

**COMMISSION OF INQUIRY INTO TAX ADMINISTRATION  
AND GOVERNANCE BY SARS**

**APPENDICES TO THE FINAL REPORT**

**VOLUME 1 OF 2**

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# **Appendix 1**

## **Terms of Reference**



# Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA  
REPUBLIEK VAN SUIDAFRIKA

Vol. 635

24 May  
Mei 2018

No. 41652



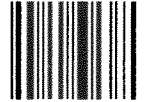
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ISSN 1682-5843



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## PROCLAMATIONS • PROKLAMASIES

## PROCLAMATION NO. 17 OF 2018

by the

President of the Republic of South Africa

**COMMISSION OF INQUIRY INTO TAX ADMINISTRATION AND GOVERNANCE  
BY THE SOUTH AFRICAN REVENUE SERVICE**

In terms of section 84(2)(f) of the Constitution of the Republic of South Africa of 1996, I hereby appoint a Commission of Inquiry into tax administration and governance by the South African Revenue Service (SARS) with the terms of reference attached hereto and appoint the former judge of the Supreme Court of Appeal who has been discharged from active service, Honourable Mr Justice Robert Nugent as Commissioner, assisted by Mr Michael Katz, Advocate Mabongi Masilo and Mr Vuyo Dominic Kahla.

Given under my Hand and the Seal of the Republic of South Africa at  
CAPE TOWN on this 23 day of MAY Two Thousand and  
Eighteen.

  
President

By Order of the President-in-Cabinet:

  
Minister of the Cabinet

**SCHEDULE****TERMS OF REFERENCE OF THE COMMISSION OF INQUIRY INTO TAX  
ADMINISTRATION AND GOVERNANCE BY SOUTH AFRICAN REVENUE SERVICE**

**WHEREAS** taxation forms a crucial basis for a democratic government, imposed for the purpose of funding the constitutional obligations of Government including the provision of public services to all;

**AND WHEREAS** the significant revenue shortfalls in two consecutive years in 2016/17 and (projected for) 2017/18 are identified as key fiscal risks and a factor in South Africa's credit rating;

**AND WHEREAS** delays in VAT and other refunds form part of a systematic policy to reach revenue targets, taking account of the findings of the Office of the Tax Ombud;

**AND WHEREAS** the public must have confidence that SARS is managed to the highest standard of ethics, integrity and efficiency;

**AND WHEREAS** certain practices in the tax system have undermined taxpayer morality and confidence;

**AND WHEREAS** administrative provisions relating to revenue collection must be transparent, applied fairly and applied without fear or favour;

**AND WHEREAS** reports in the public domain that potentially undermine taxpayer morality need to be assessed for the veracity thereof and possible corrective measures need to be implemented to maintain taxpayer morality and confidence;

**AND WHEREAS** deterioration in revenue collection, transparency of, and fairness in tax administration present a threat to fiscal sustainability, service delivery to the public and the continued deepening of our democratic gains,

**THEREFORE** a Commission of Inquiry (the Commission) is hereby appointed in terms of section 84(2)(f) of the Constitution of the Republic of South Africa, 1996.

1. The Commission must enquire into, make findings, report on and make recommendations on the following:
  - 1.1. The adequacy and legality of steps that SARS took, or failed to take -
    - 1.1.1. in light of the revenue shortfalls, relative to the budgets announced on 24 February 2016 and 22 February 2017, to improve revenue collection, including steps to change the timing of tax refunds;
    - 1.1.2. in the management of tax and customs settlements, to ensure that the settlement process was not compromised or selective having regard to favouring (or discriminating against)-
      - 1.1.2.1. a domestic prominent influential person (as defined in section 1 of the Financial Intelligence Centre Act, 2001);
      - 1.1.2.2. an immediate family member (as contemplated in section 21H(2) of the Financial Intelligence Centre Act, 2001) of a domestic prominent influential person; and
      - 1.1.2.3. known close associates of a domestic prominent influential person;  
  
(herein called "relevant persons");
    - 1.1.3. in the management of the audit case selection process, to ensure that the case selection process was not compromised or selective having regard to favouring (or discriminating against) relevant persons;
    - 1.1.4. in the management of or participation in, investigations into any malpractices or allegations of malpractices, whether SARS information was deliberately compromised by the omission or withholding of information that the SARS leadership was aware was critical or necessary to ensure a fair and transparent investigation;
    - 1.1.5. in ensuring that criminal transgressions were not concealed or ignored under the auspices of taxpayer confidentiality;
    - 1.1.6. in ensuring that the Prevention and Combating of Corrupt Activities Act, 2004 (PRECA), Financial Intelligence Centre Act, 2001 (FICA), South African Revenue Service Act, 1997 (SARS Act), Customs and Excise Act, 1964, the Tax Administration Act, 2011 and other applicable legislation

- were fully adhered to in respect of information that was provided by the Financial Intelligence Centre or was made available to the public;
- 1.1.7. in ensuring that all material matters affecting the credibility of SARS were reported to the Minister of Finance and/or Parliament; and
  - 1.1.8. in ensuring that performance bonuses to SARS employees in the senior management structure of SARS, as contemplated in section 18(3) of the South African Revenue Service Act, 1997, were duly authorised particularly in the context of growing revenue shortfalls and the need for fiscal prudence.
- 1.2. The influence of institutional factors on SARS' performance of its duties with particular reference to the quality of decision making in audit selection, technical capacity in auditing, technical capacity in tax and customs enforcement, technical capacity in transfer pricing and illicit capital flows, oversight of mining rehabilitation trusts or companies, payment of refunds, technical capacity in risk assessment and inspections including—
- 1.2.1. due consideration of the factors that must be taken into account in any decision, approval or discretion exercised in terms of the Tax Administration Act, 2011 and the Acts mentioned in Schedule 1 of the South African Revenue Service Act, 1997;
  - 1.2.2. whether material deviations occurred in the practice and protocols that relate to these areas;
  - 1.2.3. whether any abuse of such decision making powers took place and, if so whether such abuse resulted in undue benefits to SARS' senior managers, or any connected persons in relation to the aforementioned persons (in these Terms of References, the term "connected persons" means a "connected person" as defined in section 1 of the Income Tax Act, 1962).
- 1.3. Whether the tax administrative processes to determine or detect compliance or non-compliance of taxpayers with regards to the obligation to submit tax returns, declare taxable income and settle tax liabilities or the tax administrative processes to issue tax assessments, determine taxable income, enter into settlements, reopen assessments and collect revenue resulted in any non-standard treatment of any persons referred to in:

- 1.3.1. section 8(1)(e)(i) of the Income Tax Act, 1962;
  - 1.3.2. section 18(3) of the South African Revenue Service Act, 1997; or
  - 1.3.3. any connected persons to the aforementioned persons.
- 1.4. Whether the process and practices to determine and enforce compliance by all taxpayers in respect of goods indicated in Part 2A of Schedule 1 of the Customs and Excise Act, 1964 resulted in intentional non-enforcement of laws in respect of any taxpayers that resulted in loss of revenue to the State, including the veracity of reports in the public domain of collusion between SARS officials and industry leaders in illicit tobacco trade.
  - 1.5. Whether SARS neglected to comply with applicable legislation and internal policies regarding any appointment, employee grievance, disciplinary process, performance bonus, termination of services and any changes made to the functions performed in respect of senior SARS employees.
  - 1.6. With regard to the reports of the number of senior or experienced SARS employees that have left the employ of SARS since 2014, to inquire into the reasons why they left, whether any employees were coerced in any manner into resigning; whether any severance benefits were paid to those employees; whether there was any obligation to inform the Minister of Finance of these resignations and severance benefits; and if such an obligation existed whether that obligation was discharged.
  - 1.7. Whether SARS followed due and proper process in the appointment of key members of SARS staff, including members of EXCO.
  - 1.8. Whether SARS acted responsibly in regard to its obligations to account to the Executive, Minister of Finance and the Standing Committee on Finance within the relevant areas;
  - 1.9. Whether SARS, in the discharge of its obligations to collect revenue utilised the services of debt collection, legal, audit or forensic firms rationally, reasonably and prudently and in accordance with its mandate and objectives.

- 1.10. Whether any SARS official, in utilising the services of any debt collection, legal, audit or forensic firm influenced or attempted to influence the outcome of the services rendered or the outcome of any report following the services so rendered.
- 1.11. Whether the post-2014 Large Business Centre function review lead to inefficiencies and ineffectiveness with specific reference to enforcement of compliance with legislation giving effect to the international efforts of curbing base erosion and profit shifting.
- 1.12. Whether the change in the operating model of SARS post 2014 contributed to inefficiencies and ineffectiveness with particular reference to the revenue shortfall in 2016/17 and 2017/18.
- 1.13. Whether, having regard to any firm of consultants advising on the new operating model, an obligation existed on the consultant(s) to demonstrate improvements in efficiencies or cost saving or revenue collection or any other similar cost/benefit obligation as may be set out in the terms of reference and / or contractual obligations and, if so, whether this was proven.
- 1.14. Whether the current governance and operating models of SARS is the most effective and efficient model and, if not, make recommendations as to the most suitable governance and operational models for SARS for the future;
- 1.15. Whether sections 49 to 57 of the Public Finance Management Act, 1999, were complied with, in particular:
  - 1.15.1. actions envisaged in section 51(1)(e) and (2), in relation to acts by senior SARS employees that may have undermined internal control systems of the SARS;
  - 1.15.2. implementing the relevant recommendations and findings of the Auditor-General; and
  - 1.15.3. implementing and enforcing procedures for the disclosure of financial interests described in internal policies of SARS as they relate to SARS employees that report to the Commissioner.



- 1.16. Whether any processes to award tenders, or awarded tenders resulted in any undue benefit being received by any SARS employee or any connected person to the aforementioned employee or any person or entity that is not part of the tender award.
- 1.17. Whether any legal proceedings or complaints instituted by SARS against other state institutions (for example the Auditor-General), the media or any other person for reasons that do not relate to their tax affairs were instituted for reasons that are rational and in the best interest of SARS;
- 1.18. Whether any media statement issued by SARS, or any similar statement or comment issued by any SARS official, whether in his or her official capacity or not, during the period September 2014 until March 2018, brought SARS into disrepute and / or contradicted the official position of the South African Government.
2. The Commission must in its enquiry for the purpose of its recommendations consider the period 1 April 2014 to 31 March 2018.
3. The Commission must submit interim reports in accordance with the following table:

Interim report	30 September 2018
Final report	30 November 2018

4. The Commission may investigate any other SARS revenue administration, process or governance matter the Commission considers necessary but those other investigations may not cause any delay in the submission of the reports on the applicable dates referred to in paragraph 3.
5. The Commission may request the advice or input of:
- 5.1. The South African Revenue Service
  - 5.2. the Davis Tax Committee;
  - 5.3. the Office of the Tax Ombud;
  - 5.4. the Financial Intelligence Centre;
  - 5.5. the South African Reserve Bank;

- 
- 5.6. the National Treasury;
  - 5.7. any other person or organisation that is able to assist the Commission, including taxpayers or professional bodies involved with tax affairs of clients.
6. The Commission must take into account in its recommendations the protection of the State's current and future revenue; the characteristics of a good tax system, namely equity, efficiency, neutrality, certainty, transparency and buoyancy of the tax system; trends in taxpayer compliance and the cost of compliance; and any recommendation by the Davis Tax Committee and tax policy framework determined by the National Treasury.
  7. Regulations must be made in terms of the Commissions Act, 1947 and must apply to the Commission in order to enable the Commission to conduct its work meaningfully and effectively and to facilitate the gathering of evidence by conferring on the Commission powers as are necessary, including the power to enter and search premises, secure the attendance of witnesses and compel the production of documents and any other required information.

