

Filed by:
Government Attorney
Per: N Tjahikika
Legal Practitioner
for applicant
2nd Floor, SANLAM Centre
Independence Avenue, Windhoek

Managing Judge: Sibeya J
Next hearing date: 28 September 2021
Time of Hearing: Status Hearing
Roll Type: Case management roll

CASE NUMBER: HC-MD-CIV-MOT-POCA-2020/00429

ANSWERING AFFIDAVIT
IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION

In the application of

THE PROSECUTOR -GENERAL

APPLICANT

against

RICARDO JORGE GUSTAVO

FIRST DEFENDANT

TAMSON TANGENI HATUIKULIPI

SECOND DEFENDANT

JAMES NEPENDA HATUIKULIPI

THIRD DEFENDANT

SACKEUS EDWARD TWELITYAAMENA SHANGHALA

FOURTH DEFENDANT

BERNHARDT MARTIN ESAU

FIFTH DEFENDANT

PIUS NATANGWE MWATELULO

SIXTH DEFENDANT

NAMGOMAR PESCA (NAMIBIA) (PTY) LTD

SEVENTH DEFENDANT

ERONGO CLEARING AND FORWARDING CC

EIGHTH DEFENDANT

JTH TRADING CC

NINTH DEFENDANT

GREYGUARD INVESTMENTS CC

TENTH DEFENDANT

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OTUAFIKA LOGISTICS CC	ELEVENTH DEFENDANT
OTUAFIKA INVESTMENTS CC	TWELFTH DEFENDANT
FITTY ENTERTAINMENT CC	THIRTEENTH DEFENDANT
TRUSTEES OF CAMBADARA TRUST	FOURTEENTH DEFENDANT
OLEA INVESTMENTS NUMBER NINE CC	FIFTEENTH DEFENDANT
TRUSTEES OF OMHOLO TRUST	SIXTEENTH DEFENDANT
ESJA HOLDING (PTY) LTD	SEVENTEENTH DEFENDANT
MERMARIA SEAFOOD NAMIBIA (PTY) LTD	EIGHTEENTH DEFENDANT
SAGA SEAFOODSEAFOOD (PTY) LTD	NINETEENTH DEFENDANT
HEINASTE INVESTMENT NAMIBIA (PTY) LTD	TWENTIETH DEFENDANT
SAGA INVESTMENT (PTY) LTD	TWENTY-FIRST DEFENDANT
ESJA INVESTMENT (PTY) LTD	TWENTY-SECOND DEFENDANT

and against

NDAPANDULA JOHANNA HATUIKULIPI	FIRST RESPONDENT
SWAMMA ESAU	SECOND RESPONDENT
AL INVESTMENTS NO FIVE CC	THIRD RESPONDENT
OHOLO TRADING CC	FOURTH RESPONDENT
GWAANIILONGA INVESTMENTS (PTY) LTD	FIFTH RESPONDENT

I, the undersigned,

OLYVIA MARTHA IMALWA

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do hereby declare under oath as follows:

1. I am the Prosecutor-General of the Republic of Namibia appointed by the President of the Republic of Namibia in terms of Article 32(4)(a)(cc) read with Article 88 of the Constitution of the Republic of Namibia ("the Constitution").
2. I am the applicant in the main proceedings and I am the respondent in these proceedings in my official capacity as Prosecutor-General ("PG"), with my offices located at Corporate House, J. P. Karuaihe Street, Windhoek.
3. The facts deposed to herein are derived both from the documentation at my disposal and from my personal knowledge and understanding of the issues. The facts are, to the best of my belief, both true and correct.
4. Where I make a statement of a legal nature, I do so on the advice of my legal practitioners of record which advice I accept as both true and correct.
5. The applicants herein are the 17th to 22nd defendants and I will refer to these parties as the "17th to 22nd defendants", throughout this application to avoid confusion.
6. I have read the founding affidavit deposed to by Mr. Ingvar Júlíusson ("Júlíusson") on behalf of the 17th to 22nd defendants and I reply thereto in *seriatim* as set out herein below.
7. All allegations made in the founding affidavit of Mr. Júlíusson are placed in dispute in so far as such allegations-
 - 7.1 are contrary to what is herein contained;

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- 7.2 are inconsistent with the facts and position contained herein;
- 7.3 are not expressly addressed herein; and
- 7.4 constitute inadmissible hearsay evidence or new matter.

Introduction:

8. Before I deal with the specific paragraphs in the founding affidavit of the 17th to 22nd defendants *in seriatim*, I will first set out the reasons why the relief sought by the 17th to 22nd defendants set out in prayer 1 and 2 of their notice of motion is incompetent.

9. Prayer 1 of the notice of motion deals with the 17th to 22nd defendants' request for leave to refer the matter to oral evidence in terms of rule 67 and to cross examine the Prosecutor- General and Mr Stefansson.

10. It is respectfully submitted that the relief sought in prayer 1 is not competent or appropriate for three reasons:

10.1 A referral for oral evidence at the restraint of property stage is neither competent nor appropriate within the statutory framework of POCA.

10.2 The test applicable for the determination of the requirements of section 24(1)(b)(ii) does not require the court hearing the restraint of property application to determine a dispute of fact, the credibility of a witness or the veracity of any allegations.

