



EXHIBIT Y 10

**WELCOME STHEMBISO
MHLONGO**



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

2nd floor, Hillside House
17 Empire Road,
Parktown
Johannesburg
2193
Tel: (010) 214 to 0651
Email: inquiries@sastatecapture.org.za
Website: www.sastatecapture.org.za

INDEX: EXHIBIT Y 10

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1.	SEQ 18/2019 – Application of WS Mhlongo in respect of the evidence of JW Booyesen	001 to 048.20	001 to 048.20
2.	Answering Affidavit of JW Booyesen to the affidavit of WS Mhlongo (22 October 2019)	049 to 051	049 to 051
3.	WS Mhlongo reply to JW Booyesen’s replication (dated 27 November 2019)	052 to 056	052 to 056
4.	Booyesen response to Mhlongo Reply dated (29 November 2019)	057 to 059	057 to 059
5.	B Padayachee - Confirmatory Affidavit re JW Booyesen (01 November 2019)	060 to 061	060 to 061
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#	Description	Bundle Pages	Exhibit Pages
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1414/2

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

In the matter between

JOHAN WESSEL BOOYSEN

Witness

And

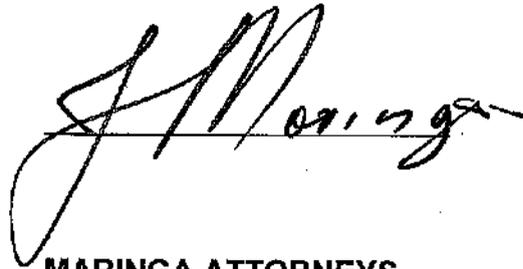
COLONEL MHLONGO

Implicated (Respondent)

Filing Notice

DOCUMENTS TO BE FILED: Original of the Notice of application to lead evidence (Numbered 13-14) as well as accompanying affidavit and Annexures (numbered 15-25 and 26-28 respectively)

TAKE FURTHER NOTICE THAT: a copy of the attached original was filed on Friday the 10th of May 2019 as per paragraph 6.3 of our application for condonation. The filing of the original is in compliance with paragraph 6.4 of the above application for condonation



MARINGA ATTORNEYS

(Attorney for the implicated persons)

201 SEDIBA HOUSE

173 BOSMAN STREET

Mobile: 061 775 4962/082 753 6719

Tel : 012 752 9473

EMAIL: Joelma@vodamail.co.za

REF : MJ MARINGA

The secretary of the Commission

Commission of inquiry into State Capture

2nd floor Hillside house

17 Empire road

Johannes burg

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

TO: ACTING-SECRETARY OF THE COMMISSION

MR P PEDLAR

2ND FLOOR, HILLSIDE HOUSE

17 EMPIRE ROAD, PARKTOWN

JOHANNESBURG, 2193

DATE: 07 MAY 2019

NOTICE OF APPLICATION TO LEAD EVIDENCE

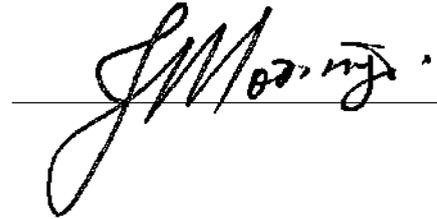
BE PLEASED TO TAKE NOTICE THAT:

1. Colonel Welcome Sithembiso Mhlongo herewith applies for leave to adduce evidence, in response to the evidence of General Johan Booyen, on the backdrop of a notice served upon on 09 April 2019, in terms of Rule 3.3 of the Rules of the Commission.
2. The nature and extent of the evidence to be adduced by Colonel Welcome Sithembiso Mhlongo is set out in an affidavit attached to this notice as **Annexure AA1.**

WSM
LTA M

14

DATED AND SIGNED ON THIS 07 MAY 2019, AT PRETORIA.



MARINGA ATTORNEYS

(Attorney for Mhlongo)

201 SEDIBA HOUSE

173 BOSMAN STREET

Mobile: 061 775 4962/082 753 6719

Tel: 012 752 9473

EMAIL: Joelma@vodamail.co.za

REF: MJ MARINGA

WSM
Liam

Annexure A A 1
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AFFIDAVIT

I, the undersigned:

WELCOME SITHEMBISO MHLONGO

Hereby state as follows, under oath:

1. I am an adult person with full legal capacity, employed as Colonel in the Directorate for Priority Crime Investigation ("DPIC"), commonly known as HAWKS. I am currently stationed at the Provincial unit for Serious Organized Crime as Provincial Commander in KZN
2. The facts deposed to hereunder are within my personal knowledge and are, to the best of my belief both true and correct.
3. I have been invited as in accordance with paragraph 5 of the notice served upon me, dated 9 April 2019 to exercise an option in terms of Rule 3.3.6 of the Rules governing proceedings of the Judicial Commission of inquiry into allegations of state capture, to either make an application for

WSM
KTM

leave to cross-examine, General Booyesen or to lead evidence on matters raised in his testimony as witness or to have another person do so on my behalf.

4. I have made a decision to only limit my participation to leading evidence on the narrow issues brought to my attention by the Secretary of the Commission.
5. I do not intent to set-forth historical background related to the evidence of General Booyesen. I will confine my evidence to the paragraphs to which, my attention has be drawn, by the Commission.

INTRODUCTION

6. I have been advised, per notice from the Commission, to which I have alluded to above, that the allegations in the evidence of General Booyesen could implicate me in, amongst others, the enabling of the capture of the Criminal Justice System.
7. The factual basis advanced in support of the foregoing conclusion appears to be that:

7.1 I had Links with Panday who was being investigated for crimes relating to corruption and Bribery

W. S. M.
L. T. M.

17

- 7.1.1 General Booyesen alleges in paragraph 44 of his statement that he had good reason to suspects that I informed Panday where the files were kept.
- 7.1.2 The bases for General Booyesen 's suspicion allegedly rest on the alleged communication interception done during their investigation purportedly linking me with Panday
- 7.1.3 It is further alleged in paragraph 42 of General Booyesen statement that Panday somehow knew where the files were kept, hence, he approached warrant officer Mostert, who is a member at Cato Manor, to steal the files as well as the exhibits or set alight the building, where the files were kept and thereafter name the price. (apparently for the job done)
- 7.1.4 Paragraph 43 of General Booyesen 's affidavit assets an unsuccessful attempt to a sting operation in terms of section 252 (A) of the Criminal Procedure Act due to Panday 's failure

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LFA M

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to engage further with warrant officer Mostert
when contacted telephonically

7.2 Affidavits by Terrence John Joubert

7.2.1 In paragraph 45 of his statement General Booyesen narrates how I was implicated by Adv Mxolisi Nxasana in an attempt to tarnish his image at the behest of Jiba.

7.2.2 An affidavit referred to as **Annexure JWB2** alleged to be attested to by Terrence Joubert is used in support of the allegation against me.

8. I am advised that the evidence of General Booyesen as set out above bears the consequence which implicates me to the extend wherefore

8.1 I sought to:-

8.1.1 Unduly interfere in the investigative independence of the National prosecuting Authority, the Directorate for Priority crimes investigations, commonly known as the Haws, and or the South African Police Service

WJSM
LJAM

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- 8.1.2 Unduly decline and or delay and or obstruct recommended prosecution
- 8.1.3 Participated in the undue persecution of officials of the NPA, the independent Police Investigative Directorate and or DPCI and
- 8.1.4 Destabilize the NPA, the DPCI and /or the SAPS
9. My reading General Booyesen 's evidence is that there is no disclosure of the facts on which he relied, to arrive at the conclusion that I informed Panday where the exhibits and the files are kept. His finding is based on mere suspicion derived from an alleged communication interception for which I have no knowledge thereof. Furthermore I am not aware of how the alleged communication interception links me to Panday
10. I submit further that General Booyesen's reliance on the alleged Affidavit of Terrence John Joubert in tarnishing the image of adv. Mxolisi Nxasana is questionable, since , the alleged deponent went public to dissociate himself from the affidavit Annexed and referred to as Annexure JWB2 by General Booyesen in his statement

WSM

KAM

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11. I wish to place before the Commission objective factors to be taken into account in my defense to dispute statement (allegations) put forth before the Commission by General Booyesen

11.1 KNOWLEDGE OF WHERE THE PANDAY CASE FILES WERE KEPT

11.1.1 I was never involved in the investigation relating to the Panday's case. Thus I would not have known where the files or exhibits were kept.

11.1.2 At the time of Panday's investigation I was seconded to the NPA within the section of missing persons task team, thus I had no knowledge of anything having to do with files or exhibits of suspects being investigated.

11.1.3 From the onset I have never denied knowing Panday or communicating with him. My knowledge of him is limited to sharing common political views and I have never discussed any matter relating to his investigation with him.

WSM
LKM

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**11.2 PARTICIPATION IN FINDING DIRT AGAINST
MXOLISI NXASANA**

11.2.1 The source for grounding allegations of participation in finding dirt against Adv. Mxolisi Nxasana is the alleged affidavit by Terrence John Joubert

11.2.2 Terrence Joubert has denied any knowledge or association with the alleged affidavit set forth by General Booyesen in his statement. I attache herewith **Annexure AA2** as confirmation to the effect that Terrence John Joubert rejected being the author and deponent of the alleged affidavit as alleged by General Booyesen.

11.2.3 The attached **Annexure AA2** is date stamped 1st February 2016 and counters the alleged affidavit referred to by General Booyesen statement titled **Annexure JWB2** and deemed to be deposed of on the 25th Nov 2013

11.2.4 The affidavit I refer to as **Annexure AA2** is in Public Domain and General Booyesen should have

WSM
LHM

known about it as it was published in both Sunday times and City press

- 11.2.5 I therefore deny participating in any manner in the persecution of adv. Mxolisi Nxasana
- 11.2.6 In paragraph 4 of attached Annexure AA2, John Joubert makes it clear that he denies any knowledge of the alleged instruction from anybody ,including Jiba directing him to investigate anybody outside the scope of his duties
- 11.2.7 Terrence John Joubert concludes his Affidavit in paragraph 4 by stating that "the information contained in the affidavit is fabricated "
- 11.2.8 I submit therefore that Joubert refers to General Booyesen 's Annexure JWB2 as fabricated and calculated to mislead the Commission
- 11.2.9 The gist of Joubert 's Affidavit set out as Annexure AA2 implies that General Booyesen 's acquired copy of statement alleged to be that of John Joubert or **Annexure JWB2** has no weight as evidence to the allegation in support of adv. Mxolisi Nxasana 's persecution but meant to tarnish my image in various platforms and to mislead the commission

W&S
BAM

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CONCLUSION

12. I am struggling to uncover reasons for General Booyesen desire to put my person to disgrace.
13. He uses statements which the alleged deponent denies any knowledge thereof.
14. I submit that it is trivial to allege that because I know Panday or rather as he puts it, that I communicated with Panday, then I am held accountable for informing him about the whereabouts of exhibits or files relating to his investigation. Moreover I was not within the Hawks but seconded to Missing persons Task team at the time General Booyesen carried out the investigation against Panday
15. My encounter at the memorial service
 - 15.1 On the 7 of February 2019 I met General Booyesen at a Memorial Service of a colleagues, warrant officer Siso Musa at Bluff Area in Durban.
 - 15.2 I was making a u turn heading to the exit of the church premises.
 - 15.3 General Booyesen came towards my car and leaned to the driver's window.

WSM
Liam

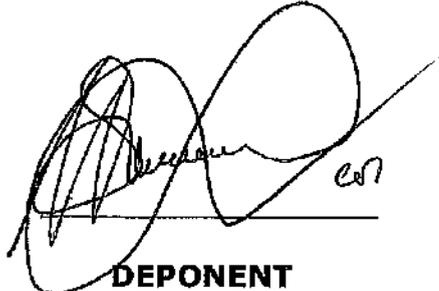
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- 15.4 He then informed me that he is going to tarnish my image at state capture inquiry and he left.
- 15.5 I never got worried as I had no reason on my part to enable state capture.
- 15.6 I now realize that he had already made up his mind to implicate me to the extent of using questionable evidence to implicate me.
16. In my capacity as colonel within the Directorate for priority crime and investigation as well as in my capacity of being seconded to the missing person section within the NPA, I submit that I did not enhance the Capture of the Criminal Justice System through:
- 16.1 Unduly interfering in the investigative independence of the NPA, DPCI and/or SAPS.
- 16.2 Unduly declining and/or delaying, and/or obstructing recommended prosecutions.
- 16.3 Participating in the undue persecution of officials of the NPA, IPID and/or the DPCI.
- 16.4 Destabilizing the NPA, DPCI and/or SAPS.

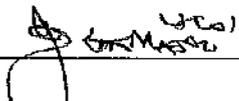
WSM
LJAM

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17 I accordingly ask for leave to present the above evidence to the Commission.


DEPONENT

I hereby certify that the deponent declares that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at Durban on this 9th day of May 2019 and that the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.

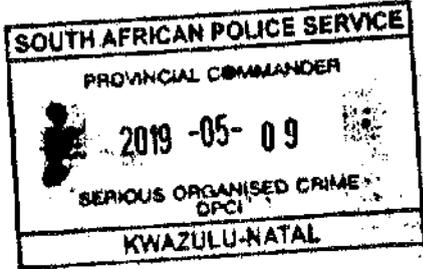


COMMISSIONER OF OATHS

FULL NAMES: LINDWE THERESIUS AUBREY MASOZ

CAPACITY: K. Labonel

AREA: Durban



Annexie AA2
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AFFIDAVIT

I, the undersigned;

TERENCE JOHN JOUBERT,

do hereby state under oath and say;

1.

I am employed by the National Prosecuting Authority of South Africa ["the NPA"] and am attached to the Security and Risk Management Unit on the 3rd Floor, Southern Life Building, 88 Joe Slovo Street, Durban.

2.

The facts contained herein are, unless stated otherwise, or the context indicates otherwise, are within my personal knowledge and to the best of belief true and correct.

3.

I wish to state that I dispute the affidavit that Advocate Willie Hofmeyr has submitted and is referring to.

My reasons are as follows:

T.J.
1
E.P.M.

27

On, or about 22 JUNE 2014, I was contacted by a certain journalist who told me that he was in possession of an affidavit I had attested to and wanted me to confirm the content of the said affidavit. I requested a copy of the said affidavit and he emailed a copy to me. I perused the affidavit and saw that my details were contained in the document as well as a signature which closely resembled mine. I read the contents of the affidavit, and did not recognize any of the information contained therein. I did not associate myself with any of the information contained in the affidavit and, it was clear to me that I had not compiled the affidavit. I have absolutely no knowledge of writing anything contained in it. I suspect that my computer was accessed and my information was used to compile this document without my knowledge. An investigation was instituted to establish the authenticity of the said disputed affidavit. I have not been informed of the outcome of the investigation.

4.

I am rather shocked and surprised to see that the said affidavit is being used during court procedures when an investigation into its authenticity is still underway. I also take offence to the fact that I am being used to fight the personal battles of Advocate Hofmeyr against the National Prosecuting Authority. I hereby deny any knowledge of the alleged instruction from anybody, including Advocate Jiba for me to investigate anybody outside the scope of my duties. The allegations contained in the affidavit are, in my opinion, all fabricated.

Handwritten signature and date: S.P. M. 2 Sep. 14

5.

I know and understand the content of this statement.

I have no objection to taking the prescribed oath.

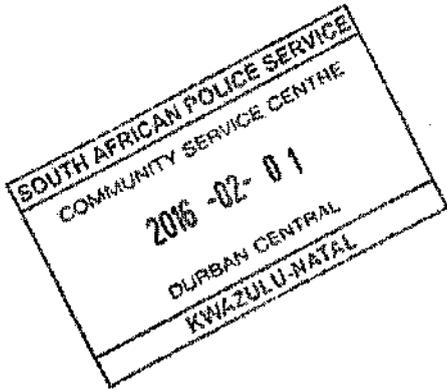
I consider the prescribed oath to be binding to my conscience.

[Handwritten signature]
TERENCE J. JOUBERT

I certify that on this _____ day of FEBUARY 2016, the deponent signed the affidavit in my presence and declared that he knows and understands its contents, that he has no objection to taking the prescribed oath and that he considers the oath to be binding on his conscience.

[Handwritten signature]

Commissioner of Oaths



Full Names: 11/11/11 1111-1111

Designation: u/p

Area: Dbr

Address: NO. 50 Broad

Street Dbr

400

[Handwritten initials]
P.M

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

TO: ACTING-SECRETARY OF THE COMMISSION

MR P PEDLAR

2ND FLOOR, HILLSIDE HOUSE

17 EMPIRE ROAD, PARKTOWN

JOHANNESBURG, 2193

DATE: 09 MAY 2019

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

TO: ACTING-SECRETARY OF THE COMMISSION

MR P PEDLAR

2ND FLOOR, HILLSIDE HOUSE

17 EMPIRE ROAD, PARKTOWN

JOHANNESBURG, 2193

DATE: 07 May 2019

**EVIDENCE OF JOHAN WESSEL BOOYSEN AGAINST WS MHLONGO
APPLICATION FOR CONDONATION**

BE PLEASED TO TAKE NOTICE THAT:

- 2 Colonel Welcome Sibusiso Mhlongo, have appointed Maringa Attorneys, whose full particulars appear herein below, as his legal representative, in respect of matter arising from and/or incidental to the work of the Commission.
- 3 The above-named person have received notice, in terms of Rule 3.3 of the Rules of the Commission, to the effect that he has been implicated in the evidence of Johan Wessel Booysen

4 Colonel Welcome Mhlogo received notice as aforesaid on the 09 of April 2019

4.1 Rule 3.3.6, of the Rules of the Commission, directs that any person implicated in the testimony presented before the Commission may exercise any of the options available in terms of the sub-paragraph thereof, within a period two weeks from date of the notice.

4.2 Col Mhlongo received the notice, on 09 April 2019. As such the *dies* for step contemplated in terms of Rule 3.3.6, of the Rules of the Commission, expired on Wednesday, 23 April 2019.

4.3 In the period intervening from 09 April 2019 until 23 April 2019, the 4 (Four) days fell on the weekend and 2 (Two) days were public holidays, of a religious nature.

4.4 Thus, only 9 (Nine) days were effectively available for the formulation of requests contemplated in terms of Rule 3.3.6, of the Rules of the Commission.

4.5 In the 9 (Nine) days that were available, he had to apply, from his employer, for legal assistance. The applications for legal assistance was eventually approved and communicated to the State Attorney, who could only bring the implicated applicant 's request for legal assistant to the attention of the legal representative on the 02nd May 2019

4.6 It appears like the documents sent to state attorney were incomplete and some pages were secured directly from client by

appointed legal representative noting the urgency with which the matter had to be addressed

- 5 We advance the foregoing factors, in support of a request, for the extension of the time period prescribed in terms of Rule 3.3.6, of the Rules of the Commission.
- 6 We envisage that:
 - 6.1 Decision to exercise any or more of the options available in terms of Rule 3.3.6, of the Rules of the Commission, will be made by no later Friday, 05 May 2019.
 - 6.2 The formulation of the necessary application(s), including the compilation of the supporting annexure, will be completed by Wednesday, 08 May 2019.
 - 6.3 Copy of the application will thus be delivered to the Secretary of the Commission, by no later than 16h00, on Friday, 10 May 2019.
 - 6.4 Noting that Colonel Mhlongo is stationed in KZN and his legal representative is in Pretoria it is requested that the original affidavits be filed on 13 May 2019 to the secretary of the Commission
- 7 Thus, we ask for the variation of the period prescribed in terms of the notice, delivered in terms of Rule 3.3 of the Rules of the Commission, as set-out above in paragraph 4 subsection 4.1 above.

DATED AND SIGNED ON THIS 07 April 2019, AT PRETORIA.



A handwritten signature in black ink, appearing to read 'J. Maringa', is written over a horizontal line. The signature is stylized and cursive.

4

MARINGA ATTORNEYS

(Attorney for the implicated persons)

201 SEDIBA HOUSE

173 BOSMAN STREET

Mobile: 061 775 4962/082 753 6719

Tel : 012 752 9473

EMAIL: Joelma@vodamail.co.za

REF : MJ MARINGA

5

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

In the matter between

JOHAN WESSEL BOOYSEN

Witness

And

COLONEL MHLONGO

Implicated (Respondent)

**APPLICATION FOR LATE FILING OF STATEMENTS REQUIRED IN TERMS OF
RULE 5 OF THE RULES OF THE COMMISSION**

I, the undersigned

MASHABA JOEL MARINGA

Do hereby make an oath and say that:

1. I am an adult male Attorney of the High Court of South Africa practicing as such under the title of Maringa Attorneys, located at 173 Bosman Street, Office 201 Sediba House, Pretoria. I am the attorney of record to implicated Respondent in the statements of **Johan Wessel Booysen** before the Commission.

M.J.

2. I am authorised to depose to this affidavit, and to bring the present application on behalf of the implicated Respondent. The facts deposed to hereunder are within my personal knowledge, save where otherwise stated, and are to the best of my belief both true and correct.
3. This affidavit accompanies an application for condonation dated 07/05/2019 addressed to the Secretary of the Commission, for variation of the period prescribed for submission of statements on behalf of the implicated person to the commission as in accordance with Rule 3.3.6 read with Rule 3.4 of the Rules of the Commission.

THE DELAY

4. The Respondent is implicated in the testimony tendered before the above Commission, As such he had to exercise the option provided for in accordance with rule 3.3.6 within fourteen calendar days of receiving notices in terms of Rule 3.3 of the Rules of the Commission.
5. The affidavits would be filed 14 (fourteen) days after the lapse of the prescribed days. The reasons for the delay are addressed in the request attached hereto and marked as **Annexure AA0**,

M.S.

7

IMPORTANCE OF THE MATTER

8. The work of the Commission is of national importance. The allegations made against the Respondent are extremely serious, and will have devastating consequences for him, should they be accepted as they are.
9. The evidence to be tendered by the implicated Respondent will greatly assist the Commission in the execution of its task.
10. Witnesses will not be prejudiced should the application for condonation be granted. The statements to be filed are very brief and concise to the relevant issues.
11. On the other hand, if condonation were to be refused, the implicated Respondents will suffer irreparable prejudice, in that the rights in terms of Section 34 of the Constitution would have been suppressed.
12. I submit that the delay is minimal, particularly when compared with the gravity of the overall circumstances. The evidence of Johan Wessel Booyens was finalised on the 03 May 2019.

Wherefore I ask the late filling of the affidavits, together with the associate applications be condoned as requested in this affidavit, read together with its Annexure.

M.S.

J. Mosey
DEPONENT

I CERTIFY that this affidavit was signed and sworn to before me at Pretoria on this 10th day of May 2019 by the deponent who acknowledged that he knows and understood the contents of this affidavit, had no objection to taking prescribed oath, Considers the oath to be binding on his conscience and uttered the following words "I swear that the contents of this affidavit are true, so help me God"

Commissioner of oaths

Name: *Mosses Mabetalale Masego Trevor*

Address: *518 Crastus Street, Hercules*

Capacity: *Constable*

<p>Ek sertifiseer dat boestande verklarings deur my afgeneem is en dat verdagte erken dat hy/sy vertrouwd is met die inhoud van hierdie verklaring en dit begryp. Hierdie verklaring is voor my teken en my deponent se handtekening is in my teenwoordigheid vasgelê.</p>	<p>I certify that the above statement was taken by me and that the deponent has acknowledged that he/she knows and understands the contents of this statement. This statement was sworn to and signed before me and deponent's signature and thumbprint was placed thereon in my presence.</p>
<p>at <i>Hercules</i> on <i>2019-05-10</i> at <i>09:50</i></p>	
<p><i>Mabetalale Masego Trevor</i> SIGNATURE OF COMMISSIONER OF OATHS</p>	
<p><i>518 Crastus Str, Hercules</i> FULL FIRST NAMES AND SURNAME IN BLOCK LETTERS</p>	
<p><i>Pretoria</i> BUSINESS ADDRESS (STREET ADDRESS)</p>	
<p><i>Constable</i> RANG/RANK</p>	

SA POLISIEDIENS
STASIEKOMMISSARIS
HERCULES
2019-05-10
CLIENT SERVICE CENTRE
STATION COMMISSIONER
SOUTH AFRICAN POLICE SERVICE

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

TO: ACTING-SECRETARY OF THE COMMISSION

MR P PEDLAR

2ND FLOOR, HILLSIDE HOUSE

17 EMPIRE ROAD, PARKTOWN

JOHANNESBURG, 2193

DATE: 07 May 2019

**EVIDENCE OF JOHAN WESSEL BOOYSEN AGAINST WS MHLONGO
APPLICATION FOR CONDONATION**

BE PLEASED TO TAKE NOTICE THAT:

- 2 Colonel Welcome Sibusiso Mhlongo, have appointed Maringa Attorneys, whose full particulars appear herein below, as his legal representative, in respect of matter arising from and/or incidental to the work of the Commission.
- 3 The above-named person have received notice, in terms of Rule 3.3 of the Rules of the Commission, to the effect that he has been implicated in the evidence of Johan Wessel Booysen

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4 Colonel Welcome Mhlogo received notice as aforesaid on the 09 of April 2019

4.1 Rule 3.3.6, of the Rules of the Commission, directs that any person implicated in the testimony presented before the Commission may exercise any of the options available in terms of the sub-paragraph thereof, within a period two weeks from date of the notice.

4.2 Col Mhlongo received the notice, on 09 April 2019. As such the *dies* for step contemplated in terms of Rule 3.3.6, of the Rules of the Commission, expired on Wednesday, 23 April 2019.

4.3 In the period intervening from 09 April 2019 until 23 April 2019, the 4 (Four) days fell on the weekend and 2 (Two) days were public holidays, of a religious nature.

4.4 Thus, only 9 (Nine) days were effectively available for the formulation of requests contemplated in terms of Rule 3.3.6, of the Rules of the Commission.

4.5 In the 9 (Nine) days that were available, he had to apply, from his employer, for legal assistance. The applications for legal assistance was eventually approved and communicated to the State Attorney, who could only bring the implicated applicant 's request for legal assistant to the attention of the legal representative on the 02nd May 2019

4.6 It appears like the documents sent to state attorney were incomplete and some pages were secured directly from client by

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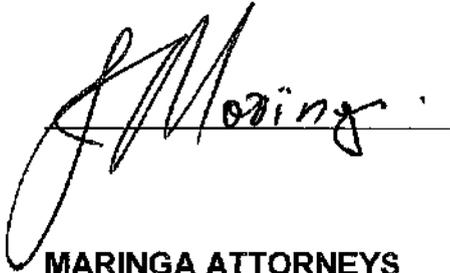
appointed legal representative noting the urgency with which the matter had to be addressed

- 5 We advance the foregoing factors, in support of a request, for the extension of the time period prescribed in terms of Rule 3.3.6, of the Rules of the Commission.
- 6 We envisage that:
 - 6.1 Decision to exercise any or more of the options available in terms of Rule 3.3.6, of the Rules of the Commission, will be made by no later Friday, 05 May 2019.
 - 6.2 The formulation of the necessary application(s), including the compilation of the supporting annexure, will be completed by Wednesday, 08 May 2019.
 - 6.3 Copy of the application will thus be delivered to the Secretary of the Commission, by no later than 16h00, on Friday, 10 May 2019.
 - 6.4 Noting that Colonel Mhlongo is stationed in KZN and his legal representative is in Pretoria it is requested that the original affidavits be filed on 13 May 2019 to the secretary of the Commission
- 7 Thus, we ask for the variation of the period prescribed in terms of the notice, delivered in terms of Rule 3.3 of the Rules of the Commission, as set-out above in paragraph 4 subsection 4.1 above.

DATED AND SIGNED ON THIS 07 April 2019, AT PRETORIA.

MJ.

MTT



MARINGA ATTORNEYS

(Attorney for the implicated persons)

201 SEDIBA HOUSE

173 BOSMAN STREET

Mobile: 061 775 4962/082 753 6719

Tel : 012 752 9473

EMAIL: Joelma@vodamail.co.za

REF : MJ MARINGA

113

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

TO: ACTING-SECRETARY OF THE COMMISSION

MR P PEDLAR

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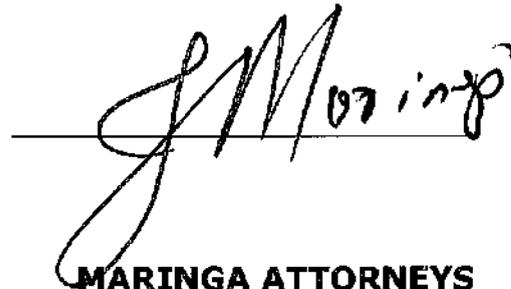
DATE: 07 MAY 2019

NOTICE OF APPLICATION TO LEAD EVIDENCE

BE PLEASED TO TAKE NOTICE THAT:

1. Colonel Welcome Sithembiso Mhlongo herewith applies for leave to adduce evidence, in response to the evidence of General Johan Booyen, on the backdrop of a notice served upon on 09 April 2019, in terms of Rule 3.3 of the Rules of the Commission.
2. The nature and extent of the evidence to be adduced by Colonel Welcome Sithembiso Mhlongo is set out in an affidavit attached to this notice as **Annexure AA1**.

DATED AND SIGNED ON THIS 07 MAY 2019, AT PRETORIA.

A handwritten signature in black ink, appearing to read 'J. Maringa', is written over a horizontal line. The signature is stylized and cursive.

MARINGA ATTORNEYS

(Attorney for Mhlongo)

201 SEDIBA HOUSE

173 BOSMAN STREET

Mobile: 061 775 4962/082 753 6719

Tel: 012 752 9473

EMAIL: Joelma@vodamail.co.za

REF: MJ MARINGA

Annexure

AAI

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AFFIDAVIT

I, the undersigned:

WELCOME SITHEMBISO MHLONGO

Hereby state as follows, under oath:

1. I am an adult person with full legal capacity, employed as Colonel in the Directorate for Priority Crime Investigation ("DPIC"), commonly known as HAWKS. I am currently stationed at the Provincial unit for Serious Organized Crime as Provincial Commander in KZN
2. The facts deposed to hereunder are within my personal knowledge and are, to the best of my belief both true and correct.
3. I have been invited as in accordance with paragraph 5 of the notice served upon me, dated 9 April 2019 to exercise an option in terms of Rule 3.3.6 of the Rules governing proceedings of the Judicial Commission of inquiry into allegations of state capture, to either make an application for

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leave to cross-examine, General Booyesen or to lead evidence on matters raised in his testimony as witness or to have another person do so on my behalf.

4. I have made a decision to only limit my participation to leading evidence on the narrow issues brought to my attention by the Secretary of the Commission.
5. I do not intent to set-forth historical background related to the evidence of General Booyesen. I will confine my evidence to the paragraphs to which, my attention has be drawn, by the Commission.

INTRODUCTION

6. I have been advised, per notice from the Commission, to which I have alluded to above, that the allegations in the evidence of General Booyesen could implicate me in, amongst others, the enabling of the capture of the Criminal Justice System.
7. The factual basis advanced in support of the foregoing conclusion appears to be that:

7.1 I had Links with Panday who was being investigated for crimes relating to corruption and Bribery

NEW
LEAM

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- 7.1.1 General Booyesen alleges in paragraph 44 of his statement that he had good reason to suspects that I informed Panday where the files were kept.
- 7.1.2 The bases for General Booyesen 's suspicion allegedly rest on the alleged communication interception done during their investigation purportedly linking me with Panday
- 7.1.3 It is further alleged in paragraph 42 of General Booyesen statement that Panday somehow knew where the files were kept, hence, he approached warrant officer Mostert, who is a member at Cato Manor, to steal the files as well as the exhibits or set alight the building, where the files were kept and thereafter name the price. (apparently for the job done)
- 7.1.4 Paragraph 43 of General Booyesen 's affidavit assets an unsuccessful attempt to a sting operation in terms of section 252 (A) of the Criminal Procedure Act due to Panday 's failure

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to engage further with warrant officer Mostert
when contacted telephonically

7.2 Affidavits by Terrence John Joubert

7.2.1 In paragraph 45 of his statement General Booyesen narrates how I was implicated by Adv Mxolisi Nxasana in an attempt to tarnish his image at the behest of Jiba.

7.2.2 An affidavit referred to as **Annexure JWB2** alleged to be attested to by Terrence Joubert is used in support of the allegation against me.

8. I am advised that the evidence of General Booyesen as set out above bears the consequence which implicates me to the extend wherefore

8.1 I sought to:-

8.1.1 Unduly interfere in the investigative independence of the National prosecuting Authority, the Directorate for Priority crimes investigations, commonly known as the Haws, and or the South African Police Service

W. S. M.
L. A. M.

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- 8.1.2 Unduly decline and or delay and or obstruct recommended prosecution
- 8.1.3 Participated in the undue persecution of officials of the NPA, the Independent Police Investigative Directorate and or DPCI and
- 8.1.4 Destabilize the NPA, the DPCI and /or the SAPS
9. My reading General Booyesen 's evidence is that there is no disclosure of the facts on which he relied, to arrive at the conclusion that I informed Panday where the exhibits and the files are kept. His finding is based on mere suspicion derived from an alleged communication interception for which I have no knowledge thereof. Furthermore I am not aware of how the alleged communication interception links me to Panday
10. I submit further that General Booyesen's reliance on the alleged Affidavit of Terrence John Joubert in tarnishing the image of adv. Mxolisi Nxasana is questionable, since , the alleged deponent went public to dissociate himself from the affidavit Annexed and referred to as Annexure JWB2 by General Booyesen in his statement

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L M

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11. I wish to place before the Commission objective factors to be taken into account in my defense to dispute statement (allegations) put forth before the Commission by General Booyesen

11.1 KNOWLEDGE OF WHERE THE PANDAY CASE FILES WERE KEPT

11.1.1 I was never involved in the investigation relating to the Panday's case. Thus I would not have known where the files or exhibits were kept.

11.1.2 At the time of Panday's investigation I was seconded to the NPA within the section of missing persons task team, thus I had no knowledge of anything having to do with files or exhibits of suspects being investigated.

11.1.3 From the onset I have never denied knowing Panday or communicating with him. My knowledge of him is limited to sharing common political views and I have never discussed any matter relating to his investigation with him.

W. S. M.
L. R. M.

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**11.2 PARTICIPATION IN FINDING DIRT AGAINST
MXOLISI NXASANA**

11.2.1 The source for grounding allegations of participation in finding dirt against Adv. Mxolisi Nxasana is the alleged affidavit by Terrence John Joubert

11.2.2 Terrence Joubert has denied any knowledge or association with the alleged affidavit set forth by General Booyesen in his statement. I attach herewith **Annexure AA2** as confirmation to the effect that Terrence John Joubert rejected being the author and deponent of the alleged affidavit as alleged by General Booyesen.

11.2.3 The attached **Annexure AA2** is date stamped 1st February 2016 and counters the alleged affidavit referred to by General Booyesen statement titled **Annexure JWB2** and deemed to be deposed of on the 25th Nov 2013

11.2.4 The affidavit I refer to as **Annexure AA2** is in Public Domain and General Booyesen should have

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known about it as it was published in both Sunday times and City press

- 11.2.5 I therefore deny participating in any manner in the persecution of adv. Mxolisi Nxasana
- 11.2.6 In paragraph 4 of attached Annexure AA2, John Joubert makes it clear that he denies any knowledge of the alleged instruction from anybody ,including Jiba directing him to investigate anybody outside the scope of his duties
- 11.2.7 Terrence John Joubert concludes his Affidavit in paragraph 4 by stating that "the information contained in the affidavit is fabricated "
- 11.2.8 I submit therefore that Joubert refers to General Booyesen 's Annexure JWB2 as fabricated and calculated to mislead the Commission
- 11.2.9 The gist of Joubert 's Affidavit set out as Annexure AA2 implies that General Booyesen 's acquired copy of statement alleged to be that of John Joubert or **Annexure JWB2** has no weight as evidence to the allegation in support of adv. Mxolisi Nxasana 's persecution but meant to tarnish my image in various platforms and to mislead the commission

WSM
BAM

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CONCLUSION

12. I am struggling to uncover reasons for General Booyesen desire to put my person to disgrace.
13. He uses statements which the alleged deponent denies any knowledge thereof.
14. I submit that it is trivial to allege that because I know Panday or rather as he puts it, that I communicated with Panday, then I am held accountable for informing him about the whereabouts of exhibits or files relating to his investigation. Moreover I was not within the Hawks but seconded to Missing persons Task team at the time General Booyesen carried out the investigation against Panday
15. My encounter at the memorial service
 - 15.1 On the 7 of February 2019 I met General Booyesen at a Memorial Service of a colleagues, warrant officer Siso Musa at Bluff Area in Durban.
 - 15.2 I was making a u turn heading to the exit of the church premises.
 - 15.3 General Booyesen came towards my car and leaned to the driver's window.

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15.4 He then informed me that he is going to tarnish my image at state capture inquiry and he left.

15.5 I never got worried as I had no reason on my part to enable state capture.

15.6 I now realize that he had already made up his mind to implicate me to the extent of using questionable evidence to implicate me.

16. In my capacity as colonel within the Directorate for priority crime and investigation as well as in my capacity of being seconded to the missing person section within the NPA , I submit that I did not enhance the Capture of the Criminal Justice System through:

16.1 Unduly Interfering In the Investigative independence of the NPA, DPCI and/or SAPS.

16.2 Unduly declining and/or delaying, and/or obstructing recommended prosecutions.

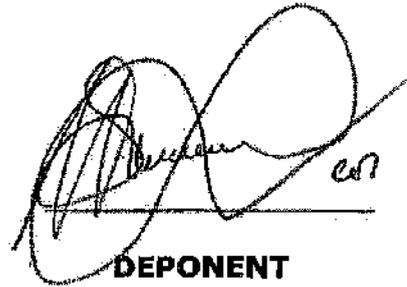
16.3 Participating in the undue persecution of officials of the NPA, IPID and/or the DPCI.

16.4 Destablilzing the NPA, DPCI and/or SAPS.

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17 I accordingly ask for leave to present the above evidence to the
Commission.


DEPONENT

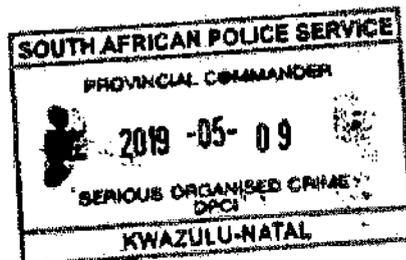
I hereby certify that the deponent declares that the deponent knows
and understands the contents of this affidavit and that it is to the
best of the deponent's knowledge both true and correct. This affidavit
was signed and sworn to before me at Durban on this
9th day of May 2019 and that the Regulations contained in
Government Notice R1258 of 21 July 1972, as amended, have been
complied with.


COMMISSIONER OF OATHS

FULL NAMES: LINDWE FAREHELE AUBREY MASOZ

CAPACITY: As Captain

AREA: DURBAN



DIRECTOR

AAZ

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AFFIDAVIT

I, the undersigned;

TERENCE JOHN JOUBERT,

do hereby state under oath and say;

1.

I am employed by the National Prosecuting Authority of South Africa ["the NPA"] and am attached to the Security and Risk Management Unit on the 3rd Floor, Southern Life Building, 88 Joe Slovo Street, Durban.

2.

The facts contained herein are, unless stated otherwise, or the context indicates otherwise, are within my personal knowledge and to the best of belief true and correct.

3.

I wish to state that I dispute the affidavit that Advocate Willie Hofmeyr has submitted and is referring to.

My reasons are as follows:

T.J.
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R.P.M.

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On, or about 22 JUNE 2014, I was contacted by a certain journalist who told me that he was in possession of an affidavit I had attested to and wanted me to confirm the content of the said affidavit. I requested a copy of the said affidavit and he emailed a copy to me. I perused the affidavit and saw that my details were contained in the document as well as a signature which closely resembled mine. I read the contents of the affidavit, and did not recognize any of the information contained therein. I did not associate myself with any of the information contained in the affidavit and, it was clear to me that I had not compiled the affidavit. I have absolutely no knowledge of writing anything contained in it. I suspect that my computer was accessed and my information was used to compile this document without my knowledge. An investigation was instituted to establish the authenticity of the said disputed affidavit. I have not been informed of the outcome of the investigation.

4.

I am rather shocked and surprised to see that the said affidavit is being used during court procedures when an investigation into its authenticity is still underway. I also take offence to the fact that I am being used to fight the personal battles of Advocate Hofmeyr against the National Prosecuting Authority. I hereby deny any knowledge of the alleged instruction from anybody, including Advocate Jiba for me to investigate anybody outside the scope of my duties. The allegations contained in the affidavit are, in my opinion, all fabricated.

P. J.
2 SP. M

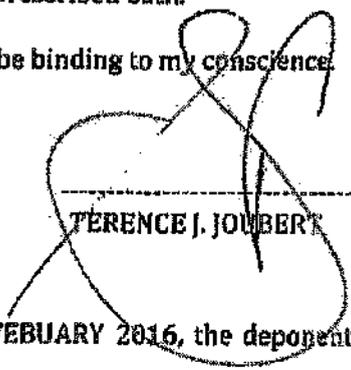
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5.

I know and understand the content of this statement.

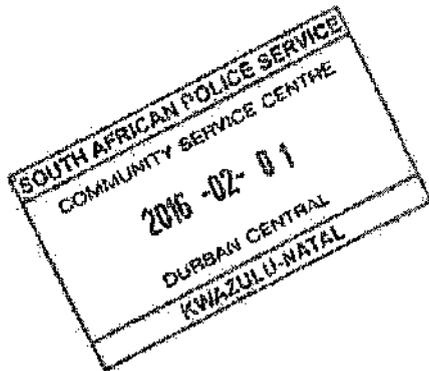
I have no objection to taking the prescribed oath.

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


TERENCE J. JOUBERT

I certify that on this _____ day of FEBRUARY 2016, the deponent signed the affidavit in my presence and declared that he knows and understands its contents, that he has no objection to taking the prescribed oath and that he considers the oath to be binding on his conscience.


Commissioner of Oaths



Full Names: A. J. J. Joubert

Designation: U/P

Area: Durban

Address: No. 50 Broad Street Durban
U/P

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A. J.
P.M

AFFIDAVIT BY JOHAN WESSEL BOOYSEN

I, the undersigned,

JOHAN WESSEL BOOYSEN

Do hereby make oath and state that;

1. I am a major male South African Citizen.
2. The facts contained in this affidavit are true and correct and are unless the contrary appears from the context, within my personal knowledge.
3. During April 2019 I gave evidence at the **Judicial Commission of Inquiry** into allegations of State capture. Hereafter referred to as the **Zondo Inquiry**.
4. In response to my evidence **Colonel WS Mhlongo** ("Mhlongo") has deposed to an affidavit to the **Zondo Inquiry**.
5. I now deal with **Mhlongo's** response. This affidavit is not an *ad seriatim* response to **Mhlongo's** affidavit. If I do not deny any specific submission by **Mhlongo**, it should not be interpreted that I agree to or admit that submission.
6. **Mhlongo** essentially denies the following:
 - That he had links with **Thoshan Panday** ("Panday") who was investigated for crimes relating to corruption, other than having shared political views with **Panday**.
 - That he colluded with any-one to compromise the investigation against **Panday**.



- That he colluded with any-one to 'find dirt on the erstwhile National Director of Public Prosecutions, **Advocate Mxolisi Nxasana**. ("Nxasana")
7. With regards to **Mhlongo's** denial of wrongful links with **Panday** my response is as follows:
 8. During the investigations of corruption against **Panday**, telephonic communications of **Panday** were lawfully intercepted by **Colonel Brian Padayachee** ("Padayachee") from **Crime Intelligence**. I was informed by **Padayachee** that interceptions of **Panday's** calls revealed that there were attempts to remove the investigation against **Panday** and to have it allocated to **Mhlongo**. According to **Padayachee**, **Mhlongo** and **Panday** discussed myself during one of these calls. According to **Padayachee** there were also conversations between **Colonel Navin Madhoe** ("Madhoe") whose communications were also lawfully intercepted, and **Mhlongo**.
 9. **Mhlongo's** explanation that his communications with **Panday** were innocuous and confined to sharing 'political views' is contradicted by what **Padayachee** informed me. **Mhlongo's** conversations with **Panday** should be seen in context with other intercepted conversations of **Panday** such as those of **Madhoe**.
 10. On 22 October 2019 I phoned **Padayachee** to confirm what I have stated above, which he did. **Padayachee** advised me that the intercepted recordings will establish that **Mhlongo** did indeed attempt to collude with **Panday** in order to compromise the investigation against **Panday**.
 11. With regards to the attempts to find dirt on **Advocate Mxolisi Nxasana** ("Nxasana") by **Mhlongo** and the statement of **Terrence Joubert** ("Joubert"), both which **Mhlongo** denies, my response is as follows:



12. Advocate **Nxasana** confirmed with me that he was approached by **Joubert** who informed him that **Mhlongo** informed him, **Joubert**, that he had to find 'dirt' on **Nxasana**. **Joubert** later sent him a recording of the conversation between him and **Mhlongo** wherein **Mhlongo** is heard saying he had to find 'dirt' against **Nxasana**. According to **Nxasana** this recording is still available.
13. I do not have any reason to 'put the person of **Mhlongo** to disgrace' as imputed by him.
14. **Mhlongo's** allegation that I told him at a funeral that I intended to tarnish his name at state capture inquiry (sic) is denied.
15. I know and understand the contents of this declaration
16. I have no objection to take the prescribed oath.
17. I consider the oath to be binding on my conscience.


JW BOOYSEN MAL-GEN (Ret)

I certify that the deponent has acknowledged that he/she knows and understands the contents of this affidavit, that he/she does not have any objection to taking the oath, and that he/she considers it to be binding on his/her conscience, and which was sworn to and signed before me and that the administering of the oath complied with the regulations contained in the Government Gazette No. R1288 of 21 July 1972, as amended.	
	
SIGNATURE - RIAAN COETZEE CA (S=)	
COMMISSIONER OF OATHS	
Designation: Chartered Accountant CA(SA) SAICA Number: 05004862	
Date	22 10 2019
Place	Mdunand
Business address: 57 Laboria, 152 Alethea Avenue, Byttelton, Camerton, 0157	

AFFIDAVIT

I, the undersigned:

WELCOME SITHEMBISO MHLOGO

Hereby state as follows, under oath:

1. I am an adult person with full legal capacity, employed as Colonel in the Directorate for Priority Crime Investigation (DPCI), commonly known as HAWKS. I am currently stationed at the Provincial Unit for Serious Organized Crime as Provincial Commander in KZN
2. The facts deposed to hereunder are within my personal knowledge and are, to the best of my belief both true and correct.
3. The purpose of this affidavit is in compliance with a request from the Commission 's investigating team inviting me to reply to General Booyesen 's response to my Affidavit filed at the Commission on the 12th of May 2019, after being served with Notice in terms of Rule 3.3 of the Commission 's Rules for regulating conduct of proceedings

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S.S.M

4. in paragraph 5 of his affidavit, General Booyesen state that, his affidavit is not an *ad seriatim* response to My affidavit whereas in the same paragraph, from his first sentence he narrates that, "I now deal with Mhlongo 's response".
5. I am advised that General Booyesen 's current Affidavit follows the affidavit I caused to be filed at the commission, on the 13th of May 2019, emanating from Rule 3.3 Notice served upon me directing that attention be drawn to paragraph 42- 45 of General Booyesen 's founding Affidavit
6. I will therefore object to any new evidence presented or raised by him in his response to my replying affidavit particularly as that carries the potential to cause me prejudice, (for example the need to request some disclosures) considering that, the omission of such evidence in his founding affidavit , deprived me of an opportunity to address such evidence from the onset , in my replying Affidavit.
7. I am particularly concerned about General Booyesen 's last sentence in paragraph 5 which reads "if I do not deny any specific submission by Mhlongo, it should not be interpreted that I agree to or admit that submission". My submission here is that it is clear that General Booyesen is unsure about what he presents before the commission about me and only hopes that his fishing expedition might be successful.
8. I object to the content of paragraph 8 for the following reasons

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S.S.M

8.1 The alleged intercepted conversation was not disclosed to me and I have no knowledge or recollection of such conversation

8.2 There is no evidence to show that the alleged interception was authorized

8.3 The entire content of the alleged intercepted conversation was never raised either in General Booyesen 's Founding Affidavit or evidence presented orally, before the Commission. Furthermore, the paragraph constitutes hearsay information as General Booyesen clearly articulates what he was informed by Padayachee.

9 I am unable to comment on what Padayachee informed General Booyesen as articulated in paragraph 9 of his Affidavit. I can however make a submission to the effect that the whole paragraph remains hearsay, but for what I already stated in my replying Affidavit, on how I knew Mr. Panday

10 In as far as paragraph 10 of his affidavit, it sounds to me like, General Booyesen is running a parallel commission of inquiry. I expected that he would have verified all the information prior to his presentation of evidence for hearing before the commission or at least before filing of his founding affidavit.

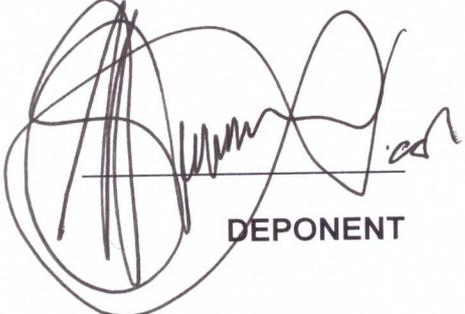
I am unable to comprehend the motives behind his approach of presenting the evidence first and verifying afterwards. The allegation that he phoned Padayachee on the 22 October 2019 to verify his facts puzzles me because his evidence was already presented in April /May 2019

WSM
S.S.M

11 General Booysen in his paragraph 10, tries to introduce Mr. Padayachee as witness to the Commission through the backdoor. My submission in this regard is that If Mr. Padayachee wants to implicate me, he should properly approach the Commission so that I can be served with the necessary Notice in terms of the Commission 's Rules. Furthermore, he should provide the evidence which I believe will be fairly disclosed to me so that I can answer. I am, as result thereof, unable to respond to the alleged intercepted communication, that I know nothing about and thus object to Padayachee 's affidavit in its entirety

12 On the matter of Mr. Nxasana as articulated in paragraph 11 of General Booysen 's Affidavit. My submission is that, at the risk of repeating what I already stated in the last sentence of sub-paragraph 8.3, General Booysen relies much on what he heard, hence my submission that, this could be attempts to put me to disgrace

13 With regard to paragraph 13 and 14 of General Booysen 's affidavit I stand by what I already said in my replying affidavit



DEPONENT

I hereby certify that the deponent declares that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and

sworn to before me at Pretoria on this 27 day of November 2019 and
that the Regulations contained in Government Notice R1258 of 21 July 1972,
as amended, have been complied with.

Mhlongos.S
Capt

COMMISSIONER OF OATHS

FULL NAMES: Siyabonga Simphiwe Mhlongo

CAPACITY: Captain

AREA: 15 Bram Fisher Road, Seruemes Building
Durban

JOHAN WESSEL BOOYSEN

Herby state as follows, under oath;

1. I have made previous statements to the Inquiry into State Capture. I also gave evidence at the inquiry.
2. I have responded to a statement deposed by Colonel WS Mhlongo ("**Mhlongo**") to the inquiry.
3. Mhlongo in turn has responded to my reply.
4. In response thereto this is my reply.
5. From the onset I would like to draw the attention of the honorable Deputy Judge President, Mister Justice Zondo to the following facts.
6. I drafted my own statement to the Commission of Inquiry. In my statement I have implicated a number of individuals whom I believe are implicated in State Capture. Unlike these individuals, I do not have the luxury, which they have, to respond and litigate at the expense and time of the taxpayer. I do so in my own time and at my own expense. It is indeed ironic and disturbing that Mhlongo be afforded legal assistance at taxpayers' expense. None of the allegations I leveled against him were consequent or as a result of the execution of his duties.
7. With this in mind I now respond to Mhlongo's response.
8. I reject Mhlongo's assertion that I am on a 'fishing expedition'. Mhlongo appears to be deliberately obtuse how he interprets what I say in par 5 of my previous affidavit. Paragraph 5 is unambiguous. Therein i inform Mhlongo that I am not responding to each of his assertions and if I do not respond to some of his assertions it cannot



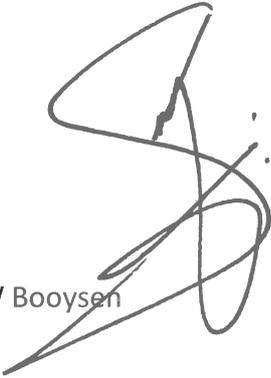
necessary follow that I admit or deny the paragraphs which I do not respond to.

There is nothing sinister about this. I simply did so to avoid prolixity at the time.

9. Mhlongo is being disingenuous through obfuscation in claiming to be oblivious to the intercepted phone calls. It is clear from my evidence and what is stated in paragraph 44 of my first affidavit that there were authorized interception in term of Act 70 of 2002.
10. Mhlongo mistakenly imputes that I am introducing 'new' evidence and that I am doing so through the 'back door'. He also refers to the evidence as 'hearsay evidence'. Mhlongo is not in a position to assume so. I am aware that Colonel Padayachee has deposed to a detailed affidavit to the Commission in which he corroborates what I stated.
11. Mhlongo's assumption that, I 'verified' what was already conveyed to me by Padayachee previously, means I only verified it after I testified, is a fallacious argument. I re-verified with Padayachee as to what he had told me earlier as a matter of caution.
12. There is no reason for me to put Mhlongo to 'disgrace'. I therefore deny Mhlongo's unsubstantiated speculation.
13. In conclusion. I have placed evidence before the Commission which I believe is true. There is no reason why I should want to present evidence to falsely implicate Mhlongo or any-one else.
14. My primary motive is to assist the Commission in establishing the facts in the inquiry into State Capture.
15. I know and understand the contents of this declaration. I have no objection to take the prescribed oath. I consider the oath to be binding on my conscience.

A handwritten signature in black ink, appearing to be the initials 'S' and 'K' or similar, located in the bottom right corner of the page.

JW Booyesen



I certify that the deponent has acknowledged that he/she knows and understands the contents of this affidavit, that he/she does not have any objection to taking the oath, and that he/she considers it to be binding on his/her conscience, and which was sworn to and signed before me and that the administering of the oath complied with the regulations contained in the Government Gazette No. R1258 of 21 July 1972, as amended.



SIGNATURE - RIAAN COETZEE CA (SA)
COMMISSIONER OF OATHS
Designation: Chartered Accountant CA(SA) SAICA Number: 05004962

Date 29/11/2019

Place Midrand

Business address: 57 Laborie, 152 Alethea Avenue, Lyttelton, Centurion, 0157

AFFIDAVIT

Colonel Brian Padayachee
S A Police Services
Crime Intelligence
Provincial Head office
Durban

During November 2010 I conducted a lawful and authorised investigation regarding serious death threats against the investigating officers tasked with the investigation of the 2010 Soccer World Cup corruption *vide* Durban Central CAS 781/06/2010

1.

The investigation confirmed that the death threats were real and the investigators were informed accordingly.

2.

During the course of the investigation large scale corruption was uncovered involving a corrupt businessman Mr Thosan Panday and senior Police Officials.

3.

At the time of this investigation Mr Panday was facing an investigation involving a R60 million Fraud with regard to the 2010 Soccer World Cup, Durban Central Cas 781/06/2010 has bearing.

4.

Several calls were incepted which revealed a corrupt relationship between Mr Panday and senior police officers.

5.

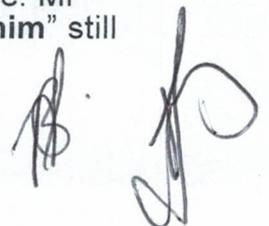
Several of these calls included Colonel WS Mhlongo.

6.

The communication intercepts clearly showed a corrupt relationship between Colonel WS Mhlongo, Colonel N Madhoe (co accused of Mr Panday) and Mr Panday.

7.

The communication intercepts further revealed discussions regarding Colonel WS Mhlongo taking over the investigations of the criminal cases against Mr Panday and Colonel Madhoe. The communication intercepts clearly showed that Colonel Mhlongo was assisting Mr Panday and Colonel Madhoe. Mr Panday even informed Colonel Mhlongo that his "**commitment to him**" still



stands.

8.

I confirm that I physically listened to the above communication intercepts and confirm that these communication intercepts are a true reflection of what is indicated in this statement.

10.

I confirm that the investigation was an authorised investigation and that the Section 18 of Act 70 of 2002 communication intercepts were duly authorised by the Designated Judge under Direction number 235/2010.

11.

I have been interviewed by the "Zondo Commission" evidence leaders and a sworn affidavit has been submitted to the Commission with regard to Corruption and State Capture.

12.

The communication intercepts and transcripts are available and have been reserved for the "Zondo Commission".

13.

I know and understand the contents of this statement.

I have no objection to taking the prescribed oath.

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



COLONEL

B PADAYACHEE

I certify that the deponent has acknowledged that he knows and understands the contents of this statement which was submitted by him. This statement was sworn to before me and the deponent's signature was placed thereon in my presence at 14h30 in Durban on 1st November 2019.


COMMISSIONER OF OATHS
SA POLICE SERVICE
CRIME INTELLIGENCE
PROVINCIAL HEAD OFFICE
DURBAN

AFFIDAVIT

I, the undersigned:

WELCOME SITHEMBISO MHLOGO

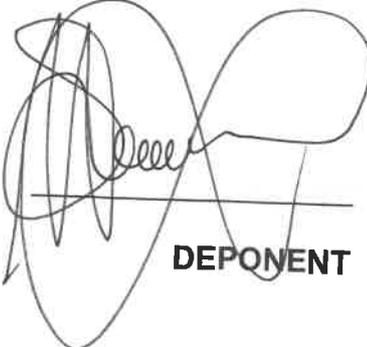
Hereby state as follows, under oath:

1. I am an adult person with full legal capacity, employed as Colonel in the Directorate for Priority Crime Investigation (DPCI), commonly known as HAWKS. I am currently stationed at the Provincial Unit for Serious Organized Crime as Provincial Commander in KZN
2. The facts deposed to hereunder are within my personal knowledge and are, to the best of my belief both true and correct.
3. The purpose of this affidavit is to supplement the affidavit I filed at the commission on 27th of November 2019 in view of General Booysen 's response to my replying affidavit.
4. I accordingly add subparagraph 8.4; 8.5 and 8.6 to paragraph 8 of my affidavit set forth above, to read as follows.

Li WSM

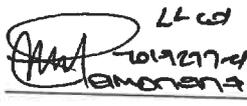
- 8.4 Should it be argued that General Booyesen 's founding Affidavit reference elsewhere , the alleged communication interception referred to in paragraph 8 his response to my replying affidavit and thus laying bases for Col Padayachee 's supporting affidavit deposed to on the 1st of November 2019 and attached to Gen Booyesen 's Response, My submission would be that the Notice in terms of Rule 3.3 served upon me drew my attention specifically to paragraphs 42 – 45 of General Booyesen 's founding Affidavit
- 8.5 My replying affidavit therefore dealt in full, with what was drawn to my attention without the necessity of requesting the alleged intercepted communication raised by Col Padayachee in his affidavit set out in 8.4 above
- 8.6 I further submit that even if I could have desired to be generous in responding to allegations pertaining to alleged intercepted communication against me , it would have been prejudicial to make such an attempt beyond what I stated in my replying affidavit, without being accorded an opportunity to access and listen to the recordings of the alleged intercepted communication

Lj



DEPONENT

I hereby certify that the deponent declares that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at Durban on this 02 day of December 2019 and that the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.

^{Lt Col}

Ramonana Jace Ramonana

COMMISSIONER OF OATHS

FULL NAMES: Jace Ramonana

CAPACITY: Lt Col

AREA: Durban.

by 

AFFIDAVIT

1.

I, Queen Ncamisile Mhlongo, ID 8008190150081 who resides at 51 Avocado Grove, Avoca Hills, 4051, employed as a Special Investigator at the National Prosecuting Authority, attached in the Asset Forfeiture Unit, business address 2nd Floor Southern Life Building, 88 Joe Slovo Street, Durban, contact numbers 031 334 5195 (work) and 0733333639 (cell), would like to state under oath that:

2.

On Friday, the 15th of November 2013 during the day I went to the 3rd floor in the Southern Life Building to see Col Welcome Sthembiso Mhlongo as I usually do. We sat and we started talking about the appointment of Mxolisi Nxasana as the new NDPP and how happy I was as someone who is from Durban who happens to be a close person to me. I thought he was going to share the same sentiments as he knows Mxolisi as well. However he started saying that he hopes that Mxolisi can let Richard Mdluli off the hook as he has been promised to head the Intelligence Unit in the KZN if Mdluli is not re-charged. He also mentioned that the right candidate was Nomgcobo Jiba. I then thought this conversation was becoming serious and I decided I would record him and started a sort of interview to find out his true feelings.

3.

He started telling me that Mxolisi Nxasana was not a kind man as I thought and that he knew this from interviewing his relatives. At the time I didn't understand what was going on. He continued by telling that he knows Mxolisi Nxasana from a long time ago where they had had an altercation about a client of Nxasana whom he (Mhlongo) had arrested. He then continued to tell me that Nxasana has many properties around Durban; he mentioned Ntuzuma, Umlazi, Pinetown and Kloof amongst others. I was surprised because one would be privy to such information if one was conducting an investigation. He came across as a person who has a hidden agenda as he was trying to convince me that Mxolisi Nxasana was not suitable for this position and he was going to prove it. I cut the recording when a private dressed police official came in. I know this because "Mhlongo" introduced him as a police official. I then left his office.

4.

On Saturday, the 16th of November 2013, I met with Advocate Thulani Duma who is working in the National office of the NPA. He is a very close friend and a colleague in Kwa Mashu and I played the recording for him. He was also shocked and I transferred the recording to him via Bluetooth. I called the NDPP and I sent him the recording on the 17th of November 2014. Unfortunately I lost the phone with the recording on the 16th of December and I no longer have the recording but the NDPP and Adv Duma still have a copy.

5.

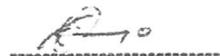
Amongst the people who heard the recording was Terrence Joubert who works in the Security and Risk department and he told me that he had recorded Col Mhlongo as well and I listened to his recording. The little that I remember from Terrence's recording is that Col Mhlongo wanted to find some "dirt" on Mxolisi from the Road Accident Fund and he was enquiring if Terrence knew anyone from the "RAF".

6.

Do you know and understand the contents of this statement? Yes

Do you have any objections taking the prescribed oath? No

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



Deponent

I hereby certify that the Deponent has acknowledged that she knows and understands the contents of this statement which was sworn to and signed before me at DURBAN on this 25th day of June 2014, the Deponent having declared that he has no objection to taking the prescribed oath which he considers to be binding on his conscience.

10/6/14
COMMISSIONER OF OATHS

NAMES: *Phisoalane M. Dube*

ADDRESS: *421 Phisoalane Street
Durban*

RANK: *Captain*

AFFIDAVIT

1.

I, Queen Ncamisile Mhlongo, ID 8008190150081 who resides at 51 Avocado Grove, Avoca Hills, 4051, employed as a Special Investigator at the National Prosecuting Authority, attached in the Asset Forfeiture Unit, business address 2nd Floor Southern Life Building, 88 Joe Slovo Street, Durban, contact numbers 031 334 5195 (work) and 0733333639 (cell), would like to state under oath that:

2.

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3.

He started telling me that Mxolisi Nxasana was not a kind man as I thought and that he knew this from interviewing his relatives. At the time I didn't understand what was going on. He continued by telling that he knows Mxolisi Nxasana from a long time ago where they had had an altercation about a client of Nxasana whom he (Mhlongo) had arrested. He then continued to tell me that Nxasana has many properties around Durban; he mentioned Ntuzuma, Umlazi, Pinetown and Kloof amongst others. I was surprised because one would be privy to such information if one was conducting an investigation. He came across as a person who has a hidden agenda as he was trying to convince me that Mxolisi Nxasana was not suitable for this position and he was going to prove it. I cut the recording when a private dressed police official came in. I know this because "Mhlongo" introduced him as a police official. I then left his office.

AFFIDAVIT

I, the undersigned,

TERENCE JOHN JOUBERT,
States under oath in English:

1.

I am an adult male 45years old with I.D no. 680728 5526 085, and residing at 32 Roosevelt Road, Padfield Park, Pinetown, 3610 with telephone number (031) 3345095, with cell number 0765966332 and I am employed as a Risk Specialist for the National Prosecuting Authority of SA, 88 Field Street, 3RD Floor, Southern Life Building, Durban, 4001.

2.

I hereby make oath and say that the facts deposed to herein are within my own personal knowledge and belief unless otherwise stated and are true and correct.

3.

On the 2013-09-18, I was on duty and I was supposed to fetch Adv. Jiba from the Ushaka International Airport. After making the arrangements I got a call from Adv. Jiba's secretary to say that she would be fetched by Col. Mhlongo on instructions from the DPP-KZN. Col. Mhlongo is currently seconded to NPA's Missing Person's Unit, that is headed by Debra Quinn in the province and by Shawn Abrahams at VGM. Their job is to assist members of the NPA to obtain information by interviewing witnesses to conclude their investigations. Shortly after the meeting between Adv. Jiba and Col Mhlongo, he (Col. Mhlongo) came to me in my office and told me that the new guy (referring to the new NDPP Mr. Nxasana), does not like Adv. Jiba and Adv. Mrwebi. He is aware that I do have a great relationship with Adv. Mrwebi and he was playing on my emotions. I asked why he thought so, and he said that he was sent by Jiba, as she is convinced that this guy is not the right person for the job and that we should try and find something on him as they did against Mr. Gumede.

219

AFFIDAVIT

4.

Mr. Gumede was the first person that we had heard about who would have been appointed the NDPP. The DPP had then insisted that Adv. Makhosi (prosecutor) make a statement against Mr. Gumede concerning the manner in which he (Mr. Gumede) had ill-treated her. This incident gave us indications as to the kind of people we were dealing with and to what lengths these people would go to get their way. Col. Mhlongo was instrumental in mobilizing people to gang up against Mr. Gumede.

5.

I then told him that this would be playing with fire as we are only small fries and when elephants fight the grass suffers was my comment to his suggestion. Col. Mhlongo assured me that their efforts would not be in vain as Jiba had said if this man (Mr. Nxasana) is removed, then she would be appointed again. The plan was not whether Mr. Nxasana is guilty but the mere fact that they wanted to embarrass him and insist that he be removed.

6.

On the 18th November 2013 we (Col. Mhlongo and I) had another meeting, but this time to discuss the fact that there are two unknown police officials occupying an office next to the DPP. When I raised this with the DPP, my executive manager, Mr. Ramahana flew down to Durban to inform me that the DPP complained about the manner in which I handled the issue of the police officials. I should leave those members as they are, and I should not ask too many questions. The police officials are said to be here to protect the DPP, but this is done without any TRA (Threat Risk Assessment) as per the security policy. We have requested secondment letters from SAPS but to date we have not received any correspondence from SAPS.

7.

Col Mhlongo then informed me that I should not worry about these two members as they were brought to work on the project against the NDPP. They went to Umlazi SAPS where they found people that could implicate Mr. Nxasana in a murder case. This case apparently happened in 1985/6 and his mother (who is a teacher) paid for the docket to disappear. The police

EVA

AFFIDAVIT

officials interviewed people in the Umlazi area to see whether they could not get tangible evidence out of them. These two police members were given a vehicle from the Provincial Commissioner to do their investigations against the NDPP.

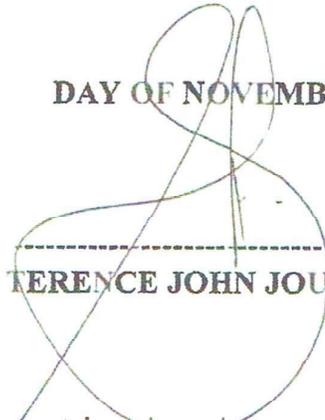
8.

Col. Mhlongo also asked that I must assist them with somebody that works at RAF (Road Accident Fund) because the information was that he, Mr. Nxasana had embezzled money from RAF. He also mentioned that Mr. Nxasana wife worked there. I told him that I would talk to people that I knew to see whether they could assist us. He then informed me that even if he is moved from the NPA to another place, he would continue his investigation from wherever he is.

9.

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

DATED AT DURBAN THIS DAY OF NOVEMBER 2013

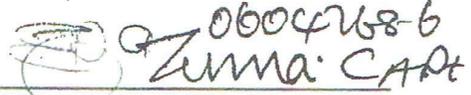


TERENCE JOHN JOUBERT

The abovementioned statement was taken down by me and the deponent has acknowledged that he knows and understands the content of this statement. This statement was sworn to before me and the deponent's signature was placed thereon in my presence at Durban on 2013-11-25.



AFFIDAVIT

 06042686
Zuma: CAPT.
COMMISSIONER OF OATH
EDWARD ZUMA
SAPS
2ND FLOOR
SOUTHERN LIFE BUILDING
DURBAN: CAPTAIN

Thulani TC. Duma

From: Terence Joubert
Sent: 25 November 2013 03:55 PM
To: mxolisin@telkomsa.net
Cc: Thulani TC. Duma
Subject: FW: SIGNED AFFIDAVIT
Attachments: 20131125144001007.pdf

Dear NDPP

Attached please find a copy of my affidavit.

Regards,

Terence

---Original Message-----

From: scan [<mailto:scan@npa.gov.za>]
Sent: 25 November 2013 03:40 PM
To: Terence Joubert
Subject:

This E-mail was sent from "RNPOE84C3" (Aficio MP 2500).

Scan Date: 25.11.2013 14:40:00 (+0100)
Queries to: scan@npa.gov.za

44

AFFIDAVIT

I, the undersigned;

TERENCE JOHN JOUBERT,

do hereby state under oath and say;

1.

I am employed by the National Prosecuting Authority of South Africa ["the NPA"] and am attached to the Security and Risk Management Unit on the 3rd Floor, Southern Life Building, 88 Joe Slovo Street, Durban.

2.

The facts contained herein are, unless stated otherwise, or the context indicates otherwise, are within my personal knowledge and to the best of belief true and correct.

3.

I wish to state that I dispute the affidavit that Advocate Willie Hofmeyr has submitted and is referring to.

My reasons are as follows:

T.J.
S.R.M.
W.S.M.
S.S.M.

45

On, or about 22 JUNE 2014, I was contacted by a certain journalist who told me that he was in possession of an affidavit I had attested to and wanted me to confirm the content of the said affidavit. I requested a copy of the said affidavit and he emailed a copy to me. I perused the affidavit and saw that my details were contained in the document as well as a signature which closely resembled mine. I read the contents of the affidavit, and did not recognize any of the information contained therein. I did not associate myself with any of the information contained in the affidavit and, it was clear to me that I had not compiled the affidavit. I have absolutely no knowledge of writing anything contained in it. I suspect that my computer was accessed and my information was used to compile this document without my knowledge. An investigation was instituted to establish the authenticity of the said disputed affidavit. I have not been informed of the outcome of the investigation.

4.

I am rather shocked and surprised to see that the said affidavit is being used during court procedures when an investigation into its authenticity is still underway. I also take offence to the fact that I am being used to fight the personal battles of Advocate Hofmeyr against the National Prosecuting Authority. I hereby deny any knowledge of the alleged instruction from anybody, including Advocate Jiba for me to investigate anybody outside the scope of my duties. The allegations contained in the affidavit are, in my opinion, all fabricated.

WSM
S.S.Mf.s.
S.P.M

4.6

5.

I know and understand the content of this statement.

I have no objection to taking the prescribed oath.

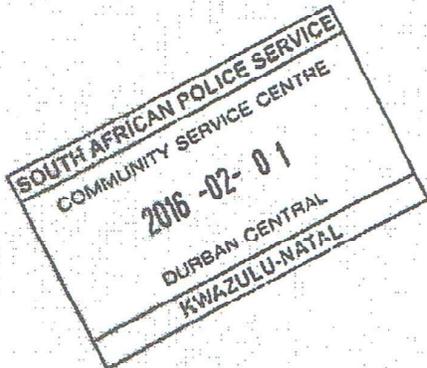
I consider the prescribed oath to be binding to my conscience.

TERENCE J. JOUBERT

I certify that on this _____ day of FEBUARY 2016, the deponent signed the affidavit in my presence and declared that he knows and understands its contents, that he has no objection to taking the prescribed oath and that he considers the oath to be binding on his conscience.

Mr. 09707066 w/o

Commissioner of Oaths



Full Names: TERENCE JOUBERT
Designation: w/o
Area: Dbrn
Address: NO. 50 Broad Street Dbrn
400

3
P.J.
WSM
P.M.

Judicial Commission of Inquiry into Allegations of State Capture, Corruption and
Fraud in the Public Sector including Organs of State

AFFIDAVIT

I, the undersigned,

TERENCE JOHN JOUBERT

do hereby state under oath that:

1. All facts stated herein are, unless the context indicates otherwise, within my own personal knowledge and are to the best of my belief both true and correct.
2. I am an adult male 51years old with I.D no. 680728 5526 085, and residing at 32 Roosevelt Road, Padfield Park, Pinetown, 3610 with telephone number (031) 3345095, with cell number 076 596 6332. I am employed as a Risk Specialist for the National Prosecuting Authority of South Africa, with offices situated on the 1st Floor, Southern Life Building at 88 Field Street, Durban, 4001.
3. The purpose of this affidavit is to confirm my role and to give clarity on a number of issues in relation to the recording of a telephonic conversation between myself and Colonel Welcome Mhlongo, as well as the confirmation of affidavits submitted in this regard.
- 3.1 There is quite a number of incidents that have transpired about these documents and the recording and I would, in this affidavit, seek to provide



detailed clarity on how they came to being and all that happened thereafter. This I would provide at the end of my affidavit.

3.2 I would like to seek pardon herein on the matter of dates as I do not have actual dates except for those appearing in the documents but my recollection of all the events remain intact.

4. On 24 March 2020, I was approached by Mr Groenewald, an investigator at the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (**"The Commission"**), who presented me with a number of documents and information requesting clarity in regard to them.

4.1 An affidavit, purportedly deposed to me on 25 November 2013 which was Commissioned by Captain Edward Zuma (**"Captain Zuma"**), attached hereto marked **Annexure "TJJ1"**. In this regard I comment as follows.

4.1.1 I confirm that I am the author and deponent of this affidavit. I

drafted the affidavit on my laptop computer containing facts within my personal knowledge at the time and thereafter, I approached a colleague, Captain Edward Zuma (**"Captain Zuma"**) who I know well, as being a Captain in the South African Police Service (**"SAPS"**) and employed at the Directorate for Priority Crimes Investigations (the **"DPCI"**), KwaZulu Natal. At that time, he occupied an office on the second Floor, Southern Life Building, 88 Field Street in Durban.

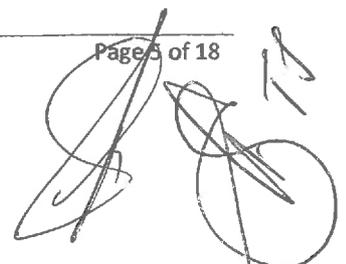
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- 4.1.2 I specifically approached Captain Zuma as the statement that I had prepared was to be Commissioned by a Commissioner of Oaths, and Captain Zuma is by virtue of his appointment, a Commissioner of Oaths.
- 4.1.3 The affidavit was duly sworn to, by me, before Captain Zuma who correctly administered the Oath, and both he and I initialled each page of the affidavit and I signed the affidavit as the deponent, and he as the Commissioner of Oaths.
- 4.1.4 I confirm the accuracy and correctness of the facts contained in this affidavit in all respects, as these facts were within my personal knowledge.
- 4.1.5 As I have referred to in 3.1 above I would deal with the issue of the affidavits substantively below.
- 4.2 An email transmission receipt from myself to mxolisin@telkomsa.net, dated 25 November 2013, attached hereto marked **Annexure "TJJ2."**
- 4.2.1 Directly after the affidavit had been commissioned, I returned to my office where I scanned the affidavit to my computer at 03:40 PM. From there I emailed the affidavit at 03:55 PM from my computer and email address, to the National Director of Public Prosecutions ("**NDPP**") at the time, Mr Mxolisi Nxasana ("**Mr Nxasana**");

- 4.2.2 I copied in Advocate Thulani TC Duma (“**Advocate Duma**”) who at that stage was an Advocate in the employment of the NPA, stationed at MVG Building, in Pretoria, Head Office, on the email;
- 4.2.3 I confirm from the correctness of the transmission receipt as well as the content contained therein.
- 4.3 Transcripts of the audio recording between Colonel WS Mhlongo and I, attached hereto marked **Annexure “TJJ3.”**.
- 4.3.1 I have read the transcripts together with listening to the sound clip of the recording between myself and Colonel WS Mhlongo and confirm that, where audible, this does not capture the core of what we were talking about.
- 4.3.2 This I do not attribute to anybody but I can only assume that the transcribers made the transcription without being sure as to who was talking to whom in the recording.
- 4.3.3 When I began the recording of our conversation Colonel Mhlongo had just received a phone call and he was responding to it and that was when I had the opportunity to take my recording device from a drawer and put it under the newspaper on the table.
- 4.3.4 As a result most of the conversation that starts the transcript are things that I do not know but were part of his conversation with another person on the other end of his line.

Handwritten signature and initials in black ink, located at the bottom right of the page. The signature is a large, stylized scribble, and the initials 'TJ' are written to its right.

- 4.3.5 It is unfortunate that I no longer have the copy of the recording but I believe that the Chairperson does have a copy of it and if it could be replayed I could assist in identifying the conversation between the Colonel and myself and that he had with the two callers that called during our conversation.
- 4.4 An affidavit deposed to by Queen Ncamisile Mhlongo to which reference has been made, I have the following to say:
- 4.4.1 A reference, during our conversation with Advocate Groenewald, was made to an affidavit by one Queen Mhlongo and I have not yet seen this affidavit.
- 4.4.2 In our discussion on the subject of her affidavit we requested it and he said he would establish if he can give us a copy thereof and that we will communicate such in due course.
- 4.4.3 In the communication that we have had with Advocate Nicholson and in exchange of documents that we requested it appears on the list of the attachments but was never actually attached.
- 4.4.4 I therefore believe that it would be imprudent to comment on her affidavit having not seen it but I believe that the Commission will be able to provide me with same in order to deal with what is required of me as far as it is concerned.
- 4.4.5 I confirm that I know Queen Mhlongo, that she is a special Investigator attached to the Asset Forfeiture Unit, situated on the

Handwritten signature and initials in black ink, located at the bottom right of the page. The signature is a large, stylized cursive mark, and the initials 'JL' are written to its right.

second Floor, Southern Life Building, 88 Field street in
Durban

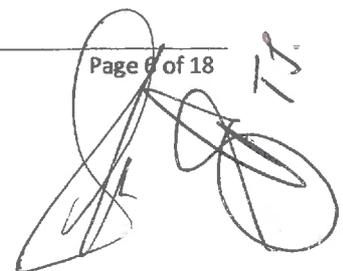
4.5 An affidavit deposed to by Mr Mxolisi Sandile Oliver Nxasana, before the Commission, dated 11 June 2019, attached hereto marked **Annexure "TJJ4."**

4.5.1 My attention was drawn, in particular, to pages 7 and 8 of Mr Nxasana's affidavit.

4.5.2 I confirm the contents of the affidavit where it is made in respect facts to which I have personal knowledge of, and in particular, paragraphs; 33 to 37 on pages 7 and 8 of the 28-page affidavit of Mr Nxasana but this excludes the contents of paragraph 36.3.

4.5.3 The contents of this paragraph does not reflect the contents of my affidavit as it appears in page 3 of my affidavit dated 25 November 2013, to which Mr. Nxasana is referring to, in that it was Colonel Mhlongo who said Mr. Nxasana does not like Adv. Jiba and Adv. Mrwebi and that he was sent by Adv. Jiba, as she was convinced that "this guy" (Mr. Nxasana) is not the right guy for the job and we should try and find something on him as they had done with Mr. Gumede.

4.5.4 That above is to explain that Adv. Mrwebi had nothing to do with the plot I recorded in my conversation with Colonel Mhlongo but was only mentioned as one person that Mr. Nxasana did not like.

Handwritten signature and initials in black ink, located at the bottom right of the page. The signature is a large, stylized scribble, and the initials 'TS' are written to its right.

4.6 A copy of the transcript of Mr Nxasana's evidence before the Commission on 19 August 2019, attached hereto marked **Annexure "TJJ5."**

4.6.1 I confirm the correctness of the evidence in respect of where it relates to myself and my interaction with Colonel WS Mhlongo, and later between Mr Nxasana and I.

4.7 I am informed that Colonel Mhlongo has submitted an application to the Commission to cross question General Booyesen and Mr Nxasana. In his application Colonel Mhlongo has attached as annexures the affidavit now attached to my current affidavit as hereto marked **Annexure "TJJ1"**.

4.8 He has further attached an affidavit, purportedly deposed to me on 1 February 2016, which was Commissioned by Warrant Officer Sipelele Patrick Magwaza (**"Warrant Officer Magwaza"**), attached hereto marked **Annexure "TJJ6."**

4.8.1 I note from the supporting documentation, allegedly annexed to his application to the Commission, by Colonel Mhlongo, and in particular from his affidavit dated 9 May 2019, from paragraph 7.2 to 11.2.9 where it concerns me, Colonel Mhlongo has made certain assumptions.

4.8.2 Without attending to the assumptions as made by Colonel Mhlongo in rebuttal of allegations by Colonel Booyesen on his activities in the employ of the NPA, as well as (in 11.2) his

rebuttal of any involvement or orchestration of a plot to remove Mr. Nxasana as the NDPP, I have made reference in 3.1 above that i would deal with the issue of the two affidavits and since his affidavits seeks reference to them both I would deal with his affidavit at the same time with the affidavits, below.

4.8.3 I take note of paragraph 10 where Colonel Mhlongo states that:

“10. I submit further that General Booyesen's reliance on the alleged affidavit of Terrence John Joubert In tarnishing the Image of adv, Mxolisi Nxasana is questionable, since, the alleged deponent went public to dissociate himself from the affidavit Annexed and referred to as Annexure JWB2 by General Booyesen in his statement”.

4.8.4 This affidavit referred to by General Booyesen (Annexure JWB2) is the attached to my current affidavit as hereto marked **Annexure “TJJ 1”**.

4.8.5 I take further note that, in his affidavit Colonel Mhlongo states further:

“11.2 PARTICIPATION IN FINDING DIRT AGAINST Mxolisi NXASANA

11.2.1 The source for grounding allegations of participation In finding dirt against Adv. Mxolisi Nxasana is the alleged affidavit by Terrence John Joubert

- 11.2.2 *Terrence Joubert has denied any knowledge or association with the alleged affidavit set forth by General Booyesen in his statement. I attach herewith Annexure AA2 as confirmation to the effect that Terrence John Joubert rejected being the author and deponent of the alleged affidavit as alleged by General Booyesen.*
- 11.2.3 *The attached Annexure AA2 is date stamped 1st February 2016 and counters the alleged affidavit referred to by General Booyesen statement titled Annexure JWB2 and deemed to be deposed of on the 25th Nov 2013*
- 11.2.4 *The affidavit I refer to as Annexure AA2 is in Public Domain and General Booyesen should have known about it as it was published in both Sunday times and City press*
- 11.2.5 *I therefore deny participating in any manner in the persecution of adv. Mxolisi Nxasana*
- 11.2.6 *In paragraph 4 of attached Annexure AA2, John Joubert makes it clear that he denies any knowledge of the alleged instruction from anybody, including Jiba directing him to investigate anybody outside the scope of his duties*
- 11.2.7 *Terrence John Joubert concludes his Affidavit in paragraph 4 by stating that "the Information contained in the affidavit is fabricated"*
- 11.2.8 *I submit therefore that Joubert refers to General Booyesen's Annexure JWB2 as fabricated and calculated to mislead the Commission*

11.2.9 *The gist of Joubert 's Affidavit set out as AnnexureAA2 Implies that General Booyesen's acquired copy of statement alleged to be that of John Joubert or Annexure JWB2 has no weight as evidence to the allegation In support of adv. Mxolisi Nxasana's persecution but meant to tarnish my image In various platforms and to mislead the commission"*

4.8.6 My comment herein shall be provided below.

4.9 I have also had sight of an affidavit submitted to the Commission dated 2 April 2019 deposed to by General Booyesen where at paragraph 45 it is stated:

4.9.1 *"...Mhlongo was later implicated by Advocate Mxolisi Nxasana for attempting to find dirt on Nxasana at the behest of Advocate Nomgcobo Jiba. This was when Nxasana had succeeded Adv. Jiba as the National Director of Public prosecutions. I acquired a copy of the statement of Mr. Terrence John Joubert, a Risk Specialist contracted to the office of the NPA, which confirms this. A copy of Joubert's statement is attached "JWB2"*

4.10 The contents of paragraph 45 in Colonel Booyesen's statement reflect to the recorded conversation between me and Colonel Mhlongo as well as the contents of my affidavit dated the 25th of November 2013. Affidavit of Colonel Booyesen attached and marked "TJJ7"

4.11 Though it is not clear how he acquired a copy of my affidavit as it was document carrying confidential information that was shared between

me, the Advisor to the NDPP and the NDPP himself. Notwithstanding, I confirm that his reflection to the content of my affidavit are indeed true.

5. THE RECORDING AND THE AFFIDAVIT DATED THE 25TH OF NOVEMBER 2013

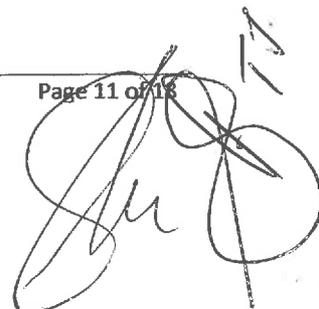
5.1 As I have referred to in paragraph 2 above that I am employed by the National Prosecuting Authority as a Risk Specialist, my work focuses on the risks that ensue either to the work of the Directorate or the Risks that are within the Directorate itself, in operations, institutional integrity and all that can be associated with the risks inherent to the institution.

5.2 In the performance of my duties I am bound by secrecy as it is provided for in terms of Section 30 of the National Prosecuting Authority Act of 1998 ("the Act") and this bind provides no exception in its application to my work as an employee of the institution established in terms of Section 7 (1) of the Act.

5.3 I received a call from Advocate Knox Mollele (Adv. Mollele), the Special Director, who told me that he had received a phone call from one Colonel Mhlongo who said he was calling from one of the offices of the ANC (which he did not mention). I recognised and know Colonel Mhlongo as he was seconded from the SAPS to join the Directorate on specific tasks.

5.4 Adv Mollele told me that Colonel Mhlongo had asked him if he could assist (to facilitate vanishing) in a matter that was involving one Mr. Bobby Motaung who was somehow entangled in investigations and his involvement in the building of one of the Stadiums that were built in preparation of the 2010 World Cup. This matter apparently was indeed an existing investigation but it had nothing to with Adv Mollele's office.

5.5 Unsettled by this phone call Adv Mollele then called me and told me the story and asked me to speak to Colonel Mhlongo and advise him that we do not do things of this nature in our line of work and this could land him in deep trouble both with the office and the law.

A handwritten signature and initials in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be 'J. M.' followed by a large flourish. The initials 'J.M.' are written above the signature.

- 5.6 It was after this phone call that I called Colonel Mhlongo to my office to address him on this issue and to warn him not to ever try to do these unethical interventions in ongoing investigations as this tarnishes the image and the integrity of the Directorate.
- 5.7 He came to my office and I communicated what I wanted to tell him and he confirmed to have understood what I was saying. Immediately after we had finished he then started a new topic which began with the new NDPP. I took a silent shock on the new subject and whilst I was trying to listen to what he was saying his phone rang. It was then when I decided that let me make a recording of whatever he is going to say because I could feel that his would be implicative in more than one ways.
- 5.8 Whilst he was on the phone I could reach my recording device in my desk, activated recording and I put it under the newspaper that was on the desk. When he finished with his phone call he then proceeded with what he wanted to say and, without elaborating, that is the contents of the recording.
- 5.9 After that I then contacted Advocate Thulani Duma (Adv Duma), who at the time was the advisor to the new NDPP Mr. Mxolisi Nxasana. I told him of what had transpired and that apart from the discussion that I had with Col Mhlongo I had also recorded our discussion.
- 5.10 During that week or the following day after contacting Adv Duma I was due to do some work at the Head Office in Pretoria (VGM Building) and Adv Duma advised that I should bring the recording with me and come see him in his office. I did as he requested and we both listened to the recording in his office. He was shocked by what he heard both in our conversation with Colonel Mhlongo and the conversations that he had in one of the phone calls that he received whilst he was in my office.
- 5.11 I left him with the copy of the recording and on the 25th of November 2013 he called me and asked me to write an affidavit in support of the information in the recording. I then drafted the affidavit and it was

commissioned by Captain Zuma on the 25th of November 2013, and I transmitted it on the same day. (i.e. "TJJ1")

- 5.12 In our institutional operations we have what we call the Integrity Management Unit (IMU) which looks into matters and issues of integrity of the institutional operations and the behavioural integrity of all employees in general.
- 5.13 When I encountered what Colonel Mhlongo brought to my office it immediately fell into the territory of my work in that it posed risk to the NDPP but, in a more serious manner, it reflected on the issue of institutional integrity as it also reflected to unethical conduct that has been successfully undertaken against Mr. Gumede who was also a candidate to the position of the NDPP.
- 5.14 This called for the immediate attention of the IMU and the quickest way for it to get to the attention of the head of the IMU was to take it to the highest office, i.e. the office of the advisor to the NDPP. That is the primary reason why I communicated all this to the office of Adv Duma who was going to relate it to the office of the NDPP.
- 5.15 To my surprise and dismay I never heard anything of this matter, the affidavit or the recording either from the office of the advisor to the NDPP, the office of the NDPP or the IMU. The dismay was due to the fact that in this whole scenario I could see an evident institutional abating taking place and the silence to the information I had provided was nothing less than encouraging this to proceed in other fronts.
- 5.16 In giving attention to the affidavit of Colonel Mhlongo in paragraph 10 and 11.2.1 I would want to say the contents are both opportunistic and fallacious in that the reliance of Mr. Nxasana and Colonel Booyesen are not misguided but are rather relying to the true state of events as they appear in my affidavit and can be listened to in the recording of our conversation. It is clear that he relies on the second affidavit (which is purported to be nullifying the first affidavit) and I am going to deal with

that affidavit herein below but the most important part of it all is that their reliance to my affidavit dated 25.11.2013 is reliance to what actually transpired.

6. THE SECOND AFFIDAVIT DATED THE 1ST OF FEBRUARY 2016. i.e. "TJJ6"
- 6.1 I understand that this part of explaining the second affidavit is somehow self incriminatory but I believe that to assist the work of the Commission to give due credence to other witnesses relying on my first affidavit is more important even though I have my reason of why and how this affidavit came to being.
- 6.2 The deafening silence on the first affidavit and the recording had overwhelmed me and passed and it was after a long time that I heard a reference to the affidavit. That was when I received a phone call from a journalist who told me that he was in possession of an affidavit that I had attested to and wanted me to confirm its contents. I asked where this affidavit came from and he said it was given to him by Advocate Willie Hofmeyer (Adv Hofmeyer).
- 6.3 On this response I took a first shock on the fact that I never gave the affidavit to Adv Hofmeyer and secondly, even if I had given it to him this was confidential institutional information and cannot be handed over to journalists under no circumstances.
- 6.4 A lot of things came into my mind about the whole situation, i.e. the silence by the NDPP after they received my affidavit, the non reaction by the IMU if the issue ever got to their attention and the overall silence as if nothing happened in my office on that day with Colonel Mhlongo.
- 6.5 As I have mentioned earlier that I know and understand the importance, the criticality and fragility of my work within the institution and that in all my operations and engagements I am bound by secrecy and that secrecy, in my standards, override a number of ordinary situations. I had to make the decision with the inquisitive journalist who was insisting in that I should make a statement of whether I know of this affidavit that he

got from Adv Hofmeyer and if not I should rebut same in writing. There was no way that I would give him satisfaction of the truth as this would have had far reaching consequence for the institution.

6.6 During this time there were lots of fights within the institution amongst the heads of the institution. The institution was divided into some kind of warring camps where there was Adv Jiba and her team on the other end and Adv Hofmeyer and his team on the other end. This war ended up in the Mokgoro commission where an inquiry into Jiba and Mrwebi's fitness to hold office was the principal issue. It was in this Commission that Adv Hofmeyer presented my affidavit as evidence of Adv Jiba's unfit to hold office.

6.7 It was only then that I understood the silence after I had given the highest office the information on the deteriorating institution as perpetrated by the heads of the institution that I did not give them the information that they were willing or planning to give to the Integrity Management Unit but they took it for their own ammunition to fight their wars on the powers they all have over the institution. It was clear that the information that I had given them was only good for their personal use not for the purpose that I, as a Risk specialist of the Institution, had provided them with for.

6.8 I had to make a decision. The pressure was mounting and the questions were piling up, the print media was running with numerous stories and different allegations and my name was in all of them either as a conduit or an information peddler in all these warring camps and their different fighting platforms.

6.9 The fact that was more grinding to my considerations was that when I gave the recording and attested to the affidavit immediately the whole situation fell under the provisions of Section 27 of the Act and understanding that my operations within the institution fall under the persons referred to in Section 7.4 of the act (including the Integrity Management Unit) I knew that I am sworn into secrecy in terms of Section 30(1) (a-c) of the Act. Though it was clear that this line has been crossed

by my superiors I was not willing to do the same as well. It was clear to me that I have been used to facilitate their sparring and whoever held my card was gaining ground to wherever they were heading.

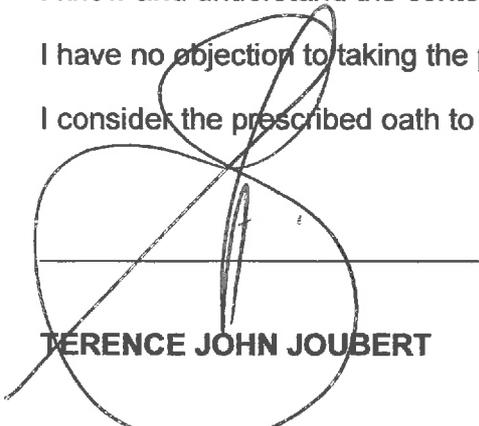
- 6.10 It was under the above mentioned situations of pressure and ongoing pestering from all corners of media frames that I took a decision to depose to the second affidavit dated the 1st of February 2016. I knew that I was sacrificing the true and correct information by this affidavit but in my weighing of all the facts and circumstances the only way out was to perjure myself, first not to give journalist the satisfaction they wanted to authenticate from my first affidavit (as the information therein was extremely sensitive) and secondly to preserve the secrecy I am sworn to in terms of Section 30 (1) (a-c) of the Act as the information I had shared already fell under Section 27 of the Act and within the operations of the Directorate.
- 6.11 I knew that perjury is an offence and that I had committed it by attesting to the second affidavit. Though this affidavit is not entirely untrue, i.e. I really did not give the first affidavit to Adv Hofmeyer nor did I have any communications with him on the issue of the crime that was committed or about to be committed and unethical conduct of Colonel Mhlongo to the operations and integrity of the Directorate, in particular to the incumbent of the office of the NDPP, but I hereby admit, unreservedly that the second affidavit is not true in its contents and that the first affidavit is true and its contents, as supported by the recording, remains the truth of what I attested to on the 25th of November 2013.
- 6.12 It is on the basis of the above averments that I have made about the second affidavit that I have mentioned in paragraph 5.16 that the contents of the affidavit of Colonel Mhlongo, in particular paragraph 10 and 11.2.1, are both opportunistic and fallacious and I wish to state firmly that the allegations made against him relying in the contents of the affidavit that I attested to on the 25th of November 2013 are all true and correct and should not be viewed to have been contradicted in any manner by my second affidavit as it is untrue.

- 6.13 I acknowledge that this admission to perjury that I had to commit for the reason I have set forth is not healthy for everything that I represent but the importance of the work of the Commission have a room in my conscience but I have a thorny concern which I have not been able to reconcile from the date I met with Adv Groenewald.
- 6.14 On the 24th of March when we met with Adv Groenewald at the offices of the NPA in Durban there was also a gentlemen (one Captain Ncwada) whom we met with before Adv Groenewald who came with a docket from Silverton where he was coming to ask to take my warning statement for a case of perjury on the two affidavits. This I did not discuss with Adv Groenewald and I did not discuss with him either (Ncwada) that I was meeting Adv Groenewald from the Commission pertaining the same affidavits but it became a conundrum in my thoughts on what are the new intentions and whose intentions are with these affidavits now. But I believe the work of the Commission is not entangled into all these intertwined sparring of power mongers and that is why it became no weight to provide the clarity that I have provided about the affidavits, including self incrimination.

I know and understand the contents of this declaration.

I have no objection to taking the prescribed oath.

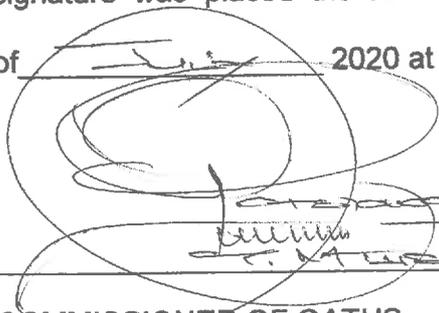
I consider the prescribed oath to be binding on my conscience.



TERENCE JOHN JOUBERT

I certify that the deponent has acknowledged that he knows and understands the contents of this declaration, which was sworn to before me and the deponent's

signature was placed thereon in my presence at Durban on this the 24 day
of July 2020 at 13h 50.


P. MTHEMBU

COMMISSIONER OF OATHS:

FULL NAMES: P. MTHEMBU

DESIGNATION: D/O

AREA: MONTCLAIR

ADDRESS: 90 ROLAND

CHAMPAIN DRIVE

MONTCLAIR

SOUTH AFRICAN POLICE SERVICE
VISPOL COMMA. DEF
2020 -07- 24
MONTCLAIR SAPS
KWAZULU-NATAL

AFFIDAVIT

I the undersigned,

JOHAN WESSEL BOOYSEN

do hereby state under oath that:

1.

I am an adult male South African citizen residing in Pretoria, Gauteng Province.

2.

All facts stated herein are, unless the context indicates otherwise, within my own personal knowledge and are to the best of my belief both true and correct.

3.

I will attempt to keep my submission brief in order to avoid prolixity and to unnecessarily burden the Commission. I will seek to highlight key aspects, events and *dramatis personae*. Should it become necessary I will provide additional facts.

MY POLICE CAREER AND QUALIFICATIONS

4.

I was a career policeman having joined the South African Police in 1976. I was an officer before our democracy in 1995 and was part of the transformation process from a Police Force to a Police Service. I regard my integration into the new Police Service, including my promotion to the ranks of Colonel, Brigadier and Major-General subsequent to the democratic dispensation in South Africa, as one of my



1

her to Lieutenant-General Vishnu Moonoo (“**Moonoo**”). Moonoo, was obviously taking instructions from Phiyega so Moonoo replaced Botha as the investigating officer and transferred the case to Major-General Norman Taioe (“**Taioe**”) who conducted the rape investigation wherein the former President Jacob Zuma was the accused. The former President Zuma was acquitted.

202.

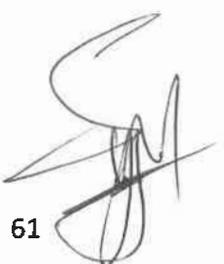
I also know that there was tension between Moonoo and Dramat when Moonoo apparently refused to cooperate with Dramat in the Nkandla investigation. Dramat confirmed to me in September 2016, that he had requested the Nkandla docket from Moonoo, the National Head of Detectives. At the time, this docket involved the abuse of state funds at Nkandla, the private residence of former President Jacob Zuma.

203.

Phiyega went on to dismiss Lebeya from SAPS. Lebeya had previously headed Organized Crime and had also ordered an investigation into Mdluli. I was privy to Lebeya’s correspondence as it formed part of Madonsela’s investigation into the looting of the Secret Services Account in KZN by CI.

204.

Colonel Brian Padayachee (“**Padayachee**”) from Crime Intelligence who had managed the intelligence in the Panday investigation, in terms of Act 70 of 2002 (communication interception) submitted two affidavits dated 28 January 2019 and 4 February 2019 with regards to his investigation. Copies of these affidavits are attached as **Annexure “JWB 26.”**



230.10. *"It will take South Africa's criminal-justice sector years to recover from the disruptive impact of the Zuma era, during which good men were booted from their jobs for doing the right thing. The chilling impact this had on prosecutors and police officers is immeasurable. Those who were willing to bend the rules and apply two sets of rules, one for Zuma and his cronies and another for the rest of us, thrived".* Adriaan Basson & Pieter du Toit. In their book *"Enemy of the People"* page 95.

230.11. I was interviewed by researchers for *"State Capacity Research Project"* titled *"Betrayal of the Promise: How South Africa is being stolen"* published in May 2017. I have read the report. The chapter dealing with *"Securing a Loyal Intelligence and Security Apparatus"*, [pages 19 and 20] accurately chronicles some of the events I have described above. Pages 50 to 52 under the heading *"Investigations and prosecutions"* are also relevant. I attach an extract from this report as **Annexure "JWB 29."**

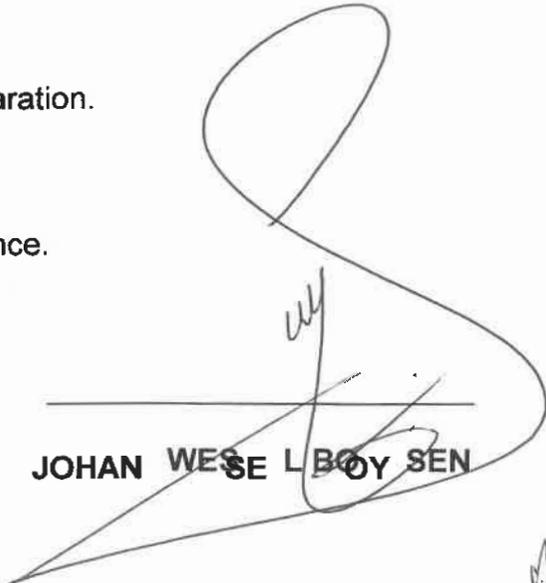
230.12. I have titled a book which I co-wrote with journalist Jessica Pitchford *"Blood on their Hands"* I sincerely believe that those who allowed themselves, for whatever reason, to become part of the captured factions at the NPA and in Law enforcement have done our country a grave disservice. They have blood on their hands.

231.

I know and understand the contents of this declaration.

I have no objection to take the prescribed Oath.

I consider the oath to be binding on my conscience.


JOHAN WESE LBOY SEN

I certify that the deponent who acknowledges that he knows and understands the contents of this affidavit; that it is the truth to the best of his knowledge and belief and that he has no objection to taking the prescribed oath and regards the same as binding on the deponent's conscience and the administration of the oath complied with the Regulations contained in Government Gazette No. R1258 of 21 July 1972, as amended. This affidavit is signed and sworn to before me at Centurion on this the 2nd Day of April 2019 at 14:32



COMMISSIONER OF OATHS

EX OFFICIO:

FULL NAMES:

JEAN JACQUES MARAIS

PHYSICAL ADDRESS:

CNR JEAN AVEINIE

OLIFANTHOUTBOOM CENTURION

DESIGNATION:

COLONEL



ANNEXURE “JWB26”

COLONEL B PADAYACHEE
CRIME INTELLIGENCE
PROVINCIAL HEAD OFFICE
DURBAN
KWA-ZULU NATAL

1.

I am a Colonel in the South African Police Service serving under the Provincial Head, Crime Intelligence, Provincial Head Office Durban. I was appointed in the South African Police Service in 1982 and have 36 years' service. I am currently the Section Commander at Intelligence Collection.

2.

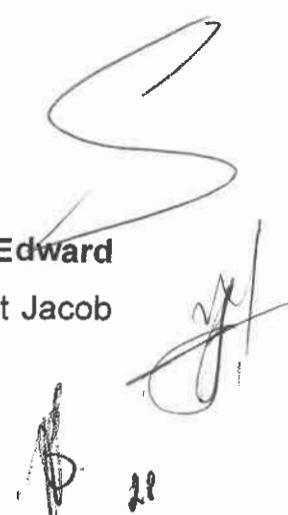
During the period of the investigation relating to the Soccer world 2010 corruption and fraud case involving R 60 million (CAS 781/06/2010), I was the Section Commander Security Intelligence. I have been working with Crime Intelligence Project Driven investigations since 2000.

3.

During the course of the investigation large scale corruption was uncovered involving, *inter alia*, Senior SMS Police Officials, Police Officers as well as very influential and prominent Government Officials/individuals. I am aware of the existence of much evidence that is available to prove this. I am informed that for purposes of the terms of reference of this Enquiry the details of the evidence need not be set out. This evidence will be put before the State Capture Commission.

4.

One of these individuals who is implicated in this investigation is **Mr Edward Zuma** (hereinafter referred to as "Zuma"), son of the former President Jacob Zuma.



5.

The investigation revealed that Zuma approached Major General Johan Booyesen (hereinafter referred to as "Booyesen") with regard to the Thoshan Panday (hereinafter referred to as "Panday") corruption cases and requested his assistance, more particularly in retrieving money, that was being withheld by the State because of the pending cases against Panday, for example, the R60 million Fraud and Corruption case which emanated from the 2010 Soccer World Cup. Confirmed factual evidence reflect that Zuma contacted Panday and that he met with Booyesen. I am personally able to confirm that this is reflected in the evidence.

6.

Several intercepted calls revealed serious death threats against Booyesen. During one of the intercepted communications between Panday and one **Colonel Rajen Aiyer** (hereinafter referred to as "Aiyer"), Panday said the following to Aiyer: *"the only way you can help me is to take Booyesen out"*. This was a serious threat which was communicated to Booyesen to be vigilant and take proactive steps to safeguard himself and his family. I had personally heard this from the intercepted call.

The investigation revealed that Aiyer sounded and appeared to be desperate both financially and emotionally. It was common knowledge that he was also going through a difficult divorce.

It was further established that Aiyer was physically in possession of a fully automatic R5 Assault Rifle.

This was communicated to Section Head, Commercial Crime, Brigadier Lategan

(hereinafter referred to as "Lategan") who then took possession of the R5 rifle from Aiyer. It is unknown why he was in possession of the rifle as this is a non-standard weapon and is only issued to operational members during specific operations. For purposes of this Enquiry further elaboration in relation hereto is not required.

7.

The investigation factually revealed that Panday was desperate to get rid of Booyesen. I have been privy to that factual information.

8.

The evidence at our disposal indicates that Panday liaised with several prominent high profile individuals as well as senior Police officials to assist him in this regard. Large sums of money were also paid to corrupt officials.

9.

The investigation factually revealed that Panday requested one **Mr Deebo Mzobe** (hereinafter referred to as "Mzobe") to assist him in getting rid of Booyesen ("**Clipping his wings**"). Mzobe is the cousin of former President Jacob Zuma.

This information about Mzobe being the cousin to President Jacob Zuma is public knowledge and also reported in the media.

Panday told Mzobe that they need to "**clip Booyesen's wings**" and suggested to Mzobe that they have a meeting and briefing on

“how to take care of Booyesen because he is obviously now standing in the way of everything”. I have listened to this recording and confirm this.

Mzobe requested some money from Panday, which the latter said he will *“sort out for him”*.

This evidence is factual and reflected in the transcripts of recordings that are in the possession of SAPS.

10.

I informed Booyesen that the threats against him were serious and that Panday has sought assistance from very “powerful individuals” to deal with him and the investigating officers. These threats were communicated to Booyesen on different occasions either telephonically or personally.

The above evidence is factual, received through my investigation and I can confirm that that is what the evidence reflects..

11.

The investigation also revealed a conspiracy between Colonel Aiyer, Panday and Sunday Times journalist, **Mr Wa Africa** (hereinafter referred to as “Wa Africa”). Factual evidence is available where Wa Africa requested criminal dockets from Panday. He even gave Panday the criminal case numbers. Panday, in turn, then requested these dockets from one Captain Pipes Hafajee (hereinafter referred to as “Hafajee”).

Wa Afrika was well informed and he knew that Booyesen was going to be arrested and suspended, He also told Panday that Booyesen flew in a helicopter and blocked the path of suspects and the Cato Manor members then shot and killed the deceased in Howick case. He gave Panday the case numbers.

Aiyer gave crime scene photographs to Panday who in turn gave it to Wa Africa. These photos were published with headline news "**Cato Manor Death Squad**". Booyesen was thereafter charged with Fraud and Corruption as well as running a so-called "Hit Squad". Wa Afrika met with Panday at Umhlanga in February 2012.

The main, single witness in these charges against Booyesen and members of the Cato Manor Organised Crime Unit, ironically, was the same Aiyer, whom had conspired with Panday earlier. Booyesen was thereafter suspended as a result of these charges.

The investigation revealed that Aiyer was on the payroll of Panday and as a result of his (Aiyer's) actions and contribution, Panday was successful in having Booyesen removed. I am able to confirm this.

11.

Further facts;

11.1 **FORMER ACTING DIRECTOR OF PUBLIC PROSECUTIONS:
KWAZULU-NATAL, ADVOCATE SIMPHIWE MLOTSHWA**

The former Acting Director of Public Prosecutions: KwaZulu-Natal, **Advocate Simphiwe Mlotshwa** (hereinafter referred to as "Mlotshwa") was removed from his acting position after he refused to withdraw all Panday related matters. I drew this inference from my own conclusions as well as articles in the media.

His life was even threatened and he thereafter had bodyguards assigned to him. I physically saw him with body guards.

After refusing to withdraw the Panday related matters on the grounds that there were *prima facie* cases against Panday and others, he was replaced by current Director of Public Prosecutions, **Advocate Moipone Noko** (hereinafter referred to as "Noko"). I base this on my own observations and articles in the media.

Noko, within a short period of her appointment, withdrew all the cases against Panday and his associates.

Mlotshwa thereafter resigned and is now practicing as an advocate and a member of the Society of Advocates: Pietermaritzburg.

11.2 **ADVOCATE BHEKI MANYATHI** (Senior State Advocate DPP: KZN)

Advocate Bheki Manyathi (hereinafter referred to as "Manyathi"), Senior State Advocate at the Director of Public Prosecutions: KwaZulu-Natal was the prosecutor in the R2 million Corruption case against Panday and co-accused Colonel Madhoe.

At the time, Manyathi was recommended to be promoted to the position of Senior Deputy Director of Public Prosecutions as Regional Head of the SCCU, in KwaZulu-Natal. This is my personal knowledge as I knew him and I interacted with him.

His refusal to withdraw the case against Panday and Madhoe resulted in the appointment being withdrawn on the eve of his appointment. This is my own conclusion and my personal observation. This I say because of the systematic sequence of events around the Panday and Madhoe matters.

Manyathi resigned thereafter and is currently in private practice at the Society of Advocates in Durban.

Panday conspired with a Sunday Times journalist, WaAfrica and published the Cato Manor Death Squad article to discredit Booysen.

Information and photos were furnished by Panday to the journalists.

The journalists even informed Panday that Booysen was going to be removed

from the case and will be suspended.

Booyesen was indeed removed from office and suspended.

These very same journalists were awarded prize money and awards for the articles they published.

The journalists and their articles were recently publicly discredited and the Sunday Times issued a formal apology to Booyesen.

All prize money and awards were subsequently returned as well.

Aiyer assisted with and was instrumental in the publication of these false articles by the journalists. He supplied official SAPS photographs to Panday who in turn handed those to the journalists.

The interceptions and further investigations revealed that Aiyer was on the payroll of Panday.

He has since been dismissed from the SAPS for defeating the ends of justice.

12.

In 2012 Booyesen, after much negative media coverage, was suspended from office.


COLONEL
B.P. DAYACHEE





I certify that the deponent has acknowledged to me that he knows and understands the contents of this declaration, that he has no objection to taking the prescribed oath and considers it to be binding on his conscience.

KP
17/02/19

Thus signed and sworn to before me at ^{Durban} ~~PIETERMARITZBURG~~ on this 04th day of FEBRUARY 2019.

~~Signature~~ SGT
PP MABOJA
COMMISSIONER OF OATHS
KETHUKUTHULA PETER MABOJA
South African Police Services
Crime Intelligence
Provincial Head Office
Durban

SOUTH AFRICAN POLICE SERVICE
PROVINCIAL CRIME INTELLIGENCE
2019 -02- 04
KWAZULU NATAL

[Handwritten signature]

COLONEL B PADAYACHEE
CRIME INTELLIGENCE
PROVINCIAL HEAD OFFICE
DURBAN
KWA-ZULU NATAL

1.

I am a Colonel in the South African Police Service serving under the Provincial Head, Crime Intelligence, Provincial Head Office Durban. I was appointed in the South African Police Service in 1982 and have 36 years' service. I am currently the Section Commander at Intelligence Collection.

2.

During the period of the operation in question, I was the Section Commander Security Intelligence. I have been working with Crime Intelligence Project Driven investigations since 2000.

3.

During November 2010, I was tasked by the Provincial Head, Crime Intelligence, to investigate serious death threats against the investigating officers tasked with the investigation of the 2010 Soccer World Cup Corruption, Durban Central CAS 781/06/2010 - Fraud and Corruption.

4.

Major General Moodley (hereinafter referred to as "Moodley") handed a written request to me which had been compiled by Brigadier Lategan (hereinafter referred to as "Lategan"), Section Head: Specialised Commercial Crime. The request included a statement of Colonel Van Loggerenberg (hereinafter referred to as "Van Loggerenberg") which clearly set out the threats made against the officer and his team. The threats were also physically directed at him and his family.



5.

On receiving the investigation, I immediately activated an intelligence network and initiated an application for monitoring and interception of communication in terms of Section 18 of Act 70 of 2002 (hereinafter referred to as "the application").

6.

The authorised interception was directed against the main suspect in the investigation Mr Thoshan Panday (hereinafter referred to as "Panday") and his co-accused. The information received from the report of Van Loggerenberg stated that the main suspect responsible for the death threats was Panday. The investigation confirmed that the death threats were real and the investigators were informed accordingly.

7.

The application is subject to very strict and stringent protocols and has to be factual and correct in respect of every aspect.

8.

The application is first perused by the Provincial Office for Monitoring and Interception. It is thereafter forwarded to the Head Office Monitoring and Interception Section, where it is further checked and verified.

The application is then taken to the Crime Intelligence Head Office Legal Section where it is further checked for legal justification and legal principles.

9.

The application is then perused and recommended by the National

Commissioner of Police or his delegate. Currently this authority is delegated by the National Commissioner to the Divisional Commissioner of Crime Intelligence.

10.

These applications are thoroughly perused by the Divisional Commissioner and it is only recommended if he/she is satisfied that the application is *bona fide* and legally justified. Recommendations can at times take several weeks.

11.

After the application is recommended, it is taken to the Designated Judge who Authorises such applications. There is only one Designated Judge for the whole country.

12.

The Designated Judge also thoroughly peruses the application. There has been occasions where the applications were not approved or returned for rectifications or amendments.

13.

The application in question followed the relevant protocols, legal principles and was approved by the Designated Judge, Judge Khumalo on 2010/11/15 for a period of 3 months from date of approval.

14.

The approved application was referenced as Direction 235/2010. The interception data commenced from the 18 November 2010.

15.

A handwritten signature in black ink, consisting of a large, stylized 'S' shape followed by a vertical line and a horizontal line crossing it.

The original data is stored at Crime Intelligence Head OIC. The OIC makes copies of the interception data on compact discs ("CDs") and these CDs are forwarded to the applicant/investigators.

16.

The data/recordings are secured by encryption codes and can only be accessed with the encryption codex.

17.

Applications for an extension (hereinafter referred to as the "extension application") of the interception Directive are also subject to the same strict protocols as the initial application.

18.

The extension application has to be well motivated setting out clearly the reasons for the extensions.

19.

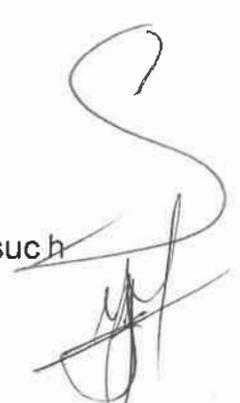
Full factual reports must also be included in the extension application stating what was found during the investigation and factual reasons for the extension.

20.

Full factual reports were included in all extension applications to the Designated Judge.

21.

The factual reports and progress reports in the extension applications were such that the Judge granted several further extensions.

A handwritten signature in black ink, consisting of a large, stylized 'S' shape followed by several horizontal and vertical strokes.

22.

The application was factual and had sufficient legal grounds. This is also supported by the fact that after Judge Khumalo retired, Judge Makgoro was appointed as the Designated Judge in his place.

23.

Judge Makgoro after thoroughly perusing the extension applications approved several extensions thereafter. These subsequent approvals by the well-respected Judge Makgoro further endorses the factual and seriousness of the content of the application.

24.

All interception data was managed by me and was secured in a locked safe after hours.

25.

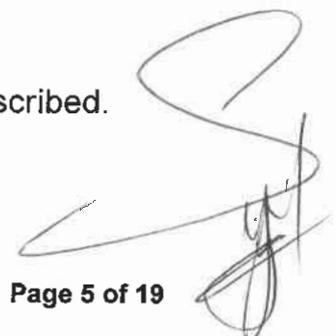
The interception data received, are copies of the original data and are regarded as working data.

26.

Once transcripts are required for specific data, an application is made for the original data following the chain of evidence protocols.

27.

This chain of evidence protocol is also applied when the data is transcribed.



28.

All interception data is strictly managed and safeguarded within the Minimum Security Standards of Crime Intelligence Policies and Guidelines.

29.

During the course of the investigation large scale corruption was uncovered involving, *inter alia*, Senior SMS Police Officials, Police Officers as well as very influential and prominent Government Officials/individuals.

30.

One of these individuals included **Mr Edward Zuma (hereinafter referred to as "Zuma")**, son of the former President Jacob Zuma.

31.

The investigation revealed that Zuma approached Major General Booyesen (hereinafter referred to as "Booyesen") with regard to the Panday corruption cases and requested his assistance. Confirmed factual evidence showed that Zuma contacted Panday and confirmed that he met with Booyesen. His message was **"Booyesen is begging to see me" "Lets play him"**.

32.

The investigation clearly established an enterprise with Panday at the helm of the syndicate and several police officials actively participating in the furtherance of the objectives of the corrupt enterprise and benefitting from the proceeds of the crime.

33.

Panday was desperate to make the case against him "go away" and was prepared to pay any amount of money to achieve this objective, including

approaching persons to assist in "taking out" investigators. Large sums of money were indeed paid out.

34.

Several intercepted calls revealed serious death threats against Booyesen. During one of the intercepted communications between Panday and one Colonel Rajen Aiyer (hereinafter referred to as "Aiyer"), Panday said the following to Aiyer: "**the only way you can help me is to take Booyesen out**".

This was a serious threat which was communicated to Booyesen to be vigilant and take proactive steps to safeguard himself and his family.

Aiyer sounded and appeared to be desperate both financially and emotionally. It was further established that Aiyer was physically in possession of a fully automatic R5 Assault Rifle.

This was communicated to Lategan who then took possession of the R5 rifle from Aiyer. It is unknown why he was in possession of the rifle as this is a non-standard weapon and is only issued to operational members during specific operations.

35.

It was factually revealed during the investigation that Panday was desperate to get rid of Booyesen.

36.

Panday liaised with several prominent high profile individuals as well as senior Police officials to assist him in this regard. Large sums of money were also paid to corrupt officials.

37.

The investigation factually revealed that Panday requested one Mr Deebo Mzobe (hereinafter referred to as "Mzobe") to assist him in getting rid of Booysen ("**Clipping his wings**"). Mzobe is the cousin of former **President Jacob Zuma**.

Panday told Mzobe that they need to "**clip Booysen's wings**" and suggested to Mzobe that they have a meeting and briefing on "**how to take care of Booysen because he is obviously now standing in the way of everything**".

Mzobe requested some money from Panday, which the latter said he will "sort out for him".

38.

The recordings of the "**clipping his wings**" conversations are available. The intercepted recordings are evidence which is included in the transcripts compiled for the Corruption matter (Durban Central CAS 466/09/2011).

39.

This threat was communicated to Booysen during briefing sessions in respect of the threats against him and the investigators.

40.

Booyesen was warned that the threats against him were serious and that Panday has sought assistance from very "**powerful individuals**" to deal with him and the investigating officers.

41.

This included having investigating officers replaced.

42.

Factual evidence is available where force numbers of investigating officers were requested and given to high profile influential individuals to assist in having the investigating officers replaced.

43.

The investigation also revealed a conspiracy between Aiyer, Panday and Sunday Times journalist, Mr WaAfrica (hereinafter referred to as "WaAfrica"). Factual evidence is available where WaAfrica requested criminal dockets from Panday. He even gave Panday the criminal case numbers. Panday then requested these dockets from one Capt Pipes Hafajee (hereinafter referred to as "Hafajee").

Aiyer gave crime scene photographs to Panday who in turn gave it to WaAfrica. These photos were published with headline news "Cato Manor Death Squad". Booyesen was thereafter charged with Fraud and Corruption as well as running a so-called "Hit Squad".

The main, single witness in these charges, ironically, was the same Aiyer, whom had conspired with Panday earlier. Booyesen was thereafter suspended as a result of these charges.

The investigation revealed that Aiyer was on the payroll of Panday and as a result of his (Aiyer) actions and contribution, Panday was successful in having Booyesen removed.

Due to the sensitive nature of the information revealed during the abovementioned investigation, I made several attempts to bring the



contents thereof to the personal attention of the National Commissioner and Divisional Commissioner: Crime Intelligence for urgent intervention and Guidance, with no response.

44.

During July 2015 I received a letter from the former National Commissioner, General Phiyega, ordering me to surrender the recordings to her office within 48 hours.

45.

I found this highly irregular and unlawful as I was the legally authorised applicant authorised by the designated Judge, to intercept and be in possession of the Interception recordings.

46.

The legal procedure to obtain the recordings/copy thereof or access thereto, is to bring an application in terms of Section 205 of the Criminal Procedure Act 51 of 1977.

47.

A serious threat was made that if I failed to comply with the instruction I will be charged departmentally. I was given 48 hours to surrender the recordings or face disciplinary action.

48.

I thereafter reluctantly complied and handed over the complete recorded interceptions under duress.

A handwritten signature in black ink, appearing to be 'S.M.', located at the bottom right of the page.

49.

The Acting Divisional Commissioner, General Zulu, was informed that the handing over of the recordings were unlawful and that there were pending cases which were still *subjudice*. In spite of my caution, she instructed me to hand over the recordings.

50.

The complete recordings were personally handed over by me directly to General Zulu.

51.

I am the lawful custodian of the intercepted recordings, authorised by the Designated Judge to be in possession and utilise such recordings as may be required by law for investigation and court purposes .

52.

Herewith the following relevant cases that were registered against Panday:

Durban Central CAS 781/06/2010 Fraud (R60 million) – 2010 Soccer World Cup

Durban Central CAS 122/03/2012 Fraud

Durban Central CAS 466/09/2011 Corruption (R2 million) – Bribery of Booysen

There are several other outstanding criminal cases which were not registered due to the lack of will from the NPA/DPP to prosecute Panday and his associates

54.

All the above cases were withdrawn on a single controversial representation made by Panday. The representations were neither investigated, nor did the

Director of Public Prosecutions KwaZulu-Natal, Advocate Moipone Noko, apply her mind to the relevant cases which she declined to prosecute. Her decisions caused utter shock and discontent amongst the senior prosecutors responsible for the cases.

55.

Serious concerns were highlighted in Advocate Noko's decisions to decline to prosecute all the cases involving Panday and his associates. The timing of her decisions are also relevant as it coincided with the extension of the contract for the former KwaZulu-Natal Provincial Police Commissioner Lieutenant General Ngobeni who together with her husband, General Lucas Ngobeni, received gratifications from Panday. Factual evidence is available to support the corrupt relationship between Panday, General Ngobeni and her husband General Lucas Ngobeni.

56.

It has to be emphasised that the investigation has been fraught with intimidation, threats and interference from the outset to date.

57.

It is very clear that the SAPS and NPA were captured in respect of the criminal investigations against highly influential criminal suspects .

58 .

The evidence is available to support the above statement.

59.

Herewith a time line with chain of events which clearly indicates State Capture :

A handwritten signature in black ink, appearing to be a stylized 'S' followed by a vertical line and a flourish.

59.1 **FORMER ACTING DIRECTOR OF PUBLIC PROSECUTIONS:
KWAZULU-NATAL, ADVOCATE SIMPHIWE MLOTSHWA**

The former Acting Director of Public Prosecutions: KwaZulu-Natal, Advocate Mlotshwa was removed from his acting position after he refused to withdraw all Panday related matters.

His life was even threatened and he thereafter had bodyguards assigned to him.

After refusing to withdraw the Panday related matters on the grounds that there were *prima facie* cases against Panday and others, he was replaced by current Director of Public Prosecutions, Advocate Noko.

Advocate Noko, within a short period of her appointment, withdrew all the cases against Panday and his associates.

Advocate Mlotshwa thereafter resigned and is now practicing as an advocate and a member of the Society of Advocates: Pietermaritzburg.

59.2 **ADVOCATE BHEKI MANYATHI (Senior State Advocate DPP:
KZN)**

Advocate Manyathi, Senior State Advocate at the Director of Public Prosecutions: KwaZulu-Natal was the prosecutor in the R2 million Corruption case against Panday and co-accused Colonel Madhoe.

At the time, Advocate Manyathi was recommended to be promoted to the position of Senior Deputy Director of Public Prosecutions, Regional Head of the SCCU, in KwaZulu-Natal.

His refusal to withdraw the case against Panday and Madhoe resulted in the appointment being withdrawn on the eve of his appointment.

Advocate Manyathi resigned thereafter and is currently in private practice at the Society of Advocates in Durban.

59.3 ADVOCATE MOIPONE NOKO: DIRECTOR OF PUBLIC PROSECUTIONS KWAZULU-NATAL

Shortly after the appointment of Advocate Noko as Director of Public Prosecutions in KwaZulu-Natal, she withdrew all the criminal cases against Panday.

59.4 COLONEL LEN SHERRIF

Colonel Len Sherrif was the investigating officer in the R2 million Corruption case, where Panday and Madhoe bribed Booyesen.

Colonel L Sheriff was falsely set up in a fraudulent sting operation by Panday and his associates and was subsequently removed as investigating officer from the case.

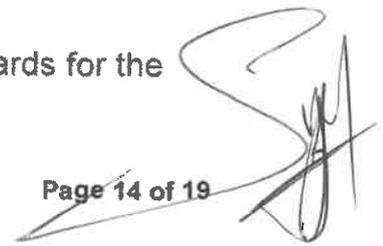
Panday conspired with a Sunday Times journalist, WaAfrica and published the Cato Manor Death Squad article to discredit Booyesen.

Information and photos were furnished by Panday to the journalists.

The journalists even informed Panday that Booyesen was going to be removed from the case and will be suspended.

Booyesen was indeed removed from office and suspended.

These very same journalists were awarded prize money and awards for the articles they published.



The journalists and their articles were recently publicly discredited and the Sunday Times issued a formal apology to Booysen.

All prize money and awards were subsequently returned as well.

Aiyer assisted with and was instrumental in the false articles published by the journalists. He supplied official SAPS photographs to Panday who in turn handed those to the journalists.

The interceptions and further investigations revealed that Aiyer was on the payroll of Panday.

He has since been dismissed from the SAPS for defeating the ends of justice.

60.

In 2012 Booysen, after much negative media coverage, was suspended from office.

61.

The ongoing capture of the Criminal Justice system ensured that he did not return to his post or office.

62.

Booyesen retired in 2017.

63.

Immediately after the suspension of Booysen, I became a target and was subjected to threats and intimidation.

64.

I was served with a 48 hour notice transfer from my office. I immediately appealed to the then Acting Divisional Commissioner of Crime Intelligence, General Chris Ngcobo, who intervened and caused my reinstatement.

65.

After much harassment and intimidation, including death threats, I was suspended in 2014.

66.

I was suspended for almost a year without any charges being brought or any disciplinary hearing being held.

67.

I approached the courts for intervention and the suspension was declared unlawful. I was thereafter reinstated.

68.

The threats and intimidation however still continued.

69.

Two weeks after I was suspended, Major General Anwar Dramat, National Head of DPCI (Hawks) was also suspended (on Christmas eve).

70.

A month later Mr Robert McBride, National Head of IPID was also suspended.

71.

The sequence of the events and suspensions clearly show the Political influence of Panday in respect of State capture.

72.

It was very clear that Panday was politically well connected as a result of his close relationship with the former President Zuma and his family.

73.

It is even alleged that the former President Zuma spoke directly to Panday. The recorded interceptions also revealed Panday boasting about his visits to Nkandla and contracts that he had been given by the President. One of these included a contract to build houses.

74.

The interceptions revealed that Panday openly boasted about his relationship with the President and his family.

75.

Prior to the removal and suspension of Booysen, the initial investigating officer in the case of Corruption (Durban Central CAS 466/09/2011) was removed after being set up by Panday in a sting operation.

76.

This operation was successful in removing the investigating officer Colonel Sheriff as a result of collusion and conspiracy between Panday and two DPCI investigating officers namely Colonel W S Mhlongo and Colonel C Jones.



77.

Colonel Jones arranged the sting operation and Colonel Sheriff was removed from the investigation.

78.

There are several other senior officers who also assisted Panday with his criminal enterprise, these include Detective Branch Commanders who closed criminal dockets on Panday's instruction and also took the dockets to him in return for payment.

79

It was factually revealed in the recordings that Panday was the "go to person" for Police promotions, transfers and sorting out criminal dockets/cases for suspects/accused

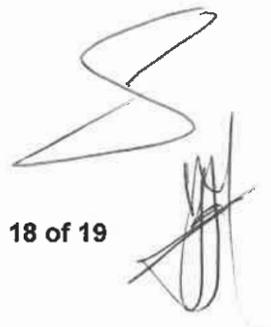
80.

It was clear from the interceptions that the Criminal justice system was indeed captured. This included the courts (DoJ and Judiciary), Correctional Services (DCS), S A Police Service and the NPA.

81.

The interceptions also revealed that:

- Suspects were referred to magistrates and prosecutors at certain courts where their release on bail would be guaranteed;



- Arrangements and payments were made to Correctional Service officials for suspects who had been detained at Correctional Services to be placed in hospital wards at the facility;
- Case dockets closed by certain Branch Commanders, on the instructions of Panday.

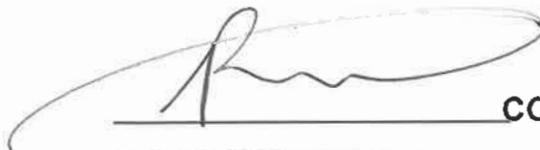
82.

This is all I wish to state at this stage.

I know and understand the contents of this affidavit.

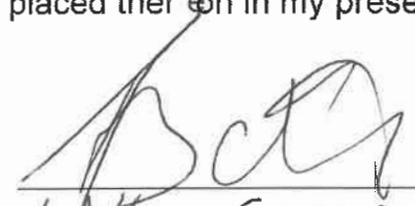
I have no objections to taking the prescribed oath.

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

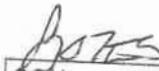

 _____ COLONEL
 B PADAYACHEE

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit which was submitted by him.

This affidavit was sworn to before me and the deponent's signature was placed thereon in my presence at Durban on 20 9/01/28 at 13:30



 WILHELM GERHARDS
 COMMISSIONER OF OATHS


 SOUTH AFRICAN POLICE SERVICE
 PROVINCIAL CRIME INTELLIGENCE
 2019 -01- 28
 KWAZULU NATAL

SA POLICE SERVICE
DURBAN

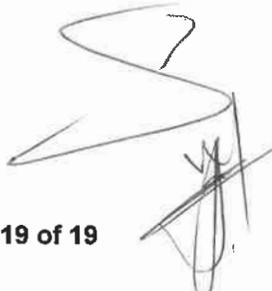




EXHIBIT EE 5

TRANSCRIPTIONS

DAY 111

12 JUNE 2019



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

2nd floor, Hillside House
17 Empire Road,
Parktown
Johannesburg
2193
Tel: (010) 214-0651
Email: inquiries@sastatecapture.org.za
Website: www.sastatecapture.org.za

INDEX: EXHIBIT EE 5

Description	Pages
Transcriptions of Day 111, 12 June 2019	197 to 332

AFFIDAVIT

I, the undersigned,

LANCE POON

do hereby make oath and state that:

1. The facts herein contained are, unless otherwise stated or indicated, within my personal knowledge and are to the best of my belief both true and correct and I can and do swear positively thereto.

A. CREDENTIALS AND QUALIFICATIONS

2. I am a 40-year-old adult male with identity number 781114 5036 086. I own a consulting firm, EM Discovery (Pty) Limited, which specialises in Digital Forensic Investigations, Electronic Discovery (eDiscovery) and related services.
3. I have obtained the following academic qualifications:
 - 3.1 Bachelor of Commerce (Information Systems);
 - 3.2 Microsoft Certified Systems Engineer (MCSE);
 - 3.3 EnCase Certified Examiner (EnCE); and
 - 3.4 Certified Clearwell Administration.
4. I have more than 16 years' experience in the information systems and related fields comprising of:
 - 4.1 Director of EM Discovery (Pty) Limited (Est: 2019)



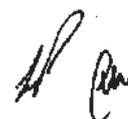
- 4.2 Four years as a Director at a Big Four auditing firm leading their Forensic Technology and Discovery practice;
 - 4.3 Nine years at another Big Four auditing firm responsible for their Digital Forensic and eDiscovery services; and
 - 4.4 Three years as a software developer at a multinational IT services company.
5. In addition to the abovementioned experience, I have also served on the Board of the Institute of Certified Forensic Practitioners for a period of four years.

B. BACKGROUND

6. I am currently contracted to the Commission of Inquiry into State Capture ("SCC") as a Digital Forensic Investigator, and more particularly, am affiliated to the SCC Forensic Data Centre.
7. As a Digital Forensic Investigator, I am, inter alia, tasked with the responsibility of gathering, preserving and analysing digital evidence.

C. CROPPING OF AUDIO FILE

8. On 14 June 2019 I responded to an email request from Salome Coetsee ("Coetsee"), a Forensic Investigator contracted to the SCC.
9. The email appeared to have originated from Amagugu Khanyile with email address of *AmaguguK@foskor.co.za*, and was sent to Lionel Groenwald ("Groenewald"), a Forensic Investigator contracted to the SCC; who in turn had sent it to Coetsee.



10. The email contained a compressed zip file with filename *VN-20131125-WA000.zip*. A zip file is an electronic container file that is used to compress other electronic files for storage or transmission.
11. The zip file contained an audio file with filename *VN-20131125-WA000.mp3*.
12. Groenewald requested Coetsee, who in turn requested me to trim the audio file from time location 4min10sec to 9min40sec.
13. Using the built-in trim function of an audio file reader styled VLC, I trimmed the aforementioned audio file from time location 4min10sec to 9min40sec.
14. The resulting trimmed file contained audio of approximately 5min31sec in duration, and was saved as filename *VN-20131125-WA000 - extraction.mp3*.
15. I subsequently emailed the trimmed file to Coetsee and Groenewald.



Lance Poon

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at Pretoria on 21 JUNE 2019, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No 1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS

Full names:

Business Address:

Office:

Coetsee van Wyk
Commissioner of Oaths
for the Republic of South Africa
IBRAKHA INTEGRATED SOLUTIONS (Pty) Ltd
874 Tlopi Street,
Silverton 0184, Pretoria

COMMISSION OF INQUIRY INTO STATE CAPTURE

VIDEO RECORDING

DISCUSSION BETWEEN COLONEL WELCOME MHLONGO &

MR TERENCE JOUBERT



VIDEO RECORDING

VIDEO RECORDING VN-20131125

COL WELCOME MHLONGO: Chose to take that way. Yes, yes, yes. He is okay, yes he is okay. He is okay, we sorted him out and I am truly grateful for your support. Hey, you know if you were not there that lady would have resigned. If you were not
5 there she would have resigned... [indistinct]. Imagine if she had resigned, all the information because I am not there when she is not here because she is not here when I am not there. Yes, yes. You have shown true brotherhood and he is also grateful in the way things are done and we, yes, it could be that. Yes, and address it too. Yes, my brother, thank you so much. Sure.

10 Yes, Bebe wanted to resign, he was very cross hey. There is this guy from TRC. They are going to complain about us that us we do things without consulting the TRC.

MR TERENCE JOUBERT: Who is TRC? Oh the, for the what's then, the exhumation.

15 **COL WELCOME MHLONGO:** They are... [indistinct] to do justice so now they are complaining that us we do things here, we do not, we do their things and we said to them and our job is to investigate and exhume and transport remains. This function things because the Premier said they need us. We must get involved.

MR TERENCE JOUBERT: Yes.

20 **COL WELCOME MHLONGO:** Like now we are saying... [indistinct] no look, speak to the Premier and tell the Premier not to use us. We do not just go and grab things. Olivia said no, us, you tell us... [indistinct] knows us. He will come and say no, no, I am not going to work with Justice to prove anything you hear. They must work through you. So they have turned things around. These people [indistinct].

25 **MR TERENCE JOUBERT:** Oh.

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COL WELCOME MHLONGO: So they wrote a stinking email... [indistinct]. I think was crying the whole day, Friday and wanted to resign and screaming [indistinct].

MR TERENCE JOUBERT: Oh man.

COL WELCOME MHLONGO: ... [indistinct] no Bongzi you cannot because if you
5 leave... [indistinct].

MR TERENCE JOUBERT: Yes, if she leaves [indistinct] you will have to come here to rescue management. You know I was thinking I told Ramani when he was here. You know there is only one person... [intervenes].

COL WELCOME MHLONGO: Go over that lieutenant.

10 **MR TERENCE JOUBERT:** Yes.

COL WELCOME MHLONGO: [indistinct] They are not strong because people [indistinct] is a contract. It is having these people. It is a contract [indistinct].

MR TERENCE JOUBERT: Oh, okay.

COL WELCOME MHLONGO: It is a contract. They can voetsak... [indistinct] and his
15 contract gets released month by month but he is a head of all... [indistinct] permanent.

MR TERENCE JOUBERT: In the NPA yes.

COL WELCOME MHLONGO: So?

MR TERENCE JOUBERT: And where does, I thought it was this thing was under
20 Shaun.

COL WELCOME MHLONGO: Sean yes Shaun is here, but MPTT [indistinct].

MR TERENCE JOUBERT: Oh is Madelane, the one that was in the photo there with Debra?

COL WELCOME MHLONGO: Yes, that is the one and Madelane is on contract.

25 **MR TERENCE JOUBERT:** Oh man.



COL WELCOME MHLONGO: So Madelane if they do not want to renew their contract.

MR TERENCE JOUBERT: They will say voetsak.

COL WELCOME MHLONGO: Voetsek.

5 **MR TERENCE JOUBERT:** Close you... [intervenes].

COL WELCOME MHLONGO: [Indistinct] wanted to do that.

MR TERENCE JOUBERT: Yes.

COL WELCOME MHLONGO: He wanted to do that until someone from MK said, hey you are you in charge of Walter Sisulu. Walter Sisulu was our commander in
10 chief and what do you want? And then he came back and said no, no, no, he wanted, I am sure he wanted to put his connection.

MR TERENCE JOUBERT: Yes, no, hey, hey, hey.

COL WELCOME MHLONGO: Yes, tomorrow chief if you need anything I am around. My car will be there. I will be, I mean for that day I am.

15 **MR TERENCE JOUBERT:** No I mean the whole, our whole point here is one collection, no, no, no. Our thing here with the boss, these guys from RAF tomorrow morning all I am going to do I will link you up with them so that you can get all the documentation. The thing that I do not want, is not I am just bringing A to B.

COL WELCOME MHLONGO: Yes.

20 **MR TERENCE JOUBERT:** These people of yours I do not want to know them. I do not want to know them, you see. I go to you, I say to you WS go and see so and so, that is it because if it comes back and this woman okay, she gets the post back... [indistinct] through these guys.

COL WELCOME MHLONGO: She will obviously know.

25 **MR TERENCE JOUBERT:** You see I mean she can know about it later on...



[indistinct] but for now ... [intervenes].

COL WELCOME MHLONGO: For now yes... [indistinct] and she does not have a problem... [indistinct].

MR TERENCE JOUBERT: Yes, yes, no.

5 **COL WELCOME MHLONGO:** [Indistinct] fuck you and then... [indistinct]. I called dude somewhere and I said [indistinct] office.

MR TERENCE JOUBERT: Yes.

COL WELCOME MHLONGO: But he continues with it [indistinct].

MR TERENCE JOUBERT: Because there you are free. No one can tell you but my
10 thing is one. Another thing we have like this murder case of yours now, the uncle and all that, guys we must not sleep on top of information. We must, get whatever you can get your hands on. Brother we must hurry up because tomorrow as you say this woman is in a hurry even us we want to know where are we going because we do not want to stay here... [indistinct] and then... [intervenes].

15 **COL WELCOME MHLONGO:** I am struggling to eat from the drug addicts (amapara).

MR TERENCE JOUBERT: Yes, so from my side it is just that this whole thing of the visit and this party and all that up until Friday I will be up-down, up-down, but sure thing tomorrow I might say, hey man because I will not be using my phone. I will be
20 using another crook. Man, I am ready. Where can we meet? Okay Sir, come. Here is my man.

COL WELCOME MHLONGO: Take my thing.

MR TERENCE JOUBERT: You meet and then you will sort it out yourselves. Then you can send your guys to do the collection.

25 **COL WELCOME MHLONGO:** Yes, yes, yes.



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MR TERENCE JOUBERT: Yes, you see we will not know nor appear. That way at least she is sharp she is safe. But tomorrow, I mean on Thursday you see okay I trust Jebu, Sir is he my guy. Your ma'am I do not trust her I want to, I will just, I will stay out of her war path but I hope that you have cleared the way right now because I
5 do not want things that are... [intervenes].

COL WELCOME MHLONGO: No, I told her... [indistinct]. People will be like that because... [indistinct].

MR TERENCE JOUBERT: Yes.

COL WELCOME MHLONGO: Yes, and do not worry. I on the side, I have got my
10 [indistinct].

MR TERENCE JOUBERT: Yes.

COL WELCOME MHLONGO: When he told me hey there is a fire, he started to explain because I told her that when I said tell me there is a fire... [indistinct] then he said hey there is a fire I stop. I do not.

15 **MR TERENCE JOUBERT:** Ask questions.

COL WELCOME MHLONGO: There is understanding otherwise I should have not sitting on third floor. I said that is [indistinct] I am there, we know each other, we fight but we come he will come and fight with me, [indistinct] together.

MR TERENCE JOUBERT: Yes no I mean he must know this.

20 **COL WELCOME MHLONGO:** And understand.

MR TERENCE JOUBERT: He must not say the only thing that... [intervenes].

COL WELCOME MHLONGO: And we are not a sangoma. We do not get what is happening but if it is something that requires your call you will sensitise it and but if you are not briefed of those things [indistinct] if you are not briefed yourself
25 [indistinct]. They have to brief you otherwise we are going to charge [indistinct].



MR TERENCE JOUBERT: Yes.

COL WELCOME MHLONGO: He said, yes you are right. I said exactly. It is what we are saying [laughing].

MR TERENCE JOUBERT: Yes, I mean that way I like the way you handled it but at
5 least now he must not want to beat me all the time

COL WELCOME MHLONGO: No, never

MR TERENCE JOUBERT: Because obviously here myself and Ramani we are not okay, you see.

COL WELCOME MHLONGO: No, even Ramani, is it not that Ramani wanted to beat
10 him?

MR TERENCE JOUBERT: Yes.

COL WELCOME MHLONGO: ... [indistinct] that boss I want to beat him...
[indistinct] he said no, no it is embarrassment.

MR TERENCE JOUBERT: Okay.

15 **COL WELCOME MHLONGO:** I have been complaining about it. I will make him an appearance. I will not go there but I don't know. What if he says that I do not know?

MR TERENCE JOUBERT: (Laughing).

COL WELCOME MHLONGO: That I cannot vouch for.

MR TERENCE JOUBERT: Yes, no, I know.

20 **COL WELCOME MHLONGO:** He will not tell that; I think he will give the boss.

MR TERENCE JOUBERT: Yes, no, no broer as long as we are sharp.

COL WELCOME MHLONGO: We are sharp yes.

MR TERENCE JOUBERT: In that ceremony I do not care about the rest of the...
[indistinct] as long as us... [intervenes].

25 **COL WELCOME MHLONGO:** Now Doctor Mnisi is still [indistinct]?



MR TERENCE JOUBERT: No, he is toeing the line for now.

COL WELCOME MHLONGO: Yes, he is toeing the line there is nothing more. There is no other way.

NO FURTHER AUDIO (from +- 09:45 to 12.30)

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P.O BOX 8099 | JOHANNESBURG | 1819
| Cell: +27658978935 |

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COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

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know if I may mention the witness?

CHAIRPERSON: I think you may, I think we may have been told – I think we have been told yes.

MR MXOLISI SANDILE OLIVER NXASANA: They then produced the statement of a Mr Danikus he was a Greek national, it was an unsigned statement.

ADV PAUL JOSEPH PRETORIUS SC: Won't you spell that name please?

MR MXOLISI SANDILE OLIVER NXASANA: It's D-a-n-i-k-u-s,
10 Danikus, Chair that was an unsigned statement, then when I asked for any statement implicating General Booyesen they then produced a statement, I cannot remember the name but I will try to recollect it was a person who apparently was a security guard for a Stanger Taxi Association who, in his statement, was alleging that a Mr Mhlongo who was a member of the executive committee of Stanger Taxi Association was – had collected monies from the Association and told the Association in this security guard's presence that , that money was required by the General and that he was present when Mhlongo and the Chairperson at the time was Mr Zondi of the Stanger Taxi Association
20 went to meet with the General at the gateway. Chair that is the General it doesn't even describe that it was General Booyesen, that is the problem but he doesn't say that he overheard the conversation between even that General and Mhlongo, that was the only evidence that they said that it implicated General Booyesen.

CHAIRPERSON: So this person who had signed this statement, you

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say he was a security guard simply said, he was present when somebody collected money and said it was for a certain General or the General...(intervention).

MR MXOLISI SANDILE OLIVER NXASANA: Wanted the money.

CHAIRPERSON: Wanted the money yes- wanted by the General.

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: He did not mention who the General was is that...(intervention).

MR MXOLISI SANDILE OLIVER NXASANA: No.

10 **CHAIRPERSON:** Yes and that he was present also – or that the Chairperson of the Taxi Association took it to meet with the General and that he was present when he met with the General or that didn't come out clearly?

MR MXOLISI SANDILE OLIVER NXASANA: It didn't come out clear but I think he was in the vehicle as the VIP protection.

CHAIRPERSON: Yes but also he didn't say who the General was?

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: Are those the only two documents they produced?

MR MXOLISI SANDILE OLIVER NXASANA: At the time yes.

20 **CHAIRPERSON:** And they did that in that meeting?

MR MXOLISI SANDILE OLIVER NXASANA: In that meeting.

CHAIRPERSON: In Ms Jiba's presence?

MR MXOLISI SANDILE OLIVER NXASANA: In Ms Jiba's presence.

CHAIRPERSON: And Ms Jiba didn't point to anything else she might have been told or shown in regard to what evidence there was.

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MR MXOLISI SANDILE OLIVER NXASANA: No.

CHAIRPERSON: Okay thank you.

MR MXOLISI SANDILE OLIVER NXASANA: Perhaps Chair, that is why if I follow the matter, I think when it came before you, if I'm not mistaken, I think that is why then subsequent I heard that Advocate Shaun Abrahams re-instated the charges, but I understand that people were sent to Greece to obtain a statement, again I'm told that, that statement is written in Greece and it was translated by someone here.

CHAIRPERSON: No I think it's important that, while you are here, we
10 get as much evidence as you have to inquire into these things – these matters because it's quite a serious suggestion or allegation when it is said that the NPA or certain people within the NPA abused their powers to charge people who should – against whom there was no evidence and that they were motivated by certain illegitimate considerations because if there is no evidence to support those allegations against those people or against the NPA then let us know but if there is evidence then let us know, the nation deserves to know exactly what the position is because the NPA is a very important institution in the country and in the fight against crime and the nation needs to know
20 exactly what the position is and if there are people who did that, we must know if there is evidence that shows that that's what they did and they will come before the Commission, put their side of the story and the Commission will make decisions and findings in due course and it was important that somebody like you comes before the Commission because you were – for a certain period of time occupying this very

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important position of NDPP and you left under certain circumstances and in the public domain there are all kinds of things that are said but also there are judgement, Court judgements that have dealt with that. It's important that somebody like you comes and tells the Commission exactly what you know and what happened while you were NDPP so that the Commission can have as full a picture as possible before, in due course, it makes findings.

MR MXOLISI SANDILE OLIVER NXASANA: Yes I appreciate that.

Sir – Chair can I make also this observation because – so that my
10 evidence here is not taken out of context.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: I haven't suggested that there was no evidence at all against General Booyesen's co-accused.

CHAIRPERSON: Yes, yes.

MR MXOLISI SANDILE OLIVER NXASANA: That – just to make that one very clear.

CHAIRPERSON: Yes, yes.

MR MXOLISI SANDILE OLIVER NXASANA: Yes
because...(intervention).

20 **CHAIRPERSON:** But you are saying with regard to the...(intervention).

MR MXOLISI SANDILE OLIVER NXASANA: To the racketeering charge against Booyesen, Chair there was not a shred of evidence.

CHAIRPERSON: Are you saying anything in regard to any other charges I can't remember whether that was the only charge he was facing, are you saying anything about any other charges he may have

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been facing other than the racketeering charge, I just can't remember if it was just racketeering charges.

MR MXOLISI SANDILE OLIVER NXASANA: Because in the main Chair, perhaps just to unpack this matter Chair, you know I even suggested Chair that if I was prosecuting that matter or directing that matter I was going to – I said to them, you could have approached one of the co-accused and turn him a 204 witness because most of the evidence I said to them, you know, I'm based in Durban and come from Durban and all that you are telling me here is what is in the public
10 domain in Durban. We hear a lot of things about Cato Manor at the time and I told them that we would hear that when the members of the Cato Manor Unit had killed a person, they would plant a firearm and then General Booyesen would come and take over the scene, so to say. Those were the allegations but then I said to them, these are just allegations and without the evidence in the docket you cannot prosecute because we don't prosecute with emotions and I tell you this is what I would also hear about the Cato Manor Unit and Chair, there was also evidence also, in the – there were allegations, not evidence in the docket that one member of the Cato Manor Unit shot and killed a
20 teenager at, I think, Empangeni (indistinct) when they were looking for a suspect, I don't know whether the suspect was related to this young man but I think they recklessly opened fire and killed an innocent young man. That's a simple investigation, I've never been an investigator in my life but, I mean you can take – collect evidence, match cartridges, spent cartridges, take the firearms for ballistic

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examination purposes and link the person or even use the adoption of common purpose to charge whoever, that is why I pointed out to them that they mustn't get carried away with this racketeering charge but of particular importance which I brought to their attention that, if you want to charge a person with racketeering you have to prove that there has been a pattern and this pattern has been continuously happening for a particular period and I said, if they want to allege that Cato Manor as the unit which was based at Cato Manor, Chair knows where Cato Manor is, in Durban, and my difficulty was that at the time General

10 Booyesen was not even a member of that unit because he was the head of the Hawks in Durban based, the now called (indistinct) building in Durban and then to allege that he was managing the enterprise when he was based there, they were not going to succeed.

CHAIRPERSON: Okay thank you.

ADV PAUL JOSEPH PRETORIUS SC: Just to explain the reference you made to Section 204, Section 204 is a Section of the Criminal Procedure Act, I understand, that is used to enable a co-accused to assist the prosecution and perhaps receive indemnity in the Court's discretion as a result.

20 **MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And that's what you were referring to.

MR MXOLISI SANDILE OLIVER NXASANA: That is what I was referring to.

ADV PAUL JOSEPH PRETORIUS SC: Earlier as having been as step

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that could and perhaps should have been taken.

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair, that is what I was suggesting.

ADV PAUL JOSEPH PRETORIUS SC: The time at which you took office, October 2013 was a time when the former President Zuma was still being investigated, is that correct?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair

ADV PAUL JOSEPH PRETORIUS SC: Were you briefed on the status of that investigation?

10 **MR MXOLISI SANDILE OLIVER NXASANA:** Not at all Chair, in fact Chair I've never even touched the docket relating to the former President Jacob Zuma. I understand that the docket was still in the possession of Advocate Jiba and Mr Hofmeyr, if I'm not mistaken.

ADV PAUL JOSEPH PRETORIUS SC: Alright.

CHAIRPERSON: Was – is it correct that the investigation was still going on at that time because remember in 2009 charges were withdrawn, did the investigation continue after they had been withdrawn?

20 **MR MXOLISI SANDILE OLIVER NXASANA:** Chair my response for the question of the investigation, I understand quite clearly that the investigations had ceased to – by then but I understand that the matter was pretty much very alive because there were challenges at the time. Then my response is in regard to that, that there were people still challenging the decision to withdraw charges against the former President Jacob Zuma.

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CHAIRPERSON: So in other words you are not necessarily saying there were investigators who were still continuing to investigate...(intervention).

MR MXOLISI SANDILE OLIVER NXASANA: No, no.

CHAIRPERSON: That you do not know?

MR MXOLISI SANDILE OLIVER NXASANA: No I'm not – I don't know Chair.

CHAIRPERSON: Ja you simply know that the matter...(intervention).

MR MXOLISI SANDILE OLIVER NXASANA: There were Court
10 challenges.

CHAIRPERSON: There were Court challenges relating to the dropping of the charges.

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: Yes perhaps my question should have been re-phrased to more accurately reflect what you say in paragraph 29 Mr Nxasana when you say you were not briefed on the status of the investigation rather on whether the investigation itself was continuing.

20 **MR MXOLISI SANDILE OLIVER NXASANA:** That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Right if we can move on then please to the events leading up to your own suspension. During your first year in office, it was not much more than a first year in office, but during that year, did you learn anything about the attitude towards you and the conduct towards you on the part of Advocates Jima and

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Mgwebi, that's Laurence Mgwebi and Nomgcobo Jiba?

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair, Chair as I pointed out that I was appointed on the 31st of August 2013 with effect from the 1st of October 2013. In a sense it means that I had this whole month of September still in Durban to wrap up before I took office. Chair I started to learn that during that period of September, because the announcement was made by the President that, there were people that were running around, driving around in the township where I grew up from that is Umlazi in my area and that these people, many people
10 were stopping people, asking them about me, about my history especially about my involvement in a matter that was publicised of murder around 1985. It didn't puzzle me at first because I thought that it was part of the vetting process but this thing gained its momentum until I got to the office. I then learnt there were members within NPA who were very much responsible also for that. I then subsequently received unsolicited statement in the form of an affidavit from one member of the NPA by the name of Terrence Joubert wo was, at the time, I don't know if he still is, a risk specialist at NPA he was based in Durban. He sent me an email and in the email there was an affidavit
20 that affidavit forms part of the bundle here where he then – where he was basically telling me that there was a campaign by Advocate Jiba that – to dig the dirt about me so that the intention, the whole purpose was to embarrass me so that the President will then remove me as the National Director of Public Prosecutions and she would then stand a chance of being considered to either continue to act or to be appointed

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permanently, it is there but it also – this affidavit – in this affidavit he also states that there were police – two police members that were assigned to the DPP, that's Deputy – Director of Prosecutions in KZN, Advocate Noko who was stationed there at his office who had received vehicles from the provincial office at the time the Commissioner was – Commissioner Mmamonye Ngobeni and that those people that were there, those two gentlemen they were then tasked with going around finding any dirt about me but he also went as far as recording this Colonel Mahlango. Yesterday I tried to get this recording, I only
10 managed to get it very late because it happened in – I think 2013 or 2014 where basically I could hear the voice of Colonel Mahlango and Terrence Joubert, Joubert was playing along. He did not – Colonel Mhlongo did not know that he was recording him. He was basically saying that Jiba had mandated him to go about digging dirt about me. They went so far as to that recording saying that I think Terence Joubert had undertaken to hook him up with people from the Road Accident Fund because the allegation was that because I was practising as an attorney they were alleging that I had embezzled clients monies when I handled the Road Accident Fund claims and also
20 I do not know how they got it from and it is true that my wife at some stage was also – was employed at the – at the Road Accident Fund office in Durban. All of that it is there that my wife was also employed there and that Terence Joubert was going to hook him up with the gentleman at Road Accident Fund so that they could give them evidence implicating me in all of that. They also refer in the murder

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charge that Terence Joubert could hear him saying that that murder charge that you have in your position referring to Colonel Mhlongo that was – it is there – it is there I have it in the record here.

ADV PAUL JOSEPH PRETORIUS SC: Because these are serious allegations perhaps we should do you the favour of allowing to go through your evidence in the sequence you settled it in your statement. You talked about people in Umlazi informing you.

ADV MXOLISI SANDILE OLIVER NXASANA: That is...

ADV PAUL JOSEPH PRETORIUS SC: This was before your
10 appointment actually became confirmed or...

ADV MXOLISI SANDILE OLIVER NXASANA: It was confirmed.

ADV PAUL JOSEPH PRETORIUS SC: Before you took office.

ADV MXOLISI SANDILE OLIVER NXASANA: Yes, yes.

ADV PAUL JOSEPH PRETORIUS SC: After its confirmation but before you took office trying to as you put it dig up information about your past.

ADV MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: That is the one set of facts that you place before the Chair.

20 **ADV MXOLISI SANDILE OLIVER NXASANA:** That is correct.

ADV PAUL JOSEPH PRETORIUS SC: You also mentioned earlier in your evidence the approach to you of two NPA officials.

ADV MXOLISI SANDILE OLIVER NXASANA: Yes Chair.

ADV PAUL JOSEPH PRETORIUS SC: Now what did they tell you? That is in paragraph 33 of your statement.

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ADV MXOLISI SANDILE OLIVER NXASANA: That is the one that I am referring to. That approach I meant the – the affidavit that I received from **Mr Terence Joubert.**

ADV PAUL JOSEPH PRETORIUS SC: And the other person?

ADV MXOLISI SANDILE OLIVER NXASANA: The other person was Ms Queen Mlongo who was stationed at the – the NPA offices attached to the Asset Forfeiture Unit in Durban.

ADV PAUL JOSEPH PRETORIUS SC: What did she tell you?

ADV MXOLISI SANDILE OLIVER NXASANA: She told me that Colonel
10 Mglongo was bragging saying that – in fact she also had recorded him unfortunately we have lost the phones now and the recordings but I listened to the recording myself. And in that recording he was bragging that he claimed to know me very well and he made a lot of false allegations about me in that recording but of importance is that he was saying that he had been promised the appointment of the Brigadier – he was accusing me of wanting to charge General Mdluli and that General Mdluli if he is not charged General Mdluli was going to make sure that he is appointed as the – he was going to be promoted as the Brigadier.

ADV PAUL JOSEPH PRETORIUS SC: Let us just take that slowly
20 because that is a lot of information.

CHAIRPERSON: Maybe before you proceed Mr Pretorius just one line. At the time going back to **Mr Joubert's** affidavit – at the time you got that affidavit was **Mr Joubert** known to you?

ADV MXOLISI SANDILE OLIVER NXASANA: Chair no he was not known to me.

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CHAIRPERSON: So you received an affidavit from somebody that you had never met, that you did not know?

ADV MXOLISI SANDILE OLIVER NXASANA: Yes but he is an employee of the NPA.

CHAIRPERSON: Yes.

ADV MXOLISI SANDILE OLIVER NXASANA: And my details are there for them.

CHAIRPERSON: Yes. Okay.

10 **ADV MXOLISI SANDILE OLIVER NXASANA**: Because I received on the ...

CHAIRPERSON: On the email.

ADV MXOLISI SANDILE OLIVER NXASANA: Official NPA email.

CHAIRPERSON: Okay, Thank you.

ADV PAUL JOSEPH PRETORIUS SC: Right. So you have said in your statement that almost immediately after you were appointed two NPA officials approached you. We will deal with **Mr Joubert** in a moment. The other person how do you spell her name?

ADV MXOLISI SANDILE OLIVER NXASANA: It is Queen. Queen **Mhlongo**. **Mhlongo** it is **Mhlongo**.

20 **ADV PAUL JOSEPH PRETORIUS SC**: Ngo. Right. Did she tell you anything about Advocates Jiba and Mwebe?

ADV MXOLISI SANDILE OLIVER NXASANA: Chair except that – I just see if I can refresh my memory.

ADV PAUL JOSEPH PRETORIUS SC: Yes please do. Look at paragraph 33 of your statement.

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ADV MXOLISI SANDILE OLIVER NXASANA: Yes, Yes Chair this is – that is the – the evidence that I have just given that paragraph 33 talks to that about the plot to oust me. That Colonel **Mhlongo** was the main person that was used by Advocate Jiba to run the campaign.

ADV PAUL JOSEPH PRETORIUS SC: And Advocate Mwebe?

ADV MXOLISI SANDILE OLIVER NXASANA: Both of them Chair.

CHAIRPERSON: Hm you talk about two officials of the NPA one of them I understand to have been **Mr Joubert**.

ADV MXOLISI SANDILE OLIVER NXASANA: Yes.

10 **CHAIRPERSON:** That you are talking about. Was the other one the person that you refer to as Queen Mhlogo?

ADV MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

CHAIRPERSON: Okay.

ADV MXOLISI SANDILE OLIVER NXASANA: She was – she was attached to the Asset Forfeiture Unit based in Durban at the time. But she is no longer with the NPA. She is the private...

CHAIRPERSON: Okay. Thank you.

ADV MXOLISI SANDILE OLIVER NXASANA: Sector now.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Did they approach you together as a team or did they approach you separately?

ADV MXOLISI SANDILE OLIVER NXASANA: No independent of each other Chair.

ADV PAUL JOSEPH PRETORIUS SC: These were two separate independent...

ADV MXOLISI SANDILE OLIVER NXASANA: Separate incidents.

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ADV PAUL JOSEPH PRETORIUS SC: Approaches to you?

ADV MXOLISI SANDILE OLIVER NXASANA: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Right.

CHAIRPERSON: Around about the same time?

ADV MXOLISI SANDILE OLIVER NXASANA: Around about the same time Chair.

CHAIRPERSON: Hm.

ADV MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: During the month of September before you – no, no
10 after you had commenced your duties as NDPP?

ADV MXOLISI SANDILE OLIVER NXASANA: Yes after I had commenced my duties yes.

CHAIRPERSON: Okay ja.

ADV MXOLISI SANDILE OLIVER NXASANA: And Chair I think I must also mention that both – I think they were – Terence Joubert and – although he was a Risk Officer Specialist. I think his office was also in the same building as the office where – of the Asset Forfeiture Unit of the NPA in Durban. That is the ...

CHAIRPERSON: Where Ms Queen Mhlongo...

20 **ADV MXOLISI SANDILE OLIVER NXASANA:** Yes.

CHAIRPERSON: Was working [indistinct]

ADV MXOLISI SANDILE OLIVER NXASANA: Yes it is – yes – it – at – is it 185 Building, Southern Life Building.

CHAIRPERSON: Hm.

ADV MXOLISI SANDILE OLIVER NXASANA: Yes.

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ADV PAUL JOSEPH PRETORIUS SC: Alright. These approaches to you at whose instance were they made? Did you call on them to speak to you? Did they come of their own accord? What was the case?

ADV MXOLISI SANDILE OLIVER NXASANA: No Chair they came of their own accord.

ADV PAUL JOSEPH PRETORIUS SC: And separately?

ADV MXOLISI SANDILE OLIVER NXASANA: And separately.

ADV PAUL JOSEPH PRETORIUS SC: Alright.

ADV MXOLISI SANDILE OLIVER NXASANA: In fact Chair what I have
10 not mentioned here in the affidavit is I have referred earlier to an incident when I said I was warmly welcomed at the NPA and during that – I referred to a – to the day when Minister Radabe came to introduce me. I gave a speech also there. We were at the auditorium. Chair I then said – I remember saying that Minister I am no – NDPP has ever finished his term of office and I can assure you that I will finish my term of office. In fact the NPA Act even permits me to take an extra period of not more than two years and I am sure that I will be here for the period of 12 years. I was saying that in jest.

CHAIRPERSON: Yes.

20 **ADV MXOLISI SANDILE OLIVER NXASANA:** But what then happened is that later on I – a lady was then seconded to my office as my secretary and at a very late stage she then said to me that she related her story to me that she said she was present at the – when I gave that – at that welcoming event. Then she said there was a gentleman she was standing by the door and a second gentleman immediately passed

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a comment after I made those remarks and said you will be surprised that you will not even last for a period of three months. As we continued working together then in the office and she then happened to meet and know that apparently that person who made those comments was Mr Lawrence Mwebe.

CHAIRPERSON: So – so this lady who was employed by the NPA said a person who was standing behind her.

ADV MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: At...

10 **ADV MXOLISI SANDILE OLIVER NXASANA**: Or next to her.

CHAIRPERSON: Oh next to her?

ADV MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: At the time when you made the speech.

ADV MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: After being introduced by Minister Jeff Radabe at the NPA to the NPA staff.

ADV MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: Said you will be surprised that you will not even finish three months?

20 **ADV MXOLISI SANDILE OLIVER NXASANA**: That is correct Chair.

CHAIRPERSON: And then that same lady later came back to you and said that person was Mr Lawrence Mwebe?

ADV MXOLISI SANDILE OLIVER NXASANA: Yes when she got to see him when we had interactions with them in my boardroom.

CHAIRPERSON: Yes. Okay.

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ADV MXOLISI SANDILE OLIVER NXASANA: And she identified him as Lawrence Mwebe.

CHAIRPERSON: Okay thank you.

ADV PAUL JOSEPH PRETORIUS SC: Alright. You have spoken then about the two NPA officials who approached your unsolicited and separately?

ADV MXOLISI SANDILE OLIVER NXASANA: Yes.

ADV PAUL JOSEPH PRETORIUS SC: With information.

ADV MXOLISI SANDILE OLIVER NXASANA: Yes.

10 **ADV PAUL JOSEPH PRETORIUS SC:** About what other people in the NPA were doing to unseat you?

ADV MXOLISI SANDILE OLIVER NXASANA: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Is that more or less an accurate summary I do not want to put words in your mouth unnecessarily. We are going to go to the detail in a moment.

ADV MXOLISI SANDILE OLIVER NXASANA: Ja but again also Chair perhaps this might also become relevant I – also during the – just to go back. During the – that September period of 2013 when the announcement had been made before I took office I received – I
20 remember I received a call from Advocate Mdladla commonly known as Advocate Sthembiso Mdladla commonly known as Sticks Mdladla. I know that he was then subsequently one of the members of the Cassim Commission of Inquiry he was also a member. He phoned me in the morning and said to me apparently he made mention of a Mr Mwebe. He said he understand Mr Mwebe wanted to speak to me because he

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fears or hears told him that – he has been told that when I came to NPA I will deal with him. Chair it took me by surprise as I pointed out earlier on that I did not even know him. I did not even met him I did not know anyone except the person that I later identified as Advocate Pinkie Mokgatlé.

CHAIRPERSON: The information that the lady gave you about the gentleman that was standing next to her was that information solicited?

ADV MXOLISI SANDILE OLIVER NXASANA: No Chair.

CHAIRPERSON: Hm. Okay.

10 **ADV PAUL JOSEPH PRETORIUS SC**: Right. You said that Mr Terence Joubert gave you an affidavit that is part of the bundle?

ADV MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: In summary what did Mr Joubert tell you in that affidavit? Or what did that affidavit say? You deal with that in paragraph 36.

ADV MXOLISI SANDILE OLIVER NXASANA: In summary Chair apparently Advocate Jiba was going to Durban. I think it was on the day that I met her. And the protocol is that Terence Joubert as the Risk Officer Specialist in Durban is – was responsible for security and risk. I think he was the head in Durban. He was the one who was going to fetch Advocate Jiba from the King Shaka International Airport and drive to her destination. But then Mr Joubert says that he then subsequently when he had made arrangements to go and fetch Advocate Jiba he received a phone call from the Advocate Jiba's secretary advising him that he was not – he was no longer going to be – it was not going to be

20

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him who was going to fetch Advocate Jiba and it was now going to be Colonel Mhlongo. And then he said he found that very strange because he talks about the security, the protocol and the security risk attached to all of that. And then he made mention of a situation where – he then made mention of these two police officers that were deployed to the DPP's office in Durban Advocate Noko and that is when he challenged that because of the security risk and that they were not vetted apparently his boss from the head office a Mr Ramahana flew down and came down and castigated him for that. Then he in this affidavit he

10 then talks about the – the plot now that apparently Jiba was running a campaign to get me removed as the – he said to Mhlongo – or he said Mhlongo told him that ...

ADV PAUL JOSEPH PRETORIUS SC: Mhlongo told who?

ADV MXOLISI SANDILE OLIVER NXASANA: Oh sorry Mhlongo told Joubert.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

ADV MXOLISI SANDILE OLIVER NXASANA: That Jiba said to him – Jiba does not trust this guy the – who is the new NDPP Mr Nxasana and that Mhlongo must go out and get some – and dig some dirt about him.

20 So that...

ADV PAUL JOSEPH PRETORIUS SC: That is you?

ADV MXOLISI SANDILE OLIVER NXASANA: About me?

ADV PAUL JOSEPH PRETORIUS SC: Yes.

ADV MXOLISI SANDILE OLIVER NXASANA: The whole intention was to embarrass me and that she did not know me but the whole intention

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was to embarrass me so that the President will remove me or will fire me as the National Director and she will then be considered to either continue to act or to be considered on a – to be appointed on a permanent basis.

ADV PAUL JOSEPH PRETORIUS SC: So the affidavit of Mr Joubert talks of a conversation between Colonel Mhlongo and Mr Joubert?

ADV MXOLISI SANDILE OLIVER NXASANA: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: And relates what was told to Mr Joubert in that conversation by Colonel Mhlongo?

10 **ADV MXOLISI SANDILE OLIVER NXASANA:** That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And you have related some of that?

ADV MXOLISI SANDILE OLIVER NXASANA: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Was anything mentioned in that conversation according to Mr Joubert about the Road Accident Fund?

ADV MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And you have – is that what you have just told the Chair about?

20 **ADV MXOLISI SANDILE OLIVER NXASANA:** That is what I have just told the Chair and also the – the issue about the cases that I had faced in about 2015.

ADV PAUL JOSEPH PRETORIUS SC: Alright.

ADV MXOLISI SANDILE OLIVER NXASANA: Sorry 1985.

ADV PAUL JOSEPH PRETORIUS SC: And what – was anything said about the example prior example of Mr Stanley Gumede would you

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explain that briefly to the Chair.

ADV MXOLISI SANDILE OLIVER NXASANA: Oh yes. Chair yes. In that affidavit also **Mr Joubert** refers to – he says that Colonel **Mhlongo** also told him that Mr Stanley Gumede who is the Regional Magistrate in Durban was the person who was considered for the position before myself. But that Advocate Jiba ran the campaign to discredit him and one of the things in that affidavit that which **Joubert** alleges is that Jiba or – Jiba then – they convinced a one advocate here – they call him Makosi in Durban to – to complain about the manner in which Mr

10 Gumede had treated her in court as a result Mr Gumede had to face a lot of complaints and he was investigated by the Magistrates Commission. The matter was all over the media and the President that [indistinct] the President not considering him as the candidate. Then he says that they were using the very same tactic that they used against – and he was responsible Mr – Colonel **Mhlongo** in that campaign authorised by Jiba.

ADV PAUL JOSEPH PRETORIUS SC: Now you have told the Chair that this conversation between **Mr Joubert** and Colonel **Mhlongo** was recorded?

20 **ADV MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: You informed the investigators that it had been recorded but as of yesterday we had not been or the investigators had not been able to obtain the recording?

ADV MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: You managed to obtain the

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CHAIRPERSON: Yes, yes, no thank you very much once again, you are excused.

We adjourn, and tomorrow we will start at – what time should we ...

INQUIRY ADJOURNS TO 13 MAY 2019



2nd floor, Hillside House
 17 Empire Road,
 Parktown
 Johannesburg
 2193
 Tel (International): +27 (10) 214-0651
 Tel (Tollfree): 0800 222 097
 Email: inquiries@sastatecapture.org.za
 Web: www.sastatecapture.org.za

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

NOTICE IN TERMS OF RULE 3.3

TO : COLONEL WELCOME STHEMBISO MHLONGO

CELL : 082 946 0260 / 084 762 9664

EMAIL : mhlongows@saps.org.za

IN TERMS OF RULE 3.3 OF THE RULES OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE (“THE COMMISSION”), YOU ARE HEREBY GIVEN NOTICE THAT:

- 1 The Commission’s Legal Team intends to present the evidence of Mr Johan Booysen (“**Mr Booysen**”) at its hearing held at 4th Floor, Hill on Empire, 16 Empire Road, Parktown, Johannesburg. The presentation of his evidence is scheduled to commence on Monday, 15 April 2019 or so soon thereafter as his evidence may be heard. The evidence in question implicates, or may implicate you in unlawful, illegal or improper conduct in the respects set out below.
- 2 The allegations in the evidence of Mr Booysen implicates or may implicate you in, *inter alia*, the following respects:
 - 2.1 You improperly and/or unlawfully sought to-
 - 2.1.1 unduly interfere in the investigative independence of the National Prosecuting Authority (“**NPA**”), the Directorate for Priority Crime

Investigation (“**DPCI**”) commonly known as the HAWKS and/or the South African Police Services (“**SAPS**”);

2.1.2 unduly decline and/or delay and/or obstruct recommended prosecutions;

2.1.3 participate in the undue persecution of officials of the NPA, the Independent Police Investigative Directorate (“**IPID**”) and/or the DPCI; and

2.1.4 destabilize the NPA, the DPCI and/or the SAPS.

2.2 In acting as set out above, you allegedly sought to enable the state capture of the criminal justice system.

3 The relevant portions of the statement of Mr Booyesen which implicate, or may implicate, you in the above allegations are annexed hereto marked “**A**”. Your attention is drawn to paragraphs 42-45 of his statement and the annexures referred to therein, if any.

4 Due to the fact that you are implicated or may be implicated by the evidence of Mr Booyesen, you are entitled to attend the hearing at which that evidence is being presented. You are also entitled to be assisted by a legal representative of your choice when that evidence is presented. The full statement of Mr Booyesen will be uploaded on the Commission’s website (www.sastatecapture.org.za) as soon as he concludes his evidence. The transcript will be uploaded daily.

5 If you wish to:

5.1 give evidence yourself;

5.2 call any witness to give evidence on your behalf; or

5.3 cross-examine the witness

then you must apply, within fourteen (14) calendar days of this notice, in writing to the Commission for leave to do so.

- 6 An application referred to in paragraph 5 above must be submitted to the Secretary of the Commission. The application must be submitted with a statement from you in which you respond to the witness' statement in so far as it implicates you. The statement must identify what parts of the witness statement are disputed or denied and the grounds on which they are disputed or denied.
- 7 In the event that you believe that you have not been given a reasonable time from the issuance of this notice to the date on which the witness is to give evidence as set out above and you are prejudiced thereby, you may apply to the Commission in writing for such order as will ensure that you are not seriously prejudiced.
- 8 Please take note that even if you do not make an application under Rule 3.4:
 - 8.1 in terms of Rule 3.10, the Chairperson may, at any time, direct you to respond in writing to the allegations against you or to answer (in writing) questions arising from the statement; and
 - 8.2 in terms of Regulation 10(6) of the Regulations of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State GN 105 of 9 February 2018 published in Government Gazette 41436, as amended, the Chairperson may direct you to appear before the Commission to give evidence which has a bearing on a matter being investigated.
- 9 The extracts of the witness statement provided to you are confidential. Your attention is drawn to Regulations 11(3) and 12(2)(c) governing the Commission, which make it a criminal offence for anyone to disseminate or publish, without the written permission of the Chairperson, any document (which includes witnesses' statements) submitted to the Commission by any person in connection with the Commission's inquiry.

DATED AT PARKTOWN ON THIS 9th DAY OF APRIL 2019.



MR P PEDLAR
Acting Secretary
Judicial Commission of Inquiry into Allegations of
State Capture, Corruption and Fraud
in the Public Sector including Organs of State

AFFIDAVIT

I the undersigned,

JOHAN WESSEL BOOYSEN

do hereby state under oath that:

1.

I am an adult male South African citizen residing in Pretoria, Gauteng Province.

2.

All facts stated herein are, unless the context indicates otherwise, within my own personal knowledge and are to the best of my belief both true and correct.

3.

I will attempt to keep my submission brief in order to avoid prolixity and to unnecessarily burden the Commission. I will seek to highlight key aspects, events and *dramatis personae*. Should it become necessary I will provide additional facts.

MY POLICE CAREER AND QUALIFICATIONS

4.

I was a career policeman having joined the South African Police in 1976. I was an officer before our democracy in 1995 and was part of the transformation process from a Police Force to a Police Service. I regard my integration into the new Police Service, including my promotion to the ranks of Colonel, Brigadier and Major-General subsequent to the democratic dispensation in South Africa, as one of my



1

premises. During the subsequent searches a number of incriminating documents were seized. One such document was the confidential Soobramoney progress report into the investigation, which I had provided to the Provincial Commissioner, Ngobeni, and Ntanjana. A copy of the progress report is attached as **Annexure "JWB 1."**

42.

In a brazen attempt Panday approached a member of Cato Manor, Warrant-Officer Paul Mostert ("**Mostert**"), and requested him to either steal the exhibits or to set the building where the exhibits were kept alight. Panday told Mostert that he could name his price. Panday somehow knew exactly where the files were kept. This was told to me personally by Mostert.

43.

We attempted to set up a sting operation in terms of section 252(a) of the Criminal Procedure Act, but Panday must have suspected something as he did not engage further with Mostert when Mostert phoned him back.

44.

It later emerged during the investigation communication interceptions authorised in terms of Act 70 of Act 2002, that one of the Colonels at the HAWKS, Colonel Welcome S (WS) Mhlongo ("**Mhlongo**") had links with Panday and I therefore had good reason to suspect that Mhlongo had informed Panday where the files were kept.

45.

Mhlongo was later implicated by Advocate Mxolisi Nxasana for attempting to 'find dirt' on Nxasana at the behest of Advocate Nomgcobo Jiba ("**Jiba**"). This was when Nxasana had succeeded Jiba as the National Director of Public Prosecutions

(“NDPP”). I acquired a copy of the statement of Mr Terence John Joubert (“Joubert”), a Risk Specialist contracted to the office of the NPA, which confirms this. A copy of Joubert’s statement is attached **Annexure “JWB 2.”**

46.

Further communications intercepted revealed that on the same day that Madhoe had been arrested, Panday had phoned Deebo Mzobe (“Mzobe”) during the evening and complained to Mzobe that I set them up. I believe that Mzobe is the relative of former President Jacob Zuma (“Zuma”). During the intercepted discussion between Panday and Mzobe they commented that *“Booyesen had to be taken care of because Booyesen was standing in the way of everything and that Booyesen’s wings must be clipped”*. The discussion related to the investigation against Panday who was a business partner of Mzobe, See attached **Annexure “JWB 3.”** This is an example of one of the conversations that were recorded. The other recordings relating to the Panday investigation can be made available to the Commission’s investigators, if so required .

47.

Panday also had close business ties with one of Zuma’s sons, namely Mr Edward Zuma. During the investigation it came to light that Panday had already received approximately R45 million from SAPS and that a further R15 million was about to be paid to him. I immediately informed SAPS’s financial services not to release the money to Panday until the corruption investigation had been concluded. Panday initially threatened me with legal action, however he did not pursue the threats.



230.10. *"It will take South Africa's criminal-justice sector years to recover from the disruptive impact of the Zuma era, during which good men were booted from their jobs for doing the right thing. The chilling impact this had on prosecutors and police officers is immeasurable. Those who were willing to bend the rules and apply two sets of rules, one for Zuma and his cronies and another for the rest of us, thrived"*. Adriaan Basson & Pieter du Toit. In their book *"Enemy of the People"* page 95.

230.11. I was interviewed by researchers for *"State Capacity Research Project"* titled *"Betrayal of the Promise: How South Africa is being stolen"* published in May 2017. I have read the report. The chapter dealing with *"Securing a Loyal Intelligence and Security Apparatus"*, [pages 19 and 20] accurately chronicles some of the events I have described above. Pages 50 to 52 under the heading *"Investigations and prosecutions"* are also relevant. I attach an extract from this report as **Annexure "JWB 29."**

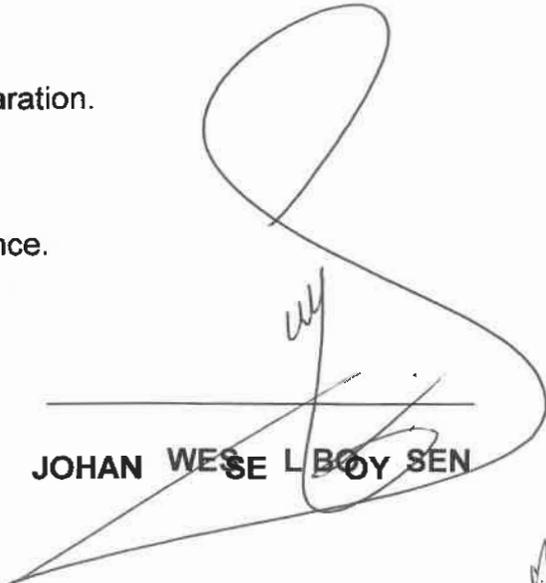
230.12. I have titled a book which I co-wrote with journalist Jessica Pitchford *"Blood on their Hands"* I sincerely believe that those who allowed themselves, for whatever reason, to become part of the captured factions at the NPA and in Law enforcement have done our country a grave disservice. They have blood on their hands.

231.

I know and understand the contents of this declaration.

I have no objection to take the prescribed Oath.

I consider the oath to be binding on my conscience.


JOHAN WESE LBOY SEN

I certify that the deponent who acknowledges that he knows and understands the contents of this affidavit; that it is the truth to the best of his knowledge and belief and that he has no objection to taking the prescribed oath and regards the same as binding on the deponent's conscience and the administration of the oath complied with the Regulations contained in Government Gazette No. R1258 of 21 July 1972, as amended. This affidavit is signed and sworn to before me at Centurion on this the 2nd Day of April 2019 at 14:32



COMMISSIONER OF OATHS

EX OFFICIO:

FULL NAMES:

Jean Jacques Martins

PHYSICAL ADDRESS:

Cnr Jean Avenue

Oliefontein Centurion

DESIGNATION:

Colonel



ANNEXURE "JWB2"

W66

AFFIDAVIT

I, the undersigned,**TERENCE JOHN JOUBERT,**
States under oath in English:

1.

I am an adult male 45years old with I.D no. 680728 5526 085, and residing at 32 Roosevelt Road, Padfield Park, Pinetown, 3610 with telephone number (031) 3345095, with cell number 0765966332 and I am employed as a Risk Specialist for the National Prosecuting Authority of SA, 88 Field Street, 3RD Floor, Southern Life Building, Durban, 4001.

2.

I hereby make oath and say that the facts deposed to herein are within my own personal knowledge and belief unless otherwise stated and are true and correct.

3.

On the 2013-09-18, I was on duty and I was supposed to fetch Adv. Jiba from the Ushaka International Airport. After making the arrangements I got a call from Adv. Jiba's secretary to say that she would be fetched by Col. Mhlongo on instructions from the DPP-KZN. Col. Mhlongo is currently seconded to NPA's Missing Person's Unit, that is headed by Debra Quinn in the province and by Shawn Abrahams at VGM. Their job is to assist members of the NPA to obtain information by interviewing witnesses to conclude their investigations. Shortly after the meeting between Adv. Jiba and Col Mhlongo, he (Col. Mhlongo) came to me in my office and told me that the new guy (referring to the new NDPP Mr. Nxasana), does not like Adv. Jiba and Adv. Mrwebi. He is aware that I do have a great relationship with Adv. Mrwebi and he was playing on my emotions. I asked why he thought so, and he said that he was sent by Jiba, as she is convinced that this guy is not the right person for the job and that we should try and find something on him as they did against Mr. Gumede.



AFFIDAVIT

4.

Mr. Gumede was the first person that we had heard about who would have been appointed the NDPP. The DPP had then insisted that Adv. Makhosi (prosecutor) make a statement against Mr. Gumede concerning the manner in which he (Mr. Gumede) had ill-treated her. This incident gave us indications as to the kind of people we were dealing with and to what lengths these people would go to get their way. Col. Mhlongo was instrumental in mobilizing people to gang up against Mr. Gumede.

5.

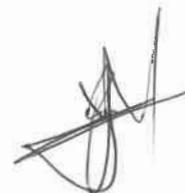
I then told him that this would be playing with fire as we are only small fries and when elephants fight the grass suffers was my comment to his suggestion. Col. Mhlongo assured me that their efforts would not be in vain as Jiba had said if this man (Mr. Nxasana) is removed, then she would be appointed again. The plan was not whether Mr. Nxasana is guilty but the mere fact that they wanted to embarrass him and insist that he be removed.

6.

On the 18th November 2013 we (Col. Mhlongo and I) had another meeting, but this time to discuss the fact that there are two unknown police officials occupying an office next to the DPP. When I raised this with the DPP, my executive manager, Mr. Ramahana flew down to Durban to inform me that the DPP complained about the manner in which I handled the issue of the police officials. I should leave those members as they are, and I should not ask too many questions. The police officials are said to be here to protect the DPP, but this is done without any TRA (Threat Risk Assessment) as per the security policy. We have requested secondment letters from SAPS but to date we have not received any correspondence from SAPS.

7.

Col Mhlongo then informed me that I should not worry about these two members as they were brought to work on the project against the NDPP. They went to Umlazi SAPS where they found people that could implicate Mr. Nxasana in a murder case. This case apparently happened in 1985/6 and his mother (who is a teacher) paid for the docket to disappear. The police



AFFIDAVIT

officials interviewed people in the Umlazi area to see whether they could not get tangible evidence out of them. These two police members were given a vehicle from the Provincial Commissioner to do their investigations against the NDPP.

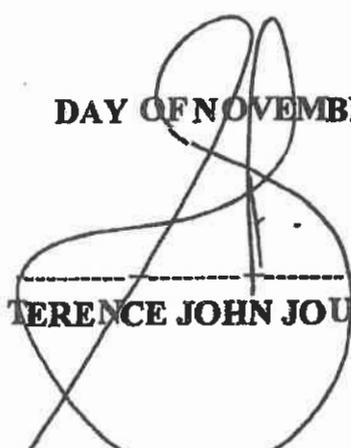
8.

Col. Mhlongo also asked that I must assist them with somebody that works at RAF (Road Accident Fund) because the information was that he, Mr. Nxasana had embezzled money from RAF. He also mentioned that Mr. Nxasana wife worked there. I told him that I would talk to people that I knew to see whether they could assist us. He then informed me that even if he is moved from the NPA to another place, he would continue his investigation from wherever he is.

9.

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

DATED AT DURBAN THIS DAY OF NOVEMBER 2013



TERENCE JOHN JOUBERT

The abovementioned statement was taken down by me and the deponent has acknowledged that he knows and understands the content of this statement. This statement was sworn to before me and the deponent's signature was placed thereon in my presence at Durban on 2013-11-25.





2nd floor, Hillside House
 17 Empire Road,
 Parktown
 Johannesburg
 2193
 Tel (International): +27 (10) 214-0651
 Tel (Tollfree): 0800 222 097
 Email: inquiries@sastatecapture.org.za
 Web: www.sastatecapture.org.za

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

NOTICE IN TERMS OF RULE 3.3

TO : COL WELCOME STHEMBISO MHLONGO
EMAIL : mhlongows@saps.org.za

IN TERMS OF RULE 3.3 OF THE RULES OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE (“THE COMMISSION”), YOU ARE HEREBY GIVEN NOTICE THAT:

- 1 The Commission’s Legal Team intends to present the further evidence of Mr Mxolisi Nxasana (“**Mr Nxasana**”) at its hearing held at 4th Floor, Hill on Empire, 16 Empire Road, Parktown, Johannesburg. The presentation of Mr Nxasana’s evidence will continue **Monday, 8 July 2019**, or so soon thereafter as his evidence may be heard. In the event of a change of date, it will be announced on the Commission’s website (www.sastatecapture.org.za) and in the media. The evidence in question implicates or may implicate you in unlawful, illegal or improper conduct in the respects set out below.
- 2 Mr Nxasana’s statement, which implicates or may implicate you, is annexed hereto marked “**A**”.
- 3 The relevant annexures to Mr Nxasana’s statement are annexed hereto marked “**B**”.
- 4 Mr Nxasana’s evidence implicates or may implicate you in the following respects:
 - 4.1 On the instruction of Ms. Jiba you sought information about Mr. Nxasana, in order to discredit him.

See: **paragraph 34 read with paragraph 30 and paragraph 36.3** of Mr. Nxasana's statement

See too: **paragraphs 36.5 and 37** of Mr. Nxasana's statement

5 Due to the fact that you are implicated or may be implicated by the evidence of Mr. Nxasana, you are entitled to attend the hearing at which that evidence is being presented. You are also entitled to be assisted by a legal representative of your choice when that evidence is presented. The full statement of Mr. Nxasana will be uploaded on the Commission's website as soon as he concludes his evidence. The transcript will be uploaded daily. The evidence of Mr. Nxasana given on Wednesday, 12 June 2019 has been uploaded on the Commission's website.

6 If you wish to:

6.1 give evidence yourself;

6.2 call any witness to give evidence on your behalf; or

6.3 cross-examine the witness

then you must apply, within fourteen (14) calendar days of this notice, in writing to the Commission for leave to do so.

7 An application referred to in paragraph 6 above must be submitted to the Secretary of the Commission. The application must be submitted with a statement from you in which you respond to the witness' statement insofar as it implicates you. The statement must identify what parts of the witness statement are disputed or denied and the grounds on which they are disputed or denied.

8 In the event that you believe that you have not been given a reasonable time from the issuance of this notice to the date on which the witness is to give evidence as set out above and you are prejudiced thereby, you may apply to the Commission in writing for such order as will ensure that you are not seriously prejudiced.

9 Please take note that even if you do not make an application under Rule 3.4:

- 9.1 in terms of Rule 3.10, the Chairperson may, at any time, direct you to respond in writing to the allegations against you or to answer (in writing) questions arising from the statement; and
- 9.2 in terms of Regulation 10(6) of the Regulations of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State GN 105 of 9 February 2018 published in Government Gazette 41436, as amended, the Chairperson may direct you to appear before the Commission to give evidence which has a bearing on a matter being investigated.
- 10 The witness statement provided to you is confidential. Your attention is drawn to Regulations 11(3) and 12(2)(c) governing the Commission, which make it a criminal offence for anyone to disseminate or publish, without the written permission of the Chairperson, any document (which includes witnesses' statements) submitted to the Commission by any person in connection with the Commission's inquiry.
- 11 Any response, affidavit or statement in regard to this notice must be sent to Advocate André Lamprecht and Shannon van Vuuren at secretary@commissionsc.org.za.

DATED AT PARKTOWN ON THIS 24th DAY OF JUNE 2019.



MR P PEDLAR
Acting Secretary
Judicial Commission of Inquiry into Allegations
of State Capture, Corruption and Fraud
in the Public Sector including Organs of State

AFFIDAVIT

I, the undersigned,

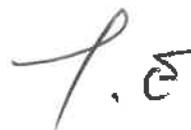
MXOLISI SANDILE OLIVER NXASANA

do hereby state under oath:

1. I am the former National Director of Public Prosecutions (NDPP) and was previously based at the head office of the National Prosecuting Authority (NPA), in Pretoria.
2. The facts deposed to below are within my personal knowledge, unless otherwise stated or indicated by the context, and they are, to the best of my belief, true and correct.
 - A. **The NPA before my appointment (A pattern of political interference and instability?)**
3. Below is a brief timeline reflecting the various individuals who have held the position of NDPP:
 - 3.1. April 2001 – 31 August 2004: Bulelani Ngcuka
 - 3.2. August 2004 – January 2005: Dr Silas Ramaite (acting)
 - 3.3. 1 February 2005 – 17 February 2009: Vusi Pikoli (suspended and then removed / retired)
 - 3.4. 1 May 2009 – 31 October 2009: Mokotedi Mpshe (acting)
 - 3.5. 1 December 2009 – 8 May 2012: Menzi Simelane (December 2011 Simelane was suspended after the SCA judgement; 8 May 2012 Simelane dismissed pursuant to the Constitutional Court judgment).



- 3.6. 20 December 2011 – 30 September 2013: Advocate Nomgcobo Jiba in an acting capacity, including her maternity leave, which she took between early January and 17 May 2013.
 - 3.7. 1 October 2013 – 31 May 2015: Mxolisi Nxasana
 - 3.8. 18 June 2015 – 13 August 2018: Shaun Abrahams
 - 3.9. 1 August 2018 – 31 January 2019: Dr Silas Ramaite (acting)
 - 3.10. 1 February 2019 – present: Shamila Batoyi
4. Bulelani Ngcuka was the first NDPP. His term of office ended in 2004 following an enquiry into his fitness to hold office. He was alleged to have been an apartheid spy. He was cleared by Judge Hefer. He subsequently resigned in August 2004.
 5. Vusi Pikoli succeeded him. He too was subjected to an enquiry into his fitness to hold office: The Ginwala enquiry. It was alleged that the relationship between him and the then Minister of Justice had broken down. He was cleared. The matter was referred to Parliament. He was 'voted' out of office. He had instituted charges against former President Zuma and Jackie Selebi, the Commissioner of Police. His term of office came to an end in February 2009.
 6. During Pikoli's suspension Advocate Mpshe acted as NDPP. He was not permanently appointed. He withdrew charges against Zuma – after the Nicholson J judgement.
 7. President Zuma then appointed Menzi Simelane as NDPP. His appointment was declared invalid by the Constitutional Court.
 8. He was replaced by Advocate Jiba – in an acting position.
 9. I was appointed in August 2013 with effect from 1 October 2013.



10. I am able to comment on this brief history of the NPA as follows:

10.1. Stability: None of the NDPP's before me lasted their full term of office (10 years).

10.2. Independence: There was political interference or outside interference in the decision-making in the NPA.

10.3. Parliamentary oversight: I will comment on the Vusi Pikoli case.

B. The appointment of a NDPP

11. The appointment of the NDPP is governed by section 179 of the Constitution. It requires there to be a single NPA structured in terms of an Act of Parliament, consisting, *inter alia*, of a NDPP who is the NPA's head. The President appoints the NDPP in his capacity as head of the National Executive.

12. Section 179(2) of the Constitution provides that the NPA has the power to institute criminal proceedings on behalf of the State. Section 179(4) of the Constitution requires there to be national legislation to ensure that the NPA exercises its functions '*without fear, favour or prejudice*'.

13. In terms of Section 179(5) the NDPP must determine prosecution policy with the Minister of Justice's concurrence. Section 179(6) states that the Minister exercises final responsibility over the NPA.

14. Section 9 of the National Prosecuting Authority Act 32 of 1998 (NPA Act) sets out the requirements of a person appointed as NDPP. Such person must be:

- a South African citizen;
- possess legal qualifications that entitle him or her to practise in all courts in the Republic; and

G.S.

[Signature]

- be a fit and proper person, with due regard to his or her experience, conscientiousness and integrity, to be entrusted with the responsibilities of the office of the NDPP.

15. The suspension and removal from office of the NDPP are governed by Section 12 of the NPA Act.

C. My appointment as NDPP

16. I was appointed by the former President of the Republic of South Africa, the honourable Mr Zuma (the former President), as the National Director of Public Prosecutions (NDPP) with effect from 1 October 2013, in terms of section 84(e) of the Constitution.

17. In terms of section 179 of the Constitution read, with section 10 of the NPA Act, my appointment was for a period of 10 years.

18. During 2013 I was approached by Mr Hulley at my office in Durban where he requested to meet with me. The meeting took place at my office and lasted approximately 30 minutes. He had with him a list of 3 names whom I assumed were candidates for the post. I was not one of them.

19. Mr Hulley told me that my colleagues had recommended me to take up the position of NDPP. He asked if I was willing to serve as NDPP and I said "yes I would". Following my appointment, I met Mr Hulley again as part of my transition to the office of NDPP.

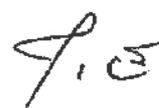
20. I was surprised when told I was being considered for the post as I had not applied for the post, had not sought it out, indicated to anyone that I was interested in it and I had no expectation of being appointed to the post.

21. In approximately August 2013 I met with the President, Mr Hulley, and the President's legal advisor, at the President's official residence in Pretoria. That too was a short meeting lasting no more than half an hour. The main concern



of the President was whether I had the necessary courage required of the post. I took that to mean that the President wanted to know whether I understood that a main requirement of the post was prosecutorial independence. He asked how I would cope under the pressure and demands of 'the job'. I said that if appointed, I would approach the job with the necessary courage, but also with the composure characteristic of the President's own performance.

- 21.1. As I was leaving the meeting with the President, Mr Hulley asked me if there was anything he should know. I told him that my father had been a trade unionist whom I understand had interacted politically with the President on occasion, a long time ago. I disclosed this information because it is not well known or public knowledge, and because I thought that I should disclose information about any connection between the President and my late father.
22. On 30 August 2013, Mr Hulley telephoned me and asked me to send him a copy of my CV, which I did. He told me that the President was going to announce his decision to appoint me as NDPP.
23. On 31 August 2013 the President announced his decision to appoint me as NDPP.
24. To the best of my knowledge the position was not advertised. I was not aware of any selection process other than what I have stated above.
- 24.1. I was not interviewed (in a way ordinarily characteristic of a job interview) by the President or anyone on his behalf for the purpose of considering whether to appoint me;
- 24.2. I was not required to complete any application form or similar document (except for my security clearance application which I completed on 4 December 2013 after I had already been appointed);



24.3. The only document I completed and signed (apart from my security clearance application) was my employment contract.

D. What I found in the NPA

25. When I arrived at the NPA personnel were warm and receptive to me.

26. My view on arrival was that the NPA was a well-equipped and functional organization. This was so notwithstanding the challenges it faced at a leadership level.

27. There was no handing-over to me. There was clearly a reluctance and insubordination on the part of Jiba to do so. I instructed her to "hand-over". She refused.

28. I recall that I had not been informed of the Cato Manor investigations into General Booyen. I read about this in the newspaper, which published the judgement of Gorven J. This judgement was critical of Advocate Jiba's handling of the case.

29. I was also not briefed on the status of the President Zuma investigation.

E. Events leading to my suspension

30. During my first year in office, it became clear that my leadership of the NPA was resisted by National Deputy Director Advocate Nomgcobo Jiba (Advocate Jiba) and the Special Director Specialised Commercial Crime Unit Advocate Lawrence Mrwebi (Advocate Mrwebi). They appeared determined to undermine my standing with the President. I later established that they had run a campaign to discredit me as a person fit and proper to hold the office of NDPP.

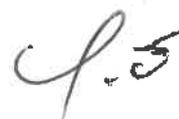
31. Even before I assumed my position as NDPP, I was made aware of attempts from within the NPA to discredit me.



32. I grew up in Umlazi, in Durban. Although I no longer live there, I have family and friends who still do. Soon after my appointment was announced, they reported to me that unknown people had been asking questions about me, trying to dig up information about my past. In particular, they were asking questions about my background and my arrest and acquittal on charges of murder in 1985.
33. Almost Immediately after I was appointed, two NPA officials approached me (independently of each other) with information that Advocates Jiba and Mrwebi were plotting to oust me. They volunteered this information of their own accord.
34. One of the employees, Mr Terence Joubert (**Mr Joubert**), a Risk Specialist for the NPA, deposed to an affidavit in which he explained how he had been approached by Colonel Welcome Mhlongo (**Colonel Mhlongo**), a member of the Directorate of Priority Crimes Investigation (**DPCI**, commonly referred to as the "Hawks") for information about me. Colonel Mhlongo claimed to be acting on the authority of Ms Jiba.
35. I do not know Mr Joubert and the information that he sent me was unsolicited. Furthermore, I do not know why he decided to send me the information.
36. A copy of his affidavit is attached, marked **Annexure "MN 1."** In his affidavit, Mr Joubert states the following under oath;
- 36.1. On 18 September 2013 he was meant to fetch Advocate Jiba from King Shaka International Airport.
- 36.2. Her secretary phoned him and told him that he did not need to fetch her. She said that arrangements had been made for Colonel Mhlongo to fetch Advocate Jiba instead.



- 36.3. Colonel Mhlongo disclosed to him that Advocate Jiba had told him that she did not think that I was the correct person for the job of NDPP. According to him, she told Colonel Mhlongo that "they" (presumably Colonel Mhlongo, Advocate Jiba and Advocate Mrwebi) should try to find some dirt on me as they had against Mr Stanley Gumede.
- 36.4. Mr Stanley Gumede is the Regional Court magistrate who had been tipped to become NDPP. His appointment was withdrawn following media reports that the Magistrates Commission was investigating numerous complaints against him.
- 36.5. Colonel Mhlongo disclosed to him that he was following up information that I had embezzled money from the Road Accident Fund.
37. Mr Joubert recorded his conversation with Colonel Mhlongo. He also sent me a copy of a voice recording of the conversation that he had with Colonel Mhlongo. I listened to and it confirmed what he stated in his affidavit.
38. In addition, I believe that Advocates Jiba and Mwebi advised the President that I intended to reinstate the criminal charges against him that my predecessor had withdrawn. I had in fact made no such decision.
39. The President informed me in one of our meetings that he had been told that I was apparently meeting former NDPP Bulelani Ngcuka at a flat in Durban. He said; *"Hey Mfanakiti, umuntu uma eke washo igama lalowomuntu angifuni nokuzwa lutho ngaye indlela angangifuni ngakhona ngivesane ngihlanye"*. This can be roughly translated as *"once they mention the name of this person I don't want to hear anything about that man - I simply go crazy."* I told the President that I have never met Mr Ngcuka and that he was being misled.
40. I believe that Advocate Jiba was resentful when she was not appointed as NDDP as she had been acting in that position prior to my appointment. I do not have any reason to believe that Advocate Jiba and I were unable to



work together professionally, but do believe that the campaign to have the President remove me was aimed at ensuring her continuing to act as, or even her permanent appointment as, the NDPP. I later discovered that Advocate Jiba had been recommended in a memorandum by former Minister of Justice and Constitutional Development, Mr Jeffrey "Jeff" Thamsanqa Radebe (**Minister Radebe**), for permanent appointment as NDPP. This campaign was similar to that which disqualified Mr Stanley Gumede who had been widely tipped to be made NDPP before my appointment.

41. I believe that this campaign against me culminated in the President's establishment of the inquiry into my continued service as NDPP.
42. Finally, I was concerned that this campaign was also used to influence some staff members against me. Some staff members were used in pursuit of the campaign, which disrupted the operation of the organisation.
43. I had taken various steps to address the instability suffered by the NPA at this time. These Included:
 - 43.1. Obtaining a legal opinion from Senior Counsel Patrick Ellis, regarding the findings of the High Courts and the Supreme Court of Appeal against Advocates Jiba, Mrwebi and Advocate Sibongile Mzinyathi (**Mzinyathi**) the Director of Public Prosecutions North Gauteng Division
 - 43.2. The appointment of a Commission of Inquiry headed by retired Constitutional Court Justice Yacoob to inquire into the instability within the NPA leadership. Advocates Jiba and Mrwebi refused to assist the commission despite my instructions to do so.
 - 43.3. The preparation of a Memorandum by Advocate Gerhard Nel the Legal Advisor in my office. This was signed by Mr Willie Hofmeyr (**Mr Hofmeyr**). It was addressed to the Minister for onward transmission to the President. It dealt with the situation at the NPA. A copy of an affidavit attested to by



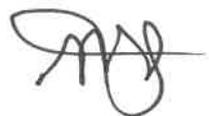
Mr Hofmeyr is attached as Annexure "MN 2." This affidavit deals with circumstances relevant to this memorandum.

- 43.4. Correspondence addressed to the General Council of the Bar regarding Advocates Jiba, Mrwebi and Mzinyathi.
- 43.5. Informal attempts to improve my relationship with Advocates Jiba, Mrwebi and Mzinyathi; and
- 43.6. Repeatedly requesting a meeting with the President, so as to request him to intervene and address the situation at the NPA by instituting disciplinary action against Advocates Jiba, Mrwebi and Mzinyathi.
- 43.7. My initiation of disciplinary action against Advocates Jiba, Mrwebi and Mzinyathi appeared not to be supported by the President and the then Minister of Justice, Minister Masutha. I had requested that the President intervene by taking disciplinary steps against Advocates Jiba, Mrwebi and Mzinyathi, and I had provided him with a file of relevant documentation. This included the legal opinion, reports and memoranda.
- 43.8. At the NPA meeting at Emperors Palace in March 2015 Minister Masutha informed me that the President had agreed to intervene as I had requested. He failed to do so.
44. In July 2014, I was informed by the President that he had taken a decision to institute a commission of inquiry to determine whether I was fit and proper to hold office, in terms of section 12(6)(a)(iv) of the NPA Act.
45. At the end of that month, the President also informed me that he intended to suspend me with full pay pending the outcome of the inquiry and he gave me an opportunity to make submissions in that regard.



F. My suspension

46. By letter dated 4 July 2014, the President informed me that, after careful consideration, he had taken a decision to institute an inquiry in terms of section 12(6)(a)(iv) of the NPA Act. Section 12(6)(a)(iv) provides that the President may provisionally suspend the NDPP from his office, pending an Inquiry into his fitness to hold office. A copy of this letter is attached marked **Annexure "MN 3."**
47. The President advised me that the details regarding the establishment of the inquiry would be communicated to me shortly. The notice did not contain the terms of reference of such an inquiry. Nor did it list the allegations that the inquiry would investigate against me.
48. On 30 July 2014 I received a notice from the President informing me that he was considering suspending me on full pay pending the finalisation of the inquiry into whether I was fit and proper to hold the office of the NDPP. A copy of this notice is attached marked **Annexure "MN 4."** The notice reads:
- "The enquiry will examine your fitness to hold the office as National Director of Public Prosecutions having regard to whether:*
- 1. The criminal convictions which you possess for violent conduct;*
 - 2. Reported comments in the media are unbecoming of a National Director of Public Prosecutions, divisive and have the effect of bringing the National Prosecuting Authority into disrepute;*
 - 3. The lack of disclosure of the facts and circumstances of prosecutions which you faced.*
- Are consonant with the conscientiousness and integrity of an incumbent to the office of the National Director of Public Prosecutions as required by the Act"*



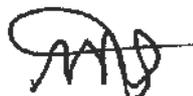
49. The notice invited me to provide the President with written representations as to why I should not be suspended.

My rights to a fair hearing

50. Section 12(6)(a) of the NPA Act empowers the President to suspend me pending an enquiry into my fitness to hold office. Implicit in the statutory power to suspend is the right to a fair hearing before suspension.
51. The requirement of fairness required that I be given a fair hearing or a fair opportunity to be heard on why I should not be suspended. That meant that I should have been given sufficient or adequate time and sufficient or adequate particularity of the allegations against me to make proper representations. It is apparent from the President's letter of 30 July 2014 that I was not given sufficient or adequate essential particulars of the allegations against me.
52. The first bullet point of the President's notice of 30 July referred to the "criminal convictions I possess for violent conduct". The President did not give particulars of the criminal convictions to which this allegation referred.
53. In the second bullet point of the President's notice of 30 July I was told that the inquiry would investigate "reported comments in the media" which the President contended were unbecoming of an NDPP, were divisive, and had the effect of bringing the NPA into disrepute. The President did not give particulars of the comments reported in the media, the dates on which those comments were reported and the media in which they were reported.
54. The third bullet point informed me that the enquiry would consider whether I was fit to hold the office of NDPP in light of my lack of disclosure of facts and circumstances of prosecutions which I had faced. The President did not give particularity of the prosecutions, nor to whom and when I had failed to disclose the relevant prosecutions.



55. I could speculate, as I did in my representations of 1 August 2014. But to have required me to speculate about the essential particulars of the allegations against me was unfair.
56. Because I did not have the essential particulars of the allegations against me, I could not say whether they were true, or whether they were sufficiently serious to warrant suspension or whether they were such that it is not possible for me to interfere with an investigation into them or with witnesses who made them. These are all considerations relevant to suspension.
57. In his 8 August 2014 letter the President justified his refusal to provide me with particulars of the allegations by saying that:
- "It is my view that the details you require in paragraph 5 of your letter dated 30 July 2014 and repeated under paragraph 2 of your recent letter are matters that will be the subject of the enquiry that I advised I shall be instituting. The information which I have provided is sufficient for the purpose of the representations which you are invited to make. In any event, it appears apparent from your initial response that you are was aware of the matters to which I refer.*
- As a result, I do not deem it appropriate to engage on matters that will form the subject matter of the enquiry. My letter invites you to make representations as to why you believe I should not suspend you pending the finalisation of this enquiry and I await your supplementary representations by no later than the extended deadline of 16:00 on Wednesday 13 August 2014".*
58. I submit that it was unfair and unlawful to require me to respond to allegations as lacking in particularity as the allegations in the President's notice of 30 July 2014 were.



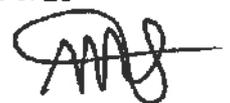
G. The Cassim Enquiry regarding the fitness of the NDPP to hold office:

Terms of Reference

59. By letter dated 5 February 2015 the President informed me that he had appointed Nazeer Cassim SC (Cassim) (assisted by LG Nkosi-Thomas and SKD Mdladla) to chair an inquiry.
60. The inquiry's Terms of Reference were published in Government Gazette No. 38453 on 9 February 2015.
61. The TOR directed the Chairperson to inquire into whether it was fit or proper for me to hold the office of the NDPP in light of the following:
- 61.1.1. My two previous separate convictions on charges of assault;
 - 61.1.2. The complaints of professional misconduct laid against me with the KwaZulu - Natal Law Society;
 - 61.1.3. My having faced criminal charges for acts of violence;
 - 61.1.4. My arrest and detention on criminal charges;
 - 61.1.5. Media statements either issued by me or on my instruction that undermined or brought the office of the NDPP or the NPA into disrepute;
 - 61.1.6. Any other matter as might be relevant to the abovementioned issues and my fitness and propriety to hold the office of the NDPP as contemplated in section 9 (1)(b) of the NPA Act.

The President's complaints

62. Submissions on behalf of the President and the Minister were filed on Monday 4 May 2015 at 18h30.
63. His complaints in the submissions were different to the complaints in the Terms of Reference.



The complaints in the submissions were the following:

- 63.1.1. Before my appointment I had failed to disclose to the President or his advisors that I had two previous convictions for assault.
- 63.1.2. I had failed to take steps to expedite the finalisation of a complaint to the Law Society by Mr Jabulani Mtshali against me in 2008.
- 63.1.3. In my security clearance application questionnaire, in answer to the question:
- "Have you ever been convicted or are there any pending cases for a criminal/departmental offence...?"*
- I failed to disclose the following:
- During 1985 I had been acquitted on a charge of murder;
 - During October 2012 I had been arrested, but not charged, for inconsiderate driving.
- 63.1.4. I had failed to disclose whether had taken took any steps to resolve my complaint against the two police officers who arrested me unlawfully (during October 2012) for inconsiderate driving.
- 63.1.5. I had made made statements to the media that:
- were not in the public interest;
 - fuelled media speculation;
 - negatively affected the public's confidence in the NPA;
 - breached the Code of Conduct.



Complaints that did not fall within the TOR

64. The following complaints did not fall within the TOR:
- 64.1.1. The complaint identified in paragraph 63.1.1 above. The complaint in the first TOR was that my two previous convictions of assault meant that I was not fit and proper to hold the office of NDPP.
 - 64.1.2. The complaint identified in paragraph 63.1.2. above. The complaint in the second TOR is that I am not fit and proper because of complaints of professional misconduct made against me with the KwaZulu-Natal Law Society,
 - 64.1.3. The complaint identified in paragraph 63.1.3. The complaint in the third TOR is that I am not fit and proper because I faced criminal charges for acts of violence.
 - 64.1.4. The complaint identified in paragraph 63.1.3 (bullet 2). The complaint in the fourth TOR was that I was not fit and proper because of my arrest and detention on criminal charges.
 - 64.1.5. The complaint identified in paragraph 63.1.4. None of the TOR referred to a failure to disclose what steps I took to finalise my complaint against the South African Police Services (SAPS).
65. I further submitted that the only complaint contained in the submissions that should be adjudicated at the inquiry was the complaint identified in paragraph 63.1.5. Despite this, I responded to all of the allegations contained in the President's submissions.

My submission to the Cassim Enquiry

66. I prepared (but did not present) a detailed submission to the Cassim Enquiry wherein I dealt at length with the TOR of the Enquiry and the complaints against me.



67. My submission is attached hereto as Annexure "MN 5."
68. In my submission I raised my opinion that the complaints against me concerned the three requirements of Section 9(1)(b) as set out in 12.3 of my submission (paragraph 14 of this affidavit, above). Salient points raised in this regard are indicated in the excerpt below:
15. *Those three requirements mean the following:*
- 15.1 *Integrity includes the high standards of honesty and candour the law expects from all legal practitioners who may not compromise on standards of honesty and integrity.*
- 15.2. *Experience implies relevant knowledge and skill acquired over time from observing and from practical acquaintance.*
- 15.3 *Conscientiousness means hardworking, diligent, and reliable with a genuine concern for the quality of one's work.*
16. *The fit and proper test for appointment as NDPP is substantially similar to the fit and proper test for admission as an attorney or advocate; i.e. the same requirements and considerations apply. Consequently, the submission by the President that a higher test applies to the appointment of an NDPP is wrong in law (and in logic. There is no reason why the requirements of Integrity, experience and conscientiousness applicable to legal practitioners should be any different for the NDPP.)*
17. *The requirements of s9(1)(b) apply to the NDPP to ensure that he discharges his statutory and prosecutorial duties honestly, independently, diligently, without fear, favour or prejudice, in keeping with the professional status and standards associated with the post, while maintaining prosecutorial independence.*



18. *The question whether the NDPP is a fit and proper person is an objective inquiry. Whether the NDPP is fit and proper is not a question left to the discretion or indeed opinion or view of the President.*

H. Unlawful conduct of Advocates Jiba and Mrwebi and Public Perceptions of the NPA

69. I also dealt with this aspect in my submission to the Cassim Enquiry when dealing with the public's perception of the NPA, emanating from numerous media reports. The President later complained that my statements to the media damaged the public's perception of the NPA. While I agreed that public confidence in the NPA had been shaken, I disputed that it was because of anything that I had done.

70. Rather, it was because of the unlawful conduct of Advocates Jiba and Mrwebi. Both of them had abused their positions in the NPA and had acted unlawfully. Examples of this conduct include:

70.1. The involvement of Advocates Mrwebi and Jiba in withdrawing charges of fraud and corruption against the former head of crime intelligence, Major-General Richard Naggie Mdluli (**Major-General Mdluli**).

70.2. Both the High Court¹ and the Supreme Court of Appeal² found that there were grounds to review their decision to withdraw charges against Major-General Mdluli. The NPA was ordered to reinstate the charges against Major-General Mdluli.

70.3. In the High Court, Murphy J criticised the manner in which they had conducted the proceedings. He held³:

¹ *Freedom Under Law v The national Director of Public Prosecutions* (26912/12) [2013] ZAGPHHC 271; [2013] all SA657 (GNP); 2014 (1) SA 254 (GNP); 2014 (1) SA SACR 111 (GNP) (23 September 2013)

² *National Director of Public Prosecutions v Freedom Under Law* (67/2014; ZASCA 58; 2014 (4) SA 298 (SCA); 2014 (2) SACR 107 (SCA) (17 April 2014)

³ *FUL v NDPP*, op cit at [24]

"Suffice it to say that the conduct of the respondents is unbecoming of persons of such high rank in the public service and especially worrying in the case of the NDPP, a senior officer of this Court with weighty responsibility in the proper administration of justice. The attitude of the respondents signals a troubling lack of appreciation of the constitutional ethos and principles underpinning the offices they hold"

- 70.4. Murphy J found that Advocate Jiba had failed to disclose Glynnis Breytenbach's representations in the NPA's record of the decision. Advocate Jiba also made no mention of the representations made by Ms Glynnis Breytenbach urging her to review the decision not to pursue charges against Major-General Mdiuli⁴
- 70.5. In the SCA, Brand JA confirmed Murphy J's decision. He criticised Advocate Jiba's conduct.⁵
- 70.6. In the case of Major-General Johan Booyen v Acting National Director of Public Prosecutions,⁶ Gorven J found that Advocate Jiba had misled the court⁷.
71. In relation to Advocate Mrwebi, the following is relevant:
- 71.1. Murphy J found that Advocate Mrwebi's evidence lacked credibility, particularly in relation to his contention that he consulted with Mr Sibongile Mzinyathi before he decided to discontinue the prosecution against Major-General Mdluli.⁸

⁴ FUL v NDPP, op cit para 88

⁵ NDPP v FUL 2014 (4) SA 298 (SCA) at para [37]

⁶ (2014) 2 All SA 391 (KZD)

⁷ (2011) 32 ILJ 112 (LAC)

⁸ FUL v NDPP, op cit [56]

- 71.2. Advocate Mrwebi had failed to disclose relevant documents that formed part of the record of his decision to withdraw charges against Major-General Mdluli⁹.
- 71.3. Murphy J also rejected Advocate Mrwebi's contention that the decision to withdraw charges against Major-General Mdluli had been made in consultation with Mr Sibongile Mzinyathi. He also rejected Advocate Mrwebi's contention that investigations into the charges against Major-General Mdluli were defective, and his evidence that Ms Breytenbach had believed that the charges were defective, as improbable. He found his evidence unreliable¹⁰.
- 71.4. Murphy J's findings against Advocate Mrwebi were confirmed by the SCA¹¹.
72. As early as 18 July 2014 I had recommended to the Minister of Justice that the President pursue disciplinary action against, amongst others, both Advocate Mrwebi and Advocate Jiba.
73. In the memorandum to the Minister of Justice referred to above, it was pointed out that:
- 73.1. Section 195 (1) of the Constitution requires public administration to be governed by democratic values and principles enshrined in the Constitution. These values require public servants to conduct themselves with a high standard of professional ethics, to provide services impartially, fairly and equitably without bias, and to be accountable,
- 73.2. The Code of Conduct of the NPA was informed by the values and principles that are enshrined in the Constitution, the NPA Act and the United Nations Guidelines on the Role of Prosecutors. It emphasises the crucial role that

⁹ *Booyesen v Action National Director of Public Prosecutions*, op cit at para [32] and [34]

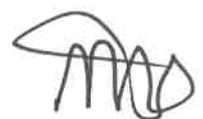
¹⁰ *FUL v NDPP*, op cit at paras [58]; [61]; [68]

¹¹ *NDPP v FUL* op cit at Fn6, paras [40] - [42]



prosecutors play in the administration of justice. It also stresses the need for prosecutors to be fair, effective and to act without fear, favour or prejudice.

- 73.3. I requested the President to suspend Advocates Jiba and Mrwebi pending an inquiry into their fitness to hold the offices of Deputy NDPP and Directors of Public Prosecutions. I suggested that the inquiry be chaired by a retired Judge of the High Court.
- 73.4. I pointed out that there were outstanding criminal proceedings against Advocate Mrwebi for defeating the ends of justice and for intimidation.
74. At the time I wrote that memorandum I was considering appointing a fact-finding inquiry to investigate allegations of unethical conduct by senior members of the NPA, including Advocates Jiba and Mrwebi.
75. On 31 July 2014 Justice Yacoob was appointed to investigate, establish and determine:
- 75.1. The alleged involvement of the NPA's employees, including senior officials, in the leaking of information to the media and other interested parties;
- 75.2. The alleged unethical and unprofessional conduct on the part of the NPA's employees.
- 75.3. Whether any member of the NPA committed an unlawful act.
76. Advocates Jiba and Mrwebi refused to cooperate with Justice Yacoob, despite my express instructions to them to do so.
77. Justice Yacoob completed his report.
78. Justice Yacoob made three recommendations, two of which were relevant to the Cassim inquiry. They were:
- 78.1. Criminal charges should be instituted or continued against certain members of the NPA;



- 78.2. The NPA should appoint a Judicial Commission of Inquiry with powers of compulsion to investigate allegations of impropriety in the NPA.
- 78.3. I handed a copy of Justice Yacoob's recommendations to the Minister of Justice and the President. They did not act on the recommendations.
79. The Mokgoro Commission was later appointed by President Ramaphosa.
- I. The settlement agreement**
80. I had on 8 August 2014 submitted a founding affidavit to the High Court citing the President of the Republic of South Africa as the first Respondent and the Minister of Justice and Correctional Services as the Second Respondent, in an application to compel the President to furnish me with further particulars pursuant to his intention to hold an Inquiry into my fitness to remain in office. I did not proceed with my urgent application since negotiations then commenced between myself and the President with a view to settling the dispute that had arisen regarding my continued service as head of the NPA.
81. There were a number of reasons why I negotiated a settlement agreement with the President.
82. First, I entered into the settlement agreement to settle what I considered to be an intractable, undesirable and ongoing dispute between myself, the President and Minister Radebe.
- 82.1. The source of the dispute was the fact that the President wanted me to vacate the office of the NDPP and I did not want to leave office. A number of spurious and baseless grounds were raised for me to depart office, and I vehemently disagreed with those grounds. To this day I maintain that I am fit and proper to hold the office of NDPP and would serve again. My fitness and propriety was agreed to and recorded by the President and Minister in the settlement agreement, and they did not contend otherwise before Court.



- 82.2. In my position as the NDPP I understood my relationship with the President as the appointing authority of the NDPP to be relevant to my employment status. This is based on his appointment powers in terms of section 179 of the Constitution. I further understood my tenure as NDPP to be contractual in nature and not exclusively regulated by the NPA Act.
- 82.3. While the dispute between the President and I remained unresolved, attempts were made to resolve it through negotiations between myself, the President's legal representatives, Michael Hulley and Ms Busisiwe Makhene, (**Ms Makhene**) the Minister and the Minister of State Security, David Mahlobo (**Minister Mahlobo**).
- 82.4. In light of these negotiations, I ultimately accepted the terms of the settlement agreement so as to resolve the dispute that had arisen with the President and the pending litigation I had been forced to bring to the Court. I did so on the basis that the President and I were entitled to resolve disputes by reaching a settlement that was acceptable to all parties.
- 82.5. I was therefore of the view that the settlement agreement was concluded, not in terms of the NPA Act, but rather to settle a dispute. I later was advised, and accept, that the NPA Act regulated the terms of any early termination of my tenure as NDPP.
- 82.6. However, all of this did not change the simple fact that the settlement agreement was not, and was never intended to be, concluded to constitute a request on my part to vacate office in terms of section 12(8) of the NPA Act.
83. Second, I was also of the view that my entering into the settlement agreement was an attempt to protect the integrity of the office of the NDPP.
- 83.1. The dispute between the President and I, and my difficulties with Advocates Jiba and Mrwebl of the NPA had been ongoing and the President did not seem willing to intervene to resolve them.



- 83.2. There was also considerable media attention paid to the dispute and speculation on the issues at stake regarding the integrity and functionality of the NPA.
- 83.3. During May 2015, the President, the Minister and I concluded a settlement agreement in terms of which I agreed to relinquish my position as NDPP. I received a settlement amount equivalent to what I would have received as a salary had I served my full term as NDPP. In that agreement, the President acknowledged that I was a fit and proper person to hold office as the NDPP.
84. I then vacated my office as the National Director of Public Prosecutions, but not in terms of Section 12(6) of the NPA Act.
- J. My refusal to vacate my Office in terms of section 12(6)**
85. At all material times, the President, the Minister and the President's legal representative Mr Hulley, were aware that I did not intend to, and in fact did not, request the President to allow me to vacate office in terms of section 12(6), me having informed them accordingly.
86. In this regard, I met with Mr Hulley after the conclusion of the settlement agreement and shortly after I was served with the papers in the application issued out of the Court under case number 62470/15 (the **Corruption Watch/ Freedom Under Law application**).
- 86.1. On 22 October 2015, I met with the Minister of State Security, David Mahlobo at the Beverley Hills Hotel in Durban, at his request. I drove him to Ebandia Hotel in Ballito where he was scheduled to speak at the opening of the "Integrity Leadership Summit", hosted by the Office of the then Premier of KwaZulu Natal, Mr Senzo Mchunu.
- 86.2. I was acquainted with Minister Mahlobo from when we had both attended university at the same time.



- 86.3. Minister Mahlobo instructed his Chief of Staff, Mr Maduma, to arrange a meeting between myself and Mr Hulley. That meeting took place on the next day, 23 October 2015, between myself, Mr Hulley and Mr Maduma, over breakfast at the Beverly Hills Hotel in Durban,
- 86.4. During that meeting, Mr Hulley enquired how I intended to approach this application by Corruption Watch and Freedom Under Law. I advised him that I had not filed a Notion of Intention to Oppose.
- 86.5. Mr Hulley proposed that I should work with the President on the matter and he offered to pay my legal costs, including the costs attendant on appointing a senior counsel.
- 86.6. I advised him that I could not accede to that request until I had seen the response which the President intended to file.
- 86.7. It was evident to me that Mr Hulley wanted me to say on oath that I had made a request to the President to vacate my office in terms of section 12(8) of the NPA Act. I advised Mr Hulley that I was not prepared to make that statement since that was not what had occurred factually. I reminded him that I was an officer of this Court and that I would not mislead the Court. I emphasised to him that there was correspondence between my legal representatives and the President that made it clear that I had never made such a request. I had drafted some of that correspondence personally.
87. I pause to note that, when I requested copies of this correspondence from my attorney following the meeting, I was informed that the files containing it had disappeared from my attorney's office. Fortunately, I had taken the precaution of keeping copies of the documents.
88. I concluded by stating to Mr Hulley that I did not intend to oppose the application, but I would be required to file a response in the event that the President's answering affidavit contained any false representation of events. Mr Hulley advised me that the Presidents answering affidavit had already



been prepared and that no false averments as to the sequence of events were made in this regard.

89. Mr Hulley undertook to provide me with a copy of the draft affidavit. However, he never did so.
90. I only became aware of the content of the President's answering affidavit after it had been filed in February 2016.
91. Thereafter, I contacted Minister Mahlobo and complained about the version contained in the President's affidavit and Mr Hulley's conduct. Minister Mahlobo invited me to his official residence in Waterkloof. Mr Maduma was also present at that meeting. I advised Minister Mahlobo about my meeting with Mr Hulley, and in particular about Mr Hulley's undertaking to me to provide the President's affidavit to me before it was filed, which was not fulfilled.
- 91.1. I advised Minister Mahlobo that I was not happy about what had happened and the version in the affidavit. I made it clear to him that even though I had not filed a notice of intention to oppose the application, I would consult with my legal representatives and advise them of what had happened. I explained to Minister Mahlobo and Mr Maduma that this application had now affected my reputation and I had to do something about it.
- 91.2. Minister Mahlobo then immediately telephoned the Minister, in my presence, although I did not speak to the minister.
- 91.3. Minister Mahlobo explained to the Minister that the President had deposed to an affidavit in which he had stated that I had requested to vacate office, even though there was correspondence which clearly indicated that this was not correct.



- 91.4. Minister Mahlobo advised me that, according to the Minister, Mr Hulley had advised the Minister that I had agreed that I had made a request to vacate office. I disputed this with Minister Mahlobo,
92. Accordingly, to the knowledge of the President's legal representatives and the Minister, I have always denied that I made a request to the President to vacate the office of the NDPP in terms of section 12(8) or at all. This is supported by the irrefutable documentary evidence that has been placed before Court.

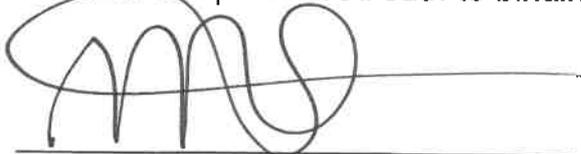
K. Conclusions

93. Political and external interference in decision making in the NPA undermined its integrity and effectiveness and served to erode public confidence in the organisation.
94. The failure to act decisively against Advocates Jiba and Mrwebi harmed the organisation.
95. In my view the Parliamentary Committee on Justice did little or nothing to exercise appropriate oversight or intervene in the issues concerning Advocates Jiba and Mrwebi, at least while I was in office.

I know and understand the contents of this declaration.

I have no objection to taking the prescribed oath.

I consider the prescribed oath to binding on my conscience.



MXOLISI SANDILE OLIVER NXASANA



The Deponent has acknowledged that he knows and understands the contents of this affidavit, which was sworn to before me and the deponent's signature was placed thereon in my presence at Pretoria on this the 11th day of June 2019, 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)
CST

COMMISSIONER OF OATHS

FULL NAMES:

Thabi Eddie GANYA

DESIGNATION:

CST



ADDRESS:

71 Dunsalk Avenue
Parkview SAPS



2nd floor, Hillside House
17 Empire Road,
Parktown
Johannesburg
2193
Tel (International): +27 (10) 214-0651
Tel (Tollfree): 0800 222 097
Email: inquiries@sastatecapture.org.za
Web: www.sastatecapture.org.za

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

25 March 2020

To: Colonel Mhlongo

Per email: joelma@vodamail.co.za

And to: Major-General Booyesen

Per email: jwbooyesen@icloud.com

APPLICATION FOR LEAVE TO ADDUCE EVIDENCE

Applicant: Colonel Welcome Sithembiso Mhlongo

Witness implicating the applicant: Major-General Booyesen

1. The above-mentioned applicant and witness are thereby notified that the Chairperson of the Commission has made the following decision in the applicant's application for leave to adduce evidence before the Commission in connection with the above-mentioned witness's evidence or statement.

1.1. Chairperson's decision:

- (a) "In as far as the applicant may have failed to timeously deliver his/her application for leave to adduce evidence and applied for condonation, condonation is hereby granted.
- (b) The applicant is hereby granted leave to adduce evidence.
- (c) The date when the applicant will adduce evidence will be communicated to both the applicant and the above-mentioned witness in due course."

Yours sincerely

A handwritten signature in black ink, appearing to read 'K. Shabalala', written in a cursive style.

Ms KB SHABALALA

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

INDIA 5692_IID 6

AUDIO FILE India 5692_IID 6
AUDIO DATE 18 NOVEMBER 2010
AUDIO TIME 06:44
CELL NUMBER
NO. OF PAGES 3
DATE TYPED 30/07/2020
TRANSCRIBED Anne Bell
BY:
SIGNATURE
MALE VOICE 1 UNKNOWN
MALE VOICE 2 MR T PANDAY

MALE VOICE 1 Hello
MALE VOICE 2 Chief, can you talk?
MALE VOICE 1 Yes
MALE VOICE 2 Did my man sms you ... the ... voucher.
MALE VOICE 1 No, not yet.
MALE VOICE 2 He will do it now.
MALE VOICE 1 Ok
MALE VOICE 2 Listen, if Dramat can't sort this thing out – all he needs to do is to give an indication to change the I/O. I will give you the name of another I/O that must handle the case.
MALE VOICE 1 Hello?
MALE VOICE 2 Another investigating officer.

- 2 -

MALE VOICE 1 Ok.

MALE VOICE 2 If he can't, if he says no he can't squash it or leave it whatever ... there is a white investigating officer – his name is van Loggerenberg - right

MALE VOICE 1 Mmm ...

MALE VOICE 2 They need to change him to a black guy called Mhlongo. I'll give you his force number.

MALE VOICE 1 Okay.

MALE VOICE 2 So if he says [indistinct] no problem take van Loggerenberg out of the case and put a black person called Mhlongo – he is also from the HAWKS.

MALE VOICE 1 Okay, okay. He will do it. He will do it

MALE VOICE 2 He will do it

MALE VOICE 1 He will do it. Don't worry I don't know why you are worried now

MALE VOICE 2 [laughter]

MALE VOICE 1 He will do it

MALE VOICE 2 I am worried

MALE VOICE 1 No, no, no – he is going to do it.

MALE VOICE 2 [indistinct]

MALE VOICE 1 Ja, don't stress he is going to do it. I thought we were going to talk about something else – he is going to do it.

MALE VOICE 2 Okay

MALE VOICE 1 Yes, he is going to do it

MALE VOICE 2 My man will sort out the voucher shortly ... what time is the game starting?

MALE VOICE 1 ... It is starting very late ... apparently they are

- 3 -

accommodating the the United States of America – you know those Americans they pumped a lot of money into this game so they want to watch ... starting at half past nine.

- MALE VOICE 2 And why you didn't go?
- MALE VOICE 1 Look I had to sort some stuff out this side – you know I am on the ground, my man.
- MALE VOICE 2 Ja, you ...
- MALE VOICE 1 I can't be watch the games all over
- MALE VOICE 2 [indistinct] underground man
- MALE VOICE 1 Yes, yes
- MALE VOICE 2 Next week we are going to go to Eastern Cape – one day – one day we are going to do Pretoria – we are going to meet with Head of Procurement for aah ... the sport.
- MALE VOICE 1 Okay, my friend. Sure.
- MALE VOICE 2 And then we do the mines as well the next day.
- MALE VOICE 1 Yes
- MALE VOICE 2 take it from there.
- MALE VOICE 1 Thanks
- MALE VOICE 2 if you don't get the voucher in half an hour, sms me
..... [indistinct]
- MALE VOICE 1 Okay, cool.
- MALE VOICE 2 Thanks [indistinct]

INDIA 5694 ----- IID

AUDIO FILE India 5694 IID -----

AUDIO DATE 30 November 2010

AUDIO TIME 09h47

CELL NUMBER

NO. OF PAGES

DATE TYPED 01/09/2020

TRANSCRIBED Anne Bell

BY:

SIGNATURE

MALE VOICE 1 COLONEL MADHOE

MALE VOICE 2 T PANDAY

MALE VOICE 1 Ja, babu

MALE VOICE 2 Sataseekay

MALE VOICE 1 190

MALE VOICE 2 190

MALE VOICE 1 34

MALE VOICE 2 34

MALE VOICE 1 849

MALE VOICE 2 849 [pause] now

MALE VOICE 1 W S

MALE VOICE 2 Ja. Now is this guy not going to be like the others? Can we trust him?

MALE VOICE 1 Nah he's 100's

MALE VOICE 2 100% we don't want to make a fuck-up and put the

- 2 -

wrong person there now

MALE VOICE 1 No, no, no nah

MALE VOICE 2 [indistinct]

MALE VOICE 1 ja, it's in order

MALE VOICE 2 that's fine

MALE VOICE 1 he's 100's

MALE VOICE 2 [indistinct] perfect

MALE VOICE 1 we got him by his short and fucking curlies

MALE VOICE 2 okay

MALE VOICE 1 ja

MALE VOICE 2 No, I can take it - whatever he needs I can sort him out
and ...

MALE VOICE 1 Nah, don't worry, don't' worry – maybol what the other
mather wanted

MALE VOICE 2 Hi he gave the stuff

MALE VOICE 1 Maybol

MALE VOICE 2 May - hum - when I meet with you

MALE VOICE 1 Okay, sharp

MALE VOICE 2 But they gave all my stuff

MALE VOICE 1 Okay, paisa too

MALE VOICE 2 No, [indistinct – noise in background] they are waiting
for an affidavit

MALE VOICE 1 Ok

MALE VOICE 2 Can't get hold of my attorney [noise in background –
indistinct]

MALE VOICE 1 [noise in background – indistinct]

MALE VOICE 2 Okay

- 3 -

MALE VOICE 1 Nah 100's lekker

MALE VOICE 2 [indistinct – noise in background]

[end of recording]

INDIA 5692 IID 1800

AUDIO FILE India 5692 IID _____

AUDIO DATE 30 NOVEMBER 2010

AUDIO TIME 09:48

CELL NUMBER

NO. OF PAGES

DATE TYPED 01/09/2020

TRANSCRIBED Anne Bell

BY:

SIGNATURE

MALE VOICE 1 UNKNOWN

MALE VOICE 2 T PANDAY

MALE VOICE 1 Hello

MALE VOICE 2 How's it.

MALE VOICE 1 Ja, what's up with your phone?

MALE VOICE 2 Ja, just airtime, airtime, airtime. You know how quickly airtime goes.

MALE VOICE 1 Yes, I know, I know.

MALE VOICE 2 This is a pay as you go man. Listen, ja, so this guy here is from that era there – he comes from that situation and, you know, I am not sure how far he wants to take this thing, he wants to go on – I don't have a problem with that but I don't mind him investigating – I don't say that people mustn't investigate but number one the manner in which they investigate and number two if we can change him as an investigator and put in a black person.

- 2 -

MALE VOICE 1 hum

MALE VOICE 2 Because he's a white investigator and he's a racist, racist, racist, biased person. If ask if I can have an interview with him for half an hour with your big guy from there, right – with, with the coloured chap – I will explain to him why that they should change the investigator, that's all I want – they can continue investigating, I don't have problem with that but if they can change the investigator.

MALE VOICE 1 Okay, okay I am with you on that one

MALE VOICE 2 You see what I'm saying – you don't want to, want to stop them in the process but there is a black investigator called Mhlongo [pause] they can give it to him to investigate

MALE VOICE 1 Okay, okay – okay so let me get back to you afternoon meeting them

MALE VOICE 2 Ja, I will get Mhlongo's force number for you [pause]. Are you happy?

MALE VOICE 1 Okay. Yes, I'm listening

MALE VOICE 2 Ja, I'll get you his force number then you can put him as the investigator

MALE VOICE 1 Okay. Sure

MALE VOICE 2 Okay. Thank you Chief.

INDIA 5692

AUDIO FILE India 5692
AUDIO DATE 2 DECEMBER 2010
AUDIO TIME 09:38
CELL NUMBER
NO. OF PAGES 4
DATE TYPED 30/07/2020
TRANSCRIBED Anne Bell
BY:
SIGNATURE
MALE VOICE 1 COLONEL MHLONGO
MALE VOICE 2 MR T PANDAY

MALE VOICE 1 Hey, my chief.
MALE VOICE 2 Hey, my brother
MALE VOICE 1 I haven't heard from you for a long time
MALE VOICE 2 Hi, somebody has to work in the house
MALE VOICE 1 [indistinct]
MALE VOICE 2 [indistinct] ... ja, one person working, ten people spending.
MALE VOICE 1 mmm...
MALE VOICE 2 How are you keeping?
MALE VOICE 1 Getting, there, getting there ... [indistinct]
MALE VOICE 2 You can talk?
MALE VOICE 1 Ja, can talk
MALE VOICE 2 Ok, listen. You guy set up a meeting with me when is –

- 2 -

Monday.

- MALE VOICE 1 Sorry
- MALE VOICE 2 Your guy, you know that white guy you put me onto.
- MALE VOICE 1 Ja, ja, ja. Yes
- MALE VOICE 2 He set up the meeting on Monday – he said he can help sort this out. I said fine. Then, I asked him how – he said no, he is going to get ... these people want to tell the truth at last and they are going to tell they went into my account illegally – the wife went into my account illegally. Ah, I said perfect – at least - they are prepared to come clean. So he said for all his troubles and all the attorney's troubles is 550 000.
- MALE VOICE 1 Mmm
- MALE VOICE 2 I said, no problem. The day the docket is nullified
- MALE VOICE 1 mmm
- MALE VOICE 2 I'll give you the cash. I don't have a problem there. Then he comes back, he says no, money up front.
- MALE VOICE 1 Which guy?
- MALE VOICE 2 Fanie [pause].
- MALE VOICE 1 money up front.
- MALE VOICE 2 So, I should leave it?
- MALE VOICE 1 [indistinct] something suspicious.
- MALE VOICE 2 I am not a bad person, I am not saying I am not paying. When they gave me such a high amount ...
- MALE VOICE 1 [indistinct] they must just do the job
- MALE VOICE 2 that's my point, do the job – I don't know if - at least these people want to tell the truth, they are coming clean [indistinct] paying for a struggle – pay the attorney – keep getting the attorney for the trouble

- 3 -

whatever – I said no problem, that all can be done. Now, you come back and say no, money up front, I said fuck it, leave it. It doesn't work like that.

- MALE VOICE 1 Mmm. Shit. So, mmm then what is the way forward?
- MALE VOICE 2 The way forward is do the job and I pay you guys. Simple, I'm not afraid to pay.
- MALE VOICE 1 Mmm, there are of course. [indistinct] A lot of people have been promising and promising
- MALE VOICE 2 No, that's my point - taking, taking, taking, I am not giving no one fucking cent – do the job - I am a man of my word even if you tell me 600, 700, 500, 200, 100, 100, whatever, it's done. Otherwise I keep the same money and I fuck them up in court and then I will have a civil suite 10 times more plus I'll embarrass them.
- MALE VOICE 1 mmm [pause] shocking, hey. Huh! So I haven't heard from you for a long time.
- MALE VOICE 2 Ja, I was busy, I was [indistinct]
- MALE VOICE 1 But the boss was down yesterday. Did you wrap up with him?
- MALE VOICE 2 No, I didn't man – because they were busy on road trips and shit like that.
- MALE VOICE 1 Oh okay.
- MALE VOICE 2 I think this week [indistinct] Sunday?
- MALE VOICE 1 Oh okay.
- MALE VOICE 2 Be with the wife. [indistinct] Probably meet with him.
- MALE VOICE 1 Okay [pause] – yeah! I am still going to find out from him. [indistinct] I can't understand why he is going that route. I mean [indistinct] I mean [indistinct] he must produce first then we can even talk about

- 4 -

- MALE VOICE 2 Yes. That's it, show us and we are not even going to skid away and we can't do it, we can't do it, we pay, I mean whatever it is we sort out.
- MALE VOICE 1 Mmm .. mmm...
- MALE VOICE 2 Just check and you can let me know [pause]. Did you pick that thing up from Madhu?
- MALE VOICE 1 Sorry
- MALE VOICE 2 Did you pick up that stuff for van Loggerenberg?
- MALE VOICE 1 No he hasn't. I was busy as well. Yesterday I was busy with an examination of MK guys [indistinct] cemetery [indistinct]. We got this project for JZ that I am doing for [indistinct] for comrades that have been killed by Fanie and them [laughter].
- MALE VOICE 2 [indistinct]
- MALE VOICE 1 So I was busy with that. But I am going try and go to, to, to but hey, the problem is yesterday I smashed my car so I am trying and sort it out today.
- MALE VOICE 2 Shit, ok you go sort yourself out then. [indistinct] I land [indistinct] sort out from then.
- MALE VOICE 1 Ja, but [indistinct] [noise in background] we must meet then one of these days [indistinct] and see if we can't find [indistinct] because I also got some things that aah that I need to talk about .
- MALE VOICE 2 Okay
- MALE VOICE 1 [indistinct]
- MALE VOICE 2 Thanks, brother.

INDIA 5692 IID 1800

AUDIO FILE India 5692 IID 1800
AUDIO DATE 10 DECEMBER 2010
AUDIO TIME 20:32
CELL NUMBER
NO. OF PAGES
DATE TYPED 31/08//2020
TRANSCRIBED Anne Bell
BY:
SIGNATURE
MALE VOICE 1 MR T PANDAY
MALE VOICE 2 COLONEL W S MHLONGO

MALE VOICE 2 Hello Ma
MALE VOICE 1 Chief
MALE VOICE 2 Yes Chief
MALE VOICE 1 How're you
MALE VOICE 2 I'm [indistinct]
MALE VOICE 1 Ja, I told that guy cancel everything because I'm not comfortable – he told me that the statements were taken already and they were taken this morning – people have to destroy it and they not very happy – that's a bullshit story
MALE VOICE 2 I'm telling you
MALE VOICE 1 Is this guy short of money [indistinct] we're not children

- 2 -

MALE VOICE 1 Is he short of money this guy – is he broke

MALE VOICE 2 Hey, I think so [indistinct] – hi because and [indistinct] don't where it comes from – [indistinct] I'm very confused – I'm not comfortable with anything

MALE VOICE 1 mmm and me too, you know what if you tell me 500 or 200 there is no problem – do the work, perform – we're not kids we're big people – I mean you are not talking to a 5 year old or 2 year old here

MALE VOICE 2 mmm

MALE VOICE 1 We can sort this out one time

MALE VOICE 2 mmm, mmm

MALE VOICE 1 So but we'll find another way, there's plenty other ways man [indistinct] this is not the way

MALE VOICE 2 There's always a way

MALE VOICE 1 Yes [indistinct]

MALE VOICE 2 [indistinct] this thing is dying [indistinct]

MALE VOICE 1 [indistinct] you can see it is dying – there is nobody talking about it – I mean they phoned me this morning they want to give back my money now – that they seized

MALE VOICE 2 Exactly that is why I am saying – don't worry yourself

MALE VOICE 1 Ja, I am not bothered

MALE VOICE 2 mmm, mmm

MALE VOICE 1 [indistinct] people just want to extort us, do this, do that, that's unacceptable – you don't stress, I just want to inform you that my position is very clear – my commitment to you still stands with Bheki Ntuli

MALE VOICE 2 mmm mmm

- 3 -

MALE VOICE 1 I will take you to that route and wants you to get that big job – that still stands – we can sort that out for you

MALE VOICE 2 mmm mmm

MALE VOICE 1 but then you know you will be earmarked as our security person for Kwa-Zulu Natal

MALE VOICE 2 Exactly

MALE VOICE 1 If we want something done we can [indistinct] you to do it – end of story

MALE VOICE 2 Exactly

MALE VOICE 1 And I [indistinct] just thinking why would this guy, I mean, first they told me 650 right

MALE VOICE 2 Yes

MALE VOICE 1 then overnight they reduced it – they reckon 270

MALE VOICE 2 mmm mmm mmm

MALE VOICE 1 Now from 650 to 270 - hi! hi! hi!

MALE VOICE 2 It doesn't make sense

MALE VOICE 1 It doesn't make sense and then I told him nothing upfront when the jobs done – they reckon no, no upfront

MALE VOICE 2 mmm

MALE VOICE 1 Nah, forget it – I think, I think he is buying a property so needs a deposit

MALE VOICE 2 Maybe, ja

MALE VOICE 1 Ja (pause) [indistinct] we are not children, we big people man [indistinct] – if you came to me, I mean – you told me upfront 200 do it fine – but it came from you

MALE VOICE 2 Exactly

- 4 -

MALE VOICE 1 You know what I'm saying

MALE VOICE 2 mmm

MALE VOICE 1 Ja, but don't stress, we sort out – when you coming to
meet

MALE VOICE 2 You can tell me

MALE VOICE 1 why where's the car – fixed up

MALE VOICE 2 Sorry

MALE VOICE 1 I take you for nice lunch one of these days - come

MALE VOICE 2 Oh okay sure, no problem – I'll hear from you

MALE VOICE 1 Ja I take you for a nice ...

MALE VOICE 2 Tomorrow I'm in Joburg

MALE VOICE 1 Tomorrow I'm going to the funeral for the judge, man

MALE VOICE 2 Oh okay.

MALE VOICE 1 His wife passed away so we going to the funeral – so
maybe Monday, Tuesday we'll see

MALE VOICE 2 Okay

MALE VOICE 1 Thanks

INDIA 5692 IID 1779

AUDIO FILE India 5692 IID 1779
AUDIO DATE 10 DECEMBER 2010
AUDIO TIME 20:33
CELL NUMBER
NO. OF PAGES
DATE TYPED 30/07/2020
TRANSCRIBED Anne Bell
BY:
SIGNATURE
MALE VOICE 1 MR T PANDAY
MALE VOICE 2 COLONEL W S MHLONGO

MALE VOICE 1 Good Morning.
MALE VOICE 2 Morning, how're you?
MALE VOICE 1 Good thankyou how are you?
MALE VOICE 2 I'm fine.
MALE VOICE 1 Good, good, good.
MALE VOICE 2 Hey, this man has been pressurising me – what is happening?
MALE VOICE 1 He said, you know what is happening.
MALE VOICE 2 Ja, he told me well after I asked him hey, what is happening. I don't know are you comfortable with that
MALE VOICE 1 You are responsible for it. How's it - just give me one second. Are you my man, you tell me if I must be comfortable

- 2 -

- MALE VOICE 2 Because you know what I wanted to, to, to – I wanted to be an observer to this thing because if anything happened I can be able to, you know.
- MALE VOICE 1 Ja, then you know what, you know what tell him to leave it, my brother. I will only go ahead with anything if you are there.
- MALE VOICE 2 If, if, if that statement is in front of you [indistinct] that why I said [indistinct] don't want to be in a position and what if that statement doesn't come.
- MALE VOICE 1 Ja, that's my point. That's why, that's why I said ...can only be done via you because I feel it to be very suspicious myself – I mean
- MALE VOICE 2 Hey, I mean I'm, I'm telling you, you know what, I am a Comrade brew.
- MALE VOICE 1 Thank you, do me a favour thank you very much, I'm a Comrade as well. Tell him leave it we don't need it anymore. I got [indistinct]
- MALE VOICE 2 No, but I don't want [indistinct] we might need him, I don't want you to tell him that – hey, you know what you are not comfortable with everything 2 you don't want this thing to be picked up by me [indistinct] because I'm there as a middle man and a and a you've will be comfortable if there, there is just an exchange because [indistinct] I don't want him to feel [indistinct]
- MALE VOICE 1 Tell him you spoke to me and I said that leave it I've got another way of sorting this out – I don't need it to be sorted out [indistinct]
- MALE VOICE 2 Na, it must be an exchange brew, it must be an exchange. [indistinct]

- 3 -

MALE VOICE 1 There's the books there. Exactly.

MALE VOICE 2 Why, why it had to be like that

MALE VOICE 1 I agree with you. Tell him that I ...

MALE VOICE 2 [indistinct] don't know what [indistinct] you know.
[indistinct] I believe in exchanging things here and then
not as [indistinct] something will come.

MALE VOICE 1 Thank you very much, my brother. You are a Comrade
like me and I've got things in store for you with Mbeke
Mtuli and shit like that [indistinct] is the new MEC for
Safety and Security. You know that ...

MALE VOICE 2 Ja.

MALE VOICE 1 Ja, so you know he is my man.

MALE VOICE 2 Ja

MALE VOICE 1 So I don't want that to ruin our friendship and our
relationship

MALE VOICE 2 I don't want to we've still got a long way to go. There's
a lot [indistinct]

MALE VOICE 1 That's my point [indistinct] no, a lot of positions
[indistinct]

MALE VOICE 2 He is in the Police, I am in the Police...

MALE VOICE 1 That's my point, that's my point – look, I don't feel
comfortable ...

MALE VOICE 2 I'll tell him that you said you are not comfortable with
everything and [indistinct]

MALE VOICE 1 Phone him and [indistinct] say to him I am busy in
meetings – you spoke to me, I did spoke to you and
after I spoke to you because I was going to give you
[indistinct]

- 4 -

MALE VOICE 2 Why it has to be done like that

MALE VOICE 1 That's my point – I ask him yesterday

MALE VOICE 2 Why it had to be done like that

MALE VOICE 2 [indistinct] because we got lots of queries about this
thing and I

MALE VOICE 1 He did – he did say to him see [indistinct] you will
explain to him later

MALE VOICE 2 mmm

MALE VOICE 1 say to him you will explain to him later then when we
meet him later I will explain to him in person – I will
meet with you and him a bit later – no prob – I'll sit with
him and explain [indistinct] there is nothing this – I can
even make a booklet 10 times this thing – there is no
problem but it can't be done this way.

MALE VOICE 2 mmm

MALE VOICE 1 Okay [indistinct]

INDIA 5694 IID 3759

AUDIO FILE India 5694 IID 3759

AUDIO DATE 3 JANUARY 2011

AUDIO TIME 19h12

CELL NUMBER

NO. OF PAGES

DATE TYPED 01/09/2020

TRANSCRIBED Anne Bell

BY:

SIGNATURE

MALE VOICE 1 COLONEL MADHOE

MALE VOICE 2 W S MHLONGO

MALE VOICE 1 Hello

MALE VOICE 2 Hey, colonel, how are you?

MALE VOICE 1 Fine, yourself?

MALE VOICE 2 I'm fine. Long time no hear from you

MALE VOICE 1 How you feeling

MALE VOICE 2 Getting there, better

MALE VOICE 1 Ja, your son told me you were in the hospital, man

MALE VOICE 2 Mmm, mmm, mmm

MALE VOICE 1 Ja, ja, ja

MALE VOICE 2 So how're you, alright?

MALE VOICE 1 Good, carrying on, huh

MALE VOICE 2 mmm, mmm. Still that side at square

MALE VOICE 1 Ja, ja, ja

- 2 -

MALE VOICE 2 Okay

MALE VOICE 1 Still around?

MALE VOICE 2 Ja, so any news?

MALE VOICE 1 Nah – nothing

MALE VOICE 2 What I think those people are – they are thing is on a
 dying stage [indistinct]

MALE VOICE 1 Ja, no it's finished

MALE VOICE 2 Mmm, mmm

MALE VOICE 1 Ha, ha, they said so too

MALE VOICE 2 Mmm, mmm

MALE VOICE 1 Ja

MALE VOICE 2 So what's is like, what is happening now – quiet?

MALE VOICE 1 Ja, totally. We'll be back one of the days

MALE VOICE 2 Oh, okay because I believe tomorrow is Mamma's
 birthday

MALE VOICE 1 Ja, ja

MALE VOICE 2 Mmm,

MALE VOICE 1 Hey, I don't know, hey, I don't know but if we need to
 buy something for her what do we do

MALE VOICE 2 [laughter] ja

MALE VOICE 1 Or [S]he's going to refuse it – to say I don't need
 anything from anyone

MALE VOICE 2 [laughter] Ja, you can get

MALE VOICE 1 mmm

MALE VOICE 2 no, don't worry

MALE VOICE 1 [indistinct]

MALE VOICE 2 its fine then

- 3 -

MALE VOICE 1 Where's our man? Is he alright?

MALE VOICE 2 Nah, everything is alright

MALE VOICE 1 Oh okay.

MALE VOICE 2 Ja

MALE VOICE 1 But me as well, my thing they are pushing my thing –
Booyesen signed my transfer

MALE VOICE 2 Ja, you see – its signed you're fixed up

MALE VOICE 1 So now I'm just waiting for those people to
acknowledge it and tell me when to start

MALE VOICE 2 Ja, nah that's good

MALE VOICE 1 [indistinct]

MALE VOICE 2 That's good, ja, because she was putting some
pressure from that side too

MALE VOICE 1 Oh okay

MALE VOICE 2 Ja, ja she was putting some pressure

MALE VOICE 1 Oh okay

MALE VOICE 2 Plus with the other one Lucas as well so it was good

MALE VOICE 1 It was good, okay

MALE VOICE 2 Ja, both sides

MALE VOICE 1 Yeah, yeah hi no we'll talk man

MALE VOICE 2 Ja, good you must come, come and see me

MALE VOICE 1 Sure okay, boet

MALE VOICE 2 No, okay, my man

INDIA 5694 IID 13426

AUDIO FILE India 5694 IID 13426

AUDIO DATE 12 APRIL 2011

AUDIO TIME 09:42

CELL NUMBER

NO. OF PAGES

DATE TYPED 01/09/2020

TRANSCRIBED Anne Bell

BY:

SIGNATURE

MALE VOICE 1 W S MHLONGO

MALE VOICE 2 COLONEL MADHOE

MALE VOICE 1 Chief

MALE VOICE 2 Okay, how's it man?

MALE VOICE 1 Hey, I'm still waiting, man

MALE VOICE 2 Ja, these ous are not around, they're in Miami

MALE VOICE 1 Oh okay and I'm in Pretoria

MALE VOICE 2 Ja, these other ous they went last week Saturday to
Miami

MALE VOICE 1 Which ones?

MALE VOICE 2 The one from the province

MALE VOICE 1 Oh okay

MALE VOICE 2 Ja. You know the larney from the province

MALE VOICE 1 Yes, yes, yes

MALE VOICE 2 Ja, he's gone to Miami he's only coming back on Friday

- 2 -

MALE VOICE 1 Oh okay

MALE VOICE 2 Ja, but he's got, got the instruction already

MALE VOICE 1 Oh okay. But I'm waiting, waiting and I've arranged my other side as well

MALE VOICE 2 Ja, good, good. They say as soon as he comes back he'll address it

MALE VOICE 1 Oh okay

MALE VOICE 2 Ja, because when the big man phoned him he was in Miami, that time

MALE VOICE 1 Oh, okay

MALE VOICE 2 Ja, [indistinct] – sorry, boss

MALE VOICE 1 What are they doing in Miami

MALE VOICE 2 I don't know what they went, there are six of them – four from Pretoria and two from the province went

MALE VOICE 1 Ok, which two from province?

MALE VOICE 2 Booysen.

MALE VOICE 1 Only him and who else?

MALE VOICE 2 And Hunter – and Hunter.

MALE VOICE 1 Oh okay, okay

MALE VOICE 2 Ja, something I don't know what to do with some borders or some story, man

MALE VOICE 1 oh okay.

MALE VOICE 2 Ja, they got international conference

MALE VOICE 1 Oh okay

MALE VOICE 2 ja, a'but 2 weeks

MALE VOICE 1 2 weeks [indistinct]

MALE VOICE 2 hey, lekker, ha [laughter]

- 3 -

- MALE VOICE 1 These people wanted to take me for course, hey. I told them I'm not going
- MALE VOICE 2 I heard them – on the 8th, 8th May
- MALE VOICE 1 Ja, they wanted to take me for that course
- MALE VOICE 2 Ja, to Thabong – I saw your name there
- MALE VOICE 1 Ja, should have taken it out – I'm not going, I'm, I'm still waiting
- MALE VOICE 2 Ja, you saw all the other guys' names were on that thing to Paarl as well
- MALE VOICE 1 Okay, who, who's going to Paarl
- MALE VOICE 2 There's two lists
- MALE VOICE 1 Sorry
- MALE VOICE 2 There's two lists, there is one lot is going to Thabong and the other lot [END OF RECORDING]

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

AFFIDAVIT

I, the undersigned:

WELCOME SITHEMBISO MHLONGO

hereby state as follows, under oath:

1. I am an adult person with full legal capacity, employed as Colonel in the Directorate for Priority Crime Investigation, commonly known as HAWKS. I am currently stationed at the Provincial Unit for Serious Organized Crime as Provincial Commander in KZN
2. The facts deposed to hereunder are within my personal knowledge and are, to the best of my belief both true and correct.
3. Mr Terence Joubert ("Mr Joubert") has appeared before the Commission and he has levelled serious allegations of impropriety against me.

WEM 

4. I have been afforded the opportunity to address those allegations through an affidavit, and I proceed to do so below. However, I wish to correct a minor misunderstanding which has resulted in the delivery of this affidavit, on Tuesday 23 February 2021, as opposed to the preceding Thursday, 18 February 2021, as the Commission had seemingly expected to receive this affidavit.

4.1 When I appeared before the Commission, through my legal representatives, on Friday 12 February 2021, I requested an adjournment affording me an opportunity to consider the evidence of Mr Joubert and to decide on the manner of tackling his evidence.

4.2 The plan was to depose to an affidavit setting out my stance to his evidence before the Commission and request leave to cross-examine him. When the request for an adjournment was refused, I, together with the legal team, understood that to mean I would not have the opportunity to ask for leave to cross-examine Mr Joubert.

4.3 When my legal representatives made the undertaking to provide my affidavit by the end of the week following the hearing of 12 February 2021, they did so in the context of seeking an adjournment and with the understanding that the intended affidavit would include in its body an application for leave to cross-examine.

WSM 

- 4.4 After the adjournment was refused, we therefore assumed that the purpose of the intended affidavit had fallen-off, and that it would therefore not be necessary to file an affidavit as I was scheduled to give evidence immediately after Mr Joubert has finished his evidence on 12 February 2021.
- 4.5 On Thursday, 18 February 2021, when I appeared again before the Commission, in the evening session, the Chairperson asked the legal team of the Commission whether an affidavit had been forth-coming from me.
- 4.6 When the Chairperson posed the question, it became apparent to me and my legal representatives that we had misunderstood the effect of the Commission's ruling on my request for adjournment.
5. It is against the foregoing background that I did not deliver this affidavit as I had initially indicated, and I apologise for the misunderstanding.
6. I now proceed to address the allegations of Mr Joubert. I will do so taking into account the oral evidence which Mr Joubert has already presented to the Commission.
7. I will also refer to the body of the affidavits prepared by Mr Joubert, and I will also provide some detail on my understanding of the timing of the affidavits.



My relationship with Mr Terrance Joubert

8. When Mr Joubert came to KwaZulu Natal, I was one of the first people in the Province to form a friendship with him. He was provided temporary accommodation at a hotel in Durban and I transported him to the hotel on numerous occasions.
9. On some of those days, he would arrange lunch or supper when we arrived at the hotel and we spend time together. At some point, in February or March 2013, I was scheduled for office relocation, from the floor I had occupied in the same building as Mr Joubert, and I was to take-up an office on another floor within the building.
10. When I mentioned my relocation to Mr Joubert, he suggested that I should instead come to his floor. Mr Joubert approached the office/building manager and he alerted the office manager to the existence of vacant offices on his floor and suggested that I should be accommodated on his floor.
11. The office manager agreed and I was accommodated on the same floor with Mr Joubert, with effect from February or March 2013. We saw each other too often, and often had lunch together, ever since, until our relations deteriorated after the emergence of an audio recording between me and him, together with his affidavit dated 25 November 2013.

W&M 

Discussions around the appointment of NDPP

12. Mr Nxasana was appointed on 30 August 2013, his appointment was publicly announced by the President of the Republic. Apart from the public announcement, there was a special announcement within the National Prosecuting Authority (“NPA”).
13. Mr Joubert and I were at the time employed within the NPA. The appointment of a National Director of Public Prosecution was obviously discussed within the NPA employee circles of discussion and gossip.
14. For our part, in Kwazulu Natal, the discussions were even more rapid as the appointee was someone from the province, and someone who was well known to many officials within our provincial NPA structure.
15. I accordingly accept, as Mr Joubert and Ms Mhlongo say, that I had on one or more occasions discussed the appointment of Mr Nxasana with either of them, and many other colleagues to be precise.

My discussions with Mr Joubert

16. Mr Joubert relies and refer to the audio recording as the first instance of our discussion relating to the appointment of Mr Nxasana as the NDPP. I must



point out that it is incorrect for Mr Joubert to refer to that incident as our first meeting wherein we discussed Mr Nxasana's appointment. Mr Joubert and I first discussed the appointment of Mr Nxasana on the same date, when his appointment was publicly announced.

17. The audio recording, which contains a conversation that I and Mr Joubert had on 25 November 2013, was not the first time we spoke about the appointment of Mr Nxasana as NDPP. The conversation was a continuation from earlier discussions which I elaborate upon below.

17.1 In our first discussion, I expressed dismay at the appointment of Mr Nxasana because I personally knew him. I mentioned to Mr Joubert that Mr Nxasana had treated me badly in one case involving one of his clients as an Attorney, and that I did not like him, from that incident.

17.2 I spoke freely about this aspect with Mr Joubert who I considered a friend and a colleague.

17.3 Soon-after the announcement, Advocate Jiba was scheduled to meet Mr Nxasana, in Kwazulu Natal. Mr Joubert was tasked with transporting Advocate Jiba, during her visit to the province, to meet with Mr Nxasana.

A handwritten signature in black ink, appearing to read 'W. J. J.', is located at the bottom center of the page.

- 17.4 I had previously been responsible for the task of transporting officials of the NPA during their visits to the province. Mr Joubert asked if I had assisted Advocate Jiba before, and I confirmed that I did transport her previously.
- 17.5 He asked me to take-over from him and transport Advocate Jiba, for the meeting with the NDPP, and I agreed.
- 17.6 After, Mr Nxasana had taken-up office, Mr Joubert informed me that he had heard that Mr Nxasana was going to resuscitate some cases against him.
- 17.7 He specifically mentioned a case that had to do with a tender for the procurement of security services, in respect of which he had been suspended at some point, and a case involving the unlawful use of an official firearm.
- 17.8 As I sympathised with him, he complained about Mr Nxasana targeting people with previous cases when he himself had previous cases. He mentioned to me that he had come across a murder case against Mr Nxasana in the course of vetting his (Nxasana) employment in the Risk & Security Unit, but he was unable to obtain greater detail on the case.

A handwritten signature in black ink, appearing to be 'W. Joubert', written in a cursive style.

- 17.9 He asked me to register an inquiry with the South African Police Service as I was still within SAPS, and help him find-out the status of the case. I did not oblige, as I was uncomfortable with the idea.
- 17.10 Mr Joubert also mentioned having come across something that had to do with defrauding the Road Accident Fund. He indicated to me that he wanted to use the information against Nxasana in the event that he (Nxasana) were to commence disciplinary proceedings against him.
- 17.11 On the date of the recording, Mr Joubert came to my office. I was unable to attend to him and I told him I would come to his office as soon as I had cleared my desk of pressing matters.
- 17.12 I later proceeded to his office to listen to what he had to say to me.
18. The next day, I received a telephone call from my Supervisor informing me that the NDPP had called and wanted me out of the office because I was digging information adverse to him. I thereafter came to know of the affidavit and the audio recording.
19. The conversation of 25 November 2013 started from the premise of Mr Joubert having undertaken to arrange concrete proof of the allegations against Mr Nxasana.

A handwritten signature in black ink, appearing to read 'W. G. J.', is located at the bottom center of the page.

Reliability and credibility of Mr Joubert

20. Mr Joubert is a habitual liar and a schemer. He is a very dishonest man. Apart from having deposed to conflicting affidavits on the same subject matter, Mr Joubert has been placed on suspension on countless occasions for corruption and misconduct rooted in dishonesty.
21. He is currently on suspension because he was caught in an operation in Umhlanga Rocks for soliciting a bribe, and taking R38 000-00 (Thirty Eight Thousand Rand) from an accused person. He also passed himself as a Colonel Joubert, to the officials that arrested him during that operation.
22. Mr Joubert was also engaged as part of the investigation teams assisting the Commission in the Free State. He was removed from the team for corruption offences. When he was appointed by the Commission he did not even mention that he was on suspension for corruption offences.
23. He is a plainly dishonest person. There are many more instances that I can report to the Commission, but I have no doubt the team of evidence leaders would already know.
24. Advocate William Nicholson has worked with Mr Joubert, in previous and unrelated cases, and he knows that the man is completely dishonest.



Timing of the affidavits of Mr Joubert

25. The first affidavit of Mr Joubert was prepared on 25 November 2013. This was the same day as he had recorded me, in a conversation where he was clearly trying to lead-me to a narrative of an investigation against Mr Nxasana.
26. The first affidavit intended to amplify what Mr Joubert could not get me to say in the recorded conversation and was availed to Mr Nxasana, together with the audio recording the same day, hence he reacted to it the following day.
27. The affidavit was intended to have Mr Nxasana not resuscitate disciplinary proceedings against Mr Joubert, and in a way have Mr Nxasana beholden to Mr Joubert. Support for the foregoing assertion lies in the fact that Mr Joubert, as Manager of Risk & Security Unit for NPA in Kwazulu Natal, reported to the National Head of Risk & Security, Mr Ramana.
28. Ordinarily, Mr Joubert ought to have elevated the matter to Mr Ramana who would have forwarded the matter to NDPP. Instead Mr Joubert forwarded the affidavit to the NDPP and his Advisor without including his immediate supervisor in the correspondence.
29. The motive was plainly to have NDPP beholden to Mr Joubert, with the hope that he would not resuscitate disciplinary proceedings against him.



30. After Mr Nxasana vacated office of the NDPP, on 01 June 2015, and the affidavit of Mr Joubert resurfaced, he very quickly distanced himself from the affidavit. He deposed to a second affidavit and rebuked the first affidavit.
31. When he appeared before the Commission, on 12 February 2021, he reluctantly accepted the second affidavit was his, and the record of the Commission is very clear on this aspect.
32. Apart from the foregoing, when his evidence was used in a Commission of Inquiry into the fitness of Advocate Jiba to hold office ("the Mokgoro Commission"), Mr Joubert became aware that his affidavit was relied upon as part of evidence in the proceedings and decided to change tune.
33. The reasons advanced by him are by all accounts devoid of merit. He basically says he had lied to the Mokgoro Commission because he wanted to preserve secrecy and maintain the integrity of the NPA.
34. Suddenly, now that Advocate Jiba is no longer with the NPA, it has become convenient to breach "secrecy" and provide an account that differs with the earlier account.
35. The real reason that Mr Joubert has changed tune is because it is now convenient to peddle his earlier lies at my expense in order to downplay the

WSM

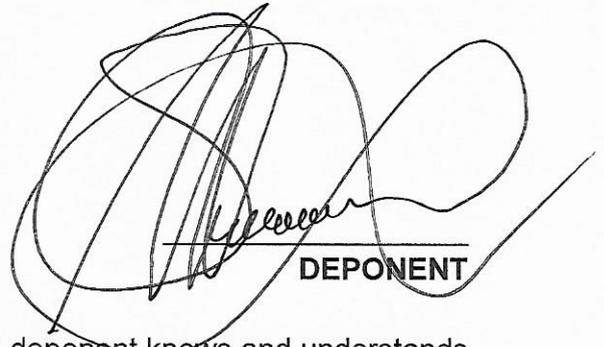


gravity of his dishonesty and the perjury charges he is facing. His lies are not even supported by the audio recording.

Discussions with Ms Queen Ncamsile Mhlongo

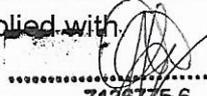
36. Ms Mhlongo's affidavit takes the substance of our discussions out of context. We were colleagues talking about the appointment of our new head, the NDPP.
37. I mentioned to Ms Mhlongo, as I had mentioned to Mr Joubert, that Mr Nxasana had treated me badly in one case involving one of his clients as an Attorney, and that I did not like him, from that incident.
38. The comment regarding his properties arose as I said: [People that are generally well-off, have a tendency of disrespecting others]. I mentioned his properties in that context.
39. I also came to know of his properties as I knew him from an early age, and because we share family relations.
40. It is not correct, as suggested by Ms Mhlongo, that the information around his properties came to me as a result of an investigation into his personal affairs.

A handwritten signature in black ink, appearing to read 'W. G. M.' followed by a stylized flourish.



DEPONENT

I hereby certify that the deponent declares that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at SAPS Malvern on this 22nd day of FEBRUARY 2020 and that the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.


SGT
 7136775-6
 N. GOVENDER
COMMISSIONER OF OATHS
FULL NAMES: NARARAJAN GOVENDER
CAPACITY: SERGEANT
AREA: MALVERN

SOUTH AFRICAN POLICE SERVICES
SAPS MALVERN
2021 -02- 22
CSC
KWAZULU-NATAL

G.P.S 002-0222

SAP 21

SUID-AFRIKAANSE POLISIEDIENS**SOUTH AFRICAN POLICE SERVICE**

Privaatsak/Private Bag- 1965, DURBAN, 4000
 Posbus/ Post Office Box

Verwysing Reference	4/14/1
Navrae Enquiries	Lt Gen BM Ngobeni
Telefoon Telephone	(031) 325 4825
Faksnommer Fax number	(031) 325 4746

**THE OFFICE OF THE PROVINCIAL
 COMMISSIONER
 S.A. POLICE SERVICE
 KWAZULU - NATAL**

05 December 2013

The Director of Public Prosecution
KWAZULU-NATAL

Attention : DPP M Noko

**REQUEST FOR IMMEDIATE TERMINATION OF SECONDMENT OF COL SW
 MHLONGO, SGT JD HADEBE AND W/O IQ SHANDU TO THE MISSING PERSON'S
 TASK TEAM (MPTT)**

1. Attached herewith please find communiqué received from the office of Priority Crimes Litigation Unit.
2. Kindly ensure that the members are informed and to report to their original post with immediate effect.
3. I trust that you will find this to be in order.

BM Ngobeni
**LIEUTENANT GENERAL
 PROVINCIAL COMMISSIONER : KWAZULU-NATAL
 BM NGOBENI**

4. Dec. 2013 7:27

No. 0754 P. 1

Priority Crimes Litigation Unit



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

HEAD OFFICE

Tel: +27 12 845-6000

Fax: +27 12 845-6337

Victoria & Griffiths
Mxenge Building
123 Westlake Avenue
Weavind Park
Pretoria
0184

P/Bag X752
Pretoria
0001
South Africa

Docex:
DX207
Pretoria

www.npa.gov.za

Lieutenant General BM Ngobeni
Provincial Commissioner: KwaZulu-Natal
P O Box 1965
DURBAN
4000

2 December 2013

Tel: 031 325 4825

Fax: 031 325 4746

E-mail: provincialcommissionerkzn@saps.gov.za

Dear General

REQUEST FOR IMMEDIATE TERMINATION OF SECONDMENT OF COL WS MHLONGO, SGT JD HADEBE AND W/O IQ SHANDU TO THE MISSING PERSONS' TASK TEAM (MPTT)

1. Col Mhlongo had been seconded by one of your predecessors to assist the Missing Persons' Task Team (MPTT) in the Priority Crimes Litigation Unit (PCLU) in the Office of the NDPP in the execution of its mandate in tracing and identifying the remains of persons who disappeared during the struggle for liberation from apartheid during the period covered by the Truth & Reconciliation Commission (TRC).
2. More recently a request was submitted to you on my behalf by the Director of Public Prosecutions: KZN to second two additional members of your staff to the MPTT so as to assist Col Mhlongo. In this regard, you were kind enough to appoint Sgt JD Hadebe and W/O IQ Shandu to render the necessary assistance to Col Mhlongo and the MPTT.
3. I hereby advise that I no longer require the services of Col Mhlongo, Sgt JG Hadebe and W/O IQ Shandu. As such, I request the immediate termination of the aforementioned officials' secondment to the MPTT.



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



"Together beating the drum for service delivery"

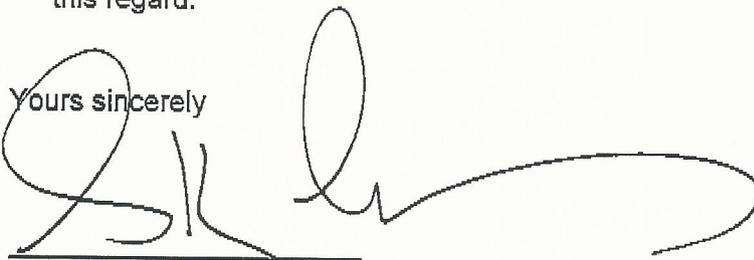
4. Dec. 2013 7:27

No. 0754 P. 2

2

4. It would be remiss of me not to take this opportunity to extend my sincerest gratitude to both you and Col Mhlongo for the sterling assistance rendered to the MPTT, the National Prosecuting Authority and to the people of the Republic of South Africa as a whole in relation to the work of the MPTT. To a lesser extent, I would also like to thank Sgt JD Hadebe and W/O IQ Shandu for their assistance to date.
5. I nevertheless intend communicating with you in due course once I have re-evaluated the work of the MPTT in KZN and the relevant prerequisite internal National Prosecuting Authority processes required to be followed in this regard.

Yours sincerely



ADV SK ABRAHAMS

**ACTING SPECIAL DIRECTOR OF PUBLIC PROSECUTIONS AND
ACTING HEAD: PRIORITY CRIMES LITIGATION UNIT
OFFICE OF THE NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS**