan Shoba Street  
 Brooklyn  
 Pretoria

TO:

**THE REGISTRAR OF THE ABOVE HONOURABLE COURT**

AND TO:

**WEBBER WENTZEL**  
 Applicant's Attorneys  
 10 Fricker Road, Ilovo Boulevard  
 Johannesburg, 2196  
 P O Box 61771, Marshalltown  
 Johannesburg, 2107  
 Tel: 011 530 5539  
 Fax: 011 530 6539  
 Email: [maray.hathorn@webberwentzel.com](mailto:maray.hathorn@webberwentzel.com)  
 Ref: M Hathorn 3001972  
 c/o Bernard van der Hoven Attorneys  
 2<sup>nd</sup> Floor, Parc Nouveaux Building  
 225 Veale Street  
 Brooklyn  
 Pretoria  
 Ref: Elmar Robbertse  
 Tel: 012 346 4243  
 Fax: 086 584 3261  
 Email: [elmar@bvdh.co.za](mailto:elmar@bvdh.co.za)

Received by  
 on this \_\_\_\_ day of \_\_\_\_ 2017

Signed: \_\_\_\_\_

AND TO:

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

First Respondent  
c/o State Attorney: Pretoria  
316 SALU Building  
Thabo Sehume Street  
Pretoria

Received by  
on this \_\_\_\_ day of \_\_\_\_ 2017

Signed: \_\_\_\_\_

AND TO:

**MINISTER OF JUSTICE AND CORRECTIONAL SERVICES**

Second Respondent  
c/o State Attorney: Pretoria  
316 SALU Building  
Thabo Sehume Street  
Pretoria

Received by  
on this \_\_\_\_ day of \_\_\_\_ 2017

Signed: \_\_\_\_\_

AND TO:

**SHAUN ABRAHAMS**

Fourth Respondent  
Victoria and Griffiths Mxenge Building  
123 Lake Avenue  
Silverton, Pretoria

Received by  
on this \_\_\_\_ day of \_\_\_\_ 2017

Signed: \_\_\_\_\_

AND TO:

**DIRECTOR-GENERAL: DEPARTMENT OF JUSTICE  
AND CONSTITUTIONAL DEVELOPMENT**

Fifth Respondent  
c/o State Attorney: Pretoria  
316 SALU Building  
Thabo Sehume Street  
Pretoria

Received by  
on this \_\_\_\_ day of \_\_\_\_ 2017

Signed: \_\_\_\_\_

AND TO:

**CHIEF EXECUTIVE OFFICER OF THE NATIONAL PROSECUTING AUTHORITY**  
Sixth Respondent  
Victoria and Griffiths Mxenge Building  
123 Lake Avenue  
Silverton, Pretoria

Received by  
on this \_\_\_\_ day of \_\_\_\_ 2017

Signed: \_\_\_\_\_

AND TO:

**NATIONAL PROSECUTING AUTHORITY**  
Seventh Respondent  
Victoria and Griffiths Mxenge Building  
123 Lake Avenue  
Silverton, Pretoria

Received by  
on this \_\_\_\_ day of \_\_\_\_ 2017

Signed: \_\_\_\_\_

AND TO:

**THE DEPUTY PRESIDENT**  
Eighth Respondent  
c/o State Attorney: Pretoria  
316 SALU Building  
Thabo Sehume Street  
Pretoria

Received by  
on this \_\_\_\_ day of \_\_\_\_ 2017

Signed: \_\_\_\_\_



INT 3A

IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG LOCAL DIVISION, PRETORIA)

CASE NO: 62410/15

In the matter between:

**CORRUPTION WATCH**

First Applicant

**FREEDOM UNDER LAW (RF) NPC**

Second Applicant

and

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

First Respondent

**MINISTER OF JUSTICE AND**

**CORRECTIONAL SERVICES**

Second Respondent

**MXOLISI SANDILE NXASANA**

Third Respondent

**SHAUN ABRAHAMS**

Fourth Respondent

**DIRECTOR GENERAL: DEPARTMENT OF  
JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

Fifth Respondent

**CHIEF EXECUTIVE OFFICER OF**

**THE NATIONAL PROSECUTING AUTHORITY**

Sixth Respondent

**NATIONAL PROSECUTING AUTHORITY**

Seventh Respondent

**THE DEPUTY PRESIDENT OF THE**

**REPUBLIC OF SOUTH AFRICA**

Eighth Respondent

---

FIRST RESPONDENT'S ANSWERING AFFIDAVIT

---

*[Signature]*

*[Signature]*

I, the undersigned

**JACOB GEDLEYIHLEKISA ZUMA**

Do hereby make oath and state that:

1. I am the President of the Republic of South Africa ("**the President**"), duly elected in terms of section 87 of the Constitution of the Republic of South Africa, 108 of 1996 ("**the Constitution**"); first respondent, and with my address of service as care of the State Attorney, SALU building, 316 Thabo Sehume Street Pretoria.
  - 1.1 The facts contained herein are, unless the context otherwise indicates within my own personal knowledge and are to the best of my knowledge and belief both true and correct.
  - 1.2 Any legal submissions that are made by me are made on the advice of my legal representatives, which advice I believe to be correct.
2. I have read the affidavits of **DAVID LEWIS** and **NICOLE FRITZ** in support of the application and wish to respond thereto in a manner outlined hereunder.
3. The broad structure of this affidavit will deal with:
  - 3.1 the nature of the application and the relief sought;
  - 3.2 summary of the answer;

- 3.3 an outline of the legislative framework;
- 3.4 the developments leading to the inquiry and settlement agreement of Mr Nxasana ("Nxasana"), the third respondent;
- 3.5 the appointment of Mr Abrahams ("Abrahams"), the fourth respondent;
- 3.6 the answer to each and every averment in the first applicant's founding affidavit insofar as it relates to me;
- 3.7 the answer to each and every averment in the second applicant's founding affidavit also as they relate to me; and
- 3.8 the answer to each and every averment in the supplementary affidavit that calls for my answer.

#### THE NATURE OF THE APPLICATION AND THE RELIEF SOUGHT

- 4. This is an application in which the applicants are seeking *inter alia*,
  - 4.1 to review and set aside:
    - 4.1.1 the settlement agreement entered between the first, second and third respondents dated 14 May 2015 and the monetary consequences arising therefrom;
    - 4.1.2 the appointment of the fourth respondent as the National Director of Public Prosecutions ("the NDPP");
  - 4.2 to declare that the:

- 4.2.1 third respondent is obliged to refund the State, money received in terms of the settlement agreement;
- 4.2.2 first respondent may not appoint, suspend or remove the NDPP in terms of section 96(2)(b) of the Constitution; and
- 4.2.3 second respondent is responsible for decisions relating to the appointment, suspension or removal of the NDPP for as long as the first respondent holds office.

## **SUMMARY OF THE ANSWER**

### **Settlement Agreement: prayer 1.1**

5. In so far as the applicants seek to challenge the settlement agreement, entered into between Nxasana and the second respondent in which inter alia, Nxasana vacated his office as the National Director of Public Prosecution. The challenge is bad in law in that:

- 5.1 I exercised my constitutional power in terms of sections 179(1)(a) of the Constitution and 12(8) of the National Prosecuting Authority Act, 32 of 1998 ("the NPA Act") in the appointment and the vacating of office of Nxasana.
- 5.2 I appointed Nxasana as the NDPP on 30 August 2013 under Presidential Minute No. 295, a copy of the minute is attached and marked "JS1".

- 5.3 I informed Nxasana, on 4 July 2014, that after consideration of all the evidence before me, I took the decision to institute an inquiry in terms of Section 12(6)(a) of the NPA Act.
- 5.4 I established an inquiry into the fitness of Nxasana to hold office of the NDPP, on 5 February 2015, by notice in the Government Gazette, No. 38463, Notice 102 of 2015. The Rules for the inquiry were published in the Government Gazette No. 38491, Notice 155 of 2015. The inquiry was to sit on 11 May 2015, when I took the decision to terminate it.
- 5.5 During the period, August 2013 to 9 May 2015, Nxasana and I had various one on one verbal discussions regarding the discord that existed in the National Prosecuting Authority, especially as between Nxasana and the senior management.
- 5.6 The discord was so pronounced, that the senior management was divided and the National Prosecuting Authority was destabilised and haemorrhaging. The looming inquiry into the fitness to hold office of Nxasana also contributed to this discord. The inquiry offered some of the senior management an additional platform to question the authority of Nxasana.
- 5.7 Section 12(8) of the NPA Act provides that the NDPP may request to vacate his or her office for any reason which the President deems sufficient. Nxasana made the request to me to vacate his office. Nxasana made it plain that the discord in the NPA largely rested on the senior management not sharing his strategic views and the disciplinary

steps or criminal charges which he intended taking against certain of the senior managers. This posited intractable disputes paralysing the proper functioning of the NPA.

- 5.8 I, therefore, deemed the reasons provided by Nxasana, together with the possibility of a protracted litigation and the holding of the inquiry not to be in the best interest of the National Prosecuting Authority, Nxasana and the Republic of South Africa, to be sufficient to allow Nxasana to vacate office.
- 5.9 It was plain to me that Nxasana was no longer willing to continue as the NDPP and the only outstanding issue remained the financial aspects relating to his vacating his office.
- 5.10 There were extensive negotiations relating to the financial terms with which he would be agreeable to leave office having made the request to do so. I was informed that there were offers made to Nxasana and counter offers made by him around the amount he contended he was entitled to.
- 5.11 Subsequently, I was informed that the parties had reached an agreement around the money to be paid to Nxasana which rendered the holding of the inquiry unnecessary. The settlement agreement was therefore the culmination of these events.
- 5.12 With Nxasana having made it crystal clear to me that he no longer wishes to continue as the NDPP, I am advised that it was within my power to allow Nxasana to vacate office having been satisfied that it

was in the interests of the NPA, Nxasana and the Republic for him to do so.

- 5.13 It is particularly surprising that the applicants find no fault with the appointment of Nxasana by me and want to contend that he is still to be regarded as the NDPP. I appointed Nxasana as the NDPP. It was still during the period that I am perceived to be in "*jeopardy of prosecution*". If that appointment remains untainted there is no reason that any other appointment of an NDPP by me would suffer a challenge on that ground.

**Decision to authorise: prayer 1.2**

- 5.14 The applicants also seek to impugn the decision to authorise the payment to Nxasana of an amount of R17 357 233.00. This process was undertaken by the fifth and seventh respondents. I am advised that the respondents who are competent to speak on the matter will do so when they file their answering affidavits.
- 5.15 In so far as the Court may find that the payment to Nxasana of the aforesaid amount was unlawful, I intend to abide by the decision of the Court. I need to emphasise however, that the challenge relating to the settlement payment is severable from Nxasana's vacating office as an NDPP.
- 5.16 I am advised that the Court having been satisfied that Nxasana made the request to vacate his office; for reasons which I found sound and sufficient; and his intimation that he has no desire to continue as an

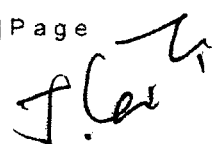
NDPP satisfies the first leg of section 12(8) of the NPA Act. To the extent that the payment to Nxasana is found unlawful, all that needs to happen is that he must be paid in terms of the provisions of section 12(8)(c)(ii) of the NPA Act (meaning that he would be deemed to have retired in terms of section 16(4) of the Public Service Act, and that he shall be entitled to such pension as he would have been entitled to under the pension law applicable to him had he been so retired).

**Appointment of the fourth respondent: prayer 1.3**

5.17 The applicants want the appointment of the fourth respondent as NDPP to be reviewed, declared invalid and set aside. The argument offered for this relief, is that there was no vacancy. This argument is bad. As a matter of fact and law, I am advised, that Nxasana had vacated his office as from 1 June 2015 having made the request to vacate his office; for reasons which I deemed sufficient and in interests of the Republic. That he may have received payment inconsistent with the provisions of the NPA Act, does not render his vacating office as invalid.

5.18 I am advised that the applicants do not question the fitness or propriety of the fourth respondent to hold office as the NDPP. For this reason I need not address the considerations I took account of in the appointment of the fourth respondent as the NDPP.

**Nxasana still as the NDPP: prayer 1.4**





5.19 The applicants argue that the Court must declare that Nxasana to still be holding the office of the NDPP. The argument draws its strength from an inference that a challenge on the decision to allow Nxasana to vacate office is unlawful, holds in logic, that Nxasana would be reinstated as the NDPP. This is incorrect. Apart from maintaining that Nxasana relinquished office in accordance with law, he has made it very plain that he does not intend to serve as an NDPP. To have him declared as still holding the office of an NDPP would be bad both in law and fact. I am also informed that a Court cannot order somebody to do that which he plainly does not want to do.

5.20 I am advised further that such a declarator would offend against the rule of law in so far as it would conflate the separation of powers. The constitutional power to appoint an NDPP remains that of Executive. Further legal argument would be made at the hearing of this application.

**Third respondent to refund the money he received: prayer 1.5 .**

5.21 I abide the decision of this Honourable Court in relation to whether Nxasana is to refund the money he received in terms of the settlement agreement.

**Section 96(2)(b) of the Constitution argument: prayer 1.6**

5.22 The applicants seek a declarator that I may not appoint, suspend or remove an NDPP. The argument stems from a contention that I am in jeopardy of prosecution and therefore would be conflicted in making

such an appointment. There is no substance to this argument. As a matter of fact, there are no pending criminal charges against me.

5.23 I am advised that the only litigation pending in the courts relates to a decision by a former acting NDPP Mr Mpshe, to discontinue the prosecution against me. I am advised that there is no basis for the applicants to contend that that application will be successful and if successful would mean that the NDPP would not make his or her decision without fear favour or prejudice as the law requires.

5.24 The applicants' contention in this regard has embedded in it a wanton and veiled accusation that I would act improperly or whoever the NDPP is would equally act improperly. There is no evidence to support what is merely an unfounded suspicion by the applicants.

5.25 There is no reason to believe that I will, in the event that actual conflict of interest is shown to exist, act despite the existence of such a conflict, in the exercise of my constitutional power. The applicants are inviting the Court to make a determination on a matter entirely academic and in anticipation that any conflict of interest might in the future be shown to exist.

5.26 In any event, the nature of the relief which is sought in relation to this aspect straddles the separation of powers doctrine – which is part of the rule of law. The applicants are inviting the Court to make pronouncements in areas which the Constitution has left exclusively for

the exercise by the Executive. I am told further legal argument will be made at the hearing of this application.

**Deputy President to appoint an NDPP: prayer 1.7**

- 5.27 In so far as the applicants seek a declarator that for as long as I am the President the power for the appointment the NDPP should be exercised by the Deputy President. I am advised that the Constitution is very clear as to what must happen if I or the President, is absent from the Republic or otherwise unable to fulfil the duties of President that various members of the Cabinet would perform those duties.
- 5.28 Without conceding that there is any basis for this declarator, the applicants do not make a case why a Minister designated by me cannot act as President; a Minister designated by the other members of Cabinet; the Speaker, until the National Assembly designates one of its other members to perform the duties of President – all of which the Constitution authorises should be options available and are constitutionally authorised.
- 5.29 I am advised that the Court has no power to suspend the operation of a constitutional provision which is what the applicants seek by way of a declarator under this relief.

**Assignment of Presidential powers: prayer 1.8**

5.30 The applicants want the Court to direct me to assign my constitutional power to the Deputy President. They say this must happen in terms of section 98 of the Constitution. This is a power the President has to assign to a Cabinet Member any power or function of another member who is absent from office or is unable to exercise their power or perform that function.

5.31 I repeat what I have said in relation to prayer 1.7 above.

6. I now turn to deal with the Legislative framework.

## THE LEGISLATIVE FRAMEWORK

7. The applicants contend that I am conflicted regard being had to section 96(2)(b) of the Constitution which provides for conduct of cabinet members and deputy minister and states that:

“(2) Members of the Cabinet and Deputy Ministers may not –

- (a) undertake any other paid work;
- (b) act in any way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; or
- (c) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.” (own emphasis)

8. The reading of section 96(2)(b) of the Constitution addresses an entirely different subject. It concerns itself with members of cabinet pursuing private interests which are in conflict with their constitutional obligations. The appointment of the NDPP is a performance of a constitutional duty which is not pursued of any private interest. The Constitution further reposes independence of the office of the NDPP who is to exercise the power to prosecute or not to prosecute without fear, favour or prejudice.
9. There is no suggestion that an NDPP would take a decision tainted purely by who would have appointed him or her. Should there be evidence to support that contention the proper relief would be to set aside the decision by that NDPP on those grounds. To ask the Court in an anticipatory fashion to do so would offend against the doctrine of the separation of powers. Further legal argument would be advanced at the hearing of this application.
10. Regarding the institutional autonomy of the NPA which the Constitution provides in section 179(1)(a) for a single national prosecuting authority in the Republic, structured in terms of an Act of Parliament and consisting of a NDPP, who is the head of the prosecuting authority and who is appointed by the President, as head of the national executive.

11. The NPA Act regulates matters incidental to the establishment of a single national prosecuting authority and is the Act of Parliament referred to in section 179 of the Constitution and the following sections bear reference:

11.1 Section 10 provides that the President must, in accordance with section 179 of the Constitution, appoint the National Director;

11.2 There is no basis for the Court to remove the constitutional power of the President. What the Court is entitled to do, if a good case is made out, is to set aside any conduct of the President that is inconsistent with the Constitution and which is invalid. The applicants have not made out any case that I have performed any act which is inconsistent with the Constitution.

11.3 I am advised that the question of tenure of an NDPP is regulated by section 12 which in the relevant part reads:

“(1) The National Director shall hold office for a non-renewable term of 10 years, but must vacate his or her office on attaining the age of 65 years.

(5) The National Director or a Deputy National Director shall not be suspended or removed from office except in accordance with the provisions of subsections (6), (7) and (8).

(8) (a) The President may allow the National Director or a Deputy National Director at his or her request, to vacate his or her office –

(i) on account of continued ill-health;

(ii) for any other reason which the President deems sufficient.

