

**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**

25 NOVEMBER 2025

DAY 7



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

PROCEEDINGS ON 25 NOVEMBER 2025

CHAIRPERSON: Good morning, everyone. Good morning, Advocate Batohi. Advocate Ramogale, I hear that Chauke is stuck in traffic, and Senior Counsel, Advocate Ngcukaitobi.

MR RAMOGALE: Yes, Judge, that is the case.

CHAIRPERSON: We will start nonetheless, because you are here.

MR RAMOGALE: Thank you, Judge.

CHAIRPERSON: Adv Mohlamonyane, good morning, Advocate Ngcukaitobi.

ADV NGCUKAITOBI SC: Good morning, Chair.

CHAIRPERSON: We thought that we should start so long because your junior is here.

ADV NGCUKAITOBI SC: Indeed, thank you, Chair.

CHAIRPERSON: Before you proceed, Counsel, we have received a formal appointment of Advocates Skosana SC and Advocate Mtsweni. It may be proper that they place themselves on record, either through you or personally.

ADV MOHLAMONYANE SC: I would prefer, Madam Chair, that they do it personally.

CHAIRPERSON: You may move your chair this way, so that Advocates Skosana can be in front of the mic.

ADV SKOSANA SC: Good morning, Madam Chair, and thank you very much. My name is David Tembe Skosana. I am a senior counsel, and I have also received a confirmation of my

appointment. Thank you.

ADV MTSWENI: Thank you, Madam Chair and members of the ...[intervenes].

CHAIRPERSON: Thank you, Advocates Skosana.

ADV MTSWENI: Good morning, Madam Chair and Members of the Panel. My name is David Mtsweni. I am an Advocate practicing with the Tshwane Society of Advocates. I have been appointed as the Evidence Leaders Team, and I have also received confirmation of my appointment.

CHAIRPERSON: Thank you, Counsel. You may begin, Advocate Mohlamonyane.

ADV MOHLAMONYANE SC: Thank you, Madam Chair.

CHAIRPERSON: I beg your pardon. I beg your pardon. Might I remind you, Madam Advocate Batohi, that you are still under oath?

ADV BATOHI: Thank you, Chair.

CHAIRPERSON: Thank you, ma'am.

SHAMILA BATOHI: (still under oath)

EXAMINATION BY ADV MOHLAMONYANE SC (Continues):

Thank you, Madam Chair. Advocate Batohi, you will remember that yesterday when the matter was adjourned to today, we were dealing with authorisation memoranda. We were, as far as your affidavit is concerned, on page 66, and busy with paragraph 156.

ADV NGCUKAITOBI SC: I am sorry, Madam Chair, I do not

want to disrupt. I actually noticed that Mr Chauke is not here. I wonder whether it is intentional to proceed in his absence.

CHAIRPERSON: Yes, indeed. Advocate, you are here, he is a party, and he is well represented. Do you think otherwise?

ADV NGCUKAITOBI SC: I do not have instructions to proceed in the absence of my client. I had not noticed when I arrived, that is why I did not raise it then. But I think it would be – I have not applied my mind to it, but it would certainly be a worry for me as the advocate to proceed without my client. So, as I said, I do not want to cause disruption, but I noticed that he is not present, so I do not know that we can proceed in his absence.

CHAIRPERSON: Well, you have to make an application then in that event, Counsel, because we said that we will start at 09:00. Ordinarily, in court, when you go to court and your client is not there, you are on instructions through your attorney. Your attorneys are here. If a litigant is not in court, but well represented, normally court starts. But if you would like us to take an adjournment, then you should place it on record what you desire to do.

ADV NGCUKAITOBI SC: Madam Chair, I think it is prudent to ask for an adjournment to ascertain his whereabouts and how long he is going to take to arrive. And then we – yes. I understand the point in civil proceedings, but I do not know.

This is *quasi*, it is a disciplinary hearing and it seems to me that he should be present to listen to the accusations against him.

CHAIRPERSON: Yes, you are correct. This is inquisitorial, and he is a party affected by this proceedings directly. But it is important that when we say we start at 09:00, everyone should be here because we are running behind schedule, that is why we try to start by 9 o'clock. All of us have to wake up early in the morning and be at the sitting early in the morning. We will take a short adjournment, and as soon as he is here, you will send our officers to call us.

ADV NGCUKAITOBI SC: Indeed, I apologise for this, but as I say, I also do not know where he is.

CHAIRPERSON: He should be calling you. He should be having a mobile phone to contact at least the attorney or the junior.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: And it has not happened, it appears. We cannot operate that way. We will take a short adjournment.

ADV NGCUKAITOBI SC: Indeed, thank you.

ENQUIRY ADJOURNS

ENQUIRY RESUMES

CHAIRPERSON: Good morning everybody again, good morning *Ntati* Chauke. We adjourned to wait for you, but I am speaking to you through your counsel.

ADV NGCUKAITOBI SC: Madam Chair, Mr Chauke did arrive 25 minutes after the adjournment. He tells me that he had traffic problems driving from Johannesburg, made worse because it is raining today. He says he left home at 08:00. He would have made it by 09:00 if it was a normal day. Maybe next time he should leave home at 07:30.

CHAIRPERSON: At 06:30.

ADV NGCUKAITOBI SC: But to conclude on his behalf and on behalf of our team, we sincerely apologise.

CHAIRPERSON: Thank you, Counsel. Let us try, all of us, to stick to time. All of us have travelling challenges and *Ntati Chauke*, as your counsel indicated earlier, it is in your interest that you are here physically when we start every morning. I do appreciate that some of you are travelling from Johannesburg. I used to work in Johannesburg and leave Pretoria at 5 o'clock every morning. It is doable. You may begin, Advocate Mohlamonyane.

ADV MOHLAMONYANE SC: Thank you, Madam Chair. Advocate Batohi, I was ...[intervenes].

CHAIRPERSON: I will remind you once again, Counsel, Advocate Batohi, that you are still under oath.

ADV BATOHI: Thank you, Chair.

CHAIRPERSON: My sister, Advocate Baloyi, seemed to be complaining about the heat. Are you all feeling this heat? Thank you. My PA is telling me that they are aware that there

is a problem with this heat and cold, and they are working on the air conditioning, but they can do it physically when we adjourn so that they can get into the ...[indistinct] chamber and fix what they need to fix. So when we adjourn for tea, they will come and try to address this problem. That is why hearings under a tree are always better. Counsel, you may proceed.

SHAMILA BATOHI: (still under oath)

EXAMINATION BY ADV MOHLAMONYANE SC (Continues):

Thank you, Madam Chair. Before I proceed with the evidence of Advocate Chauke, I am sorry, Advocate Batohi, my apologies, I need to mention to you, Madam Chair, and your two sisters, that the issue of exhibits is being attended to by Advocate Lekgetho, but then she has to start from the beginning and refer to the transcript so that she could get the exact number of documents that have been referred to.

She has started with the process, and my proposal is that any document that is being referred to here will be referred to as an exhibit without it being numbered, and the numbering will be dealt with later on, because she is afraid that if we start to say the next document is 15, and after she had gone through the transcript it may change and it may cause confusion, and we ask for that indulgence so that it can be properly done. And at the end of Advocate Batohi's evidence, I hope it shall have been done and properly

indexed, and it will be handed up to the Panel.

CHAIRPERSON: Thank you, Counsel.

ADV MOHLAMONYANE SC: Thank you, Madam Chair.
Advocate ...[intervenes].

CHAIRPERSON: As long as when Advocate Ngcukaitobi starts with cross-examining the witness, that document will be handed to all of us so that we use the naming as per list.

ADV MOHLAMONYANE SC: I will try my best to have it ready then. Advocate Batohi, let us recap. You remember yesterday that we were dealing with applications for racketeering and how indictments are done and dealt with prosecution memoranda. Now, we will proceed from where we left off yesterday, and today, Madam Chair and your two sisters, we will begin with what is referred to as centralisation.

And I must mention that centralisation, as evidence will be given, will have an impact on paragraphs 3, 3.1, 3.1.1, 3.1.1.1, 3.1.1.2 of the terms of reference. Having said so, I refer you to LO3, Bundle LO3 to page 843 of that bundle. LO00843, Madam Chair, where you will find an application for centralisation of charges in terms of section 111 of Act 51 of 1977. You may then proceed to talk to this document.

ADV BATOHI: Thank you, Counsel. To recap, as I mentioned yesterday, centralisation is a process that the affected DPPs would engage in where a case has offences

committed in different jurisdictions. The DPP of the relevant jurisdictions would then consult and agree to the case being heard, generally for convenience, in one of the jurisdictions. They would then, having consulted, apply to the National Director for the case to be centralised in one of the jurisdictions.

The document referred to LO000843 is a memorandum dated 15 August 2012. It will be noted that this is the same day of the application for the racketeering authorisation that we dealt with yesterday. It is a memorandum from Advocate Chauke to Advocate N Jiba. I am not sure if I am required to read it, but it basically sets out the fact that if you look at paragraph 2, most of the predicate offences are committed in KwaZulu-Natal, but there is one matter that is in the North West jurisdiction. Paragraph 2 refers to Rustenburg, which is in the North West jurisdiction. They then go on to give a summary of the cases, and then from paragraph 12 the charges are set out ...[intervenes].

ADV MOHLAMONYANE SC: Advocate Batohi, allow me to interpose you. I think it is imperative that it should be read into the record.

ADV BATOHI: I will do so now.

CHAIRPERSON: What is she to read into the record?

ADV MOHLAMONYANE SC: To read the application, Madam

Chair.

ADV BATOHI: I will read the document. The subject line, as I mentioned, it is from Advocate Chauke to Advocate N Jiba, who was Acting National Director at the time. Dated 15 August 2012, subject application for centralisation of charges in terms of section 111 of Act 51 of 1977, the State v Booyesen, Johan Wessel and 4 Others, Rustenburg CAS 1090/09/2009:

“[1] The abovementioned accused will be charged together with other persons of racketeering offences in terms of the Prevention of Organised Crime Act 121 of 1998 in the High Court for the Division of KwaZulu-Natal. They were involved in an enterprise, the business of which was to kill suspected criminals, and received monetary rewards and/or certificates of excellence from the State for solving violent crime. Most of the predicate offences in pursuit of the aims of the enterprise were committed in the province of KwaZulu-Natal. There is one docket, Rustenburg CAS 1090/09/2009, where Padayachee Gonasagren, Mostert Paul Jonathan,



and Eva Neville, who are police officers based at the Organised Crime Unit Cato Manor, Durban in the KwaZulu-Natal province, travelled to Rustenburg where they killed Sifiso Ndimande.

[3] According to the accused, Sifiso Ndimande was sought, amongst other crimes, in the Bhekithemba CAS 113/1/2009, wherein Nkosi Wellington Zondo was killed. Allegedly, Nkosi Zondi...”

Sorry, it is Zondi, not Zondo:

“Allegedly, Nkosi Zondi was killed because he was the former police informer in the case where Magojela Timson Ndimande and Sibusiso Tembe were killed. Magojela Timson

Ndimande and Sibusiso Tembe were killed because they were suspected of playing a role in the killing of Superintendent Zethembe Choncho, who was a police officer investigating taxi-related violence in KwaZulu-Natal.

[6] The killing of Sifiso Ndimande, Magojela Timson Ndimande and

Sibusiso Tembe are among the predicate offences committed by Padayachee Gonasagren, Mostert Paul Jonathan and Eva Neville, who are accused 2, 4 and 6 in the racketeering indictment. The evidence in the killing of Sifiso Ndimande is briefly that Mostert and Padayachee kicked open and entered the house of the deceased. As they entered the house, Mostert and Padayachee fired shots and killed the deceased. The deceased died at the scene. Eva Neville took over the scene. Booyesen Johan Wessel and Oliver Willem Cornelius are charged as managers of the enterprise.

[8] As they modus operandi, the accused placed a firearm next to the body of the deceased to create an impression that their lives were in danger when effecting arrest.

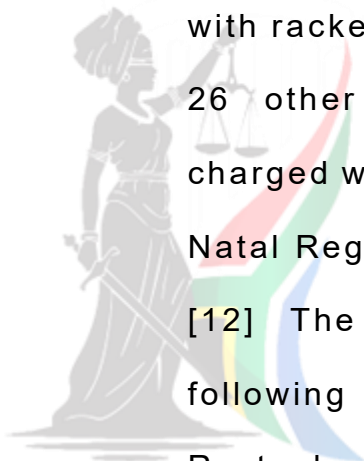
[9] The Director of Public Prosecutions in North West declined to prosecute on this docket. They instructed an inquest to be held. Thus, this matter is currently

on the roll for a formal inquest. Their reference number is 9/2/4/1-32/11B.

[10] The Office of the Director of Public Prosecutions in North West did not have the benefit of the accused's modus operandi and factual cause of the killing.

[11] The prosecution team intends to arraign Padayachee Gonasagren, Mostert Paul Jonathan and Eva Neville with racketeering offences together with 26 other accused. They are also charged with 116 counts in the KwaZulu-Natal Regional Division.

[12] The prosecution team prefers the following charges in respect of the Rustenburg docket. Housebreaking with intent to commit murder and murder read with section 51(1) of Act 105 of 1977 and section 155(1) of Act 51 of 1977. Contravention of section 3 read with sections 1, 103, 117, 121(a) and 121, read with schedule 4 of the Firearms Control Act 60 of 2000, and further read with section 250 of the



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Criminal Procedure Act 51 of 1977, the charge being unlawful possession of firearm. Contravention of section 90 read with section 1, 103, 117, 121(a) and 121, read with schedule 4 of the Firearms Control Act 60 of 2000 and further read with section 250 of the Criminal Procedure Act 51 of 1977, unlawful possession of ammunition, defeating or obstructing the course of justice.

[13] It is desirable and in the interest of justice that all the matters be held in one forum, which should be the High Court for KwaZulu-Natal. The reasons for this are the following. 13.1. The

separation of trial forums will lose the similar fact evidence.

13.2. All the accused are based in KwaZulu-Natal, therefore centralisation will be cost-efficient.

13.3. The offences in Rustenburg were furthering the aims and objectives of the enterprise operating in KwaZulu-Natal. It is thus prudent for proper functioning

of the administration of justice that these offences are tried together in a single trial.

13.4. The motive for the killing is closely connected to the other killings in KwaZulu-Natal. The chain of the killings as well as the modus operandi will provide the court with a complete picture of the manner the enterprise operated.

[14] In light of the above, separate trials would be prejudicial to the accused, witnesses, and proper administration of justice.

[15] The following documents are attached.

- (a) A draft indictment in terms of section 101, 111 of Act 51 of 1977.
- (b) A copy of the indictment.
- (c) A consent letter from the DPP North West.

[16] Although Booyesen and Olivier were not present on the crime scene in Rustenburg, they have been added in this application by virtue of their

management of the activities of the enterprise. Signed, MA Chauke, Director of Public Prosecutions, South Gauteng High Court, Johannesburg.”

ADV MOHLAMONYANE SC: Advocate Batohi, this document is comprehensive. This application for centralisation of the charges is a comprehensive document.

ADV BATOHI: That is correct.

ADV MOHLAMONYANE SC: Does it suggest, therefore, that Advocate Chauke has read the docket that he is referring to?

ADV BATOHI: It would suggest that he is aware of the facts of this matter.

ADV MOHLAMONYANE SC: Which he must have deciphered from the docket. The docket or dockets ...[intervenes].

ADV BATOHI: I do not want to make that assumption, but what I can say is that he has a good knowledge of the facts of this matter.

ADV MOHLAMONYANE SC: Go to the next page, LO00847. You will see that there is a direction. Direction in terms of section 111 of Act 51 of 1977. This is the same document that is being referred to in paragraph 15(a) of the application.

ADV BATOHI: Yes, a draft direction, 15(a), that is correct.

ADV MOHLAMONYANE SC: Which is signed, if you go to the next page, this direction ends on the next page, LO00848, not so?

ADV BATOHI: That is correct.

ADV MOHLAMONYANE SC: It is referred to as a draft direction, but it would appear that it was signed in Pretoria on the 17th day of August 2012.

ADV BATOHI: That is correct. I should add that when documents are submitted to the National Director, they are often couched in the way of a draft in the event the NDPP wants to amend it in any way. Then it can be done.

ADV MOHLAMONYANE SC: This was done, and it was signed by Advocate N Jiba, Acting National Director of Public Prosecutions.

ADV BATOHI: That is correct, on the 17th of August 2012.

ADV MOHLAMONYANE SC: Go to the next page, following that one, 00849.

CHAIRPERSON: What is the page?

ADV MOHLAMONYANE SC: LO00849, Madam Chair.

CHAIRPERSON: Thank you.

ADV MOHLAMONYANE SC: It is an internal memo from Advocate A Mosing. Do you see that?

ADV BATOHI: I do, dated 16 August 2012.

ADV MOHLAMONYANE SC: Before we proceed, lest I forget, Madam Chair, I ask that this document, the application for centralisation of charges, the one that we dealt with, be marked as an exhibit. It will later be given a number, and I apply that it be handed up as an exhibit.

CHAIRPERSON: I beg your pardon, Counsel? I beg your pardon?

ADV MOHLAMONYANE SC: I am saying, lest I forget, we dealt with the application for centralisation.

CHAIRPERSON: Yes.

ADV MOHLAMONYANE SC: We are done with it, and I am asking that it be marked as an exhibit, although it does not have a number at the moment. At the appropriate time, it will be accorded a number, and I ask that it be handed up as an exhibit.

