



"A"
M. J. ...
5/3/2010

THE COURT OF JUSTICE OF THE PRINCIPALITY OF LIECHTENSTEIN

Attention: Judge Martin Nigg

By fax: 423 236 65 39
(original to follow by post)

Spaniagasse 1

9490 Vaduz

Liechtenstein

AND TO CHIEF STATE PROSECUTOR

Attention: Dr Robert Wallner

By fax: 423 236 67 99
(original to follow by post)

Postfach 684

9490 Vaduz

Liechtenstein

REGISTRAR OF THE NORTH GAUTENG HIGH COURT, PRETORIA PRIVATE BAG/PRIVAATSAK X67
2010 -03- 05
PRETORIA 0001 GRIFFIER VAN DIE NOORD GAUTENG HOË HOF, PRETORIA

NAWA
CSA

**REQUEST FOR MUTUAL LEGAL ASSISTANCE BY
THE REPUBLIC OF SOUTH AFRICA**

A INTRODUCTION

- 1 I, the undersigned, William Andrew Hofmeyr hereby present my compliments to the Honourable Minister of Justice of Liechtenstein.
- 2 I am a Deputy National Director of Public Prosecutions in the National Prosecuting Authority (NPA) of the Republic of South Africa (RSA) and the National Head of the Asset Forfeiture Unit (AFU). I am duly appointed under the provisions of section 13(1)(aA) read with section 1 of the NPA Act 32 of 1998 [RSA] with offices at the VGM Building, 123 Westlake Avenue, Weavind Park, Pretoria 0184, Republic of South Africa.
- 3 As a Deputy National Director of Public Prosecutions, my duties include overseeing the functions of the NPA, which is tasked under the NPA Act with the prosecution of criminal offences on behalf of the Government of South Africa.
- 4 As National Head of the AFU, I am responsible for the management of this specialised unit within the NPA. The AFU implements chapters 5 and 6 of the Prevention of Organised Crime Act 121 of 1998 [RSA] (POCA). The primary purpose of POCA is the prevention of crime. A key mechanism in achieving this purpose is the preservation and forfeiture of assets that constitute the proceeds of crime and assets that are instrumentalities of crime. I attach marked "A" a copy of the relevant provisions in POCA that provide for the preservation and forfeiture of assets

1687
2
JA

5 The purpose of this request is to obtain the assistance of the Chief State Prosecutor of the Lichtenstein Court of Justice in enforcing a court order granted by the North Gauteng High Court, Pretoria [RSA] in respect of the funds in a bank account held in the name of the Gamari Trust, at Bank Pasche (Liechtenstein) S.A. Vaduz in account number 30.450767.7 (the property).

6 A copy of the court order is attached to this request marked "B".

B BACKGROUND TO THE REQUEST

7 On 6 November 2000 an investigation was instituted under section 28(13) of the NPA Act in relation to allegations of corruption and fraud in connection with the acquisition of armaments by the South African government in 1999 (Arms Deal). On 14 February 2008, the investigation was extended. The terms of the investigation (as extended) include the suspected commission of the following offences:

7.1 Racketeering in contravention of section 2 of POCA;

7.2 Corruption in contravention of section 1 of the Corruption Act 94 of 1992 (now repealed) and section 3 of its successor, the Prevention and Combating of Corrupt Activities Act 12 of 2004;

7.3 Money laundering in contravention of section 4 of POCA;
and

7.4 The common law offence of fraud.

8 It is alleged that these offences have been committed in an organised fashion or that attempts were made or are being made to commit such offences arising out of the Arms Deal involving the following:

- 8.1 BAE Systems PLC (**BAE plc**) as prime bidder/contractor for the supply of aircraft for the lead in fighter trainer aircraft and/or advanced light fighter aircraft programmes;
- 8.2 The advisers, consultants and/or nominees appointed, utilised employed or paid by BAE plc, directly or indirectly in relation to these programmes, including Red Diamond Ltd; Kayswell Services Ltd; Osprey Aerospace (Pty) Ltd; Huderfield Enterprises Inc; Hlongwane Consulting (Pty) Ltd;
- 8.3 Officials of the South African government and its agencies involved in the acquisition process for the said programmes
- 9 Furthermore, it is alleged that BAE devised a system of payments to its said advisers, consultants and/or nominees in order to disguise the true nature of the payments, being designed as bribes in order to achieve success in the said programmes and to seek to obtain undue advantage over its competitors in the bidding process relating to the said programmes.
- 10 Mr Fana Hlongwane (**Hlongwane**) is a suspect in the investigation. There are reasonable grounds to believe that he has committed the offences of corruption, fraud, money laundering and/or racketeering in the context of the Arms Deal. Moreover, there are reasonable grounds to believe that he derived financial reward in connection with the commission of the specified offences and that he was paid funds (directly and indirectly) to facilitate the commission of such offences.
- 11 On 6 October 2008, a letter of request (**LOR**) was issued out the Liechtenstein Court of Justice to the Acting National Director of Public Prosecutions (**NDPP**). It was a request from the office of the Liechtenstein Public Prosecutor for assistance in relation to criminal proceedings in progress in Liechtenstein against Hlongwane on account of suspected money laundering.

12 Liechtenstein informed the NDPP that, on the strength of information and evidence at their disposal, they had commenced an investigation into the suspected commission of the offence of money laundering in respect of the funds contained in bank accounts, including the account described as "the property" in paragraph 5 above.

