

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: 8258/2017

In the matter between:

JOHANNES KHOMOTSO PHAHLANE

Applicant

and

**EXECUTIVE DIRECTOR, INDEPENDENT POLICE
INVESTIGATION DIRECTORATE N.O.**

First Respondent

PAUL O'SULLIVAN

Second Respondent

SARAH JANE TRENT

Third Respondent

MAGISTRATE J R TSATSI N.O.

Fourth Respondent

SECOND RESPONDENTS ANSWERING AFFIDAVIT

I, the undersigned,

PAUL O'SULLIVAN

do hereby make an oath and say:

- 1.1 The content of this affidavit falls within my personal knowledge except where the contrary is clearly evident from the context thereof. The contents of this affidavit are to the best of my belief both true and correct. Where I make submissions of law, I do so on the basis of advice received from my legal representatives.

1.2 I confirm that I have perused the opposing affidavit of the first respondent deposed to by Mandla Kayise Mahlangu and confirm the correctness thereof in as far as it relates to me.

1.3 I have perused the founding affidavit of the Applicant as well and wish to reply thereto as follows.

2. STRUCTURE OF OPPOSING AFFIDAVIT

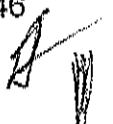
2.1 This answering affidavit is structured in the following manner:

3. Background to the application;
4. Point's *in limine*;
5. Applicant's arguments and rebuttal;
6. *Ad seriatim* response to Applicant's founding affidavit;
7. Prayers.

3. BACKGROUND TO THE APPLICATION.

3.1 It is important to provide the honourable court with background to this application in order to explain: -

- 3.1.1 who the applicant is;
- 3.1.2 the nature of my work;
- 3.1.3 why I started writing to the applicant;
- 3.1.4 why the proceedings are malicious of nature and an abuse of power by the Applicant.



WHO IS THE APPLICANT

- 3.2 The applicant is Lieutenant-General Khomotso Phahlane ("Lieutenant-General Phahlane"). He was the Acting National Police Commissioner who occupied that position since 14 October 2015 until 01 June 2017. He was appointed after the then National Commissioner, Riah Phiyega, was suspended. He himself was however suspended on 01 June 2017. He brings this application in both his official and personal capacity. The fact that the Applicant has been suspended as the Acting National Police Commissioner impinges on this application. The Applicant is given an opportunity to rectify his status.
- 3.3 The National Commissioner (including the Acting National Commissioner) is appointed by the President of the Republic of South Africa as Head of the National Executive in terms of section 207 of the Constitution read with section 6(1) of the South African Police Service Act, 68 of 1995 ("the SAPS Act") to manage and control the South African Police Service;
- 3.4 The South African Police Service, under the control and management of the National Commissioner, has a constitutional objective, per section 205(3) of the Constitution, to prevent, combat and investigate crime, to manage public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law;
- 3.5 In achieving its constitutional objectives, the Police Service must be guided by a policing policy the implementation of which is the responsibility of the National Commissioner, and which policy may make provision for the policing needs and priorities of each province which obliges provinces, under section 206(3) to (a) monitor police conduct; (b) oversee the effectiveness and efficiency of the Police Service; (c) promote good relations between the police and the community; (e) liaise with the Minister of Police on matters to do with crime and policing in each province;
- 3.6 The National Commissioner must exercise his powers and perform his duties and functions under whatever directions the Minister of Police may give in accordance with section 207(2) of the Constitution;

- 3.7 The Acting National Commissioner, who currently has to perform the duties and functions of the National Commissioner, has his offices situated at Wachthuis Building, 231 Pretorius Street, 756-7th floor, Pretoria.
- 3.8 In an article dated 14 May 2017, attached hereto as **annexure "POS 1"**, the City Press newspaper reported that:-
- 3.8.1 the Applicant was facing charges of corruption, money laundering and defeating the ends of justice;
 - 3.8.2 the Applicant was under investigation for possible contravention of the Prevention of Organised Crime Act, relating to more than R1 Million in "gratuities" he received from a Pretoria car dealer;
 - 3.8.3 a senior commercial crimes court prosecutor was shortly before assigned to provide prosecutorial guidance to the first respondent;
 - 3.8.4 the Applicant had a questionable relationship with a supplier during his tenure as divisional commissioner for forensic services.
 - 3.8.5 the Applicant had bought a sound system of R80 000. 00 for his palatial home in Sable Hills Waterfront Estate in Pretoria;
 - 3.8.6 the Asset Forfeiture Unit (AFU) had begun a process to attach assets of the Applicant worth R1 million – the amount which it believes he accrued by corrupt means;
 - 3.8.7 two investigators of the first respondent (namely Mandla Mahlangu and Timane Binang who were involved in ongoing investigations against the Applicant), had been summoned to appear in the Pretoria Regional Court on charges of fraud, extortion and conspiracy to contravene the IPID Act.

3.8.8 I and the third respondent had been summoned to appear in the Pretoria Regional Court on charges of fraud, extortion and conspiracy to contravene the IPID Act

3.9 On 16 May 2017, the Applicant was summonsed to Parliament to respond to allegations by the first Respondent that he was interfering with the investigation against him. In an article dated 24 May 2017, annexed hereto as "POS 2", News 24 reported that a letter was written by the attorneys of the first Respondent, Mandla Mahlangu and Timane Binang that, *inter alia*, required the applicant to:-

3.9.1 stay away from any investigation by the SAPS into officials of the first Respondent;

3.9.2 ensure that no police officers facing an IPID investigation become involved in any counter application into officials of the first Respondent;

3.9.3 ensure that the North West detective team ceases investigating officers of the first Respondent immediately;

3.9.4 ensure that the investigation into officers of the first Respondent are handed to a police officer who is not being investigated by the first Respondent or reports to a police officer who is being investigated by the first Respondent;

3.9.5 provide all communication relating to the appointment of the North West police detective team for investigation, to be disclosed.

3.10 A chronology of events reflects that shortly after this application was served (on 06 February 2017) and on 10 February 2017 the third respondent was unlawfully arrested and detained by the SAPS until 12 February 2017. She was released as a result of an application to the high court. No sooner had she been released and on 13 February 2017 I was unlawfully arrested and detained also by the SAPS before being released on the same day. I was released subsequent to an application to the High Court. I deal thoroughly with the events that transpired between 10 and 13 February below, but mention at this point already that the arrests were malicious

and carried out in order to intimidate me and the Third Respondent. The arrests were unnecessary by reason of the fact that there was no doubt that we would attend Court. Also, the nature of the alleged crimes is not such that it was necessary to arrest either of us. Furthermore, there was no necessity for two brigadiers to be detailed to arrest me and that such arrest had to be effected with such a show of force. The level at which this arrests were dealt with also point to the fact that it were at the instance of the Applicant.

NATURE OF MY WORK

- 3.11 I have more than 40 years of experience in the investigation of serious crime. This includes investigating offences such as terrorism, human trafficking, drug trafficking, arms trafficking and money laundering. Most thereof were of a trans-national and organized nature. My experience includes time spent in law enforcement agencies in the United Kingdom, the United States, Cyprus and South Africa. I was also for many years a police reservist in South Africa and in 1994 I received an award for making more arrests than any other police officer in Johannesburg during that year. I have received many commendations for the proper and thorough standard of investigation from Magistrates and Judges presiding over cases that I had investigated.
- 3.12 In 1978, I received a commendation from Scotland Yard in London, for arresting a dangerous criminal. I was injured during the arrest.
- 3.13 In 2002 and 2003, I received commendations from the Canadian and Australian governments for my work in combatting human trafficking.
- 3.14 In 2011, I received the Paul Harris Fellowship from the Foundation of Rotary International for my work in combatting human trafficking globally.
- 3.15 My work in law enforcement and policing placed me in good stead to do the kind of work that I am currently involved in, i.e. a Forensic and Loss Control Consultant. As I have stated in the introductory portion of this affidavit, my occupation involves the investigation and reporting on fraud and corruption at both a corporate and political level. It is not only my police work and previous involvement in law enforcement

that enables me to pursue my career successfully, but also the fact that I am a Certified Fraud Examiner. In 2014 I was awarded the Certified Fraud Examiner of the Year award, for Africa, from more than 5,000 Certified Fraud Examiners on the continent. I am thus not a meddlesome or officious person.

WHY I STARTED WRITING TO THE APPLICANT

- 3.16 In 2014 I started opening a plethora of criminal dockets implicating, a member of the SAPS, General Vinesh Moonoo, and other senior members of the SAPS in serious offences. I attach as **Annexure "POS 3"**, a snap-shot of some of the more serious cases I have opened in the last few years. Many of these cases were opened with IPID which is headed by Mr Robert McBride ("McBride"), and with the Hawks in Gauteng, under Generals Dramat ("Dramat") and Sibiya ("Sibiya"). However, in late 2014, early 2015, Dramat, Sibiya and McBride were unlawfully suspended by the Minister of Police. Such suspensions resulted in those dockets not receiving attention. IPID was during McBride's unlawful suspension managed and controlled by an unlawful appointee.
- 3.17 Returning to Moonoo in late 2015, I was informed by a Captain Coetzee in crime intelligence, that he had been inducing the well-known criminal Radovan Krejcir to have me murdered.
- 3.18 By then I have been sending e-mails pertaining to the criminal conduct of Moonoo to the former Commissioner of the SAPS, General Phiyega ("Phiyega") for a period of 18 months. On 06 February 2015 I received an e-mail from Phiyega informing me that Brigadier van Zyl would be investigating my complaints against Moonoo. That came to nothing because Phiyega was later suspended. I then decided to resend these e-mails in the hope that the Applicant, who succeeded General Phiyega, would follow it up and comply with his oath of office. It was only when Applicant not only ignored the mails, but lent assistance to Moonoo in his criminal activities, that I was compelled to increase the tone and frequency of my e-mails, my aim was to compel the Applicant to investigate the conduct of Moonoo. As will become clear, I subsequently found that the Applicant had not only been influenced by Moonoo not to act, (as I had originally thought), but was himself actively engaged in criminal conduct. Taking into account that IPID was neutralised, I realised that I was on my

own, and had to either throw in the towel, or put up a fight against Moonoo and Applicant, both of which have no regard for the law and undermine and prevent the proper functioning of the South African Police Service. I decided to fight and promote the prosecution of those two individuals. They on the information at my disposal were abusing their positions at the SAPS for personal gain without regard to the rights of South African citizens.

THE MALICIOUS NATURE OF PROCEEDINGS AND ABUSE OF POWER BY THE APPLICANT

3.19 I level my accusation of abuse from a sound basis.

3.20 On **01 April 2016** I was unlawfully arrested ("my first arrest") when I was dragged off a flight to London. It happened in front of my two small children. I was charged with using my Irish passport instead of my South African passport. I was not aware that it was an offence and had no intention to act unlawfully. At that time my life was under serious threat because of the active role I played in bringing to justice Radovan Krejcir. Krejcir and a number of corrupt policemen have since been charged with conspiring to murder me. Because my life was under threat I traveled on my Irish passport to conceal the fact that I would be returning to South Africa. I did this to protect myself against the people who were trying to kill me and for no other reason. I needed to do this because Krejcir enjoyed the support of a number of members of the SAPS, including police and immigration officials at the OR Tambo airport. As far as I was concerned they would know my travel movements if I used my South African passport but were less likely to do so if I traveled into South Africa with my Irish passport.

3.21 After my arrest I was unlawfully detained for three days and tortured by members of the SAPS reporting to the Applicant. I believe I was arrested, also, to prevent me from attending a press briefing in Whitehall in the United Kingdom where I was to hand over a detailed report of corruption in SA and specifically within the SAPS ("Whitehall" is used as a metonym for the British Civil Service). The sole purpose of the arrest was to interrogate me on matters extraneous to the charges that related to the use of my Irish passport.

- 3.22 The charges concerning the use of my Irish passport went on trial in the Kempton Park Magistrate's Court. On 02 June 2017 the Magistrate Nel delivered judgement subsequent to an application for discharge in terms of section 174 of the Criminal Procedure Act. The application was successful. During the delivery of his judgement the Magistrate stated that the state witnesses were not at all credible. He also stated that the conduct of the officer's involved in the matter bordered on contempt of court after they refused to give back my passport regardless of the court ordering them to do so.
- 3.23 During cross examination the three police officers who gave evidence for the State admitted that it was an e-mail from me dated 15 March 2016 that led to my unlawful arrest. The third respondent was present at the trial and confirms same. I attach the e-mail of 15 March 2016 hereto as **annexure "POS 4"**.
- 3.24 To avoid prolixity I will not quote the entire content of the e-mail herein. The gist of it is however as follows:

"Before I forget Phahlane, I wanted to ask you, where the money came from to build this mansion in Sable Hills Waterfront Estate? I've got a copy of the title deeds, and bond details. As I see it, you had spare cash of between R3m and R5m. Did you win the Lottery?

I opened a case about this house, with IPID but to date they have not even acknowledged my complaint, and have refused to return my e-mails enquiring on the progress. No doubt also nobbled by the Zuptas, just like SAA, Dube Tradeport, Treasury, SARS, NPA, Hawks and SAPS. If you have got nothing to hide, tell me who built, it and where the cash came from, as a R2.2m bind (sic) did NOT buy the land and build that house."

- 3.25 I thereafter launched an application to the High Court in order to protect me against intimidation. On 16 November 2016 two court orders were granted under case number 75378/2016. I attach the respective court orders (granted by agreement between the parties) hereto as **"POS 5"** and **"POS 6"**. These court order stem from the application by myself against the Applicant, National Director of Public

Prosecutions, the Minister of Justice and Correctional Services, the Minister of Police, Lt-General Berning Ntlemeza, Major-General Prince Mokotedi, Advocate Sello Maema, Advocate Jabulani Jacob Mlotshwa and Warrant Officer Joshua Jacobus Vlok.

- 3.26 In that application I requested the Honourable Court, *inter alia*, to temporarily interdict the Applicant, major-General Prince Mokotedi, Advocate Sello Maema, Advocate Jabulani Jacob Mlotshwa and Warrant Officer Joshua Jacobus Vlok from directly or indirectly supervising, conducting or participating in any criminal investigation or prosecution of myself pending the final determination of part B of the application. The founding affidavit in that matter is in excess of 400 pages and therefore I attach only the Notice of Motion hereto as annexure "POS 7".
- 3.27 "POS 5" is an agreement between myself, the Minister of Police, the Applicant, Lt-General Berning Ntlemeza and Major-General Prince Mokotedi.
- 3.28 "POS 6" was an agreement between myself and the National Director of Public Prosecutions that was made an order of court. This order is not as relevant as the first order, for the purpose of this answering affidavit, but I annex it hereto to provide the court with the full picture.
- 3.29 "POS 5" reads as follows:

"HAVING read the papers filed of record, and by agreement between the parties (but without any admission of liability, and in particular without admission that the applicant is entitled to any relief in relation to Part A), an order in the following terms issues in relation to Part A of the application:

- 1. In any matter, including the charges being investigated under Pretoria Central CAS 380/4/2016, where the First Respondent has taken a decision to prosecute the Applicant and where a warrant of arrest has been obtained for the arrest of the Applicant, the 3rd, 4th, 5th and 6th Respondents undertake to afford the Applicant 48 hours' notice to present himself at a designated Police Station.*

2. *In any other matter where the First Respondent has made a decision to prosecute the Applicant, the 3rd, 4th, 5th and 6th Respondents undertake that the applicant will be brought to court by way of summons.*
3. *In any other matter where the determination is made that the arrest of the Applicant is necessary, the 3rd, 4th, 5th and 6th Respondents undertake to afford the Applicant 48 hours' notice to present himself at a designated Police Station.*
4. *Part B is postponed sine die.*
5. *The costs of the Part A application are reserved for later determination."*

3.30 Two and a half months later, on 6 February 2017 the Applicant served this Application on myself and the third Respondent. There can be very little doubt that the criminal docket which was opened against myself and the Second Respondent was part of a well-orchestrated and devious plan by the Applicant, and his cohorts to counter my involvement as a complainant. In the process the Applicant and his cohorts were abusing State resources under their control. We contend that the purpose of the investigation of the Applicant was multi-pronged:

- 3.30.1 It is a fishing expedition, intended to discover whatever incriminating evidence I, the Third Respondent and the First Respondent had against the Applicant;
- 3.30.2 It is a fishing expedition, intended to intimidate us and force us to disclose certain information in our opposing affidavit that can be used against us in the criminal trial that is running parallel to this application;
- 3.30.3 It is intended to disrupt the investigations against him;
- 3.30.4 It is intended to punish both myself and the Third Respondent financially and emotionally for daring to assist in gathering incriminating evidence against him, and leading the IPID investigators to such evidence;

3.30.5 It was brought to prevent me from communicating a reply to the media when the Applicant repeatedly provides them with false information about me;

3.30.6 As is clear from the answering affidavit filed by Mr Mandla Mahlangu of IPID, the Applicant's scheme was also intended to defeat the ends of justice by using state resources to intimidate key state witnesses.

