

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO.: 2749/15

In the matter between :

PRIMEDIA BROADCASTING, A DIVISION OF	First Applicant
PRIMEDIA (PTY) LTD	Second Applicant
SOUTH AFRICAN NATIONAL EDITORS' FORUM	Third Applicant
RIGHT2KNOW CAMPAIGN	Fourth Applicant
OPEN DEMOCRACY ADVICE CENTRE	

and

SPEAKER OF THE NATIONAL ASSEMBLY	First Respondent
CHAIRPERSON OF THE NATIONAL COUNCIL	
OF PROVINCES	Second Respondent
SECRETARY TO PARLIAMENT	Third Respondent
MINISTER OF STATE SECURITY	Fourth Respondent

FILING NOTICE

DOCUMENT FILED HEREWITH : Fourth Respondent's Supplementary
Answering Affidavit deposed by Mr
BLOSE

STATE ATTORNEY
Per: Mr L. Ngwenya
Tel.: (021) 441 9200
Email: Ingwenya@justice.gov.za

DATED at CAPE TOWN on this the 27th day of MARCH 2015.

STATE ATTORNEY

per: _____

(L. NGWENYA)
Fourth Respondent's Attorneys
4th Floor, Liberty Centre
22 Long Street
CAPE TOWN

TO : **THE REGISTRAR**
Western Cape High Court
CAPE TOWN

AND TO : **WEBBER WENTZEL ATTORNEYS**
First and Second Applicants' Attorneys
15th Floor, Convention Tower
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AND TO : **THE LEGAL RESOURCES CENTRE**
Third and Fourth Applicants' Attorneys
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AND TO : **STATE ATTORNEY**
First to Third Respondents' Attorneys
4th Floor, Liberty Centre
22 Long Street
CAPE TOWN
(Ref.: A. Mugjenkar/512/15/P3)

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**FOURTH RESPONDENT'S SUPPLEMENTARY
ANSWERING AFFIDAVIT**

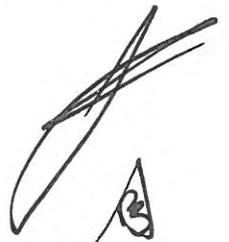
I, the undersigned,

SIPHO PETER BLOSE

do hereby make oath and say :



1. I am an adult male and I am employed as the Acting Deputy Director-General in the Domestic Branch of the State Security Agency (“the Agency”), which resorts under the fourth respondent, the Minister of State Security (“the Minister”).
2. The facts deposed to herein are within my personal knowledge save where the contrary appears from the context and are true and correct. Where I refer to matters which are not within my personal knowledge, I rely on information conveyed to me by others and I believe same to be correct. Where I refer to legal matters, I do so on the basis of legal advice received from the fourth respondent’s legal representatives, which advice I believe to be correct.
3. I have already deposed to an answering affidavit on 24 February 2015 in opposition to the application brought by the applicants. I request that the contents of that affidavit be read in conjunction with his affidavit.
4. On 18 March 2015 the applicants filed a supplementary affidavit deposed to by Pheladi Gwangwa (Ms Gwangwa) and Mpumelelo Mkhabela as well as an amended Notice of Motion : Part B (pp. 563 - 566). The supplementary affidavit deposed to by Ms Gwangwa deals with both the “jamming” relief and the broadcasting relief sought by the applicants whereas the supplementary affidavit deposed to by Mkhabela only deals

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with the broadcasting relief. Consequently, I only deal with the affidavit of Ms Gwangwa insofar as it relates to the “**jamming**” relief, which pertains to the fourth respondent, the Minister.

5. **AD PARAGRAPHS 2 AND 3**

I deny that the facts and submissions of law are correct for the reasons set forth in this affidavit.

6. **AD PARAGRAPH 6**

I note that the applicants have now filed a second amended notice of motion.

7. **AD PARAGRAPHS 7 AND 8**

7.1 I note the stated purpose of the relief which is sought in respect of the “**jamming**” (signal disruptor) relief.

7.2 However, I dispute that the applicants have established a basis for the relief sought and in support of this contention I refer to the contents of my earlier affidavit and this affidavit.

