



EXHIBIT RR 1

**JOHANNES
VAN LOGGERENBERG**



**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

2nd floor, Hillside House
17 Empire Road,
Parktown
Johannesburg
2193

Tel: (010) 214 to 0651
Email: inquiries@sastatecapture.org.za
Website: www.sastatecapture.org.za

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SWORN AFFIDAVIT

I, the undersigned,

JOHANNES VAN LOGGERENBERG

do hereby state under oath:

1. The facts deposed to herein are true and correct and, save where the context indicates otherwise, within my personal knowledge.
2. This affidavit is submitted for purposes of providing evidence to the Commission of Inquiry into State Capture ("**the Commission**").
3. The affidavit is in respect of the investigations relating to, *inter-alia*, Mr Thoshan Panday ("**Panday**").

Introduction

4. As a background to this affidavit I wish to state that:
 - 4.1. Brigadier Laurence Charles Kemp ("**Brigadier Kemp**"), the Head of Provincial Financial Services in Kwa-Zulu Natal ("**KZN**") identified the high costs of accommodation and irregularities and handed over an internal Information note *inter alia* to Major-General Johan Wessel Booysen ("**General Booysen**") to investigate the matter. Colonel ("**Col**") Soobramoney commenced with the investigation, under an enquiry;
 - 4.2. Three months later Col Soobramoney resigned, and Col Van Loggerenberg took over assisted by me, Col SY Govender and Col Phillip Herbst;

Overview of cases

There are 4 cases registered that are linked to the investigation, namely:

5. **Durban Central CAS 781/06/2010**; this was the main case docket relating to the investigation of fraud and corruption regarding the Soccer 2010 world cup. The basis of evidence is that of procurement fraud and corruption; an overview of the case is as follows:

5.1. Panday registered five (5) close corporations. They are Goldcoast Trading CC, Unite Mzanzi Trading and Projects CC, Valotone CC, Bravosat CC and Kaseef Traders CC. According to all the experian reports extracted from the CIPC database for the mentioned close corporations, Panday was the sole member of Goldcoast Trading CC. The sole members for the remaining close corporations he used his wife and family relatives. Once the close corporation documents were recorded on the SAPS supply chain management database at head office, the founding statements for all the close corporations except Goldcoast Trading CC, were changed by Panday at the CIPS to indicate that Thoshan Panday is the sole member of all the mentioned close corporations. The amended founding statements for the close corporations were never forwarded to SAPS supply chain management. Supply chain management at SAPS never knew that Thoshan Panday were now controlling all the close corporations.

5.2. Col Navin Madhoe helped Panday get the project to supply accommodation and goods required for the 2010 soccer world cup. Before the 2010 soccer world cup, the provincial head office of KZN established different committees who were tasked to get all the different equipment and accommodation for members at the 2010 soccer world cup. Col Madhoe was involved in the procurement side for accommodation. Brigadier Govender from the provincial Head Office was in charge of the committee. Every time this committee convened Col Madhoe would have the excuse that Head Office in Pretoria is still dealing with the matter and he did not receive any response from them yet. At the eleventh hour the accommodation was still not resolved, and it became an emergency to get accommodation. There are provisions in the supply chain management manual that a supplier could be appointed without any tenders from other

suppliers in the case of emergency. Col. Madhoe then in a letter he wrote to management suggested that Gold Coast Trading CC and related close corporation can supply the accommodation and goods required for the 2010 soccer world cup. In the same letter he also stated that tenders were in fact sent to other suppliers, but they never responded, or some did not respond in time. Capt. Narainpershad who worked under Col. Madhoe at supply chain management were responsible to send the tender out to other suppliers. During our investigation it was established that other suppliers did in fact respond in time, but Capt. Narainpershad kept them in the dark and never replied to anyone of them.

- 5.3. During our investigation we established the Thoshan Panday increased the cost of accommodation between 200% and 400% when he invoiced the SAPS. For goods he did the same. For example, Panday purchased generators from a company in Pinetown for @ R4 900 each and invoiced the SAPS @ R97 000 each. All the invoices received from Thoshan Panday's close corporations by the provincial supply chain management were approved by Capt. Narainpershad and Col. Madhoe.
- 5.4. We made an application to appoint a forensic auditor; some firm was initially appointed; however, they did not know how to investigate the case and wanted to sub-contract to other companies. We informed them that head office will not approve it. We then wrote a memo to Brig Lategaan and then Price Waterhouse Coopers ("PWC") was appointed.
- 5.5. We conducted searches and seizure operations and handed the data and documents to Trevor White from PWC. Around the end of 2013, the report was completed by PWC.
- 5.6. The case has over 200 affidavits in the docket with 6 lever arch files and the PWC report was over 372 pages with 20 lever arch files documentary evidence. The investigation clearly indicates fraud and corruption.

Benefits to suspects

- 5.7. The Provincial Commissioner, Lt. Gen. Ngobeni: She arranged a surprise birthday party for her husband. The birthday party was at the Dish

restaurant in Umhlanga Rocks. Thoshan Panday paid a R10 000 cash deposit to Mr. Freddy Singh the manager of the restaurant. Toshan Panday paid the remainder_R8712 with his credit card. The birthday party was held on the 29th May 2010.

- 5.8 On the 4th June 2010 at 07H45 Mr. Thoshan Panday visited the restaurant manager and requested him to print him a tax invoice from the restaurant for the function that were held on the 29th May 2010. He further requested him to inflate the original amount on the tax invoice. He further requested him to issue the tax invoice in the name of Mrs. BM Ngobeneni from no.6 Palm Boulevard, New Town Centre, Umhlanga. He further requested him to make the invoice date the 30th May 2010 and to reflect the function date as the 30th May 2010. Mr Freddy Singh also had to reflect Thoshan Panday's name opposite the job no. on the tax invoice. The manager asked Thoshan Panday what the purpose of this tax invoice would be. Thoshan Panday assured him that it was for his own personal use and for nobody else.
- 5.9 The manager issued Thoshan Panday with a tax invoice dated the 30th May 2010 with all the details he supplied to him for the total amount of R29 712.00 (twenty-nine thousand seven hundred and twelve rand). The affidavit of Mr Freddy Singh is filed in the docket. This is in the report from PWC.
- 5.10 General RS Pillay from Supply Chain Management in Head Office: Thoshan Panday paid for General RS Pillay's car hire when he came down to KZN. (This is in the report from PWC).
- 5.11 Capt. Ashvin Narainpershad: Thoshan Panday bought him a tred mill and paid his sons fees who studied at a collage. (This is in the report from PWC).
- 5.12 Col. Navin Madhoe: Panday bought him a vehicle and paid for a holiday for his whole family in Cape Town. (This is in the report from PWC.)

6 Durban North CAS 386/09/2011 (Party)

- 6.10 This relates to the birthday party of the husband of the PC, Ngobeni, which was paid for by Panday;
- 6.11 This evidence is also contained in the main case and the PWC report covers this aspect. However, the Provincial Head DPCI General Booysen ("**Booyesen**") told us to register a separate case for the birthday party;
- 6.12 This case is investigated by Col Herbst, who was called to a meeting by the former KZN DPP, Adv Mlotshwa. The DPP said that there was sufficient evidence; however, this was not provided in writing; (This is the same Adv Mlotshwa that agreed to prosecute the Amigos case);
- 6.13 Advocate ("**Adv**") Wendy Greef had the case initially and declined to prosecute; however, in the opinion of the SAPS, her reasoning appears to be flawed.
- 6.14 The case was later declined by Adv Noko, the KZN DPP appointed after Adv Mlotshwa.
- 6.15 Subsequent to the withdrawal, a memorandum was sent from Brigadier Ngobeni (the husband of the PC) dated 13 March 2012, to the Deputy Provincial Commissioner requesting a copy of the docket that was investigated against his wife regarding his birthday party.
- 6.16 We as the investigation team refused to provide a copy of the case docket.

7 Durban Central CAS 466/09/2011: Bribery / Corruption

- 7.10 This case is in respect of the money placed in the boot of Booysen's car to bribe him. The gist of the matter is that Panday offered Booysen a R2 million bribe and the subsequent events led to:
- 7.10.1 The SAPS obtaining authority in terms of Section 252(A) of the Criminal Procedure Act to participate in the bribe as a trap;



7.10.2 R1,4 million was placed in the boot of Gen Booysen's car by Col N Madhoe, which was video recorded for evidential purposes;

7.10.3 Col. N Madhoe and Thoshan Panday were arrested and charged for bribery and corruption.

7.11 The investigators were Col L Sherriff and then Col P Du Plooy. We wanted the case to be dealt with as a 'racketeering' matter, combined with the other main case, however it was separated.

7.12 There was a complaint / representation submitted to the DPP's office. Col Herbst was then called to see Adv Bheki Mnyathi (Acting DPP). He, Mnyathi, reviewed the matter and indicated there was sufficient evidence; where-after would have sent that report to Advocate Lawrence Mwrebi.

7.13 Adv Wendy Greef subsequently replaced Adv Mnyathi.

7.14 The matter was enrolled in the regional court; however, on the morning when the matter was about to start (and be transferred to the High Court), the prosecutor Adv. Wendy Greef was handed a letter from the then DPP, Adv Noko, to provisionally withdraw the case.

7.15 A copy of the memorandum from Adv Noko, addressed to Adv Vani Govender, dated 7 February 2013, regarding CAS 466/09/2011, is attached hereto per **Annexure JVL 1**. The memorandum states:

7.15.1 *I have been presented with representations in this matter which raise some concerns regarding Justice. Time is needed to investigate these concerns ...*

7.15.2 *There is a prima facie case against the accused persons, however in the interests of justice I have decided to provisionally withdraw this matter ...*

7.15.3 *This case must be withdrawn on 11 February 2013 when it appears again in court..."*



8.10 This matter relates to Captain Stevens who was used as an agent where Panday offered him a million rand as a bribe to falsify documents and to forge Brig. Hunters signature.

8.11 Adv Dorian Paver is the prosecutor, who never declined to prosecute the matter; however, we as the investigators requested that he provisionally withdraw the matter because of the transcripts that needed to be redone.

8.12 We as SAPS had to reapply for funds for the transcript to be redone as the lady who did the initial transcript could not understand the Indian 'lingo'.

9 Interference in investigations: Durban Central CAS 781/06/2010

9.10 As the investigators we were informed that the PC, Ngobeni, told General Booysen to stop the investigation on a few occasions.

9.11 A copy of an affidavit of Brigadier Kemp, Head of Provincial Financial Services, is attached hereto as **Annexure JVL 2(1) to JVL 2(50)**, which states that:

9.11.1 He received a telephone call from the PC, Ngobeni, informing him to tell General Booysen to stop the investigation;

9.11.2 He attended the meeting with the PC, Booysen and Madhoe; where the PC informed him he must cease from sending information directly to Head Office.

9.12 A copy of an affidavit of Col Melony Moodley, from the regional finance office, is attached hereto as **Annexure JVL 3 (1) to JVL 3 (22)**, which states that:

9.12.1 She was present when Brig Kemp received a call from the Provincial Commissioner to stop the investigation;

9.12.2 Col Subramoney, the initial investigator, handed all documents back to her on instruction that the case was to be closed;



9.12.3 She was intimidated by anonymous calls;

9.12.4 Col Madhoe informed her the evening before the DPCI came to search their financial offices at SAPS, that he had been informed by Col Clarence Jones and Col WS Mhlongo, that her offices were to be searched the next day;

9.13 Col Soobramoney phoned Lt. Gen. Dramat the head of the Hawks and informed him about the investigation and the interference of the PC. Col. Soobramoney and I then had a meeting with Lt. Gen Dramat at his office in Pretoria. We briefed Gen Dramat ("Dramat") and he indicated that the PC has no right to interfere with the case and that we must continue with the investigation.

9.14 Serious economic offences were supposed to be involved; however, they never took the case and we continued with the investigations.

9.15 'Doors' were blocked in our investigation; however, we obtained documents via search and seizure warrants. Other documentation was never located, which we presumed was destroyed.

10 Prosecutors withdrawal of main cases

10.10 Adv Bromley-Gans was the initial prosecutor in the main case docket, CAS 781/06/2010; she then resigned. It was then handed to Adv Abby Letsholo.

10.11 To my knowledge, Adv Letsholo was also appointed to deal with the water purification case, commonly known as the Amigos case; where it allegedly sat in his office for three years;

Interception and monitoring order

10.12 During the investigation, I received two phone calls on my office landline from an anonymous lady who was working in Panday's office. The lady informed me that Thoshan wants to kill him and there were threats to the rest of the team. A few months later, I received a similar call. We reported



this to Big Lategaan the Provincial commander of the Commercial Crime Unit. Brig Lategaan made an application to Crime Intelligence ("CI") to assist, concerned about the safety of the investigators;

10.13 Col Brian Padayachee from CI was then appointed to investigate the death threats against the members. To assist Col Padayachee's in his investigation he applied for and obtained an interception and monitoring order (Act 70) to listen to the conversations of Panday and the other suspects in the case;

10.14 Advocates Vani Govender and Adv Willie Muller from the prosecuting office were aware of this. Col Brian Padayachee also attended a meeting with us as investigators and the prosecutors stating that there were certain conversations that may assist or be applicable to our case. We stated that (and agreed upon by Adv Muller) that we did not need this evidence in the main case of procurement fraud and corruption. From the outset of the investigation we never considered to obtain an interception and monitoring order (Act 70) for the main case.

10.15 Col Brian Padayachee told us about certain aspects that Adv Vani Govender and Adv Wendy Greef decided to use the information regarding the Act 70 for the bribery case of Gen. Major. Booysen Durban Central CAS 466/09/2011. We then left as we said we did not need the Act 70 and did not listen to any of the telephone interception.

Meeting with prosecutors in January 2014

10.16 On the 15 January 2014, we had a meeting at Adv TA Letsholo's office on the main 781/06/2010 docket with the forensic report. Col Jones was not involved at any stage of the investigation. We never reported to him on all these cases. The meeting was attended by me, Col Govender, Adv Vimbani and Adv TA Letsholo. Adv Vimbani is the Deputy Director of Public Prosecutions and the regional head of the Commercial Crime Courts in Kwa-Zulu Natal.



10.17 We discussed the evidence against the various suspects and Adv Letsholo and Adv Vimbani were happy and agreed with the evidence against Panday, Madhoe, Narainpershad, Gen. Maj RS Pillay, Pravisha Panday, Arvenda Panday and all the close corporations involved.

10.18 However, when it came to discuss the evidence against the P C, Lt. Gen. Ngcobeni, Adv Letsholo said he has his reservations and Adv Vimbani concurred with him. I indicated that the evidence against Narainpershad was similar to that against the P C; thus, if they were satisfied with the evidence against Narainpershad and all the others, then how could they not be happy with the evidence against the PC Lt. gen. Ngobeni.

10.19 After some deliberation I indicated out of frustration that if the prosecutors considered the evidence insufficient against the PC (whereas there was similar evidence against the other suspects) then they may as well not prosecute on any of the charges. We got up and left and we later reported this to our superiors in the Hawks. I informed Colonel Govender after the meeting that it is my gut feeling that the decision not to prosecute is a political decision. In my view there could be no other reason not to prosecute the PC. It is common knowledge that Thoshan Panday and one of Jacob Zuma's sons are partners in a business.

Listening to privileged conversations

10.20 Allegations that the SAPS were listening to privileged conversations later arose when Gen. Maj Dina Moodley, provincial Head of Crime Intelligence instructed Col Collin Naidoo that whilst transporting Panday to court, he must stop at Gen. Maj. Deena Moodley's office.

10.21 It is alleged that Panday and Gen. Maj. Deena Moodley had a discussion alone. We as the investigators were not aware of the discussion; however, it appears that it was alleged by Panday that Gen. Maj. Deena Moodley indicated he 'was aware of what Panday's defence was going to be'.



10.22 Adv Letsholo later put this in a report utilising it as a reason to withdraw the case, as will be detailed further below. However, in the opinion of the Hawks, even if this conversation took place, it would not be a reason to withdraw the case. At this point in time there were not even a draft charge sheet and I find it difficult that Gen.Maj. Dina Moodley could tell Thoshan Panday what his defence was. In my view his knowledge to the case was limited. This argument could be argued in court.

10.23 We stated that we never listened to the Act 70 interception, as it was not used in the forensic report or our docket. The the Act 70 was not applicable to Durban Central CAS 781/10/2010. As mentioned, I never applied for an Act. 70. In confirmation thereof, we obtained a memorandum from PWC (Trevor White) addressed to the me. A copy of the memorandum is attached hereto per **Annexure JVL 4** where Trevor White stated that he had been provided with a copy of the memo by Adv Letsholo declining to prosecute and that:

10.23.1 The investigating officer informed Adv Letsholo in his presence on 21 May 2013, that there was an interception and monitoring order, but it was not related to CAS 781; and was never used in Durban central CAS 781/10/2010.

10.23.2 PWC had never listened to any recordings of conversations;

10.23.3 He was present when Adv Letsholo indicated there was sufficient evidence against Narainpershad, Madhoe and Panday ant the others listed in the forensic report but he had reservations regarding the evidence against the PC;

10.23.4 I made a comparison to Adv Letsholo of the gratification received by Narainpershad and the PC indicating 'the evidence was the same'.

10.24 As indicated by Trevor White, we informed Adv Letsholo at the outset that the Act 70 was running at the time for the corruption case re Maj. Gen. Booysen in Durban Central CAS 466/9/2011. Adv Letsholo was



satisfied with this at the time; however, he later denied that he was aware of the interception and monitoring order.

- 10.25 Adv Letsholo also stated in one of the meeting that he wanted to listen to the entire Act 70 recording. However, Col Brian Padayachee said that Adv Letsholo was not entitled to listen to all the telephone conversations recorded, as only certain portions were relevant to the criminal matter. Adv Vani Govender and Adv Muller had indicated that they were going to use portions for the Durban Central CAS 466/09/2011 case (in respect of the money placed in the boot of Gen Booysen's car to bribe him).

Meeting with prosecutors in March 2014

- 10.26 There was a subsequent meeting with Adv Letsholo in March 2014, attended by Col Govender and Col Jones. I did not attend this meeting. Adv Letsholo stated that he was going to decline to prosecute the matter as he had received representations from Panday. These representations from Panday were never provided to us as investigators. This is the first time we heard that Toshani Panday made representation in respect of the case. During all my years as a detective it is the norm that when the prosecutor receives representations from an accused person he will inform the investigating officer immediately and ask him to investigate the issues and comment on the representations. From the feedback from Col Govender, it appeared to me that:

10.26.1 Col Jones was investigating those representations.

10.26.2 Adv Letsholo had already made the decision not to prosecute when he arrived at the meeting.

- 10.27 Col. Govender asked for the representations made by Panday; however, Adv Letsholo and Col Jones declined to provide these.

- 10.28 Adv Letsholo then provided a memorandum declining to prosecute the cases and a copy of the memorandum from Adv Letsholo to Adv Vimbani dated 25 March 2014, is attached hereto per **Annexure JVL 5(1)** to



JVL5(6). The memorandum alleged that we as the investigators were targeting the P C and which:

- 10.28.1 States that there *"is just no evidence against the Provincial Commissioner"*;
- 10.28.2 Alleges that the police had hidden the interception and monitoring and wanted to use pieces of that evidence and had listed to privileged conversations between Panday and his attorney;
- 10.28.3 Alleges that Gen. Maj Deena Moodley from CI told Panday he knew his defence and he wanted to get rid of the P C, Lt. Gen. Ngobeni;
- 10.28.4 Constitutional rights had been infringed and the case was tainted; therefore, he declines to prosecute.

11 Legal opinion

11.10 We reported the withdrawal of the cases by Adv Letsholo to Lt. Gen. Dramat per a memorandum from me dated 27 May 2014. A copy of this memorandum is attached hereto per **Annexure JVL 6(1) to JVL 6(8)** and sets out detailed responses to the memo from Adv Letsholo where he declines to prosecute, indicating:

- 11.10.1 Why the reasons are unjustified;
- 11.10.2 That Adv Letsholo and Adv Vimbani appeared to be protecting the PC Lt. Gen. Ngobeni;
- 11.10.3 That the Interception and monitoring was not applied for nor used for the main case CAS 781/06/2010 and no reliance is placed on any such evidence.

11.11 Lt.Gen. Dramat instructed Brigadier Van Graan a legal officer from SAPS Head Office to come and have a look at the docket. After the review of the

case, Brig Van Graan then sent correspondence to Dramat recommending that the prosecution continue.

11.12 Dramat then wrote to Adv Vimbani, a copy of which is attached hereto per **Annexure JVL 7(1) to JVL 7(2)**. The memorandum from Lt.Gen. Dramat stated that:

11.12.1 He disagrees that the case is tainted (irredeemably stained)

11.12.2 His office intended to take the matter further and enquires whether Adv Vimbani agrees with the views of Adv Letsholo.

11.13 Adv Vimbani never responded and instead gave the letter to Adv Lawrence Mwerbi. Adv. Lawrence Mwerbi at this stage was the National head of the Commercial crime courts. Adv Mwerbi replied in one line stating, *"he had nothing to state at this stage"*.

12 Advocate Noko

12.10 After our representations stating that the SAPS disagreed with the withdrawal, Adv Noko gave a memorandum on all the cases wherein she declined to prosecute all the cases. Adv Noko's report contained various untruths and misrepresentations, which were pointed out in a subsequent response by Gen.Maj Booysen.

12.11 A copy of the memorandum from Adv Noko dated 21 October 2011, declining to prosecute the matters is attached hereto as **Annexure JVL 8 1(1) to JVL 8(8)**, which:

12.11.1 States that the investigators have 'agendas' and were trying to falsely implicate the P C;

12.11.2 Suggests that Booysen has an agenda to become the PC and access 'secret funds';

12.11.3 States that the constitutional rights of the accused were abused.



12.12 I can confirm that certain statements made by Adv Noko in her memorandum, such as that *"Maj Gen Booysen is the complainant and the only witness in the 466 case against Mr Panday and Col Madhoe"* are false.

12.13 The case docket clearly confirms that Booysen is not the complainant and is merely one of many witnesses.

12.14 The detailed response by Booysen to Adv Noko dated 19 Nov 2014, referring to the memo from Noko dated 21 October 2014 is attached hereto per **Annexure JVL 9(1) to JVL 9 (10)**. Booysen addressed this letter to the National Director of Prosecutions, Pretoria. In the memorandum, Booysen sets out:

12.14.1 The inaccuracies and untruths in Adv Noko's memorandum

12.14.2 That the suspects version is preferred over the SAPS by Adv Noko;

12.14.3 That he had no agenda to become the PC and would not have access to secret funds if he was to become the PC.

12.15 With regards to the attacks on the investigations and Booysen, I can confirm that we obtained an affidavit of Sandesh Dhaniram (now deceased), who was detached to a Taxi Violence task team in 2009. A copy of this affidavit is attached as per **Annexure JVL 10(1) to JVL 10(12)**, which:

12.15.1 Describes Col Aiyer's prolonged 'fight' with Booysen and his attempts to discredit Booysen;

12.15.2 States that Col Aiyer gave items to be handed to 'Comrade Vavi' to publicise and discredit Booysen, including a compact disc ("CD") with crime scene photos depicting Booysen;

12.15.3 States that he, Dhaniram, later copied the CD and handed it to Col Madhoe, who in turn handed it to Panday;



12.15.4 Describes his dealings with Panday and Madhoe on various occasions thereafter.

13 Col Jones

13.10 Although Col Jones was the head of ACTT at the time, Col Govender, Col Herbst and I did not report to him in respect of these Panday related investigations due to sensitivity of the investigations.

13.11 Shortly before Adv Noko signed the memorandum dated 21 October 2011, declining to prosecute the matters, Col Jones called me, Col Govender and Col Herbst to a meeting. He had a copy of the unsigned memorandum in his possession and started asking us questions about the case. He also appeared to be recording us as he placed his cellphone in the middle of the table. As a result, we left the meeting.

13.12 After the withdrawal of the case, Col Jones wrote a letter to SAPS finance instructing them to release the R15 million which had been seized from Panday by the Asset Forfeiture Unit. I obtained a copy of the letter and is attached as **Annexure JVL 11 (still to be located)**. It is unheard of that your own commander is working against you.

13.13 I heard from my old colleague's that Col Jones was recently found guilty at a disciplinary hearing for dishonesty and was fired from the SAPS. However, the sanction was later overturned by Lt. Gen. Lebeya the head of the Hawks. I heard his period of suspension before the disciplinary trial was converted to unpaid leave and he is now back at work. This appears to be a political decision and in my view irregular. I humbly request that the commission investigates this matter if it falls within its mandate.

14 IPID

14.10 In order to ensure that the cases proceeded, we then booked the case dockets out to IPID and reported this to Mr Robert McBride. We then met with the Advocates from IPID and went to Pretoria and made representations to them.



14.11 We met Mr McBride and Gen Maharaj, together with Col Piet Du Plooy (for the 466 case) and Trevor White in KZN. After a presentation, Mr McBride stated that he will ensure the case gets into court and made a few calls in our presence. A few weeks later he was suspended.

14.12 The NDPP Nxasana then appointed Adv. Gerrie Nel and Andrew Leask to deal with the case. They interviewed us; however, shortly after that Nxasana and Adv. Gerrie Nel were removed. Nothing further transpired with the cases.

15 Re-instatement of charges

15.10 After the appointment of Adv Shawn Abrahams as the DPP, he sent a directive that the charges against Panday and his co-accused should be re-instated. Panday then brought an application for a permanent stay of prosecution.

15.11 The DPP then had external counsel appointed to defend the application to place it back on the roll. Adv. Hilton Epstein SC from the Johannesburg Bar was appointed, and we met with him in March 2018. The review application is now before the High Court per case number 4477/2018. We submitted confirmatory affidavits to Epstein. As a result of Adv. A Letsholo's decision not to prosecute the matter it now cost the taxpayers thousands of Rands to pay a private senior council to litigate the matter in a High Court.

15.12 A copy of the respondents answering affidavit, the then ADPP Adv. Silas Ramaite is attached hereto marked Annexure JVL 12(1) to JVL 12(122). The submission sets out the reasons why the decisions by Adv Noko, Adv Letsholo and Adv Vimbani were baseless, unfounded and incorrect.



16 Current status

16.10 Adv Wendy O'Brien has been appointed to deal with all four cases and the indication to me is that;

16.10.1 The review of the application for the stay of prosecution in the main case Durban Central CAS 466/10/2010 is likely to take another 2 years;

16.10.2 Consequently, a racketeering prosecution is unlikely to take place;

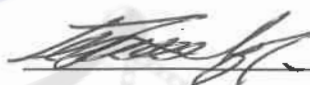
16.10.3 She was appointed one inexperienced investigator from IPID to assist, which will not suffice if she is to proceed to trial;

16.10.4 She has requested the original investigators be re-appointed to assist with the preparation of the cases for trial.

I know and understand the contents of this declaration.

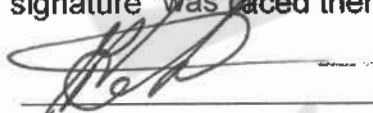
I have no objection to taking the prescribed oath.

I consider the prescribed oath to be binding on my conscience.



JOHANNES VAN LOGGERENBERG

I certify that the deponent has acknowledged that he knows and understands the contents of this statement. This statement was sworn to before me and the deponent's signature was placed thereon in my presence at Durban on 2019-11-26 at 14h50.



COMMISSIONER OF OATH

PHILLIPA HERBST

EX OFFICIO

DPCX - SEC

14TH FLOOR DURBAN CENTRAL SAPS.

Colonel

ANNEXURE JVL 1.



**DIRECTORATE OF PUBLIC PROSECUTIONS
KWAZULU NATAL**

The National Prosecuting Authority of South Africa
Iguqo Jikelele Lomshushisi bokwenzi Afrika
Die Nasionale Verwoegingsgesag vir Suid-Afrika

INTERNAL MEMORANDUM

**TO: ADV. K. D. GOVENDER
ORGANISED CRIME COMPONENT, DURBAN
DPP : KZN**

**FROM: ADV. M NOKO
ACTING DIRECTOR OF PUBLIC PROSECUTIONS
KWAZULU, NATAL HIGH COURT
PIETERMARITZBURG**

**SUBJECT: DURBAN CENTRAL CAS 466/09/2011
(S v MADHOE & T. PANDAY)**

DATE: 7 FEBRUARY 2013

Dear Adv. Govender

1. I have perused the files and the case docket in this matter, wherein the accused persons are charged with one count of corruption, alleged to have offered and / or given a gratification to an officer.
2. I have been presented with representations in this matter which raise some concerns regarding justice. Time is needed to investigate or follow up on these concerns.
3. There is a prima facie case against the accused persons in this matter, however, in the interests of justice, I have decided to provisionally withdraw this matter. It will be dealt with at a later stage after the raised issues have been attended to.
4. This case must thus be provisionally withdrawn on 11 February 2013 when it appears again in court for reasons as I have advanced *supra*. Kindly also inform the SAPS I/O accordingly.

Kind regards

[Signature]

**ADV M NOKO
ACTING DIRECTOR OF PUBLIC PROSECUTIONS
KWAZULU NATAL**

1. copy to Kgo, Nandy
2. Adverse investigation
for
Lor.
8.2.13.

DPP
301 Church Street
PIETERMARITZBURG
3201
T/Bag 78008
PIETERMARITZBURG
3200

KwaZulu/Natal
South Africa

Tel: 033 845 4405
Fax: 033 394 6891

www.npa.gov.za



ANNEXURE JVL 2(1)- JVL 2(50)



Laurence Charles Kemp, Persal number 0070735-0

States in English under oath,

1.

I am a Brigadier in the South African Police Services and The Head of Provincial Financial Services: KwaZulu-Natal. My office is situated at the Provincial Head Quarters, Servamus Building, Room 524, 15 Bram Fischer Street, Durban with telephone number 031-325 4905.

2.

I have been The Provincial Head Financial Services for the last 17 years. My duties and responsibilities are inter alia to regulate the overall financial management of the Provincial budget thereby ensuring the monitoring of expenditure in accordance with budget allocations and give guidance to management where over and under expenditure is detected to comply with the stipulations of the Public Finance Management Act. (PFMA)

3.

As April is the first month of the financial year the Polfin system an internal program where all the budget aspects is captured and the information is available, is deactivated for a period in the beginning of April to reconcile the previous financial years expenditure. During April 2010 the Polfin system was also deactivated. This made it not possible to capture payments, neither was payments made or could any reports be requested to determine any expenditure. On Friday 16 April 2010 I observed that the system was active and I perused the global Provincial expenditure report. I observed that astronomical expenditure was posted against the four (4) travel and subsistence items. They are accommodation, food, special daily allowance and incidental costs incurred for journeys undertaken. I made further enquiries on Polfin enquiry function #2.6.11 to possibly determine the high expenditure in the beginning of the financial year. Perusing the information on the computer screen, I observed large amounts being paid by means of claims paid to members. I took some of the information and made

[Handwritten signatures]

further enquiries on the system and observed that a large portion of the expenditure paid is due to detachments in the Province. As my Budget Section Commander Persal number 466249-1 Col Y Moodley was on vacation leave at that time until Monday 19 April 2010, I approached her assistant Persal number 0416042-8 Capt GV Cadman about the matter who indicated that there are a large number of detachments and these are only the claims of the members and the accommodation is paid by order forms. The Captain indicated that he has received some of the schedules to mark for payment. I requested the Captain for a few schedules to ascertain what the amounts for the accommodation is. Captain GV Cadman brought me some of the schedules. I cannot recall the correct schedules and how many anymore. Perusing the schedules I observed that a large portion is due to detachments. From the schedules I also observed very high amounts being claimed for accommodation for example the SAPS was paying a price of R550 per person sharing and R850 per person single at Estcourt. Perusing other schedules I also observed a few amounts that the prices were according to my opinion much more than the average price as there had to be good reasons for Bed and Breakfast accommodation to exceed R500 per person per night. During the process of perusing these schedules I also observed that all the claims are for one supplier in the name of Goldcoast Trading. Knowing that the database must be rotated it didn't seem to be correct that only one supplier is used. I interrogated Captain Cadman about the high amounts who indicated that the Budget section where he works were merely giving financial authorities after being requested by Supply Chain Management to give authority. I immediately ordered that the applications need to be perused and a more reasonable amount be considered before financial authority be granted.

On Tuesday 20 April 2010 on the return of Colonel Y Moodley, the Section Commander of the Budget section, I confronted her with the granting of these financial authorities without considering whether the prices were

The block contains two handwritten signatures in black ink, located at the bottom right of the page. The first signature is on the left and the second is on the right, both appearing to be stylized and possibly belonging to the same person.

reasonable. As I normally use comparisons I also asked her who this supplier of Goldcoast or no coast is. Colonel Y Moodley gave me the same reasoning as Captain GV Cadman about the granting of financial authorities. Colonel Y Moodley also indicated that she was not aware of the supplier Goldcoast Trading, which I enquired about. I then instructed Colonel Y Moodley that this cannot continue and more reasonable prices must be obtained. I also instructed Colonel Y Moodley to compile a schedule of the expenditure incurred to determine in what station areas and what suppliers are used to ultimately inform Core Management (Provincial Commissioner and Deputy Provincial Commissioner's) of the astronomical expenditure. Colonel Y Moodley started to collect the information and discussed the matter during the cause of the days following the 20th April 2010 with me.

5

On Friday 23 April 2010 I requested another global expenditure report from Polfin system for the Province and observed that the expenditure for the four mentioned items for the period 1 to 23 April 2010 was already R10 869 646-00. Attached hereto marked annexure LCK 1 (1) to LCK 1 (4) is a copy of the report. Myself and Colonel Y Moodley discussed the matter again and I instructed Colonel Y Moodley that on Monday 26 April 2010 the information must be available as an information note must be compiled to Core Management to inform them about the expenditure. On Monday 26 April 2010 Col Y Moodley presented me with some information. I perused the information which was in the form of a schedule and instructed Colonel Y Moodley to compile and finalize an information note attaching the schedule highlighting the expenditure.

6

On Wednesday 28 April 2010 after the holiday of Tuesday 27 April 2010 I attended the Provincial Management meeting (PMF). During the course of the day Colonel Moodley presented me with a draft information note. I perused the contents and verified the correctness of the contents. There were minor mistakes more to do with the structuring of the sentences and



I returned the information note to Colonel Moodley. During the course of Wednesday 28 April 2010 at the Provincial Management meeting I verbally mentioned to Major General JW Booysen, the Deputy Provincial Commissioner for the DPCI, that I am concerned about the expenditure of the detachments and that the SAPS are paying exorbitant prices for accommodation. General Booysen requested me to compile something in writing to that effect. I indicated that I was in the process of doing so and will be forwarding an information note to the Provincial Commissioner and the Deputy Provincial Commissioners.

7

Early on Thursday 29 April 2010 Colonel Y Moodley presented me with the information note. As I have verified the information and was in agreement with the contents of the information note I signed it. I signed five copies as it was addressed to the Provincial Commissioner, Lieutenant General BM Ngobeni as well as the three Deputy Provincial Commissioners, Major Generals SF Masemola, BA Ntanjana and JW Booysen. The fifth signed copy I kept, and is attached hereto marked as per annexure LCK 2 (1) to LCK 2 (3). The contents of the information note is the following:

8

During the 2008/2009 financial year an amount of R 33 966 000.00 (thirty three million nine hundred and sixty six thousand rand) was utilised for the said four items mentioned in paragraph three supra. In the 2009/2010 financial year this amount increased by 63.4% (sixty three point four percent), as the Province concluded the financial year with R55 502 000.00 (fifty five million five hundred and two thousand rand).

9

Expenditure incurred on these four items for the month of April 2010 as of 28th April 2010 is R11 194 000.00 (eleven million one hundred and ninety four thousand rand). A large portion of the expenditure is due to detachments in the Province. The substantial expenditure can be disposed

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off, as expenditure carried over from the 2009-2010 financial year, however on conducting a comparative study it is clearly not the case.

10

Towards the end of 2008/2009 financial year the Province experienced similar challenges as at 2009/2010 financial year with the system being blocked for further processing. In April 2009 the Province incurred expenditure to the value of R5 924 000.00 (five million nine hundred and twenty four thousand rand) and May 2009 R2 700 000.00 (two million seven hundred thousand). When looking at the amount comparatively the Province spent R2 570 000.00 (two million five hundred and seventy thousand rand) more in April 2010 than April (R5 924 000.00) and May (R2 700 000.00) 2009 together.

11

During the 2009/2010 financial year the Provinces average expenditure per month was R4 625 000.00 (four million six hundred and twenty five thousand rand), totalling R55 502 00.00 (fifty five million five hundred and two thousand rand) for the financial year. Should the expenditure trend for deployments continue as the financial year progresses, the Province will conclude this financial year spending approximately R134 000 000.00 (one hundred and thirty four million rand) on the four travel and subsistence items mentioned in paragraph three supra, which is a 6th of the Provinces total estimated allocation.

12

It has come to the attention of this office that one agent is utilised to obtain quotations, resulting in the state paying substantial sums of money for accommodation costs.

13

The details of two (2) applications (copies attached hereto marked as per annexure LCK 3 (1) to LCK 3 (5) and LCK 4 (1) to LCK 4 (9) respectfully) that were forwarded to this office for approval serves as examples:



	Application 1		Application 2	
Location	Estcourt		ORS Trainers	
Supplier	Gold Coast Trading		Gold Coast Trading	
Period	2009-12-24 to 2010-01-06		2010-02-21 to 2010-03-14	
Number of members deployed	6		6	
Cost of accommodation per person, per night	R1 350.00		R999.00	
Cost of accommodation for the duration	R113 400.00 (14 days)		R119 880.00 (20 days)	

14

The expenditure of the four (4) items is 12.9% of the total expenditure for the budget category Goods and Services for the month of April 2010 (information as at 28 April 2010). This office understands that some priorities cannot be ignored; however the current detachment expenditure trends could result in disastrous consequences.

15

On Thursday 29 April 2010 the Provincial Management Forum continued and I handed a signed copy of my information note to Major General Booysen as he was the only member of Core Management available. On Friday 30 April 2010 on the third day of the Provincial Management Forum Major General Ntanjana returned and I also supplied the General with a copy of my information note. At the conclusion of the Provincial Management Forum on Friday I went to the Provincial Commissioner and briefly indicated to the Commissioner that I am concerned about the

expenditure of detachments and that I have compiled an information note pertaining to the matter. I handed a copy to the Provincial Commissioner. The Provincial Commissioner indicated that she will look into the matter. As Deputy Provincial Commissioner Masemola wasn't available I handed a copy to the General's secretary.

16

On Monday 3 May 2010, Major General Booysen telephonically informed me that he has handed a copy of my information note to Brigadier Lategan of the Commercial Branch to investigate the matter.

17

On Tuesday 4 May 2010 during the course of the day Brig Lategan and Col Subramoney visited my office. Colonel Y Moodley was also present. The contents of the information note to Core Management was discussed, as well as a copy of the schedule "Deployment schedules already paid" that was compiled for the payments to Gold Coast Trading CC was given to Brig Lategan. Attached hereto marked annexure LCK 5 (1) to LCK 5 (9) is a copy of the schedule. During the discussions the process especially the procurement procedures were discussed. During the discussions Brig Lategan requested whether it is possible to obtain banking details of certain members. I indicated that it will be possible to obtain the latest banking details of a member to where the salary is paid to. A verbal request was made if the details of Colonel N Madoe of the procurement section at Provincial Supply Chain Management can be obtained. I withdrew a print out of the members banking details from the Persal System and handed it to Brig Lategan.

18

On Wednesday 5 May 2010 at about 15:25 while myself and Colonel Moodley was at Jacobs Garage attending to work related matters I received a phone call from the Provincial Commissioner, Lieutenant General Ngobeni on my cellphone. The Provincial Commissioner informed me that the investigation pertaining to the procurement procedures of the detachment duties must stop and I must inform Deputy Provincial



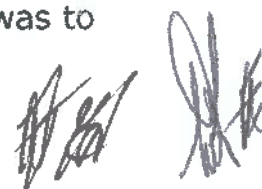
Commissioners Ntanjana and Booysen. I first phoned General Booysen, however the General's phone was on voice mail and I left a message informing the General of the Provincial Commissioners instruction. I then contacted General Ntanjana and informed the General of the Provincial Commissioners instruction whose response was that I am telling him that while it is raining and the roof is leaking we mustn't repair the roof. As I wasn't directly involved in the investigation I considered that I have complied with the Provincial Commissioners instruction.

19

On Saturday 8 May 2010 at about 17:00 I received a phone call on my cellphone from the Provincial Commissioner. The Provincial Commissioner enquired about the detachment expenditure and the procurement processes thereof. I highlighted and raised my concern about the high expenditure of detachment duties and indicated that if the current expenditure for detachments continue it will have a very negative impact on the Provincial budget. I also raised my concern about the expenditure of certain detachments that was exorbitant. I gave the example of the expenses of obtaining accommodation of R850-00 per night per person for detachment at Estcourt, which I was of opinion, was far too expensive. This call lasted for some time and the Provincial Commissioner also asked me about procurement procedures, but I refrained to give an opinion and focussed on my responsibility pertaining to the budget and the high expenditure for detachment duties. The call was concluded when the Provincial Commissioner indicated that the matter will be discussed in her office on Monday 10 May 2010.

20

On Monday 10 May 2010 at about 08:30 I was informed to go to the Provincial Commissioners office. On my arrival at the Provincial Commissioners boardroom the Provincial Commissioner, the three Deputy Provincial Commissioners Masemola, Ntanjana and Booysen as well as Colonel N Madhoe of Provincial Supply Chain Management was present. The Provincial Commissioner indicated the purpose of the meeting was to



look at the expenses of the detachments. Col Madhoe was asked to explain the procurement process, but hardly started when the Provincial Commissioner asked me to highlight the details of my information note. I told the meeting about the expenditure for detachment duties and the high expenditure as well as raised my concerns of the high expenditure incurred pertaining to certain detachments. I again referred to the example of high costs for accommodation at Estcourt. While I was giving my concerns the Provincial Commissioner interrupted on a few occasions and some of the Deputies like General Ntanjana was given an opportunity to comment. At one stage at the meeting a letter received from Head Office, which was forwarded to the Provincial Commissioner and myself as the Provincial Head Finance and requested the Province to supply information, was discussed. I indicated that I am in the process of compiling the feedback. This upset the Provincial Commissioner, who indicated that these direct lines we have with Head Office must stop. The Provincial Commissioner was very angry at me. This became the main issue and not the issue of the high expenditure for detachment duties. I was given to understand that I must know what I must do and use the correct communication channels. I felt and got the impression that I was at wrong and must not have compiled the information note as the Provincial Commissioner was very upset with me. As the meeting was becoming unpleasant Major General Booysen requested whether myself and Col Madhoe cannot be excused and Core Management discuss the matter further. The two of us was then excused. I was hurt about the treatment at the meeting, but decided to be committed to my job.

21

During the weeks following the meeting I was not officially approached about the matter again. As it seemed to me to be a very sensitive issue I decided to limit discussions about the matter with officials. I had regular informal discussions with Colonel Y Moodley. It became clear to me through discussions with Colonel Y Moodley that she was assisting the investigation team. On several occasions I verbally cautioned Colonel Y



Moodley to be careful what information is released, as several officials are observing what is being done by the Financial Component.

22

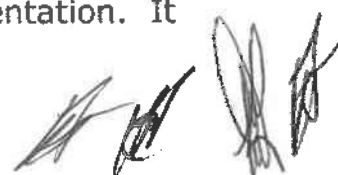
To ensure that myself and the Financial Component for which I am responsible doesn't make information available unauthorized, I compiled an information note directed to Colonel Moodley on 25 June 2010. In the information note Col Moodley was instructed not to disclose or hand any official SAPS document to any person with the exception of doing her daily duties. She was also instructed to inform me within 96 (ninety six) hours should any information or documents been disclosed or handed outside her official duties in the Budget Section. A copy of the information note which was acknowledged by Col Y Moodley on Friday 25 June 2010 is attached hereto marked as per annexure LCK 6.

23

On Tuesday 29 June 2010 I received an information note from Col Moodley indicating that the only information disclosed was copies of the payment schedules pertaining to supplier Gold Coast Trading that was handed to Brigadier Lategan and Colonel Subramoney, which was discussed at the meeting on 4 May 2010. A copy of the information note received is attached hereto marked as per LCK 7.

24

During the latter part of July 2010 I received a letter dated the 29th June 2010 directed to me as Provincial Head Financial Services per normal post. In this letter it was indicated that it was noticed with concern that various documentation which form part of procurement processes are being copied, duplicated and produced by my office. As a result confidentiality of documentation which contains information of suppliers cannot be guaranteed. The letter also indicated that a lot of negative publicity which is largely attributed to corrupt individuals as well as unauthorized individuals having unlimited access to documentation. It



further indicated that all documentation will be retained at Acquisition section for audit purposes and should any documentation be required it must be requested in writing. The letter also clearly indicated that the practice of duplicating/copying live files by members in my office must cease. This letter was signed Major General KV Mekute. A copy of this letter is attached hereto marked as per LCK 8 (1) and LCK 8 (2).

25

Despite the serious contents of the letter it was only forwarded to my office by normal post and my immediate Commander or any Senior Official never discussed it with me. Receiving the letter I got the impression that this was a method to ensure that I have limited access to information. Aware of the sensitivity of the letter I briefly highlighted it at my Management meeting with my Management on Thursday 29 July 2010, without disclosing too much information. I only discussed the contents of the letter with Colonel Moodley in detail. I again indicated to her to be alert of what is disclosed.

26

On Thursday 12 August 2010 at about 06:55 when I reported for duty at my office I was approached by Colonel Sheriff. He introduced himself and indicated to me the purpose of his visit. He indicated that he has a search warrant to obtain documentation and information about the investigation instilled. He handed me a copy of the warrant after brief discussions and the fact that the information was processed and kept by my Budget Section it was agreed that Colonel Moodley and her Budget team will assist the team to obtain the required information. The copy of the warrant was handed to Colonel Moodley. I made enquiries with Colonel Moodley before I had to attend to a meeting during the course of the day and she informed me that they are assisting the team. On my return to the office later the day Colonel Moodley informed they assisted the team who had already left. The team took some documents which they acknowledged for.

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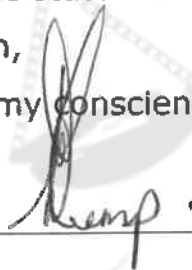
27

On Wednesday 6 October 2010 General Booysen contacted me telephonically and informed me that there are payments outstanding to the service provider Goldcoast Trading, which is under investigation. General JW Booysen requested me not to process the outstanding claims. I informed General JW Booysen that I take note of the request, however I will require a written request to that extend. During the course of the day a written request was received which I perused on 7 October 2010. On Friday 8 October 2010 I made an endorsement on the letter to Colonel Y Moodley of my Budget Section to ensure that no further claims are processed. A copy of the letter is attached hereto marked as per annexure LCK 9 (1) to LCK 9 (3). As I received no contrary instructions, no further claims for Goldcoast Trading was processed.

28

The matter was never discussed at any official meeting thereafter, which I attended. Realising the seriousness I decided to limit my dealings with the matter and ensure that I comply with my responsibilities as Provincial Head Financial Services.

I know and understand the contents of the above statement,
I have no objection in taking the prescribed oath,
I consider the prescribed oath to be binding on my conscience.



