

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 8258/17

In the matter between:

JOHANNES KHOMOTSO PHAHLANE

Applicant

and

**EXECUTIVE DIRECTOR, INDEPENDENT POLICE
INVESTIGATION DIRECTORATE N.O.**

First Respondent

PAUL O'SULLIVAN

Second Respondent

SARAH JANE TRENT

Third Respondent

MAGISTRATE J R TSATSI N.O.

Fourth Respondent

FIRST RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned,

MANDLAKAYISE MAHLANGU

do hereby make oath and state that:

1 I am a major male principal investigator, employed by the First Respondent stationed at the Head Office of the Independent Police



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Investigative Directorate (IPID), situated at 114 Madiba Street, Pretoria, Gauteng.

- 2 The facts deposed to herein fall within my personal knowledge, save where otherwise stated, and are to the best of my knowledge and belief both true and correct. Where I make averments not falling within my personal knowledge, I place reliance on the confirmatory affidavit and documents annexed hereto.
- 3 I depose to this affidavit in order to oppose the relief sought by the Applicant wherein he *inter alia* requests, this Honourable Court to review and set aside the search and seizure warrants issued by the Fourth Respondent on 29 December 2016, in respect of 53 Sable Hills Waterfront Estate, Roodeplaats Kameeldrift, Pretoria. The Applicant also seeks to review and set aside the execution of the warrant against the latter property.
- 4 To buttress the relief sought, the Applicant appears to rely on the following grounds:
 - 4.1 That I did not furnish him with the supporting affidavits or statements forming part of the application for the search and

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seizure warrants issued by the Fourth Respondent on 29 December 2016. He further contends that my failure to furnish him with the affidavit renders the execution of the warrant unlawful (Founding Affidavit: p 41 para 72).

4.2 That the team investigating the complaint laid by the Second Respondent and I, permitted the Second Respondent to unlawfully influence the investigation (Founding Affidavit: p 48 para 88).

4.3 That the search and seizure warrant is unlawful as annexure "B" contains goods or items different to those for which the authority to search and seize was sought. The Applicant also contends that no case was made out in my affidavit in support of the search for the goods identified in annexure "B" and that the Fourth Respondent misdirected himself in granting the warrant (Founding Affidavit: pp 49-50 paras 92-93).

4.4 That the Second Respondent masquerades as an IPID investigator and took the lead in the activities of IPID and conducted interviews, contacted potential witnesses and prepared witnesses for IPID. (Founding Affidavit: p 57 para 123).

5 In this affidavit, I demonstrate that -

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- 5.1 the investigation into the Applicant was not tainted by the roles played by the Second and Third Respondents nor did they take the lead in the investigation;
 - 5.2 the investigation into the Applicant has been independent and objective;
 - 5.3 the issue of the search and seizure warrant dated 29 December 2016, and the execution thereof was lawful;
 - 5.4 the Second and Third Respondents never masqueraded as IPID investigators, nor were they introduced as IPID investigators in my presence or to my knowledge; and
 - 5.5 the Second and Third Respondents were not involved in the application that led to the search and seizure warrant or the execution thereof.
- 6 This affidavit will further demonstrate that the Fourth Respondent had all the requisite information when he authorised and issued the search warrant. He properly exercised his discretion and the items that were inspected were items that were authorised in terms of the warrant.



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7 In this affidavit, I do not deal with each and every averment contained in the Applicant's Founding Affidavit. I deal with averments that are relevant to the relief sought against the First Respondent. I have therefore structured this affidavit in the following manner:

7.1 first, I deal with the preliminary legal points that are dispositive of the substance of the relief sought by the Applicant;

7.2 then I outline the legislative framework in terms of which IPID functions;

7.3 thereafter I outline the genesis of the investigation into the Applicant,

7.4 I then set out the role played by the Second Respondent in the investigation;

7.5 I further detail the events leading to the impugned search and seizure warrant;

7.6 Then I detail the interview conducted with the Applicant and the execution of the warrant;

7.7 I also provide details of the investigations that IPID is currently conducting against the Applicant, and

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7.8 I then conclude by answering *ad seriatim* the averments made in the Founding Affidavit.

8 For ease of reference, this affidavit employs the following nomenclature:

8.1 Independent Police Investigative Directorate will be referred to as "IPID";

8.2 The Applicant will be referred to as "Phahlane";

8.3 The Second Respondent will be referred to as "O'Sullivan";

8.4 The four members of the team investigating O'Sullivan's complaint against Phahlane, namely Mantsha Raphesu, Mandlakayise Mahlangu, Temane Binang and Cedric Nkabinde will be collectively referred to as "the Investigative Team";

8.5 The South African Police Services will be referred to as "the SAPS";

8.6 The Independent Police Investigative Directorate Act, 1 of 2011, will be referred to as "the IPID Act"; and

8.7 The Criminal Procedure Act, 51 of 1977 will be referred to as "the CPA".

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PRELIMINARY LEGAL POINTS

Relief sought is academic

- 9 In prayers 1 and 2 of the Notice of Motion, Phahlane seeks to review and set aside the issuing of the search and seizure warrant issued by the Fourth Respondent on or about 29 December 2016. He also requests that the execution of the warrant be set aside as having been unlawful.
- 10 In his own affidavit (p 50 para 94), Phahlane concedes that the goods relevant to the impugned warrant have already been identified at his home and he seeks the relief on the basis of, *inter alia*, seeking to send a clear message to IPID that contraventions of law cannot be tolerated.
- 11 I am advised and respectfully submit that the relief sought is academic as Phahlane does not seek the return of the goods seized and does not, by virtue of a criminal charge, impugn the granting and execution of the warrant.
- 12 The law in relation to the jurisdictional facts on search and seizure warrants is settled. The goods were inspected and there is no uncertainty pertaining to what ought to have been put before the Fourth Respondent before he could issue a search and seizure warrant. There is therefore



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no need to restate the law regarding any alleged contraventions of law in this regard.

13 Further, there is no discrete legal issue of public importance that arises out of the relief sought. Thus the relief sought has no practical effect and amounts to an academic exercise or fishing expedition.

14 Phahlane is at liberty to challenge the validity of the evidence gathered from the impugned search and seizure at a criminal trial should that be the logical conclusion of the investigation. No items were seized. Phahlane thus did not suffer any prejudice. This application should on this basis alone be dismissed with costs.

Relief sought is incompetent

15 Phahlane requests this Honourable Court to interdict O'Sullivan from acting as an investigator for IPID and to interdict both O'Sullivan and the Third Respondent from performing any statutory functions for IPID.

16 I am advised that the relief sought herein is not only vague and uncertain, but also incompetent.



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- 17 The IPID Act stipulates that the First Respondent may appoint a fit and proper person as an investigator subject to certain requirements.
- 18 O'Sullivan and the Third Respondent have not been declared to be unfit and improper people by any forum nor have they failed to satisfy the mandatory requirements of section 22(2), (3) and (4) of the IPID Act.
- 19 Phahlane may be entitled to an injunction against O'Sullivan and the Third Respondent if it relates to investigations pertaining to his person. He, however, is not entitled to a blanket embargo being imposed against O'Sullivan, the Third Respondent or anybody else, barring them from appointment as IPID investigators should such a need arise.
- 20 I am advised that the injunction sought is not competent in law and falls to be dismissed, with costs. I am further advised that my legal representatives will, in this regard, advance further legal argument at the hearing of this matter.

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IPID'S STATUTORY FRAMEWORK

- 21 IPID was established to give effect to Section 206(6) of the Constitution. It is mandated to investigate any alleged misconduct or offences committed by members of the SAPS.
- 22 IPID is tasked to ensure that there is effective oversight of, *inter alia*, the SAPS.
- 23 In terms of the IPID Act, IPID functions independently of the SAPS and must be assisted by any organ of state to maintain impartiality and perform effectively.
- 24 The First Respondent receives complaints regarding offences allegedly committed by a member of the SAPS, investigates them and if a criminal offence is revealed as a result of an investigation, refers it to the National Prosecuting Authority and notifies the Minister of Police of such a referral.
- 25 As stated herein, section 22 of the IPID Act bestows in IPID the power to appoint investigators who are, in terms of section 24 of the IPID Act, given investigative powers as provided for in the CPA. The investigative powers which are also bestowed upon a peace officer or a police official

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relate to, *inter alia*, investigation of offences, the entry and search of premises, the seizure and disposal of goods, as well as the execution of warrants.

26 In terms of section 24, the investigators also have the following functions and investigative powers :

" 24. Functions and investigative powers

- 3.a) *For the purposes of conducting an investigation, an investigator may direct any person to submit an affidavit or affirmed declaration or to appear before him or her to give evidence or to produce any document in that person's possession or under his or her control which has a bearing on the matter being investigated, and may question such person thereon.*
- b) *An investigator or any person duly authorised thereto by him or her may request an explanation from any person whom he or she reasonably suspects of having information which has a bearing on a matter being or to be investigated.*
- 4) *A person questioned by an investigator conducting an investigation must answer each question truthfully and to the best of that person's ability, but-*
- a) *a person is not obliged to answer any question if the answer is self-incriminating; and*
- b) *the person asking the questions must inform that person of the right set out in paragraph (a).*
- 5) *No self-incriminating answer given or statement made by any person to an investigator exercising powers in terms of this Act will be admissible as evidence against that person in criminal proceedings instituted against that person in any court, except in criminal proceedings for perjury."*

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- 27 In terms of section 28 of the IPID Act, IPID must investigate matters relating to corruption, initiated by the First Respondent or upon receipt of a complaint from a member of the public. IPID may also investigate matters relating to systemic corruption involving the SAPS.
- 28 In this regard, section 29 of the IPID Act obliges members of the SAPS to provide their full cooperation to IPID, including producing, giving evidence and producing documents in that member's possession or control having a bearing on the matter being investigated. They are also obliged to provide their full cooperation on any other information or documentation required for investigative purposes.

THE COMPLAINT

- 29 On 25 February 2016, O'Sullivan registered a complaint against Phahlane. In the statement supporting the complaint, O'Sullivan stated that –

"1.

I am an adult male Forensic Consultant and confirm that the information set out on the SAP 3M(a) is true and correct. The purpose of this sworn statement is to open a criminal docket in respect of the offences of corruption, money laundering and/or racketeering. My allegation is that the conduct of one Lieutenant General Johannes Phahlane "Phahlane" smacks of corruption and cronyism and only a proper ...

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6.

...The statement is attached as A2 to this docket rather than an annexure to the statement. In short order, the statement of Moonsamy makes it clear that Phahlane unlawfully and intentionally condoned tender-rigging on the part of one certain John Henry Deale "Deale" who had grossly oversupplied chemicals to the South African Police causing a loss of R50 million of public funds. It was also clear from Moonsamy's sworn statement that lives were put at risk and crime scene investigations were compromised by the use of out of date chemicals and wrong equipment being supplied. Finally, Moonsamy implicated Phahlane by virtue of the fact that Phahlane had victimised and intimidated anyone that raised questions around the supply in question. Moonsamy still feels he will be victimised by Phahlane, or those reporting to him, in breach of his rights, in terms of the Protected Disclosures Act.

7.

The only logical conclusion to be drawn from Moonsamy's statement was that there was (or is) a corrupt relationship between Phahlane and Deale however, Moonsamy could only provide what I term as a "smoking gun". Corruption by its very nature is a covert activity and quite often hard to detect, as the perpetrators always attempt to cover their tracks. What I was looking for was evidence of cash payments or kickbacks in kind to Phahlane, what is termed as gratification in terms of Act 12 of 2004. I will come back to this theory later. ...

12.

I then decided to carry out an investigation into the residential property including search into ownership and bond registration. In this regard I refer to Annexure "POS-6" being property details, building plans and history shots and a street photo, taken by me outside the house on 2016-02-13. From studying the Annexure "POS-6", the following observations are made:

- the property was purchased by Phahlane and his wife, as a vacant erf on 2010-08-2;*
- the purchase price was R850 000,00 with a bond granted contemporaneously with the erf purchase in the amount of*

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R595 000,00. We can therefore estimate that there were transfer fees, bond fees etc. Phahlane and his wife had spare cash of R275 000,00.

- *It was apparent that a major building project commenced on the property, in or about April 2011, to construct a double level luxury villa, approximately 575m² in area.*
- *After construction had commenced and was well underway, the bond on the property was increased by R1 605 000,00 – this would have provided cash of about R1 580 000,00 after taking bond registration fees into account.*
- *Construction continued until about late April or early May 2012.*

13.

Although I am a Certified Fraud Examiner, I am by profession also an engineer and practised as an engineer up until 1995. In addition, I have property development experience having personally managed the construction of more than 1 500 houses in South Africa from 1987 through to 2010. I am therefore fully conversant with building costs in South Africa and overseas. ...

19.

Although I fear there will be no proper investigation into Phahlane's conduct, I am opening this docket and reserve the right to go to the International Court of Human Rights, in the Hague if the State once again fail (sic) the people of this country."

30 The sworn statements and annexures thereto are attached as "AA1".

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- 31 Some of the statements annexed to O'Sullivan's complaint were not commissioned. This necessitated the Investigative Team to meet with O'Sullivan and some of the witnesses. I will later deal with this aspect in detail. O'Sullivan's complaint against Phahlane was received and assigned to Mmakwena Daniel Morema ("Morema") and given case number CCN 2016030085. Morema has deposed to a statement wherein he states that after registration, the complaint was referred to Phahlane through a letter drafted and sent to the erstwhile Acting Director of IPID, Israel Kgamayane to sign and engage Phahlane. I attach hereto as "AA2" and "AA3", a copy of Morema's statement and an e-mail sent to the erstwhile Acting Director on 18 March 2016.
- 32 On 9 May 2016, Phahlane acknowledged the letter notifying him of the complaint laid against him by O'Sullivan. He, in the letter indicated that his personal assistant must arrange a meeting with IPID as requested. The meeting was arranged for 28 June 2016, but Phahlane's personal assistant sent an e-mail requesting the meeting to be postponed by an hour due to Phahlane having to chair a JCPS "meeting scheduled to commence at 8 a.m.". Attached hereto is the letter to Phahlane dated 9 May 2016 as well as the e-mail correspondence between Kgamayane and Phahlane's personal assistant marked "AA4" and "AA5".

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- 33 Morema's first steps were to initially make contact with the complainant, as per the entry on his diary dated 23 June 2016. Morema made contact with O'Sullivan and this included requesting contact details of other witnesses. I annex hereto, marked "AA5.1" and "AA5.2" an affidavit from Maureen Smit confirming steps taken after receipt of the complaint from O'Sullivan as well as a copy of Morema's investigation diary.
- 34 Smit also confirms that a meeting was scheduled and attended by both Phahlane and Kgamanyane. I have no knowledge as to what transpired in this meeting.
- 35 Between late March 2015 and October 2016 IPID went through a tumultuous period as most of its top management, including the First Respondent, were suspended. This led to some of the investigations, including O'Sullivan's complaint being interrupted and not followed through.
- 36 The First Respondent was reinstated on 19 October 2016 and all of the officials that had been suspended were reinstated. O'Sullivan made contact with the First Respondent following up on his complaint. On 31 October 2016, the First Respondent, I and O'Sullivan met at the offices of IPID wherein O'Sullivan requested an update on his complaint and

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whether it was being investigated since an inordinate amount of time had lapsed since IPID had made contact with him. I wish to state that at the time of this meeting, we were not yet in possession of the docket relating to the complaint.

37 This was not the first time that the office of the First Respondent was requested to investigate Phahlane as members of POPCRU had earlier made complaints about Phahlane's conduct in certain matters.

38 On 24 October 2016, members of POPCRU came to the First Respondent's office. They informed the First Respondent about their complaints against Phahlane and that O'Sullivan lodged his complaint with IPID. I, in this regard, refer the Court to the First Respondent's confirmatory affidavit.

39 Moonsamy had also phoned the First Respondent's offices not long before the meeting held between O'Sullivan and the First Respondent, wherein he followed up on the complaint.

40 On 1 November 2016, the Investigative Team was constituted and we used the first few days of November 2016 to familiarise ourselves with the contents of the complaint. I knew of O'Sullivan's complaint against

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Phahlane since Morema had used my computer to send the e-mail of 18 March 2016 to the erstwhile Acting Executive Director. He also copied himself and his Personal Assistant on this e-mail.

41 On or about 6 November 2016 and after having received the docket, I made contact with O'Sullivan regarding the complaint. He confirmed telephonically that he had laid the complaint and that the sworn statement was his statement. I asked O'Sullivan if he had evidence to support the allegations he had made and he confirmed that he did.

42 I further asked O'Sullivan if he had witnesses who could support the allegations contained in his statement. He indicated that he could locate the witnesses who would support his complaint. I suggested that he schedule a meeting on 8 November 2016. We agreed to meet at the IPID offices.

INVOLVEMENT OF O'SULLIVAN

43 On 8 November 2016 I, together with my colleague, Binang, met O'Sullivan and the Third Respondent at around 15:30. O'Sullivan complained about the length of time that the investigation was taking; he indicated that the Estate Manager of Sable Hills Estate, where Phahlane

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resided may be able to provide evidence of Phahlane's house plans which would reveal the approximate costs that had been incurred by Phahlane to build his house.

44 I also telephoned Moonsamy who had been mentioned as a witness in O'Sullivan's statement. He indicated that he had since moved to East London. I did not meet Moonsamy personally but we had a telephonic discussion and he confirmed the averments contained in his sworn statement.

45 On 9 November 2016, pursuant to the meeting of 8 November 2016, Binang and I drove to Montana to meet O'Sullivan and his attorney, the Third Respondent. We drove in an unmarked IPID vehicle, being a single-cab Nissan Navara.

