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IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN

Case No: 08/2022

Reportable: NO
Of Interest to other Judges: NO
Circulate to Magistrates: NO

In the matter of:

THE STATE

And

MBANA PETER THABETHE	**Accused 1**
LIMAKATSO MOOROSI	**Accused 2**
SEIPATI SILVIA DHLAMINI	**Accused 3**
IQBAL MEER SHARMA	**Accused 4**
NULANE INVESTMENTS 204 (PTY) LTD (as represented by Accused 4)	**Accused 5**
DINESH PATEL	**Accused 6**

ISLANDSITE INVESTMENTS ONE HUNDRED AND EIGHTY (PTY) LTD **Accused 7**

(as represented by Accused 8)

RONICA RAGAVAN **Accused 8**

CORAM: **MBHELE, DJP**

HEARD ON: **27 SEPTEMBER 2022**

DELIVERED ON: **03 NOVEMBER 2022**

[1] This is an interlocutory application in a criminal matter where accused 6, 7 and 8 (the accused) are seeking an order compelling the State to provide them with further and better particulars. An indictment of about 61 pages in terms of which the accused are charged of contravention of Public Finance Management Act, fraud and Money Laundering was served on all the accused. Below is an extract from the indictment detailing the charges that the accused are facing:

'**COUNT 1 (IN RELATION TO ACCUSED 1 AND 2 ONLY)**

THAT THE ACCUSED ARE GUILTY OF CONTRAVENTION OF SECTION 86(1) OF THE PUBLIC FINANCE MANAGEMENT ACT, ACT 1 OF 1999, READ WITH SECTIONS 1, 36, 38, 39, 44(2) and 76(4)(c) OF THE PUBLIC FINANCE MANAGEMENT ACT 1 OF 1999 AND FURTHER READ WITH SECTION 217(1) OF THE CONSTITUTION.

1. In that during the period between October 2011 and April 2012 and at or near Bloemfontein in the regional division of Free State, Accused 1, being the Head of the

Free State Department of Rural Development and its Accounting Officer, and Accused 2, as the Head of the Free State Department of Agriculture and its Accounting Officer, did unlawfully and wilfully, alternatively, in a grossly negligent manner, contravene the provisions of Section 86(1) of the said Act by failing to comply with the following provisions of the Act;

2. To ensure the effective, efficient, economical and transparent use of the resources of the Department (**38(1)(b)**); and or

3. Take effective and appropriate steps to prevent unauthorised, irregular and/or fruitless and wasteful expenditure and losses resulting from criminal conduct (**38(1)(c)(ii)**); and or

4. The duty to comply, and to ensure compliance by the Department, with the provisions of the PFMA (**38(1)(n)**); and or

5. The duty not to commit the department to any liability for which money has not been appropriated **(38(2))**.

6. Accused 1 and 2 contravened the provisions of the PFMA as aforesaid in that they committed the Department to a contract in the amount of R 24 984 240, 00 (twenty-four million nine hundred and eighty-four thousand, two hundred and forty rand) with Accused 5, for the provision of services for Project Mohoma Mobung without complying with the Department's own prescribed procurement processes.

7. Accused 1 and 2 (and their subordinates, Accused 3 and Shadrack Cezula), wilfully disregarded the PFMA provisions, as well as the Department's SCM Policies, in order to g satisfy the "request" of the entity, Worlds Window Impex India Pvt Ltd, contained in the aforesaid entity's letter to the Department, to the effect that the "due diligence and planning exercise be conducted by an Agency of their choice to provide the necessary level of comfort to their stakeholders".

8. The Mohoma Mobung project was not budgeted for during the financial year,2011/2012 and sundry payments were used to settle the invoices of the service provider, Accused 5.

9. The Mohoma Mobung project was not registered with and or approved by the Free State Provincial Treasury as a Public Private Partnership during the 2011/2012 financial year.