(b) The request in terms of paragraph (a)(ii) shall be addressed to the President at least six calendar months prior to the date on which he or

she wishes to vacate his or her office, unless the President grants a shorter period in a specific case.

(c) If the National Director or a Deputy National Director –

(i) ....; or

(ii) vacates his or her office in terms of paragraph (a)(ii), he or she shall be deemed to have been retired in terms of section 16(4) of the Public Service Act, and he or she shall be entitled to such pension as he or she would have been entitled to under the pension law applicable to him or her if he or she had been so retired." (own emphasis)

11.4 As I have earlier indicated I allowed Nxasana to vacate office on the strength of these statutory provisions.

## **THE DEVELOPMENTS LEADING TO THE INQUIRY AND SETTLEMENT AGREEMENT OF NXASANA**

12. The following developments led to the settlement agreement which took place over a period of 18 months and were, in the main, verbal discussions held primarily between myself and Nxasana, which were not minuted or documented. The developments leading to the inquiry took place over a period of 12 months and are documented and will also be dealt with more fully by the second respondent who, in terms of section 179(6) of the Constitution, exercises final responsibility over the National Prosecuting Authority. These events are:

- 12.1 After various media reports, on the 19 June 2014, I addressed a letter to Nxasana, requesting information regarding certain incidents *inter alia*, criminal charges during December 1985; outstanding complaints before the KwaZulu Natal Law Society; the arrest during October 2012; the assault charges proffered against him in the 1980's; the complaint laid with the Public Service Commission by one Prince Mokotedi and the appropriateness of the statements made to the media regarding internal communications<sup>1</sup>.
- 12.2 I received a response from Nxasana on 21 June 2014 providing me with the information requested. However, Nxasana prefaced the reply by stating that he may not be in a position to have a clear recollection of events due to the lapse of time, in some instances being more than 28 years, and the time period provided for to furnish a response<sup>2</sup>.
- 12.3 Subsequent to the response received and considering all the events that has transpired together with the media reports<sup>3</sup>, on 4 July 2014, I caused to be served on Nxasana a notice of the institution of an inquiry<sup>4</sup>.
- 12.4 Nxasana then instituted legal proceedings in the High Court of South Africa, Gauteng Division, Pretoria signed on 8 August 2014 in which I was named as the first respondent. In these court papers, Nxasana sought various relief on an urgent basis, the main being to interdict me

<sup>1</sup> This letter is contained in the Record in terms of prayer 5 ("Record 1") on pages 2 to 3.

<sup>2</sup> This letter is contained in Record 1 on pages 4 to 13

<sup>3</sup> These media reports are contained in Record 1 on pages 84 to 126

<sup>4</sup> This notice is contained in Record 1 on page 14



from suspending him<sup>5</sup>. This matter was settled out of court between the parties.

12.5 On 5 February 2015, I caused a notice to be published in the Government Gazette notice 102 of 2015, which established the inquiry into the fitness of Nxasana. In this notice I appointed Advocate Cassim SC as the chairperson and Advocate Nkosi-Thomas SC and Advocate Mdladla as the additional members. I also provided the terms of reference for the inquiry<sup>6</sup>.

12.6 On 20 February 2015, the chairperson of the inquiry issued rules for the inquiry in Government Gazette notice 155 of 2015. The Code of Conduct for members of the National Prosecuting Authority under section 22(6) of the NPA Act as provided for in Government Gazette notice 1257 of 2010 was also provided<sup>7</sup>.

12.7 It was during the end of 2014 and the beginning of 2015, that I again had discussions with Nxasana and I had discussions with the Minister. It was during these discussions that Nxasana requested to vacate his position as head of the National Prosecuting Authority, citing the continued discord with the senior members of the National Prosecuting Authority and the inquiry as the primary reasons. I deemed the reasons to be sufficient and accepted the request. This request was not reduced to writing.

<sup>5</sup> The court papers are contained in Record 1 on pages 15 to 52

<sup>6</sup> This notice is contained in Record 1 on pages 53 to 60

<sup>7</sup> These notices are contained in Record 1 on pages 61 to 82

- 12.8 I caused the termination of the inquiry as a settlement had been reached with Nxasana.
- 12.9 The settlement agreement<sup>8</sup> was signed on 9 and 14 May 2015 between Nxasana and the Minister. The terms of which are contained in annexure "CW12" to the founding affidavit.
- 12.10 The payment arising from the settlement agreement was handled by the Department of Justice and the National Prosecuting Authority in accordance with the Public Finance Management Act, 1999. I am advised that various formula was provided by the National Treasury in relation to the amount to be paid to Nxasana and the method of such payment. After many sessions of negotiations between my office and Nxasana, Nxasana requested the payment of the entire period.

### **THE APPOINTMENT OF ABRAHAMS**

13. The events which led to the appointment of Abrahams are as follows:
- 13.1 After the vacation of office of Nxasana, I appointed Dr Silas Ramaite as acting National Director in terms of section 11(2)(b) of the NPA Act.
- 13.2 The Department of Justice and Constitutional Development, at the request of the Minister, prepared a report regarding possible persons within the NPA who it deemed fit and proper to be appointed to the vacant office of National Director.

---

<sup>8</sup> This is contained in the Record in terms of prayer six ("Record 2") on pages 2 to 5.

- 13.3 I was provided with a submission from the Minister, in relation to the appointment of Abrahams to the position of National Director<sup>9</sup>. I then held an interview with Abrahams together with Mr Hulley. The interview guide notes form the minute of this interview<sup>10</sup>.
- 13.4 I considered all the information before me, and appointed Abrahams as the NDPP. The Presidential Minute no. 162 provides for this appointment as of 1 July 2015<sup>11</sup>.
14. Mercifully the applicants do not contend that the fourth respondent is not fit for office.

#### THE CONFLICT OF INTEREST IN TERMS OF SECTION 96(2) OF THE CONSTITUTION

15. The applicants cannot point to any conduct or action on my part, which is inconsistent with the duties of my office nor am I exposing myself to any situation involving the risk of a conflict between my official responsibilities and my private interests.

- 15.1 The power I exercised is power I derive directly from the Constitution. Therefore acting in terms of that power can never be an act which is inconsistent with the duties of my office.

<sup>9</sup> This is contained in the Record in terms of prayer seven ("Record 3") on pages 3 to 10.

<sup>10</sup> This is contained in Record 3 on pages 100 to 102

<sup>11</sup> This is contained in Record 3 page 1

- 15.2 The power I exercised in accepting the request from Nxasana I derive directly from national legislation. Therefore acting in terms of that power can never be an act which is inconsistent with the duties of my office.
- 15.3 There is also no basis to state that I have any conflict of interest in exercising those powers. In fact the applicants have not provided this Honourable Court with any objective facts to show that a conflict of interest exists.
- 15.4 Therefore section 96(2) of the Constitution does not arise.
- 15.5 I reiterate that the applicants find no fault with the appointment of Nxasana by me and want to contend that he is still to be regarded as the NDPP. I appointed Nxasana as the NDPP. It was still during the period that I am perceived to be in "*jeopardy of prosecution*". If that appointment remains untainted there is no reason that any other appointment of an NDPP by me would suffer a challenge on that ground.
16. I now turn to deal with such allegations in the affidavits which I am able to respond to.

#### **AD FOUNDING AFFIDAVIT OF THE FIRST APPLICANT**

#### **17. AD PARAGRAPHS 1 & 2**

17.1 I admit the contents of these paragraphs.

17.2 I deny that the facts are both true and correct.

**18. AD PARAGRAPHS 3 – 12**

18.1 I admit the content of these paragraphs.

18.2 I deny that I "purportedly" appointed Abrahams.

18.3 I am also advised that the position of CEO of the National Prosecuting Authority does not exist.

**19. AD PARAGRAPH 13**

19.1 I note the content of this paragraph.

**20. AD PARAGRAPH 14**

20.1 I note the content of this paragraph.

**21. AD PARAGRAPHS 15 – 15.4**

21.1 I admit the content of these paragraphs.

21.2 With regards to the suspension of Nxasana, I requested reasons as to why he should not be suspended which ultimately resulted in Nxasana instituting proceedings against me in the Gauteng High Court, Pretoria.

**22. AD PARAGRAPH 16**

22.1 I have explained above, the events which led to the conclusion of the settlement agreement.

**23. AD PARAGRAPHS 17 – 17.2**

23.1 I deny the content of these paragraphs.

23.2 I aver that Nxasana's vacating of office was in accordance with the empowering provisions contained in section 12(8) of the NPA Act. This provides for a consensual vacating of office of the NDPP, where sufficient reasons exist as was the case in this instance.

23.3 The vacating of office of Nxasana in terms of the NPA Act cannot affect the independence of the National Prosecuting Authority.

23.4 I repeat what I have stated above.

**24. AD PARAGRAPHS 17.3 – 17.3.2**

24.1 I deny the content of these paragraphs.

24.2 I aver that:

24.2.1 I am not 'in jeopardy of prosecution' as alleged by the applicants. The Concise Oxford Dictionary, 9<sup>th</sup> Edition, 1995 defines jeopardy as "n 1 danger, esp. of severe harm or loss. 2 Law danger resulting from being on trial for a criminal offence."

