IN THE HIGH COURT OF SOUTH AFRICA

NATAL PROVINCIAL DIVISION

CASE NO.: CC358/2005

In the matter between :

THE STATE

and

JACOB GEDLEYIHLEKISA ZUMA First Accused

THINT HOLDING (SOUTHERN AFRICA) (PTY) LTD (as represented by PIERRE JEAN-MARIE ROBERT MOYNOT) Second Accused

THINT (PTY) LIMITED (as represented by PIERRE JEAN-MARIE ROBERT MOYNOT) Third Accused

---

FIRST ACCUSED'S ANSWERING AFFIDAVIT

I, the undersigned,

JACOB GEDLEYIHLEKISA ZUMA

do hereby make oath and state

INTRODUCTION

1.

I am the First Accused in this matter.

2.

I oppose the application for an adjournment and seek orders consequent on the case not proceeding in my own right.

3.

(a) The matters deposed to hereinafter are within my personal knowledge save where the context indicates otherwise in which event I believe the averments made to be correct.

(b) I have been advised to avoid legal argument. Insofar feasible, I have sought to do so. A considerable number of contentions vital to the case made out on my behalf consist of inferences and contentions drawn from the primary facts. I have been advised by my legal representatives in this

regard both as to the making of these contentions and their relevance. It has been also necessary to make sufficient legal submissions so as to enable the State to answer and/or reply to these. I have thus herein served as the mouthpiece for these contentions.

(c) A considerable number of the primary facts are common cause or occurred during dealing with the matter by the legal representatives in which respect I refer to the confirmatory affidavit of my attorney Michael Hulley, or appear from documents admissible between the parties mainly because they are made by the parties or their representatives or agents.

(d) I have at times made reference to myself in the third person where this was appropriate in the context of the application.

(e) Headings have been employed – this has been done simply to facilitate the reading hereof and not to introduced rigid compartments.

THE DEFENCE'S APPROACH

4.

I firstly set out briefly the overall approach adopted herein in order to facilitate the reading of the evidential material and contentions set out hereunder:

(a) Clearly the trial cannot proceed.

(b) The State is responsible for the fact that I, as an accused, am faced with charges which cannot proceed to trial.

(c) The delay inherent herein is not excusable.

(d) None of the factors on which the State relies for the adjournment provide a proper reason for the granting of an adjournment.

(e) The appropriate order is one for a permanent stay of the prosecution or if that fails, the striking of the matter from the roll, unless the State withdraws the charges.

(f) I have suffered very real and serious irremediable personal, social, economic and trial prejudice both as a result of the delays and the manner in which the prosecution has been conducted.

(g) As a result of the manner in which the State has determined to prosecute me and conducted the prosecution, my rights to a fair trial have been very significantly infringed.

(h) It would be improper to allow the State to continue with the prosecution given especially the motive for the prosecution and the delays therein which relate to my status as an accused person and impact on my role in the leadership structures of the ANC and South Africa.

(i) This answer is, insofar necessary, the basis for an application for a permanent stay insofar as that order may

not by itself be the proper order in response to the application for an adjournment.

THE POSTPONEMENT SOUGHT

5.

The State seeks an adjournment until some time in the first half of 2007 leaving to the Defence the "generous" time of 3 months to prepare for trial after providing the "Forensic" Accountant's Report.

6.

This is to enable the State to take certain steps to possibly further its case against me. Even the most superficial analysis of some of these steps indicate that:

(a) The time periods required for these steps are wholly uncertain. I refer in particular to the various search and seizure applications and the appeals in some as well as the application for the Mauritian documents, the initial

outcome of which would also be susceptible to appeal and likely to be appealed. No-one can accurately predict when these matters will eventually be finalised.

(b) The time period for the State case to reach any such state of readiness so as to allow the Defence to sensibly prepare is, on any realistic assessment of the issues, well beyond the first half of 2007.

(c) The warrant applications alone have every potential to go to the Constitutional Court and some of the appeals are at a very early stage of preparation. It is, with respect, wholly unrealistic to expect that some of these applications, which have not even been heard, will be finalised even in 2 year's time. The Mauritian application will only be finalised some 2 to 3 years from now if things go well in that process. I will obtain the affidavit of a practitioner in Mauritius to this effect and file this in the course of next week. The Defence has, however, been assured that such an estimate is realistic. Thereafter, the Forensic Report has to be finalised based on what is

finally available and the Defence will finally be in a position where it can sensibly and effectively prepare for the trial based on the final (on the State's approach) indictment and further particulars thereto. In short, one realistically looks at least at some 2½ years till this stage is reached. I record that I intend to take an active interest in any application by the State concerning the Mauritian documents. I am advised that it is quite clear from the documents put up before Combrinck J in the State's application which was opposed by Accused 2 and 3, that the State were invited in early 2003 by the Mauritian authorities to participate in injunction proceedings launched in Mauritius by the Mauritian arm of Accused 2 and 3, and for the State to provide their input in those proceedings by February 2003. It is furthermore evident that the State failed to do so. Quite why the State waited until during or about December 2005 to launch the application before Combrinck J is unexplained. The documents put up before Combrinck J also make it clear that the State had sight of, and regarded as very valuable, the documents which were the

subject of the injunction in Mauritius. This is just another aspect of the unfair trial to which the State is intent upon subjecting me. It is also consistent with the State having regard to the documents seized on 18 August 2005, despite the challenges to the State's right to do so. I will see to it that the application papers before Combrinck J are made available to this Court.

(d) These applications and issues which are, on the State's version, preventing the Accused from even having a fixed indictment to prepare on, are all post-charge (in my case) prosecution-driven initiatives and have not been marked with any real sense of urgency on the part of the State. I deal later with these aspects.

THE TRIAL PROCEEDING?

7.

The State is quite correct in its contention that the matter cannot proceed. That much is obvious from *inter alia*:

(a) The State contends that the indictment is "provisional". It expressed a very firm intention, indeed undertaking, to drastically amend or replace it (sic - apply to do so) in the hearing before Mr. Justice Levinsohn (who specifically noted it and, on that basis, declined the making of any order at that stage). It has not done so. Any such application will be resisted.

(b) The State has recently provided my legal representatives with a computer hard drive in a virus riddled format, which contains some 4 million pages of documents said to be generally relevant to the matter and consisting of documents scrutinised by the State. Some of the files are replete with pornography – the relevance of which the Defence has not yet fathomed. The State contends that is has isolated approximately 200 000 to 300 000 pages which are really relevant to the charges. The problem is that the State in this context considers only material pointing to, or of use in, advancing a case of guilt, as relevant. Of course my representatives are also interested in material pointing to innocence.

(c) A request for further particulars has been filed by my representatives on 12 July 2006. There is nothing belated about it as the deponent, Du Plooy, insidiously seeks to suggest (par. 35) - the State has made it clear that any request for further particulars will not be responded to at least not prior to end of June because it could not supply these. This was its attitude in correspondence with the other Accuseds' representative and the application before Mr. Justice Levinsohn where the First Accused featured as an interested party. This request, of Accused 2 and Accused 3 was not effectively replied to - I refer to the "answer" which I annex hereto marked "A". I also refer to relevant correspondence which I annex hereto, marked "B". The request of Accused 1 has likewise not been replied to by the furnishing of particulars or otherwise.

(d) The State has made it very clear that the fulcrum of its case is a forensic report from KPMG relating to financial matters and financial dealings involving myself, Shaik

and others. This report was at the application before Levinsohn J said to be likely to be available at the end of June 2006. It has now been indicated that we can expect it on the day of the trial, 31 July 2006 or "which should be ready as soon as possible after 31 July 2006" (par. 36). This report purports to be a summary of many thousands of underlying documents compiled on an expert basis. As yet, the Defence does not know what documents will be used in support of the Report but it is likely to be well in excess of 20 000 pages.

8.

It is perfectly obvious that the trial cannot proceed. The State has not laid the basis or obtained judicial consent for any of the proposed steps it wishes to take to extend the ambit of the case drastically, for example amend the indictment or for the introduction of the evidence it proposes to lead (which are disputed in the warrant applications) or provided the Accused with the pre-trial information, in the form of documentation and particulars, to which we are entitled.

9.

If is further clear that the defence has not been placed in the position, to which it is entitled, to effectively prepare to challenge and adduce evidence at the trial. It is very clear that the rights of the defence in terms of sections 35(3) of the Constitution of the Republic of South Africa of 1996 have been negated by the events and, in submission, the mode the State decided to utilise to prosecute me. There can be no dispute about that - what is probably in dispute is whether the blame for this is to be laid at the State's door.

THE CONSEQUENT ORDERS

10.

The fact that the trial cannot conceivably proceed as a fair trial, given the impact of events on *inter alia* the Accused's pre-trial rights, does not however mean that the trial must be adjourned.

11.

It is the First Accused's contention that the State is not entitled to an adjournment and that the appropriate orders which will be sought are:

(a) That an adjournment be refused.

(b) That a permanent stay of prosecution be ordered.

(c) In the alternative, the matter be struck from the roll.

12.

I shall set out the basis for the order of a permanent stay sought hereinafter and also where I specifically deal with the contentions made by the State in support of their application for an adjournment.

13.

The other difficulty, in principle, with an adjournment to give the State free reign to add charges, to amend charges and to introduce new documents is simply this:

(a) The State, on its version, is not in a position to proceed 6 years after it launched its investigation: the facts are too vast and complicated and it have not yet marshalled and mastered these.

(b) The State has had the services of a number of experienced senior prosecutors who have devoted their full time and efforts to the investigation. It has had the input of numerous senior advocates from private ranks. It has had senior investigators from the Scorpions investigating these matters full time (*inter alia* the deponent Du Plooy and his namesake), it has had expert forensic accountants working on the financial documents for fees that run into many millions of Rand (I challenge the State to disclose the amounts paid and payable in this regard inclusive of the investigations of this nature in the Shaik trial).

(c) There is, given the equality of arms principle, no reason why the Defence should not be given a similar opportunity to prepare for trial and master the

documentation. This would involve an adjournment for some 5 to 7 years for the Defence to prepare, should the State expand its case in the manner it allegedly intends doing.

THE ALLEGED OFFENCES, THEIR INVESTIGATION AND THE CHARGES

14.

The two main offences alleged are:

(a) A generally corrupt relationship with Shaik - and it is clear that the State has in mind a period from 1995 (it sought these in the armed raids of August 2005) to 2005 (as appears herein. The fact that the alleged relationship may have continued up to 2005 does not, in any way, alter 1995 as the effective date of the commission of the offence for delay purposes. This will further be addressed in argument.

(b) A specific bribery arrangement with Shaik and the other Accused herein, committed in 2000 and early 2001 aimed at getting Accused 1 to conceal corruption in the "Arms Deal". The Arms Deal relates to the billion Rand contracts concluded in the late 1990's by the South African Government to purchase mainly aircraft and vessels for the South African Air Force and Navy.

15.

The above is a very general summation of the charges. The indictment served on the Accused reflect the charges. I shall refer to that as annexure "C".

16.

I have further been advised that an investigation into an alleged offence is an exercise that requires an objective search for the truth in order to make a fair decision whether to prosecute the implicated person(s) or not. The mere fact of a prosecution is highly prejudicial to the accused and in my case it has certainly proved to be so. This approach implies

that both facts pointing to guilt and facts pointing to innocence will be investigated and indeed the second category of facts must also be brought to the attention of the court and the Accused.

17.

Unfortunately it is clear that the current investigation was not of that ilk nor was it intended to be such from the very outset. It was from the outset designed solely or mainly to destroy my reputation and political role playing ability. Hence the present delays and postponement sought to further more investigations of that nature and design. My conviction on any possible type of offence is being pursued at all costs and regardless of fairness and if a conviction now appears to be fraught with difficulty, the mere postponement of the matter with the charges hanging over me would suffice to irretrievably harm me as a political role player. I set out as concisely as possible the facts and circumstances on which I base this response.

18.

I have, from shortly after my appointment as Deputy President of the Republic of South Africa in 1999, been touted as a potential Presidential candidate when the current honourable President's second (and constitutionally final) term of office expires. These speculations and expectations have steadily gained momentum and, especially in the press, conjecture about me being the next President has, in the last year or two, been persistent and widespread. I annex hereto some press articles which demonstrate the aforesaid and mark these "D".

19.

I have had a long history of service to the ANC and I hope to continue to serve this organisation. I am still the Deputy President of the ANC at present. During my recent trial on a rape charge (***S v Zuma*** WLD, 2006) which was heard from February to May 2006 (the alleged offence occurring in November 2005), I set out some of my personal history in this regard. I ask that this extract marked "E" be read as part hereof.

20.

Just as there are a number of ANC members, members of other parties and members of the public who have come out in support of me being the next President, so there are those in public and in government who are very much opposed to me being President and indeed some who wish me to have no role to play in the politics of this country. I have always made it clear that if the ANC desires me to fulfil that function and determines that I must do so, I will always serve its will. It is the organisation's prerogative to decide that. It is clear, however, that there are those who are vehemently opposed to this and that their disquiet seems to have increased with the open speculation in the press about the reported growing prospects of me being elected President. [If challenged, I shall put up the reports to this effect]. Indeed, I verily believe that the charges against me have been initiated and certainly fuelled by a political conspiracy to remove me as a role player in the ANC. It has become clear that because of my past record of service to the organisation, the only feasible imperative is an indirect attempt to undermine me to achieve this.

21.

I was thus charged on 29 June 2005 with two counts of corruption. These were in essence the mirror images of counts 1 and 3 against Schabir Shaik. Indeed in the application for the warrants the prosecution authorities state this expressly.

THE INVESTIGATIONS OF THE ARMS DEAL

22.

In the warrant application, the history of the investigation is dealt with. I annex hereto the authorisations to that end – these are the investigations which form the basis of my prosecution. I mark these "F". Only Count 3 on the present indictment might, in any way, be directly and logically connected to and fall within the parameters of the investigation into the Arms Deal.

23.

The investigation into my affairs, at the very least, has been sparked off by allegations of corruption in respect of the Arms Deal. It has been sustained as part of those allegations.

24.

I verily believe that, from the outset, these investigations were not geared towards establishing corruption in the Arms Deal, but indeed that this was used to ostensibly legitimise a wide-ranging investigation of my conduct and financial affairs in order to find some aspect which could be used to discredit me. This has been an ongoing process in which the assistance of some members of the State's intelligence services has been utilised.

25.

Around the year 2000, I became aware of an investigation against me by the National Prosecuting Authority ("NPA"), headed by Mr. Bulelani Ngcuka, on the Arms Deal. This I found peculiar because of the known fact that I played no part in the Arms Deal process.

26.

In this regard, and bringing the matter to the present, I point out that during the Shaik trial the State called witnesses who clearly asserted that:

(a) I welcomed and supported an investigation of the Arms Deal until a Government decision that there is no merit in such an investigation. I refer to the extract of the evidence of Mr. Woods, annexed and marked "G". Indeed, this still seems to be the authorities' position.

(b) There was no corruption in the awarding of the Arms Deal Contracts and indeed that the system was so designed that corruption was not possible. This was the clear evidence of the State witness, Mr. Griesel, at the trial, a copy of which I annex hereto, marked "H". [I also annex hereto, marked "I", a copy of an article, dated 9 July 2006, published on the internet website of *News24.com*].

Indeed, the very organ now prosecuting me for corruption in the form of an undertaking to cover up corrupt awards of the Arms Deal contracts, formed part of a Joint Investigation by the Auditor-General, the NPA and a Parliamentary Committee – it concluded that none of the awards of Arms Deal contracts was tainted by corruption.

28.

I further point out that there is not a single State witness involved in the Arms Deal process who contends that I ever even remotely requested or suggested that he or she act in an improper manner in the process or that I tried to influence the process or its outcome in any way. If there is, I challenge the Prosecution to give details thereof. I indeed had just about nothing to do with the entire Arms Deal.

29.

Honourable President Mbeki was in his position as the then Deputy President and member of the Cabinet, very much involved in the Arms Deal process. He took an active interest and part in it. He engaged with various of the role-players and other interested parties. He has

been scurrilously accused of being party to improprieties in this regard. I annex a recent report to this effect hereto, and mark it "J". I distance myself from these and condemn the accusations as false. However, he is a person who is ideally and obviously suited to depose to the absence of corruption in the award process. Once again, if he does so the prosecution must revisit and rethink the allegations that I was bribed to protect the French interests against exposure for corruption in the arms deal.

30.

There is no statement from the President in the docket contents handed to us. Nor is he on the list of witnesses. I have every respect for the office of the President and the need to avoid embroiling the incumbent in litigation. I heed the admonitions of the Constitutional Court in this regard. It is thus the more unfortunate that the prosecution has seen fit not to approach the Presidency to eliminate these areas of accusation from the litigation.

31.

In respect hereof, I also pertinently draw attention to my response to paragraph 9 of Du Plooy's affidavit and the absence of a statement by the President.

32.

(a) In the midst of the Prosecution's investigation in terms of the National Prosecuting Authority Act 32 of 1998 ("the NPA Act"), a group of black editors from the press were called by the Director of the NPA, Mr. Ngcuka, for an "off the record briefing". In this briefing, Ngcuka briefed them about the investigation and sought to recruit them in, what I believe, was a furtherance of the conspiracy against me.

(b) He went on to castigate me and other comrades, discussing information that, in my view, was untrue, but at the very least confidential to the NPA's investigation.

33.

This issue is dealt with more fully in my complaint to the Public Protector. This is annexed hereto, marked "K" and I confirm the contents thereof as part hereof. I refer in respect of the issue of the meeting, especially to page 15 thereof and annexures 9 to 11 thereto. I accept that some of the versions of the meeting may have been discredited – however, the fact of, and the general tenor of, the meeting has never been expressly denied. In the light of the material disclosed by the Prosecution to various High Courts, little would be gained by not disclosing the content of my complaint.

34.

I point out that Mr. Ngcuka has never taken issue with the fact of the meeting or the statements ascribed to him as made there. He has had every opportunity and platform to do so. He even failed to react to the Public Protector's request for his comment.

35.

I annex hereto a copy of the report of the Public Protector following his investigations into my complaints. I mark it "L". I submit that it is obvious, at the very least, that the **office** of the NDPP (in which I include the scorpions) leaked information of the investigation process. I also refer to page 16 of my complaint.

THE ANNOUNCEMENT OF THE OUTCOME

36.

It is perfectly clear that I have been investigated since 2000 by the NDPP and that I and my financial affairs came under intense scrutiny from the Prosecution in 2001 up until 2003. The Prosecution used a multitude of Government resources to diligently do so for 2 years on its own version. The outcome of the investigation was the decision to charge Shaik. It was expressly announced by the NDPP, Mr. Ngcuka himself, that a decision was taken not to prosecute me as there was insufficient evidence to prove my guilt. I annex hereto the public announcement by Mr. Ngcuka on 23 August 2003 and I mark it "M". This was the outcome of an intensive 2 year long investigation with all the resources of the State being utilised.

37.

What Mr. Ngcuka effectively said was that I was party to corruption but that it cannot be proven in a criminal court. That was exactly how the Minister of Justice, Mr. Maduna, understood him – hence his comment at that media conference that it was a "sad day" when the NPA says a Deputy President has a case to answer.

38.

That Mr. Ngcuka wanted to be understood in the above sense and was so understood, brooks no denial. *The Sunday Times* went on to report in its reaction to this announcement on 31 August 2003 that:

> "However, Ngcuka's announcement that the Scorpions had *prima facie* evidence of wrongdoing by Zuma but would not be able to secure a conviction took the humiliation to a new level. The implication is that the man is guilty but covered his tracks well."

39.

I also refer to my complaint to the Public Protector. The NPA and Mr. Ngcuka has never once gone on record to refute such reports evincing

such an understanding. They had every reason and every opportunity to do so if the import of the NPA's announcement was misunderstood.

40.

The response of Mr. Ngcuka as NDPP to the Public Protector's report was to convene a press conference at which both he and Mr. Maduna castigated the Public Protector. This was widely reported on national television.

THE PROVISIONS OF THE ENCRYPTED FAX

41.

There is one other highly relevant feature. The genesis of the investigation against me and the foundation of the corruption allegation on Count 3 is the so-called encrypted fax. That much appears from Mr. Downer's affidavit and is also hinted at in "M".

42.

I have set out, in annexure "K", my various attempts to obtain this encrypted fax, and particularly the handwritten copy, so that I could appraise myself of the basis of the case against me. I confirm this. I

point out that the NPA in the application I finally brought to gain access to it, in that case pertinently raised the issue that my request did not qualify as urgent (which was upheld). In short, complaints about invasions of my rights to fairly defend myself can wait. I am only now beginning to understand the full implications of this attitude. That was the time for my Defence to seek out and establish the truth about the encrypted fax.

THE DECISION TO PROSECUTE ACCUSED 1

43.

The Shaik trial commenced on 11 October 2004 and ended during 2005 with the judgment on the merits on 31 May 2005 and the judgment on sentence on 8 June 2005.

44.

The decision to prosecute me was announced by the NPA on 20 June 2005 and I was charged on 29 June 2005 with two counts of corruption which mirrored the corruption charges against Shaik.

45.

Shortly before that (on or about Sunday, 6 June 2005), I was requested by the President, through others, to resign in the light of the Shaik judgment. The request at that time was hard to justify on any legal basis. The President then dismissed me. I annex hereto, marked "N1" the text of his announcement. He foresaw therein me having my "day in court".

46.

I was dismissed as the Deputy President of the Republic of South Africa as a result of the two charges brought against me - the very charges the prosecution now says they are not in a position to go to trial on. It was obvious that the bringing of the charges would bring me into serious disrepute. In the context it meant that the State must by then (before 20 June 2005) have obtained evidence that demonstrates my guilt beyond reasonable doubt - that could be the only basis for the *volte* face on the decision to prosecute. I hasten to add that I have never been asked to comment on the new evidence or to answer it - this was indeed

called for given the earlier decision not to prosecute me and the legitimate expectation it engendered in me.

47.

Insofar as there may be a suggestion that my dismissal was not induced by the charges brought against me as these post-dated the President's decision to dismiss me, this is simply wrong. The President, I believe, could not have made the decision to dismiss me simply because I was implicated in Shaik's conviction. I was not an accused and the Shaik trial's outcome was expected on the State's version. If there was to be no prosecution, how could my situation then ever be resolved? I can only surmise that the NDPP, Mr. Pikoli, briefed the Honourable President on the upcoming charges, either at an earlier occasion or during the approximately 5 days the National Director was with President Mbeki during their visit to Chile immediately prior to my dismissal. It is after all inconceivable that the President would have instructed Mr. Pikoli to prosecute me – that is, after all, the only other inference. I challenge Mr. Pikoli to reveal the new evidence which caused him to change his mind prior to his visit to Chile and whether he informed the President of that. Insofar as there may be any dispute about Pikoli accompanying

the President to Chile, I annex hereto, marked "N2", a copy of an article published in *The Cape Times* on 7 June 2005, headed "Mbeki to Decide on Zuma's Political Future".

48.

The bringing of the charges impacted extremely severely on me. I lost the Deputy Presidency. It clearly impacts severely on any employment opportunities – I am effectively unemployed and quite unemployable given the pending charges. It has cast a social pall over me; I am viewed with suspicion. I have been branded a corrupt criminal in the press, they being emboldened by the decision to prosecute me. My future political role and my eligibility as a candidate for the Presidency have been severely and negatively affected by the fact that I am an accused on corruption charges. It has placed a tremendous strain on me in my personal life.

49.

At the time the charges were announced, the then NDPP, Mr. Pikoli, spoke to me about the matter. I pointed out to him the very debilitating

effect the charges will continue to have on my political career and my person. He agreed with this assessment and promised me a speedy trial on these charges. I had every reason to accept his word on the issue and started to arrange my affairs on that basis – I thus also started to engage the services of lawyers to defend me.

THE SEARCH AND SEIZURE WARRANTS

50.

The next event took me by surprise. On 18 August 2005, search and seizure operations were carried against me and some of my legal representatives based on warrants obtained *ex parte*.

51.

It emerged later that on or about 11 or 12 August 2005, after I had been charged warrants of search and seizure were applied for on an *ex parte* basis and issued on 12 and 15 August 2005. These were applied for in the TPD from the Judge President. These warrants in respect of me:

(a) Related to various homes and work-places of myself and my family.

(b) Were grossly invasive and overbroad and included very wide and pervasive search and seizure provisions couched in a format indistinguishable in some paragraphs from what already had been branded as improper by the Supreme Court of Appeal.

(c) Were clearly designed to establish details of my defence to the corruption charges (it was clearly expected that I would have made notes and comments on the Shaik matter and verdict and could well have started preparation for my defence as well).

(d) Were sought and obtained under sections 28 and 29 of the NPA Act - this allowed persons to be questioned about the documents found, stripped of the right to silence. I simply draw the attention to two of the most offensive paragraphs in the search warrants

"11. Notes, minutes of meetings, diary entries, records of telephone conversations and any other correspondence, e-mails, faxes, computer entries or documentation which Zuma and his secretaries, assistants or colleagues would have compiled in reaction to the prosecution and trial of Shaik and his related companies."

"23. In general any records or financial records of whatever nature, including ledgers, cash books, company registers, share registers, share certificates, bank documents, notes, minutes of meetings, diary entries, records of telephone conversations and any other correspondence e-mails, faxes, documentation, or electronic computer data which have a bearing or might have a bearing on the investigation. Electronic computer data includes computers, laptops, stiffies, hard drives, compact discs, data cartridges, backups electronic devices and any other form in which electronic information can be stored or saved. Records of telephone conversations include cell phone data stored in any cell phones."

52.

The search and seizure operations were carried out by some 300 persons acting on behalf of the prosecution authorities in a number of armed raids at the crack of dawn. An application was brought to set aside these warrants which was done by this court. A copy of the application to set aside the warrants directed against me and the judgment is filed as annexure "O". It was obvious that the State was

willing to utilise and did utilise tens of millions of Rand and unlimited manpower to prosecute me. The object of the searches was clear – find anything and everything detrimental to Jacob Zuma and his career.

53.

The prosecution started scrutinising the documents seized from my various residences immediately, directly in the face of a claim of privilege. What answers they obtained from all the persons they questioned via the powers of interrogation they had, I do not know. I submit that at the very least at the prima facie level this conduct has seriously violated my rights to a fair trial. It is virtually impossible to, for example, establish now or hereafter the extent to which their conduct has appraised them of the defences I have to the charges. My right to a fair trial means little if I have to discharge an impossible onus to effectively protect it.

54.

It is naïve to even suggest that the State were under any illusions as to whether the search and seizure raids they launched would be challenged. Of course, given the targeting of my legal representatives' offices nothing else could, should and would have been expected but a serious challenge to these raids. The State's anticipation of challenges is evidenced by the presence, at the raid on attorney Hulley's offices, of a State Advocate Muller who stated, under oath before Hurt J, that he was tasked specifically to deal with matters relating to privilege, should they be raised. As is evidenced by the judgment of Hurt J, claims to privilege, even when they were made, were refuted.

55.

The warrants in respect of my attorney, Mr. Hulley, and myself were set aside. These raids were declared unlawful and they remain unlawful. I further deal with other aspects of these later. It suffices to say that these raids were grossly invasive of privacy and dignity and had the sinister objective of discovering my defences and my defence strategies after I had been charged. To what extent this was achieved, is impossible to say and the disappearance of that means of proof is wholly

attributable to the Prosecution. The damage once done is irreparable – it is impossible for the Prosecution to disabuse itself of knowledge once gained.

56.

The so-called extended investigation into tax offences and fraud on the South African Revenue Services and others raised in the warrant application serve only to demonstrate the absolutely cynical abuse of the process of court that those intent to discredit me are willing to go. The fraud charge does not appear in the indictment, despite the fact that the section 28 investigation was specifically extended to include it just before the warrants were applied for. The raising of the new charges of fraud and contraventions of the Income Tax Act was a most cynical stratagem to induce the Court to authorise the warrants. In essence, these charges rest on the proposition that I, having received bribes, committed frauds by not confessing the bribes to Parliament, the Receiver of Revenue etc. and the purpose of the warrants was to establish this "concealment" not the bribes. The patent absurdity of this has been dealt with in the warrant application and I specifically confirm what I have stated on oath and generally. It was a ruse, purely and

simply, and the patent splitting of charges is obvious. I challenge the Prosecution to explain how many thieves and robbers they have prosecuted for failure to declare their "income" to the Receiver of Revenue during the ten years from 1990 to 2000.

57.

It is perhaps as well to confirm my response to these allegations in the warrant application verbatim for the benefit of the Court.

THE 19 JANUARY 2001 LETTER

58.

I deal later with the indictment herein and its status. It was served in early November 2005. If there were any new facts and evidence apart from what which formed the basis for the Shaik indictment (a copy is annexed hereto, marked "P"), this is clearly not apparent from a comparison of the indictments.

59.

This is particularly disturbing on another level also which again points to the manner in which the Prosecution is being conducted and the rather reckless use of the judgment in Shaik's case.

60.

In this regard I point particularly to the letter of 19 January 2001 which I signed. This letter played a pivotal role in the judgment of the court. It was held that:

> "A far more reliable guide to Jacob Zuma's feelings about the SCOPA recommendations is to be found in the letter he signed, if he did not write it himself, of 19 January 2001 to Mr Gavin Woods, the chairman of SCOPA, who had asked for the issue of a Presidential proclamation to introduce the Special Investigation Unit into the inquiry and had been conspicuously urging it in the SCOPA meetings. That letter was to advise Woods of the President's decision not to issue the proclamation necessary to do this. Woods described this letter as unique in his experience of 11 years of letters from Members of the Executive. He said that in its hostility, sarcasm and untrue statements of several issues, it was like nothing he had ever received. While we are not in a position to say whether any of the statements or issues are untrue, one is bound to say that a reading of that letter confirms the rest of the assessment. It is almost as if the writer is taking a special delight in rubbing the collective nose of SCOPA, and Woods in particular, in the rejection of its recommendation. That is conspicuously not the attitude of someone who was supportive of the investigation being pursued by SCOPA. Moreover, this scathing and humiliating rebuke was made widely known to a number of other interested persons, including the contractors, some of whose conduct was perceived to justify the investigation that had been refused."

61.

What is particularly disturbing is the following paragraph in the indictment served on me:

> " ***Protection against investigations pertaining to alleged irregularities in respect of the arms deal***
>
> 89. …
>
> 93. In a letter dated 19 January 2001, written in his capacity as "Leader of Government Business" in Parliament, accused 1 addressed a long letter to Gavin Woods, then chairperson of the Parliamentary Standing Committee on Public Accounts. It included the contention that there was no need for the Heath Unit to be involved in any investigation of the arms deal."

In ***S v Shaik*** the indictment read:

> "**N. ZUMA'S REACTION TO THE INVESTIGATION OF THE ARMS DEAL**
>
> 125. In a letter dated 19 January 2001, written in his capacity as "Leader of Government Business" in parliament, Zuma wrote to Gavin Woods, then chairperson of the Parliamentary Standing Committee on Public Accounts:
>
> "*Furthermore, we are convinced that [..] there is no need for the 'Heath Unit' to be involved in any 'investigation' of the defence acquisition.*

We hope this strange manner of proceeding was not driven by a determination to find the Executive guilty at all costs, based on the assumption we have already mentioned, that the Executive is prone to corruption and dishonesty."

62.

The letter in question was not drafted or composed by myself or my office. It was word for word drafted by the President's office and forwarded to me with an instruction that I should sign it. I did comply. There can be little doubt that even the most superficial investigation must have revealed that to the prosecution. I can only infer that the Prosecution knew this at the outset and indeed also when it drafted the indictment in this case. It knew full well the indictment would be eagerly published in various formats by the press. It must have known that the passage in question, together with the exposition in the Shaik judgment would give the very clear impression that the composing and signature of that letter by me were exactly what I got paid for. It knew and knows that that is, in fact, false.

