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REPORT ON THE FINDINGS OF A COMPLAINT RECEIVED FROM MR PAUL O'SULLIVAN (COMPLAINANT) IN TERMS OF SECTION 17L (4)(a) OF THE SOUTH AFRICAN POLICE SERVICE ACT, 68 OF 1995 (SAPS ACT).

AGAINST

MAJ GEN PRINCE NKITSING MOKOTEDI	(1ST RESPONDENT)
COL AMOD KHALIL HOSEN	(2ND RESPONDENT)
CAPT JOSHUA JAKOBUS VLOK	(3RD RESPONDENT)
CAPT TEMBIKHAYA CECIL MANGQALAZA	(4TH RESPONDENT)

INTRODUCTION AND MANDATE

1. The complainant, Mr Paul O'Sullivan, has made wide ranging accusations against the respondents in his statement (and other supporting documents) dated 22 July 2016. This complaint was lodged during the tenure of my predecessor, the late Directorate for Priority Crime Investigation Judge (DPCI Judge or Hawks Ombud), Judge Essa Moosa, who sadly passed on during February 2017. It is unfortunate

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and deeply regretted that this grievance fell through the cracks. Better care and diligence should have been displayed by me as Head of the DPCI Judge's Office, and my officials to a lesser extent. The situation has not been helped by a lack of personnel capacity which has belatedly, from the beginning of 2020, slightly improved. At this early stage of the Report it is declared that the Office of the DPCI Judge has jurisdiction to adjudicate the complaint by virtue of the fact that the respondents are or were members of the Hawks when Mr O'Sullivan accused them of grossly and unlawfully violating his rights as envisaged in s 17L (4)(a) of the SAPS Act. It provides that:

"The retired judge may receive complaints in the prescribed form and manner from any member of the public who can provide evidence of a serious and unlawful infringement of his or her rights caused by an investigation by the Directorate [the Hawks]."

2. In the multiple complaints by Mr O'Sullivan, running into 152 paragraphs, he claims gross abuse of power was perpetrated, in the main, by the first respondent, Maj Gen Mokotedi, the former Provincial Head of the DPCI (the Hawks), Gauteng. He states:

"(1) The cornerstone of our criminal justice system is that those who are vested with power must exercise the power without fear, favour or prejudice.

(2) Concomitantly, it means that any power [of] abuse or ulterior motives will not and should not be tolerated in our criminal justice system.

(3) Our Constitution jealously guards the above principles and legislation has been enacted to guarantee constitutional protection against those who do an injustice to the "without fear, favour and prejudice principle". Even pre-constitutionally, our courts jealously guarded these rights. In **R v Rose 1937 (AD) 467 at 476-477**, the Court stated in this regard as follows:

"Now the term justice is not limited in meaning to the notion of retribution for the wrongdoer: it also connotes that the wrongdoer should be fairly tried in accordance with the principles of the law. This would not mean that every provision of the law should have been rigidly and precisely observed but that the accused has been substantially prejudiced by non-observance of such provisions".

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- (4) Section 17L of the South African Police Service Act, 68 of 1995 (as amended) (SAPS ACT) is one of the legislative enactments designed to guard against the violation of the above constitutional protection.
- (5) It will be demonstrated hereunder that members of the Directorate Priority Crime Investigation (the Hawks) have seriously and unlawfully violated my rights as is envisaged in s 17L (4)(a) of the SAPS Act.
- (6) The abuse by the Directorate, spearheaded by Maj Gen Mokotedi ("Mokotedi"), and certain members of the Hawks, will become evident below.
- (7) The catalyst for the abuse was my contribution to bring the erstwhile police commissioner, the late Mr Jacob Sello Selebi, to book. It is well documented in the media that I made a major contribution to expose the criminal activities of the late Mr Selebi, which ultimately led to his conviction. This can be confirmed by members of the investigating team and the members of the prosecuting team in the Selebi matter. **Mokotedi, on the other hand, testified on behalf of the late Mr Selebi during his trial. Mokotedi's evidence was rejected.**
- (8) Pursuant thereto, I filed criminal charges, inter alia, against Mokotedi for a transgression of s 32 of the National Prosecuting Act ("NPA Act"). For more detail in this regard, I refer to **Annexure "A"**, which affidavit is deposed to by me at the time.

[Interposition by the DPCI Judge]

- (A) In O'Sullivan Annexure "A", alluded to (above) he describes the summary/substance of the charges against Mokotedi in this manner:
 "Prince Moktedi (NPA) on charges of Defeating the ends of Justice, Perjury and Breaching s 32 of the NPA Act by conspiring with others interfere with the DSP [Designated Service Provider] case Selebi."
- (B) Section 32(1) of the NPA Act, 32 of 1998 provides:
"(32) Impartiality of, and oath or affirmation by members of prosecuting authority

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- (1) (a) A member of the *prosecuting authority* shall serve impartially and exercise, carry out or perform his or her powers, duties and functions in good faith and without fear, favour or prejudice and subject only to the *Constitution* and the law.
- (b) Subject to the *Constitution* and *this Act*, no organ of state and no member or employee of an organ of state nor other person shall improperly interfere with, hinder or obstruct the *prosecuting authority* or any member thereof in the exercise, carrying out or performance of its, his or her powers, duties and functions.”]
- (9) My role in the Selebi trial and my criminal complaint against, inter alia, Mokotedi set the tone for reprisal and Mokotedi’s conduct made it clear that he could not and would never be in a position to act in accordance with the “without fear, favour and prejudice” principle in relation to me.
- (10) This was confirmed, as long ago as 31 July 2004, when Redi Tlhabi on Radio 702 interviewed Mokotedi. The interview took place the day Mokotedi had resigned as the Head of the Integrity Management Unit for the NPA in order to avoid a pending disciplinary hearing against him. A copy of the notice of his disciplinary hearing is **annexed hereto marked as “B”** and a full transcript of the interview is **annexed hereto marked as “C”**. [Annexures “D” and “C” are omitted from the DPCI Judge’s Report]
- (11) For convenience, reference is made to paragraph 18 of the transcript where Mokotedi falsely stated the following about me:
- “But let me tell you also this, that during the Selebi matter, Selebi investigation, Paul O’Sullivan who was supposedly the main investigator there, the main complainant, the (DSO) was paying him for using his plane, they paid him at least R150 000,00, then you ask yourself, where is justice here. The major complainant is actually benefiting from, pursuing a criminal case against a particular person”.
- (12) The false allegations made by Mokotedi about me led to a letter of demand by my attorney, Darryl Furman & Associates, addressed to Mokotedi, to claim an amount of R500 000,00 from him on account of defamation. A

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copy of the letter of demand is annexed hereto as “D”. This matter is still pending. [Annexure “D” also omitted]

- (13) **Notwithstanding his resignation in order to avoid the disciplinary proceedings against him, Mokotedi was subsequently appointed as a General in the Directorate. It is unclear how he avoided the scrutiny of s 17(C) (A) of the SAPS Act, which provides that a person to be appointed as a member of the Directorate must be a fit and proper person. I fail to understand how he could have qualified to be a fit and proper person, particularly in view of the following: (DPCI Judge's emphasis)**

- 13.1 His evidence in the Selebi trial was rejected;
- 13.2 His interview on Radio 702 exposed his bias in general;
- 13.3 His Twitter account reflected “100% JZ” [12 December 2012] which shows an association inimical to unbiased conduct;
- 13.4 He has a judgment against him obtained by Investec for a debt in excess of R100 000, 00 in terms of credit card abuse. A copy of the summons in that matter is **annexed .hereto marked as “E”**;
- 13.5 He seemingly did not receive a security clearance, as per report on News 24, a copy of which is **annexed hereto marked as “F”**.

[Annexures “D” And “E” omitted]

- (14) His authoritative position in the Directorate set the platform and a launching pad for the abuse referred to hereunder and underlines his inability to act without fear, favour and prejudice at least in relation to me. In fact, it should already be clear from the above that Mokotedi cannot be unbiased and the reasonable perception of bias is in any event overwhelming. The facts hereunder will clearly demonstrate that the bias is not only reasonably perceived but real, which should not be tolerated as it does an injustice to the without fear, favour and prejudice principle.
- (15) His bias was exacerbated by my persistent fight against corruption, in which I implicated persons near and dear to him.

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- (16) **On 15 March 2016, I sent an email to, inter alia, senior management of the police and government about systemic corruption in South Africa and about my intentions to expose the corruption at a conference to be held in the United Kingdom. Mokotedi evidently did not kindly receive this email as it contained, inter alia, an attack on our President (in respect of whom he has "100%" support) and his friend, now retired Lt Gen Moonoo ("Moonoo").**
- (17) **This unleashed a number of biased and unlawful actions by Mokotedi ably supported by Col Hoosen ("Hoosen") and W/O Vlok ("Vlok"). The abuse and unlawfulness became manifest on 1 April 2016.**
- (18) **On 1 April 2016, I boarded a flight to London with two of my minor children, who were returning to school in the United Kingdom. After the doors of the aeroplane had closed, a large contingent of members of the Hawks (the Mokotedi team consisting *inter alia* of Hoosen and Vlok intervened and ordered me and my children off the aeroplane whereafter I was arrested on two negligible counts of allegedly contravening s 26B of the South African Citizens Act. Section 26B of the Citizens Act [which] provides that a citizen may not use a foreign passport when he enters or departs from the Republic. The penalty provides for a fine or to imprisonment for a period not exceeding 12 months.**
- (19) **During that time and more particularly at the time of my arrest, it was well known to the Mokotedi team that my life was under serious threat by virtue of my active role in bringing Krejcir to book, to the extent that Krejcir and corrupt policemen are being charged with various charges of attempting to murder me. The Mokotedi team was also aware of serious threats previously made on my life by virtue of my role in the Selebi investigation.**
- (20) **In particular, the Mokotedi team knew that in certain instances, when the threats on my life were heightened, I exited the country on my South African passport and later returned to the country on my Irish passport to conceal the fact that I was back in the country in order to protect myself. By virtue of the fact that I had entered the country on my Irish**

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passport, I had no choice but to use my Irish passport when I left the country as according to Immigration, I was still outside the country whereafter I came back on my SA passport (when the threat was not at a heightened stage).

- (21) It is well known that Krejcir at the relevant time enjoyed unlawful assistance from a number of policemen, including officials at the airport and members of the public associated with Krejcir, and as such he would have had no difficulty to give effect to his threats, especially if he was tipped off of my entering the Republic.
- (22) As stated, I have previously found myself in a similar position when I was instrumental in the investigation and prosecution of Mr Jacob Sello Selebi, during which time I also had to conceal my travel movement because of threats against my life [and] of my family. Relevant members of the prosecution knew this.
- (23) Insofar as proof is necessary about the death threats, a publication (one of many) in that regard is **annexed hereto marked as "G"**.
- (24) **In order to demonstrate that s 26B was used as a rouse to stop me from attending the media conference in London, and as a tool to extract information from me I had about Moonoo, I refer to what is stated hereunder.**
- (25) It is prudent to point out that no person has ever been charged for a contravention of s 26B of the Act. To substantiate this I refer to a publication with reference to statements made by Gary Eisenberg & Associates. Eisenberg & Associates are experts in immigration and citizen statutes and in the resolution of complex immigration problems. I **annex hereto marked as "H"** a copy of [the] publication. Although it is stated in the publication that when I was arrested I attempted to depart from South Africa on my Irish passport, the correct position is that I used my SA passport to depart and that I was at the time accompanied by my two minor children, who live and attend school in London.

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- (26) I refer to four relevant extracts in the publication, where it is, *inter alia*, stated that:

"According to Gary Eisenberg, immigration lawyer at Eisenberg & Associates, the problem at hand is not charging O'Sullivan with contravening the Citizens Act, but rather the selective enforcement of the law by the South African authorities".

And further:

"However, never in Eisenberg's experience, since s 26B was added to the Citizens Act 10 years ago, has he heard of a South African being arrested on these charges. 'To prosecute a South African citizen, and release him on R20 000, 00 bail for violating this law, is unheard of and ludicrous. This may be the first case in the country's history".

And further:

"Generally, Home Affairs authorities give South African citizens entering or leaving on the incorrect passport a warning for contravening s 26B of the Citizens Act, says Eisenberg".

And further:

"He says that he is familiar with many cases of South Africans who unintentionally entered and exited the country on their foreign passports. They did so for different reasons; either they didn't know, or perhaps they couldn't get a South African passport in time. However, no-one was prosecuted, not even when the authorities knew that there were citizens of this country travelling on a foreign passport."

- (30) What is significant is that this arrest (on the minor offences) was under the command of Mokotedi ably assisted by Hoosen and Vlok (to which I will refer in more detail hereunder).
- (31) **I need to demonstrate the power abuse at my arrest in order to demonstrate that the power abuse by Mokotedi and his team has become systemic.**

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- (32) Shortly after being offloaded, I was advised by Hoosen that he was arresting me. I asked for the reason of my arrest. I was told that I had breached s 26B of the South African Citizens Act. I asked to see the warrant and was told I would be shown later at the police station. I may add that I later established that there was no such warrant at the time. **On all accounts the alleged offences were committed in Kempton Park and are petty offences not falling within the domain of the Hawks. The fact that Hoosen is from Durban exposes the ulterior purpose of the arrest.**
- (33) My hands were then handcuffed very tightly behind my back in front of my children. I was led away, leaving my children with my wife, who had come to the airport to fetch them.
- (34) I was then driven to Pretoria Central by a large contingent of members of the Hawks, whilst I was still handcuffed. The trip to Pretoria was at high speed, sometimes more than 200 kms/h, with police sirens and blue lights. A large contingent of Hawks drove in front and behind the vehicle I was in, all with blue lights on and police sirens activated.
- (35) I annex hereto as Annexure "J" a copy of a letter by my attorney Darryl Furman in this regard, the contents of which speak for itself. In particular, it explains the torture I was put through.
- (36) I am turning 61 this year and I do not enjoy good health. The stress caused by the unwarranted arrest, the manner in which it was executed, the stress of my children and the effect of the bullying [and] subsequent actions by the Hawks cannot be over-emphasised.
- (37) **On the Sunday, that is after spending two evenings in detention, during which I did not sleep, Mokotedi visited me together with other members of the Hawks and promised that I would be released on so-called "police bail" that same Sunday (3 April 2016), provided I disclosed to the Hawks information, which was extraneous to the arrest. I agreed because I was desperate as the events and**

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circumstances of my arrest and detention were emotionally draining and it physically and psychologically impacted on me.

- (38) However, after I had disclosed the requested information about the incriminations against Moonoo to Mokotedi and other members of the Hawks, Mokotedi told me that Adv Maema, who would be the prosecutor in my matter, had overridden his decision to grant me police bail”.

[Paras 39-47 omitted as collateral or immaterial to the inquiry]

3. The accusation of abuse of power was further expatiated on in this manner:

“(48) Subsequent to my arrest I was charged for extortion, intimidation, fraud, forgery and uttering. I annex hereto a copy of the charge sheet in that matter marked as “K”. The complainant in that matter is Ms Duduzile Cynthia Myeni, the Chairperson of the South African Airways (SAA). I am charged with the previous CEO of SAA Monwabisi Kalawe and Abednigo Mbulawa. I will hereunder revert to the so-called SAA charge. Her “actions” are well documented in various media reports, and the charges are clearly aimed at protecting her in an unlawful way.

- (49) **The abuse against me was once more exposed at a court hearing on 9 May 2016 in the s 26B matter, when Mokotedi made it clear to me that he wanted me to permanently leave the country, subject to certain conditions”.**

(50) Clearly my continuous exposure of corruption by prominent politicians and high-ranking policemen and ex-policemen offended him and his fellow protectors. They perceived that the only way to silence my exposure of the corrupt activities will be to unlawfully put enormous pressure on me by:

50.1 Arresting me for an offence (s 26B) for which no other citizen has ever been arrested and for which no person should be arrested, as the obvious penalty would be a suspended sentence or a fine, if charged.

50.2 Executing the arrest in such a disgraceful manner, which clearly subjected me to enormous pressure and huge embarrassment.

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50.3 Detaining me in circumstances which constituted torture, also in terms of the relevant legislation.

50.4 Abusing my detention to interrogate me on matters extraneous to the alleged contravention of s 26B, with the sole purpose to establish from me the extent and sources of my information relevant to the corrupt activities by the highly placed persons referred to above, knowing that any person subjected to the preceding arrest, the manner of the arrest, the manner in which I was detained and the unacceptable conditions of my detention, and false promise that I would be released on police bail that weekend, would be far more willing to disclose the information sought.

50.5 Subjecting me to unfair and stringent bail condition in the present matter, which are wholly inappropriate for the alleged offences in terms of s 26B, in order to maintain unfair and improper pressure on me not to continue with the disclosure of the corrupt activities as aforesaid. This unlawful approach and onslaught on me was again exposed when it was made clear that I permanently leave the country, thereby hoping that my exposure of the corrupt activities would cease.

50.6 Charging or threatening to charge me with other purported serious charges. The fact that I believe that the charges have no prospect of success does not mean that I would not be subjected to enormous pressure".

4. Mr O'Sullivan's Second Complaint, captured from para 55 of his declaration, is described in this manner:

"(55) I deal hereunder concisely with Moonoo, Hoosen and Vlok.

(56) Cases opened against Moonoo by me, go back to early 2014 and involve systemic corruption between Moonoo and the criminal underworld in South Africa. Not one of the many cases against Moonoo has ever been investigated, leading to the only logical conclusion that it is the State's desire not to fight corruption, but to support it, by not carrying out proper investigations and instead, to target the accusers with trumped up charges. The following evidence is submitted to substantiate this allegation.

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- (57) First, a reference is made to Annexure 'L' which refers to a false docket opened by Moonoo one week after I was unlawfully arrested at OR Tambo Airport.
- (58) My affidavit revealing the Moonoo conspiracy in some detail is annexed as Annexure 'M' hereto. This was a docket opened against Moonoo and his co-conspirators in May 2015, with the IPID, which docket has not been investigated at all, as a result of unlawful interference in the running of IPID which was well documented in the media.
- (59) A letter by Furman dated 26 May 2015 is annexed hereto as Annexure 'N'. This letter sets out in crisp detail the continuing unlawful conduct and serious allegation against Moonoo. No response was ever received.

