

**IN RE: ENQUIRY INTO THE FITNESS OF ADVOCATE KHEHLA
MASENYANI ANDREW CHAUKE TO HOLD OFFICE**

OPENING ADDRESS

Introduction

1 In terms of s. 14(3) of the National Prosecuting Authority Act, 32 of 1998 ("the NPA Act") read with s. 12(6)(a), the President may remove a Director of Public Prosecutions *inter alia* –

- (i) "*for misconduct*";
- (ii) "*on account of incapacity to carry out his or her duties of office efficiently*"; and
- (iv) "*on account thereof that he or she is no longer a fit and proper person to hold the office concerned*".

2 Adv. Andrew Chauke is the DPP: of the High Court, Johannesburg, Gauteng South Division.

Terms of reference

3 On 30 September 2025 the President published Notice No. R. 6686 in Government Gazette No. 53444. In terms of this notice, the President has

established this Enquiry to look into Adv. Chauke's fitness to hold office in so far as it relates to:

"3.1. His direct or indirect conduct of Adv Chauke relating to his fitness and propriety to hold office based on information, including, but not limited to matters related to the following allegations:

3.1.1 The institution of the racketeering charges in terms of section 2(4) of the Prevention of Organised Crime Act, 1998 against Major-General Booysen and members of the Cato Manor Unit and the defence of those actions in subsequent review proceedings brought by Major-General Booysen to have the racketeering certificates set aside, in that he, Adv Chauke —

3.1.1.1 supported a decision to prosecute the accused notwithstanding that there was no evidence justifying the decision, and he sought to improperly have the Acting Director of Public Prosecutions of KwaZulu-Natal sign the case dockets and/or prosecution memorandum detailing the alleged evidence implicating the accused on which the decision to indict had to be made;

3.1.1.2 recommended to the then Acting National Director of Public Prosecutions, Adv

Nomgcobo Jiba, the application for issuing a racketeering authorisation in terms of section 2(4) of the Prevention of Organised Crime Act, 1998, whereas there was no evidence justifying the institution of racketeering charges against the accused;

3.1.1.3 sought to defend the institution of the aforementioned racketeering charges in the review proceedings brought by Major-General Booyesen to have the said racketeering charges set aside, and that he finalised the answering affidavit of the then Acting National Director of Public Prosecutions, Adv Nomgcobo Jiba, in the Booyesen review proceedings in opposing the review application, notwithstanding that there was no evidence justifying the institution of racketeering charges against the accused;

3.1.1.4 instituted an appeal against the judgment of Judge Gorven in the review case of *Booyesen v Acting National Director of Public Prosecutions and others*, 2014 (2) SACR 55 (KZN) without the approval of the then

National Director of Public Prosecutions, Mr Mxolisi Nxasana, notwithstanding that there was no evidence justifying the institution of racketeering charges against the accused, and thus no justification for lodging an appeal against the judgment; and

3.1.1.5 attempted to have racketeering charges against Major-General Booyesen and members of the Cato Manor Unit reinstated by the then National Director of Public Prosecutions, Mr Nxasana, notwithstanding that there was no evidence justifying the institution of racketeering against the accused.

3.1.2 The failure to continue with charges against Lieutenant-General Richard Mdluli for his involvement in the murder of Mr Tefo Abel Ramogibe, in that he, Adv Chauke, caused the charge of murder relating to the killing of Mr Tefo Abel Ramogibe, and related charges to be withdrawn, notwithstanding that there was strong evidence justifying the institution of a prosecution in the matter, which decision caused a significant delay in proceeding with charges concerned.

3.2 Whether, in fulfilling his responsibilities as Director of Public Prosecutions, Adv Chauke—

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

3.2.2 properly exercised his discretion in relation to —

3.2.2.1 instituting and conducting criminal proceedings on behalf of the State;

3.2.2.2 carrying out any necessary functions incidental to instituting and conducting such criminal proceedings, and

3.2.2.3 discontinuing criminal proceedings;

3.2.3 duly respected court processes and proceedings before the Courts as required by applicable prescripts and as a senior member of the National Prosecuting Authority;

3.2.4 exercised his powers and performed his duties and functions in accordance with prosecution policy and policy directives as determined under section 21 of the National Prosecuting Authority Act;

3.2.5 acted at all times without fear, favour or prejudice;

3.2.6 displayed the required competence and capacity required to fulfil his duties by, among others, objectively engaging with facts presented to him, impartially, in good faith and without fear favour or prejudice, subject to the Constitution of the Republic of South Africa, 1996 and the law, in order to discharge his duties as a Director of Public Prosecutions; and

3.2.7 in any manner, brought the National Prosecuting Authority into disrepute by any of his actions or omissions.”

