

**STATEMENT OF THE PUBLIC PROTECTOR, ADV BUSISIWE MKHWEBANE, ON
THE OCCASION OF THE LAYING OF CRIMINAL CHARGES AGAINST MR
ISMAIL ABRAMJEE AND OTHERS AT BROOKLYN POLICE STATION IN
PRETORIA ON THURSDAY, 5 MAY 2022.**

Members of my legal team present;

Members of the Public Protector South Africa staff;

The media;

Ladies and gentlemen;

Good afternoon!

As you may be aware, nearly two weeks ago, an event that could potentially bring our esteemed judiciary into disrepute – and one that should worry all democracy-loving people – occurred when Adv Andrew Breitenbach SC, received a controversial text message from a person, who has since been identified as Mr Ismail Abramjee.

Adv Breitenbach is lead Senior Counsel for the Speaker of the National Assembly and the Chairperson of the Parliamentary Section 194 Committee in an application I have brought before the Western Cape High Court in regard to the Section 194 process.

He received this text message on the eve of proceedings in the Western Cape High Court, where he was going to argue on behalf of the Speaker and the Chairperson of the Section 194 Committee against my application for an interim interdict, barring the Speaker, the Chairperson and the President from taking any further steps in the Section 194 process pending a decision of the Constitutional Court.

The Chief Justice, Raymond Zondo, is due to issue directions on my application to the apex court to rescind, reconsider and/or vary its 04 February 2022 ruling on the appeal application brought by the Speaker in respect my earlier victory in the Western Cape High Court, where I had successfully challenged the lawfulness, validity and

constitutionality of the parliamentary rules upon which the Section 194 process is based. On appeal by the Speaker and the DA, the Constitutional Court dismissed the ground of unconstitutionality based on the denial of legal representation but upheld the separate ground about the appointment of a Judge to serve on an internal independent panel of the Legislature.

In the text message concerned, Mr Abramjee informed Adv Breitenbach SC that he “... *had it on very good authority* ...” that the Constitutional Court had reached a decision in respect of my rescission application. Mr Abramjee spoke with authority in his text message, stating without any apparent fear of contradiction that the Constitutional Court had already dismissed my application and that its decision in this regard was to be published before Friday last week. He concluded the text message with emphasis that he shared the message on a “strictly confidential basis”.

Naturally, my legal team and I were alarmed and disturbed by this unfortunate turn of events. We found it regrettable in the extreme. So inappropriate was Mr Abramjee’s conduct that the Full Court of the Western Cape High Court consisting of Judges Erasmus, Dolamo, and Wille agreed with the proposal of all the parties in the case – bar the DA – to postpone the hearing until 18 and 19 May 2022 while we all sought to get to the bottom of Mr Abramjee’s bizarre text message.

And if there were still any lingering doubts about the enormity of this transgression, the Head of the Judiciary and of the Constitutional Court, Chief Justice Raymond Zondo, has since duly announced the launch of an investigation into the matter following the letter the parties wrote to him, seeking clarity on the issue. I do not wish to dwell on the unverified information in the public domain, in terms of which it has been reported that certain individuals within the Constitutional Court are being questioned and suggesting close links between Mr Abramjee and such individuals, save to say I am happy that the court is affording this matter the importance and urgency it deserves.

It is against this background that I came here today to lay criminal charges against Mr Abramjee and one or more as yet unidentified person(s), whom I have reason to believe is/are based in the Constitutional Court. The criminal charges arising out of the alleged leak include Contempt of Court, Defeating or Obstructing the Course of Justice

and contraventions of sections 3 and 8 of the Prevention and Combatting of Corrupt Activities Act 12 of 2004. Section 3 deals with general corruption relating to any person and section 8 specifically deals with “*offences in respect of corrupt activities relating to judicial officers*”.

This leak, if established, clearly poses a threat to the very fabric of our democracy, the rule of law and the much-needed independence of the judiciary. The country therefore has no choice but to get to the bottom of this matter. It cannot be swept under the carpet. It cannot be business as usual.

I would also like to announce that I have decided to initiate a formal investigation by the Office of the Public Protector into this matter, in terms of sub-sections 6(4) and 6(5) of the Public Protector Act. It is not yet clear whether the leak came from members of the Constitutional Court, the administration or the judiciary.

Insofar as it may have come from the administration, who are employees of the Department of Justice, then the Public Protector has clear jurisdiction. Insofar as it may have come from a member of members of the judiciary, the constitutional and statutory exemptions contained in section 182(3) of the Constitution and section 6(6), respectively, apply. I have therefore been advised specifically to steer away from investigating any related court decision or “*performance of judicial functions by any court of law*”. The investigation will be strictly confined to the issues of alleged maladministration, corruption and/or other criminal conduct.

This effectively means that there will be at least three separate and parallel investigations into this saga, conducted by:

- (a) the Chief Justice (who announced his investigation last week);
- (b) the South African Police Services (in respect of the complaint lodged today); and
- (c) the Public Protector (as explained above).

It is therefore important to emphasise that these three investigations will largely deal with separate angles to the problem. Although there may be some overlaps, it is essential that all three investigations must continue with urgency. The Office of the Public Protector will co-operate but not interfere with the other two investigations.

It is indeed difficult to imagine a more serious case than the present one, which involves allegations of illegality to varying degrees on the part of the Heads of the Executive, the Legislature, the Minister of Justice and/or the Judiciary and/or their subordinates, most of which alleged illegality is directed against the Head of a Chapter 9 Institution. In any democracy and if the allegations are true, they may well signal a total collapse of the State or, at best, a constitutional crisis of major proportions. The perpetrators must therefore be brought to book and their motives exposed to the public. Otherwise, we will only be dealing with the symptoms of a much deeper sickness in our society.

Purely as a matter of courtesy and co-operative governance, the attention of the President, the Minister of Police and the Minister of Justice will be specifically brought to the actions referred to above. Due to the obvious public importance of this matter and in the spirit of the constitutional values of transparency, openness and accountability, the statement made to the police and the annexures thereto will be available to the media and members of the public on the Public Protector South Africa website www.publicprotector.org.

Thank you.

Issued by the Public Protector South Africa.

For enquiries, please contact:

Mr Oupa Segalwe

Spokesperson

Public Protector South Africa

Tel: 012 366 7035

Cell: 072 264 3273

Email: oupas@pprotect.org

www.publicprotector.org