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Our Ref: /ELZANNE JONKER/ks | Your Ref: | Date: 13 September 2019

THE PRESIDENT OF SOUTH AFRICA

PER EMAIL: [presidency@presidency.gov.za](mailto:presidency@presidency.gov.za)  
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Dear President

**RUMOURED APPOINTMENT OF BATHABILE DLAMINI INTO SERVICE AS AN AMBASSADOR FOR SOUTH AFRICA**

1. I write on behalf of my client, the Democratic Alliance (DA).
2. During a recent Parliamentary Question & Answer session to the Security and Justice Cluster held on 4 September 2019, the following question was posed to Hon Naledi Pandor, the Minister of International Relations and Cooperation:

“Mr D Bergman (DA) to ask the Minister of International Relations and Cooperation:

Whether her department intends to take any action against the Republic's ambassador to the Kingdom of the Netherlands, Mr V B Koloane, for having made certain revelations at the Judicial Commission of Inquiry to Inquire into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State, chaired by Deputy Chief Justice Raymond Zondo, regarding his involvement in the landing of an aircraft at the Waterkloof Air force Base in 2013; if not, why not; if so, what are the relevant details?”

3. In reply, the Minister announced that Bruce Koloane, South Africa's Ambassador to the Netherlands, had tendered his resignation.

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4. Mr. Darren Bergman MP asked a follow-up question as follows:

“Government seems to insinuate that ambassador positions are given or handed to guilty or faulty officials in the patronage system. Can the Minister confirm that Bathabile Dlamini is being considered by the President as an ambassador and which other ex Minister’s applications are being considered? Thank you.”

5. Pandor answered that the President, Cyril Ramaphosa, would announce a new ambassador at an appropriate time, as she did not appoint ambassadors. Pandor further stated:

- “But seeing that I’m smiling I’m sure you know why I’m smiling.”

6. Ms Mmabatho Olive Mokause of the EFF, also raised by way of a follow up question, a concern about the fact that Koloane was appointed to the embassy in the first place and was met with a response of ignorance of the manner in which candidates, when taking the oath of office, conduct themselves in the understanding thereof, and that, ultimately, the President is responsible for such appointments.

7. The DA further notes that subsequent to the above Q&A Session, various reports have surfaced in the media based around the fact that there is an intention to appoint, amongst others, Bathabile Dlamini as an Ambassador in South Africa’s Foreign Service.

8. The possible appointment of Bathabile Dlamini as a Diplomat poses a concern to the DA in that, as Bergman pointed out to Pandor, it would seem that ambassador positions are reserved for those Politicians who have failed their country and who have been proven to be guilty of misconduct, *inter alia*, during their term of service in high executive office.

9. Although we note that in terms of the Constitution of the Republic of South Africa, 1996, the President is ultimately responsible for the foreign policy and international relations of South Africa, this is a decision which requires the President to apply his mind rationally. We therefore emphatically bring your attention to the following:

9.1 On 17 August 2010, the Department of International Relations and Cooperation held a training workshop on protocol and etiquette around diplomacy and personal conduct. The presentation included training of the functions of a diplomat. South African diplomats are required to implement foreign policy and represent the president and people of South Africa, they are also required to advance South African **interests and values** through Bilateral and Multilateral relations.



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9.2 According to the South African Government itself on the explanation of the works and functioning of International Relations, South Africa's foreign policy outlook is based on its commitment to the **values and ideals of Pan-Africanism, solidarity with people of the South** and the need to cooperate with all peace-loving people across the globe in pursuit of shared prosperity and a just, equitable and rules-based international order. South Africa strives to address its domestic imperatives as enunciated in the NDP and national interest while taking into cognisance **the needs and aspirations of others.**

10. As you are well aware, The Constitutional Court's findings in *Black Sash Trust (Freedom Under Law Intervening) v Minister of Social Development and Others* [2018] ZACC based upon the Inquiry Report, as to the extent of Ms Dlamini's transgressions, are momentous and warrant emphasis:

"[12] *The Inquiry Report's **finding that the Minister's failure to disclose this information was her fear of being joined in her personal capacity and being mulcted personally in costs has not been, and cannot, be faulted. The inference that she did not act in good faith in doing so is irresistible. At best for her, her conduct was reckless and grossly negligent.** All that is sufficient reason for a personal costs order.*

[13] *This conclusion is a serious and sad one, especially in the context of the provision of social grants to the most needy in our society. **But if it is not to happen again, consequences must follow.***

[14] *It has been a sorry saga and it is proper that Minister Dlamini must, in her personal capacity, bear a portion of the costs. It would account for **her degree of culpability in misleading the Court – conduct which is deserving of censure by this Court as a mark of displeasure – more so since she held a position of responsibility as a member of the Executive. Her conduct is inimical to the values underpinning the Constitution that she undertook to uphold when she took up office.***

[15] *The report by Ngoepe JP revealed that **the Minister misled the Court to protect herself from the consequences of her behaviour.** She allowed a parallel process to occur knowing that **she withheld information that would lead to her being held personally liable for the social grants disaster. The office which she occupied demands a greater commitment to ethical behaviour and requires a high commitment to public service.** The Department of Social Development*

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(Department) is as much responsible for the realisation of rights outlined in the Constitution as this Court and **she used her position as Minister of the Department to place herself between constitutionally enshrined rights and those entitled to them.**

[16] *It is difficult to determine the proper extent of the personal costs order. The determination is a discretionary one. We have to consider Minister Dlamini's personal responsibility, arising from the parallel process she set in motion, and **her shielding this truth from the Court**, against the fact that ordinarily state officials do not bear personal responsibility for the good faith performance of their official functions. **It is a novel matter to hold a cabinet minister personally responsible for the costs of litigation.**"<sup>1</sup>*

11. When we consider that Diplomats in the employ of the South African Foreign Service are required to represent the president and people of South Africa, and to, *inter alia*, advance South African interests and values, yet the Constitutional Court specifically found that Bathabile Dlamini's conduct flew in the face of the values that underpin the Constitution, it is evident that she is not suited to hold the office of a diplomat.
12. The DA wishes to point out to you that in light of the above, the appointment of Bathabile Dlamini would constitute an irrational, unconstitutional and untoward decision.
13. The Constitutional Court has emphasised that the exercise of all public power, including those that involve foreign affairs, is subject to constitutional scrutiny by the courts (*Kaunda and Others v President of the Republic of South Africa and Others* 2005 (4) SA 235 (CC) and *Democratic Alliance v Minister of international Relations and Cooperation* 2017 (1) SACR 623 (GP)). Likewise, it is the DA's view that any appointment by the President of any government official that is not rational would be invalid and subject to being set aside by the Courts (*Democratic Alliance v President of South Africa* 2013 (1) SA 248 (CC)).
14. We, therefore, request that you urgently provide us with confirmation that you will not appoint Bathabile Dlamini in any diplomatic position in the employ of the South African Foreign Service.
15. We further wish to inform you that our client intends to embark on litigation should you not confirm the above.

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<sup>1</sup> *Black Sash Trust supra* at paras [12] – [16]



16. All our client's rights are reserved.

Yours faithfully

**MINDE SCHAPIRO & SMITH INC.**

per: