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JUDICIAL CONDUCT COMMITTEE

Enq: Lynette Bios
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E-mail: lbios@judiciary.org.za

19 March 2019

**Honourable Judge NB Tutchen
Gauteng Division, Pretoria
Cnr Paul Kruger and Madiba Streets
Pretoria
0001**

Dear Judge Tutchen

RE: COMPLAINT BY JUDGE MAKHUBELE AGAINST YOUR GOOD SELF

We refer to the above matter.

We wish to confirm that there is indeed a complaint that was lodged against you by Judge Makhubele. This complaint has been allocated to a member of the Judicial Conduct Committee (the Committee) (a Judge) to consider in terms of the internal processes of the Committee.

We attached a copy of the complaint as requested. Please note that Judge Tutchen does not have to respond to the complaint at this stage as the Committee will advise you in case your response is required.

Yours sincerely,

**Sello Chiloane
Secretariat for the Judicial Service Commission**





MAKHUVELE J/TUCHTEN J



REPUBLIC OF SOUTH AFRICA
THE HONOURABLE MADAM JUSTICE
ANNAH MAKHUBELE

Gauteng Division, Pretoria
Palace of Justice
Room 25
TEL: (012) 314 9048/9049
FAX: 086 507 3466
Email: Amakhuvele@judiciary.org.za
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0001

05 December 2018

THE CHAIRPERSON

Judicial Conduct Committee

C/o The Secretary of the Judicial Service Commission

Attention: Ms L Bios

(By hand) & Email: lbios@judiciary.org.za

COMPLAINT AGAINST JUDGE TUCHTEN

Please find attached herein a complaint in the prescribed format. Kindly bring it to the attention of the Chairperson of the Judicial Conduct Committee.

Thank you.

Judge TAN Makhubele

COPY TO: JUDGE PRESIDENT DUNSTAN MLAMBO

Gauteng Division

(By hand] & Email: Dmlambo@judiciary.org.za

In the JUDICIAL CONDUCT COMMITTEE

In the complaint of:

JUDGE TINTSWALO ANNAH NANA MAKHUBELE

against

JUDGE NEIL TUCHTEN

**AFFIDAVIT IN TERMS OF SECTION 14(3)(b) OF THE JUDICIAL SERVICE
COMMISSION ACT , ACT 9 OF 1994 , AS AMENDED (THE ACT)**

I the undersigned,

TINTSWALO ANNAH NANA MAKHUBELE (MAKHUBELE)

do hereby declare under oath and state as follows;

[1] I am a Judge of the High Court of South Africa, Gauteng Division, having been appointed by the President of the Republic of South Africa by certificate of appointment dated 22 May 2018 with an effective date of 01 June 2018.

[2] Judge Tuchten is also a Judge of the High Court, Gauteng Division. I have no further details about his appointment. The both of us are stationed at the Pretoria High Court.

TAM M

Nature of the complaint (Section 14(4) of the Act)

[3] It my considered view and belief that based on the facts that I will depose to hereunder, Judge Tuchten has potentially contravened the provisions of section 14(4)(b) of the Act in that he willfully or grossly negligently breached the Code of Judicial Conduct adopted in terms of section 12 of the Act (the Code).

Background facts

[4] On Wednesday, 28 November 2018 at about 07:30, I was alerted to a live interview on Talk Radio 702 that was being conducted by one Bongani Bingwa with the Chairperson of the Passenger Rail Agency of South Africa (Prasa), Ms Khanyisile Kweyama.

[5] The essence of the discussion was a court order or judgment that had been issued by Judge Tuchten . It was alleged that I had been found to have acted improperly in relation to a dispute between Prasa and a certain group of companies referred to as "Siyaya". This was apparently the subject matter of the judgment issued by Judge Tuchten.

A copy of the audio clip will be made available to the Committee in due course.

[6] I subsequently obtained a copy of the judgment issued by Judge Tuchten. A copy is attached hereto as **Annexure "TAN 1"**.

[7] It is evident from the citation of the parties that I was not party to the litigation (application).

T M M

[8] I do not intend to deal with the merits of the application that gave rise to the judgment because as I have indicated, I was not a party thereto. The information that I have about the application and allegations leveled against me came to my knowledge through informal means and by reading of newspapers as well as having had sight of discussions in social media networks.

I also do not intend to disclose the steps I took at this stage to protect my interests because the purpose of this affidavit is not to mount a defence against those allegations, but to lodge a complaint against Judge Tuchten for the manner in which he conducted the proceedings and the criticisms he leveled against me in his written judgment which border on defamation of character. I will address the merits of the allegations at the appropriate time and relevant forum if called upon to do so, or in the exercise of any legal remedies that I may have against anyone, including Judge Tuchten.

The relevant parts of the judgment

[9] I am not in possession of the papers that were placed before Judge Tuchten. All I know is that the matter was in the unopposed roll. I also do not know whether the parties made oral submissions in open court or not. In this regard I reserve my rights to supplement my complaint on receipt of the court papers and a transcript of proceedings in open court.

TM 25

[10] It appears from paragraph 16 of the judgment that Judge Tuchten also considered and took into account some 'draft notice of motion and correspondence' filed by an organization he refers to as "Unite Behind" in the Western Cape High Court.

There is no indication from the judgment that this organization was a party to the application or case before him.

[11] Certain factual findings made in the judgment are not correct, but not being a party to the litigation, my remedies in that regard are limited. Besides, they are irrelevant for purposes of this complaint.

[12] Judge Tuchten devoted a huge chunk of his judgment to making defamatory statements and unwarranted criticisms against me on matters that were not before him or at least relevant to the issues that he was writing the judgment about, namely; whether Acting Judge Holland-Muter erred when he denied Prasa an opportunity or postponement to attend to the challenge relating to the authority of its attorneys.

[12.1] In paragraph 17 of the judgment Judge Tuchten raised questions about my fitness to hold office as a Judge because according to him I probably withheld certain information to the JSC during my interview to become a Judge.

[12.2] In paragraph 20 of the judgment Judge Tuchten unlawfully assumed jurisdiction to adjudicate on my fitness to hold office and concluded that he was of "*firm view that Judge Makhubele*

TM M

ought not to undertake any judicial duties until she clears her name of the allegations against her"

[13] Despite the fact that I was not before him and there was no proof that I had been called to file any response to the application or allegations, Judge Tuchten held in paragraph 19 of the judgment that I "*had at least two opportunities to do so when the urgent application was adjudicated and in the present application..*"

In paragraph 20 he went on to state that i will have a "*further opportunity to present*" my side of the story "*when the application for enforcement are argued*".

However, he does not issue an order in this regard.

[14] Although he did not make adverse findings on the allegations made by the GLS against me, the manner in which he phrased the questions , the context and his contempt of me as a Judge, it is clear that he believes that I am guilty of the alleged wrong doings.

The relevant paragraph (17) begins as follows "*I am sorry to say that I must say something about the conduct of Judge Makhubele as evidenced by these papers. There are questions that demand answers..*

"why did she intervene at all in the litigation with Siyaya?

"Did she sideline the GLS from participation in the litigation and the settlement and, if so, why?

Did she supply Siyaya with information which they could use against PRASA and , if so, why?

TM M

[15] Judge Tuchten also thinks that I am a dishonest person. To put it bluntly, that I am a liar.

In paragraph 18 of the judgment he refers to a report arising from a liquidation enquiry that the GLS alleged that they are not aware of. He then poses a question ; "Does such a report exist?. If it does, who compiled it and what does it say?"

[16] Judge Tuchten knew that all these questions were not relevant for the purpose of writing the judgment on the dispute before him.

He knew that the questions would be ventilated at enforcement stage of the dispute where firstly, the validity of the arbitration award issued by Judge Brand would be dealt with. The settlement agreement that I am alleged to have wrongfully concluded was the basis of Judge Brand's awards.

[16.1] Judge Tuchten does not even mention Judge Brand in his judgment. Why? Is it not relevant how the arbitration awards were made? Why did he not criticise that process?

[16.2] The orders that Judge Tuchten was called upon to rescind were issued by Judge Holland-Muter (Acting). The criticisms against him are mild and not as severe as those that he made against me.

Other than not being a party to the dispute, I did not make those orders.

[16.3] Legally, it may be found later on that both Judge Brand and the persons responsible for the settlement agreement

TM M

(alleged to be me) could have erred .Why did Judge Tuchten single me out ? Is it because I am a woman? A black woman? The others are white males.

Breaches of the Code

[17] Considering all the above, I submit that Judge Tuchten has breached the provisions of the following articles in the Code;

[17.4] Article 4 (a) & (b): Judicial independence

Judge Tuchten allowed the views of "Unite Behind" to influence him under circumstances where it was not a party to the application and based on papers filed in another jurisdiction.

I must mention at this stage that this organization has been harassing me since January 2018 by writing letters to all imaginable officials in Government, the Judiciary and the Executive. The issues raised are similar to the questions raised by Judge Tuchten. This organization has threatened legal action against me, but to date I have not been called to account in any forum.

It is clear that in writing this judgment Judge Tuchten intended to give credence to the claims made by this organization against me. A day after the judgment , an alliance of Unite Behind, and one organization called "GroundUp" (that is apparently also an online publication) issued a statement or news article on the matter under the heading "Judge criticizes Judge in Prasa

TM M

matter". I attach a copy of the statement/article hereto as **Annexure "TAN 2"**

Article 6: Compliance with the law & Article 9: Fair trial

Judge Tuchten was aware that I was not a party to the application and that neither one of the parties had joined me . As a Judge, he had powers and authority to call me to answer and not to simply write a speculative judgment. The judgment will have an effect of influencing other Judges who may hear the matter at a later stage.

It is clear from a reading of the paragraphs I have identified above that Judge Tuchten was not impartial. He was biased towards making adverse findings against me. The criticisms were unwarranted. He should have given me the benefit of doubt, but because of his contempt for me, he chose to put me on trial without evidence.

Article 7(c) &(d): Equality

I have a right to equal protection and benefit of the law. Judge Tuchten did not deem it necessary to criticise Judge Brand who made the settlement agreement an arbitration award(s). However, he singled me out for severe criticisms and even suggested that I should not hold judicial office. The process of making the arbitration awards as well as the underlying

TM N

settlement agreement has not been adjudicated upon, but Judge Tuchten has already raised questions regarding my conduct.

Why did he not do the same with Judge Brand? Does he know how Judge Brand considered the settlement agreement before making it an arbitration award?

Article 16(3) Reporting inappropriate conduct

As indicated in the introductory parts of this affidavit, Judge Tuchten is my colleague. Furthermore, I have been acting as a Judge at Gauteng Division since 2013. He knows me or should know about me.

It appears from a reading of the judgment that Judge Tuchten had prior and external information that I was "acting in a manner which is unbecoming of judicial office".

However, he failed to raise the matters that he has raised in the judgment with me or with Judge President Dunstan Mlambo.

[18] I reserve my rights to supplement the grounds of my complaint on receipt of the transcript of the court proceedings and the papers that were before Judge Tuchten.

TM M

Relief sought

[19] I submit that my complaint is valid as contemplated in section 16 of the Act and should be investigated. I also submit that on completion of the investigation, appropriate action should be taken against Judge Tuchten.

THUS DONE AND SIGNED BEFORE ME AT Lyttelton ON THIS THE 04TH DAY OF DECEMBER 2018 BY THE DEPONENT WHO SWORE THAT SHE HAS NO OBJECTION IN TAKING THE PRESCRIBED OATH WHICH SHE CONSIDERS BINDING ON HER CONSCIENCE.



DEPONENT



"TAN 1"

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA


CASE NO: 23484/18

In the matter between

PASSENGER RAIL AGENCY OF SOUTH AFRICA

Applicant

and

(1)	<u>REPORTABLE.</u>	<u>YES / NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES</u>	<u>YES / NO</u>
	27/11/18 DATE	 SIGNATURE

- | | |
|------------------------------------|-------------------|
| SIYAYA SIYAYA DB (PTY) LIMITED | First Respondent |
| SIYAYA SIYAYA RAIL (PTY) LIMITED | Second Respondent |
| SHERIFF: PRETORIA EAST | Third Respondent |
| JOHANNES ZACHARIAS MULLER | Fourth Respondent |
| TSHIFHIWA PERSEVERANCE MUDZUS | Fifth Respondent |
| MASTER OF THE HIGH COURT, PRETORIA | Sixth Respondent |

JUDGMENT

Tuhten J.

1 The applicant (PRASA) is a state owned entity It holds certain of the state s transport assets, including the passenger rail service which it operates PRASA has for some time been engaged in litigation with

TMM

entities, apparently controlled by Mr Makhensa Mabunda, all or some of which have the word *Siyaya* in their names. It is unnecessary for present purposes to distinguish between the individual *Siyaya* entities, so I shall group them under the name *Siyaya* or the *Siyaya* entities.

- 2 The *Siyaya* entities claim that PRASA owes them some very considerable amounts, totalling almost R60 million exclusive of interest, for services rendered. They sued PRASA in four separate cases in this court. PRASA defended. One of the defences raised in all the cases was that the parties had agreed to arbitrate their disputes. By agreement the four cases were submitted to retired judge FDJ Brand (the Arbitrator) for arbitration.
- 3 The arbitrations were predictably opposed. The parties to the arbitration exchanged documents and sought to enforce procedural obligations which it was alleged had been neglected.
- 4 Advocate TAN Makhubela SC was according to the papers appointed a judge of the High Court during October 2017. But, again according to the papers, on 19 October 2017, after she had been appointed a judge, Adv Makhubela (to whom I shall now refer as Judge Makhubela) accepted an appointment as the chair of the PRASA

TM m

interim board. She resigned that position, again according to the papers in the rescission application, with effect from 16 March 2018.

5 Litigation on behalf of PRASA is conducted by an internal organ called Group Legal Services (GLS). The GLS had been conducting the litigation against Siyaya. But for reasons which have apparently not to date been explained, Judge Makhubela assumed a prominent role in the litigation. This culminated in an instruction to PRASA's attorneys to settle the claims by paying capital and interest at 9% from 16 January 2018. This was done and the Arbitrator made awards to that effect.

6 All this was done against the strong opposition of a grouping of officials within PRASA which maintained that the claims ought to be resisted. According to the deponents to affidavits before me, Judge Makhubela gave instructions that members of the GLS, the very organ created to conduct PRASA litigation, who had considerable knowledge of the Siyaya litigation, were to be excluded from any participation in the further conduct of the case. Indeed, when the second most senior member of GLS, Mr MM Dingiswayo, tried to discuss the matter with PRASA's attorney, Mr Mogashoa, on 15 December 2017, Mr Mogashoa told Mr Dingiswayo that Judge Makhubela had barred PRASA's attorneys from interacting with GLS on the case.

TM M

- 7 By notice of motion dated 21 February 2018, the Siyaya entities applied (the enforcement applications) to this court to make the several arbitral awards orders of court. On 5 March 2018, officials within PRASA opposed to payment learnt of the existence of the enforcement applications. On 6 March 2018, those officials instructed attorneys Bowman Gilfillan (BG) to oppose the enforcement applications in PRASA's name. BG gave notice of PRASA's intention to oppose the applications on the same day.
- 8 PRASA was represented by both an attorney and counsel when the enforcement applications came before Holland-Muter AJ. The Siyaya entities had earlier challenged BG's authority to act under rule 7(1). Troublingly, it is alleged by the GLS officials that Siyaya challenged BG's authority on the strength of information supplied to them by Judge Makhubela herself and were in possession of at least one letter which ought to have enjoyed confidentiality as being a communication between attorney and client.
- 9 BG put up a power of attorney granted by PRASA's "Head of Legal", i.e. the head of the GLS, vested with the delegated authority to appoint lawyers to act for PRASA in litigation. But this was rejected by Holland-Muter AJ who concluded that the attempt to confer authority on BG had been ineffectual. Holland-Muter AJ then refused PRASA

TMM

a postponement to correct the perceived deficiency and granted judgment according to the tenor of the arbitral awards

10 Thus the present application (the rescission application) to set aside the orders of Holland-Muter AJ made on 9 March 2018. The rescission application was preceded by an urgent application. This was made necessary by the fact that the Siyaya entities executed on the Holland-Muter orders. Fortunately for the administration of justice and good governance, the sheriff held the monies attached in his own bank account. This enabled PRASA urgently to apply to stay the paying out of the monies attached at the instance of the Siyaya entities. If that had happened, the monies would probably have been lost to the public purse. But on 6 April 2018, Ranchod J interdicted the paying over of the monies, despite the opposition of the Siyaya entities. According to PRASA, R56 029 560,95 was seized by the sheriff from PRASA's bank account.

11 The present application is for the rescission of the Holland-Muter orders and the repayment to PRASA of the monies attached under rule 42(1) on the ground that the orders were erroneously sought and granted. It is not opposed. PRASA's papers show signs of having been drawn in desperate haste. This is not a criticism. I think those responsible for drafting the papers did a good job under the

TM M

circumstances. But there are areas where further interrogation of the facts is required. I am also not undertaking an exhaustive analysis of the facts because the present application is merely interlocutory to a hearing of the enforcement applications.

12 What is clear, however, is that Holland-Muter AJ erred in concluding that BG were not authorised to act for PRASA. They were. They represent PRASA in the present application. Their authority was conferred by the head of the GLS, the very person who had given authority for BG to represent PRASA in the enforcement applications.

13 But even if there had been a defect in the authorisation of BG to represent PRASA in the enforcement applications, I find the decision to deny PRASA, or BG, the opportunity to remedy the defect startling. The decision to grant judgment there and then meant that PRASA had been potentially denied a fair hearing. It ought to have taken little imagination to grasp that two factions had arisen within PRASA, one desired that payment be made; the other desired that payment not be made. It is vital that a court determine who is right. A very large sum of public money was involved. A short postponement would have caused no prejudice. The prejudice to PRASA, and the people of this country, if the postponement were refused, could have been substantial.

T M M

- 14 PRASA makes the case in the papers before me that the settlements before the Arbitrator were unauthorised that the process by which this was achieved constituted financial misconduct and that the facts pointed to a questionable relationship between role players including an official or officials who are supposed to act in the best interests of PRASA and the Siyaya entities
- 15 I find that case established for present purposes. So rescission must issue. This does not mean that the court has made a final decision on matter. My decision is, I repeat, interlocutory to the enforcement applications which must now proceed on their merits.
- 16 I must mention too that according to a draft notice of motion and correspondence in the present papers, an organisation which calls itself #Unite Behind and says that it is a coalition of people's organisations and legal, policy, research and support bodies advocating for social justice and equality, is challenging in the Cape Town High Court the execution of the enforcement orders and the power of the interim board of PRASA to institute, defend or settle legal proceedings or claims against one of the Siyaya entities. The papers in the rescission application do not disclose what has transpired in the Cape Town proceedings.

TM M

- 17 I am sorry to say that I must say something about the conduct of Judge Makhubela as evidenced by these papers. There are questions which demand answers. Did she disclose in her application for judicial appointment that she was considering taking up an appointment as PRASA chair which would prevent her from performing the duties of a judge until she gave up her position at PRASA? Why did she accept the appointment to chair PRASA when she had already been appointed a judge? Why did she intervene at all in the litigation with Siyaya? Did she sideline the GLS from participation in the litigation and the settlement and, if so, why? Did she supply Siyaya with information which they could use against PRASA and, if so, why? In general, did she act with propriety in relation to the Siyaya litigation?
- 18 This brings me to a further concern. According to a memorandum written in her name which is before me Judge Makhubela mentioned at an early stage of her intervention in the Siyaya litigation that she was in possession of a report arising from an insolvency enquiry into the affairs of one of the Siyaya entities. It seems that the contents of this alleged report were, according to her, central to her decision to intervene in the Siyaya litigation. In PRASA's founding affidavit in the rescission application, PRASA asserts that the GLS officials have never been furnished with such a report, despite their requests. They say that none of the evidence adduced at the insolvency enquiry

TM M


impacted upon PRASA's case in the Siyaya litigation. Does such a report exist? If it does, who compiled it and what does it say?

- 19 At no stage of the proceedings has Judge Makhubela made an affidavit or otherwise communicated her version in response to the allegations of the GLS officials in the rescission application. She has had at least two opportunities to do so when the urgent application was adjudicated and in response to the present application. The alleged insolvency enquiry report was never put before the court.
- 20 Judge Makhubela will have a further opportunity to present her side of the story when the applications for enforcement are argued. Of course it does not necessarily follow that a decision on the enforcement applications, one way or the other, will be dispositive of the concerns in relation to Judge Makhubela's conduct. If, objectively, the adjudication of the enforcement applications is not an appropriate forum for her side of the story to be received and considered, another forum ought to be provided to her for this purpose. But I must express my firm view that Judge Makhubela ought not to undertake any judicial duties until she clears her name of the allegations against her.
- 21 Because the present application is interlocutory, I shall reserve the costs for later determination.

JM m

22 I make the following order

- 1 The judgments and orders granted by this court per Holland-Muter AJ on 9 March 2018 under case numbers 2015/73933, 2015/73934, 2016/47597 and 2016/47598 are hereby rescinded and set aside
- 2 The warrants of execution issued under the above four case numbers are hereby set aside
- 3 The third respondent is directed to pay the sum of R56 029 560,95 attached by him together with the interest that has accrued thereon, calculated from the date the funds were paid into the third respondent's bank account until date of payment, into the applicant's bank account held with the Standard Bank of South Africa Limited under account number 202810241 within five days of receipt by the third respondent of this order
- 4 The notices of intention to oppose the main application, served by the applicant on 6 March 2018 will stand as notices to oppose the applications to enforce the arbitral awards
- 5 The applicant must deliver its answering affidavits, if any, in the applications to enforce the arbitral awards by 18 January 2019
- 6 The costs incurred to date are reserved for later determination


NB Tuchten
Judge of the High Court
27 November 2018



"TAN 2"

Up

LAW (/category/Law/) | PRETORIA (/region/South%20Africa/Gauteng/Pretoria)

Judge criticises judge in PRASA case

Judge Tintswalo Nana Makhubele "ought not to to undertake any judicial duties until she clears her name of the allegations against her"



(/media/uploads/images/photographers/Brent%20Meersman/MetrorailTrain7.JPG)

The Pretoria High Court has ruled that PRASA must be repaid almost R60 million. Photo: Brent Meersman

29 November 2018 - By Kelly Vinett (/author/412/)

The Pretoria High Court has ruled that the Passenger Rail Agency of South Africa (PRASA) must be repaid almost R60 million by the East Pretoria Sheriff. The court, on Tuesday, excoriated Judge Tintswalo Nana Makhubele, the former interim chair of PRASA. Judge Neil Tuchten wrote that she "ought not to to undertake any judicial duties until she clears her name of the allegations against her."

The decision resulted from an allegation that Makhubele, who is a high court judge, had disrupted litigation procedures within PRASA.

On 9 April 2018 the Sheriff removed R56-million from a PRASA bank account to cover a settlement (<https://www.groundup.org.za/article/court-puts-breaks-r56-million-payment-siyaya/>) it was ordered to pay to Siyaya Rail Solutions. But, Tuesday's judgement said PRASA may have been denied a fair hearing.

Advocate Makhubele was appointed a High Court judge in October 2017. After she was appointed a judge, Makhubele was appointed to chair the interim board at PRASA, which was a conflict of interest. She subsequently resigned following exposure of this conflict by commuter activist group #UniteBehind.

TM M

Claiming the rail agency owes them for "services rendered," Siyaya sued PRASA in four separate cases submitted for arbitration. PRASA conducted litigation in response using Group Legal Services (GLS), an internal body of the rail agency. It is reported that Judge Makhubela was an active member in GLS.

Yet Tuesday's judgement said that Judge Makhubele instructed the GLS to stop its participation in the Siyaya litigation. After senior members of GLS expressed concerns about getting cut off from the litigation, PRASA attorney Diale Mogashoa told them that "Judge Makhubele had barred PRASA's attorneys from interacting with GLS on the case" on 15 December 2017.

NO ADS. ALWAYS FAIR.

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(/donate/)

On 21 February 2018, PRASA was ordered to pay several awards to Siyaya entities under a court motion. PRASA officials then opposed the ruling using attorneys at Bowman Gilfillan as the rail agency was no longer under legal oversight of GLS. However, Siyaya challenged Bowman Gilfillan's "authority to act" in defense of PRASA. Following the court rejecting PRASA from transferring their power of attorney from GLS to Bowman Gilfillan, it granted a judgment to award Siyaya.

GLS officials alleged Judge Makhubele was the cause of Siyaya entities challenging the authority of PRASA attorneys. Officials said that she conveyed information to Siyaya entities from a letter that "enjoyed confidentiality as being a communication between attorney and client."

The present application called for the Sheriff to repay PRASA "on the ground that the orders were erroneously sought and granted". The orders made by the court on 9 March 2018 said that attorneys from Bowman Gilfillan "were not authorised to act for PRASA." However, Bowman Gilfillan's authority to defend PRASA was approved by the head of GLS, "the very person who had given authority for Bowman Gilfillan to represent PRASA in the enforcement applications" according to Tuesday's judgment.

