

**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**

**5 FEBRUARY 2026**

**DAY 21**



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

**PROCEEDINGS ON 5 FEBRUARY 2026**

**ADV KHOOE:** Good morning everyone, good morning Advocate Noko. Good morning, *Nthati* Chauke. Advocate Khooe, you remember where we ended yesterday when we adjourned, I think we were around paragraph 32 of the affidavit of the witness. Before we proceed, Advocate Noko, you are still under oath.

**ADV NOKO:** Yes, Chair.

**CHAIRPERSON:** Thank you. If my recollection is correct,  
10 we had just been dealing with MN3, but you can start where you consider it fit. Reference to MN3 is at page 10, paragraph 32. You may begin, Madam.

**MOIPONE NOKO:** (still under oath)

**EXAMINATION BY ADV KHOOE (CONTINUES):** Thank you Chair. Advocate Noko, yesterday when we adjourned you had just gone through paragraph 32 which is on page 10. We were dealing with Annexure MN3 and the Chair had asked whether all the cases that you listed on page MN00005 MN3 were all relevant and you had responded that not all of them  
20 were relevant. For purposes of this enquiry, number five is Cato Manor.

**ADV NOKO:** Yes.

**ADV KHOOE:** And in the document, if you go to page MN00027, bold red.

**ADV NOKO:** Yes, I have it. I have it.

**ADV KHOOE:** Can you read that into the record?

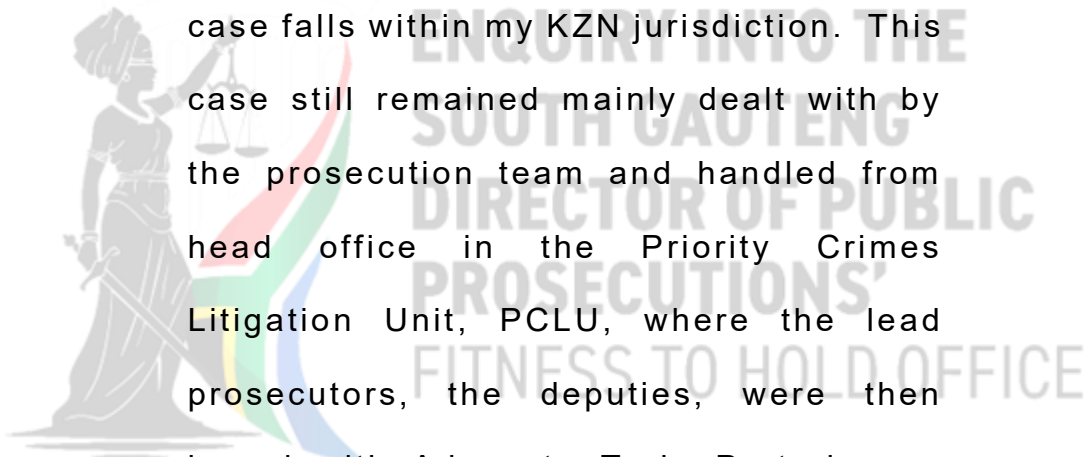
**ADV NOKO:** Okay, thank you. It is titled Cato Manor Prosecution. It says:

10 “This case reportedly started around 2011  
and dealt with by the IPID, DPCI and the  
NPA. From the NPA, the prosecution team  
comprised of Advocate Sello Maema, the  
Lead Prosecutor, Advocate Raymond  
Mathenjwa, Co-Lead Prosecutor, Mahlubi  
Ntlakaza, Patience Moleko, Jabulani  
Mlotshwa, Pumeza Futshane and  
overseen by DPP South Gauteng,  
Johannesburg, Advocate Andrew Chauke.  
Then in consultation with the Acting DPP  
KZN, Advocate Simphiwe Mlotshwa, the  
then Acting NDPP Nomgcobo Jiba and  
Advocate Chauke formulated this  
prosecution team to deal with this case.  
Please find an affidavit by Advocate Sello  
20 Maema in this regard that sheds further  
light into the background of this case and  
what led to the prosecution team's  
memorandum for the application for the  
issuing of fresh racketeering authorisation  
by NDPP Advocate Shaun Abrahams. This

is attached as Annexure CC. I was invited to a meeting at head office with the NDPP Mr Mxolisi Nxasana, DNDPP Dr Silas Ramaite, Advocate Andrew Chauke and the prosecution team. This meeting was for the prosecution team to brief the NDPP and DNDPP about this case. At this meeting, Mr Nxasana instructed that I am to be the DPP that must oversee this case and not Advocate Chauke anymore as this case falls within my KZN jurisdiction. This case still remained mainly dealt with by the prosecution team and handled from head office in the Priority Crimes Litigation Unit, PCLU, where the lead prosecutors, the deputies, were then based with Advocate Torie Pretorius as the then Acting Unit Head of the PCLU. The case dockets, documents and all other information in this case were kept by the prosecuting team at DPP South Gauteng Johannesburg and the PCLU office at head office respectively, as informed by the prosecution team. I relied on the briefings and prosecution

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memoranda by the prosecution team about what the cases were all about. I had confidence in the prosecution team comprising of senior and experienced prosecutors led by three deputies being Mathenjwa, Maema and Mlotshwa, supported by three senior state advocates being Futshane, Moleko and Ntlakaza. I thus had no reason to doubt their briefings and memoranda to me, hence my reliance thereon. During July 2015, I attended a briefing...”

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I am sorry, Chair, to interrupt myself. I have already read all this from my affidavit. I feel like I am repeating. Should I still go on? I thought maybe I would start with the cases maybe.

**CHAIRPERSON:** The reference to MN3 at paragraph 32 is covering part of what you are stating in your affidavit.

**ADV NOKO:** Yes.

20 **CHAIRPERSON:** Perhaps you can go back, Advocate Khooe, and see if we are not repeating that which she has said and/or covered in the affidavit because the annexure seems to be giving some details. I do not know whether you will look to check whether the details that is in the annexure is not covered in the affidavit. If not, you can lead the witness on

that so that you do not repeat, she does not repeat herself.

**ADV KHOOE**: All right, Chair. They are. I think basically what I was doing was to just make sure that whatever she had left out in her affidavit is also captured on record, but I see the parts that she says she has repeated and I am comfortable to move on to the next paragraph of her statement.

**CHAIRPERSON**: Yes.

**ADV KHOOE**: Okay, you may continue.

10 **ADV NOKO**: Thank you, Chair.

**CHAIRPERSON**: You are better placed to assist us with those aspects of your evidence that are not covered in your affidavit that appear in the annexure.

**ADV NOKO**: Yes, Chair.

**CHAIRPERSON**: Thanks.

**ADV NOKO**: Thank you, Chair. I will then go straight to the cases, which is on still MN00030 on page 26:

20 “The prosecution team unpacked and presented these various case dockets as follows. One, KwaDukuza CAS 39/9/2008. The deceased is Lindelani Buthelezi, a taxi owner at KwaMaphumulo Taxi Association. The incident happened on the 3<sup>rd</sup> of September 2008. In the indictment, it involves Counts 3 to 7.”

**CHAIRPERSON**: I beg your pardon, where are you reading now?

**ADV NOKO**: On page 25 of MN00030.

**CHAIRPERSON**: 25?

**ADV NOKO**: Page 25. At the bottom is written 25, yes.

**CHAIRPERSON**: Are you referring to the bolded red?

**ADV NOKO**: Yes, the MN, yes, in bold red.

**CHAIRPERSON**: Can counsel assist us? Where is the witness reading?

10 **ADV KHOOE**: MN00030.

**CHAIRPERSON**: 30?

**ADV NOKO**: Okay, Chair, can I help? I realise the report that was attached is dated 27 October 2020. As far as the cases are concerned, it is exactly the same as the 15 September 2021, 2020. So I can read from MN0005 then. I think that is what you have.

**CHAIRPERSON**: No, no, no, the counsel should lead you. I know that you are also an advocate, but allow her to lead you so that we know we are together.

20 **ADV NOKO**: Yes, Chair.

**CHAIRPERSON**: You are referring to the Cato Manor cases.

**ADV NOKO**: Yes, Chair.

**CHAIRPERSON**: And those cases in this Annexure MN3 starts at MN00030. Am I correct with the case of 1 KwaDukuza CAS 39/09/2008, at that page?

**ADV NOKO**: Yes, that is the one.

**CHAIRPERSON**: That is the cases that you want to refer to?

**ADV NOKO**: Yes, Chair.

**CHAIRPERSON**: Do you have that, Counsel?

**ADV KHOOE**: Yes, Chair.

**CHAIRPERSON**: Perhaps you must stick to the document that we are all having here. That is the October document.

**ADV NOKO**: Yes, that is the one I have, Chair.

**CHAIRPERSON**: Yes.

10 **ADV NOKO**: Okay, can I proceed?

**ADV KHOOE**: Yes, you can proceed with the cases.

**ADV NOKO**: Okay, on number, 1 KwaDukuza CAS 39/9/2008:

20 “In this case, the deceased is Lindelani Buthelezi, a taxi owner at KwaMaphumulo Taxi Association. The deceased was suspected of involvement in killing of Superintendent Choncho, allegedly in the presence of his girlfriend, Thandeka Sokhulu, whose statement is filed in the case docket as A21. While asleep, Accused 4, 8, 13 and 22 broke and opened the door, while accused 6 kept guard outside. The deceased lifted both his hands up. His girlfriend was placed in a

separate room, where she was assaulted with open hands and kicked with booted feet, and Count 4 was opened for that assault. Accused had 7.65mm firearm with serial number obliterated, and this firearm was placed next to the deceased to create an impression that the deceased was armed and/or would have used the firearm, or used the firearm to shoot and endanger their lives.”

That is just a summary of this case.

**CHAIRPERSON**: Yes, I am sorry to interrupt you, so that we recap and remember why we are here in respect of these cases.

**ADV NOKO**: Yes, Chair.

**CHAIRPERSON**: You were responding to the letter by Advocate Batohi.

**ADV NOKO**: Yes, Chair.

**CHAIRPERSON**: You said that letter was dated August 2020.

**ADV NOKO**: Yes.

**CHAIRPERSON**: Do you have a copy of that letter that requested you to report?

**ADV NOKO**: I do not have it anymore. I cannot. I do not have access to emails of the NPA anymore.

**CHAIRPERSON**: And in this report you were informing

Advocate Batohi of these cases that involved the Cato Manor members.

**ADV NOKO**: Yes, Chair.

**CHAIRPERSON**: What appears from page MN00030 up to – it is quite a number of cases.

**ADV NOKO**: Yes.

**CHAIRPERSON**: I think up to page MN00039.

**ADV NOKO**: Yes.

**CHAIRPERSON**: Are the summaries.

10 **ADV NOKO**: Yes.

**CHAIRPERSON**: What you provide there are the summaries of the cases that involved the Cato Manor members.

**ADV NOKO**: Yes, Chair. That is correct, Chair.

**CHAIRPERSON**: You may proceed, Advocate Khooe. If I may, the second case is the one involving Mr Ndimande.

**ADV NOKO**: Yes, Chair, as the deceased.

**CHAIRPERSON**: The Howick case.

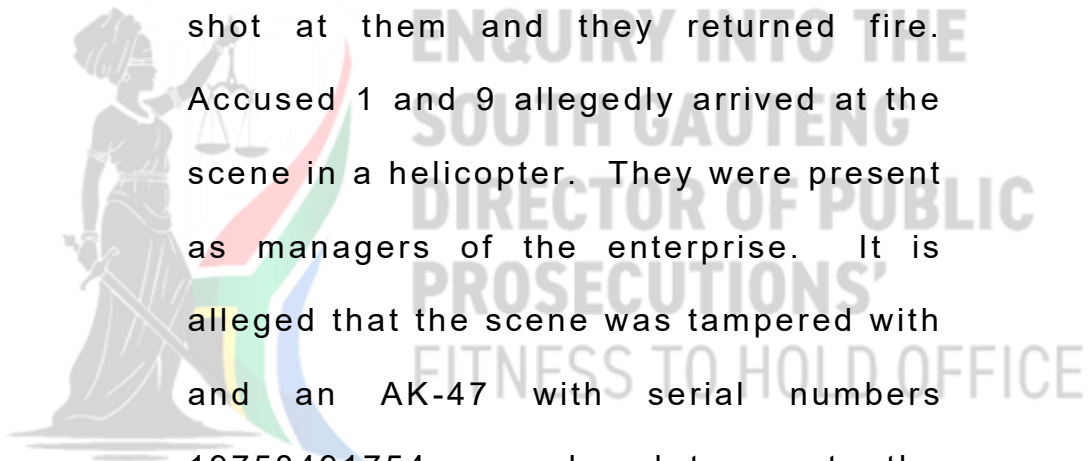
**ADV NOKO**: Yes, Chair.

**CHAIRPERSON**: You may briefly go through that.

20 **ADV NOKO**: Yes, Chair:

“In Howick CAS 106/9/2008, the deceased are Mr Magojela Ndimande, who was a taxi owner for KwaMaphumulo Taxi Association and his bodyguard, Mr Sibusiso Tembe. Allegedly, the deceased

was previously handed to Organised Crime Unit members during August 2008 for questioning regarding the killing of Superintendent Choncho, but was released as not linked. On 16 September 2008, the accused pursued the deceased on the N3 Highway near Howick and were killed. Accused 4, 5, 6, 8 and 15 and 16 were allegedly present and falsely alleged that the second deceased, who is Tembe, shot at them and they returned fire. Accused 1 and 9 allegedly arrived at the scene in a helicopter. They were present as managers of the enterprise. It is alleged that the scene was tampered with and an AK-47 with serial numbers 19758491754 was placed to create the same impression of attack from the deceased. An AK-47 cartridges placed on top of the blood inside the car. The ballistic expert, Mr Steyl, which is his statement is A41 in the case docket, stated that the car's windows were closed and no indication that shots were fired through the closed windows. A43,



allegedly accused 4, warned security company to remove the guard. So that was the guard that was at the scene and removed.”

**ADV NGCUKAITOBI SC:** Sorry, Madam Chair, I just wonder whether the witness cannot tell us when he says accused 1 ...[intervenes].

**CHAIRPERSON:** I was actually going to ...[indistinct]. Throughout this document, you referred to accused, I think, frequently 2, 4 and others.

**ADV NOKO:** Yes, Chair.

**CHAIRPERSON:** It is not clear to us who are these accused people, where do we find their names? I do know that accused 2 was Padayachee. Do you have the names of these accused elsewhere? Or can you, at the later stage, give us full details of these accused people, accused persons?

**ADV NOKO:** The details of who is accused number 1 are in the indictment and I do not have a copy of the indictment. But I know accused 1 is Major General Booyesen. I remember he is accused number 1, but the rest I do not know who is who. The indictment should be able to provide that.

**CHAIRPERSON:** And you were summarising from the indictment of each of these cases?

**ADV NOKO:** From the prosecution memorandum, which was compiled by the prosecutors.

**CHAIRPERSON:** Had you had a sight of the indictment in respect of these cases, other than looking at the memorandum?

**ADV NOKO:** I had sight of the witness statements, the witness that I am referring to in my affidavit.

**CHAIRPERSON:** Yes.

**ADV NOKO:** I was given those statements.

**CHAIRPERSON:** Yes.

**ADV NOKO:** Yes. So I had sight of some of the witness  
10 statements, the prosecution memorandum, the indictment, the slide presentation document, and others that may have been sent to me. But not all the witness statements I read, but I have what I have read.

**CHAIRPERSON:** Yes. It seems to me, Advocate Khooe and your team, Advocate Skosana, Advocate Motsweni, you would have to assist us there. We have a number of dockets that have been filed of record. We may have to go through those dockets to ascertain who these accused persons are. I am  
20 not sure whether that can be done today. Advocate Hulley, I am sure your junior can also assist us.

**ADV NGCUKAITOBI SC:** Madam Chair, they are in the witness's own documents, from page MN00062.

**CHAIRPERSON:** 62?

**ADV NGCUKAITOBI SC:** Yes, and then the first accused appears at MN00068. My concern was simply that when he

says accused 1, we do not know what he is talking about, but they are in the witness's own documents.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: So it starts at MN00062.

**CHAIRPERSON**: That would be my memorandum?

**ADV NGCUKAITOBI SC**: Yes, Madam Chair. And then the first name of the accused is at MN00068. Well, actually all of the accused start from MN00068 up to MN00071.

**ADV NOKO**: My apologies, Chair. Yes, the memorandum is  
10 here with the names. Thank you.

**CHAIRPERSON**: Yes, this is helpful, Advocate Ngcukaitobi. Yes. Would you please, all of you, put your mobile phones on silence. Yes. Yes, indeed. No, thank you very much. We will cross-refer, understanding that those accused that you are referring to are exactly the accused who appear from those pages, pages 68, as Advocate Ngcukaitobi has assisted us.

**ADV NOKO**: Yes.

**CHAIRPERSON**: Yes.

20 **ADV NOKO**: And my apology, yes, the memorandum is here with the names. Now I am thinking only of the indictment whereas they are here. I apologise for that.

**CHAIRPERSON**: Yes, thank you.

**ADV NOKO**: Okay, so should I proceed to...

**CHAIRPERSON**: Yes.

**ADV NOKO:** Okay, and then number three is Mandini CAS76/9/2008. The deceased are Mzamini Johannes Ntuli, Nkosinati Wilson Mthembu, they were both taxi owners at KwaMaphumulo Taxi Association and the incident happened on 18 September 2008. In respect of Counts 13 to 18, it is alleged that under the pretext of intending to arrest the two deceased persons for killing Superintendent Choncho, accused 3, who is Stoltz, Adriaan Jakobus Fick, and 4 and 13, who are Mr Mostert Paul Johan, and 13 is Mr Ruben Ren  
10 Naidoo. Allegedly, they entered the bedroom and fired shots at the deceased, while accused 6, 8, 10, 11, 12, and 15 guarded the house for escapees. 6, 8, 10, 11, 12, and 15 are, 6 is Eric Alfred Nel. No, no, no, that is – there is no 6 now here. I do not know whether it is a typo or what, but then there is 8, 10, 11, 12.

I do not know. 8 is Phumelele Makhanya. 11 is Mdlalose ...[indistinct] Inok [?]. Chair, the prosecution memorandum does not – it jumps other numbers. So we will need the indictment to check and verify the names. I can also  
20 do that, verify and see whether I get all the names according to the numbers.

**CHAIRPERSON:** Yes, I think you can compile a list of those accused persons according to your understanding.

**ADV NOKO:** Yes, Chair.

**CHAIRPERSON:** And then provide it to the evidence leading

team.

**ADV NOKO**: Yes.

**CHAIRPERSON**: Because when you cross-refer like that, then you can at least have a list of those accused persons.

**ADV NOKO**: Yes.

**CHAIRPERSON**: And then compare them with the list that has been, that appears in the memorandum of Advocate Maema.

**ADV NOKO**: Yes, Chair.

10 **CHAIRPERSON**: Then if a need to correct, then you can correct from your list according to your testimony.

**ADV NOKO**: Yes.

**CHAIRPERSON**: Remembering that you speak under oath.

**ADV NOKO**: Yes, Chair.

**CHAIRPERSON**: Will that be helpful, Advocate Ngcukaitobi?

**ADV NGCUKAITOBI SC**: Yes, Madam Chair. I see also that 6, but they are missing accused in the memorandum.

**CHAIRPERSON**: Yes.

20 **ADV NGCUKAITOBI SC**: So I think the witness is correct, thank you.

**CHAIRPERSON**: For instance, number 6 is not there. Let us do that later in the day.

**ADV NOKO**: Yes, I will do that, Chair.

**ADV KHOOE**: Before we move on, if we go to paragraph 26 of your affidavit, in your quotation we do not have accused

number 6, number 12, 17 to 25. We do not have them in the quotation at paragraph 26 of your affidavit. That is page 8 of your affidavit. So when you listed, you said the state has evidence linking the entire members of the enterprise, including accused, and then you listed the numbers, but there is no 6, there is no 12, and 17 to 24.

**ADV NOKO**: I will verify. However, now I think I remember, some of the accused have passed away. They are deceased. And in the initial indictment, they had already been labelled  
10 like that. So even though some had moved out because of being deceased, the numbers allocated to the accused persons remained. I remember, but I will see how I verify this.

**ADV KHOOE**: Thank you.

**CHAIRPERSON**: You can pause. My researcher tells me the bundle of Major General Booyesen has a list of all the accused persons.

**ADV NOKO**: Okay.

**CHAIRPERSON**: And there we have number 6, that is Eva,  
20 Neville, deceased.

**ADV NOKO**: He has passed away, yes.

**CHAIRPERSON**: Yes. So when you prepare that list, you can do that list and speak to it later in the day.

**ADV NOKO**: Yes.

**CHAIRPERSON**: You will have this volume in respect of

which the accused people are properly listed.

**ADV NOKO**: Yes.

**CHAIRPERSON**: And full details is given as regards those who are deceased. For instance, number 6.

**ADV NOKO**: Yes.

**CHAIRPERSON**: And I see there is also 12 there, Zondi Bongani. When I read the document, it seems that Bongi also passed on, but you will check.

**ADV NOKO**: Yes, I will check, Chair.

10 **CHAIRPERSON**: Maybe we should leave it there. You have the list, then you can speak to it later.

**ADV NOKO**: Yes, I will do that, Chair. Okay. Should I proceed? Okay. And then the ballistic experts in that case being Steyl, whose A37 stated that deceased one was shot from the back whilst lying on the floor with exit wound on the carpet under the head. Deceased two was shot at five times while in a standing and lying positions. This negate any danger posed by the deceased. The case number 4, eMkhomazi CAS 325/10/2008:

20                    “The deceased is Mduduzi Mkhize, on 18 October 2008, and it relates to count 19. It is alleged that the deceased was arrested in Pietermaritzburg on a suspicion that he was involved in the killing of Superintendent Zethembe

Choncho and was then transported to ...[indistinct] for questioning. Allegedly, the deceased was willing to point out Nathi Khumalo, and while enroute to do so, whilst handcuffed at the back of a police sedan vehicle, the deceased was shot by accused 17 as he allegedly tried to grab a firearm of accused 18. The prosecution team viewed this as improbable.”

10 Case number 5, Durban Central CAS 185/2/2009. The deceased is Bongani Mkhize, who was a chairman of the KwaMaphumulo Taxi Association, and it allegedly happened on the 3<sup>rd</sup> of February 2009, and this pertains to counts 20 to 24. It is alleged that after the killings of Lindelani Buthelezi – Chair, am I allowed to keep on elaborating as I read, or must I just read? I wanted to elaborate something here.

**CHAIRPERSON**: Yes, you may.

**ADV NOKO**: I may? Okay, Chair.

**CHAIRPERSON**: [Indistinct – mic switched off].

20 **ADV NOKO**: Yes, Chair. Okay. First of all, Mr Bongani Mkhize, who was a chairman of the KwaMaphumulo Taxi Association, the deceased in this case, allegedly had made a High Court application through his lawyers, Mr Nkosinathi Shozi, after the killing of some of the members of the KwaMaphumulo Taxi Association.

Allegedly, he made an application to the High Court for an interdict, to interdict the police from endangering his life or killing him, because he had heard that he was next in line. Statements of witnesses that I have summarised and also attached here will also talk to the planning of the killing of Mr Bongani. So apparently it leaked out to him somehow, and then he made a High Court interdict to say the police must not kill him, and if they need him for any questioning or even arresting him, they must inform his lawyers.

10 And the police responded through Major General Booyesen in his affidavit to this High Court interdict application saying, yes, we will go through the lawyers, we will not endanger his life, things will be done properly as per the interdict. However, he was killed without the police having done that. So this is just one of the incidents.

So Lindelani Buthelezi is one of those that the witnesses are saying their murders were planned, but that will be clear from their statements as we go to the witness statements. I just wanted to elaborate that. So:

20 “It is alleged that after the killings of Lindelani Buthelezi, ...[indistinct] Ndimande, Mzamini Johannes Sintuli, Nkosinathi Wilson Mthembu, and Mduduzi Mkhize, who were all members of the KwaMaphumulo Taxi Association, the deceased approached the High Court on 14 November 2008 and successfully obtained an interdict against the police not

to kill him, averring that he was the next in line to be killed. The attorney of the deceased made an undertaking to hand over the deceased if sought by the police. Nevertheless, allegedly, the accused, being accused 2, 3, 14, 19, and 20 on 3 February 2009, waylaid the deceased, thus contravening the court interdict. There was no warrant of arrest for the deceased. The deceased was shot in a rain of bullets while driving along Umgeni Road in Durban. Allegedly, a firearm with obliterated serial numbers was placed on the floor of the  
10 front passenger seat of the Lexus car that the deceased was driving to create the same impression of attack or danger. None of the cartridges found on the scene matched the firearm found inside the deceased's vehicle. It is further alleged that the deceased's two cell phones were stolen, those related to count 24.”

Case number 6, Pinetown CAS 668/05/2009. The deceased is Sibongiseni Ndimande, who was a member of the KwaMaphumulo Taxi Association and allegedly took place on 23 May 2009. It relates to count 25 to 30:

20 “Allegedly, accused 2, 3, 16 forcefully entered the deceased's house while accused 9 and 13 guarded outside for escapees. Accused pointed firearm at Zanele Mangava, which is in Count 26, and stole her cell phone, which is Count

13. It is alleged further that the deceased had a child in his hands and that the accused removed the child from him and threw the child to the deceased's wife, who was instructed to leave the room. Then accused 2, 3 and 16 fatally shot at the deceased and placed the firearm next to him to create the impression that their lives were endangered.”

10 Case number 7, Rustenburg CAS 1098/9/2008. The deceased is Ndimande. This is the case where Advocate Johan Smit, the then-DPP of the North West, issued a consent for centralisation in terms of section 111 of the Criminal Procedure Act that we spoke about yesterday. The deceased is Sifiso Ndimande. He was a member of the KwaMaphumulo Taxi Association, and it allegedly took place on 20 September 2009, and it relates to Counts 31 to 34:

20 “It is alleged that accused 2, 4 and 6 travelled to Rustenburg to the deceased's hideout, where the deceased has hidden himself. Where accused 2 and 4 entered and fired shots at the deceased, fatally wounding him, while accused 6 kept guard outside. Firearm is alleged to have been placed next to the deceased.”

Case number 8, Berea CAS 288/5/2008. The deceased is Thabong Simang, allegedly took place on May 24, 2008:

10 “Allegedly accused 4, 5, 6 and 13 forcefully opened with a crowbar and entered the deceased's apartment, then fired shots at the deceased, who ran to the balcony and fell down or was pushed to the ground floor, and further shots fired as he laid on the ground. Accused 7, 8 and 11 allegedly secured the ground floor area for possible escapees. Firearm was placed next to the deceased to create the threat impression.”

Docket number 9, Melmoth case 142/11/2008. The deceased are Bongani Biyela, Khanyisani and Khanyisani Biyela, allegedly took place on the 23<sup>rd</sup> of November 2008:

20 “Allegedly the deceased were awakened by a loud bang early in the morning while sleeping as doors and windows were broken. That is Count 45, malicious damage to property and others. Accused 2 and 4 allegedly entered the rondavel of Richard Biyela and pointed him with firearms. And those related to Count 42, assaulted him, that is Count 41, and

dragged him out of the room. Baba Biyela saw Makosasana, his brother's wife, being assaulted, that is Count 43, and pointed with a firearm, that is Count 44. He allegedly saw his 17-year-old son, Khanyisani Biyela, lying inside his rondavel in a pool of blood, that is Count 40. Bongani Biyela was also killed, Count 39. Firearms were placed next to the deceased to create the threat impression.

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Allegedly accused 2 and 4 fired shots, while accused 5, 7, 13, 14, 19, 25, 27, 28 and 30 were present.”

Docket number 10, KwaMashu CAS 629/2009. The deceased is Thokozani Ndaba and allegedly took place on 27 April 2009:

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“It is alleged that in the early morning of 27 April 2009, accused 2, 4, 5 and 6 forcefully entered the deceased's premises at G-Section KwaMashu and fatally shot the deceased in his bedroom, that is Count 53. The deceased was a section-204 witness in a cash-in-transit robbery in KwaMaphumulo. It is further alleged that the accused stole cash and

cell phone of the deceased and his wife, those constitute Count 57, and placed a firearm next to the deceased to create a threat impression. The deceased's wife and son are eyewitnesses. The ballistic expert Steyl stated that the deceased sat on the bed facing the dressing table and the shooter was in a standing position to the left of the deceased, which dispels the notion that the accused were under attack.”

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Docket number 11, Phoenix case 377/8/2009. The deceased is Lindokuhle Nzuza, allegedly took place on 10 August 2009:

“It is alleged that the deceased was accosted by accused 4, 13 and 15 as he was driving along the M25 in Phoenix, who drove parallel his car and fired shots at him. Further that the deceased's car stalled, the accused alighted and fired further shots at the deceased as he lay defenceless. Then the accused placed a firearm next to the deceased to create a threat impression. Captain Mangena, whose statement is A22 in the docket, finding that the deceased was shot four

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times. It is alleged further that the deceased was first shot in the cheek. He became unconscious and fell back on the seat. Then other wounds were inflicted while the deceased was lying backwards with his head on the headrest.”

That is according to the ballistic report. Docket number 12, KwaMashu CAS 698/11/2009. The deceased is Prince Thabethe, allegedly took place on the 26<sup>th</sup> of November 2008:

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“It is alleged that in the early morning, accused 2, 3 and 4 proceeded to the deceased's house, broke open, entered and fired shots at the deceased, fatally wounding him. The girlfriend of the deceased is an eyewitness who saw the shooting. Nkanyiso Ntenza, whose statement is A22, and Nqaba Mdluli, A21, alleged to have seen in Mbombayi [?] spook firearm taken from the Quantum vehicle and placed by accused 4 on the scene. The accused placed the firearm next to the deceased to create a threat impression. This firearm, the revolver, was defective. That was according to the ballistic expert. Ballistic expert, Steyl,

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A26 found multiple gunshots and that the deceased was lying on the bed when he was shot. The defective firearm dispels the myth that the accused were under attack.”

Docket number 13, eSikhawini CAS 3/04/2010. The deceased is Kwazi Ndlovu, a 16-year-old boy, which allegedly took place on the 1<sup>st</sup> of April 2010:

10 “It is alleged that in the early morning, accused 2, 4, 7, 8, 9, 11, 16, 23 and 24 broke open and entered the house of Mr Ndlovu whilst looking for escaped prisoners, Dili and Dumisani Chandu [?]. It is further alleged that the accused 2 fired shots with R5-rifle at the 16-year-old boy as he was asleep on the couch in front of a switched-on TV set. The deceased posed no danger at all to the accused. Ballistic expert Captain Mangena, whose  
20 A31 found that the three bullet wounds, the blood stain pattern and bullet holes all confirmed that the deceased was shot at while in a lying position on the sofa. Firearm was planted to create the impression that the deceased was a threat

to the accused.”

Docket 14, Bhekithemba CAS 44/05/2010. The deceased are Musang Ngcobo, Xolisani Ngcobo and Simphiwe Shozi.

Allegedly happened on the 10<sup>th</sup> of May 2012:

10 “Allegedly in the early morning at J-Section in Bhekithemba, accused 6, 7 and 13 asked for the whereabouts of deceased 3. They kicked and broke open the door of the room where the deceased was sleeping. Deceased 3 was looked for in connection with the killing of Captain Reddy. Eyewitness is Sibongiseni Ngcobo, whose statement is A6 in the docket.”

Docket number 15, Durban North CAS 67/7/2011. It is three of them. Durban North CAS 69/7/2011. Durban North CAS 71/7/2011. It has three deceased people, Jabulani Bengu, Dumisani Mgobozi and Boyiswi [?] Mbonambi, which happened on the 4<sup>th</sup> of July 2011:

20 “It is alleged that the deceased number 1 was spotted driving around Durban North. Accused 4 fired shots at the deceased whilst he was outside the vehicle. Ballistic expert Steyl A43 found multiple gunshots. Deceased 1 was lying or

bending when he was shot at whilst  
outside the vehicle. Further, it is alleged  
that the accused proceeded to Mhlanga  
and shot at deceased number 2.  
Eyewitnesses are Tshepiso Mbonambi,  
who is A4, and Wandile Mbonambi, who is  
A6, who allegedly saw deceased 2 raising  
his hands, asking *ngenzi*, which means,  
what did I do? And he was shot at by  
10 accused 13. Deceased number 3...”  
...[intervenes].

**CHAIRPERSON:** Before you proceed.

**ADV NOKO:** Yes, Chair.

**CHAIRPERSON:** Finish that one.

**ADV NOKO:** Okay:

“Deceased number 3, who had been in the  
house, ran through the bedroom sliding  
door to the outside, where he hit himself  
in the dustbin. The eyewitnesses saw the  
20 deceased jumping into the dustbin and  
alerted the accused. She witnessed the  
accused shooting the deceased a number  
of times through the dustbin. Firearms  
were allegedly planted at these three  
scenes to create the threat impression.

Ballistic expert Steyl, whose statement is A57 in the docket, said that in respect of deceased number 2, there were two gunshots. Deceased 2's head must have been on the floor or close to the floor when shot. Deceased 2 was falling or lying on his back when shot. Blood spatter on skirting showed that the firearm was not there at the time of firing, confirming the subsequent planting of the firearm. In

10

respect of deceased number 3, four indirect gunshots entered the dustbin, irregular entry.”

**ADV NOKO:** Yes, Chair.

**CHAIRPERSON:** Yes, when you look at the case of eSikhawini, CAS 3/4/2010, in respect of deceased Kwazi Ndlovu.

**ADV NOKO:** Yes, Chair.

**CHAIRPERSON:** What were the alleged offences that had  
20 been committed by Kwazi Ndlovu? Do you know?

**ADV NOKO:** According to what I found from the prosecution memorandum was that they were looking for somebody who had escaped from prison. Dili, Dumisani, something like that. Okay, Dili and Dumisani Shandu, apparently they had escaped from prison. So the police were looking for these

two people.

