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Suspended Public Protector faces imminent removal from ministerial estate property she has been unlawfully occupying at considerable expense

Suspended Public Protector Busisiwe Mkhwebane is on the verge of being evicted from the prestigious Bryntirion ministerial estate in Pretoria, where she has been living at great expense to her erstwhile institution.

Mkhwebane moved into the estate near the Union Buildings in 2017, citing danger to her life. However, not even an SA Police Service (SAPS) threat assessment could verify that claim.

The cost to the cash-strapped office of the Public Protector so far is said to be in the region of R4 million. This expenditure, which the institution's legal advisers have deemed irregular, is over and above the tens of millions she has racked up in legal fees, making dubious defensive arguments that were almost always overturned by the courts, as well as the further hundreds of thousands she spent on clandestine personal public relations operations.

When she first moved into the estate, she was living in a house for which the office of the Public Protector was meant to pay R54 000 a month in 2017. By 2020, the rent would have been R64 000.

Last year, she moved into a flat, still in the ministerial estate, for which the office of the Public Protector pays R11 000 a month.

Last month, the institution's CEO Thandi Sibanyoni and acting Public Protector Advocate Kholeka Galeka wrote to Mkhwebane, notifying her of the office of the Public Protector's decision to terminate its lease between it and the department of public works and infrastructure, which oversees the use of state-owned property.

In a terse response, Mkhwebane wrote that she did not mind vacating the property, but added: "I reserve all my rights relating to this matter."

The move to evict Mkhwebane comes after the office of the Public Protector sought a legal opinion on whether it was legally permissible for it to pay for her accommodation at the ministerial estate.

TERMINATING THE LEASE

City Press has seen the legal opinion, dated October 17, prepared by the institution's senior manager of legal services Neels van der Merwe, which recommended that the accounting officer notify Mkhwebane that the lease agreement was being terminated following an internal investigation.

The legal services of the office of the Public Protector had to investigate whether the arrangement permitting Mkhwebane to reside in a state-owned house was part of her contractual benefits or a legal obligation in terms of her status as a protected VIP, as envisaged in the risk information administration system.

Mkhwebane is indeed a protected VIP, however, the internal legal opinion also found that her conditions and benefits did not provide for access to prestigious state-owned accommodation.

While former minister of public works and infrastructure Nathi Nhleko had consented to her moving into Bryntirion, he had made it clear that she would have to pay her own rent and that it was a temporary arrangement of 12 months.

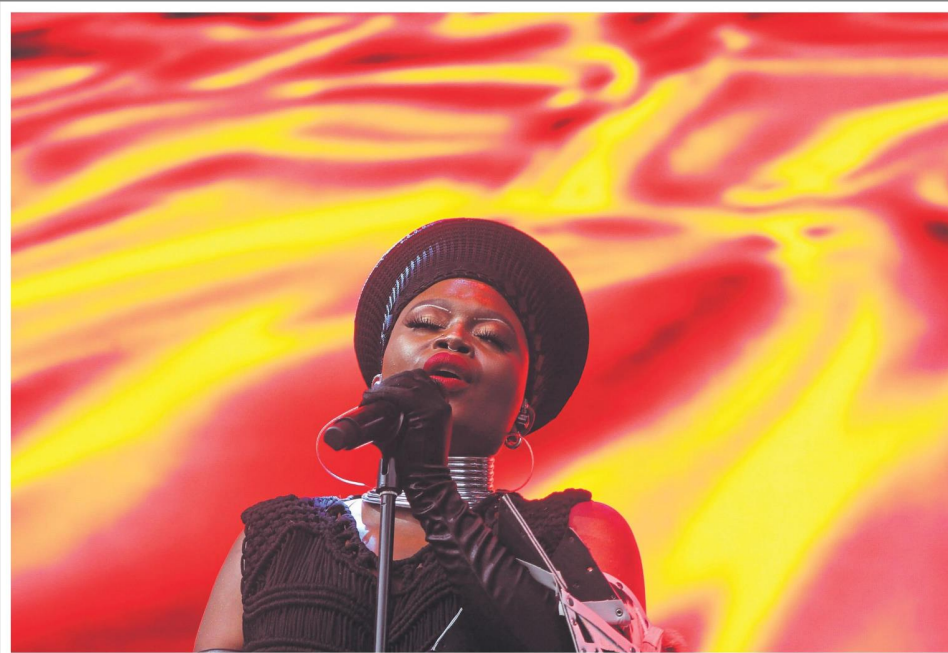
According to the legal opinion, "the office of the Public Protector's communications to National Treasury, that it was obliged to accept liability for the funding of the Public Protector's accommodation at a state-owned residence because of the security threats emanating from the scope of and during the performance of her official duties, were misdirected against the provisions of the risk information administration system and the responsibilities of the protection security services".

NO IMMINENT THREAT

"The explanation of the office of the Public Protector - that the Public Protector was and is still faced with threats as a result of the work she was conducting in her capacity as the Public Protector - were also not sustained by the results of the actual threat assessments conducted by the SAPS and the VIP protection unit."

"The assessment reports had in fact concluded that 'no imminent direct threat against the physical security of the principal was identified'. To the extent that 'Crime Intelligence recommends that the security measures in place around the principal be maintained', such measures fell within the competency and areas of responsibility of the SAPS and the protection security services," read the legal opinion.

Van der Merwe also wrote that there was "no contractual obligation" for the office of the Public Protector to fund Mkhwebane's accommodation and that it could instead have added the benefit to her remuneration package, or to the accommodation allowance she already received, instead of incurring the expense of her rental.



ALIVE WITH DIVERSITY
Songstress Zoë Modiga during her performance at the Tastic Heritage Festival titled *Zwakala Mzansi* at the Imperial Wanderers Stadium in Illovo, Sandton, yesterday. Tastic said the concert was a vehicle to bring culturally different people together through music. The proceeds will go towards its education fund
PHOTO: ROSETTA MSDMANGO

CEO WRITES TO MKHWEBANE

In a letter to Mkhwebane, dated October 18 - one day after receiving Van der Merwe's legal opinion - Sibanyoni wrote to Mkhwebane, notifying her that the institution would be cancelling the lease agreement.

Sibanyoni also informed her that the legal opinion had found that allowing her to live in a state-owned house and have the office of the Public Protector pay for that expense as part of her security was "not based on or authorised by any legal obligation on the office of the Public Protector". The decision of the institution to pay for Mkhwebane's accommodation, wrote Sibanyoni, had been "regarded as ultra vires (beyond its powers)".

"The resultant expenditure incurred by the office of the Public Protector in terms of this rental agreement is therefore possibly irregular or unauthorised," read the letter.

Sibanyoni asked Mkhwebane to make representation concerning the matter by October 28, "whereafter I will be obliged to terminate the lease agreement with the department of public works and infrastructure in accordance with the provisions of the agreement, by giving notice of 30 days with effect from November 1 2022". She added that there would be a process of recovering the expenditure.

'THOROUGH INVESTIGATION HAD TO BE DONE'

"Two days later, on October 20, Galeka also wrote to Mkhwebane, responding to an email she had written concerning the matter."

Galeka informed Mkhwebane that "a thorough investigation" had to be done "in order to be in a position to account properly" for the decision that had been taken at the level of executive authority and the accounting officer for the office of the Public Protector carrying the cost of her accommodation.

She explained that, when the SAPS had approached the office of the Public Protector to provide accommodation for Mkhwebane, the institution had responded that it could not, as there was no provision in its policies for doing so.

"This was also confirmed by National Treasury in its response dated July 20 2021, which advised - after



BUSISIWE MKHWEBANE

“The assessment reports had in fact concluded that 'no imminent direct threat against the physical security of the principal was identified'

having assessed the regulatory framework, as well as the submissions made by the office of the Public Protector - that the department of public works and infrastructure should only continue housing the Public Protector in the Bryntirion estate after obtaining the required Cabinet approval [emphasis added]," read Galeka's letter.

She added that, when Mkhwebane had been permitted to move into the state-owned residence, it had been made clear that it was a temporary arrangement.

"This was also confirmed by the then minister of public works on November 6 2017 when he requested [Mkhwebane] to 'implement a stop order with the department for the rental payment'. It should have been clear then that the department of public works and infrastructure did not intend the office of the Public Protector to be party to this agreement or assume liability in respect thereof. Even when it responded to National Treasury on its enquiries into the matter in 2021, it explained that organs of state did not discharge its financial liabilities and expenditures by means of stop orders, but on presentation of a valid invoice in lieu of a valid obligation or agreement."

City Press has seen the letter Nhleko wrote to Mkhwebane in 2017, referencing a letter he had received from the SAPS, requesting that she be provided with a state-owned house. In his letter, Nhleko wrote that the request could not be acceded to because there was no policy for the provision of state houses to a Public Protector. However, he added that a house would be provided to Mkhwebane for 12 months.

"It must be mentioned that this house can be allocated to the qualifying person at any time and you could then be required to vacate at a month's notice," wrote Nhleko. "Furthermore, you are requested to implement a stop order with the department for the rental payment."

In her letter to Mkhwebane, Galeka wrote that records at the office of the Public Protector's disposal showed that, when the SAPS had approached the department about the alleged security threats and risks to her, and suggestion that she be given access to state-owned housing, the police had been clear that the requested "protection that responds to the threat is

currently provided outside the provision of the risk information administration system".

'I WILL VACATE'

In her response to Galeka's letter, Mkhwebane wrote that former police commissioner Khetha Sithole had written to Nhleko in 2017 about a security threat, after her private residence had been maliciously damaged.

In her request for tightened security, Mkhwebane alleged that the threat to her security had begun after she released the CIEX report.

In a letter she wrote to former president Jacob Zuma in 2017, requesting his intervention in obtaining interim accommodation, Mkhwebane had written that, following the release of the report, she had begun to receive "multiple threats due to remedial actions and recommendations..."

In that letter, she had asked Zuma to enter her on the prestige or prominent list via proclamation so that she could qualify to reside in a state house, in view of the security risks she faced.

She had informed Zuma that she was prepared to relocate to a secure state house as an interim measure. His office had acknowledged receipt of the letter.

In her response to Galeka, Mkhwebane wrote: "This was not a nice-to-have arrangement and there was a State Security Agency (SSA) threat and risk assessment at my house which proposed that my house be upgraded. I did not agree to that arrangement, avoiding the Nkandla saga. I then opted to move from the comfort of my house to the state house and I kept maintaining and servicing my own house in Pebble Rock, until I sold it in July 2021..."

However, the threat and risk assessment by the SSA, which City Press has seen, did not suggest that if Mkhwebane chose to upgrade her house, the cost would be carried by the office of the Public Protector.

It simply stated: "The SSA is of the opinion that an effective level of security can be established at the residence if the above proposals can be implemented. It is, however, the prerogative of the Public Protector to decide which of the proposals she wishes to implement."

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The agency's proposals included the installation of CCTV cameras, an intercom system and burglar-proofing.

In her response to Gcaleka, Mkhwebane wrote that the SAPS had confirmed that they provided static protection service to office-bearers not covered by the Ministerial Handbook or the executive members' guide on an ad hoc basis and that their services in these circumstances were covered by the risk information administration system.

Mkhwebane added that Sibanyoni had attended a meeting where this had been clarified and claimed that she was better placed to provide that information, since she had signed the lease agreement for the second accommodation.

"The investigation and legal opinion should have been sought prior to the signing of the lease. If there is any irregularity, she [Sibanyoni] should account for it accordingly," wrote Mkhwebane, adding that Sibanyoni was conflicted in the matter.

"It is advisable that an independent body be sought for investigation of the matter for transparency and fairness. The internal legal opinion cannot be considered independent either," she wrote.

Mkhwebane also stated that the payments of rent were audited, both internally and externally, and were never considered financial misconduct.

"All the payments form part of the lease registers which are provided for audit purposes. Surely, as an independent entity, the Auditor-General of SA should have raised issues if the lease agreements were irregular," she wrote.

However, she added that she had "no problem vacating the house and the CEO can go ahead and give notice to [the department of] public works accordingly".

She also requested that Gcaleka provide her with a letter to the SAPS, informing them that she would be vacating the flat and confirming that she was no longer under the high-risk category.

She asked that she be given the letter by November 15.

City Press contacted Mkhwebane, requesting confirmation that the office of the Public Protector had alerted her of its intention to cancel the lease and that there were no longer security threats to her life.

"I suggest you ask the office of the Public Protector to respond as to why it is cancelling the lease, which was signed by the CEO without any confirmation from the SAPS about the status of my security. The last security threat and risk, done in 2020/21, indicated that the status quo remained," she responded.