"It ought to have taken little imagination to grasp that two factions had arisen within PRASA, one desired that payment be made, the other desired that payment not be made," wrote Judge Tuchten. For this dispute to be settled through the court is important because there is a consequence of losing millions of public money, said the judgment.

Makhubele said the reason why she chose to intervene in the Siyaya litigation was because she had access to information on an insolvency enquiry into one of the Siyaya entities. However, GLS officials claimed they have never seen a report investigating this apparent bankruptcy. Evidence that this report exists has yet to be disclosed by Makhubele, wrote Tuchten. The judgment also said Makhubele had multiple chances to put the alleged insolvency inquiry report before the court, but failed to do so.

"I am sorry to say that I must say something about the conduct of Judge Makhubele as evidenced by these papers," wrote Tuchten. "There are questions which demand answers." One of these questions was: "Did she supply Siyaya with information which they could use against PRASA, and if so, why?" He further wrote, "In general, did she act with propriety in relation to the Siyaya litigation?"

The court has decided to set aside a final judgment as it awaits the outcome of related applications. However, the Sheriff must pay back PRASA the R56 million within five days.

More about PRASALeaks (/topic/prasaleaks/)

- Billions spent on railway contracts. Yet Metrorail collapses (/article/billions-spent-rail-infrastructure-yet-metrorail-worsens/) 16 November 2018
- New leaked reports show why train security has collapsed (/article/new-leaked-reports-show-why-train-security-has-collapsed/) 30 October 2018
- PRASA takes disciplinary action against staff implicated in corruption (/article/prasa-takes-disciplinary-action-against-staff-implicated-corruption/) 14 September 2018

In the JUDICIAL CONDUCT COMMITTEE

In the complaint of:

JUDGE TINTSWALO ANNAH NANA MAKHUBELE

against

JUDGE NEIL TUCHTEN

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A

**REPUBLIC OF SOUTH AFRICA
THE HONOURABLE MADAM JUSTICE
ANNAH MAKHUBELE**

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Private Bag X67
PRETORIA 0001

03 March 2019

THE CHAIRPERSON

Judicial Conduct Committee

c/o The Secretary of the Judicial Service Commission

Attention: Ms L Bios / Mr. S Chiloane

(By hand) & Email: lbios@judiciary.org.za / Chiloane@concourt.org.za

COMPLAINT AGAINST JUDGE TUCHTEN : Supplementary affidavit

I refer to my previous correspondence in this matter. Find attached herein a Supplementary Affidavit, with Annexures, duly indexed and paginated for the attention of the Chairperson of the Judicial Conduct Committee.

Thank you.



Judge TAN Makhubele

COPY TO: JUDGE PRESIDENT DUNSTAN MLAMBO, Gauteng Division

(By hand] & Email: Dmlambo@judiciary.org.za

In the JUDICIAL CONDUCT COMMITTEE

In the complaint of:

JUDGE TINTSWALO ANNAH NANA MAKHUBELE

against

JUDGE NEIL TUCHTEN

**SUPPLEMENTARY AFFIDAVIT IN TERMS OF SECTION 14(3)(b) OF THE
JUDICIAL SERVICE COMMISSION ACT , ACT 9 OF 1994 , AS AMENDED
(THE ACT)**

I the undersigned,

TINTSWALO ANNAH NANA MAKHUBELE (MAKHUBELE)

do hereby declare under oath and state as follows;

[1] I am a Judge of the High Court of South Africa, Gauteng Division.

[2] I have already deposed to an affidavit dated 04 December 2018 in this matter. I wish to supplement the said affidavit as follows;

[3] In paragraph 16(3) of my previous affidavit I asked the following rhetorical question:

" Why did Judge Tuchten single me out? Is it because I am a woman? A black woman? The others are white males."

[4] What I depose to hereunder is based on the founding affidavit and annexures filed on behalf of PRASA in the urgent application dated 03 April 2018.


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[5] In paragraph 19 of his judgment, Judge Tuchten wrote the following;

" At no stage of the proceedings has Judge Makhubela made an affidavit or otherwise communicated her version in response to the allegations of the GLS officials in the rescission application. She has had at least two opportunities to do so when the urgent application was adjudicated and in response to the present application. The alleged insolvency report was never put before court"

[6] The documents indicated below demonstrate that I was not aware that Prasa had filed an urgent application until I read a news article by GroundUp dated 06 April 2018 about an order having been issued by Judge Ranchod at the Gauteng High Court in Pretoria. According to the news report, Judge Ranchod granted Prasa "an urgent interdict against a multimillion rand settlement it was ordered to pay to Siyaya DB by 9 April".

It was further alleged in the news report that Ms Ngoye had filed an affidavit making some serious allegations, amongst which was that I had breached certain procedures during settlement of Siyaya claims.

[7] I was no longer a member of the Prasa BoC as such I did not know what was happening. I called the Company Secretary, Mr. Zide (Zide) and followed this with an email to my successor, then Chairperson of Prasa Interim Board, Mr. Xorile George, copying all Board members.

[8] On 09 April 2018 I sent a further email to the Company Secretary, highlighting the public negativity, particularly in view of the falsehoods that were being spread against me. I made a request to activate the Directors' Liability Indemnity Policy because I felt that I had to defend my integrity that was under attack.

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The documents are attached in an email (on this issue) that I sent to Mr. Zide (Zide), dated 18 April 2018. I attach a copy of the email and the documents hereto as **Annexure "TAN 3"**.

[9] I am certain that the documents filed by Prasa in the urgent application were before Judge Tuchten on 27 November 2018 because in paragraph 8 of his judgment he referred to proceedings before Acting Judge Holland-Muter (Holland-Muter AJ).

I am not certain though whether these were supplemented.

[10] I do not know whether Siyaya Liquidators or any of the respondents in the urgent application filed any answering / opposing affidavits to respond to the founding papers in the urgent application. I have not asked for the contents of the court documents that served before Judge Tuchten because I do not want to interfere with the investigation that I have requested in my previous affidavit.

[11] I requested Prasa's founding papers from Advocate Botes SC (Botes SC) as I was preparing to obtain legal advice on the allegations against me that I kept reading about in newspapers and social media platforms. He emailed the affidavit and annexures in three parts on 28 May 2018. I attach hereto copies of the emails as **Annexure "TAN 4(a),(b) and (c)"**.

[12] I explained the reasons why I did not read or act on these documents at the time in my statement of referral of a complaint to the Professional and Ethics Committee of Pretoria Society of Advocates. I attach as **Annexure TAN5** a copy of the referral and subsequent email exchanges between the Office Manager, Mr. Deon Gericke and me.

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[13] I felt obligated to file a complaint against Botes SC because Prasa's case on my alleged 'questionable relationship with Siyaya lawyers' resulting in me giving them 'confidential' information is built around some alleged SMS communication I had with an unknown person in their team. It is also alleged, as I will show hereunder, that Botes SC presented this evidence (SMS) in court when the matter came before Holland-Muter on 09 March 2018. He is also alleged to have made submissions on a letter written with prejudice.

I will demonstrate hereunder that Judge Tuchten knew all this because it is in the documents that were before him. However, for some reason known to him, he chose to protect Botes SC and the lawyers of Siyaya, whose identity he was aware of when he wrote the judgment that is a subject of my complaint.

[14] When reading PRASA documents, I also came across a letter that I heard about but never had sight of. This is a letter addressed to Bowmans Gilfillan Attorneys by Tshepo Mathopo wherein he alleged, amongst other things, that he communicated with me about Prasa's position with regard to opposition of the application to make Judge Brand's arbitration awards orders of court. He alleges that I responded to his request by SMS and indicated that Bowmans Gilfillan has no authority. A copy of this letters is attached hereto as **Annexure TAN6**. This letter is Annexure 'OMN24' to the founding affidavit deposed by the Group Executive: Legal, Risk and Compliance, Ms Onica Martha Ngoye (Ms Ngoye) on behalf of Prasa.

[15] I attach hereto as **Annexure TAN7**" the Notice of Motion and paragraphs 86-108 of the affidavit deposed by Ms Ngoye on behalf of Prasa in the urgent application that served before Judge Ranchod. The relevant allegations are under the heading titled "Circumstances that led to the granting of the orders under"

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Ms Ngoye discussed Annexure OMN 24 in paragraphs 95-97 of her founding affidavit.

[16] In paragraph 93.4.3 of her affidavit, Ms Ngoye refers to submissions made by 'Counsel for the Siyaya entities'. He (Botes SC) is alleged to have *'produced a letter that he alleged was a resolution of the Interim Board authorizing the settlement, which was a letter that is subject to attorney/client privilege between PRSASA and DM Inc. that they did not share that letter with the attorneys of Siyaya entities.'*

She attached the letter as Annexure 'OMN16'. A copy is attached hereto as **Annexure TAN8**.

[17] In paragraph 98 of her affidavit, Ms Ngoye characterized the alleged communication between me and Siyaya lawyers as " ... at least, curious or in the extreme , inappropriate to me. The text messages allegedly sent by her served to protect the interests of the Siyaya entities and were to the detriment of PRASA. The above text messages that is said to be from Makhubela is not only unfortunate as it betrays the extent of the access that Siyaya had to Makhubele but it also shows that Makhubele shared with Siyaya entities internal communications of PRASA..."

[18] Mr. Fani Dingiswayo (Dingiswayo) is a Legal Manager. To the best of my knowledge he is the head of Legal Services, which is one of the three units that form the department (Legal, Risk and Compliance) headed by Ms Ngoye. Dingiswayo replied to Mathopo's letter of 08 March on 12 March 2018 and advised him, amongst other things, that Prasa intended to rescind Holland-Muter's orders. A copy of this letter was attached to Ms Ngoye's affidavit as Annexure 'OMN5'.

I attach it hereto as **Annexure "TAN9"**.

The letter basically recounts what happened when the matter came before Holland-Muter AJ on 09 March 2018.

[19] Amongst other things, Dingiswayo wrote that Holland-Muter AJ refused to allow Prasa an opportunity to set out its defences or to adjourn the matter so that it can provide an affidavit to prove that its legal representatives were duly authorised.

In paragraph 2.4 he wrote that;

" Acting Justice Holland-Muter considering and having regard to inadmissible hearsay evidence submitted by Adv Botes SC. This is the letter that you sent to Bowmans on 8 March 2018, which letter purportedly contains SMS communication between PRASA's interim chairperson and an unnamed person. Mr. Mkiva of Bowmans sought to ascertain the identity of the person who is alleged to have had SMS communication with the acting chairperson but your Mr. K Mathopo was unwilling to disclose the identity of this person to Mr. Mkiva of Bowmans during a telephone conversation between them on 8 March 2018 after you had dispatched your letter of the same date".

[20] Dingiswayo sent an email to Minister of Transport, Dr Blade Nzimande on 08 March 2018 at about 09:30 Pm, and a day before the matter came before Holland-Muter AJ. This email does not appear to be part of the documents that were filed in the urgent court application. It was however made available to the Board under circumstances indicated below. I attach a copy as **Annexure "TAN 10"**

Dingiswayo informed Minister Nzimande, amongst other things that ;

" The reason for sending the email in this form is that the 4 matters are set down for hearing by default tomorrow at 10:00 and at the North Gauteng High Court. We believe that what can prevent the taking of judgment by default tomorrow will be an instruction from you that the Chairperson of the Interim send a letter to court, to our attorneys and to the attorneys of the Siyaya Companies to the effect that she is no longer involved in this matter and will defer to the Power of Attorney that has been signed by the Head of Legal earlier today. All that a letter to this effect will do is to allow PRASA and

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the Siyaya Companies an opportunity to have the matters properly ventilated in court...."

[21] He attached an email that appeared to have been sent to the Board, including myself at 06:40 PM. In this email he informed the Board that "We have been working on a matter that came to his knowledge on Monday afternoon and we found ourselves as a department on a collision course with one in your number, the Chairperson of the Interim Board".

[22] He did not indicate the nature of the 'collision' course between his department and me, nor did he give further details of the matter. I did not receive the email at the time, and save for my name appearing in the recipients' list, it is not clear which email address he used. I had three addresses at the time. I only received this email after the Company Secretary about few days forwarded it later.

[23] I do not know if any of the other Board members received it, but we discussed it in our meeting that was held on 16 March 2018. A resolution was passed to request an explanation from his superior, Ms Ngoye, with regard to the hierarchy of communication because the issues he raised with the Minister were not raised with the Acting Group CEO or the Board. This letter is part of the annexures in the complaint that I have lodged with the Professional and Ethics Committee of the Pretoria Society of Advocates.

[24] He also attached earlier email exchanges between him and an attorney from Bowmans, identified as Mkiva, where they discussed amongst other things; the delegation of authority, suspension of Prasa legal panel, reasons for opposing the applications to make Judge Brand's awards orders of court, how he came to know about the applications and Mathopo's letter of 08 March to Bowmans and the telephone conversation where Mathopo is alleged to have informed

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Mkiva I was having some discussions with his legal team. When pressed to indicate the identity of the person(s) that I was communicating with, he told them that they were informal discussions with someone in Siyaya's legal team, which included attorneys, counsel and the liquidators. The telephone conversation was after he had transmitted the letter alleging that certain questions were put to me by his office on Prasa's position with regard to opposing Judge Brand's awards. He alleged that I responded by SMS that Bowmans lacked of authority to represent Prasa.

Purpose of this supplementary affidavit

[25] Although Judge Tuchten has purported to pass judgment on me with regard to the validity of the settlement agreement between Prasa and Siyaya companies (in liquidation), to my knowledge, the merits thereof remain in issue. I am not a party in the litigation. I am taking legal advice on the matter with regard to the correct course of action.

[26] I have, however, addressed the merits in the complaint statement that I have sent to the Professional and Ethics Committee of the Pretoria Society of Advocates. I do not believe though that it had jurisdiction to deal with this aspect. The purpose of touching on the merits was to give a background of the matter and importantly, to deny the allegations that the settlement was done in secrecy, and without consultation. As far as I am concerned, I did not do anything wrong.

[27] The letter of 08 March 2018 from Mathopo Attorneys is being used as circumstantial evidence to support a narrative that the claims were settled to advance the interests of the 'questionable relationship' that I had with the lawyers of Siyaya.
This cannot even qualify as fiction.

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[28] I also do not believe that the JCC is a correct forum to entertain the allegations regarding the merits or validity of the settlement agreement.

[29] This supplementary affidavit is intended to deal only with part of Judge Tuchten's judgment where he refers to allegations of an improper relationship between me and the lawyers or legal team of the Liquidators of Siyaya DB (in liquidation), particularly the questions that he raised which he said a platform should be created for me to answer. He phrased one such question as follows ;

"Did she supply Siyaya with information which they could use against PRASA and, if so, why?."

[30] I do not intend to answer this question in this affidavit, but simply to amplify my submissions in the previous affidavit by providing further examples arising from Prasa's affidavit deposed by Ms Ngoye and the annexures thereof to further illustrate that Judge Tuchten has breached the Code of Conduct of Judges.

[31] The allegations in Ms Ngoye's affidavit as well as the annexures that I have referred to above, demonstrate that when he wrote his judgment, and raised the question as to whether I gave out some confidential information, Judge Tuchten knew or ought to have known that the question applies (equally) to the lawyers or legal team of Siyaya. He also knew the identity of at least two of the members of Siyaya lawyers/legal team. However, he chose not to mention them, let alone refer them to their respective Professional bodies as he is obliged to.

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[32] Judge Tuchten became selective when it came to the question as to who should be punished for this improper relationship. When it comes to who must be put to trial, this 'relationship' according to Judge Tuchten involves one person, namely, 'Judge Makhubele'. In his judicial sense, I am the only one who must explain or be put to trial for this corruption/collusion or impropriety.

[33] It is clear from a reading of the affidavit deposed by Ms Martha Ngoye on behalf of PRASA and the documents attached therein that other than the allegations of lack of authority on my part to 'settle' SIYAYA (in liquidation) claims, she relies on allegations made by Siyaya lawyers in a letter that I have attached above which is addressed to Bowmans Gilfillan as proof that I had a questionable relationship with the Siyaya lawyers.

[34] In **Annexure TAN6**, writing on behalf of the Siyaya Liquidators, Tshepo Mathopo of Mathopo Attorneys alleges that he or someone in his firm asked me to confirm whether PRASA was opposing the application to make Judge Brand's arbitration awards orders of court. I am alleged to have responded by SMS to the effect that Bowmans Gilfillan Attorneys do not have authority to represent PRASA.

[35] It appears from **Annexure TAN 9**, which is a response letter written by Dingiswayo on behalf of PRASA Legal Services that Counsel for the Liquidators, Advocate Botes SC presented this 'SMS evidence' and other inadmissible and 'unlawfully' obtained letter when the matter was argued before Holland-Muter AJ.

[36] Holland-Muter AJ is alleged to have refused PRASA legal representation and postponement of the matter on the basis of what

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is alleged to be inadmissible and hearsay evidence submitted by Botes SC.

[37] The letter of 08 March 2018 from Mathopo Attorneys constitute the whole 'evidence' against me. From a reading of Ms Ngoye's affidavit, it is clear that the evidence against me with regard to the 'questionable relationship' is premised on Mathopo's letter of 08 March 2018. It is also clear from the email exchanges between Dingiswayo and an attorney from Bowmans Gilfillan that the questionable relationship between Siyaya lawyers and me is inferred from Mathopo's letter and the telephone conversation between him and Mkiva.

[38] I am not trying to minimize the effect of the letter from Mathopo's attorneys, if indeed I disclosed some 'confidential' information to Siyaya Attorneys with an intention to give them some advantage.

The point I am making is that Judge Tuchten went out of his way to victimize me by singling me out for punishment under circumstances where it is clear, if Ms Ngoye's affidavit and the relevant Annexures are to be believed.

[39] As indicated above, I have already filed a complaint against Advocate Botes SC. The relevant paragraphs for purposes of my complaint against Judge Tuchten are **31-40, 44-58 and 61-65**. I have already identified the relevant annexures for purposes of this referral. The remaining annexures relate to settlement of the Siyaya claims and I do not think that they are relevant.

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Supplementary submissions on the breaches of the Code of Conduct of Judges

Article 7(c): Equality, read with Article 16: Reporting inappropriate conduct

[40] The documents and submissions in the affidavit deposed by Ms Ngoye were before Judge Tuchten and clearly identified some of the persons who were involved in the alleged questionable relationship and or offensive SMS communication as well as the name of the Counsel who made submissions before Holland-Muter based on inadmissible hearsay and privileged documents.

[41] In my statement of referral to the Pretoria Society of Advocates I denied having communicated with Mathopo Attorneys as alleged in their letter dated 08 March 2018 that is addressed to Bowmans Gilfillan Attorneys. Of course, Judge Tuchten would not have known this fact when the matter came before him because my version was not there. If this letter constituted evidence of wrongdoing on my part, the lawyers with whom I had such SMS communication is equally guilty and should have been reported to his/her Professional body. Judge Tuchten did not deem it necessary to refer Mathopo Attorneys to the Law Society for investigations of the allegations.

[42] Botes SC is alleged to have conducted himself in an improper manner when he made submissions before Holland-Muter AJ, who in turn refused Prasa legal representation and postponement of the matter. However, Judge Tuchten did not deem it necessary to refer these allegations to the Professional and Ethics Committee of the Pretoria Society of Advocates, where he is a member.

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[43] I called Botes SC after I was alerted to a Talk Radio 702 interview with the current Chairperson of Prasa Interim Board, Ms Khanyisile Kweyama. The discussion was about the judgment of Judge Tuchten and the findings of wrongdoing against me.

[44] Botes told me that he sitting in Judge Tuchten's court and what was being said on radio was not raised or mentioned. He expressed his shock at what was in the audio clip. We did not discuss whether he made submissions before Judge Tuchten on the matter or whether he was just there. Later on he forwarded me Judge Tuchten's written judgment. There is no indication in Judge Tuchten's judgment that anyone of the parties' legal representatives addressed him or that he at least sought answers from them.

[45] In my letter of referral to the Pretoria Society of Advocates I indicated that i did not intervene in the litigation after obtaining Prasa's founding papers because I was advised by Botes SC that the liquidators were not opposing the relief sought. I was later advised that the Liquidators were no longer relying on the arbitration awards of Judge Brand or the settlement agreement. This is probably the reason the matter was not opposed when it came before Judge Tuchten.

[46] It would appear, from the circumstances I have sketched above, that Judge Tuchten took a keen interest on the matter and decided to write a 'judgment' on the basis of untested allegations deposed by Ms Ngoye on behalf of Prasa.

[47] Taking into account all the above, there cannot be any better proof that Judge Tuchten's actions against me were motivated by discrimination on the basis of at least color and gender.

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In fact, his judgment constitute hate speech. I reserve my rights in this regard.

Article 10(1)(b): Diligence

[48] It is clear from all documents that served before Judge Tuchten that Siyaya claims were settled in December 2017 and that the alleged SMS communication between me and an unnamed member of Siyaya lawyers took place in March 2018.

[49] I was not a Judge in December 2017 and March 2018. However, Judge Tuchten refers to me as a Judge throughout his judgment, probably with a view to unduly sensationalize the whole matter and invoke the public disgust and anger against me. As a result of his judgment, the newspaper reports are reflective of the tone set by Judge Tuchten.

[50] What occurred in March 2018 could not have influenced what happened in December 2017. If anything, the issues relating to the alleged SMS were about legal representation in an application to enforce the arbitration awards that were made by Judge Brand.

[51] If Judge Tuchten had afforded me an opportunity to respond to Ms Ngoye's affidavit, his speculative judgment would not have been necessary. I refer to the statement of referral that I have filed with the Pretoria Society of Advocates where it is clear that the claims were not settled in secrecy or without consultation. The issues pertaining to the "confidential" information in the SMS have nothing to do with settlement of the Siyaya claims. In fact, if Judge Tuchten had held his negative remarks back until he obtained more information, he would have realized that the issue of Prasa Legal Panel was not mine, but a lawful decision of the Board.

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Article 10(1)(b) read with Article 4(a),(b) and (c)

[52] I have already expressed a concern in my previous affidavit that Judge Tuchten allowed his objectivity and independence as a Judge to be influenced by the views of Unite Behind, which was not properly before him.

[53] Subsequent to his judgment, Unite Behind is alleged to have filed a complaint with the Judicial Conduct Committee against me. The judgment of Judge Tuchten is amongst its supporting documents. I have not received official notification, but I have seen the affidavit deposed by one Zukiswa Felakhe on behalf of Unite Behind that has been posted in the internet for public consumption. The affidavit was also forwarded to the Spokesperson of the Judiciary, Mr. Nathi Mncube by a media house, with questions that I was asked to respond to.

[54] City Press newspaper and GroundUp, an alliance of Unite Behind, carried the story about the complaint against me in their publications of 25 and 27 January 2019 respectively. I attach the GrounUp's article hereto as **Annexure "TAN 11"**.

[55] In my previous affidavit I expressed my concerns about Judge Tuchten's motives /purpose for writing the judgment under circumstances where it appeared that he was influenced by amongst others a 'draft notice' filed by Unite Behind's at the Western Cape High Court. I have not had sight of this 'draft notice of motion', however, my submission on this issue is that Unite Behind was seeking some validation from a court to enable it to lay a complaint against me.

[56] It is not a co-incidence that Unite Behind filed a complaint after Judge Tuchten's judgment, after a year of doing nothing about the

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issues that were clearly in their hands. The only new thing in the alleged affidavit is reference to failure to appear in Parliament and Prasa's failed attempt to deposit money at VBS. Unite Behind does not seriously wish to make a case on these issues because the VBS report is now a public document, and no matter how much they misrepresent its contents the true writings will not be erased. The failure to appear in Parliament is a laughable charge coming from Unite Behind in view of the communication between Prasa Board and Parliament. As regards the request not to start judicial work immediately after recommendation by the JSC, Unite Behind knows that I did not appoint myself. There is no law against making requests.

I am however ready to respond to anything that I am lawfully bound to respond to.

[57] A further indication that the judgment was written for the benefit of Unite Behind is the fact that Judge Tuchten does not identify the 'forum' where I must clear my name as it can clearly be seen in paragraph 20 of his judgment where he stated, amongst other things that;

'...If, objectively, the adjudication of the enforcement application is not an appropriate forum for her side of the story to be received and considered, another forum ought to be provided to her for this purpose. But I must express my firm view that Judge Makhubela ought not to undertake any judicial duties until she clears her name of the allegations against her.'

[58] Judge Tuchten did not even bother to investigate which 'forum' would have jurisdiction over me. As indicated above, all the alleged misconduct happened whilst I was still an Advocate and if he believed that the Judicial Conduct Committee of the JSC had jurisdiction, he should have said so in his judgment and referred the matter

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accordingly. He also does not seem to know that I have commenced my duties as a Judge since June 2018.

This shows lack of diligence on his part because if he had done his work properly, he would have indicated what the correct process should be going forward in view of the obvious facts that I have outlined above. Instead his judgment left me under the mercy of Unite Behind, the media and malicious individuals in the social media space.