Colonel AK Hoosen "Hoosen"

- (60) On 5 July 2015, at the Kempton Park Magistrates Court, Hoosen whilst giving evidence admitted that he had been "instructed by Moonoo to investigate cases against me. He also admitted that he had met Moonoo since Moonoo had retired from the police and that the meetings took place at a Casino near Durban, where he normally met with Moonoo.
- (61) It should be noted that in my criminal dockets and complaints against Moonoo, I have alleged that Moonoo regularly met with criminals at the same casino. Although I am still awaiting the Kempton Park trial transcript, it will be shown that Hoosen, admitted under cross examination that **'We originally thought O'Sullivan had himself acquired interception equipment, then we discovered that he had obtained the interceptions from a police officer'**.
- (62) Hoosen also stated in evidence that he was the investigating officer of the so-called SAA case, despite the fact that from March 2015, until November 2015, Vlok repeatedly stated under oath, in affidavits, that he was the investigating officer, thereby creating a complete lack of transparency and honesty.

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(63) What Hoosen failed to advise the court, was that the so-called intercepts had found Moonoo in dialogue with and arranging meetings between notorious criminals, at a casino near Durban.

(64) It is clearly a case of shoot the messenger, but ignore the message.

W/O J Vlok "Vlok"

(65) Vlok was appointed by Moonoo back in 2014, to carry out a "fishing expedition" against me, in the hope that something would be found that could be used against me, thereby diverting attention away from Moonoo's corrupt activities.

(66) In 2015, Vlok fraudulently obtained a search warrant and raided my offices, such warrant subsequently being set aside. The following important documents are supplied in this regard:

66.1 A letter by Furman dated 12 November 2015 addressed to Moonoo and Vlok, and annexed hereto as **Annexure "O"**. This letter again highlights the unlawful conduct of Vlok, at the instance of Moonoo. Again no response was ever received.

66.2 A letter by Furman dated 20 November 2015 addressed to Moonoo and Vlok, and annexed hereto as Annexure "P". This letter again highlights the unlawful conduct of Vlok, under the control of Moonoo. Again no response was ever received.

66.3 **It is specifically requested of the honourable retired Judge, that investigation take place specifically with regard to the so-called SAA docket and proof will be found of Moonoo/Vlok's ability to have a 'second bite of the cherry', when they were rejected from obtaining an arrest warrant on me.**

66.4 It is also clear from this letter that Vlok had been 'removed' as the 'investigating officer' so that someone else (now known to be Hoosen) could take the matter forward and obtain the desired (unlawful) outcome, by taking the dockets to more 'flexible' prosecutors.

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- (67) As evidence of Vlok's bias regard should be had to the fact that he fraudulently obtained a search warrant in April 2015, and then launched a Hollywood-style raid on my offices and even brought the media along, so as to garner as much bad publicity for me as possible. This unlawful intrusion resulted in my being forced to spend several hundred thousand rand on obtaining a final order setting aside the fraudulently obtained warrant. A copy of the interim order and final order is annexed as **Annexure "Q"**.
- (68) Further evidence of Vlok's total disregard for the Constitution and rule of law is exposed by the statement of Candidate Attorney, Candice Olim, a copy of which is annexed as **Annexure "R"**. Vlok made his contempt of the court and utter disregard of the rule of law, very clear.
- (69) When considering the list of trumped up charges against me, relating to matters that are alleged to have taken place between 2012 and 2015, it is apparent that Vlok has been on a fishing expedition utilising the data he unlawfully copied and retained.
- (70) It is inconceivable that all these so-called complainants, all of them being persons that are the subject of serious investigations carried out by me, where evidence had been adduced against them for various offences including, but not limited to, conspiracy to commit murder, fraud, theft, money laundering, defeating the ends of justice and corruption," [could have done so mero motu].

[DPCI Judge: Para 70: Sentence is incomplete and hangs in the air]

5. Mr O'Sullivan further avers that the instances of abuse of power by Maj Gen Mokotedi were perpetrated in this manner:

Bramley CAS 47/5/2016 Kidnapping

- "(101) Cora Van der Merwe is the complainant. It's not actually Bramley, it's Rosebank.

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- (102) In 2014, Cora van der Merwe stole confidential information from her employer and gave it to a journalist. She admitted to me in an interview that she stole the information from her employer.
- (103) According to the State, the allegation of her kidnap by me took place as follows: I said to van der Merwe that if she did not go with [me] she would never see her children again. This allegation of van der Merwe is patently untrue and she was shown up to be a liar in the documents I submitted with my warning statement.
- (104) Despite the fact that there is no case whatsoever, Mlotshwa (State Advocate) has unlawfully decided to issue a J175 against me. This will again amount to a malicious prosecution and is part of the ongoing campaign aimed at silencing me.
- (105) Curiously, the alleged kidnapping took place in October 2014, yet van der Merwe only comes forward with her case 19 months later, being a few weeks after I was arrested on the s 26B allegations.
- (106) **The case is false and completely without merit. Mokotedi attempted to create an air of 'lawfulness' around the case by assigning it, together with the false Johnston case, to a Captain in the DPCI in Germiston. As the Capt realised that he was being 'used' as part of Mokotedi's unlawful agenda and complained to his supervisor about it and admitted that there was no evidence to justify the charges. I expect that Capt Mokhovi will suffer reprisals for being honest, which will further confirm the malicious intentions of Mokotedi. I have a recording of his admitting that there was no evidence, and that it was part of a vendetta.**

Midrand CAS 867/6/2016: Forgery

- (107) The complainant is thought to be a certain Chad Markham or one of his friends at the Civil Aviation Authority. This relates to another patently false case. Six and a half years ago, in February 2010, I left my flight log-book at Aero precision, a company owned by Markham, with a request for a booking for a licence renewal test to be carried out on a certain date with a certain aircraft with a pro forma entry already drawn up.

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- (108) I proceeded to take the renewal test with another instructor employed by Markham at Aeroprecision at a later date, on 21 April 2010, and then proceeded to renew my license. Again the logbook was left at Aeroprecision.
- (109) When the logbook was returned, I noticed someone had scribbled in the logbook. I drew a line through this entry, as I did not know what it was all about.
- (112) At the time Markham, in an apparent attempt of retaliation, stated that he would open a docket against me for a false entry in my logbook.
- (113) The Mokotedi team is now latching onto and relying on the testimony of this person, based on events of six and a half years ago, yet registered only recently, in a desperate attempt to bolster their campaign against me. The case is false and completely without merit.

Bramley CAS 414/04/2016: Fraud

- “(114) **The complainant is Alice Johnston.** Johnston sent me an e-mail begging me for help in April 2014. In that e-mail Johnston fraudulently misrepresented that her life was in danger and that she had suffered years of abuse. She sounded desperate but she had no money to pay fees.
- (115) Due to what happened to be a desperate situation I decided to take the case on *pro bono*. However, when Johnston arrived at my offices she transmitted all the signs of someone that was lying. She claimed that her ex-employer had framed her for fraud and theft and had also shot himself in order to frame her for attempted murder.
- (116) As I do not take cases on for accused persons Johnston was asked to submit to polygraph at my expense to which she agreed. Johnston (badly) failed the polygraph and I invited her back for a further discussion. At this discussion she was given an ultimatum to come clean so that the persons she had recruited to murder her ex-employer could be brought to justice, in return for which I would approach the State and ask for her to be a state witness and obtain mental treatment, or I would not assist her at all.
- (117) I asked her to go away write it all down and then come back in order to be able to get help. Johnston left and never returned.

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[Pars 118 -120 omitted]

- (121) Despite the fact that the original allegations put to me were of "*crimen injuria*" and "intimidation", which is what I responded to in my affidavit to the police, Mlotshwa in giving effect to the ulterior motives of Mokotedi, chose to charge me with "fraud", alleging that I had "fraudulently tricked" Johnston into admitting her role in attempting to murder James Murray.
- (122) Captain Mokhovi also admitted that this case was without merit, but she was simply carrying out Mokotedi's instructions. This conversation was not recorded, but due to the revelation of Captain Mokhovi, it was decided to record the next meeting with him, hence the recording mentioned above.
- (123) The State's only witness in this case is Johnston herself, who is currently on trial at the Mookgopong (previously Naboomspruit) Regional Court on thirty one counts of theft totalling R277, 763-43 and one count of fraud totalling R88,692-00. In this regard, attention is drawn to **Annexure "S"**, which clearly implicates Johnston in the above thefts and fraud, as well as a plan to murder her ex-employer. As stated James Murray was shot and critically injured ten days later, only two hours after Johnston had been released from custody. Murray almost lost his life and this woman came to me with a concocted story about how Murray had shot himself to frame Johnston for his own murder.
- (124) Mokotedi (and Mlotshwa) have now recruited Johnston to help them silence me.
- (125) I also believe that it is important to annex to an affidavit by Murray hereto as Annexure "S", with e-mail thereto, which patently expose the falsity and the criminality of Johnston, where she is seen discussing with another how she would kill Murray.
- (126) These facts are known by Mokotedi and his team and by the prosecution but they are more inclined to pursue their ulterior actions against me than to have any regard to the true facts in the matter."

[Paras 127 – 145 omitted]

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SUMMARY (BY MY O'SULLIVAN)

- (146) All the cases referred to above are "old" cases with questionable "complainants" which are being exploited by Mokotedi and his team in flagrant disregard of the provisions of section 17D of the SAPS Act dealing in particular with the functions of the Director [sic: Directorate].
- (147) All of the above cases being brought forward by Mokotedi and his 'team', are false and are based on the testimony of criminals or persons of low ethics, who have been under investigation by my firm at some time or another. They are also the result of an unlawful witch-hunt by the unlawfully assembled team, aimed at silencing public outrage against corruption that has virtually taken over the Criminal Justice System and most state owned entities.
- (148) It is now clear that I am being persecuted, by a team of police (and prosecutors) who have formed allegiances with criminals, whilst none of the serious corruption cases opened by me against corrupt police officials and State Owned Entities, have been investigated. The team is relying on what can best be described as a 'push-back' by people who should themselves be in the receiving end of the criminal justice system.
- (149) Accordingly, it is now required that an urgent review of the conduct of Mokotedi and his team take place to bring a halt to this wanton abuse of power that is impacting my rights in terms of the constitution.
- (150) Given the fact that Capt Mokhovi admitted to me (in a tape recorded discussion) that:
- 150.1 The two cases he was forced to pursue against me had not been investigated;
 - 150.2 Contained only a few pages and were without merit, which is exactly the same conclusion arrived at by Gen Taioe; and
 - 150.3 That he complained to his superior, Col Sithole, and was advised to do what the General (Mokotedi) tells him to do.
- (151) The only logical conclusion is that rather than deal with the systemic corruption within the Police, NPA and various State Owned Entities, certain

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factions with the police (led by Mokotedi - previously led by Moonoo) have elected instead to mount a campaign of persecution, defamation and vilification which included unlawful arrest, torture, and the mounting of malicious investigations and prosecution."

6. In conclusion, from para 152 of his declaration, Mr O'Sullivan states that:

"(152) I therefore humbly request the honourable retired Judge to investigate this matter with a view to reporting on:

- (a) The gross abuse of power by the DPCI [the Hawks];
- (b) The monstrous abuse of my constitutional rights; and
- (c) The unlawful appointment of Mokotedi, as head of the DPCI (Hawks) in Gauteng.

(153) I shall also submit a complaint to the National Director of Public Prosecutions as is envisaged in section 179 of the Constitution and section 22 of NPA Act.

(154) In the interest of transparency a copy of this complaint will also be served on Mokotedi and Mlotshwa in order that they might realise that their continual abuse of constitutional imperatives does not go unnoticed.

(155) I expect and am ready for a further 'push-back' as a result of standing up for my rights and taking a strong stand against corruption in South Africa.

(156) I have also instructed my legal team to prepare:

(156.1) An application to the High Court arising out of the systemic abuse of my constitutional rights by Mokotedi and his accomplices.

(156.2) A substantial damages claim against the State."

[The emphasis throughout are those of the DPCI Judge]

7. The essence of Mr O'Sullivan's complaints for purposes of the inquiry by the DPCI Judge relate to alleged gross abuse of power, unlawful arrest, the unlawful appointment of Maj Gen Mokotedi, his torture and the unlawful raid on his offices levelled mainly against members of the HAWKS.

8. Mr O'Sullivan intimates that having regard to the foregoing his "rights have been illegally violated by the investigations conducted by the Hawks and seek further investigation in these matters."

9. Consequently, the issues raised by the complainant called for a rebuttal. The Deputy and Assistant Directors in the O/DPCI/J charged with investigations, Mr

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Edward Rasiwela and Lesetja Mothibe, duly approached those so materially implicated for a response and they obliged.

10. **Maj Gen Prince Nkitsing Mokotedi** having been furnished with the statement of the complainant, Mr Paul O'Sullivan, by the O/DPCI/J explained on affidavit in this manner on 21 April 2017:

- "(3) I was appointed as the Provincial Head of Gauteng for the DPCI in February of 2016. I have almost two decades of cumulative experience in the fields of police monitoring and oversight, integrity management and law enforcement. I was employed at the Police Secretariat in 1996 as Deputy Director for Monitoring and Analysis and in 2000 was appointed as Director for Monitoring and Analysis. I joined the National Prosecuting Authority (NPA) in 2004 as Director for Enforcement within the Integrity Management Unit. In 2012, I was appointed as the head of the Integrity Management Unit at the NPA.
- (4) I have a BA in Government (Franklin and Marshall College), BA (Police Science) (UNISA), LLB (UNISA) and MPHIL (University of Stellenbosch). I am a Certified Ethics Officer and ordained Pastor at Grace Christian Fellowship. I am currently studying towards a Master of Management (MM) degree in Security at University of Witwatersrand. I have passed the coursework for the MM and I am now working on a research proposal.
- (5) I uphold the human values and democratic principles of respect for others, honesty, fairness, integrity and the rule of law.

INVESTIGATIONS AGAINST PAUL O'SULLIVAN

- (7) The investigation against the complainant, Mr Paul O'Sullivan, were carried [out] without fear, favour or prejudice. When I took office in February 2016 as the Provincial Head of the DPCI, there were already investigations that were on-going against the complainant, namely, the SAA matter as well as the RICA matter. There were other dockets that were opened much earlier which were either withdrawn or could not be traced. **Following the arrest of the complainant on charges of transgression of immigration laws, complainants in the cases against Mr O'Sullivan approached some of the investigators regarding progress on their cases.**

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- (8) I was approached personally by one Emelia de Souza who complained that the complainant, who was a Director of her company, stole or irregularly paid himself an amount of R6 million which was a loan that the complainant had arranged from one Zunaïd Moti. The complaint by Emelia de Souza could not be taken forward as Emelia could not provide any documentation or statement to that effect. She has since approached us again on the matter.
- (9) When I took office, a team was already established to investigate the cases against the complainant. I oversee these matters as the cases are registered in Gauteng and drew up a list thereof to properly manage progress and to ensure transparency and objectivity.
- (10) I respond to the complaint by Mr Paul O'Sullivan hereinafter to the Judge of the DPCI. The response is *ad seretum (sic)*.

Ad paragraph 1 to 4

- (11) I respect the complainant's views regarding the cornerstone of democracy.

Ad paragraph 5 and 6

- (12) I deny that any rights of the complainant were violated by members of the DPCI under my guidance. The complainant failed in his submission to demonstrate the abuse or violation of his rights in the submission.

Ad paragraph 7

- (13) I deny that there was any abuse of the complainant's rights. I accept that the complainant's role in the prosecution of the late Commissioner Jackie Selebi was widely publicised. I deny that there is any connection between investigations against him and his contribution to the investigation and prosecution of the late Commissioner Selebi. I accept that I testified in the trial of the late Commissioner and further wish to state that I was subpoenaed by the defence to testify, I did not volunteer. My testimony was guided and led by the defence team and was considered by the court and deemed irrelevant.

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Ad paragraph 8

- (14) I was subpoenaed to appear for the defence and it is not a criminal offence to appear in a court of law for the defence even as an employee of the NPA. Any member of the public has the right to lodge a complaint with an appropriate forum, and the complainant is entitled to do so.

Ad paragraph 9

- (15) I uphold the rule of law. I deny that I was acting out of malice in supervising the investigations against Mr O'Sullivan. The cases against him were opened before I was appointed as the Provincial Head of the DPCI in Gauteng. Mr O'Sullivan's eagerness in conducting private investigation has absolutely no bearing on my capacity to uphold the law and to observe legal principles.

Ad paragraph 10

- (16) I refute that my participation in the Redi Tlhabi show was an indication that I am biased and will be biased against Mr O'Sullivan. My quick reference to the payment that he received from the NPA was to express my views on justice and on the failures of the NPA as an institution to uphold justice at the time.

Ad paragraph 11

- (17) I expressed a view regarding that a person who stands to benefit financially from a criminal investigation may not act in the interest of justice. **The complainant benefitted financially in that he received payment from NPA (Directorate for Special Operations).**

Ad paragraph 12

- (18) I still stand by the aversion [sic: averment?] that Mr O'Sullivan was paid by the Scorpions as it was common knowledge at the NPA that O'Sullivan was paid. Nothing has come out of the intended defamation litigation by Mr O'Sullivan referred to and that the Press Ombudsman has since requested the author of the article in dispute to apologise to me and to include a preamble to correct the reporting on me regarding the Selebi trial. No

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adverse finding was made regarding my character or integrity in the Selebi trial.

Ad paragraph 13

- (19) I resigned from the NPA because the management at the time had created an environment that was hostile towards me. I approached the General Public Service Bargaining Council [GPSBC] requesting for reinstatement on the basis that my resignation amounted to corrective [constructive?] dismissal. I challenged the NPA to proceed with the disciplinary process but they chose not to go ahead with the disciplinary hearing.

Ad paragraph 13.1 to 13.5

- (20) The evidence was rejected for relevance and not because it was false. Interview on 702 showed that I have opinions on various matters. I am paying Investec for the house loan and arrears. The loan was taken in 2005 and was payable for 20 years. **With regards to security clearance, it is the employer's responsibility to ensure vetting of employees, and that process is on-going.**

Ad paragraph 14

- (21) I refute that I am unable to act without fear, favour or prejudice in relation to the complainant and his matters. **There were several cases opened against Mr O'Sullivan and the complainants in several of them came forward to request that their cases should be looked at. I pulled such cases [out] to be dealt by a simple team for efficiency and coordination such that the complainant should not be bombarded from various units in respect of cases against him.** I deny that I have acted with bias towards the complainant. I agreed and encouraged meetings with his legal representative, Adv. Barry Roux, to find a quicker, more open and legal solution to the complaints against him.

Ad paragraph 15

- (22) **Except for the case against Mr Selebi and now recently against Mr Radovan Krejcir, I am not aware of any other corruption or criminal case that Mr O'Sullivan investigated or caused it to be investigated**

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successfully. I also do not know of or have any person close or dear to me that was investigated by the complainant for corruption or criminal case.

Ad paragraph 16

- (23) I deny that I was a recipient of the said email. Furthermore, I deny that I led investigations against Mr O'Sullivan because of the contents of the email he sent. I recently requested Mr O'Sullivan to expand on the contents of that email, and he responded through his lawyers that he 'only had suspicions' that the friends of the President [Zuma] and of General Moonoo are criminals. I deny that General Moonoo is my friend.

Ad paragraph 17

- (24) I wish to state that Col Hoosen was already conducting an investigation against the complainant and also that there was an enquiry that was opened and already being investigated against the complainant. **The enquiry was investigating allegations that Mr O'Sullivan received state secrets that he knew that he was not entitled to. The enquiry was led by Capt Mangqalaza and this was initiated around August 2015.** W/O Vlok conducted investigations before against the complainant, and he was following up on some of those cases. It is not correct that the investigations were ignited by the email.

[Observation by the DPCI Judge: The matter referred to by Maj Gen Mokotedi is: "Capt (now Lt Col) Coetzee v/s Maj Gen Mokotedi & Others: Ref No O/DPCI/J: 111/01/2017" decided on 16 March 2021 and alluded to in para 65.1 below]

Ad paragraph 18

- (25) I accept that the complainant was on his way to London. Col Hoosen led the team that arrested the complainant. I do not know if W/O Vlok was also present during the arrest and I am not able to respond thereto. **The implication of transgressing s 26B are far more serious to the security of the country than what the complainant makes them out to be.** We have recently witnessed a trend where supporters of terrorist organizations disguise entry into and exit out of the country using multiple passports.

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Ad paragraph 19

- (26) I accept that the complainant's role in the investigation against Krejcir is in the public domain. I was not aware that the complainant was ever threatened by anyone during the Selebi trial.

Ad paragraph 20

- (27) I deny that I had any prior personal knowledge that Mr O'Sullivan deliberately broke the law in order to conceal his movements to others. I learned later from the complainant's submission that he deliberately used different passports so that he could not be easily traced or tracked by persons who allegedly wanted to kill him.

Ad paragraph 21

- (28) I have no personal knowledge that Mr Krejcir had assistance of policemen to trace Mr O'Sullivan's movements. Mr O'Sullivan must present this information for further investigations.

Ad paragraph 22

- (29) I have no personal knowledge that Mr O'Sullivan was threatened by anyone during the Selebi trial.

Ad paragraph 23

- (30) I note the threat as reported in the article.

Ad paragraph 24-29

- (31) The matter was properly ventilated during the criminal trial safe to say that Mr O'Sullivan was charged on the basis of transgressing an existing law. The reasons he provides do not dispute the unlawfulness of his actions.

Ad paragraph 30

- (32) I deny that I was in charge of the arrest. Col Hoosen was in charge of the team. Col Hoosen explained at the Magistrate's Court during the trial that he was in charge and effected the arrest.

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Ad paragraph 31

- (33) I deny that I abused any powers. At the airport Col Hoosen was leading the team I deny that there is any systemic abuse of power by the team in respect of the investigations that I am overseeing against Mr O'Sullivan.

Ad paragraph 32

- (34) I have no knowledge of what happened at the time that Col Hoosen met with the complainant. I am aware that Col Hoosen was investigating a case against the complainant for fraud and other offences and he was in Johannesburg to obtain an arrest warrant against the complainant.

Ad paragraph 33

- (35) I am not aware that the complainant was handcuffed tightly.

Ad paragraph 34

- (36) I accept that the complainant was taken to Pretoria. I am not aware that the police officers drove at those high speeds as the complainant alleges.

Ad paragraph 35

- (37) I note the contents of the letter but deny that the complainant was tortured.

Ad paragraph 36

- (38) At all times that I interacted with the complainant it was with respect and due regard to his age and health issues. I was the one who caused him to be moved from Pretoria Central Police Station to Villieria Police Station after he complained of poor conditions and that he suspected that he was going to be molested or killed at Pretoria Police Station.

Ad paragraph 37

- (39) I visited the complainant on Sunday on the basis of an agreement we reached the previous night that he wanted to divulge to us his activities and knowledge regarding the cases that we are investigating against him. I asked him to call his lawyer to be present during the meeting and he did inform the lawyer and we had a meeting with other investigators wherein we interviewed him. It was part of our discussions that we could look into police bail but the prosecutors refused permission to grant police bail.

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Ad paragraph 38

- (40) For as far as my jurisdiction allowed, I had at all times ensured that the complainant is kept in humane and more comfortable environment, and press that the investigation and prosecution processes are sped up.

Ad paragraph 39-44

- (41) It was my intention that the processes should be fast-tracked to the extent that the other processes permit and that we follow the letter of the law. The criminal justice has various arms that must cooperate with each other to ensure smooth running of the system. I, in all material respects, informed the complainant and the lawyer about the fact that the prosecutors have a final say in matters pertaining to bail and other processes and that I can only persuade them in one direction or the other.

Ad paragraph 45

- (42) I deny that I secured the service of Advocates [Mlotshwa and Maema] to serve self-interest. An advocate was already secured for the matters that were investigated against the complainant. It is standard procedure within the DPCI that cases are prosecutor guided. I am informed that Col Hoosen had already sent his docket on the allegations of fraud against the complainant, "SAA matter", to the NPA as early as August 2015 for a decision. Adv Maema was attending to that docket

Ad paragraph 46-47

- (43) The bail conditions were agreed upon between the advocate for the complainant and the prosecutors and the court endorsed those. As far as my memory serves me, it was actually the defence team that typed the conditions for submissions to the court. The bail conditions were relaxed in later court appearances.

Ad paragraph 48

- (44) The SAA matter had been investigated by Col Hoosen and the investigation was already completed and sent to the NPA for a decision. This case was not a new matter.

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Ad paragraph 49

- (45) I deny that I had told Mr O'Sullivan to leave the country on certain conditions. On the contrary, it was Mr O'Sullivan who proposed that he would like to leave the country provided that all criminal matters investigated and prosecuted against him are stopped.

Ad paragraph 50, 50.1 – 50.2

- (46) I deny that Mr O'Sullivan's purported exposure of corruption against police officers or politicians irked me. I further deny that I had any intentions to silence him by putting enormous pressure on him. **The cases against Mr O'Sullivan were opened and the investigations initiated before I was appointed to Gauteng DPCI.**

Ad paragraph 51

- (47) I deny that I had an agenda to protect Lt Gen Moonoo. I never met Lt Gen Moonoo in any capacity before and after my appointment to Gauteng DPCI to discuss any matter pertaining to Mr O'Sullivan. Lt Gen Moonoo and I were at adjacent buildings at the police headquarters precinct at the time that I was there (sometimes between 1996 and 2004). I am aware that the complainant opened a case or **cases against Moonoo with the Independent Police Investigative Directorate (IPID)**, an independent agency to investigate criminal cases against the police.

Ad paragraph 52 and 53

- (48) I had never interacted with the local prosecutors to prosecute the complainant. The cases against the complainant were allocated to Adv Maema and his team (including Mlotshwa) before I was appointed to the Gauteng DPCI. **I did not dig out the cases.** It was the complainants who came forward to enquire on the progress of their cases. W/O Vlok was coordinating cases that were previously opened against Mr O'Sullivan and attending to the concerns of the complainants.

Ad paragraph 54

- (49) **The cases referred to by the complainant have since been put on the court roll and are on trial, namely, the "immigration case", "the SAA**

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matter”, the “Cora van der Merwe” matter, and the “Alice Johnson” matter. It is the prosecution who exercise their right to prosecute or not. The complainant has since submitted representation to the NDPP to review some of these cases.

Ad paragraph 55,56,57,58 and 59

- (50) **I am aware that the applicant has opened a case or cases against Moonoo with the IPID.** I have no knowledge of the progress of those investigation and have no role in the investigation process.

Col AK Hoosen “Hoosen”

Ad paragraph 60

- (51) I have no knowledge in respect of the evidence that was led by Col Hoosen during the court case save to say that it was Moonoo who opened a case against the complainant regarding possible transgression of the RICA Act.

Ad paragraph 61

- (52) I also have no knowledge of the contents of the dockets that the complainant opened against Moonoo with the IPID.

Ad paragraph 62

- (53) I have no knowledge of the interaction between Vlok and Hoosen in 2015 save to say the investigators work as teams and interact from time to time on investigation. It is therefore not untoward for one officer to work with another.

Ad paragraph 63

- (54) There is a docket that has been opened on the issue around the interceptions. It is my humble submission that Col Hoosen will have to address the issues relating to the contents of the interceptions at that stage.

Ad paragraph 64

- (55) I do not agree that the “message” is ignored. It will be dealt with by the appropriate forum.

W/O J Vlok “Vlok”

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Ad paragraph 65

- (56) I have no knowledge of when was Vlok appointed into Moonoo's unit. I do not know that the case docket against the complainant was only opened in late 2016.

Ad paragraph 66

- (57) I have no knowledge of how Vlok obtained the search warrant on the complainant's office save to say that it is common cause that the warrant was later set aside.

Ad paragraph 66.1

- (58) The averments contained in the letter are simply the position of the legal representatives and are not in of themselves proof that anyone has acted unlawfully.

Ad paragraph 66.2

- (59) The averments contained the letter are simply the position of the legal representative and are not in of themselves proof that anyone has acted unlawfully.

Ad paragraph 66.3

- (60) The complainant has submitted representations to the NDPP regarding the SAA matter and that case was on the roll and postponed to July 2017.

Ad paragraph 66.4

- (61) I deny that the rationale for appointment of Hoosen is to get more flexible prosecutors. I was made aware that the motive was to have someone who was not previously engaged in matters where the complainant is a suspect, to proceed with the matter objectively and to be seen to be objective.

Ad paragraph 67

- (62) I have no knowledge of how Vlok gained the search warrant. However, it is common cause that the warrant was set aside. I have no knowledge as to the costs of the litigation. However, it is common knowledge that the complainant puts out a public notice as to how much he willingly and deliberately spends on litigation against the state.

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Ad paragraph 68

(63) I have no knowledge of how the computers that were seized were copied.

Ad paragraph 67 and 70

(64) The criminal cases against the complainant were opened by individuals who, either hired the complainant to investigate someone, or someone else hired the complainant to investigate the individuals. The individuals or their lawyers or through others approached the DPCI for progress regarding their cases.

ALLEGED TRUMPED-UP CHARGES AGAINST THE COMPLAINANT**Ad paragraph 71**

(65) It is correct that Capt Mkupa and W/O Vlok were called to testify and that the complainant was permitted to fly outside of the country.

Ad paragraph 72

(66) It is correct that the witnesses were called to persuade the court that the complainant was a flight risk. I deny that they were called out of desperation.

Ad paragraph 73

(67) The Prosecutor argued the case as best he could. I deny that the charges against Mr O'Sullivan are trumped up. It is my submission that the credibility of the witness will be determined by the court.

Ad paragraph 74

(68) I do not know which cases Capt Mkupa made reference to during his testimony.

Ad paragraph 75

(69) OR Tambo CAS 6/4/2016 (The immigration/citizenship matter) is registered and is being investigated by the Unit. Currently the investigation is almost completed and the docket has been handed over to the prosecutors to secure the necessary warrants.

Ad paragraph 76-78

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(70) The case is on trial and I am not able to comment on the merits thereof.

Ad paragraph 79-82

(71) Kempton Park CAS 679/3/2016 is placed on the roll. The complainant has made representations to the NDPP to stop prosecution. I am unable to comment on the merits thereof.

Ad paragraph 83

(72) I deny that I am using this case to "suppress" the complainant. He has admitted in the public domain of wrong-doing and offered an amount of R50 000 as an indication of his remorse. The investigation in this case was completed before my tenure at the DPCI.

Ad paragraph 84

(73) Pretoria Central CAS 380/4/2016 is currently under investigation and the docket has been handed over to prosecutors. The Enquiry on the case was opened in 2015 already and the case docket was registered once the necessary evidential material was obtained. Summons to appear in court for the complainant and co-suspect were applied for, however, due to the interim court that stipulates a process that must be followed before such could be executed against the complainant which includes that prosecution must undergo a check and balance process internally.

Ad paragraph 85-86

(74) The case has not been to court yet. I have no knowledge of the basis of the complaint against Capt Mkupa.

Ad paragraph 87

(75) It is incorrect that the case is based on an email that the complainant sent to the Deputy President in August of 2015. The case emanates from the communication by O' Sullivan to various recipients, including Gen Moonoo, wherein he avers that he is in possession of intercepts that he claims were legally acquired. The complainant's conduct in this regard was clearly unlawful. Mr O'Sullivan further admitted the unlawful conduct during an interview we held with him on the 03 of April 2016.

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Ad paragraph 88-91

- (76) Johannesburg Central CAS 755/5/2014 is being investigated by the Unit. The lawyers of the complainant have approached us for a meeting wherein they indicated that they would like the DPCI to proceed with the investigation. W/O Vlok is carrying the docket.

Ad paragraph 92-100

- (77) The Alberton CAS 799/11/2012 is also being investigated by the Unit. It was brought to our attention that Mr O'Sullivan was found by the civil court in the matter between *Diamond vs O'Sullivan* that he (Mr O'Sullivan) committed attempted extortion.

Ad paragraph 101-105

- (78) The Bramley CAS 47/6/2016 (Cora van der Merwe matter) is being investigated by the Unit. **The case is currently on trial and cannot therefore comment on the merits thereof.** I assigned the case to an investigator who was not part of the team that was dealing with other cases to bring in objectivity and fresh eyes to the cases against the complainant. I deny that I have any vendetta against the complainant.

Ad paragraph 106

- (79) I assigned this case to an investigator who was not involved in the other investigations against the complainant purely to bring in fresh eyes and objectivity on the cases. I did not choose the investigator but asked the commander to provide an investigator who can deal with extortion cases.

Ad paragraph 107-113

- (80) The Midrand CAS 867/6/2016 [the Chad Markham case] is also being investigated by the Unit. I have been informed that the complainant is out of the country from time to time and has no more interest in pursuing the matter. I have advised the investigators that if the complainant is not interested then we should approach prosecution with a recommendation to close the case if it is unwinnable without the cooperation of the complainant. I deny that there is a campaign against the complainant.

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Ad paragraph 114-120

- (81) The Bramley CAS 414/04/2016 (Alice Johnson matter) is also being investigated by the team. **The case is on trial at the moment and I am unable to comment on the merits thereof.**

Ad paragraph 121

- (82) I deny that I have any ulterior motive against the complainant. It is the individuals who opened the cases that came forward to ensure that such cases are pursued. I do not decide on the charges that must be preferred against the complainant, it is the duty of the prosecutors.

Ad paragraph 122

- (83) I deny that Capt Mokhovi raised with me that there are no merits to pursue the case. I always direct the investigators that if investigators are of the opinion that there are no merits in the case, they should approach the prosecutor and suggest that the docket must be closed/withdrawn.

Ad paragraph 123

- (84) I have no knowledge of any trial that Ms Johnston is appearing at. I do not deny the complainant's averment in this regard.

Ad paragraph 124

- (85) I deny that I recruited Ms Johnston. I have never met with her. Ms Johnston has been interacting with W/O Vlok who indicated that Johnston wanted to pursue the matter further.

Ad paragraph 125-126

- (86) The case is currently on trial and the complainant will have opportunity to lay this bear in court. I deny that I have any ulterior motives.

Ad paragraph 127-133

- (87) I have no knowledge of the evidence that was provided by W/O Vlok. I have no background to the case and cannot deny the complainant's averments save to say that I was approached by one Emelia de Souza that Mr O'Sullivan unduly benefitted from her company (Old Fashioned Fish and Chips) [by] an amount of R6 million. These funds were brought in to the

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company as loan from one Zunaid Moti and/or Arthur Fitzhenny. The investigation into the matter could not be proceeded with as Ms de Souza could not bring forward the necessary documentation. No case was opened.

Ad paragraph 134-137

- (88) I have no knowledge of the evidence that W/O Vlok adduced. I have a slight background to the case and have requested W/O Vlok to brief me on the case. The complainant's averments will be tested against the outcome of the investigation to decide whether there is merit or not.

Ad paragraph 138

- (89) I deny that there was an overt display of the file. It is common practice that the investigators bring all files relating to an investigation to court in the event the prosecutor might need something from the files. The Douglas Fliess matter was still new at that stage, and was brought in to court because the investigators opined that there were clear similarities in respect of the conduct of the complainant between the Fliess case and others in respect of the complainant's modus operandus.

Ad paragraph 139-145

- (90) W/O Vlok is investigating the Fliess docket. The allegation against the complainant as I understand it is that he extorted an amount R10 million that was paid through overseas bank accounts.

[AD SUMMARY OF MR O'SULLIVAN]**Ad paragraph 146**

- (91) I deny that there were any threats made to the complainant. The matter of concern is that the complainant has claimed to have knowledge of people who are engaged in terrorist activities, and that he has not reported the contents thereof to the police. I have since approached him formally through his lawyers to request him to provide such and he indicated that he has no knowledge of such and that he was only reporting suspicions.

Ad paragraph 147

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(92) I deny that I am exploiting the cases that have [been] reported. Almost all of these cases were opened before my tenure at the DPCI or that the offences were committed prior to my tenure. The complainants in these cases came forward after Mr O'Sullivan was arrested at the airport.

Ad paragraph 148

(93) The cases are before court and on trial. I deny that there is a witch-hunt against the complainant. The conduct of the complainant in these cases is similar hence a single team had to be put together. I followed up on the cases or reports that Mr O'Sullivan has opened through the DPCI Gauteng.

Ad paragraph 149

(94) There are no allegiances that have been formed against the complainant. The investigators in the DPCI are supposed to work with the prosecutors and that the choice of prosecutors to work with the investigators is in the hands of the NPA.

Ad paragraph 150

(95) The complainant is clearly aggrieved. I welcome an investigation or review into our conduct in order to set the record straight. I deny that I have abused any power during my overseeing of the investigation against the complainant.

Ad paragraph 151

(96) I deny that the investigation was forced onto Capt Mokhovi. I did not choose him, I simply requested the commander to allocate these cases to an investigator who is able to deal with extortion matters.

Ad paragraph 152

(97) It is untrue that the DPCI is not focusing on systematic corruption. From the time that I took office to date, the DPCI in Gauteng under my command have arrested 84 police officials in Gauteng for corruption. I deny that I am leading any faction. I found the investigators on the complainant's cases already assigned and these include, Col Malima, Col Hoosen, Capt Mangqalaza, Capt Mkupa, Capt Mgogodlo, W/O Mashego, W/O Makeleni,

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W/O Moffat and W/O Vlok. I only brought in Capt Mokhovi, and now recently W/O Mathebula.

Ad paragraph 153

- (98) **The complainant failed to show any prima facie case of the abuse of power or the monstrous abuse of his constitutional rights or [my] unlawful appointment as the head of the DPCI.** Absolutely no reference was made in this complainant's submission to the alleged unlawful appointment.

Ad paragraph 154

- (99) I have no objection to the complainant's intention to lodge a complaint with the NDPP. The complainant has already made representations to the NDPP.

Ad paragraph 155

- (100) A copy of the complaint was received. I deny that there is any abuse of power in the investigations that were and are being conducted against the complainant.

Ad paragraph 156

- (101) The investigation team will continue to do their work without fear, favour or prejudice.

Ad paragraph 157

- (102) The complainant has made several court applications to stop the investigations [which have] failed. **The recent court order was a result of an out of court agreement that he shall be notified before an arrest is effected and provided ample time to respond to our intention, if any, to summons him to court. A final order in this regard is awaited.** The civil suit will fail as there is no legal or factual basis to support such.

CONCLUSION [BY MAJ GEN MOKOTEDI]

- (103) The investigations by the DPCI (the Hawks) that are currently being conducted against Mr O'Sullivan were generally opened before my tenure and/or that the crimes or allegations that being investigated were committed

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before my tenure. I am overseeing these investigations to ensure that they are done without fear, favour or prejudice especially given the fact Mr O'Sullivan is a well-known person in the eyes of public as he is in the media from time to time.

(104) Mr O'Sullivan has approached the High Court in Johannesburg to bar me and others from pursuing these investigations and the [court] ruled against him as there was no basis to suggest that I or any of the investigators are biased against him.

(105) **Four of these cases are now almost at the tail end of the trial process.** The "SAA matter" (Kempton Park CAS 679/3/2016) has been postponed to the 27 of July 2017 pending the outcome of the representations he made to the NDPP. With regards to the "immigration/citizenship" matter (OR Tambo CAS 6/4/2016), the state has closed its case and awaiting the court's ruling regarding the application for discharge by the defence. The two cases of extortion, namely, the "Alice Johnston matter" (Bramley CAS 414/5/2016) and the "Cora van der Merwe matter" (Bramley CAS 45/5/2016) were set down for trial for the periods 3-5 April 2017 and 22-24 March 2017 respectively. The trials have been postponed to May 2017 [to] continue with the trial as the set down dates were not enough.

(106) The investigation in the 'Act 70 matter' (Pretoria Central CAS 380/4/2016) as well as Alberton CAS 799/11/2012 have been completed and awaiting NPA internal processes for the issuing of warrants.

(107) I have ensured that the investigations are carried out and concluded as speedily as possible without fear, favour or prejudice to the complainant or the suspect/accused persons in these cases.

(108) It is my humble submission therefore that the complaint must be dismissed".

[Observation by the DPCI Judge]

(A) Mr O'Sullivan's statement ends on para 156. Maj Gen Mokotedi's "Ad paragraph 157" at his para 92 (above) is misplaced.

(B) Having regard in particular to paras 102 and 104 of Mokotedi's statement it is evident that he misconstrued the court order. It is therefore prudent to reflect

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the entire interim order made by the Gauteng Division of the High Court, Pretoria, on 16 November 2016; in Case No 75378/16; in the matter between:

*Paul O'Sullivan	Applicant
and	
National Director of Public Prosecution	1 st Respondent
Minister of Justice & Correctional Services	2 nd Respondent
Minster of Police	3 rd Respondent
Lt Gen Kgomotso Phahlane	4 th Respondent
Lt General Berning Ntlemeza	5 th Respondent
Major General Prince Mokotedi	6 th Respondent
Advocate Sello Maema	7 th Respondent
Advocate Jabulani Jacob Mlotshwa	8 th Respondent
Warrant Officer Joshua Jacobus Vlok	9 th Respondent

ORDER OF COURT

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) The first respondent [NDPP] will undertake a review (pursuant to the request made by the applicant [O'Sullivan]), in accordance with the provisions of section 179(5)(d) of the Constitution of the Republic of South Africa, Act 108 of 1996, as read with section 22(2)(c) of the National Prosecuting Authority Act 32 of 1998 ("**the review provisions**") of the decision to prosecute in the following matters:
 - (1.1) Kempton Park CAS 679/3/2015;
 - (1.2) Rosebank CAS 47/5/2016;
 - (1.3) Bramley CAS 414/04/2016.
- (2) Such review will be conducted in accordance with the standard procedure currently adopted by the first respondent ("**the standard procedure**"), and pursuant to such written representations as the applicant shall make in writing.

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(3) To the extent that any decision is made to prosecute the applicant in respect of the below mentioned cases, then and in that event, such decision will first be referred to the Acting Special Director of Public Prosecutions: PCLU, Dr Pretorius SC, who shall be required to approve the decision to prosecute therein prior to the issue of any charges against the applicant:

(3.1) Pretoria Central CAS 380/4/2016;

(3.2) Johannesburg Central CAS 755/5/2014;

(3.3) Alberton CAS 799/11/2013;

(3.4) Midrand CAS 867/06/2016.

(4) Should the Acting Special Director of Public Prosecutions: DPCI, approve the issue of charges against the applicant, then and in that event the first respondent will, if requested to do so in writing and after the receipt of written representations from the applicant, engage in a review of the decision to prosecute in accordance with **the review provisions**, and in accordance with **the standard procedure**.

(5) The parties record that, to the extent that any such review culminates unfavourably for the applicant, the first respondent may then, in his sole and absolute discretion, determine whether any such prosecution ought to be conducted by an alternative prosecutor (to wit by a prosecutor other than the prosecutor that made or makes the determination to prosecute): Provided that nothing in this paragraph shall preclude the applicant from instituting fresh proceedings if so advised.

(6) Part B is postponed *sine die*;

(7) The costs of the Part A application are reserved for later determination."

(C) The issue of Part B of the Order of Court granting the Rule *nisi* is dealt with at paras 65, 66 and 66(A) below.

(12). **Col Amod Khalil Hoosen** having been furnished with the statement of the complainant by the O/DPCI/J responded in this manner on 25 July 2017:

"(1) I am a colonel in the South Africa Police Service and attached to the Organised Crime Section of the Directorate for Priority Crime Investigation in Durban. My office is situated on the 5th Floor, 136 Victoria Embankment

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in Durban. My office telephone number is (031) 333 8035 and mobile is 082 499 7928. I hereby state under oath.

- (2) The purpose of this affidavit is that I am requested to provide an explanation to the Office of the Directorate for Priority Crime Investigation Judge, hereinafter referred to as DPCI Judge, regarding a complaint lodged by Mr Paul O'Sullivan hereinafter referred as O' Sullivan against me and others.
- (4) In interrogating the document (without annexures) which was forwarded via e-mail to me from the O/DPCI/J; and it was established and noted that incorrect and misleading information formed part of the complaint from O'Sullivan.
- (5) I would firstly respond that I was indeed instructed by Lt Gen Moonoo to interview a complainant (Ms Myeni) in the Durban area. During the time of the instruction to interview Ms Myeni; I formed part of a National Drug Task Team that reported to Lt Gen Moonoo.
- (6) Ms Myeni had reported a complaint to the then National Commissioner [General Mangwashi Victoria (Riah) Phiyega]. Lt Gen Moonoo was part of the National Commissioner's Office as Divisional Commissioner: Detective Services. The reason, that I was tasked by General Moonoo is that I was stationed in Kwazulu-Natal (KZN) and Ms Myeni was a resident in KZN. This was for the convenience of the complainant.
- (7) During March 2015, I personally interviewed Ms Myeni and satisfied myself as to her bona fides regarding the complaint. Thereafter I opened an Enquiry Docket which was registered vide Durban Central Organised Crime Enquiry CAS 4/03/2015 "SAA Investigations". The enquiry docket was subsequently done vide Kempton Park CAS 679/03/2016.
- (8) Lt Gen Moonoo discussed the matter with the National Management from DPCI Head Office and suggested to them that I should investigate Ms Myeni's complaint, since I formed part of the task team, reporting to him directly at that stage. Furthermore it was also suggested that, I would be the lead investigator because the suspects were not from KZN.

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- (9) A letter dated 24-03-2015, signed by the then Acting National Head, Maj Gen Ntlemeza, was forwarded to the Provincial Management of KZN. I was subsequently informed by the DPCI-KZN Provincial Management and Gen Moonoo to investigate the complaint of Ms Myeni and other matters that had to be addressed by the National Drug Task Team. A copy of the letter is attached hereto as Annexure AKHI pages 1 and 2. (para 3.1. is relevant).
- (10) During the course of the investigation of the enquiry case and subsequently the docket; incriminating evidential material against O'Sullivan and others had been obtained. The investigation established that criminal offences of Extortion, Intimidation, Uttering and Fraud had been committed by the complainant (O'Sullivan) and others. The docket was submitted to the National Prosecuting Authority (NPA) for a decision, which was made, after the evidence was presented for perusal of the enquiry docket and the subsequent case docket.
- (11) W/O Vlok from the National Head Office; Detective Service was detailed by General Moonoo to assist me in the investigations in *para 10 supra* which I referred to as the "SAA investigation".
- (12) I hereafter summarily deal with the complaint by O'Sullivan, and explain the facts as I am aware of:

Ad paragraph 17

- (12.1) It is wrongly stated and deliberately misleading that *"This unleashed a number of biased and unlawful actions by Mokotedi ably supported by Col Hoosen ("Hoosen") and W/O Vlok ("Vlok").* Gen Mokotedi was appointed, much later, as the Provincial Head: DPCI: Gauteng. I was at that stage finalizing the investigations in the "SAA matter" when Gen Mokotedi was appointed. I was duty bound to bring to the attention of the command structure that I was performing duties in his area of command. Various factors must be considered for example; if it necessitated the need for any assistance in his area; I call him without explaining further. Furthermore, if I was attacked or injured whilst on duty in Gauteng, it would make matters easy when the command structure bear knowledge

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of my activities there during that time. I was stationed in Durban and investigating suspects in Gauteng. It was then that Gen Mokotedi brought to my attention the other cases investigated by members from Gauteng and Pretoria; where O'Sullivan was a suspect.

Ad paragraph 30

(12.2) I deny that W/O Vlok and I arrested O'Sullivan at the Airport. I was present when he was arrested. W/O Vlok was not present when O'Sullivan was arrested inside the Airport. O'Sullivan had deliberately been misleading in this aspect because he knows exactly what my role was at the Airport and who had arrested him; yet he elects to remain silent in this regard. I opine that stating my name and that of W/O Vlok, he is skilfully attempting to create a nexus with what he is stating about Gen Mokotedi and Gen Moonoo in para 16.

Ad paragraph 60

- (12.3) I deny that Gen Moonoo instructed me to investigate O'Sullivan nor anyone in particular. It is wrongly stated by O'Sullivan that I had tendered evidence in court and I admitted *"he had been 'instructed' to investigate case against me"*. I explained fully the position in *para 5 to 11 supra*.
- (12.4) In the same paragraph (60) the mention of me meeting Gen Moonoo at the Casino near Durban. This I explained in court at length and hereto the word "Casino" is used deliberately to conjure an image of gambling. What O'Sullivan fails to mention is that it is also a Casino and Hotel facility. I was questioned at length during cross-examination if I had seen Gen Moonoo gambling. I could not establish the relevance, however I now see the reason for that line of questioning. It is to create an impression that Gen Moonoo was involved in nefarious activities. I did not see Gen Moonoo gamble. What I know is that Gen Moonoo is constantly advising people against gambling. I admit that I met Gen Moonoo; whenever he stayed at the Sibaya Casino Hotel, whilst he was in Durban. I also admit I met him soon after he went off on pension from SAPS.

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Ad paragraph 61

(12.5) This information is somewhat mixed up because O'Sullivan is mentioning a complaint about Gen Moonoo and goes on to state "*I have alleged that Moonoo regularly met criminals at the same casino*". O'Sullivan then goes on mentioning "*Hoosen admitted under cross-examination that 'we originally thought O'Sullivan had himself acquired interception equipment, then we discovered that he had obtained the interception from a police officer'*". I can say that the second [part of the] information is partly true. However it must be read in context to the question that was posed. It was brought to my attention that the offence in respect of the Regulation of Interception of Communication and the Provision of Communicated-Related Information Act, 70 of 2002, is ongoing against O'Sullivan and others.

Ad paragraph 62

(12.6) I am the Investigating Officer and W/O Vlok assisted me in the SAA investigations. This must be read together with *para 7 to 11 supra* which is self-explanatory. O'Sullivan is deliberately attempting to create a picture that we both lied under oath. All this information was explained during cross-examination.

Ad paragraph 63

(12.7) The "so-called criminals" that he had spoken of and he named one as Nazir Cassim who he alleged was a well-known drug dealer from Durban area. O'Sullivan went on to state that he had recorded telephonic conversation with Gen Moonoo and this so called drug dealer from Durban. According to Gen Moonoo the only person by the name of Nazir Cassim whom he spoke to telephonically or otherwise was, Adv Nazir Cassim (SC). I need to mention that I have been working in the drug investigation environment my entire career and I never heard of a drug dealer by the name of Nazir Cassim. All this was mentioned by me during cross-examination. O'Sullivan misleads this fact; and yet again, he remains silent about my evidence.

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(12.8) There are various other inconsistencies in the complaint to the Honourable Judge. These inconsistencies can only be attributed to slyness by O'Sullivan's attempt to create an impression that I and others had acted outside the rule of law and that we did so deceitfully and unlawfully.

I would hereunder state the inconsistencies as follows:

- (a) The year 2015, O'Sullivan was not on trial nor was he arrested. He was arrested for the breach of "Citizenship Act" on 1 April 2016 and the trial was thereafter. What I know from the information I gleaned from reliable sources; is that O'Sullivan was made aware that Ms Myeni reported the matter to the DPCI. He was also made aware from "contacts" within the SAPS and others that Gen Moonoo had tasked a "Col AK Hoosen" from Durban DPCI to investigate. O'Sullivan could not establish any further information about the investigation from his "contacts".
- (b) I ensured that an Enquiry Docket was registered first and the information therein remains unknown to anyone except the holder of it. The Enquiry Docket information remains in the file and not scanned in the CAS system. It was then, that O'Sullivan started complaining to and against Gen Moonoo. This I believe, was because, he may have been expecting Gen Moonoo or other senior personnel, including IPID investigators to inform him directly or indirectly of the information I had in the enquiry which I was tasked to investigate on behalf of Ms Myeni and his other co-accused. The case docket (Kempton Park CAS 679/03/2015) was only registered in March 2016 after the evidence in the Enquiry was placed before the prosecutor from the DPP's office for a decision. I did not know O'Sullivan personally previously.
- (c) Information gleaned from my sources is that; during the year 2015 and early 2016, O'Sullivan was making enquiries from people in Durban, and he wanted to know everything about me and the case. (The year when I was investigating the complaint from Ms Myeni).

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- (d) I found it strange also and would like to add that at the same time, my private residence was broken into and all my "private and personal documents", amongst other things, were taken in that housebreaking. When I first met O'Sullivan; he said things like **"I know everything about you and I even know where you stay"**. This he said several times. I found it to be a strange thing to say and uncalled for because I was at all times courteous towards him.

Ad paragraph 38.3

- (e) He states differently to what he states in the email he sent on the 15th March 2016 (referred in para 16 and 24 by O'Sullivan). Even during intense cross-examination, it was mentioned about the email and the fact that O'Sullivan was heading to Southall in London to present, according to O'Sullivan, "systemic corruption" at a conference on the 4th April 2016. He now changes that and state that he was [having a] meeting on the 4th April 2016 in St Helina. This normally happens when a person is not truthful. What he fails to mention is that the same email was the reason I applied for an arrest warrant for O'Sullivan and others on 31st March 2016 on the "SAA matter". I also raised my concern to the prosecutor, Adv JJ Mlotshwa, of what O'Sullivan had stated in the email that **"if I go into exile to beat you, then [so] be it. I will run my campaign from London, New York, Lusaka or wherever, just like..... during apartheid. It worked for them back then, it can work for us now"**. I understand "exile" as going away or disappearing from South Africa because he continues by mentioning other country names and "wherever". The other words or sentences he used in the same email was **"STOP US IF YOU CAN, any one of you"** and, **STOP ME IF YOU CAN! Phahlane"**.
- (f) The prosecutor involved in the SAA matter; Adv JJ Mlotshwa, had other court commitments and therefore requested that I take the application for the warrant of arrest and completed and signed J50 to the Senior Prosecutor at Kempton Park Magistrates Court for a date stamp and to have the matter placed before the magistrate at that

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court. **The actions of the senior prosecutor at Kempton Park Magistrates court will not be explained herein, save to say, it was questionable.**

- (g) I attach hereto, as Annexure AKH2 a copy of the application I placed before the prosecutor for the warrant of arrest. This information was left with the same senior prosecutor at Kempton Park Magistrates Court from the 31st March 2016 and at 16h30 he wanted to see the docket which was with Adv JJ Mlotshwa at the DPP's office in Pretoria. However, the docket (Kempton Park CAS 679/03/2016) was brought the next day, the 1st April 2016 at 07h45 and the said senior prosecutor indicated to me that he would want to read the contents of the docket. At about 16h00 and on a Friday, I was told by the same senior prosecutor at Kempton Park Magistrates Court that he was not prepared to place the information I provided to him to a magistrate and also that there was no magistrate available to sign the J50. He informed me that the J50 was wrong. He also stated that I should take the application back to the prosecutor dealing with it at the DPP's office. The same afternoon O'Sullivan was leaving the country with one hand luggage.
- (13) Furthermore, O'Sullivan fails to mention in his complaint to the Honourable Judge that after his arrest on the "Citizenship Act" case, he was served with a summons to appear on the SAA matter which is indicative of fairness to O'Sullivan. **The SAA case is currently pending.** This information is missing because he only want to show that at all times, I and others acted wrongly or that there was an ulterior and unlawful motive for his arrest.
- (14) I have 37 years of unblemished service in the law enforcement environment (South African Police Service (SAPS)) and the former Directorate of Special Operations (DSO). I take umbrage to the allegations made against me by O'Sullivan and reserve my right to use the information herein and seek legal advice on this issue. **I respectfully submit that in light of the information above; O'Sullivan's allegation are without merit and ought to be rejected".** [O/DPCI/J Emphasis]

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13. **W/O Joshua Jacobus Vlok** is not a member of the DPCI (the Hawks). He is attached to the Anti-Corruption Unit of South African Police Service. However, in response to the complaint against him, in his unsworn statement dated 01 July 2017 he explained as follows:

- "(3) I seek to deal with these allegations although I do not have an affidavit of the complainant, but just a letter of the complainant. I therefore intend to deal with them to bring clarity. I reserve my right to supplement this affidavit should it appear not to have addressed these allegations in totality.
- (4) In paragraph 18 the complainant alleges that I took him off some flight while he was on his way to London on the 1st April 2016. I was not part of the arrest. Why Mr O'Sullivan is not mentioning the names or even mentioning other officers that were involved in the arrest except myself and Col Hoosen. The arresting officer was Capt Mangqalaza from the DPCI.
- (5) In paragraph 62 the complainant mentions that I was the investigating officer on the SAA matter. I was assisting Col Hoosen in that investigation and received instructions from him on a daily basis to complete the investigation. The docket is currently under my name.
- (6) In paragraph 66 the complainant alleges that I obtained a fraudulent search warrant. The search warrant was signed by a magistrate from Randburg court. The complainant did open a docket against me at Randburg police station and the docket was investigated by Brig Gina Palko and the docket was nolle prosequied.
- (7) In paragraph 69 the complainant allege that I utilized his data from his computers to charge him. **All the dockets that I investigated against the complainant were opened by members of the public.** The download of the complainant's computers was never in my position.
- (8) In paragraph 128 the case number is Enq 36/26/03/16, enq is closed.
- (9) In paragraph 134 the case number is OR Tambo CAS 298/6/2013 and is currently with the NPA for a decision to prosecute.

