

**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**

**6 FEBRUARY 2026**

**DAY 22**



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

**PROCEEDINGS ON 6 FEBRUARY 2026**

**CHAIRPERSON:** Good morning, everyone. Good morning, Advocate Noko.

**ADV NOKO:** Good morning, Chair.

**CHAIRPERSON:** Good morning, Ntate Chauke. Good morning, gentlemen over there. I see you have devised a strategy here so that I do not move this mic. Thank you. Advocate Ngcukaitobi, we received your apology, but you know what you have to do.

**ADV NGCUKAITOBI SC:** Madam Chair ...[intervenes].

**CHAIRPERSON:** Later in the day.

**ADV NGCUKAITOBI SC:** I have already done my bit. I am severely embarrassed to use a traffic excuse again.

**CHAIRPERSON:** Well, for your punishment, you know what you need to do.

**ADV NGCUKAITOBI SC:** Yes, M'Lady, I, yes, Madam Chair.

**CHAIRPERSON:** I will not make a public announcement of it, but we received your apology.

**ADV NGCUKAITOBI SC:** Yes, thank you, Madam Chair.

**CHAIRPERSON:** Yes, thank you, Counsel. Madam, good morning again. Remember, you are still under oath.

**ADV NOKO:** Yes, Chair.

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

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

**CHAIRPERSON:** Before you do that, let me welcome Ntate Mohlamonyane. Is he here? He is not here again. Where is Ntate Mohlamonyane?

**ADV SKOSANA SC:** Madam Chair, I expected him to be here. Maybe I assumed that we understand he is continuing to prepare.

**CHAIRPERSON:** Is he continuing to prepare elsewhere?

**ADV SKOSANA SC:** Yes.

**CHAIRPERSON:** I saw him this morning. I thought he would be sitting in front of us here.

**ADV SKOSANA SC:** He is in the building.

**CHAIRPERSON:** Is he in the building?

**ADV SKOSANA SC:** Yes.

**CHAIRPERSON:** He is supposed to be here. We are starting and I thought he is ready to be here with us today. But it is okay if he is doing some work elsewhere. Advocate Ngcukaitobi, you may proceed.

**ADV NGCUKAITOBI SC:** Yes, thank you, Madam Chair. Advocate Noko, if you can just keep that file one in front of you. So that is the file we were exploring yesterday.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** We had finished one topic, which is the involvement of Major General Booyesen ...[intervenes].

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** In initiating, supervising and

coming at the end in the murder of Mr Magojela and Mr Thembe.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: You will recall that.

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

**ADV NGCUKAITOBI SC**: Yes. I wanted to just ask you a question, maybe for you to help us. Given what I showed you about his centrality ...[intervenes].

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Would you still say that his role was, I think you called it, circumstantial?

**ADV NOKO**: It is even direct.

**ADV NGCUKAITOBI SC**: Yes. Now, if you then go to page 28 of that bundle.

**ADV NOKO**: Yes, I am on page 28.

**ADV NGCUKAITOBI SC**: Yes. Now, in that front page, this is the same document we looked at in detail yesterday.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: So there are two or three points just to cover there.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: So in that front page ...[intervenes].

**CHAIRPERSON**: May I recap? By the way, where were we yesterday?

**ADV NGCUKAITOBI SC:** Yesterday we were at ...[intervenes].

**CHAIRPERSON:** In file 1.

**ADV NGCUKAITOBI SC:** Page 30, well, we were at page 28 to 33. That is the document we were looking at, and that is the motivation for the monetary awards.

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

**ADV NGCUKAITOBI SC:** Yes, thank you. So yesterday we had covered page 30 and 31.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. And after we finished, Mr Chauke said that I had overlooked page 28 and 29.

**ADV NOKO:** Okay.

**ADV NGCUKAITOBI SC:** Yes. Now, page 28 contains a list of candidates to be paid money.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Correct, by the SAPS?

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And your point yesterday was that this money was a reward for the killing.

**ADV NOKO:** Well, SAPS did not say it is for the killing, but in essence it is for the killing, because according to them, how they say they have quelled taxi violence, we know it was through the killing, according to evidence of witnesses.

**ADV NGCUKAITOBI SC:** No, I think you are wrong on that

...[intervenes].

**ADV NOKO**: Okay.

**ADV NGCUKAITOBI SC**: Because if you go to page 32

...[intervenes].

**ADV NOKO**: Okay.

**ADV NGCUKAITOBI SC**: One, two, three, the third paragraph.

**ADV NOKO**: Okay.

**ADV NGCUKAITOBI SC**: There they say, this is to explain why these people are getting their rewards.

**ADV NOKO**: Okay.

**ADV NGCUKAITOBI SC**: -:

“Dumisani Ndlovu was shot by Inspector Kanyeke, one of Superintendent Chonco crew. Lindane Buthelezi was shot by the investigating team. Nathi Mtembu was shot by the investigating team. Mdu Kolopoto Nduli was shot by the investigating team, who was also wanted in Mapumulo case 02/02/2005. Timson Magodja ...[indistinct] and his bodyguard, Sibusi Suthembe were shot by the investigating team, and who orchestrated the hit on Superintendent Chonco.”

**ADV NOKO:** Oh, yes. Yes, on this basis, yes.

**ADV NGCUKAITOBI SC:** Yes, so they themselves say this is for the killing.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** [Indistinct]... [microphone off] Counsel, where were you reading?

**ADV NGCUKAITOBI SC:** Page 32, the third paragraph.

**CHAIRPERSON:** 32.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NGCUKAITOBI SC:** Yes, they are not saying it was for their arrest.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** Through legal processes, and ja, true, I get the point.

**ADV NGCUKAITOBI SC:** Yes. And now, if you look at who are these members of the investigating team, they are all explained in that document at page 31.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And in the second sentence.

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

**ADV NGCUKAITOBI SC:** That is just one group. The investigating team, which at this stage consisted of Inspector Mostert, Neir and Makanya, in one vehicle, while Captain Van Tonder, Lockem and Eva, who followed in a separate vehicle.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Those are the members of the investigating team.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Who they say must be rewarded for killing.

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

**ADV NGCUKAITOBI SC:** Yes. Now, we are then at page 28.

**ADV NOKO:** Okay.

**ADV NGCUKAITOBI SC:** Yes. Now, these are more members that must be rewarded for playing a part in the killing.

**ADV NOKO:** Ja.

**ADV NGCUKAITOBI SC:** Yes. Now, what is the name of the first candidate to be rewarded?

**ADV NOKO:** It is Director JW Booysen.

**ADV NGCUKAITOBI SC:** Yes. And there are, I counted, 19 members there.

**ADV NOKO:** Okay. It is 18 on the first page, on page 28, and three more.

**ADV NGCUKAITOBI SC:** Yes, 18 on the first page, and then 19, 20 ...[intervenes].

**ADV NOKO:** Three more on page 29 ...[intervenes].

**ADV NOKO:** 21.

**ADV NOKO:** It is 21, yes.

**ADV NGCUKAITOBI SC:** Yes. Now, these are from Cato Manor.

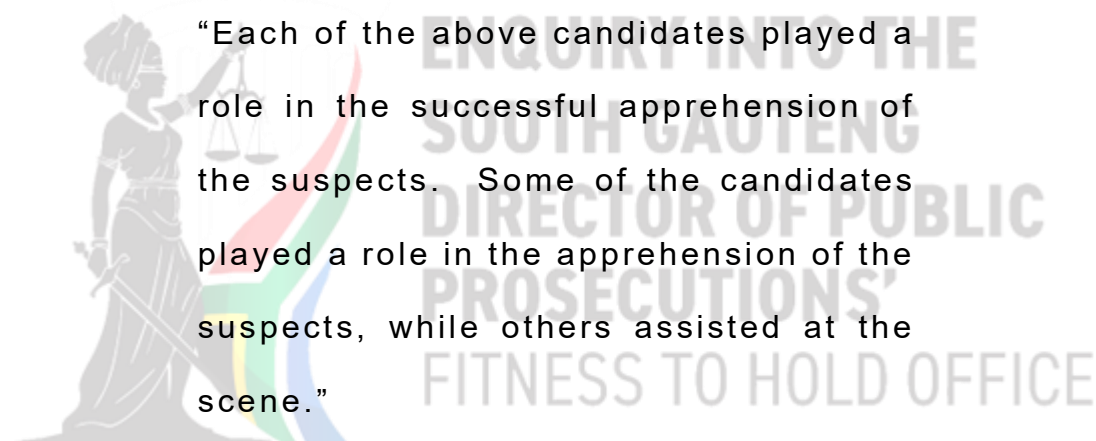
**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. But look at what is being said about them, why should they be rewarded in the second paragraph of page 29.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** After the names. Can you read that?

**ADV NOKO:** Ja. It says:



“Each of the above candidates played a role in the successful apprehension of the suspects. Some of the candidates played a role in the apprehension of the suspects, while others assisted at the scene.”

**ADV NGCUKAITOBI SC:** Yes. Now, we know as a fact that no suspects were apprehended.

**ADV NOKO:** Ja.

**ADV NGCUKAITOBI SC:** All of the suspects that, alleged suspects that are referred to, were shot and killed.

**ADV NOKO:** True.

**ADV NGCUKAITOBI SC:** Yes. Now, they themselves say each of these candidates played a role.

**ADV NOKO:** They are associating themselves, ja.

**ADV NGCUKAITOBI SC:** Yes. And then they say others came to the scene.

**ADV NOKO:** Hm.

**ADV NGCUKAITOBI SC:** Yes. But that includes General Booyesen.

**ADV NOKO:** Yes, we know in most of the scenes he was called, according to Mr Danikas.

**ADV NGCUKAITOBI SC:** Yes. Well, his name is mentioned by the SAPS, where they say he is one of the people who played a role.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now, the same point is made at page 34.

**ADV NOKO:** Okay.

**ADV NGCUKAITOBI SC:** Yes. Which appears to be a motivation later, on the 18<sup>th</sup> of November 2008.

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

**ADV NGCUKAITOBI SC:** If you look at page 42, it is signed by a Mr Wessels, or a Ms Wessels, or Mrs Wessels, who is the Provincial Head of Personnel Services in KZN.

**CHAIRPERSON:** And where is that, Counsel?

**ADV NOKO:** Oh, yes.

**ADV NGCUKAITOBI SC:** Page 42.

**CHAIRPERSON:** 42.

**ADV NGCUKAITOBI SC:** In the middle, yes, Madam Chair.

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

**ADV NGCUKAITOBI SC:** Yes. And then endorsed at the bottom by the Provincial Commissioner, Mr Ngidi or Ms Ngidi.

**ADV NOKO:** Yes, I see that as well.

**ADV NGCUKAITOBI SC:** Yes. But the point of substance at page 34, the details of the candidates to be rewarded for the killing.

**ADV NOKO:** Ja.

**ADV NGCUKAITOBI SC:** What is the first name there?

**ADV NOKO:** Director JW Booysen.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And then the rest of those candidates, we know that they were all accused in the Cato Manor killing case.

**ADV NOKO:** Yes, they are.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** Are these the listed candidates ...[intervenes].

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

**CHAIRPERSON:** At 28 or at 31?

**ADV NGCUKAITOBI SC:** 34.

**CHAIRPERSON:** At 34.

**ADV NGCUKAITOBI SC:** Yes, 34. So the point, Advocate Noko, I was making about the internal SAPS documents

...[intervenes].

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: That were generated before there was a charge.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Is that they self, are self-standing evidence that the SAPS itself admitted that these members had shot people and they were being rewarded for shooting those people.

**ADV NOKO**: Yes, it appears so, yes.

**ADV NGCUKAITOBI SC**: Yes. They included General Booyesen as a participant.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes.

**ADV NOKO**: True.

**ADV NGCUKAITOBI SC**: And that is what you were talking about when you said that there was a system of rewarding the killers.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes. Yes, my learned friend points out that if you go to page 33, it looks like that was supposed to be signed by General Booyesen, but his name is scratched out and then it is signed by the Provincial Head of Detectives.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Who is Brown.

**ADV NOKO**: Commissioner Brown, yes.

**ADV NGCUKAITOBI SC**: Commissioner Brown.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes. But in any event, General Booyesen did sign the document at page 27.

**CHAIRPERSON**: I beg your pardon, do we know for certain that this is General Brown's signature?

**ADV NGCUKAITOBI SC**: Perhaps can you, do you know for certain?

**ADV NOKO**: I do not.

**ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: Because I cannot make a head or tail of this signature.

**ADV NOKO**: Yes.

**CHAIRPERSON**: But I see in the handwritten was, is Provincial Head, Detective Service, KZN.

**ADV NOKO**: And General Booyesen was not the Head of Detectives.

**CHAIRPERSON**: Yes.

**ADV NOKO**: Yes.

**CHAIRPERSON**: We learned yesterday what rank he was holding.

**ADV NOKO**: Yes.

**CHAIRPERSON**: And who is this Provincial Head, Detective Service, KZN? Who could it be?

**ADV NOKO:** Commissioner Brown, according to what we have in the Cato Manor case, was superior to General Booysen. He was reporting to him then.

**CHAIRPERSON:** He was listed as the Provincial Commissioner, KZN, as you read from that list of yesterday.

**ADV NOKO:** Yes. Something like that, yes.

**ADV NGCUKAITOBI SC:** Yes, Madam Chair, you are correct. He is the Assistant Commissioner of KZN.

**ADV NOKO:** Okay.

**ADV NGCUKAITOBI SC:** So that appears at page 27. So at page 27, he is listed as the Provincial Head, Detective Services, Assistant Commissioner, PT Brown.

**ADV NOKO:** Yes.

**CHAIRPERSON:** Where at 27 Counsel?

**ADV NGCUKAITOBI SC:** Just under the date, 15 October 2008 on the right.

**CHAIRPERSON:** Yes, precisely.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** Thank you.

**ADV NGCUKAITOBI SC:** So that is correct.

**ADV NOKO:** Okay.

**ADV NGCUKAITOBI SC:** And then at the bottom of that page, that is where General Booysen himself signs.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. So any claim by him that he

was not aware of this system of rewarding the cops for the shooting would be false by General Booyesen.

**ADV NOKO**: Very false.

**ADV NGCUKAITOBI SC**: Yes. Now, can I move on then to another topic. We finished the internal documents, which you said you had read at the time.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes. I want to take you to the documents that start at page 43.

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

**ADV NGCUKAITOBI SC**: Yes. Now, you would recall that yesterday or the day before, I cannot remember, you gave evidence that Mr, the attorney ...[intervenes].

**ADV NOKO**: Mr Shozi.

**ADV NGCUKAITOBI SC**: No, I thought he was Hlapane.

**ADV NOKO**: Hlapane is the name of the firm.

**ADV NGCUKAITOBI SC**: Oh, the attorney himself is Shozi.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes, all right. I understand. So Hlapane Attorneys brought an application on behalf of Mr Mkhize.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: In which Mr Mkhize said, I have heard that my name is in a hit list.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC:** And I want an interdict to prevent being killed.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now, these are the papers in that interdict. At page 43 is the notice of motion.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And the relief that is sought is at page 44.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And paragraph B(i) speaks directly to what you said.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Where you said that it was an interdict against being killed. So it said:

“That the respondents be interdicted from killing, injuring, threatening, harassing, or in any way intimidating the applicant.”

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. And then paragraph (ii):

“Ordering the respondents to receive the applicant from his lawyers, thus effecting the warrant of arrest in the presence of the applicant's legal representatives.”

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now, which is also an extraordinary thing, where a suspect says, I want the court to order that the police must receive me with my attorney, because that is what the police are expected to do anyway.

**ADV NOKO:** It was out of desperation.

**ADV NGCUKAITOBI SC:** Yes. Now, the fourth respondent in that application, who is he?

**ADV NOKO:** Fourth respondent?

**ADV NGCUKAITOBI SC:** Ja, fourth respondent.

**ADV NOKO:** Oh. It is Organized Crime Unit, SAPS. Oh, okay, Commissioner J Booysen.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** Head of the Organized Crime Unit, SAPS, KZN.

**ADV NGCUKAITOBI SC:** So, again, Major General Booysen is specifically cited.

**ADV NOKO:** Yes, and he depose to an affidavit.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** To say Mkhize will not be harmed.

**ADV NGCUKAITOBI SC:** Yes. Now, let us just deal with that. You say that he deposed to an affidavit. There is an answering affidavit.

**ADV NOKO:** Page 69.

**ADV NGCUKAITOBI SC:** At page 69, thank you. And who is the deponent in that answering affidavit at page 69?

**ADV NOKO:** It is Johan Wessel Booysen.

**ADV NGCUKAITOBI SC:** Yes. Now, there are only two parts of this affidavit I would like your comment on.

**ADV NOKO:** Okay.

**ADV NGCUKAITOBI SC:** Yes. The first is page 56, paragraph 24 of the founding affidavit.

**ADV NOKO:** 56.

**ADV NGCUKAITOBI SC:** Yes, paragraph 24.

**ADV NOKO:** Okay, I see it.

**ADV NGCUKAITOBI SC:** Yes. Now, they are talking here about Moses DDIamini.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And it says:

“Moses Dlamini was released after it was found that he could not be inculcated with the murder of Superintendent Chonco.”

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** -:

“As a result of the information I received from Moses DDIamini, I became concerned for my well-being.”

That is Mr Mkhize.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** -:

“And approached the association's attorneys, Hlapane Attorneys, and instructed Nkosinathi Shozi, a practicing attorney of this honourable court, to intercede in the matter on my behalf. I annex hereto marked B, a copy of the letter written by Mr Shozi in this regard wherein I am specifically mentioned in paragraph 11 thereof.”

That is paragraph 24.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Remember that we started with that letter.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** That was the letter of the 5<sup>th</sup> of September.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Which sets out everyone who had already been killed.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Now, General Booysen responded to that paragraph at page 76.

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

**ADV NGCUKAITOBI SC:** And then he says:

“I admit that Moses Dlamini was

released. Any information received by the applicant from Moses Dlamini as referred to in the founding affidavit is hearsay and ought to be struck out. I have no knowledge as to why the applicant became concerned for his well-being and deny that he had any reason to be afraid.”

Remember that the allegation is that Moses Dlamini could not be linked to the murder of Superintendent Chonco.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Does General Booysen deny that he could not be linked?

**ADV NOKO:** He does not.

**ADV NGCUKAITOBI SC:** Yes. And then the letter itself to show that he was aware of the letter, he says:

“The letter, Annexure B, needs to be placed in context. On 5 September 2008, Hlapane Attorneys addressed *inter alia* the Provincial Commissioner. A copy of that letter is annexed hereto, marked JWB1. This was responded to on 11 September 2008, a copy of which is annexed hereto, marked JWB2. Annexure B to the founding affidavit was

then received. In any event, in the absence of an affidavit from the author of the letter, the contents thereof are hearsay.”

So again, it is clear that he is aware fully of the letter and he was aware at the time it was received.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes. Which means he knows the narrative of all of those systematic killings that were contained in that letter.

**ADV NOKO**: Yes, clearly so, yes.

**ADV NOKO**: Yes. He also knows of the allegations of torture that were contained in the letter.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: He also knows that these were innocent victims of the torture and the murder.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes. Then, if you go back to the founding affidavit, we were at page 57.

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

**ADV NGCUKAITOBI SC**: Yes. Now, at paragraph 25, there are specific allegations made.

**ADV NOKO**: Sorry, page 67 or ...[intervenes].

**ADV NGCUKAITOBI SC**: It is at five seven.

**ADV NOKO**: Oh, I was at 47. Okay, yes.

**ADV NGCUKAITOBI SC:** Yes, at paragraph 25.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Where the attorney, Mr Mkhize makes specific allegations. He says:

“All of the people whose names appeared on the list referred to above.”

Now, that is the hit list in the letter of the 5<sup>th</sup> of September 2008.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** -:

“Have since been killed by the police.”

Those are the leaders of Kwa Maphumulo Taxi Association.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes.

“It was alleged that they were being arrested for the murder of Superintendent Chonco and were killed whilst allegedly threatening members of the SAPS during or shortly after such arrest.”

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** -:

“All of these deaths have occurred under questionable and suspicious

circumstances and I have been reliably informed by certain members of the SAPS who are close to the investigating team that the policy being adopted by the investigating team is to kill or eliminate all members of my association suspected of involvement in the murder of Superintendent Chonco.”

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now, look at how Major General Booysen evades these allegations, which is at page 77.

**ADV NOKO:** Okay.

**ADV NGCUKAITOBI SC:** At paragraph 28 of his affidavit, ad paragraph 25.

**ADV NOKO:** Okay.

**ADV NGCUKAITOBI SC:** He says:

“I deny the allegations contained in this paragraph.”

I do not know if you have any experience in civil litigation, but this is referred to as a bare denial.

**ADV NOKO:** It is.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** Even in criminal.

**ADV NGCUKAITOBI SC:** Even in criminal, okay.

**ADV NOKO:** It is a bare denial.

**ADV NGCUKAITOBI SC:** Okay.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And then it continues.

“It is not the intention of the police to kill anyone. It is certainly the intention of the police to properly investigate all crimes and to bring the persons responsible, therefore, to book.”

But he never, ever engages with the allegations at all.

**ADV NOKO:** Ja. Yes.

**ADV NGCUKAITOBI SC:** Of which we have established in the previous paragraph that he is aware of them.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** He was aware at the time the report was made.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And what makes it worse here is that more people were killed after the demand was made.

**ADV NOKO:** Yes, it did not stop.

**ADV NGCUKAITOBI SC:** Yes. Now, then, there is also an allegation at paragraph 26. Now, you will remember that Mr Chonco was used as a justification for these murders.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And your evidence was that, actually, Cato Manor know who killed Superintendent Chonco. The Cato Manor members know who killed Superintendent Chonco.

**ADV NOKO:** They know.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** In collusion with the members of the Stanger Taxi Association.

**ADV NGCUKAITOBI SC:** Yes. Now, paragraph 26 addresses that point you have just made, paragraph 26 of the founding affidavit.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** It says:

“I pause at this stage to state categorically that I was not involved in the planning or execution of the plan to murder Superintendent Chonco and was surprised, as everybody else, when his death was publicized. I was of the view that Superintendent Chonco was doing sterling work in order to arrest the violence and restore the situation of normality within the association's working environment, and his death was viewed as a great loss by me for this

reason. I, however, believe, because I have been told as much by a policeman close to the investigation team, that the investigating team in the murder of Superintendent Chonco have taken the view to falsely implicate prominent members of Kwa Maphumulo Taxi Association in the murder of Superintendent Chonco, and thereafter to eliminate them. Rumour is that they have taken sides with the Stanger Taxi Association in weakening the Kwa Maphumulo Taxi Association in the dispute. One of the methods employed in weakening Kwa Maphumulo Taxi Association is to kill its leaders.”

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Can you comment on that?

**ADV NOKO**: It is as the witnesses say.

**ADV NGCUKAITOBI SC**: Yes.

**ADV NOKO**: Mr Mathonzi, Mr Thiani, and the other witnesses who even tortured themselves.

**ADV NGCUKAITOBI SC**: Yes.

**ADV NOKO**: They say there was a hit list of people who were supposed to be killed. It was given to Cato Manor after

killing them, and then take some pictures, like Bungi Zomhlovu was sent pictures by Mr Mostert, who is one of the accused in the Cato Manor, to say these are the pictures of ...[indistinct] and the other one, and they were paid money. So it was in association with members of the Cato Manor, according to the witnesses, to eliminate members of their rival taxi association, of Stanger Taxi Association, which is the Kwa Maphumulo Taxi Association.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** So it is true.

**ADV NGCUKAITOBI SC:** Yes. And in fact, General Booysen also gives a bare denial. If you go to page 77, paragraph 29, he never engages the facts. He evades the facts.

**ADV NOKO:** Ja. Yes.

**ADV NGCUKAITOBI SC:** Where he says:

“I deny the allegations. It is not the intention of the police to falsely implicate anyone in any of the crimes concerned. Again, unsubstantiated hearsay referred to in this paragraph is not a basis to grant the interdict sought and ought to be struck out.”

But never deals with the facts.

**ADV NOKO:** And besides, why would you object to an affidavit like this one, like if someone says, I should not be

killed, I should not be harassed, intimidated in any way? Why would anyone have a problem with that?

**MS RAMAGAGA**: Yes.

**ADV NOKO**: Like ...[intervenes].

**ADV NGCUKAITOBI SC**: Why would they even oppose it?

**ADV NOKO**: Why would you oppose an affidavit like that? Do you want to kill this person for you to oppose it? It is not like an interdict where someone is saying, this person, GBV, for example, and say, no, I never assaulted her. But in this one, like, I also saw it, but I did not understand why would someone object to that.

**ADV NGCUKAITOBI SC**: Yes.

**ADV NOKO**: But ja, that is just my comment.

**ADV NGCUKAITOBI SC**: Yes. Now, then at paragraph 30 of Mr Booyesen's affidavit, he says ...[intervenes].

**ADV NOKO**: Page?

**ADV NGCUKAITOBI SC**: Page 77, the same page where you are.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Ja, just paragraph 30. He also gives a generalized denial.

“No list existed, and therefore, there was no list that could have been supplied to the second respondent. In this regard, I refer to the affidavit of the

second respondent filed evenly  
herewith.”

Now, the second respondent is the MEC.

**ADV NOKO**: Page?

**ADV NGCUKAITOBI SC**: Sorry, page 47.

**CHAIRPERSON**: Advocate Ngcukaitobi, at page 77, paragraph 30, where he denies the existence of a list, he refers to the affidavit of the second respondent.

**ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: Do we have that affidavit?

**ADV NGCUKAITOBI SC**: No, Madam Chair. I actually looked for it because we had got these documents from the NPA, but I had looked for that affidavit because what we then found at page 87, so if you look at, Major General Booysen's affidavit ends at 86. At 87 is the replying affidavit. I had actually looked for the affidavit of the MEC and could not find it. So, this is something we would have asked for from the NPA, but this is what we got. These are the documents we got. It is called NPA summary.

**CHAIRPERSON**: I think I should find out from the NPA team as to whether we can have the copy of the MEC's affidavit as referred to by General Booyens, at that paragraph. We do not have it in our file also. Advocate Hulley, let me speak to you directly. I know I should be talking to the evidence leaders, but let me find out whether we can have a copy of

that answering, or that affidavit.

**ADV HULLEY SC:** Madam Chair, as I understand the position, that is what we received from the dockets that were provided to the NPA or within the prosecution team. Thank you, Madam Chair.

**CHAIRPERSON:** Yes.

**ADV HULLEY SC:** I am not sure if this is on. Thank you, Madam Chair. Madam Chair, as I understand it, the position, I might be incorrect, but as I understand the position, when these documents were received, in other words, from the prosecution team that was responsible, they had gone to select documents from various sources. This particular document was presented in this form, but I will try to ascertain or confirm that that is in fact correct. So when we talk about getting documents from the NPA, we must bear in mind that Advocate Chauke is part of the NPA, so that is the source of the documents as far as we are aware.

**CHAIRPERSON:** What do you mean, that Advocate Chauke is the ...[incomplete].

**ADV HULLEY SC:** So, what I am saying is that the ...[intervenes].

**CHAIRPERSON:** You said Advocate Chauke is what?

**ADV HULLEY SC:** So, there was a prosecution team.

**CHAIRPERSON:** Yes.

**ADV HULLEY SC:** Advocate Chauke and members like Mr

Maiema, or Advocate Maema, or Advocate Maema, Mathenjwa, and so forth, what we have been referring to as the prosecution team, they gathered documents which they used to then present the case against Major General Booyesen. What I am saying is that as far as I am aware, the documents that we have in our possession now include exactly, have exactly these documents over here. But what I am undertaking to do is to confirm whether there was this missing confirmatory affidavit.

**CHAIRPERSON:** Yes, I do not even know at this stage whether it was confirmatory because the MEC is a second respondent. He could have filed an answering affidavit probably. And this are supposed to be public documents filed of record, so it should be easy to get them even from the registrar of the court, the High Court in Durban, if we cannot get them from the NPA. Am I correct?

**ADV HULLEY SC:** They ought to be. But we are talking about, I mean, someone can go and look for that and I can give instructions to someone within the NPA to try and uplift the file. But you must be in mind that according to the case number and so forth, this is a 2008 case number.

**CHAIRPERSON:** Yes.

**ADV HULLEY SC:** But I will certainly make efforts to do so.

**CHAIRPERSON:** But you agree that this are public documents. If the registrar of the High Court is approached,

it will be easy to find these documents.

**ADV HULLEY SC:** I would agree that they are public documents. I am not sure if I can agree that they would be easy to find. I am not sure what the processes are in KZN, but certainly my own experience, for instance in the High Court in Johannesburg or in Pretoria, is that these things are not that easy to find. But theoretically, it ought to be easy, but practice dictates otherwise.

**CHAIRPERSON:** Yes. But of course, if the founding papers were found as we have them now, it could have been, maybe the documents are in the NPA's office because they could obtain at least the founding papers, the answering papers that they conceded to be relevant. So we could search and check if the NPA can be of help.

**ADV HULLEY SC:** I will certainly convey that to my client, Madam Chair.

**CHAIRPERSON:** Thank you.

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

**CHAIRPERSON:** And when will we know? Should your junior not in the meantime go and ascertain whether such a document can be filed and then by end of, say by lunchtime, we should know. Your junior can find out from the NPA so long so that we do not postpone this matter when the witness is still under cross-examination because she finishes today. We will not call her back here to deal with a matter that we

can easily dispose of today. If your junior can assist, we will appreciate that. You may proceed, Advocate Ngcukaitobi, and you can flag that part as regards the affidavit referred to by Major General Booyens, which is supposed to be the affidavit of the MEC, second respondent, in the High Court proceedings.

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. And then the second part then of the founding affidavit that I was to refer you to are the specific instances of the murder that are mentioned in the founding.

**ADV NOKO:** Okay.

**ADV NGCUKAITOBI SC:** They start at page, under the heading, the killings, at page 58, at the bottom of that page.

**ADV NOKO:** Okay. Yes, I see it.

**ADV NGCUKAITOBI SC:** And that is paragraph 28. That is the Ndimande killing.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And Thembe. That is covered at paragraph 28 and 29.

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

**ADV NGCUKAITOBI SC:** And then page 60 is the killing of Lindelane Buthelezi.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And paragraph 32, the killing of Kopolo Nduli and Nkosinathi Nthembu.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Page 61, the killing of Umdu Mkhize.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** All of whom were in the hit list.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Now, what is interesting is despite the allegation by General Booyesen that he was peripheral, he was unaware.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** He, in fact, says he was aware of each of these cases.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** You will see that from paragraph, page 78, paragraph 31, that is where he deals with the killing of Ndimande and Thembe.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And he repeats the police version that their lives were under threat.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** But nowhere does he say, I do not know what was happening. I was not present.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** As a matter of fact, Commissioner Brown, in

his statement, somewhere he is saying that Major General Booyesen was the one reporting on the incidents, like showing intimate knowledge of the incidents.

**ADV NGCUKAITOBI SC:** Yes. Now, the same thing with the killing of Buthelezi at page 79, paragraph 33.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. He, again, does not say, I have no knowledge of the killing of Buthelezi. He, in fact, provides a justification for the killing.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Which is the same justification, we attempted to arrest, he resisted, we shot him.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. The same thing at page 20, paragraph 34, with the killing of Nduli and Mthembu.

**ADV NOKO:** Page 8?

**ADV NGCUKAITOBI SC:** Page 80, sorry, paragraph 34.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Sorry. Yes. That is the same defence in the killing of Nduli and Mthembu.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** He does not say, what are you talking about, I had no knowledge. He, in fact, admits knowledge and gives a justification.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. The same thing with the killing of Mkhize, which is paragraph 35.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now, yesterday, you spoke of this interesting word that comes from the racketeering, from the POCA.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** The definition of racketeering, which talks about a pattern.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** The similarity of the methods that have been deployed.

**ADV NOKO:** Yes.

**ADV NOKO:** We have just taken four instances that he admits he was aware of.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And he provides a justification. Can you just speak about this idea of a pattern?

**ADV NOKO:** It is about similar fact evidence.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** To say racketeering, POCA allows prosecutions of, well, in racketeering prosecutions, it allows for the admissibility of similar fact evidence.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** Where the similar type of illegal activities that

are alleged to have been committed, for example, in the indictment, and may have happened prior to the dates that are covered in the indictment.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** But you look at the *modus operandi* and everything, they are similar.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** Those can be used as well.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** And it also shows and corroborates that those that are within the indictment really did happen and shows the *modus operandi* that is being employed in the racketeering within the enterprise.

**ADV NGCUKAITOBI SC:** Yes. Now, in the case of Major General Booyesen ...[intervenes].

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** It is never clear to me what his defences are, but if one of his defences is lack of knowledge, can he actually sustain that defence in the light of his affidavit?

**ADV NOKO:** He cannot. Even Mr Danikas in his statement says it was in 2007, a year prior to the date covered in the indictment, which is May 2008. He says there were a lot of things happening and during the murder of one Jabulani in Umlazi, they went there, he went there together and he,

according to Mr Danikas, he had mentioned that this Jabulani will have a bullet planted in his head. And then they went to Umlazi. Indeed, Jabulani was killed. So he was aware. Even the Malvern one, where the two African males were in a garage in a house in Malvern, he went there with Major General Booysen, according to him, where he alleges that Major General Booysen said they are not going to call the ambulance or the IPID. It was still called IDC, ICD.

**ADV NGCUKAITOBI SC:** ICD.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** Until the second suspect also dies.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** Only after he dies, they - so he is aware of all these things. And besides, if you are a manager, even though you are not even physically present at some of the incidents, if you see your members every time, whenever they have to go apprehend, apply legal processes, arrest suspects, every time suspects are killed, you do not investigate as a manager and say, what is happening, why are you not bringing any people to arrest and process legally through the criminal justice system? Why are all the people that you go out to arrest end up being dead? I mean, that is an obvious thing as well. Any manager is supposed and is expected to do that. Other than that, he was there at some scenes. He knows.

He, like, yes.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** Thank you.

**ADV NGCUKAITOBI SC:** He made himself complicit.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** In the conduct of his members.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Now, it is the second time you have mentioned the Danikas allegation that Mr Booysen said that Mr Jabulani would be found with a bullet in his head.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** According to the statement of Mr Danikas, that actually took place in 2001, not 2007.

**ADV NOKO:** Oh, then it is my mistake.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** I thought it is 2007.

**ADV NGCUKAITOBI SC:** No, no, it is just to correct that. But the event you described is exactly the same that he describes.

**ADV NOKO:** Oh, okay.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** Thank you.

**ADV NGCUKAITOBI SC:** All right, thank you. Now, I would like then to move from the answering affidavit. I think we have established that he is lying, Mr Booysen, when he says

he was unaware.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** He was aware and he provided a justification which, according to the NPA, is a false justification.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now, there were additional statements you referred to yesterday. There is one specifically that you mentioned, but you did not go to the affidavit itself. It is at page 120.

**ADV NOKO:** Oh, yes.

**ADV NGCUKAITOBI SC:** Yes. Now, that is the affidavit of Ms Thandeka Sokulu.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes, that is referred to as the common law wife of Mr Buthelezi.

**ADV NOKO:** Lindelani Buthelezi.

**ADV NGCUKAITOBI SC:** Mr Lindelani Buthelezi.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now, just explain again what was the context in which you referred to this. My job now is just to show you that the affidavit exist, it is here.

**ADV NOKO:** I do not remember which docket it is in, but they were brothers. One of the brothers was killed while the other brother was covered with a washing basin on his head.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** And then after being covered with a washing basin on his head, the allegations are that his brother was shot and killed.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** So, I was relating this to what Ms Thandeka Nompumelelo Sokulu said in relation to her husband, Lindelani Buthelezi, during the night when he was killed by the police.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** She states that they threw a blanket over her head and then immediately they shot her husband.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** And immediately removed it after shooting him.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** So, I was saying there is a similarity. It is also another pattern, *modus operandi*, but there is a similarity there as well as to how they operate.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** Even in another case where a son was killed in a room, the mother and the younger brother were just outside. Their heads were not covered, but the door was closed behind them, ja, like to remove people and then kill a person.

**ADV NGCUKAITOBI SC:** Yes. Well, the reason her affidavit is put here is because Mr Lindelani Buthelezi is one of the

persons that have been killed at the time the application is brought.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: As having been found in the hit list. And Mr Mkhize is saying to the court, this is one of the persons who were killed.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: And I know the information from his wife, Ms Sokulu.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Mr Booysen then says:

“This allegation must be struck out as hearsay because Ms Sokulu's affidavit has not been attached.”

That is what he says in the answering affidavit. We just read that at paragraph 29.

**ADV NOKO**: That is not true.

**ADV NGCUKAITOBI SC**: Yes. Now, this is why then she then brings an affidavit in the reply to say, here is the affidavit. This is not hearsay, it happened.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes. Now ...[intervenes].

**CHAIRPERSON**: Before you proceed, I would like to have a look at paragraph 29 that you are referring to.

**ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON:** The unsubstantiated hearsay point.

**ADV NGCUKAITOBI SC:** Yes, that ought to be struck out.

**CHAIRPERSON:** Now the replying affidavit, I just need clarity here, the applicant is Bongani Elvis Mkhize. The replying affidavit, when you look at the tramlines, is the applicant's replying affidavit. The deponent is Thandeka Nompumelelo Sokulu.

**ADV NGCUKAITOBI SC:** Yes. Madam Chair, I think that is an error because the actual replying affidavit is earlier. I think I saw it at page 86 or something. It is 87, yes.

**CHAIRPERSON:** Yes. I think that is correct.

**ADV NGCUKAITOBI SC:** Yes, and then all of these affidavits are just confirmatories to the reply.

**CHAIRPERSON:** Yes, let us go to the one that is correct in respect of which you made the point concerning the alleged unsubstantiated hearsay point that was to be struck out.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** According to General Booyens.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** And you then referred us to this affidavit.

**ADV NGCUKAITOBI SC:** Yes, at page 120.

**CHAIRPERSON:** That seems to be the wrong one. The correct one is the one at page 87, you say.

**ADV NGCUKAITOBI SC:** Yes. Well, they are both correct, Madam Chair. The one at page 87 is the main reply, I can

put it like that.

**CHAIRPERSON:** Yes.

**ADV NGCUKAITOBI SC:** And then the one at 120 is a confirmatory to that. It is just that the tramline is incorrect. It should have said confirmatory affidavit or supporting affidavit. If you look at the one at 126, it is called supporting affidavit.

**CHAIRPERSON:** Ja.

**ADV NGCUKAITOBI SC:** Others are just called affidavit, probably the safest, yes.

**CHAIRPERSON:** It is confusing, but I do understand.

**ADV NGCUKAITOBI SC:** Yes, thank you, Madam Chair. Advocate Noko, can we then go to the affidavit of Ms Sokulu? You remember that she is responding to the claim that it is unsubstantiated hearsay, it ought to be struck out. And you took a different issue with it, which is that why would you, as a senior policeman, oppose the admission of this affidavit, even if it was hearsay, bearing in mind the nature of the relief that a person is asking not to be killed but to be taken to the police station.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** So you can park that idea and just focus on the merits of how she describes the killing of Mr Buthelezi.

**ADV NOKO:** Yes. That is ...[intervenes].

**ADV NGCUKAITOBI SC:** Sorry.

**ADV NOKO:** Oh, sorry.

**ADV NGCUKAITOBI SC:** No, carry on.

**ADV NOKO:** Okay. I was saying the description starts at paragraph 3. Should I read from there?

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** Okay. It says, she says:

“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. 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.”

**ADV NGCUKAITOBI SC:** So just wait there. Is this what

you were talking about?

**ADV NOKO**: Yes. But she goes on about the blanket a little bit.

**ADV NGCUKAITOBI SC**: All right, carry on.

**ADV NOKO**: Ja, she says:

“I verily believe that this was done ...”

The throwing of the blanket, as she says.

“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.”

**CHAIRPERSON**: It is correct, Counsel, that when you have regard to paragraph 5 at page 122, I just mention it so that it helps us later, that paragraph 5 refers to General Booysen's paragraph 33 ...[intervenes].

**ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: Where those allegations of unsubstantiated points are made.

**ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: So, yes, she is then dealing with that aspect. I think the affidavit was then filed, among others, to deal with that specific part as she refers to paragraph 33 of

the fourth respondent's answering affidavit at page 122.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes. It is quite a lengthy rebuttal, but perhaps we should deal with it because it is important to explain, if not to the panel, certainly to the public, why Major General Booyesen lied in his affidavit, according to Ms Sokulu.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: She says:

“I wish to state categorically that the averments contained therein ...”

That is in Major General Booyesen's affidavit.

“Are false for the following reasons.”

What are those reasons?

**ADV NOKO**: From (i) right?

**ADV NGCUKAITOBI SC**: Yes.

**ADV NOKO**: -:

“When my husband left my view, I was taken to an adjoining room. He had already been under effective control of the police, who were approximately 6 to 18 number at the time.”

Number 2, she says:

“He was unarmed and was not belligerent or showing any signs of aggression towards the police up until

the time he disappeared from my view.”

3:

“Shortly after disappearing from my view, a blanket was placed over my head. A gunshot rang out. My husband was unarmed when he disappeared from my view.”

Number 4:

“The fourth respondent avers in his reply that my husband resisted arrest and attempted to shoot at the members of the South African Police Services who returned fire in self-defence. Briefly, he was killed in exchange of fire.”

Number 5:

“My husband had not resisted arrest and was effectively arrested when he disappeared from my view. Any suggestion by fourth respondent that he had resisted arrest is false. Besides, unless he was there ...”

Oh, page 23 is blank.

**ADV NGCUKAITOBI SC**: No, it continues to ...[indistinct].

**ADV NOKO**: Oh, to 24.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** Okay:

“Besides, unless he was there, his averment that police acted in self-defence is hearsay and ought to be struck out by this honourable court.”

Number 6:

“Further, the reading of the fourth respondent's averments quoted above, it appears that my husband would have fired shots at the police with his firearm.

I would like to reiterate that my husband was unarmed when he was taken out of the room.”

Number 7:

“At the moment of removing my husband from the bedroom, all that the police were asking him was, what is your name? There was thus no reason for taking him out of my view unless it was for the purpose of killing him in circumstances where there are no eyewitnesses.”

Number 8:

“It is also impossible that within this

confined space that exchange firearm that fourth respondent refers to that none of the members of the South African Police Services were indeed injured.”

**ADV NGCUKAITOBI SC:** So this is an eyewitness, that you would call an eyewitness. He was present there.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. And she is one of the witnesses you would have called if the matter had proceeded to trial

**ADV NOKO:** Yes, and she is not the only eyewitness.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** In other dockets as well, there are eyewitnesses, like the examples that I gave where a mother and her son were closed out of a room and the other son of hers was shot inside there.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** But this one was an eyewitness in respect of the killing of Mr Buthelezi.

**ADV NOKO:** Yes. Oh, yes ...[intervenes].

**CHAIRPERSON:** And no other.

**ADV NOKO:** No other, yes. It is a separate docket, yes, Chair.

**ADV NGCUKAITOBI SC:** Yes, okay, thank you. But she also

testifies that she herself was the subject of assault.

**ADV NOKO**: Yes, she says she was assaulted.

**ADV NGCUKAITOBI SC**: Which is at paragraph 6.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Where she says:

“There was no reason for the police to assault me during the arrest of my husband, and their behaviour in this regard is an objective indication of their high-handedness and disregard of fundamental human and constitutional rights.”

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Now, so this is what you were talking about. If you go to page 125, you will see the signature there, TN Sokulu.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes.

**MS RAMAGAGA**: Ja, maybe just to assist proper recording also about, or to bring certainty on whether this is a what, supporting affidavit or annexure.

**ADV NGCUKAITOBI SC**: Yes.

**MS RAMAGAGA**: That will be found in page 98, paragraph 3, you will see the document is marked P, and line 3 says:

“Contrary to the affidavit to the

common law wife annexed hereto  
and marked P.”

