

THE HIGH COURT OF SOUTH AFRICA
DURBAN AND COAST LOCAL DIVISION

CASE NO.: CC358/05

In the matter between :

THE STATE

and

JACOB GEDLEYIHLEKISA ZUMA

ACCUSED NO. 1

THINT HOLDING (SOUTHERN AFRICA) (PTY) LTD

ACCUSED NO. 2

THINT (PTY) LTD

ACCUSED NO. 3

SUPPLEMENTARY AFFIDAVIT

I, the undersigned,

PIERRE JEAN MARIE ROBERT MOYNOT

do hereby make oath and state :

1.

I have deposed to an affidavit dated 30 July 2006 (the “main affidavit”), in response to the State’s application for an adjournment and in support of the application of Accused Nos. 2 and 3 for a permanent stay of the prosecution and certain other relief.

2.

I depose to this supplementary affidavit to include matters which were not raised or dealt with in my main affidavit by virtue of the reasons set out hereunder.

3.

The facts deposed to herein are within my personal knowledge and belief save where the context indicates otherwise in which event I believe the averments made to be true and correct.

VISIT BY NCGUKA TO PARIS

4.

Adv Christine Guerrier (“Guerrier”), who is the Corporate Legal Counsel of the second and third Accused, arrived in South Africa on the 30th July 2006 and had an opportunity for the first time, on the morning of 31 July 2006, to read my main affidavit and the annexures thereto as well as the affidavits and annexures filed on behalf of Accused No. 1, in opposition to the State’s application for an

adjournment and for such other relief similar to that sought by Accused Nos. 2 and 3.

5.

5.1 She recalled a visit to Paris by the erstwhile NDPP, Mr B Ncguka (“Ncguka”) during September 2003. From her affidavit, which accompanies this affidavit, in broad summary it is evident, in my respectful submission that:-

5.1.1 During September 2003 and in Paris, Ncguka met with Thetard in her presence and required from Thetard an affidavit to confirm that:

(a) Thetard had met with Shaik and Accused No. 1 in Durban where an agreement to pay Accused No. 1 a bribe was reached; and

(b) Thetard had sent a fax to his superiors in France confirming the bribe agreement with Shaik and Accused No. 1.

5.1.2 Ncguka explained that he was under pressure as a result of the investigation and needed confirmation of these facts.

- 5.1.3 To assuage Thetard's concerns about coming to South Africa to give evidence Ncguka informed him that he would arrange to withdraw the warrant of arrest.
- 5.1.4 Thetard refused to provide an affidavit to the effect required by Ncguka.
- 5.2 In this regard I refer to the affidavit of Guerrier, filed evenly herewith.

6.

This matter and its significance and importance to the application brought by Accused Nos. 2 and 3 will be addressed during argument on 5 September 2006.

EVENTS IN MAURITIUS DURING 2001 AND 2003

7.

In his affidavit in support of the application for an adjournment by the State, Du Plooy refers to the proceedings which the State brought for an order in terms of Section 2(2) of the ICCM Act. I will endeavour, through my attorneys, to ensure

that the papers in those proceedings be placed before this Honourable Court on 5 September 2006. I do not, for fear that these papers will render these papers prolix, attach these as annexures hereto.

8.

I respectfully submit that it may be appropriate, regarding this application to refer to the events in Mauritius during 2001 and related events which followed. These are:-

- 8.1 During September 2001 the State requested the assistance of the then Director of the Economic Crime Office (“ECO”) in Mauritius to obtain an order in the Supreme Court of Mauritius for a search and seizure order in terms of Section 29 of the Mauritius Economic Crime and Anti-money Laundering Act of 2000 (the “ECAML Act”). Annexed hereto, marked “PM14” is a copy of this Act.

- 8.2 The application for such assistance which was directed to the Ministry of Justice of the Republic of Mauritius was for a commission *rogatoire* and search and seizure in a criminal matter. Annexed hereto, marked “PM15” is a copy of this application together with the annexures in support thereof.