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(10) I refer you to my affidavit that comprehensively dealt with the complainant's allegations under case number 75378/16 in the North Gauteng High Court.

(11) I therefore submit that the complainant's allegations are previously (sic), without merit and ought to be rejected."

14. **Mr Tembikhaya Cecil Mangqalaza** a former captain attached to the DPCI, in reply to the allegations, in his unsworn statement states on 25 August 2019:

"(8) In reply to the above allegations herein paragraph 7 as aforesaid respectively I wish to state as follows: I was part of the team that arrested Mr Paul O'Sullivan. I then referred the I/O Mr Rasiwela to the statement I made to the Independent Police Investigative Directorate (IPID) in 2017 on the allegations contained by docket vide, OR Tambo CAS 07/06/2017 as the basis of my reply to the allegation in which that statement covers the very same allegations laid to the DPCI Judge investigations. We then adjourned the interview at 15h15 in order for Mr Rasiwela to get the statement from IPID and to verify if the allegations are covered in the statement.

(9) On Sunday 25 August 2019 @ 11h00 the interview resumed as per earlier arrangement. It transpired from the perusal of that statement by Mr Rasiwela and myself that some of the facts of the allegations related to paragraph 7.1 of unlawful arrest was covered in paragraph 19 of the statement, paragraph 7.2 relating to abuse of power was covered particular in paragraphs 14,15 and 16 of that statement.

(10) However, allegation in paragraph 7.3 relating to mandate of investigating contravention of immigration I cannot depose an answer because it falls within the mandate of the police authorities to decide, but according to my opinion and experience while I was in the police, police were not barred to do any job of statutory law enforcement matters.

(11) I then raised my concern [relating to] the purpose of investigating misconduct against me at the time I was a police officer; whether it is still prudent to submit a statement on those allegations if this allegations are in future proven as such because I am no longer a police officer. My understanding with regard to the purpose of investigation is to reach a

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conclusion that would suggest sanctions or non-sanction or to consider whether I acted wrongly in terms of the internal prescribed standards of the SAPS in which I do not fall [within] anymore and they will not be applicable to me. The I/O Mr Rasiwela in his response to the above question said I should leave it to the relevant authorities to decide.

(12) It came to my attention that the same complainant, Mr O'Sullivan, [alleges] that I tortured him while in the police detention preceded by kidnapping and unlawful arrest were part of the allegations against me. I was informed by Mr Rasiwela that the complaint has long been referred to IPID with regard to allegations of criminal conduct at the time he lodged the complaint in 2016.

(13) As much as I referred the reader to my statement I made to IPID, but the statement received by Mr Rasiwela from IPID falls short of the allegations needed by this office to respond in the following manner. It does not have the list of thirty (30) questions which was part of my answering statement to IPID.

(14) Therefore, in the absence of those 30 questions that were part of my statement it will create uncertainty to the current investigation whether the abuse of power was asked by IPID in which I referred as answered to in paragraphs 14, 15 and 16. Therefore it is my submission that the statement in which I am referring to is emanated from a written list of 30 questions that were read to me which subsequently produce my statement.

(15) The averment in para 7.1 that stated that Col Hoosen and W/O Vlok are the ones who arrested Mr O'Sullivan. That statement is incorrect. Mr O'Sullivan was arrested by me. From his arrest I informed his lawyer, Mr Furmann, over the phone and subsequent from that the person who arrested Mr O'Sullivan by law have to open a case not to delegate as it is suggested in para 7.1.

(16) Additionally, with regard to allegation made by Mr O'Sullivan on conditions given by the team that he was asked who gave him intercepted information relating to criminal activities of the then Divisional Commission Detectives, Lt Gen Moonoo.

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(17) It is not true that there was a question asked from him with regard to promise to release him on bail conditionally he gave the name of the person who provided him with the interception of Gen Moonoo's cellphone.

(18) He was fully legally represented not under pressure from the team. He chose to bring information of interception of Gen Moonoo's cellphone voluntarily in front of his three attorneys. However, that matter is still under investigation according to my information. Therefore, I cannot depose any further information with regard to it.

(19) With regard to the investigation of the above complaints investigated by the Office of the DPCI Judge, I covered all the allegations put to me as indicated in my responses and the investigation officer agreed."

15. On the same date (25/08/2019) Mr Mangqalaza made a supplementary statement to the effect that:

"(3) On my signed statement dated 25 August 2019, I erroneously omitted the paragraph I have made to a draft statement before the signed one. During the addition of facts or answers in the finally signed statement, found to be not covered by his interview questions and allegations he (Mr Rasiwela) showed me a written complaint by Mr Paul O'Sullivan in which he stated that he was arrested by Col Hoosen and W/O Vlok.

(4) I already disputed that as untrue in my statement. Mr O'Sullivan did make a mistake by implicating people who did not effect his arrest. He deliberately misled the Office of the DPCI Judge intentionally. He knew precisely who arrested him as former Capt Mangqalaza.

(5) The reasons of changing attention from me as not the person who arrested him is because on Wednesday 22 June 2016 at about 08h18, he Mr Paul O'Sullivan, attempted to compromise justice before his case of found used three (3) of his passports in the matter in which the Immigration Act prohibits. In that call he [Mr O'Sullivan] called me [Mr Mangqalaza] and said

(6) "I wanted a meeting over cup of tea in any restaurant or cafe before the trial takes place". He further said that he was aware that I am no longer in the police therefore I can be in his side and assist him into his intention to

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pursue criminal charges and civil claim intended against senior SAPS Management namely, Lt Gen Ntlemenza, Gen Phahlane, Lt Gen Moonoo and others to get consequences of the OR Tambo Airport arrest as they were behind it.

(7) He then further promised to exclude me on his intention of pressing charges if I came to him in his invite and also assured me that is possible by law to be excluded if I am no longer a police officer. I then noted in my diary the time of the call and cellphone number called as 082 821 1666, copy of the diary is attached hereto as Annexure A.

(8) At that time, he was under the bail conditions not to communicate with state witnesses. I was surprised by his call and how did he get my Vodacom number because I never shared it with him. I then reported his conduct and his unethical behaviour to the attention of the magistrate during my testimony on record.

(9) Therefore, [he] is avoiding to include me as the person who effected arrest. The case he opened against me at IPID of torture, kidnapping and unlawful arrest is a revenge that I exposed him in court to pay ultimate price to deny him meeting despite he promised to exclude me on the charges. As the result he opened the charges a year and four (4) months later in June 2016."

ASSESSMENT OF THE EVIDENCE AND FINDING

16. The grievances by the complainant, Mr Paul O'Sullivan a private forensic investigator, to the DPCI Judge were triggered, for present purposes, by his arrest for the alleged contravention of s 26B of the South African Citizens Act, No 88 of 1995. The respondents who, apart from W/O Vlok, are/were members of the Hawks, arrested O'Sullivan on 01 April 2016 after he had boarded a plane at O R Tambo International Airport bound for the United Kingdom. He was accompanied by his two minor children who were returning to school at that destination.

17. At para 30 of his statement (deposed to on 22 July 2016) O'Sullivan states:

17.1 "(30) What is significant is that this arrest (on the minor offences) was under the command of [Maj Gen] Mokotedi ably assisted by [Col] Hoosen and [W/O] Vlok".

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17.2 O'Sullivan refers to an article by Angelique Serrao on 15 April 2016 (News/crime-courts) in which Gary Eisenberg of Eisenberg & Associates who he says are experts in immigration and citizen status and resolution of complex matters as having said, inter alia:

"He has never in his experience, since the Act came into law 10 years ago, heard of a South African being arrested on these charges. To prosecute a South African citizen, and release him on bail of R20 000 bail for violating this law, is unheard of and ludicrous. This may be the first case in the country's history."

17.3 Serrao continues in the article:

"An immigration lawyer is convinced the Hawks must have arrested forensic investigator Paul O'Sullivan earlier this month for some reason other than the use of his Irish passport to leave the country."

18 It is important to allude to the foregoing views and statements that occurred before the judgment pertaining to this incident delivered by Magistrate Mr Nel on 02 July 2017 in the case of **State v/s O'Sullivan: Case No B 803/2016, Kempton Park**. The Magistrate, inter alia, made the following remarks and pronouncements in acquitting O'Sullivan ito s174 of the Criminal Procedure Act, 51 of 1977 (CPA):

18.1 "He [O'Sullivan] was arrested on the 1st April 2016 just after he boarded a flight and was then taken to Pretoria where he was held in custody for a while and later brought to Kempton Park police cells.

He then appeared on the 4th of April 2016 and was later released on very strict bail conditions. Why Mr O'Sullivan was taken to Pretoria Police Station is beyond my understanding, but only the police who arrested him would know why. It is in any case the duty of the court to concern itself with this matter."

18.2 "During cross-examination Adv Roux literally wiped the floor with these witnesses. I am not going to elaborate on the quality of their evidence as I have done so on a previous occasion during the application for the relaxation of the accused's bail conditions.

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My impression of them as poor witnesses did not during the course of the trial further change. At this point I would also like to mention that the behaviour of the witnesses and the demeanour of them was also a matter of concern for the court."

18.3 "It was put to the state witnesses [Keneth Ndou, Tembikhaya Cecil Mangalaza, Bonele Katlako and Noncili Nkupa] that:

"No one was ever charged with it [s 26B of the South African Citizens Act] and furthermore some of the witnesses did themselves not even know about the existence of the offence contained in this Act."

18.4 "What is however disturbing to the court was his [State advocate JJ Mlotshwa's] argument that there was an evidential burden on the accused to adduce evidence that he did not have the intention to contravene the legislation. I must say this: There is no burden upon the accused or any accused to prove anything. The burden of proof is always on the state to prove their case beyond a reason doubt in criminal matters."

18.5 "The evidence that was led by the state was of a very poor quality, by lack of a better word by the court."

18.6 "In accordance with the decided case of the *State vs Lubaxa* 2001 (2) SACR the accused is entitled to his dismissal [acquittal] on all the charges against him. He cannot assist the state in bringing the case any further."

19. The next issues to determine is whether the Hawks were legally authorised or entitled to investigate what was evidently a minor offence and in doing so abused their powers.

20. It is disappointing to observe how the various members of the Hawks fell over each other in denying that they were the investigating officers. What does it really matter who was or was not? What is material is that the respondents were all part and parcel of a team that operated under the leadership or supervision of Mokotedi, a major general. The involvement of Col Hoosen, all the way from Kwazulu-Natal, is a patent give-away that there was clearly a hidden agenda notwithstanding his and Mokotedi's lame and unreliable protestations.

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21. According to O'Sullivan what "unleashed a number of biased and unlawful actions by Mokotedi" and his team starting with the immigration/passport/citizenship arrest on 01 April 2016 is attributable to this incident:

"(16) On 15 March 2016, I sent an email to, *inter alia*, senior members of the police and government about systemic corruption in South Africa and about my intentions to expose the corruption at a conference to be held in the United Kingdom. Mokotedi evidently did not kindly receive this email as it contained, *inter alia*, an attack on our president [Mr Jacob Zuma] (in respect of whom he has "100%" support) and his friend, now retired Lt General Moonoo."

O'Sullivan then catalogues in detail the number of "cold cases" that were resuscitated against him.

22. Mokotedi's ringing response to O'Sullivan's para 16 is located at his para 21 (**Ad paragraph 14**) where he states:

"(21) I refute that I am unable to act without fear, favour or prejudice in relation to the complainant and his matters. There were several cases opened against Mr O'Sullivan and the complainants in several of these came forward to request that their cases should be looked at. I pulled [out] such cases to be dealt with by a single team for efficiency and coordination such that the complainant should not be bombarded from various units in respect of cases against him. I deny that I have acted with bias towards the complainant. I agreed and encouraged meetings with his legal representative, Advocate Barry Roux, to find a quicker, more open and legal solution to the complaints against him."

[Observation by the DPCI Judge: How Sweet! How pious! Considering also Magistrate Nel's remarks]

23. His quoted para 21 (above) must then be considered in conjunction with his para 23 where he states:

"(23) I deny that I was a recipient of the said email. Furthermore, I deny that I led investigations against Mr O'Sullivan because of the contents of the email he sent. I recently requested Mr O'Sullivan to expand on the contents of that email, and he responded through his lawyers that he 'only had suspicions' that the friends of the

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President and of General Moonoo are criminals. I deny that General Moonoo is my friend."

24. On the request of the DPCI Judge to be furnished with the current status of the "cold cases" re-opened by Maj Gen Mokotedi Mr O'Sullivan provided the information on Six (6) of Nine (9) cases in schematic fashion as follows:

No.	Police Station Name and CAS NO	Court Name Case No. Investigating Officer, Prosecutor	Complainant Name	Brief Outline of charge/s	Date of charge sheet	Result
1	OR TAMBO 06/04/2016	Kempton Park D803/2016 Captain Mkupa & W/O Vlok	General Mokotedi	Violation of S 26B of Act 88 of 1995	2016-04-01	NOT GUILTY
2	KEMPTON PARK 679/03/2016	Kempton Park W/O Vlok and Col Hussein	Duduzile Myeni	Extortion Intimidation Fraud	2016-04-07	Withdrawn
3	BRAMLEY 414/04/2016	Randburg RC326/2016 W/O Vlok	Alice Johnston	Fraud	2016-06-21	NOT GUILTY
4	ROSEBANK CAS 47/05/2016	Randburg RC376/2016 W/O Vlok	Cora van der Merwe	Extortion Intimidation	2016-07-15	NOT GUILTY
5	KAMEELDRIFT CAS 12/01/2017	Pretoria CASE NO. A16/94/2017 Brigadier Ncube North West DPCI, assisted by W/O Vlok	General Mabula North West DPCI	Fraud Contravention of S 33(5) of the IPID Act 1 of 2011 (Pretending to be IPID Officer) Extortion Attempted Extortion Intimidation	2017-02-16	Struck off in terms of Sect 234
6	ALBERTON CAS 799/11/2012	Palm Ridge ?? W/O Vlok	Neil Diamond	Extortion Intimidation	2017-08-14	Withdrawn"

25. As far as the remaining three cases are concerned Mr O'Sullivan supplied this information:

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(7) The Pretoria Central Case: CAS 380/04/2016

The case originally opened by Lt Gen Moonoo: "I was never charged."

(8) The Johannesburg Central Case: CAS 755/5/2016

It is a case of theft in which the complainant is Mohammed Edrees Hathurari: "The State declined to prosecute."

(9) The Midrand Case: CAS 867/06/2016: Forgery.

The said "complainant" Chad Markham fled the country: "I heard nothing about [the case] after 2017."

NB: Maj Gen Mokotedi at his para 80 (above) in essence confirms O'Sullivan's statement in the Markham matter. He resultantly recommended to the NPA to decline to prosecute O'Sullivan because the case was "unwinnable".

26. One has to be extremely gullible to accord any credence to Mokotedi's averment that pursuant to O'Sullivan's arrest on 01 April 2016 at OR Tambo International Airport all the complaints in the "cold cases" magically came out of the woodwork and urged that charges they laid against O'Sullivan years before be resuscitated or reopened. Such coincidence defies credulity and I reject his explanation as a figment of his fertile imagination. A conspectus of the facts and circumstances strongly militate against it. This observation must further be considered in conjunction with the averment of O'Sullivan in para 70 (above) where he says:

"(70) It is inconceivable that all these so-called complainants, all of them being persons that are the subject of serious investigations carried out by me, where evidence had been adduced against them for various offences including, but not limited to, conspiracy to commit murder, fraud, theft, money laundering, defeating the ends of justice and corruption," [could have done so mero motu]."

27. The answer to the jurisdictional issue raised in para 19 above lies further in the case of **Helen Suzman Foundation v/s President of the Republic of the Republic of**

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South Africa and Others (Known as Glenister III), 2015 (2) SA 1 (CC) para 95 where the ConCourt made these pronouncements:

"[95] The National priority offences are defined as 'organised crime, crime that requires national prevention or investigation, or crime which requires specialised skills in the prevention and investigation thereof, as referred to in section 16(1)'. Section 16 lists a series of offences, including corruption, which constitute national priority offences. A concern was raised that some of those national priority offences do not deserve the attention of an anticorruption agency if that agency were to pay adequate attention to its core mandate. This is not correct. The DPCI has the primary duty to prevent, combat and investigate those national priority offences that are intimate to its core business like corruption, crimes against humanity, organised crime or serious commercial crime 'which in the opinion of the National Head of the Directorate need to be addressed by the Directorate'. It is the Directorate itself that has to ensure that its primary responsibilities are by no means compromised. Barring other considerations, this guarantees the operational independence of the DPCI [the Hawks]."

28. The quoted passage in Helen Suzman (Glenister III) (above) must be read in conjunction with the following pronouncements by **Mr Justice Sardiwalla J** in **Gigaba v Minister of Police and Others (43469/2020) [2021] ZAGPPHC 55; [2021] 3 All SA 495 (GP)** (11 February 2021) where the following is stated:

28.1 "[55] This Court has noted significantly that whilst section 17D does confer a mandate to the Hawks, its mandate is limited to national priority offences and that any suspected national priority offence in terms of section 17D(2) must be referred by the National Head in terms of [this] section. There is no evidence before this Court that the Hawks complied with this requirement."

28.2 "[77] It appears in this matter that the arresting officers abused their powers and position as members of the Hawks presumably to avenge a wrong or perceived wrong as complained and alleged by Mr Gigaba and not for any lawful purpose and was accordingly *infraudem legis*. The warrant was obtained for an ulterior motive. [-----] It is clear that this is in fact a domestic dispute between two prominent members of society, however the offences are not deserving of the high

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priority of the Hawks and the involvement of the Hawks itself speaks to the abuse of power by Mr Gigaba as former Minister in using the State administrations for his own personal benefit with an intention to intimidate his wife in a domestic spat." (O/DPCI/J Emphasis)

29. Section 17D (2) of the SAPS Act, 68 of 1995, is not triggered. It provides:

"(2) If, during the course of an investigation by the Directorate [the Hawks], evidence of any other crime is detected and the Head of the Directorate considers it in the interests of justice, or the public interest, he or she may extend the investigation so as to include any offence which he or she suspects to be connected with the subject of investigation."

30. Put differently, the situation described in para 55 of the Gigaba judgment, quoted above at para 28.1, is antecedent to an investigation in terms of section 17D(2) of the SAPS Act quoted in para 29 immediately above. The aim by the Legislature was evidently to avoid a piecemeal investigation by different bodies. The authority lies with the National Head of the Hawks who did not give or provide written authority for the deviation to Maj Gen Mokotedi who was a Provincial Head of the Hawks.

Decision: In this regard the abuse of power by Maj Gen Mokotedi has been satisfactorily substantiated. The rest of the respondents acted under his directions and supervision and could not have defied him unless his orders were outright unlawful.

31. **O'Sullivan's next gripe** is couched in these terms in his para 13 which should not be treated lightly:

"(13) Notwithstanding his resignation in order to avoid the disciplinary proceedings against him, Mokotedi was subsequently appointed as a General in the Directorate [the Hawks]. It is unclear how he avoided the scrutiny of Section 17(C)(A) of the SAPS Act, which provides that a person to be appointed as a member of the Directorate must be a fit and proper person. I fail to understand how he could have qualified to be a fit and proper person, particularly in view of the following:

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- (13.1) His evidence in the Selebi trial was rejected;
- (13.2) His interview on Radio 702 exposed his bias in general;
- (13.3) His Twitter account reflected "100% JZ" [Dated 12 December 2012],
which shows an association inimical to unbiased conduct;
- (13.4) He has a judgment against him obtained by Investec for a debt in excess
of R100 000, 00 in terms of credit card abuse."
**[A copy of the summons in that matter was annexed by O'Sullivan
marked as "E"]**
- (13.5) He seemingly did not receive security clearance, as per the report on
News 24".
**[A copy of which was annexed marked as "F". Annexure "F" is
quoted below at para 37]**

32. Mokotedi counters the impugning by O'Sullivan of his character in this manner at his paras 19 and 20:

"(19) Ad paragraph 13: I resigned from the NPA because the management at the time had created an environment that was hostile towards me. I approached the General Public Service Bargaining Council [GPSBC] requesting for reinstatement on the basis that my resignation amounted to corrective (sic) dismissal. I challenged the NPA to proceed with the disciplinary process but they chose not to go ahead with the disciplinary hearing.

(20) Ad paragraph(s) 13.1 to 13. 5: The evidence [in S v/s Selebi] was rejected for relevance and not because it was false. Interview on 702 showed that I have opinions on various matters. I am paying Investec for the house loan and arrears. The loan was taken in 2005 and was payable for 20 years. **With regard to security clearance, it is the employer's responsibility to ensure vetting of employees, and that process is on-going.**" (O/DPCI/J Emphasis)

33. The DPCI Judge does not wish to put too fine a point on O'Sullivan's allegations in his paras 13.1 and 13.2 immediately above, concerning former SAPS Commissioner Jackie Selebi and Mokotedi's interview with Redi Direko on Channel 702. However, O'Sullivan's paras 13.3 to 13.5 calls for some engagement, regard also being had to the responses by Mokotedi.

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34. Mokotedi's "Twitter Account Reflected: 100% JZ, which shows an Association Inimical to Unbiased Conduct"

What is reflected in Maj Gen Mokotedi's Twitter Account in issue is the following (supported by his upper-body photo):

"Rev Prince Mokotedi @Prince Mokotedi 12 December 2012.

I am for 100% JUZ.100% JOZI.100% Jazz. 100% JZ." There could never have been any misapprehension in the mind of Mokotedi that on the common cause and objective facts, the reference to "JZ" was meant and understood to allude to former President Zuma. He cannot obfuscate who he had in mind. It should also be borne in mind that a second reference was made to this issue in O'Sullivan's statement in para 16 in these terms:

"(16) On 15 March 2016, I sent an email to *inter alia* senior members of the police and government about systemic corruption in South Africa and about my intentions to expose the corruption at a conference to be held in the United Kingdom. Mokotedi evidently did not kindly receive this email as it contained, *inter alia*, an attack on our President (in respect of whom he has "100% support) and his friend, now retired Lt Gen Moonoo ("Moonoo").

35. It is perplexing why a Provincial Head has to declare or publicize that he is 100% for a head of state, any head of state or government for that matter; particularly if that head of state has a raft of charges pending against him and a perennial litigant in our courts. What is incomprehensible is that Mokotedi studiously avoided explaining his "100% JZ" to which O'Sullivan makes reference in paras 13.3 and 16 of his statement, whereas he has been meticulous in responding to all aspects in O'Sullivan's statements. His "answering account" speaks for itself. The conclusion can therefore safely be reached that he has no plausible explanation to give. His conduct is strongly deprecated because from his own pen come the words at his para 3 is:

35.1 "(3) I joined the National Prosecuting Authority (NPA) in 2004 as Director for Enforcement within the Integrity Management Unit. In 2012 I was appointed as the head of the Integrity Management Unit at the NPA." And further, I was appointed

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as Provincial Head for the DPCI [the Hawks] in February of 2016", which skirts the issue.

35.2 It is further incongruous with what the DPCI Judge (Hawks Ombud) stated in **Mluleki Dlelanga and Another v/s Lt Gen Berning Ntlembeza: Ref O/DPCI/J: 72/05/2016** decided on 22 July 2020 at 15 thereof as follows:

"(15) Any member of the Hawks who targets any member of a political party or embarrass him or her, simply by virtue of his/her constitutional political choice would, *mutatis mutandis*, fall foul of the following provisions:

15.1 Section 199(7)(a) and (b) of the Constitution of the Republic enjoins that:

"(7) Neither the security services, nor any of their members, may, in the performance of their function-

(a) prejudice a political party interest that is legitimate in terms of the Constitution;
or

(b) further, in partisan manner, any interest of a political party."

15.2 In terms of the South African Police Service Discipline Regulations (SAPS/DR): NO. R. 1361 of 2016 Regulation 5(3)(h) a member of the police will be guilty of misconduct if he or she: "misuses his or her position in the Service to promote or to prejudice the interest of any political party."

Granted, "JZ" is not a political party but was the President of the governing party, the African National Congress (ANC).

The next issue: Mokotedi "has a judgment against him in excess of R100 000. 00 in terms of credit card abuse.

36. **As regards para 13.4:** On 17 December 2015 the Gauteng Division of the High Court, Pretoria, in Case No 71193/2015, granted default judgment in favour of Investec Bank Ltd t/a Investec Private Bank against Mokotedi as follows:

"(1) Payment in the amount of R100 000. 01;

(2) Interest on the amount of R100 480. 01, calculated at a rate of 8.25% from 15/05/2015 to date of final payment.

(3) Costs to be taxed."

37. What is interesting is that on 15 June 2016 Mokotedi is quoted as having informed Jeff Wicks of News 24 that he "had only found out about the default judgments

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against him in January [2016] and those things [default judgments] happened in December [2015], but I only found out about them in January [2016]."

37.1 If Mokotedi is correctly quoted or better still when he learned about the default judgment is immaterial. What matters is that service was effected on him by the Sheriff on the 10th September 2015 at his residence (address omitted here by DPCI Judge).

37.2 The point really is that for a senior government functionary it is irresponsible and indeed a misconduct to have failed to manage his own financial affairs which placed him in an invidious and compromised situation.

As regards para 13.5: Mokotedi "seemingly did not receive security clearance, as per the report on News 24 (annexure F)."

38. Mokotedi concedes his non-clearance, shifts the blame to the employer and said (as at 21 April 2017 when he responded to O'Sullivan's complaint) that "that process is ongoing."

39. Jeff Wicks' aforesaid News 24 article of 15 June 2016 is themed: **"Still no security clearance for Gauteng Hawks boss"** and runs in this manner:

"Johannesburg – Gauteng Hawks head Prince Mokotedi still does not have security clearance after several months of leading the crack investigative unit.

Mokotedi was parachuted into the position following the departure of Shadrack Sibiyi, who was fired last year following a disciplinary hearing which found him guilty of orchestrating the so-called Zimbabwe renditions.

Mokotedi had courted controversy at the National Prosecuting Authority while he headed the Integrity Management Unit.

A heated Mokotedi confirmed last week on Thursday that he had not yet been given security clearance.

'Security clearance is a very long process. They can't give you security in one day. The head must first say I am suitable for the post, then the process unfolds. This thing [security clearance] is not quick, it happens in stages. I still have to have that machine put on me [a polygraph machine],'" he said.

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His response came after News24 established that his bid for unfettered security clearance may be scuppered because of pending civil litigation relating to his personal finances.

According to Mokotedi, when he applied for the top Hawks job late last year, he had declared that he had been tied up in court with two banks relating to payments in arrears.

Court controversy

Publicly available court documents, of which News24 has copies, show that Investec Bank secured two judgments by default against Mokotedi and his wife relating to payments of a R1M bond and a R100 000 credit card bill.

It was further established that Mokotedi had owed nearly R10 000 on another credit card.

Mokotedi said that he had only found out about the default judgments against him in January.

"Those things [default judgments] happened in December, but I only found out about them in January," he said.

Mokotedi said his attorneys had since entered the fray and arranged a payment plan with the banks. He maintains he is now in the clear.

"I paid them R150 000. I got the money from a mining company I was consulting for and had actually invested in and they struggled at first, but now they have started to pay me," he said.

Hawks spokesperson Brigadier Hangwani Mulaudzi refused to comment on whether Mokotedi's declaration and civil litigation would affect his security clearance.

The former NPA man had courted controversy in 2014 when he faced charges relating to his handling of an investigation into Breytenbach, who is now a DA MP.

According to his charge sheet, Mokotedi had expanded on the scope of an investigation into medical schemes without authorisation and then, without approval, had submitted the report, which purported to focus on Breytenbach, to the police.

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'You are being stupid'

He was accused of breaching the NPA's media policy, contravening the NPA's code of conduct, contravening Section 41(6) of the NPA Act. Gross insubordination, conducting investigations without approval, improper disclosure of investigation reports, failure to comply with the NPA whistle-blower policy, dissemination of false information and bringing the NPA into disrepute.

When news of the report hit the headlines, Mokotedi raised eyebrows by publicly defending himself on live talk radio, which resulted in a new charge of breaching the NPA's media policy.

'My charge sheet is in the public domain. What does this have to do with anything. You're being stupid.'

'The reason why I was charged was because I went to 702,' he said tersely.

He resigned before his hearing could be held, and then disappeared into the ether, before emerging in the top crime fighting position.

In 2010, Mokotedi testified in disgraced former police commissioner Jackie Selebi's defence, where he accused prosecutor Gerrie Nel and others of irregularly using secret funds, a move perceived as trying to derail the case."

(Emphasis by DPCI Judge)

40. Mr O'Sullivan raises a valid and fundamental question apropos the security issue which cannot be airbrushed into oblivion.

Section 17E of the South African Police Service Act, 68 of 1995, provides: "(1) Any person who is considered for appointment in, or secondment to, the Directorate [the Hawks], shall be subject to security screening investigation in terms of and in accordance with section 2A of the National Strategic Intelligence Act, 1994 (Act 39 of 1994).

(2) No person may be appointed to the Directorate unless-

- (a) a security clearance has been issued to that person in terms of section 2A(6) of the National Strategic Intelligence Act, 1994 (Act 39 of 1994), by any Intelligence Structure referred to in that Act as may from time to time be determined by the Minister;

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(b) a security clearance on the required level and which is still valid had been issued to the person in question in terms of section 2A (6) of the National Strategic Intelligence Act, 1994; or

(c) a temporary security clearance has been issued by any Intelligence Structure referred to in the National Strategic Intelligence Act, 1994, determined by the Minister after the person had submitted an application to such Intelligence Structure to have a security screening investigation conducted.

(3) Any appointment on the basis of a temporary security clearance shall be subject to the finalisation of the security screening investigation and the issuing of a security clearance in terms of sections 2A (6) of the National Strategic Intelligence Act, 1994.

(4) Whenever the head of the Intelligence Structure referred to in subsection (2) (a) and (c) acting in terms of section 2A (6) of the Strategic Intelligence Act, 1994, upon reasonable grounds, degrades, withdraws or refuses a security clearance, of a member of the Directorate, the National Commissioner may on request of the National Head of the Directorate transfer such person from the Directorate, or if such person cannot be redeployed elsewhere in the Service, discharge him or her, subject to the provisions of section 34.

(5) A member of the Directorate may from time to time, or at such regular intervals as the Head of the Directorate may determine, be subjected to a further security screening investigation.

(6) If, upon information at the disposal of the Head of the Directorate, he or she reasonably believes that the person concerned poses a security risk, he or she may require the member to undergo a further security screening investigation.

(7) (a) Any member of the Directorate must, in the prescribed manner and at the prescribed intervals, disclose his or her prescribed financial and other interests and those of his or her immediate family members.

(b) For the purpose of paragraph (a), 'immediate family' refers to the spouse, civil partner or permanent life partner of that member, and includes dependent children

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of, and dependent family members living in the same household with that member." **(Emphasis by DPCI Judge)**

41. On 19 May 2022 the DPCI Judge wrote to the National Head of the Hawks, Lt Gen Godfrey Lebeya, providing him the relevant context and passages from the allegations by Mr O'Sullivan and Maj Gen Mokotedi's responses thereto, which are superfluous to repeat here as they are fully set out in the earlier body of this report. At para 8 of the letter it was then required of Lt Gen Lebeya:

"(8) What is required of you is to provide the DPCI Judge with:

- (8.1) Documentation that evidence the process that was instituted and followed for Maj Gen Mokotedi's appointment as Provincial Head of the DPCI (the Hawks) in Gauteng;
- (8.2) Whether Maj Gen Mokotedi now enjoys security clearance and, if so, when he was granted such a security clearance. This information is required by virtue of the fact that Mokotedi's response on 21 April 2017 to O'Sullivan's criticism is the following at his para 20 **(Ad paras 13.1 to 13.5)**:
 "With regards to security clearance, it is the employer's responsibility to ensure vetting of employees, and that process is on-going."
- (8.3) The issue raised by O'Sullivan is pertinent and fundamental in light of s 17E of the SAPS Act dealing with "Security screening and integrity measures" which applies to the appointment of Maj Gen Mokotedi."

42. On 25 May 2022 Gen Lebeya acknowledged receipt and notified us that the "contents of the report [has been] referred to the Legal Section of the Directorate for Priority Crime Investigation". On 02 June 2022 Brig S Mtshazo, the Section Head: Risk and Integrity Management for Priority Crime Investigation, reported as follows:

"COMPLAINT BY MR PAUL O'SULLIVAN AGAINST MAJOR GENERAL PRINCE NKITSING MOKOTEDI AND 3 OTHERS: REF NO O/DPCI/J 76/7/2016

- (1) The above matter refers.
- (2) Kindly be advised that according to our records Major General Mokotedi did not have a top secret security clearance when he joined the DPCI in 2016,

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however, he applied for it whilst he was in the DPCI at State Security Agency (SSA).

- (3) In our 2018 and 2019 records he appears as an applicant for top secret security clearance.
- (4) This information may be verified from Human Resources (HR) in his personnel file as to whether he submitted a valid security clearance when he was appointed.
- (5) He was later issued 'with the top secret security clearance certificate after he left the DPCI.'

43. The DPCI Judge wrote to Gen Lebeya again on 28 June 2022 to furnish further specific information. General Lebeya responded on 08 June 2022 in this manner, inter alia:

- "(2) Major General Mokotedi was transferred from the Directorate for Priority Crime Investigation to Division: Inspectorate on 06 December 2018 and he accepted the transfer on the same day.
- (3) He assumed his duties at the Division: Inspectorate on 04 January 2019."

44. At the DPCI Judge's request Gen Lebeya also furnished us with the "Permanent Employment Contract for Members of the Senior Management Service" in respect of which the Government of the Republic of South Africa was represented by Lt Gen Berning Mthandazo Ntlembeza, then National Head of the Hawks, entered with Maj Gen Prince Nkitsing Mokotedi on 01 February 2016.

44.1 What catches attention is that the Provincial Head of the Hawks was given a permanent contract. As to whether this was appropriate is not pursued because it is now, as it is said: "Water under the bridge."

44.2 What Mokotedi cannot escape from is that his contract stipulates at Clause 1.2.3 (b):

"1.2.3 the employment of the Employee is subject to- (b) a security clearance of Top Secret (State confidential, secret or top secret) being obtained."

45. The statement at para 40 (above) where the National Head of the Hawks states at para 5 that: "He (Mokotedi) was later issued with the top security clearance after he left the DPCI" suggests that disgracefully it was not determined whether

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Mokotedi was a security risk from 01 February 2016 when he was appointed until at least on 06 December 2018 when he was transferred – two months shy of three years.

46. On 17 May 2022 the DPCI Judge wrote to the National Director of Public Prosecutions (NDPP), Adv Shamila Batohi, to be assisted in the following regard having given the background to the issues and referred to s17L (7) of the SAPS Act which provides:

“(7) The retired Judge may request and obtain information from the National Director of Public Prosecutions in so far as it may be necessary for the Judge to conduct an investigation.”

The relevant part of the letter to the NDPP reads as follows:

“(4) To cut to the chase. In his statement dated 22 July 2016, by way of context, Mr O’Sullivan made the following allegations in paras 9, 10 and 13:

“(9) My role in the Selebi trial and my criminal complaint against *inter alia* Mokotedi set the tone for reprisal and Mokotedi’s conduct made it clear that he could not and would never be in a position to act in accordance with the “without fear, favour and prejudice” principle in relation to me.

