IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

(REPUBLIC OF SOUTH AFRICA)

CASE NO. : ________

In the matter between:

PAUL O'SULLIVAN 1st Applicant

DEMI MEGAN JACKSON 2nd Applicant

and

VODACOM LIMITED Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

PAUL O'SULLIVAN

do hereby make oath and state as follows :

1. I am the First Applicant in this matter and am an adult male, forensic consultant. For security reasons as will hereinafter become more apparent, I furnish only the address of my current attorney of record and, which address for all purposes arising from this Application, I choose as my *domicilium citandi et executandi*, namely Gary G Mazaham

Attorneys, 1st Floor, Block 1, Freestone Office Park, 135 Patricia Road, Sandown, Sandton.

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

3. The Second Applicant is Demi Megan Jackson, an adult female business woman and carrying on business at 344 Rivonia Boulevard, Rivonia, Sandton.

4. The Respondent is Vodacom Limited, a public company with limited liability, incorporated and having juristic personality in terms of the Company Laws of the Republic of South Africa with its principal place of business at Vodacom Corporate Park, 082 Boulevard, Vodacom Valley, Midrand, Gauteng.

INTRODUCTION AND PURPOSE OF THE APPLICATION

1. The First Applicant is contracted to the Respondent which acts as a cellular service provider to the First Applicant in regard to the operation of a cellular telephone number 082 821 1666.

2. The Second Applicant is contracted to the Respondent which acts as a cellular service provider to the First Applicant in regard to the operation of a cellular telephone number 082 451 9925.

3. Generally, the itemised billing by the Respondent in respect of its clients is confidential and such itemised billing is, on request by the holder of a particular cellular phone number, entitled to receive such billing. Records in this regard are not ordinarliy made available to general members of the public on demand. Rigid protocols are enforced in order to protect the confidentiality of these records.

4. It has become evident that during 2011, and as more fully hereinafter dealt with, certain itemised billing records relating to both myself and the Second Applicant were released to third parties under circumstances which, after preliminary investigation, appear to be highly questionable.

5. The purpose of this Appliction is to obtain an Order by this Honourable Court, instructing the Respondent to make available to myself and the Second Applicant, copies of such documentation furnished to it and in terms of which the itemised billing records were released to the third receiving party.

BREACH OF CONFIDENTIALITY AND THREAT TO SECURITY OF APPLICANTS

1. In my professional capacity as a forensic specialist and certified fraud examiner, of more than 30 years professional experience, I am closely involved in serious criminal investigative matters, often involving criminals generally regarded as highly dangerous and wielding considerable influence in government and political circles, largely as a

result of, *inter alia*, considerable wealth accumulated from serious organised crime :

1.1. Such matter in which I am currently closely involved and working for Directorate of Priority Crimes Investigation (the Hawks), is that relating to serious offences allegedly commited by Radovan Krejcir ("Krejcir") who is currently under investigation, *inter alia* for fraud, murder and armed robbery;

1.2. More particularly, Krejcir is currently also under investigation in relation to the murder of Emmanuel "Lolly" Jackson who was murdered on 03 May 2012, and as a result of which murder I was subsequently mandated by his surviving wife, the Second Applicant to assist in the criminal investigation with a view to identifying the murderer and/or other parties complicit in the killing of her husband;

1.3. This investigation is highly sensitive and, as has been regularly published in the press, involves extradition proceedings and the alleged related involvement of several high profile parties;

1.4. In terms of my mandate from the Second Applicant relating to the investigation aforementioned, I am governed by a Secrecy and Confidentiality Agreement and am unable further to elaborate on the nature of the investigation.

2. In or about March 2011, Krejcir was arrested in a high-profile raid by the Hawks on his Bedfordview home. Subsequent to his arrest, and after a fairly lengthy bail application, he was released on bail.

3. Krejcir is fully aware that I am playing a particularly large role in the investigation of the offences with which he has been charged and he is manifestly hostile in his relationship with me. I have had certain "death threats" against me. For that reason, my safety and that of my family and certain high profile clients and informants with whom I work closely, is of paramount importance to me and cannot be prejudiced or endangered unduly.