<u>COUNT 2</u> (IN RELATION TO ACCUSED 1, 2, 3, 4, 5, 6, 7 and 8 ONLY)

THAT THE ACCUSED ARE GUILTY OF THE CRIME OF FRAUD READ WITH SECTION 103 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 AND FURTHER READ WITH THE PROVISIONS OF SECTION 51(2) OF THE CRIMNAL LAW AMMENDMENT ACT 105 OF 1997.

10. In that during the period between 03 October 2011 and 19 April 2012, and at or near Bloemfontein in the regional division of Free State, Accused 1, 2, 3, 4, 5, 6, 7 and 8 did unlawfully, intentionally and falsely, collude and conspire with one another and or others, with common purpose to defraud, misrepresent to the Free State Department of Agriculture and Rural Development and or its employees, that:

10.1. A letter dated 03 October 2011, bearing the details of an entity, World Window Impex India Pvt. Ltd and its Director, Anil Misra, was received from the said entity or its Director in the ordinary course of business; and

or

10.2. World Impex India Pvt. Ltd had genuine intentions to “participate as a Strategic Partner in Project Mohoma Mobung” as set out in the aforesaid letter; and or

10.3. The appointment of Accused 5 as a service provider made it impossible for the Department to follow the normal procurement processes due to the fact that it was a condition from the intended Strategic Partner (World Impex India Pvt. Ltd) that for them to be able to have comfort and

confidence in the due diligence and feasibility study, they required the Department to use the services of Accused 5 as they know the quality of work Accused 5 has performed in similar projects around the world; and or

10.4. The request, motivation and approval to deviate from the Department's normal tender procedures as contained in the submission drafted by Shadrack Cezula, dated 06 October 2011, were valid, bona fide and in accordance with the Department's Supply Chain Management Policy and Regulations; and or

10.5. Accused 5, was a reputable agency and had the capacity to conduct the said due diligence process; and or

10.6. The amount of R 24 984 240, 00 (twenty-four million nine hundred and eighty four thousand, two hundred and forty rand) charged by Accused 4, 5 and 6 for the provision of services to the Department as aforesaid, was justified, not inflated and in accordance with the acceptable government rates; and or

10.7. Payments made to Accused 5 in terms of the contract concluded between Accused 5 and the Department, were lawfully due to Accused 5.

11. And the Accused did by means of the aforesaid misrepresentations, induce the Department and or its employees to its actual prejudice to:

11.1. Accept the information provided by the Accused as being true and correct; and or

11.2. Enter into a contract with Accused 5 in the amount of R 24 984 240, 00 (twenty-four million nine hundred and eighty-four thousand, two hundred and forty rand) for the provision of services for Project Mohoma Mobung; and or

11.3. Pay to Accused 5 the amount of R 24 984 240, 00 (twenty-four million nine hundred and eighty-four thousand, two hundred and forty rand) in accordance with the said contract; and or

11.4. Procure the services of Accused 5 in contravention of the Supply Chain Management process of the Department and the PFMA, Constitution,

12. Whereas the Accused, when they misrepresented as aforesaid, well knew that:

12.1. There was no record in the Department and in the relevant procurement file of any proof of the submission of the aforesaid letter by World Windows Impex India Pvt. Ltd and or proof of receipt by any official of the Department of such letter; and or

12.2. The Department did not publicly advertise a need for a service provider to provide a due diligence report and or undertake a study for the development of a Concept Document for Project Mohoma Mobung, thus, there was no basis for the Department to "receive" World Impex India Pvt. Ltd.'s proposal as per the aforesaid letter of 03 October 2011; and or

12.3. The purported intentions, if any, by World Impex India Pvt. Ltd to "participate as a Strategic Partner in Project Mohoma Mobung" as set out in the aforesaid letter were not genuine and bona fide; and or

12.4. The alleged insistence that World Window Impex India Pvt. Ltd would participate in the said project subject to a proper due diligence process being conducted by a reputable agency chosen by themselves, was the Accused's way of bringing Accused 4, 5 and Accused 6, to contract with the Department without lawful procurement processes being followed by the Department officials (Accused 1, 2, 3 and Shadrack Cezula); and or

12.5. Accused 1, 2, 3, 4, 5, 6, 7, 8 and Shadrack Cezula were aware that the appointment of Accused 5 by the Department and the conclusion of the contract to render services under the Mohoma Mobung Project were not in accordance with the laws of this country since Accused 5 was not appointed

through a properly advertised tender and the deviation process followed to appoint Accused 5 was also not in accordance with the prescribed process for a deviation; and or

12.6. Accused 1, 2, 3, 4, 5, 6, 7, 8 and Shadrack Cezula were aware that payments made to Accused 5 in terms of the contract concluded between Accused 5 and the Department were not lawfully due to Accused 5; and or

12.7. Accused 5 was not a reputable agency and did not have the capacity to conduct the said due diligence process. Thus, Accused 5 immediately outsourced the whole contract to Deloitte; and or

12.8. The aforesaid contract amount was inflated and not in accordance with acceptable government rates; and or

12.9. The request, motivation and approval to deviate from the Department's normal tender procedures as contained in the submission drafted by Shadrack Cezula, dated 06 October 2011, was not in accordance with the Department's Supply Chain Management Policy and Regulations. In actual fact, the request, motivation and approval made by Accused 1, 2, 3 and Shadrack Cezula was intentionally aimed at bypassing the PFMA, Section 217 of the Constitution and the Department's own Supply Chain Management Policy and Regulations; and or

12.10. The contents of paragraph 3 of the 06 October 2011 submission prepared by Shadrack Cezula were false in that the World Window Impex India Pvt. Ltd. letter does not state that "they know the quality of work performed by Accused 5 in similar projects around the world".

<u>COUNT 3</u> (IN RELATION TO ACCUSED 4, 5, 7 AND 8 ONLY)

MONEY LAUNDERING – THAT THE ACCUSED ARE GUILTY OF THE CRIME OF CONTRAVENTION OF SECTION 4 READ WITH SECTIONS 1, 8 (1) OF ACT 121

OF 1998 AND FURTHER READ WITH SECTION 51(2) OF THE CRIMINAL LAW AMENDMENT ACT 105 OF 1997.

13. In that during the period between 08 November 2011 and 06 July 2012 and at or near Bloemfontein in the regional division of the Free State and or at or near Johannesburg in the regional division of Gauteng, the Accused, unlawfully, colluded and conspired with one another and with others, with a common purpose to launder the proceeds of unlawful activities, whilst they knew or ought reasonably to have known that certain property to wit, money amounting to R19 070 934, 00 (nineteen million and seventy thousand nine hundred and thirty four rand), which was derived by Accused 5 from the Free State Department of Agriculture and Rural Development as a portion of a total payment of R24 984 240, 00 (twenty four million nine hundred and eighty four thousand, two hundred and forty rand) which the said Department paid to Accused 5 in terms of the contract between the Department and Accused 5 referred to in Counts 1 and 2, was proceeds of unlawful activities or that it formed part of the proceeds of unlawful activities relating to the offence of Contravening the Public Finance Management Act 1 of 1999 and or Fraud, referred to in Count 1 and 2, agreed and arranged that;

14. The said property, to wit, the amount of R 19 070 934, 00 (nineteen million and seventy thousand nine hundred and thirty-four rand), be transferred from Accused 5's Bank of Baroda Account number, [....], to the off-shore Standard Charter Bank Account number [....], of Gateway Limited, under the pretext that the said property was payment by Accused 5 to Gateway Limited for services rendered in terms of a contract concluded between them on 2 December 2011.

