

**CRIMINAL PROCEEDINGS**

In the matter between

**THE STATE**

And

**HUMBULANI INNOCENT KHUBA**

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**DEFEATING THE ENDS OF JUSTICE AND FRAUD: PRETORIA CENTRAL CAS 2454/05/2015**

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1. On Wednesday of 24/02/2016 at 18h45 I was at home when three males arrived and introduced themselves as members of the DPCI based in Pretoria. They introduced themselves as Brigadier N Xaba, Lt Col H W Maluleke and Captain Sewele. Brigadier N Xaba who was the main speaker of the group; informed me that the purpose of their visit was to obtain a warning statement in connection with a case of defeating the ends of justice and fraud opened against me. According to him, these charges arise from the two recommendation reports made in rendition case which I understood to be Diepsloot Cas 390/07/2012. I was provided with the case number for defeating the ends of justice and fraud case which is Pretoria Central Cas 2454/05/2015.

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- 2 I remembered that it was the same case which Brigadier Rammela and Col Mahlangu of the DPCI showed me on 3 October 2015 when they requested me to make a witness statement implicating Mr McBride and Mr Sesoko in order to be reinstated after my dismissal without a hearing on the same matter. The same case had a charge of perjury and was cited in my founding affidavit to the Labour Court (Case No J2031/15), page 18 and paragraph 71. This is confirmed by telephonic call made to me by Col Mahlangu which was recorded and transcribed in which he encouraged me to make a statement against above mentioned individuals in order to be reinstated.
- 3 Brigadier Xaba gave me two pages document with 25 questions which he requested that i should respond to in my warning statement. The last question (**question 25**) requires me to give additional information in justification of my action. I hereby start with question 25 which provide with an opportunity to give background and challenges encountered during the investigation of Diepsloot Cas 390/07/2012.

4. Background

- 4.1 On 23 October 2012, Sesoko, the Acting Head of Investigations, handed a letter of appointment and a docket to me to investigate the illegal renditions of five Zimbabwean nationals. The letter was from the acting Executive Director Ms K Mbeki. However the investigation of Rendition case against the DPCI was requested by Minister Mthethwa in 2011 and shortly after the request, the Police Secretary, Ms Jenny Iris-Qhobosheane gave instruction to the then Executive Director Mr Beukman (in a meeting which I also attended) to hold-off the investigation until further communication from the Minister. At that time I was informed that I would be a lead investigator hence the request that I be part of the meeting between Ms Qhobosheane and the former Executive Director Mr Beukman.

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4.2 Mr Sesoko informed me that the reason for my appointment was that General Sibiya complained about the conduct of the North West Task team which was initially assembled to investigate cases of alleged assault against him, including Diepsloot Cas 390/07/2012. At that time I was dealing with high profile cases in the department which included Cator Manor "DEATH SQUARD" in Durban.

4.3 I was instructed to assemble my own team to assist me in the investigation, which I did. The team was comprised of the following individuals, Mr Kenneth Ratshitali, Mr L Maphetho, Mr N Mulaudzi and Mr. T Mashaphu who are all investigators from Limpopo IPID office. The docket contained 13 statements from members of the Crime Intelligence Department, friends and relatives of those deported to Zimbabwe. It was clear from the commissioned statements that the investigation was conducted by Col Maukangwe and Captain Koza of Crime Intelligence (CIG).

5. **Challenges in the investigation of Diepsloot Cas 390/12/2012**

5.1 When I began with my investigations, Ms. Koekie Mbeki , the then Acting Executive Director of IPID, instructed me to collaborate with a member of Crime Intelligence, Colonel Moukangwe ("*Moukangwe*") in the investigation. Ms Mbeki also instructed me to keep Moukangwe involvement in the matter secret.

5.2 I found Ms Mbeki's instruction not in keeping with the Departmental practices and processes. The instruction was unusual and problematic because members of the Crime Intelligence were themselves involved in the arrest of the Zimbabwean Nationals. Nonetheless I complied with Ms Mbeki's instructions.

5.3 Upon meeting with Moukangwe, he told me to work with two members from the National Prosecuting Authority ("*NPA*"), namely, Adv. Anthony Mosing ("*Mosing*") and Billy Moeletsi ("*Moeletsi*"). He advised that the pair had been guiding the investigation since its inception.

