

IN THE LABOUR COURT OF SOUTH AFRICA  
HELD AT CAPE TOWN

CASE NO: 933/2014

In the matter between:

**MARCEL JONATHAN ANTHONY GOLDING**

Applicant

and

**HCI MANAGERIAL SERVICES PROPRIETARY LTD**

First Respondent

**HOSKEN CONSOLIDATED INVESTMENTS LIMITED**

Second Respondent

**SABIDO INVESTMENTS PROPRIETARY LIMITED**

Third Respondent

**e.tv PROPRIETARY LIMITED**

Fourth Respondent

**REMGRO LIMITED**

Fifth Respondent

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**NOTICE OF MOTION**

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**BE PLEASED TO TAKE NOTICE** that the abovementioned Applicant will apply to the above Honourable Court on 24 October 2014 at 10h00 or so soon thereafter as counsel may be heard for an order in the following terms:

1. Dispensing with the provisions of the Rules of the above Honourable Court relating to the time and manner of service and disposing of this matter as one of urgency in accordance with the provisions of the Rules.
2. Directing that a rule nisi be issued, calling upon the first to fourth respondents to show cause, if any, before the above Honourable Court on a date to and at a time to be determined by the Registrar, why an order should not be granted in the following terms:
  - 2.1 Declaring that the applicant is an employee of third and fourth respondents;
  - 2.2 Declaring as unlawful the decision made by first respondent to convene a disciplinary hearing in respect of the matters referred to in the charge sheet listed as annexure MG12 and 13 hereto;
  - 2.3 Directing, third and fourth respondents to take such steps as may be necessary in the circumstances to prevent first respondent from disciplining the chief executive officer of third and fourth respondents;
  - 2.4 Declaring the suspension of the applicant by the first, alternatively second, respondent to be unlawful;
  - 2.5 Declaring the first and second respondents' conduct in disciplining the applicant as a result of his assertion of his beliefs with respect to freedom of the media is inconsistent with the Constitution read with s6 of the Employment Equity Act 55 of 1988 and is, to the extent of that inconsistency, unlawful;

- 2.6 Ordering the first and second respondent forthwith to restore the applicant's possession of the office at the premises of e.tv at Longkloof Studios, Darters Road, Gardens, Cape Town occupied by him;
  - 2.7 Declaring the suspension of the applicant by the first respondent to be an unfair labour practice;
  - 2.8 Declaring the holding of the disciplinary hearing referred to in the notices contained in annexure MG 12 and 13 to be an unfair labour practice.
  - 2.9 Ordering first and second respondents, together with such further respondents as oppose these proceedings, to be jointly and severally liable to pay the costs herein, the one paying the other to be absolved.
3. Directing that paragraphs 2.1 to 2.4 are to operate as interim interdicts and orders pending the return day of this application.
  4. Directing that paragraphs 2.5 shall operate as an interim order pending the outcome of the Labour Court proceedings (if any) in the dispute to be referred to the CCMA for conciliation prior to the hearing hereof.
  5. Directing that paragraphs 2.7 and 2. 8 shall operate as interim orders pending the outcome of the arbitration (if any) in the dispute referred to the CCMA in Annexure MG17.
  6. Granting the Respondents leave to anticipate the return day upon 48 hours written notice to the Applicant.

7. Authorising the Applicant to seek further relief, if so required, under the same case number on the same papers, duly supplemented, provided that at least 24 hours' notice of such application be given to the Respondent.
8. Granting the Applicant such further and/or additional relief as the Court deems fit.

**KINDLY TAKE NOTICE THAT** if you intend opposing this application you are to:

1. Give notice of your intention to do so by no later than 17h00 on 22 October 2014 and further that you are required to appoint in such notification an address at which you will receive notice and service of all documents; and
2. Thereafter to file such answering papers as you wish to file by no later than 10h00 on 23 October 2014.

**AND TAKE NOTICE FURTHER** that the affidavit of **MARCEL JONATHAN ANTHONY GOLDING** together with the annexures thereto, will be used in support of this application.

**BE PLEASED TO TAKE NOTICE FURTHER** that if any of the respondents intend opposing this application, they are required to deliver an answering affidavit by failing which the application may be heard in their absence.

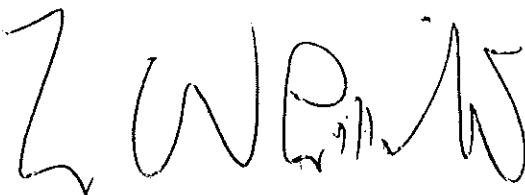
BE PLEASED TO TAKE NOTICE FURTHER that the applicant has appointed the offices of the **HEROLD GIE ATTORNEYS** at the below address at which he will accept notice and service of all processes in these proceedings.

**KINDLY PLACE THE MATTER ON THE ROLL FOR HEARING ACCORDINGLY.**

Signed and dated at **CAPE TOWN** on **22 OCTOBER 2014**.

**HEROLD GIE ATTORNEYS**

Per:



**L WHITTAKER**

Attorneys for Applicant  
Wembley 3  
80 McKenzie Street  
Cape Town  
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Email: [lwhittaker@heroldgie.co.za](mailto:lwhittaker@heroldgie.co.za)

TO: **THE REGISTRAR**  
**LABOUR COURT**  
1<sup>st</sup> Floor, Twinell House  
113 Loop Street  
CAPE TOWN

AND TO: **THE FIRST AND SECOND RESPONDENTS**  
By electronic mail c/o Mr Y Shaik, [yshaik@hci.co.za](mailto:yshaik@hci.co.za)

AND TO: **THE THIRD RESPONDENT**  
Block B, Longkloof Studios, Darters Road, Gardens, Cape Town

BY HAND

AND TO: **THE FOURTH RESPONDENT**  
Block B, Longkloof Studios, Darters Road, Gardens, Cape Town

BY HAND

AND TO: **THE FIFTH RESPONDENT**  
Millenia Park, 16 Stellantia Avenue, Stellenbosch, Western Cape

BY HAND

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IN THE LABOUR COURT OF SOUTH AFRICA  
(CAPE TOWN)

CASE NO: 933 /2014

In the matter between:

**MARCEL JONATHAN ANTHONY GOLDING**

Applicant

And

**HCI MANAGERIAL SERVICES (PTY) (LTD)**

First Respondent

**HOSKEN CONSOLIDATED INVESTMENTS LIMITED**

Second Respondent

**SABIDO INVESTMENTS PROPRIETARY LIMITED**

Third Respondent

**e.tv PROPRIETARY LIMITED**

Fourth Respondent

**REMGRO LIMITED**

Fifth Respondent

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**THE APPLICANT'S FOUNDING AFFIDAVIT**

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I, the undersigned,

**MARCEL JONATHAN ANTHONY GOLDING**

do hereby make oath and say that:

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1. I am an adult male businessman and the applicant in this matter. I am the chief executive officer ("CEO") of the third and fourth respondents. I am also the executive chairman of the second respondent, as well as the holder of a significant number of its shares.
2. The facts I depose to in this affidavit are true and correct and, unless the context indicates otherwise, within my personal knowledge. Where I relay information that is not within my personal knowledge I do so in the belief that it is true for the reasons that I give. Insofar as I make legal submissions I do so on the advice of my legal representatives, which advice I verily believe to be correct.

