

**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**

28 NOVEMBER 2025

DAY 10



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

PROCEEDINGS ON 28 NOVEMBER 2025

CHAIRPERSON: Good morning, everyone. We are told that the air conditioners are temporarily fixed. Advocate Skosana, in the event there is a leak on top of you there, you can just move the chairs. Yesterday we had some rain over there and almost disturbing the computers. Just make a move. And Advocate Batohi, that air conditioner on top of you, if it is disturbing you, just control it. If there is no water leakage, just control it. If there is, please alert us.

ADV BATOHI: I will, thank you, Chair.

CHAIRPERSON: We have agreed with the technicians that they will come back when we adjourn later in the day and they will have the afternoon to fix this air conditioner. Good morning, Counsel. Good morning, Advocate Batohi.

ADV BATOHI: Good morning, Chair.

CHAIRPERSON: Good morning Advocate Chauke.

ADV BATOHI: And the panel, and good morning to Advocate Chauke and his team.

CHAIRPERSON: Advocate Mohlamonyane, you may begin. Remember, you are still under oath, Madam.

ADV BATOHI: Yes, thank you, Chair.

SHAMILA BATOHI (still under oath)

CHAIRPERSON: Thank you. You proceed, sir.

ADV MOHLAMONYANE SC: Thank you, Madam Chair. Maybe before I proceed, I had indicated to Advocate Khooe

to have her name placed on record. Maybe this is an opportune moment for her to do so.

ADV KHOOE: [Indistinct]... [microphone off].

CHAIRPERSON: You are speaking softly, but I think I can hear you a little bit from our chamber discussion. Counsel, Advocate Nkaiseng, good morning and most welcome. Would you please place yourself on record.

ADV KHOOE: Madam Chair, panel members, my name is Nkaiseng Khooe. I am a member of PABASA in Bloemfontein. Thank you.

CHAIRPERSON: You are joining the evidence-leading team as a junior?

ADV KHOOE: Yes, I am, Chair.

CHAIRPERSON: Yes, thank you.

ADV KHOOE: Thank you.

CHAIRPERSON: You may proceed, Counsel.

ADV MOHLAMONYANE SC: Thank you, Madam Chair.

CHAIRPERSON: Perhaps, just give me a few minutes just to clear my thoughts in relation to what we discussed yesterday, perhaps so that we can close this chapter, something that was worrisome to me about that jurisdictional straddling, as we call it.

ADV MOHLAMONYANE SC: Straddling.

CHAIRPERSON: I am not sure whether it is the proper word, but we all understand why we talk about straddling between

provinces. My understanding, Advocate Batohi, was that Advocate Chauke had no authority to do what he did in the jurisdictional area of Advocate Mlotshwa in KZN. And yesterday, if my recollection is correct, you said that Advocate Mlotshwa had not been consulted. Am I correct?

ADV BATOHI: Chairperson, I think it will be best if Advocate Mlotshwa, when he does come to testify, explains precisely what happened and then we hear directly from him about the process that led to this team being set up. I think he would be best, I could be mistaken about things and I think it is best that he tender that evidence directly.

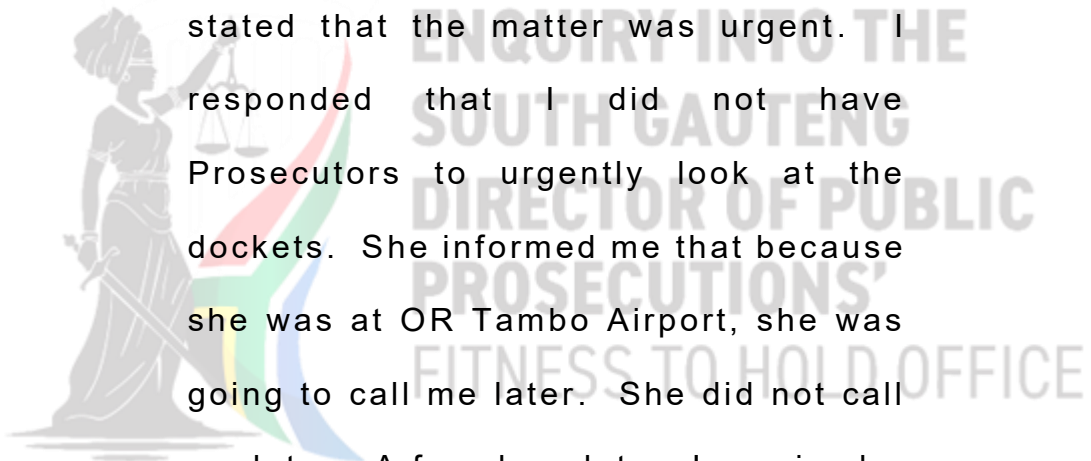
CHAIRPERSON: But let me just clarify one or two aspects in relation to that and if you are not able to say anything about it, we will clarify it from Advocate Mlotshwa. Yesterday, you referred us, Counsel, to SB5. It is at page SB5 231. It is that document that Advocate Batohi addressed to Advocate Chauke. It is dated 13 May 2021. And to this document is Annexure SB5A 236, which is Advocate Mlotshwa's statement.

ADV MOHLAMONYANE SC: That is correct, Madam Chair.

CHAIRPERSON: In the statement, Advocate Mlotshwa indicates in paragraph 2 of page SB5A 236 that on the 17th of May 2010 until 9 July 2012, so he says:

“I was acting as a Director of Public Prosecutions KwaZulu-Natal between

January 2012 and March 2012. While driving to Port Shepstone, I received a call from Advocate Nomgcobo Jiba who was acting as the National Director of Public Prosecutions at the time. She informed me that there was a matter where, because of pressure, we had to enrol as a matter of agency. I informed her that I would first read the dockets and make a decision accordingly. She stated that the matter was urgent. I responded that I did not have Prosecutors to urgently look at the dockets. She informed me that because she was at OR Tambo Airport, she was going to call me later. She did not call me later. A few days later, I received a call from Advocate Chauke informing me that he had been instructed by Advocate Jiba to send a team of Prosecutors to prosecute the accused in the Cato Manor case. He told me that there were very sensitive security issues surrounding the matter. I told him that I was going to attend the DPP's meeting



at VGM on 29 May 2012, so we were going to discuss the matter further.”

I will pause there. Flowing from this statement, and please correct me if I am wrong, it seems to me that Advocate Mlotshwa was aware of the fact that Advocate Chauke was instructed by the NDPP to do what he did in KZN. Just from this statement itself, it appears to me that he was already informed by the time Advocate Chauke coordinated the team. Is this understanding correct?

ADV BATOHI: I have no reason to dispute what is in his statement, Chairperson, and that seems to be the case.

CHAIRPERSON: Thank you, Advocate Batohi. You may proceed, Counsel.

EXAMINATION BY ADV MOHLAMONYANE SC

(CONTINUED): Thank you, Madam Chair. Advocate Batohi, yesterday when we adjourned ...[intervenes].

CHAIRPERSON: Might I just maybe flag something, just for completeness of that aspect, so that you may, if you wish, Counsel, also reflect on it. If you look at Bundle ZC6, ZC6 at page ZC01428, it is the witness statement of Advocate Chauke at the Zondo Commission.

That statement of Advocate Chauke before the Zondo Commission appears from, the numbering has been cut by the printer, but you can accept that it could be ZC014051. It starts from 051, and the page that I am referring to could

probably be ZC01428 at paragraph 57. And in this statement, Advocate Chauke seems to endorse what Advocate Mlotshwa is stating in that affidavit referred to by Advocate Batohi at SB5. Paragraph 57 reads:

“My involvement in the Cato Manor matter.”

That is the heading. It reads:

“Towards the end of April 2012, I received a call from Advocate Jiba, Jiba the then Acting NDPP, informing me that there was a request received from KZN and the SAPS that a team from outside KZN must be established to investigate the cases emanating from Cato Manor which involved the Police. The reason for the request for Prosecutors outside KZN by Jiba was because of the close working relationship between the implicated police members and the Prosecutors based at KZN office.”

58, the next page:

“In support of what I was advised about Mlotshwa’s attitude is the fact that Mlotshwa, in his response dated 13 June 2012, did not deny the contents of

my email which reads as follows:

‘I do not want to step on your toes. I was informed that you agreed and arranged with the ANDPP, that is Jiba, for somebody from outside to do the prosecution of this matter. If you have now a change of heart, please indicate so that we may resolve it as soon as possible.’.”

I mention these extracts because yesterday we were clarifying issues about the alleged jurisdictional straddling which is not permissible in terms of the Constitution and the NPA Act. I am going to pause there, Advocate Mohlamonyane and Advocate Batohi, believing that the relevant witnesses will be called at the later stage to clear this aspect that seems to be worrisome to us.

ADV BATOHI: Chairperson, if I may, on the basis of what you just said now, I want to make sure that there is no confusion because I am just trying to recall my evidence yesterday about consultation between the DPP’s in the process of centralization and I want to make sure that my evidence around that is not confused with this scenario that the Chairperson has now sketched.

If I may recall that I am not sure when, whether it was yesterday or when I testified about centralization which I stated that in those circumstances the two DPP’s of the two

jurisdictions would consult and they would then decide on the appropriate jurisdiction where the matter should be tried and they would then make an application to the National Director for the centralization and there would be an application from one of the DPP's and there would be consent as well from the other DPP indicating that they consent to the centralization of the matter in one of the jurisdictions.

So I wanted to clarify that scenario to what the Chairperson has just sketched out now with reference to the statements. Thank you, Chair.

CHAIRPERSON: Yes, thank you. I remember you making the point on centralization but remember the very question that we sought to address related to 179, section 179 of the Constitution that specifically deals with DPP's being, and I am paraphrasing, being confined to areas of their jurisdictions and it was with a view to address the issue pertaining to Advocate Chauke's alleged wrongful, if I may use that word, there could be a better terminology, his wrongful straddling going to KZN, which is not the area of his jurisdiction and doing what he did there.

Reference was made to section 179 of the Constitution and we discussed it at length and the provisions of the Act as well. We then discussed the issue relating to 179(5)(d) in respect of which you had actually written that letter to Advocate Chauke, SB5, to which Advocate

Mlotshwa's affidavit or statement is attached. In that letter you invited Advocate Chauke to make, to respond to the allegations in – yes, madam?

ADV BATOHI: Chairperson, I do not want, I want to clarify that I did not mention, I heard the Chairperson say that this letter was written in terms of section 179(5) of the Act. That is not my evidence Chairperson, I have not said that and I was just checking the document itself, so I want to clarify that aspect, Chairperson.

CHAIRPERSON: Yes, I may not, I think there is a lot of questions that flew from the 179 issue because 179(5)(d) is a review by the NDPP of a decision to prosecute or not to prosecute.

ADV BATOHI: It is indeed so.

CHAIRPERSON: And one of the issues we are, that are before us entailed alleged prosecutorial decisions by Advocate Chauke and this was discussed in the context of the alleged wrongful straddling by him. Just pardon me when I use the words because maybe it is an easy way of explaining the point that he left his jurisdictional area and went to the KZN jurisdictional area, which in terms of the Constitution he ought not to have done.

Now that takes us back to those statements and I ask the question, what is it that was required from Advocate Chauke, or any other DPP, where he seeks to traverse into a

jurisdictional area of another and then you, we talked about centralization and consultation, etcetera, etcetera. Now it is in that context that when I was reading the record as well as the annexure to your letter, the statement of Advocate Mlotshwa, I then found this paragraph 57 that seems to confirm what Advocate Mlotshwa is saying.

Now from this events a question then arises as I sought to ask, do all these factors emanating from the statement of Advocate Mlotshwa as I read it, and the paragraph 57 of Advocate Chauke, do they not signify that Advocate Chauke did not go to KZN on a frolic of his own. He was asked to do what he did and Advocate Mlotshwa was clearly in my view as I read this paragraphs, aware of the fact that there was a need to have Prosecutors being appointed in KZN.

From his statement he said I do not have Prosecutors and Advocate Jiba facilitated the Prosecutors being appointed to go to KZN. Then we had that team of Advocate Maema from KZN being coordinated at the instance of Advocate Jiba. I do not want to give you a long story but I am just trying to give you the context from which my question arose and it seemed to me that that statement that you attached to your letter, read in conjunction with the statement that Advocate Chauke made at the Zondo Commission, paragraph 57, seemed to support that. That is the only thing

that I was trying to say but I do understand that the witnesses will be in a better position to explain this scenario further. Thank you.

ADV BATOHI: I understand fully, Chairperson. I want to make one comment with regard to that. I understand perfectly what the Chairperson is saying. I want to say that even if Advocate Chauke was asked by Advocate Jiba to do the work that he did, as a DPP he would have been aware and he is aware if one looks at his documents that he had no jurisdiction over KZN and that he could not exercise any prosecutorial decisions relating to a matter that was within the jurisdiction of the KZN DPP.

So I want to make that point in view of what the Chairperson said he was not going on a frolic of his own. If we accept that he acted on the instructions of Advocate Jiba then as a DPP he would have known that what he is being asked to do is in fact unlawful. Thank you Chairperson.

ADV BALOYI-MERE SC: Advocate Batohi, good morning.

ADV BATOHI: Morning.

ADV BALOYI-MERE SC: I have a follow-up question. You say the process that landed us here was not initiated as per section 179(5)(d), meaning it is not, it is not a review.

ADV BATOHI: That is correct.

ADV BALOYI-MERE SC: Can you please enlighten us what is the process that landed us here if it is not a review?

ADV BATOHI: So I think to deal with this, let us first start with the constitutional scheme that is set out in the Constitution and we go to section 179. So in terms of section 179(3):

“National legislation must ensure that
DPP’s ...”

I paraphrase.

“Directors of Public Prosecutions –

(a) are appropriately qualified; and

(b) are responsible for prosecutions in

specific jurisdictions subject to
subsection (5).”

And subsection 5 then sets out certain, what can I say, perhaps constraints on the jurisdiction of a DPP in those very specific circumstances where a National Director must do certain things and may do certain other things in terms of section 175(a) to (d). So if one considers what as the National Director I did at that time, it was not a constraint on a DPP's jurisdiction.

At that time what had happened, and it is important that the context, sometimes context is everything, what had happened as I explained previously in my testimony is that when I took office in 2019 there was litigation in process whereby Booyesen was, had made an application for a review of the authorizations by Advocate Abrahams for the matter,

for the authorization, for the matter to be reviewed and the authorization set aside. When I came into office I was faced with a decision on what is the appropriate position that as the NPA and as a National Director I should take in these proceedings.

And as I had also testified there was an outcry at the time, a public outcry about the fact that the NPA had not been acting properly with regard to certain cases. So in this context I needed to decide what is the position that we take as the NPA. I then appointed this panel headed up by Advocate De Kock to consider this matter and to decide what position do we take in this process, the review process .

When I received the report from Advocate De Kock and the team which recommended that, which in fact found that the NDPP had acted, I think the authorizations were unlawful if I recall correctly in terms of the report, we then, it of course gave me direction in terms of what we should do in the application which we then withdrew the opposition if I recall correctly, in that application.

But that report also raised certain red flags about the process, the way the authorizations had been made, and as the National Director who is in fact constitutionally mandated to, as the Head of the NPA, to ensure that the institution is properly managed and I think it bears mentioning that the prosecuting authority falls under Chapter 8 of the

Constitution which deals with courts and administration of justice, so as Prosecutors when we take prosecutorial decisions we must take it in the context of the administration of justice and ensuring that when we exercise prosecutorial jurisdiction in accordance with the power that the Constitution gives us, that we must always exercise that jurisdiction properly.

The report that I received at the time raised red flags and I needed to then decide what to do to consider this as a National Director, as a responsible National Director, when there are red flags you cannot bury your head in the sand, you are expected to look into the matter. You have reporting. You can, you invoke reporting obligations that the DPP's have to a National Director. You have accountability to various entities. So you need to ensure that you do what is necessary to follow up and check where there are red flags, which is in fact what I did.

ADV BALOYI-MERE SC: Mam, thank you. My question was just simply to try and understand whether whatever you did, starting from the constitution of the panel, were you acting in terms of 179(5)(c), which says you may intervene in the prosecution process where policy directives are not followed, or are not complied with, or was it a review in terms of (5)(d) that say you may review a decision to prosecute or not to prosecute after consulting the relevant Director of Public –

that is what I wanted to know, what is the - the process that you followed resided under which section. If it is not 179, it is fine, you can say it is not 179 and then I will move on.

ADV BATOHI: Yes, thank you. My explanation was to convey that it was not in terms of section 179(5).

ADV BALOYI-MERE SC: Okay.

ADV BATOHI: Because it was not a constraint on the jurisdiction of a DPP but I was looking into the matter because there were red flags that were raised in the De Kock matter.

ADV BALOYI-MERE SC: Which particular legislative provision did you rely on?

ADV BATOHI: I relied on the authority. The fact that the National Director is the Head of the Prosecuting Authority and is required to ensure, I think we should go to the, as the Head of any institution you are required to ensure that the institution is well run and that the institution functions in a way that the powers that are conferred to you are properly exercised and that flows from the Constitution itself.

As the National Director you are required to ensure that when decisions are made in the Prosecuting Authority that it is always in the furtherance of the administration of justice and so in my view that is what I was doing when I invoked this process.

ADV BALOYI-MERE SC: Thank you.

CHAIRPERSON: Section 20, Advocate Batohi, of the NPA Act speaks of the powers, duties and functions of members of the Prosecuting Authority is the umbrella heading. The heading in 20:

“Section 20 speaks of the power to institute and conduct criminal proceedings and it refers to the power as contemplated in section 179 of the Constitution –

(a) to institute and conduct criminal proceedings;

(b) to carry out necessary functions incidental to instituting and conducting such criminal proceedings;

(c) to discontinue criminal proceedings
...”

I will jump sub (2) of 20.

(3) Subject to the provisions of the Constitution and this Act, any Director ...”

And I would like you to emphasize that because my question is going to come from there.

“Shall, subject to the control and direction of the National Director

exercise the powers referred to in subsection (1) in respect of the area of jurisdiction for which he or she has been appointed ...”

Etcetera. Now section 24 also speaks of the powers and duties and functions, but it specifically refers now to the powers, duties and functions of Directors and Deputy Directors. I assume that I am correct to think that the Directors envisaged here includes the section 6 Directors.

ADV BATOHI: That is correct.

CHAIRPERSON: Of which Advocate Chauke is a member or a Director. Their powers is to institute and conduct criminal proceedings as contemplated in section 23 that you referred to earlier. Now if this Director, the section 6 Director, is directed in terms of the Constitution to exercise, to do certain things as envisaged in section 3, be it within or without, in other words be within the jurisdictional area of that Director, or outside of that jurisdictional area, will that Director be acting unlawfully?

ADV BATOHI: Chairperson, if I may get clarity before I answer. I heard the Chairperson say as envisaged in section 3, or am I mistaken? I just want to get clarity on that.

CHAIRPERSON: Yes, because the powers in section 20(3) ...[intervenes].

ADV BATOHI: Oh, section 20(3), is that the reference?

CHAIRPERSON: The powers envisaged in section 24, as you can see in 24(1)(a) are subsumed in section 20 or are similar to those in section 20. In other words ...[intervenes].

ADV BATOHI: Yes.

CHAIRPERSON: The powers of the section 6 DPP and Deputy Directors are almost similar to those envisaged in section 20(1) at least. But then subsection (3) of 20 only confines the DPP or the Director to exercise his or her powers within the area of his or her jurisdiction, if you read (3)(a).

ADV BATOHI: I see that, Chairperson.

CHAIRPERSON: Correct. Now my question is, because all these Prosecutors, I call them, they are all Prosecutors, they prosecute when you look at these powers, it is a simple way of putting it, to an ordinary person they are called Prosecutors, you call them Directors or section 6 Directors but they prosecute because they have the powers to institute and conduct criminal proceedings.

My question is, the section 6 Director as envisaged in section 20(4) who may exercise his powers in terms of that provision will be, those powers will be subject to 20(3), meaning they will do so under the control and direction of the National Director, am I correct?

ADV BATOHI: Chairperson, thank you for that. That, the simple answer would be yes. My understanding from your previous question, Chair ...[intervenes].

CHAIRPERSON: I think leave it there. If the answer is yes to that question, it takes us to that subsection 20(3). Of course I bear in mind that there are subsections there. In other words, as the Head you direct, you control all the Prosecutors in their prosecutorial function. Now if you as the Head, and in this instance obviously it was not you who did what seemed to have brought us here, it is Advocate Jiba as she was acting then, if your colleague, Advocate Jiba, exercised her powers, her control and directive powers to ask a DPP to perform prosecutorial functions in an area outside the jurisdiction of this section DPP, on what basis should the DPP concerned be blamed for having acted according to the control and direction of the National Director?

ADV BATOHI: Chairperson, subsection ...[intervenes].

CHAIRPERSON: I beg your pardon, and I ask this question, madam, because you earlier said even if this is the case, Advocate Chauke himself knew that he ought not to have done what he did, despite the fact that he was directed by the National Director. This question flows from there.

ADV BATOHI: Thank you, Chairperson. So, Chairperson, firstly if one looks at section 23, any Director shall, subject to the provisions of the Constitution and this Act, any Director shall, subject to the control and directions of the National Director, exercise the powers referred to in subsection (1) in respect of the area of jurisdiction for which he or she have

been appointed.

Chairperson, my understanding of that, and I say it is my understanding, I think I should hasten to add, I am not a constitutional lawyer and I am not an administrative law expert, but I am trying to assist and I think it might be a good idea for the Evidence Leader to bring a constitutional law expert to unpack these things, but in my humble opinion, Chairperson, this subsection (3)(a) indicates that the exercise of the powers of the DPP in terms of subsection (1) can only be in respect of the area of jurisdiction for which he or she has been appointed.

Now let us assume on your question, and I urge that I be allowed to go to the end of my thought, thank you, Chairperson, let us assume ...[intervenes].

CHAIRPERSON: Well, I can rest assure you, I will not interrupt you.

ADV BATOHI: I am very grateful for that.

CHAIRPERSON: Because you anticipate that I will interrupt you.

ADV BATOHI: I am very grateful for that, Chairperson. Thank you very much. So getting back to your question, Chairperson, if Advocate Jiba asked a DPP to perform prosecutorial functions in an area outside of his or her jurisdiction, in the first place, Chairperson, I think we agree that that would be acting beyond her powers, because she

does not have those powers to instruct a DPP to exercise jurisdiction outside of his or her area of jurisdiction.

That is an executive function. The appointment by the executive is to a particular area and the constitutional scheme envisages that a DPP will exercise his or her powers within the area of your jurisdiction. But on the assumption then that this was done, Advocate Chauke in those circumstances being a DPP of considerable experience, will know that if he is being asked to exercise jurisdiction in an area where he has no jurisdiction, that that is unlawful.

And I would submit that Advocate Chauke was well aware that he had no authority to exercise jurisdiction with regard to a matter in KwaZulu-Natal, because all of the evidence, all of the documents and all of the evidence that was tendered thus far indicates that they were aware that the DPP of South Gauteng had no jurisdiction or authority in KZN. And the evidence, if one looks at it very carefully as we try to unpack, would seem to suggest that there was an attempt to create a veneer of the matter being managed from KZN when in fact Advocate Chauke was the *de facto* DPP exercising prosecutorial functions in an area that he did not have jurisdiction over and he was well aware that what he was doing is not sanctioned by the law. Thank you, Chairperson.

CHAIRPERSON: You referred us to section 20(3).

ADV BATOHI: Yes, Chairperson, that was the section that the Chairperson had referred to earlier of the Act.

CHAIRPERSON: No, I referred to section 20(4).

ADV BATOHI: My understanding was and section 20(3), Chairperson ...[intervenes].

CHAIRPERSON: Yes.

ADV BATOHI: Which you read out as well.

CHAIRPERSON: 20(3), (3).

ADV BATOHI: Yes, I beg your pardon.

CHAIRPERSON: I thought you meant section 23.

ADV BATOHI: My apologies, not 23, 20(3).

CHAIRPERSON: Yes, that is better.

ADV BATOHI: Yes, thank you, Chairperson.

ADV BALOYI-MERE SC: Thank you. Advocate Batohi, let us go back to section 20, at section 20(1) the powers as contemplated in section 79 of the Constitution are listed there as (a), (b), (c), and if you go to subsection (3) it says:

“Subject to the provisions of the Constitution and this Act, any Director shall, subject to the control and directions of the National Director, exercise the powers referred to in subsection (1) ...”

Subsection (1) meaning:

“Institute and conduct criminal

proceedings on behalf of the State,
carry out any necessary functions
incidental ...”

And so on.

“Discontinue criminal proceedings ...”

And then it goes on at sub (3) says:

“In respect of ...”

And now I am going to concentrate on sub-sub (b):

“Any offenses which have not been
expressly excluded from his or her
jurisdiction, either generally or in a
specific case by the National Director
...”

Meaning, well that is my understanding, that the National Director can assign a Director to, or, yes, can assign a Director who will be under his or her control and directions to exercise the powers to institute and control, institute and conduct criminal proceedings as per section 20(1).

So the National Director can direct a Director to exercise those functions at sub (1)(a), (b) and (c), which are expressly excluded from his jurisdiction or either generally or in a specific case, meaning you may or you can direct a Director to go and do something else as long as they have authorization from you and they are acting under your direct, your control and directions, if we read 20(1)(with (3)(b).

Please correct me if I am wrong.

ADV BATOHI: Thank you, Madam Baloyi-Mere. With due respect, I have a different understanding of that section.

ADV BALOYI-MERE SC: Okay.

ADV BATOHI: My understanding of the section, that is (3)(b), it says, well let us read it with the chapeau of subsection (3):

“Subject to the provisions ...”

So it makes sense or we can understand.

“Subject to the ...”

Or maybe I can explain better.

“Subject to the provision of the Constitution and this Act any Director shall, subject to the control and directions of the National Director, exercise the powers referred to in subsection (1) ...”

And we have got to read it as a collective, the entire section, in order to, this is my understanding:

“In respect of the area of jurisdiction for which he or she has been appointed.”