The Complaint to the President

- 4 The establishment of the present enquiry arises from a recommendation by the NDPP, Adv. Shamila Batohi.
- 5 Adv. Batohi has submitted an affidavit and will be the first witness called to testify. She has outlined in her affidavit the circumstances which led to the recommendation to the President.

THE ISSUES

- 6 As appears from the terms of reference this matter concerns two broad complaints against Adv. Chauke:

- 6.1 The first relates to his conduct in relation to the institution of racketeering charges against Major-General Johan Booysen and members of the Cato Manor Unit and the subsequent defence of the proceedings instituted by Booysen to review and set aside the issue of racketeering certificates. I shall refer, in generic terms to this aspect as “the Booysen matter”.
- 6.2 The second relates to his conduct in relation to the failure to continue with charges against Lt General Richard Mdluli relating to the latter’s involvement in the murder of Mr Tefo Abel Ramogibe. I shall, in similar fashion, refer to this aspect as “the Mdluli matter”.
- 7 Both matters enjoyed a great deal of public and media attention and both matters resulted in a great deal of litigation at the instance of various public interest bodies and civic organisations.
- 8 The issues relating to the Booysen matter (and several other issues) resulted in the establishment by the President of an enquiry into the fitness of a former Acting NDPP, Adv. Nomgcobo Jiba, to hold office. The withdrawal of different charges against Mdluli also resulted in the establishment of an enquiry by the President into the fitness of the former Special Director of the Public Prosecutions and the Head of the SCCU, Adv. Lawrence Mwrebi to hold office. That enquiry was headed by former Constitutional Court Justice Yvonne Mokgoro and resulted in the removal of both Adv. Jiba and Adv. Mrwebi.
- 9 Given the pre-eminence of these matters, it is proper that I should commence by outlining in broad terms what these matters were about. My address must

not be understood to in any way limit the nature or scope of the evidence that will be led in support of these allegations against Adv. Chauke.

The Booyesen matter

- 10 In early 2012, Adv. Nomgcobo Jiba, in her capacity as then Acting NDPP, decided to set up a team of prosecutors from Gauteng and North West Provinces to conduct the prosecution of police officials in KwaZulu Natal. Many of these police officials were from the "Serious and Violent Crimes Unit". I will refer to them as the Cato Manor Unit.
- 11 The evidence will show that Adv. Chauke, who was then and is now still the DPP of Johannesburg, was for all intents and purposes appointed as the leader of the prosecution team, acted as the *de facto* DPP of KwaZulu Natal.
- 12 The allegations against Adv. Chauke relate to his involvement in the prosecution of Booyesen and members of the Cato Manor Unit with contraventions of sections 2(1)(e) and (f) of the Prevention of Organised Crimes Act, 121 of 1998 (POCA).
- 13 At the time, Booyesen was the Provincial Head of the Directorate for Priority Crimes Investigations (DPCI) ("the Hawks"), in KZN.
- 14 Section 2(1)(e) provides:

"2 Offences

- (1) Any person who-

...

- (e) whilst managing or employed by or associated with any enterprise, conducts or participates in the conduct, directly or indirectly, of such enterprise's affairs through a pattern of racketeering activity;
- (f) manages the operation or activities of an enterprise and who knows or ought reasonably to have known that any person, whilst employed by or associated with that enterprise, conducts or participates in the conduct, directly or indirectly, of such enterprise's affairs through a pattern of racketeering activity”

15 The consequences of conviction on an offence of contravening section 2(1) are very serious. In terms of section 3(1):

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

16 That is correct, a fine not exceeding R1 billion.

17 In terms of section 2(4):

“(4) A person shall only be charged with committing an offence contemplated in subsection (1) if a prosecution is authorised in writing by the National Director.”

- 18 Adv. Chauke played a prominent role in applying for and obtaining the authorisations from Adv. Jiba, who, as already mentioned, was the Acting NDPP at the time.
- 19 In order to obtain the authorisations the prosecution had to submit an application to Adv. Jiba and such application had to be supported by a report setting out *inter alia* the evidence and the nature of the case against Booysen and the other police officials.
- 20 The allegations against Adv. Chauke are that many of the allegations contained in these reports had insufficient or no evidence to support them.
- 21 On the strength of these authorisations (or racketeering certificates), Booysen and other police officials were arrested.
- 22 Booysen applied for bail and after his release on bail instituted review proceedings in which he sought to set aside the two racketeering certificates. That matter came before the Durban High Court and is a reported judgment (*Booyesen v Acting National Director of Public Prosecutions and Others* 2014 (2) SACR 556 (KZD)).
- 23 The allegation against Adv. Chauke is that he was intimately involved in the preparation of the answering affidavit deposed to by Adv. Jiba in opposing the relief sought by Booysen and that some of the information contained in this affidavit were to his knowledge incorrect.

24 Gorven J presided over that matter and made several remarks relating to Adv. Jiba, which touch upon the actions of Adv. Chauke as well, given that he was so intimately involved in the preparation of her answering affidavit.

25 It is, perhaps, apposite to mention some of those comments:

"[33] In his replying affidavit Mr Booyesen submits that the NDPP is —

'mendacious when she asserts in paragraph 21 of the answering affidavit that she considered the statements together with the other information in the docket before making the impugned decisions. She could not have considered the statements referred to in her answering affidavit. She is invited to explain how she could have taken into account information on oath that objectively did not exist at the time of taking the decision.'

[34] Mr Booyesen was clearly within his rights to deal in reply with the inaccurate assertions by the NDPP in her answering affidavit and to issue the challenge and invitation in question. He had not seen the statements until they were annexed to the answering affidavit. As regards the inaccuracies, the NDPP is, after all, an officer of the court. She must be taken to know how important it is to ensure that her affidavit is entirely accurate. If it is shown to be inaccurate and thus misleading to the court, she must also know that it is important to explain and, if appropriate, correct any inaccuracies. Despite this, the invitation by Mr Booyesen was not taken up by the NDPP by way of a request, or application, to deliver a further affidavit. In response to Mr Booyesen's

assertion of mendacity on her part, there is a deafening silence. In such circumstances the court is entitled to draw an inference adverse to the NDPP. ... Most significantly, the inference must be drawn that none of the information on which she says she relied linked Mr Booyesen to the offences in question. This means that the documents on which she says she relied did not provide a rational basis for the decisions to issue the authorisations to charge Mr Booyesen for contraventions of s 2(1)(e) and (f), respectively.

...

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

- 26 By the time the above judgment was delivered, Adv. Jiba's acting appointment had come to an end and Mr Mxolise Nxasana had been appointed as the NDPP.
- 27 After the judgment in the above matter, Adv. Chauke was instrumental in lodging an application for leave to appeal against the judgment. In doing so, he bypassed Mr Nxasana who was the person who should have decided whether to appeal.
- 28 Arising from the findings in that judgment criminal charges of perjury and fraud were opened against Adv. Jiba.

- 29 Mr Nxasana was eventually replaced by Adv. Shaun Abrahams who took office from 18 June 2015 to 13 August 2018.
- 30 Despite Adv. Jiba facing imminent criminal prosecution, she remained in office.
- 31 The evidence will show that after the appointment of Adv. Abrahams, Advocates Chauke and Jiba were considering how to revive the appeal against the judgment of Gorven J. This was almost two years after the Gorven J judgment. Given the criminal trial against Adv. Jiba, the effect of the institution of an application for leave to appeal would, at the very least, have been to put the criminal trial on hold.
- 32 After his appointment, Adv. Abrahams's issued new racketeering certificates.
- 33 The case against Adv. Chauke relates to his involvement in the issuing of these new racketeering certificates.
- 34 Adv. Abrahams decided to withdraw the fraud and perjury charges against Adv. Jiba, which led to further litigation. (*Freedom Under Law (RF) NPC v National Director of Public Prosecutions and Others* 2018 (1) SACR 436 (GP)) That matter came before a full court which made the following order:
- “1. The decision taken by the National Director of Public Prosecutions on the recommendation contained in an opinion provided by the regional head of the Specialised Commercial Crime Unit, to withdraw charges against the Deputy National

Director of Public Prosecutions, Ms N Jiba, is reviewed and set aside.

2. The failure by the President to suspend and institute inquiries into the fitness of the Deputy National Director of Public Prosecutions, Ms N Jiba, and the Special Director of Public Prosecutions, Mr L Mrwebi, to hold office in the National Prosecuting Authority, is reviewed and set aside.
3. The President is directed to institute disciplinary inquiries against Jiba and Mrwebi into their fitness to hold office in the National Prosecuting Authority, and to suspend them pending the outcome of those inquiries."

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

36 In the Mokgoro Enquiry, the allegations against Jiba related to her conduct in several matters. One of these was the Booyesen matter. Many of the findings in the Mokgoro Enquiry are pertinent to the present Enquiry.

37 Adv. Abrahams was eventually removed by an order of the Constitutional Court (*Corruption Watch NPC and Others v President of the Republic of South Africa and Others; Nxasana v Corruption Watch NPC and Others* 2018 (10) BCLR

1179 (CC); 2018 (2) SACR 442 (CC)) To be clear, the court set aside the appointment of Adv. Abrahams on the basis that the removal of Mr Nxasana was unlawful. In this regard, the Constitutional Court found:

“[88] I next deal with Adv Abrahams. As a point of departure, I must state that not a single party has suggested that he is not a fit and proper person to hold office. As was to be expected, Adv Abrahams seeks to get a lot of mileage out of this. Must he succeed? I think not. Former President Zuma appointed Adv Abrahams following his unlawful removal of Mr Nxasana. That removal was an abuse of power. Advocate Abrahams benefited from this abuse of power. It matters not that he may have been unaware of the abuse of power. The rule of law dictates that the office of NDPP be cleansed of all the ills that have plagued it for the past few years. It would therefore not be just and equitable to retain him as this would not vindicate the rule of law.”

38 It was in this context that Adv. Shamila Batohi was eventually appointed as the NDPP. She will be the first witness to testify.

The Mdluli Matter

39 Lt. General Richard Mdluli was the Head of Crime Intelligence in the SAPS.

40 He had been charged with *inter alia* the murder of Mr Tefo “Oupa” Ramogibe. He was also charged with two counts of attempted murder of Mr Ramogibe and Ms Alice Monana. He had also been charged with three counts of kidnapping: in relation to Ms Monana, Mr Ramogibe and Ms Tshidi Buthelezi; two counts of

common assault relating to Ms Monana; two counts of assault with intent to do grievous bodily harm in respect of Ms Monana and Mr Ramogibe; four counts of contravening the Intimidation Act, 72 of 1982; and defeating the ends of justice.

- 41 In November 2011 Mdluli, through his attorneys, submitted representations to Adv. Chauke. Most of his complaint related to a conspiracy by senior police officials against him.
- 42 Adv. Chauke sent the representations to the prosecutors who were dealing with the matter. The prosecution team (led by a highly experienced prosecutor, Adv. Zaais van Zyl, SC) responded to Mdluli's representations. In a nutshell, they stated that there was a sufficient case against Mdluli.
- 43 Notwithstanding the stance of the prosecutors, Adv. Chauke withdrew all the charges and referred the death of Mr Ramogibe to an inquest in terms of the Inquest Act.
- 44 Another civic organisation, Freedom Under Law brought an application to review and set aside the decision to withdraw the charges against Mdluli. (That application related, also, to the decision of Adv. Lawrence Mrwebi to withdraw fraud and related charges against Mdluli and a decision by the Acting National Commissioner of the SAPS to withdraw disciplinary proceedings instituted against Mdluli.)
- 45 After the application had been launched, the findings of the Magistrate who presided over the inquest were made. A copy of the Magistrate's findings form

part of the record. They have been the subject of much confusion and we will examine those findings later, particularly since they were relied upon by Adv. Chauke to justify his actions. We will demonstrate that the findings of the Magistrate provide Adv. Chauke with no justification at all.

46 In opposing the relief sought by Freedom Under Law, Adv. Chauke explained that he had only provisionally withdrawn the charges against Mdluli, and that he had referred only one aspect of all the charges (the death of Mr Ramogibe) to an inquest. He had withdrawn the other charges only because it was important to keep the charges together.

47 Murphy J presided over that application. The strength of the State's case against Mdluli was captured by Murphy J in his judgment (*Freedom Under Law v National Director of Public Prosecutions and Others* 2014 (1) SACR 111 (GNP)). It is apposite to repeat the strength of the State's case here:

"[78] The affidavits before the inquest and the evidence as summarised by the magistrate in his written reasons do indeed support a conclusion that there is a *prima facie* case against Mdluli on the murder and related charges. The magistrate found the following to be common cause. Mdluli and Ramogibe, the deceased, were both in a relationship with the same woman, Buthelezi, from 1997 until the murder of the deceased in 1999. Ramogibe had secretly married Buthelezi during the period in question. Mdluli was upset about the relationship 'and on a number of occasions addressed the issue'. On 23 December 1998 Ramogibe was the victim of an attempted murder. He reported the incident to the Vosloorus SAPS.

