

**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**

**21 NOVEMBER 2025**

**DAY 5**



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

**PROCEEDINGS ON 21 NOVEMBER 2025**

**CHAIRPERSON:** Good morning, everyone. Good morning, Mr Chauke. Good morning, Ms Batohi. You are our special guests, that is why I greet you specifically and the general greetings to everybody. A very good morning to you, Advocate Mohlamonyane. We understand that you were able to solve some of the challenges that we encountered yesterday afternoon with regard to the record and progress is being made. Am I correct?

**ADV MOHLAMONYANE SC:** That is correct, Madam Chair.

**CHAIRPERSON:** Welcome back, Senior Counsel Ngcukayitobi.

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair, and thank you for excusing me.

**CHAIRPERSON:** Yes, thank you. Advocate Hulley.

**ADV HULLEY SC:** Good morning, Madam Chair.

**CHAIRPERSON:** We noted your apology this morning.

**ADV HULLEY SC:** Thank you very much.

**CHAIRPERSON:** Thank you. You may proceed, sir.

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair. Advocate Batohi, when we adjourned yesterday, you were dealing with paragraph 145.

**CHAIRPERSON:** Before you proceed, my sister just reminds me to remind you that you are still under oath. I have long forgotten to be in the trial Court.

**ADV BATOHI:** I am reminded. Thank you, Chair.

**SHAMILA BATOHI** still under oath

**CHAIRPERSON:** Thank you, madam.

**EXAMINATION BY ADV MOHLAMONYANE SC (continues):**

Thank you, Madam Chair. We were dealing with paragraph 145 on pages 60 and 61 when we attended yesterday. Now, as far as paragraph 45 is concerned ...[intervenes]

**CHAIRPERSON:** Please speak loudly. I can hardly hear you, sir.

**ADV MOHLAMONYANE SC:** I will try my best. As far as paragraph 145 is concerned, you were giving a brief overview. Can you proceed and do that?

**ADV BATOHI:** Yes, thank you, Chair. Just to emphasise that I am giving a brief overview so that the enquiry can understand. But of course, there will be other witnesses who will testify as to the specifics. Chairperson, as I mentioned yesterday, perhaps I will start off with Booysen launching an application, which I understand is early in 2013, but we can confirm the date, in which he sought to review and set aside the racketeering certificates that were issued by the previous National Directors, National Director, the acting National Director at the time.

**CHAIRPERSON:** That is paragraph 144?

**ADV BATOHI:** 145.

**CHAIRPERSON:** 145, that is when he launched the

application? Is that so?

**ADV BATOHI**: That is correct. He alleged that after he had received the indictment, he had requested Jiba to make available all documents on which the state had intended to rely. In response to that request, 23 dockets were made available to him. And of these 23 dockets, he said he was mentioned in only two of them. In these two dockets, he stated that he is mentioned in the statements of two witnesses.

Sorry, in one of the two dockets. Both witnesses stated he arrived on the scene of the shooting in a helicopter after the event. In respect of the second docket, the witness, according to him, states that he noticed Booysen on the scene of the shooting after it had taken place. In response to this application, Jiba deposed to an answering affidavit. This affidavit was, according to Advocate Chauke, finalised by him. Now, his confirmation of this will be found in the GCB proceedings, which is footnoted, footnote ...[intervenes]

**ADV MOHLAMONYANE SC**: 111.

**ADV BATOHI**: ...111, which is part of the bundle and is referred to in the footnote. So, Chairperson, in her answering affidavit and in response to Booysen's assertion that no statements ...[intervenes]

**ADV MOHLAMONYANE SC**: Before that, before that, before you proceed, I would like you to go to that paragraph you are

referring the panel to. It is contained in ZC, bundle named ZC1. And I direct your attention, Madam Chair and Madam Baloyi-Mere, as well as Madam Ramagaga, to ZCC1 bundle. ZC1 bundle. Do you have it in front of you, Advocate Batohi?

**ADV BATOHI:** I do, yes.

**ADV MOHLAMONYANE SC:** Now, go to page 164.

**ADV BATOHI:** Yes, I am there.

**ADV MOHLAMONYANE SC:** I beg your pardon. Go to page 56, rather. 56. ZC56. My apologies.

**ADV BATOHI:** Yes, 56 is a portion of, if we could identify 56.

**ADV MOHLAMONYANE SC:** Now, go to paragraph 211 on that page.

**ADV BATOHI:** Mmm-mmm?

**ADV MOHLAMONYANE SC:** Read paragraph 211 into the record.

**ADV BATOHI:** Perhaps I should, should I not read 210 first?

**ADV MOHLAMONYANE SC:** You can.

**ADV BATOHI:** I will read 210 first and it follows after that.

“Following the consultation, the prosecution team agreed that Advocate Chauke, as the DPP in charge of this matter, would be the liaison person between Advocate Hodes SC team and the prosecution team and would provide the

Hodes SC team with all the facts and evidence in the dockets necessary from the prosecution team to prepare an answering affidavit to be deposed to by myself on behalf of the NPA. I refer the Court to the confirmatory affidavit of Advocate Chauke filed herewith.”

And that is, if we could go to the confirmatory affidavit, which is on page 164.

**ADV MOHLAMONYANE SC:** ZC1.

**ADV BATOHI:** And that is an affidavit by Advocate Chauke confirming that he is read on paragraph 3, which is on page ...

**ADV MOHLAMONYANE SC:** 165.

**ADV BATOHI:** 165.

“I have read the founding affidavit of Nomgcobo Jiba and the first respondent in these proceedings and I confirm the correctness insofar as they relate to me.”

**CHAIRPERSON:** Is that s 00165?

**ADV BATOHI:** That is correct, Chairperson.

**CHAIRPERSON:** Because there are two numberings in these documents. So you should refer to us whether it is the bolded ones, the bolded numbers. Is that the bolded numbers that you are referring us to?

**ADV MOHLAMONYANE SC:** The electronic one, Chair.

**CHAIRPERSON:** I do not know which one is electronic, which one is not.

**ADV MOHLAMONYANE SC:** ZC, the bolded ones.

**CHAIRPERSON:** The bolded ones?

**ADV MOHLAMONYANE SC:** Yes.

**CHAIRPERSON:** The page here will be ZC001, 165.

**ADV MOHLAMONYANE SC:** [No answer]

**CHAIRPERSON:** Counsel? Did you say 165?

**ADV BATOHI:** That is correct, Chairperson.

**CHAIRPERSON:** 165.

**ADV MOHLAMONYANE SC:** But it starts on 164. On ZC00164, Madam Chair.

**CHAIRPERSON:** Confirmatory affidavit of Mr Chauke.

**ADV BATOHI:** That is correct, Chairperson.

**CHAIRPERSON:** Yes, thank you.

**ADV MOHLAMONYANE SC:** Now proceed.

**ADV BALOYI-MERE SC:** Before you proceed, in your main affidavit, at paragraph 146, you say this affidavit, Jiba's affidavit was finalised by Advocate Chauke. And what you have referred us to in 00165, if I am not mistaken, it is a confirmatory affidavit. Are those two things not different, or am I misreading it? A confirmatory and finalising.

**ADV MOHLAMONYANE SC:** Advocate Batohi, maybe we should assist you to enable you to answer the question. Refer back to ZC1. Bundle ZC1 on bolded page ZC00056,

where you will find Jiba's answering affidavit.

**ADV BATOHI:** I see it, Chairperson. It is the portion that I had read into the record a short while ago. Shall I read, perhaps to answer that, I should refer the honourable panel member to paragraph 210. Maybe I should read the whole thing in again.

“Following the consultation, the prosecution team agreed that Advocate Chauke, as the DPP in charge of this matter, would be the liaison person between Hodes SC team and the prosecution team, and would provide the Hodes SC team with all the facts and evidence in the dockets necessary from the prosecution team to prepare an answering affidavit to be deposed to by myself on behalf of the NPA.”

So in essence, Advocate Chauke is confirming that aspect of Advocate Jiba's answering affidavit.

**ADV MOHLAMONYANE SC:** In ZC1?

**ADV BATOHI:** 211. 210. So I will read 211 after that.

“The Hodes team then prepared the answering affidavit.”

**CHAIRPERSON:** Before you proceed, I think counsel, we must deal with what my sister is asking at paragraph 146 of

counsel's affidavit.

**ADV BATOHI**: I am dealing with that now, Chairperson.

**CHAIRPERSON**: You are dealing with it?

**ADV BATOHI**: Yes. It is in paragraph 211. The Hodes SC team then prepared the answering affidavit, which was finalised by Advocate Chauke, and which I signed. And Advocate Chauke confirms that in his affidavit.

**CHAIRPERSON**: 211 is what?

**ADV BATOHI**: It is ZC. It is the first ZC bundle, ZC1, ZC00056. It is the answering affidavit of Advocate Jiba, which was deposed to in these proceedings.

**CHAIRPERSON**: You may proceed, sir. I will look at it.

**ADV MOHLAMONYANE SC**: May I enquire as to whether Madam Baloyi-Mere has been answered? Advocate Batohi, you may proceed.

**ADV BATOHI**: Sorry, let me get my train of thought back.

**ADV MOHLAMONYANE SC**: Yes.

**ADV BATOHI**: So Advocate Jiba deposes to an answering affidavit in these proceedings, which Booyesen has brought, seeking to review and set aside the racketeering certificates. In paragraph 147 of her, in her answering affidavit, referring to paragraph 147 of my affidavit, and response to Booyesen's assertion that no statements in the dockets implicated him, Jiba sets out and it is in paragraph 147, paragraph 16 is from Advocate Jiba's answering affidavit and it is quoted right

through to paragraph 17 of my affidavit.

It sets out why, in her view, she considered that there was a *prima facie* case in this matter and I am not going to read that verbatim, but I then proceed to paragraph 17 of my affidavit. Particular reference in her statement is made to statements that were made by Colonel Aiyer, a Mr Danikas, Mr Ndlondlo, from which it is apparent that the applicant is well aware of the information that the respondents have in their possession relating to the murder of at least 23 people and the monetary and non-monetary awards claimed by him. And in this regard, copies of these statements are attached to my affidavit.

