

Office Copied

IN THE EQUALITY HIGH COURT  
(HIGH COURT, CAPE TOWN)

Case No.: Equality Court 3/2016

In the application of:

<b>SOCIAL JUSTICE COALITION</b>	First Applicant
<b>EQUAL EDUCATION</b>	Second Applicant
<b>NYANGA COMMUNITY POLICING FORUM</b>	Third Applicant
and	
<b>MINISTER OF POLICE</b>	First Respondent
<b>NATIONAL COMMISSIONER OF POLICE</b>	Second Respondent
<b>WESTERN CAPE POLICE COMMISSIONER</b>	Third Respondent
<b>MINISTER FOR COMMUNITY SAFETY, WESTERN CAPE</b>	Fourth Respondent
and	
<b>WOMEN'S LEGAL CENTRE TRUST</b>	Amicus Curiae

---

**ANSWERING AFFIDAVIT OF JOHANNES JURGENS BRAND FILED ON BEHALF  
OF THE FIRST, SECOND AND THIRD RESPONDENTS**

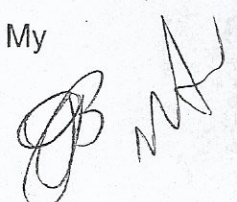
---

I, the undersigned,

**JOHANNES JURGENS BRAND**

do hereby make oath and state that:

1. I am a Major General in the employ of the South African Police Service ("the SAPS") and am the Cluster Commander for the Khayelitsha Cluster. My



managerial and administrative responsibilities are set forth in the performance agreement entered into between the Provincial Commissioner and me, a copy of which is appended hereto, marked "JJB1".

2. The facts herein contained are within my personal knowledge and belief, unless the contrary appears from the text, and are true and correct. Any legal submissions are made on the advice of the first, second and third respondents' legal representatives, the contents whereof I accept to be true and correct.
3. I have had regard to the applicants' application but do not propose responding to each and every allegation made since I am informed that other deponents will do so. It suffices to state for present purposes that any allegation contained therein which is inconsistent with the first, second and third respondents' answering papers should be construed as though denied. I furthermore point out that it is blatantly incorrect to allege, as the SJC does, in paragraph 5 of the founding affidavit and elsewhere in the applicants' papers, that no action has taken place since the release of the report by the Khayelitsha Commission in August 2014.
4. There are 8 police stations which fall under my authority as Cluster Commander, more particularly, Harare, Khayelitsha, Lingelethu West, Somerset West, Strand, Lwandle, Gordon's Bay and Macassar. I was appointed Cluster Commander in June 2014. This was after the Commission had commenced but before the release of its report in August 2014.

MA  
2

5. My duties are managerial and operational in nature, as set forth in the Strategic Overview on the Implementation of the Cluster and Station Management Framework ("CSMF"), a copy whereof is annexed marked "JJB2".
6. I have been a member of the SAPS since 23 December 1985 and have served at a number of different police stations, the majority of which were in disadvantaged areas; the applicants describe these areas as "black" and "poor". I have served in different components of the SAPS including the Detective Division and Visible Policing.
7. Some of the police stations at which I have served include Kliptown, Meadowlands and Jabulani in Soweto, Kagiso on the West Rand as well as Gugulethu, Athlone, Mitchells Plain and currently Khayelitsha, the latter four all in the Western Cape. Since my appointment as Cluster Commander, my office is physically located at the Khayelitsha Police Station and most of my policing duties (both managerial and operational) are performed at Khayelitsha Police Station, Harare, Lingeletu West and Lwandle. This has been the position since June 2014. I was appointed in Khayelitsha to perform policing duties before my appointment as Cluster Commander. Once this appointment took effect, I continued rendering policing duties in accordance with my performance agreement and the CSMF.
8. Much of the work performed at Khayelitsha and the other police stations falling under my command are matters upon which the Khayelitsha Commission had heard evidence. A number of shortcomings with policing were identified by the Khayelitsha Commission. Many of the sub-recommendations formed part of

ordinary policing functions which I had already commenced addressing prior to the being released in August 2014.

9. Without going into an analysis of the Commission's Report, it is apposite to point out that one of the recommendations was that a Khayelitsha Cluster Commander be appointed. By the time the report was released I had already been appointed in that capacity some two months earlier.
10. The Commission further found that a station commander should be appointed at Harare and in other leadership roles, such as that of detective commander at Harare. Again, by the time that the report was released, these posts had been filled.
11. In light of the subject of the challenge and the relief sought in this application, I address the following issues in turn hereunder:
  - 11.1. First, the nature of policing in areas such as Harare, Lingeletu West and Harare (collectively referred to as "*the three Khayelitsha stations*").
  - 11.2. Second, the establishment of the Priority Committee which was initially known as the Joint Committee.
  - 11.3. Third, the establishment of the Task Team as recommended by the Commission.
12. These areas (largely under-developed and described by the applicants as being largely "black" and "poor") pose challenges to the police because the infrastructure is either poor or lacking. I am advised that these deficiencies are

dealt with in the affidavit of General Rabie and are accordingly not recounted herein. The evidence at the Commission also highlighted the living conditions in these areas.

13. Much of the crime in these areas happens spontaneously, often sparked off by arguments within a domestic environment, and usually at a time when police officers are not present to prevent it. Domestic violence, by its very nature is difficult to police since it occurs in the privacy of the home. Domestic violence is one of the contributors to contact crimes in the three Khayelitsha police stations.
14. To put matters into context, there are 150 stations in the province of which 30 are responsible for 52% of all reported crime. The three stations in Khayelitsha fall within the top 30 contributing stations.
15. The staffing component in the three Khayelitsha stations has been significantly increased in recent years. By way of example and just in the past six months, Khayelitsha received 37 new recruits in August 2016 and a further 7 in January 2017; Harare received 41 in August 2016 and a further 51 in January 2017; Linglethu West received 12 in August 2016 and a further 10 in January 2017.
16. I have regular interaction with the Western Cape Government. At a presentation which I made to the Standing Committee on Community Safety at Provincial Government on 31 August 2016, the status of the Commission's recommendations was reported upon by me. I expressly adverted to the new recruits and highlighted those recommendations which had already been implemented. As regards Recommendation 7, the report was that it had been

partly implemented, as described on page 12 of Annexure "JJB3". At the time of the presentation the August intake at the said police stations were *in situ*. A number of under resourced stations did not benefit from these two new intakes, and certainly not stations located in affluent areas. The placement of the additional operational staff at the three Khayelitsha stations was done by the Provincial Commissioner acting in terms of section 12(3) of the South African Police Service Act, No. 68 of 1995 ("*the SAPS Act*"). I am given to understand that an affidavit will be filed on behalf of the Provincial Commissioner explaining why this was done. It is also apposite to mention that the evidence tendered by the former Provincial Commissioner (General Lamoer) relied upon in paragraph 130, p 52 of the SJC's affidavit is disputed. Evidence can never override the correct legal position as outlined in section 12(3) of the SAPS Act.

17. I should point out that the Commission's recommendations are contained in Chapter 15. The SAPS was given three years to implement the remedial measures. As stated, in my presentation to the DOCS' Standing Committee, Recommendation 7 is still in the process of being implemented, hence the recordal to that effect. It also falls to be emphasised that the three year period has not expired and will not have expired by the time this matter is determined. In the circumstances, the bringing of this application based on outdated and factually incorrect information constitutes an abuse of this court's process and warrants its dismissal without the court having to determine the merits.
18. I furthermore point out that in the introductory paragraph 3 of chapter 15, the Commission urged readers to debate its recommendations "*in the light of what*

*will promote the safety of the residents of Khayeltisha rather than on the basis of unrelated and irrelevant concerns”.*

19. In light of the Commission’s statement to engage in debate, a meeting was held between the then National Commissioner (General Phiyega) and Premier Zille. Both had senior representatives in attendance (I was one of the attendees on behalf of the SAPS). At this meeting, it was resolved that a Task Team would be formed; this was subject to Ministerial approval. Once this approval was received the Task Team was established immediately thereafter. It essentially comprised three sectors, viz, community organisations, five members of SAPS and five members from the Provincial Government represented by DOCS.
  
20. The community organisations represented on the Task Team comprise the SJC, Khayelitsha Development Forum (KDF), the Religious Fraternity, CODETA and the Community Police Forum (CPF). This was done in agreement (after vigorous debate) with the broader community (during a consultative process) and DOCS. I should also point out that in addition to the aforementioned Task Team, there is also the Priority Committee (formerly known as the Joint Committee) and established before the Task Team. The Priority Committee is divided into five sub-priority committees representative of the key crime generators, more particularly:

20.1. Substance abuse (chaired by the Harare station commander, Colonel Raboliba);


MA  
7  
PB

- 20.2. Youth, the purpose being to deal with violence, bullying and youth at risk at schools and in the community. This subcommittee is chaired by Adv Anthea Michaels of the Provincial Department of Sport and Recreation.
- 20.3. The Economic Sub-Forum which has as its primary focus business and transport issues. It is co-chaired by Mr Andrew Anthony of Business against Crime and Brigadier Hosking of the SAPS.
- 20.4. Gender-based violence aimed at protecting women, children, elderly persons and LGBTI members. This subcommittee is chaired by Ms Funeka Soldaat of the LGBTI who is also the project manager of the CPF at Harare police station.
- 20.5. Community intolerance which seeks to counter vigilantism and is chaired by Brigadier Nkwitshi.
21. Policing is multifaceted and necessitates the input of numerous stakeholders. Public participation is hugely important to effectively police an area and the establishment of CPFs has greatly facilitated this process.
22. Many of the concerns raised at the Commission and reported upon have been addressed. There is a much improved relationship and community interaction with the police. Contact between the various stakeholders is ongoing and occurs at fixed and regular intervals. The SJC enjoys representation on the Task Team but has not once complained that the Commission's findings were not being implemented. The minutes and other relevant documents pertaining to these meetings held by the Task Team and the Priority Committee are



appended marked "JJB4". These documents bear out the improvements at the three Khayelitsha police stations.

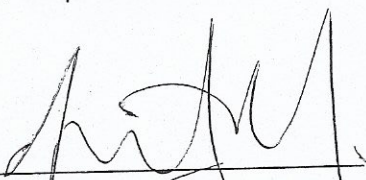
23. It is unfortunate that the applicants should have chosen the litigation route in circumstances where the community participants have at all times been kept apprised of developments at the three Khayelitsha police stations and have supported the initiatives undertaken by the SAPS.
24. The application is furthermore routed on the false premise that nothing has been done when, in truth and in fact, the documents appended hereto illustrate just the opposite. More importantly, the three year *spatium* has not expired yet and the bringing of these proceedings is premature in the circumstances.

  
\_\_\_\_\_  
JOHANNES JURGENS BRAND

I hereby certify that on the 17<sup>th</sup> day of FEBRUARY 2017 in my presence at CAPE TOWN the Deponent signed this Affidavit and declared that he: -

- (a) knew and understood the contents hereof;
- (b) had no objection to taking this oath;
- (c) considered this oath to be binding on his conscience and uttered the words:-

"I swear that the contents of this Affidavit are true, so help me God."

  
\_\_\_\_\_  
COMMISSIONER OF OATHS

**ADIEL NACERODIEN**  
PRACTISING ADVOCATE OF THE HIGH COURT  
OF SOUTH AFRICA  
COMMISSIONER OF OATHS  
HUGUENOT CHAMBERS  
40 QUEEN VICTORIA STREET  
CAPE TOWN, 8001