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IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION)

CASE NO: 17254/2019

In the *ex parte* application of:

ALFRED ARNOLD KULANI SHIMATI

Applicant

SUPERVISING ATTORNEY EXECUTION OF SEARCH WARRANT REPORT

INTRODUCTION

1. I was appointed as an independent supervising attorney in terms of paragraph 10 of the search warrant ("**Warrant**") issued by Judge Gamble of the above Honourable Court dated 08 October 2019 with the above case number.
2. In terms of paragraph 10 of the Warrant, I am required to submit a report within 5 business days of the execution of the Warrant for the benefit of the Court detailing the manner in which the Warrant was executed by the investigators and their assistance
3. This report is therefore prepared and filed in compliance with paragraph 10 of the Warrant.

THE EXECUTION OF THE WARRANT ON 09 OCTOBER 2019

4. Prior to the commencement of the investigation and in the morning of Wednesday 9 October 2019, I satisfied myself that the investigators as well as their assistants ("**the investigating team**") were those persons authorised to

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conduct the investigation as per Annexure A of the Warrant by requesting them to produce copies of their identifications. Furthermore, I requested that each of them signs next to their name on Annexure A of the Warrant. I attach hereto copies of the investigating team's identifications as well as the signed Annexure A marked as Annexure "A1".

5. The investigating team was divided into two parts, the one accompanying another attorney, Mr Stephen Koen ("**Koen**") of Bisset Boehmke McBain Attorneys. I am advised that Mr Koen was also an independent supervising attorney appointed in terms of a search warrant to supervise the execution of a warrant at other premises.
6. The investigating team for which I was responsible, consisted of a total of 6 persons (3 investigators and 3 assistants). The investigators were Nomsa Crecentia Banda ("**Ms Banda**"); Sooraj Panday ("**Mr Panday**"); and Gerrit Jacques Bruwer ("**Mr Bruwer**"). The Assistants were Dr Antonio Pooe ("**Mr Pooe**"); Ayanda Mashinini ("**Ms Mashinini**"); and Amos Mtshali ("**Mr Mtshali**").
7. The investigation commenced at approximately 09h00 at the principal place of business of Sekunjalo Investment Holdings (Pty) Ltd ("**Sekunjalo**") situated at 2nd floor, South East No.5, Silo District V&A Waterfront, Cape Town as described in paragraph 2.2 of the Warrant. It also became apparent during the execution of the Warrant that 3 Laws Capital (Pty) Ltd's ("**3 Laws Capital**") principal place of business as described in paragraph 2.4.3 of the Warrant, is the same premises as that of Sekunjalo. Since both companies share the same principal place of

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business, both companies were searched at the same time, at the same premises.

8. Upon arrival at the premises referred to above, Nomisa enquired from a lady at the front desk reception area ("**receptionist**") whether we could speak to a person in charge of the premises. The receptionist called Ms Lizaan Nel ("**Ms Nel**") to attend to us. It became apparent during the execution of the Warrant that Ms Nel was the Company Secretary for 3 Laws Capital; she subsequently confirmed as such during questioning by the Investigators. Ms Nel enquired about the purpose of our visit, at which point she was asked to confirm whether she was the most senior employee/person at the premises representing Sekunjalo. Ms Nel was advised that we were in possession of a search warrant and needed to speak to the most senior person at the premises.
9. At this point Ms Nel called Mr Wazeer Moosa ("**Mr Moosa**") who was apparently the most senior person on the premises at the time. Mr Moosa advised that he was Sekunjalo's Company' Secretary and the most senior person on the premises at the time. Mr Moosa called the investigating team into the Sekunjalo boardroom wherein he enquired as to the purpose of our visit. In the boardroom, Mr Moosa was accompanied by Ms Nel; Maadiga Ryklief ("**Ms Ryklief**") the Financial Assistant of Sekunjalo; Ms Taryn Thornton ("**Ms Thornton**"), a Personal Assistant to Dr Surve; and Ms Maud Nyandoro ("**Ms Nyandoro**"), also a Personal Assistant to Dr Surve.
10. Ms Banda explained to Mr Moosa that the investigators were in possession of a search warrant which authorised them to conduct a search on the premises. She

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proceeded to explain to him the contents of the Warrant as well as the purpose of the search. She issued him with a copy of the Warrant and asked that he take a few minutes to read the terms of the Warrant so as to satisfy himself with the contents thereof. Ms Banda furthermore introduced the investigating team to Mr Moosa and explained to him the ambit of the search, the powers of the investigating team as well as the corresponding rights of the Company during the execution of the Warrant.

