

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number:

In the matter between:

THEMBISILE PHUMELELE NKADIMENG

Applicant

And

**NATIONAL DIRECTOR OF
PUBLIC PROSECUTIONS**

First Respondent

**THE NATIONAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE**

Second Respondent

**THE MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES**

Third Respondent

THE NATIONAL MINISTER OF POLICE

Fourth Respondent

WILLEM HELM COETZEE

Fifth Respondent

TP



ANTON PRETORIUS

Sixth Respondent

FREDERICK BARNARD MONG

Seventh Respondent

MSEBENZI TIMOTHY RADEBE

Eighth Respondent

WILLEM SCHOON

Ninth Respondent

SUPPORTING AFFIDAVIT

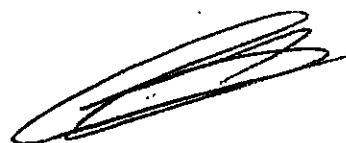
I, the undersigned,

DUMISA BUHLE NTSEBEZA

state under oath as follows:

- 1 I am an adult male senior counsel at the Johannesburg Bar. I was formerly a Commissioner and Head of the Investigation Unit of the Truth and Reconciliation Commission ("TRC" or "the Commission") constituted in terms of the Promotion of National Unity and Reconciliation Act 34 of 1995 ("the Act" or "the TRC Act").
- 2 I have practiced law for more than 30 years. I was admitted as an attorney in 1984, practicing in the Eastern Cape, mainly in the area of human rights. I

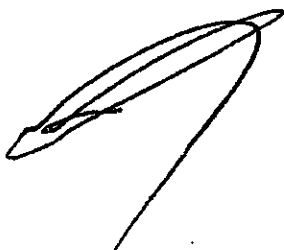
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represented a number of political prisoners throughout the 1980s and early 1990s. Between 1993 and 1996 I taught law at the University of the Transkei (now the Walter Sisulu University). I was called to the Bar in 2000 and took Silk in 2005. I have been an acting judge in three divisions of the High Court of South Africa, as well as the Labour Court.

- 3 In 2004 I was appointed by the Secretary-General of the United Nations as a member of the International Commission of Inquiry on Darfur, which was established pursuant to a UN Security Council Resolution passed under Chapter VII of the United Nations Charter to investigate violations of international humanitarian law and human rights law in Darfur.
- 4 I am a founder of South African National Association of Democratic Lawyers and served as its President. I also served as president of South Africa's Black Lawyers Association. I am a member of the Judicial Service Commission (JSC) and a visiting professor of Political Science and Law at the University of Connecticut in the United States. I am the Chairman of the Desmond Tutu Peace Trust, which is in the process of being wound up. I am also a former trustee of the Nelson Mandela Foundation.
- 5 The facts contained in this affidavit are within my own personal knowledge, unless the contrary appears from the context, and are to the best of my knowledge and belief, both true and correct.

TPD



INTRODUCTION

- 6 This application seeks to, among other things, compel the National Prosecuting Authority ("the NPA") to establish an inquest in the case of Nokuthula Simelane, who was abducted, tortured and forcibly disappeared by members of the Security Branch of the former South African Police ("SAP") in 1983.
- 7 I have read the founding affidavit of Thembisile Phumelele Nkadmeng deposed to in this matter. I confirm that I agree with the submissions and views contained therein as they relate to the TRC and South Africa's transition.

INVESTIGATION BY THE TRC

- 8 I confirm that the case of Nokuthula Simelane was investigated by the TRC as part of the amnesty matter with case number: AC/2001/185.
- 9 This case was also considered as part of the TRC's inquiries into abductions, interrogations and killings (TRC Final Report: Volume 2, Chapter 3, Subsection 31). It was also considered in relation to the TRC's investigations into the Soweto Intelligence Unit, which was a key component of the Soweto

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Security Branch of the former SAPS (TRC Final Report: Volume 6, Section 3, Chapter 1, Subsection 19).

- 10 The TRC found Nokuthula to be a victim. Her name appears on the TRC's list of disappeared and missing persons with the registration: "JB00280/01MPWES" (TRC Final Report: Volume 6, Section 4, Chapter 1, Subsection 21). I confirm further that Nokuthula's case was one of the cases that the TRC recommended that the NPA investigate further with a view to prosecution.

CONCLUSION

- 11 I have frequently gone on record stating that there has been a shameful lack of political will to deal with the issues of reparations and accountability for the apartheid-era victims of gross human rights violations. I fully endorse Archbishop Desmond Tutu's statement made in 2013 that the failure to prosecute those who failed to apply for amnesty undermined those who did. I also endorse his statement that the tardy and limited payments of reparations to victims of human rights violations eroded the very dignity that the commission sought to build.
- 12 Nokuthula's story is rooted in South Africa's bitter and divided past. She paid the ultimate price for her uncompromising resistance to apartheid. Nokuthula

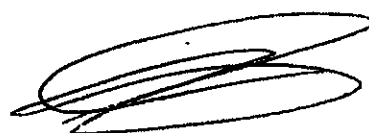
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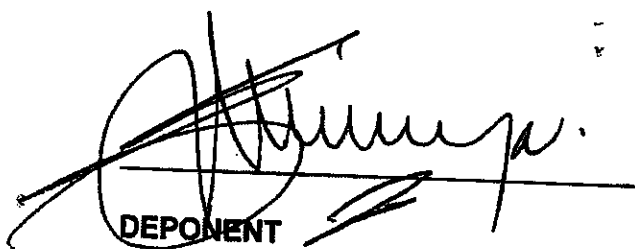
was not however cut down on the battlefield while in the line of fire. She was abducted by all-powerful State forces meant to uphold law and order, and then brutally tortured and forcibly disappeared. Her sacrifice helped to lay the basis for South Africa's democracy with its enshrined freedoms.

- 13 Nokuthula's family, notwithstanding their own pain and suffering, embraced the Constitutional compact which ushered in South Africa's new democratic order. They did so on the basis that:
- 13.1 Where the perpetrators were not truthful about their roles, and where feasible, there would be justice in the cases of their loved ones. This has not occurred in Nokuthula's case and indeed not in most of the TRC cases.
- 13.2 Where the full truth was provided, they would accept that the perpetrators were entitled to amnesty. However, instead of the full truth, the white security branch perpetrators chose to give the survivors of their victims little more than half truths. The senior officers who masterminded the operation and gave the order for her elimination have remained silent.
- 14 Nokuthula Simelane's family still do not know where her remains are. The lies and deceit of Simelane's killers have denied the family the basic human right of laying her remains to rest with the respect and dignity that she deserves.

TPA



- 15 More than 30 years after the atrocities that forever changed the lives of Nokuthula's family, they continue to be denied truth, justice and closure. Even if a prosecution or inquest does eventually take place, the many years of delay have severely compromised the interests of justice. This is, in my view, unforgiveable. The shameful political machinations that effectively stopped this investigation and others, are contemptuous of the sacrifices made for the liberation of South Africa.
- 16 I accordingly endorse this application, and respectfully urge this honourable court to grant the order in the terms set out in the notice of motion.


DEPONENT

Thus signed and affirmed at Sandton on this 13
day of May 2015, the deponent having acknowledged that s/he
knows and understands the contents of this affidavit, having affirmed that the
contents hereof are true and correct and that s/he considers the affirmation
binding on his / her conscience.



COMMISSIONER OF OATHS

SIMPIWE CLIFFORD NJOKWENI
Commissioner of Oaths
Practising Attorney
Republic of South Africa
4th Floor, The Forum
2 Maude Street, Sandown

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