

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

Managing Judge: Sibeya J  
Next hearing date: 10 August 2021  
Time of Hearing: 14h00  
Roll Type: Case management roll

---

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

**REPLYING 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**

*DMIL*  
*T-S*

GREYGUARD INVESTMENTS CC	TENTH DEFENDANT
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

*DMI*

*FS*

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 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. I have read the answering affidavit deposed to by Mr. Ingvar Júlíusson ("Mr Júlíusson") on behalf of 17<sup>th</sup>-22<sup>nd</sup> defendants and I reply thereto in *seriatim* as set out herein below.
6. This affidavit is not intended to deal with or traverse all allegations in the answering affidavit of the 17<sup>th</sup> to 22<sup>nd</sup> defendants, but it must be read in the light of the facts in my founding affidavit.
7. I do not intend to respond to all the submissions by the 17<sup>th</sup> to 22<sup>nd</sup> defendants and a failure to do so does not mean an acceptance of them.

DMI  
T.S

8. All allegations made in the answering affidavit are placed in dispute in so far as such allegations are-

8.1 contrary to what is herein contained and contained in my founding affidavit;

8.2 inconsistent with the facts and position contained herein; and/or

8.3 not expressly addressed herein; and

8.4 constitutes inadmissible hearsay and opinion evidence.

9. Before I deal with the specific paragraphs in the answering affidavit of the 17<sup>th</sup> to 22<sup>nd</sup> defendants *in seriatim*, I wish to point out that from the answering affidavit of the 17<sup>th</sup> to 22<sup>nd</sup> defendants, they attempt to argue their case as if the issue before the honourable court is whether the applicant has proven them to be guilty of the crimes of which they are accused. I respectfully submit that the guilt of the 17<sup>th</sup> to 22<sup>nd</sup> defendants will be the issue before the criminal trial court. The issue before this Honourable Court is different:

9.1 In terms of section 24(1)(a)(ii) and (b)(ii) of POCA, the applicant merely needs to satisfy the court "*that there are reasonable grounds for believing that a confiscation order may be made*" against the defendants; and

9.2 In terms of section 25(2) of POCA, the court merely needs to be satisfied "*that the facts referred to in section 24(1) appear on the face of it from the application*".

10. The effect of these two provisions, read together, is that the court merely needs to be satisfied that it appears, on the face of it from this application, that there are reasonable

DMI

T.S

grounds for believing that a confiscation order may be made against the defendants.

11. I will first deal with the 17<sup>th</sup> to 22<sup>nd</sup> defendants' basis for their opposition to the making of the restraint of property order under the following headings:

- 11.1 The claim by the 17<sup>th</sup> to 22<sup>nd</sup> defendants that they will never be accused persons before this Honourable Court due to Iceland's alleged refusal to extradite its citizens, therefore the PG has failed to prove that they are to be charged with a criminal offence or that there are reasonable grounds to believe that a confiscation order will be made.
- 11.2 The attack on the credibility of Mr. Stefánsson and the claim by the 17<sup>th</sup> to 22<sup>nd</sup> defendants that he will never testify in Namibia.
- 11.3 The claim that no criminal proceedings are pursued against Saga Investments (Pty) Ltd, the 21<sup>st</sup> defendant and therefore the restraint application against the 21<sup>st</sup> defendant must be dismissed.
- 11.4 Their claim that because common purpose is relied on in the founding papers, accused persons may not be charged with common purpose in two different trials.
- 11.5 Their claim that the criminal conduct was done by Mr. Stefánsson alone, without the knowledge or directions from Samherji.

OMI

T.S

- 11.6 Their claim that since money in the joint account for the sale of the M/V Heinaste, is already secured and therefore no restraint order is needed to protect the money in the joint account.
- 11.7 The claim that no evidence was presented that shows how Samherji improperly benefitted from payment of the Namgomar usage fees.
- 11.8 The claim that Samherji's Namibian businesses are totally separate from Iceland and Samherji is not required to respond to any allegations regarding Samherji companies in foreign jurisdictions against whom no criminal prosecution has been instituted and who will not be criminally charged in Namibia.

The claim that the 17<sup>th</sup> -22<sup>nd</sup> defendants will never be accused persons in the criminal trial.

12. The 17<sup>th</sup> to 22<sup>nd</sup> defendants refer to themselves as "the foreign defendants". This term is misleading. All these defendants are Namibian registered companies.

13. The contention that the directors of the 17<sup>th</sup> to 22<sup>nd</sup> defendants will never be extradited is flawed for the following reasons:

13.1 At least one director of the 17<sup>th</sup> to 22<sup>nd</sup> defendants is being charged in his personal capacity. Their warrants of arrest have been issued as is evident from copies of these warrants attached to the supporting affidavit of Abraham Nikolous Ihalua ("Mr. Ihalua") filed together with this affidavit.

DMT

T.S

13.2 The Republic of Namibia has not made a formal request to Iceland for the extradition of these individuals referred to above. The indictment of 17-22 defendants was only finalized on 21 April 2021. No formal extradition request was made to Iceland before this time as the 17<sup>th</sup> -22<sup>nd</sup> defendants were not liable for extradition before the abovementioned period.

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

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

15. In addition, for purposes of the restraint of property application, the Honourable Court need merely be satisfied that a prosecution is seriously intended and the fact that the directors of 17<sup>th</sup>-22<sup>nd</sup> defendants are outside Namibia, does not prevent me in the meantime from using the remedies provided for in POCA.

16. Furthermore, POCA provides for scenarios where individuals seek to avoid criminal prosecutions, that the applicant may proceed with a confiscation application in their absence.

17. It is respectfully submitted that in light of the above, there is no substance in this point.

The credibility of the state witnesses and the claim that Mr. Stefansson will not testify in Namibia

18. The 17<sup>th</sup> to 22<sup>nd</sup> defendants claim that:

OMI

T.S

18.1 Mr. Stefánsson is a self-confessed criminal with a personal vendetta against Samherji, who abuses cocaine and drugs/alcohol; and

18.2 His evidence is merely an opinion on the Namgomar project and is not evidence of any wrongdoing.

18.3 Mr. Stefánsson will not testify in Namibia;

18.4 The 17<sup>th</sup> to 22<sup>nd</sup> defendants also apply to cross-examine Mr. Stefansson on the merits before the court decides on the merits.

19. The 17<sup>th</sup> to 22<sup>nd</sup> defendants failed to consider the nature of the proceedings and the applicable test that the court needs to apply during restraint of property proceedings.

20. It is entirely inappropriate, at this stage, for the 17<sup>th</sup> to 22<sup>nd</sup> defendants to expect the court to consider the disputes of fact and the credibility of witnesses.

#### The charging of Saga Investment (Pty) Ltd ("Saga Investment")

21. The omission of Saga Investment in the decision was just an oversight and I confirm that Saga Investment will be charged together with the 17<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup> and 22<sup>nd</sup> defendants. The 21<sup>st</sup> defendant will be added to the indictment as soon as the proceedings commences in the criminal court.

#### Common purpose

22. The 17<sup>th</sup> to 22<sup>nd</sup> defendants claim that accused persons may not be charged with common purpose in two different trials. There is no basis for such a contention and it is not sound in law.

DMI  
T.S



The money in the joint accounts for the sale of the M/V Heinaste, the money is already secured, no restraint order is needed to protect it.

23. In as far as the 20<sup>th</sup> defendant agrees that the money stays in the joint account until the finalization of the confiscation enquiry, a restraint order will not be necessary in relation to the money in the joint account. However, should this not be agreed to, then the restraint of property order should be granted to secure the money in the account up until finalization of the confiscation enquiry.

24. Clause 6.9 of the Memorandum of Understanding says that the net proceeds shall be deemed to be property duly seized under section 28 of POCA. In terms of section 28(2) of POCA property seized under subsection 28(1) of POCA must be dealt with in accordance with the directions of the High Court when a restraint order is subsequently made.

25. In addition, the applicant is entitled to have the money seized under a seizure order which is binding on all the world and which vests the High Court with all the powers under POCA to deal with it.

The Namgomar award of quotas met the requirements of the Marine Resources Act, 2000.

26. The allegation that any interpretation that the awarding of quotas to Namgomar (Namibia) (Pty) Ltd ("Namgomar") met the legal requirements of the Marine Resources Act, is absurd. An official seal on an illegal and non-binding memorandum of

OMI

T.S

understanding does not render the document a legally binding fisheries agreement, but renders all actions flowing therefrom, illegal *ab initio*.

No evidence was presented that shows how Samherji improperly benefitted from payment of the Namgomar usage fees to foreign nominees.

27. It has been set out in my founding affidavit that Samherji benefitted from this corruption scheme in that it accessed the illegally awarded quotas to with a total market value of N\$ 547 600 000, which they would not have had access to, were it not for the corrupt activities in Namibia. I confirm this.

The criminal conduct was done by Mr. Stefánsson alone, without the knowledge or directions from Samherji.

28. Mr. Stefánsson acted as director and servant of the 17<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup> and 22<sup>nd</sup> defendants in the exercise of his powers or in the performance of his duties as their director or servant and in order to further their interests. These defendants are accordingly vicariously criminally liable for Mr. Stefánsson's conduct even if he acted alone, which he did not.

29. Mr. Stefánsson implicated a wide range of other directors and servants of the defendants and indeed of the entire Samherji group. At this stage, the question is not whether his evidence is accepted. The question under sections 24 and 25 of POCA is merely whether it appears, on the face of all the evidence, including that of Mr Stefánsson, that there are reasonable grounds for believing that confiscation orders will be made against the 17<sup>th</sup> to 22<sup>nd</sup> defendants. The applicant clearly satisfies this test.

DML

T.S

30. It is moreover, in any event, most unlikely that Mr Stefánsson would have engaged in the large-scale fraud and corruption for the benefit of the defendants entirely on his own and without the knowledge and cooperation of his colleagues.

31. Furthermore, from the facts as set out in my founding affidavit it is evident that the other directors of the 17<sup>th</sup> to 22<sup>nd</sup> defendants were well aware of the corrupt scheme in relation to the Namgomar allocation of quotas.

32. It is evident from the email exchange:

32.1 8 March 2014 between Mr Stefánsson and Mr James Hatuikulipi, which was shared with Mr. Thorstein, Mr. Adalsteinn and Mr. Olafsson. These emails made it very clear that all of the defendants needed the co-operation of the Ministers of both Namibia and Angola to make their scheme successful.

32.2 29 April 2019 where Irene Pascal and Mr Árnason were clearly aware of the scheme to pay 75% of the usage fee in respect of Namgomar to other entities

33. In addition to these emails, Mr. Júlíusson further confirms in his affidavit that he was aware that not all the usage fee as per the catching agreement between Esja Holding and Namgomar were to be paid to Namgomar and he subsequently made payments from foreign accounts to Tundavala.

34. It was further discovered from translated emails retrieved from Samherji's server in Iceland that the directors of the 17<sup>th</sup> to 22<sup>nd</sup> defendants were well aware of the scheme. The relevant translated emails are attached to the affidavit of Mr. Cloete. I wish to point out to the Honourable Court that the affidavit that the ACC received from the person who

OMI

T-S

extracted the emails from the server of Samherji, Finnbogi Reynisson ("Mr Reynisson"), are defective. The ACC have requested the Icelandic authorities to rectify the defects and the rule compliant statement will be filed as soon as the ACC receive it from Iceland. I summarize the emails below:

- 34.1 On 12 December 2011 an email (ANI4) was sent from Mr. Stefánsson to Mr Helgason giving an update on the progress he was making in Namibia. He reported that:
- 34.1.1 the son - in - law (presumably referring to Mr. Tamson Hatuikulipi) of the Minister, Mr Esau, got the sea frozen project earlier from him and that he would take it to Mr. Esau.
- 34.1.2 Later Mr Tamson Hatuikulipi returned to him and told him that Mr Esau was not home and when he returns from South African he would be going to his farm. Mr. Esau's wife, Mrs. Swamma Esau undertook to take the project to the farm to show him the project.
- 34.1.3 It was emphasised (presumably referring to Samherji) that they would be taken care of and they would meet Mr. Tamson Hatuikulipi again with a possible draft of an offer.
- 34.1.4 He explained that there are a lot of things that they (presumably referring to Mr. Esau, his wife, his daughter and Mr Tamson Hatuikulipi) may mean with this, but it [does not mean] using Mr.

OMI

T.S

Tamson Hatuikulipi or cheating, but to make something good of it and employment for Mr. Tamson Hatuikulipi and income etc.

34.1.5 They will then see what comes out of it, but this is one of the routes they are taking.

34.2 On 14 December 2011 Mr Stefánsson wrote another email (ANI6) to Mr. Helgason and he copied Mr Júlíusson into it, where he stated that:

34.2.1 Samherji's lawyer is expected that night and the target is to complete the agreement and Memorandum of Understanding ("MOU") as soon as possible, preferably the next day.

34.2.2 The son – in - law (presumably referring to Mr Tamson Hatuikulipi) will then follow - up on the rest, that is to say the sea-freeze project that was created for him and the Minister.

34.2.3 The Minister will look at it over the week-end at the farm.

34.3 On 16 December 2011, Mr. Helgason sent an email (ANI7) to both Mr. Stefánsson and Mr. Júlíusson with the subject line "Moon" where he stated:

*"... Greetings At some point it may make a difference to bribe one of the leaders of these men."*

34.4 On 17 December 2011 Mr. Stefánsson wrote an email (ANI8) to Mr. Helgason and Mr. Júlíusson with an MOU attached and where he stated that:

DMI

T-S

- 34.4.1 Attached to the email is the MOU which will be signed with the son-in-law.
- 34.4.2 Mr. Tamson Hatuikulipi will take this to the Minister (presumably referring to Mr. Esau), who will receive it the next day.
- 34.4.3 The underlying idea is that he (Mr. Esau) should be assured that he (Mr. Esau) will get something if he brings something to them (Samherji).
- 34.5 On 23 December 2011, Mr. Stefánsson wrote an email (ANI9) to Mr Helgason and Mr. Júlíusson, stating *inter alia* that:
- 34.5.1 The son - in - law (presumably referring to Mr Tamson Hatuikulipi) and "Sakky" (the lawyer who is the President's advisor) are working on other quota matters regarding horse [mackerel] (Cuba, experimental quota, etc.).
- 34.5.2 The plan is that they will meet with the Fisheries Minister the next week to take that matter forward.
- 34.5.3 The interests of the nation of Namibia are being used as a guiding light.
- 34.6 On 24 January 2012, Mr. Stefánsson wrote an email (ANI10) to Mr Helgason and Mr. Júlíusson stating that:

DMJ

T-S

- 34.6.1 The situation with the son - in - law (presumably referring to Mr. Tamson Hatuikulipi) is that various figures have been mentioned and considered.
- 34.6.2 Mr. James Hatuikulipi has also assisted and tried to get things in proper order.
- 34.6.3 It is the understanding of both parties that this is only a payment to keep him going, encourage him, but later he will be paid for his quota and what he brings to the table.
- 34.6.4 After figures from 150,000 to 450,000 have been mentioned he should be satisfied with N\$ 300,000.
- 34.6.5 He asked both Mr. Helgason and Mr. Júlíusson what they thought of this.
- 34.7 On 9 February 2012, Mr. Stefánsson wrote an email (ANI11) to Mr Helgason and Mr Júlíusson, with the subject line "JV2- points" where he stated that the Joint Venture No. 2 is having a board meeting that evening. From the email trail, the following transpired:
- 34.7.1 Mr. Helgason replied and asked if they can do anything to influence this meeting.
- 34.7.2 Mr. Stefánsson replied and said "Further payments?"
- 34.7.3 Mr. Helgason replied and asked Mr. Stefánsson what he meant.

DML  
T.S

- 34.7.4 Mr Stefánsson replied that he meant further payments to members of the board or exerting pressure through persons.
- 34.7.5 Mr. Helgason replied that he meant whether it would be possible to use threats.
- 34.8 On 24 February 2012, Mr. Stefánsson wrote an email (ANI12) to Mr Helgason with the subject line "Put in process" where he stated that Mr. Tamson Hatuikulipi has been paid directly from abroad.
- 34.9 On 28 August 2014 Mr Stefánsson (ANI13) wrote an email to Mr Júlíusson asking if he can sign the agreement and send it back (to him) as he has to send a copy to 'the boys'. He further stated that Lara (Halldorsdottir) is sending him the original.
- 34.10 On 30 October 2014, Mr Stefánsson wrote an email (ANI14) to Mr Júlíusson asking him:
- 34.10.1 To indicate to whom "the boys" should address the invoice to the company in Cyprus as they ("presumably referring to the boys") no longer have the information and they cannot find the last invoice; and
- 34.10.2 Whether it is not just a consulting fee.

DMJ  
T-S



- 34.11 Mr. Júlíusson emailed Ms Irene Pascual and requested her to send Mr Stefánsson the information, and the invoicing details of Esja Seafood Limited in Cyprus.
- 34.12 On 12 January 2016 Mr.Stefánsson wrote an email (ANI 15) to Mr Júlíusson stating *inter alia* that:
- 34.12.1 He should see the invoice and the message (presumably from Mr. Petrus Aashongo);
  - 34.12.2 That they need to pay the rest at the end of January (2016) and then they will deduct the USD 300 000 that was already paid;
  - 34.12.3 He requests confirmation of the payment when it is ready;
  - 34.12.4 They (Samherji) was supposed to pay 25% when the quota was finished for the year ended.
- 34.13 The next day, Mr Júlíusson by email (ANI15) asked him what he was paying for. And Mr Stefánsson replied via email to Mr Júlíusson on the same day, stating that:
- 34.13.1 The table below sets out the payments made to Namgomar for 8 000mt in Namibia; and
  - 34.13.2 They (Samherji) pay at their end 75%.
  - 34.13.3 He set out in the table the percentage under the 75% to be paid at their end:

DMJ  
T-S

Prices/USD	25%	75%	100%
-700	3.75%	11.25%	15.00%
700-800	4.00%	12.00%	16.00%
800-900	4.50%	13.50%	18.00%
900-1000	4.75%	14.25%	19.00%

34.13.4 He further stated that the above has already been paid at their end (Mr Júlíusson) for 2015 for 8000 mt.

34.13.5 On 15 April 2015 the 25% payment was USD 256 500 which was already paid.

34.13.6 In January 2016 the 25% payment was USD 216 00 (which was due for payment)

34.13.7 The USD 300 000 paid in advance will be deducted from the last payment.

34.13.8 the abovementioned USD 216 000 on an average of USD 800 per tonne for 8 000 mt (which is 25% of the payment); and

DMI  
T-S

34.13.9 the abovementioned USD 256 500 on an average of USD 900 per tonne for 8 000 mt (which is 25% of the payment); and

34.14 On 12 February 2015, Mr Júlíusson (ANI15) set out the following payments to Tundavala:

34.14.1 On 4 September 2014 USD 150 000;

34.14.2 On 11 November 2014 USD 325 000;

34.14.3 On 26 January 2015 USD 447 488.

34.14.4 On 15 January 2015 USD 66 078 was paid in Angola.

34.15 Mr Helgason replied to Mr. Júlíusson on the same day (ANI15) that:

34.15.1 Things are quite busy around the (M/V) Heinaste;

34.15.2 The entire quota of 7 000mt for Namgomar (Namibia) (Pty) Ltd was harvested in 2014;

34.15.3 The charge for the above (in Iceland) is USD 922 488, he has no explanation for the USD 66 078 yet; In addition to this at least USD 304 000 was paid in Namibia for this quota;

34.15.4 He asked him to send him more information on this as more information is still missing to reconcile the quota as it is only USD 175 per tonne;

OMI  
T-S

34.15.5 He asked if all quotas charges for 2014 do not need to be reconciled; and

34.15.6 For a review of what was paid in 2015.

35. On the same day, Mr Júlíusson wrote an email in reply to Mr. Helgason stating that:

35.1 The USD 66 078 was paid to the Angolan authorities so that they can proceed there;

35.2 He does not have a statement of what was paid in Namibia;

35.3 He cannot see that it has been entered into the accounts;

35.4 The question is whether Mr. Ingo (Petursson) has information on this;

35.5 The expense of USD 922 488 of Esja Seafood (Limited) will be shared between (M/V) Heinaste and (M/V) Alina.

36. On 16 February 2015, Mr. Stefánsson wrote an email (ANI16) to Mr. Helgason confirming the abovementioned payments to Tundavala.