That seems to be reasonably clear.

“(b) may exercise the powers in respect of any offenses which have not been expressly excluded from his or her jurisdiction.”

My understanding of this is that certain offenses can be excluded from a DPP's jurisdiction. So the understanding if one looks at the Act again, the Constitution and the Act gives DPP's a very important and broad power to prosecute all cases within their area of jurisdiction. This subsection in my understanding says there may be certain offenses that are excluded from your jurisdiction and in my understanding, and I will explain in circumstances where that can happen in my experience, but it does not talk to a DPP from one jurisdiction exercising his or her powers in another jurisdiction.

It is about excluding certain categories of offenses from the jurisdiction of the DPP in his or her area of jurisdiction. This can happen for example where there is a Special Director of Public Prosecutions that is appointed that has jurisdiction over a particular category of offenses, and this has happened in the past where you have had the SDPP for the Specialized Commercial Crimes Unit that was, and we can look at the section that deals with the powers, duties of the Special DPP. I can be assisted. There is a section that, I think that is section 24(3), but I will not go there now ...[intervenes].

ADV BALOYI-MERE SC: I am sorry to interrupt you. Yes, that one is clear because even here at (b) it says, that have not been expressly excluded.

ADV BATOHI: Yes.

ADV BALOYI-MERE SC: So the functions of the SDPP would be in the exclusive jurisdiction of the SDPP.

ADV BATOHI: That is correct.

ADV BALOYI-MERE SC: So you do not need to go there.

ADV BATOHI: I think it is important to explain my understanding of this and that is the reason why I am, my apologies if I am being a bit, if I am labouring on this, but I think it is a very important point, and my understanding is that what this subsection (3) is saying, in my simple understanding is as the DPP you have in terms of (a) subject to the control and directions of a National Director you can exercise all the powers in subsection (1), except those that are in (b) which are excluded from your jurisdiction.

And that is my understanding, certain offenses are excluded, but it does not mean that a DPP gets increased jurisdiction for want of a better word, over an area that he or she does not have jurisdiction in. I hope I have clarified my understanding.

ADV BALOYI-MERE SC: Thank you.

CHAIRPERSON: Last question, Counsel, Just for clarity, we are here to find the truth and to be assisted because when we write the report to the President we must have understood the case very clearly. Advocate Batohi is testifying and is going to be excused as the Head of the NDPP is better placed to assist us, and I am saying this deliberately so that we are

not misunderstood to be pressing her or cross-examining her. That is not our duty. We seek to find the truth and to get the correct facts so that we write the report understanding what we are writing about.

Counsel, Advocate Batohi, now flowing from these questions which signify that we seek clarity, let us look at the very practical scenario, and I am going to use the Cato Manor scenario for our better understanding, let us assume that in 2012 or in 2010 you were in the country and you were clothed or vested with the powers which the former Head of the NPA had as at that time, let us assume you are in those shoes in 2010, 2011 and this happenings in KZN involving the Police took place, I will not give details about the happenings, I think it is clear now that the Cato Manor events are matters of public knowledge, and the scenario set out in that case tells us that the Prosecutors in KZN had a close relationship with the Police involved in the Cato Manor matter, meaning that if prosecution had to happen it will be done or executed by the very same Prosecutor in KZN, would it have been unreasonable under those circumstances if you personally as the Head who is in control of the Prosecution Authority in the country, could have exercised your powers to delegate, in those circumstances, to delegate people from outside KZN, Prosecutors, not people, Prosecutors outside KZN to go and assist in prosecuting those cases relating to Cato Manor

matter?

Would it have been unreasonable of you if you would have exercised your broad powers in terms of the Constitution and given the constitutional imperative under section 179 read with the NPA Act to ensure that the authority, the Prosecuting Authority exercises its functions in the interest of the public without fear, favour or prejudice?

ADV BATOHI: Thank you Chairperson. So my understanding of the scenario is that I am the DPP in KZN in 2010 and the Cato Manor scenario pans out and there is, I have, as the DPP I have an issue with Prosecutors' close relationship with the Police ...[intervenes].

CHAIRPERSON: In addition, there are no Prosecutors as Malotshwa says. You see that scenario, I may not have put everything, but ...[intervenes].

ADV BATOHI: I understand.

CHAIRPERSON: There are no Prosecutors.

ADV BATOHI: I understand, Chairperson. We have to ask him whether, what happened there.

CHAIRPERSON: No, no, I am not talking about asking him or not. I am saying, I am giving you the scenario ...[intervenes].

ADV BATOHI: Understood.

CHAIRPERSON: That you are the Head now ...[intervenes].

ADV BATOHI: Understood.

CHAIRPERSON: And you need to decide what is to happen. There we are told there are no Prosecutors. We are told this Cato Manor matter involves the Police, the Police who are close, working closely with the Prosecutors in KZN, the question then remains, what would you have done in those circumstances as the Head of the NDPP?

ADV BATOHI: As the Head of – in KZN?

CHAIRPERSON: No, no, as the Head of the Prosecuting Authority in the country.

ADV BATOHI: Oh, okay. So as the National Director then this is the scenario, and I will not repeat it, I understand it. I am really trying to help, Chairperson. In those circumstances, and it has happened, what would happen, what I would do as the NDPP if I was approached by DPP in those circumstances, we would indeed get a team together and deploy them, or deploy may be the wrong word, but send them to KZN with the necessary delegation.

Generally what would happen, if the DPP in KZN is the one who makes the request and wants the Prosecutors, then we will agree with other DPP's to send Prosecutors there, generally what would happen then is the DPP in KZN is required in terms of the Act to issue delegations to prosecute to this group who comes from outside, delegations to prosecute in that division.

There is a provision in the Act which also allows a

National Director to do this, but if the DPP is, if this is the scenario, generally the DPP of the division will give the Prosecutors delegations to prosecute and they will do the work in KwaZulu Natal. If for whatever reason the DPP is, does not give that delegation, then there is the authority given to the, the power given to the NDPP to in fact delegate, prosecute, give them the necessary delegation to prosecute in another division.

So the point from, if I may, Chairperson, it appears from the evidence is that Advocate Jiba did give this group of Prosecutors delegations to prosecute in KZN. So from that perspective they, this group of Prosecutors had the necessary delegated authority to prosecute in KZN. What would then, because it is a KZN case, one would then, those Prosecutors are now accountable to the DPP of KZN. They work under his or her authority and they must be reporting to that DPP and for all intents and purposes they are Prosecutors in KZN working under the subject and control of the DPP in KZN.

CHAIRPERSON: Yes, thanks Counsel. Now what then happens if the DPP KZN, as it happened in this case, following the offenses that were committed in KZN resulting in several deaths of civilians and people were charged, but ...[indistinct] were not set down, we do know that DPP KZN did not approach the Head of the Prosecution Authority, the

National Director, now your answer was if the DPP KZN approaches the National Director, now my question is what then happens if he sits back, he or she sits back in those circumstances of the Cato Manor case, and does not approach the National Director, but the National Director get pressured either by the public or the victim's families or the Executive or whoever, or her or his attention is brought to the fact that these matters are not being prosecuted, what then if the DPP KZN does not say anything, matters are not set down, prosecution is delayed, nothing is happening, is it not incumbent upon the Head on his or her own to rise up to the occasion and do something, as it happened in this case?

ADV BATOHI: Thank you, Chairperson. I am not going to speculate about where the pressure was in this matter, but looking at your scenario, Chairperson, here we have a case that needs to be prosecuted, the DPP is not doing what he or she should be doing in the division, is not asking for help, firstly there is an accountability issue regarding the DPP who is required in terms of the Act to prosecute cases within his or her jurisdiction.

If the DPP is not doing that and without, well the first thing I would do as a National Director is write to the DPP and ask him or her what is going on in this matter, there is pressure from the public, you are not doing what you expected to do, please give me a report about this. I want to

understand why you are not addressing this matter. I will ask for a report. Get that report from the DPP and try to understand what exactly the position is.

If the DPP, let us, there is two scenarios, one is the DPP gives good reason, the other one he does not, or she does not, let us assuming the second option, the DPP does not give good enough reasons and I am still not happy that this case is getting the necessary attention that it needs, in those circumstances I would, I have to think carefully about this because this is a matter in the jurisdiction of the DPP KZN, there is no good reason for a prosecution not to proceed.

It is important when I state what I will do that I consider the facts, because the facts of the matter will determine what steps the National Director can take. So in this case there could be various reasons why a DPP does not, decides not to prosecute, but if it appears that there is no good reason, then depending on whether the matter is enrolled, if the matter is enrolled already, it appears from the scenario that the Chairperson, if I correctly have it, sketched out is that people have been charged but matters are not set down. That is the scenario that is sketched out. So here we ...[intervenes].

CHAIRPERSON: Not only that. And those matters involve the Police who have close working relationships with the

Prosecutors in KZN and civilians have lost their lives in relation to those matters. And this matter, as you repeatedly said, correctly so, was a matter of public outcry. So in that scenario which is a matter of public interest and you being the Head, what would you do?

ADV BATOHI: Chairperson, in those circumstances, the scenario that the Prosecutors are close to the Police, etcetera, it shows that they could be either, you know you need, you need independent Prosecutors that you think will do the work independently, of course there is an option ...[intervenes].

CHAIRPERSON: And they must act without fear, favour or prejudice.

ADV BATOHI: Absolutely, absolutely. And I hasten to add, this is a scenario that we are sketching. I would propose that we get Prosecutors from outside of KZN and they go into KZN to prosecute the matter there. Well, let me, before I do that, we have a scenario, let me get back to that, where people are charged and matters are in Court and then Chairperson added that Prosecutors are working closely with the Police, I am trying to think whether there is a possibility of whether it is necessary to review it but it is not necessary because the decision to prosecute has been taken and it appears that that is the correct one on this scenario, but Prosecutors maybe, to work too close to the accused in this matter, so in that

scenario the DPP has taken the decision to prosecute but it appears that the issue is the possible, the fact that Prosecutors may be compromised, let us put it that way, in those circumstances ...[intervenes].

CHAIRPERSON: The matters are not set down. In other words, nothing is happening in relation to those matters.

ADV BATOHI: Sorry, Chairperson, I, yes, it is, I just need to be clear about this so I know what steps could be, because it depends where in the process we are. So my understanding was that Chairperson said people are charged but matters are not set down. So it, my understanding of that is the matter is in Court, am I correct in that understanding? Are we saying the matter ...[intervenes].

CHAIRPERSON: If the matter is not set down it means that it is not in court. People are charged, but matters are not enrolled for the trial to start.

ADV BATOHI: Yes. Chairperson, I am sorry but we, I do not mean to be pedantic but people are charged means that you are now before Court, you have been charged, so I need to understand so that the scenario is the correct one.

CHAIRPERSON: Well, maybe we understand it correctly, people gets charged and sometimes nothing happens and Prosecutors are not enrolling the matters for the trial to kick start. I do not know whether I understand it differently but you have people being charged and they are not brought to

Court, that is what I am trying to say, and this seem to have been the concern of your sister Jiba when he wrote and spoke to Advocate Mlotshwa to say there is a pressure about these matters relating to Cato Manor, there is a pressure to have these matters being enrolled, and we as lawyers know what it means to enrol matters, you enrol the matter for it to be heard in Court, be it civil or criminal.

So in this scenario the question that I persist with is given this scenario and all the factors that I mentioned, what would have done, Counsel, because you referred to accountability issue and you are correct, spot on. The DPP's have accountability, must, are accountable and must be held accountable and so is the Head of the Prosecution Authority, yourself and Advocate Jiba and others. You are also accountable.

So given this constitutional imperative, openness, accountability, responsiveness, what would you have done as the Head given that scenario?

ADV BATOHI: So, Chairperson ...[intervenes].

CHAIRPERSON: Let me maybe just be specific and not be so general. Would you not, and you have said it earlier, in exercising your powers I suppose you would have then put up together or ask somebody to put up a team to replace the team that was seized with the matter in KZN, given the scenario, so that the prosecution could proceed, would that

not have been the most appropriate and reasonable thing to do as the Head?

ADV BATOHI: Absolutely, Chairperson. In that scenario that we have sketched out, a National Director getting a team from the outside to go and prosecute the matter is perfectly in order ...[intervenes].

CHAIRPERSON: And if ...[intervenes].

ADV BATOHI: And the delegations will flow from the DPP in KZN to these Prosecutors as I explained previously.

CHAIRPERSON: Yes. In fact, that was going to be my next question of delegation. So if you were to exercise your powers and you delegate to someone in a position of DPP South Gauteng ...[intervenes].

ADV BATOHI: Sorry, can Chairperson repeat that?

CHAIRPERSON: If you were to delegate a DPP such as the one from South Gauteng division, and I am asking this question bearing in mind that in so far as centralization is concerned, the offenses that were involved, those from North West together with those from KZN did not involve Gauteng, or rather did not emanate from the DPP Gauteng's jurisdictional area, nonetheless you exercise your powers to delegate DPP South Gauteng to do certain things or to carry out prosecutorial functions in KZN, to put together a team as a coordinator, would you have been wrong in doing so as you exercise your accountability responsibilities?