15. And the said agreement or arrangement had the effect of concealing or disguising the nature, source, location, disposition and/or movement of the said proceeds or the ownership thereof or any interest which anyone may have in respect thereof in that the said property was combined with other money in the bank accounts of Accused 5, Accused 7, Wone Management, Pragat Investments, Confident Concepts (Pty) Ltd, Oakbay Investments (Pty) Ltd, Tegeta Resources (Pty) Ltd and Arctos Trading (Pty) Ltd and then transferred with bewildering rapidity

between the said bank accounts and ultimately transferred to the off-shore account of Gateway Limited as set out hereunder:

a. On or about 08 November 2011:

151.1.1 the Department made payment in the amount of R12 492 120, 00 into Accused 5's Nedbank Account with number [....];
151.1.2 Accused 5 transferred the amount of R10 000 000, 00 to Pragat Investments' ABSA Bank Account with number [....];
151.1.3 Pragat investments further transferred the amount of R9 800 000, 00 to Accused 7's ABSA Bank Account with number [....];
151.1.4 Pragat investments further transferred the amount of R123 000. 00 to Pragat's Bank of Baroda account number [....].

b. On or about 11 November 2011:

151.2.1 Accused 5 transferred the amount of R2 000 000, 00 from its aforesaid Nedbank account to Pragat Investments' aforesaid ABSA account;
151.2.2 Pragat Investments further transferred the amount of R2 000 000, 00 to Accused 7's aforesaid ABSA account;
151.2.3 Accused 7 transferred the R2, 000, 000. 00 on the same day to Annex Distribution (Pty) Ltd.

c. On 22 December 2011, the Department made payment in the amount of R4 164 040, 00 into Accused 5's aforesaid Nedbank account.

d. On 05 January 2012:

151.4.1 Accused 7 transferred from its aforesaid ABSA account, the amount of R 4 000 000, 00 into Pragat Investments' aforesaid ABSA account;
Pragat Investment transferred the amount of R 4 000 000, 00 to the aforesaid Nedbank account of Accused 5;

e. On the following day, 6 January 2012, Accused 5 transferred from its aforesaid Nedbank account the amount of R8 000 000, 00 to Wone Management's Standard Bank Account with number 221044620.

f. On 10 January 2012:
Accused 7 transferred from its aforesaid ABSA account, the amount of R3 000 000, 00 into Pragat Investments' aforesaid ABSA account;
151.6.1 Pragat Investments transferred the amount of R3 000 000, 00 to the aforesaid Nedbank account of Accused 5.

g. On 11 January 2012, Wone Management returned R 8 000 000, 00 from its aforesaid Standard Bank account to the aforesaid Nedbank account of Accused 5 in two tranches of R4 999 999, 00 and R3 000 001, 00.

h. On 12 January 2012:

151.8.1 R9 000 000, 00 was transferred from Accused 5's aforesaid Nedbank account to Pragat Investments;
151.8.2 R9 000 000, 00 was transferred from Pragat's aforesaid ABSA account to Accused 7's aforesaid ABSA account;
151.8.3 R 9 000 000,00 was transferred from accused 7's aforesaid ABSA account to the ABSA account of Confident Concepts (Pty) Ltd, account number [....];
151.8.4 R9 000 000 was transferred from the aforesaid ABSA account of Confident Concepts to the ABSA account number [....] of Sahara Computers (Pty) Ltd;
151.8.5 R9 000 000 was transferred from the aforesaid ABSA account of Sahara Computers to an unknown State Bank of India account.

i. On 25 January 2012:
151.9.1 R1 000 000 was transferred from Accused 5's aforesaid Nedbank account into the aforesaid ABSA account of Pragat;
151.9.2 R1 000 000 was transferred from Pragat Investments' aforesaid ABSA account to Accused 7's aforesaid ABSA account;

151.9.3 R1 160 000. 00 was transferred to Oakbay Investments (Pty) Ltd.;

151.9.4 R1 000 000. 00 was transferred to TNA Media (Pty) Ltd.

j. On 30 January 2012:

150.1.1 R1 000 000 was transferred from Accused 7's aforesaid ABSA account into Pragat Investments' aforesaid ABSA account;

