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GENERAL NOTICES • ALGEMENE KENNISGEWINGS

**THE PRESIDENCY
NOTICE 699 OF 2018****TERMS OF REFERENCE**

Enquiry in terms of section 12(6) of the National Prosecuting Authority Act 32 of 1998, into the fitness of Advocate Nomgcobo Jiba and Advocate Lawrence Sithembiso Mrwebi to hold the office of Deputy National Director of Public Prosecutions and Special Director of Public Prosecutions respectively.

WHEREAS section 179 of the Constitution provides for a single national prosecuting authority that has the power to institute criminal proceedings on behalf of the State and to carry out any necessary functions incidental to instituting criminal proceedings, that must perform its functions without fear, favour or prejudice and is appropriately qualified;

AND WHEREAS section 179(6) of the Constitution provides that the Cabinet member responsible for the administration of justice must exercise final responsibility for the prosecuting authority;

AND WHEREAS section 179(7) of the Constitution provides that all other matters concerning the prosecuting authority must be determined by national legislation;

AND WHEREAS section 9(1)(b) of the National Prosecuting Authority Act, the requisite national legislation, requires that any person appointed as a National Director of Public Prosecutions, Deputy National Director of Public Prosecutions or Director of Public Prosecutions appointed under section 13(1) must *“be a fit and proper person, with due regard to his or her experience, conscientiousness and integrity, to be entrusted with the responsibilities of the office concerned”*;

AND WHEREAS section 12(5) of the National Prosecuting Authority Act, inter alia, provides that a Deputy National Director of Public Prosecutions shall not be suspended or removed from office except in accordance with the provisions of subsections (6), (7) and (8).

AND WHEREAS section 12(6) of the National Prosecuting Authority Act provides that the President may provisionally suspend a National Director or a Deputy National Director of Public Prosecutions from office pending *“such enquiry into his or her fitness to hold such office as the President deems fit and, subject to the provisions of this subsection, may thereupon remove him or her from office - -*

“(i) for misconduct;

(ii) ...

(iii) on account of incapacity to carry out his or her duties of office efficiently; or

(iv) on account thereof that he or she is no longer a fit and proper person to hold the office concerned”;

AND AS section 14(3) of the National Prosecuting Authority Act provides that the provisions of section 12(6), in respect of the vacation of office and discharge of the National Director, shall apply, with the necessary changes, with regard to the vacation of office and discharge of a Special Director;

AND AS section 24(3) of the National Prosecuting Authority Act provides that a Special Director of Public Prosecutions shall exercise the powers, carry out the duties and perform the functions conferred or imposed on or assigned to him or her by the President, subject to the directions of the National Director of Public Prosecutions: Provided that if such powers, duties and functions include any of the powers, duties and functions referred to in section 20(1), they shall be exercised, carried out and performed in consultation with the Director of Public Prosecutions of the area of jurisdiction concerned;

AND WHEREAS the Code of Conduct for prosecutors as published in Government Notice 1257 (*Government Gazette* 33907, 29 December 2010) enjoins the members of the National Prosecuting Authority to meet the highest standards of the legal profession, assist and respect the courts, act with integrity and in their professional dealings, and at all times to conduct themselves in a dignified manner commensurate with their position;

AND WHEREAS the Constitution, the National Prosecuting Authority Act and the rules of natural justice, demand a fair and impartial enquiry in respect of allegations made against any Deputy National Director of Public Prosecutions and Special Director of Public Prosecutions subject to such enquiry;

AND WHEREAS on 22 December 2011 Advocate Nomgcobo Jiba was appointed Deputy National Director of Public Prosecutions;

AND WHEREAS on 26 October 2011 Advocate Lawrence Sithembiso Mrwebi was appointed as Special Director of Public Prosecutions;

AND WHEREAS certain allegations have been made that raise real and important questions regarding Advocate Jiba's and Advocate Mrwebi's fitness and propriety to hold office in the aforementioned positions and as members of the prosecuting authority;

AND WHEREAS the President, acting pursuant to section 12(6)(a) of the National Prosecuting Authority Act, has effective from 26 October 2018 suspended Deputy National Director of Public Prosecutions, Nomgcobo Jiba, and Special Director of Public Prosecutions, Lawrence Sithembiso Mrwebi, on full pay pending the finalisation of an enquiry into their fitness to hold office as set out below;

NOW THEREFORE the President hereby establishes an enquiry into their fitness to hold office pursuant to the provisions of section 12(6) of the NPA Act.

1. The President appoints Justice Yvonne Mokgoro (retired) as chairperson, to conduct this enquiry, assisted by Kgomotso Moroka SC and Thenjiwe Vilakazi.
2. The issues to be determined by the enquiry are as set out in paragraphs 3 and 4 below.