4. It is in this context that I record that in or about the second week of June 2011, I was informed by one of my ~~informants~~ friends who, for security reasons I do not at this stage name, that he had been called in by Krejcir and, in the presence of Colonel Sambo, the station commander at Bedfordview Police Station, was told by Krejcir that I could very easily be killed. He further informs me that Krejcir went on to ask him why there had been so many telephone calls between myself and him on a particular day. When my informant questioned how Krejcir knew of such calls, he boldly bragged that he had my telephone records which clearly reflected the calls to which he referred.

5. Having been alerted to the possibility therefore that Krejcir may have had access to and/or obtained my cellular phone itemised billing records, I immediately contacted Vodacom and, particularly on 13 June 2011, advised them that I believed that the integrity of my cellular communications had been severely breached. I was not accusing the

Respondent in that regard but indicated that I believed that to the extent that such records may have been requested and obtained, such request was not *bona fide* and required to be further investigated.

6. Mr Bradley Smit, the Executive Head of the department : Corporate Security at the Respondent, duly advised me that he was aware of three instances when my cellular records had been requested by the South African Police, namely in March 2011, April 2011 and June 2011 respectively.

7. I duly entered into certain correspondence with Mr Bradley Smit in order to obtain further information to the extent that he was empowered to furnish in an effort to initiate further investigation into this matter. I annex hereto as **Annexure "A"** the respective e-mails that passed between Mr Bradley Smit of the Respondent and myself and in this regard, draw to the attention of this Honourable Court the following :

7.1. In terms of the e-mail of 13 June 2011 from Mr Smit, it was recorded that, *inter alia*, that the request for the records in issue, were granted pursuant to subpoenas issued in terms of Section 205 of the Criminal Procedure Act 51 of 1977 and relating to three criminal matters (in respect of which I would have had to be implicated so as to warrant the granting of such subpoena) namely:

7.1.1. Primrose Cas 709/03/2011 relating to kidnapping, assault and theft charges;

7.1.2. Tokoza Cas 268/04/2011 relating to armed robbery charge; and

7.1.3. Tokoza Cas 31/06/2011 relating to murder;

7.1.4. Reference is made to the fact that I was in immediate communication with General Sibaya of the Hawks, Gauteng in order to have this matter more fully investigated.

7.1.5. My repeated enquiries as to any developments in regard to the issues raised with General Sibaya for purposes of investigation, reveal that this matter has not been fully investigated and I am offered no assurance as to a satisfactory resolution in that regard. I was, however informed, that a Captain Beukes had been designated control of this enquiry but, he has not been willing or able to advise me as to which steps, if any, have been taken to further the investigation required.

I deny any specific knowledge relating to any of the three aforementioned dockets. It is my sincere belief that statements implicating me or creating "reasonable suspicion" so as to warrant the issuing of the said subpoenas, were based on fraudulent misrepresentations to achieve that purpose.

7.1.6. Mr Smit confirmed that he would take control of the Section 205 subpoenas (and related documentation) and hold same available in order to facilitate a police investigation at my request.

8. Mr Smit, during my telephonic conversations with him, made it clear that he would only be in a position to furnish a copy of the respective subpoenas and supporting documentation as was in his possession in the event of a Court Order so instructing. It is for that reason that the Second Applicant and myself have been required to bring this Application before this Court.

9. On 20 July 2012, my ex-wife who lives in Europe, received certain harrassing and disturbing phone calls. She telephonically communicated with me and advised me that, arising from these calls, she was led to believe that I would be arrested for certain serious offences and that she had been offered remuneration to the equivalent of R1.5 million if she would furnish the caller with information that could be used to publicly discredit me. In this respect I note :

9.1. I arranged for a special phone line at the residence of my ex-wife which line is ex-directory and details thereof are not in any public domain. This was done for the sole purpose of protecting my family from any threat to safety as a result of any of the investigations in which I was involved. As additional security, the phone line is changed every six months. It was last changed in March 2012;

9.2. A third party therefore, through having access to my itemised billing as would have been furnished by the Respondent, gained knowledge of the unlisted number of the residence of my ex-wife;

9.3. I annex hereto as **Annexure "B"**, an affidavit deposed to by my wife before a Notary Public in the United Kingdom. Certain references therein have for security reasons been blackened out and, the clear copy thereof, will be made available to the Honourable Court at the hearing should this be necessary;

9.4. As a result of the further request for my itemised billing by unknown sources and the fact the last such request must have been in or about July 2012, I am unable any longer to simply wait for the possible further investigation at the instance of the South African Police authorities. Without determining the nature of the party requesting the Section 205 subpoenas aforesaid and the basis on which such subpoenas were granted, I am unable to furnish any particulars or make any specific allegations that would possibly prompt more definitive investigation and curtailment or restraint on such parties having further access to my records aforementioned.