**ADV NGCUKAITOBI SC:** Sorry, Madam ...[intervenes].

**MS RAMAGAGA:** Page 98.

**ADV NGCUKAITOBI SC:** Yes, I have got the page. I cannot find the portion you just read.

**MS RAMAGAGA:** The third paragraph, the third line.

**ADV NGCUKAITOBI SC:** Oh, yes, yes, yes.

**CHAIRPERSON:** Is that paragraph 22 ...[intervenes].

**ADV NGCUKAITOBI SC:** Paragraph 22.

**CHAIRPERSON:** Ad paragraph 23.

**MS RAMAGAGA:** Yes, that is correct, yes.

**ADV NGCUKAITOBI SC:** Oh, yes. Thank you. Do you confirm that that is indeed the case?

**ADV NOKO:** Yes, it is the case.

**ADV NGCUKAITOBI SC:** Sorry, I think I had overlooked that part. I suppose that answers the question that the Chair had asked.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Do you know, Madam Ramagaga, once you have found the answer, everyone then finds it. My junior has now pointed out that at page 120, that P is actually at the top.

**MS RAMAGAGA:** Ja, it is marked P.

**ADV NGCUKAITOBI SC:** Yes.

**MS RAMAGAGA:** So he connect that, then at least it is clear that it is an annexure.

**ADV NGCUKAITOBI SC:** Yes, thank you.

**CHAIRPERSON:** Thank you very much, my sister, for assisting us.

**ADV NGCUKAITOBI SC:** All right, thank you. We finished the content of that affidavit, but this is what you were talking about in your evidence earlier yesterday.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now you ...[intervenes].

**CHAIRPERSON:** Which is indeed fine reading.

**ADV NGCUKAITOBI SC:** Yes, it is. It is reading with a tooth comb. Thank you. I want to move on to another category of evidence.

**ADV NOKO:** Okay.

**ADV NGCUKAITOBI SC:** We have dealt with this substantially now.

**ADV NOKO:** Okay.

**ADV NGCUKAITOBI SC:** You also mentioned ballistics.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Where you said you were also relying on ballistics.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now, I presumed that you had read those ballistics reports yourself.

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

**ADV NGCUKAITOBI SC:** Yes. Now, the first ballistics report that we have is at page 126. And that is mentioned as supporting affidavit. If you turn the page to 127, it is signed by Jacobus Steyl.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** I think we attempted to get hold of him. I think he currently lives overseas.

**ADV NOKO:** Oh, okay.

**ADV NGCUKAITOBI SC:** Yes. But at page 127, paragraph 3, he explains the context in which he got involved in the matter.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** -:

“On 18 September 2008, I was instructed by Hlapane Attorneys, Durban, by telephonic consultation with Mr Nati Shozi, where he briefly gave me the background of a shooting incident which occurred along the N3 northbound, just past the Maryvale off ramp.”

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And then he explained the steps that he took to perform an examination over that incident.

**ADV NOKO**: Ja.

**ADV NGCUKAITOBI SC**: Yes.

**ADV NOKO**: Confirmed.

**ADV NGCUKAITOBI SC**: Now, the actual report starts at page 131. Can you see that?

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes. And the assessment of the bodies that were found is at page 137.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: And that is where he deals with the body of Mr Thembe.

**ADV NOKO**: Yes.

**CHAIRPERSON**: What did you say about 131, the report starts there?

**ADV NGCUKAITOBI SC**: The ..[intervenes].

**CHAIRPERSON**: Actual report.

**ADV NGCUKAITOBI SC**: Yes, the actual report starts at page 131. The affidavit ends at 130, and then he attaches his report from 131. And then the examination of the injuries on the body starts at 137. That is Mr Thembe.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes.

**MS RAMAGAGA**: Page?

**ADV NGCUKAITOBI SC**: Page 137.

**MS RAMAGAGA**: Thank you.

**ADV NGCUKAITOBI SC:** Yes. Now, I want to just go to his conclusions that are at 138. There are seven bullets of his conclusions.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Because it is something you mentioned in your evidence when you said the police claim that they were attacked by the passengers in the vehicle.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** But there is no evidence of any shots from inside the vehicle outside.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now, these are the preliminary conclusions he reached at that stage. We have another report which deals with the final conclusions.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** The first bullet says:

“On the right side of the vehicle, it appears that there could be at least four bullet entrance holes. Two of these could have created injuries to the driver, and one could have created injury to the passenger in the left back seat. The trajectories indicate that the driver at least received a head wound and a right upper body wound.”

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** So what you have are bullets from outside into the vehicle, four of them.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And those are the bullets that kill the driver because he is shot in the head.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. The second bullet:

“The injury to the back seat passenger was most likely a grazed wound due to the amount of tissue found and the absence of blood splatter on the door frame.”

Then the third one:

“At this stage there is no indication that shots were fired through closed windows from inside to the outside.”

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes, that is the point you made pertinently yesterday.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes.

“It was indicated that the suspects were using assault rifles during the incident. It is peculiar that there were no pictures

of these weapons on the scene.”

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And then he says:

“The two AK-47 cartridge cases found inside the vehicle and the absence of blood on the one found on the console raises questions of validity.”

Do you know what this is referring to?

**ADV NOKO:** The planted firearm.

**ADV NGCUKAITOBI SC:** Yes, but can you expand on that?

**ADV NOKO:** Is it not the, it was the claim by the police that they were being shot at.

**ADV NGCUKAITOBI SC:** Yes, by people carrying AK-47s.

**ADV NOKO:** Yes. So now he is rebutting that to say the cartridges found were not compatible with the rifle.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** Yes. So it can be that they fired like ...[intervenes].

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** Ja.

**ADV NGCUKAITOBI SC:** Yes, and that is what he means ...[intervenes].

**ADV NOKO:** So the allegation that they were being shot at is not true, yes.

**ADV NGCUKAITOBI SC:** Yes, absolutely. Yes.

“Now the scrape marks and probable tyre marks on the pants of the deceased seem to be consistent with the blood found from the back left tyre. The blood drags marks on the scene, the abrasions on the deceased's body, and the broken right wrist indicate that the deceased was most probably fell out of the vehicle, breaking his wrist, and was dragged by the vehicle for some distance before becoming untangled. It appeared that the deceased thereafter received a number of gunshots while in this condition outside of the vehicle.”

If you actually can imagine what was happening, he is being dragged by the vehicle.

**ADV NOKO**: The cruelty.

**ADV NGCUKAITOBI SC**: Yes, and then they shoot him outside.

**ADV NOKO**: Sjoe.

**ADV NGCUKAITOBI SC**: Yes. And by the way, their own report we read yesterday says he was actually running away when they shot him.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes.

**ADV NOKO:** This is compatible.

**ADV NGCUKAITOBI SC:** Yes. Then he says:

“On the scene, after the police investigation, there were markings still visible indicating that only four spent cartridge cases or exhibits were collected, which is also peculiar.”

Then it says:

“It is further peculiar that no state ballistic division member was involved in the reconstruction of this matter.”

**ADV NOKO:** This is compatible with what the witness said, Mr Danikas, that the scenes were being, murder scenes were being manipulated before the forensics are called and the IPID and all the like.

**ADV NGCUKAITOBI SC:** Yes. Now, this is the scene, the reason why this is so important, this is the actual scene that Major General Booyesen started, supervised, and then came to clean up.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now, Mr Steyl at the time, was he one of the experts that you were relying upon?

**ADV NOKO:** Yes, Mr Jacobus Steyl, Captain Mangena.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** Those were the two prominent ones, yes.

**ADV NGCUKAITOBI SC:** Yes, we saw another report from, I think, Mr Naidoo.

**ADV NOKO:** Oh, yes, there could have been that as well ja.

**ADV NGCUKAITOBI SC:** But, yes, that was in relation to the killing of the young boy.

**ADV NOKO:** Kwazi Ndlovu.

**ADV NGCUKAITOBI SC:** Kwazi Ndlovu.

**ADV NOKO:** Oh, yes.

**ADV NGCUKAITOBI SC:** But it was a joint report between Steyl and Naidoo.

**ADV NOKO:** Oh, yes.

**ADV NGCUKAITOBI SC:** Yes. Now, you see, the reason I have taken you through this, you see what is puzzling is they first talk about the POCA and say, well, POCA has not been established. And then this is a straightforward case of murder.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. And in this panel, we have never been given with any justification why the murder case was not proceeded with.

**ADV NOKO:** If they feel that Section 2(1)(e) and (f) have not been established, which is also not true, yes, why not proceed with the murder then?

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** Ja.

**ADV NGCUKAITOBI SC:** And we know that Mr Booyesen, Major General Booyesen, was initially charged with two counts of murder.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now, could I then move to the third feature of this. You remember that you spoke about witness statements.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Now, that is apart from the expert witnesses.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** I am talking now factual witnesses.

**ADV NOKO:** Non-expert witnesses.

**ADV NGCUKAITOBI SC:** Ja, non-expert witnesses.

**CHAIRPERSON:** Advocate Ngcukaitobi, if I understood you correctly, you say, they say that it is murder, but it was never proceeded with.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** And then you again say Major General Booyens was charged with murder.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** So, are you suggesting that despite the fact that he was charged, that case was never proceeded with?

**ADV NGCUKAITOBI SC:** Yes, it is one of the cases that

were withdrawn by the Director of Public Prosecutions, Madam, Advocate Harrison.

**CHAIRPERSON**: That is what you mean?

**ADV NGCUKAITOBI SC**: That is what I mean.

**CHAIRPERSON**: Thank you.

**ADV NGCUKAITOBI SC**: And in this enquiry, we have never been given a justification why the murder case was withdrawn.

**ADV NOKO**: The two counts of murder.

**ADV NGCUKAITOBI SC**: The two counts of murder were withdrawn.

**ADV NOKO**: As part of the five predicate offences.

**ADV NGCUKAITOBI SC**: Yes.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes, now, I was going to move on, but I thought perhaps before I do that, it is just to put an end to that application that was brought by Mr Shozi.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: So, the outcome of that is at page 151.

**CHAIRPERSON**: I beg your pardon, Counsel. Back to that point of withdrawal, the withdrawal of the murder charges, was it at the same time with the withdrawal of the racketeering charges?

**ADV NOKO**: No, Chair, it was not. Advocate Batohi

withdrew the racketeering charges, the two counts. And then Advocate Elaine Harrison withdrew all the other offences.

**CHAIRPERSON:** The predicate offences?

**ADV NOKO:** Yes, predicate offences and all other offences in respect of the other accused persons.

**CHAIRPERSON:** Do you perhaps, Counsel, have an indication or pages where such withdrawals were made, because I would like to look at the dates. First, the withdrawal of the racketeering charges by Advocate Batohi, when precisely?

**ADV NGCUKAITOBI SC:** The one by Advocate Batohi is at SB4229, and the date is the 16<sup>th</sup> of July 2019.

**CHAIRPERSON:** It will be at SB?

**ADV NGCUKAITOBI SC:** SB4229.

**CHAIRPERSON:** SB4229. Yes, I see that. It is dated 16 July 2019.

**ADV NGCUKAITOBI SC:** Yes, so the ...[intervenes].

**CHAIRPERSON:** Under the signature of Advocate Batohi.

**ADV NGCUKAITOBI SC:** Advocate Batohi. Yes, so, if you, the heading is:

“NDPP to withdraw racketeering charges in the matter of state following a review process.”

And then in the third paragraph, she then announces her decision.

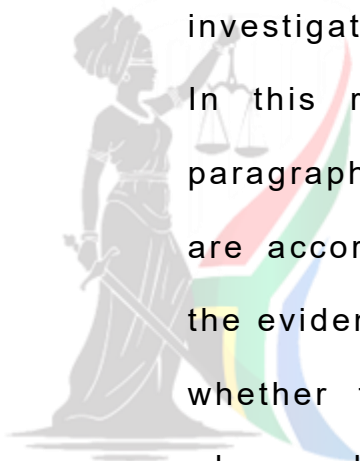
“I have decided that the said authorizations are invalid and that the racketeering charges against all accused must be withdrawn.”

So, she certainly took that decision on the 16<sup>th</sup> of July 2019. And she then later says, paragraph 4:

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

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

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



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

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

So, that is the instruction to the Director of Public Prosecutions. Madam Chair, I recall that I have seen in the context of the Kwazi Ndlovu case, correspondence about the withdrawal of other charges by the DPP of KZN, but I will ask my team to look for it.

**CHAIRPERSON:** Yes, we will also ask our researcher to assist us to check that documents. We will also check. We will ask our researcher to check the withdrawal of those predicate offences by Advocate Harrison.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** The document.

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

**CHAIRPERSON:** If you find that document during the tea

break, you can bring that aspect back.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** Then we can reflect on that.

**ADV NGCUKAITOBI SC:** Yes, thank you, Madam Chair.

**CHAIRPERSON:** So that it does not go through the cracks.

**ADV NGCUKAITOBI SC:** Yes, thank you, Madam Chair. So, in terms of where that matter ended, that application by Mr Bongani Mkhize ...[intervenes].

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** There are two documents that are relevant. The one is at page 149.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** That is the order for interim relief.

**ADV NOKO:** Yes.

**CHAIRPERSON:** What page is that?

**ADV NGCUKAITOBI SC:** 149. So there was an order given at page 150 on the 5<sup>th</sup>, sorry, on the 21<sup>st</sup> of October 2008.

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

**ADV NGCUKAITOBI SC:** Where the respondents were interdicted from killing, injuring, threatening, harassing, or in any way intimidating the applicant.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** So which was the same order that Mr Mkhize wanted.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now, that order returned to court on the 14<sup>th</sup> of November 2008 for final relief.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Which you will see at page 151.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. And there was a consent order given.

**ADV NOKO:** Yes. I can see it.

**ADV NGCUKAITOBI SC:** Yes. It looks like the interim interdict was not by consent. It was contested.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And then the final order was by consent.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. And the final order was:

“That the respondents are interdicted from unlawfully killing, injuring, threatening, harassing, or in any way unlawfully intimidating the applicant.”

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And then everything else was then discharged.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. So the point you were making yesterday, as I understood, is that despite the existence of

these orders, Mr Mkhize was in fact killed.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: The same applicant who obtained these orders.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: If you may pause, Counsel. Advocate Ngcukaitobi, I am going to request that we pause. I am going to request that we pause and take an earlier tea break. We will reconvene at 25 past 11.

**ADV NGCUKAITOBI SC**: Thank you.

**CHAIRPERSON**: You can hold on there. We will adjourn until 25 past 11.

**ENQUIRY ADJOURNS**

**ENQUIRY RESUMES**

**CHAIRPERSON**: Yes, thank you. Ma'am, are still under oath.

**ADV NOKO**: Yes, Chair.

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

**ADV NGCUKAITOBI SC**: Thank you, Madam Chair. Advocate Noko, there is just something I forgot to ask you yesterday. Advocate Batohi has created the impression in this panel that when all of these events were taking place, she was out in The Hague and came back recently and she is ignorant about what transpired before. I can hear myself,

so... Somebody is recording. Anyway. Is this correct, that when, because these are events of 2008 and 2009. Is she telling the truth when she says she was not around?

**ADV NOKO**: No, she is not. According to my understanding, she is not. Because... I think she left the position of DPP when? 2000 and... Towards the end of 2009?

**ADV NGCUKAITOBI SC**: Yes.

**ADV NOKO**: From there.

**ADV NGCUKAITOBI SC**: Yes.

**ADV NOKO**: Ja, and these events are from 2008, according to the indictment, yes.

**ADV NGCUKAITOBI SC**: Yes. And for the most part of those events, they were sent to inquests that would have been... That would have been overseen by her as the DPP.

**ADV NOKO**: As the DPP case at that time, yes.

**ADV NGCUKAITOBI SC**: Yes. So this narrative that she has peddled, that she is ignorant Of this, because she spent 10 years in The Hague, is a false narrative.

**ADV NOKO**: I do not agree with it, yes.

**ADV NGCUKAITOBI SC**: Yes. Now, before we broke, we were still dealing with the evidence of Mr Steyn.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: And I had intended to take you through to the factual statements to address the control element beyond the participation element.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** But...

**CHAIRPERSON:** Sorry, you had just dealt with the interdictory reliefs at page 150.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** And the final relief at 151. .

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

**CHAIRPERSON:** Are you able to make sense as to when the *rule nisi* was confirmed finally?

**ADV NGCUKAITOBI SC:** Yes, Madam Chair. We know that at page 151, that it was confirmed on the 14th of November 2008.

**CHAIRPERSON:** The 14th?

**ADV NGCUKAITOBI SC:** 14th of November, yes.

**CHAIRPERSON:** I see the date stamp there is not very clear to me.

**ADV NGCUKAITOBI SC:** Oh, I see. In other words, the date on the order may be different to the actual date. .

**CHAIRPERSON:** Oh, ja. I see the date on the order, the date stamp is not clear.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** The registrar's date stamp.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** But we can accept that it was confirmed on the 14th. .

**ADV NGCUKAITOBI SC:** Yes, even the following page, actually, is also not clear. .

**CHAIRPERSON:** Ja, it is not. But let us accept for now the 14th of November 2008. .

**ADV NGCUKAITOBI SC:** Yes. Thank you, Madam Chair. So the last of the witnesses were dealt with was Mr Steyn and the report he gave over the killing of Mr Tembe.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Now, my learned friend says that I should actually complete that section by going through to the final report that Mr Steyn gave.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Because we had looked at what he called the provisional report.

**ADV NOKO:** Preliminary, yes.

**ADV NGCUKAITOBI SC:** Preliminary report, yes.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And he did provide a final report, which you will see from page 247.

**ADV NOKO:** 247. Yes, I see.

**ADV NGCUKAITOBI SC:** And just to confirm, you had both of those reports at the time you were considering the matter?

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

**ADV NGCUKAITOBI SC:** Yes. Now, in the final report, that is now after he is read everything and he is given this for the

purposes of the Court.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And by the way, was Mr Steyn a witness of the prosecution?

**ADV NOKO:** Yes, he was a state witness.

**ADV NGCUKAITOBI SC:** All right, thank you. Now, in this one, he deals both with the body of Mr Ndimande and the body of Mr Tembe.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Although in the first one, he dealt with only one body, which is the gentleman that was pulled out of the vehicle and then shot while he was outside.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Now, where he deals with Mr Ndimande is from page 257.

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

**ADV NGCUKAITOBI SC:** Yes. Now, these are the observations of the killing of Mr Ndimande. Under the heading, Post-Mortem Report, which was conducted by Dr Naidoo, where the deceased is, it is spelled as Majoela, but we know this to be Magojele Timson Ndimande.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And then under item one, it says:.

“An entry gunshot wound on the right side of the neck, below the jaw, with an

accompanying exit on the left temporal area above the ear. There was also a bullet recovered from the scar. This trajectory is from right to left and upward.”

Now, that is the right side of the neck.

**ADV NOKO**: And then going up, yes.

**ADV NGCUKAITOBI SC**: And then it is also going up.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Now, just on that description, how is it possible that these people were being attacked?

**ADV NOKO**: Exactly.

**ADV NGCUKAITOBI SC**: Attacked from the side.

**ADV NOKO**: It does not make sense.

**ADV NGCUKAITOBI SC**: And then they produced photographs there, which you will find those photographs in that report. Are reproduced at page 278. Madam Chair, I have our attorney here just to show this blown up, because they are not clear from the report itself. .

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes, and I think there was a complaint last time that we had shown these images that depict violence without a prior warning. We are about to do that.

**CHAIRPERSON**: Complaint by whom?

**ADV NGCUKAITOBI SC**: I do not know. It never came to

me, but I was told that there were people that said we should have issued a warning that there will be graphic violence displayed.

**CHAIRPERSON:** Complaint from the evidence-leading team or from the public?

**ADV NGCUKAITOBI SC:** Well, the person who has told me is Mr Mtsweni.

**ADV MTSWENI:** Madam Chair, all I said was Tembeka is going to fly sensitive pictures. Perhaps we should issue a warning so that members of the public out there can know that there will be graphic pictures shown. Because remember, the proceedings are being streamed, so there might be members of the public out there. As a matter of courtesy, no, that is obliged.

**CHAIRPERSON:** I do not know. In the court proceedings, I have never heard of such. You publicise evidence. In any event, the evidence here is in the public eye. I am not sure to what extent we can hide or warn anyone. I do not know how we do it. Do you have any suggestion as to how it should be done?

**ADV MTSWENI:** I will think of a way, Madam Chair, and then I will come back to Panel.

**CHAIRPERSON:** Speak louder?

**ADV MTSWENI:** I will think of a way, and then I will come back to Panel.

**CHAIRPERSON:** But we are going to publicise it now. [Laughter] He has just indicated that he is going to fly it right now, so if you can maybe give a suggestion. Wait a minute, let me finish, sir.

**ADV MTSWENI:** Oh, sorry.

**CHAIRPERSON:** If you can indicate how best we should deal with that, maybe we can consider.

**ADV MTSWENI:** Perhaps, Madam Chair, just to issue a warning to say there will be, just a statement to say, well, warning to sensitive viewers that we are about to publish graphic photographs. Simple as that, so that at least whoever is watching knows that graphic photographs are going to be streamed. That is how they do it on the media anyway.

**CHAIRPERSON:** This is not a media. This is a quasi-judicial proceedings. .

**ADV MTSWENI:** In that way, Madam Chair, then I would not persist with the suggestion. Advocate Ngcukaitobi can proceed.

**CHAIRPERSON:** Yes, I am not sure, because we are navigating, these are difficult, uncharted waters. That is why we seek your suggestion. But it must be easy to implement. You know, when you are leading evidence, your mission is to do your job. Normally, you do not even think about what the public is saying. I mean, the public is saying so many things out there. If Advocate Ngcukaitobi agrees with your

suggestion, I do not know how he will deal with that. Is it doable, what Advocate Mtsweni is suggesting?

**ADV NGCUKAITOBI SC:** Sorry, Madam Chair, I am just told that they are not streamed. It is just for the enquiry. So I think it is fine. I thought they were streamed even on the media streams. But I am told that it is just only in the chamber. So then there is no need for that, Madam Chair. I can assure my learned friend, it is still images we will be playing. The videos are still coming. But today, it is only still images.

**ADV BALOYI-MERE SC:** If I may try to assist, whenever you are about to stream something that might be of a sensitive nature or shows gross violence, you may preface it with a statement that whatever we are going to show now might be sensitive. And you leave it at that. People will just decide to watch or not to watch. But we cannot hide stuff from the public. Thank you. .