10.3 The 17th to 22nd defendants failed to show that the allegations referred to in prayer 1.1 and 1.2 are based on a dispute of facts that cannot be resolved on the affidavits.

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11. In addition to the fact that the application is neither competent nor appropriate, the application for a referral to oral evidence in this case is moreover extraordinary because it is entirely one-sided. The 17th to 22nd defendants want me and the prosecution's main witness to be called up for interrogation about issues at the heart of the merits of the criminal case. They do, however, not offer to come to Namibia to give evidence and submit to cross - examination on the same issues. So, what the defendants want, is an entirely one - sided right to cross-examine me and Mr Stefánsson on the merits of the case while not offering to subject their own evidence to cross- examination in the same way.

12. I will briefly deal with each point on why the application for a referral for oral evidence is not competent or appropriate, below.

The relief to refer the matter for oral evidence in terms of rule 67 of the rules of the High Court is not competent within the statutory framework of POCA.

13. Section 24 (1) (b) of POCA directs that the High Court may exercise the powers conferred upon it by section 25(1) of POCA when:

13.1 the court is satisfied that a person is to be charged; and

13.2 it appears to the court that there are reasonable grounds for believing that a confiscation order may be made against that person.

14. Section 25 (2) of POCA directs that when the High Court is considering an application for a restraint order is satisfied that the facts referred to in section 24(1) of

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POCA appear on the face of it from the application, it must make, without adducing any further evidence from any other person, an order having immediate effect.

15. Regulation 7 to the regulation issued in relation to POCA directs that subject to section 91(2), (3) and (4) of POCA an application made pursuant to section 25 of POCA must be in writing and must be supported by affidavit evidence unless otherwise stated in the Act or by an order of the High Court.

16. Section 91 (3) of POCA directs when the court may have regard to oral evidence and evidence with regard to hearsay. It is however limited to cases of urgency. The instance is not an urgent application. Further, subsection (3) contains a proviso, namely that the Court may have regard to oral evidence in urgent application "provided that that evidence would not render the proceedings unfair". Again, in terms of section 91 the Court has a discretion whether to permit oral evidence.

17. Section 90 allows for the Judge President to make Rules regulating proceedings contemplated in Chapters 5 and 6 of POCA ("the POCA rules"). The Judge President on 5 May 2009 made rules regulating POCA proceedings in Chapter 5 and Chapter 6 in Government Gazette notice 4254. In terms of rule 2 of the POCA rules:

"Except where the Act provides for the procedure for proceedings contemplated in Chapters 5 and 6 of the Act and unless otherwise stated in these rules or the regulations made under section 100 of the Act – (a) the High Court Act, 1990 (Act No. 16 of 1990) and the Rules of the High Court; and (b) the Supreme Court Act, 1990 (Act No. 15 of 1990) and the Rules of the Supreme Court, apply, with necessary changes, in relation to those proceedings."

18. From the above it is evident that:

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- 18.1 The facts must appear on the face of the application;
- 18.2 The evidence must be on affidavit;
- 18.3 The court may have a regard to oral evidence if the court dispenses with the requirements of affidavit evidence in an urgent application.

19. In the circumstances, rule 67 of the High Court Rules cannot find application in this matter as POCA and the regulations provide for the prescribed procedure.

20. The 17th to 22nd defendants' application should be dismissed on this point alone, including an order as to costs, the cost of one instructing and two instructed counsels.

The test applicable for the determination of the requirements of section 24(1)(b)(ii) does not require the court hearing the restraint of property application to determine a dispute of fact.

21. In terms of rule 67(1), the court may only refer an application to oral evidence which "cannot properly be decided on the affidavits". This application can be decided on the affidavits because sections 24 and 25 of POCA have been specifically designed to ensure that applications for restraint orders are not defeated by disputes of fact and, particularly, disputes about the merits of the ultimate criminal case.

22. This is evident from the following features of sections 24 and 25 of POCA:

22.1 Section 25(2) says that a court "must" make a restraint order if the facts described in section 24(1) "appear on the face of it from the application". It accordingly does not require those facts to be proven. They merely need to "appear on the face of it

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from the application". It does not matter that they might be disputed. This standard of proof has been deliberately designed to ensure that applications for restraint orders are not defeated by disputes of fact.

22.2 In terms of section 24(1)(b), the facts that need to appear on the face of the application, are twofold. The first is that the defendant "is to be charged". It merely requires the likelihood of a charge. The second is that there are "reasonable grounds for believing" that a confiscation order "may be made" against the defendant.

22.3 When the two sections are read together, it is obvious that the legislature has gone out of its way to ensure that applications for confiscation orders are not frustrated by disputes of fact. Once the jurisdictional facts appear, on the face of it, from the application, it matters not that they might be in dispute. The court is obliged ("must") grant a restraint order despite the dispute.

23. It is respectfully submitted that the purpose of this legislative design is obvious. The function of a restraint order is merely to preserve assets pending the determination of a criminal trial which may culminate in a confiscation order. It would almost always be subject to much contestation and dispute. But the intention of the legislature is to defer the determination of those disputes to the criminal trial. In the meantime, a restraint order must be made as long as there is a prima facie case on the papers regardless of whether it is in dispute

24. As the court is not required to decide on disputes of facts, on this point alone the 17th to 22nd defendants' application should be dismissed with costs, cost of one instructing and two instructed counsel.

