IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: SS 40/2006

(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **YES**
(3) REVISED.

(Signed)

19 March 2021 .....

SIGNATURE

THE STATE

v

PORRITT, GARY PATRICK Accused no. 1

BENNETT, SUSAN HILARY Accused no. 2

RULING OF 19 MARCH 2021

AFFIDAVIT EVIDENCE- SECTION 2 OF THE INTERNATIONAL CO-OPERATION IN CRIMINAL MATTERS ACT NO. 75 OF 1996

SPILG, J:

INTRODUCTION

1. The State seeks to introduce certain evidence without leading a witness who would otherwise be subject to cross examination. During its argument it has identified various legislation on which it intends to rely. Without elaboration they deal with the admissibility of documentary evidence relating in the main to corporate, financial and business records under various provisions of the Criminal

Procedure Act, 51 of 1977 ("the CPA") such as ss 221 and 222, s 3 of the Law of Evidence Amendment Act, 45 of 1988, s 2(2) of the Prevention of Organised Crime Act, 121 of 1998 and s 15 of the Electronic Communications and Transactions Act, 25 of 2002.

In addition, the State relies on the provisions of s 5 of the International Co-operation in Criminal Matters Act no. 75 of 1996 ("*the ICCMA*").

2. Section 5 of the ICCMA reads:

Admissibility of evidence obtained by letter of request

(1) Evidence obtained by a letter of request shall be deemed to be evidence under oath if it appears that the witness was in terms of the law of the requested State properly warned to tell the truth.

(2) Evidence obtained by a letter of request prior to proceedings being instituted shall be admitted as evidence at any subsequent proceedings and shall form part of the record of such proceedings if-

(a) each party against whom the evidence is to be adduced agrees to the admission thereof as evidence at such proceedings; or

(b) the court, having regard to-

(i) the nature of the proceedings;

(ii) the nature of the evidence;

(iii) the purpose for which the evidence is tendered;

(iv) any prejudice to any party which the admission of such evidence might entail; and

(v) any other factor which in the opinion of the court should be taken into account,

is of the opinion that such evidence should be admitted in the interests of justice.

(3) The provisions of subsection (2) shall not render admissible any evidence which would be inadmissible, had such evidence been given at the subsequent proceedings by the witness from whom it was obtained.

(4) Evidence obtained by a letter of request after the institution of proceedings shall form part of the record of such proceedings and shall be admitted as evidence by the court or presiding officer which issued the letter of request in so far as it is not inadmissible at such proceedings.

3. It is evident that in order to trigger s 5 the evidence sought to be introduced must have been obtained under a letter of request ("*LoR*").

4. The State relies on the LoR it procured in terms of s 2(2) of the ICCMA to have admitted the evidence obtained under it,

5. Despite receiving the State's heads of argument dealing with the various grounds on which it sought to introduce the documentary evidence and the affidavits obtained under the LoR, prior to the hearing, neither Mr Porritt nor Ms Bennett ("*the accused"*) initially disclosed the basis of their challenge to the introduction of affidavit evidence save to claim that the State had not obtained it lawfully. Only after the State had presented its argument did Bennett disclose that the accused challenged the lawfulness of the State utilising s 2(2), contending that it had been obliged to obtain an LoR under s 2(1).

6. The State submitted that the accused's argument should be dealt with once the evidence was in fact tendered. It argued that reliance on s 5 of the ICCMA was only one of a number of grounds on which it sought to introduce documentary evidence obtained in a foreign jurisdiction.

7. It was evident that s 5 of the ICCMA was effectively the first prize position of the State. Not only would it enable documentary evidence to be admitted if the court

was satisfied that the requirements enumerated in subsection (2) (b) were met, but the contents of the affidavits obtained from the witness through whom the documents were sought to be introduced may also be subject to admission into evidence.

I did not wish to see the affidavits at this stage but after enquiring about certain of their broad features which I considered relevant for the present enquiry, it appears that they were generally deposed to by the person who claimed to possess the documents in question either in original or copy form or in whose custody and control they would ordinarily have been kept. I also understood that the affidavits not only identify documents and explained the context in which they were alleged to have come into the deponent's possession but also contain responses to certain interrogatories which might go beyond identification and findings that could in any event be made from the documents themselves (either individually or sequentially in respect of the transactions or dealings they pertain to, or may yet be explained by other witnesses who are to be called and would be subject to cross-examination). In some instances the documents are sought to be introduced because they are originals and neither accused is agreeable at this stage to admitting any document without it being properly proven even if it purports to emanate from him or her.

