



EXHIBIT RR 3

**BHEKI FELIX
MANYATHI**

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

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IN THE COMMISSION OF ENQUIRY INTO STATE CAPTURE
HELD AT PARKTOWN, JOHANNESBURG

AFFIDAVIT

I, the undersigned, **BHEKI FELIX MANYATHI**, do hereby make oath and state:

1.

I am an adult male Advocate of the High Court of South Africa, practising as such at the Society of Advocates of Kwa-Zulu Natal, Durban Bar.

2.

The facts herein contained are within my personal knowledge unless stated otherwise or appears from the context.

3.

Before becoming a member of the Durban Bar, I was a Senior State Advocate at the office of the Directorate of Public Prosecutions attached to the Durban office.

4.

In the course of my official duties in 2011, I was allocated a corruption case by the acting Director of Public Prosecutions, KwaZulu-Natal ("**DPP**"), Advocate Simphiwe Mlotshwa ("**Mlotshwa**").


MA

5.

The case of corruption was linked to a case of procurement fraud pertaining to alleged illegally inflated accommodation cost of police personnel in KwaZulu-Natal during the soccer world cup. The State had allegedly been defrauded around R60 million ("**fraud matter**"). The fraud matter was not allocated to me, but Ms Wendy Greef (Clark) at the time.

6.

The accused in the corruption matter were Thoshan Panday ("**Panday**") and Colonel Navin Madhoe ("**Madhoe**"). Madhoe was a procurement officer in the South African Police Services ("**SAPS**") and Panday was a businessman, whose companies allegedly benefited from the aforementioned fraud for accommodation for the SAPS.

7.

The investigating officer in the corruption matter was Colonel van Loggenberg ("**van Loggenberg**") who was assisted by Colonel Philip Herbst ("**Herbst**"), while the complainant was General Johan Booysen ("**Booyesen**").

8.

The corruption matter related to an alleged attempt by Madhoe to influence Booysen to predate a preliminary report, which I refer to herein below, in the fraud matter.

9.

A preliminary report had been compiled by the investigators alleging wrong doing on



MA

the part of Madhoe and Panday in the fraud matter. The preliminary report was undated at the time and was submitted to Booyesen. The fraud matter was being investigated by the Directorate of Priority Crimes Investigations (“DPCI” / “the Hawks”) and they fell under Booyesen's command.

10.

It is instructive at this point to mention that Panday had instituted litigation in the high court to set aside section 205 subpoenas pursuant to which his (Panday's) companies' bank records had been obtained, on the basis of which the preliminary report had been, *inter alia*, compiled.

11.

In the context of the two cases, the predating of the preliminary report referring to the bank records would have meant that the bank records would have predated the section 205 subpoenas and therefore (the bank records) would have been obtained illegally.

12.

On 25 August 2011, Booyesen was approached by Madhoe at Elangeni hotel, requesting him to pre-date the report that was submitted to him (Booyesen) to a date prior to the obtaining of the section 205 subpoenas. Madhoe offered Booyesen R1,5 million in cash to do so.

13.

On 26 August 2011, Madhoe asked Booyesen about the report and Booyesen replied



MA

that he could not find it. Madhoe then handed Booyesen an envelope and stated that it contained the report. Booyesen subsequently handed the envelope, containing the report, to Van Loggerenberg.

14.

The report was taken for fingerprint investigation and Panday's fingerprint was found on it. That meant that Panday must have touched the report, which he was not even supposed to have access to in the first place.

15.

Authorisation in terms of Section 252A to conduct a trap ("**sting operation**") was duly obtained in the meantime. On 8 September 2011, a sting operation was put in place. Booyesen handed over the report to Madhoe and Madhoe handed over R1.362 million cash to Booyesen. Madhoe was arrested immediately thereafter and the predated report was found in his (Madhoe's) car.

16.

However, that report was not the copy that Madhoe had handed to Booyesen on 26 August 2011. The one of 26 August 2011 had been preserved due to Panday's fingerprint that had been found on it.

17.

Madhoe admitted after his arrest that the cash that was handed over to Booyesen had

 MA

been provided by Panday.

18.

Based on the evidence, I subsequently applied for a warrant for the arrest of Panday. In my perspective, it was improbable that Madhoe would have had R1.362 million to bribe Booyesen and the probabilities were that the money had indeed been provided by Panday. Consequently, a Warrant of Arrest was authorised and Panday was arrested.

19.

Notwithstanding that I was the prosecutor dealing with the matter and that I was attached the general section of the NPA in KwaZulu-Natal, Madhoe's attorneys, Ravindra Maniklall & Company, made representations to the national head, Special Director of Public Prosecutions of the Specialised Commercial Crimes Unit ("**SCCU**"), Advocate Lawrence Mrwebi ("**Mrwebi**").

20.

A copy of their representations dated 29 December 2011 is annexed hereto marked "**BM1**".

21.

It might be useful to put the structure of the NPA in context. There are various business units within the NPA, including SCCU and National Prosecution Services ("**NPS**"). The DPP's office, where I was based, fell under NPS. SCCU had offices in major cities including Durban. There was only one SCCU office in KwaZulu-Natal, the Durban one.



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22.

As alluded to above, the corruption case was allocated to me by the acting DPP, not the regional head of SCCU. I do not know why Madhoe's attorneys decided to address his representations to Mrwebi, who was based at head office in Pretoria, instead of Mlotshwa, the acting DPP who was based in Pietermaritzburg.

23.

Mrwebi, who was a Special Director in charge of SCCU nationally, addressed an internal memorandum dated 9 January 2012 to the Acting Regional Head SCCU, Durban which was handed to me to address the issues raised by Madhoe's attorneys. A copy of this memorandum is annexed hereto marked "BM2".

24.

I addressed a memorandum to Mrwebi dated, 22 January 2012, in response to Madhoe's representations to him. A copy of my memorandum is annexed hereto marked "BM3".

25.

On receiving my memorandum in which I made it abundantly clear that there was absolutely no basis to review the decision taken by me to prosecute Madhoe and Panday, I recommended that Madhoe be prosecuted in the High Court for corruption and I was going to conduct the prosecution.

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26.

In my memorandum, the recommendation refers to Madhoe only as he is the one who made representations. However, I subsequently indicted both Madhoe and Panday in the high court for corruption.

27.

Mrwebi sent an internal memorandum dated 27 January 2012 to Mlotshwa stating that *"I have considered the matter; however, I am unable to assist the representor at this stage"*. I made note of the use of the word *"assist"*. A copy of the internal memorandum is annexed hereto marked **"BM4"**.

28.

I pause to mention that at this time there had been talk in the office about political interference in high profile cases nationally that the NPA was handling and I had been told to expect political interference in the corruption case against Madhoe and Panday, which I rather naively did not take seriously until I received the aforementioned memorandum from Mrwebi.

29.

At this stage I had already been recommended for the post of Provincial Head KwaZulu-Natal, SCCU. After I had sent my memorandum to Mrwebi, the talk in the office was that I would not get this post. The alleged rationale was that I had made it impossible factually and legally in my memorandum for head office to withdraw the corruption case. Regrettably, this turned out to be true as I did not get the post.

 MA

30.

I had applied for the position of KwaZulu-Natal provincial head of the SCCU. I was shortlisted, interviewed and thereafter directed to attend a competency test, which was conducted by an external service provider.

31.

When I was interviewed, Advocate Menzi Simelane ("**Simelane**"), the National Director of Public Prosecutions ("**NDPP**"), chaired the interview panel. The other two panelists were the late Advocate Gert Engelbrecht SC ("**Engelbrecht**") and Advocate Amy Kistnasamy ("**Kistnasamy**").

32.

As was always the case after interviews pertaining to various positions, there were widespread rumours within the NPA that I was recommended as the preferred candidate for appointment. The fact that I was sent for a competency test was confirmation of this. Procedurally, such appointment was a formality in that a memorandum was supposed to be sent to the Minister of Justice to sign the appointment.

33.

I subsequently received notification from the Human Resources department in Pretoria inviting me for a new interview for the same position I had been recommended for. I attended the interview in Pretoria and Advocate Bulelwa Vimbani ("**Vimbani**") was ultimately appointed to the position of the Regional Head of SCCU KwaZulu-Natal in 2013.

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34.

All the adverse developments I have alluded to above coincided with Simelane leaving the office of the NDPP in accordance with a Constitutional Court judgement that found his appointment to have been irregular. Advocate Nomgcobo Jiba ("**Jiba**") was then appointed as the acting NDPP. When I was re-interviewed, Simelane had left office and Mrwebi was one of the panelists.

35.

I was upset and I resigned from the NPA with effect from 31 December 2013 and I served pupillage the entire 2014.

36.

Mlotshwa's acting stint was also short lived as Advocate Moipone Noko ("**Noko**") was appointed in his place.

37.

Before leaving the NPA, I directed queries to the Human Resources Manager at head office regarding the about turn in my appointment. In short, I was informed that the questions that were asked of the shortlisted candidates were not appropriate. I regard that as nonsense and a smokescreen for the true underlying reasons, which were clearly to find an excuse to set aside the interview process.

38.

I say so because Simelane was the NDPP and the highest ranking official in the entire



NPA. Engelbrecht was a silk and highly experienced Senior Deputy Director of Public Prosecutions. Kistnasamy was also a very experienced Chief Prosecutor and had been my previous supervisor when I was a Senior Public Prosecutor.

39.

To suggest that all three were either inefficient or incompetent to conduct the interviews properly to ascertain the requisite skills for the position is nonsensical, to say the least.

40.

It stands to reason that if Simelane did not leave office, no one would have dared to challenge the process he had chaired and that his preferred candidate would have been appointed.

41.

I do not believe that the occurrences I have mentioned above pertaining to the corruption case, my non appointment, Mlotshwa's short lived duration as the acting DPP, the appointment of Noko and other related aspects were mere coincidences. It was apparent that everything was well calculated and it bolstered the rumours of political interference in certain criminal prosecutions.

42.

When I was at the bar, I heard that the charges were withdrawn against Madhoe and Panday, allegedly on the instructions of Noko.


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43.

I was subsequently called by Advocate Wendy O'Brien ("**O'Brien**") from SCCU Durban regarding the corruption case and I understood that the NPA was considering reinstating the case against Madhoe and Panday. I assisted the best way I could and provided certain documents to O'Brien, however as I was less interested, I did not follow up on the matter.


B.F. MANYATHI

THUS SIGNED AND SWORN TO before me at Durban on this the 6th day of December 2019 by the deponent who acknowledges that he knows and understands the contents of this affidavit; that it is the truth to the best of his knowledge and belief and that he has no objection to taking the prescribed oath and regards the same as binding on his conscience and the administration of the oath complied with the Regulations contained in Government Gazette No. R1258 of 21 July 1972, as amended.


COMMISSIONER OF OATHS

MICHELLE ANDILE Ngqanda
Advocate of the High Court of South Africa
Ex officio Commissioner of Oaths
Chambers 8 North
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06/12/2019 

BM 1

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OUR REF: MR MANIKLALL/S51

YOUR REF:

29 DECEMBER 2011

THE NATIONAL HEAD
SPECIAL DIRECTOR OF PUBLIC PROSECUTIONS
SPECIALISED COMMERCIAL CRIME UNIT
PRETORIA
ADVOCATE L.S. MRWEBI

Dear Sirs,

RE : **REPRESENTATIONS FOR COLONEL NAVIN MADHOE**
DURBAN CENTRAL CAS NO. 466/09/2011 AND 781/06/2010
COMMERCIAL CRIME COURT DURBAN CASE NO. 41/1388/2011
DURBAN DISCIPLINARY HEARING CASE NO. TR 03/11/2011

We refer to the above matters and advise that we act for and upon the instructions of the abovenamed Colonel Navin Madhoe.

We are instructed to make the following representations to your offices as our client is of the reasonable belief that your offices have clearly not been appraised of the circumstances wherein our client is a potential witness in matters of National interest involving both Provincial and National levels of SAPS Management, Intelligence, Covert Operations, the Hawks and others.

In addition, our client had to maintain his silence and cover throughout the proceedings of the aforesaid matters due to his personal safety and security and that of National Security concerns and we trust that you will be equal to the task of respecting the sensitive disclosures herein.

At the outset our instructions are that there are major conflicts of interest in the investigation and prosecution of the aforesaid matters which have permeated the proceedings thus far. Certain aspects including numerous anomalies in the investigation have been raised in the bail affidavit of our client which we annex hereto for your consideration. Your immediate intervention is imperative to prevent further miscarriages of Justice as shall be briefly demonstrated below.

We shall annex hereto documentation to support client's contention without repeating their content to prevent this representation from becoming unduly prolix. However, we are instructed to briefly focus on certain issues for your consideration.

[Handwritten signature]
MA

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Our instructions are to inform you of our client's conduct to enable you to take a decision on the future conduct of the above proceedings given certain sensitive disclosures contained herein.

Our instructions are that our client is a potential witness in sensitive intelligence and evidence gathering exercises in matters of National interest especially involving inter alia (but not limited to) THE NATIONAL COMMISSIONER OF POLICE, GENERAL BEKI CELE, KZN PROVINCIAL HEAD OF THE HAWKS, MAJOR GENERAL Johan BOOYSENS and numerous other persons in serious misconduct concerning the following issues:-

- 1) THE POLICE KILLINGS BY CATO MANOR(DPCI) HAWKS MEMBERS
- 2) THE R1,1 BILLION DURBAN LEASE AGREEMENT for SAPS HEADQUARTERS
- 3) THE R60 MILLION 2010 SOCCER WORLD CUP ACCOMMODATION
- 4) THE ABUSE OF SAPS COVERT FUNDS APPROXIMATELY R200 MILLION
- 5) THE COVERT POLITICAL AND NON- POLITICAL AGENDAS.

Our client is a potential witness to serious crimes involving the highest echelons of the SAPS and others relating to abuse of power, corruption, treason and defeating the ends of justice. However, those involved are instead in full control of the alleged investigation against our client.

Our Constitution and decided case authorities dictate that our client is entitled to a fair and unbiased investigation preceding the Trial. Our client has alleged, in his bail affidavit, the instances of undue influence, bias and manipulation inherent in the investigation.

It is submitted by our client that this is due to the obvious conflict of interest in that the Hawks(DPCI) detectives, Colonels Sheriff and Loggerenberg are conducting an investigation of their Commander Major General Booyesen (KZN Provincial Head of Hawks) whilst they allege to being direct witnesses on material aspects of the cases. In addition they were alleged to have been reporting to Major General Meiring (DPCI Pretoria) whilst Major General Booyesen claims he was also reporting to General Dramat (National Head of Hawks).

In short, the Hawks are complainant, witnesses, investigators and in unfettered control of the investigation to any desired end. This much was evident in the bail application where Booyesen went through great extents to allege that his life was threatened with the obvious view to deny our client's admission to bail. These allegations were demonstrated to have lacked substance and were without merit. The resultant status quo is patently prejudicial to our client's Constitutional rights and is tantamount to a gross miscarriage of justice.

To compound matters, Major General Booyesen alleges that Captain Pelser (DPCI member and liason officer to Advocate Nel) was requested to obtain a Section 252A authority to continue talking to our client. We annex hereto a copy of Booyesen's and Pelser's affidavits confirming this. It is inconceivable how Booyesen would use the Section 252A authority to request money (on his own version ex- facie his affidavit). What is obvious is that Booyesen had no Manager for the alleged operation and Advocate Nel who has drafted the guidelines annexed hereto could not have authorised Booyesen to request money from any person in terms of any Section 252A authority, unless it is being suggested that he did so.

292A

-3-

In the event Major General Booyesen suggests that General Dramat was managing him in the alleged operation it is inconceivable that he would also approve of Booyesen requesting monies from any person being tantamount to entrapment. The crucial issues are whether Booyesen managed himself or complied with or simply acted ultra vires the alleged Section 252A authority with a view to trap our client. From a plain reading of Booyesen's affidavit it is arguable that he appears to have no appointed manager of the alleged operation. As an afterthought he draws in both Advocate Nel and General Dramat as witnesses presenting a further conflict of interest in the investigation.

We draw your attention to Advocate Nel who would be required in terms of **Section 252A (5)(a) and (b)** to furnish the authority but who is presently in a compromised position given that he is a witness for Major General Booyesen. Our client is also of the reasonable opinion that Advocate Nel would be hard-pressed to submit such an authority as regards our client because of the granting of the verbal authority (not a written one as envisaged by the Section 252A of the **Criminal Procedure Act 51/1977**).

Another striking aspect is that Colonel Herbst (under oath) claims that General Booyesen informed him that our client was blackmailing him to pre-date a report. Colonel Herbst affidavit is annexed hereto. Subsequently, General Booyesen has repeatedly denied that our client ever blackmailed him at any stage. Why would a Colonel Herbst make such conflicting allegations surrounding the allegations of blackmail about Booyesen (his Commander)?

Our client is of the reasonable belief that the above processes, including the Court process, is being abused by the Generals and others in the above matters to silence our client and prevent him from disclosing the information and evidence he was possessed of. For as long as this is allowed to continue unabated, the agendas by those involved remain concealed as our client is effectively stifled in his disclosures.

Our instructs that Booyesen was handed the authorisation signed by the National Commissioner General Bheki Cele by our client in 2010. This evidence was suppressed by General Booyesen throughout 2010 and 2011 on behalf of General Cele. Instead General Booyesen has tried to link our client with this tender process to protect the National Commissioner and has demonstrably attempted to discredit our client in any conceivable way to prevent our client from making the disclosures. Our client is adamant that the Generals have used their position to harness this unit to search, investigate, arrest, detain and harness our client to falsely implicate the KZN Provincial Commissioner General Ngobeni to ultimately protect General Cele. The alleged R60million investigation into our client and others is a sham and a distraction to protect the true perpetrators.

We enclose herewith a copy of the document clearly depicting the signature and authorization of General Beki Cele. We also enclose correspondences by our client suggest future preventative measures for the State prior to any such alleged investigation. It could hardly be logically argued that if our client was involved in the alleged scam he would have taken such steps and make the recommendations contained therein.

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-4-

As a result of the present prosecution our client has to maintain a cautious approach herein, nevertheless, client is willing to co-operate with any independent and unbiased investigation into the aforesaid matters and to this end we are instructed to request the intervention by your offices to ensure that due process is followed herein to promote the interests of Justice and the Criminal Justice System.

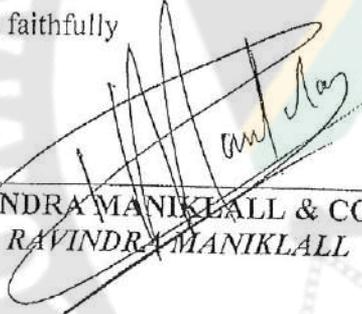
To this effect our client implores your office to review the investigative process thus far including the decision to prosecute our client further herein and test the veracity of our client's allegations through a consultative process with the various structures tasked with the aforesaid investigations.

We are instructed to record that the disciplinary hearing of our client is scheduled to commence on 17 January 2011, being a tactical move with a view to dismiss client before he can make his disclosure and thus prevent the debriefing. In the event of the hearing proceeding before the Trial our client will have no option but to prematurely make a full disclosure in this inappropriate forum. This would jeopardise National Security interests due to the sensitive nature of the abovementioned issues and expose our client's safety.

It is for this reason that we request you to take a decision at your soonest convenience bearing in mind the implications of an incorrect debriefing process especially when conducted in an inappropriate forum.

Kindly acknowledge receipt hereof and we await your response.

Yours faithfully


RAVINDRA MANIKLALL & COMPANY
PER: RAVINDRA MANIKLALL



Specialised Commercial Crime Unit



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

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INTERNAL MEMORANDUM

TO: ADV W MULLER
ACTING REGIONAL HEAD: SCCU DURBAN.

CC: ADV. MLOTSHWA
ACTING DIRECTOR OF PUBLIC PROSECUTIONS;
KWAZULU- NATAL

FROM: ADV LS MRWEBI
SPECIAL DIRECTOR: SCCU

DATE: 09 JANUARY 2012

SUBJECT: COLONEL NAVIN MADHOE: DURBAN
CENTRALCAS 466/09/2011 AND CAS
781/06/2010: COMMERCIAL CRIME COURT
DURBAN CASE NO 41/1388/2011;
DISCIPLINARY HEARING CASE NO TR
03/11/2011.

1. On 6 December 201 this office received representations from the lawyer representing Colonel Madhoe in the abovementioned matters. A copy of the said representations is attached hereto for your information.



Justice in our society, so that people can live in freedom and security

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2. In order for this office to meaningfully respond to the said representations, the prosecutor dealing with the matter must please ensure that the following is submitted to this office:
 - a. A summary of both dockets Durban CAS 466/09/2011 and Durban CAS 781/06/2011
 - b. In respect of both dockets the prosecutor must set out a clear factual basis and indication of the link of Col Madhoe to the crimes allegedly committed in respect of matters investigated under the said dockets
 - c. In respect of both dockets the prosecutor must give an indication of the legal basis of the link of Col Madhoe to the said crime. The evidential aspects must be clearly set where it is indicated how the prosecutor will set out to present these in proof of the crimes allegedly committed.
 - d. An indication of any anticipated difficulties in any of the matters must be given with an indication of how these would be dealt with.
 - e. An indication of any circumstances/evidence favourable to the accused must be set out.
 - f. A motivated recommendation on the merits of the representation
 - g. A copy of the section 252A authorisation and the affidavit in support thereof as well as the reports that General Booysen alleges he provided to adv. Nel.
 - h. Electronic copies of both dockets Durban CAS 466/09/2011 and Durban CAS 781/06/2011 must be submitted to this office.
3. With reference to Durban CAS466/09/2011 and Durban CAS 781/06/2011 and in order to save time in the matter; I raise the following preliminary issues based on the affidavits presently annexed to the representations:
 - i. As it is alleged that Madhoe made the said payment in order to have the undated report pre-dated; how did or how could Madhoe have known about the existence of the said report?

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- ii. Clearly the contents of the report refer to evidence or information in the source documents; how can it or having it predated affect anything? Or can the report be used to prove anything?
- iii. Supposing the section 205 subpoenas were based on the report and not on the evidence (something which is inconceivable of course) and were to be set aside based on the said pre-dated report what would have prevented the police from getting other subpoenas?
- iv. In reality does it make sense that a court can set aside a subpoena based on the report as the report is not evidence nor can it have any impact on any procedural steps involved in obtaining a section 205 subpoena?
- v. How could Madhoe ask General Booyesen about the investigations of the R60million fraud when he was not the investigator?
- vi. What is the nature of benefit or advantage that the state seeks to prove in the case against Madhoe taking into account that:
 - He was/is not challenging the validity of any section 205 subpoenas.
 - He naturally would not have been acting to advance the case of Mr. Panday, as on the version of the state he believes Panday is the person who put him in trouble.
 - Madhoe knows and has evidence that the contract in respect of the R60 million tender was personally authorised by the National Commissioner on under his signature on 7/06/2010.
 - Madhoe through correspondence dated 17/02/2010 and 14 June 2010 alerted the police management on the problems related to sourcing of accommodation.
- vii. It appears that General Booyesen is the single witness in the case against Madhoe; how does the prosecutor propose to overcome any difficulties associated with his evidence to satisfy the cautionary rule, taking into account the following:

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- From his statement it appears that General Booyesen did not see it fit to ensure that the events relating to any discussions on the request of Madhoe were recorded at any stage from 25/08/2011 to 8/09/2011. It appears that, save for an sms and an FNB scrap paper, reliance will mainly be on the viva voce evidence of Gen. Booyesen.
 - The instruction he gave as per minute dated 16 September 2011 that nobody else shall visit Madhoe whilst in custody except certain persons listed in the said minute.
4. The requested information must be submitted to this office on or before Friday 13th January 2012.

Regards

ADVOCATE L.S.MRWEBI
SPECIAL DIRECTOR: COMMERCIAL CRIME UNIT
PRETORIA
DATE: 04 DECEMBER 2011


MA

MEMORANDUM

TO: Adv LS Mrwebi
Special Director: SCCU

CC: Adv CS Mlotshwa
ADPP: KZN

CC: Adv S Ramouthar
DDPP: Durban

FROM: BF Manyathi
SSA: DDPP- Durban

DATE: 22/01/12

RE: Representations - Col N Madhoe
Durban Central Cas 466/09/11 (Corruption)

1. I have been on leave from 22/12/11 until 16/01/12, hence the delay in responding to your memo dated 6/01/12.
2. I am only dealing with the corruption matter (Cas 466/09/11). Ms Wendy Greef (Clark) is dealing with the fraud matter (Durban Central Cas 781/06/10). I have given her copies of your memo and attachments. She will respond with regard to the fraud matter.
3. I will endeavour to respond as best as I can, however I believe that it would be more appropriate for Wendy and I to brief you in person. If you share my belief, I would await your further directive in that regard.

Background

4. Col Madhoe ("Madhoe") was working at the procurement section. He and business man Thoshan Panday ("Panday") are suspects in the fraud matter involving R60 million. I understand that section 205 subpoenas were duly obtained and Panday's business and personal bank statements were obtained. As a result thereof, a preliminary report was compiled by the investigators alleging wrong doing on the part of Madhoe and Panday. The fraud matter is investigated by the Hawks and they fall under the command of Major General Booysen ("Booyesen").

 MA

5. At the bail hearing for the corruption matter, it was common cause that Panday had instituted civil action in order to have the section 205 subpoenas set aside. I believe the civil matter was heard in December 2011 and judgment has been reserved.

Summary of evidence in the corruption matter

6. Due to bits and pieces of evidence constituting a mosaic, it would be difficult to summarise it comprehensively for purposes of responding to your memo. A copy of the "A" clip is attached herewith for completeness. In the course of my response, I will refer to specific witnesses whose statements are part of the evidence.
7. In short, Madhoe approached Booyesen and asked him about the fraud investigation. There were several meetings and communication between them which culminated in Madhoe handing Booyesen R1,362 million cash and Booyesen handing him a pre-dated report. Madhoe was arrested on the spot and the said report was found in his car. The cash was found in Booyesen's car.
8. In my view, Madhoe's conduct falls squarely within the ambit of sections 3(b) and 4(1)(b) of the Prevention and Combating of Corrupt Activities Act 12 of 2004. The said provisions are attached hereunder.

Madhoe's representations

9. Madhoe is clouding issues and is making extremely serious allegations, including treason. He avers that he is a potential witness in matters of national interest. I cannot comment on his averments as there is nothing in my matter relating to his allegations. I also fail to comprehend how the corruption matter is being used to possibly "silence" him as a potential witness.
10. One should look at the essence of his one "defence" as raised in his bail application affidavit. He stated that he was approached by Booyesen and asked to obtain certain discs containing incriminating evidence against a

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unit falling under his command. He further stated that he handed discs and a hard drive containing such material to Booyesen. The state's case differs materially from Madhoe's version as to how it came about that he gave Booyesen the said material. It is however common cause that he did give it to Booyesen. It is significant to note that the material was handed into the SAP13 exhibit register. If Booyesen was so determined to destroy the damning evidence, it defies logic why he allowed it to be handed into the exhibit register.

11. The material is actually crime scene photos depicting dead persons. In my experience, several parties have access to such photos and they include LCRC members, detectives in general and prosecutors.
12. It is nonsensical for Booyesen to fabricate the corruption charge if Madhoe had helped him by giving him the supposed damning evidence. In any event, Sandesh Dhaniram ("Dhaniram"), a former policeman, has made a statement (A21) to the effect that he gave the said material to Madhoe. Dhaniram states that he got it from Col Aiyer, who was in bad terms with Booyesen. It would seem that Madhoe naively believed that the material was indeed damning against Booyesen and/or his unit and that he could use it to blackmail him so that he would help him with the fraud matter.
13. Madhoe's other theory is that the corruption charge is an attempt to persuade him to implicate the Provincial Police Commissioner of KZN ("PC") and Panday. I fail to understand how.
14. One should also look at another "defence" averred by Madhoe to Major General Moodley ("Moodley"), who has made a statement (A14). He stated that he had information that "would turn the (corruption) case on its head". He told Moodley that he had approached Booyesen previously and told him of damning evidence possessed by his "contacts" that implicated Booyesen and a unit falling under his command. Booyesen then asked him to get the evidence so that he would destroy it. Madhoe further stated to Moodley that his "contacts" wanted R2 million for the material.

 MA

Booyesen handed him R1,362 million and undertook to pay the balance on receipt of the material. Madhoe then took the money to his "contacts", but they refused to accept the lesser amount. When he was arrested, he was actually returning the said money to Booyesen. I must say that this is the most absurd averment I have ever come across.

15. That was not the end of the matter. Madhoe told Moodley that he had evidence to substantiate his allegations against Booyesen and was willing to hand it to Moodley. Moodley then arranged Col Chetty and Col Padayachee (A27) to book Madhoe out in order to retrieve the evidence. Madhoe took them to his residence, did a prayer and asked to be taken back to the cells where he was detained. It was clearly a false alarm.

16. Based on the state's case, Madhoe seems to be "bluffing" with these "defences", allegations and theories. From the time of the bail hearing, he has been saying that he will divulge at the right forum the real state of affairs underlying his arrest. I suggest that his attorney should obtain a "without prejudice" statement from him pertaining to the allegations in respect of which he claims to be a potential witness and submit it to your office for consideration.

Alleged conflict of interest

17. There is substance in the concern that the matter is being investigated by members of the Hawks who fall under Booyesen's command. I am however surprised that the issue is being raised again. It was first raised at the bail hearing and was discussed between myself and his defence team. They suggested the Public Protector or SIU or ICD. We deliberated the issue and they then reconsidered and decided to withdraw it. I should however not be construed as saying that the matter should not be transferred to an "independent" investigative unit.

 MA

Issues raised in para 3 of your memo

AD 3i

18. In his bail application affidavit, Madhoe stated that a copy of the report was forwarded to his office while he was at procurement. On his own admission, he had access to it.

AD 3ii-iv

19. My understanding is that the report was compiled on the basis of the information obtained, inter alia, from the bank statements. One should keep in mind that Booyesen is simply stating what Madhoe stated to him. In para 7 of his affidavit, he states: "...if I could help him. I asked in what way. He said that if I pre-dated a report that the investigating officer had submitted to me, it would assist them in getting the section 205 subpoenas to be set aside". In para 12, he states: "I asked him how the pre-dating would help, to which he responded that it would get the subpoenas overturned". As indicated above, Panday had already instituted civil action which was due to be heard in December 2011 in the High Court.

20. There is substance in your reasoning in para 3ii-iv and I agree with it. However, one should not speculate as to the logic or otherwise of pre-dating the report in order to have subpoenas set aside. As already pointed out, Booyesen is simply stating what Madhoe stated to him. One aspect is nevertheless apparent, that is, a pre-dated report would logically mean that the relevant bank accounts were accessed illegally. Perhaps one needs to look at the papers filed in the civil action in trying to figure out the sense in this regard. In any event, I will illustrate hereunder that this issue has no bearing on the legal requirements (elements) on a charge of corruption.

AD 3v

21. Madhoe had a copy of the report and he knew that Booyesen was the head of the Hawks who were investigating the fraud.

MA

AD 3vi

22. My understanding of the relevant provisions of the Prevention and Combating of Corrupt Activities Act 12 of 2004 is that the prosecution is not required to prove that the accused would have benefited or gained advantage from the commission of the offence. In the context of the evidence, the logic or otherwise of pre-dating a report in order to have subpoenas set aside will not be a hindrance in proving the requisite elements of the offence. Sections 3(b) and 4(1)(b) are relevant in this regard:

3 General offence of corruption

Any person who, directly or indirectly-

(b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner-

(i) that amounts to the-

(aa) illegal, dishonest, unauthorised, incomplete, or biased; or

(bb) misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

(ii) that amounts to-

(aa) the abuse of a position of authority;

(bb) a breach of trust; or

(cc) the violation of a legal duty or a set of rules,

(iii) designed to achieve an unjustified result; or

(iv) that amounts to any other unauthorised or improper inducement to do or not to do anything, is guilty of the offence of corruption.

4 Offences in respect of corrupt activities relating to public officers

(1) Any-

(b) person who, directly or indirectly, gives or agrees or offers to give any gratification to a public officer, whether for the benefit of that public officer or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner-

(i) that amounts to the-

(aa) illegal, dishonest, unauthorised, incomplete, or biased; or

(bb) misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

(ii) that amounts to-

(aa) the abuse of a position of authority;

(bb) a breach of trust; or


MA

- (cc) the violation of a legal duty or a set of rules;
- (iii) designed to achieve an unjustified result; or
- (iv) that amounts to any other unauthorised or improper inducement to do or not to do anything, is guilty of the offence of corrupt activities relating to public officers.

Madhoe and Panday are suspects in the fraud matter. The fraud and corruption matters are inter-related. It would be unrealistic to think that Madhoe was advancing only his own interests in his dealings with Booyesen. The evidence reasonably indicates that the R1,362 million must have come from Panday. It would also be unrealistic to think that if Panday succeeds with his civil action, Madhoe will not derive any advantage.

23. I assume that the averment that "Panday is the one who put Madhoe in trouble" is based on para 12 of Booyesen's statement. It states "...he would let the bastard pay for what he had put him through". Once again, one should not speculate as to what Madhoe meant. However, as pointed out above, Madhoe had every reason to advance Panday's course. I have not been aware that the R60 million tender was personally authorised by the National Commissioner and that Madhoe sent correspondence dated 17/02/10 and 14/06/10 respectively to police management. Wendy should deal with those aspects.

AD 3 vii

24. It is quite correct that Booyesen is essentially a single witness against Madhoe. However it is trite that a court may convict on the evidence of a single witness. I need not deal with the test, suffice to say that there is substantial other evidence giving credence to Booyesen's version. For instance, the pre-dated report that Booyesen handed to Madhoe was recovered on the spot by members of the sting operation in Madhoe's car.

25. During the course of the bail hearing, Madhoe was being detained at Durban Central police cells. At some stage, he alleged that he was being visited in the cells by certain police members who wanted to exert pressure on him to implicate the PC and Panday.

 MA

Based on that, I informed court that police management had decided that he should no longer be detained in the police cells. I accordingly suggested that he should be detained in prison. His defence team did not take kindly to that and it was apparent that Madhoe had shot himself in the foot. In the light of that, I do not believe that the minute dated 16/09/11 that restricted his visitors will adversely affect the credibility and essence of Booyesen's evidence.

Conclusion

26. In my view, the case against Madhoe is overwhelming and I recommend that he must be indicted in the High Court.

Regards

B.F. Manyathi
SSA – DDPP Durban



MA

Specialised Commercial Crime Unit



The National Prosecuting Authority of South Africa
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Die Nasionale Vervolgingsgesag van Suid-Afrika

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REF. 10/1/2/2-1/2012

INTERNAL MEMORANDUM

TO : ADV. MLOTSHWA
ACTING DIRECTOR OF PUBLIC PROSECUTIONS;
KWAZULU- NATAL

FROM: ADV LS MRWEBI
SPECIAL DIRECTOR: SCCU

DATE: 27 JANUARY 2012

SUBJECT: REPRESENTATIONS: COLONEL NAVIN MADHOE;
DURBAN CENTRALCAS 466/09/2011 AND CAS 781/06/2010;
COMMERCIAL CRIME COURT DURBAN CASE NO 41/1388/2011;
DISCIPLINARY HEARING CASE NO TR 03/11/2011.

I refer to the abovementioned matter.

I thank you for the report provided as well as a copy of the docket.

I have considered the matter; however, I am unable to assist the representor at this stage.



Justice in our society, so that people can live in freedom and security

MA

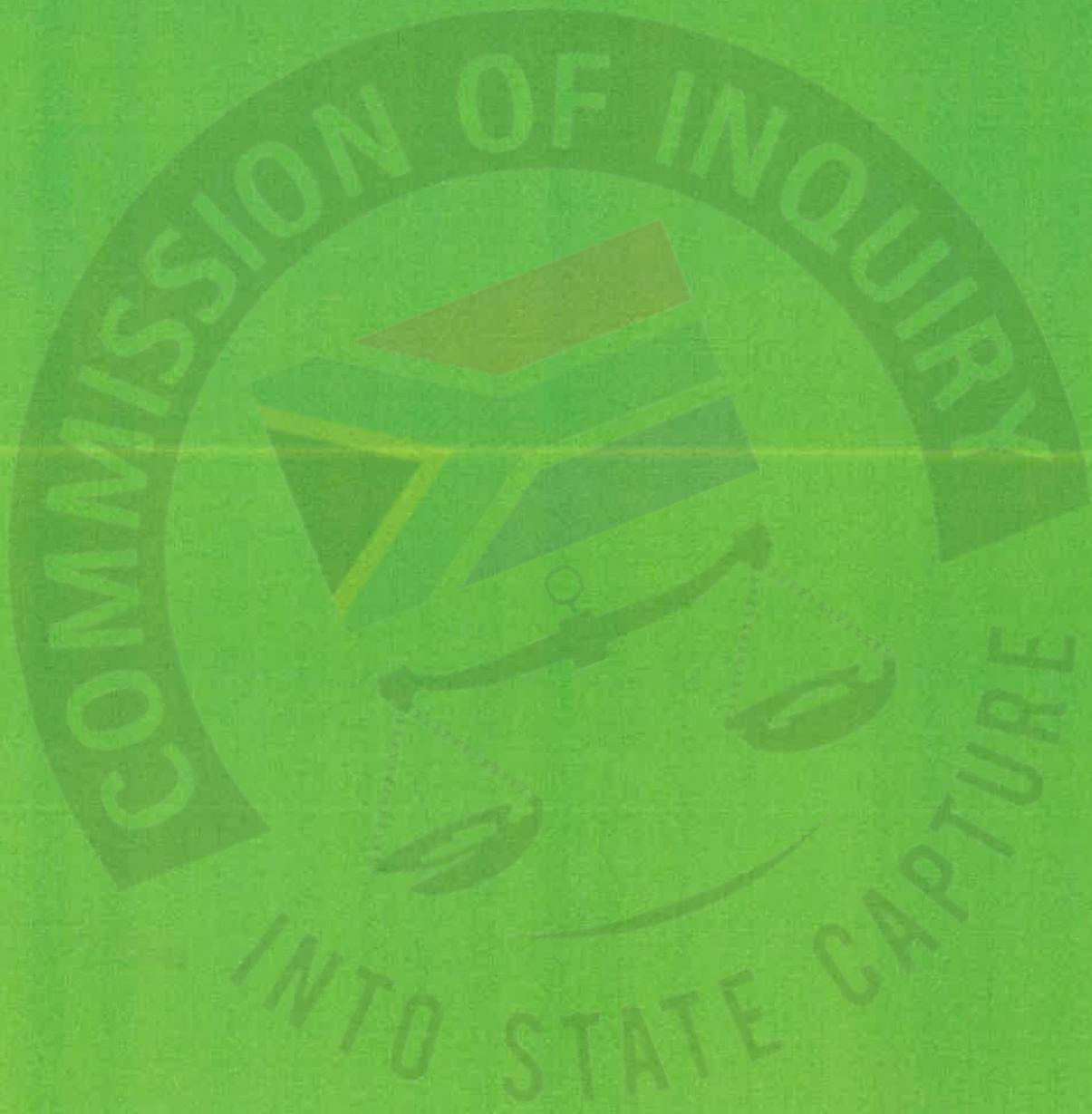
I have advised the lawyers accordingly and have also advised of any further available options. My correspondence in this regard is attached for your information.

Regards

ADVOCATE L.S.MRWEBI
SPECIAL DIRECTOR: COMMERCIAL CRIME UNIT
PRETORIA
27 JANUARY 2012



MA



MEMORANDUM

To: Adv W Greef

CC: Adv K Govender

CC: Adv S Ramouthar

From: BF Manyathi

Date: 18/07/12

S v Madhoe & Panday**Durban Central Cas 466/09/11 (Corruption)****I/O: Col Du Plooy – 0834504340**

Defence Counsel

Accused 1: Mr Maniklall – 0824918843, 0834918843

Accused 2: Ms Somaru – 0837832085 & Adv Howse - 0824682979

1. Copies of statements were given to the defence. The accused appeared for the first time in the High Court on 23 May 2012. I was hoping that we would arrange trial dates, but the defence requested additional information/material. Accused 1 requested copies of CDs and memory sticks. Accused 2 wanted his own expert to copy a hard drive. The Judge ordered that they must put their requests in writing so that there would be no misunderstanding as to what they require. The matter has been postponed provisionally until 31 July 2012. If you are not available, kindly ensure that someone appears in court on that date as I am unavailable.
2. I called both counsel on 2 July 2012 and reminded them to forward me their written requests. To date, I have still not received them. Accused 2 indicated that he wants Adv Kemp SC to be his lead counsel, assisted by Adv Howse. Mr Maniklall indicated that he will probably brief counsel. Trial dates will definitely be late next year. The office file is attached herewith and it contains other relevant information, i.e. memos, e-mails etc.
3. From the initial stage when I took this matter, I was made aware that there were telephone interceptions. On 20 March 2012, I met in Pietermaritzburg

with Col Brian Padayachee from Crime Intelligence. He played me certain interceptions of conversations involving the two accused and other persons. There is nothing in the docket in this regard and the defence has never been made aware thereof. I was still going to deal with that aspect properly before bringing it to their attention. I mean checking the application(s), judicial authorisation(s), whether I would actually use the interceptions in evidence, and all other relevant aspects. This needs to be followed up and a decision has to be made. The interceptions I listened to would add value and weight to the State's case.

4. The money which was allegedly handed to General Booyesen has been forfeited in terms of a High Court order. See e-mails in this regard.

5. [REDACTED]

6. I had not received the docket when we met and therefore nothing significant was discussed, suffice that they maintained that their client was denying any wrongdoing. It was agreed that I would inform them in the event that the police needed to speak to him or to charge him. I have signed S205 subpoena applications for cell records and a bank statement. A decision has not yet been made and it will depend on whether he is willing to become a state witness in the Corruption matter.

7. Both dockets are with the respective I/Os.

Regards
Bheki Manyathi