Signature of Deponent

I certify that the deponent has knowledge that he knows and understands the contents of this statement which was sworn to before me and his



signature was placed thereon in my presence at Durban on this 19 day of April 2013



COMMISSIONER OF OATHS

COLONEL JOHANNES VAN LOGGERENBERG

SOUTH AFRICAN POLICE SERVICE

14th FLOOR, DURBAN CENTRAL

STANGER STREET, DURBAN

DIRECTORATE FOR PRIORITY CRIME
INVESTIGATION - KZN





OBJECTIVE SYSTEM
EXPENDITURE SHEET

2010-04-23
06:42:59

B.5.6(01)

LAY OUT 2
PERIOD 1
FUND
ACCOUNT DETAIL (0=No,1=Yes)
SMALL SCA CODE (0=No,1=Small Item,2=Project)
OUTLAY 2
BUDGET TYPE 01
BUDGET NUMBER
BUDGET YEAR 2010/11
PRINT MOTIVATION (0=No,1=Yes)
RESPONSIBILITY CODE 3711
OBJECTIVE CODE 2
SCA CODE 300001
PROJECT CODE
EXCLUDE PROJECTS (0=No,1=Yes)
SMALL ITEM
JOB REQUEST 8728
ACCRUALS
REPORTING DATE

Prov
23/4

	1	2	3	4	5	6	7	8	9
STRUCTURE(P/R/O/L)	R	O	L	L					
STRUCTURE LEVEL - FROM	30	15	20						
- TO				99					
SUMMARY TYPE (1-5)	4	4	4	1					

STRUCTURE	SUMMARY TYPE
R - RESPONSIBILITY CODE	1 - DETAIL
O - OBJECT CODE	2 - SPECIFIC STRUCTURE ELEMENT
L - SCA	3 - DETAIL + SUMMARY
P - PROJECT	4 - SUMMARY AT LEVEL
	5 - BLOCKS SUMMARY

[Handwritten signatures]

PROGRAMME...: B66PG002

OBJECTIVE SYSTEM ... EXPENDITURE REPORT
CURRENT PERIOD : 201004
LAYOUT : 2

DATE...: 2010-04-23
TIME...: 06:43:01
PAGE...: 1

OBJECTIVE : 000002 EXPENDITURE OBJECTIVE HIGH LEV

DESCRIPTION	BUDGET	EXPENSE FOR 201004	EXPENSE TO 201004	REQUESTED + AUTHORISED	COMMITMENT	AVAILABLE
.... L 300009 S&W: BASIC SALARY (RES	0	249,616,055	249,616,055	0	0	249,616,055-
.... L 300031 S&W: PERF AWARD OTHER	0	583,808	583,808	0	0	583,808-
.... L 300042 S&W: SERV BASED OTHER	0	458,004	458,004	0	0	458,004-
.... L 300055 S&W: LEAVE DISCOUNTING	0	174,557	174,557	0	0	174,557-
.... L 300045 S&W: OVERTIME (RES)	0	2,063,065	2,063,065 *	0	0	2,063,065-
.... L 300064 S&W: COMPENS/CIRCUM OT	0	1,226,765	1,226,765	0	0	1,226,765-
.... L 300138 S&W: SERVICE BONUS (RE	0	18,653,590	18,653,590	0	0	18,653,590-
.... L 300166 S&W: HOME OWNER ALLOWA	0	9,849,659	9,849,659	0	0	9,849,659-
.... L 300189 S&W: NON PENSIONABLE A	0	10,522,679	10,522,679	0	0	10,522,679-
.... L 300294 ENPL CONTR: PENSION (	0	43,189	43,189	0	0	43,189-
.... L 300306 ENPL CONTR: MEDICAL (R	0	137,626	137,626	0	0	137,626-
.... L 300313 ENPL CONTR: UIF (RES)	0	19,478	19,478	0	0	19,478-
.... L 300003 COMPENSATION OF EMPLOY	0	293,348,481	293,348,481	0	0	293,348,481-
.... L 300344 BANK CHRGC&CARD FEES OT	0	252,987	252,987	0	0	252,987-
.... L 300330 ADVERT: GIFTS & PROMOT	0	10,100	10,100	0	0	10,100-
.... L 300333 ADVERT: MARKETING	0	224	224	0	0	224-
.... L 300491 C/EQP<R5000:COMP HARDW	0	12,215	12,215	855	741	13,811-
.... L 300487 EQP<R5000:AUDIO VISUAL	0	630	630	0	0	630-
.... L 300494 EQP<R5000:DOMESTIC EQU	0	283,248	283,248	677,307	1,054,242	2,014,798-
.... L 300499 EQP<R5000:EMERGENCY/RE	0	0	0	10,485	28,649	39,135-
.... L 300502 EQP<R5000:GARDENING EQ	0	3,445	3,445	15,350	0	18,795-
.... L 300505 EQP<R5000:KITCHEN APPL	0	3,538	3,538	0	0	3,538-
.... L 300524 EQP<R5000:RADIO EQUIPM	0	145,908	145,908	0	6,933	152,842-
.... L 300536 EQP<R5000:TENTS, FLAGS&	0	13,171	13,171	53,742	130,523	197,437-
.... L 300537 EQP<R5000:WORKSHOP EQP	0	0	0	34,648	3,862	38,510-
.... L 300498 F&O/EQP<R5000:DOMESTIC	0	3,646	3,646	0	0	3,646-
.... L 300519 F&O/EQP<R5000:OFFICE E	0	20,811	20,811	1,313	0	22,125-
.... L 300521 F&O/EQP<R5000:OFFICE F	0	651,346	651,346	62,476	44,799	758,622-
.... L 300353 COM:CELL CONTRAC(SUBSC	0	743,513	743,513	0	0	743,513-
.... L 300356 COM:POST/STAMP/FRANK M	0	23,027	23,027	26,435	9,507	58,970-
.... L 300362 COM:TELEPHONE INSTALLA	0	0	0	0	957	957-
.... L 300363 COM:TEL/FAX/TELEGRAP&T	0	5,256,747	5,256,747	1,539	19,701	5,277,988-
.... L 300384 EXT COMP SER: DATA LIN	0	5,214	5,214	0	0	5,214-
.... L 301314 C/P:BUS&ADV SER:TRNSLA	0	0	0	9,216	6,871	16,088-
.... L 300427 CONS/PROF:ENGIN MECHAN	0	28,026	28,026	35,729	46,953	110,709-
.... L 301000 MNT&REP:OTHER ANIMALS	0	16,054	16,054	0	2,226	18,280-
.... L 301278 CONTRCTRS:PLANT FLOWRS	0	19,750	19,750	92	12,313	32,155-
.... L 300782 MNT&REP:RESIDENCES (PE	0	138,705	138,705	0	0	138,705-
.... L 300801 MNT&REP:OFFICE BUILDIN	0	247,243	247,243	98,589	207,550	553,383-
.... L 300803 MNT&REP:POLICE STATION	0	2,643,104	2,643,104	373,273	577,560	3,593,938-
.... L 300951 MNT&REP:AIRCRAFT	0	3,464	3,464	4,159	49	7,673-
.... L 300954 MNT&REP:BUSES	0	0	0	2,490	7,163	9,654-
.... L 300957 MNT&REP:MOTOR VEHICLES	0	9,875,190	9,875,190	1,058,758	6,046,070	16,980,019-
.... L 300901 MNT&REP:CELLULAR PHONE	0	800	800	843	853	2,496-
.... L 300909 MNT&REP:DOMESTIC EQUIP	0	1,110	1,110	0	3,126	4,236-
.... L 300914 MNT&REP:GARDENING EQUI	0	8,028	8,028	1,245	11,476	20,749-
.... L 300931 MNT&REP:OFFICE EQUIPME	0	30,336	30,336	11,742	33,756	75,836-
.... L 300936 MNT&REP:PHOTOGRAPHIC E	0	705	705	0	0	705-
.... L 300937 MNT&REP:RADIO EQUIPMEN	0	19,367	19,367	0	8,442	27,810-

PROGRAMME....: B66PG002

OBJECTIVE SYSTEM ... EXPENDITURE REPORT

CURRENT PERIOD : 201004

LAYOUT : 2

DATE....: 2010-04-23

TIME....: 06:43:02

PAGE....: 2

OBJECTIVE : 000002 EXPENDITURE OBJECTIVE HIGH LEV

R 10 870
5924

DESCRIPTION	BUDGET	EXPENSE FOR 201004	EXPENSE TO 201004	REQUESTED + AUTHORISED	COMMITMENT	AVAILABLE
.... L 300945 MNT&REP:TELECOMMUNICAT	0	0	0	3,969	16,929	20,898-
.... L 300428 A&S/O/S:PERSONNEL&LABO	0	577,731	577,731	0	175,388	753,120-
.... L 300431 A&S/O/S:MECHANICAL SER	0	476,601	476,601	0	25,140	501,742-
.... L 300432 A&S/O/S:RESERVISTS	0	1,717,941	1,717,941	0	0	1,717,941-
.... L 301029 A&S/O/S:POST MORTEM	0	10,000	10,000	0	5,000	15,000-
.... L 300606 A&S/O CATERING SER:DET	0	3,334,912	3,334,912	0	0	3,334,912-
.... L 300616 INV F&G:CHEMICALS	0	24,381	24,381	12,757	42,875	80,015-
.... L 300748 INV F&G:FUEL OIL & LUB	0	17,990,165	17,990,165	96,833	164,230	18,251,229-
.... L 300644 INV MAT&SUP:BATTERIES	0	328,950	328,950	43,802	105,402	478,155-
.... L 300645 INV MAT&SUP:BUILDING&C	0	68,477	68,477	1,148,161	14,673	1,231,312-
.... L 300647 MAINT MAT:MAINTENANCE	0	135,282	135,282	81,926	241,158	458,368-
.... L 300649 INV MAT&SUP:SPARES&ACC	0	9,665,603	9,665,603	1,021,374	3,118,464	13,805,441-
.... L 300653 INV MAT&SUP:TYRES & TU	0	2,838,968	2,838,968	705,756	1,095,086	4,639,810-
.... L 300703 INV MED:FIRST AID KID	0	5,417	5,417	9,849	14,009	29,276-
.... L 300627 INV MIL:AMMUNITION & E	0	3,060	3,060	0	550	3,610-
.... L 300635 INV MIL:MATERIAL; SHOO	0	22,156	22,156	10,997	43,411	76,564-
.... L 300570 INV OTH CONS:LVSTK FOD	0	211,998	211,998	15,309	127,047	354,354-
.... L 300590 INV OTH CONS:UNIF&PROT	0	1,983,482	1,983,482	327,522	952,817	3,263,823-
.... L 300591 INV OTH CONS:WASH/CLEA	0	543,741	543,741	361,113	551,178	1,456,033-
.... L 300594 INV OTH CONS:TOILETRIE	0	22,394	22,394	1,727	9,081	33,203-
.... L 300622 INV OTH CONS:LABORATOR	0	555,016	555,016	926,672	1,512,137	2,993,827-
.... L 300631 INV OTH CONS:CELLPHONE	0	0	0	189	0	189-
.... L 300636 INV OTH CONS:PACKING M	0	0	0	0	4,900	4,900-
.... L 300642 OTH CONS:WORKSHOP MATE	0	0	0	0	2,504	2,504-
.... L 302094 INV OTH CONS:LICENCE P	0	0	0	0	60	60-
.... L 300551 INV STA&PRINT:NEWSPAPE	0	9	9	9-	0	0-
.... L 300654 INV STA&PRINT:AUDIO VIS	0	71	71	2,160	0	2,231-
.... L 300663 INV STA&PRINT:COMPUTER	0	676,744	676,744	334,124	621,076	1,631,945-
.... L 300668 INV STA&PRINT:PHOTOGRA	0	4,750	4,750	0	0	4,750-
.... L 300670 INV STA&PRINT:GOVERNME	0	1,072,419	1,072,419	471,929	878,535	2,422,884-
.... L 300673 INV STA&PRINT:STATIONE	0	272,770	272,770	189,055	160,886	622,712-
.... L 301193 LEASES :OFFICE EQUIPME	0	1,776,050	1,776,050	549,468	716,263	3,041,782-
.... L 301196 LEASES :SANITATION EQP	0	19,965	19,965	997	9,778	30,741-
.... L 301206 LEASES :TELECOMMUNICAT	0	38,719	38,719	0	0	38,719-
.... L 301208 LEASES :W/SHOP EQP&TOO	0	4,514	4,514	0	660	5,174-
.... L 301209 LEASES:LIFTING & HANDL	0	0	0	6,500	22,982	29,482-
.... L 300656 O&L/P/P:GARDENING SERV	0	18,042	18,042	0	0	18,042-
.... L 301298 O&L/P/P:CLEANING SERVI	0	3,857,171	3,857,171	671,442	1,103,179	5,631,793-
.... L 301305 O&L/P/P:LAUNDRY SERVIC	0	27,626	27,626	25,778	24,544	77,949-
.... L 301311 O&L/P/P:SAFEGUARD & SE	0	2,296,046	2,296,046	1,471,612	623,536	4,391,196-
.... L 301317 TRANSP FOR EXCURSIONS	0	198,965	198,965	0	0	198,965-
.... L 301335 T&S DOM: ACCOMMODATIO	0	7,717,692	7,717,692	797,351	3,764,990	12,280,033-
.... L 301345 T&S DOM: DAILY ALLOWA	0	741,911	741,911	780	0	742,691-
.... L 301346 T&S DOM: FOOD&BEVER(S	0	1,543,758	1,543,758	68,239	60,879	1,672,877-
.... L 301347 T&S DOM:INCIDENTAL CO	0	866,285	866,285	1,593	0	867,878-
.... L 300185 S&W: FUEL ALLOWANCE (R	0	744	744	0	0	744-
.... L 301350 T&S DOM WITHOUT OP: K	0	736,255	736,255	0	0	736,255-
.... L 301351 T&S:MEDICAL RELATED EX	0	3,745	3,745	0	0	3,745-
.... L 301356 T&S DOM WITHOUT OP: K	0	191,792	191,792	0	0	191,792-
.... L 301362 T&S DOM WITH OP: AIR	0	76,332	76,332	87,329	15,056	178,717-

PROVINCIAL FINANCIAL S E R V I C E S



INFORMATION NOTE

KWAZULU-NATAL

Dealt With Brigadier Kemp / Colonel Y Moodley Date : 29 April 2010

My Ref. 14/1/4/1/0/3(Gen1429) Tel 031 3254844 Fax No. : 031 3254966

To: A The Provincial Commissioner
KWA-ZULU NATAL
B The Deputy Provincial
Commissioner
KWA-ZULU NATAL
Attention : A Att : Lt General
B M Ngobeni
B Att : Maj General S F Masemola /
Maj General B A Ntanjana
Maj General J W Booysen

Your Ref. : Dated : Tel No. :

Subject : EXPENDITURE INCURRED IN TERMS OF DETACHMENTS

Message :

- A&B 1. On perusing the Provincial expenditure, it became apparent that core management be informed of the astronomical expenditure incurred by the four (4) travel and subsistence (accommodation / food/ special daily allowance & incidental costs) items.
2. During the 2008/2009 financial year an amount of R33 966 000 was utilised, however in the 2009/2010 financial year this amount increased by 63.4%, as the Province concluded the financial year with R55 502 000.
3. Currently (information as at 28 April 2010) expenditure incurred on these four items for the month of April 2010 is R11 194 000. A large portion of the expenditure is due to detachments in the Province. The substantial expenditure can be disposed off, as expenditure carried over from the 2009-2010 financial year, however on conducting a comparative study it is clearly not the case.

1

PROGRAMME...: B66PG002

OBJECTIVE SYSTEM ... EXPENDITURE REPORT
CURRENT PERIOD : 201004
LAYOUT : 2

DATE...: 2010-04-23
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OBJECTIVE : 000002 EXPENDITURE OBJECTIVE HIGH LEV

DESCRIPTION	BUDGET	EXPENSE FOR 201004	EXPENSE TO 201004	REQUESTED + AUTHORISED	COMMITMENT	AVAILABLE
.... L 301366 T&S DOM WITH OP: ROAD	0	27,096	27,096	0	36,986	64,082-
.... L 301370 T&S FORGN: ACCOMMODAT	0	10,100	10,100	0	0	10,100-
.... L 301374 T&S FORGN: DAILY ALL	0	3,170	3,170	0	0	3,170-
.... L 300447 TRAIN&STAFF DEV:EMPLOY	0	0	0	44,959	0	44,959-
.... L 300396 INVESTIGATION OF CRIME	0	124,910	124,910	45,804	131,660	302,376-
.... L 300453 O/P:COURIER&DELIVRY SE	0	1,977	1,977	12,080	822	14,880-
.... L 300455 O/P:DRIVERS LICENS&PER	0	377	377	0	0	377-
.... L 300479 O/P:PROTEC/SPEC CLOTH&	0	120,913	120,913	344,400	11,380	476,693-
.... L 300540 O/P:TOWING COST	0	181,455	181,455	317,931	380,952	880,338-
.... L 301280 O/P:PRINTING&PUBLICATI	0	3,640	3,640	772	691	5,104-
.... L 301282 O/P:PROF BODIES, MEMB&S	0	37,176	37,176	19,370	0	56,546-
.... L 301284 O/P:RESETTLEMENT COST	0	1,317,312	1,317,312	69,901	303,691	1,690,904-
.... L 301292 O/P:ROADWORTHY TESTS	0	3,855	3,855	2,702	6,151	12,708-
.... L 301399 WITNESS FEES	0	2,352	2,352	0	0	2,352-
.... L 300394 INFORMER FEES	87,174	168,800	168,800	204,000	0	372,800-
.... L 301391 VENUES AND FACILITIES	0	51,208	51,208	24,030	300	75,538-
.... L 300328 GOODS AND SERVICES	13,299	85,174,684	85,174,684	* 13,012,561	25,361,384	123,548,630-
.... L 301731 MUN B/ACC:VEHICLE LICE	16,66	0	155,432	* 152,318	0	307,751-
.... L 301427 PROVINCIAL AND LOCAL G	0	0	155,432	152,318	0	307,751-
.... L 302100 H/H EMPL S/BEN:PST RET	0	3,016,958	3,016,958	35,000	79,999	3,131,958-
.... L 302239 MEDICAL EXP/DETAINED P	0	1,299,834	1,299,834	* 0	0	1,299,834-
.... L 302223 H/H:CLAIMS AGAINST STA	0	234,170	234,170	0	0	234,170-
.... L 302096 HOUSEHOLDS (HH)	0	4,550,963	4,550,963	35,000	79,999	4,665,963-
.... L 302277 PUR/CAP/ASS:MOBILE HOM	0	0	0	0	1,368,224	1,368,224-
.... L 302304 PUR/CAP/ASS:POLICE STA	0	0	0	8,935	0	8,935-
.... L 302269 BUILDINGS & OTHER FIX	0	0	0	8,935	1,368,224	1,377,159-
.... L 302418 PUR/CAP/ASS:COMP HARDW	0	15,423	15,423	2,257	2,043	19,723-
.... L 302444 PUR/CAP/ASS:OFFICE EQU	0	21,570	21,570	35,642	0	57,212-
.... L 302445 PUR/CAP/ASS:OFFICE FUR	0	74,333	74,333	0	1,000	75,333-
.... L 302447 PUR/CAP/ASS:PHOTOGRAPH	0	428,614	428,614	0	39,450	468,064-
.... L 302414 PUR/CAP/ASS:AUDIO VISU	0	89,999	89,999	18,798	0	108,798-
.... L 302423 PUR/CAP/ASS:DOMESTIC E	0	976,298	976,298	329,868	104,958	1,201,208-
.... L 302448 PUR/CAP/ASS:RADIO EQUI	0	17,333	17,333	27,432	0	44,766-
.... L 302452 PUR/CAP/ASS:SEC EQP/SY	0	330,599	330,599	0	69,400	400,000-
.... L 302456 PUR/CAP/ASS:TELECOMMUN	0	51,969	51,969	0	0	51,969-
.... L 302457 PUR/CAP/ASS:TENTS; FLA	0	0	0	1,175	0	1,175-
.... L 302404 PUR/CAP/ASS:MOTOR VEHI	0	9,300,322	9,300,322	0	0	9,300,322-
.... L 302407 PUR/CAP/ASS:TRAILERS A	0	0	0	57,800	751,400	809,200-
.... L 302396 MACHINERY & EQUIPMENT	0	11,306,466	11,306,466	* 472,975	758,335	12,537,777-
.. O 000002 EXPENDITURE OBJECTIVE	0	394,536,028	394,536,028	13,681,791	27,567,943	435,785,763-

99 999

INTO STATE CAPITAL

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4. Towards the end of the 2008/2009 financial year the Province experienced similar challenges as the 2009/2010 financial year with the system being blocked from further processing. In April 2009 the Province incurred expenditure to the value of R5 924 000 and May 2009 R2 700 000. When looking at the amount comparatively the Province spent R2 570 000 more in April 2010 than April (R5 924 000) and May (R2 700 000) 2009 together.
5. During the 2009/2010 financial year the Province's average expenditure per month was R4 625 000, totalling R55 502 000 for the financial year. Should the expenditure trend for deployments continue as the financial year progresses, the Province will conclude this financial year spending approximately R134 000 000 on the four travel and subsistence items mentioned in paragraph 1 supra, which is a 6th of the Province's total estimated allocation.
6. It has come to the attention of this office that one agent is utilised to obtain quotations, resulting in the state paying substantial sums of money for accommodation costs.
- 6.1 The details of the following two (2) latest applications (copies attached) that were forwarded to this office for approval serve as examples :

	Application 1	Application 2
Location	Estcourt	ORS Trainers
Supplier	Gold Coast Trading	Gold coast Trading
Period	2009-12-24 to 2010-01-06	2010-02-21 to 2010-03-14
Number Of Members Deployed	6	6
Cost Of Accommodation Per Person, Per Night	R1 350-00	R999-00
Cost Of Accommodation For The Duration	R113 400 (14 days)	R119 880 (20 days)

7. The expenditure of the four (4) items is 12.91% of the total expenditure for the budget category Goods and Services for the month of April 2010 (information as at 28 April 2010). This office understands that some priorities cannot be ignored, however the current detachment expenditure trends could result in disastrous consequences. In order to overcome the substantial percentage utilised in favour of deployments and without compromising the comfort of officials deployed, it will have some financial relief if the role players co-ordinating the deployments could ensure that cost effective measures are taken into account.


F/PROVINCIAL COMMISSIONER : KWA ZULU NATAL
L C KEMP





SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

P O Box 1965, Durban, 4000

Verwysing Reference	3/31/121/3
Navrae Enquiries	Capt Narainpershad
Telefoon Telephone	031-3255824
Faksnommer Fax number	031-3255823

THE PROVINCIAL COMMISSIONER
PROVINCIAL SCM
KWAZULU-NATAL
P O BOX 1965
DURBAN
4000

22 Decemmbur 2009

The Section Head
Acquisition Management
SCM
KWAZULU NATAL

SUBMISSION : ACCOMMODATION : NIU MEMBERS DEPLOYED TO ESTOURT :2009-12-23 TO 2010-01-22

1. BACKGROUND

1.1. Political intolerance in Estcourt and Intergroup conflict in Loskop is a great concern for the Cluster Commander and the Provincial Core Management. A number of lives have been lost between the Kubheka and Khumalo clan in the Area. Call up instruction 25/1/7/(9) (45/12/2009) dated 2009-12-22 refers.

1.2 Due to the above para 1.1. the area is now volatile.

2. QUOTATIONS OBTAINED

2.1 One quote obtained due the urgency of the situation.

3. COST IMPLICATIONS

3.1. Goldcoast Trading : 2009-12-24 to 2010-01-06 :R113 400.00 (6 members)

4. RECOMMENDATION

In view of the above, paragraph 3.1. is recommended. It is in the interest of public safety and to maintain law and order that this application be approved.


CAPTAIN
A NARAINPERSHAD

APPROVED / NOT APPROVED

Para 3.1 approved.

TANO: 3723077207


SNR SUPERINTENDENT
SECTION HEAD: ACQUISITION MANAGEMENT
SUPPLY CHAIN MANAGEMENT : KWAZULU NATAL
N MADHOE

Suid-Afrikaanse Polisie



South African Police Service

Privaatsak / Private Bag
Postbus / Post Office Box 1965, Durban, 4000

Verwysing/Reference : 25/1/7(9) (45/12/2009)
Navrae/Enquiries : Supt. Gasa/Capt. Ntuli
Telefoon/Telephone : (031) 325 4849
Faksnt/Fax no : (031) 325 4960

OFFICE OF THE PROVINCIAL COMMANDER
OPERATIONAL RESPONSE SERVICES
KWAZULU - NATAL
22 DECEMBER 2009

- A. The Unit Commander
National Intervention Unit
KWAZULU NATAL
- B. The Station Commanders
S A Police Service
ESTCOURT
NTABAMHLOPHE
LOSKOP
- C. The Cluster Commander
S A Police Service
ESTCOURT
- D. The Provincial Head
Financial Services
KWAZULU-NATAL

**DETACHMENT DUTIES : NATIONAL INTERVENTION UNIT MEMBERS :
ESTCOURT FROM 2009-12-23 TO 2010-01-22**

SITUATION :

- A.1. Political intolerance in Estcourt and Intergroup conflict in Loskop area is a great cause of concern for the Provincial Police Management. A number of lives have been lost between the Kubheka clan and Khumalo clan in Loskop area.

- 2. To this effect National Intervention Unit to deploy as follows:-

06 x members

3. CO-ORDINATING INSTRUCTIONS :

- 3.1 The Officer to report to S/Supt. Reynders at SAPS Estcourt on Wednesday 2009-12-23 for briefing by S/Supt. Reynders .
- 3.2 Members must be equipped with necessary equipment and vehicle.
- 3.3 For any further enquiries, S/Supt. Reynders can be contacted on cell no. 082 417 5235.

[Handwritten signatures]

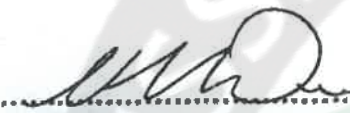
4. **FINANCIAL IMPLICATIONS :**

- 4.1 Members will be accommodated at Bergville Lodge and an order form will be issued for this purpose. There will be no need for standing advance for accommodation.
- 4.2 Members will qualify for S&T and meals allowance.
- 4.2 The following codes apply :-

RESPONSIBILITY : 3723
OBJECTIVE : 0192

B&C.1. Copy for your information.

D.1. Copy for your information and necessary attention.


DIRECTOR
PROVINCIAL COMMANDER : OPERATIONAL RESPONSE SERVICES
KWAZULU-NATAL
V H HUNTER





GOLDCOAST TRADING CC

CK No: 2006/090013/23

45 Zenith Drive
Unit 303 Quarts
Umhlanga Rocks
4019

P.O. Box 3361
Sommerset Park
Umhlanga Rocks
4021
Tele: 031- 8112472
Fax : 031- 2794595

Email address: Thoshan.panday@momentum.co.za

QUOTATION

06 January 2010

Att: SAPS

Re: TOZER'S - WINTERTON DEPLOYMENT

As per inquiry 6 Police Personnel to be accommodated from the 24th December 2009 till the 06th January 2010.

The quote comprises of the following:

6 members @R1350.00 per Single Rooms

The total owing is R113,400.00

Regards

P.P. PRANASH

Thoshan Panday.

[Handwritten signatures]

Tax Invoice

GOLDCOAST TRADING CC

Ck No: 2006/090013/23

45 Zenith Drive
 Quartz, Unit 303
 Umhlanga Rocks
 4019
 Tel: 031 811 2472

P.O. Box 3361
 Somerset Park
 Umhlanga Rocks
 4021
 Fax: 031 279 4595

Email Address: Theshan.panday@momentum.co.zaProvincial CommissionerTo: S.A.P.SKwazulu NatalINVOICE NUMBER: 10040Order Number:Date: 06 -01-2010

QTY	DESCRIPTION	@	R	c
6	TOZER'S -Winterton Deployment from 24 th of Dec2009 to the 06 th of Jan 2010			
6	Single Rooms	R1350.00	R113,400	00
Subtotal				
Total Due			R113,400.00	00

SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

P O Box 1965, Durban, 4000

Verwysing Reference	3/3/1/121/3
Navrae Enquiries	Capt Narainpershad
Telefoon Telephone	031-3255824
Faksnommer Fax number	031-3255823

THE PROVINCIAL COMMISSIONER
PROVINCIAL SCM
KWAZULU-NATAL
P O BOX 1965
DURBAN
4000

17 February 2010

The Section Head
Acquisition Management
SCM
KWAZULU NATAL

SUBMISSION : ACCOMMODATION : CROWD MANAGEMENT COURSE : TRAINERS : 2010-02-21 TO 2010-03-14

1. BACKGROUND

Training of members for crowd control management is scheduled to take place at the Chatsworth Training Institution attached list. Six trainers from Pretoria will conduct training. Call up instruction 11/1/3/19892 dated 2010-02-17 refers.

2. QUOTATIONS OBTAINED

2.1 Only one quote obtained as no other accommodation available that is close to the the training venue.

3. COST IMPLICATIONS

3.1. Goldcoast Trading :2010-02-21 to 2010-03-14 : 6 members : R119 880.00

4. RECOMMENDATION

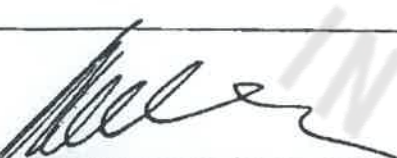
In view of the above paragraph 3.1. is recommended. It is in the interest of public safety that this application be approved.


CAPTAIN
A. NARAINPERSHAD

APPROVED / NOT APPROVED

Rua 3.1 Apprue

TAN0: 3723077140


SNR SUPERINTENDENT
SECTION HEAD: ACQUISITION MANAGEMENT
SUPPLY CHAIN MANAGEMENT : KWAZULU NATAL
N MADHOE

SOUTH AFRICAN POLICE SERVICE



SUID-AFRIKAANSE POLISIEDIENS

Private Bag X177

Reference	11/1/3/1/9892
Enquiries	Capt Thekiso
Telephone	012-334 3681
Fax No	012-334 3726
E-mail	maubane@saps.org.za

OFFICE OF THE DIVISIONAL COMMISSIONER
TRAINING
PRETORIA
0001

2010-02-17

- A. The Provincial Commissioner
SA Police Service
KWA ZULU NATAL (Attention: PTM)
- B. The Commander
SA Police Service
CHATSWORTH

CALL-UP INSTRUCTION : CROWD MANAGEMENT COURSE: 2010-02-21 TO 2010-03-12: CHATSWORTH TRAINING INSTITUTION

- A.-B. 1. The persons on the attached list have been nominated and must attend the above-mentioned training intervention.
2. Training Intervention details:

Course name	Crowd Management Course
Start date & time	2010-02-21 at 07:30
End date & time	2010-03-12 at 16:00
Venue	CHATSWORTH TRAINING INSTITUTION
Authorization (Attached)	Training Head Office 11/1/3/1/ 2232 Serial no 9892
Language of instruction	English

3. Training venue:
- 3.1. The training venue is situated in the KZN Province.
4. Reporting:

Where	CHATSWORTH TRAINING INSTITUTION
When	2010-02-21 not later than 14:00

GOLDCOAST TRADING CC

CK No: 2006/090013/23

45 Zenith Drive
Unit 303 Quarts
Umhlanga Rocks
4019

P.O. Box 3361
Sommerset Park
Umhlanga Rocks
4021
Tele: 031- 8112472
Fax : 031- 2794595

Email address: Thoshan.panday@momentum.co.za

QUOTATION

19February 2010

Att: SAPS

Re:Pinetown - Deployment

As per inquiry 6 Police Personnel to be accommodated from the 21th February 2010 till the 14th March 2010.

The quote comprises of the following:

6 members @R999.00 Single Rooms

The total owing is R119,880.00

Regards

Thoshan Panday.

[Handwritten signatures]

-2-

5. Transport:

- 5.1 In terms of Regulation 23, attendees must use the most cost effective mode of transport.
- 5.2 All attendees must confirm their traveling arrangements by phone (031) 3254784 / 0798810894 to Capt Stephens at least before the course.
- 5.3 Parking for private vehicles is available in the parking areas on the premises. No state vehicles will be allowed to leave the premises without permission from the Commander.
- 5.4 Trainers must be provided with transport for the duration of the course.

6. Accommodation:

- 6.1 All attendees will be accommodated in the single quarters at the training institution.
- 6.2 Rooms are shared between attendees and will be allocated upon arrival.
- 6.3 Only communal ablution facilities are available.
- 6.4 Basic necessities are provided at the institution, but attendees are welcome to bring along their own bedding, radios, kettles etc.

7. Meals:

- 7.1 Mess services will be available for the duration of the training intervention as follows:

Meal	Venue	Time
Breakfast	Chatsworth training Institution	06:30 to 07:15
Brunch	Chatsworth training Institution	10:30 to 11:15
Tea	Chatsworth training Institution	14:00 to 14:15
Supper	Chatsworth training Institution	16:30 to 17:30

8. Dress code:

- 8.1 The normal dress code of the SA Police Service applies to all attendees (Uniform / Office Dress).

-3-

- 8.2. All trainees must bring along tracksuits, PT shorts and exercise shoes, as all trainees will be subjected to regular fitness exercises to enhance physical and mental suitability for the operational environment.

9. **Climate:**

- 9.1 The training institution is situated in a summer rainfall region and little rain is expected during the winter months.
- 9.2. During summer, the days are extremely hot (up to 40°C).

10 **Use of alcohol:**

- 10.1 In accordance with Standing Order 71(19)(e), no liquor is allowed in the living quarters.

11. **Specific instructions:**

- 11.1. All attendees must be in possession of an approved itinerary (SAPS 501).
- 11.2. No absence from the program will be allowed. Attendees who have to attend court cases during the training intervention will not be allowed to complete the course. Prior arrangements in this regard must be made with prosecutors.
- 11.3 All lecture material will be provided to attendees.
- 11.4. Attendees are responsible for all stationery.
- 11.5. No firearms will be allowed in the living quarters. All firearms must be booked into the safe upon arrival at the training institution.
- 11.6. All attendees must bring along their Polmed Membership Cards for use when medical treatment is required.
- 11.7. All attendees must bring along the following items:
- Flashlight;
 - Boots
 - Cap;
 - Insect repellent;
 - Padlock & keys.

12. **Claims:**

- 12.1. In terms of the Financial Authority, attendees are entitled to the following for the duration of the training intervention:

-4-

ITEM	AMOUNT	INTERVAL
Meals during travel	R 130.00	Per day
Washing	R 20.00	Per week

- 12.2. No advances on claims can be arranged during the course. Attendees who need an advance must arrange it at their station prior to departing for the training intervention.
- 12.3. With regard to claims, the stipulations of Regulation 22 will be applicable. The stipulations of Regulation 23 will be applicable to travel arrangements.
- 12.4. All claims must be finalized within 2 weeks of conclusion of the training intervention.
- 12.5. Financial clerks must ensure that all claims are posted against the correct codes as indicated on the attached Financial Authority.
13. Enquiries:

Coordinator	Capt Thekisho
Office number	(012) 3343681
Supervisor	S/Supt Ally
Cell number	0827784298

14. Failure to attend:

- 14.1. If a nominee fails to attend the intervention without a valid reason, disciplinary steps will be instituted against the nominee and his commander which may result in the recovery of the course cost from the responsible person(s).

- *****
- C. 1. For your information.
2. All information regarding the training intervention must be captured on the Training Administration System within 1 week of completion of the intervention.
3. All claims must be processed on POLFIN within 2 weeks of completion of the training intervention.
4. A report on the attendance must be submitted to the Head, In-Service

-5-

Training before 09:00 on the first day of the training intervention.

Edla Dwi
DIVISIONAL COMMISSIONER : TRAINING
Edla Dwi



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SOUTH AFRICAN POLICE SERVICE



SUID-AFRIKAANSE POLISIEDIENS

CROWD MANAGEMENT TRAINING : FRENCH TECHNIQUES
21ST FEBRUARY 2010 TO 12TH MARCH 2010

CHATSWORTH TRAINING INSTITUTION : MEMBERS				
NO	PERSAL NO	RANK	SURNAME & INITIALS	
1	0522970-7	INSP	XULU	CA
2	0455966-5	INSP	ZIBANE	NH
3	0606110-9	INSP	NTOBELA	TM
4	0488070-6	INSP	MANTSINYA	JP
5	0490221-1	INSP	MBOKAZI	MGS
6	0489591-6	INSP	MBATHA	HE
7	0616874-4	INSP	MKHWANAZI	M
8	0633570-5	INSP	PERUMAL	PJ
9	0520745-2	INSP	SOMTSEWU	M
10	0515310-7	INSP	NXUMALO	FM
11	0485480-2	INSP	KHUMALO	LM
12	0489521-5	INSP	MBATHA	DH
13	0523990-7	INSP	ZONDI	HM
14	0609043-5	INSP	MTHIYANE	MG
15	0605910-4	INSP	MOONSAMY	V
16	0464714-9	INSP	NDLOVU	C
17	0637177-9	INSP	SINGH	R
18	0612869-6	INSP	MARAN	L
19	0606606-2	INSP	SOMAYI	T
20	0449319-2	INSP	MOLEFE	MA
21	0450794-1	INSP	RAJA	L
22	0622071-1	INSP	RAMSAROOP	S
23	0453244-9	INSP	VAN ROOYEN	R
24	0603384-2	INSP	POONSAMY	AN
25	0450594-8	INSP	MAGUBANE	BR

127	716718-6	S/CST	MTSHALI	CN
128	6337187-1	S/CST	ZULU	ML
129	7160700-5	S/CST	LUKHELE	TW
130	7160706-4	S/CST(F)	KHOZA	PP
TRAINERS				
01	0604753-0	INSP	GOPAL	I
02	0426552-2	INSP	ELSE	J
03	0622220-1	INSP	NAIDOO L.R	
04	2056965-8	CST	MEKHIZE SA	
05	7058390-5	CST	NDWANDWE	
06	7051943-9	CST (F)	NANTHLAL SINGH	
07	7062511-7	SGT	ELAMINI T	
08	0421000-5	INSP	CELE	
09	0431519-7	INSP	NTSHANGASE	TV



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DEPLOYMENT SCHEDULES ALREADY PAID

Location	Supplier	Period	Number of Nights	Number of Members Deployed	Cost of Accommodation Per Person/ Per Night	Cost of Accommodation for the Duration
Estcourt	Goldcoast Trading CC 10017 dd 2009-12-22	2009-12-04 to 2009-12-09	* 6	54	52 - sharing R550 2 - single R795	R171 600 R9 540
Estcourt	Goldcoast Trading CC 10020 dd 2009-12-22	2009-12-10 to 2009-12-11	1	54	52 - sharing R550 2 - single R795	R28 600 R1 590
Estcourt	Goldcoast Trading CC 10027 dd 2009-12-22	2009-12-11 to 2009-12-18	7	16	R550	R61 600
Estcourt	Goldcoast Trading CC 10033 dd 2009-12-26	2009-12-18 to 2009-12-25	7	18	16 - sharing R550 2 - single R850	R61 600 R11 900
Estcourt (Summer Place Lodge)	Goldcoast Trading CC 100119 dd 2010-01-08	2009-12-18 to 2010-01-08 (to 2010-12-18 error on invoice)	21	1	R1 300	R27 300
Estcourt	Goldcoast Trading CC 10030 dd 2009-12-29	2009-12-25 to 2010-01-01	7	18	16 - sharing R550 2 - single R850	R61 600 R11 900
Estcourt	Goldcoast Trading CC 10039 dd 2010-01-11	2010-01-01 to 2010-01-08	7	18	16 - sharing R550 2 - single R850	R61 600 R11 900
Estcourt	Goldcoast Trading CC 10052 dd 2010-01-23	2010-01-06 to 2010-01-22	16	8	R1 350	6 - R129 600 2 - R43 200 (late comers)
Estcourt Summer Place Lodge	Goldcoast Trading CC 10042 dd 2010-01-15	2010-01-08 to 2010-01-15	7	18	16 - sharing R550 2 - single R850	R61 600 R11 900
Estcourt	Goldcoast Trading CC 10049 dd 2010-01-22	2010-01-15 to 2010-01-22	7	18	16 - sharing R550 2 - single R850	R61 600 R11 900
Estcourt	Goldcoast Trading CC 10053 dd 2010-01-25	2010-01-19 to 2010-01-25	6	30	28 - sharing R750 2 - single R995	R126 000 R11 940

Estcourt	Goldcoast Trading CC 10058 dd 2010-01-29	2010-01-22 to 2010-01-29	7	18	16 - sharing R550 2 - single R850	R61 600 R11 900
Estcourt	Goldcoast Trading CC 10060 dd 2010-02-05	2010-01-25 to 2010-02-05	11	8	R1 350	R118 800
Estcourt	Goldcoast Trading CC 10063 dd 2010-02-05	2010-01-29 to 2010-02-05	7	18	16 - sharing R550 2 - single R850	R61 600 R11 900
Estcourt	Goldcoast Trading CC 10071 dd 2010-02-12	2010-02-05 to 2010-02-12	7	18	16 - sharing R550 2 - single R850	R61 600 R11 900
Estcourt	Goldcoast Trading CC 10079 dd 2010-02-19	2010-02-12 to 2010-02-19	7	18	16 - sharing R550 2 - single R850	R61 600 R11 900
Estcourt	Goldcoast Trading CC 10080 dd 2010-02-19	2010-02-12 to 2010-02-19	7	8	R1 350	R75 600
Estcourt	Goldcoast Trading CC 10087 dd 2010-02-26	2010-02-19 to 2010-02-26	7	8	R1 350	R75 600
Estcourt	Goldcoast Trading CC 10086 dd 2010-01-06	2010-02-19 to 2010-02-26	7	18	16 - sharing R550 2 - single R850	R61 600 R11 900
Estcourt	Goldcoast Trading CC 1001008 dd 2010-03-05	2010-02-26 to 2010-03-05	7	18	16 - sharing R550 2 - single R850	R61 600 R11 900
Estcourt	Goldcoast Trading CC 1001007 dd 2010-03-05	2010-02-26 to 2010-03-05	7	8	R1 350	R75 600
Newcastle (Drakensburg)	Goldcoast Trading CC 10088 dd 2010-02-19	2010-02-14 to 2010-02-20	* 7	33	32 - sharing R595 1 - single R750	R133 280 R5 250
Newcastle (Drakensburg)	Goldcoast Trading CC 10089 dd 2010-02-26	2010-02-20 to 2010-02-27	7	33	32 - sharing R595 1 - single R750	R133 280 R5 250
Newcastle (Drakensburg)	Goldcoast Trading CC 100113 dd 2010-03-12	2010-02-27 to 2010-03-06	7	33	32 - sharing R595 1 - single R750	R133 280 R5 250
Newcastle (Drakensburg)	Goldcoast Trading CC 100114 dd 2010-03-13	2010-03-06 to 2010-03-13	7	33	32 - sharing R595 1 - single R750	R133 280 R5 250
Newcastle (Drakensburg)	Goldcoast Trading CC 100130 dd 2010-03-19	2010-03-13 to 2010-03-19	6	33	32 - sharing R595 1 - single R750	R114 240 R4 500

Newcastle (Drakensburg)	Goldcoast Trading CC 100125 dd 2010-03-25	2010-03-19 to 2010-03-26	7	33	32 - sharing R595 1 - single R750	R133 280 R5 250
Newcastle (Drakensburg)	Goldcoast Trading CC 100134 dd 2010-04-01	2010-03-26 to 2010-04-01	6	33	32 - sharing R595 1 - single R750	R114 240 R4 500
Sundumbili	Goldcoast Trading CC 10016 dd 2009-12-22	2009-12-04 to 2009-12-11	7	27	24 - sharing R585 3 - single R885	R98 280 R18 585
Sundumbili	Goldcoast Trading CC 10025 dd 2009-12-22	2009-12-11 to 2009-12-18	7	27	24 - sharing R585 3 - single R885	R98 280 R18 585
Sundumbili	Goldcoast Trading CC 10032 dd 2009-12-26	2009-12-18 to 2009-12-25	7	27	24 - sharing R550 3 - single R850	R92 400 R17 850
Sundumbili	Goldcoast Trading CC 10029 dd 2009-12-29	2009-12-25 to 2010-01-01	7	27	24 - sharing R550 3 - single R850	R92 400 R17 850
Sundumbili	Goldcoast Trading CC 10037 dd 2010-01-11	2010-01-01 to 2010-01-08	7	27	24 - sharing R550 3 - single R850	R92 400 R17 850
Sundumbili (Lalanathi B & B)	Goldcoast Trading CC 10044 dd 2010-01-15	2010-01-08 to 2010-01-15	7	27	24 - sharing R550 3 - single R850	R92 400 R17 850
Sundumbili (Lalanathi B & B)	Goldcoast Trading CC 10047 dd 2010-01-22	2010-01-15 to 2010-01-22	7	27	24 - sharing R550 3 - single R850	R92 400 R17 850
Sundumbili	Goldcoast Trading CC 10057 dd 2010-01-29	2010-01-22 to 2010-01-29	7	27	24 - sharing R550 3 - single R850	R92 400 R17 850
Sundumbili	Goldcoast Trading CC 10062 dd 2010-02-05	2010-01-29 to 2010-02-05	7	27	24 - sharing R550 3 - single R850	R92 400 R17 850
Sundumbili	Goldcoast Trading CC 10070 dd 2010-01-12	2010-02-05 to 2010-02-12	7	27	24 - sharing R550 3 - single R850	R92 400 R17 850
Sundumbili	Goldcoast Trading CC 10078 dd 2010-02-19	2010-02-12 to 2010-02-19	7	27	24 - sharing R550 3 - single R850	R92 400 R17 850
Sundumbili	Goldcoast Trading CC 10085 dd 2010-02-26	2010-02-19 to 2010-02-26	7	27	24 - sharing R550 3 - single R850	R92 400 R17 850
Sundumbili	Goldcoast Trading CC 1001005 dd 2010-03-05	2010-02-26 to 2010-03-05	7	27	24 - sharing R550 3 - single R850	R92 400 R17 850

Sundumbili	Goldcoast Trading CC 1001012 dd 2010-03-12	2010-03-05 to 2010-03-12	7	27	24 - sharing R550 3 - single R850	R92 400 R17 850
Sundumbili	Goldcoast Trading CC 100122 dd 2010-03-19	2010-03-12 to 2010-03-19	7	27	24 - sharing R550 3 - single R850	R92 400 R17 850
Sundumbili	Goldcoast Trading CC 100127 dd 2010-03-12	2010-03-19 to 2010-03-26	7	27	24 - sharing R550 3 - single R850	R92 400 R17 850
Sundumbili	Goldcoast Trading CC 100133 dd 2010-04-01	2010-03-26 to 2010-04-01	6	27	24 - sharing R550 3 - single R850	R79 200 R15 300
Nongoma	Goldcoast Trading CC 100303 dd 2009-10-30	2009-10-24 to 2009-10-30	*7	34	R560	R133 280
Nongoma	Goldcoast Trading CC 10005 dd 2009-11-16	2009-10-30 to 2009-11-13	14	8	R595	R66 640
Nongoma	Goldcoast Trading CC 10008 dd 2009-11-16	2009-11-05 to 2009-11-13	8	32	R573	R146 688
Nongoma	Goldcoast Trading CC 10009 dd 2009-11-27	2009-11-13 to 2009-11-19	*7	40	R585	R163 800
Nongoma	Goldcoast Trading CC 10010 dd 2009-11-27	2009-11-19 to 2009-11-27	8	32	R585	R149 760
Nongoma	Goldcoast Trading CC 10014 dd 2009-12-11	2009-11-27 to 2009-12-04	7	32	R585	R131 040
Nongoma	Goldcoast Trading CC 10015 dd 2009-12-11	2009-12-04 to 2009-12-11	7	32	R585	R131 040
Nongoma	Goldcoast Trading CC 10026 dd 2009-12-22	2009-12-11 to 2009-12-18	7	32	R585	R131 600 - paid, however R 131 040 should have been paid
Nongoma	Goldcoast Trading CC 10031 dd 2010-01-04	2009-12-18 to 2009-12-25	7	32	R585	R131 040
Nongoma	Goldcoast Trading CC 10035 dd 2010-01-04	2009-12-25 to 2010-01-01	7	32	R585	R131 040

Nongoma	Goldcoast Trading CC 10036 dd 2010-01-11	2010-01-01 to 2010-01-08	7		32	R585	R131 040
Nongoma 16 - Thokzazi, 8 - Phindokuhle 8 - Shlalakahle	Goldcoast Trading CC 10045 dd 2010-01-15	2010-01-08 to 2010-01-15	7		32	R585	R131 040
Nongoma 16 - Thokzazi, 8 - Phindokuhle 8 - Shlalakahle	Goldcoast Trading CC 10046 dd 2010-01-22	2010-01-15 to 2010-01-22	7		32	R585	R131 040
Nongoma	Goldcoast Trading CC 10055 dd 2010-01-29	2010-01-22 to 2010-01-29	7		32	R585	R131 040
Nongoma	Goldcoast Trading CC 10064 dd 2010-02-05	2010-01-29 to 2010-02-05	7		32	R585	R131 040
Nongoma	Goldcoast Trading CC 10068 dd 2010-01-12	2010-02-05 to 2010-02-12	7		32	R585	R131 040
Nongoma	Goldcoast Trading CC 10076 dd 2010-02-19	2010-02-12 to 2010-02-19	7		32	R585	R131 040
Nongoma	Goldcoast Trading CC 10084 dd 2010-02-26	2010-02-19 to 2010-02-26	7		32	R585	R131 040
Nongoma	Goldcoast Trading CC 100104 dd 2010-03-05	2010-02-26 to 2010-03-05	7		32	R585	R131 040
Nongoma	Goldcoast Trading CC 100110 dd 2010-03-12	2010-03-05 to 2010-03-12	7		32	R585	R131 040
Nongoma	Goldcoast Trading CC 100121 dd 2010-03-19	2010-03-12 to 2010-03-19	7		32	R585	R131 040
Nongoma	Goldcoast Trading CC 100129 dd 2010-03-25	2010-03-19 to 2010-03-26	7		32	R585	R131 040
Nongoma	Goldcoast Trading CC 100131 dd 2010-04-01	2010-03-26 to 2010-04-01	6		32	R585	R112 320
Greytown	Goldcoast Trading CC 100119 dd 2009-12-11	2009-11-20 to 2009-12-04	14		16	14 - sharing R550 2 - single R850	R107 800 R23 800

Greytown	Goldcoast Trading CC 10022 dd 2009-12-11	2009-12-04 to 2009-12-11	7	32	30 - sharing R550 2 - single R850	R115 500 (E-inv) R11 900
Greytown	Goldcoast Trading CC 10023 dd 2009-12-22	2009-12-11 to 2009-12-18	7	32	30 - sharing R550 2 - single R850	R115 500 R11 900
Greytown	Goldcoast Trading CC 10034 dd 2009-12-26	2009-12-18 to 2009-12-25	7	32	26 - sharing R550 6 - single R850	R100 100 R35 700
Greytown	Goldcoast Trading CC 10028 dd 2009-12-29	2009-12-25 to 2010-01-01	7	32	30 - sharing R550 2 - single R750	R115 500 R10 500
Greytown	Goldcoast Trading CC 10038 dd 2010-01-11	2010-01-01 to 2010-01-08	7	32	30 - sharing R550 2 - single R750	R115 500 R10 500
Greytown Lady Grey Hotel	Goldcoast Trading CC 10043 dd 2010-01-15	2010-01-08 to 2010-01-15	7	32	30 - sharing R550 2 - single R750	R115 500 R10 500
Greytown Lady Grey Hotel	Goldcoast Trading CC 10048 dd 2010-01-22	2010-01-15 to 2010-01-22	7	32	30 - sharing R550 2 - single R750	R115 500 R10 500
Greytown	Goldcoast Trading CC 10056 dd 2010-01-29	2010-01-22 to 2010-01-29	7	32	30 - sharing R550 2 - single R750	R115 500 R10 500
Greytown	Goldcoast Trading CC 10065 dd 2010-02-05	2010-01-29 to 2010-02-05	7	32	30 - sharing R550 2 - single R750	R115 500 R10 500
Greytown	Goldcoast Trading CC 10069 dd 2010-01-12	2010-02-05 to 2010-02-12	7	32	30 - sharing R550 2 - single R750	R115 500 R10 500
Greytown	Goldcoast Trading CC 10077 dd 2010-02-19	2010-02-12 to 2010-02-19	7	32	30 - sharing R550 2 - single R750	R115 500 R10 500
Greytown	Goldcoast Trading CC 10083 dd 2010-02-26	2010-02-19 to 2010-02-26	7	32	30 - sharing R550 2 - single R750	R115 500 R10 500
Greytown	Goldcoast Trading CC 1001006 dd 2010-03-05	2010-02-26 to 2010-03-05	7	32	30 - sharing R550 2 - single R750	R115 500 R10 500
Greytown	Goldcoast Trading CC 1001011 dd 2010-03-12	2010-03-05 to 2010-03-12	7	32	30 - sharing R550 2 - single R750	R115 500 R10 500
Greytown	Goldcoast Trading CC 100123 dd 2010-03-19	2010-03-12 to 2010-03-19	7	32	30 - sharing R550 2 - single R750	R115 500 R10 500

Greytown	Goldcoast Trading CC 100128 dd 2010-03-25	2010-03-19 to 2010-03-26	7	32	30 - sharing R550 2 - single R750	R115 500 R10 500
Greytown	Goldcoast Trading CC 100132 dd 2010-04-01	2010-03-26 to 2010-04-01	6	32	30 - sharing R550 2 - single R750	R99 000 R9 000
Ulundi (Vigaries, Emacusiini B/B & Mshema Guest House)	Goldcoast Trading CC 10093 dd 2010-02-22	2010-02-16 to 2010-02-22	6	27	16 - sharing R700 11 - single R1 200	R67 200 R79 200
Ulundi (Vigaries, Emacusiini B/B & Mshema Guest House)	Goldcoast Trading CC 10094 dd 2010-03-01	2010-02-22 to 2010-03-01	7	27	16 - sharing R700 11 - single R1 200	R78 400 R92 400
Ladysmith	Goldcoast Trading CC 10050 dd 2010-01-19	2010-01-06 to 2010-01-17	* 12	12	R1 350	R194 400
Ladysmith	Goldcoast Trading CC 10059 dd 2010-01-29	2010-01-17 to 2010-01-29	12	12	R1 350	R194 400
Ladysmith	Goldcoast Trading CC 10066 dd 2010-01-05	2010-01-29 to 2010-02-05	7	12	R1 350	R113 400
Pongola (Breakfast)	Goldcoast Trading CC 10002 dd 2009-10-30	2009-10-11 to 2009-10-30	* 20	25	R480.75	R240 375
Pongola (Breakfast)	Goldcoast Trading CC 10004 dd 2009-11-16	2009-10-30 to 2009-11-15 (to 2009-10-15 error on invoice)	* 17	25	R480.75	R194 000 (error with payment)
Pongola (Breakfast)	Goldcoast Trading CC 10012 dd 2009-11-27	2009-11-15 to 2009-11-30	* 16	25	R485	R196 000 (R194 000 should have been pd)
Pongola	Goldcoast Trading CC 10018 dd 2009-12-22	2009-12-01 to 2009-12-15	* 15	25	R485	R181 875
Pongola	Goldcoast Trading CC 10024 dd 2009-12-22	2009-12-15 to 2009-12-18	3	25	R485	R36 375

Pinetown	Goldcoast Trading CC 10011 dd 2009-11-27	2009-11-18 to 2009-11-23	* 6	5	R999	R29 970
Pinetown	Goldcoast Trading CC 10096 dd 2010-02-12	2010-02-21 to 2010-03-14	20 (counts as 21 days)	6	R999	R119 880
Durban North Deployment / Trainers	Goldcoast Trading CC 10090 dd 2010-02-02	2010-02-17 to 2010-03-03	14	10	R750	R105 000
Durban North Deployment / Trainers	Goldcoast Trading CC 10091 dd 2010-03-12	2010-02-27 to 2010-03-14	15	10	R750	R112 500
Margate	Goldcoast Trading CC 10051 dd 2010-01-24	2009-12-30 to 2010-01-23	* 25	8	R600	R120 000
Winterton (Tozer's)	Goldcoast Trading CC 10040 dd 2010-01-06	2009-12-24 to 2010-01-06	* 14	6	R1 350	R113 400
Stanger 19 - Channel Rock 24 - Kearsnet Manor	Goldcoast Trading CC 1001009 dd 2010-03-11	2010-03-08 to 2010-03-12	4	43	R550	R94 600
La Mercy	Goldcoast Trading CC 10041 dd 2010-01-14	2010-01-09 to 2010-01-13	4	54	R925	R199 800
Inqwenyama Conference & Sport Resort	Goldcoast Trading CC 100156 dd 2010-03-05	2010-03-03 to 2010-03-05	2	6	R1 700	R20 400
Durban (Road lodge - Gateway / Break)	Goldcoast Trading CC 10006 dd 2009-11-16	2009-11-10 to 2009-11-16	6	41	40 - sharing R525 1 - single R875	R126 000 R5 250
Durban	Goldcoast Trading CC 10097 dd 2010-03-04	2010-02-28 to 2010-03-04	4	4	Sharing - R1 750	R28 000
Durban (Elangeni)	Goldcoast Trading CC 10098 dd 2010-03-03	2010-02-28 to 2010-03-04	4	5	4 - sharing R1 350 1 - single R2 500	R21 600 R10 000

CONFIDENTIAL

INFORMATION NOTE

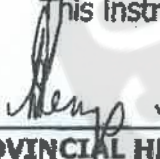
TO : The Commander
Sub Section Budget
Provincial Finance

ATTENTION : Col (f) Moodley

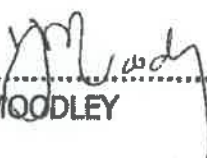
From : Provincial Head Finance
Brigadier LC Kemp

DISCLOSURE OF INFORMATION

1. No. 0466249-1 Col Y Moodley you are hereby informed and instructed not to disclose or hand any official SAPS documents that is in the possession of the Financial section at Provincial level for which I am responsible to any person with the exception of doing your daily duties at the Budget section at Provincial Finance. This refers especially to supplier payment schedules or any attachments, or any information thereof.
2. Should any information or documents for which I as the Provincial Head Finance am responsible being disclosed or handed outside your official duties in the Budget section to any person you must inform me within 96 (ninety six) hours of this notice of the full details thereof. Should no information have been disclosed or handed to any person a nil return must be submitted within the same mentioned period.
3. This instruction is done in good faith and the interest of South African Police Service.


BRIGADIER
PROVINCIAL HEAD : FINANCIAL SERVICES

I hereby acknowledge receipt of this instruction on Friday 25 June 2010 at10:25..... at SAPS Provincial Office, 15 Braamfischer Road, Durban.


.....Col
Y MOODLEY

Witnesses :1.  Col
P GOVENDER

:2. Col
A BLAMINI



Blankets	Goldcoast Trading CC 10001 dd 2009-10-22		120	R240	R28 800
Sony Bravia	Goldcoast Trading CC 10006 dd 2009-11-16		2	R24 450	R48 900
Mink Blankets	Goldcoast Trading CC 10006 dd 2009-11-16		100	R245	R24 500
Generator 10 KVA	Goldcoast Trading CC 10006 dd 2009-11-16		1		R93 250
Flip Chart Stands	Goldcoast Trading CC 10006 dd 2009-11-16		2	R2 000	R4 000
TOTAL					R12 809 733

CONFIDENTIAL

INFORMATION NOTE

TO : The Provincial Head
Financial Services

Att : Brigadier Kemp

FROM : The Commander
Sub Section Budget
Provincial Financial
Col Y Moodley

DISCLOSURE OF INFORMATION

1. Information note pertaining to the disclosure of information served on me on 25th June 2010 refers.
2. The only information disclosed by myself, No:0466249-1 Colonel Y Moodley outside the responsibilities of my daily duties, was payment copies pertaining to a supplier namely, 'Gold Coast Trading' on the instruction of Brigadier L C Kemp during a meeting held with Brigadier Lategan and Colonel Subramoney on 4 May 2010. Detail of the payment copies are attached.


COLONEL (F)
Y MOODLEY
2010-06-29 (10h30)

Received
on 29/6
10:30

SUID-AFRIKAANSE POLISIE**SOUTH AFRICAN POLICE**

P O Box 1965, Durban, 4000

Verwysing Reference	19/1/9/121/3
Navrae Enquiries	Brig Mkhize Colonel Madhoe
Telefoon Telephone	031-3255802/26
Faksnommer Fax number	031-3255823

**THE PROVINCIAL COMMISSIONER
PROVINCIAL SCM
KWAZULU-NATAL
P O BOX 1965
DURBAN
4000**

29 June 2010

A. The Provincial Head
Financial Services
S A Police
KWAZULU NATAL

BRIG KEMP

B. The Deputy Provincial Commissioner
KWAZULU NATAL

MAJ GEN NTANJANA

C. The Provincial Commissioner
KWAZULU NATAL

LT GEN NGOBENI

ACCESS TO INFORMATION : ADVERTISED BIDS/INVITATION OF PRICE QUOTATIONS : SAPS KWAZULU NATAL

1. It has been noticed with concern that various documentation that forms part of the procurement process for goods and services, are being copied, duplicated, re-produced by your office.
2. As a result of this practise, this office cannot guarantee the confidentiality of the contents of the documentation which contains information of suppliers as well as competitors pricing structures.
3. The procurement environment within the public sector has attracted a lot of negative publicity which is largely attributed to corrupt individuals as well as unauthorised individuals having unlimited access to documentation of this nature.
4. Personnel performing SCM related functions have signed a Code of Conduct for Supply Chain Management Practitioners which emphasises the importance of safeguarding supplier profiles as well as all documentation used in any procurement process.
5. All documentation for any transaction which comprises of user requirements, supplier profiles, quotations, rough notes, etc are retained at Acquisition Section for audit purposes.
6. Should your office require any documentation in future, please reduce it in writing as required by the relevant SCM Guidelines, and this office will endeavour to provide same to yourself.

/2.....

7. The practice of duplicating/copying live files by members of your office must cease forthwith.
8. Your compliance will assist this office in maintaining it's high standards of integrity within the private/public sector.
9. Logistical greetings.

B&C. 1. Copy for information.


MAJOR GENERAL
f/PROVINCIAL COMMISSIONER : SAP : KWAZULU NATAL
K V MEKUTE



South African Police Service
Umbutho Wan



Suid-Afrikaanse Polisiediens
eningizimu-Afrika

P O BOX 1965, DURBAN, 4000

My reference/ My
verwysing/Inkomba Yami

14/7/6

THE PROVINCIAL COMMISSIONER

Enquiries/Navraw/Buza

Major General JW
Booyesen

SOUTH AFRICAN POLICE SERVICE

Telephone/Telefoon/Ucingo

031-325 4731

SOUTH AFRICAN POLICE SERVICE
PROVINCIAL COMMISSIONER KWAZULU-NATAL

Fax No / Faks No

031-325 4684

2010 -10- 0 6

FINANCIAL SERVICES
KWAZULU-NATAL

6 October 2010

The Provincial Commissioner
South African Police Service
KWAZULU-NATAL

Att : Brigadier Kemp
Brigadier Mkhize

**OUTSTANDING CLAIMS : SUPPLY CHAIN MANAGEMENT : SERVICE PROVIDERS
UNDER INVESTIGATION : GOLDCOAST TRADING CC :
DURBAN CENTRAL CAS 781/06/2010**

1. Our discussion today has reference.
2. Enclosed is a copy of correspondence I forwarded to the Acting Deputy Provincial Commissioner, for support Major General Mekute on 13 September 2010.

Col M / Capt C
Please ensure no
further claims are
processed
8/10

MAJOR GENERAL
DEPUTY PROVINCIAL COMMISSIONER : DPCI : KWAZULU NATAL
J.W BOOYSEN

SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

Private/Post Office Bag
Posbus/Post Office Box 1965 DURBAN

Verwysing 14/7/6
Reference
Navrae
Enquiries Colonel V Soobramoney.
Telefoon
Telephone 031-334-5067

Faksnommer
Fax number

**OFFICE OF THE BRANCH
COMMANDER
DURBAN COMMERCIAL CRIME
JOHN ROSS HOUSE
DURBAN**

2010/09/07

**THE DEPUTY PROVINCIAL COMMISSIONER
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
15 BRAM FISCHER ROAD
DUBAN**

**OUTSTANDING CLAIMS: SUPPLY CHAIN MANAGEMENT: SERVICE
PROVIDERS UNDER INVESTIGATION: GOLDCOAST TRADING CC:
DURBAN CENTRAL CAS 781/06/2010.**

- 1 The abovementioned matter refers.
2. It has been brought to the attention of the investigation team through an informer that there is a substantial amount in outstanding claims to be paid to the service provider Goldcoast Trading CC which is under investigation for fraud and corruption.
3. It is estimated that an amount of about R17 million has not been paid to this supplier in respect of ex-post facto expenditure.
4. This expenditure forms part of the investigation as referred to in Durban Central Cas 781/06/2010.
5. Information supplied is that the supplier intends forwarding a letter of demand for the settlement of the outstanding claims.
6. The Asset Forfeiture Unit who is also involved in this investigation has been

notified of the outstanding claims.

A1

7. RECOMMENDATION

It is of the opinion of the investigation team that the outstanding claims should not be paid out as it forms a crucial part of the investigation and should be retained pending the outcome of the investigations.


COLONEL
V. SOOBARAMONEY
LEAD INVESTIGATOR
DPCI: COMMERCIALCRIME



ANNEXURE JVL 3(1) - JVL 3(22)



DURBAN CENTRAL CAS 781/06/2010

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YOGAVELLI MOODLEY

States under oath in English

1.

I am an adult South African female with identity number 7201120060089. I am a Colonel in the South African Police Service with Persal number: 04662491. I am employed as the Section Head, Budget and Monitoring, Financial and Administration Services, which is situated at the KZN SAPS Provincial Head Office, 15 Bram Fischer Road, Durban with telephone number: 031-3254844 and cellular number 0713619496.

2.

I am duly authorised to make this affidavit and the facts contained therein are both true and correct and fall within my personal knowledge unless the context indicates the contrary or it is expressly stated otherwise.

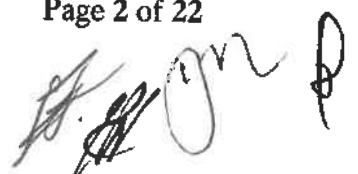
[Handwritten signatures]

During April 2010 I returned from vacation leave after the 19TH of April and I was shown a 2.6.11 report from the Polfin system which is the financial system of the SAPS and this was shown to me by my commander Brigadier (hereinafter referred to as Brig) Kemp. I was asked to comment on a service provider Goldcoast Trading CC and the exorbitant prices that were being used for accommodation of police members which were booked by this company.

I explained to Brig Kemp that at the budget section we only receive a request for financial authority as forwarded by the Provincial Supply Chain Management (hereinafter referred to as SCM) and that we do not see who the supplier is and that I had no knowledge of Goldcoast Trading CC.

I then printed out payment schedules from the Polfin system which I am authorised to access in the normal cause of my duties, with all links to Goldcoast Trading CC and these were for detachment duties in respect of members attached to SAPS Operational Response Services (ORS), which were handed to Brig. Kemp.

During the course of this week I had discussions with Brig. Kemp on further expenditure schedules that he had gathered from the Polfin system and he then instructed me to compile an information note on the expenditure incurred on detachment duties. I compiled this information note dated 28 April 2010 and handed to him as he informed me that he has to present



this to core management of the Provincial office and this information note is annexure herewith as **YM 1(1) to YM 1(3)**

3.

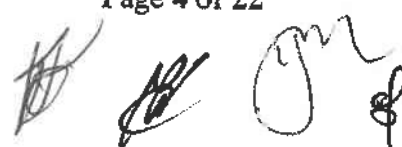
On 4 May 2010 I was summoned by Brig. Kemp into his office to attend a meeting and present at this meeting was Brig. Lategan the then Provincial Head of Commercial Crime Unit (now retired) and Colonel Soobramoney of Directorate of Priority Crime Investigation Unit –Hawks at Durban Commercial Crime Unit (hereinafter referred to as DPCI). There was a discussion on the procurement procedures and both Brig. Lategan and Col Soobramoney needed to understand the SCM procedures and as well as the role of finance office. We also discussed the information note (YM 1) and a compiled schedule marked "Deployment schedules already paid" was handed to them annexure herewith as **YM 2(1) to YM 2(9)**. I was instructed by Brig. Kemp that I must assist Col Soobramoney with any request pertaining to supplier payments, as it was now going to be investigated by the DPCI.

On 5 May 2010 I made copies of payment schedules which contained invoices, order forms and covering schedules which cover the supplier's details and the approved signatures, one

(1) from SCM and two (2) from finance office and these were handed to Col. Soobramoney.

Later that day I was in the company of Brig Kemp at SAPS Jacobs garage on our normal cause of duty and he received a telephone call on his mobile and when he had completed his conversation he looked very upset and I enquired what was the problem. Brig Kemp responded that he had received a call from the Provincial Commissioner (hereinafter referred to as PC) Lt. General Ngobeni and she had instructed him to call Major Gen's Booysen and Ntanjana and inform that that they must call off the investigation into the procurement process at Provincial SCM. He stated that he was very upset with this instruction.

The next day 6 May 2010 I received a call from Col. Soobramoney and he informed me that he was requested to hand over all documents back as he was informed that the investigation was closed. I then related to him of the telephone conversation that Brig Kemp received from the PC and he informed me that he was informed by Brig Lategan that it was at the instruction of the PC that he must hand back all documents and that the case was closed. I thereafter did not assist Col Soobramoney with any documents pertaining to this matter.



4.

On 3 June 2010 I was summoned to the office of one of the Deputy Provincial Commissioner being Major General Ntanjana (now deceased) and he enquired if I had been assisting anyone with documents pertaining to the investigation of SCM and he informed me if I was I must stop as it was in my best interest. I informed him that I was not assisting anyone at this stage.

Prior to the soccer world cup commencing I attended section 4 meetings as representative of the financial office of Province and in this meetings which was chaired by Brig. N.G.Govender there were discussions on the planning and requirements for each section for the world cup and I recall that Col Madhoe the Acquisition Head of SCM attended these meetings on an ad hoc basis and when accommodation was discussed he informed the meeting that Head Office was taking care of accommodation and they were arranging block booking and that we at province did not have to sort out accommodation. At no stage during these meetings was Goldcoast Trading CC mentioned as a possible supplier that will be involved in sourcing and or providing accommodation.

Shortly thereafter the world cup soccer tournament commenced and I was performing support services duties and I was then informed by one of my colleagues at finance that they were no longer receiving the entire SCM file and only a



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performa and financial request. I then confronted Col Madhoe and his response was that there was a memo from SCM signed by the head of Legal Services Major General Mekute informing us of the SCM files. I informed him that I did not see such a memo and he then provided me a copy of the memo attached hereto as annexure **YM 3 (1) and YM 3 (2)**. Prior to June 2010 all the SCM Files with all documents were handed to finance for financial authority and for processing of payments. Since the instruction of (YM3) we at finance office never requested for the files and we were informed that these files were archived at the SCM office at province.

5.

On 16 June 2010 in the morning I received a call on my home landline number **031-2613337** and nobody said anything and I could hear sounds of gunshot which sounded like it was coming from a movie. Later that afternoon as I arrived home and upon entering the house, I heard my home landline ring and when I answered an Indian male said to me that I know where you live and I could hear the same gunshot sounds from a movie in the background.

I informed Major General Booysen, Brig Kemp and Col Soobramoney and I was advised by Col Soobramoney to open a case for investigation. The next day at work I met with colleagues and also present was Col Madhoe and I informed

them of the threatening telephone calls and mentioned that I had opened a case for investigation and thereafter I never received any calls.

On 25 June 2010 I was summoned by Brig. Kemp into his office and in the presence of Col's P. Govender and A. Dlamini I was served a written notice on disclosure of information by Brig. Kemp and witnessed by both the Colonel's present. I was given 96 hours to respond and I acknowledged receipt of the notice and responded within the prescribed period and copy of the written notice and my response attached hereto as annexure **YM 4** and **YM 5** respectively.

6.

Late June or early July I cannot recall the exact date I was called by Col Madhoe and he wanted to meet with me and when we did he showed me a batch of files and stated that he required financial authority for ORS accommodation deployments. I enquired from him as to the amount and he responded that it was R16 million and I then queried him as to how was such a great amount allowed to accumulate and his response was that he had just received it from ORS and could not comment.

I then responded that I cannot give financial authority as this was *expo facto* (unauthorised) and brought to his attention the ex National Commissioner letter from General Bheki Cele that any procurement on *expo facto* must be signed only by the National Commissioner. Col Madhoe then stated that he will do a schedule and see Major General Ntanjana.

On this request to my recollection there were no order books and no financial authority and this had never gone through the normal process. The invoices were never seen again at the financial office.

7.

On the 11 August 2010 I received three (3) missed calls on my mobile phone and it was during the evening and I was at home, I noticed it was from Col Madhoe's official mobile number. I then informed my husband Col P.M.Moodley and he suggested that I phone Col Madhoe and enquire what the calls were about. I then phoned Col Madhoe and he informed me that he was at the provincial police building and that I must meet him urgently at his office.

I was accompanied by my husband and we went to the SAPS Provincial building and we met Col Madhoe outside on the



street. This was about 20:30, I alighted from our vehicle and my husband sat in the vehicle and I met Col Madhoe and we were then joined by Capt Narainpersad who also works at SCM under the supervision of Col Madhoe.

Col Madhoe then enquired from me if I was aware of searches that were going to be conducted tomorrow by the HAWKS (DPCI). I informed him that I was unaware and then enquired as to how he became aware of this information and he responded that he was informed by Col Jones and Col WS

Mhlongo of the DPCI (Hawks). He then informed me that I must be careful as they (DPCI-HAWKS) intended searching all our offices and homes and I asked him why was he warning me as I have nothing to hide and I am not a person of interest. He then informed me that they have decided to leave home and seek alternative accommodation and once again informed me to be careful and then I left in the company of my husband and returned home.

8.

The next day the 12TH August 2010 my office at the SAPS Provincial building was searched by members of DPCI and documents pertaining to the investigation were taken and receipts were handed in for the exhibits and I attach copies of the exhibit receipts and supplier payment schedules as per attached annexure **YM 6 (1) to YM 6(15).**



On 8 October 2010 I received a memo from Brig. Kemp and which was compiled by Major General Booysen and Brig Kemp had endorsed on the memo as an instruction to Capt Cadman and I that no further claims must be processed concerning Goldcoast Trading CC as the company was under investigation. The memo is attached as annexure **YM 7**.

During the remaining two months of year 2010 I continued with my normal duties and I was informed that the investigating officer Col Soobramoney had resigned from the SAPS.

I was then introduced at a meeting in January 2011 held by the Provincial head of DPCI Major General Booysen to the investigation team namely Col's J. Van Loggerenberg, SY Govender and P. Herbst and I was requested to assist the team with information at my disposal on the Polfin system and to explain the role of the finance office with the SCM office.

This occurred on an ad hoc basis as and when the team required information and explanations, they either phoned me and or came into my office and I assisted. All my interaction with the investigation team was brought to the attention of my



immediate commander Brig Kemp and I was aware that he had to make an affidavit to the investigation team as they had requested him to submit an affidavit.

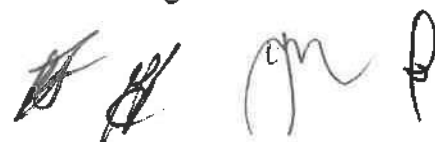
I was also informed by Col SY Govender that there are many aspects that they will need to clarify with other role players of SCM KZN Province and at Head office, and a forensic audit team will be engaged and that there will be requests to my office to assist and that when they are completed he will then obtain an affidavit from me regarding all the aspects that had occurred and for my assistance as mentioned in paragraphs supra.

10.

On 6th March 2013, I received a list of Companies, Hotels and B & B's, and was requested to ascertain if the following companies are or were ever registered on the SAPS Supplier Database as suppliers and to print out my enquiry if there were and if not as well:

Companies:

1. BAMR (Pty) Ltd
2. Bovil CC
3. Budget
4. Builders Trade Depot



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5. Canvas Construction
6. Classic Fire Unlimited
7. Continental China
8. Denkit Hobbies
9. Doculam
10. Eagle Stationers
11. Europcar
12. Game
13. Gateway Steel

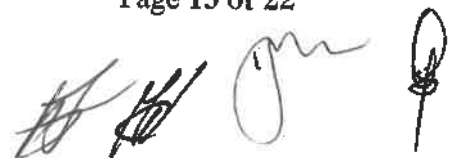
~~14. Gentux Lighting~~

15. Global Armour
16. H2O Water Dispensers
17. Hamper Sales
18. Hire It
19. Hirsch
20. Holomatrix (Pty) Ltd
21. Imperial Armour
22. Imperial Crown
23. Incredible Connection
24. Kwando Systems
25. Light Saver
26. Limco Blankets
27. Makro
28. Marine Wholesalers
29. MH Suliman Hardware
30. Mr Power Tool
31. Natal Sprite

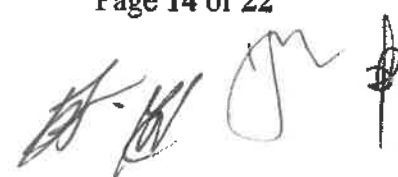
32. Photo Freedom
33. Sattars Cash and Carry
34. Solmed Pharmacy
35. Sportsman's Warehouse
36. Surgicon scc
37. Thrifty Car Rental
38. Unique Hiring Services CC
39. Venter Manufacturing
40. Voltex Briardene
41. Zzz

Hotels and B&B's:

1. Beach Hotel
2. Bergville Lodge
3. Blue Haze Hotel
4. Bridge Lodge
5. Budleigh Guest House
6. Channel Rock
7. Coastals Letting Apartment
8. Coastlands
9. Crocodile Creek
10. Drakensberg Lodge
11. Elangeni Hotel
12. Emacusini B&B
13. Hampshire Hotel
14. Heidi's Guest House
15. Hilton Hotel



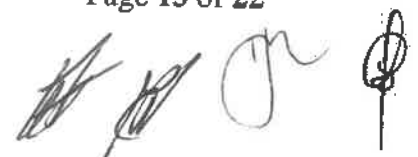
16. Hlalakahle Lodge
17. Igwenyama Conference and Sport Resort
18. Impala Flats
19. Kearsney Manor
20. La Mercy Beach Hotel
21. Lady Grey B&B
22. Lalanathi Lodge
23. Manana Lodge
24. Mataba Lodge
25. Mathaba Inn
26. McDonalds B&B
27. Miss Gets B&B
28. MS Thema B&B (18)
29. Rawstornes
30. Road Lodge
31. Seaboard Hotel
32. Southern Sun Elangeni
33. Summer Place
34. Tenbury Hotel
35. Thokazi Lodge
36. Vigaries Lodge
37. White Mountain Lodge
38. Willow Grange
39. Willow Park Transport & Projects CC
40. Windermere Apartments



11.

Upon conducting a search of the SAPS Supplier Database I discovered that the following **Companies** are **listed** on the SAPS Supplier Database as suppliers. I hereby attach enquiry printouts obtained from the SAPS Supplier Database as follows:

• BAMR (Pty) Ltd	Annexure YM 8
• Budget	Annexure YM 9
• Builders Trade Depot	Annexure YM 10
• Continental China	Annexure YM 11
• Eagle Stationers	Annexure YM 12
• Europcar	Annexure YM 13
• Game	Annexure YM 14
• Hirsch	Annexure YM 15
• Imperial Crown	Annexure YM 16
• Incredible Connection	Annexure YM 17
• Kwando Systems	Annexure YM 18
• Makro	Annexure YM 19
• Mr Power Tool	Annexure YM 20
• Surgicon scc	Annexure YM 21



- Sportsman's Warehouse **Annexure YM 22**
- Venter Manufacturing **Annexure YM 23**
- Voltex Briardene **Annexure YM 24**

11.

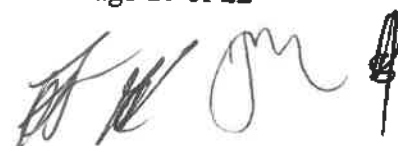
Upon conducting a search of the SAPS Supplier Database I discovered that the following **Hotels and B & B's** are listed on the SAPS Supplier Database as suppliers. I hereby attach enquiry printouts obtained from the SAPS Supplier Database as follows:

- Beach Hotel **Annexure YM 25**
- Coastlands **Annexure YM 26**
- Crocodile Creek **Annexure YM 27**
- Drakensberg Lodge **Annexure YM 28**
- Hampshire Hotel **Annexure YM 29**
- Southern Sun Elangeni **Annexure YM 30**
- Summer Place **Annexure YM 31**
- White Mountain Lodge **Annexure YM 32**
- Willow Park Transport & Projects CC **Annexure YM 33**

13.

Upon conducting a search of the SAPS Supplier Database I discovered that the following **Companies are not and have never been registered on the SAPS Supplier Database as** suppliers. I hereby attach enquiry printouts obtained from the SAPS Supplier Database which depicts in alphabetical order the names and or closest name to the company requested as follows:

• Bovil CC	Annexure YM 34
• Canvas Construction	Annexure YM 35
• Classic Fire Unlimited	Annexure YM 36
• Denkit Hobbies	Annexure YM 37
• Doculam	Annexure YM 38
• Gateway Steel	Annexure YM 39
• Genlux Lighting	Annexure YM 40
• Global Armour	Annexure YM 41
• H2O Water Dispensers	Annexure YM 42
• Hamper Sales	Annexure YM 43
• Hire It	Annexure YM 44
• Holomatrix (Pty) Ltd	Annexure YM 45



- Imperial Armour
- Light Saver
- Limco Blankets
- Marine Wholesalers
- MH Suliman Hardware
- Natal Sprite
- Photo Freedom
- Sattars Cash and Carry
- Solmed Pharmacy

Annexure YM 46**Annexure YM 47****Annexure YM 48****Annexure YM 49****Annexure YM 50****Annexure YM 51****Annexure YM 52****Annexure YM 53****Annexure YM 54****Thrifty Car Rental****Annexure YM 55**

- Unique Hiring Services CC
- Zzz

Annexure YM 56**Annexure YM 57****14.**

Upon conducting a search of the SAPS Supplier Database I discovered that the following **Hotels and B & B's** are **not and have never** been registered on the SAPS Supplier Database as suppliers. I hereby attach enquiry printouts obtained from the SAPS Supplier Database which depicts in alphabetical order the names and or closest name to the company requested as follows:

- Bergville Lodge

Annexure YM 58

• Blue Haze Hotel	Annexure YM 59
• Bridge Lodge	Annexure YM 60
• Budleigh Guest House	Annexure YM 61
• Channel Rock	Annexure YM 62
• Coastals Letting Apartment	Annexure YM 63
• Elangeni Hotel	Annexure YM 64
• Emacusini B&B	Annexure YM 65
• Heidi's Guest House	Annexure YM 66
• Hilton Hotel	Annexure YM 67
• Hlatlekane Lodge	Annexure YM 68
• Igwenyama Conference and Sport Resort	Annexure YM 69
• Impala Flats	Annexure YM 70
• Kearsney Manor	Annexure YM 71
• La Mercy Beach Hotel	Annexure YM 72
• Lady Grey B&B	Annexure YM 73
• Lalanathi Lodge	Annexure YM 74
• Manana Lodge	Annexure YM 75
• Mataba Lodge	Annexure YM 76
• Mathaba Inn	Annexure YM 77
• McDonalds B&B	Annexure YM 78
• Miss Gets B&B	Annexure YM 79
• MS Thema B&B (18)	Annexure YM 80
• Rawstornes	Annexure YM 81
• Road Lodge	Annexure YM 82
• Seaboard Hotel	Annexure YM 83
• Tenbury Hotel	Annexure YM 84

- | | |
|-------------------------|-----------------------|
| • Thokazi Lodge | Annexure YM 85 |
| • Vigaries Lodge | Annexure YM 86 |
| • Willow Grange | Annexure YM 87 |
| • Windermere Apartments | Annexure YM 88 |

15.

During the course of the investigation of this case I was requested by the investigation team for assistance from the financial office to search the Polfin system and find documents and print out schedules and which was required by the investigation team to hand to the forensic auditors Price Waterhouse Coopers and as well as for further investigation by the team. I conducted these requests in the normal course of my duties and was duly authorised to do so. I was also warned by the investigation team of the sensitive nature of the investigation and requested not to communicate with anyone regarding my interaction with the team and not to disclose any of my requests received to any person other than the investigation team members mentioned in paragraph 8 supra.

I did not disclose any of the information of the investigation to any other member and had no interaction with the press. That is all I wish to state in this matter at this stage.



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16.

Do you know and understand the content of this declaration?

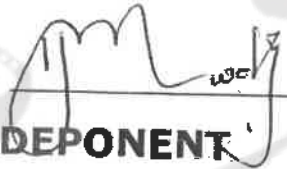
Yes

~~Do you have any objection to taking the prescribed oath?~~

No

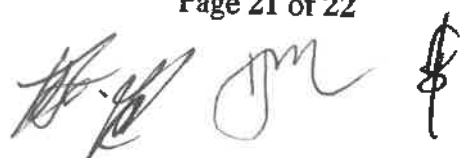
Do you consider the prescribed oath to be binding on your conscience?

Yes



DEPONENT

Y. MOODLEY



I certify that the deponent has acknowledged that she knows and understands the contents of this statement which was sworn to before me whereafter the deponent's signature was placed thereon in my presence at DURBAN on this the 27TH day of OCTOBER 2014 at 10:00.



col.

COMMISSIONER OF OATHS

SADHASIVAN YAGAMBARAM GOVENDER

DIRECTORATE OF PRIORITY CRIME INVESTIGATION

ANTI CORRUPTION TASK TEAM KZN

SAPS DURBAN CENTRAL

14 TH FLOOR

STALWARTH SIMELANE STREET

DURBAN

COLONEL: SAPS

ANNEXURE JVL 4



Col Hans van Loggerenberg
Directorate for Priority Crime Investigation
KwaZulu-Natal
Room 1421, 14th floor
SAPS Durban Central
Stanger Street
Durban
4001

9 April 2014

Dear Sir

DURBAN CENTRAL CAS : 781/06/2010

Our meeting this morning at which you handed me a copy of the letter from Adv TA Letsholo, dated 25 March 2014, regarding the aforementioned matter has reference.

I have read the letter and have the following comments.

1. The draft PwC report dated 10 May 2013, consisting of 373 pages and 20 lever arch files of annexures was also discussed at the meeting with Adv Letsholo and Adv Vimbani on 21 May 2013 and he was given a copy thereof. This was in addition to the SAPS volumes containing witness statements. The first time I received feedback from Adv Letsholo regarding the draft report was on 10 December 2013.
2. The sources of the information and documents that were used to prepare our draft report dated 10 May 2013 is set out in section 9 of that report. This included documents and computers seized by SAPS in terms of search warrants, documents subpoenaed by SAPS, internal SAPS documents and documents provided by witnesses interviewed by SAPS.
3. No evidence from any Act 70 authorised recordings of telephone conversations of Mr Thoshan Panday or any other person was ever given to myself or any member of my team as part of our investigation in this matter. In addition neither myself or any other member of PwC have ever listened to any of the recordings that were obtained by the SAPS Crime Intelligence Unit in terms of Act 70.

PricewaterhouseCoopers Advisory Services (Pty) Ltd, Reg. no. 1999/024417/07
102 Stephen Dlamini Road, Berea 4001, P O Box 1049, Durban 4000
T: +27 (31) 271 2000, F: +27 (31) 202 8220, www.pwc.com/za

J G Louw - National Advisory Leader
The Company's principal place of business is at 2 Egin Road, Sunninghill where a list of directors' names is available for inspection.



annexure JVL 1 (2)

4. The fact that there were Act 70 recordings was discussed at the meeting with Adv Letsholo on 21 May 2013 but it was clearly stated by Col van Loggerenberg that these did not related to Cas 781 but to Cas 466 and that they were not used in the investigation relating to Cas 781, being the matter in which PwC had prepared the report referred to in paragraph 1 above.
5. Towards the end of the meeting on 15 January 2014, referred to in paragraph 2 of Adv Letsholo's letter, Adv Letsholo was asked by one of the SAPS members present, I cannot recall which one, what he thought of the case and our evidence. Adv Letsholo stated that it was his view that there is a very good case against Narainpershad, Madhoe and Panday. After some discussion and further clarity regarding RS Pillay he agreed that there was also a case for Pillay to answer.
6. Up to this stage Adv Letsholo had made no mention of Provincial Commissioner Ngobeni. Col van Loggerenberg asked what about the "PC" to which Adv Letsholo replied that he had some reservations. There was then further discussion during which Col Van Loggerenberg compared the evidence implicating Narainpersad (specific mention was made about the treadmill Mr Panday bought for him) and the birthday party that Mr Panday paid for for the PC's husband. Col van Loggerenberg then went on to say if Adv Letsholo did not think there was enough evidence against the PC then there was not enough evidence against Narainpersad as the evidence was the same and he might as well close the docket. Adv Letsholo then said he would relook at the evidence and would provide feedback at the next meeting. No feedback was provided in this regard, while I was present, in the next meeting which was on 14 March 2014.

I have not commented on the remainder of the issues raised in Adv Letsholo's letter as I have no personal knowledge of these.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Trevor White', written over a large, faint, circular watermark that contains the text 'COMMISSIONER OF PRISON' and 'STATE CAPTURE'.

Trevor White

Director: Forensic Services

ANNEXURE JVL 5(1) - JVL 5(6)



Specialised Commercial Crime Unit

DURBAN



The National Prosecuting Authority of South Africa
Igunya Jikelele Lobethushishi beMzantsi Afrika
Die Nasionale vervolgingsagter van Suid-Afrika

MEMORANDUM

DURBAN

Tel: +27 31 335 6600
Fax: +27 31 332 8582

5th Floor
John Ross House
Cnr Jonsson Lane &
Victoria Embankment
Durban

P/Bag X 54355
Durban
4000
South Africa

www.npa.gov.za

TO: Adv Bulelwa Vimbani

FROM: Letsholo T.A

DATE: 25th March 2014

SUBJECT: Report in respect of Durban Central 781/06/2010

1. On 21 May 2013, I attended the first briefing session at PWC offices in Musgrave regarding Durban Central Cas: 781/06/2010.

At this meeting, I was briefed about what the case is all about. After the meeting, I was handed the docket consisting of the documents as listed in the attached Exh "A". About a week later I was handed additional 3 arch-lever files (volumes 3 to 5) containing witness statements and various Section 205 subpoenas to various entities.

- 1.1 There were other follow up meetings on 10 December 2013, 15 January 2014 and 14 March 2014.
2. It needs to be mentioned at this stage that on 15 January 2014, the lead investigator in this matter namely, Col Hans Van Loggerenberg, enquired about how strong is the case against the KZN Provincial Commissioner in respect of the allegations that one of the suspects in this matter namely Toshani Panday, allegedly paid for her husband's birthday party.



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- 2.1 I informed him that based on the information contained in the docket, given to me; there is just no evidence against the Provincial Commissioner. Col Van Loggerenberg responded thereto by saying that if I am not going to charge the Provincial Commissioner, I may just as well close the docket.
3. On 14 February 2014, I was provided with a copy of representations, made on behalf of Toshan Panday. In those representations, mentioned is made of the recordings, which were played to Toshan Panday, during a meeting held on 18 September 2011, at the KZN SAPS Provincial Head Quarters, in General Deena Moodley's office, and in the presence of General Deena Moodley upon his instructions.
- 3.1 The recordings consisted of recorded telephone conversations, Toshan Panday had with various people, including amongst others, the KwaZulu Natal Provincial Commissioner and Toshan Panday's attorney.
- 3.2 It is important to note that at no stage whatsoever, was I informed by the Investigating Officers in this case that there are tape recordings available in this matter. The first time I became aware of this specific issue, was as a result of the representations made on behalf of Toshan Panday. Furthermore, there is nothing in the docket to suggest or indicate that there was an application made for the authority to permit the police to monitor certain telephone conversations. The nature of the investigations in this matter is straight forward and there was no need for an application of this nature to be made.
- 3.3 During the meeting on 14 March 2014, one of the Investigating Officers Colonel S. Y. Govender, was asked why they did not inform me about the evidence relating to the tapping of the telephone conversations. His response thereto was that, they had taken a decision, as the police to take out everything relating to the taped conversations. I then informed him that it

was not for them to decide which evidence is relevant for the case and which other evidence is not.

- 3.4 He then told me they were informed by the Crime Intelligence Unit, that there were threats on their lives, as the Investigating Officers of this case. That the Crime Intelligence Unit decided to make an application to be granted authority for the tapping of the phones only for the purposes of verifying the allegations of the threats against the Investigating Officers.
- 3.5 He stated further that, subsequent to that application being granted, the lead Investigating Officer, Colonel Van Loggenrenberg together with members of the Crime Intelligence Unit made various applications for the tapping of the phones and to monitor conversations of certain individuals. He was not in a position to give more details, but it was clear that the other applications were done in respect of the investigations in this case.
- 3.6 Once again, it needs to be emphasised that taking into account, the nature and extent of the investigations which were being carried out in this matter, there was no need whatsoever for such applications to be made.
4. Colonel Govender was then informed that, all the evidential material in respect of the tapping of the phones will have to be included in the docket and be made available to the prosecution team.
- 4.1 His reply was that the Crime Intelligence Unit has already indicated that they will not make the recordings available to no one, alternatively, they will have to make a decision as to what is it, according to them (CIU), that they will release, but they will definitely give us only the edited version of the tapes, and not all the recordings in their original form.
- 4.2 I indicated to him that, if that be the case, we will be faced with serious challenges in court and further

informed him that the Crime Intelligence Unit cannot take such steps and interfere with the evidence.

5. What is quite disturbing and is of great concern to the State, is that, amongst others they even listened to privileged information, between Toshan Panday and his attorney about their strategy in defending this case.

5.1 This was allegedly even told to Toshan Panday by General Deena Moodley, during the meeting they had with Toshan Panday at the Provincial Headquarters on 18 September 2011, when he said to Toshan Panday, **"Now that we know what defences you will use, I will make sure that all those avenues are closed"**.

5.2 Clearly, this tapping of phones was a blatant abuse of power and the resources with far-reaching consequences, particularly in the light of the following:-

(a) Before the recordings were played to Toshan Panday, General Deena Moodley, told Toshan Panday, that he would grant him indemnity in respect of both this case and 466, if he was prepared to incriminate the Provincial Commissioner in corruption relating to her husband's birthday bash.

(b) Amongst others, this is what was said to Toshan Panday, **"I need to get rid of this Black Bitch commissioner and I need your assistance"**.

(c) The conversation is said to have gone as far as the following. **"Why are you protecting this Black Bitch? You must give her up. If you give us an affidavit we will force her to resign. General Booysen would become the new KwaZulu Natal Provincial Commissioner and you will enjoy full protection, I will remain in control of the Secret Fund"**.

6. Colonel S. Y. Govender indicated that later, when he became aware of this alleged meeting which was held on 18 September 2011, he was so angry that he confronted Colonel Padayachee from Crime Intelligence Unit about it and Colonel Padayachee told him to discuss that with General Deena Moodley. It is clear that the issue in respect of this meeting was not being disputed, but that the blame was being shifted to General Deena Moodley.
7. In the light of what is postulated above and more in particular, taking into consideration that Public Policy is concerned, not only in ensuring that the guilty are held accountable, but also that the investigating and prosecutorial agencies, conduct themselves with propriety in securing evidence against criminal suspects. That public policy also set itself firmly against admitting evidence obtained through improper means or evidence obtained in deliberate or flagrant violation of the Constitution.
- 7.1 It is submitted with respect that the issue surrounding the tapping of the phones is inextricably linked to the manner in which the evidence was obtained in this matter. That the evidence as it stands at this point is irredeemably stained.
- 7.2 To take this case to court under these circumstances would mean that I as the prosecutor will have to turn a blind eye to the manner in which the evidence had been obtained and subject the judicial process in moral defilement, something I am not prepared to do.
- 7.3 More so in the light of the stance by the Higher Courts on deterring the police from employing improper means to acquire evidence as it is evident in the following cases:
- (a). **S v Mthembu** 2008 (2) SACR 407 (SCA);
 - (b). **S v Mphala and Another** 1998 (1) SACR 388 (W);
 - (c). **S v Pillay and Others** 2004 (2) SACR 419 (SCA);
 - (d). **S v Naidoo and Another** 1998 (1) SACR 479 (N);

- (e). **S v Tandwa and Others** 2008 (1) SACR 613 (SCA);
(f). **Du Plessis and Others v De Klerk and Another**
1996 (3) SA 850 (CC).

7.4 I am not prepared as a representative of the State to go to court with dirty hands. I do not want to be seen to be condoning improper investigative techniques by the police.

8. I have therefore taken a decision to decline to prosecute in this matter.



TUMEISI ABRAM LETSHOLO
SENIOR STATE ADVOCATE
SPECIALISED COMMERCIAL CRIME UNIT
DURBAN

DATE: 25th MARCH 2014

ANNEXURE JVL 6(1) - JVL 6(9)



SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

Privaatsak/Private Bag

Posbus/Post Office Box 1965 DURBAN

Verwysing : Durban Central CAS 781/06/2010

Reference

Navrae

Enquiries Colonel J van Loggerenberg.

Telefoon

Telephone 031-3254400; Cell 0824829596

Faksnommer Fax number

**THE DIRECTORATE FOR PRIORITY
CRIME INVESTIGATION
ANTI CORRUPTION TASK TEAM
DURBAN
KWA ZULU-NATAL**

2014-05-27

A: THE NATIONAL HEAD

**DIRECTORATE FOR PRIORITY CRIME INVESTIGATION,
SOUTH AFRICAN POLICE SERVICES,
PRETORIA.**

SUBJECT: Durban Central CAS 781/06/2010: Response in relation to a report from Adv. TA Letsholo addressed to Adv. Bulelwa Vimbani dated 25th March 2014 in which he states his reasons to decline to prosecute this matter.

- 1 In terms of the above mentioned report and decision the SAPS-DPCI-ACTT Investigation team in Durban responds as follows:
- 2 The investigation team who investigated this matter is Col. H van Loggerenberg (team leader), Col. SY Govender and Col. P Herbst.

- 3 To substantiate and corroborate our response, we will attach documentation referring to specific issues mentioned in Adv. Letsholo's report. Except for admissions that are specifically made herein, the investigation team denies and categorically disagrees with certain aspects of this report and decision and will be commented on responses given herewith below:

4.1 **ADD PARAGRAPH 1 AND 1.1**

The Investigation team admits this paragraph except for the exhibit "A" attachment that was not received by the team.

4.2 **Add paragraph 2 and 2.1**

It must be noted that Adv. B Vimbani also attended this meeting. It is noted that Adv. TA Letsholo does not describe the whole conversation in context which he refers to. Adv. TA Letsholo implicates the investigator accusing him of some conspiracy he might have against the Provincial Commissioner. This allegation is strongly denied. On this day at the meeting we required from him what his views were in respect of the evidence against the suspects mentioned in the draft forensic report from PWC. We went down the list from Thoshan Panday to Capt. Ashwin Narainpershad. His comments were that the evidence is excellent against them and there won't be a problem. One of the investigators asked him what about General Pillay. He enquired about the evidence and we informed him everything is in the docket and evidence is in the forensic report. Col van Loggerenberg then asked what about the Provincial Commissioner because no one mentioned her name. Adv. TA Letsholo immediately replied as follows: "I have my reservations". Col van Loggerenberg asked him what he meant by that and then Adv. B Vimbani then also replied "I also have my reservations". Col van Loggerenberg again asked what they meant by saying "I have my reservations". No one could provide any answer. Col van Loggerenberg asked them what the difference is between the evidence against Capt. Aswin Narainpershad and the Provincial Commissioner. Col van Loggerenberg even mentioned that Toshan Panday paid for a treadmill which he gave to Capt. Aswin Narainpershad and he paid for the Provincial Commissioner's husband's



birthday party. No one could answer Col van Loggerenberg. Col van Loggerenberg's opinion is that there is good evidence against all the suspects. We have obtained various affidavits and documentary evidence to prove we have a case against all suspects and further more it is also the findings of PriceWaterhouse Coopers that there is indeed evidence against all the suspects listed in the forensic report. It appears there is inconsistency in Adv. Letsholo's decision to prosecute or not, as far as it concerns the person's status in life. We disagree with the view of Adv. Letsholo that there is no evidence in the docket against the Provincial Commissioner. In this regard see annexure A1, A81, A82 and A191 in the case docket Durban Central CAS 781/6/2010 and in the forensic report from paragraph 15.059 to 15.081 together with the documentary exhibits referred to in the report marked A86, A86/4, A86/5, A86/6-8, A86/9, A86/10, A86/11, A86a, A86b, A87/3, A87a and A87/4-6. No mention is made about the evidence in the forensic report. It is confusing to say the least that in all the meetings he did not mention that there is no evidence against the Provincial Commissioner. PriceWaterhouse Coopers also attended all the meetings. Adv. Letsholo's report was given to Trevor White from PriceWaterhouse Coopers. This report also implicates PriceWaterhouse Coopers in that they were responsible to use the evidence given to them by the SAPS to compile a forensic report together with the exhibit files. Trevor White was requested to comment on the report. Attached hereto marked **annexure JVL 1** is a copy of the report of Trevor White. Paragraph 5 and 6 of this report is self explanatory.

4.3 **Add paragraph 3 and 3.1**

The investigation team was not notified by the NPA when they received the representations. We were not requested to investigate the alleged allegations made in the representation. We cannot rely on what is mentioned in these paragraphs because we were never shown the representations. Therefore we have no comment. If the NPA did investigate the allegations made by the accused in the representations, the investigation team request copies of any report or notes made by the investigator. The name of the investigator who allegedly investigated the representations together with the name list of the people he interviewed.

4.4 **Add paragraph 3.2**

The allegation that the NPA or Adv. Letsholo never knew about the tape

recordings (Act 70) is not true. From our first meeting he was informed about the Act 70. Reference is made to paragraph 4 of **annexure JVL 1**. Adv. Letsholo received the docket from other members within his office who dealt with the matter before it was allocated to him. It is common knowledge in the NPA that there was an Act.70. The Act 70 was used inter alia in the matter where the state alleged bribery and corruption charges against Thoshan Panday and Col. N Madhoe. On the 28th November 2012 the NPA together with the investigation teams and Crime Intelligence had a meeting in respect of the evidence and the Act 70 In Durban Central CAS 466/9/2011. Attached hereto marked **annexure JVL 2** is copy of the email dated 28th November 2012. Every person mentioned in this email attended the meeting on the 29th November 2012. The Act 70 was legally approved by a Judge of the High Court in Pretoria. The application for and extensions of the Act 70 were done by Crime Intelligence to investigate the death threats against the investigation team. At no stage what so ever did the investigation team or Crime Intelligence for that matter, apply for an Act 70 in respect of Durban Central CAS 781/10/2010. The evidence which was use to compile a forensic report and exhibit files were documentary evidence seized during lawful searches conducted on the 12th August 2010 with search warrants issued by the magistrates court in Durban. There is no proof that an Act 70 was used in this matter and an entry in the investigation diary was not necessary at all.

4.5 **ADD PARAGRAPH 3 AND 3.1**

The Investigation team admits having knowledge of representations made by T Panday and till date the representations have not been made available and even after several requests the investigation team did not have insight to the representations. Therefore the contents of this paragraph are not within the knowledge of the investigation team and are unable to comment on this paragraph.

4.6 **ADD PARAGRAPH 3.2**

The investigation team categorically denies the allegation in this paragraph. From the onset the previous prosecutors and the present prosecutors were informed of an Act 70 being in place in terms of an

application done by the police Crime Intelligence Unit and that was for the death threats against the investigation team. They were informed that there was never an Act 70 application done in terms of Durban Central CAS 781-06- 2010. Reference is directed to paragraph 3.4.

4.7 **ADD PARAGRAPH 3.3 to 3.5**

Colonel Govender admits to the question being asked in 3.3 and to subsequent conversation in 3.4 and 3.5 but denies and disagrees to the correctness of the response and report. The advocates were reminded that they were informed from the initial meeting that they attended that there was an Act 70 authorised and that the Crime Intelligence (CI) of the SAPS had applied for that after they had received intelligence that there are threats on the lives of the investigators and they (CI) were the custodians of the recordings.

They were also informed that the investigation team was not relying on the Act 70 because it has no evidential value to Durban Central CAS 781-06-2010. The advocates in this meeting on the 14 March 2014 denied that they had knowledge or were informed by the investigation team about an Act 70 and it was pointed out by Col. Govender that almost all the NPA officials had knowledge of an Act 70 but they still denied any knowledge and stated vehemently that the investigation team did not disclose this to them and that the first time they had gained knowledge or insight was when they received representations from the defence that mentioned the Act 70's recordings being played to the accused Thoshan Panday.

As for paragraph 3.5 Col Govender disputes and disagrees with the entire content. At no stage did he inform the prosecutors that Col Van Loggerenberg had ever made any application for an Act 70 with the crime intelligence unit. In fact what he did inform them is that if there was any Act 70 conversations pertaining to Durban Central CAS 781-06-2010 then the lead investigator Col. Van Loggerenberg will have been contacted by Crime Intelligence and a meeting will be set up for the team to listen to those recordings and Col. Govender will reiterate that again the prosecutors were informed at this point of the meeting that the recordings that were listened to was of no evidential value to Durban Central CAS



781-06-2010 and therefore the team was not relying on Act 70 recordings but on the evidence that had been gathered in the SIX (6) lever arch files and the forensic report.

4.8 ADD PARAGRAPH 3.6

It can be clearly seen that ADV.LETSHOLO has misconstrued facts deposed to him because he was told on many occasions that the application he refers to in this paragraph was an ACT 70 application on the threat of the lives of the investigating team and no application was made for Durban Central CAS 781-06-2010. The Act 70 is a complete different project registered with CI called 'Stallion'.

4.9 ADD PARAGRAPH 4, 4.1 AND 4.2

Col. Govender admits the request in paragraph 4 and context of 4.2 and denies the correctness of 4.1

Col Govender response to the request was that Crime Intelligence were the custodians of the recordings and that they had indicated that there was certain sensitive recordings that was not pertinent to the threats on the lives of the investigation team and that they will make available what is pertinent to Durban Central CAS 781-06-2010 but reiterated to the prosecutors that the investigation team was not relying on any recordings that CI have in their possession because there was none of evidential value and that was the reason the investigation team did not ask for the recordings and that if the prosecution team insisted that recordings must be available then arrangements can be made for CI to make available only what is pertinent to Durban Central CAS 781-06-2010 and informed them once again that these recordings are not for an application in terms of Durban Central CAS 781-06-2010 but became pertinent during the listening of recordings on the threat of the lives of the investigation team and again informed the prosecutors that it is of no evidential value. The prosecutors then responded that it was for them to listen to recordings and it is their decision to make and not the police.

Col Govender also responded that if the prosecutors based on



representations received from the defence and that they had the privilege to read and if they have concluded that the CI had interfered, it was suggested to that the representations must be made available to the investigating team to comment or alternatively those representations must be thoroughly investigated and if they conclude that CI had interfered then they must place charges to those that they have gathered evidence against. He also informed them that the investigation team was not aware of the action taken by CI and that we were two separate departments but conceived that we were all the police when it was put to him by the prosecutors present.

4.10 **Add paragraph 5, 5.1 and 5.2**

The investigation team has no comment and is totally unaware if this incident took place.

4.11 **ADD PARAGRAPH 6**

The content is admitted and confirmed but the correctness is denied. Col Govender when questioned by the prosecutors if he had knowledge of recordings being played to Thoshan Panday at the Crime Intelligence office stated that he had no knowledge if such an incident had occurred but had read about it in the paper and informed them that he was angry how a reporter could report such an issue when the investigation team had no knowledge. Due to the fact that from his knowledge the custodian of the Act 70 was Col. Padayachee he then decided to confront Col. Padayachee and the response he received was that Col. Padayachee cannot comment on any issue that occurred in the office of Gen. Deena Moodley and informed him that if clarity is required then that must be taken up with Gen. Moodley.

4.12 **Add paragraph 7**

Once again the evidence has been collected in a professional manner in terms of the Criminal Procedure Act. There is absolutely no evidence to even suggest that the Bill of Rights and the Constitution had been violated. We are of the opinion that Adv. Letsholo's finding is based on information that was not at his disposal and which was not contained in the docket. The investigation team take exception to the fact that Adv Letsholo is making serious allegations against the integrity of the investigating team

in that they have obtained evidence improper/illegally which is a violation of the Constitution. The investigation team denies this accusation strongly. The National Head of The Directorate of Priority Crime Investigation SAPS, take these allegations against its members in a very serious light when its members are accused of obtaining evidence in an improper/illegal manner which violates any Act, Bill of Right or The Constitution.

4.13 **Add paragraph 7.1**

There is absolute no link surrounding the tapping of the phones and the evidence produce to Adv Letsholo. According to the Investigation team he is not even concerned about the facts put before him but he would rather direct the attention to other so called factors which he claims are influencing the case of which he had no insight or knowledge of. The impression is created by Adv. Letsholo that the Act 70 and the evidence produced is linked. Based on the evidence before Adv Letsholo and still suggest that the evidence is irredeemably tainted is an irresponsible statement base on no facts at all.

4.14 **Add paragraph 7.2**

Again Adv Letsholo states that the evidence is obtained in an improper/illegal manner without producing any substance to substantiate his allegation against the investigation team. The allegation that he has to turn a 'blind eye' to the manner in which the evidence was obtained is quiet disturbing and of great concern to the investigation team.

4.15 **Add paragraph 7.4**

The investigation team disagrees with the prosecutor's comments. The prosecutor was informed that the Act 70 is not being relied upon as evidence for this case. The serious allegation against the investigating team for using Improper investigative techniques is absurd. The investigating team has produced six lever arch files of evidence that was gather through normal investigative techniques and a professional forensic report compiled by Price Waterhouse Coopers together with 20 lever arch

file of forensic evidence which was given to him to apply his mind and make a decision. It is the view of the investigation team that the prosecutor based his decision on representations received from the defence on an Act 70 which is not related to Durban Central CAS 781/6/2010.

4.16

Add paragraph 8

The contents are noted. In light of all the explanations in the paragraph above the investigation team has spent many man hour and expenses to the state to gather evidence and to produce that to a prosecutor for a positive decision. The investigation team is still of the opinion there is a prima facie case and as informed by the prosecutor personally that the evidence produced was good. The investigation team disagrees to the prosecutor's decision as he has based his decision on representations received from the defence and which we are of the opinion was never properly investigated and the investigation team was never consulted or shown the representation to give a comment.

Colonel

J van Loggerenberg

DPCI:ACTT

KZN

ANNEXURE JVL 7(1) - JVL 7(2)



South African Police Service



Suid-Afrikaanse Polisie

Private Bag: X 1600

Fax No: (012) 846 4400

Your Reference :

THE NATIONAL HEAD
DIRECTORATE FOR PRIORITY CRIME
INVESTIGATION
SOUTH AFRICAN POLICE SERVICE
SILVERTON
0001

My Reference : Durban Central CAS 781/06/2010

Enquiries : Lt Gen Dramat

Tel : (012) 846 4001

The Head
Specialised Commercial Crime Unit
P/Bag X 54355
DURBAN
4000

Dear Advocate Vimbani

REPORT IN RESPECT OF DURBAN CENTRAL CAS 781/06/2010: ADVOCATE LETSHOLO: DATED 25 MARCH 2014

1. I refer to the above memorandum of Advocate T A Letsholo, addressed to you, in which a decision was taken to decline to prosecute in this matter.
2. According to the memorandum, Advocate Letsholo submits that the South African Police Service monitored and recorded certain telephone conversations to secure evidence against the suspects in the investigation of Durban Central CAS 781/06/2010. There is an innuendo in the memorandum that investigators of the Directorate for Priority Crime Investigation, (the Directorate) by relying on so-called "telephone tapping" (interception), utilised improper investigative techniques which are a deliberate or flagrant violation of the Constitution.
3. I wish to place on record that the above allegations are categorically denied. None of the evidence in the investigation pertaining to Durban Central CAS 781/06/2010 was obtained by means of interception and there is no such evidence contained in the docket. The evidence in Durban Central CAS 781/06/2010 comprises straight forward documentary evidence seized during lawful search and seizure operations, affidavits of witnesses and a comprehensive forensic report compiled by Price Waterhouse Coopers. Since this was an ordinary commercial crime investigation of the Directorate, there was no need for the Directorate to rely on interception as provided for in the

Regulation of Interception and Provision of Communication-related Information Act, No. 70 of 2002. I am in possession of formal reports which make it clear that interception was neither applied for nor utilised by the Directorate to secure evidence in this investigation. Advocate Letsholo himself, in paragraph 3.2 of his memorandum, acknowledges that the investigation was straight forward and that there was no need to utilise interception to secure evidence against the suspects.

4. I am, however, advised that interception was applied for by the Division Crime Intelligence which was subsequently approved by the designated Judge, on the basis of death threats made against the investigation team. None of such evidence form part of the evidence in Durban Central CAS 781/06/2010. It is also not clear how this specific interception only became known to Advocate Letsholo on 14 February 2014 (allegedly with the representations of Mr. Panday) if the prosecutors who dealt with this matter before him were all aware of the interception (since 28 November 2012) and if it was discussed with, and contextualized to him, by the investigators personally, as early as 21 May 2013. I am also aware that representations were made on behalf of Mr. Panday during June 2013 and it is not clear whether Advocate Letsholo refers to "new" representations of 14 February 2014 or whether he indeed refers to the June 2013 representations.
5. Although the Directorate was not privy to the representations made to the prosecuting authority, the Directorate disagrees with the view of Advocate Letsholo that the State would go to court with "dirty hands" in respect of Durban CAS 781/06/2010 and the evidence in this matter is "irredeemably stained". This office intends to take this matter to higher authority and would therefore appreciate, before doing so, if you could indicate, in writing, whether you share the views of Advocate Letsholo.
6. Kindly note that I can make myself available to discuss this matter in further detail, should the need arise.

With kind regards

LIEUTENANT GENERAL

**NATIONAL HEAD: DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
SOUTH AFRICAN POLICE SERVICE
A DRAMAT**

Date:

ANNEXURE JVL 8(1) - JVL 8(8)



**DIRECTORATE OF PUBLIC PROSECUTIONS
KWAZULU NATAL**



The National Prosecuting Authority of South Africa
Igunya Jikelele Labatshushisi bomzantsi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika

MEMORANDUM

**TO: THE SAPS INVESTIGATING OFFICERS
DURBAN CENTRAL CAS 466/09/2011**

**FROM: ADV. MOIPONE NOKO
DIRECTOR OF PUBLIC PROSECUTIONS
KWAZULU-NATAL**

**SUBJECT: DURBAN CENTRAL CAS 466/09/2011
CORRUPTION AGAINST MR TOSHAN PANDAY AND COL.
NAVIN MADDOE**

DATE: 21 OCTOBER 2014

DPP
301 Church Street
PIETERMARITZBURG
3201

P/Bag X9008
PIETERMARITZBURG
3200

KwaZulu Natal
South Africa

Tel: 033 845 4405
Fax: 033 394 6891

1. INTRODUCTION

I had previously provisionally withdrawn this matter on the basis that there were considerations of justice that I had to look into in order to arrive at a proper decision that is in the interests of justice. These have been so looked into and my decision is indicated hereunder with substantiation.

www.ndp.gov.za

2. BACKGROUND

- 2.1 A case with Durban Central CAS 466/09/2011 (Case 466) originates from the alleged case with Durban Central CAS 781/06/2010 (Case 781) (the alleged 2010 FIFA World Cup R60 million Fraud at Durban SAPS) with allegations that, *inter alia*, Mr Thoshan Panday (a businessman and Col. Navin Madhoe (SAPS officer at Durban Headquarters at procurement services) committed fraud against the SAPS by

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inflating accommodation costs for SAPS members who used Mr Panday's accommodation services in KZN during the FIFA World Cup in 2010.

- 2.2 Case 466 has allegations that both Mr Panday and Col. Madhoe bribed Maj. Gen. Johan Booysen by offering and giving him an amount of R2 million in exchange for a report in the 781 case which would have assisted both Mr Panday and Col. Madhoe to be exonerated from criminal liability in the 781 case.
- 2.3 Case 781 was dealt with by the Specialised Commercial Crime Unit (SCCU) in Durban and disposed of recently with a decision not to prosecute anyone as there was no evidence to prosecute any person with any offence. It has been revealed by the SCCU that the SAPS members who were charged with the investigation of this 781 case was gunning for the prosecution of a specific person (KZN SAPS Provincial Commissioner, Lt. Gen. Ngobeni) and Mr Panday and Col. Madhoe were being pressurised to falsely implicate her in the commission of criminal offences, with a promise that they will be exonerated in 781. When the SAPS investigators realised that the PC cannot be charged in this case (781), simply because there is no evidence against her, one I/O reportedly said that the SCCU prosecutor may as well just close this 781 case. It appears Mr Panday and Col. Madhoe featured nowhere in the 781 then as the focus was on the PC. One then may ask a question, why was Col. Madhoe arrested in 466 case. Was this a lawfully justified arrest or was it a way to pressurise him to implicate the PC, as he (Col. Madhoe) even mentions in his representation that he was being regularly interviewed by the I/Os so as he falsely incriminate the PC, which he flatly refused.
- 2.4 The SCCU revealed the scheming and intercepting of phone calls of, *inter alia*, Mr Panday, with a motive and agenda to falsely implicate certain people. They allegedly even went further to even boast to Mr Panday telling him that they know what his defence in the 781 case will be, as they heard his discussions with his legal representative through the intercepted calls.

- 2.5 Mr Panday was even promised by SAPS members in the 781 case that if he falsely implicate the PC, they would get rid of the 466 case. It was further explained to Mr Panday that the benefit of this sought incrimination of the PC for them (SAPS members) will be that the PC will be forced to resign and then Maj. Gen. Booysen will become the next KZN PC, further, Maj. Gen. Deena Moodley would remain in control of the secret fund.
- 2.6 The 781 matter which forms the basis and reason for the alleged corruption of Maj. Gen. Booysen by Col. Madhoe, was found to be non-existent by the SCCU.
- 2.7 Maj. Gen. Booysen is the complainant and the only witness in the 466 case against Mr Panday and Col. Madhoe.
- The very Mr Panday and Col. Madhoe who allegedly refused to pave the way for him to become the next KZN SAPS PC by refusing to falsely implicate the current Provincial Commissioner Lt. Gen. Ngobeni.
- 2.8 The 466 case is investigated by the members of the police who fall under the command of Maj. Gen. Booysen, who is the complainant in the 466 case. Their objectivity in dealing with this case (466) becomes questionable, especially with the Cato Manor case cloud hanging over their heads. This, I believe, would shake their credibility and the court would view all these in favour of the two, Mr Panday and Col. Madhoe.
- 2.9 Maj. Gen. Booysen, being the complainant in the 466 case, interfered with and exercised control in this case even going to an extent of determining and deciding on who visits Col. Madhoe when he was detained in the Durban Central police cells in the 466 case. This is exhibited by the letter that was issued on his direct instruction to the Durban Central Police Station Commander, Brigadier VR. Stokes. This letter, dated 16 September 2011, addressed to All Relief Commanders and Cell Commander and titled "VISITATION, DURBAN CENTRAL CAS 466/09/2011 : N. MADHOE", provides that

:"On the direct instruction from Maj. Gen. Booyesen, only the following persons will be allowed to visit him, - 1. Maj. Gen. Booyesen; 2. Maj. Gen. Moodley, *et cetera*.

What is amazing with this is that Maj. Gen. Booyesen issues an instruction regarding who must visit a suspect in a case that he is a complainant in himself. Further, he also has a visitation right in this as it appears in the letter him being mentioned as number one among those who are allowed to visit Col. Madhoe. By the way, what would a complainant want to visit a suspect in their own case for? This is unheard of and smacks of an agenda.

- 2.10 The allegation that the accused in 466, Mr Panday and Col. Madhoe, wanted Maj. Gen. Booyesen to predate a report in the 781 case in order to have the section 205 subpoenas set aside (subpoenas for access to the bank account records) and consequently bribed Maj. Gen. Booyesen to do that, does not really hold water because the fact is that if there has been any corruption (bribing of Maj. Gen. Booyesen) that took place, would not make the corruption and its successful prosecution impossible, as sections 3(b) and 4(1)(b) of the Prevention and Combating of Corrupt Activities Act 12 of 2004 state. The alleged report in the 781 case that it was alleged was to be predated to invalidate the section 205 subpoenas did not suffice to prove fraud or any offence against anyone, especially Col. Madhoe and Mr Panday, who are alleged to have bribed Maj. Gen. Booyesen for the predating of this very report. This report is made out to be the evidence in the 781 case to prove Fraud against Mr Panday and Col. Madhoe, but one wonders why it could not be seen in this way by the SCCU. If then there is no fraud that could be proven by the SCCU in the 781 case, why would Col. Madhoe (and Mr Panday) bribe Maj. Gen. Booyesen, or anyone for that matter, in respect of the 781 case using this report? One would expect that they would know what is contained in the 781 case against them as they are part of it, they would know what they did to even know what this report has against them, especially Col. Madhoe who was then a procurement official who processed the accommodation documents leading to the 781 case.

2.11 Col. Madhoe alleges to have met with Maj. Gen. Booysen approximately on eight (8) occasions at Maj. Gen. Booysen's instance regarding the Cato Manor unit's shooting incidents before the 466 case came into being. I will say no more regarding this issue as the Cato Manor matter is *sub judice*. This, however, indicates a history of some sort being shared by the two, Col. Madhoe and Maj. Gen. Booysen. Now they are complainant and the accused in the 466 case, respectively.

2.12 There is an assumption that is not substantiated by evidence that Mr Panday is part of the alleged bribing of Maj. Gen. Booysen by Col. Madhoe. This assumption is derived from the position that they both are suspects in the 781 case. This will not stand in court as evidence for corruption against them.

2.13 This is one of those "your word against mine" kind of cases as it is Maj. Gen. Booysen's word against that of Col. Madhoe. However, section 208 of the Criminal Procedure Act 51 of 1977 provides that a conviction may follow on evidence of a single witness. The cautionary rules may be applied by the court in this case especially given the background of this case, and the challenge here is that Maj. Gen. Booysen himself is alleged to be hitting back at Col. Madhoe for the damning information that Col. Madhoe has against him relating to the Cato Manor case. Col. Madhoe alleges that Maj. Gen. Booysen is trying to silence him with the allegation of the R2 million corruption for the damning information that he has against him. A22, a former SAPS Constable Sandesh Dhaniram, confirms the possession of this information about Maj. Gen. Booysen by Col. Madhoe in the form of discs.

2.14 If the legal strength of the section 205 subpoenas was based on the date on the report, as it is alleged, hence Col. Madhoe wanted it predated to invalidate the subpoenas, it is inconceivable that any person, let alone a Colonel in the SAPS (a person of Col. Madhoe's calibre who was working on these issues of procurement at SAPS) would not know that SAPS could simply obtain other section 205 subpoenas that would tally with the new predated date in the report. His problem would not have been resolved, therefore, one may ask why would he bribe Maj. Gen. Booysen when this would

not provide a permanent solution to his alleged problem. This dating of this report would not have caused any subpoena to be set aside because it is not evidence in the 781 case, neither does it have any bearing as far as the procedural steps and prerequisites for obtaining a section 205 subpoena is concerned. This was proven by the SCCU in the 781 case.

2.15 Further, it appears that Maj. Gen. Booyesen was not the investigator in the 781 case, but Col. Van Loggerenberg and others were. Therefore, a question arises that why would a favour of the predating of the report that should be in possession of those who are investigating the 781 case be sought from Maj. Gen. Booyesen, not the investigators.

2.16 The cell phone records purported to reflect the calls between Mr Panday and Col. Madhoe do not indicate any specific crime having been planned. It is haphazard conversations with slang and profane language between the two people that one cannot really make out what issue was being discussed as a lot of different issues were being spoken about. More especially, a criminal offence cannot be deduced as constituted by the facts from their conversations in the cell phone records available. A question may be asked that on what basis was an inference drawn by the police investigators that these conversations pertain to or constitute a criminal offence being planned by the couple, specifically that they were planning to bribe Maj.Gen. Booyesen. The alleged authority to intercept the calls for which both Col.Madhoe and Mr Panday's calls are alleged to have been recorded was issued during June 2011 for June to September 2011. This appears to go way before the 466 case. This then ties up with what the SCCU has revealed that people's calls were being recorded and the period tallies with the 781 case rather than the 466. One then wonders if the 781 recordings are not utilised in another case, the 466 case, which is not permissible..

3. CONCLUSION

- 3.1 I have decided to decline to prosecute (*Nolle Prosequi*) both Col. Madhoe and Mr Panday for corruption or any offence in the 466 case. This is due to lack of reasonable prospects of a successful prosecution, as explained and substantiated *supra*. Further, there appears to be agendas among the parties and scores to be settled, unfortunately we appear to be used to assist whoever to settle those scores and push those agendas. We are expected to act impartially and ethically in the execution of our duties as officials of the National Prosecuting Authority, thus any indication that we are being used in a manner that flies in the face of our values, ethics and Code of Conduct, must be avoided and not be entertained at all, hence I hereby do by declining to prosecute in this case.

Kind regards



ADV. M. NOKO
DIRECTOR OF PUBLIC PROSECUTIONS
KWAZULU-NATAL

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ANNEXURE JVL 9(1) - JVL 9(10)



SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

Reference : Durban Central CAS 466/09/2012
Enquiries : Maj Gen Booysen
Telephone : 031-3256069
E-Mail : BooysenJ2@saps.gov.za

OFFICE OF THE PROVINCIAL HEAD
DIRECTORATE FOR PRIORITY
CRIME INVESTIGATIONS
DURBAN

2014-11-19

National Director Public Prosecutions
Private Bag x 752
PRETORIA
0001

**DURBAN CENTRAL CAS 466/09/2012 : CORRUPTION AGAINST MR THOSHAN
PANDAY AND COLONEL NAVIN MADHOE :**

1. I refer to a missive from the office of the DPP in KwaZulu-Natal, Advocate M Noko dated 21 October 2014. For your easy reference I attach a copy marked "Annexure A".
2. This missive from Advocate Noko is rather verbose. It is permeated with conjecture, innuendo, inaccuracies and in certain instances blatant untruths. Her assertions are an aberration which lacks substance supported by credible evidence.
3. I will deal with her assertions hereunder.

Ad par 2.3

I respectfully disagree with the submission by Advocate Noko that "*there was no evidence to prosecute any person with any offence*" in the main investigation pertaining to the R60M corruption. The reference number of this case is Durban Central CAS 781/09/2011. It is my submission that there is a *prima facie* case against Mr Thoshan Panday, Colonel Navin Madhoe as well as Captain Ashwin Narrainpersad.

For purposes of this submission I refrain from detailing the evidence in this matter save to say that it contains in excess of twenty (20) lever arch files of documents, more than two hundred (200) affidavits as well as a forensic audit report compiled by an independent group of auditors namely Price Waterhouse Cooper.

I find it objectionable that the Specialized Commercial Crimes Unit (SCCU) from her office seeks to entertain and attach credibility to the claims of the suspects in this matter. Quite how it has been “revealed” by the SCCU that SAPS members charged with the investigation of Durban Central CAS 781/09/2011 was gunning for KZN Provincial Commissioner, Lieutenant General Ngobeni – is unclear. This imputation is not supported by any evidence other than the contrived version of the suspects themselves. I, for one, have never expressed any desire to become the Provincial Commissioner of KZN and neither have I applied for this position before. In my view this is a fallacious argument since the irregularities that were investigated, occurred before the 2010 Soccer World Cup. The investigation focused on irregularities before her appointment as Provincial Commissioner. It is thus ludicrous to believe the suspects ie. Panday and Madhoe in this regard. The investigating officers could not have attempted to “falsely implicate” the Provincial Commissioner for a crime that took place before she assumed her post. Her involvement in the matter relates to attempts by her to interfere with the investigation after she assumed her position as Provincial Commissioner, and not with regard to the procurement irregularities *per se*.

The conclusion by Advocate Noko that neither Panday nor Madhoe features anywhere “no where” (sic) is manifestly wrong and this conclusion ought to be challenged. There is overwhelming evidence to support a converse conclusion.

The question by Advocate Noko as to why Madhoe was arrested in a subsequent attempt to bribe me is rather rhetorical. A reading of case 466/09/2011 will demonstrate beyond doubt that Advocate Noko’s reasoning is fallacious and wrong. I find it reprehensible that the suspect’s version of events is preferred by Advocate Noko. This is a worrying precedent.



Ad par 2.4

Quite how the SCCU “revealed the scheming and intercepting of phone calls of, *inter alia*, Mr Panday, with a motive and agenda to falsely implicate certain people” in my opinion is a mystery. The tenor and tone of Advocate Noko’s assertions in this paragraph is indeed worrying and ought to be examined. In her own words there is no proof of Panday’s claims as she refers to mere “allegations”. Her preference of believing the suspect’s version over the police’s version raises to my mind a question of serious impropriety.

Ad par 2.5

Other than the claims by the suspects in this matter, who had much to lose, had the investigation led to a prosecution, and conversely much to gain should they have managed to derail the investigation, there is no evidence whatsoever to remotely support the claims contained in this paragraph. In any event, why would the Provincial Commissioner be forced to resign if she knew the evidence against her was contrived? Furthermore, there is no guarantee that I would succeed her as Provincial Commissioner. Pre-supposing that she had resigned, for this or any other reason, her vacant post would have been advertised and prospective candidates evaluated for possible appointment. It is my submission that Panday and company have failed to compromise me. They have attempted to have the investigation stopped. The Deputy National Commissioner for the HAWKS – Lieutenant General Dramat is *aux fait* with the detail. When this failed they brought in an unsuccessful application in the High Court to thwart the investigation. After they failed to bribe me with R2M in cash, they have obviously run out of ideas. To now suggest an agenda by myself to become Provincial Commissioner at the expense of Lieutenant General Ngobeni is not supported by any evidence and ought to be rejected.

Lieutenant General Ngobeni has no control over the Secret Fund. If I had to succeed her the situation would remain the same. To postulate that Major General Moodley would therefore remain in control of the Secret Fund makes no sense and is in any event irrelevant.



Ad par 2.6

I have dealt with Durban Central CAS 781/09/2011 in par 3 (*Ad par 2.3*) *supra*. This submission by Advocate Noko, I repeat, is based on a fallacious argument.

Ad par 2.7

I am not the complainant in the matter of Durban Central CAS 466/09/2011. This is a disingenuous proposition by Advocate Noko so as to build a legend for her imputations contained in par 2.8 and 2.9 *infra*. For one, the State is the complainant in the corruption matter. I am merely one of many witnesses. Advocate Noko clearly doesn't understand my role in this investigation. She also chooses to ignore the fact that the Durban Central CAS 781/09/2011 investigation was initiated by none other than the Financial Head in the province Brigadier Laurence Kemp. It is inconceivable that Brigadier Kemp knew about my "aspirations" as alleged by Advocate Noko, unless he obviously colluded with me to discredit the Provincial Commissioner. Had Advocate Noko however bothered to examine Brigadier Kemp's statement in Durban Central CAS 781/09/2011, she would have established the origin and source of this entire investigation.

Ad par 2.8

Advocate Noko is mendacious in stating that the investigating officers's objectivity are questionable, especially with the Cato Manor case cloud hanging over their heads. The investigating officers in these matters are as follows :

Durban Central CAS 781/09/2011

Colonel van Loggerenberg

Durban Central CAS 466/09/2011

Colonel du Plooy

Durban Central CAS 122/04/2012

Colonel Herbst

None of these investigating officers were ever attached to the Cato Manor Unit. They are not implicated in the Cato Manor issue at all, hence their credibility cannot be questioned as implied by Advocate Noko.

In any event, it would appear that Advocate Noko is usurping the function of the courts, as the credibility of witnesses ought to be pronounced upon by the courts.



Ad par 2.9

Advocate Noko is seriously misguided to suggest that I interfered with and exercised control in Durban Central CAS 466/09/2011. Had she complied with the NPA policy guidelines she was at liberty to consult with me to establish the facts which I shall detail now.

- As the Provincial Head – HAWKS, it is incumbent upon me to exercise control over all investigations conducted by the HAWKS in KZN.
- The National Directorate Head – HAWKS, were kept abreast of all developments in this investigation.
- To suggest that I “interfered” with the investigation is akin to suggest that Advocate Noko herself is interfering with the functions of her subordinates.
- There is nothing mysterious regarding my instruction with regard to visits to Madhoe. Initial investigations revealed complicity by officers within SAPS. This entry into the occurrence book was made to obviate attempts by officers with *mala fide* intentions.
- I have dealt with the matter regarding my being the complainant above (see *Ad par 2.7*). Once again the tenor and tone of Advocate Noko's contentions appears to be that of a defense counsel rather than that of a Prosecutor. The fact that I had not visited Colonel Madhoe at all subsequent to his arrest, or that I have not personally communicated with him directly or indirectly demonstrates that Advocate Noko's assertion that it “smacks of an agenda” is misguided and I reject it with contempt.

Ad par 2.10

Advocate Noko chooses to be deliberately obtuse. For one, there is indeed a strong *prima facie* case against Colonel Madhoe and Mr Panday in Durban Central CAS 781/09/2011. The attempt by Colonel Madhoe and Mr Panday to derail the investigation in Durban Central CAS 781/09/2011 emanates from their unsuccessful application to have the Section 205 subpoenas set aside.



Although the report in question itself does not contain *prima facie* evidence of a crime being committed, pre dating the report to a date before the application for the Section 205's could have rendered the 205's and subsequent evidence obtained, inadmissible. Information in this report contained evidence gleaned as a result of the 205's. In other words, if I had predated this report it would have meant that the investigators had obtained the information illegally, before obtaining the Section 205 subpoenas.

Advocate Noko rightly indicates that Colonel Madhoe was from the procurement section. He has inadequate legal knowledge to argue the points raised by Advocate Noko. Her sentence : *"One would expect that they would know what is contained in the 781 case against them as they are part of it, they would know what they did to even know what this report has against them, especially Col Madhoe who was then a procurement official who processed the accommodation documents leading to the 781 case."*(sic) is incoherent and difficult to understand ie. How and why would Panday and Madhoe know what is contained in 781? They were the suspects in the matter and not the investigators. Furthermore, they knew exactly what was contained in the report since they had illegally obtained it. Two copies of the report were found in Madhoe's vehicle on two separate occasions. A third copy of the report had fingerprints that matched those of Panday on it. All this evidence is contained in the dockets and for some unknown reason appears not to have been considered.

Ad par 2.11

Advocate Noko once again prefers to exclude reliable evidence in Durban Central CAS 466/09/2011 in favor of Colonel Madhoe's allegations who obviously stands to gain by making these false allegations. There is objective evidence in 466 such as cellphone tower and communication correlation analyses (obtained from the cellphone records of Colonel Madhoe and Mr Panday), sms's sent by Colonel Madhoe, affidavits from Brigadier Madonsela and Sergeant Govender as well as the cellphone records of Colonel Madhoe, Mr Panday and myself to prove that the converse is in fact true – it was Madhoe who in fact contacted myself on a number of occasions.



The objective evidence will also prove that the meetings took place before the so called Cato Manor matter. I would venture to suggest that by not considering the objective evidence and to favor unsubstantiated submissions by accused smacks of an agenda itself. If Advocate Noko had regard to all the available evidence at her disposal she would not have come to the conclusion she has.

Advocate Noko should be aware that my involvement in the Cato Manor matter is not *sub judice* and has been disposed of in my favor.

Once again the last sentence in this paragraph ie.: "*This, however indicates a history of some sort being shared by the two, Col. Madhoe and Maj. Gen. Booyesen, Now they are complainant and the accused in the 466 case, respectively.*" Is incoherent and difficult to understand

Ad par 2.12

Advocate Noko fails to ascribe these assumptions to anyone. Neither the investigators nor I have come to this assumption. If she herself is coming to this assumption she once again fails to consider *prima facie* evidence in 466. For instance the statement of the person who drew the money on behalf of Mr Panday, Mr Panday's fingerprints on the document in question, and the paper slips found amongst the money offered to myself which is linked to Panday's bank account, to name but a few.

Ad par 2.13

This is not a matter of "*your word against mine*" case. If Advocate Noko had regard to all the evidence it would be clear to her that there is not only direct witness evidence but also objective technical evidence and circumstantial evidence to support my version. No such evidence, other than false allegations by the suspects exist to support Madhoe's claims. The reference to Dhaniram's statement is rather surprising as a careful examination of this statement actually confirms my version.



Advocate Noko failed in her duty to study the outcome of my successful application in the High Court (see Booyesen vs NDPP). Had she done so she would have realized that no such evidence as purported by Colonel Madhoe exist. I fail to understand how Advocate Noko seeks to accept an untested and unfounded allegation by a suspect who faces serious consequences. In this regard I also quote a passage of a finding by the Appeal Court in State vs Zuma - where the honorable Judges of the Appeal court held the following : ***"The court dealt at length with the non-contentious principle that the NPA must not be led by political considerations and that ministerial responsibility of the NPA does not imply a right to interfere with a decision to prosecute (para 88 et seq). This, however, does need some contextualization. A prosecution is not wrongful merely because it is brought for an improper purpose. It will only be wrongful if, in addition, reasonable and probable grounds for prosecuting are absent, something not alleged by Mr Zuma and which in any event can only be determined once criminal proceedings have been concluded. The motive behind the prosecution is irrelevant because, as Schreiner JA said in connection with arrest, the best motive does not cure an otherwise illegal arrest and the worst motive does not cure an otherwise legal arrest illegal. The same applies to prosecutions."***

Ad par 2.14

I have dealt with this adequately *supra*. I would like to add however that Advocate Noko wrongly assumes imputed knowledge of law by Madhoe, she herself points out that he works at Procurement who hardly if ever works with Section 205 subpoenas. What concerns me however of this paragraph is once again the tenor and tone of her assertions. She is once again deliberately obtuse and misconceives the allegation against Madhoe. I find it disquieting that the SCCU seeks to "prove" allegations by suspects.



Ad par 2.15

Advocate Noko once again demonstrates her ignorance of the evidence at her disposal. The report in question was undated when I received it. It is common practice in SAPS communication protocol for the recipient to date stamp and sign reports when they receive it. It is this date Madhoe wanted me to predate. The fact that I, as a potential witness in this regard, was not interviewed, is indeed worrying.

Ad par 2.16

Advocate Noko, I respectfully submit, could not have listened to all the recordings between Panday and Madhoe. Her conclusion otherwise would be irrational and subjective. It is evident that she has considered some of the recordings to the exclusion of others, which may very well have resulted in a wrong conclusion.

It is common cause that Panday's calls were intercepted prior to the 466 case. In any event, even if she would argue that the recordings are inadmissible, it does not render them illegal. Furthermore, there is enough *prima facie* evidence to secure a successful prosecution in 466 – without presenting the Act 70 interceptions as evidence. This, I understand, was the stance and view of the investigator.

In conclusion, it is unfortunate that Advocate Noko seeks to accuse me of having an "agenda" in these investigations. Even if it was true, and I deny this strenuously, the AD has pronounced itself adequately in this regard. (see par 2.13 *supra*). I suspect that the converse is true. This matter had been outstanding for more than two years. I think it is no co-incidence that this missive co-insides with the renewal of the Provincial Commissioner's contract. The fact that Advocate Noko has failed to return the case docket to the investigating officers in spite of requests by them and the subsequent timing of this missive leaves me with this inescapable conclusion.



I hereby request you to summon all the relevant dockets to your office and to have same evaluated by an independent team from your office. This issue has been widely reported in the local media. It has drawn various negative remarks from the public and commerce. It is in the best interest of the Judicial System the National Prosecuting Authority, the South African Police Service, Mr Panday, Colonel Madhoe and Captain Narainpersad for these issues to be ventilated in an appropriate manner once and for all.

I trust that you will interpret my letter as a concern rather than a complaint.

Yours faithfully



MAJOR GENERAL
PROVINCIAL HEAD : DIRECTORATE PRIORITY CRIME INVESTIGATION
J W BOOYSEN



ANNEXURE JVL 10(1) - JVL 10(12)



DURBAN CENTRAL CAS 466/09/2011

SANDESH BADREEPERSAD DHANIRAM

STATES UNDER OATH IN ENGLISH

1.

I am an adult male, 39 years old with identity number: 711204 5068 083. I currently reside at 34 William Campbell Rd, La Lucia with cellular phone number: 082 402 9220.

2.

I realize that this statement I am about to make could incriminate me in a criminal prosecution. The provisions of Section 204 of Act 51 of 1977 have been explained to me. I have, however been informed by Colonel P Herbst that I am not obliged to make any statement and that I may do so at my own free will. I have also not been promised any indemnification from prosecution, any amnesty whatsoever or any other reward should I make this statement. I have also been informed that this statement will not be a warning statement made in terms of Judges Rules, but an affidavit. I am also informed that should I at a later stage be prosecuted in this matter, this statement may not be used against me in that prosecution, except in accordance with Section 204 (4)(b) of Act 51 of 1977. I understand that my status as a witness will depend on me giving my full co-operation to the South African Police, which may include submitting myself to a polygraph test and the testifying in all proceedings which may be necessary. I am satisfied that Colonel P Herbst may record my statement which I make freely and voluntarily and without any influence. I would therefore like to submit the following statement.

3.

I am an ex Police Officer. I resigned from the SAP at the end of June 2011. I held the rank of Constable until I resigned from the SAP. I joined the South African Police on 29th November 2002. I was initially employed in the Crime Intelligence Unit for approximately 3 years. I was then transferred to Umhlali SAP, where I was employed in various departments at the station for approximately 4 years.



1



DURBAN CENTRAL CAS 466/09/2011

4.

During 2009 I was detached to a Provincial Task Team that was investigating taxi violence in the Northern Natal area. My immediate commander was Colonel RS Aiyer. While I was serving under the command of Col. Aiyer I became aware that there appeared to be bad blood between Major General Booysen and Col. Aiyer. Col. Aiyer referred to General Booysen as "Big B". Whenever Col. Aiyer spoke about Gen. Booysen he would run him down, by mentioning that the General was corrupt and that they, (meaning the General and the Serious and Violent Crime Unit), had a hidden vault of money and that they were killing people if the price was right and were siding with one Taxi Association in the Stanger area, the Stanger Taxi Association, as people from other taxi Associations were being killed and not those from the Stanger Taxi Association. He often referred to the Mkhize shooting and the shooting of the suspects in the Sham Killing. After the Mkhize shooting, there was a family outcry, which was reported in the media. Col. Aiyer would always mention that it was not a justified shooting as on an occasion when we went to fit tires on the state vehicle at Royal Vulcanizing, which was close to where the Mkhize shooting took place, he spoke to some people who worked at Royal Vulcanizing and questioned them about the shooting and asked them about what they had seen. He told me that all of the witnesses had not been interviewed and that the investigators had left a lot of evidence behind. He stated that the investigation was a cover up as the shooting was not justified and was planned. He did not mention who planned the shooting. He further used to say that General Booysen was trying to remove him from the police as every time that he was served a notice of a Disciplinary case against him he would say, see what these people are doing. He would not mention names or elaborate on who these people were. Col. Aiyer often questioned the manner in which the suspects in the Sham killing were shot by the police. He used to ask why all of the suspects in that case were killed.

5.

On one occasion while I was working under Col. Aiyer, Col. Aiyer told me to drive to Durban International Airport. He told me to drive fast. He did not explain why. He did not tell me why we were going to the airport and I did not ask him. When we arrived at

DURBAN CENTRAL CAS 466/09/2011

the airport he told me to park next to the police station. A short while after our arrival Warrant Officer Haniff, who is the SAP POPCRU representative for the KZN Provincial Head Office, approached our vehicle. Col. Aiyer removed an envelope from his brief case that he had kept by his feet. Col. Aiyer climbed out of the vehicle and handed the envelope to W/O. Haniff. I did not know what was in the envelope at that stage. When Col. Aiyer got back into the car, I asked him what he had given to W/O. Haniff. He told me that he had given him evidence that could be used against Gen. Booysen and that the evidence was to be given to Comrade Vavi, who is the head of COSATU. He further said that he had to use political influence against Gen. Booysen.

6.

During this period Col. Aiyer was going through his departmental hearings. I used to assist him with the wording of his responses to the allegations made against him as his responses to the allegations were very emotional and did not answer the allegations made against him. Col. Aiyer and I built up a very trusting relationship during this time. I believe that Col. Aiyer felt that I was on his side when it came to his battle with Gen. Booysen. I became even closer to him as he was going through some domestic difficulties at the same time. He would often confide in me about his domestic problems and his wife often used to phone me and complain about Col. Aiyer in his presence. I became a confidant of his. While assisting Col. Aiyer with his responses to his Departmental hearings he often mentioned that he had things against Gen. Booysen. He said that he didn't know who to trust or who to give it to. At the time he did not mention what he had against Gen. Booysen. I eventually told him that he continuously says that he has got things against Gen. Booysen, but never shows me what he has. Col. Aiyer then handed a compact disk to me and asked me to view the contents of the disk as I knew who a number of the taxi owners in the Stanger area were. He further stated that if I could identify them we could go and interview the family members. The reason why he wanted to interview the family members was to attempt to prove that the police shootings were planned, which would prove his belief that Gen. Booysen is corrupt. I did not ask him where he got the disk from. At the time I felt that I did not have reason to question Col.

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Aiyer about any of his actions as I was only hearing a one sided story from Col. Aiyer and he made it sound very believable.

7.

I did not view the contents of the disk in Col. Aiyer's presence. When I did view the disk I noticed that there were a number of folders on the disk. I did not view the contents of all of the folders, but most of those that I did view appeared to be Crime Scene photos. I saw a photo of Gen. Booysen attending a crime scene. I also remember seeing a photo of someone holding a case of beer. Col. Aiyer questioned why suspects who were taken to conduct a pointing out by members of the SVC ended up dead on numerous occasions. I kept the disk with me. Col. Aiyer did not ask me to hand the disk back to him. I do not know if Col. Aiyer had more copies of the disk.

8.

During 2010 after the HAWKS raided offices at the Provincial Head Office, I was with Col. Aiyer in a state motor vehicle outside of the Provincial Head Office. We used to go there in the mornings so that Col. Aiyer could report to Major General Brown. Col. Aiyer and I saw a Colonel in uniform standing outside the building, smoking. Col. Aiyer called him to the vehicle and asked him what he was doing. He said that he wasn't doing anything. Col. Aiyer then told him to get into the car and take a drive with us. It appeared to me that this Colonel was stressed about something. When the Colonel climbed into the car Col. Aiyer introduced him to me as Colonel Madhoe. Col. Aiyer referred to him as Navin when he spoke to him. Col. Aiyer then told me to drive to the Umkomaas beach area. We did not discuss anything specific. We thereafter returned to Durban and dropped Col. Madhoe off at Head Office. During the following two or three days we did the same thing, never discussing anything specific. During this time I got to know Col. Madhoe a bit better. At the time I did not know that Col. Madhoe was linked to the raid that was conducted at the Provincial Head Office. I only became aware of his involvement and that of Thoshan Panday when their names were mentioned in the media. I did not ask him about the investigation at the time as I felt that I did not know him well enough. After the few trips to Umkomaas Col. Aiyer and I often used to go to Col. Madhoe's office to visit

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if we were in the building. On occasion while Col. Aiyer was elsewhere in the building I used to bump into Col. Madhoe in the passages or at the shop in the front of the building and during these brief meetings we would greet and share small talk. The investigation against Col. Madhoe was never discussed during these visits or meetings in the passage.

9.

During the middle of 2010 I was told by Major General Brown, the then Provincial Detective Head, that I was being transferred to a Task Team that was investigating unnatural deaths in Correctional facilities where prison warders were implicated in the deaths of inmates and to report to Lt. Col. A. Booysen. Col. Aiyer was not transferred with me. I later found out that he was transferred to Pinetown Cluster Detectives. He phoned me once shortly thereafter and asked me if I wanted to work with him in Pinetown. I refused as I enjoyed the work that I was doing. I did not keep in contact with him for a while as I did not want any contact with him to sour my position on the Task Team that I was working in and he tried to create difficulties for me by informing the Station Commander of Umhlali SAP that I was no longer working in the Taxi Violence Task Team. A letter was sent to the Umhlali SAP Station Commander by Lt. Col. Booysen informing him that I had been reassigned to a new Task Team. The new Task Team was moved to the Organised Crime office on Victoria Embankment. I rarely went to the Provincial Head Office after we were moved.

10.

After moving to the Organised Crime offices I did not speak to Col. Madhoe until I met him at Durban Central SAP where I had to do some administrative work. This occurred at some time during March or April 2011. I saw Col. Madhoe in the passage on the ground floor of the station. I greeted him and we had a general conversation. I asked him to make enquiries in respect of my promotion. Shortly thereafter Col. Madhoe phoned me and asked me to come and see him at the station. I arrived at his office, but he was not present. I left a message with one of the ladies on the same floor to inform him that I had been to see him. I then left the station. A day or two later Col. Madhoe phoned me and told me to come and see him. When I arrived at his office we discussed my pending



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promotion and a number of other general topics. I asked him how the investigation against him was going and he responded that there wasn't any basis for the investigation and that he had not been charged either criminally or departmentally. He did not appear to be concerned about the investigation against him. I then left the station.

11.

A few days later Col. Madhoe phoned me and asked me to come and see him. He sounded upset on the phone. When I arrived at his office he asked me, "Are you fucking me"? I said that I was not and asked him what he meant. He suspected that I was trying to

trap him in the investigation against him. I reassured him that I was not trying to trap him. At the time he was aware that I was working in the Task Team and that the Task Team was not involved in the investigation against him. I then left his office. About two weeks before I resigned from the SAP I phoned Col. Madhoe and asked him what the procedure was that I had to follow in order to "Buy my discharge" from the SAP. He told me what the procedure was and further asked me why I was leaving. I told him that I was frustrated sitting at the same rank for so many years and that I would try something-- outside of the police.

12.

I did not have any contact with Col. Madhoe again until after I resigned from the SAP at the end of June 2011. Col. Madhoe and I spoke to each other a few times after I resigned from the SAP. During one of the conversations I asked him why he didn't speak to Gen. Booysen about the investigation against him. He said that he never had a problem with Gen. Booysen and had worked with him for a long time, but he was scared to talk to the General about the investigation. I mentioned to him that Col. Aiyer had given me a disk and that he should check what was on the disk. I told him that I would give the disk to him. Col. Madhoe phoned me on numerous occasions asking for the disk. A few days later I copied folders from the disk that Col. Aiyer had given to me onto 4 separate disks. When Col. Madhoe phoned me again I told him to meet me at Virginia Airport where I gave him one of the disks that I had copied. Col. Madhoe phoned me again on numerous occasions to ask me whether I had more stuff. I met him a few days thereafter at Blue



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Lagoon where I handed the disk that Col. Aiyer had given to me and the remaining three disks.

13.

At this meeting Col. Madhoe told me that our phones were tapped and that he would organize me another phone. After I gave the disks to Col. Madhoe he told me that he was going to meet with Gen. Booysen and tell him about the disks. I suspected that Col. Madhoe was going to Blackmail Gen. Booysen with the disks in order to stop the investigation against him. I then realized that I could be in trouble. I told Col. Madhoe that if he exposes the disks that my life could be in danger, meaning that I would be in serious trouble if it was ever established that I had given the disks to him. He told me not to worry; my man Thoshan will protect you. He then gave me Thoshan's number. I knew that he was referring to Thoshan Panday as I had seen their names appearing in the same newspaper articles, but I did not know what he looked like. After I left the meeting with Col. Madhoe I Phoned Thoshan and I informed him that I was Navin's friend. He seemed to know who I was when I phoned him. I told him that I was not happy with what was going on and that I was going to lose everything. He asked me where I was and I told him that I was in Durban. He told me to meet him and gave me directions to the African Palm building in Umhlanga Rocks.

14.

I did not know what Thoshan Panday looked like so when I arrived at African Palm I phoned Thoshan. I gave him a description of my car. I then saw an Indian male approach my car and climb into the front passenger seat. When Thoshan climbed into my car we introduced ourselves to each other. Thoshan thanked me for assisting them. I told him that I was going to be in serious trouble if anyone found out that I gave the disks. He told me that I had nothing to worry about and that if I needed anything or needed a job, he would look after me. The conversation did not last long. I left after the meeting with Thoshan.

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15.

At some point before the end of August 2011, I cannot remember the date; Col. Madhoe told me that he had spoken to General Moodley, who is the Provincial Head of Crime Intelligence about the disks. He said that he spoke to Gen. Moodley as he was friends with Gen. Booysen. He told me that Gen. Moodley arranged a meeting with Gen. Booysen. Col. Madhoe told me that he had met with Gen. Booysen. He told me that the meeting went very well and that the General was calling him by his first name and he felt that the General was going to assist him. I asked him if he was sure that he knew what he was doing. He replied "That Gora" is eating out of my hand. I asked him a few more times if he was sure that he knew what he was doing. He told me that everything is under control.

16.

Col. Madhoe phoned me a the day after I had given him the disks and he told me that I must go to his old office at the Provincial Head Office to pick up a phone. He gave me a name of a lady that I was to see. I cannot remember her name, but I will be able to identify her if I see her again. On the same day I went to see the lady, who is an elderly Indian lady, who sat at the desk on the right hand side of the door as you enter the office. I told her that Col. Madhoe had sent me to pick up something. She then handed me an A3 size brown envelope that was stapled on the top. She did not ask me to sign for anything and did not say anything to me. I then went to Durban Central SAP where I met Col. Madhoe at the back of the station in the parking area furthers from the station building. I handed the envelope to Col. Madhoe, who opened it and he removed two cell phone boxes. The phones were from different models. He handed one of the boxes to me, which contained a Nokia cell phone. I cannot remember the model, but I am still in possession of the phone. He did not ask me to fill in any documentation or to sign for the phone. I then went and obtained a Sim card for the phone that Col. Madhoe gave me. I cannot remember the cell phone number for the Sim card. I am no longer in possession of that Sim Card.



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17.

During one of my conversations with Col. Madhoe, I cannot remember how long before Col. Madhoe was arrested for attempting to Bribe Gen. Booysen, he mentioned that if a report that had been submitted to Gen. Booysen could be back dated he would be able to sort out the investigation that was being conducted against him. He said that the report that Gen. Booysen had was not dated and that if the report could be back dated by the General then it would assist their defense to get the 205's served on their bank accounts nullified and the case would be thrown out of court. He further told me that if the report was backdated to before the 205's were served; it would show that the bank statements obtained by the investigators were illegally obtained. Col. Madhoe told me what he had decided to do. He stated that he would ask the General to backdate the report. I told him that it was a good idea as that was the only option and that he must go ahead and speak to the General to backdate the report. I told him this as I believed that Col. Madhoe and Gen. Booysen were on friendly terms and that it appeared from what Col. Madhoe had told me, the General was willing to assist him.

18.

Col. Madhoe phoned me a day or two later and asked me to meet him urgently. I informed him that I was busy and could not see him then and arranged to meet him the next morning. He agreed and told me to meet him at the Virginia Airport in the morning. Upon my arrival he asked me whether I had any more disks. I told him that I had given everything that I had to him. He asked me if Col. Aiyer had any more stuff against the General. I told him that I was not sure and that I would check with Col. Aiyer and ask him if he has more stuff against Gen. Booysen. Col. Madhoe told me that during his conversation with Gen. Booysen the General requested him to trace any other copies of the disk as well as to try and gather what information Col. Aiyer was professing that he had against the General. I told Col. Madhoe that I would try. I did not contact Col. Aiyer. I asked Col. Madhoe if it was safe for him to go ahead with his plan. He stated that everything was OK. He appeared to be in a jovial mood. Col. Madhoe stated that he has "Got" the General as the General had sent a SMS to him telling him to organize some money. He briefly showed his phone to me indicating a SMS sent to him by the General,



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but I was unable to read the SMS or ascertain who sent the SMS to him. Col. Madhoe said that he would make a plan to give the General what he wanted. He did not tell me how much money he would arrange or who he would get the money from.

19.

The week after I had received the cell phone from Col. Madhoe, I cannot remember if we met or if he phoned me, he told me that he had copied the disks and placed the copied items onto a memory stick. He did not tell me what he intended doing with the memory stick, but he did tell me that he had placed the memory stick in a vault. He did not tell me where the vault was. He further stated that he had other documents in the vault. He did

not tell me what those documents were. At another one of our meetings Col. Madhoe stated that Thoshan and Ashwin had "Fucked Up". I asked him what happened. He said that Thoshan had paid for Ashwin's sons varsity fees with his credit card and that Thoshan had purchased either a gym contract or gym equipment for Ashwin with his credit card. I asked him what he had received from Thoshan. He stated that he did not receive anything from Thoshan.

20.

A day or two later I met Thoshan Panday at the African Palms building. At this meeting he told me not to worry about the investigation against himself and Col. Madhoe as he has an open line with the President and that the Presidents son is a shareholder in one of his companies. He asked me if I know why Gen. Booysen doesn't like him. I replied that I did not. He then told me of an incident that occurred while he was sitting in the Provincial Commissioners office, the Provincial Commissioner called Gen. Booysen to her office and when he arrived she belittled Gen. Booysen in front of him and he, Thoshan laughed. He further stated that because of the investigation against him he has lost a lot of business as the companies that he was doing business with refused to continue their business relationship with him until he had cleared his name. He stated that prior to the investigation his turnover for a month was 30 million rand a month and since then has dropped to 2 million rand a month. While we were talking I took my phone out of my pocket. I cannot remember if I phoned Col. Madhoe or if I had sent him a please

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call me, but I do remember having a conversation with him on the phone while Thoshan was present. I told Col. Madhoe that I was talking to his "Khokta Bhayi", which means "Small brother" in reference to Thoshan. Col. Madhoe laughed and he told me that I must tell Thoshan to phone him. I told Thoshan who then phoned Col. Madhoe from his own phone. Thoshan kept asking if they were flying to Johannesburg and what time they were booked for. I commented that he must fly a lot and he responded by saying that he was building an oil refinery in Johannesburg and had to fly up often. I mentioned that he was a flyer. He said that he flies often to various destinations. At that stage a Captain in full police uniform known to me as Captain Ashwin Narainpershad arrived at Thoshan's office. I am also aware that Capt. Narainpershad is also one of the people being investigated with Col. Madhoe and Thoshan Panday. He spoke to Thoshan discussing something about insurance documents. Thoshan told Capt. Narainpershad that the documents were ready and they went into Thoshan's office. I then left.

21:

Later on the same day while listening to the radio I heard that a senior police officer had been arrested for attempting to bribe Major General Booysen. I suspected that the senior police officer was Col. Madhoe because of the conversations that I had with him. The next day during the afternoon I phoned Thoshan. I asked him what the situation was with Col. Madhoe. He said that I must not worry as he was arranging the best advocates, the best teams to get him out. He further stated that they are going to apply for a High Court Interdict to get bail. He said that his team was busy with it.

22.

On Sunday the 18th September 2011 while I was under the influence of alcohol I phoned Thoshan. I told him, "I am fucked, they are coming for me". He asked who told me that. I told him that, (I cannot remember my exact words) "My Lannies told me". He then said that I mustn't worry and that I must know by now that he is not a small boy, because he is connected to the President and his son. He told me that I must not worry as he was in the process of removing the docket and transferring it to the SIU. He said that he has contacts





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in the SIU. He further said that the complainant can't be the investigator as well as it is biased.

23.

On numerous occasions when I was under the influence of alcohol, I used to phone Col. Madhoe. I do not remember what I discussed with him during these conversations and may have during these conversations discussed the investigation with him.

24.

I know and understand the contents of this statement.

I have no objections to taking the prescribed oath.

I consider the prescribed oath to be binding on my conscience.


SANDESH SADRUKHENSAD DHANICAM
DEPONENT

I certify that the deponent has acknowledged that he knows and understands the contents of this statement which was sworn to before me and the deponent's signature was placed thereon in my presence at Durban on 25th September 2011 at 12:35.


PHILLIP HERBST
Commissioner of Oaths:
Directorate of Priority Crime
Investigations
Durban Central SAPS
288 Stalwart Simelane Street
Durban
Colonel



ANNEXURE JVL 11

This annexure was not available at the time of commissioning the affidavit



ANNEXURE JVL 12(1) - JVL 12(122)



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, PIETERMARITZBURG**

CASE NO: 4477/2018

In the matter between:

THOSHAN PANDAY

Applicant

and

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned,

SILAS RAMAITE,

do hereby declare under oath and state that:

1. I am the Acting National Director of Public Prosecutions ("ANDPP") of the Republic of South Africa.
2. Adv. Shaun Abrahams ("Adv. Abrahams") was appointed as the National Director of Public Prosecutions ("NDPP") by the former President with effect from 18 June 2015. On 13 August 2018, the Constitutional Court confirmed the declaration by the High Court that the appointment of Adv. Abrahams was constitutionally invalid, setting aside his appointment. Adv. Abrahams thereupon immediately vacated the office of the NDPP. I was appointed to succeed him, as ANDPP.





INTRODUCTION

6. The Applicant seeks to review and set aside the decision of then-NDPP, Adv. Shaun Abrahams, to prosecute him. (The third person "NDPP" is used herein to refer to whomever occupied the office of NDPP at the relevant time.)
7. Section 179(5)(d) of the Constitution, Act 108 of 1996, read with section 22(2)(c) of the National Prosecution Act, 32 of 1998 (the "NPA Act"), empowers the NDPP to review a decision to prosecute or not to prosecute. (Reference to "s.

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[Handwritten signature]

22" in this affidavit should be read as a reference to the aforementioned review process under the NPA Act.)

