

SOUTH AFRICA / JUDGMENT

S v Matodzi and Others (CC11/2021) [2024] ZAGPPHC 399 (26 April 2024)

[2024] ZAGPPHC 399**COURT**

North Gauteng High Court, Pretoria

BEFORE

Mabuse

CASE / FILE NUMBER

CC11/2021

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA****GAUTENG****DIVISION, PRETORIA****CASE****NUMBER: CC11/2021****DATE:**

26 April 2024

(1)

REPORTABLE: YES / NO

(2)

OF INTEREST TO OTHER JUDGES: YES / NO

(3)

REVISED

SIGNATURE

THE

STATE

V

TSHIFHIWA

CALVIN

MATODZI

Accused 1

ANDILE

MALUSI ATTWELL

RAMAVHUNGA

Accused 2

PHOPHI

LONDOLANI

MUKHODOBWANE

Accused 3

MULIMISI
SOLOMON
MAPOSA
Accused 4
NHLANHLA
KELVIN SIPHO
MALABA
Accused 5
PHALAPHALA
AVASHONI
RAMIKOSI
Accused 6
THIFHELIBILU
ERNEST
NESANE
Accused 7
PAUL
MAGULA
Accused 8
MMBULAHENI
ROBERT
MADZONGA
Accused 9
KABELO
JOHN
MATSEPE
Accused 10
MAMPHE
DANIEL
MSIZA
Accused 11
RALLIOM
RAZWINANE
Accused 12
TAKUNDA
EDGAR
MUCHEKE
Accused 13
TSHIANEO
MADADZH
Accused 14

JUDGMENT**MABUSE J**

[1] This matter conflates two applications, one by Accused 10 and the other by Accused 11, to compel the State to provide them with further and better particulars to enable them to plead to the charges against them and to prepare their defence accordingly. The applications are opposed by the State, which contends that it has satisfied all the requests for further particulars directed to it by the said accused.

THE BACKGROUND

[2] Accused 10 and 11 are charged, with their co-accused, with a total number of 186 counts. Of these counts Accused 10 faces 38 charges while Accused 11 faces only 8 counts, namely count 1, 3, 4, 5, 116, 118, 120 and 186:

[2.1] in count 1 Accused 11 is charged with contravention of Section 2(1)(e) read with sections 1, 2(2), 2(3), 2(4) and 3 of the Prevention of Organised Crime Act No. 121 of 1998 in that in or during the period 24 August 2015, up to 10 March 2018 and at or near the places as set out in counts 6 to 188 below, the Accused managed and/or were employed and/or were associated with enterprise as defined above and did directly or indirectly conduct and/or participate in the affairs of the enterprise to a pattern of a racketeering activities as set out in counts 6 to 188 below. In this count Accused 11 is charged with all the other accused;

[2.2] in count 3 Accused 11 is charged with contravention of section 2(1)(b) read with sections 1, 2(2), 2(3), 2(4) and 3 of the Prevention of Organised Crime Act No. 121 of 1998 in that in or during the period 24 August 2015 up to 10 March 2018 and at or near the places set out in counts 6 to 188 below, the Accused received or retained property, directly or indirectly, on behalf of the enterprise; and/or knew or ought reasonably to have known that such property was derived from or through a pattern of racketeering activities as set out in counts 6 to 188 below;

[2.3] in count 4 the Accused is charged with contravention of section 2(1)(d) read with sections 1, 2(2), 2(3), 2(4) and 3 of the Prevention of Organised Crime Act No. 121 of 1998 in that in or during the period 24 August 2025 up to 10 March 2018 and at or near the places as set out in counts 6 to 188 below, the Accused acquired or maintained, directly or indirectly, any interest in or control of any enterprise through a pattern of racketeering activities as set out in counts 6 to 188 below;

[2.4] in count 5 Accused 11 is charged with contravention of section 2(1)(g) read with sections 1, 2(2), 2(3), and 2(4) of the Prevention of Organised Crime Act No. 121 of 1998 in that in or during the period 24 August 2025 up to 10 March 2018 and at or near the places as set out in counts 6 to 188 below, the Accused conspired and/or attempted to violate the provisions of section 2(1)(b) and/or section 2(1)(d) and/or section 2(1)(e) and/or section 2(1)(f) of the Prevention of Organised Crime Act No. 121 of 1998, as set out in counts 1 to 4 above;

[2.5] in count 116, in which he appears alone, Accused 11 is charged with contravention of section 3(a) read with Sections 1, 2, 24, 25 and 26 of the Prevention and Converting of Corrupt Activities Act No. 12 of 2004 as amended in that in or during the period 11 July 2016 to 17 January 2018 and at or near Rivonia in the Johannesburg

North region magisterial district, Accused 11 unlawfully and intentionally, directly or indirectly accepted or agreed or offered

to accept a gratification, to wit the accumulative amount of R4,284,450.00, from another person, to wit Accused 1, Accused 2,

Accused 3 and Accused 10, whether for the benefit for the benefit of Accused 11 or for the benefit of another person in order to act, *in* personally or by influencing another person so to act in a manner that amounts to the illegal, dishonest, unauthorised,

incomplete, or biased exercises, carrying out or performance of any powers, duties or functions arising out of a statutory, contractual or any other legal obligation, to wit the solicitation of deposits of monies into VBS by municipalities in contravention of the provisions of the Municipal Finance Management Act 56 of 2003;

[2.6] in count 118, in which he appears alone, the Accused is charged with contravention of section 3(a) read with Section 1, 2, 24, 25 and 26 of the Prevention and Converting of Corrupt Activities Act No. 12 of 2004 as amended in that during or about the period 2016 and at or near the Fusion Boutique Hotel, Polokwane, in the Polokwane magisterial district, Accused 11 unlawfully or intentionally, directly or indirectly accepted or agreed or offered to accept gratifications from another person, to wit Accused 1 and Accused 3 to wit R200,000.00 cash for the benefit of Accused 11 in order to act, personally or by influencing another person so to act in a manner that amounts to the illegal, dishonest, unauthorised, incomplete or biased accessories, carrying out or performance of any powers, duties or functions arising out of the statutory, contractual or any other legal obligation, to wit the solicitation of deposits of monies into VBS by municipalities in contravention of the provisions of the Municipal Finance Management Act 56 of 2003 and the making of corrupt payments to various municipal officials, both known

and unknown to the State, in order to obtain such deposits of monies into VBS;

[2.7] In count 120 Accused 11 appears alone in Count 120 where he is charged with contravention of section 3(a) read with Sections 1, 2, 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act No. 12 of 2004 as amended; in that upon or about 13 February 2017 and at or near Mavuta Manor, Polokwane, in the Polokwane magisterial district, Accused 11 unlawfully or intentionally, directly or indirectly, accepted or agreed or offered to accept gratifications from another person, to wit Accused 1 and Accused 3, to wit R200,000.00 cash for the benefit of Accused 11 in order to act, personally or by influencing another person so to act in a manner that amounts to the illegal, dishonest, unauthorised, incomplete, or biased exercise, carrying out or performance of any powers, duties or functions arising out of a statutory, contractual exercise, carrying out or performance of any powers, duties or functions arising out of a statutory,

contractual or any other legal obligation, to wit the solicitation of deposits of monies into VBS by municipalities in contraventions of the provisions of the Municipal Finance Management Act, 56 of 2003, and the making of corrupt payments to various municipal officials both known and unknown to the State in order to obtain such deposits of monies into VBS.

