

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

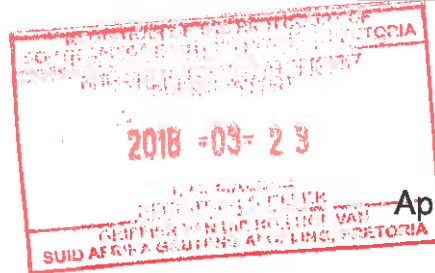
Case no:

21405/18

In the matter between:

DEMOCRATIC ALLIANCE

and



Applicant

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

First Respondent

**THE DIRECTOR-GENERAL IN THE OFFICE OF THE
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**

Second Respondent

**THE MINISTER OF JUSTICE AND
CORRECTIONAL SERVICES**

Third Respondent

THE STATE ATTORNEY

Fourth Respondent

JACOB GEDLEYIHLEKISA ZUMA

Fifth Respondent

NOTICE OF MOTION

TAKE NOTICE that the above-named applicant intends to make application to this court on a date to be determined by the Registrar for an order in the following terms:

- 1 It is declared that the State is not liable for the legal costs incurred by the Fifth Respondent ("Mr Zuma") in his personal capacity in criminal prosecutions instituted against him, in any civil litigation related or incidental thereto and for any other associated legal costs.

- 2 The decision(s) taken by the President of the Republic of South Africa, the State Attorney and/or any other public official that the State would cover the legal costs that Mr Zuma incurred in his personal capacity in the criminal prosecution instituted against him on or about 20 June 2005 and 28 December 2007 is declared invalid and is reviewed and set aside.
- 3 Mr Zuma is directed to repay to the National Treasury any and all such amounts that the State has paid towards Mr Zuma's personal legal costs as a result of the decision(s) referred to in paragraph 2 above or otherwise, within three months of the date of this order or such other reasonable period as the Court may determine.
- 4 The costs are to be paid by the First to Fourth Respondents, jointly and severally, and the Fifth Respondent, in the event that he opposes the application.
- 5 Further and/or alternative relief.

TAKE FURTHER NOTICE that the affidavit of **JAMES SELFE** will be use in support of this application.

TAKE NOTICE FURTHER that under Rule 53(1)(a) of the Uniform Rules of Court, the First to Fourth Respondents are called upon to show cause why the aforementioned decision, or failure to take a decision, should not be reviewed and/or corrected and/or set aside.

TAKE NOTICE FURTHER that under rule 53(1)(b) of the Uniform Rules of Court, the First to Fourth Respondents are required within fifteen (15) days after receipt hereof, to dispatch to the Registrar of this Honourable Court, the record of the proceedings sought to be reviewed and set aside (including all plans, correspondence, reports, memoranda, documents, evidence and other information which were before the first respondent at the time when the decision in question were made) together with such reasons as the First to Fourth Respondents are by law required or desirous to make and to notify the Applicant that this has been done.

TAKE NOTICE FURTHER that within 10 (ten) days of receipt of the record from the Registrar, the Applicant may, by delivery of a notice and accompanying affidavit, amend, add to or vary the terms of its Notice of Motion and supplement its founding affidavit in terms of Rule 53(4) of the Uniform Rules of Court.

TAKE NOTICE FURTHER that the Applicant has appointed **MINDE SCHAPIRO & SMITH care of KLAGSBRUN EDELSTEIN, BOSMAN & DE VRIES** as its attorney of record and the address at which they will accept service of notices and other processes in these proceedings is 220 Lange Street, New Muckleneuk, Pretoria and agrees that service may take place electronically at the address elzanne@mindes.co.za; karin@mindes.co.za; venashan@kebd.co.za.

TAKE NOTICE FURTHER that if any respondent intends to oppose the application, it is required, under Rule 53(5)(a):

- within 15 days after the receipt of this Notice of Motion or any amendments thereof, to deliver notice to the applicant that it intends to oppose and in such notice to uphold an address within 15km of the office of the Registrar at which it will accept notice and service of all process in these proceedings; and
- within 30 (thirty) after the expiry of the time referred to in Rule 53(4), to deliver any other affidavit it may desire in answer to the allegations made by the applicant.

TAKE NOTICE FURTHER that if no such Notice of Intention to Oppose is given, application will be made to this Honourable Court for an order in terms of the Notice of Motion on _____ or so soon thereafter as counsel may be heard.

DATED at **PRETORIA** on this **23rd** day of **MARCH 2018**.



MINDE, SCHAPIRO & SMITH

Per: Elzanne Jonker

ATTORNEYS FOR APPLICANT

Building number 2

Tyger Valley Office Park

Cnr Willie van Schoor & Old Oak Roads

BELLVILLE

Tel: 021 918 9000

E-mail: elzanne@mindes.co.za

C/O KLAGSBRUN EDELSTEIN BOSMAN DE VRIES INC.

220 Lange Street

Nieuw Muckleneuk

PRETORIA

Tel: 012 452 8900

Fax: 012 452 9801

Email: elzanne@mindes.co.za;

venashan@kebd.co.za

REF: R NYAMA/VA/HM001008

**TO: THE REGISTRAR OF
THE GAUTENG DIVISION, PRETORIA**

**AND TO: THE PRESIDENT OF THE REPUBLIC
OF SOUTH AFRICA**

First Respondent

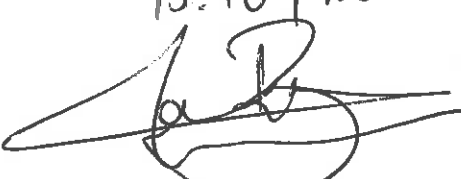
Union Buildings

26 Edmond Street

PRETORIA

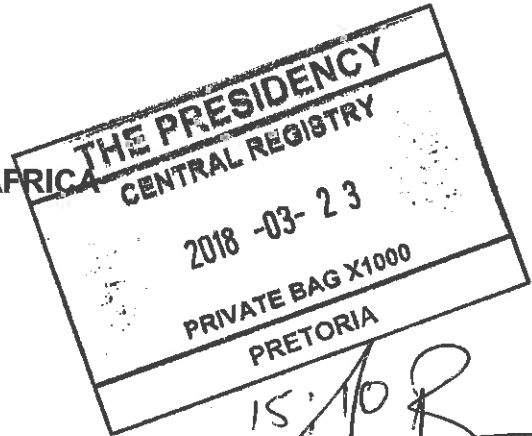
Per email: Robert@presidency.gov.za

THE PRESIDENCY
CENTRAL REGISTRY
2018 -03- 23
PRIVATE BAG X1000
PRETORIA

15:10 pm


AND TO: THE DIRECTOR-GENERAL
OFFICE OF THE PRESIDENT
OF THE REPUBLIC OF SOUTH AFRICA
Second Respondent
Union Buildings
26 Edmond Street
PRETORIA

Per email: nokukhanya@presidency.gov.za



AND TO: THE MINISTER OF JUSTICE AND
CORRECTIONAL SERVICES

Third Respondent
SALU Building, 28th Floor, 316 Thabo Sehume Street
(c/o Thabo Sehume and Francis Beard Streets),
PRETORIA

Per email: Ministry@justice.gov.za



AND TO: THE STATE ATTORNEY

Fourth Respondent
167 Andries Street
PRETORIA

Per email: VDhulam@justice.gov.za



AND TO: JACOB GEDLEYIHLEKISA ZUMA

Fifth Respondent

Care of: Hulley and Associates

(Per email: Michael@hulleyinc.co.za; Keenan@hulleyinc.co.za)

12 Floor, Office 09B, Sandton Square, 2 Maude Street, Sandown;

C/o MAVHUNGU MASIBIGIRI ATTORNEYS

977 Schoeman Street

Arcadia

PRETORIA

Tel: (012) 342 4872

RECEIVED

23 MAR 2018

Adhasego

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GAUTENG DIVISION, PRETORIA

Case no: 21405/18

In the matter between:

DEMOCRATIC ALLIANCE

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THE STATE ATTORNEY

Fourth Respondent

JACOB GEDLEYIHLEKISA ZUMA

Fifth Respondent


FOUNDING AFFIDAVIT

I, the undersigned,

JAMES SELFE

state under oath as follows:

1. I am the chairperson of the Federal Executive of the applicant, the Democratic

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Alliance of South Africa ("the DA"). I also represent the DA as a Member of the National Assembly of the Parliament of the Republic of South Africa.

2. I am duly authorised to depose to this affidavit on behalf of the DA.
3. The facts contained in this affidavit are within my personal knowledge, unless the context indicates otherwise, and are true and correct, to the best of my knowledge and belief.
4. Where I make submission on the law, I do so on the advice of the DA's legal representatives.

INTRODUCTION

5. This application is directed at recovering tens of millions of rands of taxpayers' money that the State has paid to cover the personal legal costs incurred by the former President of the Republic of South Africa, Mr Jacob Gedleyihlekisa Zuma ("Mr Zuma") –

5.1. in defending himself against criminal charges of fraud, corruption, money-laundering and racketeering instituted on or about 20 June 2005 and 28 December 2007 and in all civil litigation arising from and related to the prosecution, as set out below; and

5.2. in opposing the DA's application to review the decision of the former Acting



National Director of Public Prosecution (“acting NDPP”), Mr Mokotedi Mpshe’s decision to discontinue the prosecution against Mr Zuma (case no. GP 19577/09, instituted on 7 April 2009) (“the review application”).

6. The DA seeks declaratory relief in respect of the State’s liability to cover Mr Zuma’s legal costs in his criminal prosecution and any litigation or matters related thereto, as well as for the legal costs Mr Zuma incurred in opposing the DA’s review application.
7. The DA also seeks to review and set aside the decision(s), taken by the State Attorney, former President Mr Thabo Mbeki and/or any other public official, that the State would cover the costs that Mr Zuma incurred in any of the aforesaid litigation, conditionally or at all.
8. As I explain, whether any such decisions were taken, and if so by whom and the subject and scope of the decisions, remains unclear. The DA calls on the respondents to clarify the position in answer and to produce evidence of any such decisions and the record of such decisions.
9. The DA also seeks an order directing Mr Zuma to repay to the National Treasury any amounts that the State has paid towards Mr Zuma’s personal legal costs in defending his criminal prosecution and related litigation and in the DA’s review application, within three months of the date of this order, or such other reasonable period as the Court may determine.

10. The structure of this affidavit is as follows:

10.1. The parties;

10.2. The factual background;

10.3. The grounds for declaratory relief and review; and

10.4. Appropriate relief.

THE PARTIES

11. The applicant is the **DEMOCRATIC ALLIANCE** ("the DA").

11.1. The DA is a political party registered in terms of section 15 of the Electoral Commission Act 51 of 1996, which has its head office at the Thebe Hosken House, Mill Street, Cape Town.

