

PETER DAUBERMANN ATTORNEYS

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Our ref. 18-1984

Your ref. Adv Ntelwa

5 February 2019

The Director of Public Prosecutions
Eastern Cape
High Street
Grahamstown
6140

Fax. no. 046-602 3062

Dear Sir

THE STATE V OMOTOSO & TWO OTHERS (CASE NO. CC15/2018)

We refer to the above-mentioned partly heard matter which was postponed yesterday in the High Court at Port Elizabeth, by agreement, until 16 April 2019 pending the outcome of our clients' application to the Constitutional Court for leave to appeal against certain orders made by the presiding judge, Makaula J., during the course of the trial.

We record that at about 09:30 am yesterday, prior to the matter being postponed as aforesaid, our Mr Daubermann and your Advocates Ntelwa and Cerfontein met with Makaula J. in chambers to discuss the further conduct of the matter.

We record, further, that at the outset of the said meeting and in the presence of Makaula J. your Adv Ntelwa informed our Mr Daubermann that he felt that it is his duty to disclose that certain of the State witnesses (whom he did not name) in the

matter stayed in a guest-house owned by Makaula J. during the trial. Upon enquiry by Mr Daubermann, Adv Ntelwa disclosed, further, that Makaula J. owns the said guest-house indirectly through a company.

We record, further, that Makaula J. did not react when Adv Ntelwa made the said revelations by either confirming or denying the truth of same, or otherwise.

Our clients, for obvious reasons, stand aghast at the said revelations and their perception of bias on the part of Makaula J. has been compounded thereby.

In our view, it is patently clear that Makaula J. cannot, in the face of the said revelations, continue to preside in the matter.

In the circumstances and as a matter of courtesy, we intend to request Makaula J. to recuse himself from presiding in the matter mero motu in the interests of justice.

You are hereby invited to accompany counsel to see Makaula J. in chambers at your earliest convenience for the stated purpose.

Yours faithfully

PETER DAUBERMANN ATTORNEYS

per:

A handwritten signature in black ink, appearing to be 'P. Daubermann', written over a light grey rectangular background.

Copy to:

The Honourable Mr Justice Makaula
Chambers
Port Elizabeth