24.2.2 The applicants have not and cannot show that I am in danger as a result from being on trial for any criminal offence. The litigation referred to, which was instituted in 2009, does not place me "in jeopardy of prosecution."

24.2.3 The appointment of an NDPP by the President in terms of a constitutionally enshrined power and legislation cannot be inconsistent with the Constitution.

24.2.4 I repeat what I have stated above.

**25. AD PARAGRAPHS 18 – 18.2**

25.1 I note the content of this paragraph.

25.2 I abide the decision of this Honourable Court in relation to the payment of the R17 357 233.

**26. AD PARAGRAPH 19**

26.1 I deny the content of this paragraph.

26.2 I aver that:

26.2.1 Nxasana requested to vacate his office, which request I accepted in accordance with section 12(8) of the NPA Act.

26.2.2 Therefore a vacancy was created which was filled by Abrahams after the correct procedures were followed.

26.3 I repeat what I have stated above.

**27. AD PARAGRAPHS 20 – 20.2**

27.1 I deny the content of these paragraphs.

27.2 I repeat what I have stated above.

**28. AD PARAGRAPHS 21 – 21.2.2**

28.1 I note the content of these paragraphs.

**29. AD PARAGRAPHS 22 – 22.1**

29.1 I note the content of these paragraphs.



29.2 I again aver that the vacating of office of Nxasana does not affect the independence of the National Prosecuting Authority.

**30. AD PARAGRAPH 23**

30.1 I deny the content of this paragraph.

30.2 I aver that:

30.2.1 the removal of Nxasana was in accordance with section 12(8) of the NPA Act.

30.2.2 Mr Selebi was prosecuted and convicted.

30.2.3 Mr Pikoli, through consensual agreement between the parties, vacated his office, after being cleared by the Ginwala Commission.

**31. AD PARAGRAPHS 24 - 26**

31.1 I note the content of these paragraphs.

**32. AD PARAGRAPH 27**

32.1 I admit the content of this paragraph.

32.2 I aver that the instability in 2007 in the office of the NDPP and the National Prosecuting Authority has escalated during the period 2013 to 2015 which were reasons I found compelling to allow Nxasana to vacate office.

**33. AD PARAGRAPHS 28 - 31**

33.1 I deny the content of these paragraphs.

33.2 I am advised further that these allegations are irrelevant to the appointment of Nxasana and Abrahams.

**34. AD PARAGRAPH 32**

34.1 I admit the content of this paragraph.

34.2 I re-emphasise that the applicants seem to see no fault with me having appointed Nxasana as an NDPP.

**35. AD PARAGRAPHS 33 - 41**

35.1 I admit the content of these paragraphs to the extent that it accords with the annexures referred therein and with what I have stated above.

**36. AD PARAGRAPHS 42 – 42.5**

36.1 I admit the content of these paragraphs to the extent it accords with the settlement agreement.

36.2 I wish to point out that the settlement agreement also makes reference, in the preface, to some of the reasons which existed and which reasons I deemed sufficient to accept Nxasana's request to vacate his office. I provide them for ease of reference:

**"WHEREAS**

1. On 4 July 2014, the President informed the Applicant (National Director of Public Prosecutions herein after referred to as the NDPP) of his decision to institute an inquiry in terms of section 12 (6) (a)(iv) of the National Prosecuting Authority Act 32 of 1998 (the Act).
2. On 30 July 2014, the President gave Notice of Intention to suspend the NDPP in terms of section 12 (6) (a) of the Act.
3. The NDPP brought an urgent application in the North Gauteng High Court to interdict the President from suspending him until the President has provided the NDPP with the requested particularity of the allegations levelled against him, and which allegations were to constitute the subject matter of the inquiry.
4. These proceedings now stand adjourned and the parties subsequently entered into discussions and negotiations in an attempt to resolve the matter.
5. The parties recognize that a protracted litigation process will not be in the interests of the office of the National Director of Public Prosecutions, the functioning of the National Prosecuting Authority nor the Republic of South Africa.

6. The parties are also mindful that the public glare brought on by the holding of the inquiry, whilst necessary for transparency in our democracy, has unintended consequences.
7. The parties are fully cognizant of the costs implications for litigating and/or conducting the inquiry which resources may be better applied given the challenges our country faces." (own emphasis)

**37. AD PARAGRAPH 43**

- 37.1 I admit that I appointed Abrahams into the position vacated by Nxasana.

**38. AD PARAGRAPH 44**

- 38.1 I deny that I am disqualified in terms of section 96(2)(b) of the Constitution to exercise my constitutional power of appointment, suspension and removal of the NDPP.

**39. AD PARAGRAPHS 44.1 – 44.8**

- 39.1 I admit the content of these paragraphs to the extent that it accords with the judgments in the *Democratic Alliance v Acting NDPP 2012 (3) SA 486 (SCA)* and *NDPP v Zuma 2009 (2) SA 277 (SCA)*.

**40. AD PARAGRAPHS 44.9 – 44.10**

40.1 I submit that this matter is currently *sub judicæ*.

**41. AD PARAGRAPHS 45 – 45.2**

41.1 The content of these paragraphs are denied.

41.2 I submit that:

41.2.1 There is a constitutional doctrine that one is innocent until proven guilty. I am neither charged nor am I found to be guilty by any court of law.

41.2.2 To justify these allegations, the applicants state that there is a potential that I may be in jeopardy of prosecution in respect of which there apparently remains a case against me on the merits. This is speculative at best.

41.2.3 The 2009 litigation deals with the review and setting aside of the decision to discontinue the prosecution.

41.2.4 To speculate as to its outcome and then to deprive me of my constitutional rights would be to hold me guilty without a finding of a court of law.

41.2.5 I have provided the detailed approach adopted when sourcing persons for the appointment of the NDPP and I hold that this process provides for transparency and accountability.

41.2.6 I invite the applicants to furnish evidence that any NDPP having been appointed in accordance with the provisions of the NPA Act and with the constitutional power to perform his or her duty without fear, favour or prejudice, will act contrary to this constitutional duty and will do so purely because I made the appointment to a person who is otherwise fit and proper to hold such office.

**42. AD PARAGRAPHS 46 – 47.12.3**

42.1 I note the content of these paragraphs.

42.2 I received the letter dated 12 September 2014 from Nxasana and was informed about the recommendations relating to Advocates Jiba, Mrwebi and Mzinyathi.

42.3 I through the Minister referred all these matters relating to these advocates to the NDPP to apprise me whether the facts regarding their continued employment warrants consideration of their suspension. This exercise was conducted by the current NDPP, Abrahams.

42.4 It seemed to me, once I have received all the information that it is prudent to await the outcome of the application by the General Council of the Bar to have these advocates struck from the roll of advocates. The Court would have determined their fitness to hold office. I would clearly be informed by the outcome of those pending applications.

42.5 I believe my decision not to interfere pending judicial pronouncement on the fitness or otherwise of these advocates, to be rational given the constitutional protection enjoyed by the NPA.

**43. AD PARAGRAPH 48**

43.1 I note the content of this paragraph.

**44. AD PARAGRAPH 49**

44.1 I deny that I have failed to act in relation advocate Jiba, Mrwebi and Mzinyathi. I am advised that whether an advocate is fit and proper to be an advocate is a matter eminently within the remit of the courts. No doubt the Deputy National Directors hold that office on the strength that their fitness to be advocates is above reproach. There would be no need to hold an inquiry to probe the same issues of whether the advocates are fit to hold offices as Deputy NDPP's.

44.2 There is also a possibility of conflicting outcomes with the inquiry finding the advocates to be fit to hold office and a court of law holding differently that they are unfit to be advocates. Similarly, the court having found them to be fit to hold office, should not be contradicted by an inquiry finding that they not. This should be avoided.

**45. AD PARAGRAPH 50**

45.1 I deny that Nxasana's vacating of office is unlawful and unconstitutional.

45.2 I refer to what I have stated above.

**46. AD PARAGRAPHS 51 – 55.3.2**

46.1 I admit the content of these paragraphs to the extent that it accords with the Constitution and the NPA Act.

**47. AD PARAGRAPH 56**

47.1 I agree that NDPP cannot vacate office pursuant to a golden handshake.

47.2 I deny that the NPA Act does not provide for a consensual removal from office if all the jurisdictional requirements are met.

47.3 Section 12(8) specifically allows for a consensual vacating of office of the NDPP.

47.4 The applicants clearly understand '*a consensual removal*' as indicated in paragraph 55.3 of the founding affidavit. Here the applicants aver that an NDPP can be removed from office '*by agreement*'.



**48. AD PARAGRAPHS 57 – 57.2**

48.1 I deny the content of these paragraphs.

48.2 I admit that I established an inquiry into the fitness to hold office of Nxasana which inquiry I terminated prior to any finding being made.

48.3 It was a matter to be determined by the inquiry if the allegations were shown to be correct and the decision was made by the inquiry itself. This did not come it pass when the settlement agreement was concluded.