3.31 On 8 February 2017, a Public Prosecutor signed an application for arrest warrants under Kameeldrift CAS 12/01/2017 and took same to the Cullinan Magistrate's Court to be issued.

3.32 Also on 8 February 2017 warrants for arrest were issued for my and the Third Respondent's arrests in the Cullinan Magistrate's Court in the criminal matter under Kameeldrift CAS 12/01/2017.

3.33 On Friday 10 February 2017 the Third Respondent was unlawfully arrested and detained until 21h00 Sunday 12 February. Our attorney of record was forced to bring an application in order to obtain an order for her immediate release. The Respondent in the application was the Minister of Police, the Station Commander of the Kameeldrift Police Station of the South African Police Service, Adv M M Mashuga, Mandla Mahlangu, the Investigating Officer of the Independent Police Investigations Directorate ("IPID"). I confirm that IPID (the first Respondent) did not oppose. IPID indeed attended the proceedings.

3.34 The Application was not an Application for Bail but for an interdict *de homine libero exhibendo*. This application was brought because the third respondent's rights in terms of sections 10, 12, 14, 35(1)(f), 35(2)(a) and 35(2)(b) of the Constitution, that grants person protection against unlawful arrest and detention, were blatantly infringed. I annex a copy of the application hereto as **annexure "POS 8"**. Mr. LF Taljard ("Taljard") was the deponent of the founding affidavit. I respectfully draw the courts attention to the affidavit deposed to by my attorney of record that sets out the objectives of the application and the reasons why the arrest and detention was unlawful.

- 3.35 Because the application was brought on an extremely urgent basis no answering affidavits were filed but a court order compelling her release was made. I annex a copy as **annexure "POS 9"**. Paragraph 2 of the order, ordered the Respondents to release the third respondent on bail by no later than 21h00 on 12 February 2017. Bail was introduced into the order for no other reason than to expedite the release of the Third Respondent.
- 3.36 Shortly after the third respondent's release I was unlawfully arrested despite the terms of the court order on 16 November 2016 in paragraph 3 thereof. Due to the unlawfulness of the arrest, my attorney was once again forced to bring an application for an interdict *de homine libero exhibendo* for my release.
- 3.37 I attach hereto the Notice of Motion and Founding Affidavit deposed to by our attorneys of record managing director, Mr. W D Spies ("Spies"). The application is attached hereto as **annexure "POS 10"**. I respectfully wish to draw the Court's attention to paragraphs 5.1 of the affidavit by Mr. Spies wherein it is stated that none of the legal requirements for a lawful arrest has been complied with and to paragraph 5.2 of the affidavit wherein it is stated that the arrest is in contravention of an order of the above honorable court that is annexed hereto as "POS 5".
- 3.38 Because the application for my release was brought hours after my arrest, my attorney of record did not have enough time to set out the events that transpired on the day of the arrest in his affidavit. I set out the events because it shows the malicious intent of my arrest on 13 February 2017 that led to the order attached hereto as **annexure "POS 11"**.
- 3.39 On 13 February 2017, I, accompanied by the third respondent, attended a consultation at the offices of our attorneys situated on the corner of DF Malan Avenue and Union Avenue, Kloofsig, Centurion. As we were leaving the offices of our attorneys we were forced by at least eight police vehicles and seventeen heavily armed police officers to pull our vehicle over. Our attorney, Spies, accompanied by Taljard, his professional assistant, was notified of the arrest by a bystander who saw what had happened.



3.40 I identified the officers who were carrying out the arrest as Brigadier Ncube ("Ncube") accompanied by Brigadier Kgorane. I confirm that these were the same persons who were involved in the third respondent's unlawful arrest on the 10th of February 2017. Our attorney, Mr. Willie Spies ("Spies") accompanied by Mr. Taljard, appeared on the scene of arrest and produced the court orders that are attached hereto as "POS 5" and "POS 6" respectively. Ncube was carrying out the arrest. While Ncube was carrying out the arrest Spies tried to explain to him that the arrest was unlawful as it was in contravention with "POS 5". Ncube warned Spies that if he would interfere with the arrest he would also arrest Spies.

3.41 After Ncube filled in the necessary paperwork that pertained to the arrest, Spies referred Ncube to paragraph 3 of "POS 5". For convenience sake I quote the paragraph hereunder:

"In any matter, including the charges being investigated under Pretoria Central CAS380/4/2016, where the First Respondent has taken a decision to prosecute the applicant and where a warrant of arrest has been obtained for the arrest of the applicant, the Third, Fourth, Fifth and Sixth Respondents undertake to afford the applicant 48hours notice to present himself at a designated Police Station."

3.42 Ncube informed Spies that he was going to arrest me because, according to him, the order only applied to Pretoria Central CAS 380/4/2016, i.e. a different matter. I was taken to the Kameeldrift Police Station where I was detained. At the Police Station, and after the court had ordered my release, Brigadier Ncube gave me a written notice informing me that I was to appear at Kameeldrift Police Station within 48 hours, to receive a summons to appear in a criminal court on the alleged charges for which I was arrested.

3.43 The application, brought by my attorneys, for an interdict *de homine libero exhubendo* was successful. I was released after being detained for a six hours. I was not released on bail. Just before I departed from the Kameeldrift Police Station, Ncube called me and told me he wanted to have a look at the notice to receive a J175 Summons and requested me to hand it to him. I did so. The indication by Brigadier Ncube and the request to hand the notice back was a

devious trick. He did not want to have a look at it. He wanted to tear it up. Brigadier Ngcube tore up the notice and wrote a new notice instructing me to report once again at the Kameeldrift Police station within 48 hours to be arrested. The last mentioned notice is attached hereto as **annexure "POS 12"**.

3.44 Mr. Spies thereupon wrote an e-mail to Adv John Mashuga, who was at that time, acting on behalf of the Police. The letter that sets out the reasons why the new notice given to me by Brigadier Ncube was legally flawed. The reasons were as follows:

3.44.1 The order dated 16 November 2016 granted by the honorable DJP Ledwaba provided in paragraph 3 thereof, that such a notice can only be given if "the determination is made that the arrest of the applicant is necessary";

3.44.2 Ncube acted arbitrarily and irrationally when he tore up the former notice and replaced it with a new one insisting on my arrest;

3.44.3 Ncube did not apply his mind as to the necessity of his intended arrest of myself;

3.44.4 The arrest of myself in order to bring me before court is indeed not a necessity;

3.44.5 The notice was given despite the fact that I complied with all bail conditions imposed on him in other matters and that I showed my commitment to be present at court whenever summoned and even if he I am summoned.

3.45 The last mentioned e-mail is attached hereto as **annexure "POS 13"**. After this letter was written, the notice of arrest written by Ncube was withdrawn and I was served with a J175 summons on 16 February 2017, at Pretoria court.

3.46 The J175 informed me that I was to appear in court the same day, on 16 February 2017.

3.47 On 16 February 2017, Adv John Mashuga and Brigadiers Ncube and Kgorane were present. Regardless of the fact that I was brought before court by way of summons, Ncube and Kgorane insisted that 'conditions of release' should be imposed. I find it strange that 'conditions of release' were imposed in light thereof that there was never a bail application before court. I attach the last mentioned conditions of release hereto as **annexure "POS 14"**.