- 8.3 This application was supported, in the main by the affidavit of one, Adv Gerda Ferreira (“Adv Ferreira”) a former member of the DSO then involved with the investigation, whose affidavit is attached hereto.
- 8.4 From the affidavit of Adv Ferreira it is clear that the State requested assistance for a “commission *rogatoire*” and search and seizure.
- 8.5 In my respectful submission it must have been clear to all those connected with the aforesaid application and the searches and seizure which were conducted thereafter that the application was for the purposes of obtaining evidence through the searches and seizures for the purposes of a commission rogatoire in Mauritius, This much is clear from the application as a whole and the affidavit of Adv Ferreira in particular. The State and Adv Ferreira are challenged to state otherwise.
- 8.6 Consequent upon the aforesaid application for assistance, the Director of the ECO obtained an order on 5 October 2001 authorising the search of the premises referred to therein and the seizure of the objects and documents described therein. Annexed hereto, marked “PM16” is a copy of the said order.

- 8.7 In support of the application for the aforesaid order the Director of the ECO, one Indira Manrakhan, filed an affidavit, a copy of which is annexed hereto, marked "PM17". The annexure "A" referred to in paragraph 4 of the affidavit of Manrakhan is the aforesaid affidavit of Adv Ferreira.
- 8.8 Pursuant to the order the searches were conducted upon the premises referred to in the order on 9 October 2001. Documents, CD's and stiffy's were seized and removed in the course of the searches by the officers in the employ of the ECO.
- 8.9 Annexed hereto, marked "PM18" is a copy of an affirmation by one Murugesan Poubarlen, an investigator confirming the seizure of the items and documents referred to therein.
- 8.10 On or about 17 October 2001 Thales International Africa Ltd (Mauritius) ("Thales International (Mauritius)"), Thetard and Mutual Trust Management Mauritius Limited (formerly Valmet) ("MTMM") brought an application in the Supreme Court of Mauritius against the Director of the ECO for a prohibitory order and certain other relief. Annexed hereto, marked "PM19" is a copy of the *proecipe* which I am informed is the equivalent of a Notice of Motion

preceding an application brought pursuant to the Rules of this Honourable Court.

- 8.11 Annexed hereto, marked "PM20" is a copy of the affidavit of Thetard filed in support of this application ("the Thales International Mauritius application"). The "South African officer" referred to in paragraph 9 of this affidavit is Adv W Downer SC. This was confirmed by the Counsel referred to in this paragraph by Thetard, one Adv Shaukatally Oozeer, who identified Adv Downer from a photograph on one of the annexures attached to the affidavit referred to in the following sub-paragraph. In this annexure which is an extract from a Mauritian newspaper appears the photograph of Adv Downer.
- 8.12 Annexed hereto, marked "PM21" is a copy of the affidavit (and annexures referred to therein) of one Ziyad Abdool Raouf Bundhun ("Bundhun"), the general manager of MTMM which was filed in support of the Thales International Mauritius application.
- 8.13 The application by Thales International Mauritius was opposed by the Commissioner of the Independent Commission Against Corruption ("ICAC"), the office which replaced the Director of the ECO.

- 8.14 An order equivalent to a rule *nisi* was granted in the Supreme Court on 22 October 2001. Annexed hereto, marked “PM22” is a copy of this order.
- 8.15 Annexed hereto, marked “PM23” to “PM37” are copies of orders made by the Supreme Court of Mauritius from time to time when the matter was heard.
- 8.16 Eventually, on 27 March 2003 this application by Thales International Mauritius was settled, which settlement was recorded in an order, a copy of which is annexed hereto, marked “PM38”. This order, it will be noticed, recorded assurances given and undertakings made by the Commissioner of ICAC.
- 8.17 Unbeknown to the applicants in the Thales International Mauritius application and to Accused Nos. 2 and 3, however, Adv Downer SC and one Da Silva-Nel had left Mauritius shortly after the seizure of the documents, with copies of documents that had been seized. This much is apparent from the affidavit of Da Silva-Nel, referred to hereunder and the affidavits of Du Plooy and Adv Ferreira which form part of the proceedings before his Lordship Mr Justice PC Combrinck.

