IN THE REGIONAL DIVISION OF GAUTENG

HELD AT PRETORIA

Case No:

In the matter of:

THE STATE

Versus

NICHOLAS PHILANI LUSHABA	Accused 1
KOMPU JOHNNY MOGASHWA	Accused 2
RONALD EUGENE PITOUT	Accused 3
GLEN HUDSON	Accused 4

CHARGE SHEET

After consultation with the Acting Director of Public Prosecution Gauteng Division, Pretoria,, in terms of section 24(2) of the National Prosecuting Authority Act 32 of 1998, the Investigating Director, appointed in terms of Presidential Minute number 158 as head of the Investigating Directorate Against Corruption, who as such prosecutions for and on behalf of the State, alleges and informs the court that the accused:

Nicholas Philani Lushaba, 41-year-old South African Male of 1564 Varing street, Waverly, Pretoria, Gauteng (hereinafter referred to as **ACCUSED 1**)

Kompu Johnny Mogashwa, 53-year-old South African male of Stand 7788 Soshanguve East Gauteng (hereinafter referred to as **ACCUSED 2**)

Glen Hudson, 58-year-old South African male of 56 Sophia Street, Roseville, Pretoria Gauteng (hereinafter referred to as **ACCUSED 3**)

Eugene Ronald Pitout, 50-year-old South African male of 3 Duzi Avenue, Ext5. Little Falls, Struben Valley, Gauteng (hereinafter referred to as **ACCUSED 4**)

are guilty of the following offences:

A. <u>GENERAL PREAMBLE – SUMMARY OF SUBSTANTIAL FACTS</u>

WHEREAS at all relevant and material times to the charges:

1. **ACCUSED 1**, is employed by the South African Police Service (SAPS) as a police officer and at the time of the commission of the alleged offences held the rank of Major General (Acting Divisional Commissioner, Crime Intelligence). He is thus a public officer as defined in section 1 of the capital prevention and Combating of Corrupt Activities Act, 12 of 2004 ("PRECCA") and a law Enforcement officer for the purposes of Part 1 of Schedule 2 of the Criminal Law Amendment Act, 105 of 1997.
2. **ACCUSED 2**, is employed by the South African Police Service (SAPS) as a police officer and held the rank of Warrant Officer (Valleria Detectives Unit- Group Leader). He is thus a public officer as defined in section 1 of the capital prevention and Combating of Corrupt Activities Act, 12 of 2004 ("PRECCA") and a law Enforcement officer for the purposes of Part 1 of Schedule 2 of the Criminal Law Amendment Act, 105 of 1997.
3. **ACCUSED 2** is employed by the South African Police Service (SAPS) as a police officer and held the rank of Captain (Crime Intelligence, Counterintelligence). He is thus a public officer as defined in section 1 of the Prevention and Combatting of Corrupt Activities Act, 12 of 2004 ("PRECCA") and a law Enforcement officer for the purposes of Part 1 of Schedule 2 of the Criminal Law Amendment Act, 105 of 1997.

4. **ACCUSED 4** was employed by the South African Police Service (SAPS) as a police officer and held the of Colonel (Crime Intelligence, Counterintelligence). He was thus a public officer as defined in section 1 of the Prevention and Combatting of Corrupt Activities Act, 12 of 2004 ("PRECCA") and a law Enforcement officer for the purposes of Part 1 of Schedule 2 of the Criminal Law Amendment Act, 105 of 1997.
5. At all times relevant to the charge sheet, ACCUSED 1, 2,3 and 4 were and/or are in an employment relationship with SAPS and/or the State.
6. On the 6th of August 2022 accused 1 reported a crime of Theft at the Villieria South African Police Station CAS 38/08/2022.
7. On the 6th of August 2022, accused 1 deposed to a statement/affidavit under oath in the process of reporting the loss of items from his personal residence at 1564 Varing Street, Waverly, Pretoria, Gauteng. This affidavit was obtained by a SAPS official and commissioned by said official who attended the scene. This original affidavit was removed, destroyed and replaced with another affidavit deposed to by accused 1 and commissioned by accused 2.
8. The SAPS official who attended the scene and obtained the original / initial affidavit of the accused 1, was in the presence of this crew member who confirms that this affidavit was obtained and commissioned by his crew member.
9. Accused 1 stated that on the 5th of August 2022, he was with a friend at Eastwoods Tavern, Pretoria, where they were joined by a woman who was "*occasionally known to him*". Later that evening they proceeded to 012 Pub, Brooklyn, Pretoria, and was then dropped off at his residence by his friend.
10. Accused 1 states that he had consumed only three alcoholic beverages during the course of that evening.

11. Accused 1 states that he woke up in the morning and noticed that items being property of SAPS- Crime Intelligence were missing. Upon investigation he noted from his window that the gate motor was broken and that a window in his bedroom was open.
12. He further explains his activity after these discoveries leading to the registering of the Criminal case Villieria Cas 38/08/2022.
13. Accused 1 deposed to a second affidavit on the 21 August 2022 duly signed and commissioned.
14. The said affidavit was duly commissioned by a person who was competent to commission it.
15. In the second / supplementary affidavit he stated that the lady that joined them at Eastwood Tavern is known to him, that he had viewed video footage and confirms it was her that he recognised walking on his street leaving his house in the early hours of the morning on the 6th August 2022.
16. He states that Accused 4, a Captain from Crime Intelligence, Counterintelligence handed some of his stolen property back to him that was allegedly found abandoned.
17. He states that he did not seek medical attention between the 5th or 6th of August 2022.
18. The said affidavits were duly commissioned by a person who was competent to commission it.
19. During the investigation of Villieria Cas 38/08/2022, accused 1, notwithstanding, him being a complainant, he was uncooperative and interfered in the investigation of the matter by personally being involved with and dictating who had access to the docket and the involvement of ranked Crime Intelligence officials who obtained crucial information and followed leads without following processes of informing the investigating officer allocated to matter, thus abusing his authority as a ranked officer.

20. Accused 3 and 4 were involved in collecting some of the recovered stolen property belonging to accused 1 and did not follow due process or standard operating procedures.
21. Accused 4 withheld vital information of the suspect and the recovery of some of the stolen property from the investigating officer.
22. Recovered stolen property was returned to accused 1 without due process by officials whose sole responsibility is information gathering.
23. Accused 1, 2, 3 and 4 misled SAPS detectives which resulted in the case not being fully and thoroughly investigated.
24. In doing so accused 1,2,3 and 4 acted in common purpose pursuant to outcome of closing off a criminal investigation without due diligence, to facilitate a cover up to protect a high-ranking SAPS official.

B. LEGAL FRAME WORK

THE LAW RELATING TO THE PREVENTION AND COMBATING OF CORRUPT ACTIVITIES

The Prevention and Combating of Corrupt Activities Act, Act No. 12 of 2004 (Hereinafter referred to as the PRECCA) in its Preamble amongst others state as follows:

> *"**AND WHEREAS** corruption and related corrupt activities undermined the said rights,*
>
> *endanger the stability and security of societies, undermine the institutions and values of democracy and ethical values and morality, jeopardise sustainable development, the rule of law and the credibility of government and provide a breeding ground for organised crime;*
>
> ***AND WHEREAS** the illicit acquisition of personal wealth can be particularly damaging to democratic institutions, national economies, ethical values and rule of law;*

AND WHEREAS *there are links between corrupt activities and other forms of crime, in particular organised crime and economic crime, including money-laundering".*

PRECCA in section one thereof defines "gratification" as "*including* –

(a) Money, whether in cash or otherwise;

(b) Any donation, gift, loan, fee, reward, valuable security, property or interest in property of any description, whether moveable or immovable, or any other similar advantages;

(c) The avoidance of a loss liability, penalty, forfeiture, punishment or other disadvantages;

(d) Any office, status, honour, employment, contract of employment or services, any agreement to give employment or render services in any capacity and residential or holiday accommodation;

(e) Any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;