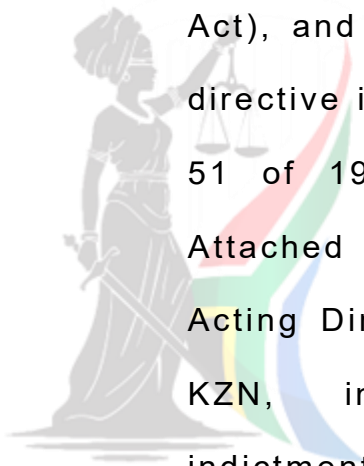
CHAIRPERSON: Might I suggest, rather, that you do not place these documents now as exhibits without numbers. Have a comprehensive document presented to us at the end of this testimony, before cross-examination, and Advocate Batohi will then confirm the correctness of those documents. I suppose that when you prepare that dossier, it will reflect what it is in the column, and the next column will reflect the exhibit number, and she can confirm those documents. You can hand up the documents. Otherwise, we are going to do things piecemeal here. Thank you.

ADV MOHLAMONYANE SC: Thank you, Madam Chair. I will deal with it in a manner proposed by yourself. Go to 849. Let us return to 849, 00849, Advocate Batohi. The document will be appropriately marked as an exhibit later on. It is an internal memorandum from Advocate A Mosing. Would you

read that document into the record, the content of the document into the record?

ADV BATOHI: It is an internal memorandum from Advocate A Mosing, Head Special Projects Division, to Advocate N Jiba, Acting National Director of Public Prosecutions, subject to State v Booyesen Johan Wessels and Others, date 16 August 2012. Subject line is:

“Application for authorisation in terms of section 24 of the Prevention of Organised Crime Act 121 of 1998 (the Act), and application for centralisation directive in terms of section 111 of Act 51 of 1977. Dear, Advocate Jiba. Attached please find a letter from the Acting Director of Public Prosecutions KZN, incorporating a proposed indictment, prosecution memorandum, draft authorisations in terms of section 21(e) and 21(f) of the Act, an application for centralisation and draft centralisation directive. I have perused the application and have on several occasions met with the prosecution team in insisting and guiding them on the principles involved in the offence of



racketeering. In the process, the available evidence was also perused. The concept of the enterprise in this matter was also fully dealt with, and I support the defining of the enterprise as being the Serious Violent Crime section (SVC) of Cato Manor, which being a unit of the SAPS, is a legal entity for the purposes of the definition of enterprise as defined in section 1 of the Act. Furthermore, the section formed part of the Durban Organised Crime Unit, and as such was part of the Provincial Organised Crime Structures of the SAPS in KZN, under the command of the Provincial Commander-Organised Crime, and subsequently the head of the DPCI, as from 2010. The offences charged also fully comply with the definition of pattern of racketeering activities as there are more than two racketeering events. The accused listed as managers are the group commanders of the section, the section commander, and the provincial commander,



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Organised Crime, KZN. It is submitted that all these complies with being managers, as was determined in *De Vries* matter at 388: “The first requirement for a conviction under Count 1 is that the accused must have managed the operations or activities of the enterprise.” The Concise Oxford Dictionary 10th Edition defines manage as: “Be in charge of, supervise, administer, and regulate, or maintain control or influence over (a person or animal)”. I have similarly perused the application for centralisation of the event that occurred in Rustenburg in the area of the jurisdiction of the DPP North West. This is indeed one of the racketeering events, and it would be in the interest of justice to charge this event, together with the rest of the racketeering event, in order to have a holistic picture of the activities of the enterprise. It is consequently recommended that the authorisations for racketeering prosecution and



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centralisation directive, as requested,
be granted. Kind regards, Advocate A
Mosing, Head Special Projects Division,
Office of the NDPP.”

It is unsigned.

ADV MOHLAMONYANE SC: I will later ask that it be handed up as an exhibit. Let us proceed to the next page. The one that follows after that should be 852. It is authorisation in terms of – the heading says authorisation in terms of section 2(4). Please read it into the record.

ADV BATOHI: This is an authorisation in terms of section 2(4) of the Prevention of Organised Crime Act. The state versus Booyesen Johan Vessel, and there are 18 other accused reflected on this document. I am not sure that I need to read them all out.

ADV MOHLAMONYANE SC: You do not have to ...[intervenes].

ADV BATOHI: And then the – sorry.

ADV MOHLAMONYANE SC: Proceed to the next paragraph.

“I, Nomgcobo Jiba, Acting Director of Public Prosecution, South Africa, do hereby in terms of section 2(4) read with sections 1 and 2 of the Prevention of Organised Crime Act number 121 of

1988, authorise the institution of prosecution against the abovementioned accused for contravention of section 2(1)(e) of the Prevention of Organised Crime Act 121 of 1998, committed during the period 2008 to 2011, given under my hand at Pretoria on the 17th day of August 2012. Signed, Advocate Nomgcobo Jiba, Acting National Director of Public Prosecution, Republic of South Africa.”

ADV MOHLAMONYANE SC: Go to the next page, 00853.

ADV BATOHI: So the impact of the previous document that I signed is that the National Director has authorised this racketeering prosecution.

ADV MOHLAMONYANE SC: Yes.

ADV BATOHI: The next document, as you mentioned, authorisation in terms of section 2(4) of the Prevention of Organised Crime Act Number 121 of 1998, the State versus Booyesen Johan Wessel and 4 Others listed in the document:

“I, Nomgcobo Jiba, Acting National Director of Public Prosecution, South Africa, do hereby in terms of section 2(4) read with sections 1 and 2 of the Prevention of Organised Crime Act

number 121 of 1998, authorise the prosecution against the abovementioned accused for contravention of section 2(1)(f) of the Prevention of Organised Crime Act number 121 of 1998, committed during the period of 2008 to 2011, given under my hand at Pretoria on the 17th day of August 2012. Signed, Advocate Nomgcobo Jiba, Acting National Director of Public Prosecution, Republic of South Africa.”

ADV MOHLAMONYANE SC: Let us take it, go back to ...[intervenes].

CHAIRPERSON: Might I clarify something, Counsel? In respect of LO00852, the first authorisation, the case against Booyesen and 18 Others, is it the same case number or different case numbers? You can find out.

ADV MOHLAMONYANE SC: Let me find out as to whether...

CHAIRPERSON: Perhaps Advocate Batohi can assist.

ADV MOHLAMONYANE SC: Can assist in that regard.

ADV BATOHI: Chairperson, I will try. I am not sure if it is the same case numbers, but what I can say is that the first one, LO00852, is in terms of section 2(1)(e), which is just above the date. You will see section 2(1)(e) of the Prevention

of Organised Crime Act. And the second one, you will see it is an authorisation in terms of Section 2(1)(f) of the Prevention of Organised Crime Act. Now, if my memory serves me correctly, 2(1)(f) relates to the management contraventions, offences relating to management, and (e) refers to offences relating to participation in the enterprise.

CHAIRPERSON: And the heading refers to 2(4).

ADV BATOHI: That is correct. They are all part of section 2(4), but one is (e) and one is (f). 2(4)(1).

CHAIRPERSON: Yes.

ADV BATOHI: Well, it says 2(4), but it says section 2(1)(e), so I am a little bit confused about that myself.

ADV MOHLAMONYANE SC: Let me assist if Madam Chair would allow me for now.

CHAIRPERSON: Yes, you may, sir.

ADV MOHLAMONYANE SC: Remember what section 2(4) says.

ADV BATOHI: Yes, if I recall, it is the authorisation by the National Director, if I am correct.

ADV MOHLAMONYANE SC: Yes, that any person, if you – can you read it into the record?

ADV BATOHI: Yes.

ADV MOHLAMONYANE SC: For purposes of ...[intervenes].

ADV BATOHI: Of POCA?

ADV MOHLAMONYANE SC: Yes, of POCA.

ADV BATOHI: Do I have a copy of POCA in front of me? I think I do. If you can help me, do we have it in front of me? I think there was a copy that was handed. I am not sure where it is.

CHAIRPERSON: You may assist the ...[indistinct] you may assist Advocate Batohi with ...[intervenes].

ADV BATOHI: Thank you very much, Chairperson. No, I think there is another copy there. We can grab that. Okay, thank you. Do I have a copy of POCA?

ADV MOHLAMONYANE SC: Madam Chair, I have a hard copy which I can lend.

CHAIRPERSON: But my question was simple. My question was whether these people who appear under authorisation in terms of section 2(4) followed by section 2(1)(e), the first one, are whether charged in terms of this one case number or are there different dockets in relation to these people? Do you understand my question, Counsel?

ADV MOHLAMONYANE SC: Yes, I do. I just want to ...[intervenes].

CHAIRPERSON: Advocate Batohi, do you understand my question?

ADV BATOHI: I am not clear, Chairperson.

CHAIRPERSON: My question is, when you look at page LO00852, you have accused 1 up to 19. My question is whether these people are charged under one case number,

one docket, or whether there are different dockets in relation to these accused people.

ADV BATOHI: I cannot answer that question. I do not know, Chairperson.

CHAIRPERSON: You do not know? I ask that question because mention has been made earlier that there was a plethora of dockets in relation to the Cato Manor matter. That is why I need clarity in relation to that question and also in relation to your 2(1)(f). If you can ascertain whether these five people were charged under the same case number, meaning that there would have been one case docket. You can ascertain that later, Counsel, and just flag it and let me know.

ADV MOHLAMONYANE SC: I will do that later. Thank you, Madam Chair.

CHAIRPERSON: You may proceed, sir.

ADV MOHLAMONYANE SC: Thank you. To tie it up, Advocate Batohi, I am referring you back to Advocate Jiba's authorisation in terms of section 2(1)(e) of POCA on page 852, and the next page, her authorisation in terms of section 2(1)(f) on page 853.

ADV BATOHI: Just for clarification, the authorisations are in terms of section 2(4), but the charges relate to contraventions of section 2(1)(e) in the first document and 2(1)(f) in the second document.

ADV MOHLAMONYANE SC: Let us clarify. So there were two authorisations.

ADV BATOHI: That is correct.

ADV MOHLAMONYANE SC: One in terms of section 2(1)(e). The other in terms of section 2(1)(f).

ADV BATOHI: The first one is for contraventions of section 2(1)(e), and the second one is for contraventions in terms of section 2(1)(f) of POCA.

ADV MOHLAMONYANE SC: And both of them were signed by Advocate Jiba, the Acting National Director of Public Prosecutions, on the same day, 17 August 2012.

ADV BATOHI: That is correct.

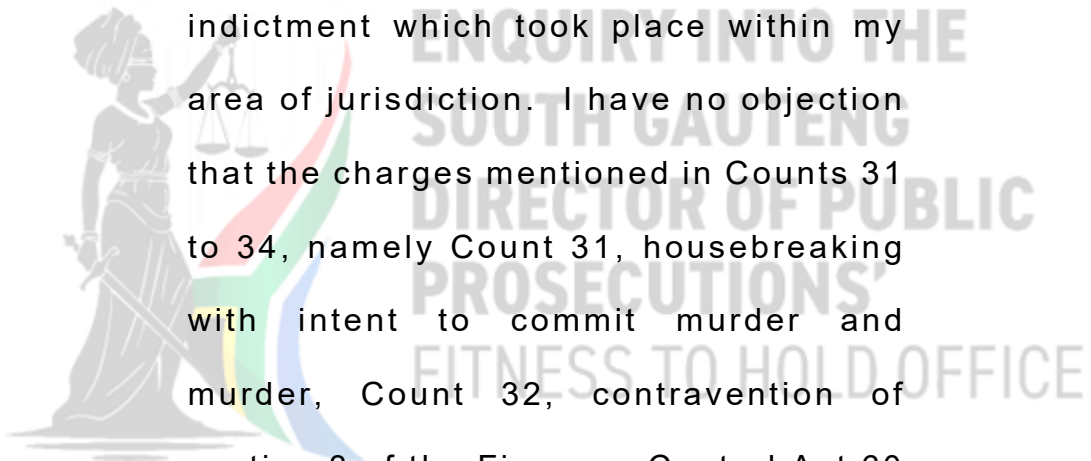
ADV MOHLAMONYANE SC: Let us then proceed to the next page, L000854, wherein you see a document there dated 2 August 2012 addressed to Advocate MA Chauke. It is from Advocate JJ Smith SC, the DPP Mmabatho. That we will see on the next page, 855. But for now, I will ask you to read this document into the record and we will later ask that it be marked as an exhibit.

ADV BATOHI: So L000854 is a letter on the letterhead of the National Prosecuting Service, Director of Public Prosecutions North West. It is dated 2 August 2012. It is addressed to Advocate MA Chauke, Director of Public Prosecutions South Gauteng Provincial Division, Private Bag X8 Johannesburg 2000:

“Dear Colleague.”

Subject Line:

“Consent to consolidation of charges in terms of section 111 of Act 51 of 1977, State versus Padayachee and Others, Cato Manor Project, Rustenburg CAS 1097/09/2009. I have perused your application for centralisation of charges arising out of Rustenburg CAS 1097/09/2009, and the copy of the indictment which took place within my area of jurisdiction. I have no objection that the charges mentioned in Counts 31 to 34, namely Count 31, housebreaking with intent to commit murder and murder, Count 32, contravention of section 3 of the Firearms Control Act 60 of 2000, Count 38, contravention of section 90 of the Firearms Control Act 60 of 2000, and Count 34, defeating or obstructing the course of justice, be dealt with in a single trial, together with racketeering charges against all accused within the area of jurisdiction of the KwaZulu-Natal High Court against



the following accused, Gonasagren Padayachee, Paul Johan Mostert, Neville Eva. I am persuaded that it will be in the interest of justice to centralise the prosecution in terms of section 111 of the Criminal Procedure Act 51 of 1977 in the High Court for KwaZulu-Natal in one singular trial (on charges including racketeering in terms of the POCA Act 121 of 1998). I accordingly hereby consent to the prosecution of all cases in the area of jurisdiction of the KwaZulu-Natal High Court. Kind regards, Advocate JJ Smith SC, DPP Mmabatho.”

And it appears to be signed by him. I do not know his signature, but it appears to be signed by him.

ADV MOHLAMONYANE SC: Advocate Batohi, let us pause for a moment and reflect on this document, the application for centralisation of charges made by Advocate Chauke. The content of the document suggests that Advocate Chauke motivates for centralisation. Is that correct?

ADV BATOHI: That is correct.

ADV MOHLAMONYANE SC: How would you categorise that, the motivation?

ADV BATOHI: Well, I would categorise, categorise, sorry. It is a decision – to centralise matters between DPPs is a prosecutorial decision. It is a decision made in a prosecution process in terms of where the trial should proceed. So I would categorise this as a prosecution decision taken in the context of a prosecution process.

ADV MOHLAMONYANE SC: Taken by whom?

ADV BATOHI: It is taken by Advocate Chauke and Advocate Smith.

CHAIRPERSON: Counsel, following on my question earlier, it is apparent from the letter by Advocate Smith SC, North West, that the case number reflected on LO00854, that is the letter, pertained to only three of the accused listed on page LO00852, that is the 19 accused person, number 2, Padayachee, Officer Padayachee, number 4, Officer Mostert, and number 6, Officer Eva. And the case number in respect of these three accused persons is CAS1097/09/2009. It then follows that we would need to have the case numbers applicable to the rest of the accused persons listed under LO00852, that is the remaining of the 19 accused officers. Therefore, when you ascertain the case numbers applicable to those listed on that page, that is the first authorisation, and in respect of the second authorisation, you need to give us the case numbers. But you will see that Eva is mentioned again under 2(1)(f), as she is also mentioned under 2(1)(e).

Is it clear?

ADV MOHLAMONYANE SC: It is clear, Madam Chair. I will ascertain.

CHAIRPERSON: It then also follows that there could be different dockets in respect of these accused persons. Thank you.

ADV BATOHI: Chairperson, if I may try to assist in this regard? There were certainly, as you indicated, a number of dockets, and these were all various mainly murder matters that were consolidated into the racketeering case. But as Counsel had indicated, we will get the CAS numbers for all of them.

CHAIRPERSON: It is important to get the answers for this so that when we deal with the dockets, we know exactly in respect of which officials or accused persons those dockets pertain, because it is critical for the determination of some of the issues before us.

ADV MOHLAMONYANE SC: Madam Chair, we will do that.

CHAIRPERSON: Thank you.

ADV MOHLAMONYANE SC: Thank you, Madam Chair. Now, Advocate Batohi, were any of the offences which were to be centralised in KZN committed within the jurisdiction of Advocate Chauke's area of operation, which would be South Gauteng?

ADV BATOHI: No.

ADV MOHLAMONYANE SC: Was it proper for him, therefore, to motivate for centralisation?

ADV BATOHI: This discussion should have happened between the DPP in KZN, who has jurisdiction, and Advocate Smith.

CHAIRPERSON: I beg your pardon?

ADV BATOHI: This discussion should have happened between the DPP in KZN and Advocate Smith.

ADV MOHLAMONYANE SC: The discussion to centralise?

ADV BATOHI: That is correct. And the application should have also been made by the DPP in KZN.

CHAIRPERSON: May we look at the date on which Advocate Chauke was authorised or requested by the NDPP to coordinate the team? If you can remind me, when was he requested to coordinate the team?

ADV BATOHI: I cannot recall offhand, Chairperson. We need to be referred to a document.

CHAIRPERSON: It is there in the bundles.

ADV MOHLAMONYANE SC: It is there, Madam Chair. It is 8 March 2012, but I need to locate the document, locate the bundle.

CHAIRPERSON: You can just give me the date.

ADV MOHLAMONYANE SC: It is said to be 8 March 2012.

CHAIRPERSON: What page is that?

ADV MOHLAMONYANE SC: It must appear in his affidavit.

