

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

CASE NO: _____

In the matter between:

MINISTER OF POLICE	First Applicant
NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE	Second Applicant
THE PROVINCIAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE FOR THE WESTERN CAPE	Third Applicant
THE CIVILIAN SECRETARIAT FOR THE POLICE SERVICE	Fourth Applicant
COLONEL M F REITZ	Fifth Applicant
BRIGADIER Z DLADLA	Sixth Applicant
COLONEL TSHATLEHO RABOLIBA	Seventh Applicant
and	
THE PREMIER OF THE WESTERN CAPE	First Respondent
THE MEMBER OF THE EXECUTIVE COUNCIL FOR COMMUNITY SAFETY, WESTERN CAPE	Second Respondent
THE CITY OF CAPE TOWN	Third Respondent
THE HON. JUSTICE CATHERINE O'REGAN N.O.	Fourth Respondent
ADV VUSUMZI PATRICK PIKOLI N.O.	Fifth Respondent
THE SECRETARY TO THE COMMISSION	Sixth Respondent
ADV T SIDAKI	Seventh Respondent
WOMEN'S LEGAL CENTRE	Eighth Respondent

NOTICE OF MOTION

STATE ATTORNEY
REF: MR M BIKO
TEL: (021) 441-9200
E-MAIL: mbiko@justice.gov.za

PART A: URGENT APPLICATION FOR INTERIM INTERDICT

TAKE NOTICE that the applicants intend to make application to this Honourable Court on **MONDAY, 12 NOVEMBER 2012** at **10h00** or as soon thereafter as counsel may be heard, for an order in the following terms:

1. that this application be heard as a matter of urgency, and that the forms and service provided for in the Rules of this Honourable Court be dispensed with;
2. that the fourth, fifth and sixth respondents, and any person or persons acting under their direction or control, be interdicted and restrained from giving effect to subpoenas purportedly issued in terms of s 3(1)(a) of the Western Cape Provincial Commissions Act 10 of 1998 on **30 October 2012** and served on **Colonel M F Reitz, Brigadier Z Dladla, Colonel Tshatleho Rabolibela** and **Lieutenant General A H Lamoer**, pending the final determination of the relief sought in Part B hereof;
3. that the fourth, fifth and sixth respondents (and those acting under their direction and control) be interdicted and restrained from conducting the Commission of Inquiry into allegations of police inefficiency in Khayelitsha and a breakdown in relations between the community and the police in Khayelitsha (*“the Inquiry”*) appointed under s 1 of the Western Cape Provincial Commissions Act, 1998 (Act 10 of 1998) and the Regulations

thereto pursuant to s 206(5) of the Constitution of the Republic of South Africa, 1996 (*“the Constitution”*), in any form whatsoever, pending the final determination of the relief sought in Part B hereof;

4. that the fourth, fifth and sixth respondents, and those acting under their direction and/or control, be interdicted and restrained from issuing or causing to be issued any subpoenas to any member of the South African Police Service in terms of s 3(1)(a) of the Western Cape Provincial Commissions Act 10 of 1998, pending the final determination of the relief sought in Part B hereof;
5. that any of the parties hereto who oppose the relief sought in Part A hereof pay the costs of this application jointly and severally, the one paying the others to be absolved;
6. that further and/or alternative relief be granted.

TAKE NOTICE FURTHER that if any of the respondents intend opposing the relief sought in Part A hereof, that party is required to:

- (a) notify the applicants' attorneys of that party's intention in writing before **17h00** on **TUESDAY, 6 NOVEMBER 2012**, and to appoint in such notification an address referred to in Rule 6(5)(b) of the Rules of this Honourable Court at which that party will accept notice and service of all the documents in these proceedings; and

- (b) deliver that party's answering affidavits, if any, on or before **17h00** on **THURSDAY, 8 NOVEMBER 2012**.

TAKE NOTICE FURTHER that the applicants will deliver their replying affidavits, if any, by **17h00** on **FRIDAY, 9 NOVEMBER 2012**.

KINDLY PLACE THE MATTER ON THE ROLL FOR HEARING ACCORDINGLY.

PART B: RELIEF IN TERMS OF RULE 53 OF THE RULES OF COURT

TAKE NOTICE that the applicants intend to make application to this Honourable Court on a date and at the time to be determined by the Registrar for an order in the following terms:

1. reviewing and setting aside Proclamation No. 9/2012 published in the Provincial Gazette on 24 August 2012 which established the Commission of Inquiry under s 1 of the Western Cape Commissions Act, 1998 (Act 10 of 1998) read with s 206(5) of the Constitution, on the grounds that it is inconsistent with the Constitution, and invalid;
2. reviewing and setting aside the first respondent's decision to appoint the Commission of Inquiry aforementioned on the grounds that it is irrational, and accordingly inconsistent with the Constitution, and invalid;

3. reviewing and setting aside the decision of the first respondent to establish the Commission of Inquiry aforesaid on the grounds of unlawfulness, and unconstitutionality in that the first respondent failed and/or refused to give effect to the principle of co-operative government and intergovernmental relations contemplated in s 41 of the Constitution read together with s 68(2)(c) of the Western Cape Constitution, the Co-operative Framework contained in Chapter 5 of the Civilian Secretariat for Police Service Act 2 of 2011, and the relevant provisions of the Intergovernmental Relations Framework Act 13 of 2005 and Regulation 491 of 26 April 2007 promulgated thereunder;
4. reviewing and setting aside the decision of the first respondent to appoint the Commission of Inquiry on the grounds of illegality and unconstitutionality in that the conduct of the first respondent in appointing and establishing the Commission of Inquiry aforementioned is unlawful and unconstitutional in that the first respondent has deliberately and intentionally avoided, alternatively refused to recognise, alternatively failed to recognise and engage, various statutory and constitutional structures prior to determining that the complaint (referred to in the attached founding affidavit) warranted the appointment and establishment of a Commission of Inquiry in relation thereto;
5. reviewing and setting aside the decision of the first respondent to appoint the Commission of Inquiry aforementioned on the grounds of illegality in

that it is in breach of the first respondent's statutory obligations as contemplated in the Public Finance Management Act 1 of 1999 (*"the PFMA"*) in that the said Commission has incurred, and will incur fruitless and wasteful expenditure as defined in the PFMA;

6. reviewing and setting aside the decision of the first respondent acting through the fifth, sixth and seventh respondents in authorising the Commission of Inquiry to issue subpoenas in terms of s 3(1)(a) and s 3(1)(b)(iii) of the Western Cape Provincial Commissions Act 10 of 1998, on the grounds of illegality and unconstitutionality, more particularly because the first respondent acting through the fifth, sixth and seventh respondent have purported to usurp the statutory and constitutional powers of the National Commissioner (second applicant) and the Provincial Commissioner (third applicant) and have thereby exceeded the legal and constitutionally-ordained provincial competencies relating to the police;
7. reviewing and setting aside the decision of the fourth, fifth and sixth respondents and those acting under their direction and control to issue and serve subpoenas on the third, fifth, sixth and seventh applicants on **30 October 2012** on the grounds of illegality, and unconstitutionality;
8. reviewing and setting aside the issue by the fourth, fifth and sixth respondents of the subpoenas aforementioned purportedly in terms of the Western Cape Provincial Commissions Act 10 of 1998, on the grounds of

illegality and unconstitutionality in that they intrude upon the constitutionally-entrenched principle of the separation of powers;

9. directing that in the event of the Court not declaring the Commission of Inquiry unlawful and/or unconstitutional, that the fourth and fifth respondents, and one of the evidence leaders appointed to assist the Commission in the gathering of evidence and the leading of any evidence before the Commission (the seventh respondent) recuse themselves from participating in the Inquiry;
10. declaring that reasonably and objectively viewed, the pith and substance of the original complaint (of **November/December 2011**) that forms the basis of the first respondent's decision to appoint a Commission of Inquiry does not constitute a proper complaint warranting the appointment of a Commission of Inquiry in terms of s 206(5) of the Constitution in that the subject-matter of the complaints were investigated and prosecuted, and in relation to six (6) of the eight (8) complaints, subsequent convictions, and effective jail sentences were imposed;
11. ordering that any of the respondents who oppose this application pay the costs of the application, and if more than one of the respondents oppose the application, that these respondents jointly and severally be ordered to pay the costs of the application, the one paying the other to be absolved;

12. granting the applicants such further and/or alternative relief as the Court deems fit.

TAKE NOTICE FURTHER that the affidavits of the Minister of Police, the National Commissioner of the South African Police Service, the Provincial Commissioner of the South African Police Service for the Western Cape, and the confirmatory affidavits of the other applicants filed herewith, together with annexures, will be used in support of Parts A and B of the relief sought in this application.

TAKE NOTICE FURTHER that the applicants have appointed the offices of the State Attorney, Cape Town, at 22 Long Street, Cape Town as the address at which it will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER that the first respondent, and the fourth, fifth, sixth and seventh respondents are hereby called upon to:

- (a) show cause why the decisions referred to above should not be reviewed and corrected or set aside; and
- (b) deliver to the Registrar of this Court, within fifteen (15) days of receipt of this Notice of Motion, the record of the proceedings pursuant to which the decisions referred to above were taken, together with such reasons as are required by law or which the respondents desire to give, and to notify the applicants that this has been done.

TAKE NOTICE FURTHER that if you intend opposing Part B of this application, you are required:

- (a) within fifteen (15) days of receipt of the Notice of Motion or any amendment thereof, to deliver notice to the applicants that you intend to oppose and to appoint an address within eight (8) kilometres of the office of the Registrar at which you will accept notice and service of all process in these proceedings; and
- (b) within thirty (30) days after the expiry of the time referred to in sub-Rule 53(4), deliver any affidavits you may desire in answer to the allegations made by the applicants.

DATED at CAPE TOWN this 5th day of NOVEMBER 2012.


STATE ATTORNEY
Applicants' Attorneys

Per: **MR M BIKO**
4th Floor, Liberty Centre
22 Long Street
CAPE TOWN
TEL: (021) 441-9200
REF: 2745/12/P2

TO: THE REGISTRAR
High Court
CAPE TOWN

**AND TO: THE PREMIER OF THE WESTERN
CAPE PROVINCIAL GOVERNMENT**
First Respondent
C/o 27 Wale Street
CAPE TOWN

AND TO: MEC FOR COMMUNITY SAFETY
Second Respondent
C/o 27 Wale Street
CAPE TOWN

AND TO: THE CITY OF CAPE TOWN
Third Respondent
FOR PERSONAL ATT: THE MUNICIPAL MANAGER
C/o Civic Centre
12 Hertzog Boulevard
CAPE TOWN

**AND TO: THE HON. JUSTICE CATHERINE O'REGAN N.O.
ADV VUSUMZI PATRICK PIKOLI N.O.
THE SECRETARY TO THE COMMISSION**
Fourth, Fifth and Sixth Respondents
C/o VPUU Centre
42 Ncumo Street
Harare
KHAYELITSHA

AND TO: ADV T SIDAKI
Seventh Respondent
C/o VPUU Centre
42 Ncumo Street
Harare
KHAYELITSHA

AND TO: WOMEN'S LEGAL CENTRE
Eighth Respondent
7th Floor, Constitution House
124 Adderley Street
CAPE TOWN