

## IN THE PARLIAMENT OF SOUTH AFRICA

### PRESENTATION TO THE SECTION 194 COMMITTEE

---

#### RE: PUBLISHING OF FEES OF BLACK COUNSEL

---

1. Chairperson, Hon Mr. Richard Dyantyi, Members of Parliament from all political parties here represented, our Public Protector and her legal team, the Evidence Leaders, we are grateful for this rare opportunity to address you from the street, as it were. I think it was Nelson Mandela himself who said this Parliament is the people's Parliament and they can walk in from the street to receive audience. First of all, we express our greatest respect to you all and for this important process you are involved in.
2. Chairperson, our appearance is indeed an extra-ordinary occurrence and for that we thank you sincerely for the indulgence while in the midst of your important work. We are not here because of what you and Honourable members did or said. But we are here because we believe that what you were told and what happened here last Wednesday was grossly unfair and constituted an abuse of this august House and its democratic processes. It was indeed a cruel and deliberate injustice that a democratic Parliament should not tolerate. **WE HEREBY REGISTER OUR OBJECTION AND CONCERN TO THIS AUGUST COMMITTEE OF THE PEOPLE'S PARLIAMENT.**
3. You are tasked with a very important matter and to the extent that you will be required to make your decision, we are here to correct a distortion that occurred here on Wednesday last week. We appear before you today in order to assure you that we support the call for accountability for the use of public funds. But we are also here to alert you that people like Ms. Bawa – a supposed colleague – can abuse such an important process to prejudice their colleagues and to fight battles that have nothing to do with your constitutional mandate about which you are here concerned.
4. A very unfortunate event took place in this House last Wednesday. The manner and content of the supposed evidence of the PP Office's expenditure on legal fees point to a clear pattern. It was callous. It was deliberate. It seemed engineered to cause maximum professional harm. And the fact that this was done by someone who is supposed to be a colleague in an otherwise honourable profession is particularly gutting. Consistent with the most common mischief and racist perpetuation of a stereotype against black professionals, Ms. Bawa, knowingly and purposely

brandished our names and, without any context, read out alarming figures she submitted constituted the money we had been “given” by the PP.

5. She knows that Counsel in our referral profession submit their fee notes to the instructing attorney for payment for legal services actually rendered. Counsel is not “given” money by the client. So, why did she try to create a direct correlation between **the person** of the PP and the fees paid out by instructing attorneys to specifically selected counsel? Of what discernible value is it to this committee (and the public) to know that a black advocate was paid R1 million for legal services in 2019 under Adv Mkhwebane, if a white advocate was paid the same amount or more in 2015 under Adv Madonsela?
6. We want to state it categorically that we reject Ms. Bawa’s intended theory to portray black professionals as corrupt simply because she does not like them. We reject as unprofessional her conduct to use her position in front of this august structure to further a stereotype that should be vanquished. We reject her cruelty to condemn us, particularly black juniors with whom we work, to be perceived as corrupt when we do our work just like she and her white friends do in the profession. We work under very testing conditions in a profession that has not been kind to black lawyers as our experience of skewed briefing patterns and other experiences attest. We do not need Ms. Bawa to pour salt into our wounds as black professionals. We have gone through so much and she should realize that her allegiance to whatever she regards as holy in the political arena will be short-lived. She must steer clear of political agendas because she may in the future be hoist with her own petard.
7. A person we regard as a colleague did what she did last Wednesday knowing full well that the public and indeed some of you may not be aware that some of her figures are wrong and that she omitted the important context of the period over which these figures were accrued, even if they are accurate. In focusing on the figures, she omitted to explore the precise nature, the complexity, the importance and the value of the legal services actually rendered by us. Section 29 of the Legal Practice Act Code of Conduct sets out what Counsel must take into account when considering what a reasonable fee is to charge in a particular matter. Ms. Bawa ignored all that. Instead, she seems to have sought to perpetuate the common stereotype that black professionals can only have money of that nature by means of corruption.
8. Ms. Bawa hung us out to dry in her attempt to perpetuate a stereotype that black professionals are looters and that their legal knowledge is of no value that should be paid for. A far more useful comparison for purposes of this process, I venture, would have been the legal fees paid to each of the white advocates and white law firms that rendered legal services to Madonsela. To simply say the budget for legal fees was lower then, is no answer. What fees were actually paid to those white advocates and firms and what was the nature, value, importance and complexity of the work they did?
9. Even if the character assassination was not her intention, that is what we have been subjected to since her contrived publishing of our names as mere beneficiaries of the-gift-that-keeps-on-giving PP. What large sums of money has Ms. Bawa herself, and others she does not mention, made through the State at taxpayers’ expenses?

What value did she add? Was the fee she and others were paid commensurate with that value? What is the measure of value in any given case? Is it success, as in a contingency fee arrangement, even in the absence of such an arrangement? Is it Counsel's expertise? Is it Counsel's race or gender? Is it the market's perception of Counsel's ability by reason of his race (white) and gender (male)?

10. Like old stereotypes, Ms. Bawa tried to impute to nature the differences between black and white by selecting us in a poisoned context and theory of abuse of state funds that she sought to sell to you. She throws the names of selected black advocates in order to ride on the old racist stereotype that black is corrupt. Whether she intended it or not is irrelevant. She did this with the full knowledge that she had outside in the media space fertile ground for this kind of sick stereotyping. Predictably, she did find fertile ground in the *Daily Maverick* that now characterizes our fees not as having been earned for legal services rendered but as monies having been "**funneled through**" Adv Mkhwebane. Her theory seeks to use this important process to perpetuate an old racist stereotype that Africans are forever children who require policing by other races, otherwise they will be up to no good. Her theory is indeed dangerous and constitutes the anti-thesis of the democratic mandate of this Parliament.
11. She knew full well that what she would achieve was the impression that, as black professionals that she carefully selected, we would be perceived, at least in the eyes of the public, as people who are corrupt or as people that helped themselves to public funds without rendering any service. Her conduct seeks to justify white supremacy and black inferiority. She had no reason to single out our names except for dramatic effect and pursuit of anti-black stereotyping.
12. Ms. Bawa's presentation of her evidence of the Public Protector's spend on legal fees deliberately pays scant attention to our white counterparts in her well calculated list of black legal practitioners. The callous nature of her conduct is not only manifest in how she scandalized us as Black senior counsel, but also in how she added to the prejudice and burden facing black and female junior counsel, who remain with this dark cloud over their heads and face the future with these doubts.
13. From our vantage point, it is hard not to conclude that this is what Ms. Bawa intended. Her cruelty and hatred for her black colleagues should not find space in this august House, which represents South Africans and their new and constitutional resolve to create a non-racial and non-sexist South Africa, in which the prejudices of the past are vanquished. Instead, she abuses her professional status here to further agendas that seek to perpetuate the pain we have always faced as black people in general and as black professionals in particular.
14. The screens on which she displayed our names were hardly off and we were splashed in the *Daily Maverick* and labelled "**RET Trick-stars**" and "**Foes of the Constitution**". Again, this is an inevitable result of the reckless handling of potentially ruinous evidence by Ms. Bawa. An experienced advocate would have handled things differently and in accordance with the established traditions of the Bar. Despite her seeming inexperience (although she pronounced herself as experienced in these matters at the commencement of these proceedings), Ms.

Bawa does not seem to have sought guidance from senior and more experienced colleagues who would doubtless have dissuaded her from her chosen path.