**ADV MOHLAMONYANE SC:** You are referring to as the end?

**ADV BALOYI-MERE SC:** Mr Mohlamonyane, I am really sorry and I apologise to interrupt you. But I would like to ask you a question, and it is not out of disrespect. I see that you often refer the witness to a specific paragraph, but the witness would go somewhere else. And maybe you should rein your witness in so that we are able to follow. Because you are lost where she is reading. We are lost, we do not know where she is. If we can have that synergy and work together, thank you.

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

**ADV BATOHI:** I apologise if I have been the cause of any confusion, Chairperson. I will take guidance from my

counsel, from the evidence leader.

**ADV MOHLAMONYANE SC:** You are now dealing with, Advocate Batohi, paragraph 17 of Jiba's affidavit, which you set out on page 63, not so?

**ADV BATOHI:** That is correct.

**ADV MOHLAMONYANE SC:** And you mentioned that there were statements. There are statements which are attached to your affidavit.

**ADV BATOHI:** That is correct.

**ADV MOHLAMONYANE SC:** And they are marked collectively as B1.

**ADV BATOHI:** That is correct.

**ADV MOHLAMONYANE SC:** Which is NJ2, NJ3, and NJ4, and 5.

**ADV BATOHI:** That is so.

**ADV MOHLAMONYANE SC:** Let me draw your attention, therefore, to your bundle on page SB1, SB1 small b, 088.

**ADV BATOHI:** I am there.

**ADV MOHLAMONYANE SC:** That statement is a statement of Rajendran Sanjeev Aiyer. Can you confirm that?

**ADV BATOHI:** That is correct.

**ADV MOHLAMONYANE SC:** The next one, which is marked SB1C-091, NJ3, is a statement of Arries Danikas.

**ADV BATOHI:** That is correct.

**ADV MOHLAMONYANE SC:** The next one is SB1D, 097, with

its original marking as NJ4. And it is a statement of Rajendran Sanjeev Aiyer.

**ADV BATOHI**: That is correct.

**ADV MOHLAMONYANE SC**: This Aiyer, who has a Colonel in the SAPS, is the same Aiyer who deposed to a statement in SB1B on page 088.

**ADV BATOHI**: Yes, that appears to be the case.

**ADV MOHLAMONYANE SC**: Now, SB5, no, no, NJ5, rather, which is marked SB11 in your bundle with its original marking as NJ5, it is on page ...[intervenes]

**ADV BATOHI**: SB11?

**ADV MOHLAMONYANE SC**: Yes, SB11- 277. This is one of the statements you are referring to, which is that of Ndlondlo, Bhekinkosi Mthiyane Ndlondlo.

**CHAIRPERSON**: Page?

**ADV MOHLAMONYANE SC**: Page SB11-277, with its original marking as NJ5.

**CHAIRPERSON**: Is it Ndlondlo?

**ADV MOHLAMONYANE SC**: That is the statement of Ndlondlo, Madam Chair. In fact, there may have been a misspelling of his surname, because it appears in paragraph 17 as Ndlondlo. But then on the affidavit itself, it appears as Dlondlo. Have you seen that?

**ADV BATOHI**: I see.

**ADV MOHLAMONYANE SC**: You confirm that that is a

statement that you are referring to?

**ADV BATOHI:** Yes, the statement that is attached to my affidavit.

**ADV MOHLAMONYANE SC:** You do not necessarily have to read those statements. It is not necessary. Proceed then to paragraph 149, because 148 deals with SB1.

**ADV BATOHI:** Understood.

**ADV MOHLAMONYANE SC:** SB1 is a collective marking of these four affidavits. Proceed.

**ADV BATOHI:** Thank you. So Booysen attacked these allegations in his replying affidavit. The essence of his reply in respect of the four statements, which was attached by Advocate Jiba to her affidavit in support of her decision to prosecute him for racketeering, was this. Two were statements by Colonel Aiyer. They did not implicate him in any of the offences indicated in the charge sheet. And the second statement of Aiyer was only deposed to on 31st August 2012, approximately two weeks after Advocate Jiba had issued the racketeering certificates.

She could accordingly not have relied upon it, according to Booysen, as she claimed in her affidavit to have done to reach her decision. In the third statement, according to Danikas, Booysen, purported to be that of Danikas, was not a sworn statement and was not signed by anyone, it was not dated. And further, the events described in the document

did not cover the period dealt with in the indictment, except for one event which did not relate to Booysen. The fourth statement, he says, was that of Ndlondlo, which did not implicate Booysen in any of the offences in question.

**ADV MOHLAMONYANE SC:** Hold it there. Let me take you back to SB1B, the statement of Aiyer on page 088.

**ADV BATOHI:** Yes, I am there.

**ADV MOHLAMONYANE SC:** If you go to page 090, where the statement ends, at the bottom there we see a signature, which is probably of Colonel Aiyer, dated the 3rd of August. Do you see that?

**ADV BATOHI:** I do.

**ADV MOHLAMONYANE SC:** Now, go to Colonel Aiyer's second statement, which you refer to in paragraph 149.1, which is dated 31 August 2012.

**ADV BATOHI:** What is the page number, counsel?

**ADV MOHLAMONYANE SC:** The page number is SB... SB1D, it starts from 097. The specific page there is 102, SB1D102.

**ADV BATOHI:** I am there.

**ADV MOHLAMONYANE SC:** It has been commissioned before a Commissioner of Oaths, and there are dates there. One is handwritten, 31 August 2012, and there is one which is typed, it was deposed to in Durban. Do you see that?

**ADV BATOHI:** I do.

**ADV MOHLAMONYANE SC:** You confirm that the date is 31 August 2012?

**ADV BATOHI:** The date is indeed 31 August 2012.

**ADV MOHLAMONYANE SC:** Okay. You may proceed. Let us proceed to Danikas' statement, which is on page SB1C-091. Do you see that? It is on page zero...

**CHAIRPERSON:** I see it.

**ADV MOHLAMONYANE SC:** Go to the last page.

**CHAIRPERSON:** It would be helpful if you can refer to them as marked. You can mention the name and then refer to the marked name of that document, NJ3.

**ADV MOHLAMONYANE SC:** NJ3 is the original marking. I thought perhaps I will start with the SB1C and then go to the NJ3. It is NJ3, which is the original marking. Do you see that?

**ADV BATOHI:** As per Advocate Jiba's affidavit.

**ADV MOHLAMONYANE SC:** Yes.

**ADV BATOHI:** That is correct.

**ADV MOHLAMONYANE SC:** Go to page 096. There is a line there, and at the end of the line under the Commissioner's portion, the Commissioner of Oaths' portion, deponent signature. There appears deponent signature. Is there any signature there?

**ADV BATOHI:** No. It is an unsigned statement.

**ADV MOHLAMONYANE SC:** Let us go to the Ndlondlo's

statement, SB11. The original marking is NJ5. Is it signed?

**ADV BATOHI:** Just refer me to the page number, please.

**ADV MOHLAMONYANE SC:** Go to page 277, NJ5. SB11. It starts at 277. It ends at 282. Is it signed? Can you confirm whether it is signed or not? On page 282. I see there is a signature there, that appears to be.

**ADV BATOHI:** Yes. It appears to be a signature.

**ADV MOHLAMONYANE SC:** It appears to be a signature.

**CHAIRPERSON:** Is it 282 or 283?

**ADV MOHLAMONYANE SC:** There is one on 282, Madam Chair. And on 282, it is a different document. SB11- 282.

**CHAIRPERSON:** The document at, it is SB12.

**ADV MOHLAMONYANE SC:** SB12 is a different document.

**CHAIRPERSON:** It is 283.

**ADV MOHLAMONYANE SC:** It is a different document.

**CHAIRPERSON:** Yes.

**ADV MOHLAMONYANE SC:** It does not relate to this affidavit.

**CHAIRPERSON:** SB11 ends at 282.

**ADV MOHLAMONYANE SC:** Indeed, Madam Chair. And there appears to be a signature underneath there. Looks like Mthiyane, if one reads it properly.

**ADV BATOHI:** That is correct. It appears on all the pages of SB11 at the bottom.

**ADV MOHLAMONYANE SC:** Now, let us proceed. Advocate

Batohi, go to page 64 ...[intervenes]

**CHAIRPERSON:** Counsel, I beg your pardon. Is this document, the last one you have referred to, is it commissioned?

**ADV MOHLAMONYANE SC:** Let me just check. SB11?

**CHAIRPERSON:** Because that document ends at 282 with that name, Mthiyane. What does it say there? Is it properly commissioned, this document, this statement?

**ADV MOHLAMONYANE SC:** Where is it? Where is it?

**CHAIRPERSON:** I am struggling with the writing.

**ADV MOHLAMONYANE SC:** On page 282, Madam Chair.

**CHAIRPERSON:** 282.

**ADV MOHLAMONYANE SC:** Ja. On page 282, my learned junior directs my attention to a sentence that starts with, 'I certify', towards the bottom there, after a signature.

**CHAIRPERSON:** Please read it for me. I am struggling with the signature.

**ADV MOHLAMONYANE SC:** The signature appears to be in Mthiyane. Something like B Mthiyane or something.

**CHAIRPERSON:** No, no, no. Just read, I certify, if you can read that, commissioning.

**ADV MOHLAMONYANE SC:**

"I certify that the deponent has acknowledged that he knows and understand the content of this statement.

This statement is sworn before me, and the deponent signature was placed there on in my present at Richards Bay.”

Appears to be Richards Bay and... I cannot read that part;

“...on 31...”

It appears to be 31/7, July 2012 at 21.54. And the deponent signature, Madam Chair, appears above. Ja, there is a cross there, but there is a note there that appears to be a signature. But there is a cross there, above there.

**CHAIRPERSON:** And the commissioning? Where is the signature of the Commissioner of Oaths there? You would ordinarily, if I am correct, counsel, have at least a Commissioner of Oaths' date stamp there. So I do not see any date stamp. I do not see his signature. I do not see his name, that is the Commissioner of Oaths.

**ADV MOHLAMONYANE SC:** There is no date stamp. All what appears on this statement is an X mark. And after the X mark, there is a signature which appears to be...