150.1.2 R1 000 000 was transferred from Pragat Investments' aforesaid ABSA account to Accused 5's aforesaid Nedbank account;

150.1.3 Two payments of R500 000 were made to SARS with reference EPAY.

k. On 30 March 2012, the Department made payment in the amount of R 4 000 000, 00 into Accused 5's aforesaid Nedbank account.

l. On 04 April 2012:

151.12.1 Accused 5 transferred the said amount to its Bank of Baroda Account number, [....];

151.12.2 Accused 5 made a transfer in the amount of R 3 900 000, 00 from its Bank of Baroda account to the aforesaid ABSA account of Pragat Investments.

m. On 05 April 2012, Pragat Investments transferred from its aforesaid ABSA account, the amount of R 3 750 000, 00 into Accused 7's aforesaid ABSA account.

n. On 10 April 2012, Pragat Investments transferred from its aforesaid ABSA account, the amount of R123 000, 00 to its aforesaid Bank of Baroda Account.

o. On 19 April 2012, the Department made payment in the amount of R4 328 080, 00 into Accused 5's aforesaid Nedbank account.

p. On 04 May 2012, Accused 5 transferred the amount of R 1 500 000, 00 to its aforesaid Bank of Baroda Account. It also made a payment to Deloitte in the amount of R1 538 457. 86 on the same day.

q. On or about 09 May 2012, Accused 5 made a transfer in the amount of R 1 400 000, 00 from its Bank of Baroda account to the aforesaid ABSA account of Pragat Investments.

r. On 10 May 2012, Pragat Investments transferred from its aforesaid ABSA account the amount of R1 200 000, 00 to Accused 7's aforesaid ABSA account, whereupon the following transfers were made on the same day on ABSA accounts on the Sahara Computers Cash Focus facility:

151.18.1 Accused 7 transferred from its aforesaid account the amount of R1 200 000, 00 into Oakbay Investments (Pty) Ltd's account with number [....];

151.18.2 Oakbay Investments (Pty) Ltd transferred from its aforesaid account the amount of R1 200 000,00 into the Tegeta Resources (Pty) Ltd account with number [....]; and

151.18.3 Tegeta Resources (Pty) Ltd transferred from its aforesaid account the amount of R1 200 000,00 to the Bank of Baroda for the account of Arctos Trading (Pty) Ltd.

s. On 15 May 2012, Arctos transferred from its aforesaid Bank of Baroda account the amount of R1 281 837, 98 to the Loan Account of Arctos with the Bank of Baroda, account number [....].

t. On 02 July 2012,

151.20.1 Oakbay Investments (Pty) Ltd transferred from its aforesaid account the amount of R7 000 000,00 into the aforesaid ABSA account of Accused 7.

151.20.2 Sahara Computers transferred from its aforesaid ABSA account R1 800 000 into the aforesaid ABSA account of Accused 7.

151.20.3 Accused 7 immediately transferred from its aforesaid ABSA account, the amount of R 8 800 000, 00 into Pragat Investments' aforesaid ABSA account.

151.20.4 Pragat Investments immediately transferred from its aforesaid ABSA account the amount of R 8 800 000, 00 into the aforesaid Bank of Baroda account of Accused 5.

151.21 On 03 July 2012, Accused 5 transferred the amount of R 8 882 142.00 from its aforesaid Bank of Baroda account to the aforesaid off-shore Standard Chartered Bank Account number [....], of Gateway Limited.

151.22 On 06 July 2012,

151.22.1 Accused 7 transferred from its aforesaid ABSA account, the amount of R 10 200 000, 00 into Pragat Investments' aforesaid ABSA account.

151.22.2 Pragat Investments immediately transferred from its aforesaid ABSA account the amount of R 10 200 000, 00 into the aforesaid Bank of Baroda account of Accused 5.

151.22.3 Accused 5 immediately transferred the amount of R10 188 792, 00 from its aforesaid Bank of Baroda account to the aforesaid off-shore Standard Charter Bank Account number [....], of Gateway Limited.