# **Appendix 2**

**Correspondence between the Commission of Inquiry and  
the attorneys of Mr Tom Moyane**

**Commission of Inquiry into Tax Administration and Governance by SARS**

Hilton House, 2<sup>nd</sup> Floor, 570 Fehrsen Street, Brooklyn, 0181

**Contact number: (012) 6479486**

**E-Mail: [commission@inqcomm.co.za](mailto:commission@inqcomm.co.za)**

Mabuza Attorneys  
Eric Mabuza  
[eric@mabuzas.co.za](mailto:eric@mabuzas.co.za)  
1<sup>st</sup> Floor  
83 Central Street  
Houghton  
2198

20 June 2018

Dear Mr Mabuza

I understand you are the attorney of the Commissioner of the South African Revenue Service (SARS), Mr T. Moyane.

I write to inform you, for your information and as a courtesy to your client, that the Commission of Inquiry will be hearing evidence in public from 26 to 29 June 2018, commencing at 14:00 on 26 June 2018, at the following venue:

**The Auditorium  
Linton House, 2<sup>nd</sup> Floor  
Brooklyn Bridge  
570 Fehrsen Street  
Brooklyn, Pretoria**

Yours faithfully

(sent electronically)

**Judge R Nugent  
Commissioner**



Judge R Nugent  
2<sup>nd</sup> Floor, Hilton House  
570 Fehrsen Street  
Brooklyn  
Pretoria

Email: [commission@inqcomm.co.za](mailto:commission@inqcomm.co.za)

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Northlands 2116  
Tel: +27 11 483-2387/483-0476  
Fax: +27 11 728 - 0145  
Direct e-mail: [eric@mabuzas.co.za](mailto:eric@mabuzas.co.za)

Your Ref:  
Our Ref: Mr. ET Mabuza  
Date: Friday, June 22, 2018

Dear Judge Nugent,

### **Commission of Inquiry into Tax Administration & Governance by SARS**

1. Thank you very much for your letter dated 20 June 2018, in which you advise Commissioner Moyane, as a courtesy, of the impending hearings of your Commission of Inquiry next week.
2. Due, *inter alia*, to the short notice it is not possible to attend the hearings in full. However our client deems it necessary to request an opportunity to address the Commission hearings in order, *inter alia*, to place certain issues on the record and where necessary to seek certain rulings. Such issues include but may not be limited to:
  - 2.1. Raising an objection against the suitability of Prof. Michael Katz to serve as a member of the Commission given his conflicted status as the personal and business legal representative of Mr Cyril Ramaphosa who is:
    - 2.1.1. The President of South Africa;
    - 2.1.2. The person who appointed the Commission; and
    - 2.1.3. The person who is our client's key adversary in pending disciplinary inquiry involving the current Commissioner of SARS.

- 2.2. Seeking an undertaking from the Commission that it will stay clear of dealing with any issue which is the subject matter of the pending disputes which have been placed before the disciplinary inquiry chaired by Adv Azhar Bham SC so as to avoid double jeopardy and manifest unfairness.
- 2.3. Expressing our client's interest in participating in and co-operating with your Commission and attending to the practical arrangements for doing so, in his capacity as the current Commissioner of SARS.
3. We would appreciate it if an arrangement can be reached for our client to make submissions in respect of the above issues preferably on 29 June 2018 at your commencement time.
4. We await your urgent response.

Yours faithfully



**MABUZA ATTORNEYS**

**Commission of Inquiry into Tax Administration and Governance by SARS**

Hilton House, 2<sup>nd</sup> Floor, 570 Fehrsen Street, Brooklyn, 0181

**Contact number: (012) 6479486**

**E-Mail: [commission@inqcomm.co.za](mailto:commission@inqcomm.co.za)**

Mabuza Attorneys  
Mr Eric Mabuza  
[eric@mabuzas.co.za](mailto:eric@mabuzas.co.za)  
1<sup>st</sup> Floor  
83 Central Street  
Houghton  
2198

23 June 2018

Dear Mr Mabuza

I have noted the contents of your letter of Friday, 22 June 2018. Note that the hearings commence on Tuesday 26<sup>th</sup> and not 29<sup>th</sup>. You are invited to make any submissions on behalf of your client at 10h30 on Tuesday 26<sup>th</sup> June at the venue indicated in my earlier letter.

Kind regards

(sent electronically)

**Judge R Nugent**  
**Commissioner**



Judge R Nugent  
2<sup>nd</sup> Floor, Hilton House  
570 Fehrsen Street  
Brooklyn  
**Pretoria**

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Fax: +27 11 728 - 0145  
Direct e-mail: [eric@mabuzas.co.za](mailto:eric@mabuzas.co.za)

Your Ref:  
Our Ref: Mr. ET Mabuza  
Date: Monday, June 25, 2018

Dear Judge Nugent,

### **Commission of Inquiry into Tax Administration & Governance by SARS**

1. Thank you for your letter dated 23 June 2018, in which you invite us to make submissions at 10h30 on Tuesday 26 June 2018.
2. Unfortunately due to the short notice and our other pressing commitments we will only be able to attend the hearings on 29 June 2018.
3. All our client's rights are reserved.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Eric T Mabuza', is written over a horizontal line.

**MABUZA ATTORNEYS**



## Commission

---

**From:** Commission  
**Sent:** Monday, 25 June 2018 11:08  
**To:** eric@mabuzas.co.za  
**Subject:** RE: Communication from Judge Nugent 23/06/2018

Dear Mr Mabuza

I note your response. For the moment will you anticipate that I will hear you at 09h00 on 29<sup>th</sup> but I will confirm that in the course of the week.

Yours faithfully  
Judge Nugent

**From:** Eric Mabuza [mailto:eric@mabuzas.co.za]  
**Sent:** 25 June 2018 10:15 AM  
**To:** Commission <commission@inqcomm.co.za>  
**Subject:** RE: Communication from Judge Nugent 23/06/2018  
**Importance:** High

Dear Judge Nugent,

Please see attached letter.

Best,

Eric T Mabuza  
Mabuza Attorneys  
1<sup>st</sup> Floor, 83 Central Street  
Houghton, 2198  
Tel: (011) 483-2387/483-0476  
Fax: (011) 728-0145  
Cell: 082 561 1067  
E-mail: [eric@mabuzas.co.za](mailto:eric@mabuzas.co.za)

**From:** Commission <commission@inqcomm.co.za>  
**Sent:** Saturday, 23 June 2018 3:46 PM  
**To:** [eric@mabuzas.co.za](mailto:eric@mabuzas.co.za)  
**Subject:** Communication from Judge Nugent 23/06/2018

Dear Mr Mabuza

Kindly find communication attached for your information.

Kind regards

Commission



Judge R Nugent  
2<sup>nd</sup> Floor, Hilton House  
570 Fehrsen Street  
Brooklyn  
Pretoria

Email: [commission@inqcomm.co.za](mailto:commission@inqcomm.co.za)

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Fax: +27 11 728 - 0145  
Direct e-mail: [eric@mabuzas.co.za](mailto:eric@mabuzas.co.za)

Your Ref:  
Our Ref: Mr. ET Mabuza  
Date: Wednesday, June 27, 2018

Dear Judge Nugent,

### **Commission of Inquiry into Tax Administration & Governance by SARS**

1. We refer to your email dated 23 June 2018.
2. We have made certain arrangements to make an appearance at the hearing on Friday at 09h00 as indicated in your email, subject to confirmation.
3. Your failure and/or delay to confirm at this late hour the time is prejudicial to us in that we need to prepare for such an appearance and to keep counsel available which can obviously not be done overnight.
4. We wait to hear from you as soon as possible.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Eric T. Mabuza', written over a horizontal line.

**MABUZA ATTORNEYS**

## Commission

---

**From:** Commission  
**Sent:** Thursday, 28 June 2018 06:58  
**To:** eric@mabuzas.co.za  
**Subject:** RE: Communication from Judge Nugent 23/06/2018

Dear Mr Mabuza

My apology for the delay. You may advance submissions on behalf of your client on Friday morning 29 June. We will be commencing half an hour later than originally advised, at 09h30.

Yours faithfully  
Judge Nugent

**From:** Eric Mabuza [mailto:eric@mabuzas.co.za]  
**Sent:** 27 June 2018 05:24 PM  
**To:** Commission <commission@inqcomm.co.za>  
**Subject:** RE: Communication from Judge Nugent 23/06/2018  
**Importance:** High

Dear Judge Nugent,

Please see attached letter.

Best,

Eric T Mabuza  
Mabuza Attorneys  
1<sup>st</sup> Floor, 83 Central Street  
Houghton, 2198  
Tel: (011) 483-2387/483-0476  
Fax: (011) 728-0145  
Cell: 082 561 1067  
E-mail: [eric@mabuzas.co.za](mailto:eric@mabuzas.co.za)

**From:** Commission <commission@inqcomm.co.za>  
**Sent:** Saturday, 23 June 2018 3:46 PM  
**To:** [eric@mabuzas.co.za](mailto:eric@mabuzas.co.za)  
**Subject:** Communication from Judge Nugent 23/06/2018

Dear Mr Mabuza

Kindly find communication attached for your information.

Kind regards

Commission



Judge R Nugent  
2<sup>nd</sup> Floor, Hilton House  
570 Fehrsen Street  
Brooklyn  
Pretoria

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Direct e-mail: [eric@mabuzas.co.za](mailto:eric@mabuzas.co.za)

Email: [commission@inqcomm.co.za](mailto:commission@inqcomm.co.za)

Your Ref:  
Our Ref: Mr. ET Mabuza  
Date: Sunday, July 01, 2018

Dear Judge Nugent,

### **Commission of Inquiry into Tax Administration & Governance by SARS**

1. Thank you again for granting our client the opportunity to address you regarding his objections to, *inter alia*, the conduct and continuation of your Commission of Inquiry.
2. You indicated that your ruling(s) will be handed out at 14h00 on Monday 2 July 2018.
3. We are instructed to bring to your attention the fact that our client is of the view that the Commission was improperly constituted on Friday 29 June 2018 when his application was heard and a further witness was subsequently called more particularly in that:
  - 3.1. The assistants ought to form an integral part of the panel. Although an explanation was given by you in respect of Professor Katz, nothing was said about the curious absence of the other two assistants.
  - 3.2. It was in any event improper to allow an application essentially for Professor Katz to recuse himself in his absence.

4. Furthermore in relation to the point argued by you at the hearing that you are the only Commissioner, we wish to bring to your attention the judgment of *S v Malindi & others* [1990] 4 All SA 45 (AD) which concerned the recusal of an assessor who would be in the same or an analogous position as your three assistants "appointed by the President". Your attention is specifically drawn to paragraph 43 of the judgment. A copy of the judgment is attached for your convenience. There are several other authorities in our law dealing with the recusal of assessors.
5. We deliberately raise these issues before your ruling is announced so that you can take them into consideration and, if you so choose, deal with and address them in your ruling.
6. Due to the inherent urgency of the matter, Commissioner Moyane hereby waives or abandons any rights he might have to raise these matters formally by way of oral submissions and he relies solely on the contents of this letter.

Yours faithfully



**MABUZA ATTORNEYS**

## Commission

---

**From:** Commission  
**Sent:** Monday, 23 July 2018 12:56  
**To:** 'eric@mabuzas.co.za'  
**Subject:** Public Hearings in August 2018  
**Attachments:** Public Hearings Notice 17 July 2018 (3).pdf

Dear Mr Mabuza

Attached is a notice of forthcoming public hearings for your information and as a courtesy to your client.

Warm regards  
Carol Steinberg  
Advocate for the Commission

**Commission of Inquiry into Tax Administration and Governance by SARS**

Hilton House, 2<sup>nd</sup> Floor, 570 Fehrsen Street, Brooklyn, 0181

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**[www.inqcomm.co.za](http://www.inqcomm.co.za)**

**PRESS RELEASE**

Kindly take note that the second session of the Commission's public hearings will take place from 21 to 24 and from 28 to 31 August 2018 commencing at 09:00 at the following venue:

**The Auditorium  
Linton House, 2<sup>nd</sup> Floor  
Brooklyn Bridge  
570 Fehrsen Street  
Brooklyn, Pretoria**

The witnesses who will be required to give evidence at the hearings will be finalised shortly before the hearings take place and will be made available when that has occurred.

**Commission of Inquiry into Tax Administration and Governance by SARS**

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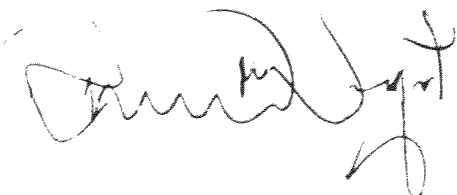
7 August 2018

Dear Mr Mabuza

I write to enquire whether your client wishes to respond to the evidence given at the Commission's public hearings, a transcript of which is attached for your convenience, or wishes to present evidence on other matters relevant to the inquiry.

Should he wish to do so he is invited to make arrangements to meet with counsel for the Commission to enable counsel to assess the evidence he wishes to present, to identify in what respect and to what extent there is a basis for the evidence, and to secure documents that might be relevant to the evidence. Once having done so, evidence of your client that is considered to be of assistance to the inquiry will be presented through counsel for the Commission, in the manner outlined in my ruling, of which you are aware.

Yours faithfully



**Judge Nugent**

**Commissioner**



Judge Nugent  
2<sup>nd</sup> Floor, Hilton House  
570 Fehrsen Street  
Brooklyn  
Pretoria

1<sup>st</sup> Floor  
83 Central Street  
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Email: [commission@inqcomm.co.za](mailto:commission@inqcomm.co.za)

Your Ref:  
Our Ref: Mr. ET Mabuza  
Date: Monday, August 20, 2018

Dear Judge Nugent,

### **Commission of Inquiry into Tax Administration and Governance by SARS**

1. We refer to your letter dated 7 August 2018 inviting our client to make arrangements with counsel for the Commission should he wish to participate in the proceedings.
2. On 2 July 2018, following your rulings, we addressed a letter to the Honourable President demanding *inter alia* that he should disestablish or stay one or both of the inquiries against our client and the removal of Professor Michael Katz as your assistant.
3. On 5 July 2018 we received a letter from the President indicating that he was going to await the ruling of Adv Bham SC in respect of our preliminary objections before making a decision on our client's demands.
4. On 31 July 2018 we received a ruling of Adv Bham SC on our preliminary objections.
5. On Friday 17 August 2018, more than a month after your rulings and our demands to the President, we received a letter from the President indicating that he was going to proceed with both inquiries. He also refused to remove Professor Katz.

6. It is obvious that we need to take instructions from our client on *inter alia* whether or not to mount a legal challenge against either the decision of the President or your ruling(s)/decision(s) or the ruling(s)/decision(s) of Adv Bham SC or all of the aforesaid decisions.
7. We expect to consult with and obtain legal opinion from our senior counsel later in the week.
8. In the interim and until such time as we have finalised the consultations we will not be in a position to respond, one way or the other, to your invitation to attend the proceedings.
9. We will inform you of our client's chosen cause of action as soon as we have finalised the consultations with counsel.
10. All our client's rights are reserved.

Yours faithfully



**MABUZA ATTORNEYS**

## Commission of Inquiry into Tax Administration and Governance by SARS

Hilton House, 2<sup>nd</sup> Floor, 570 Fehrsen Street, Brooklyn, 0181

Contact number: (012) 6479486

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Houghton, 2198  
E-mail: [eric@mabuzas.co.za](mailto:eric@mabuzas.co.za)

7 September 2018

Dear Mr Mabuza

The Commission is required to submit an interim report to the President by no later than the end of September 2018.

You will be aware, from the transcripts that have been furnished to you, of the evidence that has been given thus far in public hearings, and of documentary evidence in the public domain, being a report from KPMG commissioned by your client, and the records of court proceedings initiated by your client. Your client has been invited on more than one occasion to respond to the evidence but has failed to respond to those invitations.

The Commission is considering reporting to the President that that evidence discloses the facts summarised below, which have not been contradicted by any submissions received or by contrary evidence:

1. The situation at SARS today is one that is wracked with fear, suspicion and distrust amongst managerial employees. The information technology is falling behind and degenerating as new technology advances, a fragmented structure exists that inhibits collaboration amongst functions to the detriment of revenue collection, space exists for the illicit trade to flourish, long-serving skilled employees found themselves in supernumerary posts and have left in exasperation, and others who remain are in supernumerary positions with their skills not being utilised, and the relations between

your client and other State institutions has broken down, all of which is to the ongoing detriment of revenue collection.

2. The above has been brought about by events under the tenure of your client, the more prominent of which are summarised in what follows.
3. Within weeks of taking office your client denounced and humiliated the members of EXCO by saying, in the presence of their subordinates, that he had no confidence in them, and suspending the future operation of EXCO, based on a newspaper report of a 'rogue unit' within SARS, when there was no basis for believing that all members of EXCO would have had knowledge of the allegations in the report, thereby sowing seeds of managerial disruption, distrust and suspicion within SARS.
4. Your client suspended the modernisation programme that had been in the making for a decade, for no good reason and without consultation with the employees concerned with the programme, to the detriment of the programme.
5. He suspended Mr Pillay and Mr Richer, later commenced disciplinary proceedings against them, and they subsequently resigned. Mr Ravele also resigned after allegations made by your client that he had engaged in corrupt activities. By the time EXCO was resuscitated in early 2015 it had been denuded of its managerial expertise and experience, through the resignation of Mr Hore, the departure of Mr Head, and the suspension of Mr Pillay and Mr Richer.
6. It is premature for the Commission to consider whether the suspensions and disciplinary proceedings were justified or not because we await further evidence before considering that question. What is relevant to the Commission's consideration is only that it plunged senior management into disarray.
7. Your client engaged KPMG to investigate allegations of the existence of a 'rogue' unit particularly so far as Mr Pillay and Mr Richer might be implicated, at a cost of about R24 million (later to be repaid by KPMG), which made damning allegations against Mr Pillay that were leaked to the media, causing further reputational damage to SARS and its former senior management. The Commission has not considered whether those allegations were true or not, and is considering only what effect it had on morale within the organisation. Criminal charges were brought against Mr Pillay and others, and criminal charges were also commenced against Mr Pillay. Mr Magashula and Mr Gordhan, that were later withdrawn, which must have exacerbated the situation.
8. All the above contributed to the fear, distrust and suspicion that continues to pervade SARS today. In that atmosphere, and amidst disarray and uncertainty in senior

management, your client appointed Bain & Co to review the SARS operating model for no apparent good reason. After a perfunctory diagnostic inquiry, with little or no consultation with managerial staff, and no communication to staff, a new operating model was devised, which was presented to staff as a fait accompli, creating uncertainty and anxiety amongst managerial staff.

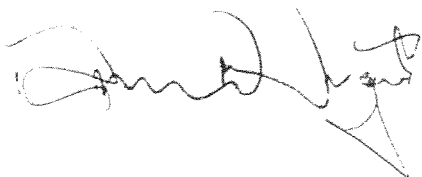
9. The implementation of the new model by your client and senior management of SARS, without a proper strategy for change, displaced about 200 employees from their jobs, creating anxiety and uncertainty, resulting in skilled and experienced employees ending up in supernumerary positions, which caused many to leave, and others remain in SARS with their skills not being utilised.
10. The implementation of the model reduced the effectiveness of SARS, particularly so far as it eviscerated the Large Business Centre, fragmented other functions, and allowed space for the illicit trades to exploit.
11. Your client's relationship with other State institutions with whom collaboration is essential – the Treasury, the Davis Tax Committee, the Auditor-General and the Financial Intelligence Centre – has broken down.
12. Your client has allowed SARS to be brought into disrepute in the public mind, by attempting to muzzle and intimidate the media through litigation on spurious grounds, in place of addressing matters reported in the media.
13. No responsible leader of a major and complex organisation that was functioning to world standards would have disrupted it as Mr Moyane did at SARS in the manner indicated above.
14. In summary, with no experience of the complexities of the organisation, your client denounced and humiliated its senior management and sowed the seeds of suspicion and distrust; he threw a world class institution into uncertainty, leaving SARS wracked with fear, suspicion and distrust, its information technology degenerating, its structure fragmented, space for the illicit trade to flourish, long-serving skilled employees being driven out and many who remain in supernumerary positions, and relations between SARS and other State institutions have broken down, all of which has caused damage to SARS, and through that the country, causing ongoing loss of revenue.

On the basis of the above the Commission is considering reporting to the President that the state of affairs at SARS, with ongoing loss of revenue has been brought about by reckless

mismanagement on the part of your client, and cannot be permitted to continue. It is considering recommending to the President that in the interest of SARS and the country, your client should immediately be removed from office, and be replaced by another person as Commissioner.

Should your client wish to make submissions on why the Commission should not report to the President in the terms summarised above, he should do so in writing by no later than 21 September 2018, so that his submissions may be considered before the Commission reaches its conclusions.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Judge Nugent', written in a cursive style.

**Judge Nugent**  
**Commissioner**

**Commission of Inquiry into Tax Administration and Governance by SARS**

Hilton House, 2<sup>nd</sup> Floor, 570 Fehrsen Street, Brooklyn, 0181

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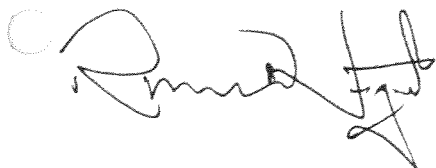
27 August 2018

Dear Mr Mabuza

You will be aware that oral evidence was given at the public hearings of the Commission last week. A transcript of the evidence is available on the Commission's website.

I write to ask whether your client wishes to respond to the evidence. If so he is invited to contact counsel for the Commission, as indicated in my earlier letter dated 7 August 2018.

Yours faithfully



**Judge Nugent**

**Commissioner**

## Commission

---

**From:** Commission  
**Sent:** Monday, 17 September 2018 09:24  
**To:** eric@mabuzas.co.za  
**Subject:** Commissioner to the Commission of Inquiry into Tax Administration and Governancy by SARS  
**Attachments:** PUBLIC HEARINGS 25-28 SEPTEMBER 2018.pdf  
**Importance:** High

Dear Mr Mabuza

The above matter refers.

Please find herewith the media release for the forthcoming public hearings for your information.