37. From the above, it can be concluded that:

37.1 Mr. Helgason and Mr. Júlíusson were aware of the fact that Mr. Tamson Hatuikulipi was the son-in-law of Mr. Esau;

37.2 Mr. Helgason advised Mr. Stefánsson to bribe Namibian officials as stated in my founding affidavit;

OMI  
T.S

- 37.3 Mr. Helgason was informed by Mr. Stefánsson that he informed Mr. Tamson Hatuikulipi and Mr. Esau will be "taken care" of;
- 37.4 Employment and income for Mr. Tamson Hatuikulipi were envisaged;
- 37.5 Mr. Esau considered and discussed the above, during weekends and at his farm, with Mr. Tamson Hatuikulipi, who acted as a contact between Mr. Esau and Samherji;
- 37.6 Mr. Esau was aware of the MOU between Mr. Tamson Hatuikulipi and the underlying idea with this was that Mr. Esau should have been assured thereof that he will get something in return for bringing something to Samherji.
- 37.7 Various figures were discussed with Mr. Tamson Hatuikulipi (as bribes concealed in this MOU), which Mr. James Hatuikulipi assisted them with;
- 37.8 The above payment was made to keep Mr. Esau, alternatively Mr. Tamson Hatuikulipi going, to encourage him and later, in addition to this, he will be paid for the quotas he brings to the table.
- 37.9 He (Mr. Esau, alternatively Mr. Tamson Hatuikulipi) should be satisfied with an (upfront) payment of N\$ 300 000.
- 37.10 Both Mr. Helgason and Mr. Júlíusson were to advise Mr. Stefánsson as to what they think of this.
- 37.11 Mr. Helgason advised Mr. Stefánsson to use threats to exert pressure on JV-2 to influence their Board Meeting, of which Mr. Júlíusson was aware.

OML  
T-S

37.12 Mr. Helgason was aware thereof that Mr. Tamson Hatuikulipi has been paid directly from abroad;

37.13 The total payments for quota for 7 000 mt to Namgomar (Namibia) (Pty) Ltd 2014 was USD 922 488 (to Tundavala) with an additional USD 304 000 in Namibia, which indicates that 75% was paid outside of Namibia to Tundavala and 25% in Namibia.

38. With regard to Mr. Árnason, the email evidence as referred to by Mr. Cloete is set out below.

38.1 On 10 February 2016, Mr Pétursson sent an email (ANI17) to Ms Arna Bryndis McClure ("Ms. McClure") indicating to her that:

38.1.1 He sends her a contract that was recently entered into between JTH Trading CC and Mermaria Seafood Namibia (Pty) Ltd ("Mermaria Seafood").

38.1.2 He asked her whether she keeps track of all the contracts in Namibia and has an exhaustive list of all contracts in force in Namibia;

38.2 On 12 February 2016, Ms McClure sent this email to Mr. Helgason stating that:

38.2.1 This is the "consulting agreement" between JTH Trading CC and Mermaria Seafood that Mr. Pétursson sent her.

38.2.2 She has not seen it before.

OMI  
TS

- 38.2.3 Service is negotiated in the agreement until 2018.
- 38.2.4 Nowhere is the fee tied to any limits.
- 38.2.5 They agree to accept services and pay for them in accordance with the issued invoices.
- 38.2.6 There is no agreement on hourly rates, ceiling (rates), discounts (rates) etc.
- 38.3 On 28 November 2016 Ms McClure also sent the above email (ANI17) with the "consulting agreement" between JTH Trading CC and Mermaria Seafood to Mr. Arnason stating that:
- 38.3.1 This is the agreement that she sent to Mr Helgason back in the day (on 12 February 2016).
- 38.3.2 This agreement was never terminated.
- 38.3.3 She did not like it at all.
- 38.4 Mr Arnason asked Ms McClure what was Mr. Helgason's answer to this and he asked her whether something was done about this at that point in time. To the above email Ms McClure replied that:
- 38.4.1 Nothing was done about this;
- 38.4.2 If she remembers correctly, he thought it was crazy, but they discussed it further on the telephone;

DMB  
T-S

- 38.4.3 She asked if this (entity i.e. JTH Trading CC) is not Mr. James Hatuikulipi's and the son -in-law's (presumably referring to Mr. Tamson Hatuikulipi's).
- 38.4.4 She stated that "this is in reality an open cheque".
- 38.5 Mr. Árnason replied to her on the same day and stated that it is nonsense and that he will talk to them. On the same day, 28 November 2016 Mr. Árnason also corresponded with Mr. Pétursson via email. Mr. Árnason asked Mr. Pétursson in the email:
- 38.5.1 Who JTH Trading CC is and who owns it;
- 38.5.2 What is being paid from there.
- 38.6 Mr Pétursson replied (ANI18) *inter alia* that:
- 38.6.1 These are "the lads" (Mr. Tamson Hatuikulipi and Mr James Hatuikulipi);
- 38.6.2 The payment is for consultancy agreement that is in effect currently until year end 2018.
39. From the above, it is evident that:
- 39.1 Mr. Árnason was aware of the "consultancy agreements" between JTH Trading CC and Erongo Clearing and Forwarding CC;

OMI  
T.S



39.2 That these consultancy agreements are connected to either Mr. Tamson Hatuikulipi or Mr. James Hatuikulipi;

39.3 That these consultancy agreements were in effect until year end 2018;

39.4 He was aware thereof that Ms. McClure regarded these agreements as "an open cheque book".

40. On 5 September 2016 (ANI19) an invoice from Fisheries Observer Agency was sent from Mr. Ricardo Gustavo to Mr Árnason. Mr. Árnason asked Mr. Gustavo to issue an invoice from Namgomar to Mermaria Seafood. The invoice was then sent again by Mr. Gustavo to Mr Helgason and Mr Júlíusson was copied into the email.

41. On 13 September 2016 Mr Júlíusson sent the abovementioned to Mr Ólaffson and Ms Pascual. On the same day Mr Ólaffson replied to Mr Júlíusson and Mr. Árnason that:

41.1 He talked to Mr James Hatuikulipi and he asked them to run the payments relating to Namgomar Namibia (quotas) through their "NED account" (presumably referring to Nedbank).

41.2 That there is clearly someone who is "an open book" at First National Bank Namibia ("FNB").

42. Later, at 12h45 on the same day, it can be seen from the email trail that Mr Júlíusson replied to Mr Ólaffson and Mr. Árnason that they (Samherji) are subsequently going to open bank accounts for Esja Holding (Pty) Ltd and for Mermaria Seafood.

43. From the above, it is evident that:

DMI  
T-S

- 43.1 Mr. Árnason corresponded with Mr. Ricardo directly regarding invoices from Namgomar to Mermaria Seafood;
- 43.2 He was advised by Mr. Ólaffson that there is someone at FNB that may expose the payments running through accounts at FNB;
- 43.3 Due to the above, Mr. Júlíusson intended to open other bank accounts for both Esja Holding (Pty) Ltd and Mermaria Seafood at this bank.
- 43.4 That payments made from Mermaria Seafood in relation to the Namgomar Namibia (Pty) Ltd scheme, was criminal in nature.

44. From the above and from what I stated in my founding affidavit, reasonable grounds exist to believe that Mr. Stefánsson did not act alone.

Samherji's Namibian businesses are totally separate from Iceland and Samherji is not required to respond to any allegations regarding Samherji companies in foreign jurisdictions against whom no criminal prosecution has been instituted and who will not be criminally charged in Namibia.

45. Even if no criminal prosecution has been instituted against the Samherji companies in foreign jurisdictions, the allegations regarding these companies form part of the factual matrix of the allegations against the defendants. The evidence in my founding affidavit and above clearly set out how the Samherji companies in other jurisdictions made payments to the other defendants in accounts in foreign jurisdiction.

**AD: THE FOUNDING AFFIDAVIT**

DMIL

T.S

46. I now intend to deal *seriatim* with the contents of the deponent's answering affidavit.

**AD PARAGRAPH 1 THEREOF:**

47. I cannot admit or deny the contents hereof as it does not fall within my personal knowledge.

**AD PARAGRAPH 2 THEREOF:**

48. Save to take note thereof that the deponent alleges to depose to the affidavit on behalf of the 17<sup>th</sup> - 22<sup>nd</sup> defendants, the remainder thereof is denied. The allegation in this paragraph is based on the opinion of the deponent without referring to any facts to support the contention.

**AD PARAGRAPHS 2.1 AND 2.2 THEREOF:**

49. I take note of the contents of these paragraphs.

**AD PARAGRAPH 2.3 THEREOF:**

50. First of all, I do not have any investigation powers. The deponent, who was instrumental in relation to payments to Tundavala was well aware of the arrangement between Samherji and the other defendants regarding the 75% of the payments outside of Namibia. The fact that the end user of the funds in the Tundavala account was not established when the application was prepared does not detract from the fact that there was such an arrangement between Samherji and the other defendants.

**AD PARAGRAPH 2.4 THEREOF:**

DMJ

T-S

51. The contents of this paragraph are denied. It is a mere opinion of the deponent and does not detract from the test in the restraint of property application which I set out above.

**AD PARAGRAPHS 2.5 AND 2.6 THEREOF:**

52. The contents of this paragraph are denied and are yet again the opinion of the deponent. There is sufficient information to prove that the Samherji companies made payments to the other defendants in order to obtain the benefit of the Namgomar agreement. Both Mr Esau and Mr Shanghala were Ministers in Namibia.

**AD PARAGRAPHS 3, 3.1 TO 3.1.2 THEREOF:**

53. The contents of this paragraph are denied for the reasons already stated above. I am not responsible to request extraditions from another country and no formal request was made to Iceland as claimed by the deponent.

**AD PARAGRAPH 3.1.3 THEREOF:**

54. Not all the defendants that are incarcerated applied for bail.

**AD PARAGRAPH 3.1.4 THEREOF:**

55. I deny that this falls within the personal knowledge of the deponent and are mere speculative.

**AD PARAGRAPH 3.1.5 THEREOF:**

56. I take note hereof, but deny that extradition is necessary in order for the

OMI  
T-S

Honourable Court to confirm the restraint of property order for the reasons already set out above.

**AD PARAGRAPHS 3.1.6 AND 3.1.7 THEREOF:**

57. I admit that the defendants acted in common purpose but I deny that I need to charge all the defendants at the same trial.

**AD PARAGRAPH 3.1.8 THEREOF:**

58. I deny that I am required for purposes of a restraint application to make out a case for two separate trials.

**AD PARAGRAPH 3.2 THEREOF:**

59. I deny the contents hereof. There is sufficient evidence without the evidence of Mr Stefansson to convict all the defendants of the offences as referred to in my founding affidavit

60. Deponent provides no basis in this paragraph or anywhere else in his affidavit on why Mr Stefansson's evidence will be rejected or why he will not testify in Namibia. Mr. Stefansson has indicated that he will come to testify.

61. The allegations to this effect by 17<sup>th</sup> - 22<sup>nd</sup> defendants are speculative and ignores the evidence set out in my founding affidavit.