- [3] By the request of further particulars dated 19 July 2023, Accused 11, acting in terms of the provisions of section 87 of the Criminal Procedure Act 51 of 1977 ("the CPA"), requested the State to provide him with further particulars. Section 87 of the CPA provides as follows:

"87

- (1) 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 or further 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: Provided that the provisions of this subsection shall not apply at the stage when an accused is required in terms of section 119 or 122A to plead to a charge in the magistrate's court.
- (2) The particulars shall be delivered to the accused without charge and shall be entered in the record, and the trial shall proceed as if the charge had been amended in conformity with such particulars.
- (3) In determining whether a particular is required or whether a defect in the indictment before a superior court is material to the substantial justice of the case, the court may have regard to the summary of the substantial facts under paragraph (a) of section 144
- (3) or, as the case may be, the record of the preparatory examination."
- [4] The further particulars that Accused 10 and 11 requested from the State are all contained in Annexure 'A' to the current application. Since such request forms part of the application, and in view furthermore, of the fact that they are massive, occupying 33 A4 pages, I do not deem it necessary to repeat them in this

judgment.

[5][1] By its response dated 14 September 2023, the State furnished Accused 11 with further particulars. A copy of such further particulars is attached to this application as Annexure 'B'. Similarly, since the response is also massive and occupies 28 pages, it is not necessary to cite them in this judgment. Moreover, they are part of the current application. On 21 September 2023, Accused 10 requested the State to furnish him with further particulars. The State furnished Accused 10 with what it regarded as further particulars on 28 September 2023.

- [6] Both Accused 10 and Accused 11 were disgruntled by the further particulars or lack of them as provided by the State. On 1 October 2028, Accused 11 requested the State to provide it with further and better particulars. A copy of this request for further and better particulars is attached to the current application as Annexure 'C'.

I do not intend repeating its contents in this judgment, suffice to emphasize that it constitutes part of this record. Similarly, on unknown date, Accused 10 requested the State to furnish him with further and better particulars. The State responded on 12 October

2023.

- [7] The State responded on 5 October 2023. It provided Accused 11 with what it regarded as further and better particulars.
- [8] Still Accused 10 and 11 were unhappy with the further and better particulars that the State had provided them with. Both complained that the State has not complied with their requests fully, hence these applications to compel. They seek the following

orders:

[8.1] an order directing the State to furnish them with the particulars set out in Annexure 'E' of their applications;

[8.2] an order directing the State to furnish them with further discovery as set out in Annexure 'F' of the applications;

[8.3] an order directing the State to discover all the documents in the docket whether it intends to utilize it;

[8.4] an order directing the State to furnish them with the information set out in paragraphs 1, 2 and 3 above within 5 days of the order or provide an affidavit why such information cannot be provided.

- [9] Still the State opposed the granting of the relief sought in those applications. Initially the State filed heads of argument by Mr van der Merwe in which he opposed the applications. Counsel for Accused 11 took issue with the heads of argument to oppose the application to compel. This is because in terms of section 87(2) of the CPA, such further particulars constitute part of the indictment, and the court is entitled to proceed as if the charge had been amended in conformity with such particulars. Mr van der Merwe was ordered by the court to file an affidavit in that regard, which he has done.

- [10] The starting point, in my view, is Section 84 of the CPA. This Section provides that:

“84

- (1) Subject to the provisions of this Act and of any other law relating to any particular offence, a charge shall set forth the relevant offence in such manner and with such

particulars as to the time and place at which the offence is alleged to have been committed and the person, if any, against whom and the property, if any, in respect of which the offence is alleged to have been committed, as may be reasonably sufficient to inform the accused of the nature of the charge.

- (2) Where any of the particulars referred to in subsection (1) are unknown to the prosecutor it shall be sufficient to state that fact in the charge.
- (3) In criminal proceedings the description of any statutory offence in the words of the law creating the offence, or in similar words, shall be sufficient.”

[11] The purpose of Section 84 of the CPA is that the charge must contain all the essential elements of the offence with which the accused is charged so that it informs the accused of the case the State wants to advance against him. The accused must be fully informed of the case he has to meet. In *S v Hugo* 1976 (4) SA 536 AD at page 546 E-F the court stated that:

“An accused person is entitled to require that he be informed by the charge with precision, or at least with reasonable degree of clarity, what the case is that he has to meet, and this is especially true of an indictment in which fraud by misrepresentation is alleged.”

This is all what fairness requires and that is now provided for in section 35(3)(a) of the Constitution of the Republic of South Africa Act 108 of 1996 (“the Constitution”) which states that:

“Every accused person has a right to a fair trial, which includes the right –

- (a) to be informed of the charge with sufficient detail to answer it.”

[12] All that section 84 prescribes is that the charges must be formulated clearly and in a proper language. It is essential that the charge must set out:

“12.1 The time or date on which the offence was committed;

12.2 The place where the offence was committed;

12.3 The person against whom the offence was committed;

12.4 The property in respect of which the offence was committed for the purpose of reasonably informing the accused of the nature of the offence he is facing.”

Subsection 84 (3) provides that:

“The offence can be described in the words of the statutory provision or in similar wording. The number of the Act or Regulation

contravened ought to be given.”

See also *R v Moyage and Others* 1958 (3) SA 400 (A) at page 413B:

“Draughtsman of charges would do well to remember that, as was again pointed out in R v Omarjee, 1955 (2) SA 546 AD (at page 549), slavish adherence to the words of statutes creating an offence can be – and regrettably, often is – productive of wholly unnecessary confusion; but the court must, in determining whether the charge contains particulars “reasonably sufficient to inform the accused of the nature of the charge” (Vide Section 315(1) of the Code), give effect to the provision in Section 315(2)(a) that:

“The description of any statutory offence in the words of the law creating the offence, or in a similar words, shall be sufficient.””

It continued further, on the same page and stated that:

“Where the charge sheet reasonably accurately follows the words of the statutes creating the offence, it discloses an offence. Where the charge sheet, although generally following the language of a statutory provision, omits a portion, it was laid down by this court in R v Omarjee supra at page 550, that one must enquire:

- (a) whether what is stated discloses an offence (for if it does not, the conviction cannot stand); and
- (b) whether, if an offence is disclosed, it is set forth in a manner that is reasonably sufficient to inform the accused of its nature.”

