



REPUBLIC OF SOUTH AFRICA

Summons No. 136/2022

SA Case No. 477/2022

SUMMONS IN CRIMINAL CASE

Magistrate's Court

District: SECUNDA		Regional division: MPUMALANGA	
Held at: SECUNDA	Court A	Date of trial 20/09/2022	

TO THE ACCUSED

- You are hereby summoned to appear in person before the abovementioned court at 08:30 on the abovementioned date and place in connection with the charge(s) of which the particulars is/are mentioned above and to remain in attendance.
- An admission of guilt fine of **(none)** may be paid on or before To the Clerk of the abovementioned Magistrate's Court or at any Police Station within the area of jurisdiction of the said Court

To any **POLICE OFFICER** or **OTHER PERSON** empowered to serve a summons in criminal proceedings:
 You are hereby commanded in the name of the State to serve the copy of this summons on the person(s) (hereafter referred to as accused) of whom particulars appear hereunder as to summons him/her/them to appear in court and to remain in attendance in connection with the charge(s) of which the particulars is/are mentioned hereunder. Report to this Court what you have done thereon.

Name: MS NOMIA MACHEBE REPRESENTING SASOL SOUTH AFRICA LIMITED			
Address: PDP KRUGER STREET, SECUNDA			
Gender:	FEMALE	Occupation:	BUSINESSWOMAN
Age:	ADULT	ID Number:	7207100360084

Prosecutor: Adv Bekwa – 013-0450634

Investigating officer: Ryno Serfontein – 082 922 9344

Particulars of charge(s) : ANNEXURE "A"

Accused is/are guilty of the offence of
 in that upon or about the day of in the year on 11/09/2022
 the accused did wrongfully

CONTROL DOCUMENT / BEHEERSTUK

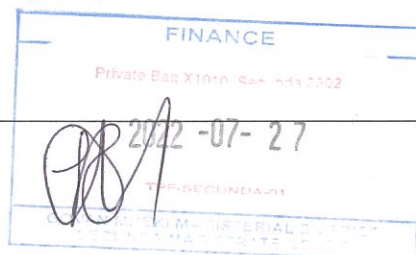
***Delete which is not applicable. If passing of sentence is declined and it is directed that the accused be prosecuted in the ordinary course a note to this effect should be endorsed accordingly under "A".**

ADMISSION OF GUILT

*In terms of subsection (7) of section 57 of Act 51 of 1977, the accused is/are deemed to be convicted of the offence(s) set out above and is sentenced to a fine of R **(None)**

*Other

.....
 Date stamp



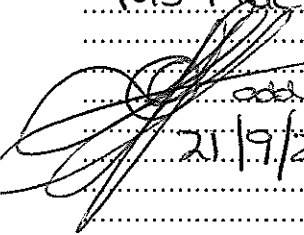
.....
 Magistrate

TRIAL/VERHOOR

Held in the aforementioned Court on the Gehou in die voormelde Hof op die		21 st	day of	September	in the year	2022
Presiding officer Voorsittende beampte		CJ Roos	instructed by	For the State Vir die Staat	Mr Mahasha.	
For defence Vir verdediging		Mr Hellens	(Sampsons attorneys)	Interpreter Tolk	None.	
Plea Pleit						
Judgment Uitspraak						
Sentence/Vonnis						
Date Datum						
						Magistrate/Landdros

The following evidence was adduced in the presence and hearing of the accused then in his/her sound and sober senses
 Die volgende getuienis is aangevoer in die teenwoordigheid en ten aanhore van die beskuldigde toe by sy/haar volle verstand

Postponed to 13/1/2023 for F/S
 Ms Machebe warned for court 09:00

 add. magistrate
 21/9/2022

**THE REGIONAL COURT FOR THE REGIONAL DIVISION OF MPUMALANGA,
HELD AT SECUNDA**

Case Number:

In the matter between:

THE STATE

Versus

SASOL SOUTH AFRICA LIMITED

ACCUSED

(as duly represented by Hannes Le Roux
in his capacity as the Senior Legal Manager
at Sasol Plaza Secunda)

CHARGE SHEET

WHEREAS Section 24 of the **Constitution of the Republic of South Africa**, Act 108 of 1996, guarantees that everyone has the right to an environment that is not harmful to their health or wellbeing; and to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other matters that prevent pollution and ecological degradation;

AND WHEREAS the Accused is a company registered as such in accordance with the provisions of the Companies Act 71 of 2008, bearing the registration number 1968/013914/06;

AND WHEREAS, at all times and places relevant to the charge **Accused** was a corporate body within the meaning of section 332 of the Criminal Procedure Act 51 of 1977;

AND WHEREAS at all times relevant to the charges hereto the authorised representative was the employee (Sasol Plaza Secunda, situated at Synfuels Road and PDP Kruger Street, Secunda, South Africa);

AND WHEREAS section 332 of the Criminal Procedure Act 51 of 1977 provides for the criminal liability of corporate or juristic persons as well as for directors and employees thereof;

WHEREAS section 1 of the **National Environmental Management: Waste Act 59 of 2008** (hereinafter referred to as NEMWA) states that:

"holder of waste" means any person who imports, generates, stores, accumulates, transports, processes, treats, or exports waste or disposes of waste.

"disposal" means the burial, deposit, discharge, abandoning, dumping, placing or release of any waste into, or onto, any land;

"waste" means: -

- (a) any substance, material or object, that is unwanted, rejected, abandoned, discarded or disposed of, or that is intended or required to be discarded or disposed of, by the holder of that substance, material or object, whether or not such substance, material or object can be re-used, recycled or recovered and includes all wastes as defined in Schedule 3 to this Act; or,
- (b) any other substance, material or object that is not included in Schedule 3 that may be defined as a waste by the Minister by notice in the *Gazette*,

but any waste or portion of waste, referred to in paragraphs (a) and (b), ceases to be a waste-

- (i) once an application for its re-use, recycling or recovery has been approved or, after such approval, once it is, or has been re-used, recycled or recovered;
- (ii) where approval is not required, once a waste is, or has been re-used, recycled or recovered;
- (iii) where the Minister has, in terms of section 74, exempted any waste or a portion of waste generated by a particular process from the definition of waste; or
- (iv) where the Minister has, in the prescribed manner, excluded any waste stream or a portion of a waste stream from the definition of waste.

WHEREAS section 67(1) of NEMWA provides, *inter alia*, that:

- (1) "A person commits an offence if that person—
 - (a) contravenes or fails to comply with a provision of section 15, 16(1)(c), (d), (e) or (f), 20, 26(1), 43A, or any order under section 38(2) or (3) or a notice under section 17(2) or 18(1) ..."

WHEREAS section 26(1)(a) and (b) further read with section 94 of NEMWA, provides that:

26 (1) "No person may-

- (a) dispose of waste, or knowingly or negligently cause or permit waste to be disposed of, in or on any land, waterbody or at any facility unless the disposal of that waste is authorised by law;
- (b) dispose of waste in a manner that is likely to cause pollution of the environment or harm to health and the well-being."

AND WHEREAS section 68(1) of NEMWA provides that:

"(1) A person convicted of an offence referred to in section 67(1) (a), (g) or (h) is liable to a fine not exceeding R10 000 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment, in addition to any other penalty or award that may be imposed or made in terms of the National Environmental Management Act. "

AND WHEREAS section 68(5) of NEMWA provides that:

A fine contemplated in subsection (1), (2), (3) or (4) must be determined with due consideration of-

- (a) the severity of the offence in terms of its impact or potential impact on health, well-being, safety and the environment; and
- (b) the monetary or other benefits that accrued to the convicted person through the commission of the offence.

AND WHEREAS Section 24F(1)(a) of National Environmental Management Act, Act 107 of 1998 as amended, provides that:

Notwithstanding any other Act, no person may-

- (a) commence an activity listed or specified in terms of section 24(2)(a) or (b) unless the competent authority or the Minister of Minerals and Energy, as the case may be, has granted an environmental authorisation for the activity; or

AND WHEREAS section 24F(4) of National Environmental Management Act, Act 107 of 1998, provides that:

- (4) A person convicted of an offence in terms of subsection (2) is liable to a fine not exceeding R5 million or to imprisonment for a period not exceeding ten years, or to both such fine and such imprisonment

AND WHEREAS section 49A(1)(a) of the National Environmental Management Act, 107 of 1998 as amended, provides that: -

A person is guilty of an offence if that person

- (a) commences with an activity in contravention of section 24F (1).

AND WHEREAS section 49B (1) of the National Environmental Management Act, Act 107 of 1998 as amended, provides that: -

- (1) A person convicted of an offence in terms of section 49A (1) (a), (b), (c), (d), (e), (f) or (g) is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine or such imprisonment.

(2) A person convicted of an offence in terms of section 49A (1) (i), (j) or (k) is liable to a fine not exceeding R5 million or to imprisonment for a period not exceeding 5 years, and in the case of a second or subsequent conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, and in both instances to both such fine and such imprisonment.

AND WHEREAS all counts as set out below must be read with the following other statutory provisions: -

- Section 34 of the National Environmental Management Act, Act 107 of 1998; and,
- Section 94, 250 and 332 of the Criminal Procedure Act, Act 51 of 1977.

AND WHEREAS the Accused commenced with listed activity 55A (GNR 922) without an environmental authorisation, by constructing the MSU plant (Desalination Plant) without an Environmental Authorization

AND WHEREAS the Accused disposed of waste containing Vanadium, Diethanolamine & Potassium Carbonate through the chemical drain valve at the Benfield West Phase 1 area into the API dams.

AND WHEREAS the Accused disposed of waste in a manner that was likely to cause pollution or harm to health and well-being, by disposing of Vanadium into the API dams which water are used in the cooling processes of the facility, and also discharged into the neighbouring Klipspruit river.

AND WHEREAS the Accused commenced with listed activity 8 (GNR 670) without an environmental authorisation, by rehabilitating the Black Product Area without an Environmental Authorization

AND WHEREAS at all material times hereto, all the charges are deemed to have been read with section 332 of the Criminal Procedure Act, 51 of 1977;

NOW THEREFORE the accused is guilty of the following offences:

COUNT 1

UNAUTHORISED DISPOSAL OF WASTE

THAT the Accused is guilty of contravening Section **26(1)(a)** read with Sections 1, 67(1)(a) & 68(1) of the National Environmental Management: Waste Act, 59 of 2008 and read with section, and read with section 94 of the Criminal Procedure Act 51 of 1977;

IN THAT the accused **between January 2012 and February 2019** and at or near the Benfield West Unit (S26.551317 & E29.154709), Sasol Secunda Synfuels Operations, corner of Synfuels Road and PDP Kruger Street, Secunda, in the Regional Division of Mpumalanga, disposed of waste, unlawfully and negligently caused or permitted waste to be disposed of, in or any land, water body or at any facility unless the disposal of that waste is authorized by law to wit: by the illegal discharging/disposal of waste containing Vanadium, Diethanolamine & Potassium Carbonate through the chemical drain valve at the Benfield West phase 1 area into the chemical sewer which flowed into the API dams.

COUNT 2:

UNLAWFUL PREJUDICE AND/ OR DISMISSAL OF A WHISTLE- BLOWER WHO IN GOOD FAITH DISCLOSED EVIDENCE OF A POTENTIAL ENVIRONMENTAL RISK

THAT the accused is guilty of contravening section 31(4), (5) and (8) read with Sections 34B, 49A (1) (j) and 49B (2) of the national environmental management, Act 107 of 1998;

IN THAT on or during **July 2020**, and within the scope and capacity of all the Directors of Sasol Synfuels Secunda, in the Regional Division Mpumalanga, the Accused, acting within the scope of its Directors, did unlawfully and intentionally prejudice or cause to prejudice a person who is within the employ of Sasol

Secunda, to wit: Ian Erasmus, a Process Artisan, who at the time of his employ was situated and conducting his duties at the Benfield/ Cold separation Units, West side (Phase 1 & 2) under the employ of Sasol Secunda, until his unlawful dismissal in July 2020, by terminating Ian Erasmus contract of employment without any reasonable grounds.

COUNT 3

DISPOSAL THAT IS LIKELY TO CAUSE POLLUTION

THAT the Accused is guilty of contravening Section 26(1)(b) read with Section 1, 67(1)(a) & 68(1) of the National Environmental Management: Waste Act, 59 of 2008 read with 49A (e), (f) and 49B of the National Environmental Management Act, 107 of 1998, and further read with section 94 of the Criminal Procedure Act, 51 of 1977;

IN THAT the accused between **January 2012 and February 2019** and at or near API Dams West (S26.542745 & E29.151054), Sasol Secunda Synfuels Operations, corner of Synfuels Road and PDP Kruger Street, Secunda, in the Regional Division of Mpumalanga, unlawfully and negligently, disposed of waste in a manner that was likely to cause pollution or harm to health and well-being, by disposing of Vanadium into the API dams which water are used in the cooling processes of the facility, and also discharged into the neighbouring river.

COUNT 4

COMMENCING WITH A LISTED ACTIVITIES WITHOUT AN ENVIRONMENTAL AUTHORISATION: (ACTIVITY 8)

THAT the Accused is guilty of contravening Section 24F(1)(a) read with Sections 1 and 49A (1) (a) and 49B of the National Environmental Management Act, Act 107 of 1989 and read with GNR 670 in GG23401 published on the 10 May 2002, and further read with section 94 of the Criminal Procedure Act, 51 of 1977;

IN THAT on or between the periods of May 2003 and December 2005 at or near The Black Product Area (S26.56305 & E29.12207), situated at Sasol Secunda Synfuels Operations, in the Regional Division of Mpumalanga, unlawfully and intentionally commenced with a listed activity without an environmental authorization to wit: ***The disposal of waste as defined in section 20 of the Act, excluding domestic waste, but including the establishment, expansion, upgrading or closure of facilities for all waste, ashes and building rubble***, by rehabilitating the Black Product Area without an Environmental Authorization and/ or a prescribed permit.

COUNT 5

COMMENCING WITH A LISTED ACTIVITIES WITHOUT AN ENVIRONMENTAL AUTHORISATION: (Activity 55A)

THAT the Accused is guilty of contravening Section 24F(1)(a) read with Sections 1, 49A(1)(a) & 49B (1) of the National Environmental Management Act, Act 107 of 1989 read with GNR 922 in GG 37084 published on the 29 November 2013, and further read with section 94 of the Criminal Procedure Act, 51 of 1977;

IN THAT the accused **between the periods of June 2013 and June Dec 2014**, and at or near the MSU Unit (S26.55397 & E29.12605), Sasol Secunda Synfuels Operations, corner of Synfuels Road and PDP Kruger Street, Secunda, in the Regional Division of Mpumalanga, unlawfully and intentionally commenced with a listed activity without an environmental authorization to wit: ***The Construction of facilities for the treatment of effluent, wastewater or sewage with a daily throughput capacity of more than 2000 cubic meters but less than 15000 cubic meters***, by constructing the MSU plant (Desalination Plant) without an environmental authorisation and/ or a prescribed permit/s.

COUNT 6

UNLAWFUL, NEGLIGENT DISPOSITION/ DISCHARGE OF CONTAMINATED WATER INTO A OR A WATER RESOURCE

THAT the accused is guilty of contravening Section 151(1)(i) read with Section (2) of the National Water Act, Act 36 of 1998 and further read with section 94 of the Criminal Procedure Act, 51 of 1977;

IN THAT between the period **January 2012 and February 2019** and at or near The Black Product Area (S26.56305 & E29.12207), situated at Sasol Secunda Synfuels Operations, in the Regional Division of Mpumalanga, the accused unlawfully and intentionally or negligently disposed of contaminated and untreated water, to wit: by channeling the water from the API dams which is likely to contain chemical Vanadium, into the Klipspruit river, an activity which caused or was likely to cause groundwater and environmental pollution.

The state prays for a sentence according to Law.

In respect of count/s:

COUNT 1: 68 (1) A person convicted of an offence referred to in section 67(1)(a), (g) or (li) is liable to a fine not exceeding R10 000 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment, in addition to any other penalty or award that may be imposed or made in terms of the National Environmental Management Act.

COUNT 2: 49B (2) A person convicted of an offence in terms of section 49A (1) (i), (j) or (k) is liable to a fine not exceeding R5 million or to imprisonment for a period not exceeding 5 years, and in the case of a second or subsequent conviction to a

fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, and in both instances to both such fine and such imprisonment.

COUNT 3: 49b (1) A person convicted of an offence in terms of section 49A (1) (a), (b), (c), (d), (e), (f) or (g) is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine or such imprisonment.

COUNT 4: 49B (1) A person convicted of an offence in terms of section 49A (1) (a), (b), (c), (d), (e), (f) or (g) is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine or such imprisonment.

COUNT 5: 49B (1) A person convicted of an offence in terms of section 49A (1) (a), (b), (c), (d), (e), (f) or (g) is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine or such imprisonment.

COUNT 6: 151 (2) Any person who contravenes any provision of subsection (1) is guilty of an offence and liable, on the first conviction, to a fine or imprisonment for a period not exceeding five years, or to both a fine and such imprisonment and, in the case of a second or subsequent conviction, to a fine or imprisonment for a period not exceeding ten years or to both a fine and such imprisonment.