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8. **AD PARAGRAPH 9**

8.1 I repeat my apology and that of the Agency that the signal disruptor was employed beyond the scheduled time for its operation.

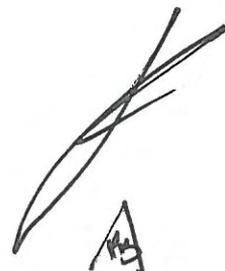
8.2 The Agency accepts responsibility for the jamming of cellphone signals but I repeat that it was never intended that the signal disruptor should be operated whilst Parliament was in session.

8.3 In my previous affidavit I have dealt with the legislation which empowers the Agency to possess and use signal disruptors. I elaborate further on this aspect in paragraph 14 below.

8.4 The further allegations relating to the fourth respondent are denied.

9. **AD PARAGRAPH 10**

9.1 I have explained in my previous affidavit the circumstances in which and the legislative authority upon which the signal disruptors were used. As stated in my previous affidavit and what is stated herein, the use of the signal disruptor was justified.

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9.2 The applicants insist – despite the explanation and justification given – that they and **“all South Africans”** who they claim to represent are entitled to know whether the signal disruptor device was used legitimately or not.

9.3 It is common cause that the disruption of signals at the commencement of the State of the Nation Address (“SONA”), whilst Parliament was in session was an isolated incident. This incident occurred as a result of an operational error on the part of the Agency’s member who did not switch the signal disruptor off at its scheduled time i.e. after the President and the Deputy President had entered the Parliamentary Chamber.

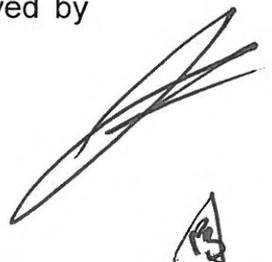
10. **AD PARAGRAPH 11**

10.1 I note the reasons advanced for the applicants’ contention that the use of the signal disruptor device was unlawful.

10.2 However, I dispute the grounds advanced by the applicants.

11. **AD PARAGRAPH 12**

11.1 It is not correct as Ms Gwangwa states that **“the Minister takes responsibility for deploying the device”**. It was deployed by

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the Agency and was operated by a member of the Agency and the Agency took responsibility for deploying the signal disruptor device.

11.2 The Minister stated in his press release (attached to the first respondent's affidavit : Annexure "BM1": p. 208; para 9) that :

"9. The Department of State Security regrets the unintentional disruption of signal and certain parts of the parliamentary chambers."

11.3 In addition, the Minister stated (Annexure "BM1" : p. 208; para 10) that :

"10. It is within the mandate of the SSA [State security Agency] to deploy these measures ..."

11.4 The Minister is not involved in the day to day operations of the Agency. It is therefore not appropriate to construe my earlier affidavit in a manner which imputes personal involvement and knowledge on the part of the Minister in respect of the security planning and measures for the SONA. The co-ordination of security planning for the SONA occurred under the auspices of the National Joint Operational and Intelligence Structure

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("NATJOINTS") as described in my previous affidavit (pp. 158/9; paras 7 and 8).

12. AD PARAGRAPH 13

12.1 The contents of this paragraph demonstrates that certain statements which I have made, are now imputed to the Minister.

12.2 The paragraph also demonstrates that Ms Gwangwa is aware that I had deposed to the earlier answering affidavit and in which I had dealt with, *inter alia*, the involvement of the Agency in respect of the signal disruptor.

12.3 I admit the contents of this paragraph to the extent that it correctly records what I have stated in my earlier affidavit.

13. AD PARAGRAPHS 14 TO 17

13.1 I deny that either the intended use or the actual use of the signal disruptor device was irrational. I elaborate on this aspect below.

13.2 The applicants' assumption that the risk was at its highest at the stage when all of the dignitaries were inside the Chamber is not correct.