[59] In my referral to the Professional and Ethics Committee of Pretoria Society of Advocates I have sketched the background facts pertaining to how the relationship between Prasa Legal Services and the Board became strained and non-existent.

[60] The real issue between the Board and Prasa Legal Services was the suspension of the legal panel. Unite Behind's issue against me was about my membership of the Board. The issue of the suspension of the legal panel was hijacked by Unite Behind and used to file a review application to challenge the Board's decision in this regard as well as my appointment as Chairperson of the Board. The memorandum written by Ms Ngoye to the Board to explain certain things about the legal panel was leaked to the media and found its way into Unite Behind's court application.

[61] In essence, Unite Behind together with Prasa's Legal Services and GroundUp waged a campaign to discredit the Board that I was chairing and have tried for over a year now to ruin my professional life.

[62] Unite Behind, represented by Zackie Achmat took a keen interest on me since I joined the Board of Prasa. The initial issue raised was whether a Judge can be member of a Board. This to me appeared to be a valid question because they thought I was doubling up as a

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Judge and Board Chairperson. They were clarified that I had not assumed duties yet. They changed tactic and teamed up with Prasa's legal services to obtain Board documents. They filed a review application to challenge our resolution to suspend the legal panel and my appointment.

[63] Since then, until I left, the Board was receiving letters from Unite Behind left right and center. The issue of the settlement of Siyaya claims became controversial after the suspension of the legal panel when Legal Services decided, without telling the Board, that they distanced themselves.

[64] It is my honest belief that Judge Tuchten allowed himself, like the Prasa Legal Services, to be influenced by Unite Behind, whose real issue with me is that I should not have been a member of the Board of Prasa.

Conclusion and submissions on : Delay in finalizing the complaint against Judge Tuchten and prejudice on me

[65] I received an acknowledgement of my complaint against Judge Tuchten from the Secretary of the JCC on or about 07 December 2018. To date, I have not heard anything, despite an assurance that the matter would be investigated and I would be advised accordingly.

[66] Unite Behind allegedly filed a complaint against me on 21 January 2018 and it was immediately leaked to the media. The story was carried in newspapers and I have been a subject of discussions in social media networks since then.

[67] Although I am already performing duties of a Judge, the judgment of Judge Tuchten somehow has imposed a restriction on my career prospects because, objectively speaking, my superiors will

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always worry about public perceptions and will be hesitant to assign me any serious matters or recommend me to serve in any Public Committee/Tribunals where Judges' expertise is required.

[68] The judgment has also affected me psychologically and I am struggling to cope with my normal (mundane) duties. I spend a lot of times checking PRASA documents and emails to prepare a defence against the allegations that I am not even certain what they are all about.

[69] I have developed some serious illnesses since this matter started, which I believe were triggered by anxiety. Now and again I have to consult various medical experts. This affects my functioning at work.

[70] I was one of the best and very few female Senior Counsel when I joined the Judiciary. I have never been subjected to any disciplinary hearings and to the best of my knowledge no one has ever said anything adverse about me.

[71] As an Acting Judge, my performance was excellent, with some judgments having been confirmed by the Supreme Court of Appeal. I was expecting to exceed my AJ performance because now my focus was going to be on judicial duties only.

[72] Ms Ngoye's allegations were never tested, and even though there were negative media reports, the public understand that the allegations only become fact after they have been tested in a court of law or authorised statutory tribunal.

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[73] However, as can be seen from GrounUp's recent article, and the Talk Radio 702 interview, the perception now is that Judge Tuchten has found me guilty of some wrongdoing. A judgment has legal effect. Judge Tuchten passed judgment that I must answer the questions that he has raised in his judgment. He did this without anyone having laid a complaint or made an application against me.

[74] I have read the Notice of Motion filed by Prasa. There is no relief sought against me, let alone one to authorize an investigation of my fitness to hold office of a Judge . If there was such a complaint or application, I would have been entitled to be notified about it and to respond to it before any Judge/Adjudicator would be entitled to make a ruling.

[75] Judge Tuchten abrogated all powers to himself; complainant, Judge and Executioner. The alleged complaint lodged by Unite Behind against me is simply to complete what Judge Tuchten has set in motion, without any lawful cause for doing so.

[76] Accordingly, I make a humble plea for his matter to be finalized as soon as possible to enable me to re-focus my energy on performing at my optimal level.

[77] I re-iterate my submission that my complaint is valid as contemplated in section 16 of the Act and should be investigated. I also submit that the evidence that I have tendered above should be taken into consideration.



DEPONENT

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[Signature]

THUS DONE AND SIGNED BEFORE ME AT Wierdbrug ON THIS THE 03rd DAY OF MARCH 2019 BY THE DEPONENT WHO SWORE THAT SHE HAS NO OBJECTION IN TAKING THE PRESCRIBED OATH WHICH SHE CONSIDERS BINDING ON HER CONSCIENCE.

Ek het hierop my bande te teken gemaak en ek is op dat oomblik bewus dat my bande te teken gemaak het vir my eie vrywillige en wettige woorde daarop aangebring.

I hereby signed the prescribed oath and I am at that time aware that I have signed the prescribed oath voluntarily and lawfully.

at **COMMISSIONER OF OATHS** on 2019-03-04 at 08:39

[Signature]
 (SIGNATURE) **COMMISSIONER OF OATHS**

M.P. Baloyi
 VOLLE VERNAMME EN VAM (PRINTED)
 FULL FIRST NAMES AND SURNAME IN BLOCK LETTERS

75 Vindhela
 BEHOORSADE EN STREEKADRES
 BUSINESS ADDRESS (STREET ADDRESS)

Valhalla
CS7

SA POLISDIENST
 SA POLICE SERVICE

SOUTH AFRICAN POLICE SERVICE

KANTOR YA DITLETLEBO

2019 -03- 04

WIERDABRUG SAPS

MAPHODISA A AFRIKA BORWA

TW 10

"TAN 3"

22

From: **Tintswalo Makhubele** tanmakhubele@me.com

Subject: PRASA v SIYAYA DB (PTY) LTD , 060418 court order [Case no 23484/18 Gauteng High Court, Pretoria]

Date: 18 April 2018 at 10:18 AM

To: Zide Izide@prasa.com

Cc: Xolile George xgeorge@salga.org.za, Natalie Skeepers natalie.skeepers@telkomsa.net, johnm johnm@infrafricaholdings.co.za, cheryl reddy cherreddy@gmail.com, Duncan Pieterse Duncan.Pieterse@treasury.gov.za, MG Maluleke MALULEKG@dot.gov.za, Xolile George xolile.george@gmail.com, Natalie Skeepers natalie.skeepers@gmail.com, MG Maluleke Mkhacanim@gmail.com

Bcc: Tintswalo Makhubele tanmakhubele@me.com



180418 letter to Zide,
court order...uments .pdf



060418 court order,
Ranchod J;...a v Siyaya



GROUNDUP , Court
puts the bra...GroundUp



090418 email to Zide;
REQUEST...GDOING .rtf

Dear Mr. Zide,

Please find attached herein letter and annexures for your urgent attention.

Best regards.

TAN.

TAN
- MP

ADVOCATE TAN MAKHUBELE SC
tanmakhubele@me.com Tel: +27 (83) 452 1405

18 April 2018

Mr. Lindikaya Zide
Group Company Secretary
PRASA

[By email: lzide@prasa.com]

REQUEST FOR DOCUMENTS: GAUTENG DIVISION, PRETORIA HIGH COURT
CASE NO. 23484/2018; PRASA V SIYAY DB (PTY) LTD & 5 OTHERS

[1] Subsequent to my email to you dated 09 April 2018 (attached), I managed to obtain a copy of the court order that was issued by Judge Ranchod on 06 April 2018. I attach a copy hereto. The matter is due to return to court on 02/03/ May 2018.

[2] I have not had a privilege to be briefed by you or my erstwhile colleagues in the Interim Board that I chaired on the contents of the affidavit that was filed by Prasa's GE: LRC, Ms Martha Ngoye on 03 April 2018 as it is alleged in the news article by 'Groundup' which I also attach hereto.

[2.1] I must hasten to state that I did ask the erstwhile Acting Chairperson, Mr. George about it and his response was that the Interim Board did not read her affidavit.

[3] Whilst waiting for a response on the request for activation of PRASA insurance indemnity, I also have an obligation to collate all relevant information to prepare myself for any eventuality, including defending my integrity in a court of law.

It is for this reason that I hereby request the documents indicated below. This is in addition to the documents that I have already requested in my email to you dated 09 April 2018 and other previous requests.

[3.1] ALL documents that served before the Interim Board of Control on 05 April 2018. This include the letter from Minister Dr. B.E Nzimande that you referred to in our telephone conversation on 060418, documents from Ms Ngoye and any other document/information that informed the decision and resolution of the Interim Board to institute the interdict application in the matter above.

[3.1] The affidavit deposed by Ms Ngoye in the interdict application that was heard on 06 April 2018 in the above matter,

[3.2] Copy of the heads of argument filed by counsel that appeared on behalf of PRASA,

[3.3] ALL documents filed in PART B of the application.

[4] Kindly ensure that the documents reach me by no later than Tuesday 24 April 2018, failing which I will be compelled to take steps to enforce my rights as I may be advised. I must have a representation in court, at the expense of PRASA when the matter is heard again, if not, I will brief counsel to approach the court and seek appropriate relief.

Yours Sincerely,

Adv. TAN Makhubele SC

Copy to: Mr. Xorile George

Former Director & Acting Chairperson: Prasa Interim Board of Control

By email: xgeorge@salga.org.za

T.M. mo

Copy to: Professor John Maluleke

Former Director: Prasa Board of Control

By email: johnm@infraafricaholdings.co.za

Copy to: Dr. Natalie Skeepers

Former Director: Prasa Interim Board of Control

By email: Natalie.skeepers@telkomsa.net

Copy to: Ms Cheryl Reddy

Former Director: Prasa Interim Board of Control

By email: cherreddy@gmail.com

Copy to: Mr. Godfrey Maluleke

Former Director: Prasa Interim Board of Control

By email: MalulekeG@dot.gov.za

Copy to: Dr. Duncan Pieterse

Former Director: Prasa Interim Board of Control

By email: Duncan.pieterse@treasury.gov.za

TW MD



Private Bag 1117, Pretoria 0001

2018-04-05
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

PRETORIA 06 APRIL 2018

CASE NO. 23484/2018

BEFORE THE HONOURABLE MR JUSTICE RANCHOD

In the matter between:

PASSENGER RAIL AGENCY OF SA

APPLICANT

AND

SIYAYA DB (PTY) LTD
(in liquidation)
SIYAYA RAIL SOLUTIONS (PTY) LTD
SHERIFF: PRETORIA EAST
JOHANNES ZACHARIAS MULLER
TSHIFHIWA PERSEVERANCE MUDZUSI
MASTER OF THE HIGH COURT, PRETORIA

1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT
5TH RESPONDENT
6TH RESPONDENT

IN RE:

Case no: 2015/73933, 2015/73934, 2016/47597, 2015/47598

HAVING read the documents filed of record, heard counsel and considered the matter:

IT IS ORDERED THAT

1. Dispensing with the forms of service and the time frames provided for in the Uniform Rules of Court and disposing of this application on an urgent basis in terms of Rule (12)(a).
2. Interdicting and restraining the respondents from executing the orders granted by this Court on 9 March 2018 and the writs of execution issued by the Registrar of this Court on 12 March 2018 under case numbers 2015/73933; 2015/73934; 2016/47597 and 2016/47598 pending the final determination of Part B of this application.
3. Interdicting and restraining the third respondent from paying over to the first and second respondents or their nominees monies attached from the applicant's bank account number 0000200348922 and 0000200348426 held with the Standard

Handwritten signature

Bank of South Africa Limited pending the final determination of Part B of this application.

- 4. The applicant be granted leave, to the extent that it may be necessary, to institute these proceedings against the first respondent.
- 5. The costs of this application be reserved for determination with Part B.
- 6. The parties may approach the DJP of this court for the relief sought in part B to be heard on a expedited basis.

BY THE COURT

REGISTRAR
CB

Attorney: BOWMAN

REGISTRAR

Private Bag X67, Pretoria 0001

2018 -04- 0 j

GD-PRET-015

GRIFFIER VAN DIE HOF

28

LAW (/category/Law/) | PRETORIA (/region/South%20Africa/Gauteng/Pretoria)

Court puts the brakes on R56-million payment to Siyaya

Head of Prasa's legal services leads charge against payment



Corruption at Prasa has led to the decline of Metrorail's service. But now Prasa staff are fighting back against a dubious transaction facilitated by Prasa's board and previous CEO. Photo: Ian Anyakama

By Aidan Jones (/author/328/) and Zoë Postman (/author/286/) April 2018

The Gauteng High Court in Pretoria on Friday granted the Passenger Rail Agency of South Africa (Prasa) an urgent interdict against a multi-million rand settlement it was ordered to pay to Siyaya DB by 9 April.

Martha Ngoye, Head of Legal at Prasa, filed a founding affidavit on 3 April applying for an urgent interdict against payments (<https://www.groundup.org.za/article/prasa-lawyers-try-stop-r59-million-payment-siyaya/>) the parastatal had been ordered to make by the Gauteng High Court on 9 March.

Judge Ranchod, who presided over Friday's case, said there were many serious allegations made by the applicant in its heads of argument. He said he was granting the order so that the "various allegations may be properly ventilated".

Additionally, Ranchod said both parties may approach the deputy judge president to request that the case be expedited.

Ngoye's affidavit stated that the interdict is the first part of an application to have the court orders rescinded (cancelled). It revealed that the Sheriff removed R56-million from Prasa's bank account "for pay-out [Siyaya] on Monday, 9 April 2018".

Ngoye emphasised the urgency of the application in her affidavit by stating that because "Siyaya DB is in liquidation ... the applicant (Prasa) has no prospect of being repaid the monies in issue if they are paid out by the Sheriff".

According to the affidavit, the payments in question were claimed by the Siyaya entities in 2015 and 2016 and subsequently in liquidation until December 2017, when a settlement was awarded to Siyaya DB.

JM
MP

29
But Ngoye expressed concern about how the settlement came about, claiming proper procedures were not followed. She stated that Prasa's Legal Department was, in her view, wrongly excluded from the settlement and that on 15 December 2017 Judge Tintswalo Nana Makhubele [then chairperson of the Prasa board] had instructed Prasa's lawyers to settle the matter.

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Business Day reported (<https://www.businesslive.co.za/bd/companies/transport-and-tourism/2018-04-06-how-siyaya-rail-made-a-mint-out-of-prasa/>) on Friday that Siyaya Rail, another of the companies in the Siyaya entities, was paid R630-million by Prasa between 2014 and 2017.


On 28 March, Transport Minister Dr Blade Nzimande appointed Xolile George as acting board chairperson following Judge Makhubele's resignation. In the statement, Nzimande said he "has directed the board to defend all litigations against Prasa".


More about PRASALeaks (/topic/prasaleaks/)



- Prasa's bizarre CEO appointment (/article/prasas-bizarre-ceo-appointment/) 04 April 2018
- PRASA lawyers try to stop R59 million payment to Siyaya (/article/prasa-lawyers-try-stop-r59-million-payment-siyaya/) 16 March 2018
- PRASA appoints a CEO who is under investigation for corruption (/article/prasa-appoints-ceo-who-under-investigation-corruption/) 11 January 2018

Topics: Metrorail (/topic/metrorail/), PRASALeaks (/topic/prasaleaks/)

siyaya)  (https://twitter.com/share?url=https://www.groundup.org.za/article/court-puts-breaks-r56-million-payment-siyaya/&text=Court%20puts%20the%20brakes%20on%20R56-million%20payment%20to%20Siyaya%20-%20via%20@groundup_news)

(whatsapp://send?text=https://www.groundup.org.za/article/court-puts-breaks-r56-million-payment-siyaya/) 

million-payment-siyaya)  (mailto:?)

Subject=I%20recommend%20an%20article%20published%20on%20GroundUp&Body=Here%20is%20an%20article%20on%20GroundUp puts the brakes on R56-million payment to Siyaya%20https%3A/www.groundup.org.za/article/court-puts-breaks-r56-million-payment-siyaya/   (/copy_article/court-puts-breaks-r56-million-payment-siyaya/)

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ou might like

TM
MS

From: Tintswalo Makhubele tanmakhubele@me.com
Subject: Fwd: REQUEST TO ACTIVATE PRASA DIRECTORS INDEMNITY INSURANCE : VARIOUS ALLEGATIONS OF CORRUPTION / WRONGDOING
Date: 09 April 2018 at 10:06 AM
To: Zide lzide@prasa.com, tokollo.mahlake@prasa.com
Cc: Xolile George xgeorge@salga.org.za, Xolile George xolile.george@gmail.com, Natalie Skeepers natalie.skeepers@gmail.com, Natalie Skeepers natalie.skeepers@teikomsa.net, MG Maluleke MalulekG@dot.gov.za, MG Maluleke MALULEKG@dot.gov.za, johnm johnm@infraafricaholdings.co.za, cheryl reddy cherreddy@gmail.com, Duncan Pieterse Duncan.Pieterse@treasury.gov.za
Bcc: Adv.Nana Makhubele SC tanmakhubele@me.com

THE MESSAGE BELOW 'SENT' ITSELF BEFORE I FINISHED WRITING.

21. I wanted to attach a copy of confirmation of indemnity that you gave us. You promised to give us copies of the policy.
22. There is actually no need to send the annexures as they are well within your knowledge.
23. Please treat this matter with the urgency that it deserves because there may be a need, depending on advice, to intervene in the latest application filed by Martha.
24. In the meantime i request the following ;
 - 24.1 Final Internal Audit report on PRASA / VBS investment proposal,
 - 24.2 The information relating to the delegated authority and employment contracts of Martha Ngoye and Fani Dingswayo as previously requested,
 - 24.3 Copy of the letter from Minister Nzimande to the Interim Board on Siyaya matter and a copy of Board resolution authorising Martha to file an affidavit.

Regards.

TAN Makhubele.

Begin forwarded message:

From: Tintswalo Makhubele <tanmakhubele@me.com>
Subject: REQUEST TO ACTIVATE PRASA DIRECTORS INDEMNITY INSURANCE : VARIOUS ALLEGATIONS OF CORRUPTION / WRONGDOING
Date: 09 April 2018 at 9:45:14 AM SAST
To: Zide <lzide@prasa.com>, tokollo.mahlake@prasa.com
Cc: Xolile George <xgeorge@salga.org.za>, Natalie Skeepers <natalie.skeepers@gmail.com>, Natalie Skeepers <natalie.skeepers@telkomsa.net>, MG Maluleke <MALULEKG@dot.gov.za>, MG Maluleke <Mkhacanim@gmail.com>, cheryl reddy <cherreddy@gmail.com>, johnm <johnm@infraafricaholdings.co.za>, Duncan Pieterse <Duncan.Pieterse@treasury.gov.za>

Dear Mr. Zide,

A. SIYAYA CONSULTING ENGINEERS (IN LIQUIDATION) V PRASA : Allegations (a) of collusion with attorneys representing the liquidations , (b) that the claims were settled by me in secrecy ; and (c) without consultation

1. I refer to our discussion on Friday evening subsequent to the email below that i'd sent to the Acting Chairperson of the Board, Mr. George and copied all Directors, including you.
2. I confirm that with regard to the issues raised in paragraphs 1,2 and 3 your response was that;
 - 2.1 Minister Nzimade has written to the Interim Board and gave it certain instructions with regard to Siyangenya and Siyaya matters. With regard to the latter, the instruction was that PRASA should oppose the writ of execution obtained by the liquidators , which money is still in the hands of the Sheriff. I did not know any of this.
 - 2.2 The letter and instruction from the Minister was considered by the Interim Board in their meeting held on Thursday, 5 April

TM
MP

2018.

2.3 The affidavit that Ms Ngoye filed and which is referred to in the email below and the application of the interdict was authorised by the Interim Board.

2.4 The merits of the settlement of the claims will still be dealt with as i have articulated the issues in paragraphs 4,5,6 and 7 of the email below.

3. I confirm having remind you that i have endured months of public humiliation on the basis of falsehoods and that i am disturbed by your silence with regard to your participation in the settlement of the liquidators' claims .

3.1 I am disturbed by the fact that ever since this controversy started, your name or involvement is not mentioned in the media, letters written by #Unite Behind or the defamatory rantings against me by Martha Ngoye and Fani Dingiswayo.

3.2 I reminded you that I sat with you (in your capacity as AGCEO, Special Projects Officer and Company Secretary) throughout all consultations with various PRASA employees and the attorney briefed by Prasa until the last day.

3.4 I also challenged you to say something.

4. I have nothing against a review of the settlement of the claims. I told Minister Nzimande this during our meeting and this is still my stance because i believe that my integrity should be vindicated by the court.

However, and as i have told Minister Nzimande, the defamatory statements uttered by Ms Ngoye (now apparently sanctioned by my former fellow Directors) cannot be left unchallenged because they have adversely affected my judicial career.

B. ALLEGATIONS OF INVOLVEMENT IN THE PRASA/VBS R1 BILLION INVESTMENT

5. I refer to the attached Sunday Times article in the first page of its 04/02/18 edition where it is alleged that both me and the former AGCEO, Mr. Molepo were actively pushing for Prasa to invest R1 billion with VBS (dubbed 'Zuma's bank).

6. Although i knew that i was not in anyway involved, and it was clear from the memo that was drafted by Ms Page, i insisted that the BOC should obtain a report from the Internal Audit.

6.1 The draft report of the Internal Auditor, Mr. Rasheeque Zaman served in the last Board meeting that i chaired and it pointed at you ad the former AGCEO, Mr Molepo.

6.2 I have not seen the final report, which i hereby request a copy of .

7. My integrity as a person and as a Judge was negatively affected by the publication of this story in the newspapers.

C. ALLEGATIONS THAT THE BOARD THAT I CHAIRED REFUSED TO PROVIDE RESOLUTION THAT AUTHORISED POPO MOLEFE TO ACT ON BEHALF OF HAWKS INVESTIGATION

8. This is an article that appeared in the TimesLive on 280318 under the title 'Prasa paid R31.5m to keep one train station safe..now Prasa wants to set aside contract with Siyangenya Technologies'

8.1 This is one of many news articles written about Siyangena matter and most contain my name.

8.2 I know nothing about Siyangenya and no request was made by anyone during my tenure as Chairperson of Prasa BOC to authorise anything about Siyangenya or whatever Popo Molefe has done.

However, despite this, the narrative in the news media is that i am 'undoing' the good work of Popo Molefe.

8.3 All i know about the Hawks investigations is that Prasa employees are not cooperating with the investigations. There is a letter dated 270218 from the DPCI (HAWKS) to this effect.

D. CITY PRESS ARTICLE (180318) TITLED 'CONFLICTED JUDGE REFUSES TO LEAVE PRASA'

9. This article is based on the opinion of EnsAfrica, which the Board rejected. You took time to advise the attorneys until the opinion was leaked.This constrained my response to the journalist.

He went as far as calling me 'stubborn.

10. After i challenged the journalist (Setumo Stone) his response, amongst others was that 'Unfortunately the captions for pictures, headlines and kickers are done by subeditors. Mine is to present all sides of the case to the extent that space allows, which was a big issue last night because we had to cut a lot of stuff, which i was not happy with but could not change'

11. The fact of the matter is that no one has ever told me to leave Prasa.

12. The opinion was reckless in many respects.

13. The Judge President wants a copy of this opinion. I have given him your belated rejection letter to ENS and indicated that i need to seek permission to give him a copy.

E. CONTENT OF LETTERS FROM ZACHIE ACHMAT (OBO #UNITE BEHIND) , MARTHA NGOYE AND FANI DINGISWAYO

14. Every piece of writing from the three contain defamatory statements that leaves a reader with a distinct impression that i am corrupt and was involved in many wrongdoings at PRASA.

15. Martha Ngoye has since confirmed that she gave the public some of the information because it is 'in the public domain'. She must disclose who and what kind of information she gave out.

16. Fani Dingiswayo wrote an email to Minister Nzimande and made some serious allegations about me.

17. Zachie Achmat has laid a complaint against me with the JSC and every imaginable judicial, government and parliamentary functionary in South Africa.

CONCLUSION

TBM
MP

- 18. The effect of all this negative publicity perpetrated by the various individuals has had a negative effect on my judicial career. In fact, i am certain that unless all these issues are cleared by a court of law, the public perception of me will sink even lower.
- 19. All what i am alleged to have done wrong occurred during the period when i was a duly appointed Chairperson of PRASA BOC. I cannot go out of pocket to defend myself or clear my name under these circumstances.
- 21. As discussed, kindly forward this email to the underwriters of the PRASA Directors Indemnity Insurance for urgent attention and assistance. I attach a copy

Begin forwarded message:

From: Tintswalo Makhubele <tanmakhubele@me.com>
Subject: Fwd: Delegation of authority: BOC-GCEO-GE Legal:Report to Minister on Siyaya (Friday 090318 court order)
Date: 06 April 2018 at 4:00:44 PM SAST
To: xgeorge@salga.org.za, xolile.george@gmail.com, cherreddy@gmail.com, Duncan.Pieterse@treasury.gov.za, johnm@infraafricaholdings.co.za, natalie.skeepers@gmail.com, MG Maluleke <MALULEKG@dot.gov.za>, natalie.skeepers@telkomsa.net, MG Maluleke <Mkhacanim@gmail.com>, Zide <zide@prasa.com>

Dear Acting Chairperson ,

- 1. I'm reading news report about Siyaya matter from which it is said that Prasa has obtained an urgent interdict with regard to the settlement of this matter.
- 2. I wish to know whether the Minister has taken a decision on this particular matter (not the general utterances in the Statement acknowledging my resignation and appointing you as Acting Chairperson).
- 3. Even if one relies on the Minister's statement; it says 'defend'. Any lawyer knows a difference between defend and institute.
- 3.1. If it is the latter, I want to know if the Board authorized the application.
- 4. The reason why there should be a specific decision is because;
 - 4.1 Minister indicated in the meeting held with me , Cromet & GE: Legal that we must all submit reports to enable him to obtain legal advice on future action wrt this matter.
 - 4.2 Ms Ngoye and Mr Dingswayo (and me) were directed not to deal with this matter anymore (save for submitting reports) as we are all 'conflicted' .
 - 4.3 The BOC made certain resolutions with regard to this matter on 16/03/18, which I communicated to the Minister.
- 5. The Minister requested reports and he was intending to obtain legal advice. In my mind, he wanted to have an idea of the strength of the case. That's why he wanted reports .
 - 5.1 I assume you have seen the opinion. If yes, please let me have a copy.
- 6. On 190318 Prof Maluleke and I (with Cromet and LK) attended a consultation with Maleka SC and ENSafrica attorneys who were briefed to assist with amongst others the wrists of execution and this particular report.
- 7. Subsequent to the consultation the attorneys requested certain critical information (similar to the email below & other question). I don't know if this was provided, but I know Cromet did ask Ms Ngoye to provide certain information.
- 8. Ms Ngoye is continuing with her behavior of making unfounded allegations in court papers
 - 8.1 I have decided to call in the Prasa indemnity so-that I can protect my name. I will write separately to the Company Secretary.

Please get back to me ASAP.

Regards,

TAN

Sent from my iPhone

Begin forwarded message:

From: Tintswalo Makhubele <tanmakhubele@me.com>
Date: March 13, 2018 at 9:47:26 AM GMT+2
To: Zide <zide@prasa.com>
Cc: Cromet Molepo <Cromet.Molepo@prasa.com>
Subject: Delegation of authority: BOC-GCEO-GE Legal:Report to Minister on Siyaya (Friday 090318 court order)

Dear LK,

One of the contentions by Legal is that I do not have authority to interfere with their functions.

I need the following to be able to report to the Minister:

TM
MP

1. Delegation of authorities & how it flows.
2. Functions of Legal support,
3. Job description/ contracts of employment / letters of appointments of Ms Ngoye and Mr. Fani Dingiswayo.

Let me have this by no later than tomorrow (Wednesday), 14 March 2018.

This email request will form part of my report.

Regards.

TAN
Chairperson

Sent from my iPhone

TAN
MP

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High Court judge accused of "impeachable conduct"

25 January 2019 By Kim Reynolds (/author/405/)

#UniteBehind has lodged a complaint against Judge Tintswalo Annah Nana Makhubele with the JSC



(/media/uploads/images/Third%20Party/makhubele-JudgesMatter.jpg)

Judge Tintswalo Annah Nana Makhubele has been accused of violating the Judicial Code of Conduct by #UniteBehind. Photo from Judges Matter video (<http://www.judgesmatter.co.za/interviews/october-2017-interviews/jsc-candidates/advocate-nana-makhubele-scr/>)

Commuter activist group #UniteBehind has lodged a complaint against sitting Gauteng High Court Tintswalo Annah Nana Makhubele. The group accuses her of breaching the Code of Judicial Conduct's (<http://www.justice.gov.za/legislation/notices/2012/20121018-gg35802-nor865-judicial-conduct.pdf>) "separation of power" clauses, by having been chairperson of the interim board of the Passenger Rail Association of South Africa (PRASA) while also serving as a Gauteng High Court judge.

The complaint filed with the Judicial Conduct Committee of the Judicial Service Commission (JSC) is signed by #UniteBehind secretariat member Zukiswa Fokazi. It is divided into two parts: one is criticism of her occupying the two positions at the same time and the second is criticism of her conduct while at PRASA, which GroundUp reported (<https://www.groundup.org.za/article/court-puts-breaks-56-million-payment-siyaya/>) last year.


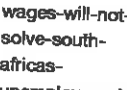
According to the complaint, Makhubele was nominated by the ISC for

<https://www.groundup.org.za/article/gauteng-high-court-judge-accused-impeachable-conduct/>

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Education

TM

WUP

35

appointment as a judge of the Gauteng High Court on 4 October 2017. On 17 October she was appointed PRASA chairperson. On 2 November, President Zuma appointed Makhubele as a judge, with a start date of 1 January 2018.

After this announcement, #UniteBehind raised concerns with the JSC about the conflict of interest the two positions would pose and questioned the rationality of appointing her to the chairperson position following her nomination for the high court.

Although Makhubele asked for a high court start date of 1 April — as revealed in emails obtained and cited by #UniteBehind in its affidavit — her position on the high court was effective from 1 January 2018, according to the activist group. Her name officially appeared on the court roll on 5 February 2018.

Makhubele continued in her position at PRASA until 16 March 2018.

During her time as chairperson, Makhubele was also accused of disrupting litigation procedures (<https://www.groundup.org.za/article/judge-criticises-judge-prasa-case/>) inside PRASA. In November 2018, the Pretoria High Court found that Makhubele had instructed PRASA's lawyers not to defend the company against legal action that resulted in R56 million being seized from PRASA (the money eventually had to be returned to PRASA). In its scathing judgment the court wrote that Makhubele "ought not to undertake any judicial duties until she clears her name of the allegations against her".

And in February 2018 the Sunday Times accused (<https://www.pressreader.com/south-africa/sunday-times/20180204/281479276860823>) Makhubele of pushing for a R500 million investment into VBS Bank "without any agreement being signed".

#UniteBehind is calling for the impeachment of Makhubele on the grounds of violating the "independence of the judiciary", as well as for her conduct while at PRASA.

The JSC acknowledged receipt of the complaint on 21 January 2019 and forwarded it to the Judicial Conduct Committee.

Nathi Mncube, spokesperson for the Judiciary, told GroundUp that Makhubele cannot comment on the matter until she has been invited to do so by the Judicial Conduct Committee when it processes the complaint.

Further reading:

- Analysis by judicial watchdog Judges Matter on judges, boards and conflicts of interest (<https://www.judgesmatter.co.za/opinions/seeking-clarity-on-judicial-conduct/>)
- #UniteBehind's complaint to the JSC (/media/uploads/documents/PART_A_UniteBehind_complaint.pdf)

CORRECTION: Some of the dates in the original article were wrong and have been corrected.

More about PRASALeaks (</topic/prasaleaks/>)

- PRASA says rail enforcement units are succeeding (</article/prasa-says-rail-enforcement-units-are-succeeding/>) 14 February 2019
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(</article/education-department-showing-us-middle-finger/>)

department is "showing us the middle finger" 2019-02-22 (</article/education-department-showing-us-middle-finger/>)



(</article/gauteng-community-health-care-workers-reject-contracts/>)

Gauteng community health care workers reject contracts 2019-02-22 (</article/gauteng-community-health-care-workers-reject-contracts/>)

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"TAN A(a)"

36

From: **Francois Botes** fwbotes@law.co.za
Subject: **Founding Papers Part 1.pdf**
Date: 29 May 2018 at 6:54 AM
To: tanmakhubele@me.com



Dear Nana,

Herewith Part 1 of the urgent application. Parts 2 & 3 will follow !

I am looking forward to your affidavit !

Kind regards,

Francois



Founding Papers Part
1.pdf

Handwritten signature or initials in the bottom right corner.

"Tan A(b)"

37

From: Francois Botes fwbotes@law.co.za
Subject: Founding Papers Part 2.pdf
Date: 29 May 2018 at 6:53 AM
To: tanmakhubele@me.com



Part 2



Founding Papers Part
2.pdf

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"TAN A(C)"

38

From: **Francois Botes** fwbotes@law.co.za
Subject: **Founding Papers Part 3.pdf**
Date: 29 May 2018 at 6:54 AM
To: tanmakhubele@me.com



Part 3



Founding Papers Part
3.pdf

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"TAN S"

39

From: Tintswalo Makhubele
tanmakhubele@me.com

Subject: Referral of complaint ;
ADVOCATE BOTES SC

Date: Feb 18, 2019 at 10:30:12 AM

To: PTA Bar Deon Gericke
ptabar@law.co.za

Refe....pdf
5.5 MB

Dear Deon,

Find attached a referral for attention of the
Bar Council.

I will forward the annexures in a separate
email, in parts, as soon as i have scanned

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them.

Kindly acknowledge receipt of this email and attachment.

Best regards.

Judge TAN Makhubele.

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**PROFESSIONAL AND ETHICS COMMITTEE
(PRETORIA SOCIETY OF ADVOCATES)**

In the matter between;

ADVOCATE TAN MAKHUBELE SC
(now JUDGE MAKHUBELE at Gauteng Division)
and
ADVOCATE FW BOTES SC

**STATEMENT IN SUPPORT OF REFERRAL FOR INVESTIGATIONS OF
POSSIBLE BREACH OF PROFESSIONAL ETHICS: BOTES SC**

[1] I was a member of the Pretoria Society of Advocates (Pretoria Bar) from 1999 until I resigned on 30 November 2018 with a view to prepare for taking up a judicial appointment.

[2] My appointment as a Judge would have been with effect from 01 January 2018, however, I requested an indulgence of four (4) months to wrap up my legal practice. I would have commenced duties on 01 April 2018 but the date was amended to 01 June 2018. I took oath of office as a Judge on 08 June 2018.

[3] I served in the Interim Board of Control (BoC) of the Passenger Rail of South Africa (Prasa) for the period 20 October 2017 to 16 March 2016. Although I have not been officially advised by the Judicial Conduct Committee (JCC) of the Judicial Services Commission (JSC), I have learnt through media reports that my tenure at this entity is currently a subject of a complaint lodged with the JCC by an organization called 'Unite Behind' which contends that I should not have taken up this appointment as I was already a Judge with effect from date of being recommended as such in October 2017 and that I committed some serious wrongdoings, including

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settlement of the liquidators' claims in the matter that forms the subject matter of this referral.

[4] As a member of the BoC of Prasa, I have been party to decisions that are currently being challenged in both the Western Cape and Pretoria High Courts.

[5] The application at the Western Cape High Court was filed during or about January 2018 by an organization called 'Unite Behind' (the same organization that has apparently asked the JCC to impeach me as a Judge) It seeks to review (a) the decision of the Minister of Transport, Mr. Joe Maswanganyi to appoint an interim Board that I was chairing, and (b) the decision of the Interim Board to suspend the Prasa legal panel.

[6] I do not know if the Minister of Transport has filed any papers with regard to the first part of the application.

[7] At the time of my departure Prasa had filed answering affidavits to oppose the application to review the decision of the Board to suspend Prasa's legal panel. I do not know the status of the matter but at some point I got it through media reports that Prasa was ordered to file the audio recording of the Board meeting wherein the legal panel was suspended. I do not know if this was done. To my knowledge the audio recording and transcript thereof exists and was provided to the attorneys representing Prasa.

SEE attachments relating to the suspension of Prasa's legal panel, which include,

[7.1] Transcribed Resolution of the BoC of 01 December 2017.

[7.2] Memorandum from the Group Executive: Legal Risk and Compliance, Ms Martha Ngoye (Ms Ngoye) in response to the Board's resolutions. The memorandum is dated 05 December 2017 and contains a response to various issues. Only paragraph 6.2 that deals with suspension of the legal panel is relevant. The entire memorandum has already been leaked to the media and has been reported on

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already. It is also an attachment in the Western Cape application. Ms Ngoye's response was based on an unsigned Board resolution (as she stated in her opening paragraph). The draft resolution was erroneously transmitted within the organization before it was checked for correctness and other errors and in the process it was also leaked to the media that was sent to her and also leaked to the media. The correct resolution was subsequently drafted and disseminated to all interested parties, including Unite Behind that had already mounted a court challenge based on leaked documents.

It is clear from this memo and subsequent communication between the Acting Group Chief Executive Officer (AGCEO) and Legal Services that the latter was not prepared to accept the resolution of the Board.

[7.3] Letter dated 12 January 2018 from Prasa (per Acting Group Chief Procurement Officer, Mr. Peter Malele) addressed to South African Civil Aviation Authority (SACAA), requesting permission to participate in its panel of legal services.

[7.4] Letter from South African Civil Aviation Authority dated 02 February 2018 granting Prasa the required permission.

[7.5] Email from AGCEO, Cromet Molepo (Molepo) to Martha Ngoye and others dated 09 March 2018, confirming suspension of Prasa Legal Panel and re-iterating the arrangement with SACAA; and also providing list of legal firms in SACAA panel.

[7.6] Emails from Ms Ngoye and Mr. Fani Dingiswayo: Manager .Legal Services (Dingiswayo) , dated 09 March 2018 addressed to Molepo challenging the use of SACAA panel and the appointment of ENSafrica to assist Prasa.

[7.7] Enquiry from National Treasury on the process followed to appoint Maluleke Msimanga Inc, and the emails amongst Prasa officials in response thereto

[8] The application before the Pretoria High Court , under case number 23484/2018 was filed by Ms Martha Ngoye, apparently with *post facto* authorization of the Minister of Transport, Dr. Blade Nzimande. In terms of the notice of motion, Prasa sought orders against the Liquidators of Siyaya DB (in

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liquidation) and the Sheriff to restrain and interdict them from executing the orders granted by Honourable Acting Judge Holland-Muter (Holland-Muter AJ) on 09 March 2018 and the writs of execution issued by the Registrar in terms of the court orders.

The application came before Honourable Judge Tuchten (Tuchten J) in the unopposed roll of 27 November 2018. He granted the relief sought, but also made some adverse comments about me on the basis of allegations made in the founding affidavit deposed on behalf of Prasa by Ms Ngoye and annexures thereof.

[8.1] This referral concerns this matter. I am alleged to have initiated the settlement and unlawfully excluded Legal Services in the negotiations. I am also alleged to have had an improper relationship with the legal team of the companies in liquidation during the settlement of the liquidators' claims, to an extent that I provided them with some confidential information that gave them an advantage against Prasa.

[8.2] Although not mentioned by name in various reports on the matter, it is common knowledge that one of the members of the legal team of the Siyaya companies in liquidation was (is) Advocate FW Botes SC (Botes SC) , against whom I am filing this referral. He argued the matter on behalf of the liquidators before Holland-Muter AJ.

[8.3] I am not a party to this litigation but from reading media reports and documents filed on behalf of Prasa in court that have since come to my possession, I am referred to as the central figure in the dispute between the parties. In fact I am considered to have breached my fiduciary duties towards Prasa.

[8.4] I am not aware if the Liquidators have filed any opposing papers, but I do have founding papers that I obtained from Botes SC

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after I made a request to Prasa that was ignored. The documents are in excess of 600 pages.

If necessary, I will make the entire founding documents available by hand. However, and for purposes of this referral I will only refer to documents that are relied on to support the allegations pertaining to the suspension of Prasa's legal panel and my communication with Siyaya's legal team in this regard because that is where the gist of the matter is.

[9] The arbitration awards issued by Judge Brand were preceded by settlement of claims that the companies in liquidation had against Prasa, which were initially a subject of court action but subsequently removed for arbitration due to a clause in that regard in the service contracts between the parties. The companies were liquidated in the process. The court appointed a Commissioner to conduct an enquiry, after which he issued a provisional report.

[9.1] The Liquidators approached me, (first through Advocate Botes SC on or about the second week of November 2017, followed by a letter (towards the end of the month) to intervene in a dispute that had ensued with regard to whether there was a need to proceed to arbitration in view of the evidence at the enquiry.

I took up the matter with my colleagues at the Board and after satisfying ourselves that it fell within the delegated authority of the Acting Group Chief Executive (AGCEO), there was consensus that I should engage him and follow-up on the issues to find a solution. I subsequently wrote a memorandum to the AGCEO to confirm the discussions and our agreed planned way forward.

See attachments hereto, being copies of documents from the liquidators and my memo to then AGCEO, Mr. Zide.

[9.2] Botes SC brought the documents from the liquidation enquiry on or about 13 November 2018. We met at Prasa. Although he did not sit in the meeting, the then AGCEO, Zide, was present as I was in several

meetings with him and others on this day. He was aware of the purpose of Botes's visit.

After Botes SC left, we discussed the matter and he made copies of the documents.

[9.3] Therefore, the allegations that the settlement was done in secret are just malicious and intended to harm the reputations of people whose integrity has never been questioned.

[10] According to the Notice of Motion filed by Ms Ngoye, the validity of the settlement is in question and Prasa intends to have it set aside.

[11] I am not at liberty to talk much about the validity of the settlement of the claims because I doubt if the Professional and Ethics Committee would have jurisdiction on the issues.

The current Minister of Transport called a meeting after Holland-Muter's orders were issued. He then asked for reports from Ms Ngoye and me to enable him to obtain legal advice on the way forward. I am not aware if he obtained any legal advice. I was advised a week or so later that he had given instructions that the matters should be defended. The application had been filed already according to the information at my disposal.

[11.1] In the last meeting that I chaired the Interim Board resolved, amongst other things that the report that Minister Nzimande requested should come from the Board and not an individual member as it was a report of the Board's activities. A Board member, Professor Maluleke was nominated to collate information to assist the attorneys and Senior Counsel who were subsequently briefed to assist in the matter. I attended a consultation at the Chambers of Advocate Maleka SC with ENSafrica attorneys, Mr. Maluleke, the former and then AGCEOs, Messrs Molepo and Zide. I do not know if they followed this through after my departure.

[12] As far as I am concerned the allegations that the settlement of the claims was done in 'secrecy' and that I 'colluded' with the legal team of the companies in liquidation are malicious, defamatory and intended to harm my good reputation and integrity.

The record (at the relevant forum should a need arise) will show that the issue was handled in a transparent manner and after consultation with the legal team and after verifying all relevant issues with all affected persons as indicated in the memorandum addressed to Zide attached above. The Board was at all times briefed about the issues.

[13] The problems that are relevant for purposes of this referral arose after conclusion of the settlement of the claims when it transpired, in early January 2019 that the Acting Chief Finance Officer, Ms Yvonne Page, was not willing to effect payment of the settlement, apparently on the instructions of the Ms Ngoye.

Events subsequent to suspension of Prasa's legal panel

[14] Prasa's legal panel was suspended on 01 December 2017 as it was not in compliance with the legal prescripts. It had already been declared irregular by the Auditor-General. I will provide documents that Prasa filed to oppose the Western Cape High Court application in this regard if necessary. In the meantime, and whilst Prasa was directed to constitute a compliant legal panel, the Board had issued certain directives for handling of legal matters. As indicated above, and as it can clearly be seen from the documents, the AGCEO and Supply Chain Officer, Mr. Malele had in the meantime secured permission from South African Civil Aviation Authority (SACAA) to utilize its panel. However, and for reasons known to themselves, the Legal Section defied the Board decision and apparently continued to utilize the suspended panel. They never communicated with me or the Board that they are not willing to comply with the Board resolutions. In fact, as the records show, documents from Legal Services were used by outsiders to discredit the Board. I am not aware of any advise that Legal Services has given the Board as it

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faced challenges relating to its authority from Unite Behind and other organizations.

[15] The relationship between the Interim Board and Prasa's Legal Services, particularly Ngoye and Dingiswayo broke down soon after the suspension of the legal panel.

[16] The memorandum that Ngoye sent to the Board in response to the suspension of the Legal Panel and other matters was leaked to the media and at least one publication known as 'GroundUp' ran a story about its contents on 10 January 2018.

The headline read "*Prasa staff try to block state capture. Legal department concerned by Board decision to suspend Legal Panel*".

The article was further captioned: "*Prasa's lawyers are contesting a resolution passed by the rail company's interim board*".

[17] The memorandum from Ms Ngoye to the Interim Board was also used and attached as an annexure by Unite Behind in its application at the Western Cape High Court to challenge the Board's decision

Since then, media reports are to the effect that the Head of Legal Services saved Prasa from the wrongdoings that were perpetrated by the Board that I was chairing. In one chance meeting I asked Ms Ngoye to issue a statement to contextualize her memorandum to the Board. She refused and arrogantly told the colleagues and me at that meeting that she stands by what she wrote.

[18] A representative of Unite Behind, one Zackie Achmat referred to Ngoye and Dingiswayo as their 'key whistleblowers'. This statement appeared in his tweet sometime during March 2018 where the discussion was about Prasa issues.

See copy of the tweet .

[19] To further illustrate that the relations between the two officers and the Board were tense or non-existent, we discovered that the letters addressed to the attorneys of Siyaya by Dingiswayo where he was making claims of

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unlawful conduct on my part were being copied to a law firm (Equal Education Law Center) that was representing Unite Behind, the same organization that is challenging the suspension of the legal panel and also seeking my impeachment as a Judge.

[19.1] The Board resolved that the AGCEO should seek an explanation from Ms Ngoye , as the Executive Head of Legal Services (one of three units she was heading) on this issue and other matters that were done without consultation of the Board or authority of the AGCEO Everyone's authority was being challenged
See copy of the letter addressed to Ms Ngoye.

[20] To my knowledge, Ms Ngoye and Mr. Dingiswayo never approached the Interim Board, as a collective or individual members to raise the concerns about their unhappiness with the settlement of the Siyaya claims and other allegations against me that they have now deposed to in the documents before court.

The only approach to the Board was by email on 08 March 2018, when for the first time they raised concerns about whether the Board knew about the settlement This was after the Holland-Muter orders were issued. The settlement was in mid-December 2018.

See the email that Mr. Fani Dingiswayo sent to Minister Blade Nzimande, in which he attached an email to the Board members as well as an email exchange between him and Prasa's attorney of record (Bowmans) where they gossip about my alleged improper relations with Siyaya legal team.

[21] Ms Ngoye and Mr. Dingiswayo absented themselves at the meetings that Zide and I held with Prasa employees who testified at the liquidation enquiry and who were still to do so. I did not suspect any unhappiness from their side because the excuses that came through the AGCEO appeared satisfactory to me. At some point Ms Ngoye was off work because she had lost a close relative. On another occasion, where the matter was finally settled I was told that they had prior arrangements in their department as it was Christmas season.

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Prasa's attorney of record, Mr. Madimpe was present on the day the settlement was made. Discussions at the last meeting are probably privileged but I will disclose at the relevant time. Nothing untoward happened as far as I know.

Reason for the referral to the Ethics Committee of the Pretoria Society of Advocates

[22] The reason for this referral is because I believe, as I will substantiate hereunder, that Botes SC compromised and betrayed my trust by using information obtained from me informally and probably with a motive that I was not aware of, to intimidate Prasa's attorneys of record (Bowmans in the letter written by Mathopo as well as when the matter came before Holland --Muter AJ.

[23] The conduct of Advocate Botes SC in my view bothers on misrepresentation because my answers to his sms were copied into a letter that one of the attorneys in his legal team wrote to Prasa's attorneys and also intimidated them and boasted about his team's proximity to me. The attorney, Mr. Tshepo Mathopo gave Prasa an impression that he had contacted me and that I responded by sms. The responses indicated though are similar to the sms exchanges between Botes SC and me.

[24] I have known Botes SC for almost twenty (20) years and we have served in the Bar Council together for many years. I have never heard anyone question his integrity. He is hard working and has done a lot in the service of the Pretoria Bar.

I had no reason to doubt his integrity. We met at Prasa and it was always clear that we were not going to take shortcuts. Although we had an open line of communication, it was always clear between us that the official communication should be between the respective attorneys.

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[24.1] After the claims were settled, and when payment did not happen as promised (in writing), and when it became clear, through rumor-mongers that Ms Ngoye and the Acting CFO were opposed to payment of the settled amount, I decided to distance myself from following up on the matter and also asked Botes SC to leave communication on the matter to the attorneys.

See copy of the SMS that I sent to him on 13 January 2018 in this regard.

[24.2] I subsequently provided him with the contact details of the new AGCEO, Mr Cromet Molepo (Molepo). It appears from communication that I was later copied that Molepo did engage Botes SC and made some undertakings with regard to compliance with the arbitration awards that were issued by Judge Brand.

See the SMS I sent to Botes SC with the CEO's contact details and one from him giving me feedback about their discussion.

The judgment of Judge Tuchten

[25] The application to rescind Holland-Muter AJ's orders in terms of which the bank accounts of Prasa were attached served before Judge Tuchten on or about 27 November 2018. No one informed me about this setback, probably because, not being a party, no one thought I had any interest. I do not know what transpired in open court, but Tuchten J decided to devote a huge chunk of his judgment writing about what he referred to as my 'conduct'.