CHAIRPERSON: Is it one of the documents that were filed of record by Advocate Batohi under the bundles of LOs?

ADV MOHLAMONYANE SC: It should be, Madam Chair. If I could just...

CHAIRPERSON: It is important for me to get that date correct because it follows on the answer that Advocate Batohi has just given. I just want to make sure that I understand her answer in relation to that date.

ADV MOHLAMONYANE SC: Madam Chair, although I have been informed by my colleagues that the date is 8 March 2012.

CHAIRPERSON: [Indistinct]... the page from which you got the date.

ADV MOHLAMONYANE SC: Yes, I am not able to locate it immediately, but I have located Advocate Chauke's affidavit, which is in Bundle LO1 on page 265, paragraph 57.

CHAIRPERSON: 00265?

ADV MOHLAMONYANE SC: 00265. Advocate Chauke, in that paragraph 57, mentions it as at the end of April when he received a request from Advocate Jiba. But I am made to believe that he might have been mistaken about that date because in Mosing's affidavit, Madam Chair, he says the date is 8. He attended a meeting, he is stating it as at 8 March 2012. So we are having two dates here ...[intervenes].

CHAIRPERSON: A meeting for what?

ADV MOHLAMONYANE SC: He says he attended a meeting on or about 8 March at our offices with three members of the IPD.

CHAIRPERSON: I am sorry to interpose. It appears that you do not understand my question. Advocate Jiba similarly requested Advocate Chauke to coordinate the team to go to KZN. There is a document in which this information is reflected. I would like to reflect on that. I do have that document. I cannot remember where it is, but that document reflects a date on which Advocate Chauke was asked to coordinate the team.

That is what I want to know. We will park it there so that we can reflect again, Counsel, and we will revert to this question that we have just asked Advocate Batohi. And just put your finger on your answer to the last question by Counsel because I want to check on those dates. Then I will probably piggyback on that question and ascertain something from you.

My sister is drawing Volume 3 of the legal opinions to my attention. Probably the answer could be there, paragraph 7 and 8. But it is for a later time when you revert back to the question. LO00706, Volume 3, LO00706. Thank you. You may proceed.

ADV MOHLAMONYANE SC: Thank you, Madam Chair. Advocate Batohi, I want you to go to page 00856 in LO3.

CHAIRPERSON: Are you dealing with the same issue or is it another matter?

ADV MOHLAMONYANE SC: We are still dealing with centralisation.

CHAIRPERSON: No, no, no. The pages that you referred us to, Volume 3, LO007?

ADV MOHLAMONYANE SC: 00856.

CHAIRPERSON: 0856, thank you.

ADV MOHLAMONYANE SC: Yes, but we are still on centralisation, Madam Chair.

CHAIRPERSON: Thank you.

ADV MOHLAMONYANE SC: You will see that on that page it is an application for centralisation. And it came from Advocate Noko-Mashilo, who was the Acting Director of Public Prosecutions. You will remember that we already dealt with her tenure when she was appointed. Just read the document into the record.

ADV BATOHI: Counsel, the entire document, it seems to be identical to the previous one that I read into the record. But I am happy to do so again because there might be minor changes.

ADV MOHLAMONYANE SC: No, no. For the sake of time, if it is identical...

ADV BATOHI: It appears to be.

ADV MOHLAMONYANE SC: Ja. You do not have to read

the whole document.

ADV BATOHI: The document is a memorandum from the Director of Public Prosecutions, KwaZulu-Natal, Pietermaritzburg Office. It is addressed to Advocate N Jiba, the Acting NDPP, from Advocate Noko-Mashilo, Acting DPP in KZN. Dated 12th of August 2012. It appears to be the same contents as LO00843.

I have not checked word for word. And it is an application for the subject line, application for centralisation of charges in terms of section 111 of Act 51 of 1977 in the case of the State versus Booysen Johan Wessel and 4 Others, Rustenburg CAS 1090/9/2009. This one is signed by Advocate – well, the name of Advocate Noko-Mashilo appears on page 00859 as the Acting DPP KZN, but it is PP signed by, the name appears to be S Maema.

ADV MOHLAMONYANE SC: Is there anything sinister that Maema should sign on behalf of Noko-Mashilo, Advocate Noko-Mashilo?

ADV BATOHI: Well, it shows that the DPP KZN has not signed the centralisation application and it is signed by the leader of the prosecution team in the Booysen matter. It also appears to be after the centralisation was, if I just page back, after the initial centralisation application by Advocate Chauke, it appears that this relates to the same issue. But it is now made by ostensibly the DPP of KZN.

ADV MOHLAMONYANE SC: This application was a fresh application by Advocate, apparently by Advocate Noko-Mashilo to Advocate Jiba. Not so?

ADV BATOHI: That is correct.

ADV MOHLAMONYANE SC: Was there a need for this application?

ADV BATOHI: On the face of it, there would not have been a need for it. Well, if the original application was – the person making the application had the authority to do that, that is Advocate Chauke. But it appears that, I am not sure if there is some correspondence about this, but we must check our documentation about the fact that the centralisation application needs to be in the name of the – well, it needs to be made by the DPP having authority in this matter, which would be the DPP KwaZulu-Natal. And so it appears that this one is meant to correct or certainly create the impression that the DPP KwaZulu-Natal is the one that is applying for centralisation. It is signed, as I said, by the leader of the prosecution team, Advocate Maema.

ADV MOHLAMONYANE SC: Now, if you go to page LO00860, therein you will find another consent to consolidation of charges by JJ Smith SC. Are you there?

ADV BATOHI: I am.

ADV MOHLAMONYANE SC: This consent to consolidation of charges, if you compare it to the previous one on page

854, are they similar?

CHAIRPERSON: What are you comparing, Counsel? What are you comparing?

ADV BATOHI: Comparing the consent to consolidation by Advocate JJ Smith dated the 2nd of August 2012 on page 00854, in which he was responding to the application by Advocate Chauke, with the one dated 20 August 2012 on page 00860, in which she was responding, presumably responding to the application made by Advocate Noko-Mashilo.

ADV BATOHI: Looking at the two documents, they appear to be, on the face of it, identical. Except for the date, which is the first one being the 2nd of August And the second one being the 20th of August, and the person to whom it is addressed, the first one being to Advocate Chauke and the second one being to Advocate Noko-Mashilo.

ADV MOHLAMONYANE SC: Please read it into the record for completeness sake.

ADV BATOHI: It is on the letterhead of the National Prosecuting Service Director of Public Prosecutions, North West. It is addressed to Advocate Noko-Mashilo, the Director of Public Prosecutions, KwaZulu-Natal Division, Private Bag X9008, Pietermaritzburg 0300:

“Dear colleague. Consent to consolidation of charges In terms of section 111 of Act 51 of 1977, the State

versus Padayachee and others, Cato Manor Project Rustenburg, CAS1097/9/2009. I have perused your application for centralisation of charges arising out of Rustenburg CAS 1097/9/2009 and the copy of the indictment which took place within my area of jurisdiction. I have no objection that the charges mentioned in Counts 31 to 34, namely Count 1, housebreaking with intent to commit murder and murder, Count 2, contravention of section 3...”

Sorry, Count 31 is the first one:

“Count 32, contravention of section 3 of the Firearms Control Act 60 of 2000, Count 33, contravention of section 90 of the Firearms Control Act 60 of 2000, and Count 34, defeating or obstructing the course of justice, be dealt within a single trial together with racketeering charges against all the accused within the area of jurisdiction of the KwaZulu-Natal High Court, against the following accused, Gonasagren Padayachee,

Paul Jonathan Mostert, Neville Eva. I am persuaded that it will be the interest of justice to centralise the prosecution in terms of section 101 of the Criminal Procedure Act 51 of 1977 in the High Court for KwaZulu-Natal in one singular trial (on charges including racketeering in terms of the POCA Act 121 of 1998). I accordingly hereby consent to the prosecution of all cases in the area of jurisdiction of the KwaZulu-Natal High Court. Kind regards, JJ Smith SC, Director of Public Prosecutions, North West Division.”

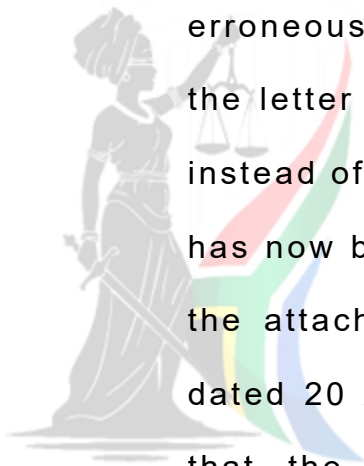
And appears to be signed by him.

ADV MOHLAMONYANE SC: The document will later be handed up as an exhibit. Now, proceed to page 00862, wherein you will find an internal memo from A Mosing. Proceed to read that document into the record.

ADV BATOHI: This is an internal memorandum on the letterhead of the Office of the National Director of Public Prosecutions From A Mosing to Advocate N Jiba, Acting DPP. Subject, State versus Booyesen and Others. The date is 27 August 2012. Subject line:

“Application for directive in terms of

section 1011 of Act 51 of 1977 as amended in section 44 and read with section 22(3) of Act 32 of 1998. Dear, Advocate Jiba. A directive in respect of the abovementioned provisions have already been approved and signed by you in the above matter in respect of offences committed within the area of jurisdiction of the DPP North West. However, the application was erroneously submitted under cover of the letter from the DPP South Gauteng instead of the DPP KZN. A new request has now been submitted under cover of the attached letter from the DPP KZN dated 20 August 2012. It is requested that the acting NDPP issue a new centralisation directive as per the attached draft. It is notable that the consent from Advocate Smith SC is directed to the DPP KZN. The facts otherwise unchanged. The omission is regretted. Kind regards, signed, Advocate A Mosing, Head Special Projects Division, Office of the NDPP.”



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

ADV MOHLAMONYANE SC: Do you have any comment about this?

ADV BATOHI: In my view, given the evidence that is present and that will be presented, it appears that there was a recognition that Advocate Chauke, not having jurisdiction in this matter, ought not to have applied for the centralisation in the first place. And that a fresh application was made, in my view, in order to create the impression that the DPP KZN was in fact requesting this when we are aware that given the original approval, well, consent by Advocate Smith, that the original request was made from Advocate Chauke himself. That is as far as I can take it.

ADV MOHLAMONYANE SC: Now, go to 864, 00864, where there is a draft direction in terms of section 111 of the Criminal Procedure Act. Do you see that?

ADV BATOHI: I do.

ADV MOHLAMONYANE SC: Go to the next page, 865, 00865.

ADV BATOHI: Yes.

ADV MOHLAMONYANE SC: The document is signed at Pretoria on the 27th day of August 2012 by Advocate N Jiba.

ADV BATOHI: That is correct.

ADV MOHLAMONYANE SC: Does it suggest that Advocate Jiba therefore went through this process again from the time that Advocate Chauke applied to the time when Advocate

Noko applied?

ADV BATOHI: It appears to be the case.

CHAIRPERSON: You may proceed, Counsel.

ADV MOHLAMONYANE SC: Thank you, Madam Chair. I do not have a watch. I rely on my colleague here.

CHAIRPERSON: It is 11 o'clock. We will take a tea break at quarter past 11.

ADV MOHLAMONYANE SC: I refer you to L01, 00340. Legal opinions on page 340. It should be L02. You will see, Advocate Batohi, are you there?

ADV BATOHI: I am.

ADV MOHLAMONYANE SC: L02 is Advocate Mosing's affidavit which served before the Zondo Commission, State Capture Zondo Commission.

ADV BATOHI: That is correct.

ADV MOHLAMONYANE SC: Go to paragraph 110. 98, I am sorry.

ADV BATOHI: It is 95.

ADV MOHLAMONYANE SC: Ja, 95. You are correct, 95. Go to 95 before you go to 96. It is on page L00376. Can you read that paragraph into the record?

ADV BATOHI: At paragraph 95, Advocate Mosing states ...[intervenes].

CHAIRPERSON: I beg your pardon. Are these two paragraphs, were they not read into the record earlier?

ADV MOHLAMONYANE SC: I do not remember them being read, but...

ADV BATOHI: These relate to the racketeering authorisations, Chairperson, so it might have been.

CHAIRPERSON: You remember we dealt with racketeering authorisations earlier, and these paragraphs were referred to. I just do not want us to burden the record by repetitions. But if you wish, you may proceed in the event it was not read in. I have made a note on my volume that part of the record, paragraphs 95 and 96.

ADV MOHLAMONYANE SC: I now recall, Madam Chair, it has been dealt with yesterday. At the moment, the relevant one that has to be referred to is paragraph 98.

CHAIRPERSON: Please take instructions. I see the advocate behind you is trying to advise you. The lady on the extreme right.

ADV MOHLAMONYANE SC: Thank you, Madam Chair. Thank you, Madam Chair. I am advised it is 98, the relevant one that we need to refer to now.

CHAIRPERSON: Not 95?

ADV MOHLAMONYANE SC: Not 95. 95 and 96 have been dealt with yesterday.

CHAIRPERSON: Yes.

ADV MOHLAMONYANE SC: Thank you, Madam Chair. Advocate Batohi, are you at paragraph 98?

ADV BATOHI: I am, yes.

ADV MOHLAMONYANE SC: Please read it into the record.

ADV BATOHI: At paragraph 98, Advocate Mosing states:

“On 17 August 2012, Jiba approved two applications and issued authorisations in terms of section 2(4) of POCA in respect of contraventions of section 2(1)(e) and (f) of POCA, as well as in terms of section 111 of Act 51 of 1977, read with sections 44 and 22(3) of Act 32 of 1998. Subsequently, Maema approached me and advised me that the application for centralisation was erroneously submitted under cover of the letter from DPP South Gauteng, instead of the office of the DPP KwaZulu-Natal. Maema then submitted a new application from the correct office. This application was approved by Jiba on 27 August 2012.”

CHAIRPERSON: It is correct to mention that Advocate Maema is an advocate under the leadership, was an advocate under the leadership of Advocate Smith SC, North West?

ADV MOHLAMONYANE SC: It is correct, Madam Chair. May I take instructions?

CHAIRPERSON: When you confer with senior counsel behind you, switch off your mic because everything will be recorded or picked up by the media there. It will confuse our record.

ADV MOHLAMONYANE SC: Thank you, Madam Chair. I am informed that at the time when he signed the application on behalf of Noko, he had been assigned from North West Division.

CHAIRPERSON: Advocate Maema?

ADV MOHLAMONYANE SC: Advocate Maema, yes. He was ordinarily within the jurisdiction of Advocate JJ Smith in the North West Division. But at the time, he was one of the members who was leading the team, the Cato Manor team, at the time when he was signing the centralisation application.

CHAIRPERSON: Advocate Maema was the lead counsel in respect of the prosecution of the Cato Manor team?

ADV MOHLAMONYANE SC: Indeed, Madam Chair.

CHAIRPERSON: Or by the Cato Manor team, prosecutorial team. It is good to place that on record. Thank you.

ADV MOHLAMONYANE SC: May we adjourn at this stage? I just want to align certain aspects, Madam Chair, before I proceed with Advocate Batohi.

CHAIRPERSON: Please give me a second. Thank you, Advocate Mohlamonyane. It has been brought to our attention that the maintenance team will need 30 minutes to

work on the air conditioning. And therefore, we will adjourn for 30 minutes until they deal with the problem.

ADV MOHLAMONYANE SC: Madam Chair, knowing maintenance people, at least 30 minutes.

CHAIRPERSON: Advocate Ngcukaitobi, 30 minutes. I suspect that you need more than 30 minutes to attend to something. We will take 30 minutes until further notice, Counsel. Thank you. We will adjourn for tea.

ENQUIRY ADJOURNS

ENQUIRY RESUMES

CHAIRPERSON: Good afternoon, everybody, Advocate Mohlamonyane, you may proceed. I am told that the air conditioning has been attended to, and I hope that at least the one next to you, Advocate Batohi, is functional. The ones next to us are in the process of being sorted out. You were correct, Advocate Ngcukaitobi. Advocate Mohlamonyane, you may proceed.

ADV MOHLAMONYANE SC: Thank you, Madam Chair. Advocate Batohi, we will now deal with subsequent events that took place after the two racketeering certificates were issued by Advocate Jiba. In this respect, I refer you to your affidavit, page 60, and we will start with paragraph 145. In paragraph 145.

ADV BATOHI: Mmm-mmm.

ADV MOHLAMONYANE SC: In paragraph 45, you are saying

that Booyesen instituted an application in which he sought to review and set aside the racketeering certificates. Perhaps, maybe as a way of reminding you, the review certificate, rather the review application was instituted on the 30th of April 2013, and, Madam Chair, that you can find in the B bundle, specifically the B5.

CHAIRPERSON: B5?

ADV MOHLAMONYANE SC: B5 on page B01, starting from page B01334, which contains the notice of motion where Johan Wessel Booyesen was the applicant and the first respondent was the acting National Director of Public Prosecutions. The date stamp appearing thereon the 30th of April 2013, the registrar's date stamp and the notice of motion bears a date on page B01339 of the same bundle, B5. I should also mention, Madam Chair, that what we are now dealing with would have an impact on the terms of reference, specifically paragraphs 3, 3.1, 3.1.1, 3.1.1.1, and 3.1.1.3. You may go back to your affidavit, Advocate Batohi.

ADV BATOHI: Counsel, if we could just check whether 3.1.1.4 might also not be relevant with regard to this evidence. For clarity.

ADV MOHLAMONYANE SC: Ja, it is also applicable. I thought I would mention it at that particular time, but you are correct. It is also applicable. Paragraph 3.1.1.4 is also applicable. You may then proceed with your affidavit and

continue.

ADV BATOHI: So, at paragraph 145, Booysen instituted an application in which he sought to review and set aside the racketeering certificates. In this application, he alleged in brief that after receipt of the indictment, he requested Jiba to make available, Advocate Jiba, to make available all the documents on which the state intended to rely in this case. As a result of this, the 23 dockets were made available to him. In his affidavit, in this review application, he said that he is mentioned in only two of these 23 dockets. In one of the two dockets, he is mentioned in the statements of two witnesses. Both witnesses stated that he arrived on the scene of a shooting in a helicopter after the event. And in respect of the other docket, the second docket, according to Booysen, the witness states that he noticed Booysen on the scene of a shooting after it had taken place. So that was just a portion of his review application, the affidavit.

ADV MOHLAMONYANE SC: Now, let me then hasten to take you to Advocate Mosing's affidavit, which you can find in LO2 bundle.

ADV BATOHI: Page number?

ADV MOHLAMONYANE SC: Page LO00382. Go to paragraph 110 and read that paragraph into the record.

ADV BATOHI: This section is headed
“Booyesen's review application”

May I proceed, Chairperson?

ADV MOHLAMONYANE SC: Hang on a bit.

CHAIRPERSON: The affidavit of Advocate Mosing.

ADV MOHLAMONYANE SC: It is the affidavit of Advocate Mosing, Madam Chair. Which starts on page LO00340.

CHAIRPERSON: LO00382. Because you referred us to LO00382.

ADV MOHLAMONYANE SC: On which section, rather paragraph 110 appears. But the affidavit itself starts from paragraph, rather from page LO00340. Which served before the State Capture Commission. I think we have already mentioned, but it is also appropriate to mention that again.

CHAIRPERSON: And it is your paragraph 100 of Mosing.

ADV MOHLAMONYANE SC: 110. 110.

CHAIRPERSON: 110.

ADV MOHLAMONYANE SC: Yes, on page LO00382.

CHAIRPERSON: Thank you.

ADV MOHLAMONYANE SC: Advocate Batohi, you may proceed to read into the record paragraph 110, which we will later hand in as an exhibit.

ADV BATOHI: Sure. The section is headed:

“Booyesen's review application”

Paragraph 110:

“The prosecuting team, led by Chauke and I, consulted with Advocate Lawrence Hodes

SC (Hodes SC) and Advocate Manaka (Manaka) on the 4th of June 2013 for the purpose of opposing the review application. Hodes SC was provided with the prepared notes, the prosecution memorandum, the indictment and copies of the dockets, to enable him to prepare the opposing papers.”

Chau, paragraph, sorry, should I continue?

ADV MOHLAMONYANE SC: Yes, continue to 111.

ADV BATOHI: Paragraph 111.

“Chauke was of the view that the prosecution memorandum should not be made available, as it was a privileged communication between the NDPP and the DPP, to which I agreed.”

ADV MOHLAMONYANE SC: Now, let us go to LO3.

CHAIRPERSON: Before you proceed, counsel. We were earlier informed that Advocate Maema led the prosecution team. Which is correct. Advocate Mosing. Seems to suggest that the leader of the prosecution team was Advocate Chauke. Elsewhere.... Elsewhere we are told the leader of the prosecution team was Advocate Maema. Please clarify that discrepancy, what appears to be a discrepancy to me?

ADV MOHLAMONYANE SC: Let me find out from the witness herself. If she is in a position to clarify that.

ADV BATOHI: Yes, thank you. This matter was dealt with at one point in my testimony. Explaining that Advocate Chauke was on the evidence that we are presenting the DPP, the *de facto* DPP in charge of the team. Advocate Maema, as I explained, in all cases, you would have a DPP who is the head of the division, who would be in charge of matters. And you would have a prosecuting team, the technical level, where you would have a leader at the technical level. So there is no contradiction. It is in fact explains different roles with regard to, for want of a better word, the leader at the technical level and the DPP as the overall person in charge of the team and the prosecution. So there is no contradiction. It is different roles.

CHAIRPERSON: We do know that Advocate Chauke was appointed as a coordinator. Will he be falling under that technical team that you are talking about?

ADV BATOHI: In my understanding, Chairperson, he was the DPP in charge, not just my understanding, what Advocate Jiba says in her affidavit, that he was the DPP in charge. So my understanding would be he would not fall in the technical team. The technical team would be headed by Advocate Maema and the DPP in charge overall of the matter is Advocate Chauke.

CHAIRPERSON: As a leader of the prosecution team?

ADV BATOHI: That is correct, Chairperson.

CHAIRPERSON: Will he then be associated with the prosecutorial decisions that would have been taken?

ADV BATOHI: That is correct, Chairperson.

CHAIRPERSON: Thank you.

ADV MOHLAMONYANE SC: Thank you, Madam Chair. Let me then refer you to bundle LO3 on page LO00738 in which you will find an internal memorandum from the Office of the National Director of Public Prosecutions. Please read this document onto the record and it will later be handed up as an exhibit. Read the purpose, the background, and I will direct you to where you should read under discussion on the next page in paragraph 3.1 and explain the purpose of this memorandum.

ADV BATOHI: Chairperson, this is a memorandum on the letterhead of the NPA, specifically the Office of the National Director of Public Prosecutions. It is an internal memorandum from Advocate A Mosing to Advocate Jiba. The subject line is State v. Booyesen and others, Cato Manor case, and the date is the 4th of June 2013.

“The purpose

The purpose of this memorandum is to inform the acting NDPP of the outcome of the meeting consultation with appointed counsel on 4 June 2013 in Sandton.”

The background as well, counsel?

ADV MOHLAMONYANE SC: The background as well, which is in paragraph 2.1 on the next page.

ADV BATOHI: 2.1:

“The appointed counsel is Lawrence Hodes SC from the Johannesburg Bar. He is ably assisted by Advocate Manaka, an African female from the same Bar Council. The purpose of the meeting was to brief counsel fully on the application of the above case. Present was Advocate Chauke, who led the entire prosecution team, barring Advocate Mathenjwa, who was on leave. The team had prepared notes for counsel in reply to the points raised in the founding affidavit. In addition, the prosecution memorandum, indictment, and memorandum written by the applicant in support for the payment of rewards for himself and the rest of the accused for work done during the killings was also made available to counsel. The last piece of evidence is, in counsel's view, very important to overcome the application.”

ADV MOHLAMONYANE SC: Go to discussion.

CHAIRPERSON: Counsel, is this document marked MAC7?

Advocate Mohlamonyane, or MC7?

ADV MOHLAMONYANE SC: [indistinct – 0:19:27]

CHAIRPERSON: The memorandum.

ADV MOHLAMONYANE SC: Oh, the memorandum.

CHAIRPERSON: Yes, what is it? Is that MAMC7 or MC7?

ADV MOHLAMONYANE SC: I do not see, in the copy that is in my possession, I only see it marked D1 in quotation marks.

CHAIRPERSON: Give me the top page, LO?

ADV MOHLAMONYANE SC: LO3, LO00738. It starts there. But the copy that is in my possession has a handwritten marking of D1 in.

CHAIRPERSON: It is LO3?

ADV MOHLAMONYANE SC: LO00738.

CHAIRPERSON: 738.

ADV MOHLAMONYANE SC: Indeed, Madam Chair.

CHAIRPERSON: Please refer us to the full numbers.

ADV MOHLAMONYANE SC: The full numbers are...

CHAIRPERSON: 00s. Count those 00s because we are getting confused.

ADV MOHLAMONYANE SC: There are two on the one that I have.

CHAIRPERSON: LO3.

ADV MOHLAMONYANE SC: It is LO, and then thereafter comes two 0s. 00.

CHAIRPERSON: It is volume 3.

ADV MOHLAMONYANE SC: In LO3. Yes.

CHAIRPERSON: 738.

ADV MOHLAMONYANE SC: 738, Madam Chair.

CHAIRPERSON: Is this the internal memo by Advocate Mosing to Advocate Jiba?

ADV MOHLAMONYANE SC: That is correct, Madam Chair.

CHAIRPERSON: Thank you.

ADV MOHLAMONYANE SC: Go to the next page, 739.

CHAIRPERSON: Maybe you can take us back to that paragraph. The earlier paragraph that you were reading from.

ADV BATOHI: Could I read the paragraphs again, counsel?

ADV MOHLAMONYANE SC: Just a minute. Maybe let me understand, Madam Chair. You want me to take you...

CHAIRPERSON: Which paragraph did you refer her to of this memo? You said he spoke about informing Advocate Jiba of the purpose of the Sandton meeting. The purpose appears on the opening page?

ADV MOHLAMONYANE SC: It appears on the opening page, Madam Chair.

CHAIRPERSON: And did you proceed to any other paragraph?

ADV MOHLAMONYANE SC: Yes, we proceeded to the background in paragraph 2, and specifically 2.1, which appears on the next page. And then she read into the record

the whole of paragraph 2.1.

CHAIRPERSON: Yes, thank you.

ADV MOHLAMONYANE SC: Perhaps it would be prudent at this stage, we should cross-reference back to, Advocate Batohi, to Mosing's affidavit, paragraph 110.

ADV BATOHI: Can you take me to the affidavit? The reference, please, counsel.

ADV MOHLAMONYANE SC: LO2, which you read into the record earlier, on page LO00382, specifically paragraph 110.

CHAIRPERSON: That would be paragraph 110 of Advocate Mosing.

ADV MOHLAMONYANE SC: Of Advocate Mosing's affidavit.

CHAIRPERSON: Yes. Thank you.

ADV MOHLAMONYANE SC: I want us to tie the two together. The purpose of this memorandum was to inform the acting NDPP of the outcome of the consultation that took place on the 4th of June. Not so?

ADV BATOHI: The memorandum is dated the 4th of June.

ADV MOHLAMONYANE SC: Yes.

ADV BATOHI: And the meeting was also on the 4th of June 2013. That is correct.

ADV MOHLAMONYANE SC: So it ties with paragraph 110 of Mosing's affidavit. Do you agree?

ADV BATOHI: Yes. This paragraph 110 also refers to the meeting of the 4th of June 2013.

ADV MOHLAMONYANE SC: Let us proceed. Go back to the subtopic discussion in paragraph 3 on page LO00739 of LO3 bundle. Are you there, Advocate?

ADV BATOHI: Mmm-mmm.

ADV MOHLAMONYANE SC: You will see that towards the end of the paragraph, towards the end of paragraph 3.1, Mosing says the relevant Rule 53. Can you read that into the record, where the sentence starts with the relevant Rule 53?

ADV BATOHI: Certainly.

“The relevant Rule 53 was consulted before we came to the conclusion. Advocate Chauke was adamant that the prosecution memo to the ANDPP is a privileged communication between the prosecution and not open for disclosure. I agree with this viewpoint.”

ADV MOHLAMONYANE SC: The prosecution memorandum referred to herein is the one dated 15 August 2012. Not so?

ADV BATOHI: I do not have it before me, so I cannot confirm that. I need to check that before I confirm it.

ADV MOHLAMONYANE SC: We will find the page. I am just trying to locate the page, Madam Chair. I remember we dealt with it. I have located it, Madam Chair. It is the memorandum on page LO665. LO3 bundle, on page LO00665, which was dealt with, I think, yesterday. Where Advocate Chauke had

signed a memorandum, apparently prepared in the name of Advocate Noko-Mashilo. You might want to comment, maybe, about this memorandum.

ADV BATOHI: Yes, this is certainly, what we have been referred to now at LO665, is the covering memo signed by Advocate Chauke in the name of Advocate Noko. But on page 668, you will note that the prosecution memorandum is then apparently attached. And in fact, well not in fact, but the covering memo refers to the application, the indictment, and the draft authorisations on paragraph 665. This is the prosecution memorandum, which appears to be attached. And I cannot say for certain, but it is certainly, that is the prosecution memorandum in the Booysen matter that was prepared by the team. And it would appear that that is the document that is being referred to.

CHAIRPERSON: Advocate Mohlamonyane, you will see we have so many bundles in front of us. You simply refer to the pages and we are battling to figure out whether it is volume 2 or volume 3. If you can, for the completeness of the record, refer to the volumes that you are talking to.

ADV MOHLAMONYANE SC: I thought I was doing that, but my apologies if perhaps I missed.

CHAIRPERSON: This will be volume 3, LO00665.

ADV MOHLAMONYANE SC: Yes, the memorandum referred to will be the one dated 15 August 2012.

CHAIRPERSON: Yes.

ADV MOHLAMONYANE SC: It will be in bundle LO3 on page LO00665.

CHAIRPERSON: Thank you, sir.

ADV MOHLAMONYANE SC: Any other one that I need to refer to as a bundle?

ADV BALOYI-MERE SC: Advocate Mohlamonyane, you referred us to page LO3, page LO00665. But Advocate Batohi, your witness, then took us to LO00668. Which one should we go to?

ADV MOHLAMONYANE SC: Let me do it this way. She was taking you to LO00668 to point out where the prosecution memorandum referred to is located. It starts on page LO00668. The covering minute is dated 15 August 2012, which was the application for authorisation in terms of section 2(4) of POCA.

CHAIRPERSON: Earlier on, counsel, you referred us to page 145. And subsequently to LO200382. That is Advocate Mosing's document, 110.

ADV MOHLAMONYANE SC: Let me make a correction, Madam Chair, with respect. It is supposed to be paragraph. I actually referred to paragraph 145 of Advocate Batohi's affidavit, where she starts giving evidence on the review application, the Booyesen review application. It is actually paragraph 145 on page 60 of her affidavit.

CHAIRPERSON: What was the point of you referring us to paragraph 145 of her affidavit? And which you read...

ADV MOHLAMONYANE SC: So that.

CHAIRPERSON: ...together, I beg your pardon, let me finish, together with LO200382 of Mosing, Advocate Mosing, that you referred us to. What is the import of those?

ADV MOHLAMONYANE SC: LO2?

CHAIRPERSON: Yes.

ADV MOHLAMONYANE SC: The import is that in Mosing, in Mosing's affidavit, specifically in paragraph 110, she talks about, he talks about the team led by Advocate Lawrence Hodes SC, to oppose, the team which was set up by the National Director of Public Prosecution. The team which was set up, let me not say National Director, but the team that was set up by the NPA to oppose the Booysen review application. Now, this ties with Advocate Mosing's memorandum. Advocate Mosing's memorandum...

CHAIRPERSON: No, I beg your pardon. Paragraph 110 does not speak of Advocate Hodes being the leader there. It simply says that the team led by Chauke, not Hodes.

ADV MOHLAMONYANE SC: Yes. He was stating that he was consulted with Advocate Lawrence Hodes. I beg your pardon if I said he led by. The Advocate who was...

CHAIRPERSON: Yes.

ADV MOHLAMONYANE SC: Who was briefed to oppose the

application by Booysen was Advocate Lawrence Hodes SC.

CHAIRPERSON: It is important to get these things correct, counsel, please, because we are recording what you are asking the witness and telling us. It must tally or correspond with the contents of the affidavit. So the point that you were answering earlier was that the import of paragraph 110 of Advocate Mosing is the fact that the prosecution team was led by Advocate Chauke.

ADV MOHLAMONYANE SC: Indeed, Madam Chair, and that it was Advocate Lawrence Hodes who was briefed. With whom consultation took place.

CHAIRPERSON: Yes, thank you. Proceed, counsel.

ADV MOHLAMONYANE SC: Thank you, Madam Chair. Let me refer you then to the supplemental opinion of Dr Broughton, specifically in LO1.

ADV BALOYI-MERE SC: Counsel, sorry to interrupt you. Are you done with LO300665, and 00668? Because that is the last page that I have in front of me.

ADV MOHLAMONYANE SC: I thought I was done, Madam Baloyi-Mere, because the witness had indicated that there was a prosecution memo and reference was made to 665 and 668. 665 being the covering minute, and 668 containing where the prosecution memorandum begins.

ADV BALOYI-MERE SC: Okay. Thank you.

CHAIRPERSON: You were referring to the legal opinion of

Dr Broughton?

ADV MOHLAMONYANE SC: Yes.

CHAIRPERSON: When my sister asked you a question.

ADV MOHLAMONYANE SC: Yes, Madam Chair. Go to LO1, Advocate Batohi and go to page 00217. Go to paragraph 137, and can you read it into the record?

ADV BATOHI: At page 137.

ADV MOHLAMONYANE SC: Paragraph 137.

ADV BATOHI: Paragraph 137.

“It is noted that in Advocate Chauke's email to Advocate Hodes dated 17 March 2014...” Which would be Annexure U to Advocate Broughton's supplementary affidavit, it is in the bundle, which we can have a look at;

“...where Advocate Chauke suggested to counsel how the application for leave to appeal in the Booyesen review case was to be handled. Advocate Chauke intimated that “counsel should also place more emphasis on the fact that Booyesen made a memo of rewards indicating his direct involvement”. This is an indication of Advocate Chauke's knowledge of the case.”

ADV MOHLAMONYANE SC: This suggests that ...[intervenes]

CHAIRPERSON: I beg your pardon. It is your testimony that this paragraph, or this piece that we have read into the record, signifies Advocate Chauke's knowledge of the case?

ADV BATOHI: Of the facts of the case, as opposed to just being a coordinator. It is one of the pieces of evidence that will indicate his knowledge of the evidence in this matter.

CHAIRPERSON: It signifies him having knowledge of the case, as opposed to his involvement in the decision-making processes relating to the case?

ADV BATOHI: That is not what I am saying, Chairperson, what I am saying ...[intervenes]

CHAIRPERSON: No, I am asking you a question.