**ADV NGCUKAITOBI SC:** Thank you, Madam Baloyi-Mere, we shall endeavour to do so. On the images, the better copies of those images, I think the one you have is black and white and it is also unclear, will be at page 278.

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

**ADV NGCUKAITOBI SC:** And photograph 22.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. And that is what is referred

to at paragraph 1, see photographs below. And then the next one is at 279.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Now, if you just stay at 279, you will see there where the blood flows from the neck but at the back of the neck.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: I will come back later to see the trajectory of the bullet. But you can see there where the blood is flowing. And you can see where his hands are.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: And you cannot see anything there about a machine gun.

**ADV NOKO**: Or anything like that.

**ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: Are you referring to photo 23?

**ADV NOKO**: Photo 23, yes, Madam Chair. Sorry, photograph 23. Now, the reason why that introduction is necessary is what the expert says after in paragraph 2. He says:.

“An entrance wound behind the head with an accompanying exit wound on the left neck.”

So entrance behind the head.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**:

“This trajectory is from back to front and downward.”

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: .

“The bullet damage to the driver's headrest is consistent direction and angle with the wound track of gunshot wound above.”

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: And then it continues.

“There were a further two entry gunshot wounds on the front right shoulder and three exit wounds over the right shoulder at the back. This trajectory is from front to back and slightly downwards.”

So it is shot on the shoulder.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Now, this then continues under the heading Post-Mortem Report.

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

**ADV NGCUKAITOBI SC**: That one is describing Thokozani Tembe. What we know about the manner, is that he is shot literally here.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: And when they describe Tembe, they say:.

“The deceased was Sibusiso Thokozani Tembe. There are no post-mortem photographs to assist in determining the general wound ballistics. However, it appears from the described wounding as well as the abrasions on his arm, shoulders, and left back as accompanied to the photographs, that the deceased was dragged by the vehicle. He was found on the scene behind the vehicle. The doctor noted the wounding. See photographs below.”

Remember the narrative of General Booysen and his people in the affidavit.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** He said so himself in the affidavit was that the police retaliated after they were being shot.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Now, we know that they shot this man from the back. They shot Mr Ndimande from the back.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And then on Mr Tembe, we know that he was running away when they shot him.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And then the way it is described

under item 1, there are photographs there. Those photographs, I think, are at 276.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: So photo 17 and 18.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes. And this is how they are described by the expert:

“Entry gunshot wound below the left ear...”

**CHAIRPERSON**: Page 276, you said?

**ADV NGCUKAITOBI SC**: Page 276, photo number 17 and 18. Those are the clearer ones.

**CHAIRPERSON**: Yes.

**ADV NGCUKAITOBI SC**: Now, when it says below the left ear, that is almost at the back of the head.

**ADV NOKO**: It is.

**ADV NGCUKAITOBI SC**: Yes.

“...with an accompanying large and gaping exit wound below the right ear.”

So the bullet came from the left and it exited on the right ear, but it was all in the back of the head.

**ADV NOKO**: Yes.

**ADV BALOYI-MERE SC**: Sorry, do not leave us behind. Where is the narrative?

**ADV NGCUKAITOBI SC**: It is paragraph 1 under the photographs. If you go to page 258.

**ADV BALOYI-MERE SC:** 258.

**ADV NGCUKAITOBI SC:** Yes, and paragraph 1. They have got the two pictures which are not clear on the narrative but are clearer on the photo album.

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

**ADV NGCUKAITOBI SC:** Thank you. So what we were dealing with is the description of the entry gunshot wound below the left ear, which then exits on the right ear. That is why there is what they call a gaping exit.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Now, that was a large exit.

**ADV NOKO:** Exit wound, yes.

**ADV NGCUKAITOBI SC:** Now, that is what those pictures show.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And then 1:

“Entry gunshot wound to the inside of the left nipple with an accompanying exit wound to the outside of the left nipple.”

Now, you remember how this was described, was that in the first provisional report, was that they shot him while he was lying down.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Which explains then the shot on the nipple.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Because he was lying down at that point.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:**

“This wound is from right to left and upward.

See the photographs above.”

So that is photograph 18.

**ADV NOKO:** Yes.

**CHAIRPERSON:** Yes, on...

**ADV NGCUKAITOBI SC:** Page 276.

**CHAIRPERSON:** Yes, on photo 18, around the nipple there, I see abrasions.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** Is it where the entry bullet went? You see that darkness there?

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** Around the nipple?

**ADV NGCUKAITOBI SC:** Yes, yes, Madam Chair. Yes, according to this, that would be correct, according to this, because there is a heading Abrasions.

**CHAIRPERSON:** Where? Oh, ja.

**ADV NGCUKAITOBI SC:** Yes, at 258, after paragraph 2.

**CHAIRPERSON:** Yes, I see that. Thank you.

**ADV NGCUKAITOBI SC:** So it says:

“There are multiple abrasions noted to the following areas. Left temporal area.”

So that is exactly where the Chairperson is referring to.

“Below the left eye and over the right nostril. Left shoulder.”

At page 259.

“Left elbow, forearm. Left hand. Over the right side of the back. Right elbow. A compound fracture on the right wrist.”

Then the expert then concludes:

“These are consistent with the photographs taken at the scene. These abrasions and the fracture also confirm that the deceased was dragged for a considerable distance behind the vehicle.”

And we have seen this evidence before.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes. Then, if you then skip a page and go to page 260.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Under the heading of the Scene Investigation.

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

**ADV NGCUKAITOBI SC**: Yes. They start by saying:

“On 22 September 2008...”

That must have been about a week after the shooting because these gentlemen were killed on the 16th of September.

**ADV NOKO:** 16th of September, yes.

**ADV NGCUKAITOBI SC:**

“...I visited the scene plus minus a kilometre after the Merrivale off-ramp on the northbound N3 highway.”

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:**

“The green marks left by the police as well as the blood were still visible on the road surface. I took photographs and measurements of the scene. The blood drag mark on the road surface was 27 metres long.”

27 metres. That is the blood drag. That shows the distance that this gentleman was dragged, that Mr Tembe.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** He was dragged for 27 metres.

**ADV NOKO:** Metres, yes.

**ADV NGCUKAITOBI SC:**

“I examined the scene for any further exhibits and walked at least a kilometre back and could not locate any cartridge cases. I only retrieved the sunglasses of the

deceased back passenger.”

Then there are two photographs there of the scene. Those, I am told, do not have the colour versions from the photo album.

**ADV NOKO**: Okay.

**ADV NGCUKAITOBI SC**: Then, under the same photographs supplied by the ICD at page 261, he says:

“I received a CD containing 98 photographs depicting the scene as well as the vehicle examination at the police pound yard in Pietermaritzburg. It is clear from the photographs, especially where exhibits were found like the firearms and cartridge cases, that the scene was not in its original condition, i.e. it was not an undisturbed scene. The firearms were placed behind and to the side of the vehicle. See the photographs below.”

That picture you will see at page 274 at photo 13.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: So, let us just deal with the first part where he says, they interfered with the crime scene.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: You remember that this is where Mr Booyesen was personally present.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. And is this why he was charged with defeating the ends of justice?

**ADV NOKO:** Yes. That is the reason.

**ADV NGCUKAITOBI SC:** Yes. Now, it then says, the narrative below the picture:

“It appears that the cartridge cases found inside the vehicle were only photographs the next day when the vehicle examination took place at the police pound yard.”

In other words, not photographed on the 16th, but photographed on the 17th.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:**

“It was alleged that the occupants of the vehicle fired shots at the police from the open left rear back door while travelling.”

And then, this is the point you were making earlier.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:**

“There were no AK-47 cartridge cases indicated, found, or photographs on the roadway which could support this version.”

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Because they found an AK and

then they said, they were shooting us with an AK. But, miraculously, there are no AK cartridges.

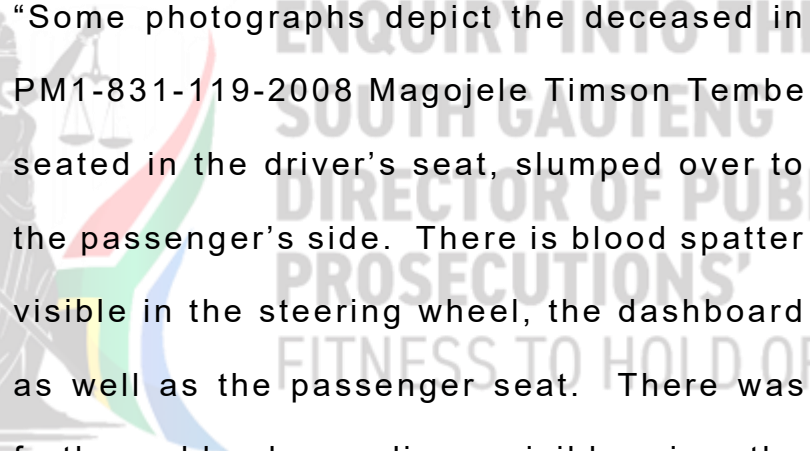
**ADV NOKO**: Cartridges, exactly.

**ADV NGCUKAITOBI SC**:

“The only cartridge cases indicated are located in the outside vicinity of the vehicle, in this stationary position, and in the inside of the vehicle.”

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Now, then, he continues.



“Some photographs depict the deceased in PM1-831-119-2008 Magojele Timson Tembe seated in the driver’s seat, slumped over to the passenger’s side. There is blood spatter visible in the steering wheel, the dashboard as well as the passenger seat. There was further blood pooling visible in the passenger seat. The blood spatter visible on the passenger seat, is consistent with the deceased having slumped over, with blood dripping from the head wounds, whereby the body completely relaxed, thereupon the body impacted on the blood pooling on the chair. See photographs below.”

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC:** So what they are saying is that this person was sitting, was shot and then slumped.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** This is not someone in active combat.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And those pictures we looked at earlier, the first on site is 279, photograph 23, that is him slumping over after being shot on the back of the head.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And then, the other one is at 286. 286.

**ADV NOKO:** That is for the blood spatter.

**ADV NGCUKAITOBI SC:** Yes, that is for the blood spatter. So, that is 286. I think it is photo 37.

**ADV NOKO:** Oh, yes.

**CHAIRPERSON:** That is page?

**ADV NGCUKAITOBI SC:** 286.

**CHAIRPERSON:** 286.

**ADV NGCUKAITOBI SC:** Photo 37. And then, it continues on the crimes that were committed in the crime scene. It says, that is now the narrative below the pictures at 262.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:**

“The deceased, in PM183-120-2008,

Sibusiso Thokozani Tembe, was found lying in a position behind the vehicle with a pistol at his feet. There is blood splatter visible on the firearm in the vicinity of the slide and grip. There are further scrape marks visible on the side and the hammer is in the backward position, which indicates the firearm might be loaded.”

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:**

“It is further unclear where this firearm was originally located and in what position it was found.”

And then, they show the picture.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And that picture in black and white is sort of clear enough, but we do not have the colour copy. It is not in the docket.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Now, this is, again, evidence of the interference with the crime scene by planting a gun.

**ADV NOKO:** Yes, that is the defeating the ends of justice as one of the predicate offences.

**ADV NGCUKAITOBI SC:** Yes. And then it continues.

“There are photographs indicating various

cartridge cases on top of the blood inside the vehicle. However, the original position of these cartridge cases is unknown.”

That, again, means they have moved around the cartridge cases.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:**

“It appears that there are five fired cartridge cases inside the vehicle, 7.62 and 39 millimetre. See photographs below.”

It just aggravates the interference because after they have done this, they go inside and then they shoot.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** The same policemen just randomly shoot a firearm and put it inside.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And then those pictures you will find at page 285, those four pictures there.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Photograph 35 and 36.

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

**ADV NGCUKAITOBI SC:** So two of the four, sorry. 285, 35, and 36.

**ADV NOKO:** Yes.

**CHAIRPERSON:** This K2 that you are depicting here at 285,

I see one cartridge there.

**ADV NGCUKAITOBI SC:** Yes. Which is the first one on the left at 262.

**CHAIRPERSON:** At page 262, I see...

**ADV NGCUKAITOBI SC:** Yes, it is K1 and K2 actually.

**CHAIRPERSON:** Yes. K1?

**ADV NGCUKAITOBI SC:** K1 is the one on the left.

**CHAIRPERSON:** Yes?

**ADV NGCUKAITOBI SC:** At page 262.

**CHAIRPERSON:** And K2?

**ADV NGCUKAITOBI SC:** K2 appears to be the one at the bottom, in the middle.

**CHAIRPERSON:** Yes?

**ADV NGCUKAITOBI SC:** And Mr Ramogale says the other two are difficult to match. I have to accept his... I have to accept his bona fides.

**CHAIRPERSON:** So you only have the K1 and K2?

**ADV NGCUKAITOBI SC:** I think, Madam Chair, we have all of them, but the problem is that they are so dark.

**CHAIRPERSON:** Even on the screen?

**ADV NGCUKAITOBI SC:** Yes, but we have the clear pictures on the screen. I think what he is struggling with is matching them because he cannot actually see those dark pictures so that he can compare them clearer with the – because there could also be K5 and K4. Yes, there could be K4, there could

be K5, which are the closest when you look at them. K4 and K5 is at 287.

**CHAIRPERSON:** Yes.

**ADV NGCUKAITOBI SC:** But I think all of us are reluctant to commit because we are just unsure.

**CHAIRPERSON:** Yes, I see cartridges there for 239.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** K5.

**ADV NGCUKAITOBI SC:** And K4.

**CHAIRPERSON:** At the top of the arrow there, and at the bottom there is another cartridge there.

**ADV NGCUKAITOBI SC:** Yes, yes.

**CHAIRPERSON:** Yes, thank you.

**ADV NGCUKAITOBI SC:** Now...

**CHAIRPERSON:** And as regards the narration by Mr Steyn, where are we as regards these depictions?

**ADV NGCUKAITOBI SC:** Yes, the narrative there is at 262 in the last paragraphs. Where he says the cartridges have been put on top of the blood splatter. That is the first thing he makes.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. And then he says, but I cannot work out what was the original position of these cartridges. So that is what he says, these photographs indicating various cartridge cases on top of the blood inside

the vehicle. However, the original position of these cartridge cases is unknown.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes. Actually, the clearest instance is actually K1 itself, which is at photo 35, page 285. So that you can see that it is a bullet superimposed on the blood splatter.

**ADV NOKO**: Also K5.

**ADV NGCUKAITOBI SC**: K5. Yes, K5. Photo 41. Yes, 41 at page 288.

**CHAIRPERSON**: Yes.

**ADV NGCUKAITOBI SC**: Thank you, Advocate Noko. I think that observation was well made. And then he then comes to the conclusion of all of this, we have done with the images. Thank you. He then comes to the conclusion at page 264.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Now, this is on Mr Magojele.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes. The inside bullets, it says:

“Based on the information available to me at this time, it is my opinion that the deceased was Magojele Timson Ndimande, the deceased was the driver of the vehicle. There was an entrance wound and associated exit wound on the top right

shoulder, of which the trajectory most likely continued through the right side of the neck, below the jaw, with an accompanying exit wound on the left temporal area above the ear.

There was also a bullet recovered from the skull. This trajectory is from right to left and upward.”

So it is actually shot on the side, which is totally consistent with someone driving a vehicle.

**ADV NOKO:** And being shot, yes.

**ADV NGCUKAITOBI SC:** Or sitting in a vehicle, even if they are not driving.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And then, which is probably the most clear instance of an ambush attack, is the last one.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:**

“There was an entrance wound behind the head with an accompanying exit wound on the left neck.”

So they shot him from the back.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** They were truly ambushing him.

**ADV NOKO:** Yes.

“This bullet trajectory most likely followed a path through the back right rear passenger window and through the headrest, resulting in the above wound.”

So that explains why we have those four bullets shot from the window outside into the vehicle.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** We have dealt with the third, fourth, and fifth bullet under the section of the narrative.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Now, the same or similar narrative appears in relation to Mr Tembe. If you turn the page to 65.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. And the first bullet, which is the second paragraph, says:

“There was an entry gunshot wound from below the left ear with an accompanying large and gaping exit below the right ear.”

So it is shot in the ear from back to back on the side.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes.

“There was an entry gunshot wound to the inside of the left nipple with an accompanying exit wound to the outside of the left nipple. This wound is from right to

left and upward and could be associated with the impact damage to the door frame on the left back passenger window. Tissue was clearly visible in the vicinity of this defect, which also indicates that there was a passenger seated in the left back.”

So again, this is another side shooting.

**ADV NOKO:** Yes, yes.

**ADV NGCUKAITOBI SC:** And then it says:

“All the windows of this vehicle were closed during the shooting incident. There is no indication that shots were fired through closed windows from the inside to the outside.”

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** You emphasised this yesterday.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:**

“There could be at least four bullet entrance holes on the right side of the vehicle. Two of these could have created injuries to the driver and one could have created injury to the passenger in the left back seat.”

And then it continues:

“The AK-47 cartridge case is found inside

the vehicle on top of the blood and in the absence of blood spatter raises questions regarding their original position.”

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:**

“There are further clear indications that the crime scene was not properly documented and photographs to indicate the exact position of firearms and exhibits in their original position.”

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Then he deals directly with this allegation of exchange of gunfire. He says:

“It was alleged that there was an exchange of gunfire between the occupants of the vehicle and the police while travelling. However, no cartridge cases were indicated, found, or photographs on the roadway which could support this version. The only cartridge cases indicated are located in the outside vicinity of the vehicle its stationary position and inside the vehicle.”

That is how he then concludes.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Now, you know I asked the person

who ensured the withdrawal of these charges, Advocate Batohi, whether she was familiar with the work of Mr Jacobus Steyn. She said she was not. But you as the people who took the decisions to prosecute had actually read these reports.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. And had recommended inter alia based on them that a criminal prosecution was indicated.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Now, that is in relation to Mr Ndimande and the direct participation of Mr Booysen.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Contrary to his consistent narrative that he came to the scene afterwards.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Could I then take you from this? There are many of these examples. If we actually did this, it would take us 30 days.

**ADV NOKO:** There are.

**ADV NGCUKAITOBI SC:** To go through all of this.

**ADV NOKO:** Yes.

But there is one you mentioned yesterday repeatedly which was the gentleman that was killed inside the dustbin.

**ADV NOKO:** The Mbonambi.

**ADV NGCUKAITOBI SC:** Yes, that was Mr Mbonambi.

**ADV NOKO:** The Durban North docket.

**ADV NGCUKAITOBI SC:** Yes, that is the Durban North docket.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** I am not going to go through that docket, but I just want to briefly go through those images just for you to show, to confirm with us that they are consistent with your recollection.

**ADV NOKO:** Okay.

**ADV NGCUKAITOBI SC:** If you can go to file 2. All right, so I need you to have file 2 and file 3 in front of you.

**CHAIRPERSON:** Before you proceed, still at the conclusion of Mr Steyn at 266. What do you make of the fact that the expert says:

“It is surprising that no ballistic examiner was called to a scene such as this in order to perform a ballistic reconstruction.”

Who ought to have called a ballistic examiner?

**ADV NOKO:** The police should have called the ballistic experts, the forensic experts and everyone, Chair, and also then it shows it is consistent with what Mr Danika says, that the crime scenes were being manipulated before the forensics are called. So when the forensics get called, the scene is already mixed up, then they will come up with something that is not correct, accurate, because the scene

was manipulated. But it is the police. The first ones at the scene, they should not touch anything. They are supposed to call the forensic experts.

**CHAIRPERSON**: In other words, it would have been a futile exercise even if the ballistic examiner would have been called because there was, according to you, a tampering with the scene.

**ADV NOKO**: Yes.

**CHAIRPERSON**: Do you understand what I am saying?

**ADV NOKO**: Yes, unless maybe a thorough examination was done like how Mr Jacobus Steyn did, not just taking pictures, because I think Mr Steyn was referring to pictures of the scene as it originally was.

**CHAIRPERSON**: Yes, but my point is we know now that a ballistic examiner was not called to the scene.

**ADV NOKO**: Yes.

**CHAIRPERSON**: And you are saying ordinarily the examiner should be called immediately before or after the shooting, before any tampering.

**ADV NOKO**: Yes.

**CHAIRPERSON**: And I am asking you, it follows that it would have been a futile exercise to call an examiner, a ballistic examiner, post the tampering.

**ADV NOKO**: Exactly, yes, Chair. It would have been.

**CHAIRPERSON**: Yes, thank you, you can proceed, Advocate

Ngcukaitobi.

**ADV NGCUKAITOBI SC:** Yes, I would like the witness to have file 2 and 3 at the same time. So if we are on file 3, the report of Mr Steyn is at 227 of file 3.

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

**ADV NGCUKAITOBI SC:** You have got it, okay.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Then...

**CHAIRPERSON:** At which page?

**ADV NGCUKAITOBI SC:** 227.

**CHAIRPERSON:** 227.

**ADV NGCUKAITOBI SC:** That is where the report starts. Yes, now. This report deals with the killing of Mr Mbonambi.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now, Mr Mbonambi is the gentleman that you said was running away from the police, tried to hide inside a rubbish bin.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And then they chased him and shot him while in a crouching position inside a rubbish bin.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** Does not it also deal with Mr Mkhize?

**ADV NGCUKAITOBI SC:** Yes, it is also, the report covers both Mr Mbonambi and Mr Mkhize. It is... Yes, that is correct.

In fact, that is, yes, under the introduction:

“On the 6th of July 2011, I was instructed by Mr Amod from the attorney firm Amod's Attorneys, Durban, to attend a medico-legal post-mortem and thereafter visit the scene where the deceased Mr BS Mbonambi Mkhize was shot and killed.”

Now, the... These were the people killed on the same day, three people killed on the same day.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. What I would like you to do is to go to page 233.

**ADV NOKO:** Okay.

**ADV NGCUKAITOBI SC:** Just to look at the description and I will compare that with the actual images we have of that scene.

**ADV NOKO:** Okay, yes.

**ADV NGCUKAITOBI SC:** Which I have no doubt you considered at the time.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Because that is why, even without the pictures yesterday, you could rattle off these facts from memory.

**ADV NOKO:** Yes, because I read this.

**ADV NGCUKAITOBI SC:** Yes. Now, at page 233 of file 3...

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** There is a summary of the wounds that were sustained by the deceased.

