

I, the undersigned,

ROBERT PAUL HOFFMAN

do hereby make oath and say:

1. I am a senior advocate of the High Court of South Africa and a director of the Institute for Accountability in Southern Africa which campaigns as Accountability Now from its offices in House Vincent, Brodie Road, Wynberg, Cape Town. The facts deposed to herein are true and correct and, save where the context indicates otherwise, fall within my personal knowledge.
2. Accountability Now is a non-profit organisation which seeks to exact accountability and to promote responsiveness to the needs of ordinary people. A full record of its various activities is located on its website www.accountabilitynow.org.za.
3. On 14 May 2015 the President of the Republic of South Africa and the Minister of Justice and Correctional Services concluded a written agreement with the then National Director of Public Prosecutions ('the NDPP'), Mr Mxolisi Nxasana ('Nxasana'), in terms of which the NDPP agreed to resign his post with effect from 1 June 2015 and the President and the Minister agreed that he would, in return, receive payment of the sum of R17 357 233,00 *'in full and final settlement of all claims of whatsoever nature arising out of his employment ...'*.

RP

MD

4. A copy of the agreement signed by the NDPP and an unidentified official on behalf of the President and Minister is attached to this affidavit, marked 'A'.
5. It had previously been contended in court papers filed by Nxasana in the High Court of the Gauteng Division, Pretoria, under case no. 59/60/14, that he was a fit and proper person for office and that no basis presented itself for his suspension from conducting his duties as the NDPP.
6. It was subsequently expressly recorded in the aforesaid settlement agreement *'that the President recognises that the NDPP is professional competent, sufficiently experienced and conscientious and has the requisite integrity to hold a senior public position both in the public and private sector'*.
7. As the settlement agreement demonstrates, it was acknowledged by the President and the Minister that Nxasana was indeed a fit and proper person to hold office. This is further demonstrated by the fact that the settlement received by Nxasana, in the sum of R17 357 233,00, represents the remuneration which he would have received had he continued in office and completed his term.
8. It follows from the foregoing that there was no lawful basis upon which the NDPP might have been required to vacate his office and resign.
9. This conduct should be read against a background where the NDPP, in the course of his duties as such, had issued various instructions regarding

PPA
MD

investigations and prosecutions which had the potential to cause discomfort to the President or persons closely associated with him.

10. It has been reported in the media that the NDPP had reacted positively to a request late last year from the then head of the Hawks unit, Mr Anwar Dramat, and the independent police investigating director, Mr Robert McBride, to review decisions taken by the KwaZulu-Natal Director of Prosecutions to withdraw charges against Mr Thoshan Panday, a business person linked to the President's son, Edward, and a relative, Debo Mzobe. It was further reported that pursuant to this request Nxasana had appointed Adv Gerrie Nel to reconsider the Panday investigation.
11. It has been further suggested in the media that Nxasana was out of favour because he had permitted the reinstatement of fraud and corruption charges against the suspended police crime intelligence head, Mr Richard Mdluli.
12. A further report stated that it is rumoured that Nxasana had indicated that he might be receptive to the reinstatement of corruption charges against the President should the pending review application by the Democratic Alliance succeed.
13. It has been formally recorded, as set out above, that Nxasana is regarded by the President and the Minister as a fit and proper person to hold office as the NDPP. The settlement agreement reflects as much. Accordingly, there was

RPH
MAD

no lawful basis for his resignation against the payment of the sum of R17 357 233,00.

14. The only inference to be drawn is that the President and the Minister wished to secure Nxasana's resignation for reasons that he had issued instructions regarding investigations and prosecutions, or anticipated doing so, which would cause discomfort or embarrassment to the President or persons close to him. As such, the settlement agreement with Nxasana was concluded with a corrupt intention and s 9 of the Prevention and Combating of Corrupt Activities Act 12 of 2004 has been contravened by the President and the Minister.
15. Accountability Now addressed a letter to the Secretary General of the African National Congress on 23 June 2015 complaining of the criminal activities of the President during May and June 2015. A copy of the letter is attached to this affidavit marked 'B'. It is also on the website home page.
16. It is not necessary, pursuant to this complaint, to investigate the crimes mentioned in the letter attached, marked 'B', other than the contravention of s 9 aforesaid, as the Judge President of the North Gauteng High Court has already given directions in respect of other matters mentioned in the said letter.
17. Mr Mantashe has not replied either timeously or at all to the letter attached marked 'B' and the time limit set in it has expired. He has however let it be

RFA
MD

known in the press that Accountability Now should proceed as it is advised to proceed.

18. This affidavit founds a request that a charge of contravening s 9 as aforesaid be investigated and it is also the basis for a request that the Asset Forfeiture Unit be required to seize the payment to the former NDPP in terms of its powers.
19. A draft charge sheet is annexed hereto, marked 'C', to facilitate the expeditious investigation of the complaint so that the necessary docket can be placed before the Director of Public Prosecutions for the Western Cape without delay. It is apparent from the draft that an alternative count of defeating the ends of justice has been included as an alternative to the main count of contravening the said section 9.
20. The evidence that still requires investigation is the identity and authority of the person who signed the agreement attached marked 'A' in Cape Town on behalf of the President and the Minister. It should also be drawn to the attention of the investigating officer that there has never been any reasonable published explanation that properly accounts for the conclusion of the agreement, despite the request for an explanation made in the letter annexed hereto, marked 'B'.