**CHAIRPERSON:** And they erroneously, from the look of things, entered the house of Mr Ndlovu and found Kwazi on the lounge.

**ADV NOKO:** Yes.

**CHAIRPERSON:** Is it safe to say Kwazi was mistaken as one of those people or escapees?

**ADV NOKO:** I do not think so, Chair, because according to the facts, Kwazi Ndlovu was sleeping. So even if it was an  
10 issue of mistaken identity, why start by firing shots? So I do not know. If it was indeed a mistaken identity, why fire shots at somebody who is sleeping?

And then the firearm is found there at the scene and it shows the deceased did not fire any shots at them and it shows the deceased was shot at while lying, sleeping on the sofa. It shows the deceased, whoever he is, was not posing any danger to the deceased, I mean to the accused, for them to have returned fire. So mistaken identity or not, according to me, I do not think the killing was justified.

20 **CHAIRPERSON:** But the point that I am making is they were looking for those two escapees.

**ADV NOKO:** Yes.

**CHAIRPERSON:** And they entered Mr Ndlovu's house.

**ADV NOKO:** Yes.

**CHAIRPERSON:** They shot at this young boy who was lying

on the sofa.

**ADV NOKO**: Yes.

**CHAIRPERSON**: Could they have mistaken Kwazi to have been one of those people? We do not know whether at that time they formed the view, but because they were looking for the escapees, so why would then, if they are looking for the escapees, just shoot at the young boy?

**ADV NOKO**: Exactly. Why would they shoot at the young boy, Chair? That is what we are saying. Even if it was the  
10 people whom they are looking for, that Dili and Dumisani, they were not under those circumstances still allowed to shoot and kill at them because they were not under any attack.

**CHAIRPERSON**: I beg your pardon, that is a different matter. I am just trying to understand why, if they were looking for somebody who would have committed an offence of escaping, would they enter this specific house and then shoot this young boy? You remember in all the cases, almost  
20 all of them, the deceased people were alleged to have done something. For instance, in respect of a number of them, including Mr Mkhize, the allegation is that they shot at Superintendent Choncho in most of those instances. In respect of Kwazi, the allegation is that they were looking for the two escapees and they went into this house, Mr Choncho's house and found this young man lying. Could they

have mistaken him to be one of those people?

**ADV NOKO**: Under the circumstances, I do not think so. Why could not they verify that? I do not know. They may have, they may say so.

**CHAIRPERSON**: Yes.

**ADV NOKO**: But, ja.

**CHAIRPERSON**: In your view, it could have just been a rampant killing or shooting.

**ADV NOKO**: Yes, based on the history of all these cases.

10 And with regards to the killing of Superintendent Choncho, the witnesses are saying something else about who really killed him. We will hear from their statements.

**CHAIRPERSON**: Yes. In respect of case 15, the Durban North case you are referring to at page MN00036.

**ADV NOKO**: Yes, Chair.

**CHAIRPERSON**: Those deceased people, what were the allegations against them? I do not see any such allegations made against these people.

20 **ADV NOKO**: There were not allegations like highlighted in each of the cases. Some were apprehended for, we do not know. For example, the witnesses, the eyewitnesses who were there said they saw one of the deceased, deceased 2 raising his hands and asking, what did I do? Well, he may have said that anyway, but then there is nothing that is being said to mean these are the reasons why we were seeking

these people or arresting them.

So it is not in all cases where it is indicated that this person was sought for this reason. Although most of them is in respect of the killing of Superintendent Zethembe Choncho, but the witnesses are saying allegedly the Cato Manor group knew exactly who killed Zethembe Choncho, but that was used as a reason to apprehend people like that, to say you killed Choncho, you killed Choncho. That is what the witnesses are saying.

10 **CHAIRPERSON:** Could these deceased persons, Bengu, Mgobozi and Mbonani also have been part of those people who were killed during the rampant shooting?

**ADV NOKO:** From the facts, yes, it appears so because there is no reason indicated to say they were sought in connection with this crime.

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

**ADV NOKO:** Yes, thank you, Chair. Docket number 16, eSikhawini CAS 50/9/2011. The deceased is Qinisani Gwala, allegedly happened on the 4<sup>th</sup> of September 2011:

20 “Allegedly accused 4, 8, 11, 25 and 26 went to the community hall looking for Pilani Bah Ndlovu. Despite mistaken identity and witnesses who confirmed that the deceased was not Bah, the accused handcuffed him and took him to the

residence, handcuffed. Accused 8, 25 and 26 alleged that they entered the room to search, uncuff the deceased and the latter went ahead of them and took a gun from the bed, then accused 26 shot him fatally. The deceased brother Zakele, whose statement is A24, was present, but his head was covered with a washing basin by the accused. Ballistic expert, Captain Mangena, A26, found one gunshot wound on top of the head, which meant the shooters were standing in front of the deceased who was in a seated position when shot at.”

10

Another modus operandi is alleged here as well, but that will be seen also, will be heard in the statement of Thandeka Nompumelelo Sokhulu, who was the wife of Lindelani Bhutelezi, who was also killed, where her head was covered with a blanket. So this one, the deceased brother's head was covered with a washing basin and then immediately the deceased was shot at. Docket number 17, KwaMashu CAS 116/8/2008. The deceased is Simfana Futi Zwane [?], allegedly took place on 31 July 2008:

20

“Allegedly accused 4, 8, 10, 11 and 15 proceeded to the deceased home in

KwaMashu and found the deceased sitting with his girlfriend in a vehicle and ordered them out of the car, separated deceased from his girlfriend and moved the former...”

Meaning the girlfriend, the deceased, I mean, meaning the deceased, they moved the deceased towards the boot of his car:

10 “Accused 4 then shot at the deceased, alleging that the deceased was trying to grab a firearm from the car boot. The deceased’s girlfriend refused that the deceased was armed.”

Docket number 18, Estcourt CAS 34/8/2008. The deceased is Zanele Majola. Allegedly took place on the 6<sup>th</sup> of August 2008:

20 “It is alleged that accused 4, 5, 13 and 30 were escorting the deceased to their offices in Durban when they stopped at Midway Caltex garage in Estcourt to use the toilet. The deceased, who was handcuffed, went into the toilet with accused 5 and 13, who alleged that the deceased asked to be uncuffed to use the toilet. Then he tried to disarm accused

13, then accused 5 shot and killed him. Firearm was placed to create the threat impression. An inquest was held and the magistrate found accused 5 criminally responsible for the deceased's death. The second suspect who was escorted, ...[indistinct] Mngomezulu, made a confession implicating nine others who were systemically killed except Mngomezulu and Mavundla, who are serving life sentences in prison as a result of Mngomezulu's confession.”

10

That is another matter. Docket number 19, KwaMashu CAS 314/11/2008. The deceased is Nhlanhla Masondo. Allegedly took place on 12 November 2008:

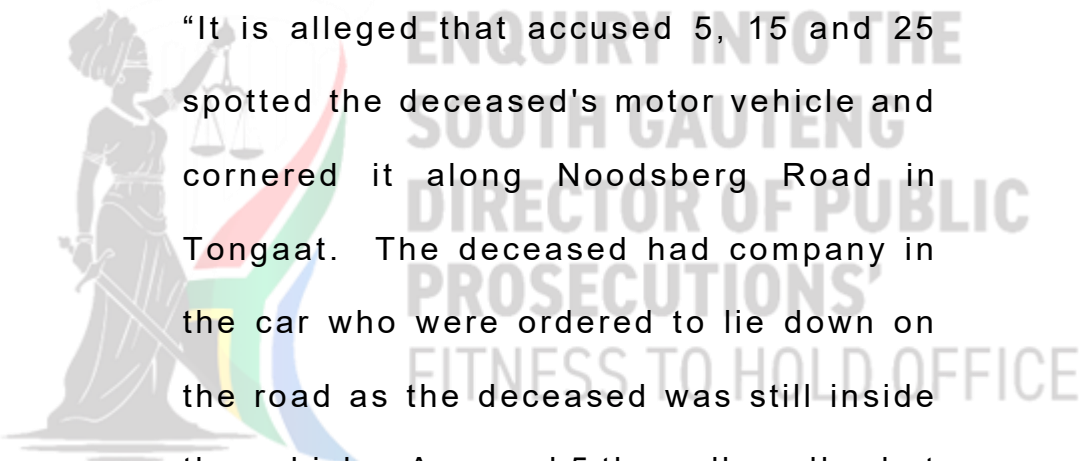
“Allegedly accused 5, 6 and 27 went to the deceased's home in Ntuzuma. They entered the house, took the deceased into his bedroom and closed the bedroom door.

20

The deceased's mother pleaded with the accused to enter the bedroom with her son, but her entry was refused. Further alleged that the accused stole the deceased's cell phone, wristwatch and bank cards. Those constitute Count

number 108. The accused then fired shots at the deceased while in the bedroom, fatally wounding him and placed the firearm next to the deceased to create a threat impression. Witnesses are the deceased's mother and the deceased's younger brother who were in the house at the time.”

Docket number 20, Tongaat CAS 357/3/2009. The deceased  
10 is Dan Phiri. Allegedly took place on 18 March 2009:



“It is alleged that accused 5, 15 and 25 spotted the deceased's motor vehicle and cornered it along Noodsberg Road in Tongaat. The deceased had company in the car who were ordered to lie down on the road as the deceased was still inside the vehicle. Accused 5 then allegedly shot and killed the deceased whilst the latter was inside the motor vehicle, then placed  
20 the firearm next to the body of the deceased to create a threat impression. Witnesses are Mavundla and Skhumbuzo Zikhali who were later killed by the Cato Manor Unit. Captain Mangena's ballistic reconstruction findings are that the

shooter was standing about 60 centimetres from the deceased when he shot him. Gunshot entry on the right ear entry below the chin and re-entering the left arm.”

Docket number 21, KwaDukuza CAS 115/3/2010. The deceased is in Nhlanhla Hlongwa. Allegedly took place on the 6<sup>th</sup> of March 2010:

10 “Allegedly accused 13 and 15 proceeded to the deceased's house in Stanger. The deceased opened the door for them whereupon accused 13 fired shots at him wounding him fatally. Accused placed the firearm next to the deceased to create a threat impression.”

**CHAIRPERSON:** If you may pause there? These summaries, the summary in your memo dated 15 September 2020.

**ADV NOKO:** Yes.

20 **CHAIRPERSON:** Which you directed or sent to Advocate Batohi in response to her letter.

**ADV NOKO:** Yes.

**CHAIRPERSON:** Are almost the same as the summaries which you provided in your memo directed to all your colleagues dated October 2020.

**ADV NOKO:** Yes.

**CHAIRPERSON:** Save with regard to few of those summaries, most of them are detailed.

**ADV NOKO:** Yes, Chair.

**CHAIRPERSON:** Some of the September summaries are quite brief. Do you agree?

**ADV NOKO:** Yes. Yes, Chair. I am expanding more in the October 2021.

**CHAIRPERSON:** Yes, but they do set out sufficient details. And do correct me if I am wrong.

10 **ADV NOKO:** Yes.

**CHAIRPERSON:** Which informs Advocate Batohi of what this Cato Manor team is alleged to have done.

**ADV NOKO:** Yes, Chair. Actually as far as the Cato Manor and all other cases are concerned, the details are the same. The October 2020 does not have more details in respect for example the Cato Manor case than the 15 September one to Advocate Batohi. The only further details that are there in the 27 October 2020 report is with regards to other matters that I was just venting on. But with regards to the Cato Manor  
20 one, it is exactly as it appears.

**CHAIRPERSON:** Yes, that is the point I am making.

**ADV NOKO:** Yes.

**CHAIRPERSON:** Which then means as at September 2020, Advocate Batohi was aware of the relevant contents of the dockets in respect of the Cato Manor cases.

**ADV NOKO:** Yes, she was. And I also attached annexures. It was not only my report, yes. Witness statements as well.

**CHAIRPERSON:** I ask you this question because Advocate Batohi testified before this enquiry that she never read the dockets.

**ADV NOKO:** Yes, Chair.

**CHAIRPERSON:** Nonetheless, if she was made aware of the contents of those dockets in summarised form as far back as September 2020, she would have been in a position to form  
10 a view whether a *prima facie* case existed in respect of which the Cato Manor members could have been prosecuted.

**ADV NOKO:** Definitely, Chair. And she could have verified from the dockets. My report was clear as it is now, yes.

**CHAIRPERSON:** According to her, she only relied on the memorandum that was provided by the, first of all, the De Kok team in which dockets were not summarised, if my recollection is correct.

**ADV NOKO:** Yes, Chair.

**CHAIRPERSON:** But already in September 2020, she was  
20 or ought to have been aware of the contents or summarised contents of those dockets.

**ADV NOKO:** Yes, Chair.

**CHAIRPERSON:** Thank you.

**ADV KHOOE:** Thank you, Advocate Noko. I have two questions. The first one relates to docket 18, Escourt CAS

34/8/2008.

**ADV NOKO**: Yes.

**ADV KHOOE**: Where the deceased is Sanele Majola.

**ADV NOKO**: Yes.

**ADV KHOOE**: In the next page, there is an allegation that the second suspect who was escorted, I think, together with Sanele Majola, ...[indistinct] Mngomezulu, made a confession implicating nine others who were systematically killed except Mngomezulu and Mavundla, who are now serving a life  
10 sentence at Kokstad as a result of Mngomezulu's confession. But what I want you to expungiate[sic] on, if you can, is on where the memorandum say the nine others who were implicated were systematically killed. Do you have information on who killed him or what happened? Was it the Cato Manor?

**ADV NOKO**: I am not sure. The prosecutors will have more information on that, really. It seems so, but I cannot assume, really. I am not sure who killed them.

**ADV KHOOE**: Meaning that the death of these nine people  
20 were never investigated?

**ADV NOKO**: Yes, because I think so, yes, because none of them are mentioned in anywhere in the case. Like it was a separate thing. I am not sure about that.

**ADV KHOOE**: But as it is put here, we can assume that they did not die naturally. They were killed.

**ADV NOKO:** As it appears, yes, they were systematically killed. It is alleged like that.

**ADV KHOOE:** Okay, thank you. Then let us go to docket 20, Tongaat, CAS 356/3/2009. You also say that Skhumbuzo Zikhali was later killed by the Cato Manor Unit.

**ADV NOKO:** Yes.

**ADV KHOOE:** Just down there, I think four lines from the last line.

**ADV NOKO:** Yes.

10 **ADV KHOOE:** Was this Skhumbuzo Zikhali's murder investigated and is it included in the charges against the Cato Manor Units?

**ADV NOKO:** It does not seem so. It does not seem so. I do not know if it was investigated or what, but that is the allegation.

**ADV KHOOE:** So it suffered the same fate as the nine others?

**ADV NOKO:** It appears so in docket number 18, yes.

20 **ADV KHOOE:** Would I be correct to assume that the people who were killed or the dockets that were opened do not cover all the people that would have been allegedly killed by the Cato Manor Unit?

**ADV NOKO:** Yes, you will be correct, ma'am, because even when you look at the statement of Mr Aristeidis Danikas, he is mentioning incidents that happened even prior to the dates

that are covered by the indictment, which is May 2008 to September 2011. He mentions that that is why the prosecution team was also using the similar fact evidence which is allowed in terms of POCA section 2, because there were incidents that happened prior that are not even covered in the indictment.

**ADV KHOOE**: Thank you, ma'am.

**ADV NOKO**: Thank you.

**CHAIRPERSON**: Now, before you proceed to the analysis of  
10 the evidence, it is apparent from those summaries, if my reading is correct, Major General Booysen is not directly implicated. You referred to accused 2, 3, all those accused persons. There is no mention of accused number 1 in all those summaries.

**ADV NOKO**: In the summaries, yes, ma'am, he is not directly mentioned like that.

**CHAIRPERSON**: Yes.

**ADV NOKO**: But as we go to what racketeering is, what POCA legislation provides, and why ...[intervenes].

20 **CHAIRPERSON**: Well, that was going to be my next question. I just wanted to make clear as to how then, Advocate, I beg your pardon, Major General Booysen comes into the picture.

**ADV NOKO**: Yes.

**CHAIRPERSON**: And you start dealing with that part when

you deal with the analysis?

**ADV NOKO**: Yes, yes. Chair, I think I have analysed the statements better in my affidavit. Should I read them from my affidavit than from the report?

**CHAIRPERSON**: Yes. You are testifying. You can guide us what is best in the circumstances.

**ADV NOKO**: Yes, I will do that.

**CHAIRPERSON**: If you take a look at those paragraphs.

**ADV NOKO**: Okay.

10 **CHAIRPERSON**: I think we have ...[indistinct – microphone switched off].

**ADV NOKO**: Yes. Okay. Thank you, Chair. It is on page 10 of my affidavit from paragraph 34. I am saying there some of the statements were of Mr – okay. Maybe, can I start on paragraph 33 so that it gives context? Paragraph 33 is:

20 “Apart from the prosecution memorandum and other documents, I was also provided with statements of some of the witnesses as per a memorandum from Advocate KR Mathenjwa, a deputy DPP who was a member of the prosecution team in the Cato Manor case. The memorandum signed by the lead prosecutor, Advocate Sello Maema, is attached hereto and marked as Annexure MN4.”

In paragraph 34 ...[intervenes].

**CHAIRPERSON**: That will be your MN00062, which you will include as one of the exhibits, but for now, it is marked MN4.

**ADV NOKO**: No, Chair, it is not. It is not the memorandum. It is the memorandum, but it does not have the cover letter of Advocate Mathenjwa as well.

**CHAIRPERSON**: [Indistinct – microphone switched off].

**ADV NOKO**: Yes.

**CHAIRPERSON**: Please do not rise. What are you telling  
10 the witness? Yes. The people who are standing there, you are an officer. You are an officer. So just sit there. Do not go closer to the witness because the witness is under oath. You cannot say anything to the witness. The people who are sitting over there, if we are making mistakes, do come down or anyone of the lawyers will assist, but do not rise. Yes, thank you. I was referring to MN00063.

**ADV NOKO**: Yes. Yes, Chair.

**CHAIRPERSON**: And that is the memorandum of Advocate Maema if you look at MN00113.

20 **ADV NOKO**: Yes.

**CHAIRPERSON**: Even if it does not covering letter. It is clear to us that there is a prosecution memorandum and the signature of Advocate Maema.

**ADV NOKO**: Yes. Yes, Chair. Okay. Okay. Then paragraph 34:

“Some of this witness...” ...[intervenes].

**MS RAMAGAGA**: May I come in? I thought the Chair was still busy. Ja. We have been told by Advocate Batohi that prosecutors, when they assess the evidence before them in order to decide whether to prosecute or whether to continue with prosecution or whether to stop prosecution, they look at the quality of evidence before them. And she spoke about, or she indicated that sufficient evidence is required for one to decide to proceed to prosecution, and it is not conclusive  
10 evidence that is required. It is sufficient evidence. Do you know that and do you agree with that?

**ADV NOKO**: I partly agree with that because even if there is *prima facie* case, *prima facie* case does not necessarily mean sufficient, but they overlap. But the criteria I know of *prima facie* case and the case must have reasonable prospects of a successful prosecution. So if you have that, then the matter must be enrolled and then be proceeded, be prosecuted.

**MS RAMAGAGA**: Right. Looking at these Cato Manor  
20 cases, you say you are the prosecutor that signed a recommendation that was made to the NDPP that racketeering charges should be preferred against the particular police officers.

**ADV NOKO**: Yes.

**MS RAMAGAGA**: It is you?

**ADV NOKO:** Yes.

**MS RAMAGAGA:** Now, when you signed or made a recommendation that racketeering charges be preferred, what was your understanding of the evidence? Or rather, let me put it this way, were you satisfied that there is sufficient evidence on which one can charge or not?

**ADV NOKO:** Yes, I was satisfied that there is *prima facie* case, there is sufficient evidence that was provided because I had sight of the witness statements. I had sight of the  
10 prosecutor's memorandum. They briefed me even verbally. I had sight of their slide presentations. They were explaining to me that this is the case. I read the statements that I had sent by Advocate Mathenjwa and this memorandum, like, I was satisfied. I still am.

**MS RAMAGAGA:** Now, based on your recommendation and maybe other information presented, then Advocate Shaun Abrahams then signed the certificates in 2016.

**ADV NOKO:** Yes, February 2016.

**MS RAMAGAGA:** February 2016.

20 **ADV NOKO:** Yes. He also satisfied himself the same way.

**MS RAMAGAGA:** Right. And then you continued to occupy the position of the Director KwaZulu-Natal until Advocate Batohi became the National Director of Public Prosecutions.

**ADV NOKO:** In 2019, yes, February, I think she came in, but I left to be the DPP for North West in – well, I left in May,

acted there, but permanently appointed in July 2019.

**MS RAMAGAGA**: Okay. According to your knowledge about these dockets, between the time when the certificates authorising the police officers with racketeering and the time that Advocate Batohi took or got appointed to the position of the NDPP, do you know as to whether there are any further developments that took place that could have brought about the need to revise or to review the decision to issue the racketeering certificates?

10 **ADV NOKO**: My understanding was that Advocate Batohi revised and ended up withdrawing in this case based on the concerns in the media that was there about the case, General Booyesen complaining that he has been targeted and all of it. I am not aware of anything, or perhaps they sent her representations. I am not aware of that, but that is my understanding that based on what is being said out there about this case and others.

**MS RAMAGAGA**: Now, at the time when you were requested to furnish more information to the NDPP, that request that  
20 you responded to on the 15<sup>th</sup> day of September, and the focus of my question is just the Cato Manor cases. The rest do not, do not be concerned about them.

**ADV NOKO**: Yes.

**MS RAMAGAGA**: Now, at that time when you were invited to respond to the enquiry by the NDPP, do you know as to

whether by then the decision to issue the racketeering certificates by Advocate Abrahams had been reviewed or not? Do you know whether it had been reviewed or not?

**ADV NOKO**: She had already done that. She did that in 2019. So the case was already withdrawn in 2019.

**MS RAMAGAGA**: And she sought for further information.

**ADV NGCUKAITOBI SC**: And then only after then she sought explanations, which I supplied as per the 15 September 2020 report explaining what the case is all about.

10 **MS RAMAGAGA**: And do you know as to whether there is anything that she did in response to receipt of the information that you brought to her attention about these cases?

**ADV NOKO**: Yes, she wanted an enquiry to be held for me. That was her response.

**MS RAMAGAGA**: Against you?

**ADV NOKO**: Yes.

**MS RAMAGAGA**: Okay. Thank you, Chair.

**CHAIRPERSON**: Yes, I think when we interrupted you, you were then, in addition to the summaries in relation to the  
20 dockets, you referred to the further statement that bolsters the evidence provided for in the dockets.

**ADV NOKO**: Yes, Chair.

**CHAIRPERSON**: And you start in your affidavit with the summary of the statement of Mr Danikas.

**ADV NOKO**: Yes, Chair.

**CHAIRPERSON:** I think it is at page 11 of your affidavit.

**ADV NOKO:** Yes, Chair. I can read it.

**CHAIRPERSON:** You can read that part of the summary into the record.

**ADV NOKO:** Yes, Chair. Thank you.

**CHAIRPERSON:** We have already read the statement of Mr Danikas, but because you are testifying, you can put it the way you want to put it.

**ADV NOKO:** Yes, Chair. Thank you. Mr Aristeidis Danikas' statement was one of those that I had sight of, but the witnesses mentioned here are not all the witnesses in the case dockets. So, he said that he was a member of the Cato Manor SVC unit and worked with this unit:

“In his statement, among others, Mr Danikas mentioned that a standardised method was always used, that is, they shot to kill, head, tortured, altered the scenes of crime. Major General Booyesen was called by his members to the crime scene to confirm and manipulate the scene. He further stated that...”

I am quoting him:

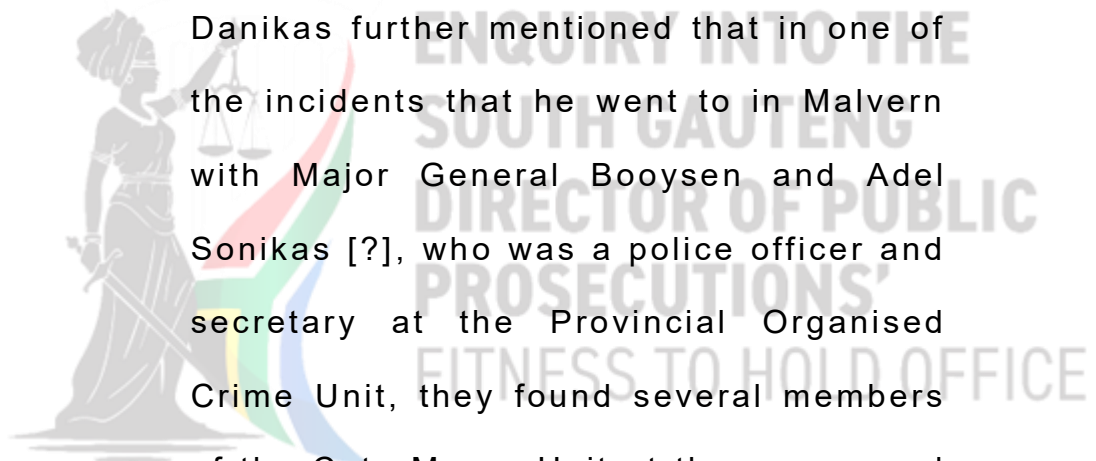
“I was present in some of the cases I mentioned earlier when I was accompanying Major General Booyesen to

the crime scene...”

And I think there is some grammar error here, but I did not want to change it because I was quoting:

10 “...and ordered Major General Booyesen in front of me to his members to collect all the spent police rifle cartridge casings and hand them over to the responsible officer investigating the case. This usually happened after Major General Booyesen had arrived at the scene of crime. Mr Danikas further mentioned that in one of the incidents that he went to in Malvern with Major General Booyesen and Adel Sonikas [?], who was a police officer and secretary at the Provincial Organised Crime Unit, they found several members of the Cato Manor Unit at the scene, and two African men were in the garage of a house. One of them was shot and killed in the car, and the other was injured and still alive, but was in great pain and bleeding heavily. Mr Danikas mentioned that Major General Booyesen said to him that they would call the ambulance and the Independent Complaints Directorate only

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if the second suspect died. So everyone waited around the second suspect to succumb to his wounds. Then the suspect died after a few minutes. He mentioned that he had requested Major General Booyesen three times before the suspect died to call an ambulance. His statement is attached hereto and marked as Annexure MN5.”

10 The second witness statement that I also read is of Mr Bheki Nkosi Tiyane [?] Ndlondlo:

“He was a taxi owner and chairman of the disciplinary department at Stanger Taxi Association SGA. He stated that he knew every secret and would always have secret meetings with other members of the association, even sensitive meetings to discuss the person who must be killed. He mentioned Nkosi Zondi, who was a police officer working for the Cato Manor Unit, and to whom information about the KwaMaphumulo Taxi Association, MTA, having killed Mr Choncho was taken. Then Nkosi Zondi arranged with his unit Cato Manor and also Booyesen, his

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commander. Then members of MTA were assassinated, the first being Lindelani Buthelezi, killed by the Cato Manor Unit. He stated that he was present when a lot of money was arranged to pay the Cato Manor for the job well done. People who became next to be killed by Cato Manor Unit were Gopolo Tantuli [?] and Nathi Mthembu, killed in Mandeni in a house.

10

Him and four others, being Mr Khanyile Ngcobo, Sanele and Bongizwe, took out a lot of cash and tasked Sanele and Bongizwe to go pay the Cato Manor for the job well done, which payment he had to place at the Tongaat Toll Plaza. He mentioned that the person who was killed next by the police was Mdu Mkhize and money was paid to those police officers.

20

He said that the fourth incident was the killing of Mr Ndimande by the Cato Manor Unit in the Howick area. Thereafter, he had a secret meeting with the other four members to arrange payment to the Cato Manor Unit and an amount of R750 000 was raised. This money was given to

Sanele and Bongizwe to go pay Cato Manor and the former, being Sanele, would tell them that the money was going to be given to the boss, referring to Mr Booyens. He further stated that the last person to be killed from the MTA by the Cato Manor was Mr Bongani Mkhize, who was the chairman of the MTA and they raised about R1 000 000 and gave Sanele and Bongizwe to pay Cato Manor. He said that Sanele told them that that money would be paid to Booyens, the big boss of the Cato Manor Unit. His statement is attached hereto and marked as Annexure MN6.”

The third witness statement was of Mr Bongani Mandla Mkhize:

“He stated that he was employed by a company that was providing security service to the members of STA. He was always assigned to be a bodyguard of Mr Bongizwe Mhlongo, a PRO at STA and whom he was close to. During conflicts and after the killing of Choncho, if the owners of STA hated somebody, they will

supply their names to Cato Manor Unit as  
being responsible for Choncho's death.”

**CHAIRPERSON:** Paragraph 35.8 refers to Annexure MN6.

Whose statement is that?

**ADV NOKO:** Paragraph 35?

**CHAIRPERSON:** 35.8.

**ADV NOKO:** It is a statement of the previous witness, which  
is Mr Bheki Nkosi and Tiyani Ndlondlo.

**CHAIRPERSON:** Yes, thank you.

10 **ADV BALOYI-MERE SC:** Before you proceed, can we also  
ask the leader, Ms Khooe, to make sure that the annexures  
that referred to are marked as evidence. You have already  
referred to a number of annexures up to Annexure MN6.

**ADV NOKO:** Yes.

**ADV KHUMALO SC:** I hope you are keeping record.

**ADV NOKO:** Thank you, Chair.

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

**ADV NOKO:** Yes, thank you, Chair. Okay, maybe let me  
finish and then I just wanted to elaborate on this statement  
20 after I read it.

**CHAIRPERSON:** Which part?

**ADV NOKO:** Up to the end of paragraph 25. Then I will  
elaborate a little bit on it.

**CHAIRPERSON:** Paragraph 25 of your affidavit?

**ADV NOKO:** At the end of it, yes.

**CHAIRPERSON:** 25?

**ADV NOKO:** I am about to read 25.7, I am sorry. 25.7 and 25.8. And I am saying when I am done with that, I will elaborate a little bit.

**CHAIRPERSON:** The numbering of the paragraphs is confusing.

**ADV NOKO:** On page 40.

**CHAIRPERSON:** You see you dealt with 35.7, 35.8, now 25.6.

10 **ADV KHOOE:** My apologies for that. When I was preparing, I accidentally did not see this part.

**CHAIRPERSON:** You made some errors there.

**ADV KHOOE:** Yes, I did.

**CHAIRPERSON:** You made some errors, Counsel.

**ADV KHOOE:** Yes.

**CHAIRPERSON:** You can correct the numbering as you go along. Yes. The main paragraph is paragraph 35. And I see at page 12, you start maybe at page 11. 35.1, 2, 3, 4, 5, 6, 7, 8. And then at page 13, as regards Mr Bongani Mandla  
20 Mkhize, you say 25.6. I think the correction should start there.

**ADV NOKO:** Yes. I apologise, Chair. I also did not pick it up. It should be 35.9.

**CHAIRPERSON:** It should be 9.

**ADV NOKO:** Yes.

**CHAIRPERSON:** You can make it 9. And then you keep on correcting as you go along.

**ADV NOKO:** Yes, Chair. Okay, Chair. I am then about to read on page 14, which will be 35.10.

**CHAIRPERSON:** 35.10?

**ADV NOKO:** Yes.

**CHAIRPERSON:** Yes?

**ADV NOKO:** Okay. Yes. It reads thus:

10 “Mr Mkhize further stated that some of the victims on the list was Khopolota and Mthembu. Bongizwe Mhlongo had received photos on his cell phone depicting that Khopolota and Mthembu had been killed and Bongizwe Mhlongo said that he was sent those photos by Mostert from the Cato Manor Unit. He said that then Bongizwe Mhlongo reported that he was going to the Cato Manor members who sent him the photos and as his  
20 bodyguard, him and Bongizwe drove to Tongaat Toll Plaza, where they met Mr Mostert and another white man in a silver BMW sedan. There, Bongizwe took out a transparent plastic bag with a lot of money in banknotes from his car's boot and got

into Mr Mostert's car. Later, he came out of Mr Mostert's car without that plastic of money. His statement is attached hereto and marked as Annexure MN7.”

**CHAIRPERSON:** That paragraph will be 35.11.

**ADV NOKO:** Yes, Chair. Yes.

**CHAIRPERSON:** Annexure MN7 is MN00135, which I suppose will be properly marked MN7. It is not marked, Advocate Khooe. And you will later then provide a list of  
10 those exhibits.

**ADV KHOOE:** We will do so, Chair.

**ADV NOKO:** Yes, thank you, Chair. My little bit of elaboration that I wanted to mention was that according to Mr Bongani Mandla Mkhize, they know who killed Mr Choncho. And it is definitely not the people who have been sought allegedly for killing Superintendent Choncho. Because hitmen were allegedly arranged to kill Mr Choncho and everybody else was blamed for that, whom they wanted killed and they will say they killed. So the reason would be people  
20 are taken because they killed Choncho. Although the real people who killed him are known. So that is what he is highlighting. That is what I gathered from his statement.

**CHAIRPERSON:** Yes, thank you.

**ADV KHOOE:** Before you move on, at paragraph 35.6, 35.7 and 35.8, you – no, no, 35.9, you refer to money being paid.

And the allegation is that the money will be given to the big boss. Where did the money come from? Was it from the Taxi Association?

**ADV NOKO**: Yes, according to Mr Bongani Mandla Mkhize, him and others, actually, it is Mr Bongani, Bheki Nkosi ...[indistinct] he says him and Mr Kanyile, Mr Ngcobo, Sanele and Bongizwe took out a lot of cash. They gathered money and they went to pay Cato Manor Unit for having killed Khopolota Ntuli and Nathi Mthembu. That is what he is saying  
10 in his statement.