11.2. The DA successfully reviewed the decision of acting NDPP to discontinue the prosecution of Mr Zuma.

11.3. The DA brings this application in its own interest, as the main opposition party in Parliament, and in the public interest, in accordance with sections 38(a) and 38(d) of the Constitution.

12. The first respondent is **THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**, cited in his official capacity Union Buildings, 26 Edmond Street, PRETORIA.

13. The second respondent is the **DIRECTOR-GENERAL IN THE PRESIDENCY**. The second respondent is cited in his official capacity as accounting officer of the Presidency, Union Buildings, 26 Edmond Street, PRETORIA. At present, the position of the Director-General in the Presidency is occupied by Dr Cassius Reginald Lubisi.

14. The Third Respondent is the **MINISTER OF JUSTICE AND CORRECTIONAL SERVICES ("the Minister")**. The Minister is cited in his official capacity, with office at SALU Building, 28th Floor, 316 Thabo Sehume Street, c/o Thabo Sehume and Francis Baard Streets), PRETORIA. In terms of section 1(1) of the State Attorney Act 56 of 1957, the Office of the State Attorney is under the control of the Minister.

15. The Fourth Respondent is **THE STATE ATTORNEY**. In terms of section 1(1) of the State Attorney Act, the Office of the State Attorney has been established in Pretoria under the control of the Minister with address 167 Andries Street, PRETORIA. The State Attorney is cited by virtue of the role and interest it has in the decision(s) that the DA seeks to invalidate.

16. The Fifth Respondent is the former President **JACOB GEDLEYIHLEKISA ZUMA**. The Fifth Respondent is served care of his attorney of Record, Michael Hulley, from Hulley and Associates, 12 Floor, Office 09B, Sandton Square, 2 Maude Street, Sandown care of MAVHUNGU MASIBIGIRI ATTORNEYS, 977 Schoeman Street, Arcadia.



FACTUAL BACKGROUND

The history of Mr Zuma's litigation following his indictment for corruption

17. The prosecution of Mr Zuma has a long history. In terms of an indictment served on Mr Zuma on 28 December 2007, Mr Zuma was accused of 18 serious criminal charges including a charge for racketeering; for charges of corruption; a charge for money laundering and 12 charges of fraud.
18. In response to these charges, Mr Zuma adopted a "Stalingrad" legal strategy – an effort to fend off the prosecution by taking every conceivable technical and preliminary point.
19. I attach marked "JS1" a table that summarises the litigation involving Mr Zuma in his personal capacity, from 20 June 2005 (when then-National Director of Public Prosecutions Mr Vusi Pikoli decided to lay criminal charges against Mr Zuma for corruption) to the decision of the Supreme Court of Appeal on 13 October 2017, to uphold the setting aside of the acting NDPP's decision to discontinue the prosecution of Mr Zuma.
20. As indicated in the table, Mr Zuma has litigated with abandon and compelled the NPA to litigate – at considerable State expense – to obtain necessary documents and disclosures in the conduct of the prosecution against him. Mr Zuma's approach resulted in the following litigation:

20.1. Legal challenges to the lawfulness of the search warrants issued against Mr Zuma, in the following cases:

20.1.1. *Zuma and Another v National Director of Public Prosecutions and Others* 2006 (1) SACR 468 (D); [2006] 2 All SA 91 (D);

20.1.2. *Thint (Pty) Ltd v National Director of Public Prosecutions* [2008] 1 All SA 229 (SCA) and *National Director of Public Prosecutions v Zuma and Another*[2008] 1 All SA 197 (SCA); and

20.1.3. *Thint (Pty) Ltd v National Director of Public Prosecutions and Others, Zuma and Another v National Director of Public Prosecutions and Others* 2009 (1) SA 1 (CC).

20.2. Legal challenges to a letter of request for access to information held by the Mauritian authorities, pursuant to search warrants issued in that jurisdiction, in the following cases:

20.2.1. *National Director of Public Prosecutions v Zuma and Others* DCLD 13569/2006, 2 April 2007, heard before Levinsohn DJP (unreported);

20.2.2. *Zuma and Others v National Director of Public Prosecutions* [2008] 1 All SA 234 (SCA); and

20.2.3. *Thint Holdings (Southern Africa) (Pty) Ltd and Another v National Director of Public Prosecutions, Zuma v National Director of Public Prosecutions* 2009 (1) SA 141 (CC).

(N) 6⁷

20.2.4. In dismissing Mr Zuma's appeal in *Thint*, the Constitutional Court ordered Mr Zuma to pay the costs, including the costs of the employment of two counsel.

20.3. Legal challenges to the indictment in terms of section 179 of the Constitution of the Republic of South Africa, in the following cases:

20.3.1. *Zuma v National Director of Public Prosecutions* [2009] 1 All SA 54 (N); 2009 (1) BCLR 62 (N); and

20.3.2. *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA).

20.3.3. In overturning the decision of the High Court in *NDPP v Zuma*, the SCA reversed the order for costs in the High Court and ordered that Mr Zuma, as the applicant, pay the costs including those consequent on the employment of three counsel.

21. On 1 April 2009, the then-acting NDPP, Mr Mokotedi Mpshe, unlawfully decided to discontinue the prosecution of Mr Zuma. The DA brought proceedings to review and set aside Mr Mpshe's decision shortly thereafter, on 7 April 2009.

22. On 6 May 2009, Mr Zuma was elected President of the country.

23. While serving as President of the Republic, Mr Zuma continued to litigate at State

expense to resist having his day in court. Mr Zuma personally opposed the DA's application to review and set aside Mr Mpshe's decision to discontinue the prosecution. This litigation is colloquially referred to as the "Spy Tapes case".

24. It took almost seven years from the launch of the DA's review application for it to be heard by the full Court. It was delayed by two main interlocutory applications:

24.1. The first interlocutory application concerned a challenge raised by the acting NDPP and Mr Zuma that the DA did not have *locus standi* to bring the review application. The acting NDPP and Mr Zuma also challenged the reviewability of the decision of the acting NDPP and disputed that the acting NDPP was compelled to furnish the record of his decision to the DA. The decision of Ranchod J granting the orders in favour of the acting NDPP and Mr Zuma was reversed on appeal by the SCA in the matter of *DA v Acting National Director of Public Prosecution and Others*.¹

24.2. In this application, the SCA again ordered the acting NDPP and Mr Zuma to pay the legal costs.

24.3. The second interlocutory was the matter of *Democratic Alliance v Acting National Director of Public Prosecutions*,² which came before Mathopo J in

¹ *Democratic Alliance and Others v Acting National Director of Public Prosecutions and Others* 2012 (3) SA 486 (SCA); [2012] 2 All SA 345 (SCA); 2012 (6) BCLR 613 (SCA).

² *Democratic Alliance v Acting National Director of Public Prosecutions and Others* 2016 (2) SACR 1 (GP); [2016] 3 All SA 78 (GP); 2016 (8) BCLR 1077 (GP); *Zuma v Democratic Alliance and Others* [2014] ZASCA 101; [2014] 4 All SA 35 (SCA).

this Court. It concerned the disclosure of the transcripts of the conversations recorded in "the spy tapes", which informed the acting NDPP's decision to discontinue the prosecution of Mr Zuma. The SCA upheld the judgment of Mathopo J, holding that the transcript of the recordings must be disclosed, subject to redaction to protect any confidentiality attaching to the representations made by Mr Zuma to the acting NDPP.

25. Almost seven years after the DA instituted its review application, on 29 April 2016, a full court of this Division, sitting as a court of first instance, reviewed and set aside Mr Mpshe's decision to discontinue the prosecution of Mr Zuma.³
26. Mr Zuma and the NPA appealed the High Court's judgment to the SCA on spurious grounds. As is recorded in the SCA judgment:

*"Minutes into the argument before us counsel for both Mr Zuma and the NPA conceded that the decision to discontinue the prosecution was flawed. Counsel on behalf of Mr Zuma, having made the concession, with the full realisation that the consequence would be that the prosecution of his client would revive, gave notice that Mr Zuma had every intention in the future to continue to use such processes as are available to him to resist prosecution."*⁴

27. The SCA upheld the High Court's decision and reviewed and set aside the decision

³ *Democratic Alliance v Acting National Director of Public Prosecutions and Others* [2016] ZAGPPHC 255; 2016 (2) SACR 1 (GP); [2016] 3 All SA 78 (GP); 2016 (8) BCLR 1077 (GP)

⁴ *Zuma v Democratic Alliance and Others; Acting National Director of Public Prosecutions and Another v Democratic Alliance and Another* [2017] 4 All SA 726 (SCA); 2018 (1) SA 200 (SCA); 2018 (1) SACR 123 (SCA) at para 3.

of the acting NDPP. The SCA also, again, ordered the NPA and Mr Zuma to pay the legal costs of the DA.

28. On 16 March 2018, the National Director of Public Prosecutions announced his decision to reinstate charges against Mr Zuma. It appears from media reports that Mr Zuma intends to continue resisting prosecution through tireless litigation. I attach the media reports, marked "JS2".

The alleged decision(s) to pay Mr Zuma's personal legal costs

29. Since the SCA's decision in October 2017, the DA has been seeking clarity from the Presidency on the amounts paid by the State towards Mr Zuma's personal legal costs and the basis for any such payments. These requests were stubbornly ignored and resisted by President Zuma.
30. Acting on the instructions of newly-incumbent President Cyril Ramaphosa, the State Attorney disclosed on 13 March 2018 that the Presidency has incurred an amount of R15 300 250.00 (Fifteen Million, Three Hundred Thousand and Two Hundred and Fifty Rand) since 1 May 2009 *"on legal costs pertaining to the National Prosecuting Authority's decision to decline to prosecute former President Zuma on charges of fraud, corruption and racketeering"*.
31. The State Attorney qualified this statement the following day, stating:



"We advise that the amount must be broken down into two separate time periods - before and after the decision to withdraw the charges that was eventually the subject of a review application. The amount incurred in the initial period is R7 505 949, 45 (Seven Million, Five hundred and Five Thousand Nine Hundred and Forty-Nine Rand and Forty-Five Cents). The process from the application to review the decision to withdraw the charges up to the end of the decision of the Supreme Court of Appeal, the legal costs incurred is the amount of R7 794 301, 28 (Seven Million Seven Hundred and Ninety-Four Thousand Three Hundred and One Rand and Twenty Eight Cent). The total for both the periods referred to herein is an amount of R15 300 250, 73 (Fifteen Million, Three Hundred Thousand and Two Hundred and Fifty Rand and Seventy Three Cents)".