ADV BATOHI: Chairperson, that would have been unconstitutional of me to do that. In the scenario, the previous scenario is a different one, we are dealing with Prosecutors as defined in the Act, in the current scenario the Chairperson refers to a DPP and in this case as the National Director I would be acting *ultra vires* my powers, because the Constitution and the NPA Act are very clear that DPP's exercise their jurisdiction in a particular area.

They exercise their powers in the area of jurisdiction to which they have been appointed. As the National Director I cannot then, that would be perhaps usurping an executive function because it is the President who appoints a DPP to a particular area of jurisdiction and as the National Director that is not within my power to change that. So I cannot delegate a DPP to exercise any functions any powers in another jurisdiction. That is my understanding, Chairperson.

CHAIRPERSON: But the Constitution or the Act, or let me put it differently, you do have powers as the Head in the proper administration of justice to delegate a team to go to KZN and perform that function. If you were to err on the side of caution, despite the fact that, as you put it, the Constitution tells you that you cannot, despite that scenario, delegate someone to go and perform a function which serves the interest of the country. If you were to err on the side of caution, would you nonetheless have delegated?

ADV BATOHI: Chairperson, that would be *ultra vires* my powers and it is the ...[intervenes].

CHAIRPERSON: I do understand, madam, I do understand.

ADV BATOHI: Oh, thank you, Chairperson.

CHAIRPERSON: Yes. But you could then delegate another team from different provinces, a team such as the Maema team, and I know that there was a centralization because of the offenses in the North West that necessitated Mr Maema, or Advocate Maema to be involved in KZN, I am saying despite the fact that you still have powers to delegate the Maema team to do exactly what you say the Constitution debars you from doing.

ADV BATOHI: Chairperson, firstly let me comment on the comment by the Chairperson that because one of the legs was in North West it necessitated Maema to be involved. As a matter of practice, Chairperson, it may be, it is not necessary, what happens is Prosecutors in one division, if there is sufficient capacity, capability, normally what happens is when it is centralized to a particular division the Prosecutors in that division will conduct the prosecution.

It is very rare, unless there is some very good reason that there is a complexity of the matter in the other division that there is a need for that Prosecutor to be part of this team. That does not really happen, so it would not have necessitated Maema to be part of the team.

Your second part of the question, Chairperson, is that, I am not sure that I am clear on your second part of the question, whether I would still have had powers to delegate the Maema team to prosecute in KZN, am I correct in that assumption, Chairperson?

CHAIRPERSON: Whether using your powers in terms of 179 you would then have used your powers to delegate in the administration of justice, the public interest, to ensure that there will be somebody, be it Maema, Advocate Maema, be it Advocate Chauke, be it another Prosecutor to go and prosecute this matters that remained unenrolled.

ADV BATOHI: Understood, Chairperson. But I have to deal with it in two parts, firstly dealing with Prosecutors like Maema and Advocate Chauke being a DPP. It is a separate issue. On the first point, delegation of Prosecutors, that is, I can do that. As I explained, Maema and other Prosecutors perfectly within the power of the National Director to give them delegated authority to prosecute in another jurisdiction.

As far as a DPP is concerned, as I explained earlier, then I would as the National Director have no power to do that and be acting *ultra vires* if I delegated a DPP to exercise powers given by the Constitution and the Act in an area outside his or her jurisdiction.

CHAIRPERSON: In essence your answer is that Advocate Jiba acted *ultra vires* in delegating or in asking Advocate

Chauke to put up together the team to exercise prosecutorial functions in KZN.

ADV BATOHI: Chairperson, Advocate Jiba did not act *ultra vires* in asking, and I am restricted to this because this is the scenario that Chairperson has sketched, did not act *ultra vires* in asking Advocate Chauke to put up a team. There is nothing wrong with that. But she did act *ultra vires* in appointing Advocate Chauke as the *de facto* DPP exercising prosecutorial oversight, supervision, functions in respect of a matter in the jurisdiction of the DPP KZN.

CHAIRPERSON: Thank you, madam.

ADV BATOHI: Thank you, Chairperson.

MS RAMAGAGA: Just as a follow up, especially to this appointment that you described as the, amongst others the appointment as a *de facto* DPP. I know that yesterday I asked as to whether you saw the appointment letter and you said no, no, you did not see it. I asked whether you have searched for it, you said no, you have not searched for it. But then where do you get this information that Advocate Jiba appointed Advocate Chauke as the *de facto* DPP? Where do you get the information from?

ADV BATOHI: Thank, Madam Ramagaga. In that regard we have to go to Advocate Jiba's answering affidavit in the GCB proceedings, I think if I can be referred to that. Counsel, if you can help me with that, in which bundle would that be?

ADV MOHLAMONYANE SC: Advocate Jiba's?

ADV BATOHI: Answering affidavit in the GCB proceedings. Maybe our colleagues can assist.

MS RAMAGAGA: [Indistinct]... [microphone off] ja, let us take a step back to the delegation of powers. In the event that the NDPP identifies a team that would go to prosecute in the KZN in particular in relation to this case, who would sign the delegation, the delegations of powers for the Prosecutors to undertake the prosecution, would it be the NDPP or would it be the receiving Director of Public Prosecutions?

ADV BATOHI: Generally it would be the receiving DPP who would do that. If for any reason that does not happen then of course the NDPP has powers to do that.

MS RAMAGAGA: Now do you know as to whether the receiving DPP, in this case Advocate Mlotshwa, do you know whether he did sign the delegations of authority in respect of any of members of the appointed team?

ADV BATOHI: Thank you. I stand to be corrected on this but my understanding is that he did not and that Advocate Jiba had signed them, but I stand to be corrected. He can best answer that.

MS RAMAGAGA: You know, you keep deferring. When you say he can best answer to that, I am asking questions and you are here as a witness by virtue of your office and you would have had access to the records in your office and as

you were writing maybe a letter of request to the President you would have made sure that you have all the information without even having to get information or consulting with the parties like Advocate Mlotshwa.

Now upon going through your records did you come across any, and maybe I should – no, I think I must abandon this question and start afresh. You say you do not know even whether it is Advocate Jiba who signed the letters of delegation or not. Is that what you are saying?

ADV BATOHI: I am saying that I think she did, but I am not sure.

MS RAMAGAGA: So you did not ascertain as to whether the letters of delegations were signed and if so, who signed them?

ADV BATOHI: Perhaps we should go to - before I answer that, perhaps we should go to a document that I think we referred to in the course of my evidence where it talks about putting the team together and I am not sure if there is anything there that talks about delegations but perhaps we can, I am trying to think which document it, I am not sure if Counsel can help me, where it says that Advocate Jiba asked Advocate Chauke to put a team - maybe it is Advocate Chauke's documents, one of his, I am not sure, but I suppose the precise answer is I cannot take it beyond at this point. I think she did, but I am not sure.

MS RAMAGAGA: And to complete the answer it is also that you are not sure whether Advocate Mlotshwa signed any of the letters of delegation or not.

ADV BATOHI: My understanding is that he did not, but it could be an incorrect understanding, but that is as I sit here my understanding from a lot of information that is before me that he did not sign the delegations in this particular case.

MS RAMAGAGA: I understand that it is a lot of information before us and it is information that comes from your office thus far and we rely totally on yourself, your office for information. Thank you.

CHAIRPERSON: Counsel, just to follow on that simply because the issue of Advocate Chauke having been as you say a *de facto* DPP flows from the appointment itself and yesterday, and as you confirmed today, you have not had a sight of that appointment or request by Advocate Jiba and you have now referred us to Advocate Jiba's affidavit. Which affidavit is this? Is that the affidavit to, in the matter of GCB versus Advocate Jiba and Others that served before the Zondo Commission?

ADV BATOHI: It might be that, or it might be Advocate Jiba's, I say, I correct myself I think it is Advocate Jiba's answering affidavit in the Booyesen review matter and which Advocate Chauke in his affidavit in the GCB matter confirms that he was the *de facto* DPP in this matter. But I think we need to

get the documents. If Counsel can please help me and refer us to the documents I will appreciate it so that we can go to it, to the, I am not sure if Counsel has them at hand. Thank you, Chairperson. I think that will help all of us.

CHAIRPERSON: Yes, and I think it will be helpful, Advocate Batohi, as you say if the junior Counsel together with the evidence leading team can contrast the two documents, the Booysen's review application with or against the affidavit of Advocate Jiba as was filed in the GCB matter as the First Respondent. That affidavit in the GCB matter as you remember is at page, is at volume 1. It does appear there in the legal opinion bundle, no, I beg your pardon, sorry, at volume 1 of ZC.

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

CHAIRPERSON: Wait a minute, please. Let me just refer you to the first one, the one that I have noted here, that Advocate Jiba's affidavit which is, she filed that document, it is an answering affidavit, it appears at ZC0038, volume 1. And you say it also appears where, Counsel?

ADV MOHLAMONYANE SC: It also appears in LO3, Madam Chair, on page LO00866 and ...[intervenes].

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

ADV MOHLAMONYANE SC: LO00866, where Advocate Jiba deposed to an affidavit in the GCB matter as the First

Respondent. That is an answering affidavit.

CHAIRPERSON: In the SCA matter?

ADV MOHLAMONYANE SC: No, Madam Chair.

CHAIRPERSON: 866?

ADV MOHLAMONYANE SC: 866, it is in the GCB matter.

CHAIRPERSON: LO3?

ADV MOHLAMONYANE SC: LO3 ...[intervenes].

CHAIRPERSON: 866?

ADV MOHLAMONYANE SC: Ja, on page 866.

ADV BALOYI-MERE SC: Okay, in the GCB matter? Well, I am there but please turn the page because we seem to be missing 68 pages there. It starts with page 69, unless if mine is wrong. And also in the Zondo bundle, ZC0038, if you turn to 39 we are missing 68 pages there. It starts at page 69. They both start at paragraph 196, if we can have maybe that corrected, get the first few paragraphs, from paragraph 1 to 195. Just one set will do.

CHAIRPERSON: Thank you, Counsel, you are correct that that affidavit is replicated at the legal opinion, Bundle 3 at that page but all these pages that my sister has mentioned are missing.

ADV MOHLAMONYANE SC: In LO3?

CHAIRPERSON: In, no, in both.

ADV MOHLAMONYANE SC: In both.

CHAIRPERSON: In ZC ...[intervenes].

ADV MOHLAMONYANE SC: And LO3 ...[intervenes].

CHAIRPERSON: 1 and LO3. Then you are going to contrast that with the affidavit referred to in the Booyens review matter as Advocate Batohi sought to do and if the junior can do that during the break so to assist Advocate Batohi to answer the question. We will just flag this point and then we will revert back to it later in the day. Advocate Batohi, I suggest that we take a pause for tea and this will enable your team to assist in this regard. Advocate Mohlamonyane, we so suggest and we will reconvene at 25 to 12. We adjourn.

ENQUIRY ADJOURNS

ENQUIRY RESUMES

CHAIRPERSON: Good afternoon, everyone. Good afternoon, Advocate Mohlamonyane, the team and Advocate Batohi. Good afternoon, *Nthathi* Chauke. Advocate Mohlamonyane, you may proceed.

ADV MOHLAMONYANE SC: Madam Chair, before I proceed, maybe I should give a response on what you implored me to do and reminded me about it yesterday.

CHAIRPERSON: If you may speak up, counsel.

ADV MOHLAMONYANE SC: I am saying, before I proceed, maybe it is appropriate to indicate to the panel about what you implored me to do concerning the issue of jurisdiction. And as to whether one DPP, as to whether there are requirements or requisites contained in the directives,

prosecution policy and directives, or the Code of Conduct, as far as that aspect is concerned. I revisited the prosecution directive. I went through it. I also revisited the Code of Conduct. I could not find any specific mention of an instance where one NDPP can, for want of a better word, straddle into an area of jurisdiction of another DPP. So I have not seen such provisions. Madam Chair, I just wanted to indicate.

CHAIRPERSON: Yes, thank you, counsel.

ADV MOHLAMONYANE SC: I could not find it.

CHAIRPERSON: Thank you. And in fact, Advocate Batohi did say what you are saying. She responded yesterday by saying that there is nothing in the policy itself that covers that aspect. You may proceed, sir. Am I correct, Advocate Batohi?

ADV BATOHI: That is correct, Chairperson.

CHAIRPERSON: Thank you. Proceed, counsel.

ADV MOHLAMONYANE SC: Thank you, Madam Chair. Advocate Batohi, when the matter was adjourned yesterday, we had begun with the process leading to referral to the President. Do you still remember?

ADV BATOHI: I do.

ADV MOHLAMONYANE SC: We are still on the Mdluli matter. And the TOR, Madam Chair and your two sisters, is still applicable, specifically paragraphs 3, 3.1, 3.1.2, 3.2, 3.2.1, 3.2.2, 3.2.2.1, 3.2.2.2 and 3.2.2.3. Now, at this stage

of the process, you already had Advocate de Kock's report dated the 27th of June 2019, which forms part of the bundles in your bundle. Advocate Batohi, is that correct?

CHAIRPERSON: Is there a report? Advocate de Kock, is that not a memoranda? You call it a report?