151.23 The aforesaid bewildering array of transactions had no legitimate business purpose. Instead, the transactions had the effect of

obscuring the true nature of the funds as criminal proceeds derived from the offences perpetrated on the Free State Department of Agriculture and/or Rural Development, where the funds originated from.

151.24 The aforesaid arrangements or agreement had the effect of enabling or assisting Accused 1 and 2 who committed the offence of Contravening Section 86(1) of the PFMA as set out in Count 1, and Accused 1 to 8 who committed the offence of Fraud as set out in Count 2, to avoid prosecution and or to enable or assist Accused 4, 5 and Wone Management and its Directors, Pragat Investments and its Directors, Accused 7 and its Directors, Gateway Limited and its Director, Tegeta Resources (Pty) Ltd and its directors, Confident Concepts (Pty) Ltd and its directors, Sahara Computers (Pty) Ltd and its directors and Oakbay Investments (Pty) Ltd and its directors to remove a portion of the funds from the jurisdiction of this honourable court to a jurisdiction beyond the borders of South Africa, viz. the United Arab Emirates and placed it at the disposal of the accused in the UAE which resulted in diminishing the said property acquired as a result of the commission of the said offences.

<u>COUNT 4</u> (IN RELATION TO ACCUSED 4, 5, 7 and 8)

THAT THE ACCUSED ARE GUILTY OF THE CRIME OF FRAUD READ WITH SECTION 103 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 AND FURTHER READ WITH THE PROVISIONS OF SECTION 51(2) OF THE CRIMINAL LAW AMENDMENT ACT 105 OF 1997

151.25 In that during the period between 2 July 2012 and 6 July 2012, and at or near Johannesburg in the regional division of Gauteng, Accused 4, 5, 7 and 8 did unlawfully, falsely, collude and conspire with one another and with others, with a common purpose to defraud, and with intention to defraud, misrepresent to the Bank of Baroda and or its employees and or the Reserve Bank of South Africa and or its employees and or the National Treasury and or its employees that:

151.26 The payments of R8 800 000, 00 (eight million eight hundred thousand rand) and R10 200 000, 00 (ten million two hundred thousand rand) made on 2 and 6 July 2012 respectively, by Pragat Investments to Accused 5's Bank of Baroda account, were made in the ordinary course of business; and or

151.26.1 Accused 5 had concluded an arm's length agreement, in the ordinary course of business with Gateway Ltd; and or

151.26.2 The total amount of R 19 070 934, 00 (nineteen million and seventy thousand nine hundred and thirty-four rand) that was transferred to Gateway Ltd, was due and payable to Gateway Ltd by Accused 5, as a result of a legitimate business transaction between them;

151.27 And the Accused did by means of the aforesaid misrepresentations induce the Bank of Baroda, the Reserve Bank of South Africa and or the National Treasury to suffer actual or potential prejudice, as follows:

151.27.1 The Bank of Baroda, National Treasury and or the Reserve Bank granted permission for the said transfer in circumstances where they ought not to have granted such permission as it resulted in an outflow of funds from South Africa that ought not to have been permitted and impacted improperly on the balance of payments and the regulation of currency exchanges between South Africa and the United Arab Emirates.

151.27.2 It also had the effect of placing proceeds of fraud beyond the reach of the South African regulatory and criminal justice authorities and exposing the Bank of Baroda to reputational damage.

151.28 Whereas the Accused, when they misrepresented as aforesaid, well knew that:

151.28.1 The aforesaid payments of R8 800 000, 00 (eight million eight hundred thousand rand) and R10 200 000, 00 (ten million two hundred thousand rand) made on 2 and 6 July 2012 respectively, by Pragat Investments to Accused 5's Bank of Baroda account, were not made in the ordinary course of business; and or

151.28.2 The aforesaid amounts paid by Pragat Investments to Accused 5, were made available by Accused 7 on the aforesaid dates; and or

151.28.3 Accused 5 and Gateway Ltd did not transact at arm's length, in the ordinary course of business; and or

151.28.4 The amounts mentioned above were not due and payable to Gateway Ltd, by Accused 5, since the two parties did not have a legitimate business transaction between them; and or

151.28.5 The contract between Accused 5 and Gateway Ltd was neither valid nor bona fide; and or

151.28.6 Gateway was not entitled to payment for services rendered as it did not render services under the contract with Accused 5. The services were rendered by Deloitte in terms of its contract with Accused 5.

151.28.7 The amounts that were transferred to Gateway Ltd, were proceeds of unlawful activities as described in counts 1, 2 and 3.'

[2] Accused 6, 7 and 8 filed requests for further particulars which the State responded to. Upon receipt of the State's response the accused filed request for further and better particulars. It is the response of the state to the request for further and better particulars that triggered this application. The state is of the view that the information provided to the accused is sufficient to enable them to prepare for trial and answer the case against them.

[3] Further particulars requested by the accused are listed in over 200 pages. I will not enumerate them one by one. At the heart of the accused 6,7 and 8 s' complaint is that the indictment, the statement of facts as well as the state's response to the request for further particulars fail to disclose, with clear particularity the case that the accused are expected to answer at trial. The accused complain that the information provided by the state is scanty and fails to show the role that each of the accused played in the commission of the alleged offences. They require the prosecution to set out in detail when and where the accused conspired to commit the alleged offences. They require exact roles played by each of the accused when they colluded to commit the alleged offences. The time and the place where the meetings were held and individuals who participated in those meetings.

[4] Section 87(1) of the Criminal Procedure Act,[1] provides as follows:

> 'An accused may at any stage before any evidence in respect of any particular charge has been led, in writing request the prosecution to furnish particulars of any matter alleged in that charge, and the court before which a charge is pending may at any time before any evidence in respect of that charge has been led, direct that particulars or further particulars be delivered to the accused of any matter alleged in the charge, and may, if necessary, adjourn the proceedings in order that such particulars may be delivered.'

[5] The prosecution is obliged by law to provide the accused with all material evidence as a requirement for a fair trial. This enables the accused to properly organise his defence before the trial court so as to influence the outcome of the proceedings. It is well established that the purpose of further particulars is to enable the accused to know the case that he has to meet.

[6] Section 35 (3) (a) and (b) of **The Constitution Act of 1996** provides that

> every accused person has a right to a fair trial, which includes the right to be informed of the charge with sufficient detail to answer it and to have adequate time and facilities to prepare a defence.[2]

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[1] Section 87(1) of The Criminal Procedure Act 51 of 1977

[7] The writer of **The Constitutional Criminal Procedure**[3] states the following when dealing with the right to be informed of the charge with sufficient detail:

> "The right to a detailed charge constitutionalises the current rules pertaining to the drafting of the charge sheets and indictments[4] . It is peremptory that a charge set forth the relevant offence in such a manner and with such particulars as may be reasonably sufficient to inform the accused of the nature of the charge [5]. It is not sufficient merely to state the name of an offence; all elements of the offence should be spelled out as well. Furthermore, most importantly, the factual allegations on which the charge is based should be given. In assessing the sufficiency of information, the point of departure is that the accused is presumed innocent and thus has no knowledge of the facts. Where a charge is not detailed enough, further particulars can be requested and their enforcement is in the discretion of the court"

[8] The court has to determine whether the indictment, the statement of facts and the further particulars provided sufficiently informs the accused of the case he has to answer. It is the court that has to determine the adequacy of the information provided by the state. The author of **Hiemstra Criminal Procedure** 11th ed p 14-21[6] sets out the criteria for the court to determine whether sufficient information has been provided to the defence as follows:

> "(a) Does the accused need the information to answer to the charge?
>
> (b) Would refusal to give the particulars prejudice the accused?
>
> (c) If the particulars are requested after plea, before evidence has been led, what is the relevance of the particulars?