**49. AD PARAGRAPH 57.3**

49.1 I deny the content of this paragraph.

49.2 I reiterate that the intractable discord that was in the NPA was bleeding the institution and demanded some resolution. Nxasana had indicated unequivocally that he would no longer wanted to continue as an NDPP and the only item for negotiation remained the financial consequence of him vacating office.

**50. AD PARAGRAPHS 57.4 – 57.5**

50.1 I deny the content of these paragraphs.

50.2 I deny that the vacating of office of Nxasana is *ultra vires* and violates the independence of the National Prosecuting Authority. I have already addressed the reasons for allowing Nxasana to vacate office as an NDPP. I already pointed out that I acted in terms of the powers I have as spelt out in section 12(8)(a) of the NPA Act.

50.3 I admit that the financial payment following Nxasana vacating office may be open to judicial review.

**51. AD PARAGRAPHS 58 – 58.2**

51.1 I deny the content of these paragraphs.

51.2 I repeat what I have stated above.

**52. AD PARAGRAPHS 59 – 59.2**

52.1 I admit that objective facts relating to a conflict of interest must be placed before this Honourable Court in order to establish whether there is indeed a conflict of interest as provided for in section 96(2)(b) of the Constitution.

52.2 I aver that the applicants have not provided any objective facts to establish a conflict of interest.

52.3 The exercise of a constitutional and legislative power, for the President to remove an NDPP where all the jurisdictional elements are met, is not an 'act' as contemplated by section 96(2)(b) of the Constitution.

52.4 I am advised that there is no need to prove 'actual manipulation'. What the applicants need to show though is an 'actual conflict of interest'. Such an 'actual conflict of interest' has not been shown on the papers. What the applicants appear to do is to anticipate a future event; namely, that the application to review and set aside the decision of the former acting NDPP, will be successful and that I would appoint an NDPP whose decision will be manipulated in my favour. This is particularly remote where the NDPP enjoys statutory independence.

52.5 If the argument by the applicants was good, I would be disentitled to appoint any Judge in this country who may potentially have to preside over my matter if I ever get to be prosecuted. No such relief is being sought and I am advised for correct reasons.

**53. AD PARAGRAPHS 60 – 60.3**

53.1 I deny the content of these paragraphs.

53.2 The applicants are relying on speculation at best.

53.3 I repeat what I have stated regarding this aspect earlier.

**54. AD PARAGRAPH 61**

54.1 I note the content of this paragraph.

**55. AD PARAGRAPH 62**

55.1 The settlement agreement has at least two aspects to it. The one relates to Nxasana vacating office as an NDPP and the financial consequences of him vacating the office of an NDPP. The first aspect, I am advised, was lawful having considered the request by Nxasana to vacate office, the reasons behind the request being cogent, compelling and rational; and me allowing him to vacate office.

55.2 Regarding the financial consequences of him vacating office, I repeat the averments contained herein and shall abide the finding of the Court in this regard.

55.3 These two elements to the settlement agreement should not be conflated.

**56. AD PARAGRAPHS 63 - 64**

56.1 I note the content of these paragraphs.

**57. AD PARAGRAPH 65**

57.1 I admit that Abrahams is a fit and proper person to hold office as the NDPP.

**58. AD PARAGRAPH 66 – 66.4**

58.1 I deny the content of these paragraphs.

58.2 I aver that:

58.2.1 the vacating of office of Nxasana was in accordance with section 12 of the NPA Act and this necessitated a filling of this vacant post.

58.2.2 Abrahams was appointed in accordance with section 179(1) of the Constitution.

58.3 I repeat what I have stated above.

**59. AD PARAGRAPHS 67 - 68**

59.1 I deny the content of these paragraphs.

59.2 I aver that the applicants have not laid a basis for any conflict of interest in terms of section 96(2) of the Constitution.

59.3 The applicants admission that there is instability in the National Prosecuting Authority clearly shows an appreciation of the difficulties Nxasana and I faced to try to resolve the instability not only for the National Prosecuting Authority but also to contain its effect on the country at large.

**60. AD PARAGRAPHS 69 – 70**

60.1 I deny that the applicants are entitled to the relief as set out in the notice of motion.

**AD FOUNDING AFFIDAVIT OF THE SECOND APPLICANT**

**61. AD PARAGRAPHS 1 - 3**

61.1 I admit the content of these paragraphs.

61.2 I aver that the deponent has not stated anywhere in the affidavit that the facts contained in her affidavit are to the best of her knowledge both true and correct.

**62. AD PARAGRAPH 4**

62.1 I note the content of this paragraph.

**63. AD PARAGRAPHS 5 - 9**

63.1 I note the content of these paragraphs.

**64. AD PARAGRAPH 10**

64.1 I deny that I have '*perverted the rules*' or that I '*unlawfully induced*' Nxasana to vacate his office. I invite the applicants to produce evidence of "threat of dismissal" made to Nxasana.

64.2 I am advised that applicants are enjoined by the Rules of Court to furnish this type of evidence in their founding affidavit.

64.3 I refer to what I have stated above.

**65. AD PARAGRAPH 11**

65.1 I note the content of this paragraph.

**66. AD PARAGRAPHS 12 – 13.5**

66.1 I have no knowledge of the content of these paragraphs but have noted the content of the annexures as they stand.

**67. AD PARAGRAPH 14**

67.1 I deny that the second applicant is entitled to the relief in its notice of motion.

**AD SUPPLEMENTARY AFFIDAVIT**

**68. AD PARAGRAPHS 1 - 4**

68.1 I admit the content of these paragraphs.

68.2 I deny that the facts are both true and correct.

**69. AD PARAGRAPH 5**

69.1 I deny the content of this paragraph.

69.2 I aver that the I have the power to shorten the period referred to in section 12(8)(b), which period was duly shortened. It would not have been in the interest of the workings of the NPA, with the disharmony prevailing between Nxasana and senior management to require the six months' notice. To the contrary, there was every reason to waive that notice period to enable the smooth functioning of the NPA.



**70. AD PARAGRAPHS 6 – 6.2**

70.1 I have stated that due to the fact that my engagements with Nxasana were verbal they were not documented or minuted. Therefore no documentary evidence exists for me to produce in terms of the Rule 53 record.

70.2 The NPA Act requires me to deem whether the reasons are sufficient to accept Nxasana's request to vacate his office. These reasons are summarised in the preamble to the settlement agreement.

**71. AD PARAGRAPH 7**

71.1 I note the content of this paragraph.

**72. AD PARAGRAPH 8**

72.1 I have provided the record as is required in terms of Rule 53.

72.2 I have stated under oath that the verbal discussions which I had with Mr Nxasana were not documented or minuted and therefore I am unable to produce same.

**73. AD PARAGRAPH 9**

73.1 I deny the content of this paragraph.

9/5



**74. AD PARAGRAPHS 10 – 10.6**

74.1 I have no knowledge of the content of these paragraphs.

**75. AD PARAGRAPHS 11 - 12**

75.1 I note the content of these paragraphs.

**76. AD PARAGRAPHS 13 - 14**

76.1 I deny the content of these paragraphs and repeat what I, have stated above.

**77. AD PARAGRAPH 15**

77.1 I deny that the applicants are entitled to the relief as prayed for.

**78. AD PARAGRAPH 16**

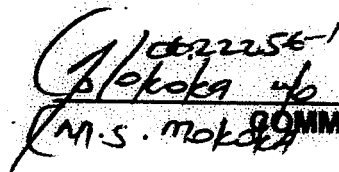
78.1 I note the content of this paragraph.

**WHEREFORE** I pray that this application be dismissed with costs, which costs include the cost of two counsel.



**DEPONENT**

**THUS SIGNED AND SWORN** to before me at PRETORIA on this the 29 day of February 2016, by the deponent, he having acknowledged that he knows and understands the contents of this affidavit, that he has no objection to taking the prescribed oath and considers same to be binding on his conscience.