(f) Any forbearance to demand any money or money's worth or valuable thing;

(g) Any other service or favour or advantage of any description including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and includes the exercise or the forbearance from the exercise of any right or any official power or duty;

(h) Any right or privilege ;

(i) Any real or pretended aid, vote, consent, influence or abstention from voting;

Or

(j) Any valuable consideration or benefit of any kind, including discount, commission, rebate, bonus deduction or percentage"

The PRECCA in section 1 thereof states that a “person who is party to an employment relationship”, includes any person who in any manner assists in carrying out or conducting the business of an employer;

The PRECCA in section 1 thereof states that a “police official” means a “member” of the South African Police Service as defined in section 1 of the South African Police Service Act 1995 (Act No. 68 OF 1995)

The PRECCA section 1 therefor states that a “public officer” means any person who is a member, an officer, an employee or servant of a public body, and includes –

(a) Any person in the public service contemplated in section 8 (1) of the Public Service Act 1994 (Proclamation No. 103 of 1994)
(b) Any person receiving any remuneration from public funds
(c) Where the public body is a corporation, the person who is Incorporated as such but does not include any –
    (a) Member of the legislative authority;
    (b) Judicial officer;
    (c) Member of the prosecuting authority

The PRECCA in section 3 thereof sets out the General Offence of Corruption as follows:

3. Any person who is directly or indirectly-

(a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or

(b) gives or agrees or offers to give to any other person any gratification whether for the benefit of that other person or for the benefit of another person, in order to act personally or by influencing another person so to act in a manner

(i) that amounts to the –

(aa) illegal, dishonest, unauthorised, incomplete or biased or

(bb) misuse or selling of information or material acquired in course of the

exercise, carrying out or performance of any powers, duties or functions arising out of constitutional, statutory, contractual or any other legal obligation.

(ii) that amounts to –

(aa) the abuse of a position of authority

(bb) breach of trust or

(cc) the violation of a legal duty or a set of rules

(iii) designed to achieve unjustified results or

(iv) that amount to any other unauthorised or improper inducement to do or not do anything

is guilty of the offence of corruption

The PRECCA in section 4 thereof sets out offence in respect of corrupt activities relating to public officers.

4. (1)Any –(a) Public officer who, directly or indirectly accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person or

(b) Person who, directly or indirectly, gives or agrees or offers to give any gratification to a public officer, whether for benefit of that public officer or for the benefit of another person, in order to act, personally or by influencing another person so to act in a manner –

(i) that amounts to the –

(aa) the abuse of a position of authority;

(bb) is a breach of trust; or

(cc) the violation of legal duty or set of rules;

(iii) designed to achieve an unjustified result; or

(iv) that amounts to any other unauthorised or improper inducement to do or not do anything is guilty of the offence of corrupt activities relating to public officers.

(2) without derogating from the generality of section 2 (4), " to act" in subsection (1) includes – (a) voting at any meeting of a public body;

(b) performing or not adequately performing any official functions;

(c) expecting, delaying, hindering or preventing the performance of an official act;

(d) aiding, assisting or favouring any particular person in the transaction of any business with the public body.

(e) Aiding or assisting in precuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person in relation to the transaction of any business with the public body;

(f) showing any favour or disfavour to any person in performing a function as pubic officer;

(g) diverting for purposes unrelated to those for which they were intended, any property belonging to the state which such officer received by virtue of his or her position for purposes of administration, custody or for any other reason to another person or

(h) exerting any improper influence over the decision, making of any person performing function in a public body.

The PRECCA in section 19 thereof sets out the offence in respect of corrupt activities relating to international interference with, hindering or obstruction of investigation of offence.

19. Any person who, at any stage, with intent to defraud or to conceal an offence in terms of this chapter or to interfere with, or to hinder or to abstract a law enforcement body in its investigation of any such offence-

(a) destroys, alters mutilates or falsifies any book, document, valuable security, account, computer system, disc, computer printout or other electronic devices or any entry in such book, document, account or electric device or is privy to any such act;

(b) makes or is privy to making any false entry in such book, document, account or electric device or

(c) Omits or is privy to omitting any information from any such book, document, account or electronic device

Sect. 25(1) of the PRECCA provides that any person who is convicted of an offence referred to in

(a) Part 1, 2,3, or 4 or section 38 of Chapter 2 is liable –

(i) In the case of a sentence to imposed by a High Court to affine or to imprisonment up to a period or for imprisonment for life;

(ii) In the case of a sentence to be imposed by regional court to affine or to imprisonment for a period not exceeding 18 years; or

(iii) in the case of sentence to be imposed by Magistrates court to affine or to imprisonment for a period not exceeding 5 years.

1. Section 9 of the Justices of the Peace and the Commissioner of Oaths Act, 1983 (Act No 15 of 1983) provides that " *Any person who, in affidavit, affirmation or solemn or attached declaration made before a person competent to administer an oath or affirmation or take the declaration in question, has made a false statement knowing it to be false, shall be guilty of an offence and liable on conviction to the penalties prescribed by law for the offence of perjury"*
2. Section 101 (1) of the Criminal Procedure Act 1977 (Act No 51 of 1977) provides that "*A charge to relating to the administering or taking of an oath or the administering or making of affirmation or giving of false evidence or making of a false statement or precuring of false evidence of false statement.*
   (a) *Need not set forth the words or the affirmation or the evidence or the statement, if it sets forth so much of the purpose there of as is material;*
   (b) *Need not alleged, nor need it be established at the trial, that the false evidence or statement was material to any issue at relevant proceedings or that it was to the prejudice of any person"*
3. Section 101(2) provides that "*a charge relating to the giving of or procuring or attempted procuring of false evidence need not alleged the jurisdiction or state the nature of the authority of the court or tribunal before which or officer before who the false evidence was given or was intended to or proposed to be given".*

4. Section 83 of the Criminal Procedure Act 1977 (Act No 51 of 1977) provides "*if by reason of any uncertainties' so to the facts which can be proved or If for any other reason it is doubtful which of several offences conducted by the facts which can be proved, the accused maybe charged with the commission of all or any such offences and any number of such charges maybe be heard at once or the accused maybe charged in the alternative with the commission of any number of such offences*"

NOW THEREFORE, THE PROSECUTION AVERS THAT THE ACCUSED COMMITTED THE FOLLOWING OFFENCES:

COUNT 1: ACCUSED 1 ONLY

THE ACCUSED IS GUILTY OF CONTRAVENING SECTION 3 (a), READ WITH SECTIONS 1, 2, 3,20,21, 24,25 AND 26 OF THE PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT 12 OF 2004 - GENERAL CORRUPTION; FURTHER READ WITH SECTION 51 (2) AND PART II OF SCHEDULE 2 OF THE CRIMINAL LAW AMENDMENT ACT 105 OF 1997 AND SECTIONS 4, 256,257 AND 269A OF THE CRIMINAL PROCEDURE ACT 51 OF 1977.

In that during the period 6th August 2022 up to and including 30th April 2024 and at or near Pretoria in the Regional Division of Gauteng ACCUSED 1 directly and or indirectly wrongfully accepted and or agreed and or offered to accept GRATIFICATION for the benefit of ACCUSED 1 and/or for the benefit of another person TO WIT;

Accused 2, 3 and 4 hindered or obstructed proper investigation into Villieria CAS 3808/2022, and actioned events for the benefit of Accused 1 to escape legal consequence and internal disciplinary processes.

IN ORDER TO act and or omit to act personally and or by influencing other person(s) to act in a manner

(a) That amounts to illegal, dishonest, unauthorised or biased exercise or carrying out or performance of any powers, duties or functions arising out of the constitutional, statutory or contractual obligations and or

(b) That amounts to

- Breach of trust and all
- Abuse of a position of authority
- Violation of a legal duty or a set of rules and or designed

(c) Designed to achieve and unjust result and or

(d) That amount to an authorised or improper inducement to do or not do anything.

COUNT 2: **ACCUSED 2, 3,4 ONLY**

THE ACCUSED ARE GUILTY OF CONTRAVENING SECTION 3 (b), READ WITH SECTIONS 1,2,3,20,21,24,25 AND 26 OF THE PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT 12 OF 2004 – GENERAL CORRUPTION; FURTHER READ WITH SECTION 51 (2) AND PART : OF SCHEDULE 2 OF THE CRIMINAL LAW AMENDMENT ACT 105 OF 1997 AND SECTIONS, 256, 257 AND 269 A OF THE CRIMINAL PROCEDURE ACT 51 OF 1997.

In that during the period of 5 August 2022 up to and including 30 April 2024 and at or near Pretoria in the Regional Division of Gauteng ACCUSED 1 directly and or indirectly, gave and or agreed and or offered to give any GRATIFICATION for the benefit ACCUSED 1 and or for the benefit of another person TO WIT:

ACCUSED 2,3 AND 4 HINDERED and obstructed proper investigation into CAS 38/08/2022, and actioned event for the benefit of accused 1 to escape legal consequence and internal disciplinary process.

IN ORDER TO act and or omit to act personally and or by influencing other person(s) to act in a manner

(a) That amounts to illegal, dishonest, unauthorised or biased exercise or carrying out all performance of any powers, duties or functions arising out of constitutional, statutory or contractual obligation and or

(b) That amounts to

- Breach of trust and all
- Abuse of a position of authority
- Violation of a legal duty or a set of rules and or designed

(e) Designed to achieve and unjust result and or

(f) That amount to an authorised or improper inducement to do or not do anything.

COUNT 3: **ACCUSED 1 ONLY**

CORRUPTION in contravention of section 4 (1) (a) read with section 1,2 ,24,25, and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2) (a) of the Criminal Law Amendment Act, 105 of 1997

In that during the period 5 August 2022 up to and including 30 April 2024 and in or near Pretoria in the Regional Division of Gauteng ACCUSED 1 directly or indirectly wrongfully accepted and or agreed and or offered to accept GRATIFICATION for the benefit ACCUSED 1 and or for the benefit of another person TO WIT :

ACCUSED 2,3 AND 4 hindered and obstructed proper investigation into CAS 38/08/2022, and actioned event for the benefit of accused 1 to escape legal consequence and internal disciplinary process.

TO A PUBLIC OFFICER to wit ACCUSED 1 whether for benefit of that public officer or for the benefit of another person

In order to act and or omit to act personally and or by influencing other person(s) to act in a manner

(a) That amounts to illegal, dishonest, unauthorised or biased exercise or carrying out or performance of any powers, duties or functions arising out of constitutional, statutory or contractual obligation and or

(b) That amount to

- Breach of trust and or
- Abuse of a position of authority

COUNT 4: **ACCUSED 2,3,4**

CORRUPTION in contravention of section 4 (1) (b) read with section 1,2 ,24,25, and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2) (a) of the Criminal Law Amendment Act, 105 of 1997

In that during the period 5 August 2022 up to and including 30 April 2024 and in or near Pretoria in the Regional Division of Gauteng the ACCUSED individually and or jointly and or in concert with individuals mentioned in COUNT 2 did directly or indirectly, give and or agreed and or offered to give any GRATIFICATION for the benefit ACCUSED 1 and or for the benefit of another person TO WIT :

ACCUSED 1,2,3 AND 4 hindered and obstructed proper investigation into Vallieria CAS 38/08/2022, and actioned events for the benefit of accused 1 to escape legal consequence and internal disciplinary process.

TO A PUBLIC OFFICER to wit ACCUSED 1 whether to the benefit of that public officer or for the benefit of another person

in order to act and or omit to act personally and or by influencing other person(s) to act in a manner

(a) That amounts to illegal, dishonest, unauthorised or biased exercise or carrying out all performance of any powers, duties or functions arising out of constitutional, statutory or contractual obligation and or

(b) That amounts to

- Breach of trust and all
- Abuse of a position of authority
- Violation of a legal duty or a set of rules and or designed

(c) Designed to achieve and unjust result and or

(d) That amount to an authorised or improper inducement to do or not do anything.

COUNT 5 **ACCUSED 1,2,3 AND 4**

CORRUPTION in contravention of section 19 read with section 1,2,24,25, and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2) (a) of the Criminal Law Amendment Act, 105 of 1997

In that during the period August 2022 to April 2024 and at or near Pretoria in the Regional Division of Gauteng the ACCUSED 1,2,3 and 4 intentionally and unlawfully, and with intent to defraud or conceal an offence and or to interfere with or to hinder or obstruct a law enforcement body in its investigation of any such offence TO WIT:

ACCUSED 1,2,3 AND 4 HINDERED and obstructed proper investigation into Villieria CAS 38/08/2022, for the benefit of accused 1 to escape legal consequence and internal disciplinary process.

COUNT 6 **IN RESPECT OF ACCUSED 1 ONLY**

CONTRAVENTION OF SECTION 9 OF THE JUSTICES OF PEACE AND COMMISSIONER OF OATHS ACT, 1963 (ACT NO 16 OF 1963).

THAT the accused is guilty of contravening the provisions of section 9 read with section 9 of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No 16 of 1963)

IN THAT upon or about the 6th August 2022 and at or near Pretoria in the Regional Division of Gauteng the Accused did unlawfully and intentionally make a false statement in an affidavit, affirmation or solemn or binding oath to wit an affidavit in Villieria Cas Number 38/08/2022 made before the person competent to administer an oath or affirmation or take a declaration to wit ACCUSED 2 knowing to it be false.

COUNT 7 **ACCUSED 1 ONLY**

CONTRAVENTION OF SECTION 9 OF THE JUSTICES OF PEACE AND COMMISSIONER OF OATHS ACT, 1963 (ACT NO 16 OF 1963).

THAT the accused is guilty of contravening the provisions of section 9 read with section 9 of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No 16 of 1963)

IN THAT upon or about the 21st August 2022 and at or near Pretoria in the Regional Division of Gauteng the Accused did unlawfully and intentionally make a false statement in an affidavit, affirmation or solemn or attested declaration to wit an affidavit in Villieria Cas Number 38/08/2022 made before the person competent to administer an oath or affirmation or take a declaration to wit ACCUSED Lieutenant Colonel F. L Visagie knowing it to be false.

COUNT 8 **ACCUSED 1 ONLY**

PERJURY

THAT the Accused is guilty of the crime of perjury.

IN THAT upon or about the 6th August 2022 and at or near Pretoria in the Regional Division of Gauteng the Accused submitted an affidavit in Villieria Cas Number 38/08/2022 and the affidavit was duly signed or deposed to by the accused and commissioned by Commissioner of Oaths and Accused confirmed the contents of the affidavit as being truthful, did wrongfully and intentionally providing false information to a South African Police Services official.

COUNT 9 **ACCUSED 1 ONLY**

PERJURY

THAT the Accused is guilty of the crime of perjury.

IN THAT upon or about the 21st August 2022 and at or near Pretoria in the Regional Division of Gauteng the Accused submitted an affidavit in Villieria Cas Number 38/08/2022 and the affidavit was duly signed or deposed to by the accused and commissioned by Commissioner of Oaths and Accused confirmed the contents of the affidavit as being truthful, did wrongfully and intentionally providing false information to a South African Police Services official.

COUNT 10 **ACCUSED 1,2,3, AND 4**

DEFEATING THE ADMINISTRATION OF JUSTICE

THAT the accused are guilty of the crime of the Defeating and or Obstructing the Administration of Justice,

IN THAT during the period 5th August 2022 up to and including 30 April 2024 and at near Pretoria in Regional Division of Gauteng the accused did unlawfully and with intend to defeat or obstruct the course of justice, committed an act, to wit hindering and obstructing the investigation of Villieria Cas 38/08/2022 by providing false information and or false affidavits and failing to provide true, accurate and timeous information to the detectives