

Media Statement



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TO: ALL MEDIA

DATE: 31 JANUARY 2014

RE: State versus Zikhulise Cleaning, Maintenance and Transport cc and Mabong Flora-Junior Shawn Mpisane

The accused submitted written representations to the then Acting NDPP, Adv Nomgcobo Jiba on 11 July 2013, with regard to criminal case of State versus Zikhulise Cleaning, Maintenance and Transport cc court case number 41/1064/201 Durban Regional Court. The case is part-heard and relates to charges *inter alia* of fraud and tax evasion. SARS, the complainant in this matter was furnished with a copy of the said representations and was requested by the accused to comment thereon.

On 30 August 2013, the Office of the NDPP received comments from SARS that included serious allegations of *inter alia* prosecutorial misconduct where SARS concluded that it "cannot in good conscience associate itself with the continuation of the current trial."

On receipt of the aforementioned comments, it was decided in the interest of justice to remove the prosecutor and to investigate the conduct of the prosecutor in this matter. The internal investigation pertaining to the alleged conduct of the prosecutor is still in progress and inputs from all parties have not been received.

The then acting NDPP, Adv Nomgcobo Jiba, assigned four very senior and independent prosecutors (two Senior Deputy Directors of Public Prosecutions and two Senior State Advocates) to assess the matter.

They were required to study all available evidence, the transcribed record and input from the various stakeholders to ascertain whether there was indeed irreparable trial related prejudice and at the same time to prepare

to proceed with the trial in the event that it was decided that the trial ought to continue.

The allegations of prosecutorial misconduct bring the integrity of the criminal justice system into disrepute, especially given the trite legal principle of the prosecutor's paramount duty to truth in his/her high role as a so-called quasi-judicial officer of the court or "minister of justice".

In the reported decision of *S v Jija and Others*, Erasmus J held that the "prosecutor... stands in a special relation to the Court", in that his/her "paramount duty is not to procure a conviction but to assist the Court in ascertaining the truth". This principle was espoused by the Constitutional Court in *S v Shaik and Others*, where the Court cited with approval *Jija's* decision and described the position of the prosecutor as being that of "truth-seeker", whose role "is not to ensure convictions".

The NDPP was on 17 January 2014 presented with a motivated report and recommendations from the new prosecuting team assigned to the matter. It was recommended that it would not be in the interest of justice to proceed with the Durban case and that the prosecution in respect of those charges should be stopped in terms of section 6(b) of the Criminal Procedure Act. The effect of such a decision is that the court trying the accused shall acquit the accused in respect of those charges and that they cannot again be prosecuted on the same or substantially similar charges.

On 4 September 2013, the accused made further representations with regard to the prosecution in Pinetown Regional Court case number C0671/13. This case stems from the aforesaid Durban matter and pertains to allegations of corruption and defeating or obstructing the ends of justice, by claiming private expenses as business expenses in the Durban tax case. These charges were preferred in the Pinetown case after the prosecution was unsuccessful in adding the charges to the Durban matter. The accused has not as yet pleaded in the Pinetown case. The new prosecuting team has also recommended that the Pinetown matter ought to be withdrawn by virtue *inter alia* thereof that it is intertwined with the Durban case and the two matters ought to have been

merged into one case given that one cannot really deal with the Pinetown case without taking into account what transpired in the Durban matter.

After carefully studying the report and recommendations of the prosecutors, the submissions and stance of SARS, having had regard to the relevant case-law and authority and deliberations with my deputies, I have decided to stop the prosecution of the accused in terms of section 6(b) of the Criminal Procedure Act 51 of 1977 in respect of the Durban Regional court case number 41/1064/20.

The section reads thus *“the attorney-general or any person conducting a prosecution at the instance of the State or anybody or person conducting a prosecution under section 8, may-*

(b) at any time after an accused has pleaded , but before conviction, stop the prosecution in respect of that charge, in which event the court trying the accused shall acquit the accused in respect of the charge: Provided that where a prosecution is conducted by a person other than an attorney-general or a body or person referred to in section 8, the prosecution shall not be stopped unless the attorney-general or any person authorised thereto by the attorney-general , whether in general or in any particular case, has consented to.”

Further I have decided to withdraw the charges against the accused in the Pinetown Regional Court case number C0671/13. As explained above the Pinetown matter flows from the Durban Court Tax case.

My responsibility is to ensure that all cases are prosecuted without fear, favour and **prejudice**. To that end I want to assure South Africa that I, with the support of my deputies and Directors of Public Prosecutions, will be working very hard to ensure that there is no reoccurrence of incidents similar to the one that has led to this decision.

Issued by Nathi Mncube

On behalf of the National Director of Public Prosecutions, Mr Mxolisi Nxasana.