**COMMISSIONER OF OATHS**

INT 3B

**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG LOCAL DIVISION, PRETORIA)**

**CASE NO: 93043/15**

In the matter between:

**COUNCIL FOR THE ADVANCEMENT OF THE  
SOUTH AFRICAN CONSTITUTION**

**Applicant**

**and**

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

**First Respondent**

**MINISTER OF JUSTICE AND  
CORRECTIONAL SERVICES**

**Second Respondent**

**NATIONAL PROSECUTING AUTHORITY**

**Third Respondent**

**MXOLISI SANDILE NXASANA**

**Fourth Respondent**

**SHAUN ABRAHAMS**

**Fifth Respondent**

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

**Sixth Respondent**

---

**FILING SHEET**

---

**DOCUMENT PRESENTED FOR FILING: First Respondent's answering affidavit  
to the explanatory affidavit of the Fourth Respondent.**

Dated at Johannesburg on this the 26<sup>th</sup> day of June 2017

FILED BY:

  
**1<sup>ST</sup>, 2<sup>ND</sup>, & 6<sup>TH</sup> RESPONDENT'S  
ATTORNEYS**  
THE STATE ATTORNEY  
SALU BUILDING, GROUND FLOOR  
316 THABO SEHUME STREET  
PRIVATE BAG X 91  
PRETORIA  
Email: [MLetsoko@justice.gov.za](mailto:MLetsoko@justice.gov.za)  
TEL: (012) 309 1672  
ENQ: M O LETSOKO  
FAX: 086 644 5436

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

**AND TO: APPLICANT'S ATTORNEYS**  
LEGAL RESOURCES CENTER  
FLOOR 16, BRAM FISCHER TOWERS  
20 ALBERT STREET  
MARSHALLTOWN  
JOHANNESBURG  
Email: [avani@lrc.org.za](mailto:avani@lrc.org.za)  
REF: A Singh/1111315L  
**C/O GILFILLAN DU PLESSIS INC**  
FIRST FLOOR, LHR BUILDING  
357 VISAGIE STREET  
PRETORIA  
REF: J66

Receive by on this .... day of ..... 2017

\_\_\_\_\_

**AND TO: NATIONAL PROSECUTING AUTHORITY**  
Third Respondent  
Victoria and Griffiths Mxenge Building  
123 Lake Avenue  
Silverton, Pretoria

Receive by on this .... day of ..... 2017

---

**AND TO: DELANEY ATTORNEYS**

Fourth Respondent's Attorneys  
6 Stafford St, Westdene, Johannesburg  
Cell: 083 397 0075  
Email: [simon@delaney.co.za](mailto:simon@delaney.co.za)  
**C/O MACROBERT ATTORNEYS**  
MacRobert Building  
1062 Jan Shoba Street  
Brooklyn  
Pretoria

Receive by on this .... day of ..... 2017

---

**AND TO: SHAUN ABRAHAMS**

Fifth Respondent  
Victoria and Griffiths Mxenge Building  
123 Lake Avenue  
Silverton, Pretoria

Receive by on this .... day of ..... 2017

---

**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG LOCAL DIVISION, PRETORIA)**

**CASE NO: 93043/15**

In the matter between:

**COUNCIL FOR THE ADVANCEMENT OF THE  
SOUTH AFRICA CONSTITUTION**

**Applicant**

and

**THE PRESIDENT OF THE  
REPUBLIC OF SOUTH AFRICA  
MINISTER OF JUSTICE AND  
CORRECTIONAL SERVICES**

**First Respondent**

**NATIONAL PROSECUTING AUTHORITY  
MXOLISI SANDILE NXASANA  
SHAUN ABRAHAMS**

**Second Respondent**

**Third Respondent**

**Fourth Respondent**

**Fifth Respondent**

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

**Sixth Respondent**

---

**FIRST RESPONDENT'S ANSWERING AFFIDAVIT TO THE EXPLANATORY  
AFFIDAVIT OF THE FOURTH RESPONDENT**

---

I, the undersigned:

**JACOB GEDLEYIHLEKISA ZUMA**

M. A. M.



Do hereby make oath and state that:

1. I am the President of the Republic of South Africa ("the President"), duly elected in terms of section 87 of the Constitution of the Republic of South Africa, 108 of 1996 ("the Constitution"); first respondent, and with my address of service as care of the State Attorney, SALU building, 316 Thabo Sehume Street Pretoria.
2. The facts contained herein are, unless the context otherwise indicates within my own personal knowledge and are to the best of my knowledge and belief both true and correct.
3. Any legal submissions that are made by me are made on the advice of my legal representatives, which advice I believe to be correct.
4. I refer to the confirmatory affidavits of Mr Michael Hulley ("Mr Michael") and the second respondent, Minister of Justice and Correctional Services, Tshililo Michael Masutha ("the Minister") where relevant.

#### INTRODUCTION

5. I have read the "explanatory affidavit" of the fourth respondent, **MXOLISI SANDILE OLIVER NXASANA** ("Nxasana") and wish to respond thereto hereunder.
6. I have previously deposed to an answering affidavit in this matter on 13 May 2016



7. Nxasana, who is the fourth respondent in these proceedings, elected not to participate herein after the filing of the Rule 16A Notice, along with the Notice of Motion and its accompanying papers on 18 November 2015. In this regard, Nxasana elected not to file a Notice of Opposition within the prescribed period of fifteen days after receipt of the papers and thus in effect elected to abide by the decision of this Court.
8. The respondents, *in casu*, with the exception of the fourth and sixth respondents, all filed their Notices of Opposition timeously and their respective answering affidavits during April and May 2016.
9. Some twelve months hereafter, during the middle of April 2017, Nxasana filed a Notice to Abide, termed explanatory affidavit in his own name.
10. Nxasana, who ostensibly filed his explanatory affidavit to assist the Court, does not oppose the relief sought by applicants and is willing to abide by and fulfil any relief sought in the Notice of Motion. Nxasana, further requests:
  - 10.1 the Court to condone his non-compliance with the time period as provided in the Rules of Court;
  - 10.2 in the event that his application for condonation is unsuccessful, costs should not be awarded against him;
  - 10.3 intends to abide by the decision of the Court, and;
  - 10.4 specifically advises that he is both willing and able to resume the responsibilities as National Director of Public Prosecutions ("NDPP").

11. I do not intend to address all the allegations outlined in the explanatory affidavit of the fourth respondent. Any failure by me to address specific allegations should not be construed as an acquiescence or an admission.

**"EXPLANATORY" AFFIDAVIT**

12. I am advised that an explanatory affidavit of this nature is not provided for in terms of Rule 6(5)(d) of the Uniform Rules of Court which provides for a respondent to file an answering affidavit within a period of time set in the Notice of Motion.
13. Nxasana, a duly admitted and practising attorney and former NDPP, is a respondent in these proceedings who is legally represented throughout regrettably does not proffer any explanation why he elected not to oppose the application or abide by the decision the Court may arrive at in time.
14. It is further regrettable that Nxasana waited until answering affidavits of respondents were filed and then only filed his explanatory affidavit some 12 months later.
15. By his own admission, in para 51.1 and 51.2 of his explanatory affidavit filed during April 2017 in the corresponding Corruption Watch matter, Nxasana admits that he had earlier than 23 March 2016, assisted Corruption Watch and Freedom Under Law in the Corruption Watch matter by providing the applicants in that matter with documentary evidence which formed the basis of their Rule 30A Application in those proceedings. Respondents filed their respective answering affidavits in the main application during February and early March 2016.

16. Likewise, Nxasana deposed to this explanatory affidavit not in response to applicant's founding affidavit, but in response to the answering affidavits of the respondents in these proceedings.
17. The circumstances that led to the settlement agreement are fully set out in my answering affidavit and in that of the Minister of Justice and Correctional Services in these proceedings.

**AD SERIATUM RESPONSES TO FOURTH RESPONDENT'S EXPLANATORY AFFIDAVIT**

**18. AD PARAGRAPH 1**

18.1 I admit the contents of these paragraphs.

**19. AD PARAGRAPH 2**

19.1 The contents hereof are noted.

19.2 I however dispute that the facts contained in the explanatory affidavit are true and correct insofar as they conflict with anything stated by me in my answering affidavit in these proceedings, as well as the respective affidavit of the Minister.

**20. AD PARAGRAPH 3**

20.1 I am advised that an explanatory affidavit of this nature is not provided for in terms of Rule 6(5)(d) of the Uniform Rules of Court which provides for a respondent to file an answering affidavit within a period of time set in the notice of motion.

20.2 Nxasana does not provide any explanation why as a respondent, having elected not to oppose the application or abide by the order the Court might make, did not file this affidavit on time.

20.3 Evidently, Nxasana appears to have an attorney representing him in this matter. He does not give any explanation why his attorney did not bring to his attention all the papers.

20.4 I am advised that Nxasana did not have to wait for any other respondents' papers in order for him to file his affidavit.

**21. AD PARAGRAPH 4**

21.1 I deny that this explanatory affidavit is a response to the founding affidavit as alleged in this paragraph but is in substance a response to mine and the second respondent's answering affidavits.

21.2 It is patently clear that Nxasana is alive to the fact that he does not resist the relief that the applicant seeks, including that he has to pay back the settlement amount.

**22. AD PARAGRAPHS 5 - 7**

22.1 I note the contents hereof.

22.2 I dispute the account of the facts of the fourth respondent's explanatory affidavit insofar as they conflict with anything stated by me in my answering affidavit in these proceedings, as well as the respective answering affidavit of the Minister.

22.3 It is regrettable that Nxasana does not explain why he remained supine and inactive having received the Notice of Motion and Founding Affidavit, on a matter that practically explained something central to his life and on account of his version of events would have been a matter of great public importance.

22.4 It is more so concerning that Nxasana's attention to issues which he wants to assist the Court with, was brought home through the belated filing of an explanatory affidavit in response to answering affidavits of the Minister and I.

23. **AD PARAGRAPHS 8 – 8.3**

23.1 I note the content of these paragraphs

24. **AD PARAGRAPH 9**

24.1 I admit the content of this paragraph.

25. **AD PARAGRAPH 10**

25.1 I deny the content of this paragraph.

25.2 Nxasana's appointment to the vacant position of NDPP followed a formal process ultimately culminating in his appointment. In this regard his *curriculum vitae* and certificate of good conduct was perused by me as I did with other candidates. After following an interview process, Nxasana was appointed as NDPP.

