ENQUIRY INTO THE SOUTH GAUTENG DIRECTOR OF PUBLIC PROSECUTIONS' FITNESS TO HOLD OFFICE

HELD AT

SALU BUILDING, 316 THABO SEHUME STREET,

DEPARTMENT OF JUSTICE AND CONSTITIUTIONAL DEVELOPMENT

17 NOVEMBER 2025

DAY 1

ENQUIRY INTO THE SOUTH GAUTENG DIRECTOR OF PUBLIC PROSECUTIONS' FITNESS TO HOLD OFFICE

PROCEEDINGS ON 17 NOVEMBER 2025

CHAIRPERSON: Good afternoon, everybody. I cannot say good morning, we started quite late. We apologise to all of you, we know the media is here, we ought to have started this morning at 10 o'clock, but got held up by some housekeeping matters with the parties. Good afternoon. We are going to begin with our proceedings today, the first hearing date of this enquiry and as we start, I welcome you and hope that all of you have familiarised yourself with the procedural rules of this enquiry. I will then invite Advocate Mohlamonyane, the evidence leader, to make some presentation to us. But before that, I suppose that it is proper for all the parties to place themselves on the record. Advocate Mohlamonyane?

ADV MOHLAMONYANE SC: My name is David Mohlamonyane, SC. I am a member of the Pretoria Society of Advocates. I am the chief evidence leader in this enquiry.

ADV HULLEY SC: Thank you, Madam Chair. It is Garth Hulley, a member of the Johannesburg Society of Advocates, together with my learned junior, Ms Nonhla Legeto.

CHAIRPERSON: Advocate Ncukaitobi?

ADV NGCUKAITOBI SC: Thank you, Madam Chair. My name is Tembeka Ncukaitobi. I am from the Johannesburg Bar. Mr Tsidiso Ramogale and I represent Mr Chauke. We are instructed by Mr Lesley Mkhabela.

CHAIRPERSON: We have also before us Advocate Andrew

Chauke. Advocate Chauke, good afternoon, sir.

ADV CHAUKE: Good afternoon, Chair. Thank you.

CHAIRPERSON: Yes, thank you. Advocate Mohlamonyane?

ADV MOHLAMONYANE SC: Thank you, Madam Chair. As we have indicated in the meeting prior to this hearing beginning, I am ready to deliver the opening address. During the break before we commenced at one o'clock, there are developments. [Phone ringing] I beg your pardon. Oh my God, my apologies.

CHAIRPERSON: Might I request everybody, put your mobile phones on silent. Please proceed, sir.

ADV MOHLAMONYANE SC: I have actually switched it off, thanks, Madam Chair. There is a development that took place during the break. Counsel for the NPA, Advocate Hulley, made contact with Advocate Batohi, and what I got from him was that Advocate Batohi would prefer to give her evidence in one continuous sitting, including being cross-examined. This was after she was told that, in fact, she will not be cross-examined on the day on which she will be testifying, but that the team, Advocate Chauke's team, rather, will ask for an opportunity to prepare themselves for her cross-examination.

So that is where we are, Madam Chair. And I have not personally spoken to her, but she spoke to Advocate Hulley, who then conveyed the message to me. And it puts me in a situation where I have to ask that she testify, if she

is not comfortable to do that, in a staggered way, that she be allowed to testify when Advocate Ncukaitobi will be ready to cross-examine her, because it appears to me senabling comfortable to give evidence, and then the matter gets postponed to enable Advocate Ncukaitobi to have an opportunity to prepare for her cross-examination.

CHAIRPERSON: I will not find out from Advocate Hulley, whether what you say is correct, I beg your pardon, but I suppose what you say represents your discussions privately, counsel.

ADV HULLEY SC: That is so, Madam Chair.

CHAIRPERSON: Yes, thank you. I should make this very clear to all of you, counsel. We have had a discussion this morning about the progress we have made in this matter. We have not started. And it is not for Advocate Batohi to decide how we are going to proceed in this enquiry. When she is called to testify, she will come and testify, and should come to testify. What will then happen at the end of her testimony will be decided at that stage.

But she should come to testify and finish her testimony. When she finishes, it will be open for the legal representatives, for Advocate Chauke, whether they want to cross-examine her or not. But at this stage, we will expect her to present herself to testify sometime during the course of this week, when you both finish with your opening

addresses. I think that should be clear to all of us that we are not going to delay this enquiry any further because Advocate Batohi wants to do what she wants to do.

Once she is asked to come to testify, as the head of the NPA, who has lodged a complaint with the President, resulting in the establishment of this enquiry, she will come to testify. As to what will happen at a later stage, we will cross that bridge when we reach it. On that approach, I suggest that we begin.