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The application of rule 67 is limited to resolving a dispute of fact

25. As already stated above, rule 67 relates to instances where an application cannot properly be decided on the affidavits. It gives the court a discretion to direct that oral evidence be heard with a view to resolve any dispute of fact.
26. Therefore, the court must first establish if it is required in terms of the enabling provision to resolve a dispute of fact and secondly whether the dispute of fact can be resolved on the affidavits.
27. In addition, the court, if rule 67 were applicable, also needs to consider dispute of facts that are relevant to be determined.
28. Prayers 1.1 and 1.2 of the 17th to 22nd defendants relate to the requirement in section 24(1)(b) of POCA.
29. Section 24(1)(b) of POCA requires the court to be satisfied that a person is to be charged with an offence. In my founding affidavit I explained that the 17th to 22nd defendants will be joined to the pending proceedings once the whereabouts of their directors have been established and that there might have to be extradition proceedings.
30. From what I stated in the founding affidavit it is evident that there is a real intent to prosecute the 17th to 22nd defendants. This intent was further re-established as is evident from the indictment that the 17th to 22nd defendants attached to their answering affidavit as annexure J4. It is also common cause that an extradition process cannot commence without an indictment.

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31. At this stage of the proceedings the warrants of arrest of three of the directors have already been authorised as referred to in my replying affidavit. As indicated by Mr Júlíusson in the answering affidavit these directors are not in Namibia. Due to the directors' absence in Namibia these warrants of arrest could not be executed and further steps are taken to determine their whereabouts and ensure that they are made available to Namibia.

32. The complaint by the 17th to 22nd defendants revolve around their contention that the State cannot proceed against the 17th to 22nd defendants in the already instituted prosecution of the 1st to 16th defendants. The applicants are labouring under the misconception that the defendants should all be in the dock at the same time during the same criminal trial. However, this is incorrect. Whether or not the 17th to 22nd defendants will in fact be joined to the already instituted prosecution of the 1st to 16th defendants are not the main consideration for this court as per section 24(1)(b) of POCA. Should it later become evident that the 17th to 22nd defendants cannot be joined to the pending proceedings, there will be no prohibition for the State to prosecute the 17th to 22nd defendants at a different trial than that of the 1st to 16th defendants even if they are charged with common purpose.

33. It is respectfully submitted that prayers 1.1 and 1.2 of the notice of motion do not relate to a dispute of fact as the requirement set out in section 24(1)(b) requires only a serious intent to prosecute.

34. In addition, prayer 1.3 as per the notice of motion also does not relate to a dispute of fact. The allegation by Mr Júlíusson that Mr Stefansson will not testify is not

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substantiated by any fact or supporting evidence and is merely based on speculation. It seems to be more a fishing expedition to establish what conditions or statutory arrangements will be placed on Mr Stefánsson once he comes to testify in Namibia as per prayer 1.4.1 of the notice of motion.

35. It is evident that the 17th to 22nd defendants rather want an enquiry as to the process of the criminal proceedings instead of raising real issues of dispute of facts.

36. I respectfully submit that the 17th to 22nd defendants have in any event failed to indicate to the court that there is a dispute of fact that needs to be resolved.

Hearing: points "in limine"

37. In relation to prayer 2 of the notice of motion dealing with the 17th to 22nd defendants' request to argue certain points in *limine*, it is respectfully submitted that the point relates to the two requirements in section 24(1)(b) of POCA.

38. The above points are with respect not preliminary points and the 17th to 22nd defendants will be entitled to raise those points at the hearing of the application for a restraint of property order.

39. I respectfully submit that any separation of issues is normally determined by considerations of convenience. But there is absolutely no reason advanced in the application of the 17th to 22nd defendants why the restraint of property application should not, like any other application, be argued as a whole. The splitting off of some issues will merely delay the determination of the balance of the issues. A splitting of the determination of the issues will not only cause a delay but will open the possibility that

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this matter is dealt with in a piece - meal approach, especially if one of the parties elect to take the determination of the preliminary issue, requested to be determined separately for the other issues, on appeal.

AD: THE FOUNDING AFFIDAVIT

40. Without, in any manner whatsoever, derogating from the foretasted points, I now – subject to what is already stated above – turn to deal with the further content of the founding affidavit.

AD PARAGRAPH 1 THEREOF:

41. I cannot admit or deny the content hereof as it does not fall within my personal knowledge. It is also not evident to which period the deponent is referring. It is however evident that the deponent's affidavit was commissioned in Belgium and not in Spain.

AD PARAGRAPH 2 THEREOF:

42. I take note that the deponent alleges to depose to the affidavit on behalf of the 17th -22nd defendants and that he refers to these defendants as "Foreign Defendants. The deponent, however, did not produce proof of the alleged authorisation by the 17th to 22nd defendants. In the circumstances I deny that the deponent is duly authorised by the 17th to 22nd defendants. I deny that all the facts contained in the founding affidavit are true and correct. I further deny that all the facts fall within the personal knowledge of the deponent.