63.

When the President, in early June 2005 (prior to his Chile visit) discussed the Shaik outcome with me, I pertinently pointed out to him that the Court in Shaik's case had been misinformed about the source and responsibility for the letter. He agreed with me and undertook to put things straight about the letter on his return.

64.

What I say is correct - the honourable President himself has publicly pronounced this. I annex hereto but one newspaper report (which has never been contradicted, denounced or qualified despite the ease with which the President's office can do so and its obvious knowledge thereof) and mark it "Q".

65.

I specifically call on the Applicant to take issue with what I have stated herein if it does not agree with my exposition. If evidence to the contrary is not adduced the defence shall seek to have this recorded as an admission. In particular the Applicant should explain why it seeks to

persist to base its case on a letter which it perfectly well knows was not composed by me and was signed by me on instruction. It again points to the major omission in the State's case if an objective investigation was done – a statement from the President. Providing evidence to prevent an injustice is a Constitutional obligation resting on all of us.

THE EFFECT OF THE ADJOURNMENT

66.

The present adjournment sought indeed destroys whatever fair trial right remnants I may have had. I point out some of its impacts.

(a) The adjournment sought, if the reasons for it are accepted, is one for some 2 years at least. Testimony will then relate back to events of 1995 – 13 years before. The current effect of time delay will be exacerbated.

(b) The devastating consequences for me would continue. In this regard I make mention of a fact very well-known to the Prosecution. The present term of office of the ANC

top structure comes to an end in 2007. The meeting to determine its officials and leaders for the next 5 year period will take place towards the end of 2007. There is every indication that the ANC will again emerge as the ruling party by a considerable margin in the next elections – it currently has a two-thirds majority. I, for one as an experienced politician, am certainly of that view and I shall work tirelessly towards that goal. It would be naïve indeed to recognise that the appointment of the ANC leaders (whilst not necessarily mirroring it) does not have a profound bearing on the leadership of the country. That, of course, is well known to the Prosecution – indeed it is well known by all interested in this case. It is also well known that if these charges against me are still pending, then it will greatly strengthen the resolve and capabilities of those who seek to exclude me from any meaningful political role. That much is obvious.

(c) A specific consequence of the adjournment is the question of legal costs. Especially as Counsel had to set aside time for this matter; other matters were turned away and fees for a number of months have inevitably been incurred. The financial prejudice is enormous; it runs into millions for preparations which, as a matter of fact, are duplicated to a considerable extent. In short, resources to employ legal representatives adequate to deal with this matter are being exhausted; quality of representation is obviously a concern and in this way my right to a fair trial is also being undermined. [The recent rape trial also took its toll in this regard].

67.

It is also appropriate to raise in this regard the current status of efforts to obtain State assistance in respect of legal costs.

(a) The President's office ultimately decides on this. In the recent past, Dr. Basson, General Malan and others were so assisted because of their capacities as officers of the

State at the time of the alleged commission of the offences.

(b) A request for assistance was directed many months ago.

(c) The response was that the State Attorney would act as the instructing attorney and fees for a specifically named Senior and Junior Counsel would be provided.

(d) This was, of course, wholly unsatisfactory and unacceptable, given the current adversarial position. One only has to point to the State Attorney's role as instructing attorney in the warrant applications and appeals to demonstrate that this was effectively a rejection.

(e) The Counsel involved did not include any of the Counsel who have always acted for me in this matter. I do not point any fingers in this regard, for the mode of request may have caused a misunderstanding that I sought the services of those specific Counsel named, which was

never my intention. The fact remains that if financial assistance for Counsel is provided, my instructing attorney should engage such Counsel whom he, in conjunction with me, wishes to engage.

(f) These concerns have been raised with Ms. Mosidi of the State Attorney's office (who undertook to raise these issues) and the President's office – so far these efforts have borne no fruit. Again, the different way I am being treated in this regard, impacts on my rights to a fair trial. The legal representatives of other accused in similar positions have not, to the best of my knowledge, been prescribed and the State Attorney certainly did not act as their instructing attorney.

THE RAPE TRIAL

68.

In this respect, I must also raise the recent rape trial in which I featured as an accused.

69.

I was charged on 5 December 2005 with rape in relation to an incident which occurred in early November 2005.

70.

The complainant's version included the facts that she was not threatened with physical violence, that no physical assault occurred and that she did not in any physical manner resist intercourse, or protested during intercourse or called for assistance well aware of the fact that a uniformed policeman was on duty within ready earshot, 10 metres away from the scene.

71.

The trial date was fixed for 13 February 2006.

72.

Various telephonic records running into thousands of entries as part of the State's case were given to the Defence in that matter some 2 to 3 weeks before trial, a similar number on the date of the trial as well as the expert report of a psychologist, the State wished to call. My representatives went on record to the Prosecution prior to 13 February 2006 to state that we required a short adjournment of 2 to 3 weeks to properly prepare for trial, locate certain witnesses and scrutinise the documents provided. This request was not acceded to. We were advised to bring an application on the day and the indication was that this would be opposed.

73.

I do not wish to expand on various events which occurred and that the Prosecution eventually agreed to a 3 week adjournment which was recorded as a final adjournment. I simply make the point that the Prosecution Authority's attitude differs markedly depending on whether they or I require an adjournment.

74.

In that case, the State listed 34 witnesses. I have been advised that this is, in itself, a somewhat extraordinary number in a rape matter. Included on the list were persons one would unhesitatingly have classified as Defence witnesses. This effectively precluded the Defence from cross-examining the complainant on various discussions which ensued between her and these witnesses who were alleged to have acted on my behalf and about which discussions she testified. Their availability at the end of the State's case, marred by statements drawn by the State from its perception, did nothing to remedy this. This issue was pertinently raised in that matter but in view of the verdict, was unnecessary to decide.

75.

I specifically raise this because the Defence has information at its disposal that a somewhat similar approach is at present being adopted – persons who, if they have a contribution to make, would clearly be Defence witnesses. That is obviously one of the State objectives to be pursued in any adjournment period.

76.

There should not be one law for the State and another law for me when we are both litigants.

ASSERTION OF MY RIGHTS

77.

I further reiterate that I have consistently complained of invasion of my fair trial rights and my specific right to a speedy trial. I summarise these:

(a) In 2003, my then attorneys complained about the 2 year investigation of my alleged corrupt dealings in the Arms Deal which is continuing without any apparent conclusion. I annex the letter and mark it "R".

(b) I sought specifically the handwritten version of the encrypted fax, on an urgent basis, to make my own enquiries. I was warded off by the State's plea of no urgency.

(c) I raised the specific issue of a speedy trial with Mr. Pikoli when I got charged. I was assured that especially in view of the investigation that had already been carried out, that the hearing would proceed anon.

(d) In October 2005, this was specifically raised and the postponement sought by the State in the Magistrate's Court was opposed until an agreement was reached at Court. The indictment was sought specifically also to be able to start preparations.

(e) At the meeting with the Judge President, my representatives initially sought April 2006 as the trial date. The present date was then agreed as the trial date. Very extensive preparations were made by the judiciary and others to accommodate the trial on 31 July 2006.

(f) In the application for further particulars by Accused 2 and Accused 3, an affidavit was filed on my behalf. I annex hereto a copy thereof, marked "S", and ask that it be

read as part hereof. My fair trial rights were clearly asserted therein.

(g) In respect of the present adjournment, the Defence made it very clear that they are opposed to it.

SPECIFIC RESPONSES

78.

I now deal specifically with the averments of Du Plooy insofar as necessary and given what I have already stated.

79.

AD PARAGRAPHS 1-2

I do not take issues with these averments save to point out that facts are per definition true; some of the averments made are not correct.

80.

AD PARAGRAPH 3

(a) Obviously the right to a speedy trial is a facet of the Accused's right to a fair trial.

(b) The State is fully responsible for the delay in the commencement of the trial - I shall deal with this elsewhere.

81.

AD PARAGRAPH 4

The attention of the Applicant was, from prior to 6 November 2000, focused on me as the target of investigation. That much was evident.

82.

