



EXHIBIT J 1

APPLICATION





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

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APPLICATION BUNDLE

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

In the matter of:

TERENCE NOMBEMBE

Applicant

NOTICE OF MOTION

On **27 September 2018 at 10am**, or so soon thereafter as counsel may be heard, the applicant will seek an order in the following terms:

- 1 admitting the data, referred to as **"the HDD H data"**, on a hard drive (with model number ST500DM009 and serial number Z9ADLVFT), referred to as **"HDD H"**, as evidence before the Judicial Commission of Inquiry into Allegations of State Capture, Corruption, Fraud in the Public Sector including Organs of State ("the Commission");
- 2 admitting the data, referred to as the **"HDD H1 data"** and **"HDD H2 data"**, which has been forensically imaged from **HDD H** onto two further hard drives, referred to as **"HDD H1"** (with model number WD10EZEX-60WN4A0 and serial number WCC6Y0RRVNTJ) and **"HDD H2"** (with model number WD10EZEX-60WN4A0 and serial number WCC6Y6HRF7HX), as evidence before the Commission;
- 3 that the rulings in paragraphs 1 and 2 above will operate on an interim basis, pending a return date to be determined by the Chairperson, on which date Sahara Computers (Pty)

Ltd may show cause, if any, why the rulings in paragraphs 1 and 2 above should not be made final; and

4 further, other or alternative relief.

TAKE NOTICE that the accompanying affidavit of **TERENCE NOMBEMBE** will be used in support of the application.

DATED at Schermbs on this 24th day of September 2018.


Secretary of the Commission

TO:

DEPUTY CHIEF JUSTICE ZONDO
CHAIR OF THE COMMISSION

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

In the matter of:

TERENCE NOMBEMBE

Applicant

FOUNDING AFFIDAVIT

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I, the undersigned,

TERENCE NOMBEMBE

do hereby make the following statements under oath:

- 1 I am the Head of Investigations appointed to the *Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State* ("the Commission") situated at Hillside House, 3rd Floor, 17 Empire Road, Parktown, Johannesburg, Gauteng.
- 2 The facts to which I depose are true and correct and they are within my personal knowledge except where it is apparent from the context that they are not.
- 3 Where I make statements of a legal or technical nature in this affidavit, I do so on the advice of the Commission's legal representatives or technical experts.

Introduction

- 4 The Commission has under its control a hard disk drive from Sahara Computers (Pty) Ltd ("Sahara Computers"). I shall refer to that original hard disk drive from Sahara Computers as "**HDD A**" and I shall refer to the information on **HDD A** as the "**HDD A data**". The Commission also has in its possession forensic images of the **HDD A data**.



- 5 Some of the **HDD A data** has already been disclosed in the media through the so-called "GuptaLeaks" by the journalists at, amongst others, amaBhungane and Daily Maverick. But not all of the **HDD A data** has yet been made public.
- 6 This is an application for the admission of the data (referred to as "**the HDD H data**") on a hard disk drive with model number ST500DM009 and serial number Z9ADLVFT (referred to as "**HDD H**") which has been forensically imaged onto two further hard disk drives (referred to as "**HDD H1**" and "**HDD H2**") as evidence before the Commission.
- 7 The **HDD H data** is an exact replica, forensically made, of the **HDD A data**.
- 8 **HDD A** was made available to the Commission by whistle-blowers. It is critically important for the work of the Commission that whistle-blowers are given the fullest protection possible. Without the assistance of whistle-blowers, the work of the Commission will be severely hampered. Their personal safety is of prime importance. It is therefore necessary, when I describe the events culminating in the Commission's possession of **HDD A**, and then later, **HDD H**, not to disclose in this public affidavit, details that may allow the whistle-blowers to be identified. I will therefore, at times, speak broadly about certain facts. I do so only to protect the identities of those who have risked their safety to ensure that the Commission has a forensic image of the hard disk drive to further its investigations.
- 9 It is probable that at some stage in the future, the identity of the whistle-blowers may be revealed without endangering their personal safety. At that stage, it will be possible to place the full facts before this Commission and the public. Alternatively, the whistle-

 3

blowers may be willing to give evidence in camera. At present, principally for reasons of personal safety, they unwilling to do so.

10 This affidavit is structured in five parts:

10.1 First, I deal with the general approach that should be adopted to this application.

10.2 Second, I set out the background to how **HDD A** and **HDD H** came into the possession of the Commission.

10.3 Third, I address the relevance and reliability of the **HDD A data**, and by inference the **HDD H data**,

10.4 Fourth, I deal with the overarching public interest in the **HDD A data**, and by inference the **HDD H data**.

10.5 Finally, I deal with Sahara Computers' position.

The general approach

11 I am advised that in his seminal work on public inquiries, Beer QC has noted that the rules of evidence developed in criminal and civil proceedings do not, in general, apply to inquiries. The justification for this relaxation of the rules of evidence is that those rules have been developed within an adversarial process and an inquiry is not such a process. If it were required to maintain those rules for admitting evidence, it might well be

prevented from taking into account all relevant information. This would hamper it in the discharge of its mandate.¹

12 This Commission is not a court of law. It is an inquiry established by the President in order to discover the truth about allegations of state capture, corruption and fraud in the public sector. The Commission is empowered to make recommendations. It may not make decisions that a criminal or civil court may make and so determine individual rights and freedoms.

13 It is of the utmost importance that the Commission be able to pursue its terms of reference as widely and deeply as it considers necessary to discover the truth.

14 The Rules of the Commission make it plain that the rules of evidence applicable in a court do not apply here. Rule 6.1 provides that “the Commission may receive any evidence that is relevant to its mandate”. This includes evidence that might otherwise be inadmissible in a court of law. The Rule says that the rules of evidence applicable in a court of law need not be strictly applied to the determination of the admissibility of evidence before the Commission.

15 I therefore bring this application in keeping with the broad terms on which the Commission may receive evidence relevant to its mandate.

16 The **HDD H data** is what is commonly referred to as “electronic evidence”.

¹ Beer QC *Public Inquiries* (Oxford University Press) 2011, 230 paras 5.173 to 5.175

17 The admissibility of electronic evidence in legal proceedings is set out in section 15 of the Electronic Communications and Transactions Act 25 of 2002. Although this section may provide a guide to the Commission on the treatment of electronic evidence by our courts, it should not be regarded as setting requirements for the admission of the **HDD H data**. This is because, as I have set out above, this Commission is not required to observe the requirements for admissibility of evidence adopted by the courts. It is free to admit any evidence provided it is relevant to its mandate and is sufficiently reliable to be taken into account.

18 I address these requirements later in the section of the affidavit dealing with relevance and reliability.

Background facts

19 Before commencing with the background facts, it is important that I explain certain technical terms that will be relevant to the story set out below .

Technical terms

20 I shall refer to a “clone” of a hard disk drive. A clone is an exact replica of the data on the original hard disk drive.

21 I shall refer to a “forensic image” of a hard disk drive. A forensic image is an exact replica of the data on the original hard disk drive made by means of forensic imaging processes, using recognised and specialised forensic software.



- 22 I shall also refer to a "check sum". A check sum is a method used by specialists to assess the authenticity of a data set.

Chain of custody

- 23 The **HDD A data** has been copied, cloned and forensically imaged numerous times. Some of these iterations (simply put, a new version) are iterations of practically all of the **HDD A data** but others are iterations of only portions of the **HDD A data**.
- 24 I have prepared a diagram and accompanying affidavit which set out in detail the full chain of custody for all these iterations. I shall refer to these as "**the full chain of custody documents**". The full chain of custody documents are not required to be presented to the Commission for the purposes of this application. I do not do so in order to protect the identity of various persons referred to in the full chain of custody documents.
- 25 The only iterations of the **HDD A data** that are relevant for the purposes of this application are the forensic images of that data that reside on three hard disk drives: **HDD H**, **HDD H1** and **HDD H2**. The most complete iteration of the **HDD A data** was recovered from **HDD A** by an international data recovery expert and forensically imaged onto **HDD H** by him.
- 26 In order to protect the safety of the international expert who worked on **HDD A**, I will not refer to him by name. Instead, he will be referred to as "the international expert". The international expert has deposed to an affidavit in which he explains the process that he followed in recovering the **HDD A data** from **HDD A** and then forensically imaging it onto **HDD H**. His affidavit also qualifies him as an expert. His affidavit will be filed together

[Signature] 7

with this affidavit but under conditions of confidentiality so that his identity is not publicly disclosed.

- 27 As I set out above, the forensic image of the **HDD A data** that was made onto **HDD H** is referred to as the **HDD H data** in this affidavit. The **HDD H data** has also been forensically imaged onto **HDD H1** and **HDD H2**. Since the data on **HDD H1** and the data on **HDD H2** are forensic images of the **HDD H data**, a reference to the **HDD H data** in this affidavit includes references to the **HDD H1 data** and the **HDD H2 data**, unless I specifically state otherwise.
- 28 **HDD H** is currently being kept safely secured at a location within South Africa. I do not disclose where that location is in this affidavit in order to protect its integrity. But the location is disclosed in the full chain of custody documents. The **HDD A data**, and by inference the **HDD H data**, has been verified for trustworthiness as I set out in this affidavit.
- 29 The full chain of custody documents may need to be submitted to the Commission in due course when the legal team of the Commission presents information obtained from the **HDD H data** and in the event that the veracity of the information is challenged. If the full chain of custody documents need to be presented to the Commission at a time when the identities of persons referred to in those documents still cannot be disclosed for safety reasons, the Commission's legal team will take steps to submit the full chain of custody documents under conditions of confidentiality.
- 30 The full chain of custody documents have also been prepared so that they may form the basis for the admissibility of the **HDD H data** in any future criminal prosecution or civil

proceedings connected with that information. However, for present purposes, it is important to emphasise again that the rules of evidence for admission of evidence in criminal or civil proceedings do not apply to this Commission. This Commission must consider all information relevant to its terms of reference. As I shall set out in more detail below, the **HDD A data**, and by inference the **HDD H data**, is clearly relevant to its mandate.

The narrative

- 31 In this section of the affidavit, I refer to information imparted to me by others. Where I do not identify them by name, I do so in order to protect the identities of the whistle-blowers. Where I refer to events involving the investigators appointed to the Commission, I have personal knowledge of their conduct because they work directly under my supervision.
- 32 I shall refer to the first whistle-blower, who obtained possession **HDD A**, by the name of "Stan". This is the name by which he was referred to publicly in a pre-recorded interview with Stephans Brümmer of amaBunghane on 15 August 2018. The interview was broadcast to the audience at Daily Maverick's event called "The Gathering: Media Edition" in Cape Town.
- 33 The second whistle-blower was referred to as "John" in the same interview with Stephans Brümmer on 15 August 2018. I shall also refer to him as "John".
- 34 A transcript of the interview is attached as "**TN1**".
- 35 After Stan and John took possession of **HDD A**, they looked at the data on it. Having looked at the **HDD A data**, Stan and John saw that it consisted mainly of emails that



related to the Gupta family and their associates. The emails seemed to corroborate what the media had been reporting about state capture. They also appeared to emanate from Mr Ashu Chawla, who was then the Chief Executive Officer of Sahara Computers.

36 Stan did not know what to do with the information. He therefore approached a friend of Mr Brian Currin's for advice. Mr Brian Currin is a human rights lawyer involved in international arbitration and political conflict resolution. I shall refer to Mr Currin's friend, whom Stan approached, as "the friend".

37 The friend did not feel that he had the experience, expertise or network of contacts to assist Stan in the manner that he believed Stan needed. The friend therefore approached Mr Currin because of the nature of the work that Mr Currin had done for decades. This included the work Mr Currin did with others for Captain Dirk Coetzee when he blew the whistle on the Vlakplaas activities in the 1980s under command of Colonel Eugene de Kock.

38 The friend and Mr Currin met with Stan in the week of 13 February 2017. By that stage, Stan had been in possession of **HDD A** for many months and was undecided about what he should do with it. Although he had not read all of the emails contained in the **HDD A data**, he had read enough of the emails to be very well informed about what appeared to be corrupt relationships involving the Gupta brothers, Mr Duduzani Zuma, certain Cabinet Ministers and some of the CEOs and official of the major state-owned enterprises in South Africa.

39 After taking advice about whistle-blower protection, Stan decided to make some of the **HDD A data** available to the media. He did so because of the overwhelming public

interest in the disclosure of the information. But he was very concerned about his, and John's, safety after the information was disclosed.

40 Mr Currin therefore assisted Stan and John to obtain protection.

41 Mr Currin also facilitated the safekeeping of **HDD A**. This included making arrangements for its safekeeping with Mr Greg Nott of Norton Rose Fulbright and then taking it to Nairobi, Kenya during March 2018. Further details of this process are set out in the full chain of custody documents and will be dealt with in the oral testimony of Mr Currin before the Commission.

42 Later in March 2018, Mr Currin contacted the Commission in order to disclose the existence of **HDD A** and to facilitate the Commission's use of the **HDD A** data.

43 On 10 April 2018, members of the Commission's legal team, and an investigator appointed to the Commission, travelled to Nairobi, Kenya, to meet with Stan, John, Mr Currin, an attorney, and three individuals who represented authorities from the United States of America.

44 After this meeting, Mr Currin and his attorney returned to South Africa with **HDD A**. He gave it to me at a secure venue and I arranged for its high security safekeeping.

45 During July 2018, the Commission's representatives made further contact with Stan and agreed with him that the Commission would arrange for an international data recovery expert to perform data recovery on **HDD A**, which, by that stage, Stan thought had collapsed completely. It was agreed that the Commission would use the data recovered

from **HDD A** to further the work of the Commission in accordance with its terms of reference.

46 As I set out above, a pre-eminent international expert in the field of data recovery was selected to do the data recovery. This is "the international expert" referred to above.

47 On 9 August 2018, I retrieved **HDD A** from its place of safekeeping and handed it over to an investigator and an attorney, who then flew out of the country to hand it over to the international expert.

48 The investigator and the attorney handed over **HDD A**, and other clones of it, to the international expert on 10 August 2018.

49 Over the course of the next ten days, the international expert attended to the data recovery and forensic imaging of **HDD A**. It remained in his possession throughout this period.

50 The international expert was able to recover 99,9998269% of the **HDD A** data from **HDD A**. A forensic image was made of this recovered data on a new hard disk drive with model number ST500DM009 and serial number Z9ADLVFT. This hard disk drive is **HDD H**.

51 **HDD A** is currently held being held on behalf of the Commission in safekeeping at a location that I do not disclose in this application.

52 The investigator and the attorney returned to South Africa with **HDD H** on 20 August 2018. On their return, one of the Commission's data expert investigators then made two further forensic images of **HDD H**. They are called "**HDD H1**" and "**HDD H2**". The data expert investigator then took **HDD H** to a place of safekeeping and the Commission's investigators have retained **HDD H1** and **HDD H2** in order for them analyse the information on the drives.

53 I have been informed that two further witnesses will give evidence in public in July 2019 to assist the Commission to complete the chain of custody set out above.

54 Through-out the events described above, various chain of custody forms and non-disclosure documents were completed. Tamper-proof evidence bags have also been used to ensure the integrity of the hard disk drives during their transportation around, beyond the borders of, and on their return to, South Africa. I have not burdened this affidavit with these details because they all appear in the full chain of custody documents that may be presented to the Commission in due course. For present purposes, only the facts set out above are pertinent because they explain how:

54.1 **HDD A** came into the possession of Stan;

54.2 **HDD A** was taken out of the country for data recovery to be performed by the international expert;

54.3 the international expert managed a 99,9998269% recovery of the **HDD A** data and forensically imaged this onto **HDD H**;

54.4 **HDD H** was returned to South Africa and is secured at a location within South Africa; and

54.5 The Commission's investigators now have two forensic images of **HDD H** (**HDD H1** and **HDD H2**) which they intend to use for analysis once this is granted.

Relevance and reliability

Relevance

55 There can be no doubt that the **HDD A data**, and by inference the **HDD H data**, is relevant to the Commission's terms of reference. This is clear from the following.

55.1 The **HDD A data** contains communications and other information relating to the affairs of the Gupta family and their association with government officials and state-owned enterprises.

55.2 The Commission's terms of reference refer repeatedly to the Gupta family. The references appear in the following paragraphs of the terms of reference: 1.1, 1.2, 1.3, 1.4, and 1.6.

55.3 After the President had established this Commission on 9 January 2018, *The Citizen* reported that Ms Thuli Madonsela, the former Public Protector and author of the State Capture Report that gave rise to the establishment of this Commission, urged the Commission to verify the email information about the Gupta family and its associates that had been disclosed through the GuptaLeaks. She is quoted as saying the following:

"The commission of inquiry will now have to authenticate those emails, it will have to go to the original systems to check the veracity or authenticity of the emails"

A copy of this article is attached as "TN2".

56 As the former Public Protector identified in this article, it is important that the Commission's investigators be given an opportunity to work on the **HDD H data** themselves and to use their expertise to analyse and synthesise the data.

57 Once this task has been completed, it will then be appropriate for the Commission's legal team to present relevant information from the **HDD H data** to the Commission in evidence.

58 This exercise should be done unencumbered by, and independently of, what persons, who have worked with the **HDD A data** through the GuptaLeaks (for example, by journalists and academics), have already done. It is therefore necessary for the Commission to have access to its own forensic image of the **HDD A data** and to use it to further its investigations.

Reliability

59 The international expert has already confirmed that the **HDD H data** is a forensic image of the **HDD A data**.

60 After he repaired **HDD A**, the international expert was able to confirm that out of the 976,773,167 logical sectors of **HDD A**, they were able to read 976,771,476. This meant that only 1691 sectors were too damaged to read. Put differently, he was able to recover 99,9998269% of **HDD A**.

61 Furthermore, by running a check sum, the international expert was able to confirm that
the **HDD H data** was an identical replica of the **HDD A data**, save for the 1691 sectors
that were too damaged to read.

62 Although the Commission's investigators are awaiting the outcome of this application to
conduct a full analysis of the **HDD H data**, they have already been able to establish that
the data appears to be authentic. This means that it is what it claims to be. In other
words, the data was actually created by real people in real time, rather than being
manufactured later by someone wanting to make it look like it is genuine when, in fact, it
is fake. I have personal knowledge of the work of the Commission's investigators
because they work directly under my supervision.

63 The following provide indicators of authenticity:

63.1 The **HDD A data** represents the most complete and original data set. As I set out
above, the Commission has in its possession the **HDD H data**, the **HDD H1 data**
and the **HDD H2 data**, which are exact replicas, forensically made, of the **HDD A**
data.

