SAPS / SAPD 3M(a)

Part / Deel A 1

SOUTH AFRICAN POLICE SERVICE — SUID-AFRIKAANSE POLISIEDIENS

PREAMBLE TO STATEMENT * AANHEF TOT VERKLARING

Station / Stasie: O R TAMBO INT AIRPORT

CAS no / MAS no: 91 / 01 / 2016

PERSONAL PARTICULARS * PERSOONLIKE BESONDERHEDE

Title / Titel: MR

Initials / Voorletters: P

Surname / Van: O'SULLIVAN

First names / Voorname: PAUL

Identity number / Identiteitsnommer: [redacted]

Race / Ras: A / A, Br / Br, Bl / Sw, W / W — W

Passport number / Paspoortnommer:

Country of issue / Land van uitreiking:

Date of Birth / Geboortedatum: 19550826

Age / Ouderdom: 60

Gender / Geslag: M / M, F / V — M

Nationality / Nasionaliteit: SOUTH AFRICAN

I am/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:

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

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

Town/City / Dorp/Stad:

Postal Code / Poskode:

Telephone number / Telefoonnommer: Home / Huis Code — No — ; Work / Werk Code — No —

Cellphone number / Sellulêre foonnommer:

Fax / Faks Code — No —

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

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

Street name / Straatnaam:

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

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

Town/City / Dorp/Stad: JOHANNESBURG

Postal Code / Poskode: 2142

Telephone number / Telefoonnommer: Home / Huis Code — No — ; Work / Werk Code — No —

Cellphone number / Sellulêre foonnommer: [redacted]

Fax / Faks Code — No —

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: Yes / Ja

E - Mail address / E - Pos adres: paul.osullivan@poaa.za.com

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

Title / Title:

Initials / Voorletters:

Surname / Van:

Telephone number / Telefoonnommer: Home / Huis Code — No — ; Work / Werk Code — No —

2016-01-14

Date/Datum

Signature/Handtekening

SOUTH AFRICAN POLICE SERVICE — SUID-AFRIKAANSE POLISIEDIENS

Part / Deel A 1

STATEMENT * VERKLARING

Station / Stasie	O.R. TAMBO INT. AIRPORT	CAS no / MAS no	•• , 01, 2016

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

PARTICULARS OF OFFENCE/INCIDENT * BESONDERHEDE VAN MISDRYF/VOORVAL

Date and time of offence/incident / Datum en tyd van misdryf/voorval	2015/11/06 - HHMM 1200
Or / Of Period: Between / Tydperk: Tussen	HHMM ____ on / op ________ and / en HHMM ____ on / op ________
Day of week / Dag van week	Su/So M/M D/D W/W D/D V/V S/S
Description of Offence/Incident / Beskrywing van Misdryf/Voorval	RECKLESS CONDUCT i.t.o. Sect 214 of Act 71 of 2008
Method used/Entrance gained / Metode gebruik/Toegang verkry	MISMANAGED FINANCES OF A COMPANY
Type of instrument used / Tipe instrument gebruik	MEMORANDUMS AND LETTERS

SCENE OF CRIME * TONEEL VAN MISDAAD

Between: Name of place / Tussen: Pleknaam	AIRWAYS PARK
and: Name of place / en: Pleknaam	
Or / Of	
Street name / Straatnaam	32 JONES ROAD,
Building/farm/plot/place / Gebou/plaas/plot/plek	
Suburb/Extension/Area / Voorstad/Uitbreiding/Gebied	
Town/City / Dorp/Stad	KEMPTON PARK
Postal Code / Poskode	2001
Geographical block no / Geografiese blok no	
Type of premises / Tipe perseel	BUSINESS PREMISES /AIRPORT

2016-01-14
Date/Datum

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

SWORN STATEMENT

I, the undersigned Paul O'Sullivan, ID No. [redacted] state under oath as follows:

1

I am an adult male Forensic Consultant & Certified Fraud Examiner and confirm that the information set out herein is true and correct.

BACKGROUND

2

The purpose of this sworn statement is to set out the grounds for a criminal complaint against EACH AND EVERY member of the board of directors **'Board'** of South African Airways (Pty) Limited, with registration number 1997/022444/07 **'SAA'** as led by Chairwoman Dudu Myeni **'Myeni',** whom I shall class as the 'main suspect' in this complaint, as she unlawfully and intentionally manipulated the board into carrying out her unlawful intentions and, despite being a non-executive director, unlawfully took on executive functions, in order to perpetrate her acts.