11. I explained to Mr Moosa that I was appointed as a neutral and independent supervising attorney with the main task of ensuring that the Warrant is executed fairly and with strict adherence to its terms. I advised that I was not part of the investigating team and would not be actively involved in the search and seizure of documentation. I also advised that I was not acting on behalf of or assisting in any manner, the Financial Sector Conduct Authority ("FSCA") in the execution of the Warrant. Mr Moosa confirmed that he understood my role in the investigation and that he was satisfied that he understood the terms of the Warrant.

12. In addition to being issued with the Warrant by Ms Banda, Mr Moosa was also provided with a copy of the main application which led to the issuing of the Warrant. The annexures to the main application included the investigators' Certificates of Appointment as investigators in the matter. After perusal of the certificates of appointment, Mr Moosa was satisfied that the investigators were who they purported to be. I also advised Mr Moosa that I had also checked their identification documents prior to the commencement of the investigation and that I was satisfied that they were the persons authorised to conduct the search. I offered to show Mr Moosa the identity documentations of the investigating team

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but he declined the offer advising that he was satisfied that the investigating team were who they purported to be.

13. Mr Moosa, after reading the Warrant and perusal of the main application, asked whether he could contact Sekunjalo's Attorneys to be present during the execution of the Warrant. I advised him that he could contact them to join the investigation if he so wished, but that the execution of the Warrant was to commence without any unnecessary delays and in so doing potentially defeat the purpose of the search. Mr Moosa advised that he wanted to first call his Attorneys before the search commenced to which request I agreed. He proceeded to contact Mr Charles Abrahams ("**Mr Abrahams**"), an attorney from Abrahams Kiewitz Incorporated, who was later confirmed to be the firm of attorneys representing both Sekunjalo and 3 Laws Capital. After speaking to Mr Abrahams on the phone, Mr Moosa emailed him a copy of the Warrant.

14. After the boardroom discussions and after having been satisfied that Mr Moosa received the Warrant and understood its terms as well as the purpose of the search, the investigating team commenced with their investigation. I asked Mr Moosa to nominate one of the company's staff members to supervise the search on behalf of the Companies in order to ensure that it was conducted fairly. Mr Moosa nominated and appointed Ms Thornton to supervise the execution of the Warrant on behalf of Sekunjalo and 3 Laws Capital. Ms Thornton was only supervising the search of physical documentation in the office. In respect of the search and seizure of electronic devices and the copying of mirror imaging of such devices, the Companies nominated Mr Hanson Raphael Frances ("**Mr Frances**"), who was the person responsible for IT on the premises, to supervise

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this process. I expand further herein-below on how the copying and mirror imaging of electronic devices was conducted.

15. At approximately 09h20, as the search was about to commence, Mr Abrahams telephonically contacted Mr Moosa and requested to speak with me. I introduced myself to Mr Abrahams and advised him of my role in the execution of the Warrant. He advised that he had perused the Warrant sent to him via email by Mr Moosa and that he understood my role as well as the purpose of the search. I advised that the investigating team, under my supervision, served the Warrant on Mr Moosa and explained its terms to him and he confirmed to have understood its terms. Mr Abrahams responded that he had also briefly read the Warrant and that he would be arriving at the Sekunjalo premises in a few minutes to address a few issues, particularly relating to the ambit of the search in relation to the duplicate imaging of the Companies' electronic devices. He asserted that in his view, only relevant information should be copied from electronic devices seized as opposed to copying the entire data that was contained on electronic devices. I advised Mr Abrahams that we could discuss this issue together with the investigating team upon his arrival and that in the interim, the search for documents would proceed.

16. During the investigation, the investigators, namely Mr Panday and Ms Banda were involved in the searching of physical documents, whilst the 3 Assistants from Exactech were concerned with the searching and making of duplicate imaging of all electronic devices identified on the premises and identified as being relevant for purposes of the search. The Assistants proceeded to set up their forensic equipment for the image copying of electronic devices searched on the

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premises. The Assistants set up their work stations in one of the offices on the premises which is where all of the duplicate copying and mirror imaging of all electronic devices occurred. Mr ("Bruwer") was tasked with the recording and issuing of receipts of all physical documents seized during the execution of the Warrant. He was at all times stationed at the boardroom of the premises for purposes of this exercise. The receipt of all physical documents seized were handed over by Mr Bruwer to Ms Nel in the boardroom.