13 Requests for mutual legal assistance in the respective investigations were exchanged between Liechtenstein and South Africa.

14 Subsequently, on 28 October 2009, the criminal investigation conducted by Liechtenstein was referred to South Africa together with the material documents in the criminal docket due to the fact that, in the opinion of the Liechtenstein authorities, the main suspect is resident in South Africa and the primary offence(s) appear to have been committed wholly or partly in South Africa.

15 From the documents included in the referral of the investigation, it became evident that:

15.1 the property currently is subject to a judicial freezing order handed down on 11 September 2009 by the Court of Justice of Liechtenstein and the freezing order will expire on 14 March 2010; and

15.2 Hlongwane is the beneficial owner of the property

16 Accordingly, a preservation order under section 38(1) of POCA was sought on an urgent basis and granted as per the order attached and marked "B".

C DETAILS OF THE REQUEST

17 The request is for the Chief State Prosecutor in the Principality of Liechtenstein to take such steps as may be necessary to enforce the

court order attached and marked "B" against the property named in the order.

D RECIPROCITY

- 18 The NPA respects the principle of reciprocity and undertakes to honour any similar future request launched by the Honourable Minister of Justice of Liechtenstein.

E CONTACT PERSONS

- 19 In the event of enquiries, please contact Adv William Downer at his office on +27 21 487 7228 or on his mobile telephone on +27 82 650 7743.

F CONCLUSION


- 20 I respectfully request the honourable Chief State Prosecutor of Liechtenstein to consider and give effect to this request for assistance.

WAR.
6
D.A.

W.A. Hofmeyr

WILLIAM ANDREW HOFMEYR

I certify that on this ^{5 SA 1111} 5TH day of MARCH 2010, the deponent signed the affidavit in my presence and declared that he knows and understands its contents, that he has no objection to taking the prescribed oath and that he considers the oath to be binding on his conscience.



Commissioner of Oaths

Full Names: *Simon Areehiza HLATSHWAYO*
Designation: *Manager Vetting Investigations*

Area: RSA

Address: *123 Westlake Avenue
Brixerton
Pretoria.*

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT, PRETORIA)

CASE NUMBER: _____

13934/10

In the matter between:

NATIONAL DIRECTOR OF PUBLIC

PROSECUTIONS

and

FANA HLONGWANE

REGISTRAR OF THE NORTH GAUTENG HIGH COURT, PRETORIA
PRIVATE BAG/PRIVAATSAK X67
2010 -03- 05
PRETORIA 0001
GRIFFIER VAN DIE NOORD GAUTENG HOË HOF PRETORIA

Respondent

For an ex parte order in terms of section 38(1) of the
Prevention of Organised Crime Act 121 of 1998

DRAFT ORDER

Having heard counsel for the applicant and having read the papers

IT IS ORDERED AS FOLLOWS

- 1 An order declaring that this matter is urgent, and dispensing with the forms and service provided for in the Rules of this Honourable Court and disposing of this matter at such time and place and in such manner and in accordance with such procedure as to it seems meet.

2 A rule *nisi* is issued calling upon the Respondent and any other interested parties to show cause, if any, on **Tuesday 6 April 2010 at 10h00** or so soon thereafter as counsel may be heard, why:

2.1 a preservation order in terms of section 38(2) of the Prevention of Organised Crime Act 121 of 1998 ("POCA") should not be made in respect of the funds in a bank account held in the name of the Gamari Trust, at Bank Pasche (Liechtenstein) S.A. Vaduz in account number 30.450767.7 ("the property");

2.2 the Respondent and all persons with knowledge of this order should not be interdicted from removing, taking possession of or control over, dissipating, interfering with, diminishing the value of, or dealing in any other manner with the property;

2.3 an order should not be made directing that the costs of this application should be paid by any person opposing the granting of the relief sought herein; and

2.4 such further and/or alternative relief as this Court may deem meet should not be granted to the Applicant.

3 An order that paragraphs 2.1 and 2.2 above shall operate as an interim preservation order and interim interdict pending finalisation of the application.

4 An order issuing the Letter of Request appended hereto as annexure "A" in terms of section 23(1) of the International

Co-operation in Criminal Matters Act 75 of 1996 to the Chief State Prosecutor in the office of the Public Prosecutor in the Principality of Lichtenstein ("Chief State Prosecutor") to render the assistance described in the letter, namely to assist in enforcing the orders in paragraph 2.1 and 2.2. above and the interim preservation order and interim interdict in paragraph 3 above.

- 5 An order directing the Director-General: Justice and Constitutional Development ("D-G") to transmit the said Letter of Request to the Chief State Prosecutor of Liechtenstein.
- 6 An order authorising the NDPP to transmit the Letter of Request informally to the Chief State Prosecutor for execution pending compliance by the D-G with the order in paragraph 4 above.
- 7 This order is to be served on the respondent, accompanied by a copy of the application, by delivery of a copy of the aforesaid on his attorneys Stockenstöm Fourie Inc at 78 Tijger Vallei Office Park, Silver Lakes, Pretoria.
- 8 An order that, in the event of the Respondent desiring to oppose the confirmation of the rule *nisi* on the abovementioned return date, he shall deliver a notice to that effect and his answering papers or amplified answering papers, if any, by **Friday 20 March 2010**.
- 9 An order that Applicant shall deliver his reply, if any, to any answering papers delivered by the Respondent by **Friday 27 March 2010**.

BY THE COURT

W. Francis Skerme.

REGISTRAR