8. In this case, the NDPP reversed the decision not to prosecute the Applicant, which decision had been recommended by the Durban Senior State Adv. (Adv. Letsholo), and by the Senior Deputy Director in the Special Commercial Crimes Unit ("SCCU") (Adv. Vimbani), and ultimately thereafter by the KwaZulu-Natal Director of Public Prosecutions (Adv. Noko).
9. The Applicant allegedly conspired with Colonel Navin Madhoe ("Col Madhoe"), a South African Police Services ("SAPS") officer who is Section Head: Acquisition Management in Supply Chain Management, to defraud the SAPS, by inflating a R60 million procurement to supply temporary accommodation for officers on detachment duties during the 2010 FIFA Soccer World Cup. Adv Mzinyathi's memorandum of 24 November 2017 (Applicant's Supplemental Founding Affidavit (SFA-I), summarises the case against the Applicant as follows:

"C. Summary of substantial facts and available evidence

9. Businessman Toshan Panday, Colonel Navin Madhoe and Captain Aswin Narainpershad who are members of the South African Police Service in KwaZulu-Natal involved themselves in fraudulent and corrupt conduct in respect of the procurement of accommodation for members of the SAPS involving millions of rands. Mr Panday would obtain accommodation quotations and grossly inflate the rates and submit invoices to the SAPS which were processed by Colonel Madhoe and Captain Aswin Narainpershad. Procurement contracts were awarded to Mr Panday or his companies and other entities related to him. Colonel Madhoe and Captain Narainpershad who were responsible for the SAPS procurement received benefits from Mr Panday for their role."



10. In addition, an IPID report (SFA-N), addressed to the NDPP, elaborates on the 781 matter, and refers to the PwC Report.
11. It bears emphasis that the main focus of the Applicant's argument in support of the present application to review the NDPP's s 22(2) decision is not that there is insufficient evidence of the procurement fraud to be found in the docket. It is rather that the Applicant was subject to unlawful interception of his telephone calls. The Applicant contends that this was "so egregious that it forever taints the matter and excludes any prospect of a fair trial". (Representations of 9 October 2017, paragraph 7.8) (FA-13).
12. Almost all the Applicant's claims about the facts and circumstances of the interception are drawn from two memoranda in which Adv. Letsholo set out his ostensible reasons for his decision not to pursue the prosecution. The NDPP's evaluation of those memoranda, together with a large amount of documentary material, and detailed analyses by senior prosecutors, that served before him, led him to conclude that the decision of Adv. Noko was not well-founded, and that the Applicant should be subject to prosecution.
13. The Applicant claims that the NDPP is bound to accept his affidavit for purposes of the review. That is wrong on two levels:
 - 13.1. First, Mr Panday is the Applicant in these motion proceedings. It is the Respondent, not Applicant, whose version must be taken as true where there arises a dispute of facts.
 - 13.2. Second, the Applicant conflates the standard in trial proceedings with the test that applies when the NDPP (or any other prosecutor), decides



whether to institute a prosecution. The state will ultimately need to satisfy the burden of proving guilt beyond a reasonable doubt at trial. But that is not the test applicable here. All that is necessary to support a decision to institute a prosecution is *prima facie* evidence suggesting reasonable prospects of success in the prosecution.

14. To a remarkable extent, the Applicant's representations to Adv Noko form the foundation of Adv Letsholo's two memoranda; indeed, the latter quotes the former verbatim. These memoranda were then recycled as the template for the Applicant's representations to the NDPP. They are now again reproduced in the affidavit under reply.
15. It might be said that the structure of the Applicant's arguments is circular. In the first instance, Adv Letsholo parrots the Applicant. In the second instance, the Applicant parrots Adv Letsholo.
16. A voluminous record (some 3790 pages), served before the NDPP. (The Applicant acknowledges an "*immense volume*" of evidence in this matter.) (Applicant's 9 October 2017 representations.) (FA-13), para 12.
17. The docket includes thousands of pages of invoices from suppliers and hotels that the Applicant procured the relevant accommodation, equipment and goods from, various affidavits in support of applications for section 205(1) subpoenas, affidavits of witnesses and/or suppliers concerning purchases made by the Applicant, multiple sworn statements from officers in the SAPS supply chain management department and of officers following search and seizure operations. A 400-page report prepared by *PricewaterhouseCoopers* ("PWC") was also considered by the NDPP,



which analysed salient financial documents. A copy thereof will be made available to the Court on request.

18. Among the twenty binders of annexures to the PWC report are much of the documents contained in the docket.
19. I understand that it was based on his considerations of this plethora of documentation, and having considered the advice of several senior prosecutors in the NPA's head office, that the NDPP decided to overrule the decision not to prosecute the Applicant.
20. But the Applicant devotes little of his affidavit under reply to argument on the merits of the decision to prosecute. It is fair to say that the present application stands or falls on the allegation that the interceptions were unlawful.
21. As to the interceptions, the Applicant fails to acknowledge that the authorisations were triggered by the receipt of death threats against officers investigating the irregular procurements under CAS 781. They had nothing to do with the merits of CAS 781. That is why fruits of the interceptions never found their way into the docket. In any event, were the fruits of the interceptions to be tendered at trial, the Applicant would have the opportunity to oppose their admission on any of the grounds he raises in the present review.

D. Jm

[Signature]

LEGAL ARGUMENT TO BE ADVANCED

22. It is opportune at this point to preview the legal argument to be advanced at the hearing.

A. The Applicant Must Not be Permitted to Use**Procedural Manoeuvres to Defer His Day In Court**

23. The present application is an instance of the so-called "Stalingrad" defence: The relentless effort of a well-funded target of criminal investigation to delay trial for as long as possible, by lodging a succession of civil applications designed to obstruct the prosecution at all costs. This is a tendency that has been decried in the Supreme Court of Appeal:

"Fairness is not a one-way street conferring an unlimited right on an accused to demand the most favourable possible treatment, but also requires fairness to the public as represented by the State. This does not mean that the accused's right should be subordinated to the public's interest in the protection and suppression of crime; however, the purpose of the fair trial provision is not to make it impracticable to conduct a prosecution. The fair trial right does not mean a predilection for technical niceties and ingenious legal stratagems, or to encourage preliminary litigation - a pervasive feature of white collar crime cases in this country. To the contrary: courts should within the confines of fairness actively discourage preliminary litigation. Courts should further be aware that persons facing serious charges - and especially minimum sentences - have little inclination to co-operate in a process that may lead to their conviction and 'any new procedure can offer opportunities capable of exploitation to obstruct and delay'. One can add the tendency of such accused, instead of confronting the charge, of attacking the prosecution." (*National Director of Public Prosecutions v King* 2010 (2) SACR 146 (SCA) (Harms JA)).

24. The law has long acknowledged the *sui generis* nature of the prosecutorial function, the need to defer to prosecutorial expertise, and the manifest

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impracticality of a regime in which prosecutors operate with judges peering over their shoulders in the execution of their day-to-day decisions. Thus, it has been held that:

"Courts will only on rare occasions express their disapproval of the fact that a prosecution was instituted. That is because the prosecuting authority has the power to decide to prosecute and, once the accused is on trial, he or she will have the fullest opportunity to put his defence to the court, cross-examine prosecution witnesses and to rely on his right not to be convicted unless the prosecution can prove his guilt beyond reasonable doubt, based on admissible evidence and prevented in terms of a regular procedure." (General Council of the Bar of South Africa v Jiba and Others 2017 (1) SACR 47 (GP), para 43.)

25. Indeed, Courts look with special disfavour upon litigation in advance of the trial of issues that could as well be handled by the trial court. The Constitutional Court has held as follows:

"This court should discourage preliminary litigation that appears to have no purpose other than to circumvent the application of s 35(5). Allowing such litigation will often place prosecutors between a rock and a hard place. They must, on the one hand, resist preliminary challenges to their investigations and to the institution of proceedings against accused persons; on the other hand, they are simultaneously obliged to ensure the prompt commencement of trials. Generally disallowing such litigation would ensure that the trial court decides the pertinent issues, which it is best placed to do, and would ensure that trials start sooner rather than later." (Thint (Pty) Ltd v National Director of Public Prosecutions and Others; Zuma v National Director of Public Prosecutions and Others 2009 (1) SA 1, para 65.)

26. The Applicant herein is playing precisely the dilatory game against which Harms DP cautioned. He is bent on protracting the pre-trial process to defer his day in Court.
27. Moreover, the Applicant appears to take it for granted that the interception

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evidence would be *ipso facto* inadmissible. This is here a strictly hypothetical question, since, as noted, the fruits of the interceptions are no way germane to the substance of CAS 781. Nevertheless, it may be worth noting that the question as to whether the evidence is admissible or not depends on how the Court exercises its discretion, balancing the rights of an individual against that of society in ensuring that criminals are properly convicted and punished:

"Simply because the accused's right to privacy may have been infringed does not necessarily mean that the admission of the disputed evidence would render their trial unfair. The question of the effect of admitting such evidence is fundamentally one of fairness but is not one which can be asked or answered in a vacuum." S v De Vries 2009 (1) SACR 613 (C), para 66.

28. Krieger J in Key v Attorney-General, Cape Province Division, and Another 1996 (2) SACR 113 (CC) (1996 (4) SA 187; 1996 (6) BCLR 788) in para [13] at 120 - 1 (SACR) and 195 - 6 (SA) said:

"In any democratic criminal justice system there is a tension between, on the one hand, the public interest in bringing criminals to book and, on the other, the equally great public interest in ensuring that justice is manifestly done to all, even those suspected of conduct which would put them beyond the pale. ... What the Constitution demands is that the accused be given a fair trial. Ultimately ... fairness is an issue which has to be decided upon the facts of each case, and the trial Judge is the person best placed to take that decision. At times fairness might require that evidence unconstitutionally obtained be excluded. But there will also be times when fairness will require that evidence, albeit obtained unconstitutionally, nevertheless be admitted."

B. Prosecutorial Decisions are Entitled to Deference

29. It is settled law that the Promotion of Administrative Justice Act does not apply to decisions to institute a prosecution. Such decisions fall to be decided only on the principle of rationality, a test which the Chief Justice has cautioned is "not a

uniquely designed master key" and must be applied "sensitively and cautiously."

(Electronic Media Network Limited & Others v ETV & Others Case 2017 (9) BCLR 1108 (CC), para 6; see also para 85.)

30. These sentiments of the sitting Chief Justice echo a long line of authority from the apex Court. Chaskalson P underscored that what the Constitution requires is that public power vested in the Executive and other functionaries be exercised in an objectively rational manner. However:

"The setting of this standard does not mean that the Courts can or should substitute their opinions as to what is appropriate for the opinions of those in whom the power has been vested. If the purpose sought to be achieved by the exercise of public power is within the authority of the functionary, and if the functionary's decision, viewed objectively, is rational, a Court cannot interfere with a decision simply because it disagrees with it or considers that the power was exercised inappropriately." (Pharmaceutical Manufacturers Association of South Africa & Another: In re: Ex Parte President of the Republic of South Africa & Others 2000 (2) SA 674 (CC) at para [90.]

31. Moreover, the principle of judicial restraint brought to bear when a Court assesses the rationality of a decision is all the more salient when what is being reviewed is a decision to prosecute – that is because, once an accused is on trial, he will have the fullest opportunity to put his defence, to cross-examine prosecution witnesses, and to rely on his right not to be convicted unless the prosecution can prove his guilt beyond reasonable doubt based on admissible evidence. To put it another way: a decision not to prosecute has a finality that logically makes it more susceptible to judicial review, whilst the opposite decision is always subject to correction at the ensuing trial.
32. Although this question has not been settled by the Constitutional Court, Chaskalson P was prepared to assume that decisions not to prosecute may



more readily be subject to review than the converse decision. (Kaunda v President of the Republic of South Africa, 2005 (4) SA 235 (CC), para 84.)

C. The NDPP need not Personally Examine Every Item Pertinent to the Prosecution

33. The Applicant's fall-back argument is effectively that the NDPP was obliged to *personally examine* the applications for the interceptions, and the fruits thereof, before making his section 179(5)(d) or section 22(2)(c) decision. But it cannot be required of the NDPP to personally follow up each point advanced in representations. It is relevant to note that the NDPP's office receives hundreds of representations annually, often accompanied by voluminous dockets. Were the NDPP to analyse with a fine-tooth comb every docket that crossed his desk, he would be little time to attend to myriad other duties.
34. Like the heads of most large entities, whether in the public or the private sector, the NDPP necessarily relies upon the advice of a host of officers who are appointed on the basis that they can be trusted implicitly for their advice and counsel.
35. The High Court in Durban recently handed down an interlocutory judgment in the course of review of a decision of an Acting NDPP to authorise the institution of charges under the Prevention of Organised Crime Act, 1998. Rejecting the argument that the Acting NDPP had acted irrationally in issuing the authorisation, the Court held:

"[The Acting NDPP] is not obliged to have read every docket and document when granting authorisations. She was clearly entitled to rely on the summaries of her prosecuting staff as to the facts, and on the

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advice of counsel for her legal conclusions . . . In addition, she was not obliged to disclose [as part of the Rule 53 record] all the material read and summarised below - only the material that was relevant to her decision." (*Jiba v Naidoo* (Case No 6921/2015), 17 Oct 2018 (per Lopes J).)

36. By similar token, in *S v De Vries and Others* 2008 (4) SA 441 (C), the Applicant challenged the NDPP's authorisation of charges under the Prevention of Organised Crime Act, 121 of 1998 ("POCA"), on the basis, *inter alia*, that the NDPP had failed to read the contents of the entire docket before making the decision. Bozalek J dismissed this challenge, holding that:

"To require the NDPP to read the contents of an entire docket before making a decision whether to authorise charges...is both unnecessary and impractical...[it] would have been a hugely time-consuming exercise". (Para 29)

D. Applicant's "Taint" Argument is Meritless

37. The Applicant argues that the interception was so egregious that it taints the entire prosecution. Aside from the fact that there is no showing that the interception was anything but lawful, I would point out that even a clearly unlawful interception would not necessarily vitiate the prosecution.
38. A widely-reported decision makes the point. The Acting NDPP had been persuaded by the Director of Special Operations to delay service of an indictment on President Zuma until after the ANC's elective conference. (*Zuma v NDPP* 2018 (1) SACR 123 (SCA)). This was after Mr Zuma's legal representatives had presented the NPA with transcripts of recordings of intercepted telephone conversations, allegedly showing political interference in the timing of the indictment, designed to disadvantage Mr Zuma. Setting aside



the decision to terminate the prosecution, the SCA held:

"It appears to me to be inimical to the preservation of the integrity of the NPA that a prosecution is discontinued because of a non-discernible negative effect of the timing of the service of an indictment on the integrity of the investigation of the case and on the prosecution, itself. There is thus no rational connection between Mr Mpshe's decision to discontinue the prosecution on that basis and the preservation of the integrity of the NPA. If anything, the opposite is true. In these circumstances discontinuing a prosecution in respect of which the merits are good and in respect of which there is heightened public interest because of the breadth and nature of the charges and the person at the centre of it, holding the highest public office, can hardly redound to the NPA's credit or advance the course of justice or promote the integrity of the NPA." (Para 84 of Zuma judgment.)

39. In the course of rejecting the argument that the decision to terminate the prosecution was justified by an abuse of process, the Court added that questions of abuse of process in relation to a prosecution should be decided by a trial court. (Para 94.)
40. Regarding the suggestion by the Applicant that his prosecution is fatally infected by a nefarious alleged plot to ensnare senior police officers in the province, it is well to note that, in an earlier decision, also involving Mr Zuma, the SCA held:

"A prosecution is not wrongful merely because it is brought for an improper purpose. It will only be wrongful if, in addition, reasonable and probable grounds for prosecuting are absent, something not alleged by Mr Zuma and which, in any event, can only be determined once criminal proceedings have been concluded. The motive behind the prosecution is irrelevant because, as Schreiner JA said in connection with arrests, the best motive does not cure an otherwise illegal arrest and the worst motive does not render an otherwise legal arrest illegal. The same applies to prosecutions." (National Director of Public Prosecutions v Zuma 2009 (2) SA 277 (SCA), para 37.)

41. The Applicant herein makes much of what he depicts as an egregious infringement of attorney-client privilege, arising out of the alleged interceptions



of calls between himself and his attorney. This, he suggests, represents an irremediable taint on the entire proceedings. Once again, this is neither here nor there, since, even if such calls were intercepted, they would not be pertinent to the substance of CAS 781. But for the record, I would note that there is authority to the effect that even the intentional violation of the attorney-client privilege will not prevent the material being tendered by the state at trial, unless it is established that future proceedings were irreparably tainted to the extent that the entire criminal prosecution could already be said to be unfair. (Bennett and Others v Minister of Safety and Security and Others 2006 (1) SACR 523 (T), para 64)

THE INVESTIGATION AND DECISION NOT TO PURSUE A PROSECUTION

A. The Allegations Against the Applicant and Others

42. To understand the intertwined investigations targeted at the Applicant and his co-accused, one must grasp that CAS 781 – the matter under review herein – gave birth to two other matters, each housed in a separate docket, alleging that the Applicant attempted to bribe senior officers to quash CAS 781. In two of the three matters, Adv Noko, likewise refused to pursue the prosecution. Both of those decisions under CAS 466 and 781 were reversed upon review under s 22 of the NPA Act.

CAS 386

43. In Durban North 386/09/2011, a charge of corruption and defeating the ends of justice against the SAPS Provincial Commissioner, Lt General Ngobeni (the "PC"), alleges that she received rewards from the Applicant, including payment



for her husband's birthday party on 29 May 2010, as *quid pro quo* for her efforts to quash the investigation of the Applicant in CAS 781. It is alleged the PC instructed the provincial head of the DPCI (the "Hawks"), Major General Booysen ("Gen Booysen") not to pursue CAS 781 on four different occasions. (The supervising prosecutor was Adv Vaní Govender.)

44. Adv Jiba, the-then Deputy National Director of Public Prosecutions, recommended in a memo of 9 May 2016 (SFA-G), that the docket be reconstructed and placed before Adv Noko. On 30 January 2017, the latter decided not to proceed with the prosecution. However, on 26 January 2018, the NDPP addressed a letter to Noko, requesting her to conduct further investigations. The outcome was that Adv Noko once again declined to prosecute. The file was then sent to the NDPP, who decided that a prosecution must be pursued.

CAS 466

45. The Applicant's co-accused, Col Madhoe, was charged with attempting to bribe Gen Booysen, to quash CAS 781. Col Madhoe was arrested in a "sting" operation on 8 September 2011 and charged with contravention of section 3(b) of the Prevention and Combatting of Corrupt Activities Act, 12 of 2006. On 21 October 2014 Adv Noko provisionally withdrew the matter. (See SFA-C.) Adv. Abrahams reviewed and reversed that decision on 2 September 2016.
46. Adv Letsholo's cardinal error was his conflation of the two matters. He apparently operated on the incorrect assumption that the transcripts of the interceptions form part of the CAS 781 docket. He asks why, that being the case, the transcripts were not produced to the Applicant in CAS 781, and

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accordingly did not serve before the NDPP for purposes of his section 22 review?

47. The simple answer to that question is that portions of the transcript form part of the 486 docket - but not the 781 docket. How that came to be is explained below.

CAS 122

48. In this matter, another spin-off from CAS 781, it is alleged that the Applicant fraudulently attempted to secure the unfreezing of funds purportedly payable to him by SAPS that gave rise to CAS 781. (The designated prosecutor was Adv Paver.) This matter is, however, of lesser significance for present purposes.

B. Initiation of CAS 781

49. The following appears from the record that served before the NDPP. On 28 April 2010 Brigadier L.C. Kemp ("Brig Kemp"), head of KZN SAPS Provincial Financial Services, reported financial irregularities to Gen Booysen, relating to procurement expenditure in respect of the SAPS spending exorbitant amounts for accommodation. Brig Kemp noted that the amount expended in the 2009/10 financial year was an extraordinary R55 502 000, with only one agent utilised to obtain quotations. (A copy of an affidavit deposed to by Brig Kemp on 29 April 2013 is attached marked "SR-1".)
50. Almost all of the expenditure was to the benefit of one entity, namely Goldcoast Trading CC, linked to the Applicant. There had been apparent efforts to evade procurement protocols applicable where a single invoice amounts to more than R200,000, by the splitting of invoices in excess thereof. This allegedly allowed the Applicant's co-accused, Col Madhoe, to approve payments to the Applicant



without obtaining approval from SAPS head office. In addition, it is alleged, Col Madhoe deliberately delayed approval for tenders until the last minute, so that they were eligible to be treated as urgent, thus by-passing competitive bidding.

51. What Brig Kemp had uncovered was discussed at a meeting in early May 2010. It was chaired by the PC, and attended by Brig Kemp, Gen Booysen, and Col Madhoe. It was resolved that Brig Kemp should investigate further. Gen Booysen handed over Brig Kemp's advice to Brig Lategan, of the Commercial Crime Unit. Following further investigation, a docket was opened in mid-June. At the NPA, the file was initially assigned by Adv Wille Muller a former DPP to Senior State Adv. Bromley-Gans. Upon her resignation, it was re-assigned to Adv Letsholo.
52. Subpoenas were obtained in respect of bank accounts held by the Applicant. The Applicant's challenge to the issuing of the subpoenas was dismissed in a decision of 18 April 2012, under Case no. 12044/10. The subpoenas yielded a trove of statements, allegedly reflecting payment concerning gratuity paid to Col Madhoe amongst other people.
53. Colonel Johannes Van Loggerenberg ("Col Van Loggerenberg") on 10 May 2010 spoke with the National Head: DPCI, then Lieutenant General Anwar Dramat ("Gen Dramat"), about his concerns of interference in the investigation. General Dramat directed that the investigation should continue. On 19 May 2010 Gen Dramat, following up on the matter, asked Gen Booysen about progress in the investigation. Gen Booysen responded that the PC had directed that the matter be abandoned. (As we have seen, it was this that led to the opening of CAS 386, in which it was alleged that the PC had accepted favours

from the Applicant and his co-accused as a *quid pro quo* for dropping the charges in CAS 781.) Upon hearing of this, Gen Dramat countermanded the PC's instructions. He ordered that the investigation continue under the supervision of the National Office of the DPCI.

54. The broad-ranging investigation continued. On 3 August 2010, the responsible investigating officer made an affidavit (a copy of which is attached hereto as "SR2"), in support of the issuance of search warrants. This led to a search of the Applicant's home, where a large cache of documents was seized. It is alleged that this material confirmed Brig Kemp's analysis.
55. It will be noted that the affidavit in support of the issue of the warrants contains reference to extensive documentation uncovered in the investigations, including the bank records obtained under the section 205 subpoenas, information from witnesses, and the notes of Brig Kemp.
56. It is my understanding that the NDPP's assessment was that the material that served before him made CAS 781 a relatively easy one. In this respect, he agreed with Adv Letsholo, who subsequently observed, in his memorandum of 25 March 2014, that the matter was "straightforward," such that no interceptions would be required. (Para 3.2 of FA-2).

C. The Interceptions

57. I turn now to the allegedly unlawful interceptions upon which the Applicant has elected to build his case.
58. An investigating officer in CAS 781, Col. Van Loggerenberg wrote to the DPCI on 12 October 2010, to report threatening telephone calls. (A copy of this letter



is attached hereto marked "SR3"). That led to the drafting of a request on 18 October 2010, marked as secret, by Brigadier Lategan, addressed to the Provincial head of Crime Intelligence, General Deena Moodley, requesting that a threat analysis be conducted. (A copy of this request is attached hereto marked "SR4").

59. I pause here to mention that Crime Intelligence is an independent department within the SAPS, which of necessity frequently makes use of clandestine methods, like telecommunication interceptions. Under the Regulation of Interception of Communications and Provisions of Communication-Related Information Act, 70 of 2002 (the "Act"), an application for an interception direction is made to a judge. Section 16 has very specific requirements, intended to ensure that the rights of the target are affected to the minimum extent necessary to serve the legitimate purposes of the interception. Section 43 of the Act permits disclosure of the contents of intercepted communications to other officers, only to the extent necessary for the proper performance of the official duties of the authorised person, or the law enforcement officer receiving the disclosure. Section 42 strictly prohibits the disclosure of information, save in circumstances set out thereunder.
60. *In casu*, Colonel Brian Padayachee ("Col Padayachee") was designated as the responsible officer at Crime Intelligence, entailing that he was the sole and exclusive custodian of the fruits of the operation. An application was approved by Khumalo J on 15 November 2010, authorising interceptions from that day until 14 February 2011 (SFA-H).
61. It should be explained that Col Padayachee delegated Captain Cele, also of

Crime Intelligence to depose to the necessary affidavit supporting the application that served before Khumalo J pursuant to a "court driven investigation" (No. 145/2010.) (A copy of the affidavit, with confidential text redacted, is annexed hereto marked "SR5".)

62. Captain Cele stated that information available:

62.1. suggested that the Applicant had intimidated a prior investigating officer of the case, Colonel Soobramoney;

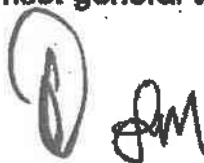
62.2. supported the allegation that two investigating officers in CAS 781, Colonel Bala Naidu ("Col. Naidu") and Col. Van Loggerenberg had received death threats from the Applicant;

62.3. showed that the brother-in-law of the Applicant had recently been arrested at one of the Applicant's business premises bearing two unlicensed firearms and R173 000 in cash. (Phoenix CAS 446/10/2010.)

63. It was accordingly:

"Imperative to intercept and monitor the above the Applicant's communication to collect the intelligence on the plan of action which is communicated amongst the Applicant and the unidentified individuals who will be hired to carry out the hit to the two investigating officers and in furthering his fraudulent activities with the unidentified collaborators."

64. It bears emphasis that, as indicated by the above, what triggered the interception application was the death threats. Whilst mention is made of alleged corruption in SAPS supply chain management as the basis of the underlying case, that is referred to in the most general terms. Nothing at all is



said of the particulars of CAS 781. To put it another way: The information set forth to justify the interception cites solely the threats reported by the investigating officers.

65. In context, the sole reason for the mention of the underlying offence in Capt. Cele affidavit was that the high stakes involved, and the mass publicity, had created a situation wherein, as Capt. Cele wrote, the "corrupt elements in the police" would "stop at nothing to fill their greed and further their acts by intimidation, conspiracy to commit murder, murder by assassinations ("hits") and defeating the ends of justice."
66. It is also clear that the reference to the purpose of the interceptions as being to "gather *prima facie* evidence with the purpose of successful criminal prosecutions" was not the prosecution of the substantive charges in CAS 781 – of which no details whatsoever are given – but to glean information that might form the basis for purposes of convictions for intimidation and conspiracy.
67. The interceptions commenced on 18 November 2010, having been approved on 15 November 2010. The authorisation was subsequently extended, ultimately, until 29 September 2011.
68. As sole custodian, Col Padayachee was the only officer who listened to the recordings in their entirety. He reported in an Information Note dated 16 April 2016 ("SR-6"), that the interceptions confirmed the threats against CAS 781 investigating officers, and concluded that threats were animated by Panday's desire to make the case against him "go away." (Para 6.4.) Thereafter, Col. Nakdu and Col Van Loggerenberg were advised to take steps to minimise their vulnerability. In addition, an R5 rifle was removed from the person of a police

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officer who it was thought might pose a threat to the investigating officers.

69. The interceptions did verify the death threats reported by investigating officers in case 781. I refer in this regard to the confirmatory affidavit of Col Padayachee where confirmation that of those portions of the recordings which were transcribed. Most of the recordings consisted of incoherent and irrelevant chatter amongst the Applicant and various persons. I might mention that this characterisation of the recordings was borne out by Adv Noko with respect to the 466 matter. In her 21 October 2014 memorandum, she remarks that the transcripts:

"Do not indicate any specific crime having been planned... It is haphazard conversation with slang and profane language between two people ... One cannot make out what issue was being discussed. A criminal offence cannot be deduced." (SFA-C), para 2.16.

70. The Hawks confirmed that material gathered in the interceptions would not be required for purposes of CAS 781 because there was sufficient forensic. I refer in that regard to the information note dated 16 April 2014 from Col. Padayachee to Gen Dramat, attached above as SR-6 (paras 6.6 – 6.8). It was contemplated that any information gleaned via the interception would be filed in a separate docket which would be registered as such once the CAS 781 investigation was finalised. (Para 6.10).

D. Applicant's 18 September 2011 Meeting with Gen Moodley

71. On the Applicant's account, he became aware of the interceptions when he met with General Moodley in his Durban office, on 18 September 2011. (Panday's version of the meeting, which is contested in almost all respects, is set out in his affidavit of 14 November 2012. (Applicant's Founding Affidavit)



(FA-1).

72. It is noteworthy that although the meeting took place on 18 September 2011, the Applicant's affidavit is deposed to on 14 November 2012, coincidentally around the time that a meeting held by the prosecutors and relevant investigating officers concerning the consolidation of the various dockets mentioned above. The latter meeting will be addressed in detail below.
73. It is also noteworthy that in the Applicant's affidavit of 14 November 2012, he did not know who one of the gentlemen present at the 18 September 2011 meeting was, but in his founding affidavit (FA-13) to the review application he is able to identify Col. Padayachee.
74. The Applicant contends that General Moodley set up the meeting for purposes of extorting him into framing the PC, and it was for that reason that he was approached by Gen Moodley, through Warrant Officer Moodley.
75. In fact, it appeared on the basis of what served before the NDPP that it was in fact the Applicant who approached Warrant Officer Moodley, seeking assistance in dealing with the allegations against him.
76. Warrant Officer Moodley, at the request of the Applicant, arranged that the Applicant meet with Gen Moodley at his office in Durban on 18 September 2011. Also present at the 18 September 2011 meeting were:
- a) Warrant Officer Moodley himself.
 - b) Col Padayachee.
 - c) Lt Col JS Chetty.
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77. The Applicant claims that, at the meeting, recordings were played containing *inter alia*, conversations between the Applicant and his attorney. But material that served before the NDPP indicates that no recordings were played at all.
78. As explained by Col Padayachee, Crime Intelligence recordings are encrypted, and difficult to access. They can be played only on specialised encrypting software. The recordings were never signed out from the custodian thereof during the relevant time window. I should explain also that, as an additional security measure, the fruits of the interceptions were retained in a safe to which only Col. Dumisani Zulu had access, although he himself did not have the software necessary to de-encrypt the recordings. As confirmed in the accompanying affidavit of Col. Zulu (attached hereto marked "SR-7"), there is no record of the fruits of the interceptions having been accessed by Col. Padayachee at or about the time of the meeting in the office of General Moodley.
79. The Applicant alleges that after playing the recordings, Gen Moodley "gulpped":
- "Now that we know what defences you will use, I will make sure that all these avenues are closed to you". (FA-1, Para 12)
80. This is disputed. Gen Moodley did not have any knowledge of the interceptions. Col. Padayachee had never related any information that he had listened to Gen Moodley, or anyone else for that matter, save for information relevant to the death threats and in CAS 466.
81. To anticipate the discussion below of Adv Letsholo's memorandum, dated 25 March 2014 (FA-2, Para 5.1): Despite Applicant's use of the verb "gulpped,"

Adv Letsholo elected to make this alleged "threat" the linchpin of his decision not to pursue a prosecution. Indeed, he purported to view the putative breach of attorney-client privilege as so egregious that it tainted the entire prosecution.

82. General Moodley denies the Applicant's rendition of the balance of the conversation. In fact, he says, the Applicant indicated his willingness to cooperate in exchange for the release of monies that had been frozen by SAPS when the tender fraud was discovered. (The Applicant's unlawful attempt to have the funds unfrozen forms the basis of CAS 122.) When the Applicant asked him whether a deal could be negotiated in exchange for immunity, Gen Moodley suggested that he should speak to his legal advisor, who should take his proposal to the prosecutor.
83. It should be borne in mind that at this time, Col Madhoe had just been arrested (on 9 September 2011), in the 466 case. The day after his arrest he, like the Applicant, had asked to meet Gen Moodley. Col Madhoe asked Gen Moodley if he could be a section 204 witness. Gen Moodley says that he gave the same advice to Col Madhoe as he subsequently gave to the Applicant.
84. The Applicant left the 18 September meeting saying that he would consider his options. But, instead of reverting, he flew to the Democratic Republic of the Congo. When he returned to OR Tambo airport some two weeks later, he was arrested, and charged with fraud and corruption, held in custody for two weeks, and released on bail.

E. Meeting of Prosecutors and Investigating Officers

85. In November 2012, as confirmed by Col Padayachee, in his 13 May 2016



affidavit (attached hereto marked **SR-8**), a meeting was held at the NPA's offices in Durban. Present were:

- 85.1. DDPP KD Govender (the official responsible for teams in CAS 466 and CAS 122).
 - 85.2. Adv. Wendy Greeff (the supervising prosecutor in CAS 466).
 - 85.3. Senior State Advocate Willie Muller (the prosecutor responsible for CAS 781).
 - 85.4. Senior State Advocate Paver (the prosecutor responsible for CAS 122 and 386).
 - 85.5. Col Jones (the Supervisor of Investigating Officers in CAS 781).
 - 85.6. Col Van Loggerenberg (Investigating Officer CAS 781).
 - 85.7. Col S.Y. Govender (Investigating Officer CAS 781).
 - 85.8. Colonel Herbst (Investigating Officer CAS 386 & 781).
 - 85.9. Lt Col du Plooy (Investigating Officer CAS 466).
 - 85.10. Theresa Botha (a SAPS analyst).
 - 85.11. Col K Naldoo (DPCI).
 - 85.12. Col. Padayachee.
86. Adv. Muller and Adv. Paver indicated that they preferred to proceed per the individual dockets, notwithstanding the substantial overlap. Adv Muller observed that his docket, CAS 781, was a forensic investigation and

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interceptions were not necessary for that purpose. (The affidavit of Col Padayachee attached above as SR-8 refers.)

87. After Col Padayachee had made a presentation on the interception results, Adv Govender requested transcriptions of those recorded portions belonging to CAS 466 only. Transcripts were thereafter compiled from the original recordings following the chain of evidence protocol. The transcripts of the 31 phone calls, together with the judicial authorisation, including affidavits, were handed to Adv. Govender and Adv. Greeff *"to be utilised in Durban Central CAS 466/09/11 Bribery and Corruption"* (The affidavit of Col Padayachee attached above as SR-8 refers, para 22.) These extracts were filed in the CAS 466 docket because, while they had nothing to do with the merits of CAS 781, the material did shed light upon the alleged plan to bribe Gen Booysen to assist in quashing the matter which formed the subject matter of CAS 466.
88. To anticipate Adv. Letsholo's crucial memorandum of 25 March 2014 (FA-2), it will be seen that he therein asserts that the first time Adv. Letsholo became aware of the interception issue was when he read the Applicant's representations. And yet, as we have just seen, Adv. Muller, Adv. Letsholo's superior, had been in attendance at a presentation about the interceptions in November 2012. Adv. Letsholo's professed ignorance of the interception issue is hence surprising.
- F. The Case 781 Briefings attended by Adv Letsholo**
89. As noted, Adv Letsholo of the Durban Specialised Commercial Crime Unit of the NPA, was allocated the CAS 781 file after the departure of Adv Bromley-Gans.

90. In the period spanning 21 May 2013 and 14 March 2014, Adv Letsholo attended several meetings on the matter, as recorded in his memoranda, dated 25 March 2014 (FA-2); and 9 October 2015 (FA-3). Adv Letsholo says he decided on 25 March 2014, after the final meeting, not to prosecute the matter. It is noteworthy that, although the interceptions were ostensibly viewed by Adv. Letsholo, as tainting the entire investigation, he failed to contact Col. Padayachee to discuss same. Nor did he approach General Moodley, against whom very serious allegations were made in the Applicant's representations.

91. My understanding is that the NDPP viewed these omissions as undermining Adv Letsholo's credibility, and as supporting his decision to reverse Adv. Noko's decision not to press the matter against the Applicant.

21 May 2013 Meeting

92. According to Adv Letsholo, he attended the first meeting on CAS 781, at PWC's offices in Musgrave. (FA-2, para 1.) He was briefed about the case and received a copy of the docket. (Adv Letsholo refers to a list of documents in the docket as *Annexure A*; however, that is not attached to the copy of the 25 March 2014 memo. A week later three files containing witness statements and related documents were delivered to Adv Letsholo.

10 December 2013 Meeting

93. Adv Letsholo says nothing in his two memoranda of what transpired at this meeting.

15 January 2014 Meeting

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94. Adv Letsholo says that at this meeting, Col Van Loggerenberg asked for his view of the case against the PC under CAS 781. He responded that, based upon what he had seen in the docket, there was no evidence against the PC. Adv Letsholo contends that Col. Van Loggerenberg exclaimed that, if the PC was not to be charged, he "may just as well close the docket."

14 February 2014 Meeting

95. Adv Letsholo says that it was at this meeting that he was handed the Applicant's representations, which included the Applicant's account of his meeting with General Moodley on 18 September 2011 (FA-3, pg. 3).
96. Adv Letsholo quotes directly from the account of the Applicant as to what was said at that meeting, alleging, as we have seen, that intercepted phone conversations were played.
97. Adv Letsholo complains:
- "At no stage whatsoever, was I informed by the investigating officers in this case that there are tape recordings available in this matter. The first time I became aware of the specific issue, was because of the representations made on half of Panday. Furthermore, there is nothing in the docket to suggest or indicate that there was an application made for the authority to permit the police to monitor certain telephone conversations." (FA-2, pg. 2).
98. I reiterate that it is surprising that Adv Letsholo had no knowledge of the interceptions, given that Adv Muller had attended a briefing on the subject in November 2012.
99. Adv. Letsholo says that he asked the investigating officer, Col Govender, why he had not been informed about the interceptions. (FA-2, pg.2, para 3.3).



According to Adv. Letsholo, Col Govender's response was that SAPS had taken a decision to "take out" everything related to the interceptions.

100. Col Govender disputes Adv. Letsholo's account of their discussion. He says that when Adv. Letsholo asked about the interceptions, he responded that, as part of the 781 investigating team, he had nothing to do with interceptions, and referred Adv. Letsholo to Col. Padayachee. Adv. Letsholo indicated that he did not want Col. Govender to contact Col. Padayachee. (FA-2, pg. 3, para 4.1).

101. Significantly, Adv. Letsholo added:

"The nature of the investigations in this matter is straightforward and there was no need for an application of this nature to be made." (Id Para 3.2)

102. It is passing strange that Adv. Letsholo would lift word-for-word out of Applicant's representations the following alleged sentiment attributed by the Applicant to General Moodley:

"Why are you protecting this Black Bitch? You must give her up. If you give us an affidavit we will force her to resign. General Booysen would become the new KwaZulu Natal Provincial Commissioner and you will enjoy full protection, I will remain in control of the secret fund."

103. This passage was copied (with insignificant variation), from (FA-1, paragraph 19) of the Applicant's 14 November 2012 representations, into paragraph 5(2)(c) (FA-2), of Adv. Letsholo's 25 March 2014 memo.

104. I understand that the NDPP found it surprising that Adv. Letsholo would uncritically embrace the Applicant's account, without following up directly with General Moodley the very serious charge namely that he sought to extort the

Applicant into framing the PC. For that matter, neither Adv. Letsholo nor the Applicant failed to have charges laid against Gen. Moodley arising out of the alleged extortion.

105. I note that Adv Letsholo says that the recordings were in the possession of Gen Moodley. But Adv. Letsholo was mistaken in that regard. The custodian throughout was Col. Padayachee.

14 March 2015 Meeting

106. A final meeting was held at PWC on 14 March 2015.
107. Although Adv. Letsholo does not specify on what date he received the PwC report (he refers to it on the first page of his 9 October 2015 memo) (FA-3), I assume it was at this final meeting. Yet Adv Letsholo says not a word about the substantive content of the PwC report, preferring to focus instead upon the interception issue.
108. It is significant that Adv. Letsholo commented no less than *three* times in his two memoranda that "the nature of the investigations in this matter is straight forward and there was no need for an application of this nature to be made." (FA-2, Para 3.2).
109. This sentiment was supported when Col Govender who stated that the SAPS was not intending to rely on the taped conversations for the purposes of CAS 781. The interception had, he emphasised, been triggered by death threats against the investigating officers in CAS 781. (FA-2, para 3.4)
110. A purported verbatim quotation of the highly offensive sentiments attributed to



General Moodley by the Applicant was transposed into Adv. Letsholo's 25 March 2014 memorandum. (FA-2). For example, Adv. Letsholo quotes words attributed by the Applicant to General Moodley, stating his supposed desire "*to get rid of this Black Bitch Commissioner.*" (FA-2, Para 5.2(b)) These words appear to be copied-and-pasted directly (including even the capitalization Black Bitch), from the Applicant's 14 November 2012 affidavit (FA-1, para 11.).

111. General Moodley unequivocally denies uttering such words. I submit that it was within the legitimate discretion of the NDPP to accept General Moodley's account for purposes of determining whether there was *prima facie* evidence suggesting a reasonable possibility of obtaining a conviction of the Applicant and his co-accused.
112. Returning to Adv. Letsholo's memorandum, his conclusions were as follows:
- "The issue surrounding the tapping of the phones is inextricably linked to the manner in which the evidence was obtained in this matter. ... The evidence as it stands at this point is irredeemably stained (*sic*)."
- (FA-2, para 7.1)
- ...
- "To take this case to court under these circumstances would mean that I as the prosecutor will have to turn a blind eye to the manner in which the evidence had been obtained and subject the judicial process in moral defilement, something I am not prepared to do."
- (FA-2, para 7.2)
- "I am not prepared as a representative of the State to go to court with dirty hands. I do not want to be seen to be condoning improper investigative techniques by the police."
- (FA-2, para 7.4)
- "I have therefore taken a decision to decline to prosecute in this matter."
- (FA-2, para 8)
113. While it is open to a prosecutor to decline to pursue a matter for any number of reasons, he may not do so without investigating the account of the suspect - especially where the account includes allegations of serious police misconduct



at the highest level – in this case, a plot to frame the Police Commissioner.

114. Adv. Letsholo does not indicate when he decided to decline to prosecute the Applicant, but it would appear to have been a snap decision. My understanding is that the NDPP found it disturbing that Adv Letsholo would take a precipitous step in a case of this importance, without following up with Crime Intelligence, or verifying the contested allegations in the Applicant's representations as to the nature and purpose of the interceptions.

G. Adv Letsholo's October 2015 Memorandum (FA-2)

115. For reasons that remain obscure, Adv Letsholo authored a second memorandum, addressed this time to Adv Noko (the first having been addressed to Adv Vimbanli).

116. The issue of the interceptions once again features prominently in Adv Letsholo's second memorandum (FA-2, pgs. 3-4.) Adv. Letsholo commented:

"Bearing in mind that an accused person has a right to a fair trial, if this information is not made available to us, it will be like we are perpetuating the days of docket privilege by not making available to an accused person all the information we have. . (FA-2, pgs. 5)

117. - Adv Letsholo's reference to the now defunct docket privilege is without basis. As he would know, a suspect does not have an absolute right of access to the entirety of the docket even as a matter of criminal law. Argument in that regard will be advanced at the hearing.

118. Adv. Letsholo continued:



"There is no way that the issue regarding the tapping of the phones, and the recordings can be separated from the evidence gathering process in this matter." (FA-2, pgs. 5)

119. This is another conclusion that appears to have derived solely from the Applicant's untested account. Adv. Letsholo concluded his 9 October 2015 (FA-2), memorandum with the following words:

"In the process of obtaining the necessary authorization the designated Judge *must have been* misled into granting the said authorization since the investigations in this matter did not require such directives." (FA-3, pg. 6) (Emphasis added)

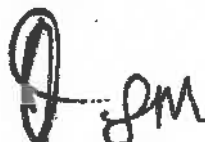
120. I understand that the NDPP found it remarkable that Adv Letsholo was ready to deduce a conclusion such as this from a suspect's untested, plainly self-serving account.

H. Adv. Noko's Decision in CAS 466

121. On 21 October 2014, Adv Noko wrote a memo to SAPS (SFA-C), stating: "I have decided to decline to prosecute both Colonel Madhoe and Mr Panday for corruption of any offence in the 466 case." Adv Noko added that recorded calls between Panday and Madhoe did not indicate any crime having been planned. Rather, the transcripts reflected:

"Haphazard conversation with slang and profane language between two people ... One cannot really make out what issue was being discussed. A criminal offence cannot be deduced." (SFA-C, para.2.16).

122. Another reason Adv Noko gave for dropping the CAS 466 prosecution was the fact that CAS 781 was not being pursued. She says that CAS 781 was "disposed of recently with a decision not to prosecute anyone as *there was no evidence to prosecute any person with any offence*" (SFA-C, Para 2.3)



(Emphasis added).

123. Adv Noko thus offers a different reason from Adv Letsholo for dropping CAS 781. (The latter did not mention the merits as a basis for not prosecuting the Applicant.) But she did follow his example in slavishly embracing the Applicant's self-serving narrative. For example, she states as a matter of unvarnished fact that:

"The SCCU revealed the scheming and intercepting of phone calls of inter-alia Mr Panday with a motive and agenda to falsely implicate certain people. They allegedly even went further to boast to Mr Panday telling him that they know what his defence in the 781 case will be, as they heard his discussions with his legal representatives through the intercepted calls." (SFA-C, para 2.4.)

124. Once again, my understanding is that the NDPP found it surprising that Adv Noko would, like Adv Letsholo, omit to approach the SAPS officers who were present at the 18 September 2011 meeting, to establish their version of what transpired nor did she approach Crime Intelligence directly to follow up on the basis for the interceptions. As drastic a step as dropping a prosecution in a matter of the undoubted public interest – alleged corruption in the highest echelons of law enforcement bodies – without a full investigation, represents a radical departure from prosecutorial policy.

I. The IPID Report (SFA-N)

125. I turn now to the sequence of events that led to the NDPP's decision to pursue the prosecution of the Applicant.
126. Having learned of the aforementioned decision not to pursue CAS 466, the Independent Police Investigative Directorate ("IPID"), investigated the matter,



together with the Hawks. (A letter from IPID to the NDPP is attached as SFA-N. They disagreed with the reasons relied upon by Adv. Noko to decline to prosecute. It was resolved to request the NDPP to review the decision, based upon evidence gathered by the Hawks (Para 2.4). The Head of the IPID, Mr Robert McBride, amongst others, recommended that Col Madhoe and the Applicant be criminally prosecuted for bribery in Case 466.

127. The sole mention of the interceptions in the aforementioned letter is to be found in paragraph 6.26. From the context, it is clear that what is being referred to is CAS 466. One finds no suggestion that the recordings are relevant to CAS 781 - even in that portion of the letter that separately discusses CAS 781.

J. Adv. Noko's Decision in CAS 781

128. Adv. Vimbani (the Senior Deputy Director of Public Prosecutions: Specialised Commercial Crimes Unit ("SCCU"), on 28 October 2015 addressed a memo to Adv Noko (SFA-A) (attaching the Applicant's representations and Adv. Letsholo's memo relating to CAS 781. She articulated her agreement with Adv. Letsholo. (One notes that Adv Vimbani states that she attended "some" of the meetings referred to by Adv. Letsholo in his reports - but without specifying *which* meetings in particular she did attend.)
129. The next day, 29 October 2015, Adv Noko wrote a memorandum to the NDPP to the following effect:
- "I have perused the reports by both Advocates Letsholo and Vimbani regarding this matter. I agree with their decision to decline to prosecute." (SFA-B).
130. Adv Noko furnished no reason for her agreement with Advocates Letsholo and



Vimbani regarding CAS 781. However, as we have seen, in her memo of 21 October 2014 (SFA-C), dealing separately with CAS 486, she had stated that CAS 781 was disposed as *there was no evidence to prosecute any person with [sic] any offence*" (Emphasis added.) By contrast, Adv Letsholo, ignoring the merits, had based his own decision entirely upon the putatively irremediable taint of allegedly unlawful interceptions.

DECISION TO PURSUE A PROSECUTION

131. I turn now to the NDPP's reversal of the decision to drop the prosecution and the steps that led to his decision.

A. Initial Steps

132. At about the time he decided not to pursue the matter, Adv Letsholo had issued a media statement, slamming the interceptions as illegal. (The statement is reported in an article by Logan Govender in *The Post*, 2 April 2014, attached hereto as annexure SR-9.) That prompted Col Padayachee to approach Gen Dramat, in the information note referred to above dated 16 April 2014 (SR-6"), saying that he suspected political interference. He added:

132.1. The request for an investigation had been received from the DPCI on 18 October 2010 (para 2), after investigators in CAS 781 reported death threats. Thereafter Crime Intelligence initiated an application for the interceptions (Id. para 6.2.)

132.2. An application had been approved by the Designated Judge on 15 November 2010, authorising interception from that day until 14 February 2011. (SFA-H).



132.3. The prosecution of CAS 781 would not rely whatsoever on the telephone interceptions; it was a "red herring" to treat these recordings as relevant for the review application for CAS 78.

132.4. Crime Intelligence had not been given access to the CAS 781 docket (Id, paras 6.6 – 6.8).

133. Regarding the latter point, the regulations, protocols and practices of Crime Intelligence ensure that, save in extraordinary circumstances, and then always subject to strict controls, the work of Crime Intelligence is ring fenced from ordinary police investigation.

134. Gen Dramat responded to Adv. Letsholo's 25 March 2014 memorandum by way of a letter to Adv Vimbani (SFA-K). He wrote as follows:

"I am in possession of formal reports which make it clear that the interception neither applied for nor utilised by the Directorate to secure evidence in this investigation ... Adv Letsholo acknowledges that the investigation was straightforward and that there was no need to utilise interceptions to secure evidence against the suspects. (Para 3).

The interception was applied for by the Crime Intelligence which was subsequently approved by the designated judge, based on death threats made against the investigation team. None of such evidence form part of the evidence in Durban central CAS 781/06/2010. (Para 4).

It is also not clear how this specific interception only became known to Adv. Letsholo on 14th February 2014 (allegedly with the representations of Mr Panday) if the prosecutors who dealt with this matter before him were all aware of the interceptions (since 28 November 2012) and if it was discussed with, and contextualised to him, by the investigators personally as early as 21 May 2013. (Para 4).

I am also aware that representations were made on behalf of Mr Panday during June 2013 and it is not clear whether Adv. Letsholo refers to "new" representations of 14 February 2014 or whether he indeed refers to the June 2013 representations. (Para 4).

135. The documentation in the RoD does not indicate whether Adv Vimbani



responded to Gen Dramat's letter.

136. My understanding is that this letter served before the NDPP, bolstering his decision to reverse the decision not to prosecute the Applicant.

B. The NDPP's Follow Up

137. Following Adv Letsholo's decision, the file was sent to the NDPP. I understand that he commenced his enquiries into both the 781 and 466 cases, by approaching Adv. Jiba, and communicating with the Hawks.
138. To that end, the NDPP addressed a letter to Major-General BM Ntlemeza (who had since replaced General Dramat as head of the Hawks), on 8 March 2016 (SFA-D). (It is important to note that the "Re" line in this letter refers both to CAS 466 and CAS 781.)
139. The NDPP explained he wished to obtain a "complete picture" of the two matters. He said that he was also reviewing CAS 781, and mentioned that an allegation had been made by the Applicant that the Hawks had conducted unlawful surveillance:

"The Specialised Commercial Crime Unit of the NPA in Durban has in the past requested the investigation team in this matter to provide it with all information of phones interception related to CAS 781/06/2010 ... [s]uch information has, however, not been forthcoming.

To enable me to carry out my mandate in terms of the legislation and to evaluate the representations as placed before me properly, your intervention is hereby sought all information of electronic surveillance by members of the DPCI, KwaZulu-Natal, in respect of CAS 781/96/2010 made available to me as soon as possible. Such information will include all applications for interceptions of phones together with the necessary directions by the relevant designated judge as well as transcripts of all recordings related to any of the suspects in the aforesaid matter."



140. The Applicant makes much of the latter request from the NDPP. He contends that it showed that the NDPP himself recognised that he could not properly perform his review functions without having sight of the interceptions. Following his exchanges with Adv Jiba and Mzinyathi, the NDPP, so I understand, was satisfied that the interceptions were of no relevance to the merits of CAS 781, and that it was therefore not necessary to pursue them any further, especially because there was more than enough *prima facie* evidence to warrant prosecution.

141. On 23 February 2016 the NDPP met with Adv Jiba to discuss both matters. He requested that Adv Jiba prepare a memorandum to guide his decision. On 9 May 2016, Adv Jiba recommended that the docket be reconstructed and placed before the DPP for a decision. (See SFA-G) She recommended that:

141.1. Madhoe and Panday be prosecuted for fraud and corruption in CAS 781;

141.2. they also be prosecuted for corruption in respect of CAS 466;

141.3. the CAS 386 docket be reconstructed;

141.4. the DPP be requested to advise the NDPP on the status of CAS 122.

142. As to CAS 466 Adv Jiba wrote:

"It is ... still for the Prosecuting Authority to decide whether the intercepted information is critical in proving the case against the accused. Although the interception supports the available evidence it is submitted that it is not crucial and need not be presented in the trial itself. The written authority of the NDPP... is only required if the evidence is to be used in criminal proceedings... It happens many times that the prosecution might decide not to utilise available evidence... where it is

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foreseen that a trial within a trial is not worth going through when there is already sufficient evidence available." (para 8.)

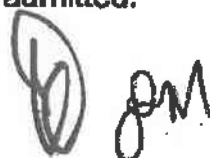
143. Adv Jiba wrote further, still regarding CAS 466:

"The intercepted information placed in the docket under discussion was obtained in another investigation registered under Durban CAS 781/06/2010 ... The suspect monitored was Mr T Panday. The designated Judge, Khumalo JA, issued the direction on 29 June 2011 for the period 29 June 2011 to 28 September 2011. During the operation information came to the fore pertaining to corruption in CAS 466. It appears that this information was disclosed to the investigating officer in terms of Section 43 of the said Act. This disclosure and the placement thereof in the case docket are not unconstitutional and cannot render any envisaged trial unfair." (SFA- F, para 6.) (Emphasis added.)

144. Contrary to what the Applicant implies, the context makes clear that the "docket under discussion" was CAS 466 - *not* CAS 781. That explains why, although it was threats received by investigating officers in CAS 781 that prompted the interceptions, the intercepted material ended up in the CAS 466 docket – *not* in the CAS 781 docket.

145. Turning separately to discuss CAS 781, Adv Jiba noted that the Applicant had alleged that DPCI had unlawfully surveyed him. He had claimed that conversations were recorded in 2009, before any of the case dockets were opened.

146. Adv Jiba records that Col Padayachee advised that the interception operation commenced in 18 November 2010 (Para 15). She concluded that the admissibility of the recordings would fall to be decided at trial. She cited authority to the effect that fairness may require evidence, even if unconstitutionally obtained, nonetheless be admitted.





147. The NDPP signed his approval of Jiba's 1 September 2016 memorandum on 8 September 2016; the docket was made available to the Applicant on 10 October 2016.
148. In a letter to Ms Aziz (the Applicant's attorney of record), dated 2 September 2016 (FA-2), the NDPP advised that decision of Adv Noko not to prosecute in respect of CAS 781 was under his review. The Applicant was invited to submit representations.
149. The Applicant responded by way of a letter dated 7 September 2016, demanding:
- (a) the charge sheet;
 - (b) the evidence under review;
 - (c) details of the decision of Adv Noko declining to prosecute (FA-6).
150. It is noted that no mention is made of the intercepted telephone calls - although the Applicant would, on his own account, have known thereof from the day they were (allegedly) played to him in September 2011, in the office of General Moodley.
151. The NDPP advised the Applicant, in a letter also dated 8 September 2016 (FA-7), that no charge sheet had yet been prepared. He advised further that the Applicant and his co-suspects stood accused of fraudulent and corrupt conduct in respect of the procurement of accommodation for officers of the SAPS for the 2010 World Cup. He added that the rationale for the decision not to prosecute, as endorsed by Adv Noko, had been:



"The alleged exclusion from the case docket of the evidence of the alleged recordings of phones of [Panday], which recordings [Panday] seemingly alluded to in his affidavit dated 14 November 2012... which affidavit was made available to the senior State Adv. dealing with the matter, dealing with the matter Adv. TA Letsholo".
(FA-7)

152. The NDPP undertook to provide a copy of the docket as soon as possible. It was duly furnished on 20 October 2016.
153. A letter of 12 December 2013 (SFA-K) was written by Gen Dramat to Adv. Vimbani (the Senior Deputy Director of Public Prosecutions: Specialised Commercial Crimes Unit ("SCCU")). It will be recalled that in that letter Gen Dramat had denied that the Hawks had unlawfully intercepted calls in CAS 781. He had stated further that none of the evidence in CAS 781 was in any event obtained by means of interception. The evidence, he said, had in fact been seized during lawful searches and included various witness affidavits, and the PWC report.
154. My understanding is that by now the NDPP was finally satisfied that he could take his s 22 decision without recourse to the interceptions, based upon the voluminous material that served before him, which showed what was in his view a strong *prima facie* case.
155. On 15 February 2017, Adv. Majokweni addressed a memorandum to the NDPP regarding Col Madhoe (SFA-J). He noted that Madhoe's attorney had requested, *inter alia*, the record of the decision of the DPP and copies of the PWC report. Regarding Col Madhoe's demand for the interception application, as well as the recording themselves, Adv. Majokweni states that:



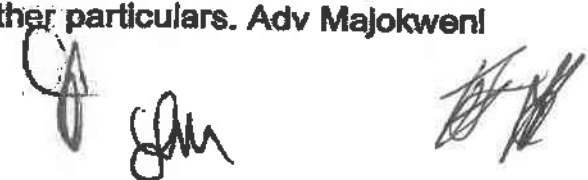
"None of the evidence pertaining to Durban Central CAS 781 was obtained by means of telephone interception. The issue of the alleged tapes will, seemingly, not take this matter any further." (Para 9).

156. Adv. Majokweni concluded that any procedural irregularities in the investigation could be canvassed at the trial. She added that:

"The matter at hand is, in our opinion, complex, and delays are bound to happen. It will be in the interests of justice and the public that the decision whether the suspects/accused have been prejudiced by any such issues is left to the courts."

157. I understand that the NDPP found himself in agreement with this sentiment, which is consistent with a body of judicial authority canvassed above. Judges have cautioned about the tendency of accused to engage in pre-trial manoeuvres calculated to defer for as long as possible their first appearance.
158. On 17 Feb 2017, Adv Majokweni approved a further memo (SFA-J), to the NDPP (regarding CAS 781), for purposes of attaching letters regarding requests for further information. She reaffirmed that the Hawks had confirmed that none of the evidence pertaining to CAS 781 had been obtained by means of interception.
159. Accordingly, on 3 July 2017, the NDPP wrote to the Applicant (FA-11), attaching the PwC report, and stating that:

"None of the evidence pertaining to Durban Central Cas 781/06/20 was obtained by means of interceptions. The issue of the tapes will, seemingly, not take this matter any further".

160. Adv Majokweni on 6 October 2016 addressed yet a further memorandum to the NDPP, in response to the NDPP's request that she consider the Applicant's requests for further particulars. Adv Majokweni
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advised that, although the defence might not be entitled to parts B and C of the case docket, the information would likely assist the NDPP in responding to the request by the defence for further information. She noted, however, that there was a risk that such disclosure might reveal state secrets, methods of police investigation, or the identity of informers (A copy of this memorandum is attached hereto marked "SR10".)

161. On 18 July 2017, the Applicant's attorneys indicated that "because of the volume of the [PwC] report", they would not be able to meet the deadline of 4 August 2017 for submission of reparations.

C. The Applicant's Representations

162. The Applicant submitted his representations on 9 October 2017 (FA-13). They were conveyed to the NDPP under cover of a memorandum of Adv Mzinyathi, dated 23 November 2017 (SFA-I), advising him to set aside the decision of Adv Noko not to prosecute. Adv Mzinyathi stated that:

162.1. A *prima facie* case of fraud and corruption had been made against the applicant and his co-accused.

162.2. The issue of the recording could be raised by the defendants at trial. In that regard, Mzinyathi cited the Constitutional Court decision in Key v Attorney General (referred to above), regarding the need to strike a balance between the public interest in bringing criminals to book and the public interest in ensuring that justice was done.



THE NDPP'S DECISION AND AFTERMATH

163. On 24 November 2017, the NDPP countersigned Mzinyathi's memorandum, supporting the recommendation that Applicant and his co-accused be prosecuted for fraud and corruption.
164. On 26 January 2018, the NDPP addressed a letter to Aziz (FA-14), advising that after perusal of the available information, he had decided that the Applicant be prosecuted for fraud and corruption *per* CAS 781. On the same the NDPP advised Adv Noko of the decision, and that the acting head of the SCCU, Adv. M Govender, had nominated Advs. Letsholo and Mpambo to prosecute the matter
165. Applicant's attorneys on 8 February 2018 responded with a letter (FA-15), to the NDPP indicating that a review would be forthcoming, and requesting his reasons. Notably, the letter did mention the interceptions – even though the Applicant would, on his own account, have known about them since September 2011, when - so he says - they were played to him in the office of General Moodley.
166. Adv Mzinyathi on 9 February 2018 approved a further memorandum (SFA-M), recommending a response to the letter of the previous day. The memo noted that the Applicant had been provided with a copy of the case docket, including the PwC report, which constituted sufficient information to allow representations to be made.
167. Regarding the interceptions, Adv Mzinyathi noted once again that this was to be canvassed in court. As to the internal correspondence requested by the



Applicant, it could not be disclosed at this stage insofar as it was confidential.

168. My understanding is that, in order to prepare himself for the section 22 review that was now in the offing, the NDPP wished to discuss the interception issue further with Adv Mzinyathi. Hence it was that in the "comment" section at the base of the 9 February 2018 memorandum, he indicated that he wished to discuss the matter with Adv Mzinyathi and Adv Kone.
169. On 13 March 2018, Adv Mzinyathi met with the NDPP, as foreshadowed in the 9 February memo. (SFA-M). He reaffirmed to the NDPP that the interception issue would fall to be canvassed at trial.
170. Adv Mzinyathi wrote a follow-up letter on 20 March 2018 to the NDPP (SFA-L), in which he recorded the contents of his discussion with the NDPP of the prior week. He attached to his 20 March letter a copy of the information note of Col Padayachee to Lt Gen Dramat dated 16 April 2016 (SR-6), in which Col Padayachee had explained the background to the interceptions.

Although the directorate was not to privy to the representations made to the prosecuting authority, the directorate disagrees with the view of Adv. Letsholo that the state would go to court with "dirty hands" in respect of Durban CAS 781/08/2010 and the evidence in this matter is "irredeemably stained." This office intends to take this matter to higher authority and would therefore appreciate, before doing so, if you could indicate, in writing, whether you share the views of Adv. Letsholo." (Para 5).

171. In a letter dated 26 March 2018 (FA-18), the NDPP wrote to Aziz as follows:

"Kindly be advised that the decision to prosecute your client was taken because a prima facie case has been made against him. This reason was provided in my letter to you dated 26 January 2018. You are in possession of the copy of the relevant case docket, including a copy of the forensic report by PWC, which contains the evidential



materials that form the basis of the *prima facie* case against your client."

AD APPLICANT'S FOUNDING AFFIDAVIT

Ad paragraph 1

172. Having noted that Adv. Letsholo and Adv. Noko took the view that the Applicant should not be prosecuted, he omits to mention that three senior prosecutors, Adv. Jiba, Adv. Mzinyathi and Adv. Majokweni recommended that the Applicant should be prosecuted.
173. After reading the latter's detailed inputs, Adv. Abrahams determined, correctly so, in my view, that the evaluations of Adv. Jiba and Adv. Mzinyathi were more compelling despite the views of Adv. Letsholo and Adv. Noko.

Ad paragraph 2

174. It is disputed that the contents of the Applicant's affidavit are true and correct, insofar as they conflict with what is stated in this affidavit and in the confirmatory affidavits attached hereto.

Ad paragraph 3

175. The contents of this paragraph are noted, save that I do not see the relevance of the Applicant's gender.

Ad paragraph 4

176. The contents of this paragraph are noted. I however refer to paragraph 2 above.

Ad paragraph 5



177. The contents of this paragraph are admitted.

Ad paragraph 6

178. The contents of this paragraph are admitted.

Ad paragraph 7

179. The contents of this paragraph are noted.

Ad paragraph 8

180. The contents of this paragraph are admitted.

181. It is true that prosecutorial decisions are subject to review under the principle of legality. But as set out in the legal exposition above, courts have cautioned against allowing accused persons to take such decisions on judicial review to obstruct the prosecution, and have held that issues such as those raised by the Applicant herein are best dealt with at trial.

182. The Applicant's stance also reflects his failure to appreciate the distinction between appeal and review proceedings. He effectively contends that the Court should set aside the NDPP's decision on the basis that he erred in attaching more weight to some considerations than to another. That is to collapse the distinction between appeal and review. It transforms judicial review into appeal, calling upon the Court to determine the *correctness* or otherwise of the decision. That is not the function of judicial review.

Ad paragraph 9

183. The contents of this paragraph are admitted.



Ad paragraph 10

184. The first three sentences of this paragraph are admitted. The final sentence is denied.

185. The reason that charges have not thus far been preferred is because Adv. Noko determined not to pursue the matter. After reversing Adv. Noko's decision, the Applicant lodged the present review. The NDPP agreed that pending this review, the Institution of the prosecution would be put on hold.

Ad paragraph 11

186. Warrant Officer Moodley did not contact the Applicant. Rather, the Applicant contacted Warrant Officer Moodley, shortly after they had encountered each other at the Gateway Mall. It was the Applicant, not Warrant Officer Moodley, who made follow up calls seeking further meetings over the next few days.

187. Save as aforesaid, the remaining contents of this paragraph are denied.

Ad paragraph 12

188. I understand that Warrant Officer Moodley and the Applicant Indeed met on 18 September 2011 at the Gateway Mall. However, this was not at the initiative of Gen Moodley. There was no telephone call with Gen Moodley in the presence of Warrant Officer Moodley. Gen Moodley did not indicate that he wished to meet with the Applicant urgently.

189. To the contrary, it was, I am advised, the Applicant who asked Warrant Officer Moodley to arrange a meeting with Gen Moodley.



Ad paragraph 13.

190. Pursuant to the Applicant's request, the Applicant met with Gen Moodley at his office in Durban on 18 September 2011.
191. It should be borne in mind that at this time, Madhoe had just been arrested (on 8 September 2011), in the CAS 466. The day after his arrest he asked to see Gen Moodley. Madhoe asked Gen Moodley if he could be a section 204 witness. Madhoe then wrote a warning statement implicating Panday in the 466 matter. But he had ultimately declined to sign it.
192. It was because of Madhoe's approach that General Booysen and General Moodley expected to soon be approached by Panday, who was, they believe, anxious to make a deal to save himself.
193. Also present at the late afternoon meeting of 18 September 2011 meeting with the Applicant were:
- a. Warrant Officer Moodley.
 - b. Col Padayachee.
 - c. Lt Col JS Chetty.
194. Confirmatory affidavits of each of these officers are filed herewith.
195. The remainder of this paragraph is denied.

Ad paragraph 14

196. The contents of this paragraph are denied in their entirety.



197. It is denied in particular that Moodley expressed the sentiments reflected in the first, second and third sentences of this paragraph.

198. As for the final sentence, no recording was played at the meeting.

199. No charges had been laid against the Applicant at this point. It hence makes no sense to say that the Applicant's legal defences were discussed in any of the alleged recordings.

Ad paragraph 16

200. I reiterate that no recordings were played at the meeting.

Ad paragraph 17

201. I reiterate that no recordings were played at the meeting. General Moodley did not say that which is attributed to him.

Ad paragraph 18

202. The contents of this paragraph are denied in their entirety. I reiterate that no recordings were played at the meeting.

203. Moreover, General Moodley has no power to grant immunity from criminal prosecution.

204. It is true that the Applicant is a suspect in the matter concerning PC's husband's birthday party.

205. It is denied that General Moodley made a call to General Booyesen to confirm that the Applicant would be granted immunity.

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Ad paragraph 19

206. The contents of this paragraph are denied.

Ad paragraph 20

207. The contents of this paragraph are admitted. There was Indeed a meeting on the date mentioned.

208. However, the Applicant misrepresents the discussion at the meeting.

Ad paragraph 21

209. I admit the contents of the second sentence of this paragraph. The remaining contents of this paragraph are denied.

Ad paragraph 22

210. The contents of this paragraph are noted.

211. There are several contradictions between the present founding affidavit and the affidavit dated 14 November 2012.

212. It is not open to the Applicant to require the contents of a lengthy affidavit be read as incorporated in his present founding affidavit. Every allegation and fact appearing in an annexure upon which a party wishes to rely must be spelt out in the body of the main affidavit. Hence, I do not address each allegation in that affidavit.

Ad paragraph 23

213. The contents of this paragraph are admitted.



Ad paragraph 24

214. The contents of this paragraph are noted. I deny that the Applicant's affidavit of 14 November 2012 (FA-1) accurately describes the meeting in Gen Moodley's office.

Ad paragraph 25

215. For the reasons set forth below, little weight could be attached to much of Adv. Letsholo's memorandum. As I understand it, Adv. Letsholo was indeed not briefed as to the existence of the recordings, for the simple reason that they were of no relevance to CAS 781, which was the subject matter of the meeting described in the memorandum.

Ad paragraph 26

216. As to the first sentence, I note what is stated about Adv. Letsholo's memorandum. Regarding the second sentence, I agree that the investigation in CAS 781 was relatively straightforward. For that reason no interceptions were necessary. The sole purpose of the interceptions was to investigate death threats reported by the investigating officers in CAS 781.

217. Regarding what is attributed to Col Govender, this is disputed. I refer to his accompanying affidavit. He did not say that the police had decided to "take out" everything related to the taped conversations.

218. The fruit of the interceptions was never part of the CAS 781 docket.

219. Regarding the final sentence of this paragraph, I refer to the accompanying affidavit of Col Govender. He confirms that the sole purpose of the interceptions



was investigating death threats against certain of the investigating officers. He advised Adv. Letsholo that he was aware that some interceptions had been provided to Adv. Govender in the CAS 466 matter.

Ad paragraph 27

220. The contents of this paragraph are misleading. It is not true that Crime Intelligence was unwilling to make available the contents of the recordings.

221. However, such disclosure would necessarily be subject to the strict requirements that limit the accessibility of such material.

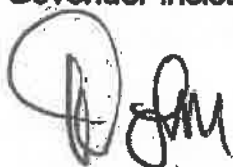
Ad paragraph 28

222. The content of this paragraph is admitted, insofar as it accurately quotes paragraph 6 of Letsholo's memorandum.

223. As I understand it, Col Govender raised with Col Padayachee what he had heard concerning the Applicant's version of what transpired at the meeting of 18 September. Col Padayachee responded that Col Govender should approach General Moodley if he wished to know more.

224. I do not understand the first clause of the final sentence in the quoted paragraph 6 of Adv. Letsholo's memorandum. I have already referred to the version of General Moodley, Col Padayachee and Lt Col Chetty as to what transpired at the meeting on 18 September 2011.

225. Adv. Letsholo mischaracterises this. In fact, Col. Govender was angry at Adv. Letsholo for stating that he would not be prosecuting the 781 matter because of the interception. To this end, Col. Govender insisted that Col. Padayachee be



contacted telephonically, to which Adv. Letsholo responded that would not be necessary.

Ad paragraph 29

226. The contents of this paragraph are admitted to the extent that they correctly quote Adv Letsholo's memorandum.

227. It is denied that the prosecution of the Applicant under CAS 781 would require the prosecutor to appear in court with "dirty hands". I disagree also with the contention that improper investigative techniques had been used. The Act 70 application was properly granted. In fact, it would have been irresponsible of Crime Intelligence not to take steps to investigate the death threats directed at the lives of the Investigating officers.

228. As noted, appropriate steps were taken to prevent the fruits of the interceptions making their way into the docket of CAS 781.

Ad paragraph 30

229. I note the further memorandum of Adv. Letsholo dated 9 October, 2015.

230. I refer to what has been set out above regarding Col Govender's response to the questions asked by Adv. Letsholo.

231. It is true that an interception application was prompted by threats reported by investigative officers.

232. It is misleading to say that any other applications were made for interception of calls. The initial authorisation of Judge Khumalo was, however, extended on

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more than one occasion.

Ad paragraph 30(a)

233. The contents of this paragraph are admitted, although I do not understand the discussion having taken the form of a "confrontation."

Ad paragraph 30(b)

234. The contents of this paragraph are admitted. I refer once again to what Col Govender has said about how he responded to these questions.

Ad paragraph 30(c)

235. The contents of this paragraph are admitted.

Ad paragraph 30(d)

236. It is true that the application was made to intercept conversations, and that this was prompted by death threats having been received by the investigating officers.

237. It is, however, misleading to say that other applications were made for the tapping of telephones in relation to the CAS 781 investigation. As noted, the authorisation of Judge Khumalo was extended.

Ad paragraph 30(e)

238. According to Col Van Loggerenberg and Col Govender, Adv. Letsholo made no such requests for the Act 70 application.

Ad paragraph 30(f)



239. The content of this paragraph are denied. The use of the passive voice in the second clause renders it impossible to determine who allegedly quoted General Moodley as refusing to release the recordings.

240. In any event, General Moodley did not refuse to release the recordings.

Ad paragraph 30(g)

241. The contents of this paragraph are admitted to the extent that they accurately quote what was said by Adv. Letsholo in his memorandum.

242. It does not follow from the fact that Adv. Letsholo was not informed of the application that there was anything untoward in the manner in which the authorisation was obtained. The fruits of Crime Intelligence Interceptions are highly confidential. *In casu*, they bare no relevance to CAS 781. That is why the recordings and the applications therefore were not made available to Adv. Letsholo.

Ad paragraph 30(h)

243. The reasoning as quoted in the first sentence of this paragraph is faulty. Not providing information about an interception that produced nothing of relevance to CAS 781 is not analogous to asserting docket privilege.

244. The interceptions are readily separable from the investigation in 781, given that the interceptions had to do with investigating reported death threats. They had, I repeat, nothing to do with the substance of allegations in CAS 781.

Ad paragraph 31

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245. It is not clear why Adv. Letsholo made a second memorandum justifying his decision not to prosecute.

Ad paragraph 32

246. The contents of this paragraph are admitted.

Ad paragraph 33

247. A copy of a document reflecting Advocate Noko's decision is attached as annexure B to the Applicant's supplementary founding affidavit.

248. It will be noted that Adv Noko takes the matter no further than Adv Letsholo. It is noted that, like Advocate Letsholo, Adv Noko made no attempt to verify the accuracy of the representations in so far as they describe the interceptions. Nor did she follow up with Crime Intelligence in that regard.

249. Moreover, in her memorandum of 21 October 2014 (SFA-C), she cites as a basis for the decision not to prosecute CAS 781 that "there was no evidence to prosecute any person with any offence." (Para 2.3). This, was, of course, not the main reason cited by Adv Letsholo for dropping the matter.

Ad paragraph 34

250. The contents of this paragraph are admitted.

Ad paragraph 35

251. The contents of this paragraph are admitted.

Ad paragraph 36

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252. The contents of this paragraph are admitted.

Ad paragraph 37

253. The contents of this paragraph are admitted to the extent that they accurately reflect the correspondence alluded to.

Ad paragraph 38

254. The content of this paragraph are admitted.

Ad paragraph 39

255. The content of this paragraph is noted.

Ad paragraph 40

256. The contents of this paragraph are admitted to the extent that they accurately characterise the letter of 30 November, 2016. (FA-8).

Ad paragraph 41

257. The contents of this paragraph are admitted.

Ad paragraph 42

258. The contents of this paragraph are admitted.

Ad paragraph 43

259. The contents of this paragraph are admitted.

Ad paragraph 44

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260. The contents of this paragraph are admitted to the extent they accurately characterise the letter dated 20 September, 2017.

261. I deny, however, the contents of the letter, to the extent that it is inconsistent with what is set forth above.

Ad paragraph 45

262. The contents of this paragraph are noted.

Ad paragraph 46

263. The contents of this paragraph are noted, save that the substance of the final sentence is denied.

Ad paragraph 47

264. The content of this paragraph are admitted to the extent that it accurately quotes the letter of 26 January 2018.

Ad paragraph 48

265. The contents of this paragraph are admitted.

Ad paragraph 49

266. The contents of this paragraph are admitted.

Ad paragraph 50

267. The first two sentences of this paragraph are admitted.

268. Regarding Adv. Noko's reasons, the NDPP was under no obligation to provide

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them, since it is not her decision that was subject to review.

269. Regarding the telephone communications referred to, there was similarly no obligation upon the NDPP to provide this. The fruits of the interceptions did not serve before the NDPP with regard to CAS 781.

270. I deny that improper investigative techniques were used.

Ad paragraph 51

271. The contents of this paragraph are noted.

Ad paragraphs 52, 53, 54 and 55

272. The contents of these paragraphs are noted and admitted to the extent that they accurately reflect the relevant legislation.

Ad paragraph 56

273. The content of this paragraph is admitted to the extent it accurately reflects the policy cited.

274. What the Applicant conspicuously omits to mention is that no more than prima facie evidence is required to warrant the instituting of a prosecution. This is an error that characterises the Applicant's entire argument.

Ad paragraph 57

275. The content of this paragraph is noted to the extent it accurately paraphrases the document referred to.





276. I would add, however, that the Applicant fails to mention that the fundamental test remains whether there exists a *prima facie* case suggesting reasonable prospects of a successful prosecution. As appears from the NDPP's letter of 26 January 2018 (FA-14), it was on this basis that the NDPP decided that the prosecution of the Applicant herein must proceed.

Ad paragraph 58

277. The contents of this paragraph are admitted to the extent they accurately reflect the document relied upon by the Applicant.

Ad paragraph 59

278. It of course true that a decision to prosecute is subject to judicial review on the grounds of legality and rationality. But it is also true that, as set out above, courts are reluctant to interfere with a prosecuting authority's bona fide exercise of the discretion to prosecute.

279. Courts are, as evidenced by the authority outlined above, wary of attempts by criminal suspects to abuse the judicial review process to indefinitely defer their day in court, by litigating on the papers matters that should properly be dealt with at trial.

280. I would add that, for the reasons set forth above, and as a matter of policy, a decision *not* to prosecute is properly subject to a higher level of scrutiny than a decision to prosecute. In the latter instance, the accused will have an opportunity to raise alleged abuses of process and the like at trial. Argument in support of that proposition will be advanced at the hearing.



Ad paragraph 60

281. The contents of this paragraph admitted.

Ad paragraph 61

282. The contents of this paragraph are admitted.

283. What the applicant omits to mention is the abiding importance of prosecutorial independence. I reiterate that courts are intolerant of attempts by criminal suspects to use procedural mechanisms to defer their day in court, by attempting to litigate on the papers matters that should properly be dealt with at trial.

Ad paragraph 62

284. The contents of this paragraph are admitted to the extent that they accurately quote the Code of Conduct for members of the National Prosecuting Authority, dated 29 December 2010.

Ad paragraph 63

285. The Applicant's interpretation of the code of conduct as meaning that there must be "special reasons" why the NDPP review a particular case is disputed. This interpretation would attenuate the constitutionally vested discretion of the NDPP to review a prosecutorial decision. Argument in that regard will be advanced at the hearing.

Ad paragraphs 64 and 65

286. The contents of this paragraph are admitted.

Ad paragraph 66

287. The contents of this paragraph are admitted, although I would point out that the phrase "criminal statutory offence" is redundant.
288. The NDPP was satisfied that the interception was not unlawful.

Ad paragraph 67

289. The contents of this paragraph are admitted insofar as they correctly paraphrase Act 70 of 2002. However, the final sentence is an over simplification. Where the interests of justice demand it, the contents of an unlawful interception may in certain circumstances be deemed admissible, subject to certain safeguards. Argument in that regard will be advanced at the hearing.

Ad paragraph 68

290. The content of this paragraph are admitted.

Ad paragraph 69

291. The contents of this paragraph are admitted save that I reiterate what is stated above in this regard.

Ad paragraph 70

292. The contents of this paragraph are admitted. However, I reiterate what is said above.

Ad paragraph 71

293. The contents of this paragraph are admitted. However, I reiterate what is said above in this regard.

Ad paragraph 72

294. I understand that the NDPP was *in casu* not persuaded that there had been any breach of the attorney-client privilege. I would add in addition that, even had there been such breach, it would be of no moment, inasmuch as the fruits thereof were not adduced at trial.

295. The "general principles" articulated by the Applicant represent a partial and over-simplified summation of applicable law regarding the admissibility of the fruits of unlawful interception, and material obtained inconsistent with the attorney-client privilege.

296. I reiterate that the Applicant's rendition is inadequate insofar as it fails to recognise that in certain circumstances such material may, in the interests of justice, be deemed admissible, notwithstanding underlying unlawfulness. Argument in that regard will be advanced at the hearing.

Ad paragraph 73

297. The legal exposition in this paragraph is admitted, save that I assume that the applicant intended the word *incidence* to read *incident*.

Ad paragraphs 74 to 78

298. The legal exposition in this paragraph is admitted.

Ad paragraph 79



299. The generalised sentiments expressed in this paragraph are admitted.

Ad paragraph 80

300. The generalised sentiments expressed in this paragraph are admitted.

Ad paragraph 81

301. The contents of this paragraph are noted.

Ad paragraph 82

302. The contents of this paragraph are admitted, save that, given the paucity of reasons articulated by Adv. Noko, it is unclear as what extent her decision was consistent with the reasons for the decision of Adv. Letsholo. As will appear below, that it is of no consequence.

Ad paragraph 83

303. The legal conclusions set forth in this paragraph are denied, for the reasons set forth below.

Ad paragraph 84

304. I understand that the NDPP concluded that the fruits of the interception did not bear one way or another on the substance of CAS 781, and did not form part of the docket that served before him.

305. The second sentence of this paragraph it is not correct. I understand that the NDPP took his decision having determined that the available evidence



suggested that there was a reasonable prospect for obtaining a conviction, as stated in his letter of 26 January 2018. (FA-14).

306. I understand that the NDPP understood such recordings existed, as is evident in his letters of the relevant time. His posture was not one of "supine" acceptance of what was presented by the SAPS. My understanding is that he was aware of the allegation that the interception was unlawful, but was persuaded to the contrary by the material that served before him.

Ad paragraph 85

307. The NDPP did not fall to deal with the allegation that the interceptions would render the trial unfair. Adv. Letsholo apparently concluded that the interceptions were inseparable from the evidence gathering for purposes of CAS 781. Having reviewed that which served before him, the NDPP differed from Adv. Letsholo in that regard.

308. It is significant that there was no indication that the fruits of the interception made their way into the CAS 781 docket. The Applicant has not come forward with anything to show that the interceptions themselves were unlawful.

309. It is true that the NDPP did not set forth chapter and verse regarding his conclusions in his communication with the attorney for the Applicant. However, the fundamental basis for his conclusion is clear. I refer in that regard to the NDPP's letter of 26 January 2018.

310. The basis for the NDPP's decision appears more fully from the memorandum



from Adv. Jiba (annexure SFA "G"), which he signed.

Ad paragraph 86

311. I deny that the NDPP's decision was either irregular or irrational.

Ad paragraph 87

312. The NDPP indeed came to the conclusion that none of the evidence in CAS 781 was obtained by means of interceptions. My understanding is that the NDPP did so on the basis of that which served before him.

313. For the Applicant to suggest that the NDPP should not have accepted what the DPCI stated in this regard because it had a "motive to deny any wrongdoing" is, with respect, absurd. The Applicant, by the same token, would have a motive to allege wrongdoing.

314. I note the Applicant's suggestion that it was incumbent upon the NDPP to perform his own objective independent scrutiny of the claim. The NDPP a large number of applications to review decisions to prosecute annually. Were the NDPP himself or herself attempt to investigate each and every allegation independently, he or she would have very little time to do anything else.

315. It is not unusual for the NDPP to make decisions based upon oral advice from senior prosecutors and other NPA functionaries. Like the head of most large entities, whether in the public or the private sector, the NDPP necessarily relies upon the advice of persons in the organisation who are appointed on the basis that they can be trusted implicitly for their advice and counsel.

316. Having noted the applicant's claims regarding the interceptions, the NDPP



found himself in agreement with the analysis of Adv. Jiba in her memorandum.

Ad paragraph 87(a)

317. The Applicant does not state which aspect of his lengthy affidavit of 14 November 2012 he contends the NDPP should have followed up on.

318. The NDPP had no reason to grant dispositive weight to these claims of the Applicant. He concluded that they should be tested at trial. The fallacious premise of the Applicant's stance is that it is open to pre-empt in this application determinations that are appropriately made by the trial court.

Ad paragraph 87(b)

319. I have dealt above with the memoranda of Adv. Letsholo. For the reasons stated, the NDPP elected to accord little weight thereto. It appears that Adv. Letsholo accepted without question the version of the Applicant as set forth in his affidavit of 14 November, 2012, to the extent of quoting verbatim therefrom at length.

Ad paragraph 87(c)

320. I do not fully understand the import of the Applicant's claim that the SAPS did not dispute the Applicant's version of his meeting with General Moodley.

321. My understanding is the NDPP had no reason to believe that Adv. Letsholo's memoranda captured everything that was said by SAPS officers in his presence.

322. The above was in any event irrelevant to the question of whether the evidence





was obtained by improper means. There served before the NDPP authorisations granted by Judge Khumalo for the interceptions. The Applicant would have every opportunity at trial to challenge evidence adduced against him.

Ad paragraph 87(d)

323. The NDPP took into account the decision of Adv. Noko, but did not deem himself bound thereby. The point of the NDPP's review was to determine whether there was material that, on a prima facie basis, suggested good prospects of success in obtaining a conviction. I understand that the NDPP stands by his determination that the answer to that question is in the affirmative.

Ad paragraph 87(e)

324. Because neither the fact nor the fruits of the interceptions were relevant to the merits of CAS 781, they were not included in the docket for that case.

Ad paragraph 88

325. The contents of this paragraph are denied.

326. What the Applicant does not understand is that the SAPS division responsible for crime intelligence operates separately from the rest of SAPS. There are good reasons for that. Every effort is made to protect the processes of crime intelligence from disclosure even within the SAPS. The products of crime intelligence are shared with the SAPS on a "need to know" basis.

327. Since the recordings had nothing to do with the merits of CAS 781, it was unnecessary for them to have been placed in the docket. In fact, it would have



been a violation of protocol and policy had the fruits of the interception been included in the CAS 781 docket, and it will similarly be an abuse if such material is adduced at trial. If there is an attempt by the state to rely upon this material at trial, the Applicant will have every opportunity to challenge that.

328. The Applicant states that the SAPS concealed the recordings from Adv. Noko. Yet there is no record of Adv. Noko having requested them. For that matter, there is no record of Adv. Letsholo having made a written request to Crime Intelligence for the recordings. All we have are two memoranda from Adv. Letsholo, in which, having uncritically embraced the version of the Applicant, he summarily concluded that it would be a gross irregularity to take the matter to trial.

329. The Applicant misstates by attributing to the NDPP the "pretext" that "no evidence" was obtained under the interceptions. My understanding is that evidence was indeed obtained. But, it was not evidence pertaining to CAS 781.

Ad paragraph 89

330. It is denied that the NDPP turned a blind eye. All things considered, he was justified in deciding to institute prosecution.

331. Throughout his rendition, the Applicant fails to acknowledge that, if unlawfully obtained evidence is presented against him at the trial, he will have every opportunity to oppose admission of same upon all of the bases alluded to.

Ad paragraph 90

332. The contents of this paragraph are denied.



333. It is not clear what prompted Adv. Letsholo to proclaim that he was not prepared to go to court with "dirty hands". It appears that this sentiment arose after he viewed the representations of the Applicant, which he quotes verbatim and at some length.

334. It is not clear why Adv. Letsholo would believe everything that the Applicant said about what had transpired in General Moodley's office without at least checking with General Moodley and other SAPS officers who had been present at the meeting.

Ad paragraph 91

335. It is disputed that the NDPP was in the same position as Adv. Letsholo and Noko when they made their decisions declining to prosecute. The NDPP had the advantage of, *inter alia*, a comprehensive analysis by Adv. Jiba, as well as communications with Col Padayachee about the genesis, purpose and outcome of the interceptions.

336. Most importantly on the merits, these served before the NDPP the extensive PWC report, which captures in great detail the voluminous evidence against the Applicant and his co-accused.

337. The NDPP also had regard to factors to which it appears Advocates Letsholo and Noko paid little attention, including the principle that a trial court is in the best position to evaluate the provenance of evidence.

Ad paragraph 92

338. The contents of this paragraph are denied.

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339. I understand that the NDPP stands by his decision to reverse Adv. Noko's decision not to prosecute the Applicant. In his view, the material in the docket demonstrated that there was a reasonable prospect of success in the prosecution.
340. The allegation that the prosecution would be tainted by unlawfully obtained evidence, is not convincing. There was no showing that the evidence was unlawfully obtained. And even if it was, such evidence was not intended to be used as part of CAS 781.
341. The conclusion that the evidence presented as part of CAS 781 would not include unlawful obtained evidence did not merely reflect the "subjective statements" of the DPCI.

Ad paragraph 93

342. The contents of this paragraph are denied.
343. My understanding is that the NDPP concluded that the recordings produced by the interceptions would take the matter no further on three bases:
- 343.1. first, he had no reason to conclude that the interceptions were unlawful;
- 343.2. second, even if the interceptions were unlawful, that could not taint a trial in which the fruits were not adduced;
- 343.3. third, in the event that the fruits of an unlawful interception were to be adduced at trial, the Applicant would have his remedies.



344. The logic of the second sentence of this paragraph is faulty. In no way does the existence of the recordings "confirm" that the prosecution may not proceed. It makes no sense to allege that evidence has been "suppressed" where it has no relevance to the subject matter of the trial.

345. An accused does not have the right to any and all evidence in the hands of the prosecution. He has a right to evidence that will be relevant at the trial. Argument in that regard will be advanced at the hearing.

Ad paragraph 94

346. The contents of this paragraph are denied.

Ad paragraph 95

347. In my understanding, the NDPP did not ignore the memoranda of Adv. Letsholo and Adv. Noko. He considered their expressed views, together with the views of more senior prosecutors, and determined that the material that served before him indicated that there was a reasonable prospect of a successful prosecution.

348. Regarding the reference to the Supreme Court of Appeal in the context of the decision of Adv Mpshe not to prosecute the former President, that authority supports the Respondent herein, as alluded to above.

349. The Applicant's case is premised upon a fallacy that was pointedly rejected by the Supreme Court of Appeal. Even if there has been a serious irregularity in the investigation of a matter, that would not render the trial unfair – unless the nature of the irregularity was such that it will irreparably prejudice the defence at trial.

Ad paragraph 96

350. It is stated above why the NDPP preferred the views of Advs. Jiba and Mzinyathi to those of Adv. Letsholo and Adv. Noko.
351. I deny that the NDPP's decision-making was inconsistent with the principle of legality, or that his conclusions were not supported by valid reasons.

Ad paragraph 97

352. No recordings were suppressed by the DPCI. No one has denied that such recordings exist. But the Applicant has failed to show either that the interceptions were unlawful, or that the fruits thereof form part of the case against him.
353. Nothing that was placed before the NDPP tended to show that the interceptions were "coloured by impropriety". But even if that were so, this would not in itself suffice to render the trial unfair.
354. Argument will be advanced at the hearing that such impropriety would need to cause "trial" prejudice in order for it to be rendered unfair.

Ad paragraph 98

355. Nothing that served before the NDPP suggested that interceptions were unlawful.
356. It does not assist the Applicant to claim that a fair trial would not be possible. I understand that the NDPP was persuaded both that there was no showing that the interceptions were unlawful, and that in any event no reliance would be



placed upon the fruits of the interception.

357. The Applicant will not lack for opportunities to raise the matter at his trial.

Ad paragraph 99

358. The recordings have never been "suppressed". I understand that the NDPP deemed it unnecessary to listen to the recordings referred to, because same would not be relied upon under CAS 781.

Ad paragraph 100

359. The NDPP did not deem it necessary to inspect the interception application in the context of CAS 781, because he saw it in a different context. He was satisfied that the authorising judge was not misled. At no point has the Applicant offered anything more than speculation in support of his contention that the authorising judge was misled.

360. And, even if the interceptions were unlawful, that could not in any manner prejudice the accused, where no reliance is placed either directly or indirectly upon the material for purposes of trial.

361. I understand that the NDPP deemed it not necessary, for purposes of his review of the merits of CAS 781, to view an application for an interception targeted at allegations that did not bear upon the merits of CAS 781.

Ad paragraph 101

362. The first sentence of this paragraph is admitted, save that the purpose was not so much to verify the existence of threats, but to determine whether any steps



were necessary in the light of such threats.

363. The second sentence of this paragraph is denied. The only interceptions applications were in connection with the alleged threats against investigating officers.
364. Irrespective of what Adv. Letsholo requested of the investigating officers, the assessment was that there was sufficient evidence to show a reasonable prospect of success in a prosecution of the Applicant. Since the NDPP had no reason to believe either that the interceptions were unlawfully approved, or that they were of any relevance to the merits of the case, he did not deem it necessary to take it any further.
365. It is true that the Applicant has access to the authorisation dated 15 November 2010. That has been made available to the Applicant in the RoD. The affidavit of Captain Cele in support of the application is attached above as SR-5.
366. Since none of the fruits of the interceptions form part of the docket in CAS 781 or will be used against the Applicant at trial, it was neither here nor there whether the Applicant had access to the documentation.
367. The reference to docket privilege is a red herring for reasons set forth above.

Ad paragraph 102

368. The contents of this paragraph are denied.
369. It is denied that the Applicant was unable to comment meaningfully upon the case that was brought against him. In fact, he did so in considerable detail, by questioning the financial calculations used, attempting to justify various

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payments to co-accused, and arguing that what is alleged to constitute tender fraud amounted to no more than the extracting of a reasonable commission.

370. I understand that the NDPP concluded in the absence of any evidence to the contrary that the interception order was lawfully obtained in a different context. As stated this evidence formed no part of CAS 781, the file under review.

371. If the Applicant wishes to argue that, contrary to the NDPP's determination, the interceptions tainted the entire process, he will be free to advance that argument at trial. I can only comment for now that this argument seems unlikely to succeed in light of the Zuma precedent canvassed above.

Ad paragraph 103

372. The contents of this paragraph are denied.

373. The Applicant has now supplemented the instant founding papers; answers thereto appear below.

374. My understanding is that the NDPP did not unquestioningly accept the say-so of the DPCI. His decision was not irrational. I reiterate what is stated above concerning the interceptions.

Ad paragraph 104

375. The contents of this paragraph are denied.

376. The NDPP did not without question accept what was told to him. The relevant correspondence, as referred to in the supplemental founding papers and answered below, demonstrates that nothing could be further from the truth.

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377. As to the Applicant's arguments about the separation of prosecutorial and investigated functions, collaboration between the law enforcement agencies is indispensable in the effective combating of crime, subject to constitutional limits.

Ad paragraph 105

378. The contents of this paragraph are denied.

379. I understand that the NDPP determined that there was no credible proof of "illegal phone tapping" nor was there any proof of a breach of attorney-client privilege. There served before the NDPP interception orders issued by Khumalo J which were on their face lawful. In addition the affidavit of Captain Cele attached as "SR5" makes it plain that the interceptions were lawfully obtained.

Ad paragraph 106

380. The contents of this paragraph are denied.

381. I reiterate that that which served before the NDPP showed to his satisfaction that the interceptions were lawful. I reiterated what is stated above.

Ad paragraph 107

382. I understand that the NDPP accepted General Moodley's denial that he told the Applicant that, since he knew his defences, he would ensure that all avenues were closed to the Applicant. I note that, in any event, no charges had at that point been preferred against the Applicant.

Ad paragraph 108

383. The contents of this paragraph are denied. I reiterate what I have stated above



In that regard, If the Applicant wishes to argue that the manner in which evidence was gained was so abhorrent that it tainted the entire process, It would be open to him to do so at the trial – if and when such evidence is adduced against him. For the Applicant to pursue that line of argument now is nothing more than an attempt to obstruct the prosecution.

Ad paragraph 109

384. The contents of this paragraph are denied.
385. The gathering of evidence that does not form part of the docket is not material to this review. When and If the fruits of the allegedly unlawful Interceptions are adduced against the Applicant, he will have his remedies. That will not happen in CAS 781, since the fruits of the interception are of no relevance on the merits.

Ad paragraph 110

386. The allegations in this paragraph, repetitious of what has been stated many times over already, are denied. I reiterated what is stated above.

Ad paragraph 111

387. My understanding is that nothing in the material that served before the NDPP led him to believe that the Applicant was targeted for prosecution because he refused to join a plot against the Provincial Commissioner.
388. I do not accept that the NDPP was motivated by political considerations. I saw no evidence of bad faith or ulterior purpose.
389. The contents of this paragraph are accordingly denied.



Ad paragraph 112

390. The contents of this paragraph are denied.
391. I reiterate that nothing supports the allegation that the prosecution was in bad faith or motivated by ulterior purpose.
392. Where the arrest of the Applicant took place is of no consequence to the determination the NDPP had to make: whether there was *prima facie* evidence suggesting a reasonable prospect of a successful prosecution.
393. Even if there had been an abuse of process, that would not under the Zuma precedent render the prosecution unfair, unless it could be shown that the prejudice was such that the applicant could not have a fair trial.
394. The quotation from Adv. Letsholo's supplementary memorandum is noted.

Ad paragraph 113

395. The contents of this paragraph are denied.

Ad paragraph 114

396. The NDPP gave his reasons for his decision to prosecute as set out at "FA-18".
397. The fact is that the interception was not sought to obtain evidence in CAS 781. There was no intent to use the fruits of the interceptions in the matter under review.

Ad paragraph 115

398. My understanding is that the NDPP was satisfied that the interception was



lawfully authorised and unrelated to CAS 781.

399. It is true that the NDPP was obliged to consider the relevant circumstances in the exercise of his discretion. My understanding is that he did indeed do so, noting that the fact of the interception and its fruits were of no relevance to the matter under review.

400. I deny that the NDPP did not act independently.

Ad paragraph 116

401. In my understanding the NDPP acted in compliance with the relevant policy directives.

402. What the Applicant fails to grasp is that the fundamental test for the institution of a prosecution is whether there is *prima facie* evidence suggesting a reasonable prospect of success in obtaining a conviction.

403. I understand that the NDPP concurred that this was a straightforward prosecution. That is why it was not necessary to obtain evidence via interception.

Ad paragraph 117

404. The NDPP did not adopt a "supine attitude" to rights violations; I reiterate what is stated above in that regard. Neither did he flout NPA policy. I have dealt above with the Applicants oft-repeated allegations in this regard.

Ad paragraph 118

405. The contents of this paragraph are denied.

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406. The NDPP was not obliged to consider each and every item alleged by the Applicant to be material to the decision to review the prosecution. If that were so, the review function of the NDPP would amount to a *de facto* preliminary investigation in each and every criminal matter.

407. My understanding is that the NDPP having applied his mind did not accept that the interceptions were irregular.

Ad paragraph 119

408. The contents of this paragraph are denied.

409. The record shows extensive consultation with Adv. Jiba. My understanding is that the NDPP did not ignore the views of Adv.'s Noko and Letsholo. He considered carefully the two memoranda of Adv. Letsholo, but found himself in disagreement with his sentiments.

Ad paragraph 120

410. The recordings were not made available because they were not relevant nor part of CAS 781. In any event the Applicant is not entitled to access to each and every item of the material to the case against him. He is entitled only to items that will be relevant at trial.

411. The material demanded is highly sensitive material obtained by Crime Intelligence which is subject to strict controls even within SAPS structures. It is shared only on a "need to know" basis and concerned death threats against the investigating officers.

412. As for the decision of Adv. Noko, the Applicant obtained access to all of the



material that served before the NDPP.

413. The Applicant had access to everything that he needed to make his representations.

Ad paragraph 121

414. Argument regarding the doctrine of procedural irrationality will be made at the hearing of this matter.

Ad paragraph 122

415. The first sentence of this paragraph is denied for the reasons set forth above. I note the contents of the second sentence of this paragraph but I reiterated that the Applicant had all information necessary to make representations.

Ad paragraph 123

416. The contents of this paragraph are denied.
417. The applicant suffered no prejudice. The reason why no charge sheet was produced was because charges had not yet been preferred. The factual basis and nature of the prosecution - tender fraud and corruption - are well known to the Applicant.
418. I do not follow the Applicant's objection to the PWC report, which sets out in a great deal of detail the facts upon which the allegations against the applicant are based. That is not to say that the PWC report is perfect in every respect. But perfection is not the standard when a prosecutor is assessing whether a prima facie case has been made.



Ad paragraph 124

419. I have already noted that the Applicant has had access to everything about the decision of Adv. Noko which served before the NDPP. In any event, the Applicant's application for review is directed at the NDPP's decision, and not at the decision of Adv. Noko.

Ad paragraph 125

420. The contents of this paragraph are denied.

421. Argument will be advanced at the hearing in this regard.

Ad paragraph 126

422. The contents of this paragraph are denied.

423. I take issue with the suggestions that new reasons have been invented. The Applicant has filed nearly 100 pages of affidavits, setting out extensive arguments challenging the decision to pursue a prosecution. In order to deal with his allegations, it is necessary to cover ground that is not canvassed.

Ad paragraph 127

424. These allegations are illustrative of the Applicant's misunderstanding of the nature of decision to institute a prosecution. The fundamental test is whether it is believed that there is a *prima facie* case suggesting reasonable prospects of success.

425. In this matter, the NDPP determined that the *prima facie* evidence pointed to good prospects of successful prosecution. It is for the trial court to determine



whether this ultimately amounts to proof beyond a reasonable doubt.

426. To divert attention from that, the Applicant has relentlessly pursued the issue of interception orders that were obtained to investigate death threats against the investigating officers.

427. There was nothing irregular in the NDPP's determination that the approval of the interception application and the fruits thereof did not bear one way or another on the merits of the case against the Applicant.

428. I do not understand why the Applicant is invoking the so-called "no-difference" principle. It is emphatically not the case that the decision to go ahead with the prosecution of the applicant could be justified because there is a legitimate basis therefore over and above "illegitimate reasons".

Ad paragraph 128

429. The content of this paragraph is disputed. I refer to Adv. Mzinyathi's memorandum of 24 November 2017 (SFA-I), in this regard.

430. Adv Mzinyathi summarises the case against the Applicant as follows in this memorandum:

"C. Summary of substantial facts and available evidence

9. Businessman Toshan Panday, Colonel Navin Madhoe and Captain Aswin Narainpershad who are members of the South African Police Service in KwaZulu-Natal involved themselves in fraudulent and corrupt conduct in respect of the procurement of accommodation for members of the SAPS involving millions of rands. Mr Panday would obtain accommodation quotations and grossly inflate the rates and submit invoices to the SAPS which were processed by Colonel Madhoe and Captain Aswin Narainpershad. Procurement contracts were awarded to Mr Panday or his companies and other entities related to him.

[Handwritten signature]

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Colonel Madhoe and Captain Narainpershad who were responsible for the SAPS procurement received benefits from Mr Panday for their role.

10: See annexure D for summary of the available evidence."

431. Although the Applicant has attached Adv. Mzinyathi's memorandum to his supplementary founding affidavit, the annexures to this memorandum have themselves not been attached. Some of the annexures do feature as attachments to either the Applicant's founding or supplementary founding affidavit. A notable omission is *annexure D* to Adv Mzinyathi's memorandum, which is abovementioned summary of the available evidence against the Applicant. *Annexure D* to Adv Mzinyathi's memorandum is attached hereto marked "SR11".
432. The latter summarises much of the evidence in the docket and supports much of the evidence set out in this affidavit. I shall return thereto.
433. The procurement process was highly irregular. It is a specific requirement of the SAPS procurement process that emergency procurement situations may not be self-created. Provision is made that it must be verified that the urgency was not the result of a lack of proper planning.
434. Although Gen R S Pillay certified that the procurement was urgent, he failed to certify that the urgency was not the result of a lack of proper planning. It was further alleged that Gen R S Pillay himself received gratuity from the Applicant.
435. Col Madhoe was allegedly instrumental in orchestrating the delay in order to ensure that tenders were awarded to the Applicant on a non-competitive basis.
436. Returning to "SR11", the witness statement of Ms Roshni Naidu, the then

Executive Director of Coastlands Hotels and Resorts ("Coastlands"), is relevant. (This is summarised at paragraph 86.) Ms Naidu states that on 15 October 2012, Col Van Loggerenberg showed her three written price quotations relating to the accommodation of SAPS members. She confirms that these written price quotations were received. They were sent to her by Captain Narainpershad. Ms Naidu completed the price quotations and faxed them back to Captain Narainpershad. Col Van Loggerenberg also showed her another price quotation for the *period 1 June 2010 to 12 July 2010* for the accommodation of 530 SAPS members, with the closing date by when to quote being 5 October 2009.

437. Ms Naidu categorically denied having received this quotation. Ms Naidu was also shown an internal SAPS letter dated 8 October 2009, from the PC Division: Supply Chain Management, which states that Coastlands did not respond to the written quotation in question. Ms Naidu stated that this was false since Coastlands did not receive that particular price quotation. The same letter also states that Goldcoast Trading CC (one of the Applicant's entities) had sourced accommodation from Coastlands. Ms Naidu states that this too is false since the first time that the Applicant approached Coastlands for accommodation was in May 2010.
438. The witness statement of Brigadier Nagamuthu Govindsamy Govender ("Brig Govender") must also be considered in this regard. Brig Govender's witness statement is summarised at paragraph 155 of annexure "SR11". He was the chairman of the section 4 meetings – the meetings held at the time to plan the logistical arrangements for the 2010 Soccer World Cup. Accommodation of

SAPS members was discussed for the first time, according to him, on 4 April 2009. At a meeting held on 13 July 2009, Coastlands Hotel was mentioned as a venue that could accommodate members. According to the meeting minutes, Col Madhoe had never reported that he had received feedback from Coastlands Hotel during the period 3 August 2009 to 7 June 2010. Col Madhoe had also never mentioned that accommodation would be provided by Pendelburys Guest Suites and Resorts and Gold Coast Trading CC.

439. As a further example of a *prima facie* case against the Applicant, the witness statement of Colonel Soobramoney is summarised at paragraph 12 of annexure "SR11". (This is the same Colonel Soobramoney the initial investigating officer of CAS 781, and whom Captain Cele says was intimidated, as per his affidavit to apply for the interceptions). Paragraph 12 of annexure "SR11" states as follows in the last two paragraphs:

"Colonel Madhoe has the authority to sign off on acquisitions not exceeding R200 000,00. Hence the majority of claims submitted and settled fall within this limit. Claims that would have exceeded the R200 000,00 limit as a single claim, have been deliberately split into more than one claim to allow Colonel Madhoe to have signing authority.

Information was brought to the witness that Colonel Madhoe and Captain Narainpershad have made acquisition without financial authority and after obtaining the product or services, an application for financial authority was then sought. Information has also been brought to the witness that Panday was using more than one CC to procure work from the SAPS in collusion with Colonel Madhoe and Captain Narainpershad. The witness further states that Panday has from November 2009 to date been paid more than R17m by the SAPS in a corrupt and fraudulent manner (the witness's statement is dated 15 June 2010)."

Ad paragraph 129

440. The content of this paragraph is disputed.

The block contains three handwritten signatures or sets of initials. From left to right: a large 'D' followed by 'JM', a signature that appears to be 'D. J. M.', and a signature that appears to be 'D. J. M.'.

441. I note the Applicant's reference to his representations annexed as FA-13, which runs to 123 paragraphs. I do not intend to answer thereto to the extent they are not captured in the body of his founding papers. It is well-established that it is not open to an applicant to incorporate by reference the content of annexures to his affidavit. The applicant must stand or fall by allegations that appear in the body of his affidavit.
442. It is prejudicial for the Respondent and the Court to have to sift through the Applicant's representations to find the averments which purportedly support his allegation that there was no reasonable basis to conclude that he corrupted the procurement process through his relationship with the co-accused.
443. In my understanding the NDPP concluded that there was more than sufficient *prima facie* evidence to suggest a good prospect of a successful prosecution.
444. Adv Mzinyathi, in considering the Applicant's representations, states as follows in his memorandum (annexure "I" SFA).

"The evidence of the gift received by the two officials as gratuity is compelling. The explanation provided by Panday for the payments he made in favour of Madhoe and Narainpershad or their families, namely that he did so as a travel or accommodation agent does not hold water and is indeed unacceptable and exposes, Mr Panday, with the utmost respect, is a stranger to the truth. For example, it makes no business sense that Panday would at all times personally pay from his credit card for the services rendered by his company, Gold Coast Trading. Panday claims that Madhoe's son was looking for a car and Panday found a Toyota Corolla and paid R60 000.00 for it and had it registered in the names of Madhoe's son. Panday claims further that the Madhoe's later paid for the car. One would have expected the Madhoe's to first view the car before they could give Panday the go ahead to purchase it on their behalf. Importantly, Justin Naidoo, A79, who sold the Toyota Corolla to Panday said that Panday told him that the car was a gift to Madhoe. There is also no other satisfactory explanation why the treadmill had to be first delivered to Captain Narainpershad home but for the fact that Panday had purchased it for Narainpershad as a gratuity. Regarding the accommodation at Protea Hotel Karridene Beach which accommodated

Mr and Mrs Narainpershad. Robert Somerset Trahaeven: A172: filed a statement that Mr and Mrs Narainpershad were booked under the name of Mr T. Panday and refers to an e-mail which requested that the hotel assists the guests in whatever they required because it was a gift from Mr T. Panday and that he would be responsible for the total cost of the guest's stay." (Underlining added.)

445. The witness statements of Mr Justin Naidoo and Mr Robert Somerset Trahaeven referred to in the quotation above are also summarised in "SR11" at paragraphs 55 and 138 respectively. A plethora of information served before the NDPP in support of the *prima facie* case against the Applicant. This included the PwC report, which was attached to "SR11" and the information in the docket.

Ad paragraph 130

446. The content of this paragraph is disputed. My understanding is that whilst the co-accused were not part of the final decision-making process, there was evidence to support the allegation that they influenced the process to such an extent that the Applicant became the only service provider in the main eligible to supply the accommodation, amongst other things. The latter was achieved through misrepresentation of the facts and the placing of a particular slant on the facts to the Applicant's benefit.

Ad paragraphs 131 (a) – (g)

447. The contents of these paragraphs are disputed for the reasons set out above.

Ad paragraphs 132-135

448. The contents of these paragraphs are disputed for the reasons set out above.





AD THE APPLICANT'S SUPPLEMENTAL FOUNDING AFFIDAVIT**Ad paragraph 1**

449. The contents of this paragraph are noted.

Ad paragraph 2

450. It is denied that the allegations in the supplementary founding affidavit are true insofar as they conflict with what is stated by me in this affidavit and in the confirmatory affidavits attached hereto.

Ad paragraph 3, 4, 5 and 6

451. The contents of these paragraphs are noted.

Ad paragraph 7

452. The contents of this paragraph are noted. The Respondent is under no obligation to compile an index to the RoD or to arrange the documents in any particular order. The obligation is to furnish the RoD as kept in the ordinary course of business.

Ad paragraph 8

453. The contents of this paragraph are noted.

454. The Applicant has purported to incorporate large parts of the record into his affidavit by reference. That is not permissible, as binding authority holds. To the extent that the applicant wishes to rely upon any part of the record he must quote it, or provide an adequate summary or paraphrase thereof, in the body of his affidavit itself.

Ad paragraph 9

455. The contents of this paragraph are noted. As set forth above, the Applicant is under no obligation to compile an index to the record or to arrange them in any particular order.

456. All items that served before the NDPP were included in the record of decision as filed.

Ad paragraph 10

457. The contents of this paragraph are noted.

Ad paragraph 11

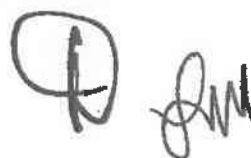
458. The contents of this paragraph are noted.

Ad paragraph 12

459. The contents of this paragraph are denied.

Ad paragraph 13

460. It is admitted that the Applicant seeks to review the decision of NDPP made in





terms of section 22(2)(c) of the NPA Act. The decision of the NDPP was to reverse the decision of Adv. Noko in which she declined to institute a criminal prosecution against the Applicant under CAS 781.

Ad paragraph 14

461. I repeat the contents of paragraph 13 above.
462. There is no basis for the allegation that there should be "special reasons" for a NDPP to review a particular matter where the DPP has declined to prosecute. The NDPP exercises a broad discretion when he or she exercises his or her review powers as provided for in the Constitution and s 22 of the NPA Act.
463. That being said, my understanding is that the NDPP, having considered what served before him, concluded that the decision of Adv. Letsholo and Adv. Noko not to pursue the matter was indeed clearly wrong.
464. The remaining contents of this paragraph are denied.

Ad paragraph 15

465. My understanding is that the NDPP reached the decision to prosecute the Applicant on the basis that at least a *prima facie* case had been made against the Applicant, and that there appeared to be reasonable prospects of success in obtaining a conviction.

Ad paragraph 16

466. I admit that the NDPP reviewed the decision of Adv. Noko refusing to pursue a prosecution. It is denied that the DPCI refused to disclose the intercepted



material.

467. The NDPP noted the reason given by Adv. Letsholo for his determination that no prosecution could ensue - that the DPCI had failed to furnish him with the interception order and the fruits thereof. My understanding is that, having reviewed the relevant material, the NDPP concluded that significant parts of Adv. Letsholo's memoranda were not factually reliable. I am inclined to agree with the NDPP that Adv. Letsholo's decision was ill-founded and illogical.
468. There is no indication, that Adv. Letsholo attempted to take the matter further. He could have approached Crime Intelligence formally demanding the interception direction and the fruits thereof. That would have allowed him the opportunity to properly apply his mind to the allegations of the Applicant. Instead of taking such steps, Adv. Letsholo appears to have impulsively concluded that pursuing a prosecution was out of the question.
469. I understand that Adv. Vimbanl did indeed support the decision of Adv. Letsholo. She, however, gave no reasons at all for that decision, and appears to have acted merely as a conduit between Adv. Letsholo and Adv. Noko. In any event, no less than three senior prosecutors differed with Adv. Letsholo and Noko.

Ad paragraph 17

470. My understanding is the NDPP knew of the existence of the recordings, which were not illegal.
471. My further understanding is that the NDPP did not deem it necessary to examine the fruits of the interception for purposes of his review of CAS 781.



472. That is both because the purpose of the order was not to obtain evidence on the merits CAS 781, and in light of the fact that the fruits of the interception were not used, and would not be adduced in the trial on the merits. To the extent that Adv. Letsholo believed to the contrary, my understanding is that the NDPP, having applied his mind, concluded that he was wrong.

473. Regarding the latter part of this paragraph, I reiterate that as a matter of law the NDPP is vested with a broad discretion in exercising his constitutionally vested review power. I reiterate what I have said above in that regard.

Ad paragraph 18

474. The first sentence of this paragraph is admitted. I understand that the NDPP's agreement with the memoranda of Advs. Jiba, Majokweni and Mzinyathi signifies that he adopted their reasons.

475. It is true that the NDPP's letter of 26 March 2018 did not mention the telephone interceptions. I have indicated above why those interceptions are wholly immaterial to the merits of CAS 781.

Ad paragraph 19

476. The contents of this paragraph are denied.

477. For the reasons set out above, there was no reason whatsoever for the NDPP to address the issue of the interceptions. The sole operative standard is whether or not the material served before him *prima facie* suggested good prospects for a successful prosecution. In his considered view, the answer was in the affirmative.

[Signature]

[Signature]

Ad paragraph 20

478. The interception issue is a red herring created by the Applicant to distract from what is really at stake herein. My understanding is that the NDPP was satisfied that the material that served before him demonstrated that there were good prospects of success in the prosecution of the Applicant on the merits. He did indeed engage with the interception issue, as evidenced by documentation that the Applicant has cited.
479. The Applicant's suggestion - that the NDPP cannot properly apply his mind unless he personally examined the large volume of documents underlying the material that informs his decision making, and personally interview every individual whose input he considered - is absurd.
480. My understanding is that the NDPP carefully considered what was said regarding the various memoranda listed by the Applicant.
481. My understanding is further that the NDPP considered the views of those persons mentioned, and with the reasons given by Adv Noko as quoted by the Applicant.
482. He also considered, as he was obliged to, the views of Adv's Jiba and Mzinyathi. On balance, he agreed with the aforementioned that the interceptions did not justify not proceeding with the prosecutions.
483. The basis for that view was that, as reflected in the aforementioned memoranda, the interceptions were not aimed at gathering evidence with respect to CAS 781. Nor was there an intention to utilise the fruits of the interceptions for that purpose. Moreover, none of the fruits of the interceptions



form part of the docket in CAS 781.

484. My further understanding is that the NDPP was cognisant of case authority to the effect that to omit to proceed with a prosecution where the matter is one of great public concern, and where there are also very good prospects of success, could itself bring the administration of justice into disrepute. The fairness of a trial is evaluated on the basis of potential trial prejudice. Not prejudice in the abstract.

485. I do not know what Adv Noko is referring to when she speaks vaguely of *"agendas among [sic] the parties and scores to be settled."*

Ad paragraph 21

486. I do not understand what is meant by the reference to *"red lights."* To the extent it is implied that the NDPP did not apply his mind and make a rational decision to pursue the prosecution of the Applicant, that is denied.

487. My understanding is that the NDPP was indeed familiar with the contents of Adv Letsholo's memorandum. He disagreed fundamentally with the conclusions and reasoning therein.

488. Regarding his request for information as to the interceptions, the NDPP was satisfied with the explanation that the interceptions had nothing to do with the substance of the prosecution in CAS 781.

Ad paragraph 22

489. The contents of this paragraph are denied. The NDPP indeed acted rationally. I have stated my understanding why he was not persuaded by the reasoning of



Advs. Letsholo and Vimbani.

490. I further reiterate what I have stated above in that regard.

Ad paragraph 23

491. I deny that the NDPP took what the Applicant characterises as a "shortcut." He duly applied his mind and made an independent decision to pursue the prosecution of the Applicant.

Ad paragraph 24

492. The contents of this paragraph are denied.

Ad paragraph 25

493. I deny that the allegation of illegal phone tapping was ignored in making the decision.

Ad paragraph 25.1

494. The contents of this paragraph are denied. My understanding is that the NDPP took into account the interceptions, and concluded that there was nothing to justify not proceeding with the prosecution in the face of material that *prima facie* demonstrated good prospects of success in the prosecution of the Applicant.

Ad paragraph 25.2

495. The contents of this paragraph are denied. The decision was entirely consistent

with the prosecutorial policy.

496. It is inaccurate to say that the NDPP ignored the advice of senior prosecutors. In fact, he embraced the reasoning of Adv. Jiba and Adv. Mzinyathi. Both of them had independently considered the views of Adv. Letsholo and Adv. Noko, and arrived at the conclusion that they had been in error.

Ad paragraph 25.3

497. I deny that the NDPP's decision was subject to any error of law. As I understand it, he appreciated the scope and content of his review powers, applied his mind, and determined that there was no demonstration of procedural or investigative unfairness such as would prevent a fair trial.

Ad paragraph 25.4

498. The contents of this paragraph are denied. My understanding is that the NDPP was given no reason to believe that the interception authorisations were improperly obtained, and that he was satisfied that there had been no infringement of the Applicant's rights.

Ad paragraph 25.5

499. It denied that the determination of the NDPP brings the administration of justice into disrepute.
500. To the contrary, *failing* to proceed with a prosecution where good prospects of success had been demonstrated would have brought the administration of justice into disrepute.



Ad paragraph 26

501. The contents of this paragraph are denied.
502. My understanding is that the NDPP considered how the interception authorisations had been obtained, there being no showing that they were unlawful.
503. My understanding is that the NDPP, having received the input of senior prosecutors who carefully considered the issue, deemed it not necessary to concern himself with the contents of the interception. They were not relevant to the substance of CAS 781.
504. The Applicant proceeds from an unrealistic understanding of the nature of the review process. Were the NDPP to consider in detail all documents raised in review proceedings in minute detail, such a review would take weeks, if not months of his time. His reliance upon the considered views of senior prosecutors was entirely necessary and justified.
505. There was no abdication of responsibility.
506. Authority and argument in that regard will be advanced at the hearing.

Ad paragraph 27

507. I reiterate that which is stated above in answer to the equivalent allegation in the Applicant's founding affidavit.

Ad paragraph 28

508. It has not been denied that the NDPP was aware of the interceptions, which

were discussed in some detail in Adv Jiba's and Adv. Mzinyathi's affidavits

509. The NDPP was, in my view, entirely warranted in accepting the advice of Adv Jiba, amongst others, to the effect that the fact of the interceptions did nothing to taint the prosecution.

Ad paragraph 29

510. I admit the contents of this paragraph to the extent it accurately quotes the content of the correspondence referred to.

511. It is true that the NDPP did not receive all of the particulars regarding the interceptions from Major-General Ntlemeza. That was not necessary for purposes of the review. As I understand it, he relied upon, the advice of Adv. Jiba and Adv. Mzinyathi in this regard.

Ad paragraph 30

512. I admit the contents of this paragraph, to the extent it accurately quotes the letter of 26 April 2016.

Ad paragraph 31

513. I have already dealt with the allegations in this paragraph. As I understand it, the NDPP was indeed initially inclined to elicit further information about the interceptions from DPCI. That was because the Applicant's representations made it appear as if the interceptions were targeted at obtaining evidence on the merits of CAS 781. When it transpired that this was not so, he determined that it was not necessary to access the interceptions for purposes of his review function.

514. I have already indicated that to have pursued every possible line of enquiry would be entirely impractical. Having consulted with his subordinates, the NDPP determined, so I understand, that he had sufficient information upon which to base his decision.

515. The suggestion that the NDPP relied solely upon the input of the DPCI is misleading. My understanding is that he also relied upon the evaluation of *inter alia* Adv. Jiba and Adv. Mzinyathi. He also took into account the input of Col Padayachee of Crime Intelligence.

Ad paragraph 32

516. I deny that there was anything "incredible" about the NDPP's decision, or the course of conduct leading up to the decision. The Applicant gives no indication why the NDPP should set more store in the advice of Adv. Noko and Adv. Letsholo than that of Adv. Jiba and Adv. Mzinyathi.

Ad paragraph 33

517. My understanding is that the NDPP took into account the input of Adv. Vimbani, which apparently went no further than adopting Adv. Letsholo's conclusions. The Applicant does not disclose why the NDPP was not entitled to set store by the advice of more senior prosecutors.

Ad paragraph 34

518. The contents of this paragraph are admitted, although I do not understand why the Applicant uses the word "ostensibly".

Ad paragraph 35

Q JM

JS

519. To the extent that this paragraph accurately reflects the memorandum of Adv. Jiba, the content is admitted.

Ad paragraph 36

520. The contents of this paragraph are admitted to the extent that they accurately quote Adv. Jiba's memorandum.

Ad paragraph 37

521. The contents of the first sentence of this paragraph are misleading. Adv. Jiba used the phrase "another investigation". The Applicant overlooks the meaning of this phrase in context.
522. As to the third sentence (quoted in para 35), in the paragraph reading "during the course of the operation information came to the fore pertaining to corruption in the case docket under discussion", it is misleading. A reading of this passage in the context of the document reveals that the "case docket under discussion" is CAS 466, not CAS 781.
523. The information was indeed disclosed to the investigating officer. However, this was in CAS 466, not CAS 781.
524. A passage from the transcript produced as a result of the interception was indeed produced as part of the litigation around CAS 466.
525. I do not understand what weight the Applicant attaches to what appears in the penultimate sentence of this paragraph. The fact is that the interception commenced in November 2010 related not to the substance of CAS 781, but to death threats reported by investigating officers in that case.



Ad paragraph 38

526. The contents of this paragraph are both false or misleading.
527. The allegation that the NDPP did not disclose why he preferred the advice of Adv. Jiba is contradicted by the admission of the Applicant in the second sentence that his signature on Adv Jiba's memorandum suggested that the NDPP endorsed her view.
528. It is true that the NDPP did not expressly state why he agreed with Adv Jiba rather than Adv Letsholo. The omission of a decision-maker to set out in elaborate detail the reasons for his decision does not render that decision irrational and unlawful. All that is required is the gist of the reasons. Argument in that regard will be advanced at the hearing.

Ad paragraph 39.1

529. Adv. Jiba was not disentitled from relying on Col Padayachee's account, which is detailed, comprehensive and complete."
530. The phrase "all necessary information" begs the question. If the Applicant is proposing that every conceivable avenue must be pursued to its end-point, that would entail that review of a complex case could take months, if not years.
531. The fact that the Applicant disputes the rendition of facts that appears in Adv Jiba's memorandum did not trigger the duty of the NDPP to chase down every conceivably material item. If the NDPP were not entitled to rely upon advice received from his subordinates, and was obliged to personally follow up every issue, he would have no time to perform the myriad other duties of his office.



532. I am aware that the Applicant asserts that the interceptions began in 2009. Crime Intelligence states that the interception operation commenced in November 2010. That is consistent with the Judge's authority. There served before the NDPP the authorisation of Khumalo J to that effect. To suggest that the NDPP was required independently to settle this "dispute" by combing through voluminous documentation is self-evidently absurd.

Ad paragraph 39.2

533. The Applicant disingenuously interprets the phrase "*interception operation*". It is clear in context that the application for an interception was lodged before the interceptions themselves commenced.

Ad paragraph 39.3

534. Regarding the target of the interceptions, it was clear from the context that the interceptions targeted the Applicant. The NDPP was entitled to rely upon the representations of Col Padayachee in that regard.

535. Regarding the final sentence of this paragraph, I understand that the reason the NDPP requested the DPCI to furnish information relevant to the authorisations was that it was not at this stage clear that the interceptions had nothing to do with the merits of the criminal case. This was subsequently clarified to the NDPP's satisfaction.

Ad paragraph 39.4

536. Regarding the first sentence of this paragraph, the Applicant was free to challenge the interception authorisations as soon as he became aware thereof.



Even if, hypothetically, the interception authorisations were unlawful, that would not vitiate the prosecution of CAS 781. As stated, a copy of Captain Cele's affidavit, which formed the basis of the application for the interception is attached as SR-5.

Ad paragraph 39.5

537. Regarding the first sentence of this paragraph, the perverse implication of the Applicant's proposal is that the NDPP cannot take a review decision without having examined for himself, not only every item that underlies everything that underpins what is before him, but everything that underlies that too. Through a process of infinite regress, the NDPP would be compelled to himself examine every item that could conceivably be disputed at trial. That proposition need only be stated to be rejected.

Ad paragraph 39.6

538. The first sentence of this paragraph is premised on the incorrect assumption that the fruits of the interception will be used in the prosecution of CAS 781.

539. Gen Moodley denies that he spoke the words attributed to him in the second sentence. The purported verbatim quotation of words attributed to him raises eyebrows. How, one may ask, would such word-for-word quotations be possible? The inference that the Applicant invented what he attributes to Gen Moodley seems irresistible.

540. My understanding is that the NDPP did not accept that the interception directive was not properly obtained. He also did not accept that the fruits thereof were improperly utilised.



Ad paragraph 39.7

541. The contents of this paragraph are denied.
542. Nothing that served before the NDPP suggested there had been a violation of attorney-client privilege. But, even if there had been such a violation, that would be of no consequence, given that the fruits of the interception form no part of the case against the Applicant in CAS 781.
543. I understand that the NDPP did not accept that he had been presented with what the Applicant labels "credible proof" of illegal phone tapping, or breach of attorney-client privilege.
544. It follows from the above that the NDPP did not act under error of law.

Ad paragraph 39.8

545. The contents of this paragraph are denied. The Applicant misreads Adv. Jiba's memorandum, by misinterpreting it as stating that the fruits of the interception was placed in the docket for CAS 781. This has been dealt with above.
546. As for what General Moodley is alleged to have said about the use of attorney-client information, the NDPP had no reason to believe the Applicant's self-serving and inherently implausible account on that subject.
547. To the extent that the interceptions are impugned, the time to mount such a challenge would be a "trial within a trial".

Ad paragraph 39.9

548. The legal argument in this paragraph is denied. Argument will be advanced at



the hearing in this regard. For present purposes, I note the self-serving selectiveness of the quotation from Adv. Jiba's memorandum.

Ad paragraph 39.10

549. It is a diversion to make an issue of whether the interception occurred before or after the docket in CAS 781 was opened, given that the fruits of the interception are irrelevant to the merits of CAS 781.

Ad paragraphs 40 and 40.1

550. The contents of these paragraphs are denied. In my view, the NDPP acted rationally and applied his mind, taking into account and appropriately weighing the information that served before him.

Ad paragraph 40.2

551. The contents of this paragraph are denied. It is clear that the NDPP properly understood the scope and content of his review function. He did not violate the Applicant's procedural rights.

Ad paragraph 40.3

552. The content of this paragraph is denied and what is stated above is reiterated. The NDPP was entitled to rely upon the input of senior prosecutors within the NPA.

Ad paragraph 40.4

553. The contents of this paragraph are denied. It was within the NDPP's discretion to accept the advice of senior prosecutors.



554. I am unaware of material flaws in the Internal memoranda of Adv Jiba.

Ad paragraph 41

555. The contents of this paragraph are noted.

Ad paragraph 42

556. The contents of this paragraph are noted.

Ad paragraph 43

557. The contents of this paragraph are denied.

558. It is denied in particular that Adv. Jiba indicated that the interception commenced in October 2010.

559. The Applicant seems intent upon diverting from what is at issue here. The fact is that the material that served before the NDPP suggested that there were good prospects of success in the prosecution of the Applicant on the merits.

Ad paragraph 44

560. I reiterate the denial that the NDPP abdicated his decision-making duties concerning this paragraph and the sub-paragraphs hereunder.

Ad paragraph 44.1

561. The NDPP acted consistently with the NDPP's review obligations under Section 179(5) of the Constitution and Section 22(c) of the NPA Act.

Ad paragraph 44.2



562. I reiterate that the Interceptions Issue is a red herring created by the Applicant to distract from the fact that the material that served before the NDPP established good prospects of success for the prosecution.

563. Whilst the NDPP did note that the Applicant's lawyers had asked for access to the transcripts and the recordings, he concluded, so I understand, that they had no entitlement thereto for purposes of CAS 781.

Ad paragraph 44.3

564. The NDPP did seek interception materials from DPCI initially. Having discussed the matter with Adv Jiba and Adv Majokweni, the NDPP was persuaded, so I understand, that this was unnecessary, because it was irrelevant for purposes of his review of CAS 781.

565. It does not assist the Applicant to point out that the DPCI "self servingly" claims that the interceptions were authorised. It is no less self-serving of the Applicant to claim the contrary.

566. It was within the NDPP's discretion to accept the DPCI's version.

Ad paragraph 44.4

567. The contents of this paragraph are denied.

568. My understanding is that the NDPP was indeed satisfied with the input of the DPCI. Having considered all of the relevant material, he was not inclined to credit Adv. Letsholo's account of the exchange between Col Govender and Col Padayachee.



Ad paragraph 44.5

569. Adv. Vimbani states that she "attended some of the meetings that Mr Letsholo is [s/c] referring to in his reports." But she does not say whether she attended the meeting at which Col Govender allegedly confronted Col Padayachee. One cannot therefore know whether Adv Vimbani is purporting to confirm the exchange at that particular meeting.

Ad paragraph 45

570. It is my understanding that Adv Mzinyathi's conclusion was correct.

Ad paragraph 46

571. The contents of this paragraph are denied.

Ad paragraph 47

572. The contents of this paragraph are admitted insofar as they correctly quote the letter of General Dramat.

Ad paragraph 48

573. The contents of this paragraph are noted.

574. My understanding is that, for the reasons referred to above, the NDPP did not deem it necessary to demand the reports referred to by Gen Dramat. The Applicant's suggestion - that the NDPP cannot properly apply his mind unless he personally examines each and every document underlying all of the material that informs the matter, and personally interviews every individual whose input is taken into account - is absurd.



Ad paragraph 49

575. It is true that the NDPP discussed with Adv. Mzinyathi the question of the interceptions, and indicated his agreement with the assessment that, if the Applicant had genuine concerns regarding the recording, these could be dealt with in the course of a "trial within a trial."

Ad paragraph 50

576. The contents of this paragraph are denied.

577. I deny in particular that it was a "shortcut" to concur that, if the Applicant has any genuine objection to the interceptions, these would fall to be determined at a "trial within a trial."

Ad paragraph 51.1

578. The contents of this paragraph are denied. If the fruits of the interceptions are adduced at trial, the Applicant will be at liberty to raise his objections.

Ad paragraph 51.2

579. The contents of this paragraph are denied.

580. The fact that the Applicant does not have access to material that is of no relevance to the merits of the case against him cannot be said to deny meaningful exercise of his rights.

Ad paragraph 51.3

581. The contents of this paragraph are denied.



582. I reiterate what I have stated immediately above.

Ad paragraph 51.4

583. The contents of this paragraph are denied. I reiterate what has been said about the attempt by the Applicant to divert attention from the merits of the decision on review.

Ad paragraph 52

584. It is denied that any of Applicant's rights have been violated.

Ad paragraph 53.1

585. It is disputed that the Applicant has been denied documents to which he is entitled. Under Rule 53 of the Uniform Rules of Court, a party is entitled to relevant documents. The material relating to the interceptions is, as explained, not relevant.

Ad paragraph 53.2

586. The contents of this paragraph are denied.

Ad paragraph 53.3

587. There is no inconsistency. The co-accused, Col Madhoe, had certain intercepted material produced to him because they were relevant to the merits of the case against him, in CAS 466. By contrast, the interceptions have no relevance to the merits of CAS 781.

Ad paragraph 53.4

588. The contents of this paragraph are denied. As will be argued at the hearing, the admission of documents is within the discretion of the court, on the basis of what is in the interests of justice.

Ad paragraph 53.5

589. The contents of this paragraph are denied. The interceptions at issue were never furnished to the prosecutors in CAS 781.

Ad paragraph 54 and sub-paragraphs

590. The contents of these paragraphs are denied.

Ad paragraph 55

591. The contents of this paragraph are denied.

Ad paragraph 56

592. The contents of this paragraph are denied. There was adequate consultation for purpose of s 22 of the NPA Act.

Ad paragraph 57

593. I deny that there was not proper consultation.

594. As I understand it, the NDPP took into account the views of senior prosecutors within the NPA hierarchy who urged that the prosecution of Applicant be pursued, as well as those who contended to the contrary.

Ad paragraph 58



595. The first sentence of this paragraph is admitted; the balance of this paragraph is denied.

596. It is true that the NDPP requested the materials referred to in his letter. He had noted in the Applicant's representation to the effect that the interceptions had to do with the substantive allegations in CAS 781. My understanding is that, thereafter, he established that this was not the case. In fact, the interception's related only to death threats reported by Investigating officers.

Ad paragraph 59

597. I reiterate what is stated above in this regard. I deny that the DPCI was "under scrutiny" with respect to this matter. The NDPP was quite entitled to accept the explanation offered by General Dramat.

Ad paragraph 60

598. The contents of this paragraph are denied. The Applicant's numbing repetition of the same ill-founded claim does nothing to render it more convincing.

Ad paragraph 61

599. The contents of this paragraph are denied.

Ad paragraph 62

600. I do not see how the recommendation of IPID that Col Madhoe and the Applicant be criminally prosecuted for bribery, assists the Applicant's cause.

601. I deny that IPID lacked the jurisdiction to propose that the decisions of Advocates Letsholo and Noko be reviewed. Section 7 of the Independent Police

① JM

WJ

Investigator Directorate Act, 1 of 2011, allows the executive director to refer criminal offences revealed as a result of its own investigation to the NPA.

602. I do not understand the lengthy second sentence of this paragraph, and therefore cannot answer fully thereto.

Ad paragraph 63.1

603. As already mentioned, the surrounding circumstances and the input of senior prosecutors led the NDPP, so I understand, not to place great weight upon the memoranda of Adv Letsholo.

Ad paragraph 63.2

604. I do not understand what is meant by this paragraph, which does not appear to be consistent with its antecedent.

Ad paragraph 63.3

605. The meaning of this paragraph it is not readily discerned. I have said that it is unclear why IPID's recommendation that a prosecution be instituted is thought to support the Applicant's argument.

Ad paragraph 63.4

606. I understand that the NDPP did not attach great weight to these allegations in the letter of Adv. Noko with respect to CAS 466. I understand further that the NDPP found it disquieting that Adv Noko appears to have relied solely upon Adv. Letsholo's memoranda, which in turn quotes verbatim from the representations of the Applicant.



Ad paragraph 63.5

607. The concession that Adv. Noko's decision relates to CAS 466 is noted.
608. The Applicant's suggestion - that the NDPP must personally examine each and every document underlying the material that informs his decision-making, and personally interviews every individual whose input he takes into account - is self-evidently absurd.

Ad paragraph 64

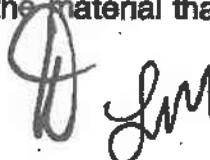
609. The contents of this paragraph are denied.

Ad paragraph 65

610. The contents of this paragraph are denied.
611. I take issue in particular with the sentiment that the case against the Applicant is bound to fail. My understanding is that the NDPP's assessment of the material that served before him was that there were good prospects of obtaining a conviction.
612. Moreover, the scourge of corruption in general, and corruption involving law enforcement institutions in particular, is so serious as to warrant the investment of significant resources to combat it.

Ad paragraph 66

613. The contents of this paragraph are denied.
614. I have said that the interception issue is a red herring created by the Applicant to distract from what is at issue here: that the material that served before the



NDPP amply demonstrated good prospects of success in the prosecution of the Applicant on the merits.

Ad paragraph 67

615. The contents of this paragraph are denied.

Ad paragraph 68

616. The contents of this paragraph are denied.

Ad paragraph 69

617. The contents of this paragraph are admitted.

Ad paragraph 70

618. The contents of this paragraph are admitted. A party furnishing a RoD is under no obligation to arrange it in any particular order, or to compile an index thereto.

Ad paragraph 71

619. I reiterate that there is no obligation upon a party producing a RoD to arrange it in any particular order, or to compile an index.

Ad paragraph 72

620. The contents of this paragraph are denied. While it is true that the documents in the RoD are not arranged in terms of themes or order of presentation, that is only to be expected, given that they were compiled from various files distributed amongst several NPA offices.

621. It is not reasonable to characterise the record of decision as a "shambles". The



NDPP had the opportunity to consider the documents as they served before him in their entirety. He concluded on the basis of his consideration thereof that what served before him showed that there were reasonable prospects of a successful prosecution.

Ad paragraph 73

622. The contents of this paragraph are denied.

623. In any event, the Applicant's application for condonation is not be opposed.

Ad paragraph 74

624. It is denied that the impugned decision falls to be set aside.

Ad paragraph 75

625. The contents of this paragraph are noted.



M. SILAS RAMAITE, SC

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at Pretoria on the 31st day of January 2019, the regulations contained in Government Notice No. R 1258 of 21 July 1972, as amended, and Government Notice No. R 1648 of 19 August 1977, as amended, having been complied with. *fm*



COMMISSIONER OF OATHS

FULL NAMES:

LS *JS* **Luckson Mzamane Mgiba.**

CAPACITY:

Marriage Officer (Act 25 of 1961)

BUSINESS ADDRESS:
478 Lalibella Crescent
PRETORIA OFFICE:



[Handwritten signature]

**IN THE KWAZULU-NATAL HIGH COURT, DURBAN
REPUBLIC OF SOUTH AFRICA**

CASE NO:12044/10

In the matter between

**T. PANDAY
and**

Applicant

MINISTER OF POLICE AND OTHERS

Respondent

JUDGMENT

Delivered: 18 April 2012

MURUGASEN J

[1] This an application to review and set aside the issuance of subpoenas in terms of the provisions of Section 205 (1) of the Criminal Procedure Act 51 of 1977 on the grounds that the issuance is inconsistent with the Constitution of South Africa and invalid, and for an order directing the return of the documents and records obtained pursuant to the execution of the subpoenas.

[2] The applicant, Thoshan Panday, seeks the following orders:

- 1 an order reviewing and setting aside a decision by the Magistrate, Durban Magistrate Court (the Fourth Respondent) during May and June 2010 to issue five subpoenas in terms of the provisions of Section 205 (1) of the Criminal Procedure Act 51 of 1977;
- 2 an order declaring that the issuance of the subpoenas is inconsistent with the Constitution and invalid;
- 3 an order declaring that the issuance of subpoenas in terms of Section 205 of the Criminal Procedure Act 51 of 1977 (the CPA) by the Fourth Respondent without keeping proper records of the application and decisions leading to the issuance of the subpoenas is unconstitutional;

- 4 an order declaring that the authorisations issued by the Deputy National Director of Public Prosecutions dated 14 April 2005 are not the authorisations required by Section 205 of the CPA;
- 5 an order that the Minister of Police, the Minister of Justice and Constitutional Development and the Director of Public Prosecutions (the First, Second and Third Respondents respectively) return all the documents and records of accounts obtained pursuant to the execution of the subpoenas be returned to the applicant's legal representatives; and
- 6 an order for costs against the First, Second and Third respondents jointly and severally.

[3] The relief sought by the applicant is premised on the following alleged Procedural irregularities or failure to follow due process which renders the issue of the subpoenas inconsistent with the Constitution and invalid :

- 1 The failure of the 4th respondent to keep a proper record of the circumstances leading to the issue of the subpoenas and his decisions, and to retain copies of the section 205 applications constitutes a drastic procedural irregularity, which detracts from the accountability and obligation of the issuing officers to premise their decision on a factual basis.
- 2 The State did not make out a sufficient case for the subpoenas to be issued on the terms contained therein. In particular, given the paucity of relevant averments in Colonel Soobramoney's affidavits, no connection between the accounts of Goldcoast CC and the information pertaining to applicant's personal bank statements and between the alleged offences and the documentation sought, was established.

The applicant was not afforded a hearing by the magistrates nor did they order that copies of the subpoena be served on him, nor did they endorse the subpoenas to the effect that his bankers' were permitted to inform the applicant of the intended examination or production of the requested information prior to the examination or production of the documents.

As the handwritten amendments /additions were not initialled and portions of the supporting affidavits are nonsensical or the allegations therein incongruous, but no query was raised by the magistrate. They did not also query the authority of the applicants.

The applicant contends that the foregoing is indicative that the magistrates could not have applied their minds properly in deciding whether or not to authorize the subpoenas.

- 3 The following jurisdictional requirements for the issue of the subpoena were not satisfied, rendering the subpoenas invalid:

- 3.1 the written authorizations by virtue of which Advocates Muller and Lucken applied for the subpoenas are not the necessary authorizations contemplated in section 205 of the Act and therefore the provisions of 205 (1) were not satisfied.

Lucken requires the written authority of the Director of Public Prosecutions ie the designated official but the authority was issued by the Deputy National Director of Public Prosecutions.

As Muller is not a director under the National Prosecuting Authority or in terms of S205A, he is not a designated official who may apply for a subpoena without a written authority. The objective behind the specification of the designated official is that he would guard against the potentially abusive S205 process.

The failure to obtain the specified or prescribed authority undermines the legality of Lucken's and Muller's requests.

- 3.2 Further the authorisations are invalid as they are dated 14 April 2005, and have no connection with the current investigation into the applicant, which had not commenced at the time.
- 3.3 Section 205 (1) requires an authority for the specific application; and blanket authorizations do not suffice.

- 4 The applicant submits that if however the court were to rule that a general authorization will suffice, then the requirements of section 20(5) read with the peremptory requirements of section 20(6) of the National Prosecuting Authority Act 32 of 1988 were not satisfied viz the authority does not set out
- i) the area of jurisdiction
 - ii) the offences; and
 - iii) the court
- in respect of which the powers may be exercised.

[4] In opposing the relief sought, the 1st, 2nd and 3rd respondents make the following in response to the applicant's contentions :

- 1 A failure to keep copies of the application or reasons for the decision does not constitute a procedural irregularity as there is no requirement in Section 205 which renders it peremptory for the magistrate to retain a copy of the record, although such a practice may be recommended.

The deponent has on behalf of the respondents, confirmed under oath that the record furnished to the applicant is correct and complete, and as there is no genuine dispute as to its correctness, the applicant has not been prejudiced by the failure to keep records.

- 2 The offences upon which the information was sought were clearly stated in the subpoenas. Further or a greater degree of particularity before a potential witness attends the enquiry would frustrate the objective and purpose of the section.

It is not mandatory that the applicant be given notice of an intended examination. No examination of witnesses was conducted.

Section 205 does not prescribe that the Fourth Respondent must afford the applicant a hearing prior to the issuing of the subpoena. Such forewarning would have jeopardized and compromised the very purpose of obtaining the documents via the subpoenas in respect of serious offences.

A proper case was made out justifying the issue of the subpoenas. The supporting affidavits contained the evidence which gave rise to reasonable suspicion that there was a close connection between the applicant and the suspected criminal conduct under investigation. The bank statements to be furnished in terms of the subpoenas were crucial to the investigation as they were important evidence of the movement of funds.

Any intrusion into the privacy interests of the applicant is justified by the need for proper police investigation to crimes and the bank statements being evidence of the movement of funds, may assist in the exposure of serious economic crimes, such as fraud and money laundering.

The applicant had consequently failed to make out a case for his complaint of misdirection on the part of the magistrates or their failure to apply their minds properly before arriving at a decision to grant the applications in terms of Section 205.

- 3 In terms of Section 22(1) of the National Prosecuting Authority Act 32 of 1998 (the NPAA) the authority conferred on the Director of Public Prosecutions by any law may be exercised by the National Director of Public Prosecutions.

In terms of Section 23 of the NPAA, the Deputy National Director of Public Prosecutions exercises authority over the Special Commercial Crime Unit, and is therefore duly authorised by the National Director of Public Prosecutions to authorise public prosecutors in the Special Commercial Crimes Unit to bring requests and apply for subpoenas contemplated in Section 205. Section 23 does not contemplate that the authorisation of the Deputy National Director by the National Director must be in writing. The authorisation of Lucken in terms of s 205(1) of the CPA read with Section 20(5) of the NPAA under and by virtue of which she applied for the subpoenas, was therefore proper and valid.

Muller in his capacity as Deputy Director of Public Prosecutions and the Coordinator of the Specialised Commercial Crimes unit was in terms of

S20(4) of the NPAA conferred with statutory authority to exercise the powers referred to in Section 20(1) of the NPAA which are broad enough to include the power to deal .

There was therefore no validity or merit in the applicant's challenge to the authority under which the prosecutors applied for the subpoenas.

- 4 The provisions of Section 205 do not prescribe that the authority under which the prosecutor applies for the subpoena has to be granted specifically for each individual application, which would create an administrative burden without serving a meaningful purpose. There is also no requirement that there must be an investigation in place when the authority is granted.
- 5 The respondents deny that the authority issued to Lucken does not comply with Section 20(5).

[5] The respondents also contend that if the applicant was prepared to co-operate, there was no need for him to complain now about the police obtaining his bank records. The applicant's offer of co-operation is also viewed with scepticism by the head investigating officer, Major General Booysen, as at the meetings held with the police, the applicant did not indicate how he would co-operate or disclose any pertinent information that would have assisted in the investigation. According to Booysen, the concern of the applicant was to terminate the investigation rather than to assist in the investigation or provide information, which would clear his name.

Section 205 of the Criminal Procedure Act provides as follows:

205 Judge, regional court magistrate or magistrate may take evidence as to the alleged offence

(1) A Judge of a High Court, a regional court magistrate or magistrate may, subject to the provisions of subsection (4) and section 15 of Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002, upon the request of a Director of Public Prosecutions or a public prosecutor authorised hereto in writing by the Director of Public Prosecutions, require the attendance before him or her or any other judge, regional court magistrate or magistrate, for examination by the Director of Public Prosecutions or the public prosecutor authorised hereto in writing by the Director of Public Prosecutions, of any person who is likely to give material or relevant information as to any alleged offence, whether or not it is known by whom the offence was committed: Provided

that if such person furnishes that information to the satisfaction of the Director of Public Prosecutions or public prosecutor concerned prior to the date on which he or she is required to appear before a judge, regional court magistrate or magistrate, he or she shall be under no further obligation to appear before a judge, regional court magistrate or magistrate.

[Sub-s (1) substituted by s 59 of Act 70 of 2002.]

(2) The provisions of sections 162 to 165 inclusive, 179 to 181 inclusive, 187 to 189 inclusive, 191 and 204 shall *mutatis mutandis* apply with reference to the proceedings under subsection (1).

(3) The examination of any person under subsection (1) may be conducted in private at any place designated by the judge, regional court magistrate or magistrate.

(4) A person required in terms of subsection (1) to appear before a judge, a regional court magistrate or magistrate for examination, and who refuse or fails to give the information contemplated in subsection (1), shall not be sentenced to imprisonment as contemplated in section 189 unless the judge, regional court magistrate or magistrate concerned, as the case may be, is also of the opinion that the furnishing of such information is necessary for the administration of justice or the maintenance of law and order.

[S 205 substituted by s 11 of Act 204 of 1993]

The constitutionality of Section 205

[6] It is common cause that Section 205(1) is a valid provision and does not offend against any constitutional right.

In **Nel v Le Roux N O & Others 1996 (3) SA 562 (CC)** at para 20 the Constitutional Court rejected the contention that S 205 infringed a number of fundamental constitutional rights and held that S 205 was 'narrowly tailored as possible to meet the legitimate state interest of investigating and prosecuting crime', and that witnesses have a duty to testify. This decision was based on the provisions of Section 205 post the 1993 amendment which introduced the proviso whereby the hearing and inquiry before a judicial officer falls away when the documents are produced.

[7] Despite a scrutiny of Section 205, when the Constitutional Court held that the provisions thereof were not unconstitutional, the Court did not find it necessary to interfere with the procedure envisaged by the section as being inconsistent with the Constitution or potentially unconstitutional, or prescribe any procedural

formality to preserve the constitutionality, although it is apparent that applications in terms of Section 205 although demanding 'the exercise of invasive and compulsive powers' are subject only to the exercise of judicial discretion by the presiding officers after due consideration of the facts disclosed in the application.

[8] The impugning of the subpoenas by the applicant is premised on procedural irregularities which tainted the application in terms of which the subpoenas were authorised and the conduct giving rise to the authorisation.

The failure to keep records

[9] Section 205 does not prescribe the formality that the 4th respondent must retain copies of the application or record.

[10] The applicant however avers that the failure of the Fourth Respondent to retain the affidavits and other relevant information in the application placed before the magistrate, is inconsistent with the Constitution as he is consequent to such failure, deprived of access to the information.

[11] The applicant avers further that the respondents seem to acknowledge the validity of his objection and complaint in this respect, as the procedure relating to the records of applications in terms of Section 205 has been revised. He relies on a Circular 16/2010 issued by the Acting Judicial Head : Administrative Region 7, the contents of which relate to the keeping of records and registers for search warrants and subpoenas in terms of section 205 (the circular).

[12] In the circular the acting Judicial Head, S F van Niekerk, refers to a lack of uniformity of practice relating to the keeping of records of search warrants and subpoenas in terms of Section 205. After pointing out the obligation on judicial officers to exercise their discretion judicially in authorising warrants or subpoenas, Van Niekerk also warns of the potential for constitutional challenges which occur after the lapse of a period of time after the authorisation and will therefore entail sight of the application in order for the judicial officer to furnish reasons and to demonstrate that his discretion was exercised judicially.

Van Niekerk therefore suggests in the circular that a register of the details of such applications are maintained at each office, and a copy of each application be kept

in a file.

The circular, firstly, confirms that there is no peremptory requirement relating to the keeping of records of Section 205 applications or the recording of reasons therefor.

[13] However, contrary to the contention of the applicant, the effect of the circular is not an acknowledgement that the failure to retain the records constitutes an infringement of or non compliance with Section 205 or any other statutory requirement or that such failure constitutes a drastic procedural irregularity which vitiates or taints the issuing of the subpoenas, rendering same unconstitutional. Nor does the circular have the effect of a prescriptive directive to ensure compliance with the requirements of Section 205.

[14] The circular sets out the obligations on the magistrate before whom an application in terms of S205 lies for determination, and thereafter suggests a formalised process to be implemented in respect of record keeping, which will assist the magistrate in responding to any subsequent query, as 'it is not expected of a judicial officer to have a precise recollection of every such matter that came before him/her'.

[15] Therefore while it is acknowledged in the circular that the retention of the record of a request and the decision by the magistrate may facilitate the resolution of any queries raised in connection therewith and subsequently assist the magistrate to provide reasons for his decision, the circular does not impinge on the validity of the procedure under and in terms of which the subpoenas were issued nor does it sustain the applicant's allegation that the failure to keep records of the Section 205 applications constitutes a drastic procedural irregularity on which this review application is grounded. The reliance on this circular is, in my view, illconceived.

[16] Although the Fourth Respondent acknowledges that the maintenance of a register and a file of applications is good practice, the mere failure to keep records cannot detract from the accountability and obligation of the issuing officers to premise their decision on a factual basis. Section 205 imposes these obligations on the judicial officers without imposing the formal requirement to maintain records.

The issuing officers have confirmed that they applied their minds before authorising the subpoenas although they did not retain copies of the applications.

[17] Although the Fourth Respondent did not keep records of the processes by virtue of which the subpoenas were issued, the applicant has been furnished with copies of the applications and the subpoenas, the correctness and completeness of which have been confirmed by the respondents.

[18] The onus lies on the applicant to show that he is prejudiced in his claim to review the decisions to issue the subpoenas because he does not have access to the same and all the information placed before the magistrates or that the record furnished to him is unreliable or susceptible to manipulation by the respondents. I am unable to find that the applicant has shown such prejudice because of the lack of particularity in his objections as to why the records furnished to him are susceptible to a challenge based on a failure to access the correct and complete information considered by the magistrates.

[19] In the premises the applicant cannot rely on a dispute of fact, and there is merit in the submission on behalf of the respondents that the material averments of Van Loggerenberg confirming that the record furnished to the applicant is a true copy, remain unchallenged and fall to be accepted as correct in accordance with the legal principle set out in **Plascon Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A) at 635 A-C.**

[20] Consequently I do not find any merit in the contention that the failure by the magistrates to keep records of Section 205 applications constitutes an unconstitutional practice and a fatal procedural irregularity making the issuance of the subpoenas susceptible to being reviewed and set aside.

The Failure of the Issuing Officers to Exercise their Discretion Judicially

[21] The applicant avers that the information in the applications considered by the magistrates is inadequate to justify the decision to authorise the subpoenas.

[22] Section 205 provides that the subpoenas may only be issued in respect of

persons who are 'likely to give material or relevant information as to any alleged offence, whether or not it is known by whom the offence was committed'. The provision clearly envisages that the objective of the subpoenas is to obtain information in the course of, or to assist in the investigation of, the alleged offence and involves the exercise of a judicial discretion.

[23] The applications for the subpoenas specify the alleged offences as 'fraud/corruption' and the name of the suspect as 'Thoshan Panday'. The supporting affidavits by Soobramoney set out *inter alia* the circumstances under which the facts and other information pertaining to the alleged offence have been discovered, nature of the investigation being conducted, the relationship between the Goldcoast Trading CC and the suspect (the applicant), and need to obtain further relevant information on monies received, disbursed or transferred by the applicant in connection with the alleged offences.

[24] Therefore although the offending transactions may have been made by the juristic entity, Goldcoast Trading CC, of which the applicant is the director, the alleged involvement of the applicant in related transactions in his personal capacity, is in my view, sufficiently established in the affidavit to justify the authorisation of the subpoenas within the parameters of Section 205.

[25] In **Nel supra at para [20]** the court based its finding that the Section 205 proceedings are 'narrowly tailored as possible' on, *inter alia*, the role of the independent judicial officers in the implementation of the proceedings. The issuing officers have confirmed under oath that the applications were properly considered and that they did apply their minds before authorising the issuance of the subpoenas and did not merely 'rubber stamp' the applications.

[26] There is no legal basis on which the court may reject their averments or facts which render such averments improbable or false, even though the magistrate Nieuwoudt could not confirm the presence of manuscript amendments appended to the affidavit of Soobramoney and the formalities relating to the amendments were not complied with. Nieuwoudt nevertheless confirms that he was satisfied from the application presented to him that that the subpoenas lay to

be authorised.

[27] The applicant also contends that the information was obtained from the banks in violation of the applicant's rights to privacy entrenched in terms of section 14(d) of the Constitution, but the magistrates did not take into account this invasion of the rights of confidentiality and privacy of the applicant.

[28] In **R v Parker** 1966 (2) SA 56 (RA) at 58 although the decision is pre-constitutional, the court recognised that the interest of an individual to privacy is unequal when weighed against the competing interest of justice. It accordingly held that it would not be a proper exercise of discretion if the available facts indicate that the enquiry is to be based on vague supposition and that the magistrate had a duty 'to ensure that the members of the public are not **unduly** harassed by inquisitions'. (my emphasis). Therefore although key word 'unduly' emphasizes the obligation on the magistrate to apply his mind to the application and not act as 'a rubber stamp' in authorising an invasive enquiry into the affairs of an individual, the court also recognised that such invasion may be necessary and justified in the interests of justice, provided that it is properly grounded.

[29] Even under the current Constitutional protection of an individual's rights to privacy and property, Section 205 remains an effective means to obtain disclosure and production of information despite the potential invasion of the aforesaid rights (see **Nel supra**) as it serves the 'legitimate state interest of investigating and prosecuting crime'.

[30] I am not satisfied that the applicant's has furnished compelling or even persuasive grounds for his allegations that the application was based on inadequate facts or 'vague suppositions' or that the issuing magistrates failed to apply their minds or exercise their discretion judicially in authorising the subpoenas.

[31] The further allegations that the Fourth Respondent failed to give the applicant a hearing, or to issue an order issued that the applicant be furnished with a copy of the subpoena, and that the applicant was not given notice of the

application in terms of Section 205 are not based on any legal requirements and the applicant has failed to show that the conduct of the magistrates complained of, prior to or post the issuance of the subpoenas, offend against the provisions of the section. Such procedures, if implemented, would undermine the very objective of Section 205: to obtain information in the investigation and prosecution of serious crime.

[32] The issue of the legality when compelling testimony lies to be determined by the presiding officer at the S 205 examination, who may also be called upon to balance any conflict of interest. Although no examination was held in respect of the impugned subpoenas as the documents were furnished pursuant to the execution of the subpoenas, this does not undermine the existence of an essential moderating tool to deal with any issue of legality or conflict of interest on which an examinee may rely as justifying his refusal to furnish the information requested. As held in **Nel supra** at paragraph [20] 'This affords the examinee the widest possible residual protection'.

Therefore the subpoenas do not lie to be struck down as unconstitutional because the examination was not held.

[33] Further the applicant's conclusions that the affidavits fell short based on the failure of the respondents to furnish him therewith, or that the failure to afford the applicant any notice of the S205 process is unlawful as it created the impression that the applicant is a fraudster do not sustain the allegations of procedural irregularity or constitute sound grounds for the relief sought.

[34] The allegations of the applicant that he was prepared to co-operate with the police in respect of the investigation, is denied by Booysen on the basis that that nothing constructive or pertinent was offered during meetings with the applicant and his legal representatives. The applicant has not furnished any compelling argument in favour of rejecting Booysen's denials. In my view, his resistance to the documents obtained pursuant to the execution of the subpoenas remaining with the Third Respondent undermines his protestations of cooperation.

The Validity of the authorisations under and by virtue of which the Section

205 applications were made

[35] The relevant sections of the National Prosecuting Authority Act 32 of 1998 (the NPAA) are :

Section 20: Power to institute and conduct criminal proceedings -

- (1) The power, as contemplated in section 179(2) and all other relevant sections of the Constitution, to -
 - a) institute and conduct criminal proceedings on behalf of the State;
 - b) carry out necessary functions incidental to instituting and conducting such criminal proceedings ; and
 - c) discontinue criminal proceedings
 vests in the *prosecuting authority* and shall, for all purposes be exercised on behalf the *Republic*.
- 2) Any *Deputy National Director* shall exercise the powers referred to in subsection (1) subject to the control and directions to the *National Director*.
- 3)
- 4) Subject to the provisions of this act, any Deputy Director shall, subject to the control and directions of the Director concerned, exercise the powers referred to in subsection (1) in respect of –
 - (a) the area of jurisdiction for which he or she has been appointed; and
 - (b) such offences and in such courts, as he or she has been authorised in writing by the National Director or a person designated by the by the National Director.
- 5) Any *prosecutor* shall be competent to exercise any of the powers referred to in subsection (1) to the extent that he or she has been authorised thereto in writing by the *National Director*, or by a person designated by the *National Director*.

Section 22 Powers, duties and functions of National Director -

- (1) The *National Director*, as head of the *prosecuting authority*, shall have authority over the exercising of all the powers, and the

performance of all the duties and functions conferred or imposed on or assigned to any member of the *prosecuting authority* by the *Constitution, this Act* or any other law.

Section 23 Powers, duties and functions of Deputy National Director –

- 1) Any *Deputy National Director* may exercise or perform any of the powers, duties and functions of the *National Director* which he or she has been authorised by the *National Director* to exercise or perform.

[36] The Deputy National Director may in terms of Section 20 (2) exercise the power set out in Section 20 (1), which includes the performing of ‘necessary functions incidental to instituting and conducting such criminal proceedings’, subject to the control and directions of the National Director. There is no requirement that the directives to the Deputy National Director have to be in writing. Further there is no limitation in respect of the jurisdictional area for which the National Director or Deputy National Director is appointed, as in the case of a Director under Section 20 (3).

[37] The issuing of authorities to prosecutors to bring requests in terms of Section 205, if properly founded and motivated may be construed as falling within the ambit of a necessary function incidental to instituting and conducting criminal proceedings. It is apparent from the affidavits of Soobramoney, that the objective of the Section 205 applications consequent to which the offending subpoenas were issued, was to obtain information pertinent to contemplated criminal proceedings to be instituted or already being conducted against the applicant. The National Deputy Director may therefore, in my view, properly rely on Section 20 (2) as an empowering provision.

[38] In consequence of the National Deputy Director being so empowered, he /she may under Section 20 (5) empower a prosecutor in writing to perform such function or exercise such power as specifically conferred in writing on him/her.

[39] The exercise of this power is circumscribed in its implementation by the independent judicial officer who must grant the request after a due consideration of

the pertinent facts. This prevents arbitrary prosecutorial conduct in invoking Section 205 within the hierarchy structured by the NPAA, and effectively counters the argument that only the designated prosecuting officials with 'more than the simple status of Prosecutor' may exercise these powers of compulsion via subpoena because of the drastic invasive nature of the process.

[40] Further, by virtue of Section 23, the National Director may authorise the Deputy National Director to exercise any power or perform any of the functions of the National Director. There is no prescriptive requirement that this authorisation has to be in writing.

[41] I am therefore satisfied that Lucken's authority is not susceptible to attack on its validity on the grounds that she was not authorised by a Director but by the Deputy National Director.

[42] Insofar as Muller's authority is concerned, I am satisfied that he was conferred with the requisite authority to bring a request under Section 20 (4) (a) from the date of his appointment on 4 March 2010, on considerations similar to those set out *supra* in respect of the National Deputy Director under Section 20 (2). Muller was also authorised by the Deputy National Director on the same terms as Lucken on 11 October 2006.

[43] The challenge to Ramaite's authority by the applicant that the jurisdictional prerequisite that the Section 205 powers can only be invoked by a Director of Public Prosecutions or a public prosecutor authorised in writing by a Director of Public Prosecutions was not met, that there has been a usurpation of the statutory discretion of the designated official, and that the Respondents' reliance on Sections 20(2), 22(1) and 23 is misplaced, cannot in my view be sustained from a reading of the relevant sections. I am further satisfied that it is the empowering legislation and not the appointment (either by the President or the Minister) that is relevant in determining whether the Deputy National Director could validly confer the power to bring applications in terms of Section 205.

[44] The applicant has further not satisfied the onus on him to show that the

magistrates who authorised the issue of the subpoenas did not consider the legality of the authority relied upon by the prosecutor bringing the request. He merely makes the submission on the basis of his own interpretation of the relevant legislative provisions but provides no basis why the court should accept his contention as probable in the face of the denial by the magistrates, that they failed to apply their minds to the request.

[45] The provisions of Section 205 do not prescribe that the authority under which the prosecutor applies for the subpoena has to be granted specifically for each individual application or that there must be an investigation in place when the authority is granted. I am also of the view that there is no merit in the contention that the authority issued to Lucken does not comply with Section 20(5), and am in agreement with the submission by the respondents that the authority issued to her covers applications to all courts; that there is no need to prescribe the offences as the powers in S205 are not circumscribed by particular offences; and that the area of Lucken's jurisdiction is stipulated in her authority.

[46] Consequently, contrary to the arguments advanced by the applicant, I am unable to find that the applicant has furnished cogent or compelling grounds on which I may properly find that the process applied in obtaining the approvals necessary for issue of the subpoenas and the execution thereof is inconsistent with the Constitution or that the authorisations relied on by the respondents are not the requisite authorisations to invoke the Section 205 process, and declare the issuance of the subpoenas invalid. Nor am I persuaded that the grounds on which the applicant relies for the relief sought, merits a robust judicial oversight.

Costs:

[47] There is no reason why costs should not follow the result. I am also satisfied that this is a matter which warranted the employment of two counsel, given the nature of the issues raised by the applicant.

Order

In the premises the following order do issue : -

The application is dismissed with costs, such costs to include the costs consequent upon the employment of two counsel.

MURUGASEN J

Counsel for the Applicant:
Instructed by:

Mr KJ Kemp
T Giyapersad & Associates
53 Anthony Road
Riverside
DURBAN NORTH

Counsel for the Respondent:
Instructed by:

Mr N Singh
State Attorney
6th Floor
Metropolitan Life Building
391 Smith Street
DURBAN

KABELO VICTORIA MEKUTE

States under oath in English:

1.

I am an adult South African female with ID NR: 5910040924081. I am a Major General in the South African Police Service with Persal NR: 05142199, stationed as the Head of Legal Services at KZN Provincial Head Office on the 16TH Floor of Servamus Building, at 15 Bram Fischer Road, Durban. My duties and responsibility entails providing legal support to the SAPS KZN Province. My contact details as follows: (O) 031-3254816 and cellular phone 0825667195.

2.

I am duly authorised to make this affidavit and the facts contained therein are both true and correct and fall within my personal knowledge unless the context indicates the contrary or it is expressly stated otherwise.

KVM



On the 02ND December 2013 I was interviewed by Colonel SY Govender from The Directorate for Priority Crime Investigation, Anti Corruption Task Team (ACTT), Durban, an investigator on Durban Central CAS 781-06-2010 a case of Fraud and Corruption. I was shown an official SAPS letter SAP 21 which was signed by me and I attach the letter as annexure **KVM 1**.

At this stage Col. Govender was making enquiries to understand the policy and process of Supply Chain Management (SCM) to assist the team in their investigation. He also pointed out to me his difficulty in obtaining crucial evidence files from SCM. My explanation on the official document signed by me from SCM was recorded as an interview by Col Govender and I now explain that as follows:

3.

During that period of June 2010 I was acting as Support Service Head for KZN Province. I was approached by Col. Naveen Madhoe the Saps Provincial Head of Acquisition for KZN SCM and he brought to my notice his administration concerns about customer related protection and his concern was the duplication of files at KZN Finance office of suppliers details. He

KVM 

requested that Finance be prevented from duplicating supplier's details as this was a concern that it will affect customer relationship, profile and information.

The annexure KVM 1 was drafted by Col Madhoe and the concerns regarding the protection of supplier's information is explained and I endorsed the letter as the Support Service Head for the province and not as the legal Head.

During the interview with Col Govender he raised the concern that he was unable to gather evidential files from SCM during an authorised search as nobody was able to account for the files of suppliers and he was unable to gather same from Finance, due to the files not being handed to Finance in terms of the instruction signed by me as per annexure KVM 1.

I brought to his attention that Finance was not cut off as if they required the files or copies thereof they had to request it from SCM as per paragraph six (6) of annexure KVM 1. I am unable to comment on the files not being at SCM during the search. That is all I wish to state in this matter at this stage.

KVM



4

Do you know and understand the content of this declaration?

Yes

Do you have any objection to taking the prescribed oath?

No

Do you consider the prescribed oath to be binding on your conscience?

Yes

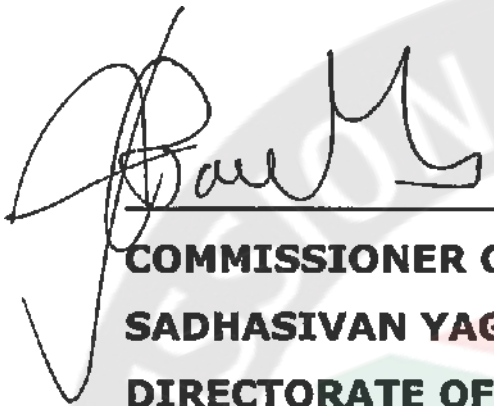


**DEPONENT
K.V.MEKUTE**

K.V.M



I certify that the deponent has acknowledged that she knows and understands the contents of this statement which was sworn to before me whereafter the deponent's signature was placed thereon in my presence at DURBAN on this the 04th day of AUGUST 2014 at 13:00.

 COL.

COMMISSIONER OF OATHS

SADHASIVAN YAGAMBARAM GOVENDER

DIRECTORATE OF PRIORITY CRIME INVESTIGATION

ANTI CORRUPTION TASK TEAM KZN

SAPS DURBAN CENTRA

14 TH FLOOR

STALWARTH SIMELANE STREET

DURBAN

COLONEL: SAPS

SUID-AFRIKAANSE POLISIE



SOUTH AFRICAN POLICE

P O Box 1965, Durban, 4000

Verwysing Reference	19/1/19/121/3
Navrae Enquiries	Brig Mkhize Colonel Madhoe
Telefoon Telephone	031-3255802/26
Faksnommer Fax number	031-3255823

THE PROVINCIAL COMMISSIONER
PROVINCIAL SCM
KWAZULU-NATAL
P O BOX 1965
DURBAN
4000

29 June 2010

BRIG KEMP

A. The Provincial Head
Financial Services
S A Police
KWAZULU NATAL

B. The Deputy Provincial Commissioner
KWAZULU NATAL

MAJ GEN NTANJANA

C. The Provincial Commissioner
KWAZULU NATAL

LT GEN NGOBENI

ACCESS TO INFORMATION : ADVERTISED BIDS/INVITATION OF PRICE QUOTATIONS : SAPS KWAZULU NATAL

1. It has been noticed with concern that various documentation that forms part of the procurement process for goods and services, are being copied, duplicated, re-produced by your office.
2. As a result of this practise, this office cannot guarantee the confidentiality of the contents of the documentation which contains information of suppliers as well as competitors pricing structures.
3. The procurement environment within the public sector has attracted a lot of negative publicity which is largely attributed to corrupt individuals as well as unauthorised individuals having unlimited access to documentation of this nature.
4. Personnel performing SCM related functions have signed a Code of Conduct for Supply Chain Management Practitioners which emphasises the importance of safeguarding supplier profiles as well as all documentation used in any procurement process.
5. All documentation for any transaction which comprises of user requirements, supplier profiles, quotations, rough notes, etc are retained at Acquisition Section for audit purposes.
6. Should your office require any documentation in future, please reduce it in writing as required by the relevant SCM Guidelines, and this office will endeavour to provide same to yourself.

KVM

12.....

7. The practice of duplicating/copying live files by members of your office must cease forthwith.
8. Your compliance will assist this office in maintaining it's high standards of integrity within the private/public sector.
9. Logistical greetings.

B&C. 1. Copy for information.


MAJOR GENERAL
f/PROVINCIAL COMMISSIONER : SAP : KWAZULU NATAL
K V MEKUTE



KVM P.

From: Govender SY - Colonel
Sent: 05 August 2014 10:23 AM
To: van Graan Nicolaas - Brigadier
Cc: Mahlangu William - Colonel; Van Loggerenberg J - Colonel
Subject: PREVIOUS CORRESPONDENCE REGARDING THE ACTIONS OF COL JONES
Attachments: Durban Central CAS 781-6-2010-Col. Jones letter to KZN Legal Services.pdf

GOOD MORNING BRIGADIER

1. Yesterday 2014-08-04 I had a meeting and appointment with Major Gen. K.V. Mekute the Head Of Legal Services for KZN Province to obtain her affidavit with regards to investigation of Durban Central Cas 781-06-2010.
2. During the meeting she raised the fact of receiving a letter from Col Jones stating that the matter which is Durban Central Cas 781-06-2010 has been brought to her attention that it has been declined to prosecute and that Col Jones had stated in the letter to prevent any civil claim against the state that she may attend to the matter of the civil claim. This letter was addressed to the Provincial Commissioner. Attached letter sent by Col Jones for your information. Also Col Jones had attached the decision from the prosecutor to his letter which you have in your possession.
3. I then informed the Gen that the investigation team was unaware of this letter and that there was no communication by Col Jones with the team. This was reported to your office has unbecoming conduct of Col Jones last week when the investigation team was telephoned by Brig Kemp when he was approached by Col Jones.
4. I further informed the Gen and Brigadier Mc cullough who was present in the meeting that Col Jones had no role to play in terms of the investigation and that the status quo was that your office was handling the matter regarding the prosecutor's decision to decline to prosecute and the investigation is ongoing to complete outstanding investigation and achieve a final forensic report.
5. The both senior officers pointed out that the letter from Col Jones addressed to the Provincial Commissioner was misleading and are now willing to discuss this matter with your office and also requested to set an appointment to see Lt.Gen. Dramat.
6. I then informed both Gen. Mekute and Brig. Mc cullough that no further correspondence and communication must be entertained in the following cases of PC 49 that is Durban Central cas's 781-06-2010, 122-04-2012 and 466-09-2011 except from the investigation team Col's J Van Loggerenberg and SY Govender.
7. Kindly bring this to the attention of Lt. Gen. Dramat.

CC: FOR YOUR INFORMATION.

Regards

COLONEL SY (SADHA) GOVENDER
SAPS -DPCI-HAWKS
ANTI-CORRUPTION TASK TEAM(ACTT)
KWAZULU NATAL
SOUTH AFRICA
CELL:00 27 (0)82 4699 136
EMAIL:(INT) Govender SY-Colonel@saps.gov.za
(EXT) Govender SY@saps.gov.za



From: Van Loggerenberg J - Colonel
Sent: 31 July 2014 12:39 PM
To: Govender SY - Colonel
Subject: FW: Durban Central CAS 781/6/2010

From: Van Loggerenberg J - Colonel
Sent: 31 July 2014 12:38 PM
To: van Graan Nicolaas - Brigadier
Cc: Mahlangu William - Colonel
Subject: Durban Central CAS 781/6/2010

Good morning Brigadier,

I would like to inform you about the conduct of Col. C Jones which occurred yesterday the 30 July 2014. At about 12h00 I received a phone call from Brig. Kemp the Provincial Head of Finance. He informed me that General Mekute, Provincial Head Legal department saw him in his office yesterday morning. He informed me that they spoke in general and that she informed him that she wanted to speak to him in respect of the money owing to Thoshan Panday by the SAPS. Col. Y. Moodley from finance was also present in the meeting. Before Gen Mekute actually got to the topic her phone rang and she answered it. She informed the person on the phone that she is with Brig. Kemp. After the call she made her way to the door and Col. Jones was standing there. She told Brig. Kemp that this is the man that is phoning me all the time in respect of outstanding payments to Thoshan Panday by the SAPS. She then left. Col Jones then introduced himself to Brig. Kemp and informed him he will like to have a discussion regarding the outstanding payments to Thoshan Panday and although he did not have an appointment with Brig. Kemp as he was requested previously to do so. Brig Kemp told him that he is busy and Col Jones insisted that he will like to see him and discuss at that stage. Brig. Kemp then stated to me that he realised Col Jones was not willing to leave and invited him into his office and requested Col Y. Moodley to be present. Col. Jones then apparently mentioned that the tapping of the phones Act 70 of T.Panday in the criminal matter, had affected the case and told him that is why the matter was declined to prosecute. He asked Brig. Kemp if there is any other evidence available in the matter because he has to report back to General Dramat. He then mentioned that he had insight to Brig Kemp affidavit and questioned Brig. Kemp about the outstanding payments to Toshan Panday and Col. Y. Moodley responded that they did not receive any invoices for those outstanding payments from Toshan Panday. He then also mentioned to Col. Y. Moodley that he is aware that she was interviewed by the team in this matter and then asked her if she is the A1 in the docket. Brig. Kemp then told Col. Jones that he is not comfortable to continue and will only do so in the presence of the investigating officer. Col Jones then verbally gave him his whole CV and told him that he is involved in the matter since the 5th December 2013 as I requested him to attend a meeting with the prosecution team and that thereafter he was fully involved in the investigation. He then also stated that he was in charge of the investigation team and that the team reports to him on the case. This is not the truth as I have mentioned this before in previous correspondence that the investigation team never reported to him on progress and on any issue regarding the case and I have never requested him to attend any meeting on behalf of me and he has never been on board on this investigation. Brig. Kemp refused to comment on his request and informed him that he will only communicate with him if I am present. Col. Jones then left.

The action of the officer Col Jones is highly questionable as he has now affected two witnesses of Durban Central Cas 781-06-2010 and they have now become concerned as to why they are being questioned for information pertaining to the case and are now questioning the integrity of the investigation team especially when the witnesses are aware that he has not been part of the investigation team. I as the investigating officer is now concerned as to what mandate is Col. Jones acting on and if Gen. Dramat is aware of this mandate and if this mandate was given by Gen Dramat because Gen Dramat name has been used to make the enquiries and that he had to give feedback to Gen Dramat.

It will be appreciated if this is brought to the attention of Gen Dramat and a feedback given to me.

Regards

Colonel Hans van Loggerenberg
South African Police
Anti-Corruption Task Team (ACTT)
Directorate for Priority Crime Investigation
Durban
Kwazulu-Natal
Tel 00 27 (31) 325 4400
Cell 00 27 (0) 824829596
Fax 00 27 (031) 325 4336
E-mail: vanloggerenbergj@saps.gov.za

"Victims have the right to be treated with respect and dignity."



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UMBUTHO WAMAPHOYISA ASENINGIZIMU AFRIKA

Verwysing Reference	DBN CENTRAL 781/06/2010
Navrae Enquiries	Col Jones
Telefoon Telephone	031-3345054
Faksnommer Fax number	

THE PROVINCIAL CO-ORDINATOR
ANTI-CORRUPTION TASK TEAM
DPCI

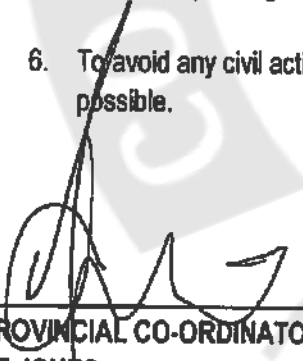
DURBAN : 4000

KWAZULU-NATAL

The Provincial Commissioner
S A Police Service
KWAZULU-NATAL

DECISION TO DECLINE TO PROSECUTE : DURBAN CENTRAL CAS 781/06/2010

1. Herewith attached memorandum dated 25th of March 2014 from the Prosecutor Adv T A Letsholo.
2. A decision has been made by Adv Letsholo to decline prosecution.
3. The suspects, defense attorneys and the investigators in the matter have been made aware of this decision as indicated in the memorandum.
4. The investigators have since released all the exhibits that was seized to their lawful owners.
5. It was brought to my attention by the defense that the State also needs to release funds that had been held back due to the pending investigation that has since been declined against the suspects involved.
6. To avoid any civil action against the State, it is therefore recommended that the matter be finalized as soon as possible.

 COL
PROVINCIAL CO-ORDINATOR : ANTI-CORRUPTION TASK TEAM (ACTT) : KWAZULU-NATAL
CF JONES

DATE: 26/03/2014

Govender SY - Colonel

From: Van Loggerenberg J - Colonel
Sent: 06 June 2014 08:01 AM
To: Govender SY - Colonel
Subject: FW: REPORT IN RESPECT OF DURBAN CENTRAL CAS 781/06/2010: ADVOCATE LETSHOLO: DATED 25 MARCH 2014
Attachments: Letter Gold Dramat 26 2014-06-03 Letter to Adv Vimbani DBN CENTRA CAS 781-06-2010.doc
Importance: High

From: van Graan Nicolaas - Brigadier
Sent: 03 June 2014 04:05 PM
To: DPCI:Head; DPCI:Staff Officer
Cc: Moodley Kubandran - Brigadier; Van Loggerenberg J - Colonel; Jacobs PC - Major General
Subject: FW: REPORT IN RESPECT OF DURBAN CENTRAL CAS 781/06/2010: ADVOCATE LETSHOLO: DATED 25 MARCH 2014
Importance: High

Dear Lieutenant General Dramat

Sir, further to the report of Col van Loggerenberg sent to you last week, herewith a draft letter, for your consideration, to Adv Vimbani, Head of the SSCU in Durban.

I have checked the details with Col van Loggerenberg and briefly discussed the content with Brig. Moodley. I have also asked Maj Gen Jacobs to peruse the same. Maj Gen Jacobs and the officers mentioned are in agreement with the content.

Kind regards

Brig NF van Graan

Legal Support: Crime Operations.

From: Human Irene
Sent: 03 June 2014 02:26 PM
To: van Graan Nicolaas - Brigadier
Subject: REPORT IN RESPECT OF DURBAN CENTRAL CAS 781/06/2010: ADVOCATE LETSHOLO: DATED 25 MARCH 2014

Brigadier NF van Graan:

Crime Operations, National Crime Investigations

**PRESIDIA BUILDING 225
C/O PAUL KRUGER & PRETORIUS STREET
3RD FLOOR
ROOM NO. 338
PRETORIA-CENTRAL
0001**

Tel: (012) 393 7050

Fax: (012) 393 7126

Fax to mail: 0866038508

HumanIrene@saps.gov.za



South African Police Service*Suid-Afrikaanse Polisie*

Private Bag: X 1500

Fax No: (012) 846 4400

Your Reference :

My Reference : Durban Central CAS 781/06/2010

Enquiries : Lt Gen Dramat

Tel : (012) 846 4001

THE NATIONAL HEAD
DIRECTORATE FOR PRIORITY CRIME
INVESTIGATION
SOUTH AFRICAN POLICE SERVICE
SILVERTON
0001

The Head
Specialised Commercial Crime Unit
P/Bag X 54355
DURBAN
4000

Dear Advocate Vimbani

REPORT IN RESPECT OF DURBAN CENTRAL CAS 781/06/2010: ADVOCATE LETSHOLO: DATED 25 MARCH 2014

1. I refer to the above memorandum of Advocate T A Letsholo, addressed to you, in which a decision was taken to decline to prosecute in this matter.
2. According to the memorandum, Advocate Letsholo submits that the South African Police Service monitored and recorded certain telephone conversations to secure evidence against the suspects in the investigation of Durban Central CAS 781/06/2010. There is an innuendo in the memorandum that investigators of the Directorate for Priority Crime Investigation, (the Directorate) by relying on so-called "telephone tapping" (interception), utilised improper investigative techniques which are a deliberate or flagrant violation of the Constitution.
3. I wish to place on record that the above allegations are categorically denied. None of the evidence in the investigation pertaining to Durban Central CAS 781/06/2010 was obtained by means of interception and there is no such evidence contained in the docket. The evidence in Durban Central CAS 781/06/2010 comprises straight forward documentary evidence seized during lawful search and seizure operations, affidavits of witnesses and a comprehensive forensic report compiled by Price Waterhouse Coopers. Since this was an ordinary commercial crime investigation of the Directorate, there was no need for the Directorate to rely on interception as provided for in the

Regulation of Interception and Provision of Communication-related Information Act, No. 70 of 2002. I am in possession of formal reports which make it clear that interception was neither applied for nor utilised by the Directorate to secure evidence in this investigation. Advocate Letsholo himself, in paragraph 3.2 of his memorandum, acknowledges that the investigation was straight forward and that there was no need to utilise interception to secure evidence against the suspects.

4. I am, however, advised that interception was applied for by the Division Crime Intelligence which was subsequently approved by the designated Judge, on the basis of death threats made against the investigation team. None of such evidence form part of the evidence in Durban Central CAS 781/06/2010. It is also not clear how this specific interception only became known to Advocate Letsholo on 14 February 2014 (allegedly with the representations of Mr. Panday) if the prosecutors who dealt with this matter before him were all aware of the interception (since 28 November 2012) and if it was discussed with, and contextualized to him, by the investigators personally, as early as 21 May 2013. I am also aware that representations were made on behalf of Mr. Panday during June 2013 and it is not clear whether Advocate Letsholo refers to "new" representations of 14 February 2014 or whether he indeed refers to the June 2013 representations.
5. Although the Directorate was not privy to the representations made to the prosecuting authority, the Directorate disagrees with the view of Advocate Letsholo that the State would go to court with "dirty hands" in respect of Durban CAS 781/06/2010 and the evidence in this matter is "irredeemably stained". This office intends to take this matter to higher authority and would therefore appreciate, before doing so, if you could indicate, in writing, whether you share the views of Advocate Letsholo.
6. Kindly note that I can make myself available to discuss this matter in further detail, should the need arise.

With kind regards

LIEUTENANT GENERAL

NATIONAL HEAD: DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
SOUTH AFRICAN POLICE SERVICE
A DRAMAT

Date:

SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

Privaatsak/Private Bag
Posbus/Post Office Box 1965 DURBAN

Verwysing : Durban Central CAS 781/06/2010

Reference

Navrae

Enquiries Colonel J van Loggerenberg.

Telefoon

Telephone 031-3254400; Cell 0824829696

Faksnommer Fax number

**THE DIRECTORATE FOR PRIORITY
CRIME INVESTIGATION
ANTI CORRUPTION TASK TEAM
DURBAN
KWA ZULU-NATAL**

2014-05-27**A: THE NATIONAL HEAD**

**DIRECTORATE FOR PRIORITY CRIME INVESTIGATION,
SOUTH AFRICAN POLICE SERVICES,
PRETORIA.**

SUBJECT: Durban Central CAS 781/06/2010: Response in relation to a report from Adv. TA Letsholo addressed to Adv. Bulelwa Vimbanl dated 25th March 2014 in which he states his reasons to decline to prosecute this matter.

1. In terms of the above mentioned report and decision the SAPS-DPCI-ACTT investigation team in Durban responds as follows:
2. The investigation team who investigated this matter is Col. H van Loggerenberg (team leader), Col. SY Govender and Col. P Herbst.
3. To substantiate and corroborate our response, we will attach documentation referring to specific issues mentioned in Adv. Letsholo's report. Except for admissions that are specifically made herein, the investigation team denies and categorically disagrees with certain aspects

4.1 ADD PARAGRAPH 1 AND 1.1

The investigation team admits this paragraph except for the exhibit "A" attachment that was not received by the team.

4.2 Add paragraph 2 and 2.1

It must be noted that Adv. B Vimbani also attended this meeting. It is noted that Adv. TA Letsholo does not describe the whole conversation in context which he refers to. Adv. TA Letsholo implicates the investigator accusing him of some conspiracy he might have against the Provincial Commissioner. This allegation is strongly denied. On this day at the meeting we required from him what his views were in respect of the evidence against the suspects mentioned in the draft forensic report from PWC. We went down the list from Thoshan Panday to Capt. Ashwin Narainpershad. His comments were that the evidence is excellent against them and there won't be a problem. One of the investigators asked him what about General Pillay. He enquired about the evidence and we informed him everything is in the docket and evidence is in the forensic report. Col van Loggerenberg then asked what about the Provincial Commissioner because no one mentioned her name. Adv. TA Letsholo immediately replied as follows: "I have my reservations". Col van Loggerenberg asked him what he meant by that and then Adv. B Vimbani then also replied "I also have my reservations". Col van Loggerenberg again asked what they meant by saying "I have my reservations". No one could provide any answer. Col van Loggerenberg asked them what the difference is between the evidence against Capt. Aswin Narainpershad and the Provincial Commissioner. Col van Loggerenberg even mentioned that Toshan Panday paid for a treadmill which he gave to Capt. Aswin Narainpershad and he paid for the Provincial Commissioner's husband's birthday party. No one could answer Col van Loggerenberg. Col van Loggerenberg's opinion is that there is good evidence against all the suspects. We have obtained various affidavits and documentary evidence to prove we have a case against all suspects and further more it is also the

findings of PriceWaterhouse Coopers that there is indeed evidence against all the suspects listed in the forensic report. It appears there is inconsistency in Adv. Letsholo's decision to prosecute or not, as far as it concerns the person's status in life. We disagree with the view of Adv. Letsholo that there is no evidence in the docket against the Provincial Commissioner. In this regard see annexure A1, A81, A82 and A191 in the case docket Durban Central CAS 781/6/2010 and in the forensic report from paragraph 15.059 to 15.081 together with the documentary exhibits referred to in the report marked A86, A86/4, A86/5, A86/6-8, A86/9, A86/10, A86/11, A86a, A86b, A87/3, A87a and A87/4-6. No mention is made about the evidence in the forensic report. It is confusing to say the least that in all the meetings he did not mention that there is no evidence against the Provincial Commissioner. PriceWaterhouse Coopers also attended all the meetings. Adv. Letsholo's report was given to Trevor White from PriceWaterhouse Coopers. This report also implicates PriceWaterhouse Coopers in that they were responsible to use the evidence given to them by the SAPS to compile a forensic report together with the exhibit files. Trevor White was requested to comment on the report. Attached hereto marked **annexure JVL 1** is a copy of the report of Trevor White. Paragraph 5 and 6 of this report is self explanatory.

4.3 Add paragraph 3 and 3.1

The investigation team was not notified by the NPA when they received the representations. We were not requested to investigate the alleged allegations made in the representation. We cannot rely on what is mentioned in these paragraphs because we were never shown the representations. Therefore we have no comment. If the NPA did investigate the allegations made by the accused in the representations, the investigation team request copies of any report or notes made by the investigator. The name of the investigator who allegedly investigated the representations together with the name list of the people he interviewed.

4.4 Add paragraph 3.2

The allegation that the NPA or Adv. Letsholo never knew about the tape recordings (Act 70) is not true. From our first meeting he was informed about the Act 70. Reference is made to paragraph 4 of **annexure JVL 1**. Adv. Letsholo received the docket from other members within his office who dealt with the matter before it was allocated to him. It is common

knowledge in the NPA that there was an Act.70. The Act 70 was used inter alia in the matter where the state alleged bribery and corruption charges against Thoshan Panday and Col. N Madhoe. On the 28th November 2012 the NPA together with the investigation teams and Crime Intelligence had a meeting in respect of the evidence and the Act 70 in Durban Central CAS 466/9/2011. Attached hereto marked **annexure JVL 2** is copy of the email dated 28th November 2012. Every person mentioned in this email attended the meeting on the 29th November 2012. The Act 70 was legally approved by a Judge of the High Court in Pretoria. The application for and extensions of the Act 70 were done by Crime Intelligence to investigate the death threats against the investigation team. At no stage what so ever did the investigation team or Crime Intelligence for that matter, apply for an Act 70 in respect of Durban Central CAS 781/10/2010. The evidence which was use to compile a forensic report and exhibit files were documentary evidence seized during lawful searches conducted on the 12th August 2010 with search warrants issued by the magistrates court in Durban. There is no proof that an Act 70 was used in this matter and an entry in the investigation diary was not necessary at all.

4.5

ADD PARAGRAPH 3 AND 3.1

The investigation team admits having knowledge of representations made by T Panday and till date the representations have not been made available and even after several requests the investigation team did not have insight to the representations. Therefore the contents of this paragraph are not within the knowledge of the investigation team and are unable to comment on this paragraph.

4.6

ADD PARAGRAPH 3.2

The investigation team categorically denies the allegation in this paragraph. From the onset the previous prosecutors and the present prosecutors were informed of an Act 70 being in place in terms of an application done by the police Crime Intelligence Unit and that was for the death threats against the investigation team. They were informed that there was never an Act 70 application done in terms of Durban Central CAS 781-06- 2010. Reference is directed to paragraph 3.4.

Colonel Govender admits to the question being asked in 3.3 and to subsequent conversation in 3.4 and 3.5 but denies and disagrees to the correctness of the response and report. The advocates were reminded that they were informed from the initial meeting that they attended that there was an Act 70 authorised and that the Crime Intelligence (CI) of the SAPS had applied for that after they had received intelligence that there are threats on the lives of the investigators and they (CI) were the custodians of the recordings.

They were also informed that the investigation team was not relying on the Act 70 because it has no evidential value to Durban Central CAS 781-06-2010. The advocates in this meeting on the 14 March 2014 denied that they had knowledge or were informed by the investigation team about an Act 70 and it was pointed out by Col. Govender that almost all the NPA officials had knowledge of an Act 70 but they still denied any knowledge and stated vehemently that the investigation team did not disclose this to them and that the first time they had gained knowledge or insight was when they received representations from the defence that mentioned the Act 70's recordings being played to the accused Thoshan Panday.

As for paragraph 3.5 Col Govender disputes and disagrees with the entire content. At no stage did he inform the prosecutors that Col Van Loggerenberg had ever made any application for an Act 70 with the crime intelligence unit. In fact what he did inform them is that if there was any Act 70 conversations pertaining to Durban Central CAS 781-06-2010 then the lead investigator Col. Van Loggerenberg will have been contacted by Crime Intelligence and a meeting will be set up for the team to listen to those recordings and Col. Govender will reiterate that again the prosecutors were informed at this point of the meeting that the recordings that were listened to was of no evidential value to Durban Central CAS 781-06-2010 and therefore the team was not relying on Act 70 recordings but on the evidence that had been gathered in the SIX (6) lever arch files and the forensic report.

ADD PARAGRAPH 3.6

It can be clearly seen that ADV.LETSHOLO has misconstrued facts deposed to him because he was told on many occasions that the application he refers to in this paragraph was an ACT 70 application on the threat of the lives of the investigating team and no application was made for Durban Central CAS 781-06-2010. The Act 70 is a complete different project registered with CI called 'Stallion'.

ADD PARAGRAPH 4. 4.1 AND 4.2

Col. Govender admits the request in paragraph 4 and context of 4.2 and denies the correctness of 4.1

Col Govender response to the request was that Crime Intelligence were the custodians of the recordings and that they had indicated that there was certain sensitive recordings that was not pertinent to the threats on the lives of the investigation team and that they will make available what is pertinent to Durban Central CAS 781-06-2010 but reiterated to the prosecutors that the investigation team was not relying on any recordings that CI have in their possession because there was none of evidential value and that was the reason the investigation team did not ask for the recordings and that if the prosecution team insisted that recordings must be available then arrangements can be made for CI to make available only what is pertinent to Durban Central CAS 781-06-2010 and informed them once again that these recordings are not for an application in terms of Durban Central CAS 781-06-2010 but became pertinent during the listening of recordings on the threat of the lives of the investigation team and again informed the prosecutors that it is of no evidential value. The prosecutors then responded that it was for them to listen to recordings and it is their decision to make and not the police.

Col Govender also responded that if the prosecutors based on representations received from the defence and that they had the privilege to read and if they have concluded that the CI had interfered, it was suggested to that the representations must be made available to the investigating team to comment or alternatively those representations must be thoroughly investigated and if they conclude that CI had interfered then they must place charges to those that they have gathered evidence against. He also informed them that the investigation team was not aware of the action taken by CI and that we were two separate departments but

conceived that we were all the police when it was put to him by the prosecutors present.

RR1-JVL-314

4.10 **Add paragraph 5. 5.1 and 5.2**

The Investigation team has no comment and is totally unaware if this incident took place.

4.11 **ADD PARAGRAPH 6**

The content is admitted and confirmed but the correctness is denied. Col Govender when questioned by the prosecutors if he had knowledge of recordings being played to Thoshan Panday at the Crime Intelligence office stated that he had no knowledge if such an incident had occurred but had read about it in the paper and informed them that he was angry how a reporter could report such an issue when the investigation team had no knowledge. Due to the fact that from his knowledge the custodian of the Act 70 was Col. Padayachee he then decided to confront Col. Padayachee and the response he received was that Col. Padayachee cannot comment on any issue that occurred in the office of Gen. Deena Moodley and informed him that if clarity is required then that must be taken up with Gen. Moodley.

4.12 **Add paragraph 7**

Once again the evidence has been collected in a professional manner in terms of the Criminal Procedure Act. There is absolutely no evidence to even suggest that the Bill of Rights and the Constitution had been violated. We are of the opinion that Adv. Letsholo's finding is based on information that was not at his disposal and which was not contained in the docket. The investigation team take exception to the fact that Adv Letsholo is making serious allegations against the integrity of the investigating team in that they have obtained evidence improper/illegally which is a violation of the Constitution. The investigation team denies this accusation strongly. The National Head of The Directorate of Priority Crime Investigation SAPS, take these allegations against its members in a very serious light when its members are accused of obtaining evidence in an improper/illegal manner which violates any Act, Bill of Right or The Constitution.

Add paragraph 7.1

There is absolute no link surrounding the tapping of the phones and the evidence produce to Adv Letsholo. According to the investigation team he is not even concerned about the facts put before him but he would rather direct the attention to other so called factors which he claims are influencing the case of which he had no insight or knowledge of. The impression is created by Adv. Letsholo that the Act 70 and the evidence produced is linked. Based on the evidence before Adv Letsholo and still suggest that the evidence is irredeemably tainted is an irresponsible statement base on no facts at all.

4.14

Add paragraph 7.2

Again Adv Letsholo states that the evidence is obtained in an improper/illegal manner without producing any substance to substantiate his allegation against the investigation team. The allegation that he has to turn a 'blind eye' to the manner in which the evidence was obtained is quiet disturbing and of great concern to the investigation team.

4.15

Add paragraph 7.4

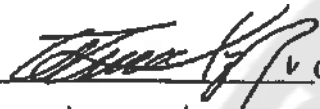
The investigation team disagrees with the prosecutor's comments. The prosecutor was informed that the Act 70 is not being relied upon as evidence for this case. The serious allegation against the investigating team for using improper investigative techniques is absurd. The investigating team has produced six lever arch files of evidence that was gather through normal investigative techniques and a professional forensic report compiled by Price Waterhouse Coopers together with 20 lever arch file of forensic evidence which was given to him to apply his mind and make a decision. It is the view of the investigation team that the prosecutor based his decision on representations received from the defence on an Act 70 which is not related to Durban Central CAS 781/6/2010.

4.16

Add paragraph 8

The contents are noted. In light of all the explanations in the paragraph above the investigation team has spent many man hour and expenses to

the state to gather evidence and to produce that to a prosecutor for a positive decision. The investigation team is still of the opinion there is a prima facie case and as informed by the prosecutor personally that the evidence produced was good. The investigation team disagrees to the prosecutor's decision as he has based his decision on representations received from the defence and which we are of the opinion was never properly investigated and the investigation team was never consulted or shown the representation to give a comment.


Colonel
J van Loggerenberg
DPCI:ACTT
KZN



**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE
CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
INCLUDING ORGANS OF STATE**

TO: ACTING-SECRETARY OF THE COMMISSION

FOR ATTENTION Ms SHANNON VAN VUUREN

2ND FLOOR, HILLSIDE HOUSE

17 EMPIRE ROAD, PARKTOWN

JOHANNESBURG, 2193

DATE: 01 JANUARY 2020

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JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE
CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
INCLUDING ORGANS OF STATE

TO: **ACTING-SECRETARY OF THE COMMISSION**

C/O Ms Shannon Van Vuuren

2ND FLOOR, HILLSIDE HOUSE

17 EMPIRE ROAD, PARKTOWN

JOHANNESBURG, 2193

DATE: **24 DECEMBER 2019**

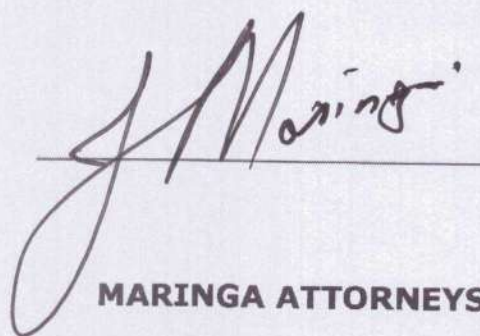
NOTICE OF APPLICATION TO LEAD EVIDENCE

BE PLEASED TO TAKE NOTICE THAT:

1. Colonel Welcome Sithembiso Mhlongo herewith applies for leave to adduce evidence by way of an affidavit, in response to the evidence of Mr. Johannes Van Loggerenberg, on the backdrop of a notice served upon on 19th December 2019, in terms of Rule 3.3 of the Rules of the Commission.
2. The nature and extent of the evidence to be adduced by Colonel Welcome Sithembiso Mhlongo is set out in an affidavit attached to this notice as **Annexure AA1**.

WSM HKB

DATED AND SIGNED ON THIS 24 DECEMBER 2019, AT
PRETORIA.



MARINGA ATTORNEYS

(Attorney for Mhlongo)

201 SEDIBA HOUSE

173 BOSMAN STREET

Mobile: 061 775 4962/082 753 6719

Tel: 012 752 9473

EMAIL: Joelma@vodamail.co.za

REF: MJ MARINGA

WSM HNB



AFFIDAVIT

I, the undersigned:

WELCOME SITHEMBISO MHLONGO

Hereby state as follows, under oath:

1. I am an adult person with full legal capacity, employed as Colonel in the Directorate for Priority Crime Investigation ("DPCI"), commonly known as HAWKS. I am currently stationed at the Provincial unit for Serious Organized Crime as Acting Provincial Commander in KZN
2. The facts deposed to hereunder are within my personal knowledge and are, to the best of my belief both true and correct.
3. I have been invited as in accordance with paragraph 6 of the notice served upon me, dated 19 December 2019 to exercise an option in terms of Rule 3.3.6 of the Rules governing proceedings of the Judicial Commission of inquiry into allegations of state capture, to either make an application for

W8m HXB

leave to cross-examine, Col. Johannes Van Loggerenberg or to lead evidence on matters raised in his testimony as witness or to have another person do so on my behalf.

4. I have made a decision to only limit my participation to leading evidence by way of an affidavit on the narrow issues brought to my attention by the Secretary of the Commission.

5. I do not intent to set-forth historical background related to the evidence of Col. Van Loggerenberg.

I will confine my evidence to the paragraph which, my attention has be drawn, by the Commission.

INTRODUCTION

6. I have been advised, per notice from the Commission, from which I have alluded to above, that the allegations in the evidence of Mr. Johannes Van Loggerenberg could implicate me in, amongst others, allegations of participating in various acts of corruption, bribery fraud, money laundering and or tax evasion .
7. The factual basis advanced in support of the foregoing conclusion appears to be that:

W8M HAB

S

7.1 **Col. Van Loggerenberg alleges that he was advised by Colonel Soobromoney that Colonel Madhoe informed her that I and Colonel Clarence Jones tipped Colonel Madhoe about the pending search within their crime intelligence offices prior to its actual occurrence.**

7.1.1 Col. Johannes Van Loggerenberg alleges in paragraph 9, sub- paragraph 9.12.4 of his affidavit that 'Col Madhoe informed her (presumably Col Soobramoney) the evening before the DPCI came to search their Financial offices at SAPS, that he had been informed by Col. Clarence Jones and Col WS Mhlongo, that her Offices were to be searched the next day".

7.1.2 I have no knowledge of the allegations set forth by Mr. Van Loggerenberg and advance the following facts in support of my stance

7.1.2.1 I was not part of the team vested with authority to execute the search at Col Madhoe 's Offices, neither

WSM

HAB

did I know or carry information regarding the time frames of their action plan.

7.1.2.2 During the period in which the search took place, I was seconded to the NPA within the section of missing persons task team, thus I had no knowledge of anything having to do with Search warrants earmarked to be carried out at the Crime Intelligence offices

7.1.2.3 The evidence of Col. Van Loggerenberg in this regard further constitute to hearsay as he talks about what he heard from Col Soobramoney without even substantiating how and where the alleged tip took place

7.1.2.4 I cannot vouch for the allegations against Col Clarence Jones; however, my submission is that Mr. Johannes Van Loggerenberg 's allegation is far from assisting the commission in that nothing is being said about how each party effected the alleged tipping of Col Madhoe.

8 I note further with concern that the affidavit deposed to by Col Yogavelli Moodley attached to the Rule 3.3 notice sent to me, marked "B" and titled Annexure "JVL3" also echoes similar sentiments whereby, Col Madhoe allegedly informed Col Moodley that he got a tip from me about the pending search by the Hawks to their offices prior to the actual search

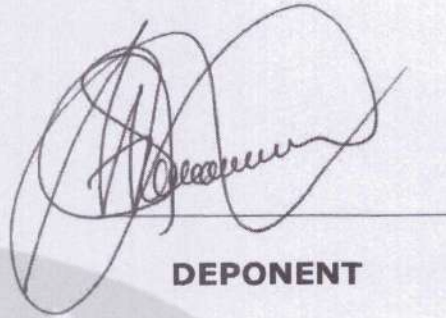
Wsu

HMB

- 9 I deny Col. Moodley 's allegations on the same reasons advanced in paragraph 7 above in my response to Col Johannes Van Loggerenberg as if referring to Col Moodley.
- 10 I am advised that the evidence of Col Johannes Van Loggerenberg as set out above bears the consequence which implicates me to the extend wherefore
- 10.1 I allegedly participated in acts of: -
- 10.1.1 Corruption
 - 10.1.2 Bribery
 - 10.1.3 Fraud
 - 10.1.4 Money Laundering and or Tax evasion
11. I deny all the allegations set forth against me above and view that as a deliberate attempt to fit me within the umbrella of participation of alleged unlawful conduct.
12. My submission is therefore that the allegations have no bases and carries the potential to tarnish my reputation

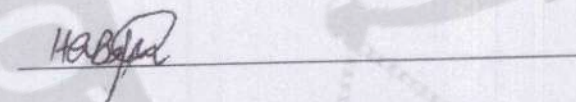
WSM 17/03

13. Should it be pleasing to the commission, I am satisfied in presenting my evidence by way of affidavit without the necessity of presenting oral evince



DEPONENT

I hereby certify that the deponent declares that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at DURBAN on this 30TH day of December 2019 and that the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.



COMMISSIONER OF OATHS

FULL NAMES: Hloniphele Angel Bontela

CAPACITY: Captain

AREA: Durban

JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE
CAPTURE, CORRUPTION AND FARUD IN THE PUBLIC SECTOR INCLUDING
ORGANS OF STATE

In the matter between

COL. JOHANNES VAN LOGGERENBERG

RESPONDENT

And

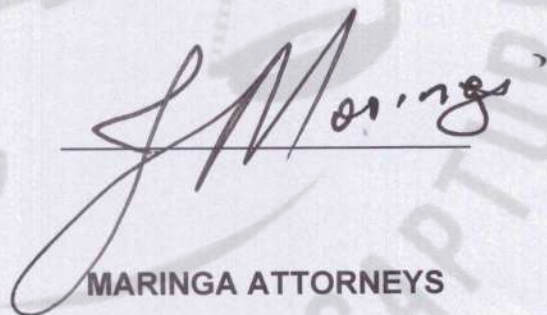
COLONEL WS MHLONGO

WITNESS

Filing Notice

DOCUMENTS TO BE FILED: Option to place evidence by way of affidavit without the necessity to testify

DATED AT PRETORIA ON 1st JANUARY 2020



MARINGA ATTORNEYS

(Attorney for the implicated persons)

201 SEDIBA HOUSE

173 BOSMAN STREET

Mobile: 061 775 4962/082 753 6719

10

Tel : 012 752 9473

EMAIL: Joelma@vodamail.co.za

REF : MJ MARINGA

The secretary of the Commission

Commission of inquiry into State Capture

2nd floor Hillside house

17 Empire road

Johannes burg



**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE
CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING
ORGANS OF STATE**

TO: ACTING-SECRETARY OF THE COMMISSION

MR P PEDLAR

2ND FLOOR, HILLSIDE HOUSE

17 EMPIRE ROAD, PARKTOWN

JOHANNESBURG, 2193

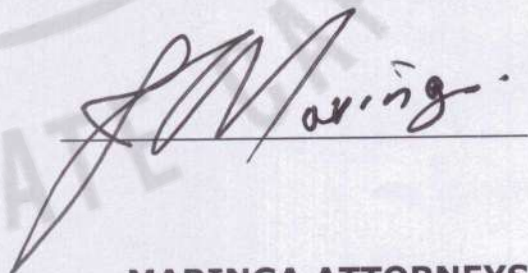
DATE: 1 JANUARY 2020

**NOTICE OF APPLICATION TO PLACE EVIDENCE BEFORE THE COMMISSION
BY WAY OF AFFIDAVIT**

BE PLEASED TO TAKE NOTICE THAT:

1. Colonel Welcome Sithembiso Mhlongo herewith applies for leave to place his evidence before the commission by way of affidavit without testifying should it be pleasing to the chairperson of the commission

DATED AND SIGNED ON THIS 1ST JANUARY 2020, AT PRETORIA.

A handwritten signature in black ink, appearing to read 'Maringa', is written over a horizontal line.

MARINGA ATTORNEYS

(Attorney for Mhlongo)

201 SEDIBA HOUSE

173 BOSMAN STREET

Mobile: 061 775 4962/082 753 6719

Tel: 012 752 9473

EMAIL: Joelma@vodamail.co.za

REF: MJ MARINGA