3. The fitness of Advocate Nomgcobo Jiba to hold office as a prosecutor in the prosecutorial services, in particular, in the capacity as a Deputy National Director of Public Prosecutor;
 - 3.1. With reference to, and at the discretion of the chairpersons of the enquiry, but not limited to, matters raised in or arising from the following cases:
 - 3.1.1. *Jiba and Another v General Council of the Bar of South Africa and Another Mrwebi v General Council of the Bar of South Africa* [2018] 3 All SA 622 (SCA),
 - 3.1.2. *Freedom under Law v National Director of Public Prosecutions & others* 2018 (1) SACR 436 (GP),
 - 3.1.3. *General Council of the Bar of South Africa v Jiba & Others* 2017 (2) SA 122 (GP),
 - 3.1.4. *Freedom Under Law v National Director of Public Prosecutions and Others* 2014 (1) SA 254 (GNP),
 - 3.1.5. *National Director of Public Prosecutions and Others v Freedom Under Law* 2014 (4) SA 298 (SCA),
 - 3.1.6. *Zuma v Democratic Alliance* [2014] 4 All SA 35 (SCA),
 - 3.1.7. *Booyesen v Acting National Director of Public Prosecutions and Others* [2014] 2 ALL SA 319 KZD);

Insofar as it relates, directly or indirectly to the conduct of Adv Jiba, and relating to her fitness and propriety to hold office and with due regard to all other relevant information, including but not limited to matters relating to Richard Mdluli and Johan Wessel Booyesen;

- 3.2. Whether, in fulfilling her responsibilities as Deputy National Director of Public Prosecutions:
 - 3.2.1. She complied with the Constitution, the National Prosecuting Authority Act and any other relevant laws in her position as a senior leader in the National Prosecuting Authority and is fit and proper to hold this position and be a member of the prosecutorial service;
 - 3.2.2. She properly exercised her discretion in relation to
 - 3.2.2.1. instituting and conducting criminal proceedings on behalf of the State;
 - 3.2.2.2. carrying out any necessary functions incidental to instituting and conducting such criminal proceedings, and
 - 3.2.2.3. discontinuing criminal proceedings;
 - 3.2.3. She duly respected court processes and proceedings before the Courts as required by applicable prescripts and as a senior member of the National Prosecuting Authority;
 - 3.2.4. She exercised her powers and performed her duties and functions in accordance with prosecution policy and policy directives as determined under section 21 of the National Prosecuting Authority Act;
 - 3.2.5. She acted at all times without fear, favour or prejudice;
 - 3.2.6. She displayed the required competence and capacity required to fulfil her duties; and

- 3.2.7. She in any way brought the National Prosecuting Authority into disrepute by any of her actions or omissions.
4. The fitness of Advocate Sithembiso Lawrence Mrwebi to hold office as a prosecutor in the prosecutorial services, in particular, in the capacity as Special Director of Public Prosecutions;
- 4.1. With reference to, and at the discretion of the chairpersons of the enquiry, but not limited to, matters raised in or arising from the following cases:
- 4.1.1. *Jiba and Another v General Council of the Bar of South Africa and Another Mrwebi v General Council of the Bar of South Africa* [2018] 3 All SA 622 (SCA),
- 4.1.2. *Freedom under Law v National Director of Public Prosecutions & others* 2018 (1) SACR 436 (GP),
- 4.1.3. *General Council of the Bar of South Africa v Jiba & Others* 2017 (2) SA 122 (GP),
- 4.1.4. *Freedom Under Law v National Director of Public Prosecutions and Others* [2014] (1) SA 254 (GNP), and
- 4.1.5. *National Director of Public Prosecutions and Others v Freedom Under Law* 2014 (4) SA 298 (SCA),

Insofar as it relates, directly or indirectly to the conduct of Adv Mwrebi, and relating to his fitness and propriety to hold office and with due regard to all other relevant information, including but not limited to matters relating to Richard Mdluli;

- 4.2. Whether, in fulfilling his responsibilities as Special Director of Public Prosecutions:
- 4.2.1. He complied with the Constitution, the National Prosecuting Authority Act and any other relevant laws in his position as a senior leader in the National Prosecuting Authority and is fit and proper to hold this position and be a member of the prosecutorial service;
- 4.2.2. He properly exercised his discretion in relation to
- 4.2.2.1. instituting and conducting criminal proceedings on behalf of the State;
- 4.2.2.2. carrying out any necessary functions incidental to instituting and conducting such criminal proceedings, and
- 4.2.2.3. discontinuing criminal proceedings;
- 4.2.3. He duly respected court processes and proceedings before the Courts as required by applicable prescripts and as a Special Director of Public Prosecutions in the National Prosecuting Authority;
- 4.2.4. He exercised his powers and performed his duties and functions in accordance with prosecution policy and policy directives as determined under section 21 of the National Prosecuting Authority Act;
- 4.2.5. He acted at all times without fear, favour or prejudice;

- 4.2.6. He displayed the required competence and capacity required to fulfil his duties;
 - 4.2.7. He in any way brought the National Prosecuting Authority into disrepute by any of his actions or omissions.
5. The chairperson chosen to conduct the enquiry shall determine the seat of the enquiry.
 6. The chairperson chosen to conduct the enquiry shall determine the rules of the enquiry.
 7. At the end of the enquiry the chairperson shall submit a report to the President. All documents filed during the enquiry shall form part of the report.
 8. The enquiry will be completed within 4 (four) months of its commencement date.

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