**ADV NOKO:** Okay.

**ADV NGCUKAITOBI SC:** And that is the last paragraph under the heading, wounding.

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

**ADV NGCUKAITOBI SC:** He says:

“The deceased sustained the following major wounds.”

**CHAIRPERSON:** That is Mr Mbonambi.

**ADV NGCUKAITOBI SC:** Mr Mbonambi, yes.

“A high-velocity, unstable bullet gunshot wound to the right side head with a fracture of the skull. This wound is located behind the right ear.”

So what we see here is also a shot from the back.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now, unlike what we saw in the previous case, at page 234, they say:

“There is no associated exit wound with this entry wound.”

So they shot him, but it was lost inside.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:**

“A deformed copper jacket bullet of 5.56 calibre projectile, R4 and R5 type rifle, was retrieved from this wound. This wound is from right to left and upward.”

Now, I had read somewhere that the R4 and R5 bullets explode inside the body of the object.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: They spin and explode.

**ADV NOKO**: Yes, I heard so too.

**ADV NGCUKAITOBI SC**: Yes. Do you confirm that?

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

**ADV NGCUKAITOBI SC**: Yes. Now, the reason why it is important to know the nature of the gun that was used is to know whether it is true or false that there was an intention to apprehend or an intention to kill.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes. Now, if you use a 5.56 calibre projectile which spins and explodes inside the body of the victim, I mean what is the most sensible interpretation of that?

**ADV NOKO**: To kill.

**ADV NGCUKAITOBI SC**: Yes.

**ADV NOKO**: It is to kill.

**ADV NGCUKAITOBI SC**: It is to kill, yes. Now, that nature of the R5 bullet appears in the report by Mr Steyn in relation

to Kwazi Ndlovu. They killed a 16-year-old boy using an R5 bullet.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** Who was asleep.

**ADV NGCUKAITOBI SC:** Yes. Then, in paragraph 2, they say:

“A high-velocity, unstable bullet gunshot wound through the neck. The trajectory was from right to the left.”

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:**

“This wound is consistent with a 5.56 type projectile wound fired from an R4, R5 type rifle.”

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:**

“A high-velocity, unstable bullet gunshot wound through the right shoulder. This trajectory is downward.”

So, in other words, it is from the top downwards...

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Shooting him on the shoulder.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:**

“...and it is consistent with a 5.56 type projectile wound from an R4, R5 type vehicle. A deformed copper jacket projectile was removed from the wound track of a 5.56 calibre.”

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** 4:

“A high-velocity, unstable bullet gunshot wound on the right upper front chest wall. This trajectory is from right to left and is consistent with a 5.56 type projectile wound fired from an R4, R5 type rifle. Copper jacket bullet fragments were found consistent with a 5.56 calibre.”

Basically, it is the same conclusion at 5 and 6.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Now, this is what was found.

These bullets are shot from top to bottom, but they are also lodged inside his body.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And there is no exit for them.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Now, if we then do a comparison of the actual scene of the crime, you will find that the photos appear from page 435 of file 2.

**ADV NOKO**: Okay. Yes.

**ADV NGCUKAITOBI SC**: If the... So let us start with those that were found on the scene of the crime. At page 435. Now, page 435, photo 5.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes. That is the picture of these large bullets from these machine guns.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: But photo number 6 is actually how Mr Mbonambi was found.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Now, I am not an expert, you are not an expert, but just as an ordinary person, how is this person posing any danger to anyone?

**ADV NOKO**: I also do not understand. He seems to be hiding inside a dustbin.

**ADV NGCUKAITOBI SC**: Yes. And if you turn the page to 436.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Photo number 9.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Now, here you can see clearer what they meant when they said he was shot from the back of the right ear.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC:** Because here you can see his right ear.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And the bullet, the entry part of the bullet.

**ADV NOKO:** And the blood spatter on the left side.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** To show the exit.

**ADV NGCUKAITOBI SC:** Yes. And it seems to me that could have been somebody from the top of the rubbish bin, not from the side or anything because it is actually lodged.

**ADV NOKO:** Oh, lodged, no exit, yes.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** You can see it.

**ADV NGCUKAITOBI SC:** Now, the same with photo number 10.

**ADV NOKO:** Yes.

Because remember that they found an entry on the right shoulder.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And another entry on the back of the right ear.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Which is clearer now in photo number 10.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** If you then turn the page to 437.  
Photo number 11.

**ADV NOKO:** 11, yes. I can see it.

**ADV NGCUKAITOBI SC:** So you can see the danger of this  
bullet. Those are the bullets that spin and explode.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** You can see the explosion here.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** That it actually ruptures the flesh.

**ADV NOKO:** Of the victim, yes.

**ADV NGCUKAITOBI SC:** Yes. There is one that is still  
necessary to see clearer. But these were the pictures at the  
scene of the crime.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** But he was then taken to a  
mortuary where his body was cleaned. But his wounds are  
more visible there. So if I can take you to those. So starting  
at 423. Photo number 5.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** So this one is clearer. What Mr  
Steyn was talking about. About where they were found. And  
then he said these were coming from top to the bottom. And  
you can see the one behind the right ear. And the one on the  
shoulder. And the last one on the chest.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. But you can also see that they have ruptured the flesh of the body as well.

**ADV NOKO:** Yes, yes.

**ADV NGCUKAITOBI SC:** And that is photo 5 and photo 6.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. And you turn the page to photo 7.

**CHAIRPERSON:** What page are you on?

**ADV NGCUKAITOBI SC:** 423. Photo 3 and then photo 4.

And photo 5, photo 6, photo 7. Yes. And then there is another one at 433. Photo 24 and 25. That is also coming from the back.

**ADV NOKO:** Yes. You can see it.

**ADV NGCUKAITOBI SC:** Now, I mean, we have seen the expert description.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And we have seen the photographs that back up the expert description.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** We have seen also just from a common sense point of view, a man crouching inside a rubbish bin.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And we have seen the bullets most

probably having been shot from top to bottom.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: And we have seen the nature of the bullets that were being used.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes. I mean, can there be any doubt that this is consistent with an intentional murder?

**ADV NOKO**: There is no doubt.

**ADV NGCUKAITOBI SC**: Now, this case of Mr Mbonambi, you know, what is curious here is there is a version given by the police. The person who actually killed him was, I think, was Inspector Lee. And his affidavit is at file 3, page 186. So he was shot, the person who shot him is Raymond Lee. And his affidavit is at page 186.

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

**ADV NGCUKAITOBI SC**: Yes. Who says that he is part of the Provincial Organised Crime Unit, but ...[intervenes]

**CHAIRPERSON**: Just wait a second.

**CHAIRPERSON**: Yes, thank you.

**ADV NGCUKAITOBI SC**: Yes. Thank you, Madam Chair.

But if you look at that paragraph, he says:

“I am from the Provincial Organised Crime Unit.”

Which may appear to exclude Cato Manor.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC:** But if you look at the second paragraph...

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:**

“On Monday, 4 July 2011, I was on duty. I had been asked to assist the Cato Manor members...”

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:**

“...as Warrant Officer Mostert had received information, a possible robbery was to take place in the Durban North area by suspects driving a gold Hyundai IX35 motor vehicle with registration ZHC767GP.”

So this was a Cato Manor operation.

**ADV NOKO:** It was, yes.

**ADV NGCUKAITOBI SC:** Now, this is how he describes and justifies the killing of Mr Mbonambi.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** It is at page 187.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Paragraph 5.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** He says:

“It was approximately an hour later when

members of the public began informing us that they had seen a man running through a property in Norfolk Road. Children in the complex also visited us and informed us that they had seen him climb over a fence near Unit 1. They described him as wearing the same clothes that Warrant Officer Martin had seen him in.

Warrant Officer Martin and I began to search the area. We then entered the complex's bin area and I began opening the bins to search for the suspect, as I felt that they were big enough for a grown man to hide in. Warrant Officer Martin was standing behind me and giving me cover. The bin area was very small and the bins were in an L shape.”

This is now the moment where he shot him.

“The next moment, I saw the last bin on my right begin to open. I immediately turned towards the bin. I realised to my horror, I was looking at a human face and next to it was a pistol which was pointing at me. I shouted and jumped backwards into Warrant Officer Martin, now in mortal fear of my life and unable to retreat further. I opened fire

with my R5 assault rifle in the direction of the bin which immediately closed again.”

Now, this scene is truly from a movie. According to him, the bin opens, a man stands up with a gun and then the man closes the bin with a gun again.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** We have seen the pictures, there is not even a stone inside the bin.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Then he continues:

“I opened fire with my R5 assault rifle in the direction of the bin which immediately closed again. Without taking my eyes from the bin, I explained to Warrant Officer Martin what had happened. While covering the bin and Warrant Officer Martin, Warrant Officer Martin then approached the bin and opened the lid. He informed me that the suspect had been wounded and was inside the bin. Then he immediately called radio control.”

Now, this is the best version of the killers.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** I suggest to you that this is the most improbable made up story. It would have been obvious to any trained prosecutor that the police are lying.

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

**ADV NGCUKAITOBI SC**: Yes. And there is no one else who was there who did the shooting other than Mr Lee, Raymond Lee.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: This is their only version of how the shooting happened.

**ADV NOKO**: Yes.

**ADV SKOSANA SC**: The other person is Inspector Martin who was watching the shooting.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Now, I am not a criminal lawyer, but you have to take this version and put it against all the other evidence that exists to show that this was an execution. And then decide whether or not a prima facie case has not been made. Is not that the way it should work?

**ADV NOKO**: Yes. And there are eyewitnesses who saw this incident taking place who say they saw the police. One of the witnesses said to the police that Mr Mbonambi had hidden in the bin because they thought the police were chasing after a real criminal, only to see the police just shooting at him inside the dustbin.

**ADV NGCUKAITOBI SC**: Yes. Well, we will not go through the eyewitnesses, but the eyewitness statement is at page 189 of that same bundle.

**ADV NOKO:** Yes.

**CHAIRPERSON:** What page is that?

**ADV NGCUKAITOBI SC:** Page 189, Madam Chair, of Wandile Mbonambi. Now, this was a child. He was 12 years old at the time.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And he described what he saw.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** That the police chased after and killed his father.

**ADV NOKO:** Yes.

**CHAIRPERSON:** This is a statement at 189?

**ADV NGCUKAITOBI SC:** 189, yes. And it is made by Wandile Mbonambi.

“I am a male teenager, 12 years old, grade 6 learner at Virginia Primary School.”

And he described in detail what he saw.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Cops came chasing, looking for his father.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** His father ran, of course, because the police were looking for him. But then they shot and killed him in cold blood.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And that is also supported by the Independent Complaints Directorate. There is a statement from the ICD at page 194.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And another statement from them at page 198.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And then the expert reports. So, I mean, this is what you were trying to come towards when you kept on saying, but why are they killing people in a rubbish bin?

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And why is the murder charge withdrawn in those circumstances?

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Now, as I said earlier, we can go over and over this. We will find all of these same patterns.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And there are 28 people that they killed.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** But the pattern is the same.

**ADV NOKO:** Same pattern, yes.

**ADV NGCUKAITOBI SC:** Now, I want to move to another topic. We dealt with Mr Booyesen's awareness from looking at

the affidavits that he submitted and his own admissions.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: And the police statements, et cetera.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: But I want to look at the control element, that for a racketeering case, under F ...[intervenes]

**ADV NOKO**: Yes, 2(1)(f).

**ADV NGCUKAITOBI SC**: 2(1)(f), you have to also show control.

**ADV NOKO**: Management.

**ADV NGCUKAITOBI SC**: Yes, if you are charging him as a manager.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: We have shown him as a participant.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Now, I want to just look at the evidence of him as a manager.

**ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: Advocate Ngcukaitobi, the statement by the ICD at 194, when was it taken? So I see at 197, the commissioning...

**ADV NGCUKAITOBI SC**: No, it does not have a date, no.

**CHAIRPERSON**: Yes, the commissioning does not show the

date, time and place. Should there not have been a day stamped there, at least?

**ADV NGCUKAITOBI SC:** Yes, Madam Chair, there should have been. But it is not.

**CHAIRPERSON:** At least, as regards the one that appears at 199 up to 201, there is a time given there and a date, although there is no date stamp.

**ADV NGCUKAITOBI SC:** Yes, yes.

**CHAIRPERSON:** What should we make of that?

**ADV NGCUKAITOBI SC:** Madam Chair, I am not sure if it would meet the requirements of the 1972 regulations on commissioning if it does not have a date and a place where it was commissioned. It might affect technically its admissibility. But if there is a requirement that it should be commissioned.

**CHAIRPERSON:** If we are to accept that under the POCA provisions, the situations in respect of which hearsay would be admitted in a court of law, dealing with a normal criminal matter, hearsay evidence would not be admitted. In an enquiry of this nature, could this kind of a deposition, despite the fact that the commissioning seemed to have been erroneous, or rather not complete, could we take that into consideration?

**ADV NGCUKAITOBI SC:** We would say yes, Madam Chair, that there is no requirement that the statement even needs to

be commissioned. But if there was an attempt to commission it, but that attempt was defective, it would still be admissible under the POCA provisions.

**CHAIRPERSON:** But perhaps these are matters that could be left for argument.

**ADV NGCUKAITOBI SC:** Indeed.

**CHAIRPERSON:** And I see your junior is sharing some wisdom with you.

**ADV NGCUKAITOBI SC:** It turns out that he has missed the plot this time. [Laughter]

**CHAIRPERSON:** Yes, I am just raising it so that at a later stage, both you and the evidence leading team at an appropriate moment, when you make submissions, you can assist us in that regard.

**ADV NGCUKAITOBI SC:** Yes. Thank you, we shall do so.

**CHAIRPERSON:** You will remember that also during the time when Advocate Batohi was testifying in chief, we were referred to certain statements, some of which were not properly commissioned. And the evidence leading team placed those statements before us, and you may just as well together prepare helpful submissions in this regard.

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

**ADV NOKO:** Chair, may I please say something? I see the witness we are talking about is Annelem Panza [?], where the commissioning... But then there is another statement of the

same person that seems to be better commissioned because there is the designation, the name of the Commissioner of Oaths. There is address, work address of the Commissioner of Oaths, there is date, time, and place.

**CHAIRPERSON:** Yes. It seems to be a replica.

**ADV NOKO:** Yes.

**CHAIRPERSON:** The second one at 198 seems to be a replica of the one at 194.

**ADV NOKO:** Yes.

**CHAIRPERSON:** So you are rescuing Advocate Ngcukaitobi's team. You look closely, but from the look of things, it seems to be a replication of that statement that appears at 194.

**ADV NGCUKAITOBI SC:** Madam Chair, I was just not sure if it was a replica, and so I did not want... That is what Mr Ramogale was telling me. But the problem I had was that they... I was not sure if it is a replication. I actually doubted. If you just look at the last page, at page 197, and you compare that with page 201...

**CHAIRPERSON:** Yes.

**ADV NGCUKAITOBI SC:** So you see there that these are different statements. Now, I have not done a word-for-word analysis. I actually doubt if they are the same, because if you look at, again, 196, and you look at paragraph 7, and compare that with page 200, at page 200, there is a

paragraph 8. There is no paragraph 8 at page 196. So I did not want to take this and simply accept what you were telling us, that this is something to be argued later.

**CHAIRPERSON:** The second one seemed to have gone further from paragraph 8, but everything up to paragraph 7 seems to be the same.

**ADV NGCUKAITOBI SC:** That is possible.

**CHAIRPERSON:** You are correct that there is an addition of paragraph 8 in the subsequent statement, the one where the deposition, there is a date on the commissioning there. But, again, maybe you can focus on the subsequent statement, because all that appears in the previous one is incorporated in the subsequent one, where there is a date.

**ADV NGCUKAITOBI SC:** Yes. Yes, thank you, Madam Chair. It could be that.

**CHAIRPERSON:** On the cursory reading of the first one, you will see that everything seems to appear up to paragraph 7.

**ADV NGCUKAITOBI SC:** Yes, thank you, Madam Chair.

**CHAIRPERSON:** You will also look, and then you will decide what you make of this point.

**ADV NGCUKAITOBI SC:** Yes. Thank you, Madam Chair. Yes, Advocate Noko, I wanted to move the discussion forward to look at the, not the participation, but the control or the management.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And to do that by reference to the evidence of witnesses. We have already looked at control through the statements of the SAPS, where they themselves say this is the man that is in control of the unit, even though he has been placed at the provincial office.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Now, that is entirely consistent with a number of witness statements. Let us start with, from page, so are you back with file 1? Do you have file 1?

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now, there are three affidavits of Mr Ayer.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** The first one is at 169 up until 172. The second one is 173 up until 178.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And then the last one is 179 up until 183.

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

**CHAIRPERSON:** During the testimony of Advocate Batohi, these statements were referred to, am I correct?

**ADV NGCUKAITOBI SC:** Yes, they were referred to.

**CHAIRPERSON:** And they were subsequently marked as exhibits. Do you remember at the end of the evidence-in-chief, the NPA team was to give us a collated list of exhibits?

I just want to make sure that we are not going to do a repeat of those annexures and marking them again as exhibits to confuse the record.

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

**CHAIRPERSON:** Let me ascertain from my researcher, or even the NPA team, am I correct, madam, Advocate Hulley? I see you are nodding your head. Maybe you can just bring that roving mic so that she can speak to this point. I do remember that a document was presented to us at the end of the evidence-in-chief. It was at our instance as you guided us how those documents should be prepared. Advocate Hulley, your junior assisted us in that regard. Am I missing the point then?

**ADV LEKGETHO:** Thank you, Madam Chair. Yes, they were dealt with. They were actually dealt with in her supplementary affidavit. So it is actually an attachment to her affidavit. But it is referred to in the list of exhibits.

**CHAIRPERSON:** And that list of exhibits, I remember you presented it.

**ADV LEKGETHO:** That is correct.

**CHAIRPERSON:** We should all be having those exhibits. And you should pick from those exhibits and do the numbering properly.

**ADV LEKGETHO:** That is correct. That is correct, Madam Chair.

**CHAIRPERSON:** Advocate Ngcukaitobi, Ramogale, you should confer with her, to make sure that you pick from where she ended. You can refer to the document because we already have it. We will name it here in our notes because we do have that list. Somebody should produce it to us. Our researchers over there, you can assist us. We will not name it as an exhibit because it is already named. But I do remember that these three documents appeared somewhere and were named. For progress, I think you can proceed as long as you remember that.

**ADV NGCUKAITOBI SC:** Yes, Mr Ramogale, I suppose for the benefit of the NPA team, tells me that these statements are not in the list of exhibits.

**CHAIRPERSON:** They are not in the list?

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** But they appear in the third volume.

**ADV NOKO:** Yes, they are in Advocate Batohi's affidavit as annexures.

**CHAIRPERSON:** Yes.

**ADV NGCUKAITOBI SC:** But they have not been included yet. I am sure they will include them in due course.

**CHAIRPERSON:** Please.

**ADV LEKGETHO:** Madam Chair, as I said, they are part of Advocate Batohi's supplementary affidavit. They are attached to her affidavit. So that which was not on record

already is in the list of exhibits. And with reference numbers were in the record that the document will be found. So the statements of Colonel Ayer are attached to the affidavit of Advocate Batohi.

**CHAIRPERSON:** Was evidence tendered during her evidence-in-chief about those statements?

**ADV LEKGETHO:** That is correct, yes, yes. Those statements were part of the NJs. NJ1, 2, 3, 4 and 5. And because there was a mishap, some of the pages were missing. Some of the last pages were missing. That had to be corrected. In correcting such, a supplementary was then filed.

**CHAIRPERSON:** My question is, was evidence tendered by Advocate Batohi in relation to those statements by collision Ayer?

**ADV HULLEY SC:** Madam Chair, the evidence in relation to those statements was that those statements were attached by Advocate Jiba to her affidavit that she filed in the first Booyesen review application. So that was the evidence that was around this particular statement.

**CHAIRPERSON:** I thought that the fact that they were referred to and they were marked, if my recollection is correct, and what needed to follow was for you to then collate them and name them as exhibits in that list. I do not remember where we ended with the exhibit numbering.

**ADV LEKGETHO:** I understand, Madam Chair.

The understanding was that on her affidavit, it stands as it is with its annexures. And then everything that she referred to in her affidavit, which is not attached as an annexure, goes to the list of exhibits. So the list of exhibits will contain documents that she spoke to in her evidence, refers to in her affidavit, in some of the letters that were exchanged between her office and the Minister's office and Advocate Chauke. Some of those annexures were not part of her affidavit. So all those are referred to in the list of exhibits. But all that her affidavit came with are attached to her respective affidavits. The founding, the first, and the second supplementary affidavit.

**CHAIRPERSON:** Yes, that is not my understanding of how we directed. And someone has to correct me. My understanding was that we will have a list of exhibits. The annexures as attached to the papers will then be named sequentially as exhibits. One, two, three. You will say annexure what is exhibit what. So that we do not find ourselves repeating as we may be repeating now. That is why I was raising the point that if those annexures were named, we talked about naming of those documents as exhibits. So that we have a list, at least a list of those annexures now named as exhibits. Then we could go back in our list and say this very document, Colonel Ayer's

statements, three statements, were they named. That is where I come from.

**ADV LEKGETHO:** Thank you, thank you, Madam Chair. I will upload them on the list.

**ADV NGCUKAITOBI SC:** Do you remember that?

**ADV LEKGETHO:** Yes, I remember. I just had it I think the other way. But I will, it should not be difficult. I will put all her annexures on the list.

**CHAIRPERSON:** Yes, thank you.

**ADV LEKGETHO:** Thank you.

**MS RAMAGAGA:** Ja, I think just to clarify the issue, because this comes from the question by my sister, Justice Nkabinde, about whether Advocate Batohi testified about the statements. And it is clear, it appears from my record, that the statements of Ayer were read into the record on the 26th day of November. So which means those documents are there. They have been read. They are part of the evidence. The only thing then that is outstanding, now that you understand the directive, is just to add them onto what you already have. Thank you.

**CHAIRPERSON:** Thank you, my sister. Advocate Ngcukaitobi, you can then refer to those documents. And we will pick the numbering from the list that Advocate Lekgetho is going to give us.