[25.1] I have already referred a complaint against Tuchten J to the Judicial Conduct Committee. **A copy is attached.** The judgment is already a public document and has been referred to in various radio talks and newspaper articles.

[26] The JCC has acknowledged my complaint and has undertaken to conduct investigations and revert to me. I cannot say much at this stage save to state that the issues that inform my referral to the Professional and Ethics Committee have only to do with the portions of the judgment where Tuchten J made comments about my perceived improper relationship with the legal

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team of Siyaya companies. He does not say who the persons are. This issue is relevant in this referral.

[27] Paragraph 8 of Tuchten J's judgment reads as follows:

"PRASA was represented by both an attorney and counsel when the enforcement applications came before Holland-Muter AJ. The Siyaya entities had earlier challenged BG's authority to act under rule 7(1). Troublingly, it is alleged by the GLS officials that Siyaya challenged BG's authority on the strength of information supplied to them by Judge Makhubela herself and were in possession of at least one letter which ought to have enjoyed confidentiality as being a communication between attorney and client."

[28] In Paragraph 17 of his judgment Tuchten J felt a need "to say something about the conduct of Judge Makhubela as evidenced by these papers". He then raised questions that according to him demand answers. One such question that is relevant for purposes of this referral is phrased as follows:

"Did she supply Siyaya with information which they could use against PRASA and, if so, why?"

[29] After speculating about what I could have done wrong at Prasa, Judge Tuchten concluded that he was of a "firm view that Judge Makhubela ought not to undertake any judicial duties until she clears her name of the allegations against her". He had earlier indicated that the court forum 'will not be dispositive of the concerns in relation to Judge Makhubela's conduct. If objectively, the adjudication of the enforcement applications is not an appropriate forum for her side of the story to be received and considered, another forum ought to be provided to her for this purpose'.

Alleged complaint filed by Unite Behind at the Judicial Conduct Committee against me

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[30] I have not received any official communication from the JCC of the JSC about the matter, but I learnt from enquiries made by newspapers ('Ground Up' and 'City Press') that Unite Behind has filed a complaint against me and that it is seeking an order that I should be impeached as a Judge.

[30.1] According to media reports, Unite Behind has relied on amongst others the affidavit filed by Ms Ngoye in the rescission application of Holland-Muter A.J's orders and the judgment of Tuchten J as supporting documents. The documents have been posted in the internet and can be accessed by anyone.

[30.2] 'GroundUp' and 'City Press' articles were published on 25 and 27 January respectively. The respective journalists refer to the judgment of Tuchten J and the Unite Behind as sources of the information.

[30.3] The headline of 'GroundUp' article reads as follows:
"High Court judge accused of 'impeachable conduct"
The article alleges, amongst other things that I was "accused of disrupting litigation procedures inside PRASA. In November 2018, the Pretoria High Court found that Makhubele had instructed PRASA's lawyers not to defend the company against legal action that resulted in R56million being seized from PRASA (the money eventually had to be returned to PRASA).

[30.4] The headline of the City Press article reads as follows:
"Judge Tintswalo Makhubele referred for impeachment"
The article alleges, amongst other things that I "drove efforts to enforce a secret settlement agreement with companies linked to corruption"

[30.5] The City Press article was a follow-up to an earlier one that appeared in its edition of 18 March 2018 where it was alleged amongst

other things that I had made interventions that saw Snyaya strike a R58m settlement.

The contentious SMS communication between Makhubele SC (me) and Botes SC

[31] Firstly, I wish to state that I was not aware, until Botes SC alerted me by SMS that Prasa (read Ms Ngoye) had filed opposing documents in the application made by the Liquidators to make Judge Brand's arbitration awards orders of court. In fact, I never had sight of the Liquidator's applications but was advised about it informally. I did not have anything to say because at that time there were already rumors that there are allegations of wrongdoing against me in relation to the settlement of the claims.

[31.1] I had a meeting with the Company Secretary (AGCEO at the time the matter was referred and commencement of settlement) and the Acting CFO, Ms Yvonne Page in early January 2018 where we tried to understand the reasons for the change of attitude with regard to payment of the settlement. All she told us was that she received instructions from Ms Ngoye not to pay. The basis appears to be that the matter was settled at the time when Legal Services was defending the matter, as they believed Prasa should pay zero.

[31.2] It also emerged at that meeting that the Acting CFO had consulted with all user departments about the settlement and according to her no one knew about the claims. She told us that she was following the ESKOM Parliamentary enquiry and was scared after listening to the testimony as she did not want to be in the same position as Eskom CFO. I will address the fears she expressed and our discussion at the relevant forum.

[31.3] We urged Ms Page to put everything in writing to allow a proper response from the people who were alleged to have done something wrong in relation to this matter. I do not know if she did, but nothing was brought to my attention.

JM
MP

[31.4] Ms Ngoye never put anything in writing or approach me, the Board as a collective or individual members about my alleged wrongdoings until as I have stated above her legal services manager sent an email to Minister Nzimande and the Board Directors, including myself after Holland-Muter's orders were issued.

[32] I received Botes SC's SMS at about 06:30 on 07 March 2018 whilst on my way to Cape Town.

[33] Our SMS exchange went as follows;

BOTES SC: 6:32 *Dear Nana. I trust that you are well. Did PRASA decide to oppose the 4 applications that were initiated by virtue of the Awards made by Judge Brand? Kind regards. Francois Botes.*

MAKHUBELE: *Morning Francois. Nothing has been brought to my attention. I am boarding a flight now to Cape Town to meet the Deputy Minister of Transport about my imminent departure. I will also meet the Minister of Justice to discuss the controversies raised by //Unite Behind (echoing the sentiments of Legal Section). They have already written to CJ, President & the JSC. My involvement in the settlement of this matter is cited amongst reasons why I should be investigated by the JSC. As you can imagine, my priority now is to get all this cleared up so I can commence my judicial duties.*

I'll talk to you when I return.

Regards.

Nana.

BOTES: at 8:22 He sent 4 screenshots of copies of "Notice to Oppose" filed by Bowman Gilfillan Inc with four different case numbers in the matters between Siyaya Consulting Engineers (PTY) LTD (in liquidation) versus Passenger Rail Agency of South Africa (PRASA).

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MAKHUBELE: at 10.02: Just landed in Cape Town. Those attorneys have no authority. Prasa legal panel has been suspended since 1 December 2017. We are using SACAAA panel. I know they couldn't have been appointed through that panel. Only those who had instructions already continue.

I have just asked Zide.

He says decision was taken by Martha Ngoye and the current AGCEO.

I am about to start meetings.

BOTES: Thank you Nana.

[34] In-between communicating with Botes SC, I was also in communication with the company secretary, Zide, (who was AGCEO at the relevant time) about what Botes SC was telling me. I wanted him to verify if indeed Prasa had filed notices to oppose and that they were utilizing the services of attorneys in the suspended legal panel.

Mr. Zide's reply was as follows:

"... We met with Group Legal yesterday and the AGCEO was advised by the Group Legal of the intention to oppose the awards and the law firm that would be briefed. The AGCEO indicated that He will brief you in detail on the issues and the reasons raised by the Legal on their stance.

My response to Zide was as follows.

" AGCEO hasn't told me anything. He hasn't spoken to me about many things. You and I were involved in the settlement. If it is opposed what're they saying? Affidavit in the same style as Siyangena one? Whatever happens you and I must give version. Assist Prasa or be court witnesses"

[35] I suppose Zide discussed the matter with Mr. Molepo (current AGCEO) because shortly after our SMS exchanges, I received an SMS from Molepo which reads as follows;

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" Morning Chairperson.

I will appreciate an opportunity to discuss few critical issues, which will include:

- 1. ENS legal opinion and way forward on related briefs*
- 2. ICT penetration tests.*
- 3. National Treasury draft response;*
- 4. Werksmans*
- 5. Siyaya Arbitration Awards and related court applications.*
- 6. Hawks correspondence and related Court proceedings.*
- 7. AG's Management Letter*
- 8. Preparation for the meeting with the new Minister.*
- 9. PCOT investigations*
- 10. Other urgent matters including my personal matter.*

Regards

NCM

[36] *My response to Mr. Molepo was as follows:*

" Morning AGCEO,

As discussed just now, I am at the Parliament office of the Ministry for an urgent meeting with the DM.

I will be available tomorrow to discuss he issues 1-10.

I must state however that it has already come to my attention that you authorized Legal Services to oppose the matter under 6 (I wanted to say under 5) and furthermore, to use the services of the suspended legal panel.

The matter involves me directly and I would have expected a courtesy briefing before decisions were taken.

I will seek legal opinion on the matter after having sight of the grounds of opposition.

On the issue of firm that's in the suspended panel, I believe it's further evidence of disobedience of Board resolutions.

I will advise the Board accordingly.

Regards.

*TOM
MP*

Nana.

[37] Molepo responded as follows;

" I did not authorize them and they told us that they are proceeding on their own,

I called the attorneys to be briefed because I only learned yesterday that we had received court papers that were referred to our legal and held all those meetings with LK.

[38] I forwarded Molepo a copy of one of the Notices of Intention to oppose that I had received from Botes SC. Molepo replied as follows;

" It is one of the fundamental problems we have. They even accused LK of leaving them out of the engagements regarding the settlement negotiations and even alleging that the heads of the affected divisions are not in agreement".

[39] LK referred to in Mr. Molepo's sms is Mr. Lindikaya Zide, his predecessor, and then Company Secretary.

See attached copies of SMS and Whatsapp messages between me and Botes SC for the period from November 2017 to May 2018

Proceedings before Holland-Muter

[40] I did not know that the matter was setdown for 08 or 09 March 2018. I only became aware when I received news, firstly through media that the Sheriff had attached Prasa's bank accounts to satisfy a court order. I only learnt about what actually happened in court after the meeting that was called by Minister Nzimande on 12 March 2018. I did not know what the meeting was all about when I went there but then learnt that it was about the attachment of the bank accounts.

Meeting with Minister Nzimande and Board resolutions thereafter

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[41] The meeting was not good, particularly because I did not know what it was all about and because I had not had sight of Ms Ngoye's affidavit or the nature of evidence that she had to support the allegations against me. Minister Nzimande directed that we all should file reports about what happened and that he, as Minister would consider the reports and obtain legal advice to decide on way forward, whether to rescind or appeal or whatever remedy.

[42] I briefed the Board in my last meeting on 16 March 2018. It was resolved as indicated above, namely, that the report should come from the Board because it was a Board report on the activities of the Board, and not an individual member. We nominated Professor Maluleke to collate all the information to assist in writing the report. ENSAfrica was instructed to obtain SC opinion on the issues, particularly the contention by Ms Ngoye that she has absolute authority that is not subject to the Board or the Chief Executive Officer.

[42.1] The Board had a problem with the manner in which minutes were drafted. At times certain critical issues and resolutions would be left out and the issues muddled up and riddled with errors. It is difficult to tell whether it was because of incompetence or sabotage. The minutes were riddled with errors and were not factual. At times Board discussions were often leaked as I have indicated above.

I have already referred to the Resolution that suspended the Legal Panel that was distributed and leaked to the media even before I, as the Chairperson of that meeting could check it. It had to be recalled and a correct one was drafted after listening to the audio recording, which took in excess of two months because initially they claimed that it was lost, and then it was subsequently 'found'.

[42.2] This issue was addressed almost in all meetings. The Secretariat was directed to listen to the audio of all meetings and draft minutes based on the recording.

JM
MP

[42.3] In the last meeting that I chaired we resolved that I should draft minutes and resolutions of 'closed meetings' and sign all verified minutes and resolutions of open Board meetings. The minutes and resolutions were subsequently emailed to me by the Secretariat after my resignation for me to do what we agreed upon in our last meeting. However, it became impossible to coordinate the Directors' inputs because the remaining members of my Board were dismissed about four weeks after I left. I do not have access to Prasa emails anymore, but these can be accessed if need be. The Secretary called me several times to remind me because the Auditor General had raised a query about lack of minutes. These tasks remain unfinished.

[43] Senior Counsel (Maleka) and the instructing attorneys requested certain documentation relating to delegation of authority, particularly to Ms Ngoye. I do not know if they were subsequently produced after my departure.

The conduct of Botes SC

[44] Botes SC did not tell me on 07 March 2017 that he was going to use the SMS exchange between us in court, let alone that he was going to share it with his instructing attorney, who in turn, would refer to it when he write to Prasa. As far as I was concerned there was nothing contentious in the SMS because it was in the public knowledge that Prasa Legal Panel had been suspended. Furthermore, there was a pending court application to review the decision of the Board in this regard.

[45] I only expressed my shock at the decision to oppose the applications without being told under circumstances where the main defence was that I acted irregularly in the conclusion of the settlement that preceded the arbitration awards. I did not think that Botes SC, who knew that my authority was being challenged at that time would even think that I was an authority to be quoted in formal court proceedings. As indicated above, I had already told him in January 2018 that he should let the attorneys handle communication in the matter. I did not think that his SMS question was a formal enquiry or that my response was a formal response of Prasa Board.

TW
MP

[46] I just did not think that an Advocate would think that he has authority to make enquiries about anything.

When one has regard to the smses exchanged before this fateful date, it is clear I always referred his requests for 'updates' to either the company secretary or AGCEO. I never answered a question without conferring. Because I was not always kept informed by Prasa Legal Services, Botes SC at times became my source of 'updates' with regard to what was happening with the disputed payments.

[47] I was under extreme psychological pressure at the time because Unite Behind was trying to block me from assuming my judicial as they alleged I had breached the Code of Conduct of Judges by agreeing to serve in the Prasa Board.

[47.1] An online newspaper called 'GroundUp' which is aligned to Unite Behind was reporting a lot about the Board's activities and we were concerned about leaking of internal documents.

[47.2] Zackie Achmat, who was the face of Unite Behind at the time had written to Parliament, the JSC, and everyone about me. As indicated above, it later transpired from a tweet by Zackie Achmat that he regarded both Ms Ngoye and Mr. Dingiswayo as Unite Behind's 'key whistle blowers'.

[47.3] It was clear that Legal Services was working hand in hand with Unite Behind not only to discredit me but to ruin my professional life.

[48] Botes SC knew the pressures that I was being subjected to at the time. He knew my frustrations. He persisted to involve me in the matter. When I first answered the SMS enquiry on the fateful day it was clear that I did not want to get involved.

He persisted and forwarded the screenshots of the notices to oppose, and then I broke down and responded the way I did. I was vulnerable and someone elicited my responses that were later used against Prasa.

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MP

The response is factual in as far as suspension of the Legal panel is concerned. However, I did not mean that Prasa should not oppose the applications, only that as far as I know they should utilize SACAA panel.

[49] I only discovered what Botes has done when I read a letter after our meeting with Minister Nzimande that Botes SC forwarded to me. This was a letter from Mr. Dingiswayo, addressed to one of Botes SC's instructing attorneys, Mr. Tshepo Mathopo. The letter was dated the same day as the meeting but I later learnt that it was sent before the meeting.

The copy is attached .

[50] In this letter, copied to Bowman Gilfillan and Equal Education Law Centre (lawyers for Unite Behind), Dingiswayo recounted what happened in court before Holland-Muter AJ, in particular that ;

" 2.4 Acting Justice Holland-Muter considering and having regard to inadmissible hearsy evidence submitted by Adv Botes Sc. This is a letter that you sent to Bowman's on 08 March 2018, which letter purportedly contains SMS communication between PRASA's interim chairperson and an unnamed person. Mr. Mkiva of Bowmans sought to ascertain the identity of the person who is alleged to have had SMS communication with the acting chairperson but your Mr. K Mathopo was unwilling to disclose the identity of this person to Mr. Mkiva of Bowmans during a telephone conversation between them on 08 March 2018 after you had dispatched your letter of the same date".

[51] I do not have a transcript of what transpired before Holland-Muter AJ, but if the contents of Mathopo's letter are correct, it is clear from the above that Botes SC disclosed the contents of our SMS communication to Holland-Muter AJ to argue that Prasa's representatives were not authorized.

[52] In paragraph 4 of the same letter Dingiswayo further alleges that Botes SC alleged during discussions with his opponents that he was in possession of a resolution that was passed by the Prasa BoC to the effect that the matter should be settled. He was apparently challenged to produce the resolution but

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came with a "a letter which did not in any way state that the Board of Prasa had resolved and authorised settlement of the matter"

[53] I only came across the letter written by Mr. Mathopo to Bowmans on 08 March 2018 recently after Tuchten judgment, and after perusing the founding papers filed by Prasa. This letter is attached hereto.

[54] Paragraph 2 of the letter reads as follows:

" Your purported "notices of intention to oppose" the four applications are irregular and you do not have any mandate from the Board of the Passenger Rail Agency of South Africa (PRASA) to represent it in these applications and to oppose the applications on behalf of PRASA. Adv Nana Makhubele SC is the Acting Chairperson of PRASA's Board. After we received your purported "notices of intention to oppose" the four applications we requested Adv Nana Makubela SC to indicate whether or not the Board of PRASA has decided to oppose the four applications. Adv Nana's response was as follows:

[55] Mathopo then went on to quote what appears to be part of my SMS communication with Botes SC, but just a little bit that was my response, and not the question put and context. He also quoted what appears to my SMS communication with the AGCEO in response to his request for a meeting.

[56] In Paragraph 4 of the letter Mathopo wrote the following:

" On a proper analysis and interpretation of the abovementioned comments from Adv Nana Makubela it is evident that you have no mandate from Passenger Rail Agency of South Africa to oppose these applications. We delivered a Rule 7 notice at your offices yesterday, but have not received the courtesy of any response or reply. The Board of the PRASA did not resolve or decide to oppose the aforementioned applications".

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[57] I have never had any communication with Mr. Mathopo, by letter, SMS or any means with regard to the authority of Bowmans to act on behalf of Prasa. I have never met him. I do not know him. I never received any enquiry from him as indicated in paragraph 2 of his letter addressed to Bowmans.

[58] After reading Mathopo's letter referred to above, I called Botes SC to enquire about the SMS extracts that appeared like the communication exchanged between us. He apologized and could only say that he showed the instructing attorney but he doesn't know why he decided to use the content in a letter addressed to Prasa's attorneys. I do not know if Mathopo replied to Dingiswayo letter or if both he and Botes SC have filed an explanation in court.

The allegations in the founding affidavit of Ms Martha Ngoye in the rescission application that served before Tuchten J

[59] In her affidavit filed in support of the rescission application Ms Ngoye relies on two grounds:

First ground

[60] The first one is about her alleged absolute authority to deal with legal matters and what she perceives was interference on my part when I intervened in the matter. She attaches a document that she alleges gives her absolute delegated powers. She also makes allegations that she and her subordinate, the legal manager, Dingiswayo were excluded from the settlement negotiations. Furthermore, that Prasa's then attorney of record, Mr. Madimpe Mogashoa was instructed by me not to communicate with her and Dingiswayo.

[60.1] As indicated above, these issues are not relevant for purposes of this referral. My version of the events, subsequent to the approach by Botes SC and the attorneys for the liquidators, as indicated will be put forward at the relevant forum. I re-iterate that everything that I undertook to do after sending the memorandum to Zide (attached above) was followed through, to the letter.

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[60.2] I also attach hereto a copy of a report from Mr. Sonic Baltac, one of Prasa's employees who testified at the liquidation enquiry. He alleged that Legal Services prevented him from providing information that he had gathered after his testimony to the Commissioner. I obtained a bundle of documents from Mr. Mogashoa, Prasa's then attorney of record on how they dealt with the matter from summons to liquidation enquiry. One of the documents is a letter addressed to the erstwhile owner of the companies (before liquidation), to the effect that Mr. Baltic was asked by the Commissioner to verify certain things.

[60.3] Ms Ngoye alleges in her affidavit (and Tuchten J appears to believe her) that she does not know that there is a transcript of the insolvency enquiry proceedings. Well, this clearly exposes her negligence because Prasa was represented at the enquiry by both attorney and Counsel. Their presence, and utterings are noted in the transcripts. If they did not provide her with a copy or sought instructions it exposes many things about how the matter was handled.

[60.4] That the enquiry was not adversarial is not an excuse. The witnesses testified under oath, and nowhere did the representatives undertake to provide counter evidence to assist the Commissioner. Instead they agreed to further investigate certain issues that would advance the liquidators' claims.

The transcript exists. Copies were made available to both the Acting AGCEO and ENSafrica. I will make it available.

[60.5] Ms Ngoye has attached a document that she alleges is Prasa's Delegation of Authority dated 2016 to her Founding affidavit .

All I can say at this stage is that I have never had sight of this document before I saw it in the court papers.

The Interim Board that I chaired asked for, and was provided with a different document. I will refer to it at the relevant forum, but for present purposes. See attached an email from the Secretariat, Ms Martha

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Kotu, and dated 04 November 2017 wherein she forwarded certain documents to the Board members. One such document is Delegation of Authority signed by Sifiso Buthelezi.

[60.5] The issue of delegation of authority would have been addressed in the opinion that the Board sought from Advocate Maleka SC just before I left Prasa. One of the documents requested by the AGCEO from Ms Ngoye was a copy of her written delegated authority and employment contract. This is because was after her utterances that she had absolute powers, not subject to the Board or Group CEO.

[60.6] The Board that I was chairing was comprised of very highly qualified individuals with relevant skills and expertise. I was a Senior Counsel with practical legal experience. The Transport Parliamentary Portfolio Committee recognized our expertise when we made our first appearance.

My colleagues had confidence in me with regard to legal issues. I cannot imagine a situation where I would not have been obliged to intervene in the face of allegations of negligence in the manner in which legal matters were being handled. Ms Ngoye was not even aware of the status of this particular matter, hence she is still in the dark as whether there is a transcript of the liquidation enquiry or not.

[60.6] The request from the Liquidators was not the first. In fact, the Board was made aware that there were many contracts that were put on hold for no reasons. When Zide's term as Acting CEO ended he was appointed to look into these issues and to advise the Board. There were issues with the appointment, which was deferred.

All these issues are not relevant for purposes of this referral as I have indicated.

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Second ground

[61] The second and ground of rescission that Ms Ngoye relied on to rescind the orders of Holland-Muter AJ is what she has referred to in paragraph 93.4 of her affidavit as follows:

"The questionable relationship between the role players including an official or officials that are supposed to act in the best interests of PRASA and the Siyaya entities as evidenced by."

This is relevant for purposes of this referral.

[62] In paragraph 94.3.3 of the founding affidavit Ms Ngoye alleges that at the hearing of the matter before Holland-Muter AJ, "Counsel for the Siyaya entities produced a letter that he alleged was a resolution of the Interim Board authorizing the settlement, which was a letter that is subject to attorney/client privilege between PRASA and DM Inc. Dingiswayo has been advised by DM Inc. that they did not share the letter with the attorneys of Siyaya entities. This shows that there were persons who were supposed to act on behalf of PRASA and who acted to the detriment of PRASA. A copy of the letter is already annexed hereto marked OMN16".

[63] Ms Ngoye also referred to the letter that Mathopo addressed to Bowmans on 08 March 2018, challenging their authority on the strength of SMS responses that he alleged were from me in response to his enquiry. The letter is already attached above. As stated, there was never an enquiry about Bowmans authority from Mathopo to me.

[64] In paragraph 98, Ms Ngoye deposed as follows;

"The stance taken by Makhubele in the above text messages is, at least, curious or in the extreme, inappropriate to me. The text messages allegedly sent by her served to protect the interests of the Siyaya entities and were to the detriment of PRASA. The above text messages that is said to be from Makhubele is not only unfortunate as

¹ See founding affidavit deposed by Onicca Martha Ngoye on behalf of PRASA, paragraphs 93.1-99.

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it betrays the extent of the access that Siyaya had to Makhubele but it also shows that Makhubele shared with the Siyaya entities internal communications of PRASA. It will be recalled that she chided Group Legal Services from sharing the memorandum with DM Inc, PRASA'S former attorneys, yet she saw no irony sharing internal communication with attorneys that were suing PRASA."

[65] In paragraph 105, Ms Ngoye deposed as follows;

"The court made a finding that Bowmans was not properly before Court. The Court accepted the contents of Mathopo's letter dated 8 March wherein it is alleged that Makhubele advised the Siyaya entities that Bowmans did not have authority to act on behalf of PRASA. The Court proceeded to grant Siyaya the orders on an unopposed basis. The Court confirmed that the judgments were granted by default"

Reasons for late submission of this referral and steps taken to deal with the allegations against me

[66] I first heard about Ms Ngoye's allegations against me when they were reported by GroundUp on 06 April 2018 after the order of Judge Ranchod.

[66.1] The headline reads as follows,

"Court puts the brakes on R56-million payment to Siyaya. Corruption at Prasa has led to the decline of Metrorail's service. But now Prasa staff are fighting back against a dubious transaction facilitated by Prasa's board and previous CEO"

[67] The article referred to the affidavit that was filed by Ms Ngoye where she stated, amongst other things that Prasa's Legal Department was wrongly excluded from the settlement and that I had instructed Prasa's lawyers to settle the matter.

