

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO: 17782/15

Set down for 2 - 4 February 2016

In the matter between:

DEMOCRATIC ALLIANCE

Applicant

and

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

First Respondent

**THE MINISTER OF JUSTICE AND
CORRECTIONAL SERVICES**

Second Respondent

**THE NATIONAL DIRECTOR OF
PUBLIC PROSECUTIONS**

Third Respondent

NOMGCOBO JIBA

Fourth Respondent

GENERAL COUNCIL OF THE BAR

Fifth Respondent

SECOND RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned,

TSHILILO MICHAEL MASUTHA

do hereby declare under oath and state that: -

1. I am the Minister of Justice and Correctional Services of the Republic of South Africa.

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2. The facts herein contained are within my personal knowledge, save where otherwise stated or where the contrary appears from the context, and are true and correct. Where I make submissions of law in this affidavit, I do so on the advice of my legal representatives which advice I accept as correct.
3. The founding and supplementary affidavits of Mr James Selfe have been read to me.
4. I dispute the submissions of law and conclusions contained in the founding and supplementary affidavits insofar as they are inconsistent with what is set out in the answering affidavit of the Third Respondent and in this affidavit.
5. In terms of Section 179 (6) of the Constitution of the Republic of South Africa, 1996 (*"the Constitution"*), final responsibility over the National Prosecuting Authority (*"NPA"*) vests in myself.
6. On 10 April 2015, I responded to two parliamentary questions from Adv Breytenbach, a member of the Applicant. The questions, nos. 1219 and 1220, appear at annexure **JS11** (Record p 529) and **JS10** to the FA (Record: p 526). I refer to my answers as set forth in these two annexures.
7. The President too was subsequently asked a question, by Mr Selfe, a member of the Applicant, concerning, *inter alia*, the fitness to hold office of any Deputy National Directors of Public Prosecutions

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("DNDPP"). The question and the President's answer appear as annexure **JS12** to the FA, p 531 of the record.

8. Adv Shaun Abrahams ("*Adv Abrahams*") was appointed as the National Director of Public Prosecutions ("*NDPP*") on 18 June 2015, after the resignation of the former NDPP, Mr Mxolisi Nxasana. I asked Adv Abrahams to investigate the subject matter of the parliamentary questions, gather the relevant facts and report to me. I met with him on several occasions after his appointment. He reported the facts he had ascertained, as well as his views. He also expressed his views to me on the judgments in which Adv Jiba had been criticised on the Yacoob Report, and the Annual Report of the NPA, 2014/15.
9. In light of the relief sought by the Applicant in this matter, I confine my further comments to the case of Adv Jiba.
10. I was aware that Adv Jiba had been criticised by some Judges of both the High Court and the Supreme Court of Appeal. I was also aware of the Yacoob Report, which I mentioned in my reply to the question from Adv Breytenbach (FA: annexure **JS10**).
11. I was also aware of the pending criminal charges against Adv Jiba, which were withdrawn on or about 18 August 2015.
12. Adv Abrahams informed me that he believed that there were no prospects of a successful prosecution. I, having considered what was conveyed to me by Adv Abrahams, including the reasons, was

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satisfied that the decision to withdraw the charges had been properly taken.

13. I had been made aware of the letter of 26 August 2015 from the Applicant's attorneys (annexure JS16, founding affidavit).
14. I met with the President to discuss the demand made by the Applicant through its attorneys, namely that he invoke s.12(6)(a) of the NPA Act.
15. The following paragraphs in the affidavit of Adv Abrahams in this matter have been read to me and I confirm the contents thereof insofar as they relate to me:

9.4, 25, 26, 61, 62, 62.1 - 62.6, 75, 88, 96, 103, 104, 106, 112, 115, 121, 122, 173, 195, 201, 210, 215.
16. I did not impart to the President chapter and verse of Adv Abrahams' recommendations and reports. I instead apprised the President of the salient facts, as well as the view of Adv Abrahams that Adv Jiba's conduct had not been such that it called for her suspension and an enquiry in terms of Section 12 (6) of the NPA Act, and Adv Abrahams' reasons for his views.
17. I was satisfied that I imparted all the information to the President necessary in order for him to make a rational decision. In my view he did so.

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18. Insofar as I have not dealt with all allegations concerning me in the founding and supplementary affidavit these should not be taken as admitted.

M. Masutha

TSHILO MICHAEL MASUTHA

I hereby certify that the deponent declares that the deponent knows and understands the contents of this affidavit which have been read to him and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at PRETORIA on this 29th day of **NOVEMBER 2015** and the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.

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[Signature]

COMMISSIONER OF OATHS

*No: 218 GENERAL PIET
 JOUBERT BUILDING
 VISAGIE STREET
 PRETORIA: 0001
 S.A.P.S. CAPTAIN
 SANJAY NUNDLAL*

DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
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SILVERTON
CRIMES AGAINST THE STATE