ADV MOHLAMONYANE SC: We loosely call it Advocate de Kock's report, although it is written memoranda. We started by calling it a report.

CHAIRPERSON: We should now call it what? Report.

ADV MOHLAMONYANE SC: I suggest it remain as it is.

CHAIRPERSON: A memoranda. A memorandum.

ADV BATOHI: It is a memorandum, Chairperson.

CHAIRPERSON: Let us call it what is written on it, a memorandum.

ADV MOHLAMONYANE SC: Now, can you go to page 69 and then proceed?

ADV BATOHI: Thank you, counsel.

CHAIRPERSON: Where is it, by the way? We have to recap.

ADV MOHLAMONYANE SC: The memorandum is SB3, Madam Chair, page 132. It starts from page 132.

CHAIRPERSON: Thank you, counsel.

ADV MOHLAMONYANE SC: Advocate Batohi, we are on page 69. Just recap and start from page 69 without necessarily repeating everything that you already said.

ADV BATOHI: Yes, thank you. Chairperson, just for

correctness of the record, it appears that the memorandum, page 132 and 133, are in fact duplicates of 134 and 135, but then it continues after that. So it looks like just the first two pages have been duplicated.

CHAIRPERSON: And the duplication appears from which pages?

ADV BATOHI: 132 and 133 are duplicates of 134 and 135, respectively.

CHAIRPERSON: Yes, counsel. Advocate Batohi, you remember we actually spoke about the duplication. It is running through from many pages in this bundle and throughout. And we thought that where there is a duplication, let us use even numbers and disregard odd numbers. So you can just refer to the even number page that is repeated elsewhere.

ADV BATOHI: Noted, Chairperson.

CHAIRPERSON: Thank you. You are referring to page 132?

ADV MOHLAMONYANE SC: SB3132 and SB3134, Madam Chair, which are where 134 is a duplicate of 132.

ADV BALOYI-MERE SC: Maybe we should start at 134.

ADV MOHLAMONYANE SC: And disregard 132.

ADV BALOYI-MERE SC: Because it is a duplication, is it not?

ADV MOHLAMONYANE SC: Yes, it is.

CHAIRPERSON: Might I suggest we start at 132 because it

is the first few pages. And then as we go along and then we jump 133. And then we will go to the next page. Because even after 134, there seem to be duplication. Am I right? Should we start at ...[intervenes]

ADV BATOHI: I do not think so, Chairperson.

CHAIRPERSON: The repetition is 132 and 133.

ADV BATOHI: That is correct. It is just two pages, it appears.

CHAIRPERSON: Yes, we may start at 134 then. It makes reading very cumbersome. Because we have read seven pages and we have to re-read again. But let us start at 134 and disregard 132 and 133. SB3132 and SB3133. Yes, thank you. 134.

ADV MOHLAMONYANE SC: You may proceed, Advocate Batohi.

ADV BATOHI: Thank you, counsel. So reverting to paragraph 161 of my report, of my affidavit. So the De Kock memorandum was received on 27 June 2019. Proceeding from paragraph 161:

“On 13 May 2021, I addressed a letter to Advocate Chauke, in respect of which I requested him to explain his actions in the Booysen matter and Mdluli matter.”

It is amongst others. And that letter is attached, marked SB5.

“Then, on the 28th of May 2021, Advocate

Chauke responded to my request.”

And his response is SB6. I proceed to paragraph 163.

“The essence of Advocate Chauke's explanation in respect of the Mdluli matter was that while he was satisfied that there was a *prima facie* case in respect of some of the charges, he was not satisfied that there was a *prima facie* case in respect of the murder charge and the attempted murder charge that would relate to Ms Alice Manana and he therefore decided to hold an inquest into the death of Mr Ramogibe.”

164 paragraph:

“In respect of the Booyesen matter, he explained that he had been requested by Advocate Jiba to assist in putting together a team of prosecutors to guide members of the police and IPID on the investigation and prosecution. He agreed, so he said, to act as a coordinator of the prosecution team.

He alleged that his role as coordinator was confined to dealing with logistics and administrative matters of the team and coordinating between stakeholders and

providing feedback and briefing on the team to Advocate Jiba. He alleged that his role excluded prosecutorial decisions, whether to prosecute.”

Chairperson, at this point, I would like to pause. There were a number of questions prior to the short adjournments regarding a *de facto* authorisation. Chairperson, to clarify that we are not saying that there was actually a formal document that authorised Advocate Chauke to perform these functions.

What we are saying is that, firstly, there is two reasons why we say this. One is because of all of the evidence that points to him being the *de facto* DPP without the authority and also the reference to what Advocate Jiba said in her answering affidavit. So I wanted to clarify that because we were asked about a memo and so that is the position as far as we are concerned, Chairperson. At paragraph 169:

“On 31st January 2023, Advocate Chauke...”

Oh, where was I? No, sorry, I have jumped a page. At paragraph 165:

“On 19 October 2021, Advocate Nalane SC provided the NPA with an opinion in which he recommended that an enquiry into

Advocate Chauke's fitness hall office should be established in relation to his handling of both the Booysen matter and the Mdluli matter.

A copy of Advocate Nalane's opinion is in the record in bundle legal opinions LO00030 and LO00119.”

Chairperson, I should add at this point that all of these legal opinions will be handed in as exhibits. We did not attach them because they are quite long and so there is reference to them in the bundles, Chairperson.

“I pause at this point to mention that ...[intervenes]”

CHAIRPERSON: I beg your pardon, madam. You would have seen these bundles in front of us. We have those opinions.

ADV BATOHI: Correct, that is correct, Chairperson.

CHAIRPERSON: What needs to be done, as we discussed yesterday, is to have a list of exhibits in a form of an index. Counsel understand what I am saying. We discussed it even in chambers. That will then have to be handed up as we agreed in case counsel did not convey that to you. We gave the evidence leading team some guidance as to how to prepare the document, which will be handed up when we reconvene. That is at the end of your evidence. That

document will be inclusive of all the exhibits that you have referred to.

ADV BATOHI: Thank you, Chairperson. That is understood.

CHAIRPERSON: And the document will refer us to the exhibit itself, its name and the page where we should find it in these bundles that we have.

ADV BATOHI: Understood, Chairperson.

CHAIRPERSON: In the event any of the document does not appear in these bundles, counsel will indicate and then the document can then be handed up from the bar. Is that clear?

ADV BATOHI: That is clear, thank you, Chairperson.

CHAIRPERSON: Yes, thank you.

ADV BATOHI: Chairperson, in paragraph 166:

“I pause to mention that during this period, the Zondo Commission had been investigating allegations of capture of the NPA. I had assumed that the Commission would make findings and recommendations in this regard. The Commission concluded with the delivery of three separate reports to the President, the final part being delivered in April or May of 2022.

The Zondo Commission was, disappointingly I say, unable, given the scope and breadth of its mandate, to

finalise the investigation in relation to the allegations against members of the NPA.”

I should add, Chairperson, that a number of the allegations in this matter was being investigated by the Zondo Commission and that is why you will note that a number of prosecuting authority members deposed to affidavits for the purpose of the Zondo Commission. Chairperson;

“On 27 July 2022, I addressed a letter to Advocate Chauke, attaching the copy of the opinion of Advocate Nalane SC. I requested Advocate Chauke to provide me with reasons why I should not request the President to establish an enquiry into his fitness to hold office. A copy of this letter is attached, marked SB7.”

Proceeding to paragraph 169.

ADV MOHLAMONYANE SC: Before you proceed to that paragraph, go to SB7 on page 261. Are you there?

ADV BATOHI: I am.

ADV MOHLAMONYANE SC: Read it into the record.

ADV BATOHI: It is a letter dated, signed on the 27th of July 2022, at page 262. It is addressed to Advocate Chauke and the subject line:

“Decisions made by you as DPP Gauteng
Local Division, Johannesburg”

CHAIRPERSON: I beg your pardon, ma'am. Is it SB7261?

ADV BATOHI: That is correct, Chairperson. If I may continue?

CHAIRPERSON: Yes, please.

ADV BATOHI: Paragraph 1:

“My correspondence and your response thereto dated 13 May 2022 and 28 May 2021, respectively, refer. An opinion and advice in respect of your conduct as it pertains to cases mentioned in the aforesaid correspondence was obtained from Senior Counsel Advocate FJ Nalane SC. A copy of the relevant opinion dated 19 October 2021 is attached hereto for your attention.

Counsel expressed a view and advised the NPA that an enquiry be instituted into your conduct to determine whether or not you are a fit and proper person to hold the office of the DPP in respect of the Cato Manor prosecution and the withdrawal of the charges in the Mdluli matter. After a careful perusal of your aforementioned response and the opinion of counsel, I am inclined to make a submission to the

President to hold an enquiry into your fitness to hold office as contemplated in section 12(6), read with section 14(3) of the NPA Act 32 of 1998 in respect of the Cato Manor and Mdluli matters.

However...”

At paragraph 5;

“...you are first afforded a final opportunity to make a representation, if any, regarding my intended course of action as per paragraph four above. The abovementioned is in line with my undertaking to afford you an opportunity to respond to the findings of counsel and the Zondo Commission or an enquiry into state capture.”

Looks like there might be an edit there.

“The Commission's final report, which was recently released, does not require any comments from you. Your response or representation must please reach me within a period of 10 working days from the receipt of this communication.”

And it is signed by me on the 27th of July 2022.

ADV MOHLAMONYANE SC: You may go back to page 71,

paragraph 169.

ADV BATOHI: Advocate Chauke had requested for extensions to prepare this affidavit, to prepare his response, which I agreed to. And he then presented, he then on the 31st of January, that is about six months later, responded to my request to provide representations. His representations took the form of an opinion by Advocates Maenetje SC and Scott. The opinion is part of the record in the legal bundle, in the bundle legal opinions LO120 to LO00148.

ADV MOHLAMONYANE SC: It is actually in bundle LO1, but it will be handed up, Madam Chair and your two sisters. It will be properly marked as an exhibit and will be handed up accordingly. You may proceed, Advocate Batohi.

ADV BATOHI: At paragraph 170:

“On 15 February 2023 and upon receipt of the opinions of Advocate Maenetje SC and Scott, Advocate R de Kock, the then head of the National Prosecuting Service, sent a memorandum to me, attaching a copy of the opinion of Advocate Maenetje SC and Scott. In his memorandum, Advocate de Kock expressed the view that in light of certain shortcomings which Advocate Maenetje SC and Scott had highlighted with regard to the opinion of Advocate

Nalane SC, I should not make a recommendation to the President to establish a Commission of Enquiry into Advocate Chauke's fitness to hold office. A copy of Advocate de Kock's memorandum is included in the record under the correspondence bundle...”

Perhaps counsel can help with that reference.

ADV MOHLAMONYANE SC: Madam Chair, the correspondence bundle is in what is referred to as a C bundle. The single bundle referred to as the C bundle and Advocate de Kock's memorandum appears from page 1 up to page 8, up to page 8.

ADV BATOHI: Moving on to paragraph ...[intervenes]

ADV MOHLAMONYANE SC: Before you do that, let us go to, it will be handed up. It will be marked accordingly as an exhibit and will be handed up at the appropriate time, Madam Chair. Let us go to the memorandum itself. Advocate de Kock's memorandum itself. And I direct your attention to specifically page 7. You do not necessarily have to read the whole memorandum. I would like you to read the recommendations of Advocate de Kock as they appear in the memorandum on page C00007. The recommendation under subparagraph F in paragraph 12. May you read that into the record?

ADV BATOHI: Sure:

“It is recommended, on account of the shortcomings identified in the Nalane SC report, as per the legal opinion of Advocate Maenetje SC and Advocate Scott, that the NDPP make no submissions to the President for the holding of a formal enquiry against Advocate Chauke in terms of section 12(6)(a) of the National Prosecuting Authority Act 32 of 1988 (and that the NDPP, as a matter of courtesy, inform the President through the Ministry of Justice accordingly).”

This is dated 15 February 2023 and signed by Advocate de Kock, the Deputy National Director of Public Prosecutions and the head of the National Prosecution Service.

ADV MOHLAMONYANE SC: You may perhaps wish to comment on the recommendation. If not, you may leave it out.

ADV BATOHI: Yes, certainly.

“So from my reading of Advocate de Kock's memorandum, it appeared to me that he had accepted, merely accepted the opinions of Advocate Maenetje, Chair and Scott, Maenetje SC and Scott at face value.

I was of the view that there were indeed gaps that were identified by Advocate Nalane SC and that all the relevant evidence needed to be thoroughly considered.

In mid-February, I therefore requested Dr Advocate DWM Broughton, Research and Legal Support and Legal Advisor in the Office of the NDPP, to furnish me with an opinion in this matter. To such end, I provided Dr

Broughton with Advocate de Kock's memorandum and the opinions of Advocate Nalane SC, Advocates and Advocates Maenetje SC and Scott. On 23rd, February 2023, Dr Broughton provided me with his opinion.

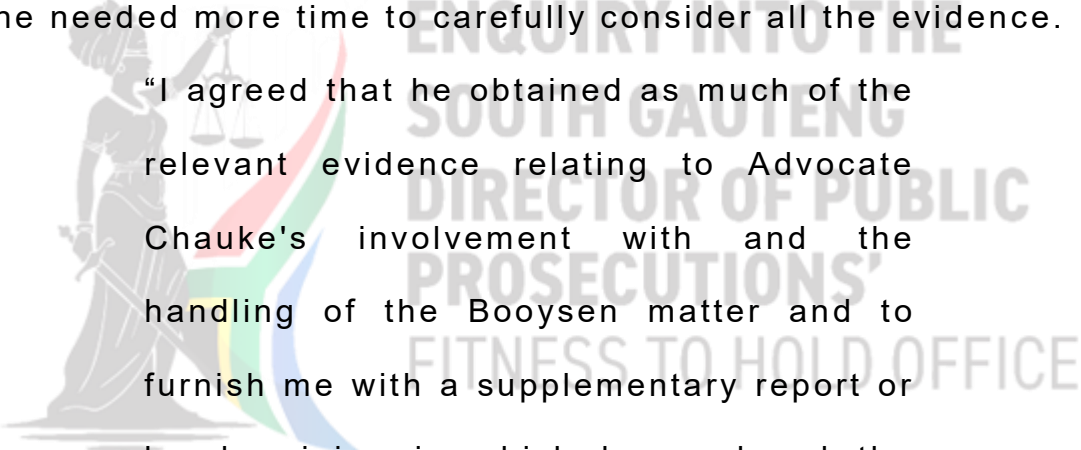
He concluded that I should make a recommendation to the President regarding the fitness of Advocate Chauke to hold office in respect of his involvement with the handling of the Booyesen matter. He did not deal with them Mdluli matter. Dr Broughton's opinion is included in the record under bundle legal opinions at pages 149 to 170.”

ADV MOHLAMONYANE SC: Which is contained, Madam Chair, in bundle LO1 on pages 00149 to LO00170. It will be marked accordingly and as an exhibit. Proceed, Advocate Chauke...

ADV BATOHI: Dr Broughton informed me...

ADV MOHLAMONYANE SC: Advocate Batohi.

ADV BATOHI: Yes, sorry, counsel. I had given him very little time to do this task. I think it was less than two weeks. We do not have the date of when I asked him to do this, but I know it was a short period of time. And he informed me that he needed more time to carefully consider all the evidence.



“I agreed that he obtained as much of the relevant evidence relating to Advocate Chauke's involvement with and the handling of the Booyesen matter and to furnish me with a supplementary report or legal opinion in which he analysed the evidence and information obtained. The reason for this is that I wanted to make a thoroughly informed decision so that I had all the evidence before me as this was a very important decision that I had to make and I did not want to get it wrong.

On 21 April 2023, Dr Broughton provided me with a supplementary opinion in which

he thoroughly analysed the evidence and information he was able to gain access to. He reaffirmed his previous opinion that I should consider making a submission to the President to institute an enquiry in terms of section 12(6) of the NPA Act into Advocate Chauke's fitness to hold office as a DPP. A copy of Dr Broughton's supplementary opinion is included in the record in bundle legal opinion pages 171 to 1038.”

May I proceed, counsel?

ADV MOHLAMONYANE SC: Just a minute. I may mention that it is contained in L01 bundle and it continues up to L04, but it will be accordingly marked and handed up as an exhibit. That is this Dr Broughton's supplementary opinion.

CHAIRPERSON: Much of this opinion has been referred to.

ADV MOHLAMONYANE SC: Each other on, indeed.

ADV BATOHI: If I may proceed, counsel?

ADV BALOYI-MERE SC: Advocate Mohlamonyane, may I? I see this train is moving very fast and I was left behind. May I take you back to page 71, paragraph 171?

ADV MOHLAMONYANE SC: Page 71.

ADV BALOYI-MERE SC: Page 71, paragraph 171, where Advocate Broughton says, it appeared to me on a reading of

Advocate de Kock's memorandum that he had merely accepted the opinion of Advocate Maenetje SC and Scott. I would like to invite Advocate Batohi to unpack this statement for us in line with Advocate de Kock's memorandum that is in C, bundle C, from page 0001. And maybe, ja, maybe explain to us why she came to this conclusion.

ADV BATOHI: If I may proceed, counsel?

ADV MOHLAMONYANE SC: You may proceed.

ADV BATOHI: So, at that point, I had received two opinions. That is, the first one of Advocate Nalane.

CHAIRPERSON: Pardon, counsel. I opened the bundle of opinions instead of the correspondence. I have it.

ADV MOHLAMONYANE SC: Proceed, Advocate Batohi.

ADV BATOHI: Thank you, counsel. So, at that stage, I had two opinions. The one is Advocate Nalane and the second one is Advocate Maenetje, acting for Advocate Chauke. When Advocate de Kock submitted, the purpose of this memorandum was to forward me Advocate Maenetje's opinion. When he sent it to me, he expressed, he looked, if one looks at the memorandum, he looks at various aspects of the Nalane opinion as well as the Maenetje opinion and looks at both the Booyesen and Mdluli matters. And he concluded, as I read previously.

So, I had these two opinions. And what was clear from them, both from his memorandum and Advocate

Maenetje's and Advocate Nalane's opinion, is that there were a number of gaps. That is, there was evidence that was not, they did not have access to. So, as a result of that, I asked and I was faced with these two memoranda and gaps. As I said, I wanted to make an informed decision because this was an important decision. I then asked Advocate Broughton to go and look at these matters and then even gave him more time to look at all the evidence in this matter so that I could consider all of that properly and make a properly informed decision in this matter.

ADV BALOYI-MERE SC: You, at the recommendations, the last paragraph of Advocate de Kock's memorandum, he says, on account of the shortcomings identified by Nalane SC's report, which is an opinion and as per the legal opinion of Advocate Maenetje SC and Advocate Scott. What Advocate de Kock says to us is he looked at both opinions. He looked at the Mdluli files because he analysed, he's got a topic, a heading where he says Mdluli. I think, Mdluli Prosecution. And he looked at the response by Advocate Chauke. He goes to the Booyen's Prosecution and looked at the response and various other headings that he has.

And then he comes to that conclusion. His recommendation is that, no, do not request an enquiry from the President because from what I have seen from the two opinions, you do not have a leg to stand on. You then move

on to ask Dr Advocate Broughton to give you an opinion. Would I be wrong to assume that you were looking for an opinion that suited or that spoke to what you wanted to hear?

ADV BATOHI: Panel member, Madam Baloyi-Mere, I think it, in my view, you asked my opinion, I think you would be very wrong to assume the worst from me. I was acting *bona fides*.

ADV BALOYI-MERE SC: What I want to put ...[intervenes]

ADV BATOHI: I am answering your question.

ADV BALOYI-MERE SC: But I want to put this worst away.

ADV BATOHI: Yes, thank you. I am answering your question. I acted *bona fides*. I was certainly not trying to find something that would support my view. I wanted to have all of the evidence before me so that I can make a properly considered reasonable view on what was this. I had two opinions. And I am not sure that Advocate De Kock looked at them Mdluli file, but my understanding was from his memorandum was that he had the opinion of Mr Advocate Nalane and he had the opinion of Advocate Maenetje SC, both senior counsel. And on the basis of these opinions, he made that recommendation.

And he also, I hasten to add that there were gaps. All of them identified that there were shortcomings and gaps, which means they appreciated that there were more things that needed to be considered in this matter. On that basis, I

approached Dr Broughton because I base my decisions on evidence. I want to look at the evidence before I make any decision as a responsible prosecutor. So I had two opinions and I wanted my decision to be based on the evidence. And that is why Dr Broughton's affidavit, or his opinion, has got all of the underlying evidence.

And we led some of it and I emphasise some of it. There is a wealth of evidence in that bundle that will need to be gone through very, very carefully with due respect. And so I looked at that very carefully, looked at all the evidence and then did not come to an opinion based on my desire to reach a particular outcome. I came to an opinion based on the evidence that was presented to me and evidence which will be handed in to this enquiry as an exhibit.

ADV BALOYI-MERE SC: And if I may ask this, of the three opinions, including the fourth being the De Kock's memorandum, which one did you rely on to make your decision? And I am asking this because I think you need to clarify to us which one. If I remember well, yesterday, we spoke about a paragraph in Advocate Nalane's opinion and you said it is a mistake and ...[intervenes]

ADV BATOHI: There was one word, I think, that was a mistake. Murder, there was a murder charge, if I remember correctly.

ADV BALOYI-MERE SC: Murder and related charges.

ADV BATOHI: Yes, there was a mistake.

ADV BALOYI-MERE SC: And you said it is a mistake. But as we sit here, we are going to go through these opinions. We do not know which one, specifically, did you rely on and where are mistakes that maybe we should disregard, or it was the only mistake that you had picked up?

ADV BATOHI: Chairperson, it is the only mistake that I am aware of, but I want to emphasise again, there are opinions, even what I am saying with regard to how the evidence is, how we have presented the hard evidence, which is in Dr Broughton's bundle, may be considered as my opinion. And with all due respect, the panel needs to look at the evidence, the underlying evidence, in order to conclude what the role of Advocate Chauke was in this matter.

So to answer your question, I considered primarily Dr Broughton's two opinions, the initial one and the supplementary one, but read with all of the underlying evidence. And I also considered the opinions of Advocate Nalane and we will proceed, Advocate Maenetje. And there were other opinions, there was another opinion that was obtained after that from the Department of Justice, which I will get to in a minute.

ADV BALOYI-MERE SC: Advocate Batohi, you are the decision maker.

ADV BATOHI: Mmm-mmm.

ADV BALOYI-MERE SC: We need to know what was before you that helped you or prompted you to take a certain decision. We cannot be told to read all this evidence and infer that this is the cause of your decision. You need to be able to say to us, I considered one, two, three, four, five and then I came to the conclusion that I must take, I must make this decision. It is not up to us to look at all the evidence and decide that, oh, it is because there is this plethora of evidence that Advocate Batohi took this decision.

ADV BATOHI: Chairperson, I accept the panel will consider how it wants to do its work, so I do not mean to be disrespectful in that regard. So simply put, I considered Advocate Nalane's opinion, I considered Advocate Maenetje's opinion, I considered Dr Broughton's two opinions, the first and the supplementary. I considered the Advocate De Kock's memorandum. At that point when I made the authorisation, when I made the recommendation to the President through the Minister and of course, it is the President's ultimate decision to hold this enquiry. I was not the decision maker, I certainly made a recommendation to the President. The President is the ultimate decision maker in this matter, but those are the documents I considered.

ADV BALOYI-MERE SC: Thank you.

CHAIRPERSON: Advocate Batohi, when after the assumption of office, did you take the steps?

ADV BATOHI: Which steps, Chairperson?

CHAIRPERSON: I beg your pardon, seeking the legal opinions, asking Advocate Chauke to make representations. And I ask the question bearing in mind that, if I remember, you had been out of the country, you assumed office and not long after the assumption of office, if I am correct, these issues surfaced. My question is, after how long, upon your assumption of office, did you take these steps?

ADV BATOHI: Chairperson...

CHAIRPERSON: What is the first step?

ADV BATOHI: Chairperson, I am not sure which is the first step, but you will recall my evidence that when I took office in 2019, there was an application by Booysen to have the authorisation of Advocate Abram's set aside. So at that point in 2019, the De Kock panel was put together to give me advice on what approach we should take in those proceedings before Court. That happened in 2019 and I got that first De Kock report in, I think it was July of 2019. And then ...[intervenes]

CHAIRPERSON: Just to recap, I am sorry, you assumed office in 20...

ADV BATOHI: 1st February 2019.

CHAIRPERSON: The same year.

ADV BATOHI: That is correct.

CHAIRPERSON: And the review was, when precisely?

ADV BATOHI: Chairperson, it was not a review, but I suppose loosely termed a review. Yes, the application was pending at that time. It had been brought before I took office.

CHAIRPERSON: The review by Major General Booysen, what was it?

ADV BATOHI: Chairperson, that was brought, when I took office, it was already before the Courts. So the review was pending and my understanding is that Advocate ...[intervenes]

CHAIRPERSON: I want to, it was a review application.

ADV BATOHI: That is correct. A review application. A review...

CHAIRPERSON: I thought that you were saying it was not a review. I was getting confused.

ADV BATOHI: I was confused too, Chairperson, my apologies.

CHAIRPERSON: So the review, but I just want to get a sequence correct to clear my mind. You assume office February 2019. And as you assume office, you are confronted with these issues, including a pending review application by Major General Booysen, which was when, by the way, if you remember? Just a month?

ADV BATOHI: I am not sure. It would have been longer than that because we can get the dates. Of course, the documents are filed.

CHAIRPERSON: We can get the dates correct.

ADV BATOHI: He was, my understanding is that Advocate Abrams had already filed an answering affidavit as well in those proceedings.

CHAIRPERSON: And you sought a legal opinion from the team of Advocate de Kock?

ADV BATOHI: I sought an opinion from them, yes.

CHAIRPERSON: My sister is actually, looking at the sequence, it may not be as conclusive as that because there may be other things intervening. But what then happened, you sought the legal opinion of Advocate de Kock?

