

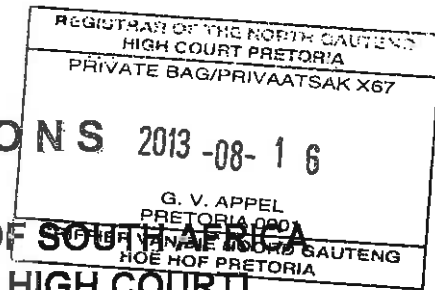
VAN DER MERWE
& ASSOCIATES

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0002
GT VD MERWE/nt

SUMMONS 2013-08-16

**IN THE HIGH COURT OF SOUTH AFRICA
[NORTH GAUTENG HIGH COURT]**



CASE NUMBER: 50365 /2013

In the matter between:

RAJESH GUPTA

PLAINTIFF

and

THE EDITOR OF THE MAIL & GUARDIAN NEWSPAPER FIRST DEFENDANT

M&G MEDIA LIMITED

SECOND DEFENDANT

TO THE SHERIFF OR HIS DEPUTY:

INFORM THE EDITOR OF MAIL & GUARDIAN NEWSPAPER with its main place of business being **GROSVENOR CORNER, 195 JAN SMUTS AVENUE, ROSEBANK, JOHANNESBURG, GAUTENG.**

[hereinafter called the **FIRST DEFENDANT**]

and

M&G MEDIA LIMITED, the owner and/or the publisher of the First Defendant with its business address being **GROSVENOR CORNER, 195 JAN SMUTS AVENUE, ROSEBANK, JOHANNESBURG, GAUTENG.**

[hereinafter called the **SECOND DEFENDANT**]

that:

RAJESH GUPTA, a major male businessman acting herein in his personal capacity and in his capacity as authorised representative and member of and in the interest of a group/class of persons named as The Gupta Family (hereinafter referred to as "the Guptas") as is

envisaged in Section 38(c) of the Constitution of the Republic of South Africa, 1996, with address for service of any and all notices and pleadings under this action being that of their attorney of record, Van der Merwe & Associates situate at **41 IVY STREET, CLYDESDALE, PRETORIA, GAUTENG.**

[hereinafter called the **PLAINTIFF**]

hereby institutes action against them in which action the **PLAINTIFF** claims the relief and on the grounds set out in the particulars annexed hereto.

INFORM the **DEFENDANTS** further that if the **DEFENDANTS** disputes the claim and wishes/wish to defend the action, the **DEFENDANTS** shall :

- (i) Within 10 days of the service upon the **DEFENDANTS** of this summons, file with the Registrar of this High Court at the High Court Building, Vermeulen Street, Pretoria, Notice of Intention to Defend and serve a copy thereof on the Attorneys of the **PLAINTIFF**, which notice shall give an address (not being a post office or poste restante) referred to in Rule 6(5)b for the service upon the **DEFENDANTS** of all notices and documents in the action.
- (ii) Thereafter and within 20 days after filing and serving Notice of Intention to Defend as aforesaid, file with the Registrar and serve upon the **PLAINTIFF** a Plea, Exception, Notice to Strike Out, with or without a Counter-claim.

INFORM the **DEFENDANTS** further that if the **DEFENDANTS** fails to file and serve notice as aforesaid, Judgment as claimed may be given against the **DEFENDANTS**

without further notice to the **DEFENDANTS** or if having filed and served such notice, the **DEFENDANTS** fails to plea, except, make application to strike out or counter-claim, Judgment may be given against **DEFENDANTS**.

AND immediately thereafter serve on the **DEFENDANTS** a copy of this Summons and return the same to the Registrar with whatsoever you have done thereupon.

SIGNED AT PRETORIA ON THE 15 DAY OF August 2013.



VAN DER MERWE & ASSOCIATES
ATTORNEYS FOR PLAINTIFF
41 IVY STREET
CLYDESDALE
PRETORIA
TEL: [012] 343 5432
FAX: [012] 343 5435
REF.: GT VD MERWE/nt/G177

REGISTRAR OF THE HIGH COURT

PARTICULARS OF CLAIM

1.

The Plaintiff is **RAJESH GUPTA**, a major male businessman acting herein in his personal capacity and in his capacity as authorised representative and member of and in the interest of a group/class of persons named as The Gupta Family (hereinafter referred to as "the Guptas") as is envisaged in Section 38(c) of the Constitution of the Republic of South Africa, 1996, with address for service of any and all notices and pleadings under this action being that of their attorney of record, Van der Merwe & Associates situate at **41 IVY STREET, CLYDESDALE, PRETORIA, GAUTENG.**

2.

The First Defendant is **THE EDITOR OF THE MAIL & GUARDIAN NEWSPAPER** with its main place of business being **GROSVENOR CORNER, 195 JAN SMUTS AVENUE, ROSEBANK, JOHANNESBURG, GAUTENG.**

3.

The Second Defendant is the owner and/or the publisher of the mail & guardian newspaper, **M&G MEDIA LIMITED**, a company with limited liability with registered address alternatively main place of business being **GROSVENOR CORNER, 195 JAN SMUTS AVENUE, ROSEBANK, JOHANNESBURG, GAUTENG.**

4.

On 22 March 2013 the Defendants published and/or caused to be published and/or allowed to be published an article titled "**R10bn contract behind SAA dogfight**" in its weekly paper commonly known as Mail & Guardian. A copy of the aforesaid article is appended hereto as **Annexure "A"**, the contents thereof incorporated herein as if specifically pleaded.

5.

The Mail & Guardian is a widely distributed newspaper within the Republic of South Africa and similarly read by the general public.

6.

The said article and its contents are *per se* defamatory of the Plaintiff and the Guptas in general in that it alleges *inter alia* the following:

1. *"And questions have been raised about how an extraordinary meeting held in Johannesburg at the Saxonwold compound of the Gupta family – involving the airline's acting chief executive as well as the special adviser to Minister of Public Enterprises Malusi Gigaba – fed into that battle." (sic)*
2. *"The Sunday Times this week revealed detailed allegations about the meeting held at the Saxonwold compound on October 29."*

3. *“Siyabonga Mahlangu, the special legal counsel to Gigaba, had invited Kona to the Gupta Meeting.”*
4. *“Gigaba’s friendship with the Guptas is well known, but according to a source familiar with the ministry, Mahlangu is a power broker who is also close to the family.”*
5. *“Also present on October 29 were Rajesh “Tony” Gupta, the most unctuous of the Gupta brothers, as well as President Jacob Zuma’s son Duduzane and the son of Free State Premier Ace Magashule, Tshepiso.”*
6. *“Tony and Duduzane are directors of Mabengela Investments, and Tshepiso lists Mabengela as his employer. Mabengela appears to be the vehicle for the Zuma family’s empowerment by the Gupta family.”*
7. *“Mabengela was to have been the vehicle for Duduzane’s share in the aborted R9-billion ArcelorMittal empowerment deal and it owns the R4-million Saxonwold house where Duduzane reportedly lives.”*
8. *“Another Gupta company, Confident Concept, owns a Saxonwold home worth R3.2-million where Magashule lives.”*
9. *“According to the Sunday Times Tony made an offer to make R100 000 available to Kona and then upped it to R500 000. The report didn’t specify what the money was for, but said Kona refused and later spoke to board colleague Dudu Myeni about the meeting.”*

10. *“Given that the Guptas’ Oakbay Investments owns just under 5% of SAA’s rival Comair this explanation is barely credible. A senior source at Comair confirmed that Atul Gupta was still on the board and that if there was any intention to transfer business away from Comair “we would have heard about it”.”*

7.

The Plaintiff is a member of the Gupta family and this fact is a matter of common knowledge. The aforesaid article also refers to the Plaintiff’s brother, Rajesh Gupta, duly represented by the Plaintiff herein as being a member of the Gupta family.

8.

The reference to the Guptas was intended to include a reference to the Plaintiff and the reference to Rajesh Gupta was similarly intended to include a reference to the Guptas and would so be understood by the ordinary reader.

9.

The aforesaid words, in the context of the article, are wrongful and defamatory of the Plaintiff in that they were intended and understood by readers of the newspaper to mean that the Plaintiff and the Guptas are dishonest, corrupt and deceitful in the following respects:

- 9.1 That the Guptas tried to bribe a senior official of South African Airways.

- 9.2 That the article about the Gupta family which appeared in the Sunday Times on 17 March 2013 was factually correct and that the information contained in the aforesaid defamatory article had to be consumed as fact.
- 9.3 That the Guptas are involved in untoward negotiations and conduct as to secure benefits from South African Airways.
- 9.4 That the Guptas hosted a meeting at their Johannesburg compound during or about October 2012 during which one or more of the family members would offer a bribe of R100 000.00.
- 9.5 That the Guptas hosted a meeting at their Johannesburg residence during which a bribe of up to R500 000.00 was offered to a senior official of South African Airways.
- 9.6 That the Guptas maintained a secretive and manipulative relationship with senior Government officials as to exercise undue influence and pressure on Government officials as to gain benefits.
- 9.7 That the Guptas are known as a corrupt group of people.
- 9.8 That the Guptas were involved in a R10 billion transaction with South African Airways, same with ill intent and with the purpose to defraud.

10.

As a result of the aforesaid defamation the Plaintiff and the Guptas have been prejudiced in that their good name and reputation suffered damages in an amount of R500 million.

11.

The Plaintiff afforded the Defendants various opportunities to retract the aforesaid article and to publish an apology with the same exposure and publicity as the article appended hereto. The Defendants, however, failed and/or refused to respond in any way whatsoever to the demands of the Plaintiff.

12.

WHEREFORE the Plaintiff, in his personal capacity and in his capacity as member of the Gupta family claims the following relief against the Defendants jointly and severally:


12.1 Payment in the amount of R500 million.

12.2 Costs of suite on a scale as between attorney and own client.

12.3 Further and/or alternative relief.



GT VAN DER MERWE
DULY ADMITTED IN TERMS OF SECTION
4[2] OF ACT 62 OF 1995



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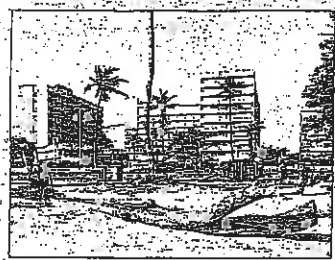
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"A"

March 22 to 27 2013 Vol 29, No 12
SOUTH AFRICA

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Lens on Libreville

Friday



Twilight zone

Friday



Diary of disaster

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R10bn contract behind SAA dogfight

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R10bn contract behind the

The Airbus tender was approved by SAA's board — but this put it at odds with a distinctly unimpressed ministry

Sam Sole & Lionel Faulk

A huge South African Airways tender, worth at least R10-billion, appears to be at the heart of the destructive battle to control the airline's board and executive.

And questions have been raised about how an extraordinary meeting held in Johannesburg at the Saxonwold compound of the Gupta family — involving the airline's acting chief executive as well as the special adviser to Minister of Public Enterprises Malusi Gigaba — fed into that battle.

SAA's management has been wracked by instability since September 2012, when the majority of the board, led by former chair Cheryl Carolus, resigned over a breakdown in its relationship with Gigaba. Chief executive Siza Mzimela and some of her key lieutenants followed in early October.

The *Mail & Guardian* can reveal that SAA's fleet committee selected the new Airbus A350 over Boeing's long-haul offering in a recommendation to the SAA board in late August — and that the outgoing board gave a nod to the choice.

SAA insiders say it is this decision that appears to have precipitated events that blocked the Airbus bid — and have left SAA's top structure in disarray.

"The previous board accepted the recommendation from the fleet committee," said one well-placed source. "That's when events started melting down — after the shareholder [the minister] was advised of SAA's view on the bids. There was a sense that the minister's office was quite shocked the process had progressed so far."

If the minister was surprised, he should not have been. The new fuel-efficient long-haul fleet was central to a detailed turnaround plan that Carolus's board had prepared.

High fuel costs are punishing SAA, especially in relation to the older generation Airbus A340-600s it has on an expensive long lease.

Securing the right aircraft quickly was key to the turnaround strategy.

According to an aviation source, the delay created by SAA's board upheaval means SAA has lost the



Public Enterprises Minister Malusi Gigaba (top) enthusiastically brought back Vuyisile Kona (above) to head SAA and Siyabonga Mahlangu (below), the special legal counsel to Gigaba. Photos: David Harrison and Pudeye Makgatha/Gallo Images/Business Day

production slot offered by Airbus during its bid. Now any new decision about the bids may be influenced by the consideration that delivery by Airbus could be up to a year later than initially planned.

Said an SAA manager: "If you look at what's happened, you have to ask yourself if we would have had such big problems if the ministry had concurred with the choice of Airbus."

The minister's version

Department of public enterprises spokesperson Mayihlome Tshwete said the "reality" was that the Carolus board "only met 30% of its key performance indicators, the most important of those being financial management".

He said the department had not seen a "detailed turnaround" plan.

Tshwete confirmed that the fleet committee had made a recommendation to the board to procure from Airbus, but denied that the minister was aware of this preference.

"The department was concerned that there was no long-term strategy that had been shared with it that informed the fleet renewal programme," he said.

"This is the reason that the programme is being revised: to be aligned with the long-term strategy that is being developed."

But the ministry's explanation why the procurement process was placed on hold is called into question by allegations of a disturbing pattern of interference in procurement matters — and by the events surrounding the arrival and sudden departure of acting chief executive Vuyisile Kona.

The Gupta factor

The *Sunday Times* this week revealed detailed allegations about the meeting held at the Saxonwold

in effect disappeared.

Siyabonga Mahlangu, the special legal counsel to Gigaba, had invited Kona to the Gupta meeting.

Gigaba's friendship with the Guptas is well known, but according to a source familiar with the ministry, Mahlangu is a power broker who is also close to the family.

Responding to a question about the frequency of the special adviser's meetings with the Guptas family, Tshwete answered with a question: "Mahlangu wouldn't be able to provide you the number of times he meets other business people, why is this different?"

Also present on October 29 were Rajesh "Tony" Gupta, the most unctuous of the Gupta brothers, as well as President Jacob Zuma's son Duduzane and the son of Free State Premier Ace Magashule, Tshepiso.

Tony and Duduzane are directors of Mabengela Investments, and Tshepiso lists Mabengela as his employer.

Mabengela appears to be the vehicle for the Zuma family's empowerment by the Gupta family.

Mabengela was to have been the vehicle for Duduzane's share in the aborted R9-billion ArcelorMittal empowerment deal and it owns the R4-million Saxonwold house where Duduzane reportedly lives.

Another Gupta company, Confident Concept, owns a Saxonwold home worth R3.2-million, where Magashule lives.

Neither Duduzane nor Tshepiso could be reached for comment this week.

According to the *Sunday Times* Tony made an offer to make R100 000 available to Kona and then upped it to R500 000. The report didn't specify what the money was for, but said Kona refused and later spoke to board colleague Dudu Myeni about the meeting.

Both Mahlangu and a spokesperson for the Gupta family said the meeting was about how various companies that the Gupta family controlled could switch their corporate travel business to SAA and that nothing unlawful was discussed.

Gupta group spokesperson Gary Naidoo said they had issued a demand to the *Sunday Times* for a retraction and apology.

Given that the Guptas' Oakbay Investments owns just under 5% of SAA's rival Comair this explanation is barely credible. A senior source at Comair confirmed that Atul Gupta was still on the board and that if there was any intention to transfer business away from Comair "we would have heard about it".

Stranger still was a text message that Mahlangu sent to Kona on November 27 last year in which he reportedly told Kona: "Uyangithengisa [you are selling me out]. Why did you let her know that u knew where she was going. U will compromise the mission."

Mahlangu, through Tshwete, told the *M&G*: "The attempt by the *Sunday Times* to draw a connection between this text message and their story about the Guptas is regrettable. It has

Riah Phiyega is right on gender

Riah Phiyega has endured sexism as police chief, but she lacks the requisite management skills and should therefore resign, writes Sisonke Msimang.
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Clarification

On page 30 of the Careers Matter insert in the *Mail & Guardian* of February 8, Regent Business School was listed under the headline "Foreign degrees offered locally". Although the school does have international affiliations, the qualifications it offers are all accredited by SAQA and, therefore, are South African qualifications and not foreign degrees.

amaBhungane



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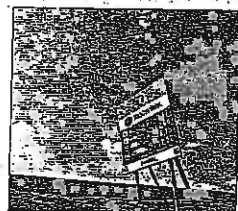
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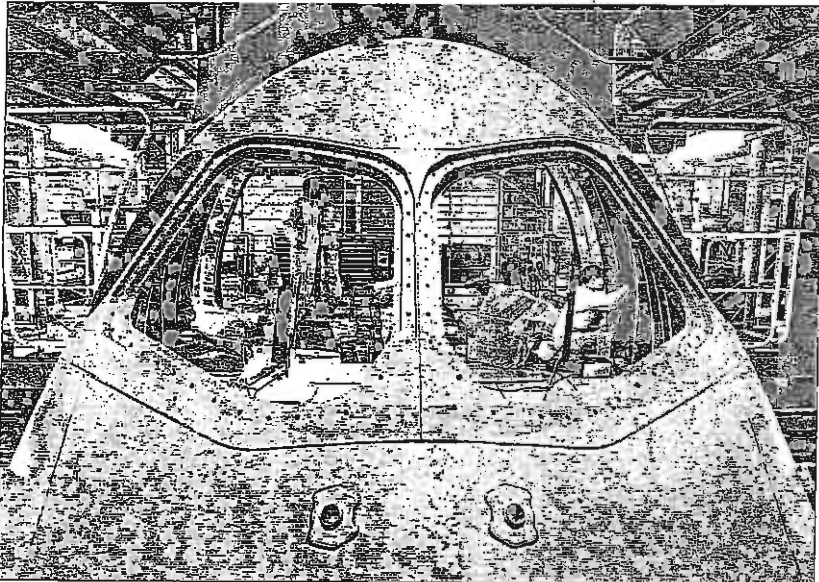
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Ministerial meddling

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dogfight at national carrier



The Airbus A350 was selected by SAA's fleet committee over Boeing's long-haul offering in a recommendation to the national airline's board in late August. Photo: Stephane Mahe/Reuters

no relationship whatsoever with such meeting."

He declined to answer questions about who "she" was, where she was going and what "the mission" might be.

However, this appears likely to be a reference to Kona's discussion with Myeni, who was appointed chairperson of SAA a week later.

Myeni did not respond to M&G questions, but an SAA source who has seen Mahlangu in action was in no doubt about a common sense interpretation of the message: "The mission" was clearly this contract, all of these contracts."

A range of sources with insight into the top structures at SAA said the relationship with the ministry became increasingly fraught over shareholder interference in procurement, though the ministry denies this. The same sources said that Kona acted like he was a man on "a mission" and demanded access to information about key, large contracts almost immediately after he arrived, in particular, the file on the fleet bids from Airbus and Boeing.

"He acted like an executive chair from day one," said one source.

That all ground to a halt not long after Mahlangu's November 27 text message.

By January 8 this year, Myeni, who is close to Zuma and chairs his charitable foundation, was installed as chair.

According to a report in *Business Day*, the SAA security department had also begun spying on Kona and would later send its reports to Myeni.

The board began overruling Kona over his negotiations with a minority union and over the appointment of two consultants.

On February 11, the SAA board announced a "cautious suspension" of Kona as acting chief executive, pending an investigation into alleged contraventions of financial regulations.

The airline has declined to detail the nature of the investigation but, according to a source who has had insight into the dispute, the initial reason given was concerning a consultancy contract he had entered into with German airline Lufthansa.

Kona challenged the board after he was tipped off that a legal opinion on the Lufthansa contract

had been doctored to justify his suspension.

On March 11, Gigaba removed Kona from the board, citing a breakdown in trust.

A source close to the process said SAA had offered Kona a settlement but had tried to insist the payment be held in trust for six months to make sure he did not talk to the media.

Kona is out of the country and could not be reached. His lawyer, Tando Ngeno, confirmed there had been settlement negotiations but would not disclose any details.

SAA has consistently refused to comment on the dispute.

This week, Naidoo declined to answer questions about whether there had been any contact with either Airbus or Boeing.

He said: "Oakbay and other companies owned by the Gupta family are private companies. Their dealings with other business entities are private for obvious reasons."



Ama Bhungane, the investigator of the M&G Centre for Investigative Journalism, produced this story. All names are suronyms. amaabhungane.co.za

Mayday! Mayday!

Timeline of boardroom turbulence at South African Airways

July 20 2012

Rival bidders Airbus and Boeing make presentations to the SAA fleet committee.

Late August 2012

SAA fleet committee recommends Airbus to the company board. The *Mail & Guardian* understands the recommendation was accepted.

September 19 2012

Public Enterprises Minister Malusi Gigaba says no more cash for SAA without a "long-term plan".

September 27 2012

In a major and unexpected shake-up, SAA board chair Cheryl Carolus and seven out of 14 board members resign.

September 28 2012

Gigaba appoints Duduzile Myeni, one of three board members not to resign in solidarity with Carolus, as acting board chairperson for a day pending Vuyisile Kona's appointment.

September 29 2012

Kona is duly appointed.

October 3 2012

SAA formally briefs the public enterprises department about its fleet acquisition plan.

October 8 2012

SAA chief executive Siza Mzimela resigns, together with key members of the fleet committee. Acting board chair Kona is appointed to replace Mzimela as acting chief executive, despite concerns that his dual role is not conducive to corporate governance best practice.

October 29 2012

Gigaba's special adviser, Sibabonga Mahlangu, invites Kona to a "stakeholder" meeting at the Gupta family's Sandton home. The meeting, attended by Mahlangu, Rajesh "Toxy" Gupta, Jacob Zuma's son Duduzane and Free State premier Ace Magashule's son 'Sheplelo, dissolves after Kona allegedly refuses a R500 000 cash offer from Gupta.

In November

Kona later confides in Myeni, his fellow board member, about the meeting at the Guptas.

November 27 2012

Myeni, who is also chair of the Jacob Zuma Foundation and a close friend of the Zuma family, appears to have told others about Kona's meeting at the Guptas. Mahlangu reportedly sends Kona an SMS, which reads: "Thyagithengisa (you are selling me out). Why did you let her know that you knew where she was going. It will compromise the mission."

December 4 2012

Myeni replaces Kona as acting chair, leaving Kona as acting chief executive.

January 8 2013

Kona meets with a breakaway union, the National Transport Movement (NTM), over a strike at SAA. The airline's security division begins spying on him.

January 17 2013

SAA security sends two reports about Kona to Myeni. In the same week, the board nullifies two key decisions taken by Kona — consultants who Kona had hired to help to stem financial losses, had their contracts terminated and the board also nullified decisions taken at his NTM meetings.

January 20 2013

SAA advertises for applications for a new chief executive.

February 11 2013

The SAA board decides on the "cautious suspension" of Kona as acting chief executive, pending an investigation into alleged contraventions of procurement processes. Mago chief executive Nico Bezuidenhout is appointed to replace Kona in an acting capacity.

March 11 2013

Gigaba removes the suspended Kona from the SAA board entirely; Myeni stays on as acting board chair with Bezuidenhout as acting chief executive.

March 17 2013

The *Sunday Times*, citing several unnamed sources, reveals details for the first time about Kona's meeting with Mahlangu and Rajesh Gupta back in October 2012. Mahlangu and Magashule confirm the meeting happened, but deny a bribe was offered.

Graphic: JOHN MCCANN; Sources: SAM SOLE, LIONEL PADILL

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