[13] I was referred by counsel for the State in his heads of argument to the case of S v Cooper and Others, 1976 (2) SA 875 (T) at page 885G-886 C, where the court had the following to say:

“These applications must be considered in the light of the pertinent provisions of the Criminal Procedure Act, 56 of 1955, and the

principles laid down in the decided cases. In terms of Section 315, a description of the offence in the words of the statutory

enactment is sufficient, but the charge must, at the same time, set forth the offence in such a manner as may be reasonably sufficient to inform the accused of the nature of the charge. See also R v Alexander and Others 1936 AD 445 at p. 457; R v Moyage and Others, 1958 (3) SA 400 (AD) at p. 413. If it does not, he may apply for further particulars under the provisions of sec 179, and the charge is to be regarded as amended in conformity with the further particulars furnished. The object of asking for further particulars is to enable the accused to know the case which is proposed to be made against him and thus to enable him to prepare his defence; R v Mokgoetsi, 1943 A.D. 622 at p. 627. The prosecution must therefore furnish particulars of the relevant or material facts which it proposes to prove but is under no obligation to disclose its evidence by which it proposes to prove the facts; R v Heyne and Others (1), 1958 (1) S.A. 607 (W) at p. 609. Care must therefore be exercised not to confuse particulars which may be essential to inform the accused fairly and reasonably of the case he has to meet with the evidence which may be tendered to prove the commission of the offence. There may however be cases where the obligation to furnish particulars of relevant or material facts may necessarily involve the

disclosure of evidence, such particulars must nonetheless be furnished. Whether an accused has been sufficiently advised of the extent of his participation in a criminal course of conduct is one of degree depending on the circumstances of each case and which ultimately reduces itself into one of fairness for the accused. *R v Adams and Others*, 1959 (1) SA 646 (Special Criminal Court, Pretoria) at p. 656. It follows from this that it is not always advisable to refer to decided cases where applications for further particulars have failed or succeeded; each case is decided on its own facts. An accused is not entitled to be informed of every detail of the case against him and the prosecution should not be tied down with further particulars in a way that would limit its case unfairly at the trial. Where for example particulars are unknown to the prosecutor, it is in terms of Section 315(3) sufficient to state that fact. The use of particulars is intended to meet a requirement imposed in fairness and justice to both the accused and the prosecution. Because of the nature of some of the arguments addressed to the court, it is appropriate to observe that the Court is in applications of the present kind not concerned with the ability of the prosecution to substantiate the facts it alleges and on which it bases its case (*R v Andrews and Others*, 1948 (3) SA 577 (Special Criminal Case, Johannesburg, at page 580). That will depend on the kind and quality of the evidence that it can muster at the trial. The Court is here also not concerned with the type of case where, because of the absence of a material allegation of fact no offence is disclosed in the charge which would be excipiable under the provisions of sec. 165(1). Nor is the Court, in the present instance, concerned with the type of case where there is a vague and general allegation of a fact which is an essential element of the charge, as for example in cases where the offence depends on words used and those words must be set out or described with sufficient particularity to enable the accused or the Court to see whether, if the allegations are proved, the offence is committed (*R v Raphoane* 1913 T.P.D. 241, *R v Mokgatle and Another*, 1952 (2) SA 124 (T).”

[14] Again the court was referred to the case of *S v Alexander and Others* 1954 (1) SA 249 (C) at 251 G-H where the court held the following in respect of the essentials of the charge:

“In terms of the law, the offences with which an accused person is charged, must be set forth in such a manner and with such particulars

as may be reasonably sufficient to inform the accused of the nature of the charge. This is provided for by Section 315 (1) of the Criminal Procedure Act, 56 of 1955. In considering whether this has been done, the court should exercise care not to confuse particulars which may be essential to warn the accused fairly and reasonably of the case which they have to meet, with the evidence which may be led in prove of the commission of the offence; it does not mean that the accused must be informed of every detail of the case against him.”

The court continued at page 252 E-F in respect of the particulars supplied in respect of the conspiracy and stated that:

“I have already given my views on these particulars supplied by the State to identify the accused with conspiracy. To my mind, the State need not go further at this stage than it has done. The State is not obliged to inform the accused of every particular of the case against them, but is entitled to allege in general terms that in addition to a large number of specific x-detailed, each accused also identified himself or herself with the conspiracy by supporting and furthering the interest of Y.C.C.C.”

- [15] Section 87(1) of the CPA sets out the principles that governs the request to be furnished with particulars or further particulars. The particulars or further particulars requested must be in relation to any matter alleged in the charge. This cause for a thorough examination of the charge sheet or indictment to establish what has been alleged. It is what has been alleged in the charge sheet that the State must, during the trial, prove with evidence. The charge must therefore contain all the material allegations of the offence. The accused must therefore plead to the charge that has been or has not been amended by any further particulars.
- [16] It is of paramount importance to point out the main rules as regards to principles of request for further and better particulars and the supply thereof, as are seen in both criminal and civil proceedings. The main difference in this regard is that in civil proceedings the further particulars are requested in respect of the cause of action whereas in criminal proceedings the further particulars are requested in respect of the indictment or the charge sheet. Now in *Curtis-Setchell, Lloyd and Matthews v Koeppen* 1948 (3) SA at 1028, the court dealt with the rules as regards to further particulars. It stated that “the rule as regards further particulars is simple and well-known. It is conveniently set out in Halsbury’s Law of England (Vol. 25) (Hailsham ed), para. 466 at p. 276), and it is to the effect that the function of particulars is to fulfil the following requirements:

“(a) to limit the generality of allegations in the pleadings. In respect of a criminal case, it will be to limit the generality of all the allegations in the indictment;

- (b) to define with precision the issues; and
- (c) to prevent the party asking for further particulars from being taken by surprise at the trial.”

- [17] It is important to know the remarks of various judges as to the ends which this procedure is not intended to serve. It is not intended to force an opponent to disclose the evidence he intends to rely on at a trial; it is not intended by a process of interrogatories to allow the cross-examination of an opponent or to provide an opportunity for a fishing expedition or to afford an excuse for delaying the proceedings. It is plainly not the purpose of the particulars to:

[17.1] enable either party to find out what evidence his opponent intends to rely on; nor

[17.2] to obtain information on which to build up an answer to the pleadings or indictment, in other words, information not about the opponent’s pleading or indictment but on matters arising out of the pleading or indictment pertinent only to his defence and not to his opponent’s allegations.