- 13.3 The signal disruptors were employed in order to counter a potential threat posed by hidden explosive devices which could be remotely detonated by cellular phones or radio transmitters.
- 13.4 Prior to the SONA session the Chamber had already been inspected ("swept") to ensure that no explosive devices were present in the Chamber.
- 13.5 Whilst the President and Deputy President as well as the dignitaries were outside the risk of explosive devices was at the highest. Once the President and Deputy President had entered the Chamber, the security threat decreased because it had already been secured as explained above.
- 13.6 It was for that reason that the signal disruptors would have been switched off once the President and the Deputy President had entered the Chamber.
- 13.7 The deponent persists that the Minister must explain aspects relating to the operational plan implemented at the SONA. As explained in my previous affidavit, the Minister did not devise the operational plan for the SONA. It was done by NATJOINTS (on

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which I serve as the representative of the Agency) as I explained in my previous answering affidavit.

13.8 The details of the operational plan employed at the SONA are classified and secret. I am therefore not at liberty to disclose or provide details of exactly what measures were taken as part of the operational plan as :

13.8.1 disclosure of these measures would compromise future NATJOINTS operations;

13.8.2 disclosure would place these measures in the public domain and defeat these future implementation; and

13.8.3 disclosure would place the lives of operatives (those involved in the operations), the public and those intended to be protected by these measures at risk.

13.9 NATJOINTS have never disclosed details of its operational plans and measures in respect of previous SONA's or other events. To do so now, would be irresponsible.

13.10 What the applicants seek to do is to use this application in order to obtain a court sanctioned disclosure and access to operational

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plans which they should know they are not entitled to and which are precluded by the provisions of the Intelligence Services Act 65 of 2002 and the National Strategic Intelligence Act 39 of 1994.

13.11 The intention was never to operate the signal disruptor when Parliament was in session; otherwise the Parliamentary session would have been disrupted as, has unfortunately occurred when the signal disruptor was erroneously not switched off. Instead, other security measures were employed inside the Chamber to ensure the safety of members of the judiciary, the executive, the legislature as well as invited guests and former heads of State. These measures also served to protect members of the public and the media who attended the SONA.

13.12 I reiterate that the operational plan was to employ the signal disruptors up and until the stage when the President and the Deputy President had entered the Parliamentary Chamber and the potential threat of a remote controlled explosion no longer existed.

13.13 Save as aforesaid, I deny the further allegations contained in this paragraph.

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14. **AD PARAGRAPHS 18 AND 19**

14.1 I note the deponent's concession that the Intelligence Services Act allows the Agency to use security equipment.

14.2 In any event, section 12(2)(c) of the Intelligence Services Act empowers the Minister to acquire or utilise equipment for the efficient functioning of the Agency. The signal disruptors were purchased in order to assist the Agency, *inter alia*, in combating a threat posed by remote controlled explosive devices. I say therefore that the possession and use of signal disruptors are authorised by legislation. Consequently, the Agency is exempt from having to obtain a license in terms of the Electronic Communications Act 36 of 2005 with regard to the use of the signal disruptor.

14.3 I deny the further allegations contained in these paragraphs for the reasons set out in my previous answering affidavit and in this answering affidavit.

15. **AD PARAGRAPHS 20 AND 21**

15.1 I note that the deponent does not dispute that drones can pose a security threat. Drones can be utilised to carry explosive devices.

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15.2 The drone is operated and propelled by a radio signal which is found in communication devices such as cellular phones (which also works with a radio signal). The signal disruptor disrupts the radio signal, which is used to navigate the drone. The disruption of the radio signal immobilises the drone which facilitates detection of the drone.

15.3 I am advised that the contents of paragraph 20.2 constitutes legal argument and that the applicants' interpretation of the definition of "security equipment" is not correct. Legal argument in this regard will be advanced at the hearing of this application.

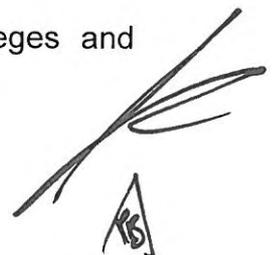
15.4 I further refer to the contents of paragraph 14.2 above.

15.4 The further allegations contained in these paragraphs are denied.

16. **AD PARAGRAPHS 22 AND 23**

16.1 I admit that the Agency forms part of the Security Services as referred to in section 199 of the Constitution.

16.2 I deny that the use of the signal disruptor was contrary to the provisions of section 3 and 4 of the Powers, Privileges and

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Immunities of Parliament and Provincial Legislatures Act 4 of 2002
("the Privileges Act").

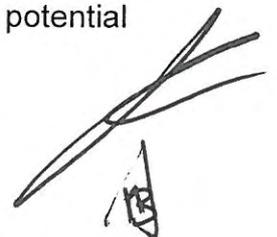
16.3 I further deny the conclusions which Ms Gwangwa advances in these paragraphs.

17. **AD PARAGRAPHS 24 AND 25**

17.1 The Privileges Act is not prescriptive as to how and with what measures the security services should fulfill their functions. The members of the Agency, who were present at Parliament on the day of the SONA, performed their duty to protect those present at Parliament, with the permission of the Speaker.

17.2 The use of the signal disruptor device was not discussed with the Speaker or the Chairperson. As a rule, details of the security measures are not discussed with a principal, such as the Speaker or the Chairperson; such matters are left to our discretion.

17.3 Furthermore, section 4 of the Privileges Act on which the applicants rely, does not require permission to be obtained for the Agency to use such equipment as may be considered necessary to properly fulfill its function of countering any threat or potential threat to those attending the SONA.

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17.4 It is correct that the Speaker and Chairperson did not know that signal disruptors would be employed at the SONA.

17.5 I deny the further allegations contained in these paragraphs.

18. **AD PARAGRAPHS 26 TO 28**

18.1 The fact that the signal disruptor operated beyond the intended time disrupted the ability of journalists and Members of Parliament as well as members of the public, who attended the SONA, to communicate with persons outside the Parliamentary Chamber.

18.2 Despite the disruption of radio signals, Parliament was open and was able to function.

18.3 I have already dealt with the circumstances why the signal disruptor operated beyond the intended time.

28.4 I deny the further conclusions which Ms Gwangwa seeks to draw in these paragraphs.

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19. **AD PARAGRAPH 29**

19.1 I have already explained how it came about that the signal disruptor was operated beyond the intended time. An apology in this regard has been tendered by the Agency which operated the signal disruptor.

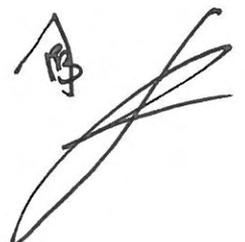
19.2 I deny the further allegations contained in this paragraph.

20. **AD PARAGRAPH 30**

20.1 The Minister did not institute an investigation into the incident. The Agency, acting in terms of the Intelligence Services Act and the National Intelligence Services Act, has instituted an investigation into this unfortunate incident.

20.2 The investigation instituted by the Agency is not yet complete.

20.3 I deal with the remainder of the allegations in my replies hereunder.

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21. AD PARAGRAPH 31 (IN GENERAL)

21.1 I dispute that there is any basis to compel disclosure of the Agency's investigation.

21.2 The Intelligence Services Act and the Strategic Intelligence Act recognise that the intelligence matters, which the Agency is required to deal with, are matters of national security.

21.3 Members of the Agency are required to undergo a vetting process to obtain a security competence in order to fulfil the functions in terms of the Intelligence Services Act and the Strategic Intelligence Act.

21.4 It is also a criminal offence in terms of the Intelligence Services Act to disclose classified information or material to an unauthorised person.

21.5 The nature of the investigation conducted by the Agency in respect of the SONA "jamming" incident involves matters of a classified and secret nature, including the operational plan and measures implemented at the SONA.

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21.6 It is for these reasons that I am not at liberty to disclose the results of the Agency's investigation.