Kind regards  
Commission of Inquiry Secretariat

---

**From:** Commission  
**Sent:** Friday, 07 September 2018 11:40  
**To:** eric@mabuzas.co.za  
**Subject:** Communication from Judge Nugent: Commissioner to the Commission of Inquiry into Tax Administration and Governancy by SARS

Dear Mr Mabuza

Kindly find a letter from Judge Nugent for your attention.

Kind regards

Secretary to the Commission of Inquiry



**Commission of Inquiry into Tax Administration and Governance by SARS**

Hilton House, 2<sup>nd</sup> Floor, 570 Fehrsen Street, Brooklyn, 0181

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**PRESS RELEASE**

Kindly take note that the next session of the Commission's public hearings will take place from 25 to 28 September 2018 commencing at 09:00 at the following venue:

**The Auditorium  
Linton House, 2<sup>nd</sup> Floor  
Brooklyn Bridge  
570 Fehrsen Street  
Brooklyn, Pretoria**

The witnesses who will be required to give evidence at the hearings will be finalised shortly before the hearings take place and will be made available when that has occurred.

Judge Robert Nugent  
2<sup>nd</sup> Floor, Hilton House  
570 Fehrsen Street  
Brooklyn  
Pretoria

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Direct e-mail: [eric@mabuzas.co.za](mailto:eric@mabuzas.co.za)

Your Ref:  
Our Ref: Mr. ET Mabuza  
Date: Friday, September 21, 2018

Dear Judge Nugent,

### **Commissioner Thomas Swabihi Moyane: Disciplinary Inquiry**

1. We refer to your letter dated 7 September 2018. We have now had the opportunity to consult with our client, Commissioner Tom Moyane, and to engage with the contents of your letter.
2. It would seem necessary to remind you of the previously articulated stance of our client and his attitude towards the unlawfulness of the proceedings of the inquiry, *modus operandi* and composition.
3. These matters were raised extensively, both in writing and orally by Senior Counsel, on 29 June 2018. We refer you to the relevant documents submitted to you and the transcript of the hearing on that day. For the sake of completion, we also refer you to the written ruling which you issued in respect thereof on 2 July 2018. Needless to say, our client strongly disagrees with your findings, not to mention the *ad hominem* and personal attacks on him and his counsel.
4. In a nutshell, our client remains of the firm view that yours is an unlawfully appointed inquiry, which constitutes nothing but an inherently biased process and witch-hunt against him. He also contends, as you know, that the President ought not to have appointed your Commission whilst the Disciplinary Proceedings into

the fitness of our client for office and/or the alleged breakdown of the relationship between him and the President due to alleged misconduct on his part, is simultaneously underway. Finally, he separately complains of perceived bias on the part of Mr Michael Katz and you as Commissioner.

5. At the hearing and in your ruling, you emphatically denied the obvious existence of an overlap between your and the Disciplinary Inquiry chaired by Advocate Bham SC. Your startling intention, stated in your letter, to recommend to the President that "*in the interest of SARS and the country, (Commissioner Moyane) should immediately be removed from office and be replaced by another person as Commissioner*", which is the very same outcome intended by the President when he appointed the Disciplinary Inquiry, betrays that the professed differentiation between the two inquiries, as it concerns Commissioner Moyane, has always been and remains a fallacy.
6. At the risk of unnecessary repetition, we are instructed to inform you that your Commission has no legal authority to make that and any of the other "findings" postulated in your letter because, *inter alia*:
  - 6.1. The simultaneous appointment(s) and proceedings of yours and the Disciplinary Inquiry is, in the circumstances, unfair and unlawful and in violation of the provisions and values of the South African Constitution and Bill of Rights.
  - 6.2. Contrary to your assertions, our client has never actually been invited to participate meaningfully in your Commission. For example, unlike all other "witnesses", our client has never been contacted by the Evidence Leaders of your Commission. The attendance at the Commission on 29 June was specifically at our request, which you kindly granted.
  - 6.3. Our client does not have the resources to secure proper legal representation at your Commission. He has been denied such representation in spite of the fact that he is still the incumbent SARS Commissioner and ought to be

granted such representation and related support. You have already clearly indicated that this is none of your concern.

- 6.4. Your Commission's selection and sequencing of witnesses was deliberately designed and skewed to reach a predetermined outcome, as outlined in your letter. From the start, no effort whatsoever was made to secure the real and meaningful participation of those people anticipated to be opposed to that predetermined outcome and narrative. Such people, including our client, have instead been treated unfairly and with undue hostility.
- 6.5. You have since publicly admitted to holding an unlawful and undisclosed meeting with Mr Pravin Gordhan before he "testified" at your Commissioner as a "witness". Such conduct is unlawful and unheard of and disqualifies you to act as an impartial chair of the Commission.
- 6.6. The unwarranted remarks made in your ruling further and separately confirm your disqualification.
- 6.7. The inclusion and presence of Professor Michael Katz in your panel of assistants is unlawful and in breach of the rules of natural justice, in particular the rule *nemo sua in indicio*. Katz is, to your knowledge, the chair of ENS Africa Attorneys and he and them represent President Ramaphosa in ongoing and sensitive litigation to do with his alleged involvement in causing and instigating the alleged murder and massacre of 34 workers in Marikana in 2012. Katz and/or ENS have also represented Ramaphosa in many other personal and business matters. Katz has admitted to you in writing that:

*"The litigation department of ENS, conducted by one of our partners, Doug Molepo, is representing President Ramaphosa."*
- 6.8. You nevertheless ruled that these conflicts do not bother you and that you are "grateful" that he was appointed by the President.

- 6.9. Katz is further and additionally disqualified to play the role he is playing in your Commission due to his and his firm's involvement in ongoing litigation against SARS, which is the subject of a scandal which was the subject of a publicly available article which was published in both the print and electronic versions of the Mail and Guardian newspaper. A copy of the exposé is in any event annexed hereto for your attention. It is understood that your Mr Katz is the head of the ENS Tax Division, which is embroiled and implicated in the said scandal.
- 6.10. We have also subsequently learnt that the other two assistants are also possibly disqualified, unsuitable and/or tainted in that, during the period under investigation:
- 6.10.1. Advocate Masilo was allegedly an employee of SARS; and
- 6.10.2. Mr Khahla was a member of the SARS Audit Committee.
- 6.11. The "witnesses" subsequently called and/or selected after your ruling were also seemingly biased and hostile towards our client, rendering their evidence irrelevant and inadmissible.
7. We have also been reliably informed by a whistle-blower that your Commission has separately made inappropriate contact with Judge Kroon and Advocate Muzi Sikhakhane SC, with a view to *ex post facto* influencing those of their decisions which do not conform to the narrative contained in your letter. In this regard, we are instructed to demand, as we hereby do, that you urgently furnish us with all copies of any correspondence exchanged between your Commission and the two persons, on or before 24 September 2018, failing which other legal avenues for obtaining the same will be explored.
8. All your letters allegedly "inviting" our client to participate in the unlawful Commission, without addressing any of the issues raised above and previously, constitute empty and hollow words. Our client is not prepared to legitimise such a

flawed and unlawful process as your Commission until such time as his legitimate concerns have been addressed.

9. Insofar as you stated that the issue of the simultaneous Inquiries and the appointment of Professor Katz were matters outside your jurisdictional powers, which fall within the exclusive powers of the President, our client did refer those matters to the President for determination and he elected not to engage with them, thereby automatically rejecting them and effectively endorsing, *inter alia*, your unlawful ruling.
10. In the circumstances, our client has been left with no other option but to approach the Constitutional Court for relief, which includes reviewing and setting aside your ruling. This eventuality was clearly intimated to you and expressly anticipated in the penultimate paragraph of your ruling. The application was delayed, *inter alia*, by a request from the President to await the outcomes of separate objections brought before Bham SC. Both you and Bham SC will be cited in the Constitutional Court application, as second and third respondents respectively. You will accordingly be served with the court papers shortly but no later than Wednesday 26 September 2018.
11. In view of all the foregoing, we are instructed to demand, as we hereby do, that you must refrain from acting as contemplated in your letter, which will only serve to exacerbate the situation and to further and gratuitously violate our client's constitutional and reputational rights. In this regard, we await your urgent response.
12. This correspondence will be made available to the Constitutional Court for ease of reference.

Yours faithfully



**MABUZA ATTORNEYS**

**Commission of Inquiry into Tax Administration and Governance by SARS**

Hilton House, 2<sup>nd</sup> Floor, 570 Fehrsen Street, Brooklyn, 0181

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25 September 2018

Dear Mr Mabuza

I am in receipt of your letter dated 21 September 2018.

Once separated from the abuse, to which I will naturally not be responding, I find nothing in your letter that satisfies me the Commission, or any of its personnel, has acted unlawfully.

To clarify some of the issues that you raise, though not necessarily exhaustively, your client has at all times been represented by you, and for that reason he has not been contacted directly, in accordance with ordinary etiquette. Through you he has been invited on more than one occasion to engage with counsel for the Commission should he wish to present evidence. If your client would prefer future contact with him to be direct, kindly advise me and furnish his address.

The concurrence of the Commission of Inquiry and the disciplinary proceedings was dealt with in my earlier ruling, in which I indicated that, at least for the moment, the Commission would not be inquiring into the issues that are the subject of the disciplinary proceedings, and thus far it has not done so. That the Commission is considering recommending the removal of your client from office on separate grounds does not seem to me to be relevant. If that is a conclusion properly arrived at on the evidence before the Commission, a matter upon which your client was invited to make submissions, then I do not see why it is unlawful to recommend it.

Witnesses have been called according to those who have been willing and available to inform the Commission on matters relevant to its terms of reference. One such witness has been Mr Gordhan, whose explanation of the operating model that existed at SARS was

invaluable as a starting point for the inquiry, as will be apparent from the evidence that followed upon his.

Indeed, I am pleased that I took the opportunity at the outset to obtain from Mr Gordhan an explanation of what the 'operating model' meant, which was extremely helpful in setting the inquiry on its course. I have always found it a good idea when inquiring to begin at the beginning, and at SARS the beginning was the operating model devised by Mr Gordhan.

I might add that I have met many others in the course of the inquiry to enable myself to be properly informed, including, I might add, one who said he belonged to the 'Moyane faction' within SARS, whatever that might mean, and I will continue doing so if I consider it will assist to reach properly informed conclusions.

It is not clear to me what other witnesses you have in mind who you believe ought to have been called. If you are aware of witnesses with relevant information who are willing to give evidence, please let me know who they are and I will arrange for counsel to contact them. I would be obliged if you would do so without delay as time is moving on.

I have dealt with the position of Mr Katz in my ruling and see no need to repeat it. Adv Masilo was indeed formerly employed by SARS, and I understand Mr Kahla was at one time on its external audit committee, and the same considerations apply to them.

I am not sure why you consider the person who informed you that I have been in contact with Adv Sikhakhane and Judge Kroon to be a 'whistle blower'. I would have thought it obvious from the important part both played in events that occurred at SARS that I would be in touch with them. Indeed, Judge Kroon will be giving evidence on Friday. I remind you that this is an inquiry, and the purpose of an inquiry is to inquire. You are welcome to view the correspondence once you inform me that they have consented.

I'm afraid nothing in your letter persuades me that it will be unlawful to recommend to the President that your client should be removed from office if that is the conclusion reached by the Commission. In those circumstances I am not willing to give you the undertaking you request.