3.48 I deem it necessary to indicate to this honourable court that the bail conditions inter alia prohibit me from interfering, intimidating, contacting or communicating in any manner whatsoever with the applicant. The bail conditions furthermore dictate the following:

3.48.1 The names of State witnesses must not be disclosed to any third party;

3.48.2 The accused must not go to Sable Hills;

3.48.3 The accused must not commit any offense while on bail;

3.48.4 The accused must give prior notice to the investigating officer Brigadier P D Ncube before leaving the country, by fax.

3.49 The honourable court's attention is drawn to the final paragraph of the bail conditions which states that my agreement to these conditions must not be construed as a concession that my arrest on Monday 13 February 2017 was lawful. The court will also notice that the names of State witnesses, except for the applicant's name, has been deleted from the copy of the bail conditions attached hereto due to clause 2 of the bail conditions. I always adhered to these conditions.

3.50 If consideration is had to the events that transpired since 10 February 2017 and the orders and/or bail conditions currently in place the only reasonable conclusion that can be reached is that the applicant is abusing his position to intimidate and harass myself and the third respondent.

4. POINT IN LIMINE

RELIEF SOUGHT IS ACADEMIC

- 4.1 The Conditions of Release of myself (annexed hereto as "POS 14") issued by the Pretoria Magistrate's Court covers the bulk of the relief presently sought by the Applicant. The Applicant does not need to persist with this Application. Furthermore, as will be seen in 4.3.1 *infra*, both I and the Third Respondent offered an undertaking in respect of the balance of the relief sought by the Applicant, but Applicant chose to persist with this Application.
- 4.2 Essentially, the Applicant has abused his power as the Acting Commissioner of Police to interfere with an ongoing investigation by the First Respondent. This is also confirmed when regard is had to the answering affidavit of first respondent.
- 4.3 On **4 April 2017** my attorneys addressed a letter to the Applicant's attorneys with the view to settle this matter, attached as Annexure "POS 15". I and the third respondent tendered not to: -
- 4.3.1 Threaten, harass, intimidate, or abuse, verbally or by email communication or any other form of communication, the applicant; (See also paragraph 1 (a) of Conditions of Release);
- 4.3.2 Incite or encourage any other person or entity to threaten, harass, intimidate or abuse, verbally or by email communication or any other form of communication, the applicant; (See also paragraph 2 of Conditions of Release);
- 4.3.3 Enter upon the estate in which the applicant's home is situated at Waterfront Estate, Roodeplaat, Kamiedrift, Pretoria; and carry out surveillance of the applicant's home at 53 Sable Hills, Waterfront Estate, Roodeplaat, Kamiedrift, Pretoria; (See also paragraph 3 of Conditions of Release);
- 4.3.4 Publish any information of and concerning the applicant, his professional conduct as a police officer and as the National Commissioner of Police;

and/or his private life and circumstance; and/or otherwise defaming the applicant, save with the leave of a Court.

4.4 I also respectfully refer the court to paragraphs 9 – 20 of the first respondent's answering affidavit under the heading "Preliminary Legal Points". I concur with the first respondent's arguments in this regard.

4.5 The application should on this score alone be dismissed with punitive costs.

5. **APPLICANT'S ARGUMENTS AND REBUTTAL**

5.1 Under the heading "Prelude and commencement of IPID investigation" the Applicant alleges that:-

5.1.1 he did not have a duty to respond to my e-mails and/or investigate my complaints;

5.1.2 he did not respond to my e-mails because he believed that I am a deranged and unbalanced individual;

5.1.3 I extorted him when I told him that he must take action against Moonoo or face the consequences;

5.1.4 I carried out my threats by opening a docket against him with the first respondent.

5.2 In this affidavit I will explain that:

5.2.1 the applicant indeed had a duty in terms section 205(3) of the Constitution to respond to my e-mails and investigate my complaints;

5.2.2 I am sound of mind and that his averment to the contrary is an attempt by the applicant to justify his intentional failure to reply to my e-mails and/or investigate my complaints;

5.2.3 I demanded action from the Applicant because there is a duty on the Applicant to take action against police officials when *prima facie* evidence of their corrupt activities are presented to him;

5.2.4 because the Applicant did not to reply to my e-mails and/or complaints I suspected that the Applicant was intentionally failing to take action, in order to protect Moonoo and was involved in criminal activity himself;

5.2.5 I confirmed my suspicions above when I investigated the Applicant

5.3 Under the heading "Unlawful involvement of Paul O'Sullivan and the third respondent in the affairs of the first respondent" the Applicant alleges that:-

5.3.1 I was appointed as an investigator in terms of section 22 of Act 1 of 2011. Such allegation is only by implication;

5.3.2 because I am the complainant in a matter against the applicant, I have a direct or indirect interest in the outcome of the investigation. Therefore my alleged appointment as an investigator is in contravention of section 25(1) of the Act; or

5.3.3 I masqueraded as a duly appointed IPID investigator and therefore I was in contravention of section 33(5) of the Act.

5.4 In this affidavit I will explain:-

5.4.1 that I am the complainant in the corruption charge against the applicant and assisted the first respondent to the best of my ability as expected of a complainant;

5.4.2 that I was never appointed as an investigator of the first respondent;

5.4.3 that I did not masquerade as an investigator of the first respondent. The first Respondent did not misrepresent me as one of their investigators.

5.5 Under the heading "Part C: Interdict" the Applicant alleges that:-

5.5.1 I intentionally defamed the Applicant in the media and that I will continue to do so in the future.

5.6 In this affidavit I will explain:

5.6.1 that what I said is not defamatory of nature; or

5.6.2 that the statements to the media was fair comment on information provided to the media by the applicant; and/or

5.6.3 why the information I provided to the media is true; and/or

5.6.4 why the information I provided to the media was of public interest.

6. **AD SERIATIM RESPONSE TO FOUNDING AFFIDAVIT**

AD PARAGRAPH 1 & 2:

6.1 I deny that the averments contained in applicant's affidavit are true and correct for the reasons as set out herein and in the First Respondents Answering Affidavit. The Applicant is not the Acting National Police Commissioner as he has been suspended subsequent to the filing of this Application. This fact impinges on this application. The Applicant is given an opportunity to rectify this.

AD PARAGRAPH 9:

6.2 I deny that I am the complainant in the defeating the ends of justice case. I have no knowledge of this matter. I confirm that I am the complainant in the corruption case. I deny that Phahlane only learned of my complaint through media reports and sworn statements. He presents one of my e-mails as evidence (see his FA – 1.12) and in his paragraph 35, even extracts and states the following words:

"I opened the case about this house, with IPID, but to date"

The Applicant thus became aware of my complaint before any media reports pertaining to this matter were published. I deny the remainder of the allegations in the Applicants paragraph 9 for the reasons set out herein and in the first respondent's answering affidavit.

AD PARAGRAPH 10

- 6.3 The content of this paragraph is denied. The so called media frenzy was caused by the applicant who repeatedly informed the media that he is the victim of an unlawful investigation by myself and the first respondent. In doing so, the Applicant has forced me to respond to his false claims about my involvement in the IPID investigation. Ironically the Applicant made statements on television and on radio wherein he complained about the investigation being aired in public. That fact was not lost on the media, who repeatedly took him to task.

AD PARAGRAPH 11

- 6.4 I have set out the reasons why I believe this application was brought under the heading "The malicious nature of the proceedings and abuse of power by the Applicant".
- 6.5 I deny that I at any stage subverted and/or manipulated the constitutional and statutory powers of the First Respondent, its investigators and/or delegates for my own personally gain and/or profit. I did not subvert or manipulate anything. Also, I have not gained anything. I did not profit. I will gain and profit if the Applicant is brought to justice. To my knowledge, IPID and its officers have in no manner abused any State powers or illegitimately abused their authority. It is the Applicant that abuses his powers and authority.

AD PARAGRAPH 12

- 6.6 I deny that I or the third respondent is or was unlawfully involved in the affairs of the First Respondent and I wish to record that no grounds exist for a "broader interdict"

against the myself or the third Respondent for the reasons set out herein and in the first respondent's answering affidavit.