[18] The person who applies for particulars, in this instance, accused 10 and 11, must show some instances entitling him/her to, such as without the particulars which he seeks he would be embarrassed in pleadings or that he is unable to understand fully and in detail the case sought to be made against him. The request must be reasonable, and the particulars must be necessary for the purposes of pleading. The State cannot be forced to give accused 10 and 11 particulars which will enable him to build up his case. The State is, however, only obliged to provide them with such particulars or information as is relevant to the case. In *R v Moilwanyana and Others* (3) 1957 (4) SA 608 (T) at p. 617D-618A the court held the following:

“I think that I should say something about an application for further particulars such as was made in the present case. A very large number of questions were asked, and it seems to have been thought that when a number of questions are asked there is some duty upon the crime to answer each one. This is an erroneous view. An accused person is entitled to ask for such particulars as he reasonably requires to inform him what he is said to have done, and an application for further particulars to an indictment or charge should be limited in that way. It was not intended that every question which ingenuity might suggest should be put to the Crown-not with the purpose of gaining information to which the accused is entitled but, in an attempt, I cannot help thinking, to embarrass the crime.”

[19] Many questions are asked about the indictment. The duty of this court, at this stage, is to establish whether these questions have been answered, if not, what the reason for such failure is and what order this court should make in the circumstances. Before dealing with the questions and answers, it is necessary for me to consider the main argument advanced on behalf of accused 10 and 11 to support their demand for the extraordinary number and apparently relevant character of many of the questions. Both Accused 10 and 11 have piled up questions upon questions.

[20] THE HISTORY OF THE REQUEST FOR FURTHER PARTICULARS BY ACCUSED 10 AND 11:

[20.1] According to the State, it provided accused 10 and accused 11 each with a detailed indictment on 12 March 2021 when they appeared for the first time before court. These are the counts in which:

[20.1.1] Accused 10 appears with his co-accused in counts 1, 3, 4, 5, 185 and

186 in which they are all charged with contravention of various provisions of POCA and in which he appears alone in counts 29, 54, 56, 58, 60, 62, 64, 66, 68, 70, 72, 74, 76, 78, 80, 82, 84, 86, 88, 90, 92, 96, 98, 100, 102, 104, 106, 108, 110, 112 and 114 which involved the contravention of either Section 3(a) and/or Section 3(b) of the

Prevention and Combatting of Corruption Activities Act 12 of 2004;

[20.1.2] Accused 11 appears with his co-accused in counts 1, 3, 4, 5, 116, 118 and 120.

[20.2] According to the State, an electronic copy of the docket was handed to all the fourteen accused, including Accused 10 and 11 on 12 May 2021. Further electronic disclosures of additional statements were handed to all the accused on 16 March 2022, 9 October 2023 and 16 November 2023.

[20.3] On July 2023, Accused 11 requested the State, in terms of Section 87 of the CPA, to furnish him with further particulars. The State obliged on 14 September 2023 by furnishing Accused 11 with what it deemed to be further particulars.

[20.4] On 21 September 2023, accused 10, acting in terms of Section 87 of the CPA, requested the State to furnish him with further particulars and the State responded on 28 September 2023.

[20.5] On 1 October 2023, the State received from Accused 11 a request for further and better particulars, in terms of section 87 of the CPA, and the State responded on 5 October 2023.

[20.6] On 5 October 2023, the State was served by Accused 10 with a request for further and better particulars in terms of Section 87 of the CPA. The State responded on 12 October 2023.

[20.7] Accused 10 and 11 are not satisfied with the State's responses hence these applications to compel, which the State is opposing on the grounds that:

[20.7.1] it has complied with the request for further particulars;

[20.7.2] the further particulars requested constitute evidence; or

[20.7.3] the State is not in possession of the further particulars requested;

[20.7.4] that the State has already disclosed all the evidential material contained in Pretoria Central CAS, 1058/05/2019 and furthermore that the State can only disclose what is contained in the docket or falls within its domain; or

[20.7.5] the State has discovered all the documents in the Pretoria Central

THE REQUEST FOR FURTHER PARTICULARS BY ACCUSED 10 AS CONTAINED IN ANNEXURES 'E' AND 'F' TO THE APPLICATION TO COMPEL

[21] Accused 10 requests the State to furnish him with the written particulars and/or further particulars to enable him to prepare for trial and formulate his defence in respect of the charges.

[22] At the pain of repetition, according to the indictment, Accused 10, is charged individually and/or together with his co-accused with the following counts:

[21.1] Counts 1, 3, 4, 5, 185 and 186 which are charges of contravention of the various provisions of the Prevention of Organised Crime Act 121 of 1998.

[22.2] Counts 29, 54, 56, 58, 60, 62, 64, 66, 68, 70, 72, 74, 76, 78, 80, 82, 84, 86, 90, 92, 94, 96, 98, 100, 102, 104, 106, 108, 110, 112 and 114 which are contravention of either Section 3(a) and/or 3(b) of the Prevention and Combatting of Corrupt Activities Act 20 of 2004.

[23] Accused 10 was unhappy with the further particulars that the State had provided him with. As a result, he brought an application to compel the State to furnish him with full and better particulars. Those requests are contained in Annexures “E” and “F” to Accused 10’s application to compel.

[

[23] Annexure ‘E’:

[23.1] AD paragraph [1] of Annexure ‘E’:

[23.1.1] Accused 10 wants the State to be compelled to specify the date and place the State alleges that Accused 10 met with Accused 1 to be introduced to the existence of the enterprise.

[23.1.2] In response, the State referred Accused 10 to its response to question

[2.1.3] of the further and better particulars it provided Accused 10 with on 28 September 2023 in which it gave a lengthy explanation.

[23.1.3] In my view, the State has, in the said paragraph [2.1.3], provided

Accused 10 with full and better particulars.

[24] AD paragraph [3] thereof:

[24.1] Accused 10 requests:

“Details of where in Rivonia it alleged that Accused 10 joined and/or associated himself with the activities and/or affairs of the

enterprise.”

[24.2] In response, the State stated that it will be a matter of evidence that Accused 1, Accused 2 and Accused 3 were all based at the VBS Corporate Office in Rivonia.

[24.3] The further and better particulars herein now had been furnished. The answer is simply “at the VBS Corporate Office in Rivonia”.

[25] AD paragraph [4] thereof:

[25.1] The further and better particulars requested herein are:

“The exact location in Midstream and/or Midrand where the State alleges that Accused 10 received gratification from Accused 1, Accused 2 and Accused 3 in certain counts.”

[25.2] In response, the State referred Accused 10 to Accused 10’s address at page 2 of the indictment and also the docket for branch details of bank accounts as set out in paragraph [141] of the general preamble to the indictment.

[26] AD paragraph [5] thereof:

[26.1] In paragraph [5] of Annexure 'E', Accused 10 wants to know the exact location in Rivonia that the State alleges Accused 10 received gratification from Accused 1, 2 and 3 for his benefit or for the benefit of Accused 11 as alleged in counts 114 and 115 respectively.