8. . I ruled that the challenge attacks the very basis on which the State applies to introduce the evidence and that the State must therefore satisfy the court that the preconditions for its introduction under the ICCMA have been lawfully complied with. It is important that if a document or affidavit statement is admitted into evidence that I make it clear that I am satisfied that it falls within one or other legislative provision and in the case of a s2 LoR whether the requirements of subsection (2)(b) apply and have been satisfied.

THE STARTING POINT

9. The main considerations irrespective of the legislation relied on to introduce any affidavit evidence or to allow the admission of documentary evidence is;

a. The deprivation of the accused's right to cross-examine the witness who deposed to the affidavit. This is such a fundamental invasion of the accused's right that it automatically impacts on the right to a fair trial

b. The genuineness of the documents sought to be introduced.

10. The ICCMA firstly seeks to adopt a process, via co-operation between nations, whereby evidence available in one country may be utilised in the jurisdiction of another (subject to the latter's own safeguards as to admissibility) while giving satisfactory assurance that the process adopted has legal efficacy and ensures as best as is possible that judicial officers are engaged bilaterally in securing the proper observance of initiating the request in the one country and its proper execution in the other. Not only does this concern the observance of protocols and judicial control over the process but also satisfies any chain of evidence requirement (at least from the time of deposition to the receipt of the evidence by the trial court).

11. At this stage the State has confined the evidence it seeks to introduce under s 5 of the ICCMA to that allegedly gathered in Hong Kong pursuant to LoRs relating to five witnesses who reside there. The State has advised that there are similar LoRs in relation to evidence gathered in other jurisdictions.

12. Although at this stage the issue is confined to the lawfulness of the process adopted by the Sate in obtaining the LoRs, I am acutely aware, having regard to some of the evidence already led and the contents of the further particulars to the indictment, that the documents sought to be admitted via the affidavit evidence are intended to provide a paper trail of what in fact occurred or to show that what was held out to have occurred, by the entities whose affairs the State alleges were the *alter ego* of the accused did not in fact take place.

13. I had also informed the accused of the implications should the documents and the other statements contained in the affidavits be admitted having regard to the

offences in respect of which the evidence was sought to be introduced. They advised that they were so aware.

14. The evidence sought to be introduced by the five Hong Kong LoRs concern counts 1 to 14 of the indictment.

15. In order to give some idea of the seriousness of these offences and the likely nature of the documents which the State will seek to have admitted via the five LoRs, I will recite certain extracts from main count 2 of the indictment which alleged common law fraud

> *"during the period October 1996 to 15 April 1997 …, the accused, in concert with others or otherwise, did unlawfully, falsely and with the intent to defraud, give out and pretend … that:*
>
> *136.1 Pan Pacific Financial Services Limited (a subsidiary of Tigon Limited at the time) had entered into, lawful and valid agreements with Goldstar Limited, Cabali Limited, and Three Oceans Finance & Trading Limited, during October 1996. These agreements were titled the "Pan Pacific Client Investment Account Agreements";*
>
> *136.2 the "Pan Pacific Client Investment Account Agreements" were entered into with the intention to bring about enforceable rights and obligations;*
>
> *136.3 full payment had been made for shares lawfully acquired in Tigon Limited for Cabali Limited, Goldstar Limited and Three Oceans Finance & Trading Limited with Pan Pacific Financial Services Limited;*
>
> *136.4 Pan Pacific Financial Services Limited was entitled to a "performance fee" at 31 January 1997, as a result of managing the portfolios of Goldstar Limited, Cabali Limited and Three Oceans Finance & Trading Limited in terms of the "Pan Pacific Client Investment Account Agreements";*

136.5 at Tigon Limited's balance sheet date (31 January 1997) the transaction in respect of the "performance fee" had reached a stage of completion and could be measured reliably;

136.6 the "performance fee" earned by Pan Pacific Financial Services Limited by virtue of the "Pan Pacific Client Investment Account Agreements", should be included in Tigon Limited's group profits;

136.7 Pan Pacific Financial Services Limited was lawfully entitled to purchase Tigon Limited shares, in terms of the "Pan Pacific Client Investment Account Agreements";

136.8 the transactions between Tigon Limited, the accused, Pan Pacific Financial Services Limited, Goldstar Limited, Cabali Limited and Three Oceans Finance & Trading Limited were at an arms length and not artificial or simulated;

136.9 an amount of R26 250 000-00 could and/or should have been included in Tigon Limited's group profits for the financial year ending 31 January 1997;

136.10 the "performance fee" could be measured reliably as at 31 January 1997;

136.11 the accounting for the "performance fee" was in accordance with generally accepted accounting practice in South Africa;

136.12 the Tigon group consolidation workings for the year ended 31 January 1997, correctly reflected a profit before tax of R26 250 000-00 in the income statement for Pan Pacific Financial Services Limited;

137. and by means of the said misrepresentations induced … to act to their prejudice, actual or potential, in that:

…..

138. WHEREAS the accused, when they gave out and pretended as aforesaid, well knew that:

138.1 the agreements that Pan Pacific Financial Services Limited (a subsidiary of Tigon Limited at 31 January 1997) had entered into with Goldstar Limited, Cabali Limited, and Three Oceans Finance & Trading Limited, during October 1996 were neither lawful nor valid and were false and/or simulated;

138.2 the supposed contracting parties had no intention for actual rights and obligations to arise from the "Pan Pacific Client Investment Account Agreements";

138.3 Cabali Limited, Goldstar Limited and Three Oceans Finance & Trading Limited had not actually provided funds for investment by Pan Pacific Financial Services Limited and full payment had not been made for the Tigon Limited shares which had not been lawfully acquired;

138.4 the "Pan Pacific Client Investment Account Agreements" contravened section 39 of the Companies Act:

138.4.1 the effect of these arrangements was that Tigon Limited directly or indirectly acquired an interest in its own shares and/or;

138.4.2 Pan Pacific Financial Services Limited acquired an interest in the shares of its holding company, Tigon Limited;

138.5 the "Pan Pacific Client Investment Account Agreements" were not entered into with the intention to bring about enforceable rights and obligations but were intended to:

138.5.1 support the accused's assertions that the terms of the agreement provided that, a "performance fee" amounting to R26 million would

be recorded in Tigon's group profits and that the fee was determinable and realisable;

138.5.2 manipulate the Tigon share price, by boosting the share price, which in turn increased the "performance fee" earned which was to be included in Tigon group profits. Tigon Limited was therefore in the position to "profit" from the interest acquired in its own shares;

138.5.3 create the impression that the shares acquired in terms of the "Pan Pacific Client Investment Account Agreements" formed part of Tigon's "free float" of shares.

138.6 Pan Pacific Financial Services Limited was not entitled to a "performance fee" at 31 January 1997, as it was not a lawful and valid contract. Even if it was a lawful contract (which it was not) the performance fee could not be accounted for in terms of South African generally accepted accounting practice as at 31 January 1997.

138.7 the transactions between Tigon Limited, the accused, Pan Pacific Financial Services Limited, Goldstar Limited, Cabali Limited and Three Oceans Finance & Trading Limited were not at arms length and were false and simulated.

138.8 the recording and recognition of the "performance fee" was not in accordance with generally accepted accounting practice;

138.9 the Tigon group consolidation workings for the year ended 31 January 1997 reflected a profit before tax of R26 250 000-00 in the income statement for Pan Pacific Financial Services Limited which was inaccurate and incorrect and amounted to a material overstatement of earnings;

138.10 …...

138.11 these transactions were simulated and/or fictitious.

16. The basic allegations find expression in one form or another in other offences listed under counts 1 to 14 which are said to have been committed at the same time or subsequently and which involve one or more of the same entities.

    For sake of completeness Pan Pacific Financial Services Limited, Goldstar Limited, Cabali Limited and Three Oceans Finance & Trading Limited are all alleged to be entities registered in the British Virgin Islands, Niue and in one case Hong Kong and in respect of some ostensibly managed from Hong Kong.

THE ISSUES

17. The accused contended that the State was obliged to apply for the LoRs in terms of s 2(1) of ICCMA and not s 2(2). In utilising the incorrect section, they were deprived of their right to challenge the issue of the LoRs. They alleged that this was done deliberately to thwart their rights.

18. After I heard the accused's argument there were a number of issues I requested the State to address me on. After they did so, Bennett then sought to introduce a further point, namely that the circumstances of this case raise constitutional issues arising from the conduct of the prosecution in allegedly manoeuvring itself into a position in order to deprive the accused of their fair trial rights and which are therefore unique circumstances that fall outside the decisions of the Supreme Court of Appeal and Constitutional Court to which I will refer.

    The short answer is that the SCA and Constitutional Court decisions were decided as far back as 2008. This was well before the accused pleading to the charges in 2016. The decisions are based on the interpretation of legislation not the peculiar facts of a case.

    Indeed, the Constitutional Court held that the State was obliged to utilise s 2(2) even though the accused in that case had already been indicted, which negates

any argument that once an indictment is ready or even served that there is no reason for further investigation. These issues were pertinently dealt with and rejected as appears more fully from the extracts of the case which are cited later. Moreover the issue of fair trial rights is more concerned with the admission or otherwise of the documentary or other evidence which would fall under s 5(2)(b) of the ICCMA in cases where the LoR was obtained under s 2(2).

DISTINCTION BETWEEN PROCEEDING UNDER S 2(1) and 2(2) of ICCMA

Comparing the sections

19. Bennett had raised the lawfulness of utilising s 2(2) immediately after the State had completed its arguments as to admitting the documentary evidence and the five affidavits obtained under the LoRs. Without the full Act in front of me at the time I expressed concern that the State could withhold the institution of proceedings to frustrate the right of an accused to the apparent advantages of challenging the procurement of evidence.

20. An understanding of the scheme of the ICCMA can only be gathered by having regard to s 2 in its entirety and certain complimentary provisions.

The section provides:

> *2 Issuing of letter of request*
>
> *(1) If it appears to a court or to the officer presiding at proceedings that the examination at such proceedings of a person who is in a foreign State, is necessary in the interests of justice and that the attendance of such person cannot be obtained without undue delay, expense or inconvenience, the court or such presiding officer may issue a letter of request in which assistance from that foreign State is sought to obtain such evidence as is stated in the letter of request for use at such proceedings.*

(2) A judge in chambers or a magistrate may on application made to him or her issue a letter of request in which assistance from a foreign State is sought to obtain such information as is stated in the letter of request for use in an investigation related to an alleged offence if he or she is satisfied-

(a) that there are reasonable grounds for believing that an offence has been committed in the Republic or that it is necessary to determine whether an offence has been committed;

(b) that an investigation in respect thereof is being conducted; and

(c) that for purposes of the investigation it is necessary in the interests of justice that information be obtained from a person or authority in a foreign State."

21. It becomes immediately apparent that s 2(1) applies during the course of *"proceedings*" whereas s 2(2) does not. The question then is whether the legislature left any *lacuna* in cases where proceedings had not yet commenced.

22. In order to answer the question regard must be had to the definition of "*proceedings*" in s 1 of the ICCMA. It means:

"criminal proceedings and any other proceedings before a court or other tribunal, instituted for the purpose of determining whether any act or omission or conduct involves or amounts to an offence by any person"

23. Moreover the only distinction between applying for an LoR during the course of proceedings and prior to it is that in the former case the accused (or a legal representative) is entitled under s 3(1) to submit interrogatories or actually appear (if not in custody) at the examination in the foreign jurisdiction. In the case where an LoR is obtained prior to the proceedings being conducted then no such right is afforded. It is however replaced with other safeguards which have passed constitutional scrutiny.

More particularly, where an LoR is sought during the course of proceedings then under s 5(1) the evidence obtained by an LoR "*shall be deemed to be evidence under oath if it appears that the witness was in terms of the law of the requested State properly warned to tell the truth"* whereas if an LoR was obtained prior to the proceedings then the evidence obtained pursuant to it can only be admitted as evidence if either the accused agrees failing which then under s 5(2)(b) if:

> *"the court, having regard to-*
> *(i) the nature of the proceedings;*
> *(ii) the nature of the evidence;*
> *(iii) the purpose for which the evidence is tendered;*
>
> *(iv) any prejudice to any party which the admission of such evidence might entail; and*
>
> *(v) any other factor which in the opinion of the court should be taken into account,*
>
> *is of the opinion that such evidence should be admitted in the interests of justice."*

24. In other words, the legislature considered that the fair trial right accorded under s 5(1) in cases where a request for an LoR was made during the course of proceedings would be satisfactorily protected by the safeguards introduced under s 5(2)(b) in cases where an LoR request was made prior to the proceedings being instituted.

25. This very issue and the constitutionality of s 2(2) was determined by the Constitutional Court in *Thint Holdings (SA) (Pty) Ltd v NDPP; Zuma v NDPP* 2008 (2) SACR 557 (CC). Moreover the arguments raised by the accused were pertinently dealt with in its judgment [1]. In particular the Constitutional Court held that:

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[1] *Thint* at paras 16, 17, 25 and 31.
At para 31 of the judgment the court identified two if the issues regarding s 2(2) as follows:

a. The meaning of s 2 (1) is clear. It means that *"the letter of request is issued in court and not by a judge in chambers or a magistrate. The application is therefore made to the court by the investigator during, and not outside of, the criminal proceedings."* [2]

The court endorsed the judgments of the SCA in *Zuma and Others v National Director of Public Prosecutions* 2008 (1) SACR 298 (SCA) and of the High Court in *S v Zuma and Others* 2006 (2) SACR 69 (D).

b. There is no clear line separating obtaining evidence and obtaining information. In this regard the court said that:

"it should be borne in mind that the State is entitled to tender evidence that seeks to strengthen its case at the criminal trial. Indeed, the State is under an obligation to prosecute crime as effectively as it lawfully can. In our constitutional democracy, the courts must ensure, in the interests of justice, that fairness prevails and litigants are not oppressed or evidence suppressed. The courts must also ensure that a litigant's right to a fair trial under s 35 of the Constitution is protected."[3]

Later the court also said that:

"To understand 'investigation' as referring only to the former process and not the latter would be to adopt a meaning of s 2(2) incompatible with the manner in which criminal investigations are undertaken. In our view, a more functional and appropriate understanding of s 2(2) would recognise

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"The legal questions concerning the proper interpretation of s 2(2) of the Act that must be decided in this case are twofold: (a) may the State use s 2(2) to procure original documents of which it already has copies; and (b) does the fact that the applicants had been previously charged, though that case had been struck from the roll, prevent the State from using s 2(2) in the circumstances of this case?"

[2] Id at para 26

[3] Id para 36

that the two processes are inevitably intertwined and that 'investigation' in s 2(2) should be read accordingly.[4]

Furthermore, information is not restricted to new and/or unknown knowledge. It extends to any knowledge, known or unknown. Indeed, as the applicants argue, the NDPP has had the information contained in the 14 documents available to him since 10 October 2001, in the form of copies. He therefore did not seek new knowledge. What he sought was to obtain the original documents to counter, as he contended, the risk of the applicants' objection to the use of the copies.[5]

The NDPP employed these investigative and information-gathering exercises with a view to building a case against the applicants for a future trial. That is a legitimate and lawful strategy to adopt. To distinguish between information and evidence as the applicants did is therefore to draw a false distinction. In our view, therefore, the applicants' argument that the purpose for which the original documents were sought in this case falls outside the scope of s 2(2) must be rejected."[6]

c. In response to the argument that the trial had commenced once Mr Zuma had been indicted and therefore s 2(2) could not be relied on even if the State had originally withdrawn that first indictment the court identified two reasons why the argument could not succeed.

The first was that:

"As soon as the criminal matter had been struck from the roll by Msimang J, therefore, the criminal proceedings were terminated and the proceedings were no longer pending. <u>At the time, Mr Zuma had not yet pleaded to the charge</u>. Even if there might have been an intention on the part of the NDPP at that stage to reinstitute proceedings, there was no

[4] Id para 36
[5] Id para 37
[6] Id para 38

guarantee that he would actually do so. But it would not matter even if the probabilities were that he would do so." (emphasis added) [7]

It is evident that stripped of the issue regarding the withdrawal of the initial indictment, the court made the point that Mr Zuma had not yet pleaded.

This echoes the reason for the decision ("*the ratio*") of *Zuma (SCA)* where Nugent JA said in relation to when s 2(1) applies:

"The word 'proceedings' might have various meanings depending upon its context. It is clear that it is used in s 2(1) to mean the trial of a person on a criminal charge, which commences when the person who stands accused is called upon to plead to the charge. That construction seems to me to accord with the ordinary meaning of the term in the context in which it is used, and is fortified by the provisions of s 3(1), s 3(3)(a) and (b), s 5(4) and s 6, all of which contemplate evidence being placed before a court after issue has been joined. The clear distinction between the two sections is that s 2(1) allows for evidence to be taken in a foreign state in the course of a trial, while s 2(2) allows for assistance to be sought in the course of a criminal investigation that precedes a prosecution."[8]

The corollary to this is that a court cannot be called on to apply s 2(1) if an accused has not yet pleaded although an indictment has been issued. This situation arose in *Zuma (KZN)* where Combrink J held that proceedings in a criminal trial commence only when the accused has pleaded. The court said:

"*unlike in civil cases where the lis between the parties is established at close of pleadings, in criminal matters only after pleading to the charge is the lis established between the accused and the State. It is, in my view, doubtful whether evidence on commission can be led before the accused has pleaded*."[9]

[7] Id para 42
[8] Id para 10
[9] *Zuma(KZN)* para 6

The second reason why the argument could not succeed also answers the argument raised by the accused that there is a *lacuna* between s 2(1) and 2 (2) where the State cannot use either provision. This is what the court said:

"Secondly, the effect of this argument is that until the trial resumed, the NDPP would not have been entitled to use either s 2(1) or 2(2). This would be an untenable result. It is in the interests of a speedy and fair trial that the State should prepare its case as fully as possible before proceeding to court. A speedy and fair trial is not only a constitutional obligation placed on the State, it is also a right of the applicants themselves and in the interests of justice. If the interpretation of s 2(2) suggested by the applicants were to stand, it would frustrate the very objectives of a speedy trial."

The court also referred to the clear wording of s 5(4) which leaves no doubt that s 2(1) can only apply once a trial has actually commenced.[10]

26. Earlier I mentioned the protection which s 2(2) provides by reason of the accused not having the opportunity to attend an examination conducted abroad and cross-examine the witness nor has the opportunity of putting his or her own interrogatories as would be the case if s 2(1) applied.

The Constitutional Court in *Thint* specifically mentioned the protection provided in relation to evidence sought to be introduced by a s 2(2) LoR. It said:

"Finally, we should add that the admissibility of any documents obtained under s 2(2) at the criminal trial falls to be determined in the light of s 5(2) of the Act. That section regulates the approach the court must take in relation to

[10] Section 5(4) of IMCCA provides that;

"Evidence obtained by a letter of request after the institution of proceedings shall form part of the record of such proceedings and shall be admitted as evidence by the court or presiding officer which issued the letter of request in so far as it is not inadmissible at such proceedings

admissibility. One of the factors to be taken into account is any prejudice to any party which the admission of such evidence might entail."[11]

27. If the law was otherwise, then in the present case the State would not have been able to bring a s2(1) application despite the accused receiving their indictment in 2006. The reason is that they only pleaded to the charges in 2016.

28. In view of the clear case law it is unnecessary to engage in an examination of when the State could have served the indictment or whether it deliberately withheld doing so before it sought to obtain the LoRs. The reason is that it would have been unable to bring a s 2(1) application since the accused had not yet pleaded and although receiving the indictments in 2006 and the matter coming before Borchers J, throughout the five or so years that the judge dealt with the matter before recusing herself the accused had still not pleaded.

29. In a fundamental way the accused's argument relies on a heads I win tails you lose proposition: If s 2(1) applied, then the evidence could not have been procured prior to 2016 despite the indictment having been served in 2006.

30. I am satisfied that the LoRs were lawfully obtained under s 2(2) of the ICCMA. No costs order is to be made under the provisions of the ICCMA as it was not argued before me.

31. Accordingly the matter will proceed to the s 5(2) phase in regard to the admissibility of the documents and the affidavit evidence under the five LoRs.

32. For sake of completeness the following order was then made:

    1. *The five letters of request in respect of Christopher David Ian Gordon, Michael Lintern-Smith, Jane Adamczyk, Herbert Adamczyk and Alan Kenneth Mercer are declared to have been lawfully obtained under s 2(2) of the International Co-operation in Criminal Matters Act no. 75 of 1996 ("the ICCMA")*

[11] Id para 45

2. *The trial will proceed to the s 5(2) phase in terms of the ICCMA with regard to the admissibility of the documents and the affidavit evidence obtained under the aforesaid letters of request*

3. *No order as to costs*

(signed)

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SPILG, J

The reasons for the decision were read out during a virtual court hearing on 19 March 2021.

DATES OF HEARING:	8 and 9 March 2021
DATE OF JUDGMENT:	19 March 2021
FOR THE STATE:	Adv. EM Coetzee SC
	Adv. JM Ferreira
FOR ACCUSED ONE AND TWO:	In person