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LEGAL OPINION
[Confidential]

TO: Mr A J Nyambi, MP
Chairperson: Select Committee on Petitions and
Members' Legislative Proposals

COPY: Mr M B Coetzee
Secretary to Parliament

FROM: Constitutional and Legal Services Office
[Adv G Rhoda – Parliamentary Legal Adviser]

DATE: 15 May 2013

SUBJECT: Legal Opinion on the Petition from Mr ABP Mkhize

REFERENCE: 142/2013



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MEMORANDUM

TO: Mr A J Nyambi, MP
Chairperson: Select Committee on Petitions and Members'
Legislative Proposals

COPY: Mr MB Coetzee
Secretary to Parliament

FROM: Constitutional and Legal Services Office
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SUBJECT: Legal Opinion on the Petition from Mr ABP Mkhize

INTRODUCTION

1. Our Office was requested to provide a legal opinion on the petition received from Mr A B P Mkhize (the petitioner).
2. The petition and the documents presented to the Select Committee on Petitions and Members' Legislative Proposals set out the facts in this matter.
3. From the information provided, the petitioner now seeks that the inquest into the death of his wife be reopened.
4. Given the extensive amount of documentation attached to petition, this opinion will only highlight those sections necessary for the legal opinion.

ANALYSES / LEGAL FRAMEWORK

5. From the information provided, it would appear that a formal judicial inquest, in terms of the Inquests Act, No. 58 of 1959, into the death of the spouse of the petitioner was conducted in December 2008.
6. At the conclusion of the inquest referred to above, the Court found that the deceased died of natural causes and that her death was not brought about by any act or omission involving or amounting to an offence on the part of any person.

7. However, section 17A of the Inquests Act allows for the re-opening of an inquest. Section 17A(1) provides that:

“The Minister may, on recommendation of the attorney-general concerned, at any time after the determination of an inquest and if he deems it necessary in the interest of justice, request a judge president of a provincial division of the Supreme Court to designate any judge of the Supreme Court of South Africa to re-open that inquest, whereupon the judge thus designated shall re-open such inquest.”

8. This means that, in terms of the above section, the petitioner may make an application to the Minister of Justice and Constitutional Development (the Minister) to have the inquest reopened. In his application, the petitioner would have to prove that it is in the interest of justice to have the inquest reopened. Thereafter, the Minister would have to determine whether it is in the interest of justice to do so, based on the facts before him/her.

LEGAL ADVICE

9. It appears that legislation exists that provides for a remedy to the petitioners' request. In light of this, the Committee may consider assisting the petitioner in directing the aforementioned request to the Minister.



Adv G Rhoda
Parliamentary Legal Adviser