32. These letters are attached marked "JS3".

33. On 13 March 2018, the media reported that the President's spokesperson, Ms Khusela Diko had confirmed that all expenditure the State incurred for former President Zuma's legal costs was "in line with the provisions of the State Attorney Act". I attach the media articles marked "JS4".

34. On 14 March 2018, President Ramaphosa attended a Parliamentary question and answer session. President Ramaphosa answered questions pertaining to the legal costs incurred by the State on behalf of the former President's legal costs. President Ramaphosa stated in his answer that:

"...the acts that former President Zuma was charged with, he was charged with acts that arose as he was occupying a government position...it was as a result of conduct, conduct that had to do with him occupying a government position. In that regard, there is a practice that those who are charged for activities, be they criminal or otherwise, and this agreement covers that...for those who are charged the Government will cover that..."⁵

⁵ President Ramaphosa parliamentary question and answer session. Accessed at <https://www.youtube.com/watch?v=J6DwpvXio5s> on 22 March 2018.

35. On the same day, 14 March 2018, the DA addressed further correspondence to President Ramaphosa. The DA sought answers to specific questions pertaining to the State's payment of Mr Zuma's legal costs. The letter is attached marked "JS5". Given the relevance, I set out the questions addressed to President Ramaphosa in full:

"4.1 Your spokesperson, Khusela Diko, confirmed to the media on 13 March 2018 that all expenditure incurred by former President Zuma was incurred in line with the provisions of the State Attorney Act.

4.1.1 On what provisions of the State Attorney Act 56 of 1957 does the Presidency rely to claim compliance with the State Attorney Act;

4.1.2 What steps were taken to ensure that the Presidency, in allowing this expenditure, was in lawful compliance with all relevant legislation;

4.1.3 The attorney of record of former President Zuma was not the State Attorney but Michael Hulley of Hulley and Associates, a private law firm. On what basis is it alleged that this practice is subject to the provisions of the State Attorney Act.

4.2 Former President Zuma was, at all relevant times, cited in his capacity as an ordinary citizen and not in his official capacity. The costs orders granted by the Courts in the matters Zuma v Democratic Alliance and Others: Acting National Director of Public Prosecutions and Another v Democratic Alliance and Another (771 /2016, 1170/2016) (2017] ZASCA 146; [2017] 4 All SA 726 (SCA); 2018 (1) SA 200 (SCA); 2018 (1) SACR 123 (SCA) (13 October 2017) and Democratic Alliance v Acting National Director of Public Prosecutions and Others (19577 /2009) [2016] ZAGPPHC 255; 2016 (2) SACR 1 (GP); [2016] 3 All SA 78 (GP); 2016 (8) BCLR 1077 (GP) (29 April 2016) were also against former President Zuma in his personal capacity. Kindly explain on what basis he would have been entitled to expect his legal fees to be paid by the State and/or Presidency and/or Treasury. Also, regard must be had to the concessions made by former President Zuma and the National Prosecuting Authority's legal counsel, in the Supreme Court of Appeal, that there was no merit in the opposition to our client's Application.

4.3 Media reports furthermore reveal that your acting spokesperson, Tyrone Seale, conveyed to the Financial Mail that the State would continue to fund former President Zuma's legal fees based on an undertaking that was concluded by former Presidents Zuma and Mbeki in 2006. Mention is also

made of an undertaking that former President Zuma has undertaken to refund the state should he be found guilty.

4.3.1 Kindly confirm whether this is the position of the Presidency? If so, kindly explain the legal basis on which such a position is held.

4.3.2 Was the Agreement concluded between former Presidents Mbeki and Zuma in writing? If so, we are entitled and require a copy thereof.

4.3.3 If not concluded in writing, what was the exact terms of the agreement. Full details are requested.

4.3.4 Was the so-called undertaking to repay the legal fees, if convicted, in writing? If so, we require copies thereof. If not, we require full details of the undertaking.

4.4 Kindly indicate whether there is a current obligation that former President Zuma's legal fees shall continue to be paid by the Presidency / State / Treasury.

4.5 Insofar as there exists a current obligation on the State to continue to fund the legal costs of former President Zuma in the above matter or in any other matter, kindly indicate what oversight is exercised by your office and/or the Government and/or Treasury over such expenditure.”⁶

36. On 22 March 2018, the State Attorney responded to the DA's letter of 14 March, after consulting with the Department of Justice and the President. The response is attached marked "JS6". The State Attorney (per Mr V. Dhulam of the Johannesburg Office) advised that –

"The decision to provide to Mr Zuma legal representation at state expense was taken in accordance with section 3(1) of the State Attorneys Act 56 of 1957. This decision was taken by the Presidency in 2006. After receiving the request for legal representation the Presidency sought advice from the Minister of Justice and the State Attorney. The decision was based on advice from the Chief State Law Advisor (M Daniels), the Director-General in the Department of Justice (Adv Simelane), the Minister of Justice (Minister Mabandla) and the State Attorney (Ms Mosidi)" (paras 2.1 – 2.4 of the letter);

⁶ I have corrected the numbering of paragraphs 4.4 and 4.5 in the letter.

"The Presidency was also advised that the circumstances of this particular request warranted the appointment of a private attorney on the basis that there may exist a conflict of interest where the state attorney to be engaged in providing legal representation or a perception of a conflict of interest" (para 2.5);

"The decision was subject to the undertaking by former President Zuma to refund the legal costs incurred by the State in the event that his defence is unsuccessful. We have been unable to locate a written agreement between the Presidency and Mr Zuma in this respect. However, we have been provided with an undertaking dated 22 August 2006 signed by Mr Zuma and ... a second undertaking was made on 26 September 2008" (paras 2.6 and 2.7);

"The Presidency, at the time, was advised that the basis for the application of section 3 of the State Attorney Act was that the charges concerned government; that they relate to Mr Zuma's activities while he held political office as an MEC in KZN and later was required to answer questions as Deputy President; and that the matter is of public import" (para 2.8);

"Due to the fact that the Presidents who came after the undertaking was signed are the successor in title in the President's office, they assume the obligation created in the undertaking. The office of the Presidency is therefore bound by that decision and must continue paying for Mr Zuma's legal fees on the basis that it undertook to do so until such time as the decision is reviewed and set aside by a court" (para 2.9).

"The PFMA and the Treasury Regulations require the accounting officer in the Presidency (as a Department) to ensure that there is sufficient funding for expenditure that it undertakes to cover. This necessarily means that there must be a budget provided for Mr Zuma's legal fees. In order to continue fulfilling its obligations under the PFMA and the Treasury Regulations, the accounting officer in the Presidency will request Mr Zuma's legal representatives to provide estimates of how much they will require in order to render their services to Mr Zuma in the criminal trial. In turn, the office of the Presidency will seek to ensure that such estimated costs are reasonable and budgeted for" (para 2.10).

37. The State Attorney attached the two undertakings signed by Mr Zuma, dated 22 August 2006 and 26 September 2008. These undertakings are included as annexure "JS7". I note that both undertakings pertain only to "the criminal case" in which Mr Zuma is the accused.

38. On 22 March 2018, the Office of the Presidency also issued a written response to the question posed by Mr Julius Malema of the Economic Freedom Fighters ("EFF") in the National Assembly. Mr Malema sought clarity on the legal provision relied on to fund former President Jacob Zuma's personal legal costs. President Ramaphosa's response, attached marked "JS8", reads:

"I was informed that the State Attorney, at the time of considering the request made by President Zuma for legal representation at State expense, considered section 3(3) of the State Attorney Act, 1957 (as amended) to give her discretion where the State was not party to a matter but interested or concerned in it, or it was in the public interest to provide such representation to a government official.

The acts on the basis of which it is alleged that the former President committed criminal offences took place during his tenure as a government official both at provincial and later at national level.

In addition, the Department of Justice considered section 12.2.2 of the then applicable Treasury Regulations, issued in terms of the Public Finance Management Act, 1999, read with section 3(1) of the State Attorney Act, as providing for an obligation to refund the state if any loss was found to be incurred when an official was acting outside the course and scope of his employment.

For this reason, the State Attorney decided that it was appropriate to grant the request of the former President, subject to the condition that he make an undertaking (which he did) to refund monies thus spent should it be found that he acted in his personal capacity and own interest in the commission of the alleged offences."

39. From the above, the following remains unclear:

39.1. What specific legal costs, and in which litigation, were covered by the R15 300 250,73 that the State has admittedly paid towards Mr Zuma's personal legal bills. It is not clear whether this amount pertains only to the legal costs that Mr Zuma incurred in opposing the DA's review application,

or whether it includes legal costs incurred prior thereto, in Mr Zuma's criminal trial or related civil litigation;

- 39.2. The total amount paid by the State towards Mr Zuma's personal legal costs, since he was indicted for fraud, corruption, money-laundering and racketeering – in the criminal prosecution, in all related civil litigation and in the DA's review application;
- 39.3. Whether the decision(s) that the State incur Mr Zuma's personal costs was or were taken by former President Thabo Mbeki or a functionary in the Office of the Presidency (as the State Attorney alleges in the letter of 14 March) or by the State Attorney (as President Ramaphosa alleges in the written response to the EFF's parliamentary question) or both;
- 39.4. Whether the decision(s) was or were taken under section 3(1) or 3(3) of the State Attorney Act;
- 39.5. The scope of the subject of the decision(s) taken – specifically, whether the decision(s) was or were that the State would cover the legal costs of Mr Zuma's defence in the criminal prosecution only (as appears to be the case from the undertakings signed by Mr Zuma), or whether the State would also cover the personal legal costs incurred by Mr Zuma in any and all related civil litigation; and
- 39.6. Whether any decision was taken to cover the personal legal costs Mr Zuma incurred in opposing the DA's review application, including Mr Zuma's

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subsequent applications for leave to appeal and appeal to the Supreme Court of Appeal in that matter.