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- 5.4 Shortly after I began my investigation; I briefed Mbeki on the case and informed her that I would consult with Mr Sesoko in the course of investigation. This was common practice. As the National Head of Investigations at IPID, Sesoko was consulted and briefed on all national investigations. To my surprise Ms Mbeki categorically instructed me not to work with or discuss the case with Mr Sesoko. She stated that the person I could collaborate with was Mr Moukangwe of CIG. This was the first and the last time I received instruction to exclude the National Head of investigation on national project investigation in my almost 16 years of service with the department.
- 5.5 I then complied with the instruction of the Acting Executive Director and informed Mr Sesoko about it. I investigated the case, sometimes accompanied by Mr Moukangwe. However every time I gathered crucial evidence in his absence, I would telephonically informed him of the type of evidence obtained. He would always request me to fax or email him a copy. I enquired from the acting Executive Director whether I should share the copies of the docket with him. She informed me that he is a member of the investigation team and has a right to the content of the docket. She reiterated that the only thing required of me was to keep his involvement secret.
- 5.6 My worst fear about the arrangement was confirmed when Sunday Times started to publish certain evidence as they appears in the docket. Mr Moukangwe always wanted me to send copies of the documentary evidence and witness statements to an email which is [june16@gmail.com](mailto:june16@gmail.com) even though I had his private email which is [botsotsomoukangwe@gmail.com](mailto:botsotsomoukangwe@gmail.com). He preferred that I email from Southern Sun hotel on Church Street in Pretoria rather than using the Department's email. The Sunday Times of 13 October 2013 had just published the details of Madilonga's statement and how it implicated Dramat. I was very concerned about the safety of Madilonga whom I regarded as key witness. I phoned Adv. Mosing the same Sunday and he also expressed his disappointment. I then requested Ms Mbeki in a letter

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dated 31/10/2013 that everybody involved in the investigation especially my team be polygraphed. The acting Executive Director told me that she would look into my request but nothing was done. Adv. Mosing expressed his interest in undergoing polygraph test with the rest of the investigative team. However, Col Moukangwe asked why I was worried about leaking of information whereas the Minister and my boss were not. He said they would never ask me about it, and really did not.

5.7 On the other hand, General Nhlemeza, the then Deputy Provincial Commissioner in Limpopo requested a meeting with me few months after obtaining Lt Col Madilonga's statement in 2013, I met with General Nhlemeza. We met at Wimpy, Cycad Centre in Polokwane. He said he had valuable information that could assist me in the investigation of rendition case. General Nhlemeza and I were close from working relation between IPID and SAPS in the province.

5.8 The General was with an officer from Eastern Cape claiming that when he attended a course in Cape-Town, Lt Col Maluleke confessed to him that he arrested Moyo in Zimbabwe by posing as a South African doctor who wanted to treat Moyo in South Africa. I interviewed him in the presence of General Nhlemeza and took notes by writing on my phone notepad. Advocate Mosing also took interest in the case regarding Moyo when I informed him of what General Nhlemeza has brought through Eastern Cape officer and also what was in Maluleke's laptop. He did his own investigation and emailed me a statement which was about the arrest of Moyo, which he indicated that he got it from the person who prosecuted Moyo. He also instructed me to obtain Moyo's statement from prison and check his hospital record at Musina hospital of which I did. However I could not confirm the allegation that Lt Col Maluleke posed as a doctor or he was in Zimbabwe when Moyo was arrested. Moyo story was not part of the March 2014 report but part of January 2014 report. This is also part of why I am being charged for not including it in March 2014 report despite its irrelevance to the case.

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- 5.9 During the meeting, General Nhlemeza informed me that he had transferred Lt Col Madilonga to Burgersfort and if I need him for anything I should contact him. I informed him that I am worried about Col Madilonga safety since he is a key witness. He assured me that Madilonga is his man and he is taking care of him. He then requested my wife's number as he suspected that my own number might have been intercepted. As a result, I started to have concerns about the credibility of Madilonga's statement. The main red flag was a recodal in Madilonga's second statement, which suggests that he had been put under pressure to give manufactured evidence in November 2011. I then took his statement for analysis by expert as confirmed by email dated 04/10/2013. The expert confirmed my suspicion.
- 5.10 In September 2013, General Nhlemeza called me using my wife's number and requested me to come to his house. When I arrived he asked me about the progress in the case. I informed him that there are still outstanding statements including the warnings statements of the suspects which I would be able to obtain before the end of the month. He told me that he regret to inform me that his political principals want him to head the hawks and not IPID. I said to him that I am disappointed because I was expecting him to join us as he earlier said. He promises to keep contact and assist in any investigation that I would be tasked to do.
- 5.11 Again in October 2013, my wife called me while I was watching TV and informed me that "Mhlekazi" (referring to General Nhlemeza) was at the gate. She then handed me her phone and he requested me to order the security to open for him as he had valuable information to tell me. When he was inside, he said that he has urgent information to tell. He said on Friday he was at the Airport and he met with Mdluli who requested him to tell me that I must not be afraid when dealing with rendition case because there were people who were looking after me. He said he was asked by Mdluli to deploy people for my safety and that if I see any suspicious car behind me I should call him. I was surprised because I never met or spoke with Mdluli. During my entire investigation with Col Moukangwe, he never mentioned