AD PARAGRAPHS 3, 3.1 AND 3.2 THEREOF:

43. I take note of the contents of these paragraphs, but deny for the reasons which I

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set out hereinbefore and below that the 17th to 22nd defendants are entitled to the relief sought in the notice of motion. The application stands to be dismissed with costs.

AD PARAGRAPH 4 THEREOF:

44. I deny the contents hereof. I repeat that the 17th to 22nd defendants are not entitled to refer the dispute to oral evidence. The 17th to 22nd defendants' points of law relating to referral for oral evidence are already still born. There exists no basis to hear these so-called points of law separately from the main application.

AD PARAGRAPH 5 THEREOF:

45. I deny the contents hereof for reasons already set out above.

AD PARAGRAPHS 6, 6.1-6.4 THEREOF:

46. I take note of the content hereof.

AD PARAGRAPH 7 THEREOF

47. I deny that any issues are to be determined *in limine* for reasons already set out above.

AD PARAGRAPH 8 THEREOF:

48. Subject to what I said hereinbefore on the relief sought by the 17th to 22nd defendants in the notice of motion and the allegations made by the deponent, I take note of the contents thereof.

AD PARAGRAPH 9 THEREOF:

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49. I take note of the content hereof. However, I respectfully refer to what I stated above in relation to the applicability of rule 67 of the High Court Rules in these proceedings. I stand by what I said hereinbefore.

AD PARAGRAPH 10 THEREOF:

50. I deny that an application in terms of rule 67 can be brought by the 17th to 22nd defendants for reasons already set out above. I also deny that the adjudication of the matter on affidavit infringes the 17th to 22nd defendants' right to a fair hearing. In addition, the 17th to 22nd defendants will have their opportunity to cross examine any witness of the state at the criminal trial.

AD PARAGRAPH 11 THEREOF:

51. I admit the contents hereof. I confirm that I relied on section 24(1)(b) of POCA.

AD PARAGRAPH 12 THEREOF:

52. I deny that the allegation herein is relevant to the requirement of section 24(1)(b) of POCA. Save as aforesaid I take note of the content herein.

AD PARAGPRAH 13 THEREOF:

52.1 I take note of the content hereof.

AD PARAGRAPH 14 THEREOF:

53. I deny the contents hereof. The 17th to 22nd defendants can be charged as per the provision of section 332 of the Criminal Procedure Act 51 of 1977 ("the CPA"). There is

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also currently a dispute in relation to the directorship of the 20th defendant. Once that dispute is resolved the 20th defendant can be charged through one of those directors as well.

AD PARAGRAPH 15 THEREOF:

54. I take note of the content hereof.

AD PARAGRAPH 16 THEREOF:

55. I deny the contents hereof and refer the court to what I stated in my replying affidavit. There was no formal extradition request made to Iceland. If there was no formal request made to Iceland there can be no formal refusal of such a request. I have still a number of avenues available to follow in relation to the 17th to 22nd defendants and it will be premature to make a finding on an informal email that the 17th to 22nd defendants will not be charged.

AD PARAGRAPH 17 THEREOF:

56. I deny the contents hereof for the reasons already set out above and in my replying affidavit. There exists no requirement in law that all those who are accused of common purpose must be arranged in the same trial.

AD PARAGRAPH 18 THEREFORE:

57. I deny that the production of the letter from Icelandic District Prosecutor constitute a dispute of fact on an extradition request. My replying affidavit comprehensively explained that:

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57.1 The Republic of Namibia has not made a formal request to Iceland for the extradition of these individuals referred to above. The indictment of 17th to 22nd defendants was only finalized on 21 April 2021. No formal extradition request was made to Iceland before this time.

57.2 Iceland will only have the authority to refuse extradition if the person or persons requested to be extradited is or are in Iceland.

57.3 The contention that these directors will not be extradited is premature.

AD PARAGRAPH 19 THEREOF:

58. I deny the contents hereof and refer to my response in my replying affidavit.

AD PARAGRAPH 20 THEREOF

59. I take note of the contents of this paragraph, but I wish to add that the contents of paragraph 13.2 were duly introduced in reply in response to 17th to 22nd defendants' denials in their answering affidavits.

AD PARAGRAPH 21 THEREOF:

60. I deny the contents of this paragraph. A confiscation order can only be made after conviction but before sentencing. The trial court in the criminal matter will be tasked with the making of the confiscation order and not this court. This court is only required to consider the restraint order.

AD PARAGRAPH 22 THEREOF:

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61. I deny the contents hereof. What I stated in paragraph 15 of my replying affidavit is not a new requirement. It is in fact an interpretation to the meaning of 'to be charged' in section 24(1)(b) that has been assigned to the requirements by the courts.

62. It requires a court only to be satisfied that a prosecution is seriously intended and not that a charge sheet has already been drawn.

AD PARAGRAPH 23 THEREOF:

63. I deny the contents of this paragraph for reasons already stated in my founding affidavit and my replying affidavit.

64. I wish to further add that this was not introduced for the first time in my replying affidavit, I stated the requirements of section 24(1)(b) of POCA in my founding affidavit and the correct interpretation of the above was duly introduced in reply in response to defendants' denials in their answering affidavits.

