

IN THE DISCIPLINARY INQUIRY

HELD AT NORTON ROSE FULBRIGHT, SANDTON

Between:

SASCOC

and

SANDRASAGREN (TUBBY) REDDY

VINESH MAHARAJ

JEAN KELLY

FINDINGS OF DISCIPLINARY INQUIRY

INTRODUCTION

1. This is a disciplinary inquiry between SASCOC (the employer¹) and Mr Reddy, Mr Maharaj and Ms Kelly (the employees), who are the employer's CEO, CFO and executive manager, respectively. The employees face the charges of misconduct reproduced verbatim in annexure "A" hereto.
2. The disciplinary inquiry was held on 4 - 7 December 2017. On 4 December, I refused an application by the employees for a postponement, whereupon the inquiry commenced in their absence. Evidence was heard on that day and then on 5 and 6 December from a total of six witnesses (Messrs

¹ I use the terms SASCOC and the employer interchangeably below.

Subramoney,² Stevens,³ Marais,⁴ Cobers⁵ and Sam,⁶ and Mrs Vardhan⁷). On 7 December, the employer presented closing argument in support of its case.

3. The structure of these findings is as follows. Firstly, I provide my reasons for refusing the application for a postponement. Secondly, I deal with the charges of misconduct brought against each of the employees. Thirdly, I give my recommendation on sanction. The intention throughout is to provide no more than brief reasons for my findings, with no attempt being made to summarise the entirety of the evidence (which was recorded and will presumably be transcribed in due course). The charges set out in annexure “A” hereto should be read as if incorporated into my findings, thus avoiding the need to reproduce them in the course hereof.

REFUSAL OF A POSTPONEMENT

4. As mentioned above, the employees applied for a postponement at the outset of the disciplinary inquiry on 4 December 2017 – this in circumstances where they had been advised of the dates of the inquiry as far back as 31 October 2017. The application was moved by Mr Maharaj of DMA Inc, the employees’ erstwhile attorney. The application was based on these three legs: (i) Mr Reddy was ill; (ii) the employees had not placed Mr Maharaj in funds to cover counsel’s fees; and (iii) the employees needed time to respond to a so-called expert report. In my view, for the reasons that follow, there was no merit on any of these legs – thus my decision to refuse the application.
5. Regarding Mr Reddy’s alleged illness, the two medical certificates tendered (one issued in French in the DRC on 28 November 2017 and the other in Johannesburg on 3 December 2017 at 16h55⁸) amount to inadmissible hearsay evidence. Furthermore, Mr Maharaj’s attempts to contact Mr Reddy’s

² Of FTI Consulting.

³ Of FTI Consulting.

⁴ SASCOC board member, and chairperson of the finance committee.

⁵ SASCOC manager – operations and events.

⁶ SASCOC president.

⁷ SASCOC manager – coaches development.

⁸ Unhelpfully, this medical certificate describes the nature of Mr Reddy’s illness as a “medical condition”, and records that “bedrest is strongly recommended”.

- local doctor to obtain details of the alleged illness had been unsuccessful, and he held no instructions apart from having been provided with the (inadmissible) medical certificates under cover of a bland email from Mr Reddy at 17h29 on 3 December 2017.
6. Regarding the issue of funds, in the absence of the employees having appeared before me or put up an affidavit, there existed no evidentiary basis upon which I could find that they do not have the money to fund their legal expenses. Furthermore, Mr Maharaj's contention that Mr Reddy was on the point of issuing a High Court application against the employer for the payment of R2-million, that the matter would be swiftly determined in his favour, and that he would then use the money to pay his legal expenses and those of his two colleagues, suffers from the same fate. In addition, given the vagaries of litigation, I am not prepared to accept that the R2-million in funds (which Mr Motau SC for the employer knew nothing about) will be forthcoming in the short term.
 7. Regarding the so-called expert report, the sequence of events is important. On 23 November 2017, affidavits by Messrs Subramoney and Stevens of FTI Consulting were served on Mr Maharaj's offices; on 27 November 2017, Norton Rose Fulbright (NRF) wrote to Mr Maharaj enquiring whether he was prepared to accept the contents of the affidavits (which were described in the letter as being of a formalistic nature); and no response was received to this before the commencement of the disciplinary inquiry on 4 December 2017. On first principles, the employees cannot legitimately create a basis for a postponement through their own inaction, which is what the sequence of events exposes. In addition, insofar as the employees wished to contest the contents of the affidavits, which relate to the mirror imaging of the hard drives of their computers and the SS Griffin report metadata, and do not qualify as an expert report (in the formal sense), they could do so by challenging Messrs Subramoney and Stevens under cross examination. Furthermore, insofar as the employees wished to secure the services of their own computer consultant, there was no reason why the inquiry could not commence, and this be done during the course of the proceedings.

8. Of concern to me was the conduct of the employees. Remarkably, Mr Maharaj had been unable to contact Mr Reddy in the immediate run up to the disciplinary inquiry. Equally concerning was the fact that despite Mr Maharaj having implored upon both Mr Maharaj (i.e. the CFO) and Ms Kelly, who he was in contact with in the run up to the inquiry, to attend upon the proceedings at the outset, they refused or failed to do so.
9. After I refused the application for a postponement, Mr Maharaj withdrew – this on account of a lack of funds. Before leaving the inquiry, he placed on record that during the short adjournment immediately prior to me giving my ruling, he had (again) attempted to make contact with the employees to alert them to the fact that the inquiry would proceed in their absence in the event of a postponement being refused and them not presenting themselves. According to Mr Maharaj, he had been unable to get hold of Mr Reddy because his phone was off; Ms Kelly's phone just rang and she did not answer it; and Mr Maharaj (i.e. the CFO) indicated a reluctance to come to the inquiry.
10. For the sake of completeness, I should also make mention of two letters that I received which were sent by Siven Samuel & Associates (the employees new attorneys) to NRF dated 7 and 8 December 2017, respectively. In the first letter, a request was made to lead the evidence of Mr Reddy's doctor and the evidence of all of the employees on the merits of the charges. Not only was this an about turn on the part of the employees, but by this time the hearing of the evidence had already been completed. In the second letter, another medical certificate in relation to Mr Reddy was tendered (although it was not attached to the letter I received) and various complaints were levelled that I need not be drawn into. But by this time, argument had been presented by the employer and my findings were pending.