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

[79] In its supplementary founding affidavit FUL highlighted the following key attributes of the evidence demonstrating a *prima facie* case against Mdluli, and upon which the magistrate's inference of Mdluli's involvement is soundly based.

[80] The deceased's mother, Ms Maletsatsi Sophia Ramogibe, testified that during 1998 Mdluli came to her home looking for the deceased, obviously unhappy with the fact that the deceased was in a relationship with Buthelezi. A few days later Mdluli came and fetched her and took her to the police station. There she found her son bleeding, with his shirt covered in blood. Mdluli insulted her son in his presence and warned him to keep away from Buthelezi. Her son was killed a few days later. After his death Ms Ramogibe's daughter, Jostinah, was kidnapped and raped (confirmed by her in a confirmatory affidavit). She later received a call from an unknown caller who warned her that, if she proceeded to press the case of her son's murder, all her daughters would be killed.

[81] Ms Alice Manana, an acquaintance of the deceased and Buthelezi, described how in August 1998 she was allegedly kidnapped, intimidated and assaulted by Mdluli and two fellow officers of the Vosloorus SAPS, and forced to disclose the whereabouts of the couple and to take the

police to them at Orange Farm. The deceased and Buthelezi were then taken to Vosloorus Police Station where they were assaulted for 30 minutes before being discharged. On 17 October 1998 Ms Manana was repeatedly shot by an assailant who shot her at the front door of her home. During the shooting she saw Mdluli sitting in the driver's seat of a green Volkswagen Golf, which she knew belonged to him, parked outside her house.

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

[83] Five other witnesses, including the deceased's father, testified that Mdluli had visited them repeatedly, looking for the deceased and informing them that he would kill Ramogibe if he did not end his relationship with Buthelezi. Mr Steven Buti Jiyane testified that Ramogibe had periodically stayed at his family home because Mdluli was threatening to kill him.

[84] Mary Lokaje in her affidavit heard the shooting of Ramogibe outside her house and saw three uniformed policemen running away from the scene, and saw the Golf being driven away.

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

- 48 The allegations against Adv. Chauke relate to his decision to refer this matter to an inquest in the first place. Virtually all the evidence, captured in the above passage taken from the judgment, was before him when he decided to refer the matter to an inquest. There was, as found by both Murphy J and the Supreme Court of Appeal (*National Director of Public Prosecutions and Others v Freedom Under Law* 2014 (2) SACR 107 (SCA)) sufficient evidence upon which to prosecute. Yet Adv. Chauke did not prosecute. Instead, he referred the matter to an inquest.
- 49 It will be contended that in referring the matter to an inquest, Adv. Chauke weakened the State's case.
- 50 The further allegations against Adv. Chauke are that after the Magistrate's findings became available (in November 2012), he ought to have taken a decision then to reinstate the murder and attempted murder charges. Instead, Adv. Chauke, now in possession of the Magistrate's findings, filed an affidavit opposing the relief sought by Freedom Under Law.
- 51 In his affidavit in those proceedings, Adv. Chauke explained that the Magistrate had found that there was no evidence implicating Mdluli.
- 52 The allegations against Adv. Chauke are that his view that the Magistrate had found that there was no evidence implicating Mdluli is wrong and that he either did not read the findings or that he ignored the findings.
- 53 In his judgment Murphy J said the following about Adv. Chauke's explanation:

"[89] Chauke in his answering affidavit similarly ignored some of the inquest findings, saying simply that the magistrate had found there was no evidence implicating Mdluli. Clearly there is evidence implicating Mdluli. The magistrate's conclusion is anyhow not decisive. Guilt or innocence is a matter for the trial court tasked with the responsibility of determining culpability. Section 16(2) of the Inquests Act only requires a magistrate conducting an inquest to determine whether the death was brought about by any act or omission that amounts *prima facie* to an offence on the part of any person and, insofar as this is possible, a finding as to whom the responsible offenders might be. The DPP is, besides, not bound by the findings of the inquest."

54 At any rate, what Adv. Chauke was referring to was the conclusion reached by the Magistrate that:

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

55 Murphy J dealt with the apparent contradictions between this finding and other findings by the Magistrate. After summarising all the findings made by the Magistrate, Murphy J stated:

"[86] The magistrate did not reject any of this evidence. He in fact accepted it. In the conclusion to his reasons the magistrate stated:

'But be this as it may, their evidence of Mdluli being to such a degree upset with Oupa's (Ramogibe) relationship with an estranged Tshidi

(Buthelezi) that they deemed it necessary to have reported it and mentioned it in their affidavits shortly after Oupa's death, runs like a golden thread through the murky waters of their evidence. Evidence that he passed threats to kill Oupa, whether made repeatedly or not, against the background of the strong current of Mdluli's emotions at the time, is in my opinion overwhelmingly probable.'

[Emphasis supplied].

He then found that it had been proved on a balance of probabilities that Mdluli was 'highly upset and humiliated' by Ramogibe's relationship with his former lover, had not come to terms with the fact that Buthelezi had ended their relationship, had made threats to kill Ramogibe and that his family would mourn him, and had wanted Ramogibe out of Buthelezi's life in the hope that he could rescue his relationship with her. He, however, went on to point out that it might be difficult to link the threats, intimidation and alleged kidnapping to the ultimate fatal shooting of Ramogibe. The inability to call Buthelezi, now deceased, was in his opinion a complicating factor. These weaknesses (and others) in the evidence led the magistrate to conclude that an inference of Mdluli's involvement was permissible but not conclusive. His ultimate conclusion that there was no evidence on a balance of probabilities 'implicating' Mdluli, is wrong and inconsistent with his otherwise correct assessment and evaluation of the evidence."

- 56 The allegations against Adv. Chauke is that, even assuming that Adv. Chauke had either misread the Magistrate's findings or had not read them fully, upon receipt of this judgment he ought to have reconsidered, recommended that this aspect of the appeal be withdrawn, and given instructions to the prosecution

team to continue with the prosecution of Mdluli on the murder and attempted murder charges.

- 57 At any rate, the matter then proceeded on appeal to the Supreme Court of Appeal.
- 58 The SCA found that Adv. Chauke's explanation for withdrawing all charges whilst he referred the death of Mr Ramogibe to an inquest was "not irrational". The question of whether the matter should have been referred to an inquest in the first place was not a ground of review before the High Court or the SCA.
- 59 There are several findings by the SCA which warrant mention.
- 60 Brand JA dealt with the Magistrate's findings.

"[13] I pause to record that at Chauke's request the inquest was held in terms of the Inquests Act 58 of 1959 by the magistrate of Boksburg, who handed down his reasons and findings on 2 November 2012. His ultimate conclusions make somewhat peculiar reading, namely that:

'The theory of Mdluli being the one who had orchestrated the death of [the deceased] is consistent with the facts.'

And that:

'The death [of the deceased] was brought about by an act *prima facie* amounting to an offence on the part of *unknown persons*. There is *no evidence* on a balance of probabilities implicating Richard Mdluli [and his co-accused persons] in the death of the deceased.' [Own emphasis.]

[14] I say peculiar because s 16(2) of the Inquests Act required the magistrate to determine whether the death of the deceased was brought about by any act or omission amounting to an offence on the part of any

person. The evidence before him clearly established a prima facie case against Mdluli. That appears to be borne out by the first conclusion. The second conclusion, which appears to contradict the first, seems to be both unhelpful and superfluous. It was not for the magistrate to determine Mdluli's guilt on a murder charge, either beyond reasonable doubt or on a balance of probabilities. But if Chauke had any uncertainty about the import of the magistrate's findings he could have asked for clarification or even requested that the inquest be reopened in terms of s 17(2) of the Inquests Act. Furthermore, it is clear that the magistrate's findings were wholly irrelevant to the 17 related charges. Nonetheless it is common cause that no further steps have since been taken by the prosecuting authorities to reinstitute any of the 18 charges."

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

IMPACT ON THE NPA: CIVIL LITIGATION AND BRINGING THE NPA INTO DISREPUTE

62 It will be contended that the actions of Adv. Chauke undermined the administration of justice, exposed the NPA to litigation and brought it into disrepute.

63 The evidence will show that the various court cases in which Adv. Chauke played a role and the stance he adopted cast the NPA in a very poor light. Apart from the immediate financial impact of various cost orders against the NPA,

Booyesen and several other police officials instituted a civil claim against the NPA.

- 64 And ultimately, it is about the victims: although Mdluli was ultimately convicted on some of the other charges, Mrs Ramogibe, the mother of Mr Oupa Ramogibe died without seeing justice for her son.