**ADV KHOOE**: Thank you.

**CHAIRPERSON**: Please just give me a second. Now, in relation to the gathered money that you have just mentioned.

**ADV NOKO**: Yes, Chair.

**CHAIRPERSON**: Mention is also made of monetary awards to the officers who allegedly killed people.

**ADV NOKO**: Yes, Chair.

**CHAIRPERSON**: If you look at your September 2020 memorandum to Advocate Batohi, it does not have a page  
20 number, it is page 38 of 56, the September memorandum.

**ADV NOKO**: Yes, Chair.

**CHAIRPERSON**: At the bottom there, paragraph 5, monetary awards. Can you read that paragraph, please?

**ADV NOKO**: Okay. Thank you, Chair:

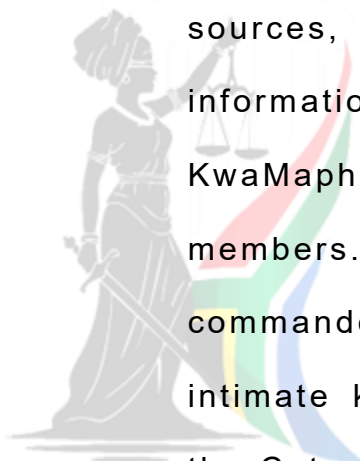
“The South African Police Service

accepted that the SVC Cato Manor section was honest in combating the taxi violence in the province and rewarded all officers who were involved in the Taxi Violence Task Team, including Booyesen. The reward was in the form of cash and certificates. The motivation for the reward states the role of Booyesen in the operation, hence he was rewarded.

10

Booyesen further motivated for payment of

sources, informers who provided information that led to the killing of the KwaMaphumulo Taxi Association members. Booyesen, as the provincial commander of Organised Crime, had intimate knowledge of the operations of



the Cato Manor SVC section when it was

eliminating the KwaMaphumulo Taxi Association members instead of arresting

20

them for any alleged offences. As a manager, he did nothing to stop this killing spree because it was fulfilling their arrangement with the Stanger Taxi Association, as stated in Mathonsi's statement."

**CHAIRPERSON:** Advocate Khooe and your team, perhaps you can assist here. In our records, the document that we read last year, the records are voluminous, but there is an annexure that shows that members of the Cato Manor Unit were paid a certain amount of money. If my recollection is correct, it was R10 000 per head. Would you remember where in the records we find that? You can look into that so that I can ask the witness about it. If not, we can park it and deal with it later after my researcher has picked the page.

10 **ADV BALOYI-MERE SC:** As a follow-up to your question, when one looks at what you have in your memorandum of September, which talks about monetary awards, this would obviously come from SAPS, what you are referring to in your September memorandum?

**ADV NOKO:** Yes, those are performance awards.

**ADV BALOYI-MERE SC:** Performance awards.

**ADV NOKO:** Yes.

**ADV BALOYI-MERE SC:** Meaning that they got their performance awards and the reward from the Taxi Association for having eliminated these people?

**ADV NOKO:** Yes, according to the witnesses, they were paid the monies and also on the other hand, the employer, SAPS, reward them for good performance.

**ADV BALOYI-MERE SC:** Thank you.

**CHAIRPERSON:** Good performance in this case, meaning

for the killing of the deceased?

**ADV NOKO**: Well, that is what it is, but obviously it is not mentioned like that. It is mentioned as eliminating or combating taxi violence in the area, whereas according to the witnesses who were members of the Stanger Taxi Association, they allege in their statements that as members of the Stanger Taxi Association, they colluded or they agreed with the Cato Manor Unit to deal with the KwaMaphumulo Taxi Association. Hence, all the people that were killed were  
10 members of the KwaMaphumulo Taxi Association. However, to the employer, it appears to have been portrayed as having quelled taxi violence in the province. Hence, the employer rewarded them for that.

**CHAIRPERSON**: Can you just give me a second?

**ADV KHOOE**: Chair?

**CHAIRPERSON**: Yes?

**ADV KHOOE**: I am told it is on page SB1A.

**CHAIRPERSON**: SB?

**ADV KHOOE**: 1A, SB1A0A2.

20 **CHAIRPERSON**: Some of our bundles are stored ...[indistinct – microphone switched off]. I beg your pardon, thank you. Yes, our bundles are kept elsewhere because we do not have a space here. They will bring those documents. We have the Booyesen's Bundle 1 of 11. In that bundle, there are pages B00014 to B00015, 16 and 16. Those three pages

show a list of officers, their surnames, their initials and the awards and the total amount of money.

We will compare that with the one that you have just referred to us, but in most instances, we will tick the names. If you look at the one that appears at B00016, most of those people were given R10 000 awards, and they are officers. If you look at B00015, you will see all of them are officers. Some were given R10 000 awards. In fact, most of them and others, a few of them, R15 000.

10           On the first page of that award list, B00014, the first one there is Major General Booysen, then Brigadier JW, R10 000, Warrant Officer Padayachee, nothing, and the list follows, but most of them were given higher amounts. I think the highest paid there is R95 000 to Warrant Officer Mostert.

          What I want to ascertain regarding these monetary awards that you are referring to is whether the money that was collected, the R750 000 and the R1 000 000, is the money that was used to pay these awards which I have referred to in these three pages. If you know, if you do not,  
20 we will understand.

**ADV NOKO:** Yes, Chair. No, my understanding from the reading of the witness statements was that the R750 000 for the murder of Khopolota Ntuli and somebody else and the R1 000 000 for the murder of Mr Bongani Mkhize, who was the chairman of the Stanger Taxi Association, those are

separate.

That is what the Stanger Taxi Association gathered to pay the Cato Manor, as per the witness statements, to say you have done well by killing these people because their deaths were planned. And according to the witnesses, they were working from the Stanger Taxi Association, they were working together with the Cato Manor police officers and they had asked them to kill these people.

After killing them, they paid them to say thank you.

10 That is why one of the witnesses, I do not know whether it is Bongizwe Mkhize, he says he was even sent photos. He was told that Bongizwe was sent photos on his cell phone showing that some people, Khopolota and somebody else were killed and he was sent those photos by Mostert. Mostert is from where? From the Cato Manor. He is the one who allegedly received R95 000 from the police. So they are separate, Chair. The monetary awards are by the employer.

**CHAIRPERSON:** Yes, that is what I want to understand.

**ADV NOKO:** Yes, it is separate, Chair.

20 **CHAIRPERSON:** Yes.

**ADV NOKO:** I am sorry for going the long way. I was trying to elaborate and make it clear.

**CHAIRPERSON:** The monetary awards you are referring to in your documents, was that awards in respect of the killing of those people, the R10 000 each per head or separate from

the employer awards?

**ADV NOKO:** The R10 000 and other amounts from the employer, SAPS, was the awards to the employees, the Cato Manor Unit members, for having quelled combated taxi violence in the province because that is how they presented to the employer to say they have dealt with taxi violence in the province, whereas the witnesses are saying something else, that they actually were killing these people from a rival taxi association being the KwaMaphumulo.

10 **CHAIRPERSON:** Yes, we have a file here containing the statement and attachments to the statement, the statement of Advocate Batohi.

**ADV NOKO:** Yes, Chair.

**CHAIRPERSON:** Now, one of the annexures in the statement, to the statement, is SB1A082 is headed Monetary and Non-Monetary Awards.

**ADV NOKO:** Yes, Chair.

**CHAIRPERSON:** Now, in this Annexure SB1A082 annexed to Advocate Batohi's affidavit, a list of candidates who  
20 qualified for awards included the first one, Major General Booyesen. I know you do not have that, but I have a document.

**ADV NOKO:** Yes.

**CHAIRPERSON:** Before I ask you a question, I just want to let you know the basis why I am going to ask you this question.

**ADV NOKO:** Yes, Chair.

**CHAIRPERSON:** In the affidavit of Advocate Batohi, she refers to the affidavit of Advocate Jiba. The relevant part of that affidavit of Advocate Jiba make mentions of the monetary awards.

**ADV NOKO:** Yes.

**CHAIRPERSON:** Paragraph 16.7 of the extract from the affidavit of Advocate Jiba reads as follows:

10                   “The information further revealed that the  
unlawful activities of killing suspects  
and/or civilians were in certain instances  
motivated by the applicants and members  
of his unit...”

The applicant here referring to Major General Booysen.

**ADV NOKO:** Yes.

**CHAIRPERSON:**

20                   “...and members of his unit is desire to  
enrich themselves by means of state  
monetary awards and/or certificates for  
excellent performance. In this regard, I  
annexed a copy of an example of such a  
monetary awards claim documented as  
NJ1 and in which, *inter alia*, the applicant  
is recommended for such an award  
resulting from the deaths of suspects.”

The point made there refers to that SB1A082 where Major General Booyen and others are listed as candidates who received the awards.

**ADV NOKO**: Yes.

**CHAIRPERSON**: Now, these awards in relation to these paragraphs are not the employer's awards that we read in those three pages earlier in the Booyen documents. This, if my understanding is correct, are the awards for the killing of those people. Is my understanding correct? Or if you know,  
10 if you do not know?

**ADV NOKO**: Ja, I do not know, Chair.

**CHAIRPERSON**: I ask this question because there seem to have been two separate awards. One by the employer for having subdued the criminality in KZN, in those areas. The second part of the awards, as I understand this statement by Advocate Jiba, referred to by Advocate Batohi, which they call trophies, are in respect of the monetary payment for killing the suspects or the civilians.

**ADV NOKO**: Okay, Chair. What I understand is the  
20 payments from the Stanger Taxi Association rewarding or paying the Cato Manor Unit, as per the witnesses, for having killed certain people whose deaths were planned and the names given to Cato Manor to kill, under the pretext that they had killed Superintendent Zethembe Choncho. That is the one, the R750 000, the R1 000 000. I do not know if there is

any more, but from the statements, it is only those two. And the second monetary rewards or payments was from the employer, under the pretext that they have quelled taxi violence in the province of KwaZulu-Natal. Then they gave the monetary and non-monetary awards, the R10 000, the whatever different amounts, and the certificates for excellent performance. That is how I understand it. And I have seen the copies of those monetary awards and the certificates. I have seen them. Those were provided to me as well. I just  
10 do not have them now anymore, as I do not have access to those documents.

**CHAIRPERSON:** And those, the monetary awards for killing the suspects – thank you, I beg your pardon. The monetary awards for killing the suspects would be in relation to the few listed people, not the long list of the employer, the three-page document. Because here the monetary and non-monetary awards, which would have included a certificate, were in respect of about 18 members of the Cato Manor, as listed in this annexure. But the amounts do not appear in the list. So  
20 your understanding is that the R1 000 000 and the R750 000 collected from the Taxi Association people in Stanger was to reward those people who killed the people that they had identified, according to you.

**ADV NOKO:** Yes, Chair.

**CHAIRPERSON:** And separate and quite distinct from the

employer monetary award.

**ADV NOKO**: Yes, those are separate, yes.

**CHAIRPERSON**: Yes, thank you.

**ADV NOKO**: Thank you, Chair.

**CHAIRPERSON**: So that ...[indistinct] A little bit long. We have five minutes to go and have tea. But you can proceed for five minutes.

**ADV NOKO**: Yes.

**CHAIRPERSON**: I just wanted to get clarity because we had  
10 these two different statements in relation to awarding people.

**ADV NOKO**: Yes, Chair.

**CHAIRPERSON**: Okay.

**ADV NOKO**: Okay. I will be, it is number 25.9, but the correct one is paragraph 35.1. It is the statement of Mr Simphiwe ...[indistinct] Mathonsi. It is on page 14 still:

20 “He stated that he was a bodyguard of the vice chairman of the STA. The vice chairman of the Stanger Taxi Association was Mr Bongizwe Elphias Mkhize, whose death was allegedly planned, as per this witness, as per Mr Mtiyane. Mr Bongani Elphias Mkhize's death was planned by the Stanger Taxi Association and after he was killed, he alleges that they paid the Cato Manor R1 000 000 for his death.”

So here, Mr Mathonsi was the bodyguard of the vice chairman. No, the vice chairman is a separate one. This is Mr – I am sorry, I am confusing the record now. Mr Bongani Elphias Mkhize was the chairman of the KwaMaphumulo Taxi Association. It is a different one here. I apologise for that. So:

10 “Mr Simphiwe Mathonsi stated that he was a bodyguard of the vice chairman of the Stanger Taxi Association and was trusted by all executive members of STA and they would even plan to hire a hitman to kill someone in his presence. Some members of STA, Sanele and Bongizwe, were close to a unit called Cato Manor. He said that he had accompanied Sanele Zondi and Bongizwe Mhlongo to meet Mr Mostert and now General Booysen near Gateway Shopping Mall by the Shell Garage behind the private hospital. The purpose of which he had was to have Mostert and Booysen cover up if police wanted to arrest members of STA. He further said that after a week, he again...” ...[intervenes].

20

**CHAIRPERSON:** Before you proceed, the sentence, the last sentence of 35.12 that you have just read.

**ADV NOKO:** Yes, Chair.

**CHAIRPERSON:**

“He said that he accompanied Sanele Zondi and Bongizwe Mhlongo to meet Mr Mostert and now General Booyesen.”

And now General Booyesen. You mean now? You mean now General?

**ADV NOKO:** No. My understanding was that the rank had changed.

10 **CHAIRPERSON:** Yes. That is what I am asking.

**ADV NOKO:** Yes.

**CHAIRPERSON:** He was a brigadier.

**ADV NOKO:** Yes.

**CHAIRPERSON:** He was now General.

**ADV NOKO:** Yes, Chair:

“He further said that after a week, he again accompanied Sanele and Bongizwe to Gateway Shopping Mall at McDonalds parking, where they met now General Booyesen and Mostert travelling in a grey BMW 5-Series. There, Sanele and Bongizwe went into the BMW with an envelope that contained a lot of money. They stayed in the BMW for about 45 minutes to an hour. He mentioned that he

20

heard Sanele and Bongizwe saying that Choncho was trouble and they will talk to senior officers, referring to Booysen and Mostert, to sort Choncho. Choncho was gunned down and thereafter Cato Manor started to kill all hitmen who were behind the killing of Choncho. He stated that he..." ...[intervenes].

**CHAIRPERSON:** Those paragraphs ...[indistinct –  
10 microphone switched off].

**ADV NOKO:** Yes. The one that I have just read, 25.10, is supposed to be 35.13. And the next one I am reading must be 35.14.

**CHAIRPERSON:** Yes.

**ADV NOKO:** Yes. Thank you, Chair:

20 "He stated that he heard Sanele saying that he had a list of people that need to be killed by Cato Manor and that Bongani Mkhize, the chairman of the KwaMaphumulo Taxi Association, was on that list. Bongani Mkhize was killed by Cato Manor, then money was collected and paid to Cato Manor. His statement is attached hereto and marked as Annexure MN8."

This Mr Bongani Mkhize is the one who had obtained a High Court interdict in desperation to say because people are being killed and he heard that he is on that list, which Mr Mathonsi mentioned that indeed Mr Bongani Elphias Mkhize was on that list of the people to be killed. He was pleading with the Cato Manor through his lawyers. They obtained an interdict to say he must not be killed.

If the police, the Cato Manor needs him for anything, questioning, even arrest, they must just go through the  
10 lawyers and then he will be handed over to the police. But instead, he was waylaid and killed around Umgeni Road. General Booysen had deposed of an affidavit wherein he stated that Mr Bongani Mkhize must not worry about anything and if they seek him for any reason, they will contact his lawyers, meaning that they will comply with what the High Court interdict mentioned, that whenever they need him, they must go through his lawyers.

His lawyer's statement is there as well. Mr Nkosinathi Hopewell Shoji of Hlapane Attorneys. He is the  
20 one who launched the interdict. So he was not contacted, but instead the Cato Manor just killed Mr Mkhize despite the interdict saying if they need him for whatever reason, they must please go through the lawyers as per the interdict.

**CHAIRPERSON:** The statement of the attorney, Mr Shoji, is it attached to your affidavit or referred to in your

memorandum of September 2020?

**ADV NOKO**: I think I am referring to it, yes. It is one of the statements that I also read, part of the other statements, but I am referring to it in page 40 of my 15 September document as paragraph 8.

**CHAIRPERSON**: Is it one of the annexures here, counsel?

**ADV KHOOE**: Sorry, Chair, it is one of the annexures. I am just trying to find the index. I think it is MN13.

**CHAIRPERSON**: Ja.

10 **ADV NOKO**: Okay. Thank you, Chair.

**CHAIRPERSON**: Proceed.

**ADV NOKO**: Thank you, Chair. Paragraph ...[intervenes].

**CHAIRPERSON**: I beg your pardon, where are you now?

**ADV NOKO**: 35.15, and that is the next witness.

**CHAIRPERSON**: Yes. I know that is tea time, but let us finish this subparagraphs before we go to paragraph 36 at page 16.

**ADV NOKO**: Yes.

20 **CHAIRPERSON**: You are now dealing with Thandeka Sokhulu.

**ADV NOKO**: Yes, Chair.

**CHAIRPERSON**: Yes.

**ADV NOKO**: Okay. The right one is 35.15:

“Thandeka Nompumelelo Sokhulu’s statement, she mentioned that she was

present at their home when her husband...”

Her husband is one of the people who was killed, his Lindelani Buthelezi. So, her and her husband were at home, and her husband was subdued, shot, and killed in the adjoining room to the one she was in. She states in her affidavit that, I quote her:

10 “There were approximately 20 policemen. When I emerged from the house, there were approximately six or eight inside the house when they arrested my husband. When he disappeared from my sight, he was already subdued and under their effective control. There would thus have been no opportunity in respectful submission for him to have obtained or secured a weapon to threaten the lives of the policemen.”

She further stated that, I quote her as well:

20 “I believe that the police had executed my husband on that night as they had behaved in very high-handed fashion. I too had been assaulted for no reason whatsoever and had a blanket thrown over my head. I verily believe that this was

done by the police in order to make double sure that I did not witness the unlawful actions. There is no other explanation why a blanket would be put over my head immediately prior to the sound of a gunshot and it being removed immediately thereafter.”

Her affidavit is attached hereto and marked as Annexure MN9. This is the one I had referred to when a brother to the  
10 deceased, in one of the cases that I mentioned, the case dockets, a washing basin was put over his head and then immediately his brother was shot so that he cannot see. So the same style was used, allegedly used here as per Thandeka Sokhulu's statement that she was covered with a blanket over her head and then immediately her husband was shot.

**CHAIRPERSON:** This affidavit of Ms Sokhulu is actually a replying affidavit in the High Court proceedings in respect of the matter of Mr Mkhize.

20 **ADV NOKO:** Yes.

**CHAIRPERSON:** I think it is that application where he sought an interdict.

**ADV NOKO:** Yes, it is, Chair. But my understanding is that there is another statement, the initial statement that she made to the police after the killing of her husband.

**CHAIRPERSON:** Please wait a minute. Let me finish because you are confusing me now.

**ADV NOKO:** I am sorry, Chair.

**CHAIRPERSON:** The reply affidavit of Miss Thandeka Sokhulu, Annexure MN9, is at page MN00171.

**ADV NOKO:** Yes, Chair.

**CHAIRPERSON:** What is her standing there? She is deposing to this affidavit in her capacity as who?

**ADV NOKO:** My understanding was to substantiate or to  
10 corroborate the fact that people were being harassed and  
killed by the Cato Manor Unit and that her husband, Lindelani  
Buthelezi, had been killed because Mr Bongani Mkhize  
launched an affidavit application after Mr Lindelani Buthelezi  
and others have been killed and he had heard that he is also  
on the list. So, she was a witness in the matter of Lindelani  
Buthelezi and she was making this affidavit to support the  
interdict by Mr Mkhize, as I understood.

**CHAIRPERSON:** Because in paragraph 3, she refers to her  
husband.

20 **ADV NOKO:** Yes, Chair.

**CHAIRPERSON:** And I was wondering as to whether she is  
the wife to Mr Mkhize or to Mr Buthelezi. It is not very clear  
to me.

**ADV NOKO:** Yes, it is not clear here, but I got it from the  
prosecution team that the husband she is referring to is as

per her initial statement in the docket with regards to the murder of her husband, who is Mr Lindelani Buthelezi.

**CHAIRPERSON**: Proceed. Proceed with the last paragraph, subparagraph.

**ADV NOKO**: That was the last paragraph.

**CHAIRPERSON**: Was that the last paragraph?

**ADV NOKO**: Yes.

**CHAIRPERSON**: The next paragraph is erroneously marked as 26 It should be 36.

10 **ADV NOKO**: Yes.

**CHAIRPERSON**: And the numbering will be corrected accordingly up to the end.

**ADV NOKO**: Yes, Chair.

**CHAIRPERSON**: We will take a tea adjournment. We will adjourn for tea until quarter to 12. We adjourn now.

**ENQUIRY ADJOURNS**

**ENQUIRY RESUMES**

**CHAIRPERSON**: Good afternoon everyone.

**ADV KHOOE**: Good afternoon, Chair.

20 **CHAIRPERSON**: Advocate Noko, I did not warn you, but you know that is the right thing, you are still under oath.

**ADV NOKO**: Yes, Chair.

**CHAIRPERSON**: When we adjourned, you were to begin with paragraph 36, at page 16 of your affidavit.

**ADV NOKO**: Yes, Chair. May I please, before I go to this,

because these are not extracts from statements or anymore, answer your question, the previous question about the direct involvement or so, or something along the lines of General Booyesen, Major General Booyesen, in the dockets.

**CHAIRPERSON:** [Indistinct]

**ADV NOKO:** Yes, okay. Chair, when this ...[intervenes]

**ADV KHOOE:** Sorry, sorry, Chair, I have an audience. Yes, I just wanted to mention that Mr Hulley asked to be excused for a moment, he is busy attending to certain evidence that  
10 the witness is currently testifying about. He is still in the building, but he has just stepped out to attend to some aspects of the evidence.

**CHAIRPERSON:** Relating to what she has testified about?

**ADV KHOOE:** Correct, correct, Chair.

**CHAIRPERSON:** In particular?

**ADV KHOOE:** He did not convey what it is.

**CHAIRPERSON:** Advocate, do you have an idea? Is he preparing those exhibits? I am not putting you on a spot.

**ADV KHOOE:** No, Chair, he is not, he is just trying to  
20 [indistinct – 0:02:43]...

**CHAIRPERSON:** Yes, thank you.

**ADV NOKO:** Okay, thank you, Chair. What I need to state is that when I was brought into the case and provided with a prosecution memorandum, the statements of some of the witnesses, the indictment, the slide presentation, all the

documents that the prosecution team provided to me, and their verbal presentations and our verbal engagements as well, and upon me reading all those documents and the statements, I gathered that there is an enterprise in this case that existed, because it met all the requirements in terms of there being that pattern of committing illegal activities, that is, the killing of the 28 people and the commission of other offences, the assault, the pointing of firearms and malicious property and all of those things.

10           And it was continuing, because it continued for many years, even prior to the May 2008 that is mentioned in the indictment. It started even prior to that as per Mr Danikas, who was working in the very same unit. And further that, there was a system of authority and management. And Major General Booysen was one of those that were managing the enterprise, as it was labelled. So there was that pattern of racketeering. Hence, they were charged in terms of POCA legislation, the Prevention of Organised Crime Act 121 of 1988, because there was that pattern of racketeering.

20           And POCA legislation, as we all know, Chair, is that it was promulgated to deal with matters like this, where some people are not directly implicated, but it is induced from the circumstances. Hence, the POCA legislation permits circumstantial evidence to be used. It also permits similar fact evidence. In this case, with regards to similar fact

evidence, we can go to the statement of Mr Aristides Danikas. For example, in one of the incidents, he says, during 2007, which happened, it is outside the indictment. It was prior to the indictment.

He says, for example, in one of the incidents, he mentions in his statement that, during 2007, when he was having lunch with Major General Booysen in one of the cafes, cafe or restaurant in Musgrave, Mr Booysen told him and showed him a picture of a person on his cell phone, whom he  
10 said his name was Jabulani and allegedly, he had escaped or whatever, and had done some wrong things, I do not know. And Mr Danikas said, Major General Booysen told him that, if he sees that Jabulani, he is going to plant a bullet in his head. Then Mr Danikas goes on to say, later he was invited by Major General Booysen to go look for Jabulani.

And they went to Umlazi. I forgot the name of the section, but they proceeded to Umlazi with Major General Booysen, along with the other members of the Cato Manor. And Mr Danikas says, when they got to Umlazi, Major General  
20 Booysen remained in the car that had parked where all other members had parked their cars. He stayed in the car, while everyone else, including Danikas, they alighted from their cars, and he said they went into a house, which was just there, by where they had parked. And then one person, who was called Jabulani, whom they were looking for, was

dragged out.

It was raining, he was outside in the rain, wearing only a dark underwear. And he was assaulted and kicked, handcuffed, lying on the floor, and he was shot and killed there. So Major General Booyesen was not there with them, but he was in the car, according to Mr Danikas. And according to Mr Danikas, Major General Booyesen had told him that a bullet would be planted in this Jabulani's head. And indeed it was, because they went to that scene, but he  
10 remained in the car. So when you take in all these dockets, he is not there physically, but he knows about these incidents. And that is what the POCA legislation provides for.

You will not, it is hard to really pin someone, to say, you took this bottle and put it here. But circumstantially it can be induced, that this person knows. So he apparently, he knew about all these incidents, because Mr Danikas further says, he would go to this, he gets called after the incidents, like the murders are committed. And according to  
20 Mr Danikas, then the scenes will be altered. Cartridges removed or swapped or whatever, but the murder scenes will be messed up before the forensics and the IP and all of that are called. That is what Mr Danikas said. So that is what the similar fact evidence.

Which happened, just one incident, he mentions

more, just one incident that happened in 2007. So that is a similar fact evidence that is allowed in terms of POCA legislation to be used in racketeering offences. Then we put the similar fact evidence. We go to hearsay evidence. There is hearsay evidence here as well. In terms of, for example, some of the witnesses who have deposed of statements and affidavits have passed away. But the Criminal Law Amendment Act, 45 of 1988, it allows the prosecution to use statements of deceased people. As long as they meet the  
10 criteria, of course, of being reliable and being in the interest of justice.

So when I looked at the statements, according to me, not being a presiding officer, of course, but in my prosecutorial discretion, they were reliable and it was definitely in the interest of justice. Because so many people have been massacred under similar circumstances. A blind eye cannot be turned onto this. People are all killed under similar circumstances. What does that mean? They do not even arrest anyone of them. All of them are killed. I do not  
20 deny the fact that police are being killed, threatened by people who have been sought for criminal offences. But it can never be the position that in every case, 28 reported and clearly there is more. All of them are killed and all of them were allegedly trying to endanger the police's lives.

Even where it does not make sense, according to

ballistic reports, experts' reports. So that is circumstantial evidence that can be inferred from that one. And also, when we look at the murder of Mr Bongani Elfias Mkhize, who was a chairperson of the KwaMaphumulo Taxi Association, whose murder was planned according to Mr Mthiyane Dlonde. It was planned within the Stanger Taxi Association. And his name, with others, were given to the Cato Manor to kill them. And indeed, he was killed by Cato Manor. So as far as Mr Bongani Mkhize is concerned, he had, out of desperation, asked for help not to be killed. Although he was killed after the interdict, but he was killed.

But his murder was planned according to the witness, and the Cato Manor was paid for that. And according to the witness, General Booyen was one of those who were paid, at some point in Gateway or something like that, for his murder. That is what the witness is saying. So you can see from that, that after making an affidavit to say, no, Mr Mkhize will not be killed, he will not be harmed or anything like that, the interdict will be complied with, he will be requested through his lawyer, he was killed afterwards. So General Booyen was aware of that as well. But also, I am not aware of anything that is mentioned to have been done against those members of Cato Manor unit who shot at Mr Bongani Mkhize, because it was not him directly who shot at him.

But he knows the circumstances. So it is inferred

circumstantially from that. Ja, so that is what I wanted to illustrate to say. I was convinced on that basis, that there is a pattern of racketeering in this case, and these people are linked like that. So Major General Booyesen is charged in terms of Section 2(1)(f) of the POCA, which is managing the operations, because he was the head of the Serious Violent Crime in Cato Manor, and he was managing its activities. And those activities, unfortunately, included the murder of these people, because he was aware that these people are being  
10 killed and all of that, but nothing was done. One after the other, 28 in number. It cannot be how the police operate. Ja, that is what I wanted to elaborate on, Chair.

**CHAIRPERSON:** You make a point in your memorandum to Advocate Batohi in closing.

**ADV NOKO:** Yes.

**CHAIRPERSON:** At page 39 of 56, under that rubric, Monetary Awards, the last paragraph, the next page. You can read it again. I know you read it into the record, but it tallies with what you are saying. You can read that  
20 paragraph.

**ADV NOKO:** Yes. I said to Advocate Batohi that this ...[intervenes]

**CHAIRPERSON:** No, no, no. That is...

**ADV NOKO:** Yes, I am reading it.

**CHAIRPERSON:** Are you reading there?

**ADV NOKO:** Yes.

**CHAIRPERSON:** The sentence, the paragraph that starts with 'Booyesen as the Provincial Commander'. You see paragraph 5? Headed, Monetary Awards.

**ADV NOKO:** Oh, I am...

**CHAIRPERSON:** The next page is on page 39 of 56 at the bottom of page numbering.

**ADV NOKO:** Yes, I can see that.

**CHAIRPERSON:** That last paragraph before paragraph 6,  
10 Statements of Andrew Carson [?].

**ADV NOKO:** Yes.

**CHAIRPERSON:** That last paragraph speaks to what you have just said.

**ADV NOKO:** Yes.

**CHAIRPERSON:** You can read it into the record again.

**ADV NOKO:** Yes, sure. It reads thus:

20 "Booyesen, as the Provincial Commander of Organised Crime, had intimate knowledge of the operations of the Cato Manor SBC section when it was eliminating the KwaMaphumulo Taxi Association members instead of arresting them for any alleged offences.

As a manager, he did nothing to stop this killing spree because it was fulfilling the

arrangement with Stanger Taxi Association  
as stated in Mathonsi's statement.”

**CHAIRPERSON**: According to you, what you are reading then links General Booyesen with those activities by virtue of the POCA provision, section 2(1)(f).

**ADV NOKO**: Yes, Chair.

**CHAIRPERSON**: As you say.

**ADV NOKO**: Yes, managing the operations.

**CHAIRPERSON**: You have earlier referred us to the High  
10 Court application and then to the statement of the attorney,  
Attorney Shozi. You found it in the record. Do you want to  
add anything or you just referring to them as forming part of  
the record? You also made a point at paragraph 6 in relation  
to the one who was flying General Booyesen to the scenes.  
You can read paragraph 6 of 39 of 56.

**ADV NOKO**: Yes, Chair. It is statement of Andrew Carson  
Corcoran dated 16 May 2013.

20 “He will state that he was a crew member to  
the pilot who flew Booyesen to the scene  
where Makojela, the KwaMaphumulo Taxi  
boss, was killed. It is the prosecution  
team's view that this helicopter was on  
standby to carry Booyesen pending the  
notification by his foot soldiers that the  
execution of Makojela has been fulfilled.”

**CHAIRPERSON:** You look at page 41 of 56 of the memorandum to Advocate Batohi under paragraph 9.

**ADV NOKO:** Yes, Chair.

**CHAIRPERSON:** It is a statement of the Provincial Deputy Commissioner Brown.

**ADV NOKO:** Yes, Chair.

**CHAIRPERSON:** The last part, the hanging paragraph after the last bullet.

**ADV NOKO:** Yes, Chair.

10 **CHAIRPERSON:** Can you read those few lines?

**ADV NOKO:** Yes, Chair. It reads as thus:

“During the daily crime reports at the province, when Crime Intelligence would present crime reports, Booyesen would confirm the contents of the shooting incident reports and provide additional information.”

**CHAIRPERSON:** Is this hanging paragraph part of the statement of Commissioner Brown?

20 **ADV NOKO:** No, it is the analysis by the prosecution team from the prosecution memorandum.

**CHAIRPERSON:** It is the analysis.

**ADV NOKO:** Yes, yes, Chair.

**CHAIRPERSON:** Now, in terms of the reporting lines, as explained by Provincial Deputy Commissioner Brown, who

was the head there? I see he is referring to Captain van Tonder, Colonel Olivier, Colonel Ayer, Director Booysen. Who was the head?

**ADV NOKO**: My understanding was that Colonel Ayer, Rajendran Ayer, was the head, and the other members were reporting to him. However, there was sort of an impasse or something like that, as I was made to understand, and then Major General Booysen was the one to whom members who were supposed to report to Colonel Ayer reported directly in  
10 relation to Cato Manor.

**CHAIRPERSON**: And in turn, he reported to Commissioner Brown?

**ADV NOKO**: Yes, Chair.

**CHAIRPERSON**: You may proceed.

**ADV RAMAGAGA**: May I just come in here, Chair? Advocate Noko, for now, the purpose of my questions will be to deal with the delivery and receipt of the exchange of information or request for information between yourself and Advocate Batohi. Now, you say that you received a request for  
20 information from Advocate Batohi in August. We do not have the copy, we do not have the precise date on which the request was made. But the question is, how was that request delivered to you?

**ADV NOKO**: Okay. It was on the 27th of August 2020. I received it via email through my PA, who was then Ms Tertia

van Biljon. She gave me the document. It was through email. Dated, actually, it was dated 25 August 2020, but it was emailed and received by me through my PA on the 27th of August 2020. And the, I just do not have it, unfortunately. But then it was saying, concerns are raised, or something to that effect, regarding these following cases.

Then, explain like your decisions or something like that. Clearly, I do not remember the contents. But it wanted me to explain what happened in each of those cases. Was  
10 there evidence for people to be charged? Were there reasons for people not to be charged or for cases to be withdrawn? Something to that effect. That is why I got to be so detailed in my elaboration and explanation to her.

**MS RAMAGAGA**: Ja, ja. Advocate Noko. Generally, I do not ask complex questions or compound questions. I will ask one at a time. So, you say it was delivered to you by electronic mail via your PA.