[68] I called Prasa's company secretary and followed by an email, requesting copies of the court papers and also to find out the procedures to

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invoke the Directors' Liability Insurance as I really wanted to get involved in the litigation

See copy of the email to Zide which I copied my former colleagues in the Interim Board.

[69] Zide promised to give me the founding papers, but I have not heard from him to date. I did get a copy of the Insurance Policy, but the initial response from the brokers was somehow vague. I attach a copy of the response.

[70] I contacted Botes SC and enquired about the contents of Ms Ngoye's affidavit. He undertook to give me the papers, but in the meantime he forwarded a copy of Ranchod J's order, which basically postponed the matter to be properly ventilated.

[71] I did not assume judicial office in April as anticipated because a legal controversy had emerged after all the challenges by Unite Behind with regard to whether my appointment date could be changed from 1 January to 1 April 2018. I could not afford legal fees as I had no job.

[72] At this time, my only source of information on what could be the contents of the founding papers filed by Ms Ngoye was Botes SC. At some point I even smsed him to enquire if I could get pro bono representation from the Bar. He subsequently suggested an attorney, one Johan Crouse. I accepted the offer to engage him.

[73] I started sending documents to Johan Crouse in preparation for our consultation, but then as I was going through my documents, including emails, I came across one email from a Johan Crouse. When I looked at it, I realized that he appeared to be the same attorney that approached me in writing during November 2017 and requested intervention on behalf of Siyaya liquidators.

[74] In my thoughts, there was going to be issues of conflict of interest if I utilized him (Johan Crouse) to assist me with legal representation on issues arising from the same matter.

[75] I then informed Botes SC that there was a conflict of interest and that I did not think that it would be proper to utilize the services of Johan Crouse. I met him (Johan) and expressed the same sentiments. We agreed that the Senior Counsel that he had proposed to brief (Mark Leathern SC) would first advise on the question of conflict of interest.

[76] I met Mark Leathern SC. Save to state that I did not formally engage Johan Crouse, I do not know if I am at liberty to disclose the advice given, but will do so if it is permitted.

[77] I later received information from Botes SC that the Liquidators were not going to oppose Prasa's application to rescind Holland-Muter's orders and that they were no longer relying on the arbitration awards of Judge Brand (based on the settlement) but that the matter would go back to arbitration.

[78] I then did not see a need to intervene in the court application, moreso because in my view, the party that sought reliance on my authority was no longer opposing the application, and furthermore, Prasa had not joined me as a party.

[79] I was however seeking advice on my legal remedies on the defamatory allegations made by Ms Ngoye in her founding affidavit, as well as the various news reports in social media (Twitter, Facebook) and newspapers that were made by Zackie Achmat to the effect that I was linked to 'State Capture', and that I colluded with Siyaya liquidators to make a secret settlement to pay money to a corrupt entity.

I am still pursuing legal advice and will act as soon as possible

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[80] I remained under the impression that the parties (Prasa and the Liquidators) will remove the matter from the court roll and go back to arbitration.

[81] Therefore, it came as a shock to me when I was alerted to a Radio interview on 28 November 2018 about a judgment that had been issued by Tuchten J on the matter.

[82] I do not know if the liquidators have filed any papers and whether Botes SC made any submissions before Tuchten J.

I have asked the JCC to investigate the matter, particularly what transpired before Tuchten J.

[83] I contacted Botes SC immediately after I was alerted to the Radio interview and enquired, amongst other things why the matter was still in the court roll and what actually happened. Initially he told me that he was sitting in court and that the issues dealt with in the Radio interview were not canvassed in open court. The order was obtained on an unopposed basis.

He later forwarded me Tuchten J's written judgment, which he said he was shocked about.

[84] I repeated my plea to Botes SC (which I made during March 2018, after I read the letter from Dingiswayo where it was stated that I exchanged smeses with Siyaya attorneys) that there was a need for him to make a statement by affidavit or whatever means to own up to the issues regarding the alleged SMS communication between me and Siyaya Liquidators' legal team.

[85] I spoke to Botes SC in the last week of January 2019. He was reluctant to make a statement at any forum. Instead he suggested that I should clear my name, and he was going to 'support' me. I asked how was the support going to be because since last March I have not seen any statement, instead my name is mentioned in court papers, newspapers and

social media, but the identity of the person I was communicating with by SMS is still a mystery

[86] Botes SC suggested that he was going to ask the Liquidators to join me in the current application, where I was going to file the affidavit. I raised my concern about the 'support' that he has been promising me. On the one hand, the Liquidators do not intend to oppose Prasa's application to rescind Judge Brand's orders, but on the other they want to keep the matter in court, simply for me to file an affidavit.

[87] I then informed Botes SC that at the time of commencement of settlement of the claims, the both of us were still members of Pretoria Bar and in any event, the Bar would have jurisdiction even if I was no longer a member.

I then informed him that I intended to refer a complaint for investigation by the Professional Ethics Committee of the Pretoria Bar. This is when he then changed tune and agreed that indeed it was necessary for him to file a statement. He undertook to draft a statement and that we would refer the matter by consensus as he agreed that he should not have given Tshepo Mathopo our sms exchanges

[88] I have not heard anything from Botes SC to date.

The prejudice on me

[89] I have been a subject of media reports and attempts to block my assumption of duties as a Judge. The organization that has led the offensive against me (Unite Behind) has resuscitated the matter after Tuchten J's judgment that they believe gives them some grounds to have me impeached as a Judge. Save for reference to what Unite Behind believes is a transgression of the Code of Conduct of Judges, namely, chairing the Board of Prasa, and some incoherent allegations about VBS and failure to attend a Parliamentary meeting, the main 'charge' against me is that I had some improper relations with the legal team of Siyaya liquidators. It is also alleged

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that as a result thereof, I provided the legal team with some confidential and sensitive information that somehow benefited the companies in liquidation.

[90] I have read all documents that I could lay my hands on, but I cannot find any substantiation of this allegation, save wild statements that I concluded a secret settlement and colluded with the Siyaya lawyers Zackie Achmat has written extensively about me on this matter. He even threatened to take legal action against me.

See the media release that he issued on 21 March 2018 where he refers to me as a Judge who is implicated in "State Capture" He posted these utterings in Twitter, Facebook and newspapers

[90.1] After Prasa was ordered to file audio recordings by the Western Cape High Court, Zackie Achmat gave a press interview and alleged that I obtained people to lie on behalf of the Prasa Board on the existence of the resolution to suspend the legal panel. He appears to think that the Board did not make such a resolution. This was not part of the court order, but just his own imagination.

I objected to the news report and the newspaper issued an apology.

See a copy of the news article (EWN) and a subsequent apology that was issued.

[91] The only "evidence" of the alleged improper relationship between me and the Siyaya legal team that has been attached in the founding affidavit deposed by Ms Ngoye is the letter of 08 March 2018 from Mathopo Attorneys to Bowmans. This is the letter where he has quoted sms allegedly from me to him or his office after he had enquired from me whether Prasa was opposing the application to make the arbitration awards of Judge Brand orders of court. No such communication occurred between me and Mathopo.

[92] In the email exchanges between Fani Dingiswayo and Mkiva (Bowmans), the latter informed the former that Mathopo called him and spoke about the discussions that I was having with the legal team of Siyaya

Liquidators. He (Mathopo) refused to reveal the identity of the person in his legal team that I was talking to.

[93] I have already indicated above that the sms responses that Mathopo alleges are from me to him are actually sms exchanges between me and Botes SC on 07 March 2018.

[94] The name of Botes SC is being concealed by Mathopo. I do not know why. The newspapers only mention my name and the identity of the person with whom I am alleged to have communicated with regard to Bowmans' alleged lack of authority is not being revealed.

[95] I do not know if Botes SC or Mathopo have filed any affidavit to address the content of the letter that the latter has sent to Bowmans.

[96] Tuchten J relied heavily if not solely on the allegations about my alleged sms correspondence with Siyaya lawyers in reaching his conclusion that I had some improper dealings that I must explain. Of course this comes from the founding affidavit of Ms Ngoye. According to media enquiries, Unite Behind has also relied on this affidavit, the judgment of Tuchten J as well as the letter dated 08 March 2018 from Mathopo In to Bowmans in its complaint to the JCC

[97] I believe that the explanation of Botes SC (and his instructing attorney (Mathopo) about the reasons for their conduct, will restore my dignity, integrity and reputation.

Conclusion

[98] I request an investigation with regard to the conduct of Botes SC;

(a) in relation to the SMS exchange between us; why he shared it with his instructing attorney, Tshepo Mathopo, who then passed it off as

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communication between me and him in his letter addressed to Bowman Gilfillan Attorneys,

(b) in relation to the alleged submissions made by Botes SC before Holland-Muter J on or about 08 March 2018 in the matter between Prasa and the Liquidators of Siyaya companies (in liquidation) wherein he relied on our SMS exchanges (converted into a letter) ; and

(c) in relation to allegations in Ms Ngoye's affidavit that when making submissions before Holland-Muter AJ, he disclosed the contents of a letter written with prejudice from Prasa's attorneys or Prasa with regard to settlement proposals.

[99] I will await your response and any request for clarity or further information.



JUDGE TAN MAKHUBELE

TM
MP

From: Deon Gericke, PTA Bar

[<mailto:ptabar@law.co.za>]

Sent: Wednesday, 20 February 2019 12:01

Annah Makhuvele

Subject: RE: Referral of complaint ;
ADVOCATE BOTES SC

Dear Nana

I hope you are well.

TIM
MP

I have received your complaint against Botes SC (pages 1 to 35), but no attachments were included. Can you please let me have the attachments referred to in your complaint.

Regards

Deon Gericke
General Manager
Pretoria Society of Advocates

10/11/18

78

Room 107
High Court Chambers
220 Madiba Street
PRETORIA
Tel. 012/303-7420
Cell. 082 336 8108
E-mail: ptabar@law.co.za

Pras....pdf
1.1 MB

08-0...r.pdf
369 KB

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From: Judge- Annah Makhuvele
AMakhuvele@judiciary.org.za
Subject: Annexures, PART 6 [RE:
Referral of complaint ;
ADVOCATE BOTES SC]
Date: Feb 21, 2019 at 5:41:10 PM
To: Deon Gericke, PTA Bar
ptabar@law.co.za, Judge
Annah Makhuvele
tanmakhubele@me.com

PART 6: Paragraphs 49 and 55

08-03-18 Mathopo letter to Bowmans
Gilfillan

12-03-18 Dingiswayo letter to Mathopo

Thank you.

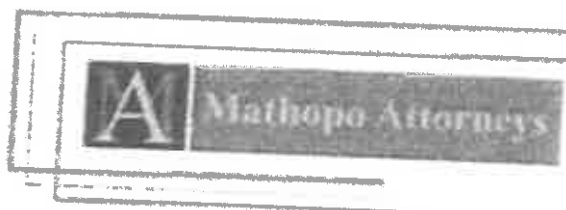
TAN.

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TAM 6"

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"OMN24"



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Our ref: GTM/SIYAYA/HCRT

Your ref: Mr C Mkhwa/6179674

Date: 8 March 2018

Bowman Gilfillan Inc.

11 Alice Lane

Sandton

Email: clement.mkhwa@bowmanslaw.com

WITH PREJUDICE OF RIGHTS

Dear Sir,

IN RE : SIYAYA DB CONSULTING ENGINEERS (PTY) LTD (IN LIQUIDATION) / PASSENGER RAIL AGENCY OF SOUTH AFRICA - CASE NUMBERS 73933/2015, 73934/2015 AND 47588/2016

IN RE: SIYAYA RAIL SOLUTIONS (PTY) LTD / PASSENGER RAIL AGENCY OF SOUTH AFRICA - CASE NO. 47587/2016

1. We represent the Applicants in the four applications which have been set-down for hearing in the High Court of South Africa, Gauteng Division, Pretoria on Friday, 9 March 2018. Our clients are the liquidators of Siyaya DB Consulting Engineers (Pty) Ltd (in liquidation).

Partner: Gabriel Tshepo Mathopo
Associates: Kabelo Mathopo,

Handwritten signatures of Gabriel Tshepo Mathopo and Kabelo Mathopo. The signature of Gabriel Tshepo Mathopo is at the top, and the signature of Kabelo Mathopo is below it, with the initials 'GTM' and 'MP' written next to it.

- 81
2. Your purported "notices of intention to oppose" the four applications are irregular and you do not have any mandate from the Board of the Passenger Rail Agency of South Africa (PRASA) to represent it in these applications and to oppose the applications on behalf of PRASA. Adv Nana Makubela SC is the Acting Chairperson of PRASA's Board. After we received your purported "notices of intention to oppose" the four applications we requested Adv Nana Makubela SC to indicate whether or not the Board of PRASA has decided to oppose the four applications. Adv Nana Makubela SC's response was as follows:

"Those attorneys have no authority.

PRASA legal panel has been suspended since 1 December 2017. We are using SACAA panel.

I know they couldn't have been appointed through that panel. Only those who had instructions already continue.

I've just asked Mr Zida. He says decision was taken by Martha Ngoye and the current AGCEO."

3. Adv Nana Makubela SC subsequently dispatched the following message to the Acting Group Chief Executive Officer of PRASA:

"Morning AGCEO,

As discussed just now, I am at the Parliament office of the ministry for an urgent meeting with the DM.

I will be available tomorrow to discuss the issues 1 - 10.

I must state however that it has already come to my attention that you authorised legal services to oppose the matter under 6 and furthermore, to use the services of the suspended legal panel.

The matter involves me directly and I would have expected a courtesy briefing before decisions were taken.

I will seek legal opinion on the matter after have sight of the grounds of opposition.

On the issue of firm that's in the suspended panel, I believe it's further evidence of disobedience of board resolutions.

I will advise the board accordingly.

Regards

Nana."

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4. On a proper analysis and interpretation of the aforementioned comments from Adv Nana Makubela SC it is evident that you have no mandate from the Passenger Rail Agency of South Africa to oppose these applications. We delivered a Rule 7 notice at your offices yesterday, but have not received the courtesy of any response or reply. The Board of the PRASA did not resolve or decide to oppose the aforementioned applications.
5. Retired Judge Fritz Brand made the four awards which are the subject matter of the four applications by agreement between the parties on Wednesday, 7 February 2018. PRASA has no defence in law in opposing any of the four applications.
6. We briefed senior counsel to attend to the four applications on Friday, 9 March 2018. Our clients instructions are to move all four the applications on Friday, 9 March 2018, and furthermore to disclose the content of this letter to the Presiding Judge. We have consequently instructed senior counsel to move all four the applications on Friday, 9 March 2018 and to hand a copy of this letter to the Presiding Judge.
7. Our clients have nothing to hide and our clients have conducted themselves in an honest, fair, reasonable and transparent manner. PRASA has conceded our clients' respective claims and our clients are entitled to dispose of the four applications and to finalize these matters. PRASA is, with respect, playing cat and mouse with the Court and our clients.

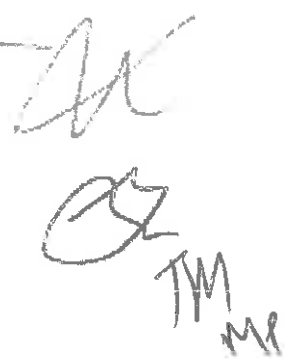
Yours sincerely,



MATHOPO ATTORNEYS

per: Mr Tshepo Mathopo

Partner: Gabriel Tshepo Mathopo
Associates: Kabelo Mathopo,



"TAN 7"

1 83

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

CASE NO:

PASSENGER RAIL AGENCY OF SA

APPLICANT

And

**SIYAYA SIYAYA DB (PTY) LTD
(In liquidation)**

FIRST RESPONDENT

SIYAYA SIYAYA RAIL (PTY) LTD

SECOND RESPONDENT

SHERIFF: PRETORIA EAST

THIRD RESPONDENT

JOHANNES ZACHARIAS MULLER

FOURTH RESPONDENT

TSHIFHIWA PERSEVERANCE MUDZUS

FIFTH RESPONDENT

MASTER OF THE HIGH COURT, PRETORIA

SIXTH RESPONDENT

IN RE:

Case No.:2015/73933

**SIYAYA DB SIYAYA DB (PTY) LTD
(in Liquidation)**

APPLICANT

And

PASSENGER RAIL AGENCY OF SA

RESPONDENT

TM
MP

AND

IN RE:

Case No.:2015/73934

**SIYAYA DB SIYAYA DB (PTY) LTD
(In Liquidation)**

APPLICANT

And

PASSENGER RAIL AGENCY OF SA

RESPONDENT

AND

IN RE:

Case No.:2016/47597

SIYAYA SIYAYA RAIL (PTY) LTD

APPLICANT

And

PASSENGER RAIL AGENCY OF SA

RESPONDENT

AND

IN RE:

Case No.:2015/47598

SIYAYA DB SIYAYA DB (PTY) LTD

APPLICANT

*TM
MP*

SS

And

PASSENGER RAIL AGENCY OF SA

RESPONDENT

NOTICE OF MOTION

PART A

TAKE NOTICE THAT application will be made on behalf of the abovementioned applicant on 6 April 2018 at 10h00 or soon thereafter as counsel for the applicant may be heard for an order in the following terms -

- 1 Dispensing with the forms of service and the time frames provided for in the Uniform Rules of Court and disposing of this application on an urgent basis in terms of Rule 6(12)(a).
- 2 Interdicting and restraining the respondents from executing the orders granted by this Court on 9 March 2018 and the writs of execution issued by the Registrar of this Court on 12 March 2018 under case numbers 2015/73933; 2015/73934; 2016/47597 and 2016/47598 pending the final determination of Part B of this application.
- 3 Interdicting and restraining the third respondent from paying over to the first and second respondents or their nominees monies attached from the applicant's bank account number 0000200348922 and 0000200348426 held with The Standard Bank of South Africa Limited pending the final determination of Part B of this application.

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- 4 That the applicant be granted leave, to the extent that it may be necessary, to institute these proceedings against the first respondent.
- 5 That the costs of this application be reserved for determination with Part B save that any costs occasioned by opposition to this Part A be paid by the respondent(s) opposing it, jointly and severally.
- 6 That the applicant be granted such further or alternative relief as the Court may deem appropriate.

TAKE FURTHER NOTICE THAT the founding affidavit of **MARTHA ONICA NGOYE** together with annexures attached thereto will be used in support of this application.

TAKE FURTHER NOTICE THAT if you intend to oppose Part A of this application, you are required to ~

- a) deliver a notice of your intention to oppose this application by no later than 10h00 on 4 April 2018;
- b) indicate in the aforesaid notice, the address at which you will receive notices and other documents in this application;
- c) file an answering affidavit, if any, by no later than 18h00 on 4 April 2018 to enable the applicant to prepare a replying affidavit by no later than 14h00 on 5 April 2018.

TAKE FURTHER NOTICE THAT if no notice of intention to oppose is delivered as aforesaid, Part A of this application will then proceed on an unopposed basis without any further notice to you.

TM
MP

PART B

TAKE NOTICE THAT application will be made on behalf of the abovementioned applicant on a date and time to be determined by the Registrar for an order in the following terms ~

- 1 Rescinding and setting aside the judgments and orders granted by this Court on 9 March 2018 under case numbers 2015/73933; 2015/73934; 2016/47597 and 2016/47598.
- 2 Setting aside the warrants of execution issued by the Registrar on 12 March 2018 under case number 2015/73933; 2015/73934; 2016/47597 and 2016/47598.
- 3 That the costs of this application be paid by the first and second respondents jointly and severally, the one paying the other to be absolved.
- 4 That the applicant be granted such further or alternative relief as the Court may deem appropriate.

TAKE FURTHER NOTICE THAT the founding affidavit of **MARTHA ONICA NGOYE** together with annexures attached thereto will be used in support of Part B of this application.

TAKE FURTHER NOTICE THAT if you intend to oppose Part B of this application, you are required to ~

- a) deliver a notice of your intention to oppose this application within ten (10) days from the date on which this application is served;

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- b) indicate in the aforesaid notice, the address at which you will receive notices and other documents in this application;
- c) file an answering affidavit, if any, within fifteen (15) days from the date on which the notice referred to above is delivered.

TAKE FURTHER NOTICE THAT if no notice of intention to oppose is delivered as aforesaid, the application will then proceed on an unopposed basis without any further notice to you on a date to be arranged with the Registrar.

DATED at SANDTON on this the 3rd day of **APRIL 2018.**



BOWMAN GILFILLAN INC
 Applicant's Attorneys
 11 Alice Lane
 Sandton
 Tel: 011 669 9000
 Fax: 011 669 9001
 Ref: C Mkiva / 6179674
 Email:
 clement.mkiva@bowmanslaw.com/
 bongumusa.sibiya@bowmanslaw.com
 c/o **BOSHOFF ATTORNEYS**
 Ground Floor, Hazelwood Gate
 Office Park
 14 Oaktree Avenue
 Cnr Oaktree Avenue & Dely Road
 Hazelwood, Pretoria
 Tel: 012 424 7500
 Fax 086 228 6805
 Ref: Natasha Nortje

TO:
THE REGISTRAR OF THE
ABOVE HONOURABLE COURT
PRETORIA

AND TO:
SHERIFF PRETORIA EAST
 Mrs CF Nel
 813 Stanza Bopape Street

TW
MR

And

PASSENGER RAIL AGENCY OF SA

RESPONDENT

AND

IN RE:

Case No.:2016/47597

SIYAYA SIYAYA RAIL (PTY) LTD

APPLICANT

And

PASSENGER RAIL AGENCY OF SA

RESPONDENT

AND

IN RE:

Case No.:2015/47598

SIYAYA DB SIYAYA DB (PTY) LTD

APPLICANT

And

PASSENGER RAIL AGENCY OF SA


RESPONDENT

FOUNDING AFFIDAVIT

I, the undersigned,

ONICA MARTHA NGOYE

do hereby take oath and say:


2 TM MP

instruction. When I came back from annual leave, I did not change this instruction as I deemed it to be in the interests of PRASA.

- 85. Therefore from 2 January 2018, persons who ordinarily brief lawyers in PRASA have been using the Pre-1 December Panel as a point of reference for briefing attorneys.

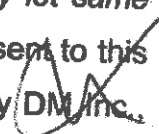


Circumstances that led to the granting of the orders under

- 86. On Monday, 5 March 2018, Dingiswayo received a call from an attorney that represents a creditor of a gentleman known to be a director and shareholder of the Siyaya entities, Mr Makhensa Mabunda (**Mabunda**). This attorney advised Dingiswayo that Mabunda had undertaken to pay that attorney's client from the proceeds of the judgment to be entered against PRASA by the Siyaya entities. In light of the above and that it appeared that Mabunda was certain that certain orders will be obtained against PRASA without PRASA opposing, this attorney had called Dingiswayo to confirm that PRASA would not oppose the applications.

- 87. Surprised by the above, Dingiswayo immediately called Mogashoa of DM Inc. to establish the details of this. Mogashoa indicated that he was in receipt of four applications to make arbitration awards between the PRASA and the Siyaya entities orders of court. These are the applications under case numbers: 73933/15; 73934/15; 47595/16 and 47597/16.





- 88. Mogashoa also indicated that his firm had been asking for instructions from Zide from 20 February 2018 and none had been forthcoming. Dingiswayo requested that these documents be sent to him. Copies of DM Inc.'s requests for instructions from Zide are attached hereto marked **OMN23.1** to **OMN 23.3**.

- 89. In their e-mail of 21 February 2018, DM Inc states the following: *"Kindly advise whether you would want us to oppose these applications or simply let same proceed on the basis that they are unopposed"*. No response was sent to this e-mail. It appears that, although these matters had been settled by DM Inc.




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they believed that they could still be opposed. It should be noted that even in the face of the application to make the arbitration awards order of court DM asked if the applications should be opposed, this clearly shows that DM Inc does not believe that the matters should have been settled and made orders of court.

- 90. As soon as Dingiswayo received the documents from DM Inc. and after discussing the matter with me, I decided to brief Bowmans and instructed Dingiswayo to send these documents to Bowmans as soon as possible.
- 91. On 6 March 2018, I instructed Bowmans to oppose the above applications. Bowmans served on Siyaya's attorneys the notices of intention to oppose the application on the same day.
- 92. On the same day, a meeting held with Molepo, DM Inc, Zide, Dingiswayo and I, where I and Dingiswayo advised that Bowmans was on brief to oppose the matter. No objection was raised to the instruction of Bowmans and the opposition of the applications by PRASA.
- 93. I pause to state that PRASA's opposition to Siyaya entities' applications had merit. The notices were not delivered for purposes of delay or any perverse motive. The reasons for opposing the application to make the arbitration awards orders of court were the following:
 - 93.1. The person who purported to settle these matters on behalf of PRASA, Makhubele, did not have the authority to settle them. In their letter of 8 March 2018, Mathopo Attorneys asked Makhubele to indicate "*whether or not the Board of PRASA has decided to oppose the four applications*". According to that letter, no response was received to this question, all that Makhubele stated related to a question that, according to the recordal in the letter, was not asked. This should have presented Mathopo Attorneys with evidence that Makhubele may have been acting without the authority of the Interim Board. In any event, the authority to settle matters pertaining to PRASA rests with me as the Head of Legal together with the relevant


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executives. A copy of the letter from Mathopo Attorneys is annexed hereto marked **OMN24**. I will discuss other aspects of this startling letter further below.