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17. Ms Banda and Mr Panday requested Ms Nyandoro to open Dr Surve's office so they could enter and conduct a search inside his office. They were advised that Dr Surve's office was locked and that he was the only person with the keys to the office. Mr Panday then suggested that they contact a locksmith nearby in order to assist with the opening of the office. Whilst the search was ongoing and at about 10h17, Mr Charles arrived with Dr Surve and three journalists. One of the journalists started taking photographs of everyone on the premises on the instructions of Dr Surve. Dr Surve insisted that the journalists accompany him at his office and that they should not be removed from the premises.
18. When Dr Surve arrived, the search was temporarily disturbed as he started making allegations about the manner in which the Warrant was obtained. He alleged that what was transpiring was not properly authorised and was unlawful since the Warrant itself had not been properly obtained. He made allegations *inter alia* that the investigation of his Company was a political plot aimed at intimidating him and bringing his Company's name into disrepute as well as to bring reputational harm to him personally. He submitted that had the documents been requested from him by the FSCA, he would have willingly produced them,

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but instead the FSCA chose a route that constituted a fishing expedition and an act of intimidation. Dr Surve's address was video recorded by the journalists. Upon the conclusion of this address, I explained to him the nature of the search and content of the Warrant. I thereafter suggested that I and the investigating team discuss the matter further with him and his Attorneys in one of the boardrooms on the premises which we duly did.

19. During the discussions in the boardroom, Mr Abrahams and Dr Surve raised concerns about the ambit of the search, suggesting that it was too wide and not in line with the Warrant to the extent that the Assistants were making mirror images of all the electronic devices and not confining themselves specifically to copying information that was relevant to the search in accordance with the items listed on pages 6 and 7 of the Warrant. They suggested that the Assistants should utilise key word searches and only copy relevant information on the electronic devices as opposed to mirror imaging the entire electronic device.
20. In response, Mr Pooe explained that it would be impossible to conduct the search in the manner suggested and would in fact take months to complete if the search were to be confined only to key word searches. He explained further that keyword searches would only be conducted at a later stage at Exactech's laboratory using the copied and mirrored images of the electronic devices. Mr Pooe explained that the first step to their investigation would be to take the electronic devices and make duplicate images thereof by copying the data onto an empty hard drive. It was also explained that once every device had been copied onto the hard drives, the drives would be placed into plastic bags, sealed and handed to me as the Supervising Attorney for filing at Court. He stressed

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that the action would be limited to making a mirror image of the electronic devices without seeing any of the information on the devices. The mirror images would be transferred onto empty hard drives, sealed and filed at Court. At the time of leaving the premises, they would do so with nothing but the equipment they arrived with, the sealed bags being placed into my possession as the Supervising Attorney.

21. Furthermore, I explained to both Mr Abrahams and Dr Surve that the Assistants were in fact authorised by the Warrant to make two duplicate images of the data housed on all of the electronic devices and that the keyword searches would thereafter be conducted only afterwards on the duplicate images. In this regard I referred them to paragraphs 17 to 22 of the Warrant. I also explained to them that each and every document seized at the premises, whether in hard copy or in electronic form, would not leave with the investigators or the Assistants but would be sealed and handed to me to file with the Court and that in the event that they wished to challenge the Warrant or to raise any issues pertaining thereto, they could do so within 5 days from its execution by bringing an application before Court.
22. Eventually Mr Abrahams and Dr Surve, after having privately consulted together outside of the boardroom, agreed that the search could proceed as per the Warrant, but requested that the documents be sealed and filed with the Court on the same day. I advised that this may not be practical as the execution of the Warrant would be completed only after working hours. I then attempted to make arrangements with the Registrar to file after working hours, however, my attempts were unsuccessful as I was unable to make the necessary contact with

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the Registrar. Mr Abrahams and Dr Surve agreed with the investigating team that, in the event that the arrangements to file after hours were unsuccessful, the documents would be locked and kept in Mr Koen's office situated at 45 Buitengracht Street until the execution of the Warrant was complete. I would thereafter file the seized documents with the Registrar. Both parties indicated their agreement with this arrangement and I thereafter made the necessary arrangements with Mr Koen to give effect to such agreement.

23. The search continued pursuant to the boardroom discussions. Dr Surve opened his office and the Investigators conducted the search in his office to search for any relevant physical document. Dr Surve also handed to the Assistants his laptop in order for the duplicate image of the laptop to be made. When he was requested to provide his cell phone, he responded that he did not know where his cell phone was. He stated that he arrived with the cell phone at the premises and that it may have been taken by someone from the investigating team. The investigating team was, however, adamant that they had neither seen nor seized Dr Surve's cell phone. Dr Surve again expressed that he did not have his cell phone with him and was unaware where it may have vanished to. When attempts were made by one of Sekunjalo's Attorneys to call his cell phone, it went straight to voicemail. Accordingly, his cell phone and the information therein, could not be seized as part of the search.

24. The Investigators continued to search for physical documentation whilst the Assistants were busy with the duplicate imaging of the electronic devices situated at their work stations. The electronic devices which were seized and copied including *inter alia* the laptops and cell phones of Dr Surve's PA's, laptops and

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cell phones of Mr Moosa and Ms Nel, as well as the Laptop of Dr Surve. The process of duplicating images of all the electronic devices seized was completed at approximately 17h05 after having taken approximately 7 hours to complete the entire exercise.

25. As alluded to in paragraph 14 above, this process was at all times supervised on behalf of both Companies by Mr Frances who confirmed to be the person responsible for IT at the premises. The hard drives on which the duplicate images were copied were placed into separate evidence bags. Each evidence bag consisted of two hard drives (save for one plastic bag which only had one hard drive) and marked accordingly to identify the evidence therein. Upon the completion of this process, there were 6 separate bags in total, each containing the hard drives produced during the search, which were all taken to the boardroom and sealed by the Investigating team in the presence of myself, Mr Frances, Dr Surve, Mr Moosa and other employees of Sekunjalo and 3 Laws Capital.

26. The physical documents found at the premises were not taken and seized; instead copies of the documents were made inside the premises and the documents were returned to Ms Nel. Only copies of the documents were taken from the premises. The physical documentation was placed inside two separate plastic bags, with documents seized from Sekunjalo placed in one plastic bag and documents seized from 3 Laws Capital placed inside a separate plastic bag. The documents were also sealed in the presence of the Sekunjalo personnel referred to above. Prior to all physical documents being placed and sealed inside the plastic bags, they were given to Dr Surve to peruse which he duly did.

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27. The 6 plastic bags consisting of the hard drives as well as the two plastic bags consisting of the physical documents seized were placed inside one brown board box which was also sealed by the Investigators in the presence of myself and the personnel from Sekunjalo and 3 Laws Capital referred to in paragraph 24 above. The sealed box was then handed over to me in the presence of all parties and I left the premises with the sealed box of documents at approximately 17h25.
28. Since the execution of the Warrant only concluded after working hours, I left with the sealed box of documents with Mr Koen and together we locked the documents in his office. This was in accordance with the agreement reached between the parties as referred to in paragraph 22 above. Mr Koen and I agreed that we would, once we had completed the execution of both Warrants the following day, deliver to the Registrar the boxes of evidence seized under the respective Warrants.

EXECUTION OF THE WARRANT ON 10 OCTOBER 2019

29. On 10 October 2019 at approximately 11h30, I met up with the Investigators, Mr Panday and Ms Banda who advised me that they wished to have the Warrant executed at Sekunjalo's registered address at 5th floor, Weltestedt House, Norwich on Main, Newlands, Cape Town as referred to in paragraph 2.1 of the Warrant. They also wished to have the Warrant executed at 3 Laws Capital's registered address at 4th Floor, Claremont Central, 8 Vineyard Drive, Claremont Cape Town as referred to in paragraph 2.3.3 of the Warrant.
30. I Accordingly accompanied them in order to supervise the execution of the Warrant as mandated. We first drove to 3 Laws Capital in Claremont and arrived

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there at approximately 12h30. Upon our arrival the entrance of the building, we were advised by a security officer at the security desk situated at the entrance of the building that 3 Laws Capital had relocated to the Silo building at the V&A Waterfront sometime in 2018 and that the company no longer operated from these premises. The Security officer identified himself as Mr Shapiro Mrabalaba who worked for a private security company he identified as Veritas Securities.