65. If the 17th to 22nd defendants are seriously contending that this is a new point, they could have applied for leave to file a further affidavit. Rule 67 is reserved for issue of genuine disputes of facts that cannot be resolved on the papers before the court and not to address new issues.

AD PARAGRAPHS 23.1 TO 23.3 THEREOF:

66. An extraction request cannot be made to any country without an indictment. Save as aforesaid I take note of the content herein.

AD PARAGRAPH 24 THEREOF:

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67. I deny the contents hereof. The 17th to 22nd defendants are attempting to place matter before the court which was not dealt with in the founding, answering or replying affidavits. It was indicated that the foreign directors will have to be extradited. This can only be done once the indictment has been finalised which was on 21 April 2021. The warrant of arrests of the foreign directors has also been issued.

68. There is no factual dispute emanating from these steps taken.

AD PARAGRAPHS 24, 24.1 AND 24.2 THEREOF:

69. I deny the contents hereof for the reasons set out above and in my replying affidavit.

70. The reason why the extradition request was not done before 31 July 2021 is not a factual dispute and does not relate to any requirement set out in section 24 of POCA.

71. The steps taken since 4 February 2021 do not relate to a dispute of fact.

72. The steps taken after I received an informal email from the Icelandic Prosecution do not create a dispute of fact. Iceland cannot refuse an extradition if the persons sought to be extradited are not in Iceland.

73. The steps taken after the finalisation of the indictment do not amount to a dispute of fact.

74. The submissions made by the prosecutor in the criminal case is not before this court and does not form a basis for a dispute of fact to be referred to for oral evidence.

AD PARAGRAPH 25 THEREOF:

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75. I deny the contents hereof for the reason already set out above. In addition, rule 67 does not allow for cross examination if it does not relate to a dispute of fact. I refer also to what I said hereinbefore on sections 90 and 91 of POCA.

AD PARAGRAPH 26 THEREOF:

76. I take note of the content hereof.

AD PARAGRAPH 27 THEREOF:

77. I deny the contents hereof for the reason already stated above. First of all, there is no conflicting version placed before the court in the answering affidavit of Mr Júlíusson or anyone else. There is no genuine dispute of facts.

78. Even if there is a dispute of fact, which is denied, it is not for this court to determine a dispute of fact at this stage of the proceedings.

79. In addition, and as I already alluded to above, the 17th to 22nd defendants want me and the prosecution's main witness to be called up for interrogation about issues at the heart of the merits of the criminal case. They do, however, not offer to come to Namibia to give evidence and submit to cross - examination on the same issues.

AD PARAGRAPHS 28 – 30 THEREOF:

80. I admit what I stated in paragraph 59 of my replying affidavit. Save as aforesaid, I deny the contents hereof for the reasons already set out in my founding affidavit and my replying affidavit. There is no basis in the 17th to 22nd defendants' affidavit to allege that Mr Stefansson will not testify. The list of witnesses that the state intends to call at the

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criminal trial included the name of Mr Stefansson. I attach a copy hereof as annexure **OMI1** and an acknowledgement of receipt thereof by the legal practitioners for the accused persons as annexure **OMI2**.

AD PARAGRAPHS 31, 32, 33, 34, 35, 36, 37, 38, 39 AND 40 THEREOF:

81. I take note of the quoted paragraphs from the founding, answering and replying affidavits.

AD PARAGRAPH 41 THEREOF:

82. I deny the contents of this paragraph. The defendants attempt to deal with one fact to the exclusion of all other facts, trying to create the impression that the facts do not support the contention that the 17th to 22nd defendants will be convicted and that they benefited from the offences they will be convicted of.

83. In any event, as already set out above, the court is not required to make a finding on a dispute of fact at this stage of the proceedings.

AD PARAGRAPHS 42, 42.1 AND 42.2 THEREOF:

84. I deny the contents thereof. The Supreme Court cases the 17th to 22nd defendants rely on merely says that a director can defraud his own company. It is not open to the director to say that the company was not misled because his knowledge of the truth is attributable to the company. The principle established is merely that, when a director defrauds his own company, his knowledge of the truth is not attributable to the company. Attribution, for purposes of the criminal liability of companies, is regulated by section 332

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of the CPA. It provides, in essence, that the criminal conduct of a director of a company is attributable to the company: if the director or manager acted in the exercise of his/ her powers or in the performance of his/ her duties as director or manager; or- if he/ she acted in furthering or endeavouring to further the interests of the company.

85. Furthermore, as to the liability of the directors, there is no prohibition against the prosecution of the directors both in their personal capacities and their official capacities. The correct legal position in this regard is that where there has been a misuse of corporate personality, it may be disregarded in order to arrive at the true facts and to attribute liability where it should lie, notwithstanding the application of section 332(5) of the CPA.

86. Furthermore, section 7 of POCA states that where money laundering offences are committed by a company "every person who, at the time of the commission of the offence acted in an official capacity for or on behalf of" that company, whether as a director, manager, secretary or other similar office, or was purporting to act in that capacity, commits that offence".

87. It is respectfully submitted that the companies for and on behalf of whom Mr Stefánsson acted are all criminally liable for his conduct. If any other directors or servants of the 17th to 22nd defendants were complicit in Mr Stefánsson's conduct, then they are also criminally liable.