8.18 Some time in 2003, five (5) lever arch files of documents which, according to the State had been seized in and removed from Mauritius were handed to Mr Robert Driman, the erstwhile attorney for Accused Nos. 2 and 3. In the event of this being disputed, which I doubt, I will endeavour to obtain a confirmatory affidavit from Mr Driman. I will also endeavour to make available at Court on 5 September 2006, these 5 lever arch files.

8.19 I propose to refer to certain correspondence which featured in the application before his Lordship Mr Justice PC Combrinck. These are:-

- (a) a letter dated 25 September 2002, together with the annexure referred to therein, by the Commissioner of the ICAC to Adv Downer, a copy of which is annexed hereto, marked "PM39";
- (b) the reply thereto by Adv Downer to the Commissioner of the ICAC dated 7 October 2002, a copy of which is annexed hereto, marked "PM40";

- (c) a letter dated 17 January 2003, by the Deputy Commissioner of the ICAC to Adv Downer, a copy of which is annexed hereto, marked "PM41";
- (d) a letter to Adv Downer by the Deputy Commissioner of the ICAC dated 13 April 2004, a copy of which is annexed hereto, marked "PM42".

8.20 I propose also to refer to certain affidavits and documents made available by the State to the defence in May 2006 which relate to the events in Mauritius. These are:-

- (a) an affidavit by Carla Paula Perreira Da Silva-Nel, ("Da Silva-Nel"), a copy of which is annexed hereto, marked "PM43". In her affidavit she mentions that after relevant documents had been identified, copies were made and placed in an envelope and sealed. These envelopes were handed to Adv Downer and herself to take with them to South Africa;
- (b) a letter by the Commissioner of Police in Mauritius to Adv Downer dated 13 October 2004, a copy of which is annexed hereto, marked "PM44";

- (c) an affidavit by the Chief Inspector in the Mauritian Police Service, Pierre Errol Coret, a copy of which is annexed hereto, marked "PM45";

9.

Before the 5th of September 2006 I will make every endeavour to obtain and make available to the Court and all parties concerned:-

- 9.1 duly authenticated and certified copies of the papers and orders relating to the aforementioned court applications in the Supreme Court of Mauritius;
- 9.2 clearer copies and sworn translations of the annexures referred to in the affidavit of Bundhun.

10.

It will be contended on behalf of Accused Nos. 2 and 3 that the removal of copies of the seized documents by Da Silva-Nel and Adv Downer:-

- 10.1 was unlawful;

- 10.2 contrary to the terms of the assistance sought by the State from the Authorities in Mauritius; and
- 10.3 had no regard for the order of the Supreme Court of Mauritius made on 5 October 2001 and the territorial sovereignty of a foreign state.

11.

Use of these copies by the prosecution for its investigations and in the preparation of the indictment in this case has caused serious prejudice to Accused Nos. 2 and 3.

12.

During the Shaik trial and in the course of the evidence of Inspector Coret, Adv Downer endeavours to explain the justification for bringing the copies from Mauritius to South Africa. Annexed hereto, marked "PM46" is a copy of the transcript of the proceedings in the Shaik trial which relate to the evidence of Inspector Coret.

THE RAID ON THE PREMISES OF ACCUSED NOS. 2 AND 3 ON 18 AUGUST
2005

13.

In the main affidavit I dealt with the search and seizure application and the effect on the relief sought by the State and Accused Nos. 2 and 3.

14.

I omitted to deal pertinently with the question of the trial related prejudice to Accused Nos. 2 and 3 arising from the seizure of material protected by legal professional privilege and access thereto by the State.

15.

I am informed that submissions in this regard will be made by reference to the papers in the search warrant application relating to Accused Nos. 2 and 3.

WHEREFORE I humbly persist with the relief sought in the main affidavit.

DEPONENT

I CERTIFY that the Deponent has acknowledged to me that he/she knows and understands the contents of this affidavit which was SIGNED and SWORN to before me at DURBAN on this day of 2006, the Regulations contained in Government Notice Nos. R1258 dated 21 July 1972 and R1648 dated 16 August 1977, as amended, having been complied with.

COMMISSIONER OF OATHS

NAME :

CAPACITY :

ADDRESS :

AREA :