IN THE HIGH COURT OF SOUTH AFRICA
(NATAL PROVINCIAL DIVISION)

Case number CC 358/2005

In the matter between:

THE STATE

And

JACOB GEDLEYIHLEKISA ZUMA	First Accused
THINT HOLDINGS (SOUTHERN AFRICA) (PTY) LTD (as represented by PIERRE JEAN-MARIE MOYNOT	Second Accused
THINT (PTY) LTD (as represented by PIERRE JEAN-MARIE MOYNOT	Third Accused

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AFFIDAVIT OF THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

I, the undersigned,

VUSUMZI PATRICK PIKOLI,

do hereby make oath and state:

1. I am an adult male, the National Director of Public Prosecutions, having been duly appointed by the President as such on 1 February 2005 in terms of section 179(1)(a) of the Constitution of the Republic of South Africa, No. 108 1996.

2. In terms of Section 5(2)(a) of the National Prosecuting Authority Act, No. 32 of 1998, I am the head of the office of the National Director of Public Prosecutions, which is situate at VGM Building, 123 Westlake Avenue, Weavind Park, Silverton, Pretoria.

3. I have read the affidavits filed on behalf of the accused in this application. In this affidavit, I shall answer those allegations of the accused that fall within my knowledge.

THE AFFIDAVIT OF ACCUSED NUMBER 1

The allegations of conspiracy

4. It is appropriate for me to deal at the outset with a theme that resonates throughout the affidavit of Accused No 1. Accused No 1 alleges that :

- the charges against him have been initiated and fuelled by a political conspiracy to remove him as a role player in the ANC" (paragraph 20).
- I colluded with the President or discussed this with him prior to my decision to charge him at some stage prior to the President announcing his decision to dismiss Accused No 1
- That he was dismissed as a result of the charges brought against him (paragraph 46).
- that his conviction on any possible type of offence is being pursued at all costs and regardless of the fairness of the conviction (paragraph 17).

5. I reject these allegations in unequivocal terms. I note that Accused No 1 has put up no facts upon which such serious accusations could reasonably have been

founded, but has chosen instead to rely on rumours, press reports, speculation and innuendo. I am advised that these accusations are scurrilous and unfounded, and that they appear to be part of a concerted publicity campaign.

The Decision to Prosecute Accused No. 1

6. I intend to set out below some of the events and information that informed my decision of 20 June 2005 to prosecute accused No 1 on at least 2 counts of corruption. This has also been set out in some detail in McCarthy's affidavit. I am of the view, however, that in the light of the fact that this trial is still pending, it is inappropriate and undesirable to reveal certain details of the information presented to me since this might prejudice the State in the presentation of its case.

7. I am also advised that it is inappropriate in these proceedings for the accused to attempt to review my decision to prosecute. However, in light of the allegations and insinuations of impropriety on my part in taking this decision (as well as the decision *vis-à-vis* Accused Nos 2 and 3) I have decided to provide certain details. For these reasons, I will confine myself to the broad issues that I took into account.

8. Following the successful prosecution of Mr Shaik, who was Accused No 1's financial advisor, I requested the prosecution team to brief me *inter alia* on the significance of the court's findings *vis-à-vis* Accused No 1 and whether there was now a reasonable prospect of a successful prosecution against him.

9. I did this with a view to revisit my predecessor's decision in August 2003 not to prosecute.

10. On Friday 17 June 2005, the prosecution team briefed me on their recommendations, which included the recommendation, based on the evidence currently at their disposal and in the light of the fact that such evidence had been demonstrated to be admissible and reliable at the Shaik trial, to prosecute Accused No 1 on at least 2 counts of corruption. According to their analysis of the evidence, the prosecution team believed that there were good prospects that the evidence necessary to secure a conviction on corruption charges would similarly be admissible against Accused No 1. We discussed, *inter alia*, the available evidence, the admissibility thereof against Accused No 1 and the effect that various findings of fact and law in the Shaik trial would have on our prospects of success.