AD PARAGRAPHS 5-6

In October 2002 I was for the first time expressly mentioned in the investigation. However, as pointed out, I had been targeted from the

outset. I know of absolutely no prosecution of anyone other than Shaik and the present Accused in respect of the Arms Deal. It is, moreover, a total mystery still as to how I influenced what facet of the contract award process. It will remain a mystery for I did no such thing.

83.

AD PARAGRAPH 7

What the Applicant carefully avoids dealing with is the fact that I was not charged in the matter. In the armed raids on various of my homes, the homes of my family and my attorney's offices during the latter part of 2005, which gave rise to the warrant applications referred to hereinbefore, the Applicant in seeking the warrants (ex parte) alleged that the corruption charges against Shaik were the mirror images of the charges brought before the raids, against me – These were exactly the same crimes, Shaik merely being the briber and I the bribee.

84.

When the charges relating to Shaik were announced in August 2003, the NDP announced that whilst there was a prima facie case against me, and that the investigating team which include the members of the prosecution team then and now considered that they had a good case against me, there was not sufficient evidence beyond reasonable doubt to convict me. Hence the decision not to prosecute me with Shaik.

85.

This was highly prejudicial to me and the office I then occupied as Deputy President. What it was was character assassination of the first order. I was publicly pronounced guilty in the media but only the lack of beyond reasonable doubt evidence precluded my prosecution with Shaik.

86.

I took this matter up with the Public Protector who found in clear terms that my constitutional rights had been infringed.

87.

I further contend that the inference is irresistible that this was a deliberate attempt to poison the minds of the public. There was no need for such pronouncements - they were meant to prejudice and they did. I say so *inter alia* because of the history of the matter.

88.

AD PARAGRAPH 8

The Applicant has referred to an agreement with Thint (Pty) Ltd. In order for me to deal herewith, I require a copy of the agreement. I further request a copy of the affidavit that Thetard was to provide. I further require details of the breach and in particular what it is that Thint was supposed to have done which it did not do. I can only surmise that this is another attempt to persuade an entity to provide evidence which is prejudicial to me.

89.

The State has seen fit to rely on selected portions of the agreement with Thint. I have requested a copy of the affidavit Thetard had to produce. The version deposed to is wholly improbable. I cannot comment on the alleged breach by Thint; the State has singularly failed to provide details of this.

90.

What is however particularly significant of the State version is that:

(a) The breach by Thint must have occurred in 2004.

(b) Thint thus had no indemnity since then.

(c) Thint's only indemnity ever would only extend to being a co-accused.

(d) The case against Thint was a strong one.

91.

This simply underlines the extent to which I have been personally targeted by the prosecution - I was charged in June 2005; Thint was only charged in November 2005.

92.

AD PARAGRAPH 9

I do not dispute these allegations. I obviously hold that Court in respect. However, the findings of that Court, especially where it rests on credibility findings, have no application or force in this matter. It is moreover obvious that those findings were made based on wholly incorrect factual premises presented by the State.

93.

AD PARAGRAPH 10

I admit these averments save for the last sentence. There is not the slightest basis for the view that a judgment will likely be handed down

in the fourth term. It is simply, given the allocation of 5 days for argument, not possible to make any informed guess. I have no idea on what the deponent's estimate is based. Moreover, when that judgment is handed down, is of no consequence in respect of the adjournment sought.

94.

AD PARAGRAPH 11

The deponent coyly does not indicate what startling new evidence was discovered which changed prospects of a loss into a victory. The date of the 20th is disputed. That could never have been a considered and proper decision. I challenge the deponent to put up the evidence which changed the prospects of success so dramatically so as to warrant prosecution. It must be exact in response – generalisations will not suffice. It is perfectly clear that the change of decision was simply a reaction to the Shaik judgment if it was not a deliberate stratagem, decided at the very outset when Shaik alone was charged.

95.

The Applicant knew full well that charging me would result in the loss of my position as Deputy President of the Republic of South Africa.

96.

I take issue with this extension which occurred after I had been charged. The introduction of additional offences was a ruse, purely and simply. I was charged on 29 June 2005. There has been no valid extension demonstrated - I challenge the Applicant to put up the necessary authority of the individual extending it. This has been challenged in the past in proceedings between the parties and the Applicant then refused to put up the same. One can only surmise as to why.

97.

It is also instructive to consider exactly what the fraud charges are all about. It is alleged that I committed fraud by not telling these various

bodies that the monies paid by Shaik were bribes. This was also used as an excuse to justify the search warrants applied for.

98.

The contraventions of the Income Tax Act were of the same ilk. I should have declared the payments as income from bribery. This is not an extension of the investigation - it is extremely cynical to claim this. It is striking that despite its apparently foundational importance in the affidavit by the deponent to raise the search warrants, no such charge appears from the indictment served on me months later in November 2005.

99.

AD PARAGRAPH 13

I admit the appearance and adjournment.

100.

AD PARAGRAPH 14

What is relevant here is that the prosecution as at October 2005 was fully aware that the defence took the attitude that further adjournments would prejudice me as accused and that they would resist it and seek if needs be a stay.

101.

AD PARAGRAPH 15

The position is incorrectly stated. The matter could not be removed to the High Court without an indictment. Without that there would be no charges pending in the High Court. The defence had no objection to the prosecution removing it from the Magistrate's Court on that basis. There would then be no charges pending and charges would have had to be instituted anew. That is the very clear effect of the applicable provisions of the Criminal Procedure Act 51 of 1977 ("the CPA").

102.

It is correct that an agreement was reached. It is not correct that it was agreed that a provisional indictment be served. There is no such thing. The State was at liberty to formulate the indictment as they saw fit. The defence made it perfectly clear that they wanted an indictment served *inter alia* to consider an application to stay the prosecution on a fair trial objection. A mockery of an indictment would have served no purpose in this regard.

103.

It was not understood or agreed that the State could amend the indictment as and when it saw fit. The defence's attitude was that amendments are governed by the applicable provisions of the CPA. The State was at liberty to so apply and the defence to object. What is correct is that it was foreseen that the State may seek to amend and it was agreed that such amendment would be sought before the end of March 2006. In short, the defence did not agree that the State could as

of right amend the indictment, it recognised that the State could seek to do so and that it would likely seek to do that and this would be prior to end March 2006. It is clear from the correspondence that the State understood it in the same way.

104.

I further point out that the indictment to be served would be a proper indictment - the defence would not have had anything to do with an indictment which was simply a pretence in order to manipulate the High Court. That would have been a clear abuse of procedure.

105.

AD PARAGRAPH 16

This meeting was held at approximately the end of October 2005. This again emphasised the need for urgency. I annex hereto a chronology of the main events considered relevant for these purposes. I mark this "T". The Prosecution is invited to indicate where they disagree with the dates provided.

106.

There is of course another option open to the State : it can withdraw the charges. If it thereafter decides to continue the prosecution and has its case ready to present the defence with definite charges and meet its other procedural obligations to me, it can charge me again. Surely the fact that they are ready and able to proceed with the matter in a proper manner would strengthen their hand in dealing with any opposition to my being recharged. The State would clearly be in a better position than it is now given such a state of then readiness. The only reasonable inference as to why this course of action is not resorted to, is that the state wants to perpetuate a situation whereby I am gravely harmed by pending charges hanging over my head : the very motives for charging me when it did so which have been ascribed to the State must then be the correct ones. It would eliminate me from the political arena and keep me in limbo until the case is resolved.

107.

AD PARAGRAPH 12

These were not true extensions or bona fide further investigations. They were at best cynical manipulations of the investigative powers under National Prosecuting Authority Act 32 of 1998 ("the NPA Act") for the purpose of persuading a Judge that a warrant of search and seizure to investigate these new matters were justified.

108.

AD PARAGRAPH 13

At this stage I was not represented by my current legal representatives at counsel level (they were approached shortly thereafter).

109.

AD PARAGRAPH 14

What was made clear to the prosecution was that the defence required an indictment in order to prepare for trial and to consider its position in respect of an infringement of my fair trial rights. It was wholly

unacceptable that I could be charged but that an indictment could not be provided, given the particular circumstances. I was going nowhere and I was hardly a physical threat to others so why charge me then, unless for the effect it would have on me? The warrant raids provide no excuse for this - unless there is something we are not being told, the State should have had no certainty that its application for warrants would succeed. Indeed, subsequent events bear this out.

110.

AD PARAGRAPH 16

The defence wanted the matter to proceed in the second quarter of 2006, the April session. It reluctantly accepted the July date. It made it perfectly clear that delays in prosecution were extremely harmful to me. It had done so since the outset. I annex hereto, marked "U", a copy of attorney Hulley's letter, dated 19 September 2005, to which "JDP1" to Du Plooy's Founding Affidavit was the response.

111.

AD PARAGRAPH 17

I again stress that the indictment was not provisional and that the State did not have the right to amend it founded on an agreement with the defence. It is indeed unfortunate that the prosecution consistently conflates its powers, capacities and functions with the concept of entitlement.

112.

AD PARAGRAPH 18

The State would wish this court to believe that payments made by Shaik to me or on my behalf after November 2002 and after his trial had commenced, and where the eyes of everyone were on us, were bribes. This is what had to be investigated. Clearly such payments and dealings at that time, on the probabilities, pointed at the very least to the absence of *mens* rea.

113.

In short, it would tend to exculpate not incriminate and that is presumably exactly for that reason that Shaik raised these (which could have been fully canvassed with him in the witness box – this was significantly not done). In short, the armed raids and further investigation were indeed aimed at establishing facts of my defence. It was certainly not aimed at obtaining evidence to decide whether an offence had been committed which is the basis for the powers given under NPA Act - I had already been charged. It was to the end of discovering my defence that this was done - that indeed was a very real invasion of my right to silence.

114.

AD PARAGRAPH 19

(a) Prosecution and defence are dynamic processes. That is not an effective cloak for trying to establish an accused's defence (obviously to try and sabotage it) and indirectly invading his right to silence. With the greatest respect, the revolving loan agreement which is apparently the best the State can come up with as an aspect requiring investigation,

is not and can never be a vital part of the State case. It may be part of the defence but the prosecution can never depend on that. Neither was it sought, at that stage, to inform the decision to prosecute or not.

(b) Nor did the loan agreement "emerge" during Shaik's defence. It was referred to in written answers I provided to the prosecution to its questions as long ago as 2003. The Prosecution has used these answers in the application for the warrants, to persuade the Judge President to grant it the warrants. It also makes use of these in this application for an adjournment. In that way, it seeks to advance the criminal process against me. It is not entitled to do so. Once again, my fair trial rights have been infringed.

115.

AD PARAGRAPH 20

The question may well be posed here : "If the State's application for the search warrant was not successful, would the charges against Zuma

have proceeded?" If yes, it is no excuse to delay my trial that the legality of the armed raids and their fruits are still in dispute.

116.

The second question that may be posed is "how many more of these armed raids am I and others going to be exposed to on the basis that the relevant evidence which was absent previously may now be there?". What do I do with my notes, my recollections for my benefit, my communications from my legal representatives? Must I prepare a defence without committing anything to paper to avoid this being seized? How fair can my trial be if such facilities to prepare are effectively being denied to me? It is perfectly clear from the warrant application that the State regards all this as relevant evidence. Paragraph 20 is in context, a very frightening statement and good reason to prevent a potential repeat by refusing an adjournment. There is also nothing new about the allegations in paragraph 20. They all appeared in Du Plooy's affidavit to raise the search warrants, dated 11 August 2005, long before the date for the criminal trial was set.

117.

AD PARAGRAPH 21-23

Shaik is not on the list of State witnesses - what the State here seeks to do is to rely on a conflict between Shaik and what I allegedly said. I am not certain that Du Plooy has summarised my statements accurately or in context and that does not call for further comment but surely the State is not relying on hearsay to reformulate the indictment? Moreover, this use of the information elicited under the NPA powers of interrogation is simply unlawful.

118.

The reasoning in these paragraphs makes no sense at all save to again reveal that what the prosecution seeks are details of my defence. That is not a basis for an adjournment.

119.

The access to the diary depends on the outcome of the proposed appeal (there is only an application at the moment). The diary is being classified as various privileges which vest not only in me are at stake. It is not me (or as a result of my warrant application) that has denied the State access to the diary. On this basis also, this cannot serve to adjourn the case.

120.

AD PARAGRAPH 24

The State gives no details of this. There is no evidence of which witnesses have to be interviewed about which documents. Nor is there any indication of whom the new witnesses are going to be. That seemed to be no obstacle when earlier promises of a final indictment by March 2006 were made. The deponent Du Plooy has coyly avoided mentioning who the "above" are - unless he does so the generalisations carry no weight. There is also no explanation as to why steps referred to in paragraph 20, since 18 August 2005, the date on which the State seized the documents, which they proceeded to start looking at immediately, were not taken long ago.

121.

AD PARAGRAPH 25

I reiterate, the prosecution had every opportunity to get details of this from Shaik when he was cross-examined. Significantly, they did not do so. They have also had the benefit of their search and seizure operation on 18 August 2005 (Shaik's challenge to which is stated in paragraph 33 "not likely to have any impact on the trial"). It is also not clear why no steps have been taken to subpoena the further "financial records" from the financial institutions concerned.

122.

AD PARAGRAPH 26

The "aforesaid" provide no sound reasons for delay. One would expect such analysis to have preceded the charges if any, not a mandate to rescue these. The rest of this paragraph has no concrete meaning and is of no factual import.

123.

AD PARAGRAPH 27

Once again Du Plooy relies on the views of unidentified persons. I invite the forensic auditor to identify himself, the documents he had looked at, its source and what he perceives to be the general relevance thereof to be. This entire dilemma is one of the State's own making - one in an investigation such as this gathers evidence dealing with challenges thereto and then you decide to charge the person or not based on the available evidence. Here I was charged, brought before the court, had to seek bail, had to comply with bail conditions, lost the Deputy Presidency, then armed raids to gather evidence which the State knew were going to be disputed, were launched in order to formulate the charges.

124.

In hopefully a couple of years time I will be told what the charges actually are. I even without legal advice on this, simply feel this is very wrong.

125.

AD PARAGRAPH 28

These protestations are belied by the fact that I have been charged more than a year ago. It is very late in the day to now investigate this. Once again this points to a sinister motive in charging me in June 2005.

126.

AD PARAGRAPHS 29-30

Du Plooy puts this in such a manner as to suggest that this information was only recently received and thus it caused the delay. This impression is false and indeed misleading.

127.

The State has been aware of this for many years, at least three. In support hereof I refer to the very interrogatories posed to me during where I was asked about these specific persons and financial dealings with them. The State further questioned these people whether in writing or otherwise, as they did pose questions to me, under section 28 of the NPA Act. The State refers to this in the application for the warrants (quite impermissibly so as to destroy my statutory protection).

128.

The prosecution has not even unearthed, according to their witnesses in Shaik, a single Arms Deal contract which had been improperly awarded. The prosecution in this matter flows from a very specific mandate and it cannot go outside that for otherwise the draconian powers under the NPA Act would really rage unchecked.

129.

Moreover, Kogl's "previously obtained affidavits" were dated or sent to the prosecution on or about 15 June 2002 and 8 March 2004

respectively. This appears from Du Plooy's affidavit for the warrants. It is also clear that the State is undeterred by Kogl's alleged challenge to the warrants and that the State has had regard to the "material discovered".

130.

AD PARAGRAPHS 32-33

It suffices to state that all the seizures I have contested have been set aside. Similarly the searches conducted in respect of an attorney who has frequently represented me and testified in the Shaik trial (Ms. Mohamed). I annex a copy of the judgment in her matter hereto, marked "V".

131.

I shall cause the applications launched by myself and my trial attorney Michael Hulley to be placed before this court, as well as the judgment of Hurt J therein and the judgment in the Mohamed matter under the various annexure numbers.

132.

Whilst it is encouraging to note that the Mohamed matter is likely to be settled, that cannot effect the current proceedings nor has it been settled and Ms. Mohamed may have a very different view as to the likelihood of settlement. She brought the application in her own right and is in control thereof. What is perfectly clear is that the admissibility of those documents will be contested in the trial on my behalf on issues relating to fair trial rights. The time-line of the process in Mohamed after the judgment indicates a singular lack of urgency.

133.

It is correct that my representatives are also hopeful of negotiating a settlement in respect of the Zuma/Hulley applications. That does not mean it will happen. I would not be breaching confidences if I simply state that my right to still challenge the use of the documents will remain whatever happens eventually whether by way of settlement or appeal. I simply wish to record that the delay in settlement insofar as reference is made to a response from my side is not due to any

tardiness on our part and I do not think such suggestion was intended (the proposal reached the Defence after 12 July 2006).

134.

AD PARAGRAPH 35

Du Plooy's tone suggests that the First Accused's representatives were remiss in seeking the particulars so late. That is not the case. The prosecution intimated that the Forensic Report would hopefully be ready by the end of June 2006. They made it very clear that before that any request would be met with a similar rebuff as the Second Accused and Third Accused received. In short, it would be a waste of time.

135.

I have set out the attitude of the defence to the indictment; however, without the summary of the forensic accountant duplication in request for particulars which should rather be avoided, if feasible, was a real factor. When the 30th June came and went without the report being furnished, it was resolved that a request could no longer be delayed.

136.

The electronic copy is in the form of a hard drive which contains some 4 million pages of documents in esoteric software and is virus riddled. One of the demands which must clearly be met is for the defence to be given at least one legible paper copy of these documents before the trial can proceed. It is entitled thereto with payment.

137.

The State is not unable to provide further particulars to the charges they laid against me to deprive me of my role as Deputy President of the Republic of South Africa; they are unwilling to do so because they are not ready to proceed with those charges or to place me in a position to sensibly prepare for trial to meet the actual allegations. They provided Shaik with further particulars.

138.

AD PARAGRAPH 36

These are some of the very reasons why the report was anticipated at the end of June (and it is not suggested that the State bound itself unconditionally to that date). The prosecution has in any event perused the documents they seized in the Zuma/Hulley raids from the moment of seizure. Lack of knowledge of the content thereof did not in any manner hamper its preparation. I point out that the contents of paragraph 36 are largely unintelligible.

139.

AD PARAGRAPH 37

What the State alleges herein in plain language is that to understand and challenge the report, some 20 000 plus pages will have to be scrutinised this being only the direct documents on which it is based. Other documents may also in turn throw light on these and cause them to be questioned. The anticipation as to the support the report will give to the charges is a thing of wonder.

140.

Again, it is completely unacceptable that the State refuses to commit itself to any date.

141.

AD PARAGRAPH 38

The rhetorical question which arises time after time, why was this not done prior to making a decision to charge me or prior to charging me. Shaik was indicted in November 2003, his trial commenced on 11 October 2004. The charges against me are the mirror images of the counts he faced according to Du Plooy. There was no need to charge me in June 2005, save that it served the aims of my political opponents very well.

142.

AD PARAGRAPH 39

Charging any person with a serious offence and when it is quite unnecessary to do that, delaying trials and interfering with fair trial rights, are equally grave matters.

143.

The trial is being delayed for speculative efforts to obtain evidence that should have been obtained prior to charging me. The threat to fair trial rights indeed makes this a very significant case to establish whether the constitution is merely a paper tiger to be manipulated by some of the State agencies when it suits them to do so.

144.

AD PARAGRAPHS 40-41

If these submissions are correct, and the constitutional principle of parity between State and Defence is paid due regard as opposed to lip service, the matter must be adjourned for at least a number of years. What is particularly objected to is the decision to actually charge me, it seems, at least two years before the State is even ready to provide me

with proper and sufficient details of the charges. That is the course the State has deliberately elected to pursue; it must then act accordingly.

145.

AD PARAGRAPH 42

There is no evidence that the offences were ongoing until July 2005. I challenge the State to detail what services I am alleged to have rendered in exchange for the alleged bribes or what benefits I am alleged to have bestowed in return from 2002. In any event, this should have made the State's task easier.

146.

The extension of the investigation was a cynical attempt to establish details of my defences.

147.

AD PARAGRAPHS 43

There was no need for the matter to be pending at all. There is thus an unreasonable and deliberate delay in this matter.

148.

AD PARAGRAPH 44

The State must have anticipated serious challenges to their conduct.

149.

Their unlawful conduct in respect of Ms. Mohamed, Hulley and myself cannot assist in explaining away the delay.

150.

The suggestion that these delays are outside the control of the State is bereft of truth and logic. Nor are these delays grounds for adjournment.

151.

AD PARAGRAPH 45

The fallacy in the contention (argument) advanced is obvious and will be addressed in argument. It is not clear how infringements of the pre-trial rights of an accused is redressed in a trial on the merits. The only prejudice from unlawful access to a document is not its production as evidence. The Prosecution's stance that I must simply live with its unlawful conduct until it is convenient for it to deal with it is, however, consistent.

152.

AD PARAGRAPH 46

The search warrant issue has nothing to do with getting on with the trial. At the risk of monotony - all this could have been avoided by judicious conduct evidencing a respect for the constitution and individual rights rather than a political agenda.

153.

AD PARAGRAPH 46 (the 2nd)

That is not how the defence understood the status of the indictment. The State would not of right supply a new indictment. It could of course investigate and seek to provide a new indictment which it undertook in principle to do so by end of March 2006. In short the defence could not feign surprise at such a turn of events.

154.

AD PARAGRAPH 47

It is with respect the State which has elected to challenge the current status of the documents seized from Mohamed, Hulley and Zuma - the State has no rights to these documents.

155.

The deponent cannot be serious about the timetable in paragraph 47 and the other averments made elsewhere as to the extent and volume of the investigations. At least one of these two averments is incorrect.

156.

AD PARAGRAPH 48

The State's averments are simply wholly illogical. It is their ill timed, unlawful armed raids which caused the "difficulty" they raise.

157.

AD PARAGRAPH 49

I take issue with Du Plooy - apart from the warrants nothing new has been spelt out. Perhaps he can detail which new witnesses were seen in May and June (before the first week's end and thereafter up to the 20th) and what new documents were procured then.

158.

AD PARAGRAPH 50

The announcement by the NDPP did not refer to such a review. It is, however, clear what happened (as is elsewhere also intimated). Shaik's conviction gave rise to me being charged – that is all. It does not take great legal acumen to resolve not to charge me with Shaik and so isolate his evidence. [I was obviously unlikely to be advised to testify and if I did, there would be extensive cross-examination material for a second trial]. My prosecution was deliberately delayed.

159.

In any long trial breaks are unavoidable. Whether the Supreme Court of Appeal judgment will affect the current trial is moot and is in any event a consideration which should have been present to the mind of the deponent and other members of the task team right from the moment of conviction of Shaik and prior to charging me.

160.

AD PARAGRAPH 52

I note these averments and that no leave to appeal was sought.

161.

AD PARAGRAPH 53

The State elected to add Accused 2 and 3. In case it has any illusions about the attitude of the defence that should be dispelled : the State must prove each and every facet of its case and no other attitude could ever have been anticipated.

162.

AD PARAGRAPH 54

This application was pursued whilst I was on trial facing the rape charges in Johannesburg represented by a defence team who are also representing me herein. The defence will obviously now consider this application and indicate on Monday 31 July 2006 what its attitude is. This is just one more aspect of unpreparedness which the prosecution should have foreseen from the outset.

163.

AD PARAGRAPH 55

I have dealt with trial prejudice elsewhere. This issue will be addressed further in argument. It is perfectly obvious that if the State has its way, the defence would have to have a considerable period to prepare.

164.

AD PARAGRAPH 56

The attitude displayed in this paragraph is not only callous, it is unlawful given that the prejudice could largely have been avoided.

165.

AD PARAGRAPH 57

Preparation will be lengthy - the Shaik matter is not comparable. There was at least some certainty as to the case he faced.

166.

I accordingly ask for the State's application to be dismissed and for the orders sought herein.

_____

DEPONENT

I HEREBY CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to before me at on this the day of JULY 2006, the provisions of the Regulations contained in Government Gazette Notice R35 dated 14 March 1980 having been duly complied with.

_____

COMMISSIONER OF OATHS