

## Specialised Commercial Crime Unit

DURBAN



The National Prosecuting Authority of South Africa  
Igunya Jikelele Lobethushisi bolizant-Afrika  
Die Nasionale Vervolgingsgesag van Suid-Afrika

### MEMORANDUM

#### DURBAN

Tel: +27 31 335 6600  
Fax: +27 31 332 8582

5<sup>th</sup> Floor  
John Ross House  
Cnr Jonsson Lane &  
Victoria Embankment  
Durban

P/Bag X 54355  
Durban  
4000  
South Africa

[www.npa.gov.za](http://www.npa.gov.za)

TO: Adv Bulelwa Vimbani

FROM: Letsholo T.A

DATE: 25<sup>th</sup> March 2014

SUBJECT: Report in respect of Durban Central 781/06/2010

1. On 21 May 2013, I attended the first briefing session at PWC offices in Musgrave regarding Durban Central Cas: 781/06/2010.

At this meeting, I was briefed about what the case is all about. After the meeting, I was handed the docket consisting of the documents as listed in the attached Exh "A". About a week later I was handed additional 3 arch-lever files (volumes 3 to 5) containing witness statements and various Section 205 subpoenas to various entities.

- 1.1 There were other follow up meetings on 10 December 2013, 15 January 2014 and 14 March 2014.
2. It needs to be mentioned at this stage that on 15 January 2014, the lead investigator in this matter namely, Col Hans Van Loggerenberg, enquired about how strong is the case against the KZN Provincial Commissioner in respect of the allegations that one of the suspects in this matter namely Toshani Panday, allegedly paid for her husband's birthday party.



Justice in our society, so that people can live in freedom and security

- 2.1 I informed him that based on the information contained in the docket, given to me; there is just no evidence against the Provincial Commissioner. Col Van Loggerenberg responded thereto by saying that if I am not going to charge the Provincial Commissioner, I may just as well close the docket.
3. On 14 February 2014, I was provided with a copy of representations, made on behalf of Toshan Panday. In those representations, mentioned is made of the recordings, which were played to Toshan Panday, during a meeting held on 18 September 2011, at the KZN SAPS Provincial Head Quarters, in General Deena Moodley's office, and in the presence of General Deena Moodley upon his instructions.
- 3.1 The recordings consisted of recorded telephone conversations, Toshan Panday had with various people, including amongst others, the KwaZulu Natal Provincial Commissioner and Toshan Panday's attorney.
- 3.2 It is important to note that at no stage whatsoever, was I informed by the Investigating Officers in this case that there are tape recordings available in this matter. The first time I became aware of this specific issue, was as a result of the representations made on behalf of Toshan Panday. Furthermore, there is nothing in the docket to suggest or indicate that there was an application made for the authority to permit the police to monitor certain telephone conversations. The nature of the investigations in this matter is straight forward and there was no need for an application of this nature to be made.
- 3.3 During the meeting on 14 March 2014, one of the Investigating Officers Colonel S. Y. Govender, was asked why they did not inform me about the evidence relating to the tapping of the telephone conversations. His response thereto was that, they had taken a decision, as the police to take out everything relating to the taped conversations. I then informed him that it

was not for them to decide which evidence is relevant for the case and which other evidence is not.

3.4 He then told me they were informed by the Crime Intelligence Unit, that there were threats on their lives, as the Investigating Officers of this case. That the Crime Intelligence Unit decided to make an application to be granted authority for the tapping of the phones only for the purposes of verifying the allegations of the threats against the Investigating Officers.

3.5 He stated further that, subsequent to that application being granted, the lead Investigating Officer, Colonel Van Loggenrenberg together with members of the Crime Intelligence Unit made various applications for the tapping of the phones and to monitor conversations of certain individuals.

He was not in a position to give more details, but it was clear that the other applications were done in respect of the investigations in this case.

3.6 Once again, it needs to be emphasised that taking into account, the nature and extent of the investigations which were being carried out in this matter, there was no need whatsoever for such applications to be made.