**CHAIRPERSON:** Mthiyane.

**ADV MOHLAMONYANE SC:** Mthiyane.

**CHAIRPERSON:** But Mthiyane is the deponent, is it not? Who is Bhekinkosi?

**ADV MOHLAMONYANE SC:** The deponent is Dlodlo, Ndlondlo.

**CHAIRPERSON:** His names are Bhekinkosi Mthiyane

Ndlondlo.

**ADV MOHLAMONYANE SC:** Dondlo.

**CHAIRPERSON:** So this Mthiyane would ordinarily refer to the deponent, because that is his middle name.

**ADV MOHLAMONYANE SC:** Yes, possibly.

**CHAIRPERSON:** I am confused there because you have that middle name, Mthiyane.

**ADV MOHLAMONYANE SC:** Yes.

**CHAIRPERSON:** And that seems to be the deponent.

**ADV MOHLAMONYANE SC:** It seems to be the deponent, Madam Chair.

**CHAIRPERSON:** And I am asking you, counsel, where is the stamp of the Commissioner of Oaths? Or who is the Commissioner here? And where do I find it? This document has been properly commissioned.

**ADV MOHLAMONYANE SC:** It appears not to have been properly commissioned at face value. Because it says here in paragraph 14:

“I know and understand the content of the statement.”

Where after one would expect that there would be a signature of the deponent.

**CHAIRPERSON:** He must be talking to the Commissioner of Oaths there, he must be talking to the Commissioner of Oaths there.

**ADV MOHLAMONYANE SC:** Yes.

**CHAIRPERSON:** Or at least in front of him or her.

**ADV MOHLAMONYANE SC:** Yes, yes and then next, there is a statement that says, I certify. And the person who says, I certify, we expect that that person should be a Commissioner of Oaths. At the bottom, there is a signature there. It says Mthiyane, it looks like Mthiyane.

**ADV BALOYI-MERE SC:** Counsel, one would expect that the Commissioner would have said, I, so and so, certify that the deponent has acknowledged da, da, da, da. And at the end, even if he does not have a date stamp, because I suspect this was done at the airport, because it seems like it is Richards Bay Airport. Maybe they did not have a date stamp, but they should have had their name. And if you look at this whole affidavit, there is a common thread. This Mthiyane signed every page, the deponent. He put Mthiyane on every page. Which there is nothing wrong with it, but the only problem is the Commissioner of Oath. This is not proper commissioning.

**ADV MOHLAMONYANE SC:** Madam Baloyi-Mere, this is how it was, what it is. It is what it is.

**ADV NGCUKAITOBI SC:** Sorry, Madam Chair.

**ADV BALOYI-MERE SC:** Sorry, sorry about that. Ja, I will have them to repeat. I say, as one looks at this document, it appears as though there is a missing page, because it is written right up to the bottom. And if there is no other lines

for one to write, one would then have to turn over. I am just talking about possibilities. What we have here is a document that we can just say it is a declaration. That does not show to have been attested. So I am saying, is it not possible? At times when you copy documents, you do this and that, you find that some page or two go missing. And the appropriate thing would be to go back and check as to whether is there no such possibility.

**ADV NGCUKAITOBI SC:** Madam Chair, if I could, I do not know if I am going to help or make it worse, but our version does have the Commissioner's certificate, which we got from the evidence leader. For some reason, when they copied theirs, they missed that page.

**CHAIRPERSON:** I am saying, it means we must get that page. I do not have it. We do not have it. So please, let us have a copy of that document so that the record is complete.

**ADV MOHLAMONYANE SC:** I will see to it that it is accessed.

**CHAIRPERSON:** You would know, legally speaking, why we are enquiring about the commissioning of that statement.

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

**CHAIRPERSON:** It is important to have that last document. Thank you. Thank you, Advocate Ngcukayitobi.

**ADV MOHLAMONYANE SC:** Let us go back to the body of the affidavit, Advocate Batohi. You were dealing with

paragraph 149, and we are done dealing with it. Leap over to 150.

**ADV BATOHI:** So given the contents of the four statements that have just been referred to, and his replying affidavit, Booyesen invited Advocate Jiba to file a further affidavit to explain how she could have taken into account information on oath that objectively did not exist at the time of taking the decision. You will recall that there is one unsigned statement, and there is one statement that is signed two weeks after the certificates are authorised. Advocate Jiba did not file a further affidavit. However, Advocate Chauke did provide Advocate Hodes SC, with a memorandum setting out a response to Booyesen's replying affidavit. And a copy of the memorandum is attached, SB2.

**ADV MOHLAMONYANE SC:** Go to SB2, Advocate Batohi, on page 111, the bolded ones.

**CHAIRPERSON:** And reference is made to SB2 in paragraph 150 of Advocate Batohi's affidavit.

**ADV MOHLAMONYANE SC:** Yes, Madam Chair. Are you on page 111?

**ADV BATOHI:** Yes, I am.

**CHAIRPERSON:** And SB2 is at which page?

**ADV MOHLAMONYANE SC:** SB2-111. It is an internal memorandum. It was directed to Lawrence Hodes SC, from the Cato Manor Prosecution Team, Director of Public

Prosecutions, South Gauteng High Court, Johannesburg.

Can you confirm that?

**ADV BATOHI**: That is correct.

**ADV MOHLAMONYANE SC**: And the date is 15 August 2013.

**ADV BATOHI**: That is so.

**ADV MOHLAMONYANE SC**: Now, are you in a position to explain where this memorandum emanated? Where it comes from? Because you are saying it comes from Advocate Chauke. But we see here it is the Cato Manor Prosecution Team and the Director of Public Prosecutions, South Gauteng High Court.

**ADV BATOHI**: Yes. We have to refer to another docket, document, which is, Chairperson, I am trying to make sure that there is no confusion. And it is not clear in my affidavit. It is not set out. But there is another document in another bundle that refers to this. And it is Jiba's answering affidavit in the GCB proceedings that one needs to look at.

**ADV MOHLAMONYANE SC**: But for the moment, let us park that. Go to page 131 of the same document.

**ADV BATOHI**: Of which document?

**CHAIRPERSON**: SB2?

**ADV MOHLAMONYANE SC**: SB2.

**CHAIRPERSON**: [Indistinct – 0:42:28]

**ADV MOHLAMONYANE SC**: I am very sorry, my apologies.

**CHAIRPERSON**: Read it as it is, if it is SB2, 111, let it be.

**ADV MOHLAMONYANE SC:** Go to SB2-131.

**ADV BATOHI:** Yes, I am there.

**ADV MOHLAMONYANE SC:** It says, there:

“Kind regards,

Cato Manor Prosecution Team.”

**ADV BATOHI:** That is so.

**ADV MOHLAMONYANE SC:** Director of Public Prosecutions.

**ADV BATOHI:** Yes.

**ADV MOHLAMONYANE SC:** Johannesburg.

**ADV BATOHI:** Yes, that is so.

**ADV MOHLAMONYANE SC:** Is that of any significance? If you see on page 111, SB2, where it comes from. And kind regards, Cato Manor Prosecution Team, Director of Public Prosecutions. Is there anything of significance?

**ADV BATOHI:** Well, it is clear that the team was working under the authority of the DPP, Johannesburg.

**ADV MOHLAMONYANE SC:** Let us proceed then. Proceed to the next paragraph, 151.

**ADV BATOHI:** So the judge in this review application, Gorven J, in his judgment was critical of Jiba and there is a reference to a footnote there:

“Apart from the passage quoted from her affidavit above, Gorven J noted that Jiba did not otherwise contest Booyesen's version, that none of the statements in the

docket implicated him.

The learned judge concluded that, and I quote:

“The impugned decisions were arbitrary, offend the principle of legality, and therefore the rule of law, and were unconstitutional.”

Since there was no material which was considered by Jiba on which to rationally authorise a prosecution of Booyesen, the just and equitable consequence was to review the impugned decisions and set them aside.”

And that was where the review, so these decisions were set aside by the Gorven judgment. Jiba's authorisation to issue the racketeering certificates.

**ADV BALOYI-MERE SC:** Sorry, maybe before you continue, for completeness, can we get the date on which the racketeering certificates were issued or signed? Because there is a contention that one of the affidavit was signed after the certificates, but I do not seem to remember the date of the signing of the racketeering certificates.

**ADV MOHLAMONYANE SC:** May I help with that regard, Madam Baloyi-Mere? If you go back to paragraph 144, Advocate Batohi?

**ADV BATOHI:** Page 16?

**ADV MOHLAMONYANE SC:** Yes, 17 August, is that the date on which Jiba signed the racketeering certificates?

**ADV BATOHI:** Yes, that is correct. 17 August 2012.

**ADV MOHLAMONYANE SC:** Continue to 152.

**ADV BATOHI:** Advocate Shaun Abrahams was appointed the National Director on 18 June 2015, and he issued fresh racketeering certificates for the prosecution of Booysen and members of the Serious and Violent Crimes Unit on 13 February 2016.

**ADV MOHLAMONYANE SC:** Proceed.

**CHAIRPERSON:** I beg your pardon, before you proceed, counsel, the memorandum SB2-111, that page, is from the Cato Manor Prosecution Team, Director of Public Prosecution, South Gauteng High Court. Does it suggest, just by its mere mention of Director of Public Prosecution, South Gauteng High Court, Johannesburg, does it suggest that it was from Advocate Chauke? Or should we infer that it was from him? Because I do not see any signature of Advocate Chauke here or his name. Or should we infer that it is him who wrote the memo?

**ADV MOHLAMONYANE SC:** It can be inferred. Because there is no signature. For now, let it be inferred.

**CHAIRPERSON:** [Indistinct – 0:48:11]

**ADV MOHLAMONYANE SC:** May I take instructions? May I

confer?

**CHAIRPERSON:** You may, sir. Just take instructions so you can confer with counsel.

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair, for the opportunity. I have taken instructions and reference should be made to the documents referred to earlier.