RAF

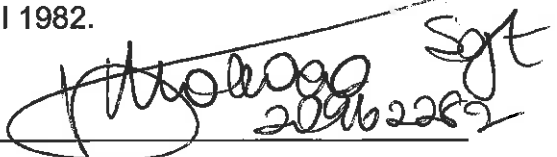
ms

21. I request that the matter be investigated without delay.



ROBERT PAUL HOFFMAN

I certify that the above signature is the true signature of the deponent who has acknowledged to me that he knows and understands the contents of this affidavit, which affidavit was signed and sworn to at Ocean View on this 20 day of July 2015 in accordance with the provisions of Regulation R128 dated 21 July 1972, as amended by Regulation R1648 dated 19 August 1977, R1428 dated 11 July 1980 and GNR774 of 23 April 1982.



COMMISSIONER OF OATHS
Momoo

SUID-AFRIKAANSE POLISIEDIENS
DIST. 3
GEMEENSKAPDIENSSENTRUM
2015 -07- 2 0
COMMUNITY SERVICE CENTRE
OCEAN VIEW, K.P./C.P.
SOUTH AFRICAN POLICE SERVICE

Annexure "MN01"

"A"
TH
om

IN THE NORTH GAUTENG HIGH COURT, PRETORIA

CASE NO 59160/14

In the matter between:

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS Applicant

And

THE PRESIDENT OF REPUBLIC OF SOUTH AFRICA First Respondent

MINISTER OF JUSTICE AND CORRECTIONAL SERVICES Second Respondent

SETTLEMENT AGREEMENT

WHEREAS

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

TH

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

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


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

IT IS AGREED THAT

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

A handwritten signature in black ink, appearing to be 'T. K. ...' with a stylized flourish.

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

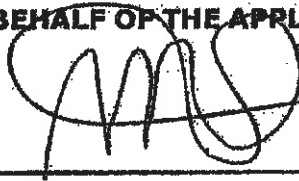
TM


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

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

SIGNED AT ULATHAMA GA ON 09 MAY 2015

FOR AND ON BEHALF OF THE APPLICANT (NDPP)



SIGNED AT CABE TOWN ON 14 MAY 2015

FOR AND ON BEHALF OF THE FIRST AND SECOND RESPONDENTS



trusted cabinet ministers, for the president of the Republic of the Sudan, Omar Al-Bashir, in respect of whom two ICC warrants of arrest have been issued, to leave the country. This exit was exercised in breach of a court order which interdicted Al-Bashir from doing so and which also required the SA government to ensure that he did not leave pending the determination of a court hearing.

5. President of the AU, Robert Mugabe, has publicly let it be known that President Zuma gave an undertaking to Al-Bashir that he would not be arrested in SA. The rule of law precludes Mr Zuma from giving any such undertaking.
6. We have taken the advice of counsel in regard to these two incidents and now write to you to request that you urgently convene a meeting of the NEC of the ANC to consider the recall of President Zuma.
7. You will remember that a previous president was recalled by the ANC in September 2008, so there is precedent for doing so.
8. The reason for our request that the NEC resort to recalling President Zuma is that he is involved in criminal activity totally incompatible with his oath of office and his constitutional duties and obligations.
9. The negotiation of the agreement with Mr M Nxasana is a clear contravention of section 9 of PRECCA and is accordingly a criminal offence.
10. The spiriting away of Omar Al-Bashir in contempt of a High Court Order amounts to defeating the ends of justice, also a criminal offence.
11. It is intolerable to our constitutional order that a sitting president should, in the space of a few days, make himself guilty of the corrupt activity involved in his agreement with Mr Nxasana and then defeat the ends of justice by acting in complete disregard of an order of court by which he is bound in relation to the secretive departure of Al-Bashir from the country.
12. If the president is not recalled by the ANC on or before 10 July 2015 and otherwise dealt with appropriately by the ANC as a law-abiding political organisation, we will be left with no alternative but to lay criminal charges against him with the SAPS ourselves.
13. We shall thereupon also call upon the Asset Forfeiture Unit to use its powers to search for and to seize the funds paid to Mr Nxasana as the proceeds of crime and to hold them until there is finality in the criminal proceedings.
14. Should the NPA decline to prosecute the president we will obtain a certificate of *nolle prosequi* from the relevant director of public prosecutions and mount a private prosecution against the president in which he will be charged with defeating the ends of justice and with contravening the provisions of section 9 of PRECCA.
15. In the event of the AFU not co-operating with our request for the seizure of the proceeds of the pay-out to Mr Nxasana, we will seek a civil interdict to freeze the proceeds pending the final determination of the private prosecution.
16. In the private prosecution we will ask at sentence stage that the payment of R17,3 million be declared forfeit to the State and that the accused be declared liable for the legal costs incurred in the private prosecution. Mr Nxasana is an obvious co-accused in respect of the section 9 charge.
17. It is intolerable to all democrats, both in and outside the ANC, who respect the supremacy of the Constitution and the rule of law, that impunity should prevail after the resignation of the NDPP whose independence is guaranteed in C 179 and after so

Patron: Archbishop Emeritus Desmond Tutu

Trustees: S Christie; B King; G Williams; T Dunne

Directors: P. Hoffman, SC.; Adv G Lloyd-Roberts; Adv C Shone, B Malherbe

flagrant a violation of C 165 by the president and those who assisted him in allowing Al-Bashir to leave the country.

