

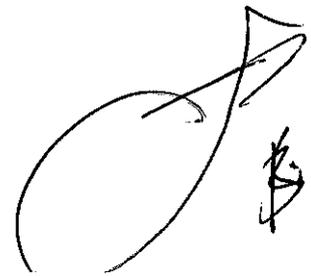
**IN THE EX PARTE APPLICATION IN CHAMBERS BY THE COUNCIL OF
THE LAW SOCIETY OF NAMIBIA**

I, the undersigned

MARGARETHA STEINMANN

make the following statement under oath:

1. I am a female legal practitioner of this honourable Court and currently serve as the Director of the Law Society of Namibia with its offices situated at 1st Floor Namlex Building, Independence Avenue, Windhoek in the Republic of Namibia.
2. The facts set out herein are within my own personal knowledge, unless the context indicates the contrary and are both true and correct. Where I make submissions of a legal nature, I do so on advice of our legal representative.
3. I am duly authorised by resolution of the Council of the Law Society of Namibia passed at its meeting on 24 January 2020, to depose to this affidavit on its behalf. I refer to the resolution (4/2020) attached marked "**MS 1**".
4. The applicant is the Council of the Law Society of Namibia duly established in terms of section 40 of the Legal Practitioners Act, 1995 (Act 15 of 1995).
5. The Law Society is duty bound by statute to maintain and enhance the standards of conduct of integrity of all members of the legal profession, to define and enforce correct and uniform practice and discipline among members and to do anything that is necessary or conducive to the attainment of the objects of the Law Society.



6. On the basis of what is set out herein, the Council resolved to approach a judge in chambers on an *ex parte* basis for the issuing of a search and seizure warrant in terms of Rule 22(6)(g) of the Rules of the applicant made in terms of the Legal Practitioners Act, in respect of the records relating to the practice of Sisa Namandje & Company Incorporated, incorporated and registered as a private company under the Companies Act in accordance with Section 7 of the Legal Practitioners Act. The firm's current directors are Sisa Namandje, Mathilda Kahimbi Jankie, Mbushandje Ntinda, Astrid Nicoleene Feris and Nelao Ndateelela Shilongo.
7. Rule 22(6)(g), entitles the applicant to "*approach any judge in chambers for a warrant to enter and seize the client records of the firm / law practice of the member concerned or any other matter as in their reasonable opinion may be associated with or relate to or evidence the conduct of the member which is being investigated without the necessity of making written application*".
8. As appears from the language of "MS 1" the Council has decided to lodge an investigation into legal practitioners allegedly involved in the "#Fishrot scandal" and has expressly included resort to such an application in the event of resistance on the part of a legal practitioner in question.

Background:

Al Jazeera Investigative Documentary Film:

9. It is necessary to set out the background in some detail. On 1 December 2019 Al Jazeera, the news agency, published an investigative documentary titled "Anatomy of a bribe", which directly linked up with the #FishRot scandal that had broken a few weeks earlier and which exposed large scale corruption within the Namibian fishing industry and that saw a number of high profile persons, including two former Ministers arrested.

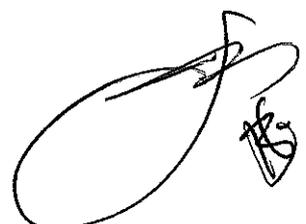
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10. In the documentary one can observe undercover reporters, who posed as representatives for wealthy Chinese investors, making a deal with Sacky Kadhila-Amoomo (hereinafter Mr Kadhila), an admitted legal practitioner and member of the Law Society, for the payment of a bribe in the amount of USD 200 000.00 to the former Minister of Fisheries and Marine Resources (Bernhard Esau) in exchange for the assurance that the joint venture to be entered into between Sacky Kadhila and the undercover reporters would obtain fishing quota rights.
11. In the documentary, Sisa Namandje (also a member of the Law Society) and Sacky Kadhila-Amoomo can be observed expressing their willingness and preparedness to facilitate the payment of the bribes, using Sisa Namandje's trust account. Mr Namandje provides Mr Kadhila with a reference number, knowing it to be false in relation to the proposed transfer of the bribe into his trust account. The reference number given is S 2868/SN/19 Ombundu Properties, which concerned a local housing project owned by Ombundu Investments, a trust of which Mr Kadhila is a trustee.
12. As can be seen in the film, the letter dated 17 September 2019 addressed by Mr Namandje to Mr Kadhila with the reference number, concerns the *"Agreement: Council for the Municipality Swakopmund // Swakopmund Ombundu Investment (Pty) Ltd"*.
13. Mr Kadhila emphasises to the undercover reporters that when the payment of USD 200 000 is made, the reference to be used **must** be that given by Sisa Namandje (the reference given above) to ensure that the payment remains hidden. He makes it clear that the investor *"cannot mention the donation to the party (SWAPO party) or the donation to the Minister (former Minister Esau) or anything like that because the FIC and BON will check, which is why they are*

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doing it this way, through Sisa's account" (being a reference to Sisa Namandje & Co Inc.'s trust account).

14. Mr Kadhila goes further and explains to the undercover reporters that Mr Namandje has to report to the authorities (FIC and BON) and that the latter monitor accounts. If they ask him, explains Mr Kadhila, he (Mr Namandje) will say, "*no this is for this development and the FIC and BON will be satisfied with that*".
15. When the undercover reporter enquires whether they have done this before, whether the payment will go through, Mr Kadhila answers them "*that is why we are dealing with it this way*". He assures them "*once it has reached Sisa's account you are assured that it has reached the Minister*".
16. The undercover reporters in the investigative documentary film also engaged directly with Mr Namandje at his firm on two occasions. The first is at the start of their investigation, when they enquire whether he would act as their consultant and place them in contact with the relevant persons in the fishing industry. Mr Namandje can be observed telling them that he is there to guide them to go about their business legally and that he can put them in touch with all the relevant persons locally as that is his speciality, which he delivers on. He subsequently put the undercover reporters in touch with Mr Kadhila by setting up a meeting between them.
17. The second time, the undercover reporters meet with Mr Namandje is after the deal with the Minister for the payment of the USD 200 000 has been concluded with Mr Kadhila and the Minister and the undercover reporters wanted to confirm the payment method with Mr Namandje. When they sought to confirm with Mr Namandje that the payment for the Minister would be made via his trust account, Mr Namandje warned them, "*you guys must be careful speaking to people about paying the Minister. If you speak to a number of*

