

SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

Reference : Durban Central CAS 466/09/2012
Enquiries : Maj Gen Booysen
Telephone : 031-3256069
E-Mail : BooysenJ2@saps.gov.za

OFFICE OF THE PROVINCIAL HEAD
DIRECTORATE FOR PRIORITY
CRIME INVESTIGATIONS
DURBAN

2014-11-19

National Director Public Prosecutions
Private Bag x 752
PRETORIA
0001

**DURBAN CENTRAL CAS 466/09/2012 : CORRUPTION AGAINST MR THOSHAN
PANDAY AND COLONEL NAVIN MADHOE :**

1. I refer to a missive from the office of the DPP in KwaZulu-Natal, Advocate M Noko dated 21 October 2014. For your easy reference I attach a copy marked "Annexure A".
2. This missive from Advocate Noko is rather verbose. It is permeated with conjecture, innuendo, inaccuracies and in certain instances blatant untruths. Her assertions are an aberration which lacks substance supported by credible evidence.
3. I will deal with her assertions hereunder.

Ad par 2.3

I respectfully disagree with the submission by Advocate Noko that "*there was no evidence to prosecute any person with any offence*" in the main investigation pertaining to the R60M corruption. The reference number of this case is Durban Central CAS 781/09/2011. It is my submission that there is a *prima facie* case against Mr Thoshan Panday, Colonel Navin Madhoe as well as Captain Ashwin Narrainpersad.

For purposes of this submission I refrain from detailing the evidence in this matter save to say that it contains in excess of twenty (20) lever arch files of documents, more than two hundred (200) affidavits as well as a forensic audit report compiled by an independent group of auditors namely Price Waterhouse Cooper.

I find it objectionable that the Specialized Commercial Crimes Unit (SCCU) from her office seeks to entertain and attach credibility to the claims of the suspects in this matter. Quite how it has been "revealed" by the SCCU that SAPS members charged with the investigation of Durban Central CAS 781/09/2011 was gunning for KZN Provincial Commissioner, Lieutenant General Ngobeni – is unclear. This imputation is not supported by any evidence other than the contrived version of the suspects themselves. I, for one, have never expressed any desire to become the Provincial Commissioner of KZN and neither have I applied for this position before. In my view this is a fallacious argument since the irregularities that were investigated, occurred before the 2010 Soccer World Cup. The investigation focused on irregularities before her appointment as Provincial Commissioner. It is thus ludicrous to believe the suspects ie Panday and Madhoe in this regard. The investigating officers could not have attempted to "falsely implicate" the Provincial Commissioner for a crime that took place before she assumed her post. Her involvement in the matter relates to attempts by her to interfere with the investigation after she assumed her position as Provincial Commissioner, and not with regard to the procurement irregularities *per se*.

The conclusion by Advocate Noko that neither Panday nor Madhoe features anywhere "no where" (sic) is manifestly wrong and this conclusion ought to be challenged. There is overwhelming evidence to support a converse conclusion.

The question by Advocate Noko as to why Madhoe was arrested in a subsequent attempt to bribe me is rather rhetorical. A reading of case 466/09/2011 will demonstrate beyond doubt that Advocate Noko's reasoning is fallacious and wrong. I find it reprehensible that the suspect's version of events is preferred by Advocate Noko. This is a worrying precedent.

Ad par 2.4

Quite how the SCCU "revealed the scheming and intercepting of phone calls of, *inter alia*, Mr Panday, with a motive and agenda to falsely implicate certain people" in my opinion is a mystery. The tenor and tone of Advocate Noko's assertions in this paragraph is indeed worrying and ought to be examined. In her own words there is no proof of Panday's claims as she refers to mere "allegations". Her preference of believing the suspect's version over the police's version raises to my mind a question of serious impropriety.

Ad par 2.5

Other than the claims by the suspects in this matter, who had much to lose, had the investigation led to a prosecution, and conversely much to gain should they have managed to derail the investigation, there is no evidence whatsoever to remotely support the claims contained in this paragraph. In any event, why would the Provincial Commissioner be forced to resign if she knew the evidence against her was contrived? Furthermore, there is no guarantee that I would succeed her as Provincial Commissioner. Pre-supposing that she had resigned, for this or any other reason, her vacant post would have been advertised and prospective candidates evaluated for possible appointment. It is my submission that Panday and company have failed to compromise me. They have attempted to have the investigation stopped. The Deputy National Commissioner for the HAWKS – Lieutenant General Dramat is *aux fait* with the detail. When this failed they brought in an unsuccessful application in the High Court to thwart the investigation. After they failed to bribe me with R2M in cash, they have obviously run out of ideas. To now suggest an agenda by myself to become Provincial Commissioner at the expense of Lieutenant General Ngobeni is not supported by any evidence and ought to be rejected.

Lieutenant General Ngobeni has no control over the Secret Fund. If I had to succeed her the situation would remain the same. To postulate that Major General Moodley would therefore remain in control of the Secret Fund makes no sense and is in any event irrelevant.

Ad par 2.6

I have dealt with Durban Central CAS 781/09/2011 in par 3 (*Ad par 2.3) supra*. This submission by Advocate Noko, I repeat, is based on a fallacious argument.

