

**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 CONSTITUTIONAL  
DEVELOPMENT**

**18 NOVEMBER 2025**

**DAY 2**



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

**PROCEEDINGS ON 18 NOVEMBER 2025**

**CHAIRPERSON:** Good morning, everybody. Good morning, everybody. Good morning, Mr Chauke.

**ADV CHAUKE:** Good morning, Chair. Thank you.

**CHAIRPERSON:** Good morning, Advocate Ngcukaitobi.

**ADV NGCUKAITOBI SC:** Morning, morning, Madam Chair.

**CHAIRPERSON:** I did not see you this morning.

**ADV NGCUKAITOBI SC:** Yes, but I was told that there was confusion about the blue lights. Everybody thought they were mine, but it turned out that they were for the Panel.

**CHAIRPERSON:** I told her it is important people like you who use blue lights. Yes, we received your apology.

**ADV NGCUKAITOBI SC:** Thank you, Chair.

**CHAIRPERSON:** Yes, thank you. We may start where we ended yesterday.

**OPENING ADDRESS BY ADV NGCUKAITOBI SC**

**ADV NGCUKAITOBI SC:** Thank you, Chair. Could I start by handing up the – we have got three bundles that we will be making references to. The only reason we are doing this, some of them are already in the record, but it is because of the state of the record that we are extracting from it what we are going to use for each episode. We have written an opening address. We propose to hand it up shortly after it has been delivered, but the bundle I have handed up will be referred to in the course of my address.

If we could start then with the opening address. We say that the charges against Mr Chauke are denied. They are unfounded. In fact, they are unsustainable in law. They are based on a grave misunderstanding of the decisions that he made, the decisions that he was empowered to make. And most importantly, they overlook judicial pronouncements. They are also dangerous charges, and I do not say that lightly.

What Mr Chauke is accused of is not dishonesty, is not corruption, is not *mala fide*. He is accused of exercising a prosecutorial discretion in a particular way. It is extremely dangerous to charge a prosecutor for exercising a discretion in a particular way. That is why everywhere you go in the world, prosecutors are never disciplined for exercise of a discretion. They are disciplined only when they act *mala fide*.

When you go through all of the charges, you will find that they are also vague and embarrassing, and they do not disclose an offence because there is not a single reference to the fact that Mr Chauke exercised his discretion in a manner that exhibits *mala fide*, or ulterior motive, or gross recklessness.

Madam Chair, I do not want to sound dramatic, but take an example of a judge who makes a decision that is outrageously wrong because it completely ignores the facts. To charge that judge of misconduct in removal proceedings

would be a grave assault on the independence of the Judiciary. What you always need, you always need something extra, that when the judge gave that judgment, he was motivated by malice. And that is what will distinguish a *bona fide* exercise of a discretion with a malicious conduct by a judicial officer.

Now, of course, NPA prosecutors are not judges, but their independence is protected by section 179 of the Constitution. And the reason we say that these charges are also dangerous is because they threaten to interfere with the independence of prosecutors. And that is more so because in this case, the person who has called this enquiry is the President, in his capacity as the head of the executive.

**CHAIRPERSON:** [Indistinct]... Advocate Nka. I Do not want to interrupt you. I am not sure whether the example or the comparison of a prosecutor and a judge is the correct one.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** Say, for instance, if a judge is found to have grossly misconducted himself or herself.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** There is a great possibility of such a judge being removed from office.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** Because of the gross misconduct.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** Supposing the allegations here are found to constitute serious misconduct.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** Will the charges then be found to be founded in that event?

**ADV NGCUKAITOBI SC:** Yes, there is no doubt about that. We agree.

**CHAIRPERSON:** Yes.

**ADV NGCUKAITOBI SC:** But what you will see, which is why we have copied the terms of reference, is that Mr Chauke is not charged with gross misconduct.

**CHAIRPERSON:** But does not – if you look at the charges themselves, if I refer to them as the charges, the terms of reference, supposing you equate them as constituting serious misconduct. If they are found to constitute serious misconduct, these allegations.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** If they are found to be true or correct and found that they constitute a serious misconduct, will such charges be founded? You say that they are vague and embarrassing.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** But if it is found, just on the reading of the terms of reference as they stand, and it is found that these allegations, if found correct, are serious, they constitute a

serious misconduct, can we safely say that the charges or allegations are unfounded on the evidence that will be presented?

**ADV NGCUKAITOBI SC:** No, there are two questions, Chairperson. The first one is that we say on the facts they are unfounded, in which event we do not even go to the second enquiry.

**CHAIRPERSON:** You do not go to the seriousness.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** Thank you.

**ADV NGCUKAITOBI SC:** Thank you. Now, the point I had just completed is that it is extremely dangerous to charge a prosecutor for the exercise of a prosecutorial discretion, whether that discretion is a discretion to institute a charge or a discretion to withdraw a charge. To elevate that into misconduct is extremely dangerous in South Africa.

One of the witnesses we will be calling, Mr Gerrie Nel, will explain what impact on the ability of prosecutors to make decisions. They must make robust decisions in difficult environments, with uncertain facts, in circumstances where they do not have enough support from the police and where accused persons are severely legally armed.

Prosecutors make many decisions. Those decisions are usually imperfect. But if you start a pattern where you say to a prosecutor, I am sorry I disagree with your decision,

but I am also going to initiate removal proceedings, that is an extremely dangerous thing. Prosecutors will be so reluctant to make the decisions that we want as a country for them to make.

And we do not mind when they are found by the judges to have been wrong and accused is acquitted, because we want them to fulfil what the Constitution requires them to fulfil. So there is a level of thoughtlessness that underpins the request for the President to charge Mr Chauke for the exercise of a prosecutorial discretion. Because its consequences in a country that is besieged by crime are actually very, very serious.

So that is by way of a broad outline. I am still going to go to the individual instances. The second thing to be said about these charges right now is that the factual premises of these charges have been overtaken by judicial authority. There are judgments that have pronounced specifically on whether or not the NPA was rational or irrational in its decision to charge Mr Booyesen for racketeering or in its decision to provisionally withdraw the charges against Mr Mdluli subject to an inquest under the Inquest Act of 1959.

**CHAIRPERSON:** And if I may, just for clarity, this theme that you are now addressing, that these events have now been overtaken by judicial pronouncement, does it relate to both, ...[indistinct] and Mdluli?

**ADV NGCUKAITOBI SC:** Both of them, yes. So if we start with the judgment of the Booyesen matter. Now, the Panel will recall that what this relates to is that in the late 2000s ...[intervenes].

**CHAIRPERSON:** The judgment, I am sorry to keep on interrupting, I just want clarity so that we get things right.

**ADV NGCUKAITOBI SC:** Indeed.

**CHAIRPERSON:** The Cato Manor Booyesen's matter, the judgment there is the KZN decision of the High Court.

**ADV NGCUKAITOBI SC:** Yes, by Judge Gorven.

**CHAIRPERSON:** Judge Gorven.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** So you are referring to that, not the SCA?

**ADV NGCUKAITOBI SC:** No, I am referring to ...[intervenes].

**CHAIRPERSON:** The High Court.

**ADV NGCUKAITOBI SC:** Both the judgment by Judge Gorven as well as the judgment. So the judgment by Judge Gorven is reported as *Booyesen v Acting National Director of Public Prosecutions*.

**CHAIRPERSON:** Yes.

**ADV NGCUKAITOBI SC:** And it is reported in the 2014(9) BCLR 1064. It is a KZN. But even that judgment has itself been subject to further judicial pronouncement in a case called the *General Council of the Bar of South Africa v Jiba*

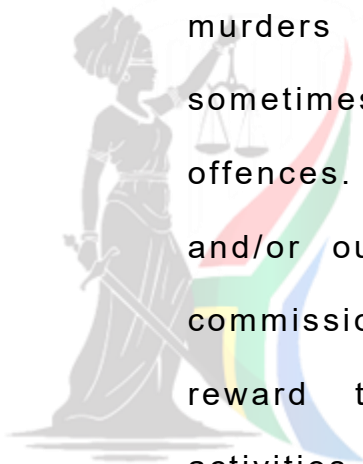
*and Others*. The judgment of the Full Court and the person who wrote the judgment of the court is Judge Legodi, but there were three judges. It is reported in 2017(2) SA 122 GP.

Now, why this judgment is crucial is that if the Court will remember, the General Council of the Bar applied to strike Ms Jiba from the Roll of Advocates on a range of allegations. One of them was the signing of the certificate under section 2 of POCA relating to Mr Booysen. The JCB relied fully on the judgment of Judge Gorven.

The Full Court reviewed all of the evidence and it ultimately came to the conclusion that Ms Jiba acted rationally when she instituted the racketeering charges against Mr Booysen. There are several parts of that judgment which are crucial for the Court to keep in mind right now. The discussion on Mr Booysen starts at paragraph 41 and then it goes on to paragraph 67, but here are the most important observations that were made.

Now, I am not criticising my learned friend for the State, but with respect, he did not read these paragraphs. Unfortunately, in inquiries like this, it is not just the evidence against Mr Chauke that should be taken into account, but it is also exculpatory evidence. If you have regard to paragraphs 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, I want to read 66 and 67 into the record of the Full Court judgment. It says:

“The essence of the information before Jiba can be summed up as follows. In addition to what is stated in paragraphs 56, 57, and 60 of this judgment, Booyesen was the head of the Cato Manor Organised Crime Unit in the South African Police Service. Members of the police in his unit and under his command had allegedly committed crimes of a serious nature, including murders against suspects who were sometimes framed in the commission of offences. Booyesen knew, approved, and/or ought to have known of the commission of these offences. In reward to the members' unlawful activities, Booyesen motivated for an incentive of R10 000 each for the 26 members of the Cato Manor Crime Unit, including Booyesen himself. Booyesen was also commended for outstanding services rendered in that he was part of a team who, through their commitment and dedication, arrested several crime and dangerous suspects for the murder

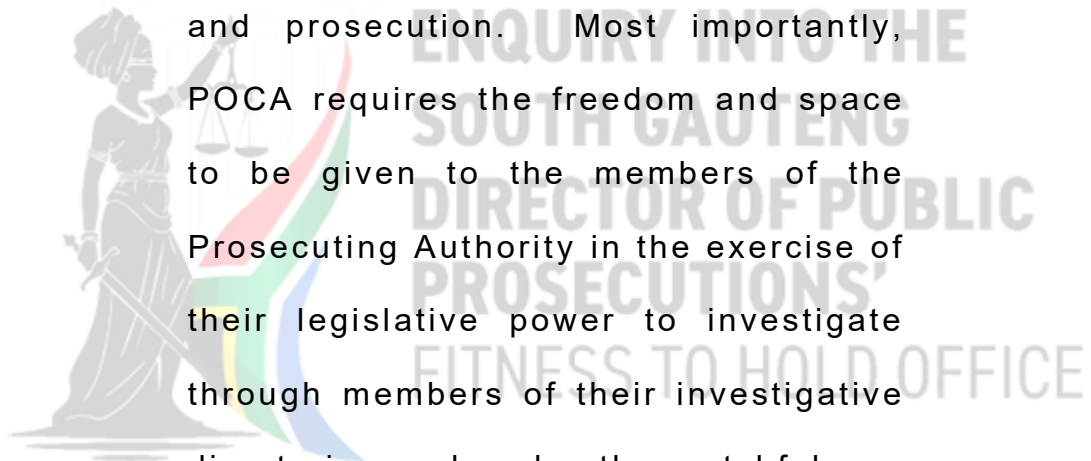


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of a police officer.”

Now, Madam Chair, this is the Full Court summarising the information that was before Ms Jiba at the time the decision was taken. Paragraph 67:

“I cannot find any *mala fides* or ulterior motive in the authorisation by Jiba as contemplated in POCA. POCA is like a cry out for a declaration of war against serious, continuous, and organised crimes that needs special investigation and prosecution. Most importantly, POCA requires the freedom and space to be given to the members of the Prosecuting Authority in the exercise of their legislative power to investigate through members of their investigative directories and under the watchful eye of a special director so appointed to prosecute without fear, favour, and prejudice those implicated in the commission of serious crimes. Anything short of this, or anything which tends to impede on this constitutional and legislative imperative, for example, howling Jiba to the proceedings in terms



of section 7 of the Admission of Advocates Act ought to be based on very cogent, serious, and exceptional circumstances.”

Paragraph 68:

“You do not want members of the Prosecuting Authority to unduly watch their backs for fear of being dismissed or removed from the Roll of Advocates every time when they make mistakes in prosecuting or presenting cases in court or every time when an application for authorisation is made in terms of section 2(4) of POCA. An overriding factor for them for consideration should be to adhere to the rule of law and the Constitution. It suffices for now to conclude on the Booyesen matter by stating that no case has been made for the removal or suspension from the Roll of Advocates. I turn now to deal with the other matters.”

So, I come back to this point, Madam Chair. There is clear judicial authority that Ms Jiba acted lawfully based on the information that was before her at the time that she

authorised the racketeering certificate under section 2 of POCA. That judicial authority goes further to warn that it is a dangerous thing for prosecutors to be dismissed or removed from the Roll of Advocates when they have exercised their discretion in good faith, even if one comes to the conclusion that that discretion, you think you should have exercised it differently to the prosecutor.

What is also important about that judgment is what is contained in paragraph 63, which is really the essence of what the case against Mr Chauke is, which is, what is the standard of the evidence that must be present in the docket for the authorisation of a racketeering certificate? That has been answered by the High Court. It has said the following:

“In my view, the provisions of section 2(1)(e) and (f), referred to in paragraph 44 of this judgment, are meant for the criminalisation of such activities. The point I am making is this. Courts, for the purposes of an exercise of its discretion, in terms of section 2(2) referred to in paragraph 62 of this judgment, may rely on hearsay evidence, information and/or documentation collected by the police and presented to it by the prosecution.

If that is so, and the Courts are entitled to have regard to hearsay evidence during the trial, so too should the National Director of Public Prosecution, Jiba, in Booyesen's case, be entitled to rely on hearsay and similar facts evidence for the purposes of authorisation as contemplated in subsection 4 of subsection 2 of POCA. Otherwise, pervasive presence of criminal gangs will continue to rule with impunity and fear in many of our communities and resultantly pose harm to the well-being of many communities.”

So that is also going to be a central feature of our case, that at the time a racketeering certificate is authorised, the nature of the information that must be present is broader than the evidence that the Evidence Leader suggests in this enquiry. It includes hearsay evidence, information, and documentation. That judgment, Madam Chair, was affirmed by the Supreme Court of Appeal in – sorry. Thank you, Madam Chair.

**CHAIRPERSON:** Advocate Ngcukaitobi, I suppose somebody will be able to account. Somebody on the mountain over there will account.

**ADV NGCUKAITOBI SC:** They would have blamed an evil spirit.

**CHAIRPERSON:** I think the floor is very slippery here. I am okay, thank you.

**ADV NGCUKAITOBI SC:** Thank you, thank you, Chair. I wonder if there is something they should be doing to make you more stable and comfortable, Chair.

**CHAIRPERSON:** You would actually be surprised. We moved the earlier chair that was here because it was more problematic.

**ADV NGCUKAITOBI SC:** I see. But you are happy that we continue?

**CHAIRPERSON:** Yes.

**ADV NGCUKAITOBI SC:** Thank you, Chair.

**CHAIRPERSON:** The Solicitor General is in front of me. He is taking note of this.

**ADV NGCUKAITOBI SC:** Okay.

**CHAIRPERSON:** Yes, thank you.

**ADV NGCUKAITOBI SC:** Now the judgment of ...[intervenes].

**CHAIRPERSON:** I am sorry for the interruption. You were addressing the aspect of the similar facts evidence and the hearsay aspect.

**ADV NGCUKAITOBI SC:** Yes, I was, Madam Chair. So I was referring specifically to paragraph 63 of the *GCB v Jiba*

judgment, which specifically denounces the approach that has been adopted in the opening address of the Evidence Leader.

Now, that judgment of *GCB v Jiba* was also taken on appeal before the Supreme Court of Appeal. And you will find that in Item 2 and 3 of our bundle, particularly at pages 8 to 36. Yes, I am corrected that the Jiba one is item 3.

**CHAIRPERSON:** Yes.

**ADV NGCUKAITOBI SC:** Page 37. The important paragraph there is paragraph 10 at page 44 of the bundle. This is how the Supreme Court of Appeal was disposed of the Booysen situation. It said:

“The first complaint dealt with by the Court *a quo* was in connection with the Booysen’s case. In that case, Jiba in her capacity as acting NDPP issued two authorisation letters charging Major General Johan Wessel Booysen with the contravention of section 21(e) and (f) of the Prevention of Organised Crime Act 121 of 1998. In a nutshell, Booysen alleged that Jiba was mendacious when she asserted that she considered statements together with other information in the docket before she

took the decision to charge him. This allegation was further exacerbated by the negative remarks of Gorven J, who presided in the Booyesen matter when he threw an inference that none of the information upon which Jiba relied linked Booyesen to the offence in question. The Court a *quo*...”

Now, this is now referring to Judge Legodi's judgment:

“The Court a *quo* found that it suffices for now to conclude that on the Booyesen matter by stating that no case has been made for the removal or suspension from the Roll of Advocates. I do not find it necessary to deal with the detail of the complaint of the finding of the Court a *quo*. I share the sentiment expressed.

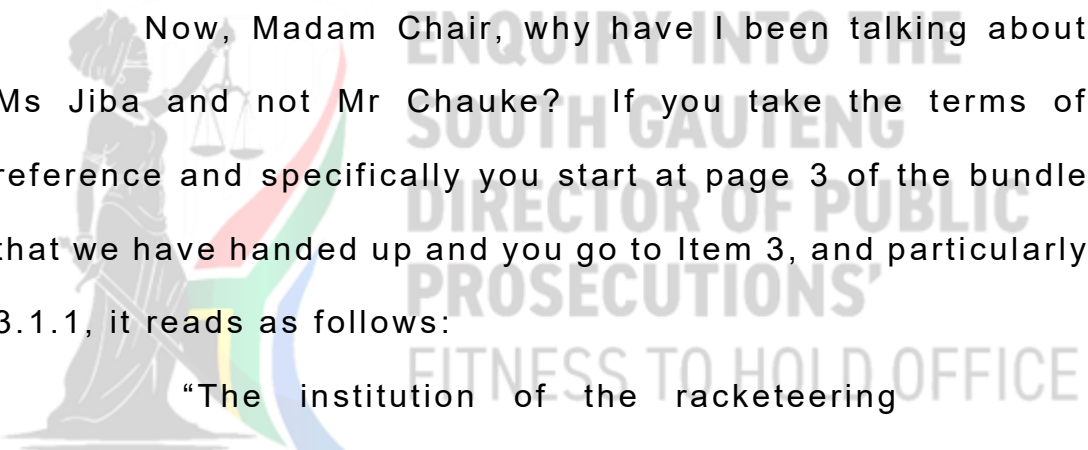
Before us, counsel for the GCB dealt with some of the complaints, but in my view did not take the matter any further. The Court a *quo* could not find any *mala fide* or ulterior motive in the authorisation by Jiba as contemplated in POCA.”

So the point is the Supreme Court of Appeal in express terms

endorsed the findings of the High Court in relation to whether at the time of the authorisation there was sufficient information before Ms Jiba.

That case went to the Constitutional Court. It suffices only to say that the Constitutional Court rejected it for absence of jurisdiction. So the final word is the paragraph 10 of the SCA judgment, which found in express terms that the judge was correct in saying that you do not want prosecutors to fear being disciplined when they make *bona fide* decisions under section 2 of POCA.

Now, Madam Chair, why have I been talking about Ms Jiba and not Mr Chauke? If you take the terms of reference and specifically you start at page 3 of the bundle that we have handed up and you go to Item 3, and particularly 3.1.1, it reads as follows:



“The institution of the racketeering charges in terms of section 2(4) of the Prevention of Organised Crime Act against Major General Booysen and members of the Cato Manor 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...”

In other words the case against Mr Chauke. 3.1.1.1:

“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 the Public Prosecutions of KwaZulu-Natal sign the case dockets and/or the prosecution memorandum detailing the alleged evidence implicating the accused on which the decision to induct had to be made.”

So the case is that Mr Chauke merely supported a decision, he did not take the decision. That is because it is common cause that the decision was taken by Ms Jiba and Ms Jiba, according to the GCB case, had sufficient information to prosecute Mr Booysen. We ask therefore rhetorically, if the decision maker acted without *mala fide*, acted lawfully and rationally, and acted in circumstances where they may not be disciplined or dismissed or removed from the Roll of Advocates, how can the person who merely supported the decision be charged with misconduct?

Now, the Evidence Leader knows that this is a problem. That is why he then tries to introduce the findings of the Judge Mokgoro Panel. But he faces two fundamental problems. Those findings are not findings against Mr

Chauke. Mr Chauke was not an accused person before Judge Mokgoro. That is a problem of fact. He is an accused person for the first time before, might I say, the Nkabinde Panel.

The second problem that the Evidence Leader faces is the so-called Hollington rule. Now, the Hollington rule has been subject to a lot of debate in South Africa, but it is still the law. Findings of fact made before an equivalent panel are not admissible or binding in a different panel. The Panel must examine the facts that are presented before it. So you cannot have a shortcut that I am terribly sorry, some of the evidence was led before Judge Mokgoro, and therefore it is conclusive before this Panel.

Before this Panel there is a fresh duty to present evidence against Mr Chauke. So regrettably for my learned friend, the attempt at relying on the findings of the Panel by Judge Mokgoro as conclusive evidence before this Panel suffers both from a factual and a legal difficulty. 3.1.1.2 is a charge that he recommended, that Mr Chauke recommended to the then Acting National Director of Public Prosecution. Now again, a charge of recommendation should not be confused with the charge of making a decision.

The decision maker has been found to have acted in good faith. The same applies to those persons who recommend it. 3.1.1.3 is about seeking to defend the institution of the aforementioned racketeering charges in

review proceedings brought by Major General Booysen.

Now, Madam Chair, we will also take a similar issue about this being a vague and embarrassing charge that does not disclose an offence. Because what happened is that Mr Booysen as an accused person challenged the decision of the NPA. The NPA is represented by its head, Ms Jiba, who makes decisions whether or not they must defend legal proceedings.

Once she has made those decisions, the junior officials, including Mr Chauke, ought to give effect to that, including briefing counsel, signing affidavits. It would be a sad day if when an institution is brought to court in review proceedings, those people who sign the affidavits in good faith are disciplined. It would have been one thing to say that they lied on oath, but there is no allegation that Mr Chauke lied on oath. The mere allegation is the fact of opposing an application. He is being taken to task on that.

Then 3.1.1.4, instituted an appeal against the judgment. Now the evidence that the Panel will encounter here is that by the time the judgment of Judge Gorven was delivered and the NPA decided to appeal, Ms Jiba was no longer the Acting National Director. Mr Nxasana had become the National Director.

**CHAIRPERSON:** It is not the difficulties that the Panel will encounter. Perhaps it is the difficulty of the NPA.

**ADV NGCUKAITOBI SC:** Yes, yes. I apologise, Madam Chair. Yes, yes. That is what I am trying to say. Thank you for the correction. Yes. Thank you for the correction. Yes. So by this time, there was a new National Director, Mr Nxasana. Mr Nxasana, we have consulted with him and he will give evidence as part and parcel of Mr Chauke's list of witnesses.

**CHAIRPERSON:** Is he an advocate?

**ADV NGCUKAITOBI SC:** Yes, I think he is an attorney. Mr Nxasana, I think he is an attorney if I am not mistaken. So Mr Nxasana will also be a witness in these proceedings and he will explain the process that was followed when he got an indication that the senior counsel on brief, now that was Mr Laurance Hodes SC, Advocate Laurance Hodes SC, had made a recommendation to the prosecutors, which included Mr Chauke, that there is a basis to lodge an appeal because in his view, the judge was wrong.

A provisional application for leave to appeal was put in on the basis that a request was going to be made to the NDPP. Mr Chauke was part of that team that decided that because, and you know this, all of the panellists know this, there is a specific time period by which you have to bring an application for leave to appeal. If you do not, you lose the right of appeal.

They decided, the group that was working on the

matter, which included Mr Maema, Advocate Maema now. Mr Advocate Maema will also be a witness that will give evidence in this panel. They decided that the most prudent thing to do is to lodge an application for leave to appeal. Thereafter, to ask the head of the institution, Mr Nxasana, if he decided that he did not want to appear, he could withdraw it. But if he decided he wanted to appeal, it would have been irresponsible for them not to interrupt the running of the DS by lodging the leave to appeal.

And, Madam Chair, this is in circumstances where Mr Laurance Hodes, the senior counsel who argued the matter on behalf of the NPA, had advised them that they had a very strong case of appeal. This is really what this is about. We have also spoken to Mr Hodes. He has agreed to come and give evidence, which is an extraordinary thing for a senior counsel, but that is how strongly he feels about this matter. Now then, the last of the Booyesen charges, Madam Chair, is at page 5, paragraph 3.1.1.5 ...[intervenes].

**CHAIRPERSON:** I beg your pardon, Counsel. It is Adv Hodes?

**ADV NGCUKAITOBI SC:** Laurance Hodes.

**CHAIRPERSON:** Hodes?

**ADV NGCUKAITOBI SC:** Yes, Hodes. H-o-d-e-s SC. He is on the list of witnesses to be called by Mr Chauke.

**CHAIRPERSON:** Yes, thank you.

**ADV NGCUKAITOBI SC:** Yes, thank you. And so is Advocate Sello Maema.

**CHAIRPERSON:** Yes, I have noted.

**ADV NGCUKAITOBI SC:** Yes. And just to place him in context, Advocate Sello Maema was the person appointed by Ms Jiba to head the team that was dealing with the Booyesen's matter, and among the people that supported him was Mr Chauke.

**CHAIRPERSON:** And also part of the group that came from the North West?

**ADV NGCUKAITOBI SC:** Yes, yes. He was, I think at the time, the DPP of North West.

**CHAIRPERSON:** Yes.

**ADV NGCUKAITOBI SC:** Yes. The deputy. The Deputy DPP of North West.

**CHAIRPERSON:** Yes, I noted that.

**ADV NGCUKAITOBI SC:** Yes, but Mr Sello Maema is also a witness that will be called by Mr Chauke. Then the last of the five instances on the Booyesen matter is attempted to have racketeering charges against Major General Booyesen 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.

Now, Madam Chair, the evidence you will hear about

this from both Mr Sello Maema and Mr Nxasana is actually a simple thing which we do not understand how it has been elevated to misconduct. What Mr Nxasana told the prosecution team is that he was not satisfied that on the record there was enough evidence to reinstate the racketeering certificate which had been set aside by Govind J. They must go and do more. Go and dig more before you bring this back to me.

Now, they kept coming back to him to say we think we have more. Both Mr Sello Maema was part of that team and Mr Chauke was part of that team. They kept coming back to him saying, look, we think we have more evidence. Can you please reconsider your decision? And he will say that he kept telling them that no, no, no, I am not satisfied.

So what they were doing is they were evaluating and re-evaluating the decision because the NDPP had taken the view that I do not think this is enough but if you find more evidence you can bring it back to me. Now, the evidence of Mr Chauke, I have been corrected by my junior, would be that he himself was not part of this team that did the reassessment. It was Mr Maema who did the reassessment.

Now, the important part about this, Madam Chair, is that on the evidence that you will hear is that Mr Nxasana tells his team that my view is you do not have enough on the racketeering certificate and I am not going to reinstate the

certificate unless you bring me better evidence. They then go back and then come back to him again and said, what about this? What about a different interpretation of the evidence that we have? And then every time he said to them, I am still not satisfied.

And that is why we say with respect it is vague and embarrassing in those circumstances to charge somebody for attempting to reinstate the charges. The debate as to the sufficiency of the evidence remained live but the final decision maker, of course, was Mr Nxasana and his view prevailed, but that was in the course and scope of prosecutorial discretion. They were working through a decision.

So we again would like to suggest to the Panel that this allegation does not disclose an offence. And when I say it is vague and embarrassing and does not disclose an offence, what I am trying to say, Madam Chair, is even if you accepted it factually as correct, it would still not amount to misconduct.

Then, Madam Chair, I want to, I have now done an outline of the defence on the so-called Booyesen, Booyesen's matter. Madam Chair, if it is not clear, my junior is reminding me again to stress that Mr Chauke had no involvement at 3.1.1.5.

**CHAIRPERSON:** Then ...[indistinct] give you a break to do

your opening address. You will still have more chance to do, to present submissions at a later stage.

**ADV NGCUKAITOBI SC:** Indeed, I am so pleased, Madam Chair, someone has finally seen this. Then an outline of the second charge. Now, this is the Mdluli case. Now, unlike the first charge, here Mr Chauke was the decision maker, but we need to look at the charge. And I want to outline what the defence will be. The charge is 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, caused the charge of murder relating to the killing of Mr Tefo Abel Ramogibe and related charges to be withdrawn or Ramogibe.

**CHAIRPERSON:** Counsel, Ramogile.

**ADV NGCUKAITOBI SC:** Ramogile. Thank you for the correction. Yes, unfortunately, they stuck us there in Xhosa Land. Only came to Johannesburg when we were older. 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 the charges concerned.

Now, it is unclear what does it mean charges concerned. But here is the point, Madam Chair, about what the evidence will be. Mr Chauke never decided that Mr Mdluli

should never be charged with murder forever and a day in the case of Mr Ramogibe. Never made that decision. His decision was a provisional withdrawal pending an inquest. That is the first thing.

The second thing is you would have heard yesterday that the Evidence Leader now intends to run a different case, which is that the decision to refer the matter to an inquest weakened the State's case. But that is not what the President wants an enquiry into. The President has not said anything here about weakening of the State's case.

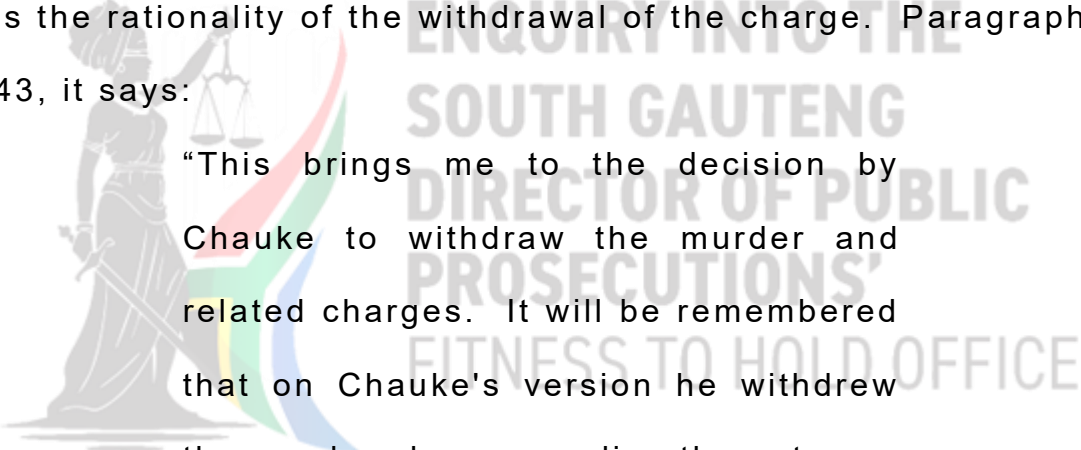
The President is only concerned about a delay because he says which decision caused a significant delay in proceeding with the charges concerned. He is not interested in an evaluation of whether the case became stronger or weaker. The problem though, so what so Mr Chauke will of course own up that this was his decision, but he will say that this decision was valid and lawful.

What I would like to refer the Panel to, yesterday you will remember that a lot of time was spent by the Evidence Leader analysing the findings of Judge Murphy in a case brought by Freedom Under Law and all of the criticisms that Judge Murphy had against the decision to refer the matter to an inquest.

What is important, however, is that the judgment of Judge Murphy has been overturned. It is no longer the law,

completely overturned. The judgment that overturned it is Item 2 of the bundle, which is at page 8 to 36. So the operative judgment right now is the SCA judgment. Anything you hear about what Judge Murphy found is irrelevant.

That case has dealt with the issue of Mr Mdluli specifically and also dealt with the decision taken by Mr Chauke to refer the murder charge to an inquest. If I could ask the Panel to turn to page 28 of the bundle we have handed up at paragraph 43. You will see that there the SCA is addressing directly what we are dealing with today, which is the rationality of the withdrawal of the charge. Paragraph 43, it says:



“This brings me to the decision by Chauke to withdraw the murder and related charges. It will be remembered that on Chauke's version he withdrew the murder charge pending the outcome of the inquest that he had requested and that he withdrew the 17 other related charges to avoid a fragmented trial.”

So the first thing that is crucial here is that Mr Chauke never decided that Mr Mdluli will never face murder charges. His decision was a provisional withdrawal pending the outcome of an inquest. That is correctly articulated in the SCA judgment but incorrectly presented yesterday by the Evidence

Leader:

“The contention by full...”

The judgment continues:

“...was in essence that this decision was irrational. However, as I see it, the contention has not been substantiated in argument. On the face of it, the decision that the findings that an inquest could perhaps enable him to take a more informed view of the prospects of the State's case with regard to the murder charge was not irrational.”

So they are answering the question, was it irrational? We say no, it was not irrational. It is a different way of simply saying ...[indistinct] negatives was rational:

“It is true that the outcome of the inquest could have no impact on the 17 related charges. Mdluli, as the Panel will remember, there was murder, but there were many other charges, 18 in total. But Chauke never thought that it would. As I understand his reasoning, he always intended to reinstate at least some of the charges after the inquest

with or without the murder charge.”

Again, this comes back to the point that really the Evidence Leader has the wrong end of the stick because there was never a decision that Mr Mdluli will never be charged with murder. If the inquest suggested that he should be charged with matter, he would have been charged with murder. That is what the SCA recorded:

“What he tried to avoid...”

The SCA continues:

“...so he said, was a fragmentation of trials. That line of reasoning I do not find irrational either, particularly since the evidence supporting the related charges would also impact on the murder charge. It is true that he could have asked for a postponement of the 17 related charges pending the inquest, but we know that a postponement is not there for the asking. It could be successfully opposed by Mdluli, in which event the fragmentation, which Chauke sought to avoid for understandable reasons, may have become a reality.”

So that is in paragraph 43 and I would like to also ask the

Panel to have regard to paragraph 45. It is very important on the evidence, and I will explain shortly why it is important on the evidence that will be led.

**CHAIRPERSON:** Counsel, if you may pause there? Just for my clarity, ...[indistinct] the referral for an inquest. I beg your pardon. I beg your pardon. Just for my clarity, the referral for an inquest related only to the murder charge.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** And the ...[intervenes].

**ADV NGCUKAITOBI SC:** 17 other charges.

**CHAIRPERSON:** The ancillary charges, what happened to them? Were they proceeded with?

**ADV NGCUKAITOBI SC:** No, they were postponed.

**CHAIRPERSON:** They were postponed?

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** Pending the ...[intervenes].

**ADV NGCUKAITOBI SC:** They were withdrawn pending the outcome of the inquest. Let me not say postponed. They were withdrawn.

**CHAIRPERSON:** They were withdrawn?

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** Pending the outcome of the inquest?

**ADV NGCUKAITOBI SC:** Yes, yes.

**CHAIRPERSON:** Yes, thank you.

**ADV NGCUKAITOBI SC:** In fact, Madam Chair, I thought

there is somewhere in this judgment where that point is made. I just cannot remember now where. Yes, Madam Chair, it is actually at paragraph 43. In the second line, in the second sentence as well, it says:

“It will be remembered that on Chauke's version, he withdrew the murder charge pending the outcome of the inquest that he had requested and that he withdrew the 17 other related charges to avoid the fragmented trial.”

Yes. Thank you, Madam Chair, that is where it is dealt with. Then the next part that we would be relying on in the case of Mr Chauke is paragraph 45. Now, this is what is said in paragraph 45:

“However, having said that, Senior Counsel for the NDPP considered, rightly and fairly in my view, that there is no answer to the proposition that at least some of the murder and related charges are bound to be reinstated. In the light of this concession, he undertook on behalf of his client, which undertaking was subsequently elaborated upon in writing:

a) That the NDPP will take a decision

as to which of the 18 charges are to be reinstated and will inform full of that decision within a period of two months from this order.

b) If the NDPP decides not to institute all the 18 charges, he will provide full with his reasons for that decision during the same period. I cannot see a reason why this undertaking should not be incorporated in the court's order and I propose to do so.”

If you then turn to the order itself, which you will find at page 34, paragraph 54 of the judgment and subparagraph 3 of the order, it is stated:

“It is recorded that the following undertaking has been furnished on behalf of the first respondent.”

Now, the first respondent is the NDPP, not Mr Chauke:

“To decide which of the criminal charges of murder and related crimes that were withdrawn on 2 February 2012 are to be reinstated and to make his decision known to the respondent within two months of this order.”

The respondent in that case was Freedom Under Law. At

page 35:

“To provide reasons to the respondent within the same period as to why he decided not to reinstitute some, if any, of those charges.”

Now, the reason why this is an important element in the case is that after this judgment was delivered, the decision whether to charge Mr Mdluli or not was no longer the decision of Mr Chauke. It was the decision of the NDPP. At that point, the NDPP was Mr Nxasana. He decided not to charge Mr Mdluli with murder and he wrote a letter to that effect, to Freedom Under Law, as per the court order.

And this is why we say that it seems that there is a fundamental confusion about what decisions were made by Mr Chauke and what decisions were made by his bosses. The only decision Mr Chauke made was a decision to refer the matter to an inquest and thereafter a decision would be made. That decision has been found to be lawful by the Supreme Court of Appeal, but the question of reinstatement, which accounts for the second part of this, if you look at the charge where it says which decision caused a significant delay in proceeding with the charges concerned, the SCA has already found that Mr Chauke's rationale, which is to avoid a fragmentation of trials, was logical, but the SCA took the decision from Mr Chauke and placed it in the hands of the

NDPP.

So the NDPP's decision, and you will hear the evidence because the subsequent NDPP, Mr Nxasana will be giving evidence here, he will confirm that it was his decision after the SCA judgment not to reinstate those charges and fully in fact did not challenge the decision by Mr Nxasana. Madam Chair, I am told that it is already 18 minutes past 11. So perhaps this would be the convenient time.

**CHAIRPERSON:** Yes, I think that as per our agreement earlier, we will take a tea break for 15 minutes and when we reconvene, Advocate Ngcukaitobi, I would like you also to look at the words used in paragraph 3.1, page 3 of your bundle, in the terms of reference. His, and I am quoting that: “...his direct or indirect conduct.”

Those words.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** If you may also deal with it when we reconvene or maybe even at the end of your presentation so that I do not derail you from your course.

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair.

**CHAIRPERSON:** We will take a 15 minutes tea adjournment, meaning that we will reconvene at about 11:35.

**ADV NGCUKAITOBI SC:** Thank you.

**ENQUIRY ADJOURNS**

**ENQUIRY RESUMES**

**CHAIRPERSON**: Yes, thank you, Advocate Mr Ngcukaitobi.

**ADV NGCUKAITOBI SC**: Thank you, Madam Chair. Madam Chair, I am still continuing the analysis of the Mdluli case, Mr Mdluli case. There is one aspect from the SCA judgment which is important, because it places in context the statement that was made yesterday by the evidence leader. You will find that at page 29, paragraph 44 and the panel will recall that what – paragraph 183 of the judgment of Murphy J was relied upon in express terms yesterday, as one of the points of criticism against the decision of Mr Chauke.

And you will recall that when I began this line, I pointed out that that judgment of Judge Murphy, has been overturned. Paragraph 44 of the SCA justice says the following about paragraph 183, it says:

“Fools [?] real argument, which found favour with the Court *a quo*, paragraph 183, is that Chauke’s failure to proceed with the murder and related charges, after the findings of the inquest became available, was irrational. But that decision or really his failure to apply his mind afresh to the matter, after the conclusion of the inquest, was not the subject of the review application.

It will be remembered that the review application started in May 2012, while the results of the inquest only became available in November of that year. Stated somewhat more concisely, I do not believe the earlier decision to withdraw

the charges, which is the impugned decision, can be set aside on the basis that a subsequent decision, taken in different circumstances, not to reinstate all or some of those charges, was not justified. To that extent, the appeal must, therefore, succeed.”

You will recall that that was the appeal of the NDPP, among others, against the findings made in paragraph 183. Those findings were expressly set aside. So when you try to compare this with ...[intervenes]

**CHAIRPERSON**: Counsel, I beg your pardon.

**ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: I think we must correct your statement that Murphy J's decision was overturned.

**ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: I think if we look at the order, it was partly upheld.

**ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: If you look at the order itself.

**ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: So we need to focus on those areas of the judgment in respect of which Murphy was overturned and in respect of which he was not. Because if you look at paragraph 1 of the order.

**ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: In the premises, it is ordered that, one, the

appeal succeeds only to the extent that paragraphs da, da, da, da, da, of the order of the Court *a quo* are set aside.

**ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: What I am saying is that your earlier statement, to suggest that Murphy's decision, the whole judgment, was overturned. So we need to focus. And if you can direct us to those areas of Murphy J's judgment or paragraph or decisions that were overturned in respect of the terms of reference.

**ADV NGCUKAITOBI SC**: Yes. Thank you, Madam Chair.

**CHAIRPERSON**: So that, because it can be misleading, the way you put it earlier.

**ADV NGCUKAITOBI SC**: Yes, no, no, I accept that entirely. I think the point really is this. Insofar as the Mdluli findings were concerned, it was overturned. Yes, perhaps that is the more correct way of presenting it.

**CHAIRPERSON**: Yes, thank you so much.

**ADV NGCUKAITOBI SC**: Yes, yes and that you will find at paragraph 43, 44, and 45. And then if you compare that then with the... sorry, with charge 3.1.2 at page 5, which is the decision to refer the matter to an inquest and that you will find at 3.12 of the charge, where they say:

“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 prostitution in the matter.”

Now that withdrawal decision by Judge Murphy was overturned. And then the later part of that charge, which says:

“The decision caused a significant delay in proceeding with the charges concerned.”

Now again, that criticism by Judge Murphy was overturned in paragraph 45, yes. Thank you, Madam Chair, for the correction, I stand corrected.

**CHAIRPERSON**: Thank you, counsel.

**ADV NGCUKAITOBI SC**: Yes. Then I have completed the analysis of the charge by reference to the judgment of the SCA and we will be making reliance on the judgment of the SCA. Then, Madam Chair, I referred in my earlier address to the standard that must be applied in where a prosecutor is charged specifically with the exercise of prosecutorial discretion. Might I refer the panel to page 101 of the bundle we handed up.

Now, the panel does not have to necessarily read that for now. Simply to say that this is the extract from the finding of the Ginwala Commission and the panel will recall that that was an enquiry into the conduct of Mr Pikoli. It ultimately turned out, it is known now to be a Simelane Enquiry. But it was actually against Advocate Pikoli. But paragraph 101 said something salutary, which is also at page

101. It says the following:

“I must also point out that this complaint comes very close to trespassing on the terrain that the legislature and the Constitution has reserved for the discretion of the NDPP. It would not be proper for anyone to second guess the judgment of the NDPP without encroaching on the constitutionally guaranteed independence of the NPA.

The decision to prosecute or not to prosecute the 11 mercenaries, or to conclude or not to conclude a plea and sentence agreement is one which the Constitution says the NPA must take without fear, favour, or prejudice.

The legislation governing the judicial review of administrative actions and decisions specifically exempts a decision, to prosecute or not to prosecute, from judicial review.”

Now, why that is relevant here is because one of the allegations against Advocate Pikoli was that he made decisions to enter into plea agreements in circumstances where there was an overwhelming case against some persons alleged for mercenary activity.

The Ginwala Commission is salutary because it says that decision, whether to charge or not to charge, is a matter that the legislature preserves for the prosecutor concerned. Now, that we will submit in due course and we will support it with the evidence of Mr Gerrie Nel, who will explain the intricacies involved and the difficulties involved when

prosecutors make decisions. And that is why we think it is necessary to set this up front right now.

I also referred, Madam Chair, to the decision of Judge Mokgoro and her panel, but I did not take you to the specific part. She also dealt with the question of Ms Jiba, and one of the advantages that she had was that she already had all of the judgments that I have been referring to. The distinction that she draw, the panel will find, that she draws is at page 104 of the bundle that we handed up at paragraph 10-62, and this is what they confirmed. 10-62, page 104.

**CHAIRPERSON:** Yes.

**ADV NGCUKAITOBI SC:**

“Jiba's counsel quite correctly pointed out that in the SCA's assessment of the facts, no case of misconduct could be established against her. The Court supported the GCB High Court's findings that no mala fide or ulterior motive could be shown in Jiba's authorisation as contemplated in POCA.

In relation to the delays in the full matter (that is the Mdluli matter) the Court explained that Jiba may have been a trained lawyer, but her opinion would have been secondary to that of her counsel and of LAD. Differences of opinion in relation to the Halgryn [?] memo, which could not be said to have established that Jiba was not fit and proper to remain on the roll of advocates simply because she had been advised otherwise.”

So she accepts all of those findings, but here is where she draws a distinction.

“This, of course, must be distinguished from the fit and proper evaluation as it applies to NPA officials. The SCA acknowledged as much, explaining that an inference regarding her incompetence with regards to her duties as DNDPP may be inferred, which would then be a ground for her to be removed from her position of DNDPP (Deputy National Director of Public Prosecution).

It seems that the case, we would have to get a full record, against Ms Jiba was a case, remember, Madam Chair, we spoke at the beginning of gross incompetence. Now, we do not have a case of gross incompetence against Mr Chauke. Then, Madam Chair, I have now done an analysis of those charges, looking at the judicial outcomes. I want to say a few things then about the actual decision. Starting with the Booysen matter, the panel will recall what this case is about.

It is about a series of abuses by police officials who were part and parcel of the Cato Manor squad or Cato Manor team or Cato Manor Unit, as referred to in various appellations. At a certain point in time, Mr Booysen was the head of that unit. When the racketeering certificate was signed, Mr Booysen had moved from that unit to be the head of DPCI in KwaZulu-Natal at the provincial level. The case involved more than 20 dockets. Some accounts say 23

dockets. Other accounts say 26 dockets.

The pattern in those dockets is that police officials would follow a purported suspect, instead of detaining them as the Constitution requires, they would make a decision to execute them. Mr Booyesen was aware of that pattern of execution of suspects. In some instances, he was present at the site of the killing. In some instances, he expressly authorised setting of the activities of the police officials.

The question that arose which faced the NPA was, is there sufficient evidence to show firstly that the predicate offences were committed? And secondly, whether Mr Booyesen was involved in any manner, shape, or form to justify the institution of a racketeering charge against him. And as the panel knows, a racketeering charge depends on the predicate offences.

**CHAIRPERSON:** Counsel, I do appreciate that at this juncture, you are giving us just an overview.

**ADV NGCUKAITOBI SC:** And outline, yes.

**CHAIRPERSON:** An outline. But we will later draw our attention to those instructions or authorisations that he seemingly gave at the scene when he was present.

**ADV NGCUKAITOBI SC:** Yes. Now, so the first element of the so-called racketeering is there must be offences, criminal offences. The question really in this case was not the presence or absence of the predicate offences. Just to take

two of those examples, Madam Chair, the example of Mr Bongani Mkize. Mr Bongani Mkize had obtained an interdict against the police, which included Mr Booysen as a respondent, in which he said, if you want to detain me or arrest me, I will hand myself in. There is no need to intimidate me, to violate me. In fact, there was an interdict against shooting him.

He was subsequently murdered, and by all accounts, by members of the Cato Manor Unit. And they had strategies of planting weapons after the killing of a suspect and making it as if the murdered person was the aggressor, they were acting in self-defence. Or take another extreme case, the case of Kwazi Ndlovu. Kwazi Ndlovu was a 15-year-old boy, a 15-year-old boy, found at home in the evening, taken out, executed, and then a gun placed on his hands.

The police faced no threat.

They had no basis to use violence against him. But nevertheless, they executed him. And the evidence was clear that the killers were part and parcel of police officials linked to the Cato Manor squad, or the Cato Manor team, or the Cato Manor Unit. When these allegations were made to Advocate Jiba, she did not want to make a decision herself. She put together a team. Mr Sello Maema was the head of that team. Mr Chauke was a member of that team.

There were also people from the DPCI, police

officials from the DPCI. So you can describe it as a multidisciplinary team. And there were also people from IPID, the Independent Police Investigative Directorate. So you can describe it as a multidisciplinary team. They conducted a thorough assessment of the statements that were contained by witnesses. Of those statements, three stood out. I am coming now, Madam Chair, to the question you asked about the source material. Of those statements, three stood out.

And the reason they stood out is because they were given by persons who were part and parcel of the unit. Those statements directly mentioned Mr Booyesen. Although they admitted that Mr Booyesen at that point was no longer formally the head of the unit, they nevertheless stated that he was *de facto* in control of the unit. One of those statements, and you will see the criticism in the judgment of the KwaZulu-Natal High Court by Judge Gorven, was not signed and it was submitted by a gentleman known as Danikas, who was a police reservist.

At the time of the signing of the certificate, it was not yet signed, but that entire technical issue was dealt with thoroughly by Judge Legodi, who pointed out, Madam Chair, that section 2(2) of POCA allows a Court to admit all types of evidence, information, documents, hearsay statements, similar fact evidence. And then he said, if that information is admissible before a Judge, it stands to reason that it would

be admissible before the NPA.

When the NPA assessed the evidence, it took the view that the statement of Mr Danikas was admissible. We will show you that the statement was subsequently signed, and it confirms in all material respects the version that would have been given by Mr Danikas. Another statement that stood out was a statement by Mr Dlodlo, the statement was written in Zulu, who also directly implicated Mr Booysen. There was also common cause evidence that the members of the Cato Manor Unit received a thank you gift for their activities of R10,000 per member. Mr Booysen himself received, I think, R10,000 as well.

There was also the statement of Mr Ayer. Mr Ayer had taken over from Mr Booysen. He also directly implicated Mr Booysen. The comparison, Madam Chair, between Judge Gorven and Judge Legodi in terms of the statements that were present, you will see between paragraphs 55 and 67 of the GCB v. Jiba case, where Judge Legodi goes extensively to analyse each statement and each contents of the statements and how they ultimately put Mr Booysen on the scene. Now, this panel, we will not ask the panel to say Mr Booysen is prima facie guilty or not.

But we will ask the panel to find that on the evidence that was before them, it was entirely justifiable to say that enough of a case exists to sign a racketeering certificate.

Madam Chair, you will remember that what my client is accused of is supporting, recommending, seeking to defend, instituting. But the key of each of those charges are the following words, “notwithstanding that there was no evidence justifying the decision”. That is the key to all of them. It is the words notwithstanding that there was no evidence justifying the decision.

There are two things that the panel needs to be considerate of when it listens to the evidence. The charge is that there was no evidence. The charge is not that the evidence that was present was insufficient. Yet, it is common cause that there was evidence. That is the second part. The debate among the prosecutors was whether that evidence is enough or not. The view that was taken by Advocate Jiba on the advice, we will not shy away from it, Mr Chauke was one of the persons who supported the decision. He was one of the persons who recommended the decision.

Of course, he was a part and parcel of the team. But the decision maker was Ms Jiba. And the view that Ms Jiba took at the time was that she was satisfied about the evidence. That was not the view that was held by Mr Nxasana. Mr Nxasana was not satisfied. But both of those decisions are capable of living alongside each other with both of the parties acting rationally and bona fide. You do not go and charge Mr Nxasana because his opinion was that the

evidence is not enough. And you do not charge Mr Chauke on the basis that your recommendation was not based on good enough evidence.

But you will have to ask yourself whether or not the evidence leader can substantiate the statement that there was no evidence. And we will show you that that statement cannot be substantiated. There was evidence. The evidence was sufficient. We will obviously not say that the evidence was conclusive because that was not required at that stage.

**CHAIRPERSON:** In any event, I cannot imagine that in a criminal setup, you can safely say the evidence is conclusive, as a prosecutor, until the Judge or the Magistrate decides.

**ADV NGCUKAITOBI SC:** Until the Magistrate decides, yes. Now, on this point, Madam Chair, you will see in the prosecution policy, which is referred to in the charge sheet. The prosecution policy requires prosecutors to evaluate the case and the evidence until the last minute. And it appreciates that when they start a prosecution, they may take a particular view, maybe robust, maybe conservative. But as the developments go along, representations are made. Witnesses that initially appeared to be reliable turn out not to be reliable. Witnesses that initially agreed to testify refuse to testify.

The key on that prosecutorial policy is that a prosecutor must always be agile and able to evaluate their

position until the end. And it allows them, where they initially charge a person, to also withdraw the charge when new evidence emerges. That is a good thing, Madam Chair, which unsettles prosecutors to do the job that we are paying them to do. It is really a bad thing that when a prosecutor made one decision, they must be taken to a disciplinary hearing. I went through, Madam Chair, cases in preparation for this statement, cases of malicious prosecution. They are a legion.

But I would be shocked that in all of the cases that I have read about malicious prosecution, those prosecutors have been taken to a disciplinary hearing. This is why, then, Madam Chair, this multidisciplinary team prepared a memorandum and gave it to Ms Jiba. When, and this is now dealing with the defence 3.1.3, when there was a review brought by Mr Booysen, what the prosecution team did, it went to a senior counsel, widely respected for his expertise in criminal law, Mr Hodes.

They asked him, Mr Hodes, tell us your opinion. Is this good enough, or are we barking the wrong tree? He told them, you have a strong case. Defend it. They defended it. When they lost the case, they still went back to him, which is now in 3.1.1.4, on the appeal. When they lost the case, and we will show you the memorandums that he prepared, they went back to him. Said, Mr Hodes, you initially told us we

had a good case. We have now lost the case. Should we appeal? He says, yes, you should appeal.

On the strength of that, they filed an appeal. Just think about this. And then today, we are having a person who is held before a disciplinary hearing. There is a word constitutional lawyers like chilling effect. This has a chilling effect on prosecutors. I make one wrong decision, I will actually one day face a disciplinary enquiry. On 3.1.1.5, I have already explained that the basic defence there is that that decision was just not made by Mr Chauke at all. He was not involved in that at all.

And I have already outlined the defence on the Mdluli case. Having said this, I must now tell you about who is this man that we are dealing with today, Mr Chauke. It has been written up for me, Madam Chair, so I am looking for it.

**CHAIRPERSON:** As you reflect, as you reflect, I am tempted to say, what was the role of Advocate Chauke in the Cato Manor matter?

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** I am saying I am tempted because it is not you who brought this matter here.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** I suppose someone will present that case.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** And then you will respond. So I will

withdraw my temptation. [Laughter]

**ADV NGCUKAITOBI SC**: Thank you, Madam Chair.

**CHAIRPERSON**: You may proceed.

**ADV NGCUKAITOBI SC**: Madam Chair, I referred to the prosecution policy, and particularly the need for flexibility.

**CHAIRPERSON**: If I may, counsel, I beg your pardon. Just to recap, the signature of the racketeering authorisation was done by Advocate Jiba.

**ADV NGCUKAITOBI SC**: Jiba, yes.

**CHAIRPERSON**: Yes, thank you.

**ADV NGCUKAITOBI SC**: Yes, thank you. The prosecution policy dated June 2013 says the following – in fact, it is very helpful to remember this. It says:

“In deciding whether or not to institute criminal proceedings against an accused person, prosecutors must assess whether there is sufficient and admissible evidence to provide a reasonable prospect of a successful prosecution. There must indeed be a reasonable prospect of a conviction, otherwise, the prosecution should not be commenced or continued. This assessment may be difficult because...”

And this is the point, Madam Chair, you made;

“...it is never certain whether or not a prosecution will succeed. In borderline cases, prosecutors should probe deeper than the surface of written statements. Where the prospects of success are difficult to assess, prosecutors must

consult with prospective witnesses in order to evaluate their reliability.

The version of the defence of an accused person must be considered before a decision is made. The test of a reasonable prospect must be applied objectively after careful deliberation to avoid an unjustified prosecution. However, prosecutors should not make unfounded assumptions about potential credibility of witnesses.”

Then it says:

“The review of a case is a continuing process. Prosecutors must take into account changing circumstances and fresh facts, which may come to light after an initial decision to prosecute or not to prosecute has been made. This may occur after having heard and considered the version of an accused person and the representations made on his or her behalf.

Prosecutors may, therefore, withdraw charges before an accused person has pleaded, in spite of an initial decision to institute a prosecution.”

So that comes back to this thing that this is a continuous process. You look at the evidence you have at that stage. You convince yourself that it is sufficient and it is admissible. New evidence then emerges. You are obliged to continue evaluating that case. What you never do, you never say, I am now charging you with misconduct because on a certain

date, you made a decision to charge a certain person, because that is just against the prosecution policy.

Now, Madam Chair, I wanted to, before coming to answer the question you asked me before the adjournment, to just give you a sense of who are we dealing with.

**CHAIRPERSON:** Before you go there, counsel, it is just occurred to me, as you were addressing last aspect, about the fragility of that process. It is ongoing.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** Where does it end? Does it not end even probably at the end of the entire case? Or first, probably at 174?

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** If not at the end of the entire case, that fragility. If that is the case, can a prosecutor then be faulted for having let the case run until section 174?

**ADV NGCUKAITOBI SC:** Yes. We submit with the greatest respect, this is why we describe these charges as dangerous charges. Because we would submit, it is not misconduct for a prosecutor to run a case that they subsequently lose. It would have been a different issue if the charge sheet said, Mr Chauke took money from a witness in order to proceed, because that would be corruption, or that he acted mala fide. What is striking about the charges is that there is no allegation of dishonesty or malice, which means he was bona

fide throughout.

**CHAIRPERSON**: Thank you for your answer.

**ADV NGCUKAITOBI SC**: Thank you, Madam Chair. So who is this man? Mr Chauke has served the administration of justice ...[intervenes]

**CHAIRPERSON**: Before you go to who is this man, you were going to look at that 3.1, the direct or indirect.

**ADV NGCUKAITOBI SC**: Yes, yes, yes.

**CHAIRPERSON**: Are you going there?

**ADV NGCUKAITOBI SC**: I can do it now. I was going to do it after this, but I can do it now.

**CHAIRPERSON**: No, you may. I do not want to disrupt the structure of your presentation.

**ADV NGCUKAITOBI SC**: Thank you, Madam Chair. Mr Chauke has served the administration of justice in this country for more than 40 years. He has risen through the prosecutorial system by diligence, competence, integrity. He has never been found wanting on any of those matrix. He began in 1983 as an interpreter in the Giyani Magistrates Court. He completed a diploma Juris in 1988, and thereafter was appointed as a prosecutor.

From the outset of his career, he was entrusted not only with prosecutorial decisions, but with training new clerks, interpreters, junior prosecutors. This was a sign of confidence placed on him at an early stage. After completing

his B.Juris and LLB degrees while he was working full time, he was promoted to prosecute in the Regional Court and later served as a Magistrate after completing the Magistrate's Civil Seminar at Justice College.

In 1996, he became the first African senior prosecutor in the Randburg region. In a sense, this is a momentous occasion that the first African prosecutor in the Randburg region is today being called in a misconduct enquiry. In that role of managing 19 prosecutors, overseeing all District and Regional Courts in Randburg, Wynberg, Midrand, he was responsible for supervision, training, docket preparation, media engagement, and representing the DPP in stakeholder forums

His responsibilities increased when he was transferred to the office of the DPP in the then Witwatersrand Local Division, where he prosecuted High Court trials and appeals, prepared indictments, and vetted the work of junior advocates. From 2001 to 2004, he served as the chief prosecutor of the Vaal Triangle cluster, where he managed 10 offices with extensive administrative, financial, and oversight responsibilities, including PFMA compliance, performance monitoring, liaison with SAPS and local authorities, and the overall functioning of the cluster.

He later completed a diploma in corporate governance and was appointed as the regional head of the

Special Commercial Crimes Unit in Johannesburg, leading a team specialising in complex fraud and corruption prosecution, and contributing to the Dornan Commission of Enquiry into the Oil-for-Food programme. In 2007, he joined the Johannesburg Bar. He practised across civil, labour, criminal, and equality matters, and interacted with senior officials in both the public and private sectors.

On 1 September 2011, he was appointed as the Director of Public Prosecutions, South Gauteng, where he was, until his suspension, responsible for 400 prosecutors and 100 support staff. In this capacity, he has overseen prosecutions of some of the most prominent matters, represented the NPA in high-level engagements, and managed one of the busiest prosecutorial offices in the Republic.

One of the witnesses that will be called, Madam Chair, Mr Gerrie Nel, will testify not only about his interaction with Mr Chauke when he was in the NPA, but after he left, and the level of professionalism that he has always encountered whenever he dealt with Mr Chauke. So we say that this is the professional and personal account of Mr Chauke, a prosecutor, a Magistrate, a senior manager, an investigator, a practising advocate, and ultimately, the DPP of this province.

This is a record of steady advancement, deep

institutional experience, and decades of commitment to the administration of justice. Nothing in this career has shown or suggested a person prone to recklessness, to mala fide, or the disregard for the rule of law. To the contrary, his history is one of sustained public service and trusted leadership. We ask that you take that into account in listening to the evidence that will be led, which will attempt to portray him as something that he is not.

When I then finalise, Madam Chair, to look at the specific point in 3 point, well, it starts at 3. Well, it starts at two. It says ...[intervenes]

**CHAIRPERSON:** Let me say this. I think in all fairness, you should probably wait and not answer that question, because someone will explain better those concepts. I will be unfair to you to expect you to elaborate on these terms of reference, as I was doing. I think we will wait for Advocate Batohi to assist us to understand those concepts, and then you will take it from there.

**ADV NGCUKAITOBI SC:** As you please, Madam Chair. I am happy not to disagree. [Laughter] Thank you, Madam Chair, I have got nothing else to add.

**CHAIRPERSON:** I suppose you are going to hand up the written opening address at some stage?

**ADV NGCUKAITOBI SC:** Yes, it will be handed up shortly, literally in the next hour. It will be distributed on email.

**CHAIRPERSON**: On email.

**ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: Yes, thank you. Thank you, counsel, my sister just reminded me of something. You referred us to a number of witnesses that you intend to call.

**ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: And needless to say, at one stage, those statements should be made available to us. But I say this guardedly, knowing that things have not happened as swift as things should have happened, given the circumstances of this case.

**ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: There has been some delays, and there has not been a proper communication with the evidence leader, meaning that, or rather, resulting in delays in presenting documentation. Not only to you, but also to the panel. I would like to know from you, when do you propose to be ready with those statements? We will proceed. From the evidence leader's side, their bundles are ready. That should not delay the enquiry.

You have a team of able lawyers next to you. As you proceed, they can go and consult to fast-track the process, rather than postponing and you go and sit with witnesses. So as it happens with the evidence-leading team, whilst they proceed, one of his colleagues will deal with other

outstanding matters. I am saying this because we have run behind schedule, one and a half months behind schedule. And I suppose that we all share the sentiments that this is not a matter that should delay any further.

Nobody wants to be subjected to this kind of uncertainty. And I am sure Mr Chauke, as I read in some of his written representation to the President, he said he is ready to start. And I understand why he would want this matter to be finalised as soon as possible. So the long and short of this long prelude to my question is, is it feasible that your team can start working on taking statements from those witnesses that you would like to call, just to fast-track the process and not delay it any further? Is that possible?

**ADV NGCUKAITOBI SC:** Madam Chair, you will be pleased to know that we have substantially revised our position. We think that we should be able to match the panel's desire for expedition. So we can work on statements and literally deliver them, not next week, but the week after. So we are not going to ask for long delays, no. So if you are asking me for a specific date, I could... Oh, yes, that is actually very, very important, I had forgotten about it. And the three witnesses, Mr Gerrie Nel, Mr Nxasana, and Mr Sello Maema are ex-NPA.

There is a provision in the NPA Act that they may not disclose information obtained by them in the course and

scope of their duties without permission. Last Wednesday, we wrote a letter to the NPA, telling them that we had consulted with these witnesses, and in the course of the consultation, one of those witnesses raised the concern that the Section 41, 41(c) prohibits them from disclosing information to us and that they need authorisation from the NPA.

That letter was written on the 14th of November. Is that Thursday, not Wednesday? 14th of November. We have not received a response. So we would be very keen to get those authorisations, so that those witnesses can sign statements. On the ...[intervenes]

**CHAIRPERSON**: Has that letter been copied to the Secretary of the Enquiry?

**ADV NGCUKAITOBI SC**: I am told, yes.

**CHAIRPERSON**: On the 14th?

**ADV NGCUKAITOBI SC**: 14th of November, yes.

**CHAIRPERSON**: I suppose that Advocate Mohlamonyane has had a sight of it as well?

**ADV NGCUKAITOBI SC**: Yes, I am told he has.

**CHAIRPERSON**: May I just confirm with counsel, yes, sir, I am sorry, I do forget that I have to speak to this microphone. Advocate Mohlamonyane, have you had a sight of the letter of the 14th to the NEWSPAPER, requesting authorisation, the disclosure?

**ADV MOHLAMONYANE SC:** Madam Chair, I recall discussing the issue with Advocate Batohi. I cannot recall whether I saw the letter or not, but such a request was made to the NPA. And I believe if she has not signed it yet, already she is going to sign the authorisation in terms of section 41(6) of the NPA Act.

**CHAIRPERSON:** The 14th, Advocate Ngcukaitobi, was on Friday, just last Friday?

**ADV NGCUKAITOBI SC:** Yes, indeed.

**CHAIRPERSON:** It may well be that the NPA is looking into the matter. And as you have seen on television, she has been busy elsewhere. So let us hope that the authorisation will be done. I suppose, Advocate Hulley, you can probably assist there, maybe speak to the NPA to facilitate that request, whether yes or no.

**ADV HULLEY SC:** Indeed so.

**CHAIRPERSON:** I do not know what you people do, but the request is pending.

**ADV HULLEY SC:** I understand that the request has been acceded to. It may simply be that the written communication thereof has not yet been transmitted.

**CHAIRPERSON:** Yes, thank you. We can only note what you are presenting before us. I do understand, counsel, that the delay in the authorisation will have an effect on the consultations, effectiveness of the consultation with

Advocate Nel, Advocate Maema, and Advocate Mr Nxasana.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** I think what we are discussing now is sufficient to remind all concerned of the importance of reacting to that request.

**ADV NGCUKAITOBI SC:** Yes, thank you, Madam Chair. So subject to that, these are all senior practitioners. They are also helping us to draft their own statements. So it is not a scenario of dealing with a lay witness where you have to draft the statements. So we can make it quicker than it would ordinarily be the case. And I was thinking that it should be feasible to complete the statements of these witnesses by the 1st of December and to hand them to the panel.

I am glad we are on this topic, Madam Chair, because I have been looking for the right opportunity to raise the wider problem, that you have seen that this case in large part depends on two dockets and two records, the Mdluli docket and the Booyesen docket. The charge itself, if you look at charge 3.1.1.1, talks about the docket in the Booyesen matter. Now, there is also the Jiba judgment as well as the full judgment.

We had asked as early as the 7th of November for the full records in those cases. We have not received them. They themselves are relying on statements made by the Judges in those cases, but we do not have the records of

those cases. So that also does implicate the preparation time that we would need. They know the letter. They have received it. But perhaps they can commit now to giving it to us with the date. Thank you, Madam Chair.

**CHAIRPERSON:** Mr Ramogale, we are still doing the preliminaries. In fairness to the senior counsel, just give him space. Some of the matters you can discuss when we adjourn. You still have abundance of time to have your conferences there. I suppose the appropriate thing to do in the circumstances, when we adjourn, is for all the teams to come together and address these issues. We cannot decide for you unless there is a substantive application for us to make an order or direction.

But some of these things can be dealt with by way of agreement when lawyers sit and talk. When should you expect the authorisation, for instance? When do you propose to be ready with the statements, that is the filing day of? When will you be provided with the paragraph 3.1.1.1 dockets and all other documents? We will not be able to assist you unless you approach us properly, so that you can compel somebody to do what they are supposed to do, if it is necessary.

My suggestion is that when we adjourn and probably the entire afternoon, if we are not going to proceed with Advocate Batohi, you may use that opportunity to address

these aspects, because we cannot delay that. You can deal with that maybe for an hour or so and come up with an agreement that will be made an order or the panel's direction. Then we can take it from there. May I just confer with my sisters on that?

We are so minded to do as I proposed, that we are going to take a lunch break and after you have had lunch, you can take time, an hour or so, and if you need more time, you can approach us and see if you can deal with all these issues, to fast-track the process, because if you cannot have those statements, it means we cannot proceed at a later stage. It may well be that those very dockets that you have asked for may be helpful to the evidence leader as well.

So discuss those aspects and if you cannot reach an agreement, you know what to do. Anything else, Advocate Ngcukaitobi?

**ADV NGCUKAITOBI SC:** Nothing, Madam Chair. I will not tell you what Mr Ramogale wanted me to say. [Laughter]

**CHAIRPERSON:** I am not going to be privy to those conferences. I have warned him several times. Probably I must chuck him out of the premises. [Laughter] The evidence-leading team, because I have been addressing you, especially with regard to the processes relating to the sharing of documents, do you anticipate any challenges in respect of agreeing? I am sure somebody from the NPA is here.

**ADV MOHLAMONYANE SC:** Yes, Madam Chair.

**CHAIRPERSON:** Apart from counsel.

**ADV MOHLAMONYANE SC:** Apart from counsel.

**CHAIRPERSON:** Who is here?

**ADV MOHLAMONYANE SC:** There is an official from the NPA who is here with Advocate Batohi.

**CHAIRPERSON:** I do not see Advocate Batohi here.

**ADV MOHLAMONYANE SC:** She is sitting...

**CHAIRPERSON:** In the holding room?

**ADV MOHLAMONYANE SC:** Yes, she is sitting there.

**CHAIRPERSON:** And the official, is the official here?

**UNIDENTIFIED SPEAKER:** She is also sitting there.

**CHAIRPERSON:** Okay, thank you.

**ADV MOHLAMONYANE SC:** She is also sitting with her, Madam Chair.

**CHAIRPERSON:** Yes, thank you.

**ADV MOHLAMONYANE SC:** Thanks.

**CHAIRPERSON:** Let me, we will apologise to her for just holding on, because it seems to me that it is critical that we get this process running, to make sure that you agree on the sharing of documents, the request for authorisation, for instance, the statements, the dates for statements. Once you get the undertaking that the authorisation will be provided today or tomorrow, you will be in a position to say the statements will be ready by the 30th of this month or the 1st

of December.

And the wider problem with regard to the dockets, et cetera, discuss it amongst yourself and see if you will be able to come to *toenadering*, *hulle sê*, is it *toenadering*, Afrikaans speaking people? Maybe you will come closer to each other, to one another, and then write a document in a form of an agreement that we may endorse. When you are ready, you will let us know.

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair.

**CHAIRPERSON:** Will that be possible?

**ADV MOHLAMONYANE SC:** That will be possible, Madam Chair, thank you. I do not foresee any problems in having discussions with our learned colleagues. I think in due course we will be able to see eye to eye as far as taking the matter forward is concerned. We will try our best to expedite the saving of requested documents on the Chauke team. Thank you, Madam Chair.

**CHAIRPERSON:** Confer, you may, you may.

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair.

**CHAIRPERSON:** It is okay to give an embrace. [Laughter]

**ADV MOHLAMONYANE SC:** Thanks, Madam Chair... Thank you, Madam Chair, I have conferred with my learned colleague and with Advocate Hulley for the NPA. We can adjourn at this stage to have the conversation with our colleagues.

**CHAIRPERSON:** I think your lunch is ready. I am serving lunch, so after lunch, 30 minutes lunch, you can then have your discussion. And as soon as you are ready, let us know.

**ADV MOHLAMONYANE SC:** We will do that, Madam Chair.

**CHAIRPERSON:** We are adjourned. Thank you.

**ADV MOHLAMONYANE SC:** Thank you.

### **ENQUIRY ADJOURNS**

### **ENQUIRY RESUMES**

**CHAIRPERSON:** Good afternoon, everyone.

**ADV NGCUKAITOBI SC:** Good afternoon, Madam Chair.

**ADV MOHLAMONYANE SC:** Good afternoon, Madam Chair.

**CHAIRPERSON:** Counsel, this has been a long waiting, but I assume that you have made good progress.

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair, and thank you for the opportunity afforded the parties. We, as you indicate, have taken quite some time, but I must point out that we have reached some agreement, Madam Chair. We have prepared two copies for the co-panellists and an original copy for you, Madam Chair, and I beg leave to hand them up, if you allow us.

To the extent to which we could agree within some of us who are a bit constrained, this is how far we could agree and we made certain commitments as far as witnesses are concerned and as far as exchanging of other documentation is concerned. There is, of course, a document which is

readily available in the Mdluli matter. I speak under correction. Can I confirm? In the Mdluli matter, when Mdluli was charged with murder, that document is available, but it needs to be verified and checked.

**CHAIRPERSON:** Well, we have not had an opportunity to read this document. You can probably place it on record properly, this agreement.

**ADV MOHLAMONYANE SC:** Indeed, I will do that.

**CHAIRPERSON:** And read it into the record at an appropriate moment and indicate to us the areas of disagreement, and you can take it from there. And we can then decide on the progress regarding tomorrow.

**ADV MOHLAMONYANE SC:** Indeed, Madam Chair. Should I proceed to place it on record?

**CHAIRPERSON:** Yes, I think you can place it on record if it is the agreement between the two parties. I see it has been signed by Advocate Chauke. Or is it you, Advocate?

**ADV NGCUKAITOBI SC:** Yes, I think my attorney has signed it on behalf of Mr Chauke.

**CHAIRPERSON:** PP, yes.

**ADV NGCUKAITOBI SC:** PP, yes, thank you.

**CHAIRPERSON:** Thank you. And NPA?

**ADV MOHLAMONYANE SC:** Advocate Batohi has signed, Madam Chair.

**CHAIRPERSON:** Advocate Batohi has signed.

**ADV MOHLAMONYANE SC:** Yes.

**CHAIRPERSON:** Yes, thank you. I think you can place it on record, Advocate Mohlamonyane. Then you will address us on the areas of disagreement.

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair.

“In this, the enquiry in terms of section 12(6), read with section 14(3) of the National Prosecuting Authority Act, number 32 of 1998, into the fitness of Advocate Andrew Chauke to hold office as DPP Johannesburg.

Agreement on the further conduct of the enquiry.”

And I wish to place the following on record. It starts with the introduction, and it reads as follows:

1. “In accordance with the directions issued by the Chairperson of the panel, Justice Nkabinde, on 18 November 2025, the parties have reached the following agreement.

2. Concerning witness statements:

2.1 The evidence leader:

1. It is recorded that the witness statement of Advocate Shamila Batohi has been furnished.”

**CHAIRPERSON:** I beg your pardon, counsel. I think read it as it is. 2.1.1, as it is, verbatim, please?

**ADV MOHLAMONYANE SC:** Thank you. As it pleases you, Madam Chair. Paragraph 1, let me rather begin where it begins.

1. Introduction

1.1 In accordance with the directions issued by the Chairperson of the panel, Justice Nkabinde, on 18 November 2025, the parties have reached the following agreement.

2. Witness statements

2.1 The evidence leader:

2.1.1 It is recorded that the witness statement of Advocate Shamila Batohi has been finished.

2.1.2 The evidence leader is yet to finalise the list of witnesses. The evidence leader has undertaken to revert on or before 26 November 2025 with a list of the proposed witnesses and the date upon which their witness statements shall be provided.

2.2 Chauke

2.2.1 Chauke has indicated that in addition to his testimony, he intends on calling four additional witnesses.

2.2.2 It is proposed that subject to the availability of the documentation below, Mr Chauke and his witness will present his written statements on or before 3 December 2025.

3. Record of the application in Freedom Under Law v. NDPP (Mdluli).

3.1 The evidence leader undertakes to furnish this record on or before 26 November 2025.

4. Record of the application in GCBSA v. Jiba

4.1 The evidence leader shall revert on the availability of the documents on or before 21 November 2025. However, should the documents be available in electronic format before the said date, the documents shall be transmitted to Advocate Chauke without delay.

5. Case docket of racketeering charge of General Booyesen

5.1 The evidence leader shall revert on the availability of the documents on or before 21 November 2025. However, should the documents be available in electronic format before the said date, the documents shall be transmitted to Advocate Chauke without delay.

6. Case docket in the murder charge of General Richard Mdluli.

6.1 The evidence leader shall revert on the availability of the documents on or before 21 November 2025. However, should the documents be available in electronic format before the said date, the documents shall be transmitted to Advocate Chauke without delay.

7. Internal NPA memoranda in the Booyesen matter

7.1 The evidence leader, in consultation with the NPA, have agreed that Mr Chauke can attend at the premises of the NPA, that is the VGM building, on any date, subject to reasonable notice, chosen by him, to obtain access to access

of his laptop. The NPA will make copies of documents identified on the laptop available to him.

7.2 The evidence leader, in consultation with the NPA, have agreed that Mr Chauke can attend at the premises of the DPP Johannesburg on any date, subject to reasonable notice, chosen by him, to obtain/access any documentation in the possession of the NPA.

7.3 To facilitate the above, the evidence leader, in consultation with the NPA, shall provide Mr Chauke with the details of the NPA's relevant contact person.

8. Internal NPA memoranda in the Mdluli matter

8.1 The evidence leader, in consultation with the NPA, have agreed that Mr Chauke can attend at the premises of the NPA, VGM building, on any date, subject to reasonable notice, chosen by him, to obtain access to access of his laptop. The NPA will make copies of documents identified on the laptop available to him.

8.2 The evidence leader, in consultation with the NPA, have agreed that Mr Chauke can attend at the premises of the DPP Johannesburg on any date, subject to reasonable notice, chosen by him, to obtain/access any documentation in the possession of the NPA.

8.3 To facilitate the above, the evidence leader, in consultation with the NPA, shall provide Mr Chauke with the details of the NPA's relevant contact person.”

That will be it and signed by the evidence leader, the National Prosecuting Authority. Advocate Batohi has signed on behalf of the NPA and on behalf of Advocate Chauke, I believe this is his attorney's signature.

**CHAIRPERSON:** Yes, thank you, Advocate Ngcukaitobi has confirmed that Advocate Chauke's signature appears PP by his attorney. Correct?

**ADV NGCUKAITOBI SC:** We do confirm, Madam Chair.

**CHAIRPERSON:** Yes, thank you. Thank you, thank you, counsel. Thank you to all of you, counsel.

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**DIRECTIVE**

By agreement between the parties, this agreement on the further conduct of the enquiry is made an order or directive of the enquiry and we so direct.

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**ADV NGCUKAITOBI SC:** As it please.

**ADV MOHLAMONYANE SC:** As it pleases you, Madam Chair.

**ADV BALOYI-MERE SC:** Thank you, Mr Evidence Leader. When we took a break, part of what you were supposed to address was the issue of the three witnesses from Advocate Chauke's team. Advocate Gerrie Nel, Maema, and Mr Nxasana for their request for authorisation to sign or to depose to affidavits, and you have not addressed it here.

**ADV MOHLAMONYANE SC:** Yes, it has not been addressed

in this agreement, Madam Baloyi-Mere. We discussed it and with the National Director of Public Prosecutions, together with Advocate Hulley, the document is ready to be sent in terms of section 41 of the NPA Act and we deemed it unnecessary to place it in this type of an agreement when, in fact, it is already there and can be sent any minute from now on.

**CHAIRPERSON:** I suppose it is on that basis that you were able to agree on the date of the 3rd of December with Advocate Ngcukaitobi's team.

**ADV MOHLAMONYANE SC:** Yes, indeed, Madam Chair.

**CHAIRPERSON:** In that event, I think that the appropriate thing is to look into those areas of disagreement, if you would like to bring it to our attention at this stage.

**ADV MOHLAMONYANE SC:** What I can bring to your attention, Madam Chair, is that there was a proposal emanating from our colleagues, from Advocate Chauke's team, that I should make an undertaking and give a specific date as to when witness statements will be available. And I indicated to them that I am constrained to a certain extent. I would have loved that at this stage witness statements would have been available, but I am not yet done with consulting with all the potential witnesses that I intend to call or the evidence leaders intend to call.

But I have made a list of those witnesses, which I

have transmitted to the National Prosecuting Authority. And it is the National Prosecuting Authority who then arranges contact, arranges for me to contact those witnesses. So far, we have contacted one witness who has already prepared a draft statement, which I still have to look at and finalise with the witness in conjunction with the National Prosecuting Authority. That is why I could not commit to a specific date.

As far as the other aspects are concerned, we found one another. We could not commit to a specific date, save to state that we will revert in three days' time, that being the 21st of November 2025. Especially on the question of the records.

**CHAIRPERSON:** 21st?

**ADV MOHLAMONYANE SC:** November 2025, three days henceforth from today.

**CHAIRPERSON:** On which issues specifically? The date is 21st of November 2025. In relation to which issues?

**ADV MOHLAMONYANE SC:** In relation to the record of the application in GCB South Africa v. Jiba, which is contained in paragraph 4 of our agreement.

**CHAIRPERSON:** But in relation to the witness statements, Advocate Mohlamonyane, I take that it should not be difficult for the NPA to facilitate consultation with those witnesses, and to make sure that those witnesses are consulted with and their statements are prepared without delay.

**ADV MOHLAMONYANE SC:** Indeed, Madam Chair. It should not be difficult and it will not be difficult.

**CHAIRPERSON:** Let me emphasise this. The NPA is comprised of a team of lawyers. And your team, yourself, your colleague who will be joining you before long, Advocate Hulley and the junior advocates, should be in a position when you work as a formidable team to produce those statements without delay. One of you or two of you can go and consult with the witnesses as we proceed.

The same way I mentioned to the team of Advocate Chauke so that we do not delay sharing documents. As you recall, the statement of Advocate Batohi was furnished to us on Saturday, which was quite late. I think in fairness, not only to the Advocate Chauke's team, but to yourself as well, to be able to prepare for leading those witnesses. So if those statements can be prepared timeously and be filed of record on time, that will make our task a lot easier.

**ADV MOHLAMONYANE SC:** I agree, Madam Chair, and I must point out to you that Advocate Hulley and his junior have been very, very, very helpful to see to it that I am assisted. They were very, very helpful and there is no reason now why they should not continue to assist me. And we will make our arrangements. I will make arrangements with them insofar as consultations with potential witnesses are concerned.

**CHAIRPERSON:** Well, to that end, it should have been easy

to give at least a date or two to say approximately on these dates, you will be in a position to furnish some of the statements at least, given the fact that some of your witnesses will be people, I suppose, who would have been part of the NPA.

**ADV MOHLAMONYANE SC:** Let me deal with it in this fashion. We could not give a – I could not give a definite date, because I still have to make contact with some of them. We have already made contact with one or two of them, but I still have to make contact with some of them whose phone numbers have been furnished to me. And I can mention that one of them is in Natal. I am speaking under correction. I stand to be corrected. One of them is in KZN. I still have to call him to talk to him.

**CHAIRPERSON:** Yes, thank you. I do not want to belabour the point. After all, you are the evidence leader. And this enquiry should not be delayed, and I will emphasise it again and again, that let us make sure that we are on track. At least towards the festive season, around Christmas time, we should have made progress, because we started one and a half months late.

**ADV MOHLAMONYANE SC:** I take your point, Madam Chair. I take your point.

**CHAIRPERSON:** Regarding tomorrow's proceedings, I assume that Advocate Batohi, who has been in the holding

room, has now left.

**ADV MOHLAMONYANE SC:** No, no.

**CHAIRPERSON:** Is she still here?

**ADV MOHLAMONYANE SC:** Ja, she is still here. She is waiting to be excused.

**CHAIRPERSON:** Excused.

**ADV MOHLAMONYANE SC:** Because the notice to her was specific that she must remain in attendance until she is excused.

**CHAIRPERSON:** Yes, thank you. I think it is proper that we request you to extend our apology to him, Advocate Hulley, for having kept her waiting the whole day. But I realise that she has signed the agreement herself, so her presence here has been beneficial.

**ADV MOHLAMONYANE SC:** Should we not perhaps, Madam Chair, call her in? She is just around.

**CHAIRPERSON:** Well, she is not going to testify. I think you are in a better position to just extend our apology to her for the delay.

**ADV MOHLAMONYANE SC:** I will do that.

**CHAIRPERSON:** That you can even explain much better than myself because she signed this agreement. And tomorrow's proceedings, as we have agreed, will continue to resume at 10 o'clock. And you can approach us at quarter to 10 to do the normal housekeeping, first thing in the morning for five

minutes, and we start at 10 o'clock. Is that doable to all of you?

**ADV MOHLAMONYANE SC:** It is doable.

**ADV NGCUKAITOBI SC:** Madam Chair, I do want to excuse myself for tomorrow. My junior will attend. I have a longstanding commitment to Parliament to account for my role as the Chairperson of my old university. I would like to confirm, I asked my attorney about that running record. It looks like there is a bit of a challenge with it.

**CHAIRPERSON:** Could you repeat the last sentence?

**ADV NGCUKAITOBI SC:** I just want to confirm about that running record that the Chairperson spoke about yesterday.

**CHAIRPERSON:** Oh, yes. The running transcription.

**ADV NGCUKAITOBI SC:** Yes, indeed. It was asked for today and it does not look like anyone knew where we could access it.

**CHAIRPERSON:** It should not be a difficult matter to resolve. We should be able to communicate with you through the Secretary after our adjournment. They will cause an email to be sent to your attorneys and yourself about this transcription. They are all here. The transcription group is here. They will tell us why and what has happened. But whatever is in our procedural rules is a matter that has been agreed upon with the service providers. So that should not be difficult. We will attend to that.

**ADV NGCUKAITOBI SC:** It is just that tomorrow is different because the witness will be giving evidence. So even if they did not record yesterday and today, maybe it is not too much of an issue.

**CHAIRPERSON:** Tomorrow?

**ADV NGCUKAITOBI SC:** Yes, tomorrow is crucial for us because there will be a witness testifying. So whatever challenges they had experienced, if they could be attended to by tomorrow at least.

**CHAIRPERSON:** Not only for yourself, for us, for everybody concerned. We will make sure that the transcription is attended to as a matter of urgency. Thank you for drawing it to our attention. Thank you very much, counsel and everyone who has been patient with us today, the media, we will adjourn our proceedings until tomorrow at 10 o'clock. We adjourn, thank you.

**ENQUIRY ADJOURNS UNTIL 19 NOVEMBER 2025**

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**TRANSCRIBER'S CERTIFICATE**

I, the undersigned, hereby certify that **so far as it is audible to me**, the foregoing is a true and correct transcript of the proceedings recorded by means of a digital recorder in the matter between:

**CHAUKE COMMISSION OF ENQUIRY**

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**PROBLEMS EXPERIENCED WITH RECORDING**

1. Verbatim transcript, no syntax or grammar alterations effected.
2. Unknown names spelled phonetically.
3. Microphone not always switched on.

**NB: Transcriber can only transcribe what is recorded and clearly audible.**

DATE COMPLETED: 18/11/2025

TRANSCRIBER:



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Lisa O'Connor