26. **AD PARAGRAPH 11**

26.1 I admit the content of this paragraph.

27. **AD PARAGRAPHS 12-14**

27.1 That there was resistance to the leadership of Nxasana at the NPA appears apparent. I am however unaware whether such resistance involved or invoked a campaign against him. The genesis of the status of the NPA can be found in the answering affidavits of the Minister and the incumbent NDPP, Adv Shaun Abrahams ("**Abrahams**"), in these proceedings and in the Corruption Watch matter.

27.2 The genesis of the status of the NPA can also be found in the voluminous Court papers and in the judgments on the *Democratic Alliance v The President of the Republic of South Africa and Others*, Western Cape High Court Case No 17782/2015 ("**DA matter**"), and in *General Council of the Bar of South Africa v Jiba, Mrwebi and Mzinyathi* ("**GCB matter**"), Gauteng High Court (sitting in Pretoria) Case number 23576/2015, as well in *Freedom Under Law v NDPP and Others*, Gauteng High Court Case Number 89849/2015 ("**FUL matter**").

27.3 At no stage have I discussed the reinstatement of criminal charges against me with any official of the NPA, including Nxasana. This is the subject of formal legal proceedings which has been in the Courts for a considerable period of time and I have always expressed my confidence in legal processes.

27.4 I specifically deny that I had discussed the person of Mr Bulelani Ngcuka or made the comments attributed to me by Nxasana.

27.5 I cannot attest to any views which Advocates Jiba ("Jiba") and Mrwebi ("Mrwebi") might otherwise hold in relation to Nxasana. Neither Jiba nor Mrwebi are parties to these proceedings.

27.6 I again refute that I was aware of any campaign against Nxasana or that I participated or condoned it in any respect.

27.7 Significantly, Nxasana confirms that the NPA was unstable whilst he was at the institution.

27.8 This corroborates my assertion that he requested to vacate office which request culminated in the settlement agreement.

28. **AD PARAGRAPH 15 - 16**

28.1 I deny the content of this paragraph.

28.2 I am not aware of any campaign waged against Nxasana. I agree with Nxasana that there was disruption in the operation of the organisation brought about by the discord among the leadership of the NPA. This discord was negatively impacting on the institution and had brought about instability.

28.3 The discord in the NPA is set out in my answering affidavit in these proceedings, and in the respective answering affidavit of the Minister.

28.4 The inquiry was instituted on the grounds set out in the Terms of Reference to which no objection was proffered by any party on any basis.

29. AD PARAGRAPHS 17 – 17.6

29.1 I note the content of these paragraphs.

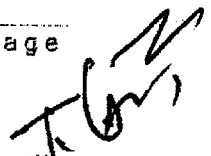
29.2 I am unaware of repeated requests to meet with me and by whom such requests were made or when such requests were made.

29.3 In any event, I am aware of interventions by the Minister in an effort to address the management crisis. I am advised that, the Minister, *inter alia*, convened a meeting with senior management of the NPA on or about 9 June 2014 in an attempt to restore stability and to maintain integrity of the institution. During this meeting the Minister called for ceasing of all hostilities and impressed on senior management to desist from attacking each other through the media and further called on senior management to exercise self-restraint and to avoid ugly and unnecessary altercations.

29.4 Nxasana once again repeats the fact that the NPA was unstable.

29.5 I am unaware of what correspondence Nxasana would have had with the Bar Council at the time and which Bar Council that was.

29.6 I regrettably also cannot respond to the informal attempts which were made by Nxasana to improve the relationship between him and the





NPA save to point out that the NPA was dysfunctional despite all attempts to resolve issues.

29.7 The facts and status of many of the matters referred to in this paragraph can be found in the voluminous Court papers and in the judgments in the DA and the GCB matters as well as in the court papers in the FUL matter.

**30. AD PARAGRAPHS 18 - 20**

30.1 I admit the content of these paragraphs.

**31. AD PARAGRAPHS 21 - 22**

31.1 I admit the content of these paragraphs.

31.2 I admit further that I had already commenced discussions with Nxasana by this stage.

**32. AD PARAGRAPH 23**

32.1 I admit the content of this paragraph.

**33. AD PARAGRAPH 24**

33.1 I admit the content of this paragraph.

33.2 I aver that Nxasana has stated that he agreed to relinquish his position as NDPP which accords with what I have stated in my answering affidavit.

33.3 It is true that there is a recordal in the settlement agreement that Nxasana is a fit and proper person to hold senior office in government.

33.4 Notwithstanding the aforementioned, whilst allegations were made against Nxasana, the commission of inquiry had not made any findings against Nxasana because it was aborted. I therefore had no legal basis to assume otherwise.

34. **AD PARAGRAPH 25**

34.1 I note the content of this paragraph.

35. **AD PARAGRAPH 26**

35.1 I deny the content of this paragraph.

35.2 Nxasana does not state what this ongoing dispute was.

35.3 I deny that I had any dispute with Nxasana.

35.4 Nxasana makes it plain that as head of the NPA, he did consider the situation to be "intractable and undesirable". This situation could not be allowed to remain unresolved.

36. **AD PARAGRAPH 26.1**

36.1 I deny the content of this paragraph.

36.2 I aver that the only dispute Nxasana had related to the infighting within the NPA which was cause for concern. Especially since the infighting

was with senior officials in the management of the NPA. This is not denied by Nxasana.

36.3 The forum which was created in order to determine Nxasana's fitness for office, being the commission of inquiry, was aborted. It is correct that the settlement agreement records that Nxasana is a fit and proper person to hold a senior position in government.

36.4 Nxasana regrettably does not explain what spurious and baseless grounds were raised for him to leave office; who raised those grounds; when were those grounds raised; and the responses thereto.

37. **AD PARAGRAPH 26.2**

37.1 I dispute that the appointment of an NDPP is contractual in nature.

37.2 The statutory provisions governing the circumstances in which an NDPP may vacate office are pertinently relevant to the independence of the office of the NDPP which is central to the work of that office. I am advised that Nxasana cannot suggest that private parties can contractually agree to terms inconsistent with a statute governing the circumstances in which an NDPP may vacate office.

37.3 Significantly, in this regard, it is evident on Nxasana's own account as reflected in para 3 of "MN1", in which his attorney records that '(T)he procedure thereof is succinctly spelt out in Section 12 subsections 6, 7, 8 and 9 of the NPA Act', in reference to discussions around the settlement agreement, that Nxasana was well aware of the statutory

provisions governing the circumstances under which an NDPP may vacate office.

**38. AD PARAGRAPH 26.3**

38.1 I deny that I had any dispute with Nxasana.

38.2 Not having been a party to the negotiations, I am advised that the role played by Mr M Hulley, Ms Busisiwe Makhene, and the Minister was post my engagement with Nxasana and related to the terms of the settlement agreement and its implementation.

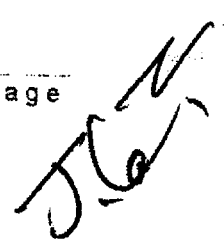
38.3 It is in fact in a letter dated 10 December 2014, attached to Nxasana's explanatory affidavit as "MN1" that Nxasana's lawyer, in paragraph 3 thereof, refers Ms Makhene to the relevant legal prescripts as envisaged by section 12(6) to (9) of the NPA Act.

**39. AD PARAGRAPHS 26.4 – 26.5**

39.1 I deny that the dispute was resolved outside of the parameters of the statutory framework governing the removal of an NDPP.

39.2 The only dispute arising from the litigation was whether I was entitled to suspend Nxasana after I had requested reasons from him as to why I should not suspend him pending an enquiry.

39.3 No other dispute existed.

A large, stylized handwritten signature in black ink, likely belonging to the author of the affidavit, is written over the page number and the 'M.A.M.' text.

39.4 By his own account, as illustrated above, Nxasana was well conversant with the legal prescripts governing the circumstances under which an NDPP may take leave of office.

**40. AD PARAGRAPHS 26.6 – 26.7**

40.1 I dispute that the settlement agreement could ever have been concluded outside of the statutory framework.

40.2 The settlement agreement was a culmination of my discussion with Nxasana when he requested to vacate the office of NDPP because of the instability which persisted within the institution.

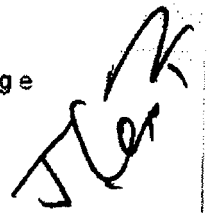
40.3 My negotiations with Nxasana for him to leave office did not include the financial computation reflected in the settlement agreement. Nxasana did however insist that he wanted to be remunerated for the remainder of the term that he ordinarily would have served.

40.4 In addition to the aforementioned, Nxasana in various discussions with myself and the Minister, or be it independently of each other, had initially requested that his departure from the office of the NDPP should likewise include the exit of Jiba and Mrwebi.

**41. AD PARAGRAPHS 27 – 27.1**

41.1 I deny that there was ever a dispute between myself and Nxasana.

41.2 Nxasana's difficulties surrounding Jiba and Mrwebi were being handled by the Minister, following my instructions, in an attempt to resolve it.

A handwritten signature in black ink, appearing to be 'J. Ler', is written over the page number and extends into the right margin.