ADV BATOHI: And three others with him as a panel.

ADV BALOYI-MERE SC: Sorry, just to interpose. So you constituted a panel?

ADV BATOHI: That is correct.

ADV BALOYI-MERE SC: When was that? Do you remember the date?

ADV BATOHI: We will have to get, I think it was around April of 2019, but we will be able to confirm that date.

CHAIRPERSON: I beg your pardon. You subsequently obtained a legal opinion from the team of Advocate de Kock and later a supplemental opinion by him after the opinion of Advocate Maenetje? Am I correct?

ADV BATOHI: Chairperson, if I could...

CHAIRPERSON: When you look at that sequence.

ADV BATOHI: Yes, I will clarify, Chairperson.

CHAIRPERSON: If you can help me.

ADV BATOHI: The purpose of this initial opinion was, as I had indicated, to make an informed decision about the approach we take in the proceedings.

CHAIRPERSON: I just want to get a sequence, understand why you did that as you answered earlier.

ADV BATOHI: Chairperson, thereafter.

CHAIRPERSON: Yes, the next one was, the next step?

ADV BATOHI: We got... The next step was that we got, I think it was Advocate Nalane's opinion in October 2021. That is in paragraph 165 of my affidavit. And then we obtained Advocate Maenetje's opinion on 15 February 2023. And then Advocate de Kock then sent the memorandum to me attaching the opinion of Advocate Maenetje and Scott. So that is the sequence of events, Chairperson. That was on the 15th of February 2023.

CHAIRPERSON: Now to the earlier question asked to you as to in relation to this opinions, you answered that what you wanted was that your decision should be based on evidence.

ADV BATOHI: That is correct, Chairperson.

CHAIRPERSON: And I bear in mind that attached to this opinions, different evidential material in the form of affidavits.

ADV BATOHI: It is only Dr Broughton's opinion that has all

the annexures to it. Emails, affidavits, et cetera.

CHAIRPERSON: That being the case, that what you actually wanted was to base your decision on evidential material, not legal opinions, why was it important then, instead of asking the teams, which would have been in the office for many years, and seized with this matters, to assemble the evidential material and place it before you, so that you could form your own opinion?

ADV BATOHI: Chairperson, at that point, in my view, the appropriate step to take was to, which I did take, was to ask Dr Broughton to look at, to collate all the evidence, to analyse it and to give it to me in the form of an opinion, which is what he did and what I based my final decision on. Well, primarily, having considered all the other opinions as well.

CHAIRPERSON: I am not sure whether you answered my question. My question is directed at the very answer you gave in earlier because saying, what was important was the evidence, not legal opinions. That is the answer that you gave. And my question is, that being the case, should it not have been more critical for you as the head, to obtain evidential material upon which you could base your own decision? Because what we have been referred to here is the legal opinions, together with the evidence, of course, but legal opinions by other people. And I am saying to you, given the fact that you say what was important was the evidence

itself, then why was it not necessary, at that stage, to gather the evidential material and look at it yourself and satisfy yourself, without looking at the law, if I may say so and just form a view from the evidential material? Because the legal opinion is not evidence.

ADV BATOHI: Chairperson, I hope I am following your question. As I said, the evidence that I looked at is primarily the annexures to Dr Broughton's opinion in the form of affidavits, emails, et cetera. And that is precisely what I did, is that I and I am not saying that the opinions were not considered or not important. All I am saying is that I needed to have, as I would expect a person in this position making a decision that will impact on the life of a person, I needed to make sure that I had looked at the relevant evidence. That evidence is the bundle of annexures to Dr Broughton's opinion, which I considered very, very carefully.

CHAIRPERSON: You may proceed, Advocate. I beg your pardon, it appears my sisters want to make a follow-up on these questions or to ask questions, you may.

MS RAMAGAGA: Advocate Batohi, you received the opinion of Advocate Nalane SC, which recommended that you approach the President and request for the enquiry to be held. And having received that opinion, you then sent the opinion to Advocate Chauke for comment, for consideration and comment. At that time, were you satisfied with the

recommendation in Advocate Nalane's opinion?

ADV BATOHI: I was not ready to, well, I am not sure what you mean by was I satisfied with it.

MS RAMAGAGA: It can only mean that were you satisfied with the opinion or not?

ADV BATOHI: It was an opinion that I read. And at that point, it identified gaps. So I am not sure how to answer your question whether I was satisfied with it. I think he had considered various documents and he had gone through a process and come to a conclusion. And to that extent, it was something I needed to consider in my deliberations in terms of what my ultimate decision would be, which is what I did.

MS RAMAGAGA: Put otherwise maybe. Why did you send this opinion to Advocate Chauke?

ADV BATOHI: In fairness to him, to respond to it and to take his view on this as well into consideration in my deliberations.

MS RAMAGAGA: And then you constituted a panel headed by Advocate de Kock.

ADV BATOHI: No.

MS RAMAGAGA: Yes.

ADV BATOHI: The de Kock panel was in 2019.

MS RAMAGAGA: Okay, okay, right, then let us progress to the other opinion that you sought. Maybe before we go there, when you seek for an opinion, I believe that it is you, the consultant, who furnishes the Advocate or whoever the

opinion is sought from, information in the form of available evidence, available documents for analysis.

ADV BATOHI: That is generally the case when you brief counsel.

MS RAMAGAGA: Okay. And when you gave the panel of doctor, Advocate de Kock, the 19, what is it 2019, that panel, when you gave it the brief, did you also finish it with information on which to rely in order to execute the mandate of giving an opinion?

ADV BATOHI: Advocate de Kock was internal and he was my deputy at the time. So I simply asked him to conduct this task for me. I did not, he would have gathered whatever was necessary. But he was an internal staff member.

MS RAMAGAGA: I would have thought you would have come across certain documents that would prompt you to approach him, but nevertheless, you say he could access information.

ADV BATOHI: May I clarify that?

MS RAMAGAGA: Yes, please do.

ADV BATOHI: Because at the point, as I said, Advocate de Kock's panel report was obtained in 2019. And I was trying to understand what is the position we take during litigation. So that was a different purpose of the de Kock panel report. This is not the panel report now in 2022.

MS RAMAGAGA: I understand that quite clearly.

ADV BATOHI: Thank you.

MS RAMAGAGA: And I hear you as to what approach you used in order to secure an opinion in that respect. Right? Now, after Advocate Chauke received your memo or your invitation to comment, he commented at some point and sent that with the accompanying opinion of Advocate Maenetje.

ADV BATOHI: That is correct.

MS RAMAGAGA: All right. Now, thereafter, you then went on to approach Dr Broughton for an opinion and he gave you an opinion, the first one.

ADV BATOHI: That is correct.

MS RAMAGAGA: Did you send this opinion to Advocate Chauke?

ADV BATOHI: I did not. Well, not at that stage.

MS RAMAGAGA: And after he gave you an opinion and maybe sought for more time to refine the opinion or give you a better opinion, then he wrote the second one, the one that we refer to here as a supplementary, his supplementary opinion.

ADV BATOHI: That is correct.

MS RAMAGAGA: Now, the supplementary affidavit, did you then furnish Advocate Chauke with that supplementary affidavit?

ADV BATOHI: The supplementary opinion? No, not at that stage.

MS RAMAGAGA: The supplementary opinion. Thank you

for the correction. You did not.

ADV BATOHI: I did not.

MS RAMAGAGA: Yes. And when you presented your request for establishment of the enquiry into the fitness of Advocate Chauke, had you by then furnished him with the opinions of Dr Broughton, the first one and the supplementary?

ADV BATOHI: No, I did not.

MS RAMAGAGA: Right. Ja, I will stop there for now. Thank you.

ADV BALOYI-MERE SC: I would like to know, Advocate Batohi refers to the first opinion from De Kock team and I do not remember seeing it on the record. Can you assist? We have the De Kock memorandum, that is in correspondence starting from 00001, but, and this is the 15th of February 2023. But there is also mention of the De Kock memorandum sometime in, well, I do not know, but the De Kock team was constituted in April 2019. So if I can be assisted, where to find it?

ADV MOHLAMONYANE SC: Madam Baloyi-Mere, it is marked SB3, ja, SB3 that we earlier referred to, which we said has some two pages which are duplicated and we will start at and consider SB3134 going forward.

ADV BALOYI-MERE SC: So the correct date for the De Kock's first memorandum is 27 June 2019.

ADV MOHLAMONYANE SC: That is correct.

ADV BALOYI-MERE SC: The one dated 27 June 2019.

ADV MOHLAMONYANE SC: That is correct.

ADV BALOYI-MERE SC: Thank you and as a follow-up to what my sister asked, Advocate Batohi, when you were asked why did you forward Advocate Nalane's opinion to Advocate Chauke, you said it is in fairness to him and he indeed responded with an opinion from Advocate Maenetje. Now, my question is why did not you do the same if it was in fairness to him? Why did not you do the same with Dr Broughton's opinions?

ADV BATOHI: That is a good question. At that point, Advocate Chauke had tendered his version and I suppose at that point, I had an indication of what his defence, or what his version was, well, more than, ja, I had an indication of what his version was going to be to the allegations. This was just unpacking the detail and so I referred it to the, well, I made a recommendation to the President.

ADV BALOYI-MERE SC: You assumed his response to Dr Broughton's opinion?

ADV BATOHI: I indicated, as I indicated, I had his response to Dr Nalane's, Advocate Nalane's opinion and I knew what his version was going to be with regard broadly to the allegations and so this was just unpacking it in detail and so I decided at that point that I had given him sufficient

opportunity to respond broadly to the allegations and that I could, at that stage, proceed to make the referral to the President, or recommendation to the President.

ADV BALOYI-MERE SC: Thank you.

ADV BATOHI: Thank you.

CHAIRPERSON: Just on that aspect, Advocate Batohi and correct me if I am wrong, in the correspondence, or maybe I should correct that, in Advocate Chauke's response to the President's asking for his response, he mentioned towards the end of his representations to the President and please correct me if I may missing the point, that he had not been given all the relevant document in terms of which he should make an informed decision. He is not using those words, but I think that is the essence of what he was saying to the President and subsequently, such information, which I assume include some of those opinions which were obtained by your office, but were never brought to his attention. What should we make of that?

ADV BATOHI: Chairperson, the opinions were sent to him and it was an oversight that the memorandum was not sent, but upon request, we actually realised the oversight and we sent it to him immediately.

CHAIRPERSON: Yes and I think you are correct. Maybe for the purpose of this record, Dr de Kock and team's document should appropriately be referred to as internal memorandum,

not a legal opinion in the sense of the Advocate Maenetje's legal opinions and others. So he says to the President in response, the way he responded, but to what is the end and says, I have not been given all the relevant documents. That would have assisted me to respond to the allegations fully, something to that effect. And this response was not responded to. Or if my recollection is correct, the President's office responded, but said it is not necessary to be given that information. I may be wrong, but all that I picked out is that his response was not answered.

ADV BATOHI: My understanding is that it was, Chairperson.

CHAIRPERSON: Or he was not given the information that he expected to receive and you are now telling us that the memorandum, the internal memorandum was not brought to his attention.

ADV BATOHI: That is correct and once it was brought to our attention, we then forwarded it immediately to him.

CHAIRPERSON: Should I consider that omission as a *bona fide* omission and error?

ADV BATOHI: Yes, Chairperson.

CHAIRPERSON: Thank you.

MS RAMAGAGA: Just one or two questions. The opinion from Advocate Nalane, was it at a cost to the NPA?

ADV BATOHI: Yes, absolutely and so was that of Advocate Maenetje.

MS RAMAGAGA: And the opinion, no, you keep on, you just like answering.

ADV BATOHI: I like giving full information, Chairperson.

MS RAMAGAGA: Ja, ja, ja, you know, you know, you really, I must, in any event, that is fine.

ADV BATOHI: Chair, it is a fact-finding and I need to present the facts, Chairperson. Sometimes I give more than I should, maybe.

MS RAMAGAGA: Ja.

CHAIRPERSON: Do not anticipate the questions, counsel. Thanks, my sister.

MS RAMAGAGA: And the opinion of Dr Broughton, was it obtained at a cost to the NPA?

ADV BATOHI: He is a staff member at the NPA, so we certainly pay his salary, but it was no addition than that. He is an internal staff member, so it is not external counsel.

MS RAMAGAGA: Do not assume that the outside world knows that if it is a staff member, then he was not paid, because it also depends on the job specs of a person. That is why I say it does help to answer the asked question. The question is, I repeat, was the opinion of Dr Broughton obtained at a cost to the NPA, or not?

ADV BATOHI: No, it was not, except for his salary, as I said. He did not get paid anything more than that.

MS RAMAGAGA: I will not engage with something that I

have not asked for. I think I just have to restrain myself to be alert to that. Thank you.

CHAIRPERSON: Thank you, Advocate Mohlamonyane, you may proceed.

ADV MOHLAMONYANE SC: Thank you, Madam Chair. Advocate Batohi, it did appear to me, I may be wrong, I heard you responding that you asked for Advocate Nalane SC's and Advocate Maenetje's SC's opinion. I may be wrong.

ADV BATOHI: I did not ask for that.

ADV MOHLAMONYANE SC: I need to clarify that.

ADV BATOHI: No, no, no, we did not. It is not, those opinions were obtained by Advocate Chauke after we sent him Advocate Nalane's opinion.

ADV MOHLAMONYANE SC: Which ones? Let us be clear.

ADV BATOHI: Advocate Maenetje and Scott SC.

ADV MOHLAMONYANE SC: Thank you. You were on page 73 and proceed from 179.

CHAIRPERSON: Counsel, if I may just, sorry, Advocate Batohi. We plan to adjourn at 1.30. But you can proceed with your question. Proceed from where you were and at 1.30, if you can bear that in mind, we will take an adjournment.

ADV MOHLAMONYANE SC: I will, Madam Chair. Thank you. Go to 179, paragraph 179, Advocate Batohi.

ADV BATOHI: Yes, I am there.

ADV MOHLAMONYANE SC: Can you comment on 179?

ADV BATOHI: Yes.

“So after I got Advocate Broughton's analysis of the evidence and opinion, I was satisfied that there was sufficient basis to request the President to establish an enquiry into Advocate Chauke's fitness to hold office in respect of the Booysen matter.

With regard to the Mdluli matter, I requested Advocates GI Hulley and S Wentzel to provide me with an opinion on Advocate Chauke's conduct in this regard.”

They did so and concluded, understanding that already Advocate Nalane had requested, had recommended that this matter also be included in any referral, they did make a recommendation in an opinion that there was sufficient basis to conduct, to recommend to the President that any fitness to hold enquiry include Advocate Chauke's conduct in the Mdluli matter.

ADV MOHLAMONYANE SC: That opinion is the one you are referring to here in LO01047 to LO01067, which is contained in bundle LO4. It is in bundle LO4. Hulley SC and S Wentzel's opinion is the one referred to here.

ADV BATOHI: That is correct.

ADV MOHLAMONYANE SC: It will later be marked accordingly and be handed up, Madam Chair. 180, paragraphs 180 and its subparagraphs that you can leave out. It is already dealt with. Go to paragraph 182 immediately on page 78.

ADV BATOHI: Yes, just for clarity, just to say that from paragraph 180 through to 181 summarises the key aspects of the matters with regard to the Booyesen and Mdluli matter. So at 182.

CHAIRPERSON: I beg your pardon, counsel. The further opinion that you considered necessary in relation to the Mdluli matter, as you mentioned in paragraph 139, was sought and obtained in 2023.

ADV BATOHI: I do not have the document before me, so I cannot confirm that. We need the date.

CHAIRPERSON: If you quickly just go through the index of LO1, you will see on page marked 04 on top. Legal opinions bundle, next page of one. It says 4 there on top and item 9. 10 July 2023, legal opinion of GI Halley. 10 July 2023 is at LO01047 to LO01063.

ADV BATOHI: That appears to be the one, Chairperson.

CHAIRPERSON: The date is correct.

ADV BATOHI: Yes, it is Halley and Advocate Wentzel as well.

CHAIRPERSON: It was sought in 2023.

ADV BATOHI: That is correct, Chairperson.

CHAIRPERSON: And as you say, because the former team of Advocate de Kock and correct me, whether it is Dr Broughton or De Kock team, one of the two, had not expressed a view in relation to the Mdluli matter.

ADV BATOHI: It is Dr Broughton had not expressed a view.

CHAIRPERSON: It is Dr Broughton?

ADV BATOHI: That is correct.

CHAIRPERSON: Now, I would like to take you back to your earlier testimony, that what was important in these two matters was the evidence. I do understand that with regard to the initial memo of doctor, or rather, Advocate de Kock, you had just assumed office and there was litigation pending upon the assumption of office and you needed to discuss the way forward with regard to that pending litigation.

ADV BATOHI: That is correct.

CHAIRPERSON: I will not go back to the earlier question pertaining to the seeking of opinions, legal opinions, regarding the Booyesen's matter. But with regard to the Mdluli matter, given that answer that you gave us, which I thought was correct, that what was important was actually the evidence. Now, you would have been in office for, say, three years, four years. You would have been in a position to form, or rather to go through the evidential material yourself before seeking a legal opinion, that is, with regard to the Mdluli

matter. Given the fact that evidence was more important, was it necessary to seek a legal opinion four years later with regard to this matter, the Mdluli matter, when you could have then gathered the evidential material and formed that opinion yourself?

ADV BATOHI: Chairperson, if I may, the work of a National Director is very complicated and it requires running a rather big institution and the functions are very varied and you have to depend on opinions and where you can, in important decisions, yes, you must look at the evidence as well. So in the Mdluli matter, in the Mdluli matter...

CHAIRPERSON: No, no, no, I just want to intervene, counsel. I am asking this question based on your earlier answer, saying what was critical? Was the evidence.

ADV BATOHI: I am getting to that, Chairperson.

CHAIRPERSON: So I am asking that now four years later, after your assumption of office, because you had been given opinions that did not close that gap in relation to Mdluli matter, was it then not necessary for yourself to have used this period from 2019 to 2023 to look at the evidence yourself rather than looking or seeking a legal opinion?

ADV BATOHI: Chairperson, at that point, I had Advocate Nalane's opinion that recommended that the case of Richard Mdluli also be referred to the President. I then wanted and his opinion was also there were gaps and so I requested a

further opinion and attached to the second opinion was some of the evidence in the matter. I concede it was not all, but it was the investigating officer's statement was one of the attachments to that opinion. I do not think this is in any bundle, but we do have a copy of his statement that was attached to the opinion, which I also considered in taking this decision and, counsel, if we can get that statement and refer the panel to it and I am in your hands, but perhaps hand it up as an exhibit. Chairperson, the point I make is that that opinion had various annexures that included this statement that summarised the evidence in the docket. It also had certain other documents I cannot recall offhand, but they are all referred to in the opinion, so that was also before me.

CHAIRPERSON: I understand what was before you. My question is, as you said earlier, what was critical at that stage was the evidence that you needed to look at. You nonetheless sought legal opinions. Now, I am saying to you, based on your own answer, even four years later, you sought a further opinion in relation to the Mdluli matter. Was it then not an appropriate moment for you to satisfy yourself from the very evidence itself, part of which you have just mentioned, without necessarily looking at the opinion of somebody?

ADV BATOHI: Chairperson, it was indeed about four years later. On the face of it, given what Advocate Nalane had said,

this was a gross miscarriage of justice to the Ramogibe family and I needed to look into this matter more closely. As I said, it is the responsibility of any responsible National Director to look into cases that you, on the face of it, appears to be a gross miscarriage of justice, but you look into it, because at the end of the day, after looking into it, you might come to a conclusion that it was not the case, but you do need to look into it and in my view, that is precisely what I was doing, to look into it, to ensure that this matter was properly dealt with. Advocate Hulley and Wentzel's opinion had evidence in the form of the investigating officer's statement attached to it, so that is what I did, Chairperson, and I can take it no further.

CHAIRPERSON: I will take that you do not want to answer my question.

ADV BATOHI: No, please, Chairperson, I would hope that you do not take it in that way. I am explaining to you ...[intervenes]

CHAIRPERSON: Let me repeat myself and I based my question on your answer earlier, your own evidence and the answer could be very brief. Earlier on, when my sister asked you a question about this legal opinions that you sought, your answer was that when seeking, let me just see how you even said it.

ADV BATOHI: I will be careful about the language that I use in front of you. I am trying to be really careful.

CHAIRPERSON: Precisely because we are taking notes.

ADV BATOHI: I understand.

CHAIRPERSON: It is evidence that we need to consider.

ADV BATOHI: Yes, I understand.

CHAIRPERSON: And it is important because we take what you say very serious. You said that what was important was the evidence.

ADV BATOHI: That is correct.

CHAIRPERSON: And I am basing my questions on that and say, fine, with regard to the initial matter, the De Kock team internal memorandum, one would understand because you had just assumed office and there was litigation pending. Subsequent thereto, you sought legal opinions with regard to both matters, but they did not cover the Mdluli matter, the Broughton opinion. Four years later, despite the fact that you conceded that what is important in relation to this matter is the evidence itself, my question is four years later, you then did not do what you considered to be more important ...[intervenes]

ADV BATOHI: Chairperson, sorry.

CHAIRPERSON: Would you please give me a second to finish?

ADV BATOHI: Yes, of course.

CHAIRPERSON: You said your decision, it was important. In fact, you said what I wanted was my decision to be based

on evidence. And that is why I keep on going back to that very evidence that you presented earlier, to say if evidence was important, four years later still, you sought a further opinion when you had been in office for a while and you could have easily obtained the evidential material that you considered to be important, to decide as you say, what was important for that decision was the evidence. And that is why I am asking you the question.

ADV BATOHI: Chairperson, firstly, I think we should get the four years and figure out whether it was four years.

CHAIRPERSON: I do not know. I said it could have been four years from 2019 to 2023 when you sought the opinion of Advocate Hulley.

ADV BATOHI: Okay, four years from that date, yes.

CHAIRPERSON: There had been some development.

ADV BATOHI: Yes, that is correct.

CHAIRPERSON: It could be two years, it could be three years. But you had at least been in office for a while.

ADV BATOHI: Mmm-mmm.

CHAIRPERSON: So I do not want to repeat my question, but if you think that you have covered it, maybe we should close that part.

ADV BATOHI: Chairperson, in my view, seeking an opinion together with the evidence of the investigating officer was an appropriate course of action at that point, which is what I did.

ADV BALOYI-MERE SC: Can I make a follow-up? Advocate Batohi, please do not take this as the panel faulting you for seeking an opinion. You are entitled, as the head of the institution, to seek an opinion. What we want to establish is, after assuming office and after you realise that there are a number of problems relating to maybe the Cato Manor, the Booyesen's matter and the Mdluli matter, did you take your time out of your busy schedule, and I want to accept that you are busy, did you take your time out of your busy schedule to look at the files? Because even if you were to receive an opinion, at some stage, you had to satisfy yourself that that which is contained in the opinion and that which was dealt with by whoever drafted the opinion, is the correct facts, because counsel may come in and give a legal opinion, but you are the repository of the facts. The facts should be known by you. The facts are in your hands. Have you ever taken time to acquaint yourself with the facts in these two matters, even though you sought legal opinions?

ADV BATOHI: Chairperson, as I indicated, the second legal opinion had facts and evidence, being the investigating officer's very comprehensive summary of the evidence and in my view, I did sufficient to take into account the evidence and the facts before I made the recommendation in the circumstances.

MS RAMAGAGA: So you relied on those summaries?

ADV BATOHI: I relied on the investigating officer's summary of the evidence, yes.

MS RAMAGAGA: Thank you.

ADV BATOHI: That is in the Mdluli matter.

MS RAMAGAGA: Thank you.

CHAIRPERSON: Advocate Batohi, perhaps we should adjourn now. Advocate Mohlamonyane, your last paragraph was 179. If there is no further question in relation to that aspect, if we then take a break, then you will continue when you resume next week from where you want to resume.

ADV MOHLAMONYANE SC: Ja, I have no further questions on paragraph 179.

CHAIRPERSON: No further questions?

ADV MOHLAMONYANE SC: Yes.

CHAIRPERSON: As we discussed during the tea break and communicated our proposal to your counsel, all counsel, we will adjourn until next week. Until next week, Wednesday, I am not sure what the date is exactly.

ADV MOHLAMONYANE SC: It is the 3rd, Madam Chair.

CHAIRPERSON: Yes, thank you, counsel. So the 3rd of December at nine o'clock, we seek to enable the Chauke team to prepare themselves, as they requested, an opportunity to look at this evidence and be ready for cross-examination as soon as Advocate Batohi finishes her evidence-in-chief. We do so for many reasons, main of which are that the bundles

were provided very late.

Secondly, Advocate Chauke's team comprised of two counsel, had made a request to the state, the state attorney, to assist them with appointment of a further counsel, junior counsel. Because as they believe and we consider fairly so, the evidential team comprises of a number of Advocates and to ensure that some fairness is afforded to the legal team based on the equality of arms, they should then make that request to the state attorney.

In the meantime, they should prepare. But because they have not received assistance while that request is pending, we should enable them at least two days added to this weekend to prepare. This means Advocate Chauke's team, you will have Saturday, Sunday, Monday and Tuesday to get ready, so that when we reconvene on Wednesday, the third, we should not interrupt this proceedings because of a need of time.

It is for that reason that we consider it appropriate to afford you an opportunity to reflect on these records that you received late and prepare for a cross-examination. We are told that Advocate Batohi's evidence-in-chief may be concluded probably on Wednesday. And if when that happens, hopefully, you will and should be ready to start with your cross-examination.

We are therefore, as I said, going to agenda until

Wednesday, the third of December at nine o'clock. And when we resume at the end of Advocate Batohi's evidence, the evidence leading team will then hand up the documents that we spoke about, including the exhibits, a list of exhibits, exchange of further documents, including the dockets and other documents that we mentioned during our chamber discussions. We will then adjourn until next Wednesday, December 3rd. We adjourn.

ENQUIRY ADJOURNS UNTIL 3 DECEMBER 2025



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