63.2 It appears that **HDD A** was an operational drive in a machine, or, colloquially, a
computer, of a specific user in a corporate environment. It therefore contains
typical machine related system data, as well as, user related data.

63.2.1 System data contained within the **HDD A data** may be used to verify
that the machine was in fact utilised on a specific company network
over a period of time.

63.2.2 User data contained within the **HDD A data** can also be used to identify the user of the specific machine through meta data of documents, emails and other files contained within the user profile.

63.2.3 The **HDD A data** also contains metadata. Metadata can be described as data that describes and gives information about other data. Within a computer system, large amounts of metadata may be maintained on digital files and is usually hidden from the user. This forms a virtual treasure trove for purposes of the authentication of the evidence concerned.

63.3 Since the **HDD A data** is not static, it appears to be information that has actively evolved over the lifespan of the hard disk drive.

63.4 In addition to the system data, user data, and meta data, there are other aspects that can be investigated in order to prove the authenticity of the **HDD A data**.

63.5 The **HDD A data** comprises a large selection of emails stored in an archive which is referred to as a ".pst file". This refers to a "Personal Storage Table", which is an open proprietary file format used to store copies of messages, calendar events, and other items within Microsoft software such as Microsoft Exchange Client, Windows Messaging, and Microsoft Outlook. This points to another indicator of authenticity because the likelihood of a .pst file being manufactured to look as though it is real when, in fact, it is not, is remote. The reason for this is that if one considers that a single email may have several iterations, depending on, for example, how many recipients it has, who replied to what, and how many subsequent actions were taken on this particular email over a period of time, the possibility of fabricating such a massive amount of data to be in such a credible

format, is a gargantuan task, and would easily be identifiable, due to the extremely random manner in which any particular person's individual .pst file develops over a particular period of time.

63.6 In addition to the sheer size of the .pst file, there are a number of other indicators relevant to the authenticity of the emails which the Commission's investigators intend investigating including the following:

63.6.1 Most people either use a personal email account or a corporate account, and some even use both. Much correspondence is delivered via email, including attachments. Emails are composed of "header" information and a "body".

63.6.2 The body of an e-mail contains the text composed by the sender. The header information contains, amongst other things, the sender's name and address, the recipient's user name and address, the transmission date and time and the subject matter of the email.

63.6.3 Additional header information can also be contained within the metadata of an email that provides technical detail such as the route that an email took. Due to the nature of email communications, it usually involves multiple participants. Emails may be sent within the organisation's domain but also outside on the World Wide Web. These communications can be verified by using header information with the outside sources, such as recipient, or dispatching servers, for example, to prove the authenticity of the email.

63.6.4 Authenticating authorship of emails can be also done circumstantially by evaluating information contained in the email, such as for example:

- (a) the purported author's known email address, electronic signatures, names, nicknames,
- (b) a writing style similar or identical to the purported author's manner of writing,
- (c) reference to facts only the purported author or a small subset of individuals including the purported author would know,
- (d) reference to facts uniquely tied to the author or the author's personal information.

63.6.5 A person's name in an email address can sometimes be used to identify a person, especially where an email address emanating from an organisation, public or private, is allocated by setting out the name of the person followed by the domain name of the organisation.

63.6.6 There are other variations that can be used, such as where an email address describes the office or function of the person, rather than their name. However, even this, if allocated to a single person, can also function to identify a particular person, subject to evidence to the contrary.

63.6.7 Various types of software exist to create, send, receive and store email. With corporate email, the email client will connect to the corporate email server, and all email traffic will take place via the

email server. There is a limit on the mail box size, so emails need to be deleted when the mailbox is full or users may archive their emails in an email archive. An email archive may be in the form of a large compressed file, which once opened, contains many email message files and their attachments. This type of content is similar to information contained within a database and have a unique structure. An email archive is a record keeping system that keeps track of the emails, attachments and the order in which data is added. Email archives are difficult to manipulate consistently and can be used in the process of satisfying authentication requirements.

63.6.8 There are a number of ways to establish the authenticity of email communications. These include:

- (a) A witness with personal knowledge of the particular email and its content, such as for example the author or recipient of the email, may testify to its authenticity;
- (b) The custodian of relevant business email archives or backup processed may testify to the archive's, or backup's authenticity, and concomitantly the email itself, as contained in the archive or backup;
- (c) The subsequent conduct or communications of the sender or recipient may also reflect his or her knowledge of the contents of specific email communications;

- (d) If the email was received and accessed on a device in the possession and control of a third party, this may serve to authenticate the original email; and
- (e) There may also be admissions by persons referred to in the emails.

64 Once the **HDD H data** is admitted in evidence, the Commission's investigators will be in a position to undertake these further detailed investigations.

Conclusion

65 The **HDD A data**, and by inference the **HDD H data**, is both relevant to the Commission's terms of reference and probably reliable. The **HDD H data** should therefore be admitted in evidence in order for the Commission's investigators to analyse it and conduct further investigations to authenticate it.

66 In addition to its relevance and reliability, there is an overwhelming public interest in the **HDD H data** being properly analysed and presented to the Commission.

The public interest

67 Admitting the **HDD H data** in evidence may impact on the privacy interests of Sahara Computers. This is because it may be that Sahara Computers did not sanction the public disclosure of the data on **HDD A**. In the final section of this affidavit, I set out the steps that may be taken to ensure that the Commission considers any privacy interests that

Sahara Computer seeks to advance. However, in this section, I set out why there is an overwhelming public interest in the **HDD H data** being admitted in evidence at this stage.

68 I am advised that although the law generally protects the confidentiality of information, there are a number of recognised limitations to this general principle.

68.1 The first is that the principle of confidentiality only applies to information to the extent that it is confidential. Once information has entered the public domain, then, as a general rule, the principle of confidentiality can have no application to it.

68.2 The second is that although the basis of the law's protection of confidence is that there is a public interest that confidences should be preserved and protected, that public interest may be outweighed by some other countervailing public interest which favours disclosure.

69 I am advised that our courts have previously ordered the disclosure of confidential information because the public interest in its disclosure outweighed the interest in protecting the confidentiality of the information. For example:

69.1 In *Independent Newspapers*, the Constitutional Court granted the media access to certain documents that had been classified by the Minister of State Security as "secret" or "top secret".²

69.2 In *Tshabalala-Msimang*, the Gauteng High Court refused to interdict the media from publishing the private medical records of the former Minister of Health, Ms Manto Tshabalala-Msimang despite the fact that they had been unlawfully

² *Independent Newspapers (Pty) Ltd v Minister of Intelligence Services: In re Masetlha v The Republic of South Africa and Another* 2008 (5) SA 31 (CC) paras 43 to 47 and 79

obtained, because the public interest in the disclosure of the records outweighed Ms Tshabalala-Msimang's privacy interests.³

69.3 In *SAA*, the Gauteng High Court refused to interdict the publication of South African Airways' privileged legal opinion because of the overwhelming public interest in the disclosure of the legal opinion.⁴

70 This Commission is investigating matters of ultimate public concern. There should be no obstacle in its path. The duty to investigate matters of state capture, corruption and fraud in the public sector, including state owned enterprises is integral to the well-being of all South Africans, and in particular, its poor people. The privacy concerns of Sahara Computers cannot be allowed to outweigh their consideration.

71 In any event, it is apparent from public statements from various members of the Gupta family that Sahara Computers may not claim privacy at all. Their version appears to be that the leaked emails were fabricated. In this regard, I attach, as annexure "TN3.1, a copy of an article published in *The Citizen* on 3 August 2017 entitled "Emails? What emails? Atul Gupta denies everything; Despite how improbable it is that someone could have made up 100 000 emails, the richest Gupta brother would like us to believe they're all fake".

72 There has already been extensive public reporting on some of the **HDD A data** through GuptaLeaks. The first leaks included the following:

³ *Tshabalala-Msimang and Another v Makhanya and Others* 2008 (6) SA 102 (W) paras 44, 46 and 50

⁴ *South Africa Airways SOC v BDFM Publishers (Pty) Ltd and Others* 2016 (2) SA 561 (GJ) paras 53 and 65

- 72.1 The Bell Pottinger proposed press release during March 2016 that would have implicated deputy finance Minister Mcebisi Jonas in receiving bribes from a South African businessman. A copy of this article is attached as "TN3".
- 72.2 How, two months before the former President, Mr Jacob Zuma, appointed Mr Mosebenzi Zwane as Mineral Resources Minister, his *curriculum vitae* was sent to the Gupta family "for consideration". This is reflected in an article attached as "TN4".
- 72.3 How Minister Faith Muthambi exchange proposed drafts of a Presidential Proclamation with associates of the Gupta family before the proclamation was promulgated. A copy of this article is attached as "TN5".
- 73 The confidentiality that remains in the **HDD A data** is therefore limited. The Commission's investigators are awaiting the outcome of this application in order to conduct a thorough analysis of precisely how much of the **HDD A data** is already in the public domain and how much has not yet been publicly disclosed.
- 74 The Commission received the **HDD H data** only on 20 August 2018. It is important for it to conduct its own authentication analysis on the **HDD H data** and then to incorporate that information in its on-going investigations. As and when those investigations are completed, the legal team of the Commission will then present the information to the Commission at its future hearings.
- 75 It is therefore very important for the Commission's expert data investigators to be able to commence analysing the **HDD H data** in order not to delay the completion of the Commission's work.

76 It is also in the public interest that the integrity of the process that has been followed thus far by the Commission's investigators and legal team be recorded. If anything were to happen to any of these individuals in due course, it is important that the Commission has a record of the chain of custody in order for this to provide a basis for the admission of the **HDD H data** in any future criminal or civil proceedings.

77 Mr Currin, who has been one of the key role-players in securing the **HDD A data**, and therefore the **HDD H data**, for the Commission's work, has also informed me that it is in the interests of his and his family's safety that he is able to speak publicly now about his involvement.

78 In the light of all these considerations, I respectfully submit that it is in the interests of advancing the Commission's mandate and in the public interest generally, that the **HDD H data** be admitted in evidence before the Commission.

The position of Sahara Computers

79 For all the reasons advanced in the preceding section, I submit that the ruling sought must be granted now. However, in order to cater for the possible privacy interests that Sahara Computers may have in opposing the ruling sought, I have made provision in the notice of motion for the ruling to operate on a provisional basis pending a date, to be determined by the Chairperson, for Sahara Computers to show cause (if any) why the ruling should not operate on a final basis.

I, therefore, seek a ruling in terms set out in the notice of motion to which this affidavit is attached.

Twebb
DEPONENT

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me, Commissioner of Oaths, at Hillbrow on this the 26th day of SEPT 2018 the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

[Signature]
COMMISSIONER OF OATHS

FULL NAMES: KHUMANA MASHIA
ADDRESS: 1 CHARENDA PLACE
EX OFFICIO: HILLBROW



TN1

IN THE COMMISSION OF ENQUIRY INTO
ALLEGATIONS OF STATE CAPTURE

Stefaans Brümmer in conversation with the #GuptaLeaks whistle blowers

Person A – seated on the left

Person B – seated on the right

Stefaans: John and Stan, you left the country around the time that we started publishing the Gupta leaks. That was for your safety. In this interview you are still not identified. Do you see a time when you'll be ready to tell the world who you are.

Person A: I think we do see the time, when we'll be identified and we'll tell the world who we are. That will come. Not now... but... let's see how we go.

Stefaans: John.

Person B: Yah, we do feel the same way. As you know that home is home. We'd prefer to come back... but for now, we would like to still remain anonymous.

Stefaans: Hhmmm of course leaving home in a hurry like both of you did and leaving behind careers can be very very disruptive. Hmm without giving away where you've been can you give us an idea of a whistle blowers life on the run?

Person A: Sometimes, leaving home... well, we know that leaving home can be quite dramatic and traumatic as well... in our case it was... it was quite quick. We had to get away. And, from time to time when you're away... out the country... you kind of think... why on earth did I do this? But you know why you did it.

Stefaans: John I think, I think in your case hhhmm, there was possible slightly less disruption because you had another place to go to at least for a while. Hmm how has it been?

Person B: Your life, your thoughts are where you used to be. So it'll be taken away... although I've got two homes, still its destructive to me. I could just add to that. Not having

a home... is quite an experience... and it's been quite some time... that I've not had a home. And I do look forward soon, to be back home again.

Stefaans: You've been quite the nomad.

Person A: A nomad... travelling, worried, concerned. But yah, job done.

Stefaans: Of course then the next question is whether you were ever afraid before or after you left hmmm that the Guptas or maybe people close to them would get to you and do actual physical harm.

Person A: Yes, the people like the Guptas and possibly others... doing us harm, has always been at the back of our minds, sometimes foremost in our thinking. But... we did take that into account for many months, before we decided to actually go ahead with this and contact the right people. And I think it's... it's been fine. It's been alright.

Stefaans: Ja and John I think your circumstances were slightly different but again you know there there was a real issue and you had to get out.

Person B: Yes, they were very, very difficult. And they... as of now... I'm still not comfortable about it... because... I don't know what might happen, but... as of now because we are working with good people. I do feel comfortable but I still maintain that I'd rather be where I am.

Stefaans: And of course until you are willing to come out in person hmmm we cannot tell the whole story of the leaks, how they came to be in your possession and so on. Hmmm many people have asked us are these things were they obtained legally. Hmmm were they hacked were they stolen? Hmmm what's your answer to that?

Person A: Of course, right now is not the right time... to describe precisely how the whole of the events originated... but we can say, and we have had advise... that everything we've done has been above board... legal, ... and proper. And on that basis, knowing that we decided that it was the right thing to do to release this information.

Stefaans: For us of course we don't necessarily and there is even legal judgment to that effect that whether something is legally obtained or not is not the ultimate question. The question is whether this was in the public interest.

Person A: Oh yes, absolutely, that was one of the things that we were assured. That the information was not only... properly obtained, rightfully... but one of the words that came out which persuaded us to do what we've done, is that it was in the public interest. And that, the country as a whole, really needed to get this information. Although it took us time to give that information out, we're very happy that we've done that.

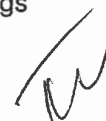
Stefaans: Of course there there can be no doubt that the leaks served the public in quite an unprecedented way. Hhmmm I cannot think of another instance of of whistleblowing having such effect since 1994 and possibly before. Hhmmm when you decided to make the leaks public and John I think it would be interesting to hear what you have to say about that. Did you think that it could lead to headlines in the way that it did to civil society and political parties rallying in the way that they did. Hhmmm to the ANC itself looking internally. Hhmmm the self-examination that came from companies internationally in fact and ultimately a president prematurely vacating his post.

Person B: Yes we did, and the one thing that really motivated us was to say, why we did it and we did it for the interest of the community. It was not for our interest but it was for the interest of the community, to discover between the right and the wrong.

Stefaans: Would you ever have imagined Stan that anything like this could have come about because of one small little decision agonising as it may have been that the two of you took.

Person A: Well the decision wasn't actually small. It was quite a large decision and it wasn't done with any political agenda in our minds because we're not political in any form or shape whatsoever. It's a matter of right and wrong. It's a matter of a necessity for people to see, and to be given... information that can help them, and a system if that is what they choose. For them to do exactly what they would like to with that information. But yes, I don't think I could imagine what might have happened. Certainly the fall of a president was not in our minds at all. At any time if that was the consequence, and right has taken over from wrong, then that's fine. But the idea of overthrowing a president in that kind of sense... no ways! We're not in that position, we're just regular South Africans.

Stefaans: In our experience there's been many more whistle blowers coming forward so you would find that that people from the remotest parts of the country contact us telling us about things in their communities, about their municipal counsellors, hhmmm about things



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that, about service delivery, hhmhm whatever that is not working as it should in their communities and I think that's been one effect of all of this. Hhmhm possibly something that you can pat yourself on the backs for.

Person A: Oh yes, I think when we met you guys, the journalists, one of the very early requests that we made, without requiring it, was that it was essential that the message got out. And if we are whistle blowers, which I think we've been told this is what we are, we didn't think of it in that sense but it's a good thing. What we've done is a good thing. It is conscience and right and wrong has driven us to make the decision to be where we are today.

Stefaans: There was this period and I think it was quite a while that that hhmhm you were in possession of these leaks before you approached people who ultimately approached people who ultimately got to us kind of thing and hhmhm where you were introduced to the Daily Maverick and amaBhungane. Hhmhm so during that period before you made your decision to go public with this hhmhm you had a lot of knowledge, privileged knowledge. It must have been quite surreal I imagine to, to know things that the rest of the country could only have been guessing at.

Person A: There were a lot of very funny moments where we were interacting with a television set. And, we were watching these programs. One of them I seem to recall was... SABC parliamentary inquiry or something like that. And we heard one person giving evidence about a document that somebody was carrying or transporting to a floor near the top of the SABC building. And we were shouting at the TV, we said: We have that document. And there was nothing we could do. So with that document, which eventually we saw in all the publications, we're very happy that we found our way to the Daily Maverick and to amaBhungane. They have looked after us extremely well, they've ensured our safety... and we would recommend anybody, if you every have any information, much like ours or anything that is of value, these are the right guys to go to.

Stefaans: Well thank you for that. We didn't ask for a free editorial here but hhmhm I think you mention at one stage even seeing the President and feeling somewhat uncomfortable about what you saw.

Person A: Yes. Not only our TV, he actually motivated us in a way. Gave us reason. Because when he acted... in parliament... the kind of thing that I have sort of tried to mimic, maybe I'm not good at it but he always used to go [laughing]. When he did that I

- 5 -

just thought. No Mr President, you shouldn't be doing that. Presidents don't behave like that. And in a way it motivated me even further, not for revenge or to get back at him, It just motivated me further. Besides other things that I read and saw... in the e-mails. It just gave a little bit of an extra nod to yes, this must be done. People must see what is behind this laughter.

Stefaans: So there was, as we say, this gulf hmmm between the one reality and the real reality that you saw. John why did you it?

Person B: It was not for the best of our interests, it was for the best of the community. To see how they feel. People they have been complaining and they want to see the change, well let us put it out for the people to decide. It was not for us but for the community.


Stefaans: And now that you've been there and done that do you have any advice for other would be whistle blowers?

Person A: Yes, think carefully, your safety, and honestly... you really need to know where to go. That was one of our single biggest problems, and the only advice that I can give to any potential whistle blowers, is choose the right people.

Stefaans: Of course, there's risk. One never knows until you try it.

Person B: I suppose really you're quite right. But before you attempt to do anything, what you need in life is to find. Do I have protection? If you said that there is no protection, even if you might be doing the right thing, what is the point of doing that? Because other than that, you might just destruct your life... because most of the people in the community, there are very few people that don't love to see what you are doing. Especially once you are doing a good thing, most people they don't like it. But when you do bad things, they follow you.

Stefaans: Right so the best laid plans often come to nought and as it happened hmmm there were events beyond your and our control that caused you to have to get out of the country much earlier than planned. Can you tell us about this feeling of suddenly having to roll up a life when you thought maybe you doing it in x amount of time and now you have to do it immediately and people are telling you, you need security and hmmm you need to leave loved ones behind at a time when you hadn't said your goodbyes properly etc.



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Person A: Yes that's true. That did happen. We did leave much earlier than we had planned. But, we did that. We managed it. Our lives were in far greater danger at that particular point in time, and it was quite traumatic.

Stefaans: You were irreticent though. You were quite reticent at that stage.

Person A: We were scared. We were very scared. I mean.

Stefaans: But there were also things that tied you down.

Person A: It's not easy to... to abandon your place where you live. But, we stuck it through, we saw it out, and in simple terms, mission back on track.

Stefaans: If I may just, just raise one more thing. There was like but I first need to fix the gutters and we said the gutters really don't matter.

Person A: Oh the gutters! Yah, that's another story. There were so many tasks to do before one could go. But, we managed, we managed. We did it ok. It was tough, as I said before, it was traumatic, the gutters were one of the things that were quite funny in a way, but yah. We managed.

Stefaans: And John, I think there were several members of your family who needed to be convinced to go, who needed to be gotten together, packed off out of the country. Were they resistant?

Person B: Yah, they were, but... for the scare of their lives I did manage to tell them that no, there is nothing more that I can do. But for your safety, we have to leave. And they accepted my decision that we have to leave. Although, it was something that they didn't like at all, and they still don't like it at all, because home is home.

Stefaans: Considering all of this, would you do it again if the same set of circumstances applied again?

Person B: Only if I meet the right people, I would've, because this is something that you don't just do from nowhere. First of all, you have to find the right people who will assist you and who you can try and get more advise to say, the only thing to do, you have to do the right way. But because we did manage to find the right people, that's why we said, we

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- 7 -

are going to do it. But if we don't find the right people, there is no way that I can do this. Do it again? To be honest... in the last year there have been times when I have said I'll never do this again. But then you remind yourself of why you started this whole process, and I'm that one kind of person that, if I start something I see it through. And when you use the logic of why you did it, it prevails over any regrets that one might have. And sure, there is a lot of good reasons why one would not want to do this. And I'm sure there are lots of whistle blowers out there. Potential whistle blowers, who don't do what we've done. And I'd urge them, think carefully, make good decisions, consult, and if you feel that you want to play a role in providing information and you want to bring right over wrong, and your conscience is playing with your mind, do what we did. It's the right thing.



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THURSDAY, JANUARY 11, 2018

South Africa's former Public Protector calls for fresh probe on Zuma's phone records

Summary

Ms Madonsela who headed the country's anti-corruption watchdog led the investigation into alleged undue influence of the president's wealthy business friends on government appointments and contracts, and released a report known as the State of Capture. The 2016 report recommended the setting up of a probe team.

Pretoria. South Africa's former Public Protector Thuli Madonsela wants the newly appointed commission of inquiry on the state capture to begin with forensic probe into President Jacob Zuma's phone records.

Ms Madonsela who headed the country's anti-corruption watchdog led the investigation into alleged undue influence of the president's wealthy business friends on government appointments and contracts, and released a report known as the State of Capture. The 2016 report recommended the setting up of a probe team.

The advocate has however lamented that the commission, set up by President Zuma after a court ordered him to do so, is a little late and that the mobile phone records may be unavailable.

"Cellphone records are kept for a limited period and I'm not sure if we're still going to get them," she said.

While welcoming the decision to set up the inquiry, she said it was "two years too late, if you look at when the first whistle-blowing happened, and more than a year after I had asked him [Zuma] to establish a commission. But better late than never," Ms Madonsela said.

On Tuesday night, President Zuma made announced that he had decided to appoint a commission of inquiry into the state capture to be headed by the



deputy Chief Justice Raymond Zondo.

The appointment comes after a court ruling in December that ordered the beleaguered president to abide by the anti-corruption watchdog recommendations and let the Chief Justice Mogoeng Mogoeng pick the judge to head it since Mr Zuma was implicated in the investigation.

Ms Madonsela has warned that the inquiry would be a waste of time if it ventured outside the parameters of what was prescribed by her report. She said the recommendations were made because her office did not have sufficient time or resources to comprehensively investigate the issues. She released the report a day before her seven-year term as Public Protector came to an end.

Ms Madonsela also urged the inquiry to verify several emails, dubbed the #GuptaLeaks, which revealed the alleged extent of state capture by the wealthy Gupta family and their associates.

The Guptas, who run several businesses in South Africa, allegedly benefited from their relationship with President Zuma. The Guptas and Mr Zuma both deny the allegations.

"The commission of inquiry will now have to authenticate those emails, it will have to go to the original systems to check the veracity or authenticity of the emails," she said.

<http://www.thecitizen.co.tz/News/africa/South-Africa-s-former-Public-Protector/3302426-4259802-ufuc3ez/index.htm>

FW

south africa 3.8.2017 05:01 am

Emails? What emails? Atul Gupta denies everything

Yadhana Jadoo

Despite how improbable it is that someone could have made up 100 000 emails, the richest Gupta brother would like us to believe they're all fake.

Atul Gupta says the more than 100 000 e-mails leaked about his family and their businesses are fake – but the journalists who first received them have no doubt about their authenticity.

And they say there are just too many of them to have been manufactured.

Sam Sole, one of the journalists who founded the amaBhungane investigative journalism unit, told The Citizen: “We don’t have any doubt about the authenticity and there is nothing so far that we have published that has been challenged as implicated in the e-mails.”

In a defensive interview with the BBC this week, one of the family’s brothers, Atul, said the leaked e-mails suggesting his family used links to President Jacob Zuma to win contracts and influence decisions were fake.

Gupta, whose family business empire spans media, mining and technology, told the BBC he had no idea where more than 100 000 documents and e-mails released since June had come from.

But Sole, one of the journalists reporting on the issue, said he was not sure on what basis Gupta was questioning the e-mails.

“We are quite sure of its authenticity. We know where they came from and who gave them to us – you can see the internal consistency of material. It’s simply too big to fabricate – so there is nothing we have come across that has raised doubts about it.”

Reports based on the e-mails have drawn several international firms into the scandal and have prompted politicians to call for a judicial enquiry and Zuma’s resignation.

Zuma and the Guptas have denied wrongdoing.

“There’s no authenticity of Gupta leaks at all,” Gupta told the BBC, without suggesting who might have forged them or addressing specific allegations in the paperwork.

A family spokesperson said last month the allegations were false and part of a “blatantly political campaign”.



Gupta said his family also had no role in a publicity campaign by London-based public relations firm Bell Pottinger that cast enemies of Zuma as agents of “white monopoly capital”.

The slogan, aired frequently on Gupta-owned ANN7 television station, quickly gained traction.

Deputy President Cyril Ramaphosa and opposition party members have said the campaign inflamed racial tensions.

“White monopoly capital, if you go and research any revolutionary speech in this country, always existed. I don’t know where any of these terms come from, believe me,” Gupta said.

The leaked e-mails suggested Bell Pottinger worked with Zuma’s son Duduzane, who was then a director at a subsidiary of the Gupta-controlled Oakbay company, to create a “narrative that grabs the attention of the grassroots”.

Bell Pottinger ended its work with Oakbay in April and last month apologised for the campaign. The firm is also under investigation by Britain’s Public Relations and Communications Association.

Last month, Public Protector Busisiwe Mkhwebane announced a new investigation into state capture.

But the Democratic Alliance said she refrained from providing details of whom or what she intended to investigate.

“Of course we were sceptical, given her track record in office to date,” said DA leader Mmusi Maimane.

“So I wrote to her and asked her to explain the scope of this new investigation. Since the previous public protector’s report, we’ve seen hundreds of thousands of Gupta e-mails directly implicating the president and the three brothers in the looting of our resources. She has enough evidence.” – news@citizen.co.za

<https://citizen.co.za/news/south-africa/1596770/emails-what-emails-atul-denies-everything/>

Tw

TN3

Spin doctors of smear: PR firm conspired with Guptas to paint Mcebisi Jonas as corrupt

30 May 2017 - 09:29 By SABELO SKITI and SIPHE MACANDA

Gupta family associates plotted with UK public relations firm Bell Pottinger to launch a smear campaign against the Treasury by painting former deputy finance minister Mcebisi Jonas as corrupt, leaked e-mails show.

They also show that President Jacob Zuma's son, Duduzane, put himself in charge of a fightback by the Gupta family as they sought to counter reports about their relationship with several government leaders.

Damning e-mails exposing the extent of the Gupta's control over the state also shed more light on the family's relationship with the controversial UK PR firm.

Correspondence shows that the plot against Jonas was hatched a day after he said he turned down a bribe offer, which included him being appointed finance minister after the removal of Nhlanhla Nene.

The parties drafted a press release purporting to come from Hamza Farooqui, managing director of WorldSpace SA, and a partner of Gupta associate Salim Essa in Vardonspan, the company that wanted to buy Habib Bank.

Farooqui's statement, drafted by Bell Pottinger employee Nick Lambert on March 17, read: "I can confirm that I paid inducement fee to Deputy Finance Minister Mcebisi Jonas, through the chief of staff to the Ministry of Finance, Pule Setai, and relative of Jonas's, as well as provided other benefits, such as flight upgrades and luxury hotel rooms. I am willing to sign an affidavit in support of the above statement. I am making this statement in a bid to shed light on corruption within the Ministry of Finance."

The statement was, however, not released because Bell Pottinger's Victoria Geoghegan later said the media would not run the story because of the possibility that it would provoke litigation.

Farooqui read, but did not respond to, a Whatsapp query from The Times about the statement.

Gupta family lawyer Gert van der Merwe has released a statement saying that Sunday's reports relied on "undisclosed documents and assumptions of impropriety resulting in a clear intention to influence political perception, which is another example of fake news".

Van der Merwe said the Gupta family denied any wrongdoing or paying any amounts to ministers or the president, and reserved its rights.

Duduzane Zuma, who did not respond to numerous requests for comment, was fingered in a Sunday Times report yesterday for his influence over the government.

The e-mails show other work done by Bell Pottinger as part of its public relations work for Oakbay and the Gupta family, which included looking at and revising press statements made by the Umkhonto WeSizwe Military Veterans Association and drawing up notes for ANC Youth League president Collen Maine ahead of a rally in February last year. Central to the work done were former Oakbay CEO Nazeem Howa and Bell Pottinger's Geoghegan and Lambert, who seem to have overseen most of it.

During that time, the PR company discussed the possibility of lobbying the "ANC or constituent bodies" to react to a press release issued by the EFF in Gauteng that threatened to drive the Guptas out of the province.

Geoghegan asked whether the party could not be lobbied to say something along the lines of: "The EFF comments fly in the face of the revolution against apartheid: threatening the safety and security of workers and committing to physically drive people out of South Africa on the basis of their race is behaviour unbecoming of our people, our

The company had also told Duduzane Zuma it saw its role as deflecting criticism directed at President Zuma and turning the nation's focus to the need for "economic emancipation".

In return for these services and others, Bell Pottinger asked for a £100,000 a month retainer, excluding costs, such as those for travel for a team that visited South African every month.

In a responding e-mail, Duduzane Zuma thanks Bell Pottinger and asks that the company assist him in a campaign he was undertaking involving research he had done.

"It will also require a visual campaign of sorts: T-shirts/banners etc where I will require assistance, whether it be in the designing and creating a hard hitting message along the lines of the #EconomicEmancipation or whatever it is," he said.

Though it is not clear whether these campaigns were ever executed, the ethos is similar to that of the #WhiteMonopolyCapital campaign which, the Sunday Times previously reported, was also influenced by Bell Pottinger.

It was reported at the time that an aggressive strategy was adopted to portray the Guptas as victims of a conspiracy involving "white monopoly capital".

At the time all involved denied a conspiracy but the e-mails show there was a concerted effort to drum up popular support for the family against what was perceived to be a "media onslaught".

This included roping in the ANC's Youth League and the military veterans.

Attempts to get comment from youth league national spokesman Mlondi Mkhize were unsuccessful.

In response to the allegations, Bell Pottinger commented, "Virtually everything that has been written to date about Bell Pottinger's work in South Africa for Oakbay Investments,

has been inaccurate or based on fabricated documents. Bell Pottinger ceased work for Oakbay in April 2017."

<https://www.timeslive.co.za/politics/2017-05-30-spin-doctors-of-smear-pr-firm-conspired-with-guptas-to-paint-mcebisi-jonas-as-corrupt/>



W

TN4

Elon Musk Quits Tesla After - Failing To Go Private

Tesla share prices plummet after news of Elon Musk leaving. What will he do next? jobgoldenrules.com/Elon-Quit-Tesla

OPEN

News

Exposed: Explosive Gupta e-mails at the heart of state capture

28 May 2017 - 02:05 By THANDUXOLO JIKA



The Gupta family has been caught up in a new controversy.
Image: MARTIN RHODES

A series of damning e-mails seen by the Sunday Times show that the Guptas run South Africa.

The explosive evidence comes as President Jacob Zuma fights for his political life amid mounting confirmation of state capture and growing opposition in his own party to his links with the family.

The e-mails show the extent of Gupta control over cabinet ministers and parastatal CEOs and board members. The correspondence also gives insight into the role of Zuma's son Duduzane in presidential matters. Duduzane is a close Gupta associate and is believed to have made billions through this partnership.

Another series of explosive e-mails show that the Guptas were central to a scheme for Zuma and his family to acquire residency in Dubai in the United Arab Emirates.

However, Zuma yesterday denied the claim, saying his only home was in Nkandla.

Along with Gupta brothers Ajay, Atul and Tony, Sahara CEO Ashu Chawla emerges as a key player in the intricate web of state capture.

On several occasions Zuma has asked his critics to come forward with proof that he has done something wrong. In December he asked "Tell me what is it that I have done wrong?" while addressing a youth league rally, adding that his removal would be a victory for white monopoly capital.

Two weeks ago, on May 14, Zuma reiterated his position: "If I am not told what I have done wrong, I cannot correct my mistakes because I don't know what I have done wrong."

WATCH: 9 things revealed from the Gupta e-mails

In the wake of Zuma's repeated denials of any wrongdoing, the Sunday Times today publishes evidence of the Gupta family's unprecedented control over government affairs.

Mr President, here is the proof!

The e-mails reveal that the Guptas:

- Were sent Mosebenzi Zwane's CV a month before he was appointed minister of mineral resources;
- Intervened to have the powers of the then communications minister, Faith Muthambi, strengthened and were forwarded a presidential proclamation detailing her powers by Muthambi herself before it was signed by Zuma;

ADVERTISING

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- Received confidential information on cabinet meetings from Muthambi;
 - Paid for Des van Rooyen's trip to Dubai after his appointment to the cabinet in December 2015;
 - Arranged for Denel director Dan Mantsha to be chauffeured around Dubai;
 - Paid for a deluxe suite for Matshela Koko - subsequently appointed acting CEO of Eskom - at the luxurious Oberoi Hotel in Dubai;
 - Were asked by an SAA board member to get him onto the board of Transnet;
 - Had staff coach Zwane on how to handle media conferences, including questions about his relationship with the Guptas. He flew on a Gupta jet to Dubai and they picked up the tab for his accommodation; and
 - Had their company's CEO, Nazeem Howa, prepare notes for ANC Youth League president Collen Maine advising him on how to respond to media questions.
- Here they are: The emails that prove the Guptas run South Africa

HERE ARE SOME OF THE DETAILS UNCOVERED BY THE SUNDAY TIMES:

• A second home for Zuma in Dubai

On January 16 last year two draft letters were circulated from Tony Gupta to Chawla and then to Duduzane Zuma with subject lines: "JZ letter to Crown Prince AUH" and "JZ letter to Sheikh Mohammed".

In one of the letters prepared for Zuma, he writes to "His Highness Crown Prince of Abu Dhabi, General Sheikh Mohammed Bin Zayed Al Nahyan", congratulating him on initiatives for the developing and planning of Abu Dhabi. In the second letter Zuma commends "His Highness Vice President and Prime Minister, Sheikh Mohammed Bin Rashid Al Maktoum" for his "dynamic rule and visionary leadership".

He continues to sing both their praises and then requests their "guidance and direction" for making the United Arab Emirates his second home.

"It is with this sentiment that I am happy to inform you that my family has decided to make the UAE a second home. It will be a great honour for me and my family to gain your patronage during our proposed residency in the UAE."

Two months after the draft letters, Zuma added Dubai at the last minute to his Saudi Arabia state visit. There he met Sheikh Mohammed Bin Rashid Al Maktoum, to discuss a "number of regional issues".

At the time, the Sunday Times reported that sources close to the Presidency confirmed that the Dubai stopover was indeed added at the last minute.

• The ministers

Des van Rooyen

E-mail correspondence prove that Van Rooyen repeatedly lied when he said he paid for a private trip to Dubai shortly after his appointment to the cabinet in December 2015.

At a press conference in April 2016 Van Rooyen vehemently denied that his December 21 trip was done at short notice, saying it was planned long before his brief appointment as finance minister and later minister of cooperative governance and traditional affairs.

At the time he said: "It was a private visit, I paid for that myself. You know I didn't have enough [money]. I was supposed to stay for a week, but you know, it was in and out".

The e-mail correspondence, however, shows that the trip was sponsored by the Guptas and booked just a day before his departure on December 21.

Reservations e-mails from the luxurious five-star Oberoi Hotel to Chawla confirm that bookings were done by the Gupta-owned company.

Van Rooyen was chauffeur-driven with a Jaguar XJ L from the airport to the hotel and booked a deluxe suite, which costs about R6,000 a night. The room reservations from the e-mails indicate that the booking at the hotel was for two adults.

Chawla sent Van Rooyen's reservation confirmation to Salim Essa, a Gupta associate who owns shares in several of the family's companies.

The Sunday Times reported last year that Van Rooyen's advisers - two days after his appointment as finance minister - leaked confidential cabinet information to Essa, saying "Gents Finally".

It has been widely claimed that Van Rooyen's appointment as finance minister was influenced by the Guptas. He even arrived at the Treasury with two advisers said to be linked to the Guptas, Mohamed Bobat and Ian Whitley. The two moved with him to cooperative governance.

The Sunday Times also reported that Van Rooyen visited the Gupta compound in Saxonwold, Johannesburg, for seven consecutive days before his appointment as finance minister.

- Gupta e-mail scandal: 'We've done no wrong'

Mosebenzi Zwane

The Guptas hand-picked Zwane as mineral resources minister a month before Zuma appointed him to his cabinet in September 2015.

On July 31 2015, one France Oupa Mokoena, from Koena Consulting and Property Developers, e-mailed Tony Gupta to say: "Please find attached the CV of Mr Mosebenzi Zwane for your attention."

Three months after his appointment, Zwane stood up embassy officials when he left Zurich for Dubai in a Gupta-owned plane, on December 2.

Zwane, a staunch Gupta defender, was on a working trip in Zurich where he helped to facilitate the sale of the Optimum coal mine in Mpumalanga to a company owned by the Guptas and Duduzane Zuma.

E-mail correspondence between Chawla and the crew flying the Gupta plane reveal that Zwane flew out of Zurich with Essa, Tony Gupta and other people.

This was despite a flight ticket on an Emirates flight being booked by his department to fly him to Dubai.

E-mails from the Oberoi Hotel to Chawla confirm that Zwane's stay at the five-star hotel overlooking the Burj Khalifa was paid for by Sahara.

Zwane was chauffeured around in a BMW 7 Series. Chawla advised hotel reservations to charge the cost of the chauffeur services to a certain Mr Singh.

Further evidence of the Guptas' influence and hold over Zwane is contained in another e-mail last year.

With a subject line reading "Zwane questions", former Oakbay CEO Howa e-mailed Tony Gupta and Duduzane Zuma on February 2 last year.

"I need some help on some of the answers. I think we should also prepare for a question of his role around the Waterkloof landing.

"Perhaps I can sit with someone at his side to help me polish and add to the answers. Lets chat when you have a chance to review."

Howa drafted questions that included:

- "Given this perfect storm, you have been described as unsuited to the role of minister of mineral resources given your inexperience?"
- "Critics have slammed your appointment as proof of government's alarming lack of urgency in dealing with SA's ailing mining sector and its ambiguous regulatory framework?"
- "Your appointment seems to be really irregular? You were silently moved from MEC for Agriculture to mining minister. what do you think the president saw in you to give him the confidence to appoint you?"
- "Analysts say the mining industry is at its lowest ebb ever and this can be directly attributable to legislation, policies, ideology, corruption, inefficiency, political demagoguing, organisations not adhering to the constitution and draconian labour legislation. What is your comment?"
- "What about the rumours of your being captured by the Guptas and your appointment was made for you to do their bidding?"
- "What is your relationship with the Guptas?"

Howa then requested further information and asked for further input from Tony Gupta and Duduzane Zuma.

Zwane was one of the ministers at the forefront of trying to force South African banks to reopen closed Gupta accounts.

- **State capture bombshell: DA weighs up legal action**

Faith Muthambi

Former communications minister Faith Muthambi, now the minister in charge of the public service, corresponded directly with Tony Gupta, as well as his staff, on government policy.

A series of e-mails show that the minister, who is a close ally of the president, alerted the Guptas to various changes in government policies relating to her department - even before they had been officially approved by Zuma.

One e-mail sent to Tony Gupta in January 2014 contains a proclamation - which she says is to be signed by Zuma - transferring functions under other ministers to herself.

They include those under the Electronic Communications Act, the Sentech Act and the Broadband Infraco Act.

In July that year, she sent two e-mails to Chawla.

In the first e-mail, with the subject line "Proclamation New July 18", she writes: "These sections must be transferred to the Minister of Communications."

The regulations listed in the e-mail give the communications minister wide-ranging power over the Independent Communications Authority of South Africa, including the power to make policies and issue policy direction and oversee applications for electronic communications network licences, radio frequency plans and commercial broadcasting licences.

In a second e-mail sent minutes later, with the subject line "Responsibility for InfraCo and Sentech", she writes: "Sentech's signal distribution must rest with the Ministry of Communications."

Attached is a document transferring powers, functions and duties of the minister of public enterprises in the Broadband Infraco Act and the Sentech Act to herself. Both e-mails were subsequently forwarded by Chawla to Duduzane Zuma.

On July 29 2014, Muthambi sent an e-mail to Chawla, with an attachment containing a memo from Telecommunications and Postal Service Minister Siyabonga Cwele, in which he expresses concerns about proposed amendments to broadcasting digital migration policy.

In her message to Chawla - which was meant for Tony Gupta - Muthambi writes: "Despite my request, the cde is determined to table the matter in cabinet tomorrow ... He called me that he was coming to Cape Town this morning ... I hope he still on his way."

Chawla forwarded the e-mail to Tony Gupta the same day.

Muthambi was appointed public service and administration minister in March in a midnight cabinet reshuffle. As communications minister, she was accused of allowing the SABC to be plundered and run into the ground.

She was widely condemned for failing to halt former chief operating officer Hlaudi Motsoeneng's abuse of power at the broadcaster.

Youth League

Collen Maine

The e-mails show that former Oakbay CEO Howa prepared notes for ANC Youth League president Maine advising him on how to respond to media questions.

Howa's notes, which were sent to Tony Gupta and Duduzane Zuma, detail how Maine should respond to questions about the anti-Gupta revolt within the ANC, state capture, his attacks on banks, #FeesMustFall, his relationship with North West premier Supra Mahumapelo, and an incident in which he allegedly shoved R200 notes down a journalist's cleavage.

In the e-mail, Howa writes: "Maybe I can sit with young man to work on this."

The Howa notes instruct Maine to sing the praises of the Guptas.

On his view on the anti-Gupta revolt in the ANC, Howa advises Maine to say: "I hold no brief for the Guptas, but I'm celebrating how they have entered areas previously closed to anyone other than the pre-94 controllers of our economy. Today, we have a progressive newspaper and tv channel thanks to their investment. I have been there to be interviewed and I have been impressed by the number of young African people employed there."

"Our country needs job creation and it looks like they are doing it."

• The CEO

Matshele Koko

Sahara Computers paid for Koko's accommodation at the Oberoi Hotel in Dubai last year. At the time he was the Eskom group executive in charge of generating power.

Koko was chauffeur-driven around Dubai during his one-day visit.

He checked in on Monday January 4 last year and left the hotel the following day.

The e-mails show the confirmation of his booking was sent to Sahara Computers CEO Chawla.

Koko's trip took place a month after another Gupta-owned company, Tegeta Exploration and Resources, took over operations at the Optimum coal mine - supplier of coal to Eskom power stations.

Koko - who took over as acting group CEO after Brian Molefe's controversial departure last year - is on suspension following allegations that Eskom awarded tenders worth R1-billion to a company where his stepdaughter was a director.

• The Directors

Dan Mantsha

On January 3 last year, Chawla confirmed travel arrangements for Denel board chairman Dan Mantsha.

Mantsha was booked into the Oberoi Hotel in Dubai and Chawla arranged a concierge service for Mantsha to an exclusive housing estate in Dubai.

Earlier this month Finance Minister Malusi Gigaba canned a multibillion-rand deal involving a Gupta-linked company.

The deal - in which the Guptas were expected to make billions - involved setting up a joint venture between Denel and VR Laser Asia to form a new company called Denel Asia.

Denel believed the joint venture would help it "find new markets for our world-class products, especially in the fields of artillery, armoured vehicles, missiles and unmanned aerial vehicles".

Gupta business associate Salim Essa is the sole shareholder of VR Laser Asia.

He is also a director of VR Laser RSA, a company owned by Duduzane Zuma and Tony Gupta through an entity called Westdown Investments.

Ajay Gupta's son Kamal Kant Singhala was a director of VR Laser RSA but has resigned.

Rajesh Naithani

When Rajesh Naithani was dumped as an SAA board member in October 2014, he sent an e-mail to Chawla asking him to tell Tony Gupta to "get me in at Transnet".

Gigaba, who was then public enterprises minister, had appointed Naithani to the SAA board in September 2012.

Two years later it appears from e-mail correspondence that Naithani had caught wind that his days at the national airline were numbered.

In an e-mail to Chawla on September 26 2014, Naithani attaches his CV "for possible positions in boards". He adds "kindly make necessary changes".

On October 15, he writes: "I received a mail in which they have said that they will be removing seven directors from SAA which includes me."

"Please convey this to Tony Bhai [Bhai means brother in Hindi].

"Please also request him that if this does not work he may kindly get me in Transnet."

On November 19, he again e-mails Chawla: "I got the e-mail that presently I am no more a member at SAA. You may show it to Tony Bhai please."

THE PRESIDENT RESPONDS

President Jacob Zuma denied that he was planning to move to the United Arab Emirates but failed to respond to questions about his cabinet ministers' communications with the Guptas.

He said he had no plans to leave South Africa when he retires.

"I have my home in Nkandla and I have no intention of living anywhere else. When I retire I will go home to Nkandla. This is a pure fabrication. Duduzane has never spoken to me about living in any other country. He has never shown me any letter. It's shocking in the extreme. It's absolute mischief aimed at sowing confusion," said Zuma.

However, he had no explanation for why these claims were made in e-mails to Duduzane.

A spokesman for Mosebenzi Zwane, Martin Madlala, declined to answer pointed questions. He said the minister of mineral resources had travelled to promote investment.

"The visit came at a time when commodity prices were depressed, as well as responding to specific invitations from major investment companies, including Glencore. Engagements and road shows undertaken by the minister serve an important role of promoting mining in South Africa, as well as providing a platform to clarify policy and regulatory issues within the mining and minerals sectors. The minister continues to hold meetings with key mining stakeholders as he has adopted an open-door policy," said Madlala.

Madlala did not answer questions about Zwane travelling in a Gupta aircraft with Rajesh "Tony" Gupta and Salim Essa, nor why he was being driven around in a luxury car paid for by a Gupta-owned company.

Legadima Leso, a spokesman for Minister of Co-operative Governance Des van Rooyen, said the minister would comment once he was back in the country today.

"Minister is out of the country attending a conference on disaster risk reduction," said Leso.

When contacted for comment Maine said: "That is rubbish, I don't respond to rubbish".

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[Archives] State capture: The eight big cheeses who must be grilled

Jessica Bezuidenhout (<https://mg.co.za/author/jessica-bezuidenhout>), Phillip de Wet (<https://mg.co.za/author/phillip-de-wet>) 15 Jun 2017 00:00

If ever there was a case for a criminal probe, it is Faith Muthambi sharing Cabinet documents with the Guptas. (David Harrison)

(<https://mg.co.za/article/2017-06-15-00-guptaleaks-the-eight-big-cheeses-who-must-be-grilled>)

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NEWS ANALYSIS

If the ANC is calling people to account about the Gupta leaks revelations, these are the four ministers and four state entity managers we think will have the toughest questions to answer.

Mosebenzi Zwane Mineral Resources Minister

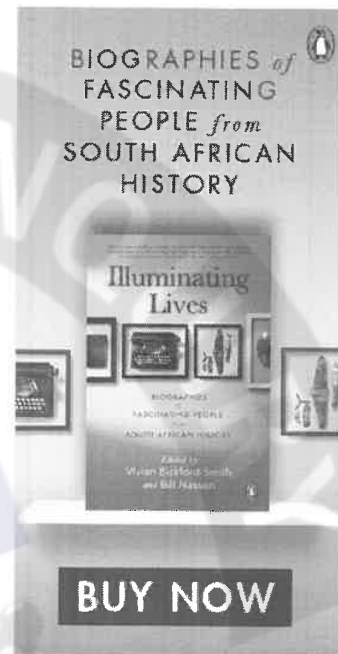
The Gupta leaks emails suggest that Mosebenzi Zwane travelled to Switzerland with the Gupta family to help them buy Optimum Coal mine. Zwane has told Parliament, both before the leaks and since, that this was not the case. Misleading Parliament can come with jail time for fraud.

The emails also show that Zwane, as Free State MEC for agriculture, supported a diary project there that appeared to channel provincial subsidies to the Guptas. The family later funded his tour of India, a benefit that could amount to corruption.

Zwane has not commented on the dairy (which collapsed) and India allegations, and could not be reached for comment.

Malusi Gigaba Finance Minister

Malusi Gigaba maintains that he did everything by the book, but the leaked emails paint a worrying picture of how he, while minister of home affairs, seemingly did a lot to help the Guptas get what they wanted.



(<https://mg.co.za/article/2018-09-26-mbekis-document-a-falsification-of-anc-principles-pallo-jordan>)

NATIONAL (/SECTION/NEWS-NATIONAL)

Mbeki's document 'a falsification' of ANC principles — Pallo Jordan
(<https://mg.co.za/article/2018-09-26-mbekis-document-a-falsification-of-anc-principles-pallo-jordan>)

ANC veteran Pallo Jordan believes former president Thabo Mbeki's 30-page paper on land expropriation does not enrich the land discourse

By Gemma Ritchie
(<https://mg.co.za/author/gemma-ritchie>)

(<https://mg.co.za/article/2018-09-26-stats-sa-reports-69-000-in-second-quarter>)

BUSINESS (/SECTION/BUSINESS)

Key here is his signature on an early citizenship application for several members of the Gupta family – and whether he had satisfied himself that the Guptas had made a legal application to the Indian government to renounce their citizenship. India does not allow for dual citizenship.

But it is Gigaba's decisions in his previous job as minister of public enterprises that must be investigated to clear him of suggestions of wrongdoing. Under his watch, the Gupta empire succeeded in having their cronies appointed to the boards of state-owned enterprises that allowed them to feed off multibillion-rand deals.

If there is evidence that Gigaba received or even sought something in return, he could be in trouble.

ⓧ

Faith Muthambi Public Service Minister

If ever there was a clear-cut case for an immediate criminal investigation, it involves former communications minister Faith Muthambi sharing confidential Cabinet documents with the Guptas.

She allegedly sent the Guptas confidential information about Cabinet meetings, the leaked emails show. Worse, she also forwarded them a copy of a presidential proclamation detailing her powers as communications minister even before President Jacob Zuma had signed the document.

If existing evidence against her stands up in court, Muthambi could be prosecuted in terms of the Protection of Information Act. If she is found to have committed a crime, she could receive a jail sentence.

Muthambi's cushy relationship with the Guptas is further entrenched by the nearly R1-million in sponsorship her department gave Gupta-owned newspaper *The New Age*.

She is now the minister of public service and administration.

Des van Rooyen Co-operative Governance Minister

Des van Rooyen has previously denied that the Gupta family paid for his brief jaunt to Dubai in late 2015; the Gupta leaks emails seem to show the family did exactly that.

The trip could amount to a corrupt benefit if there had been an expectation of reciprocity. The emails have so far not yielded evidence that Van Rooyen offered the family any direct favours in return, but seem to show that advisers reporting directly to him shared confidential government information with the Gupta empire during his brief stint as finance minister.

Van Rooyen has previously refused to comment on allegations drawn from the emails and could not be reached for comment.

Daniel Mantsha Denel chairperson

Stats SA reports 69 000 jobs lost in second quarter
(<https://mg.co.za/article/2018-09-26-stats-sa-reports-69-000-in-second-quarter>)

Stats SA reported that non-agricultural formal sector employment dropped from 9 817 000 in March 2018 to 9 748 000 in June 2018

By Agency (<https://mg.co.za/Author/Agency>)

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The steakhouse franchise group has confirmed the incident and says it is in contact with the family while the police investigate

By Mashadi Kekana
(<https://mg.co.za/Author/Mashadi-Kekana>)

(<http://bhkisisa.org/article/2018-09-25-live-from-new-york-its-the-un-high-level-meeting-on-tb>)

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Follow Bhkisisa's live blog from New York this week as heads of state including Cyril Ramaphosa sign the world's first UN declaration on TB.

By Laura Lopez Gonzalez
(<https://mg.co.za/Author/Laura-Lopez-Gonzalez-1>)

Emails suggest that Daniel Mantsha on more than one occasion directly furnished the Gupta family empire with highly confidential information about Denel, in breach of secrecy obligations.

He also sent the family personal bills, which suggests he sought (if not actually received) benefit, which could amount to corruption.

To add insult to injury, the emails suggest Mantsha was intimately aware of the Gupta family's involvement in the planned Denel Asia subsidiary – even when his board denied such involvement time and again.

Mantsha has not commented on the allegations and could not be reached for comment.

Matshela Koko (Suspended) Eskom executive

Matshela Koko "agreed" to go on leave while investigations continue into more than R1-billion that flowed from the Eskom division he headed to a company of which his stepdaughter was a director.

As yet, the Gupta leaks have provided no evidence about those transactions. But the emails do suggest that Koko, or someone pretending to be him, shared confidential Eskom information with the Guptas and that he was treated to a luxury Dubai trip at the family's expense, a benefit that could be found to be corrupt.

Koko has previously insisted he acted properly with regard to his stepdaughter. He has not commented on the Gupta leaks allegations and could not be reached for comment.

Bruce Koloane Ambassador to the Netherlands

He was billed as the fall guy for the Gupta family's illegal landing of an aircraft filled with wedding guests at the Waterkloof Air Force Base in 2013. Then he bagged a diplomatic post to the Netherlands.

In the Gupta leaks revelations, Bruce Koloane was found to have written the family emails asking for sponsorships for personal events – and, as the emails seemingly show, instructions were issued that he was to be given "whatever he wants".

If investigators find a link between Koloane's request for sponsorship and any favours he may have done for the Guptas, he should be deeply concerned.

Koloane could not immediately be reached for comment.

Anoj Singh Eskom/Transnet executive

Courtesy of the generous Guptas, Anoj Singh enjoyed four trips to Dubai and spa treatments at a five-star hotel, the Gupta leaks suggest. He previously served as chief financial officer under Brian Molefe at Transnet and then at Eskom.

The two parastatals have proven to be big money-spinners for the Gupta family's network of companies.

A police docket has been opened into how the Guptas scored just over R5-billion from a Transnet contract for new locomotives, amid an Economic Freedom Fighters dossier showing that Transnet had allegedly paid inflated prices for them.

Once Singh moved to Eskom, it appears that the Guptas hit pay dirt in the coal business too. Singh, as chief financial officer, must have been privy to the family's bid to buy the Optimum Coal mine – and, as they were short of cash, Eskom authorised a controversial prepayment for coal supply to them that enabled Gupta company Tegeta to buy the mine.

Singh could not be reached for comment.

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By Thabo Mbeki (<https://mg.co.za/Author/Thabo-Mbeki-Author>)

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Lenders allow Jooste more time to pay up (<https://mg.co.za/article/2018-09-25-lenders-allow-jooste-more-time-to-pay-up>)

Lenders and other creditors have now agreed that Markus Jooste has until March 2019 to repay his debts without interest

By Loni Prinsloo (<https://mg.co.za/Author/Loni-Prinsloo-1>)

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