(10) This confirmed, as long as 31 July 2004, when Redi Tlhabi on Radio 702 interviewed Mokotedi. **The interview took place the day Mokotedi had resigned as the Head of the Integrity Management Unit for the NPA in order to avoid a pending disciplinary hearing against him.** A copy of the notice of his disciplinary hearing is annexed hereto marked as “B” [Annexure “B” is attached for convenience].

(13) Notwithstanding his resignation in order to avoid the disciplinary proceedings against him, Mokotedi was subsequently appointed as a General in the Directorate. It is unclear how he avoided the scrutiny of Section 17C (A) of the SAPS Act, which provides that a person to be appointed as a member of the Directorate must be a fit and proper person.”

- (5) At para 153 of his statement O’Sullivan foreshadows that:

“(153) I shall also submit a similar complaint to the National Director of Public Prosecutions as is envisaged in section 179 of the Constitution and section 22 of the NPA Act.”

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47. In his response to, in particular, the quoted paras 10 and 13 (above) of O'Sullivan's allegations, which are the nub of the controversy, Maj Gen Mokotedi states at para 19 of his statement dated 21 April 2017:

"Ad para 12 [thereof]

(19) I resigned from the NPA because the management at the time had created an environment that was hostile towards me. I approached the General Public Service Bargaining Council requesting the reinstatement on the basis that my resignation amounted to corrective (sic) dismissal. I challenged the NPA to proceed with the disciplinary hearing but they chose not to go ahead with the disciplinary hearing."

48. Maj Gen Mokotedi does not state whether he was re-instated to the NPA or not. However that may be, the DPCI Judge requests the official version from the NPA on this aspect supported by documentary evidence, to the extent permissible, on how, and perhaps, why, Mokotedi left the NPA."

49. On 15 June 2022 Adv Batohi responded as follows:

"RE: COMPLAINT BY MR PAUL O'SULLIVAN AGAINST MAJ GEN PRINCE NKITSING MOKOTEDI & 3 OTHERS

Your letter dated 17 May 2022 refers.

Mr P.N Mokotedi is a former Chief Director: Integrity Management Unit.

He was served with a notice to attend a disciplinary enquiry on 6 August 2014, which notice was attached to your correspondence.

Mr Mokotedi had on 7 August 2014, a day after being issued with the notice to attend a disciplinary enquiry, delivered a letter of resignation in the NPA.

Although the disciplinary hearing was scheduled to take place on 20 August 2014, the NPA realized that in all likelihood the hearing could not be finalized during the notice period and paid Mr Mokotedi *in lieu* of the notice period.

Mr Mokotedi referred a constructive dismissal dispute to GPSSBC which he later withdrew.

The NPA cannot comment on how Mr Mokotedi avoided the scrutiny of Section 17 C(A) of the SAPS Act as the NPA, upon termination of his service, indicated that the reason for his termination was that he resigned when facing disciplinary action.

Mr Mokotedi left the NPA when he had to face allegations of serious misconduct and was never reinstated to the NPA.

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We trust that our response hereto provides the required information. Should you have any further queries, the NPA will gladly assist."

(DPCI Judge's emphasis)

50. Maj Gen Mokotedi is therefore not only equivocating but is also misleading when he states at para "(19) **Ad paragraph 13**":

"I resigned from the NPA because the management at the time had created an environment that was hostile towards me. I approached the General Public Service Bargaining Council requesting for reinstatement on the basis that my resignation amounted to corrective [sic: constructive] dismissal. I challenged the NPA to proceed with the disciplinary process but they chose not to go ahead with the disciplinary hearing."

It is a material non-disclosure on Mokotedi's part not to have been frank and upfront with the DPCI Judge and declare that he withdrew his "constructive dismissal dispute to the GPSSBC", as the NDPP has now exposed him. This does not behove a former "Integrity Management Unit of the NPA" functionary (his own description). It is evident that the NPA could not proceed with disciplinary measures against him when he was no longer its employee.

51. **As far as retired Lt Gen Vinish Moonoo is concerned: He was the Divisional Commissioner of Detectives Services based at Head Office in Pretoria.** Mr O'Sullivan deals with his involvement essentially at paras 55-66 of his statement. However, the nub of his grievance against Moonoo is captured at para 56 in these terms:

"56 Cases opened against Moonoo by me, go back to early 2014 and involve systemic corruption between Moonoo and the criminal underworld in South Africa. Not one of the many cases against Moonoo has ever been investigated, leading to the only logical conclusion that it is the State's desire not to fight corruption, but to support it, by not carrying out proper investigation and instead, to target the accusers with trumped up charges."

52. The charges levelled by O'Sullivan against certain police in general but against the Hawks specifically are extremely serious. It therefore needs to be looked at

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purposefully by the National Commissioner of Police; the National Head of the Hawks and probably the National Director of Public Prosecutions. It should not be brushed aside because the charges are brought by Mr Paul O'Sullivan, who has been admittedly known to be both an irritation and a thorn in the side of some senior police officers, but it should be considered whether there are any merits in his complaints/reports. No one, and not even Gen Moonoo, should be perceived to be above the law.

53. However, as Moonoo was not a member of the Hawks s 17L(4) of the SAPS Act, 68 of 1995, does not apply to him. The DPCI Judge accordingly lacks jurisdiction or mandate to investigate his conduct or adjudicate the merits of the grievance against him. If need be the DPCI Judge may invoke s17L (5) of the SAPS Act and refer the matter to one of the institutions or organs of state listed therein.

54. What should be determined by this Office is whether O'Sullivan asked or complained to Mokotedi to investigate Moonoo for the alleged criminal transgressions and whether Mokotedi abused his powers by corruptly or without legal justification failed or refused to do so. In the matter of **Isaac Kgalabi Aphane v/s Maj Gen Simon Leroy Mapyane Ref O/DPCI/J: 229/08/2018** decided on 23 March 2020 the following Finding was made and Remedial Action issued by the DPCI Judge, inter alia:

54.1 "A. On a conspectus of the evidence that has been dealt with in this report we find that the former Head of the Hawks (DPCI) of Mpumalanga, then Maj Gen Simon Leroy Mapyane (the Respondent) had rendered himself guilty of serious dereliction of duty through his failure or refusal to register/open a docket in this matter and has therefore seriously breached the constitutional rights of the complainant, Mr Isaac Kgalabi Aphane, for which a disciplinary [inquiry] ought to be instituted, but for the fact that he has been dismissed from the South African Police Service (and concomitantly the Hawks) for an unrelated matter."

54.2 The Remedial Action in the Aphane matter was to this effect:

(1) The [National] Head of the DPCI (the Hawks), Lt Gen Godfrey Lebeya, is hereby directed to appoint a senior member of the Hawks, who was not previously involved in this matter, within two months of receipt of this report to lead an investigation

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into the allegations of criminal malfeasance reported by or complained of by Mr Isaac Kgalabi Aphane and to notify the DPCI Judge within two weeks of such appointment that he has done so."

55. In the current matter we (O'Sullivan v/s Mokotedi) find no evidence that O'Sullivan specifically asked Mokotedi to investigate Moonoo and that he failed or refused to do so. In his statement (Annexure "M") dated 14 May 2015 O'Sullivan states at para 3.1 in respect of Moonoo that:

55.1 "In that on or between December 2011 and to date, Moonoo has been engaged in a generally corrupt relationship with the following persons [names omitted by DPCI Judge];

55.2 At para 3.1.2 he goes on:

"3.1.2 And further that in the period between October 2014 and March 2014, I personally reported Moonoo's conduct to the following persons:

General Riah Phiyega	National Commissioner of the Police	'Phiyega'
Lt General Dramat	National Head of the Hawks	'Dramat'
Maj General Sibiya	Gauteng Provincial Head of the Hawks	'Sibiya'
Robert McBride	Executive Director of IPID	'McBride'

56. The allegations against Moonoo were apparently brought to his attention by Darryl Furman & Associates Attorneys, for O'Sullivan, at Moonoov@saps.gov.za in a letter dated 12 November 2015 (O'Sullivan's Annexure "P") to which no response appears to have come forth.

57. The DPCI Judge makes no adverse finding or draws no negative inference against Lt Gen Moonoo in that he is not the subject of the DPCI Judge's investigation and because Moonoo was not asked or required by the DPCI Judge to respond. The bottom line is that the indications are that Moonoo is aware of the allegations and the threat of a civil action against him by O'Sullivan in respect of which Moonoo would be at large to meet, if so advised.

58. In the circumstances it cannot be said that Maj Gen Mokotedi is guilty of dereliction of duty in that it has not been shown or substantiated that he failed or refused to investigate Lt Gen Moonoo, although he could if he had the "gumption".

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If, for instance, he failed or refused to carry out a directive of the then National Head of the Hawks, Lt Gen Anwar Dramat, that would be an internal matter.

In this respect Maj Gen Mokotedi is exonerated.

THE FOLLOWING FINDINGS AGAINST MAJ GEN MOKOTEDI ARE MADE

59. In respect of Mr O'Sullivan's arrest and the manner it was carried out at OR Tambo International Airport on 01 April 2016, in the presence of his children, needlessly detained for several days for what is a minor infraction of having allegedly contravened s26B of the South African Citizens Act and his dubious prosecution in **State v/s O'Sullivan: Case No B803/2016**, Kempton Park, for which he was acquitted to s174 of the Criminal Procedure Act, 51 of 1977 (CPA), **Maj Gen Mokotedi is found Guilty** of having seriously and unlawfully infringed the rights of Mr O'Sullivan as contemplated in s 17L(4)(a) of the SAPS Act, 68 of 1995.

60. As far as the cold cases against Mr O'Sullivan that Maj Gen Mokotedi unearthed and re-investigated are concerned it is certainly permissible for the major general to have done so. What he has made himself guilty of is to falsely claim under oath, as the DPCI Judge observes in para 26 (above) of this Report:
 "(26) One has to be extremely gullible to accord any credence to Mokotedi's averment that pursuant to O'Sullivan's arrest on 01 April 2016 at OR Tambo International Airport all the complainants in the "cold cases" magically came out of the woodwork and urged that charges they laid against O'Sullivan years before be resuscitated or reopened. Such coincidence defies credulity and I reject his explanation as a figment of his fertile imagination. A conspectus of the facts and circumstances strongly militate against it."
 All nine re-investigated cases proved to have been moribund and none of them survived, as far as it could be determined. See paras 24 – 26 above.

61. It is common cause that the relationship between O'Sullivan and Mokotedi was and remains strained, if not acrimonious. I am acutely alive to the fact that Mokotedi may have harboured an ulterior motive for re-opening the aforesaid cold cases. However, such motive in and of itself does not render the re-opening of the cases unlawful. See: **National Director of Public Prosecutions v/s Zuma (Mbeki and another intervening) 2009 (2) SA 277 (SCA)** at para 37 where the

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court held: "The motive behind the prosecution is irrelevant." However, I am satisfied that the re-investigation of the cases was meant to and did harass O'Sullivan. It was designed to have a chilling effect on his forensic investigations and to fight corruption. Sometimes, it appears, he acted unconventionally but so far, as the DPCI Judge could discern, not unlawfully.

To put Mr O'Sullivan to such unwarranted great expense to defend the unmeritorious cases was prejudicial to him and seriously and wrongfully infringed his constitutional rights as contemplated in s 17L(4)(a) of the SAPS Act, 68 of 1995.

62. As regards the questions of Mokotedi being unable to pay his debts or failure to manage his financial affairs to the point where judgment was obtained against him, as a Provincial Head of the Hawks, that amounts to a misdemeanour amenable to disciplinary action. However, there is no direct link between such misconduct and the multiple cases Mokotedi pursued against O'Sullivan.
63. The failure by Mokotedi to obtain a security clearance for almost three years is unlawful and a transgression of s 17E of the South African Police Service Act and s 2A of the National Strategic Intelligence Act, No 39 of 1994. Mokotedi disgracefully tried to shield behind his employer. However, he had a concomitant duty and responsibility to obtain the clearance. In addition his appointment (set out in para 44.2, (above)) was "subject to-(b) a security clearance of Top Secret."
64. Nevertheless, no direct connection can be made or line drawn between Mokotedi's spurious appointment as Provincial Head of the Hawks and the woeful treatment meted out to O'Sullivan. Be that as it may, he should never have been appointed to such a lofty position, least of all he should not have been given a permanent contract of employment under the sketched prevailing circumstances.
65. On 26 September 2022 the O/DPCI/J wrote to Maj Gen Mokotedi as follows:
"RE: MR PAUL O'SULLIVAN V/S MAJ GEN PRINCE MOKOTEDI AND OTHERS (OFFICE OF THE DPCI JUDGE/HAWKS OMBUD): REF NO: O/DPCI/J: 85/07/2016

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1. The DPCI Judge is about to issue his report in respect of the above matter.

There is one aspect outstanding which is in dispute.

1.1 In your para 102 in response to what you term **"Ad paragraph 157"** to Mr Paul O'Sullivan's statement you state:

"(102) The complainant has made several court applications to stop the investigations [which have] failed. The recent court order was a result of an out of court agreement that he shall be notified before an arrest is effected and provided ample time to respond to our intention, if any, to summons him to court. A final order in this regard is awaited. The civil suit will fail as there is no legal or factual basis to support such."

(1.2) However, the official interim Court Order of the Gauteng Division of the High Court, Pretoria, dated 16 November 2016 in Case No: 75378/2016 reads as follows:"

The "Court Order" after para 102 of Mokotedi's statement was then quoted as in full.

The letter ended:

"(3) Contacted by the O/DPCI/J Mr O'Sullivan and his attorneys Hurter Spies Inc Attorneys were emphatic that the rule nisi (interim order) was confirmed but could not provide the court order to that effect. Kindly, therefore furnish the DPCI Judge with a copy of the final court order, if you are in possession thereof or can acquire same. If not, state what the current or latest status of the case, as far as you know, is.

(4) Please note that if no response has been received by Friday, 30 September 2022, the Report will be finalised without such input from you because the incumbent DPCI Judge's tenure ends on 06 October 2022."

66. Mokotedi responded on the same date (26 September 2022) as follows:

"Good day sir,

I refer to the letter attached [to] your trailing email. Please be informed that, to the best of my knowledge, the State Attorney and the SAPS Legal Division dealt with the litigation of this matter. I have no records nor do I recall the eventual outcome of the case that is referred to."

66(A) State Attorney Mr Issac Chowe and SAPS Legal Services Col Juliet Munyuku were written to on 03 October 2022 to confirm or dispute the averments by Mr O'Sullivan and his attorneys that the Rule nisi in question was confirmed. A copy of the correspondence to Maj Gen Mokotedi was also provided to them for context and convenience. The exigency of the

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matter was explained including that the tenure of the DPCI Judge expires on 06 October 2022. Granted, it was very short notice, but as of 06 October 2022 at 17h00 no communication from Mr Chowe and Col Munyuku had been received. This aspect of the Report cannot be taken any further at this juncture.

67. Later the same date (26/09/2022) Mokotedi had a "brainwave" and wrote a long email levelling several accusations at the DPCI Judge which do not deserve to be engaged with except the following passages:

67.1 "Please take note that I am concerned that the said letter is titled 'Paul O'Sullivan v Mokotedi and Others'. I submit that I am not aware of any matter referred to as such neither by yourselves nor any other structure. Your honourable office never brought such a matter, if there is any, to my attention. The only matter that I am aware of where Paul O'Sullivan were parties (sic) is the one wherein I was a complainant."

Reading the Report Maj Gen Mokotedi will realise how mistaken he has been. His statement dated 21 April 2017 comprising 108 paragraphs is exactly a response to O'Sullivan's 156-page complaint document.

67.2 In the penultimate and ultimate paragraphs Mokotedi writes:

"In the aforesaid, the Honourable Judge's expediency in respect of his tenure of office should not circumvent the rule of law, and the principles of the natural justice, namely, *Audi alteram partem*.

I submit that the Office of the DPCI Judge will provide me with the privilege to properly respond to the envisaged report itself, and it is my intention to not only subject the report for judicial review but I will also approach the Judicial Service Commission regarding the conduct of the Honourable Judge of the DPCI given the fact that there is [a] worrying pattern in respect of how the Office of the Judge of the DPCI handled previous matters wherein I was party thereto. Furthermore, I will request punitive costs against the individuals in the Office of the DPCI."

It is clear that Mokotedi's precipitate threats are meant to intimidate this Office. We discharge our responsibilities without fear, without favour and without prejudice. Mokotedi has to do what his constitutional rights entitles him.

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67.3 Maj Gen Mokotedi speaks of a "worrying pattern in respect of how the Office of the Judge of the DPCI handled previous matters wherein I was party to". He produces no evidence nor does he allude to any specific cases for this statement. The accusation or insinuation is without substance and is vehemently denied.

67.4 Nevertheless, a search of our records reveal three matters involving Mokotedi.

(a) The first is subjoined below in its entirety and is dated 07 February 2020.

"REF NO: O/DPCI/J: 254/01/2019

**REPORT ON THE FINDINGS OF THE COMPLAINT RECEIVED FROM
MAJ GEN PRINCE MOKOTEDI, THE FORMER PROVINCIAL HEAD OF
DPCI GAUTENG (COMPLAINANT) AGAINST THE NATIONAL HEAD OF
THE HAWKS, LT GEN GODFREY LEBEYA (RESPONDENT)**

INTRODUCTION

(1) The Office of the Directorate for Priority Crime Investigation (O/DPCI/J or the Hawks Ombud) received a complaint from Maj Gen Prince Mokotedi concerning his alleged unlawful transfer from the post of Provincial Head of the Hawks in Gauteng to the Management Discipline Section of the South African Police Service (SAPS) in Pretoria with the retention of his rank and salary. He further alleges that this measure amounts to political interference and/or improper influence with the investigation of criminal cases conducted by the Hawks. Maj Gen Mokotedi also claims that the alleged irregular transfer interfered with his security of tenure and the independence of the Hawks and undermined his authority as the Provincial Head of the Hawks in Gauteng.

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- (2) The mandate of the DPCI Judge is to investigate complaints from members of the public in respect of a serious and unlawful violation of their rights caused during an investigation conducted by the Hawks as empowered by s 17L (4)(a) of the South African Police Act (SAPS Act). The O/DPCI/J may also investigate complaints from members of the Hawks in respect of undue influence or interference with their investigation, emanating from their colleagues or of a political nature or other kind. See s 17L (4) (b) of the SAPS Act.