41.3 Nxasana now wishes to resume office as an NDPP after voluntarily negotiating and agreeing to vacate the office of NDPP so as to *"protect the integrity of the office of the NDPP"*. This is contrary to the spirit and purport of the negotiations and the eventual settlement agreement.

42. **AD PARAGRAPHS 27.2**

42.1 I admit that there was considerable media attention to how senior managers of the NPA were conducting themselves.

42.2 This accords with what both I and the Minister have stated in our answering affidavits with regards to the dysfunctionality of the NPA.

43. **AD PARAGRAPHS 27.3**

43.1 I dispute that Nxasana, as NDPP, had any power to institute disciplinary proceedings against Jiba or Mrwebi as he purported to do.

43.2 I had instructed the Minister to investigate the complaints raised and to provide me with a recommendation of what steps should be taken to resolve this issue. This matter extended beyond Nxasana's tenure as NDPP and sought to address issues relating to Jiba and Mrwebi's conduct.

43.3 I deny that I failed to act as alleged by Nxasana. My intervention may not have suited Nxasana but was appropriately done through the engagement of the Minister.

43.4 I refer to what I have stated in my answering affidavit in paragraphs 40.3 to 40.7.

43.5 I am advised that Minister's interventions on these issues are well versed in his answering affidavit. The outcome of the Minister's interventions can also be found in the voluminous Court papers and in the judgments in the DA and the GCB matters, as well as in the court papers in the FUL matter.

**44. AD PARAGRAPH 27.4**

44.1 I deny that there existed a dispute between Nxasana and myself.

44.2 The only litigation between myself and Nxasana was the urgent interdict brought on 8 August 2014 which sought to stop me from suspending him.

44.3 The only other issue was that of the inquiry which sought to address certain allegations against Nxasana.

44.4 I agree that the acrimony which existed impaired the standing of the NPA and the office of the NDPP.

**45. AD PARAGRAPH 27.5**

45.1 I deny that any dispute existed between Nxasana and myself.

**46. AD PARAGRAPHS 28 – 29**

46.1 I state that I was not a party to negotiations relating to the financial computation and terms of settlement agreement; I admit the content of

these paragraphs to the extent it accords with the settlement agreement.

**47 AD PARAGRAPH 30**

47.1 I admit the content of this paragraph which accords with what I have stated previously that the dispute was not between myself and Nxasana.

47.2 This affirms that I had no dispute with Nxasana.

47.3 The internal acrimony between Nxasana and senior managers of the NPA adversely affected the working of the office of the NPA.

**48. AD PARAGRAPH 31**

48.1 I admit the content of this paragraph and reiterate that it is Nxasana that relinquished his position as NDPP by agreement.

**49. AD PARAGRAPH 32**

49.1 As I pointed out earlier, Nxasana requested to leave office.

49.2 I disagree that Nxasana did not have an intention to request vacating office.

49.3 In his own account, as illustrated above, Nxasana was well conversant with the legal prescripts governing the circumstances under which an NDPP may exit the office of NDPP.

*J. G. M.*



**50. AD PARAGRAPH 33**

50.1 I deny the content of this paragraph.

50.2 I reiterate that the intractable discord that was in the NPA demanded some resolution. Nxasana had indicated unequivocally that he no longer wanted to continue as an NDPP.

**51. AD PARAGRAPHS 34 - 36**

51.1 I was not privy to the contemporaneous correspondence referred to in these paragraphs.

51.2 The settlement agreement reflects that these stated positions were altered by Nxasana in agreeing to the terms of the settlement agreement.

51.3 I further re-emphasize that it is evident on Nxasana's own account, as referenced earlier herein, and in relation to para 3 of "MN1" that Nxasana was well aware of the statutory provisions governing the circumstances under which an NDPP may vacate office.

51.4 Nxasana voluntarily negotiated his exit and ultimately voluntarily signed the settlement agreement and exited the office of NDPP with effect from 1 June 2015.

**52. AD PARAGRAPHS 37 - 38**

52.1 I have no knowledge of the content of these paragraphs.

52.2 I confirm that the Minister in his confirmatory affidavit has stated that he stands by his answering affidavit filed in this matter.

**53. AD PARAGRAPHS 39 - 42**

53.1 I deny the content of these paragraphs.

53.2 Nxasana voluntarily requested to leave his position as NDPP.

53.3 I deny that Nxasana was unwilling to leave office.

53.4 As demonstrated above, on his account, he was aware of the statutory prescripts governing the exit of the NDPP from office, yet proceeded to voluntarily negotiate his exit out of office, which culminated in the voluntary signing of the settlement agreement.

53.5 Nxasana's strident position that he did not want to vacate office thus stands at sharp odds with the fact that he signed a settlement agreement.

**54. AD PARAGRAPH 43**

54.1 I note the content of this paragraph.

**55. AD PARAGRAPHS 44 - 44.4**

55.1 I deny the content of these paragraphs.

**56. AD PARAGRAPH 45**

56.1 I deny the content of this paragraph.

56.2 Nxasana requested to leave office. The terms for him leaving office were negotiated with the Minister.

56.3 Nxasana was well aware of the provisions of section 12(8) of the NPA Act when he voluntarily exited the office of NDPP.

**57. AD PARAGRAPH 46**

57.1 I deny that Nxasana can be reinstated as NDPP.

57.2 Nxasana has publicly stated that it was in the interest of NPA for him to vacate office.

57.3 Nxasana signed a settlement agreement with full knowledge of legislative provisions regulating his office.

57.4 I repeat what I have stated above.

**58. AD PARAGRAPH 47**

58.1 I deny the content of this paragraph.

58.2 I repeat what I have stated above.

**59. AD PARAGRAPHS 48 – 48.10**

59.1 Mr Hulley explained in his confirmatory affidavit his version relating to the alleged meeting.

59.2 As I explained earlier my negotiation with Nxasana was that, it was in the interest of the NPA and him that he vacates office given the

admitted facts that the instability in the relationship of the leadership in the NPA could not be allowed to continue.

**60. AD PARAGRAPH 49**

60.1 Nxasana does not explain when he became aware of my answering affidavit.

**61. AD PARAGRAPHS 50 – 50.4**

61.1 I have no knowledge of the content of these paragraphs.

61.2 I confirm that the Minister in his confirmatory affidavit has stated that he has no recollection of the telephone conversation as alleged in these paragraphs.

**62. AD PARAGRAPH 51**

62.1 I deny the content of this paragraph.

**63. AD PARAGRAPHS 51.1 – 51.3**

63.1 Nxasana had discussions with Corruption Watch and FUL during the months of January to March 2016.

63.2 Nxasana would also have been alive to what was stated in the answering affidavits filed in the Corruption Watch matter which was also filed during this time period, which answering affidavits are similar to the ones filed in this application. This is apparent by what was stated by the applicants in the Rule 30A application in paragraph 24.

63.3 Nxasana was corresponding with Corruption Watch and FUL, therefore the filing of this explanatory affidavit should be viewed in that light.

63.4 Nxasana was never denied any right to file his side of the story as he is a respondent in this matter

**64. AD PARAGRAPH 52**

64.1 It is an understatement to say that the affidavit has been filed considerably out of time. It is approximately 12 months out of time.

64.2 This is especially so as, in his own version, he had been alerted that a possible untrue account of his exit as NDPP had been given.

**65. AD PARAGRAPHS 53 – 53.3**

65.1 I deny that condonation can be granted on the insufficient and unreasonable reasons as advanced.

65.2 I aver that Nxasana chose not to file his affidavit as required in terms of the rules of this Court.

65.3 No substantive application for condonation has been made.

**66. AD PARAGRAPHS 54 - 56**

66.1 I do not dispute that these issues raise important matters that require the attention of this Court.

66.2 Nxasana has omitted to explain why, as a respondent, he elected not to do anything for such a long period.

67. **AD PARAGRAPH 57**

67.1 I am advised, it is not for the parties to consent to condonation.

67.2 There is no condonation application before the court.


68. **AD PARAGRAPHS 58 - 59**

68.1 I deny the content of these paragraphs.

68.2 Nxasana has not made out any case as to why condonation should be granted.

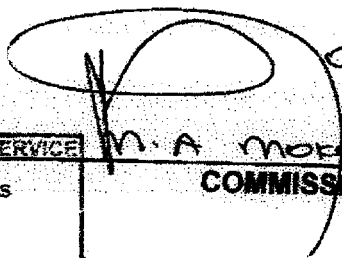
69. **AD PARAGRAPHS 60 - 61**

69.1 I note the content of these paragraphs.

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

**THUS SIGNED AND SWORN** to before me at Pretoria on this  
the 26 day of June 2017, by the deponent, he having acknowledged that he  
knows and understands the contents of this affidavit, that he has no objection to  
taking the prescribed oath and considers same to be binding on his conscience.

SOUTH AFRICAN POLICE SERVICE
DRYNTEDION
STATIC GUARD SERVICES
2017 -06- 26
PROTECTION AND SECURITY SERVICES
PRETORIA
SOUTH AFRICAN POLICE SERVICE

  
**M. A. MORDYANNE**  
**COMMISSIONER OF OATHS**