88. There is sufficient evidence to impute the criminal conduct to the directors of the 17th to 22nd defendants and therefore three of the directors are also being charged in their personal capacity. I have already addressed the allegations herein relating to referral to oral evidence and cross-examination and stand by what I said hereinbefore.

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AD PARAGRAPH 43 THEREOF:

89. The 17th to 22nd defendants did not make out a case for the relief sought in the notice of motion to which the founding affidavit is attached. I therefore deny the contents hereof for the reasons as set out above in my answering affidavit.

CONCLUSION

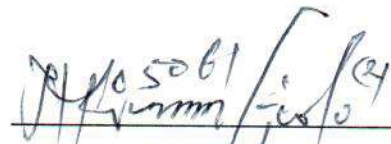
90. In the premises I respectfully pray that the application by the 17th to 22nd defendants should be dismissed with costs, which costs to include the costs of one instructing and two instructed counsels.



OLYVIA MARTHA IMALWA

I hereby declare that the deponent has sworn to and signed this statement in my presence at WINDHOEK on the 10th day of September 2021 and she declared as follows: that the facts herein contained fall within her personal knowledge and that she understands the contents hereof; that she has no objection to taking the oath; that she regards the oath as binding on her conscience and has declared as follows:

“I swear that the contents of this sworn affidavit are true and correct, so help me God.”



COMMISSIONER OF OATHS

FULL NAMES: *HAFENI KAUUKUUGWA*
CAPACITY: *POLICE OFFICER*
ADDRESS *J.P. Karraike street*

OMI,

IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION

HELD AT WINDHOEK

In the matter between:

STATE

And

RICARDO GUSTAVO	ACCUSED 1
JAMES NEPENDA HATUIKULIPI	ACCUSED 2
SAKEUS EDWARD TWELITYAAMENA SHANGHALA	ACCUSED 3
BERNHARDT MARTIN ESAU	ACCUSED 4
TAMSON TANGENI HATUIKULIPI	ACCUSED 5
PIUS NATANGWE MWATELULO	ACCUSED 6
NAMGOMAR PESCA NAMIBIA (Pty) Ltd (REPRESENTED BY RICARDO GUSTAVO)	ACCUSED 7
ÉRONGO CLEARING AND FORWARDING CC (Represented by TAMSON TANGENI HATUIKULIPI)	ACCUSED 8
JTH TRADING CC (Represented by TAMSON TANGENI HATUIKULIPI)	ACCUSED 9
FITTY ENTERTAINMENT CC (Represented by TAMSON TANGENI HATUIKULIPI)	ACCUSED 10
OTUAFIKA INVESTMENTS CC (Represented by PIUS NATANGWE MWATELULO)	ACCUSED 11
OTUAFIKA LOGISTICS CC	

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(Represented by PIUS NATANGWE MWATELULO	ACCUSED 12
OLEA INVESTMENTS NUMBER NINE CC (represented by JAMES NEPENDA HATUIKULIPI)	ACCUSED 13
ERF ONE NINE EIGHT ZERO KUISEBMOND (PTY) LTD (NUMBER 2010/0168) (represented by JAMES NEPENDA HATUIKULIPI)	ACCUSED 14
GREYGUARD INVESTMENTS CC (Represented by JAMES HATUIKULIPI)	ACCUSED 15
CAMBADARA TRUST (Represented by JAMES HATUIKULIPI)	ACCUSED 16
OMHOLO TRUST (Represented by SAKEUS EDWARD TWELITYAAMENA SHANGHALA)	ACCUSED 17
NIGEL VAN WYK	ACCUSED 18

NAMGOMAR PESCA DOCKET LIST OF WITNESSES		
NO.	NAME OF WITNESS:	ADDRESS & CONTACT DETAILS:
1.	Johanness Stefansson	N/A
2.	Destino Perdo	NCB Interpol, Luanda, Angola
3.	Moses Maurihungirire	Windhoek
4.	Andreas Kanyangela	Windhoek
5.	Susanna Swartz	Standard Bank Namibia, Windhoek
6.	Samuel Zambwe	Nedbank Namibia, Windhoek
7.	Wilhelm Eiseb	Windhoek
8.	Himee Kamburona	BIPA
9.	Anna Rossouw	Walvis Bay
10.	Ockert Brits	Walvis Bay
11.	Edingtone Tafirentika	Saunderson & Company Windhoek
12.	Retha Cloete	SGA chartered Accountants Windhoek
13.	Perpetua Jacobs	SGA chartered Accountants Windhoek

