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CASE NO: HC-MD-CIV-MOT-POCA-2020/00429

Managing Judge: Hon.MR JUSTICE SIBEYA

Hearing Date: 8 June 2021 at 14h00

Roll Type: Status Hearing

AFFIDAVIT

IN THE HIGH COURT OF NAMIBIA

(Main Division - Windhoek)

Case No. HC-MD-CIV-MOT-POCA-2020/00429

In the application of

THE PROSECUTOR-GENERAL

APPLICANT

against

RICARDO JORGE GUSTAVO

FIRST DEFENDANT

TAMSON TANGENI HATUIKULIPI

SECOND DEFENDANT

JAMES NEPENDA HATUIKULIPI

THIRD DEFENDANT

SACKEUS EDWARDS TWELITYAAMENA SHANGHALA

FOURTH DEFENDANT

BERNHARDT MARTIN ESAU

FIFTH DEFENDANT

PIUS NATANGWE MWATELULO

SIXTH DEFENDANT

NAMGOMAR PESCA (NAMIBIA) (PTY) LTD

SEVENTH DEFENDANT

ERONGO CLEARING AND FORWARDING CC

EIGHT DEFENDANT

JTH TRADING

NINTH DEFENDANT

GREYGUARD INVESTMENT CC

TENTH DEFENDANT

OTUAFIKA LOGISTICS CC

ELEVENTH DEFENDANT

OTUAFIKA INVESTMENT CC

TWELFTH DEFENDANT

FITTY ENTERTAINMENT CC

THIRTEENTH DEFENDANT

TRUSTEES OF CAMBADARA TRUST

FOURTEENTH DEFENDANT

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OLEA INVESTMENT NUMBER NINE CC	FIFTEENTH DEFENDANT
TRUSTEES OF OMHOLO TRUST	SIXTEENTH DEFENDANT
ESJA HOLDING (PTY) LTD	SEVENTEENTH DEFENDANT
MERMARIA SEAFOOD NAMIBIA (PTY) LTD	EIGHTEENTH DEFENDANT
SAGA SEAFOOD (PTY) LTD	NINETEENTH DEFENDANT
HEINASTE INVESTMENT NAMIBIA (PTY) LTD	TWENTIETH DEFENDANT
SAGA INVESTMENT (PTY) LTD	TWENTY-FIRST DEFENDANT
ESJA INVESTMENT (PTY) LTD	TWENTY-SECOND DEFENDANT

and against

NDAPANDULA JOHANNA HATUIKULIPI	FIRST RESPONDENT
SWAMMA ESAU	SECOND RESPONDENT
AL INVESTMENT NO FIVE CC	THIRD RESPONDENT
OHOLO TRADING CC	FOURTH RESPONDENT
GWAANIILONGA INVESTMENTS (PTY) LTD	FIFTH RESPONDENT

**ANSWERING AFFIDAVIT ON BEHALF OF SEVENTEENTH TO TWENTY-
SECOND DEFENDANTS**

I, the undersigned,

Thorsteinn Mar Baldvinsson

do hereby make oath and state as follows:

1. I am informed that the Prosecutor-General of Namibia refers to me in the application cited above (the "application").



2. I have not been served with the application, am not a party to the application, have no personal interest in the application and have accordingly not read the application, which I am informed consists of almost 7000 pages.

3. Certain parts of the Prosecutor-General's affidavit were presented to me by the in-house counsel of Samherji group. I was informed that there is a perception created in the Prosecutor-General's affidavit that I was part of an alleged corrupt scheme described in more detail in her founding affidavit and the supporting documents thereto. I have been invited to comment on this. I vehemently deny any involvement in the alleged corrupt scheme or any unlawful activity in Namibia or relating to Namibia.

4. I have never been a direct shareholder or director of any of the following companies and have also never been employed by any of them :

- 4.1 Esja Holding (Pty) Ltd
- 4.2 Mermaria Seafood Namibia (Pty) Ltd
- 4.3 Saga Seafood (Pty) Ltd
- 4.4 Heinaste Investment Namibia (Pty) Ltd
- 4.5 Saga Investment (Pty) Ltd
- 4.6 Esja Investment (Pty) Ltd

Ad paragraph 70.29.1 of the Prosecutor-General's affidavit

5. The e-mail referred to was not attached to the Prosecutor-General's affidavit. I am informed that she may have referred to annexure JS 27 (page number 2176) of Mr Stefansson's affidavit. I do not recall such e-mail. The e-mail trail on annexure JS 27 includes an e-mail sent from Mr Stefansson to Mr James Hatuikulipi in which he states that I am copied in, but the e-mail itself clearly reflects that it was only my assistant who was copied.

Ad paragraph 70.30.9 of the Prosecutor-General's affidavit

6. I am not mentioned in this paragraph, and my assistant—not I—received a copy of the e-mail which the Prosecutor-General discussed. There is however reference to a "strategy" that was put in place in Samherji's boardroom. In so far as the Prosecutor-General (or Mr Stefansson) silently or obliquely refers to an unlawful strategy and may



suggest my involvement, I vehemently deny any unlawful conduct on my part. If Mr Stefansson was part of an unlawful scheme, he certainly never informed me about it. He also did not make the faintest reference that he needed my approval for the implementation of any unlawful scheme that he may have been involved in.