**ADV NOKO**: Yes, ma'am.

**CHAIRPERSON**: And it was directly from Advocate Batohi,  
20 or what is the position?

**ADV NOKO**: It was from Advocate Batohi. Hence, even my report is addressed to her directly.

**MS RAMAGAGA**: Ja, now let us talk about your response. How was your response conveyed to Advocate Batohi?

**ADV NOKO**: I remember because it was very voluminous. It

was scanned and emailed, and it was also hand-delivered to her office. So, it was in two-fold, manually and electronic.

**MS RAMAGAGA**: Let us talk about electronic delivery. Was it delivered to her email address? And if so, is it directly to her or via the PA, or both?

**ADV NOKO**: It was both. She was copied, her PA and herself.

**MS RAMAGAGA**: Who was copied? Who was the addressee of the email? When you send an email, it will be to so-and-  
10 so, and then copy so-and-so. Do you remember?

**ADV NOKO**: I do not quite remember how it was put, but then I know it was sent to her and her PA. And I know it was delivered.

**MS RAMAGAGA**: Do you know whether your response reached her?

**ADV NOKO**: I know it reached her, because as much as she did not... I do not know, did she acknowledge receipt or what? It is just unfortunate I do not have access to my emails anymore, or any records. But I do not know whether she  
20 acknowledged or what, but to show that she had received it, the next thing I received were reasons, me, to furnish reasons why she should not be suspended. She was not asking about the response to her 25 August 2020 letter. I know she received those. She received my response.

**MS RAMAGAGA**: Okay. Ja, that is what I wanted to

establish, as to whether you knew whether she received your response or not. Thank you.

**WITNESS**: Yes, thank you, ma'am.

**CHAIRPERSON**: Paragraph 36.

**ADV NOKO**: Okay, thank you, Chair.

10                   “The above are just extracts from some of the witness statements, ballistic expert reports, the prosecution memorandum, and other relevant documents that I had access to from the prosecution team, explaining the commission of various crimes, including the killing of 28 people. A *prima facie* case and reasonable prospects of a successful prosecution exist in this case.

20                   It is on this basis that I do not agree with the decisions to withdraw charges against the accused persons in the Cato Manor cases by Advocate Shamila Batohi, Advocate Elaine Harrison, who was formerly Zungu, her team, the De Kock panel, and all others who were involved in the withdrawal of charges against these people.

I further disagree that any prosecutor who supported the prosecution of this case as it

stands, or any case like this one, has acted improperly. Furthermore ...[intervenes]”

**CHAIRPERSON**: Before you proceed...

**ADV NOKO**: Yes, Chair.

**CHAIRPERSON**: Am I correct that the charges against Major General Booyesen was withdrawn in 2019, somewhere there?

**ADV NOKO**: Yes, Chair, because it was Section 2(1)(e) and 2(1)(f), which are racketeering authorisations, that can only be issued or withdrawn by an NDPP. So those two, ja. And  
10 the others, I think it was later, whether in the same year or 2020, I am not sure.

**CHAIRPERSON**: When the request was made in August 2020, the racketeering charges were already withdrawn?

**ADV NOKO**: Yes, my understanding, because it was in the previous year, 2019, around June or so, yes.

**CHAIRPERSON**: Are you in a position to explain why then were the charges, why then was the explanation sought post the withdrawal of the charges?

**ADV NOKO**: Chair, it was clear to me. The seeking of  
20 explanation and clarification from me was just a formality, because nothing was done about it as far as maybe reinstating the case or anything like that. It was just a formality to follow processes, to have an enquiry or a disciplinary action against me, because nothing was done about that. So that is my understanding. It does not make

sense to make a decision. You do not seek clarification, you do not seek explanations from the people who were involved in the case.

You withdraw it and after that you want explanations. They give you clear, detailed explanations and you still do not do anything about it in the interest of justice. You do nothing about the case. So it was clearly a formality that was just being followed, to follow the processes that she wanted to follow against me, that she wanted to pursue against me.

10 **CHAIRPERSON:** But why do you think that she wanted to pursue you with an enquiry?

**ADV NOKO:** Chair, there were a lot of things that were happening. I do not know whether to say it or not to say it and how I am going to prove it, but it was something that was said to my ears. Not what I heard somebody saying, somebody said, somebody... No, I was told to my face when I was still DPP in KZN. That was 2019. I went for an interview for NDPP, so did Advocate Chauke and others as well. And then I was told there in KZN that Advocate Batohi will come  
20 and will deal with me, Advocate Chauke and the other people.

And I asked why and I was told no. One of the reasons was that I came all the way from Pretoria. I landed in KZN. I should not be there. They do not agree with some of the decisions I made. Like, I do not know. It is a lot of hearsay politics that you can even call gossip that I would not

even have put in my affidavit because it is not something that I can prove, but I was told. I know I was told. And the treatment that I got from him confirmed what I had when I was in KZN.

And the reason why I even wanted to move from KZN, I wanted to leave KZN to the KZNers and come back home in Gauteng. It is just that there was no relevant or same position as DPP in Gauteng. So the closest I asked to go to the North West. And it was on that basis that I asked for a  
10 transfer to go to North West because I was running away and thinking, perhaps if I am away from KZN, people will be happy that I am out of their hair and then I am away. So I moved because she was not treating me well. That is something I know, and she knows it. But it is not something that I can tangibly prove.

For example, one day there was this conference, I think it was in Irene, Centurion or something like that, where DPPs, we volunteered to say, okay, I will do this task, I will do this task. I also volunteered to say I will do a particular  
20 task. I do not remember the task, but it was coordinating some project countrywide. And so were other DPPs as well. Okay, so we did that. So one day after that, one day now we were at head office, we were in a meeting. During lunchtime I was sitting in the boardroom. It was in the AEF, I think it was in the Asset Forfeiture Unit boardroom, which I think was

on the first or second floor of the VGM building in head office.

Then she came to me and she said to me, no, I do not want you doing that project. I will take it away, I will give it to somebody else. And I asked her why. And that is just one of the incidents. She was not treating me well. So I realised she was not okay with me. And I do not know why.

**CHAIRPERSON:** Maybe we can pause there, maybe you condition pause there. It should not be like you are testifying against all these people, including Advocate Batohi, because  
10 probably you are bitter. Maybe we should not get into those nitty-gritties of your relationship that became sour. Let us focus on the matters we assist with.

**ADV NOKO:** Yes, Chair.

**CHAIRPERSON:** Let us hear you. [Indistinct – 0:31:41]...

**ADV BALOYI-MERE SC:** Advocate Noko, you say in your opening sentence on paragraph 7 that you do not agree with the decision to withdraw charges against the accused person in the Cato Manor cases by Advocate Batohi and Advocate Harrison and the De Kock team and everybody else.

20 **ADV NOKO:** Yes.

**ADV BALOYI-MERE SC:** Can you just quickly maybe run through your reasons why you do not agree with that decision?

**ADV NOKO:** As elaborated earlier, that there is a *prima facie* case and there are reasonable prospects of a successful

prosecution. There is direct evidence in relation to other accused. There is circumstantial evidence in relation to the other accused, like Major General Booysen. There is circumstantial evidence. There is evidence of similar effect. And hearsay evidence can also be used in respect of the statements of the deceased people and all of those. So meaning that there is a case that the accused must answer to. And I do not agree with the withdrawal of this case because there is a *prima facie* case. So it is wrong, according to me, to have withdrawn it. It is not in the interest of justice to have done so in a case like this.

**ADV BALOYI-MERE SC:** You earlier on testified that you were overseeing these prosecutions.

**ADV NOKO:** Yes.

**ADV BALOYI-MERE SC:** Now, is it normal practice that the NDPP would withdraw a case where the DPP is overseeing those cases and the cases are within your jurisdiction? Is it normal for the NDPP to withdraw? Or is there a procedure or a process that is followed by the NDPP to withdraw a case that is being overseen by a DPP and they are in that DPP's jurisdiction?

**ADV NOKO:** Okay, thank you. The NDPP can withdraw any case within the NPA in any division of the country, in any province, because the NDPP is a National Director. He or she oversees prosecutions in the entire country. So she had

a right to withdraw it if there were valid reasons for that. My gripe is because of the fact that I believe there is a *prima facie* case and it should not have been withdrawn as it is not in the interest of justice to do so, but not with regards to her authority to do that. Only a DPP cannot withdraw a case of another DPP's jurisdiction, but the NDPP can throughout the country.

**ADV BALOYI-MERE SC:** Just as a follow-up, before these cases were withdrawn, were you informed as the DPP in that  
10 jurisdiction?

**ADV NOKO:** No, I learned from the media about it.

**ADV BALOYI-MERE SC:** Thank you, Chair.

**CHAIRPERSON:** I will reserve this question towards the end of your testimony. Paragraph 38. You seem to have alluded to POCA.

**ADV NOKO:** Oh, yes, I have. Okay, I must go to 38. Okay.

**CHAIRPERSON:** You may read it into the record. It is part of your statement.

**ADV NOKO:** Okay, thank you, Chair.

20                   “Furthermore, with the available *prima facie* case and the ease burden of proof by the Prevention of Organised Crime Act 121 of 1998 in POCA prosecutions due to the fact that evidence that would ordinarily not be admitted in ordinary prosecutions are,

however, admitted in POCA prosecutions, like similar fact evidence, hearsay evidence, joining in, et cetera, the need for the prosecution of the Cato Manor case becomes more glaring and obvious because the prospect of its successful prosecution had become heightened as a result. Its withdrawal is unfortunate.”

**CHAIRPERSON:** That part takes you to the point that I asked  
10 you earlier in relation to the Zondo Commission.

**ADV NOKO:** Yes.

**CHAIRPERSON:** You may also read it into the record.

**CHAIRPERSON:** Okay, thank you, Chair.

**CHAIRPERSON:** To the extent relevant.

**ADV NOKO:** Thank you, Chair.

“During early 2019, I was contacted by one  
of the evidence leaders at the Zondo  
Commission of inquiry into state capture,  
regarding a document that had been  
20 compiled in my name and my office  
letterhead of DPP KZN. This document was  
then emailed to me by the said evidence  
leader.

Upon receipt and perusal of the document,  
I gathered that it was a memo or covering

letter that was for an application for racketeering authorisations during 2012 in the Cato Manor case. The evidence leader asked me if the signature at the bottom of that document was mine. In response, I informed the evidence leader that it was not mine because it was not.

The evidence leader asked me if I knew whose signature it was, and I answered that

10 I think that the signature looked like that of Advocate Andrew Chauke.”

**CHAIRPERSON:** As of 2012, were you in KZN? As of 2012, were you already in KZN?

**ADV NOKO:** Yes, I went to KZN in 2009.

**CHAIRPERSON:** 2009.

**ADV NOKO:** As a deputy DPP, yes.

**CHAIRPERSON:** And you were appointed as a DPP when?

**ADV NOKO:** Permanent in 2013 to act in 2012.

**CHAIRPERSON:** The signature that you identified as that of  
20 Advocate Chauke was on the application for racketeering authorisation certificate?

**ADV NOKO:** Yes, Chair.

**CHAIRPERSON:** In 2012?

**ADV NOKO:** Yes, Chair.

**CHAIRPERSON:** Who was the DPP then?

**ADV NOKO**: I think when that application was made, I was the acting DPP. Shortly after Advocate Simphiwe Mlotshwa was the acting DPP. I became acting DPP in July 2012.

**CHAIRPERSON**: You may proceed.

**ADV NOKO**: Thank you, Chair.

10                   “The various Cato Manor cases were subsequently withdrawn in 2019 by Advocate Shamila Batohi and Advocate Elaine Harrison, respectively. I was informed by the prosecution team that their response reports were not sought before the withdrawals, nor did the De Kock panel seek the prosecutor's views or reports.

20                   It had always been a practice of fairness and justice in the NPA, which conforms to the Rule of Natural Justice of *audi alteram partem* rule, that whenever there is a need to review a case, the views of the prosecutor or prosecutors who dealt with that particular case or cases be sought first before a decision is made on whether or not to confirm or review the decision.

                    Unfortunately, those rules and practices were not applied in the Cato Manor cases. My report on the Cato Manor case was only

requested from me by Advocate Shamila Batohi during August 2020, while the case was withdrawn already during the previous year, 2019, and not even for the purpose of re-looking at the withdrawal of this case for justice sake, but for other reasons.

As far as I was involved and knew, the one and only reason ...[intervenes]”

**CHAIRPERSON:** I beg your pardon?

10 **ADV NOKO:** Ja.

**CHAIRPERSON:** For other reasons?

**ADV NOKO:** Yes.

**CHAIRPERSON:** What reasons were those?

**ADV NOKO:** To charge me with an enquiry or something like that.

**CHAIRPERSON:** To charge?

**ADV NOKO:** To say I am unfit for office because of the decisions in those cases. Because nothing was done after my thorough and detailed explanation about the case. All  
20 those cases, actually, not just Cato Manor.

**CHAIRPERSON:** Proceed, ma'am.

**ADV NOKO:** Thank you, Chair.

“As far as I was involved and knew, the one and only reason why Major General Booyesen and the Cato Manor unit members

have been charged in the Cato Manor case, is due to the *prima facie* case and reasonable prospect of a successful prosecution that exists in that case. As I have explained the basis, supra, I am not aware of the existence of any plot or plots to derail anyone from an investigation of anyone by charging them in the Cato Manor case or any other case.

10 I have supra referred to some cases, CAS466 and CAS781, as related to the Cato Manor because it has been mentioned by Major General Booysen that he was being charged in the Cato Manor unit because he was investigating Mr Thoshan Panday, who was the accused in the 466 and the 781 cases, and that the latter, being Mr Thoshan Panday, was a business partner of the former President's son.

20 I know nothing of those. I do not know who is or was whose business partner of whose son. That did not and still does not concern me in my prosecutorial duties in any way. During my tenure ...[intervenes]”

**CHAIRPERSON:** Does that, the former President's son, does

that refer to President Zuma's son?

**ADV NOKO**: Yes. Yes, Chair.

10 “During my tenure as DPP in KZN, I was not aware of any case or cases that Major General Booysen was investigating for which he claimed to have been targeted and thus charged in the Cato Manor case. Upon hearing this claim, I enquired from Advocate Bulelwa Vimbani, who was then the head of the Specialised Commercial Crimes Unit in Durban, and she indicated that she also did not have any case in her unit, the SCCU, that Major General Booysen was investigating then. My reasons and those of Advocates Vimbani and Letsolo in respect of these cases, being the 466 and the 781, are in our various reports.”

20 **CHAIRPERSON**: In your report, or memorandum addressed to all colleagues, MN4, rather, MN3, if you look at MN00057, the second paragraph or the third paragraph that starts with, ‘it cannot be wrong’. Please read that into the report.

**ADV NOKO**: Yes, Chair.

“It cannot be wrong for a DPP to sign an indictment or memoranda or other

correspondence in cases that result within their own jurisdiction, in whose names such prosecutions are instituted, and especially that these are so signed by the DPP for the purpose of forwarding such correspondence to their superiors, being the NDPPs.

10 It would not be proper for such to be signed by anyone below the DPP when such is destined for the NDPP, and when the relevant DPP is available and legally able to sign such by virtue of the powers, duties and functions conferred on a DPP in terms of section 24 of the NPA Act 32 of 1998.”

**CHAIRPERSON**: Do you reiterate those remarks? Do you reiterate those remarks?

**ADV NOKO**: Yes, I do, Chair.

**CHAIRPERSON**: The next, last but one paragraph.

**ADV NOKO**: Yes, Chair.

20 “As a matter of fact, even those who are not ...[intervenes]”

**CHAIRPERSON**: No, no, no. Oh. The last but one.

**ADV NOKO**: Oh, last but...

**CHAIRPERSON**: Yes, because that part deals with those who are not NDPPs, so I do not think it is very relevant.

**ADV NOKO**: Okay.

**CHAIRPERSON**: But you may read it for completeness.

**ADV NOKO**: Oh, okay. Thank you, Chair.

10 “As a matter of fact, even those who are not the NDPP themselves, but based at head office, often demand that the DPP must be the one who signs correspondence to head office. That is not even addressed to the NDPP. What more if that is addressed to the NDPP directly? On what basis is it seen to be wrong when signed by the DPP for their own jurisdiction?

20 I did not have reason to doubt what the prosecution team presented to me in the above cases, leading to decisions that were ultimately made in such cases, especially considering their levels of seniority and experience, being deputy DPPs, senior state advocates, and state advocates. They read the case dockets and compiled their prosecution memoranda, which I relied on.

This is the practice within the NPA and for practical reasons as well, that prosecutors, especially DPPs and head office, being the

NDPP and DNDPP, will confirm to being applicable that we rely on the presentations by the prosecutors or prosecution teams, especially being high-ranking and experienced, as in these cases. For example, in this very Cato Manor case, the De Kock panel appointed by Advocate Batohi compiled their report, although without consultation with myself and the prosecution team, and advised her thereon.

10

Advocate Batohi then relied and acted on the basis of this report and withdrew charges in this case. Therefore, it cannot be wrong for me, as DPP, when I relied on prosecution memoranda from senior or high-ranking and experienced prosecutors, as it happened in the above cases, then labelled as targeting certain people and protecting others, as if I worked alone and with hidden agendas in those cases. Anyway, not that it is wrong to deal with a case alone.

20

As prosecutors in the Cato Manor cases, we simply believe in these cases and the appropriateness of their prosecution, hence

our decision. There is no ulterior motives or *mala fides* that I am aware of or part of in the decision to prosecute the accused in all these cases. I have no other interest except of justice in these cases. I need to be shown evidence of protecting and targeting some people.

10 Some claim to have been investigating some high-profile cases and that being the reason of them being targeted and prosecuted to allegedly derail them. I am not aware of any big or high-profile case that those people were dealing with for which they claim victimisation and I could have known if such existed when I was DPP KZN.”

**CHAIRPERSON:** Before you conclude, the previous page, you referred to the DPP's signing indictments, memos and other correspondence.

20 **ADV NOKO:** Yes, Chair.

**CHAIRPERSON:** Are you aware of any occasion or of any matter for that matter, a case in respect of which Advocate Chauke signed the indictment in KZN?

**ADV NOKO:** I am not aware of that, Chair.

**CHAIRPERSON:** Any correspondence that you may be aware

of that might have been suggestive of the fact that Advocate Chauke took a prosecutorial decision in respect of the Cato Manor cases in KZN?

**ADV NOKO:** I am not aware of that, Chair.

**CHAIRPERSON:** What role, if you know, did Advocate Chauke play after being asked by Advocate Jiba to organise a team of prosecutors?

**ADV NOKO:** I heard from ...[intervenes]

**CHAIRPERSON:** To coordinate a team, if the word is  
10 correct?

**ADV NOKO:** Yes. No, I heard from the prosecution team that they would brief him the same way they did to me. They would brief him on the case, what is happening, update him as the DPP who was overseeing or coordinating the case and furthermore, other than the meeting that we had with the Judge President for requesting a Judge from outside of KZN and this memo that was shown to me by the evidence leader in the Zondo Commission, which was a covering memo for requests for authorisation for racketeering certificates in  
20 2012 which I also did in 2016, then I am not aware of any other role that he played.

I see his role as the same one that I played, being updated and you sign whatever you need to sign because protocol and practice requires you to sign that and you get updated by the prosecution team but the decisions and

everything are done by the prosecutors and the prosecution teams and we are just there as DPPs because every case must have a DPP. It cannot just be prosecutors.

**CHAIRPERSON:** Are you correct though to suggest that he played the same role as you did because you were the DPP KZN, he was the DPP South Gauteng, so for him to do what you did does not necessarily mean that he had authority to do what you did or is my understanding correct?

**ADV NOKO:** No, no, you are correct, Chair, but the issue of  
10 authority is a different issue now. I was just answering on the role he played and whether he had authority or not by virtue of him not being DPP KZN is a separate one, so I am not sure about authority.

**CHAIRPERSON:** A suggestion is made that he acted unlawfully by straddling being a DPP South Gauteng and acting and going to KZN and performing prosecutorial decisions. That is why I am asking all these questions because I need to understand precisely what is it that he did as he oversaw as Advocate Jiba had allocated him that role.  
20 What is it specifically that he might have done that suggests that he acted unlawfully? If you know?

**ADV NOKO:** I am not sure what those who are alleging that he acted unlawfully, improperly or wrong have to back the allegation. He who alleges must prove. So they are alleging, I think they will know better, Chair. Really I do not know

where that is based on, because my understanding was that he was instructed, like it was an instruction that he was carrying over from the acting NDPP then to say go and oversee this case. That is how I understood it. That is why I found no wrong in that. But if it is wrong and it is alleged wrong, perhaps those know why they are saying it was wrong. So really I do not know, Chair, I am sorry.

**CHAIRPERSON:** In your view, him having been asked to oversee the work of the prosecution team and asking you to  
10 accompany him to approach the Judge President with the request that you presented to him to appoint an outside Judge, could that role that he played be considered, given the totality of the evidence and the circumstances that prevailed at that time, could such a conduct on his part be considered to be unlawful?

**ADV NOKO:** It cannot be unlawful. It cannot be unlawful, because as I said my understanding was that he was mandated to go oversee that case in KZN from Johannesburg to KZN. So it can be unlawful or improper if it is within the  
20 mandate, command or instruction given by his superior then.

**CHAIRPERSON:** As a DPP at that time, you had no disagreement with that kind of a conduct or you were not opposed to him approaching you, coming from South Gauteng and requesting you to do the things that he suggested that you should do together, for instance approaching the Judge

President, in relation to those matters?

**ADV NOKO:** No, I did not have any objection or concern about it because my understanding was that the person who was heading the entire NPA then, who was the acting NDPP Advocate Jiba then, had authority regarding everything that is happening within the NPA countrywide and if she had decided to mandate a DPP from another province to deal with a matter in another province, I did not see it wrong or to have a problem with it, really I did not have any concern. I assisted  
10 as I was requested. I did not have a problem really.

**CHAIRPERSON:** I think you are better placed to understand the prosecutor's policies internal policies and of course the relevant provisions of the enabling legislation. As far as the law is concerned, is there any legal provision or even policies for that matter that would have made Advocate Chauke's presence or whatever he did in KZN following the request by Advocate Jiba to be illegal or unlawful?

**ADV NOKO:** Chair, I think in section 24 of the NPA Act 32 of 1998 that appoints or describes, I think it is, well appointment  
20 is in terms of section 13, but the duties, responsibilities of DPPs I think is in section 24, if I am not mistaken, of the NPA Act, it says nothing about a DPP forbidden from doing a job in another jurisdiction, it is silent on that and I do not think it can be imputed to say you cannot go do that. My understanding, if I am wrong then I am wrong, but even now

my understanding is that as much as I am appointed to be a DPP in Pretoria, I do conduct, my duties as a DPP in Pretoria for example, it does not mean that if my superiors say I am tasked, that is what we call ad hoc duties, you get tasked to say okay there is this one project that we want you to go do somewhere else.

The same way as prosecutors below the DPPs are being tasked on ad hoc basis go do this in this province and they get delegations for that. My understanding, and even  
10 now it is still like that, that even DPPs can be tasked by their superior, which is the NDPP, despite the fact that they are stationed or appointed for a particular division, the NDPP as the overall head of the prosecution service in the entire country, it is my understanding that they can say go do this there, go do, even though you are, yes, that is how I understand, as a result I am not aware of any provision in any legislation that forbids that from happening as far as the DPP is concerned.

**CHAIRPERSON:** Yes, now the concluding paragraph of your  
20 memorandum to all your colleagues, and I suppose what you read earlier, you read it as incorporated in your affidavit. This is a statement that you just read in and it was not written under oath, it was not commissioned, so you are repeating those in your evidence?

**ADV NOKO:** Yes, under oath, yes, Chair.

**CHAIRPERSON:** And the conclusion, if you are minded to read it? It is long, but it may just be relevant that you read the entire part into the record.

**ADV NOKO:** Yes, Chair.

**CHAIRPERSON:** It is of relevance.

**ADV NOKO:** Okay, I will just read up to where it is relevant to the Cato Manor case, which is up to page 56. That is just the two lines on top, on page 56, I think that is what is relevant. Or maybe I can just finish off, it is just one and a  
10 half page extra, because I may miss some that may be relevant. May I proceed?

**CHAIRPERSON:** Proceed.

**ADV NOKO:** Thank you, Chair.

“The prosecution teams in various cases, myself and various NDPPs and DNDPPs in these cases, acted in good faith and we exercised our prosecutorial discretion and independence to decide on cases without fear, favour or prejudice. However, it  
20 appears that I and the prosecution teams and others are expected to have acted differently in those cases, despite the status of cases that stood before us then and how we deemed as legally fit, which is what must rightfully determine whether or

not we prosecute, not who is being prosecuted or who is not.

This is eroding the prosecutorial independence that prosecutors must enjoy in terms of section 179 of the Constitution when executing their prosecutorial duties, because fear and pressure is instilled in prosecutors. Some of us are already

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this fear in prosecutors. They tend to be scared to deal with any case that has any issue or issues around it, for fear of being labelled and crucified at the later stage for their prosecutorial decisions, which position did not exist previously.

There has to be accountability for decisions that prosecutors make, with their reasons for such decisions. However, being insulted and labelled for simply holding one's views in cases that one dealt with and while advancing their reasons for their decisions is neither good nor fair to me and other prosecutors who are part of these various prosecution teams. Neither is this good nor does it augur well for an

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independent prosecution service that has to execute its prosecutorial duties without fear, favour or prejudice, as the Constitution requires.

I have no problem at all to be hated. I am not here to be love anyway, however it is something else to be defamed, vilified, insulted and called a rogue element, rotten apple, saboteur, controversial, et cetera.

10 I need to be shown who I have sabotaged and made them fail to do their duties. As much as we are rightfully expected to prosecute without fear, favour or prejudice, sadly, on the other hand, we are ridiculed for doing so when our prosecutorial independence and discretion have been exercised in situations that appear to be unfavourable to some. Criminal cases are even opened against us for doing our job as prosecutors.

20

One wonders if this is being allowed, that those who are not happy that prosecutors are prosecuting them, as if anyone would be happy for that, may open criminal cases against these prosecutors and whether or

not prosecutors must start to accept this as part of what comes with their job as prosecutors. In 2015, a criminal case was opened against me for my role, as explained above in the Cato Manor case. It was then allocated to a certain DPP who declined to prosecute it, as obviously rightfully expected.

10 However, despite the decision to decline to prosecute, this case is still left to hang up to now, unfairly so, over my head, like I am some criminal and is still being decided upon, even though a DPP has already decided and declined to prosecute me for executing my prosecutorial duties without fear, favour or prejudice. Perhaps it is relevant to indicate here that I have been repeatedly falsely accused in the past for reasons known to the accusers.

20 For example, on 9 February 2014, City Press published an article that I have been busted on video footage, dumping files on the high-profile case of Mpisane in the parking area of the Pietermaritzburg High Court. This false story was widely

published against me. The reporter indicated that his report was based on information supplied by at least three sources who are employed by the National Prosecuting Authority, NPA, who met with him and confirmed this false story to him.

And because he had used them before, he trusted them to be telling the truth, whereas he realised later that the story was false

10 and he was being used by his own NPA

sources who had doctored the whole story and files had not been dumped there as he was made to believe. There was no CCTV footage and that Noko, myself, was not even in the building at the time of the alleged incident. Further, the reporter said

that his trusted NPA sources played him for a fool and used him, he assumed, as part of a bid to make Noko look incompetent. He

20 apologised for that. This City Press article is attached hereto as Annexure GG.

Myself and some managers in my previous Pietermaritzburg office in KZN were at some stage subjected to some unfair and humiliating process of investigations

authorised by Advocate Karen van Rensburg and the then NDPP. A lot of money and state resources were spent in this futile exercise where a firm of attorneys was contracted and paid for pure internal NPA issues that should have just simply been internally dealt with, being issues of racism and others that had long been in existence from the time when Advocate Simphiwe and Advocate Batohi were DPPs in KZN, respectively.

10

In the same way, again millions were spent fruitlessly in the so-called work-study exercise, which up to now has yielded no positive results to the NPA, which exercise we as DPPs could have simply and most efficiently dealt with in our divisions, as we are ofay with the operations and dynamics of our divisions more than any person contracted for millions of rands coming from outside to attempt to do it. No one is saying anything about all these wrongs and injustices. Instead, I am being continuously harassed for my prosecutorial decisions.

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I just mentioned the above as some of the examples of how dangerous some of our own colleagues within the NPA are and are unfortunately even sources to the media against some of us. In the same vein, we have very good and credible colleagues within the NPA to whom I feel obliged to write these explanations, so that they get to know my version. I cannot control what those with agendas plot and say as they have been against me for a number of years now.

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The same stories that put me in a bad light continue to prevail despite my clarifications and explanations. I have integrity and adhere to the values of the NPA and I live daily, walking tall and sleep well every night with a clear conscience, knowing that I execute my prosecutorial duties by the book. However, I cannot continue to be insulted like this in silence with the hope that justice will be done.

20

My living God will ensure justice for me, He surely will.”

**CHAIRPERSON:** That is read as being incorporated in your

statement, in your affidavit.

**ADV NOKO**: Yes, Chair.

**ADV BALOYI-MERE SC**: Thank you, Chair. Advocate Noko, I want to take you just one or two steps back. And the questions – are you in conference? What I would like you to please assist the enquiry with, and especially myself. I may not be understanding some things quite well. And it is particularly relating to the prosecution terminology in relation to the functions that get discharged by different designated  
10 positions.

**ADV NOKO**: Yes.

**ADV BALOYI-MERE SC**: Now, in this case of the Cato Manor, the person who is – or the professional that is designated as the lead prosecutor is Advocate Maema.

**ADV NOKO**: Yes.

**ADV BALOYI-MERE SC**: Now, can you just enlighten us as to what responsibilities rest on the shoulders of the lead prosecutor in general terms?

**ADV NOKO**: Yes, yes, ma'am. Thank you. The lead  
20 prosecutor in any prosecution team will be like – I do not know whether to call it a coordinator. Even, let us say, for example, the matter goes to court, he or she is the one who will be speaking mostly. Yes, and the others are mostly supporting team. So, he or she will be the one talking, putting the charge, but then they can also share the roles. Others

may lead other state witnesses, things like that. But the lead prosecutor does most of the work. And when you want anything in that case, you go to the lead prosecutor.

That is why Advocate Maema here, for example, in the Cato Manor case, he is the one who even signs the prosecution memorandum. And that would happen with the concurrence, with the prosecution team having discussed, looked at the case, read the docket and all of that. They compile a prosecution manual, but it gets signed by the lead  
10 prosecutor. So, he or she is the go-to person in the prosecution team. Because otherwise, if there is no lead prosecutor, you do not know who to go to in that case. You go to this one, you talk about this issue, things fall within the cracks.

So, there has to be a particular person that you know as a DPP. whatever I need in this case, I go to this person, yes.

**ADV BALOYI-MERE SC:** Right, thanks for that explanation. You know, I think your focus or focal point has been more of  
20 what happens at court. But we know that about prosecution, the road is longer.

**ADV NOKO:** Yes, yes.

**ADV BALOYI-MERE SC:** There is a lot that has to be done before a matter is right for prosecution. Or even where you need to make some reconsiderations, whether to proceed or

request to stop the prosecutions and so forth. Now, at that point of the investigation of the matter, maybe let me ask this first. Is it correct that once a matter, it has been decided that there should be prosecutions, but the investigation at times continues beyond the decision to prosecute? Is that correct?

**ADV NOKO**: That is correct, yes.

**ADV BALOYI-MERE SC**: Thank you. Now, in the event that, in cases where there is investigation that is taking place, what is the role of the lead prosecutor? Can you enlighten  
10 us about that, as to whether he plays any role, and if so, what is the role?

**ADV NOKO**: Yes, ma'am. The lead prosecutor plays a more active role there. They will be arranging with investigating officers to bring witnesses for consultation. They will be the ones directly giving instructions to investigating officers, go do this one, two, three, four, things like that. They will be liaising with the attorneys or the legal teams for the accused, in writing or verbally in meetings. Ja, all those. They do everything as if they are the only prosecutor in the matter.

20 Physically, they get to be the ones doing that more. However, there is coordination and working together as a team, from the entire members of the prosecution team. That is what the lead prosecutor does.

**ADV BALOYI-MERE SC**: Would it be correct to describe the lead prosecutor as actually the accounting officer, who would

have to see that everything is done well, and if there is accountability or accounting to be done, it must be done by the accounting officer, and in this case, the lead prosecutor. Would that understanding be correct?

**ADV NOKO:** Yes, it would be correct.

**ADV BALOYI-MERE SC:** Right, yes, thank you, Chair.

**CHAIRPERSON:** In 2019, when Advocate Batohi withdrew the racketeering charges, she had not had a sight, according to her, she had not had a sight of the dockets. Do you know  
10 that?

**ADV NOKO:** I heard that from her, yes. I do not know that.

**CHAIRPERSON:** When did you hear from her?

**ADV NOKO:** When she testified, Chair.

**CHAIRPERSON:** In your view, as a DPP or a prosecutor of 23 years of experience, is it normal or is it acceptable for the leader of an institution such as NPA to make decisions without herself or himself reading the dockets, in respect of which he makes decisions?

**ADV NOKO:** I am not sure how NDPPs work, but what I  
20 expected from NDPP and herself, in respect of the Cato Manor case specifically, is for her to have obtained reports of all the prosecutors who were involved in the case, starting with Advocate Chauke, who was the DPP, the first DPP in the case, myself, the second DPP, and the entire prosecution team. That was very, very important, because it would have

summarised the whole case for her, as I did only the following year when she requested. But before withdrawal, you are supposed to obtain everything from both sides.

If you receive representations from the accused person, you must also receive response from prosecutors, responding to those representations and rebutting allegations in there, for example. So whether she must have read the whole case dockets or not, I do not know how they review decisions as NDPPs. I do not know what the process is really.