AD PARAGRAPH 13

6.7 I have no knowledge of this and cannot comment.

AD PARAGRAPH 14

6.8 The content of this paragraph is denied and the applicant is put to the proof thereof.

6.9 The content of my e-mails where not outlandish, unlawful and unsubstantiated.

6.10 Under the heading "Who is the Applicant" in hereof I explain that a duty rested on the Applicant to assist me and to see to the investigation of my complaint.

6.11 I provided the Applicant with, *inter alia*, two sworn statements that substantiated my complaints:

6.11.1 On 15 March 2016 I sent the Applicant an e-mail that contained a sworn statement deposed to by Humbulani Innocent Khuba. This statement paints a disturbing picture as it contains evidence of unlawful conduct by several SAPS officials. Khuba makes it clear that that he was offered gratification if he would depose to a sworn statement implicating McBride in wrongdoing. The statement is attached to **annexure "POS 16"** hereof;

6.11.2 On 26 November 2016 I sent the Applicant a statement by Jacob Nare dated 26 November 2016. Attached to the statement is also a letter dated 08 February 2016 from Darryl Furman Attorneys that preceded the sworn statement. In this statement Nare specifically sets out the manner in which Moonoo conspired with Krecjir to have Nare murdered. The essence of this statement is summarised in the letter of 08 February 2016. I attach the last mentioned affidavit and letter hereto as **annexure "POS 17"**.

6.11.3 I also respectfully refer the court to Captain Coetzee's complaint laid with the first respondent. Coetzee provided me with a copy of the complaint that I attach hereto as **annexure "POS 18"**. In this affidavit Coetzee explains how Moonoo has been assisting criminals for a number of years and how he was involved in a plot to have me murdered.

6.11.4 The Applicant refused to assist me regardless of his duty in terms of section 205(3) of the Constitution to do so. He intentionally and unlawfully ignored my e-mails and the abovementioned statements. I suspected that the Applicant was intentionally ignoring my e-mails and the incriminating information contained therein. I started suspecting that the reason for the Applicant's intentional omission was because he was himself involved in criminal activity and therefore part of the problem. I confirmed my suspicions by way of investigation and laid a complaint with the first respondent.

6.12 The Honourable Court must see the above for what it is. The criminal conduct was on the part of the Applicant and other police officers. My conduct amounted to attempts to investigate such criminal conduct in order to bring the Applicant to book. The Applicant wanted to thwart me and the Third Respondent. It is clear that the motto of the Applicant was that the accuser must become the accused.

AD PARAGRAPH 17 & 17.1

6.13 I have explained why I started writing to the Applicant above.

6.14 I requested the Applicant to give me the opportunity to discuss my complaints with him and to provide him with *prima facie* evidence of Moonoo's criminal activity. My request was not responded to.

AD PARAGRAPH 17.2

6.15 The content of this paragraph are denied as it is untrue and also hearsay and the Applicant is put to the proof thereof.

AD PARAGRAPH 17.3

- 6.16 The content of this paragraph are denied and the applicant is put to the proof thereof.
- 6.17 I am not "any Tom, Dick or Harry". I am a certified forensic consultant with many years of experience in this particular field. The Applicant admits that he had knowledge of me and the work I do. He would then also be aware that I am an expert investigator with the means to thoroughly investigate criminal activity. Regardless hereof I was still ignored. Even if I were a "Dick, Tom or Harry", the criminal activity that I raised should still be investigated. I am advised that it will be argued that the phrase "Dick, Tom and Harry" is indicative of the way the Applicant views a person complaining about a crime.
- 6.18 In light of the fact that Moonoo was South Africa's most senior detective at that time, it is inappropriate that the Applicant suggest that such an investigation should've been conducted by officials with a far lower rank than Moonoo. I furthermore wish to remind the applicant that at this stage I had already laid several complaints with the first respondent which was rudderless and therefore unable to assist me.
- 6.19 The mails in question contained extremely serious allegations of criminal conduct, (supported with prima facie evidence), against South Africa's most senior detective, Moonoo. In my e-mails, I made it clear to Applicant that Moonoo was not only engaged in criminal conduct but had fraudulently obtained a search and seizure warrant against me. This enabled him to seize evidence I had obtained against him. The court order which sets the search and seizure warrant aside is attached hereto as **annexure "POS 19"**.
- 6.20 By his own admission, the Applicant simply chose to ignore the evidence contained in my e-mails. He instead assisted Moonoo in his criminal conduct as is clear from the letter addressed to General Sithole and Applicant on 08 February 2016. A copy thereof is attached hereto as **Annexure "POS 20"**. This letter was written on behalf of Jacob Nare who later deposed to the affidavit attached hereto as annexure "POS 17".



6.21 There are many unanswered letters. I attach as **Annexure "POS 21"**, just one of these, which is a letter from my previous attorneys dated 01 February 2016, with serious complaints of gross violation of my rights by Moonoo and SAPS members under his command, with *prima facie* evidence attached.

AD PARAGRAPH 19 & 20

6.22 I fail to see the relevance of these e-mails as it does not contain any substantiating evidence to the relief sought by the Applicant.

6.23 I copied the Applicant in these e-mails because I wanted to provide the applicant with incriminating information that would force him to act against Moonoo.

AD PARAGRAPH 21

6.24 These mails are not directly addressed to the Applicant and therefore does not contribute to the relief requested in the Applicant's Notice of motion.

6.25 The allegations were not unsubstantiated. After hearing an application by the Helen Suzman Foundation this honourable Court found that Ntlemeza was unfit to hold office.

AD PARAGRAPH 22

6.26 The Applicant is clearly attempting to justify his omission to consider my correspondence by trying to convince the court that I am not sound of mind, even if the abuse of power and corruption within the top ranks of the South African Police Services "makes me mad". I take exception to this tactic. I can assure the honourable court that I am sound of mind.

AD PARAGRAPH 23

6.27 When the e-mail 'FA1.5' was sent I fully intended to launch such an Application to force the Applicant to take action against Moonoo. I changed my mind when it

became clear to me that the Applicant himself was involved in corruption, and rather than being part of the solution was part of the problem. Even if the Applicant was forced to take action against Moonoo by a court, it would be impossible to ensure that the investigation was done diligently and honestly. Such an application would've been extremely costly and the enforcement of such an order very difficult. I could legally force the Applicant to investigate Moonoo but I could not force him to do so diligently and honestly.

AD PARAGRAPH 24

6.28 I deny that the content of the e-mail was unlawful. I wanted the applicant to fulfil his obligation to act against corruption within the SAPS.

6.29 I deny claiming any credit for Phiyega's suspension. My reference to shifting my focus to Applicant like I did with Phiyega, was intended to convey that I would launch a criminal complaint against the Applicant as I did with Phiyega.

6.30 The words "I sleep soundly in my bed at night, do you?" was not a threat. I only suggested that the Applicant should consider whether his conscience is clear.

AD PARAGRAPH 25

6.31 The only thing that was becoming tiresome was the Applicant's deafening silence and his refusal to assist me. The Applicant conveniently does not refer the court to the allegations contained in the first four paragraphs of my letter (his annexure "FA1.5"). To avoid prolixity I will repeat the gist of the last mentioned allegations:

6.31.1 I have met with Jacob Nare (a state witness against Krecjir);

6.31.2 Moonoo is assisting Krecjir to murder Jacob Nare (a state witness) and also Bheki Lukhele;

6.31.3 I have recorded my conversation with Jacob Nare and he has provided me with an affidavit confirming Moonoo's involvement in the murder plot;

6.31.4 I inform the Applicant that a telephone recording between Padayachee and Krecjir (while in prison) exists wherein Krecjir states that he will have Moonoo murdered if Moonoo does not pay back monies he received from Krecjir. Moonoo then assures Krecjir that he would not go to prison because he will have Jacob Nare murdered.

6.32 I, once again, presented *prima facie* evidence to the Applicant concerning Moonoo's very active involvement in plans to assassinate Jacob Nare.