3

The complaint is in respect of the offences of **FRAUD through FALSE PUBLIC STATEMENTS, RECKLESS CONDUCT, NON-COMPLIANCE** and **FRAUD – WITH THE UNLAWFUL ATTEMPTS TO COVER THE TRAIL OF EVIDENCE,**

In short that the Board of SAA appear to have been trading recklessly and in a manner calculated to defraud creditors and/or employees and/or any person with a vested interest in the ongoing business of the airline, such as myself and many others like me. They continued to trade when SAA was in financial distress and in the face of their own legal advice, advising them that SAA was insolvent and that steps should be taken to enter into business rescue. However, notwithstanding the aforesaid advice the Board continued to incur debt knowing full well that this is prohibited by law in the event that a company is not able to meet its liabilities when they fall due, as is currently the case. To compound their unlawful conduct, Myeni herself then intentionally misled parliament, in a desperate attempt to cover up the collective unlawful conduct of the board.

4

My legal standing herein is two-fold:

- I am a long standing SAA Life-Platinum, Voyager card holder and regular passenger on SAA, spending about R500,000.00 per annum as such – I therefore have a vested interest in the continuation of the airline as a going concern
- I am a significant contributor of taxes, paying approximately R1,000,000.00 in tax each year and Myeni and the Board's unlawful conduct is causing SAA to be a drain public funds.

I therefore have the legal standing, to call for this criminal investigation by the state, which I hereby do.

PREAMBLE

5

On **2015-11-06,** then acting Chief Executive Officer, Thuli Mpshe **'Mpshe'** submitted a Legal Opinion **'the Opinion'** to the Board at the request of the SAA Group Executive Committee **'EXCO',** headed *ADVICE ON THE LEGAL OF THE CORRESPONDENCE FROM AIRBUS DATED 2 & 26 October 2015 RELATING TO THE PREDELWERY PAYMENTS UNDER THE A320-200 PURCHASE AGREEMENT.* I have attached this Opinion hereto as **Annexure 'POS – 1'.** I will also unpack and explain the import of the well thought-out advice.

6

The purpose of the aforementioned legal advice was clearly to provide unequivocal legal advice to the Board pertaining to its financial position, its fiduciary duties and the consequences thereof which, at the ongoing instance of Myeni were ignored by the Board and eventually leading to the patently unlawful conduct of the Board, in not only ignoring the advice, but acting *ultra vires* the legal advice by attempting to unlawfully vary an already agreed trading decision with Airbus, for the purpose of benefiting some or other 3rd party that was supposed to have been introduced into the equation, for no other purpose than unlawful enrichment, by that third party, which leaves the unpleasant odour that smells of an attempt to enter into a corrupt relationship, as no lawful procurement process had been initiated to bring about such third party enrichment. It is clear the advice was well thought out.

EVENTS LEADING UP TO THE UNLAWFUL CONDUCT – UNPACKING THE LEGAL ADVICE

7

On **2015-10-02** SAA Chief Financial Officer **'CFO'** received a letter from Airbus that in terms of the Agreement SAA was in default of the Agreement for non-payments and was required to pay the Predelivery Payments **'PdP's'**. On **2015-10-26** a further letter was received from Airbus demanding payment to be made by **2015-11-02**, reserving their rights in terms of the Agreement. On **2015-10-29** a meeting was held with the EXCO and the CFO in attendance, where the aforementioned demands were discussed. The relevant details of the Agreement are clearly set out in Annexure 'POS 1 '.

8

On **2015-10-30** a further meeting was convened whereby the CFO informed the Board that SAA was not in a financial position to pay its debts that were due and payable including those due to and demanded from Airbus, which debts arose specifically as a result of the unlawful conduct of Myeni.

9

On **2015-11-06** Mpshe issued the Opinion to the Board and I will briefly cover the pertinent facts for purposes of supporting the allegations of fraud and reckless trading I make herein:

FINANCIAL POSITION OF SAA AS AT DATE OF DEFAULT

10

On pages 4 and 5 of Annexure 'POS – 1' under heading **Financial Position**, it is stated that:

*As stated above, the CFO advised that SAA currently does not have sufficient cash resources to meet the newly imposed POP obligations by Airbus in addition to its current cash flow obligations either the due to Airbus or all its other debts, but not both. From the CFO's financial forecasts, it appears that on 30 October 2015, SAA's cash resources would have been extremely low, assuming that of $17m (USD) were paid on 23 October 2015 (see Consolidated Cash flow forecast attached as Annexure **'A'**). The forecast also appears to indicate that from 9-15 November 2015 SAA will have no more cash available. The forecast further appears to indicate that on 10 November 2015 SAA is required to honour a loan commitment. The forecast also includes a comment that SAA is, based on the current information with regard to the newly anticipated transaction, required to pay an additional $100m in PdPs within 30 days of signature of the new transaction. From previous forecasts from the Finance department (excluding PdPs), it appears that SAA would have low, rather no cash available on 10 & 16 November 2015, and no cash available on 30 November 2015. (see Annexure **'B'**)*

*The CFO also provided a 24 month outlook of financial position (see Annexure **'C'**). It appears from the outlook that SAA is not in a position to pay its debts until such time as the current funding process has been finalised - estimated finalisation is January 2016, as advised that in the interim he is undertaking initiatives to try and secure bridge funding.*

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CONSEQUENCES OF BREACH CLEARLY SPELT OUT

11

On pages 8 of Annexure 'POS – 1' under heading **Consequences of non-payment of PdPs**, it is stated that:

> *Should Airbus issue a notice of default or seek to terminate the Purchase Agreement for breach, this may trigger an Event of Default allowing lenders and lessors to accelerate their debts, terminate leases and take other enforcement actions. All could further trigger financial distress and/or insolvency tor SAA.*
>
> *In addition, under the Purchase Agreement Airbus may institute legal action against SAA for breach of contract and claim damages. Airbus may withhold payment of any sums due or claimable by SAA unless and until the Default is cured or remedied. Airbus may also retain all of the existing sums paid by SAA, apply any PdP amount it holds in respect of any Aircraft or any other funds, credits and credit memoranda available to SAA under the Purchase Agreement as it wishes, including compensating for losses or damages suffered due to the non-payment of PdPs. All these are in addition to any other rights Airbus has under the Purchase Agreement and at law.*

COMPANIES ACT, 2008 – this demonstrates that board members knew their conduct was wrong (since they were being told this) and therefore satisfies the test of *mens rea* or culpability. The Board are therefore collectively responsible for the conduct of the board (even though it was Myeni's unilateral conduct) as a whole and should **ALL** face criminal prosecution if it is found that they acted unlawfully.

12

On pages 8 and 9 of Annexure 'POS – 1' under heading **Companies Act**, it is stated that:

> ***Section 22 (1)*** *of the Act provides that a company must not carry on its business recklessly, with gross negligence, with intent to defraud any person or for any fraudulent purpose. In terms of section 22(2) the CIPC may issue a notice to a company to show cause why it should be permitted to continue trading if the has reasonable grounds to believe that a company is trading recklessly or is unable to pay its debts as and when they become due and payable in the normal course of business?.*
>
> ***Section 77(8)(b)*** *states that any director of a company is liable for any loss, damages or costs sustained by the company as a direct or indirect consequence of the director "acquiesced to the carrying on of the company's business despite knowing that it was being conducted in a manner prohibited by section 22 (1)"*
>
> *The Companies Act defines "financially distressed" in* ***section 128(1)*** *to mean that, at any particular point in time, it appears to be:*
>
> *i. reasonably unlikely that the company will be able to pay all of its debts as they fall due and payable within the immediately ensuing six months [Commercial insolvency – own emphasis], or*
>
> *ii. reasonably likely that the company will become insolvent within the immediately ensuing six months" [technical insolvency – own emphasis]*

THE CONCLUSION AND RECOMMENDATION OF MPSHE

13

On pages 12 and 13 of Annexure 'POS – 1', it is stated that:

> **Conclusion**
>
> SAA is financially distressed and currently trading under insolvent circumstances and consequently trading recklessly. While the Correspondence does not induce a new risk with respect to the reckless trading and financial distress, it introduces a new risk of a breach of an agreement and consequently a

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potential trigger of material adverse effect and potential cross default under the funding and aircraft lease agreements. This exacerbates an already weak financial position and compounds financial issues. SAA has always had this under the Purchase Agreement. The Correspondence accelerates the issue.

The Companies Act requires the Board to fits for business rescue or liquidations. Alternatively, any creditor or employees may apply to court to place SAA under business rescue. Creditors may also apply to court for liquidation of SAA. Failure to comply with these provisions of the Companies Act can result in statutory sanctions and a possible fine or imprisonment against a person found guilty of an offence to defraud a creditor, employee or shareholder.

Under the Purchase Agreement Airbus can take action - including to terminate the Purchase Agreement, retain all existing paid by SAA and seek damages against SAA in an English court. Additionally, SAA is required to notify its lessors and tenders of potential events of default arising under other loan/tease and material contracts, which can result in enforcement action by relevant lenders/lessors/other counterparties. The Board should consider alternative options to remedy the situation and workshop these with EXCO.