**AD PARAGRAPHS 3.2.1 TO 3.2.4 THEREOF:**

62. The prosecutors dealing with the criminal prosecution will decide who they will call

OMI  
T-S

as witnesses and under what circumstance those witnesses will testify and that decision does not negate the requirement of a restraint of property application. Mr Stefánsson did indicate that he will come to testify in the criminal matter.

**AD PARAGRAPHS 3.2.5 TO 3.2.9 THEREOF:**

63. I cannot admit or deny these allegations as they are speculative and constitute inadmissible hearsay and opinion evidence.

**AD PARAGRAPHS 3.2.10 AND 3.2.11 THEREOF:**

64. I take note of these allegations. The deponent had an opportunity to point out any factual contradictions in the evidence of Mr Stefánsson but elected only to attack the character of Mr Stefánsson. Whether Mr Stefánsson is going to be charged or whether he is going to be a section 204 of the CPA witness still needs to be decided by the prosecution in the criminal trial.

**AD PARAGRAPH 3.3 THEREOF:**

65. I deny the contents of this paragraph for reason already set out above.

**AD PARAGRAPHS 3.3.1 AND 3.3.2 THEREOF:**

66. I deny the contents hereof. The email correspondence to which I referred to above, clearly confirms that the directors of the 17<sup>th</sup> to 22<sup>nd</sup> defendants were well aware of the criminal conduct of Samherji in Namibia and Mr Stefansson also implicated them in his affidavit.

**AD PARAGRAPH 3.3.3 THEREOF:**

OMI  
T-S

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

**AD PARAGRAPH 3.4 THEREOF:**

68. I deny the contents hereof for the reasons already set out above. There was already a decision taken to prosecute the 17<sup>th</sup> to 22<sup>nd</sup> defendants.

**AD PARAGPRAH 3.4.1 THEREOF:**

69. I take note of the contents of the paragraph and reiterate that the prosecution of the 17<sup>th</sup> - 22<sup>nd</sup> defendants are seriously intended.

**AD PARAGRAPHS 3.4.2 TO 3.4.3.4 THEREOF:**

70. I take note hereof.

**AD PARAGRAPH 3.4.3.5 THEREOF:**

71. I take note of the first two sentences of this paragraph, but deny the rest of the contents thereof.

72. There is no basis for the allegation that I must have sought extradition at an earlier stage or at the time that the other defendants were arrested. Furthermore, the deponent ignores my other statements under oath as per par. 53.1. and 53.2 of my founding affidavit regarding the unidentified nature of the whereabouts of the directors of the 17<sup>th</sup> - 22<sup>nd</sup> defendants.

**AD PARAGRAPHS 3.4.3.6 AND 3.4.3.7 THEREOF:**

73. I take note of the contents of these paragraphs.

DMIL  
T-S

**AD PARAGRAPH 3.4.3.8 THEREOF:**

74. I deny the contents of this paragraph. Part of any extradition process is that the charges against the directors of the 17<sup>th</sup> -22<sup>nd</sup> defendants should be finalised before the process moves on to the next phase. This was done and a decision was made on 4 February 2021, as is conceded to by the deponent in par. 3.4.3.1.

75. Furthermore, the addresses of Mr Júlíusson for the 17<sup>th</sup> - 22<sup>nd</sup> defendants on the company secretarial documentation is indicated as:

75.1 In relation to the 17<sup>th</sup> defendant, on the BIPA documentation dated 18 May 2017 his address is indicated as in Limassol, Cyprus.

75.2 For the 21<sup>st</sup> and 18<sup>th</sup> defendants his address is Sonnenland, Maspalomas, in Gran Canaria in Spain;

75.3 For the 19<sup>th</sup> and 20<sup>th</sup> defendants his address is indicated as Las Palmas, Gran Canaria in Spain;

75.4 According to the information of DNB bank, his residential address is either in Las Palmas; Gran Canaria, Canary Islands, Spain, or in Limassol; Cyprus;

75.5 However, the deponent's current address at the time of the commissioning of his founding affidavit remains a mystery as he does not disclose to this Honourable Court where he currently resides;

75.6 The answering affidavit was signed and commissioned in Brussels.

76. Mr. Arnasson's residential address is stated as:

OMI  
T-S



76.1 For the 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> defendants it is indicated as Sonnenland, Maspalomas, in Gran Canaria in Spain.

76.2 For the 18<sup>th</sup> and 21<sup>st</sup> defendants in Los Tinos; Sonnenland; Gran Canaria; Spain;

76.3 His current address remains a mystery as he did not disclose his current residential address in his confirmatory affidavit, however, his affidavit was signed and commissioned in London, England.

77. From the above, it is evident that the variety of addresses of the directors of 17<sup>th</sup> - 22<sup>nd</sup> defendants make it difficult to ascertain exactly where they are currently residing.

**AD PARAGRAPH 3.4.3.9 THEREOF:**

78. I take note hereof but refer to what I stated above in relation to extradition.

**AD PARAGRAPH 3.4.3.10 THEREOF:**

79. I take note of the contents of this paragraph which is a clear indication that there is a serious attempt to secure the foreign directors' presence in Namibia.

**AD PARAGRAPH 3.4.3.11 THEREOF:**

80. I deny the contents hereof for the reasons already set out above. Iceland has no jurisdiction to refuse extradition if the foreign directors are not within its jurisdiction.

**AD PARAGRAPHS 3.4.3.12 AND 3.4.3.13 THEREOF:**

81. I deny the content hereof. There is no basis to conclude that the indictment of the directors of 17<sup>th</sup>- 22<sup>nd</sup> defendants has been unsuccessful for the reasons already stated

DMJ  
T-S

above.

82. Furthermore, I have duly demonstrated to the Honourable Court in my founding affidavit and for the reasons already set out above, that there is a serious intention to prosecute the 17<sup>th</sup> -22<sup>nd</sup> defendants.

**AD PARAGRAPH 3.4.3.14 THEREOF:**

83. I deny that the 17<sup>th</sup> to 22<sup>nd</sup> defendants are innocent. The deponent made quite a big issue about wanting to test Mr Stefánsson's version under cross – examination, but at the same time he is not willing to come to Namibia to put his and the other Samherji' directors' versions before the criminal trial court.

**AD PARAGRAPH 3.4.3.15 THEREOF:**

84. I deny the contents of this paragraph for reasons already stated above. Namibia will use all available avenues to extradite the directors involved and will use all mechanisms available to ensure that they are prosecuted.

**AD PARAGRAPHS 3.5; 3.5.1 TO3.5.5.2 THEREOF:**

85. I deny the contents of this paragraph. The 21<sup>st</sup> defendant can be added to the indictment as a defendant and formed part of the racketeering enterprise. If one or more of the defendants falls away for any reasons, there will be no prohibition to continue against the remaining defendants.

**AD PARAGRAPHS 3.6; 3.6.1 TO3.6.6 THEREOF:**

85.1 I take note of the contents of these paragraphs in as far as it correctly reflects the

OMI  
T-S

position in relation to the M/V Heinaste

**AD PARAGRAPH 3.6.7 THEREOF:**

86. I deny the contents of this paragraph and referred to what I stated above. There is no basis for the excluding of the proceeds of the sale of the M/V Heinaste. Prosecution of 17<sup>th</sup> -22<sup>nd</sup> defendants is seriously intended as set out above and the proceeds of the sale are (by agreement) "... from time to time .... deemed to be property duly seized under the (same) Notice of Seizure of the Fishing Vessel Heinaste in terms of section 28 of POCA....".

**AD PARAGRAPHS 4, 5, 6, 7 AND8 THEREOF:**

87. I deny that the global turn orver of Samherji has any relevance to the corrupt activities as set out in my founding affidavit. I further cannot admit or deny the remainder of the allegations in these paragraphs as it does not fall within my personal knowledge.

**AD PARAGRAPH 9THEREOF:**

88. I deny the content hereof. Mr. Baldvinsson was the CEO of Samheri Hf at all relevant times and as is common practice, the board of directors act through its CEO.

**AD PARAGRAPHS 10 AND10.1 THEREOF:**

89. In the absence of any supporting documents I cannot admit or deny these paragraphs.

**AD PARAGRAPH 10.2 THEREOF:**

OMI  
T-S

90. I confirm the contents hereof.

**AD PARAGRAPH 10.3 THEREOF:**

91. I confirm the contents of the first four sentences of this paragraph and that Mr. Júlíusson and Mrs McClure were appointed as directors on 12 August 2016 that Mr. Stefansson resigned on 20 December 2016. However, I deny the rest of the contents of the paragraph. In amplification of my denial I state that:

91.1 Mr Helgason did not resign as director on 30 October 2012. On the company documents he was still a director on 15 May 2013 together with Mr. Stefánsson.

91.2 Furthermore, as per the AFS for the year ended December 2015, the key management members were Mr. Júlíusson, Mr Arnason; Ms McClure together with Mr. Stefansson, and for the year ended December 2017 they are all of the above, except Mr. Stefansson.

91.3 18<sup>th</sup> defendant's name was changed to Mermaria Seafood on 9 February 2015.

**AD PARAGRAPH 10.4 THEREOF:**

92. I confirm the content of this paragraph, but cannot admit or deny the date of the name change or whether Mr. Júlíusson resigned as director or the date thereof as I have no personal knowledge of this. I further add that no supporting documentation has been attached by 17<sup>th</sup>- 22<sup>nd</sup> defendants in this regard.

**AD PARAGRAPH 10.5 THEREOF:**

93. I confirm the content of this paragraph, but cannot admit or deny the date when

DMJ  
T-S

17<sup>th</sup> defendant acquired its shares in 20<sup>th</sup> defendant as I have no personal knowledge of this. I further add that no supporting documentation has been attached by 17<sup>th</sup> - 22<sup>nd</sup> defendants in this regard.

**AD PARAGRAPH 10.5.1 THEREOF:**

94. I take note thereof that a name change took place from Shelfco Investments One Six Nine (Pty) Ltd to Heinaste Investments (Namibia) Pty Ltd., however I cannot admit or deny the date of the name change nor the exact shareholding of the Namibian joint venture companies. I further add that no supporting documentation has been attached by 17<sup>th</sup> -22<sup>nd</sup> defendants in this regard.

**AD PARAGRAPHS 10.5.2 TO 10.5.8 THEREOF:**

95. I take note hereof. I further add that no supporting documentation has been attached by 17<sup>th</sup> -22<sup>nd</sup> defendants in this regard.