11. The prosecution team also informed me that for various reasons, including the passage of time since the conclusion of the investigation against Shaik and due to certain new information which emerged during the Shaik trial, there was a considerable amount of investigation specific to Accused No 1 that still needed to be undertaken.

12. After considering their recommendations and studying the Shaik judgement and discussing the issues with my senior advisors, including the Head of the DSO, I came to the conclusion that there was indeed a reasonable prospect of a successful

prosecution against Accused No 1, hence I took a decision to institute a prosecution against him. The decision to prosecute was based solely on my assessment of the admissible evidence and the prospects of a successful conviction and nothing else.

13. I considered the possibility of delaying my decision until the DSO had completed the further investigations which they believed to be necessary. However, I decided that this course of action was untenable for a number of reasons. Although these are not exhaustive, I will attempt to outline some of the important considerations that taxed my mind.

13.1 As pointed out by accused No 1, his investigation and the subsequent prosecution and conviction of Shaik and his companies had elicited huge media and public interest at that time.

13.2 There was intense speculation regarding Accused No 1's political future as well as the prospects of criminal charges being brought against him.

13.3 This had been further heightened by the President's recent decision to dismiss him as Deputy President as a result of the court's findings.

13.4 It was apparent to me that the decision that I had to make was one of national interest and might affect the perception of South Africa with foreign governments and could even impact upon the economy.

13.5 I took into account also the fact that Accused No 1 had been making repeated calls to "have his day in court" and I felt that it would be unfair on him to prolong his uncertainty in circumstances in which I was already

satisfied that there was enough evidence to form an opinion about the prospects of a successful prosecution.

13.6 In all the above circumstances, I felt that it would be neither in the interests of justice, nor the public interest to prolong the speculation by delaying the announcement of my decision.

14. I informed the prosecution team of my decision to charge Accused No 1 on the morning of Monday 20 June 2005. I then called at the official residence of the President at Mahlamba'Ndhlovu in Pretoria and informed him of my decision to institute a prosecution against Accused No 1. I deemed it necessary as a matter of courtesy to inform the President of my decision to institute a prosecution against Accused No 1, since he had until recently been the Deputy President of the country and still held the office of Deputy President of the ANC. This was the first and only occasion that I informed the President of my decision to institute a prosecution against Accused No 1. I also informed the Minister of Justice of my decision.

15. I then proceeded to the ANC's headquarters at Luthuli House in Johannesburg to see Accused No 1, after securing an appointment with him earlier that day. I informed Accused No 1 in person of my decision to institute a prosecution against him. I deemed it necessary to inform him personally of my decision as a matter of courtesy to the former Deputy President as I did not want him to learn thereof in the media. I should add that on a personal level this was not an easy task for me, as this was a man that I had looked up to as my political leader during my time in exile. Accused No 1 then raised certain concerns as to the effect that my decision

would have on his career. I empathised with him and expressed the hope to him that the matter should be resolved as soon as possible one way or the other. I did not, however, make any specific promises to him about time frames for the trial. He did not ask me what the nature of the charges were.

My trip to Chile

16. Much has been made in Accused No 1's affidavit (and in the media, which seems to be his chief source of information) about my trip to Chile and I need to put the circumstances and the reason for the trip in the correct perspective. This trip took place between 6 and 10 June 2005. The Minister of Justice had previously undertaken a trip to Chile and met with their Chief Prosecutor. The two countries had discussed an agreement to enter into a memorandum of understanding ("MOU") to co-operate on matters of mutual legal interest which had been initiated by my predecessor, Mr Ngcuka. The Chilean prosecutor had suggested that the ratification of the MOU be scheduled to coincide with a planned trip to Chile by a South African government delegation led by the President, so that the formal signing of the MOU could be witnessed by the Presidents of our respective countries.

17. Although I was part of the same delegation, I did not travel to Chile together with the President. I travelled separately using South African Airways.

18. I stayed in the same hotel as the President and the rest of the South African delegation and attended various meetings and functions together with him. These were all occasions attended by various members of the delegation. At no time during the entire trip did I have any private audience with the President. At no time during this trip, or at any other time prior to 20 June, did I discuss with him the outcome of the Shaik case or my thoughts regarding the possible prosecution of Accused No 1 or any related matters. As appears from what I have said above, I could not and did not discuss with him my decision to prosecute Accused No 1, as I had not yet taken such decision.

The Searches against Accused No 1 and Thint

19. In their briefing to me regarding the investigations still outstanding against Mr Accused No 1, the prosecution team explained to me the need to search Accused No 1 and various other premises. After listening to their motivation and in consultation with the Head of the DSO, I agreed to sanction these searches.

20. Searches are a routine part of an investigation for these types of offences. I can categorically state that the searches conducted in this matter were not carried out with any motive other than to secure relevant and admissible evidence for use at the subsequent trial. I should point out that search and seizure operations were also carried out in respect of Mr Shaik and yielded a great deal of relevant and admissible evidence that ultimately played a crucial role in his conviction. It appears to me that the real reason why the accused in this matter are so intent upon challenging these searches is not because of considerations of any breach of

their right to privacy and the like, but rather to try to avoid at all costs having relevant and incriminating evidence placed before the trial court that might also contribute to their conviction. Ultimately, however, the admissibility or otherwise of such evidence is a matter for the trial court to determine.

The decision to charge Thint

21. At the briefing on 17 June, the issue of the prospects of charging Accused Nos 2 and 3 was also raised. I requested further details from the prosecution team regarding the terms of the agreement to withdraw the charges against Accused No 3 and whether they had satisfactorily held up their part of the agreement. I also required a briefing on whether there were reasonable prospects of a successful prosecution against each of Accused Nos 2 and 3.

22. I was subsequently briefed on these issues and advised that, in the view of the prosecution team, there was no obstacle to re-charging accused No 3, for reasons that are set out elsewhere in these papers. I was also persuaded that there was sufficient admissible evidence to warrant charging them.

23. With respect to Accused No 2, I was advised that the reason why it had not initially been charged together with Accused No 3 and Shaik, was that at the time of the trial, Shaik was no longer a director of this company and hence could not represent Accused No 2 at the trial. He was, however, a director of Accused No 3.

24.1 Since Thetard had left the country and refused to return, there was no director to represent the company, with the result that the State would be forced to cite a junior employee, who had nothing to do with the offences, as representative of Accused No 2.

24.2 A further and more serious consideration was that this would have created potential misjoinder problems with respect to the second count of fraud which did not involve either of the present Accused Nos 2 and 3.

24.3 I was advised that the above mentioned obstacles did not present themselves in the instant case.

24. I therefore formed a *prima facie* view that there was no legitimate obstacle to charging either of these accused and that there appeared to be a reasonable prospect of a successful prosecution. The conviction of Mr Shaik and his companies and the terms of the court's judgment made it abundantly clear that Thint has a case to answer. The effect of this judgement is discussed in more detail in the affidavit of McCarthy. Considerations of public policy also dictated, in my view, that as co-conspirators to the corruption charges they should be charged along with the corruptee.

25. I was also informed that there was still further investigation required against these two accused. Since, in my view, the same pressing public interest issues that informed my decision to charge Accused No 1 without further delay, I decided to pend my decision regarding Accused Nos 2 and 3 until the investigations had progressed further.

26. In October of 2005, however, I was advised that a trial date had been set in Accused No 1's case. Since it was deemed desirable by the prosecution team to prosecute all three accused together, the decision was taken in consultation with the Head of the DSO to charge Accused Nos 2 and 3. The decision could not be delayed any longer without impinging upon their ability to prepare properly for the trial, with the probability of ensuing delays.

27. I turn now to deal with individual paragraphs where I am referred to in the affidavits of Accused No. 1 and Moynot. In order to avoid prolixity, I shall not repeat what I have already stated but respectfully request that it be read as incorporated in what appears below. I shall also only deal with those paragraphs which directly concern me. My failure to specifically refer to any specific paragraph should not be regarded as an admission thereof.

