

Alexander J. KHL

TO WHOM IT MAY CONCERN

I, Oupa Magashula (ID Number: [REDACTED]), the Commissioner of SARS (Employee Number: [REDACTED]); hereby depose the following affidavit with the Fact Finding Enquiry by the Honourable Judge Yacoob.

I declare, to the best of my knowledge, the following to be true.

1

I hereby submit my annual leave schedule from Aug 2009 to December 2012 (*See Annexure A*) and my diary for the month of May 2011 (*See Annexure B*) as per Judge Yacoob's instruction on May 3, 2013. This statement provides my best recollection of the circumstances surrounding my meeting with the former National Commissioner of the South African Police (SAPS), Bheki Cele and Mr Timmy Marimuthu.

2

In my initial testimony before the Honourable Judge on April 3, 2013 I had intimated that the meeting between, Mr Bheki Cele and I may have taken place in the second half of 2010. It has since emerged through the evidence placed before Judge Yacoob by Ms Nosipho Mba that this was an implausible date. I hereby submit that the statement was not meant to mislead the enquiry and was a bona fide error based on faulty memory. At the time of my initial interview, I had relied on the information we received from the journalists who had told us that the recording had been made in 2010.

3

The Honourable Judge will note that my diary for the month of May 2011 (*Annexure B*) shows that I was scheduled to travel to Durban on Saturday the 14th of May at 8.55am. I did travel on the appointed day and time. However, because this was a private trip, I did not retain the documents that could be adduced as direct evidence to the Judge to prove actual travel (e.g. a boarding pass or an acquittal form).

The trip had been planned for the whole family who were joining my son, a pupil and boarder at the [REDACTED] who had been granted a "free weekend". My family (my wife and another son) travelled on the preceding Friday evening separately by road as I could not join them because I could not excuse myself from an important meeting ("Segmentation").

I considered the trip also an opportunity to meet Mr Cele whom I had struggled to meet on several occasions we had attempted to. Therefore, I made arrangements to that effect.

4

I met Mr Cele on the afternoon of May 14, 2011 at a fish shop in Umhlanga as arranged. It was during this meeting that Mr Marimuthu joined us and the events that have since been reported on took place.

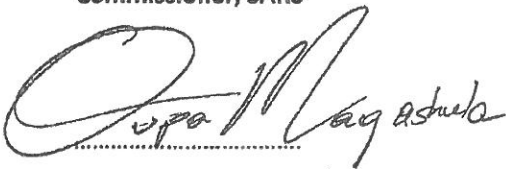
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I conclude this deposition by declaring the following:

- a. In giving my initial testimony to the enquiry, I did not intend to mislead Judge Yacoob. Instead, I was sincerely confused about the timing of my meeting with Mr Cele.
- b. The above testimony is, to best of my knowledge and recall, true.

Oupa Magashula

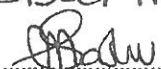
Commissioner, SARS



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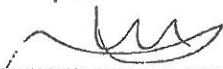
Date:

Witness 1

Sister Mashinini

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Date: 15 May 2013

Witness 2

FAWZIA CASSIEN

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Date: 15 May 2013

TO WHOM IT MAY CONCERN

I, Ivan Pillay (ID Number: [REDACTED] the Deputy Commissioner of SARS (Employee Number: [REDACTED] hereby depose the following affidavit with the Fact Finding Enquiry by the Honourable Judge Yacoob.

I declare, to the best of my knowledge, the following to be true.

1

I submitted a statement to Judge Yacoob on April 3, 2013 in which I stated categorically in paragraph 3 that *"Mr Marimuthu's acquaintance, who is the subject of the recording, is not in SARS' employ. She has never submitted a curriculum vitae to, or applied for a post at SARS."*[Emphasis added]

In our subsequent meeting of May 3, 2013 it emerged that this statement was erroneous.

2

I hereby submit that the statement was not meant to mislead the enquiry and was a bona fide error based on the information that we had at the time I made the statement (*See Annexure A*).