Mdluli's name. However, I did not enquire anything on what he said but told General Nhlemeza that if I see anything suspicious, I would call him. General Nhlemeza asked, when would I submit my report to NPA. I informed him that even though I had requested warning statement from Dramat, I was battling to get hold of General Lebeya who signed one of the success reports. He then called someone immediately who gave him General Lebeya's number. He said my report was the one holding everything regarding his move to the Hawks. I then called General Lebeya in his presence and put him on an open speaker. I requested him to provide me with a statement regarding rendition and he said I should come to his office in Pretoria. After refreshments, General Nhlemeza left. What General Nhlemeza said got me worried. I spoke to my wife saying that by accepting the request to investigate rendition case, I do not know what I got myself into.

- 5.12 The article of 13 October 2013 coupled with what General Nhlemeza said gave me a final thought to request the acting Executive Director to remove me from rendition investigation. I did not tell her about what General Nhlemeza said but I only told her that I was not happy with the leaking of information. She said I had to continue with the investigation of the case because there was no one who could do it and that the Minister would not be happy with that.
- 5.13 I only informed one of IPID employees whom I trusted about what happened when General Nhlemeza visited me. When I sent a report to Adv. Mosing, General Nhlemeza stopped asking me about the report. The last time I met with General Nhlemeza was on 06/12/2014 at Wimpy Cycad Centre. He had just called me to tell me the good news. I arrived at approximately 15h00 with my wife but she remained in the car. I found him seated inside. He said that his time to move to the Hawks had arrived and that there was going to be a hit on Dramat. He encouraged me to watch the news on TV in the next coming weeks. What he told me happened exactly as he said. His last communication with my wife was 31/01/2015 where he sent her a message at 16h06.

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- 5.14 During January 2014, I met with Mosing and delivered the investigation report to him. The report did not have the outstanding evidence with regard to the warning statement of Sibiya and the cell phone records providing the street location of the relevant individuals making and/or receiving calls. Adv. Mosing, Moeletsi and Moukangwe had previously met on several occasions with me and they gave their input on the analysis of evidence contained in the report. I was adamant that the report had to be approved by the IPID Head as it was a national investigation. At that time the acting Executive Director was no longer coming to the office. When I enquired from Tshiamo Mahibila, the Secretary to the Acting Executive Director, she said that Ms Mbeki only signs financial documents of the IPID and not investigation related matters. Advocate Mosing told me that nevertheless I should sign the report and send it to him. There are numerous emails exchanged between me and Adv. Mosing on this issue including the one where I requested him to give me time.
- 5.15 I must state that the cell phone data analysis report that was in the docket did not give an indication of the location of the relevant persons making or receiving calls. However, Mosing was impatient and pressured me into submitting a report on the investigation even though he earlier requested me to instruct the Expert to cover such points.
- 5.16 February 2014, Sibiya responded to the questions previously sent to him. However few days before receiving Sibiya's statement, I also received the cell phone data analysis report from the expert in the manner and form required by Mosing.
- 5.17 On 27 February 2015, I submitted Sibiya's response to Mosing by email. On 28 February 2015, Mosing responded via email as follows, *"Dear Mr Khuba, in light of the fact that the matter has been referred to the DPP of South Gauteng for decision, you are requested to file these evidence in the docket which is presently with the DPP SG and in future forward any additional evidence or other matter directly with him. Kind Regards."*

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5.18 On 3 March 2015, Robert McBride ("*McBride*") commenced employment as the Executive Head of IPID.

6. The Hawks members have been in my house four times now regarding the same case. I shiver to the core of my spine with fear because I just realised that I investigated a case which was so politically charged to an extent that certain outcome were needed. I was fired without a hearing and even that seems not to be enough. These charges of defeating the ends of justice and fraud are as baffling as my departmental case itself. It is my first time to hear that a recommendation which is just the view of the investigator about the case can give birth to a criminal charge.

6.1 In 2013 I was given appointment letter to investigate Boksburg CAS 322/04/2011, 21/04/2011 and 486/03/2011 involving General Sibiyi. The case was already investigated by Mr De Jager, an assistant Director in Gauteng office. He had made recommendation report in which he recommended that General Sibiyi should not be charged criminally. I review the already signed report and gathered additional evidence. On 13 November 2013 I made a report in which I recommended that General Sibiyi be criminally charged. However, the DPP Gauteng informed me that despite my recommendation they are still of the view that there is no enough evidence to sustain a prima facie case. The question is where did they get the view that there is no evidence because my report clearly recommended criminal charges against him? It is clear that NPA is not bound by the view of the investigator on any case but guided by the evidence in the docket. They decided not to prosecute him in this case even though I recommended prosecution.

6.2 Mr Beukman tasked me to investigate a case of *Mzilikazi wa Afrika* in August 2011 wherein he was arrested in Gauteng by the Hawks and transported to Nelspruit for detention. The case was reported by a Member of Parliament and already investigated by Poopedi who was a Monitor in Gauteng office. He submitted a report in which he recommended disciplinary steps against members of the Hawks. The report was approved by Adv. Moleshe who was

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the Provincial Head at the time. I reviewed his report and gathered additional evidence and consulted Criminal Procedure Act as well as SAPS Standing orders. On 06 September 2011 I gave a report with a recommendation that no member of the Hawks be criminally or departmentally charged. The findings in my report were then communicated to the Member of Parliament concerned. No one brought criminal or departmental charges against me on these cases.

7. Every time when I think of what I got myself into by accepting the task, it gives me nightmares. I fear for my personal safety because members of the Hawks had already made advances, asking me to make a statement that implicates McBride and Sesoko in order to be re-instated into my position. It seems as I am viewed as the only gate to deal with McBride and it kills me with fear. Who knows what is next with me, I am really afraid. These are the most powerful people in the country and it seems as my life is at their mercy. I spend sleepless nights thinking of the worst. I just pray that all ends in opening cases against me without any physical harm. I will be able to defend myself in court. All the evidence that I have regarding what happened during the investigation, I am ready to produce in court.
8. When I concluded an agreement with the employer on 23/09/2015, it was because I feared the worst and took my family interest at heart. I grew without a father and took myself to the University sleeping under bridges in order to attend evening classes. I never wanted my children to go through what I went through. It is clear that sometimes no matter how hard one try to choose a path, some paths chooses us.
9. I would like to respond to the remaining 24 questions as follows;

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**9.1 Question 1:**

See 4.1 above.

**9.2 Question 2:**

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See 4.2 and 5.1 above.

**9.3 Question 3**

See 5.3 above.

**9.4 Question 4**

See 5.1 above.

**9.5 Question 5:**

The investigation was not finished but nevertheless Advocate Mosing wanted the report and the docket. See 5.14 above.

**9.6 Question 6:**

Yes

**9.7 Question 7:**

Handed to Adv. Mosing.

**9.8 Question 8**

Advocate Mosing and Billy Moeletsi

**9.9 Question 9:**

I recommended criminal charges against General Sibiya, General Dramat, Lt Col Maluleke, Captain Nkosi, Warrant Officer Makoe and Constable Radebe.

**9.10 Question 10:**

Yes.

**9.11 Question 11.**

New evidence, Mosing email and McBride gave me permission to go to DPP.

**9.12 Question 12**

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Attach new evidence, update the docket and to do final report in terms of IPID regulations and IPID SOP.

**9.13 Question 13**

Attached new evidence in Sesoko's office and compiled final report.

**9.14 Question 14**

New evidence and review of existing evidence.

**9.15 Question 15**

It was with Mosing because I personally handed to him. And when I collected the docket, there was no report.

**9.16 Question 16**

Mr Sesoko

**9.17 Question 17**

New evidence and review of existing evidence.

**9.18 Question 18**

I was reminded that according to the IPID Act the Directorate makes recommendation to NPA and not with NPA.

**9.19 Question 19**

Yes

**9.20 Question 20**

I signed as an Investigator, Mr Sesoko as Supervisor and Head of investigation and McBride as an approving authority.

**9.21 Question 21**

I handed it to Mr Sesoko whom I believed that he gave it to Mr McBride.

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**9.22 Question 22**

No

**9.23 Question 23**

We arrived at different recommendation after new evidence and review of existing evidence.

**9.24 Question 24**

Yes

COMPILED AND SIGNED AT POLOKWANE ON THE 3<sup>RD</sup> DAY OF MARCH 2016



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**Innocent Humbulani Khuba**