AD ACCUSED NO 1'S AFFIDAVIT

AD PARAGRAPH 17

28. This paragraph is denied. I was thoroughly briefed about this investigation and its history upon my assuming office as NDPP. Had I come across any evidence of improper or ulterior motives pertaining to the investigation, I would certainly have looked into these closely and, if confirmed, recommended the closure of the investigation. I have not come across any such indications of improper or ulterior motives.

AD PARAGRAPH 20

29. It is denied that the charges against Accused No 1 were initiated or fuelled by a political conspiracy against him. I specifically challenge Accused No 1 to state whether I am alleged to be a party to such a conspiracy.

AD PARAGRAPH 30

30. It is denied that the prosecution has not approached the Presidency about the matter. The NPA and the prosecuting team have in fact been engaging with the Director - General in the Presidency in this regard since February 2006.

AD PARAGRAPHS 43 AND 44

31. These paragraphs are admitted.

AD PARAGRAPH 45

32. I have no knowledge of these events and can neither admit nor deny them.

AD PARAGRAPH 46

33. I deny that Accused No 1 was dismissed as a result of the charges brought against him. The facts, as set out more fully in McCarthy's affidavit, demonstrate clearly that the decision was taken by the President **before** I had been briefed by the

prosecution team on 17 June and **before** I made my decision on 20 June. As I have already stated above, I only informed the President of my decision on 20 June and not a moment earlier. Nor could he have learned of my decision to prosecute from any other sources prior to his decision to dismiss Accused No 1 as Deputy President **because I had not yet made the decision**.

34. However, Accused No 1 does not have to take my word for this. The President himself, in his address to Parliament on 14 June 2005, spells out clearly that the reason for his dismissal of Accused No 1 was due, in summary, to the fact that the findings of the court in the Shaik case made his continued holding of the position of Deputy President untenable. By asserting, without a shred of proof, that the real reason was that I had decided to prosecute Accused No 1 for corruption, Accused No 1 **is effectively branding the President a liar**. I challenge Accused No 1 to pertinently state that the president lied to Parliament and to spell out whether or not he asserts that the President is also a party to the alleged political conspiracy against him.

35. Furthermore, what Accused No 1 fails to explain is, if the President's real reason for dismissing him was because I had decided to prosecute him, **why did he not simply say so**. There would have been nothing sinister about this and absolutely no reason to conceal this fact.

36. I deny that I made an about-turn on the decision to prosecute. The decision to prosecute was informed solely by the merits of the case, i.e. the weighing up of legally admissible evidence against Accused No 1, credibility findings in the

Shaik matter and reasonable prospects of a successful prosecution. The National Prosecuting Authority has adopted the United Nations Guidelines on the role of prosecutors and I believe that my decision was in line with both these guidelines as well as NPA policy.

AD PARAGRAPH 47

37. I refer to my explanation above on this issue. I deny that I briefed the President about my decision to institute a prosecution against Accused No 1 before or during the trip to Chile. I informed the President for the very first time of my decision to institute a prosecution against Accused No 1 on the morning of 20 June 2006 shortly before I made the announcement.

AD PARAGRAPH 49

38. As pointed out above, I did personally communicate my decision to charge Accused No 1 to him. He did raise concern about the impact of my decision on his political career. However, I deny that I expressly promised him a speedy trial. I did, however, express the hope to him that the matter should be resolved either way as soon as possible.

AD PARAGRAPHS 51 - 52

39. The searches carried my approval and were part of a normal investigation to gather evidence.

40. It is denied that the aim of the searches was to "find anything and everything detrimental to Jacob Zuma and his career". There is no basis whatsoever for this claim. The material seized during the search has been safely kept in the custody of the NPA, pending the outcome of the appeal, and has not been communicated to anyone else. The material will only be used at the trial and only to the extent that it is sufficiently relevant to the charges at hand.

41. It is denied that the searches were designed to establish the details of Accused No 1's defence to the corruption charges.

42. Accused No 1 provides no details of persons who were allegedly *"questioned about the documents found [and] stripped of their right to silence"* Accused No 1 was certainly not so questioned. The relevance of this assertion is therefore not understood.

43. The issues raised relating to these searches are dealt with more fully in the affidavit of McCarthy.

AD PARAGRAPH 77(c)

44. This paragraph is denied. See my comments above.

AD PARAGRAPHS 90 - 91

45. The reasons why I decided to charge Accused No 1 and Accused Nos 2 and 3 respectively as and when I did are set out above. I deny that the fact that I decided to charge Accused No 1 before Accused Nos 2 and 3 was due to him being "personally targeted by the prosecution"

AD PARAGRAPH 94

46. The contents of this paragraph are disputed and I refer to my reasons for charging Accused No 1 set out above.

AD PARAGRAPH 106

47. This paragraph is denied. In particular, I deny the ulterior motives ascribed to me therein. I take my oath of office seriously. I have no interest as to who governs the country. My allegiance is to the Constitution and the upholding of the rule of law. I would also not allow any person under my authority to act with improper motives.

48. I regard the invitation to withdraw the charges as cynical and disingenuous. I am firmly of the belief that if the State were to follow the suggested course of action, any subsequent attempt to reinstate the charges would be met with howls of protest from all three accused and concerted legal challenges, such as the present one. If I am wrong in my assessment, I challenge the accused to say so.

AD PARAGRAPH 109

49. The contents of this paragraph are disputed and I refer to my reasons for charging Accused No 1 set out above.

AD PARAGRAPH 125

50. The contents of this paragraph are disputed and I refer to my reasons for charging Accused No 1 set out above.

AD PARAGRAPH 141

51. The contents of this paragraph are disputed and I refer to my reasons for charging Accused No 1 set out above. I do not know who the political opponents are that Accused No 1 refers to.

AD MOYNOT'S AFFIDAVIT

AD PARAGRAPH 34.3

52. I deny that I made an about-turn after and as a result of the Shaik judgment. I refer to my reasons for charging Accused Nos 2 and 3 set out above.

AD PARAGRAPH 34.4

53. I refer to my reasons for charging Accused Nos 2 and 3 set out above.

AD PARAGRAPH 34.5

54. I deny the contents of this paragraph and refer to my reasons for charging Accused Nos 2 and 3 set out above. I also point out that it is a sound principle of prosecution policy that co-conspirators should be charged together. There is nothing sinister in this. I reiterate, however, that the decision to charge each accused was taken on the merits of their individual cases.

55. I should also point out that the mere fact that Accused Nos 2 and 3 are charged together with Accused No 1 cannot in law have the effect of rendering admissible evidence otherwise inadmissible against him. The court will obviously disregard any evidence tendered against Accused Nos 2 and 3 that is inadmissible against Accused No 1, just as it would disregard the confession of one accused in assessing the case against another.

56. I deny that the decision to charge Accused Nos 2 and 3 was brought about by the realization that the prosecution against no. 1 would not succeed or that the decision to charge Accused No 3 was motivated by *mala fides*. I refer to Annexures “PM 12” and “PM13” and to my comments above in this regard.

AD PARAGRAPH 79

57. There is no need for me to testify as this matter ought to be decided on papers alone. I refer to the reasons set out in the affidavit of McCarthy.

The contents of this declaration are true to the best of my knowledge and belief.

I read this statement before I signed it.

I know and understand the content of this declaration.

I have no objection to taking the prescribed oath.

I consider the prescribed oath to be binding on my conscience.

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VUSUMZI PATRICK PIKOLI

I certify that the above statement was taken by me and that the deponent has acknowledged that she knows and understands the content of this statement. This statement was sworn to before me and that the deponent's signature was placed there on in my presence at PRETORIA on 14 AUGUST 2006.

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FULL NAMES: _____
COMMISSIONER OF OATHS
EX OFFICIO: (eg: South African Police Service) _____
REPUBLIC OF SOUTH AFRICA
RANK: _____

ADDRESS: _____
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