The nature of this application

3. I have recently been summoned to a disciplinary hearing of the first respondent to answer charges relating to the purchase by the third respondent of shares in the Ellies Group, a listed company. It is alleged that I did so without the necessary Board's authority. I contend that I acted in good faith in what I at the time believed to be the third respondent's best interests in purchasing the shares. I expand in some detail below on the circumstances in which these transactions occurred.
4. The disciplinary hearing has been launched after months of attempts to get me to relinquish the chair of the board of the second respondent and resign

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as CEO of third and fourth respondents as a result of my refusal to permit the main media asset of the group of companies, e.tv, to be used for political purposes by a trade union that is invested in the group.

5. The disciplinary hearing was initially deliberately set down for hearing at the same time as the first respondent's annual general meeting – an annual general meeting that I am required to chair and at which, as a significant minority shareholder, I would be entitled to exercise my rights as a minority within the company.

The relief sought


6. In this application I seek an order:
  - 6.1 Declaring that the applicant is an employee of third and fourth respondents;
  - 6.2 Declaring as unlawful the decision made by first respondent to convene a disciplinary hearing in respect of the matters referred to in the charge sheet annexed to the notice of motion;
  - 6.3 Directing third and fourth respondents to take such steps as may be necessary in the circumstances, to prevent first respondent from disciplining the CEO of third and fourth respondents;

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- 6.4 Declaring the suspension of the applicant by the first and second respondents to be unlawful;
- 6.5 Declaring the suspension of the applicant by the first and second respondents to be an unfair labour practice pending the outcome of a CCMA arbitration;
- 6.6 an order restoring possession of my office to me;
- 6.7 Declaring the holding of the disciplinary hearing referred to in the notice contained in the annexure to the notice of motion to be an unfair labour practice pending the outcome of a CCMA arbitration;
- 6.8 Ordering first and second respondents, together with such further respondents as oppose these proceedings, to be jointly and severally liable to pay the costs herein, the one paying the other to be absolved.

The parties to this application

- 7. I am, as I have said, the second respondent's executive chairman and the third and fourth respondents' CEO. I was originally exclusively an employee of HCI. As the business of e.tv and Sabido expanded I came to be appointed as CEO of both e.tv and Sabido.

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8. The first respondent is HCI Managerial Services (Pty) Ltd ("**HCI MS**"), a private profit company incorporated with limited liability as envisaged in section 8(2)(b) of the Companies Act under registration number 1996/017874/07 and with a principal place of business in the Western Cape at Suite 801, 76 Regent Road, Sea Point, Cape Town.
9. The second respondent is Hosken Consolidated Investments Limited ("**HCI**"), a public profit company incorporated with limited liability as envisaged in section 8(2)(d) of the Companies Act under the registration number 1973/007111/06. Its principal place of business within the Western Cape is at Suite 801, 76 Regent Road, Sea Point, Cape Town, Western Cape.
10. The third respondent is Sabido Investments (Proprietary) Limited ("**Sabido**"), a private profit company incorporated with limited liability as envisaged in section 8(2)(b) of the Companies Act under the registration number 1999/011709/07. Its principal local place of business is at Block B, Longkloof Studios, Darters Road, Gardens, Cape Town, Western Cape.
11. The fourth respondent is e.tv (Proprietary) Limited ("**e.tv**"), a private profit company incorporated with limited liability as envisaged in section 8(2)(b) of the Companies Act under the registration number 1997/012816/07. Its principal local place of business within the Western Cape is at Block B, Longkloof Studios, Darters Road, Gardens, Cape Town, Western Cape.

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12. The fifth respondent is Remgro Limited ("**Remgro**"), a public profit company incorporated with limited liability as envisaged in section 8(2)(d) of the Companies Act under the registration number 1968/006415/06. Its head office and principal place of business in the Western Cape is at Millenia Park, 16 Stellantia Avenue, Stellenbosch. No relief is sought against the fifth respondent. It is cited as a result of its interest in the relief sought.

Relationships between the Parties

13. The parties are inter-related, and it is accordingly necessary to set out in what manner this is so.
14. HCI's single largest beneficial shareholder - through a nominee investment vehicle - is the Southern African Clothing & Textile Workers' Union, ("**SACTWU**") which holds approximately 32% of HCI's shares. In my individual capacity I am a significant shareholder of the company, holding close lose to 8% of the shares, which are worth a very considerable amount of money. I hold these shares in my personal capacity and therefore have an interest in the good governance of HCI which goes beyond my fiduciary duty as executive chairman.
15. Remgro and HCI hold shares in Sabido (HCI through Seardel Investments Limited ("**Seardel**")), with HCI having a controlling interest in Sabido.

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Sabido is an investment vehicle for its shareholders and it possesses both 'media' assets and 'non-media' assets.

16. I am the CEO of Sabido and the driving force behind the creation of its portfolio of media assets. I have been involved in Sabido since 1999.
17. Sabido owns e.tv – South Africa's only private free-to-air television broadcaster – and I am the CEO of e.tv.

My true employers?

18. In the chronology of events that follows I point out that on 17 October 2014 my attorney sent a letter of demand to 2<sup>nd</sup> respondent with a view to avoiding the need for litigation. This letter is annexed marked **MG1**.
19. In that letter I stated that because I was employed as the CEO of both third and fourth respondents, and because I was being accused of misconduct allegedly committed in the course and scope of my employment as CEO of those entities second respondent had no lawful authority to take disciplinary steps against me.
20. As I indicate in what follows I hold the view that I believe that two directors of HCI, John Copelyn ("Copelyn") and Yunis Shaik ("Shaik") are the driving forces behind the attempts to push me out. The facts show that they have deliberately failed to consult with the boards of my true employers, relying

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instead on the pretext that I am not an employee of the third and fourth respondents.

21. To avoid the legal conclusions following from a finding that I am an employee of third and fourth respondent Shaik, purporting to represent first and second respondents, says the following:

21.1 That I render services to third and fourth respondents in terms of a management agreement as an employee of the first respondent. He adds that first respondent is under the control of the second respondent, and as such "the Employers" (presumably first and second respondents) have a right to discipline me.

21.2 Under this version my alleged exclusive employer is the first respondent "under the direction of HCI". Otherwise stated he appears to assert that second and third respondent had no say in whether I stay on as the CEO, as it is first respondent who determines who is the CEO of the third and fourth respondents in terms of their management agreement with these entities.

22. First respondent is indeed the conduit through which the salaries of some executives are paid. As I understand the situation the first respondent is largely a cost centre created by the accountants for accounting purposes and not a determinant of employment status in any true sense.

Handwritten signature/initials.

23. I annex hereto marked MG2 a Cipro document reflecting the directors of first respondent. The directors of the first respondent are listed as myself, Copelyn and Theventheran Govender ("**Govender**" – he goes by the name "Kevin"). I can confirm that no directors' meeting (to which I was invited) was held authorising first respondent to take steps against me. Shaik's contention that it is the first respondent that made the decision to proceed against me has no foundation in fact. I also deny that he has any authority to act on behalf of the first respondent.
24. I also draw the attention of the court to the fact that the charge sheet and notice to attend the hearing make no mention of the involvement of first respondent and the claim that it is first respondent that made the relevant decision is one that first arose only after the letter of demand was served.
25. My productive capacity is placed almost exclusively at the disposal of third and fourth respondents and Shaik does not deny that I am the CEO of these entities.
26. I am advised that it cannot be correct that the CEO of a company is not an employee simply because he is apparently supplied through some sort of internal labour broking entity which can then determine his fate - as CEO of a company within the group - without the executive enjoying the protections of the Labour Relations Act. On this, the ostensible basis is that the provider of the management services is the sole employer. This

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arrangement would also strip the minority shareholders and directors of the second and third respondents of any rights to decide on their CEOs.