4. Colonel Govender was then informed that, all the evidential material in respect of the tapping of the phones will have to be included in the docket and be made available to the prosecution team.

4.1 His reply was that the Crime Intelligence Unit has already indicated that they will not make the recordings available to no one, alternatively, they will have to make a decision as to what is it, according to them (CIU), that they will release, but they will definitely give us only the edited version of the tapes, and not all the recordings in their original form.

4.2 I indicated to him that, if that be the case, we will be faced with serious challenges in court and further

informed him that the Crime Intelligence Unit cannot take such steps and interfere with the evidence.

5. What is quite disturbing and is of great concern to the State, is that, amongst others they even listened to privileged information, between Toshan Panday and his attorney about their strategy in defending this case.

5.1 This was allegedly even told to Toshan Panday by General Deena Moodley, during the meeting they had with Toshan Panday at the Provincial Headquarters on 18 September 2011, when he said to Toshan Panday, **"Now that we know what defences you will use, I will make sure that all those avenues are closed"**.

5.2 Clearly, this tapping of phones was a blatant abuse of power and the resources with far-reaching consequences, particularly in the light of the following:-

(a) Before the recordings were played to Toshan Panday, General Deena Moodley, told Toshan Panday, that he would grant him indemnity in respect of both this case and 466, if he was prepared to incriminate the Provincial Commissioner in corruption relating to her husband's birthday bash.

(b) Amongst others, this is what was said to Toshan Panday, **"I need to get rid of this Black Bitch commissioner and I need your assistance"**.


(c) The conversation is said to have gone as far as the following. **"Why are you protecting this Black Bitch? You must give her up. If you give us an affidavit we will force her to resign. General Booysen would become the new KwaZulu Natal Provincial Commissioner and you will enjoy full protection, I will remain in control of the Secret Fund"**.

6. Colonel S. Y. Govender indicated that later, when he became aware of this alleged meeting which was held on 18 September 2011, he was so angry that he confronted Colonel Padayachee from Crime Intelligence Unit about it and Colonel Padayachee told him to discuss that with General Deena Moodley. It is clear that the issue in respect of this meeting was not being disputed, but that the blame was being shifted to General Deena Moodley.
7. In the light of what is postulated above and more in particular, taking into consideration that Public Policy is concerned, not only in ensuring that the guilty are held accountable, but also that the investigating and prosecutorial agencies, conduct themselves with propriety in securing evidence against criminal suspects. That public policy also set itself firmly against admitting evidence obtained through improper means or evidence obtained in deliberate or flagrant violation of the Constitution.
- 7.1 It is submitted with respect that the issue surrounding the tapping of the phones is inextricably linked to the manner in which the evidence was obtained in this matter. That the evidence as it stands at this point is irredeemably stained.
- 7.2 To take this case to court under these circumstances would mean that I as the prosecutor will have to turn a blind eye to the manner in which the evidence had been obtained and subject the judicial process in moral defilement, something I am not prepared to do.
- 7.3 More so in the light of the stance by the Higher Courts on deterring the police from employing improper means to acquire evidence as it is evident in the following cases:
- (a). **S v Mthembu** 2008 (2) SACR 407 (SCA);
  - (b). **S v Mphala and Another** 1998 (1) SACR 388 (W);
  - (c). **S v Pillay and Others** 2004 (2) SACR 419 (SCA);
  - (d). **S v Naidoo and Another** 1998 (1) SACR 479 (N);

- (e). **S v Tandwa and Others** 2008 (1) SACR 613 (SCA);  
(f). **Du Plessis and Others v De Klerk and Another**  
1996 (3) SA 850 (CC).

7.4 I am not prepared as a representative of the State to go to court with dirty hands. I do not want to be seen to be condoning improper investigative techniques by the police.

8. I have therefore taken a decision to decline to prosecute in this matter.



**TUMEISI ABRAM LETSHOLO**  
**SENIOR STATE ADVOCATE**  
**SPECIALISED COMMERCIAL CRIME UNIT**  
**DURBAN**

**DATE: 25<sup>th</sup> MARCH 2014**