46 We met O'Sullivan and had a discussion with him. He reiterated that he could prove the allegations pertaining to Phahlane's house by means of the building plans. We then agreed to go and see the Estate Manager of Sable Hills Estate.

47 Due to the fact that the Nissan Navara was a single cab vehicle, we could not all travel in the IPID vehicle. We then agreed to drive in the vehicle

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that O'Sullivan had come in. I, for purposes of identification and ease of passage, drove O'Sullivan's car and we proceeded to Sable Hills Estate. I identified myself by means of my IPID identification/ appointment card and indicated that I was from IPID and needed to see the manager of the estate.

48 The security officers at the estate directed us to the offices of the Estate Manager and opened the gates for us. We proceeded to the offices and found the Estate Manager's personal assistant or secretary, Antoinette. I introduced Binang, O'Sullivan and myself. I then asked to see the Estate Manager. Within a short space of time, she took us through to his office where I similarly introduced everyone. I indicated that Binang and I were from IPID and were conducting an investigation into Phahlane. I indicated that O'Sullivan was assisting us in locating the witnesses and the evidence. I advised the Estate Manager that we needed to see the architectural drawings and site plans of Phahlane's house.

49 The Estate Manager, Christo Jooste ("Jooste") indicated that he had the plans and he showed them to us. He, however, refused to hand them over. He indicated that he was not permitted to do so. We looked at the

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plans and I indicated to him that I would address a letter to him requesting that he formally furnish copies of the plans to IPID. I point out that:

49.1 I later wrote this letter on 18 November 2016 and delivered it to the estate manager on the same day– he then obliged. A copy of the letter is attached as "AA6". This was the second time that I went into the estate in which Phahlane's house is built. I was accompanied by O'Sullivan and the Third Respondent.

49.2 The third time I entered the estate was when we executed the search warrant. O'Sullivan and the Third Respondents were not present on the third occasion.

50 Returning to the first occasion I went into the Estate:

50.1 During that visit and whilst we were still in the Estate Manager's office, Frederick van der Walt ("Van der Walt"), the head of security at Sable Hills Estate, told us that he knew the person who had built Phahlane's house, namely Frederick Terblanche. Van der Walt gave us Terblanche's number and we immediately made contact with him and requested to meet him. He agreed. At all material times whilst inside the estate, we were accompanied by Van der Walt.

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50.2 Binang, O'Sullivan, the Third Respondent and I then proceeded to meet Terblanche in Sinoville at the crèche where he was working. After introducing Binang, I informed Terblanche that we were from IPID and that O'Sullivan and the Third Respondent were assisting IPID to identify witnesses. I asked Terblanche if he had built Phahlane's house and he confirmed that he had. I then asked him how he had been paid for such work. He indicated that the bulk of his payments were made in cash, which had been given to him by either Phahlane or his protector, Alwyn du Preez ("Du Preez"), in plastic bags from the boot of Phahlane's car. I also asked Terblanche whether any payments had been made by electronic transfer to his bank account. He advised that he could not remember but would check his bank account for any such payment.

50.3 At the time, no statement was taken from Terblanche as this was preliminary work. Once details of the evidence buttressing O'Sullivan's complaint became available we would revert to him to collect a statement. This was also part of the preliminary work that O'Sullivan had undertaken to assist us in the identification of witnesses and corroborative evidence supporting the complaint.



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51 After this interview, we returned to the Sasol garage, where I thanked O'Sullivan and the Third Respondent for their assistance and we parted ways.

52 Binang and I returned to the office with the information we had gathered. We analysed it and realised that due to the details furnished to us by Terblanche and the complaints made by O'Sullivan in his statement, it had become necessary to obtain the services of a Data Analyst. I later revert to this aspect.

53 Having analysed the information before us, we telephoned Terblanche to obtain a statement. We also wanted to obtain information relating to other sub-contractors who had assisted in the building of Phahlane's house. We wanted to ascertain how the other contractor's were paid for the work that they had done on Phahlane's house. The statement was obtained on 24 November 2016.

54 The investigation had at that stage revealed that:

54.1 Phahlane had built the house at Sable Hills Estate using Terblanche Du Toit CC and the building contract had been at a cost of approximately R3 million including material;

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54.2 During this building process, Phahlane paid the architect R109 489,99 by Electronic Fund Transfers. However, the investigation revealed that Phahlane had during the building process paid Terblanche a total amount of R710 000,00 in cash by means of 3 payments of R350 000,00, R350 000,00 and R10 000,00 respectively. All these payments were made in plastic bags from the boot of Phahlane's car.

54.3 The sub-contractors were also paid in cash by Phahlane using his driver, Du Preez who had made payments in cash from the boot of a black BMW as follows:

54.3.1 the builder received approximately 7 cash payments of R14 000,00 each, and an extra R20 000,00 in cash to build a wall and R11 000,00 in cash for the stairs, swimming pool and bathroom wall, which all amounted to R129 000,00;

54.3.2 the plasterer was paid R170 000,00 in cash payments that occurred on a fortnightly basis;

54.3.3 the electrician was also paid an amount of R10 000,00 on 4 or 5 occasions, amounting to approximately R50 000,00 in cash;

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54.3.4 the plumber was also paid in cash by Phahlane in amounts that totalled R30 000,00;

54.3.5 the tiler was paid between R5 000,00 to R10 000,00 on 7 or 8 times in cash.

55 On or about 14 November 2016, the Third Respondent advised me that she and O'Sullivan had been able to contact Josua Francois Rosslee who had earlier provided a draft statement (this is one of the statements earlier referred to at paragraph 31 above). I thought that his statement may be necessary in relation to the relationship between Phahlane and an entity known as Kriminalistik, which was alleged to be one of the companies that had benefited from tenders awarded during Phahlane's tenure as the Divisional Head in the SAPS Forensics Division.

56 We arranged to interview Rosslee on 23 November 2016. He deposed to a statement explaining the invoices that had been used to acquire electronic equipment ("the equipment") that had later been installed in Phahlane's house.

57 In this regard, Rosslee stated that the first invoice, totalling R126 900,00 was paid in cash and the second invoice in an amount of R80 075,00 had


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been paid by EFT. Copies of these invoices dated 30 June 2011 and 19 April 2012 respectively, are annexed as "AA7" and "AA8". These were also attached to the application for the search and seizure warrant. Rosslee further indicated that the beneficiary that had been referred to on the bank statement was the same person who had taken the goods on invoice 1 and the customer details had been captured as Kriminalistik. A copy of this statement is annexed as "AA9".

58 As already stated in paragraph 52 and due to the complexity of the information obtained regarding Phahlane and these payments, we recommended the appointment of a Data Analyst. The need for the data analyst was also exacerbated by death threats made to my life, my family, the First Respondent and O'Sullivan, received by me and O'Sullivan on 20 November 2016. I annex hereto a copy of the death threat sent to me in the form of a text message as "AA10".

59 Consequently, the First Respondent approached Botha to assist with the investigation. In relation to Botha's involvement:

59.1 The First Respondent approached Botha on 21 November 2016 pursuant to me receiving death threats. There was a need to appoint her on an emergency basis.

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- 59.2 Negotiations ensued pertaining to the employment of Botha and this led to her appointment on 9 December 2016. Botha has fifteen years' experience in the field of analysis of criminal data, processing and profiling. I annex as "AA11", Botha's *curriculum vitae* and as annexure "AA12" e-mail correspondence exchanged wherein her services were procured.
- 59.3 Botha formally commenced working on 9 January 2017, having been on sick leave after her appointment.
- 59.4 After Botha formally commenced working, I introduced her to O'Sullivan and the Third Respondent on 7 February 2017. The purpose thereof was to assist Botha with the orientation of the case. During the introduction, O'Sullivan explained to Botha his field of expertise as a Certified Fraud Examiner and forensic consultant.
- 59.5 This introduction of Botha to O'Sullivan was the only engagement I had with O'Sullivan after November 2016.
- 60 On 23 November 2016, we also interviewed Divan Botha ("Divan"), who also deposed to a statement. Divan states that he was instructed by Jolanta Regina Komodolowicz, who was known to him as Yola, to attend




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at Sounds Great Audio and Electronic Equipment ("Sounds Great") in Woodlands, where he had previously worked, to order the equipment that she had previously purchased from him. The equipment included a 55" Toshiba flat screen TV, 2 or 3 33" Samsung flat screen TV's and 1 Jamo home theatre system valued between R80 000,00 and R100 000,00.

61 Divan further stated that he was later instructed to deliver the equipment to Phahlane's house in Sable Hills as it had already been paid for. He collected the equipment, delivered it to Phahlane's house and once the installations were completed, he was sent back to ensure that the equipment had been correctly installed. His statement is annexed, as "AA13".

62 Later that day, being 23 November 2016, I interviewed Du Preez who confirmed that the contractors were at times paid in cash from the boot of the car. I later deal with the circumstances around Du Preez's interview in detail. Du Preez later gave Binang a statement.

63 The interviews conducted with Divan, Jooste and Du Preez were the last time that O'Sullivan was involved in the investigation. With my agreement, O'Sullivan facilitated some of the interviews. I agreed to this because he had first-hand knowledge of the case and I considered that in

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view of South African racial dynamics, this approach was more likely to succeed in obtaining the information from the witnesses – as indeed occurred.

64 Once this had occurred, we had obtained all the necessary information that we required for the investigation to proceed without O’Sullivan providing further assistance.

65 Botha subsequently involved O’Sullivan in one further respect – this was in a limited and technical capacity. As is explained in her supporting affidavit, she required his assistance to convert Phahlane’s bank statements from PDF format to Excel format, so that she could analyse them.

THE THREATS AND INTERFERENCE

66 I have referred above to the threats made by text message. Botha has already investigated these text messages and the investigation reveals that the handset used to send the text message sent on 20 November 2016 was linked to a member of the SAPS working at the OR Tambo International Airport.



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67 The cell-phone data read from the second death threat received on 19 February 2017 revealed that the threat was made from a handset that had received reception from ""3G_SAPS_Intel_HQ_MN1_NGA" tower. The sender of the threat also referred to himself/herself as a cousin of someone we were investigating. I assume that the threat came from Phahlane's cousin as I was at that point, only investigating him (Phahlane) and I had earlier received a death threat pertaining thereto. I annex hereto a copy of the second death threat sent to me in the form of a text message as "AA13.1".

68 It is interesting to note the timing of these death threats as there were no death threats made to anyone who had previously worked on this matter until the investigative team was constituted and we started with the investigation.

69 It is for, *inter alia*, these reasons and Phahlane's interference with the investigation, as evidenced by the charge of defeating the ends of justice, that the First Respondent requested the then Minister of Police to ask the President of the Republic to place Phahlane on leave, pending the investigation into these allegations made against him.



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70 There is a high probability of Phahlane using his office and authority to undermine the investigation. This is also clear from the fact that he has made contact with three witnesses and two of them have since deposed to affidavits pertaining to the investigation and the interviews held with them. It is possible that those affidavits were not voluntarily deposed to and displays an attempt to undermine the investigation.

71 Phahlane has also been able to access a court file where an application for the subpoena of certain witnesses and information pertaining to a list of the intended witnesses. This is also likely to compromise the investigation as witnesses may, akin to what has happened to me, be intimidated. Phahlane contends that his security was breached but he did not involve Protection Services.

72 In actual fact, Phahlane established his own "task team" under the pretence of investigating the alleged security breach. The Task Team is led by a General Mabula who is currently being investigated for the possible charges of torture and murder. It is also important to mention that other members of this Task Team are also being investigated for the same offences.

73 The Task Team has thus far been responsible for:



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- 73.1 Questioning the witnesses of IPID in relation to the matter against Phahlane and made them prepare statements different from what has been presented to IPID;
- 73.2 Arresting the Second and Third respondents who are IPID witnesses, despite the existence of a court order preventing such arrest in respect of O'Sullivan;
- 73.3 Seeking to obtain all the information on the Third Respondent's cell phone without any warrant permitting this; and
- 73.4 Most recently and as a way to subvert the investigation, they have initiated an investigation against the appointment of Botha by IPID.

EVENTS LEADING TO INTERVIEW WITH PHAHLHANE AND THE IMPUGNED WARRANT

74 Parallel to the interviews, Nkabinde undertook to schedule an interview with Phahlane, because the interview which had been previously arranged had not materialised. On 22 November 2016, Nkabinde telephoned Phahlane using his office line. He introduced himself and indicated that he was contacting Phahlane in order to schedule an interview in relation to the complaint by O'Sullivan as well as a charge of defeating the ends of justice.

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- 75 The defeating the ends of justice charge, was related to Phahlane's conduct pursuant to our meeting with Jooste. Phahlane had instructed the head of security and security guards at the Estate, to not permit any of us into the Estate. Copies of sworn statements from Van der Walt, the head of security and Elvis Makhase, a security official at Sable Hills Estate are attached marked "AA14" and "AA15" respectively.
- 76 Jooste, the Estate Manager, also confirms that Phahlane made contact with him and enquired about the investigation and the meeting we had held on 9 November 2016. Phahlane instructed Jooste not to provide documents relating to his house to anyone including the Investigative Team. This then led to me laying a charge of defeating the ends of justice against Phahlane as, in my view, he had attempted to interfere or compromise the investigation which he had been aware of since March 2016. This statement is attached as "AA16".
- 77 Regarding the scheduling of the interview, Phahlane directed Nkabinde to his Personal Assistant, who asked how long the interview would take. Nkabinde indicated that it would be approximately 30 minutes. Consequently, an appointment was scheduled for 23 November 2016 at 14:00.

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- 78 Phahlane's PA telephoned Nkabinde on the morning of 23 November 2016 and indicated that the meeting scheduled for 14:00 that day had to be cancelled as Phahlane was no longer available. No reasons were provided to Nkabinde.
- 79 On 24 November 2016, Phahlane's PA sent a text message to Nkabinde indicating that the meeting had been rescheduled for 12 December 2016 at 10:30. Nkabinde did not confirm the meeting as he wished to confirm the suitability of the date with other members of the Investigative Team.
- 80 On 5 December 2016, Phahlane's PA made contact with Nkabinde who was unable to speak to her as he was at a meeting. She sent a text asking whether the meeting could be confirmed, but the time indicated therein was incorrect. Phahlane's PA later sent a text and corrected the time for the meeting.
- 81 On 7 December 2016, Nkabinde received a text from Phahlane's PA indicating that since the meeting had not been confirmed, it had now been cancelled. The text further indicated that Nkabinde was to telephone Phahlane's office at a number reflected therein, to schedule a further meeting. Nkabinde responded by noting the content of the text message.

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82 A copy of a "screen-grab" of the text conversation between Nkabinde and Phahlane's PA, is annexed as "AA17". I also attach Nkabinde's confirmatory affidavit. I will later refer to the subsequent interviews held with Phahlane leading to the execution of the search warrant at his house.

APPLICATION FOR SEARCH AND SEIZURE WARRANT

83 Having received the sworn statements from Rosslee as well as the invoices and the bank statement indicating that a payment had been made to Sounds Great. I on 23 December 2016, deposed to an affidavit wherein I indicated that I had obtained objective evidence that implicated, *inter alia*, Phahlane in allegations of corruption.

84 The evidence was that Kriminalistik CC, who had supplied the SAPS with forensic equipment, had bought a sound system for the then head of the SAPS' Forensic Division and installed it in his house. I indicated that the sworn statements annexed to my affidavit necessitated further investigation. I further stated that a search for the items mentioned in annexure "B" was necessary but that these items would not be seized in terms of section 20 of the CPA.



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- 85 Having considered the application, the search and seizure warrant was granted by the Fourth Respondent on 29 December 2016. The decision to grant the application was based on information on oath, which indicated that the offence of corruption was reasonably suspected to have been committed and that the specified articles were in the possession or under the control of Phahlane. These articles were identified and listed on annexure "B".
- 86 The warrant further states that I shall be assisted by the Investigative Team, namely Nkabinde, Raphesu, Binang and Botha. My affidavit used in the application for the search and seizure warrant as well as the annexures and the warrant are annexed as "AA18" and "AA19" respectively.
- 87 The warrant was not immediately executed as the Investigative Team felt that because it was during the December holiday, Phahlane may be engaged in operations pertaining to safety and/or road safety at the time, that December was also a family period and it was unnecessary to intrude on Phahlane's privacy during such time. It was also not executed as some of the members of the Investigative Team had already gone on their December leave and Botha who was to assist was still on sick leave.



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88 Members of the Investigative Team returned to work during the first and second week of January 2017.

89 During the December and January period, I was able to locate Douw Lombard, the person who had installed the electronic equipment at Phahlane's house. He deposed to an affidavit wherein he indicated that he was employed at Sounds Great and that around April 2012 and he had been instructed to install the sound equipment that had been acquired from Sounds Great.

90 He stated that he had, *inter alia*, installed equipment being the DSTV dish LNB, decoder, the home theatre which included the installation of the main TV in the lounge, surround sound, audio system including 5 speakers and a sub-woofer, amplifier, DVD player and the Mode 8 ER and had tested that it was working properly. He also recalled the client who had bought the equipment as being Yola and that she had purchased sound equipment at the store previously.

91 Lombard further indicated that the first sound equipment that Yola had bought had been installed at her house and the second equipment was installed at Sable Hills Estate in Phahlane's house. Lombard's sworn statement is annexed hereto as "AA20".