27. I spend over 95% of my time on Sabido matters. My days involve meetings, phone calls, and conference calls (individual or collective) with Sabido executives. I am constantly talking to our international programming suppliers, talking to Sabido subsidiaries, responding to mails relating to Sabido or its subsidiaries, seeking out new investment opportunities for Sabido and its subsidiaries. I also engage in programming discussions regarding the commissioning and acquisition of programmes for e.tv and various subsidiaries, including our off-shore business. I review many strategic and research documents concerning media and the broadcasting industry and I participate and lead strategic discussions relating to Sabido's future. I direct specific research into potential investments. I represent e.tv at the regulatory authority, government and industry meetings, meetings with clients, and the like. I interact with all stakeholders affecting the media and broadcasting industry, including potential investors (or HCI investors who are interested in what's happening with Sabido). I spend time with key members of Sabido staff and its subsidiaries where they require advice and assistance. I write and review all reports to the board, regulatory authorities, policy documents, and the like.
28. The only things I do for HCI are: chair the HCI board and attend subsidiary board meetings in my capacity as a director.

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29. I am not at all involved in the day-to-day operations of HCI.

30. My office circumstances are as follows:

30.1 In Johannesburg (which was my main base until the end of last year) my office is in the e.tv building. All my office expenses, support, administration, personal assistant, and the like are provided by e.tv. I have an annual budget allocation in the e.tv budget for all my office expenses. I have no such budget from HCI and HCI provides me no such support. The only time I ever went to HCI's offices in Johannesburg was to attend the odd subsidiary board meeting - maybe four times a year.

30.2 During the time that I lived in Johannesburg I had an office in the HCI office suite in Longkloof Studios in Cape Town. This office suite was directly across the passage from e.tv which enabled easy access to me for e.tv. My office manager also had an office at the HCI office suite. However, all of my work (and his) related to Sabido. More than 90% of the meetings I held in that office were for Sabido purposes and all my office equipment was supplied by e.tv. All the admin and IT support (e.g. if my PC wasn't working or my printer has to be serviced) came from e.tv's IT department because all that equipment belongs to e.tv. I never received assistance from an HCI IT person for anything relating to my laptop, cellphone, printer, etc. The only

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thing that HCI provided me with was refreshments - tea, coffee and water. Paper, stationery, etc. were all supplied by e.tv.

31. In January this year I moved to Cape Town on a permanent basis. I therefore spent more time in my office in the HCI office suite in Longkloof Studios, but nothing changed in regard to the above arrangements. 95% of business conducted in that office related to e.tv/Sabido. In about March/April I was informed by Copelyn that I would not have an office in the new HCI building in Seapoint. HCI moved in August and there is no space in that building that has been allocated to me - not even for purposes of my role as Executive Chairman. At that point, I moved into my current office in the e.tv part of the Longkloof building.
32. I still have my office in e.tv Johannesburg which I go to when I commute to Jhb for e.tv /Sabido work.
33. My main work e-mail is at the @etv.co.za domain and it is this mail address that I use to transact all Sabido business. HCI sends all its mails to me (even internal mails) on my e.tv e-mail address. If I do have an HCI e-mail address I have not used it in a very long time and I don't even know what it is. HCI itself never contacts me on anything other than my e.tv mail address. All other HCI executive directors and staff use HCI mail addresses and telephone numbers.

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34. My office manager in Cape Town and personal assistant in Johannesburg are both paid for by e.tv. All their expenses - cellphone, stationery for my office, their laptops, printers, etc. - all run through e.tv. All my travel is covered by e.tv/Sabido.
35. My cellphone contract on my main cell number is with by HCI (this arrangement pre-dated my appointment as Sabido CEO) but HCI claims repayment of that entire cellphone bill from Sabido every month. My contract for my Blackberry is through e.tv and e.tv supplies my Blackberry and pays the bills related to it.
36. My laptop, i-pad, office printer, are all supplied by e.tv/Sabido. If I need repairs or assistance with any of this equipment, e.tv IT staff are responsible for this.
37. My office furniture is either my personal furniture or belongs to e.tv.
38. HCI and e.tv each had their own lease in the Longkloof Building. My parking bay falls under the e.tv lease and not the HCI lease.
39. I have an HCI card for entertainment expenses but I hardly ever use it - I always use my e.tv card.
40. In all the circumstances it is obvious that my real employers are third and fourth respondents and the attempt by first respondent to purport to

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discipline me as the third and fourth respondents' CEO as if it were my employer, alternatively my exclusive employer, is unlawful.

Summary of factual background

41. HCI was originally founded by Copelyn and myself, Copelyn is currently HCI's CEO and Sabido's non-executive chairman.
42. Over the last year our relationship, hitherto good, has deteriorated.
43. The cause of this deterioration included amongst others our differing views with respect to how to manage the concerted pressure SACTWU has been exerting on HCI and Sabido. SACTWU has persistently attempted to influence the editorial direction of e.tv news in order to further its agenda.
44. In August 2013 third respondent contracted with Yunis Shaik Attorneys to perform consultancy services, including advice on its business strategy in relation to government. Since then, Shaik has been endeavouring to increase his power and influence in the company. As will be seen in what follows, he purports to speak on behalf of those close to the central levers of State power - as well as on behalf of SACTWU, for whom he previously worked - and in that capacity he has been motivating for my ousting. He

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was subsequently elevated to the status of an executive director of the second respondent. His role is to represent SACTWU on the Board.

45. I am vehemently opposed to any interference with the independence and integrity of editorial content and this tension is what led to the fracture of alliances within the connected companies.
46. When those attempts failed, the disciplinary action that is the subject of this application was initiated. In the paragraphs that follow I set this out in greater detail.

#### Factual background

47. Copelyn and I had become business partners in 1995 and we co-founded HCI in 1997. Before that, both of us held leadership positions in trade unions. I was involved in the National Union of Mine Workers and Copelyn was the general secretary of SACTWU. Both of us served as members of the post-apartheid South African Parliament before founding HCI.
48. HCI was always intended to be a transformative investment vehicle for the empowerment of the previously disadvantaged and both Copelyn and I worked to achieve that goal, initially in partnership with the unions.
49. Over the years the company structures became more complicated and a loose arrangement between the two of us was no longer possible in the

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context of corporate governance and accountability. Nonetheless, we kept our entrepreneurial spirit and brought very many deals to various tables, all for the ultimate benefit of HCI and its shareholders.

50. I have always had an interest in the media and I saw a niche for my special interest in the media which I could house under Sabido and this led to what is now e.tv. I also saw this business as an opportunity to drive transformation directly in an operating asset as I was concerned at the lack of transformation at HCI and its other subsidiaries.
51. The media assets I attended to became very successful and have enjoyed a strong performance under a largely black management.
52. The control of media assets in any country is a sought after goal. Initially, though HCI had control of Sabido, and Sabido of e.tv, HCI did not attempt to influence e.tv. Approximately a year ago this situation changed, however, particularly during the lead-up to the 2014 general elections in May 2014. This pressure on Sabido and, through it, e.tv brought into focus philosophical differences between myself and Copelyn and we were unable to agree how the situation ought to be managed. I was unwilling to compromise on the issue of independence and integrity of editorial content and Copelyn saw my view as detrimental to HCI's business interests, particularly because of the attitude of its major shareholder, SACTWU, predominantly expressed through Shaik.

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53. On 24 March 2014 Shaik, an executive director of the HCI board addressed an email to Bronwyn Keene-Young ("Keene-Young"), , I assume, in her capacity as the chief operating officer ("COO") of Sabido. I attach this email and all replies to it as "MG3".
54. In that email, sent from Shaik's official HCI email address, Shaik stated that the Minister of Economic Development, Ebrahim Patel ("Minister Patel"), had called him and asked that a supplied newsfeed of President Zuma opening a dam be aired on the e.tv evening news. The suggestion in the email was that it *"might be a good lead story"* and the last sentence read *"Please raise with news desk"*. It should be noted that this request was made four days after the Public Protector report into Nkandla was made public.
55. Keene-Young and I were at a conference at the time and unavailable to respond to calls, messages and emails. Shaik therefore, after receiving another call from Minister Patel – in his own words - *"assumed the responsibility to liase with"* Patrick Conroy, Managing Director of the News Channel *"alerting him of the news and suggested it gets some coverage."*
56. Late on 24 March 2014, Keene-Young replied to Shaik's email and explained the inappropriateness of Shaik's conduct to him in the context of news integrity and appealed to him *"never to make this kind of request directly to our managers"*.

57. On 26 March 2014, Shaik replied to Keene-Young's email and contended that he was "*not acting as a shareholder representative*" when he contacted e.tv's news channel's Managing Director. Shaik characterised her reply as a "*temper tantrum*" aimed at "*protecting turf not values*" and dismissed her stated concern about integrity and independence of the media on that basis. It was his stated view that Keene-Young's concern about a direct approach by him was "*simply ridiculous*".
58. During the afternoon of the same day, Keene-Young copied me into her reply to that email as CEO, her direct line of report. She set out that our earlier written agreement with the Department of Economic Development to broadcast a series on infrastructure development did not mean that e.tv would become the mouthpiece for the Infrastructure Development Programme. She also indicated that she was unwilling to accept the treatment meted out to her by Shaik and would reconsider her future at e.tv should it continue.
59. On 28 March 2014, I received an email from Copelyn from his official HCI email address – I cannot say whether in his capacity as CEO of HCI or chair of Sabido's board – to alert me to a conversation he was planning to have with me about Keene-Young who had raised the ire of "*several important corners of HCI*". I attach this email as "**MG4**".

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60. Keene-Young (who has worked at e.tv since 1999 and as Chief Operating Officer since 2004) is my spouse, so this situation was understandably awkward for all of us. Copelyn and I met and an altercation ensued in which an ultimatum was posed that either I or my spouse should leave the business. A solution was found in that Keene-Young was designated as Sabido's chief corporate officer and removed from any interface with external stakeholders.
61. Nonetheless, Shaik contacted Keene-Young again in respect of furthering the wishes of Minister Patel, this time on 29 April 2014, on the eve of the election, which occurred on 7 May 2014. A debate was due to be held between Minister Patel and opposition party representatives at the University of the Witwatersrand. Patel asked that a clip of an earlier Reserve Bank meeting (which would be supplied, and which Patel evidently believed showed the opposition party was incorrect in certain statements it had made regarding the Reserve Bank) be aired during the course of the debate, which was to be broadcast live. Reluctant to reply at length, Keene-Young requested that I contact Shaik.
62. I sent a text message to Shaik at 09h51 on the morning of 30 April 2014, which read as follows:

*"Hi Yunis, Bronwyn told me about The debate and EP's request. The debate is not normally handled like that since it is intended to be a straight party debate. EP can just raise it in the normal*

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*course when he makes a point about economic policy, he can refer to it, explain what it was and then express his view. I will be in a meeting for the next 2 hours and will phn u then. Chat later. Marcel ( we have agreed that Bronwyn is not going to deal with these matters, so I would prefer that she is not drawn into these matters. I am at the end of the phone. So drop me an SMS if I do not answer. Chat later. Regards, marcel."*

(All text messages are rendered with the errors contained in the originals.)

63. On 19 May 2014, at 15H36, I received yet another text message from Shaik. This time it was about the possible mention of another HCI affiliate, Tsogo Sun:

*"Maggs on Media. He will feature a story on gambling addiction. See the story before he airs it. Watch the visuals. It would be terrible if he features Tsogo. Check to see if it is balanced and includes activities we take for responsible gaming."*

64. Perturbed, at 15.51h, I enquired: "What is this Yunis a request a suggestion an instruction?"
65. Yunis' immediate reply was: "For you, it is an alert. Remember last year we were under pressure from government because it was said we ripping off Pensioners. We had to meet PG and their wanted to raise taxes." (The reference to PG is to Pravin Gordhan; I have no knowledge of the rest of the context of the text message.)
66. I was asked why I was fighting him. Our exchange ended with the following text from Shaik at 16h50:

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*[Signature]*

*"Marcel, I alerted you. If you think the matter is in safe hands, fine. I am just alive to how negative media attention plays out in government. It rapidly degenerates into self righteous crusade with government escalating controls or taxes. Any, 'nough said. You on top of it."*

67. On another occasion, on 14 August 2014 at 19h55, I was also sent the following sms "instruction" by Andre Kriel of SACTWU:

*"Evening. Will call you tomorrow. Violet Seboni Memorial lecture will be on 25 August in Johannesburg. Minister Patel will deliver the lecture. We require eTV to cover it live. More details will follow closer to the date. Please arrange. Regards. Andre"*

68. Realising, after the Keene-Young debacle outlined above, that I was in an untenable situation and did not enjoy the support of my HCI co-founder Copelyn to deal with Shaik's attempts at interfering in news content. Before this event there had been serious problems and we had already considered our options to go our separate ways, but for me these incidents of interference in news content were the last straw.
69. An executive board member, Govender, its financial director, worked on various separation proposals with me. At that time I was of the view, based on what had been discussed between us, that Copelyn was agreeable to the restructuring which would leave him with the non-media interests in HCI and would see Shaik take over my position in HCI.

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70. Another company in the HCI framework in which HCI has a controlling interest is Seardel Investment Corporation Limited. On 21 May 2014, a resolution had been taken by HCI's board, stating that I would become the CEO of Seardel. This resolution was not implemented. I attach the relevant page of the HCI board minutes of that meeting as "MG5".
71. It was my intention to obtain co-operation from all stake-holders for the 'unbundling' of the media assets of Sabido and the transfer of them to Seardel. I had hoped that in my position as CEO of Seardel, I would continue with the HCI's media business as I had, but without the attempted interference which I have set out above. I pursued that goal by structuring various proposals to present to appropriate stakeholders.
72. In August 2014, however, it became clear that the 'in principle' agreement I had struck with the HCI executive had not met with approval from SACTWU. The HCI executive informed me that SACTWU would moreover henceforth not even tolerate me remaining as CEO of any media business in which it had an interest. It also appeared that HCI had changed its stance and had now decided that Sabido was too valuable to unbundle.
73. I was therefore advised that my only remaining option was to resign my position as Sabido CEO, citing an intention to take a sabbatical. I was offered several incentives, including tax structuring and the possibility of remaining as HCI's chairman. On 23 August, I received a text message from

Govender, the abovementioned HCI executive financial director, at 15H53.

It read:

*"Hi MG. I'm sorry that this is turning out into exactly where I didn't want it too which I was alluding u too right from the beginning. JC should never have raised the possibility of a sale at the Sabido level as Sactwu will not support this. Please consider my original proposal Of the non exec dept chair in Sabido and remaining in the HCI chair but you need to step out of etv soon. I think you should talk to Andre and hear him out but at the moment we are also fighting him on other issues on Seardel so he is not returning my calls. I'm terribly sorry for this to go this way and the last thing I wanted to avoid is JC and Yuni presenting it at the board this way. If you are not fighting I can help with buying back your shares tax free, etc but you got to help me too. Regards, Kevin."*

74. It is clear from the context that "JC and Yuni" are Copelyn and Shaik.

"Andre" is the SACTWU general secretary Andre Kriel. Govender followed up with another text message at 22h03 that evening:

*"Hi M. I had a chat to JC this evening and he is happy for you to give Sactwu another serious try to join you to buy the media assets. We can go see Andre together to do a deal over the next month. He would like a letter from you for the board that if you don't succeed in the next month by the time we list, you will resign from HCI and support who the new CEO would be. If you succeed you will be the CEO. You will stay on until the end of September as the CEO of Sabido. This will clear up things at the board on Wed and not bring all the other issues before the board. I will work on the letter tmrw. At least this way you can engage Sactwu directly. Please think about this as I'm really trying here. Chat tmrw. Kevin "*

*M. A.*

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75. On the morning of 24 August 2014, Govender sent me a draft of the letter foreshadowed above. It is his draft of the letter that he wanted me to send him. I attach it as "MG6".
76. On the same day, Govender followed up with two messages after 21h00 in the evening. The first refers to the draft letter and states:

*"I've emailed the draft letter after discussing with Johnny. If u are available tmrw and would like to move forward this way then let me know and I will attend the Seardel board by VC from CT tmrw. I just have a function tday. Thanks Kev"*

77. The second asks for confirmation that I received the email with the draft letter: *"Hi M. Did you get the draft letter. Will we be able to discuss tmrw then I won't go to Dbn in the morn. Let me know. Tx Kev"*

Threats relating to disciplinary steps

78. I was also threatened that should I not resign I would be suspended and disciplined on account of my purchase of Ellies shares – the subject matter of the impending disciplinary hearing. This started shortly after I first disclosed the Ellies purchase in early August. Govender and I were attempting to reach an agreement ensuring my exit. He told me that people that he referred to as *"the bloodhounds"* (I believe he meant Shaik, Copelyn and some other SACTWU directors on the HCI Board) would try to

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"get me" if I did not agree to a deal. It was constantly raised: if I did not agree to a deal, I was told, disciplinary steps would be taken against me.

#### The Ellies transactions

79. Ellies Limited is a listed company on the JSE. I believed that it was strategically sound to invest in it. I saw such an investment (and still do) as a strategic investment for one of our key Sabido subsidiaries which is struggling to meet its targets. The subsidiary is a free-to-air satellite platform which is dependent on the distribution – by Ellies – of set top boxes to retail outlets where they are bought by end-users who are then able to access the platform. Ellies' relationship with retail outlets across South Africa is a critical element of the success of this subsidiary.
80. I first presented the Ellies opportunity to Copelyn and Govender in August 2013 but there was no reply from them. A copy of the relevant email together with the briefing document prepared by Java Capital concerning a possible BBBEE transaction is enclosed as annexure **MG7**.
81. The issue of whether Sabido should invest in Ellies shares continued to be discussed informally over the six months that followed between Copelyn, Govender and me. On several occasions I informed Copelyn that I had asked Investec to buy some shares and check on the company's liquidity, an important factor in determining its share price. As these were relatively

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small amounts in the context of our multi-billion rand business, it was not regarded as a big issue when we discussed it.

82. When Sabido met with Ellies and their advisers Java Capital in August 2013 my view was that Ellies represented a useful investment opportunity, even though their shares were overpriced at R7.40 a share. I accordingly waited for the share to drop to the R4 level in March 2014 and at that point instructed Investec through a nominee account, to build our holding incrementally.
83. At one point Govender did say to me that he had had cause to have misgivings about the management of Ellies which had made Govender sell his own Ellies shares. This was the first time that I had heard that Govender was actually trading in Ellies shares for his personal account. I said that Ellies was still the number one distributor of television set top boxes in South Africa and the rest of Africa by a considerable margin and therefore, notwithstanding the loss in the share price, its relevance in the distribution value chain (and importance for our Sabido TV business) could not be ignored.
84. From March 2014, the relationship between Copelyn and me had become so strained that there were fewer and fewer discussions between us on any matter and, accordingly, with respect to Ellies. In my view the Ellies transaction was worthwhile considering the strategic point of view. Its current low share price is an opportunity as it allows Sabido to acquire

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shares at a lower value in a market where there is a great deal of liquidity in the share.

85. Between March 2014 and July 2014 (when the price had dropped to about R3.75) Investec on behalf of Sabido spent R24m to purchase shares. Investec have not yet been paid. Effectively, they make the purchases on Sabido's behalf and interest is charged on that trading account until the client settles.
86. On 6 August 2014, the day before the Sabido Board meeting (and Investments Committee meeting) of 7 August, I told Govender and Copelyn that I had acquired approximately R24m worth of Ellies shares and it was now time to raise it at a Sabido level given that (with the drop in the share price) there were more shares available on the market and my acquisitions had also reached the threshold where the JSE would require disclosure of the identity of the ultimate purchaser of the shares.
87. I prepared a draft Mergers and Acquisitions report for the Investments Committee that included a description of the Ellies purchase. I attach a copy of the draft report hereto marked **MG8**. In the end result it was decided, by Copelyn, Govender and myself, to hold the issue over to a more appropriate time and the portion of the draft report pertaining to the Ellies transaction was omitted from the version presented to the board.

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88. In the report I mentioned that Ellies have over 5000 accredited installers and a sales force that is difficult to replicate. I noted that we had not succeeded in making headway at an earlier phase because too high a price per share had been sought. I stated that I remained of the view that Ellies is a key feature in our expansion and I set out the reasons proposing that we should aim to secure a 25% stake.
89. This was not a particularly large transaction by the standards of the organisation. To gain some perspective as to the magnitude of the deals which we discuss, one of the transactions referred to in this report concerns the rejection of an offer of 87 million UK pounds. Although the purchase price of R24m may seem to be a substantial amount, in the context of Sabido it is not. Our turnover is approximately R2.5bn and our profit approximately R447m. The expenditure involved is less than 1% of turnover and it is my understanding of the manner in which we have conducted business in the past that the CEO had discretion to make investment decisions on behalf of the company with the expectation that they would subsequently be ratified.
90. The shares' price fell after purchase but I was not particularly concerned that the shares had lost this value because it remained a good strategic transaction for Sabido. Obviously, with the benefit of hindsight, they that less could have been paid. I, like many others, got the timing wrong.

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Govender and Copelyn indicated that they did not support the transaction but they did not – at this stage - allege any fiduciary breach. They merely said that they did not think it was a good investment. It was agreed that I would not raise the matter at the Sabido Investment Committee meeting (which included Remgro) until we (Copelyn, Govender and I) had decided how to approach the Ellies transaction. It was even agreed that I could arrange for a presentation by Ellies' investment adviser to Copelyn and Govender so that they could evaluate whether the investment should be pursued.

91. What is especially significant in the light of what has happened subsequently is that, in the detailed submissions made by Copelyn to Andre Kriel of SACTWU on 28 August 2014 regarding the terms on which the various interested parties might part ways no mention is made of the Ellies transaction as being of any significance or relevance. (This email is referred to in detail below and a copy of it is attached at that point.) Only when those negotiations failed was it suggested that the purchase of the Ellies shares was of any significance.
92. I must stress that the relationship between Copelyn and me was so tense at this stage that there was very limited contact because we had already agreed that we would be going in different directions (me with Sabido / Seardel and Copelyn with the rest of HCI).

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93. The Ellies matter was accordingly not raised either at the Sabido Investments Committee meeting or at the Sabido board meeting on 7 August 2014. Around this time (possibly the next day) Govender advised me that the union no longer wanted me in HCI or in Sabido and that he thought that - in the interests of peace - I should leave both positions.
94. The next time the Ellies issue was raised with me was at a meeting between Shaik, Govender, Copelyn and myself on Friday 15 August 2014. The meeting was very acrimonious. Both Copelyn and I threatened to walk out at certain points and had to be restrained by Shaik and Govender. The meeting - which was an informal one - was to discuss the possibility of my stepping down from HCI and Sabido and how this would be managed. There were several options on the table including my becoming deputy chairman of Sabido and non-executive director of HCI.
95. I said that I did not want to do this as there had been an agreement that I would run the media (Sabido) side of the company and that I wanted an opportunity to engage with the union to see why it had changed its mind. Copelyn then raised the Ellies transaction and accused me of acting "fraudulently" in regard to the Ellies matter. It was after this that I realized I would not get any support for the Ellies transaction and that, given that the share value had dropped, I would need to come up with some remedy to deal with it.

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96. Subsequently, after discussion and agreement with Govender, I decided to tender that I would pay for the shares myself and take ownership of them. I made this tender in order to indemnify Sabido against any possible loss.
97. I made the same tender to Remgro in two separate meetings which I had with them (well before the disciplinary process was initiated). It was not an admission of wrongdoing as I still believed that the transaction was strategically important. At present, the shares are still being held by Investec in a nominee account designated for Sabido as this is the company for which it was intended. Whilst I have tendered the offer to pay for the shares personally (as per my letter to Govender dated 12 September 2014 (a copy of which is annexed as annexure XXX) and in accordance with discussions with Remgro -MG9) there has been no response to this in writing from Govender and the shares therefore remain unpaid in the nominee account.
98. Both Govender and Remgro verbally agreed (some time before disciplinary proceedings were instituted) that the matter could be finally resolved on the basis that I agreed that the shares could be paid for from my personal account. A further possibility was raised of donating them to a philanthropic trust. I am not suggesting that this constituted a conclusive settlement because Govender and Remgro cannot by themselves bind Sabido. The point I am making is that the two representative shareholders had in principle committed themselves to a resolution which did not require formal

disciplinary measures. In numerous discussions with me, Govender acknowledged that there had been no dishonesty on my part.

99. It should also be noted that when I met with SACTWU (general secretary Andre Kriel and president Themba Khumalo) at 1pm on 12 September 2014 at the Eastern Boulevard Holiday Inn in Cape Town, neither of them mentioned anything regarding the Ellies transaction nor anything relating to breaches of corporate governance. Their stated position was that they didn't want to have to choose between Copelyn and me because we had built HCI into a very valuable company.
100. I think that the initial intention was to charge me with secretly trading in Ellies for personal profit for my own account. I confirmed in my email to Govender, on 12 September 2014, that he had confirmed with Investec that I had been trading on behalf of Sabido and not for my own account. Investec had confirmed to him that I had asked Investec to hold the shares in a nominee account because I contemplated that this would become a transaction for the benefit of Sabido, which would ultimately be approved by Sabido. A copy of this email has previously been annexed hereto as annexure **MG9**.
101. It may be said that a formal mandate to make these purchases should have been formally obtained from the investments subcommittee of the Sabido board. I should however point out that there are many transactions that Sabido and HCI have been involved in which have been initiated through

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informal and highly entrepreneurial methods. In other words, we have transacted on a basis that could give rise to accusations from point-takers that we practice poor corporate governance. Copelyn and I started our business partnership by engaging in what were often informal discussions about business opportunities in circumstances where we trusted each other to do the right thing in the knowledge that formal ratification of steps taken would be obtained in due course. In other words, we were much smaller than we are today and did not conduct ourselves as persons well-schooled in ensuring that formal compliance methods and a proper paper trail are put in place. My actions were not unusual in the circumstances and it was my expectation that they would be ratified.

102. On 28 August 2014 Copelyn wrote to Andre Kriel of SACTWU ("Kriel"), advising him that HCI and I had agreed to part ways on mutually agreeable terms but that the exact terms of the separation needed to be ironed out in circumstances where SACTWU's consent was required for the implementation of the appropriate exit strategy. A copy of the letter and all replies thereto is annexed hereto marked as annexure **MG10**.
103. Various options were outlined in the letter which pertinently noted the following:

*"We are all committed that this parting, however it is done, will be effected on the basis where we preserve the value we have built in*

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*the business to date and we all desperately hope it can be achieved without animosity or recrimination.*

*We have also agreed that we need to finalise the basis of the separation by no later than the 30<sup>th</sup> September 2014 and we are presently arranging a special board meeting of HCI to finalise its terms for early October."*

104. Mention was made of the fact that this timeline was related to requiring matters to be resolved before the HCI shareholders' AGM on 30 October 2014.
105. The essence of the separation proposals involved creating a consortium which, through an appropriate vehicle - possibly Seardel - would assume control of media assets while HCI would assume control of over all non-media assets. The parties would thereafter conduct their separate businesses for the benefit of their shareholders. In this way potentially destructive differences of opinion over future strategy and personality issues could be avoided.
106. Discussions remained constructive and amicable until SACTWU indicated that it was not interested in any outcome where I would remain on as the CEO of Sabido. This appears from an email that Kriel sent to me on 1 October 2014 was previously attached hereto marked MG10.
107. My understanding of the situation is that SACTWU's stance is directly related to a desire by SACTWU to exert greater control over news content

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at e.tv (and eNCA) by ensuring that a CEO less independent than me assumes control over Sabido.

The internal investigation of the Ellies transactions

108. After SACTWU adopted this stance the board of HCI decided - on 8 October 2014 and without reference to the board of Sabido - to form an investigative committee into the Ellies transactions, to be chaired by Velaphi Mphande ("Mphande"). I do not have a minute of this meeting, although I have asked for it.
109. As the executive chairman of the HCI board I co-operated fully and made submissions to that committee on 10 October 2014. I attach them marked **MG11**.
110. To my surprise Mphande wrote to me, on 13 October 2014, to say the following:

*"Thank you for your cooperation with the Board's Investigation Committee;*

*After thorough deliberations by the committee of all the facts put before them by all parties, the Committee has come to the following conclusion and decision;*

- 1. This matter (Ellie's transaction) is very serious and as such requires an immediate disciplinary enquiry.  
Action.*
- 2. The committee appoints company lawyers, ENS to conduct this enquiry.*
- 3. You will be presented with the charge sheet by Tuesday the 14<sup>th</sup> of October 2014.*

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4. *You are suspended with full pay, pending the outcome of this enquiry."*

A copy of this email is annexed hereto marked **MG12**.

111. Before taking this drastic step the investigation committee did not report its findings to the HCI board to allow it to deliberate on whether disciplinary action was generally warranted or whether suspension was required. Nor was the board told that HCI did not have the power to suspend and charge the CEO of an independent legal entity in which it held shares. Nor was the board informed that a decision to take steps with a view to terminating the employment of the CEO of Sabido is a "specially protected matter" under the Sabido shareholder agreement. This status rendered it a decision that cannot be taken unless agreed to, in writing, unanimously by both HCI and Remgro and unless a "protective majority" of the board members of both the Sabido and e.tv boards agree thereto.
112. On 14 October 2014 Mphande wrote to me enclosing a charge sheet and requiring me to present myself at the offices of HCI's firm of attorneys ENS from 27 October to 31 October to answer charges of misconduct relating to the Ellies transactions. A copy of this email is attached as **MG13**.
113. On the same day Mphande wrote a letter to the board of HCI (a copy of which I attach marked **MG14**) in which he stated that the committee had reached a unanimous decision to conduct an "immediate disciplinary

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hearing/enquiry" and that I be suspended pending the outcome of the enquiry.

114. The dates initially chosen for the disciplinary hearing are significant: the HCI shareholders' AGM is scheduled for 30 October 2014 and I am the HCI executive chairman as well as a significant minority shareholder in the company. Any attempt to oblige me to be present at such a disciplinary hearing was clearly an attempt to ensure that I am not present at the AGM.

115. On 16 October 2104 I made use of my office at e.tv's premises and was subsequently informed by a staff member that Copelyn, ostensibly acting through Govender, had issued an instruction that the locks on my office door be changed to bar my entry. This was duly done. I am advised that this constitutes unlawful spoliation as I occupy this office not only as an employee, but in my capacity as a director and indirect part owner of the business.

116. In response to these events, my attorneys addressed a letter to HCI's board of directors, dated 17 October 2014. It is attached previously as **MG1** and sets out my position as follows:

116.1 The desire of some shareholders to have me removed from my position/s is unrelated to the best financial interests of both Sabido and HCI shareholders.

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116.2 The desire to have me removed, in particular as CEO of Sabido, is directly related to the pursuance of an agenda to exert greater control over news content aired by e.tv and its related broadcasters.

116.3 It is only the boards of Sabido and e.tv which are in a position to suspend me and charge me with any disciplinary offences relating to my conduct as an employee of either company. HCI is therefore requested to confirm (by 15.00h on 20 October 2014) that my purported suspension and disciplining by HCI is withdrawn.

116.4 Even had HCI had the authority to contemplate my suspension (which is denied) its conduct would in any event have been unfair and unlawful in that –

116.4.1. I had not been given an opportunity to be heard;

116.4.2. no reasons were given;

116.4.3. my presence did not hamper any investigation or pose a threat (either to Sabido or to e.tv);

116.4.4. it had been principally effected with the ulterior motives to-

116.4.4.1. prevent me from attending the HCI shareholders' AGM on 30 October 2014;

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116.4.4.2. put pressure on me to appease certain shareholders who wish me to divest from Sabido and cease to exercise control over it.

117. In response thereto, my attorneys received a letter shortly before 15h00 on 20 October 2014, a copy of which I attach hereto marked "MG15". The letter is signed by Shaik. In it, he:

117.1 States that he has been asked to respond to the letter on behalf of both HCI and '*HCI Managerial Services*', to whom he refers collectively as '*the employers of your client*' (in the plural, and accordingly referring to both of them).

117.2 Asks that all further correspondence with respect to my suspension and the disciplinary enquiry is to be addressed to him. (Why it should be addressed to him and not the other parties he does not explain.)

117.3 Purports to record (wrongly, I contend) that I am not employed by Sabido or e.tv.

117.4 Avers that I '*render certain management services to HCI Limited and various of its subsidiaries and E.TV in terms of a management agreement*', and that as regards Sabido and e.tv, I do so '*as an employee of HCI Managerial Services*' and that I am '*assigned by*

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*HCI Managerial Services under the direction of HCI Limited*'. This, he goes on to say, gives 'the Employers' a 'right to discipline and to suspend [me] as an employee', pending the outcome of a disciplinary hearing. He accordingly denies my contention that only the boards of Sabido and e.tv can do so. The relevant contract is not annexed and I am not aware that it exists. I deal in detail with these allegations above.

117.5 Confirms that I have not been suspended as CEO of Sabido or e.tv, thereby clarifying an aspect of the unclear charge sheet.

117.6 Purports to take note that I '[acknowledge] *that a termination of [my] employment is and was, at all times, mutually sought and embraced*'. I take this to refer to the fact that I have at various times been willing to agree to a separation of media and non-media assets on mutually agreed terms. This had nothing to do with termination of my employment at Sabido or e.tv. He is well aware that it is not true that "*a termination of [my] employment is and was, at all times, mutually sought and embraced*". It may have been sought by him but it was not embraced by me.

117.7 Purports to take note that I '[declare] *that [I do] not hold [my]self accountable to and accept the authority of the Board of HCI (and its duly mandated and authorised sub-committee) and HCI Managerial Services and is not willing to abide by their lawful directives and*

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*resolutions; and [repudiate my] contract of employment'*. This is a clumsy attempt to work up a case for repudiation by me of my various contracts of employment. The allegation has no foundation and is denied.

117.8 Persists in his demand that I attend the scheduled hearing on 30 October 2014.

117.9 Takes exception to the fact that I have had conversations 'with Remgro'. I may say in this regard that as Remgro has the right to participate in decisions in relation to the possible removal of the Sabido CEO – which seems to be the intended outcome of this hearing – I have a right to discuss this matter with them

117.10 The letter goes on to make various inappropriate demands with respect to Remgro, the essence of which I reject. I have also discussed the Ellies issue with Remgro as I was obviously obliged to do.

117.11 He then (in paragraphs 17 to 19 of his letter) deliberately fudges my role as director and as employee, and makes plain that the only opportunity I was given flowed from the 8 October 2014 HCI board meeting. I make the point that I was never afforded a subsequent opportunity to address anyone with regard to whether or not I ought

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to be suspended, and that this is inadvertently made plain in Shaik's letter.

117.12 He concludes by threatening that should I not attend the hearing it will be conducted in my absence, and that any application that I choose to make will be opposed.

118. What is missing from the letter is a pertinent statement with respect to which board meeting, held at what date and at what time, decided to consider the sub-committee's findings and to launch the disciplinary proceedings. As I would have had to receive notice of such a meeting (being the chairperson and entitled to such notice even if I were to have to recuse myself from the meeting - which I do not concede) I can state clearly that no such meeting was held, or, if it was, it was not properly called and its decisions are accordingly unlawful and of no effect. It is clear from Shaik's avoidance of this aspect that I am correct in this regard. This is equally plain from Mphande's letter to the board of HCI referred to previously, in which Mphande reports a *fait accompli*.

119. In a subsequent email to my attorney (received on 21 October 2014 and attached hereto marked "MG16") Shaik states the following:

*"For clarification, the enquiry will not convene during the hours your client needs attend on the AGM of HCI Ltd or any related scheduled meetings of the company. ... Please, favour me with a call on my mobile ... that we may discuss any diary conflicts that I may not be mindful of. ... I wish also to discuss representation,*

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*discovery and agree matters common cause and the issues of dispute."*

120. The reference to "*diary conflicts that i may not be mindful of*" is disingenuous. He is well aware that the hearing was initially scheduled to take place at the same time as the AGM on 30 October 2014 and he has now in effect conceded that this was wrong.

121. I have already pointed out why the actions of HCI MS and HCI are unlawful. Even, if as they contend, HCI MS and HCI were empowered to suspend and charge me, the manner in which this was done was grossly unfair and constituted an unfair labour practice for the following reasons:

121.1 no hearing was given to me on whether I should be suspended;

121.2 no reasons have been advanced for my suspension, even though the employer was invited to furnish same by the letter of demand and submit that no justifiable reason for my suspension exists;

121.3 the subcommittee tasked investigate the allegations about the Ellies transactions did not furnish me with reasons for recommending that I be charged, and nor did they report back to their own board to gain guidance on what steps be taken arising out of the findings;

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121.4 the reasons for taking steps against me are deeply mired in corporate politics and the timing of the initiative to discipline me speaks for itself – namely that I am supposed to attend my own disciplinary hearing during the week that I am required to preside as the chair of the HCI AGM and present myself for re-election by the HCI shareholders to the HCI board. This step is obviously an attempt to humiliate me with a view to forcing me to resign; it is also significant that after HCI became aware of the Ellies trades it was prepared to consent to a major transaction in which I would have been a significant contracting party and it is only after talks about this transaction broke down that it was suddenly alleged that I could no longer be trusted as CEO.

121.5 I have referred the unfair labour practice dispute to the CCMA. Copies of the relevant referral notice is annexed hereto marked as annexure **MG17**. I would respectfully submit that my prospects of success at arbitration are excellent and I accordingly submit that I am entitled to interim relief pending the outcome of such arbitration.

Breach of constitutional rights

122. I respectfully submit that editorial independence is part and parcel of the constitutional right of the media to freedom of expression as protected by

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section 16 of the Constitution of South Africa. Section 16(1)(a) provides for freedom of the press and other media.

123. I respectfully submit that in opposing the attempts to manipulate news content I have been acting to protect the right of the editorial staff to run an independent television news service. I furthermore submit that the conduct of the first and second respondents in endeavouring to remove me for this reason is conduct in breach of the right of freedom of expression.
124. Furthermore, in acting against me for holding the views which I have – namely that e.tv's news service must act independently – the conduct of the first and second respondents breaches my rights to freedom of thought, belief and opinion protected under section 15(1) of the Constitution.
125. I will be referring a dispute in this regard to the CCMA in terms of section 10 of the Employment Equity Act, 55 of 1998 complaining of unfair discrimination on the grounds set out above within the meaning of section 6 of that Act. At the time of deposing hereto the relevant referral form had not been submitted, but I undertake to do so before the matter is heard.

Requirements for the granting of interdictory relief

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Suitable alternative remedy

126. I am advised, and believe it to be so, that in proceedings of this nature employers usually argue, that because an applicant enjoys a suitable alternative remedy either at unfair labour practice proceedings – or, if s/he is dismissed, at unfair dismissal proceedings – the applicant is not entitled to interim relief due to the availability of such suitable alternative.
127. The market value of my shareholding is substantial. I am not merely fighting for my job, but to preserve and maintain the value that I have built up in the business throughout my working life. That I do in my capacity as CEO.
128. It can also be taken for granted that any hearing chaired by HCI MS and HCI's handpicked attorney will almost inevitably result in a dismissal and a finding that I have breached my fiduciary duties. This finding will then be used not only to remove me as CEO but to force me from the various boards on which I serve. This is not prejudice that I can remedy through attending a CCMA arbitration at some stage in the future.
129. I also hold the view that in creating e.tv as an independent news service we have built up something of value for the nation as a whole. Many South African citizens rely on e.tv news as the only independent news source on local issues.

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130. I have already submitted that my exit is being engineered so as to compromise the independence of the e.tv (and eNCA) news services. If that happens, credibility will be lost, which in my view, will lead to a significant decline in shareholder value as viewership will decline - along with advertising revenue. I submit that I am only effectively placed to prevent this outcome by remaining on as the CEO of Sabido and e.tv.
131. I concede that my real employers obviously have the right to decide to take disciplinary steps against me over the Ellies transactions should they be of a mind to do so. At least I would in that case be afforded an opportunity to attempt to persuade the properly authorised and mandated decision-makers that dealing with this matter in a different way is a preferable outcome for all.
132. Then, if I am indeed to be disciplined, it should be before a truly independent chairperson and not one hand-picked from the ranks of a particular firm of attorneys.

The balance of convenience

133. I point out that such disciplinary proceedings as may ultimately commence stands a very small chance indeed of being concluded swiftly, as a result of the complexity of the issues and the need for the calling of a number of witnesses, many of them persons with busy schedules.

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134. In his email of Tuesday, 21 October 2014 Shaik (who will be attend to the presentation of evidence against me personally, he says) pointed out to my attorney that he envisages a process of discovery which must necessarily be concluded prior to the commencement of proceedings and which, in order to be fair, would have to be conducted thoroughly by both parties.
135. He also wishes to engage in a process of agreeing on what matters are common cause and what issues are in dispute. This would obviously require completion of a pre-hearing minute.
136. In the result my suspension may prove to be a lengthy one and the prejudice to me will be grave.
137. Moreover, the harm to the companies of which I am CEO will be grave. I am in fact the person who most directly directs the day to day activities of Sabido and e.tv and I must be there to do this. I should add that I am at present involved in negotiating a number of substantial deals in which negotiations I've been personally involved for a lengthy period of time. Were I to simply withdraw from these negotiations, there would be substantial prejudice both to second and third respondent and to myself as a substantial shareholder.
138. Were I to be facing continuing suspension and the threat of imminent discipline this would obviously impact on my standing in the community, in

circumstances where I have to chair second respondent's AGM in the near future, as well as attend a number of other board meetings. The quarterly board meetings of Sabido and its Sabido subsidiaries commence on 31 October 2014 and run until 17 November 2014.

139. I note that Shaik in his email advises my attorney that they would be kind enough to halt the hearing for long enough to allow me to attend second respondent's AGM. This is of course a concession of the point I made in my letter of demand to the effect that the scheduling of the hearing to coincide the AGM gave rise to an inference of extreme bad faith on their behalf.
140. Conversely, there is no potential prejudice to the first or second respondents if my suspension is set aside while the necessity of my being suspended is considered afresh. I pose no threat to the Company and they have been aware of the subject matter of this complaint for months without acting.

#### Urgency

141. The hearing is scheduled to commence on Monday of next week. If I am to be granted relief it must be granted by Friday of this week.
142. The Annual General Meeting of the HCI will commence on 30 October 2014 -- next week Thursday. If I am to obtain meaningful relief I must obtain it

R-N.


before that meeting. Not only am I required to chair that meeting, but I am up for re-election as a director.

143. I have done nothing to cause this urgency. HCI has known of the actions that they now contend are misconduct since I engaged in them, which was 6 August 2014, two and a half months ago – and yet they waited until 13 October 2014 before laying a charge and summoning me to proceedings to be heard at the same time as the AGM.

144. This matter is a matter with significant ramifications for the country. I contend that I am being forced out because of my determination to maintain the independence of e.tv. That is, I contend, an issue of sufficient urgency and importance to warrant the very urgent consideration of this matter.

#### Conclusion

145. I respectfully move for an order in terms of the notice of motion to which this affidavit is attached.

  
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MARCEL JONATHAN ANTHONY GOLDING

R.N.



I certify that the above signature is the true signature of the deponent, who has acknowledged to me that he knows and understands the contents of this affidavit, which was signed and sworn to

AT CAPE TOWN ON THIS 22<sup>nd</sup> DAY OF OCTOBER  
2014

in accordance with the provisions of Regulation R128 dated 21 July 1972, as amended by Regulation R1648 dated 19 August 1977, R1428 dated 11 July 1980 and GNR774 of 23 April 1982.

  
\_\_\_\_\_  
COMMISSIONER OF OATHS

**Adv. Roseline Nyman**  
Member of Cape Bar  
Advocate of the High Court  
Room 620, 6th Floor, Keerom Chambers  
56 Keerom Street, Cape Town