93.2. PRASA has a valid defence against the claims by the Siyaya entities and the defence of PRASA is contained in the pleadings filed in these matters. To demonstrate that PRASA has a defence to the Siyaya entities' claims, when Siyaya applied for summary judgment on some of these matters the the applications for summary judgment were all dismissed and PRASA was granted leave to defend. PRASA's pleas in the four matters are annexed hereto marked **OMN24.1** to **OMN24.4**.

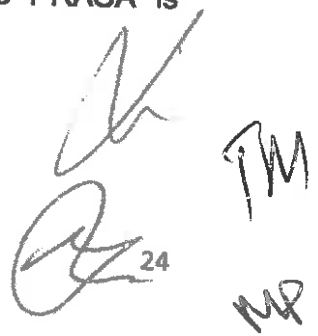
93.3. The settlement is unlawful in that:

93.3.1. it was purportedly a term of the settlement that PRASA did not admit liability, payment in terms of the settlements would therefore constitutes wasteful and irregular expenditure by PRASA; and

93.3.2. *"PRASA insisted that the existence, nature, terms and conditions of [the] settlement offers be regarded as strictly confidential and that same shall not be disclosed by either party in any manner or form, directly or indirectly, to any person or entity under any circumstances"*. If PRASA owes the money there would be no need to keep the settlements a secret. This flies in the face of maintaining a transparent and accountable public institution.

93.4. The questionable relationship between the role players including an official or officials that are supposed to act in the best interests of PRASA and the Siyaya entities as evinced by:

93.4.1. The direct lines of communication between Makhubele and the Siyaya entities' legal representatives in circumstances where PRASA is represented;

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93.4.2. The exclusion of Group Legal Services and its client representatives (the Group Executives responsible for the areas concerned) from the settlement discussions and decision making thereon;

93.4.3. The attorneys of the Siyaya entities correcting (more like reprimanding) PRASA's attorneys when the offer made by PRASA's attorneys that the offer they are made did not accord with the PRASA's purported instructions. In fact, at the hearing of 9 March 2018, Counsel for the Siyaya entities produced a letter that he alleged was a resolution of the Interim Board authorising the settlement, which was a letter that is subject to attorney/client privilege between PRASA and DM Inc. Dingiswayo has been advised by DM Inc. that they did not share that letter with the attorneys of Siyaya entities. This shows that there were persons who were supposed to act on behalf of PRASA and who acted to the detriment of PRASA. A copy of the letter is already annexed hereto marked **OMN16**.

93.4.4. Although the matters were settled by Makhubele, I assumed because of "major concessions" made by the officials of PRASA at the Insolvency Enquiry, a matter the claim by Siyaya Rail was also 'settled' when Siyaya Rail was not in liquidation and the pretext of the need to settle had been the concessions made at the Insolvency Enquiry.

94. As a tactic to prevent Bowmans from acting for PRASA, on 7 March 2018, Siyaya's attorneys filed a notice in terms of Rule 7(1) requiring "[PRASA's] attorney[s] to produce a Power of Attorney by [PRASA] and or its board to Act on behalf of [PRASA] in this matter".

95. Siyaya's attorneys also sent a letter to Bowmans dated 8 March 2018 challenging Bowmans' authority to act for PRASA.

96. In addition to disputing Bowmans' authority to act for PRASA, it also contained text messages which were alleged to have been sent by Makhubele to the

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Siyaya entities attorneys in response to Bowmans authority to act. In the text message that directly questions the authority of Bowmans, Adv Makhubele SC is said to have stated that:

"Those attorneys have no authority. PRASA legal panel has been suspended since 1 December 2017. We are using SACAA panel. I know they couldn't have been appointed through that panel."

97. The letter also contained another text message also alleged to have been received from Makhubele. The text message stated:

"Morning AGCEO

As discussed just now, I am at the Parliament office of the ministry for an urgent meeting with the DM.

I will be available tomorrow to discuss the issues 1 – 10.

I must state however that it has already come to my attention that you authorised legal services to oppose the matter under 6 and furthermore, to use the services of the suspended legal panel.

The matter involves me directly and I would have expected a courtesy briefing before decisions were taken

I will seek legal opinion on the matter after have sight of the grounds of opposition.

On the issue of firm that's in the suspended panel, I believe, its further evidence of disobedience of board resolutions.

I will advise the board accordingly.

Regards

[Handwritten signature]
[Handwritten signature]
TM
MR

Nana."

A copy of the letter containing the text messages is already annexed marked at **OMN24**.

98. The stance taken by Makhubele in the above text messages is, at least, curious or in the extreme, inappropriate to me. The text messages allegedly sent by her served to protect the interests of the Siyaya entities and were to the detriment of PRASA. The above text message that is said to be from Makhubele is not only unfortunate as it betrays the extent of the access that Siyaya had to Makhubele but it also shows that Makhubele shared with the Siyaya entities internal communications of PRASA. It will be recalled that she chided Group Legal Services from sharing her memorandum with DM Inc., PRASA's former attorneys. Yet she saw no irony sharing internal communication with attorneys that were suing PRASA.
99. Bowmans informed Dingiswayo of the notices in terms of Rule 7 and the above letter. A special power of attorney was prepared in respect of each of the four matters and I signed the special power of attorney in favour of Bowmans in all the four matters. Bowmans served and filed the special power of attorney on 8 March 2018 together with a notice of substitution of attorneys of record. DM had remained on record in the matters from the time that they were actions before the High Court.
100. For the sake of completeness, DM Inc also delivered their notices of withdrawal as attorneys of record.
101. The matter was heard on the following day, 9 March 2018. At the hearing of the matter, in order to show that Bowmans was authorised to act for PRASA, Counsel for PRASA handed up PRASA's Delegation of Authority to the Court.
102. In terms of the Delegation of Authority of PRASA, the Board of PRASA delegated the following authority to me:


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- 102.1. to oppose a legal matter;
- 102.2. to settle a claim against PRASA;
- 102.3. to obtain legal opinions on behalf of PRASA; and
- 102.4. to appoint attorneys and counsel to act on behalf of PRASA.

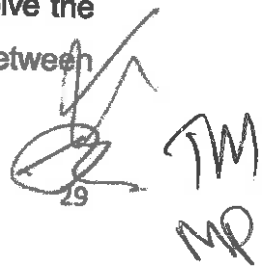
103. The authority delegated to me may be revoked or varied by the Board and the Board may, in writing, vary or revoke a decision taken by me as a result of this delegation. The Board has not varied or revoked my authority and has not varied or revoked the decisions that I have taken in this matter. This authority cannot be taken away by an allegation of a text message that is from Makhubele.

104. At the hearing of the matter the court found that Bowmans was not properly before the Court, despite Bowmans having done the following:

- 104.1. producing the notices of intention to oppose showing that the matter was opposed and, as a consequence it ought to be removed from the unopposed roll;
- 104.2. having filed the notice of substitution of attorneys of record and DM Inc having delivered its notice of withdrawal as attorneys of record;
- 104.3. filing the special powers of attorney signed by me and having handed up the Delegation of Authority showing that I have authority to instruct attorneys and counsel;
- 104.4. advised the Court that if it was not convinced by the foregoing that Bowmans had authority to act, requesting a postponement to file an affidavit to confirm that Bowmans had authority to act on behalf of PRASA.

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 28 JM MP

105. The court made the finding that Bowmans was not properly before Court. The Court accepted the contents of Mathopo's letter dated 8 March wherein it is alleged that Makhubele advised the Siyaya entities that Bowmans did not have authority to act on behalf of PRASA. The Court proceeded to grant Siyaya the orders on an unopposed basis. The Court confirmed that the judgments were granted by default.
106. I submit that for purposes of Rule 7, where the authority of a legal representative to act is challenged, the filing of a power of attorney from an appropriately authorised person should suffice. The transcribed text that is said to be from Makhubele is irrelevant for purposes of satisfying the Court on whether Bowmans was duly authorised to represent PRASA. What was relevant are the provisions of the Delegation of Authority and the signed powers of attorney. Alternatively, I submit that the court should have, as requested by PRASA's counsel on the day, granted a postponement for the matter of the authority of Bowmans to be properly ventilated. The applications of the Siyaya entities were not an urgent application but was treated by the Honourable Court as if they were.
107. On 12 March 2018, Dingiswayo addressed correspondence to Siyaya's attorneys confirming that PRASA intended to challenge the orders handed down on 9 March 2018, as a consequence, PRASA sought an undertaking from Siyaya that pending the challenge to the Orders, the Siyaya entities will not issue warrants of execution or proceed with effecting the warrants of execution. A copy of that letter is already attached hereto OMN5.
108. There was no response to the above letter. Instead, later in the day the Sheriff attached accounts held by the applicant with its bankers.
109. As result of the aforementioned events and because I and Dingiswayo had made the relevant stakeholders aware of the relevant events a meeting with the Minister of Transport, the Honourable Dr B Nzimande was held in the afternoon of 12 March 2018. I had hoped that the meeting would decisively resolve the issues involved in this matter and address the tensions that existed between

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"TAN 8"

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"OMN26"

www.prasa.co.za



prasa

PARASTYDINGSKAP ALIEM
VAN SUID-AFRIKA

PRASA HOUSE
1010 Sunningdale
Midrand
Pretoria

Private Bag 1118
Midrand 2017
T: +27 (0) 746 3000

Diale Mogashoa Attorneys

Brookfield Office Park

Ground Floor, South Block

272 Bronkhorst Street

Nieuw Mucklenhuk

Brooklyn, Pretoria

Dear Mr Mogashoa

SIYAYA DB CONSULTING ENGINEERS (PTY) LTD (NOW IN LIQUIDATION)

1. I confirm that you were instructed to defend the actions instituted at the Gauteng Division of the High Court Pretoria, under the case numbers indicated hereunder.
2. Furthermore I confirm the meeting held between yourself and the Chairperson of the Interim Board of Control on 15 December 2017, and that you were instructed as follows:

A) Siyaya DB Consulting Engineers (now in liquidation)

2.1 In respect of Case No. 74281/15 PRASA's instructions are that you pend both the file and the arbitration proceedings until receiving further instructions. You are also instructed to confirm with the liquidators the amount claimed by Siyaya. According to the documents attached in the particulars of claim, the matter appears to arise from an initial contract of R 5.6 million which appears to have been settled. The total amount for the project is indicated as R 14 million. In this regard, the

Directors

Adv. TAN Makhanya SC (Chairperson), C-Netco Mining Group CEO
G Mkhutsho, X-George, Dr. N. Gwengwe, Mr. Duddy
Prof. J. Mafahole

Company Secretary
L. Zulu



outstanding amount if any, will be the difference between the R 14 million and R 5.6 million which Siyaya conceded in a memo provided to PRASA, to have been paid and received.

2.2 In respect of Case No. 77388/15- You have advised the Chairperson that you did not file a plea because it was agreed between you and Siyaya legal representatives that the amount claimed under this matter was paid in April 2016.

2.3 In respect of Case No. 73834/15- The amount claimed is R7 085 481.06, PRASA's instructions is for settlement of this matter, as per the amount claimed.

2.4 In respect of Case No. 73833/15- the amount claimed is R 8 085 950.00, PRASA's instructions is for settlement of this matter, as per the amount claimed.

2.5 In respect of Case No. 47598/16- The amount claimed is R 15 371 738.87, PRASA's instructions is for settlement of this matter, as per the amount claimed.

B) Siyaya Rail Solutions (PTY) LTD

2.6 In respect of Case no 47597/16- the amount claimed is R 21 million. However, after investigations and verifications PRASA's instructions are that the amount that is due and payable for settlement is R19 583 778.42 (including vat).

C) Interest Payable

2.7 It was noted that in some instances in the summons instituted, the interest claimed was to be reckoned from the date of invoice.

2.8 The instruction to you is that the payment of interest should be reckoned from the date of summons.

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MR



D) Full and Final Offer

2.9 You are instructed to tender this offer as follows:

2.9.1 Liquidators of the Siyaya DB Consulting Engineers (Now in Liquidation), in the total amount of R30 586 171.53 plus interest.

2.9.2 Attorneys representing Siyaya Rail Solutions (PTY) LTD, in the total amount of R 19 583 770.42 plus interest.

E) Confidentiality Clause

2.10 As discussed with the Chairperson you are to include the confidentiality Clause in the Settlement offer.

Please advise as soon as possible if this offer is acceptable.

Kind regards,


LINDIKAYA ZIDE
GROUP COMPANY SECRETARY

DATE: 15/12/2017.



"TAN 9"

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"OMN5"



prasa

PASSENGER RAIL AGENCY
OF SOUTH AFRICA

PRASA HOUSE
1040 Burnett Street
Hatfield
Pretoria

Private Bag X101
Brandsfontein, 2017
T: +27 12 748 7000

To: Mathopo Attorneys
Email: info@mathopo.co.za

CC: Bowman Gilfillan Inc.
Email: clement.mkiva@bowmanslaw.com

CC: Equal Education Law Centre
Email: daniel@eelawcentre.org.za / mbekezeli@eelawcentre.org.za

Dear Sirs

Siyaya DB Consulting Engineers (Pty) Ltd (In liquidation) vs PRASA – Case no's: 73933/2015; 73934/2015 & 47598/2016

Siyaya Rail Solutions (Pty) Ltd vs PRASA – Case no: 47597/2016

- 1 On Friday 9th March 2018 in the Pretoria High Court Acting Justice Holland Muter granted default orders against the Passenger Rail Agency of South Africa (PRASA) in the applications under the abovementioned case numbers. Prior to granting the orders, Acting Justice Holland Muter heard argument from Counsel as to whether not Bowman Gilfillan Inc. (Bowmans) was able to act for PRASA in the applications.
- 2 Acting Justice Muter after hearing argument made a finding that Bowmans were not properly before the Court. The *ex tempore* judgment and order preventing Bowmans from acting and the default orders were granted at the request of your clients, through your Counsel - Adv F Botes SC, despite, inter alia:-

Directors Adv. TAN Makhubele SC (Chairperson), C Molepo (Acting Group CEO)
G Maluleka, X George, Dr. N Skeapers, MC Reddy
Prof. J Maluleka

Company Secretary
L.Zide

"OMN5"



prasa

PASSENGER RAIL AGENCY
OF SOUTH AFRICA

PRASA HOUSE
1040 Burnett Street
Hatfield
Pretoria

Private Bag X101
Braamfontein, 2017
T: +27 12 748 7000

To: Mathopo Attorneys
Email: info@mathopo.co.za

CC: Bowman Gilfillan Inc.
Email: clement.mkiva@bowmanslaw.com

CC: Equal Education Law Centre
Email: daniel@eelawcentre.org.za / mbekezeli@eelawcentre.org.za

Dear Sirs

Siyaya DB Consulting Engineers (Pty) Ltd (In liquidation) vs PRASA – Case no's: 73933/2015; 73934/2015 & 47598/2016

Siyaya Rail Solutions (Pty) Ltd vs PRASA – Case no: 47597/2016

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Directors

Adv. TAN Makhubele, SC (Chairperson), C Molepo (Acting Group CEO)
G Matuleke, X George, Dr. N Skeepers, MC Reddy
Prof. J Maluleke

Company Secretary
L.Zide



- 2.1. Bowmans having delivered notices of intention to oppose the applications on behalf of PRASA.
- 2.2. Your clients' legal representatives and the Court being furnished with (a) the power of attorney signed by the Head of Legal of PRASA authorising Bowmans to act for PRASA and (b) PRASA's delegation of authority document confirming the Head of Legal's powers and authority to instruct Bowmans and counsel.
- 2.3. Counsel instructed by Bowmans for PRASA having informed the Court that Bowmans had shown that it had authority to act and should the Court not be satisfied (which it should have been) the matter should be postponed for a short period to give Bowmans an opportunity to provide an affidavit to prove its authority to act.
- 2.4. Acting Justice Holland Muter considering and having regard to inadmissible hearsay evidence submitted by Adv Botes SC. This is the letter that you sent to Bowmans on 8 March 2018, which letter purportedly contains SMS communication between PRASA's interim chairperson and an unnamed person. Mr Mkiva of Bowmans sought to ascertain the identity of the person who is alleged to have had SMS communication with the acting chairperson but your Mr K Mathopo was unwilling to disclose the identity of this person to Mr Mkiva of Bowmans during a telephone conversation between them on 8 March 2018 after you had dispatched your letter of the same date.
- 2.5. PRASA not having been afforded an opportunity to set out its defences to the applications.





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- 3 We also confirm that prior to Court commencing discussions were held between Mr F Dingiswayo of PRASA's Group Legal Services, Mr B Sibiyi of Bowmans and, Adv B Maselle, Counsel appointed by Bowmans and Mr K Mathopo and Adv F Botes SC on behalf of the applicants. Mr Dingiswayo made it clear to your Mr K Mathopo and Adv F Botes SC that Bowmans had been properly instructed by PRASA. Adv Botes SC advised that he wanted to know whether a settlement could be reached without long and drawn out litigation. He was told that PRASA was opposing the orders sought because, inter alia, the current acting chairperson of PRASA, Adv Makhubele SC had no authority from PRASA nor was it within her power to settle the disputes and/or cause the disputes to be settled.

- 4 Counsel for the applicants, Adv Botes SC said that the Board of PRASA has passed a resolution authorising the agreements and that he had a copy of the resolution in his chambers. Adv Maselle, Counsel for PRASA, responded that if there was such a resolution then there appears to be no defence for PRASA. Adv Botes SC agreed to provide a copy of the alleged resolution to Mr Dingiswayo, Mr Sibiyi and PRASA's Counsel. A copy was later provided but it was not the resolution that was said to exist, it was a letter which did not in any way state that the Board of PRASA had resolved and authorised settlement of the matters. Accordingly, the basis of PRASA's opposition was unaffected by the letter and the applicants were made aware that PRASA persisted with its opposition of the applications.

- 5 Prior to the commencement of the proceedings, the parties' counsel had a collegial discussion about the matter. During the aforesaid discussion, PRASA's Counsel advised your Counsel of some of the defences of PRASA and the difficulties which the applicant had with their papers. They included the following:-
 - 5.1. The lack of authority of the acting chairperson to conclude an agreement of settlement or make an offer of settlement of the matters.



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- 5.2. PRASA had not accepted the claims of the applicants. This is evident when the unauthorised settlement offers were made without admission of liability. The Public Finance Management Act (PFMA) prohibits useless and wasteful expenditure by institutions like PRASA. Inasmuch as PRASA does not accept liability any offer or agreement to pay your clients would be contrary to the terms of the PFMA and should be set aside.
- 5.3. The liquidators of Siyaya DB Consulting Engineers (Pty) Ltd (In liquidation) were only furnished powers by the Master in terms of Section 386(1) of the Companies Act 61 of 1973. No case had been made out by the liquidators that they had authority to act as they had previously acted in the litigation and the arbitration and moreover that they had authority to launch the applications. Simply put, the liquidators were acting outside their statutory powers as is evident from the certificate of appointment.
- 5.4. Confirmatory affidavits in relation to the founding affidavits were deposed to before the founding affidavits and notice of motion were signed. As result, no cognisance could be taken of the confirmatory affidavits which had a material inadmissible effect on certain of the allegations as set out in the founding affidavits.
- 5.5. The applications were launched in terms of s31(1) of the Arbitration Act. The applications are not ancillary or interlocutory applications relating to the issues under the case numbers 73933/2015; 73934/2015; 47598/2016 and 47597/2016. Each application should have been issued under a new and separate case number. More particularly, there should have been service by the Sheriff on PRASA (and not its attorneys who were on record in the actions) as the applications in terms of the Arbitration Act are the commencement of completely different and new litigation.



5.6. Retired Judge Brand should have been joined as a nominal respondent by the applicants. After all it is his awards that the applicants seek to enforce. The failure to join Judge Brand materially affects PRASA as it would want to counter-apply in the same application to set aside the awards. Certainly, the non-joinder of Judge Brand would affect PRASA in relation to a counter-application to set aside the awards.

6 PRASA intends to launch an application for rescission of the default judgments granted in respect of all the applications. PRASA will do so within the time period set out in the Uniform Rules of Court. We request that you furnish us with a written undertaking by no later than Friday, 16 March 2018 that your clients will not issue a writ of execution and/or proceed with a writ of execution pending the outcome of the rescission of judgment proceedings as foreshadowed. We trust that your clients will allow the issues to be fully ventilated before the Courts before seeking to enforce an orders which PRASA will seek to rescind.

7 We reserve all of our rights. Please note that this letter is not intended to be and it should not be regarded as being exhaustive of any defence, issue, fact and occurrence. PRASA shall raise such issues and facts as when it deems necessary.

Yours faithfully

Fani Dingiswayo

Date: 12 MARCH 2018

"TAM 10"

IDS

**EMAIL FROM MR FANI DINGISWAYO TO MINISTER OF TRANSPORT
AND OTHER EMAILS FOR YOUR INFORMATION**

From: Fani Dingiswayo
Sent: 08 March 2018 09:27 PM
To: 'Nzimandeb@dot.gov.za'
Cc: Martha Ngoye
Subject: FW: Siyaya BD Consulting Engineers (Pty) Ltd and Siyaya Rail Solutions (Pty) Ltd [BG-JhbActive.FID1158405]

Honourable Minister of Transport,
Dear Dr Nzimande,

My name is Fani Dingiswayo, I am employed by PRASA as one of its Legal Advisors. Earlier this morning I received disturbing news that the Chairperson of the Interim Board of PRASA was co-operating with attorneys appointed by PRASA to challenge a secret settlement concluded on the instructions of the Chairperson of the Interim Board. This settlement is concluded without admission of liability by PRASA and obliges PRASA to monies in excess of R50 million. Below is an exchange of e-mails between myself and the attorneys assisting us in the matter. This exchange was shared with the other members of the Interim Board because the secret terms of the settlement agreement created an impression in me that the other members of the Board may not be aware of this matter and the fact that it has been settled.

Because the Interim Board reports to you, I also felt that it is necessary that this exchange of e-mails be shared with you. I discussed this matter with my manager, Ms Martha Ngoye and have her blessings to send this e-mail to you. If you so require, a formal report may be prepared for you with all the necessary documentary evidence of documents mentioned in the e-mail. The reason for sending the e-mail in this form is that the 4 matters are set down for hearing tomorrow at 10h00 and at the North Gauteng High Court. We believe that what can prevent the taking of judgement by default tomorrow will be an instruction from you that the Chairperson of the Interim send a letter to court, to our attorneys and to the attorneys of the Siyaya Companies to the effect that she is no longer involved in this matter and will defer to the Power of Attorney that has been signed by the Head of Legal earlier today. All that a letter to this effect will do is to allow PRASA and the Siyaya Companies an opportunity to have the matters properly ventilated by a court. This instruction will have to be issued in time for the letter to reach the addressees by 10h00 tomorrow morning.

We will naturally be working on other lawful means to ensure that the rights of PRASA are protected.

Your assistance will be highly appreciated.

Kind regards,
Fani Dingiswayo
Group Legal Services

PRASA House
1040 Burnett Street
Hatfield
Pretoria

Private Bag x101
Marshalltown
2107

TM
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Tel: [+27 12 748 7595](tel:+27127487595)
Cell: [+27 83 790 0687](tel:+27837900687)

Email: fani.dingiswayo@prasa.com <mailto:fani.dingiswayo@prasa.com>

for

[cid:8FA8FF17-AE10-481D-96D7-AE8F88745048@mrail.co.za]

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From: Fani Dingiswayo
Sent: 08 March 2018 06:40 PM
To: 'natalie.skeepers@gmail.com'; Tintswalo Makhuvele; 'johnm@infraafricaholdings.co.za'; 'MalulekG@dot.gov.za'; 'cherreddy@gmail.com'; 'Xolile.george@gmail.com'
Cc: Martha Ngoye; Lindikaya Zide; Cromet Molepo
Subject: FW: Siyaya BD Consulting Engineers (Pty) Ltd and Siyaya Rail Solutions (Pty) Ltd [BG-JhbActive.FID1158405]

Dear Directors,

My name is Fani Dingiswayo, the General Manager: Group Legal Services.

We have been working on a matter that came to my knowledge on Monday afternoon and we found ourselves as a department on a collision course with one in your number, the Chairperson of the Interim Board. As I worked through this matter and giving the below instructions to our lawyers, I felt that it will be remiss of me to share these with our lawyers and not with you in your capacity as members of the Interim Board. Even if the only response that I will get is that you are aware of the matters and their settlement and circumstances of their settlement has your assent. This is the first reason for this e-mail.

The second reason for this e-mail to you is that my manager, Ms Martha Ngoye, who has been in EXCO for the day, informed me after EXCO that the Company Secretary and the Acting Group CEO would elicit your direction on this matter and on how these four applications should be dealt with tomorrow. I therefore believe that for you to be in a position to decide on this matter, you should have the benefit of the views contained herein.