Recommended actions to address situation

It is recommended that the Board should immediately:

1. request the shareholder for an equity injection whether through capitalisation, sale of shares or other applicable and appropriate corporate finance mechanisms to arrest the financial decline and resolve going concern, financial distress and reckless trading concerns and comply with the Companies Act;

2. Finalise its decision regarding the Swap Transaction;

3. engage Airbus and seek to reach agreement on the agreed transaction structure between the parties, including the withdrawal of the Correspondence and the suspension of ail the obligations under the Purchase Agreement pending agreement on the revised Swap Transaction; and

4. Establish a transaction team to negotiate the Swap Transaction under the agreed transaction structure.

The Board failed and/or refused to ensure the above recommendations were acted upon, showing that the Board had knowledge of the position, and intentionally acted in a manner calculated to defraud creditors, by not only covering up its financial distress, but by increasing the distress by allowing Myeni to introduce a third party.

RECKLESS TRADING IN TERMS OF SECTION 214 OF THE NEW COMPANIES ACT, NO. 71 OF 2008

14

214. False statements, reckless conduct and non-compliance

(1) A person is guilty of an offence if the person-

(a) is a party to the falsification of any accounting records of a company;

(b) with a fraudulent purpose, knowingly provided false or misleading information in any circumstances in which this Act requires the person to provide information or give notice to another person;

(c) was knowingly a party to an act or omission by a company calculated to defraud a creditor

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or employee of the company, or a holder of the company's securities, or with another fraudulent purpose; or

[Para. (c) substituted by s. 119 of Act 3/2011]

SANCTIONS UNDER IN TERMS OF SECTION 216 OF THE COMPANIES ACT

15

216. Penalties

Any person convicted of an offence in terms of this Act, is liable—

(a) in the case of a contravention of section 213(1) or 214(1), to a fine or to imprisonment for a period not exceeding 10 years, or to both a fine and imprisonment; or

(b) in any other case, to a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and imprisonment.

There is no logical reason why the board as a whole, should not all stand as co-accused, if it is found that they acted unlawfully.

16

In order to hide and/or to cover up the allegations against them, the Board have unlawfully used what scarce funds they had, to stymie media attention on their parlous state of affairs, thereby demonstrating *mens rea*. There can be no doubt that the Board unlawfully squandered public funds, for no other purpose than to prevent the truth about the parlous state of affairs of SAA, in particular Myeni's unlawful attempt to benefit a third party company, by unlawfully introducing same as a middleman in a varied transaction, without even a smattering of compliance with any procurement processes at all. In the absence of a proper explanation as to the unlawful cover-up and the unlawful introduction of a third party beneficiary, the only logical conclusion that can be drawn is that Myeni was intending to enter into a corrupt relationship with the third party company, for the purpose of receiving a 'gratification' as id well defined in Act 12 of 2004.

17

Based on the contents of my statement, I request a Police investigation into the conduct of the Board in terms of the following offences:-

RECKLESS TRADING, in that on or about **2015-11-06**, at OR Tambo International Airport, or at a place or places unknown, the Board (led by Myeni) received legal advice pertaining to SAA's financial position stating that if they continued to trade they would be doing so recklessly. They unlawfully ignored the advice and continued trading, with the intention to commit fraud against its creditors. In addition, they suppressed the legal advice, which show intention on their part.

FRAUD, in that on or about **2015-11-18**, at Parliament in Cape Town, Myeni unlawfully and intentionally misled the Portfolio Committee of Public Enterprises and the Standing Committee of Finance by failing and/or refusing to disclose information that would show that SAA was insolvent. Instead of pointing out the aforesaid information Myeni unlawfully and intentionally painted a false picture that all was well with the finances of SAA, which at all material times she knew to be false and therefore committed fraud. She did this with the sole intention of attempting to move forward with her unlawful plan to introduce a third party, to plunder the public purse.

CORRUPTION, in that between September 2015 and November 2015, Myeni unlawfully and intentionally attempted to introduce a third party (namely Quartile Capital and/or Mr Modise Motlaba, into the deal with Airbus, for the purpose of obtaining a gratification from such third party, after syphoning funds from the public purse for that purpose.

18

To further evidence the above allegations and demonstrate the patently unlawful and reckless conduct of Myeni's board, I also attach relevant media articles, over and above Annexure 'POS-1':

Annexure 'POS-2', The Mail & Guardian article of 2015-11-27, which makes it patently clear that Myeni was engaged in unlawful conduct to introduce a third party and to unlawfully vary the terms of the Airbus deal. As previously mentioned, in the absence of a proper explanation (which should exclude the smokescreen of so-called black empowerment), the only logical conclusion is that Myeni and others would receive gratification from this introduction.