[26.2] The further and better particulars furnished by the State is that Accused 1, 2 and 3 were all based at the VBS Corporate Office in Rivonia. In brief, the exact location in Rivonia is the VBS Corporate Office in Rivonia.

[27] AD paragraph [6] and [7] thereof:

[27.1] The State's response to the request for further and better particulars contained in paragraphs [6] and [7] of Annexure 'E' is that the further particulars provided clearly state the State is not able to allege that Accused 10 offered and/or gave a gratification to each municipal officer involved in each count. The State then provided a further and clear explanation of what it alleges.

[27.2] The State has, in my view, furnished a reasonable response and sufficient explanation to enable Accused 10 to understand the charge against him.

[28] AD paragraph [8] thereof:

[28.1] In this paragraph, Accused 10 requested information regarding the municipalities which have investment policies and/or information with whom the power to invest and/or to re-invest lie in those in municipalities that Accused 10 is said to have influenced and/or solicited.

[28.2] In response, the State explained what:

[28.2.1] Regulation 6(c) of the Municipal Investment Regulations of the MFMA;

[28.2.2] Regulation 2 of the Municipal Regulations provide.

[28.2.3] The State has, in my view, furnished Accused 10 with a reasonable explanation.

[29] AD paragraph [9] thereof:

[29.1] In this paragraph, Accused 10 wants the State to point out in the statement of Mr Nemabubeni (A539) and the statement of Ryan Sacks (A758) where the names of the municipal officers are mentioned. Furthermore, the State was requested, in the same paragraph, to provide objective facts for inferences to be drawn or similar facts to be relied upon in respect of this aspect.

[29.2]

The State responded correctly in respect of the first part of the request. Accused 10 must read those statements.

[29.3]

The court is, in the second part of the request, requested to compel the State to furnish him with evidence. A court may be disinclined to do so. It is not the purpose of a request for further and better particulars to compel an opponent to produce or divulge evidence in he/she/it intends using at trial to prove its case.

[30] AD paragraphs [10] to [14] thereof:

[30.1] In respect of the request for further and better particulars contained in paragraphs [10] to [14] of Annexure 'E', the State has referred Accused 10 to paragraph [6] of the General Preamble to the indictment for the POCA definition of what property is. Furthermore Accused 10 is referred to paragraphs [141] to

[155] of the General Preamble to the indictment. The further and better particulars Accused 10 requested will be found there.

[31] AD paragraph [15] thereof:

[31.1]

Accused 10 applies for an order compelling the State to provide him with information regarding when and how he, Accused 10, gained overall control of VBS Financial System.

[31.2] The State responded that it is not alleged that Accused 10 gained any overall control of VBS Financial System. Furthermore, the State has referred Accused 10 to paragraphs [15], [16], [17] and [18] of the Summary of Substantial Facts of the indictment.

[32] AD paragraph [16] thereof:

[32.1] The further and better particulars requested by Accused 10 in paragraph [16] of Annexure 'E', have been fully answered by the State in paragraph [41] of its response. In my view, sufficient particulars have been provided.

[33] AD paragraphs [17] and [20] thereof:

[33.1] In its response to the further and better particulars requested in these two paragraphs, the State has pointed out that those further particulars constitute evidence.

[34] AD paragraph [18] thereof:

[34.1] Accused 10 request the State to specify those municipalities that invested and/or re-invested and received invested or re-invested amounts back and those that did not.

[34.2]

According to the State's response, the further and better particulars so requested constitute evidence. For that reason, the State refuses to divulge them. The State has nevertheless disclosed that a certain Mr Anush Rooplal and Mr Walter Stander will testify in this regard. By providing these further particulars indirectly, the State replies that the evidence so requested may be found in the statement of Anush Rooplal and Mr Walter Stander.

[35] AD paragraph [19] thereof:

[35.1] In this paragraph, Accused 10 applies for an order in terms of which the State is compelled to provide him with:

“The date, time, place and by whom Accused 10’s device was seized, data, extracted and analysed.”

[35.2] According to the State, Accused 10’s device was seized during the Motau inquiry. The data was extracted and analysed during he said inquiry.

[36] Annexure ‘F’ of Accused 10’s application to compel:

[36.1] AD paragraph [21] thereof:

[36.1.1] The State’s response to the further and better particulars requested herein is that a full data/report of all communications, in the form of WhatsApp messages, SMM messages, and emails between Accused 10 and the other Accused extracted from Accused 10’s devices during the Motau inquiry, were provided to his attorneys on 22 November 2023.

[37] AD paragraph [22] thereof:

[37.1] In this paragraph, Accused 10 requested to be provided with the cell phone record/data obtained under the subpoena issued on 2 March 2021 (A844).

[37.2] The State’s response herein was that the cell phone records obtained in terms of section 205 subpoena issued on 2 March 2021 were disclosed as A845.

[38] AD paragraph [23] thereof:

[38.1] Accused 10 requests in this paragraph, to be provided with the full transcript of the Advocate Motau SC’s Inquiry.

[38.2] The State has responded to this request by stating that the full transcripts of the Motau SC’s Inquiry were already provided to Accused 10’s attorney.

[39] AD paragraph [24] thereof:

[39.1] The State’s response to the information requested in paragraph [24] of Annexure ‘F’ is that the full Motau’s report with appendices ‘A’, ‘B’, ‘C’, and ‘D’ were already provided to Accused 10’s instructing attorneys.

[40] AD paragraph [25] thereof:

[40.1] Accused 10 requested to be provided with the witness statement indicating the date, time, place and by whom his device was seized, data extracted and analysed.

[40.2] According to the State, Accused 10’s device was seized during the Motau Inquiry, the data was extracted and analysed as part of the Motau Inquiry.

[41] AD paragraph [26] thereof:

[41.1] In this paragraph, the State was requested to provide a loan book and it refused to do so, saying that the request is not reasonably necessary to inform the accused of the nature of the charge. It does not form part of the docket and the State is not able to provide it. In this regard:

“26.1 In count 114 Accused 10 is charged with contravention of section 3(d) of PRECCA in that he received gratification in the cumulative amount of R7,895,954.59 in the form of loans.

26.2 In paragraph [14] of the summary of substantial facts, the State has averred that there was a general deficiency in the monies received by VBS amounting to R2,296,599,008.00.”

[41.2] Accused 10 is entitled to the loan book.

“26.3 The loan agreement between VBS and Accused 10.

26.4 Accused 10’s statement of accounts for all his loans in VBS.”

[41.3] In its response, the State stated that the statement by Ryan Sacks, filed as A758, sets out the benefits attributed to Accused 10. A758 has already been disclosed. These benefits include loans and

other payments made to Accused 10 and Moshate Investments. This information

is sufficient to inform Accused 10 of the nature of the charges against him. The available agreements are discussed in A758. The EMID accounts for each of the facilities granted to Accused 10 are discussed in A758 by Ryan Sacks.

[42] AD paragraph [27] thereof:

[42.1] The State is compelled to provide Accused 10 with the copies of the agreement between Accused 1, 2, 3, 11 and himself entered in the period during 11 July 2016 and January 2018.

[42.2] The State responded by saying that it is not in possession of the agreements entered into between Accused 1, 2, 3, 11 and Accused 10.

[43] AD paragraph [28] thereof:

[43.1] In this paragraph, Accused 10 requested to be provided with copies of all invoices paid to Moshate Investments and/or Accused 10 as well as corresponding payment honouring those invoices from VBS.

[43.2] In its response the State stated that an agreement between VBS and Moshate Investments were not signed by the parties and as discussed in A758 by Ryan Sacks.

[44] AD paragraph [29] thereof:

[44.1] The State was required to provide copies or invoices paid to Moshate Investments and/or Accused 10 as well as corresponding payment honouring those invoices from VBS.

[44.2]

The State responded by saying that invoices on which payments were made to Moshate Investments by VBS are discussed by Ryan Sacks in statement A758.

[45] AD paragraph [30] thereof:

[45.1] Accused 10 requires the statement of witness that Accused 10 was involved with the activities of the enterprise from July 2016 at or near Fusion Boutique Hotel.

[45.2] In this regard, the State referred Accused 10 to Mr Mmuso Pelesa's statement filed as A824 and expanded on during consultation.

[46] AD paragraph [31] thereof:

[46.1] The statement of witness that Accused 10 influenced or solicited municipal officials to deposit money in VBS.

[46.2] The State referred in this regard to Mr Sassa Nemabubuni's statement filed as A539 and indicated that it shows Accused 10's involvement in influencing and/or solicitation of municipal officials to make municipal investments with VBS. A539 has already been disclosed. The statement discusses his involvement in every municipality that he dealt with.

[47] AD paragraph [32] thereof:

[47.1] Accused 10 requested the following further and better particulars in this regard:

"The statement listing all officials who were offered and/or given gratification by Accused 1 to invest or re-invest."

[47.2] The State responded that all municipalities are established in terms of the Provisions of the Municipal Structures Act 117 of 1998. Municipalities are subject to the provisions of the Local Government Municipal Finance Management Act 56 of 2003. The State gave thereafter a detailed explanation about the Municipal Finance Management Act.

[48] AD paragraph [33] thereof:

[48.1] There is no response to paragraph [33] of Accused 10's request as contained in Annexure 'F'.

[49] AD paragraph [34] thereof:

[49.1] The State was requested to provide Accused 10 with copies of the section 205 subpoenas which were issued to all Cellular Network Service Providers that resulted in the State being in possession of the recently discovered cell phone contract data of all accused persons.

[49.2] The State's response is that all section 205 subpoenas served on Cellular Network Service Providers for the cell phone records of the accused were already disclosed under A27, A28, A211, A840 and A844.

[50] AD paragraph [35] thereof:

[50.1] Accused 10 requested to be provided with the balance of the dockets that the State has not disclosed to date. There is no response to this request.

ACCUSED 11'S APPLICATION TO COMPEL

[21] Accused 11 applies that the State be compelled to furnish him with the further and better particulars as set out in Annexures 'E' and 'F' to his application to compel.

[22] Annexure 'E'

[22.1] AD paragraph [1] thereof:

[22.1.1] In paragraph [1] of Annexure 'E', Accused 11 applied for an order compelling the State to furnish him with the following further and better particulars:

"The source of the information that Accused 11 was involved with the activities of the enterprise from 11 July 2016, including such activities."

[22.1.2] The State responded by referring Accused 11 to paragraph 1.8 of the further particulars it provided him with on 14 September 2023. In the said paragraph 1.8, the State had referred Accused 11 in response to:

[22.1.2.1] A824 statement by Mr Mmuso Solomon Wesley Palesa;

[22.1.2.2] A539 statement by Mr Nenabubuni;

[22.1.2.3] A324 statement by a municipal;

[22.1.2.4] A324 statement.

In these statements, the State believed honestly that Accused 11 would find the full and better particulars he was looking for. It goes without saying that the State would not have referred Accused 11 to those statements if such statements did not contain what the State believed to be the full and better particulars that Accused 11 was looking for. The Court is of the view that, in the circumstances, the State has furnished Accused 11 with the full and better particulars. Therefore, Accused 11 requires no further and better particulars. The Courts holds the same view.

[22.2] AD Paragraph [2] of Annexure 'E':

[22.2.1] In this request, Accused 11 has applied to this Court that the State should be compelled to furnish him with the following full and better particulars:

"To specify whether Accused 11 influenced, intervened, solicited, or instructed officials and to provide particulars of how it was done."

[22.2.2] Again the State responded by referring Accused 11 to paragraph [1.8] of the further particulars dated 14 September 2023. It indicated further that the full and better particulars requested constitutes evidence, which is correct. Once accused request full and better particulars on:

“to provide particulars of how it is done”, then the request obviously requires an explanation of how that was done. That explanation constitutes the giving of evidence.

[22.2.3] A request for further and better particulars is not intended to force an opponent to divulge the evidence he intends to rely on at the trial.

[22.2.4] So, the State was correct to refuse the full and better particulars “of how it was done”.

[22.3] AD paragraph [3] thereof:

[22.3.1] The State has furnished Accused 11 with the further and better particulars requested herein by stating that Accused 1, 2 and 3 were all based at the VBS Corporate Office in Rivonia.

[22.4] AD paragraph [4] of Annexure ‘E’”

[22.4.1] Accused 11 requested:

“The exact location in Rivonia that the State alleges Accused 11 received gratification from Accused 1, 2, 3 and 10, as alleged in counts 116 and 186.”

[22.4.2] The State responded by referring Accused 11 to paragraphs [141] to

[150] of the General Preamble to the indictment and to paragraphs [53], [54] and [56] of the Summary of Substantial Facts and stated, in addition, that Accused 1, 2 and 3 were all based at the VBS Corporate Office in Rivonia.

[22.4.3] Accused 11 did not request the State to furnish him with any evidence.

[22.5] AD paragraph [5] thereof:

[22.5.1] In paragraph [5] of Annexure ‘E’, the Accused requests:

“The exact breakdown of how much Accused 11 is said to have received from Accused 1, 2, 3 and 10 respectively as alleged in count 116.”

[22.5.2] The State’s response, which in my view, is adequate, is that it will be argued that the payments were made in terms of a common purpose. For that reason, those payments cannot be allocated to any specific accused.

[22.6] AD paragraph [6] thereof:

[22.6.1] In this paragraph, Accused 11 requested the State to furnish him with:

“The full details of the agreements of the (dates, place, parties, material terms etcetera) including a copy thereof as alleged in count 186.”

[22.6.2] The State replied by saying that:

“It is not in possession of the said agreement. Section 84(2) of the CPA provides that where any of the particulars referred to in subsection (1) are unknown to the prosecution, it shall be sufficient to state that fact in the charge sheet. The State continued and stated that it was not aware of the existence of such a copy.”

[22.6.3] The indictment does not state that Accused 1, Accused 2, Accused 3,

Accused 10 and Accused 11 are lawfully entered into a written agreement. Therefore, Accused 11 could not have requested to be furnished with a copy of the agreement referred to in count 186.

[22.7] AD paragraph [7] thereof:

[22.7.1] Accused 11 requested, in this paragraph, the source of the information that “Accused 11 received R200,000.00 on 30 May 2017”.

[22.7.2] According to the State, the cryptic answer is that the source is Mr Nemabubuni. The State gave further details that Mr Nemabubuni made a reference to two cash payments in his statement and that during consultation he realised that the payment at Fusion Hotel was made on 30 May 2017.

[22.7.3] In the premises, I am of the view that the State has, in this respect, furnished Accused 11 with full and better particulars.

[22.8] AD paragraph [8] thereof:

[22.8.1] Accused 11 request for:

“The objective facts from which the State intends inferences to be drawn or to rely on similar facts.”

[22.8.2] In my view, strictly speaking, the full and better particulars requested under this paragraph clearly constitute evidence and Accused 11 is not entitled to them. I have already stated somewhere supra that a request for further particulars is not intended to force an opponent to disclose the evidence he intends to rely on at the trial.

[22.8.3] Notwithstanding the fact that the further particulars requested herein constitute evidence, the State has opted to respond to it by furnishing further particulars after stating that the requested particulars constitute evidence.

[22.9] AD paragraph [9] thereof:

[22.9.1] Accused 11 wants to be provided with the following further and better particulars:

“The two bank account details from which the amount of R200,000.00 were withdrawn.”

[22.9.2] Firstly, the details or further and better particulars requested herein are irrelevant for purposes of the plea. Strictly speaking, they are not reasonably required by Accused 11 for plea purposes.

[22.9.3] Secondly, they constitute evidence. I therefore agree with the State's response.

[22.9.4] Accused 11 is accordingly not entitled to be furnished with evidence on which at trial the State intends relying.

[22.10] AD paragraphs [10] and [12] thereof:

[22.10.1] Accused 11 request this Court to compel the State to furnish it with:

"The names of all the officials that Accused 11 is said to have intervened and/or instructed and/or intervened with."

[22.10.2] The State has refused to furnish Accused 11 with these particulars by reason of the fact that Accused 11 is already in possession of these particulars. According to the State, Accused 11 has already, in the past, requested the State to furnish him with similar further particulars and the State has already done so.

[22.10.3] A party is not entitled to repeatedly request to be furnished with the same further particulars and secondly, with further particulars with regard to matters already in his possession.

[22.11] AD paragraph [11] thereof:

[22.11.1] Accused 11 requests the following further and better particulars:

"The particulars of how it is alleged accused 11 influenced officials on any other day other than the allegations of the Meeting of 19 September 2016."

[22.11.2] Firstly, once a request contains the word "how", such a question requires an explanation. Often, such an explanation implies the giving of evidence. So, in essence, a request such as the present one, vouched in that manner, invariably a requests to be provided with evidence. Accused 11 therefore, requested to be furnished with full and better particulars, which constitute evidence. He would not be entitled to such particulars.

[22.11.3] Despite the fact that the further and better particulars herein constitute evidence, the State has opted to respond to it by stating that it will at the trial rely on hearsay evidence.

[22.12] AD paragraph [13] thereof:

[22.12.1] In this regard, the State has, in respect of Accused 11's

request in this paragraph, furnished the accused with comprehensive further and better particulars.

[22.12.2] Besides, Accused 11 does not reasonably require these particulars to plead.

[22.13] AD paragraph [14] thereof:

[22.13.1] Accused 11 requested the State to:

“Specify those municipalities that invested and/or reinvested and received the, or reinvested amounts back and those that did not.”

[22.13.2] The State responded by stating that this is a matter for evidence.

I agree.

[22.13.3] Secondly, Accused 11 does not, strictly speaking, require these particulars to plead.

[22.14] AD paragraph [15] and [16] thereof:

[22.14.1] Accused 11 requested the State to be compelled to furnish him with the following further and better particulars:

“Provide information regarding where and how Accused 11 indirectly offered or agreed to offer any gratification to any of the officials of municipalities to invest or re-invest.”

[22.14.2] Firstly, two questions are enveloped in this question. It is of crucial importance that a party that requests further particulars do so succinctly and clearly to make it easier and simpler for his or her opponent to respond properly.

[22.14.3] The State’s response was that it is not in possession of the evidence.

[22.14.4] Furthermore, where the request continues with the word “how”

the details that Accused 11 requests constitute evidence. The State may not be compelled to divulge to evidence it intends using at trial.

[22.14.5] Therefore, Accused 11 is not entitled to these particulars.

[22.15] AD paragraph [17] thereof:

[22.15.1] “Accused 11 applied for the State to be ordered to provide objective facts for inferences to be drawn or similar facts to be relied on in questions 22.2.3 of the original request.”

[22.15.2] The information requested constitute evidence to which Accused 11 is not entitled.

[22.15.3] The State has however responded to the request. It’s response is evidence, viva voce and documentary of, among others, transactions, communications, payments and financial analysis.

[22.16] AD paragraph [18] thereof:

[22.16.1] The State is requested by Accused 11 to answer questions 22.2.6 to 22.7 in his request.

[22.16.2] The State's response is that this issue was answered during the previous request for further particulars and that the State need not add anything further. I agree.

[22.17] AD paragraph [19] thereof:

[22.17.1] The State is requested to:

"Indicate when and how Accused 11 gained overall control of the financial system of VBS."

[22.17.2] The State's response is that "it has never alleged that Accused 11 gained control of the financial system of VBS. In addition, it referred Accused 11 to

paragraphs [15], [16], [17] and [18] of the Summary of Substantial Facts of the indictment."

[22.18] AD paragraph

[20] thereof:

[22.18.1] The State has confirmed the statement as contained in this paragraph.

[22.19] AD paragraph [21] thereof:

[22.19.1] The State has responded to the request contained in this paragraph by stating that the question contained therein has already been answered. It states furthermore that the State clearly states

whether the information is derived from the Motau SC's Commission.

[23] Annexure 'F'

[23.1] AD paragraph [2] thereof:

[23.1.1] In this paragraph Accused 1 requested the State to provide him with the VBS loan book.

[23.1.2] The State's response was that the VBS loan book was not necessary to inform Accused 11 of the nature of the charge against him. I agree with the State. I cannot fathom out how, in terms of section 84 of the CPA, the VBS loan book is relevant to Accused 11's plea.

[23.1.3] Over and above, the State refused to provide Accused 11 with the VBS loan book, and in my view quiet correctly so, on the ground that the loan book contains personal information of all VBS' clients and

therefore disclosing it would be violation of the Protection Of Personal Information Act 4 of 2018 ("POPI").

[23.2] AD paragraph [23] thereof:

[23.2.1] With regard to the application to compel the State to furnish it with full and better particulars as contained in paragraph

[22] of Annexure 'F', the State has made it clear that it is not in possession of the agreement between Accused 1, 2, 3, 10 and 11 entered during 11 January 2026 and January 2028.

[23.3] AD paragraph [24] thereof:

[23.3.1] In this request, contained in paragraph [24] of Annexure 'F', Accused 11 applied for an order that the State should furnish him with:

"The statement of a witness that Accused 11 was involved with the activities of the enterprise from July 26 at or near Fusion Boutique

Hotel."

[23.3.2] In response, the State referred Accused 11 to Mmuso Pelesa's statement filed as per A824 in the docket and expanded during the constitution.

[23.4] AD paragraph [25] thereof:

[23.4.1] In this paragraph of Annexure 'F', Accused 11 applies for an order compelling the State to furnish it with:

"The statement of a witness that Accused 11 instructed municipal officials to deposit in VBS."

[23.4.2] The State furnished Accused 11 with the relevant statement. It referred Accused 11 to the statement of Mr Sasa Nemabubuni filed as A539. This statement shows Accused 11's involvement in influencing and/or solicitation of municipal officers to make municipal investments with VBS. According to the State, Accused 11 is already in possession of A539 statement.

[23.5] AD paragraph [26] thereof:

[23.5.1] In respect of this request, Accused 11 was referred to A539, which statement Accused 11 already possesses. This statement, so contends the State, of Mr Sasa Nemabubuni refers to the R200,000.00 received by Accused 11.

[23.6] AD paragraph [27] thereof:

[23.6.1] Accused 11 applies for an order compelling the State to furnish him with:

"27. The Statement listing all officials who were influenced by Accused 11 to invest or re-invest."

[23.6.2] The State responded by stating that it does not have in its possession a list of officials influenced by Accused 11 to invest or re-invest with VBS.

[23.6.3] But the State referred Accused 11 to the statement A539.

[23.7] AD paragraph [28] thereof:

[23.7.1] Accused 11 has applied to court for an order compelling delivery to him of:

"Bank statements of the accounts from which the two amounts of R200,000.00 in counts 118, 120 were allegedly withdrawn."

[23.7.2] The State is not in possession of bank statements that shows the withdrawal of the two R200,000.00 amounts referred to in count 118 and count 120, so responded the State.

[23.7.3] Apart from the State's response, the further and better particulars requested in this paragraph are, strictly speaking, not necessary for purposes of the plea. The accused does not require them to plead.

[23.8] AD paragraph [29] thereof:

[23.8.1] Accused 11 wants the Court to:

“compel the State to furnish him with the information requested from the South African Police Services on 5 October 2021.”

[23.8.2] The State has informed Accused 11 that it does not have, in its possession, the requested information from the South African Police Services.

[23.9] AD paragraph [30] thereof:

[23.9.1] In paragraph [30] of Annexure 'F', Accused 11 wants the Court to compel the State to:

“Provide him with annexures to Motau SC's enquiry.”

[23.9.2] According to the State, it has already provided Accused 11 with annexures to the Mudau report. This was furnished to Accused 11's attorneys.

[23.10] AD paragraph

[31] thereof:

[23.10.1] Accused 11 wants the State to be compelled to provide him with the full transcripts of Mudau SC's enquiry.

[23.10.2] The State responded that it already has provided Accused 11's attorneys with the full transcripts of Motau's enquiry.

[23.10.3] Once again, this request is irrelevant for Accused 11's plea.

[23.10.4] I would urge Accused 11's legal team to refrain from asking for further particulars or issues which are already unrelated to the indictment. It takes the Judge's time to pay attention to irrelevant requests.

[23.11] AD paragraph [32] thereof:

[23.11.1] In this paragraph of Annexure 'F', Accused 11 asked the Court to compel the State “to provide him with investment policies of all municipalities that he is said to have influenced.”

[23.11.2] The State has furnished Accused 11 with a comprehensive explanation.

[23.11.3] Again this is an instance of Accused 11's legal team asking for particulars not connected to the indictment.

[24] The offences with which Accused 10 and 11 are charged are all statutory offences. In terms of s 84(3) of the CPA, an offence can be described in the words of the statutory provision or in similar wording. The number of the Act or regulation contravened ought to be given. The State has, in all the charges levelled against the accused 10 and 11, done so. Where the two accused are charged under the provisions of the Prevention of Organised Crime Act No. 121 of 1998, it has referred to the relevant sections of this said Act, which Accused 10 and 11 have contravened. Similarly, where they are charged under the provisions of the Prevention and Combating of Corrupt Activities Act No. 12 of 2004, the State has referred to the relevant sections which the accused have allegedly contravened.

[25] In my view, the State has, in all respect, satisfied the requirements of s 84 (3) of the CPA. The State has, accordingly, satisfied the requirements of *S v Moyage* and others *supra*. The court must therefore conclude that as the indictment reasonably accurately follows the words of the statute creating the offences, all the offences against Accused 10 and 11 disclose offences. The accused 10 and 11 should therefore be able to plead and to prepare their defence.

[26] In these applications, a very large number of questions have been asked. It would appear that Accused 10 and 11 had thought that when a number of questions are asked, there is some duty on the State to respond to each one of them. This, in my view, is a fallacy. Some of the questions required further and better particulars which were already in the possession of the Accused, e.g. questions which had to be requested and answered in the previous step. Other questions required the State to disclose its evidence. The accused should have known that the State would not be prepared to divulge its evidence in its further particulars.

[27] Many questions have been asked about the document. The court is satisfied the State has answered those questions adequately and that it need not go further than it has done. I am satisfied that the State has furnished Accused 11 with all the further and better particulars and disclosure to make them understand the charges against them.

In the result, the following order is made respect of both applications;

The applications of accused 10 and 11 to compel the State to furnish them with full and better particulars are hereby refused.

PM MABUSE

JUDGE OF THE HIGH COURT

Appearances:

Counsel for the Accused 10: Adv Zakwe Instructed by: Attorneys Joseph Maluleke (Maluks Attorneys) Counsel for Accused 11 Advocate William Mokhare SC Assisted by Adv Naomi Manaka Instructed by: Mr Joseph Maluleke (Maluks Attorneys) Counsel for the State: Adv JH Van Der Merwe Assisted by : Adv S Veenemans Instructed by: Director of Public Prosecution, Pretoria
Date heard: 18 March 2024 Date of

Judgment:

26 April 2024

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