**AD PARAGRAPH 10.6 THEREOF:**

96. I deny the contents hereof for reason already referred to above.

**AD PARAGRAPH 10.7 THEREOF:**

97. I confirm the contents of this paragraph with regard to:

97.1 The fact of its name change from Tidle Wave Investments Eighty-Seven (Pty) Ltd to Esja Investments (Pty) Ltd;

97.2 Mr. Júlíusson being a director thereof;

BMI

T-S

97.3 That it is a minority shareholder in Arcticnam Fishing (Pty) Ltd with 49% shareholding, and with Sinco Fishing (Pty) Ltd; Yukor Fishing JV (Pty) Ltd and Epango Fishing (Pty) Ltd with 51% shareholding.

98. I further add that no supporting documentation has been attached by 17<sup>th</sup> - 22<sup>nd</sup> defendants in this regard.

**AD PARAGRAPH 11 THEREOF:**

99. I deny the contents of this paragraph and refer to what I stated above Any allegations of contradictory versions by Mr. Stefánsson should be properly pleaded. Bare allegations do not suffice. Annexures J-5 – Annexures J-11 to the answering affidavit also contains inadmissible hearsay and opinion evidence.

**AD PARAGRAPH 12 THEREOF:**

100. I take note of the allegation that Mr. Stefánsson managed some of Samherji's business in Namibia during 2011 – 2016. However, I deny the allegation that Mr. Stefánsson managed the business autonomously. The allegations in the remainder of this paragraph constitute hearsay evidence as it is not evident if the deponent had any knowledge thereof.

**AD PARAGRAPHS 13, 14 AND 15 AND 16 THEREOF:**

101. I refer to what I stated above in relation to the character and credibility allegations against Mr Stefánsson. None of the affidavits explain how Mr Stefánsson alleged drug abuse led to Samherji entering into several agreements, to which they would have had

OMI  
T-S

no access to was it not for their corrupt relationship with the other defendants. By 2016 Samherji was already enjoying the fruits of their unlawful activities with the other defendants.

102. The deponent is also very vague with regard to so called dispute with senior Samherji officials. That allegation is an opinion and constitute hearsay evidence.

**AD PARAGRAPH 17 THEREOF:**

103. I deny the contents hereof and refer to what I stated above and in my founding affidavit. Mr Júlíusson authorised payments to Tundavala long after Mr Stefánsson left the service of Samherji.

**AD PARAGRAPHS 18 AND 19 THEREOF:**

104. I take note hereof. It is evident that Samherji could not enter into the Namibian fishing market without the assistance of the other defendants.

**AD PARAGRAPHS 20 AND 21 THEREOF:**

105. I deny the contents hereof and stand by what I stated in my founding affidavit.

106. In addition, I deny that the deponent could have thought that there was nothing unusual about the meeting with Mr Tamson Hatuikulipi, who is the son-in-law to Mr. Esau, the then Minister of Fisheries, and who represented a direct line to Mr Esau, who is also the same person that had the power to allocate quotas to Namgomar under a purported fisheries agreement.

**AD PARAGRAPH 22 THEREOF:**

OMI

T-S

107. I deny the content hereof. I deny that Mr. Kanyangela misquoted Mr. Stefánsson's affidavit. From the text, the meaning that Mr. Tamson Hatuikulipi was introduced by this unknown person to Mr. Stefánsson, Mr. Adalsteinn and Mr. Júlíusson as the person who could possibly "arrange things", is clear.

108. I take note that 17<sup>th</sup> - 22<sup>nd</sup> defendants were not allocated with fishing rights directly, but reiterate what I stated in my founding affidavit with regard to the total of 50 000 mt of horse mackerel that was allocated to Namgomar, as a nominated entity to a purported fisheries agreement, during the relevant period, causing a benefit to them of at least N\$547 600 000. It is irrelevant that 17<sup>th</sup> -22<sup>nd</sup> defendants were not allocated with fishing rights directly.

**AD PARAGRAPH 23 THEREOF:**

109. I cannot admit or deny the contents of this paragraph as I do not have personal knowledge of its contents.

110. However, it should have been unusual that Mr Tamson Hatuikulipi, the son -in- law of the then Minister of Fisheries, would be the person to advise Samheji that Mr James Hatuikulipi, an Investec Manager, would be a suitable person to introduce them to fishing right holders.

**AD PARAGRAPH 24 THEREOF:**

111. I deny the contents hereof. The Namgomar scheme was designed to benefit Samherji and the other defendants. The 75% of the agreed payment for the so-called usage fees was not done by Mr Stefánsson. Mr. Júlíusson was responsible for payments

DMT  
T-S



from Esja Seafood in Cyprus to Tundavala and needed an approval from Mr. Baldvinsson for the payments. He was also the person who signed the catching agreement with Namgomar and would have been well aware what amounts were due under the catching agreement.

**AD PARAGRAPHS 25, 26 AND 27 THEREOF:**

112. I cannot admit or deny the contents of this paragraph as I do not have personal knowledge of its contents. However, I point out that there is no indication that either Mr Tamson Hatuikulipi, Mr James Hatuikulipi or Mr Shanghala had, during 2011 and 2012, any known connection with the fishing industry save for their connections with the Minister of Fisheries.

**AD PARAGRAPH 28 THEREOF:**

113. I deny the contents hereof. It is very unusual to refer to someone as a 'consultant' whose only purpose is to introduce someone to Samherji who holds a fishing right. It would also be improbable that Mr Stefánsson, if he was acting alone, would have copied Mr Júlíusson into his correspondence with Mr James Hatuikulipi, Mr Shanghala and Mr Tamson Hatuikulipi if the person was not aware of the scheme.

**AD PARAGRAPHS 29 TO 34 THEREOF:**

114. It is evident that the scheme was for the defendants to give Samherji access to the quotas in return for payment.

**AD PARAGRAPH 35 THEREOF:**

OMI  
T-S

115. I deny the contents hereof and stand by what I stated in my founding affidavit and above. It is not my version that no other person, except Mr. Stefánsson, was involved in the criminal activities.

**AD PARAGRAPHS 36 TO 39 THEREOF:**

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

117. However, what is not stated by the deponent is that he, as per the AFS for the year ended December 2015 of 18<sup>th</sup> Defendant, formed part of the key management members thereof together with Mr. Arnason; Mrs. McClure and Mr. Stefánsson.

118. What the deponent conveniently excluded is the email correspondence referred to above and the email correspondence between Ms Pascual and Mr Arnason in relation to a Namgomar invoice Mr Gustavo submitted. The scheme between Samherji and the defendants continued long after Mr. Stefánsson left the employment of Samherji.

119. The email of Ms. Pascual to Mr. Arnason dated 29 April 2019 that was forwarded stating the following:

"Hi

Invoice is not correct as they are invoicing 500.000 NAD more the amount should be. Please see detail below:

Pending payment:

Total owed for 5,000 tons (1700 NAD per ton + Vat);	9 775 000
---	-----------

Payments done as of 24.04.2019:

JTH Trading:	3 622 500
--------------	-----------

OMI  
T-S

	Namgomar	1 552 500
	JTH Trading	3 622 500
	Total payments	8 797 500
Total outstanding		
Invoice to be issued:		977 500
	Subtotal:	850 000
	VAT:	127 500
	Total:	977 500

Therefore, invoice should be issued for a total amount of 977 500. 00 NAD (subtotal 850 000 NAD, VAT 127 500 NAD).

Regards

Irene"

**AD PARAGRAPHS 40 TO 46 THEREOF:**

120. I deny the contents hereof. It is the most unusual and very suspicious for a private company to attend a bilateral meeting between two countries.

121. It is further unusual and peculiar for Samherji, who had no previous operations in Namibia or Angola to be the company that gets invited to a bilateral meeting between two countries.

122. I further add that the involvement of Mr. Tamson Hatuikulipi and Mr. James Hatuikulipi, two private sector persons without any fishing industry experience of which one of them, Mr. Tamson Hatuikulipi's is directly related to the Minister of Fisheries in Namibia, is innocuous and further confirm what I stated in my founding affidavit.

**AD PARAGRAPHS 47 TO 48 THEREOF:**

OmI

T-S

123. I deny the contents hereof. If the so-called opportunity in Angola was a legitimate bi-lateral agreement between Angola and Namibia, there is no basis why the listed private individuals should have attended a meeting in Iceland.

**AD PARAGRAPHS 49 AND 50 THEREOF:**

124. I deny the contents hereof. There exists no other basis, save for a corrupt relationship between Samherji and the other defendants, that would have resulted in Samherji, being approached to assist in the catching of the quotas and being involved in the development of the Namgomar project.

**AD PARAGRAPHS 51 AND 52 THEREOF:**

125. I deny the contents of this paragraph for reasons already set out above. The fact that an unknown fishing company known as Esja Holdings (Pty) Ltd suddenly got approached by two governments to execute a so-called bilateral agreement, arranged by *inter alia* the son in law of the Minister of Fisheries, Mr Esau and his cousin, Mr James Hatuikulipi, reeks of corruption.

126. All private companies involved in the rendering of services to the Government is subject to tender bids and processes.

**AD PARAGRAPHS 53 TO 55 THEREOF:**

127. I deny the contents hereof. Private individuals, including a government employee of Namibia, Mr Shanghala, attending to a meeting with the Minister of Angola after so -

OMI  
T-S

called bilateral meetings between the two countries, together with the son-in law of the Minister of Fisheries of Namibia, is very unusual and suspicious.

**AD PARAGRAPHS 56 TO 61 THEREOF:**

128. I deny the contents hereof and stand by what I stated in my founding affidavit and above. The same agreement was later taken over by Mr Árnason after Mr Stefánsson left. Mr Júlíusson also seem to forget the emails referred to above. If one considers these in context, JTH Trading CC and Erongo Clearing and Forwarding CC delivered exactly the same invoices for 'consultancy fees'.

129. Mr. Ingolfur Pétursson appeared to have signed as a witness to this agreement. He was also the person that signed the tax returns in his capacity as accountant at Katla Seafood Namibia (Pty) Ltd (Mermaria).

130. It is evident that Mr. Stefánsson was not the only person at Samherji that was aware of the true nature of these agreements.

**AD PARAGRAPHS 62 TO 64 THEREOF:**

131. I deny the contents of this paragraph and stand by what I stated in my founding affidavit and what I stated above. Mr James Hatuikulipi is not government official and his involvement with the Namibian and Angolan Ministers make no sense. The Namibian Government did not employ Mr James Hatuikulipi to act on its behalf in any agreement with Angola.

DMĪ

T-S

132. The only probable conclusion is that he stood in a corrupt relationship with Samherji and the other defendants to obtain fish quotas for the benefit of Samherji.

**AD PARAGRAPHS 65; 65.1 TO 65.3 THEREOF:**

133. I deny the contents of these paragraphs and stand with what I stated in my founding affidavit and what I stated above. The MOU does not refer to any fishing agreement with Angola and does certainly not give any legitimacy to the unlawful scheme.

**AD PARAGRAPH 66 THEREOF:**

134. I deny the contents of this paragraph for reasons already stated above. The MOU is not a fisheries agreement and does not comply with the provision of the Marine Resource Act or any principle of international law.

**AD PARAGRAPHS 67 TO 69 THEREOF:**

135. I deny the contents of this paragraph and stand with what I stated in my founding affidavit and what I stated above. The subsequent payments made to companies that had no direct links with Namgomar is indicative of Samherji's knowledge of the corrupt scheme.

**AD PARAGRAPH 70 THEREOF:**

136. I deny the contents of this paragraph. As per par. 70.15 of my founding affidavit I stated that Dr. Kawana indicated in his letter that the legal effect of this MoU is that it (merely) constitutes an intention by parties vis-à-vis a binding agreement. The latter should have indicated to the parties that this MOU cannot, and will not ever be, a fisheries

OMI  
T.S

agreement as envisaged in section 35 of the Marine Resources Act. I reiterate what I stated in my founding affidavit.

**AD PARAGRAPH 71 THEREOF:**

137. I do not dispute that Samherji did not get any fishing quotas directly, however Samherji obtained access to Namibian fishing quotas as set out in my founding affidavit.

**AD PARAGRAPH 72 THEREOF:**

138. I deny the contents of this paragraph and stand by what I stated in my founding affidavit and what I stated above. There was an MOU entered into between the two countries. The MOU was not a fisheries agreement as per section 35 of the Marine Resources Act.

**AD PARAGRAPHS 73 TO 77 THEREOF:**

139. I deny the contents of these paragraphs and stand by what I stated in my founding affidavit and what I stated above. Mr Stefánsson confirmed the purpose of the meeting as well as the agreement. The evidence supports the contentions of Mr Stefánsson that payments from the Namgomar scheme would be paid into an account in Dubai. Mr Júlíusson authorised these payments and yet do not wish to tender any explanation that would contradict what Mr Stefánsson explained transpired in Iceland in relation to what was agreed. He also yet again forgot about the emails referred to above.

140. I deny the allegation in Mr Balvinnsonn's affidavit and stand by what I stated in my founding affidavit. I note from the affidavit of Mr Baldvinnsonn that he claims that he has

OMI  
T-S

not read the application and that he only refers to certain portions that were referred to him by his legal practitioner. There is also no confirmatory affidavit attached by his personal assistant to explain what happened to the emails.

**AD PARAGRAPH 78 THEREOF:**

141. I take note of the contents of thereof.

**AD PARAGRAPH 79 THEREOF:**

142. I deny the contents of thereof for reasons already stated above and in my founding affidavit.

**AD PARAGRAPH 80 THEREOF:**

143. I do not dispute that the agreement did not grant Esja Holding (Pty) Ltd fishing quotas, but I deny the rest of the contents of this paragraph and refer to what I stated in my founding affidavit.

144. The agreement granted Esja Holding (Pty) Ltd access to the quotas awarded to Namgomar. As such, Esja Holding (Pty) Ltd was the true beneficial recipient of the quotas, whether they were the technical service partner or not.

145. I dispute that no defendant was ever the recipient of any quota. Namgomar was a recipient of about 50 000mt of horse mackerel.

**AD PARAGRAPH 81 THEREOF:**

OMI

T-S



146. I deny the contents of this paragraph for the reasons already set out above and in my founding affidavit. Any government process has to be transparent including process of a bilateral nature. It is not a transparent process if the Minister of Fisheries' son – in - law, Mr Tamson Hatuikulipi, his cousin, Mr James Hatuikulipi, his business partner, Mr Shanghala and his colleague working at Investec, Mr Gustavo, all of whom had no connection with the Namibian fishing industry save for their relationship with the Minister, to get their company Namgomar, nominated as the entity who will receive quotas under a bilateral agreement.

147. Out of nowhere this unknown company with no fishing experience entered into a catching agreement with Samherji and Samherji agreed to pay 25% to Namgomar and the remaining 75% to companies that has no connection with the bilateral agreement or Namgomar.

**AD PARAGRAPHS 82 TO 89 THEREOF:**

148. I confirm what I stated in my founding affidavit and above. If the catching agreement did not make provision for the full usage fee to be paid to Namgomar, and this was done with the knowledge of Mr Júlíusson, who signed the agreement on behalf of Esja Holdings, then he cannot deny that he was not aware of the unlawful scheme.

149. If all the funds were not to be paid to Namgomar for the so-called benefit of the Namibian and Angola people, the catching agreement is a fraudulent agreement entered into to mislead the Minister of Fisheries, who would have believed that the payments due to Namgomar from Esja Holdings in terms of the catching agreement is the only fees due to Namgomar.

DMI  
T-S

150. Mr Júlíusson clearly admitted his part in the scheme by entering into the fraudulent agreement. He further admitted that when he made the payments to Tundavala that he was aware that it was part of the Namgomar quota fees being paid to third parties that were not part of the catching agreement between Esja Holdings and Namgomar.

151. I deny further that there is any inconsistency in Mr Stefansson's affidavit and the claim that no one else was aware of the unlawful distribution of the usage fees.

**AD PARAGRAPH 90 THEREOF:**

152. I deny the contents of this paragraph for reasons already set out above and what is stated in my founding affidavit. Samherji would not have entered into any catching agreement or usage fee agreement in relation to Namgomar if it was not for the corrupt relationship between Samherji and the other defendants.

**AD PARAGRAPHS 91 AND 92 THEREOF:**

153. I deny the contents hereof. The pricing manipulation by Samherji is relevant to the scheme of how Samherji transferred funds from Namibia to the detriment of their joint venture holders in Heinaste Investments Namibia (Pty) Ltd.

**AD PARAGRAPH 93 THEREOF:**

154. I deny that Samherji did not participate in a corruption scheme involving Fishcor. The investigation is still ongoing.

**AD PARAGRAPH 94 THEREOF:**

OMI

T-S

155. I take note of the first three sentences, but I deny the rest of the contents of this paragraph and stand by what I stated in my founding affidavit as well as for reasons already stated above.

**AD PARAGRAPHS 95 AND 96 THEREOF:**

156. I take note of the contents of these paragraphs but they seem not to be relevant to unlawful activities of Samherji as set out in my founding affidavit.

**AD PARAGRAPH 97 THEREOF:**

157. Samherji's tax activities are still being investigated by the Ministry of Finance and at this stage bears no reference to this application. It in any event does not take into consideration how many Namibian companies had to close down due to the unlawful activities of the defendants and how many Namibians lost their jobs.

**AD PARAGRAPH 98 THEREOF:**

158. I take note of the contents of this paragraph.

**AD PARAGRAPHS 99 TO 100 THEREOF:**

159. I deny the contents of these paragraphs for reasons already set out above and in my founding affidavit. I also refer to the emails which I discussed above.

**AD PARAGRAPHS 101 AND 102 THEREOF:**

160. I deny the contents of this paragraph for reasons already set out above and, in my founding affidavit, I wish to add that any allegations relied upon by the deponent that are

DMI  
T-S

contained in affidavits annexed to his affidavit, should be properly pleaded, which was not done. I also refer to the emails which Mr Petursson and Ms McClure elected not to refer to in their affidavits.

**AD PARAGRAPHS 103 TO 110 THEREOF:**

161. I take note of the contents thereof.

**AD PARAGRAPH 111 THEREOF:**

162. I take note hereof. It is inappropriate for a deponent to ask questions in pleadings to the other side as the pleadings is for the court and not for the litigants to ask each other questions.

163. However, I wish to add to that the indication of consultancy fees as a tax-deductible expense for the payment of consultancy fees is insignificant. The deduction of these consultancy fees is in favour of Esja Holding (Pty) Ltd as these would reduce the taxable income of Esja Holding (Pty) Ltd and would conversely increase the amount of profit that 17<sup>th</sup> defendant can make.

164. The Ministry of Finance will recover the amounts due and payable to the Receiver of Inland Revenue and these proceedings provide for the benefit the 17<sup>th</sup> to 22<sup>nd</sup> defendant received due to the unlawful activities as set out in the founding affidavit. The court granting the confiscation order will decide the amount of the benefit after the confiscation enquiry.

**AD PARAGRAPH 112 THEREOF:**

OMI

T-S

165. I take notice of the contents of this paragraph, except the last two sentences which I address as set out below. I deny that:

165.1 The account is under the joint administration of Mr. Agenbach and Mr. Ndjoze. The latter are the only signatories to the account.

165.2 That a debt of USD 6 908 716.70 is owed to Esja Investment (Mauritius) as Mrotgagee. As part of the aforesaid agreement, it was also agreed between the parties that the Government of Namibia require proof from the Esja Investment (Mauritius) that the aforesaid amount has not yet been repaid to them. To date Esja Investments (Mauritius) has failed to submit the aforesaid proof.

166. I furthermore cannot admit or deny that Heinaste Investment (Namibia) (Pty) Ltd holds any receivables against Esja Investment (Pty) Ltd and the Receiver of Revenue or that any trade payables are owed to Saga Seafood as I do not have personal knowledge of this. There is no supporting documentation attached in support of the above allegations.

**AD PARAGRAPH 113 THEREOF:**

167. I deny the contents hereof for the reasons as set out in my founding affidavit. The vessel is still registered under the Saga Investment with no outstanding bond.

**AD PARAGRAPH 114 THEREOF:**

DMI

T-S

168. I take notice of the contents of the first sentence of this paragraph; however, I cannot admit or deny the rest of this paragraph as I do not have personal knowledge thereof. No supporting documentation has been attached in support of the above.

**AD PARAGRAPHS 115 TO 117 THEREOF:**

169. I take notice of the contents of this paragraph.

**AD PARAGRAPH 118 AND 118.1 THEREOF:**

170. I deny the contents hereof. A restraint order is necessary to secure the funds of the proceeds of the sale of the M/V Heinaste for the reasons already set out above.

**AD PARAGRAPHS 118.2 TO 118.5 THEREOF:**

171. I deny the content hereof. The vessel is still registered in the Namibian registry. There is no bond registered to that effect in Namibia.

**AD PARAGRAPH 119 THEREOF:**

172. I deny that a restraint order against 17<sup>th</sup> -22<sup>nd</sup> defendants is not necessary to achieve the objective of the application for reasons already set out above.

173. I further deny that the 17<sup>th</sup> -22<sup>nd</sup> defendants' attitude has been one of *bona fides* and goodwill. Had this been so, their directors would have voluntarily offered to come to Namibia to answer to the allegations against them.

**AD PARAGRAPH 120 THEREOF:**

174. I deny the contents of this paragraph for reasons already set out above.

DM I  
T-S

**AD PARAGRAPH 121 THEREOF:**

175. I take note of the contents of this paragraph.

**AD PARAGRAPH 122 THEREOF:**

176. I deny the contents of the paragraph for the reasons already set out above and what is stated in my founding affidavit.

177. With regard to the availability of the addresses of the directors of 17<sup>th</sup> - 22<sup>nd</sup> defendants, I already set out above the confusion regarding this and the mystery surrounding their current residential addresses.

178. Furthermore, there was cooperation between my office and the directors of Heinaste Investments Namibia (Pty) Ltd with regard to the M/V Heinaste as already set out above.

179. There was furthermore no prohibition on the directors of 17<sup>th</sup> to 22<sup>nd</sup> defendants to voluntarily tender evidence and documentation to the ACC under oath, which was not done.

**AD PARAGRAPH 123 THEREOF:**

180. I take note of the first sentence of this paragraph, but deny the contents of the rest of this paragraph for reasons already set out above. I confirm what I stated in my founding affidavit.

**AD PARAGRAPH 124 THEREOF:**

O.M.L.  
T-S

181. I take note of the contents of this paragraph.

**AD PARAGRAPH 125 THEREOF:**

182. I deny the contents of this paragraph and stand by what I stated in my founding affidavit and above.

**AD PARAGRAPH 126 THEREOF:**

183. All the Samherji entities acted in one common purpose to exploit the Namibian fish industry for their benefits and those of their friends, the 1<sup>st</sup>-16<sup>th</sup> defendants

**AD PARAGRAPH 127 THEREOF:**

184. I deny the contents of this paragraph and confirm what I stated in my founding affidavit and what I stated above.

**AD PARAGRAPH 128 THEREOF:**

185. I take note of the contents of this paragraph.

**AD PARAGRAPHS 129 AND 130 THEREOF:**

186. I deny the contents of this paragraph for reasons already set out above and what I stated in my founding affidavit,

**AD PARAGRAPH 131 THEREOF:**

DMT  
T-S



187. I deny the contents of this paragraph for the reasons stated in my founding affidavit and more specifically the reference to the legislative scheme of the Marine Resources Act, as per para. 69 of my founding affidavit.

**AD PARAGRAPHS 132, 133,133.1 TO 133.6 THEREOF:**

188. I take note of the contents of these paragraphs and add that a party to a fisheries agreement as referred in section 35 of the Marine Resources Act is regarded as a right holder, as already stated in my founding affidavit.

**AD PARAGRAPH 134 THEREOF:**

189. These allegations are hearsay evidence. The allocation of fishing right is regulated by Marine Resources Act and not through Joint Ventures.

**AD PARAGRAPH 135 THEREOF:**

190. I deny that Sinco, Epango and Yukor held a majority 51% shareholding in Arctican Investments (Pty) Ltd. They held collectively held 41.6% shareholding in Arctican Investments (Pty) Ltd. I take note of the rest of the contents of this paragraph.

**AD PARAGRAPH 136 THEREOF:**

191. I take note that Arctican Fishing (Pty) Ltd is not indicated as an accused in the criminal trial, however, I deny the contents of this paragraph and confirm what I stated in my founding affidavit, specifically para 312 thereof.

**AD PARAGRAPHS 137 TO 139 THEREOF:**

OMI  
T-S

192. I deny the contents of these paragraphs and confirm what I stated in my founding affidavit and for reasons already set out above.

193. I wish to add that the fact that the MOU was published, does not render it valid, binding or enforceable for the reasons already set out above. This is unremarkable as the persons that motivated the publication and signing of this memorandum of understanding are the very persons that are accused persons in the criminal matter.

**AD PARAGRAPH 140 THEREOF:**

194. I deny the contents of this paragraph for reasons already set out in my founding affidavit. I further wish to add that it is the case of the Applicant that 17<sup>th</sup> to 22<sup>nd</sup> defendants benefitted from the criminal scheme and not the deponent himself in his personal capacity.

**AD PARAGRAPH 141 THEREOF:**

195. I deny the contents of this paragraph for reasons already set out in my founding affidavit. I wish to add that the catching agreement was entered into between Esja Holding (Pty) Ltd, the 17<sup>th</sup> defendant, and Namgomar Namibia (Pty) Ltd, the 7<sup>th</sup> defendant.

**AD PARAGRAPH 142 THEREOF:**

196. I deny the contents of this paragraph for reasons already set out in my founding affidavit.

**AD PARAGRAPH 143 THEREOF:**

DMI  
T-S

197. I take note of the contents of this paragraph and note that there is no basis for the denial.

**AD PARAGRAPHS 144 TO 148 THEREOF:**

198. I deny the contents of these paragraphs for reasons already set out above and in my founding affidavit. The fact that it is recorded in the financial statements does give it legitimacy.

**AD PARAGRAPH 149 THEREOF:**

199. I deny the contents of this paragraph for reasons already set out above and in my founding affidavit. The deponent already admitted that he was aware that the payments outside Namibia related to the Namgomar quotas and that it constituted part of the usage fee agreement not contained in the catching agreement between Esja Holdings and Namgomar.

**AD PARAGRAPH 150 TO 151 THEREOF:**

200. I deny the contents of these paragraph for reasons already set out above and in my founding affidavit.

**AD PARAGRAPH 152 THEREOF:**

201. I take note hereof.

**AD PARAGRAPH 153 THEREOF:**

OMI  
T-S

202. I deny the contents of this paragraph for reasons already set out above and in my founding affidavit.

**AD PARAGRAPH 154 THEREOF:**

203. I take note hereof.

**AD PARAGRAPHS 155 TO 157.3 THEREOF:**

204. I deny the contents of these paragraph for reasons already set out above and in my founding affidavit.

**AD PARAGRAPH 158 THEREOF:**

205. I take note hereof.

**AD PARAGRAPH 159 TO 159.4 THEREOF:**

206. I deny the contents of these paragraphs for reasons already set out above and in my founding affidavit. The fact that annexure JS3 does not mention the defendants by name does not detract from the evidence presented in my founding affidavit that these defendants received the benefit from the unlawful activity.

207. It is evident that the 17<sup>th</sup> to the 22<sup>nd</sup> defendants attempts to deal with one fact to the exclusion of all other facts, thereby trying to create the impression that the facts do not support the contention that the 17<sup>th</sup> to 22<sup>nd</sup> defendants will be convicted and that they benefited from the offences they will be convicted of.

**AD PARAGRAPH 160 THEREOF:**

OMI  
T-S

208. I deny the contents of this paragraph for reasons already set out above and in my founding affidavit.

**AD PARAGRAPH 161 TO 163 THEREOF:**

209. I deny the contents of this paragraph for reasons already set out above and in my founding affidavit. Mr Stefánsson did not act in his personal capacity but in his capacity as an employee of Samherji. The benefit of his conduct was not for himself but for the benefit of the 17<sup>th</sup> to 22<sup>nd</sup> defendants.

**AD PARAGRAPH 164 THEREOF:**

210. I deny the contents of this paragraph for reasons already set out above and in my founding affidavit. It is evident that the 17<sup>th</sup> to the 22<sup>nd</sup> 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 17<sup>th</sup> to 22<sup>nd</sup> defendants will be convicted and that they benefited from the offences they will be convicted of.

**AD PARAGRAPHS 165 TO 167 THEREOF:**

211. I deny the contents of these paragraph for reasons already set out above and in my founding affidavit.

**AD PARAGRAPHS 168 TO 170 THEREOF:**

212. I deny the contents of this paragraph for reasons already set out above and in my founding affidavit. It is notable that the payments to JTH and Erongo continued after the resignation of Mr Stefánsson.

OMI

T-S

**AD PARAGRAPH 171 THEREOF:**

213. I deny the contents of this paragraph for reasons already set out above and in my founding affidavit. Again, it is evident that the 17<sup>th</sup> to the 22<sup>nd</sup> 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 17<sup>th</sup> to 22<sup>nd</sup> defendants will be convicted and that they benefited from the offences they will be convicted of.

**AD PARAGRAPH 172 THEREOF:**

214. I deny the contents of this paragraph for reasons already set out above and in my founding affidavit. It is evident that the 17<sup>th</sup> to the 22<sup>nd</sup> defendants attempt to deal with one fact to the exclusion of all other facts, thereby trying to create the impression that the facts do not support the contention that the 17<sup>th</sup> to 22<sup>nd</sup> defendants will be convicted and that they benefited from the offences they will be convicted of.

**AD PARAGRAPHS 173 TO 175 THEREOF:**

215. I deny the contents of this paragraph for reasons already set out above and in my founding affidavit.

**AD PARAGRAPH 176 THEREOF:**

216. I deny the contents of this paragraph for reasons already set out above and in my founding affidavit. It is evident that the 17<sup>th</sup> to the 22<sup>nd</sup> defendants attempt to deal with one fact to the exclusion of all other facts, trying to create the impression that the facts do

OMI  
T-S

not support the contention that the 17<sup>th</sup> to 22<sup>nd</sup> defendants will be convicted and that they benefited from the offences they will be convicted of.

**AD PARAGRAPH 177 THEREOF:**

217. I deny the contents of this paragraph for reasons already set out above and in my founding affidavit. Ms McClure does not deal with any of these paragraphs and her affidavit did not refer to all relevant correspondence as is evident from the emails I referred to above.

**AD PARAGRAPH 178 THEREOF:**

218. I deny the contents hereof in as far as it relates to Namgomar and refer to my founding affidavit.

**AD PARAGRAPH 178.1 THEREOF:**

219. I deny the contents of this paragraph for reasons already set out above and in my founding affidavit.

**AD PARAGRAPH 178.2 THEREOF:**

220. I deny the contents of this paragraph for reasons already set out above and in my founding affidavit. The contention that my conclusion on the amount of benefit the 17<sup>th</sup> to 22<sup>nd</sup> defendants received is distorted, is contrary to the law regulating the benefit that should be confiscated to the State.

**AD PARAGRAPH 178.3 THEREOF:**

omi  
T-S

221. The fact that payments were only made by three of the Samherji companies does not detract from the fact that the 17<sup>th</sup> to 22<sup>nd</sup> defendants had the same aim of receiving the benefit of the Namgomar quotas.