ADV BATOHI: Chairperson, no. It signifies his knowledge of evidence in this matter, as opposed to his assertion that he was a mere coordinator, which would seem to convey the impression that he was not deeply involved in the case itself with regard to the prosecution and the evidence, et cetera.

ADV BALOYI-MERE SC: A follow-up question, counsel. Is there anything wrong for a coordinator or a liaison officer to read and know what they are coordinating, to know the contents of the files?

ADV BATOHI: I say it in the context of Advocate Chauke's assertion that he was a mere coordinator, which suggests that he was, and he set out what his role entailed. It seems to convey the impression that he was not involved intimately

with the investigation and the prosecution of this matter. So what I am saying is that this is one indication that that is not correct.

ADV BALOYI-MERE SC: If memory serves me well, the only exclusion from his duties was making prosecutorial decisions. But I do not think, or I did not see anywhere where he was excluded from knowing the facts or from reading the files.

ADV BATOHI: Perhaps I can address it in this way. A decision to take a matter on appeal is also a prosecutorial decision. So in this case, Advocate Chauke's role in this process in terms of his engagement with Advocate Hodes regarding appealing this matter, would amount to a prosecutorial decision with regard to the appeal process in this matter.

CHAIRPERSON: To come back to my question, thank you my sister, to piggyback on that. So this extract that you have read to us and repeating your answer is not only about him having knowledge about the appeal. It also signifies, according to you, that he was involved in the appeal decisions.

ADV BATOHI: That is correct, in the decision to take the matter on appeal.

CHAIRPERSON: Earlier on you were contrasting knowledge of the appeal matters with him having been a coordinator. Are you correcting that?

ADV BATOHI: That is, that is, let me think about that before I agree too quickly. I should go back to what he says his role was as a coordinator so that I can properly apply my mind to that.

CHAIRPERSON: No, no, no. You see, the extract that you have read to us or read into the record speaks of Advocate Chauke having made suggestions to the lead counsel in the appeal. And I asked you the question as to whether this, his involvement in the appeal as you are writing to the record, is suggestive of the fact that he participated in the appeal decision making.

ADV BATOHI: That is correct.

CHAIRPERSON: And your answer was that no, it signifies that he had knowledge of the appeal processes. If I may paraphrase, but you spoke of knowledge ...[intervenes]

ADV BATOHI: Chairperson...

CHAIRPERSON: If I may proceed, ma'am, and just clarify my question to you. But you may answer if you are in a position to answer.

ADV BATOHI: Well, I am trying to because there is a number of things that were asked with regard to this piece of information. Perhaps what I can say is that this piece of information, together with others, will indicate Advocate Chauke's involvement in the appeal process and in taking a decision to support or to request an appeal in this process,

which in fact would be contrary to what he says his role as a coordinator was because it excluded taking prosecutorial decisions and deciding to take a matter on appeal is a prosecutorial decision. I hope that clarifies, Chairperson.

CHAIRPERSON: Yes, it does clarify. And I asked you a question. Are you correcting your earlier answer that necessitated our questions? Because you seemed earlier to be contrasting knowledge of the appeal process with him being having appointed as a coordinator ...[intervenes]

ADV BATOHI: Chairperson, sorry.

CHAIRPERSON: The question then was, are you then therefore correcting your earlier answer?

ADV BATOHI: Chairperson, I do not think I made a mistake. I think we need to read the record so that I can. I think I dealt with one aspect of it and then dealt with another aspect of it. But I do not think that I made a mistake that requires a correction. But I would like to look at that.

CHAIRPERSON: Advocate Mohlamonyane, as your witness, you can assist her.

ADV MOHLAMONYANE SC: Let us for now proceed. I referred to paragraph 137 just to indicate the extent to which Advocate Chauke participated in the whole Booyesen issue.

ADV BATOHI: 137 and LO1 is that?

ADV MOHLAMONYANE SC: Yes, LO1, yes. But now, I want to take you back to your affidavit. Let us park the issue of

the appeal for now. I want to take you back to your affidavit.

Go back to page 61.

ADV BATOHI: I am there.

ADV MOHLAMONYANE SC: May I proceed, Madam Chair?

CHAIRPERSON: You may proceed, counsel.

ADV MOHLAMONYANE SC: Go to paragraph 146.

ADV BATOHI: Mmm-mmm.

ADV MOHLAMONYANE SC: Deal with the Jiba answering affidavit.

ADV BATOHI: So, in response to Booyesen's founding affidavit in the review process, Advocate Jiba deposed to an answering affidavit. This affidavit was, according to Advocate Chauke himself, finalised by him. In her answering affidavit, and in response to Booyesen's assertion that no statements in the dockets implicated him.

ADV BALOYI-MERE SC: Advocate Mohlamonyane, I am really sorry to interrupt your witness. At paragraph 146, there is a footnote there.

ADV MOHLAMONYANE SC: Yes, there is a footnote.

ADV BALOYI-MERE SC: The footnote tells us that it is Advocate Chauke's confirmatory affidavit in the GCB matter. And filed under bundle Zondo Commission. The witness gave another explanation. That in response to the Booyesen's matter, Jiba deposed to an affidavit that was finalised by Chauke. Can we maybe be guided to that affidavit if it is

close by, in the Booyesen's? Because I heard Booyesen in response to Booyesen. But when I look at the footnote and read what is on the footnote, it does not talk about Booyesen. Instead it gives me Jiba against the GCB and also that it was filed in the Zondo Commission. Unless if I am misunderstanding the explanation.

ADV MOHLAMONYANE SC: Maybe let me, let us go to the footnote itself and go to ZC00164.

ADV BATOHI: In which bundle, counsel?

ADV MOHLAMONYANE SC: ZC00184 to ZC00165. I will get the volume soon. Volume 1, Madam Baloyi-Mere.

CHAIRPERSON: It is a confirmatory affidavit of Advocate Chauke.

ADV MOHLAMONYANE SC: Indeed, Madam Chair.

ADV BALOYI-MERE SC: But it is in the GCB matter, if you look at the headnote.

ADV MOHLAMONYANE SC: Yes.

ADV BATOHI: May I explain my response?

CHAIRPERSON: I beg your pardon, ma'am. Just wait for counsel to capture what we are talking about.

ADV MOHLAMONYANE SC: They are still trying to locate for me ZC00164.

CHAIRPERSON: I beg your pardon, Advocate Batohi.

ADV BATOHI: I do not seem to have the bundle either, Chairperson.

CHAIRPERSON: Well, it is your team that ought to have prepared your bundles.

ADV BATOHI: That is correct.

CHAIRPERSON: And by the way, Advocate Batohi, all these bundles that we have prepared ourselves come from your office.

ADV BATOHI: That is correct, Chairperson. There was a lot of work that went into this.

ADV BALOYI-MERE SC: Maybe to assist, because I am the one who raised this issue, the witness may have been wrong to characterise paragraph 146 and link it to the Booysen matter instead of just... because the paragraph that deals with the Booysen matter starts from 147. But before she read 146, she characterised it as in response to Booysen matter. That is where my confusion came in, because I looked at the footnote and the footnote does not say anything about Booysen.

ADV MOHLAMONYANE SC: In fact, it is cross-referenced in LO. It must be LO2.

ADV BATOHI: Chairperson, I did ask if I could try to clarify the panel member's confusion. I would appreciate the opportunity to do that.

CHAIRPERSON: I think you must wait for your counsel to lead you. He is still trying to find himself, and please allow him to lead you. Because if he does not understand, then it

will be difficult for him to lead you. Just be patient a little bit and let counsel take us through what you are trying to ascertain.

ADV MOHLAMONYANE SC: Madam Chair, Nomgcobo Jiba's, Advocate Jiba's affidavit appears in bundle LO3. And it is paragraph...

ADV BATOHI: Page number, please.

CHAIRPERSON: Page?

ADV MOHLAMONYANE SC: Page LO00871. Now, it might be prudent to also refer to 210 before we get to 211. Without being seen to be repetitive, Advocate Batohi, I would ask you to please just read 210 again, paragraph 210 of that, before you get to 211.

ADV BATOHI: Paragraph 210.

“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 for the prosecution team to prepare an answering affidavit to be deposed to by myself, on behalf of the NPA.”

ADV MOHLAMONYANE SC: Read the whole sentence. The

whole paragraph, rather.

ADV BATOHI: Pardon me.

“I refer the Court to the confirmatory affidavit of Advocate Chauke filed herewith.”

ADV MOHLAMONYANE SC: We will go to it. Just go to 211.

ADV BATOHI:

“The Hodes team then prepared the answering affidavit, which was finalised by Advocate Chauke, and which I signed. It was then duly filed by a state attorney. At the time that I deposed to the answering affidavit, the facts and the evidence against Booysen had been presented to me on many occasions, and I was well acquainted with the case against him.”

ADV MOHLAMONYANE SC: It will later be handed up as an exhibit. That page 871 in bundle LO3. But then let us now go to the... the confirmatory affidavit of Advocate Chauke, which you will locate in LO4 bundle. Are you there?

ADV BATOHI: Page number?

ADV MOHLAMONYANE SC: 880. It starts on page 880.

ADV BATOHI: 880?

ADV MOHLAMONYANE SC: Yes. Are you there?

ADV BATOHI: Not yet. I am.

ADV MOHLAMONYANE SC: It is a confirmatory affidavit of

Andrew Masenyani Chauke. Confirm that?

ADV BATOHI: That is correct.

CHAIRPERSON: Counsel, give me a second.

ADV MOHLAMONYANE SC: 880.

CHAIRPERSON: In paragraph 210 that you have just read to the record, where mention is made of Advocate Chauke having been the DPP in charge of this matter. Which matter?

ADV MOHLAMONYANE SC: You may answer the question for the Chair.

ADV BATOHI: Of the Booyesen... My understanding is it is of the Booyesen prosecution matter.

CHAIRPERSON: But the matter in respect of which the affidavit is prepared is the GCB matter against Advocate Jiba, Advocate Mrwebi, and one Mzinyathi, which was not necessarily a Booyesen's matter. So I just want to get clarity there.

ADV BATOHI: Yes, I am trying to give clarity, Chairperson. If I am given the opportunity to explain, it might become clear.

CHAIRPERSON: Yes, if Advocate Jiba deposes to an affidavit in a matter in which she is a respondent and she refers to that matter in which she is a party and she says, following the consultation process, the prosecution team agreed that Advocate Chauke, as the DPP in charge of this matter. Of this matter.

ADV BATOHI: Chairperson, can I be referred to that page

again?

CHAIRPERSON: Which matter does it refer to? It is page LO00871, which is marked in exhibit to be handed up later. Paragraph 210 that you read into the record.

ADV BATOHI: Yes, I am back there.

CHAIRPERSON: My question is, counsel, reference to this matter, my question is, which matter? And you say the Booyesen's matter. And I refer you to the deposition, or rather to the affidavit of Advocate Jiba in which she is a respondent. And that matter is not a Booyesen's matter per se. It is an application by the GCB. And that is where I am getting a confusion when you say this matter, in which Advocate Chauke, according to you, was allegedly in charge of, seemed to be incorrect. And do correct me if I am wrong.

ADV BATOHI: Thank you, Chairperson. I appreciate the opportunity.

ADV MOHLAMONYANE SC: If I may, to assist her, Madam Chair, with your permission. That may help her to answer the question.

CHAIRPERSON: Yes, sir.

ADV MOHLAMONYANE SC: May I refer you, with Madam Chair's permission, Advocate Batohi, to paragraph 208 on the same page?

ADV BATOHI: Yes, that is where I was going. Thank you.

ADV MOHLAMONYANE SC: Go there.

ADV BATOHI: So let me, I am trying to figure out how to deal with this so that it makes sense and I am clear about it. But okay, let us start with paragraph 208. It states, and that is correct, Chairperson, this is Jiba's affidavit in the GCB matter. At paragraph 208, she's now dealing with the Booyesen matter.

“The Booyesen matter was instituted and argued when there was still uncertainty as regards the reviewability of decisions to prosecute or not to prosecute. As I have set out above, this was indeed only finally determined by the decision of Brandt J in the full matter. The judgment of Gorven, which was the Booyesen review judgment, was handed down on 26 February 2014 and after the judgment of Murphy in the full matter, but before the judgment of Brandt in the JA matter and these cases will become relevant later in the Mdluli case.

For that reason, the advice of Hodes's SC team was that it was not necessary to file a Rule 53 record. I never intended to detail all of the information that was placed before me for the purposes of granting the authorisation.

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's SC team and the prosecution team and would provide the Hodes's 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 filled herewith.

So Chairperson, if I may explain, at paragraph 146, going back to my affidavit, at page 61.

CHAIRPERSON: Yes, ma'am.

ADV BATOHI: Chairperson, I state in response, Jiba deposed to an answering affidavit. So she deposed to an answering affidavit in the Booyesen review matter.

[End of audio – power failure]

ENQUIRY ADJOURNS

ENQUIRY RESUMES

CHAIRPERSON: Good afternoon, everyone. Good afternoon, Advocate Batohi. Advocate, Mr Mohlamonyane, you may proceed.

ADV MOHLAMONYANE SC: Thank you, Madam Chair.

Advocate Batohi, before the lights went off, the Madam Chair raised the issue of in the, in this matter, this phrase in this matter appear to have been causing some confusion. Maybe we need to contextualize it in order for it to be clearly comprehended. If I refer you back to Advocate Jiba's affidavit.

CHAIRPERSON: Please speak to the volume.

ADV MOHLAMONYANE SC: Advocate Jiba's affidavit ...[intervenes].

CHAIRPERSON: You are still volume 3?

ADV MOHLAMONYANE SC: It is volume 3, Madam Chair.

CHAIRPERSON: I think it is at paragraph page 8000871, paragraph 210.

ADV MOHLAMONYANE SC: 871. Thank you, Madam Chair, I have located it. Now Advocate Batohi, if you go back to where it starts on page 00866, do you see that? It starts on page 00866, do you see that?

CHAIRPERSON: 0?

ADV MOHLAMONYANE SC: It starts on page 00866.

ADV BATOHI: The affidavit starts on that page, I do see that.

ADV MOHLAMONYANE SC: Now the next page, at the bottom there, you see paragraph 199 where Advocate Jiba says:

"I turn now to consider the complaint in the Booysen matter."

ADV BATOHI: I see that.

ADV MOHLAMONYANE SC: Which presupposes that she was dealing with other issues, not so?

ADV BATOHI: That is correct.

ADV MOHLAMONYANE SC: Now she goes on from that Roman VII, number VII, that subparagraph under the Booyesen matter, from paragraph 200, 201 on the next page, 6800868. The next page, 00869, appears paragraph, appear paragraphs 202, 203 and 204. She is still dealing with the Booyesen matter. Go to the next page, 00870 appear paragraphs 205, 206. Do you see that?

ADV BATOHI: I do.

ADV MOHLAMONYANE SC: There is also 207 at the bottom there. Do you see that?

ADV BATOHI: I do, yes.

ADV MOHLAMONYANE SC: Now she went on up to the next page, from 208, 209, 210, 211, she is still dealing with the Booyesen matter.

ADV BATOHI: That is correct.

ADV MOHLAMONYANE SC: On page 00872, 212, 213, 214 it appears that she ...[intervenes].

CHAIRPERSON: Counsel, I think it addresses my question.

ADV MOHLAMONYANE SC: Does it, Madam Chair?

CHAIRPERSON: It does.

ADV MOHLAMONYANE SC: I am elated.

CHAIRPERSON: Thank you very much for that clarity.

ADV MOHLAMONYANE SC: Indeed.

CHAIRPERSON: Flowing from that paragraph 199 ...[indistinct].

ADV MOHLAMONYANE SC: [Indistinct]... indeed.

CHAIRPERSON: Thank you.

ADV MOHLAMONYANE SC: Now let me take you back to your affidavit. You were on page 146.

ADV BATOHI: Paragraph 146.

ADV MOHLAMONYANE SC: Ja, I am sorry. My apologies, paragraph 146, page 61.

ADV BATOHI: That is correct.

ADV MOHLAMONYANE SC: You may proceed with paragraph 146.

ADV BATOHI: Yes, so I had started from there and then we sought to clarify what I had said there. So to the extent that it is necessary, getting back to the Booysen review matter, which I deal with in paragraph 145, I state in 146:

“In response, Jeba deposed to an answering affidavit. This answering affidavit in the Booysen matter, that is, was, according to Chauke himself, finalized by him.”

And it is correct, as the honourable panel member explained, the reference to 111 is what we have just dealt

with, and that is in particular paragraph 210 and 211 of Jiba's affidavit in the GCB matter where she is dealing with the Booysen matter and states in paragraph 211:

“The Hodes SC team then prepared the answering affidavit, which was finalized by Advocate Chauke and which I signed, and there is a confirmatory affidavit to that effect from Advocate Chauke, which is also filed in the GCB matter.”

So that was, I hope that clarifies paragraph 146. Moving on to paragraph 147, back to the Booysen review matter, in her answering affidavit and in response to Booysen's assertion that no statements in the dockets implicated him, Jiba stated, and in paragraph, we quote then from paragraph, from her affidavit in the Booysen review matter, paragraph 16, and that continues on page 062 of my affidavit, and then on to 063 where we quote from paragraph 17 and then 21.

Essentially in paragraph 16, Advocate Jiba sets out reasons why she considers there was *prima facie* evidence against Booysen in the matter. And then in paragraph 17, she makes particular reference to statements that were made by Aiyer, Danikas, and Ndlondlo, and in that regard, she annexed copies of these statements to her affidavit, NJ2, 3, 4, and 5.

ADV MOHLAMONYANE SC: Be so kind to read, Advocate Batohi, paragraph 17 into the record.