**CHAIRPERSON:** It would be helpful if you can speak louder, counsel. Some of us, hearing aids are giving us problems

**ADV MOHLAMONYANE SC:** Indeed, I will try my best. I thought I should not shout, but I need to raise my voice a bit.

**CHAIRPERSON:** You may lift your mic.

**ADV MOHLAMONYANE SC:** Ja, well, maybe I should. Maybe I should, ja. Reference should be made to bundle ZC1 on page ZC00056, wherein Jiba's answering affidavit appears.

Specifically, 210 is relevant. It has already been read into the record and it says:

“Following the consultation, the prosecution team agreed that Advocate Chauke, as the DPP in charge of this matter, would be the liaison person between Advocate Hodes SC team and the prosecution team and would provide the Hodes SC team with all the facts and evidence in the dockets necessary from the

prosecution team to prepare an answer in answering affidavit.”

And then that suggests therefore that it was Advocate Chauke with the prosecution team that prepared this document to Lawrence Hodes.

**CHAIRPERSON:** Yes, thank you. You may proceed.

**ADV MOHLAMONYANE SC:** Let us go back, Advocate Batohi, to the paragraphs. You were dealing with paragraph 152, not so?

**ADV BATOHI:** Yes, I was. So just, I think I should maybe clarify something, Chairperson, to be clear, the suggestion is that the team prepared it, but Advocate Chauke would have handed it over as the liaison person to Advocate Hodes. There is no evidence, my understanding at the moment is that Advocate Chauke himself prepared this document. I want to be clear about that, Chairperson. Thank you. If I may proceed.

Chairperson, after the, I am now at paragraph 153. After the appointment, well, Advocate Abrahams was appointed in June 2015. As I said, he issued fresh racketeering certificates on the 13th of February 2016. When I took office in 2019, February, 1st of February, this was one of the matters that I needed to deal with, as it had received a lot of attention in the public space. It was also a matter that was the subject of the Mokgoro Commission that had

been put in place to look into the fitness to hold office of Advocate Mrwebi and Jiba.

And so when I assumed office... and Chairperson, I want to state at this point that paragraph 153 is a bit, I should say, lean in terms of detail because when we prepared this affidavit, I did not go into the detail of what the circumstances were when I requested this report to be prepared. But given the questions yesterday, I went and tried to see what exactly the position was when I requested the De Kock and his team to look into the authorisations.

And what emerged from that is that at the time, there was the litigation, Booyesen had brought litigation to in fact review the certificate authorised by Advocate Abrahams, Shaun Abrahams, and as the new National Director, I needed to decide what was the position of the NPA going to be in that litigation. And as a result of that, I appointed this panel to assist me to look into this matter. And the panel did its work. I have attached a copy of the report dated 27 June 2019 as SB3. And as a result of that, we withdrew the opposition to the review process that Booyesen had instituted.

**ADV MOHLAMONYANE SC:** Go to SB3, Advocate Batohi, which is on page SB3-132. It starts on page SB3-132.

**ADV BATOHI:** Yes, I am.

**CHAIRPERSON:** Which page?

**ADV MOHLAMONYANE SC:** Annexure SB3.

**CHAIRPERSON:** SB3?

**ADV MOHLAMONYANE SC:** Yes, Annexure SB3 to the papers, to the affidavit. It is an internal memorandum.

**ADV BATOHI:** That is correct.

**ADV MOHLAMONYANE SC:** Addressed to you.

**ADV BATOHI:** That is so.

**ADV MOHLAMONYANE SC:** From these advocates here, can you list them?

**ADV BATOHI:** Yes, it is from the panel that I had appointed to look into this matter. It was chaired by Advocate RJ de Kock. He was Deputy National Director of Public Prosecutions and the head of the NPS Business Unit in the NPA. Sadly, he passed away in January this year. The second panel member is Advocate Ivy Thenga. She is currently the Director of Public Prosecutions and was also at the time the DPP in Limpopo. The third is Advocate S Riley, who is a Deputy Director of Public Prosecutions, and I understand the coordinator of the Organised Crime Section in the Director of Public Prosecutions Office in Western Cape.

And the last one is Advocate ER Mamabolo, who sadly also passed away. He was working at the time at the NPA head office in what we refer to as a racketeering desk. So the racketeering desk at the NPA is where colleagues deal with all racketeering, requests for racketeering authorisations of a National Director, given that in terms of

the Prevention of Organised Crime Act it is the NDPP that authorises these racketeering prosecutions, there is a desk in the head office that manages all the racketeering requests for racketeering.

And Advocate Mamabolo was at that time working at that desk. And given his experience as well in racketeering matters, he was also included on the team, on the panel.

**ADV MOHLAMONYANE SC:** Go to Annexure SB12  
...[intervenes]

**ADV BALOYI-MERE SC:** Maybe before you go there, I just need some clarity. From the evidence that you have just given now, it appears that Advocate Mamabolo was roped into this panel by virtue of his sort of expertise in the racketeering environment. Is it correct?

**ADV BATOHI:** That is correct.

**ADV BALOYI-MERE SC:** And Advocate Thenga, what speciality, if at all, was he or she bringing?

**ADV BATOHI:** Let me explain. Advocate, I will deal with Advocate Thenga. She is the DPP of Limpopo. And of course all DPPs are, because racketeering authorisations are sent, a DPP will be the one that will recommend racketeering authorisations to the National Director when they emanate from the division. So all DPPs have experience with racketeering applications. She was also brought in because we needed a very senior member. We were dealing with a

National Director's authorisation. So she was brought in because of seniority and her expertise in dealing with racketeering referrals or applications.

Advocate Riley is the head of the Organised Crime Unit and she has experience and expertise in racketeering because a lot of the racketeering matters emanate from the organised crime environment. And Advocate RJ De Kock was the Deputy National Director of Public Prosecutions at the time. He, well, was he? Actually he was not. Let me rethink this because he was still the DPP in the Western Cape, my apologies. I must get, this happened in 2019. So he was also a DPP. He was later appointed Deputy National Director in 2021. So at the time he was also a DPP.

So both of them would have had experience with dealing with racketeering matters as DPPs who recommend to the National Director on whether to authorise or not.

**ADV BALOYI-MERE SC:** Right, thank you. I would appreciate that when I ask a question you answer the asked questions.

**ADV BATOHI:** My apologies, I was trying to help.

**ADV BALOYI-MERE SC:** Ja, not anticipated questions because at times one would not be going in that direction. Now, the issue that you appointed this panel to attend to is an issue that relates to the NDPP.

**ADV BATOHI:** That is correct.

**ADV BALOYI-MERE SC:** And it is of course common cause that all these panellists are people whose office was below the NDPP's office.

**ADV BATOHI:** That is correct.

**ADV BALOYI-MERE SC:** And in actual fact, the panel is constituted of people who are either deputy NDPPs or even Directors.

**ADV BATOHI:** Not a deputy NDPP, DPPs.

**ADV BALOYI-MERE SC:** DPPs, okay, that is fine, thank you.

**CHAIRPERSON:** You may proceed, Advocate Mohlamonyane.

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair. Advocate Batohi, go to page SB 12, Annexure SB 12, page 283 of your bundle. It is the last page of the memorandum, the internal memorandum from the team.

**ADV BATOHI:** I see that.

**ADV MOHLAMONYANE SC:** The signature that appears on top there is that of Advocate de Kock.

**ADV BATOHI:** That is correct.

**ADV MOHLAMONYANE SC:** They made recommendations, not so?

**ADV BATOHI:** That is correct.

**ADV MOHLAMONYANE SC:** Which recommendations are on page SB3-228. Under column F.

**ADV BATOHI:** That is correct.

**ADV MOHLAMONYANE SC:** Be kind enough to read the recommendations that were made to you into the record.

**ADV BATOHI:** From paragraph F:

“Recommendations

The following recommendations are made:

1. The racketeering authorisations issued in terms of section 2(4) of the Prevention of Organised Crime Act of 1998 by the acting NDPP Advocate Jiba on 17 August 2012 is invalid.
2. The racketeering authorisations issued in terms of sections 2(4) of the Prevention of Organised Crime Act 121 of 1998 by the NDPP Advocate S Abrahams on the 16th of February 2016 is invalid.
3. The prosecution instituted against all the accused on the racketeering charges based on the authorisations issued by the acting NDPP N Jiba and NDPP S Abrahams, as set out above should be withdrawn.
4. The Director of Public Prosecutions, KwaZulu Natal should, in compliance with the prosecution policy of the



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

National Prosecuting Authority, review the evidence in respect of the remaining charges preferred against the accused and decide whether or not to proceed with the prosecution against the individual accused named in those charges.

5. A copy of this memorandum and its annexures should be provided to the DPP KZN.”

**ADV MOHLAMONYANE SC:** Fine, let us go back to the body of the affidavit now where we were on page 65.

**ADV BATOHI:** Chairperson, if I just can mention that the last page of SB3 is missing from the original and that has been filed by way of a supplementary affidavit which is now SB12 at paragraph, at page 283. So this last page was subsequently filed. Thank you, Chairperson.

**CHAIRPERSON:** What is the significance of item 5 of the recommendation?

**ADV BATOHI:** If I can just be directed to the page again.

**CHAIRPERSON:** It is that line that says a copy of this memorandum and its annexures should be provided to the DPP KZN. What is the significance of that?

**ADV BATOHI:** Sure. Chairperson, this matter had emanated from the Director of Public Prosecutions, KwaZulu Natal, who

had jurisdiction to deal with this matter. The panel was therefore directing or recommending, not directing, recommending to the National Director that these documents, if I could just be referred to the page, I flipped through so that I can... counsel?

**ADV MOHLAMONYANE SC:** SB3-228.

**ADV BATOHI:** Oh, thank you, just one, thank you. Yes, so the panel was recommending that a copy of this memorandum and annexures should be sent to the DPP that has jurisdiction in this matter, so that she could actually consider, as you look at paragraph 4, their recommendation was that she should review the evidence in respect of the remaining charges preferred against the accused and decide whether or not to prosecute in respect of the individual accused persons. So I suppose they had, in their view, they thought it would be useful for the DPP of KZN to have a copy of this, their report and the annexures.

**MS RAMAGAGA:** Thank you for that. As a follow-up... as a follow-up, should we assume that the team that drafted the memorandum at SB1F, page 109, that dealt with, okay, SB2-111, that dealt with the information required in reply for the review application, should we assume that this team had been disbanded at this time such that this memorandum was only sent to the DPP KwaZulu-Natal? What would have happened to this team that is at SB2-111?

**ADV BATOHI**: Thank you. The prosecutors that were, the prosecutors that were part of this team, I did direct that they return to their offices where they were stationed. One was from the Northwest and there were a few from Johannesburg. I cannot recall the precise date on this, on when this was done. So it would have been sometime, it was definitely sometime in 2019, a couple of months after I took office, but I cannot remember. So the team was certainly disbanded and sent back to their DPP offices where they had been stationed.

**MS RAMAGAGA**: Thank you.

**ADV BALOYI-MERE SC**: Right. Did you act on the recommendations that appear on this SB3?

**ADV BATOHI**: Thank you. I think we, my affidavit does deal with that. So it actually is not comprehensive. So the first thing I did as a result of this, these recommendations are that I withdrew our, the NPA's opposition to the Booyesen review application that was pending at that time. So I withdrew the opposition and then I should, I do not have documentation. I am speaking from memory and I stand to be corrected.

But I did, I think there is a letter from, that I sent to Advocate Zungu that should be attached, but I then did withdraw, I hope I have the right term because I do not have my documents in front of me, the racketeering certificates that were authorised by the previous National Directors and then withdrew the opposition. So in essence, that is what I

did. I then transferred, sent all the, sent a letter to the DPP in KZN and ...[intervenes]

**ADV MOHLAMONYANE SC:** That you are dealing with...

**ADV BATOHI:** ...that is on 154.

**ADV MOHLAMONYANE SC:** Advocate Batohi, sorry to intercept you. That you are dealing with in paragraph 154.

**ADV BATOHI:** Yes, thank you, counsel. On the 16th of July, I wrote to the acting DPP KZN, Advocate Zungu at the time, now Advocate Harrison, who is now a permanently appointed DPP, and requested that she evaluates the evidence and makes a decision in respect of each of the dockets and decide whether or not to prosecute any individuals on those dockets. As I mentioned in my statement, given the possible impact on the decision to withdraw on the families of the deceased, I urged her to contact the next of kin and to explain the implications of the decision. She considered all the matters in paragraph 155 of my affidavit and declined to prosecute in all of them except for one. That matter proceeded to trial and the accused were acquitted.

**MS RAMAGAGA:** [Indistinct – 1:12:45]

**ADV BATOHI:** That is correct.

**MS RAMAGAGA:** Your answer is yes, I acted on the recommendations.

**ADV BATOHI:** That is correct.

**MS RAMAGAGA:** When you acted on the recommendations,

had you satisfied yourself about the reliability of these recommendations?

**ADV BATOHI**: I certainly had every confidence in the team that I had appointed. They did a very, very comprehensive process, which they set out in their report, and I was satisfied that I could rely on their recommendation.

**MS RAMAGAGA**: Did you satisfy yourself by looking at the documents that served before them in order to make a decision? Because the panel just makes recommendations. At the end of the day, the buck stops with you.

**ADV BATOHI**: That is correct.

**MS RAMAGAGA**: So what steps did you take to satisfy yourself that you could live with the recommendations and actually it would be up to implement them?

**ADV BATOHI**: I looked at their report and they had certain annexures that was attached to the report. I cannot recall what those annexures were, but they are referred to in the report. And on my confidence in the ability and expertise of the panel, their report and annexures, I made a decision.

**MS RAMAGAGA**: So it would be correct to understand your answer to be that you relied on the report in its entirety and the trust that you have in the panel members' expertise.

**ADV BATOHI**: That is correct.

**MS RAMAGAGA**: Thank you.

**CHAIRPERSON**: Proceed, sir.

**ADV MOHLAMONYANE SC:** Go back to paragraph 154, Advocate Batohi, and let us go to SB4. The, it is on page 229. The letter you wrote to Advocate E Zungu at the time. This is the letter that you referred to earlier.

**ADV BATOHI:** That is correct.

**ADV MOHLAMONYANE SC:** Go to paragraph 4 on page 230 and read it into the record.

**ADV BATOHI:**

“In respect of the predicate offences as set out in the indictment, the panel concluded that there are various challenges with the evidence and the investigations in respect of each docket.

In this regard, you are referred to paragraph C, D,E of the report. You are accordingly requested to evaluate the evidence in each docket and decide whether to prosecute the individuals who may be implicated in those matters.

I bring to your attention that the panel also found that there is insufficient evidence against General Booysen in respect of other charges preferred against him. Please take this into account in your evaluation of the evidence against him in

respect of these, those predicate offences  
in which he is charged.”

**ADV MOHLAMONYANE SC:** Read paragraph 5 into the  
record.

**ADV BATOHI:**

“As discussed with you, please contact with  
the next of kin of the deceased persons and  
explain the implications of my decision. It  
is important for them to know that the  
withdrawal of the racketeering charges  
does not mean that there will be no justice  
for victims of crimes. You will be  
considering whether there is sufficient  
evidence to charge any persons for other  
offences, including murder.”

**ADV MOHLAMONYANE SC:** Okay, let us go back to the body  
of the affidavit and proceed.

**ADV BALOYI-MERE SC:** Before you go back, 4, maybe just  
to satisfy my curiosity, why did you specifically in that  
paragraph four sing out General Booysen, when you, it seems  
like you have then submitted to the whole report of the panel  
and its findings. Why specifically in that paragraph single out  
General Booysen?

**ADV BATOHI:** I am trying to cast myself back to that point.  
And I am just reading the paragraph to understand the context

which might help me.

**ADV BALOYI-MERE SC:** If you can just go to the sentence that starts with, you are according, because you tell Advocate Zungu that you can evaluate the evidence in each docket and decide whether to prosecute the individuals or not. And you are correct, that is the DPP's discretion whether to prosecute or not. But you take it further and say, I bring to your attention that the panel found that there is insufficient evidence against General Booyen in respect of other charges. Why specifically single him out?

**ADV BATOHI:** I am not sure, it may have been because he had brought the review application. I am not sure, perhaps that was the reason is because he was the one that was the applicant in the review applications. Thank you.

**ADV MOHLAMONYANE SC:** To assist you, Advocate Batohi, perhaps to answer the question, can go to paragraph 3 of SB4, of the same document as before on page 229. Paragraph 3, the last sentence there starts with, after careful consideration of the report and other relevant material, and the recommendation of the panel. Is it not that the panel had recommended, made certain recommendation about the racketeering certificates?

**ADV BATOHI:** That is correct.

**ADV MOHLAMONYANE SC:** What were their recommendations?

**ADV BATOHI:** If you could direct me to the page.

**ADV MOHLAMONYANE SC:** The recommendations appear on page SB3-228. We dealt with earlier.

**ADV BATOHI:** The recommendation specifically with regard to the racketeering authorisations are 1 and 2 of paragraph F.

“The following recommendations are made:

1. The racketeering authorisations issued in terms of section 2(4) of the Prevention of Organised Crime, Act 121 of 1998, by the acting NDPP Advocate Jiba on 17 August 2012 is invalid.
2. The racketeering authorisations issued in terms of section 2(4) of the Prevention of Organised Crime Act 121 of 1998 by the NDPP Advocate S Abrahams on 16 February 2016 is invalid.”

And I suppose 3 also is relevant.

3. “The prosecution instituted against all the accused on the racketeering charges based on the authorisations issued by the acting NDPP Jiba and NDPP S Abrahams as set out above

should be withdrawn.”

**ADV MOHLAMONYANE SC:** Is that anything to do with General Booysen? These recommendations that you have just alluded to.

**ADV BATOHI:** They included him. He was one of the accused in the matter and was facing racketeering charges.

**CHAIRPERSON:** It follows why he made an application to review the decision authorising the certificates, is it not? Proceed, counsel.

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair. Go back to the body of the affidavit. We dealt with 155. You dealt with 155 and proceed from 156 where you deal with the essence of the allegations against Advocate Chauke.

**ADV BATOHI:** Yes. So the essence of the allegations against Advocate Chauke is that whilst being the DPP of South Gauteng, he assumed *de facto* role of the DPP in the prosecution of alleged crimes committed in KwaZulu-Natal, over which he had no jurisdiction. The acting DPP of KwaZulu-Natal at the time, Advocate Simphiwe Cyril Mlotshwa, and later Advocate Moipone Noko had jurisdiction over these crimes.

**ADV MOHLAMONYANE SC:** Hold it there. You make reference in this paragraph to a footnote 115.

**ADV BATOHI:** Yes.

**ADV MOHLAMONYANE SC:** Where you refer to Advocate

Chauke's confirmatory affidavit in General Counsel of the Bar of South Africa v. Jiba and others.

**ADV BATOHI**: That is correct.

**ADV MOHLAMONYANE SC**: Which has been filed in the record under bundle Zondo Commission. Now I want to take you to the bundle itself that contains this confirmatory affidavit. Go to ZC, ZC1.

**ADV BATOHI**: Yes.

**ADV MOHLAMONYANE SC**: Go to page 164. ZC00164.

**ADV BATOHI**: Yes.

**ADV MOHLAMONYANE SC**: Therein you will find a confirmatory affidavit of Andrew Masenyane Chauke. Is that the affidavit you are referring to?

**ADV BATOHI**: Yes, that is correct.

**ADV MOHLAMONYANE SC**: Go to the next page. Where this affidavit ends, on page 165, ZC00165. Can you read into the record paragraph 3?

**ADV BATOHI**: So this is a confirmatory affidavit of Advocate Chauke, at paragraph 3:

“I have read the founding affidavit of Nomgcobo Jiba, the first respondent in these proceedings, and I confirm the correctness of its contents insofar as they relate to me.”

**ADV MOHLAMONYANE SC**: Is he referring to the same

affidavit that we referred to earlier?

**CHAIRPERSON:** Which?

**ADV MOHLAMONYANE SC:** Answering affidavit of Jiba, Madam Chair.

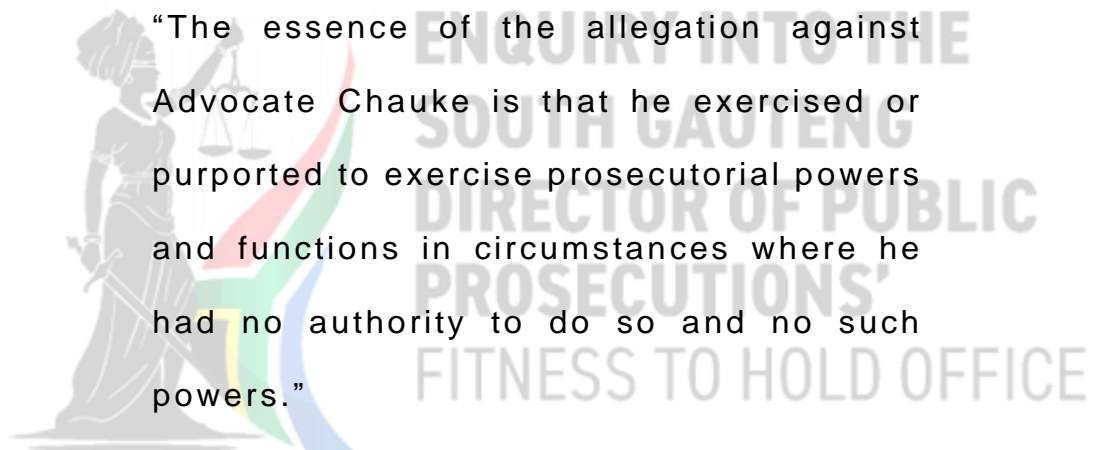
**ADV BATOHI:** In the GCB proceedings?

**ADV MOHLAMONYANE SC:** Yes. Which is contained in ZC1 on page 56 in paragraph 210. It is confirmatory?

**ADV BATOHI:** That is correct.

**ADV MOHLAMONYANE SC:** You may proceed. 156.2.

**ADV BATOHI:** Yes, the next:



“The essence of the allegation against Advocate Chauke is that he exercised or purported to exercise prosecutorial powers and functions in circumstances where he had no authority to do so and no such powers.”

Should I proceed?

**ADV MOHLAMONYANE SC:** Proceed, yes.

**ADV BATOHI:** 156.3:

“He undermined or attempted to undermine the authority of the acting DPP of KwaZulu-Natal...”

Should I proceed to the end, counsel, or?

**ADV MOHLAMONYANE SC:** Proceed to the end, yes.

**ADV BATOHI:**

“...and he settled the affidavit of Advocate Jiba and allegations contained in Advocate Jiba's affidavit were found to be false, and as such, he made himself party to these false allegations.”

**CHAIRPERSON:** [Indistinct – 1:27:37]

**ADV MOHLAMONYANE SC:** [Indistinct – 1:27:42]

**CHAIRPERSON:** [Indistinct – 1:27:45] Before you go to Mdluli, I would like to ask some questions in relation to paragraph 156, but you can proceed. So that I do not disturb your line of thinking.

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair. Advocate Batohi, go to ZC2, which is Zondo Commission bundle.

**CHAIRPERSON:** What bundle are you referring to, counsel? Volume 2.

**ADV MOHLAMONYANE SC:** Yes, volume 2, ZC2.

**ADV BATOHI:** Sorry, which is the document, counsel? I am trying to find... I am not sure that I have the document that counsel is referring to with me.

**CHAIRPERSON:** Would you please ask your junior to assist Advocate Batohi? May I just maybe read the face of this bundle, the documents that are contained, but very quickly. It is the affidavit of, answering affidavit of Mr Booysen. That of Mr Mlotshwa. Jiba, GCB. Answering affidavit Jiba.

Confirmatory affidavit of Chauke. Answering affidavit of Jiba. The list goes on. It is quite long. I am not sure whether we should read that. Which one are you referring to?

**ADV MOHLAMONYANE SC:** [Indistinct – 1:30:37] Zero, zero, zero, ZC2. Zero, zero, zero, 243.

**CHAIRPERSON:** [Indistinct – 1:30:52]

**ADV MOHLAMONYANE SC:** 000243.

**CHAIRPERSON:** [Indistinct – 1:31:07]

**ADV MOHLAMONYANE SC:** No, I am looking for the affidavit which he deposed to in the State Capture Commission.

**CHAIRPERSON:** Who?

**ADV MOHLAMONYANE SC:** Advocate Chauke.

**CHAIRPERSON:** We have his confirmatory affidavit before the Zondo Commission. I am not aware of any other affidavit, a founding affidavit by Advocate Chauke before the Zondo Commission.

**ADV MOHLAMONYANE SC:** Well, it is my mistake. I am informed that it is actually in LO. 243.

**CHAIRPERSON:** I beg your pardon, counsel?

**ADV MOHLAMONYANE SC:** I have been advised that it is not ZC2. It is my mistake, and I apologise for that. It is actually in LO1.

**CHAIRPERSON:** LO is the legal opinions.

**ADV MOHLAMONYANE SC:** Legal opinions, yes.

**CHAIRPERSON:** LO1.

**ADV MOHLAMONYANE SC:** LO1, Madam Chair. 243. LO1, 243. 00243.

**CHAIRPERSON:** That annexure B, Advocate Chauke's affidavit, SCC.

**ADV MOHLAMONYANE SC:** It is actually a witness statement. It is written here as witness statement. Advocate Batohi, do you have a copy?

**ADV BATOHI:** I do, yes.

**ADV MOHLAMONYANE SC:** Thank you. I am sorry for the confusion. I refer you to, specifically to page 00266, paragraph 60 thereof.

**CHAIRPERSON:** And this affidavit or witness statement would have been placed before the Zondo Commission.

**ADV MOHLAMONYANE SC:** That is so, Madam Chair. Advocate Batohi, maybe to confirm what Madam Chair has just raised, go back to page 243, LO00243.

**ADV BATOHI:** Yes.

**ADV MOHLAMONYANE SC:** On top there, can you read what stands there?

**ADV BATOHI:**

“Judicial Commission of Enquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector, including Organs of State.”

**ADV MOHLAMONYANE SC:** And then this was an

application of, in Re, read that into the record.

**ADV BATOHI:**

“Application of Kehla Masenyane Andrew Chauke, the applicant, for condoning the late filing of the affidavit, and the application for leave to cross-examine General Johan Booysen (Booyesen), and Cyril Simphiwe Mlotshwa (Mlotshwa), in terms of Rule 11.2, read with Rule 3.3.6 of the rules governing proceedings of the Judicial Commission of Enquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector, including Organs of State (the Rules of Commission).”

**ADV MOHLAMONYANE SC:** Now, direct your attention to ...[intervenes]

**CHAIRPERSON:** It is not clear to me why this affidavit is placed in the bundle of legal opinions. Do you have an idea why?

**ADV MOHLAMONYANE SC:** I do not have an idea, Madam Chair.

**ADV BATOHI:** I can try to help, Chairperson.

**CHAIRPERSON:** Let counsel answer first. You may confer with your junior. I see she is talking to you.

**ADV MOHLAMONYANE SC:** My instructions are, this was a document contained in Dr Broughton's supplementary opinion, legal opinion, which he drafted for the National Director of Public Prosecutions.

**CHAIRPERSON:** Dr Broughton.

**ADV MOHLAMONYANE SC:** It accompanied the opinion of Dr Broughton.

**CHAIRPERSON:** Thank you.

**ADV MOHLAMONYANE SC:** Go to paragraph 60, Advocate Batohi, on page 00266, LO1-00266.

**ADV BATOHI:** I am there.

**ADV MOHLAMONYANE SC:** Can you read?

**CHAIRPERSON:** Give me the page again? Give me the page?

**ADV MOHLAMONYANE SC:** It is LO1-00266.

**CHAIRPERSON:** 0226.

**ADV MOHLAMONYANE SC:** 266.

**CHAIRPERSON:** 266.

**ADV MOHLAMONYANE SC:** Would you read paragraph 60 into the record?

**ADV BATOHI:**

“Jiba requested me to assist with putting together a prosecution team which will guide members of the police and members of IPID (the Cato Manor team) on the

investigation and prosecution of the matters. I agreed to be the coordinator of the prosecution team. The prosecution team was comprised of the following advocates:

Advocate S Maema, DDPP (team leader)  
(Maema)

Advocate KR Mathenjwa, DDPP (co-team leader) (Mathenjwa)

Senior State Advocate M Ntlakaza

Senior State Advocate JJ Mlotshwa

Senior State Advocate F Futshane

Senior State Advocate P Moleko.”

That is the team.

**ADV MOHLAMONYANE SC:** Go to the next page, LO-00267 and read paragraph 62 into the record.

**ADV BATOHI:**

“My role as team coordinator was deal with logistics and administrative matters of the prosecution team, ensuring coordination between the various stakeholders. My involvement excluded taking prosecutorial decision whether to prosecute or not. Feedback and briefing on the team to Jiba including the submission of documentation

from prosecution team to the NDPP.”

**ADV MOHLAMONYANE SC:** Madam Chair, may I take a moment to confer with my junior?

**CHAIRPERSON:** Yes.

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair. Let me take you back to bundle ZC, ZC1, page 0056, to which reference has been made earlier.

**ADV BATOHI:** Yes, I am there.

**ADV MOHLAMONYANE SC:** Paragraph 210 ...[intervenes]

**CHAIRPERSON:** Which page?

**ADV MOHLAMONYANE SC:** Page ZC0056.

**CHAIRPERSON:** Paragraph 210?

**ADV MOHLAMONYANE SC:** Paragraph 210, Madam Chair. You remember earlier on you mentioned and you read this into the record where Jiba says Advocate Chauke as the DPP in charge of this matter.

**ADV BATOHI:** That is correct.

**ADV MOHLAMONYANE SC:** How does it relate to him being a coordinator? Are you in a position to explain that?

**ADV BATOHI:** Well, clearly what this was reflecting is that the DPP in whose area of jurisdiction the matter was, was not in charge of this matter. That is the KZN DPP. But the DPP in Johannesburg was in charge of this matter. And counsel will no doubt take me through aspects of the evidence which will demonstrate that Advocate Chauke was in fact, the *de*

*facto* DPP in this matter. Without the legal authority.

**CHAIRPERSON:** I do not understand the answer. Would you please repeat the answer?

**ADV BATOHI:** Chairperson, I was saying that what this means is that Advocate Chauke was the DPP in charge of this matter. And firstly, that meant that the DPP in KwaZulu-Natal ...[intervenes]

**CHAIRPERSON:** In charge of this matter.

**ADV BATOHI:** That is correct, Chairperson.

**CHAIRPERSON:** What matter?

**ADV BATOHI:** Chairperson, this particular matter related to the review proceedings that Booysen had brought. Let me just make sure I get this right. To... to review the authorisations, the racketeering authorisations by the acting National Director Jiba. So the, let me get my thoughts right, Chairperson. There was... a team was set in place to look into or to investigate, prosecute, work with the police to put together, maybe I am using the wrong term, but to investigate and prosecute racketeering charges against the Serious and Violent Crimes unit of the police. And Advocate Chauke was, as we say, in charge of the team, the prosecution team that was put together to deal with this matter.

**CHAIRPERSON:** [Indistinct – 1:46:02]

**ADV BATOHI:** Chairperson, as the DPP in charge of this matter who would be the liaison person between Hodes and

the team. So the liaison aspect relates only to the liaison between Hodes SC and the team. Hodes SC had been briefed to deal with, I am not sure if it is just the appeal or other aspects of the litigation as well.

**CHAIRPERSON:** Proceed, I will revert back to that question, I think, later, thank you.

**ADV MOHLAMONYANE SC:** I want to refer you to LO3.

**ADV BATOHI:** What page?

**ADV MOHLAMONYANE SC:** Page 780. On page 780, you will find an application for authorisation. LO3, are you there?

**ADV BATOHI:** Yes, I am.

**ADV MOHLAMONYANE SC:** Can you explain this document?

**ADV BATOHI:** This is an application for authorisation as the subject line says, in terms of section 2(4) of the POCA Act, that is short form for Prevention of Organised Crime Act 121 of 1998 in the State versus Booyesen, Johan Wessel and others. It is a memorandum on the Director of Public Prosecutions Kwazulu-Natal letterhead. It is addressed to Advocate Jiba as the National Director of Public Prosecutions. It is from Advocate Noko Mashilo, acting DPP of Kwazulu-Natal, dated 15 August 2012. Paragraph one states:

“Herewith the following:

- 1.1 Application for authority in terms of section 2(4) of the Prevention of

Organised Crime Act of 1998 for your consideration and approval.

1.2 The proposed indictment.

1.3 The draft authorisations for section 2(1)(e) and 2(1)(f) respectively.

I have perused the documents and recommend the application.

The accused have appeared in the Regional Court Durban and the matter has been postponed to 24 August 2012 for racketeering authorisation. 18 of the accused persons are on bail and 12 other accused persons were added to the charge sheet.”

It has the signature of Advocate Chauke above what is, well, Advocate Noko Mashilo, acting DPP Kwazulu-Natal, but signed by Advocate Chauke.

**ADV MOHLAMONYANE SC:** Now...

**CHAIRPERSON:** Counsel, just allow me, I do not want to disrupt your line of leading evidence, when Advocate Ngcukayitobi dealt with his opening address, I postponed this question in relation to the terms of reference. If that can be cleared, because we may find ourselves being all over the show without necessarily directing ourselves to the very key issues that are reflected in the terms of reference. When you

look at paragraph 3 of the Gazette in terms of reference, reference is made to the fitness of Advocate Chauke to hold office.

And this enquiry has to enquire into those aspects that are referred to in paragraph 3.1 in the sub-paragraphs and 3.2. For our purpose under this rubric, the Booyesen's matter or Cato Manor matter, we have to make an assessment regarding 3.1. Now in 3.1, it is alleged that it is his direct or indirect conduct and his propriety to hold office based on information, including but not limited to those aspects, including in 3.1.1, the institution of the racketeering charges. Are you going to deal with these concepts, his direct or indirect conduct by placing clear evidence before us, so that we do not find ourselves looking all over the show?

**ADV MOHLAMONYANE SC:** We will, Madam Chair. We will place evidence as you are seeking to do now, place evidence before this panel.

**CHAIRPERSON:** Yes, sir, as you deal with this evidence, if you can assist us that you are now addressing a specific aspect of the terms of reference, it will certainly help us, because we have individual paragraphs and sub-paragraphs that deals with different allegations levelled against Advocate Chauke. And I would assume that as we move with this hearing, we will know precisely the relevance of each and every piece of evidence in relation to this terms of reference,

or at least these allegations that are levelled against him, Advocate Chauke.

**ADV MOHLAMONYANE SC:** I hear you.

**CHAIRPERSON:** You understand what I am trying to say?

**ADV MOHLAMONYANE SC:** I do, Madam Chair.

**CHAIRPERSON:** I interrupted you, but I think this will be an appropriate time to take a tea break. And you will take it from where we left, bearing in mind what I have just mentioned to you, counsel.

### **ENQUIRY ADJOURNS**

### **ENQUIRY RESUMES**

**CHAIRPERSON:** When we adjourned, I referred to the terms of reference as gazetted. And I thought that to guide all of us as to where we are, where we are going, we should actually be using these terms and characterising the issues as per the terms and know what we are addressing. Counsel, that may be helpful to you and to your team as you proceed. Of course, I cannot dictate how you should proceed. But I thought that that is the best way, so that these terms will guide us to which evidence we should look at as we are going along. Also, for the purpose of those people who have not had a sight of the terms or even the record itself, I will pause there. You may proceed.

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

**ADV BATOHI:** You may proceed.

**ADV MOHLAMONYANE SC:** I have considered what Madam Chair has advised me on. And at the moment, I seem to lose track of certain issues that I need to put before this tribunal. And I am putting forward an application that the matter be adjourned so that I can put myself together and be able to marshal these proceedings in the best way possible.

**CHAIRPERSON:** Counsel just lift up your mic, please. Up a little bit.

**ADV MOHLAMONYANE SC:** Up a little bit.

**CHAIRPERSON:** Yes, sir. Yes, sir.

**ADV MOHLAMONYANE SC:** I am saying I am mindful of the fact that we have to proceed with the matter and try to cover mileage. But I am asking the panel to give me more time and to put myself together. And because I am losing certain track of certain documents that are important, which need to be placed before this tribunal. If you can give me time until Monday, and then we will proceed.

**CHAIRPERSON:** Perhaps let us start from where I began and ended. Because we have different ways of presenting evidence. We have different styles of advocacy in our advocacy training. So once we have the terms, I think if you agree, for instance, if you agree that your evidence should be guided by the terms, that will assist us not to be all over the show, and to have pertinent bundles or documents in relation to each and every ...[intervenes]

**ADV MOHLAMONYANE SC:** Aspect.

**CHAIRPERSON:** ...characterised issue.

**ADV MOHLAMONYANE SC:** Issue.

**CHAIRPERSON:** In other words, if you characterise the issues as per the terms of reference, you will know which evidence will be or is relevant to those aspects that you would have characterised.

**ADV MOHLAMONYANE SC:** Indeed. I fully agree with you, Madam Chair. That is why I am a little derailed, because that was not my line of dealing with it. But I take it, now I request time in order for me to be able to say, we are now dealing with paragraph, for instance, 3 or paragraph 2 of the terms of reference. And it gives me a bit of a challenge at this moment to be able to say, this relates to paragraph 3.1, 3.1.1. However, even though it says, but not limited to matters related to these allegations, I need to be particular going forward, unfortunately. And I know my request may not go down well with the panel, but this is a situation I find myself in.

**CHAIRPERSON:** I suppose you have discussed this matter with your team, Advocate Hulley and the junior, are you comfortable to proceed on the approach, your approach, at least until 1 o'clock, so that we can make progress? Alternatively, if you think this proposed approach will make it easier for you to pattern or to fashion your evidence, then we

can talk. You have the two options. To proceed the way you have on your own approach, alternatively to adjourn and you try to pattern your evidence following the terms of reference, characterising the issues in line with the terms, then presenting evidence.

**ADV MOHLAMONYANE SC:** I take it, Madam Chair, that it will be appropriate as advised, in order to contextualise the evidence of Advocate Batohi within the terms of reference, to take that line.

**CHAIRPERSON:** Advocate Mohlamonyane, I suppose you have discussed this as a team and you are all agreeable on the proposed approach.

**ADV MOHLAMONYANE SC:** Yes, as a team we are agreeable, but I must confess, I omitted to alert my learned colleagues, the Chauke team.

**CHAIRPERSON:** I am talking about your team.

**ADV MOHLAMONYANE SC:** Yes, we discussed it.

**CHAIRPERSON:** You discussed it.

**ADV MOHLAMONYANE SC:** Indeed, Madam Chair, we did.

**CHAIRPERSON:** Advocate Ngcukayitobi, you remember right at the outset of your opening address, I took you straight to the terms of reference and I said, I am tempted to ask you questions on those aspects. But I immediately cautioned myself and I said, I thought it was unfair to you and your client to be expected to answer these very questions that have

drawn to the attention of counsel Advocate Mohlamonyane. It is for that reason that I thought that in any trial you are guided by the issues. You are guided by the terms of reference here.

And if you go step by step using the terms of reference, we would be in a position to gather ourselves, to gather the pertinent evidence that is relevant to each and every aspect of the terms. Then we will not find ourselves paging through looking for documents the way we have been doing. It is going to make it even more difficult for us when we prepare the report because we are trying to patch, as if you are cutting and pasting. But it should be easy to have a patent or a properly structured evidence in line with the terms because the issues are already there in the terms of reference.

So I think we should consider that. But let me hear from you, from your side, if you have anything to say. I know this is not a matter on your table in the sense that it is not your issue.

**ADV NGCUKAITOBI SC:** No, Madam Chair, if we can get an early break, we would appreciate it. [Laughter]

**CHAIRPERSON:** Counsel, this is not about an early break. We have to work. And as we work as a team, it will also help you, on the very same terms, because I asked you that question right at the beginning, and I withdrew it. But I think

it will help all of us in our respective duties to make sure that we have the evidence or the facts because we are on a fact-finding mission here. And we will make a determination on all those facts, for or against. And so it is not about adjourning early because it is Friday.

**ADV NGCUKAITOBI SC:** Madam Chair, I do have something else. We have no objection to the postponement request for Monday, just to record that. We have one more request. We have received the section 41(6) authorisations that we had requested, which we are grateful for. But we have now got another witness who is an employee of the NPA for which we will be making a request. And I assume it would be speedily attended to Advocate Mathenjwa. Thank you, Madam Chair.

**CHAIRPERSON:** Have you made the request already?

**ADV NGCUKAITOBI SC:** No, we want to just highlight that because we would have difficulties approaching Ms Batohi outside of the proceedings, now that she has started giving evidence.

**CHAIRPERSON:** I suppose through you, counsel, Advocate Mohlamonyane, through you, I suppose this request will be addressed with the witness.

**ADV MOHLAMONYANE SC:** It will be addressed, Madam Chair.

**CHAIRPERSON:** And Advocate Batohi, you hear?

**ADV BATOHI:** Yes, Chairperson. We will have it. We do

not even need a request. We have the template. We will add Advocate Mathenjwa's name and submit one today. They will get it today.

**CHAIRPERSON:** Yes, thank you, Advocate Mohlamonyane. We are minded to grant you the indulgence, but we would like to take an adjournment and reflect probably on other matters that we might want to bring to the attention of the parties. And after this break, which will probably be a 30-minute break, then we will reconvene.

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

**CHAIRPERSON:** And grant your request.

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

**CHAIRPERSON:** We will take a 30-minute break and reconvene after 30 minutes. Let us say we will reconvene at half past 12.

**ENQUIRY ADJOURNS**

**ENQUIRY RESUMES**

**CHAIRPERSON:** Good afternoon, counsel.

**ADV MOHLAMONYANE SC:** Good afternoon.

**CHAIRPERSON:** When we adjourned, we needed to look into several matters that we thought we should bring to your attention. We subsequently sent our researchers to you with some items that we thought you should reflect upon and indicate whether they have been complied with, in particular, matters that were referred into the agreement that was made

the order or directive. There are other matters that have been raised, which we believe you have discussed, or you will discuss in due course, so that by next week, all those matters should have been dealt with.

I take that you have agreed amongst yourselves on how those matters will be addressed. In particular, we wish to impress upon the NPA that when you file a record, please make sure that you file documents that are properly paginated. Some of the documents that were filed apparently today, in compliance with the agreement, have not been paginated. I am told so. I am not reopening, I am just giving an example because our clerks look into the computer and they realise that you complied, but the documents are not properly paginated, those dockets, among others.

I suppose that because you have now looked into those matters and have agreed, by Monday, you should be ready, Advocate Mohlamonyane, adopting the approach that we have suggested to you, so that you can have a well-structured evidence. And we should not be going back and forth by next week because we are running now more behind schedule. Advocate Batohi has been here now for a week and, obviously, she has to come back.

So let us try to get our house in order and assist one another. Is there anything that you would like to draw to our attention other than what we are mentioning to you?

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair. Perhaps I should bring to your attention that it was not my understanding that when I comply in terms of the agreement between us and the Chauke team, that would constitute part of the record, because those documents were requested by the Chauke team. And in my understanding, they should not form part of the record. They requested those documents for their own purposes. That is how I understood it.

**CHAIRPERSON:** Are you referring to those...

**ADV MOHLAMONYANE SC:** Dockets.

**CHAIRPERSON:** Dockets.

**ADV MOHLAMONYANE SC:** Yes. In compliance with the agreement, my understanding was we are exchanging documents with them and those documents need not have been filed. That is how I understood it. Just to hand documents to the Chauke team.

**CHAIRPERSON:** I do not understand.

**ADV MOHLAMONYANE SC:** They requested documents from the NPA, from the evidence leader in particular. The NPA made those documents available. But those documents will not talk to anything. They were requested by the Chauke team. And I understood it not to be part of the record.

**CHAIRPERSON:** Let me just clarify something. The documents that we are talking about are the dockets, or some of the dockets. Am I correct?

**ADV MOHLAMONYANE SC:** You are correct, Madam Chair.

**CHAIRPERSON:** Now, we know that your record, Advocate Batohi's affidavit, refers to those dockets. They may not be relevant for your purpose, but they are part and parcel of this record that we have, because we know that reference has been made to a number of dockets, which we may also want to look at because you refer to them. Or rather, your documents refer to them.

**ADV MOHLAMONYANE SC:** It does, but on a high level. May I indicate this? May I respond in this fashion? There will be a witness who will talk to those dockets and not Advocate Batohi. Although Advocate Batohi has referred to the docket, but there will be a witness who will directly deal with the specific ...[intervenes]

**CHAIRPERSON:** It has now happened that somebody, it could have been me saying, where are those dockets? Remember, we are in a fact-finding mission here. We are not in a criminal case. We are in a fact-finding mission. So when you talk about documents in the affidavit and somebody says, where are those dockets? It is appropriate that the NPA should provide those dockets. And when they do, they must file them appropriately. That is what we are saying to you.

**ADV MOHLAMONYANE SC:** I hear you, Madam Chair. All what I am trying to explain, perhaps I am not being clearer. Perhaps I am not... These dockets will be made part of the

record at the time we deem appropriate because then that witness will talk to the documents.

**CHAIRPERSON:** Advocate Mohlamonyane, the documents were made part of the agreement, of the order, correct? Those documents, they are part of that order that we issued. Am I correct?

**ADV MOHLAMONYANE SC:** You are correct, Madam Chair.

**CHAIRPERSON:** So I do not understand why is this back and forth because those documents must be placed as part of the record. They are part of the order of the Court. So the party that is supposed to file those documents must file them appropriately. That is all that we are saying to you. Whether you are going to use them or not, but those documents will be before us as we are trying to find facts. I am not sure whether I make myself clearer. This going back and forth is taking us back to the issue of roles. What is our role?

**ADV HULLEY SC:** Madam Chair, I am not sure, without interrupting, if I could be of some assistance. With respect, I think I agree with you. Any document, if it gets put onto the record, it ought to, the entire bundle needs to be paginated and indexed. That was our understanding. I am not sure why it was placed onto the record formally so that you can see it, but without seeing an index or pagination. Can I give an undertaking that we will attend to that? I discovered with this

particular problem that there was a lack of pagination and a lack of an index yesterday. We will give an undertaking that we will attend to it. So I agree with your understanding of how matters get placed onto the record.

**CHAIRPERSON:** Thank you, Advocate Hulley and NPA team, we hope that that will be the case. Thank you very much for that.

**ADV HULLEY SC:** Madam Commissioner, if I could raise another matter, if you do not mind. I just want to make it clear, lest it be misunderstood. The evidence leader, and I am not part of the evidence leader's team, nor is my junior, Ms Lekgetho, she is part of my team. I understand that Your Lordship, sorry, I understand that Madam Chairperson is using that as a shorthand, but I do think that it is important to place it on record, lest there be a misconception.

The evidence leader decides how he is going to read the case, and we will provide him with assistance as you have directed in the past, and we are more than willing to do so. But it is his choice as to which witnesses he calls, how he conducts the case, and so forth. It is not our choice, and we are not his... My junior is not his junior. She is my junior. His junior will be here on Monday, but for the time being, she is assisting him to find pages, find documents, and so forth. But we are part of the NPA team. We are not part of the evidence leader's team.

**CHAIRPERSON:** Yes, you will recall that when we had the private discussion, we discussed these matters at length, because all of you belong to the NPA. You may be occupying different spaces. I am saying that in the sense that Advocate Mohlamonyane cannot operate without the NPA.

**ADV HULLEY SC:** I accept.

**CHAIRPERSON:** Otherwise, we would not be here.

**ADV HULLEY SC:** I accept that.

**CHAIRPERSON:** And unfortunately, Advocate Hulley, he is new in this matter. I think you have been in this matter in the sense that you provided an opinion. He is totally new in this matter. And for expediency, as I mentioned earlier, it would be proper that you work as a team.

**ADV HULLEY SC:** Indeed.

**CHAIRPERSON:** And I do appreciate that you are not necessarily an evidence leader, but you work as a team to assist this enquiry. And we should not be going back and forth the way we have done, and I think we have really given so much indulgences, because things have not happened the way they ought to have happened. So I think in that spirit that we spoke about in chambers, that let us work towards a common goal. We are here to serve the country, to present evidence, to assist this enquiry. But if you go back and forth that this is not my space, we may as well all go home, because we are not going to be enabled to do our work as an

enquiry.

What we have done thus far is to try to guide all of you the best way of reaching our goal as lawyers. That is all that we have been trying to do. And just to expedite the whole process without influencing or interfering with the manner in which you conduct your work. I still plead with all of you that let us work together towards the common goal and to ensure that we have all the material that we need. You know, in the High Court or in the Constitutional Court, in the SCA, you cannot just dump documents before the judges. The same thing applies here. We have been trying to paginate and to assist in the pagination, and that is really not our work.

But we have tried to do our bundles and to paginate them appropriately. So let us all work together to achieve that common goal. Advocate Mohlamonyane, I assume that your junior will be here by Monday.

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

**CHAIRPERSON:** And despite the fact that you have your junior and Advocate Hulley has a junior, I still expect that these two juniors will work together and that you will be able to sit together as a team and confer with one another.

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

**CHAIRPERSON:** In that spirit of collegiality.

**ADV MOHLAMONYANE SC:** Indeed.

**CHAIRPERSON:** Yes, thank you. In the event, we will

postpone this matter or stand it down to Monday. Monday, I am told, 24th of November. Monday, 24th of November at 10 o'clock. And please, let us start on time, 10 o'clock. Iron our all the issues that are outstanding over the weekend. These chambers, 28th and the 29th floors, are open to all of us. If you want to come and make copies or to sit in the chambers that have been allocated to you, you should feel free to do so. But Monday, we should proceed, please, without interruption, so that we can make progress. Thank you very much. We will adjourn until Monday, 24th of November.

**ENQUIRY ADJOURNS UNTIL 24 NOVEMBER 2025**



ENQUIRY INTO THE  
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