**AD PARAGRAPH 179 THEREOF:**

222. I deny the contents of this paragraph for reasons already set out above and in my founding affidavit. The Samherji companies were well aware of the aim of the Namgomar quotas.

**AD PARAGRAPHS 180 TO 187 THEREOF:**

223. I deny the contents of this paragraph for reasons already set out above and in my founding affidavit. Again, it is evident that the 17<sup>th</sup> to the 22<sup>nd</sup> 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 17<sup>th</sup> to 22<sup>nd</sup> defendants will be convicted and that they benefited from the offences they will be convicted of.

**AD PARAGRAPH 188 THEREOF:**

224. I deny the contents of this paragraph for reasons already set out above and in my founding affidavit.

**AD PARAGRAPHS 189 AND 189.1 THEREOF:**

225. I deny the contents of these paragraph for reasons already set out above and in my founding affidavit. There is no basis for the denial of these emails. It is clear from the emails that there was an intention to hide the reasons for the transfers of money to Dubai.

omi  
T.S



**AD PARAGRAPH 189.2 THEREOF:**

226. I deny the contents of this paragraph for reasons already set out above and in my founding affidavit. Mr Olafsson's affidavit consist of inadmissible hearsay and opinion evidence. He is also very wage in his explanation regarding the emails.

**AD PARAGRAPHS 190 TO 192 THEREOF:**

227. I deny the contents of this paragraph for reasons already set out above and in my founding affidavit.

**AD PARAGRAPH 193 THEREOF:**

228. I deny the contents of this paragraph for reasons already set out above and in my founding affidavit. Annexure KPC2 is the affidavit of Ms Pay. Annexure APOO8 refers to invoice 21 and to the amount of N\$977 000. It also refers to N\$14 198 398.92 but that amount does not relate to the email of Ms Pascual and the deponent clearly does not understand the conclusion in para 118.9 of my founding affidavit. I stand by that conclusion.

**AD PARAGRAPHS 194 TO 196 THEREOF:**

229. I deny the contents of this paragraph for reasons already set out above and in my founding affidavit.

**AD PARAGRAPH 197 THEREOF:**

230. I take note hereof.

DMI  
T.S

**AD PARAGRAPHS 198 TO 200 THEREOF:**

231. I deny the contents of this paragraph for reasons already set out above and in my founding affidavit.

**AD PARAGRAPH 201 THEREOF:**

232. I take note hereof.

**AD PARAGRAPH 202 THEREOF:**

233. I deny the contents of this paragraph for reasons already set out above and in my founding affidavit.

**AD PARAGRAPH 203 THEREOF:**

234. I deny the contents of this paragraph for reasons already set out above and in my founding affidavit. The payments and the licences issued under Namgomar by the Ministry of Fisheries confirmed that Mermaria and Saga Seafood caught the Namgomar quotas.

**AD PARAGRAPH 204 THEREOF:**

235. I deny the contents of this paragraph for reasons already set out above and in my founding affidavit.

**AD PARAGRAPH 205 THEREOF:**

OMI  
T-S

236. I deny the contents of this paragraph for reasons already set out above and in my founding affidavit. The deponent provides no reason why the BIPA documents and the financial statements reflect Ms McClure and Mr Árnason as directors.

**AD PARAGRAPH 206 THEREOF:**

237. I take note hereof.

**AD PARAGRAPH 207 THEREOF:**

238. I deny the contents of this paragraph for reasons already set out above and in my founding affidavit.

**AD PARAGRAPH 208 THEREOF:**

239. I deny the contents of this paragraph for reasons already set out above and in my founding affidavit.

**AD PARAGRAPHS 209 TO 210 THEREOF:**

240. I deny the contents of these paragraph for reasons already set out above and in my founding affidavit. It is not the applicant's case that there were no fish caught. The unlawful activities referred to allowed Samherji to obtain the fish quotas unlawfully and to the benefit of the 17<sup>th</sup> to 22<sup>nd</sup> defendants.

**AD PARAGRAPHS 211 TO 212 THEREOF:**

241. I deny the contents of these paragraph for reasons already set out above and in my founding affidavit.

OMI  
T.S

**AD PARAGRAPHS 213 TO 215 THEREOF:**

242. I deny the contents of these paragraph for reasons already set out above and in my founding affidavit. It is not the applicant's case that there were no fish caught. The unlawful activities referred to allowed Samherji to obtain the fish quotas unlawfully and to the benefit of the 17<sup>th</sup> to 22<sup>nd</sup> defendants.

**AD PARAGRAPHS 216 THEREOF:**

243. I take note hereof.

**AD PARAGRAPHS 217 TO 223.3 THEREOF:**

244. I deny the contents of these paragraph for reasons already set out above and in my founding affidavit.

**AD PARAGRAPHS 223.4 TO 223.8 THEREOF:**

245. I take note hereof. However, I deny the amount outstanding as certain payments were already made in respect of the payments of the loan amount.

**AD PARAGRAPH 224 THEREOF:**

246. I deny the contents of this paragraph. There is currently a dispute in relation to the removal of the directors of this company.

**AD PARAGRAPHS 225 TO 226 THEREOF:**

247. I deny the contents of these paragraphs for reasons already set out above and in my founding affidavit.

OMI  
T-S

**AD PARAGRAPHS 227 TO 228 THEREOF:**

248. I deny the contents of these paragraph for reasons already set out above and in my founding affidavit. Mr Stefánsson did not act in his own capacity and both Mr Júlíusson and Mr Árnason were well aware of the unlawful activities to obtain the quotas through the Namgomar scheme.

**AD PARAGRAPHS 229 TO 231 THEREOF:**

249. I deny the contents of these paragraphs for reasons already set out above and in my founding affidavit.

**AD PARAGRAPHS 232 TO 233 THEREOF:**

250. I take note hereof.

**AD PARAGRAPHS 234 TO 235 THEREOF:**

251. I deny the contents of these paragraphs for reasons already set out above and in my founding affidavit.

**AD PARAGRAPHS 236 TO 237 THEREOF:**

252. I deny the contents of these paragraphs. It is evident that the Namibian Samherji companies did not operate independently from the Samherji companies in other jurisdictions. The deponent's refusal to deal with their involvement is clear indication that Samherji were not *bona fide* in their dealings in Namibia.

**AD PARAGRAPH 238 THEREOF:**

SMI  
T-S

253. I take note hereof.

**AD PARAGRAPH 239 THEREOF:**

254. I deny the contents of this paragraph for reasons already set out above and in my founding affidavit.

**AD PARAGRAPHS 240 TO 244 THEREOF:**

255. I deny the contents of these paragraphs for reasons already set out above and in my founding affidavit. All the information was obtained from documentation including documentation received from DBN Bank. There is no document attached by the deponent to indicate otherwise.

**AD PARAGRAPH 245 THEREOF:**

256. I take note hereof.

**AD PARAGRAPHS 246 TO 250 THEREOF:**

257. I deny the contents of these paragraphs for reasons already set out above and in my founding affidavit.

**AD PARAGRAPHS 251 TO 251.3 THEREOF:**

258. I take note thereof.

**AD PARAGRAPHS 251.4 TO 252.4 THEREOF:**

DM  
T-S

259. I deny the contents of these paragraphs for reasons already set out above and in my founding affidavit.

**AD PARAGRAPH 253 THEREOF:**

260. I take note hereof.

**AD PARAGRAPH 254 THEREOF:**

261. I take note hereof as well as Samherji's unwillingness to deal with the allegations.

**AD PARAGRAPH 255 THEREOF:**

262. I take note hereof.

**AD PARAGRAPH 256 THEREOF:**

263. I deny the contents of this paragraph for reasons already set out above and in my founding affidavit.

**AD PARAGRAPHS 257 AND 258 THEREOF:**

264. I deny the contents of this paragraph for reasons already set out above and in my founding affidavit.

**AD PARAGRAPHS 259 TO 310 THEREOF:**

265. I deny the contents of these paragraphs for reasons already set out above and in my founding affidavit.

**AD PARAGRAPH 311 THEREOF:**

OMI  
T.S

266. I take note hereof.

**AD PARAGRAPHS 312 TO 315 THEREOF:**

267. I deny the contents of these paragraphs for reasons already set out above and in my founding affidavit.

**AD PARAGRAPH 316 THEREOF:**

268. I take note hereof.

**AD PARAGRAPHS 317 TO 318 THEREOF:**

269. I deny the contents of these paragraphs for reasons already set out above and in my founding affidavit.

**AD PARAGRAPHS 319 TO 320 THEREOF:**

270. I deny the contents of these paragraphs for reasons already set out above and in my founding affidavit.

**AD PARAGRAPHS 321 TO 323 THEREOF:**

271. I deny the contents of these paragraphs for reasons already set out above and in my founding affidavit.

**AD PARAGRAPH 324 THEREOF:**

272. I take note hereof. The allegations that the applicant relied on in relation to Ms Pay was adequately identified in the supporting affidavit of Mr Kanyangela.

DMI  
T-S



**AD PARAGRAPHS 325 TO 328 THEREOF:**

273. I deny the contents hereof and the investigation in relation to the allocation of quotas to Fishcor forms part of a different investigation and will be dealt with at an appropriate time.

**AD PARAGRAPHS 329 TO 337 THEREOF:**

274. I deny the contents of these paragraphs for reasons already set out above and in my founding affidavit.

**AD PARAGRAPHS 338 TO 339 THEREOF:**

275. I deny the contents of these paragraphs for the reasons as set out above and in my founding affidavit. The deponent fail to enlighten the court what the consultancy fees would have entailed. The lack of transparency is a clear indication that the deponent is trying to hide the true nature of the payments.

**AD PARAGRAPHS 340 TO 350 THEREOF:**

276. I deny the contents of these paragraphs for the reasons as set out in my founding affidavit and above. Ms Pay explained her role in the Samherji group in her affidavit.

**CONCLUSION**

277. In the premises I respectfully submit that the opposition to the restraint of property order is without merit. I therefore pray for an order as set out in the notice of motion with costs, which costs to include the costs of one instructing and two instructed counsels.

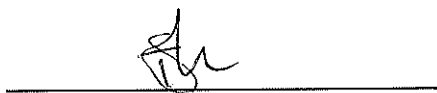
OMI  
T-S



**OLYVIA MARTHA IMALWA**

I hereby declare that the deponent has sworn to and signed this statement in my presence at WINDHOEK on the 30<sup>th</sup> day of July 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

NAMIBIAN POLICE  
WINDHOEK  
2021-07-30  
STATION COMMANDER/CLERK

FULL NAMES: TEOPOLINA SHAFOMBABI

CAPACITY: WARRANT - OFFICER

ADDRESS: WINDHOEK