10 I do not know how they work. But I understand they rely on reports. So it is fine, relying on reports, but how do you make a decision not having reports from prosecutors who dealt with the case themselves?

Because she did not before she withdrew the case. The De Kock panel, constituted by Advocate Rodney De Kock, Advocate Ivy Tenga, who is DPP Limpopo, and I think there was one Advocate Riley. Apparently, I do not know who else,

but I remember those three. My understanding is that they formed the members of the De Kock panel. They also did not  
20 get prosecutors' reports. So on the part of prosecutors' reports, really, it does not make sense to me. Because that would have helped a lot to arrive at a fair decision. We are looking at fairness here. So it cannot be fair to look at one side and make a decision based on one side.

**CHAIRPERSON:** Have you had a chance to look at the De

Kock report? Those two reports by Advocate De Kock?

**ADV NOKO**: Ja, I think I found it from the media. Because I was never given a report, yes. But I think I got it and I read it, yes.

**CHAIRPERSON**: As you read the reports, did you see any summaries of the dockets, as you have done in your memorandum to Advocate Batohi?

**ADV NOKO**: No, not at all. Not even referring to what the cases are, maybe trying to crush, nothing like that. There  
10 was no mention of the dockets and what they say, evidence per se, no.

**CHAIRPERSON**: We know, as we were made aware by Advocate Batohi, that there were 23 dockets in relation to the Cato Manor case.

**ADV NOKO**: Yes, Chair.

**CHAIRPERSON**: Correct?

**ADV NOKO**: Yes, Chair.

**CHAIRPERSON**: And those dockets were not summarised, as you did in your memo of 2020, by the De Kock team?

20 **ADV NOKO**: Yes, it was not.

**CHAIRPERSON**: Correct?

**ADV NOKO**: Yes, it was not.

**CHAIRPERSON**: You may not be able to answer this question, but I would like to get your views.

**ADV NOKO**: Okay.

**CHAIRPERSON:** Had Advocate Batohi been given the summaries you have now presented to us...

**ADV NOKO:** Yes, Chair.

**CHAIRPERSON:** ...because she did not read the docket.

Had she been aware of those summaries, do you think that she would probably have decided otherwise?

**ADV NOKO:** I think so. Any reasonable NDPP, DPP, prosecutor would have decided differently had he or she had sight of summaries of case dockets and the witnesses' evidence and all of that. But I do not know whether she had it somewhere or not. Ja, I myself, if it was me, then I would change, I would reconsider my decision of withdrawing, to realise I was wrong, then no, let us reinstate this case.

**CHAIRPERSON:** Now that she received, and I assume that she did receive your memorandum?

**ADV NOKO:** Yes. Of September 20?

**ADV NOKO:** 20.

**CHAIRPERSON:** 20.

**ADV NOKO:** Yes, Chair.

20 **CHAIRPERSON:** What would have been the appropriate step to take in those circumstances?

**ADV NOKO:** To reconsider her decision and realise in the interest of justice she made a mistake and she must re-enrol the cases and withdraw her withdrawal of the section 2(1)(f) and 2(1)(e). The two racketeering, because those are the

ones she withdrew.

**CHAIRPERSON:** The withdrawal of the racketeering authorisation charges or certificates, as it were, means you can later re-institute, correct?

**ADV NOKO:** Yes, you can. Withdrawal in prosecution environment means the case is taken off for whatever reason. But it can be re-instituted whenever the situation changes complexion. So if, for example, the reason for I withdraw this case because there are insufficient reasons, and later more  
10 information comes that gives me more evidence, then I can re-institute it again. So she could have done the same as well.

If her reasons to withdraw the racketeering certificates was based on lack of *prima facie* case or lack of reasonable prospects of a successful prosecution, then having had sight of what she had later then, at least from me, then I expect her to have reconsidered her decision. To say, no, no, no, no, interests of justice do not allow this kind of injustice to just be left like this. Because now she was made  
20 aware of what is happening in these cases. If she withdrew without understanding and she thought there was no evidence, I tried my best to show her that there is evidence in this case.

There is similar fact evidence. There is hearsay evidence. There is circumstantial evidence. There is direct

evidence in respect of the other accused. The charges are in respect of POCA legislation. POCA legislation allows all those to be used. So there is a prosecutable case. Yes, Chair.

**CHAIRPERSON:** As we speak, the position is still the same. The charges are still hanging there as they have been withdrawn.

**ADV NOKO:** Yes, Chair.

**CHAIRPERSON:** Are they capable of being reinstated?

10 **ADV NOKO:** Yes, definitely, Chair. They have just been withdrawn. It is not an issue of *autrefois acquit*. So they can be reinstated. It is not like the accused have been acquitted and in terms of a *autrefois acquit*, you cannot now reinstate. It is just a withdrawal. A withdrawal means there are reasons why we withdraw and you can later reinstate. Plus, most of the cases are murder. Murder do not lapse.

**ADV BALOYI-MERE SC:** Thank you, Chair. Advocate Noko, it will help us a great deal to just maybe if you are to explain two concepts.

20 **ADV NOKO:** Yes, ma'am.

**ADV BALOYI-MERE SC:** The concept of withdrawal of charges and the concept of declining to prosecute.

**ADV NOKO:** Yes, ma'am.

**ADV BALOYI-MERE SC:** Now, is it correct – well, you have already dealt with the issue of withdrawal, but I am putting

them side by side. You have eloquently and adequately dealt with the implications of a withdrawal.

**ADV NOKO:** Yes.

**ADV BALOYI-MERE SC:** But now let us go to the implications of a declining to prosecute. Once the prosecutor has declined to prosecute, what is the effect and impact of the decline to prosecute?

**ADV NOKO:** Okay, thank you, ma'am. Declining to prosecute is, I can just make an example. Let us say you  
10 have a case of shoplifting. Somebody has stolen some sweets worth R10. And then you say, no, I will apply *de minimis non curat lex*. So, as a result, I am declining to prosecute. That case can never come back based on the facts. So, there are some decline to prosecute, which is also *nolle prosequi*, that apply and it is final. It is decline to prosecute.

However, that is where now it overlaps with the withdrawal. And almost it is the same thing, depending on the facts of the case. So, another one will come before you  
20 as a prosecutor, and you decline to prosecute, and your reasons are insufficient evidence. In that one, evidence can still crop up tomorrow. And then you do what? You reinstate it. So, it is like, it is a withdrawal, but you decline to prosecute.

And another feature of withdrawing a case is, for

example, a case that is already on the court roll. And then you pull it, you withdraw it, because you realise, no, the insufficient evidence or other reasons. That one can still go back. But decline to prosecute mostly is when, at the first instance, a prosecutor receives the docket and makes a decision. And the prosecutorial decision in that case is that, I am not prosecuting here. I *nolle prosequi*, I decline to prosecute. For various reasons, like I mentioned, the *de minimis non curat lex*. I mentioned the insufficient evidence.

10 I mentioned a lot of other reasons. But still, it can come back as well, depending on the facts.

**ADV BALOYI-MERE SC:** Yes, you are not the subject of this enquiry, but I heard you say you have this hanging over your head because there has been an expression of declining to prosecute by one of the deputy prosecutors. But then it remains like that. So once a Deputy Director or anyone with the power to decline makes that recommendation that this matter or forms a view and expresses that it has to be declined, prosecution should be declined, who ultimately

20 issues the *nolle prosequi* certificate?

**ADV NOKO:** The *nolle prosequi* certificate is issued by the DPP. And it is on that basis where now we talk about private prosecution, for example, if somebody else is not happy with the declining, yes. But yes, the DPP does.

**ADV BALOYI-MERE SC:** [Indistinct – 1:29:01]... with

declining to prosecute. It is clearly just a withdrawal.

**ADV NOKO**: It is a withdrawal, yes.

**ADV BALOYI-MERE SC**: Thank you, ma'am.

**ADV NOKO**: Thank you, ma'am.

**CHAIRPERSON**: Advocate Khooe and the evidence leaders, Advocate Ngcukaitobi, it is twenty-five past one. I think it is, madam, it is time to pause.

**ADV NOKO**: Yes, Chair.

**CHAIRPERSON**: And to stretch our legs and go and have  
10 lunch. I am not sure whether there is lunch, but I am told one  
of the officers is celebrating a birthday. So you will have a  
birthday cake for lunch. I have been asked to invite all of  
your family. You remember we are a family, so we are going  
to share a birthday cake at lunch. We will adjourn, Advocate  
Ngcukaitobi. Ma'am, we will afford you an opportunity to  
proceed and thereafter, if the time will be ripe, for Advocate  
Ngcukaitobi to cross-examine. Let us take a lunch break  
for... My sister on the left is admonishing me. But I accept  
the whipping. We will adjourn for an hour until twenty-five  
20 past two. I must remind you that you are still under oath,  
madam.

**ADV NOKO**: Yes, Chair.

**CHAIRPERSON**: You can join us as you cut the cake, or  
they will bring a piece of cake to you wherever you are sitting.

**ADV NOKO**: Thank you, Chair.

**CHAIRPERSON:** Let us adjourn, grab lunch, share a cake, and come back and work. We adjourn for now.

**ENQUIRY ADJOURNS**

**ENQUIRY RESUMES**

**MS KHOOE:** Good afternoon, Chair.

**CHAIRPERSON:** Good afternoon, everyone, once again, Advocate Noko, Advocate Chauke, Advocate Khooe. Madam, you are still under oath?

**ADV NOKO:** Yes, Chair.

10 **CHAIRPERSON:** Advocate Khooe?

**ADV KHOOE:** Thank you, Chair.

**CHAIRPERSON:** You may proceed where we interrupted you.

**ADV KHOOE:** Chair, my colleague who is working with me on the matter has a few clarifying questions for the witness. May he have an audience, Mr Mtsweni?

**CHAIRPERSON:** You do not have anything?

**ADV KHOOE:** I have nothing. I have nothing.

**CHAIRPERSON:** Yes, Advocate Mtsweni?

20 **ADV MTSWENI:** Thank you, Chair. Madam Noko, I just want us to go through your evidence and we do this in order to obtain clarification on some of the aspects which came out during your evidence and you would recall during the course of your evidence yesterday, Madam Ramagaga took you particularly in, raised the question of what amounts to

prosecutorial decisions or acts vis-à-vis oversight. Do you recall that?

**ADV NOKO**: Yes, I do.

**ADV MTSWENI**: I just want to get your comment on Advocate Chauke's conduct so that you are not criticized in the future that you have not dealt with that.

**ADV NOKO**: Okay.

**ADV MTSWENI**: And I think the starting point would be in relation to the consent between Advocate Chauke and Smith.

10 Do you recall that?

**ADV NOKO**: Yes, I do.

**ADV MTSWENI**: And you testified that in terms of section 111 of the CPA - Madam Chair, if I am too fast, please do alert me.

**CHAIRPERSON**: Yes, I think you are steady.

**ADV MTSWENI**: Yes. You testified that that kind of consent is usually done between two DPP's. Am I correct?

**ADV NOKO**: Yes.

20 **ADV MTSWENI**: And it would be one DPP consenting to have a matter that would have otherwise been prosecuted in his or her division to have that matter prosecuted in another division.

**ADV NOKO**: Yes.

**ADV MTSWENI**: So basically, would one classify that kind of conduct as a prosecutorial decision or as an oversight act?

**ADV NOKO:** That is a prosecutorial decision.

**ADV MTSWENI:** Now, we know that in this case it was Advocate Chauke who entered into that arrangement with Advocate Smith.

**ADV NOKO:** Yes.

**ADV MTSWENI:** And we know that at the time Advocate Mlotshwa was the Acting DPP in KZN.

**ADV NOKO:** Yes.

**ADV MTSWENI:** And the arrangement was that these  
10 matters, the Rustenburg case, would go and be tried in KZN.

**ADV NOKO:** Yes.

**ADV MTSWENI:** Not in Gauteng.

**ADV NOKO:** Not in Rustenburg.

**ADV MTSWENI:** Yes, and not in Gauteng as well.

**ADV NOKO:** Yes, not in Gauteng.

**ADV MTSWENI:** Now, if I might ask, you testified that you had seen the authorizations granted by Advocate Mlotshwa to the prosecution team.

**ADV NOKO:** The delegations, yes.

20 **ADV MTSWENI:** Yes.

**ADV NOKO:** Yes.

**ADV MTSWENI:** Did you see one in respect of Advocate Chauke?

**ADV NOKO:** No, Advocate Mlotshwa was in the same level with Advocate Chauke because Advocate Mlotshwa was the

Acting DPP. So if there were to be any authorization or delegation for Advocate Chauke to prosecute in KZN, that would have come to somebody who is superior, and that would have been the NDPP.

**ADV MTSWENI:** Yes, I am saying from Advocate Jiba at the time.

**ADV NOKO:** Yes.

**ADV MTSWENI:** Did you see one?

**ADV NOKO:** No, I have never seen that.

10 **ADV MTSWENI:** And you say that the consent was a prosecutorial action, the consent between Smith and Chauke.

**ADV NOKO:** Section 111, yes, it is a prosecutorial decision because as a Prosecutor you decide whether to take the matter that you have to another jurisdiction or to request a DPP in another jurisdiction to give you that case to deal with it. It will depend on the circumstances and facts of the case. But yes, it is a decision that a Prosecutor takes.

**ADV MTSWENI:** Now, would you say that it was competent or proper for Advocate Chauke to enter into such an  
20 arrangement, notwithstanding the fact that Advocate Mlotshwa was the DPP of KZN?

**ADV NOKO:** I do not know what the arrangement was. That was before I came in.

**ADV MTSWENI:** Yes, I am ...[intervenes].

**ADV NOKO:** I do not ...[intervenes].

**ADV MTSWENI:** Asking, I am asking you this, ma'am, so that we could get all the facts clear.

**ADV NOKO:** Ja.

**ADV MTSWENI:** You expressed an opinion as to whether towards the end of, towards your engagement, the end of your engagement with the panel ...[intervenes].

**ADV NOKO:** Ja.

**ADV MTSWENI:** That there was nothing wrong with one DPP exercising some functions because there was no statute that  
10 said he cannot do that.

**ADV NOKO:** Yes, I am not aware of that, yes.

**ADV MTSWENI:** Yes, and to be fair to you, would I be correct that a Prosecutor or a DPP is an organ of state?

**ADV NOKO:** Yes.

**ADV MTSWENI:** Would I be correct to say then he can only exercise those powers that are given to him by law?

**ADV NOKO:** Obviously, we are creatures of statute. We operate in terms of the law. But my point was that I have nothing that I am aware of that legally forbids the opposite.  
20 There is no, it is silent. For example, the NPA Act is silent. It does not say a DPP cannot operate in another jurisdiction. So that is why I could not give my opinion whether that was wrong, illegal or not, because I am not aware of any statute or legislation that prohibits that. For me to say any action contrary to that is a contravention of that legislation, hence,

I could not say it was illegal or unlawful.

**ADV MTSWENI**: Yes. I am not sure whether you would have the bundle, or I am not sure where the witness bundles would be, but I wanted us to also examine Advocate Chauke's involvement in the matter in his own words so that I also get your comment ...[intervenes].

**ADV NOKO**: Okay.

**ADV MTSWENI**: Whether it was part of oversight or was it a prosecutorial action.

10 **ADV NOKO**: Okay.

**ADV MTSWENI**: Madam Chair, I think it would be in the LO bundle. You would not have it.

**CHAIRPERSON**: She would not have it. If you want to ask questions, try to make sure that you give it to her, then she can read it.

**ADV MTSWENI**: I thought there was a witness bundle that had been on standby, Madam Chair.

**CHAIRPERSON**: You would have been, as evidence leaders, responsible for that evidence bundle, not anybody else. But  
20 let us see if we can, I can assist with my copy. It is LO?

**ADV MTSWENI**: LO, it is Advocate Chauke's affidavit in the Zondo Commission. It starts at LO243.

**CHAIRPERSON**: LO ...[intervenes].

**ADV MTSWENI**: I am skipping the zero's, Madam Chair.

**CHAIRPERSON**: You must read everything.

**ADV MTSWENI:** It is LO00243.

**CHAIRPERSON:** LO00?

**ADV MTSWENI:** 243.

**CHAIRPERSON:** 243.

**MS RAMAGAGA:** Is it LO1?

**ADV BALOYI-MERE SC:** LO1.

**ADV MTSWENI:** Unfortunately, yes, 243, I am not sure whether it is LO1 or not, because I have got it in electronic format.

10 **CHAIRPERSON:** It should be Advocate Mtsweni, it is LO1, then 00 something.

**ADV MTSWENI:** Thank you, Madam Chair.

**CHAIRPERSON:** We will borrow you a copy.

**ADV NOKO:** Thank you.

**ADV MTSWENI:** Do you have it, Advocate Noko?

**ADV NOKO:** Yes, I do.

**ADV MTSWENI:** Yes, as you would see, that is the witness statement in terms of rule 3.4 and it is deposed to by Advocate Chauke in what would had become known as the  
20 State Capture Commission.

**ADV NOKO:** Okay.

**ADV MTSWENI:** Now, I do not think that it would be disputed that is, in fact, his affidavit. But I just want us to zoom into what Advocate Chauke described in the Zondo Commission as being the extent of his involvement in the Cato Manor

prosecution. And you would find that at 265, LO1200265.

**ADV NOKO**: Okay, I am there.

**ADV MTSWENI**: Starting from paragraph 57.

**ADV NOKO**: Okay.

**ADV NGCUKAITOBI SC**: Sorry, Madam Chair, hoping that my learned friend will tell us at some point what is the relevance of those questions to the terms of reference.

**CHAIRPERSON**: Yes, Advocate Mtsweni, you are clarifying questions with the witness. You can guide all of us as to  
10 where you are getting to.

**ADV MTSWENI**: Madam Chair, you would recall that Advocate Batohi testified that Advocate Chauke's involvement amounted to, that was beyond an oversight.

**CHAIRPERSON**: Yes.

**ADV MTSWENI**: And you would have recalled, although there was, there is no response from the President on the amendment, but you would have in your report to the President in your ruling, you had foreshadowed that this was not a new event. It is apparent from the, without, I do not  
20 recall is it part in your ruling ...[intervenes].

**CHAIRPERSON**: You can speak louder, it will help me.

**ADV MTSWENI**: Oh, okay. Where you, in your ruling, where you did not support the amendment, the request for an amendment, that this aspect has always been there. And it would be ...[intervenes].

**CHAIRPERSON:** This aspect?

**ADV MTSWENI:** The issue of Advocate Chauke traversing, acting out of bounds, of his statutory bounds. But I will just get to the terms of reference where I can point you exactly. I will just ask my junior, my colleague to assist me.

**CHAIRPERSON:** Ja, it will be helpful, Counsel. You are now referring to the ruling and you mentioned aspects that I do not remember are written in that ruling. It might have appeared in the application. So it is helpful if you can give  
10 us the context, and then we can look at all the documents.

**ADV MTSWENI:** I will do so, Chair, later on ...[intervenes].

**CHAIRPERSON:** Yes.

**ADV MTSWENI:** If maybe that aspect might just be, if I can just, I have made note of what ...[intervenes].

**CHAIRPERSON:** If the need arises we can adjourn and get a copy of the ruling, because you are referring to it and you do not have it here and what you are mentioning, I do not remember that part being mentioned in the ruling itself. But give us the context and so that we can then proceed with the  
20 question, then we can at least follow as to why you are pursuing that line of clarification.

**ADV MTSWENI:** Madam Chair, basically it also follows upon what Madam Ramagaga took up with the witness as to whether the distinction between prosecutorial actions as well as oversight action. It simply follows upon that. But if it is

regarded as not being relevant, Chair, we will, we could then abandon that.

**CHAIRPERSON:** No, no, no, Advocate Mtsweni, you asked that question earlier and that was followed by further questions.

**ADV MTSWENI:** Yes.

**CHAIRPERSON:** You sought the response of the witness in relation to those concepts and she answered, and then you followed that with further questions. And then Advocate  
10 Ngcukaitobi says, but where are we going to. And I am saying to you, I am not sure what the context of this is. You can just maybe tell us. You seek to clarify something with regard to that and if it falls within that distinction, make it clear to us so that we can proceed.

**ADV MTSWENI:** That was, that is basically the concept to say whether was Advocate Chauke's conduct and oversight or not. That was just simply on that basis.

**CHAIRPERSON:** You may proceed.

**ADV MTSWENI:** Yes. Advocate Noko ...[intervenes].

20 **ADV NOKO:** Yes.

**ADV MTSWENI:** At paragraph 57, I will not read that, but Advocate Chauke tells us of the circumstances which led to him being involved in the matter, in the main that it was at the instance and at the request of Advocate Jiba, and he provides the reasons why, amongst others, he would be

requested to assist and to procure Prosecutors outside KZN. But what he then, at paragraph 62 on LO00267, at paragraph 62, he outlines what his role as the team coordinator was. And in the nutshell, he says:

“Was to deal with logistic and administrative matters of the prosecution team, ensuring the coordination between various stakeholders.”

10 And then that he was not involved, 62.3:

“My involvement excluded taking prosecutorial decision whether to prosecute or not.”

And then at 62.4 it says:

“Feedback and briefing on the team to Jiba, including submission of documents from the prosecution team to the NDPP.”

And then, he then, moving forward, at paragraph 64, he then tells us what then started to happen. He says:

20 “On 3<sup>rd</sup> May 2012, I attended a briefing meeting with Jiba, during which it was arranged that the prosecution team brief her on the Cato Manor on 18 May 2012. And on 15 May 2012, I attended a meeting with the prosecution team for

the preparation for Jiba's briefing.”

Now, again, within the context, just to underline whether that conduct amounts to prosecutorial action or oversight, how would you classify that?

**ADV NOKO**: You mean the briefing?

**ADV MTSWENI**: Yes, what he says in paragraph 64.

**ADV NOKO**: The briefing are actually done by DPP's in every high-profile cases.

**ADV MTSWENI**: Now, which DPP would do that?

10 **ADV NOKO**: The DPP who is in charge of the case.

**ADV MTSWENI**: In charge of the case, would it be the, in whose jurisdiction the prosecution will take place or the oversight DPP?

**ADV NOKO**: It depends on which, under which DPP that case resorts. So, in respect of Cato Manor, at then, it was resulting under Advocate Chauke in terms of the instruction from the NDPP, Acting NDPP, Advocate Jiba. But then it was under jurisdiction of Advocate Simphiwe Mlotshwa, then myself afterwards.

20 **ADV MTSWENI**: Yes, so, you are saying that that briefing ought not to have been done by, ideally, it ought to have been done by Advocate Mlotshwa?

**ADV NOKO**: If he was overseeing the case. But if he was not overseeing the case, he could not have been expected to be the one briefing the NDPP, but the one who is overseeing

it. Whether he is doing so, rightly or wrongly, it is something else. But the one who is in charge of that case then, overseeing it, is the one who is supposed to brief the NDPP.

**ADV MTSWENI:** Yes. And then he goes on, on paragraph 68. He says:

10 “On the 24<sup>th</sup> May 2012, he attended a briefing meeting with Jiba, together with the prosecution team, where Mathenjwa did the briefing and the briefing entailed possible charges against the suspect, the security of the prosecution team, delegations of the prosecution team, and part 8 of the prosecution manual and section 17 of the Inquest Act.”

Do you see that? It is on ...[intervenes].

**ADV NOKO:** Yes, it is paragraph 68, yes.

**ADV MTSWENI:** And you still maintain that the briefing still has to be done by the DPP, overseeing the matter?

20 **ADV NOKO:** Advocate Mtsweni, the point here is that Advocate Chauke was overseeing the case and he had to be the one doing the briefing. It is a different point whether he was overseeing the case rightly or wrongly, but if we talk about the briefing, he is the one who is expected to do the briefing. No other DPP was overseeing the case, but he was. So he is the one who was expected to go with the prosecution

team, and the prosecution team briefed the NDPP in his presence.

That is how it worked, even with me. And in all other high-profile cases, we had a lot in KZN, and we would go with the prosecution team, and the NDPP is briefed by the prosecution team and DPP, the DPP will add here and there wherever is necessary. But the fact of the matter here is with regards to the briefing, he was overseeing the case. No one else had to brief the NDPP except him.

10 **ADV MTSWENI:** Yes. And then we go on. I thank you for the clarification.

**ADV NOKO:** Yes.

**ADV MTSWENI:** And at LO1 ...[intervenes].

**CHAIRPERSON:** Before you proceed, Counsel, paragraph 68, were you focusing on the second sentence that says Mathenjwa did the debriefing? Were you making that point?

**ADV MTSWENI:** Yes, as well as in relation to the charges, where charge, the possible charges are being discussed.

**CHAIRPERSON:** Where does it say that?

20 **ADV MTSWENI:** It says that:

“This briefing entailed charges against the suspect, the security of the prosecution team, delegation of the prosecution teams, Part 8 of the prosecution manual, and Section 17 of

the Inquest Act.”

**CHAIRPERSON:** Yes, and with regard to the point that the briefing was done by Advocate Mathenjwa, are you taking issues with that?

**ADV MTSWENI:** No, we are not.

**CHAIRPERSON:** Okay. Yes, the next one.

**ADV MTSWENI:** Now, we just, I just want us to go, jump further to paragraph 79, where he talks about having held a meeting with Mlotshwa, as well as the Acting DPP of KZN, as well as the Acting Judge President about that matter. Would you still classify his attendance of those meetings as part of the oversight duties?

**ADV NOKO:** The thing is, I was not in the picture yet, so I do not know what was discussed.

**ADV MTSWENI:** No, I just want to Chauke, Advocate Chauke’s involvement, would you classify it as prosecutorial, or do you still classify it as part of the oversight?

**ADV NOKO:** It is hard for me to say if I do not know what was being discussed, because what gets discussed determines whether it is prosecutorial or oversight. It could have been that they were discussing security of Prosecutors. It could have been they were discussing who to charge with what charges.

**ADV MTSWENI:** Okay.

**ADV NOKO:** But if I do not know what they discussed, I

cannot answer that.

**ADV MTSWENI:** Now, let us go to paragraph 8.

**CHAIRPERSON:** Before that, 79 flows from paragraph 78.

It is the 18<sup>th</sup> of June 2012.

**ADV NOKO:** Yes.

**CHAIRPERSON:** Were you the DPP at that time?

**ADV NOKO:** Not yet, Chair.

**CHAIRPERSON:** It was Advocate Mlotshwa?

**ADV NOKO:** Yes, Chair.

10 **ADV MTSWENI:** Yes, now let us, you said the question of whether it is prosecutorial or oversight depends on the discussions. Am I correct?

**ADV NOKO:** Partly, yes, it does.

**ADV MTSWENI:** Now, he tells us on paragraph 8 that he had a meeting with the KZN Regional Court President, Mr Nzimande, to discuss availability of Regional Court Magistrates to hear the bail applications. Is that still part of oversight, or is that now prosecutorial?

20 **ADV NOKO:** This leans more on prosecutorial, because that is what Prosecutors do now. You are discussing which Presiding Officer and all of that, ja. It is more prosecutorial this one.

**ADV MTSWENI:** And would you also classify his involvement in your meeting with the Judge President of KZN, where it was about arranging the Judges to hear the matter, would you

also classify that as oversight or prosecutorial?

**ADV NOKO**: It is prosecutorial. It is the same as this one.

**ADV MTSWENI**: Yes, okay. Now ...[intervenes].

**ADV BALOYI-MERE SC**: Before you move on, Advocate Mtsweni, can I, the situation that is described on paragraph 80, that on 19 June 2012 I had a meeting with the KZN Regional Court President, it differs to a certain extent with what happened when Advocate Chauke took you along to see the JP for the allocation of a Judge outside the province.

10 **ADV NOKO**: Yes, ma'am.

**ADV BALOYI-MERE SC**: And you have just said this situation described on paragraph 80 leans more on prosecutorial, while you say you did not answer the same when, in your situation when you went with him to see the KZN JP for the allocation, to request the allocation of a Judge from outside the country. Would you care to enlighten us what is the difference?

**ADV NOKO**: Okay, thank you, ma'am. I remember being asked whether the request for section 111 for the consent of  
20 Advocate Johan Smith was prosecutorial or otherwise, not about going to meet, unless I am mistaken, but not about going to meet the JP to request for a Judge out of KZN, but ...[intervenes].

**ADV BALOYI-MERE SC**: Okay, was not asked.

**ADV NOKO**: Yes.

**ADV BALOYI-MERE SC:** Then I am asking it now.

**ADV NOKO:** Yes.

**ADV BALOYI-MERE SC:** Was it prosecutorial or oversight ...[intervenes].

**ADV NOKO:** This is ...[intervenes].

**ADV BALOYI-MERE SC:** On the part of Advocate Chauke?

**ADV NOKO:** It was prosecutorial, the same with the Judge President and the Regional Court President.

**ADV MTSWENI:** Can I proceed, Madam? Now  
10 ...[intervenes].

**CHAIRPERSON:** But maybe perhaps whilst you are there, in these instances, when I look at the paragraphs that the Counsel has referred you to, 68, 79, and also in respect of that part where you indicated that Advocate Chauke approached you and you both approached the Judge President KZN.

**ADV NOKO:** Yes, Chair.

**CHAIRPERSON:** In those instances, the DPP's were present. For instance, as regards 79, that meeting, Advocate  
20 Mlotshwa was there as the DPP KZN.

**ADV NOKO:** Acting DPP then, yes.

**CHAIRPERSON:** Then.

**ADV NOKO:** True, Chair.

**CHAIRPERSON:** Do we know then who would have taken any decision there, whatever decision that man has taken?

The point is the DPP was there, is it not?

**ADV NOKO**: Yes, the DPP was there ...[intervenes].

**CHAIRPERSON**: In your case, before you proceed, in your case when you acquiesced to go and see the Judge President ...[intervenes].

**ADV NOKO**: Yes, Chair.

**CHAIRPERSON**: It was done on the basis that it was your jurisdiction, hence you were approached to accompany Advocate Chauke. Is my understanding correct?

10 **ADV NOKO**: Yes, Chair.

**CHAIRPERSON**: Which means he would not go alone to see the Judge President KZN without the DPP.

**ADV NOKO**: Yes, Chair.

**CHAIRPERSON**: In respect of paragraph 79, the paragraph where Advocate Mlotshwa, 79 ...[intervenes].

**ADV NOKO**: Yes, Chair.

**CHAIRPERSON**: The same day, that is the 18<sup>th</sup> of June 2012, where a meeting was held between Advocate Chauke and Advocate Mlotshwa, then a DPP KZN.

20 **ADV NOKO**: Yes.

**CHAIRPERSON**: To go and, at the AJP of KZN.

**ADV NOKO**: Yes, Chair.

**CHAIRPERSON**: The point that I am trying to make there is that in those instances, Advocate Chauke was accompanied by either the Acting DPP or the DPP.

**ADV NOKO:** Yes, Chair, as far as I am aware, yes.

**CHAIRPERSON:** Yes, thank you, Counsel.

**ADV MTSWENI:** Thank you, Madam Chair. Advocate Noko, I just want us to go then further to whether, still within the context of prosecutorial oversight, as to whose responsibility, which DPP would be responsible - is the submission of an application for authorization in terms of section 24 of POCA, is that part of oversight or is it prosecutorial in nature?

**ADV NOKO:** That is oversight because the decisions are  
10 taken by the Prosecutors. The DPP does the administrative part because what the DPP does when you send an application or recommendation to the NDPP is mainly to sign. You sign the cover memo, the prosecution memorandum is made, compiled and signed by the Prosecutors. You sign, you can sign it as well, but everything is done and decided upon, even what charges to charge who are done by the Prosecutors. And the NDPP will just be sort of a conduit pipe to submit those to the NDPP.

**CHAIRPERSON:** DPP?

20 **ADV NOKO:** Yes, the DPP will be that kind of conduit pipe and also approved by signing that because they are from their own jurisdiction and out of protocol as well. The DPP must be the one submitting to the NDPP, not be submitted by those below the NDPP submitting to superiors. So that is purely administrative.

**CHAIRPERSON:** I am not sure whether she answers your question, Advocating Mtsweni. Will you please repeat that question?

**ADV MTSWENI:** Thank you, Madam Chair. Madam Noko, in fact, let us put it within, so that I am clear.

**ADV NOKO:** Ja.

**ADV MTSWENI:** Can you please go to, or still, I am not sure which part of the LO is this, but 00666.

**CHAIRPERSON:** 00666.

10 **MS RAMAGAGA:** Now you are making our lives, everybody's life difficult. You cannot ask a question and say, I do not know which part of the LO is this. What do you expect us to do?

**ADV MTSWENI:** Because, Madam Ramagaga, if I might explain. I have got it electronically. My bundles are not subdivided as the panel's bundles, so I only have it as one complete document.

**MS RAMAGAGA:** I understand that, but who is the navigator here?

20 **ADV MTSWENI:** I am the captain, but unfortunately, I inherited this flight because already when I came in, the bundles had already been prepared.

**MS RAMAGAGA:** Advocate Mtsweni, I think that line is stale. It is very stale. That line of saying I only came in when the plane was already in the air. You came in here before

Advocate Khooe, before Advocate Skosana SC. Let us try another line. And maybe let us not even try lines.

**ADV MTSWENI:** I retract that, Madam Ramagaga.

**MS RAMAGAGA:** Ja, thank you. Thank you. Thanks.

**ADV MTSWENI:** I am told it is LO3.

**MS RAMAGAGA:** I beg your pardon?

**ADV MTSWENI:** I am told it is LO3. It is LO3.

**MS RAMAGAGA:** Okay.

**ADV MTSWENI:** And I undertake that from now on, I will  
10 familiarize myself with where, which LO starts where and ends where.

**MS RAMAGAGA:** Thank you very much. It will be very much appreciated.

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

**ADV MTSWENI:** The reason I am, well, you would see there, Advocate Noko.

**CHAIRPERSON:** LO3 is what?

**ADV MTSWENI:** 665.

**CHAIRPERSON:** 665. The application, just tell us what it  
20 is. Place it on record.

**ADV MTSWENI:** Yes, that is what I wanted her to get there ...[intervenes].

**CHAIRPERSON:** Yes.

**ADV MTSWENI:** So that she knows.

**CHAIRPERSON:** Yes.

**ADV MTSWENI:** Advocate Noko, that is an application that was submitted to Advocate Jiba on the 15<sup>th</sup> of August 2012 for authorization in terms of section 2(4) of POCA. Do you see that?

**ADV NOKO:** I do not see it here. I do not know where it is. They gave me a laptop. I do not know where it is.

**CHAIRPERSON:** It is also not fair to the witness, Advocate Mtsweni. you know very well that this witness does not have the bundles. You should have made proper arrangement  
10 before we reconvened.

**ADV NOKO:** Okay, thank you.

**CHAIRPERSON:** Given the fact that this is our witness. She is our witness. You are leading her at our instance. You should have gathered all this information beforehand.

**ADV MTSWENI:** I apologize.

**CHAIRPERSON:** And for you to ask the witness a question about something she does not have is very unfair.

**ADV MTSWENI:** I was under the impression that there was a witness bundle readily available.

20 **CHAIRPERSON:** I beg your pardon?

**ADV MTSWENI:** I was under the impression that there was a witness bundle that had been prepared.

**CHAIRPERSON:** Well, there cannot be a witness bundle which you yourself must compile as evidence leading team. Who would have prepared that bundle?

**ADV MTSWENI:** I take note of that.

**CHAIRPERSON:** Yes, sir.

**ADV MTSWENI:** I will make sure that in future ...[intervenes].

**CHAIRPERSON:** Yes, you cannot expect us to prepare bundles. You are an evidence leading team. You must prepare documents that you are presenting to us and you should know them better than all of us.

**ADV MTSWENI:** I take note of that, Madam Chair. Do you  
10 have the document, Madam Noko?

**ADV NOKO:** Yes, I do.

**ADV MTSWENI:** That, you would see, it is an application for authorization in terms of section 2(4) of POCA in relation to General Booysen and others.

**ADV NOKO:** Yes.

**ADV MTSWENI:** Do you see that?

**ADV NOKO:** I see that.

**ADV MTSWENI:** Now, the question I asked you was the submission of this application, because the authorization  
20 must be granted by the National Director, am I correct?

**ADV NOKO:** Yes, you are correct.

**ADV MTSWENI:** Now, the submission of this application or the making of this application, is that an oversight or is it a prosecutorial act?

**ADV NOKO:** This is oversight.

**ADV MTSWENI:** Now, can we just delve into that. If you look at paragraph 2, it says:

“I have perused the document and recommend the application.”

Do you see that?

**ADV NOKO:** Yes.

**ADV MTSWENI:** Is that, the recommendation, it is something that the, would I be correct that it is part of what the NDPP would consider when applying his or her mind on the application as to what is the stance by the DPP?  
10

**ADV NOKO:** Yes, it is. Those are – oh.

**ADV MTSWENI:** Now, would you still then maintain that where you make recommendations such as this which are going to have a bearing on the decision, that still amounts to oversight?  
15

**ADV NOKO:** That is still oversight, as I am understanding.

**ADV MTSWENI:** Yes.

**ADV NOKO:** You are recommending after a prosecutorial decision has been taken. You are not taking a prosecutorial decision. You are recommending as a DPP and saying NDPP for your consideration.  
20

**ADV MTSWENI:** Okay, thank you ma'am.

**ADV NOKO:** Yes.

**ADV MTSWENI:** Now, I just want us to also consider this document. It appear in ...[intervenes].

**CHAIRPERSON:** Pardon, Counsel. Let me understand this answer. As at August 15, 2012 ...[intervenes].

**ADV NOKO:** Yes, Chair.

**CHAIRPERSON:** When you wrote to Advocate Jiba applying for authorization, did the prosecutorial team, had there been a decision by the prosecutorial team as regards this matter?

**ADV NOKO:** I did not write this, Chair.

**CHAIRPERSON:** Oh, because I see Advocate Noko Mashilo. Who is Noko Mashilo?

10 **ADV NOKO:** It is me, Chair, but this is the document that the evidence leader from the Zondo Commission asked me about and I said I had not seen it. I mean, that is not my signature. So, I did not compile this.

**CHAIRPERSON:** Wait a minute. LO, this is a legal opinion, this document, otherwise it would have been from ZC if it is the Zondo Commission document. LO would have been a document coming from legal opinions. Now, I do not understand why it would have been at the Zondo Commission.

I am getting even more confused now. But, are you saying  
20 this is a document that was brought to our attention ...[intervenes].

**ADV NOKO:** Yes, Chair.

**CHAIRPERSON:** By the evidence leader at the Zondo Commission?

**ADV NOKO:** Yes, Chair.

**ADV MTSWENI:** And, you then said this is, did not append your signature to this document or something like that because the signature is that of Advocate Jiba here.

**ADV NOKO:** Advocate Chauke.

**CHAIRPERSON:** Advocate Chauke?

**ADV NOKO:** Yes.

**CHAIRPERSON:** And, then at the bottom there is written Advocate Nomgcobo Jiba.

**ADV NOKO:** It is written my name, Chair.

10 **CHAIRPERSON:** Oh, oh, there is – okay, I am on the second page. Oh ja, I am sorry. I beg your pardon. I think that is where I got a bit confused. Yes, thank you. And, then your answer is that this is not your signature.

**ADV NOKO:** Yes, it is not.

**CHAIRPERSON:** Thank you.

**ADV NOKO:** It is what I referred to in paragraph 39 and 40 of my affidavit.

**ADV MTSWENI:** May I continue, Madam Chair?

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

20 **ADV MTSWENI:** In fact, this was the next question that I wanted to ask you to say that as on the 15<sup>th</sup> of August 2012 you were already the Acting DPP of KZN.

**ADV NOKO:** Yes, I was.

**CHAIRPERSON:** And, I take it that on the 15<sup>th</sup> of August, 2012, you were not indisposed otherwise, you were not on

leave or indisposed of health, whatever, for health reasons whatsoever, you were in the office.

**ADV NOKO**: I need, I do not know whether, I do not have my diaries. I do not have my schedule then. So, I do not know what was happening really on the 15<sup>th</sup> of August, 2012. It is a long time ago, so I do not know where I was.

**ADV MTSWENI**: I accept it.

**ADV NOKO**: Ja.

**ADV MTSWENI**: But, the document purports to come from  
10 your office. Do you see that?

**ADV NOKO**: Yes, in terms of having my letterhead and my name.

**ADV MTSWENI**: Yes.

**ADV NOKO**: Yes, it say so.

**ADV MTSWENI**: And, at the end there, it is signed and there is no indication whether it is PP or is it your signature or not.

**ADV NOKO**: I do not know, but I see this arrow. I do not know, sometimes other people, when they PP, they put this triangle arrow. I do not know if it is a PP or not.

20 **ADV MTSWENI**: Now, when this application was submitted, were you briefed about the application that is going to be submitted?

**ADV NOKO**: I do not remember being briefed, but I had had a meeting with Advocate Chauke the previous week when we were going to meet the NDPP. I mean, the Acting Judge

President in Durban.

**ADV MTSWENI:** Yes. Now, and you were fully cooperating with Advocate Chauke at the time, whatever his requests were.

**ADV NOKO:** Yes.

**ADV MTSWENI:** Now, would I be correct that if there was an application of this nature and which would have been issued on your letterhead and is emanating from your office, you would have and ought to have been aware of it, that there  
10 was going to be this application submitted in my name?

**ADV NOKO:** I am not hearing the question?

**CHAIRPERSON:** Sorry, you would have?

**ADV NOKO:** Ja.

**ADV MTSWENI:** She would have been aware or ought to have been aware that there was going to be an application of this nature which was being submitted in her name.

**ADV NOKO:** Ja, I guess so.

**ADV MTSWENI:** Yes, and you now told us that you saw this document for the first time during the Zondo Commission.

20 **ADV NOKO:** Yes.

**ADV MTSWENI:** And you were never told about it anywhere.

**ADV NOKO:** No, I was not.

**ADV MTSWENI:** Yes. The reason, I will get to it, I just want to, because when one looks, there is a document which was an opinion by Dr Broughton where he, amongst others, says

that apparently it was done with you, it was an arrangement between yourself and Advocate Chauke. But my junior is still finding the relevant portion of it. Now, I just want us then to move on to the memorandum that you received.

**CHAIRPERSON:** Let me understand the last point that you are putting to the witness. The arrangement between Dr Broughton and the witness would have been with regard to what?

**ADV MTSWENI:** That, from Dr Broughton's opinion, it says  
10 that the submission of this application was in terms of an arrangement between Advocate Chauke and Advocate Noko. But they rely on an affidavit by Advocate Mosing we are just finding the relevant part of that affidavit so that we can just get the question whether is that statement correct or not.

**CHAIRPERSON:** Yes.

**ADV MTSWENI:** Now, Advocate Noko, if we go to the document MN1 ...[intervenes].

**CHAIRPERSON:** Before, I am sorry, before we pass that point. This point you are making with regard to the  
20 arrangement, would it appear in Dr Broughton's memo?

**ADV MTSWENI:** Yes, it appears in Dr ...[intervenes].

**CHAIRPERSON:** [Indistinct]... [cross-talking].

**ADV MTSWENI:** It appears in Dr Broughton's opinion. In fact, at LO00197.

**CHAIRPERSON:** LO03? Is that 3?

**ADV MTSWENI:** It should be 1, I think.

**CHAIRPERSON:** 1.

**ADV MTSWENI:** And if I may ...[intervenes].

**CHAIRPERSON:** 00197.

**ADV MTSWENI:** And if I may read ...[intervenes].

**CHAIRPERSON:** Before you read, let us just get our volumes.

**CHAIRPERSON:** Yes, paragraph?

**ADV MTSWENI:** He says, at paragraph 77, he says:

10                   “However, in Advocate Mosing's affidavit in Silverton case number, it is noted as following.”

**CHAIRPERSON:** Sorry, sorry, paragraph?

**ADV MTSWENI:** Paragraph 77.

**CHAIRPERSON:** Yes.

**ADV MTSWENI:** He quotes from what Advocate Mosing says in his affidavit and at the bottom, towards the quotation, I think it is six or seven lines, says:

20                   “What may possibly explain the situation where the application emanated under the cover of Advocate Chauke's office, that it seems that Advocate Chauke and the DPP of KZN, Advocate Noko had arranged that such an arrangement in order to expedite the matter and avoid

any possible delay on account of Advocate Noko being based in KZN. It seems that it was later considered prudent that Noko rather sign the document instead, but the application for centralization signed by Chauke had already been submitted by him, as indicated above.”

And I think you would find that part, Advocate Mosing's, in his footnote, he refers to Advocate Mosing's affidavit at paragraph 98.

**ADV NOKO**: Okay, should I respond?

**ADV MTSWENI**: Yes, now that we are there, as to whether was this document, was this an arrangement between yourself and Advocate Chauke, that he would sign documents because, to avoid delays?

**ADV NOKO**: What you can see here, he says it seems, it seems, it seems, like it is ...[intervenes].

**ADV MTSWENI**: No, I understand. I just want to get your view now, you are here. Was that, was there such an arrangement or not?

**ADV NOKO**: I am trying to answer and I am answering based on what Dr Broughton is saying. He is deducing from, I do not know, from whatever he is deducing. But does he know, as a matter of fact, that that was the position, because he

says it seems as if there was an arrangement, it seems as if, to show that he is not sure about what he is saying. And he was not even part of the case.

**ADV MTSWENI**: Okay, now let me ask then ...[intervenes].

**ADV NOKO**: Ja.

**ADV MTSWENI**: Was there an arrangement between yourself and Advocate Chauke, that he would sign documents on your behalf?

**ADV NOKO**: No, I did not have that arrangement with  
10 Advocate Chauke in that respect.

**ADV MTSWENI**: Okay. Now, I just want us to deal with your support for the decision to institute the racketeering charges.

**ADV NOKO**: Ja.

**ADV MTSWENI**: And the first time ...[intervenes].

**CHAIRPERSON**: Before you leave that point, you were just looking at footnote 70 and referred us to paragraph 98 of the affidavit to the SCC ...[indistinct].

**ADV MTSWENI**: It is a Silverton case number.

**CHAIRPERSON**: Are you making any point with regard to  
20 that?

**ADV MTSWENI**: No, no, I just wanted to say that is where Dr Broughton gets, what you, you would see there under paragraph 77, it is a quotation from that affidavit.

**CHAIRPERSON**: Yes.

**ADV MTSWENI**: So I was just trying to show where he gets

that from.

**CHAIRPERSON:** Yes. Thank you.

**ADV MTSWENI:** Now, Advocate Noko, would I be correct that the first time that you got a briefing into the Cato Manor case was when you received Annexure MN1?

**ADV NOKO:** Yes.

**ADV MTSWENI:** And that was on the 7<sup>th</sup> of August 2012?

**ADV NOKO:** 2012, yes.

**ADV MTSWENI:** And that was a summary. The summary  
10 that was given to you, it was given by Advocate Chauke.

**ADV NOKO:** Yes.

**ADV MTSWENI:** And now he then, at paragraph 6, gives you a number of documents.

**CHAIRPERSON:** Which part is that?

**ADV MTSWENI:** Paragraph 6 of the internal memorandum, MN1 to Advocate Noko's affidavit, the annexures to Advocate Noko's affidavit.

**CHAIRPERSON:** Paragraph 6 ...[indistinct] [microphone off].

**ADV MTSWENI:** No, no, no, Advocate Chauke's  
20 memorandum, MN1, Annexure MN1, Madam Chair. It is, I am told it is M ...[intervenes].

**CHAIRPERSON:** Repeat yourself?

**ADV MTSWENI:** It is MN00001. It has got four zero's. I am not sure how to call ...[intervenes].

**CHAIRPERSON:** Quadruple.

**ADV MTSWENI:** Quadruple zero.

**CHAIRPERSON:** [Indistinct]... [microphone off] are we back to the affidavit of the witness?

**ADV MTSWENI:** Yes, Madam Chair.

**CHAIRPERSON:** [Indistinct]...

**ADV MTSWENI:** It looks like it was cut.

**CHAIRPERSON:** Page MN?

**ADV MTSWENI:** Under paragraph 6, Madam Chair.

**CHAIRPERSON:** Of her affidavit.

10 **ADV MTSWENI:** Yes, I am told it is 00003.

**CHAIRPERSON:** Paragraph 6 of what?

**ADV MTSWENI:** Of the memorandum from Advocate Chauke to Advocate Noko, Annexure MN1. This is the one that my colleague said it was cut during the making of copies and she handed up, I am sure, I think she handed up a hard copy.

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

**ADV MTSWENI:** Madam Noko, under paragraph 6, that is where Advocate Chauke refers to the documents that were under cover the memorandum.

20 **ADV NOKO:** Yes, the memorandum, ja. Yes.

**ADV MTSWENI:** Yes. And she tells you that what was included was the indictment and then a copy of the memorandum to the NDPP for authorization of racketeering charges together with the draft authorization certificates as well as a request for centralization and a copy of the consent

letter which he received from Advocate Smith.

**ADV NOKO:** Yes.

**ADV MTSWENI:** Now, if I might then ask, in your evidence that you gave earlier, and I think it is one of, it is in your memorandum to Advocate Batohi and your colleagues, you go to a great length and you summarize each and every statement which informs your view why you believe that the institution of the racketeering charges was justified.

**ADV NOKO:** Yes.

10 **ADV MTSWENI:** Now, if I might ask, when did you for the first time get to, or come across these statements that you summarize herein?

**ADV NOKO:** It was when Advocate Mathenjwa sent them to me.

**ADV MTSWENI:** Yes, so ...[intervenes].

**ADV NOKO:** I think it was in 2014, 2015. It is in my affidavit. I will quickly tell you. Okay, it is in page 10, paragraph 33 and Annexure MN4. There is a covering letter from Advocate Mathenjwa that enclosed the prosecution memorandum, the  
20 statements from witnesses then. But the prosecution memorandum, I had it here from Advocate Chauke. Then in 2012, that was amended. It was different from the one I got in 2014, I think, from Advocate Mathenjwa.

**ADV MTSWENI:** So the reason I am asking this is because of the impression that is given by the application for

authorization that was submitted under your name where it says:

“I have perused the documents and recommend the application.”

**ADV NOKO**: Okay.

**ADV MTSWENI**: It seeks to create an impression that you had applied your mind and you believe that there was a case for Advocate, for General Booysen and the team to answer. Do you agree with me?

10 **ADV NOKO**: Which memorandum are you talking about?

**ADV MTSWENI**: I think they took away the laptop now.

**ADV NOKO**: The one in 2012?

**ADV MTSWENI**: Yes.

**ADV NOKO**: I did not compile that. I was not in the case yet.

**ADV MTSWENI**: Ja, but I am just saying, I just want you to look at it and that statement that says, because it is submitted under your name and the impression it creates that it emanates from your office.

20 **CHAIRPERSON**: Yes, sir ...[intervenes].

**ADV NOKO**: But the ...[intervenes].

**CHAIRPERSON**: I think in fairness, he testified that when he was contacted about this document, if it is the same document, he then answered that that was not even his signature. Am I correct?

**ADV NOKO:** That was not my signature.

**CHAIRPERSON:** So the fact that her name appears there and there is somebody who has signed there and she said that this signature looks like the signature of Advocate Chauke, that is how I understood her evidence.

**ADV MTSWENI:** Okay, thank you, Madam Chair, for that.

**CHAIRPERSON:** And then paragraph 2 that you read, which says, I have perused the documents and recommend the application, that cannot be imputed to her because she says,  
10 I did not sign this document.

**ADV MTSWENI:** I just wanted to highlight the danger that is implied in that statement, which seeks to suggest that ...[intervenes].

**CHAIRPERSON:** Ja, well, it is a matter for argument.

**ADV MTSWENI:** Ja.

**CHAIRPERSON:** The point is the witness is testifying that it is not my signature.

**ADV MTSWENI:** Thank you, Madam Chair. May I just get one thing? I just want to get something. Now, Ms, Advocate  
20 Noko, I just want us to zoom in into your support, the basis of your support for the decisions, for the decision that you say the institution was justified. Now, and in particular, the complaint here, it is in relation, I would zoom, there were about 16 accused in this matter. Am I correct?

**ADV NOKO:** I do not quite remember how many there were,

but there was a number of them around that ja.

**ADV MTSWENI:** Yes, because if you look at the way the charges ...[indistinct] if you look at the number of the accused, then the highest number is 16.

**CHAIRPERSON:** 16 in respect of which?

**ADV MTSWENI:** The Cato Manor charges.

**CHAIRPERSON:** The Cato Manor case.

**ADV MTSWENI:** Yes. Now, as a Prosecutor, when you take a decision to prosecute, the primary consideration is *prima*  
10 *facie* case. Am I correct?

**ADV NOKO:** Yes.

**ADV MTSWENI:** That is the standard.

**ADV NOKO:** Correct.

**ADV MTSWENI:** In other words, is there a case for this person to answer to.

**ADV NOKO:** Yes.

**ADV MTSWENI:** And in light of the fact that there were 16 accused, you have to be satisfied that each one of them has a case to answer.

20 **ADV NOKO:** Yes.

**ADV MTSWENI:** Meaning that you must ask yourself, is there evidence that implicates or pinpoints this person to the commission of the offense.

**ADV NOKO:** Yes.

**ADV MTSWENI:** Yes. Now, let us just zoom into Major

General Booyesen, and I can put a disclaimer right now that I do not hold a brief on behalf of Major General Booyesen. I am just simply asking this so that you get an opportunity to comment on this so that whatever later on you are not criticized that you never dealt with these issues and so that the enquiry can then be in a position to make an informed report.

**ADV NOKO:** Ja.

**ADV MTSWENI:** Out of the 116 charges that are contained  
10 in the indictment, Major General Booyesen is implicated in at least seven of them. That would be 12, 11, 10, 9, 8, 2, and 1.

**CHAIRPERSON:** Please repeat yourself.

**ADV MTSWENI:** It is count 1, count 2, count 8, count 9, count 10, count 11, and count 12. Now, I just want us to, I do not want, given, for the purpose of time, it would take us another three weeks for us just to analyse these charges and evidence, and I do not want to do that, but I just want us to at least, let us look at count 1 and 2, which are the POCA  
20 related charges. The first one, it is in terms of ...[intervenes].

**CHAIRPERSON:** Where are they? Take us to those counts.

**ADV MTSWENI:** I just have, they are in the indictment, Madam Chair.

**CHAIRPERSON:** I suppose your attorney is helping you there. I see he is busy on the phone. [Indistinct]... you are

supposed to be helping your Counsels, but you are busy on the phone there. We need your assistance as an instructing attorney.

**ADV NOKO**: Chair, if that will help, I know what he is talking about, and I can tell him which counts, which charges, and why those charges, to shorten the whole thing.

**CHAIRPERSON**: No, no, it is to our benefit.

**ADV NOKO**: Oh.

**CHAIRPERSON**: We need to know. We have to go through  
10 those documents ourselves.

**ADV NOKO**: Yes, Chair.

**CHAIRPERSON**: Because they are asking questions on them, so that we can follow up.

**ADV NOKO**: Yes, Chair.

**ADV MTSWENI**: Madam Chair, I am told it is Annexure MN004, MN4. You will find them under paragraph, just at the end of paragraph 25. I will just find it. MN008.

**CHAIRPERSON**: You have to refer us to the bolded red.

**ADV MTSWENI**: Yes. It is MN00083. Just for the record,  
20 Advocate Noko, charge 1, it says, you see under (i) there, it says:

“List of proposed charges and accused involved in them. Count 1, contravention of section 2(1)(f) read with section 2(2) of the Prevention of

the ...”

I am just rushing through them, but it is the enterprise management charge and you will see the accused there is accused 1, 6, and 9. And we know that General Booyesen was accused number 1.

**ADV NOKO:** Yes.

**ADV MTSWENI:** Right. And then in count 2, it is the participation charge. I will call it the participation charge, which Advocate Booyesen is also implicated in that. And then  
10 if you turn over to MN00085, it is murder. Count 8, it is murder read with section 5(1) of Act 105 of 1997.

**CHAIRPERSON:** A minute, please. You have dealt with count 1 and 2. You are now dealing with the predicate offenses.

**ADV MTSWENI:** Yes, the predicate offenses. I just wanted, so that we were clear as to which charges Major General Booyesen was charged in.

**CHAIRPERSON:** Yes. It is also important to highlight that count 1 and 2 fell under the POCA, racketeering charges.

20 **ADV MTSWENI:** Yes.

**CHAIRPERSON:** The subsequent ones fall under the predicate offenses.

**ADV MTSWENI:** Yes.

**CHAIRPERSON:** It does help.

**ADV MTSWENI:** Thank you, Madam Chair.

**CHAIRPERSON:** I am sure you understand why.

**ADV MTSWENI:** I appreciate that, Madam Chair. And then under the predicate charges, Madam Noko, you will see he is implicated in count 8, which is murder, count 9, which is murder and then unlawful possession of firearm, count 10, and then count 11, which is unlawful possession of ammunition, and then count 12, defeating or obstructing the course of justice. Unless I have missed others, those are the charges which were levelled against Major General Booysen.

10 **CHAIRPERSON:** Yes, Counsel, proceed.

**ADV MTSWENI:** Now, in relation to the management charge, you would have read from the prosecution memorandum that the prosecution relied on the statement by, in fact, in relation to all, to these charges, the POCA charges, the prosecution relied on the statements by Colonel Ayer, Mr Thlondlontiane, Bongani Mkhize, I summarize them, Matonzi, and Cochran and Danikas. Those are the documents that they relied on in order to prove the POCA charges against Major General Booysen.

20 **CHAIRPERSON:** The racketeering charges.

**ADV MTSWENI:** The racketeering charges.

**ADV NOKO:** Okay, I do not know if there are more statements because I did not read all the statements. Those are some of those that I read, yes.

**ADV MTSWENI:** Yes.

**ADV NOKO:** But they also support those charges, yes.

**ADV MTSWENI:** Now, you would agree, I just want your comment, you would agree that the management of an enterprise basically means that one must have been overseeing this enterprise for the purpose of committing offenses. It is not just being the head of the unit. It must be aligned towards the purpose.

**CHAIRPERSON:** I beg your pardon?

**ADV MTSWENI:** Insofar as the management charge, I call it  
10 the management charge, that it is not enough for one to simply say he was in charge of the unit. His management must be channelled, must be directed with the purpose of that enterprise committing the offenses.

**ADV NOKO:** Yes, if circumstantially it is proven that that unit was sort of an enterprise based on the evidence that is here, the killing of people and all of that, then it shows it was an enterprise and whoever is managing it, is managing the enterprise because that unit is the one that has turned to be an enterprise.

20 **ADV MTSWENI:** Yes, but in this case, especially within SAPS, I just wanted to ask you this so that, to get it from your, did these issues come ...[intervenes].

**ADV NOKO:** Ja.

**ADV MTSWENI:** Did you consider them or do they have an impact or would they change your view on the existence of a

*prima facie* case, the fact that within SAPS there are units and those units are under commanders.

**ADV NOKO:** Yes, the same applies to Cato Manor, it had commanders.

**ADV MTSWENI:** Yes, so would you say that just because General Booyesen was in charge of the Serious and Violent Crimes Unit that it overcomes the hurdle of management of an enterprise?

**CHAIRPERSON:** I beg your pardon, Counsel. I did not  
10 understand her testimony to say that. If you look at those paragraphs that she was reading, she then dealt with those statements about management in terms of POCA, and she then, further there was evidence by these witnesses, you can go back there.

**ADV MTSWENI:** We will come there, Madam Chair. I will come to those witnesses.

**CHAIRPERSON:** Okay.

**ADV MTSWENI:** Yes. Now, in relation ...[intervenes].

**CHAIRPERSON:** But what I would like you to do, do not put  
20 it as if the reliance was only on the fact that he was a manager. Maybe you can couple it together so that it is conclusive. Then we know what he is answering.

**ADV MTSWENI:** Yes. Thank you, Madam Chair. Now if one reads the statement by Colonel Ayer, all that Colonel, if you understand the theme, Colonel Ayer seems to complain about

being overthrown by General Booysen who basically, he complains about being undermined by General Booysen, because he says in fact this unit ought to have resorted under him, but they disregarded him and then they reported directly to Booysen. Did you understand the statement to mean that?

**ADV NOKO**: Yes, he mentions that, yes.

**ADV MTSWENI**: Yes. And then we then come to the statement of Danikas.

**ADV NOKO**: Okay.

10 **ADV MTSWENI**: Danikas refers to a number of incidents that happened at least pre ...[intervenes].

**CHAIRPERSON**: Counsel, I am sorry to interrupt you. The previous statement as regards, is that Colonel Ayer? You are making it to buttress the point that actually the person who ought to have been a manager was him and not Booysen.

**ADV MTSWENI**: Yes, and that is the essence of the complaint and the statement.

**CHAIRPERSON**: Yes.

**ADV MTSWENI**: And I just want, basically, in fact  
20 ...[indistinct] does it, in her view, support the contention that he was a manager or not of an enterprise.

**ADV NGCUKAITOBI SC**: I am sorry, Madam Chair. Colonel Ayer gave three statements. They say many things. The witness is not being correctly put to say that all that he complains about is X. That amounts to misleading a witness.

If my learned friend wishes to put the witnesses, the statements of Colonel Ayer, they must put all of the three statements and go through them.

**ADV MTSWENI**: Thank you, Madam Chair. Just for Advocate Ngcukaitobi's comfort, I did not intend misleading the question. To the extent that it came across as if I am seeking to mislead, that was never the intention.

**CHAIRPERSON**: Yes, sir.

**MS RAMAGAGA**: I just want to comment that I think it is  
10 common cause that whenever there is reference to documents, those documents must be availed. Can we just subscribe to that and do that, please, otherwise, there will be this to-ing and fro-ing. If you want to make reference to the statement, make reference to the statement and say the essence of this paragraph in particular, or the essence of the entire statement. It will help. All of us will be on the same page through and through. Thank you. Thank you, Chair.

**ADV MTSWENI**: Thank you, Madam Chair, Ms Ramagaga.

**CHAIRPERSON**: Now, you drew our attention to the  
20 statement by Colonel Ayer where he complained, apparently, that he was overlooked. I am not quoting him verbatim, but instead of reporting to him, they reported to Major General Booyesen. Is that correct?

**ADV MTSWENI**: Yes, that is the first thing. I am just trying to get to ...[intervenes].

**CHAIRPERSON:** This is, he is saying so?

**ADV MTSWENI:** Yes, I will just ...[intervenes].

**CHAIRPERSON:** Colonel Ayer.

**ADV MTSWENI:** That is the theme of the statement.

**CHAIRPERSON:** Yes.

**ADV MTSWENI:** [Indistinct]... just try and get the next, the, in fact in Advocate Batohi's ...[incomplete].

**CHAIRPERSON:** And also as you search if you can tell us what do you seek to establish by this question?

10 **ADV MTSWENI:** We just want to point out these aspects as to whether does, in light of those, does she still maintain her view that the prosecution was justified. That is what we just want to clarify, whether did these aspects cross her mind, did she pay attention to them. That is all that we are seeking to do, Madam Chair.

**CHAIRPERSON:** By virtue only of a statement by a witness who says, I was actually the boss, but I was overlooked, and instead of them reporting to me, they reported it to Major General Booyen, could it ever mean that the prosecution  
20 was then wrong or improper just based on that statement alone?

**ADV MTSWENI:** No, Madam Chair. Well, I think, Madam Chair, in view of that, then I think that just ...[intervenes].

**CHAIRPERSON:** Yes, because I am trying to understand. We know, and the evidence that we have, at least of several

witnesses, is that, which up to now has not been refuted, that seemingly General Booyesen played a critical part, be it managerial or otherwise. If it is managerial, that still has to be established under the POCA provisions, section 2, count 1 and 2. That is where this feature of him having played a managerial aspect may kick in when you look at the concept enterprise. Are you taking issues with those statements that are made by witnesses that advocate, I beg your pardon, Major General Booyesen played those parts or those roles?

10 **ADV MTSWENI:** No, Madam Chair. Like I tell you, I do not hold a brief for Major General Booyesen for him to come and dispute that.

**CHAIRPERSON:** Yes, would you please just repeat that statement in regard to, as regards Advocate, Colonel Ayer then, because I am trying to understand the point that you are making.

**ADV MTSWENI:** No, no, I think what we just wanted to just to say, whether did the theme of the statements, would they change ...[indistinct] that in light of the themes of the  
20 statements, does she still maintain her view. But in light of the fact that the statements have not been disputed, I will not take it further, Madam Chair. And I think on that note, that brings to an end my clarification. Those are the issues that I just wanted clarity on.

**CHAIRPERSON:** Yes. In any case, your witness, Colonel

Ayer, apparently you are going to call him? Is that Colonel Ayer?

**ADV MTSWENI:** That is Booyesen I think that is going to be called.

**CHAIRPERSON:** We will look into that later. But it appears that this witness, if my understanding is correct, is on the list of witnesses, because he made several statements, this officer.

**ADV MTSWENI:** Yes.

10 **CHAIRPERSON:** I am not sure whether you came at a time when you had dealt with the NJ's. Those statements, NJ3, NJ4, NJ2, they are attached to Advocate Batohi's affidavit, supplementary affidavit.

**ADV MTSWENI:** Yes, I am aware of that.

**CHAIRPERSON:** If you can look at the supplementary affidavit and look at those annexures, you will find those statements there.

**ADV MTSWENI:** No, I have taken note of that, Madam Chair.

**CHAIRPERSON:** Yes.

20 **ADV MTSWENI:** But in view of the fact that these statements have not been refuted, I do not think that I have got any reason to take them up with the witness.

**CHAIRPERSON:** Yes, I am not sure how the witness can help in that regard, because she is not the deponent of those things.

**ADV MTSWENI:** Yes, so then I think that brings about the end of my clarification, Madam Chair.

**MS RAMAGAGA:** Chair, through you, much as Advocate Mtsweni would like to part with us on this point, it does help just to understand even what the thinking and the understanding of the evidence team is about these statements. It is correct that the statement, we have more than one statement of General or Mr Ayer, is it correct?

**ADV MTSWENI:** Yes, Madam Ramagaga.

10 **MS RAMAGAGA:** Now, when you say that the essence of his statement ...[intervenes].

**ADV MTSWENI:** That was the first statement, Madam Ramagaga.

**MS RAMAGAGA:** Yes, I hear. Are you talking about - oh, the essence of the first statement.

**ADV MTSWENI:** Yes.

**MS RAMAGAGA:** Not the essence of ...[intervenes].

**ADV MTSWENI:** Of the entire statements.

**MS RAMAGAGA:** These statements.

20 **ADV MTSWENI:** No.

**MS RAMAGAGA:** Oh, now I understand. Maybe I was not listening properly.

**ADV MTSWENI:** Yes.

**MS RAMAGAGA:** That is fine, there's no need to ask you further questions.

**ADV MTSWENI:** Thank you, Chair, thank you for the indulgence. I have got no further questions.

**CHAIRPERSON:** As regards the counts, I want to clear my mind, particularly in relation to the racketeering charges, because most of those questions you raised seem to fall under the POCA racketeering, counts 1 and 2.

**ADV MTSWENI:** Yes.

**CHAIRPERSON:** That might take us to the argument point on the law. So, I was just wondering why you go that route, because much could be said about those issues. But if a need arises before the witness retires, I am sure you can come back and re-examine.

**ADV MTSWENI:** Thank you, Madam Chair.

**CHAIRPERSON:** On these very issues, because you referred us to documents, I do not think you looked at some of them. In re-examination, if some of the matters might arise in cross-examination, you will re-examine on them.

**ADV MTSWENI:** Thank you, Madam Chair.

**CHAIRPERSON:** Anything else from the evidence leading team?

**ADV MTSWENI:** Chair, just save to pass the message that our leader, Advocates Skosana, has a pupil lecture to give at 4.

**CHAIRPERSON:** I beg your pardon?

**ADV MTSWENI:** Advocate Skosana had requested to be

excused, as he needs to give a lecture to the pupils at 4. I am not sure whether we will still continue beyond this or not, but he had asked that he be excused so that he can attend to provide the lecture. But Advocates Khooe and I are more than capable of holding the fort.

**CHAIRPERSON:** I thought this is your primary responsibility, gentlemen, for anybody to leave this enquiry to go and lecture students. This is very important, Advocate Skosana, with your respect to you.

10 **ADV SKOSANA SC:** Yes. Sorry, Madam Chair, I had been asked by our bar to give the lecture, but actually it is not actually 4 o'clock, it is about 5, Madam Chair. I had put it after hours, assuming that we would have adjourned around half past 4 or so, then I could rush down to chambers. But I did not anticipate that would go beyond, and I see now that today it might be that case. I just wanted to ask for that excuse.

**CHAIRPERSON:** Yes. You will remember in chambers I mentioned that we may have to run late, until late, even  
20 tomorrow, because we have lost so much time. And I think all of us must prioritize the matters of this enquiry. I was actually, but I will ask you when we finish with my colleagues as to whether Advocate Ngcukaitobi starts or starts tomorrow. Then I will ask you something. Let me just be clear, so you are done with your clarifying questions?

**ADV MTSWENI:** Yes, Madam Chair.

**CHAIRPERSON:** Thank you, Counsel. It is 4 o'clock, Advocate Ngcukaitobi. If you can make progress maybe with the preliminaries, if you like.

**ADV NGCUKAITOBI SC:** Yes, I am happy to start, Madam Chair.

**CHAIRPERSON:** Okay. We are agreed that time is of essence, and we will use whatever time, even if it is an hour, to make a start, because this witness is available only until  
10 tomorrow. She is practicing, and she has left her practice to come and assist this enquiry. She is not being paid for coming here to assist this enquiry, so we should utilize this time to finish her evidence and to excuse her. Then we can deal with other matters. I am told that tomorrow afternoon you have to fly back or drive elsewhere, Me Noko.

**ADV NOKO:** Yes, Chair, but just to clarify, I am not practicing. I am busy with other things.

**CHAIRPERSON:** Oh, you are busy – you are no longer under the NPA though?

20 **ADV NOKO:** Yes, but I am not practicing yet.

**CHAIRPERSON:** Ja.

**ADV NOKO:** Ja.

**CHAIRPERSON:** Well ...[intervenes].

**ADV NOKO:** But I am busy with ...[intervenes].

**CHAIRPERSON:** That is business.

**ADV NOKO**: Yes, it is. I am busy with other things.

**CHAIRPERSON**: Yes. Well, I think we just appreciate the fact that you made time to come to testify.

**ADV NOKO**: Yes.

**CHAIRPERSON**: And you have indicated that you will be available for the three days.

**ADV NOKO**: Yes, Chair.

**CHAIRPERSON**: Yesterday, today, and tomorrow.

**ADV NOKO**: Yes, Chair.

10 **CHAIRPERSON**: Therefore, let us use whatever time that we have and Advocates Skosana, I plead with you that you request the bar that you are on a brief here, and this matter is running, because it will not be fair to leave your juniors on their own. And Advocate Mohlamonyane is not here, and now you are leaving. Two SC's leaving the juniors. I think it is important that one of the leaders must be here, at least as far as I am concerned. So I request that if we go until about half past 5, just explain to them that you may be late, because I consider that this is very important to finalize. The lecturing  
20 can be postponed to another day and your attorney is sitting right next to you, I am sure he shares my sentiments, that is Nthati Sebelemetsa. You are an instructing attorney here.

**MR SEBELEMETSA**: Yes, Chair.

**CHAIRPERSON**: You agree?

**MR SEBELEMETSA**: To the release? No, I was not

approached, Chair, so.

**CHAIRPERSON:** You were taken by surprise.

**MR SEBELEMETSA:** Yes, Chair.

**CHAIRPERSON:** Counsel, you cannot take your attorney by surprise. He is the man who is paying your fees, and please involve him. And I am sure all of us understand why we need to prioritize this matter at whatever cost, and to finish it on time. I am going to request that we take a comfort break, those who want to go to the clinic, and we come back and  
10 start with cross-examination.

**ADV NGCUKAITOBI SC:** How long is the comfort break, Madam Chair?

**CHAIRPERSON:** Let us take ten minutes. Ten minutes. We can stretch our feet, our legs, and come back. Thank you. We will adjourn for ten minutes, let say until five past four. We adjourn.

**ENQUIRY ADJOURNS**

**ENQUIRY RESUMES**

**CHAIRPERSON:** Good afternoon again, everyone. Good  
20 afternoon, Me Noko. Nthati Chauke, good afternoon. Advocate Ngcukaitobi and the evidence-leading team, we propose to sit until 5.30.

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

**CHAIRPERSON:** Thank you. You may begin.

**ADV NGCUKAITOBI SC:** Yes, Madam Chair, I have been

asked by my colleagues in the light of the air-conditioner that has apparently stopped working whether they can take off their jackets.

**CHAIRPERSON:** I see the witness is smiling. Are you also suffering there?

**ADV NOKO:** No, actually I feel bad because I am the one who asked them to reduce it, but it was off.

**ADV NGCUKAITOBI SC:** Oh, I see.

**ADV NOKO:** My throat, I was getting blocked. But they can  
10 just switch it on and not too high.

**CHAIRPERSON:** Yes, I think it is all hot for all of us.

**ADV NOKO:** Yes, it is.

**CHAIRPERSON:** You can take off your jackets. You must thank Advocate Ngcukaitobi for raising this. Feel free to take off your jackets. Those who feel the heat, feel free to take off your jackets. Thank you, Counsel.

**CROSS-EXAMINATION BY ADV NGCUKAITOBI SC:** Thank you, Madam Chair. Advocate Noko, can I just start with this question of the authority of Advocate Chauke in relation to  
20 so-called prosecutorial decisions in KZN during the period before you arrived and took over.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Now, when I cross-examined Advocate Batohi and I asked her whether these charges relate to the predicate offences, the charges against Mr

Chauke, or relate to racketeering, and my recollection is that she seems to have confirmed that they are confined to racketeering and only relate to predicate offences as part of racketeering.

**ADV NOKO**: Okay.

**ADV NGCUKAITOBI SC**: Yes, not that you should, but I am just putting that to you.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Now, if it is correct that this is a  
10 case about racketeering, which jurisdiction does racketeering fall under?

**ADV NOKO**: You mean in terms of who can institute such ...[intervenes].

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

**ADV NOKO**: It falls under the NDPP only.

**ADV NGCUKAITOBI SC**: Yes, is there any DPP that has jurisdiction over racketeering?

**ADV NOKO**: No, only the NDPP.

**ADV NGCUKAITOBI SC**: Yes. Now, this is, for me, the one  
20 thing I cannot really understand with the theory of the evidence leaders about this case. This case is about racketeering. Racketeering is a national jurisdiction. Only the NDPP can make decisions, correct?

**ADV NOKO**: Correct. That is my understanding. Even, I think, the terms of reference say so.

**ADV NGCUKAITOBI SC:** Yes. Now, if the NDPP then says to Advocate Noko from the North West, I have got a racketeering case in Gauteng, and I am asking you to go and coordinate on my behalf, what exactly is the problem?

**ADV NOKO:** I do not see any problem because the NDPP oversees the NPA throughout the country.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** He or she can delegate, go do this, do this, do this. And especially racketeering resorting under NDPP, he  
10 or she is the one who can say, go do this on their behalf.

**ADV NGCUKAITOBI SC:** Yes, because it seems to me that the alternative option is for the NDPP personally to drive to KZN on a racketeering case and to coordinate it herself.

**ADV NOKO:** It seems so, yes.

**ADV NGCUKAITOBI SC:** Yes. But would that be a rational thing?

**ADV NOKO:** No, that is not how it works.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** He or she has to send someone to do that, and  
20 the next highest person to send will be a DPP.

**ADV NGCUKAITOBI SC:** Yes, well, it could be one of the Deputy National Directors.

**ADV NOKO:** Those are mostly in the office there. Ja, they could be that as well. Maybe let me not go there.

**ADV NGCUKAITOBI SC:** Yes, but the big point really is this.

This is a case about national jurisdiction. It is not a case confined to a province.

**ADV NOKO**: Yes, it is national, ja.

**ADV NGCUKAITOBI SC**: Yes, and so when the National Director says, I am sending Mr Chauke here, that is perfectly within her right because this is a charge that is falling exclusively under her office.

**ADV NOKO**: That's precisely why I did not see anything wrong with that when Advocate Chauke was in the Cato Manor  
10 case.

**ADV NGCUKAITOBI SC**: And similarly, the National Director could say, Advocate Noko, this is from your province, I want you to coordinate it on my behalf, not because you have jurisdiction, because she has exclusive jurisdiction, but because she has chosen.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes, thank you very much. The other thing I do not really understand with the theory of the case of the evidence leaders is the inconsistency within the  
20 NPA itself. I want to show you two documents which will illustrate this inconsistency. The first is the report by Advocate de Kock, which you will find at SB3, but I want you to refer to SB12. Somebody will open it for you.

**ADV NOKO**: Okay.

**ADV NGCUKAITOBI SC**: I am told, Advocate Noko, that you

do not have Ms Batohi's affidavit. It looks like, Madam Chair, Advocate Batohi took the witness bundle, or someone in her office took it from where it was, yes. Well, perhaps what I should ask you is just to go to the last page, page 96 of that report. It is SB12/283.

**ADV NOKO**: Yes, I see it.

**CHAIRPERSON**: Yes, I am advised that the bundle that was provided was taken by the NPA when they left with Advocate Batohi, so, whenever you refer to documents, we might share  
10 here and then borrow the witness our bundle.

**ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: If it is not marked. A lot of scribbling in these documents.

**ADV NGCUKAITOBI SC**: Yes, thank you.

**CHAIRPERSON**: If you have a clean document, you can also assist there.

**ADV NGCUKAITOBI SC**: Yes, we do have some documents, but I think the witness has received the document I am referring to.

20 **CHAIRPERSON**: Yes, I will also ask my researcher to assist. Officer? Officer, you can take the seat at the back. My researcher will sit next to the witness so that when the need arises, he can quickly go into the computer and open that document. Thank you Nthati Marani. Thank you, Counsel.

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

you will have, you will have page 96 at the bottom and then KVR60 in the top right.

**ADV NOKO**: Yes, I can see that.

**ADV NGCUKAITOBI SC**: Yes. Now, this document is 96 pages long.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: It is a decision made by four employees, allegedly by four employees of the NPA to recommend to Advocate Batohi the withdrawal of the charges.

10 **ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Now, Advocate Batohi says that a decision to withdraw, to recommend a withdrawal is a prosecutorial decision.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: That is her thesis.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Now, these four employees have allegedly made a decision to recommend a withdrawal, correct?

20 **ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes. Now, if you look at the first person there, this is all coming from the Cato Manor prosecution in KwaZulu-Natal.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: The first person there, where does

he come from?

**ADV NOKO:** Advocate RJ Rodney de Kock was a Director of Public Prosecutions for Western Cape Town, Cape Town.

**ADV NGCUKAITOBI SC:** Anything to do with KwaZulu-Natal?

**ADV NOKO:** Nothing at all.

**ADV NGCUKAITOBI SC:** Yes. Now, the second person there, which is Advocate I Tenga, where does she come from?

**ADV NOKO:** Advocate Ivy Tenga is the Director of Public  
10 Prosecutions in Limpopo.

**ADV NGCUKAITOBI SC:** Anything to do with KwaZulu-Natal?

**ADV NOKO:** Nothing at all.

**ADV NGCUKAITOBI SC:** Yes. The third person there is Advocate S Riley. Who is she, and where does she come from?

**ADV NOKO:** She is the Deputy Director of Public Prosecutions, deputy to the first one, late Advocate Rodney de Kock in Cape Town.

20 **ADV NGCUKAITOBI SC:** In the Western Cape?

**ADV NOKO:** Western Cape, yes.

**ADV NGCUKAITOBI SC:** Any relationship with KwaZulu-Natal?

**ADV NOKO:** Nothing at all.

**ADV NGCUKAITOBI SC:** And then the last one is Advocate

Mamabolo.

**ADV NOKO**: Yes, the late Advocate Mamabolo, I think it is the one, Senior State Advocate, Specialist Commercial Crime Unit in Pretoria, Gauteng.

**ADV NGCUKAITOBI SC**: Anything to do with KwaZulu-Natal?

**ADV NOKO**: Nothing at all.

**ADV NGCUKAITOBI SC**: Yes. Now this is the inconsistency I am referring to. In this case, when they were deciding to  
10 withdraw the charges ...[intervenes].

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: The decision to recommend the withdrawal was made by at least two DPP's from outside of KwaZulu-Natal.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: On the instruction of Advocate Batohi.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: The same person who is accusing  
20 Advocate Chauke of exceeding his jurisdiction.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: But she herself has instructed two Prosecutors to exceed their jurisdiction.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes.

**ADV NOKO:** And just to clarify on that for the panel as well, I was once tasked by Advocate Abrahams when he was still the NDPP to come from KwaZulu-Natal as a DPP to come and do some project on investigations of some Prosecutors here in Pretoria.

**ADV NGCUKAITOBI SC:** When you were the DPP?

**ADV NOKO:** When I was a DPP, still a DPP in KZN.

**ADV NGCUKAITOBI SC:** And there was a DPP in Pretoria?

**ADV NOKO:** Yes.

10 **ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** There was a DPP in Pretoria.

**ADV NGCUKAITOBI SC:** Yes. So here we have three National Directors that have done exactly the same thing, Advocate Jiba who instructed Advocate Chauke to assist on a racketeering case in KZN.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** We have Advocate Batohi who instructed Advocate de Kock and Advocate Tenga to assist on a racketeering charge in KZN.

20 **ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And then we have Advocate Sean Abrahams who instructed you to assist on a matter in Pretoria.

**ADV NOKO:** And I came with a team of Prosecutors from KZN, yes.

**ADV NGCUKAITOBI SC:** Yes. Now, then on this theme of inconsistency, there is another decision. If you go to B9, which is the so-called Booyesen bundle, B9 B02199, my attorney will assist. Do you have it? Oh, no, they are still looking for it, sorry.

**CHAIRPERSON:** Have you found it, Mr Morani? It will be the Booyesen bundle, 9 of 11. The page is B?

**ADV NGCUKAITOBI SC:** B02199, Madam Chair.

**CHAIRPERSON:** Yes, thank you.

10 **ADV NGCUKAITOBI SC:** Do you have it Advocate Noko?

**ADV NOKO:** Yes, B02199, yes.

**ADV NGCUKAITOBI SC:** Yes. Now, that is a decision, if you look at it addressed to Advocate Abrahams about Silverton case 622/10/2014.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Now that case, you can correct me if I am wrong, was a purported prostitution against Advocate Jiba.

**ADV NOKO:** Yes.

20 **ADV NGCUKAITOBI SC:** For instituting these charges against Major General Booyesen.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now it is a case arising from Pretoria which is where Advocate Jiba worked, correct?

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** That is it is called Silverton.

**ADV NOKO:** Silverton, yes.

**ADV NGCUKAITOBI SC:** Now, who took the decision to decline to prostitute?

**ADV NOKO:** It is Advocate Ivy Tenga who is the Director of Public Prosecutions when she was still a DPP in the Northern Cape.

**ADV NGCUKAITOBI SC:** Yes. Now I would suggest to you that it is pervasive practice in the NPA that DPP's, I am not  
10 talking about people below DPP's, that DPP's are instructed to play roles across the provinces regularly.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now, in your own experience how long have you been in the NPA before you ...[intervenes].

**ADV NOKO:** Since the inception of the NPA.

**ADV NGCUKAITOBI SC:** Is that so. 1995.

Is it? Around there.

**ADV NGCUKAITOBI SC:** 1998.

**ADV NOKO:** Yes, around there.

20 **ADV NGCUKAITOBI SC:** All right, but it is a substantial period.

**ADV NOKO:** Yes, because I was with the Department of Justice first and then when the NPA got to be established we were already there in the system.

**ADV NGCUKAITOBI SC:** Yes. I mean, have you ever heard

of a case in your entire experience of a DPP being charged with a misconduct for carrying out an instruction of the National Director to perform functions in a different province to the one they are appointed at?

**ADV NOKO:** Never before.

**ADV NGCUKAITOBI SC:** Yes. Now the document I referred to earlier, which is the Booyesen, sorry, the de Kock bundle, I want to just come back to that now. Now you will recall that I had put to you something that is common cause, that this  
10 document formed the basis for the withdrawal of the charges against the Cato Manor accused.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** That was repeated here *ad nauseum* by Advocate Batohi.

**ADV NOKO:** So this is the de Kock memorandum?

**ADV NGCUKAITOBI SC:** Yes, but this was the basis for the withdrawal of those charges.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now I just want you to clarify  
20 something in your evidence because Advocate Chauke has a different recollection to yours.

**ADV NOKO:** Okay.

**ADV NGCUKAITOBI SC:** Apparently on the day Advocate Batohi decided to withdraw the charges she called a meeting of yourself, Advocate Chauke attended and the prosecution

team to announce her decision but she did not share this document with you. Well, apparently you were not physically there. You were on the phone.

**ADV NOKO:** Yes, I wanted to clarify that I was not present but I think that meeting took place, yes.

**ADV NGCUKAITOBI SC:** You confirm that it took place?

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now in that meeting there was a specific complaint by those that were invited that if she  
10 has already made a decision to withdraw the charges, she is wasting their time by inviting them to inform them of a decision without inviting their representations.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Did you contribute in that discussion?

**ADV NOKO:** I do not remember what my contribution was but I shared the same sentiment.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** I do not know exactly what I said really. But  
20 even now, even when you have seen my affidavit, I am complaining that no reports were sought from us. Our views were not sought. So, I may have said that also. I do not remember what my contribution was but that is my standpoint.

**ADV NGCUKAITOBI SC:** Yes. Now the other thing about this document is I want to just confirm with you, were you

given two of these?

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes, alright. There is something I want to just check with you because it has confused me a lot when I have been preparing, but I need my attorneys to provide the panel with this version of the report. So if you have got the two versions in front of you ...[intervenes].

**ADV NOKO:** Yes.

**CHAIRPERSON:** Have you provided some copies to the  
10 evidence-leaving team?

**ADV NGCUKAITOBI SC:** They should be given. Now these documents on the face of it look the same, correct?

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** It looks like it is the de Kock report.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Except that when you go to the last page, that page 96, just open both of them. Now you will see the one that has KVR is signed by Mr de Kock. Can you see that?

20 **ADV NOKO:** Yes, I can see that.

**ADV NGCUKAITOBI SC:** But the other one is signed by Mr de Kock and Mr Mamabolo.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** I mean, do you know how this happened?

**ADV NOKO:** I do not know. I was not even given a copy.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** I do not know how it happened like that.

**ADV NGCUKAITOBI SC:** But the other problem is that at least two of the authors have not signed in both reports.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Advocate Tenga and Advocate Riley.

**ADV NOKO:** Yes.

10 **ADV NGCUKAITOBI SC:** Yes. But it is all presented as if it is a common report of the panel as a whole.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** But we are not told why two members of the panel have not signed.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And we are not told why one version is missing a signature.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Of Mr Mamabolo.

20 **ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now, this document, that is KVR 60, is attached to the statement of Advocate Batohi in these proceedings.

**ADV NOKO:** Okay.

**ADV NGCUKAITOBI SC:** Yes. And then the second

document which does not have the marking KVR was given to us by the NPA when we made a request for a full document in these proceedings.

**ADV NOKO**: Okay.

**ADV NGCUKAITOBI SC**: So both of them come from the NPA.

**ADV NOKO**: But different.

**ADV NGCUKAITOBI SC**: But they are different. Now, I take it you cannot really explain.

10 **ADV NOKO**: I do not know really, ja.

**ADV NGCUKAITOBI SC**: Yes. But when I also look at the style of writing in the content of the report ...[intervenes].

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: I find that there are some differences.

**ADV NOKO**: Is it? Okay.

**ADV NGCUKAITOBI SC**: Yes. So it would ...[intervenes].

**CHAIRPERSON**: [Indistinct]... [microphone off] style of writing, are you referring to the font or ...[intervenes].

20 **ADV NGCUKAITOBI SC**: Yes, the, I can take an example. If you go to paragraph 30, just as an example, and you open the report and you see paragraph 30 on both, so you see in the report that is signed by two, paragraph 30 firstly is in inverted commas and is italicized. And in the other one there are no inverted commas and it is not italicized.

**ADV NOKO**: Yes, I can see that.

**ADV NGCUKAITOBI SC**: Now I can, when I was preparing, I came across seven instances like this and I thought maybe you would know because you come from inside.

**ADV NOKO**: I come from inside, but I was not part of this report and I was not even given the report, neither was I given to compare.

**ADV NGCUKAITOBI SC**: Yes. You know, Advocate Riley is coming apparently.

10 **ADV NOKO**: Okay.

**ADV NGCUKAITOBI SC**: So maybe I should reserve these questions for her.

**ADV NOKO**: Yes, especially that she was part of the legal panel, yes.

**ADV NGCUKAITOBI SC**: There is discrepancies.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes. Now, I can ask you ...[intervenes].

20 **CHAIRPERSON**: But I suppose that even though you were not there, on the face of this document ...[intervenes].

**ADV NOKO**: Yes.

**CHAIRPERSON**: The parts that have been drawn to your attention, it is very clear that there are differences.

**ADV NOKO**: Yes, I agree to that.

**CHAIRPERSON**: Yes.

**ADV NOKO**: To paragraph 8, yes.

**CHAIRPERSON**: There must have been some editing.

**ADV NOKO**: Yes.

**CHAIRPERSON**: Later.

**ADV NOKO**: Yes.

**CHAIRPERSON**: Or after.

**ADV NOKO**: Yes.

**CHAIRPERSON**: Either before or after.

**ADV NOKO**: Yes, that there was – yes, it appears so, yes.

10 **ADV NGCUKAITOBI SC**: Thank you, Madam Chair. Because if you accept ...[intervenes].

**ADV SKOSANA SC**: Chair, sorry to interrupt ...[indistinct] [microphone off] I think we have been provided with one document here, only the one ...[indistinct].

**CHAIRPERSON**: Just put on your mic. Counsel, which version do you have?

**ADV SKOSANA SC**: What I am saying is that we have just been provided with a version which has the signature of Advocate de Kock.

20 **CHAIRPERSON**: The one with KDR16?

**ADV SKOSANA SC**: That is all, ja. I think, ja, while I was raising this now we have been given the second one.

**CHAIRPERSON**: Yes.

**ADV SKOSANA SC**: I just wanted to say we ...[incomplete].

**CHAIRPERSON**: You have borrowed them now.

**ADV NGCUKAITOBI SC:** No, we apologize to Mr Skosana. We thought we had given them two different versions, but we have given them one.

**CHAIRPERSON:** And if you look at the last part was in relation to paragraph 30 of both, you will observe the obvious difference in relation to paragraph 30, the opening sentence, the quotation marks in one and the font is very different. One is with italics and quotation marks. The other one is in normal font without quotation marks. You see that?

10 **ADV SKOSANA SC:** We do Madam. Yes, thank you.

**ADV NGCUKAITOBI SC:** As I said to the witness, I have identified six additional stylistic changes, which also made me to come to the conclusion that perhaps the document with one signature is then the final version, which makes the matters worse why the other three have not signed.

**ADV NOKO:** Yes. I do not know why they did not sign.

**ADV NGCUKAITOBI SC:** Yes. Now, my learned junior points out something I almost overlooked, which is in LO4, page LO01044.

20 **CHAIRPERSON:** That will be LO1?

**ADV NGCUKAITOBI SC:** LO4.

**CHAIRPERSON:** LO4.

**ADV NGCUKAITOBI SC:** Ja, I am told, Madam Chair. So if you go to LO01044.

**CHAIRPERSON:** Please repeat the page, Counsel.

**ADV NGCUKAITOBI SC:** The page I would like the witness to look at is LO01044.

**CHAIRPERSON:** 044.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** It is volume 4.

**ADV NGCUKAITOBI SC:** LO4 according to us.

**CHAIRPERSON:** Yes.

**ADV NGCUKAITOBI SC:** And then the document starts at, the document starts at LO01039.

10 **CHAIRPERSON:** No, I think volume 4 starts elsewhere with the 00880. That is the volume 4.

**ADV NGCUKAITOBI SC:** My colleague says the document that we are looking for starts at 039. LO01039.

**CHAIRPERSON:** It should be volume 1.

**ADV NOKO:** You say 01039?

**ADV NGCUKAITOBI SC:** 01039. Yes.

**CHAIRPERSON:** 10-39.

**ADV NGCUKAITOBI SC:** Yes, 10-39. Yes, that is correct, LO4.

20 **CHAIRPERSON:** Thank you, counsel.

**ADV NGCUKAITOBI SC:** Thank you. And, Advocate Noko, I want to go to that section that says evaluation, which is under E, so that you will find paragraph 11 of that document.

**ADV NOKO:** Paragraph 11, under evaluation, I see it.

**ADV NGCUKAITOBI SC:** Yes. Got it.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Now, if you look at the opening sentence under Evaluation, this is Advocate de Kock telling Advocate Batohi that there is no basis to charge Mr Chauke for exceeding jurisdiction. And he says:

10 “It is respectfully submitted that Advocate Chauke has overall provided a satisfactory response to the allegations levelled against him for the employer not to proceed with a formal enquiry into his conduct or fitness to hold office in terms of the NPA Act.”

Do you see that sentence?

**ADV NOKO:** Yes, I see that.

**ADV NGCUKAITOBI SC:** And if you go to the last sentence under paragraph 11.1, the very last sentence in that page.

**ADV NOKO:** I see it here.

**ADV NGCUKAITOBI SC:** It says:

20 “It is also important to take note that Chauke got involved in a KZN matter, in the instance of his senior and supervisor, Advocate Jiba, and therefore the employer.”

Would that be consistent with what you have been saying?

**ADV NOKO:** That is what I have been saying. I was not even aware of this. That is what I have been saying, yes.

**ADV NGCUKAITOBI SC:** Yes. Your view is also shared by

Mr de Kock.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Then it gets even better because if you go to the following page in the opening sentence.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: He says:

“As a matter of practise and the law, NDPPs have in the past assigned prosecutors and even DPPs in matters that fell outside their jurisdiction for one reason or the other.”

10

**ADV NOKO**: True. That has been the position.

**ADV NGCUKAITOBI SC**: Yes. So, in other words, this is not just about people below the DPP. I mean, we have gone through these instances I have shown you.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: We have also now looked at the statement by Mr de Kock. We have also now got your evidence.

**ADV NOKO**: Yes.

20 **ADV NGCUKAITOBI SC**: That this is a pervasive practise within the NPA.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes. Now, I wanted to move slightly forward when I brought these two reports, to show you that we do not actually understand whether these reports

reflected a consensus or just the view of Mr de Kock.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Because the other persons have not signed.

**ADV NOKO**: Signed, yes.

**ADV NGCUKAITOBI SC**: And we are still going to try and speak to the other, there are only two surviving authors of these reports.

**ADV NOKO**: Yes.

10 **ADV NGCUKAITOBI SC**: One is Advocate Riley.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: That we were promised would be brought here. The other is Advocate Tenga.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Where is Advocate Tenga right now?

**ADV NOKO**: She is still a DPP in Limpopo.

**ADV NGCUKAITOBI SC**: Okay. So, she is still within the...

**ADV NOKO**: Within the NPA, yes.

20 **ADV NGCUKAITOBI SC**: Okay, that is fine. Thank you very much. Now, what I am interested in here is the process. Remember that you mentioned the issue of the process.

**ADV NOKO**: Okay, yes.

**ADV NGCUKAITOBI SC**: That you heard about the report in the media. You then looked for it and then you found it and

you read it.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Now, the decision to review a prosecution is a constitutional decision.

**ADV NOKO**: It is in terms of section 179, yes. I think subsection D or something.

**ADV NGCUKAITOBI SC**: Okay. Do you have the Constitution in front of you?

**ADV NOKO**: Yes, I do.

10 **ADV NGCUKAITOBI SC**: Can I ask you to open it?

**ADV NOKO**: Yes, I have it.

**ADV NGCUKAITOBI SC**: If you go to that section 179 you are mentioning, you said subsection D, but I think you mean subsection 5.

**ADV NOKO**: Oh, okay.

**ADV NGCUKAITOBI SC**: Yes. Sub-subsection D.

**ADV NOKO**: Oh, yes. I remember the D.

**ADV NGCUKAITOBI SC**: Yes. Subsection 5, paragraph D.

**ADV NOKO**: Yes.

20 **ADV NGCUKAITOBI SC**: Can you just read what it says? Starting with the National Director of Public Prostitutions.

**ADV NOKO**: Oh, the whole 5(d) from 5, okay.

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

**ADV NOKO**:

“The National Director of Public

Prostitutions:

- a. Must determine with the concurrence of the cabinet member responsible.

**ADV NGCUKAITOBI SC:** No, I just want D.

**ADV NOKO:** Oh, D.

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

**ADV NOKO:** 5(d), okay.

10 The National Director of Public Prostitutions may review a decision to prosecute or not to prosecute after consulting the relevant Director of Public Prostitutions and after taking representations within a period specified by the National Director of Public Prostitutions from the following:

1. The accused.
2. The complainant.
3. Any other person or party whom the National Director considers to be relevant.”

20 **ADV NGCUKAITOBI SC:** Now, thank you. Now, it is common cause here that Advocate Batohi consulted only the panel that she set up. Is the panel mentioned in section 179(5)(d)?

**ADV NOKO:** There is no panel mentioned in the Constitution.

**ADV NGCUKAITOBI SC:** It is also common cause that Advocate Batohi did not consult, well, we know that she

consulted one accused person because she invited that accused person to her office shortly after she became the NDPP in February of 2019, Major General Booyesen, through his attendance.

**ADV NOKO**: Oh, I heard about that, yes.

**ADV NGCUKAITOBI SC**: Yes. But the other accused, were they consulted?

**ADV NOKO**: I do not know.

**ADV NGCUKAITOBI SC**: Yes. And then the complainants?

10 **ADV NOKO**: I do not think so.

**ADV NGCUKAITOBI SC**: Yes. And then most critically, the prosecution team, of which you would be aware.

**ADV NOKO**: Ja, I was not consulted. I know the prosecution team told me they were not consulted as well, and Advocate Chauke as well was not, so we were not.

**ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: I beg your pardon, counsel. Counsel, why do you say you do not think that the complainant could have been consulted with? You said you do not think so.

20 **ADV NOKO**: I think, I do not know, I do not have proof, but then I think I heard that the complainants, some witnesses were not happy with the decision to withdraw the case. For example, even Mr Danikas was not happy with the decision to withdraw the case, so it does not seem that witnesses were consulted, and neither have I seen anything to that effect in

the De Kock report to say at least the witnesses or the complainants or any other person except relying on what the De Kock report said were consulted.

**CHAIRPERSON:** Thank you.

**ADV NOKO:** Thank you.

**ADV NGCUKAITOBI SC:** Yes, now, you see, the situation we have right now, Advocate Noko, is an extraordinary one.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** It looks like the NDPP has violated  
10 the Constitution by withdrawing a decision outside, a decision to prosecute, outside of the parameters of section 179(5)(d).

**ADV NOKO:** Yes, it appears so.

**ADV NGCUKAITOBI SC:** Yes. And if you have the Constitution, can I ask you to look at section 2?

**ADV NOKO:** Yes, I am here.

**ADV NGCUKAITOBI SC:** Now, what does that section say about a decision that is inconsistent with the Constitution?

**ADV NOKO:** About the supremacy of the Constitution?

**ADV NGCUKAITOBI SC:** Yes, just read that section.

20 **ADV NOKO:** Okay.

“This Constitution is the supreme law of the Republic.

Law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.”

**ADV NGCUKAITOBI SC:** Yes. Now, if Advocate Batohi has withdrawn a criminal prosecution contrary to the Constitution, would that decision be invalid?

**ADV NOKO:** Yes, and unconstitutional as well.

**ADV NGCUKAITOBI SC:** Yes. Now, this is what I refer to the extraordinary situation.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** That a person who is meant to uphold the Constitution, has violated it.

10 **ADV NOKO:** Yes, clearly.

**ADV NGCUKAITOBI SC:** Yes. Now, I want to also then look at this memorandum, the internal memorandum to withdraw these charges.

**ADV NOKO:** Okay.

**ADV NGCUKAITOBI SC:** So you said something interesting earlier in your main evidence.

**ADV NOKO:** Okay.

20 **ADV NGCUKAITOBI SC:** When you said that contrary to what you did in the report, they did not go through the dockets and analyse the evidence inside of the dockets.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Now, there are some portions of the report that refer to the docket, dockets, some dockets.

**ADV NOKO:** Okay.

**ADV NGCUKAITOBI SC:** So if you can open the report.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** It is at paragraph 77. I am told, Madam Chair, it is SB3157.

**CHAIRPERSON:** 3?

**ADV NGCUKAITOBI SC:** 157. It is page 157, yes.

**CHAIRPERSON:** Please bear with us?

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

**CHAIRPERSON:** 3157. Yes, you may proceed.

**ADV NGCUKAITOBI SC:** Thank you. So if you go to  
10 paragraph, from paragraph 77 under the heading C, the  
evaluation of evidence contained in the dockets.

**ADV NOKO:** Yes, I see that.

**ADV NGCUKAITOBI SC:** And then you...

**CHAIRPERSON:** Maybe you can just clarify to the witness  
that this is a document that was attached to the founding  
statement of Advocate Batohi.

**ADV NGCUKAITOBI SC:** Yes, thank you, Madam Chair. So  
this document is annexed SB3 to the witness statement of  
Advocate Batohi before this enquiry.

20 **ADV NOKO:** Okay.

**ADV NGCUKAITOBI SC:** And if you go to heading C from  
paragraph 77, they purport to provide an analysis of the  
dockets.

**ADV NOKO:** I can see that.

**ADV NGCUKAITOBI SC:** And if you turn the page at

paragraph 82, where there is table A and table B.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Which refers to section 2(1)(f) and 2(1)(e).

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: And we know 2(1)(f) is the management.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: And 2(1)(e) is the participation.

10 **ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: In the affairs of the enterprise.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes. But the statement I was going to refer you to, just to make sure that you are not criticised later for being untruthful, is paragraph 82, which says:

“We also read and analysed the evidence in the 23 dockets that the prosecution team, in their PowerPoint presentation to Abrams, said implicated the accused in the racketeering activities.”

20

Do you see that?

**ADV NOKO**: Yes, I can see that.

**ADV NGCUKAITOBI SC**: So they at least purported to have read the dockets.

**ADV NOKO**: Oh. Yes. I see that.

**ADV NGCUKAITOBI SC:** And then, if you go to page 27 of that document, just above paragraph 84.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** There are dockets for 2008. They are listed.

**ADV NOKO:** Okay. I can you see them.

**ADV NGCUKAITOBI SC:** Yes. Now, the problem, which is probably what you were referring to, is that there is no full analysis, on a case-by-case basis, of the contents of the  
10 dockets.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Which is what you did.

**ADV NOKO:** Yes, that is what I meant, yes.

**ADV NGCUKAITOBI SC:** Yes, that is it. And in addition to that, there are at least 12 dockets that are not referenced at all in the report.

**ADV NOKO:** Okay, yes.

**ADV NGCUKAITOBI SC:** In fact, I can read them to you to make your evidence complete.

20 **ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Now, the dockets that are mentioned by name and are not referenced at all are the following dockets. 18 October 2008, Umkomaas CAS253/10/2008, the deceased is in Mduduzi Mkhize.

**ADV NOKO:** Okay.

**ADV NGCUKAITOBI SC:** It is analysed in your report, and there is no mention of it in the De Kock report.

**ADV NOKO:** Okay.

**ADV SKOSANA SC:** Madam Chair, if we can assist Advocate Ngcukaitobi, it looks like on page 27, the case he is referring to is listed as number 7.

**CHAIRPERSON:** It would be helpful if you speak up, please.

**ADV SKOSANA SC:** I am saying that if we can just assist Advocate Ngcukaitobi, the Umkomaas case he is referring to, 10 235 October 2008, appears on page 27 of the report under number 7 on the 2008 dockets. I am not sure if maybe that was a mistake on his part.

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

**CHAIRPERSON:** [Indistinct – 0:47:12]...

**ADV SKOSANA SC:** Yes.

**CHAIRPERSON:** Page 3160, the table at paragraph 7?

**ADV SKOSANA SC:** Yes, because unless I misheard him when he said 235 of October 08.

**ADV NGCUKAITOBI SC:** No. You see, this is the problem. 20 This is exactly what we are saying. They have mentioned the name of the docket. There is not a single analysis, not a single line that talks about the contents of the dockets. That is the point I am putting to you, Advocate Noko.

**ADV NOKO:** Okay, I note that. .

**ADV NGCUKAITOBI SC:** There are 12 of them like this.

**CHAIRPERSON:** Do you get a point, counsel?

**ADV SKOSANA SC:** We thought he said they were not mentioned in the report, but if we did not understand him correctly, we apologise, Chair. We now get his point when he says there is nothing said about them other than a lip service.

**CHAIRPERSON:** My understanding of Advocate Ngcukaitobi's line of questioning is to assist the witness in relation to what she said earlier. And he is drawing her  
10 attention to this part, to say in the report they did mention that they analysed the evidence in the dockets, in the 23 dockets. That is what they say in paragraph 82.

**ADV NGCUKAITOBI SC:** 82.

**CHAIRPERSON:** But when you look further, they give a table of those cases, but there is no summary of those cases at all. They just mention the case numbers. Is my understanding correct?

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

**CHAIRPERSON:** You remember the witness had earlier  
20 testified that when I asked her about whether she read the De Kock report, she said yes, she got it from the media. And she confirmed that in the report there are no summaries of those case dockets. And this is confirmed by what she is now saying, answering Advocate Ngcukaitobi. And counsel is saying other than just a table of those case numbers, there

is no content. There is the summary of the dockets, the contents of the dockets.

**ADV SKOSANA SC:** We accept that, Madam Chair.

**CHAIRPERSON:** Are you following that?

**ADV SKOSANA SC:** Yes, we accept that.

**CHAIRPERSON:** Thank you, Counsel.

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. So the second case is 23 May 2009, Pinetown, CAS1000/05/2009.

**ADV NOKO:** Okay.

10 **CHAIRPERSON:** I may be losing you. Are you still at SB3160 looking at that table?

**ADV NGCUKAITOBI SC:** At that table, yes. So that is item number 13.

**CHAIRPERSON:** 13, yes.

**ADV NGCUKAITOBI SC:** Thank you.

**CHAIRPERSON:** Yes, Pinetown.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** Okay.

20 **ADV NGCUKAITOBI SC:** The third one is the Rustenburg case, which is item 15.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** The fourth one is KwaMashu, which is item 16.

**ADV NOKO:** Okay. Noted.

**ADV NGCUKAITOBI SC:** Where the deceased is Gladwell

Thokozani Ndaba.

**ADV NOKO**: Okay.

**ADV NGCUKAITOBI SC**: Fifth is Phoenix, 377/08/09, item 14.

**ADV NOKO**: Okay. Noted.

**ADV NGCUKAITOBI SC**: Item 14, under the column of 2009.

**ADV NOKO**: Okay.

**ADV NGCUKAITOBI SC**: Can you see that?

**ADV NOKO**: Yes, I see that.

10 **ADV NGCUKAITOBI SC**: Next one is Bheki Themba in 2010, item 19, CAS44/05/10.

**ADV NOKO**: I see it. Yes.

**ADV BALOYI-MERE SC**: I am sorry to disturb you. Are you cross-referencing with the cases, with the dockets that were analysed by the witness?

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

**ADV BALOYI-MERE SC**: Thank you.

**ADV NGCUKAITOBI SC**: Thank you. And then we skip to 2011. Durban North, 4th of July 2011. By the way, on the 20 4th of July 2011, it was a killing spree. They killed three people in different areas.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: That is the one of whom was in a dustbin.

**ADV NGCUKAITOBI SC**: Yes, one of them was. That is Mr

Mbonambi.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: One that was killed in the dustbin.

**ADV NOKO**: And his brother, yes..

**ADV NGCUKAITOBI SC**: Yes. Now, that would be all of the Durban North cases, 20, 21, 23.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: And then Esikhawini.

**MS RAMAGAGA**: Maybe just, are you deliberately skipping  
10 22? I see you are saying...

**ADV NGCUKAITOBI SC**: No, no, no, Madam Chair. 20, 21, 22. So, those are the three that were killed on the same day. Yes. And then Esikhawini, item 23.

**ADV NOKO**: Yes, I see that.

**ADV NGCUKAITOBI SC**: And then I see that I have overlooked one from 2008, which is KwaMashu case 314. That is item 9.

**ADV NOKO**: Okay. I see it as well.

**ADV NGCUKAITOBI SC**: Yes. And then Tongaat in 2009,  
20 case 356. That is item 11.

**ADV NOKO**: Okay, yes.

**ADV NGCUKAITOBI SC**: And then KwaDukuza, that is 2010. Yes, that is 17. Sorry, I have got it now.

**ADV NOKO**: Yes, I see.

**ADV NGCUKAITOBI SC**: Now, the reason we had to go

through this exercise, even though it is a tedious one, is that if the only thing you read as the NDPP, which is what we now know to be the case with Advocate Batohi, she would know absolutely nothing about at least 12 of the dockets, because even her own best version she had, other than referring to those dockets, did not analyse a single statement from those dockets.

**ADV NOKO:** Exactly.

**ADV NGCUKAITOBI SC:** Yes. Now, if she had just taken  
10 your report, as imperfect as it is, which analyses all 23, she would have actually found that it is substantive. It explains what is the case.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** So you have a scenario now where Advocate Batohi acts unconstitutionally because she fails to observe section 179, but she also acts irrationally because she simply does not have all of the evidence.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** I mean, if she read this report, she  
20 would have realised that the majority of the dockets are not analysed in the report.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now, to come back then to your earlier point that you made, that you realised when you looked at this report that these people did not read the

docket. Can you contextualise now that answer again in the light of what we have gone through?

**ADV NOKO**: It is the same. I can see they did not. If they did, like, I do not know how, but it is not enough for an NDPP to decide based on this, that is to say, there is no evidence for the racketeering charges and to withdraw them based on this.

**ADV NGCUKAITOBI SC**: Yes.

**ADV NOKO**: If she got this report in addition to prosecutors' report as well, perhaps, or reading the dockets, yes, but not only on this basis. It is not enough.

**ADV NGCUKAITOBI SC**: Yes. But would you agree with the submission we will make at the end of this enquiry that her decision, other than being unconstitutional, was also irrational?

**ADV NOKO**: Yes, I agree with that.

**ADV NGCUKAITOBI SC**: Yes. Now, I want to go further on this because it is a big part of your case to say that, look, we have got a strong case for racketeering, but it is being withdrawn for unclear reasons.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: And you remember that Advocate Mtsweni, under the guise of clarification, tried to take issue with your analysis of the statements in the racketeering case against Major General Booyesen. Do you remember that?

**ADV NOKO**: Yes, I remember.

**ADV NGCUKAITOBI SC**: I want to just take us through that case. I am going to do it by reference to documents.

**ADV NOKO**: Okay.

**ADV NGCUKAITOBI SC**: You should have cross-examination file 1 in front of you.

**ADV NOKO**: Okay.

**ADV NGCUKAITOBI SC**: Now, before we go through this, you remember the main defence that is repeated on behalf of  
10 Major General Booyesen...

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: ...is the idea that in the killing of Ndimande and Magojela, he came after the event.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Now, let us see if the documents support that.

**ADV NOKO**: Okay.

**ADV NGCUKAITOBI SC**: The useful starting point is page 1, which is dated the 5th of September, 2008, and it is a letter  
20 from Hlapane Attorneys.

**ADV NOKO**: Oh, yes, I see.

**ADV NGCUKAITOBI SC**: Are those the attorneys you were referring to?

**ADV NOKO**: Yes. It is through Mr Nkosinathi Hopewell Shezi.

**ADV NGCUKAITOBI SC:** Yes. Now, Mr Shezi ...[intervenes]

**CHAIRPERSON:** Advocate Ngcukaitobi, take me to that page again.

**ADV NGCUKAITOBI SC:** It is page 1, Madam Chair, of file 1 of the cross-examination bundle.

**ADV NOKO:** The Hlapane Attorneys?

**ADV NGCUKAITOBI SC:** Hlapane Attorneys, yes. Now, the gentleman you referred to is listed as the sole proprietor of the firm at the foot of that page, below the line.

10 **ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Nkosinathi Hopewell Shezi.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Is that the person you are talking about?

**ADV NOKO:** Yes, he is the one.

**ADV NGCUKAITOBI SC:** Now, it is important to actually go through his letter.

**ADV NOKO:** Yes.

20 **ADV NGCUKAITOBI SC:** And we will come back to the role of Mr Nkosinathi afterwards.

**ADV NOKO:** Okay, yes.

**ADV NGCUKAITOBI SC:** So, the first thing he says in the first paragraph is that they represent the Maphumulo Taxi Association, and then he refers in the second sentence to the murder of Superintendent Ntonto on the 27th of August 2008.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And then he says:

“After that, there have been unlawful acts perpetrated by the police against the members of the Maphumulo Taxi Association, accompanied by a disturbing disregard of the rule of law and the constitutional rights of the individuals concerned.”

10 **ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Okay.

If you then go to the following page, the first thing he explains at page 2, paragraph 1, you can ignore the main paragraph, just go to where it is listed, paragraph 1.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Where he says:

20 “On the 27th of August 2008, it was specifically arranged with a controlled prosecutor at Stanger Magistrates Court that two of our clients who appeared on that day, Somizi Mkhize and Gedwane Mhlongo, would be detained at Westville Prison until their next court appearance. This arrangement was made following extensive complaints by our clients of abuse by the

police while detained in police cells during investigations. The Magistrate duly ordered that our clients be detained at Westville Prison and signed detention warrants to this effect.”

**ADV NOKO**: Yes, I see that.

**ADV NGCUKAITOBI SC**: So, you now have complaints of abuse in the police cells. And then you have a judicial officer who says, do not go to this particular police cell, go to  
10 Westville.

**ADV NOKO**: And that kind of abuse, if I may say, was also experienced in another case, the 466 case.

**ADV NGCUKAITOBI SC**: Yes.

**ADV NOKO**: Ja, where Thoshan Panday and Colonel Navin Madhoe were accused.

**ADV NGCUKAITOBI SC**: Yes.

**ADV NOKO**: The same kind of actions by the police were also alleged there.

**ADV NGCUKAITOBI SC**: That is why Major General Booysen  
20 wanted to be among the people who were visiting them, despite being a complainant.

**ADV NOKO**: Yes, and gave an instruction to that effect while he was a complainant in the same matter, yes.

**ADV NGCUKAITOBI SC**: Yes. Now, then this is where it really gets disturbing.

“Both detention warrants were thereafter unlawfully and intentionally altered by the police by deleting Westville Prison and inserting Cato Mano police cells as the place of detention.”

So, there is a warrant of detention signed by the Magistrate for a different station. The police then change it on their own.

**ADV NOKO:** Ja, I see that.

**ADV NGCUKAITOBI SC:** Yes.

10 **ADV NOKO:** It is not surprising to me, to be honest.

**ADV NGCUKAITOBI SC:** Now, what then happens there is set out in paragraph 3, 4 and 5. So, basically they are interrogated and then severely beaten up.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And they are also denied access to a lawyer.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Now, that is just one instance, but it goes further if you go to paragraph 7 of page 3.

20 **ADV NOKO:** Yes, I can see it.

**ADV NGCUKAITOBI SC:** Now, that refers to Mr Moses Siphon Dlamini.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Who surrenders himself because he hears that his name is being listed in association with the

killing of Mr Ntonto.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And then he surrenders himself.

**ADV NOKO:** Yes, this Mr Moses Dlamini is one of the witnesses. His statement I have attached and referred to in my affidavit as well. And he explains the incident, the very same torturing incident.

**ADV NGCUKAITOBI SC:** Yes. He is also sent to Cato Manor and then is tortured there.

10 **ADV NOKO:** Yes. That is what he said in his statement, yes.

**ADV NGCUKAITOBI SC:** Yes. And that is set out in paragraph 7, 8, 9.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And then more people are also detained. Paragraph 10. That is now Mr Magojela, that is Magojela Ndimande, and Mr Thembe.

**ADV NOKO:** Who were later killed near Howick, yes.

**ADV NGCUKAITOBI SC:** Yes, that is the Howick case.

20 **ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Where Mr Booysen was directly involved.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now, but what then happens with Mr Magojela and Mr Thembe is that they are released

after their detention.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: And they are told, when we want you, we will call you.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: But they are never wanted. And the reason they are released is because the police formed the view that there is no case linking them to Ntonto.

**ADV NOKO**: Yes.

10 **ADV NGCUKAITOBI SC**: They release them.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Thereafter, they murder them.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes.

**ADV NOKO**: So they were not being sought for having committed any offence. And that is the position in most of the cases.

**ADV NGCUKAITOBI SC**: Yes.

**ADV NOKO**: Yes.

20 **ADV NGCUKAITOBI SC**: Yes. And the thing about them is that they had done the exercise of checking whether they are implicated.

**ADV NOKO**: Or not, yes.

**ADV NGCUKAITOBI SC**: And then, after that, they released them.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** But then they still killed them.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now, that you will find at 10, 11, 12. And then at 13 is a different person. That is Lindelani Buthelezi.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Who was killed in the presence of his wife, Thandeka Nompumelelo Sokulu. Remember that  
10 earlier on, you were not able to trace the husband of Ms Sokulu.

**ADV NOKO:** No, no, no. I know who her husband is. It is just that the statement that we now have as part of my affidavit is the one that pertains to the application by Mr Bongani Elfias Mkhize, who was applying for an interdict not to be killed by Cato Manor.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** But in her initial statement, just that I did not have it when I was doing the affidavit, in her initial statement,  
20 she indicates there that her husband is Lindelani Buthelezi, as I remember.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** And he was killed in her presence.

**CHAIRPERSON:** Yes. If I may just also assist, counsel, I think it is me who might have misunderstood, because in that

replying affidavit deposed to by Ms Sokulu, she kept on referring to my husband. And by the way, it was an application by the late Mr Mkhize, where she sought an interdict to relief. And she deposed the replying affidavit, but she referred to my husband. And I wanted to clarify that aspect as to who precisely was her husband. And she said it is Mr Lindelani Buthelezi, not Mr Mkhize.

**ADV NGCUKAITOBI SC:** Okay. Thank you for the clarification.

10 **CHAIRPERSON:** Thank you.

**ADV NGCUKAITOBI SC:** Yes. Now, this is why then this letter, when you see where it ends, it is at page 7. So they have detailed that there are members that have already been killed. They have also detailed that there is a hit list.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** They have also detailed that there is a torture chamber at Cato Manor.

**ADV NOKO:** Yes, Mr Mathonsi and or Mr Mthiyane also mentioned a hit list.

20 **ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** Where people will be killed and their names. And indeed, those people were killed by the Cato Manor under the pretext of being sought for having committed criminal offences. Yes.

**ADV NGCUKAITOBI SC:** Yes. Now, this is why then in

paragraph 7 they say, look, gentlemen, if you want our client, approach us. We will bring those clients to you.

**CHAIRPERSON:** Counsel, which paragraph?

**ADV NGCUKAITOBI SC:** Yes. Now, paragraph, page 7.

**CHAIRPERSON:** Page 7. That would be paragraph 19.

**ADV NGCUKAITOBI SC:** Paragraph, yes, it starts at 19, correct. 19, Roman figure 1. Yes, sorry.

10 “Any member of the Maphumulo Taxi Association sought to be questioned in connection with any investigation pertaining to text of violence or the murder of senior superintendent Ntonto is allowed legal representation at all relevant times during the questioning. Our clients have nominated our offices to represent them in this regard and require that our office be contacted before questioning or interview is undertaken.

20 We wish to make it clear that this applies equally to persons considered suspects and those considered witnesses because the police have acted unlawfully irrespective of the status of the person they question.”

Then, if you look at the last sentence there:

“We wish to record that our clients will

honour any subpoena issued in terms of section 206 of the Criminal Procedure Act and we welcome the use of this process if it is deemed necessary. Any member of the Maphumulo Taxi Association who is arrested or detained, whether or not he is charged, requires to be legally represented and nominates our office in this regard.

We require that our offices be contacted immediately if an arrest is made.”

10

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Now, and that is how they end. They say we are available. Come to us if you want our people.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now, that is a letter of demand of the 3rd, sorry, 5th of September.

**ADV NOKO:** Okay.

**ADV NGCUKAITOBI SC:** Yes. Now, that is to be read together with page 9 of that document, which is the complaints written to the Human Rights Commission, IPID, the Police Commissioner, and the Public Protector, dated the 23rd of September.

**ADV NOKO:** I see that.

**ADV NGCUKAITOBI SC:** Now, in this letter, they repeat

these events and they say, look, we have had no joy. We are now asking you to intervene.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** These organs that are mentioned there.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** So that goes on up until page 26.

**ADV NOKO:** Yes, I see that.

**ADV NGCUKAITOBI SC:** Now, by this stage, if you look at  
10 the period between the 5th of September 2008 and the 23rd  
of September 2008, Mr Magojela Ndimande has been killed  
because he was killed on the 16th of September 2008.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And Mr Thembe was killed because  
he was killed together with Mr Magojela.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And the letter of demand was  
written precisely to avoid the killing of Mr Magojela.

**ADV NOKO:** And Mr Mkhize.

20 **ADV NGCUKAITOBI SC:** Yes, Mr Mkhize was killed later as  
well.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. But in between this, just  
within a week, they had killed one of the people that they  
said, please do not kill him. If you want him, we will bring

him.

**ADV NOKO:** Yes. Yes.

**ADV NGCUKAITOBI SC:** Which explains why they have become so desperate now that they are reporting to the national institutions.

**ADV NOKO:** To all authorities in desperation.

**ADV NGCUKAITOBI SC:** And then no one intervenes.

**ADV NOKO:** No one did.

**ADV NGCUKAITOBI SC:** Yes. Now, inside the police, what  
10 was happening during that period? Because at this point, we have five people that the police have killed. It is common cause they were killed by the police.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Go to page 27 where we see what is going on inside the police.

**ADV NOKO:** Yes, I see it.

**ADV NGCUKAITOBI SC:** Yes. What we then have there, we have a letter dated the 21st of October, 2008. If you look at the stamp on the top right corner, you see that it is 21  
20 October.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And then there is also another stamp, 17th of October, on the left at the top as well.

**ADV NOKO:** Yes, I can see this.

**ADV NGCUKAITOBI SC:** I am not sure when exactly it is

signed. There is another date, 15th of October. So it has got three dates, 15th, 17th, and 21.

**ADV NOKO**: I think they were received by various sections or divisions within SAPS. As you see, the 17th of October, 2008 one was received by Detective Services. They stamped it, and it went to Auxiliary Services. They received it on the 21st of October. They stamped it.

**ADV NGCUKAITOBI SC**: Yes. Oh, I see.

**ADV NOKO**: And usually, that is how I understand many  
10 stamps in a document to mean, yes.

**ADV NGCUKAITOBI SC**: Yes. But the person who signed it is who?

**ADV NOKO**: Provincial Commander, Director JW Booysen, Organised Crime, KwaZulu Natal.

**ADV NGCUKAITOBI SC**: That is Major General Booysen?

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes. Now, we will go later to show that he is aware of everything that has been said by Mr Hlapane.

20 **ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: But in this letter, what he is saying at paragraph 3, he is talking about Superintendent Ntonto, who was shot dead, and Inspector Kanyeke, who was seriously wounded.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC:** And that the killing of Superintendent Ntonto has sent shockwaves through the community.

“This criminal attack was seen as a direct threat against an organ of state.”

And then he says:

“The solving of this case was widely reported and applauded by the media and the public alike.”

10 And then he says in the last paragraph:

It is recommended that the members of the enclosed list be rewarded with a cash incentive of R10,000 each, as well as a certificate by the National Commissioner.”

Correct?

**ADV NOKO:** Yes, I see that.

**ADV NGCUKAITOBI SC:** So what he is saying here is my police have solved the murder of Ntonto.

**ADV NOKO:** And that has been my position even in my report  
20 and affidavit and my understanding why he was managing and participating.

**ADV NGCUKAITOBI SC:** Yes, but he is saying so himself directly.

**ADV NOKO:** Yes, I have seen this document as well.

**ADV NGCUKAITOBI SC:** Now, let us see how they solved

it. Because solving a crime ordinarily for people who have read the Constitution means someone goes to jail.

**ADV NOKO**: Yes, legal processes are followed.

**ADV NGCUKAITOBI SC**: Now, the solution to the crime is to be found in a document that starts at page 28 and then ends at 242. And that is the document called Monetary and Nonmonetary Awards. Can you see that?

**ADV NOKO**: Yes, I can see that.

**ADV NGCUKAITOBI SC**: Yes. Now, if you go to page 30  
10 under paragraph 3?

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: It says here the apprehension of two more suspects.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: So when you read that, you think that they have arrested people.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Until you actually read the content.

**ADV NOKO**: Yes.

20 **ADV NGCUKAITOBI SC**: Yes. Now, who are those people that are involved in those suspects? They are listed. There are details of candidates.

**ADV NOKO**: Yes. Number 1 ...[intervenes]

**ADV NGCUKAITOBI SC**: Number 1. Yes, you can. Yes, please read. I was going to ask you. Number 1?

**ADV NOKO:** Number one is listed as Director JW Booyesen.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** That is Major General Booyesen. Number two, Captain Locum. Three, Captain JJE van Tonder. Captain N Eva. Inspector P Mostert. Inspector Makanya. And Inspector E Nel. And as far as I know, all of these are the accused in the Cato Manor case.

**ADV NGCUKAITOBI SC:** Yes, precisely. Now, he himself says these are the people that have solved the matter of  
10 Ntonto.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** I am the first one.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Then listen to the summary of the events. He explains how they were solved.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** He says:

20 “On Monday, 15 September 2008, Director Booyesen, the Provincial Commander, contacted Inspector Mostert and informed Inspector Mostert that he had information pertaining to the suspect that had organised the hit on Superintendent Ntonto. He was in Virginia in the Orange Free State and en route to Pietermaritzburg to collect some

cash in Pietermaritzburg. During this time, the informer remained in contact with Director Booysen, who continued to relay the information over to the investigation team.”

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: So, in other words, the start of this operation is initiated by Director Booysen.

**ADV NOKO**: Yes, exactly.

10 **ADV NGCUKAITOBI SC**: Who instructs Inspector Mostert.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: The only reason he instructs him is because he is in charge.

**ADV NOKO**: Yes, he is managing.

**ADV NGCUKAITOBI SC**: Yes.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Now, then, that was on the 15th of September.

**ADV NOKO**: Yes.

20 **ADV NGCUKAITOBI SC**: On the 16th, that is the day they killed Mr Magojela.

**ADV NOKO**: And Mr Thembe.

**ADV NGCUKAITOBI SC**: And Mr Thembe, yes.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**:

“On Tuesday, the 16th of September 2008, at 6.20 hours (that is the morning), Director Booyesen contacted Inspector Mostert again, read the movement of the suspect, who was near the Pietermaritzburg area in a Hyundai Tuscan 4x4 with registration NRP3904, and that he was armed and dangerous. The investigation team consisting of the above members immediately departed to Pietermaritzburg.”

10

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** So, again, the person who initiated the operation is Director Booyesen.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** By instructing Inspector Mostert.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** By the way, Inspector Mostert faced 79 criminal charges. All of them were wiped clean by Advocate Batohi and Advocate Harrison.

20 **ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:**

“Then, the same day, at 8.30, the investigation team still consisting of the above same members who were in Pietermaritzburg continued to receive

further information from Director Booyesen.”

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:**

“And at 10.10, information was received that the above vehicle was en route on the N3 towards the Orange Free State. The vehicle was spotted near the Cedar turnoff by the investigation team, the occupants being two persons, a driver and a passenger, seated on the back seat of the vehicle. The investigation team, which at this stage consisted of Inspector Mostert, Nel and Makanya in one vehicle, while Captain Van Tonder, Locum and Eva, who followed in a separate vehicle. Inspector Mostert managed to catch up to the vehicle and in an attempt to get the suspects to pull over, the official blue light and siren was used.”

20 We know that not only did he start it, they themselves say he remained in contact with them throughout the operation.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Then he says:

“A shootout then took place between the passenger of the suspect's vehicle and the

investigation team, resulting in the driver of the vehicle being injured in the process which resulted in the vehicle stopping.”

Now at this point, they do not explain who started the shooting. They say a shootout happened.

**ADV NOKO**: Happened, yes.

**ADV NGCUKAITOBI SC**: Then they say:

10 “The passenger in the suspect's vehicle during the shootout made an attempt to flee from the moving vehicle which resulted in him being flung out of the moving vehicle.”

So even on their own version, he was running away.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**:

“Both the suspects were fatally injured in the shootout. The driver was positively identified as Timson Magojela Ndimande and was the main brain behind the assassination of Superintendent Ntonto.”

20 Now this statement, we know it to be false because of the letter of the 5th of September 2008 where Mr Hlapane says to them, you arrested him, you interrogated him, you released him because you had no evidence.

**ADV NOKO**: Exactly.

**ADV NGCUKAITOBI SC**: Yes.

**ADV NOKO:** And that is why, sorry to interrupt, that is why in the predicate offences, one of the menaces of Mr Magojela Ndimande.

**ADV NGCUKAITOBI SC:** Yes, Mr Booyesen is charged for the murder of Magojela Ndimande.

**ADV NOKO:** Yes, as one of the predicate offences.

**ADV NGCUKAITOBI SC:** And the second one, because you need two, and the second one is Ndimande. Sorry, is Thembe.

10 **ADV NOKO:** Thembe.

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

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Then it says:

“The following firearms were found in the vehicle.

One AK47 rifle with loaded magazine,

One Ruger Mini 14 automatic rifle and two magazines, as well as

To 9mm Norinco pistols

20 Both with loaded magazine.”

**ADV NOKO:** And if I can interrupt again, please.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** And that is where the other predicate offences come from. Remember count 9, 10, 11, no, no, 8, 9, 10, 11, 12.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** The first two are murders.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** That is Magojela Ndimande and Thembe.

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

**ADV NOKO:** And then the three, the first one is possession of an unlicensed firearm, that is the AK47. And the second, what is this, the fourth predicate offence will be the possession of the ammunition for this very same AK47, being  
10 the 40 rounds, bullets thereof. And then the fifth predicate offence is the defeating the ends of justice for having placed the firearm there.

**ADV NGCUKAITOBI SC:** I see.

**ADV NOKO:** So that is the five predicate offences and they meet the requirements of the racketeering charges.

**ADV NGCUKAITOBI SC:** Now just to come back to the narrative of how they, they were not being investigated at this stage when they wrote this report.

**ADV NOKO:** Yes.

20 **ADV NGCUKAITOBI SC:** So they were just writing the report freely.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** But the way they explained it is very shocking. They admit that one person was trying to flee when they shot him. But in relation to the second person who

was the driver, they never say that that driver attempted to shoot at them. They actually say a shootout occurred.

**ADV NOKO**: mmm.

**ADV NGCUKAITOBI SC**: You see?

**ADV NOKO**: Ja, I see that.

**ADV NGCUKAITOBI SC**: Now this whole story that has been peddled for years, that Major General Booyesen arrived at the scene after the shooting, given what they themselves say that he was actually the initiator and remained in contact  
10 throughout the operation and came afterwards. I mean, can that be true or is it blatantly false?

**ADV NOKO**: It is not true. And this was attached to the prosecution memorandum. I saw this.

**ADV NGCUKAITOBI SC**: Yes.

**ADV NOKO**: And that is why I also supported the prosecution. It is not true that he only arrived late. He started it, coordinated it, like arranged everything.

**ADV NGCUKAITOBI SC**: Yes.

**ADV NOKO**: Yes.

20 **ADV NGCUKAITOBI SC**: Well, the person who actually did not say it is Advocate Batohi.

**ADV NOKO**: But it was there. I do not know whether it was given to him or not. And the De Kock pane, I do not know if they saw this.

**ADV NGCUKAITOBI SC**: Yes. Well, the De Kock panel

repeats the lie that Major General Booyesen came after the scene.

**ADV NOKO**: And turn around and say, we lied against Major General Booyesen because he was investigating some people where, yes, the truth is here.

**ADV NGCUKAITOBI SC**: Yes. Now, if you then look at the... Here it is clear who they say were involved in the killing. They have listed them themselves. Booyesen, Locum, Van Tonder, Eva, Mostert, Makanya, and Nel. It is clear who was  
10 killed. It is Ndimande and Thembe.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: And it is clear the method of the killing.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: It was just a spray gun approach.

**ADV NOKO**: The same modus operandi in all the cases and a firearm is placed there.

**ADV NGCUKAITOBI SC**: Yes.

**ADV NOKO**: Yes.

20 **CHAIRPERSON**: You are now referring to the details of the candidates.

**ADV NGCUKAITOBI SC**: Yes, the details of the candidates.

**CHAIRPERSON**: The apprehension of the suspects.

**ADV NGCUKAITOBI SC**: Yes, yes. Under paragraph 3, correct.

**CHAIRPERSON:** Yes.

**ADV NGCUKAITOBI SC:** Yes, paragraph 3.

**CHAIRPERSON:** It is 5.30 almost. I do not know whether we are interrupting your cross-examination.

**ADV NGCUKAITOBI SC:** No, this is the right moment.

**CHAIRPERSON:** May we pause here? Hopefully, we will be able to finalise the cross-examination before midday tomorrow to enable the evidence leading team to re-examine, with my plea or our plea that we release the witness timeously tomorrow.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** Oh, by the way, she has to travel.

**ADV NGCUKAITOBI SC:** Madam Chair, we are planning on finishing by 1.00 tomorrow.

**CHAIRPERSON:** By 1 o'clock tomorrow. Yes, thank you. In any event, we will adjourn until tomorrow, 9 o'clock. But before we adjourn, we would like to remind you, Advocate Skosana, of the request you made two weeks ago, when you requested that you were going to establish whether there is a conflict of interest in relation to the involvement of Advocate Hulley and Junior as regards the decision of the Minister. The evidence leading team has not come back to us.

We cannot leave that matter hanging because we spend the whole day exchanging views in relation to that

matter, and we need to know where we are in relation to the matter. The mic is on. At one stage, probably tomorrow, you would then have to indicate to us what the position is. Remember, Advocate Batohi is still on the witness stand, still undergoing cross-examination, and you sought to apply or request on her behalf that it be found that there is a conflict, after your ascertaining with whoever so that the Minister can revisit her decision. Am I correct?

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

10 **CHAIRPERSON:** We are therefore saying to you that matter cannot be left in the limbo because that witness, Advocate Batohi, has not finished her testimony. And it is your witness, as the evidence leading team, you should therefore tell us of the status of the request that you made two weeks ago. Indicate to us what you have found, what you have decided. If you would have approached the Minister, do let us know because we need to progress with the evidence of Advocate Batohi.

**ADV SKOSANA SC:** Yes, we will endeavour to bring the  
20 report tomorrow, Madam Chair.

**CHAIRPERSON:** We will adjourn until nine o'clock tomorrow morning. Thank you. You are still on the oath, madam.

**ADV NOKO:** Yes, Chair.

**ENQUIRY ADJOURNS UNTIL 6 FEBRUARY 2126**

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