It is obviously a very difficult position that we find ourselves in that has caused us to take this extraordinary step. However, our view is that the interests of PRASA trump personal comforts and the awkwardness of having to share these views with you about one in your number. Please note that to the extent that the views may be misconstrued, I have attempted to piece together scant information that could put together within a very limited time. In doing this, I tried my best to be as accurate and as fair as was possible.

I trust that these e-mails will not be waste your time.

Kind regards,
Fani Dingiswayo
Group Legal Services

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Email: fani.dingiswayo@prasa.com <mailto:fani.dingiswayo@prasa.com>

for

[cid:8FA8FF17-AE10-481D-96D7-AE8F8B745048@mrail.co.za]

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From: Fani Dingiswayo
Sent: 08 March 2018 06:18 PM
To: 'Clement Mkiva'
Cc: Jerry Kaapu; Ayanda Nkabinde; Bongumusa Sibiyi; Martha Ngoye
Subject: RE: Siyaya BD Consulting Engineers (Pty) Ltd and Siyaya Rail Solutions (Pty) Ltd [BG-JhbActive.FID1158405]

Mr Mkiva,

Thank you for the e-mail below as well as the letter from Mathopo Attorneys.

The Authority to Appoint Lawyers

I have furnished you with the Delegation of Authority of PRASA dated 2016 ("the DoA"). The DoA has not been replaced or superceded by any other document. Clause 9.1(a) of the DoA authorises the Chairperson of the Board sign "any memorandum of understanding or contract, which is ... approved by the Board". I have not seen any other power that is delegated to the Chairperson of the Board except for this one. On the other hand, the authority to defend legal proceedings and to settle claims against PRASA has been delegated to the Head of Legal, Ms Martha Ngoye. The authority "[t]o appoint attorneys and counsel to act on behalf of PRASA" has been delegated to Ms Ngoye. I have forwarded to you the signed Power of Authority in respect of the 4 matters. My reading of Rule 7 is that where the authority of anyone is disputed, a power of attorney must be filed. Inherent in the requirement is that the person giving such power must be authorised to do so. Ms Ngoye is therefore authorised to give the power in terms

Page 3 of 12

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of the DoA. Therefore, the question as to whether you have the power to represent PRASA is sufficiently dealt with by the Power of Attorney and the DoA.

The Issues that Relate to the Panel of Attorneys

I believe that the matter that relates to the Panel of Attorneys is irrelevant for the purposes of Rule 7. However, because there is an allegation of text messages that were received from the Chairperson of Interim Board, there may be a need to explain the position around the panel of attorneys. For starters, a panel of attorneys is simply a point of reference used by the legal department after following an open procurement process.

On 1 December 2017, the Interim Board took a resolution to 'suspend' the panel of attorneys. I will endeavour to find the draft resolution and share it with you in a separate e-mail. In terms of that resolution, any instruction to lawyers should be procured through the Supply Chain Management department. We wrote to the Interim Board to, among others, indicate to the Interim Board why this route will not be practical and was unwise. To date, we have not received a response from the Board on the matters.

A few days before the 15th December 2017 and in compliance with the resolution of the Interim Board, I handed 2 court documents to the Acting Chief Procurement Officer (Mr Peter Malele) and requested him to procure legal services and favour me with the identity of the lawyers on brief so that we can speak to them and discuss the matters. Mr Malele did not revert back to me on this. On 22 January 2018 concerned that default judgment may be taken against PRASA, I addressed an e-mail to Mr Malele asking him about the lawyers that have been secured in the matter. Mr Malele did not respond to this e-mail. This proved to me that the concern around the irrationality of the resolution of the Interim Board was valid. On 21 February 2018, I sent a reminder to Mr Malele and he neither acknowledged receipt nor replied.

On 2 January 2018, I learnt that in response of a court challenge of the 1 December resolution by an NGO, the then Company Secretary had signed a very confusing affidavit that contains assertions that the panel had not been suspended. I therefore instructed the persons who normally instruct lawyers to proceed making use of the pre-1 December panel. This has been the practice from 2 January 2018 to date and many matters have been initiated and defended by attorneys who are on the pre-1 December panel of attorneys. This matter is therefore one of many. However, this matter appears to enjoy a strange attention by the Chairperson of the Interim Board. This is dealt with below.

On 22 January 2018, the Office of the Chief Procurement Officer of National Treasury addressed a letter to Mr Zide asking for the process that was followed in the appointment of Maluleke Msimang Attorneys. Maluleke Msimang was appointed to represent PRASA in the litigation that challenged the 1 December 2017 resolution and they were not on the pre-1 December 2017 panel of lawyers of PRASA. National Treasury required a response by 26 January 2018. To date, PRASA has not responded to this letter.

The legal department has not been informed by either the Chairperson or the Company Secretary or the Acting Chief Procurement Officer that the SACAA panel is to be used by PRASA.

In any event, the concerns that appear from the text messages that are said to be from the Chairperson of Interim Board have to do with whether there is an irregularity in your appointment. This has nothing to do with Rule 7, it has to do with procurement issues and, to the extent that there may be an irregularity, there are guidelines that are issued by National Treasury on how irregularities are treated. This treatment of irregularities does not include vitiating the irregular appointments.

The Regulation that was invoked to appoint the SACAA panel is Regulation 16A of the Treasury Regulations. PRASA is listed in Schedule 3B of the Public Finance Management Act and in terms of:

- The definition of an "institution" in Regulation 16A1;
- Regulation 16A2; and

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Regulation 16A6.

Regulation 16A does not apply to PRASA. I gave this advise to the Acting Group CEO Mr Cromet Molepo on 20 December 2017 when he suggested something similar with respect to the Transnet Panel.

Therefore, if the court wishes to entertain an argument of an allegedly irregular appointment, then neither Bowmans nor attorneys on the SACAA panel may act for PRASA. I believe that the court will be misdirecting itself if it entertains this argument.

The Reasons for Opposing the Applications

In short the following are the reasons why we wish to challenge the applications:

These matters were settled on the instructions of the Chairperson of the Interim Board. As indicated above, the Chairperson of the Interim Board does not have the power to settle any matter.

After our consultations with the PRASA witnesses in the matters and having read the claims of the Siyaya Companies, we came to the conclusion that PRASA has a valid defence against these claims and this informed our defence of all these matters. We have not been provided with any information that contradicts this position. Our view is that these matters should be fully ventilated and the interests of PRASA preserved. There was an attempt to have these claims paid by the responsible executives before the launch of these applications. These executives did not

Below, I analyse the letters from the attorneys of Siyaya Companies to demonstrate that it was common cause between the parties to the settlement that the matters were settled "without admission of liability and purely for settlement purposes". This is a classic case of fruitless and wasteful expenditure that is accepted by both parties.

How I got to Learn of the Applications

I received a call on Monday afternoon (5 March 2018) from an attorney who knows me to be one of the legal advisors of PRASA. This attorney informed me that he was representing a company that was owed almost R3 million by Mr Makhensa Mabunda and he (Mr Mabunda) had indicated to his client that he was expecting money from payments to be made by PRASA. The attorney was advised that these payments would come from Court Orders to be obtained against PRASA. I immediately contacted Mr Mogashoa and enquired from him about these matters. Mr Mogashoa informed me that he was aware of the applications and had requested instructions on what to do with the applications and none were forthcoming. Mr Mogashoa had been instructed not to interact with PRASA's legal department on these matters and to deal with the Chairperson, apparently through the Company Secretary. According to the call that I received, it appears that somehow, Mr Mabunda knew that default judgment would be entered against PRASA.

The Strange Attention of the Chairperson on the Siyaya Matters

The last point I wish to address concerns a very strange attention that is paid by the Chairperson of the Interim Board to these matters.

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As a general rule, it is highly irregular for the Chairperson to involve herself in litigation against PRASA. It becomes somewhat curious when a person that occupies the position of Chairperson of the Board has an interest in one matter out of all the litigation that happens in an organisation. Another red flag becomes the exclusion of the legal department from the matter and prohibiting lawyers from engaging with the legal department on a matter. The legal department reports to the Board on all claims against PRASA. This claim is contained in previous PRASA Annual Financial Statements as a result of reports submitted to the Board by the legal department. The correspondence obtained in this matter have content that, at the very least, requires an investigation of the interest that the Chairperson has shown in this matter. Briefly the following appears from the correspondence:

- Letter of 18 December 2017 – This letter is from the attorneys of the Siyaya Companies and is addressed to PRASA's attorneys. This letter contains the following strange things:

"1.2 We take note of the fact that both settlement offers are made "without admission of liability and purely for settlement purposes"

I deal with this below when I demonstrate that, although on this occasion, the above is a protest by the lawyers representing Siyaya Companies, it appears to have been retained in the final settlement that is communicated to the arbitrator.

"2. ... You received instructions from your client, PRASA, to submit the following settlement offer or tender to our clients:...

3. Your client, PRASA, did not instruct you to submit an offer or tender to our clients in respect of the capital amounts only. Your client's specific and express instruction to you was to submit an offer or tender to our clients which provides for payment of interest a tempore morae at the rate of 9% per annum, calculated from the date/s upon which the respective summonses were served on your clients"

It is strange that it is the attorneys of the Siyaya Companies that tell PRASA's lawyers of the "specific and express instruction" that were given to PRASA's attorneys. This requires investigation.

- Letter of 17 January 2018 - This letter is from the attorneys of the Siyaya Companies and is addressed to Justice Brand, the arbitrator in the disputes between PRASA and the Siyaya Companies.

"1.2 The settlement offers, referred to in paragraph 1.1 supra were made without admission of liability and purely for settlement purposes".

This shows that, notwithstanding the protestations of the lawyers of Siyaya Companies, PRASA maintained this 'without admission of liability' provision. It also shows that the lawyers of Siyaya Companies accepted this provision.

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Simply put, the parties are not agreed on the liability of PRASA and, therefore, PRASA has a defence against the claims and this is accepted by Siyaya Companies.

"1.2 ... PRASA furthermore insisted that the existence, nature, terms and conditions of both settlement offers be regarded as strictly confidential and that same shall not be disclosed by either party in any manner or form, directly or indirectly, to any person or entity under any circumstances;

1.3 In light of the aforementioned, we are not at liberty to disclose the details of both settlement offers herein;

1.4 You can unconditionally accept that our clients accept that our clients accepted both the aforementioned settlement offers"

PRASA as an organ of state in a democratic country is enjoined to act in a manner that is fair and transparent. An insistence from the side of PRASA to conceal the existence, the nature, the terms and the conditions of an agreement and for an agreement not to be disclosed by either party in any manner or form, directly or indirectly to any person or entity under any circumstances is illegal and requires investigation.

· Letter of 8 March 2018 - This letter is from the lawyers of Siyaya Companies to PRASA's new attorneys, Bowman Gilfillan

"2. ... we requested Adv Nana Makubela SC to indicate whether or not the Board of PRASA has decided to oppose the four applications. Adv Nana Makubela SC's response was as follows: "Those attorneys have no authority. PRASA legal panel has been suspended since 1 December 2017. We are using SACAA panel. I know they couldn't have been appointed through that panel. Only those who had instructions already continue. I've just asked Mr Zide. He says decision was taken by Martha Ngoye and the current AGCEO".

I have transcribed the entire text that is alleged to have been received from the Chairperson to demonstrate that the only thing that is conspicuous by its absence is a response to a singular, crisp, pointed question, that is, "whether or not the Board of PRASA has decided to oppose the four applications". If this was a matter that was within the purview of the Board, then whether or not Bowman Gilfillan has authority to act would require the Board to decide. I have no information that suggests that this was a matter before the Board. There is also no response to the crisp question posed that has a direct bearing on whether or not the matter should be opposed. The impression created here is consistent with PRASA's insistence on secrecy of the settlement that is recorded in the above letter of 18 December 2017. The response deflects the attention of the reader from the central issue.

It seems to me that what will be before court tomorrow is whether to grant a default order against a state entity in the circumstances or to allow the state entity an opportunity to challenge a decision that was entered into surreptitiously and "without admission of liability" by the state entity. Please request our counsel to place this e-mail before court tomorrow so that the court may consider its contents before making an adverse order against a state entity.

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Kind regards,
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Group Legal Services

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for

[cid:8FA8FF17-AE10-481D-96D7-AE8F88745048@mrail.co.za]

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From: Clement Mkiva [mailto:clement.mkiva@bowmanslaw.com]
Sent: 08 March 2018 10:30 AM
To: Fani Dingiswayo
Cc: Jerry Kaapu; Ayanda Nkabinde; Bongumusa Sibiya
Subject: RE: Siyaya BD Consulting Engineers (Pty) Ltd and Siyaya Rail Solutions (Pty) Ltd [BG-JhbActive.FID1158405]

Dear Mr Dingiswayo,

As indicated in my e-mail last night, we sought to have a discussion with the opposing attorney this morning. We managed to get hold of him but then he said he would call us back in a few minutes as he was busy. A few minutes later we received the attached letter, which clearly indicates that he intends to proceed with seeking order in the applications on Friday, 9 March.

The content of the letter is concerning on many levels. Firstly, that the other side is liaising with the acting chairperson makes the running of this matter difficult. Secondly, there are various allegations made about our authority to act for PRASA in this matter and generally.

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He then called me after sending the letter. He essentially reiterated what is in the letter. He initially said that the basis upon which they are proceeding tomorrow, despite our opposition, is that we do not have authority to act on behalf of PRASA. I then asked him if we provided him with a power of attorney would he withdraw. He then backtracked by saying PRASA had agreed to the amounts claimed and therefore there is no basis for the opposition. I told him that that would be something to be determined by a judge, during opposed proceedings, after he/she had seen our opposition. He remained steadfast that they would proceed tomorrow.

I also queried why he is having discussions with the acting chairperson of PRASA when PRASA is represented by attorneys. He said that those were informal discussions and that it was somebody from his team (which includes liquidators, attorneys and counsel) that had exchanged the sms correspondence with the acting chairperson. He was unwilling to name the person who was exchanging the sms's with the acting chairperson. During the conversation, he also informed me that he contacted DM, who confirmed that they are still on record in the matter and as far as DM is aware their mandate has not been withdrawn by PRASA.

As DM is still on record from the time when the matters were still actions, we will also file notices of substitution to ensure that there is no confusion as to who is currently on record on behalf of PRASA.

I will give you a call to discuss this matter but it would be of great assistance if PRASA legal, the acting GCE and the acting chairperson could have a discussion urgently to ensure that you are all aligned regarding our mandate.

In the interim, we are seeking counsel for tomorrow as it seems quite clear that we will need to brief someone.

Kind regards,
Clement

Clement Mkiva
Partner

[cid:image003.jpg@01D3B6E0,A98D95A0]

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BOWMAN GILFILLAN

11 Alice Lane, Sandton, Johannesburg

P O Box 785812, Sandton, 2146, South Africa

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From: Bongumusa Sibiyi

Sent: 08 March 2018 10:07 AM

To: Fani Dingiswayo <fani.dingiswayo@prasa.com> <mailto:fani.dingiswayo@prasa.com>

Cc: Jerry Kaapu <jerry.kaapu@bowmanslaw.com> <mailto:jerry.kaapu@bowmanslaw.com>; Ayanda Nkabinde

<ayanda.nkabinde@bowmanslaw.com> <mailto:ayanda.nkabinde@bowmanslaw.com>; Clement Mkiva

<clement.mkiva@bowmanslaw.com> <mailto:clement.mkiva@bowmanslaw.com>

Subject: RE: Siyaya BD Consulting Engineers (Pty) Ltd and Siyaya Rail Solutions (Pty) Ltd [BG-JhbActive.FID1158405]

Dear Fani

As requested in your email below, we attach four Special Power of Attorney documents in respect of the four matters. Please ensure that each document is signed by the Group Executive: Legal, Risk and Compliance and properly witnessed because they each relate to different matters. Once they are signed, please send them back to us immediately so that they can be served on the opposing attorney.

Regards

TM
MP

114

Bongumusa Sibiyi
Senior Associate

[cid:image003.jpg@01D3B6E0.A9BD95A0]

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E bongumusa.sibiyi@bowmanslaw.com <mailto:bongumusa.sibiyi@bowmanslaw.com>

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www.bowmanslaw.com <<http://www.bowmanslaw.com>>
From: Fani Dingiswayo [mailto:fani.dingiswayo@prasa.com]
Sent: 08 March 2018 05:35 AM
To: Clement Mkiva <clement.mkiva@bowmanslaw.com> <mailto:clement.mkiva@bowmanslaw.com>>
Cc: Jerry Kaapu <jerry.kaapu@bowmanslaw.com> <mailto:jerry.kaapu@bowmanslaw.com>>; Bongumusa Sibiyi <bongumusa.sibiyi@bowmanslaw.com> <mailto:bongumusa.sibiyi@bowmanslaw.com>>; Ayanda Nkabinde <ayanda.nkabinde@bowmanslaw.com> <mailto:ayanda.nkabinde@bowmanslaw.com>>
Subject: Re: Siyaya BD Consulting Engineers (Pty) Ltd and Siyaya Rail Solutions (Pty) Ltd [BG-JhbActive.FID1158405]

Mr Mkiva,

Thanks for the update.

Please send me a power of attorney for signature by Martha Onica Ngoye, her title is Group Executive: Legal, Risk and Compliance.

I will request DM to favour me with their files on the matters. The 5th matter is still a subject of the arbitration. I suggest that you write a letter to the other side indicating that you will be representing PRASA in this arbitration and request a meeting with the other side and the arbitrator to formally place yourself on record and agree a new program on the arbitration in respect of that matter.

Kind regards,

Fani
Sent from my iPhone

On 07 Mar 2018, at 20:16, Clement Mkiva <clement.mkiva@bowmanslaw.com> <mailto:clement.mkiva@bowmanslaw.com>> wrote:
Dear Fani,

We hope that this e-mail finds you well.

We have served and filed notices to oppose in all the 4 matters that you referred to us. We have also reviewed the documents that you sent to us. There are certain topics that we would like to address you on.

Power of Attorney

It seems that upon receiving our notices of opposition, the opposing attorneys prepared notices in terms of Rule 7(1) disputing our authority to act on behalf of PRASA and requesting that we produce a power of attorney from PRASA or its board. We note that in terms of the Delegation of Authority (DoA) that we received yesterday, it is the Head of Legal that is responsible for inter alia opposing such matters.

TM
MP

Please let us know if PRASA has a standard template that they use for such powers of attorney or whether you would like us to prepare one for signature by the Head of Legal. In addition, please can you check that the DoA that was sent to us is the one that is currently applicable, as we note that we were sent the 2016/17 version which states that it must be reviewed annually.

Proceedings on Friday, 9 March

As you know, in terms of Rule 7, if a Rule 7(1) notice is served on an attorney that attorney is not permitted to act in the matter until such time as he satisfied the court that he is authorised to act. It may be the opposing attorney's stratagem to somehow use his disputing our authority to argue on Friday, 9 March, that we can't represent PRASA at court. Although Rule 7(1) also provides that the court may postpone a matter to allow the attorney to procure proof of his authority to act, we would like to have the power of attorney signed as soon as possible, before Friday, 9 March.

We called the opposing attorney's offices earlier today to ascertain if he still intended to proceed with the unopposed application on Friday given that the matter is now opposed. We did not get hold of him but we will try again tomorrow morning. If he intends to proceed on Friday we will brief counsel to ensure that they do not take an adverse order against PRASA. We will also contact you to ensure that we have the DoA in place by Friday.

Documents

Thank you for the documents that you just sent, we will review them. In addition to the documents that you have sent us, it is critical that we have access to Diale Mogashoa Attorneys' (DM) office file/s for these matters, including the correspondence and the pleadings in the arbitration. The merits of the matters will feature in PRASA's opposition of these applications and in the counter-applications to set aside the arbitration awards. Our messenger looked for the court files at court but could not find them, we were hoping to at least uplift the court documents from the time that the matters were still being conducted as action proceedings.

Please let us know as soon as the DM's office files are available for collection and we will arrange for our messengers to collect them.

From the documents provided to us, it appears that it is only 4 matters that the other side has instituted applications. We do note that in some of the memos there is a reference to a matter under case number 74281/15, which does not form part of the extant matters that we have been briefed on. If this is a matter that we should also be dealing with in the same manner as the other ones then please do let us know. We do note that in the opposing attorney's letter to the arbitrator dated 17 January 2018, he indicated that that matter remained outstanding and not settled. Please let us know the status of that matter. Our messenger could not find the court file for this matter.

Counsel

Given the sum of the amounts and issues involved, we propose appointing senior and junior counsel for these matters. We will make a recommendation to you after we have assessed the availability of some of the candidates we have in mind. Given the timelines, availability will be a key factor in the counsel that we recommend.

By way of introduction - I have copied my colleagues, Bongumusa and Ayanda, who are a senior associate and a candidate attorney, respectively, within our litigation team and who will be working with us in this matter.

If you would like to discuss anything in the interim then please let us know.

Kind regards,
Clement

Clement Mkiva
Partner

TM
MP

<image001.jpg>

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High Court judge accused of "impeachable conduct"

25 January 2019 By Kim Reynolds (/author/405/)

#UniteBehind has lodged a complaint against Judge Tintswalo Annah Nana Makhubele with the JSC



(/media/uploads/images/Third%20Party/Makhubele-JudgesMatter.jpg)

Judge Tintswalo Annah Nana Makhubele has been accused of violating the Judicial Code of Conduct by #UniteBehind. Photo from Judges Matter video (<http://www.judgesmatter.co.za/interviews/october-2017-interviews/jsc-candidates/advocate-nana-makhubele-scf>)

Commuter activist group #UniteBehind has lodged a complaint against sitting Gauteng High Court Tintswalo Annah Nana Makhubele. The group accuses her of breaching the Code of Judicial Conduct's (<http://www.justice.gov.za/legislation/notices/2012/20121018-gg35802-nor865-judicial-conduct.pdf>) "separation of power" clauses, by having been chairperson of the interim board of the Passenger Rail Association of South Africa (PRASA) while also serving as a Gauteng High Court judge.

The complaint filed with the Judicial Conduct Committee of the Judicial Service Commission (JSC) is signed by #UniteBehind secretariat member Zukiswa Fokazi. It is divided into two parts: one is criticism of her occupying the two positions at the same time and the second is criticism of her conduct while at PRASA, which GroundUp reported (<https://www.groundup.org.za/article/court-puts-breaks-r56-million-payment-siyaya/>) last year.

According to the complaint, Makhubele was nominated by the JSC for

<https://www.groundup.org.za/article/gauteng-high-court-judge-accused-impeachable-conduct/>

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appointment as a judge of the Gauteng High Court on 4 October 2017. On 17 October she was appointed PRASA chairperson. On 2 November, President Zuma appointed Makhubele as a judge, with a start date of 1 January 2018.

After this announcement, #UniteBehind raised concerns with the JSC about the conflict of interest the two positions would pose and questioned the rationality of appointing her to the chairperson position following her nomination for the high court.

Although Makhubele asked for a high court start date of 1 April — as revealed in emails obtained and cited by #UniteBehind in its affidavit — her position on the high court was effective from 1 January 2018, according to the activist group. Her name officially appeared on the court roll on 5 February 2018.

Makhubele continued in her position at PRASA until 16 March 2018.

During her time as chairperson, Makhubele was also accused of disrupting litigation procedures (<https://www.groundup.org.za/article/judge-criticises-judge-prasa-case/>) inside PRASA. In November 2018, the Pretoria High Court found that Makhubele had instructed PRASA's lawyers not to defend the company against legal action that resulted in R56 million being seized from PRASA (the money eventually had to be returned to PRASA). In its scathing judgment the court wrote that Makhubele "ought not to undertake any judicial duties until she clears her name of the allegations against her".

And in February 2018 the Sunday Times accused (<https://www.pressreader.com/south-africa/sunday-times/20180204/281479276860823>) Makhubele of pushing for a R500 million investment into VBS Bank "without any agreement being signed".

#UniteBehind is calling for the impeachment of Makhubele on the grounds of violating the "independence of the judiciary", as well as for her conduct while at PRASA.

The JSC acknowledged receipt of the complaint on 21 January 2019 and forwarded it to the Judicial Conduct Committee.

Nathi Mncube, spokesperson for the Judiciary, told GroundUp that Makhubele cannot comment on the matter until she has been invited to do so by the Judicial Conduct Committee when it processes the complaint.

Further reading:

- Analysis by judicial watchdog Judges Matter on judges, boards and conflicts of interest (<https://www.judgesmatter.co.za/opinions/seeking-clarity-on-judicial-conduct/>)
- #UniteBehind's complaint to the JSC (/media/uploads/documents/PART_A_UniteBehind_complaint.pdf)

CORRECTION: Some of the dates in the original article were wrong and have been corrected.

More about PRASALeaks (/topic/prasaleaks/)

- Former PRASA Rail CEO back in the dock for fraud (</article/former-prasa-ceo-back-dock-fraud-money-laundering-and-theft/>) 28 February 2019
- PRASA says rail enforcement units are succeeding (</article/prasa-says-rail-enforcement-units-are-succeeding/>) 14 February 2019

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