

ANNEXURE "A"

IN THE COURT FOR THE REGIONAL DIVISION OF THE EASTERN CAPE

HELD AT ELLIOT

CASE NO:

IN THE CASE OF THE STATE

VERSUS

MTHUTHUZELI SWARTZ

ACCUSED 1

SYED NADHIR MOHIUDEEN

ACCUSED 2

CHARGE SHEET

GENERAL PREAMBLE TO THE CHARGES

Whereas at all times material to the charges

1. Accused 1 was employed by Metrorail as a Regional Manager for the Western Cape and stationed at Prophet Building, 6th Floor, 11 Adderley Street, Cape Town.
2. Accused 2 was the sole director and shareholder of an entity known as Spanish Ice Logistics (Pty) Ltd (Hereinafter referred to as **SPANISH ICE**).
3. Spanish Ice was headquartered at 4th Floor, 5 St George Mall, Cape Town and its registration number was 2002/007292/07.

4. Adrian Samuels (hereinafter referred to as Adrian) is the sole director and shareholder of Akisisa (Pty) Ltd. (hereinafter referred to as "Akisisa").
5. In September 2012 Accused 2 approached Adrian telephonically, informing him that he had 360 000 metric tons of used rail material for sale, which Accused 2 claimed to have obtained directly from Metrorail. Accused 2 advised Adrian that he could supply him with 30 000 metric ton over a period of 12 months. Accused 2 also informed Adrian that he was in negotiations with a Turkish company who was interested in buying the said used rail material.
6. Adrian and his cousin, Cedric Samuels, travelled to Cape Town to discuss the potential purchase of the used rail material with Accused 2.
7. They met, and Accused 2 showed Cedric and Adrian documentation which created the impression that:
 - Spanish Ice had a deal on with a Turkish company in respect of used rail material; and
 - Metrorail issued used rail material to Spanish Ice.
8. Accused 2 advised that 25 000 metric tons of rail material was immediately available in the Metrorail stock yard in Woodstock and took Adrian and Cedric to view the used rail material.
9. On the same day, Accused 2, Cedric and Adrian met at a coffee shop where Accused 2 introduced Accused 1 to them.
10. Accused 1 confirmed at the meeting that Spanish Ice was involved in various programs with Metrorail and that plenty of work could be done that was beneficial to all parties.

11. Accused 2, at this meeting with Adrian and Cedric, requested that they furnish a guarantee to Spanish Ice that they had the means to purchase the used rail material.
12. A guarantee letter of R 5 million was furnished to Spanish Ice by Akisisa.
13. Accused 2 informed Adrian and Cedric that the used rail material they saw at the Metrorail Stockyard in Woodstock could be uplifted on 25 October 2012.
14. The Samuels cousins arrived in Cape Town in order to make arrangements to uplift the used rail material.
15. They were contacted by Accused 2 who came up with several reasons or excuses why delivery could not take place and the Samuels were unhappy about the non-delivery.
16. Accused 2 contacted them and informed them that they will be meeting again with Accused 1 at the Waterfront, in Cape Town.
17. At the meeting, Accused 2, in the presence of Accused 1, told the Samuels that an upfront payment of R1.5 million was required into the Spanish Ice account, in order to secure the release of the used rail material from the Woodstock yard.
18. The Samuels paid R 1.5 million in to the Spanish Ice Account and Accused 2 signed an acknowledgement of receipt for the amount.
19. Thereafter further excuses and reasons were tendered by Accused 2 for non-delivery of the used rail material.
20. A further meeting was arranged with Accused 1 and 2, who confirmed that:

- There were delays in the quantifying the stock; and
- The used rail material would be delivered.

21. During this meeting, Accused 1 suggested that they go on a trip to the Eastern Cape to identify other rail material that could be uplifted, while they waited for the stock to be ready in Cape Town.

22. On 1 November 2012, Accused 1, 2 and Cedric travelled to the Sterkstroom and Maclear area, where Accused 1 and 2 identified a railway line between Sterkstroom and Maclear, which according to Accused 1 and 2, could be disassembled and which could be uplifted by the Samuels cousins and Akisisa.

23. Adrian requested the paper work from Accused 2 regarding the disassembly and upliftment of the railway line from Sterkstroom to Maclear and Accused 2 promised to provide him with the documents.

24. Whilst waiting for the paper work from Accused 1 and 2, the Samuels, with the permission of Accused 1 and 2, mobilised a workforce and began uplifting the railway line that had been identified by Accused 1 and 2 on the basis that they would receive the paperwork later.

25. Buyers were approached for the rail material that was being uplifted. The uplifted rail material was loaded onto trucks and taken to the Durban Harbour and loaded into containers belonging to the buyers for onward exporting of the used rail.

26. On 8 February 2013, Transnet security discovered that employees of Akisisa and the Samuels were uplifting the railway line between Sterkstroom and Maclear. Adrian was contacted and he immediately informed Transnet that he had been sold the rail by Accused 1 and 2. Transnet informed the Samuels that the rail could not be uplifted and had never been sold to Spanish Ice and/or Accused 1 and/or 2. At

that stage approximately 42 000 metres of railway line had already been uplifted. He was informed that the rail belonged to Transnet and not Metrorail.

27. The railway line between Sterkstroom and Maclear was never for sale and in fact was in the process of being refurbished to service coal a mine project in Indwe.
28. Accused 1 and 2 at no stage were sold and/or obtained any rights and title to the railway line between Sterkstroom and Maclear from Transnet, who were the lawful owners of the railway line between Sterkstroom and Maclear.
29. Accused 1 and 2 misrepresented to Adrian and/or Cedric and/or Akisisa that they had obtained the right to disassemble and remove the said railway line and were entitled to sell the rail to the Samuels.
30. The total amount that would have to be spent by Transnet to rebuild the 42 000 meter of railway line that had been uplifted is R 58 875 975.
31. The state alleges that at all relevant times during the commission of the offences, the Accused acted in furtherance of a common purpose with each other and persons unknown to the state.

NOW THEREFORE the accused are guilty of the following crimes:

COUNT 1

COUNT 1: FRAUD (READ WITH THE PROVISIONS OF SECTION 51(2) OF ACT105 OF 1997)

IN THAT during the period December 2011 to February 2013 and at or near Elliot in the Regional Division of the Eastern Cape the accused, whilst acting in concert with each other

and/or another person and/or other persons whose identity or identities is or are to the state unknown, did unlawfully, falsely and with the intent to defraud, give out and misrepresent to Adrian Samuels and/or Cedric Samuels and/or Akisisa that:

1. The Accused had obtained rights and title from Metrorail and/or Transnet and/or the State to disassemble and remove railway line between Sterkstroom and Maclear; and/or
2. The disassembly and removal of the railway line between Sterkstroom and Maclear was authorised by Metrorail and/or Transnet and/or the state; and/or
3. The Accused were entitled to authorise the disassembly and removal of the railway line between Sterkstroom and Maclear and/or to sell the rail material to prospective buyers; and/or
4. The accused were entitled to receive a sum of R1.5 million from Adrian Samuels and/or Cedric Samuels and/or Akisisa as a deposit to in order to secure the right to purchase rail material from Metrorail and/or the Accused; and

AND did there and then and by means of the said misrepresentations induce Akisisa and/or Adrian Samuels and/or Cedric Samuels to uplift the railway line between Sterkstroom and Maclear to the actual and/or potential prejudice of Transnet and/or the state totalling the amount of R 58 872 975 to;

WHEREAS when the accused misrepresented as aforesaid, they well knew that in truth and in fact that:

1. The accused and/or any other person or persons mandated by the accused had not obtained rights and title from Metrorail and/or Transnet and/or the state to remove railway line between Sterkstroom and Maclear stations and/or;
2. The removal of the railway line between Sterkstroom and Maclear was not authorised by Metrorail and/or Transnet and or the state and/or;
3. The accused were not entitled to dispose of the uplifted rail material by selling it to Adrian Samuels and/or Cedric Samuels and/or Akisisa.

ALTERNATIVE TO COUNT 1: THEFT (READ WITH THE PROVISIONS OF SECTION 51(2) OF ACT 105 OF 1997)

IN THAT and during the period December 2011 and February 2013 and at or near Elliot in the Regional Division of the Eastern Cape, the accused acting in the furtherance of a common purpose unlawfully and intentionally stole 42 000 meters of rail material between Sterkstroom and Maclear, which would cost Transnet an amount of R 58 872 975 to replace, in the manner described in the preamble, the property of or property in the lawful possession of the Transnet and/or its employees.

COUNT 2

THEFT (READ WITH THE PROVISIONS OF SECTION 51(2) OF ACT 105 OF 1997)

IN THAT and during the period December 2011 and February 2013 and at or near Elliot in the Regional Division of the Eastern Cape, the accused acting in the furtherance of a common purpose unlawfully and intentionally stole R 1.5 million the in the manner described in the preamble, the property of or property in the lawful possession of Adrian Samuels and/or Cedric Samuels and/or Akisisa.

COUNT 3

ASSISTING ANOTHER TO BENEFIT FROM PROCEEDS OF UNLAWFUL ACTIVITIES IN CONTRAVENTION OF SECTION 5 READ WITH SECTIONS 8 AND 1 OF ACT NO. 121 OF 1998 (IN TERMS OF SECTION 156 OF ACT 51 OF 1977)

IN THAT during the period December 2011 and February 2013 and at or near Elliot in the Regional Division of the Eastern Cape the Accused did unlawfully assist each other and/or any other person or persons whose identity or identities is or are to the state unknown to benefit from proceeds of unlawful activities, to wit the rail material/lines as described in the preamble to the charge sheet knowing or having ought reasonably to have known that the aforesaid material was or formed part of the proceeds of unlawful activities.