15. Ms. Bawa's apparent ineptitude in her handling of evidence last Wednesday suggests lack of experience. But that is no excuse because section 26.4 of the Code of Conduct for Legal Practitioners afforded her an opportunity to decline this brief. Alternatively, aware of her shortcomings, she should have sought guidance from more experienced colleagues. Section 26.4 says: "**Counsel may decline offers of briefs in matters in which they believe they are not competent to render professional services at the appropriate standard reasonably expected of a counsel in such matters or to discharge their duty of diligence, and when declining such offers counsel shall disclose those reasons to the instructing attorneys.**"
16. Chairperson, we are here because each one of you is an important service to the citizens of this country. That you come from different political parties is immaterial because you represent the length and breadth of this country, and you are the heartbeat of our nascent constitutional democracy. We are here to plead with you not to allow this august House and this important process to be used for whatever ulterior purpose may be at play here.
17. Most importantly, Chairperson, South Africa emerges from a very sad period of grave prejudice against black people. True, you must hold everyone accountable, but we must be able to see if Parliament is used for nefarious purposes.
18. We would have preferred to address our concerns to her and leave it at that. In fact, Ngalwana has. But Ms. Bawa has done this before in another court case where she wantonly invoked the names of colleagues in her argument and had to be put right by the presiding Judge as to the relevance of that approach. For that reason, and since this is a repeat performance, it appears to us that addressing any concern to her only would not have achieved any correction.
19. Since Ms. Bawa seems so concerned about legal fees of black advocates paid from the public purse, we invite her to share with the public how much she has made in these proceedings, in the Mokgoro Inquiry and all the matters in which she has been briefed by the State. If you cared to check their fees, you will be surprised by the double standards of these people that have bestowed upon themselves the duty to police black people they regard as inferior, irrational and child-like beings that require the supervision of the "superior race(s)" and those who have elected to be an appendage to whiteness.
20. We trust that in the fulness of time Parliament will also be shown the millions of Rand that white legal practitioners have made or accumulated from the State. White Senior Counsel whose names are included in the list seem deliberately glossed over. One is alleged to have been paid over R4,4 million during this Public Protector's tenure. But his name has not featured as prominently as that of Black Counsel. Why? His name (known to us) appears nowhere in the *Daily Maverick* takedown of selected Black Counsel. Why? Ms. Bawa should reasonably have expected this when her presentation of evidence seemed focused on us as Black

Counsel. She should have been conscious of the South African tendency to condemn black for the same conduct that it is not prepared to condemn white.

21. Ms. Bawa's conduct is indeed regrettable, to say the least. The prejudice and pain she has caused to her colleagues is profound and has far-reaching consequences for the lives and reputations of those she has tagged.
22. As for Mr. Van Der Merwe, his conduct is astounding. On 16 August 2022 I, as Muzi Sikhakhane SC, consulted with him in respect of a huge matter I was doing for the Office of the PP. I have since withdrawn from this matter which is being heard as we speak in the Bisho High Court. Not once did he indicate to me that during his testimony, he would be flouting my name and my supposed income in the full glare of the media and the public. He also consulted with Ngalwana SC and omitted to alert him that he would be brandishing his name in this fashion. Had he and Ms. Bawa not been obsessed with brandishing our names, the mistakes they made about figures would have been averted. However, accuracy was never their intention. Instead, they sought to harm our reputation because we represent clients unpopular with dominant classes in South Africa. This hatred is simply unfair and irrational. Like white counsel, who are free to represent white tax dodgers and crooks, we also just represent clients, and we should not be hated and targeted for simply doing our jobs. White counsel who represent people accused of raping scores of young women live their lives without the attacks and the stigma we, as black counsel, have to endure for representing clients viewed as unpopular in the eyes of those who control the dominant narrative in our country. What exactly is the sin in representing such clients and why must only black lawyers be hated for representing certain clients?
23. Chairperson, both Ngalwana SC and I are here to set the record straight and to assure the public and yourselves as the representatives of our citizens, that despite Ms. Bawa's cruel and deliberate display of our names, we have done nothing wrong. She carefully selected those of us she seems to have, for some reason, sought to discredit. She must pursue her own stereotypes outside this forum. Her conduct supports the justification of the structure of domination through racist myths and prejudicial innuendo against her black colleagues.
24. We consider her conduct to be not only unprofessional, but also unlawful, And we are considering pursuing the professional complaint route against her. Her actions seem deliberate and should be frowned upon by this democratic Parliament, regardless of political preferences.
25. We have available our own invoices to demonstrate that she did not only lie to you about the accuracy of the figures, but also to lay bare her own prejudices and unprofessional conduct. Ngalwana will show you communication between himself and Ms. Bawa in the past 72 hours to demonstrate the reckless nature of her conduct in relation to the professional standing of senior colleagues. She herself knows what conversations she has had with Ngalwana SC. Some of it is in writing. Some of it she has admitted here. We are all senior to her and would have expected a measure of courtesy from her. But our skin colour seems to have counted for less than she can suffer to humble herself.