18. As the party of liberation and the co-author of the new multi-party constitutional dispensation under the rule of law, the ANC is, we suggest, in honour bound to consider our request favourably and to take steps to recall President Zuma as soon as possible, and in any event before 10 July 2015.
19. Please acknowledge safe receipt of this communication and let us know if you require any further particularity in order to enable the NEC to deal with the request that President Zuma be recalled forthwith.
20. If the ANC does not regard the President's agreement with Mr Nxasana as criminal and does not agree that the ends of justice were defeated when Al-Bashir was allowed to leave South Africa, we would be pleased to know why. In particular we would like to know in what respects the report in the Mail and Guardian upon which we rely above is inaccurate. We record that no accountable explanation for the resignation of Mr Nxasana has ever been given.

Yours sincerely



Paul Hoffman SC
Director, Accountability Now
www.accountabilitynow.org.za

" C "

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



CASE NO.



In the matter between:

THE STATE

and

JACOB GEDLEYIHLEKISA ZUMA

Accused 1

TSHILOLO MICHAEL MASUTHA

Accused 2

CHARGE SHEET

PREAMBLE

WHEREAS AT ALL TIMES MATERIAL HERETO

1. On 1 October 2013 Mxolisi Nxasana ('Nxasana') had been appointed by accused 1 as the National Director of Public Prosecutions ('the NDPP') of the Republic of South Africa in terms of s 84(e) of the Constitution of the Republic of South Africa (Act 108 of 1996).

2. The NDPP, during the course of his duties, had issued instructions regarding investigations and prosecutions which had the potential to cause embarrassment to accused 1 or persons close to him.
3. By means of a letter dated 4 July 2014 accused 1 had informed the NDPP that he had taken a decision to institute an enquiry, in terms of s 12(6)(a)(iv) of the National Prosecuting Authority Act 32 of 1998 ('the NPA Act'), to determine his fitness to hold office.
4. On 30 July 2014 the NDPP received a notice from accused 1 informing him that he was considering suspending him on full pay pending finalisation of the enquiry into whether he was fit and proper to hold the office of NDPP.
5. On 11 August 2014 the NDPP brought an urgent application before the High Court, Gauteng Local Division, Pretoria, under case no. 59/60/14, in terms of which it was sought to interdict accused 1 from suspending the NDPP prior to him providing certain particularity regarding the allegations against him.
6. On 14 May 2015 accused 1 and 2 concluded a written agreement with the NDPP in terms of which the NDPP agreed to resign his post with effect from 1 June 2015 and the accused agreed that he would, in return, be paid the sum of R17 357 233,00.
7. It was recorded in the written settlement agreement that the NDPP was a fit and proper person to hold office.

8. No lawful basis presented itself for the sum of R17 357 233,00 to be paid to Mr Nxasana in order for him to resign his post and vacate his office.

NOW THEREFORE the accused are guilty of contravening s 9(1) of the Prevention and Combating of Corrupt Activities Act 12 of 2004, alternatively, defeating the ends of justice.

MAIN COUNT – CONTRAVENING s 9(1) OF THE PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT 12 OF 2004

That the accused are guilty of contravening s 9(1) of the Prevention and Combating of Corrupt Activities Act 12 of 2004 in that on or about 14 May 2015, at or near Cape Town in the division of the Cape, the accused wrongfully, unlawfully and with corrupt intention offered to give a gratification, to wit payment of the sum of R17 357 233,00, to a member of the prosecuting authority, Mxolisi Nxasana, for the benefit of that person as an improper inducement to him to relinquish his position as the NDPP when there was no lawful basis which required him to do so and which violated the NDPP's legal duty to remain in the office to which he had been appointed to exercise independence as the chief executive officer of the National Prosecuting Authority.

ALTERNATIVE COUNT – DEFEATING THE ENDS OF JUSTICE

That the accused are guilty of defeating or attempting to defeat or obstruct the course of justice in that on or about 14 May 2015 and at Cape Town in the division

of the Cape, the accused did unlawfully and with intent to defeat or obstruct the course of justice enter into an agreement with Mxolisi Nxasana, who held the office of NDPP at the time, for him to agree to vacate his office in return for payment of the sum of R17 357 233,00 in circumstances where there was no lawful basis for him to vacate his office and in circumstances where the said Nxasana had issued instructions regarding investigations and prosecutions that were likely to cause embarrassment to accused 1 or persons close to him.