AD PARAGRAPH 26

6.33 I wanted to force the Applicant to investigate my complaints and the information contained in my e-mails. The Applicant remained silent and did not take action, which lead me to believe that he too is involved in criminal activity. Taking into consideration the incriminating information contained in the First Respondent's answering affidavit, I believe it is safe to say that my suspicions were correct.

AD PARAGRAPH 27 & 27.1

6.34 The content of this paragraph is denied.

6.35 Only one e-mail is attached as "FA 1.7" and not e-mails as stated by the Applicant. I did not allege that the "top echelon of police generals were a narrow syndicate and cabal of persons protecting one another" in "FA 1.7". Those are the words of the Applicant.

AD PARAGRAPH 27.2

6.36 The content of this paragraph is denied.

6.37 In the Applicant's "FA 1.7" I state that I would call a media conference. The purpose of such a conference would have been to inform the media that the Applicant was not willing to investigate or even comment on serious allegations against high

ranking officials. I do not use the words "smear campaign" in annexure "FA 1.7" and that is, in any event, not something I would consider possible as I do not control the media. If the Applicant had nothing to hide he would have welcomed a media conference. Instead the applicant wants to prohibit me from communicating with the media at all costs.

AD PARAGRAPH 27.3

6.38 The Applicant had a duty to investigate these very serious complaints against Moonoo. He refused to do so.

6.39 I deny that I expected the Applicant to accept prejudgements of matters involving his colleagues. I wanted him to investigate my complaints and then act accordingly.

AD PARAGRAPH 27.4

6.40 "FA 1.7" is one e-mail and does not contain extravagant threats. As explained above, I wanted the Applicant to investigate my complaints.

AD PARAGRAPH 28

6.41 When the Applicant refused to investigate my complaint I suspected that he was also involved in criminal activities. I then started investigating the Applicant. When I started my investigation against the Applicant I realised that Applicant had been assisting Moonoo by intentionally ignoring my complaints. By this time I was able to adduce evidence of the corrupt activities of the Applicant. Subsequent to me realizing that I sent the e-mail of 12 February 2016.

AD PARAGRAPH 29 & 30

6.42 The mails were sent in error, as is made clear in the follow up mail I sent him. The Applicant admits the mail should've been deleted. I informed him of my error after my first e-mail was sent. This e-mail, is therefore irrelevant.

AD PARAGRAPH 31

6.43 The content of this paragraph is denied and the plaintiff is put to the proof thereof.

6.44 The Applicant tries to justify his omission to investigate my complaints by stating that I am "deranged". I furthermore submit that the only basis for these untrue statements, advanced by the Applicant, is that I've sent him e-mails that contain information regarding criminal conduct by high ranking police officials. The Applicant has not lifted a finger to verify the validity of my complaints regardless of how serious they are. He has intentionally omitted to investigate my complaints regarding Moonoo.

AD PARAGRAPH 32

6.45 The content of this paragraph are denied.

6.46 I take serious exception to the defamatory allegations contained in this paragraph. The fraud that was committed by the Applicant was glaringly obvious. In this regard I refer the Honourable Court to the incriminating information contained in the first respondent's answering affidavit.

AD PARAGRAPH 33

6.47 The Applicant once again tries to justify his inaction by questioning my soundness of mind.

6.48 I have explained in detail why I started writing to the Applicant and deny any allegation to the contrary.

6.49 It cannot be expected of an individual approach a court to ensure that the SAPS or the Applicant does its job. I expect, like every other citizen, that this is a given.

6.50 Evidence regarding the Selebi matter is hearsay evidence and untrue.



6.51 If the Applicant really respected the Rule of Law he would've investigated the serious allegations against officials in respect of which I provided *prima facie* evidence.

AD PARAGRAPH 34

6.52 I intend to assist with all I have bringing each every one of those generals mentioned to justice. That includes the Applicant.

AD PARAGRAPH 35

6.53 The content of this paragraph are denied and the Applicant is put to the proof thereof.

6.54 I fail to see how the Annexure FA1.12 proves that I was "fuelling a media narrative".

6.55 The information contained in this e-mail that pertains to the building of the Applicant's home, clearly hit a nerve. Two weeks later on 01 April 2016 I was unlawfully arrested. This arrest also lead to the application (notice of motion attached hereto as "POS 7" and the orders attached hereto as annexures "POS 5" and "POS 6".

6.56 The charges concerning the use of my Irish passport went on trial. During cross examination the three police officers who gave evidence admitted that it was an e-mail dated 15 March 2016 that led to my unlawful arrest.

AD PARAGRAPH 36

6.57 The content of this paragraph is denied and the Applicant is put to the proof thereof.

6.58 I deny that I at any time acted unlawfully.

6.59 Instead of writing me a letter wherein he warns me that he has a problem with my conduct, the Applicant has me arrested and detained for three days and institutes malicious civil and criminal proceedings against me to punish and silence me.



AD PARAGRAPH 37

6.60 This mail was intended to prompt the recipients into some soul-searching. I hoped they might 'see the light' and realise they would have to change their ways or face prison. As it turned out it merely led to my unlawful arrest and torture. The R20 million mentioned, was merely a puffing of the chest, to induce the recipients into believing that I had resources for a protracted legal battle, which I did not. I was fighting this systemic corruption with very limited resources.

AD PARAGRAPH 38

6.61 The first sentence is a defamatory conjecture, intended to mislead this Honourable court.

6.62 I have no tolerance for corruption and will fight corruption with any lawful means to my disposal.

6.63 The reference to Afriforum is not warranted by the email. In any event my first contact with Afriforum, was in October 2016. I have a constitutional right to freedom of association.

AD PARAGRAPH 39

6.64 The mails abruptly ceased because Applicant had started a process to punish me and it took me a good few months to get back on my feet, after facing unlawful arrest, detention, torture, and being charged on trumped up charges, put together by persons under the Applicants command. I had to turn my resources to defensive measures for a period. It was only when McBride returned to his office, after almost two years of unlawful suspension, that my faith was partially restored in the criminal justice system again. It was shortly after this, that Applicant's rogue conduct again started to affect me. I found evidence that he was behind my original arrest and the

death threat against me of 20 November 2016. I felt this should not go unanswered. I did this as a way of self-preservation, thinking that if I exposed him it would stop the attempt on my life.

AD PARAGRAPH 40

6.65 The only warped logic here is the fact that the Applicant did not launch an investigation into the persons listed in his annexure "FA 1.14" subsequent to the Public Protector's report.

6.66 I demanded an urgent investigation. No time line was set. This email is not unlawful.

AD PARAGRAPH 41

6.67 Under the heading "Malicious Nature of Proceedings and abuse of power by the Applicant" I have explained that it was my e-mail of 15 March that pertained to the building of the Applicant's house that led to my arrest and detention on 01 April 2017.

6.68 Under the abovementioned heading I have also explained how this application, the unlawful arrest of the third respondent on 10 February 2017 and my unlawful arrest on 13 February 2017 are all part of a well thought out and malicious plan to punish and silence myself and the third Respondent.

6.69 The abovementioned is not fantastical. It is a disgrace and abuse of power.

AD PARAGRAPH 42

6.70 The "surrender" I was referring to, had to do with the guilty parties, including the Applicant, admitting their wrongdoing and submitting to the criminal justice system, so that they can be held accountable, nothing more nothing less. I was not asking the Applicant to withdraw the charges against me.



6.71 I request this honourable court to read the Applicant's entire "FA 1.15". The Applicant selectively submits extracts from my e-mails in a deliberate attempt to mislead the court.

AD PARAGRAPH 43

6.72 I uncovered corruption in the ranks of the SAPS and I was a victim thereof. When the SAPS and the Applicant refused to investigate my complaints I approached the first respondent. Nothing came of these complaints because McBride and his team was unlawfully suspended. Upon Mr. McBride's return my complaints were investigated.

6.73 The first respondent investigated my complaints, with my assistance as a complainant, as they are mandated and obliged to do. When they saw that there was merit in my complaints against the Applicant, they acted accordingly.

6.74 The suggestion that IPID were to meet me at the airport was untrue. In this regard, I admit I misled the Applicant and others copied on the mail. I had a good reason for doing so. I had been warned that I would again be unlawfully arrested upon my return, by officers reporting to the Applicant.