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

You are at file 1, page 169, correct?

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Now, this is the first statement by Colonel Ayer.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: This is, if you look at the date, at page 171, it is dated the 3rd of August 2012.

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

**ADV NGCUKAITOBI SC**: Yes. Now, he says:

“On Thursday, the 2nd of August 2012, I met with Brigadier...”

Is it Mokone?

“...at my office, 9th floor, Servamus building.”

**ADV NOKO**: It looks like a Mokoena.

**ADV NGCUKAITOBI SC**: Mokoena?

**ADV NOKO**: It looks like it is, yes.

**ADV NGCUKAITOBI SC**: Yes.

“I was requested to submit a statement regarding the structure of the Organised Crime since December 2006 on the appointment as Unit Commander Organised Crime.”

Now, you will recall the theory that the NPA was working from, is that the Cato Manor unit operated as an enterprise for the

purposes of section 2 of POCA.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes. Now, he is then asked to explain what is the structure, who is in command of that enterprise.

**ADV NOKO**: Yes, it is a he.

**ADV NGCUKAITOBI SC**: Oh, he. He is being asked. Okay, sorry, thank you. Now, just explain this to me. In the definition of an enterprise under POCA, is it a requirement that the enterprise must be an unlawful enterprise?

**ADV NOKO**: No.

**ADV NGCUKAITOBI SC**: Yes.

**ADV NOKO**: It does not have to be, as long as it is used as an enterprise.

**ADV NGCUKAITOBI SC**: Yes, exactly. And do you know that Mr de Kock, Advocate de Kock, actually concluded that it is required that an enterprise must be an unlawful enterprise?

**ADV NOKO**: No.

**ADV NGCUKAITOBI SC**: Yes.

**ADV NOKO**: He was not correct in that.

**ADV NGCUKAITOBI SC**: Yes. So, which actually means that Advocate Batohi relied on a report which contained an egregious error of law.

**ADV NOKO**: But POCA legislation is clear on what an

enterprise is.

**ADV NGCUKAITOBI SC:** Yes. But it does mean that Advocate Batohi did not satisfy herself about the basic terms of POCA.

**ADV NOKO:** That is what it means, yes.

**ADV NGCUKAITOBI SC:** Yes. Now, this is what he then explains.

“Shortly thereafter, in January 2007, the Serious and Violent Crimes Unit closed the National Commissioner. Only 14 members from Serious and Violent Crimes were restructured into the Durban Organised Crime. In terms of Organised Crime mandate, the Serious and Violent Crime investigation became the mandate Organised Crime. I was informed that the then Director, JW Booysen, was appointed a Provincial Commander of Organised Crime in KZN in February 2007.”

So, from February 2007, he is supposed to leave Cato Manor and go to the province.

**ADV NOKO:** Provincial office, yes.

**ADV NGCUKAITOBI SC:** Yes.

“All four unit commanders of Organised Crime had to report to the then Director

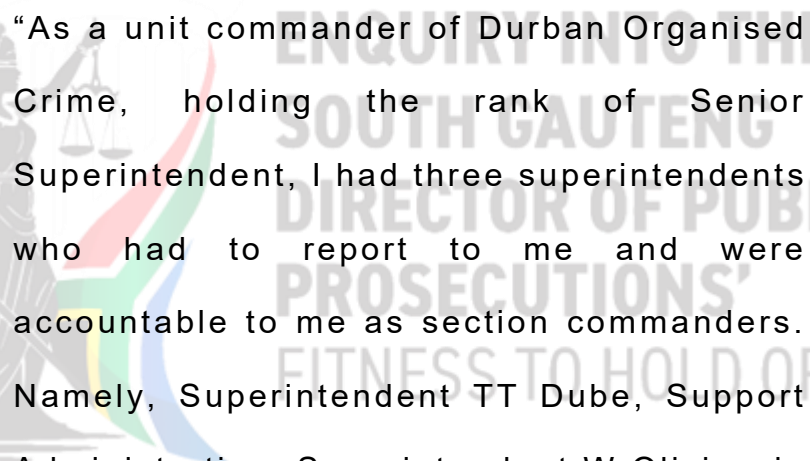
Booyesen directly in KZN. Then Director Booyesen was accountable to Provincial Head of Detective Services, Assistant Commissioner, PT Brown, who retired in 2011.”

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** So, Commissioner Brown is the direct boss of Major General Booyesen.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:**



“As a unit commander of Durban Organised Crime, holding the rank of Senior Superintendent, I had three superintendents who had to report to me and were accountable to me as section commanders. Namely, Superintendent TT Dube, Support Administration, Superintendent W Olivier, in charge of Serious and Violent Crime section. The other superintendent, K le Roux [?], in charge of Drug, Firearms, Vehicles, and Gold, Diamond. Between these two section commanders, WC Olivier and K le Roux, all operations conducted under their supervision. Under the command of Superintendent Olivier, he had three

captains accountable to him...”

And then he names them. You can ignore the rest of that.

And then he says in the last paragraph:

“Shortly thereafter, problems started to surface with Serious and Violent Crime section. After an inspection conducted by then Director Nchinga of the Hawks, of the National Organised Crime Office in her inspection report, she wanted to know why the unit was split into two. Her instructions was that all members must report to one office, namely 136 Victoria Embankment, where my offices had been. I tried to explain to Superintendent Olivier, who was not too happy regarding the decision. I am fully aware that Superintendent Olivier was close to the then Director, JW Booysen. I told Superintendent Olivier, a measure has taken place on the instruction of National Office. Superintendent Olivier changed his attitude towards me.”

Now you will recall that Superintendent Olivier is meant to report to Colonel Ayer.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** But he says I told him he must

report to me, but he is not happy with that.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes.

“I noticed that Superintendent Olivier reports all incidents directly to the then Director, JW Booysen.”

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** So he is skipping the actual line of command to Mr Booysen.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:**

“I was merely informed afterwards, or long after any shooting incident had taken place in his section. Almost every week, the Cato Manor offices were visited by the then Director, JW Booysen, without me being informed.”

So even though he is at province, he is constantly in the office and people reporting directly to him.

**ADV NOKO:** At Cato Manor, yes.

**ADV NGCUKAITOBI SC:** At Cato Manor, sorry, yes.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Now:

“I kept telling him to register all operations or raids on the CAS system, but nothing of

that nature, of that happened.”

Now, I found this a very peculiar part when I was reading this statement. Apart from this issue that they were reporting to Mr Booyesen, to Major General Booyesen, why were they not registering cases on the CAS system?

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** They conduct an operation, but they do not register on the CAS system.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Can you explain what could be the explanation behind the police doing a raid or an operation and then not registering it on the CAS system?

**ADV NOKO:** It is clear from the evidence of witnesses that they were just seeking people, apprehending them, shooting and killing them. Because if they were conducting proper legal processes, they would have been recorded in all the records of the police as the system requires. So, it shows.

**ADV NGCUKAITOBI SC:** But then he says:

“I told Mr Olivier to report, but he refused.”

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Then, let us see what he says was the basis for the refusal.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** He says:

“He started frustrating me as unit

commander. It is clear that Superintendent Olivier was acting on his own accord. He was forming his own unit at Cato Manor and had the backing of then Director JW Booyesen, who constantly visited the Cato Manor office.”

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: So it is clear that what he is saying is, well, instead of reporting to me, they report to Mr Booyesen.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: I give him an instruction, he ignores it because he has got the support of Mr Booyesen.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Then he continues:

“The trouble started to surface when I noticed strange faces and members alleging to be members of Durban Organised Crime Unit at Cato Manor offices. Some of these members and reservists claimed to be members of the Durban Organised Crime Unit. I had no indication who these members, e.g. Captain Eva [?], reported to Cato Manor without any written document. Members like Sergeant Padayachee, Warrant Officer Giannis [?], many moved

within the unit without my permission. These members started to behave as they felt and became hostile towards me. Information was that all these members are only accountable to the then Director Booyesen. I had no support from the Director Booyesen.”

So, again, this is the same thing. People who are not even part of the Serious and Violent Crime Unit are coming into the unit. He is not informed, but they report to Mr Booyesen.

**ADV NOKO:** Yes. Even Mr Danikas, in his statement, he started by saying he was a reservist at the Cato Manor Unit. He was recruited by Major General Booyesen, who made sure he gets into the Cato Manor Unit and gave him all the documentation, blue lights for the car, all the equipment that he needed to be a member. And he worked with them through Major General Booyesen.

**ADV NGCUKAITOBI SC:** Yes. Now, then it continues.

“When I eventually informed them, we cannot run two offices, and I served those members with notices to move them from Cato Manor offices, that is when the aggression and anger surfaced. All of them ran to the then Director JW Booyesen's office at Province. Then Director Booyesen came

down on me heavily. He walked into my office on that day, raised his voice, and stated that the decision regarding Cato Manor is his, is in his hands, and I should not interfere anymore and he left for the airport.”

So, quite apart from what he was witnessing, he was told directly by Major General Booysen that Cato Manor is under my control.

**ADV NOKO:** Yes, that is what he is saying.

**ADV NGCUKAITOBI SC:** Yes.

“It was very clear that I was not in command of the Cato Manor offices. I was shocked that since that day, Superintendent Olivier operated on his own. They did not report to me. I was victimised. My son was attacked in school.”

That does not seem to be relevant. And he is talking about the cell phone. That is also not relevant. If you go to the following page?

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** He again continues on this line of the control, that the de facto control of the unit was under Mr Booysen.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:**

“The section under Lieutenant Colonel Olivier started to call themselves the Cato Manor Organised Crime Unit. State resources, emails, and financials were sent directly to the then director, JW Booyesen. Although I was the unit commander, I was not in control of them. I reported this to very senior officers. That did not help.”

I mean, you could not get clearer where a man says, I am just here on paper, but all of these people work with Mr Booyesen. He is in control of them.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes.

“The more I tried to act on the issue, the more I was victimised by the now Major General JW Booyesen. He tried everything possible to suspend me and misuse the departmental procedure to target me. He tried everything in his power to move me out of the unit. He recommended that I must be moved out from my post so that he could put someone he wants to run the unit.”

Then you skip one, two paragraphs, and start with a paragraph that starts with ‘to this very day’. Can you see

that?

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

**ADV NGCUKAITOBI SC**: Then skip everything there to the line that says 'those members'. That would be one, two, three, four, five, six from the bottom. Those members.

**ADV NOKO**: Okay, let us start from the top.

**ADV NGCUKAITOBI SC**: It says 'to this very day'. Can you see that?

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

**ADV NGCUKAITOBI SC**: If you then count, one, two, three, four, five, six, seven. The eighth line from the top. The sentence starts with 'those members'.

**CHAIRPERSON**: That line begins with the Minister's office.

**ADV NGCUKAITOBI SC**: Oh, the Minister's office.

**CHAIRPERSON**: Then full stop.

**ADV NGCUKAITOBI SC**: Yes.

**ADV NOKO**: Okay, you say the eighth one.

**ADV NGCUKAITOBI SC**: Ja, ja.

**ADV NOKO**: One, two, three, four, five, six, seven, eight.

No, it starts with the Minister, then it is the seventh one.

**ADV NGCUKAITOBI SC**: Yes, yes.

**ADV NOKO**: Okay.

**ADV NGCUKAITOBI SC**: Just read that.

**ADV NOKO**:

“The Minister's office. Those members at

Cato Manor office acted under command of Major General Booyesen all the time. All media reports on all incidents came from Major General Booyesen and not me. All graphic pictures of shooting on crime scenes was put in by a journalist called Mr Anil Singh, a friend of Booyesen, of Daily Sun newspaper. I do not know how this journalist got to those crime scenes and where he obtained those pictures.”

**ADV NGCUKAITOBI SC:** Yes. Now, we have seen on a fair reading of the statement of Colonel Ayer, what he is saying is that on paper I am the head, but the person in control or managing this unit is Major General Booyesen.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Now, was this one of the witnesses you were supposed to call?

**ADV NOKO:** Yes, he is one of the state witnesses, yes.

**ADV NGCUKAITOBI SC:** Yes. Because, I mean, it is also unclear why on earth would Major General Booyesen be answering media queries of Cato Manor when he is the provincial head.

**ADV NOKO:** Yes, and goes to report. Well, anyway, he reports to Commissioner Brown. He had to report to him, but my point is he reported everything, showing intimate

knowledge of the unit.

**ADV NGCUKAITOBI SC:** You know the report by Mr de Kock, Advocate de Kock.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Criticises Colonel Ayer, not by the content of what he said.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** But they rely on the criticism by Advocate Nazeer Cassiem in the disciplinary hearing against Major General Booyesen, that he is obsessed, these are the direct words, obsessed with his own self-importance. I mean, just hearing those words, are they fair when you just read what he is actually talking about?

**ADV NOKO:** They are not, not even relevant.

**ADV NOKO:** Yes.

**ADV NOKO:** To each other.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Now, you know, this part we have been reading, which is, this is the person at Cato Manor, and he is telling the world that the person running the show here is Mr Booyesen.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** If Cato Manor is an enterprise that is committing unlawful acts, it is under the control of Major General Booyesen.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Would that satisfy the requirement in 2(1)(f) of the POCA legislation?

**ADV NOKO:** Completely, for managing the enterprise, yes.

**ADV NGCUKAITOBI SC:** Yes. Now, this goes further. We have somebody below Mr Booyen. Now, let us look at the person above Mr Booyen. What did they say about who is in control of the Cato Manor unit?

**ADV NOKO:** Commissioner Brown.

**ADV NGCUKAITOBI SC:** Yes, Commissioner Brown. You will find his statement at page 2.1.4 of the same bundle. That is the first statement. He gave two statements.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And then the second statement is at 219, which is called the supplemental statement.

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

**CHAIRPERSON:** Just give me a second, please.

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

**CHAIRPERSON:** The criticism that you mentioned earlier made by the disciplinary hearing Chairperson, I suppose, does it or is it reflected in the disciplinary findings of Chairperson Cassiem SC?

**ADV NGCUKAITOBI SC:** Yes, it is, Madam Chair. I think we have it, if I am not mistaken.

**CHAIRPERSON:** It is on that bundle, page 186.

**ADV NGCUKAITOBI SC:** Page 186, yes. In file 1, page 186.

**CHAIRPERSON:** Where do we find it in this file, the criticism in this report that you say the De Kock team seemed to have relied on when they criticised Colonel Ayer?

**ADV NGCUKAITOBI SC:** At paragraph 44, page 200.

**CHAIRPERSON:** Yes.

**ADV NGCUKAITOBI SC:** In fact, we could have a look at that. Thank you, Madam Chair.

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

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** It is telling.

**ADV NGCUKAITOBI SC:** Yes. It says in paragraph 44,

“I found Colonel Ayer to be a dismal witness in material respects. He is obsessed by the notion of his own importance...”

That is what I remember. Those words struck me.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:**

“...and his entire testimony was permeated by his political acceptability and self-importance. I find him not to be the kind of professional policeman one would expect, holding the rank he holds. His tender of evidence, as I have indicated above, is one in which he emphasises his own importance,

but lacking in conduct justifying any usefulness. I think those in charge of the SAPS ought to carefully consider Colonel Ayer's continuous role in the police force.

In his quest for acceptance and self-importance, he was determined to tarnish Booyesen's reputation and dignitas, irrespective of the cost to the overall interest of the police force. If, in fact, the employer party actually believed that it could establish a case against the employee based on the evidence of Colonel Ayer, this was a serious error of judgment and was still a strong indication that the employer sought to create a case where one did not exist.”

Then, this is where it continues:

“Colonel Ayer's affidavit...”

We know the only affidavit that was before him was the affidavit we have just read.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:**

“...and other documentary communications he relies on is punctuated by inventive and occasionally pure hatred for Booyesen.”

Now, I mean, is there anything there in that affidavit that

shows any hatred towards Mr Booyesen?

**ADV NOKO**: I did not see that.

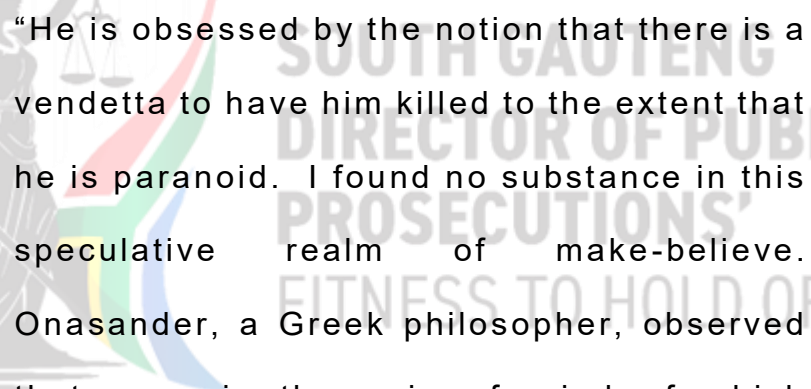
**ADV NGCUKAITOBI SC**: Yes. I mean and is there anything that shows the desire on the part of Colonel Ayer to be politically acceptable?

**CHAIRPERSON**: No.

**ADV NGCUKAITOBI SC**: Yes. So, this entire ruling is just gratuitous insults against a witness who is actually doing his best that he could.

**ADV NOKO**: It seems so.

**ADV NGCUKAITOBI SC**: Yes. And then he says:



“He is obsessed by the notion that there is a vendetta to have him killed to the extent that he is paranoid. I found no substance in this speculative realm of make-believe. Onasander, a Greek philosopher, observed that envy is the pain of mind of which successful persons cause to their neighbours. This, I think, is the case with Colonel Ayer.”

You know, what I really found puzzling with this, there is not a single reference, not one, reference to the actual evidence that Colonel Ayer gave about the fact that Major General Booyesen was controlling the unit. What has happened is that the writer of this document has degenerated himself into a

personal attack against a witness.

**ADV NOKO**: It seems so.

**ADV NGCUKAITOBI SC**: Yes. Now, the strange thing is that these gratuitous statements, that have no basis at all, made their way into the report of the four panellists, which was then relied upon by Advocate Batohi. No one actually reading the underlying statement from Colonel Ayer.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: And even yesterday, there was an attempt to undermine Colonel Ayer's statements, even in this case, by the evidence leaders, without any reading of the actual statement.

**ADV NOKO**: Yes, in its essence.

**ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: Let us then go to the De Kock's report and see how these remarks found their way in that report. So, in the De Kock report is paragraph 109, in the Advocate de Kock report. Sorry, it starts at SB168, SB3168. I think it starts with paragraph 107.

**CHAIRPERSON**: I know that you gave us those bundles yesterday. We have them in our files, but it was easy to look at the document that you handed out.

**ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: Paragraph?

**ADV NGCUKAITOBI SC**: The first reference I could pick up

is at paragraph 107. But the part I was talking about is paragraph 109. At page 35 of the report. So, paragraph 109, do you have it, Advocate Noko?

**ADV NOKO:** Yes, I do. On page 35.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Now, this is where the power of a lie lies in repetition.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** This is where they just repeat the findings of Advocate Cassiem, without examining the underlying material.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. They say in paragraph 109:

“Ayer's credibility was questioned and he was discredited by Advocate Cassiem SC in the Booyesen internal disciplinary hearing. Advocate Nazeer Cassiem SC, the Chairperson of the disciplinary hearing against Booyesen, described Colonel Ayer, who testified before him, as a dismal witness in material respects, he is obsessed by the notion of his own importance, and his entire testimony was permeated by his political acceptability and self-importance.”

And then you would expect, as a dispassionate reader, that they would explain why those allegations are correct.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: You then turn over the page, you do not find even an attempt to read the statement, and then to say, well, is it gratuitous or is it fair to insult a witness like this?

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: But look at what they say, they just say:

“In our view, a witness should be both credible and reliable. In our view, no reliance should be placed on the statements of Colonel Ayer.”

But you ask yourself why?

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: You do not find a reason?

**ADV NOKO**: Clearly.

**ADV NGCUKAITOBI SC**: Now...

**CHAIRPERSON**: Counsel, it is after 1.30.

**ADV NGCUKAITOBI SC**: Indeed.

**CHAIRPERSON**: If you can guide us how long you are going to take with this witness still? We had proposed that we will have lunch around this time, and are you still going to be long?

**ADV NGCUKAITOBI SC:** Look, it depends, Madam Chair, on whether my junior is insistent on one theme that I said I should not pursue. But if he is not insistent, I should be 30 minutes.

**CHAIRPERSON:** You are the boss. [Laughter]

**ADV NGCUKAITOBI SC:** So we are still debating on whether a certain theme should be pursued or left for a future witness. But if I win them over on that, I should be 30 minutes.

**CHAIRPERSON:** But let me check with all of you. First, with my sisters. Yes, thank you. Advocate Ngcukaitobi, I am guided by my sisters, and I think you will find it also acceptable that we pause to have lunch until 2.15. When we reconvene, you will utilise your 30 minutes. [Laughter] Mr Ramogale is not going to extend it to an hour and thereafter, the evidence-leading team will seize the moment to re-examine.

**ADV NGCUKAITOBI SC:** Thank you.

**CHAIRPERSON:** Let us have a lunch break until, say, 2.15, and you will utilise your 30 minutes and the evidence-leading team will use whatever time. And thereafter, we can adjourn then to have a meeting that was proposed in the morning. If you are still minded to have the meeting. You owe us a report about the issues that we raised yesterday, Advocate Skosana. Yes, thank you, until 2.15. We adjourn.

**ENQUIRY ADJOURNS**

**ENQUIRY RESUMES**

**ADV NGCUKAITOBI SC:** Second aspect of control of management, we dealt with the evidence of people below Mr Booyesen, particularly by reference to Colonel Aiyer and we went through to show that the criticism against him was an unfounded criticism because its original source was Mr Cassim SC's decision, which itself has no foundation.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Then I said I wanted to look at the people above Colonel Aiyer to see what do they say about the structure of Cato Manor.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And we looked at the two affidavits of Commissioner Brown. The first one you can ignore for the current purpose, it will become relevant later, but the second one is the relevant one directly, page 219 of File 1.

**ADV NOKO:** Okay. I have it.

**ADV NGCUKAITOBI SC:** Yes. Now, he is explaining the structure of how Cato Manor operated and we know that formerly, General Booyesen is supposed to be in the province and Colonel Aiyer is supposed to be in charge.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** But substantively, Colonel Aiyer says General Booyesen is running the show.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Now, that is the context in which he now needs to clarify what is actually happening as the boss of General Booyesen.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** In paragraph 1, he says:

“The poor relationship between Major General Booyesen, the members of the Cato Manor Organised Crime office and Colonel Aiyer as the commander had a direct impact on the management style of Major General Booyesen. He adopted a hands-on approach in respect of matters involving this unit.”

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** I mean, his own boss says he was hands-on on the unit.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes:

“Colonel Aiyer's perceived lack of knowledge on Serious and Violent Crime matters and the culture of Serious and Violent Crime units led to a breakdown in their communication. This meant that Major General Booyesen was more operationally involved in matters at this

unit other than at other units in the province. He also used the services of Colonel Zikhali at provincial level to coordinate the activities of the unit. He would visit the Cato Manor weekly on a Tuesday for the grid meeting. His management style ensured that the unit continued to function optimally.”

Now, we know Colonel Aiyer says every week General Booyesen was there.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** But we also now know that even according to Commissioner Brown, in relation to this unit, General Booyesen was hands-on, visited weekly, and was operationally involved.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Now then, it continues. Remember that Lieutenant Colonel Olivier who reported to Colonel Aiyer actually did not take instructions from Colonel Aiyer.

**ADV NOKO:** That too, yes.

**ADV NGCUKAITOBI SC:** But from General Booyesen.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** So even that is dealt with in paragraph 2.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:**

“The relationship between Major General Booyesen and Lieutenant Colonel Olivier was one of complete trust and respect. They had both served at Amanzimtoti during their formative years in the police. They also worked very closely when the project office was stationed in Rosburgh. This contributed to easy communication between him and Major General Booyesen.”

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Now what this means is that, again, Colonel Aiyer is completely correct that Lieutenant Colonel Olivier refused to take instructions from me. And instead, he took instructions from Major General Booyesen.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And Commissioner Brown is explaining that it is because they have a prior working relationship and they trust each other.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And they are criticising Colonel Aiyer for not having sufficient knowledge of the unit.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Then, paragraph 3:

“The accepted protocol for conducting

Organised Crime investigations or operations outside the unit's boundary would be to inform the unit commander of the unit whether investigation or operation would be conducted. The same would apply to investigations or operations conducted outside the province when the provincial commander of the other province or the local unit commander would be informed. This was not necessarily followed..."

You see?

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** So they say this is the rule, but we do not follow the rule.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:**

"...when information was at hand, which indicated that secrecy was essential due to local police involvement with the suspect sought. For trips outside the province, prior approval would be required on the trip itinerary from the unit commander, provincial commander, and the provincial head of Detectives."

So what they are saying here is this. When Colonel Aiyer says, I was not informed of operations.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: And I asked them to open the system on the CAS system, open the cases on the CAS system, they say, no, no, no, sometimes the information required secrecy, so we would not inform you.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes. And then, paragraph 4:

“When a death in custody as a result of police action occurred, the member responsible was required to have the matter reported to the local area duty officer, who would dispatch a duty officer to the scene and ensure that the Independent Complaints Directorate member on call was informed to enable their attendance at the scene. This required ICD form and the shooting incident report had to be completed and the duty officer would report the matter to the provincial nodal point for inclusion in the daily crime report. During the daily morning crime meeting, the core management of the province would be



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

presented with a crime report by crime intelligence. When Organised Crime members were involved...”

Now this is Cato Manor.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:**

“...Major General Booyesen would confirm the contents of the shooting incident report and provide additional information which had been provided to him or from his own personal observation at the scene.”

**ADV NOKO:** That is what I meant when I said he reported to his commander, Commissioner Brown, showing intimate knowledge of the scenes of crime.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** So on two occasions, they set out what the rule ought to be, which they say was not followed at Cato Manor.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** So both about the flow of information before operations are undertaken and the record of the information after operations.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes. And then:

“Depending on the decision of the ICD official, a case would be registered for investigation either by themselves or the local detective with them monitoring the investigation. Progress in the investigation would be reported to area and provincial level.”

But the point here is really this. Even according to Commissioner Brown, the person who was operationally involved at Cato Manor as a manager was Major General Booyesen.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Colonel Aiyer was excluded, did not get the information. Even the reports were drafted from the personal knowledge of Major General Booyesen.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** There is something in the first statement that is somewhat curious. You remember that this entire case, which ended up becoming the Cato Manor issue, was allegedly about taxi violence.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** At least in part about taxi violence. There are other instances about ATM bombings.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** But the majority of it was taxi violence.

**ADV NOKO:** Taxi violence, yes.

**ADV NGCUKAITOBI SC:** Yes. And it was expected that the persons responsible would deal with the issue of taxi violence and if there are allegations of misconduct by the police, they would be investigated at a senior level.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** In other words, if the police at Cato Manor misconduct themselves, is it not reasonable to expect that the person who would investigate them would be their boss, or their provincial boss, General Booysen?

**ADV NOKO:** It is.

**ADV NGCUKAITOBI SC:** Yes. And you can see now from Commissioner Brown that he is in fact part and parcel of that team. So how can he now have the ability to consider their misconduct?

**ADV NOKO:** I am not sure about that, but I am noting it.

**ADV NGCUKAITOBI SC:** Yes. Because that probably explains why, because he was part and parcel of the team, there was impunity at Cato Manor.

**ADV NOKO:** Yes. I get the point, yes.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** You see, in the first statement of

Commissioner Brown, which is at page 214, there is a paragraph at page 217. The paragraph 12.

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

**ADV NGCUKAITOBI SC**: Ja, the fourth paragraph, the fourth sub-paragraph of paragraph 12.

**ADV NOKO**: Okay, I see.

**ADV NGCUKAITOBI SC**: So this is what they say:

“A provincial team of detectives stationed at Umhlanga Rocks was formed to deal specifically with the cases arising from the conflict between KwaMaphumulo and Stanger Taxi Associations.”

Okay?

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**:

“The investigation in these cases was monitored by Lieutenant Colonel Van Rensburg and Major General Booyesen.”

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Now, this strikes me because your evidence is Major General Booyesen and the Cato Manor team received cash bribes from the members of the Stanger Taxi Association.

**ADV NOKO**: Yes, that is what the witnesses are saying, yes.

**ADV NGCUKAITOBI SC**: Yes, according to the witnesses,

but that would have been the case of the NPA had it been allowed to continue with the trial.

**ADV NOKO**: Exactly.

**ADV NGCUKAITOBI SC**: Yes, but the conflict here is that Major General Booyesen is the very same person assigned by the province to oversee the investigations into taxi violence.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: But instead of overseeing the investigations into taxi violence, he has abused his position, accepted money, and carried out unlawful killings of one association to the benefit of another.

**ADV NOKO**: It seems so.

**ADV NGCUKAITOBI SC**: Yes. Who is this Lieutenant Colonel Van Rensburg?

**ADV NOKO**: If I am not mistaken, he could be one of the accused in the Cato Manor.

**ADV NGCUKAITOBI SC**: Yes.

**ADV NOKO**: His name rings a bell. He might be one of those.

**ADV NGCUKAITOBI SC**: Yes. So you have an instance of the same people that have been told to monitor the situation are, in fact, inflaming it, doing the opposite.

**ADV NOKO**: Seems so, yes.

**ADV NGCUKAITOBI SC**: Now, having gone through this affidavit, both affidavits of Colonel Aiyer and the affidavit of

Commissioner Brown, what is your summary in relation to the requirement in subsection (f), 2(1)(f), of control or management of the enterprise?

**ADV NOKO**: He was in full control and management of the enterprise, and this is what we had in front of us when we applied for a certificate for racketeering authorisation. It is part of those that we had.

**ADV NGCUKAITOBI SC**: Yes. Now, you remember that I mentioned to you that there is a fundamental misconception in the de Kock report.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Because it requires the enterprise necessarily to have been an unlawful enterprise.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Now, I want to take you to those paragraphs of the de Kock report. The first one is paragraph 190, subparagraph 1. SB3, page 201.

**ADV NOKO**: Subparagraph?

**ADV NGCUKAITOBI SC**: 190, subparagraph, 190.1, sorry.

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

**CHAIRPERSON**: Proceed.

**ADV NGCUKAITOBI SC**: Thank you, Madam Chair. Paragraph 190.1 is crucial because the Panel has now done its job. It is explaining in conclusion why your indictment was legally wrong.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** They give the first reason, paragraph 190.1. If you look at 190, it says:

“It is clear from our discussion that the prosecution will not succeed in proving the racketeering offences for the following reasons:

[1] There is no evidence to establish the existence of an unlawful enterprise separately from the existence of a pattern of racketeering activity.”

**ADV NOKO:** De Kock talks about enterprise, not legal or illegal.

**ADV NGCUKAITOBI SC:** Yes. In fact, there is a judgment of the Supreme Court of Appeal on this very point. We ask for leave to hand it up. It is called *S v Eyssen*, delivered on the 17<sup>th</sup> of September 2008. Do you have the judgment?

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

**ADV NGCUKAITOBI SC:** Yes. Now, you have just said to us, POCA speaks about enterprise.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Whether legal or illegal is not a requirement.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** But Mr De Kock thinks that it is a

requirement and in fact, criticises the indictment for that reason and it is upheld by the National Director of Public Prosecution.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** If you go to paragraph 6 of that judgment, page 4.

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

**ADV NGCUKAITOBI SC:** So it talks about the definition of the word enterprise.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Then if you just go further, one, two, three, four, five, six, the sixth line from the bottom of that paragraph.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Just read that, it says there is no.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes?

**ADV NOKO:**

“There is no requirement that the enterprise be legal or that it be illegal. It is the pattern of racketeering activity through which the accused must participate in the affairs of the enterprise that brings in the illegal element. And the concepts of enterprise and pattern of

racketeering activity are discrete. Proof of the pattern may establish proof of the enterprise, but this will not inevitably be the case.”

**ADV NGCUKAITOBI SC:** Yes. Now, which answers two misconceptions in paragraph 190.1. Misconception number one is the idea that the enterprise must be necessarily unlawful.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** It is clear here that it must just be an enterprise, whether it is lawful or unlawful.

**ADV NOKO:** Yes, because sometimes a legal system is used as a vehicle to be an enterprise.

**ADV NGCUKAITOBI SC:** Precisely, which is what Cato Manor was.

**ADV NOKO:** Exactly.

**ADV NGCUKAITOBI SC:** But they also answer another misconception, which is this enterprise must exist separately from the pattern of racketeering activity. When the judgment says proof of the pattern may establish proof of the enterprise.

**ADV NOKO:** Yes. The continuity, all those elements, the continuity, the structure, system of authority, all those requirements, if they are met, then they form an enterprise. Whether it is within an unlawful structure or a lawful

structure, it does not matter, yes.

**ADV NGCUKAITOBI SC:** Yes. In fact, to show that this is not just a blab, they repeat it at paragraph 190.3 of the de Kock report.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** They say:

“The statements do not prove that an organised criminal group existed that acted in common purpose and conspired together on a continuous basis to commit murder.”

So, it seems their understanding is that the enterprise must be an organised criminal group. So, at paragraph 190.3 of the de Kock report, SB3202.

**ADV NOKO:** That is not true. If they have read the statements of the witnesses, read, they would have realised that the killing of people, committing of offences, continued.

At least, what is captured within the indictment is from May 2008 until September 2011. That shows a pattern of racketeering, continuous commission of illegal activities. So, and ja.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** And there was common purpose there. All the elements are there.

**ADV NGCUKAITOBI SC:** Yes. And then, you know, it

actually gets worse.

**CHAIRPERSON:** Which paragraph were you reading that refers to the common purpose?

**ADV NGCUKAITOBI SC:** Paragraph 190.3.

**CHAIRPERSON:** 190.

**ADV NGCUKAITOBI SC:** 190.3.

**CHAIRPERSON:** I thought you said 193.

**ADV NGCUKAITOBI SC:** No, 190.3, sorry. So, I suppose, let us just go through this again to make sure that we have not missed important elements.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** So, they say here:

“The statements do not prove that an organised criminal group existed that acted in common purpose and conspired together on a continuous basis to commit murder.”

So, there is a fundamental problem that Mr de Kock believes, and his team, that in order to be an enterprise, you must be an organised criminal group.

**ADV NOKO:** Unfortunately, it is a lack of understanding then of how racketeering and POCA legislation provides and operates.

**ADV NGCUKAITOBI SC:** Yes, but we have just had a Supreme Court of Appeal judgment we have just read that

says the enterprise can either be lawful or unlawful.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes. Now, quite apart from the definition of the enterprise, they also seem not to understand the import of the term continuous.

**ADV NOKO**: Yes.

**CHAIRPERSON**: Apart from the decision of the Supreme Court of Appeal, the Act itself, on a clear reading of the provision, does it really speak of organised criminal groups or criminal activities? Because that is where you start.

**ADV NGCUKAITOBI SC**: Yes, what you say ...[intervenes].

**CHAIRPERSON**: Where could we find, I am just wondering, where could we find in the POCA any suggestion that the definition of enterprise could encompass the phrase organised criminal activities by a group? Could there be such?

**ADV NOKO**: To say that the group must be organised?

**CHAIRPERSON**: Yes, to say that even apart from the decision of the SCA, upon a proper reading of the POCA, the definition of enterprise, where does it speak of such concepts?

**ADV NOKO**: No, it does not, Chair.

**CHAIRPERSON**: That we find in paragraph 190.3?

**ADV NOKO**: It does not. The POCA definition talks about a continuous pattern of commission of illegal activity by two or

more people in common pursuit or common purpose. It does not say it must be organised or it must be an illegal entity or something like that.

**CHAIRPERSON:** Proceed, Counsel.

**ADV NGCUKAITOBI SC:** Yes, thank you. You know, I mean, this is paragraph 6 of that SCA judgment. You know, it could not be clearer. It says it is difficult to envisage a wider definition. A single person is covered. So it seems every other type of connection between persons known to the law or existing in fact, those which the legislature has not included specifically would be incorporated by the introductory word includes. So what we have here is we have got Mr De Kook and his Panel who just imposed their own requirements and ignored the requirements of the statute.

**ADV NOKO:** Yes. And if they had just sought the prosecution memorandum only, at least then they would have gotten the definition of walker racketeering and all of that enterprise, everything, then it would have been clear to them if they had not at least consulted the POCA itself.

**ADV NGCUKAITOBI SC:** Yes. They also seem to misunderstand quite a part. I mean, we have shown how they misunderstand pattern. We have also shown how they misconstrue the evidence. We have also shown how they misunderstand enterprise.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** They also misunderstand the concept of continuous.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** If you look at paragraph 190.6, they say if one has evidence, sorry:

“If one has reference to the evidence as contained in the docket, the alleged enterprise was on the verge of extinction. In 2011, the accused are only charged with two racketeering acts as compared with nine racketeering acts in 2008. To show a continuity, the racketeering acts must include a specific threat of repetition extending indefinitely into the future.”

Now, what is your comment on this? That in order for it to be a pattern of racketeering activity, it must be unending into the future.

**ADV NOKO:** No. It must just show that within the alleged period, it had continued for some time. It was not just a once-off thing.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** It must have continued. That is why continuity is one of the prerequisites or elements for identifying an enterprise and a pattern of racketeering.

**ADV NGCUKAITOBI SC:** Yes, yes.

**ADV NOKO:** So this is not correct. Besides, the indictment also says 2008 to 2011. That means the offences, the criminal activities continued for those number of years. So the element of continuity has been satisfied.

**ADV NGCUKAITOBI SC:** Yes. You know why this is totally absurd, what they are alleging? It means you can commit racketeering for 10 years. As long as you stop before you are charged.

**ADV NOKO:** It is not racketeering.

**ADV NGCUKAITOBI SC:** Then it is not racketeering.

**ADV NOKO:** And that is incorrect.

**ADV NGCUKAITOBI SC:** Yes, but it is also absurd.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Now, do you know that actually this was accepted by the NDPP, Advocate Batohi?

**ADV NOKO:** Yes, it is on the basis of this report that she withdrew the racketeering charges.

**ADV NGCUKAITOBI SC:** Yes. Now, I had to go through this in detail in paragraph 190 because those are the reasons they have given for alleging that there is no case for racketeering.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** To just show how ridiculously upset they are.

**ADV NOKO:** I agree.

**ADV NGCUKAITOBI SC:** Now, I just want to then look at the

last part, which is, you know that the NPA has been relying heavily on the judgment by Judge Gorven.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes, to say that it gives them a justification to withdraw the charges, to push people like Advocate Jiba out of the system, to push people like Advocate Chauke out of the system.

**ADV NOKO**: And they pushed me as well.

**ADV NGCUKAITOBI SC**: Yes, well, I did not want to mention you, but...

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: So, of course, you are not a witness for yourself. I want to just go to that judgment. There are a few parts there that just show how they have abused that judgment.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: The judgment appears at CL2. I do not know if you have received a copy of the judgment.

**ADV NOKO**: Which one?

**ADV NGCUKAITOBI SC**: CL2, page CL00358.

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

**ADV NOKO**: Yes, yes, I am told.

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

**ADV NGCUKAITOBI SC**: Yes. If you can go to CL00358?

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

**ADV NGCUKAITOBI SC:** At paragraph 27.

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

**ADV NGCUKAITOBI SC:** Yes. This is what the judge actually found, not what has been peddled in the newspapers.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** He says:

“From this it can be seen that the NDPP says that she relied on information under oath and the evidence as contained in the dockets and that the instances relied by her are referred to in the abovementioned statements, which were considered together with the other information in the docket before the impugned decisions were made. Whilst she says that she will not detail all the information placed before her prior to making the first impugned decision, she does not say that any of that undisclosed information was relied on by her. In argument, the respondent submitted that because the correspondence annexed to the founding affidavit refers to documents which contain prosecution strategy and information concerning informers and



sources contained in correspondence between the DPP and the NDPP, the inference should be drawn that those documents were also relied on by the NDPP. The insurmountable difficulty with this submission is that the NDPP does not say that she had regard to any such information or documents at the time the impugned decisions were made. She limits herself to the documents dealt with above. Had she said that she considered such documents, even if the precise contents were not disclosed, this might well have affected the outcome of this application.”

Then he says:

“The provisions of POCA allow for hearsay and similar-fact evidence to be led in certain circumstances. Once again, the NDPP does not indicate any reliance was placed on any such evidence.”

Now what you find here is that this is an extremely narrow finding, which says based on what you say you relied upon, we find that what you say you relied upon is irrational. It is not a finding of general import that General Booysen is not

*prima facie* guilty of the crime of racketeering.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And in fact, it is stronger than that because it says POCA allows for hearsay and similar-fact evidence to be led.

**ADV NOKO:** That is what I also testified to.

**ADV NGCUKAITOBI SC:** Yes, you testified on that.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And then they say, if you had said in your affidavit, you have also relied on hearsay evidence and on similar-fact, the outcome could have been different.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Then if you go to the next paragraph, paragraph 38 at 00359.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** In paragraph 38, just the first line there, it says:

“I hasten to emphasise that this outcome is based purely on the facts of the present case.”

Now we have just shown what those facts were.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Then paragraph 38 later on, if you go to where it ends, which is in the following page, one, two, three, four, the fourth line from the end of that paragraph, it

starts with in the light.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Can you see that?

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Can you read that?

**ADV NOKO**: Okay:

“In the light of the provisions of POCA, it is also not necessary to have beforehand sworn statements from witnesses on which the state intends to rely. I expressly refrain, however, from making a positive finding as to the level of disclosure necessary in meeting an application such as the present one or the detail required. This can only be assessed on a case-by-case basis.”

**ADV NGCUKAITOBI SC**: Yes. So again, the judge is saying, look, you do not even have to have a sworn statement before you end a POCA.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes, but I am criticising you because you say you relied on sworn statements. If you had told me that you are relying on unsworn statements, I would have decided the case differently.

**ADV NOKO**: Okay.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Yes, but the important point here is that the judge is saying it is not necessary to have sworn statements before the NDPP.

**ADV NOKO:** And that is true.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** Because POCA allows that.

**ADV NGCUKAITOBI SC:** Yes. Now, this is the one thing I have never understood since I got involved in this case.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Why the NPA leadership, not the prosecutors, have been obsessed about sworn statements of Mr Danikas when the judgment in 2014 already made it clear that it is not necessary to have sworn statements on a POCA prosecution.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Can you explain why they have taken this?

**ADV NOKO:** I wondered as well.

**ADV NGCUKAITOBI SC:** Yes. Then in paragraph 39, they say:

“It is important to note that the above findings do not amount to a finding that Mr Booyesen is not guilty of the offences set

out in Counts 1 and 2 and 8 to 12.”

Now, those are the seven counts against him in the indictment.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Two of murder.

**ADV NOKO**: Two of ...[intervenes].

**ADV NGCUKAITOBI SC**: Racketeering.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Two of defeating the ends of justice.

**ADV NOKO**: One of defeating the ends of justice.

**ADV NGCUKAITOBI SC**: Yes.

**ADV NOKO**: And two of possession of unlawful, unlicensed firearms.

**ADV NGCUKAITOBI SC**: Unlicensed firearms. And those are the ...[intervenes].

**ADV NOKO**: Predicated.

**ADV NGCUKAITOBI SC**: Violations of the Firearms Control Act.

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Yes. And then they say:

“That can only be decided by way of a criminal trial.”

**ADV NOKO**: Yes.

**ADV NGCUKAITOBI SC**: Then it goes on:

“Setting aside the authorisations and decisions to prosecute also does not mean that fresh authorisations cannot be issued or fresh decisions taken to prosecute if there is a rational basis for this decision.”

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** So the judge never closed the door on the NPA to prosecute Mr Booysen again.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** My understanding of your evidence is that even today, as we speak on the 6<sup>th</sup> of February 2026, the door is open to Advocate Mothibi to charge Major General Booysen.