THE GROUNDS FOR THE DECLARATORY ORDER AND REVIEW

40. The State Attorney and the President have invoked sections 3(1) and 3(3) of the State Attorney Act to justify the alleged decision/s that Mr Zuma's personal legal costs would be paid for by the State.
41. I deny that either of these provisions authorises the State Attorney or the President, or any other public official for that matter, to decide to impose on the State the obligation to pay for Mr Zuma's personal legal costs, conditionally or otherwise.
42. I am advised that the interpretation of section 3 of the State Attorney Act is a legal question and will be addressed in argument. I wish to make some preliminary observations, however.
43. Section 3 of the State Attorney Act describes the functions of the State Attorney's office. Section 3(1) provides:
- "The functions of the office of the State Attorney and of its branches shall be the performance in any court or in any part of the Republic of such work on behalf of the Government of the Republic as is by law, practice or custom performed by attorneys, notaries and conveyancers or by parliamentary agents: Provided that the functions in regard to his duties as parliamentary agent shall be subject to the Standing Rules of the respective Houses of Parliament." (My emphasis.)*
44. This provision is clear on its terms: the function of the State Attorney's office is to

perform work on behalf of the Government. While this function may extend to providing legal services to public officials *in their official capacity*, it does not permit the State Attorney to provide legal services to public officials who sue or are being sued or prosecuted *in their private capacity*.

45. Section 3(3) provides:

"Unless the Minister of Justice otherwise directs, there may also be performed at the State Attorney's office or at any of its branches like functions in or in connection with any matter in which the Government or such an administration as aforesaid, though not a party, is interested or concerned in, or in connection with any matter where, in the opinion of the State Attorney or of any person acting under his authority, it is in the public interest that such functions be performed at the said office or at one of its branches."

46. This subsection permits the State Attorney to perform functions "*in or in connection with any matter in which Government ..., though not a party, is interested or concerned in*", or "*in connection with any matter where, in the opinion of the State Attorney or of any person acting under his authority, it is in the public interest that such functions be performed at the said office or at one of its branches*". This provision extends the range of matters in which the State Attorney may itself assume functions.

47. Neither section 3(1) nor section 3(3) authorises the State Attorney, or any other person, to assume responsibility on behalf of the State for the costs incurred by any other private attorney (or the counsel and experts instructed by such private attorney).

48. Further, any reliance on section 3(3) would have to demonstrate that the performance of functions by the State Attorney in matters where the Government is not a party is justified by –

48.1. the Government's interest or concern in the matter; or

48.2. the public interest that the State Attorney assume the functions.

49. Neither of these requirements are met in the case of Mr Zuma's defence against criminal prosecution and the catalogue of civil litigation that has ensued in relation thereto.

50. The Government can have no legitimate interest or concern in the conduct of a defence against criminal charges, particularly where the alleged crimes concern the abuse of public office. The public interest demands that such charges are prosecuted and met to ensure public accountability, the promotion of good governance, and the protection of the rule of law.

51. I note that the State Attorney itself considers it impermissible to fund the defence of criminal charges, where public officials are charged with committing acts that cannot be aligned with "the course and scope of their employment". I attach marked "JS9", a refusal by the State Attorney to provide legal representation at state expense to accused police officers on this basis.

52. The litigation that Mr Zuma has conducted following his indictment has been

calculated to and has in fact served to, obstruct and delay the administration of justice. Mr Zuma has abused the courts to avoid public accountability, in defiance of the public interest. Mr Zuma's abuse of the legal process is demonstrated by the fact that, at the very least, four costs orders have been made against him in this litigation.

53. Likewise, there is no "Government interest" or public interest in Mr Zuma's personal opposition to the DA's application to review the Acting NDPP's decision to discontinue the prosecution. The relevant State authorities were represented in those proceedings – by the National Director of Public Prosecutions and the National Prosecuting Authority's Directorate of Special Operations.
54. I am advised and submit that there is, accordingly, no lawful basis for the decision/s (whether taken by the President or the State Attorney or some other public official) that the State pay for Mr Zuma's personal legal costs in the criminal prosecution and related civil litigation or in the DA's review application.
55. The decision/s is accordingly reviewable and falls to be set aside under the Promotion of Administrative Justice Act 3 of 2000 and/or the principle of legality on the grounds that –
 - 55.1. the decision/s was not authorised and is *ultra vires*; and
 - 55.2. the decision/s was materially influenced by an error of law – i.e., the belief that the decision was authorised by the State Attorney Act and the Public



Finance Management Act 1 of 1999 ("PFMA") and Treasury Regulations.

56. Secondly, the decision/s is reviewable for contravening the Public Finance Management Act 1 of 1999. This Act obliges the accounting officer of every national Department (including the Department of Justice and Correctional Services that is responsible for the Office of the State Attorney and the Office of the Presidency) to, inter alia, *"prevent unauthorised, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct"* and *"enforce compliance with any prescribed conditions if the department, trading entity or constitutional institution gives financial assistance to any entity or person"* (sections 38(1)(c)(ii) and 38(1)(k)). It also stipulates that the accounting officer *"may not commit a department to any liability for which money has not been appropriated"* (section 38(2)). It appears that all of these provisions were breached in the taking of the decision(s).
57. Third, the decision(s) is or are reviewable for being materially influenced by irrelevant considerations – specifically, the undertaking by Mr Zuma to repay the costs in the event of successful prosecution; that the criminal charges concern "Mr Zuma's activities while he held political office as an MEC in KZN"; that Mr Zuma "was required to answer questions on the criminal charges while sitting as Deputy President"; and that "the matter is of public import". None of these considerations meet the requirements of section 3 of the State Attorney Act (even if the Act did apply) and can justify the decision(s).
58. Fourth, the decision(s) is or are reviewable for being irrational and/or unreasonable,

in particular, for lacking a rational connection to the purpose of the alleged empowering provision and information before the decision-maker.

59. The DA reserves its right to supplement the grounds of review on receipt of a full and proper explanation of the decision, or decisions, taken and on perusal of the rule 53 record.

APPROPRIATE RELIEF

60. In addition to reviewing and setting aside the decision(s) taken, the DA seeks the following further relief:
61. A declaratory order in respect of the State's liability to cover Mr Zuma's legal costs in his criminal prosecution and any litigation related thereto, as well as the legal costs that Mr Zuma incurred in opposing the DA's review application.
62. The declaratory order is required given that Mr Zuma has already intimated that he intends to litigate further in an effort to avoid prosecution.
63. Further, it appears that President Ramaphosa considers himself bound to the decision(s) taken under a previous administration and the undertakings given by Mr Zuma, including in respect of future litigation by Mr Zuma. I refer in particular to paragraphs 2.9 and 2.10 of the State Attorney's letter to the DA of 14 March 2018 (quoted above).

64. The DA also seeks an order directing Mr Zuma to repay to the National Treasury any amounts that the State has paid towards Mr Zuma's legal costs in defending his criminal prosecution and related litigation and in the DA's review application, within three months of the date of this order, or such other reasonable period as the Court may determine.

65. An order of repayment is the only just and equitable order in the circumstances. It is necessary to give effect to the principle that no one is entitled to benefit from an unlawful decision, and to restore to the fiscus ill-gotten and abused public funds. Mr Zuma has exploited the unlawful decision to obstruct the administration of justice and to avoid public accountability – first as an MEC, then as Deputy President and as President. This flagrant abuse of his position and the public purse must be corrected.

66. In the circumstances, I pray for the relief in the Notice of Motion.

James Selfe

JAMES SELFE

THUS SWORN TO AND SIGNED before me at BELLVILLE on this the 23rd day of MARCH 2018 by the deponent who acknowledges that he/she knows and understands the contents of this affidavit and he/she has no objection to taking the prescribed oath and that he/she considers the oath as binding on his/her conscience.



Adèle Grünwald

COMMISSIONER OF OATHS

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Adèle Grünwald CPA (SA)
SAIPA Membership No 18811

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TIMETABLE OF LEGAL PROCEEDINGS DELAYING THE PROSECUTION OF MR ZUMA

Date	NDPP's decisions to prosecute Zuma	Search and seizure applications	International co-operation application	s179 application	DA review application
9/12/2005			Application made to D&CLD for letters of request to Mauritius ¹		
20/6/2005	Decision by NDPP Pikoli to prosecute Zuma				
29/6/2005	Zuma appears in Durban magistrates court and matter postponed for investigation				
12/8/2005-26/8/2005		21 warrants for search and seizure issued by Ngoepe DJP in the TPD			
9/9/2005		First challenge to warrants by Ms Mahomed (Zuma's attorney): heard before Hussain J in WLD; and judgment setting aside warrants ²			
6-7/2/2006		Second challenge to warrants by Zuma: heard before Hurt J in the D&CLD			
10/3/2006			Application heard before PC Combrinck J		
22/3/2006			Judgment of Combrinck J, referring matter to trial court in criminal proceedings		

¹ In terms of s 2(2) of the International Co-operation in Criminal Matters Act 75 of 1986

² *Mahomed v National Director of Public Prosecutions and Others* 2006 (1) SACR 495 (W)

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	NDPP's decisions to prosecute Zuma	Search and seizure applications	International co-operation application	s179 application	DA review application
15/2/2006		Judgment of Hurt J setting aside warrants ³			
29/6/2006-4/7/2006		Third challenge to warrants by Thint: heard before Du Plessis J in the TPD			
4/7/2006		Judgment of Du Plessis, upholding warrants ⁴			
20/9/2006	Prosecution struck off the roll by Msimang J ⁵				
22/4/2007-23/4/2007			Application for co-operation heard before Levinsohn DJP		
2/4/2007			Judgment of Levinsohn DJP, granting letters of request ⁶		
28/8/2007		Appeal heard in SCA in Zuma application			
21/9/2007		Appeal heard before SCA in Thint application	Appeal heard before the SCA		
8/11/2007		Judgment of SCA in Zuma application ⁷ ; and Thint application ⁸	Judgment of the SCA in international co-operation matter ⁹		
29/11/2007	Decision by NDPP Mpshe to prosecute Zuma				

³ Zuma and Another v National Director of Public Prosecutions and Others 2006 (1) SACR 468 (D); [2006] 2 All SA 91

⁴ Thint (Pty) Ltd and Others v National Director of Public Prosecutions and Others (268/2006) [2006] ZAGPHC 133 (4 July 2006) (accessible at <http://www1.saflii.org/za/cases/ZAGPHC/2006/133.pdf>)

⁵ S v Zuma and Others (CC358/05) [2006] ZAKZHC 22 (20 September 2006), accessible at <http://www1.saflii.org/za/cases/ZAKZHC/2006/22.pdf>

⁶ National Director of Public Prosecutions v Zuma and Others (13569/2006) [2007] ZAKZHC 4 (2 April 2007), accessible at <http://www1.saflii.org/za/cases/ZAKZHC/2007/4.pdf>

⁷ National Director of Public Prosecutions and Others v Zuma and Another 2008 (1) SACR 258 (SCA) [2008] 1 All SA 197

⁸ Thint (Pty) Ltd v National Director of Public Prosecutions [2008] 1 All SA 229 (SCA)