AD PARAGRAPH 44

6.75 The content of this paragraph is noted.

6.76 I respectfully request the honourable court to familiarise itself with the Applicant's FA 1.16. I repeat the gist of the e-mail: I opened a docket at the Bedford view police station. The head of detectives at this station, colonel Maluleke, advised me as follows:

6.76.1 A civilian is not allowed to open a corruption case against state employees;

6.76.2 Only the state can open a corruption case against state employees;

6.76.3 There is not sufficient evidence in the docket I have opened for an arrest to take place.

6.77 I placed the above on record and explained why the above is untrue by way of e-mail (applicant's "FA 1.16").

AD PARAGRAPH 45

6.78 I deny that I am politically driven. I fight corruption, because I am a concerned citizen and have the skills to do.

6.79 The comments in the e-mail was purely tongue in cheek. It would, however be refreshing to see Zuma being held accountable, which would not happen while the Applicant is Acting Commissioner of the SAPS.

AD PARAGRAPH 46

6.80 This is not relevant to that what the Applicant request in his notice of motion.

6.81 This e-mail is factual. What is worrying, is the intention of the Applicant, the then Minister and the State in general to turn a blind eye to the fact that the chief of staff in Ministry of Police, is an imposter, an illegal immigrant, a convicted fraudster and a person with zero security clearance. I put the Applicant to state in his reply affidavit what he has done about this disgraceful state of affairs.

AD PARAGRAPH 47

6.82 The content of this paragraph is denied. The Applicant is put to the proof thereof.

6.83 I attach hereto as **Annexure "POS 22"**, a copy of a press article, that appeared on News 24 which makes it clear that the Applicant is being untruthful.



AD PAPRAGRAPH 50

6.84 I admit I went into the estate and this was for the purpose of assisting the First Respondent's officials in pointing out evidence in my capacity as a complainant. I deny I was "snooping around" the Applicant's home and he is put to the proof thereof.

6.85 The Applicant cannot possibly be in possession of a picture of my vehicle at his house, as my vehicle was not at his house, but on a public street nearby.

AD PARAGRAPH 52

6.86 The media statement referred to is contradicted by the Applicant's own conduct. Despite repeatedly stating that he does not want an investigation conducted in the media, he has made repeated trips to TV studios and radio studios to advance his (untruthful) version of events. In most of those interviews, he blamed his misfortune on myself and went on to make highly defamatory comments about me. If Applicant did not want media attention, he should have simply stayed away from the TV and radio studios.

6.87 I attach a sample of the transcripts of some of his interviews, as annexure "POS 23", from which it can be seen, he has not been honest with the public and therefore only has himself to blame for the media frenzy he has created.

6.88 It is important to note that despite the Applicant's continued stated intention of not wanting to have this investigation conducted in public, he should explain why he felt the need to spend the whole day of **20 January 2017**, being driven to the following tv/radio studios:

SABC Pretoria TV studios

SAFM Radio studio - Johannesburg

ENCA TV Studio - Johannesburg

ANN7 TV studio - Midrand

Power FM Radio Studio – Johannesburg

702 radio studio – (by telephone)

6.89 I respectfully submit that the above is not the conduct of a person that claims not to want to debate the issues in the media.

AD PARAGRAPH 55

6.90 I opened a docket with the first Respondent that contained the *prima facie* evidence that I refer to in this e-mail. The first respondent was investigating my complaint and therefore I agreed not to discuss the merits of the matter with the media. This is made clear in my answers to the journalist.

6.91 I am the complainant in one of the charges against the Applicant. I will testify against the Applicant when the time comes and my testimony will be in the public domain.

6.92 The Applicant selectively discloses information to this journalist. When the journalist confronted me with this information I gave, what I considered to be fair comment. The Applicant is requesting this court to interdict me from talking to the media to allow him to defame me.

6.93 Had I responded to the journalist's questions in detail the Applicant would have accused me of "carefully stage-managing the media". When I decided not to discuss the merits of a matter that is under investigation, he is also upset.

AD PARAGRAPH 56

6.94 Applicant attaches a copy of the sworn statement of Nare, which formed Nare's complaint with IPID, as part of his annexure 'FA-3.2'. I am surprised that he attaches such an incriminating document. In the statement Mr. Nare thoroughly explains Moonoo's involvement with Krejcir and how the witness protection system

was not safe because Krejcir was able to use the program to plan assassination of myself and others involved in his prosecution.

6.95 The Applicant has not lifted a finger to investigate the information contained in this affidavit regardless of the seriousness of the allegations contained therein.

6.96 The applicant further states that he is "prosecuting a defamation action" against POPCRU members. When you have unlimited resources, the easiest way to silence someone that is critical of your actions is to draw that individual into malicious litigation that they cannot afford. I am also a victim of his strategy.

AD PARAGRAPH 57

6.97 This e-mail was sent the week I received death threats which I am certain emanated from the applicant. I was extremely aggravated and wanted the Applicant to know I suspected him of involvement in the death threats.

6.98 The Applicant's wife is not a co-applicant in this matter but I am fully within my rights to open a complaint if I could gather *prima facie* evidence of wrongdoing. I however doubt that such allegation will be investigated unless it is opened with the first respondent. The Applicant's wife must've been aware that she was financially benefitting the unlawful activities of the Applicant.

AD PARAGRAPH 58

6.99 I deny that my involvement with the first respondent was unlawful. I was involved only as a complainant and to the extent set out in the first respondent's answering affidavit.

6.100 There is only one person that had a motive, and the knowledge, for sending the death threats to myself and to the IPID Principal Investigator, Mandla Mahlangu 'Mahlangu'. That person is the Applicant.



AD PARAGRAPH 59

6.101 This mail also is a draft that I unfortunately sent to the applicant, when I should have deleted it. I apologise for the unbecoming tone of the mail. The draft was made, because I wanted to unsettle him for conspiring to send the death threat to me.

AD PARAGRAPH 60

6.102 The Applicant complains about the investigation being aired in the media, yet he meets with journalists on 27 November 2016 in the hope that the media will help him fulfil his untrue narrative of being a victim of foul play.

6.103 The journalist had an interview with the Applicant. He divulged information pertaining to me. I was confronted with this information and I fairly commented thereon.

AD PARAGRAPH 61

6.104 The Applicant once again avers that I am not sound of mind. I deny this and put the Applicant to the proof thereof by presenting expert evidence to that effect.

6.105 The surveillance I was referring to was the security camera of the estate, situated at the estate entrance. If he should drive out or in, the suspect car would be seen on camera. That footage could be easily obtained and present by the Applicant.

6.106 I deny that I am, or ever was, a threat to the Applicant's safety. I merely assisted the first respondent with an investigation as is expected of a complainant. My involvement in the investigation has been concluded. I have agreed to bail conditions that prevent me from making contact with the Applicant I have also tendered these terms. The Applicant's wife is not a co-applicant.

6.107 The Applicant alleges that he fears for his personal safety. He need not. I am not a violent person.

AD PARAGRAPH 62.1 & 63

6.108 The Applicant has taken no steps to investigate my complaint notwithstanding the serious nature of the complaints against Moonoo, replete with prima facie evidence. The charge regarding defeating the ends of justice relates to the Applicant informing witnesses involved in his investigation not to co-operate with IPID.

AD PARAGRAPH 62.2 & 64

6.109 In light of the information contained in the first respondent's answering affidavit it is clear that the house could not have been built by legally obtained funds.

6.110 The Applicant furthermore does not even attempt to explain where he obtained the funds that were used to build his house.

AD PARAGRAPH 62.3

6.111 I admit that this is indeed the case and is also confirmed in the first respondent's affidavit.

AD PARAGRAPH 65 & 66

6.112 I have read the first Respondent's answer to the Applicant's paragraph 66 and confirm the correctness thereof

6.113 I have a copy of the CPN report, and have extracted certain pages therefrom. The applicant only shared exculpatory findings with the media. I attach hereto an extract of 37 pages of the 1991 page CPN report as **Annexure "POS 24"**. These pages contain incriminating evidence that supports the first Respondent's answer to the Applicant's paragraph 66. To avoid prolixity, my legal representative will deal with these pages in argument if necessary.



6.114 These pages are important, and I refer to the relevance of certain paragraphs and put the Applicant to explain the glib exculpatory press conference he gave to the media on 01 December 2016, contrasted with the findings he deliberately omitted to tell the media.

6.115 I deny the Applicant was being truthful when he said the CPN (not E&Y) report exonerated him. For the reasons contained in the first respondent's answering affidavit and herein, there were more questions than answers. It is clear that the Applicant cherry-picked those aspects of the CPN report that were exculpatory, whilst ignoring the sections that were not.

AD PARAGRAPH 67

6.116 I deny that I have pursued a false media narrative. I do not believe that the information provided to the media was defamatory of nature. The information I provided was true and correct and it was in the public's interest to be aware thereof. I have also on numerous occasions fairly commented on false statements made to the media by the Applicant.

AD PARAGRAPH 69 – 81

6.117 I have no knowledge save for:

AD PARAGRAPH 69.2

6.118 The content is denied in as far as it relates to me and the Applicant is put to the proof thereof.

AD PARAGRAH 73.3

6.119 I admit making a statement in February 2016. Five weeks later I was unlawfully arrested and hauled off an aircraft to London in front my minor children, unlawfully detained and then tortured, as punishment for my conduct.



AD PARAGRAPH 88

6.120 I deny that I in any way influenced the First Respondent's independence and/or unlawfully influenced the First Respondent. The Applicant is put to the proof thereof.

AD PARAGRAPH 90

6.121 I confirm the correctness of the First Respondents answer to paragraph 90 of the Applicants Founding Affidavit.

AD PARAGRAPH 91

6.122 I deny that my involvement in this regard was a publicity stunt and I put the Applicant to the proof thereof.

AD PARAGRAPH 98

6.123 I deny that the relevant allegations are false and I confirm that these allegations did not originate from me. The Applicant is put to the proof of his statement in this paragraph.

AD PARAGRAPH 103

6.124 I deny that I or the Third Respondent have ever held ourselves out to be or acted as IPID investigators.

AD PARAGRAPH 110

6.125 I deny that I ever acted in breach of any section of the IPID act and put the Applicant to the proof thereof. I confirm that I have read paragraphs 216 to 217 of the First Respondents Answering Affidavit and confirm the correctness in as far as it relates to me.

AD PARAGRAPH 112

6.126 I confirm that I have read paragraphs 218 and 219 of the First Respondents Answering Affidavit and confirm the correctness thereof in as far as it relates to me.

AD PARAGRAPH 113

6.127 I have read paragraphs 220 to 223 of the First Respondents Answering Affidavit and confirm the correctness thereof in as far as it relates to me.

AD PARAGRAPH 116

6.128 The contents of this paragraph are denied.

6.129 I accompanied two IPID directors on that date and did not take any pictures of the Applicants house. I also did not snoop around the premises. The Applicant is put to the proof of these allegations.

AD PARAGRAPH 117

6.130 The content of this paragraph are denied.

6.131 The Applicant contradicts Terblanche's own statement that is attached as FA12. Terblanche states under oath that the initial meeting took place at Mirka Street, Sinoville and not at Waterford Estate.

6.132 Terblanche further states under oath that:

"At no stage prior to the interview was it made clear to me what the official designation of the parties were.....".

6.133 Terblanche does not say in his affidavit that I or the Third Respondent held ourselves out to be IPID investigators.

6.134 The Applicant is the only one attributing the abovementioned statements to Terblanche. In light of the above I deny that I held myself out to be an IPID investigator and confirm that I was not involved in the subsequent statement taking that was done between IPID and Terblanche.

AD PARAGRAPH 118

6.135 I was assisting the investigators of the first respondent where possible. We stopped at Terblanche's residence to ascertain if he could attend the meeting with the first respondent on 17 November 2016 at 11h00 and bring his bank statements with him. Terblanche's wife started shouting, so we left. Terblanche asked for a case number and the Third Respondent sent it to him.

AD PARAGRAPH 119

6.136 The First Respondent answered this paragraph. I confirm the correctness thereof in as far as it relates to me and the Third Respondent.

AD PARAGRAPH 120 TO 127

6.137 I have read the First Respondents Answering Affidavit in this regard and confirm the correctness of the submissions that pertain to me.

6.138 I do however note that the Applicant has not been able to obtain a confirmatory affidavit by Mr. Jooste and therefore the content of paragraphs 120 and 121 is hearsay evidence.

AD PARAGRAPH 128

6.139 The content of this paragraph are denied and the Applicant is put to the proof thereof.

6.140 I am a globally respected certified fraud examiner with many years of experience and I have in the last 30 years in South Africa built more than 1500 residential houses as part of my property development activities. Therefore it cannot be said

that I am not qualified to express the opinions that pertaining to the Applicants house and the building costs thereof. I am also an engineer, although I ceased practicing as such in the 1990's.

6.141 The Applicant still does not explain how the funds were obtained.

AD PARAGRAPH 129

6.142 I deny that my involvement with IPID as a complainant was in any way unlawful. I in no way affected the First Respondents independent and objective nature. I put the Applicant to the proof thereof.

AD PARAGRAPH 130

6.143 It is ironic that the Applicant is not willing to answer to the allegations that has been made against him. In not answering these allegations he is reserving his right to remain silent. The applicant has seen to my malicious prosecution and is forcing me to answer to certain allegations before my criminal trial has commenced and therefore my right to remain silent is being prejudiced. In light of this, I believe that it should be expected of the Applicant to answer to the allegations that has been put to him, by the Respondents.

AD PARAGRAPH 131 – 147

6.144 In paragraph 131 the Applicant states that the purpose of this section of his founding affidavit is aimed at interdicting myself from making defamatory remarks of and concerning his office and his person. The Applicant tries to justify his request for an interdict, in the abovementioned terms, by referring to interviews I had with journalists, radio and television interviews and previous judgements. Furthermore, the Applicant is not the Acting National Police Commissioner as he has been suspended subsequent to the filing of this application. This fact impinges on this application.

6.145 Under the heading "*Point in limine*" I explained to the honorable court that my bail conditions attached hereto as annexure "POS 14" grants almost all of the relief



sought by the applicant. I confirm that I have always adhered to my bail conditions. I have also referred the court to a letter from my attorneys annexed hereto as annexure "POS 15". In the last mentioned letter I tendered, *inter alia*, the following:

"[I] Will not publish any information of and concerning the applicant, his professional conduct as a police officer and as the (Acting) National Commissioner of Police and/or his private life and circumstances and/or otherwise defaming the applicant save with the leave of a court or on the written request of an investigator of IPID. This however shall not prevent the second respondent from replying to any direct or indirect defamatory comment by the applicant of the second respondent."

6.146 It is therefore clear that I do not have any intention to discuss litigation between myself and the Applicant with the media.

6.147 I furthermore wish to reply to paragraphs 131 - 144 of the Applicant's founding affidavit as follows:

6.147.1 My statements are not defamatory of nature or unlawful; or

6.147.2 My statements were fair comment on information provided to the media by the applicant; and/or

6.147.3 The information I provided to the public are true; and/or

6.147.4 The information I provided to the media was in the public interest and therefore there was duty on me to disclose the information to the public.

6.148 Any averments by the Applicant that contradicts my submission above are denied and the Applicant is put to the proof thereof.

AD PARAGRAPH 147 - 149



6.149 The content of this paragraph are denied for the reasons set out herein and in the first Respondents answering affidavit.

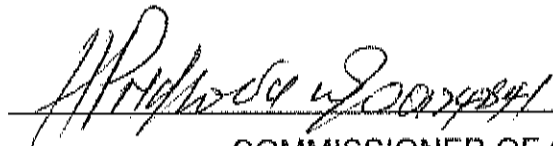
7. PRAYERS

7.1 In light of the above I request the honourable court to dismiss the Application with costs.



DEPONENT

THUS SIGNED AND SWORN TO AT GALLO MANOR on this NINTH day of JUNE 2015 by the deponent who acknowledged that he regards the prescribed oath as binding on his conscience, that he knows and understands the contents of this affidavit and that he verily beliefs the contents hereof to be both true and correct.



COMMISSIONER OF OATHS