CHARGES AGAINST MR REDDY

Charge 1 – Sexual harassment

11. Mrs Vardhan gave evidence about the alleged acts of sexual harassment covered by this charge, which took place in 2009 - 2013. She had initially raised the issue on a friendly and informal basis with Ms Kajee (the deputy president of SASCO) and had hoped that the matter could be resolved

amicably, as Ms Kajee had a close personal relationship with both her and Mr Reddy. Although the sexual harassment stopped in 2013, things came to the fore in November 2016, when Mrs Vardhan's husband came across the emails making up charge 1.1 on her computer. This led to Mrs Vardhan raising the issue with Mr Sam and ultimately to her lodging a formal grievance, which culminated in this charge.

12. Turning to the charges, in relation to charge 1.1:
 - 12.1 in the absence of being provided with the Diwali message that Mr Reddy responded to in October 2009, which prevents me from properly contextualising his response, I find Mr Reddy not guilty of charge 1.1.1;
 - 12.2 given the 'play along' terms of Mrs Vardhan's response to Mr Reddy's email in June 2010, I find Mr Reddy not guilty of charge 1.1.2; and
 - 12.3 given the grossly sexually explicit nature of the "erotic calendar" sent by Mr Reddy to Mrs Vardhan in March 2011, under cover of an email asking her to identify her "birthday position", I find that this qualifies as sexual harassment in terms of the employer's policy, and accordingly that Mr Reddy is guilty of charge 1.1.3.
13. In relation to charge 1.2, Mrs Vardhan testified that Mr Reddy made the request for a massage on some four occasions during the period 2010 - 2013. To my mind, her evidence establishes that this conduct on the part of Mr Reddy qualifies as sexual harassment in terms of the employer's policy. I accordingly find Mr Reddy guilty of charge 1.2.

Charge 3 – Don Chen

14. The background to this charge is as follows.
 - 14.1 SASCOC and Double Edge (Hong Kong) Sports Development Ltd (DE), being the marketing agent of 361° (a Chinese sportswear brand), entered into a partnership agreement relating to the sponsorship of sportswear for athletes for the period 27 January 2015 to 31 December

2016. Both of the emails forming the subject of this charge were sent while this agreement was operative.

- 14.2 On 1 April 2015, Mr Chen of DE sent Mr Reddy an email referring to an agreement with a cost value of about \$900 per set, and then enquiring –

“Let me know if we shall put the price a bit up or not, OK?”

- 14.3 On 8 June 2016, Mr Chen (using a Duo Sports Group email address) sent Mr Reddy’s son (Mushed) an email to be passed on to Mr Reddy. In the covering email addressed to Mushed, Mr Chen describes himself as “Tubby’s friend and partner in China”. In the email to Mr Reddy, Mr Chen said this:

“Regarding the cooperation idea we discussed last time in Shanghai, basically we expect that SASCOC or relevant companies under SASCOC can cooperate with DSG for some consultancy projects. For instance DSG to help SASCOC to build up youth talent development program, or some venue management program, or Chinese market promotion and business development, etc.

Of course all these projects don’t have to be real projects (unless you do have that needs); what we need is to create these opportunities and cash flow between SASCOC side and DSG side.” (Own emphasis.)

15. To my mind, both the April and June emails reflect – at least on a *prima facie* basis – underhand dealings between Mr Reddy and Mr Chen qualifying as dishonesty or a material breach of fiduciary duties on the part of Mr Reddy. In the first email, there is an invitation to inflate a price. The second email reveals a friendship and business connection between Mr Reddy and Mr Chen, and an invitation (previously discussed) to create fictitious consultancy projects and cash flow.
16. On the face of the emails, SASCOC did enough to shift the evidentiary burden to Mr Reddy to provide an exculpatory explanation. In the absence of him having acquitted himself thereof, I find Mr Reddy guilty of charge 3.

Charge 4 – M&M Hiring Marquee CC

17. On 29 April 2014, SASCOC (represented by Mr Reddy) and M&M Hiring Marquee CC (M&M) (represented by Mr Naidoo) entered into an SLA regulating the provision by M&M of event management and services for “Ekhaya and bid exhibition at Glasgow” – this during the 2014 Commonwealth Games. Ekhaya is a home away from home area, while the reference to “bid exhibition” related to Durban’s bid to host the 2022 Commonwealth Games.
18. Mr Reddy’s “Medicalert details” contained in the employer’s records reflect that he chose Mr Naidoo – described as a “friend” – as his third contact person in the case of an emergency. In circumstances where he failed to disclose this relationship in the run up to the appointment of M&M, I find Mr Reddy guilty of charge 4.1.
19. The extent to which Mr Reddy had a conflict of interest and was compromised in contracting with Mr Naidoo is demonstrated by the fact that the evidence reveals that Mr Reddy materially assisted him in formulating M&M’s close out report, with reference being made to the report in the minutes of the finance committee meeting of 24 October 2014. Their friendship apparently ran deep.
20. In terms of the employer’s 2014 finance policy, a minimum of three quotations had to be obtained for all procurements over R100 000. The SLA with M&M involved the procurement of two different services – those relating to Ekhaya (funded by the Department of Sports and Recreation and amounting to R5 940 000) and those relating to the bid exhibition (funded by SASCOC and amounting to R1 560 000). Although the minutes of the finance committee meeting of 24 October 2014 reflect that four quotations were obtained (including from M&M), Mr Marais (then a new member of the committee) disputed this in his evidence. The quotations have also not been located. To my mind, this establishes a *prima facie* case of misconduct, which shifted the evidentiary burden of rebuttal to Mr Reddy. In the absence of him having acquitted himself thereof, I find him guilty of charge 4.2.1.
21. The SLA is contradictory when it comes to the scope of services and fees payable to M&M. Clause 3.1 appoints M&M to provide services relating to both Ekhaya and the bid exhibition, as detailed in annexure “A”. But annexure “A”

- only sets out services “relative to the Ekhaya Project”, which are reflected as totalling R5 940 000. Clause 5.1 then goes on to provide that “the total fees payable” to M&M shall be R7 500 000, with it being the employer’s own case that the additional R1 560 000 was in respect of the bid exhibition. In these circumstances, it cannot be found (as alleged in the charge) that “the SLA showed that only the sum of R5 940 000 should be payable to M&M”, and that Mr Reddy miscondacted himself in authorising / allowing payment of R7 500 000 to M&M on 2 May 2014. I thus find Mr Reddy not guilty of that part of charge 4.2.2 relating to the payment of R7 500 000.
22. The second leg to charge 4.2.2 relates to the payment to M&M on 21 July 2014 of an additional amount of R1 500 000, which was authorised by both Mr Reddy and Mr Maharaj. To my mind, this was clearly in breach of the SLA, which caps M&M’s “total fees” at R7 500 000, and contains a ‘whole agreement’ and ‘no amendment unless reduced to writing’ clause. I thus find Mr Reddy guilty of that part of charge 4.2.2 relating to the payment of R1 500 000.
23. In argument, Mr Motau pursued predominantly that part of charge 4.3 relating to the failure to obtain three quotations, and linked it to the 14 payments listed in charge 4.4 – the contention being that three quotations were not obtained in respect of these 14 amounts (none having been located).
- 23.1 Given that the amounts reflected therein were above the threshold set in the prevailing finance policy for when three quotations must be obtained, I find Mr Reddy guilty of charge 4.3 (relating to the failure to obtain three quotations) read with charges 4.4.1 and 4.4.2.
- 23.2 Given that the amounts reflected therein were below the threshold set in the prevailing finance policy for when three quotations must be obtained, I find Mr Reddy not guilty of charge 4.3 (relating to the failure to obtain three quotations) read with charges 4.4.3 to 4.4.14.

Charge 5 – SS Griffin Risk Management Services

24. So as to contextualise this charge, a slightly fuller rendition of the evidence is required.

- 24.1 On 27 February 2017, Mr Sam addressed a staff meeting at SASCOC's offices in Johannesburg. The meeting was not attended by Mr Reddy, and unbeknown to Mr Sam, his address appears to have been illicitly recorded.
- 24.2 Having received the recording, Mr Reddy allegedly formed the view that Mr Sam had stated during his address words to the effect that SASCOC's offices were being bugged with his (Mr Sam's) authorisation. Mr Sam denied this – it being his testimony that he was referring to information that board members had come to learn of by way of their interactions within the organisation.
- 24.3 Mr Reddy then allegedly commissioned SS Griffin Risk Management Services (SS Griffin) to debug SASCOC's offices, and his own home. According to a schedule submitted by SS Griffin, the work was undertaken between 17 March and 22 April 2017 at a cost of R171 850.
- 24.4 At the request of Mr Reddy, Ms Kelly (who said she had worked through the schedule with Mr Reddy) asked Mr Maharaj to effect payment of this amount. Payment was duly effected by Mr Maharaj on 21 April 2017, but from the account of Volleyball South Africa, which is an entity independent of SASCOC.
- 24.5 On 20 May 2017, a second payment was made to SS Griffin – this time by SASCOC itself in the amount of R28 700. Payment of the invoice – which described the services rendered as being health and safety auditing, reporting and training – was authorised by Messrs Reddy and Maharaj. This invoice was fictitious, as no such services were rendered to SASCOC.
- 24.6 On 5 June 2017, Mr Reddy addressed a letter to Ms Kajee in which he informed her on a confidential basis of his appointment of SS Griffin and his motivation therefor. The letter records that Mr Reddy was due to receive their report shortly, and that their findings were “frightening to say the least”. The letter concludes on this basis:

“On receipt of the report, I will make available a copy to the ... Minister of Sport and Recreation ..., the Chairperson of the Portfolio Committee on Sport and Recreation ... and ... you as the Deputy President of SASCO. Thereafter I will decide together with the Honourable Minister and yourself as to whether any criminal charges must be laid.”

24.7 On 21 June 2017, Mr Reddy sent Ms Kajee an email attaching “the investigative report” (the SS Griffin report). The email records that Mr Reddy intended furnishing the Minister and the Chairperson of the Portfolio Committee with a copy, which he appears to have done. The email also records Mr Reddy’s motivation for doing so as follows:

“I do this because I have declared a dispute with SASCO and unfortunately do not believe that I will get fair and impartial treatment from the board of SASCO.”

24.8 The metadata recorded on Ms Kelly’s computer reflects that she worked on / edited the SS Griffin report for a total of 225 minutes (almost four hours) on 21 - 22 June 2017.

24.9 Save for Ms Kajee, who kept her colleagues in the dark, SASCO board members were entirely unaware of the SS Griffin report, and the circumstances that allegedly led to it being commissioned.

24.10 Turning to the contents of the SS Griffin report, it purports to be a report compiled by SS Griffin (a security specialist) and runs to 218 pages. Remarkably, only pp 12-22 deal with the bug sweep allegedly undertaken by SS Griffin, with it being reported that bugs were (allegedly) uncovered in SASCO’s offices. The balance of the report (running to some 200 pages) principally comprises, in effect, complaints against SASCO’s board.⁹ In numerous instances, the report is obviously authored by Mr Reddy, as he speaks in the first person. This despite the fact that the report is passed off as having been authored by SS Griffin on an independent basis.

⁹ Divided into sections headed: “manipulation of constitution – 1st instance”; “attacks on CFO, Mr Vinesh Maharaj”; “manipulation of constitution – 2nd instance”; “harassment charge on Desiree Vardhan and the findings, subsequent allegations of sexual harassment against myself as CEO”; and “collusion of Desiree Vardhan with board members and Coaches Association of South Africa”.

- 24.11 The SS Griffin report was apparently leaked to the press, and caused embarrassment and reputational damage to SASCOC, particularly in relation to the allegations of bugging. In reaction to the report, the Minister has established a committee of inquiry into the affairs of SASCOC, which has also placed it under a cloud.
- 24.12 In the process of undertaking an investigation into the matter, NRF has been unable to make contact with SS Griffin or Morne Mostert, the apparent owner. The firm is apparently dormant.
25. Turning now to the charges, the first one is that Mr Reddy acted dishonestly by misrepresenting that listening devices had been found on SASCOC's premises – the contention being that the SS Griffin report (in relation to bugging) was, in effect, trumped up. This is a difficult charge to determine in the absence of Mr Reddy having given evidence.
26. But, to my mind, SASCOC has established a *prima facie* case arising from the following: according to Mr Sam, SASCOC's offices were never bugged and he did not imply that they were at the staff meeting of 27 February 2017; SASCOC has no knowledge of the bug sweep undertaken by SS Griffin; one of SS Griffin's invoices (for health and safety services) was fictitious; the payments to SS Griffin were made irregularly; NRF have been unable to even make contact with SS Griffin (it apparently being dormant); the SS Griffin report itself is a fraud insofar as it purports to have been prepared by a security specialist, when the vast majority of it deals with HR complaints against SASCOC's board, which were clearly not authored by SS Griffin; Ms Kelly worked extensively on the SS Griffin report; and the commissioning of SS Griffin by Mr Reddy came about at a time when he was in dispute with SASCOC.
27. In these circumstances, the evidentiary burden to rebut this *prima facie* case rested on Mr Reddy, but he failed to acquit himself thereof. In the result, I find him guilty of charge 5.1.
28. In the light of the findings that I have made in paras 24.8 and 24.10 above, I find Mr Reddy guilty of charge 5.2.

29. In circumstances where I have found Mr Reddy guilty of both charges 5.1 and 5.2, there is no need to determine the alternative charge, i.e. charge 5.3.¹⁰ (That said, if I had been required to determine the alternative charge, I would have been inclined to find Mr Reddy guilty of charges 5.3.1 and 5.3.2.)
30. In the light of the finding that I have made in para 24.5 above, I find Mr Reddy guilty of charge 5.4.
31. The cumulative value of the payments made to SS Griffin is R200 550. In terms of the 2016 finance policy, it is not clear to me what the threshold for obtaining three quotations is. Clause 2.3.3 speaks of this being required for procurements “over” R5-million, and for this being required (in relation to non-budgeted services) for amounts “up to” R5-million. In these circumstances, I find Mr Reddy not guilty of charge 5.5.

Charge 6 – SASCOC constitution

32. In argument, Mr Motau made some reference to article 29 of SASCOC’s constitution, and listed a number of factors in support of SASCOC’s case, but qualified this by submitting that “these factors properly sit under the heading of aggravating circumstances rather than a breach of the Constitution”.¹¹
33. To my mind, article 29, which provides for private arbitration, is not applicable to the employment related issues and disputes raised by Mr Reddy with the Minister. It was thus not a dispute-settlement mechanism available to Mr Reddy. In the circumstances, I find Mr Reddy not guilty of charge 6.

Charge 7 – PCS Consulting Services

34. The background to the charge is as follows.
- 34.1 On 30 April 2012, SASCOC (represented by Mr Reddy) and PCS Consulting Services CC (PCS) (represented by Mr Rajab) entered into a retainer agreement, in terms of which PCS was appointed to provide

¹⁰ This was the approach adopted by Mr Motau in argument in respect of all charges in the alternative.

¹¹ SASCOC’s heads of argument: para 3.25.6, fn 18.

SASCOC with HR consulting services on a monthly retainer of R17 500 for up to 24 hours work per month (and could thereafter bill on an hourly basis). The retainer agreement was for a period of four years, commencing on 1 May 2012.

- 34.2 On 30 June 2014, the parties (represented by the same persons) entered into an addendum to the retainer agreement, in terms of which the monthly retainer payable to PCS was increased to R45 000 (on the same terms as before) with effect from 1 July 2014. This was little more than two years into the four-year retainer agreement – which did not itself provide for an increase – and equated to an increase of more than 250%.
- 34.3 Despite the retainer agreement lapsing on 30 April 2016, it appears to have been extended on a month-to-month basis thereafter. So, for example, PCS was paid an amount of R119 700 on 1 September 2016.
35. Turning to the charges, in argument Mr Motau did not press for a finding of guilty in respect of charges 7.1 and 7.2. Accordingly, I find Mr Reddy not guilty of charges 7.1 and 7.2.
36. *Prima facie*, the 250% increase in the monthly retainer paid to PCS is alarming, and called for an exculpatory explanation by Mr Reddy. In the absence of him acquitting himself of this evidentiary burden, I find Mr Reddy guilty of charge 7.3.
37. On the evidence presented, Mr Reddy did not disclose the increase to the board. Again, this called for an exculpatory explanation by Mr Reddy. In the absence of him acquitting himself of this evidentiary burden, I find Mr Reddy guilty of charge 7.4.
38. In circumstances where the retainer agreement lapsed on 30 April 2016, it seems to me that Mr Reddy was not at liberty to extend it on a month-to-month basis without compliance with the finance policy. In the circumstances, I find Mr Reddy guilty of charge 7.5.

Charge 8 – The dispute between Athletics South Africa (ASA) and SASCOC

39. The background to the charge is as follows.

39.1 Mr Skhosana, the president of Athletics South Africa (ASA), was removed from the SASCOC board in the first half of 2017.

39.2 On 1 June 2017, Ms Kelly sent an email to Dr Adams, the vice president of ASA, reading as follows:

“Please find attached the draft letter for your consideration as discussed with Tubby.”

39.3 The attached letter, which is under the hand of Dr Adams and addressed to Mr Sam, constitutes the declaration of a dispute by ASA against SASCOC around Mr Skhosana’s removal from the SASCOC board.

39.4 On 13 July 2017, Dr Adams sent a follow up letter to Mr Sam about the dispute, from which it appears that Dr Adams’ initial letter was sent to Mr Sam on 2 June 2017.

40. On the face of it, Mr Reddy (together with Ms Kelly) was involved in writing the letter sent to Dr Adams on 1 June 2017. This, in itself, establishes his guilt. In the circumstances, I find Mr Reddy guilty of charge 8.

Charge 9 – Basketball South Africa (BSA)

41. The background to this charge appears from the text thereof (paras 9.1 - 9.6). It was confirmed in evidence and need not be repeated.

