

**IN THE SPECIAL TRIBUNAL ESTABLISHED IN TERMS OF SECTION
2 (1) OF THE SPECIAL INVESTIGATING UNITS AND
SPECIAL TRIBUNALS ACT 74 OF 1996
(REPUBLIC OF SOUTH AFRICA)**

Case No:GP08/2024

In the matter between:

SPECIAL INVESTIGATING UNIT

Applicant

and

MAINSTREET 699 (PTY) LTD t/a RED ROSES

1st Respondent

(Registration Number: 2008/021420/07)

QWABE BLESSING BONGINKOSI

2nd Respondent

(I.D. NO: 8111075351087)

RICHARD MATANA WELLINGTON GUMEDE

3rd Respondent

(I.D. NO: 6308095496080)

THE MINISTER: SOUTH AFRICAN

4th Respondent

POLICE SERVICE

THE NATIONAL COMMISSIONER:

SOUTH AFRICA POLICE SERVICE

5th Respondent

GUMA GROUP

(Registration Number 2001/012981/07)

6th Respondent

GUMA AFRICA CONSULTING	7 th Respondent
GUMA CAPITAL (Registration Number 2000/029185/07)	8 th Respondent
GUMA RAILWAY SOLUTIONS (Registration Number 2010/024092/07)	9 th Respondent
GIJIMA AST FINANCE (Registration Number 2006/007198/07)	10 th Respondent
GUMA PROPERTY HOLDINGS (Registration Number 2005/037735/07)	11 th Respondent
NICQUI GALAKTIOU INC ATTORNEYS (Registration Number 2016/341372/21)	12 th Respondent
ANRIK BRUINDERS/SOUND HQ SOLUTIONS (ID NO. 84020220006086)	13 th Respondent
FOUR RIVERS TRADING 21	14 th Respondent
FLO BRANDING (PTY) LTD	15 th Respondent
DISCHEM PHARMACIES (Registration Number 2006/009663/07)	16 th Respondent
ALTECRETE CC (Registration Number 1994/041478/23)	17 th Respondent
AND GROUP (PTY) LTD (Registration Number 2013/227132/07)	18 th Respondent
RESULTANT FINANCE (PTY) LTD (Registration Number 2002/020588/07)	19 th Respondent

ANISHA SIRJITKUR RAMSAMMY

(ID NO. 7210130112087)

20th Respondent

PRESTIGE MARQUE (PTY) LTD (Home of SA's

Finest Cars (Registration Number 2016/086664/07)

21st Respondent

NOVO MUNDO TRAVEL

22nd Respondent

OMNI DIGITAL (PTY) LTD

(Registration Number 2016/156313/07

23rd Respondent

BRIAN KHAN INC.

24th Respondent

PAMOJA ASSET MANAGEMENT (PTY) LTD

(Registration Number 2006/016727/07)

25th Respondent

AUTOMATION AUTHORITY CC

(Registration Number 2006/010353/23)

26th Respondent

SOUTH AFRICAN REVENUE SERVICES

27th Respondent

REIMON UNIFORMS t/a REIMON CORPORATE

(Registration Number 2005/104153/23)

28th Respondent

ACETOVOX INVESTMENTS (PTY) LTD

(Registration Number 2010/004733/07)

29th Respondent

MAIORA AFRICA (PTY) LTD

(Registration Number 2008/021002/07)

30th Respondent

GEISMAR SOUTH AFRICA (PTY) LTD

(Registration Number 1974/004090/07)

31st Respondent

KWENA MAHLAKOANA ATTORNEYS

32nd Respondent

MAITLAND GROUP SA

33rd Respondent

IYCEE FRANCAIS JULES VERNE

(Registration Number 2011/009464/07)

34th Respondent

LSM DISTRITUTORS (Porsche Centre)

(Registration Number 2005/017932/07)

35th Respondent

WEBBER WENTZEL BOWENS

36th Respondent

CITY OF JOHANNESBURG

37th Respondent

SEDTRADE (PTY) LTD

(Registration Number 2004/014721/07)

38th Respondent

GEN TECHNOLOGIES (PTY) LTD

(Registration Number 1996/003623/07)

39th Respondent

LAWSONS INC.

(Registration Number 1992/006150/21)

40th Respondent

AMAHAYENA HOLDINGS (PTY) LTD

(Registration Number 2012/137747/07)

41st Respondent

WESTERNNONSIX (PTY) LTD

(Registration Number 2016/454176/07)

42nd Respondent

MBOMBELA GOLF CLUB

43rd Respondent

FULCRUM COLLECTIONS (PTY)LTD

(Registration Number 1997/015535/07)

44th Respondent

LANSERIA JET CENTRE (PTY) LTD

(Registration Number 2004/002561/07)

45th Respondent

ROBOT INDUSTRIAL SUPPLIES (PTY) LTD

(Registration Number 1990/004598/07)

46th Respondent

ADENDORFF MACHINERY MART CC

(Registration Number 2007/216708/23)

47th Respondent

APPLICANT'S REPLYING AFFIDAVIT

I, the undersigned,

JACKEY LEBONYE MATHABATHE

do hereby make oath and state:

- 1 I am an adult male Chief Forensic Investigator in the Special Investigating Unit ("the Applicant"), established in terms of section 2 of the Act, with its physical address at 74 Watermeyer Street, Rentmeester Building, Meyers PARK, Pretoria.
- 2 I confirm that I have previously deposed to the Founding Affidavit in this matter and I confirm that I am duly authorised to depose to this affidavit on the Applicant's behalf.

- 3 The facts contained in this affidavit are, accordingly, and unless the contrary appears from the context, within my personal knowledge and are true and correct.
- 4 To the extent that I rely on information conveyed to me by others I believe such information to be true and correct and where necessary, confirmatory affidavit will be filed together with this affidavit.
- 5 Where I make submissions of a legal nature, I do so on the advice of the Applicant's legal representatives, which advice I verily accept to be correct.
- 6 I have read the answering affidavit delivered by the First, Second, Third, Sixth, Seventh, Eighth, Nineth, Tenth, Eleventh, Fourteenth, Thirtieth and Thirty-Nineth Respondents (**"the Guma Respondents" and/or the First Respondent**) and have obtained counsel thereon.
- 7 I have also perused and considered affidavits filed by other respondents and will briefly refer thereto in this affidavit. These affidavits were filed of record after the Applicant had filed its Founding Affidavit. The Applicant was thus not privy to the information contained in the affidavits of these other respondents which is relevant and material to its application herein.

- 8 I submit that many of these affidavits support the case that the Applicant has brought before this Tribunal, and as such and where relevant, the contents thereof require to be placed before the Tribunal.
- 9 Insofar as I do not deal with any specific factual allegation which does not correspond with the contents of the founding affidavit or this affidavit, same is denied.
- 10 Before I reply to the contents of the Guma Respondents herein below, I wish to make the following observations which are pertinent to the adjudication of this matter.

ATTACK ON MY CREDIBILITY AND EXPERTISE

- 11 I have noted with concern that throughout the Guma Respondents' answering affidavit the personal attacks on my credibility and expertise have been a constant feature. Their personal attacks are short of using foul language. I submit that the tone of these attacks shows the lack of respect towards me, an attitude of entitlement, and are totally unfounded.
- 12 The Guma Respondents fail to note that prior to this matter, I did not know who they were and whence they came. It was only through the investigations of this matter pursuant to the President's Proclamation, that I came to know about them.

- 13 The evidence discovered during the investigation warranted the course of action currently taken by the Applicant. It is, in any event, authorised by law.
- 14 The Applicant, myself as Chief Forensic Investigator in the employ of the Applicant, other investigators within the Applicant's employ and Mr Cameron Mthembu, the Applicant's Forensic Investigator ("**Mr Mthembu**") have no personal interest in the Guma Respondents and their affairs and therefore have no reason to fabricate or conceal any information pertaining to this matter. Every detail dealt with in this matter, is purely within the scope of executing our duties and nothing else.
- 15 Finally, the Applicant stands by all its factual and legal submissions made including the evidence of Mr Mthembu contained in its founding papers.

EXPLANATORY AFFIDAVIT BY THE SAPS NATIONAL COMMISSIONER MASEMOLA

- 16 I have noted the contents of the Explanatory Affidavit of the National Commissioner of the South African Police Service, Major General Fannie Masemola and the annexures thereto. In the main and from what I am able to gather, the National Commissioner, through his

internal investigations on the contract in issue, largely confirms the Applicant's findings and conclusions.

- 17 The honourable Tribunal would recall that the First Respondent contended that the former National Commissioner executed Deviation Notice, to the SAPS and provided the reasons for such deviation such that the SAPS no longer required to record any reasons for deviation from the normal procurement process when it needed to procure PPE in 2020.
- 18 My reading of the Explanatory Affidavit and the contents thereof including the subsequent actions that the National Commissioner took after being alerted of the conducts of his officials particularly that of National Deputy Commissioner ("NDC") F N Vuma, speaks volumes against the First Respondent and Lt General Riet on this issue.
- 19 I submit that had the First Respondent's contention been correct i.e. that the former Accounting Officer provided the SAPS with authority to disregard the procurement laws, the current National Commissioner would have not acted in the manner that he did and subject NDC Vuma to disciplinary process. Also, the SAPS's investigation report into this impugned procurement would not have yielded the findings and outcomes it has found.

20 Accordingly, I respectfully submit that the Applicant's position is vindicated, strengthened and emboldened by the said SAPS's affidavit.

THE IMPORT OF VARIOUS ANNEXURES TO THE MATTER

21 In this section, I wish to deal with various annexures filed by the First Respondent. I do so with a view to give context to this case, from the Applicant's perspective.

ANNEXURES MPC3 AND MPC4

22 These annexures demonstrate that the First Respondent initially approached Mr Molefe Fani with a pricelist. However, what is interesting is that the pricelist they provided to Mr Fani did not contain sanitizers, and/or prices thereof.

23 This initial pricelist led Mr Fani, of the treasury, to inform the First Respondent that he shall post its prices to Government departments.

24 Further strange is the fact that once it was referred to SAPS, the First Respondent ended up not delivering any of these products on its above list except the facemasks.

25 This simply demonstrates that the First Respondent entered the NT's database on the false basis of offering to deliver things that it ended

up not even delivering. In its letter of 17 April 2020 when it sought to revise the products to supply to the SAPS in terms of the Offer it made, it discarded many of those items and opted to deliver the 25L Sanitisers that were not offered to the NT for other departments to consider.

- 26 It is notable that, as per Annexure MPC4, the First Respondent stated that it could not deliver 25L Sanitizers at the Transversal suggested price. It is also not clear who then opted to proceed with a supplier that refused to accept the reasonable prices, or the price methodology suggested by government and opted for obscenely high prices. This is so because, on the following day, the First Respondent quoted SAPS R4,700 for 25L sanitizers (**Annexure MPC6**).
- 27 The First Respondent was wrongly and unlawfully given a go ahead to quote outside the reasonable government prices.

ANNEXURE MPC 8

- 28 In annexure MPC8, the First Respondent uses, amongst others, Bangkok prices for 25L 70% alcohol infused sanitisers to justify its increased prices to SAPS.
- 29 All these discussions and comparisons were either based on the false narrative that the First Respondent had an Airbus to deliver the PPE

goods; or were the justification that the First Respondent required to support its highly inflated prices for the delivery of 25L Sanitizers; or it was for both reasons.

ANNEXURE MPC 11

- 30 Annexure MPC 11 is a copy of an incomplete Submission. It is strange that the entire document was not annexed hereto. It appears important to this matter in that it deals with this PPE.

ANNEXURE MPC 12

- 31 Annexure MPC12 to the Answering Affidavit is a memo from Lt Gen Riet seeking confirmation of funds for the PPE in this transaction. He sought this confirmation from, and approval of, Lt General Dimpane – Divisional Commissioner Financial Management and Administrative Service.
- 32 From the now known facts, the body of the above memo, by Lt Gen Riet, contains falsehoods about the then existing state of affairs. There were no proven or identified challenges with procurement of PPE as contained in his para 2. If ever these challenges existed: (i) they were not set out clearly and with sufficient particularity; (ii) there was no evidence of lack of suppliers proven to the SAPS, and to the NT; and

most importantly (iii) there was no evidence of suppliers not having stock.

33 I respectfully submit that it was not enough for the First Respondent and Lt Gen Riet to simply allege that a 'letter of suppliers' had been sent to the NT and without him retaining a copy for the SAPS records. There is no such a letter, otherwise, it would have been annexed hereto given the First Respondent's ability in this case to dig out documents that ordinarily ought to reside within the SAPS. Fourthly, (iv), it is not true that there were expensive suppliers on the NT's list. If those existed, there is no record of such and it is telling that such information was not retained for the records of the SAPS.

34 The honourable Tribunal will recall that in the email trail of 28 March 2020, Lt Gen Riet moved to activate the emergency purchases even at above 15% of the NT's regulated price (**Caselines 001-268**), Ms Estelle Setan gave the SAPS a go-ahead to procure the said PPE.

35 However, Ms Setan stated clearly in her email of 28 March 2020 at 1:38 PM as follows:

"Dear General

Please go ahead and place the order ito Emergency Procurement Provisions.

Please keep record of the suppliers you have contacted and proof that they did not have stock or that the delivery lead time was too long.

We will also have a discussion with the AGSA in this regard.”

(Caselines 001-266)

36 Clearly, Ms Setan was aware that the keeping of records and the evidence that the SAPS had no immediate alternative but to go with whoever they had in mind then, was important for good, lawful, and proper SCM practice.

37 Lt Gen Riet simply ignored all those and forged ahead in clear breach of the law and a clear simple instruction from Ms Setan.

38 It is even strange that the Auditor General SA ("**AGSA**") was to be approached or discussion to be held with her on these issues. It is not clear what was discussed with her, and no wonder the SAPS was not castigated for this overcharge.

39 The context of the above email trail ties in with the First Respondent's conclusion in support of its unlawful profiteering, that the AGSA has never criticized the SAPS.

40 It is also evident, in para 5 thereof, that the presence of an Airbus in China by the First Respondent was a factor for which General Riet

convinced the Authorities, including Lt Gen Dimpane, after having painted a picture of scarcity and comparative expensive alternatives. He sets out the amount that forms the subject matter of this contract. Lt Gen Riet also peddled the above narrative, on 28 March 2020, by email. **(Caselines 001-268)**

41 The First Respondent cannot deny the essence of its letter to Mr Fani, of 27 March 2020 **(Founding Affidavit Caselines (001-362; 001-368))**; together with the letters seeking to exert pressure by reiterating that the Order price was also dependent on the rand/dollar exchange. **(Founding Affidavit at Caselines 001-372)**

42 Lt Gen Riet argued that reprioritization of the funding or budget within the existing framework of funding will not be possible. This submission, he made to the senior person from whom he sought confirmation of funding.

43 However, Lt Gen Dimpane disagreed with Lt Gen Riet's submission on the reprioritization and offered her approval on the condition that:

"This will have an impact on the 2020/2021 financial year and reprioritization will have to be done and approved by an accounting officer. The SAPS APD will be officer and this has been brought to the attention of the NC and Div Asset and Legal Manager".

44 There is no evidence that this was done; there is no evidence of confirmation of Lt Gen Riet's position by the Accounting Officer. There is also no evidence that what Ms Estelle Setan asked for was done **(Caselines 001-266)**.

45 Instead, Lt Gen Riet proceeded on the apparent approval of Lt Gen Dimpane as if such condition was blanket and unconditional.

46 This is patently wrong and the reason the SAPS lost such substantial amount of money from this transaction.

ANSWERING AFFIDAVIT AD SERIATIM

47 I now address the answering affidavit *ad seriatim*. In doing so, I wish to state that where I do not deal with a particular paragraph thereof, the Applicant should not be taken to have admitted that fact, in fact, I should be taken to place the contents thereof in dispute.

AD PARAGRAPHS 1 – 3

48.1 Save to state that I do not have any knowledge of the deponent's role within the First Respondent, the contents of these paragraphs are noted.

49 **AD PARAGRAPHS 4 – 7; AND 8**

49.1 I note the contents hereof.

50 **AD PARAGRAPH 9**

50.1 The Applicant's investigation revealed that the money received by the First Respondent from the South African Police Service ("**SAPS**") based on the impugned contract flowed to all the Respondents as cited. It was imperative that the Applicant as *dominus litis* has to prove its case by presenting all the evidence gathered. With respect, it is not for the Guma Respondents to determine how the Applicant prepares and present its case.

51 **AD PARAGRAPH 10**

51.1 I note the contents hereof.

52 **AD PARAGRAPH 11**

52.1 I deny the contents hereof and submit that the Guma Respondents were opportunistic in their response to the Covid-19 pandemic. Theirs was to enrich themselves as proven by the factual and expert evidence presented by the Applicant in the founding papers. I vehemently deny that their actions were motivated by their desire to assist the SAPS as it will be shown

below that their interest was in the business of making as much profit from this contract as they could.

53 AD PARAGRAPH 12

53.1 I deny the contents hereof. The First Respondent through the Third Respondent induced the SAPS to request it to provide the RFQ based on the lies told to Mr Molefe Fani who at the time was the National Treasury's Chief Procurement Officer by sending a proposal letter dated 25 March 2020 (**Annexure SAP3 Case Lines 001-142 to 001-143**).

54 AD PARAGRAPH 13

54.1 I deny the contents hereof. There was no bidding process which took place. The SAPS officials flouted all the deviation prescripts and directives, and accepted the First Respondent's quotation only (**FA paras 147 – 175 Case Lines 001-66 to 001-73**).

55 AD PARAGRAPH 14

55.1 I note the contents hereof.

56 AD PARAGRAPH 15

56.1 Save to note that the First Respondent is facing charges at the Competition Commission based on the same impugned contract for charging the SAPS exorbitant prices, which is also telling, I deny the remainder of the contents of this paragraph. I have mentioned above that the First Respondent through the doings of the Third Respondent induced the SAPS to grant the impugned contract to the First Respondent.

56.2 There was no bidding process which took place, otherwise, the Guma Respondents would have been eager to annex documents to prove this. The RFQ that they refer to, would have been annexed to the First Respondent's Answering Affidavit. The First Respondent or the SAPS officials have failed to provide this Tribunal and the Applicant with the names of other suppliers who were contacted in order to verify whether or not they had the PPE supplies available. It is just a mere allegation which is not supported by any recorded shred of evidence.

56.3 I accordingly deny that the First Respondent was selected amongst other bidders.

57 AD PARAGRAPH 16

57.1 I deny the contents hereof and submit that the First Respondent's continued assertion about the world economic climate at the time occasioned by the PPE supply and demand is an insult, not only to the Applicant but also to the Tribunal considering the known fact that all the PPE the First Respondent provided to the SAPS were locally procured, despite it peddling the false fact that there were no supplies locally.

58 AD PARAGRAPHS 17 – 17.8

58.1 I deny the contents of these paragraphs. The Applicant has extensively addressed the issue of condonation in the founding affidavit and does not want to saddle this Tribunal with the repetition of those submissions (**FA paras 226 – 262, Case Lines 001-85 to 001-100**).

59 AD PARAGRAPHS 18 – 25; AND 26 – 31

59.1 I note the contents of these paragraphs.

60 AD PARAGRAPH 32

60.1 I note the contents of this paragraph, save to deny that the SAPS placed an order with the First Respondent on 24 March 2020. I re-iterate as mentioned at paragraph 22 above that the

Third Respondent contacted the then National Treasury's Mr Molefe Fani (Chief Director: Transversal Contract) on 25 March 2020 and proposed that the First Respondent could provide the PPE on an urgent emergency basis at the shortest delivery time. **(FA par 151 Case Line 001-67, par 241.4 Case Lines 001-88 to 001-89).**

61 **AD PARAGRAPH 33**

61.1 I note the contents hereof.

62 **AD PARAGRAPH 34**

62.1 I note the contents of this paragraph and submit that ***paragraph 3.7.6 (ii) states that the prices from the suppliers should be equal or lower that the prices in Annexure A*** and the First Respondent's prices were way higher as evidenced in Mr Mthembu's report.

63 **AD PARAGRAPH 35**

63.1 I vehemently deny the contents of this paragraph and submit that the instruction note referred to was addressed to the:

63.1.1 Accounting Officers of all National Departments and Constitutional Institutions;

63.1.2 Accounting Authorities of all Schedule 2 and 3 Public Entities and

63.1.3 Head Officials of Provincial Treasuries.

63.2 The First and Third Respondents are not government entities and do not fit the criteria of the addressees. It is the government departmental heads who were directed to direct their enquiries to Mr Fani and the other two officials and not the private businesses.

63.3 It begs the question as to how did the Third Respondent know about the communication between National Treasury and the government department heads.

63.4 It is evident that the Third Respondent, if not the Guma Respondent's tentacles go much deeper than one can fathom.

64 **AD PARAGRAPH 36**

64.1 The contents hereof are contradictory to the Third Respondent's letter of 25 March 2020 addressed to National Treasury mentioned at paragraph 22 above.

65 **AD PARAGRAPH 37**

65.1 I deny the contents of this paragraph. As stated above, the SAPS was induced to contract the First Respondent to supply it

with the PPE (**FA paras 151 – 176 Case Lines 001-67 to 001-73**).

66 AD PARAGRAPH 38

66.1 I note the contents hereof and submit that the evidence indicates that the First Respondent was not tax compliant. Brigadier Ngobeni: Section Head: Demand & Asset Management made a note of this on 31 March 2020 (**SAP 14 par 1.5 Case Lines 001-250**).

67 AD PARAGRAPH 39

67.1 The contents of this paragraph are contradictory to that of paragraph 36, wherein the First Respondent is being honest that it had never supplied PPE prior and yet its letter of 25 March 2020 says that they "*offer end to end testing and protective gear solutions against Coronavirus Covid-19 pandemic.*"

67.2 This is, with respect, the lie which induced National Treasury and SAPS to issue the Purchase Order to the First Respondent.

67.3 When the Third Respondent addressed this letter to National Treasury, it did not have an iota of PPE and yet the Information Note of 20 March 2020 from Lt General Riet at paragraph 4 stated: "**...Suppliers which are registered on the Central**

Suppliers Database, with available stock [emphasis added], will be approached for quotations for such goods and services (Annexure B and C)." (SAP2, Case Lines 001-138 to 001-141).

67.4 The affidavits of the other respondents who actually provided the Guma Respondents with PPE products including units of 25L sanitisers demonstrate that this happened as early as 8 April 2020. This is the Fifteenth, and Seventeenth Respondents' affidavits.

68 AD PARAGRAPHS 40 – 41

68.1 The Applicant submits that the submission by the First Respondent herein ought to have highlighted the red flags to the recipient thereof in that at 25 March 2020, the Treasury had already published the Instruction Note 8 of 2019/2020 (NTI 8) and Transversal lists of the products, and goods related to Covid 19, including the prices thereof, and where there were no prices available, as was the case in relation to the items on Table 2, and products/goods such as the 25 litres hand sanitizers with 70% alcohol content ("the 25L hand sanitizer"), the National Treasury had published a list of prices that it obtained from third party suppliers.

68.2 The First Respondent had no business, after considering the said NTI 8, to offer its products at any price not contained in the NTI 8, and the persons in the Treasury and the SAPS had no authority to even consider the Applicant's offer that stood in contradiction to the NTI 8 and its annexures.

68.3 It is because of the said carte blanche given to the First Respondent that the SAPS has suffered the loss that it has suffered.

68.4 Otherwise, I note the contents hereof.

69 **AD PARAGRAPHS 44 – 46**

69.1 The Applicant submits that the consideration in the response to para 40 above equally bear reference herein. Why seek to tender on products that are already regulated in terms of price and insist that your products cannot be provided at the regulated price and the government accepts that. What then was the purpose of the NTI 8 we ask rhetorically. The Guma Respondents knew that the stage was set for the SAPS to accept the irrational and unlawful conduct of transacting with each other outside the NTI prices. The SAPS' collusion and support hereof, without the benefit of the hind sight, was then unlawful. The Third Respondent knew all these when he engaged with Mr Fani.

70 AD PARAGRAPHS 50 – 51

- 70.1 I note the contents of these paragraphs and submit that all the averments regarding the supplies shortage, availability of an airbus ready to take off and travel to South Africa from China as soon as the purchase order is issued, the weakened rand against global trading currencies increasing cost of procurement were just statements meant to induce the issuance of a purchase Order and prepare the stage for an overcharge by the First Respondent without any questions asked.
- 70.2 Evidence from the four Respondents (Respondent Thirteenth, Fifteenth, Sixteenth and Seventeenth) who provided the First Respondent with the PPE locally has shown that the First Respondent contacted them after the Purchase Order was issued by SAPS.
- 70.3 This I submit is a clear indication that the SAPS was sold a lie by the First Respondent orchestrated by the Third Respondent.
- 70.4 It is in fact even interesting to note that despite the SAPS supposedly directing that the closing date and time for the Requests for Quotations ("RFQ") was on 31 March 2020, (the time of the closure of the RFQ submission, and the submitted so-called RFQ, are interestingly omitted by the First

Respondent), on the very same closing date and at 16h48 well after the close of business day, the First Respondent was still asking for clarification of price breakdown per item including margins.

70.5 This, with respect and, logically, ought to inform us that the First Respondent was by any logical account, late in its submission, if it ever submitted one, and ought to have been excluded from further procurement process.

70.6 The information that the First Respondent required, was obviously an information that could not be provided at the shortest time and after hours.

70.7 However, when regard is had to the entirety of the Answering Affidavit, it is evident that on 1 April 2020, the day after the closing date, the SAPS issued a Purchase Order in the amount of about R515 million in favour of the First Respondent.

70.8 The entire set of events herein simply just demonstrate further that the First Respondent could not have been lawfully, fairly, competitively, cost effectively, selected and appointed for the above procurement contract. This in addition to the complaint noted that its CSD Tax Compliance Status was non-compliant as at the same Closing date of 31 March 2020.

70.9 I demonstrated in the Founding Affidavit, per annexure SAP14, that the First Respondent, was objectively found, by one of the SAPS officials, not to be tax compliant on 31 March 2020, and miraculously, on 1 April 2020, the First Respondent had become tax compliant.

70.10 Yet again, in the world of procurement, once a closing date comes and goes, no further documents should be received beyond that date to cure the noted defect on the closing date.

70.11 Accordingly, the tenderer who failed to comply with all the requirements set out in that tender document or RFQ, is non-responsive and his or her tender or quotation ought to have been rejected there and then.

70.12 It is trite legal proposition, I am advised, that the government officials do not have the authority to condone the tenderer's non-compliance with the tax, and late submission of the tender.

70.13 Applicant's legal representatives shall deal with this aspect in their heads and at the hearing of this matter.

70.14 The involvement of the First Respondent in the impugned contract beyond the date of 31 March 2020, is yet another demonstration that the First Respondent, with the assistance

of rogue members of the SAPS, operated above the law and acted unlawfully, if not unconstitutionally.

71 AD PARAGRAPH 52

71.1 I note the contents hereof. However, the email referred to is not attached.

72 AD PARAGRAPHS 53 – 55

72.1 The same concerns made in respect of the contents of paras 50 – 51 above, are further repeated herein.

72.2 On the same closing date of 31 March 2020, the First Respondent was still making enquiries about the availability of Hand Sanitiser with foreign countries, in relation to a product that it eventually received from local suppliers, and having priced its product to be inclusive of air freight costs.

72.3 However, the contents hereof, confirms the First Respondent's misrepresentation of facts to National Treasury and SAPS. The correspondents referred to herein took place from 27 March 2020.

72.4 The First Respondent started running helter-skelter in an effort to procure the PPE it had boldly promised to have and that it

was waiting for the purchase order and delivery will urgently take place.

73 AD PARAGRAPH 57 – 58.10

73.1 The Guma Respondents refer this Tribunal to Dr Ncube's report without themselves interrogating it. I deny the contents of these paragraphs and submit that the Applicant stands by the findings of Mr Mthembu.

73.2 Mr Cameron Mthembu made his submissions in his affidavit found on **Caselines 001-427 to 001-440** and stands thereby.

73.3 He also has considered the submissions by the two experts on behalf of the First Respondent. He maintains that his affidavit contradicts the expert reports filed herein.

73.4 The First Respondent's experts cannot speak to the procedural aspects of the procurement of this contract. They can only compare prices and argue as they do.

73.5 Yet there is sufficient evidence that procedurally, the award of the tender to the First Respondent was unlawful and ought to be set aside for those reasons only.

73.6 Furthermore, the two experts adopt two divergent points of departures which undermines their reports. While Dr Ncube bases his report on the supposition that the transaction to the

contract involves rand/dollar exchange and prices comparable to Thailand or Bangkok prices, instead of SA prices based on SA markets, Mr Cameron-Ellis, seek to take the 500ml price of 70% Alcohol infused hand sanitisers to multiply those until they reach 25L to arrive at what according to him would be a reasonable price for the 25L Sanitiser.

73.7 These theses are rejected out of hand by the Applicant.

74 **AD PARAGRAPHS 59 – 59.4**

74.1 Save to state that the pricing of the face masks has been accepted by the Applicant. I submit that there was an overcharge of the hand sanitiser as per Mr Mthembu's report and deny Mr Camerol-Ellis' contention that there was not. His contention is based on the fact that the 25-litre unit of hand sanitiser was not listed in Annexure A (Table 2) of Instruction Note 8 and the 500 ml units which were included were simply adjusted to 25-litre units for logistical reasons.

74.2 This logic, I submit, cannot be accepted, especially when evidence has shown that the 25-litre units of hand sanitiser was sold at R1,680.00 at Dischem.

74.3 Not only that, the First Respondent procured a large amount of hand sanitiser from Dischem, Flo Branding, SA Mining Supplies

etc, and still overcharged the SAPS using this wrong accounting principle of the 500ml adjusted to 25-litre units because there was no 25-litre units on Annexure A (Table B) of Instruction Note 8.

74.4 Mr Mthembu rightfully used Dischem as a benchmark. **(Reference to Founding Affidavit at paras 115 to 173 Case Lines 001-57 to 001-72, Annexure SAP8 Case Lines 001-165 to 001-230).**

75 AD PARAGRAPH 59.5

75.1 I deny the contents hereof and I am equally perplexed by the First Respondent's contention in this paragraph. It suggests that if the other companies have overcharged the SAPS, they are therefore also justified to do so.

76 AD PARAGRAPH 59.6

76.1 I note the contents hereof and submit that Mr Mthembu's revised findings have established that First Respondent did not over-charge on the face masks.

76.2 The Applicant is no longer pursuing the issue of the face masks against the First Respondent and submit that the First Respondent is aware of same.

77 AD PARAGRAPH 59.7

77.1 I deny the contents hereof.

78 AD PARAGRAPH 59.8

78.1 I note the contents of this paragraph with disdain and submit that one can only understand it to mean that the First Respondent contends that it was justified to over charging the SAPS because other suppliers have done it also.

79 AD PARAGRAPHS 59.9 – 60

79.1 I deny the contents hereof and submit that I stand by Mr Mthembu's findings.

80 AD PARAGRAPH 61

80.1 I note the contents hereof.

81 AD PARAGRAPHS 62 – 62.4

81.1 I confirm the contents hereof.

81.2 The suggestion that permeates the numerous subparagraphs thereof that the National Commissioner gave a blanket approval for deviation (annexure MCP.11) in terms of the Treasury Regulation 16A, from which the First Respondent

could, relying on the interpretation thereof by SAPS officials of dubious character, do as it please, is patently false and such an approval would not have been lawful whether issued verbally or in writing.

81.3 However, the perusal of the approval read with the Regulation 16A, demonstrate that the National Commissioner stated that the SAPS must continue to comply, where possible, with the procurement laws. The fact that a procurement was done under emergency circumstances, does not encourage lawlessness that the First Respondent seeks to argue for.

81.4 It further suggests that the National Commissioner delegated Regulation 16A powers to Lt General Riet. This submission is made with no evidence of such an actual delegation, which must, as a matter of law, be in writing. The argument is denied and self-serving.

81.5 I am loath to submit that the evidence of Lt General Riet be treated with some reservation. This is a person who during the course of this matter has deposed to favourable affidavits to both sides of the matter/dispute and in different points in time. First when he was within the police service, and the second when he left the force upon the commencement of the investigations into the impugned tender.

81.6 I am not surprised that he would, after he had left the force, seek to deny his unlawful conduct in this matter and to besmirch my name and repute in the process much to the delight of the Guma Respondents who have benefitted immensely from the likes of Lt General Riet's violation of the procurement laws; or unlawful omissions *in re* procurement laws.

81.7 I would urge this Tribunal to assess this evidence with circumspect.

82 **AD PARAGRAPH 62**

82.1 The suggestion that permeates the numerous subparagraphs thereof that the National Commissioner gave a blanket approval for deviation (annexure MCP.11) in terms of the Treasury Regulation 16A, from which the First Respondent could, relying on the interpretation thereof by SAPS officials of dubious character, do as it please, is patently false.

82.2 Such an approval would not have been lawful, whether issued verbally or in writing. However, the perusal of the approval read with the Regulation 16A, demonstrate that the National Commissioner stated that the SAPS must continue to comply, where possible, with the procurement laws.

82.3 The fact that a procurement was done under emergency circumstances, does not encourage lawlessness that the First Respondent seeks to argue for.

83 **AD PARAGRAPH 62.5**

83.1 I vehemently deny the correctness of this paragraph and the accompanying insinuation thereof.

83.2 I have not deliberately or intentionally withheld or ignored any person, information, or document that is relevant and material to this matter. Anything left out of my investigation of this matter was and remains irrelevant. All that is relevant has been placed before the Tribunal. The Guma Respondents have also access to many other documents and information that pertains to this matter. The fact that they disclose some herein does not mean that I deliberately or intentionally withheld same.

83.3 Ultimately this Tribunal will indeed determine the relevance of the information placed before it.

83.4 Notwithstanding the above, I wish to place on record that the meeting referred to herein did indeed take place on 5 December 2022 between Red Roses delegates and the SIU Executive and me. The Third Respondent (Mr. Robert Gumedé) deliberated on the issue of deviation in terms of Regulation 16A6.4 and the

fact that General Kehla Sithole gave such approval. This I have already addressed in the Founding and this Replying Affidavit.

83.5 In response, I contended that we, as the Applicant, noticed and acknowledged the deviation which also categorically stated that: "taking the above into consideration SAPS must comply with all Act, instructions and circulars, regulating the containment of the Coronavirus by ensuring that the necessary protective equipment and hygienic chemicals are available to all operationally deployed members in all official buildings, cells and vehicles". This is a position we have always propagated.

83.6 We indicated to the Guma Respondents that SIU investigation is not against any deviation that is compliant with the law, but the deviation issued must comply with all procurement prescripts including Instruction Note 3 of 2016/2017, particularly paragraph 8 thereof, SAPS SCM Policy in clause 4.2.1.10 thereof, and section 217(1) of the Constitution. We spoke about deviations in general without referring to dates.

83.7 Furthermore, Mr. Mario Pillay, the deponent to the Guma Respondents' Answering Affidavit, referred us to Instruction Note 8 of 2019/2020 – He indicated that this Instruction Note waived all policies dealing with emergencies and is the only

policy relevant to deal with Coronavirus. This is not correct and not supported by the wording of the Note itself.

83.8 In the Applicant/SIU's response to Mr Pillay, I referred the meeting to paragraph 2.3 of Instruction Note 8 of 2019/2020 which reads as follows:

"these regulations provide that institutions must comply with the Public Finance Management Act and applicable emergency provisions in the regulations and instructions issued under that Act".

83.9 Therefore, I contended, Regulation 16A6.4 cannot be used in isolation without referring to paragraph 8 especially 8.2 of Instruction Note 3 of 2016/2017, which deals with deviations from normal bidding process.

83.10 It is common cause that paragraph 3.5.1 of Instruction Note 8 referred Accounting Officer to paragraphs 8.1 and 8.2 of Instruction Note 3, and further waived paragraph 9.2 only because it deals with construction.

83.11 Accordingly, it was and it is still not true or correct that NTI 8 of 2019/2020 did away with other Treasury Notes when it regulated urgent, or emergency procurement. This false narrative would indeed serve the Guma Group well had it been true.

83.12 It is worth noting with respect that the deviation notice that the Applicant/SIU received from SAPS through Lt. Col Tipanyega was dated 20 March 2020, and we first heard and saw a snapshot of the deviation dated 26 March 2020 through Red Roses lawyers on 1 May 2024. I have no idea of where and how they obtained same.

83.13 It is another common cause fact that the SAPS was approved by National Treasury to make use of transversal contracts on 16 March 2020 and the First Respondent (Red Roses) was not in the list of transversal contracts.

83.14 In conclusion, I, together with the team, did not withhold any information on our papers but provided everything before us. The only file we received from Mr. Leonard Lekgetho from the First Respondent/Red Roses had the same documents that we had except the flight arrangement in China, which was a new document all together, but it did not make an impact on our findings.

83.15 For whatever it is worth, I hereto annex the letter from the Investigating team of the Applicant to the Chief Legal Counsel of the Applicant dated 14 April 2023 asserting everything that I refer to herein, and mark same as **RA01**.

83.16 As is evident at the signature page thereof, I work with, and report to a team, and any decision that we take is not an individual's decision alone but that of the team.

84 AD PARAGRAPH 62.6

84.1 Save to confirming the importance of the SIU's mandate and powers including the conduct of its investigator to do their work diligently, I deny the remainder of the contents of this paragraph.

85 AD PARAGRAPHS 62.7; AND 62.8 TO 62.8.2

85.1 I vehemently deny the contents hereof.

86 AD PARAGRAPH 62.9

86.1 I note the contents hereof.

87 AD PARAGRAPH 62.10

87.1 I deny the insulting contents of this paragraph with the contempt it deserves.

88 AD PARAGRAPH 62.11

88.1 I note the contents hereof and state that evidence has shown that the First Respondent did not have available stock when it

approached National Treasury to propose that they can provide PPE.

88.2 Therefore, the First Respondent did not satisfy the requirements of section 4 of the Information Note from the outset.

89 AD PARAGRAPHS 62.12 – 62.12.3

89.1 Save to state that the deviation request under emergency delegation was to procure PPE from other suppliers if the suppliers on the CSD did not have stock. In this instance, the SAPS has not been able to provide the details of the suppliers on CSD which they contacted who did not have stock available.

89.2 The Applicant's evidence demonstrated that Estelle Setan of the Treasury directed the SAPS officials to keep records of the suppliers contacted and evidence of the fact that they did not have stock.

89.3 I submit Ms Setan was well aware of the essence of lawful procurement, while officers like Lt Gen Riet, and the ones found by the First Respondent were all quick to pay lip service to that directive. Their conduct was and remains unlawful.

90 **AD PARAGRAPHS 62.13 – 62.13.9**

90.1 Save to mentioning that annexure MCP.11 is incomplete, I submit that the First Respondent has dismally failed over and over again to do a simple thing, that is, to indicate the names of the service providers on CSD which were contacted and indicated that they did not have the supply of the PPE. Chief Director Estelle Setan of the National Treasury had clearly directed that every step taken during the deviation process should be reduced to writing and this was not done.

90.2 With this failure to produce any evidence of the names of the contractors who were contacted, the Tribunal is requested to accept that none of the other contractors were contacted, because the aim was to award the contract to the First Respondent.

90.3 There was just make believe that the other contractors were contacted.

91 **AD PARAGRAPH 62.14**

91.1 I submit, this request for further emergency and deviation was not signed by Lt. General Riet nor dated. Therefore, I deny that this request was produced by Lt. General Riet (**Annexure MCP-12, Case Lines 013-256 to 013-258**). Lt. General

Dimpane approved a document which was not signed nor dated by its apparent author on 31 March 2020.

91.2 Once again, the claim that SCM approached various suppliers and "*constantly ran into non availability of stock*" is not supported by any shred of evidence by the First Respondent.

91.3 It was a lie that Lt Gen Riet, seeking to advance the unlawful conduct of the Guma Respondents, peddled without any objective evidence to support such a claim.

92 **AD PARAGRAPHS 62.15 – 62.22**

92.1 I note the contents hereof and once again state that the First Respondent has not proven the list of the contractors approached regarding the supply of PPE as alleged at paragraph 3.1 of annexure MCP.13.

92.2 The Applicant challenges how the delegation of authority was unlawfully executed. I submit, the contents hereof, does not assist the First Respondent in its case.

93 **AD PARAGRAPH 62.23**

93.1 I note the contents of this paragraph.

94 AD PARAGRAPH 62.24

94.1 The deviation of 20 March 2020, 26 March 2020 and 31 March 2020 are noted. However, I deny the remainder of the allegations in this paragraph.

94.2 I also stand by my submissions herein that such deviations provided the likes of the First Respondent with *carte blanche* to pilfer the SAPS, at Lt Gen Riet's watch. Lawful and responsible procurement was still a requirement.

95 AD PARAGRAPHS 62.25 – 62.37

95.1 For the reasons mentioned above, I vehemently deny that there were reasons for the deviation because the First Respondent has failed to support this averment with evidence.

96 AD PARAGRAPHS 63 – 63.16

96.1 I admit that the National Treasury issued a media statement on 19 March 2020 inviting companies in South Africa who are CSD compliant to participate and to supply PPE to Government during the National State of Disaster. However, I deny the following:

- 96.1.1 The media statement did not have Mr Molefe Fani's name on it. It had the Communications Unit's details for any related queries.
- 96.1.2 The Applicant does not deny the National Treasury Instrument issued at the beginning of the Covid-19 pandemic. The Applicant in this application is addressing the flouting of the procurement processes due to the fraudulent misrepresentation by the Third Respondent.
- 96.1.3 The Third Respondent claimed that the First Respondent had an Airbus ready to charter from China awaiting the Purchase Order from the SAPS. General Riet's affidavit at par 7 states that he visited the China Embassy and liaised with DIRCO to request their assistance without success **(Annexure MCP.9, Case Lines 013-238 to 013-234)**. However, the Third Respondent claimed to have access to PPE in China even though Government Departments could not assist. To add on that, the flights were grounded during this time.
- 96.2 At annexure MCP.9, Lt. General Riet claims that under the management of Brigadiers Deysel and Babu, they scrutinised Annexure A and B of the National Treasury Instruction Note

3 of 2019/2020 and found that the companies mentioned did not have PPEs available.

96.3 However, Ms Estelle Setan: Acting Chief Procurement Officer: Chief Director Strategic Procurement for National Treasury had indicated that the details of all the activities should be recorded. However, none of those companies' names were ever recorded and kept. No mention is made of who was contacted, their contact numbers and what was said i.e. evidence of the unavailability of the supplies.

96.4 The Tribunal is requested to deduce that the contents of this Annexure is not true.

96.5 Lt General Riet's submissions are denied. I further submit that Lt. General Riet deposed to another affidavit after he had left the SAPS. In this affidavit he, for the first time, indicated that he was under pressure from his seniors at SAPS SCM and that put his life and those of his family members at risk. He clearly was acting under duress when he deposed to this affidavit. In this affidavit he indicated that Senior Management used what he termed "**Stratcom**", a strategy used during the apartheid regime, he said. Lt General Riet wanted to part ways with the SAPS so desperately, he even willingly forfeited a 0.33 percent of his pension fund money.

This was due to the burden put on him by senior management at SAPS.

96.6 Lt Gen Riet seeks this Tribunal to accept his version that he was put under pressure at the SAPS. He clearly lied under oath when he deposed to the initial affidavits. It appears as though in hind sight, he clearly became aware that he was used for a wrong purpose.

96.7 Lt General Riet contends that he was put under pressure by the powers that be to perpetuate the narrative of the unavailability of stock. Taking into account that the Third Respondent approached National Treasury directly and then Mr Molefe Fani who was working at the National Treasury at the time, gave the SAPS the details of the First Respondent. However, for some unknown reason, it was only the First Respondent which was recommended by Mr Molefe Fani to the SAPS.

96.8 The paragraphs, particularly paras 62.22, and 63, further suggest that the National Commissioner delegated Regulation 16A powers to Lt Riet. This is submission is made with no evidence of such an actual delegation, which must as a matter of law, be in writing. The argument is denied and self-serving.

96.9 I am loath to submit that the evidence of Lt General Riet be treated with some reservation. I am not surprised that he would, after he had left the force seek to deny his unlawful conduct in this matter and to besmirch my name and repute in the process much to the delight of the Guma Respondents who have benefitted immensely from the likes of Lt General Riet's violation of the procurement laws.

96.10 I submit that his credibility is questionable and I would urge this Tribunal to assess this evidence with circumspect.

97 AD PARAGRAPHS 64.1 TO 64.3

97.1 The Applicant persists that the First and Third Respondents actively, decidedly and with fraudulent intent misrepresented to the SAPS that they could deliver PPE under certain circumstances when they knew that they would in fact deliver under different circumstances, and at a greater loss to the SAPS.

97.2 The Explanatory Affidavit by the SAPS National Commissioner is telling in this regard. It is also no surprise that the assertion that the First Respondent has fully performed in terms of the contract was made and signed off during the tenure of Lt General Riet.

98 AD PARAGRAPHS 64.6 TO 64.8

98.1 I deny that I have failed to attach the said letter of demand by Lt Gen Riet dated 15 April 2020. That letter is annexed to the Applicant's Founding Affidavit, together with a response thereto dated 17 April 2020.

98.2 The Applicant's counsel were favoured with this letter and considered same. There was and there is still nothing worth concealing therefrom. As it stands, it is actually noteworthy, with respect, that Lt General Riet, having accepted a revised offer to accept less quantity of the hand Sanitizers, failed to demand a concomitant reduction of the purchase price.

98.3 It is a fact that despite the revised delivery, the First Respondent pocketed the amount initially meant for the original delivery and to date refuse to return monies attached to the revised procurement.

99 AD PARAGRAPHS 64 – 64.10

99.1 I deny the contents hereof and submit that the Third Respondent induced the SAPS to grant the contract to the First Respondent through a fraudulent misrepresentation. This fraudulent misrepresentation was perpetuated further by Mr Mario Pillay (the deponent to the Guma Respondents

Answering Affidavit), Deon van der Walt and The Second Respondent.

99.2 I will not repeat what has already been indicated above about the letter dated 25 March 2020 from the Third Respondent.

99.3 During the time when the Third Respondent made an assertion about an Airbus waiting in China, airlines the world over were grounded. Wuhan was the epicentre of the pandemic. It is mind boggling that National Treasury and the SAPS officials bought into this lie given the circumstances regarding the Covid-19 pandemic the world over at the time.

99.4 The First Respondent's letter, indicated that it had never provided PPE before. Evidence has shown that even at the time when the SAPS issued the PO the First Respondent did not have the supply and it started sourcing such after the issue of the PO.

99.5 The other four Respondents provided the First Respondent with the PPE. Their Answering Affidavits indicate that the First Respondent contacted them on after it was issued with the PO.

99.6 Therefore, there was no such thing as an airbus waiting to take off from China and bring the PPE to South Africa. This

confirms that the Third Respondent sold a lie to National Treasury and SAPS.

99.7 I submit that the impact of Covid-19 on aviation was devastating because the air transportation system enabled the spread of the virus to the farthest places on our planet in the shortest amount of time.

99.8 China closed its borders on 23 January 2020. I submit that the Applicant stands by its assertion that there was a fraudulent misrepresentation by the First Respondent.

99.9 I deny that the First Respondent performed its obligations and submit that it did so only upon receipt of the letter of demand from General Riet on 15 April 2020. This ground of review is based on the fraudulent misrepresentation by the First Respondent.

100 AD PARAGRAPHS 64.11 – 64.12

100.1 I deny the contents of these paragraphs with the strongest contempt they deserve. On 1 April 2020 when the SAPS issued the PO to the First Respondent, South Africa and China were on total lock down and the First Respondent could not have been able to charter the alleged Airbus from China to South Africa.

101 AD PARAGRAPHS 64.13 – 64.13.3

101.1 I have dealt with the contents of these paragraphs above.

101.2 Regrettably, the First Respondent persists with this false narrative and the Tribunal is requested to frown upon this conduct by the Guma Respondents.

102 AD PARAGRAPH 64.13.4

102.1 I deny the contents of this paragraph. The First Respondent only started to source the PPE after they were issued the PO. They did not have the supply at all.

103 AD PARAGRAPHS 64.13.5 – 64.13.6

103.1 I note the contents of the Order and still deny that the First Respondent was invited by the SAPS to provide PPE.

103.2 I submit that the narrative about the supply of PPE being in China was not started by myself, but the Third Respondent.

104 AD PARAGRAPHS 64.13.7 – 64.13.11

104.1 The contents hereof are vehemently denied. This aspect has been dealt with above.

105 AD PARAGRAPHS 64.13.12 – 64.13.13

105.1 The contents of Annexure MCP.19 clearly confirms that the First Respondent did not have the PPE as it was alleged on the letter dated 25 March 2020. Hence the Third Respondent had to run helter-skelter looking for an aircraft.

105.2 These communication documents indicate that the communication started only on 27 March 2020. The fraudulent misrepresentation had already taken place on 25 March 2020.

105.3 Therefore, the First Respondent had to make good on the misrepresentation.

106 AD PARAGRAPH 64.13.14

106.1 I note the contents hereof and submit that the First Respondent had no choice but to source the PPE locally.

107 AD PARAGRAPH 64.13.15

107.1 I deny the contents hereof.

108 AD PARAGRAPH 64.13.16

108.1 I have no knowledge of the contents of these paragraphs. I note the "*supposed*" confirmatory affidavit of Mr Deon van

der Walt ("**Mr van der Walt**") and submit that it is not proper before this Tribunal because it is not signed by the deponent, nor is it commissioned. It also incorrectly cites Mr van der Walt as the Third Respondent.

109 AD PARAGRAPH 64.14

109.1 I deny that that the Applicant has made any insinuations, and submit that the remainder of the contents of this paragraph is a confirmation that the First Respondent wanted to keep the misleading narrative alive.

109.2 I submit that in all fairness, the exchange rate fluctuations were not even supposed to be the subject of discussion.

110 AD PARAGRAPH 64.15

110.1 I deny the contents hereof.

111 AD PARAGRAPH 65

111.1 I deny the contents hereof. On 31 March 2020 Lt. General Ngobeni indicated that the First Respondent was not tax compliant. On 1 April 2020, the SAPS issued the Order and coincidentally the First Respondent's tax pin was issued on 01 April 2020.