21.7 I now proceed to deal with Ms Gwangwa's allegation that the explanations thus far have been unsatisfactory.

22. **AD PARAGRAPH 31.1**

22.1 A member of the Agency did not switch off the signal disruptor at the intended time. I instructed the member to switch off the signal disruptor when I became aware that it was not switched off. The Minister was not involved in this.

22.2 I am not aware of the steps taken by the Speaker to have the signal restored but I state that the signal disruptor was switched off as a result of my direct instruction as explained in my previous answering affidavit.

22.3 I deny the further conclusions which Gwangwa seeks to draw in this paragraph.

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23. **AD PARAGRAPH 31.2**

23.1 I have already explained that the Minister was not involved in the implementation of the operational plan and measures.

23.2 I have already dealt with the further allegations raised by Ms Gwangwa in this paragraph.

24. **AD PARAGRAPH 31.3**

24.1 I have already dealt with these allegations in paragraph 17 above.

24.2 I dispute that there is any need for a further explanation as requested by the applicants.

25. **AD PARAGRAPH 32**

I deny, for the reasons set out above, that there are any inconsistencies as alleged by Ms Gwangwa.

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26. **AD PARAGRAPH 33**

In view of the fact that the signal disruptor was erroneously in operation beyond its intended time of operation, I dispute the correctness of the allegations made in this paragraph.

27. **AD PARAGRAPH 34**

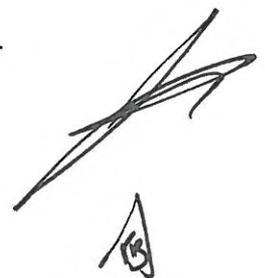
27.1 As stated above, the Agency has already instituted an investigation as explained above.

27.2 The member who was responsible for the “**jamming**” incident is known and the Agency’s investigation will also deal with the member’s involvement in the incident and what action should be taken against the member.

27.3 As regards the further allegations, I refer to what I have stated above.

28. **AD PARAGRAPH 35**

28.1 I dispute that the use of the device has exposed a tension between the executive and legislative arms of government.

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28.2 I cannot give an assurance that a signal disruptor will never be used again. It would depend on the nature of the threat which may have to be countered.

28.3 The further conclusions contained in this paragraph are denied.

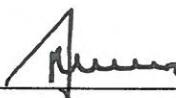
29. **AD PARAGRAPH 36**

29.1 As stated above, the product of the Agency's investigation will of necessity involve matters of a classified and secret nature. Its disclosure is neither justified nor necessary. The applicants' invitation to disclose the results of the Agency's investigation is therefore declined, for the reasons set forth above.

29.2 I deny the further allegations contained in this paragraph.

CONCLUSION

30. In the premises, I request that the application be dismissed with costs.



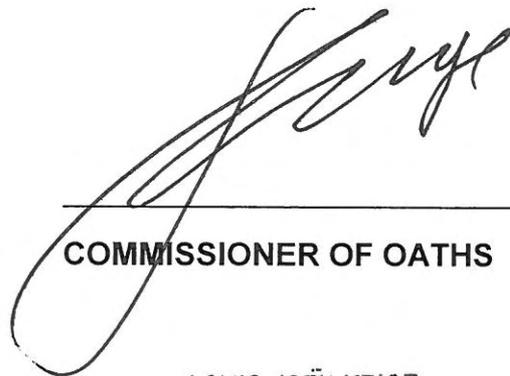
SIPHO PETER BLOSE



I certify that:-

1. The deponent has acknowledged that:-
 - 1.1 he knows and understands the content of this declaration;
 - 1.2 he has no objection to taking the prescribed oath;
 - 1.3 he considers the prescribed oath to be binding on his conscience.
2. The deponent thereafter uttered the words: "I swear that the contents of this declaration are true, so help me God".

The deponent signed this declaration in my presence at the address set out hereunder on this *29th* day of MARCH 2015.



COMMISSIONER OF OATHS

LOUIS JOËL KRIGE
Practising Advocate
Commissioner of Oaths
Huguenot Chambers
Queen Victoria Street
Cape Town