Yours faithfully

(sent electronically)

**Judge Nugent**  
**Commissioner**



## Commission of Inquiry into Tax Administration and Governance by SARS

Hilton House, 2<sup>nd</sup> Floor, 570 Fehrsen Street, Brooklyn, 0181

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1<sup>st</sup> Floor 83 Central Street  
HOUGHTON  
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15 November 2018

Dear Mr Mabuza

Further to my earlier letter of 12 November 2018, in particular paragraph F, the following further information has come to the knowledge of the Commission from the records of SARS:

1. (a) On 24 March 2017 Ms Refiloe Mokoena and Ms Makehekhe-Mokhuane, and on 18 April 2017 Ms Makola, were appointed by your client to employment by SARS.
  
- (b) On 6 April 2017 your client asked the Minister of Finance to take note of the appointments, in the following terms:

'The purpose of this memo is for the Minister to take note of the appointment of three Chief Officers: Mogola Tsibugo Makola as Chief Officer: Enforcement, Refiloe Mokoena as Chief Officer: Legal Counsel and Mmamathe Makehekhe Mokhuane as Chief Officer: Digital Information Services & Technology, in accordance with section 5(1)(a) and 18(3) of the SARS Act; and section 4 of the legal opinion provided by Byron Morris, especially paragraph 4.19 of that legal opinion, paragraphs 21 to 28 of the legal opinion provided by Wim Trengove SC and Kate Hofmeyer, and paragraphs 52 to 54 of the legal opinion provided by Vincent Maleka SC and Ndumiso Nxumalo (see attached).'

- (c) That statement to the Minister was misleading in that the opinions of Adv Trengove SC and Adv Hofmeyer, and Adv Maleka SC and Adv Nxumalo, were to the effect that, while your client was entitled to select appointees, the terms and conditions upon which the persons concerned were employed required the approval of the Minister.
- (d) Shortly after the appointments were made, your client approved an increase of approximately 43% in the remuneration of the persons concerned.
- (e) The Minister was not asked for, nor did he grant, approval of the terms and conditions upon which they were employed, nor for the increase in their remuneration.
2. On the basis of the evidence it is possible the Commission might find that Ms Mokoena, Ms Makehekhe-Mokhuane, and Ms Makola were appointed by your client, and their remuneration was increased, when to his knowledge he was not entitled to do so, that he misled the Minister, and that the appointments and the increases were accordingly unlawful.
3. Your client is invited to furnish written submissions on why such findings should not be made. If he wishes to furnish submissions, he should do so no later than 27 November 2018.

Yours faithfully



Judge R Nugent

Commissioner

## Commission of Inquiry into Tax Administration and Governance by SARS

Hilton House, 2<sup>nd</sup> Floor, 570 Fehrsen Street, Brooklyn, 0181

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12 November 2018

Dear Mr Mabuza,

You will be aware that since delivering the Commission's interim report to the President, considerable further evidence has been received by the Commission. The transcript of the oral evidence is posted on the website of the Commission, as is an affidavit deposed to by Mr Massone of Bain & Co, together with internal emails furnished to the Commission by Bain & Co. Your client has chosen not to respond to that evidence nor to produce evidence in contradiction. It is possible that the Commission could make the findings and recommendations below, on the basis of that evidence, and inferences from that evidence.

A: The evidence before the Commission reveals that

1. Your client met with representatives of Bain & Co on the various occasions detailed in the affidavit of Mr Massone, at which the various presentations referred to in the affidavit were made.
2. At the meeting of 28 August 2014 your client was accompanied by Mr Makwakwa and discussion took place in the terms indicated by the Bain internal email of that date.
3. Your client subsequently sought the approval of the Minister of Finance to seek out consultants to assist him in evaluating SARS

4. A contract was subsequently approved by the Bid Evaluation and Adjudication committees of SARS ostensibly to conduct an evaluation of SARS.
5. A further contract was later concluded with SARS for the restructuring of SARS, by deviation from the ordinary competitive procurement process.

It is possible the Commission might find, based on the evidence that:

1. the discussion on 28 August 2014 was aimed at devising a strategy to procure a contract for Bain to restructure SARS. The contract would ostensibly be one for the evaluation of SARS, but would be a disguised precursor to appointing Bain to undertake the restructuring of SARS.
2. neither your client nor Bain had any proper knowledge of the functioning of SARS at the time the strategy was devised, and were intent upon restructuring SARS irrespective of whether that was required for its efficient functioning.
3. the strategy was devised in the personal interests of your client and Bain and not in the interests of SARS.
4. the strategy was devised in pursuance of a conspiracy between your client and Bain for your client to take control of SARS in his own interests, and in the interests of Bain, and not in the interests of SARS
5. he intentionally misled the Minister of Finance as to his true intentions, by failing to disclose the conspiracy with Bain
6. he intentionally caused the Bid Evaluation and Bid Adjudication committees to be misled by failing to disclose the conspiracy with Bain
7. in acting as above he caused prejudice or potential prejudice to the Minister, the committees and SARS, in that they would not have acted as they did had they known of the conspiracy.

If the findings above were to be made the Commission might possibly recommend that the prosecuting authority investigate whether your client committed fraud.

B: The evidence before the Commission reveals that

1. a contract was concluded between SARS and a firm called Gartner for the provision of information technology consultancy services to SARS
2. the contract was negotiated, to the knowledge of your client, through the intervention of Mr Monyeki, a close personal friend of your client, and the appointment occurred contrary to the SARS procurement process.
3. the appointment of Gartner was partly to investigate the earlier modernisation process

It is possible the Commission might find on the basis of the evidence that

1. your client secured the appointment of Gartner when he had a conflict of interest
2. your client secured the contract for Gartner when he knew it was secured in conflict with SARS policy on procurement, for purposes that were not in the interests of SARS
3. your client caused SARS to suffer wasteful and purposeless expenditure.

C: The evidence of Mr Hlangeni Mathebula reveals that your client met with Mr Mathebula in clandestine circumstances, and there persuaded Mr Mathebula to sign a document against his will.

It is possible the Commission might find on the basis of that evidence that

1. it was grossly improper to secure the signature of a document in that way
2. your client caused a document he knew was improperly obtained to be acted upon by employees of SARS who were not aware of the circumstances in which it had been signed.
3. Your client's conduct was clandestine for reasons known only to your client but that were not in the interests of SARS

D: The evidence of Mr Mathebula reveals that your client ignored evidence available to him that was alleged to establish that an employee of SARS was engaged in unlawful

and corrupt conduct, and thereafter appointed the same employee to undertake work reporting direct to your client.

The Commission might possibly find on the basis of that evidence that

1. your client's conduct was contrary to his duty to investigate allegations of corrupt and unlawful conduct on the part of SARS employees.
2. your client's appointment of the employee to conduct further work for SARS not knowing whether he had been engaged in corrupt conduct was grossly improper and not in the interests of SARS
3. your client's conduct was prejudicial to SARS in that it might have caused corrupt conduct to deprive SARS of revenue.

E: To your client's knowledge, as evidenced by the records of SARs that were under his control, your client instructed KPMG to undertake investigations as recorded in its report.

It is possible the Commission might infer from the nature of the instructions as contained in the report, that KPMG was appointed for the improper purpose of seeking out evidence that would enable your client to rid SARS of the persons concerned, for the purpose of neutralising them as foreshadowed in the advice given to you by Bain in its 'TM First 100 day' presentation referred to in the affidavit of Mr Massone.

F: To your client's knowledge, as evidenced by the records of SARS that were under his control

1. your client appointed Chief Officers during the period December 2014 and May 2017
2. your client was aware that the employment policy of SARS required candidates for appointments to such posts to be interviewed by 'reasonable cross functional teams, representative of the functional department', and that psychometric assessments were required to be taken account of in the selection process.
3. the interviewing teams were not 'reasonable cross functional teams, representative of the functional department'.

4. in the cases of Mr Jonas Makwakwa, Mr Jed Michaletos and Mr Tabogo Mokoena, the results of their assessments were not known at the time the appointments were made, and none of the assessments of the other appointees, other than that of Mr Hlangeni Mathebula, recommended the appointments.

The Commission might possibly find on the basis of the evidence that

1. your client ignored assessments when making the appointments
2. made the appointments improperly and in conflict with SARS policy.

G: Your client will be aware, from his own knowledge as evidenced by records in the possession of SARS, that bonuses were awarded to your client and EXCO members for the year 206/2017 without the approval of the Minister of Finance.

It is possible the Commission might find, on the basis of the evidence, that your client and the members of Exco breached their fiduciary duty to SARS by approving bonus payments to one another without the approval of the Minister of Finance when they had a clear conflict of interest.

H: To your client's knowledge, as evidenced by the records of SARs that were under his control, litigation was commenced at the instance of your client against Mr Lackay, the Mail & Guardian, Mr Jacques Pauw, and the Auditor General. Your client will also be aware that he instructed attorneys and counsel to read books called 'The Maputo Connection' and 'Rogue'.

It is possible the Commission might find, on the basis of the evidence before it, that

1. your client acted as above in his personal interest, under the guise of protecting taxpayer information and SARS confidential information, and not in the interests of SARS.
2. in so doing your client caused SARS to incur expenditure in his personal interests when he was not authorised to do so.

If that were to be its finding it is possible the Commission might recommend that SARS should take steps to recover the costs of your client's actions from your client.

I: Your client will be aware, from his own knowledge, as evidenced by the records of SARS that were under his control, that he told the parliamentary Steering Committee on Finance that he was not involved in the approval of New Integrated Credit Solutions as a debt collector for SARS, when he had in truth approved its appointment.


It is possible the Commission might find, on the basis of that evidence, that your client intentionally misled the Steering Committee.

J: Your client will be aware, from his own knowledge, as evidenced by the records of SARS that were under his control, that he authorised media releases to be issued concerning Judge Davis and concerning KPMG after it had withdrawn its recommendations.

It is possible the Commission might find, based on that evidence, that the media releases were scurrilous and unbecoming of SARS, and brought SARS into disrepute.

Your client is invited to furnish written submissions to the Commission as to why the above findings and recommendations should not be made. Should he wish to furnish submissions he should do so no later than 23 November 2018.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Judge Nugent', with a stylized flourish at the end.

Judge Nugent

Commissioner



Judge R Nugent  
2<sup>nd</sup> Floor, Hilton House  
570 Fehrsen Street  
Brooklyn  
Pretoria

Email: [commission@inqcomm.co.za](mailto:commission@inqcomm.co.za)

1<sup>st</sup> Floor  
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Tel: +27 11 483-2387/483-0476  
Fax: +27 11 728 - 0145  
Direct e-mail: [eric@mabuzas.co.za](mailto:eric@mabuzas.co.za)

Your Ref:  
Our Ref: Mr. ET Mabuza  
Date: Tuesday, November 27, 2018

Dear Judge Nugent,

### Commission of Inquiry into Tax Administration & Governance by SARS

Your letters dated 12 and 15 November 2018 in which you requested a response refer. We are instructed to respond to you, as a matter of courtesy, as follows.

1. As previously and repeatedly indicated to you our client is not in a position to participate in your Commission until such time that his preliminary objections raised with you on 29 June 2018 and subsequently with President Ramaphosa on 8 August 2018 have been adjudicated upon by a court of law. Both you and the President have, separately, dismissed our client's objections. Our client disputes both decisions upon legal grounds.
2. In terms of section 34 of the Constitution of the Republic of South Africa:  
  

*“Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court, or, where appropriate, another independent and impartial tribunal.”*
3. In the exercise of that right, which must be read together with relevant legislation and/or rules governing court processes, our client is not legally obliged and/or is actually barred from participating in or taking any further step in the very

proceedings objected against until after the adjudication of the objections, one way or the other.

4. Fortunately the dispute is now before the courts and will be heard in a matter of days.
5. Until then, it is not open to our client alternatively he is under no legal obligation to participate in your impugned process. In any event and due to the inherent bias and other unlawfulness tainting your Commission, our client does not wish to subject himself to an unlawful process.
6. In the event that you dispute our client's often articulated stance as outlined above, you are equally free to challenge him in a court of law. Alternatively you may exercise or invoke your powers of subpoena as conferred in the relevant Terms of Reference. In either case, our client's rights are hereby reserved.
7. For the record our client disputes as false the allegations of any wrongdoing on his part. He again commits to address such allegations as soon as his objections have been confirmed or dismissed in court.
8. We kindly hope that it will not be necessary to explain the above for the umpteenth time.

Yours faithfully



**MABUZA ATTORNEYS**

# **Appendix 3**

**Correspondence between the Commission of Inquiry and  
the attorneys of Mr Jonas Makwakwa**

**Liesel David**  
**Attorney, Conveyancer and Notary Public**

13 WOLFGANG AVENUE  
NORWOOD 2192  
P O BOX 2893  
HOUGHTON, 2041

TEL: +27 11 728-1139  
FAX: 0866 167 597  
MOBILE: 082 890 1376  
E-MAIL: [lieseldavid@telkomsa.net](mailto:lieseldavid@telkomsa.net)

---

To: The Honorable  
Mr Justice Nugent

E-mail: [commission@inqcomm.co.za](mailto:commission@inqcomm.co.za)

Acting Commissioner of SARS  
Mr Mark Kingon

E-mail: [mark.kingon@sars.gov.za](mailto:mark.kingon@sars.gov.za)

From: Liesel David / M028

Pages: 4

Date: 16 July 2018

Subject: **Re: Commission of Inquiry South African Revenue Services**

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**CONFIDENTIALITY NOTE:** This e-mail contains confidential information intended only for the person/s to whom it is addressed. Any other recipient is not entitled to read the rest of this e-mail or disclose its contents to any person, or take copies, and is requested to notify us immediately by fax or telephone at the numbers listed above and we will reimburse the costs for doing so.

---

Dear Sir,

I confirm that I act on behalf of Mr Jonas Makwakwa, the former Chief of Business and Individual Taxes of SARS.

As the Commission of Inquiry which you have been appointed to chair, concerns the internal workings of SARS for the period which my client held a senior position, he feels it necessary to make an appearance at the Commission of Inquiry in order to correct a number of inaccuracies that have been put forward by the witnesses called to date as well as to shed light on what has been at play at SARS.

We have studied the transcripts of the hearings for Day 1, 2 and 3 and believe that some testimony presented is factually incorrect, untruthful, based on evidence that does not exist and/or based on hearsay evidence.

Prior to arranging a date for my client to present testimony at the next hearings, we would like confirmation that all of the witnesses who have already testified will be available to be re-called and cross-examined.

In order to conduct a thorough enquiry, we believe that the following information and documents should be made available by SARS and/ or the witnesses already called, and we hereby request the following:

- 1) Makungu Mthebule – copies of the text messages which she refers to @ page 418 of her testimony. We request this so that this can be read to the public to correct the inaccuracy presented. We notice that she indicates that she doesn't have the text messages anymore, but we request that she engages with her cellphone service provider to extract the text message/s that she refers to in her testimony. We also request that she provides evidence and witnesses on the allegations she made against our client.
- 2) Gene Ravele – copies of the instructions allegedly given by my client to stop inspections on cigarette factories. We would like to him to provide written evidence or witnesses substantiating the allegations.
- 3) Sunita Munik –has made a number of unsubstantiated claims, and we hereby request her to produce evidence or witnesses to substantiate the allegations made.
- 4) Tshebeletso Seremane – This witness has provided no evidence of the allegations made regarding claims that our client appointed his wife in a senior position. We require the witness to produce documentary evidence to support these claims.
- 5) Bernard Mofokeng –Evidence on allegations made regarding our client proving or supporting allegations including documentary evidence and witnesses.

We have received instructions to open perjury cases and defamation claims against any of the above witnesses who have testified and made baseless allegations against our client should any of the requested evidence not be produced.

Due to the fact that our client is not within SARS anymore we request the following information to be made available to substantiate our clients' presentation on appearance before the commission.

- 1) The full report on "Project Lion".
- 2) A full set of tender documents submitted for the SARS Modernization Project of 2006.
- 3) Copies of documents showing the approval process followed by SARS in the appointment of the successful bidders for the Modernization tender of 2006.
- 4) All legal opinions obtained from Edward Nathan Sonnenberg by SARS in the Modernization process.

- 5) Documents reflecting the total amount spent on all companies in the Modernization process including all amounts spent by SARS on SAP licenses from 2005 to date.
- 6) Copies of all documents evidencing the procurement process followed in the appointment of the companies BBD and Shandon, as part of the consortium of companies in the Modernization process.
- 7) Proof of authorization of use of the SARS intellectual property by BBD and Shandon in doing work for the Department of Home Affairs.
- 8) All documents used relating to the billing process relating to payments made by SARS to BBD and Shandon in excess of R2 billion.
- 9) Copies of the vetting certificates for the following previous SARS employees:
  - 9.1 Barry Hore
  - 9.2 Ivan Roberts-York
  - 9.3 John Cruickshank

There are “jobs for pals” involving over 300 employees at SARS. We urge the commission to investigate this.

We therefore request copies of the supporting documents which include but are not limited to the advertisement for the position, the interview results, the applicants cv's and the psychometric results used in the recruitment process by SARS to recruit the following personnel, as a sample to be presented to the Commission.

- 10) Copies of the recruitment process used to recruit the following personnel including the (Advert for the post, interview results and psychometric results etc.)

Copies of the supporting documents which include but not limited to:

The advertisement for the position;

The interview results, CV's obtained, and psychometric results used in the recruitment process by SARS to recruit the following personnel:

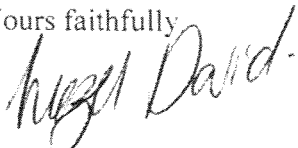
- Raymond Lala
- Alf Carrim
- John Cruickshank

- Janice Alford
- Dipuo Mvelizi
- Sridharan Kersavan
- Andre Scheepers
- Andre Rabie
- Bob Head
- Mary Hagreves
- Carla Da Silva Nel
- Yousuf Denath
- Anwar Mustapha

Kindly confirm by return when the above information will be available, as well as possible dates when my client can make an appearance before the Commission.

All my client's rights remain reserved.

Yours faithfully



**LIEZEL DAVID**

**Commission of Inquiry into Tax Administration and Governance by SARS**

Hilton House, 2<sup>nd</sup> Floor, 570 Fehrsen Street, Brooklyn, 0181

**Contact number: (012) 6479486**

**E-Mail: [commission@inqcomm.co.za](mailto:commission@inqcomm.co.za)**

**[www.inqcomm.co.za](http://www.inqcomm.co.za)**

Liezel David  
Attorney, Conveyancer and Notary Public  
13 Wolfgang avenue  
Norwood 2192  
P O Box 2893  
Houghton, 2014

17 July 2018

Dear Ms David

I refer to your letter of yesterday.

At the outset kindly bear in mind that the Commission of Inquiry is not associated with SARS. If there are matters you wish to raise with SARS I would be obliged if you would raise them with SARS separately, and vice versa.

The Commission welcomes any evidence that is relevant to its Terms of Reference and will assist the inquiry, and will allow your client to refute evidence that might be adverse to him, but I'm afraid that must be done in an orderly manner, and in the same way as the evidence of other witnesses.

Should your client wish to give evidence, I would thus be obliged if you would make arrangements to meet with counsel for the Commission to enable counsel to assess the relevance of the evidence he wishes to give, to identify in what respects your client provides a basis for refuting evidence that has been given, and to secure such documents as might be relevant to the inquiry. Once having done so, evidence of your client that will assist the inquiry will be presented through counsel for the Commission. Your client might wish, instead of being interviewed by counsel, to furnish a statement or affidavit outlining the evidence he wishes to give, and if that is the case he is invited to do so.

I'm afraid I am not willing to confirm, as you have requested, that all witnesses who have given testimony will be recalled. Witnesses will be recalled where there is a proper basis for



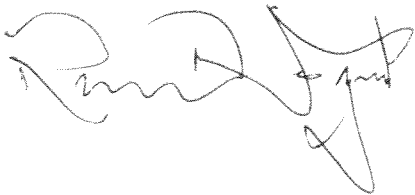
doing so, which will be decided once your client has been interviewed or furnished a statement or affidavit. I also remind you that no person has a right of cross-examination, as is apparent from the regulations governing the work of the Commission. Where there is a basis for closer examination of any witness, counsel for the Commission are perfectly capable of doing so, and will be instructed by the Commission to do so where necessary. If there is a relevant conflict in the testimony of witnesses, counsel will examine all relevant witnesses to establish where the truth lies.

It is not clear why you should have directed your threats against witnesses to me. You will appreciate, however, that witnesses are obliged to appear and to give evidence where that is required by the Commission. I am sure you appreciate that whether a witness has perjured himself or herself is not capable of being determined until all the relevant evidence has been heard. I would thus be obliged if you would desist from threatening action against witnesses in the course of the inquiry, thereby hindering the work of the Commission, which constitutes an offence. Any attempt to do so will be referred immediately to the Director of Public Prosecutions.

Meanwhile, the Commission will give consideration to the matters you suggest it inquires into, for which I thank you.

I look forward to your client's co-operation with the Commission, and trust he will accept the invitation to meet with counsel, or with me if that is required, as he was invited to do some time ago, or to furnish a statement or affidavit if that is preferred.

Yours faithfully

A handwritten signature in black ink, appearing to read 'R. Nugent', written in a cursive style.

**Judge Nugent**  
**Commissioner**

**LIEZEL DAVID**  
**ATTORNEY, CONVEYANCER AND NOTARY PUBLIC**

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NORWOOD 2192  
P O BOX 2893  
HOUGHTON, 2041

TEL: +27 11 728-1139  
FAX: 0866 167 597  
MOBILE: 082 890 1376  
E-MAIL: [liezeldavid@telkomsa.net](mailto:liezeldavid@telkomsa.net)

---

To: Commission of Inquiry into Tax Administration and Governance by SARS

Attention: The Honourable Mr Justice Nugent

E-mail: [commission@inqcomm.co.za](mailto:commission@inqcomm.co.za)

From: Liezel David /M028

Pages: 3

Date: 30 July 2018

Subject: **My Client: Mr Mashudu Jonas Makwakwa**

---

**CONFIDENTIALITY NOTE:** This e-mail contains confidential information intended only for the person/s to whom it is addressed. Any other recipient is not entitled to read the rest of this e-mail or disclose its contents to any person, or take copies, and is requested to notify us immediately by fax or telephone at the numbers listed above and we will reimburse the costs for doing so.

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Your letter dated 17 July 2018 refers.

The Commissioner will be aware that the letter which was directed to your good office was equally directed to SARS.

SARS has replied to our letter on the basis that certain information is available in the public domain, and the remainder of the information must be requested from SARS in terms of Promotion of Access to Information Act, 2000 ('PAIA'). A copy of SARS letter is attached for reference.

SARS have failed to identify which information is publicly available. To the extent that we are able to identify which information is in the public domain, our client will access that information. We will endeavor to engage further with SARS on this issue.

However, to the extent that the information is not publicly available we hereby request your office to issue a subpoena requesting the information as set out in our letter from SARS. We do not believe that a meeting with the counsel for the Commission is necessary prior to facilitating this request for information, unless you feel otherwise.

In terms of section 3(1) and 3(2) of the Commissions Act 49 of 1996, you as the Commissioner have the following powers namely:

- "1) *For the purpose of ascertaining any matter relating to the subject of its investigations, a commission shall in the Union have the powers which a Provincial Division of the Supreme Court of South Africa has within its province to summon witnesses, to cause an oath or affirmation to be administered to them, to examine them, and to call for the production of books, documents and objects (my underlining).*
- (2) *A summons for the attendance of a witness or for the production of any book, document or object before a commission shall be signed and issued by the secretary of the commission in a form prescribed by the chairman of the commission and shall be served in the same manner as a summons for the attendance of a witness at a criminal trial in a superior court at the place where the attendance or production is to take place."*

With regard to the invitation from your office to meet either with yourself or Counsel for the Commission or both, our client once again thanks you for invitation.

However, it must be noted that without the supporting evidence (which forms part of the requested documents from SARS), our client will be hampered in his ability to prepare for the inquiry and will be accused of the same thing that he is accusing other witnesses of, namely unsubstantiated claims.

In order to hold a fruitful and meaningful discussion, the requested documents are vitally important to achieving that goal.

Our client will highly appreciate the assistance of the Commission in this regard, as our client believes that the production of the documents and information will be in the interest of the Commission, fairness and justice.

Our client is aware of the fact that the right to recall witnesses is not automatic. However, it is our client's submission that it will remain inherently unfair and bluntly unjust to allow hearsay evidence which can also be construed as false, and/ or defamatory to remain unchallenged. Our client will rebut these statements.

Kindly advise whether the witnesses who have already testified followed the same process as outlined in paragraph 4 of your letter, and whether the counsel for the commission assessed the relevance of the evidence before calling the witnesses. If so, we hereby request copies of the documents that the witnesses produced. We are only at this stage concerned with the statements made by witnesses relating to my client, and not the over all running of SARS.

To the extent that witnesses who have already testified cannot produce the documentary proof to substantiate their claims, we hereby request that their evidence before the Commission be struck from the record and disregarded.

We wish to place on record that our client has not directed threats against witnesses to your office. Our client simply pointed out, that based on the transcripts of the first 3 days of the public hearings, there are a number of witnesses who have provided false and unsubstantiated evidence relating to my client.

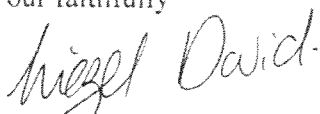
Our client was merely bringing this to your attention and reserving his rights in this regard.

Once our client has given evidence, it will be up to the Commission to examine the evidence of all of the witnesses and come to its own conclusions.

We reiterate that our client is not hindering and has no intention of hindering the good work of the Commission, but is merely bringing certain facts to its attention.

Our client appreciates the opportunity brought about by the Commission for him to tell the truth, and we hereby confirm our client's willingness to co-operate with the Commission.

Your faithfully

A handwritten signature in cursive script that reads "Liezel David".

**LIEZEL DAVID**

## **Commission of Inquiry into Tax Administration and Governance by SARS**

Hilton House, 2<sup>nd</sup> Floor, 570 Fehrson Street, Brooklyn, 0181

**Contact number: (012) 6479486**

**E-Mail: [commission@inqcomm.co.za](mailto:commission@inqcomm.co.za)**

**[www.inqcomm.co.za](http://www.inqcomm.co.za)**

Ms Liezel David  
Attorney, Conveyancer and Notary Public  
13 Wolfgang Avenue, Norwood, 2192

7 August 2018

Dear Ms David

I refer to your letter of 30 July 2018.

I am not willing to direct the production of documents unless I am satisfied that they are relevant to the work of the Commission. That can be assessed once your client has met with counsel for the Commission, or submitted a statement, as he was invited to do in my earlier letter.

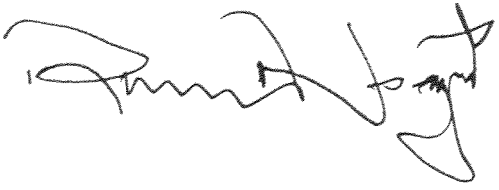
I do not see why he finds it necessary to consult documents for that purpose. If he has knowledge of facts that are relevant then he needs no documents in order to convey that knowledge. If he requires documents to substantiate what he knows then the substantiating documents can be secured once counsel has been informed by your client of what relevant knowledge he has, as you were informed in my earlier letter.

The process outlined in my earlier letter has been, and will continue to be applied in relation to all witnesses who have been or are to be called, unless sound reasons emerge for not doing so in any particular case. So far as statements are received in the course of that process, those are for the assistance of counsel and will not be made available to your client or, for that matter, anyone else.

I take this opportunity to bring to your attention that further public hearings will commence on 21 August 2018 as indicated in the attached press release.

For your assistance, it is anticipated that evidence will be given relating to the introduction of the new operating model of SARS, which your client, as the project sponsor, might have an interest in.

Yours faithfully

A handwritten signature in black ink, appearing to read "Judge Nugent", written in a cursive style.

**Judge Nugent**

**Commissioner**

**Commission of Inquiry into Tax Administration and Governance by SARS**

Hilton House, 2<sup>nd</sup> Floor, 570 Fehrsen Street, Brooklyn, 0181

**Contact number: (012) 6479486**

**E-Mail: [commission@inqcomm.co.za](mailto:commission@inqcomm.co.za)**

**[www.inqcomm.co.za](http://www.inqcomm.co.za)**

**PRESS RELEASE**

Kindly take note that the second session of the Commission's public hearings will take place from 21 to 24 and from 28 to 31 August 2018 commencing at 09:00 at the following venue:

**The Auditorium  
Linton House, 2<sup>nd</sup> Floor  
Brooklyn Bridge  
570 Fehrsen Street  
Brooklyn, Pretoria**

The witnesses who will be required to give evidence at the hearings will be finalised shortly before the hearings take place and will be made available when that has occurred.

**Commission of Inquiry into Tax Administration and Governance by SARS**

Hilton House, 2<sup>nd</sup> Floor, 570 Fehrsen Street, Brooklyn, 0181

**Contact number: (012) 6479486**

**E-Mail: [commission@inqcomm.co.za](mailto:commission@inqcomm.co.za)**

**[www.inqcomm.co.za](http://www.inqcomm.co.za)**

Ms Liezel David  
Attorney, Conveyancer and Notary Public  
13 Wolfgang Avenue, Norwood, 2192  
E-Mail: [liezeldavid@telkomsa.net](mailto:liezeldavid@telkomsa.net)

29 August 2018

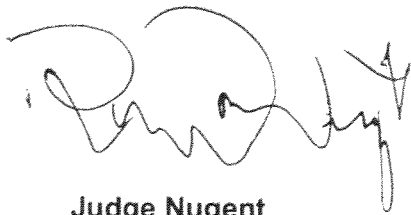
Dear Ms David

You will be aware that public hearings of evidence have been held over the past week.

I write to enquire whether your client wishes to respond to the evidence given at the Commission's public hearings, transcripts of which are available on the Commission's website, or wishes to present evidence on other matters relevant to the inquiry.

Should he wish to do so he is invited to make arrangements to meet with counsel for the Commission to enable counsel to assess the evidence he wishes to present, to identify in what respect and to what extent there is a basis for the evidence, and to secure documents that might be relevant to the evidence. Once having done so, evidence of your client that is considered to be of assistance to the inquiry will be presented through counsel for the Commission, in the manner outlined in my earlier ruling, which is also available on the website.

Yours faithfully



**Judge Nugent**

**Commissioner**



## Commission

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**From:** Commission  
**Sent:** Monday, 17 September 2018 09:27  
**To:** 'liezeldavid@telkomsa.net'  
**Subject:** Commissioner to the Commission of Inquiry into Tax Administration and Governancy by SARS  
**Attachments:** PUBLIC HEARINGS 25-28 SEPTEMBER 2018.pdf  
**Importance:** High

Dear Ms David

The above matter refers.

Please find herewith the media release for the forthcoming public hearings for your information.

Kind regards  
Commission of Inquiry Secretariat

**Commission of Inquiry into Tax Administration and Governance by SARS**  
Hilton House, 2<sup>nd</sup> Floor, 570 Fehrsen Street, Brooklyn, 0181  
**Contact number: (012) 6479486**  
**E-Mail: [commission@inqcomm.co.za](mailto:commission@inqcomm.co.za)**  
**[www.inqcomm.co.za](http://www.inqcomm.co.za)**

**PRESS RELEASE**

Kindly take note that the next session of the Commission's public hearings will take place from 25 to 28 September 2018 commencing at 09:00 at the following venue:

**The Auditorium**  
**Linton House, 2<sup>nd</sup> Floor**  
**Brooklyn Bridge**  
**570 Fehrsen Street**  
**Brooklyn, Pretoria**

The witnesses who will be required to give evidence at the hearings will be finalised shortly before the hearings take place and will be made available when that has occurred.

**LIEZEL DAVID**  
**ATTORNEY, CONVEYANCER AND NOTARY PUBLIC**

13 WOLFGANG AVENUE  
NORWOOD 2192  
P O BOX 2893  
HOUGHTON, 2041

TEL: +27 11 728-1139  
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MOBILE: 082 890 1376  
E-MAIL: [liezeldavid@telkomsa.net](mailto:liezeldavid@telkomsa.net)

---

To: Commission of Inquiry into Tax Administration and Governance by  
SARS

Attention: The Honourable Mr Justice Nugent

E-mail: [commission@inqcomm.co.za](mailto:commission@inqcomm.co.za)

From: Liezel David /M028

Pages: 1

Date: 17 September 2018

Subject: **My Client: Mr Mashudu Jonas Makwakwa**

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**CONFIDENTIALITY NOTE:** This e-mail contains confidential information intended only for the person/s to whom it is addressed. Any other recipient is not entitled to read the rest of this e-mail or disclose its contents to any person, or take copies, and is requested to notify us immediately by fax or telephone at the numbers listed above and we will reimburse the costs for doing so.

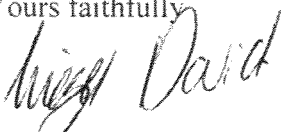
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Dear Sir,

The above matter refers.

Kindly find a letter from our client for your kind attention attached.

Yours faithfully

  
**LIEZEL DAVID**

Dear Commissioner;

This correspondence refers to your letter dated 29th August, addressed to my attorney, as well as my observations throughout the Commission's work. I therefore wish to raise my concern regarding how you have administered the Commission, as well as how treated me.

You have called for anyone who has information on your Commission's terms of reference to come forward. However, on the background, it looks like any information you refer to only applies to a narrative which is aligned to that of the media and a particular grouping.

It is not rocket science to see that evidence leaders, especially Adv Steinberg, is hellbent in pushing and ensuring that a particular outcome emerges at the end, if not concluded and sealed already. Even ordinary members of the public can see that your evidence leaders, especially Adv Steinberg are more geared towards and are a representative of those with a particular narrative than an impartial and independent evidence leader seeking for the truth.