111.2 I invite the First Respondent to provide its tax pin ending 31 March 2020 in order to prove that indeed it was tax compliant when it was considered for the impugned contract.

112 AD PARAGRAPH 66

112.1 I deny the contents hereof.

112.2 The argument regarding the airbus, we maintain was bogus. The First Respondent had used this fact as an incentive to hasten the decision makers to issue the Purchase Order.

112.3 The Applicant persists with its argument that the First Respondent did not intend to secure the Airbus, and in fact, secured the required products locally and without concomitantly reducing the amount of the Purchase Order price.

113 AD PARAGRAPH 68.1

113.1 I submit that the National Treasury incorrectly compared the price of the 500ml and scaled same up to 25L in order to conclude that the First Respondent paid less than 50 times 500 ml 70% alcohol sanitizers, in terms of Annexure A.

113.2 It is submitted that the reading of the two tables of NTI 8 clearly indicate that Table A contain prices of goods while

Table B does not contain prices but refer to prices that may be regarded as reasonable having considered the third-party producer process.

113.3 Had it been that simple to extrapolate the price of the 25L by working it in the said simplistic manner of taking the 500ml price and times it by 25L, the price of 25L hand sanitizers would have been easy to determine, and there would not have been any need to make reference to local produced prices.

113.4 The fact of the matter is that the local producers of sanitizers produced the same product at a fraction of a price, far lesser than what the First Respondent charged the SAPS. The price comparison between what local producers charged and what the First Respondent charged are markedly out of sync to the extent that even the Competition Commission has charged the First Respondent for overcharging in violation of law.

113.5 Accordingly, I am advised that the Applicant does not accept the paragraph relied by the First Respondent herein.

114 **AD PARAGRAPHS 67 – 68.2**

114.1 I admit that the meeting took place between National Treasury and the Auditor General. However, I deny the remainder of the contents hereof.

114.2 The National Treasury report regarding its meeting with the Auditor General findings relating to prices are captured at paragraphs 2 and 3 of MCP.22 (**Case Lines 013-453 to 013-456**) and MCP 22.3 at paragraph 4.2 (**Case Lines 013-457 to 013-483**) regarding the Covid-19 Expenditure regarding Comments and Questions.

115 **AD PARAGRAPH 70**

115.1 I note the contents hereof.

116 **AD PARAGRAPHS 71 – 71.2**

116.1 I deny the contents hereof and submit that I take umbrage at the Guma Respondents attack on my person and expertise. The Guma Respondents' have to disprove the evidence presented and not attack me in my personal capacity.

117 AD PARAGRAPHS 72 – 75

117.1 Save to state that the legal and trading name of the First Respondent is Mainstreet 699 (Pty) Ltd on the CSD submitted by the First Respondent, I note the remainder of the contents of these paragraphs.

118 AD PARAGRAPHS 76 – 77

118.1 I note the contents hereof and state that the Second Respondent as a sole director features nowhere in the dealings between the First Respondent and SAPS.

118.2 Instead, it is the Third Respondent who is running the affairs of the First Respondent. The distribution of the funds received from the SAPS contract benefited the Third Respondent, his family and business interests.

118.3 I submit that the Second Respondent is indeed purportedly the sole director of the First Respondent. He received only a fraction from the Funds received from the SAPS. To be specific, he was paid R250,987.58 **(FA par 220.1 Case Lines 001-81)**.

119 AD PARAGRAPHS 78 – 78.2

119.1 I deny the contents hereof and submit that the Third Respondent identified himself as Robert Matana Gumede on the first letter which he addressed to the National Treasury on 25 March 2020.

119.2 I have no knowledge of the remainder of this paragraph.

120 AD PARAGRAPH 79

120.1 I note the contents hereof.

121 AD PARAGRAPHS 80 – 81

121.1 I deny the contents hereof and submit that the SAPS has since filed its Explanatory Affidavit (**Case Line 011-1 to 011-16**).

122 AD PARAGRAPHS 82 – 95

122.1 I note the contents hereof.

123 AD PARAGRAPH 96

123.1 I note the contents hereof and submit that the Third Respondent was a critical player whose role appears crucial and remains crucial because he was instrumental in initiating

the process regarding this contract and he spearheaded it in all respects. All the deals and transactions were done by the Third Respondent to his benefit, family and business interests.

124 AD PARAGRAPH 97

124.1 I deny the contents hereof and reiterate that the funds received from the SAPS benefitted the Third Respondent, his family and business interests.

125 AD PARAGRAPH 98

125.1 I vehemently deny the contents hereof. The First Respondent is invited to prove the Applicant otherwise.

126 AD PARAGRAPH 99

126.1 I deny the contents hereof.

127 AD PARAGRAPHS 100 – 102.2

127.1 I note the issue about SARS and deny the remainder of the contents of these paragraphs. I submit that the First Respondent's personal attack is not in the spirit of litigation.

128 AD PARAGRAPHS 103 – 104

128.1 I note the contents hereof.

129 AD PARAGRAPH 105

129.1 I deny the contents hereof and refer the Tribunal to the findings of Mr Mthembu.

129.2 I note the contents of MCP.25 and submit that it is a repetition of what has already been addressed above.

130 AD PARAGRAPHS 106 – 107

130.1 I deny the contents hereof. These averments have been dealt with above.

131 AD PARAGRAPH 108

131.1 I note the contents hereof and state that the remainder of the contents has been dealt with above.

132 AD PARAGRAPH 109

132.1 I note the contents hereof and submit that I stand by the assertions which I made in the founding papers.

133 AD PARAGRAPHS 110 – 112.10

133.1 I note the contents of these paragraphs and submit it has been dealt with above and same will not be repeated.

134 AD PARAGRAPHS 113 – 114.3

134.1 I submit that annexure MCP.27 actually confirms the Applicant's contention that the impugned contract was irregularly given to the First Respondent.

134.2 It is my contention that it is quite bizarre and impossible that within the SAPS SCM not even a single individual within those who were tasked with the procurement of the PPE kept a record of the contractors which were contacted.

135 AD PARAGRAPHS 115 – 116

135.1 I note the contents hereof and submit that same has been dealt with above.

136 AD PARAGRAPHS 117 – 118

136.1 Save to confirm the contents of Annexure SAP4, SAP5 and SAP6, I have no knowledge of the remainder of the contents of these paragraphs.

137 AD PARAGRAPHS 119 – 121

137.1 I have dealt with the contents of this paragraph above.

137.2 The First Respondent argues, in the main, that because the aircrafts were a scarce commodity then, any delay in providing a formal purchase order resulted in increased costs.

137.3 The reality, however is that no costs ought to have been raised because the First Respondent did not acquire the PPE from overseas. It was not exposed to any rand-dollar exchange.

138 AD PARAGRAPHS 122 – 123

138.1 I note the contents hereof.

139 AD PARAGRAPHS 124 – 124.10

139.1 I deny the contents of these paragraphs. The SAPS SCM Guidelines as well as the National Treasury Instruction Note applicable at the time could then and now be interpreted in a manner that violates the spirit and purport of the Constitution.

139.2 Therefore, the procurement processes should have accorded, even in cases of emergency, with the minimum compliance requirements of section 217(1) of the Constitution.

139.3 Mr Pillay is at pains to paint a picture which bears no truth. I submit that the issues raised in these paragraphs have been dealt with and no law should be against the Constitution.

140 AD PARAGRAPHS 125 – 126

140.1 I note the contents hereof.

140.2 The deponent submits that the First Respondent submitted a firm offer on 31 March 2020. Yet the same deponent demonstrated to us that as at 31 March 2020 being a closing date of the unknown and yet to be disclosed RFQ, it was still asking companies based overseas about the prices of PPE and compiling its RFQ response and now to read that it had submitted on 31 March 2020. No evidence and proof to support any of these contentions.

141 AD PARAGRAPHS 127 – 127.5

141.1 I deny the contents hereof and submit that these averments have been dealt with above.

142 AD PARAGRAPHS 128, AND 130 – 131.6

142.1 I deny the contents hereof.

143 AD PARAGRAPH 129

143.1 I note the submission that Lt Gen Riet was commended by Parliament.

143.2 We submit that he initially adopted a position favourable to the investigations herein, and thereafter resigned from the SAPS even taking a cut of his pension. Thereafter and for no unexplained reasons therefor, he now adopted a position hostile to the SAPS and these investigations.

143.3 Parliament is not privy to these facts.

144 AD PARAGRAPH 132

144.1 I note the contents hereof.

145 AD PARAGRAPH 133

145.1 I vehemently deny the contents hereof.

146 AD PARAGRAPHS 134 – 135

146.1 I note the contents hereof.

147 AD PARAGRAPH 136

- 147.1 I deny the contents hereof. On 31 March 2020 Colonel Ngobeni at paragraph 1.5 of the Application for Procurement Authorisation made a note that the First Respondent is "*non-tax compliant based on the CSD report dated 31 March 2020*" **(Annexure SAP14, Case Lines 001-250)**.
- 147.2 On 01 April 2020, suddenly the First Respondent has a new tax compliance certificate **(Annexure MCP.21, Case Lines 013-452)**. The First Respondent is invited to submit its tax compliance certificate ("TCC") ending 31 March 2020.
- 147.3 The fact that the First Respondent has failed in these many years since the launch of this application to provide that TCC to counter what I state in the Founding and this affidavit, confirms my submission on this point. The First Respondent should not have been considered for the contract.
- 147.4 The Tribunal is requested to find that the contracted was awarded unlawfully to the First Respondent.

148 AD PARAGRAPH 137

- 148.1 I note the contents hereof.

149 AD PARAGRAPH 138

149.1 The contents of this paragraph have been dealt with above.

150 AD PARAGRAPH 139

150.1 I note the contents hereof.

151 AD PARAGRAPH 140

151.1 I deny the contents hereof.

152 AD PARAGRAPHS 141 – 141.2

152.1 I submit that the search for supplies and securing transport from China took place after the National Treasury and SAPS had been sold a lie that there is an Airbus waiting in China for an Official Order, whereas there was none.

152.2 The Communication with the Airlines commenced on 27 March 2020.

152.3 I note the remainder of the contents of these paragraphs.

153 AD PARAGRAPHS 142 – 145

153.1 I deny the contents hereof.

154 AD PARAGRAPH 146

- 154.1 The First Respondent argues that SAPS invoiced for and got what it required. SAPS paid the said invoice and this is the reason why it received clean Bill of Health from the AGSA and a clean PPE Report.
- 154.2 I submit that the payment and reporting of that transaction do not reveal anything about the lawfulness or otherwise of the prices and the goods charged for. This is the reason why the Competition Commission is also investigating the First Respondent for irregular charge and breach of law for the unlawful profit made.
- 154.3 The consideration herein is different from the AGSA.
- 154.4 It must furthermore, be remembered that the AGSA was approached in relation to this transaction and it is not even clear on what was said to her and she to the then officials of SAPS.
- 154.5 Accordingly, I submit that the Tribunal should not be bound by the AGSA's findings in this regard.

155 AD PARAGRAPH 147

- 155.1 The Respondent has, in its attempt to paint me as dishonest investigator, contended that the Investigating Officer did not

attach its letter of 17 April 2020 from Pillay dealing with failure of Airbus and proposed alternatives.

155.2 This statement is patently not true. If regard is had to Exhibit L, in the Founding Affidavit, (**Caselines page 001-378 and continuing at 001-381 to 001-383, 386**), the Tribunal will note that this letter is annexed to the Applicant's papers.

155.3 I must however own up to and apologize for the misfiling of these annexures. I do not know what transpired that separated these documents from one another. Despite this unfortunate outcome, the letter the deponent refers to, is the same letter that is annexed to the Founding Affidavit.

155.4 It appears that in preparing of the Founding Affidavit file, misfiling took place. See for example, annexure M at **Caselines 001-387 and 001-388**, the letter is also wrongly filed. The affidavit by Second Respondent has also suffered the same fate in Caselines 001-390 to 406; and then portion thereof is on **Caselines 001-422 to 001-423**).

155.5 I apologise for those errors.

156 AD PARAGRAPHS 148 – 150

156.1 I note the contents hereof.

157 AD PARAGRAPHS 151 – 151.2

157.1 I deny the contents hereof.

158 AD PARAGRAPHS 153 – 153.3

158.1 I deny the contents hereof.

158.2 The First Respondent relies on Lt Gen Riet's comment (per annexure MCP 16) to the President about the Applicant's Final Report, and says NTI 8 of 2020 was the only emergency procurement authority in SA for PPE. NTI 3 of 2019/2020 was referred to in passing and to refer to excluded procedures. The same General when the first Investigating Officer ("IO") Netshie asked for information in 2021, indicated that there were various NTIs that applied at the relevant time and even quoted NTI 6 and NTI 8 of 2020.

158.3 Evidently, NTI 8 was not the only one that was applicable. It may have taken prominence given the prevailing circumstances, but it was certainly applicable to the exclusion of others.

159 AD PARAGRAPH 154

159.1 The First Respondent argues that Mr Mthembu relied on NIT 5 of 2020 which came about in 28 April 2020. It contends

that NTI 8 required the SAPS to contract with any supplier who was registered on CSD and whose prices were on range. But the Applicant's case is that the First Respondent's prices on the 25L 70% Alcohol infused Sanitizers were not on range in terms of the price hence this application. This is a view also shared by the Competition Commission.

159.2 The Applicant thus stands with what Mr Mthembu has contended, to disagree with the Respondent's expert witnesses including Dr Ncube's report annexed to the Answering Affidavit.

159.3 Dr Ncube, at pages 8, 22, and 47 of his report, incorrectly uses a benchmark price on the false narrative that the 25L sanitizer would have been imported from Thailand at R4,653 per unit. The truth of the matter is that the product was not purchased in Thailand but in South Africa where the price was around R1800,00 per unit.

159.4 Mr Cameron Mthembu has already dealt with the points that contradicts Mr Robert Cameron-Ellis's Report. It is upon Mr Mthembu's contention that the Applicant rejects the conclusion reached by Mr Cameron-Ellis together with the basis thereof.

- 159.5 To buttress the point, and at paras 23 to 26 of his Report, Mr Cameron-Ellis erroneously seeks to use the price of 500ml of 70% hand sanitizer and extrapolate same to the price of a 25L unit, in order to come to a price that support the First Respondent's price argument. This is denied.
- 159.6 I once again contend that if the pricing of 25L was that easy, there is no reason that the NT would not have calculated the product in the same manner and included same in the Transversal prices of 2020.
- 159.7 I submit that Table B where there are no prices of products, mandated the SAPS to consider the reasonable price from the third-party markets (i.e. benchmarking that Mr Mthembu did). The First Respondent and its experts are out of the line and wrong in their contentions and approaches.
- 159.8 They approach this matter on fundamentally wrong but different bases/angles.
- 159.9 The issue relating to the pricing of facemasks was resolved by concluding that there was no demonstrable overcharge thereto.
- 159.10 Mr Mthembu was correct in considering market benchmarking as per the instruction of the Table B of the Transversal Agreement given that there was no price for the supply of

25L 70% Alcohol based sanitizer. The best and reasonable benchmarking was the independent third-party market.

159.11 It does not make sense that Dischem *inter alia*, could sell the same product that the First Respondent was selling at +/- R1,200 per 25L unit, while the First Respondent cost +/- R4,500.00 excl. VAT and R5,500.00 with VAT. There is no sense out of this and the Tribunal should not with respect accept this logic.

159.12 I also noted that the First Respondent's expert at para 2.2.1 of his report also makes the wrong point of seeking to ignore the market benchmarking as a factor to determine the price used by the Applicant. We deny this argument.

159.13 He also focuses on Dischem's invoice which he argues represented 31 days after the fact i.e. on 30 April 2020.

159.14 However, the truth is some of the suppliers like the SA Mining Engineer Suppliers were already, on around 8 April 2020 which is the closest date that Applicant benchmarked the price, charging R1860, per 25L of 70% Alcohol infused sanitisers (See: page 274 *et seq* of the FA). This is the same or closer to the same to Dischem's prices at the time he refers to. (See Founding Affidavit: **Caselines (001-304 to 001-338)**).

159.15 I also refer to the affidavits of the Thirteenth, Fifteenth, Sixteenth, and Seventeenth Respondents.

159.16 If regard is had to the Dischem's invoices, one immediately sees that, in fact, Dischem sold the same quantity at around R1700.00 per unit.

159.17 I refer the Tribunal to the affidavits that have already been filed herein. They reveal the following:

159.17.1 Mr Barnes of the Fifteenth Respondent submits that during the period 01 April 2020 and 02 June 2020 he sold 17 251 units of 25 litre drums at R1744 (excluding VAT) per unit of sanitiser for an amount of R35 856 094.00 including VAT. As well as the respirator masks to the value of R1 523 750.00 and cloth masks to the value of R26 000.00.

159.17.2 The Seventeenth Respondent filed a lengthy answering affidavit deposed to by Gavin Borejszo ("Mr Borejszo") in his capacity as a managing member of the seventeenth respondent explaining that its relationship with the First Respondent started on 03 April 2020 when none other than the Third Respondent approach it for

supplies of Sanitizers. It later learned that the First Respondent had a tender/contract to deliver sanitisers to the SAPS.

159.17.3 As per the First Respondent's request, the Seventeenth Respondent prepared a quotation for the First Respondent for the supply of 90 000 units of 25 litres hand sanitiser at a unit price of R1,650.00 per unit. The interesting, if not strange part is that some of the payments of the many thousands of litres purchased from this Respondent were paid for by Gijima AST, the Tenth Respondent. Ample documentary evidence is annexed to the Seventeenth Respondent's affidavit.

159.17.4 It is further noteworthy that the Third Respondent's Order was made from 3 April 2020 and delivery took place the very next day – thus demonstrating without a shadow of doubt that there was supplies locally; and at reasonable prices.

159.18 This, I submit, is a clear indication that the SAPS was sold a lie by the First Respondent orchestrated by the Third Respondent.

159.19 I reiterate that the Respondent made unlawful profits at the expense of the pandemic.

159.20 For clarity, I submit that the issue of the number and amount charged for the face masks has been settled.

159.21 However, I deny the contents hereof in as far as it relates to the hand sanitiser and submit that the Applicant still persists that it relies on the Mr Cameron Mthembu's report. I further submit that Mr Mthembu's report is credible.

160 AD PARAGRAPHS 155 – 155.4

160.1 Save for admitting that the Thirteenth, Fifteenth, Sixteenth and Seventeenth Respondents were *bona fide* suppliers of PPE to the First Respondent, I deny the remainder of the contents of these paragraphs.

161 AD PARAGRAPHS 156 – 158.2

161.1 I note the contents hereof.

162 AD PARAGRAPH 159

162.1 Save for admitting that the Tribunal has the discretion to determine whether it is just and equitable to exercise a discretion and issue orders regarding the return of money

through what is broadly known as a "*no profit*" order, I vehemently deny the remainder of the contents of this paragraph.

163 AD PARAGRAPH 160

163.1 I note the contents hereof.

164 AD PARAGRAPHS 161 – 161.4

164.1 I note the contents hereof and submit, with respect that it does not take the First Respondent's matter any further.

164.2 The First Respondent is aware of the date when the investigations started and denies that they started on our version. It then attaches a letter dated 10 November 2021 from the first IO Lufuno Netshie.

164.3 The First Respondent's deponent erroneously and without any basis whatsoever accuses me of trying to hide this from the Tribunal but does not say that this document was given to me. I deny this baseless accusation.

164.4 The said deponent then seeks to rely on Lt Gen Riet's response dated 13 December 2021 which response sought to justify the non-compliance with SCM emergency procurement and lack of important information on the basis

that there were various NTIs passed and NTI6 and NTI8 dispensed with the need for 3 quotations. This is blatantly not true and an unlawful submission to make.

164.5 This false narrative was carefully crafted to bypass and violate the procurement law. The fact that the First Respondent seek to rely on affidavits of SAPS officers who allegedly contacted unknown and unidentifiable suppliers to no avail, belies the First Respondent's and Lt Gen Riet's positions.

164.6 They both knew that comparative prices/quotations were required precisely to avoid suppliers cashing in on the pandemic, and to ensure that the SCMs are not compromised by unscrupulous officials who may act on the frolic of their own and not follow the law.

164.7 The SAPS under Lt Gen Riet failed to ensure that this was done. The worst part is that he was under strict instruction from General Dimphe to keep records in this regard and he deliberately refused, failed, or ignored to keep the said record.

164.8 Unsurprisingly, Lt Gen Riet retired soon after the commencement of the investigations in 2022 an after he had authored these untruthful reports and letters regarding the SAPS's PPE procurement in 2020.

165 AD PARAGRAPHS 162 – 167.2

165.1 I note the contents hereof.

166 AD PARAGRAPHS 168 – 168.6

166.1 I deny the contents hereof.

167 AD PARAGRAPH 169

167.1 I deny the contents of this paragraph and refer the Tribunal to the report of Mr Mthembu.

168 AD PARAGRAPH 170

168.1 I deny the contents hereof with the contempt it deserves. The SAPS was indeed misled by the Third Respondent. This issue has been dealt with repeatedly and extensively above and in the founding papers. The First Respondent is clutching at straws in trying to justify their fraudulent misrepresentation.

168.2 The SAPS has filed its Explanatory Affidavit. The outcome of the SAPS' findings speak for themselves (**SAPS Explanatory Affidavit paragraphs 16 – 21, Case Lines 011-1 to 011-16**).

169 AD PARAGRAPH 171

169.1 Save to state that the pricing of the face masks has been settled, I deny the remainder of the contents of this paragraph.

170 AD PARAGRAPH 172

170.1 I deny the contents hereof.

171 AD PARAGRAPH 173

171.1 I deny the contents hereof and submit that the other Respondents' answering affidavits confirm that the funds which they received had nothing to do with the procurement of PPE.

171.2 Their frank disclosure of how the Third Respondent and the Guma Respondents spend the unlawful profit made off the Covid PPE contract demonstrate the obscene and opulent lives lived off the hundreds of millions that they made of this transaction.

171.3 I have submitted, as an annexure to the Founding Affidavit, a schedule of how the Third Respondent and the Guma Respondents spent the ill-gained profits and I refer herein, *inter alia*;

171.3.1 to the Third Respondent's son taking in a Porsche motor vehicle to have performance exhaust system installed for over R260,000.00 (See the Thirty-Fifth Respondent's affidavit);

171.3.2 A purchase of a Lamborghini vehicle worth over R4 million, relatively in cash (see the Twenty-First Respondent's Affidavit). Of interest is that Mr Mandusic states that this transaction was first negotiated on 01 May 2020 by the Third Respondent at his Sandhurst home. He further states that on 15 May 2020 an amount of R50 000.00 was paid as a deposit to the Twenty-First Respondent's bank account by the Fourteenth Respondent (The Fourteenth Respondent is a company belonging to the Third Respondent) on behalf of the First Respondent. The balance of R4 000 000.00 was paid by the First Respondent on 15 June 2020. Soon after the transaction was concluded and still at the height of Covid deaths;

171.3.3 A transfer, for no apparent commercial reason, of over R150 million rand into the Third Respondent's lawyer's account; and

171.3.4 Transfer of many more millions in the Guma Properties.

171.4 As matters stand, according to Mr Barnes of the Fifteenth Respondent, during the period 01 April 2020 and 02 June 2020 the Fifteenth Respondent, sold 17 251 units of 25 litre drums at R1,744.00 (excluding VAT) per unit of sanitiser for an amount of R35 856 094.00 including VAT. As well as the respirator masks to the value of R1 523 750.00 and cloth masks to the value of R26 000.00.

171.5 The Seventeenth Respondent sold thousands of 25L sanitisers to the First Respondent at R1,650.00 per unit.

172 AD PARAGRAPHS 174 – 174.2

172.1 I deny the contents hereof.

173 AD PARAGRAPHS 175 – 175.2

173.1 I deny the contents hereof and submit that Mr Mthembu's report remains credible and should prevail.

174 AD PARAGRAPH 176

174.1 I note the contents hereof.

175 AD PARAGRAPHS 177 – 179

175.1 Save to note the meeting of 5 December 2022, I deny the remainder of the contents of these paragraphs.

176 AD PARAGRAPH 180

176.1 I note the contents hereof.

177 AD PARAGRAPHS 181 – 181.4

177.1 I deny the contents hereof and submit that the voluminous founding papers are a clear indication that the Applicant has disclosed all documents at its disposal when it launched this application.

177.2 The Applicant has no reason at all to hide any information. It is under the law obliged to place all relevant facts and documents before the Tribunal.

178 AD PARAGRAPH 182

178.1 I deny the contents hereof. I submit that Mr Mthembu's expertise as a Forensic Accountant were extremely important in this regard. Mr Mthembu's investigation unearthed the money trail and this evidence has not been disputed by the Guma Respondents.

178.2 Instead, they simply justify the distribution of funds as normal commercial processes.

179 AD PARAGRAPHS 183 – 184

179.1 I note the contents hereof.

180 AD PARAGRAPHS 185 – 187.3

180.1 I deny the contents hereof.

181 AD PARAGRAPHS 188 – 188.6

181.1 I deny the contents hereof and submit that the First Respondent is clutching at straws in trying to justify the wrong awarding of the impugned contract to it by the SAPS.

182 AD PARAGRAPH 189

182.1 I take note of the acknowledgement of the powers of the Tribunal by the First Respondent and deny the remainder of the contents hereof.

183 AD PARAGRAPHS 190 – 190.2

183.1 I deny the contents hereof. The First Respondent acted upon receipt of Lt General Riet's letter of demand.

183.2 The First Respondent has admitted that some of the sanitiser delivered at the SAPS did not meet the required 70% alcohol content standard and had to remedy that situation.

183.3 As state above, the SAPS has since filed its Explanatory Affidavit.

184 AD PARAGRAPHS 191 – 191.2 AND 192

184.1 I deny the contents hereof.

185 PARAGRAPHS 193 – 197

185.1 I deny the contents hereof and submit that these assertions have been dealt with above.

186 AD PARAGRAPHS 198 – 199

186.1 I note the contents hereof.

187 AD PARAGRAPHS 200 – 200.1

187.1 I deny the contents hereof and submit that the Applicant stands by its submissions.

188 PARAGRAPH 201

188.1 I note the contents hereof.

189 AD PARAGRAPHS 202 – 200.2

189.1 I deny the contents hereof.

190 AD PARAGRAPHS 203 – 204.4

190.1 I deny the contents hereof.

191 AD PARAGRAPHS 205 – 205.5

191.1 I deny the contents hereof.

192 AD PARAGRAPH 206

192.1 I deny the contents hereof and submit that I stand by my submissions.

193 AD PARAGRAPH 207

193.1 I deny the contents hereof.

194 AD PARAGRAPH 208

194.1 I note the contents hereof.

195 AD PARAGRAPHS 209 – 210

195.1 I deny the contents hereof.

196 AD PARAGRAPHS 211 – 211.4

196.1 I deny the contents hereof. Evidence has shown that all the PPE supplied to SAPS by the First Respondent were procured locally. Therefore, the SAPS would have had access to those locally produced PPE but for the lies perpetuated by the Third Respondent with the aid of the various identified SAPS officials in the First Respondent's affidavits, Lt Gen Riet, and the officials in National Treasury such as Mr Fani who is now heading the SAPS SCM Division (both knowingly or unknowingly).

197 AD PARAGRAPH 212

197.1 I deny the contents hereof.

198 AD PARAGRAPH 213

198.1 I deny the contents hereof with the contempt it deserves. I submit that the First Respondent is not allowed in law to make unlawful profits from the public purse or anywhere else for that matter.

198.2 I am empowered by the SIU Act to investigate unlawful conduct as per the delegation of authority conferred upon me **(Annexure SAP1, Case Line 001-135 – 001-137)** and per paragraphs 2 and 3 above.

199 AD PARAGRAPHS 214 – 214.2

199.1 I deny the contents hereof.

200 AD PARAGRAPH 215

200.1 I note the contents hereof.

201 AD PARAGRAPHS 216 – 216.2

201.1 I note the acknowledgement of the legal prescripts and deny the remaining averments.

202 AD PARAGRAPHS 217 – 217.2

202.1 I deny the contents hereof.

203 AD PARAGRAPHS 218 – 224

203.1 I deny the contents hereof.

203.2 The First Respondent contends that the Applicant must not be granted condonation. I deny this submission.

203.3 I submit that this case is too important to warrant that every issue thereof be ventilated in a Tribunal. It is a matter of national importance.

203.4 The Applicant will suffer immeasurable, irreparable prejudice in the event that condonation is refused. I have made the necessary submissions in this regard and I stand by them.

203.5 The fact that the parties have taken over 12 months exploring ways of resolving this matter without going to the tribunal signifies this fact.

204 AD PARAGRAPH 225

204.1 I deny the contents hereof.

205 AD PARAGRAPHS 226 – 227

205.1 I note the contents hereof.

CONCLUSION

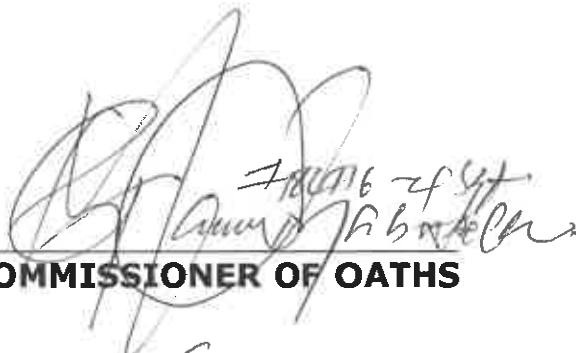
206 A confirmatory affidavit by Mr Cameron Mthembu, and Mr Johan Van Schalkwyk – the SIU instructing attorney, are annexed hereto marked **RA02** and **RA03**.

WHEREFORE the Applicant prays for an order as set out in the notice of motion.



JACKEY LEBONYE MATHABATHE

HEREBY CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed before me at TSHWANE on the 22nd day of DECEMBER 2025, the regulations contained in Government Notice No. R1258 dated 21 July 1972, as amended, and Government Notice No R1648 dated 19 August 1977, as amended have been complied with.


COMMISSIONER OF OATHS

Ex officio: Sergeant
Full Names: Khutsole Mabudela
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Silverton
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JL 256