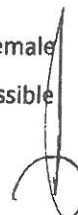
3

When the City Press and Rapport published their reports, the only name we could identify Mr Marimuthu's acquaintance by was "Nosipho". The other identifiers in the reports were that she is supposed to be a "Chartered Accountant" at KPMG aged 28 years old at the time the recording took place. Lastly, she would have had to have been employed by SARS after July or August 2010 which was the best estimate for the time of the recording.

To these limitations must be added the limitations of how employee data are kept at SARS. We do not record the qualification "Chartered Accountant" on our employee systems but rather their academic qualifications, for example, "Bachelor of Commerce". An attempt had been made to keep a database of chartered accountants, a copy of which was submitted to Judge Yacoob by our Maropeng Phineas Sebothoma on April 5. (*For ease of reference a copy is attached. See Annexure B*)

4

With these considerations in mind, we conducted a search of our databases for all black female applicants for the period between July 1, 2010 and December 31, 2012 which turned up two possible



people to be tested (See Annexure A). These were [REDACTED] and Ms [REDACTED]. Only one of these - [REDACTED] a chartered accountant but her previous employer was Deloitte rather than KPMG and resides in Pretoria rather than in KwaZulu-Natal. Ms Dube is not a chartered accountant and resides in Soweto (Gauteng). Neither of these individuals earn more R550, 000 which was the minimum amount which was reported in the press.

5

We conducted perfunctory inquiries about one "Nosipho from KwaZulu-Natal" of our databases with chartered accountants to no avail.

6

It is to be noted that (a) the search was conducted on the recruitment and payroll databases and not (b) on the Commissioner's email mailboxes or (c) or requested SAICA to investigate.

The reasons for these choices were that we couldn't infringe on the Commissioner's privacy without good cause or due process and asking SAICA to investigate had the potential for attracting adverse attention to SARS at a delicate time.

7

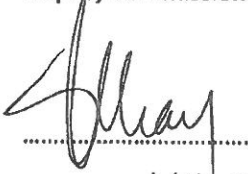
I conclude this deposition by declaring the following:

- a. In giving the statement to the enquiry, I did not intend to mislead Judge Yacoob. Instead, the statement contained a bona fide error based on the information we had at the time.
- b. We have since followed up on the evidence that was presented to Judge Yacoob regarding the submission and accept that a curriculum vitae of one Nosipho Mba was indeed submitted to the Commissioner and referred to the Group Executive for Internal Audit by the Commissioner's office.
- c. An affidavit attesting to (b) above was submitted to Judge Yacoob on April 7, 2013 on my instruction.



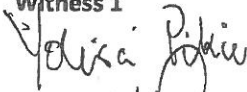
Ivan Pillay

Deputy Commissioner, SARS


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Date: 9 MAY 2013

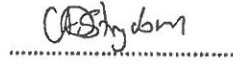
Witness 1


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Date: 9 MAY 2013.

Witness 2

Cecilia Strydom


.....

Date: 9 May 2013

TO WHOM IT MAY CONCERN

I, Mmathabo Sukati (ID Number: [REDACTED] the Group Executive for Internal Audit at SARS (Employee Number: [REDACTED] hereby depose the following affidavit with the Fact Finding Enquiry by the Honourable Judge Yacoob.

I declare, to the best of my knowledge, the following to be true.

1

I received an instruction from the Deputy Commissioner, Mr Ivan Pillay, on Friday the 3rd of May to search my records for any communication between the Internal Audit Division and one, Ms Nosipho Mba arising from any instruction from the Commissioner, Mr Oupa Magashula or his office.

2

From the discussion with the Deputy Commissioner, I surmised that the query arose from evidence and testimony by Ms Mba to Judge Yacoob which intimated that she had submitted to SARS a curriculum vitae pursuant to her discussions with the Commissioner about potential employment at SARS.

3

I hereby confirm that the search has been completed and the following declarations reflect my records and best recollection of the events surrounding the communication about Ms Mba.

I therefore place on record the entire record of communication between Commissioner and myself; between me and members of my staff; and the reports of communication between members of my staff and Ms Mba.

