

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

CASE NO. 8500/2022

In the matter between:

THE PUBLIC PROTECTOR OF SA

Applicant

and

THE SPEAKER OF THE NATIONAL ASSEMBLY

First Respondent

**THE CHAIRPERSON OF THE SECTION 194
COMMITTEE**

Second Respondent

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

Third Respondent

**ALL POLITICAL PARTIES REPRESENTED
IN THE NATIONAL ASSEMBLY**

Fourth to Seventeen Respondents

**FURTHER AFFIDAVIT ON BEHALF OF THE THIRD RESPONDENT:
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**

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I, the undersigned,

MARK NEVILLE OWEN

make the following statement under oath:

1. I am an Assistant State Attorney employed as such at the Office of the State Attorney, Cape Town.
2. I am the attorney of record for the Third Respondent, the President of the Republic of South Africa ("**the President**").
3. The facts to which I depose are within my personal knowledge except where it is apparent from the context that they are not.
4. At the hearing of this matter, application will be made for leave to have this affidavit admitted as a further affidavit in these proceedings in the exercise of this Court's discretion to admit further affidavits, in terms of Rule 6(5)(e).
5. In support of the request for the admission of this affidavit in terms of Rule 6(5)(e):
 - 5.1. I submit that the information which I seek to place before the Court at this point is material to averments that the President has previously made in this matter.
 - 5.2. The information contained herein bears on a just and equitable determination of the issues.
 - 5.3. No party will be prejudiced by this affidavit.

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6. I make clear that the President is not seeking a postponement of the hearing and nor is there any basis for any party to seek a postponement of the hearing of this matter based on the content of this affidavit.
7. In this affidavit I deal with the statement made in the President's main supplementary answering affidavit in Part B of these proceedings ("**the Part B answering affidavit**"). In that affidavit, the President stated that he would make the response that he files with the office of the Public Protector (in response to the Phala Phala investigation) available to this Court once it has been filed.
8. I pause to draw the Court's attention to the fact that the President is represented in the Phala Phala investigation by different attorneys and different counsel. In the Phala Phala investigation, the President is represented by his private attorneys and at his own cost and not the State Attorney.
9. The President was unable to meet his intended deadline of 18 July 2022 for his response to the office of the Public Protector on the Phala Phala investigation and his request for a further extension was refused by the Acting Public Protector.
10. The President however submitted his response to the Acting Public Protector on Friday, 22 July 2022.
11. Mindful of what was stated in Part B answering affidavit, the President intended to place his response to the Acting Public Protector before the Court in these proceedings. However, when this issue was raised with the President's private attorneys shortly after the President's response in the Phala Phala investigation was filed on 22 July 2022, I was

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informed of an email that the Office of the Public Protector had sent to the President's attorneys in the Phala Phala investigation.

12. In that email, dated 4 July 2022, (after the Part B answering affidavit had been deposited to), the Acting Public Protector wrote to the President's attorneys dealing with the investigation and advised them as follows:

"Please ensure that when the response from the Presidency is ready is (sic) emailed only to us and copied here and nobody else.

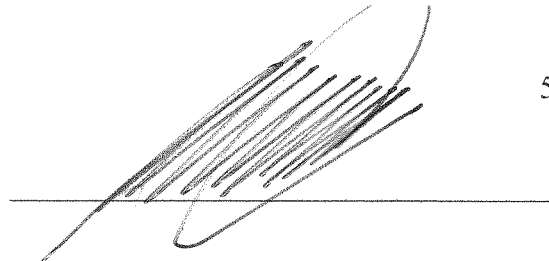
Alternatively, you can call me to arrange for physical delivery to me at the Public Protector's Head Office.

We want to take precautions to avoid any leakage of such documents to the media, thereby compromising and jeopardizing the investigation."

A copy of the email from the Acting Public Protector is annexed marked "SA1".

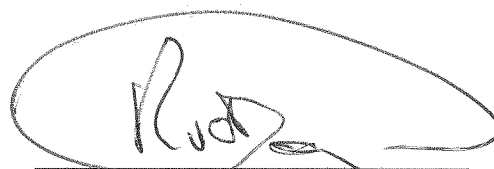
13. In light of this request from the Office of the Public Protector, the President has not made his response to the investigation available to Court. While the President has no objection to doing so (particularly in view of what was stated in his supplementary answering affidavit), he has no intention of "*compromising and jeopardising the investigation*" which, according to the Office of the Public Protector, will occur if the response is made public.
14. In view of the foregoing, the President considers it prudent to place this information before Court. The President will abide the decision of this Court as to whether his response to the Phala Phala investigation must be filed before Court.
15. I accordingly ask that this affidavit be admitted as a further affidavit in these proceedings.

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MARK NEVILLE OWEN

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of his knowledge both true and correct. This affidavit was signed and sworn to before me at **FISH HOEK** on this the **23rd** day of **JULY 2022**, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

Commissioner of Oaths

Name: R. VAN DEN BERG 545357-7

Rank: Sgt

Service No: 0545357/7

Ex Officio: South African Police Service

SAPS Fish Hoek
Main Road, Fish Hoek

"SA1"

From: Vusumuzi Dlamini <VusumuziD@pprotect.org>
Sent: Monday, July 4, 2022 9:34 PM
To: Rethabile Mokgatle <rethabile@hnmattorneys.co.za>; Peter Harris <pharris@hnmattorneys.co.za>
Cc: Prudence Maluleke <PrudenceM@pprotect.org>; Ponatshego Mogaladi <PonaK@pprotect.org>
Subject: RE: Letter to grant extension to the President

You don't often get email from vusumuzid@pprotect.org. [Learn why this is important](#)

Good Evening

Please ensure that when the response from the Presidency is ready is emailed only to us and copied here and nobody else.

Alternatively, you can call me to arrange for physical delivery to me at the Public Protector's Head Office.

We want to take precautions to avoid any leakage of such documents to the media, thereby compromising and jeopardizing the investigation.

Regards

VX Dlamini

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