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EVENTS LEADING TO THE PHAHLANE MEETING AND THE EXECUTION OF THE WARRANT

92 On 17 January 2017, Nkabinde was telephoned by Phahlane's PA who requested that a meeting be scheduled for 19 January 2017. Nkabinde confirmed that the date was suitable. Phahlane's PA confirmed via text message with an address where the meeting would take place and the date of 19 January 2017 at 9:00 as the date and time thereof. Nkabinde responded and thanked Phahlane's PA for the text message. However, later on the day Phahlane's PA shifted the time to 11:00. Nkabinde responded and confirmed that the time change was not an issue.

93 On 19 January 2017, Phahlane's PA sent a text message to Nkabinde indicating that Phahlane was busy with the Minister of Police and Nkabinde should await her confirmation of the meeting time before making his way to the venue where the meeting was to take place. Nkabinde told Phahlane's PA that he would wait for Phahlane to finish his engagements. Nkabinde, the Investigative Team and I then proceeded to the police headquarters and arrived at approximately 11:00 to wait for Phahlane outside his office.

94 The purpose of the interview that had been scheduled for that day was two-fold: firstly Nkabinde would conduct an interview relating to the

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charge of defeating the ends of justice. This interview was to be conducted by Nkabinde, Raphesu and Botha, who would be present and observe the interview because I was the complainant. Binang and I were to wait outside and thereafter conduct the second interview relating to the allegations of corruption.

95 Phahlane arrived at approximately 11:20. He was accompanied by persons I later got to know to be Isaac Chowe of the State Attorney's office in Pretoria, Major-General Khan from Legal services and the Acting Head of Detectives, Major-General W P Ramatsoele. Nkabinde, Botha and Raphesu were thereafter directed to the boardroom.

96 When the interview commenced, Phahlane introduced the people in his company. Nkabinde introduced Raphesu and Botha. Phahlane thereafter requested to see their appointment certificates or identity cards. Raphesu and Nkabinde produced identity cards but Botha could not produce her identity card because her appointment card was in the process of being printed. Phahlane objected to Botha's presence at the meeting. Botha then left the meeting to get a copy of her appointment letter printed.

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- 97 She was able to do so and subsequently produced her appointment letter. However, Phahlane was still not satisfied and objected to her presence. He further indicated that Botha had not been vetted. This was incorrect, as Botha had been vetted when she was a member of the SAPS and when she worked for the Directorate for Priority Crimes Investigation (the Hawks). Botha nevertheless then left the meeting.
- 98 I suspect that Phahlane wanted Botha to not form part of the meeting because he knows Botha's expertise. He, out of fear, thought she might uncover incriminating facts and did not want her to form part of the interview.
- 99 Nkabinde and Raphesu then proceeded with the first interview and Phahlane answered the questions that were put to him. This was recorded in writing. Nkabinde then indicated that the team that was waiting outside, namely Binang and I would be joining them for purpose of the second interview relating to the allegations of corruption. I in this regard refer the Court to Nkabinde and Raphesu's confirmatory affidavits.
- 100 Binang and I then went into the boardroom and introduced ourselves after Nkabinde had called us in. Phahlane introduced the people with him and thereafter said he had questions for Binang and me. I advised him that I

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was conducting the interview. Phahlane responded by indicating that he would not answer any questions and wanted any questions to be put to him in writing. He also indicated that he had only confirmed the meeting for Nkabinde's interview.

101 Unlike the interview that he had conducted with Nkabinde, Phahlane was particularly hostile towards Binang and me. The interview came to an abrupt end as a result of his refusal to answer questions.

102 I then advised Phahlane that I had a warrant, which I produced and requested him to accompany the Investigative Team to his house. He asked whether the warrant was to seize any items. I advised him that the warrant was to inspect the items listed therein. He responded by saying that he was busy and could not accompany us. I asked Phahlane to make someone available to do so. He refused to do so and said that he would not accompany us to conduct the search and there was no one at the house.

103 Phahlane then asked for a copy of the warrant. I gave him one. He conferred with the State Attorney and confirmed that he would arrange with his protectors to accompany us to his house. Phahlane never

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requested a copy of the statements that had been annexed to the warrant.

104 Phahlane then went outside and spoke to Du Preez who indicated that he would go with us. As we were about to leave, Phahlane called me back to his office and provided me with an e-mail containing an instruction to Nedbank to transfer an amount of R80 075,00 with a reference as Yola. A copy of this instruction is annexed to Phahlane's Founding Affidavit as "FA8". He requested that we should not proceed with the execution of the warrant on the basis of this instruction to Nedbank. I informed him that I had an invoice which referred to Yola and Kriminalistik and I refused to accede to his request. I further informed Phahlane that the Technician (Lombard) who had installed the items listed in the warrant was accompanying us in order to identify and verify these items. I was getting concerned that Phahlane was delaying us and that Lombard's employer had only given him a day off work to attend to this matter. He did not pursue this issue any further. He then called his protectors to his office. I left and they then had a long discussion in my absence.

105 I waited for approximately 15 minutes, after which I returned to Phahlane's office and asked what the cause of the delay was as Du Preez

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had earlier indicated his readiness to accompany us. Du Preez responded and indicated that Phahlane was still using his phone to make a phone call. Soon thereafter, Phahlane came out of his office visibly upset and scolded us about the execution of the search warrant being "breaking news". I told Phahlane that the breaking news had nothing to do with the Investigative Team.

106 I had requested some members of the Tshwane Metro Police to stand-by as backup to execute the warrant. I made this request in advance after learning that Phahlane had availed himself for the interview. I arranged with the Metro Police for the following reasons:

106.1 I did not want to compromise members of the SAPS who may be victimised for accompanying the team to execute a warrant at the Acting National Commissioner's house;

106.2 there were threats against my life and I invited them to ensure that there would be no safety risk associated with the execution of the warrant; and

106.3 there is a limited availability of photographers and Phahlane had already complained about the objectivity of the investigation as outlined in his affidavit.

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107 These Metro Police officials came in a Combi and were placed outside Phahlane's house. They did not enter Phahlane's house when we executed the warrant.

108 When we left the police headquarters, we used different cars and followed Du Preez and Manganye (Phahlane's other protector). Upon leaving the police headquarters, we notified the Metro Police Officers to be on stand-by as we were making our way to Phahlane's house.

109 When we arrived at Sable Hills Estate, the media was already there with cameras, which made the investigative team uncomfortable to a point where we tried to conceal our faces from the cameras. Upon our arrival the Metro Police Officials had not arrived and we waited for them to arrive before we entered the estate. Once they arrived, we all entered but they remained outside the house. It was only the Investigative Team who did so, including David de Bruyn (IPID's videographer), Graeme Smith a photographer from the Tshwane Metro Police, Lombard who had installed the equipment as well as Sydney de Wet who is the photographer's supervisor. O'Sullivan was not present when this warrant was executed.

110 Lombard accompanied us so that he could verify that the items were the same items that he had installed. He would also ensure that he

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compares the items and their description as contained in annexure "B" of the warrant. We were also made to understand that the items or some of them had been mounted against some of the walls inside Phahlane's house.

111 When we got to Phahlane's house, Du Preez asked that we wait outside whilst the "kids" got out the house. I acceded to this request as I thought the "kids" were young children. We waited outside and after about ten minutes, a lady who we now know to be Phahlane's daughter drove out. Manganye went inside the house and Du Preez remained with us. About five minutes after Phahlane's daughter left, Manganye advised that we could enter the house. We found Phahlane's helper there. The Investigative Team and Lombard came inside as well as De Bruyn, Graeme Smith and his supervisor Sydney de Wet. De Bruyn began recording the video whilst Lombard pointed out where he had installed the equipment and the photographer took photographs and his supervisor was making notes.

112 The inspection began in the sitting room and continued to the main bedroom. In the inspection conducted in Phahlane's bedroom, only Du Preez, Lombard, De Bruyn, the photographer, Botha, Binang, Nkabinde

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and I entered the main bedroom as I felt that it was a private place that did not need to be traversed by all the members of the Investigative Team. The inspection identified the TVs installed by Lombard, the music system and the home theatre set in the lounge.

113 We also went into the children's bedrooms but did not find anything. One of the TVs that had been installed by Lombard could not be found and the search ceased after approximately 45 minutes. We then returned to the office with the photographs and video footage that had been taken.

FURTHER INVESTIGATION INTO PHAHLANE WITHOUT O'SULLIVAN'S INVOLVEMENT

The vehicles

114 The investigation into Phahlane has so far revealed that Phahlane had purchased a Landrover Discovery V6 vehicle with registration number BG 85 NM GP on 4 May 2011 for an amount of R765 995,00. The vehicle was registered in his name and he sold it to Inspect-a-Car on 21 August 2014. At the time of the trade-in, the value of the vehicle was R557 500,00. However, Inspect-a-Car paid Phahlane R650 000,00 for the vehicle by means of payments made on 19 August 2014 in two instalments of R405 907,52 and R244 092,48 through First National

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Bank. The R650 000,00 purchase price amounted to a benefit of R92 500,00 above the trade-in value of the vehicle. This vehicle was later sold to a Mr Anton du Plessis on 20 June 2015 for an amount of R547 500,00. Inspect-a-Car thereby incurred a loss of R106 632, 72.

115 A Mercedes Benz C250 Elegance Automatic with registration number BT 95 ZW GP was purchased in the name of Phahlane's wife on 14 March 2012 for an amount of R482 500,00. Phahlane's wife is a senior member of the SAPS. This vehicle was sold to Inspect-a-Car on 16 January 2015. At the time of the sale the vehicle was valued at R318 900,00 according to Inspect-a-Car's stock card. However, Inspect-a-Car's bank statement for the period reflects that someone using the reference Phahlane#225844, being the last digits of the vehicle's identification number was paid a total amount of R549 999,91. Therefore Inspect-a-Car paid a total amount of R549 099 91. This purchase price is R241 099,91 above the trade-in value.

116 The proceeds of the sale of the Mercedes Benz were used to purchase a second Mercedes Benz for Mrs Phahlane. She had ordered a new Mercedes Benz E250 CDI with registration number DM 14 XN GP from Garden City Motors, Durban during November 2014. She entered into an

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instalment sale agreement with Nedbank on 5 January 2015 and the vehicle was registered in her own name on 8 January 2015. A purchase price of R 756 000, 00 was paid to Garden City Motors. Within few days after payment of the purchase price, Phahlane transferred R 320 000, 00 from his Nedbank account to his wife's account also held with Nedbank.

117 During May 2013, Phahlane purchased a 2013 Nissan Navara motor vehicle with motor vehicle identification number VSKCVAD40Z0512529 for a total of R322 927,00. This vehicle was financed by Nedbank. This vehicle was also sold to Inspect-a-Car for an amount of R495 000,00 during or about April 2015. The book value of the vehicle at the time of sale was R308 000,00. The difference between the trade-in value and the price paid by Inspect-a-Car is R187 000,00.

118 On 28 April 2015, Phahlane bought yet another car, a VW Amarok from VW Hatfield with registration number DR 34 VB GP. When he purchased this car, Phahlane advised the salesperson that the deposit would be paid from the sale of a Nissan Navara that he had sold to Inspect-a-Car for an amount of R495 000,00. Inspect-a-Car credited the amount of R362 963,00 to Hatfield VW on 29 April 2015 and the balance which was meant to be financed by Nedbank, being R132 037,19, was paid by



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Inspect-a-car as settlement for the Navara to Nedbank. On 29 April 2015, the VW Amarok was registered in Phahlane's name.

119 The effect of the sale of the Nissan Navarra to Inspect-a-Car led to Phahlane receiving an undue benefit of approximately R187 000,00.

120 On 7 December 2015, a Toyota Hilux 4x4 single can bakkie with registration number FB 21 DT GP was purchased from Naboom Toyota for an amount of R377 360, 22. On 6 January 2016 this vehicle was registered in Phahlane's name. This vehicle was purchased by Ms H Groenewald for Inspect-a-Car.

121 On 15 February 2016, a VW Polo with registration number FC 98 TG GP was registered in the name of Phahlane's wife and insured by Phahlane from 19 February 2016. Snyman purchased this vehicle as a brand new vehicle from Bidvest McCarthy Volkswagen, Wonderboom at a price of R230 681,70. This vehicle was neither registered to Snyman nor to the dealership but was delivered with all the necessary manufacturer's documents to enable him to register the vehicle on the eNatis system.

122 Snyman of Inspect-a-Car claims that the Toyota Hilux and the Polo were given to Phahlane as a sponsorship. This sponsorship was not

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mentioned by Phahlane in his Founding Affidavit, nor has he declared it in his official disclosures.

The Sable Hills house

123 The investigations into Phahlane's house and the building thereof, reveal that:

123.1 he acquired the land at the Estate on 6 April 2010 for an amount of R850 000,00. A cash deposit of R255 000,00 for the acquisition of the stand was paid at the time and he obtained a bond for the balance of the purchase price of R595 000,00;

123.2 his bank statements indicate that the proceeds from the sale of his house in Queenswood totalled R513 994,87 which was only paid into his account at the end of September 2010. It is unknown where the amount of R255 000,00 (paid as the deposit for the land) came from;

123.3 from 2010/2011 Phahlane paid an amount of R157 064,30 into his bond account when he was only required to pay R47 292,00;

123.4 in 2011/2012, Phahlane paid an amount of R143 870.62 into the bond account when he was only required to pay R36 576,00.

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123.5 it was during this period that he built his house and the only visible payment into his bond account is an amount of R200 000,00;

123.6 in 2013/2014 Phahlane's bond repayments were, pursuant to an increase in the bond amount, R128 448,00 and he paid R369 733,20;

123.7 in 2014/2015, Phahlane was required to pay R111 984,00 but paid R402 733,24;

123.8 in 2015/2016, Phahlane was required to pay R73 368,00 and he paid R330 678,768; and

123.9 between March and December 2016, Phahlane was required to make payments amounting to R51 930, 00 and he paid R244 799,93.

124 The payments made into Phahlane's bond account must also be considered in light of the R710 000, 00 cash that was paid to Terblanche from the boot of his car, as well as the cash payments made to other contractors. These payments were made during the building of the house.

125 The aforementioned information reveals dubious transactions in Phahlane's financial affairs. The investigation reveals that Phahlane and

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his wife were able to make additional payments of approximately R2 million into their bond account in the last five years. It is also important to mention that Phahlane had obtained a bond of R 2.2 million and that he never used this money towards the costs of building the house. He only accessed about R 1, 180 000, 00 between the months of March 2012 and July 2012 after the house was almost finished and this money was used for finishes and trimmings. The acquisition of the stand and building of the house by Phahlane and his wife do not correlate with the amounts earned from their official sources of income. I annex hereto the analysis compiled by Botha on Phahlane's home-loan and current accounts extracted from his bank statements by Botha as "AA20.1" and "AA20.2".

126 I do not attach Phahlane's bank statements to this affidavit. However, should Phahlane dispute the correctness of the analysis, the full bank statements will be made available to the parties and the Honourable Court.

127 On 23 January 2017, Yola was interviewed in relation to the corruption investigation and her relationship with Phahlane. She indicated that she would make a statement in court and was unwilling to answer any questions at that time. I annex, as "AA21", a copy of her statement.

A handwritten signature consisting of a stylized, cursive-like mark.

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128 The above information clearly shows that there is a case to be investigated.

129 I now turn to deal with the averments made in the Founding Affidavit.

AD PARAGRAPH 2 THEREOF

130 I deny that the averments contained in Phahlane's affidavit are true and correct for the reasons set out herein.

AD PARAGRAPH 8 THEREOF

131 I confirm that Phahlane is under investigation as alleged.

AD PARAGRAPH 9 THEREOF

132 I deny that Phahlane only learned of O'Sullivan's complaint through media reports and sworn statements.

133 As indicated above, Phahlane was, as early as March 2016, advised of the complaint.

134 I have no knowledge of the remaining averments made in this paragraph.

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AD PARAGRAPH 11 THEREOF

135 I deny that IPID and its officers have abused any State power or illegitimately used their authority.

136 I deny that Nkabinde declined to indicate the basis of the complaint against Phahlane. There would be no need to conceal the basis of the investigation as Phahlane had previously been advised in a letter that a complaint had been laid against him.

AD PARAGRAPH 43 THEREOF

137 I deny that O'Sullivan ever "gained the ear" of McBride, save for following up on the complaint which he had laid as early as 25 February 2016.

138 O'Sullivan never had access to the resources and infrastructure of IPID to pursue any agenda. The basis of IPID's involvement with O'Sullivan is the complaint laid on 25 February 2016, during which period the first respondent was still on suspension.

AD PARAGRAPH 47 THEREOF

139 As indicated below, the preliminary investigative work had been done prior to Nkabinde making contact with Phahlane.

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140 It is disingenuous of Phahlane to suggest that 22 November 2016 was the first time that he had been notified of an IPID investigation against him. This is clearly untrue in the light of the letter addressed to him dated 18 March 2016, and the meeting which had been scheduled for 7 June 2016.

141 It is also clear that Phahlane lies about his knowledge of the investigation and that he has repeatedly lied to the nation through the interviews he conducted a day after the execution of the search warrant.

142 In this regard, on 20 January 2017, at an interview he had with ENCA, he said he only knew of the investigation on 19 January 2017, being the day of the interview as well as the execution of the search warrant. This is, in light of what has been stated hereinabove, clearly untrue.

143 He repeated his purported lack of information regarding the investigation in an interview held with SAFM. I attach hereto transcripts of these interviews as "**AA22**" and "**AA23**"

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AD PARAGRAPH 48 THEREOF

144 I deny the averments made in this paragraph and refer to the sequence of events as outlined hereinabove and Nkabinde's confirmatory affidavit attached hereto.

145 I specifically deny that Nkabinde lied to Phahlane's personal assistant.

146 I further note that Phahlane deemed the complaint and the interview not worthy of priority. One would expect that a person in Phahlane's position would want any investigation regarding allegations of corruption against him to be expeditiously finalised so that a person of his stature could as soon as possible clear up any suspicion of being involved in acts of criminality. What is further startling is that Phahlane indicated in one of his interviews that he did not have time for our investigation, as it was trivial.

AD PARAGRAPH 49 THEREOF

147 I deny that the information emanated from the office of the First Respondent and that there was any irregularity in the manner in which the investigation was conducted.

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AD PARAGRAPH 50 THEREOF

148 I confirm that from around 25 November 2016, O'Sullivan had no involvement in the investigation.

AD PARAGRAPH 51& 52 THEREOF

149 I deny that the media leaks emanated from IPID, the investigation is impartial and independent. There is no basis for a carefully co-ordinated staged management of the media. IPID is investigating a complaint, as it is statutorily mandated and obliged to do.

AD PARAGRAPH 53 THEREOF

150 Once again Phahlane is not being truthful. His PA cancelled the meeting on 7 December 2016 as is evidenced by the text messages attached hereto.

AD PARAGRAPH 58 THEREOF

151 I note the content of the e-mail annexed to the Founding Affidavit as FA3.4 and wish to state that the text referred to in that e-mail contains a death threat directed at me. I discussed this death threat with the First Respondent. He confirmed that the investigation must, as it had started,

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continue without the involvement of O'Sullivan as he had served his purpose.

152 I confirm that O'Sullivan had initially assisted. However, his assistance was limited to what has been set out hereinabove.

AD PARAGRAPH 66 THEREOF

153 It is interesting that the findings of the E&Y investigation (CPN Report) were delivered in April 2014, its content was communicated to Phahlane in April 2015 and he only saw fit to release the findings on 1 December 2016. In my view, this is what led to the media focussing on the IPID investigation.

154 It is, however, important to note that the E&Y report (CPN Report) states the following:

154.1 that the quality of some of the chemicals and canisters delivered by the company associated with Yola and Deale were of a questionable quality;

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154.2 that it did not seem entirely correct that the explanation of the increase in orders placed by the SAPS was to address the likely depletion in the year 2010,

154.3 that the supplier's invoice system was flawed;

154.4 that the supplier charged VAT inclusive prices but was not VAT registered, thus committing VAT fraud; and

154.5 that on face value Crimotech and Kriminalistik (suppliers) were colluding with each other in rendering services to the SAPS.

155 These are damning allegations made against people that Phahlane decided to associate with. This is clearly inappropriate and inexplicable as it, at the very least, creates a clear conflict of interest in the official government relationship that Phahlane had with Yola and Deale.

AD PARAGRAPH 69.1 THEREOF

156 I deny the averments made in this paragraph. There is an amendment to the warrant, initialled by me and the Fourth Respondent.



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AD PARAGRAPH 69.2 THEREOF

157 I deny that IPID had notified the media in advance in order to publicise the execution of the search warrant for any reason.

158 I, however, accept that the media was alerted and, as explained above, it was regrettable but it could have emanated from any of the parties who knew of the investigation. I reiterate that I was uncomfortable with the presence of the media.

159 I, and the Investigative Team played no role in the publicising of the execution of the warrant in the media.

AD PARAGRAPH 69.3 THEREOF

160 Phahlane is again being disingenuous. I explained to him in his office when he produced the instruction to his banker to pay for the sound system that the instruction did not suffice. I further explained that the invoice referred to Yola and Kriminalistik, which was the entity that he was alleged to have had a corrupt relationship with. It was therefore necessary to execute the warrant, in order to confirm that the electronic equipment had in fact been installed at Phahlane's house as had been

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alleged. The search would also confirm the model numbers of the equipment.

AD PARAGRAPHS 69.4 and 69.5 THEREOF

161 I deny that IPID made any promises to the media and that the warrant was executed to satisfy promises made to the media. In carrying out my investigation, I had to execute the warrant and confirm that the equipment listed in the invoice had in fact been installed in Phahlane's house to verify that it was the same equipment listed in annexure "B" to the search warrant.

162 Further, Phahlane did not, when requesting a copy of the warrant, request copies of all documents annexed thereto. Had he requested this, it would have been given to him.

AD PARAGRAPH 70 THEREOF

163 The search was conducted in order to identify the equipment as the Investigative Team had been advised that the equipment had been installed in Phahlane's house. We anticipated the equipment would have been mounted and therefore brought the person who had installed the equipment to identify it and confirm that it was indeed the equipment

✓ M.M

reflected in the invoice from Sounds Great. This was done. Lombard confirmed that the equipment at Phahlane's house was in fact what was detailed in the invoice.

164 The investigation was therefore not a publicity stunt.

165 I deny that Phahlane was handed the warrant and the invoice at that stage. The invoice was only furnished to him later when we were about to go into his office and he showed me the instruction to Nedbank. Had Phahlane wanted these documents, they would have been furnished to him and, as an Acting National Commissioner of Police, one would have expected him to know that he could request a copy of these documents if he wanted to do so.

166 It is clear that we are not dealing with an ordinary civilian, especially in view of the fact that Phahlane was able to insist on seeing identity cards of the Investigative Team who conducted the interview on that day.

AD PARAGRAPH 72 THEREOF

167 I deny that the failure to furnish the supporting documentation renders the warrant and execution thereof unlawful. Further, the warrant was not to

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search and seize but the search and confirm the presence of the items listed therein.

168 I note that Phahlane uplifted the content of the Fourth Respondent's file and did not request a copy of any documentation from me, notwithstanding that he knew that I was responsible for the investigation. Had he requested a copy, it would not have been furnished to him, as it also contains information that he is not entitled to.

AD PARAGRAPH 73.4 and 73.5 THEREOF

169 It is alarming that Phahlane has sought and gained access to all of the documentation pertaining to the investigation. This has the potential of compromising the investigation, as he now knows the details of those subjected to subpoenas in terms of section 205 of the CPA.

170 It is possible, just as I received death threats, that these witnesses may be intimidated or have their lives threatened to ensure that they do not cooperate with our investigation.

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AD PARAGRAPH 75.1 THEREOF

171 I annex Botha's appointment letter as "AA24" and refer to the background to her appointment as explained herein.

AD PARAGRAPH 75.3 THEREOF

172 Again, Phahlane is being disingenuous when he states that he only received notice of the investigation for the first time on the day of the interview.

173 Nkabinde indicated on 23 November 2016 that the complaint laid against him related to corruption.

AD PARAGRAPHS 76 and 77 THEREOF

174 The contents hereof are denied.

175 I refer this Honourable Court to the sequence of events as outlined hereinabove. I wish to add that Phahlane was hostile and actually refused to accompany us to his house.

176 He only availed Du Preez and Manganye after conferring with the State Attorney who was present at the meeting.

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177 The remaining averments in these paragraphs are denied.

AD PARAGRAPH 78.1 – 78.3 THEREOF

178 The contents hereof are noted.

179 However, these leaks did not emanate from IPID. Further, there is no warning statement that was obtained from Phahlane, relating to corruption. The only warning statement obtained was for defeating the ends of justice.

180 It was embarrassing that there had been a leak. However, the leak was not engineered within the ranks of IPID. I therefore deny the content of this paragraph.

AD PARAGRAPHS 81 and 82 THEREOF

181 The payment instruction dated 16 April 2012 is just that, a payment instruction. It was not proof that funds were indeed available and they were transferred to Sounds Great. Additionally, the reference and client was still Yola and Kriminalistik. No other entity was used for interior decoration. The only reference is Yola.

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182 Therefore, we could not be satisfied by the explanation proffered by Phahlane.

AD PARAGRAPHS 83 - 85 THEREOF

183 At the time of the execution of the warrant, Phahlane did not explain that Yola is an interior decorator. We only knew that Yola is a director and linked to companies that benefited from SAPS contracts awarded to them to the tune of R93 496 215,00. These tenders were awarded from 2010 to 2016. The information further indicates that these companies received tenders that increased in value from 2011 going forward.

184 It is also uncommon for a contractor to have such a personal and/or business relationship with a person who is responsible for a government department division, which they supply products to. He alleges that he paid Yola for the interior decoration work she did in 2011 and 2012 but fails to produce proof of such payments.

185 Again, one would expect that a person faced with allegations pertaining to corruption would provide all the proof to dispel any suspicion created by his relationship with Yola.

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186 A notice in terms of rule 35(12) was despatched on 29 March 2017 requesting certain information referred to in Phahlane's affidavit. The Applicant's legal representatives responded thereto on 10 April 2017. Copies of some of the documents requested including the E & Y report were inspected and uplifted on 12 April 2017.

187 It is however interesting to note that the full report of E & Y furnished by the Applicant's legal representatives recommends that the conduct of Kriminalistic and Crimeteck be reported to various state entities including the Treasury for, *inter-alia*, collusion in the tender process. I annex hereto an extract of E & Y report detailing these recommendations as "AA24.1" and challenge Phahlane to produce evidence of what steps were taken, if any, to implement these recommendations. This is particularly important in view of the relationship that Phahlane had with the directors of these companies.

AD PARAGRAPH 86 THEREOF

188 The contents hereof are noted.

A handwritten signature, possibly 'W', written in black ink.

M.M

189 However such contents do not explain why the invoice was issued for Kriminalistik. Yola could have used the company she uses for interior decorating and not Kriminalistik.

AD PARAGRAPH 88 THEREOF

190 I deny the content of this paragraph and put Phahlane to the proof thereof.

191 I particularly deny that the investigation was not independent and was unlawfully influenced by O'Sullivan.

192 This Honourable Court is referred to the background outlined above and the information obtained with O'Sullivan's help.

AD PARAGRAPH 89 THEREOF

193 I deny that we left Phahlane's offices at 14:30. The interviews were relatively short. We left at around 13:00.

AD PARAGRAPH 90 THEREOF

194 I confirm that I made contact with Du Preez for purposes of interviewing him. When we interviewed Du Preez, O'Sullivan was present and asked

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questions. However, I dispute that O'Sullivan and/or the Third Respondent were in charge of the investigation or that they were part of the Investigative Team.

195 In fact, Du Preez's interview revealed the following:

195.1 that he was not involved in the big payments made to Terblanche.

He was only involved in making payments to other contractors;

195.2 that he complained about the relationship Phahlane had with Yola

as it seemed "not right" because Yola was a supplier of goods to the SAPS.

196 I explained that O'Sullivan was the complainant and that he had obtained information which was followed up by the Investigative Team. The Third Respondent indicated that she is an attorney, working with O'Sullivan.

197 I deny that there was further contact made with Du Preez regarding the interior decorator.

198 I further deny that the execution of the warrant was a raid. Two Metro Police Officers were present, as explained above. Lombard, who had

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installed the electronic equipment was the other person. Divan did not go into Phahlane's house, but Botha did.

199 It is also untrue that everyone who accompanied us went to each and every room including Phahlane's private quarters.

200 Further, there was no need for an inventory list to be left behind as no items were seized, the items were only identified and photographed.

AD PARAGRAPH 91 THEREOF

201 I deny the averments made in this paragraph.

202 There was more than reasonable cause to apply for and execute the warrant. Further, there is nothing flattering about the performance of statutory functions and I invite Phahlane to prove what ulterior purpose was served by IPID's Investigative Team in executing the warrant.

203 Even if there was an ulterior purpose, it is irrelevant. What matters is whether or not an offence was committed. There is therefore no basis for the setting aside of the execution of the warrant.

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204 I am further advised that further legal argument will be addressed to this Honourable Court in this regard at the hearing of this application.

AD PARAGRAPH 92 THEREOF

205 I deny that the search is *ex facie* unlawful. When the Fourth Respondent issued the warrant, it was clear in his mind that the articles in terms of which the authority was sought, were detailed in annexure "B" which is the electronic equipment that had been installed in Phahlane's house. This is buttressed by the statement quoted in this paragraph.

AD PARAGRAPH 93 THEREOF

206 The contents hereof are denied.

207 When the application for search and seizure was presented, he knew what constituted annexure "B", hence he issued the warrant.

AD PARAGRAPH 94 THEREOF

208 The averments made in this paragraph are denied.

209 There was no excessive violation of Phahlane's privacy and the investigation was not executed on a flawed legal basis.

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AD PARAGRAPH 97 THEREOF

210 It is rather premature for Phahlane to conclude that the execution of the warrant was without substance as the investigation and envisaged trial have not yet been concluded.

211 The contents hereof are denied.

AD PARAGRAPHS 98 – 98.6 THEREOF

212 I deny the averments made in this paragraph and refer this Honourable Court to the investigation into Phahlane's vehicles outlined hereinabove.

213 It is worth noting that Phahlane fails to mention the value of the vehicles referred to herein.

AD PARAGRAPH 110 THEREOF

214 The contents hereof are denied.

215 I specifically deny that IPID is supporting an agenda to vilify Phahlane.

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M.M

AD PARAGRAPH 111 THEREOF

216 O'Sullivan may be involved in an investigation conducted by IPID, subject to him not having an interest in such investigation.

217 There is no blanket restriction against O'Sullivan. However, he was not involved in the investigation of Phahlane. He merely assisted in the preliminary stages by locating certain witnesses who could corroborate the allegations made by him.

AD PARAGRAPH 112 THEREOF

218 The contents hereof are denied. I have already explained the involvement of O'Sullivan and refer this Honourable Court to what has been set out earlier herein.

219 Save as aforesaid, the further contents hereof are denied

AD PARAGRAPH 113 THEREOF

220 O'Sullivan was involved in the collation of some of the statements prior to the complaint being laid with IPID.

 M.M

221 These draft statements, since they were accurate and confirmed by the deponents, were sent to them for confirmation and commissioning. This then explains why, the font and style in the affidavits is similar to O'Sullivan's statement. There was no need for these statements to be redrafted. However, where O'Sullivan had not obtained statements before him lodging the complaint, the Investigative Team drafted and commissioned the statements.

222 Raphesu was responsible for the commissioning of some of these statements as O'Sullivan indicated that he had obtained some of them in 2015.

223 As stated above, O'Sullivan was not involved in drafting or preparing the application for the warrant nor was he involved in its execution. For the avoidance of all doubt, I specifically deny that O'Sullivan drafted my affidavit which was used in the application for the warrant – I drafted it myself with the assistance of the IPID legal department.

AD PARAGRAPH 114 THEREOF

224 As explained hereinabove, the inferences sought to be drawn from the statements are misplaced.

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225 I refer to the affidavit of Raphesu, who is the person responsible for the commissioning of some of the statements compiled by O'Sullivan.

AD PARAGRAPH 117 THEREOF

226 I refer to what has been stated in this regard hereinabove.

227 To the extent that it is insinuated that O'Sullivan was a part of the Investigative Team, this is false and the contents of this paragraph are denied.

AD PARAGRAPH 119 THEREOF

228 I have responded to the content of this affidavit by indicating that O'Sullivan was part of the preliminary investigation as outlined hereinabove. He asked questions but as soon as we had obtained all the necessary information to support an independent investigation, O'Sullivan ceased to be involved in the matter.

229 I deny the averments made in these paragraphs to the extent that they are inconsistent with the factual outline contained herein.

230 I further refer to Jooste's sworn statement annexed hereto.

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AD PARAGRAPH 120 - 127 THEREOF

231 I have dealt in detail above with O'Sullivan's involvement. I deny each of the allegations made to the extent that they are inconsistent with what is stated above.

AD PARAGRAPH 129 THEREOF

232 The contents hereof are denied.

233 I confirm that the investigation into Phahlane has been independent and objective.

AD PARAGRAPH 134 THEREOF

234 I note and confirm that O'Sullivan has indicated that he is not involved in the investigation process undertaken by IPID.

AD PARAGRAPH 144.4 THEREOF

235 I object to the averments contained in this paragraph, as they insinuate that I somehow control or influence what O'Sullivan says.

236 I deny that there is any authority that IPID has given to O'Sullivan.



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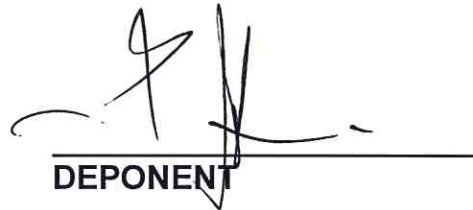
AD PARAGRAPH 148 THEREOF

237 I deny that there is any basis for the relief sought by Phahlane against the First Respondent.

238 I further deny that there has been any imbalance in the corruption investigation into Phahlane.

239 Lastly, I attach hereto the confirmatory affidavits of the First Respondent, Botha, Nkabinde, Mantsha and Binang as annexure "AA25", "AA26", "AA27", "AA28" and "AA29".

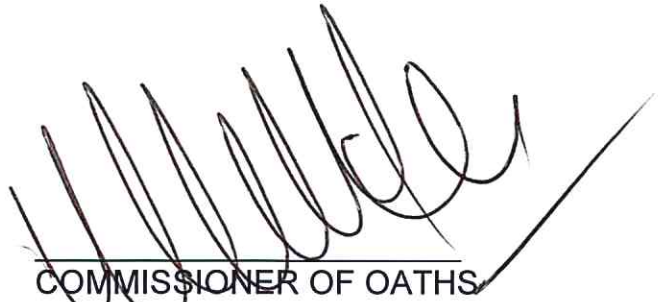
WHEREFORE I pray that this application be dismissed with a punitive costs order.



DEPONENT

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at **PRETORIA** on this the 20 day of APRIL 2017, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.





COMMISSIONER OF OATHS

Full names:

Address:

Capacity:

Contact no:

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