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[2] The constitution of the Republic of South Africa, 1996
[3] Constitutional Criminal Procedure by Nico Steytler page 227
[4] S v Friedman (1) 1996SACR 181(W) at 190b
[5] S 84(1) CPA
[6] A Kruger Hiemstra Criminal Procedure 2019. Ed p14-21

(d) What does the interest of justice dictate? The fact that the defence had access to the police docket must be taken into account by the court in assessing the adequacy of information in possession of the accused.[7]"

[9] In count 2 the accused persons are jointly charged with the offence of fraud, wherein the prosecution alleges that the accused on a date just before 03 October 2011 and February 2012 acted in concert and with common purpose to defraud, the Free State Department of Agriculture and Rural Development (DARD) and or its employees. The charge shows how the misrepresentation was committed and the entities through which the misrepresentation was facilitated as well as individual role players who held positions of authority in companies that benefited from the misrepresentation. The state admitted that the exact time of the alleged collusion is unknown to the state.

[10] The state makes the following assertions, amongst others, in support of its allegation that the accused acted in common purpose: That:

As at 3 October 2011, the Free State Department of agriculture and Rural Development did not have a need to for the service of producing a feasibility study. There was no budget neither were there funds to support the project. Accused 6, without procurement processes being followed nor submitting any proposal for the said services, signed a contract on behalf of accused 5 in terms of which the Department had to pay an amount in excess of R24 million to accused 5. The money is alleged to have been paid to accused 5 and from there it went to Pragat Investments (Pty) Ltd and accused 7. Accused 5 was at the time controlled by the directors of accused 7 where accused 8 was a Chief Financial Officer. The said money was channelled to other accounts ending up with a Company registered in the United Arab Emirates.

[11] Accused 5 is alleged to have entered into a subcontracting agreement with Delloitte in an amount of R1 538 457.86 for the services that it charged the department R24 984 240.00 for. The state further alleges that accused 6 was in

[7] S v Chao and Others 2009 (1) SACR 479 (C) par. 44

charge of negotiations on behalf of accused 5 when the subcontracting agreement was entered into.

[12] The accused challenge the responses from the state on the basis that they do not specify individual role players in the alleged offences. In count 3 and 4 accused 7 and 8 are charged with Money Laundering and Fraud respectively. The indictment alleges that the money that was paid as a result of contracts which were entered into in violation of the constitution and the Public Finance Management Act were channelled through accused 7 and other companies associated with accused 8.

[13] Showing association is a matter of evidence which can only be cured during trial, the same goes with matters that require inferential reasoning. Issues raised by the accused in their requests for further particulars are matters of evidence. For the state to show that accused 6, who is a business man, knew that state institutions have to engage in competitive bidding processes to procure services for the amount alleged in the indictment would require inferential reasoning which can only be done through evidence.

[14] Having considered the indictment, the statement of facts provided by the state and the fact that the accused have access to the docket, I am of the view that Counsel for all the accused have adequate information to prepare for trial. I am satisfied that the information provided sufficiently informs all the accused of the case that they have to meet. Even if prejudice arises during trial the presiding Judge can always make an appropriate order to obviate a situation where the accused ‘s right to a fair trial is compromised. The application must fail.
In view of the above the following order is made:

ORDER

[15] The application brought by accused 6,7 and 8 in terms of s 87 of the Criminal Procedure Act, Act 51 of 1977 to compel the State to furnish further particulars, is dismissed

N.M. MBHELE, DJP

On behalf of the applicants: 6:	Adv Aldwage
Instructed by:	Schindler Attorneys
7 & 8:	Adv Hellens SC
Instructed by:	Krause Attorneys Incorporated
	BLOEMFONTEIN
On behalf of the respondent:	Adv Cassiem SC
	Adv Serunye
	Adv Witbooi
Instructed by:	The Director of Public Prosecutions
	BLOEMFONTEIN