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14.	Johannes Neputa	Advanced Accounting Services
15.	Joyce Mbuende	Ministry of Fisheries and Marine Resources Windhoek
16.	Christo October	Windhoek
17.	Maria Mbeeli	Windhoek
18.	Ernst Potgieter	M+Z Group Windhoek
19.	Lionel McPhelan	Spesbona Platinum Select Windhoek
20.	Hedwig Van Heerden	Pupkewitz Honda Windhoek
21.	Jacob Van Lill Barnard	Pupkewitz Toyota Windhoe
22.	Norbert Zimmermann	Zimmermann Garage Windhoek
23.	Hercules Pretorius	Jaguar, Land Rover Windhoek
24.	Patrick De Goede	Windhoek
25.	Deon Swartz	Gunshop, Hidas Center Windhoek
26.	Armand Barnard	Pupkewitz BMW Windhoek
27.	Victoria Shikukumwa	Ministry of Home Affairs Windhoek
28.	Martin Kashaakumwa	Pastor at Engela Parish (ELCIN)
29.	Titus Hatuikulipi	Engela near the Hospital
30.	Nadiema Eberenz	ACSEC Windhoek
31.	Gwynneth Rukoro	Investec CC Windhoek
32.	Anna Erastus	Ministry of Fisheries and Marine Resources Windhoek
33.	Zelnadia Angula	MTC Head Office Windhoek Risk Department
34.	Wycliff Kauuova	ACC
35.	John Malumani	Ministry of Land Reform Windhoek
36.	Tevin Zander	FNB Ausspannplatz Windhoek
37.	Erastus Shilongo	FNB Ausspannplatz Windhoek
38.	Jenene Buekes	Pointbreak (Ashburton) Wealth Management Klein Windhoek
39.	Yamillah Katjirua	Pointbreak (Ashburton) Wealth Management Klein Windhoek
40.	Aretha Burger	Pointbreak (Ashburton) Wealth Management Klein Windhoek
41.	Willem Olivier	ACC
42.	Yvonne Dausab	Ministry of Justice
43.	Werner Weise	Weise Construction & Renovations Windhoek
44.	Ferdinand Baard	NAMFISA,
45.	Henock Nantanga	Windhoek
46.	Louis Du Toit	Agribank
47.	Sarafina Matias	NAMPOL Seeis police station
48.	Manfred Kavita	NAMPOL Seeis police station
49.	James Kleinfield	Al Jazeera Media Network
50.	Anneline Zaaruka	Ministry of Justice
51.	Laili lipumbu	BFS Fund Windhoek
52.	David Moller	D&M Rail Construction Windhoek
53.	Melt Van Schoor	FNB Namibia (Forensic Investigations)
54.	Edwig Theodore	Social Security Commission

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55.	Adell Pay	Esja Holdings (Pty) Ltd Walvisbay
56.	Karl Cloete	ACC
57.	Martinus Mengela	D&M Rail Construction Otjiwarongo
58.	John Buekes	Windhoek
59.	Josef Matyayi	Otiwarongo
60.	Annette Conradie	Windhoek
61.	Herman Meuller	Windhoek
62.	Elizabeth Uupindi	Gobabis
63.	Rorisang Ndolvu	Windhoek
64.	Petrus Niilonga	ACC
65.	Aaron Kalinga	Ministry of Finance
66.	Lukas Nangolo	Windhoek
67.	Lynette Strauss	Swakopmund
68.	Daniel Malherbe	Walvis Bay
69.	Patrick Silishebo	Ministry of Works and Transport Walvisbay
70.	Steven Ambabi	Ministry of Fisheries & Marine Resources Walvisbay
71.	Wilma Saunderson	NAMPORT Walvisbay
72.	Herman Krauze	Walvisbay
73.	Hilde Shilamba	Hollard Insurance, Windhoek
74.	George simataa	Secretary to Cabinet
75.	Patricia Visser	DDE Imports and Exports Walvisbay
76.	Dr. Andre Kingelhoefter	Ministry of Agriculture, Water & Land Reform Gobabis
77.	Apolles Witbeen	Farm Dakota (Omaheke region)
78.	Simson Ekandjo	Ministry of Agriculture, Water & Land Reform Gobabis
79.	Edeberth Serogwe	Ministry of Agriculture, Water & Land Reform Gobabis
80.	Johannes Van Der Merwe	JDE Agri Impliments Otjiwarongo
81.	Christoffel Vermaak	JDE Agri Impliments Otjiwarongo
82.	Alfed Clayton	Profile Investment Holdings (Pty) Ltd Windhoek
83.	Michael Mukete	Windhoek
84.	Kelvin Kaisi	Windhoek
85.	Melindi Fourie	Windhoek
86.	Nichol Koen	Windhoek
87.	Bernadus Xoagub	Windhoek
88.	Masilo Hochobeb	Gobabis
89.	Jobb Kauvi	NAMPOL Scene of Crime Unit Windhoek
90.	Cecilia Nakale	Ministry of Fisheries & Marine Resources
91.	Burgert Terblanhce	Finkenstain
92.	Alleeta Annandale	Elisenheim Estate
93.	Merja Iileka	Windhoek
94.	Rejoice Itembu	Windhoek
95.	Thessa Ndjavera	Windhoek
96.	Hornest Madzivadondo	Crewfield Investments CC Windhoek
97.	Thomas Pade	Windhoek