THE SO-CALLED COMPLAINT

- (3) Maj Gen Mokotedi lodged his complaint as described in para 1 (above) in person and orally at our Pretoria offices on 29 January 2019 (a year ago). He is aggrieved that the Head of the DPCI (the Hawks), Gen Lebeya, transferred him from heading the Hawks in Gauteng to the Management Discipline Section of SAPS. He is accordingly no longer a member of the Hawks or the DPCI.
- (4) Maj Gen Mokotedi states that during December 2018 he was approached by Lt Gen Lebeya and informed that he is to be deployed to the said position in SAPS. He admits that he consented to the deployment. After a brief sojourn (between December 2018 and 29 January 2019) he had a change of heart and petitioned Lt Gen Lebeya to reverse the deployment. Lt Gen Lebeya apparently made him understand that his transfer was a tripartite consensual agreement which he (Lebeya) is content to honour and referred him to SAPS where he currently performs his responsibilities.
- (5) In his oral submission Maj Gen Mokotedi accused Lt Gen Lebeya that his transfer was politically motivated in that he was investigating high profile cases of people in high places who are wielding considerable power and political influence (or allegation to that effect). He was reluctant to list the cases being investigated or give a narrative of how the interference and influence is being exerted and by whom.
- (6) At the conclusion of the preliminary interview the major general was requested to provide a detailed sworn statement and/or complete our pro-forma "Complaint Reporting Form" which must be attested by a

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Commissioner of Oath. Section 17L(4) stipulates that the "retired Judge may receive a complaint in the prescribed form and manner". The "Complaint Certification" at p3 of the pro-forma cautions:

"I have been advised that the filing of a false report may constitute defeating the ends of justice, or in appropriate cases perjury, which are criminal offences, and I hereby certify that all of the information contained in this Complaint Reporting Form as well as any supporting Continuation Sheets is true and correct to the best of my knowledge and belief".

- (7) When Maj Gen Mokotedi was contacted during or about 26 April 2019 to furnish the requisitioned information he intimated that he was still consulting his legal representative. The major general is entitled to consult and be so assisted. However, for a police officer of his seniority to be so dilatory with charges which, if substantiated, may render those complicit guilty of defeating or deflecting the ends or the course of justice reflects poorly on him, to put it mildly.
- (8) We wish to remark that, even without the assistance of a lawyer, it is a matter of public record that Maj Gen Mokotedi is an advocate (as in an Officer of the Court) and must have been aware when he left the Office of the DPCI Judge that part of his complaint involved an out-and-out labour issue or a Human Resource (internal) matter, over which the O/DPCI/J has no jurisdiction or mandate. See: Kaylor v/s Minister of Public Service (2013) 34 ILJ 639 (LC) and Superintendent General: Eastern Cape Department of Health (2019) 40 ILJ 1328 (LC).
- (9) We are accordingly treating this complaint as if it was never made. However, the major general is not precluded from lodging his complaint afresh. Properly so this time round. We are therefore closing our file.
- (10) We are uncertain how to characterize this matter as it is now a "non-issue". What is required is that the **"retired Judge shall report the outcome of any investigation undertaken by him or her or any referral to the Minister"**. We shall nevertheless do so because tax-payers' money was disbursed in the investigation of the complaint.
- (11) The "Report" is also furnished to Lt Gen Lebeya but not to SAPS because some sweeping adverse allegations have been made against him (Lt Gen Lebeya) but none ostensibly against SAPS.

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(Signed)**MR EDWARD RASIWELA****DEPUTY DIRECTOR INVESTIGATION: O/DPCIJ HEAD: O/DPCI/J****DATE: 07/02/2020****(Signed)****JUDGE F DIALE KGOMO****DATE: 07/02/2020**

(b) The second matter is Capt (now Lt Col) Candice Coetzee v/s Prince Mokotedi and 8 Others: Ref No O/DPCI/J: 111/01/2017: Report dated 16 March 2021. It is 44 (forty four) pages long. In the premises only the "Findings and Conclusions, the "Decisions", the "Remedial Action" and the "Report to the SAPS Minister and Head of the Hawks" at pages 38 – 44 (paras 49 – GG) of that Report are subjoined.

"FINDINGS AND CONCLUSIONS

(49) In the premises the following Findings are made and Conclusions reached:

(49.1) Whereas the complainant, Lt Col Candice Coetzee, was a member of the South African Police Service, Act 68 Of 1995 (SAPS Act), and attached to the Crime Intelligence Unit, at Head Office, Pretoria, and not a member of the Directorate for Priority Crime Investigation Unit (DPCI or the Hawks), it is concluded that the Office of the DPCI Judge (O/DPCI/J or Hawks Ombud) is clothed with jurisdiction to adjudicate the merits of her complaint ito section 17 L(4)(a) of the SAPS Act pertaining to the manner in which her case was investigated or she was treated during her interview by the Hawks on 08 April 2016 and/or 04 May 2016.

(49.2) Lt Col Coetzee characterised her complaint as "multi-faceted". On the aspect of her complaint quoted in para 24 of this Report pertaining to the alleged violation of certain provisions under Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002, by the respondents the DPCI Judge is satisfied that that portion of her complaint resorts in the domain and within the competence of the Inspector General of Intelligence (IGI) and need not occupy the DPCI Judge. However that may be, the complainant has also referred her complaint to the Independent Police Investigative Directorate (IPID). For this reason no referrals will be made to them ito S 17L (5) of the SAPS Act which stipulates that:

"(5) The retired judge may upon receipt of a complaint investigate such complaint or refer it to be dealt with by, amongst others, the Secretariat, the Independent Complaints Directorate, the National

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Commissioner, the Head of the Directorate, the relevant Provincial Commissioner, the National Director of Public Prosecutions, the Inspector-General of Intelligence, or any institution mentioned in chapter 9 of the Constitution of the Republic of South Africa, 1996."

- (49.3) Lt Col Coetzee was charged with misconduct in connection with: "Covert Intelligence Collection: Crime Intelligence: Application for Act 70 of 2002: Paul O'Sullivan, Private Forensic Investigator." She was found not guilty (she was exonerated) on 21 July 2017 by Brig Bellingan and her suspension lifted. In the intervening period her promotion to the rank of Lt Col which had apparently been frozen was activated. Although Lt Col Coetzee's Request for Further Particulars had not been furnished the DPCI Judge concluded that she suffered no prejudice in the circumstances. The DPCI Judge has decided not to investigate or pursue this leg of the complaint any further because it would have amounted to reviewing the decision of a duly constituted disciplinary body, which the Hawks Ombud was not competent to do.
- (49.4) Concerning the complaint by Lt Col Coetzee that her rights were wrongfully and seriously violated by the Hawks in the course of investigating the Criminal Case (CAS 380/04/2016, Pretoria Central registered against her by Lt Gen Moonoo) the DPCI Judge needed to inform itself whether, in the event the case proceeded to trial, Coetzee's statement was used and if so whether it was admitted in evidence. The idea was that if introduced the trial-within-a-trial proceedings would have been a good indicator of how a court of law perceived the manner in which the statement was obtained.
- (49.5) The case did not reach trial stage. The investigation was Prosecutor Driven. Adv JJ Mlotshwa of the National Prosecuting Authority (NPA) drove it. He does not say he declined to prosecute. He says the case was "finalised undetected." The DPCI Judge was made to understand that it meant that the investigation was terminated.
- (49.6) The DPCI Judge is satisfied that on a consideration of all the statements and evidence presented and the surrounding circumstances the intention was never to obtain a warning statement from Coetzee which was said to be requisitioned by Adv Mlotshwa of the NPA. The intention was to interrogate her, which the respondents did. The clear ploy was to use her statement against her when she was charged or use it as a bargaining chip against her to implicate Mr Paul O'Sullivan and testify against him.

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(49.7) The attempt to obtain the first statement from Lt Col Coetzee that Col Bertus Flynn was designated to record on 08 April 2016 was attended by untold menaces: (a) Lt Col Coetzee was crying continually; (b) She was shaking (shivering), sniffing and using a lot of tissues; (c) She was unwell and under medication; (d) Her attorney intervened and stated that the interview was off the record. Flynn agrees and Mokotedi concedes that part of the interview was off the record but he (Mokotedi) does not identify which part.

(49.8) Lt Col Coetzee in the end did not make a warning statement. Col Flynn composed his own statement from the notes he made on 08 April 2016 on what Lt Col Coetzee would have said and generally what transpired. Both Maj Gen Mokotedi and Brig Malima were not satisfied with Flynn's statement because it did not contain or reflect "what they wanted." That statement, unsurprisingly, went missing to this day.

(49.9) Brig Malima states that: "On 04 May 2016 I together with my team members conducted an interview with [then] Capt Coetzee. She was fully informed of her rights. She subsequently exercised her rights to remain silent and elected not to make any statement during the interview. **The questions and answers were reduced into writing [on] the form. Capt Coetzee appended her signature [on] all the pages on the form.**"

There should not have been a question and answer session if Coetzee elected to remain mute. To murky the waters further Brig Malima only attached p4 of the printed proforma "SAPS 3M(m)" form to his statement which reflects only the questions and answers pertaining to clauses 7, 8 and 9 of "SAPS 3M(m)." Clause 9 contains only the "Certification". During the interview with the DPCI Judge on 20 October 2020 Brig Malima had no cogent explanation why he furnished an incomplete form.

(50) Based on the foregoing analysis and findings the DPCI Judge is satisfied:

(50.1) That of all the respondents only Col Bertus Flynn (the 2nd Respondent) was forthright and frank and did the right thing in the prevailing circumstances. He stands to be exonerated.

(50.2) That, in so far as Warrant Officers Spietkop Mashego (4th Respondent), Michael Benny Moffat (5th Respondent) and Welcome Makeleni (6th Respondent) are concerned it is evident that they were minions (juniors) and did nothing overtly wrong. In any event, they acted under the guidance of their superiors and were largely passive or did what they were told lest they were accused of disobeying a "lawful" order.

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(50.3) Capt Banele Mgodlolo and W/O Mangqalaza (7th and 8th respondents, respectively) were described as investigating officers. However, they essentially resorted under the same category as the 4th to 6th respondents alluded to in para 50.2 above. They were under the supervision of Maj Gen Mokotedi and Brig Malima. They did nothing materially irksome. Capt Mgogodlo seems to have been instrumental in transmitting Lt Col Coetzee's docket (CAS 380/04/2016) to Adv JJ Mlotshwa of the NPA for guidance and decision. W/O Mangqalaza, it must be pointed out, left SAPS and the Hawks after the interview/interrogation of Coetzee on 08 April 2016. No aspersions have been cast on him pertaining to his departure.

(50.4) As far as Col Amol Khali Hoosen, the 9th Respondent, is concerned he was the Acting Commander at Serious Organised Crime Section of the DPCI (the Hawks) in Durban, KZN. Neither Brig Malima nor Maj Gen Mokotedi could explain at whose invitation he attended the interrogation of 08 APRIL 2016. He did not merely hold a watching brief but enthusiastically participated in the interrogation, having regard to his statement. Whereas his presence was initially taken exception to by Coetzee, the complainant, he was subsequently permitted to be involved with the acquiescence of Coetzee. See para 6 of his statement at para 9 of this Report.

In the premises no adverse findings can be made against him and he is exonerated.

(50.5) The two elephants in the room are Maj Gen Prince Mokotedi (1st Respondent) and Brig Landa Edgar Malima (3rd Respondent). Mokotedi was Head of the Gauteng Hawks and directed all operations involving the investigation of the case (CAS 380/04/2016) against Lt Col Coetzee. He was in charge of the interrogation of Coetzee on 08 April 2016 during her inhumane treatment summarised at para 49.7 above. From his own mouth he had at least two further but separate engagements with her. Mokotedi and Malima prevailed upon Flynn to tailor his statement to what suited them. That amounts to an incitement to falsify a statement. In the circumstances, the disappearance of Flynn's statement from the docket smacks of something sinister which borders on defeating the ends of justice.

(50.6) Malima's feeble attempt to exculpate himself by denying that he was the investigating officer is hollow: (a) Everyone, including Col Flynn, referred to him as such; (b) Importantly, he fulfilled that role throughout and he also speaks of: "On 04 May 2016, I together with my team members conducted an interview with Capt Coetzee"; (c) Col Flynn gave him his statement which has now

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disappeared; (d) He and Mokotedi prevailed upon Flynn to truncate his statement in a particular way. That says it all.

DECISIONS

- (A) The complaints by Lt Col Candice Coetzee, attached to Crime Intelligence: Head Office, Pretoria, against Maj Gen Prince Mokotedi, the former Head of the Gauteng Directorate for Priority Crime Investigation (DPCI or Hawks) and Brig Landa Edgar Malima, the Investigating Officer, that her rights were seriously and unlawfully infringed during their investigation against her in respect of Pretoria Central CAS 380/04/2016 on 08 April 2016 (by both) and 04 May 2016 by Brig Malima have been substantiated (Sec 17L (4)(a) of the SAPS Act).
- (B) The aforesaid complaints against Col Bertus Flynn, Capt Banele Mgogodlo and Warrant Officers Spietkop Mashego, Michael Benny Moffat, Welcome Makeleni and Thembikhaya Mangqalaza have not been substantiated and are accordingly exonerated. The same goes for Col Amod Khali Hoosen.

REMEDIAL ACTION

- (AA) It is directed that the National Head of the Directorate for Priority Crime Investigation (the DPCI or Hawks), Lt Gen S Godfrey Lebeya, institute disciplinary action against Maj Gen Prince Mokotedi and Brig Landa Edgar Malima for seriously and unlawfully infringing the rights of Lt Col Candice Coetzee on the occasion of her interview/interrogation on 08 April 2016 under the circumstances that have been summarised in para 49.7 of this Report, but not limited to the catalogued list, which is not meant to be exhaustive.
- (BB) That disciplinary measures be instituted against Maj Gen Mokotedi and Brig Malima for:
- (a) Inciting Col Bertus Flynn to falsify his statement; and
 - (b) to account and take responsibility for the disappearance of Flynn's statement which did not suit what clearly seemed to have been their nefarious purposes.
- (CC) That disciplinary measures be instituted against Brig Malima for a combination of violating Lt Col Coetzee's rights by:
- Interrogating/interviewing her and obtaining her statement in the absence of her legal representative whom she wanted to be present but could not due to court commitment; and did so notwithstanding the fact that her

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attorney conveyed to Brig Malima that he advised his client to remain silent (Coetzee also confirmed the advice); and by exacerbating the situation by making only a fraction of the "Question" and "Answer" proforma form (SAPS 3M(m) with its recordings available to the DPCI Judge.

REPORT TO THE SAPS MINISTER AND HEAD OF THE HAWKS

(DD) We are sending the Report to the Minister in compliance with s 17L (6) of SAPS Act.

(EE) The Report is also furnished to the National Head of the Hawks, Lt Gen Godfrey Lebeya to deal with the matters set out in the Remedial Action above.

DISPOSAL OF THE MATTER

(FF) In view of our findings we are closing our file in this matter and complainant will be furnished with a copy of this Report.

(GG) A copy of this Report will also be furnished to each one of the Respondents.

(c) The third matter is Maj Gen Prince Mokotedi v/s Paul O'Sullivan:

Ref No O/DPCI/J: 177/07/2018 which, through sheer inadvertence, was only brought to the attention of the DPCI Judge on 04 October 2022. It came to light in the course of verifying Mokotedi's accusations and is now given priority. The delay in finalising its investigation is partly excusable as far as the O/DPCI/J is concerned as the final Report will in this third matter in which Mokotedi is the complainant will show.

(d) The current Report dated today (06/10/2022) is the fourth matter involving Maj Gen Mokotedi.

It is curious that his projection is that the case will go against him and have it reviewed but claims that he does not know the facts (the substance) thereof. All reports speak for themselves.

Conclusion:

(A) This is an appropriate DPCI Judge's Report deserving the attention of the National Commissioner of Police, General Sehlahle Fannie Masemola, where Maj Gen Prince Mokotedi is currently based by virtue of what section 205(3) of

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the Constitution of the Republic of South Africa, 108 of 1996, enjoins. The referral is also imperative in that Maj Gen Mokotedi has left the Hawks and is currently attached to SAPS (simpliciter). Section 205(3), we are reminded, reads:

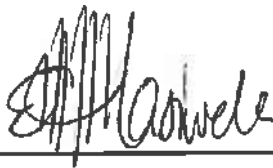
"205 (3) The objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law."

- B. A copy of the Report is forwarded to the National Head of the Hawks, Lt Gen Lebeya, to act upon the misdemeanours that were perpetrated under his watch and dealt with in this Report and impose appropriate sanctions against Maj Gen Mokotedi.
- (C) The complaint against Lt Gen Vinesh Moonoo (Retired) by Mr Paul O'Sullivan is referred to both the National Commissioner of Police Gen Sehlahle Fannie Masemola, and the National Head of the Hawks, Lt Gen S Godfrey Lebeya, in terms of s 17L(5) of the SAPS Act, quoted in para (E) below, to consider investigating the alleged offences ascribed to him. The DPCI Judge, as already stated, has no jurisdiction over Lt Gen Moonoo (Retired).
- (D) The Report is provided to the National Director of Public Prosecutions (NDPP) in terms of s17L(5) of the SAPS Act because O'Sullivan states that he reported General Moonoo's conduct to, inter alia, the heads of the institutions mentioned in para 55.2 (above) and to the "National Prosecuting Authority, Adv G.S Maema" on 25 April 2016; (O'Sullivan's Annexure "L"): Section 17L(5) provides: "The retired Judge may upon receipt of a complaint investigate such complaint or refer it to be dealt with by, amongst others, the Secretariat, Independent Police Investigative Directorate, the National Commissioner of SAPS, the National Head of the Hawks, the relevant Provincial Commissioner of SAPS, the National Director of Public Prosecutions, the Inspector-General of Intelligence and any institution mentioned in Chapter 9 of the Constitution of Republic of South Africa, 1996."
- (E) A copy of the separate Report of former Captain Mr Tembikhaya Cecil Manaqalaza issued on 23 August 2022 is hereby appended marked "CAPT TCM". It explains why his Report was expedited.

DISPOSAL OF THE MATTER

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- (F) In view of the DPCI Judge's findings we are closing our file in this matter and the complainant, Mr Paul O'Sullivan, will be informed accordingly and provided with a copy of this report.
- (G) We are sending the Report of Findings to the SAPS Minister in compliance with s 17L (6) of SAPS Act which requires that:
- "(6) The retired Judge shall report the outcome of any investigation undertaken by him or her or any referral to the Minister."

**MR EDWARD RASIWELA****DD – INVESTIGATION: O/DPCI/J****DATE: 06/10/2022****JUDGE F DIALE KGOMO****HEAD: O/DPCI/J****DATE: 06/10/2022**