Annexure 'POS-3', A selection of articles which make it crystal clear that Myeni unlawfully and unilaterally attempted to change the deal with Airbus and introduce a third party (without following any procurement process), with the sole intention of plundering the public purse, as so succinctly put by Alec Hogg. When taken as whole it can only indicate that Myeni, working in collusion with Modise Motlaba of Quartile Capital unlawfully and intentionally attempted to scupper a deal with Airbus, for the purpose of introducing the third party (Quartile Capital), so that monies (in the form of un-earned and excessive fees from Quartile) could be syphoned out of the public purse.

19

These annexes are also important, as they prove, when taken as a whole, that the board acting collectively in accordance with the 'instructions' of Myeni, (or Myeni acting unilaterally) authorised the company to hire lawyers to unlawfully cover-up their unlawful conduct by falsely claiming to the court that the legal advice was 'privileged' when clearly it was not. The fact that the board was prepared to waste further hundreds of thousands of Rand (if not more) of tax-payer funds, in covering up their unlawful reckless conduct is, in my humble submission further evidence of their culpability in the reckless trading that they have been engaged in and goes to the state of mind and legal 'intention' of the Board.

20

I therefore request an urgent high-level investigation into the disgraceful unlawful conduct of Myeni and the whole board of SAA. It also needs to be examined as to why Myeni is being protected, as has been publicly alleged, by the state president and father of her children and whether such protection is in itself unlawful and amounts to an offence.

AGGRAVATING CIRCUMSTANCES

21

Myeni's conduct was not only reckless in the extreme, but it was calculated and planend, as part of a conspiracy to introduce a third party. When she di not get her way, she took the matter further and the repercussions were immense and extreme. For this reason alone, it is imperative that the investigations and resultant prosecutions send out a clear signal to like-minded politically connected persons, who treat multi-billion Rand State owned Enterprises as their own 'pension fund', that they simply cannot get away with it.

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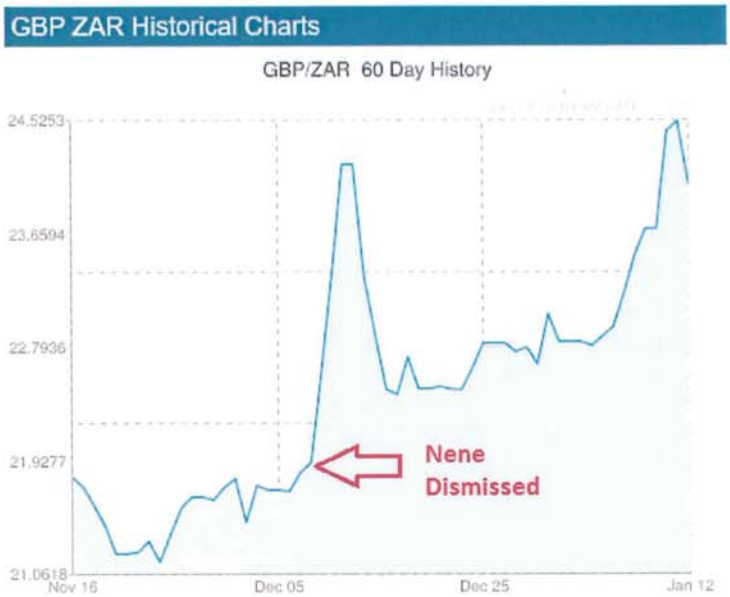
Not only did Myeni and the board engage in reckless, fraudulent and patently disgraceful unethical conduct but, when it became clear that treasury, and in turn the Minister of Finance refused to kow-tow to Myeni's desires, she managed to procure, through the person that denies fathering her children, (Jacob Zuma) to arrange for the then Minister of Finance to be (unlawfully) fired. The unlawful dismissal of Nene, by President Zuma, sent the world markets into turmoil and wiped billions of Rand off the balance sheets of many South Africans and South African companies, by causing a run on the Rand, to the extent that the rand has plummeted against other countries, as is clear below:



Prior to me signing this statement, I have carefully read through it and am satisfied that the facts are correctly and accurately recorded. The following questions were put to me in person by the commissioner of oaths and I entered the answers thereto in my own handwriting:

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

'Do you have any objection to taking the prescribed oath?' No

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

PAUL O'SULLIVAN

I certify that the deponent has acknowledged that he knows and understands the contents of this statement which was sworn to before me and the deponents signature was placed thereon in my presence at ~~**Gallo Manor**~~ Rosebank on this **THIRTEENTH** day of **JANUARY 2016**

Commissioner of Oaths

SOUTH AF... POLICE SER
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