⁹ Zuma and Others v National Director of Public Prosecutions 2008 (1) SACR 298 (SCA) [2008] 1 All SA 234

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	NDPP's decisions to prosecute Zuma	Search and seizure applications	International co-operation application	s179 application	DA review application
28/12/2007	Indictment served on Zuma				
11/3/2007 - 13/3/2008		Appeal argued before the CC search and seizure, and international co-operation matters			
6/2008				Zuma launches s179 application in the NPD	
31/7/2008		Judgments of the CC in search and seizure ¹⁰ and international co-operation matters ¹¹			
12/9/2008				Judgment of Nicholson J, setting aside decision to prosecute ¹²	
28/11/2008				Appeal heard in SCA	
12/1/2009				Judgment of the SCA ¹³	
				Application by Zuma for leave to appeal to the CC	
30/1/2009	Agreement postponing proceedings to 25/8/2009, and setting timetable for Zuma's threatened application for permanent stay				
16/2/2009				NPA files answering papers in application for leave to the CC	

¹⁰ *Thint (Pty) Ltd v National Director of Public Prosecutions and Others*; *Zuma v National Director of Public Prosecutions and Others* 2009 (1) SA 1 (CC)

¹¹ *Thint Holdings (Southern Africa) (Pty) Ltd and Another v National Director of Public Prosecutions*; *Zuma v National Director of Public Prosecutions* 2009 (1) SA 141 (CC)

¹² *Zuma v National Director of Public Prosecutions* [2009] 1 All SA 54 (N); 2009 (1) BCLR 62 (N)

¹³ *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA); 2009 (1) SACR 361 (SCA); 2009 (4) BCLR 393 (SCA); [2009] 2 All SA 243 (SCA)

	NDPP's decisions to prosecute Zuma	Search and seizure applications	International co-operation application	s179 application	DA review application
20/3/2009 onwards	Zuma's representations heard and considered				
1/4/2009	NDPP Mpshe decides to stop prosecution				
6/4/2009	NDPP Mpshe announces decision				
7/4/2009	Order before Tshabalala JP withdrawing charges				DA application launched, to review Mpshe's decision to stop prosecution
27/5/2009					First interjectory: DA brings application to compel production of the record of Mpshe's decision ("the 6(11) application")
14/8/2009					Zuma's answering papers in the 6(11) application, and launches application for security
9/6/2010					The 6(11) application heard before Ranchod J
22/2/2011					Judgment of Ranchod J in 6(1) application, ¹⁴ dismissing the DA's case based on standing
15/2/2012					Appeal heard in the 6(11) application before the SCA
20/3/2012					Judgment of SCA in the 6(11) application ¹⁵
12/4/2012					NPA provides Part A of the Rule 53 record

¹⁴ *Democratic Alliance v Acting National Director of Public Prosecutions and Others* (19577/09) [2011] ZAGPPHC 57 (22 February 2011), accessible at <http://www1.saflii.org/za/cases/ZAGPPHC/2011/57.pdf>

¹⁵ *Democratic Alliance and Others v Acting National Director of Public Prosecutions and Others* 2012 (3) SA 486 (SCA); [2012] 2 All SA 345 (SCA); 2012 (6) BCLR 613 (SCA)

NDPP's decisions to prosecute Zuma	Search and seizure applications	International co-operation application	s179 application	DA review application
18/9/2012				Second Interlocutory. DA brings application in the NGHC to compel compliance with SCA order, and to compel production of documents
24/7/2013				Application to compel heard before Mathopo J
16/8/2013				Judgment of Mathopo J in the application to compel ¹⁶
15/8/2014				SCA hears appeal by Zuma in the application to compel
28/8/2014				SCA dismisses appeal in application to compel ¹⁷
4/9/2014				NPA provides Part B of the Rule 53 record
				Redacted documents returned by Hurt J, making up Part C of the Rule 53 record
7/10/2014				NPA provides Part D of the Rule 53 record
6/11/2014				DA files supplementary founding affidavit
31/3/2015				Answering papers of NPA
15/4/2015				Answering papers obo Zuma
20/5/2015				DA files replying papers
30/6/2015				Further papers filed by Mpshe
1-3/3/2016				Review heard before Full Bench of the NGHC

¹⁶ Democratic Alliance v Acting National Director of Public Prosecutions and Others [2013] 4 All SA 610 (GNP)

¹⁷ Zuma v Democratic Alliance and Others [2014] 4 All SA 35 (SCA)

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	NDPP's decisions to prosecute Zuma	Search and seizure applications	International co-operation application	s179 application	DA review application
29/4/2016					Judgment of the Full Bench of the NGHC ¹⁸
10/6/2016					Full Bench hears applications for leave by Zuma and the NPA
24/6/2016					Full Bench refuses leave to appeal
28/8/2016					CC refuses NPA application for leave
11/10/2016					SCA refers Zuma's application for leave to argument
30/1/2017					SCA refers NPA's application for leave to argument
8/5/2017					Zuma eventually files record (of 22 volumes) in appeal
					DA prepares core bundle to correct deficiencies in record filed by Zuma
14/9/2017					SCA hears appeal
13/10/2017					Judgment of SCA ¹⁹

¹⁸ *Democratic Alliance v Acting National Director of Public Prosecutions and Others* 2016 (2) SACR 1 (GP); [2016] 3 All SA 78 (GP); 2016 (8) BCLR 1077 (GP)

¹⁹ *Zuma v Democratic Alliance and Others; Acting National Director of Public Prosecutions and Another v Democratic Alliance and Another* (77/1/2016, 1170/2016) [2017] ZASCA 146 (13 October 2017), accessible at <http://www1.saflii.org/za/cases/ZASCA/2017/146.pdf>

Politics

Zuma's lawyer says bid to overturn Abrahams decision is 'likely'

17 March 2018 - 16:27 By Timeslive



Jacob Zuma. File photo.

Image: SIMPHIWE NKWALI/ Sunday Times

Former president Jacob Zuma is likely to challenge the decision to reinstate criminal charges against him, his lawyer said on Saturday.

Michael Hulley issued a brief statement saying a decision would be made only "after careful consideration and consultation with Mr Zuma".

His statement said: "We are giving consideration to the one-page and somewhat terse response received from the National Director of Public Prosecutions wherein he has advised that the representations made on behalf of Mr Jacob Zuma are unsuccessful.

"The rationale for this decision is not clearly apparent from the communication, nor is the basis for the refusal.

"In the circumstances, the likely course of action would be to take the decision of the NDPP on review."

Exactly 24 hours earlier, NDPP Shaun Abrahams said Zuma would go on trial for the 2009 string of charges that had been brought against him.

"I am of the view that there are reasonable prospects of a successful prosecution of Zuma in the charges listed in the indictment," Abrahams told a news conference.

Zuma faces 16 charges, involving 783 incidents, of racketeering, corruption, money laundering and fraud.

The National Prosecuting Authority in KwaZulu-Natal will facilitate the trial.

The charges relate to a multi-billion rand government arms deal in the late 1990s. Zuma — then deputy president — was linked to the deal through Schabir Shaik, his former financial adviser who was jailed for corruption.

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Shaik's conviction almost torpedoed Zuma's bid for president but the charges against him were dropped on a technicality in 2009.

The High Court reinstated the charges in 2016 and the Supreme Court upheld that decision last year, rejecting an appeal by Zuma and describing the NPA's initial decision to set aside the charges as "irrational".

Shaik was found guilty of fraud in 2005 and sentenced to 15 years, while Zuma walked away unscathed.

Shaik was released on medical parole in March 2009, after serving just over two years of his 15-year sentence. He was convicted on two counts of corruption and one of fraud, relating to his facilitation of a bribe, allegedly by French arms company Thint, to Zuma.

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ZUMA CONSIDERS CHALLENGING DECISION TO PROSECUTE HIM

Former president Jacob Zuma's lawyers say they are considering challenging the National Prosecuting Authority's decision to prosecute him.

Zuma



Former president Jacob Zuma. Picture: GCIS.

National Prosecuting Authority NPA (http://ewn.co.za/Topic/National-Prosecuting-Authority-NPA) Eyewitness News (http://ewn.co.za/Contributors/eyewitness-news) 6 days ago (6 days ago)

JOHANNESBURG - Former president Jacob Zuma (http://ewn.co.za/Topic/Jacob-Zuma) could challenge a decision by the National Prosecuting Authority to reinstate criminal charges against him.

His lawyer, Michael Hulley is reportedly considering taking the decision on review.

NPA head, Shaun Abrahams, announced on Friday (http://ewn.co.za/2018/03/16/abrahams-says-npa-to-pursue-charges-against-zuma) that Zuma will face 16 charges of fraud, corruption, money laundering and racketeering related to 783 payments from his former advisor Shabir Shaik.

Abrahams says he notified the former president earlier on Friday of his decision.

He explained that Zuma's representations were unsuccessful.

"Mr Zuma's representation, broadly speaking, largely relates to allegations of a prosecution characterised by prosecutorial manipulation, impropriety, fair trial abuses, prosecutorial misconduct, deliberate leaking of information to the media and irrational decisions made by various national directors and/or acting national directors of public prosecution."

Abrahams said Zuma disputes all the allegations against him, and that he lacked the requisite intent to commit the crimes.

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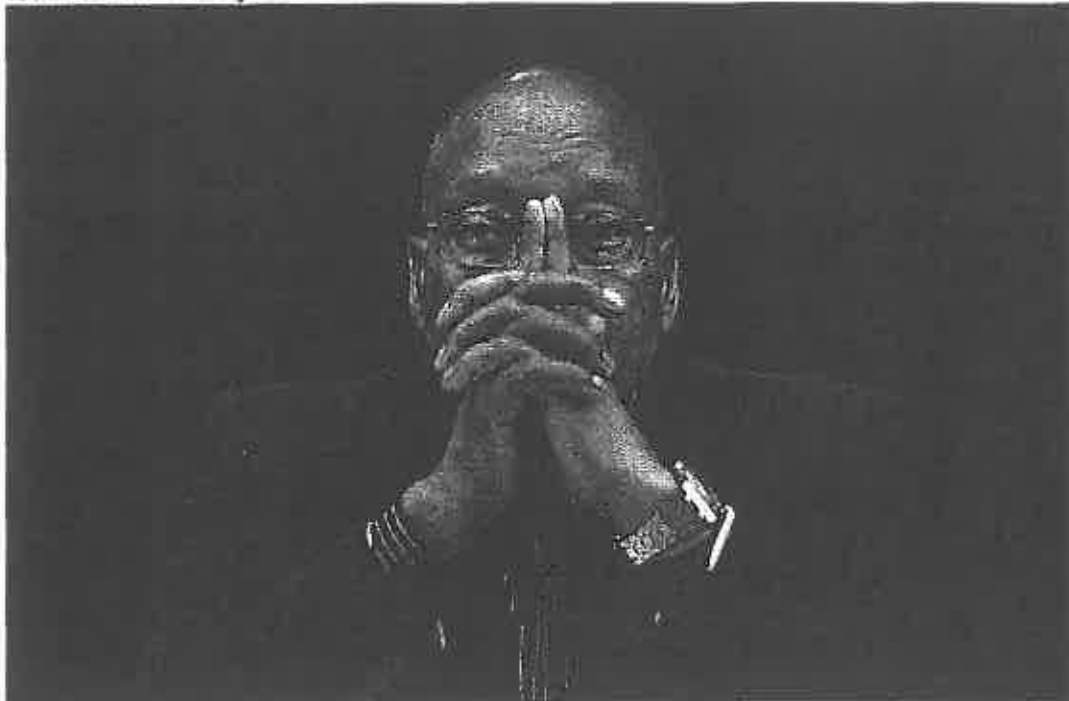
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Politics

Zuma has rights, says lawyer fighting to stave off prosecution

16 March 2018 - 18:19 By Phijani Nombembe



Jacob Zuma. File photo.
Image: Thuli Dlamini

A lawyer representing an NGO fighting for former president Jacob Zuma's freedom has vowed to take the fight to the bitter end.

South African Natives Forum's lawyer, Lucky Thekiso, told the Sunday Times shortly after the prosecution's announcement that charges against Zuma would be reinstated: "That man [Zuma] has rights like any other person on this earth, the constitution protects him as a person."

Thekiso said the NGO launched an application to stop Zuma's prosecution in the High Court in Cape Town last month.

He said a number of respondents including the prosecution, the Speaker of parliament, the Presidency, the justice minister and Zuma are cited in the litigation.

"We have to cite him [Zuma], he has an interest [in the matter]. We want a stay of prosecution," said Thekiso.

"We are people of social justice. Anyone one would have ensured that his or her constitutional rights are not violated."

He said the prosecution had indicated to the NGO that it intended to defend the lawsuit and should provide an "interim affidavit" within 15 days.

Thekiso said the NGO would appoint a spokesperson to deal with the lawsuit next week.

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13 March 2018

ATTORNEYS MINDES SCHAPIRO & SMITH

Attention: **Ms E Jonker**

Email: elzanne@mindes.co.za

Dear Madam

**RE: DEMOCRATIC ALLIANCE / PRESIDENT OF THE REPUBLIC OF SOUTH
AFRICA & OTHERS - WESTERN CAPE HIGH COURT CASE NO. 20462/17**

Further to your letter dated 17 January 2018.

1. Thank you for affording us an extension of time to allow the current President to consider the matter and for us to take instructions to meaningfully respond to your above letter.
2. We are instructed to inform you that since 1 May 2009 an amount of R15 300 250.00 (Fifteen Million, Three Hundred Thousand and Two Hundred and



Fifty Rand) was incurred by the Presidency on legal costs pertaining to the National Prosecuting Authority's decision to decline to prosecute former President Zuma on charges of fraud; corruption and racketeering.

3. Our further instructions are that the Presidency will convey the above information to the National Assembly.
4. In light of the aforesaid the offer contained in your above correspondence is hereby accepted, consequently the matter has become settled and we now await your client's notice of withdrawal of its application.

Yours faithfully

STATE ATTORNEY

Per: L. Manuel



**The State Attorney
Die Staatsprokureur
iGqweta IlkaRhulumente**

4th FLOOR / 4^{de} VLOER
LIBERTY LIFE CENTRE / SENTRUM
22 LONG STREET / LANGSTRAAT 22
CAPE TOWN / KAAPSTAD / KAPA
8001

DOCEX 156

Private Bag X 9001
Privaatsak
CAPE TOWN
KAAPSTAD
KAPA
8000

(021) 441-9200

(021) 421-9364

My Ref./My Verw./ Isalathiso
sam: 2555/17/P12

Your Ref./ U Verw./ Isalathiso sakho:
DEM16/0497/E JONKER/ks

14 March 2018

ATTORNEYS MINDES SCHAPIRO & SMITH

Attention: **Ms E Jonker**

Email: elzanne@mindes.co.za

Fax: 021 918-9070

Dear Madam

**RE: DEMOCRATIC ALLIANCE / PRESIDENT OF THE REPUBLIC OF SOUTH
AFRICA & OTHERS - WESTERN CAPE HIGH COURT CASE NO. 20462/17**

We refer to our letter of the 13th March 2018 in which we provided the total amount which was incurred by the Presidency with regards to legal costs pertaining to the National Prosecuting Authority's decision to decline to prosecute former President Zuma.

We have been instructed by our client to clarify the breakdown of the amount of R15 300 250, 00 (Fifteen Million, Three Hundred Thousand and Two Hundred and Fifty

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Rand). We advise that the amount must be broken down into two separate time periods – before and after the decision to withdraw the charges that was eventually the subject of a review application. The amount incurred in the initial period is R7 505 949, 45 (Seven Million, Five hundred and Five Thousand Nine Hundred and Forty Nine Rand and Forty Five Cents). The process from the application to review the decision to withdraw the charges up to the end of the decision of the Supreme Court of Appeal, the legal costs incurred is the amount of R7 794 301, 28 (Seven Million Seven Hundred and Ninety Four Thousand Three Hundred and One Rand and Twenty Eight Cent). The total for both the periods referred to herein is an amount of R15 300 250, 73 (Fifteen Million, Three Hundred Thousand and Two Hundred and Fifty Rand and Seventy Three Cents).

We hope that the breakdown will assist in the explanation of the amounts involved.

Yours faithfully

STATE ATTORNEY


Per: L Manuel

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Weekend Weather Update: Rainy conditions continue across central and northern SA
The SA Weather Service forecasts heavy rain that could lead to localised flooding in the north-eastern parts of the country

LAST UPDATED: 2018-03-23, 12:14

Cape Town		Friday 16-24°C	Search
		Sunny, MM.	Brought to you by: weather24
		3 DAY FORECAST	

Zuma's court expenses incurred in line with State Attorney Act - Presidency

2018-03-13 21:40

Tammy Petersen

news24

Cape Town - President Cyril Ramaphosa has no reason to believe that there is a basis to seek the recovery of the R16.3m spent by his predecessor Jacob Zuma on legal fees for his nine-year "spy tapes" challenge, his spokesperson said on Tuesday.

"All expenditure incurred by former president Zuma was incurred in line with the provisions of the State Attorney Act," Ramaphosa's spokesperson Khuseka Diko told News24.

"There is no basis at this point for the president to believe that this money should be personally recovered as it was in line with the Act."

She confirmed the figures provided to the DA in a letter from the state attorney on Tuesday, saying it was the same provided to the Presidency based on an enquiry by its office.

After Zuma failed to answer the question on how much he had spent on the case in Parliament, the DA in November approached the Western Cape High Court to compel him to reveal it.

The state attorney said the office was instructed by Ramaphosa to provide the details after having considered the court approach.

The letter reads: "We are instructed to inform you that since May 1, 2009 an amount of R16 300 250 was incurred by the Presidency on legal costs pertaining to the National Prosecuting Authority's decision to decline to prosecute former president Zuma on charges of fraud, corruption and racketeering."

DA leader Mmusi Maimane said Zuma was now liable to pay back the money, because the spy tapes case was against him in his personal capacity, and before he was president.

He had called on Ramaphosa to join their legal action to recover the money.

Read more on: [cyril ramaphosa](#) | [jacob zuma](#)



Jacob Zuma and Cyril Ramaphosa. (File, AFP)

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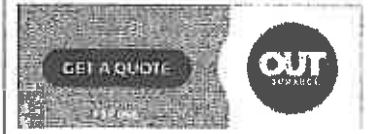
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Handwritten marks: a circled 'D' and the number '19'.

JSS

Mindes

MINDE SCHAPIRO & SMITH

Docex 1 | Tygerberg
PO Box 4040 | Tyger Valley | 7536 | South Africa
Tyger Valley Office Park | Building Number 2 | Cnr Wille van Schoor & Old Oak Roads | Beville
T: 021 918 9000 | 021 918 9020 (Direct Line) | F: 021 918 9070 (General) | 0866131061 (Direct Fax)
E: elzanne@mindes.co.za | www.mindes.co.za

Our Ref: DEM16/0063/ELZANNE JONKER/ks | Your Ref: | Date: 14 March 2018

THE PRESIDENT OF SOUTH AFRICA

PER EMAIL: presidentrsa@presidency.gov.za

URGENT

Dear President Ramaphosa,

LEGAL FEES: J G ZUMA - CASE NO 19577/09: NORTH GAUTENG HIGH COURT

1. We represent the Democratic Alliance (our client).
2. As you are aware, our client was the applicant in the aforesaid litigation that has taken place since May 2009.
3. On 13 March 2018, the State Attorney, on instructions from yourself, confirmed that "an amount of R15 300 250.00 (Fifteen Million, Three Hundred Thousand and Two hundred and Fifty Rand) was incurred by the Presidency on legal costs pertaining to the National Prosecuting Authority's decision to decline to prosecute former President Zuma on charges of fraud, corruption and racketeering."
4. Our instructions are to request the following information from the office of the Presidency and you as Head of that office:
 - 4.1 Your spokesperson, Khuseka Diko, confirmed to the media on 13 March 2018 that all expenditure incurred by former President Zuma was incurred in line with the provisions of the State Attorney Act.
 - 4.1.1 On what provisions of the State Attorney Act 56 of 1957 does the Presidency rely to claim compliance with the Act.
 - 4.1.2 What steps were taken to ensure that the Presidency, in allowing this expenditure, was in lawful compliance with all relevant legislation.
 - 4.1.3 The attorney of record of former President Zuma was not the State Attorney

Minde Schapiro & Smith Incorporated | Attorneys Notaries & Conveyancers since 1926 | Registration number 2010/025182/21

Directors: Louis Meyer B Juris LLB | Heinrich Crous BA LLB | Rosalfe Smill B Comm LLB |
Elzanne Jonker BA LLB | *Jonathan Rubin B Comm LLB LLM | Venesen Reddy LLB
Senior Associate: Gerhard Lourens FPSA@
BA LLB

Associates: Jaime Lifford BA LLB | Andre van Breckla B Comm LLB | Jhané Bezuidenhout LLB
Consultants: Gerhard van Reenen | Marianne O'Mear B Comm LLB LLM | Marais Hoon BA LLB | Rolé Beeby BA LLB

Vat registration number: 4580257428 | *At Greenacres, Port Elizabeth

KS

Mindel

MINDE SCHAPIRO & SMITH

but Michael Hulley of Hulley and Associates, a private law firm. On what basis is it alleged that this practice is subject to the provisions of the State Attorney Act.

- 4.2 Former President Zuma was, at all relevant times, cited in his capacity as an ordinary citizen and not in his official capacity. The costs orders granted by the Courts in the matters Zuma v Democratic Alliance and Others; Acting National Director of Public Prosecutions and Another v Democratic Alliance and Another (771/2016, 1170/2016) [2017] ZASCA 146; [2017] 4 All SA 726 (SCA); 2018 (1) SA 200 (SCA); 2018 (1) SACR 123 (SCA) (13 October 2017) and Democratic Alliance v Acting National Director of Public Prosecutions and Others (19577/2009) [2016] ZAGPPHC 255; 2016 (2) SACR 1 (GP); [2016] 3 All SA 78 (GP); 2016 (8) BCLR 1077 (GP) (29 April 2016) were also against former President Zuma in his personal capacity. Kindly explain on what basis he would have been entitled to expect his legal fees to be paid by the State and/or Presidency and/or Treasury. Also, regard must be had to the concessions made by former President Zuma and the National Prosecuting Authority's legal counsel, in the Supreme Court of Appeal, that there was no merit in the opposition to our client's Application.
- 4.3 Media reports furthermore reveal that your acting spokesperson, Tyrone Seale, conveyed to the Financial Mail that the State would continue to fund former President Zuma's legal fees based on an undertaking that was concluded by former Presidents Zuma and Mbeki in 2006. Mention is also made of an undertaking that former President Zuma has undertaken to refund the state should he be found guilty.
- 4.3.1 Kindly confirm whether this is the position of the Presidency? If so, kindly explain the legal basis on which such a position is held.
- 4.3.2 Was the Agreement concluded between former Presidents Mbeki and Zuma in writing? If so, we are entitled and require a copy thereof.
- 4.3.3 If not concluded in writing, what was the exact terms of the agreement. Full details are requested.
- 4.3.4 Was the so-called undertaking to repay the legal fees, if convicted, in writing? If so, we require copies thereof. If not, we require full details of the undertaking.
- 4.3 Kindly indicate whether there is a current obligation that former President Zuma's

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Ezanne Jonker BA LLB | * Jonathan Rubin B Comm LLB LLM | Venesen Reddy LLB
Senior Associate: Gerhard Lourens FPSA®
BA LLB

Associates: Jaime Lifford BA LLB | Andre van Breda B Comm LLB | Jhané Bezukienhout LLB
Consultants: Gerhard von Reenen | Marianna Ollmer B Comm LLB LLM | Marais Hoon BA LLB | Rolé Beeby BA LLB

Vat registration number: 4580267428 | *At Greenacres, Port Elizabeth

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Minde

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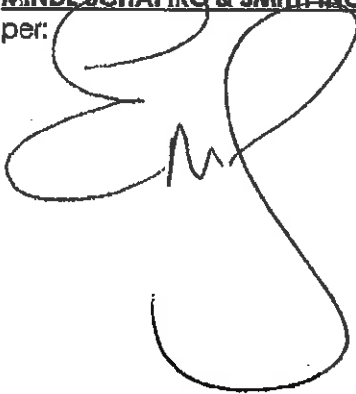
legal fees shall continue to be paid by the Presidency / State / Treasury.

- 4.4 Insofar as there exists a current obligation on the State to continue to fund the legal costs of former President Zuma in the above matter or in any other matter, kindly indicate what oversight is exercised by your office and/or the Government and/or Treasury over such expenditure.
5. Since this matter is of the utmost public importance, we require your response to the aforesaid by no later than **Thursday, 22 March 2018**, failing which our client has instructed us to institute legal proceedings on an urgent basis seeking the appropriate relief, and declaratory orders concerning the lawfulness of the Presidency's conduct in relation to the legal fees paid.
6. We trust we can rely on your cooperation herein.

Yours faithfully

MINDE SCHAPIRO & SMITH INC.

per:



Minde Schapiro & Smith Incorporated | Attorneys Notaries & Conveyancers since 1926 | Registration number 2010/025182/21

Directors: Louis Meyer B Juris LLB | Heinrich Crous BA LLB | Rosalie Smit B Comm LLB |
Elzanne Jonker BA LLB | * Jonathon Rubin B Comm LLB LLM | Venesen Reddy LLB
Senior Associates: Gerhard Lourens FPSA®
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Associates: Jaime Wilford BA LLB | Andre van Breda B Comm LLB | Jhané Bezuidenhout LLB
Consultants: Gerhard van Reenen | Marianne Olivier B Comm LLB LLM | Marais Hoon BA LLB | Rolé Beeby BA LLB

Vat registration number: 4580257426 | *At Greenacres, Port Elizabeth





the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

JS6

OFFICE OF THE STATE ATTORNEY: JOHANNESBURG

Private Bag X9, JOHANNESBURG, 2000
10TH Floor, North State Building, 95 Market Street (cnr Kruis), JOHANNESBURG, 2001

Docex 688, Johannesburg
Tel (011) 330 7600 / 7621 (direct)
Cell : 082 926 0708
Fax (011) 333 0348 / 086 612 4106

My ref : vdulam
Enq : V Dhulam (Mr)
E-mail : VDulam@justice.gov.za

Your ref: DEM16/0063/E JONKER

Date: 22 March 2018

MINDES SCHAPIRO & SMITH ATTORNEYS
P.O. BOX 4040
TYGER VALLEY
7536

E-MAIL: elzanne@minds.co.za

Dear Sirs

RE: LEGAL FEES: J.G. ZUMA- CASE NO 19577/09: NORTH GAUTENG HIGH COURT

1. We acknowledge receipt of your letter dated 14 March 2018 addressed to the President, in which you request a response to questions related to the above subject matter by 22 March 2018.
2. After consultation between the Presidency and Department of Justice, we hereby provide a response to your questions:

(Always quote my reference number)

STATE ATTORNEY: K G Lelake (B Proc, LLB, LLM) DEPUTY STATE ATTORNEYS: A S P Solha (BA, LLB, LLM); T Pillay (B Proc); T W Sekwadi (B Juris, LLB); Z N S O Nhlavisi (B Proc); V Dhulam (B Proc, LLM) SENIOR ASSISTANT STATE ATTORNEYS: S Du Preez (B. Juris, B Proc); M C Engelman (BA, LLB); A H Fouché (B Proc, LLB); D D Govender (B Proc); W R I Mabilisela (B Proc, LLB); I V); S L Makenna (B Proc); N Gqawu (B Proc); S J Mantlavana (B Proc); J Z S Mkhata (B Proc)(LLB) (B Proc); L Fletela (B Proc, LLM); V Malherbe (B Juris)(LLB) ASSISTANT STATE ATTORNEYS: ; H T Higa (B Proc); N T Hongo (BA Economics and Accounting, LLB); D Lebanya (B Proc); H S Linda (BA, LLB); I T Malape (LLB); LLB); M H Maponya (B Proc); Ed Mafou (B Juris, LLB); H T Ngobeni (B Juris, LLB); S P N Nkoana (LLB); A M Setshuny (LLB); C T Setshole (B Proc, LLB); L E Kokota (LLB); S Nyawo (B Juris)(LLB); R R Nematkonde (LLB, LLM); D Mphahpu (B Proc);

Handwritten initials/signature

AD PARA 4.1

- 2.1. The decision to provide to Mr Zuma legal representation at state expense was taken in accordance with section 3(1) of the State Attorneys Act 56 of 1957.
- 2.2. This decision was taken by the Presidency In 2006. After receiving the request for legal representation the Presidency sought advice from the Minister of Justice and the State Attorney.
- 2.3. The decision was based on advice from the Chief State Law Advisor (Mr Daniels), the Director-General in the Department of Justice (Adv Simelane), the Minister of Justice (Minister Mabandla) and the State Attorney (Ms Mosidi).
- 2.4. All the officials referred to in para 4 above recommended the provision of legal representation at state expense under section 3 of the State Attorney Act.
- 2.5. The Presidency at the time was further advised that there may be circumstances in which a private attorney may be engaged in order to provide legal representation to a government official or department. The Presidency was also advised that the circumstances of this particular request warranted the appointment of a private attorney on the basis that there may exist a conflict of interest were the state attorney to be engaged in providing legal representation or a perception of a conflict of interest.
- 2.6. The decision was subject to the undertaking by former President Zuma to refund the legal costs incurred by the State in the event that his defence is unsuccessful. We have been unable to locate a written agreement between the Presidency and Mr Zuma in this respect.

(Always quote my reference number)

STATE ATTORNEY: K G Lekabe (B Proc, LLB, LL.M) DEPUTY STATE ATTORNEYS: A S P Botha (BA, LLB, LL.M); T Pillay (B Proc); T W Sekwati (B Iuris, LLB); Z N S O Nhlalal (B Proc); V Dhlam (B Proc, LL.M) SENIOR ASSISTANT STATE ATTORNEYS: B Du Preez (B. Iuris, B Proc); M C Engelsman (BA, LLB); A H Fouche (B Proc, LLB); D D Govender (B Proc); W R I Mabitsela (B Proc, LLB); I V); S L Makenna (B Proc); N Gcwiri (B Proc); S J Manthana (B Proc); J Z S Mtata (B Proc)(LLB) (B Proc); L Fetele (B Proc, LL.M); V Malherbe (B Iuris)(LLB) ASSISTANT STATE ATTORNEYS: ; H T Higa (B Proc); N T Hongo (BA Economics and Accounting, LLB); D Leberya (B Proc); H S Linda (BA, LLB); I T Malape (LLB); M H Mponya (B Proc); Ee Maitso (B Iuris, LLB); H T Ngobeni (B Iuris, LLB); B P N Nkoana (LLB); A M Sathunya (LLB); C T Sedhato (B Proc, LLB); L E Kokoto (LLB); S Nyawo (B Iuris)(LLB); R R Nematkonde (LLB, LL.M); D Mphesphu (B Proc);

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2.7. However, we have been provided with an undertaking dated 22 August 2006 signed by Mr Zuma and attach it hereto as Annexure A. A second undertaking was made on 26 September 2008, which is attached hereto as Annexure B.

AD PARA 4.2

2.8. The Presidency, at the time, was advised that the basis for the application of section 3 of the State Attorney Act was that the charges concerned government; that they relate to Mr Zuma's activities while he held political office as an MEC in KZN and later was required to answer questions as Deputy President; and that the matter is of public import.

AD PARA 4.3

2.9. As stated earlier, the undertaking to afford Mr Zuma legal representation at the State's expense was taken in terms of section 3(1) of the State Attorney Act. This undertaking was also duly communicated to him (through his lawyers) on more than one occasion. Due to the fact that the Presidents who came after the undertaking was signed are the successor in title in the President's office, they assume the obligation created in the undertaking. The office of the Presidency is therefore bound by that decision and must continue paying for Mr Zuma's legal fees on the basis that it undertook to do so until such time as the decision is reviewed and set aside by a court.

AD PARA 4.4

2.10. The PFMA and the Treasury Regulations require the accounting officer in the Presidency (as a Department) to ensure that there is sufficient funding for expenditure that it undertakes to cover. This necessarily means that there must be a budget provided for Mr Zuma's legal fees. In order to continue fulfilling its obligations under the PFMA and the Treasury Regulations, the accounting

(Always quote my reference number)

STATE ATTORNEY: K G Letabe (B Proc, LLB, LLM) DEPUTY STATE ATTORNEYS: A G P Botha (BA, LLB, LLM); T Pillay (B Proc); T W Sekoradi (B Juris, LLB); Z N S O Nhlaliso (B Proc); V Dhlamini (B Proc, LLM) SENIOR ASSISTANT STATE ATTORNEYS: B Du Preez (B. Juris, B Proc); M G Engelmann (BA, LLB); A H Fouche (B Proc, LLB); D D Govender (B Proc); W R I Mabizela (B Proc, LLB); I V); S L Makana (B Proc); N Gcawu (B Proc); S J Manfisa (B Proc); J Z S Mkhata (B Proc)(LLB) (B Proc); L Fialata (B Proc, LLM); V Mahtaba (B Juris)(LLB) ASSISTANT STATE ATTORNEYS: ; H T Higa (B Proc); N T Hongo (BA Economics and Accounting, LLB); D Labanya (B Proc); H S Linda (BA, LLB); I T Malape (LLB), LLB); M H Maponya (B Proc); Eo Mafou (B Juris, LLB); H T Ngobeni (B Juris, LLB); S P N Nkomo (LLB); A M Sethunya (LLB); C T Bethathole (B Proc, LLB); L E Kokofa (LLB); S Nyawo (B Juris)(LLB); R R Nemaokonde (LLB, LLM); O Mphahle (B Proc);

Handwritten initials or signature.

officer in the Presidency will request Mr Zuma's legal representatives to provide estimates of how much they will require in order to render their services to Mr Zuma in the criminal trial. In turn, the office of the Presidency will seek to ensure that such estimated costs are reasonable and budgeted for.

3. I trust that this response is of assistance.

Yours faithfully


V DHULANI (Mr)
FOR/ STATE ATTORNEY
JOHANNESBURG

(Always quote my reference number)

STATE ATTORNEY: K G Lekaba (B Proc, LLB, LLM) **DEPUTY STATE ATTORNEYS:** A S P Botha (BA, LLB, LLM); T P Ray (B Proc); T W Sekweli (B Iuris, LLB); Z N S O Nhlalal (B Proc); V Dhulani (B Proc, LLM) **SENIOR ASSISTANT STATE ATTORNEYS:** B Du Preez (B. Iuris, B Proc); M C Engelmann (BA, LLB); A H Fouche (B Proc, LLB); D D Govender (B Proc); W R I Mabhiza (B Proc, LLB); I V); S L Matheba (B Proc); N Gcwu (B Proc); S J Manthata (B Proc); J Z S Mkhata (B Proc)(LLB) (B Proc); L Fietala (B Proc, LLM) ; V Malherbe (B Iuris)(LLB) **ASSISTANT STATE ATTORNEYS:** ; H T Higa (B Proc); N T Hongo (BA Economics and Accounting, LLB); D Labanya (B Proc); H S Linda (BA, LLB); I T Malape (LLB); LLB); M H Maponya (B Proc); Eo Matlou (B Iuris, LLB); H T Ngobeni (B Iuris, LLB); B P N Nkoena (LLB); A M Bethunya (LLB); C T Satholele (B Proc, LLB); L E Kokofa (LLB) ; S Nyawo (B Iuris)(LLB); R R Nemaokonde (LLB, LLM); D Mphophu (B Proc);

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PAGE 04/04 30
"A"



APPLICATION AND UNDERTAKING

I, JACOB ZUMA, hereby apply for legal assistance at the State's expense in a criminal case in which I am accused of two counts of corruption.

1. I request that the State Attorney appoint the below-stated lawyers to conduct the case on my behalf:
 - 1.1 The firm of Hulley & Associates, Durban.
 - 1.2 Advocates K.V. Kamp SC, Advocate J. Brauns SC, Advocate T. Mbongwa and Advocate M. Smithers.
2. That the said Hulley & Associates be permitted to instruct a firm of accountants for the purposes of advising on the audits report and to further assist in the conduct of Mr Zuma's defence.
3. I hereby undertake on demand to refund to the State Attorney all costs incurred by the State Attorney in connection with my defence should the court find that I acted in my personal capacity and own interests in the commission of alleged offences. The demand to refund all costs incurred will still be in the discretion of the State Attorney.
4. I am aware that legal representation by the State Attorney does not preclude her office from acting against me on behalf of the State in any separate case arising out of this matter or related thereto.

SIGNED AT DURBAN ON THIS 22 DAY OF AUGUST 2006.

AS WITNESSES:

1. 
2. 


JACOB ZUMA

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" B " (29)

APPLICATION AND UNDERTAKING IN REGARD TO LEGAL REPRESENTATION AT STATE'S COSTS IN A CRIMINAL CASE AGAINST MR JACOB GEDLEYIHELEKISA ZUMA

I, Jacob Gedleyihlekisa Zuma, hereby apply for legal assistance at State expense in criminal case in which I am accused of


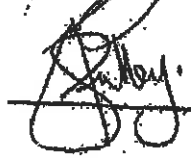
1. I request the State Attorney to appoint the below - stated lawyers to conduct the case on my behalf.


- 1.1 The firm *Mulley and Associates, Durban;*
- 1.2 Advocate *K J Kemp SC;*
- 1.3 Two Junior Counsel to assist the Silk;
- 1.4 A Second Senior to assist on ad hoc basis (in consultation with the State Attorney).

2. I hereby undertake on demand to refund to the State Attorney all costs incurred by the State Attorney in connection with my defence.

SIGNED at PRETORIA on this 21 day of September 2008

AS WITNESSES

1. 
 2. 


 JACOB G ZUMA



JS8

**FURTHER INFORMATION IN RESPONSE TO QUESTIONS FOR
ORAL REPLY, NATIONAL ASSEMBLY, 14 MARCH 2018**

★3. Mr J S Malema (EFF) to ask the President of the Republic:

(a) What is the total amount that the Presidency spent on the legal costs of former President, Mr J G Zuma, since his election as President in 2009 and (b) on what legal provision(s) or policy did the State rely when using state resources to fund the former President's personal legal costs?

NO409E

(b)

I am informed that the State Attorney, at the time of considering the request made by President Zuma for legal representation at State expense, considered section 3(3) of the State Attorney Act, 1957 (as amended) to give her discretion where the State was not party to a matter but interested or concerned in it, or it was in the public interest to provide such representation to a government official.

The acts on the basis of which it is alleged that the former President committed criminal offences took place during his tenure as a government official both at provincial and later at national level.

In addition, the Department of Justice considered section 12.2.2 of the then applicable Treasury Regulations, issued in terms of the Public

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Finance Management Act, 1999, read with section 3(1) of the State Attorney Act, as providing for an obligation to refund the state if any loss was found to be incurred when an official was acting outside the course and scope of his employment.

For this reason, the State Attorney decided that it was appropriate to grant the request of the former President, subject to the condition that he make an undertaking (which he did) to refund monies thus spent should it be found that he acted in his personal capacity and own interest in the commission of the alleged offences.

ENDS

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JS9



Office of the State Attorney Pretoria

Private Bag X 91
PRETORIA
0001

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Francis Baard Street
Entrance Thabo Sehume Street

Tel (Switchboard) (012) 309 1500
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(Secretary) (012) 309 1530

Fax (General) (012) 309 1488/90
(Direct) (086) 507 3325

21 SEPTEMBER 2015

Enquires K I CHOWE
Email kchowe@justice.gov.za

My ref 8003/2015/275/JS
Your ref

PER FAX: (012) 393 7120
086 545 1471
Email: groenewaldD@saas.gov.za

Legal Services
Litigation and Administration
PRETORIA

**RE: APPLICATION FOR LEGAL REPRESENTATION AT STATE'S COSTS:
THE STATE / D VAN DER ROSS, L GOVENDER AND K GOVENDER**

We refer to the above matter and your email of the 8th September 2015 in which you have instructed us to consider the application by the above members for legal representation at state's costs

We have read the attached draft indictment for each of the officials and we have noted that most of the charges are far removed from the normal course and scope of the employment of the officials. The alleged criminal offences although allegedly committed whilst the officials were executing their duties, they do not relate to their execution of their duties as police officials. It is therefore not possible to link the commission of the alleged offences with the employment and therefore the officials may not be covered in these instances.

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We wish to point out that there is a difference between civil liability that is vicarious liability of the Minister of Police and the cover for legal representation of officials in criminal matters. In civil matters, although a member may not have acted within the course and scope of his employment, the Minister of Police may attract civil liability only on the basis that such member was appearing to be acting within his duties. In certain civil cases, members do lose their state cover based on the fact that their actions are grossly negligent and cannot be expected to be within the course and scope of employment and in such cases, a member will be obliged to reimburse the Minister of Police for losses incurred. However, in criminal matters where a member was clearly acting outside the scope of his work, it may not necessarily attract liability for the Minister of Police hence criminal matters are directed at the official personally. In the charges alleged against the members who are subjects of our opinion herein, on the face of it, the alleged criminal charges are not at all characteristic to the duties of police officials and cannot be aligned to the course and scope of the employment. These alleged criminal offences were not advancing the interest of the Minister of Police.

In the light of the above we are of the view that the members should not enjoy legal representation at state's expenses and recommend that their applications should be declined.

We trust you find the above in order

Yours faithfully



K. CHOWE
FOR: STATE ATTORNEY (PRETORIA)

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