4

I received a copy of Ms Nosipho Mba's curriculum vitae from Ms Sister Mashinini, the Commissioner's Personal Assistant on May 20, 2011 (See Annexure A) with the following message: "Commissioner has asked that ... I send this cv to you first, you can review and decide if you want to take it further".



I immediately referred the curriculum vitae Ms Heleen du Preez and Prenisha Moodley who are Senior Manager: Internal Audit Assurance: Tax and Senior Manager: Internal Audit Assurance: Head Office & Customs in the Internal Audit Division, respectively with the following instruction: *"Please interview this lady for one of your Audit manager positions. Please arrange for next week as may lose her"[Emphasis added]. See Annexure B*

I impressed upon them to act urgently because Chartered Accountants are in high demand and we were keen to secure their services. No other factor or consideration was behind this instruction.

Ms Prenisha Moodley responded on 23 May stating that she *"would be very keen to interview for the Support Service [Manager] position (as she is a CA and would be very suitable for that environment given some technical accounting issues we have to deal with)..."* See Annexure C

I instructed her to conduct a joint interview with Ms Heleen du Preez in case she was more suitable for her area (See Annexure D). Ms Moodley agreed (See Annexure E) but raised a concern that the position she thought was suitable had not been provided for on our information system (SAP) yet. I assured her that I expected approval of our proposed organisational structure by the Commissioner within that week. Therefore, it was appropriate for her to continue and schedule the interview.

I add here that there was no connection between the approval of the organisational structure and the potential interviews. The background work on the structure was done before we received Ms Mba's CV. I submitted the request for the budget for new positions to the CFO on 19 May 2011. The CFO approved the budget on 20 May 2011. I then submitted the proposed structure and the new budget to the Commissioner for approval on 20 May 2011. (See Annexure F and G).

On 20 May 2011 Ms du Preez had written to Ms Gerda van der Walt of the Recruitment Unit within the Human Resources Division requesting that Ms Mba, together with two other candidates, be interviewed (See Annexure H). The interview date was set for 24 May 2011 and due arrangements were made (See Annexure I).

I was informed by Ms du Preez on 24 May 2011 that Ms Mba was "only interested in a position in KZN" (See Annexure J). I relayed the same information to the Commissioner on 25 May 2011. However, I had erroneously assumed that this information had been gleaned from the interview and that is how I conveyed it to the Commissioner (See Annexure K). I subsequently learned that the interview with Ms Mba had been cancelled by the Human Resources Division. To the best recollection of Ms van der Walt the interview was cancelled as Ms Mba preferred a post in KZN rather than Gauteng.

8

I conclude this deposition by declaring the following:

- a. I am not connected to Ms Mba in any way including professionally, commercially, socially and filial. I was not acquainted with her prior to the communication detailed above. I made no direct contact with her except in the manner described above nor have I since come into contact with her. I have no reason to believe that any member of my staff had any connection with her.
- b. A referral of Ms Mba's curriculum vitae from the Commissioner was not an unusual event; nor did appear to me irregular or extra-ordinary. On the contrary, referrals of this nature are very common when the person under review has rare skills or qualifications.
- c. At not point did the Commissioner, expressly or by implication, during the period under review or afterwards, impress upon me any wish regarding Ms Mba's employment. I handled the referred curriculum vitae as I would any other referral by directing it to the relevant managers and for them to act within the strictures of the Human Resource policies at SARS.
- d. At no point during the period under review and afterwards did I come under pressure, explicitly or not, to act unduly with respect to Ms Mba's potential employment. From the start to the end of the process described above I acted in the confidence that I was free to apply my mind.

Mmathabo Sukati

Mmathabo Sukati

Date:

Witness 1

Prerisha Maselley

Prerisha Maselley
P.M

Date: 07/05/2013

Witness 2

Helen du Preez

Helen du Preez
HP

Date: 7/5/2013

Witness 3

Gerda udWale

Gerda udWale

Date: 7/5/2013