Ad par 2.7

I am not the complainant in the matter of Durban Central CAS 466/09/2011. This is a disingenuous proposition by Advocate Noko so as to build a legend for her imputations contained in par 2.8 and 2.9 *infra*. For one, the State is the complainant in the corruption matter. I am merely one of many witnesses. Advocate Noko clearly doesn't understand my role in this investigation. She also chooses to ignore the fact that the Durban Central CAS 781/09/2011 investigation was initiated by none other than the Financial Head in the province Brigadier Laurence Kemp. It is inconceivable that Brigadier Kemp knew about my "aspirations" as alleged by Advocate Noko, unless he obviously colluded with me to discredit the Provincial Commissioner. Had Advocate Noko however bothered to examine Brigadier Kemp's statement in Durban Central CAS 781/09/2011, she would have established the origin and source of this entire investigation.

Ad par 2.8

Advocate Noko is mendacious in stating that the investigating officers's objectivity are questionable, especially with the Cato Manor case cloud hanging over their heads. The investigating officers in these matters are as follows :

Durban Central CAS 781/09/2011	Colonel van Loggerenberg
Durban Central CAS 466/09/2011	Colonel du Plooy
Durban Central CAS 122/04/2012	Colonel Herbst

None of these investigating officers were ever attached to the Cato Manor Unit. They are not implicated in the Cato Manor issue at all, hence their credibility cannot be questioned as implied by Advocate Noko.

In any event, it would appear that Advocate Noko is usurping the function of the courts, as the credibility of witnesses ought to be pronounced upon by the courts.

5

Ad par 2.9

Advocate Noko is seriously misguided to suggest that I interfered with and exercised control in Durban Central CAS 466/09/2011. Had she complied with the NPA policy guidelines she was at liberty to consult with me to establish the facts which I shall detail now.

- As the Provincial Head – HAWKS, it is incumbent upon me to exercise control over all investigations conducted by the HAWKS in KZN.
- The National Directorate Head – HAWKS, were kept abreast of all developments in this investigation.
- To suggest that I “interfered” with the investigation is akin to suggest that Advocate Noko herself is interfering with the functions of her subordinates.
- There is nothing mysterious regarding my instruction with regard to visits to Madhoe. Initial investigations revealed complicity by officers within SAPS. This entry into the occurrence book was made to obviate attempts by officers with *mala fide* intentions.
- I have dealt with the matter regarding my being the complainant above (*see Ad par 2.7*). Once again the tenor and tone of Advocate Noko's contentions appears to be that of a defense counsel rather than that of a Prosecutor. The fact that I had not visited Colonel Madhoe at all subsequent to his arrest, or that I have not personally communicated with him directly or indirectly demonstrates that Advocate Noko's assertion that it “*smacks of an agenda*” is misguided and I reject it with contempt.

Ad par 2.10

Advocate Noko chooses to be deliberately obtuse. For one, there is indeed a strong *prima facie* case against Colonel Madhoe and Mr Panday in Durban Central CAS 781/09/2011. The attempt by Colonel Madhoe and Mr Panday to derail the investigation in Durban Central CAS 781/09/2011 emanates from their unsuccessful application to have the Section 205 subpoenas set aside.

Although the report in question itself does not contain *prima facie* evidence of a crime being committed, pre dating the report to a date before the application for the Section 205's could have rendered the 205's and subsequent evidence obtained, inadmissible. Information in this report contained evidence gleaned as a result of the 205's. In other words, if I had predated this report it would have meant that the investigators had obtained the information illegally, before obtaining the Section 205 subpoenas.

Advocate Noko rightly indicates that Colonel Madhoe was from the procurement section. He has inadequate legal knowledge to argue the points raised by Advocate Noko. Her sentence : *"One would expect that they would know what is contained in the 781 case against them as they are part of it, they would know what they did to even know what this report has against them, especially Col Madhoe who was then a procurement official who processed the accommodation documents leading to the 781 case."*(sic) Is incoherent and difficult to understand ie. How and why would Panday and Madhoe know what is contained in 781? They were the suspects in the matter and not the investigators. Furthermore, they knew exactly what was contained in the report since they had illegally obtained it. Two copies of the report were found in Madhoe's vehicle on two separate occasions. A third copy of the report had fingerprints that matched those of Panday on it. All this evidence is contained in the dockets and for some unknown reason appears not to have been considered.

Ad par 2.11

Advocate Noko once again prefers to exclude reliable evidence in Durban Central CAS 466/09/2011 in favor of Colonel Madhoe's allegations who obviously stands to gain by making these false allegations. There is objective evidence in 466 such as cellphone tower and communication correlation analyses (obtained from the cellphone records of Colonel Madhoe and Mr Panday), sms's sent by Colonel Madhoe, affidavits from Brigadier Madonsela and Sergeant Govender as well as the cellphone records of Colonel Madhoe, Mr Panday and myself to prove that the converse is in fact true – it was Madhoe who in fact contacted myself on a number of occasions.

The objective evidence will also prove that the meetings took place before the so called Cato Manor matter. I would venture to suggest that by not considering the objective evidence and to favor unsubstantiated submissions by accused smacks of an agenda itself. If Advocate Noko had regard to all the available evidence at her disposal she would not have come to the conclusion she has.

Advocate Noko should be aware that my involvement in the Cato Manor matter is not *sub judice* and has been disposed of in my favor.

Once again the last sentence in this paragraph ie: "*This, however indicates a history of some sort being shared by the two, Col. Madhoe and Maj. Gen. Booysen, Now they are complainant and the accused in the 466 case, respectively.*" Is incoherent and difficult to understand

Ad par 2.12

Advocate Noko fails to ascribe these assumptions to anyone. Neither the investigators nor I have come to this assumption. If she herself is coming to this assumption she once again fails to consider *prima facie* evidence in 466. For instance the statement of the person who drew the money on behalf of Mr Panday, Mr Panday's fingerprints on the document in question, and the paper slips found amongst the money offered to myself which is linked to Panday's bank account, to name but a few.

Ad par 2 13

This is not a matter of "*your word against mine*" case. If Advocate Noko had regard to all the evidence it would be clear to her that there is not only direct witness evidence but also objective technical evidence and circumstantial evidence to support my version. No such evidence, other than false allegations by the suspects exist to support Madhoe's claims. The reference to Dhaniram's statement is rather surprising as a careful examination of this statement actually confirms my version.

Advocate Noko failed in her duty to study the outcome of my successful application in the High Court (see *Booyesen vs NDPP*). Had she done so she would have realized that no such evidence as purported by Colonel Madhoe exist. I fail to understand how Advocate Noko seeks to accept an untested and unfounded allegation by a suspect who faces serious consequences. In this regard I also quote a passage of a finding by the Appeal Court in *State vs Zuma* - where the honorable Judges of the Appeal court held the following : ***"The court dealt at length with the non-contentious principle that the NPA must not be led by political considerations and that ministerial responsibility of the NPA does not imply a right to interfere with a decision to prosecute (para 88 et seq). This, however, does need some contextualization. A prosecution is not wrongful merely because it is brought for an improper purpose. It will only be wrongful if, in addition, reasonable and probable grounds for prosecuting are absent, something not alleged by Mr Zuma and which in any event can only be determined once criminal proceedings have been concluded. The motive behind the prosecution is irrelevant because, as Schreiner JA said in connection with arrest, the best motive does not cure an otherwise illegal arrest and the worst motive does not cure an otherwise legal arrest illegal. The same applies to prosecutions."***

Ad par 2.14

I have dealt with this adequately *supra*. I would like to add however that Advocate Noko wrongly assumes imputed knowledge of law by Madhoe, she herself points out that he works at Procurement who hardly if ever works with Section 205 subpoenas. What concerns me however of this paragraph is once again the tenor and tone of her assertions. She is once again deliberately obtuse and misconceives the allegation against Madhoe. I find it disquieting that the SCCU seeks to "prove" allegations by suspects.

Ad par 2.15

Advocate Noko once again demonstrates her ignorance of the evidence at her disposal. The report in question was undated when I received it. It is common practice in SAPS communication protocol for the recipient to date stamp and sign reports when they receive it. It is this date Madhoe wanted me to predate. The fact that I, as a potential witness in this regard, was not interviewed, is indeed worrying.

Ad par 2.16

Advocate Noko, I respectfully submit, could not have listened to all the recordings between Panday and Madhoe. Her conclusion otherwise would be irrational and subjective. It is evident that she has considered some of the recordings to the exclusion of others, which may very well have resulted in a wrong conclusion.

It is common cause that Panday's calls were intercepted prior to the 466 case. In any event, even if she would argue that the recordings are inadmissible, it does not render them illegal. Furthermore, there is enough *prima facie* evidence to secure a successful prosecution in 466 – without presenting the Act 70 interceptions as evidence. This, I understand, was the stance and view of the investigator.

In conclusion, it is unfortunate that Advocate Noko seeks to accuse me of having an "agenda" in these investigations. Even if it was true, and I deny this strenuously, the AD has pronounced itself adequately in this regard. (see par 2.13 *supra*). I suspect that the converse is true. This matter had been outstanding for more than two years. I think it is no co-incidence that this missive co-insides with the renewal of the Provincial Commissioner's contract. The fact that Advocate Noko has failed to return the case docket to the investigating officers in spite of requests by them and the subsequent timing of this missive leaves me with this inescapable conclusion.

I hereby request you to summon all the relevant dockets to your office and to have same evaluated by an independent team from your office. This issue has been widely reported in the local media. It has drawn various negative remarks from the public and commerce. It is in the best interest of the Judicial System the National Prosecuting Authority, the South African Police Service, Mr Panday, Colonel Madhoe and Captain Narainpersad for these issues to be ventilated in an appropriate manner once and for all.

I trust that you will interpret my letter as a concern rather than a complaint.

Yours faithfully



MAJOR GENERAL
PROVINCIAL HEAD : DIRECTORATE PRIORITY CRIME INVESTIGATION
J W BOOYSEN