OPENING ADDRESS BY ADV MOHLAMONYANE SC

ADV MOHLAMONYANE SC: As it pleases Madam Chair. I will then begin with this enquiry by reading the opening address. Enquiry into the fitness of Advocate Khehla Masenyani Andrew Chauke to hold office as the National Director of Public Prosecutions, South Gauteng in Johannesburg. The address is written down. I have not handed copies to the panel, but I will do so as soon as I am done with presenting the opening address.

CHAIRPERSON: Counsellor, it will be helpful if you can move your mouth. Yes, and try to speak up.

ADV MOHLAMONYANE SC: Indeed. It is in written form and it reads as follows:

> "As we all know that the NPA is established in terms of section 179 of the National Prosecuting Authority Act. South Africa has

a National Prosecuting Authority. Now, in terms of section 14(3) of the National Prosecuting Authority Act, 32 of 1998, read with section 12(6)(a), the President may remove a Director of Public Prosecutions inter alia:

1. For misconduct;
2. On account of incapacity to carry out his or her duties of office efficiently; and
3. On account thereof that he or she is no longer a fit and proper person to hold the office concerned.

Advocate Andrew Chauke is the Director of Public Prosecutions, in short, the DPP of the High Court Johannesburg South Division. I will get on to the terms of reference pertaining to this enquiry.

On 30 September 2025, the President published Notice No. R6686 in Government Gazette No. 53444. In terms of this notice, the President has established this enquiry to look into Advocate Chauke's fitness to hold office insofar as it relates to..."

Now, what I am going to read hereafter, are the terms of reference, and I am quoting them verbatim as they appear in

the terms of reference as gazetted on the 30th of September 2025 by the President. And I quote:

> "...relates to "his direct or indirect conduct of Advocate Chauke relating to his fitness and propriety to hold office based on information including, but not limited to, matters related to the following allegations:
>
> 1. The institution of the racketeering charges in terms of section (2)(4) of the Prevention of Organised Crime Act 1998, which is usually referred to by prosecutors as the POCA, against Major General Booysen and members of the Cato Manor Unit and the defence of those actions in subsequent review proceedings brought by Major General Booysen to have the racketeering certificates set aside in that he, Advocate Chauke:
>
> 1. Supported a decision to prosecute the accused notwithstanding that there was no evidence justifying the decision, and he sought to improperly have the acting Director of Public Prosecutions of KwaZulu-

Natal sign the case dockets and a prosecution memorandum detailing the alleged evidence implicating the accused on which the decision to indict had to be made.

2. Recommended to the then acting National Director of Public Prosecutions, Advocate Nomgcobo Jiba, the application for issuing a racketeering authorisation in terms of section 2(4) of the Prevention of Organised Crime Act 1998, whereas there was no evidence justifying the institution of racketeering charges against the accused.
3. Sought to defend the institution of the aforementioned racketeering charges in the review proceedings brought by Major General Booysen to have the set racketeering charges set aside and that he finalised the answering affidavit of the then acting National Director of Public Prosecutions, Advocate Nomgcobo Jiba in the Booysen

review proceedings in opposing the review application, notwithstanding that there was no evidence justifying the institution of racketeering charges against the accused.

4. Instituted an appeal against the judgment of Judge Govind in the review case of Booysen v. acting National Director of Public Prosecutions and others, 2014 (2) SACR 55 (KZN), without the approval of the then National Director of Public Prosecutions, Mr Mxolisi Nxasana, notwithstanding that there was no evidence justifying the institution of racketeering charges against the accused and thus no justification for lodging an appeal against the judgment; and
5. Attempted to have racketeering charges against Major General Booysen and members of the Cato Manor Unit reinstated by the then

National Director of Public Prosecutions, Mr Nxasana, notwithstanding that there was no evidence justifying the institution of racketeering against the accused.

2. The failure to continue with charges against Lieutenant General Richard Mdluli for his involvement in the murder of Mr Tefo Abel Ramogibe, in that he, Advocate Chauke:

    1. Caused the charge of murder relating to the killing of Mr Tefo Abel Ramogibe, and related charges to be withdrawn, notwithstanding that there was strong evidence justifying the institution of a prosecution in the matter, which decision caused a significant delay in proceeding with charges concerned.

    2. Whether in fulfilling his responsibilities as Director of Public Prosecutions, Advocate Chauke:

        1. Complied with the Constitution,

the National Prosecuting Authority Act, and any other relevant laws in his position as a senior leader in the National Prosecuting Authority, and is fit and proper to hold this position and be a member of the prosecutorial service.

2. Properly exercised his discretion in relation to instituting and conducting criminal proceedings on behalf of the state.

2. Carrying out any necessary functions incidental to instituting and conducting such criminal proceedings; and

3. Discontinuing criminal proceedings.

3. Duly respected Court processes and proceedings before the Courts as required by applicable prescripts and as a senior member of the National Prosecuting Authority.

4. Exercised his powers and performed his duties and functions in accordance with

prosecution policy and policy directives as determined under Section 21 of the National Prosecuting Authority Act.

5. Acted at all times without fear, favour, or prejudice.
6. Displayed the required competence and capacity required to fulfil his duties by, among others, objectively engaging with facts presented to him impartially, in good faith and without fear, favour, or prejudice, subject to the Constitution of the Republic of South Africa, 1996, and the law in order to discharge his duties as a director of public prosecutions; and lastly
7. In any manner, brought the National Prosecuting Authority to disrepute by any of his actions or omissions."

Unquote. Now, I will then deal with a complaint to the President.

"The establishment of the present enquiry arises from a recommendation by the National Director of Public Prosecutions, in short, the NDPP, Advocate Shamila Batohi. Advocate Batohi has submitted an affidavit

and will be the first witness called to testify in this enquiry. She has outlined in her affidavit the circumstances which led to the recommendation to the President."

Now, the issues, what are the issues in this enquiry?

"As appears from the terms of reference, this matter concerns two broad complaints against Advocate Chauke. The first relates to his conduct in relation to the institution of racketeering charges against Major General Johan Booysen and members of the Cato Manor Unit and the subsequent defence of the proceedings instituted by Booysen to review and set aside the issue of racketeering certificates. I shall refer in generic terms to this aspect as the Booysen matter.

The second relates to his conduct in relation to the failure to continue with charges against Lieutenant General Richard Mdluli, relating to the latter's involvement in the murder of Mr Tefo Abel Ramogibe. I shall, in similar fashion, refer to this aspect as the Mdluli matter.

Both matters enjoyed a great deal of public

and media attention and both matters resulted in a great deal of litigation at the instance of various public interest bodies and civic organisations. The issues relating to the Booysen matter and several other issues resulted in the establishment by the President of an enquiry into the fitness of a former acting NDPP Advocate Nomgcobo Jiba to hold office.

The withdrawal of different charges against Mdluli also resulted in the establishment of an enquiry by the President into the fitness of a former Special Director of the Public Prosecutions and the head of the SSSCCU, Advocate Lawrence Mrwebi to hold office. That enquiry was headed by a former Constitutional Court Justice, Yvonne Mokgoro, and resulted in the removal of both Advocate Jiba and Advocate Mrwebi.

Given the pre-eminence of these matters, it is proper that I should commence by outlining in broad terms what these matters were about. My address must not be understood to, in any way, limit the nature or scope of the evidence that will be led in

support of these allegations against Advocate Chauke. I will then start with the Booysen matter.

The Booysen matter

In early 2012, Advocate Nomgcobo Jiba, in her capacity as then-Acting NDPP, decided to set up a team of prosecutors from Gauteng and Northwest Provinces to conduct the prosecution of police officials in KwaZulu-Natal. Many of these police officials were from the, "Serious and Violent Crimes Unit". I will refer to them as the Cato Manor Unit.

The evidence will show that Advocate Chauke, who was then and is now still the DPP of Johannesburg, was for all intents and purposes appointed as the leader of the prosecution team, acted as a de facto DPP of KwaZulu-Natal. The allegations against Advocate Chauke relate to his involvement in the prosecution of Booysen and members of the Cato Manor Unit with contraventions of sections 2(1)(e) and (f) of the Prevention of Organised Crimes Act, number 121 of 1998, commonly referred to as POCA by

prosecutors.

At the time, Booysen was the provincial head of the Directorate for Priority Crimes Investigations, DTCI, commonly referred to as the Hawks, in KZN."

Now I will quote from the Act itself, the POCA Act itself. I do have it here. In terms of the POCA Act, section 2 thereof contains offences. And subsection 1 says, and I quote:

"Any person who..."

Subsection E that I referred to above, says:

"Any person who:

e. Whilst managing or employed by or associated with any enterprise, conducts or participates in the conduct directly or indirectly of such enterprise's affairs through a pattern of recruiting activity;

f. Manages the operational activities of an enterprise and who knows or ought reasonably to have known that any person, whilst employed by or associated with that enterprise, conducts or participates in the conduct directly or indirectly of such enterprise's affairs through a pattern of racketeering

activity."

Unquote.

"The consequences of conviction on an offence of contravening section 2(1) are very serious. In terms of section 3(1), and I quote it, it says the following:

"Any person convicted of an offence referred to in section 2(1) shall be liable to a fine not exceeding R1,000 million or to imprisonment for a period up to imprisonment for life."

That is correct, a fine not exceeding R1 billion, for the uninitiated R1,000 million is an equivalent of R1 billion and this is how serious the legislature viewed this type of an offence.

"In terms of section 2(4), it states the following and I quote:

"A person shall only be charged with committing an offence contemplated in subsection 1, if a prosecution is authorised in writing by the National Director."

The national director referring to the likes of Advocate Batohi and those who came before her.

> "Advocate Chauke played a prominent role in applying for and obtaining the authorisations from Advocate Jiba who, as already mentioned, was an acting NDPP at the time. In order to obtain the authorisations, the prosecution had to submit an application to Advocate Jiba and such application had to be supported by a report setting out, inter alia, the evidence and the nature of the case against Booysen and the other police officials.
>
> The allegations against Advocate Chauke, are that many of the allegations contained in these reports had insufficient or no evidence to support them. On the strength of these authorisations or racketeering certificates ..."

Racketeering is an offence that is not as simple as that but this is a legal, this is a jargon that is used by prosecutors to call it racketeering.

> "On the strength of these authorisations or racketeering certificates, Booysen and other police officials were arrested. Booysen applied for bail and after his release on bail, instituted review proceedings in which he

sought to set aside the two racketeering certificates. That matter came before the Durban High Court and is contained in a reported judgment quoted as Booysen v. Acting National Director of Public Prosecutions and others 2014 (2) SACR 556 (KZD)."

KZD standing for KwaZulu Natal Durban.

"The allegation against Advocate Chauke is that he was intimately involved in the preparation of the answering affidavit deposed to by Advocate Jiba in opposing the relief sought by Booysen and some of the information contained in this affidavit were to his knowledge incorrect. Govind J presided over that matter and made several remarks relating to Advocate Jiba, which touch upon the actions of Advocate Chauke as well, given that he was so intimately involved in the preparation of her answering affidavit.

It is perhaps apposite to mention some of those comments, meaning the comments of Judge Govind. He says and I quote..."

This is quoted in paragraph 33 of his judgment says the

following:

> "In his replying affidavit, Mr Booysen submits that the NDPP is mendacious when she asserts in paragraph 21 of the answering affidavit that she considered the statements together with the other information in the docket before making the impound decisions. She could not have considered the statements referred to in her answering affidavit.
>
> She is invited to explain how she could have taken into account information on oath that objectively did not exist at a time of taking the decision."

And the Judge proceeded in the next paragraph which is paragraph 34. No, let me not do that, it is not him.

> "Mr Booysen was clearly within his rights to deal in reply with the inaccurate assertions by the NDPP in her answering affidavit and to issue the challenge and invitation..."

I beg your pardon, Madam Chair, may I correct myself? This is still Govind J. Because it is in paragraph 34, it is still Govind J.

CHAIRPERSON: Are you reading paragraph 34?

ADV MOHLAMONYANE SC: Of, yes, Govind J's judgment. He states and I quote:

> "Mr Booysen was clearly within his rights to deal in reply with inaccurate assertions by the NDPP in her answering affidavit and to issue the challenge and invitation in question. He had not seen the statements until they were annexed to the answering affidavit.
>
> As regards the inaccuracies, the NDPP is after all an officer of the Court. She must be taken to know how important it is to ensure that her affidavit is entirely accurate. If it is shown to be inaccurate, and thus misleading to the Court, she must also know that it is important to explain and if appropriate, correct any inaccuracies.
>
> Despite this, the invitation by Mr

> Booysen was not taken up by the NDPP by way of a request or application to deliver a further affidavit. In response to Mr Booysen's assertion of mendacity on her part, there is a deafening silence.
>
> In such circumstances, the Court is entitled to draw an inference adverse to the NDPP. Most significantly, the inference must be drawn that none of the information on which she says she relied, linked Mr Booysen to the offences in question. This means that the documents on which she says she relied did not provide a rational basis for the decisions to issue the authorisations to charge Mr Booysen for contraventions of section 2(1)(e) and (f), respectively."

And then he continues in paragraph 36, Govind Jay continues and says the following.

> "Even accepting the least stringent

> test for rationality imaginable, the decision of the NDPP does not pass muster. I can conceive of no test for rationality, however relaxed, which could be satisfied by her explanation. The impugned decisions were arbitrary, offend the principle of legality, and therefore the rule of law and were unconstitutional."

By the time the above judgment was delivered, Advocate Jiba's acting appointment had come to an end and Mr Mxolisi Nxasana had been appointed as the NDPP. After the judgment in the above matter, Advocate Chauke was instrumental in lodging an application for leave to appeal against the judgment.

In doing so, he bypassed Mr Nxasana, who was the person who should have decided whether to appeal. Arising from the findings in the judgment, criminal charges of perjury and fraud were opened against Advocate Jiba. Mr Nxasana was eventually replaced by Advocate Sean Abrahams, who took

office from 18 June, 2015 to 13 August, 2018.

Despite Advocate Jiba facing imminent criminal prosecution, she remained in office. The evidence will show that after the appointment of Advocate Abrahams, Advocates Chauke and Jiba were considering how to revive their appeal against the judgment of Govind J. This was almost two years after the Govind J judgment.

Given the criminal trial against Advocate Jiba, the effect of the institution of an application for leave to appeal would, at the very least, have been to put the criminal trial on hold. After his appointment, Advocate Abrahams issued new racketeering certificates. The case against Advocate Chauke relates to his involvement in the issuing of these new recruiting certificates.

Advocate Abrahams decided to withdraw the fraud and perjury charges against Advocate Jiba, which led to further litigation. And one can have a look at Freedom Under Law NPC v National Director of Public Prosecutions

and others 2018 (1) SACR 436 (GP)."

Gauteng Province, in other words.

"That matter came before a full Court, which made the following order:

1. "The decision taken by the National Director of Public Prosecutions on the recommendation contained in an opinion provided by the regional head of the Specialised Commercial Crime Unit to withdraw charges against the Deputy National Director of Public Prosecutions, Mrs N Jiba, is reviewed and set aside.
2. The failure by the President to suspend and institute inquiries into the fitness of the Deputy National Director of Public Prosecutions, Mrs N Jiba, and the Special Director of Public Prosecutions, Mr L Mrwebi, to hold office in the National

Prosecuting Authority, is reviewed and set aside.

3. The President is directed to institute disciplinary inquiries against Jiba and Mrwebi into their fitness to hold office in the National Prosecuting Authority, and to suspend them pending the outcome of those enquiries."

It was eventually, pursuant to this judgment, that the President established the Mokgoro Enquiry to inquire into the fitness of advocates Jiba and Mrwebi to hold office. The Mokgoro Enquiry found that Advocates Jiba and Mrwebi were not fit to hold office. The President accepted this, and they were eventually removed.

In the Mokgoro Enquiry, the allegations against Jiba related to her conduct in several matters. One of these was the Booysen matter. Many of the findings in the Mokgoro Enquiry are pertinent to the present enquiry. Advocate Abrahams was eventually removed by an order of the Constitutional

Court, and one can have a look at Corruption Watch NPC and others v. President of the Republic of South Africa and others, Nxasana v. Corruption Watch NPC and others 2018 (10) BCLR 1179 (CC), 2018 (2) SACR 442 (CC).

To be clear, the Court set aside the appointment of Advocate Abrahams on the basis that the removal of Ms Nxasana was unlawful. In this regard, the Constitutional Court found…"

And I quote from paragraph 88 of the ConCourt decision, judgment rather:

"I next deal with Advocate Abrahams. As a point of departure, I must state that not a single party has suggested that he is not a fit and proper person to hold office. As was to be expected, Advocate Abrahams seeks to get a lot of mileage out of this. Must he succeed? I think not.

Former President Zuma appointed Advocate Abrahams following his

> unlawful removal of Ms Nxasana. That removal was an abuse of power. Advocate Abrahams benefited from this abuse of power. It matters not that he may have been unaware of the abuse of power.
>
> The rule of law dictates that the office of NDP be cleansed of all the ills that have plagued it for the past few years. It would therefore not be just and equitable to retain him as this would not vindicate the rule of law."
>
> It was in this context that Advocate Shamila Batohi was eventually appointed as the NDPP. She will be the first witness to testify."

That concludes the opening address on the Booysen matter. I will then jump on to the Mdluli matter.

> "Lieutenant General Richard Mdluli was the head of Crime Intelligence in the South African Police Service, SAPS. He had been charged with inter alia the murder of Mr Tefo Oupa Ramogibe. He was also charged with

two counts of attempted murder of Mr Ramogibe and Ms Alice Monana.

He had also been charged with three counts of kidnapping in relation to Ms Monana, Mr Ramogibe, and Ms Tshidi Buthelezi. Two counts of common assault relating to Ms Monana. Two counts of assault with intent to do grievous bodily harm in respect of Ms Monana and Mr Ramogibe. Four counts of contravening the Intimidation Act number 72 of 1982, and defeating the ends of justice.

In November 2011, Mdluli, through his attorneys, submitted representations to Advocate Chauke. Most of his complaint related to a conspiracy by senior police officials against him. Advocate Chauke sent the representations to the prosecutors who were dealing with the matter.

The prosecution team, led by a highly experienced prosecutor, Advocate Zais van Zyl SC, responded to Mdluli's representations. In a nutshell, they stated that there was a sufficient case against Mdluli. Notwithstanding the stance of the prosecutors, Advocate Chauke withdrew all

the charges and referred the death of Mr Ramogibe to an inquest in terms of the Inquest Act.

Another civic organisation, Freedom Under Law, brought an application to review and set aside the decision to withdraw the charges against Mdluli. That application related, also, to the decision of Advocate Lawrence Mrwebi to withdraw fraud and related charges against Mdluli, and a decision by the acting National Commissioner of the SAPS to withdraw disciplinary proceedings instituted against Mdluli.

After the application had been launched, the findings of the Magistrate who presided over the inquest were made. A copy of the Magistrate's findings form part of the record. They have been the subject of much confusion and we will examine those findings later, particularly since they were relied upon by Advocate Chauke to justify his actions.

We will demonstrate that the findings of the Magistrate provide Advocate Chauke with no

> justification at all. In opposing the relief sought by Freedom Under Law, Advocate Chauke explained that he had only provisionally withdrawn the charges against Mdluli and that he had referred only one aspect of all the charges, i.e. the death of Mr Ramogibe, to an inquest.
>
> He had withdrawn the other charges only because it was important to keep the charges together to avoid, as he put it, piecemeal, to deal with the matters on a piecemeal basis. Murphy J presided over that application. The strength of the state's case against Mdluli was captured by Murphy J in his judgment in the Freedom Under Law v. National Director of Public Prosecutions and others 2014 (1) SACR 111 (GNP)."

GNP standing for Gauteng North Pretoria, in other words, the High Court in Pretoria.

> "It is apposite to repeat the strength of the state's case here, and what follows is quoted from Judge Murphy's judgment."

And paragraph 78, he had the following to say, and I quote:

> "The affidavits before the inquest and the evidence as summarised by

the Magistrate in his written reasons, do indeed support a conclusion that there is a prima facie case against Mdluli on the murder and related charges. The Magistrate found the following to be common cause:

Mdluli and Ramogibe, the deceased, were both in a relationship with the same woman, Buthelezi, from 1997 until the murder of the deceased in 1999.

Ramogibe had secretly married Buthelezi during the period in question.

Mdluli was upset about their relationship, and on a number of occasions addressed the issue. On 23 December 1998, Ramogibe was the victim of an attempted murder. He reported the incident to the Vosloorus SAPS. Ramogibe was requested to report to the Vosloorus police station to meet with the investigating officer and to point out

the scene of the attempted murder. On 17 February 1999, Ramogibe was taken to the scene in Mdluli's official vehicle, a green Volkswagen Golf. Ramogibe was murdered at the scene on that day, while pointing it out to the investigating officer.

In its supplementary founding affidavit, FUL, referring to the Freedom Under Law, highlighted the following key attributes of the evidence demonstrating a prima facie case against Mdluli, and upon which the Magistrate's inference of Mdluli's involvement is soundly based."

Paragraph 80:

"The deceased mother Mrs Maletsatsi Sophia Ramogibe, testified that during 1998, Mdluli came to her home looking for the deceased, obviously unhappy with the fact that the deceased was in a relationship with Buthelezi. A few

days later, Mdluli came and fetched her and took her to the police station.

There, she found her son bleeding, with his shirt covered in blood. Mdluli insulted her son in his presence and warned him to keep away from Buthelezi. Her son was killed a few days later. After his death, Mrs Ramogibe's daughter, Justina, was kidnapped and raped, as confirmed by her in a confirmatory affidavit.

She later received a call from an unknown caller who warned her that if she proceeded to press the case of her son's murder, all her daughters would be killed."

Paragraph 81:

"Ms Alice Monana, an acquaintance of the deceased and Buthelezi, described how in August 1998, she was allegedly kidnapped, intimidated, and assaulted by Mdluli, and two fellow officers of the

Vosloorus SAPS and forced to disclose the whereabouts of the couple and to take the police to them at Orange Farm. The deceased and Buthelezi were then taken to Vosloorus police station, where they were assaulted for 30 minutes before being discharged.

On 17 October 1998, Ms Monana was repeatedly shot by an assailant who shot her at the front door of her home. During the shooting, she saw Mdluli sitting in the driver's seat of a green Volkswagen Golf, which she knew belonged to him, parked outside her house."

Paragraph 82:

"Buthelezi, now deceased, stated in an affidavit deposed to her before her death that she and the deceased had been kidnapped and assaulted by Mdluli and his colleagues."

Paragraph 83:

"Five other witnesses, including the

deceased's father, testified that Mdluli had visited them repeatedly, looking for the deceased and informing them that he would kill Ramogibe if he did not end his relationship with Buthelezi.

Mr Stephen Boetie Jiane testified that Ramogibe had periodically stayed at his family home because Mdluli was threatening to kill him."

Paragraph 84:

"Mary Logaje in her affidavit heard the shooting of Ramogibe outside her house and saw three uniformed policemen running away from the scene and saw the Golf being driven away."

85:

"Various affidavits by police officers who investigated the murder were filed, confirming that Mdluli was the main suspect in the case, although there was no evidence of his direct involvement in the murder and dealing with the loss of the dockets

and evidence linked to some of the charges."

That is as far as Judge Murphy quoted this.

"The allegations against Advocate Chauke relate to his decision to refer this matter to an inquest in the first place. Virtually all the evidence captured in the above passage taken from the judgment was before him when he decided to refer the matter to an inquest.

There was, as found by both Murphy J and the Supreme Court of Appeal in the National Director of Public Prosecutions and others v. Freedom Under Law 2014 (2) SACR 107 (SCA), sufficient evidence upon which to prosecute. Yet Advocate Chauke did not prosecute. Instead, he referred the matter to an inquest. It will be contended that in referring the matter to an inquest, Advocate Chauke weakened the state's case.

The further allegations against Advocate Chauke are that after the Magistrate's findings became available, that is in November 2012, he ought to have taken a decision then to reinstate the matter and

> attempted murder charges. Instead, Advocate Chauke, now in possession of the Magistrate's findings, filed an affidavit opposing the relief sought by Freedom Under Law.
>
> In his affidavit, in those proceedings, Advocate Chauke explained that the Magistrate had found that there was no evidence implicating Mdluli. The allegations against Advocate Chauke are that his view that the Magistrate had found that there was no evidence implicating Mdluli, is wrong and that he either did not read the findings or that he ignored the findings.
>
> In his judgment, Murphy J said the following about Advocate Chauke's explanation."

And this is quoted from the judgment in paragraph 89 of Murphy J's judgment and I quote.

CHAIRPERSON: [Microphone not switched on – 0:56:11]

ADV MOHLAMONYANE SC: Let me just go back to it.

CHAIRPERSON: [Indistinct]

ADV MOHLAMONYANE SC: The National Director of Public Prosecution and others v. Freedom Under Law, is that the one Madam Chair is referring to?

CHAIRPERSON: The decision of Murphy J.

ADV MOHLAMONYANE SC: The decision of Murphy J. Let me go back to it.

CHAIRPERSON: I suppose that we are dealing with the SCA decision of 2022, are you going back to that one?

ADV MOHLAMONYANE SC: Yes, I went back to Murphy. I went back to Murphy.

CHAIRPERSON: 2014 (1)?

ADV MOHLAMONYANE SC: Yes, 2014 (1).

CHAIRPERSON: SACR?

ADV MOHLAMONYANE SC: SACR 111 (GNP). In practise GNP. I am going back to Murphy J's judgment and I indicated that it is contained in paragraph 89 of his judgment and I quote:

> "Chauke in his answering affidavit similarly ignored some of the inquest findings, saying simply that the Magistrate had found there was no evidence implicating Mdluli. Clearly there is evidence implicating Mdluli. The Magistrate's conclusion is anyhow not decisive. Guilt or innocence is a matter for the trial Court tasked with the responsibility of determining culpability.

> Section 16.2 of the Inquest Act only requires a Magistrate conducting an inquest to determine whether the death was brought about by any act or omission that amounts prima facie to an offence on the part of any person. And so far as this is possible, a finding as to whom the responsible offenders might be. The DPP is besides not bound by the findings of the inquest."

Unquote. At any rate, what Advocate Chauke was referring to was the conclusion reached by the Magistrate that, quote:

> "The death was brought about by an act prima facie amounting to an offence on the part of unknown persons". There is no evidence on the balance of probabilities implicating Richard Mdluli."

Unquote. Murphy J dealt with the apparent contradictions between this finding and other findings by the Magistrate. After summarising all the findings made by the Magistrate, Murphy J stated, and I quote..."

And this appears in paragraph 86 of his judgment. It says the following"

> "The Magistrate did not reject any of this evidence. He in fact accepted it. In the conclusion to his reasons, the Magistrate stated:
>
> > "But be this as it may, their evidence of Mdluli being to such a degree upset with Oupa's (Ramogibe) relationship with an estranged Tshidi Buthelezi, that they deemed it necessary to have reported it and mentioned it in their affidavits shortly after Oupa's death, runs like a golden thread through the murky waters of their evidence. Evidence that he passed threats to kill Oupa, whether made repeatedly or not, against the background of the strong current of Mdluli's emotions at the time, is in my opinion, overwhelmingly probable."

Unquote. And he goes on, after quoting the Magistrate, Judge Murphy goes on and states the following:

"He then found that it had been proved on a balance of probabilities that Mdluli was, quote:

> "...highly upset and humiliated by Ramogibe's relationship with his former lover, had not come to terms with the fact that Buthelezi had ended their relationship, had made threats to kill Ramogibe, and that his family would mourn him and had wanted Ramogibe out of Buthelezi's life in the hope that he could rescue his relationship with her. He, however, went on to point out that it might be difficult to link the threats, intimidation, and alleged kidnapping to the ultimate fatal shooting of Ramogibe.
>
> The inability to call Buthelezi now deceased was, in his opinion, a complicating factor. These weaknesses and others in the evidence led the Magistrate to conclude that the inference of Mdluli's involvement was

> permissible but not conclusive. His ultimate conclusion, that there was no evidence on a balance of probabilities implicating Mdluli, is wrong and inconsistent with his otherwise correct assessment and evaluation of the evidence."

Unquote. The allegations against Advocate Chauke is that, even assuming that Advocate Chauke had either misread the Magistrate's findings or had not read them fully, upon receipt of this judgment, he ought to have reconsidered, recommended that this aspect of the appeal be withdrawn, and given instructions to the prosecution team to continue with the prosecution of Mdluli on the murder and attempted murder charges.

At any rate, the matter then proceeded on appeal to the Supreme Court of Appeal."

That is the Murphy J judgment.

"The SCA found that Advocate Chauke's explanation for withdrawing all charges whilst he referred the death of Mr Ramogibe to an inquest was "not irrational". The question of whether the matter should have

been referred to an inquest in the first place was not a ground of review before the High Court or the SCA. There are several findings by the SCA which warrant mention. Brandt JA., as he then was, dealt with the Magistrate's findings, and he is quoted in paragraph 13 of his judgment, he says the following:

> "I pause to record that at Chauke's request, the inquest was held in terms of the Inquest Act 58 of 1959, by the Magistrate of Boksburg, who handed down his reasons and findings on 2 November, 2012. His ultimate conclusions make somewhat peculiar reading, namely that "the theory of Mdluli being the one who had orchestrated the death of the deceased is consistent with the facts" and that the death of the deceased was brought about by a prima facie amounting to an offence on the part of unknown persons.
>
> There is no evidence on a balance of probabilities implicating Richard

> Mdluli and his co-accused persons in the death of the deceased."

And Brandt JA continued to say the following:

> "I say peculiar because section 16.2 of the Inquest Act required the Magistrate to determine whether the death of the deceased was brought about by any act or omission amounting to an offence on the part of any person. The evidence before him clearly established a prima facie case against Mdluli and that appears to be borne out by the first conclusion.
>
> The second conclusion, which appears to contradict the first, seems to be both unhelpful and superfluous. It was not for the Magistrate to determine Mdluli's guilt on a murder charge, either beyond reasonable doubt or on a balance of probabilities. But if Chauke had any uncertainty about the import of the Magistrate's

findings, he could have asked for clarification or even requested that the inquest be reopened in terms of section 17(2) of the Inquest Act.

Furthermore, it is clear that the Magistrate's findings were wholly irrelevant to the 17 related charges.

Nonetheless, it is common cause that no further steps have since been taken by the prosecuting authorities to re-institute any of the 18 charges."

The allegations against Advocate Chauke are that upon receipt of the judgment of the SCA, he ought to have reconsidered his stance and ought to have reinstated all charges, including the murder and attempted murder charges."

I will now deal with the impact on the NPA, civil litigation and bringing the NPA into disrepute.

"It will be contended that the actions of Advocate Chauke undermined the administration of justice, exposed the NPA to litigation and brought it into disrepute. The evidence will show that the various

> Court cases in which Advocate Chauke played a role and the stance he adopted, cast the NPA in a very poor light.
>
> Apart from the immediate financial impact of various cost orders against the NPA, Booysen and several other police officials instituted a civil claim against the NPA. And ultimately, it is about the victims. Although Mdluli was ultimately convicted on some of the other charges, Mrs Ramogibe, the mother of Mr Oupa Ramogibe, died without seeing justice for her son."

Madam Chair, that concludes the evidence leader's opening address.

CHAIRPERSON: Thank you, Advocate Mohlamonyane, for the opening address. Might I find out from Advocate Ncukaitobi, whether he will be ready today, if not, tomorrow morning, to present the opening address on behalf of Advocate Chauke, if any?

ADV NGCUKAITOBI SC: We would like to present the opening address, but we would like to use the afternoon to streamline it, subject to the direction of the panel, which would have the effect that we would be ready tomorrow morning to present a full address. Thank you, Madam Chair.

CHAIRPERSON: In that event, you may switch off your mic.

Ja, thank you very much, counsel. I think it is appropriate that we take an adjournment to enable you to prepare the address on behalf of Advocate Chauke. We will then adjourn until tomorrow morning at 10 o'clock. Please, 10 o'clock.

ADV NGCUKAITOBI SC: Thank you, Madam Chair.

CHAIRPERSON: So that we proceed with your opening address, and we will then, I suppose, Advocate Mr Mohlamonyane will be ready with the leading of the evidence of Advocate Batohi.

ADV MOHLAMONYANE SC: Indeed, Madam Chair.

CHAIRPERSON: Thank you very much, all of you. We will adjourn until tomorrow morning at 10 o'clock. We adjourn.

INQUIRY ADJOURNS UNTIL 18 NOVEMBER 2025

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