As you may know, I grew from the grassroots of SARS and understand it more than many current and past leaders, as well as the real truth of what happened at SARS. So far, it's conspicuous that the motive is to settle personal scores and destroy careers and personalities of other people whilst promoting others.

If the Commission was seeking what it was meant to, it could have discovered that SARS was broken from 2009 not 2014 as per well manufactured and systematically designed narratives. And the evidence is there for anyone to see expect for those whose mandate is to seek and conclude in a set theme.

I am not expressing the above views lightly but in pain. The way I have been treated which I am sure, others with a different view have, confirms my above views. From the onset, I have stated my intentions to come before the Commission and as a result I have requested critical information from SARS through you. This information was meant to assist me in the clarification of many of the lies as to what is the real problem at SARS, which in contrast with the contrived falsehoods fed to the Commission and the nation.

Instead of assisting me, you did not only attack me but also referred me to SARS. In following with your instructions, I sent the same request to SARS for the information, and instead, SARS referred me back to you. A ping-pong treatment was meant to discourage me and deflate my energy. To add insult to injury, instead of SARS assisting me with the information, SARS shockingly instructed me to make a Promotion of Access to Information (PAIA) application. How absurd and insulting.

I asked SARS whether those who already appeared before the Commission such as Mr Gordhan and others, who were even in possession of recent SARS confidential information applied for PAIA. And SARS failed to respond at all to this simple question and decided, just like your Commission to ignore me.

Out of frustration, I wrote you a follow up letter requesting that you use the powers vested in you to subpoena the information and the witnesses for cross examination. In your response you dismiss my right to cross examine people who have attacked and defamed my person, by so doing denying me any recourse and thereby violating my constitutional rights.

The next I see is another round of public hearing of carefully selected people meant to push a particular narrative, which narrative started with the presentation by Mr Gordhan.

Making one wonder whether there is a relationship between all the apparent biased narrative and the fact that you met Mr Gordhan prior to the commencement of the Commission.

There are a number of SARS employees who have been complaining that your Commission screens employees who wishes to give evidence and if they discover that the employees are not going to assist with the preferred narrative, such employees are either never called, or discouraged or even couched.

And the treatment your Commission exposed me to so far clearly confirms this as the above background and shows that your Commission intends discouraging me as it did and continues to do to many other SARS employees.

I once again want to reiterate that I want to come and present evidence to your Commission so that I demystify the concerted, rehearsed lies told to your Commission.

However, to do that, I need your impartial assistance which includes subpoenaing the documents as requested from SARS as well as the cross examination of the witnesses.

It is more important than ever that your Commission gain some confidence by being impartial and fair and I hope that you will be assisting me urgently so that I can state my facts.

The one-sided narrative will not assist the work of the Commission for the rebuilding of the fractured reputation of SARS which will have everlasting consequences for our young and fragile country.

My basic sense of judgment fails to understand the strangeness whereby the Commission chooses to prioritise junior employees of SARS and completely ignore the leadership of SARS.

So far not a single EXCO member appeared to the Commission including its Commissioner. It will be a sad day when such a critical institution of the state is used to settle scores when our country needs more revenue than ever before in achieving its developmental agenda.

I hope that your Commission will address my concern and ensure that I appear before it.

Regards  
Jonas Makwakwa

**Commission of Inquiry into Tax Administration and Governance by SARS**

Hilton House, 2<sup>nd</sup> Floor, 570 Fehrsen Street, Brooklyn, 0181

**Contact number: (012) 6479486**

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18 September 2018

Dear Ms David

Kindly forward the attached letter to your client, Mr Makwakwa.

Yours faithfully

(sent electronically)

**Judge Nugent**

**Commissioner**

**Commission of Inquiry into Tax Administration and Governance by SARS**

Hilton House, 2<sup>nd</sup> Floor, 570 Fehrsen Street, Brooklyn, 0181

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E-Mail: [liezeldavid@telkomsa.net](mailto:liezeldavid@telkomsa.net)

26 October 2018

Dear Ms David

There is evidence before the Commission in an affidavit deposed to by Mr Massone that your client attended a meeting at the offices of Bain & Co on 28 August 2014 and evidence of an email of Bain & Co on the same date, a copy of which is attached.

Oral evidence concerning your client has also been given at various times in the course of the public hearings.

The evidence above appears on the website of the Commission, together with a detailed index from which references to your client can be identified.

Should your client wish to appear before the Commission to respond to any of that evidence, or to give evidence on any issue relating to the Commission's Terms of Reference, would you kindly make contact with Adv Steinberg not later than 2 November 2018 to consult with her so as to enable her to lead such evidence and to make the necessary arrangements.

Yours faithfully



**Judge Nugent**

**Commissioner**

Message

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**From:** Massone, Vittorio [/O=BAIN/OU=EXCHGLOBALESERVICES/CN=RECIPIENTS/CN=09VMA]  
**Sent:** 8/28/2014 6:03:44 AM  
**To:** Beaumont, John [john.beaumont@bain.com]  
**CC:** Franzen, Fabrice [fabrice.franzen@bain.com]; Timpano, Stephane [stephane.timpano@bain.com]

Guys,

Just had a call and heard that the Sars announcement should happen tomorrow or monday

Meeting later in the office, to discuss also procurement process

Fabrice/Stephane, how many teams did we say? Can we please think about Managers, with and without Galactica? I guess we should have a few weeks to ramp up (procurement process) but we'll need to have a first contingent to start working asap..

Thank you  
Vittorio



**LIEZEL DAVID**  
**ATTORNEY, CONVEYANCER AND NOTARY PUBLIC**

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To: Commission of Inquiry into Tax Administration and Governance by  
SARS

Attention: The Honourable Mr Justice Nugent

E-mail: [commission@inqcomm.co.za](mailto:commission@inqcomm.co.za)

From: Liezel David /M028

Pages: 2

Date: 2 November 2018

Subject: **My Client: Mr Mashudu Jonas Makwakwa**

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**CONFIDENTIALITY NOTE:** This e-mail contains confidential information intended only for the person/s to whom it is addressed. Any other recipient is not entitled to read the rest of this e-mail or disclose its contents to any person, or take copies, and is requested to notify us immediately by fax or telephone at the numbers listed above and we will reimburse the costs for doing so.

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Dear Sir,

The above matter refers.

Before the commencement of the Inquiry, my client indicated his willingness to appear before the Commission as he firmly believed that it would be a fair process.

However, reading through the transcripts of the proceedings to date, my client has formed a different opinion, based on the quality of the evidence that has been put before the Commission.

My client has on numerous occasions during these proceedings requested certain information which he needs in order to prepare for his appearance before the Commission. These requests have been met with resistance from the Commission.

In addition, my client further requested that he wanted the opportunity to cross examine the witnesses who have appeared before the Commission, but his request was denied.

Their evidence has been unchallenged as to being truthful or correct, as the evidence was not supported with any documents and in some cases was hearsay evidence. This has in the process tarnished my client's image and reputation.

You have invited my client to meet with Adv Steinberg to discuss the evidence that he wishes to produce at the Inquiry, and then Adv Steinberg would exercise her discretion whether to allow the evidence or not, or to issue a subpoena for the requested documents or not.

This is a very subjective approach, where the nature of the Inquiry requires objectiveness.

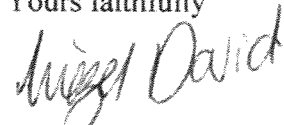
My client has requested certain information from SARS on a number of occasions, and to date the information has not been provided.

My client is only prepared to appear before the Commission if the following is honored:

1. That the Commission agrees to call the witnesses as identified in my letter dated 16 July 2018, for cross examination.
2. That the Commission subpoena all the information as requested in my letter dated 16 July 2018.

My rights are reserved

Yours faithfully



**LIEZEL DAVID**

**Commission of Inquiry into Tax Administration and Governance by SARS**

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2 November 2018

Dear Ms David

I would be obliged if your letters to me are written with accuracy.

Your client's requests for information have not met with resistance. Your client was told on 17 July 2018 that if your client chose to give evidence, counsel would secure such documents as might be relevant.

Your client was not told that Adv Steinberg 'would exercise her discretion whether to allow the evidence or not'. Your client was told that Adv Steinberg would assess the relevance of the evidence your client wishes to give. Adv Steinberg has been given no discretion to allow or not allow relevant evidence. As your client was advised in that letter, the Commission welcomes any evidence that is relevant to its terms of reference.

Finally, your client has not been required to appear before the Commission. He has been given the opportunity to do so if he so chooses, in accordance with the procedure adopted with all other witnesses as outlined in the letter I have referred to.

Yours faithfully



Judge R Nugent

## **Commission of Inquiry into Tax Administration and Governance by SARS**

Hilton House, 2<sup>nd</sup> Floor, 570 Fehrsen Street, Brooklyn, 0181

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E-Mail: [liezeldavid@telkomsa.net](mailto:liezeldavid@telkomsa.net)

9 November 2018

Dear Ms David

Your client is advised that there is evidence before the Commission in the form of an affidavit deposed to by Mr Massone, to be found on the Commission's website, and internal emails furnished to the Commission by Bain & Co that are attached. On the basis of that evidence and inferences drawn from that evidence it is possible that the Commission might find:

1. Your client attended a meeting with Mr Moyane and representatives of Bain & Co at the offices of Bain & Co on 28 August 2014. Mr Moyane had attended a number of meetings with Bain before that, at which various presentations had been made and a strategy devised for Mr Moyane to take control of SARS.
2. At the meeting on 28 August 2014 a strategy was discussed to secure a contract for Bain for the restructuring of SARS. It can be inferred from that evidence, evidence of the previous meetings between Mr Moyane and representatives of Bain, and the internal emails of Bain, that Mr Moyane and Bain were colluding to secure a contract for Bain to restructure SARS, and that your client joined in with that collusion.
3. Your client attempted to secure the contract for Bain by investigating participating in a contract that existed between Bain and Telkom, but that was not successful.
4. Your client attended the proceedings, as the business manager motivating the award of the contract, of the SARS Bid Adjudication Committee that approved the award of a contract to Bain purporting to be for an evaluation of SARS.

5. In fact that contract was always intended by Mr Moyane, to the knowledge of your client, to be a precursor to a further contract for the structuring of SARS.
6. Your client intentionally withheld the facts above from the committee for the purpose of misleading the Committee, thereby assisting to manipulate the procurement process.
7. The process was further manipulated by holding out to the committee, by your client or in your client's presence, that the project to be undertaken by Bain was to evaluate SARS, when in fact your client knew that the project was to set a platform for a further contract to restructure SARS, and by holding out that if there was to be a second phase, the contract for that phase would be subjected to competitive bidding, when your client knew that was not intended.
8. The intentional withholding and holding out misled the Committee to its prejudice and to the prejudice of SARS, in that the committee would not otherwise have approved the award of the contract.
9. To your client's knowledge a contract for the second phase of the contract was awarded to Bain by misusing the proper procurement process, in that your client was aware that it was held out that the award of the second contract was urgent, when in truth it was not.

Your client is invited to furnish written submissions to the Commission on why, on the evidence before it, the Commission should not make the findings above. Should your client wish to take the opportunity to make such submissions, he must do so no later than 23 November 2018.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Judge Nugent', with a stylized flourish at the end.

**Judge Nugent**

**Commissioner**