31. Thereafter we left Claremont in search of the Sekunjalo registered address in Newlands. It became apparent when the Investigators searched for the address on their GPS that the name "*Weltstedt House, Norwich on Main Newlands*" did not exist as it could not be identified by the GPS. The GPS instead picked up the following address on each occasion a search was conducted for the Sekunjalo premises: "*Letterstedt House, Norwich on Main, Main Road, Newlands*". After driving in and around Newlands attempting to locate **Sekunjalo's registered address as identified in the Warrant, we were unable to locate the premises. We thereafter decided to follow the address that appeared on the GPS even though it was not the addressed identified in paragraph 2.1 of the Warrant.**

32. We arrived at the Letterstedt House at approximately 13h40. Upon our arrival, we enquired from a security officer, who identified herself Ms Phumza Peter ("**Ms Peter**") from a private security company by the name "*Imvula Quality Protection*", as to whether she knew where the offices of Sekunjalo were situated in the Letterstedt House building. We showed Ms Peter the address specified in the Warrant and enquired whether we were at the right place. Ms Peter advised us that the name Norwich on main had been changed to Newlands on Main and hence why we were struggling to locate the address via GPS. Ms Peter confirmed

that she had been working at the premises for more than 4 years and that as far as she was aware, there was no company by the name of Sekunjalo Investment Holdings operating from the premises.

33. Ms Peter offered to telephonically contact someone who had been working at the premises for longer than she, in order to enquire whether Sekunjalo had previously operated from the premises. She spoke to a person whom she confirmed to be the property manager of Growth Point Properties who advised her that Sekunjalo had once operated from Letterstedt House but had relocated from there more than 6 years ago. The person could not, however, confirm where Sekunjalo had relocated to. We thereafter left the premises without executing the Warrant at the registered addresses of both Companies as identified in paragraphs 2.1 and 2.3.3 of the Warrant respectively. I was advised by the Investigating Team that this was the conclusion of the execution of the Warrant.

DELIVERING OF SEIZED DOCUMENTS TO THE REGISTRAR ON 11 OCTOBER 2019

34. On the same day, viz. 10 October 2019, I contacted Mr Koen in order to enquire whether he had completed the supervision of the execution of his warrant. He advised me that the downloading of data from the server was not going to conclude that day but would probably conclude during the morning of 11 October 2019. We then agreed that since he was the only person with keys to his office and since he was still busy with the supervision of his Warrant at the V&A, I would collect the box from his office during the morning of 11 October 2019 whereupon

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we would simultaneously file with the Registrar of the above Honourable Court the evidence/documents seized under both Warrants.

35. During the of morning of 11 October 2019, I was telephonically contacted by Mr Koen who advised that the downloading of the documents from the server under the Warrant he was executing was not yet complete. He advised me further that he anticipated that the downloading would probably complete later that afternoon. He proposed that I proceed with collecting my box of evidence from his office.
36. I arrived at Mr Koen's office at approximately 11h38. I confirm that the box was still sealed and in the same place I left it on the evening of 9 October 2019. I attach hereto marked Annexure "B" a photograph I took of the box upon collecting it from Mr Koen's office. I delivered the box of evidence to the Registrar at approximately 12h45. I attach hereto a copy of the Registrar's acknowledgment of receipt marked Annexure "C".

CONCLUSION

37. The Warrant was executed over a period of two days, viz. 9 and 10 October 2019 respectively. The documents seized were sealed and handed to me which I delivered to the Registrar on 11 October 2019.
38. Having supervised the execution of the Warrant on both days, I am satisfied that the Warrant was executed fairly and that the investigating team executed the Warrant strictly in accordance with its terms. I am also satisfied that there were no unreasonable obstructions of the search or refusal to cooperate by any of the

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Sekunjalo and 3 Laws Capital personnel nor did they unduly obstruct or interfere with the execution of the Warrant. Any issues of dispute that arose during the execution of the Warrant were, under my supervision, amicably resolved by agreement between the parties.

39. At the conclusion of the execution of the Warrant, both parties separated in good terms.

Dated at **CAPE TOWN** on this 18th day of October 2019.

MCACISO STANSFIELD INCORPORATED

Per: [transmitted electronically]

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TO:

**THE REGISTRAR OF THE
ABOVE HONOURABLE COURT**

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