ADV BATOHI: In paragraph 17 of her answering affidavit, Advocate Jiba states the following.

“Particular reference is made in this regard to the statements made by Colonel Rajendran Sanjeevi Aiyer, Mr Aris Danikas, and 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 murder of at least 28 people and the monetary and non-monetary awards claimed by him (the applicant) for the instrumental part that he played in these crimes. Additionally, Danikas has revealed some of the information that he has provided to the respondents and to the press, and even posted video footage thereof on YouTube. I annex copies of the statements as NJ2, 3, 4, and 5, respectively.”

ADV MOHLAMONYANE SC: I will refer you at a later stage to these statements referred to by Jiba as NJ2 to NJ5. But for the moment, go to paragraph 21 and read it into the

record. We will revert.

ADV BATOHI: Paragraph 21 of Advocate Jiba's answering affidavit:

“These are only some of the instances that are referred to in the above-mentioned statements, which were considered together with the other information in the docket before the impugned decisions were made. In this affidavit, I do not intend to detail all of the information that was placed before me prior to me making the decisions in issue. I submit with respect that the aforementioned information is *prima facie* proof that the applicant was involved in racketeering activities.”

ADV MOHLAMONYANE SC: Now, let us go back to paragraph 17, and from there, go directly to the annexes that she refers to, which are contained in your bundle. The first one is NJ2, marked SB1b on page 088 of your bundle. Are you there?

ADV BATOHI: I am.

ADV MOHLAMONYANE SC: It is a statement of a Colonel Aiyer, Rajendran Sanjeevi Aiyer. Have you seen it?

ADV BATOHI: That is correct.

ADV MOHLAMONYANE SC: Go to the last page of that statement on page 090.

ADV BATOHI: Yes.

ADV MOHLAMONYANE SC: The date is the 3rd of August 2012.

ADV BATOHI: That is correct.

ADV MOHLAMONYANE SC: On which it was commissioned.

ADV BATOHI: That is correct, and apparently signed by Colonel Aiyer.

ADV MOHLAMONYANE SC: Apparently signed by Colonel Aiyer. Go to the next one on page 091, marked SB1c, a statement of Aris Danikas.

CHAIRPERSON: Before you do that, sir, the first statement of Colonel Aiyer is SB1b 088, NJ2, am I right?

ADV MOHLAMONYANE SC: That is so, Madam Chair.

CHAIRPERSON: That is the NJ2 referred to by Advocate Batohi. Then the second one, jumping the one of ...[intervenes].

ADV MOHLAMONYANE SC: Danikas, the one of Danikas.

CHAIRPERSON: Yes, Danikas. It is unsigned. The next statement, NJ4, in other words, the statement of Mr Danikas, NJ3 is unsigned. The next statement of Colonel Aiyer is at SB1d 097.

ADV MOHLAMONYANE SC: That is so, Madam Chair.

CHAIRPERSON: And which one were you referring to?

ADV MOHLAMONYANE SC: And may I mention before we leave it that it is an additional statement. I was coming to it, but may I mention that this second statement of Colonel Aiyer is an additional statement from what he states in the second line of his statement. He says he was approached by the investigation team in order to make this, the additional statement. Then he makes it as set out herein.

CHAIRPERSON: The first statement of Colonel Aiyer, if you look at SB1b 090, who has commissioned that statement?

ADV MOHLAMONYANE SC: It is not clear from the statement as to who has commissioned it.

CHAIRPERSON: Is it commissioned, though?

ADV MOHLAMONYANE SC: In any event, it is not clear whether it is commissioned or not. But what appears here is a signature which comes before the name RS Aiyer, Colonel, where he had purported to be saying, I know and understand the contents of this statement, which presumably should have been, presumably it was before a Commissioner of Oath, but it is not clear. It does not appear in the statement, Madam Chair.

CHAIRPERSON: He is signing as a deponent, not as the Commissioner.

ADV MOHLAMONYANE SC: Indeed.

CHAIRPERSON: So my question is, is this statement properly commissioned?

ADV MOHLAMONYANE SC: To my mind, it is not properly commissioned.

CHAIRPERSON: The next statement of Colonel Aiyer that you referred to is at SB1d 098. That statement is properly commissioned.

ADV MOHLAMONYANE SC: It appears so, Madam Chair ...[intervenes].

CHAIRPERSON: Thank you.

ADV MOHLAMONYANE SC: On page 102.

CHAIRPERSON: Yes, you may proceed, sir.

ADV MOHLAMONYANE SC: Advocate Batohi, let me refer you to the second statement before we go back to the first one of Colonel Aiyer, the additional statement. Go to the last page where it has been commissioned by a Lieutenant Colonel Richard Ramukosi. You see that?

ADV BATOHI: I do.

ADV MOHLAMONYANE SC: You see above that, there is a signature which is presumably that of Colonel Aiyer.

ADV BATOHI: Yes, I see that. It says RS or G Aiyer next to it, what appears to be Aiyer.

ADV MOHLAMONYANE SC: Across that signature appears a date, 31 August 2012.

ADV BATOHI: That is correct.

ADV MOHLAMONYANE SC: Down the statement, down the page, appears a typed version which says 31 August 2012 at

10:45 and it was ...[intervenes].

ADV BATOHI: That is correct.

ADV MOHLAMONYANE SC: Done at Durban.

ADV BATOHI: That is so.

ADV MOHLAMONYANE SC: Let us go back to the first one, the first Aiyer statement, NJ2, SB page 088. It starts on page 088, Madam Ramagaga, and it goes to, it ends on page 090.

CHAIRPERSON: SB1b 088 for the purpose of the transcription.

ADV MOHLAMONYANE SC: Indeed, Madam Chair.

CHAIRPERSON: What about the statement?

ADV MOHLAMONYANE SC: I am referring you to the date on which it was allegedly signed, or signed, which appears to be 3 August 2012.

ADV BATOHI: That is correct.

ADV MOHLAMONYANE SC: Now, tying it to the date on which the racketeering certificates were issued by Jiba, you will remember that we dealt with it.

ADV BATOHI: We did.

ADV MOHLAMONYANE SC: It was 17 August 2012, not so? We may refer back ...[intervenes].

ADV BATOHI: I cannot recall, but I will accept it. I cannot recall.

ADV MOHLAMONYANE SC: We may refer back to the documentation.

ADV BATOHI: Perhaps we could.

ADV MOHLAMONYANE SC: I just need to be reminded as to which bundle that was.

ADV BATOHI: Sure.

ADV MOHLAMONYANE SC: May I take instructions, Madam Chair?

CHAIRPERSON: Counsel, behind you.

ADV MOHLAMONYANE SC: Thank you, Madam Chair. I am reminded that it appears, the authorization appears, in fact, the application was made on 15 August 2012, and it was in LO3, page LO 00665, where Advocate Chauke had signed, above the imprint of Advocate Noko-Mashilo. Do you still remember that?

CHAIRPERSON: LO3?

ADV MOHLAMONYANE SC: LO3 bundle, page LO 00665. That is where the application for authorization, in terms of section 2(4) of POCA, was made.

ADV BATOHI: If we are looking for the date that Jiba authorized it ...[intervenes].

ADV MOHLAMONYANE SC: Yes, we will come to that. The authorization then comes on page 667. The authorization in terms of section 2(1)(f) is on 667.

ADV BATOHI: That is correct.

ADV MOHLAMONYANE SC: Maybe I should have started with 666.

ADV BATOHI: That is right.

ADV MOHLAMONYANE SC: Where there is authorization in terms of section 2(1)(e).

ADV BATOHI: That is correct.

ADV MOHLAMONYANE SC: Now, the two authorizations were made after the 3rd of August.

ADV BATOHI: They were made on the 17th of August, that is correct.

ADV MOHLAMONYANE SC: After the first ...[intervenes].

CHAIRPERSON: I beg your pardon. The one at LO 00667 is in terms of 2(1)(f).

ADV MOHLAMONYANE SC: 2(1) - 667 is 2(1)(f), indeed, Madam Chair.

CHAIRPERSON: Yes. You referred to (e).

ADV MOHLAMONYANE SC: The one (e) is 666.

ADV BATOHI: That is correct.

ADV MOHLAMONYANE SC: And both of them were done on the same day by Advocate Jiba, 17 August 2012.

CHAIRPERSON: 17 August 2012?

ADV MOHLAMONYANE SC: Indeed, Madam Chair.

CHAIRPERSON: What is the relevance of this date?

ADV MOHLAMONYANE SC: The relevance of the date comes into play because Advocate Jiba states in her affidavit that she conceded statements in NJ2, which were sworn statements in NJ2, NJ3, NJ4, and NJ5, which are collectively

referred to as SB1 in Advocate Batohi's bundle.

ADV BATOHI: So NJ4 is dated 31 August 2012, which is after the 17th of August 2012, which, logically speaking, it is signed, it is commissioned after that. So at the point when the racketeering authorization was granted, this was, if this statement, whether it was taken or not, I cannot say, but it was certainly not commissioned. It was only commissioned after the racketeering certificate was authorized.

CHAIRPERSON: NJ4 1D097, dated 31 August 2012, Advocate Mohlamonyane, seems to be a replica of the next statement. And I say, seems to be a replica of the statement NJ4 1E103.

ADV MOHLAMONYANE SC: It is, Madam Chair, and at the beginning I did mention that there are two statements, the one with a big font and the other with a smaller font, but they seem to be the same. It is a replica of the first one.

CHAIRPERSON: I am not sure about the fonts. All that I know is that they are all in capital letters.

ADV MOHLAMONYANE SC: Maybe ...[intervenes].

CHAIRPERSON: But it is fine, you may proceed. I was just making a point that these statements that I have just referred to seem to be the same.

ADV MOHLAMONYANE SC: Indeed.

CHAIRPERSON: When you look at the contents thereof.

ADV MOHLAMONYANE SC: Indeed, Madam Chair. Now, let

us go back to Danikas' statement.

ADV BATOHI: It is at SB1C at 91, 091.

ADV MOHLAMONYANE SC: Yes. It is not even signed.

CHAIRPERSON: Do you know what is the rank of Mr Danikas? Can you please refer to them properly. They are officers. If you do not know the rank, just refer to them as officer.

ADV MOHLAMONYANE SC: I will do that, Madam Chair.

CHAIRPERSON: The public will need to know that we are dealing with police officers here.

ADV MOHLAMONYANE SC: Indeed, Madam Chair.

CHAIRPERSON: You can refer to him as Mr, Officer Danikas.

ADV MOHLAMONYANE SC: It is not clear from his statement here what rank he was, but he only says he was a police reservist. Let me refer to him merely as an officer.

CHAIRPERSON: Absolutely.

ADV BATOHI: Chairperson, at the time he made the statement, it states, his statement starts:

“I, Aris Danikas, age 41 years old, ex-owner of Tektronix, would like to make the following statement.”

And then he is, in fact, referred to as a reservist somewhere in the statement.

ADV MOHLAMONYANE SC: Yes, he refers to himself as a police reservist. So, I will refer to him as an officer. We do

not know his rank.

ADV BATOHI: Yes.

ADV MOHLAMONYANE SC: Madam Ramagaga, would you like to raise something?

MS RAMAGAGA: No, no, I do not want to raise anything. Thanks for giving me attention. Thank you.

ADV MOHLAMONYANE SC: Madam Chair ...[intervenes].

CHAIRPERSON: When I went through the statement, I wondered whether he is a member of the public or whether he is part of the police force.

ADV MOHLAMONYANE SC: I am, Madam Chair, you may be correct because I am alerted to this technical aspect of whether he was, he is a police, a police reservist is a police officer or not and my learned colleague says police reservists are not members of the force. So, we would rather call him Mr Danikas.

CHAIRPERSON: You may refer to him as such, as a reservist. People will understand that he is not necessarily under the Commander of the SAPS. We know what the reserves do, but at least we understand that he was operating, whatever he was doing, he ...[intervenes].

ADV MOHLAMONYANE SC: He was a reservist.

CHAIRPERSON: He was a reservist.

ADV MOHLAMONYANE SC: Thank you, Madam Chair. Advocate Batohi, we will call him Mr Danikas, the reservist.

ADV BATOHI: As you wish.

ADV MOHLAMONYANE SC: The police reservist.

ADV BATOHI: Mr Danikas, the police reservist.

ADV MOHLAMONYANE SC: Yes. His statement is unsigned, as we indicated.

ADV BATOHI: That is correct.

ADV MOHLAMONYANE SC: Is this a statement that Advocate Jiba said she considered?

ADV BATOHI: That is correct, one of the statements she considered was one that was signed after she signed the racketeering authorization and this one was not signed or commissioned.

ADV MOHLAMONYANE SC: Let us go to NJ5, which is on page 277 of your bundle. It is marked SB11. It is Annexure SB11.

CHAIRPERSON: Volume?

ADV MOHLAMONYANE SC: It is in the bundle, Advocate Batohi's bundle, yes.

CHAIRPERSON: [Indistinct]... [microphone off]

ADV MOHLAMONYANE SC: It is SB11. It is on ...[intervenes].

CHAIRPERSON: SB5A 236, is that the one?

ADV MOHLAMONYANE SC: Let me verify it.

CHAIRPERSON: Oh, I beg your pardon. No, no, no, I am wrong. I am wrong there. Yes, NJ5 is SB11277.

ADV MOHLAMONYANE SC: Yes, from 277.

CHAIRPERSON: Yes, thank you.

ADV MOHLAMONYANE SC: You will remember, Advocate Batohi, that this statement was referred to earlier in the week, earlier last week or, it was referred to and ...[incomplete].

CHAIRPERSON: You can remind her that it is a statement of Ndlondlo. We dealt with it earlier.

ADV MOHLAMONYANE SC: Yes, it is a statement of Ndlondlo which was dealt with.

ADV BATOHI: That is correct.

ADV MOHLAMONYANE SC: And an issue arose as to whether it was properly commissioned. Go to page SB11 282.

ADV BATOHI: I am there.

ADV MOHLAMONYANE SC: All we see here are a marking, a cross-marking, and names that, a name that appear to be Matiani or Mtiani. Do you see that?

ADV BATOHI: I do. It looks like it is B, Mtiani.

ADV MOHLAMONYANE SC: So this is one of the statements, it is among the statements that Advocate Jiba says she considered.

ADV BATOHI: That is correct.

ADV MOHLAMONYANE SC: Is there anything that you would like to point out ...[intervenes].

ADV BATOHI: If we could go back ...[intervenes].

ADV MOHLAMONYANE SC: On these statements.

ADV BATOHI: If we could go back to ...[intervenes].

ADV MOHLAMONYANE SC: To your affidavit.

ADV BATOHI: Which paragraph were we at, if you could just remind me?

CHAIRPERSON: Paragraph 147 was your last paragraph in relation to ...[intervenes].

ADV BATOHI: 145, 146. It is correct, Chairperson. That is correct.

ADV MOHLAMONYANE SC: On page 63.

ADV BATOHI: That is correct. So perhaps it would be best explained if I move on in my paragraph, in my affidavit, to paragraph 149. In Booyesen's replying affidavit, he dealt with these statements and the essence of his reply in respect of these four statements attached by Advocate Jiba to her affidavit, in support of a decision to prosecute him for racketeering, and that is important to bear in mind that these were in support of a decision to prosecute him for racketeering, was this.

Firstly, two were statements by Colonel Aiyer, which we have gone through now. They did not implicate him in any of the offenses indicated in the charge sheet. The second statement was only deposed to on the 31st of August, approximately two weeks after Advocate Jiba had issued the racketeering certificates. She did so on the 17th of August. She could accordingly not have relied upon the statements

as she claimed in her affidavit to reach her decision.

The third statement purported to be that of Mr Danikas, was not a signed or sworn statement. It was also not dated. And further, the events described in the document, as he said, did not cover the period dealt with in the indictment, except for one event, which he said did not relate to him.

And the fourth statement was that of Mr Ndlondlo, which did not implicate him in any of the offenses. And I should state that when a National Director authorizes racketeering certificates, you must have the signed statements, witness statements before you, so that you know that this is evidence, proper evidence that you can take into account for the authorization of a racketeering certificate.

In his replying affidavit, Booyesen also invited 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, given that it was unsigned statements and in one instance taken, signed after the date of the authorization.

In this regard, Advocate Jiba did not file a further affidavit. However, we earlier went to documents. Advocate Chauke did provide Advocate Hodes SC, who was briefed by the NPA to act in a potential appeal, Advocate Chauke did provide Hodes SC with a memorandum setting out the

response, I should say a proposed response to Booysen's replying affidavit and a copy of this memorandum is attached to my affidavit as SB2.

ADV MOHLAMONYANE SC: Go to SB2 on page 111.

CHAIRPERSON: Of what?

ADV MOHLAMONYANE SC: Of Advocate Batohi's bundle.

ADV BATOHI: It is attached to my affidavit, Chairperson.

CHAIRPERSON: Can you please help us, help me, take me to SB2.

ADV MOHLAMONYANE SC: SB2, Madam Chair, is on page 111 of Advocate Batohi's bundle. These are attachments to her affidavit. Triple one.

CHAIRPERSON: It is SB2.

ADV MOHLAMONYANE SC: With a number bolded just on the right hand, top right hand page 030. It is not significant, but it may assist in locating ...[intervenes].

CHAIRPERSON: You see, I am getting confused there, Counsel, because you refer me to 111. If you can read the entire reference, because it is going to be captured in the transcription, as you call it. It is better to read it as is, SB2 111. Then we know where we are. Thank you.

ADV MOHLAMONYANE SC: It is SB2, 111.

ADV BATOHI: I am there, Counsel, thank you.

ADV MOHLAMONYANE SC: Deal with it from ad paragraph 5 to 8.

ADV BATOHI: So this is an internal memorandum that is from the Cato Manor prosecution team. It is dated 15 August 2013 and it is what appears to be a proposed response to Booyesen's replying affidavit that I just talked to, which questioned how Advocate Jiba could have taken, in essence, non-existent evidence because of, I mentioned the reasons.

There was no replying, there was no affidavit filed by Advocate Jiba after that, but this appears to have been a proposal to respond to Booyesen's replying affidavit. You look between the tram lines, it says, Booyesens versus ANDPP, re-replying affidavit of Booyesen, and then it goes ad paragraphs 1. It appears to be a document that is responding to a filing, and that is Booyesen's replying affidavit and it appears to be, well, it is addressed to Advocate Hodes, so it is, these are proposals in terms of responding to Advocate Hodes.

ADV MOHLAMONYANE SC: Go to the next page, SB2 112.

CHAIRPERSON: Is it correct, Counsel to say that this internal memorandum sought to address the replying affidavit of Colonel Booyesens?

ADV MOHLAMONYANE SC: Madam Chair, it was, from the face of it, it was addressed to Advocate Laurence Hodes SC, who was representing the National Prosecuting Authority in the Booyesen matter. It sought to give him responses.

CHAIRPERSON: What I am saying is, when you look at the words in the tram lines, it sought to address Colonel

Booyesen's replying affidavit.

ADV MOHLAMONYANE SC: Indeed.

CHAIRPERSON: Thank you.

ADV MOHLAMONYANE SC: Proceed to the next page. Look at ad paragraph 12, can you read it into the record.

ADV BATOHI: Ad paragraph 12, it states:

“The evidence under oath is the evidence in the dockets.”

ADV MOHLAMONYANE SC: Go to the bottom of the page and read into the record ad paragraph 19 to 21.

ADV BATOHI: -:

“NJ2 is a statement of Aiyer taken on 3rd of August, 2012, stating the managerial responsibilities, participation and interferences in activities of a section of Durban

Organized Crime based in Cato Manor.

This section under management and supervision of the applicant committed horrendous pattern of criminal acts.

This statement was obtained before the 17th of August, 2012, being the date on which the certificate was authorized.

NJ4 is a statement of Aiyer taken on 31 August, 2012, following a consultation

with the prosecution team. Whatever is contained in this statement was already information related to the prosecution team by the deponent during the consultation with the prosecution team. Therefore, the applicant's affirmance are unfortunate, unfounded and misleading.”

ADV MOHLAMONYANE SC: Can you comment? Do you have any comments? Are you able to comment, if any, Advocate Batohi?

ADV BATOHI: My recollection is that Advocate Jiba mentioned that she had considered statements under oath, and this was one of the statements that she considered. In fact, she filed it as attachments to her affidavit. And what appears here is that it was, the statement was not signed because they had had a consultation with the witness, but that, so it was information that the team had.

That is essentially what they are saying here. But the reality is that it was still not signed at the time, it was not a statement under oath at the time the racketeering certificates were authorized. I think that is the point to be made here.

MS RAMAGAGA: I just want to take you back to the respective statements that you have referred to in your

evidence, and those statements are NJ2, 4, 5, that appear on SB1, 1B, 1C, 1E. Now, what I would like to ascertain from your good self is whether you have had sight of the application for authorization of the racketeering certificates. That is, whether you have had sight of the papers that served before the court when the applications were done.

ADV BATOHI: The applications for authorization was made to Advocate Jiba, so I am not sure which court is being referred to, papers before the court.

MS RAMAGAGA: The papers that I am talking about, it is the application papers to the court in order to obtain the racketeering certificates. Those are the ones that I am talking about.

ADV BATOHI: There was no application to the court to obtain racketeering certificates.

CHAIRPERSON: Might I just assist there?

ADV BATOHI: Please, Chairperson.

CHAIRPERSON: Remember this was a review application by Colonel Booyens ...[intervenes].

ADV BATOHI: That is correct.

CHAIRPERSON; Challenging the authorization.

ADV BATOHI: That is correct, Chairperson.

CHAIRPERSON: And that is why we have that replying affidavit by him, attacking the statements upon which Advocate Jiba relied ...[intervenes].

ADV BATOHI: That is correct, Chairperson.

CHAIRPERSON: When she issued the racketeering certificates. Am I correct?

ADV BATOHI: That is correct.

CHAIRPERSON: I suppose my sister is referring to that review application, because that is the only court application that was there.

ADV BATOHI: If I could then have the question.

MS RAMAGAGA: That is correct, thank you. Yes.

ADV BATOHI: If I could have the question then. If I read which papers?

MS RAMAGAGA: The papers of the application.

ADV BATOHI: I have not read the full papers of the application.

MS RAMAGAGA: Okay, that is fine. Thank you.

ADV BALOYI-MERE SC: Advocate Batohi, you, after reading the paragraph that you have just read, ad paragraph 19 to 21, you said the essence of this paragraph is that when Advocate Jiba signed the racketeering authorization certificate, she did not have signed affidavits before her.

ADV BATOHI: That is correct.

ADV BALOYI-MERE SC: But if one were to look from NJ2 to NJ4, one of them was signed and properly commissioned.

ADV BATOHI: That is correct. I think one of them is.

ADV BALOYI-MERE SC: Yes.

ADV BATOHI: I think it is Aiyer's first statement.

ADV BALOYI-MERE SC: Yes, I think we should be careful not to make sweeping statements as if everything that served before Advocate Jiba was not properly signed and commissioned. One of them, at least we know, Aiyer's second statement was commissioned.

ADV BATOHI: Certainly, that was not my intention at all, because evidence has been led already that there was one signed statement. The point I wanted to make, which is important, is that out of the four, one was not signed and one was signed after the racketeering. The other two, of course, by implication. But in future I will give a fuller answer so that it does not appear that I am highlighting certain things and not dealing with it in a comprehensive way. So thank you for that.

ADV BALOYI-MERE SC: You scare me when you say in future.

ADV BATOHI: I think I am going to be here for a long time.

ADV BALOYI-MERE SC: Thank you.

MS RAMAGAGA: Thank you. Is it compulsory for the statements relied upon for issuance of the racketeering certificates to be signed? Is it compulsory for such ...[intervenes].

ADV BATOHI: Absolutely.

MS RAMAGAGA: Statements to be signed?

ADV BATOHI: Absolutely, because you are dealing with evidence and you are authorizing charges. So you need to make sure that you have the evidence before you. It is confirmed by the witness. So that is extremely important to have signed statements under oath, affidavits, when you make these decisions because they have implications.

MS RAMAGAGA: Right. Is it permissible for, amongst others, to consider hearsay evidence in such applications before a determination is made? Can there be reliance on hearsay?

ADV BATOHI: In any criminal case, hearsay evidence can be admitted in certain circumstances. When you are dealing with an application for an authorization like this, you would consider all the evidence that is before you. I think the important aspect here is, of course, there may have been other evidence that is hearsay in this docket, I am not sure, but I think we need to, and Counsel must help me to go back to the place where Advocate Jiba says that these were statements under oath that she considered. And that is the challenge because these, one was not signed and one was signed after the date of the authorization.

MS RAMAGAGA: Thank you.

CHAIRPERSON: As you proceed, Counsel, from that page, SB2114, you will notice a repeat of each and every page that follows up to, almost up to the end. It just made reading very

cumbersome. 114 is repeated. The next one, all those pages. So, as you jump the pages, go into paragraphs. Bear that in mind.

ADV MOHLAMONYANE SC: I will, Madam Chair.

CHAIRPERSON: Recap, and then take you where you were, Counsel. Advocate Batohi had just addressed the response of Advocate, I beg your pardon, Colonel, Colonel Booyens, attacking the statements. He had just attacked the statement of Colonel Aiyer and I think the next part that you were going to deal with was his response in which he attacks the statements of Mr Danikas at page SB114, if that helps.

ADV MOHLAMONYANE SC: It does, Madam Chair. Now, go on to the statement of Danikas, Mr Danikas was a police reservist, the police reservist. The team is dealing with paragraphs 22 to 25 of the replying affidavit on page SB2114.

CHAIRPERSON: No, it is not a team. It is the memo that makes reference to this replying affidavit of Colonel Booyens in relation to those statements. I just want us to capture it correctly. Paragraphs 22 to 25 is the response or the reply of Colonel Booyens and he is there dealing with the statements of Mr Danikas. I think if you can capture it that way so that we avoid the confusion.

ADV MOHLAMONYANE SC: Madam Chair, maybe we should - let me take you back to the first page of this memorandum, SB2111.

CHAIRPERSON: Yes.

ADV MOHLAMONYANE SC: It is a memorandum addressed to Advocate Laurence Hodes SC, from the Cato Manor prosecution team in which they were seeking to give responses to the replying affidavit of General Booysen.

CHAIRPERSON: Yes, thank you. I hope I understand. Who is speaking in those paragraphs, ad paragraphs 1 to 4, ad paragraphs 5 to 6, who is speaking there under those paragraphs? I may be mistaken.

ADV MOHLAMONYANE SC: We assume what is speaking is the team, the Cato Manor prosecution team, because on page SB2131, it says:

“Kind regards, Cato Manor prosecution team.”

Which will be the team that is giving instructions to Laurence Hodes SC.

CHAIRPERSON: And the team is responding, replying to something.

ADV MOHLAMONYANE SC: They are responding to the replying affidavit. It says here in between tram lines.

CHAIRPERSON: Yes.

ADV MOHLAMONYANE SC: I stand to be corrected, Advocate Batohi can help.

CHAIRPERSON: Yes, please let us get it correct.

ADV MOHLAMONYANE SC: Between tram lines, it says:

“Booyesen versus Acting National Director of Public Prosecutions, Re replying affidavit of Booyesen.”

And this memorandum is from the Cato Manor prosecution team.

ADV BATOHI: Yes, that is correct.

ADV MOHLAMONYANE SC: They are seeking to give answers to Advocate Laurence, who is on brief, representing the Acting National Director of Public Prosecutions in the Booyesen matter, in which General Booyesen brought a review application in the High Court, seeking to review and set aside the two racketeering certificates issued or authorized by Advocate Jiba, the Acting National Director of Public Prosecutions.

CHAIRPERSON: If I understand you correctly, and you may be correct, that the team seeks to address the averments in the replying affidavit of Colonel Booyesen.

ADV MOHLAMONYANE SC: Indeed, Madam Chair. And bearing in mind what Advocate Batohi has stated in her evidence that Advocate Jiba, being the respondent in the matter, if I am not wrong, was the first respondent in the Booyesen application, review application, did not file a further affidavit.

CHAIRPERSON: Just give me a second. Let me just reflect it correctly here. I might have misunderstood the contents of

this internal memo as to what, who is speaking there. Yes, I see at the end it is signed by the Cato Manor prosecution team. Thank you for clarification, Counsel.

ADV MOHLAMONYANE SC: Thank you, Madam Chair.

CHAIRPERSON: Advocate Baloyi wishes to say something.

ADV BALOYI-MERE SC: Just in passing, we are aware that the respondent in an application may not file any further affidavits without leave of the court. The fact that Colonel Booyesen invited Advocate Jiba to file further affidavits is not a given because she had to seek leave of the court.

ADV MOHLAMONYANE SC: Indeed.

ADV BALOYI-MERE SC: Thank you.

ADV MOHLAMONYANE SC: That is so.

ADV BATOHI: If I may, Counsel, if we circle back to paragraph 210, and that is the answering affidavit of Advocate Jiba, which we dealt with earlier, Chairperson, at LO 00871, the point here being that at paragraph 210.

CHAIRPERSON: Yes, Advocate Batohi.

ADV BATOHI: Thank you, Chairperson.

CHAIRPERSON: Paragraph 210.

ADV BATOHI: The only point I want to make here is about Advocate Chauke's role in the engagements with Advocate Hodes, ad again, to indicate that this does not suggest simply a coordinator. It is the DPP in charge of the matter, and Advocate Hodes, Advocate Chauke is a liaison person

between Advocate Hodes SC and the prosecution team, and will provide him with all the facts and evidence necessary in order to prepare, in this case, an answering affidavit. So I just wanted to cycle back to that, Chairperson, to indicate his role in this process.

CHAIRPERSON: Yes, thank you.

ADV MOHLAMONYANE SC: Now proceed to deal with the next paragraph under the subheading, the statement of Danikas.

ADV BATOHI: Sorry, where are you? Which document? I beg your pardon?

ADV MOHLAMONYANE SC: On page SB2114 in your bundle.

ADV BATOHI: Yes, I am there.

ADV MOHLAMONYANE SC: You may read the first paragraph there.

ADV BATOHI: These paragraphs refer to NJ3, which is Danikas draft statement.

“The applicant's averments in these paragraphs are deliberately misleading or misleading due to lack of information. Danikas was reservist in Durban organized crime unit based in Cato Manor. He was recruited into the reservist component of SAPS by the applicant. He was the confidant of the

applicant and a family associate of the applicant. The draft statement deals with the activities of the applicant as a director of the KwaZulu-Natal Organized Crime Unit actively involved in the operational activities of Cato Manor-based section of the Organized Crime.”

ADV MOHLAMONYANE SC: Go to the next paragraph.

CHAIRPERSON: Before you do that, and I beg your pardon if I go back to this document, this internal memo. The team responded to the averments under oath by Colonel Booyens and the memo sought to advise or to provide information to the SC.

ADV BATOHI: That seems to be the case, Chairperson, that is correct.

CHAIRPERSON: Thank you.

ADV MOHLAMONYANE SC: Proceed to read the first sentence.

ADV BATOHI: Sorry, I turned my page. Could you just direct me please to the page again? Oh, I get it, 114.

ADV MOHLAMONYANE SC: SB2114.

ADV BATOHI: The second paragraph, the draft starting with the draft statement?

ADV MOHLAMONYANE SC: Yes.

ADV BATOHI: -:

“The draft statement details the method of operation by the Cato Manor section with the applicant involved in killing suspects and the applicant condoning and or covering the same.”

ADV MOHLAMONYANE SC: Now, Advocate Batohi, is it ...[intervenes].

CHAIRPERSON: Just for the record, I am sorry, just for the record for those people who do not know who is this applicant, this applicant will be Colonel Booyens.

ADV MOHLAMONYANE SC: Indeed, it will be Colonel – he was Lieutenant Colonel at the time, I believe. I am speaking under correction, but - I am told he was a Major General then at the time.

CHAIRPERSON: He was already promoted? By that time, was already promoted?

ADV MOHLAMONYANE SC: Major General, yes.

CHAIRPERSON: Major General.

ADV MOHLAMONYANE SC: May I proceed, Madam Chair?

CHAIRPERSON: Proceed.

ADV MOHLAMONYANE SC: Now, in terms of prosecutorial processes, should an NDPP in the position of Advocate Jiba in an application for a racketeering certificate rely on such a statement of, a statement which was not on oath like the one of Mr Danikas, the police reservist?

ADV BATOHI: Remember, this is not hearsay evidence. This is evidence meant to be evidence under oath, and it is not signed. That being the case, you should have a signed statement so that you know the evidence, the witness is indeed committed to a statement and will testify according to the statement. So the short answer is no, you should have a signed statement, and you should not act on an unsigned statement. In fact, evidence will reveal that Danikas never signed an English statement. I believe there was a Greek statement at some point.

ADV MOHLAMONYANE SC: May I proceed, Madam Chair?

CHAIRPERSON: Just something is troubling my mind. The internal operations within your office operate under the legislation, the NPA Act, of course the Constitution, the NPA Act, and other pieces of legislation, as well as the policy directions.

ADV BATOHI: Absolutely, Chairperson.

CHAIRPERSON: Will this aspect regarding reliance on signed documents or statement, reliance on statements under oath be a polycentric matter?

ADV BATOHI: Chairperson, I cannot recall precisely the wording in policies, but I have no doubt that there will be something in our policies that will guide our exercise of discretion in making decisions of this nature. We can certainly have a look at the policies.

CHAIRPERSON: Advocate Mohlamonyane, your team will assist us and look into the policy direction documents if it addresses the point that Counsel is dealing with now.

MS RAMAGAGA: As a follow-up, what do you make of the provision in the Act, particularly Section 2, that allows the court to act on the strength of hearsay evidence?

ADV BATOHI: Section 2 of which Act is, I do not have it in front of me, if I could be given, if I could be given, I did indicate earlier on when I was asked by Madam Ramagaga about hearsay evidence, and I did respond that in any criminal case, hearsay evidence is in certain circumstances admissible. And that would be my response, is that in certain circumstances hearsay evidence is admissible.

In this case, we are not dealing with hearsay evidence. We are dealing with evidence that purports to be direct evidence by witnesses, but not signed. It would not, in my view, amount to hearsay evidence.

CHAIRPERSON: ... seek to address, in relation to the signing of statements purportedly under oath, is the probative value of such statements.

ADV BATOHI: Well, Chairperson, it is not a statement under oath. And the point here ...[intervenes].

CHAIRPERSON: I am trying to add to a point that you are making, if you can listen to my proposition.

ADV BATOHI: I certainly will, and my apologies.

CHAIRPERSON: That the issue relating to the signing of the statements as you suggest, that the head of the NPA cannot and should not rely on an unsigned statement. And I am saying to you, that could be supported by the fact that that statement may not have any probative value.

ADV BATOHI: That is correct, Chairperson.

ADV MOHLAMONYANE SC: Let me take you back to your affidavit. You were on paragraph 150, not so, on page 64?

ADV BATOHI: That is correct.

ADV MOHLAMONYANE SC: The memorandum SB2 has been dealt with. Proceed to 151.

ADV BATOHI: -:

“Following that, Govind J, who was the judge in the review application, set aside the racketeering authorizations, concluding that the 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 authorize a prosecution of Booyesen, the just and equitable consequence was to review the impugned decisions and set them aside.”

And that ...[intervenes].

CHAIRPERSON: Is it – I beg your pardon, madam. I am sorry.

ADV BATOHI: I beg your pardon. No, I just said and that is what, that was what happened in that matter.

CHAIRPERSON: Yes, thank you. Sorry to interpose. Is, are you deliberate, Advocate Mohlamonyane, not to go to SB2116, the statement of Ndlondlo, the unsigned statement of Ndlondlo? Is it intentional that you do not go to it?

ADV MOHLAMONYANE SC: No, it was not intentional. I had thought we dealt with it, but I may continue to deal with it as set out in this memorandum. Go to page SB2116.

ADV BALOYI-MERE SC: Sorry, before the witness goes to that, I think on the first day, or first or second day that the witness started giving evidence, we were informed, I think, by the Chauke team that they have the last page of the Ndlondlo statement that was correctly commissioned.

ADV NGCUKAITOBI SC: That is still the case.

ADV BALOYI-MERE SC: And I had hoped that you will share that page with us so that our record is complete, because as it is now, we still refer to it as uncommissioned when you have a page that is properly commissioned.

ADV NGCUKAITOBI SC: We got it from them. When we asked for a disclosure of documents, they gave us the signed one. The problem is that that statement appears maybe three

or four times on the record and then in some parts, it has the Commissioner's certificate.

CHAIRPERSON: Just for direction, I remember that. And I think Advocate Ngcukaitobi is correct that they have been supplied, as we are, with this document from the NPA. This correction should be done by the NPA and make sure that we do have that last page. I see the junior Counsel is having a conference with someone from the NPA.

Please make sure that you follow up on this point again because it was dealt with last time and the junior Counsel was sitting here. This document ought to have been presented to your Counsel or to us through the evidence-leading team. I suppose that the document will be obtained and be placed on record appropriately.

When copies were made, they might have missed that page. But your Counsel does not have it either, so the Evidence Leader must have that document and present it to us. May we then proceed?

ADV MOHLAMONYANE SC: Proceed, Advocate Batohi. We are on page SB2116.

ADV BATOHI: Yes, I am there. What would you like me to proceed with?

ADV MOHLAMONYANE SC: Deal with the statement of Ndlondlo.

ADV BATOHI: That is on SB2116, the statement of Ndlondlo

at paragraph 26.

“NJ5, which is Ndlondlo's statement, gave a breakthrough in the killing of members of Kwa Maphumulo Taxi Association by the Cato Manor unit under the management of the applicant in the Cato Manor section was used by Stanger Taxi Association to kill its rivals, being Kwa Maphumula Taxi Association. Further, Cato Manor section received gratification for this discourse. The statement is hearsay as a direct link of the applicant, but the first respondents had information which corroborated this hearsay against the applicant, and that information has subsequently been converted into evidential material directly linking the applicant. Hearsay evidence is admissible in law, and it is the responsibility of the trial court to determine the admissibility of any hearsay material.”

ADV MOHLAMONYANE SC: Would you like to comment, if any, on the statements made here?

ADV BATOHI: No, it appears from what is being said here is that the evidence of Ndlondlo is hearsay, but that, as the team states, it is admissible in certain circumstances, but that it is hearsay at this point.

CHAIRPERSON: If I may, bearing in mind that the proceedings here are inquisitorial, and the documents presented to us as we gather facts, the standard regarding the admissibility of documents in courts need not necessarily be the standard in this enquiry. I just want us to get it right. It can be a matter of argument, but I think the terms of reference and the procedural rules of this enquiry makes that clear, that the enquiry proceeds as an enquiry, and it is not inquisitorial by nature, meaning, as I understand this evidence, that the evidence which could have been inadmissible in a court of law may be admissible or may be conceded here. Am I right?

ADV BATOHI: That is the understanding, Chairperson.

CHAIRPERSON: And I deliberately ask you this question because you are a seasoned lawyer, a witness who is a seasoned lawyer.

ADV BATOHI: Not a seasoned witness, though, Chairperson.

CHAIRPERSON: Well, you are going ahead of me.

ADV BATOHI: It is my first time, actually.

CHAIRPERSON: So I ask you this question because as the Head of the NPA, you will probably know better.

ADV BATOHI: Thank you, Chairperson. That is my understanding as well.

ADV MOHLAMONYANE SC: Madam Chair, it is five minutes before four. I wonder whether ...[incomplete].

CHAIRPERSON: [Indistinct]... [microphone off]. You were dealing with the prosecutorial team's response to the Danikas statement as dealt with by Advocate, or Colonel Booyens né.

ADV MOHLAMONYANE SC: Ja ...[intervenes].

CHAIRPERSON: Danikas.

ADV MOHLAMONYANE SC: Ja, and as well as ...[intervenes].

CHAIRPERSON: Mr Danikas.

ADV MOHLAMONYANE SC: Yes, in the internal memorandum.

CHAIRPERSON: Internal memorandum in relation to the statement by Mr Danikas.

ADV MOHLAMONYANE SC: That is correct. We then went to Ndlondlo.

CHAIRPERSON: To Ndlondlo?

ADV MOHLAMONYANE SC: Yes.

CHAIRPERSON: Yes.

ADV MOHLAMONYANE SC: On page SB2116.

CHAIRPERSON: 116. Thank you. Should you not, Counsel, exhaust this item, the memorandum? Are you done with it,

because I do not want us to leave it hanging and we reconvene and you go back there. Let us exhaust the point that we are making here in relation to the response by the prosecutorial team in that internal memo. I suggest you proceed, unless if you have exhausted it.

ADV MOHLAMONYANE SC: Madam Chair, I have not exhausted the memorandum. Maybe I should deal with ad paragraph 29 on SB2119. Go to SB2119, Advocate Batohi.

CHAIRPERSON: SB2118, paragraph 29, is that the one you are dealing with?

ADV MOHLAMONYANE SC: Paragraph 29, yes.

CHAIRPERSON: Are you dealing with paragraph 29, Counsel?

ADV MOHLAMONYANE SC: Ad paragraph 29, Advocate Batohi.

CHAIRPERSON: Yes.

ADV MOHLAMONYANE SC: SB2118. SB2118, 119 is a duplicate of SB2118.

CHAIRPERSON: I propose that we follow the even numbers rather than the odd numbers of the duplication. In that way, we will not be confused. The even number referring to paragraph 29, ad paragraph 29 is SB2118. Then we will jump all the odd numbers and go to even numbers.

ADV MOHLAMONYANE SC: Are you there, Advocate Batohi?

ADV BATOHI: Yes.

ADV MOHLAMONYANE SC: Proceed and read ad paragraph 29.

ADV BATOHI: -:

“First and second respondent were in possession of the statements of the witnesses herein referred to before 17th of August 2012. NJ4 is a further statement of Aiyer obtained after NJ2, which was obtained on the 4th of August 2013.”

ADV MOHLAMONYANE SC: Do you have any comment on that?

ADV BATOHI: No.

ADV MOHLAMONYANE SC: Let us proceed then to deal with ...[intervenes].

CHAIRPERSON: Just remind us who was the first respondent and who was the second respondent?

ADV BATOHI: Chairperson, I do not have the filing in front of me, so I - I think the first respondent was the Acting National Director of Public Prosecutions. I am not sure who the second respondent was in this matter.

ADV MOHLAMONYANE SC: May I assist in that regard?

CHAIRPERSON: Yes, it is the review application by Major General Booyens, so the respondents there would have been Advocate Jiba and someone else. So when you speak

to these documents and refer to first respondent, anybody reading this record may not know who are these people. We are advantaged because we have read the application. So if you can just clarify that.

ADV MOHLAMONYANE SC: The application appears in L04 bundle, page LO 00949.

CHAIRPERSON: You can just assist Advocate Batohi just to refer to who is that first respondent and the second respondent.

ADV MOHLAMONYANE SC: The first respondent is the Acting National Director of Public Prosecutions.

ADV BATOHI: Yes, that is correct.

ADV MOHLAMONYANE SC: The second respondent is the Public Protector. Oh, I beg your pardon. Maybe the day has been long. Public Prosecutor. My apologies. My eye ran over the word.

CHAIRPERSON: Who is the Public Prosecutor, do you know, Advocate Batohi, as cited in the review application?

ADV BATOHI: Chairperson, no, I am not sure.

CHAIRPERSON: We do know, however, that the first respondent there was Advocate Jiba.

ADV BATOHI: The Acting National Director, that is correct.

CHAIRPERSON: Yes. Thank you. You may proceed, Counsel.

ADV MOHLAMONYANE SC: Go to page SB2, 120, paragraph

30.2 and you read that into the record.

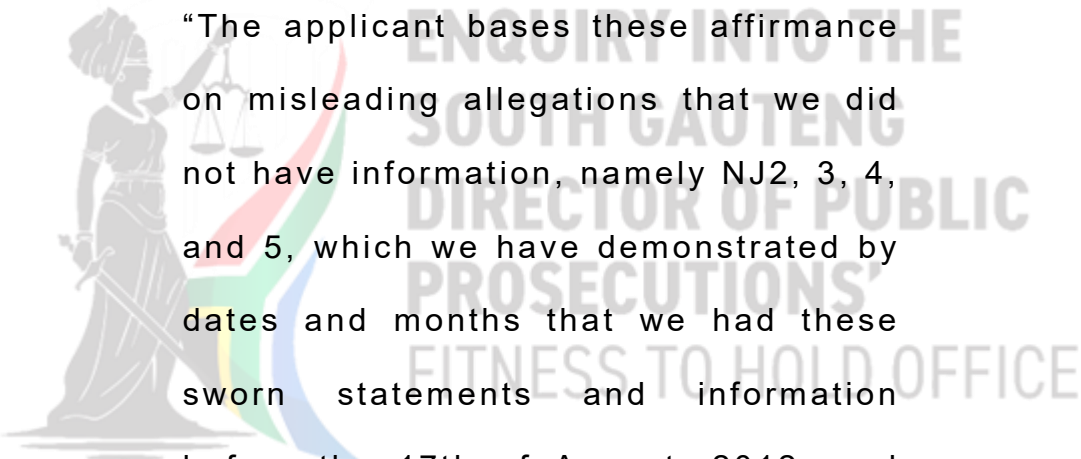
ADV BATOHI: -:

“The applicant seems to concentrate only on the statements of Ndlondlo, Aiyer, and Danikas as the only information that was considered in taking the decision to prosecute him. The first and second respondent had further material in their possession to consider before 17 August 2012, which is the monetary award for the Cato Manor unit, including the applicant, motivation of which was drafted by the applicant, and court papers relating to the interdict, case number 13759/2008, against KZN MEC for Safety and Security and Others, filed by Bongani Elvis Mkize, who is the deceased in count 20 on the indictment, where the deceased was seeking court recourse to prevent the police from killing him, which they subsequently did in breach of the court order. The applicant filed an answering affidavit on behalf of the SAPS, marked NJ6. In this replying

affidavit, the applicant demonstrated his intimate knowledge and participation in the investigation and subsequent killing of members of the Kwa Maphumulo Taxi Association, the rival of Stanger Taxi Association.”

ADV MOHLAMONYANE SC: I will leave it at that. Go to page SB2122, ad paragraphs 31 to 36, and read the first paragraph there.

ADV BATOHI: -:



“The applicant bases these affirmance on misleading allegations that we did not have information, namely NJ2, 3, 4, and 5, which we have demonstrated by dates and months that we had these sworn statements and information before the 17th of August, 2012, and further, that we had the monetary award documentation as well as the applicant's answering affidavit. The applicant further bases these affirmance on the information that the information has no evidential weight, which we respectfully differ with and is a matter for the trial court to determine.”

ADV MOHLAMONYANE SC: That there were sworn affidavits and information before the 17th of August, 2012, is that correct? Is that a correct proposition?

ADV BATOHI: That is correct, according to what they say in this paragraph.

ADV MOHLAMONYANE SC: No, no, I mean, *viz-a-viz* what ...[intervenes].

ADV BATOHI: What is ...[intervenes].

ADV MOHLAMONYANE SC: What is contained in documentation.

ADV BATOHI: Yes, sorry, my apologies. When we look at this, it says we had ...[intervenes].

ADV MOHLAMONYANE SC: Before the 17th. Bear in mind that the 17th of August was a date on which the racketeering certificates were authorized.

ADV BATOHI: Understood. This states, namely, NJ2, NJ3, NJ4, NJ5, which we have demonstrated by dates and months that we had these sworn affidavits and information before the 17th. Now, we do know that at least two of these were not sworn affidavits at the time before the 17th of August, 2012.

ADV MOHLAMONYANE SC: May I then refer you to - I leave the internal memorandum for the moment, Madam Chair, and refer the witness to LO4, page LO 00949, referred to earlier, which is, which contains the first and second respondents' answering affidavit, being the Acting National Director of

Public Prosecutions as the first respondent and the Public Prosecutor. And references made, specific reference is made to page LO4, LO 00959.

CHAIRPERSON: LO4, page?

ADV MOHLAMONYANE SC: Page LO4, LO00959. Specific reference is made to paragraph 24.5.

CHAIRPERSON: Thank you, Counsel.

ADV MOHLAMONYANE SC: Advocate Batohi, this is an affidavit deposed to by Advocate Jiba. It ends on page LO4, LO00976, where Advocate Jiba has signed the affidavit. Do you see that? It appears that it is her signature, apparently her signature that appears there.

ADV BATOHI: That is so.

ADV MOHLAMONYANE SC: Now, if you go back to LO4, LO00959, you will find paragraph 24.5, which I ask you to read into the record.

ADV BATOHI: -:

“The applicant has failed to demonstrate to this court in what respects the decisions sought to be impugned are unjustifiable, irrational, unreasonable, or unlawful. He is directly implicated under oath in the statements placed before me in Annexures NJ2 to NJ5.”

ADV MOHLAMONYANE SC: Now, this page will later be

handed up as an exhibit. Is this statement correct?

ADV BATOHI: It is not correct because we do know that at least two of those statements were not under oath.

ADV MOHLAMONYANE SC: Which ones?

ADV BATOHI: It was the second one of Aiyer and the one of Danikas. The one of Aiyer signed, I think, on the 31st of August.

ADV MOHLAMONYANE SC: The one of Aiyer is on page, signed on 31st August, it is on page, it is SB1D, NJ4 on page SB1D097. SB1D097, that is where it starts and it ends at SB1D102 where there is a signature there or two signatures.

CHAIRPERSON: Take me to that document again, Counsel? I am sorry to take you back.

ADV MOHLAMONYANE SC: SB1D097, the affidavit of Aiyer which is an additional statement according to him. It ends on page SB1D102.

CHAIRPERSON: Is the signed one, the one that is commissioned?

ADV MOHLAMONYANE SC: Properly commissioned and is signed on the 31st of August 2012.

ADV BATOHI: That is correct. So this statement could not have been one that Advocate Jiba would have had as she states in 24.5 as a statement under oath that was placed before her at the time she made the racketeering authorization because it was signed after that, after the 17th

of August. And it appears that NJ - I beg your pardon.

ADV MOHLAMONYANE SC: Thank you, Madam Chair. I am advised that the issue of the Prosecutor can be clarified. The Public Prosecutor who is referred to as the second respondent in the review application is actually Advocate Maema and that appears in bundle B5 BO1342 and 1343.

CHAIRPERSON: Thank you, Counsel.

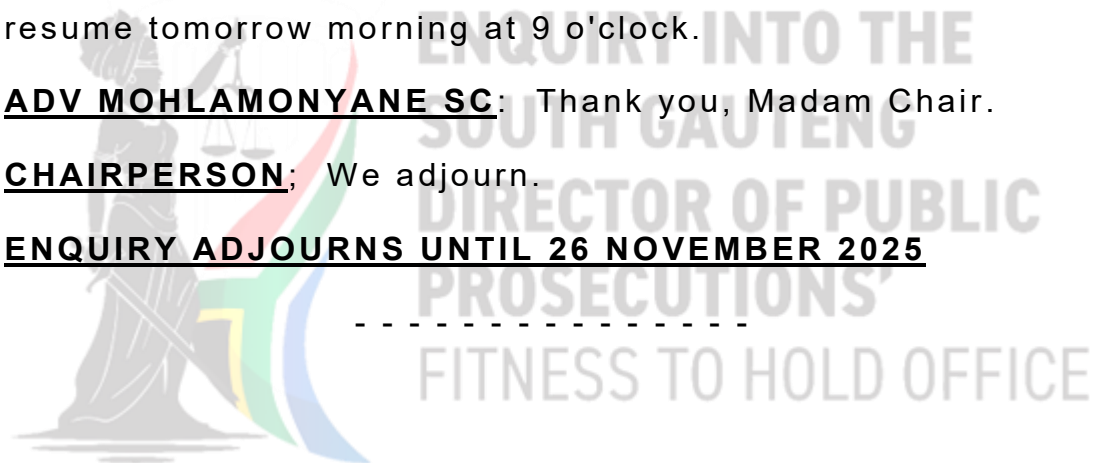
ADV MOHLAMONYANE SC: Thank you, Madam Chair. And that closes the issue of the internal memorandum.

CHAIRPERSON: Thank you, Counsel. We will adjourn to resume tomorrow morning at 9 o'clock.

ADV MOHLAMONYANE SC: Thank you, Madam Chair.

CHAIRPERSON: We adjourn.

ENQUIRY ADJOURNS UNTIL 26 NOVEMBER 2025



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