



REPUBLIC OF NAMIBIA

**MINISTRY OF HOME AFFAIRS, IMMIGRATION, SAFETY
AND SECURITY**

**RESPONSES BY HON. FRANS KAPOFI,
MINISTER OF HOME AFFAIRS, IMMIGRATION, SAFETY
AND SECURITY**

**TO QUESTIONS POSED BY HON. NICO SMIT IN THE
NATIONAL ASSEMBLY**

04 MARCH 2021

Honourable Speaker,

Honourable Members,

On 24 March 2021 Hon. Nico Smit gave his notice to ask me questions concerning a former finance manager at the Defence Company August 26 and what he termed "the deliberate attempt" by members of the Namibian Police to protect such former finance manager and his wife "from being arrested and facing the full might and length of the law".

I want to start by thanking Hon. Smit for the questions. I have carefully studied them and it is now my pleasure to provide answers thereto.

I wish to start by providing factual background:

1. During July 2018 a criminal case was registered under case number Windhoek CR 500/07/2018. The case relates to fraud, theft, tax evasion and money laundering pertaining to the affairs of "August 26". This case is still under investigations and when the time is opportune, and if evidence so dictates, then a shift to a higher gear of law will happen. This is an important case and the Police are carefully gathering and considering evidence.
2. As the investigations under the criminal case progressed, the Namibian Police together with the Office of the Prosecutor General also commenced with the process of tracing of proceeds of crime under the Prevention of Organised Crime Act of 2004.
3. With regard to the allegation that Mr. Moshana allegedly looted money from August 26 textile and Garment Factory Pty Ltd ("August 26") with his wife Ester Ndinelago Shimwandi and then squandered that money on vehicles and houses, it must be noted that the systematic process of law took its due course. A civil case was lodged in the High Court which specifically dealt with the aspect of the properties. The case number is HC-MD-CIV-MOT-POCA-2019/00454.

- a. A **preservation order** in terms of Section 51 of the Prevention of Organised Crime Act 29 of 2004 ("POCA") was issued on 6 December 2019 by the High Court. In terms of this order, the following were **preserved**:
- one house located in Windhoek,
 - one house located in Walvis Bay and
 - 6 vehicles were preserved;
- b. After the preservation order was issued, interested parties opposed the preservation order and laid claim to some of the properties. These interested parties are Standard Bank of Namibia and "August 26". This resulted in the interested parties proving their legitimate claims to some of the properties listed in the preservation order. I will not get into the details of this because all these are contained in a court file that can be accessed by those interested to know the details.
- c. **A forfeiture order** in terms of Section 61 of "POCA" was granted by court on 09 December 2020. In terms of this order, the following were eventually forfeited:
- One house in Walvis Bay, and
 - 5 vehicles.
- d. As you may note, the forfeiture order and the preservation order differ with one house and one car. This is for the reason I explained above. One of the properties was bought through the bank and mortgaged by the bank. Since it was still not paid off, it was not and could not be part of the forfeiture order.

Hon. Smit, in his questions, accused the Namibian Police of allowing Mr. Moshana to sell off residential properties that were bought with ill-gotten money. I do not know what Hon. Smit intends to convey to the nation with such a misleading and damaging accusation. I wish to categorically clarify that the Police have no power to allow or not allow a person to dispose of a property. The properties that were

preserved and forfeited were listed in court orders – anything that was not covered in those court orders was not part of the property to be preserved or forfeited.

The police are aware of four (4) other houses (three (3) in Walvisbay and one (1) in Omuthiya) which were allegedly sold prior to the investigation into the properties. Since these had already been sold, they could not be and were not part of the preservation order.

Honourable Speaker

Honourable Members

What I have just explained pertains mostly to the civil case. I will now give some details of the criminal case.

Firstly, I want to assure this Honourable House that the criminal investigations in respect of the criminal case are continuing. As you may be aware, the burden of proof in a criminal case is "**beyond reasonable doubt**" while in a civil case it is "**on a balance of probabilities**". We must at all times be cognisant of the distinction between the two types of cases. It seems Hon. Smit is under the mistaken impression that as soon as the forfeiture order was granted (under the civil forfeiture) persons implicated should have been arrested. That would be an absurd, guaranteed-to-fail, mechanical way of operating. The Namibian Police Force does not operate like that.

The fraud, theft, tax evasion and money laundering investigations which resulted in the seizure and forfeiture described above were investigated by among others police officers who deal with commercial crime investigation, anti-money laundering & combating of financing of terrorism. It cannot, by any stretch, be insinuated that the Police have not been working diligently on the case. Had it not been for the criminal case, the forfeiture would not have happened.

I want to inform this Honourable House that although the investigations were in respect of about N\$14 million which was allegedly defrauded from August 26, it is becoming clear through the on-going document-intensive investigations for the period 2011 to 2019 that the amount is higher.

This is why the investigations have not been concluded. When the case goes to court the State must prove its case beyond reasonable doubt; this will be done using the evidence gathered by the Police. I do not want to believe that it is the intention of this Honourable House, or of Hon. Smit rather, for the Police to have inchoate evidence when the case goes to court which will result in the State not being able to prove the case "**beyond reasonable doubt**".

Due to the complexity of the investigations, a forensic report on the finances of "August 26" is an absolute necessity. A private accounting firm was approached to carry out the forensic investigation, this has not been finalised. I pause to remind myself that Hon. Smit is not a person far removed from the "profession of numbers", so I will (in his favour) assume that he has a fair understating of the possible complexity the investigators are facing. The investigation also extends to foreign jurisdictions and the collection of evidence from foreign jurisdictions is still ongoing.

Honourable Speaker

Honourable Members

I believe that the above explanation is plausible and that it adequately takes care of question 1 of the questions posed by Hon. Smit.

Before I answer Questions 2 and 3, I want to deal with this unreasonable expectation that when members of the public address a letter to the Inspector-General on a matter then an arrest must be made. I am curious to know what evidence a member of the public considers in order to instruct the Police to arrest. The Police cannot be instructed to arrest anyone! It will not be the members of the public proving that case in court.

Honourable Speaker

Honourable Member

Let me finalise by shortly answering questions 2 and 3.

On question 2: I deny that The Namibian Police Force is complicit in protecting members of the Namibian Defence Force or that they act on

instructions of nameless senior politicians. If there is proof for this allegation, it must not be left unattended. I invite Hon. Smit to raise it with the relevant authorities he is comfortable with.

By the way, all of us, including Hon. Smit and myself, are equal before the law and when accused of wrongdoing due process must follow in accordance with the law. Our current dispensation is founded on the rule of law, unlike the previous one that made it a habit to arrest and detain with neither reason nor due process.

The public must also understand that each case is treated on its own merit. We must not be in a hurry to expect same treatment for all cases – they may differ substantially.

On question 3: As minister responsible for safety and security, I of course expect that the public should continue to trust in the police. I say "continue" because we have evidence that the public currently trusts the work of the Police Force. Cases are registered with the Police daily; would one report a case to a Police Force that he or she does not trust?

It is an individual decision to trust or not to trust. No one can be forced. Be that as it may, the Namibian Police Force serves within the confines of the law and as an institution of State there are processes within which actions are taken. While appealing to Hon. Smit not to drum up allegations and statements that have the potential to tempt us to divulge information that can put the investigations at jeopardy, I importantly urge the public to trust the work of the Force.

Honourable Speaker

Honourable Members

I thank you.