Ad paragraph 70.50 of the Prosecutor-General's affidavit

7. I do not recall the meeting discussed in paragraphs 70.50.1 – 70.50.7. However, I have reviewed the documents that the Prosecutor-General alleges provide information about this meeting. Annexure JS 17 (pages 2067 – 2076 of the founding affidavit). These show that the meeting attendees were informed that the Governments of Namibia and Angola successfully concluded a bilateral fisheries agreement which resulted in a joint venture of Namibian and Angolan citizens (Namgomar) and that Samherji had the opportunity to become involved as technical partner. The joint venture had certain development objectives, such as food security, value addition and job creation. As the Prosecutor-General correctly observes in paragraph 70.50.6, everything described in these documents appears to be perfectly legitimate. I cannot see any reference to payment of bribes or any other improper payment. I cannot see any indication that the meeting was about any unlawful activity. Insofar as Mr Stefansson alleges that I agreed to become involved in unlawful activity or approved a corrupt scheme during this meeting, he is simply not telling the truth.

Ad paragraph 70.64.1 of the Prosecutor-General's affidavit

8. I am not sure to which agreement the Prosecutor-General refers as the founding papers did not contain pages 19 and 20 of Mr Stefansson's affidavit. If she refers to the catching agreements concluded with Fishcor and Namgomar, I was not involved in negotiating those agreements and can certainly not be described as the "main architect" of those agreements, which were in fact negotiated and agreed to by Mr Stefansson. If there was anything unlawful in those agreements, only Mr Stefansson, and no-one else, most certainly not me, would have been party to it.'

Ad paragraph 70.64.3 of the Prosecutor-General's affidavit

9. Mr Stefansson did not work under my direct supervision, direction or decisions. From the start of his employment until his departure in December 2016, Mr Stefansson

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ran Samherji's operations in Namibia autonomously. All business decisions were made by him. Had he worked under my direct supervision, he would have been fired long ago.

Ad paragraph 70.64.6 – 70.64.7 of the Prosecutor-General's affidavit

10. I recall my visit to Namibia and the meeting with Minister Esau. Obviously fishing capacity was discussed. I was certainly not aware that it was ever even contemplated that the Minister would benefit from the fishing operations. It was certainly never mentioned to me or even remotely discussed in my presence.

Ad paragraph 70.64.9 of the Prosecutor-General's affidavit

11. It is correct that Mr Juliusson, or at least his financial department, was in the ordinary course of business responsible for payments to be made in respect of fishing operations. However, I do not approve the payment of operational expenses and Mr Juliusson certainly did not need my authorisation for the payment of operational expenses as alleged by Mr Stefansson. In fact, Mr Stefansson was in control of the Namibian operations and directed payment of expenses related to Namibian operations.

Ad paragraph 70.64.10 of the Prosecutor-General's affidavit

12. It is of course correct that I wanted the project to work and to go forward. Each and every other allegation is specifically denied, as if individually repeated herein and then denied. The contents of this paragraph are in any event vexatious and frivolous. Not a single document is attached, not a single sentence or word that I may allegedly have used is quoted to support such wild and farfetched conclusions. I do not know what motivation Mr Stefansson has for making these ridiculous allegations. He is, with respect, a disgruntled employee that had to be removed from the Namibian business because of the mess that he created.

Ad paragraph 154.6 of the Prosecutor-General's affidavit

13. It is denied that I was aware of the fact that fish quotas were allegedly corruptly obtained by Namgomar for the benefit of Samherji. I again refer to paragraph 70.50.6 of the Prosecutor-General's affidavit where the Prosecutor-General correctly observed

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that everything about the Namgomar project appeared to be perfectly legitimate. To the extent that I reviewed any documents related to the Namgomar project, which I do not recall doing, nothing about them would have suggested that any illegal activity was ongoing. If Mr Stefansson was corrupt, he must be held accountable, not me, the companies mentioned or others.

Ad paragraph 210 of the Prosecutor-General's affidavit

14. The contents hereof are denied as if each allegation is specifically repeated and denied. This paragraph once again is proof of the wild allegations that the Prosecutor-General and Mr Stefansson are prepared to make to allege unlawful conduct on the part of myself, Mr Adalsteinn, Mr Juliusson, Mr Arnason and the Namibian companies referred to in paragraph 4 above. I am advised, which advice I believe to be correct, that under Namibian law, only existing holders of fishing rights can be allocated fish quotas and that this is a well-known fact in Namibia. Thus, the only way the companies referred in paragraph 4 could have become involved in the Namibian fishing industry was to conclude usage agreements or catching agreements with existing fishing rights holders who were allocated fishing quotas. Obviously those agreements would have had to benefit the companies otherwise they would have had no incentive to enter into them. Yet the Prosecutor-General ignores the established legal basis on which non-rights holders conduct fishing business in Namibia and recklessly makes unsubstantiated allegations and arrives at unjustified conclusions.

Ad paragraph 212 and 213 of the Prosecutor-General's affidavit

15. I refer to paragraph 4 above. I never managed any of the Namibian companies and had limited knowledge of its day-to-day operations. Mr Stefansson managed the Namibian operations until he was removed. To put this in perspective, the Namibian operations formed a minor part of the overall operations of the Samherji group and certainly did not justify my direct involvement in operational matters.

16. Furthermore, the Samherji group's operations in Namibia coincided exactly with a seven year long legal battle which Samherji had with the Icelandic Central Bank, which I describe below:



- 16.1 After the financial crisis in 2008, the Icelandic government considered it necessary to implement capital controls. The Central Bank of Iceland was put in charge of designing, overseeing and enforcing these controls.
- 16.2 On 27 March 2012, the Central Bank organised a police raid on Samherji's headquarters, based on suspicions that Samherji, the country's largest exporter, had violated the capital controls by selling seafood to one of its subsidiaries in Germany at a discount (i.e. not as a required "arm's-length transaction"). The media were tipped off in advance, and TV journalists accompanied the police on the raid. As a result, the raid became global news. Not surprisingly, there was a significant reputational impact on Samherji, which initially was not provided with any information as to what formed the basis for the Central Bank's suspicion. When the Central Bank finally provided its reasons for the raid, it was discovered that the main allegations were based on incorrectly calculated fish prices.
- 16.3 Following the raid, the Central Bank concluded that there were sufficient grounds for prosecution and passed the case to the state prosecutor, but the prosecutors disagreed and dropped the case. The Bank then used its regulatory powers to impose a fine of ISK 15 million (approximately USD 120,000) on Samherji, which Samherji challenged before the Icelandic courts. A lengthy legal battle followed, including a targeted campaign by the Central bank against Samherji's management for alleged wrongdoing.
- 16.4 In September 2015, the management team at Samherji was cleared of all wrongdoing after a special prosecutor dismissed the case, but the Central Bank nonetheless refused to drop the case against Samherji.
- 16.5 Towards the end of 2018, the Icelandic Supreme Court, upholding a lower court's ruling, concluded the case in favour of Samherji, thereby finally clearing the company of any wrongdoing. The ISK 15 million fine was annulled and the Central Bank was ordered to pay Samherji ISK 1.2 million (approximately USD 10,000) in legal costs
- 16.6 Although this battle was successful, ending with Samherji being fully victorious in the Icelandic Supreme Court, the case took a tremendous toll on Samherji senior management. There would simply have been no

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time, resources or energy for me to be deeply involved in a remote, minor and rather insignificant operation on the other side of the planet.

Ad paragraph 218 of the Prosecutor-General's affidavit

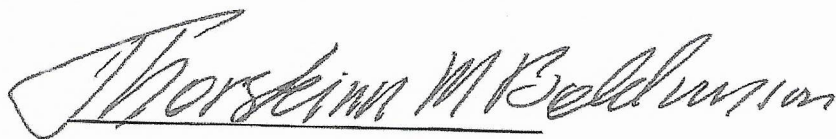
17. Mr Stefansson did not work under my direct supervision, direction or decisions. From the start of his employment until his departure in December 2016, Mr Stefansson ran Samherji's operations in Namibia autonomously. All business decisions were made by him.

Ad paragraph 235 of the Prosecutor-General's affidavit

18. I deny that I was ever involved in, knew of, or even suspected that Mr Stefansson was involved in corrupt deals or was involving any of the Namibian companies in corrupt deals while he was employed by the Samherji group. I am advised, which advice I believe to be correct, that Mr Stefansson's corrupt deals cannot be attributed to any Namibian companies or any of their directors if his deeds were not known and authorised by other responsible directors or employees of the Namibian companies. I was certainly not aware of nor did I authorise any of his allegedly corrupt deals. This is simply not the way we at Samherji do business.

Ad paragraph 238, 240, 242 and 305 of the Prosecutor-General's affidavit

19. For the same reasons as stated above, I also deny that the Namibian companies or I were involved or participated in any of the offences described by the Prosecutor-General. I state unequivocally that I had no intent or purpose, common or otherwise, to be involved in or to approve any wrongdoing in which Mr Stefansson was involved.



Thorsteinn Mar Baldvinsson



I hereby declare that the deponent has sworn to and signed this statement in my presence at **LYNGAS 15, 700 EGILSSTADIR, ICELAND** on **27 MAY 2021** and he declared as follows:

- that the facts herein contained fall within his personal knowledge and that he understands the contents hereof;
- that he has no objection to taking the oath;
- that he regards the oath as binding on his conscience and has declared as follows:

"I swear that the contents of this Sworn Affidavit are true and correct, so help me God."

NOTARY PUBLIC AND COMMISSIONER OF OATHS

FULL NAMES: Birna Kristin Einarsdóttir

CAPACITY: Deputy of the District Commissioner of the East Area of Iceland, Iceland

ADDRESS: Lyngas 15, 700 Egilsstaðir, Iceland.

27. MAY 2021

Signed before me.

Birna Kristin Einarsdóttir



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