10. The Second Applicant sent me an e-mail on 23 December 2011, a copy of which is annexed hereto marked **Annexure "C"** which, in turn includes an e-mail chain between her and her step-daughter, Samantha Jackson :

10.1. The **first item** of **Annexure "C"** is an e-mail from Shaun Rossouw addressed to Second Applicant's step-daugher, Samantha Jackson. This e-mail offers the cellular phone records of the Second Applicant when, in fact, the offeror has no lawful right to such records;

10.2. The **second item** of **Annexure "C"** is an e-mail from Shaun Rossouw to Second Applicant's step-daughter aforementioned, in which he attaches three PDF files;

10.3. The **third item** of **Annexure "C"** is the forensic analysis carried out by myself in respect of each of the three PDF files aforementioned and, from such analysis, it is evident that the three files were created on 02 June 2011, 01 August 2011 and 01 August 2011 respectively;

10.4. The **fourth item** of **Annexure "C"** is the complete e-mail chain from Shaun Rossouw as between him and Samantha Jackson and, in turn from Samantha Jackson to Second Applicant and myself. Upon my receiving advice of this breach of confidentiality in respect of the Second Applicant, I immediately, on instruction from the Second Applicant, communicated with the Second Applicant;

10.5. There is a distinct overlap in the investigations of the allegations as against Krejcir as aforementioned and the investigation into the murder of the late husband of the Second Applicant. Further, I am able to state that certain threats were made to the Second

Applicant which relate directly to former dealings as between the late Emmanuel "Lolly" Jackson and Krejcir and/or his business entities. Accordingly, the cellular phone records of myself and the Second Applicant have a distinct benefit to Krejcir and, it is common knowledge that he has high connections to certain members of the South African Police force. It is therefore necessary for me to determine the nature and origin of the aforementioned Section 205 subpoenas in an attempt to identify the persons/persons unlawfully seeking access to the phone records of myself and the Second Applicant.

11. The Second Applicant, by way of a Confirmatory Affidavit annexed hereto marked **Annexure "D"** confirms the content of this affidavit insofar as it has reference to her.

WHEREFORE I pray that the relief sought in the Notice of Motion to which this affidavit is attached be granted.

PAUL O'SULLIVAN

SIGNED AND SWORN TO AT Johannesburg ON THIS 22 DAY OF August 2012, THE DEPONENT HAVING SWORN THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, THAT THE OATH HE TAKES IS BINDING ON HIS CONSCIENCE AND THAT THE CONTENT OF THIS AFFIDAVIT IS TRUE AND CORRECT.

FAREEAA CsIKÓS
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COMMISSIONER OF OATHS

ANNEXURE 'A'

E-MAILS – 2012-06-13 through 2011-06-15

e-mail between Paul O'Sullivan, Vodacom and General Sibiya of Police, Complete chain, with oldest e-mail shown last:

From: Bradley Smit <Bradley.Smit@vodacom.co.za>
To: "Paul.OSullivan@securitas-rsa.co.za" <Paul.OSullivan@securitas-rsa.co.za>
Date: 2011/06/15 01:40 PM
Subject: RE: Violation of Privacy - resulting in threat to my life

Good Afternoon Paul

I have secured all the information, and will only give it to a Police officer who will be looking into this matter, I cannot advise you as to what action you need to take, but I would think the commissioner will be in a better position to give advice, and the action to be taken.

Regards

Bradley Smit
EHOD: Corporate Security

-----Original Message-----
From: Paul.OSullivan@securitas-rsa.co.za [
Sent: 14 June 2011 04:55 PM
To: Bradley Smit
Cc: Jodee Farah; sibiyashadrack@saps.org.za; Wilna Meiring
Subject: RE: Violation of Privacy - resulting in threat to my life

Thanks Bradley,

I'm currently in CT and the General is in Durbs, but I'm sure he will let us know who will be handling it very soon.

General,

Please advise if I need to formally open a docket? I would have thought it better not to, lest they get alerted that we are onto them.

Best wishes,

Paul O'Sullivan

From: Bradley Smit <Bradley.Smit@vodacom.co.za>
To: "Paul.OSullivan@securitas-rsa.co.za"
Cc: Jodee Farah <Jodee.Farah@vodacom.co.za>, "sibiyashadrack@saps.org.za" <sibiyashadrack@saps.org.za>, Wilna Meiring <Wilna.Meiring@vodacom.co.za>
Date: 2011/06/14 04:43 PM
Subject: RE: Violation of Privacy - resulting in threat to my life

Good Afternoon Paul

We will secure all section 205's made in respect of your call data related information, and will present it to the Police as part of their investigation into the allegations.

Regards

Bradley Smit
EHOD: Corporate Security

-----Original Message-----
From: Paul.OSullivan@securitas-rsa.co.za
Sent: 14 June 2011 03:38 PM
To: Bradley Smit
Cc: Jodee Farah; sibiyashadrack@saps.org.za; Wilna Meiring
Subject: RE: Violation of Privacy - resulting in threat to my life

Thanks Bradley.

Obviously a very scary situation, to think that there are dirty cops, pulling my data and handing it to underworld characters like Krejcir.

I've spoken to General Sibiya and he is taking the necessary steps. Obviously, you would need to secure all the data (ie the 205 applications addressed to you), as these will be an integral part of the investigation.

It would be funny, were it not for the fact that it has compromised my life and the life of people I work with, to consider I am the subject of investigations into kidnapping, assault, theft, armed robbery and murder.

I hope to be able to report soon, that the dirty cops in question are behind bars, for fraud, defeating the ends of justice and the relevant bit of the act that deals with unlawful interception.

Best wishes,

Paul O'Sullivan

-----Original Message-----
From: Paul.OSullivan@securitas-rsa.co.za [
mailto: Paul.OSullivan@securitas-rsa.co.za]
Sent: 13 June 2011 12:21 PM
To: Bradley Smit
Cc: sibiyashadrack@saps.org.za
Subject: Fw: Violation of Privacy - resulting in threat to my life

Hi Bradley,

Thanks for calling me this morning.

I accept, based on what you have told me, (that two police officers applied for, and received details of my incoming and outgoing phone calls) that Vodacom's position is not compromised here.

I confirm I am awaiting details as to the name and case numbers of the persons that executed 205's against Vodacom, so that the matter may be taken further.

You will note that I am copying Gen Sibiya, as I will be passing the information straight to him, with a view to ascertaining how the information came into the hands of the underworld and, whether or not as the case may be, the officers in question had probable cause to apply for such warrants.

It would also be important to know for what period such information was issued. We at least know he had the data for the month of March 2011, as it was this that he discussed with a third party.

What I now need to know, is whom of my other sources may have been compromised and this may only be possible to ascertain once I know what data has been handed to Krejcir.

I thank you for your prompt response to this matter.

Best wishes,

Paul O'Sullivan
Director of Operations & Forensics

From: Bradley Smit <Bradley.Smit@vodacom.co.za>
To: "Paul.OSullivan@securitas-rsa.co.za"
Cc: "sibiyashadrack@saps.org.za"
Jodee Farah <Jodee.Farah@vodacom.co.za>, Wilna Meiring <Wilna.Meiring@vodacom.co.za>
Date: 2011/06/13 04:59 PM
Subject: RE: Violation of Privacy - resulting in threat to my life

Good Afternoon Paul

Thank you for your mail, as discussed we have received section 205's for information relating to your call data related information, and Vodacom is obligated to disclosed this information if we receive a section 205 to do so,

Unfortunately as mentioned, this is a matter that you will need to take up with the Police and the justice department collectively, as to the authentication of the section 205 and the content thereof.

In doing so, I can advise you that there was 3 applications made:

Primrose	Case 709/03/2011,	Kidnapping, Assault and Theft
Tokoza	Case 268/04/2011,	Armed Robbery
Tokoza	Case 31/06/2011	Murder

All the applications was for call data related information, falling within 2011,and the investigating officers are different in each case.

The Police will need to provide you with more information as to the officers in charge of each case and the legitimacy of the cases.

Trust this will assist you in taking the matter up appropriately.

Regards

Bradley Smit
EHOD: Corporate Security