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people you will end up ...” (Mr Namandje can be observed making the gesture of being handcuffed). He informs the undercover reporters, “I am not involved in who is to be paid and what the money is for. I also do not want to be involved in that discussion. But it is fine, once money comes in, I have given Sacky the file with the money and Sacky obviously having discussed with you guys, he will know how to channel it. He (Sacky Kadhila) has a good relationship with the Minister”.

18. The film concludes with comments from both Mr Kadhila and Mr Namandje. Mr Namandje states that he was not privy to any discussions about payments to the Minister and was only acting on the instructions of Mr Kadhila. Mr Kadhila states that he became suspicious that the undercover reporters were fake businessmen and that he played along to confirm his suspicions. He added that he reported the matter to Mr Namandje, who in turn claimed to have alerted the police.
19. Relevant to the present matter are two facts, which appear from the investigative documentary film. First, Mr Namandje and Mr Kadhila expressed a clear intention of engaging in and facilitating money laundering using Mr Namandje’s trust account, knowing this to be illegal. Second, this would not have been the first time they would have done so. On this basis alone, the Law Society would be justified and duty bound to initiate an inspection of Mr Namandje’s trust account in terms of section 25 of the Legal Practitioner’s Act and failing Mr Namandje’s cooperation, to initiate an investigation in terms of Rule 22 (3) of the Rules of the Law Society, including lodging this *ex parte* application in chambers for a warrant in terms of Rule 22(6)(g).
20. It should be noted that Mr Kadhila, per the Law Society’s records, is exempt from holding a fidelity fund certificate and to my knowledge practises on a very limited basis. Since Mr Kadhila does not operate

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a trust account, the Law Society cannot initiate an inspection in terms of section 25 (2) of the Legal Practitioners Act.

FIC Disclosure in terms of Sections 9 and 48 FIA:

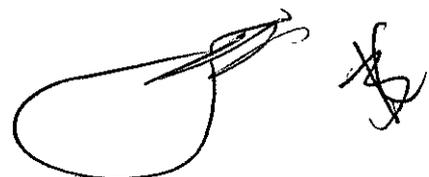
21. On 13 February 2020 the Financial Intelligence Centre shared a Spontaneous Disclosure Disseminated to the Anti-Corruption Commission in terms of Sections 9 and 48 of the Financial Intelligence Act, 2012 (Act 13 of 2012) with the Law Society.
22. The FIC disclosure, dated 13 January 2020, which is attached and marked "**MS 2**", raises the following concerns.
23. It confirms the payment of NAD 15 000 000.00 into Mr Namandje's trust account from Fishcor on 1 December 2015, which was referenced in the film and for which there was documentary proof leaked to and published by Wikileaks.
24. Mr Namandje (or one of his co-directors) made the following transfers subsequent to the receipt of the Fishcor funds into his trust account: payment of NAD 2 100 000.00 into the trust account of Van Der Westhuizen & Greeff held at FNB numbered 55443850603 on 3 December 2015; payment of NAD 7 630 000.00 to Baby Face Investments CC into an account held at Standard Bank numbered 042744334 on 3 December 2015 - Baby Face Investments CC is owned by Vaino N Nghipondoka; payment of NAD 5 210 000.00 to Gwashihwemwa Family Trust into an account held at Standard Bank numbered 60000777403 at the Tsumeb Branch on 3 December 2015 - Armas Amukwiyu is a trustee under the trust.
25. The total of the above outward transfers comes to NAD 14 940 000.00 leaving a balance of NAD 60 000.00.

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26. The FIC disclosure reveals a further payment of NAD 2 500 000.00 into Sisa Namandje & Co Inc's trust account on 4 August 2017 referenced "National Fishing Corporation", also a payment from the National Fishing Corporation. The FIC did not observe significantly large disbursements following receipt of these funds.
27. The third transaction of concern into Sisa Namandje & Co Inc's trust account occurs on 28 August 2017 in the amount NAD 5 000 000.00 by Mermaria Seafood Namibia (Pty) Ltd referenced "FNB 000002641 Fishcor / Fishcor". The reference in Sisa Namandje & Co Inc.'s trust account is recorded as "Government Objective".
28. Mr Namandje (or one of his co-directors) made the following transfers subsequent to the receipt of the Mermaria Seafood funds into trust: payment of NAD 4 000 000.00 EFT to Gabriel Kandjengo into an account held at FNB numbered 62261412846 on 28 August 2017 referenced "IBPMT/S2361/MJS-PP"; payment of NAD 1 100 000.00 EFT to a Nedbank Home Loan account referenced "IBPMT/L236/SN-Bond Payment", first received into a suspense account 15910002632 and then into a home loan account number 13990335138 held in the name of Mr Sisa Namandje and referenced "Instalment Collection" on the side of the bank.

Application for FFC for 2018:

29. Upon receipt of the FIC disclosure, with the assistance of the Manager: Finance at the Law Society, I scrutinised Sisa Namandje & Co Inc's application for fidelity fund certificates for the year 2018, which would have information for August 2017 in support of the application and compared it to the information contained in the FIC disclosure.
30. We were unable to compare the December 2015 transactions with the application for fidelity fund certificates for 2016 because the information supporting applications for fidelity fund certificates are



limited to the month of August of the previous year, and the first Fishcor payment referenced on the FIC disclosure, was made on 1 December 2015.

31. The information / documentation generally submitted in support of applications for fidelity fund certificates consists of the 'bank reconciliation' for the trust account, the 'matters balances' in respect of the trust, business and transfers, the 'creditors' aged analysis' as well as the 'trial balance' for the overall business.
32. From the application for the fidelity fund certificates for 2018, which is attached marked "**MS 3**", we learn the following:
 - 32.1 the inward payment of NAD 2 500 000.00 on 4 August 2017 from Fishcor referenced "National Fishing Corporation" is recorded in the bank reconciliation as "*direct deposit- Lemon*", which from the 'creditors aged analysis' appears to be a reference to Lemon Square Fishing, which on 16 September 2017 (the day the documents were printed) had NAD 4 672 400.00 in trust;
 - 32.2 the inward payment of NAD 5 000 000.00 from Mermaria on 28 August 2017 is recorded in the bank reconciliation as "*direct deposit- Lemon*", again the reference to Lemon appears to be a reference to Lemon Square Fishing;
 - 32.3 the bank reconciliation confirms the outward payment of NAD 4 000 000.00 made to Gabriel Kandjengo on 28 August 2017 as well as the outward payment of NAD 1 100 000.00 to Nedbank Home Loans.
33. Based on all of the above I have reason to believe that Mr Namandje and / or the other directors at Sisa Namandje & Co Inc may have engaged in money laundering activities using the firm's



trust account, and in the course thereof have contravened the requirements for the keeping of trust accounts in a number of respects, which I detail below. However before I do so, it would be conducive to make general observations on a legal practitioner's obligations relating to the keeping of trust accounts.

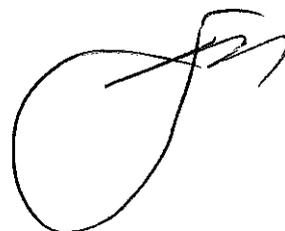
Proper and accurate record keeping trust account general observations:

34. Section 25 of the Legal Practitioner's Act, 1995 (Act 15 of 1995) (hereinafter the LPA or Legal Practitioner's Act), obliges every legal practitioner, practising with a fidelity fund certificate, **to keep exclusively in respect of his practice such books of account as may be necessary to show and distinguish in connection with such practice** – a) moneys received and moneys paid on his own account; b) moneys received, held or paid by him for on account of another person.

35. In addition to keeping the trust account separate from the business account, it also requires all transactions in and out of the trust account to be connected to the legal practitioner's **practice**. The scope of practice for those in private practice with a fidelity certificate (leaving aside the investment practice), translates into the following types of transactions involving the trust account: **a)** deposits for legal services yet to be rendered, which funds will be transferred once the work has been done and invoiced, **b)** deposits for the onward transfer to third parties, payable by the legal practitioner's clients in terms of settlement agreements, judgment awards, cost orders, conveyancing and other commercial transactions, **c)** deposits from third parties (or their legal representatives) payable to the legal practitioner's clients in terms of settlement agreements, judgment awards, conveyancing or other commercial transactions and **d)** refunds to one's own client of surplus left in trust after all invoices have been paid.

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36. Payment of surplus funds may be made to a third party with the express (and ideally written) instruction of the client, which has to be noted on the client file. Absent such express (and ideally written) instruction from the client, surplus funds must be returned to the client. Payment of the costs of instructed counsel is generally also effected directly from trust to said instructed counsel, once these have been deposited into trust by the client. The same applies to the payment of certain expenses incurred in the conveyancing practice, such as rates and taxes relating to property transfers.
37. Some of the more concrete requirements relating to the keeping of trust accounts, relevant to this matter, include that a firm shall ensure that withdrawals from its trust banking account are made only – to or on behalf of a trust creditor; or as transfers to its business banking account, but only in respect of money claimed (by way of invoice) to be due to the firm.
38. It is, with respect, simply impermissible for the legal practitioner to receive funds in trust, which are not linked to the provision of legal services by the legal practitioner or connected to a matter the legal practitioner is engaged in. In the era of the Financial Intelligence Act (FIA) and the Prevention of Organised Crime Act (POCA), every service provider subject to compliance with those two acts is required to implement and enforce certain measures such as 'know your customer' and establishing the origin of funds that are to flow through the service provider's bank accounts. In view of the fact the regime set up under FIA and POCA is designed to combat money laundering, among other things, facilitating money laundering through one's trust account, constitutes not only criminal conduct, but also very serious misconduct, unprofessional conduct and conduct unbecoming a legal practitioner all at once, since at its core, money laundering is inherently dishonest.



39. It is important to note that a legal practitioner who uses his trust account to facilitate money laundering will be hard pressed to comply with the obligation that he must keep **complete and accurate records of all financial transactions**, which lies at the heart of the obligation to keep proper accounting records or books of account.
40. To illustrate: had the undercover reporters, in the investigative documentary film, gone through with the USD 200 000 bribe to the former Minister via Mr Namandje's trust account, this would have been recorded as a deposit to the credit of Ombundu Investments under reference number S 2868/SN/19 Ombundu Properties, in respect of the Ombundu Properties housing development project, when in reality the deposit into the trust had nothing to do with the trust creditor and the funds would not be expended in relation to the housing development project. The accounting records in respect of this transaction would simply not have been complete or accurate and would have constituted a violation / transgression of the obligation to keep proper and accurate books of account for the trust account.
41. It would also have constituted money laundering in as much as the transaction and its entry in the trust books of account would have sought to conceal both the origin and destination of the funds in question, which were in the nature of a bribe or illicit donation. In concealing both the origin and destination of the funds in question, Mr Namandje would have also acted dishonestly, which would have amounted to unprofessional conduct unworthy of a legal practitioner, thereby risking his suspension from practice or even removal from the roll of legal practitioners.
42. Mr Namandje's assertion in the investigative documentary film that he is *"not involved in who is to be paid and what the money is for and that he does not want to be involved in such a discussion"* in

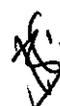


and of itself is highly problematic, where these funds come through his trust account, for which he (together with his co-directors) is solely responsible.

43. Legal practitioners are required to ensure that each client upon opening a file with the firm completes a FIA checklist / questionnaire, a requirement imposed under FIA. This checklist requires an express indication by the client of the source of funds to be used in relation to the services to be provided or introduced into the firm's trust account. A legal practitioner simply cannot be heard to say that he had no knowledge about the details of a transaction involving his trust account, which he personally authorised.

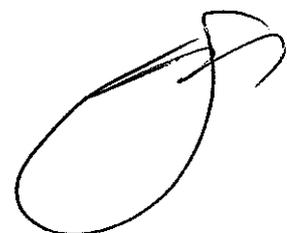
Prima facie specific transgressions or suspicious transactions:

44. I now turn to the *prima facie* specific transgressions or potentially suspicious transactions that appear from the documentation available to the Law Society at this stage.
45. I have to stress that because the documentation available to the Law Society is limited to the documentation provided in support of the applications for fidelity fund certificates, which in itself is not comprehensive, together with the information provided by the FIC as well as information in the public domain, what follows below are inferences and observations based on the limited information.
46. I also want to stress that in order to definitively state whether or not Mr Namandje and / or any of his co-directors in fact engaged in money laundering using the firm's trust account, it is imperative that an inspection be conducted. As I outline below, it does appear at least *prima facie* that Mr Namandje and / or his co-directors have failed to comply with the trust account requirements in some respects. For a definitive finding in this respect, it is imperative that an inspection is conducted that covers the client files, detailed payment advices, receipts, distribution lists and detailed fee

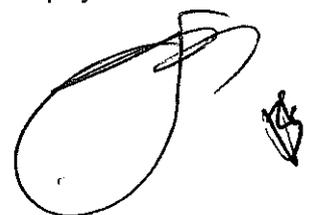


accounts, the trust ledgers for each client file and of course the bank statements for both the trust and business to tally the transactions.

47. **With respect to the 2015 payment from Fishcor:** in context of the Fishrot scandal and the details made public about “donations” to the SWAPO party from the Icelandic interests in exchange for access to fishing quotas and quota rights, the fact that an amount of NAD 7 630 000.00 was paid to a company owned by Vaino N Nghipondoka and an amount of NAD 5 210 000.00 was paid to a trust in which Armas Amukwiyu is the trustee, both of whom by virtue of their influential standing in the SWAPO party fall into the category of politically exposed persons (PEPs), make these two transactions suspicious. This is so, especially when one takes into account that, as the FIC has established, the funds paid to the Van der Westhuizen Greeff were for the payment of the purchase price for farm Apostle, bought by Mr Vaino Nghipondoka.
48. The United Nations Convention Against Corruption (UNCAC) to which Namibia is a party, in its article 52, which is titled, ‘prevention and detection of transfers of proceeds of crime’, obliges states parties to conduct “*enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members or close associates*”, often simply referred to as politically exposed persons. Due to their positions and influence, it is recognised that many PEPs are in positions that potentially can be abused for the purpose of committing money laundering offences and related predicate offences, including corruption and bribery.
49. Against the above, the 2015 Fishcor payment into Sisa Namandje & Co Inc’s. trust account raises questions and calls for an explanation, which to date has not been forthcoming.

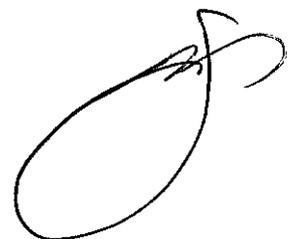


50. **With respect to the 4 August 2017 Fishcor payment:** again in light of the Fishrot scandal, the transaction is immediately suspicious, absent an explanation why Fishcor, which seemingly is at the heart of the Fishrot scandal, would pay money to Lemon Square.
51. The fact that the inward payment is recorded as "*direct deposit-Lemon*", rather than a direct deposit from Fishcor, may demonstrate an intention to conceal the origin of the source of funds, which would constitute money laundering if the funds were bribes or illicit donations. In light of Mr Namandje's express willingness to hide the USD 200 000 bribe to the Minister by channelling it through his trust account, as one observed in the investigative documentary, it is not unreasonable to infer that the Fishcor funds were hidden under the description "*direct deposit- Lemon*" in the trust account. However, without an inspection of the relevant client file, the trust records and ledgers, invoices issued, etc. it is difficult to say one way or another definitively.
52. **With respect to the 2017 Mermaria Seafood payment:** this payment appears suspicious for a number of reasons, which I deal with below. But first it is important to draw the Hon Judge's attention to the fact that the outward payment to Gabriel Kandjengo appears to be legitimate and not linked to the Mermaria Seafood payment. It appears to relate to the sale of property from Kandjengo to Octagon Construction CC, which the FIC has learned had deposited NAD 4 000 000.00 in July 2017 into Sisa Namandje &Co Inc' trust account.
53. The first reason why the transfer from Mermaria Seafood appears to be suspicious is the fact that, similar to the Fishcor payment, it is recorded in the trust books as "*direct deposit – Lemon*" rather than direct deposit Mermaria. In light of the Fishrot scandal, which heavily implicated the Icelandic company Samherji, this too may demonstrate an attempt at concealing the origin of the payment

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similar to the arrangement Mr Namandje and Mr Kadhila agreed to in the investigative film. I reiterate that only an inspection of the relevant client file, trust records, ledgers, and invoices issued etc. can shed definitive light on the legitimacy or otherwise of this particular transaction.

54. What is of concern and most troubling, however, is the transfer to Nedbank in respect of the loan the firm had taken for the construction / renovation of building it currently operates from. This was done as a direct transfer from the trust account, which is impermissible. A firm's business expenses may not be paid directly from the trust account. All funds in trust belong to the client until such time that the legal practitioner is lawfully entitled to those funds, at which point they must be transferred to the business account. Where a legal practitioner must effect a payment to a third party on behalf of the client, in the context of the mandate he is given by the client, these are paid from the business account and are considered disbursements, which the legal practitioner recovers from the client, by including the disbursement on the invoice to the client.
55. I reiterate that the only permissible direct transfers from the trust account are those listed in paragraph 35 and 36 above. These do not include paying business expenses and certainly not repaying loans. In any event the loan to Nedbank was owed by Sisa Namandje & Co Inc (the firm) and not by Lemon Square Fishing and certainly not by Mermaria Seafood. This raises the question on what basis funds paid into trust by Fishcor for the benefit of Lemon Square Fishing, could be used by the firm to make a payment towards the loan it owes to the bank. It also raises questions as to how this was accounted for, if at all, in the trust records and the client file for Lemon Square Fishing.



56. In addition to the loan payment to Nedbank, a payment was made from the trust account on 5 September 2017 in the amount of NAD 333 333.00 to Simon Ya Namandje Square CC referenced "*IBPMT/L236/SN-Drawings*". A search at BIPA indicates that Mr Namandje is the sole member in this close corporation. The first observation to be made in this respect regard is that directors and partners take their drawings from the business account, based on the firm's income and not from the trust account, certainly never directly from the trust account. The second observation is that Mr Namandje's drawings were transferred directly to a separate legal entity, in which he is the sole member. This calls for an explanation on the part of Mr Namandje. It also raises questions on how exactly this was accounted for, if at all, in the trust records and the client file for Simon Ya Namandje Square CC.
57. A third payment was made from trust on 7 September 2017 in the amount of NAD 1 433 333.00 to SP Kadhila Amoomo referenced "*IBPMT/Lemon Square*". This payment was made into Mr Kadhila's personal bank account held at First National Bank. This immediately raises the question why Mr Namandje would transfer funds, which were deposited into his trust account for the benefit of Lemon Square to Mr Kadhila or why indeed Lemon Square would make such a significant payment to Mr Kadhila personally. This also raises the question of how exactly this was accounted for in the trust records and the client file for Lemon Square Fishing.
58. I point out that the payment to Simon Ya Namandje Square CC and Mr Kadhila appear on an excel spread sheet prepared by the FIC that covers outward trust payments for the period of 14 February 2012 to 15 February 2019, which I decline to attach in order to protect the firm's other clients' confidentiality. Should the honourable Judge deem it necessary to have sight of this spread sheet I shall avail it.

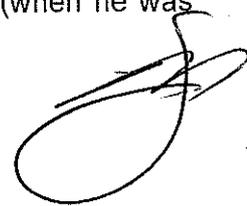
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True identity – Mermaria Seafood and Lemon Square Fishing:

59. There are important observations to be made and factors to take note of concerning the entities Mermaria Seafood and Lemon Square Fishing, which I submit, further cloud and taint the transactions in question and add to the gravity of the present situation facing the Law Society.

Mermaria Seafood:

60. Mermaria Seafood, while a company registered in accordance with the laws of Namibia, represents Icelandic interests, as is apparent from its directors. The directors are indicated to be the following over the years. On 28 July 2011, when the company was called Tidlewave Investments 65, Adalsteinn Helgason (Icelandic national) appointed on 27 April 2011, who replaced Marisa Strauss, a Namibian national who resigned on 27 April 2011.
61. On 17 February 2012 when the company was called Esja Mer Fishing Adalsteinn Helgason was the sole director, at the time. For the period 10 May to December 2013 when the company was called Katla Seafood Namibia, the directors were Helgason and Johannes Stefansson (appointed on 12 April 2012). On 15 August 2016 when the company was called Mermaria Seafood Namibia, the directors were Stefansson, Ingvar Juliusson and Arna Bryndis Baldvins MacClure. In 2017 Egill Helgi Arnasson replaced Stefansson and the directors remained the same in 2019.
62. Johannes Stefansson is of course the now famous or infamous whistle-blower (depending on one's perspective), who exposed the Fishrot scandal. In the Al Jazeera investigative documentary film Stefansson details how the Icelandic company Samherji, whose group of companies, includes a number of companies registered in Namibia but controlled by Icelandic nationals, paid significant bribes to Namibian nationals over the period 2012 to 2016 (when he was



involved), including top politicians and other high profile persons in exchange for access to fishing rights and quotas.

63. This would mean that the Mermaria Seafood payment into Sisa Namandje & Co Inc.'s trust account was a direct payment from the Icelandic interests and it would also mean that Sisa Namandje & Co Inc, Mr Namandje himself and Mr Kadhila benefitted directly and personally from Icelandic interests.
64. A search at BIPA reveals the following in respect of Mermaria Seafood: the annual return for 2017 lists the shareholders for Mermaria as Esja Seafood Limited, a company registered in Cyprus (part of the Samherji group of companies) and Katla Seafood Namibia Holding, a company registered in Namibia (also part of the Samherji group of companies). The annual return for 2018 reveals the identical position regarding the shareholding. Mermaria Seafood's local public officer throughout the years to date is listed as Daniel Francois Malherbe, also a legal practitioner and member of the Law Society.

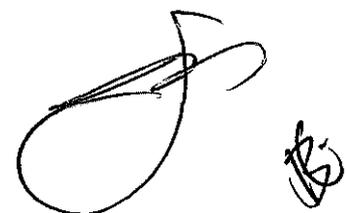
Lemon Square Fishing:

65. In as far as the entity Lemon Square Fishing is concerned, the following is noteworthy. We could find no record of an entity called Lemon Square or Lemon Square Fishing. However, an open source search revealed that Lemon Square Investments Pty Ltd is one of a number of companies, in which the First Lady of Namibia had interests in and from which she resigned as director when she became the First Lady. This appears from her voluntary financial disclosure report dated 20 May 2015, which is readily available on the Internet at www.leramobile.com and attached marked, "MS 4".
66. On page 3 of the disclosure report on the list of her directorship resignations under item 6, there appears the following information, "*Lemon Square Investments (Pty) Ltd, Namibia, Minority*



shareholder in Fishing rights (1 Hake right) sold shareholding resigned as director". Under item 7, there appears the following information, "Alumni Fishing (Pty) Ltd, Namibia, Special Purpose Vehicle for Lemon Square Hake Quota, resigned as director".

67. In early July 2015 with reference to the MTC's inspirational talk show "Masters of Success" at which Mr Namandje was to be the inspirational guest, it was widely reported in the media, including the Villager, that Mr Namandje is a director and interest holder in Lemon Square Fishing and Alumni Fishing. I refer to the online article in the Villager on 3 July 2015, marked and attached "**MS 5**".
68. A search at BIPA reveals the following in respect of Lemon Square Investments: the register of directors, auditors and officers as at 9 December 2011, lists the directors as Monica Kalondo (appointed on 21 April 2009), Sisa Namandje (appointed on 7 December 2011) and Anarosa Katjivena (appointed on 7 December 2011). The register as at 16 March 2015 lists the directors as Sisa Namandje, Anarosa Katjivena and indicates that Monica Kalondo resigned on 10 March 2015. The register as at 3 October 2017 lists the directors as Sakaria Panduleni Kadhila Amoomo (aka Sacky Kadhila) (appointed on 24 January 2017), Anarosa Katjivena and Sisa Namandje. This register also indicates that Sisa Namandje was appointed the company's public officer on 10 March 2015 (it previously was Monica Kalondo).
69. From the annual return for 2018, the shareholders in Lemon Square Investments are indicated as Erongo Community Development Trust, Karas Community Development Trust, Anarosa Katjivena, Sisa Namandje and Erastus Shikongo Shapumba.

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Alumni Fishing:

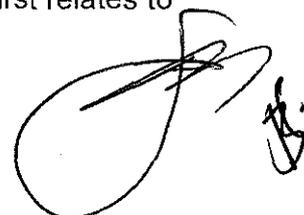
70. The First Lady's Disclosure indicates that Alumni Fishing (Pty) Ltd from which she also resigned was the Special Purpose Vehicle for Lemon Square Hake Quota.
71. A search at BIPA reveals the following in respect of Alumni Fishing: the register of directors, auditors and officers as at 9 December 2011 lists the following directors Monica Kalondo (appointed on 7 December 2011), Sakaria Panduleni Kadhila Amoomo (aka Sacky Kadhila) (appointed on 7 December 2011), Kangulohi Helmut Angula (appointed on 7 December 2011), Matti Amukwa (appointed on 7 December 2011) and Elizabeth Kamati (appointed on 7 December 2011). The company's public officer is indicated to be Monica Kalondo.
72. The register as at 11 June 2015 lists the following directors, Sakaria Panduleni Kadhila Amoomo, Muindia Ndeumona Onesmus (newly appointed on 1 December 2014), Sisa Namandje (newly appointed on 10 March 2015), Matti Amukwa and Elizabeth Kamati. It indicates that Monica Kalondo resigned on 10 March 2015 and Helmut Angula resigned on 30 November 2014.
73. The annual return for 2016 lists the following shareholders, Aluhe Fishing (Pty) Ltd, Lemon Square Investments (Pty) Ltd, Marshall Rock Number Nineteen CC, Nampala Holdings (Pty) Ltd and Nambombola Investments (Pty) Ltd. The annual return for 2019 lists the same shareholders.
74. In view of Mr Namandje's personal stake in Lemon Square Investments / Fishing, the 2017 payments into Sisa Namandje & Co Inc.'s trust account by Fishcor and Mermaria Seafood appear to suggest that Mr Namandje was personally benefitting from these payments. Absent an explanation by Mr Namandje, it is impossible to discern whether he benefitted legitimately or otherwise from

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these transactions. I reiterate these transactions call for an inspection of the relevant client files and trust records to ascertain the true state of affairs.

Efforts at securing the firm's voluntary cooperation:

75. The exposure of what is now infamously known as the 'Fishrot scandal', by any account is the biggest scandal in the history of this country. It has shocked the nation to its core and has seen high profile personalities arrested and placed in custody.
76. Following the airing of the Al Jazeera investigative documentary film, the Council instructed me to address a letter to the Mr Namandje, which I did on 13 December 2019. In the said letter I inform him that in view of information that came to light also through discussions with the FIC, suggesting that his trust account may have been involved in certain questionable transactions, the Law Society had appointed PWC to conduct an inspection of his firm's trust account. I refer to the letter attached marked "MS 6".
77. Mr Namandje responded with an eight-page letter dated 18 December 2019, in which he essentially challenges the Law Society on its authority to initiate and conduct a Section 25 inspection under the circumstances. Mr Namandje also challenges the Law Society to demonstrate how he is not complying with the requirements relating to the keeping of trust accounts. I refer to his letter dated "MS 7".
78. There then ensued a back and forth between the Law Society and Mr Namandje, in which the Law Society explains why the inspection is necessary and Mr Namandje continues to resist all efforts at allowing the inspection. The letters exchanged are attached and marked "MS 8" and "MS 9" respectively. For the most part their content is irrelevant to the present application, but there are however, three aspects that need to be dealt with, the first relates to

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the FIC findings, the second to the purpose of the inspection and the third to the appointment of PriceWater House Coopers (PWC).

79. From Mr Namandje's letter dated 14 February 2020, it appears in paragraph ten thereof that he takes the position that the FIC had all but cleared him, save for some minor instances of non-compliance. He states that the FIC had not found that there was actual or potential money laundering involving the firm's trust account, but rather suggested that the firm's alleged non-compliance (in some respects) with its (FIC) requirements may put the firm at risk of being abused.
80. I point out that in view of the FIC disclosure, which forms part of these papers (annexure "MS 2"), Mr Namandje's conclusion on the inspection conducted by the FIC, cannot be sustained. The FIC is still in the process of finalising its report following their inspection. I refer to the confirmatory affidavit of Ms L Dunn, the director of the FIC filed herewith as it concerns all the references to the FIC herein.
81. I wish to stress that the purpose of the Law Society's inspection is to determine whether the firm has indeed contravened the requirements relating to trust accounts and whether it has engaged in money laundering or facilitated money laundering by its clients. Depending on the findings of the inspection, the firm would be either cleared or in the event that violations and transgressions are found, would be given an opportunity to respond to the findings. Depending on the firm's response, the Law Society would either refer the matter to the Disciplinary Committee or conclude the matter there.
82. Mr Namandje's assertions that the Law Society is not following its usual process are without foundation. The investigation lodged by the Law Society in this matter is not based on a complaint from a



third party. The Law Society acted in its own initiative in view of the exposure of the Fishrot scandal and in particular the documentary film, in which Mr Namandje together with Mr Kadhila express their readiness to facilitate money laundering using the firm's trust account and from which it appears that they have done so in the past.

83. Initiating an inspection and investigation in these circumstances is entirely within the Law Society's purview and powers. The purpose is to establish whether Mr Namandje and Mr Kadhila (and possibly other individuals) have indeed in the past laundered money through Sisa Namandje & Co Inc's trust account as Mr Kadhila states unequivocally in the documentary film. I reiterate that it is impossible to facilitate money laundering through one's trust account and at the same time comply with the obligation to keep complete and accurate books of account.
84. The same applies to the concerns raised by the FIC in its disclosure. The purpose of the exercise by the Law Society is to determine whether there is any merit to the concerns, in which event Mr Namandje would be requested to address the concerns. If it is found (through the inspection) that there are no merits to the concerns raised (one has to keep in mind that the FIC does not have access to the trust books of account, which provide information on the transactions flagged as potentially suspicious, the FIC would be informed accordingly and the matter would end there.
85. Mr Namandje has challenged the appointment of PWC as the auditors appointed on account of the fact that the managing director of PWC has publicly commented on the Fishrot scandal when it first broke. Whereas the Law Society does not agree that the managing director's comments disqualify PWC from appointment, the Law Society terminated PWC's mandate, in respect of the inspection of

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Sisa Namandje & Co Inc. When and if an inspection takes place - Mr Namandje's efforts at resisting the inspection to the detriment of the reputation of the legal profession have so far been successful - a different auditor will be appointed.

86. Finally on 20 March 2020 the Law Society addressed a final letter to Mr Namandje, explaining once again and in some detail why the inspection was considered necessary. The letter also addresses some of the issues he had raised in his previous correspondence, including his request for a meeting and documentation. It concludes with the Law Society informing Mr Namandje that since its attempts at persuading him to cooperate were futile, it would have to take alternative steps to execute its statutory functions in the attainment of its objectives in terms of the Legal Practitioners Act. I refer to the letter attached marked "**MS 10**". I submit that the present application constitutes said alternative steps.

Necessity of warrant:

87. Against the above background and in particular in view of the fact that the Law Society has to date been unable to determine definitively, whether or not any and / or further action against Mr Namandje and his fellow directors is warranted, the Law Society is constrained to apply for an in chambers warrant in accordance with Rule 22 (3) and (6) of the Rules of the Law Society, which empower the Council "*on its own motion to cause an investigation to be made into unsatisfactory conduct of a member*" and to "*approach a judge in chambers for a warrant to enter and seize the client and financial records, files, etc. of the member concerned, the financial records of the firm/law practice of the member concerned or any other matters as in their reasonable opinion may be associated with or relate to or evidence the conduct of the member which is being investigated, without the necessity of making written application*".

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88. It has become clear that the only way to conduct an inspection of at least the files and records related to the transactions in the FIC disclosure as well as those connected or mentioned in the context of the Fishrot scandal, is by way of a search and seizure warrant issued by the honourable Judge.
89. I submit that the Law Society is duty bound to act. In view of Mr Namandje's refusal to cooperate with the Law Society, applying for a warrant in chambers is the only option left to the Law Society.
90. I consider it important in this respect to point out that Sisa Namandje & Co Inc. is not the only law firm, which was mentioned in reference to the Fishrot scandal and which is subject to inspection / investigation by the Council.
91. However, unlike Sisa Namandje & Co Inc., two of the other firms and legal practitioners are already cooperating **fully** with the Law Society and have **voluntarily** opened their firms, records, and books to the inspectors/ auditors sent in by the Council. The third firm is also willing to oblige. I submit that this is the reaction one would expect from a responsible legal practitioner in the circumstances.
92. I submit that it is important to keep in mind that the Fishrot scandal had and continues to have a deeply negative impact on the reputation of the legal profession as a whole, which has the potential of eroding the public's faith and trust in the legal profession and by extension the administration of justice. Failure on the part of the part of the Law Society to take decisive action will no doubt be perceived as the Law Society protecting its own over its duty to protect the public from errant legal practitioners.
93. I fear that without the honourable Judge's intervention, this may spell the end of the Law Society's ability to pursue its objectives,



which include to maintain and enhance the standards of conduct and integrity of all members of the legal profession and to define and enforce correct and uniform practice and discipline among its members. The Law Society's power to do anything that is necessary or conducive to the attainment of its objects would be rendered nugatory.

Specific documentation and information sought:

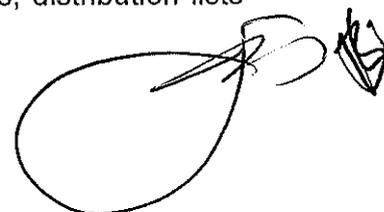
94. The records, client files, trust ledgers and bank statements sought to be seized on the authority of the warrant are listed in annexure "B", to the draft search and seizure warrant, which is marked "A". I demonstrate below, why the documents are necessary and reasonably required for inspection by the Council (or its appointed auditor).

Lemon Square Fishing / Investments - client files, trust records and ledgers 2015 to 2020:

95. In view of the discrepancy between the FIC disclosure of the transfers into trust and the description on the trust books, the starting point must be the records pertaining to Lemon Square Fishing / Investments, including any and all client files of Lemon Square, detailed payment advices, receipts, distribution lists and detailed fee accounts, including all trust ledgers for all the files relating to Lemon Square Fishing / Investments for the period 1 January 2015 to date.
96. In view of the fact that the description for both the 2017 Fishcor and Mermaria Seafood transfers into trust as "direct deposit – Lemon" it is very likely that the December 2015 Fishcor transfer into trust was likewise linked to Lemon Square in the trust records.

Fishcor - client files, trust records and ledgers 2015 to 2020:

97. In view of the deposits effected by Fishcor into the trust account, all the client files, detailed payment advices, receipts, distribution lists



and detailed fee accounts, including all trust ledgers for all the files relating to Fishcor must be inspected for the period 2015 to date.

Mermaria Seafood – client files, trust records and ledgers 2015 to 2020:

98. In view of the deposit made by Mermaria Seafood into the trust account, any and all the client files, detailed payment advices, receipts, distribution lists and detailed fee accounts, including all trust ledgers for all the files relating to Mermaria Seafood for the period 2015 to date.

Alumni Fishing – client files, trust record and ledgers 2015 to 2020:

99. In view of the link between Lemon Square Investments and Alumni Fishing, all client files, detailed payment advices, receipts, distribution lists and detailed fee accounts, including all trust ledgers for all the files relating to the Lemon Square Investments for the period of 2015 to date.

Ombundu Properties/ Ombundu Investments - client files, trust records and ledgers 2015 to 2020:

100. In view of the Al Jazeera investigative documentary film, in which Mr Namandje gave a very specific firm reference number, which would have concealed the transaction, the client file bearing reference number S 2868/SN/19, all other client files for Ombundu Investments as well as all client files, detailed payment advices, receipts, distribution lists and detailed fee accounts, including all trust ledgers for all the files relating to the Ombundu Properties development project.

Baby face Investments / Vaino N Nghipondoka – client files, trust records and ledgers 2015 to 2020:

101. In view of the payment made to Baby Face Investments CC, which is owned by a politically exposed person, all client files, detailed payment advices, receipts, distribution lists and detailed fee

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accounts, including all the trust ledgers for all the files relating to Baby Face Investments CC and / or Vaino N Nghipondoka.

Gwashihwemwa Family Trust / Armas Amukwiyu - client files, trust records and ledgers 2015 to 2020:

102. In view of the payment to Gwashihwemwa Family Trust, the trustee of which is a politically exposed person, all client files, detailed payment advices, receipts, distribution lists and detailed fee accounts, including all trust ledgers for all the files relating to Gwashihwemwa Family Trust and / or Armas Amukwiyu.

Omualu Fishing (Pty) Ltd – client files, trust records and ledgers 2015 to 2020:

103. In view of its link to Sacky Kadhila Amoomo and its mention in the Al Jazeera investigative documentary film as well as the long-term business relationship established between Mr Kadhila and Mr Namandje, any and all client files, detailed payment advices, receipts, distribution lists and detailed fee accounts, including all trust ledgers for all the files relating to Omualu Fishing (Pty) Ltd.

Sakarias Panduleni Kadhila Amoomo - client files, trust records and ledgers 2015 to 2020:

104. In view of his connection to and possible involvement in the fishrot scandal, as well as the payment made to him personally, all client files, detailed payment advices, receipts, distribution lists and detailed fee accounts, including all trust ledgers for all the files relating to Mr Kadhila Amoomo.

Simon Ya Namandje Square CC – client files, trust records and ledgers 2015 to 2020:

105. In view of the payment made to Simon Ya Namandje Square CC on the heels of the inward payment from Mermaria Seafood and its connection to Mr Namandje, and all client files, detailed payment advices, receipts, distribution lists and detailed fee accounts,

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including all trust ledgers for all the files relating to Simon Ya Namandje Square CC.

Trust and business bank statements for the firm 2015 to 2020:

106. Finally, the bank statements for the firm's trust account as well as the firm's business account are necessary for a proper assessment and analysis of the transactions and information pertaining to the transactions. Since at least one potentially suspicious transaction occurred in 2015, the statements to be obtained will have to cover the period 2015 to date.
107. As appears from the draft warrant, the applicant seeks access to the software utilised to manage administration orders as well as bookkeeping software. Most, if not all, legal practitioners use computers and Legal Suite (or some equivalent) for their filing, bookkeeping and accounts. The computer system requires a password and so does Legal Suite (or equivalent) system. The records and documents sought under points 1 and 2 require the access sought under point 5.

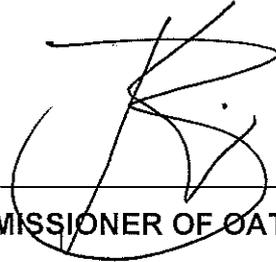
Conclusion

108. In the premises I submit that the applicant has duly made out a case for the issuing of the warrant in terms of Rule 22(6)(g) in respect of the practice of Sisa Namandje & Co Inc.
109. The honourable Judge is accordingly respectfully requested to issue the search and seizure warrant marked "A" together with its annexure "B".



MARGARETHA STEINMANN

I hereby declare that the deponent has sworn to and signed this statement in my presence at **WINDHOEK** on the ~~25~~ day of **MARCH 2020** and she declared as follows: that the facts herein contained are within her personal knowledge and that she understands the contents hereof, that she has no objection to taking the oath, that she regards the oath as binding in her conscience. I further certify furthermore that the Deponent in my presence uttered the following words: "*I swear that the contents of this declaration are true*".



COMMISSIONER OF OATHS

FULL NAMES:

CAPACITY:

ADDRESS:

NGAKUMBIRUE KATJIVENA
Commissioner of Oaths
AngulaCo Incorporated, Unit 112 E/F,
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