42. In the circumstances, I find Mr Reddy guilty of charge 9 (as formulated in para 9.8).

CHARGES AGAINST MR MAHARAJ

Charge 2 – Brad’s Glass and Aluminium / Fli-Afrika

43. The background to this charge is as follows.
- 43.1 Both Fli-Afrika and Brad’s Glass and Aluminium (BGA) are service providers to SASCO.
- 43.2 On 25 January 2016, BGA submitted a quotation to Mr Maharaj for renovations at his home – the quotation being for some R90 000.
- 43.3 On 2 March 2017, Fli-Afrika addressed a letter to BGA advising that it had erroneously paid R535 310.20 into Fli-Afrika’s bank account, and that the amount that should have been paid was R50 000. A refund of the balance (R485 310.20) was thus requested. (Seemingly it was duly effected.)
- 43.4 On 23 August 2017, Fli-Afrika addressed a further letter to BGA concerning the retained R50 000. The letter records:
- “We hereby formally request a refund of the amount paid to you during February 2016, in respect of aluminium works that were supposed to have been carried out for Mr Vinesh Maharaj (who is employed at SASCO) at his flat in Rosebank, which works never took place.
- You will recall that Vinesh had spoken to Gasant to refund the monies to us, as we had done the payment on his behalf. However, the matter cannot simply be forgotten and we hereby request immediate refund of the sum of R50 000 into our bank account” (Own emphasis.)
44. On the face of it, Mr Maharaj got a service provider to SASCO to pay for renovations to his home, which is a corrupt activity. I thus find Mr Maharaj guilty of charge 2.1.
45. In the circumstances, there is no need to determine the alternative charge 2.2 (which, in any event, has been proven).

Charge 3 – M&M Marquee CC

46. The background to this charge is set out above.
47. Charge 3.1 against Mr Maharaj is the equivalent of charge 4.4 (read with 4.3) against Mr Reddy. For the reasons set out in para 23 above (read *mutatis mutandis*), I find Mr Maharaj guilty of charges 3.1.1 and 3.1.2, and not guilty of charges 3.1.3 to 3.1.14.
48. Charge 3.2 against Mr Maharaj is the equivalent of charge 4.2.2 against Mr Reddy. For the reasons set out in paras 21 and 22 above (read *mutatis mutandis*), I find Mr Maharaj not guilty of that part of charge 3.2 relating to the payment of R7 500 000, and guilty of that part of charge 3.2 relating to the payment of R1 500 000.
49. Charge 3.3 against Mr Maharaj overlaps with charge 4.2.1 against Mr Reddy. The minutes of the finance committee meeting of 24 October 2014 reflect that Mr Maharaj represented to the committee that four quotations had been obtained. For the reasons set out in para 20 above (read *mutatis mutandis*), I find Mr Maharaj guilty of charge 3.3.

Charge 6 – SS Griffin Risk Management Services

50. The background to this charge is set out above.
51. Charge 6.1 against Mr Maharaj is the equivalent of charge 5.4 against Mr Reddy. For the reasons set out in paras 24.5 and 30 above (read *mutatis mutandis*), I find Mr Maharaj guilty of charge 6.1.
52. The facts relevant to charge 6.2 are set out in para 24.4 above. They establish a *prima facie* case against Mr Maharaj, with the evidentiary burden shifting to him to provide an exculpatory explanation. In the absence of him having acquitted himself thereof, I find Mr Maharaj guilty of charge 6.2.
53. In circumstances where I have found Mr Maharaj guilty of the preceding charges, there is no need to determine the alternative charge 6.3. (If called

upon, I would have found Mr Maharaj not guilty for the reasons stated in para 31 above.)

54. Regarding charge 6.4, Mr Marais confirmed in evidence the contents of his email to Mr Maharaj of 30 July 2017, the relevant part of which reflects that Mr Maharaj had told him that SS Griffin was not a service provider to SASCOG and that no payments had been made to SS Griffin. The facts (see paras 24.4 and 24.5 above) clearly establish that this statement by Mr Maharaj was knowingly untruthful. I thus find Mr Maharaj guilty of charge 6.4.

Charge 7 – PCS Consulting Services

55. The background to this charge is set out above.
56. Charge 7.1 against Mr Maharaj is the equivalent of charge 7.1 against Mr Reddy. For the reasons set out in para 35 above (read *mutatis mutandis*), I find Mr Maharaj not guilty of charge 7.1.
57. Charge 7.2 against Mr Maharaj is the equivalent of charge 7.3 against Mr Reddy. For the reasons set out in para 36 above (read *mutatis mutandis*), I find Mr Maharaj guilty of charge 7.2.
58. Charge 7.3 against Mr Maharaj is the equivalent of charge 7.5 against Mr Reddy. For the reasons set out in para 38 above (read *mutatis mutandis*), I find Mr Maharaj guilty of charge 7.3.
59. Charge 7.4 against Mr Maharaj is the equivalent of charge 7.4 against Mr Reddy. For the reasons set out in para 37 above (read *mutatis mutandis*), I find Mr Maharaj guilty of charge 7.4.

Charge 8 – Khululekani Security Services

60. The background to the charge is this. On 2 May 2017, Mr Maharaj notified Khululekani Security Services (KSS) of the termination of their services with immediate effect. According to Mr Cobers, 60 days' notice ought to have been given, and Mr Molefe of KSS has sent a letter of demand to SASCOG,

demanding payment for the notice period. The matter is under consideration, but SASCOC apparently considers itself liable.

61. In these circumstances, the evidentiary burden to justify the termination of KSS' services rested on Mr Maharaj. In the absence of him acquitting himself thereof, I find him guilty of charge 8.

Charge 9 – Basketball South Africa (BSA)

62. Charge 9.2 against Mr Maharaj is the equivalent of charge 9.8 against Mr Reddy. The background to the charge is contained in paras 9.1 - 9.6 of the charges against Mr Reddy. It was confirmed in evidence and need not be repeated.
63. In circumstances where Mr Maharaj authorised the two payments in question, which exceeded the grants, he had an evidentiary burden to provide an exculpatory explanation. Having not acquitted himself thereof, I find Mr Maharaj guilty of charge 9.2.