**ADV NOKO:** Definitely.

**ADV NGCUKAITOBI SC:** Yes.

**ADV NOKO:** And other Cato Manor members.

**ADV NGCUKAITOBI SC:** Yes. And then the last paragraph, which is paragraph 40.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** Last paragraph of importance for what I am putting, not of the judgment. It says that:

“Prior (e) in paragraph 3 of this judgment, seeks to interdict the NDPP from issuing fresh authorisations in the absence of the NDPP having beforehand facts under oath

implicating Mr Booyesen. A final interdict is thus sought. The requisites for a final interdict are well established. A clear right must be shown, an injury actually committed or reasonably apprehended, and an absence of an alternative relief. Mr Booyesen has a clear right to a lawful decision-making process. He certainly has no rights at all to such a decision being taken only if affidavits connecting him to the offences are in the possession of the NDPP.”

Now, the reason I mention this is that he asked, he tried to get an interdict in perpetuity that he will never be charged.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** He failed. And then the judge says:

“I have mentioned above, for example, that hearsay and similar-fact evidence is admissible under certain circumstances in respect of the offences under section 2(1) of POCA.”

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And then later on in the last sentence there in that paragraph, sorry, the third last sentence, they say:

“To make such an order...”

Now that is an order of a blanket interdict in perpetuity.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:**

“To make such an order would amount to fettering the discretion of the NDPP to make the decisions in question. This discretion has been given to the NDPP by the requisite legislation and there is no attack on the constitutionality of that legislative provision. No order shall therefore issue in terms of prior (e).”

So it comes back to the point that he actually tried to put a blanket interdict and he failed.

**ADV NOKO:** Yes.

**ADV NGCUKAITOBI SC:** And then they said, well, it is up to the NPA upon a reassessment of the evidence, including a reliance on unsworn statements to charge him.

**ADV NOKO:** Yes. Hence the fresh racketeering authorisations were issued again in 2016.

**ADV NGCUKAITOBI SC:** Well, I mean, the reason we have had to go through this exercise is perhaps to answer my puzzlement at why Advocate Batohi placed any stone in this judgment.

**ADV NOKO:** I wonder.

**ADV NGCUKAITOBI SC:** Yes. Thank you, Madam Chair.

**CHAIRPERSON:** Thank you, Counsel. Thank you, Counsel. Advocate Khooe, I was looking for you here. The three of you, who is re-examining the witness?

**ADV MTSWENI:** Madam Chair, we had agreed that I will do it.

**CHAIRPERSON:** You are re-examining the witness?

**ADV MTSWENI:** Yes.

**CHAIRPERSON:** Please place that on record properly.

**ADV MTSWENI:** Thank you, Madam Chair. Madam Chair, we have agreed amongst us that I will do the re-examination and I promise to be very, very, very brief. Advocate Noko ...[intervenes].

**CHAIRPERSON:** And by the way, you have decided to do, bear in mind, as we discussed this morning, this witness should not be kept long. I am not trying to limit your re-examination. She must be out of Gauteng as soon as possible.

**RE-EXAMINATION BY ADV MTSWENI:** Hence I said I will be very, very brief. Advocate Noko, I, in fact, looked through your memorandum that you addressed to your colleagues. That was in October 2020.

**ADV NOKO:** Okay.

**ADV MTSWENI:** And when I read that, I would have ...[intervenes].

**CHAIRPERSON:** You would have to take us to the documents that you are referring to.

**ADV MTSWENI:** Chair, it is MN555, Madam Chair, to the witness statement.

**CHAIRPERSON:** MN0?

**ADV MTSWENI:** 5. Are we there, Madam Chair?

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

**ADV MTSWENI:** Are you there, Ms Noko? Are you there on MN ...[intervenes].

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

**ADV MTSWENI:** Yes, just for clarification purposes, you know that I told you, I do not know, we do not hold a brief for anyone else, but we just have to make sure that the truth comes out. When one reads this document, the sense where one cannot help but notice that it comes from a painful place in that it is preceded by a lot of vilifications as a result of a number of decisions that you took when you were A DPP in KZN. Would that be correct?

**ADV NOKO:** Yes, ja.

**ADV MTSWENI:** And when one reads it, one finds that amongst the central features of the vilifications was General Booyesen.

**ADV NOKO:** No.

**ADV MTSWENI:** I say this because if you start on the Panday case, General Booyesen was the complainant.

**ADV NOKO:** Okay.

**ADV MTSWENI:** Am I correct?

**ADV NOKO:** Ja, he was.

**ADV MTSWENI:** And you took a decision not to prosecute Mr Panday.

**ADV NOKO:** Yes, to withdraw the case.

**ADV MTSWENI:** And Booysen was not happy about it.

**ADV NOKO:** Yes.

**ADV MTSWENI:** And also you say that in fact, there was an attempt to use your office on page MN0007 to use your office to kick out Ms Ngobeni out of the way so that she is forced to resign and thus General Booysen becomes the next SAPS Provincial Commissioner.

**ADV NOKO:** No, I am not saying that.

**ADV MTSWENI:** Let us just read that so that we will get it. It says:

“I have never seen or heard of any complainants doing this and having visitation rights to accuse persons in the...” ...[intervenes].

**CHAIRPERSON:** Where are you reading?

**ADV MTSWENI:** At the top of MN0007, the top paragraph, Madam Chair.

**CHAIRPERSON:** Yes.

**ADV MTSWENI:** And you say, okay, I will start again.:

“I have neither seen nor heard of complaints doing this, complainants doing this and having visitation rights to accused persons so that their own cases, persons in their own cases. This then tallied with what the accused mentioned in their representations that they were being pressurised to do certain things like falsely implicate the then Provincial Commissioner of KZN SAPS, Lieutenant General Mmamonye Ngobeni, who was allegedly referred to as...”

I will not read that word for safety reasons:

“...that had to be given in so that she is forced to resign and Booyesen becomes the next KZN SAPS Provincial Commissioner.”

Do you see that?

**ADV NOKO:** Ja, yes.

**ADV MTSWENI:** And would that be correct that Ms Ngobeni was, the attempt was to implicate her in the Pandey case?

**ADV NOKO:** No, no, no. To implicate her in a separate case.

**ADV MTSWENI:** Yes.

**ADV NOKO:** Ja.

**ADV MTSWENI:** But you then, the reason you then say at

the end of your memo, in the memo that you can no longer keep quiet whilst you are being vilified, that is in the introduction, in fact.

**ADV NOKO**: Okay, what about that?

**ADV MTSWENI**: I am just paraphrasing that by you writing the memo.

**ADV NOKO**: Okay.

**ADV MTSWENI**: You are trying to speak out after you say you have been vilified because of various decisions that you took. Am I correct?

**ADV NOKO**: By the media, yes.

**ADV MTSWENI**: Yes. And when I read your document again, I could, when I stopped reading, I think General Booyesen is mentioned a number of times in the first few pages.

**ADV NOKO**: Advocate Mtsweni, I think it would be fair if you do not just say General Booyesen is mentioned as if I have beef with him. I do not, I do not know him. I have never even met him. I think maybe you should indicate where I mention him, the context why I mention him, and I will answer you.

**ADV MTSWENI**: No, no, ma'am. I am not trying, that is what I am trying to clarify to say, would the criticism, would it be fair if one was to say when one reads it, it appears as if you have got a bone to pick with General Booyesen?

**ADV NOKO**: No, it is wrong because you must read the whole thing, understand, before you make that conclusion.

**ADV MTSWENI:** No, no. I am not making it. I am just trying to clarify, ma'am.

**ADV NOKO:** No, you are clarifying wrong because you must say it in the context of where you see his name. Tell me what I am saying about his name.

**ADV MTSWENI:** In fact, it is for your own benefit, ma'am, so that in the future ...[intervenes].

**CHAIRPERSON:** No, Counsel. You cannot argue with the witness ...[intervenes].

**ADV MTSWENI:** No, I am just trying to ...[intervenes].

**CHAIRPERSON:** She is trying to answer your question. You are putting a statement to her and she is answering and say, no, this is not what I said. You have to read it in context.

**ADV MTSWENI:** Okay, okay.

**CHAIRPERSON:** I think then you can take her to the context if you understand it otherwise.

**ADV MTSWENI:** No, we do not understand it. I just wanted to clarify it so that there is no criticism against her, in fact, in future that she was, she said all these things against General Booysen because she had a bone to pick with General Booysen. I am just trying to clear the air.

**CHAIRPERSON:** Yes, but that is what she is answering.

**ADV MTSWENI:** Yes.

**CHAIRPERSON:** She said, no, she had no bone to pick.

**ADV MTSWENI:** Okay, thank you, ma'am.

**CHAIRPERSON:** Remember, she is the witness for this Panel.

**ADV MTSWENI:** That is what I am trying to clarify.

**CHAIRPERSON:** You will protect her if you seek to cross-examine her in that fashion.

**ADV MTSWENI:** No, no, Madam Chair, I am not trying to do that. I am just ...[intervenes].

**CHAIRPERSON:** And when she answers you, pick it from the answer. Thank you.

**ADV MTSWENI:** Yes. Now, Ms Noko, again, so that we are clear, I am not sure whether you have got the de Kock reports, the report.

**ADV NOKO:** Yes.

**ADV MTSWENI:** Can you just pick one of them?

**ADV NOKO:** Ja.

**ADV MTSWENI:** And turn to the last page, the second last page. I know that you have got two different versions.

**ADV NOKO:** Okay.

**ADV MTSWENI:** But the recommendations appear to be, the conclusion part seems to be the same.

**ADV NOKO:** Yes, I see them.

**ADV MTSWENI:** Now, yesterday, Advocate Ngcukaitobi said to you when he was trying to advance the argument of a single prosecution authority, to say, in fact, Advocate, no, in fact, I am trying to remember. Just give me a second. When

he said the de Kock Panel, in fact, withdrew the charges, withdrew the charges, the racketeering certificates. Do you recall that?

**ADV NOKO**: No, they did not.

**ADV NGCUKAITOBI SC**: No, I never said that as well.

**ADV NOKO**: Yes.

**CHAIRPERSON**: Pardon me, *Nthathi* Mtsweni, please.

**ADV MTSWENI**: No, in fact, I cannot find it on my notes. That is why I wanted to quote him properly.

**CHAIRPERSON**: The racketeering authorisation charges certificate was withdrawn by Advocate Batohi.

**ADV MTSWENI**: Yes, okay.

**CHAIRPERSON**: Do you remember I even asked the days when the withdrawal took place?

**ADV MTSWENI**: Yes.

**CHAIRPERSON**: I do not remember the panel of de Kock withdrawing anything.

**ADV MTSWENI**: No, I just wanted to clarify that, so that it is not seen as if – I wanted to check whether from where, whether I see, did you understand the evidence to be saying it was withdrawn by the de Kock Panel or was it by Advocate Batohi? But I do recall the Chairperson clarifying that with her. I will just move on from that point, Madam Chair. Thank you. Now, I just deal with the last part, which we spent a bit of time with Advocate Ngcukaitobi on the ...[intervenes].

**CHAIRPERSON**: Sorry. As regards the earlier point, I might have missed it. You referred to the recommendations of the de Kock report.

**ADV MTSWENI**: Yes.

**CHAIRPERSON**: Were you making a point on the recommendations?

**ADV MTSWENI**: The point I wanted to make was that the de Kock Panel did not withdraw. They simply recommended.

**CHAIRPERSON**: That is the same point.

**ADV MTSWENI**: Yes.

**CHAIRPERSON**: And you have corrected yourself now?

**ADV MTSWENI**: Yes. Now, the charges, which both the racketeering as well as the predicate charges, they have got a timeline. It is from 2008 and 2011. Am I correct?

**ADV NOKO**: Yes.

**ADV MTSWENI**: And one of the, insofar as the racketeering charges, one of the things you need to prove, so that you must prove a pattern of racketeering activity.

**ADV NOKO**: Yes.

**ADV MTSWENI**: And it must be, in this case, because of the number of accused people, you had to, depending on whether they are charged under management or participation, you had to ask yourself whether each one of them has got, there is evidence of participation in racketeering patterns.

**ADV NOKO**: Obviously, when you charge people in any

case, you check who is, whether there is evidence to prove what offence against whoever, then you charge accordingly.

**ADV MTSWENI:** Yes.

**ADV NOKO:** Yes.

**ADV MTSWENI:** Now, we know that in this case, there were at least two racketeering charges against Booyesen, and then there were other predicate charges.

**ADV NOKO:** Yes, five.

**ADV MTSWENI:** And we know that the predicate charges stem from, I would call Magojela incident.

**ADV NOKO:** Only the men? Ja, okay, all of them.

**ADV MTSWENI:** All of them.

**ADV NOKO:** Ja, Magojela and Tembe.

**ADV MTSWENI:** That was one incident.

**ADV NOKO:** Ja.

**ADV MTSWENI:** And he was not charged for any other incident.

**ADV NOKO:** I am not sure if he was charged with the murder of Mr Bongani Elphias Mkhize.

**ADV MTSWENI:** No, he was not.

**ADV NOKO:** As per the indictment, I do not have the indictment.

**ADV MTSWENI:** The only charge insofar as the predicate charges was the Magojela incident, which we know that it was defeating the ends of justice, murder, as well as possession

of, contravention of the Firearms Controls Act.

**ADV NOKO:** Ja.

**ADV MTSWENI:** Yes. And we know that all those offences stem from one incident.

**ADV NOKO:** Yes.

**ADV MTSWENI:** And other than that, there were no other charges that he faced on the predicate charges.

**ADV NOKO:** Okay.

**ADV MTSWENI:** Am I correct?

**ADV MTSWENI:** Ja. I am asking this so that I can find out from you as to what other evidence did you consider or do you rely on, in substantiation of your point that there was at least a pattern of racketeering? Demonstrate evidence of racketeering pattern against Major General Booysen.

**ADV NOKO:** He was a manager. He ...[intervenes].

**ADV MTSWENI:** Yes, I understand.

**ADV NOKO:** No, let me explain to you. He was a manager of this unit since it started. And the dates for the commission of offences is 2008 to 2011. He has been all along managing the activities of this enterprise. So it does not mean only because the five predicate offences happened on the same day, which was what, 16 September 2008, it means he is not involved in the others. By association, he gets joined into, that is why also POCA legislation allows what would be misjoinder under ordinary cases. Where you join people

together, you would not ordinarily do that under normal circumstances, but under POCA you do that.

So he is joined in into that pattern of racketeering that happened for all those years. And by association, common purpose is also there. So the predicate offences, it is only a requirement to charge with racketeering. It does not mean that he is not, he was not part of the pattern throughout those years.

**ADV MTSWENI:** Yes. And you are saying that his participation, his being part of those other offences is through a common of doctrine purpose, right?

**ADV NOKO:** Yes.

**ADV MTSWENI:** But then the question is, why was he not charged with those other ones if he participated through the doctrine of common purpose?

**ADV NOKO:** That is how POCA works. You get joined in, not necessarily that you physically committed that, but by association, doctrine of common purpose, you are there as well. But it does not mean you were there, you committed, you did this, this, this, this. But because you are part of the enterprise, then you are also guilty of those as part of the, that is why you are prosecuted or charged together in the same case.

**ADV MTSWENI:** No, no, but I am just asking, let us say logically it would follow that you would have to be charged

for the predicate charges as well because you participated through the doctrine of common purpose or even on the predicate charges.

**ADV NOKO:** Yes, he was charged with predicate offences. Maybe I am not getting your question here. He was charged with predicate offences, which are the prerequisites for racketeering.

**ADV MTSWENI:** But it was one incident. The question I have is, why not in respect of everyone else, but only in respect of the Magojela case?

**ADV NOKO:** POCA does not say it must be 400 sins or incidents.

**ADV MTSWENI:** Okay.

**ADV NOKO:** As long as the requirement is that it must be two or more offences, then they meet the requirements of being predicate offences. And once you have two or more predicate offences, then you have met the requirement to charge in terms of section 2(1)(e) or 2(1)(f).

**ADV MTSWENI:** I just wanted to clarify that. Thank you, Madam Chair. Let me just confirm with my team whether there is anything I have missed. Madam Noko, I was just being reminded to just ask you to turn to page 70 of the de Kock report.

**ADV NOKO:** 70?

**ADV MTSWENI:** Yes, bottom page 70.

**ADV NOKO**: Okay. I see it.

**CHAIRPERSON**: Page 70 or paragraph 70?

**ADV MTSWENI**: Page 70, Madam Chair. Are you there?

**CHAIRPERSON**: The pages are at the bottom?

**ADV MTSWENI**: Yes. Yesterday you agreed with Advocate Ngcukaitobi when he criticised through you the de Kock Panel for not having gone in depth in the analysis of the documents. Do you recall that?

**ADV NOKO**: Yes.

**ADV MTSWENI**: Now, I just want to check whether you still agree with his contention. If you start under paragraph D from paragraph 191, and where you would see, if you go through it up to page 91, if you go through that, you would realise that the de Kock Panel, in effect, did analyse the case dockets and they tell us what they are about to ...[intervenes].

**CHAIRPERSON**: Which paragraph are you referring to?

**ADV MTSWENI**: From 191 to ...[intervenes].

**CHAIRPERSON**: Page 70, is it?

**ADV MTSWENI**: Paragraph 191.

**CHAIRPERSON**: 191, up to?

**ADV MTSWENI**: It goes all the way to paragraph 229.7.

**ADV NOKO**: I feel it is very superficial and I do not even believe it.

**ADV MTSWENI**: No, no, but the ...[intervenes].

**ADV NOKO**: Because they should be saying exactly what is

...[intervenes].

**CHAIRPERSON:** Please allow the witness to answer you.

**ADV MTSWENI:** Okay, thank you. No, I ...[intervenes].

**CHAIRPERSON:** Also, you do not have to interrupt anybody.

**ADV MTSWENI:** Okay. I am just saying that, in fact, the statement put to you by Advocate Ngcukaitobi, which you agreed with, was that, in fact, they had failed to analyse each docket like you did. All they did was just to do a laundry, to provide a laundry list.

**ADV NOKO:** No. The issue was that there are some dockets that are missing, where there are no explanations or analysis of. And if you are referring me to paragraph D, up to 191, up until where you are referring to, I will still say it is very superficial.

You cannot be relying on this to make a decision. For you to make a decision, you must go thoroughly into each and every case, analyse it. Then you will be able to know, you know, with a fine tooth comb. Fine what? Fine tooth comb, yes. You must go through that and be sure that you – so this is a very superficial analysis that one cannot rely on to make a decision. More information was needed to know about the case to make a decision, to withdraw the racketeering charges and all other charges predicated and the rest.

**ADV MTSWENI:** Okay, I have got no further questions.

**ADV NOKO:** So it was on that basis that we are saying they did not read the dockets.

**ADV MTSWENI:** Okay, thanks for the clarification, Madam Noko. Thank you.

**ADV NOKO:** Thank you.

**ADV MTSWENI:** I have got no further questions, Madam Chair.

**CHAIRPERSON:** Can we also look at paragraph 191, the one that you have just referred us to? Just that paragraph. Look at the words in emphasis. Those underlined words emphasising that there was no shred of evidence linking them to any offence. In the next line, says:

“They also allege that the accused also killed civilians and all suspects, emphasis, without any tangible evidence.”

Now, we have gone through these records. We have looked through statements. We have looked, even in summarised form, dockets in summarised form. Do you have any quibble with even the summaries that we have, even if you do not have the details of the dockets or the contents of the dockets? For anybody to suggest that there was no shred of evidence linking the accused to any offence?

**ADV MTSWENI:** Madam Chair ...[intervenes].

**CHAIRPERSON:** Just in the face of it.

**ADV MTSWENI:** Madam Chair, with respect, I am going to

avoid answering that question because that is the question that you will have to determine at the end of the day.

**CHAIRPERSON:** Well, you have just referred the witness to those paragraphs, and I am picking up the emphasised portions in the very paragraph that you have referred the witness to, and I am trying to ascertain from you. What do you make of those, the emphasised parts?

**ADV MTSWENI:** Madam Chair, unless I was misunderstood, I did not do so to emphasise that that statement was correct or not.

**CHAIRPERSON:** Yes.

**ADV MTSWENI:** It was just to simply say, if one looks at it, there appears to have been some analysis of the dockets. I am not saying that the conclusions drawn are correct or not. And insofar as the question of whether there was tangible evidence or not, ultimately, that is the question for the Panel to answer because that is what Advocate Chauke is accused of doing, that he made some of these decisions where there was no evidence. And I think at this stage, Madam Chair, I would not want to be seen to be ...[intervenes].

**CHAIRPERSON:** Yes, but you are an evidence leader. You know those records better than us, as you presented the evidence-in-chief. Now, I am asking that now that these reports are not even giving us the summaries of the dockets, you remember Advocate Batohi said she did not read the

dockets at all. She relied on these reports. Do you remember?

**ADV MTSWENI:** I recall that, Madam Chair.

**CHAIRPERSON:** Now, this very report upon which she relied do not even give us a summary or summaries of any of those dockets, so that we can have a sense of whether the contents of the dockets were considered to make a determination whether there was a case, *prima facie* case or not. So without that, and somebody comes and say, from the look of this report, which does not even summarise, not even in one line, just simply giving us a broader picture, without summaries of those dockets, upon which Advocate Batochi herself said I did not read the dockets, I relied on the de Kock report, but the report does not give anything insofar as each one of those cases, the 23 dockets are concerned.

And I am asking you, as you lead, and that will help us, because the terms of reference suggest that there was no evidence. Now, this question ...[intervenes].

**ADV MTSWENI:** Madam Chair, can I just ...[intervenes].

**CHAIRPERSON:** No, no, no, wait a minute. This very question comes from the very paragraph you drew our attention to and I am saying to you, as we ultimately have to decide that point, and of course you will argue it, but now that you raised it, I am asking you, could it ever be correct, now having even looked at the summaries, that you do not take

issues with?

And we know that the report that was relied upon does not even give summaries. They emphasised words without a shred of evidence, linking them to any offence. What do you make of that?

**ADV MTSWENI:** Madam Chair, can I confer with my leader before I make that concession?

**CHAIRPERSON:** Yes, if you cannot assist me, it is fine. I understand.

**ADV MTSWENI:** Ja, I do not want to be seen to be not willing to make a concession when I have to, but given the fact that there are still going to be witnesses that will still come and talk to the report ...[intervenes].

**CHAIRPERSON:** Yes, you may confer with your colleagues.

**ADV MTSWENI:** Yes.

**CHAIRPERSON:** I thought that if you would be able to help us because you raised the point.

**ADV MTSWENI:** