

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

Case:

In the matter between:

WILLIAM JOHN DOWNER

Applicant

And

JACOB GEDLEYIHLEKISA ZUMA

Respondent

FOUNDING AFFIDAVIT



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I, the undersigned,

WILLIAM JOHN DOWNER

make the following statement under oath.

INTRODUCTION

- 1 I am the applicant. I am an advocate, a Senior Counsel and Senior State Advocate stationed at the offices of the National Prosecuting Authority, Cape Town.
- 2 The first respondent is Mr Jacob Gedleyihlekisa Zuma, a former President of South Africa, who lives at KwaNxamalala Residence, Nkandla, KwaZulu-Natal.
- 3 I have personal knowledge of the facts to which I depose in this affidavit except where it is evident from the context that I do not.

THE ESSENCE OF THIS APPLICATION

- 4 I have, since 2001, been the NPA's lead prosecutor in successive prosecutions — first of Mr Schabir Shaik and others and thereafter of Mr Zuma and another. Mr Shaik was convicted of bribing Mr Zuma. Mr Zuma currently faces charges of corruption, fraud and money laundering.
- 5 Mr Zuma's prosecution has been dragging on and off for the better part of 20 years. The delay has in large part been due to Mr Zuma's "*Stalingrad tactic*". Mr Zuma's purpose with his Stalingrad tactic is to avoid at all cost to have his day in court, that is, to face the charges against him. The way in which he does so is to launch and prosecute endless challenges of various kinds. They have varied



widely over the years but were all baseless and ultimately failed. They served Mr Zuma's purposes, however, because he pursued them as far as he could to play for time. Whenever a challenge finally petered out, Mr Zuma initiated a fresh challenge for another round of litigation to avoid ever having to stand trial.

6 Mr Zuma has, in his challenges, frequently attacked me in an attempt to discredit and disqualify me as the prosecutor in his case. He did so for instance in,

- the "Spy Tapes" case which culminated in the Supreme Court of Appeal's judgment, that cleared the way for Mr Zuma's renewed prosecution, in *Zuma v Democratic Alliance* 2018 (1) SA 200 (SCA);
- his application to the High Court, for a permanent stay of his prosecution, dismissed by a full bench of the High Court in *S v Zuma* [2019] ZAKSDHC 19 (11 October 2019); and
- his plea, in terms of section 106(1)(h) of the Criminal Procedure Act 51 of 1977, that I was unfit and thus lacked titled to prosecute him, which his Lordship Mr Justice Koen dismissed in *S v Zuma* [2021] ZAKZPHC 89 (26 October 2021).

7 Since the dismissal of his special plea, Mr Zuma repackaged two of his accusations, which Justice Koen had dismissed, as criminal charges against me. When the NPA refused to prosecute, he launched a private prosecution in terms of section 7 of the CPA. He did so by a summons, indictment, summary of substantial facts and list of witnesses, annexure "BD1". I shall refer to them collectively as Mr Zuma's "summons" or individually by name where appropriate.



- 8 The summons accuses me of the unlawful disclosure of official information in contravention of section 41(6)(a) and (b) of the National Prosecuting Authority Act 32 of 1998. The charges are two-fold:
- 8.1 Counts 1 and 2 (indictment paragraphs 1 to 8) accuse me of sanctioning the release, on 9 August 2021, of a letter written by a General Mdutywa, by my colleague, Advocate Andrew Breitenbach SC, to a journalist, Ms Karyn Maughan.
- 8.2 Count 3 (indictment paragraphs 9 to 12) accuse me of disclosing unidentified official information to a journalist, Mr Sam Sole, in telephone conversations between 4 and 13 June 2008, that is, some fourteen years ago.
- 9 The purpose of this application is to put a stop to the private prosecution because it is an obvious abuse of the process of this court driven by Mr Zuma's ulterior purpose to discredit me as his prosecutor. It has all the hallmarks of just another play in Mr Zuma's Stalingrad tactic.
- 10 I shall demonstrate that the charges against me are quite unfounded on the facts that are common cause. They suffer many obvious and fatal flaws. Justice Koen dismissed both complaints in his judgment on Mr Zuma's special plea.
- 11 Ms Maughan is my co-accused in the private prosecution. The charge against her (indictment paragraphs 13 to 17) is that she contravened section 41(6) of the NPA Act by her public disclosure of General Mdutywa's letter.

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THE SCHEME OF MY AFFIDAVIT

12 I shall, by way of background, start with a description of Mr Zuma's Stalingrad tactic.

13 I shall briefly describe the runup to the current private prosecution.

14 I shall deal with the charges arising from my telephone conversations with Mr Sole. I shall demonstrate that they are fatally flawed in the following respects:

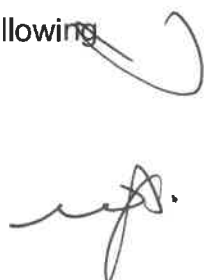
14.1 I did not disclose any information about Mr Zuma to Mr Sole.

14.2 I was duly authorised to disclose information to Mr Sole under the NPA's media policy at the time.

14.3 Mr Zuma does not satisfy the requirement for standing in terms of section 7(1)(a) of the CPA. He does not have a substantial and peculiar interest in the prosecution "*arising out of some injury which individually suffered in consequence of the commission of the said offence*". He did not suffer any injury at all even if my conversations with Mr Sole were in some or other way unlawful.

14.4 This court does not have jurisdiction in the matter. I was in Cape Town at the time of our telephone conversations. The indictment alleges that the offence occurred "at or near JOHANNESBURG", that is, outside the jurisdiction of this court.

15 I shall demonstrate that the charges arising from the disclosure of General Mduywa's letter to Ms Maughan are equally fatally flawed on the following grounds:



- 15.1 Mr Breitenbach lawfully gave Ms Maughan a copy of General Mduywa's letter. It had by then been filed in court. The media and the public were thus entitled to access to the letter under the rules confirmed by the Supreme Court of Appeal in *City of Cape Town v SANRAL* 2015 (3) SA 386 (SCA) paras 43 and 47.
- 15.2 I did not "sanction" Mr Breitenbach's release of the letter.
- 15.3 Mr Zuma again does not satisfy the requirement for standing in terms of section 7(1)(a). He does not have a substantial and peculiar interest in the prosecution "*arising out of some injury which he individually suffered in consequence of the commission of the said offence*". Quite to the contrary, Mr Zuma's own attorney obtained the letter in order to make it public and did indeed make it public before Ms Maughan publicised it.
- 16 I shall lastly deal with further symptoms of Mr Zuma's abuse in pursuing his private prosecution.

MR ZUMA'S STALINGRAD TACTIC

- 17 I have summarised the chronology of Mr Zuma's Stalingrad tactic in annexure "**BD2**". The essence and impact of his tactic over the years are perhaps best illustrated by the following timeline extracted from the chronology of events described in annexure "**BD2**".
- 18 Mr Zuma's application to obtain the encrypted fax:

18.1 30 August 2003 – Application launched but never enrolled (2)

18.2 Duration – unresolved.



19 Mr Zuma's complaint to the Public Protector:

19.1 30 October 2003 – Complaint lodged (3)

19.2 28 May 2004 – Report by the Public Protector (3)

19.3 Duration – 7 months.

20 The Zuma – Hulley search warrant application:

20.1 10 October 2005 – Application launched (8).

20.2 15 February 2006 – High Court (Hurt) grants the application (10).

20.3 8 November 2007 – SCA dismisses the application (12).

20.4 31 July 2008 – CC dismisses the application (13, 27).

20.5 Duration – 34 months.

Opposition to the United Kingdom MLA application

21 23 December 2006 – NPA applies to the High Court, Pretoria, to issue letters requesting mutual legal assistance ('MLA') from the United Kingdom (15).

22 28 March 2007 - High Court, Pretoria, issues the MLA request. (16)

23 9 May 2007 – Mr Zuma's application for leave to intervene and for the order dated 28 March 2007 to be set aside (17).

24 14 September 2007 - High Court (Van der Merwe) dismisses application to intervene (18).

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25 14 September 2007 – Mr Zuma launches application for leave to appeal. Not enrolled (18).

26 Duration 9 months.

27 Opposition to the Mauritius MLA application:

27.1 4 December 2006 - NPA applies to the High Court, Durban, to issue MLA request to Mauritius (20).

27.2 7 December 2007 – Mr Zuma opposes the application (20).

27.3 2 April 2007 – High Court (Levinsohn) grants request. Mr Zuma appeals (21, 22).

27.4 5 June 2007 – High Court (Hugo) grants opposed application for immediate execution (24).

27.5 29 May 2007 Mr Kemp makes “*Stalingrad*” comment (25).

27.6 8 November 2007 – SCA dismisses appeal (12, 26).

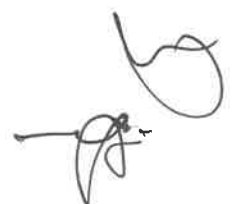
27.7 31 July 2008 – CC dismisses appeal (13, 28).

27.8 Duration – 19 months.

28 Mr Zuma's audi application:

28.1 23 June 2008 – Application launched (30).

28.2 12 September 2008 – High Court (Nicholson) upholds the application (32).



- 28.3 12 January 2009 – SCA (Harms) dismisses the application (34).
 - 28.4 23 January 2009 – Mr Zuma launches application to the CC for leave to appeal (35).
 - 28.5 Duration – 7 months.
- 29 Mr Zuma's first representations:
- 29.1 10 February 2009 – Representations made (38).
 - 29.2 6 April 2009 – Mr Mpshe accedes to representations (39).
 - 29.3 7 April 2009 – Charges withdrawn (40).
 - 29.4 Duration – 2 months
- 30 DA's Spy Tapes application:
- 30.1 7 April 2009 – Application launched (42).
 - 30.2 27 May 2009 – DA application for the record (43).
 - 30.3 22 February 2011 – High Court (Ranchod) dismisses application (46).
 - 30.4 20 March 2012 – SCA (Navsa) grants application (49).
 - 30.5 18 September 2012 – DA application for the Spy Tapes (50).
 - 30.6 24 July 2013 – Mr Zuma opposes the DA application (51).
 - 30.7 16 August 2013 – High Court (Mathopo) upholds application (52).
 - 30.8 28 August 2014 – SCA (Navsa) upholds application (54).

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- 30.9 29 April 2016 – High Court (Ledwaba, Pretorius, Mothe) upholds main application (55).
- 30.10 14 September 2017 – SCA hearing of the main application. Mr Zuma and the NPA capitulate (59).
- 30.11 13 October 2017 – SCA Spy Tapes judgment on the main application (61).
- 30.12 Duration – 102 months.
- 31 Mr Zuma's second representations:
- 31.1 11 October 2017 – Mr Zuma requests opportunity to make representations (63).
- 31.2 31 January 2018 – Representations made (64).
- 31.3 16 March 2018 – Mr Abrahams refuses representations (67).
- 31.4 Duration – 5 months
- 32 Mr Zuma's application for a stay of prosecution:
- 32.1 6 April 2018 – Mr Zuma and Thales' first appearance (69).
- 32.2 15 November 2018 – Mr Zuma and Thales launch applications (75).
- 32.3 20 May 2019 – Hearing of applications (76).
- 32.4 11 October 2019 – High Court (Mnguni, Steyn, Poyo-Dlwati) dismisses applications (77)

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- 32.5 1 November 2019 – Mr Zuma’s application to the High Court for leave to appeal to the SCA (79).
- 32.6 29 November 2019 – High Court (Mnguni, Steyn, Poyo-Dlwati) dismisses the application (80).
- 32.7 23 December 2019 – Mr Zuma’s application for leave to appeal to the SCA (81).
- 32.8 10 March 2020 - SCA (Petse, Plasket) dismisses applications (83).
- 32.9 26 March 2020 – Mr Zuma’s application for leave to appeal to the CC (84).
- 32.10 21 April 2020 – Mr Zuma withdraws the application (85).
- 32.11 Duration – 24 months
- 33 Mr Zuma’s application to remove Downer from the prosecution by special plea:
- 33.1 17 May 2021 – Special plea entered (87).
- 33.2 21-22 September 2021 - Hearing of special plea (92).
- 33.3 26 October 2021 – High Court (Koen) dismisses the special plea (93).
- 33.4 10 November 2021 – Mr Zuma’s launches application to the High Court for leave to appeal (94).
- 33.5 31 January 2022 – Hearing of application for leave to appeal (97).
- 33.6 6 February 2022 – High Court (Koen) dismisses application (98).



- 33.7 9 March 2022 – Mr Zuma launches application to the SCA for leave to appeal (99).
- 33.8 28 March 2022 – SCA (Zondi, Nicholls) dismisses the application (101).
- 33.9 6 April 2022 – Mr Zuma launches section 17(2)(f) reconsideration application to the President of the SCA (102).
- 33.10 20 May 2022 – President of the SCA (Maya) dismisses the application (105).
- 33.11 10 June 2022 – Mr Zuma's application to the Constitutional Court for leave to appeal (106).
- 33.12 23 September 2022 – Constitutional Court dismisses the application (110).
- 33.13 Duration (at least to 31 October 2022) - 17 months
- 34 Total duration – 30 August 2003 to at least 31 October 2022, that is, 229 months (19 years).
- 35 I highlight the following features of this timeline illustrative of Mr Zuma's abuse:
- 35.1 Mr Zuma has been actively avoiding his day in court for a period of about 19 years.
- 35.2 All his challenges have ultimately failed, but only after he had pursued them to the bitter end. His ultimate goal has been never to face his day in court.



35.3 Mr Zuma launched his challenges one by one, each starting only when the previous one failed, to maintain, extend and prolong their impact over time.

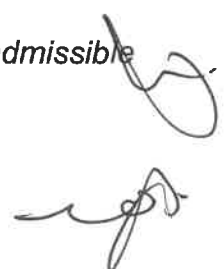
THE RUN-UP TO THE PRIVATE PROSECUTION

36 In the prosecution of Mr Zuma, he raised a plea on 17 May 2021, in terms of section 106(1)(h) of the CPA, to the effect that I did not have title to prosecute him. He filed very voluminous affidavits in support of his plea. They made it clear that, when he said that I did not have title to prosecute him, he really meant that I had been guilty of misconduct which rendered me unfit to prosecute him. The misconduct of which he accused me included his accusations that I unlawfully leaked information about him to Mr Sole and sanctioned the release of General Mdutywa's letter to Ms Maughan.

37 His Lordship Mr Justice Koen dismissed Mr Zuma's special plea in a judgment handed down on 26 October 2021 reported online as *S v Zuma* [2021] ZAKZPHC 89 (26 October 2021). Annexure "BD3" is an extract comprising pages 1, 88 to 91, 93 to 101 and 107 of the original judgment. As appears from the extract, his Lordship dismissed both,

- the complaint about the leaks to Mr Sole from page 88 in paragraphs 231 to 245; and
- the complaint about the release of General Mdutywa's letter from page 93 in paragraphs 246 to 268.

38 He was particularly scathing of the complaint about my conversations with Mr Sole. He held that it was *"based on speculation, unsupported by admissible*

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evidence” (paragraph 233). He noted that Mr Zuma had indeed, in an earlier hearing, “*expressly disavowed and accordingly waived reliance on the leaks*” which were consequently “*no longer an issue on which reliance can be placed*” (paragraph 234). Notwithstanding this condemnation, Mr Zuma now persists with the same complaint repackaged as a criminal charge.

39 Mr Zuma tells us, in paragraph 46 of his substantial facts, that, in October 2021, at about the time of the dismissal of his special plea, he instructed his lawyers “*to seek the NPA to remove (me) as the prosecutor in his matter*”.

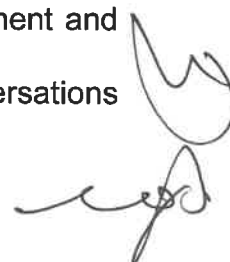
40 At the same time, on 21 October 2021, Mr Zuma laid the criminal complaint against me which has led to my private prosecution. Annexure “**BD4**” is a copy of the complaint (excluding annexures). Mr Zuma dealt with my conversations with Mr Sole in paragraph 10 and with the release of General Mduywa’s letter in paragraphs 6 and 11 of his affidavit. He admitted in paragraph 16 that he had raised the same complaints in his special plea.

41 After an investigation of the criminal complaints, the Director of Public Prosecutions of KwaZulu-Natal, Advocate Elaine Zungu, declined to prosecute me. She issued a certificate to that effect on 6 June 2022. Annexure “**BD5**” is a copy of the certificate.

MY CONVERSATIONS WITH MR SOLE

No disclosure of information about Mr Zuma

42 Mr Zuma tells us very little of his accusation that I unlawfully disclosed official information to Mr Sole. He says merely, in paragraph 10 of his indictment and paragraph 24 of his substantial facts, that I did so in telephone conversations

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with Mr Sole between 4 and 13 June 2008. He says that the information disclosed to Mr Sole related to his prosecution.

43 Mr Zuma told us more about this complaint in his affidavit filed in support of his special plea that I lacked title to prosecute him. Annexure “**BD6**” is an extract from his affidavit comprising paginated pages 5, 11 and 12. He raised the complaint in paragraph 8.9. He based it on transcripts of telephone conversations between me and Mr Sole. The transcripts annexed to his affidavit, as annexure JGZ4, were incomplete and rather jumbled.

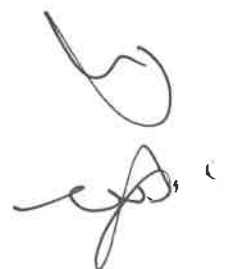
44 I dealt with Mr Zuma’s accusation in my answer. Annexure “**BD7**” is an extract from my answer comprising paginated pages 1454, 1501 to 1504 and a better copy of the transcript of my telephone conversations with Mr Sole at paginated pages 3436 to 3443 attached as Annexure “**BD8**”. I dealt with Mr Zuma’s complaint in paragraph 55. I draw attention to the following features of my answer:

44.1 The tapes of my conversations with Mr Sole were part of the “*Spy Tapes*” Mr Zuma used to persuade the Acting National Director of Prosecutions, Mr Mpshe, to withdraw the charges against him in April 2009.

44.2 The same tapes featured in two well-known cases since then. The first was the “*Spy Tapes*” case in which the Democratic Alliance successfully challenged the withdrawal of the criminal charges against Mr Zuma. It has been reported as *Zuma v Democratic Alliance 2018 (1) SA 200 (SCA)*.

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- 44.3 The second was the case in which Mr Sole successfully challenged the constitutional validity of certain provisions of the Regulation of Interception of Communications Act 7 of 2002. The Constitutional Court judgment has been reported as *amaBhungane Centre for Investigative Journalism v Minister of Justice 2021 (3) SA 246 (CC)*.
- 44.4 It is in other words clear that Mr Zuma has had the transcripts of my conversations with Mr Sole since no later than April 2009.
- 44.5 I denied that I had given Mr Sole any confidential information (paragraph 55.7). I also denied that I had contravened the NPA Act or the NPA's Prosecution Policy in any way (paragraph 55.6).
- 45 Mr Zuma dealt with the issue in paragraphs 37 to 45 of his reply. Annexure "BD9" is an extract from his reply comprising paginated pages 4157 and 4174 to 4177. What was most notable about his reply, however, was what Mr Zuma did not say. He did not contend that the transcripts upon which he based his complaint revealed that I had disclosed any confidential information about his case to Mr Sole.
- 46 The transcripts of my conversation with Mr Sole, annexure "BD8", show that I did not leak any confidential information about Mr Zuma:
- 46.1 I mentioned Mr Zuma only once during a conversation on 18 June 2008 as appears from page 4 of the transcript (paginated page 3439). This date falls beyond the period covered by Mr Zuma's criminal charge against me.

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46.2 Mr Sole asked me about the mechanisms for mutual legal assistance in terms of the International Co-operation in Criminal Matters Act 75 of 1996. He mentioned Mr Zuma only because it was public knowledge that the NPA had sought mutual legal assistance from other countries in their investigation of Mr Zuma's case. That much was for instance apparent from the following cases which had by then attracted much publicity in the media:

NDPP v Zuma [2007] ZAKZHC 4 (2 April 2007)

Zuma v NDPP [2007] ZASCA 135 (8 November 2007)

Thint Holdings v NDPP [2008] ZACC 14 (31 July 2008)

46.3 Although the judgment in the last case was only handed down after my conversations with Mr Sole, it was the culmination of much publicised litigation which had been running for very many months.

46.4 I merely described the mechanisms for mutual legal assistance, under the International Co-operation in Criminal Matters Act, in the abstract. I did not say anything about Mr Zuma or his case at all.

47 His Lordship Mr Justice Koen was scathing about this complaint in his judgment dismissing Mr Zuma's special plea. As appears from the extract from his judgment, annexure "**BD3**", he made the following findings:

47.1 He held that Mr Zuma's accusations were "*based on speculation, unsupported by admissible evidence from Mr Zuma*" (paragraph 233).

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47.2 He noted in paragraph 234 that Mr Zuma had previously disavowed and waived reliance on this complaint:

“At the hearing of the stay application Mr Zuma through his counsel, expressly disavowed, and accordingly waived, reliance on the leaks. That this was so, has not been disputed in reply. Mr Masuku, who co-signed the special plea in this matter, is one of the senior counsel who represented Mr Zuma in the stay of prosecution application. The alleged media leaks to Mr Sole are accordingly, at that level, no longer an issue on which reliance can again be placed.”

47.3 He noted that Mr Zuma had not gain-said my account of my conversations with Mr Sole (paragraph 235).

47.4 He held in paragraph 240 that it was prima facia lawful for a prosecutor to deal with enquiries from the media as I had done:

“Prima facia it would not , in my view, be unlawful for a prosecutor to deal with enquiries from the press, to ensure that the public is properly informed of the work of the NPA and that the progress in investigations, which inevitably might result in the disclosure of information which came to his or her knowledge in the performance of his or her functions in terms of the NPA Act, or any other law.”

48 The evidence upon which Mr Zuma bases this complaint has accordingly been much discredited and does not disclose the beginnings of an offence. I did not disclose any information to Mr Sole relating to Mr Zuma's case. I merely

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described, in the abstract, the mechanisms by which the NPA obtain mutual legal assistance.

I was duly authorised to make disclosures

49 I annex a copy of the NPA's 2006 Directives on media statements and public communications as annexure "BD10". I highlight the following provisions:

49.1 Paragraph 2 authorised deputy directors [the appointment I held at that time] and senior public prosecutors to act as spokespersons for the NPA on matters pertaining to prosecution policy or any criminal prosecution. I was thus authorised to act as spokesperson for the NPA under this provision *inter alia* in relation to "*any criminal prosecution*".

49.2 Paragraph 4 described the purpose of responding to the media in much the same way as Justice Koen recently did. It said that the purpose of responding to the media was "*to assist the public in understanding the nature and course of criminal proceedings*" without prejudicing the parties before the court who cannot defend themselves.

50 Any disclosure I might have made was accordingly permissible under section 41(6) of the NPA Act because,

- I was authorised to make disclosures to the media; and
- I in any event did so for the purpose of performing my functions in terms of the NPA Act.

51 The disclosure was also in line with the United Nations Guidelines on the Role of prosecutors which authorises me to disclose matters that are necessary in the

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performance of my duties or when the needs of justice require such disclosure.

A copy of the Guidelines is Annexure “**BD11**”.

Mr Zuma did not suffer any injury

52 Mr Zuma does not satisfy the requirement, in terms of section 7(1)(a) of the CPA, that a private prosecutor must have a substantial and peculiar interest in the prosecution *“arising out of some injury which he individually suffered in consequence of the commission of the said offence”*.

53 Mr Zuma did not suffer any injury as a result of my conversations with Mr Sole at all. He accordingly does not have standing to pursue this charge by private prosecution.

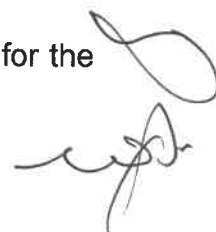
This court does not have jurisdiction

54 I was in Cape Town when we had the telephone conversations about which Mr Zuma complains. Paragraph 10 of the indictment alleges that the offence was committed “at or near JOHANNESBURG”. The offence, if any, accordingly occurred beyond the jurisdiction of this court. This court consequently does not have jurisdiction to entertain this charge.

Further features of abuse

55 These charges are not only wholly unfounded but also display the following features which highlight Mr Zuma’s abusive tactics:

55.1 He has known about my conversations with Mr Sole since 2009. He has repeatedly complained about them in his failed bids to discredit me. Only now, after more than a decade, does he seek to prosecute me for the



same complaint. It is obviously a last-ditch attempt to recycle the same complaint yet against in pursuit of his Stalingrad tactic.

55.2 His tactic is compounded by the fact that, as appears from the extract of the judgment of Justice Koen, Mr Zuma previously abandoned any reliance on this complaint. His attempt to revive it is clearly in bad faith.

THE MDUTYWA LETTER

Introduction

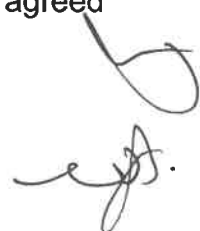
56 Mr Zuma's counts 1 and 2 accuse me of contravening section 41(6)(a) or (b) of the NPA Act by sanctioning the disclosure of the Mdutywa letter by Mr Breitenbach to Ms Maughan on 9 August 2021. The charges are, however, unfounded on the facts that are common cause. They are recounted in the judgment of his Lordship Mr Justice Koen, annexure "BD3", in paragraphs 246 to 268.

The history of the letter

57 Mr Zuma's case was due to come before this court on Tuesday 10 August 2021. He was, at the time, incarcerated at the Estcourt Correctional Centre under a sentence of imprisonment imposed on him by the Constitutional Court.

58 On 6 August 2021, the Department of Correctional Services issued a media statement that Mr Zuma had been admitted to hospital.

59 On Sunday 8 and Monday 9 August 2021, the parties agreed to apply to the court for postponement of Mr Zuma's case in the light of his indisposition. They agreed

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that Mr Zuma's attorney, Mr Thusini, would launch an application for a postponement.

- 60 Mr Thusini launched such an application by emailing a copy of the application to Justice Koen at 21h07 on Monday 9 August 2021. Annexure "BD12" is a copy of the email by which he did so. Annexure "BD13" is a copy of the application.
- 61 In paragraph 11 of his founding affidavit, Mr Thusini referred to and annexed General Mdutywa's letter as annexure FA2. In paragraph 16 of his founding affidavit, he referred to and annexed a supporting affidavit by General Mdutywa as annexure FA4.
- 62 General Mdutywa's letter, annexure FA2 to Mr Thusini's affidavit, was dated 8 August 2021. His supporting affidavit, annexure FA4 to Mr Thusini's affidavit, was also deposed to on 8 August 2021.
- 63 It is accordingly clear that Mr Thusini obtained the letter and founding affidavit from General Mdutywa's on Saturday 8 August 2021 for purposes of his application for postponement launched the following day. Mr Thusini obtained the letter and General Mdutywa wrote it to include it in Mr Thusini's application for postponement, that is, for purposes of public disclosure in open court.
- 64 It is wholly opportunistic for Mr Zuma to complain about the public release of the letter. His attorney, acting on his behalf, obtained the letter for that very purpose. His attorney indeed filed the letter on public record on the evening of Monday 9 August 2021.

A handwritten signature in black ink, consisting of a large, stylized initial 'B' above a more complex, cursive signature.

I lawfully filed the letter

65 I received a copy of General Mduywa's letter on Sunday 8 August 2021 from Ms Radebe, the officer in charge of the Estcourt Correctional Centre. She did not impose any restriction on my use of the letter.

66 Pursuant to the parties' agreement to seek a postponement of Mr Zuma's case, I prepared an affidavit to explain these developments to Justice Koen. I sent him an unsigned copy of my affidavit under cover of an email at 11h46 on Monday 9 August 2021 (which was a public holiday). Annexure "BD14" is a copy of the email by which I did so. As appears from the email, I also copied it to Mr Thusini.

67 Annexure "BD15" is a copy of my unsigned affidavit. I referred to General Mduywa's letter in paragraph 10 and annexed a copy as annexure WJD2.

68 The clerk assigned to the prosecution team filed a signed copy of my affidavit at court at about 08h00 on Tuesday 10 August 2021.

69 The court held a virtual hearing of Mr Zuma's case on Tuesday 10 August 2021. Justice Koen postponed the matter in accordance with the parties' joint request.

70 It follows that both parties filed General Mduywa's letter on public record on 9 August 2021. I did so in the morning at 11h46 and Mr Thusini did so that evening at 21h07.

71 Once General Mduywa's letter had been filed, it became a public document accessible to the public and the media under the SCA's SANRAL judgment.

72 It is thus clear that I lawfully filed General Mduywa's letter and that its subsequent release to the media was equally lawful.

A handwritten signature in black ink, consisting of a stylized, cursive script that appears to be the initials 'WJD'.

Mr Breitenbach's release of the letter

73 I understand that, after I had sent my unsigned affidavit to Justice Koen at 11h46 on Monday 9 August 2021, Mr Breitenbach sent a copy of the affidavit to Ms Maughan in the late afternoon at about 16h45. Mr Breitenbach only told me that he had done so later that afternoon. I did not authorise or "sanction" his release of the affidavit to Ms Maughan. I have little doubt that I would have done so, if he had asked, because it is perfectly lawful to release copies of documents filed in court to the media. But, as it happened, Mr Breitenbach did not seek my sanction as Mr Zuma alleges.

74 I do not have personal knowledge of the exchanges between Mr Breitenbach and Ms Maughan at the time. They have, however, described their interactions in affidavits made to the NPA as part of its investigation of Mr Zuma's criminal complaint. Annexure "**BD16**" is a copy of Mr Breitenbach's affidavit. Annexure "**BD17**" is a copy of Ms Maughan's affidavit. Their account may be summarised as follows:

74.1 At about 16h45 on Monday 9 August 2021, Ms Maughan asked Mr Breitenbach for a copy of my unsigned affidavit sent to Justice Koen earlier that day. Mr Breitenbach sent her a copy on condition that she would not publish anything based on the affidavit before the signed copy was filed at court.

74.2 Later that afternoon, Mr Breitenbach told me of his arrangement with Ms Maughan and enquired when I proposed to file my signed affidavit. I told him that I proposed to do so first thing the following morning.

Handwritten signature in black ink, consisting of a stylized, cursive script.

74.3 Early the following morning, Tuesday 10 August 2021, I confirmed to Mr Breitenbach that my signed affidavit had been filed. Mr Breitenbach conveyed this message to Ms Maughan at 08h01.

74.4 Ms Maughan first published an article based on the documents received from Mr Breitenbach thereafter at around 09h14 on 10 August 2021.

Conclusions

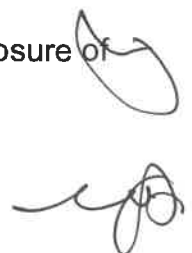
75 As this history makes clear, Mr Zuma's complaint about the disclosure of General Mduywa's letter is unfounded for the following reasons:

75.1 Mr Breitenbach lawfully gave Ms Maughan a copy of the letter. It had by then been filed in court. The media and the public were entitled to access to the letter under the SCA's SANRAL judgment.

75.2 I, in any event, did not "*sanction*" Mr Breitenbach's release of the letter to Ms Maughan as Mr Zuma would have it.

75.3 Mr Zuma moreover does not satisfy the requirement for standing in terms of section 7(1)(a). He does not have a substantive and peculiar interest in the prosecution "*arising out of some injury which he individually suffered in consequence of the commission of the said offence*".

76 Mr Zuma's abuse, in seeking to prosecute me for Mr Breitenbach's release of the letter to Ms Maughan, is particularly egregious. His own attorney obtained the letter from General Mduywa for purposes of public disclosure. He in fact publicly disclosed it as part of his application for a postponement filed on Monday evening 9 August 2022. For Mr Zuma to suggest that he was injured by the disclosure of



the letter to Ms Maughan or her public disclosure of it, accordingly constitutes crass abuse.

OTHER MANIFESTATIONS OF ABUSE

77 There are further manifestations of Mr Zuma's abuse of the process of this court in his pursuit of his private criminal prosecution.

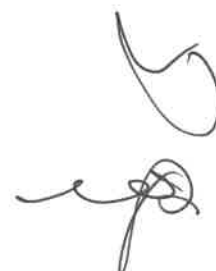
78 His summary of substantial facts brims with irrelevant, one-sided and sensationalist allegations. Paragraphs 14 to 23 are entirely irrelevant and a shameless distortion of the history of his prosecution. Paragraphs 26 to 34 are equally irrelevant. Paragraph 46 is irrelevant and clearly sensationalist.

79 Mr Zuma's list of witnesses is also an obvious sensationalist publicity stunt. The facts on which he bases his private prosecution are common cause. The witnesses on his list cannot, in any event, contribute to them at all. His list is an abusive attempt at sensationalist publicity.

80 Mr Zuma's prosecution of Ms Maughan is also a manifestation of abuse. He did not lay a criminal complaint against her. He did not obtain a certificate *nolle prosequi* to prosecute her. His suggestion that she committed a criminal offence by receiving a document which formed part of his court record, is obviously far-fetched. And so is his contention that he suffered injury as a result of her public disclosure of the letter which he had filed in court and thus made public himself.

PRAYER

81 I ask for the orders sought in my notice of motion.

A handwritten signature in black ink, consisting of a large, stylized initial 'B' above a more complex, cursive signature.



William John Downer

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of her knowledge both true and correct. This affidavit was signed and sworn to before me at *CAPE TOWN* on this *26th* day of **September 2022**. The Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, have been complied with.

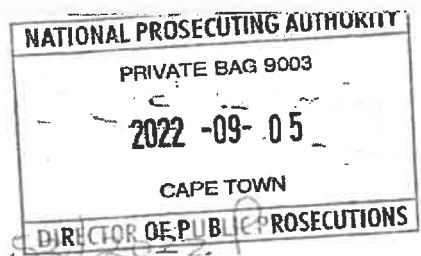


COMMISSIONER OF OATHS

**COMMISSIONER OF OATHS
PRACTISING ADVOCATE OF THE HIGH COURT
7TH FLOOR, HUGUENOT CHAMBERS
40 QUEEN VICTORIA STREET
CAPE TOWN, 8001**



BD1



CASE NO: CC 512022
PIETERMARITZBURG CAS 309/10/2021

Investigating Officer: Brigadier Mbhele

HIGH COURT OF SOUTH AFRICA

(KWAZULU-NATAL DIVISION, PIETERMARITZBURG)

In the matter of:

JACOB GEDLEYIHLEKISA ZUMA

An 80-year old adult South African male citizen of KwaNxamalala Residence,
Nkandla, Kwa-Zulu-Natal

(Hereinafter referred to as 'the Private Prosecutor')

versus

1. WILLIAM JOHN DOWNER

a 65-year old adult South African male citizen of Cape Town, Western
Cape. (C/O of the National Prosecuting Authority, 115 Buitengracht Street,
Cape Town, Western cape

(Hereinafter referred to as 'Accused 1')

and

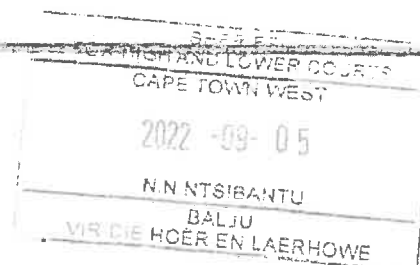
2. KARYN MAUGHAN

a 42-year old adult South African female citizen of Bryanston,
Johannesburg, Gauteng (C/O Willem De Klerk of Willem De Klerk.
Attorneys ('WDK Attorneys'), Le Val Office Park, North Block, 45 Jan
Smuts Avenue, Westcliff, Johannesburg, Gauteng).

(Hereinafter referred to as 'Accused 2')

(Hereinafter collectively referred to as 'the Accused')

SUMMONS IN A CRIMINAL CASE



TO THE ACCUSED:

You are hereby summoned to appear in person before the **PIETERMARITZBURG HIGH COURT** at **09H30** on the **10TH Of OCTOBER 2022** at **COURT "A"** in connection with the charges of which the particulars are mentioned in the indictment attached hereto and to remain in attendance.

TO ANY POLICE OFFICER / SHERIFF OR OTHER PERSON empowered to serve summons in criminal proceedings:

You are hereby commanded in the name of the Private Prosecutor to serve the copy of this summons on the persons (referred to as the Accused) of whom particulars appear hereunder as to summons them to appear in Court and to remain in attendance in connection with the charges of which the particulars are mentioned herein and particulars set out in the indictment. Report to the Court what you have done thereon.

PARTICULARS OF ACCUSED 1:

Name: **WILLIAM JOHN DOWNER**
Address: **C/O of the National Prosecuting Authority, 115 Buitengracht Street, Cape Town, Western cape**
Gender: **MALE**
Occupation: **STATE ADVOCATE**
Age: **65**

PARTICULARS OF ACCUSED 2:

Name: **KARYN MAUGHAN**
Address: **C/O WILLEM DE KLERK OF WILLEM DE KLERK ATTORNEYS ('WDK ATTORNEYS'), LE VAL OFFICE PARK, NORTH BLOCK, 45 JAN SMUTS AVENUE, WESTCLIFF, JOHANNESBURG, GAUTENG**
Gender: **FEMALE**
Occupation: **JOURNALIST**
Age: **42**



THE CHARGE(S):**IN RESPECT OF ACCUSED 1**

1.1 Contravening Section 41(6)(a), read with section 41(7) of Act No. 32 of 1998.

(Unauthorised disclosure of information) (Only in respect of Accused 1)

1.2 Contravening Section 41(6)(b), read with section 41(7) of Act No. 32 of 1998.

(Unauthorised disclosure of the contents of a document); (Only in respect of Accused 1)

IN RESPECT OF ACCUSED 1 AND/OR ACCUSED 2

2.1 Contravening Section 41(6)(b), read with section 41(7) of Act No. 32 of 1998.

(Unauthorised disclosure of the contents of a document); (In respect of both Accused 1 and Accused 2)

2.2 Accomplice to the breach of section 41(6)(a) and/or (b), read with section 41(7) of Act No. 32 of 1998 (Only in respect of Accused 2)



The following identify and contact details of the Private Prosecutor apply to this matter:

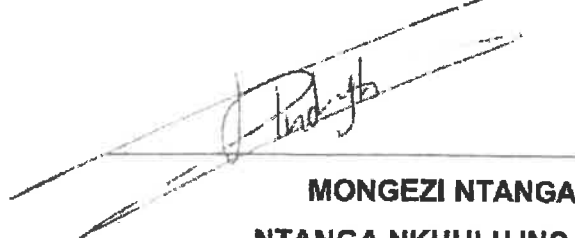
NAME: JACOB GEDLEYIHLEKISA ZUMA

OCCUPATION: FORMER PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

CONTACT ADDRESS c/o KwaNxamalala Residence, Nkandla, Kwa-Zulu-Natal

Compiled/Issued on behalf of the Private Prosecutor by

DATED AT PIETERMARITZBURG ON THIS 5TH DAY OF SEPTEMBER 2022



MONGEZI NTANGA

NTANGA NKUHLU INC.

ATTORNEYS FOR THE PRIVATE PROSECUTOR

Unit 24 Wild Fig Business Park

1492 Cranberry Street

Honeydew

TEL: (010) 595-1055

MOBILE NO.: 072 137 7104

C/O PRANESH INDRAJITH ATTORNEYS

41 Lahore Road

Pietermaritzburg

Tel: 033 3871 410

mail@pi-attorneys.co.za

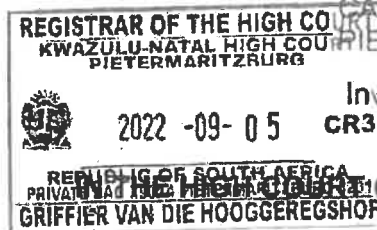
reception@pi-attorneys.co.za

Ref: Pavi Indrajith



REGISTRAR OF THE HIGH COURT





CASE NO:

PIETERMARITZBURG CAS 309/10/2021

Investigating Officer: Brigadier Mbhele

IN THE HIGH COURT OF SOUTH AFRICA
(KWAZULU-NATAL DIVISION, PIETERMARITZBURG)

In the matter of:

JACOB GEDLEYIHLEKISA ZUMA

An 80-year old adult South African male citizen of KwaNxamalala Residence,
Nkandla, Kwa-Zulu-Natal

(Hereinafter referred to as 'the Private Prosecutor')

versus

1. WILLIAM JOHN DOWNER

a 65-year old adult South African male citizen of Cape Town, Western
Cape. (C/O of the National Prosecuting Authority, 115 Buitengracht Street,
Cape Town, Western cape

(Hereinafter referred to as 'Accused 1')

and

2. KARYN MAUGHAN

a 42-year old adult South African female citizen of Bryanston,
Johannesburg, Gauteng (C/O Willem De Klerk of Willem De Klerk
Attorneys ('WDK Attorneys'), Le Val Office Park, North Block, 45 Jan
Smuts Avenue, Westcliff, Johannesburg, Gauteng).

(Hereinafter referred to as 'Accused 2')

(Hereinafter collectively referred to as 'the Accused')

INDICTMENT

The Private Prosecutor, who as such prosecutes in terms of section 7(1), read with sections 9(1)(a), 9(1)(b), 10(1) and 10(2) of the Criminal Procedure Act No. 51 of 1977 (as amended), hereby institutes and shall, with the assistance of his duly mandated legal representatives, conduct criminal proceedings to find the Accused persons cited above guilty of the following crimes of:

1. IN RESPECT OF ACCUSED 1

1.1. Contravening Section 41(6)(a), read with section 41(7) of Act No. 32 of 1998.

(Unauthorised disclosure of information) (Only in respect of Accused 1)

1.2. Contravening Section 41(6)(b), read with section 41(7) of Act No. 32 of 1998.

(Unauthorised disclosure of the contents of a document); (Only in respect of Accused 1)

2. IN RESPECT OF ACCUSED 1 AND/OR ACCUSED 2

2.1. Contravening Section 41(6)(b), read with section 41(7) of Act No. 32 of 1998.

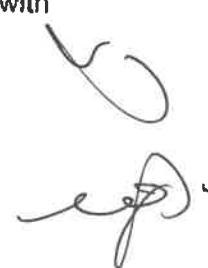
(Unauthorised disclosure of the contents of a document); (In respect of both Accused 1 and Accused 2)

2.2. Accomplice to the breach of section 41(6)(a) and/or (b), read with section 41(7) of Act No. 32 of 1998 (Only in respect of Accused 2)

COUNT 1: (Only in respect of Accused 1)

UNAUTHORISED DISCLOSURE OF INFORMATION

1. That Accused is guilty of the crime of contravening section 41(6)(a), read with section 41(7) of the National Prosecuting Authority Act No. 32 of 1998.

Handwritten signature and initials in the bottom right corner of the page.

2. IN THAT upon or about the period 9 to 10 August 2021, and at or near Pietermaritzburg and at or near places unknown to the Private Prosecutor, in the district of PIETERMARITZBURG, Accused 1, a member of the National Prosecuting Authority, did unlawfully and intentionally sanction ANDREW BREITENBACH, a duly admitted and practicing Advocate representing the National Prosecuting Authority on brief, to disclose information which came to his (i.e. Accused 1) knowledge in the performance of his functions in terms of the National Prosecuting Authority Act No. 32 of 1998 as the prosecutor in *S v Jacob Gedleyihlekisa Zuma and Thales South Africa (Pty) Ltd, KwaZulu-Natal Division, Case Number CCD 30/2018*, namely, a letter dated 8 August 2021, classified as 'MEDICAL CONFIDENTIAL' and titled, 'MEDICAL SUPPORT TO THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA AND FORMER PRESIDENTS', as authored by BRIGADIER GENERAL (DOCTOR) M. Z. MDUTYWA of the South African Military Health Service, Department of Defence, to Accused 2, a journalist for and on behalf of News 24.
3. WHEREAS the information was in fact disclosed to Accused 2 without the permission of the National Director of Public Prosecutions, SHAMILA BATOHI, and/or without the permission of a person authorised thereto in writing by the said National Director of Public Prosecutions.
4. NOW THEREFORE the Accused is guilty of contravening section 41(6)(a), read with section 41(7) of the National Prosecuting Authority Act No. 32 of 1998.

COUNT 2 (Only in respect of Accused 1), ALTERNATIVELY TO COUNT 1

UNAUTHORISED DISCLOSURE OF THE CONTENTS OF A DOCUMENT

5. That the Accused is guilty of the crime of contravening section 41(6)(b), read with section 41(7) of the National Prosecuting Authority Act No. 32 of 1998,



6. IN THAT upon or about the period 9 to 10 August 2021 and at or near places unknown to the Private Prosecutor, in the district of PIETERMARITZBURG, Accused 1, a member of the National Prosecuting Authority, did unlawfully and intentionally sanction ANDREW BREITENBACH SC, an Advocate representing the National Prosecuting Authority on brief, to disclose the contents of a document in the possession of the National Prosecuting Authority, namely, a letter dated 8 August 2021, classified as '*MEDICAL CONFIDENTIAL*' and titled, '*MEDICAL SUPPORT TO THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA AND FORMER PRESIDENTS*', as authored by BRIGADIER GENERAL (DOCTOR) M. Z. MDUTYWA of the South African Military Health Service, Department of Defence, to Accused 2, a journalist for and on behalf of News 24.
7. WHEREAS the content of the said document was in fact disclosed to Accused 2 without the permission of the National Director of Public Prosecutions, SHAMILA BATOHI, and/or without the permission of a person authorised thereto in writing by the said National Director of Public Prosecutions.
8. NOW THEREFORE the Accused are guilty of contravening section 41(6)(b), read with section 41(7) of the National Prosecuting Authority Act No. 32 of 1998.

COUNT 3 (Only in respect of Accused 1)

UNAUTHORISED DISCLOSURE OF INFORMATION

9. That the Accused is guilty of crime of contravening section 41(6)(a), read with section 41(7) of the National Prosecuting Authority Act No. 32 of 1998.
10. IN THAT upon and between 4 and 13 June 2008 and at or near JOHANNESBURG Accused 1, a member of the National Prosecuting Authority, did unlawfully and intentionally disclose information which came to his knowledge in the performance of his functions in terms of the NPA Act as the



prosecutor in the then pending prosecution of the Private Prosecutor, to a Mr Sam Sole, then a journalist for and on behalf of the Mail and Guardian.

11. WHEREAS the said information was in fact disclosed to Mr Sam Sole without the permission of the National Director of Public Prosecutions and/or without the permission of a person authorised thereto in writing by the said National Director of Public Prosecutions.
12. Now THEREFORE, the Accused is guilty of contravening section 41(6)(a), read with section 41(7) of the National Prosecuting Authority Act No. 32 of 1998.

COUNT 4 (Only in respect of Accused 2)

UNAUTHORISED DISCLOSURE OF THE CONTENTS OF A DOCUMENT

13. That the Accused is guilty of the crime of contravening section 41(6)(b), read with section 41(7) of the National Prosecuting Authority Act No. 32 of 1998.
14. IN THAT upon or about the period 9 to 10 August 2021, and at or near places unknown to the Private Prosecutor, in the district of PIETERMARITZBURG, Accused 2, a journalist contracted to News 24, did unlawfully and intentionally disclose the contents of a document in the possession of the National Prosecuting Authority, namely, a letter dated 8 August 2021, classified as '*MEDICAL CONFIDENTIAL*' and titled, '*MEDICAL SUPPORT TO THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA AND FORMER PRESIDENTS*', as authored by BRIGADIER GENERAL (DOCTOR) M. Z. MDUTYWA of the South African Military Health Service, Department of Defence, to News 24 readers and/or the general public, without the permission of the National Director of Public Prosecutions, SHAMILA BATOHI, and/or without the permission of a person authorised thereto in writing by the said National Director of Public Prosecutions.
15. NOW THEREFORE the Accused is guilty of contravening section 41(6)(b), read with section 41(7) of the National Prosecuting Authority Act No. 32 of 1998.



COUNT 5: (Only in respect of Accused 2)

ACCOMPLICE TO BREACH OF SECTION 41(6)(b)

16. That Accused 2 is guilty of the crime of contravening section 41(6)(a) and/or (b), read with section 41(7) of the National Prosecuting Authority Act No. 32 of 1992,
17. IN THAT upon or about the period 9 to 10 August 2021, and at or near places unknown to the Private Prosecutor, in the district of PIETERMARITZBURG, Accused 2, a journalist contracted to News 24, did unlawfully and intentionally facilitated aided and/or encouraged the commission by Accused 1 of the crimes of breaching section 41(6)(a) and/or (b), read with section 41(7) of the National Prosecuting Authority Act No. 32 of 1992, thereby facilitating, aiding and/or abetting Accused 1 in the commission of the crimes referred to in Counts 1 and/or 2 above.
18. In case of conviction, the said Private Prosecutor prays for sentence according to law, against the Accused.
19. The Private Prosecutor further confirms that this matter will be handled in accordance with the provisions of applicable legislation.

ATTACHMENTS

20. This document must be read with the attached Summary of Facts and Witness List.

DETAILS OF THE PRIVATE PROSECUTOR:

The following identity and contact details of the Private Prosecutor apply to this matter:

Handwritten signature and initials in the bottom right corner of the page.

NAME: JACOB GEDLEYIHLAKISA ZUMA

OCCUPATION: FORMER PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

CONTACT ADDRESS c/o KwaNxamalala Residence, Nkandla, Kwa-Zulu-Natal

Compiled/Issued on behalf of the Private Prosecutor by



MONGEZI NTANGA

NTANGA NKUHLU INC.

Attorneys for the Private Prosecutor

UNIT 24 WILD FIG BUSINESS PARK

1492 CRANBERRY STREET

HONEYDEW

TEL: (010) 595-1055

MOBILE NO.: 072 137 7104

C/O PRANESH INDRAJITH ATTORNEYS

41 LAHORE ROAD

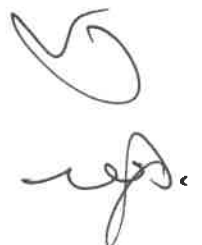
PIETERMARITZBURG

(REF: PAVI INDRAJITH)

TO: THE SHERIFF

**AND TO: THE REGISTRAR OF THE
ABOVE HONOURABLE COURT
PIETERMARITZBURG**

**AND TO: MR WILLIAM JOHN DOWNER
c/o THE NATINAL PROSECUTING AUTHORITY**

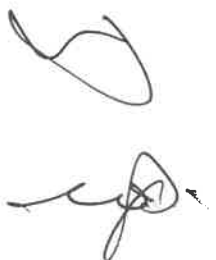


**115 BUITENGRACHT STREET
CAPE TOWN**

SERVICE BY SHERIFF

**AND TO: MS KARYN MAUGHAN
c/o MR WILLEM DE KLERK
WDK ATTORNEYS
LE VAL OFFICE PARK
NORTH BLOCK
45 JAN SMUTS AVENUE
WESCLIFF
JOHANNESBURG**

SERVICE BY SHERIFF

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CASE NO:
PIETERMARITZBURG CAS 309/10/2021

Investigating Officer: Brigadier Mbhele

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

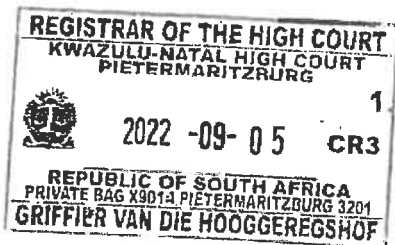
In the matter of:

JACOB GEDLEYIHLEKISA ZUMA

[Private Prosecutor,

in terms of section 7(1), read with sections 9(1)(a), 9(1)(b), 10(1) and 10(2) of Act No. 51 of 1977, as amended

versus



1. **WILLIAM JOHN DOWNER (Accused 1)**

and

2. **KARYN MAUGHAN (Accused 2)**

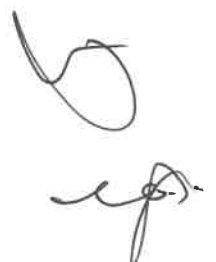
**SUMMARY OF SUBSTANTIAL FACTS IN TERMS OF SECTION 144(3)(a) OF
ACT 51 OF 1977**

INTRODUCTION

1. The National Prosecuting Authority ('NPA'), foreshadowed in section 179 of the Constitution of the Republic of South Africa Act No. 108 of 1996 ('the Constitution'), and which is established by the National Prosecuting Authority Act No. 32 of 1998 ('NPA Act') is enjoined to exercise its functions without fear, favour or prejudice.



2. Section 22(1) of the NPA Act clothes the National Director of Public Prosecutions ('National Director') as head of the NPA, with the authority over the exercising of the powers, and the performance of all the duties and functions conferred or imposed on or assigned to any member of the NPA.
3. Section 32(1) of the NPA Act obligates members of the NPA to serve impartially and to exercise, carry out or perform their powers, duties and functions in good faith and without fear, favour or prejudice, subject only to the Constitution and the Rule of Law.
4. The NPA and its members are further required to observe and prescribe to the objectives, guidelines and standards of the International Association of Prosecutors ('IAP').
5. In this regard, Article 1 of the IAP's Constitution, delineates the objects of the IAP, which, *inter alia*, include:
 - (i) Promoting effective, fair, impartial and efficient prosecution of criminal offences;
 - (ii) Respecting and seeking to protect human rights as contained in the United Nations' Universal Declaration of Human Rights; and
 - (iii) Promoting high standards and principles, generally recognised internationally as necessary and corollary in the proper and independent prosecution of offences.
6. The Guidelines on the Role of Prosecutors, determined at the Eighth United Nations ('UN') Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, requires of prosecutors to, *inter alia*:
 - (i) Perform their duties fairly, consistently and expeditiously, with respect to and in protecting human dignity and to uphold human rights in ensuring due process in the functioning of the criminal justice system;



- (ii) Carry out their functions impartially and avoid, inter alia, political, social, racial and any other kinds of discrimination;
- (iii) Protect the public interest, act with objectivity and take proper account of the position of the suspect and the victim;
- (iv) Keep matters in their possession confidential, subject to the performance of their duty or the needs of justice requiring otherwise; and
- (v) In ensuring fairness and effectiveness of prosecution, strive to cooperate with the police, the courts, the legal profession, public defenders and other government agencies and institutions.

7. The Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, adopted by the IAP on 23 April 1999, require prosecutors to, inter alia:

- (i) Respect, protect and uphold the concept of human dignity and human rights;
- (ii) At all times protect an accused's right to a fair trial;
- (iii) Always remain unaffected by individual or sectional interests and public or media pressures and have only regard to public interest;
- (iv) Strive to be, and be seen to be, consistent, independent, impartial and always act with objectivity.
- (v) Exercise the highest standards of integrity and care at all times;
- (vi) Always maintain the honour and dignity of their profession; and
- (vii) At all times conduct themselves professionally, in accordance with the law and the rules of ethics of their profession.



8. The Code of Conduct of Members of the National Prosecuting Authority requires, *inter alia*, the values of accountability, credibility, integrity and professionalism on the part of member of the National Prosecuting Authority.
9. It is, *inter alia*, against the above background and prescripts that section 41(6), read with section 41(7) of the NPA Act criminalises the disclosure of certain information and documents which are in the possession of the prosecuting authority, without the permission of the NDPP.

BACKGROUND

10. The Private Prosecutor and complainant herein is a former President of Republic of South Africa ('South Africa'), having served in that position from 9 May 2009 to 14 February 2018; a former Deputy President of South Africa, having served in that position from 14 June 1999 to 14 June 2005; a former President of the African National Congress ('ANC'), a political party registered in accordance with the laws of South Africa, having served in that position from 18 December 2007 to 18 December 2017; and the first accused in ***S v Jacob Gedleyihlekisa Zuma and Thales South Africa (Pty) Ltd, KwaZulu-Natal Division, Pietermaritzburg Case Number CCD 30/2018***, presently pending before this Court, the Honourable Mr Justice P. A. Koen presiding.
11. Accused 1, a duly admitted advocate of the High Court of South Africa and a Senior Counsel, was at all material times an employee of the National Prosecuting Authority ('NPA') as a Deputy Director of Public Prosecutions ('DDPP') in terms of section 15 of the National Prosecuting Authority Act No. 32 of 1998 ('NPA Act') and the designated prosecutor in ***S v Jacob Gedleyihlekisa Zuma and Thales South Africa (Pty) Ltd, KwaZulu-Natal Division, supra***, presently pending before this Honourable Court.
12. Accused 2 was at all material times a journalist for and on behalf of News 24, an online news website and a subsidiary of Media 24, a media company, which is further a subsidiary of Naspers Limited, a multinational internet, technology and

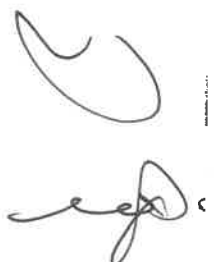
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multimedia holding company. The said companies are all registered in accordance with the laws of the Republic of South Africa.

13. Andrew Breitenbach SC, a duly admitted advocate of the High Court of South Africa and Senior Counsel, was at all material times one of the private advocates on brief for and on behalf of the NPA, *inter alia*, in relation to interlocutory proceedings emanating from ***S v Jacob Gedleyihlekisa Zuma and Thales South Africa (Pty) Ltd, supra.***
14. The Private Prosecutor was initially indicted on various counts of fraud, corruption and money laundering on or about 20 June 2005 in this Division.
15. However, prior to being indicted, on or about 23 August 2003, then National Director, Bulelani Ngcuka ('Mr Ngcuka'), at a press conference publicly stated, whilst there was a *prima facie* of corruption against the Private Prosecutor, the NPA had decided not to prosecute him as it was uncertain that the prospects of success were strong enough for a winnable case.
16. Mr Ngcuka's public utterance garnered strong criticism from then Public Protector, Lawrence Mushwana, labelling it as '*...most unusual and contentious. It opened the floodgates for varied speculations by several sectors of society, particular the media and some parliamentarians, about the involvement of the Deputy President [i.e. the Private Prosecutor] in criminal conduct, which was unjustified and not in the public interest.*'
17. On 5 September 2006 the Honourable Mr Justice Msimang struck that prosecution off the roll as the State was not ready to proceed with the prosecution.
18. On 28 December 2007 the Private Prosecutor was again indicted. This time only charges of corruption and money laundering were preferred against him.
19. In February 2009 the Private Prosecutor made representations to the then Acting National Director, Mokotedi Mpshe SC ('Mpshe SC').

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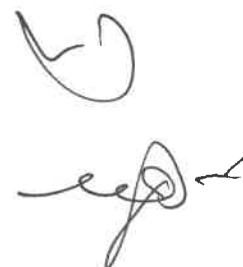
20. On or about 1 April 2009, the then Acting National Director, Mokotedi Mpshe SC ('Mpshe SC') decided to discontinue the prosecution against the Private Prosecutor, which decision was made public on or about 6 April 2009.
21. The decision to discontinue the prosecution against the Private Prosecutor, was in the main as a direct result of then Deputy National Director of Public Prosecutions, Leonard McCarthy ('Mr McCarthy'), who was also Head of the Directorate of Special Operation ('DSO' and/or 'Scorpions') and responsible for the investigation and prosecution of the Private Prosecutor, having used the illegal processes against the Private Prosecutor to accomplish a purpose for which it was not designed in abuse of the criminal justice system; having subjected the Private Prosecutor to abuse of process which offended against one's sense of justice and that of the administration of justice in relation to the timing of the charges which had been influenced politically by former National Director, Mr Ngcuka.
22. The political interference is exacerbated by the telephone recordings interceptions and meetings Mr McCarthy had engaged in with numerous people, including Mr Ngcuka who, for sometime, was no longer the National Director and Ronnie Kasrils (Mr Kasrils'), the then Minister of Intelligence, Faiek Davids, Mzi Khumalo and Andre Pienaar.
23. It was Mr McCarthy, the day after scheduling an engagement with Mr Kasrils, on 21 December 2007 who telephoned Accused 1, and instructed him to amend the indictment and to proceed with the prosecution of the Private Prosecutor.
24. Between 4 and 13 June 2008, Accused 1 engaged in numerous telephonic discussions with Sam Sole ('Mr Sole'), a journalist for and or behalf of the Mail & Guardian, during which Accused 1 disclosed information in relation to self-same prosecution of the Private Prosecutor which had come to his attention during the course and scope of the performance of his duties and functions as a member of the NPA, without the authority of the National Director.



25. In this regard, Accused 1 specifically divulged to Mr Sole sensitive and/or confidential information, acquired in his capacity as prosecutor, without any written authorisation of the National Director.
26. A further consideration was the authoring of the Browse Mole Report by former journalist and NPA employee, Ivor Powell ('Mr Powell') under the direction of Mr McCarthy, which involved an information and intelligence gathering exercise to be used to discredit the Private Prosecutor by leaking same to the media to thwart the Private Prosecutor's prospects of being elected President of the ANC, and ultimately President of South Africa.
27. Accused 1 was at all relevant times the lead prosecutor in the various indictments preferred against the Private Prosecutor.
28. The Democratic Alliance ('DA'), another political party registered in accordance with the laws of South Africa, subsequently successfully instituted review proceedings in the Gauteng Provincial Division of the High Court against Mpshe SC's decision to discontinue the prosecution against the Private Prosecutor.
29. Both the Private Prosecutor and the NPA appealed the decision of the Gauteng High Court.
30. The Supreme Court of Appeal dismissed the appeal.
31. The Private Prosecutor submitted representations to the then National Director, Shaun Abrahams ('Mr Abrahams'), not to prosecute him.
32. Mr Abrahams subsequently rejected the representations and authorised the prosecution of the Private Prosecutor on or about 16 March 2018 on charges of inter alia, racketeering, corruption and money laundering.
33. As a result of all the above, the Private Prosecutor is currently facing various charges in this Honourable Court, with Accused 1 as the lead prosecutor.
34. The Private Prosecutor subsequently instituted numerous legal challenges culminating in him raising a special plea in terms of section 106(1)(h) of the Criminal Procedure Act No. 51 of 1977 before the trial Court.



35. In July 2021 the Constitutional Court convicted and sentenced the Private Prosecutor to a period of 15 months direct imprisonment, resulting in his detention at the Estcourt Correctional Centre in respect of an unrelated offence of contempt of court.
36. The trial Court subsequently adjourned the matter to the period 10 to 13 August 2021 for the adjudication of the special plea raised by the Private Prosecutor.
37. On 4 August 2021 the trial Court issued a directive for the hearing of the special plea to be argued in open court.
38. Whilst incarcerated at the Estcourt Correctional Centre, the Private Prosecutor was at all times under medical care and was later admitted into a private hospital in Pretoria under care of the Presidential Medical Unit of the South African National Defence Force ('SANDF') on 6 August 2021.
39. On 8 August 2021, Accused 1, the Director of Public Prosecutions: KwaZulu-Natal, Elaine Zungu ('Ms Zungu') and another colleague, Deneshree Naicker ('Ms Naicker') a Deputy Director of Public Prosecutions in Ms Zungu's office, received an email communication from Ms Radebe, of the Estcourt Correctional Centre, which included an attachment namely, a letter dated 8 August 2021, classified as '*MEDICAL CONFIDENTIAL*' and titled, '*MEDICAL SUPPORT TO THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA AND FORMER PRESIDENTS*', as authored by BRIGADIER GENERAL (DOCTOR) M. Z. MDUTYWA of the South African Military Health Service, Department of Defence
40. On 9 August 2021, the trial Court issued a directive in relation to the proceedings scheduled for 10 August 2021, which resulted in an expected postponement of the matter subject to the application for same by the Private Prosecutor's Counsel.
41. During the late afternoon of 9 August 2021, Breitenbach SC provided Accused 2 with a copy of the letter dated 8 August 2021, classified as '*MEDICAL CONFIDENTIAL*' and titled, '*MEDICAL SUPPORT TO THE PRESIDENT OF*

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THE REPUBLIC OF SOUTH AFRICA AND FORMER PRESIDENTS, which disclosure was specifically sanctioned and authorised by Accused 1.

42. Accused 1 did not have the authorisation of the National Director for the said letter or its contents to be disclosed to Accused 2 or anyone else for that matter, nor did he have the authorisation of any person so duly authorised by the National Director.
43. The next day Accused 2 published a media article in relation to the Private Prosecutor's trial and his medical condition based on the content of the *MEDICAL CONFIDENTIAL* classified letter received from Breytenbach SC as sanctioned by Accused 1.
44. Now therefore, both Accused unlawfully and intentionally, without the authority of the National Director or such person designated by the National Director, respectively, authorised the disclosure and disclosed the information and/or content of the document referenced herein, which document was in the possession of the NPA and obtained by it as the prosecuting authority.
45. At all material times Accused 2 aided and abetted the commission of the alleged crime by Accused 1, rendering herself as an accomplice thereto.
46. As a result, the Private Prosecutor subsequently instructed his legal representatives in October 2021 to seek the NPA to remove Accused 1 as the prosecutor in his matter and subsequently laid a complaint with the President of the Republic in relation to the conduct of Accused 1 and the NPA, inter alia, in relation to the manner in which Accused 1 caused confidential information in relation to the Private Prosecutor as disclosed to Accused 2, in violation of the Private Prosecutor's fair trial rights and in failing to maintain the requisite confidentiality
47. The Private Prosecutor has, as a direct result of the conduct of the accused, personally and individually suffered injury in that his right to confidentiality, dignity and fair trial rights have been prejudiced.

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48. The Private Prosecutor also laid criminal charges as a direct result of the disclosure of the confidential medical letter and/or the content thereof. In support thereof the Public Prosecutor submitted an affidavit in which it was specifically indicated that the charges were targetted at Accused 1 plus "any other person --".
49. In a letter dated 11 April 2022 the Private Prosecutor's legal representative requested the NPA to provide it with a *Nolle Prosequi* certificate, which was only forthcoming on or about 6 June 2022.
50. As evinced herein above, the Private Prosecutor has demonstrated that he has a substantial and peculiar interest in the trial with reasonable prospects of a successful prosecution in the trial.
51. On 5 September 2022, the Private Prosecutor paid into the Court the requisite security in demonstration of the ability, willingness and readiness to prosecute the charges to conclusion and without delay and in security of the costs the Accused may incur in defence of the charges preferred against them.
52. The Private Prosecutor intends to call the witnesses indicated in the attached Witness List in support of his case.



CASE NO:
PIETERMARITZBURG CAS 309/10/2021

Investigating Officer: Brigadier Mbhele

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

In the matter of:

JACOB GEDLEYIHLEKISA ZUMA

[Private Prosecutor]

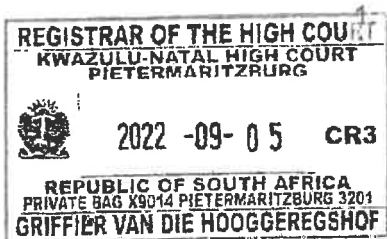
in terms of section 7(1), read with sections 9(1)(a), 9(1)(b), 10(1) and 10(2) of Act No. 51 of 1977 (as amended)]

versus

WILLIAM JOHN DOWNER (Accused 1)

and

2. KARYN MAUGHAN (Accused 2)



LIST OF WITNESSES IN TERMS OF SECTION 144(3)(a) OF ACT 51 OF 1977

1. His Excellency, President Jacob Gedleyihlekisa Zuma
Former President of the Republic of South Africa
Kwanxamala Residence
Nkandla
KwaZulu-Natal
2. His Excellency, President Matamela Cyril Ramaphosa
President of the Republic of South Africa
Union Buildings
Government Avenue
Pretoria

3. **Ronald Lamola**
Minister of Justice and Correctional Services
SALU Building
316 Thabo Sehume Street
Pretoria
4. **Andrew Breitenbach SC**
56 Keerom Street
Cape Town
5. **Advocate Shamila Batohi**
National Director of Public Prosecutions
National Prosecuting Authority
123 Westlake Avenue
Weavind Park
Silverton
Pretoria
6. **Brigadier General (Dr.) M. Z. Mdutywa**
Area Military Health Formation
South African Military Health Service
Department of Defence
Pretoria
7. **Dr. Zola Dabula**
Surgeon-General
South African National Defence Force
Pretoria
8. **Mr. Bethuel Mondli Thusini**
BM Thusini Inc.
134 Mark Street
Vryheid
9. **Mr Singabakho Nxumalo**
Media Spokesperson
Department of Correctional Services
Pretoria
10. **Commissioner K. Mthombeni**
Acting Regional Commissioner
Department of Correctional Services
Pietermaritzburg



KwaZulu-Natal

11. Ms. E. Griffin
Registrar to the Honourable Mr Justice P. Koen
KwaZulu-Natal Provincial Division of the High Court
301 Church Street
Pietermaritzburg
12. Ms. Nompumelelo Radebe
Estcourt Correctional Facility
Department of Correctional Services
Estcourt
13. Advocate Elaine Zungu
Director of Public Prosecutions
National Prosecuting Authority
286 Pietermaritz Street
Pietermaritzburg
14. Advocate Deneshree Naicker
Deputy Director of Public Prosecutions
National Prosecuting Authority
286 Pietermaritz Street
Pietermaritzburg
15. Mr. William (Willie) Andrew Hofmeyr
Former Deputy National Director of Public Prosecutions
I/C of the Investigating Officer
Brigadier Mbhele
16. Mokotedi Mpshe SC
Former Acting National Director of Public Prosecutions
I/C of the Investigating Officer
Brigadier Mbhele
17. Mr. Lawrence Mushwana
Former Public Protector
I/C of the Investigating Officer
Brigadier Mbhele
18. Ambassador Thembisile Majola
Director-General
State Security Agency
Musanda Complex



Delmas Road
Pretoria

19. Warrant Officer Phindile Nurse Manzini
Directorate for Priority Crimes Investigations
Pretoria
20. Advocate Jane Sarah Blomkamp
56 Keerom Street
Cape Town
21. Captain Jayson N. Naidoo
Community Service Centre
Durban Central Police Station
South African Police Service
Durban
22. Mr. Roy Tresco Horatio Hart
118 A High Street
Grahamstown
23. Mr. Daniel Joseph Witz
1st Floor, The Conservatory
13 Baker Street
Rosebank
Johannesburg



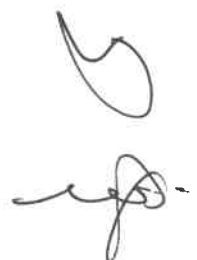
CHRONOLOGY - THE FIRST ACCUSED'S STALINGRAD TACTIC**The applicants to obtain the encrypted fax**

- 1 Mr Zuma's strategy of delay and investigation into his conduct was evident from 2003 during the criminal investigations from when one can clearly see that this was a precursor to the strategy that he would implement into full swing in 2005 when his criminal trial was set to begin.
- 2 On 30 August 2003 Mr Zuma launched an urgent application in the Pretoria High Court under case number 24517/03 against the National Director of Public Prosecutions ("NDPP"), the NPA and the Directorate of Special Operations ("DSO) of the NPA for an order directing them to give him immediate access to the handwritten French version of the encrypted fax. Despite the fact that the respondents delivered answering papers and Mr Zuma replied, the matter was never heard.
- 3 On 30 October 2003 Mr Zuma lodged a complaint with the Public Protector about the manner in which the NPA had conducted the investigation into him. This culminated in a report by the Public Protector on 28 May 2004, the findings of which included that Mr Bulelani Ngcuka had unjustifiably infringed Mr Zuma's right to dignity and acted unfairly and improperly in making the media statement on 23 August 2003 to the effect that Mr Zuma would not be prosecuted despite there being a *prima facie* case against him.

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The Zuma – Hulley search warrant applications

- 4 From 2005 onwards Mr Zuma's litigation strategy has been to delay and, if at all possible, avoid, the commencement of the criminal trial against him under case number CCD30/2018.
- 5 On 29 June 2005 Mr Zuma appeared for the first time in the Durban Magistrate's Court and the case was postponed to 11 October 2005 for further investigation, including a new forensic investigation and report.
- 6 On 11 August 2005 the DSO applied in terms of s 29 of the NPA Act for a series of 21 search warrants for various premises, including Mr Zuma's residences in Forest Town and Killarney in Johannesburg, Mr Zuma's residence at Nkandla in KwaZulu-Natal, Mr Zuma's former offices and those of his former secretaries and assistants at the Union Buildings in Pretoria and Tuynhuys in Cape Town, the offices of the Kwazulu-Natal Department of Economic Development and Tourism in Durban, the office of Mr Zuma's attorney Mr Hulley in Durban, the office and residence of Mr Zuma's attorney Ms Mahomed in Johannesburg, the business premises of Thomson Holding and Thomson (Pty) and the residence of Mr Moynot.
- 7 On 12, 15 and 18 August 2005 the warrants were granted by the Judge President Ngoepe of the Transvaal Provincial Division of the High Court.
- 8 On 10 October 2005 Mr Zuma and Mr Hulley brought an application in the Durban High Court under case number 14116/05 for, amongst other things: the setting aside of the seven search warrants for Zuma's residences and the offices of Hulley and

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Associates and the return of all the items seized in the ensuing searches and seizures on 18 August 2005 and any copies thereof.

- 9 On 11 October 2005 Mr Zuma appeared for the second time in the Durban Magistrates' Court. The State applied for the matter to be transferred to the High Court in terms of s 75 prior to the service of the indictment, but this was opposed by the defence. The matter was eventually resolved by agreement.
- 10 On 15 February 2006 the Durban High Court (*per* Hurt J) granted the application made by Mr Zuma and Mr Hulley on 5 October 2005 (case number 14116/05) for the setting aside of five of the seven search warrants relating to them and ordered the State to return all the evidence seized under them to Mr Zuma and Mr Hulley (see *Zuma and Another v NDPP and Others* 2006 (1) SACR 468 (D)).
- 11 The State subsequently applied for leave to appeal and it was granted pursuant to an overall agreement to expedite the hearing of the search-warrant related appeals by the SCA.
- 12 The appeals concerning the searches during August 2005 of the premises of Mr Zuma, Mr Hulley and the Thomson companies were argued on 28 and 29 August 2007. On 8 November 2007 the SCA handed down judgments in both matters (*National Director of Public Prosecutions and Others v Zuma and Another* [2008] 1 All SA 197 (SCA) and *Thint (Pty) Ltd v National Director of Public Prosecutions and Others* [2008] 1 All SA 229 (SCA)).
- 13 A further appeal to the Constitutional Court was dismissed on 31 July 2008.

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14 These applications delayed the commencement of the trial by 34 months.

Opposition to the United Kingdom MLA application

15 On 23 December 2006, the NPA applied to the High Court, Pretoria, to issue letters requesting mutual legal assistance ('MLA') from the United Kingdom, in terms of section 2(2) of the ICCMA.

16 On 28 March 2007, the High Court, Pretoria, issued the MLA request to the United Kingdom.

17 On 9 May 2007, Mr Zuma applied to the High Court for leave to intervene and for the order dated 28 March 2007 to be set aside.

18 On 14 September 2007, the High Court (Van der Merwe J) dismissed Mr Zuma's application to intervene. Mr Zuma filed an application for leave to appeal but he did not set it down for hearing.

19 This application delayed the commencement of the trial by 9 months.

Opposition to the Mauritius MLA application

20 On 4 December 2006, the NPA applied to the High Court, Durban, to issue letters requesting mutual legal assistance ('MLA') from Mauritius, in terms of section 2(2) of the ICCMA. Mr Zuma opposed the application.

21 The Mauritius MLA application was argued on 22 and 23 March 2007 and on 2 April 2007 the Deputy Judge President of this Court, Levinsohn DJP, gave judgment granting the Mauritius MLA application and issued the letter of request.

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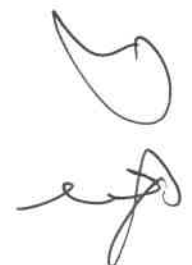
- 22 Mr Zuma and the Thomson companies applied for leave to appeal to the SCA against the High Court judgment, in order to expedite the process, the State consented to the granting of leave to appeal to the SCA.
- 23 The State also applied for leave to execute Levinsohn DJP's order pending the determination of the appeal. Mr Zuma opposed the application.
- 24 On 5 June 2007 this Court (*per* Hugo J) granted the State leave to request the relevant authorities in Mauritius to start the proceedings required to give effect to the letter of request forthwith on conditions relating to the outcome of the SCA appeal. (See *National Director of Public Prosecutions v Zuma and Others* 2008 (1) SACR 243 (D)).
- 25 During the hearing before Hugo J on 29 May 2007, in response to a query from the Court about Zuma's efforts to stop the retrieval of the documents from Mauritius, Zuma's counsel, Adv Kemp J Kemp SC ('Kemp'), said the following: '*We think it is important. This is not like a fight between two champ fighters. This is more like Stalingrad. It's burning house to burning house.*' This was a frank acknowledgment of Zuma's 'Stalingrad' defence strategy.
- 26 The appeal by Mr Zuma and the Thomson companies to the SCA in respect of the Mauritius MLA request was heard on 21 September 2007 and dismissed on 8 November 2007 (see *Zuma and Others v National Director of Public Prosecutions* [2008] 1 All SA 234 (SCA)).

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- 27 On 28 November 2007 Mr Zuma, Mr Hulley and the Thomson companies applied to the CC for leave to appeal against the SCA judgments of 8 November 2007 in the search warrant and Mauritius MLA matters.
- 28 On 31 July 2008 the CC granted the applications by Mr Zuma and the Thomson companies for leave to appeal against the SCA's judgments of 8 November 2007 in the search warrant and Mauritius MLA matters but, save in respect of one paragraph of the warrant for the search of Mr Hulley's offices which was declared unlawful and severed from the rest of the warrant, dismissed their appeals in the search warrant matters (see *Thint (Pty) Ltd v National Director of Public Prosecutions and Others*; *Zuma v National Director of Public Prosecutions and Others* 2009 (1) SA 1 (CC) and *Thint Holdings (Southern Africa) (Pty) Ltd and Another v National Director of Public Prosecutions*; *Zuma v National Director of Public Prosecutions* 2009 (1) SA 141 (CC)) and the Mauritius MLA matters (see *Thint Holdings (Southern Africa) (Pty) Ltd and Another v National Director of Public Prosecutions*; *Zuma v National Director of Public Prosecutions* 2009 (1) SA 141 (CC)).
- 29 This application delayed the commencement of the trial by 19 months.

Mr Zuma's audi application

- 30 On 23 June 2008 Mr Zuma launched an application in this Court under case number 8652/08 asking it to overturn the decisions to prosecute him in 2005 and 2007 because they were taken without first affording him a hearing.

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- 31 On 4 and 5 August 2008 Mr Zuma applied in this Court under case number 8652/08 to overturn the decisions to prosecute him in 2005 and 2007 because they were taken without first affording him a hearing was heard by Nicholson J.
- 32 On 12 September 2008 Nicholson J upheld both Mr Zuma's causes of action and declared the 2007 decision to prosecute him invalid (see *Zuma v National Director of Public Prosecutions* [2009] 1 All SA 54 (N)).
- 33 With the leave of Nicholson J, the State appealed to the SCA, which heard the appeal on an urgent basis on 28 November 2008.
- 34 On 12 January 2009 the SCA upheld the State's appeal and re-instated the prosecution against Mr Zuma (see *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA)).
- 35 On about 23 January 2009 Mr Zuma applied to the CC for leave to appeal against the SCA's decision of 12 January 2009.
- 36 These applications delayed the commencement of the trial by 7 months.

Mr Zuma's first representations

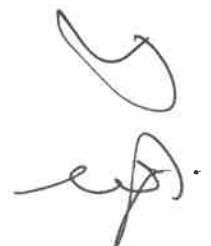
- 37 Following the SCA's decision of 12 January 2009, the criminal proceedings against Mr Zuma and the Thomson companies were re-enrolled in this Court.
- 38 On 10 February 2009 Mr Zuma's legal representatives made written representations to the NPA to discontinue his prosecution.

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- 39 On 6 April 2009 the prosecution team was called to a meeting with the then NDPP Mr Mpshe. At the start of the meeting Mr Mpshe announced his decision to withdraw the charges against Mr Zuma due to what he believed was interference.
- 40 On 7 April 2009 the matter was re-enrolled in this Court and the charges against Mr Zuma and the Thomson companies were withdrawn. Shortly thereafter, the warrant for Mr Thétard's arrest was cancelled.
- 41 These applications delayed the commencement of the trial by about 2 months.

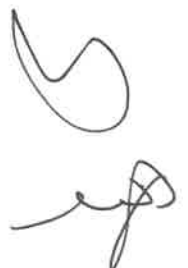
The DA Spy Tapes application

- 42 On 7 April 2009 the DA brought an application in the High Court in Pretoria, for an order reviewing and setting aside Mr Mpshe's decision to discontinue the prosecution. The NDPP and Mr Zuma opposed the application.
- 43 On 27 May 2009 the DA launched an interlocutory application in the High Court, in terms of Uniform Rule 6(11), for an order directing the NPA to dispatch the record of proceedings on which the decision to discontinue the prosecution was based, excluding the representations by Mr Zuma and any documents based thereon. In addition the DA also sought an order directing that the NPA specify, by written notice, the documents or material excluded from the record.
- 44 The NPA opposed the DA's Rule 6(11) application.
- 45 The DA's Rule 6(11) application was heard in the Pretoria High by Mr Justice Ranchod on 9 June 2010, together with an application by two private parties, Mr

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Richard Young ('Young') and CCII Systems (Pty) Ltd ('CCII'), who were seeking leave to intervene as parties in the DA's application for judicial review of Mr Mpshe's decision.

- 46 On 22 February 2011 Ranchod J dismissed the DA's Rule 6(11) application and the private parties' application (see *Democratic Alliance v Acting National Director of Public Prosecutions and Others* (19577/09) [2011] ZAGPPHC 57 (22 February 2011)).
- 47 The DA, Young and CCII applied in the High Court for leave to appeal to the SCA, which was granted.
- 48 That appeal was argued in the SCA on 15 February 2013. As in the High Court, both the NPA and Zuma opposed the granting of the interlocutory relief sought by DA, Young and CCII.
- 49 On 20 March 2012 the SCA (*per* Mr Justice Navsa JA) delivered its judgment, upholding the appeal by the DA but dismissing the appeals by Young and CCII. (see *Democratic Alliance and Others v Acting National Director of Public Prosecutions and Others* 2012 (3) SA 486 (SCA)).
- 50 On 18 September 2012 the DA brought a second interlocutory application for an order compelling the Acting NDPP to produce and lodge with the Registrar of the High Court a record of the decision by Mr Mpshe to discontinue Mr Zuma's prosecution.

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- 51 On 24 July 2013 the DA's application to compel was heard in the High Court in Pretoria. The NPA abided the decision of the Court regarding the making available of the electronic recordings and the transcripts, but opposed the granting of an order that it produces the internal NPA memoranda etc. Mr Zuma opposed the DA's application for both the recordings/transcripts and the internal NPA memoranda etc.
- 52 On 16 August 2013 the High Court (*per* Mr Justice Mathopo J) granted the DA's application to compel (see *Democratic Alliance v Acting National Director of Public Prosecutions and Others* [2013] 4 All SA 610 (GNP)). Mr Zuma applied for and was granted leave to the SCA against the High Court's order in the DA's application to compel.
- 53 On 15 August 2014 the SCA heard argument in Mr Zuma's appeal against the High Court's order in the DA's application to compel.
- 54 On 28 August 2014 the SCA (*per* Mr Justice Navsa ADP) handed down a judgment dismissing Mr Zuma's appeal, but varying the High Court's order to provide that retired Justice Hurt would determine the internal documents which reveal the contents of Mr Zuma's representations (see *Zuma v Democratic Alliance and Others* [2014] 4 All SA 35 (SCA)).
- 55 On 29 April 2016 the High Court (*per* Mr Justice Ledwaba DJP and Justices Pretorius and Mothle) upheld the DA's review application and granted an order reviewing and setting aside Mr Mpshe's decision (see *Democratic Alliance v Acting National Director of Public Prosecutions and Others* [2016] 3 All SA 78 (GP)).

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- 56 Mr Zuma and the NPA respondents applied to the High Court for leave to appeal, but on 24 June 2016 the High Court dismissed the applications for leave to appeal (see *Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others* (19577/09) [2016] ZAGPPHC 489 (24 June 2016)).
- 57 The NPA respondents thereupon applied for leave to appeal directly to the CC, but in October 2016 the CC refused to hear the application for leave to appeal, saying it was not in the interests of justice to do so at that stage.
- 58 The NPA respondents consequently applied to the SCA for leave to appeal.
- 59 During the hearing in the SCA on 14 September 2017, after the judges had pointed to indistinguishable CC authority that was against the NPA's argument based on section 179(2) of the Constitution, its counsel conceded that Mr Mpshe's decision was liable to be set aside on that ground alone.
- 60 The same concession was made by counsel for Mr Zuma, who added that Mr Zuma had every intention in the future to continue to use such processes as are available to him to resist prosecution including the making of representations in relation to the discontinuation of the prosecution and, if the representations were not successful, an application for a permanent stay of prosecution.
- 61 On 13 October 2017 the SCA handed down its judgment, which culminated in orders granting the NPA's and Zuma's applications for leave to appeal a but dismissing the appeals (see *Zuma v Democratic Alliance and Others*; *Acting National Director of*

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Public Prosecutions and Another v Democratic Alliance and Another 2018 (1) SA 200 (SCA)).

62 These applications delayed the commencement of the trial by 102 months.

Mr Zuma's second representations

63 On 11 October 2017 Mr Zuma's attorney, Mr Hulley, wrote to Mr Shaun Abrahams the then incumbent NDPP requesting that Mr Zuma be afforded an opportunity to make representations.


64 On 31 January 2018 Mr Hulley delivered Mr Zuma's representations, asking that the prosecution be stopped.

65 On 6 March 2018 the Council for the Advancement of the South African Constitution ("CASAC") brought an urgent application in the CC for an order interdicting Mr Abrahams from announcing his decision. Mr Abrahams opposed the application.

66 On 14 March 2018 the CC dismissed CASAC's urgent application.

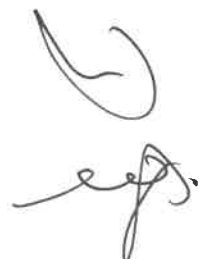
67 On 16 March 2018 Mr Abrahams wrote to Mr Hulley informing him of his decision to reject Zuma's representations and to re-institute the criminal proceedings against the Thomson companies.

68 These applications delayed the commencement of the trial by 5 months.

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Mr Zuma's application for a stay of prosecution

- 69 Shortly after Mr Abrahams' decision on 16 March 2018, the indictment was finalised, signed (by me) and served on Mr Zuma and Thales South Africa along with a summons that they appear in the High Court in Durban on 6 April 2018, which they duly did.
- 70 The matter was provisionally postponed to 8 June 2008 because Mr Zuma's legal team had indicated they intended bringing a review application and intended having it ready by that date.
- 71 On 8 June 2018, upon the accused's second appearance, the matter was provisionally postponed to 27 July 2018 to permit the State to consider and respond to the representations from Thales South Africa and because Mr Zuma's legal representatives again indicated they required time to prepare a review application.
- 72 On 27 June 2018 Mr Driman attorney for Thales South Africa submitted brief supplementary representations to me.
- 73 On 25 July 2018 Mr Abrahams consequently wrote to Mr Driman informing him of his decision to reject the representations.
- 74 On 27 July 2018, at Mr Zuma's and Thales South Africa's third appearance, the matter was, *inter alia*, provisionally postponed until 30 November 2018 and, following their indication that they intended applying for permanent stays of the prosecution, they were directed to submit their applications by 16 November 2018.

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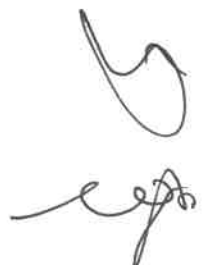
- 75 On 15 November 2018 Mr Zuma and Thales South Africa brought the applications for stay of their prosecutions.
- 76 On 30 November 2018 Mr Zuma and Thales sought and were granted a postponement. The applications were heard on 20 May 2019.
- 77 The applications for permanent stays of prosecution were heard together by a Full Court (comprising Mnguni, Steyn and Poyo Dlwati JJ), which delivered a judgment on 11 October 2019 culminating in orders dismissing both applications with costs (*S v Zuma and Another; Thales South Africa (Pty) Limited v KwaZulu-Natal Director of Public Prosecutions and Others* [2019] 4 All SA 845 (KZD)).
- 78 On 15 October 2019 Mr Zuma and Thales sought and were granted a postponement in order to afford them an opportunity to bring their respective applications for leave to appeal.
- 79 On 1 November 2019, Mr Zuma instituted an application to this Court for leave to appeal to the SCA.
- 80 On 29 November 2019 this Court (per Mnguni, Steyn and Poyo Dlwati JJ) dismissed the application with costs.
- 81 On 23 December 2019 Mr Zuma's instituted an application for leave to appeal to the SCA.
- 82 On 4 February 2020 Mr Zuma and Thales sought and were granted a postponement to allow for judgment in the pending applications for leave to appeal.

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- 83 On 10 March 2020 the SCA (per Petse DP and Plasket JA) dismissed the applications for leave to appeal.
- 84 On 26 March 2020 Mr Zuma's instituted an application for leave to appeal to the CC.
- 85 On 21 April 2020 the State and Mr Zuma agreed that Mr Zuma withdraws the application to the CC.
- 86 These applications delayed the commencement of the trial by 24 months.

Mr Zuma's application to remove Downer from the prosecution

- 87 On 17 May 2021 Mr Zuma raised a special plea in terms of section 106(1)(h) and 106(4) of the CPA and filed an affidavit in support of his plea explanation. The Court excused the first State witness Minister Ms de Lille had flown from Cape Town for the trial, attended court and the court was obliged to excuse her. The State had to inform Mr Feinstein to cancel his flight to the RSA from London that had already been booked and paid for.
- 88 On 26 May 2021 the matter was postponed allowing further papers to be filed on the special plea.
- 89 On 19 July 2021, Mr Zuma was granted a postponement of the argument.
- 90 On 10 August 2021 the State's made partial arguments on the special pleas raised by Mr Zuma. The argument which was set down for 3 days was postponed at Mr Zuma's request due to his hospitalisation for further argument on special plea and enquiry regarding Mr Zuma's absence.

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- 91 On 9 September 2021, Mr Zuma was granted another postponement.
- 92 The special plea was finally heard on 21 to 22 September 2021.
- 93 On 26 October 2021 this Court (per Koen J) dismissed the special plea with costs.
- 94 On 10 November 2021 Mr Zuma instituted an application to the High Court for leave to appeal.
- 95 On 14 November 2021 Mr Zuma declined the State's and the High Court's proposal to hear the application for leave to appeal soonest by agreement, in the absence of Mr Zuma and at a virtual hearing and proposed the first week of February 2022.
- 96 On 21 November 2021 Mr Zuma declined the High Court's proposal to hear the application virtually before the end of the court term in 2021 and proposed a date after 28 January 2022.
- 97 On 31 January 2022 the Court heard Mr Zuma's application for leave to appeal to the SCA.
- 98 The application for leave to appeal was dismissed on 6 February 2022 and Koen J set the next trial date of 11 April 2022.
- 99 On 9 March 2022, Mr Zuma petitioned the SCA for leave to appeal.
- 100 On 13 March 2022, Mr Zuma made an application to postpone the trial on 11 April 2022. This application caused terrible inconvenience to the commencement of the trial. On 1 March 2022 the Prosecutors, investigating officers and forensic

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accountants had relocated to Pietermaritzburg to finalise trial preparation for the hearing on 11 April 2022, including summoning and consulting with witnesses.

- 101 On 28 March 2022, the SCA (per Zondi and Nicholls JJA) dismissed the petition for leave to appeal.
- 102 On 6 April 2022, Mr Zuma issued an application to the President of the SCA for reconsideration in terms of section 17(2)(f) of the Superior Courts Act.
- 103 On 11 April 2022 on the date on which the trial was due to commence, Mr Zuma failed to appear. His team sought a postponement on account of Mr Zuma's ill health. This Court (per Koen,J) ordered argument to proceed in Mr Zuma's absence, with the agreement of counsel for Mr Zuma. Mr Zuma was granted a postponement. Again, State witnesses who had been booked and ready to give evidence were informed to cancel their flights.
- 104 On 17 May 2022, Mr Zuma was granted a further postponement on the basis that the President of the SCA had not yet finalised Mr Zuma's section 17(2)(f) application.
- 105 On 20 May 2022, the President of the SCA (Maya, P) dismissed Mr Zuma's section 17(2)(f) application.
- 106 On 10 June 2022, Mr Zuma issued an application to the CC for leave to appeal the order in the special plea.
- 107 On 1 August 2022, Mr Zuma was granted a postponement on the basis that the Constitutional Court had not yet finalised Mr Zuma's application for leave to appeal.

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108 On 3 September 2022, the Constitutional Court dismissed the application.

109 The next holding date set for the criminal trial to commence is 17 October 2022, pending the Constitutional Court order in Mr Zuma's application for leave to appeal.

110 Koen J reserved 31 October 2022 as the next trial date in the event that a CC order dismissing the application is handed down before 17 October 2022, as it now has been on 23 September 2022.

111 These applications delayed the commencement of the trial by 17 months.

Conclusion

112 Total duration – 30 August 2003 to at least 31 October 2022, that is, 229 months (19 years).

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

Case no: CCD30/2018

In the matter between:

THE STATE

and

**JACOB GEDLEYIHLEKISA ZUMA
THALES SOUTH AFICA (PTY) LTD**

**FIRST ACCUSED
SECOND ACCUSED**

JUDGMENT IN RESPECT OF THE FIRST ACCUSED'S PLEA IN RESPECT OF
SECTION 106(1)(h) AND 106(4) OF THE CRIMINAL PROCEDURE ACT, 1977

Koen J

Introduction

[1] The first accused, Mr Jacob Gedleyihlekisa Zuma (Mr Zuma), and the second accused, Thales South Africa (Pty) Ltd (Thales), face various charges, as set out in the indictment.¹ They have both pleaded not guilty to all the charges. In addition, Mr Zuma

¹ The criminal trial commenced on 17 May 2021. The former legal representatives of Mr Zuma, Mabuza Attorneys, formally requested leave to withdraw as his legal representatives. Mr Masuku SC, with him Mr Buthelezi and Mr Xulu instructed by B.M. Thusini Incorporated appeared as Mr Zuma's new legal representatives. They placed on record that Mr Zuma was ready to proceed with the trial. In the light of that recordal, the withdrawal of Mabuza Attorneys would not cause a hiatus and hence any interruption in the trial proceedings that could prejudice either Mr Zuma, or Thales, or the prosecution. Leave to withdraw as Mr Zuma's attorneys was accordingly granted to Mabuza Attorneys. The trial thereafter commenced with the State being represented by Mr Downer SC, Mr Du Plooy and Mr Singh, Mr Zuma being represented as aforesaid, and Thales being represented by Mr Roux SC and Ms Jackson.

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spy tapes matter, filed by the State Attorney representing the NPA, disagreeing with the stance taken by his superiors.

[229] There is no evidence that Mr Downer was in possession of any evidence, to justify laying any charges against his superiors. He says that much in the answering affidavit, and any suggestion to the contrary is based on mere suspicion or speculation. There is also no evidence that he occupied an administrative position where that would have been required of him. During argument, Mr Masuku submitted that Mr Downer should have used 'the internal process' to object to the conduct of his superiors. But that allegation was never made in the affidavits, and it is not known what this internal process would have entailed, or whether it was even available to Mr Downer. Consequently, it was not dealt with in answer, and cannot be relied on.

[230] On the evidence before me Mr Downer played no role in, and had no knowledge of, the alleged political interference. He can accordingly not be an 'essential witness' in the allegations of political interference, and is not on that basis excluded from prosecuting in this trial.

Mr Downer's alleged leaks to the media.

[231] Mr Zuma complains that information regarding his prosecution was leaked by the NPA to the media, specifically, that Mr Downer disclosed information to a journalist, Mr Sam Sole of the *Mail & Guardian*.

[232] Mr Downer does not dispute that there have been leaks from within the NPA, but denies that he was involved in such leaks and denies that these were part of a concerted NPA strategy employed in the prosecution of Mr Zuma. Instead, he said, while Mr Zuma was Deputy President, the NPA went to 'extraordinary measures' to keep the fact of his prosecution confidential.

[233] Insofar as Mr Zuma seeks to impute the leaking of confidential information about the investigation and prosecution to Mr Sole, to Mr Downer specifically, the allegations

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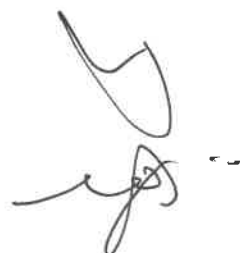
(7) Any person who contravenes subsection (6) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 15 years or to both such fine and such imprisonment' (emphasis in the original)

[240] As the complaint was only made in argument and then in reply. Mr Downer did not have an opportunity to respond thereto. I accordingly also did not have the benefit of the issue having been dealt with fully in argument. In those circumstances I consider that it will be improper to consider the request for any such a referral further in this judgment. Apart from that procedural difficulty, I have doubt whether the wide terms of s 41(6) are necessarily constitutional and/or would necessarily find application on the facts of this matter. *Prima facie*, it would not, in my view, be unlawful for a prosecutor to deal with enquiries from the press, to ensure that the public is properly informed of the work of the NPA and the progress in investigations, which inevitably might result in the disclosure of information which came to his or her knowledge in the performance of his or her functions in terms of the NPA Act, or any other law. I would have thought that s 41(6) would not, for example, prohibit a member of the NPA, in response to enquiries from a journalist, to confirm or deny that a particular suspect might or might not be formally indicted on particular charges, or that assistance regarding a particular investigation in another jurisdiction, was being pursued. But these are simply ruminations without the benefit of having heard considered argument. If it is believed that the provisions of s 41(6) outlaws such conduct, then a formal charge in that regard can be pursued, where the proper application of s 41(6) can be fully ventilated and its proper interpretation determined.

Mr Downer's insistence that Mr Zuma be prosecuted

[241] Mr Zuma alleges that Mr Downer has pursued his prosecution with 'unrestrained gusto' to ensure that he is convicted 'at all costs', and that Mr Downer's '20 year-long commitment to this case is now an obsession for a legacy and not a pursuit of justice'. This is a conclusion, a matter of opinion, rather than fact.

[242] In answer, Mr Downer referred to documents prepared by him as part of the prosecution team, addressed to the various National Directors of Public Prosecutions,



tapes case, rejected Mr Zuma's further representations and concluded that 'there are reasonable prospects of a successful prosecution of Mr Zuma on the charges listed in the indictment, served on Mr Zuma prior to the termination of the matter by Adv Mpshe SC'.

[245] Mr Zuma has not been prosecuted because Mr Downer is insistent on prosecuting him but because the NDPP, obedient to the judgement of the SCA in the spy tapes case, decided that his prosecution must continue. The full court thereafter also rejected his application for a permanent stay of prosecution.

The leaking of confidential medical information

[246] The medical information referred to is that contained in the letter from Brigadier General (Dr) M.Z. Mdutywa, General Officer Commanding Area Military Health Formation, dated 8 August 2021 and carries an official stamp dated 8 August 2021, addressed to the 'Head of the Centre, Estcourt Correctional Centre, Department of Correctional Services, Estcourt', referred to above. The letter recorded, inter alia, that '[o]n 28 November 2020, the President was put under active care and support after he suffered a traumatic injury', that he 'needed an extensive emergency procedure that has been delayed for 18 months due to compounding legal matters and recent incarceration and cannot be delayed any further as it carries a significant risk to his life' and that the 'minimum proposed period of care is six months.'

[247] On 10 August 2021 an application was launched, carrying the date stamp of the Registrar, to give effect to my directive, quoted in paragraph 33 above, which required that the application for an adjournment of the proceedings was required to be 'supported by an affidavit by a medical practitioner treating Mr Zuma.' In the application Mr Zuma sought an order that, 'The trial and all other related proceedings between the State and Jacob Gedhleyihlekisa Zuma and Thales Africa (Pty) Ltd are adjourned in terms of Section 168 of the Criminal Procedure Act 51 of 1977 to a date agreed upon by the parties or determined by this Honourable Court.' The application was supported by an affidavit by Mr Thusini, duly authorised thereto by Mr Zuma, to which the letter from Brigadier General (Dr) Mdutywa was annexed, and was supported by a confirmatory affidavit of



Brigadier General (Dr) Mdutywa. This confirmatory affidavit was in the usual terms that he had read the affidavit of Mr Thusini and confirmed that the contents thereof were correct in so far as they related to him. Mr Downer also filed an affidavit headed 'The States Affidavit regarding the Postponement of the Proceedings on 10 August 2021', to which the letter from Brigadier General (Dr) Mdutywa was also attached. The medical condition of Mr Zuma accordingly was a material issue on 10 August 2021, and will remain one should Mr Zuma not be able to attend further proceedings due to his physical condition.

[248] An adjournment of the proceedings, which were due to commence on 10 August 2021, had effectively forced on the parties by the contents of Brigadier General (Dr) Mduywa's letter. As indicated earlier in this judgment, on 10 August 2021 I granted an order postponing the matter to 9 and 10 September 2021, directed that the medical report in respect of Mr Zuma be delivered by not later than 20 August 2021, and ordered that the State may appoint a medical practitioner of its choice to examine Mr Zuma, and if necessary to give evidence, as to his fitness to attend court and stand trial.


[249] Paragraph 3 of that order did not expressly refer to the authority for such an order. The statutory provision that applies is s 37(3)(b) of the CPA which provides that:

'(3) Any court before which criminal proceedings are pending may –

(a) . . .

(b) order that the steps, including the taking of a blood sample, be taken which such court may deem necessary in order to ascertain the state of health of any accused at such proceedings'

[250] On 7 September 2021 Mr Zuma filed a supplementary evidence affidavit seeking an order that 'at the hearing of this matter on a date to be directed by the Honourable Court, the First Accused intends to apply for an order granting leave to admit into evidence the First Accused's supplementary affidavit filed in terms of section 115 of the Criminal Procedure Act 51 of 1977 ("the CPA") in so far as it relates to the additional plea brought in terms of section 106 (1) (h) read with section 106 (4) of the CPA.'

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[251] The affidavit of Mr Thusini, filed in support of the supplementary evidence application, raises that Mr Downer, in the previous application for the postponement of the proceedings on 10 August 2021:

' . . . strangely filed an unsolicited affidavit even prior to us filing our postponement application in which he disclosed and annexed the confidential medical report in respect of Mr Zuma. While preparing our application (that was the postponement of the proceedings on 10 August 2021), an inquiry was made by a journalist who appeared to have a source in the NPA on matters involving Mr Zuma, who broke the story of the medical report/letter and to our utter surprise and shock, referred to its contents in such a way that it was abundantly clear that the journalist had read or had been advised of the contents thereof. This was despite serious pleas made by Mr Zuma's legal representatives to the NPA's legal representatives to treat the report or letter with the strictest confidentiality. The medical report/letter is incidentally similar to the one which was rejected by Judge Pillay . . . '

[252] In answer to the supplementary evidence affidavit of Mr Thusini, Mr Downer explained that on Friday 6 August 2021 the Head of the Estcourt Correctional Centre, Ms Radebe, sent a WhatsApp message to Ms Naicker of the NPA recording that Mr Zuma had been 'emergency referred to outside hospital due to his medical condition last night.' Ms Naicker thereupon enquired from Ms Radebe whether she was able to give any indication as to whether Mr Zuma would be brought to court as per the requisition for his attendance on 10 August 2021. Ms Radebe's response was that she was awaiting documents with that information. On the same day, the Department of Correctional Services issued a media release stating that Mr Zuma had been admitted to a hospital outside the prison for medical observation by the South African Military Health Services. On Saturday, 7 August 2021 Ms Naicker was contacted by a Mr Kenneth Mthombeni, who introduced himself as the Acting Regional Commissioner of Correctional Services. He indicated, regarding the requisition for Mr Zuma, as subsequently confirmed by her in a WhatsApp message, that Mr Zuma would not be brought to court as he was hospitalised in Pretoria.

[253] Mr Downer explains that on Sunday 8 August 2021 at 14h24 Ms Naicker, the Director of Public Prosecutions, KZN (Ms Zungu) and Mr Downer received an email from

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Ms Radebe, the officer in charge of the Estcourt Correctional Centre, to which the letter addressed to her earlier that day by Brigadier General (Dr) MZ Mdutywa, being the letter referred to above, was attached. The State was not satisfied with the vague generalities in the letter regarding Mr Zuma's 'condition', the 'extensive emergency procedure' and the 'minimum proposed care of six months.'

[254] Lead counsel for the State, Mr Trengove SC contacted Mr Mpofu regarding the postponement of the proceedings of 10 August 2021. The final terms thereof were finally agreed during subsequent exchanges extending, it seems, to Monday, 9 August 2021, a public holiday. Mr Downer addressed an email to my Registrar advising me that following the hospitalisation of Mr Zuma late the previous week, the State and the legal representatives of Mr Zuma had been separately informed by the Department of Correctional Services and Military Health Services that he remained admitted in an outside health facility. This email also recorded that Mr Downer was 'busy making an affidavit that explains the sequence of events that have led to this approach for a new directive.'

[255] At 11h46 on 9 August 2020 11h46 Mr Downer sent a second email to my Registrar, copied to Mr Thusini, to which he attached an unsigned copy of the affidavit he said he would provide, including the annexures thereto which included the letter.

[256] Mr Downer's answering affidavit, to the supplementary evidence affidavit of Mr Thusini explains that:

'41. Later that afternoon (9 August 2021), around 16h45, a journalist, Ms Karyn Maughan of Newsweek 24, requested from one of the State's counsel, Adv Breitenbach SC, copies of any court papers pertaining to the proceedings the following day. Adv Breitenbach sent a copy of Justice Koen's letter (i.e. annexure AA 20) and the unsigned copy of my affidavit, the annexures thereto and the unsigned copy of Adv Naicker's affidavit.(i.e. annexure AA19). The unsigned affidavits were sent to her on condition that she not publish anything based on them or their annexures before the signed affidavits were filed with this Honourable Court. In response to a request, Adv Breitenbach SC also agreed to forward to her any papers which may be delivered on behalf of the accused.

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42. That evening (9 August 2021), at 21h08, Mr Thusini emailed to Justice Koen's Registrar, to me and to the second accused's attorneys, an application by the first accused for the postponement on 10 August 2021 of the trial and all other related proceedings between the State and the accused to a date to be agreed by the parties or determined by Honourable Court. The application was supported by affidavits made by Mr Thusini and Brig Gen Mduetywa. The annexures to Mr Thusini's affidavit included (as annexure FA2) a copy of Brig Gen Mduetywa's letter to Ms Radebe of 8 August 2021, i.e. annexure AA 14 hereto . . .

43. On Monday (Tuesday), 10 August 2021, at about 07h30, Adv Breitenbach SC sent to Ms Maughan the first accused's postponement application (annexure AA 22). In response to a request that we inform her once my and Ms Naicker's signed and commissioned affidavits had been filed, around 08h00 Adv Breitenbach, after checking with me, told her they would be filed shortly.

44. To the best of my knowledge, the first media article based on my affidavit of 9 August 2021 (annexure AA 19) and on the first accused postponement application (annexure AA 22) was the one published by Ms Maughan on News 24 later that morning (10 August 2021). . . As is apparent, it includes excerpts from Brig Gen Mduetywa's letter to Ms Radebe of 8 August 2021 (annexure AA14).'

[257] In reply to Mr Downer's allegations above, Mr Thusini in his replying affidavit stated that:

'In the context of the issues which are pertinent to these proceedings the mere fact that it turns out that it was the one member of the current prosecuting team namely, Adv Breitenbach SC and not directly Adv Downer SC who executed the leak, is neither here nor there. There is no solid line between the misconduct of Adv Downer SC which is the principal focus of the section 106 (1) (h) inquiry and the misconduct of the NPA itself, which is the focus of the section 106 (4).'

[258] The ambit of the complaint raised by Mr Zuma was then widened to also question 'the appointment and involvement of the two counsel who are in private practice namely Adv Trengove SC and Breitenbach SC who represent the State', presumably on a basis similar to the objection taken to the counsel for the State in *Porritt*. This is an issue that had not been raised before, to which there has been no opportunity to respond, and which accordingly will not be considered in this judgment.

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[259] The signed application for a postponement, and the affidavits thereto and the signed affidavit of Mr Downer relating to the adjournment, were filed with the court on the morning of 10 August 2021. The chronological sequence of the events culminating in that application has assumed significance.

[260] Mr Thusini's affidavit in the application for postponement was commissioned *ex facie* that document before a practicing attorney in Vryheid on 9 August 2021. The confirmatory affidavit of Brigadier General (Dr) Mdutywa, confirming the contents of the affidavit of Mr Thusini to which Brigadier General (Dr) Mdutywa's letter of 8 August 2021 was annexed, was attested, *ex facie* that affidavit, before a Commissioner of Oaths with the military police, on 8 August 2021. The official stamp of the Military Police, also reflects the date of attestation as '08-08-2021'. Mr Thusini's affidavit did not however exist in commissioned form on 8 August 2021.

[261] There has been no suggestion that Brigadier General (Dr) Mdutywa on 8 August 2021 was confirming the contents of an 'affidavit' other than the, at that stage, still unsigned affidavit of Mr Thusini, which was signed and attested the next day on 9 August 2021. As a Brigadier General in the South African National Defence Force he would, I assume, not sign a confirmatory affidavit confirming the contents of a non-existent affidavit, but would have intended to refer to the 'affidavit' (presumably the unsigned draft) of Mr Thusini, although not truly yet an affidavit, on 8 August 2021. There would be no, or little, purpose in Brigadier General (Dr) Mdutywa confirming the 'affidavit' of Mr Thusini other than for the medical aspects it contains, or would contain, including his letter of 8 August 2021.

[262] Mr Mpofo suggested from the bar that the date of attestation of the affidavit of Brigadier General (Dr) Mdutywa, was simply an 'error.' I am, with respect, unable to, and cannot on what is before me, accept that there was simply an error. The date of the 8th of August 2021 was inserted on Brigadier General (Dr) Mdutywa's affidavit twice: once in manuscript and then also in the form of the official date stamp of the military police. Brigadier General (Dr) Mdutywa would also, no doubt, have verified that his affidavit was



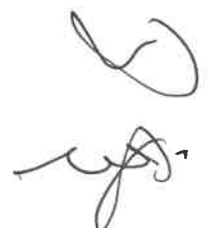
completed correctly before transmitting it to Mr Thusini for filing. The Monday, 9 August 2021, was a public holiday. The affidavits were subsequently filed with the court as the official affidavits in support of the application for a postponement of the hearing on 10 August 2021.

[263] The significance of this sequence lies not so much in Brigadier General (Dr) Mdutywa confirming the 'affidavit' of Mr Thusini when it was still only in draft form, but in him confirming the correctness of his medical report/letter which would form an annexure to the affidavit of Mr Thusini which was yet to be signed, on 8 August 2021, for it to be filed in court. The only inference is that the intention, at that point, was that the letter of 8 August 2021 would form part of the application for a postponement, pursuant to the terms of my directive, which would mean that it would become public when filed.¹³³ That would be inconsistent with the protestations that the letter was a confidential document, of which the confidentiality, if it in fact was confidential in the first place, was not waived.

[264] The letter had furthermore been disclosed to Mr Downer, Ms Naicker and the DPP of KZN, without any specific restrictions as regards confidentiality, by the Head of the Correctional Centre at Estcourt on 8 August 2021. The letter did not contain anything significantly confidential. On Mr Zuma's version, it was similar to a report previously produced before Judge D Pillay, which had been found to be lacking in particularity, and had culminated in a warrant for Mr Zuma's arrest being authorised by her. The circumstances relating to that event were obviously not dealt with as the allegation was only made in reply. Presumably, if the warrant was authorised unlawfully or improperly by Judge Pillay, being based on confidential information, then proceedings would have been launched to have it set aside. I could find no such application in the court file.

[265] The letter of Brigadier General (Dr) Mdutywa is vague and general in its terms and does not disclose any particularity, which could be said to amount to a violation of Mr Zuma's rights his rights to privacy. Specifically, it does not mention the medical condition

¹³³ Per Ponnar JA in *City of Cape Town v South African National Roads Authority Limited and others* [2015] ZASCA 58; 2015 (3) SA 386 (SCA); [2015] 2 All SA 517 (SCA).

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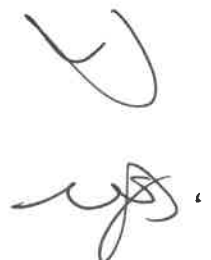
Mr Zuma suffers from. Mr Mpofu however submitted that it was unacceptable, in the spirit of uBuntu, for Mr Zuma's relatives to hear from press reports, and not from Mr Zuma personally, that he was suffering from a life threatening illness. The letter presumably would not record a diagnosis which the doctors had not shared with Mr Zuma previously, and which he could have shared with his family even before the letter was issued to the Department of Correctional Services. The doctors would not convey information regarding Mr Zuma's medical condition to the Department of Correctional Services without his authority, and, at least them having advised him of the details of his state of health, which were then recorded in the letter.

[266] Finally, the right to privacy, like most fundamental rights, except the right to life, is not an absolute right and is subject to limitations, having regard to what is reasonable and justifiable in an open and democratic society, based on human dignity, equality and freedom.¹³⁴ Competing rights and interests must also be considered. In the present enquiry, it is not only Mr Zuma's right to privacy that is at stake. As has been remarked earlier in this judgment, the constitutional court has held that fairness is not a one-way street. There are also the rights of members of the public, the proper administration of justice and the interests of justice generally, which must be considered in a prosecution where the medical condition of the accused is made an issue. These are all considerations, which a court will still have to consider once fully ventilated and after all medical reports relating to Mr Zuma's treatment, medical parole, and the like, have been produced, should the medical condition of Mr Zuma be or remain a material issue for determination in further legal proceedings. I am not persuaded that the disclosure of the contents of the letter constituted an actionable violation of Mr Zuma's rights.

[267] In the alternative, if it did, then Mr Zuma would have remedies he might pursue. In the context of the prosecution and Mr Downer's title to prosecute, it might, at best, amount to an irregularity. It bears repeating, as held in *Shaik and Others v NDPP*,¹³⁵ that while

¹³⁴ Section 36 of the Constitution. See generally in regard to the right to privacy, *Bernstein and others v Bester NNO and others* 1996 (2) SA 751 (CC), 1996 (4) BCLR 449 (CC).

¹³⁵ 2008 (1) SACR 1 (CC) para 44.



some irregularities may result in a failure of justice and an unfair trial, not every irregularity has that effect. The question is therefore, even assuming that it amounted to an irregularity, whether it was of the kind to render the trial unfair. I am not persuaded, on the evidence that has been placed before me, that it has affected the merits of the prosecution, and that Mr Downer has therefore been deprived of the title to prosecute and/or that he should be removed as a prosecutor. The merits of the prosecution stand apart from the events concerning Mr Zuma's medical condition.

[268] The request for a referral pursuant to s 41(6) of the NPA Act has been dealt with earlier.¹³⁶ That brings me to the final ground relied upon.

The unlawful attempted physical examination of Mr Zuma.

[269] The allegations by Mr Zuma in this regard proceed from an interpretation of the order granted by me on 10 August 2021. It relies particularly on some of the exchanges between counsel and myself in court before the order was granted and alleges that Mr Zuma was visited in breach thereof.

[270] The order envisaged that the medical report would be produced on 20 August 2021. Following the grant of that order Mr Thusini wrote to Mr Downer stating that should that be impossible, communication to the NPA would be made; that following consultations on 19 August 2021 and

'unforeseen major developments pertaining to Mr Zuma's health, as well as a recent procedure performed on him publicly announced by the Department of Correctional Services, it might not be possible to deliver the report within the scheduled period, and that if necessary, these delays will be explained in greater detail to the court during oral evidence.'

The letter concluded that the 'current indication' is that the report will be ready on or before 27 August 2021.

[271] Mr Downer responded on behalf of the State stating that the State did not accept the failure to comply with paragraph 2 of the court order, nor the reasons provided

¹³⁶ Para 238 to 240 above.

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106(1)(h) of the CPA, that does not deprive Mr Downer of the title to prosecute. In the alternative, and adopting a wider interpretation of the words 'title to prosecute', I am still not persuaded that Mr Downer lacks the title to prosecute or should be removed as prosecutor. On the evidence before me it has not been shown that Mr Zuma's rights to a constitutionally fair trial have been impaired, or that there is a real possibility that his rights will be impaired.

Order

[287] The following order is granted:

1. The special plea is dismissed.
2. The matter is directed to proceed to trial in respect of the not guilty pleas of Mr Zuma and Thales.
3. Paragraph 3 of the court order of 10 August 2021, as now clarified in paragraph 284 above, stands.

KOEN J

26 October 2021

A handwritten signature in black ink, appearing to be 'Koen J', located in the bottom right corner of the page.



A1

A1

PREAMBLE TO STATEMENT * AANHEF TOT VERKLARING

Station / Stasie: Pietermaritzburg CAS no / MAS no: 309 10 000

PERSONAL PARTICULARS * PERSOONLIKE BESONDERHEDE

Title / Titel: PRES Initials / Voorletters: JG Surname / Van: ZUMA

First names / Voornames: JACOB GEALE ZHLEKISA

Identity number / Identiteitsnommer: 4204125599080 Race / Ras: A Br BI W

Passport number / Paspoortnommer: [] Country of issue / Land van uitreiking: SA

Date of Birth / Geboortedatum: 12041942 Age / Ouderdom: 79 Gender / Geslag: M F

Nationality / Nasionaliteit: SA Citizenship / Burgerskap: South African

I am not a member of the SAPS with PERSAL no * Ek is lid/nie lid van die SAPD met PERSAL no []

RESIDENTIAL ADDRESS * WOONADRES

Street name / Straatnaam: KUANTAMALALA RESIDENCE

Building/farm/plot/place / Gebou/plaas/plot/plek: []

Suburb/Extension/Area / Voorstad/Uitbreiding/Gebied: []

Town/City / Dorp/Stad: NKANOLA Postal Code / Poskode: []

Telephone number / Telefoonnommer: Home / Huis Code: 010 No: 595-1055 Work / Werk Code: 011 No: 595-1055

Cellphone number / Sellulêre foonnommer: 0721377104 Fax / Faks Code: 086 No: 538-8718

ADDRESS-WORK/BUSINESS/INSTITUTION/ORGANISATION * ADRES--WERK/BESIGHEID/INSTANSIE/ORGANISASIE

Name of Institution/Organisation / Naam van Instansie/Organisasie: []

Street name / Straatnaam: KUANTAMALALA RESIDENCE

Building/farm/plot/place / Gebou/plaas/plot/plek: []

Suburb/Extension/Area / Voorstad/Uitbreiding/Gebied: NKANOLA, Kwa-Zulu-Natal

Town/City / Dorp/Stad: NKANOLA Postal Code / Poskode: []

Telephone number / Telefoonnommer: Home / Huis Code: 010 No: 595-1055 Work / Werk Code: 010 No: 595-1055

Cellphone number / Sellulêre foonnommer: 0721377104 Fax / Faks Code: 086 No: 538-8718

Would you like to receive information regarding this case via sms? / Wil u inligting in verband met die saak ontvang per sms? Yes / Ja No / Nee

CONTACT PERSON (IF APPLICABLE) * KONTAK PERSOON (INDIEN VAN TOEPASSING)

Title / Titel: MR Initials / Voorletters: M Surname / Van: NTANGA

Telephone number / Telefoonnommer: Home / Huis Code: 010 No: 595-1055 Work / Werk Code: 010 No: 595-1055

21-09-2021

Date/Datum

[Signature]
Signature/Handtekening

STATEMENT * VERKLARING

Station / Stasie: Pietermaritzburg

CAS no: 309
MAS no: 10 2021

The following particulars in respect of the offence / incident is supplied:
Die volgende besonderhede met betrekking tot die misdryf / voorval word verskaf:

PARTICULARS OF OFFENCE/INCIDENT * BESONDERHEDE VAN MISDRYF/VOORVAL

Date and time of offence/incident: 20210922 1200
Datum en tyd van misdryf/voorval: 20210922 1200
Period: Between / Tydperk: Tussen

Description of Offence/Incident:
Beskrywing van Misdryf/Voorval:

Method used/Entrance gained:
Metode gebruik/Toegang verkry: Failing to Keep Records

Type of instrument used:
Tipe instrument gebruik: Verbally

SCENE OF CRIME * TONEEL VAN MISDAAD

Between: Name of place / Tussen: Pleknaam: PIETERMARITZBURG HIGH COURT

and: Name of place / en: Pleknaam:

Street name / Straatnaam: Church Street

Building/farm/plot/place / Gebou/plaas/plot/plak:

Suburb/Extension/Area / Voorstad/Uitbreiding/Gebied:

Town/City / Dorp/Stad: Pietermaritzburg

Geographical block no / Geografiese blok no:
Postal Code / Poskode: 3201

Date/Datum: 2021/10/21

Signature/Handtekening

In a case of theft of a vehicle the statement must be continued on form SAPS 3M(c).
In a case of theft of a firearm the statement must be continued on form SAPS 3M(d).
In all other cases the statement must be continued on blank folio paper.

In die geval van diefstal van 'n motorvoertuig moet die verklaring op vorm SAPD 3M(c) voorgesit word.
In die geval van diefstal van 'n vuurwapen moet die verklaring op vorm SAPD 3M(d) voorgesit word.
In alle ander sake moet die verklaring op 'n blanke foliopapier voorgesit word.

[Handwritten signature]

AT THE PIETERMARITZBURG POLICE STATION

In the matter between

JACOB GEDLEYIHLEKISA ZUMA

Complainant

and

WILLIAM DOWNER SC

Accused No 1

SWORN STATEMENT IN SUPPORT OF CRIMINAL COMPLAINT

I, the undersigned

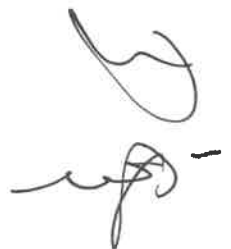
JACOB GEDLEYIHLEKISA ZUMA

do hereby make oath and state that

1. I am a major male person, the former president of the Republic of South Africa, residing at KwaNxamalala residence, Nkandla, KwaZulu-Natal.
2. The facts deposed to in this affidavit are, save where it is stated or where the context indicates the contrary, within my personal knowledge and to my belief true and correct.



1

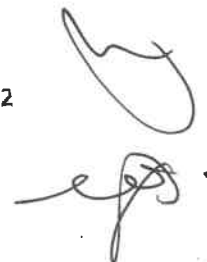


3. I am an accused person in the matter of the State v Zuma and Another which is enrolled in the Pietermaritzburg High Court under case number CCD 30/2018. In the course of my case being argued before the High Court, it became clear to me that there is evidence that criminal conduct has taken place in an attempt to manipulate my investigation and prosecution for unlawful purposes.

3.1. In a detailed affidavit deposed to on behalf of the NPA, by Mr Hofmeyr, the Deputy National Director of Prosecuting Authority, there is evidence that in the course of the investigation and of my prosecution under case number CCD 30/2018 information was given or crudely put, leaked to people who had nothing to do with the case or the investigation in contravention of the law. I attach a copy of the affidavit of Hofmeyr which details the evidence of criminality involved in the investigation and prosecution of my case as annexure "A".

3.2. It is clear that there has been criminal interference in the investigation by persons not authorised to conduct such investigations which include criminal involvement of foreign spies and illegal surveillance.

3.3. Former prosecutors, currently serving prosecutors, former investigators and current investigators are reported on oath by Mr Hofmeyr to have engaged in various conducts which when carefully considered amount to contravention of the National Prosecuting Authority Act, 32 of 1998 ("the NPA Act").



4. I am advised that:

4.1. section 41 (6) of the NPA Act provides that:

"notwithstanding any other law, no person shall without the permission of the National Director or a person authorised in writing by the National Director disclose to any other person:

- a. any information which came to his or her knowledge in the performance of his or her functions in terms of this Act or any other law;***
- b. the contents of any book or document or any other item in the possession of the prosecuting authority; or***
- c. the record of any evidence given at an investigation as contemplated in section 28."***

4.2. section 41(7) of the NPA Act provides that:

"Any person who contravenes subsection (6) shall be guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 15 years or to both such fine and such imprisonment."

5. I first became aware of these contraventions of the National Prosecuting Authority Act after various reports were prepared and produced by at least two independent investigations. The first being an investigation of the Joint Standing Committee on Intelligence on the so-called Browse Mole and the report of an investigation by a Judicial Commission of Inquiry headed by Justice Khampepe. Copies of both



documents, which are bulky, will be provided to the investigating team if so required.

6. This criminal interference in my case has not been investigated or reported by any law enforcement agency. Consistent with the pattern of leaks and criminal interference in the recent past, I learnt during the court proceedings in Pietermaritzburg that the Advocate Downer SC breached the aforementioned provision when he unlawfully handed a medical report involving me in an affidavit leaked to a Journalist, Karyn Maughan. I attach a copy of the affidavit as "B". Advocate Downer authorised the leaking of sensitive and private information obtained in the course and scope of his employment in breach of the aforementioned provision of the NPA Act. I understand that giving or leaking information that is obtained in the course and scope of work is a criminal offence under the NPA Act punishable by a severe sentence.

7. I therefore report and seek that a criminal case be opened and investigated by the police and law enforcement officers in relation to the conduct of Advocate WJ Downer SC, a Senior Deputy Director of Public Prosecutions in the NPA. I wish to extend my complaint of criminal wrongdoing to cover all other persons as reflected in the documents attached above who are either prosecutors and or investigators who have violated the provisions of the NPA Act and the Constitution.

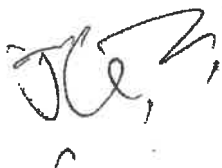


8. The conduct that I demand be investigated by the South African Police Service (SAPS) relates to the contravention of section 41 of the National Prosecuting Authority Act primarily but extend to other criminal activities, particularly those reflected in the affidavit of Mr Hofmeyr involving criminal interference in my prosecution by foreign spies with the assistance of local investigators and prosecutors. I believe that the interference of foreign spies contravened the law governing our intelligence services and would in that regard refer to the report of JSCI referred to above for further guidance.

9. I have no doubt that beyond the criminal conduct involving the leaking of confidential information to persons outside the NPA, the scope of criminal conduct is far wider and in the course of a diligent investigation, the SAPS will discover clear evidence showing the violations of section 41 by the prosecutors, investigators and other persons who are directly or indirectly involved in my case. The specific details of the criminal offences which, at this stage, I wish to report for criminal investigation and prosecution are:

Count 1

10. On or about 04 to 13 June 2008 Advocate WJ Downer SC unlawfully and in breach of section 41 of the NPA Act disclosed information concerning an investigation by the National Prosecuting Authority involving Mr Jacob Gedleyihlekisa Zuma to another person, namely Mr Sam Sole, a journalist who was at all material times employed by the Mail & Guardian.



Count 2

11. On or about 09 and 10 August 2021 Advocate WJ Downer SC authorised and sanctioned the disclosure by Advocate A Breitenbach SC of a confidential medical report person, to one News24 journalist Ms Karyn Maughan. The report had been initially disclosed in an affidavit signed by Advocate Downer himself on behalf of the National Prosecuting Authority in relation to a then pending application for the postponement of the criminal trial of Mr Jacob Gedleyihlekisa Zuma. The information came to the knowledge and into the possession of the prosecuting authority and members of its prosecuting team in the performance of their functions in terms of the NPA Act. The leaking of this medical report and information was done without the written permission of the National Director of Public Prosecution and therefore constituted a criminal violation of section 41 of the NPA Act.

Preliminary analysis

12. The admitted conduct of Advocate WJ Downer SC and his accomplices clearly contravened the provisions of section 41(6), read with 41(7) of the National Prosecuting Authority Act.
13. The criminal conduct set out in the affidavit of Hofmeyr also reports a number of criminal activities that were committed in violation of the law, for example possibly the Intelligence Act and ultimately the Constitution.



14. As can be observed from the annexures, the most prominent feature of this case is that the complaints are based on conduct which has already been admitted by the suspects under oath. The relevant investigations and decision whether or not to prosecute should therefore take a relatively shorter period of time than usual, more particularly given the national importance of the matter and the seriousness of the offences.
15. In aggravation of the criminal conduct referred to above, it also appears from the papers that the prosecuting team also authorised their doctor, a Professor Sarkin, to send his life partner to handle sensitive medical information without the necessary authorisation.
16. I am fully cognisant of the fact that the criminal conduct which I am reporting herein also forms part of totally separate and distinct ongoing proceedings in which I have raised a plea in the High Court sitting in Pietermaritzburg, in terms of section 106(1)(h) of the Criminal Procedure Act. This criminal complaint is a completely separate cause of action which must be pursued to bring the suspects to book and to cause them to account for their own criminal conduct, irrespective of the outcome of the said plea proceedings. This sentiment was also correctly expressed by the presiding Judge in the aforementioned ongoing criminal trial in which I am the accused person. At that point, my legal representatives merely sought, at my instruction, to place my intentions to lay the present criminal charges on the record, which was duly done.



17. The alleged conduct also forms part of separate investigations which are conducted by the President of the Republic of South Africa, Mr Cyril Ramaphosa, the Minister of Justice, Mr Ronald Lamola, and/or the Legal Practice Council. The relevant complaint letter written to President Ramaphosa and his response form part of the full papers in an application which I had brought to supplement my ^Plea in my criminal trial. The full application is attached hereto marked "C". 21/10/2021

JGZ.
KMS
2021-10-21

18. The purpose of bringing the information contained in this affidavit to the attention of the police is to initiate a process which must necessarily lead to the prosecution of the suspects, failing which a certificate to the contrary must be duly issued by the National Director of Public Prosecutions, who is incidentally the person ultimately responsible for the deployment of the suspects.

19. I am prepared to give further clarificatory statements under oath in support of the above should that be deemed necessary. The criminal violations set out in the attached documents should serve as a useful basis of determining the scope of criminal investigation that the SAPS may conduct in this complaint and the inclusion of further suspects and/or accomplices.

21/10/2021



JACOB GEDLEYIHLEKISA ZUMA



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 PETERMARIJBURG on this the 21 day of OCTOBER 2021, 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.


BRIG
K.M. SHQ,
COMMISSIONER OF OATHS

JCA



BD5

DIRECTOR OF PUBLIC PROSECUTIONS

KwaZulu-Natal Division

Tel: +27 33 845 4400 | dppmbhighcourt@npa.gov.za
286 Pietermaritz Street, Pietermaritzburg, 3200 | P/Bag X9008,
Pietermaritzburg, 3200, South Africa



National Prosecuting Authority
South Africa

CERTIFICATE IN TERMS OF SECTION 7 (2) OF ACT 51 OF 1977

I, ELAINE ZUNGU, duly appointed Director of Public Prosecutions, KwaZulu-Natal hereby certify that I have seen all the statements and affidavits on which the charge particularized below is based and that I decline to prosecute at the instance of the State.

SUSPECT:	WILLIAM JOHN DOWNER
COMPLAINANT:	JACOB GEDLEYIHLEKISA ZUMA
ALLEGED CRIME:	CONTRAVENTION OF SECTION 41(6) READ WITH SECTION 41 (7) OF THE NATIONAL PROSECUTING ACT 32 OF 1998
DATE OF THE ALLEGED CRIME:	09 AUGUST 2021
POLICE REFERENCE:	PMB CAS 309/10/21

This certificate is issued to **JACOB GEDLEYIHLEKISA ZUMA**

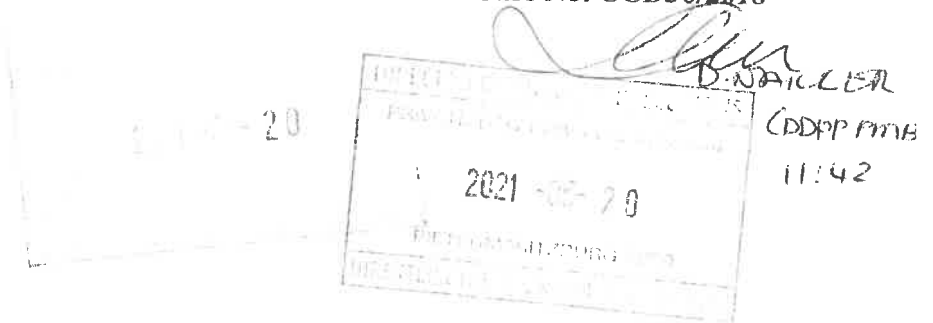
SIGNED at PIETERMARITZBURG on this 06 day of JUNE 2022.

**ADV. E. ZUNGU
DIRECTOR OF PUBLIC PROSECUTIONS
KWAZULU-NATAL**

ANNEXURE "JGZ1"

IN THE HIGH COURT OF SOUTH AFRICA
(KWAZULU-NATAL PROVINCIAL DIVISION,
PIETERMARITZBURG)

Case No: CCD30/2018



In the matter of:

THE STATE

and

JACOB GEDLEYIHLEKISA ZUMA

First Accused

THALES SOUTH AFRICA (PTY) LIMITED

Second Accused

**PLEA EXPLANATION IN TERMS OF SECTION 106(I)(h) AND 106(4)
OF THE CRIMINAL PROCEDURE ACT**

I, the undersigned

JACOB GEDLEYIHLEKISA ZUMA

do hereby state under oath that:

1. I am the former President of the Republic of South Africa residing at KwaNxamalala in Nkandla, Kwa-Zulu- Natal. Prior to that I served in various capacities in both the national

JGZ
S.A.
[Signature]

- 8.6. Mr Downer SC's denial that evidence of political interference which is admitted by the NPA demonstrates that he cannot be trusted to be an impartial and independent prosecutor, to act in good faith (which would include disclosing to the Court the evidence of unlawful political interference within his knowledge - that could hurt the state's case me.)
- 8.7. He has in my view, by failing to report admitted evidence of unlawful political interference in my prosecution, violated the oath or affirmation of prosecutors as prescribed by section 32(2)(a) of the NPA Act. In addition, Clause 24 of the United Nations Guidelines on the Role of Prosecutors places a positive duty on Mr Downer to report violations of prosecutorial guidelines to authorities for action, which he has not done in this case.
- 8.8. Such failure to report and act on unlawful interference in the prosecution processes involving my case is itself a specified offence or offence in terms of section 11 of the NPA Act as amended by Act 61 of 2000.

Media Leaks about my prosecution

- 8.9. The NPA was condemned for the extensive media leaks that were entirely damaging of my fair trial rights as they exposed me to unprecedented public attacks resulting in a public narrative that I am guilty of the allegations. I am aware of Mr Downer SC's intimate engagement with journalists from the transcripts of telephone records in which Mr Downer SC held meetings with investigative journalists who were writing very prejudicial articles about me. I attach a copy of the transcript showing Mr Downer SC making arrangements to meet Sam Sole

J.G.Z.
S.T.
-

of the Mail & Guardian as “JGZ4”. The full extent of his interaction with a journalist who churned out very damaging and defamatory stories about my prosecution is still unknown. This conduct was not properly investigated as no one appears to have been held liable for these damaging media leaks. There is prima facie evidence based on these transcripts of recorded conversations between Mr Downer and Sam Sole which give me an inescapable impression that Mr Downer gave Sam Sole information for some of the articles that he wrote. This conduct would be a contravention of section 41(6)(a) of the National Prosecuting Act 32 of 1998 in that it amounts to unlawfully disclosing information to another person that came to his knowledge in the performance of his functions in terms of the Act 32 of 1998 or a contravention of section 41(6)(c) of the National Prosecuting Act 32 of 1998 in that it amounts to unlawfully disclosing to an unauthorised person the record of evidence given at an investigation as contemplated in section 28(1) of Act 32 of 1998. This conduct is in addition, a contravention of clause 13(c) of the United Nations Guidelines on the Role of Prosecutors which places a positive duty on prosecutors to act with confidentiality.

- 8.10. In fact, in the report prepared by Justice Kampehe on the DSO, she made the following finding about media leaks – which I believe Mr Downer was also involved in. In para. 21.2 of the report, she found that the “improper media sensation associated with the investigation and/or arrests of some individuals resulting from the leaks in the DSO may open a practise that is inconsistent with the right to a fair trial guaranteed under section 35 of the Constitution.”

JGZ
S.T
ep

IN THE HIGH COURT OF SOUTH AFRICA
(KWAZULU-NATAL DIVISION, PIETERMARITZBURG)

CASE NO. : CCD30/2018

In the matter of:

THE STATE

and

JACOB GEDLEYIHLEKISA ZUMA
THALES SOUTH AFRICA (PTY) LIMITED
(as represented by Pierre-Marie Durand)

First Accused
Second Accused

**THE STATE'S ANSWERING AFFIDAVIT:
THE FIRST ACCUSED'S PLEA IN TERMS OF
SECTION 106(1)(h) AND (4) OF ACT 51 OF 1977**

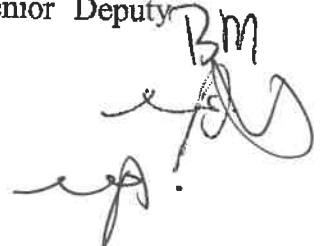
I, the undersigned,

WILLIAM JOHN DOWNER

do hereby make oath and say:

INTRODUCTION

1. I am an admitted advocate of the High Court of South Africa, a member of the National Prosecuting Authority ('the NPA') and a Senior Deputy



February 2009 by the first accused's legal representatives to the senior leadership of the NPA, including the then Acting NDPP Mr Mpshe, who in turn informed the prosecution team about them. On 6 April 2009 Mr Mpshe made them public when announcing his decision to discontinue the first accused's prosecution. There was accordingly no need for me to report them to anyone.

53.3. In this regard, I refer to paragraphs 360 to 364 of my answering affidavit in the first accused's application for a permanent stay of prosecution (annexure BD 5).

53.4. I also refer to paragraphs 83 and 84 of my affidavit of 2 June 2015 in the Spy Tapes matter (annexure BD 18) in which I confirmed we were all shocked about the contents of the recordings as they cast serious doubt on Mr McCarthy's integrity and I was reduced to tears.

54. Ad paragraphs 8.6 to 8.8:

I deny these paragraphs.

55. Ad paragraph 8.9:

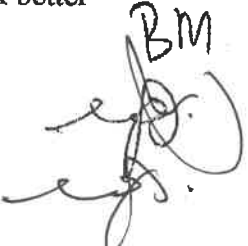
55.1. The issue of media leaks was also raised by the first accused in his stay of prosecution application.

55.2. In paragraph 719 of my answering affidavit in that application (annexure BD 5) I said I do not dispute that, from time to time, there have been leaks from within the NPA. These were inconsistent with

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NPA policy and the NPA Act. They were, however, not the result of a concerted NPA strategy in relation to the investigation leading to the current prosecution. On the contrary, as explained earlier in my answering affidavit, while the first accused was the incumbent Deputy President (which is when the bulk of the investigation work was done), the NPA took extraordinary measures to keep the fact that he was being investigated and what was being investigated out of the media.

- 55.3. As I also explained in paragraph 719 of my answering affidavit, when announcing his decision on 20 June 2005 that the first accused was to be charged, Mr Pikoli acknowledged that there had been leaks from within the NPA, and that such leaks were unacceptable.
- 55.4. In paragraph 775 of my answering affidavit I added that while I accept that on occasion there were leaks to the media from within the NPA, I deny they were a pervasive feature of this matter and that any members of the prosecution team or any of the NDPPs who took decisions concerning Zuma's prosecution were responsible.
- 55.5. As regards annexure JGZ 4, I point out that it is an incomplete and rather jumbled version of the intercepted telephone calls in the period 5 June 2008 to 2 July 2008 to me from Mr Sole of the *Mail & Guardian* newspaper, which were the only 'Spy Tapes' communications with a member of the media involving me. A better

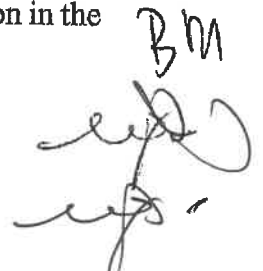
BM


but still incomplete version forms part of annexure JGZ 14. A complete version forms part of annexure SKA 26 of Mr Abrahams' answering affidavit in the permanent stay of prosecution proceedings. I attach the relevant excerpt from the latter annexure, marked 'BD 19'.

55.6. In paragraph 536.3 of my answering affidavit in the first accused's stay of prosecution application, in response to an allegation by him that '*in constant communication with members of the media, feeding them a narrative that sought to irreparably prejudice [the first accused] outside a trial*', which I denied, I pointed out that, as appears from the transcripts of my conversations with Mr Sole, most of them were entirely unrelated to the investigation or prosecution of the first accused. Moreover, as I submitted there, nothing I said (mainly in response to questions from Mr Sole) contravened the NPA Act or the NPA Prosecution Policy. The two questions relating to the investigation or prosecution of the first accused I answered concerned the workings of the International Co-operation in Criminal Matters Act 75 of 1996 ('ICCMA') and international requests for mutual legal assistance ('MLA').

55.7. I deny giving Mr Sole confidential information.

55.8. I point out that in paragraphs 15 to 19 of the State's supplementary heads of argument in the first accused's stay of prosecution application (annexure BD 12), counsel addressed an insinuation in the

BM


heads of argument of counsel for the first accused that I had leaked confidential information about the prosecution of him to Mr Sole.

55.9. As mentioned in paragraph 27 above, the Full Court did not deal with this issue and the first accused's other allegations concerning me and Mr Trengove because, at the hearing, the first accused's counsel expressly abandoned the attacks on us. I am taken aback that in support of his present special plea, which is signed by one of the senior counsel representing the first accused in the stay of prosecution application, the first accused has sought to resurrect this and the other criticisms of Mr Trengove and me (discussed below) regarding a public lecture each of us gave after Mr Mpshe had withdrawn the charges against the first accused.

56. **Ad paragraph 8.10:**

I again deny I was involved in media leaks.

57. **Ad paragraph 8.11:**

I deny this paragraph.

58. **Ad paragraph 8.12:**

58.1. I deny the first sentence.

58.2. I deny the second and third sentences.

BM
ep
ep

SM:HULLEY & ASSOCIATES TO:0313044646 2015/02/06 12:21:39 #4307 P.002/012

FROM:Hully Associates TO 0315847678 2015/02/05 16 25 05 #4097 P.002/012

MH4

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CONVERSATION 1

05/05/2008

Sam Sole // Billy Downer

Sam Sole	Calls Downer
B:	Hello Sam.
S:	Howzit Billy, you're not in Mauritius are you?
B:	No no, Anthony is.
S:	Can you talk?
B:	I'm busy but you can talk.
S:	You heard there was supposed to be some move this week or last week on Fana the and Minister stepped in?
B:	No on Fana, maybe some truth in that. Look you reported that we go ahead with the BAE investigation that is proceeding.
S:	And the Minister's involvement somehow?
B:	I cannot disclose that.
S:	Ok, alright I'll ask Tshall Cheers.
B:	Bye

CONVERSATION 2

13/06/2008

Sam Sole // Billy Downer

B:	Hello
S:	Billy Sam, can you talk?
B:	Hello Sam. Ya sure
S:	Listen we got pretty good information that the Germans are in the process of striking a deal with Thyssen in Germany.
B:	Right.
S:	Probably next week, or within the next two weeks. But they are negotiating at the moment and then probably going to plead guilty to a tax offense and the rest will go away. I suspect that will put page ----- on his the ----- SA side.

BM




DM:HULLEY & ASSOCIATES TO:0313044646 2015/02/06 12:21:46 #4307 P.003/012

FROM:Hully Associates TO:0315847678 2015/02/05 16:25:12 #4097 P.003/012

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B:	Not necessary, depending on the info they got.
S:	Ya, Ya Sure
B:	We've written to them and told them that we know this is going on.
S:	I was just gonna say, you need to extradite.
B:	Thanks, we got that info from Richard Young as well.
S:	He got it from us.
B:	Oh did he?
S:	Not for publication.
B:	The fact they do a deal doesn't mean that they won't give us any info that we might want. They for their own purpose do whatever they do.
S:	Oh ... Ok im trying to get some via Marcus, what is happening on their side.
B:	Would be nice if they would liase with us before they did a deal. That's Feature dusting on our DOJ.
S:	Ya, DOJ has a spanner in the works
B:	Everyone knows about MLA application they sitting on it and haven't done anything. Why has it been sent back with queries. Clearly processes triggered by application is 2 fold: (1) We help with their prosecution. (2) Inform us about crime in our country. in respect of the process DOJ has done fuck all.
S:	Stay to that effect for that effect. (unsure)

CONVERSATION 3

18/06/2008

B:	Hello
S:	Billy Sam,
B:	Morning, Afternoon.
S:	Can you talk. Did you see that how the Germans have withdrawn everything against Mr. Kupp.
B:	No, no I haven't seen.
S:	No evidence of criminology, proceeding with charges against former employees for fraud against Thyson Kupp, not connected to deal.
B:	Really?
S:	Withdrawn all request for mutual legal assistance etc.
B:	Good God. Wonder what went on there.

BM

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FROM:HULLEY & ASSOCIATES TO:0313044646 2015/02/06 12:21:53 #4307 P.004/012

FROM:Hully Associates TO:0315847678 2015/02/05 16:25 20 #4007 P.004/012

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S:	Yah
B:	It will be no thanks to our cooperation.
B:	We carrying on, we already requested them for info, the fact that they not asking us for info does not mean that we can't ask them for info.
S:	Ok In terms of our own investigation of that deal?
B:	It's a bit irritating because all we got are the reports of what they reported to have filed. We as an investigation team have never had insight into the content of what they allegedly revealed.
S:	But I know, I don't want to get you in shit, but we know, it was confirmed by Tshali's record that a formal investigation is underway. Can we say German investigation reopened on SA side.
B:	Can't be reopened because it was never closed.
S:	Ya sure, but its been up again.
B:	SAE new investigation has to be declared New terms have to be assigned. In respect of the Germans, the terms of our 2002 declaration of investigation, include whole of it for them, not to be declared, ongoing since 2001. But you can't quote me to say that.
S:	No, no, I'm not going to quote you at all.
B:	Say that ongoing investigation on SA side. In other words Germans may have dropped theirs but we haven't dropped ours, you can refer to the terms in the 2001 investigation, formal terms of reference included in there.
S:	I didn't know that. Listen we must sit down. Quite a lot of stuff that I can share with you. Where are you?
B:	Cape Town
S:	I am going to be in Cape Town for like a week at the end of the month. We can meet. There's quite a lot on Georgiadus that I can share with you.
B:	We can't just drop it?
S:	Is there anything that you can tell me about the Germans and the toing and froving between Germans and Ministry in terms of what clarification was sought from the Germans?
B:	I wish I could. You know more than me, I read this in the newspaper, I'm getting out info from Ministry.
S:	Can I report that we requested info from the Germans?
B:	No, no, we haven't done anything formal.
S:	Are you getting shit from the Minister's office in terms of that investigation as well, in terms of travel and approvals for the -----?
B:	We haven't gotten that far. Open investigation. You can draw your own conclusions from the fact that we have an open investigation include-----

BM

MM:HULLEY & ASSOCIATES TO:0313044648 2015/02/06 12:22:03 #4307 P.005/012

FROM:Hully Associates TO:0315847678 2015/02/06 16:26:29 #4097 P.006/012

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<p>S: B: S: B:</p>	<p>there the Minister apparently and the DG gets an a application which falls squarely within the terms of our declared investigation and yet we don't get insight into what is contained in that request. That was never forwarded to you? Never</p>
<p>B: S: B: S:</p>	<p>Remember that technically speaking Its quite a long complicated process because the request for mutual legal assistance is primarily and usually aimed at exactly that. They require information from us to further their investigation. But obviously if they asking for that information it is revealed then at the same time, there are offences which have been committed in our country and they give us in their request for information that we weren't party to, because it came from them, because it was in Germany. 2nd aim of mutual legal assistance, subsidiary aim, effect of MLA, is that if foreign country is appraised of crime committed in that foreign country.(I don't know whether the government appreciates that, is permissible and obviously a consequence of requesting MLA) unsure. You can't just say that we not satisfied with the Germans request and you know blah blah, we know that they have been crimes in their country. The mere fact that it seems that the crimes appeared in our country, what should normally happen is an internal investigation relating to crimes in our country the 2nd process is ignored. What is the legislation in which the whole thing happened? The one with Zuma?</p>
<p>B:</p>	<p>Internal Cooperation Criminal Matters Act.</p>
<p>S: B:</p>	<p>Incoming requests in terms of section 7 all the DG is to do, if done in terms of section 7, is to get ministers consent, send to magistrate, all magistrate can do is issue subpoenas. In terms of that whole process the investigation been carried in SA is very limited. People have been called in front of a magistrate and been asked questions. That subsidiary process of triggering an SA investigation is done as an exchange of info between the investigation agencies.</p>
<p>S:</p>	<p>That's another thing I wanted to ask you, all the decisions, this fight with Zuma, not everything has to take place in terms of the ICCMA, there are processes and practices that can be used for the exchange of info?</p>
<p>B:</p>	<p>Yes, the incoming request from other countries, in terms of the Act are very well suited for Section 7, where the offence was committed, in that another country and where a specific type of info, a statement from a person or whatever. But it's not suited for cross boarder international crime of huge magnitude. It's not suited for another person from a country to come to us and say well listen we want a statement from that person and this person.</p>

BM



TO: HULLY & ASSOCIATES TO:0313044646 2015/02/06 12:22:12 #4307 P.006/012

FROM: Hully Associates TO:0315847678 2015/02/06 16:25:30 #4097 P.006/012

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	There has to be a whole process. We need to do our own investigation before they tell us what they need to get from us. That preliminary process of those agencies communicating emailing, looking at documents, devising strategies and figuring out who's going to be section 204 witnesses. That process is devised from the ICCMA. You can't deal with it in terms of that act it doesn't work.
S:	ICCMA also doesn't work for search and seizure or does it?
B:	No it doesn't. There's an argument for outgoing search and seizure. Incoming search and seizure no provision for it. That was by design. Author tells you that they specifically left out search and seizure because there is provision in the criminal procedure Act for SS for a foreign country. Specially excluded because it has already been provided for. S30 of CPA — see ss, in SA/out SA
S:	Ok. The reason why I asked that I sent them questions on the foot dragging of the BAE thing and they not replying specifically. Saying that they sure whether the correct procedures are being followed. In terms of dealing with a sovereign case. But I wanted to just check.

CONVERSATION 4

18/06/2008

B:	Hi Sam
S:	Hi, can you hear alright
B:	Sorry I am just going around this mountain.
S:	Its fine if I lose you again I'll just call back. I wanted to check, remember when we reported on the initial British request, now that was, letter of request, I understand that since then they sent more than 1 MLA, they have followed up. Is it correct?
B:	When you get an incoming request it's not always that they specify in terms of what legislation they doing it. Usually they don't, because they don't know. 1 st formal request indeed sent to authorities, who then would not in consultation with the British we send it directly to us, as request for parallel investigation. It was still directed to DG and the correct panel.
S:	There has been a formal request for a joint investigation?
B:	Yeah but just avoid the terms joint investigation because the ministers hated it. That implies that we let them investigate our offences.

Bm
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FROM:HULLEY & ASSOCIATES TO:0313044646 2016/02/06 12:22:21 #4307 P.007/012

FROM:Hully Associates TO:0315847678 2016/02/06 16:25:46 #4097 P.007/012

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	What you want to use is the term parallel investigation. We investigate our offenses and they investigate their offense. We in contact all the time and we look at each others' information and we share the information formally to help each other and eventually that might lead to a formal request where in terms of section 7 we'll give them our information and they'll give us their information.
S:	What role does ministers and DG play in that?
B:	Nothing they don't play any role. Except, DG having received that request formally, forwards it back to us, as the British wanted. In terms of section 7 no provision for the DG to send it to us. All they can do is send it to a magistrate. He didn't do it in terms of the act. He didn't go to minister or magistrate.
S:	How are they being obstructed then not allowing to travel?
B:	They say it is illegal.
S:	They basically say we don't think we allowed to do this.
B:	They sent sep letters. They knew that DG didn't send it to us formally.
S:	I'm sure that person got into trouble.
B:	Be careful how you word it. Avoid sources close to us.

Sam sends Billy a copy of this article before it is released for publication.

CONVERSATION 5

19/06/2008

S:	Hi Billy
B:	Hi Sam
S:	I got your message. Can I read you more or less what we got.
B:	Okay.
S:	The Justice Minister and NPA are locked in a battle on the survival of the ARMS deal investigation, Justice Minister ----- accused of obstructing the scorpions fresh investigation into commission. *article attached to this transcript*
B:	Ya
S:	There's other bits and pieces
B:	Its explosive, I don't think it is helpful. When you say Senior NPA official are going to be angry, who's that? ...
S:	Oh well.
B:	I don't any of those things to come from me, some of the things seems to be first hand information. It must not come from me. They will ask who's talking to M & G.

BM
[Signature]

[Signature]

FROM: HULLY & ASSOCIATES TO: 0313044646 2015/02/06 12:22:29 #4307 P.008/012

FROM: Hully Associates TO: 0315847678 2015/02/05 16:25:57 #4097 P.008/012

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CONVERSATION 6

30/06/2008

B:	Hi
S:	Billy, Sam.
B:	Howzit?
S:	In Cape Town, you want get together and talk about the Germans?
B:	Yes, okay. Where are you now?
S:	Water Front.
B:	Come up to my office now or whenever suits you.
S:	Ya, that's a possibility. How are you placed tomorrow?
B:	Tomorrow should be fine.
S:	Will confirm.
B:	Bye.

CONVERSATION 7

30/06/2008

S:	Billy, Sam.
B:	Hi Sam.
S:	We can come now, we at the water front, where are you?
B:	At the office in town.
S:	Where about?
B:	Up from High Court. Looking at Signal Hill.
S:	Be there in 30 minutes
B:	Cheers.

BM


FROM: HULLEY & ASSOCIATES TO: 0313044646 2015/02/06 12:22:35 #4307 P.009/012

FROM: Hulley Associates TO: 0315847678 2015/02/05 16:28:03 #4097 P.009/012

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CONVERSATION 8

2/07/2008

S:	Hi
B:	Hi
S:	I'm in Cape Town, can we meet in the evening?
B:	Good reason why we cannot meet. Is Nick around?
S:	Thanks
B:	Hired car in Johannesburg, M&G premises, ARMS deal documents, car removed, with documents and suitcase.

Bm



**IN THE HIGH COURT OF SOUTH AFRICA
(KWAZULU-NATAL PROVINCIAL DIVISION, PIETERMARITZBURG)**

Case No: CCD30/2018

In the matter of:

THE STATE

and

JACOB GEDLEYIHLEKISA ZUMA

First Accused

THALES SOUTH AFRICA (PTY) LIMITED

Second Accused

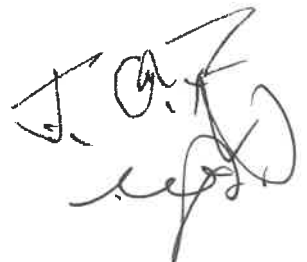
**REPLYING AFFIDAVIT:
PLEA IN TERMS OF SECTION 106(1)(h) AND 106(4) OF
THE CRIMINAL PROCEDURE ACT 51 OF 1977**

I, the undersigned

JACOB GEDLEYIHLEKISA ZUMA

do hereby state under oath that:

1. I am the former President of the Republic of South Africa residing at Kwa-Nxamalala in Nkandla, Kwa-Zulu- Natal. Prior to that I served in various capacities in both the national and provincial government. Prior to that I served in various positions in my political party, the African National Congress ("ANC"), including Deputy Secretary-General, Chairperson and President.
2. I am the first accused in this matter and as such, I am authorised to depose to this affidavit in support of my plea made in terms of section 106(1)(h) of the Criminal Procedure Act No. 51 of 1977 ("CPA").

T.P. 

proceedings as a whole, the above objections will be raised to sustain the necessary acquittal decision sought by me.

DOWNER AND THE MEDIA

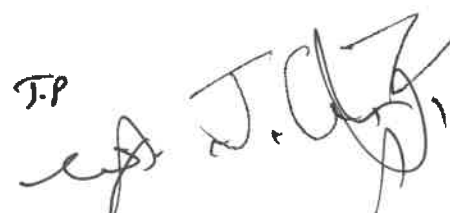
37. Mr Downer denies that he leaked information relating to my prosecution and the related investigations to the media. There is no doubt that Ngcuka leaked information to the media. There is no doubt that the NPA was rightly concerned about media leaks with the result that it commissioned an investigation into that practice. There is also no doubt that Mr Downer regularly held private meetings with Sam Sole of the Mail and Guardian to discuss the investigations and my prosecution. His denial of this misconduct is inconsistent with the proven facts.
38. However, what is clear is that Sam Sole has not denied that he collaborated with and had discussions with Mr Downer about my prosecutions. In a High Court judgment that will be referred to at the hearing of this matter, Sam Sole recounted his undisputed first-hand experience of the abuse of the Regulation of Interception of Communication Act 70 of 2002 ("RICA") by state authorities. In 2008 he suspected that his communications were being monitored and intercepted. In 2009 he took steps to obtain full disclosure of the details relating to the monitoring and interception of his communications from the Office of the Inspector-General of Intelligence. These efforts were fruitless because – as he was told in a letter – the Inspector-General had found the National Intelligence Agency ("NIA") and the crime intelligence division of the police not to be guilty of any wrongdoing. The letter continued that, as RICA prohibits disclosure of information relating to surveillance, Sam Sole could not be furnished with the information. Sam Sole was thus left in the dark as to whether his communications had in fact been intercepted and, if so,

J.P



what the basis for the interception was.

39. The judgment will be referred to at the hearing of this application but suffice to state that Mr Downer's denial that he leaked critical information on my investigation is without any merit. For that reason alone, Mr Downer should be removed. He knows that leaking information to the media on NPA investigations and prosecution is a criminal offence that undermines the integrity of the NPA's processes and the public's confidence in the system of justice. Once more his denial is a cover up intended to extricate him from the unenviable position that he finds himself with this removal plea.
40. Criminal conduct and prosecutorial abuse exist in that Mr Downer was disclosing to unauthorised persons details of my prosecution case.
41. In Mr Downer's case, it is a combination of publicity and other prejudicial factors which lead to circumstances so unfair that his removal must result in the dismissal of the case. His role in grooming a journalist and offering to discuss my prosecution with that journalist, his offer to read the written draft article by the journalist and his agreement to feed the journalist with information obtained exclusively from the prosecutions' files ineluctably point to a prosecution hell-bent on using unfair trial tactics and attempting desperately to generate unfair negative publicity to my prejudice.
42. Another ground is the lack of transparency and disclosure on the part of the NPA in respect of the criminal activities of both Messrs McCarthy and Ngcuka. Mr Downer is actively involved in an effort to conceal, downplay and make apologies for Mr Ngcuka's involvement in the prosecutions many years after he

J.P.


resigned from the NPA and at the time when he sought to ensure that his wife beat 'Zuma' in the competitive election to become the President of the country. Mr Downer has also acquiesced in, approved and condoned the conduct of Mr McCarthy in that he has not ordered a full investigation of the said clear criminal activities, he continues to use Mr McCarthy's affidavits and evidence to bolster the NPA's case, in addition to allowing Mr Ngcuka to escape prosecution for interfering with the Zuma prosecution in violation of the NPA Act.

43. In this case Mr Downer must be directed make full and complete disclosure of investigations conducted in regard to the interference of foreign intelligence operatives in my prosecution.
44. The political interference by CIA agents and by both Messrs McCarthy and Ngcuka is a form of gross prosecutorial abuse that occurred during the investigation stage of the case. Downer's attempt to cover up this self-evidently serious breach of the law by offering incoherent explanation intended to induce a sense of believability in his feigned innocence is as unlawful as the NPA's failure to act against these nefarious and criminal activities in order to protect the rule of law, the constitutional and moral authority and standing of the NPA and public confidence in its intolerance for crime. The conduct of Mr Downer disqualifies him. He cannot be handed the responsibility of presenting evidence against me in a lawful criminal trial. No one under him can do so. The failure of the NPA to safeguard the integrity of its own prosecution and investigative processes involving me justifies an order of acquittal- for there is no legal basis on which Downer and the NPA should be allowed to present evidence against me in a criminal trial.
45. Misconduct and criminal acts committed in connection with and by persons

T.P.


intimately involved in the criminal justice system ought to invoke the Court's serious censure and complete rejection. The Court is being asked in terms of section 106(4) to acquit me because Downer is too tainted to hold and exercise the title to prosecute me lawfully. The State should not be a party to the abuse committed by both Messrs McCarthy and Ngcuka, or any other private parties that participated in the discussion of the Zuma case as heard on the "Spy Tapes."

EVIDENTIARY HEARING ON PROSECUTORIAL MISCONDUCT PRIOR TO THE TRIAL ITSELF ON THE MERITS IS NECESSARY

46. Mr Downer and the NPA have relied on perjured testimony and/or evidence of persons who have committed criminal offences. Mr McCarthy's evidence is perjured testimony for it can never be contended that his criminal abuse of the prosecutorial position – which Mr Downer is fully aware of – reflects the truth of what he actually did. I intend to contest the veracity of his evidence by way of cross-examination. In any event, the NPA's reliance on his evidence under these circumstances is a telling sign that it condones criminal abuse of its prosecutorial powers by its members.

Ngcuka committed a crime by interfering and directing my criminal prosecution when he was not authorised to do so

47. To the knowledge of the NPA and Mr Downer, Mr Ngcuka's involvement in directing the prosecution when he was not lawfully entitled to do so constitutes a crime for which the NPA should have charged him by now. Despite having committed a crime in relation to my prosecution, the NPA and Mr Downer continue to rely on the evidence of a criminal to pursue my prosecution.

T.P

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BD10

GENERAL EXPLANATORY NOTE:

[] Words in bold type square brackets indicate proposed omissions.

____ Words underlined with a solid line indicate proposed insertions.

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A. PERFORMANCE OF OTHER PAID WORK

1. No member of the Prosecuting Authority shall perform or engage to perform remunerative work outside his or her employment without authorisation of the National Director.
2. Any member of the Prosecuting Authority who intends to do such work should apply in writing and submit his or her motivated application to the relevant DPP or National Director as the case may be, stating—
 - (a) why the performance of remunerative work by the member will not lead to a conflict of interests;
 - (b) why the member's productivity will not be affected;
 - (c) why the professional image of the NPA and the Department of Justice will not suffer any harm;
 - (d) when such work is to be performed and whether it can be performed entirely outside the prescribed hours of attendance;
 - (e) whether the work would involve the use of official facilities; and
 - (f) whether the work will contribute to or enhance the performance of official duties.
3. An application for authorisation to perform remunerative work outside the service will be considered with due regard to—
 - (a) the staff position and state of work in the office where the applicant is based;
 - (b) the general availability of other persons outside the NPA to do the kind of work in question; and
 - (c) the nature and extent of the work and its relation to the applicant's official job description.
4. Notwithstanding the above provisions, unpaid work performed by members of the Prosecuting Authority who serve in a part time capacity on statutory bodies, corporations and other organizations, by virtue of their office or accepted practice, will not be affected.

B. MEDIA STATEMENTS AND PUBLIC COMMUNICATIONS

1. Prosecutors should refrain from making inappropriate media statements, public communications or comments.
2. Deputy Directors and Senior Public Prosecutors may act as spokespersons for the NPA on matters pertaining to prosecution policy or any criminal prosecution.
3. If any other member of the NPA is required to make a statement to the media,

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comment in public or deliver a public address, the authorisation of the DPP must be obtained.

4. The purpose of responding to media or public inquiries is to assist the public in understanding the nature and course of criminal proceedings and yet not prejudice the parties before the court who cannot defend themselves against public comment.
5. The information or comment provided by a spokesperson of the NPA should be provided subject to legal prohibitions and be factually correct.

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Guidelines on the Role of Prosecutors *3

Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

Whereas in the Charter of the United Nations the peoples of the world affirm, *inter alia*, their determination to establish conditions under which justice can be maintained, and proclaim as one of their purposes the achievement of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion.

Whereas the Universal Declaration of Human Rights enshrines the principles of equality before the law, the presumption of innocence and the right to a fair and public hearing by an independent and impartial tribunal.

Whereas frequently there still exists a gap between the vision underlying those principles and the actual situation.

Whereas the organization and administration of justice in every country should be inspired by those principles, and efforts undertaken to translate them fully into reality.

Whereas prosecutors play a crucial role in the administration of justice, and rules concerning the performance of their important responsibilities should promote their respect for and compliance with the above-mentioned principles, thus contributing to fair and equitable criminal justice and the effective protection of citizens against crime.

Whereas it is essential to ensure that prosecutors possess the professional qualifications required for the accomplishment of their functions, through improved methods of recruitment and legal and professional training, and through the provision of all necessary means for the proper performance of their role in combating criminality, particularly in its new forms and dimensions.

Whereas the General Assembly, by its resolution 34/169 of 17 December 1979, adopted the Code of Conduct for Law Enforcement Officials, on the recommendation of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

Whereas in resolution 16 of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Committee on Crime Prevention and Control was called upon to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors.

Whereas the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted the Basic Principles on the Independence of the Judiciary, subsequently endorsed by the General Assembly in its resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

Whereas the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recommends measures to be taken at the international and national levels to improve access to justice and fair treatment, restitution, compensation and assistance for victims of crime.

Whereas, in resolution 7 of the Seventh Congress the Committee was called upon to consider the need for guidelines relating, *inter alia*, to the selection, professional training and status of prosecutors, their expected tasks and conduct, means to enhance their contribution to the smooth functioning of the criminal justice system and their cooperation with the police, the scope of their discretionary powers, and their role in criminal proceedings, and to report thereon to future United Nations congresses.

The Guidelines set forth below, which have been formulated to assist Member States in their tasks of securing and promoting the effectiveness, impartiality and fairness of prosecutors in criminal proceedings, should be respected and taken into account by Governments within the framework of their national legislation and practice, and should be brought to the attention of prosecutors, as well as other persons, such as judges, lawyers, members of the executive and the legislature and the public in general. The present Guidelines have been formulated principally with public prosecutors in mind, but they apply equally, as appropriate, to prosecutors appointed on an *ad hoc* basis.

QUALIFICATIONS, SELECTION AND TRAINING

1. Persons selected as prosecutors shall be individuals of integrity and ability, with appropriate training and qualifications.
2. States shall ensure that:
 - (a) Selection criteria for prosecutors embody safeguards against appointments based on partiality or prejudice, excluding any discrimination against a person on the grounds of race, colour, sex, language, religion, political or other opinion, national, social or ethnic origin, property, birth, economic or other status, except that it shall not be considered discriminatory to require a candidate for prosecutorial office to be a national of the country concerned;
 - (b) Prosecutors have appropriate education and training and should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by national and international law.

STATUS AND CONDITIONS OF SERVICE

3. Prosecutors, as essential agents of the administration of justice, shall at all times maintain the honour and dignity of their profession.
4. States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.
5. Prosecutors and their families shall be physically protected by the authorities when their personal safety is threatened as a result of the discharge of prosecutorial functions.
6. Reasonable conditions of service of prosecutors, adequate remuneration and, where applicable, tenure, pension and age of retirement shall be set out by law or published rules or regulations.
7. Promotion of prosecutors, wherever such a system exists, shall be based on objective factors, in particular professional qualifications, ability, integrity and experience, and decided upon in accordance with fair and impartial procedures.

FREEDOM OF EXPRESSION AND ASSOCIATION

8. Prosecutors like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the

promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional disadvantage by reason of their lawful action or their membership in a lawful organization. In exercising these rights, prosecutors shall always conduct themselves in accordance with the law and the recognized standards and ethics of their profession.

9. Prosecutors shall be free to form and join professional associations or other organizations to represent their interests, to promote their professional training and to protect their status.

ROLE IN CRIMINAL PROCEEDINGS

10. The office of prosecutors shall be strictly separated from judicial functions.

11. Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.

12. Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.

13. In the performance of their duties, prosecutors shall:

- (a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination;
- (b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;
- (c) Keep matters in their possession confidential, unless the performance of duty or the needs of justice require otherwise;
- (d) Consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

14. Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.

15. Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.

16. When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.

DISCRETIONARY FUNCTIONS

17. In countries where prosecutors are vested with discretionary functions, the law or published rules or regulations shall provide guidelines to enhance fairness and consistency of approach in taking decisions in the prosecution process, including institution or waiver of prosecution.

ALTERNATIVES TO PROSECUTION

18. In accordance with national law, prosecutors shall give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally, or diverting criminal cases from the formal justice system, with full respect for the rights of suspect(s) and the victim(s). For this purpose, States should fully explore the possibility of adopting diversion schemes not only to alleviate excessive court loads, but also to avoid the stigmatization of pre-trial detention, indictment and conviction, as well as the possible adverse effects of imprisonment.

19. In countries where prosecutors are vested with discretionary functions as to the decision whether or not to prosecute a juvenile, special consideration shall be given to the nature and gravity of the offence, protection of society and the personality and background of the juvenile. In making that decision, prosecutors shall particularly consider available alternatives to prosecution under the relevant juvenile justice laws and procedures. Prosecutors shall use their best efforts to take prosecutory action against juveniles only to the extent strictly necessary.

RELATIONS WITH OTHER GOVERNMENT AGENCIES OR INSTITUTIONS

20. In order to ensure the fairness and effectiveness of prosecution, prosecutors shall strive to cooperate with the police, the courts, the legal profession, public defenders and other government agencies or institutions.

DISCIPLINARY PROCEEDINGS

21. Disciplinary offences of prosecutors shall be based on law or lawful regulations. Complaints against prosecutors which allege that they acted in a manner clearly out of the range of professional standards shall be processed expeditiously and fairly under appropriate procedures. Prosecutors shall have the right to a fair hearing. The decision shall be subject to independent review.

22. Disciplinary proceedings against prosecutors shall guarantee an objective evaluation and decision. They shall be determined in accordance with the law, the code of professional conduct and other established standards and ethics and in the light of the present Guidelines.

OBSERVANCE OF THE GUIDELINES

23. Prosecutors shall respect the present Guidelines. They shall also, to the best of their capability, prevent and actively oppose any violations thereof.

24. Prosecutors who have reason to believe that a violation of the present Guidelines has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with

BD12

From: B M Thusini [mailto:thusini@thusinilaw.co.za]
Sent: Monday, August 9, 2021 9:07 PM
To: E Griffin <EGriffin@judiciary.org.za>; Billy Downer (WJ) <Bwjdowner@npa.gov.za>; 'Dunstan-Smith, Cameron' <Cameron.Dunstan-Smith@hsf.com>
Cc: Pavi Indrajith <pavi.indrajith@gmail.com>
Subject: STATE v.s JG ZUMA & ANOTHER CCD30/2018

SIRS

Herewith is 1st Accused Notice of Application for condonation, BM Thusini's affidavit and its annexures as well as that of Brigadier General M Z Mduywa for your attention. our correspondent will file same tomorrow in court.

Kind regards

Mondli Thusini

B.M.THUSINI INC.

(REG. NO: 2014/120830/21)

ATTORNEYS AT LAW

134 Mark Street
Vryheid
3100

Phone: (034) 980 9482
Fax: (034) 980 9483

P.O. Box 2104
Vryheid
3100

e-mail: thusini@thusinilaw.co.za

Disclaimer

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BD13

**IN THE HIGH COURT OF SOUTH AFRICA
(KWAZULU-NATAL PROVINCIAL DIVISION,
PIETERMARITZBURG)**

Case No: CCD30/2018

In the matter of:

THE STATE

And

JACOB GEDLEYIHLEKISA ZUMA

First Accused

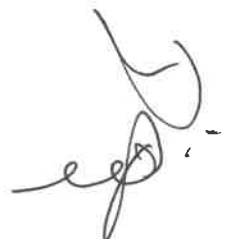
THALES SOUTH AFRICA (PTY) LIMITED

Second Accused

NOTICE OF APPLICATION

TAKE NOTICE THAT the First Accused will make an application at the above Honourable Court on 10 August 2021 at 10h00 or as soon thereafter as the matter may be heard for an order in the following terms:

1. The trial and all other related proceedings between the State and Jacob Gedleyihlekisa Zuma and Thales South Africa (Pty) Ltd are adjourned in terms of Section 168 of the Criminal Procedure Act 51 of 1977 to a date agreed upon by the parties or determined by this Honourable Court.



TAKE FURTHER NOTICE THAT the affidavit of **BETHUEL MONDLI THUSINI** and its supporting annexures as well as that of **BRIGADIER GENERAL MCEBISI ZUKILE DUTYWA** will be used in support of this application.

DATED AT VRYHEID ON THIS 10th DAY OF AUGUST 2021



ACCUSED 1'S ATTORNEY

BM THUSINI INC

134 MARK STREET

VRYHEID

3100

L/LINE: 034 9809483

EMAIL: thusini@thusinilaw.co.za

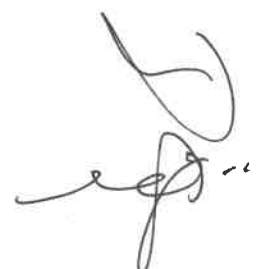
c/o

PRANESH INDRAJITH ATTORNEYS

41 LAHORE ROAD

RAISETHORPE

PIETERMARITZBURG



**IN THE HIGH COURT OF SOUTH AFRICA
(KWAZULU-NATAL PROVINCIAL DIVISION,
PIETERMARITZBURG)**

Case No: CCD30/2018

In the matter of:

THE STATE

and

JACOB GEDLEYIHLEKISA ZUMA

First Accused

THALES SOUTH AFRICA (PTY) LIMITED

Second Accused

FOUNDING AFFIDAVIT

I, the undersigned

BETHUEL MONDLI THUSINI

do hereby state under oath that:

1. I am a major male, a practicing attorney under the name BM THUSINI INC situated at 34 Mark Street, Vryheid, Kwa Zulu Natal.
2. The facts deposed to in this affidavit are within my personal knowledge, save for where the context indicates otherwise, are to the best of my knowledge true and correct.


B.M.I
B.P.

3. I am the attorney of record for the First Accused and by virtue of such appointment, am duly authorized to depose to this affidavit in the context of the purpose of this application.

PURPOSE OF APPLICATION

4. The purpose of this application is to seek a postponement of the hearing of the Plea in terms Section 106(1)(h) of the Criminal Procedure Act 51 of 1977 that was set down for hearing before the above Honourable Court on 10 August 2021.
5. The duration of the postponement, as per mutual agreement between the State and the legal representatives to of the Second Accused, is anticipated and intended to be about two weeks subject to the availability of the presiding Judge and counsel on all sides on the nominated future dates.
6. It is reasonably anticipated that:
 - 6.1. As at the time of the hearing of this application the next hearing date will have been mutually agreed between all the interested parties; and
 - 6.2. The application will be moved on an unopposed basis.

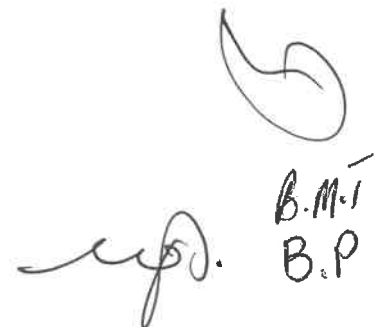
BACKGROUND FACTS TO APPLICATION

7. On 20 July 2021, the above matter was adjourned to 10 to 13 August 2021 for the hearing and adjudication of the First Accused's Plea in terms Section 106(1)(h) of the Criminal Procedure Act 51 of 1977.



Handwritten signature and initials. The signature is a cursive scribble. To its right, there are two lines of initials: "B.M.T" and "B.P".

8. A directive (FA1) issued by the Honourable Koen J on 4 August 2021, directed that the hearing of 10 to 13 August 2021 was to proceed in open court and not virtually, with the First Accused physically present in court.
9. It is common cause that the First Accused is currently serving an imprisonment sentence and is incarcerated at the Estcourt Correctional Centre.
10. The First Accused is by virtue of the imprisonment sentence under the direct care and control of the Department of Correctional Services but his medical support remains under the auspices of the Department of Defence's Military Health Services as a former President of the Republic.
11. On 6 August 2021, the First Accused was admitted to hospital to undergo extensive medical evaluation and care. I annex a letter (FA2) from Brigadier General (Dr) MZ Mduywa (General Officer Commanding Area Health Formation) of the SA Military Health Service dated 8 August 2021 addressed to the Head of the Center (Estcourt Correctional Center) wherein a fuller context of the First Accused's hospitalization is explained.
12. Following a consultation between the legal representatives of the First Accused and the medical team attending to the First Accused on the weekend of 7 August 2021, it became clear that:
 - 12.1. The First Accused was not in a position to be discharged from hospital for purposes of attending the trial on 10 August 2021.



Handwritten signature and initials: B.M.T. B.P.

- 12.2. The medical team attending to the First Accused had not completed their medical processes to pronounce with certainty on their prognosis of the First Accused's health.
13. Discussions through correspondence and telephonically that subsequently ensued between the representatives of the First Accused and the State culminated in a mutual agreement between the parties wherein the State consented to the postponement of the hearing. I annex a letter (FA3) addressed to lead counsel for the First Accused, Mpofo SC, from the Director of Public Prosecutions Kwa Zulu Natal dated 8 August 2021 wherein the details and terms of the State's agreement to the postponement are fully detailed.
14. Save as supplemented above, I am in agreement with the factual outline contained in the explanatory affidavit filed by Advocate William Downer SC on behalf of the National Prosecution Authority.
15. In summary, the parties have agreed that:
- 15.1. The parties shall request that the proceedings of 10 August 2021 be held virtually.
- 15.2. The First Accused shall on 10 August 2021, apply for a postponement of the proceedings to a date within the following two weeks be arranged with the presiding officer.
- 15.3. The Application is to be supported by an affidavit of the medical practitioner treating the First Accused.



B.M.J
B.P

15.4. If the First Accused is to apply for a further postponement thereafter, such application is to be supported by viva voce evidence of the medical practitioner treating the First Accused.

MEDICAL TREATMENT OF THE FIRST ACCUSED

16. I annex a confirmatory affidavit (FA4) of Brigadier General (Dr) MZ Mduywa confirming his authorship of the above mentioned letter and his willingness to assist this Honourable Court in whatever manner deemed necessary.

CONCLUSION

17. In light of the fact that the application for postponement is not opposed and has been mutually agreed to by all parties, the above Honourable Court is humbly requested to grant such postponement after hearing and considering additional oral submissions of counsel from all sides on the date of the hearing.



BETHUEL MONDLI THUSINI

I certify that:

- 1. the deponent acknowledged to me that:
 - 1.1 he/she knows and understands the contents of this declaration;
 - 1.2 he/she has no objection to taking the prescribed oath;
 - 1.3 he/she considers the prescribed oath to be binding on his/her conscience;



2. the deponent thereafter uttered the words, "I swear that the contents of this declaration are true, so help me God";
3. the deponent signed this declaration in my presence at Vryheid on this 09 day of **AUGUST 2021**.

BAJ!

COMMISSIONER OF OATHS

Practising Attorney
KwaZulu-Natal
202 Mark Street, Vryheid, 3100






FA1

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

Case no: CCD30/2018

In the matter between:

THE STATE

and

JACOB GEDLEYIHLEKISA ZUMA

FIRST ACCUSED

THALES SOUTH AFRICA (PTY) LTD

SECOND ACCUSED

DIRECTIVE DATED 4 AUGUST 2021

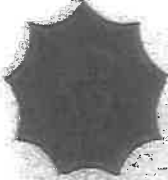
Koen J

1. The hearing of the plea in terms of s106(1)(h) of the Criminal Procedure Act 51 of 1977 set down from 10 August 2021, shall proceed in open court at the High Court in Pietermaritzburg.
2. The currently applicable Disaster Management (Covid) regulations, particularly those regarding the wearing of face masks, maintaining social distancing, and the restriction on the number of attendees at indoor venues, must at all times be adhered to strictly.
3. The directive previously issued on 15 July 2021 is hereby revoked.
4. This directive is subject to amendment at any stage should circumstances arise which make it desirable to do so.

JUDGE P. A. KOEN

[Handwritten signature] - BM-1
B.P

MEDICAL CONFIDENTIAL



sa military health service

FA2

Department of Defence
REPUBLIC OF SOUTH AFRICA

Telephone: (012) 671 5354
Facsimile: (012) 671 5257
SSN: 812 5354
Enquiries: Brig Gen (Dr) M.Z. Mduywa

Department of Defence
Area Military Health Formation
Private Bag X102
Lyttelton
0046
08 August 2021

Head of the Center,
Escourt Correctional Center
Department of Correctional Services
Escourt

Dear Sir

MEDICAL SUPPORT TO THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA AND FORMER PRESIDENTS

- The above matter refers.
- The South African National Defence Force is responsible for medical support to the current President of the Republic of South Africa, the former Presidents of the Republic and the Deputy Presidents of the Republic of South Africa through the office of the Surgeon General who is the Surgeon General of the South African National Defence Force who commands the Presidential Medical Unit situated at Bryntirion Estate (Government Complex).
- The Former President Jacob Gedleyihlekisa Zuma has been under the care of the unit since he was appointed the Deputy President of the Republic of South Africa in 1999 and the health care is continuous. On 28 November 2020, the President was put under active care and support after he suffered a traumatic injury.
- This is to inform you that Mr Zuma has been admitted to hospital as of the 06 August 2021. He is undergoing extensive medical evaluation and care as a result of his condition that needed an extensive emergency procedure that has been delayed for 18 months due to compounding legal matters and recent incarceration and cannot be delayed any further as it carries a significant risk to his life. The medical team is actively monitoring his progress and will inform you soon as to the prognosis and outcome thereof through a medical report.
- We trust that the court processes will accommodate this urgent health program such that we can be able to work swiftly to restore his health. The minimum proposed period of care is six months during which periodic reports will be communicated to advise on possible availability of any further engagements on your end.
- We further appeal that you treat this information with the confidentiality it deserves.


 GENERAL OFFICER COMMANDING AREA MILITARY HEALTH FORMATION: BRIG
 GENERAL BAG X102
 Lyttelton

Kgompo ya Tshikolelo (Sebe lezoKhusele) Department of Defence, Muhasbo wa Tshebediso
 Ukuhambisa - Lehaqha la Tshikolelo Department van Verdediging, LiTiko leTshikolelo

MEDICAL CONFIDENTIAL


 B.M.I
 B.P

**Director of Public Prosecutions
KwaZulu - Natal**



FA3

NATIONAL PROSECUTING AUTHORITY
South Africa

Reference: CCD 30/2018

Enquiries: Adv WJ Downer

Adv D Mpofu SC

dali.mpofu@yahoo.com

Dear Mr Mpofu

**S V JG ZUMA AND THALES: AGREEMENT REGARDING THE
POSTPONEMENT OF THE HEARING ON 10 AUGUST 2021**

I refer to the telephone discussions between you and Adv Wim Trengove SC earlier this afternoon regarding the above.

The State will support the postponement of the proceedings on 10 August 2021 on the following terms.

1. As soon possible, the parties shall request the presiding Judge to rule that the proceedings on 10 August 2021 be held virtually, and not in person, and in the absence of the first accused, who, the State has been informed by the Estcourt Correctional Centre, is currently an inpatient in hospital under the care of the Presidential Medical Unit of the South African National Defence Force.
2. On 10 August 2021 the first accused shall apply for a postponement of the criminal proceedings to a date within the following two weeks to be arranged with the presiding Judge ("the postponed date").
3. The application shall be supported by an affidavit by a medical practitioner treating the first accused.
4. If, on the postponed date, the first accused applies for a further postponement, his application shall be supported by the *viva voce* evidence of a medical practitioner treating him, who may be cross-

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

DPP KZN
Regional Office

Tel: +27 33 845 4400
dppmbhighcourt@npa.gov.za

286 Pietermaritz
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PIETERMARITZBURG
3201

Private Bag X9008
PIETERMARITZBURG
3201
KwaZulu-Natal
South Africa

www.npa.gov.za

examined by the State; and the State may adduce rebutting *viva voce* evidence, either there and then or at an adjourned hearing.

Yours faithfully



for DIRECTOR OF PUBLIC PROSECUTIONS
KWAZULU-NATAL

Date: 08 August 2021

Guided by the Constitution, we in the National Prosecuting Authority ensure justice for the victims of crime by prosecuting without fear favour or prejudice and by working with our partners and the public to solve and prevent crime



B.M.I

Page 2 of 2

B.P



**IN THE HIGH COURT OF SOUTH AFRICA
(KWAZULU-NATAL PROVINCIAL DIVISION,
PIETERMARITZBURG)**

Case No: **CCD30/2018**

In the matter of:

THE STATE

and

JACOB GEDLEYIHLEKISA ZUMA

First Accused

THALES SOUTH AFRICA (PTY) LIMITED

Second Accused

CONFIRMATORY AND SUPPORTING AFFIDAVIT

I, the undersigned

MCEBISI ZUKILE MDUTYWA

do hereby state under oath that:

1. I am a major male, in the rank of Brigadier General at South African National Defence Force and duly appointed in the position of General Officer Commanding Area Military Health Formation at the South African Military Health Service of the Department of Defence. I am a duly qualified medical doctor who is officially assigned to lead the medical team of Former President JG Zuma.

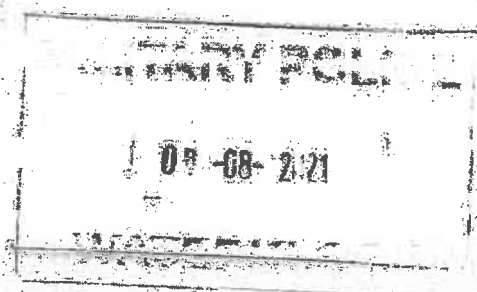


- 2. The facts deposed to in this affidavit are within my personal knowledge, save for where the context indicates otherwise, are to the best of my knowledge true and correct.
- 3. I have read the affidavit of Bethuel Mondli Thusini, and I confirm that the contents thereof are correct in far as they relate to me.


MCEBISI ZUKLE MDUTYWA

I certify that:

- 1. the deponent acknowledged to me that:
 - 1.1 he/she knows and understands the contents of this declaration;
 - 1.2 he/she has no objection to taking the prescribed oath;
 - 1.3 he/she considers the prescribed oath to be binding on his/her conscience;
- 2. the deponent thereafter uttered the words, "I swear that the contents of this declaration are true, so help me God";
- 3. the deponent signed this declaration in my presence at AFB-WKLF on this 08 day of **AUGUST 2021**.




COMMISSIONER OF OATHS



BD14

From: Billy Downer (WJ) [mailto:Bwjdowner@npa.gov.za]
Sent: Monday, August 9, 2021 11:46 AM
To: E Griffin <EGriffin@judiciary.org.za>
Cc: B M Thusini <thusini@thusinilaw.co.za>; mail@pi-attorneys.co.za; Mbusowezwe Zondi <MZondi@judiciary.org.za>; Dunstan-Smith, Cameron <Cameron.Dunstan-Smith@hsf.com>; 'Ripley-Evans, Jonathan' <Jonathan.Ripley-Evans@hsf.com>
Subject: RE: S v Zuma and Thales: Hearing on 10 August 2021

Dear Ms Griffin

I indicated in my e mail below that I would send my affidavit once it is made.

Due to the public holiday and the fact that my office is closed for decontamination anyway, and the urgency of the matter, I attach unsigned and uncommissioned affidavits by me and Adv Naicker, for the urgent attention of Mr Justice Koen.

As soon as we have had them commissioned tomorrow, we will file them with you at court.

Kind regards

Adv WJ Downer SC
Senior Deputy Director of Public Prosecutions
NPA Building Private Bag X9003
115 Buitengracht CAPE TOWN
CAPE TOWN 8000
8001

Landline phone: +27 (0)21 487 7228
Cell phone: +27 (0)82 650 7743
E mail: bwjdowner@npa.gov.za

From: Billy Downer (WJ)
Sent: Monday, August 9, 2021 9:59 AM
To: 'E Griffin' <EGriffin@judiciary.org.za>
Cc: B M Thusini <thusini@thusinilaw.co.za>; 'mail@pi-attorneys.co.za' <mail@pi-attorneys.co.za>; 'Mbusowezwe Zondi' <MZondi@judiciary.org.za>; 'Dunstan-Smith, Cameron' <Cameron.Dunstan-Smith@hsf.com>; 'Ripley-Evans, Jonathan' <Jonathan.Ripley-Evans@hsf.com>
Subject: S v Zuma and Thales: Hearing on 10 August 2021

Dear Ms Griffin



Please will you bring the above urgent letter to the attention of the Honourable Mr Justice Koen.

Kindly also inform him that I am busy making an affidavit that explains the sequence of events that have led to this approach for a new directive. I will forward the affidavit as soon as I can have it made.

Kind regards

Adv WJ Downer SC
Senior Deputy Director of Public Prosecutions
NPA Building Private Bag X9003
115 Buitengracht CAPE TOWN
CAPE TOWN 8000
8001

Landline phone: +27 (0)21 487 7228
Cell phone: +27 (0)82 650 7743
E mail: bwidowner@npa.gov.za

A handwritten signature in black ink, consisting of a stylized 'W' or 'J' shape at the top and a cursive signature below it.

IN THE HIGH COURT OF SOUTH AFRICA
(KWAZULU-NATAL DIVISION, PIETERMARITZBURG)

CASE NO. : CCD30/2018

In the matter of:

THE STATE

and

JACOB GEDLEYIHLEKISA ZUMA
THALES SOUTH AFRICA (PTY) LIMITED
(as represented by Pierre-Marie Durand)

First Accused
Second Accused

**THE STATE'S AFFIDAVIT REGARDING THE
POSTPONEMENT OF THE PROCEEDINGS ON 10 AUGUST 2021**

I, the undersigned,

WILLIAM JOHN DOWNER

do hereby make oath and say:

1. I am an admitted advocate of the High Court of South Africa, a member of the National Prosecuting Authority and a Senior Deputy Director of Public Prosecutions duly appointed as such in terms of the National Prosecuting Authority Act 32 of 1998, and a senior counsel duly appointed as such by the President of the Republic of South Africa.



2. The contents of this affidavit are true and are within my personal knowledge or that of a Deputy Director of Public Prosecutions, KwaZulu-Natal ('KZN'), Adv Deneshree (Melanie) Naicker, whose confirmatory affidavit will be delivered as soon as possible.
3. On 20 July 2021 this Honourable Court made a ruling adjourning this trial to 10 to 13 August 2021 for the adjudication of the issues raised in the first accused's special plea in terms of section 106(1)(h) of the Criminal Procedure Act 51 of 1977 ('CPA').
4. On Wednesday 4 August 2021 this Honourable Court issued a directive that the hearing of the plea in terms of s106(1)(h) of the CPA set down from 10 August 2021, shall proceed in open court at the High Court in Pietermaritzburg.
5. Pursuant to that directive, the State requisitioned the first accused from the Estcourt Correctional Centre, where he was serving a sentence of imprisonment.
6. On Friday 6 August 2021 the Head of the Estcourt Correctional Centre, Ms Radebe, sent a WhatsApp message to Adv Naicker, saying the first accused had been "*emergently referred to outside hospital due to his medical condition last night*".
7. Adv Naicker responded by asking Ms Radebe if she was able to give any indication at that stage whether the first accused would be brought to court as per the requisition for 10 August 2021. Ms Radebe's response was she was awaiting documents with that information.

A handwritten signature in black ink, consisting of a stylized 'e' followed by a flourish that loops back to the right and then down.

8. On the same day (6 August 2021), the Department of Correctional Services ('DCS') issued a media release saying the first accused had been admitted to a hospital outside the prison for medical observation by the South African Military Health Services, a copy of which is attached marked "WJD 1".
9. On Saturday 7 August 2021 Adv Naicker was contacted by Mr Kenneth Mthombeni, who introduced himself as the Acting Regional Commissioner of Correctional Services in KZN, about the requisition to and appearance of the first accused in this Honourable Court on 10 August 2021. Adv Naicker confirmed the content of their telephone conversation by means of a WhatsApp message, which reads as follows:

"Good day Mr Mthombeni

Our telephonic conversation regarding the appearance of Mr. Zuma at Pmb High Court on Tuesday 10 August 2021 refers.

You advised that Mr Zuma will not be brought to court as he is currently hospitalized in Pretoria.

I accordingly requested that you address a letter to Advocate E Zungu, the Director of Public Prosecutions KZN advising that Mr Zuma will not be brought to court as per our requisition request.

You may kindly forward your correspondence to the following email addresses:

*ezungu@npa.gov.za and
dnaicker@npa.gov.za and
bwjdowner@npa.gov.za.*

Once in receipt of your correspondence same will be brought to the attention of the Presiding Judge and legal representatives of Mr Zuma.

Kind Regards

Advocate D Naicker, DDPP: PMB".



10. On Sunday 8 August 2021, at 14h24, Adv Naicker, the Director of Public Prosecutions, KZN (Ms Zungu) and I received an email from Ms Radebe, attached to which was a letter from Brigadier General (Dr) M Z Mduywa of the South African Military Health Service. A copy of this letter is attached, marked "WJD 2". After explaining that the first accused is under the care of the Presidential Medical Unit, the letter continues as follows:

"4. This is to inform you that Mr Zuma has been admitted to hospital as of the 06 August 2021. He is undergoing extensive medical evaluation and care as a result of his condition that that needed an extensive emergency procedure that has been delayed for 18 months due to compounding legal matters and recent incarceration and cannot be delayed any further as it carries a significant risk to his life. The medical team is actively monitoring his progress and will inform you soon as to the prognosis and outcome thereof through a medical report,

5. We trust that the court processes will accommodate this urgent health program such that we can be able to work swiftly to restore his health. The minimum proposed period of care is six months during which periodic reports will be communicated to advise on possible availability of any further engagements on your end.

6. We further appeal that you treat this information with the confidentiality it deserves."

11. The State is not satisfied with the vague generalities in the letter from Brig Gen Mduywa regarding the first accused's "condition", the "extensive emergency procedure" and the "minimum proposed period of care of six months".

A handwritten signature in black ink, appearing to be 'M. Z. Mduywa', located in the bottom right corner of the page.

12. Shortly after we received the letter, lead counsel for the State in the first accused's special plea, Adv Wim Trengove SC, contacted lead counsel for the first accused, Adv Dali Mpofu SC, to apprise him of the letter and to discuss its implications for the proceedings in this Honourable Court on 10 August 2021. Adv Mpofu SC indicated his side would be applying for a postponement of the proceedings. Adv Trengove SC indicated that the State would support the application on terms which would be set out in correspondence to Adv Mpofu SC.
13. At 18h33 I addressed a letter to Adv Mpofu SC setting out the State's attitude to the postponement. A copy of this letter is attached, marked "WJD 3". The relevant portion reads as follows:

"The State will support the postponement of the proceedings on 10 August 2021 on the following terms.

1. As soon possible, the parties shall request the presiding Judge to rule that the proceedings on 10 August 2021 be held virtually, and not in person, and in the absence of the first accused, who, the State has been informed by the Estcourt Correctional Centre, is currently an inpatient in hospital under the care of the Presidential Medical Unit of the South African National Defence Force.

2. On 10 August 2021 the first accused shall apply for a postponement of the criminal proceedings to a date within the following two weeks to be arranged with the presiding Judge ("the postponed date").

3. The application shall be supported by an affidavit by a medical practitioner treating the first accused.

4. If, on the postponed date, the first accused applies for a further postponement, his application shall be supported by the viva voce evidence of a medical practitioner treating him, who may be cross-examined by the

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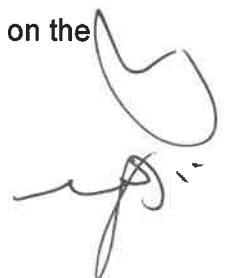
State; and the State may adduce rebutting viva voce evidence, either there and then or at an adjourned hearing.”

14. Earlier this morning, Monday 9 August 2021, Adv Mpofo SC informed Adv Trengove SC that his side accepted the State’s terms, save that they requested to introduce some flexibility regarding the postponed date, but to still endeavour for it to be within a reasonably short period depending on the availability of all concerned and the Court. Adv Trengove SC agreed. They further agreed that the State would direct urgent correspondence to the presiding Judge recording the parties’ agreement.
15. I requested Adv Mpofo to inform lead counsel for the second accused, Adv Roux SC, of the developments, which I understand he did. I then also telephoned Adv Roux SC, to establish whether he joined the agreement that the parties should approach Mr Justice Koen with the request for a new directive. I read him the draft letter and he agreed.

WILLIAM JOHN DOWNER

I certify that–

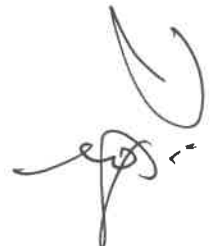
- (a) the deponent–
- (i) acknowledged that he knows and understands the contents of this declaration;
 - (ii) informed me that he does not have any objection to taking the prescribed oath;
 - (iii) informed me that he considers the prescribed oath to be binding on his conscience;
- (b) the deponent then uttered the words, ‘I swear that the contents of this declaration are true, so help me God’;
- (c) the deponent signed this declaration in my presence at Cape Town on the 18th day July 2021.



SIGNATURE: _____

FULL NAMES: _____

COMMISSIONER OF OATHS

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to consist of several loops and a long vertical stroke.



correctional services

Department:
Correctional Services
REPUBLIC OF SOUTH AFRICA

MEDIA STATEMENT

06 August 2021

MR ZUMA ADMITTED TO AN OUTSIDE HOSPITAL

The Department of Correctional Services (DCS) can confirm that Former President, Jacob Zuma has today, 06 August 2021, been admitted to an outside hospital for medical observation.

The health of inmates is addressed under Section 35(2) of the Constitution. This obliges the Department of Correctional Services (DCS) to ensure that:

"Everyone who is detained, including every sentenced prisoner, has the right to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment."

As a Former President, the healthcare needs of Mr Zuma require the involvement of the South African Military Health Services. This been the case since his admission at Estcourt Correctional Centre.

A routine observation prompted that Mr Zuma be taken for in-hospitalisation.

Ends.

Enquines, Singabakho Nxumalo

Issued by the Department of Correctional Services.



sa military health service

Department:
Defence
REPUBLIC OF SOUTH AFRICA

Telephone: (012) 671 5354
Facsimile: (012) 671 5257
SSN: 812 5354
Enquiries: Brig Gen (Dr) M.Z. Mduywa

Department of Defence
Area Military Health Formation
Private Bag X102
Lyttelton
0046
08 August 2021

Head of the Center.
Escort Correctional Center
Department of Correctional Services
Escort

Dear Sir

MEDICAL SUPPORT TO THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA AND FORMER PRESIDENTS

1. The above matter refers.
2. The South African National Defence Force is responsible for medical support to the current President of the Republic of South Africa, the former Presidents of the Republic and the Deputy Presidents of the Republic of South Africa through the office of the Surgeon General who is the Surgeon General of the South African National Defence Force who commands the Presidential Medical Unit situated at Bryntirion Estate (Government Complex).
3. The Former President Jacob Gedleyihlekisa Zuma has been under the care of the unit since he was appointed the Deputy President of the Republic of South Africa in 1999 and the health care is continuous. On 28 November 2020, the President was put under active care and support after he suffered a traumatic injury.
4. This is to inform you that Mr Zuma has been admitted to hospital as of the 06 August 2021. He is undergoing extensive medical evaluation and care as a result of his condition that that needed an extensive emergency procedure that has been delayed for 18 months due to compounding legal matters and recent incarceration and cannot be delayed any further as it carries a significant risk to his life. The medical team is actively monitoring his progress and will inform you soon as to the prognosis and outcome thereof through a medical report.
5. We trust that the court processes will accommodate this urgent health program such that we can be able to work swiftly to restore his health. The minimum proposed period of care is six months during which periodic reports will be communicated to advise on possible availability of any further engagements on your end.

6. We further appeal that you treat this information with the confidentiality it deserves.

AREA MILITARY HEALTH FORMATION HEAD QUARTERS
 GENERAL OFFICER COMMANDING AREA MILITARY HEALTH FORMATION: BRIG
 PRIVATE BAG X1016
 LYTTTELTON

Department of Defence / Mubasho wa Tsimolozzo / Department van Verdediging / LiTiko leTekuvikela



Handwritten signature and initials.

WJD 3

**Director of Public Prosecutions
KwaZulu - Natal**



NATIONAL PROSECUTING AUTHORITY
South Africa

Reference: CCD 30/2018

Enquiries: Adv WJ Downer

Adv D Mpofu SC
dali.mpofu@yahoo.com

Dear Mr Mpofu

**S V JG ZUMA AND THALES: AGREEMENT REGARDING THE
POSTPONEMENT OF THE HEARING ON 10 AUGUST 2021**

I refer to the telephone discussions between you and Adv Wim Trengove SC earlier this afternoon regarding the above.

The State will support the postponement of the proceedings on 10 August 2021 on the following terms.

1. As soon possible, the parties shall request the presiding Judge to rule that the proceedings on 10 August 2021 be held virtually, and not in person, and in the absence of the first accused, who, the State has been informed by the Estcourt Correctional Centre, is currently an inpatient in hospital under the care of the Presidential Medical Unit of the South African National Defence Force.
2. On 10 August 2021 the first accused shall apply for a postponement of the criminal proceedings to a date within the following two weeks to be arranged with the presiding Judge ("the postponed date").
3. The application shall be supported by an affidavit by a medical practitioner treating the first accused.
4. If, on the postponed date, the first accused applies for a further postponement, his application shall be supported by the *viva voce* evidence of a medical practitioner treating him, who may be cross-

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

DPP KZN

Regional Office

Tel: +27 33 845 4400
dppmbhighcourt@npa.gov.za

286 Pietermaritz
Street
PIETERMARITZBURG
3201

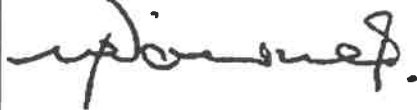
Private Bag X9008
PIETERMARITZBURG
3201

KwaZulu-Natal
South Africa

www.npa.gov.za

examined by the State; and the State may adduce rebutting *viva voce* evidence, either there and then or at an adjourned hearing.

Yours faithfully



for **DIRECTOR OF PUBLIC PROSECUTIONS**
KWAZULU-NATAL

Date: 08 August 2021

Guided by the Constitution, we in the National Prosecuting Authority ensure justice for the victims of crime by prosecuting without fear favour or prejudice and by working with our partners and the public to solve and prevent crime



IN THE HIGH COURT OF SOUTH AFRICA
(KWAZULU-NATAL DIVISION, PIETERMARITZBURG)

CASE NO. : CCD30/2018

In the matter of:

THE STATE

and

JACOB GEDLEYIHLEKISA ZUMA
THALES SOUTH AFRICA (PTY) LIMITED
(as represented by Pierre-Marie Durand)

First Accused
Second Accused

**CONFIRMATORY AFFIDAVIT REGARDING THE
POSTPONEMENT OF THE PROCEEDINGS ON 10 AUGUST 2021**

I, the undersigned,

DENESHREE NAICKER

do hereby make oath and say:

1. I am an admitted advocate of the High Court of South Africa, a member of the National Prosecuting Authority and a Senior Deputy Director of Public Prosecutions duly appointed as such in terms of the National Prosecuting Authority Act 32 of 1998.
2. The contents of this affidavit are true and are within my personal knowledge.



- 3. I have read the unsigned affidavit of Adv William John Downer concerning this matter.

- 4. I confirm the contents as far as they relate to me.

DENESHREE NAICKER

I certify that—

- (a) the deponent—
 - (i) acknowledged that he knows and understands the contents of this declaration;
 - (ii) informed me that he does not have any objection to taking the prescribed oath;
 - (iii) informed me that he considers the prescribed oath to be binding on his conscience;
- (b) the deponent then uttered the words, 'I swear that the contents of this declaration are true, so help me God';
- (c) the deponent signed this declaration in my presence at Cape Town on the 18th day July 2021.

SIGNATURE: _____

FULL NAMES: _____

COMMISSIONER OF OATHS



AB

BD16

AB

I the undersigned,

ANDREW MARK BREITENBACH

do hereby make oath and say:

- 1 I am an admitted advocate of the High Court of South Africa, a senior counsel and a member of the Cape Town Bar Council practising at 56 Keerom Street Cape Town.
- 2 The contents of this affidavit are true and are within my personal knowledge.
- 3 At all material times I have been engaged in terms of section 38 of the National Prosecuting Authority Act 32 of 1998 ('the NPA Act') to assist the prosecution team led by William John Downer ('Mr Downer') in case number CCD30/2018 in the KwaZulu-Natal Provincial Division of the High Court of South Africa, which is a criminal prosecution of Mr Jacob Gedleyihlekisa Zuma ('Mr Zuma') and Thales South Africa (Pty) Ltd ('the criminal case').
- 4 I make this affidavit in relation to the aspect of the complaint by Mr Zuma dated 22 October 2022 which relates to me.
- 5 The facts concerning me are set out in the supplementary answering affidavit of Mr Downer dated 16 September 2021 ('Mr Downer's affidavit') made on behalf of the State in response to Mr Zuma's supplementary founding affidavit deposed to by his attorney Mr Bethuel Mondli Thusini on 7 September 2022 in support of Mr Zuma's plea in terms of section 106(1)(h) and (4) of Act 51 of 1977 dated 16 September 2021 in the criminal case.




6 I prepared Mr Downer's affidavit and confirm the correctness of its contents insofar as they relate to me.

7 More specifically, I confirm paragraphs 41 and 43 of Mr Downer's affidavit and, in amplification, I refer to the accompanying two screenshots of my WhatsApp conversation with Ms Karyn Maughan of News24 ("Ms Maughan") on 9 and 10 August 2021 and wish to add the following:

7.1 I contacted Ms Maughan at 16h39 on 9 August 2021 (which was a public holiday) because she usually travelled from Johannesburg for the in-person hearings in Pietermaritzburg of the criminal case and matters related to it (like Mr Zuma's application for a permanent stay of prosecution) and I had heard from a colleague who follows Twitter – I don't – that she had recently been hospitalised with Covid-19. I wanted to let her know that it would be unnecessary to travel to Pietermaritzburg because earlier that day the parties had agreed and the presiding judge, Judge Koen, had ruled that the proceedings on 10 August 2021 would comprise a virtual (online) hearing at which the case would be postponed;

7.2 shortly after Ms Maughan had responded at 16h42 that she was already in Pietermaritzburg, I called her or she called me – I cannot recall which, and unfortunately my cellular phone monthly accounts are not itemised and for some reason my cellular phone (Vodacom) call log only goes back to 21 September 2021. During our conversation I told her about the parties' agreement and Judge Koen's letter of that morning containing his ruling and that Mr Downer had emailed to Judge Koen and to the

The block contains handwritten signatures and initials. On the left, there are three vertical lines. To the right, there is a large, stylized signature. Below these, there are more initials, possibly 'JP'.

accused's legal representatives as yet unsigned copies of affidavits by him and Ms Deneshree Naicker explaining the run-up to the parties' agreement. Ms Maughan asked me for copies of Judge Koen's letter and the unsigned affidavits. I agreed on condition that Ms Maughan not publish anything based on the affidavits or their annexures before the affidavits had been filed with the High Court Registrar. During our conversation I also agreed to forward to Ms Maughan any papers which may be delivered on behalf of the accused;

7.3 on 9 August 2021 at 18h41 I made a WhatsApp call to Mr Downer, who by then had arrived in Pietermaritzburg. The reason I called him was to tell him about the condition on which I had sent his and Ms Naicker's unsigned affidavits to Ms Maughan and to find out whether they had been commissioned and if not when that would be done. Mr Downer's response was that they would be making their affidavits early the following day so that they could be filed as soon as possible that morning;

7.4 on 10 August 2021 at 07h59, after I had sent Ms Maughan a copy of the postponement application which Mr Zuma's attorney Mr Thusini had emailed to Judge Koen and Mr Downer the previous evening at 21h08, I responded to a WhatsApp message from Ms Maughan in which she said she needed to wait before filing a story referring to Mr Downer's affidavit. I responded by saying I would check with Mr Downer, by which I meant (and I'm sure she understood in the light of the condition I had imposed when sending her the draft of Mr Downer's affidavit the previous

The block contains three handwritten marks in the bottom right corner. The top one is a small, stylized signature or set of initials. Below it is a larger, more fluid signature. The bottom-most mark is another set of initials or a signature, partially overlapping the one above it.

afternoon) I would check with Mr Downer whether his affidavit had been commissioned and filed with the Registrar;

7.5 I then phoned Mr Downer, presumably on his mobile phone (i.e. using my Vodacom number) as my WhatsApp call log does not list a call to him around that time. He told me that his and Ms Naicker's affidavits had been commissioned and would be filed with the High Court Registrar shortly; and

7.6 at 08h01 I made a WhatsApp call to Ms Maughan, during which I relayed to her what Mr Downer had told me.

8 I deny Mr Zuma's allegation that my sending of the papers to Ms Maughan on 9 and 10 August 2021 was in contravention of section 41(6) and (7) of the NPA Act. In this regard, I refer to, and rely on, paragraphs 125 to 135 of Mr Downer's affidavit. I also respectfully refer to, and rely on, the reasoning of Judge Koen in paragraphs 240 and 263 to 266 of his judgment dated 26 October 2021 on Mr Zuma's special plea.



ANDREW MARK BREITENBACH

I certify that-

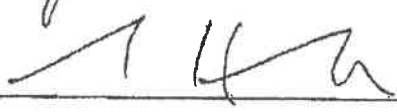
(a) the deponent-

- (i) acknowledged that he knows and understands the contents of this declaration;
- (ii) informed me that he does not have any objection to taking the prescribed oath;
- (iii) informed me that he considers the prescribed oath to be binding on his conscience;



(b) the deponent then uttered the words, 'I swear that the contents of this declaration are true, so help me God';

(c) the deponent signed this declaration in my presence at Grahamston on the 12 day of April 2022.

SIGNATURE: _____ 

FULL NAMES: _____

COMMISSIONER OF OATHS

Roy Tresco Horatio Hart
118A High Street
Grahamstown
Commissioner of Oaths
Practising Attorney, R.S.A



I hope you are well and aren't en route to Pmb.

16:39 ✓✓

I'm here 16:42



Koen J letter August 202...

240 KB • DOCX

16:44 ✓✓



Zuma postponement affi...

13 pages • 1,2 MB • PDF

16:46 ✓✓

10 August 2021



20210809205343752.pdf

14 pages • 5,7 MB • PDF

07:29 ✓✓

Thank you! 07:30

When can I publish this 07:30

It was emailed to the judge's registrar and the parties last night. So you can do so now.

07:33 ✓✓

[Handwritten signature]

Thank you! 07:30

When can I publish this 07:30

It was emailed to the judge's registrar and the parties last night. So you can do so now.

07:33 ✓✓

Great 07:34

I need to wait before I file on billy though

07:58

I'll check with him 07:59 ✓✓

Please. Otherwise it's just their side.

07:59

And Thusini refers to billy affidavit 07:59



COURT ORDER 10 AUGUS...

2 pages • 225 kB • PDF

11:18 ✓✓

13 August 2021



AFFIDAVIT

I, the undersigned

KARYN MAUGHAN

do hereby state under oath as follows:

1. I am an adult female journalist at News24, employed as such by Media24 (Pty) Limited, with principal place of business at 40 Heerengracht, Cape Town.
2. The facts herein contained are within my personal knowledge and are both true and correct.
3. This affidavit is deposed to on request by the National Prosecuting Authority of South Africa (NPA) in the course of its investigation into criminal charges registered against public prosecutor Advocate Billy Downer SC. I do so on legal advice, albeit under protest since my involvement in the matter relates to my work as a journalist and deposing to this affidavit may compromise perceptions of my professional independence.
4. Around 16h45 on Monday 9 August 2021, I requested from Advocate Breitenbach SC, one of the State's counsel in a criminal trial involving former president Jacob Zuma, copies of court papers pertaining to the proceedings on the following day. Later that afternoon, Adv Breytenbach sent me copies of Justice Koen's letter, the unsigned affidavit with annexures by Adv Billy Downer and the unsigned affidavit of Adv Naiker. The documents were sent to me per WhatsApp. Adv Breytenbach also undertook to forward to me any papers which may be delivered on behalf of the accused.
5. My request for the court papers was made in my capacity as a journalist covering the ongoing criminal proceedings involving former president Zuma and others. The documents were sent to me on the understanding that I would report thereon, but on the express condition that reportage would be held back

D. S. [Signature]
[Signature]

until such time as the affidavits were deposed to and filed with the court. I agreed to abide by the condition.

6. On Tuesday 10 August 2021, at around 07h30, Adv Breytenbach sent to me a copy of the first accused's postponement application. I enquired from him when the State's affidavits would be signed and commissioned and was told it would be shortly after 08h00 that morning.
7. My first article based on the documents I had received was published on the News24 platform at around 09h14 on 10 August 2021, after I was advised that the affidavits have been signed, commissioned and filed at court.

R. G. van der Merwe

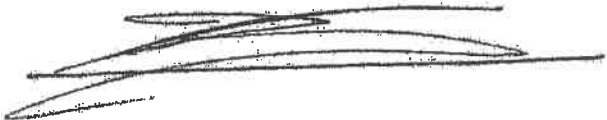
DEPONENT

I certify that the deponent:

- (a) has acknowledged that the deponent knows and understands the contents of this declaration; and
- (b) has no objection to taking the prescribed oath, that the deponent considers the oath binding on the deponent's conscience and has in due form SWORN that the contents of this declaration are true and has signed same.

SWORN to before me at Rosebank on this 7th day of April 2022.

2


DANIEL JOSEPH WITZ
COMMISSIONER OF OATHS
PRACTISING ATTORNEY
REPUBLIC OF SOUTH AFRICA
1st FLOOR, THE CONSERVATORY
13 BAKER STREET, ROSEBANK

