

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

Case number CC 358/2005

In the matter between:

**THE STATE**

And

**JACOB GEDLEYIHLEKISA ZUMA  
THINT HOLDINGS (SOUTHERN AFRICA)  
(PTY) LTD (as represented by PIERRE JEAN-  
MARIE MOYNOT  
THINT (PTY) LTD (as represented by  
PIERRE JEAN-MARIE MOYNOT**

First Accused  
Second Accused

Third Accused

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AFFIDAVIT OF MR NGCUKA

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I, the undersigned, BULELANI THANDABANTU NGCUKA, do hereby make oath and state:

**I. INTRODUCTION**

1. I am an adult make businessman, resident in Gauteng. I was previously the National Director of Public Prosecutions.

2. The facts deposed to below are true and correct and fall within my personal knowledge unless the context indicates the contrary or it is expressly stated otherwise.
3. Where legal submissions are made, I do so under legal advice.
4. I have read the affidavits of Leonard Frank McCarthy and Penuel Mpapa Maduna and confirm the contents insofar as they relate to me.

## **II. AD ZUMA'S AFFIDAVIT**

I have read the affidavit of Mr Jacob Zuma ("Accused No 1") and I respond as follows:

5. I note the theme which permeates Accused No 1's affidavit to the effect that I am a party to an alleged political conspiracy with the sole aim to destroy Accused No 1's political career and prevent him from becoming president of the country. According to this theory, the entire "arms deal" investigation was designed, from the outset, for this purpose. So too, was my announcement of the decision not to prosecute him in August 2003 and the decision of my successor, Mr Vusi Pikoli, to prosecute him in 2005.
6. I categorically and specifically deny that I, or any of the officials involved in the investigation and prosecution of Accused No 1 and his fellow suspects/accused, are party to any such conspiracy. Nor am I aware of the existence of such a conspiracy, other than through speculation in the media and wild and

unsubstantiated allegations made by Accused No 1 and his supporters. I am aware, however, that the National Executive Committee of the ANC has investigated these allegations and found them to be baseless. I am verily of the belief that these rumours have been started and fuelled by Zuma and his supporters in an attempt to deflect from the seriousness of charges which he is facing.

7. I point out that the allegations made by Accused No 1 are entirely without foundation in fact. They appear to be based entirely on rumours (many of which appear to have been generated by his own supporters and spin doctors), media reports and questionable inferences drawn from certain actions and statements attributed to me, the falsity of which I will demonstrate below.
8. The irony is that, far from abusing my powers in order to harm Zuma's reputation, I did everything within my powers to protect it. The extraordinary lengths to which the NPA went, on my instructions, to avoid the investigation entering the public arena are set out in my press release of 23 August 2003 (Annexure **LM4**) and further amplified in Du Plooy's Answering/Replying affidavit. If any criticism is to be levelled at the manner in which the investigation was handled, in retrospect, it is that I may have tried too hard to protect Accused No 1's reputation and not the contrary.
9. I do not propose to deal with each and every allegation in Accused No 1's affidavit since I these have been dealt with in other affidavits. I will therefore confine myself to addressing those which most directly concern me. My failure to deal with any particular point should not be regarded as an admission thereof.

**AD PARAGRAPH 17**

10. This paragraph is disputed in its entirety. The assertion that the investigation was “designed from the outset solely or mainly to destroy my reputation or political role playing ability” is nothing short of preposterous when viewed against the factual background of the investigation as described in McCarthy’s affidavit. In short, the genesis of the investigation into the bribe agreement involving Accused No 1, Shaik and Thethard and its subsequent extension into the alleged corrupt relationship between Shaik and Accused No 1 was simply the result of conscientious investigators following the trail of evidence, nothing more and nothing less.
  
11. The news that the investigation team had uncovered evidence implicating the Deputy President in corruption came as an unpleasant revelation to me. The decisions which I was subsequently forced to make were difficult, unpleasant and taken at great personal cost to myself and my family. Nevertheless, I was obliged to take them by virtue of my responsibility to the constitution and the rule of law. As a result thereof, I have been publicly vilified, falsely branded as an apartheid spy and a traitor to my people and been subjected to a malicious whisper campaign aimed at impugning my character and my morals. So too have the NPA and, in particular, the Directorate of Special Operations (“Scorpions”) suffered grave and unfounded criticism, all because they have been fearless enough to follow the evidence, regardless of where the finger of blame has fallen. All this I have endured, however, because I firmly believed in giving effect to my oath of office to act without fear, favour or prejudice.

**AD PARAGRAPH 19**

12. I deny the allegations contained in annexure “E”, more especially at page 883 of the transcript, that I have a political agenda and wish to negative Accused No 1’s role in the ANC. I wish to point out that his evidence around this and preceding issues is characterised by extreme vagueness and appears to be based chiefly on media reports. The only “fact” that he advances in support of this serious and defamatory allegation is the so-called “off the record” media briefing, which I will deal with below. Suffice to say that I vehemently deny that I told editors any of the statements which he attributes to me in his evidence.

**AD PARAGRAPH 20**

13. I deny, at least insofar as my tenure as NDPP is concerned, that the charges against Accused No 1 have been initiated and fuelled by any political conspiracy to remove him as a role player.

**AD PARAGRAPH 24**

14. This paragraph is denied in its entirety. I have already referred to the origins of the investigation into Accused No 1 and how it came to emerge from the broader investigation into the arms deal. The broader investigation was in turn initiated by the 14<sup>th</sup> report of the Standing Committee on Public Accounts (SCOPA). Any suggestion that I had the power to influence the recommendations of that committee would be clearly absurd.

15. It is furthermore specifically denied that the assistance of members of the State's intelligence services have been used in the investigation. I verily believe that this is a fabrication aimed at lending credibility to Accused No 1's allegations that the Minister of Intelligence, Mr Ronnie Kasrils, is a party to the alleged conspiracy against him.

**AD PARAGRAPH 25**

16. I have already explained how the investigation into Accused No 1 arose out of the investigation into the Arms Deal. The manner in which Accused No 1's corrupt activities are related to the Arms Deal are set out in detail in the draft indictment and summary of substantial facts.

**AD PARAGRAPHS 26 - 27**

17. It has never been alleged that Accused No 1 corruptly influenced the awarding of any Arms Deal contracts. Even a cursory perusal of the indictment would have made this clear to him. It seems that he is hammering at this irrelevant issue to deflect from the real issues, such as his involvement in securing Shaik's entry into the ADS joint venture and the R500 000 per annum bribe agreement with Shaik and Thetard.
18. Regarding the findings of the Joint Investigation team ("JIT"), I am well acquainted with the contents of this report as I was a signatory thereto. While it is correct that the JIT found that there was no evidence that the **ultimate selection of the successful bidders** was not tainted by corruption, this is not the same as finding that there was no corruption relating to the process at all. Indeed, in

paragraph 1.3.2.3 the JIT report states that “... *there may have been individuals and institutions who used or attempted to use their positions improperly, within government departments, parastatal bodies and in private capacity to obtain undue benefits in relation to these packages...*” . It is at this level that Accused No 1 is accused was implicated of corruption. In order to avoid unnecessary prolixity, I do not propose to attach this lengthy document to my affidavit. I am advised that counsel will ensure that a copy is available on the date of the hearing.

19. The report also specifically makes reference paragraph 1.3.2.4 to ongoing criminal investigations by the DSO, the details of which were not revealed at that time for obvious reasons. These investigations included the present matter. It is clear from the report, and I can confirm, that the JIT was well aware of this investigation at the time of its report and nothing in its findings should be interpreted as grounds for questioning the legitimacy of the present investigation.

#### **AD PARAGRAPHS 32 - 34**

20. Apart from admitting the fact that a meeting with certain newspaper editors did take place, which is a matter of public record, the contents of these paragraphs are strenuously denied. In particular, the nature of the meeting and what was said thereat is disputed.
21. The purpose of the meeting was to dispel certain defamatory and damaging rumours that were being circulated about me. It had come to my attention that these rumours had also been sent to certain sections of the media. I considered it necessary to meet with relevant role-players to scotch these rumours before they

were widely published, with the attendant and obvious damage to me, my family and the NPA. I explained to them that these rumours were being invented and circulated in order to tarnish my reputation as a result of a number of high profile investigations in which I, as head of the NPA, was involved. I do not intend to go into further details of these rumours and the discussions that I had in regard to them with those present, as this would entail publishing and perpetuating defamatory matter. Suffice to say that they included the allegation, which was later brought into the public domain by a certain ex-journalist who now acts as a media consultant to Accused No 1, that I was an apartheid spy. This fabrication was subsequently and publicly discredited by the Hefer Commission of Inquiry. The journalist in question resisted all attempts by the Commission to subpoena her to substantiate this allegation.

22. For the record, I specifically and categorically deny that I made derogatory or racist remarks at the meeting or that engaged upon any character assassination of Accused No 1. I have already said as much under oath in my evidence before the Hefer Commission. I furthermore deny that the purpose of the meeting was to further any sort of political conspiracy against Accused No 1 or anyone else. I should point out that this was not the sort of secretive, shadowy meeting that Accused No 1 and his collaborators seek to portray. It was also attended by two of my most senior colleagues in the NPA, which would hardly be likely if I were intent on the sort of subterfuge that Accused No 1 alleges.
23. It must be pointed out that the allegations in regard to this meeting contained in Accused No 1's affidavit, as well as his complaint to the public protector, are

based **entirely upon hearsay**. The main source of his allegations appears to be Vusi Mona, ex-editor of the City Press. This is a man whose integrity and reliability were thoroughly discredited in the Hefer Commission. In his evidence before the Commission, Mona repeated the allegations contained in the annexure E1 to Accused No 1's affidavit, but in the words of the Chairperson "*he was forced to make one damning concession after the other*" with the result that by the end of cross examination "*his credibility had been reduced to nil*" The Commission concluded, regarding Mona's version of what transpired at the meeting, that "*[a]s far as I am concerned one simply cannot accept its factual basis*". (See annexure **BTN2**)

24. I regard it as surprising and disturbing, in the light of these damning findings, that Accused No 1 seeks to resurrect these defamatory allegations in the present papers, when he must be well aware that their reliability is, at the very least, subject to serious question. I am advised that should he persist with these allegations, I would be quite within my rights to pursue legal remedies.
  
25. The other two persons relied upon in his complaint to the Public Protector, Mark Gleason and Elias Maluleka, were not even at the meeting, making this hearsay upon hearsay. The statement of Phalane Motale, who appears to support the version of Mona, is unsworn and his credibility has never been tested. It is not even clear if he is referring to the same version of events contained the statement of Mona that is included in Accused No 1's papers. Furthermore, in light of the comprehensive manner in which the evidence of the person whose version he

purports to report has been discredited, I am advised that little if any weight can be placed on this statement.

26. What Accused No 1 appears to be saying is that, while the mud slung by Mona may have been washed away by the Hefer Commission, the stain remains. I am advised, however, that applications such at the present do not fall to be determined on the basis of such vexatious and unreliable allegations.

27. In any event, even if there were any truth to these allegations, which I repeat there is not, this does not logically justify the conclusion that the investigation and prosecution of Accused No 1 is the result of a political conspiracy.

28. As regards my alleged failure to react to the Public Protector's request for my comment, this is again a misrepresentation of the facts. My senior colleagues and I met with the Public Protector and explained to him in person why we were unable to respond to certain matters at that time. We also submitted written responses to him. I am advised, however, that this matter is of such tenuous relevance to the present application that it does not warrant further explanation.

**AD PARAGRAPH 36**

29. The investigation against Accused No 1 commenced only in 2001, not 2000, on the discovery that the "Senior Government Minister" who was reported in the Thint (then Thomson CSF) audit working papers as allegedly having been the subject of bribery by Thint, was none other than he.

30. The thrust of Accused No 1's complaint about the announcement of my decision on 23 August 2003 appears to be, not that I decided that there was insufficient prospect of a successful prosecution and therefore declined to prosecute him, but rather the single line in my statement to the effect that there was a *prima facie* (ie "at face value" or "on the face of it") case against him. This statement, he implies was both the result of, as well as proof of, my alleged ulterior motives. He is wrong in both respects.
31. To understand the reasons for my announcement, one first has to understand the factual background. Despite every precaution taken by the NPA to keep Accused No 1's name out of the media, at least until the investigation could be finalised, this was frustrated when Shaik himself saw fit to explicitly reveal this fact in papers filed in the High Court. This was done, presumably, in an effort to raise a public furore and place the NPA under pressure to abandon the prosecution.
32. In the result, the outcome of the investigation became, as Accused No 1 notes in his affidavit, a matter of intense public speculation. In light of his then position of Deputy President, it was also a matter of national interest. I therefore deemed it necessary to publicly announce and explain the decision to which I had ultimately come, after long and anxious consideration.
33. I should also add, as Accused No 1 has omitted to mention this, that I took the trouble to contact Accused No 1's then legal representative, Adv Naidu SC, on the morning of 23 August prior to the announcement. I advised him that I had decided not to prosecute his client, but that I would be making a statement to the

effect that there was in my view a *prima facie* case against him. I believe that he conveyed this message to Accused No 1. It is illuminating to note that this information elicited no objection at the time.

34. At the time when I prepared my announcement, I was in possession of a draft indictment against, *inter alios*, Schabir Shaik. In this indictment, reference was of necessity made to his relationship with Accused No 1 and the bribe agreement with Thetard. This indictment spelled out, far more eloquently than my statement, what was clearly a *prima facie* case of corruption against Accused No 1. I knew that this document would be in the public domain when the draft charge sheet was served on Shaik on the following Monday. What I felt obliged to explain to the public, therefore, was the reason why, **despite** the *prima facie* case disclosed by the indictment, I had nevertheless come to the conclusion that I was not able to prosecute Accused No 1. The indictment was in fact served two days later on Monday 25 August. Therefore, any harm that I may have inadvertently caused Accused No 1 by my statement was only transitory in nature.
35. If the announcement had the effect complained of by Accused No 1, this was regrettable, but unavoidable. However, I must stress that the bald statement that in my view a *prima facie* case existed against Accused No 1 was far less damning than the detailed allegations that were of necessity disclosed in the indictment and, I might add, proved beyond a reasonable doubt in the Shaik trial. To this extent, my view has been comprehensively vindicated. Any harm that it may have caused has surely now been overtaken by the findings of this court of law.

36. Insofar as Accused No 1 relies on this statement as evidence of *male fides* on my part, I should point out that even the Public Protector, despite the serious reservations that I have expressed about the validity of his findings, comes to the conclusion that “*no indication could be found that the statement was made in bad faith or with the intent to prejudice the Deputy President*”.

**AD PARAGRAPHS 41 - 42**

37. Accused No 1 does not explain the relevance of his request for the handwritten copy of the encrypted fax, or the State’s refusal to provide it, other than to hint darkly that he is “*only now beginning to understand the full implications of this attitude*”. Quite what these implications are alleged to be remains a mystery.
38. I believe that this saga is of absolutely no relevance to the present application. Quite simply, his request was refused because he had no legitimate or lawful right to access to this document, which was the subject of a pending criminal prosecution to which he was not a party. I point out that at that time the document was also withheld from the subjects of the prosecution themselves, Shaik and his companies, for cogent reasons. To mention but one, I was advised by those seized with the investigation and prosecution that, by releasing the original handwritten copy of the fax, the identity of the witness who had provided it to us would of necessity be revealed. This witness entertained legitimate fears for her safety, which in the view of the prosecution team and I outweighed whatever interest Accused No 1 might have in having access to the document before it was made public at the trial.

39. I might place on record, for what it is worth, that as soon as this document had been provided to Shaik, the State allowed Accused No 1's legal representatives to personally inspect and copy the original document.

**AD PARAGRAPHS 39 - 40**

40. I dispute the contents of this paragraph. Firstly, it was not my function as NDPP to quibble with the press over their interpretation of my statement. They are entitled to their opinions and have a constitutional right to express them.

41. Secondly, the NPA and the Minister of Justice prepared a comprehensive response to the findings of the Public Protector, including the issue of my press statement, which we sought to present to Parliament. Unfortunately, Parliament did not see fit to give us an opportunity to do so. In the result, I have not had the opportunity to formally respond to the Public Protector's report in the appropriate forum.

**AD PARAGRAPHS 85 - 86**

42. These paragraphs are denied. I refer to the reasons for my statement described above. The findings of the Public Protector in this regard are disputed

**AD PARAGRAPH 88**

43. This paragraph is denied. The State is quite entitled to obtain admissible evidence against an accused, even from a co-conspirator.

### III. AD MOYNOT'S AFFIDAVIT

#### *The trips to Paris*

44. Since many of the allegations contained in this affidavit pertaining to this issue have already been traversed in other answering affidavits, I will not attempt to deal with each and every allegation.
45. I confirm the fact that Maduna and I were approached while on a trip to London by a person purporting to be an intermediary acting on behalf of Thales International and Accused Nos 2 and 3 (I will refer to them collectively as "Thales/Thint"). We were informed that Thales/Thint were prepared to cooperate with our investigation
46. As a result of that approach, and since our formal request to the French authorities for their assistance in questioning various officials of Thales/Thint had met with a conspicuous lack of cooperation, McCarthy and I decide to travel to Paris to meet with Thales/Thint to see how they would be prepared to cooperate. We met with various senior executives of Thales/Thint. However, all our enquiries were met with the refrain "we do not know" Our request to speak with Thetard was also denied and we left Paris none the wiser for our trip.

47. The second trip occurred in September 2003, shortly after the announcement of my decision to prosecute Accused No 3 in this matter. On this occasion I was approached by the same intermediary, who informed me that Thetard was now willing to speak to us, but that he would only do so in Paris.
48. I decided to meet with Thetard and to hear what he had to say. I indeed met Thetard in Paris together with the attorney Guerrier. I was accompanied by two other NPA officials. This is the meeting referred to in Guerrier's supplementary affidavit. However, that is where the truth of her affidavit ends.
49. This meeting, firstly, was not "off the record". We came armed with tape recorders to take Thetard's statement very much for the record. However, this was not to be. From the outset it became very clear that he was not intent on cooperation. We showed him a typed copy of the encrypted fax and asked him if he could explain it. I recall that his response, repeated like a mantra, was "I don't remember".
50. I dispute that there were any raised voices, although I was obviously not impressed that we had come all the way to Paris, for a second time, to see Thetard, simply to be told that he doesn't remember. I formed the clear impression that he was not intent on telling us the truth.

***The approach by Driman***

51. In April 2004, I was contacted by Maduna who informed me that he had been approached by an attorney, one Robert Driman, on behalf of Thales/Thint. He

informed me that they wanted to meet with us again in order to discuss their cooperation. Although I was sceptical of their motives, on the basis of our previous meetings, I decided that it was worth another try.

52. Maduna then arranged the meeting at his house. I have read and confirm Maduna's description of the meeting. They were the ones making their case to us and we were listening. **They** were trying to convince **us** that there were good reasons to withdraw the charges against Accused No 3.
53. I deny that Maduna or I told them that the focus was on Shaik and his companies and not on Accused No 3. I specifically recall one of **them**, I can no longer recall which, saying that they were only minor players in the matter and that the damage which a prosecution would cause to their reputation was not commensurate with their role in the events.
54. I dispute that Maduna gave any assurances or encouraged them specifically to make new investments in the country. Again, they were the ones trying to impress us with their assertions about how much investment they were bringing into the country. Maduna's comments were limited to generalised observations to the effect that foreign investment is always good for the country and should in general be encouraged.
55. I dispute that Maduna made any recommendation to me, or that he was in a position to do so. Although he had received reports from me regarding the

prosecution, he was not sufficiently apprised of the facts to make that sort of decision. Nor did he have the authority to do so.

56. Maduna did, however, turned enquire from me what my point of view was regarding their representation. I was initially not prepared to agree to withdraw the charges since Thales/Thint had previously not been willing to assist us with the simple matter of getting an affidavit from Thetard. I felt that there was no reason to withdraw the charges unless they were prepared to cooperate. It should be remembered that when I took the decision to prosecute Accused No 3 together with Shaik and his companies, I was of the opinion that there was a reasonable prospect of a successful prosecution against it. Nothing they had told us had changed that view. They then requested what was the nature of the cooperation that we sought. I informed them that I required at least an affidavit from Thetard as a gesture of good faith. They indicated that they would take instructions and revert to us.

57. The meeting ended, therefore, without any agreement as to the withdrawal of charges, save that they would revert to me in due course to take the matter forward, if so advised.

***The agreement to withdraw charges***

58. A few days later, I was contacted by Adv Kessie Naidu SC, who by that time had been instructed to represent Thales/Thint in the negotiations. We set up a meeting at my offices on 19 April 2004 (Annexure **LM31**). The meeting was attended by myself, McCarthy Naidu and Sooklal.

59. After some discussion it was agreed that if Thetard agreed to cooperate with us by giving us an affidavit confirming truthfully that he was the author of the so-called encrypted fax, we would agree to withdraw the charges against him. We agreed that I would reduce the terms of the agreement to writing, which I did immediately after the meeting, and sent it to Adv Naidu.
60. I must stress that it was implicit in the agreement that the affidavit to which Thetard would depose would be truthful. This is confirmed by the terms of my letter of 19 April which states that he must execute the affidavit “verily”.
61. I confirm that I subsequently received an affidavit from Naidu which appeared to satisfy the terms of the agreement. Hence I drafted a letter dated 4 May 2004 (Annexure **LM33**), in which I confirmed that the charges in the pending case would be withdrawn. I must stress, however, that nothing in the agreement was intended to amount to anything like a permanent indemnity from prosecution. Such an undertaking by the NPA would be very unusual, as in normal circumstances this would only be granted by a court in terms of section 204 of the CPA and then only after a suspect has testified frankly and honestly in a related prosecution. In any event, it is clear from the wording of my undertaking that the agreement related specifically to the charges in the pending case involving Shaik and nothing more.
62. When the statement was provided, there was also some further discussion about a possible indemnity from prosecution for various officials of Thales/Thint. To this

end, Adv Naidu requested that he be provided with copies of documentary evidence implicating his clients in the offences, so that he could consult with his clients with a view to possibly providing the State with further evidence which might assist us in the upcoming trial. I discussed this with the prosecuting team and we agreed to do so, since the documents either had been or would shortly be provided to Shaik's defence team and there was no real need for secrecy at that time. This is also confirmed in my letter of 4 May. From that point on I referred Naidu to the prosecution team to take the matter further.

63. Although my personal involvement in the negotiations was more limited from that time onwards, I am aware that there were various subsequent meetings and correspondence between the prosecuting team and Adv Naidu and his attorney. I am also aware that during the course of these negotiations, Thales/Thint sought to extract ever further indulgences and concessions from the State that had not been part of the initial agreement, such as:

- Having the pending letter of request for mutual legal assistance to France withdrawn;
- Being provided with voluminous documents on which the State would be relying in the upcoming prosecution of Shaik and his companies (notwithstanding the agreement that charges would be withdrawn against them). These included the annexures to the KPMG report (consisting of 20 lever arch files), copies of all documents seized during searches in Durban Mauritius and France and copies of all evidence obtained for the purposes of the investigation and the preparatory investigation. I am advised that this comprised of hundreds of thousands of documents; and ultimately

- To have the charges withdrawn immediately rather than on the date of the trial, as had been agreed.

64. Also during this period I was shown a second, unsolicited statement from Thetard. I was flabbergasted and annoyed by this affidavit as it flew in the face of Thetard's earlier confirmation that he was the author of the relevant document. In my view, this second affidavit constituted a flagrant breach of both the spirit and the letter of our earlier agreement, more especially since it was patently and demonstrably false. I can state unequivocally that, if Thetard had given this version in his first affidavit, on the strength of which I agreed to withdraw the charges, I would never have even considered consenting to the withdrawal of charges.

65. In this affidavit, however, Thetard also indicated that he was prepared to submit to an interview in Paris with McCarthy and I regarding the issues described in his affidavit. By this stage it was quite apparent to me that Thetard and his representatives were busy leading the NPA up the proverbial garden path and I had no intention of ever meeting with the man again. However, the prosecuting team felt that it could still be useful to meet with him to discuss his latest allegations, if only to demonstrate Thetard's deceitfulness.

66. I agreed to let them make the necessary arrangements. I am aware that negotiations proceeded to the stage where tentative dates of 8 – 9 July were arranged for the interview and I submitted a memorandum to the Minister to approve the trip. A letter to the attorney for Thales/Thint dated 8 June 2004 was

drafted in my name and signed by my Deputy to formally request the interview. (See annexure **LM59**) This elicited the response dated 1 July (annexure **LM42**) in which we were notified that Thetard would not agree to meet with the prosecuting advocates, but would only consent to meeting with McCarthy and I as originally proposed.

67. At a certain stage prior to the receipt of Thetard's second affidavit, I was informed by Maduna that Adv Naidu had come to see him and complained about the alleged lack of cooperation he was receiving from me. He informed me that during this meeting Naidu had made certain startling revelations to him, in confidence, which do not accord with Thetard's later version the document that he had admitted to writing was nothing more than random scribbles which he subsequently discarded. This provided further confirmation to me that Thetard's second affidavit was false and executed in bad faith. Although I am of the view that I would be justified in revealing the contents of this report in light of the fact that the accused have chosen to reveal the contents of other confidential discussions which give a skewed and incomplete account of the facts, I have decided to respect Maduna's decision not to breach the confidence of this report.

***Response to individual paragraphs in the affidavit of Moynot***

68. I have read Maduna's seriatim replies and I confirm them insofar as they relate to me. In order to avoid prolixity I respectfully request that it be read as if incorporated herein. I dispute the contents of Moynot's affidavit insofar as it is

inconsistent with my evidence above and the contents of the affidavits of Maduna and McCarthy.

69. In summary, however:

- I dispute the circumstances set out in Moynot's affidavit insofar as they differ from what I have said above and what is contained in the affidavits of McCarthy and Maduna.
- I confirm Moynot's concession in paragraph 33 that the agreement to withdraw the charges did not amount to an indemnity against prosecution of Thales International, Accused Nos 2 and 3 or any of their employees, including Thetard.
- I dispute that any legitimate expectation was created in the minds of those representing Accused Nos 3 that the prosecution against it would never be reinstated, as alleged in paragraph 33.8.3.
- I confirm that I was confident in the strength of the State case against Accused No 3. If not I would not have decided to prosecute them. The decision to withdraw was taken solely as a result of the agreement reached. This, in my estimation, provided sufficient strategic advantage to the State in the prosecution of Shaik and his companies (and potentially also in any subsequent prosecution of Accused No 1) to justify the agreement to withdraw charges for the purposes of the pending trial.

## **AD MOYNOT'S SUPPLEMENTARY AFFIDAVIT AND GUERRIER'S AFFIDAVIT**

70. In order to avoid prolixity, I shall not repeat what I have already stated above but respectfully request that it be read as if incorporated in what appears below. I have also read Maduna's seriatim replies and I confirm them insofar as they relate to me.
71. Suffice to say that I also dispute the contents of these supplementary affidavits insofar as they are inconsistent with my evidence above and the contents of the affidavits of Maduna and McCarthy.

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

I read this statement before I signed it.

I know and understand the content of this declaration.

I have no objection to taking the prescribed oath.

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

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BULELANI THANDABANTU NGCUKA

I certify that the above statement was taken by me and that the deponent has acknowledged that she knows and understands the content of this statement. This

statement was sworn to before me and that the deponent's signature was placed there on  
in my presence at \_\_\_\_\_ on \_\_\_\_ August 2006.

\_\_\_\_\_

FULL NAMES: \_\_\_\_\_

COMMISSIONER OF OATHS

EX OFFICIO: (eg: South African Police Service) \_\_\_\_\_

REPUBLIC OF SOUTH AFRICA

RANK: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_