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98.	Germans Toromba	Gobabis
99.	Rafael Gauli	Gobabis
100.	Lukas Mupupa	Windhoek
101.	Elisha Anton	Gobabis
102.	Stephanus Hogobeb	Omaheke
103.	Theopolina Amadhila	Gobabis
104.	Willem Kotze	Windhoek
105.	Michael Kakove	Windhoek
106.	Erastus Haitengela	Windhoek
107.	Onesmus Nampala	Windhoek
108.	Dep. Comm. Ignasius Nangombe	NAMPOL Firearms department
109.	Josef Mafwila	Bank Windhoek
110.	Dr. Abert Kawana	Ministry of Fisheries and Marine Resources
111.	Rudolf Van Wyk	Divundu
112.	Thimy Diergaardt	Windhoek
113.	Leevi Tshoopara	GIPF Windhoek
114.	Antony Edmunds	Pointbreak (Ashburton) Wealth Management Windhoek
115.	Jeffrey Brown	Windhoek
116.	Izolda Van Wyk	Rehoboth
117.	Vivienne Katjuongua	BIPA
118.	Petros Kangameni	ACC
119.	Richard Theron	Windhoek
120.	Philgensius Kahambundu	Ministry of Justice
121.	Cordula Kahambundu	UNAM Finance department
122.	Fillipus Dala	Ongwediva
123.	Ndaweda Nghiwewelekwa	Engela Ohangwena
124.	Josephine Izaks	Dr Wedder, Kauta & Hoveka Inc
125.	Liana Van Den Berg	Dr Wedder, Kauta & Hoveka Inc
126.	Magano Erkana	Dr Wedder, Kauta & Hoveka Inc
127.	Elizabeth Steenkamp	Dr Wedder, Kauta & Hoveka Inc
128.	Suzanne Leff	Dr Wedder, Kauta & Hoveka Inc
129.	Risa Dreyer	Dr Wedder, Kauta & Hoveka Inc
130.	Nevadia Van Zyl	Dr Wedder, Kauta & Hoveka Inc
131.	Miranda Bosman	Indongo Motors Walvisbay
132.	Annel Stadler	Indongo Auto Windhoek
133.	Rolf Adrian	Adrian & Meyer Jeweler
134.	Christo Platt	STANLIB Namibia
135.	Janene Van Der Heever	Windhoek
136.	Mariette Hofman	Otiwarongo
137.	P.N. Nahambo	NAMPOL Scene of Crime Unit Windhoek
138.	David Nuyoma	Finkenstein Estate
139.	Vaino Nghipondoka	Babyface Investments CC
140.	Armas Amukwiyu	Omuthiya
141.	Evast Kalumbu	Agribank Namibia Windhoek
142.	Lizelle Laubscher	Walvis Bay

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143.	Jan Olivier	Swakopmund
144.	Edmund Gowaseb	Kuisebmond
145.	George Tobias	Windhoek
146.	Paulus Ngalangi	Windhoek
147.	Johannes Brits	Agra Limited
148.	Christiaan Steenkamp	Windhoek
149.	Jurrie Scholtz	Windhoek
150.	Petrus Wilders	Pierewiet Property Valuations
151.	Wayne Buekes	Property Valuations Namibia Ausblick
152.	Sharon Neumbo	Windhoek
153.	Heinrich Schmidt	Windhoek
154.	Marius Alberts	Deloitte & Touche
155.	Melanie Harrison	Deloitte & Touche
156.	Leon Knoetze	Deloitte & Touche
157.	Trevor Caizergues	Deloitte & Touche
158.	Nicoline Badenhorst	Deloitte & Touche
159.	Nelmarie Havinga	Deloitte & Touche
160.	Sean Miller	Deloitte & Touche
161.	Linda Sheehan	Deloitte & Touche
162.	Nigel Gumbo	Deloitte & Touche
163.	Thabo Moloto	Deloitte & Touche
164.	Pieter Badenhorst	Deloitte & Touche
165.	Marius Alberts	Deloitte & Touche

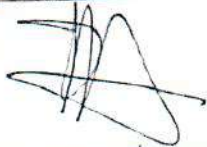

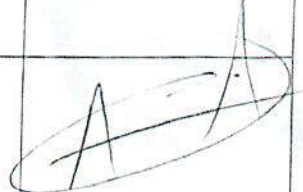

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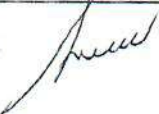
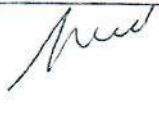
166.	Melanie Harrison	Deloitte & Touche
167.	Leon Knoetze	Deloitte & Touche
168.	Trevor Caizergues	Deloitte & Touche
169.	Nicoline Badenhorst	Deloitte & Touche
170.	Nelmarie Havinga	Deloitte & Touche
171.	Sean Miller	Deloitte & Touche
172.	Linda Sheehan	Deloitte & Touche
173.	Nigel Gumbo	Deloitte & Touche
174.	Thabo Moloto	Deloitte & Touche
175.	Pieter Badenhorst	Deloitte & Touche

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LIST OF WITNESSES DISCLOSED TO THE FOLLOWING LAWYERS ON THE NAMGOMAR DOCKET:

LEGAL REPRESENTATIVE:	COLLECTED BY:	DATE:	SIGNATURE:
1. Trevor Brockerhoff	T.B	28/5/21	
2. Gilroy Kasper (MKK)	Riaan Giesel	28/05/2021	
3. Richard Metcalfe	Roberto Avila	28/05/21	
4. Jermaine Muchali	J. Muchali	07/06/21	

5 Engelbrecht Attorneys  28/05/21. 

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