CHARGES AGAINST MS KELLY

Charge 1 – SS Griffin Risk Management Services

64. Charge 1.1 against Ms Kelly is the equivalent of charge 5.2 against Mr Reddy. The background to this charge is set out above.
65. It is apparent from the metadata recorded on Ms Kelly's computer that she at least co-authored the SS Griffin report (see para 24.8 above). It follows that she was complicit in falsely passing off the report as having been authored by SS Griffin on an independent basis, which report contained false allegations (see paras 25 - 27 above). Given the role that she played, Ms Kelly presumably knew of Mr Reddy's intention to submit the report to the Minister, and of the consequences thereof for SASCOC. I thus find Ms Kelly guilty of charge 1.1.

66. In circumstances where I have found Ms Kelly guilty of charge 1.1, there is no need to determine the alternative charge 1.2. (If called upon, I would have found her guilty.)

Charge 2 – The dispute between Athletics South Africa (ASA) and SASCOC

67. Charge 2 against Ms Kelly materially corresponds with charge 8 against Mr Reddy. The background to this charge is set out in para 39 above. For the reasons stated in para 40 above (read *mutatis mutandis*), I find Ms Kelly guilty of charge 2.

RECOMMENDATION ON SANCTION

68. I am not required to determine the issue of sanction myself, but have instead been instructed to provide a recommendation on sanction, which I do below.
69. I have found Mr Reddy guilty of a wide range of charges relating to sexual harassment, Don Chen, M&M, SS Griffin, PCS, the ASA / SASCOC dispute, and BSA. In numerous instances, Mr Reddy acted dishonestly and betrayed the duty of good faith and trust and confidence that he owed to SASCOC and its board – conduct that is incompatible with the position of CEO. To exacerbate matters, his conduct brought SASCOC into disrepute, which has (as Mr Sam testified) negatively affected its ability to obtain funding and sponsorships. According to Mr Sam, the trust relationship between the parties has been irreparably destroyed, with this being borne out, in my view, by the severity of Mr Reddy's misconduct and the nature of his position. In the circumstances, despite Mr Reddy's length of service (12 years) and clean record, I recommend his summary dismissal.
70. Turning to Mr Maharaj, I have also found him guilty of a wide range of charges relating to BGA / Fli-Afrika, M&M, SS Griffin, PCS, KSS, and BSA. In a number of instances, he acted dishonestly or committed financial irregularities, striking at the core of his duties. Overall, his conduct is incompatible with the position of CFO. According to Mr Sam, the trust relationship between the parties has been irreparably destroyed, with this being borne out, in my view, by the severity of Mr Maharaj's misconduct and the nature of his position. In

the circumstances, despite Mr Maharaj's length of service (12 years) and clean record, I recommend his summary dismissal.

71. Finally, in relation to Ms Kelly, although I found her guilty of only two charges (pertaining to SS Griffin and the ASA / SASCOC dispute), her misconduct was severe. In both instances, she acted dishonestly or in breach of her duty of good faith, and colluded with Mr Reddy against SASCOC. As mentioned above, the SS Griffin report caused SASCOC embarrassment and reputational damage – and Ms Kelly played a part in it. To my mind, her conduct is incompatible with the position of executive manager, which is also a senior position within the organisation. According to Mr Sam, the trust relationship between the parties has been irreparably destroyed, with this being borne out, in my view, by the severity of Ms Kelly's misconduct and the nature of her position. In the circumstances, despite Ms Kelly's length of service (ten years) and clean record, I recommend her summary dismissal.
72. In sum, I recommend the summary dismissal of all three of the employees.

ANTON MYBURGH SC

Chairperson of disciplinary inquiry
Chambers, Sandton

21 December 2017

Annexure “A”**CHARGES AGAINST MR REDDY****1. Charge 1 – Sexual harassment**

1.1 Acting in material breach of SASCO’s Sexual Harassment Policy by sexually harassing and/or engaging in inappropriate conduct towards Desiree Vardhan (Vardhan) by sending her inappropriate and unwelcome correspondence of a sexual or suggestive nature. The details of the correspondence are as follows:

1.1.1 In October 2009 Vardhan sent you a Diwali greeting, to which you responded ‘don’t you want a firecracker under the table for Diwali’.

1.1.2 In June 2010 you sent Vardhan a series of sexual images by email and insisted that she respond to these sexual images; and

1.1.3 In March 2011 you sent Vardhan an erotic calendar.

1.2 Acting in material breach of SASCO’s Sexual Harassment Policy by sexually harassing and/or engaging in inappropriate conduct towards Vardhan by repeatedly asking Vardhan for neck and shoulder massages during working hours.

2. Charge 2 – Victimization [withdrawn]**3. Charge 3 – Don Chen**

3.1 Acting dishonestly and/or in material breach of your fiduciary duties as CEO by failing to disclose to the board:

3.1.1 a proposal by a service provider and sponsor to SASCO, Double Edged (Hong Kong) Sports Development Limited (acting as agent of 361°) (DE), that sponsored items be given an inflated value; and

3.1.2 that the principal of DE and Duo Sports Group suggested to you that SASCO and DSG co-operate in regard to projects that need not be real (and thus could be fictitious).

4. Charge 4 – M&M Hiring Marquee CC

4.1 Acting in material breach of the Code of Conduct and Ethics (Code of Conduct) in the SASCO Human Resources Policy and Procedure (HR Policy) and the Finance Policy and Procedure Manual (Finance Policy) by failing to disclose that you had a conflict of interest at the time that M&M Hiring Marquee CC was appointed as a service provider and/or that you had a close personal relationship with the managing director of M&M Hiring Marquee CC, David Naidoo, which adversely influenced, impaired and threatened your capacity to act with integrity and objectivity.

4.2 Acting grossly dishonestly and/or in material breach of the Finance Policy in conducting business with M&M Hiring Marquee CC in the following respects:

- 4.2.1 Entering into a Service Level Agreement (SLA) pertaining to the Ekhaya event at Glasgow Commonwealth games with M&M Hiring Marque CC on 29 April 2014 without securing 3 quotations.
- 4.2.2 Authorising and/or allowing payment by SASCOG to M&M Hiring Marquee CC in the sums of R7 500 000.00 on 2 May 2014 and R1 500 000.00 on 21 July 2014 in circumstances where the SLA showed that only the sum of R5 940 000.00 should be payable to M&M Hiring Marque CC.
- 4.3 Acting in material breach of the Finance Policy by failing as the CEO to prevent non-compliance with the Finance Policy in conducting business with M&M Hiring Marque CC, in the absence of a valid SLA for hospitality services, or otherwise and/or in breach of the procurement process (ie failing to obtain three competitive quotes);
- 4.4 Authorising and/or allowing payments from SASCOG to M&M Hiring Marque CC, a non-contracted service provider, as follows:
- 4.4.1 On 8 May 2014 for an amount of R280 344.20;
- 4.4.2 On 16 May 2014 for an amount of R280 000.00;
- 4.4.3 On 30 May 2014 for an amount of R 87 210.00;
- 4.4.4 On 27 May 2015 for an amount of R58 826.85;
- 4.4.5 On 9 July 2015 for an amount of R17 353.65;
- 4.4.6 On 20 August 2015 for an amount of R10 830.00;
- 4.4.7 On 1 September 2016 for an amount of R39 831.60;
- 4.4.8 On 16 September 2016 for an amount of R11 211.90;
- 4.4.9 On 14 November 2016 for an amount of R12 272.10;
- 4.4.10 On 29 November 2016 for an amount of R10 305.60;
- 4.4.11 On 31 January 2017 for an amount of R17 105.70;
- 4.4.12 On 30 March 2017 for an amount of R2 257.20;
- 4.4.13 On 26 April 2017 for an amount of R14 820.00;
- 4.4.14 On 7 June 2017 for an amount of R2 063.40;

5. **Charge 5 – SS Griffin Risk Management Services**

- 5.1 Acting grossly dishonestly by misrepresenting that listening devices had been found on the SASCOG premises in the period from March to May 2017.
- 5.2 Engaging in grossly dishonest conduct by co-authoring the SS Griffin report with Jean Kelly, and misrepresenting that the report was authored by SS Griffin

thereby compromising the integrity of the report which purported to be prepared for SASCOC on an independent basis.

- 5.3 In the alternative to 5.1 and 5.2, acting in material breach of your fiduciary duties as CEO:
- 5.3.1 by failing to disclose to the board of SASCOC the fact of your suspicion of the presence of listening devices (bugs) at SASCOC's offices.
- 5.3.2 by failing to disclose to the board of SASCOC your retention of and mandate to SS Griffin, ostensibly on behalf of SASCOC, at the time of your retention of and mandate to SS Griffin.
- 5.3.3 by failing to report the security breach of having listening devices at SASCOC to the SAPS until two months after discovering them.
- 5.4 Acting grossly dishonestly and/or in material breach of your fiduciary duties as CEO by permitting or instructing that payment be made to SS Griffin pursuant to an invoice from SS Griffin which did not reflect the services rendered by SS Griffin in connection with the debugging of SASCOC's premises, but instead reflected occupational health and safety services purportedly rendered to SASCOC which were not in fact rendered to SASCOC.
- 5.5 Acting in material breach of the Finance Policy by failing to obtain three quotations in commissioning the services of SS Griffin, ostensibly on behalf of SASCOC.

6. Charge 6 – SASCOC Constitution

Acting in material breach of the Constitution of SASCOC by directly approaching the Minister of Sport and Recreation, through Dev Maharaj & Associates Inc, in regard to issues and/or disputes which you have with SASCOC, instead of resolving such issues and/or disputes through the mechanisms provided for in the Constitution of SASCOC.

7. Charge 7 – PCS Consulting Services

- 7.1 Acting in material breach of the Finance Policy by failing to obtain 3 quotations before entering into an agreement with PCS Consulting Services on 1 May 2012.
- 7.2 Acting grossly dishonestly and/or in material breach of the Code of Conduct in the HR Policy and Finance Policy by failing to disclose that you had a conflict of interest during the time that PCS Consulting Services rendered services to SASCOC in that you had a close personal relationship with a director of PCS Consulting, Shaun Rajab, which adversely influenced, impaired and threatened your capacity to act with integrity and objectivity.
- 7.3 Acting grossly dishonestly and/or in material breach of your fiduciary duties as CEO in arbitrarily and without any justifiable business rationale, authorising and/or permitting the increase in the monthly retainer paid to PCS Consulting

from R17 000.00 per month to R45 000.00 per month with effect from 30 June 2014.

- 7.4 Acting in a grossly dishonest manner by concealing the increase in the PCS Consulting monthly retainer from the Board.
- 7.5 Acting in material breach of the Finance Policy by extending the Retainer Agreement with PCS Consulting on a month to month basis effective 1 May 2016.

8. **Charge 8 - The dispute between Athletics South Africa (ASA) and SASCOC**

Acting in material breach of your fiduciary duties as CEO by colluding with Jean Kelly and/or ASA in the dispute between ASA and SASCOC.

9. **Charge 9 - Basketball South Africa (BSA)**

- 9.1 On or about 25 June 2014 you entered into an agreement on behalf of SASCOC with the National Lotteries Board (NLB) in respect of a grant of R 10 005 500 for BSA.
- 9.2 Clause 1.1(c)(i) of the agreement provided that the grant had to be used strictly for the items stated in annexure "A" and for no other purpose, whatsoever, unless the prior written approval of the board has been obtained.
- 9.3 Basketball Without Borders (BWB) hosted and paid for the 2015 BWB event for boys and for girls.
- 9.4 The annexure contains the following items:
 - 9.4.1 BWB Boys R917 000
 - 9.4.2 BWB Girls R917 000
- 9.5 On 17 February 2017 you reported to the President of BSA that the former leadership of BSA had provided proof that R1 267 676.72 had been disbursed in respect of each of the 2015 BWB Boys and BWB Girls events.
- 9.6 To your knowledge, these amounts were different to the amounts in the grant from the NLB earmarked for the BWB Boys and BWB Girls events. You did not follow up on these discrepancies and your failure exposed SASCOC to a claim by the NLB.
- 9.7 **[Withdrawn]**
- 9.8 Your conduct as aforesaid was grossly negligent and has brought SASCOC's name into disrepute.

CHARGES AGAINST MR MAHARAJ

1. Charge 1 – CATHSSETA [withdrawn]

2. Charge 2 – Brad’s Glass and Aluminium / Fly-Afrika

2.1 You engaged with a service provider to SASCOC, Fly-Afrika, to pay Brads Glass and Aluminium for renovations to your home, which amounts to corruption.

2.2 Alternatively to 2.1 above, this was a breach of your fiduciary duties as CFO.

3. Charge 3 - M&M Hiring Marquee CC

You failed as the CFO to prevent non-compliance with the Finance Policy in conducting business with M&M Hiring Marquee CC in the following respects:

3.1 Authorising and/or allowing payment by SASCOC to M&M Hiring Marquee CC, in the absence of 3 comparable quotations and a valid SLA, in the following circumstances:

3.1.1 On 8 May 2014 for an amount of R280 344.20;

3.1.2 On 16 May 2014 for an amount of R280 000.00;

3.1.3 On 30 May 2014 for an amount of R 87 210.00;

3.1.4 On 27 May 2015 for an amount of R58 826.85;

3.1.5 On 9 July 2015 for an amount of R17 353.65;

3.1.6 On 20 August 2015 for an amount of R10 830.00;

3.1.7 On 1 September 2016 for an amount of R39 831.60;

3.1.8 On 16 September 2016 for an amount of R11 211.90;

3.1.9 On 14 November 2016 for an amount of R12 272.10;

3.1.10 On 29 November 2016 for an amount of R10 305.60;

3.1.11 On 31 January 2017 for an amount of R17 105.70;

3.1.12 On 30 March 2017 for an amount of R2 257.20;

3.1.13 On 26 April 2017 for an amount of R14 820.00;

3.1.14 On 7 June 2017 for an amount of R2 063.40

3.2 Authorising and/or allowing payment by SASCOC to M&M Hiring Marquee CC in the sums of R7 500 000.00 on 2 May 2014 and R1 500 000.00 on 21 July 2014 in circumstances where the SLA showed that only the sum of R5 940 000.00 should be payable to M&M Hiring Marquee CC.

- 3.3 Acting grossly dishonestly in materially misrepresenting to the FinCom that 4 quotations were obtained for the Glasgow event, when in reality, only a quote from M&M was obtained at the time of them being awarded the contract for the event, and the other quotes were cover quotes or not for the work that had to be done.
4. **Charge 4 - Fli Afrika [withdrawn]**
5. **Charge 5 - FlyWell and/or FlyNow [withdrawn]**
6. **Charge 6 - SS Griffin Risk Management Services**
- 6.1 Acting grossly dishonestly and/or in material breach of your fiduciary duties as CFO by permitting or instructing that payment be made to SS Griffin pursuant to an invoice from SS Griffin which did not reflect the services rendered by SS Griffin in connection with the alleged debugging of SASCOC's premises, but instead reflected occupational health and safety services purportedly rendered to SASCOC which were not in fact rendered to SASCOC.
- 6.2 Acting grossly dishonestly and/or in material breach of your fiduciary duties as CFO by permitting or instructing that payment be made to SS Griffin from the account of Volleyball South Africa for an expense purportedly incurred by SASCOC.
- 6.3 In the alternative to 6.1, acting in material breach of the Finance Policy by failing to obtain three quotations in commissioning the services of SS Griffin, ostensibly on behalf of SASCOC.
- 6.4 You deliberately misled the chair of the financial committee when you told him that SS Griffin was not a service provider to SASCOC and that SASCOC had not made payments to SS Griffin.
7. **Charge 7 – PCS Consulting Services**
- 7.1 Acting in material breach of the Finance Policy by failing to obtain 3 quotations before permitting SASCOC to enter into an agreement with PCS Consulting Services on 30 April 2012.
- 7.2 Acting grossly dishonestly and/or in material breach of your fiduciary duties as CFO in arbitrarily and without any justifiable business rationale, by permitting the increase in the monthly retainer paid to PCS Consulting from R17 000.00 per month to R45 000.00 per month with effect from 30 June 2014.
- 7.3 Acting in material breach of the Finance Policy by permitting the extension of the Retainer Agreement with PCS Consulting on a month to month basis from 1 June 2016.
- 7.4 Acting in a grossly dishonest manner by concealing the increase in the PCS Consulting monthly retainer from the Board, notwithstanding that you had a duty to report this as the CFO.

8. **Charge 8 - Khululekani Security Services**

Authorising and or effecting and or permitting the premature termination of the service level agreement between SASCOC and Khululekani Security Services with immediate effect, in circumstances where 60 days' notice was required, thereby placing SASCOC in a position of having to pay damages for the 2 month notice not given.

9. **Charge 9 - Basketball South Africa (BSA)**

9.1 **[Withdrawn]**

9.2 Further, you knew or reasonably ought to have known that the amounts of R1 267 676.72 were different to the amounts in the grant from the NLB earmarked for the 2015 BWB Boys and BWB Girls events. You were grossly negligent in not following up on these discrepancies and your failure exposed SASCOC to a claim by the NLB.

CHARGES AGAINST MS KELLY

1. **Charge 1 - SS Griffin Risk Management Services**

1.1 Engaging in grossly dishonest conduct by authoring or co-authoring the so-called SS Griffin report, which contained false and spurious allegations against members of the Board, and misrepresenting that the report was authored by SS Griffin thereby compromising the integrity of the report which purported to be prepared for SASCOC on an independent basis

Alternatively to 1.1

1.2 Acting in material breach of the duty of good faith owed to your employer by virtue of your involvement in the drafting of the SS Griffin report which report contained false and spurious allegations against members of the Board.

2. **Charge 2 - The dispute between Athletics South Africa (ASA) and SASCOC**

Acting in material breach of your fiduciary duties as employee by colluding with the CEO and/or ASA in the dispute between ASA and SASCOC in that you authored the letter of dispute sent by ASA to SASCOC.