26. We thank you for affording us this opportunity to clear the air and expose this anti-African agenda we all should distance ourselves from. I have never met Ms. Bawa but I am aware that at every opportunity she has tried to target me for discrediting.
27. The impact of what she has done goes against what we do as advocates. She and others like her seek to intimidate advocates never to represent unpopular clients or clients that are hated by powerful forces in society. Of course, no junior counsel would like to be treated and prejudiced the way we have been. So, the effect of what she and those who condemn us for our clients do is to instill the fear of God in advocates to only represent those who are loved and popular with certain classes. This is contrary to our role to represent everyone who needs to be represented regardless of their political views or standing in society.
28. We plead with you not to allow us to be collateral damage in political battles of our clients and their foes. Contrary to popular sentiment, we are distinct from our clients, and we are briefed by attorneys to represent clients. Unfortunately, of late, a narrative is propagated that when black lawyers represent unpopular people, they must be part of some corrupt agenda. When the same people are represented by white colleagues, it is professional, and they are doing their jobs. This sentiment, as typified by Ms. Bawa is also perpetuated by our own colleagues.
29. It is a narrative that seeks to perpetuate the stereotype that all that is black is corrupt and all that is white is professional and good. Unfortunately, this stereotype is also perpetuated by those who are black and should know better. Unfortunately, some regard white validation as more essential for their existence than principles of human emancipation. It is indeed regrettable that we have had to travel so far to make this point. Ordinarily, such anti-black sentiment should have been recognized by all progressive members, regardless of their position in the battle with the suspended Public Protector.
30. In this address to you, Chairperson, we also convey the sentiments of many Black juniors who, for obvious reasons, are not able to stand up for themselves lest they be targeted or further victimized and maligned for speaking the truth. We are aware that we are being targeted, not for what we have done, but for who we represent. However, when white counsel represent the very same people, they face no reprisal or judgment. This attitude itself is premised on an anti-black mindset that uses different standards for judging black people. The clients we are targeted for have been represented by white counsel before us and such white counsel have never been subjected to the onslaught we face.
31. Although Ms. Bawa has sought to correct the wrong figures she flighted and has apologized to Ngalwana SC and publicly, the damage she intended is done and her apology is contrived and therefore not accepted. We are fully aware that we will be targeted by the white media for daring to defend ourselves. However, we expect such targeting from those whose existence thrives of the denigration of black lives. We await the attacks, but we are clear that we have a duty to rid our society of the remnants of racism, even the sophisticated version that thrives in neo-apartheid South Africa and perpetuated by the self-proclaimed progressives. We know that such racism faces every black professional and exists in the newsrooms as well and

thrives because black people do not own the means by which these grand anti-black narratives are engineered.

32. Although Ms. Bawa has tendered her much belated and, in our view, contrived apology, we implore you, members of this august Committee to correct this distortion and abuse of this process for what we see as nefarious purposes designed to demean black legal practitioners. Such conduct has no place in our country and the Parliament of the people. It was a cruel, insensitive and mean act.
33. We thank you, Chairperson and Honourable Members of our National Assembly represented here for affording us this rare opportunity. We express our sincere apologies for the manner in which we came to this Committee, but we are eternally grateful to the Chairperson and members for granting us the indulgence.

**V NGALWANA SC**

**MUZI SIKHAKHANE SC**

Sandton Chambers

**PABASA**

10 NOVEMBER 2022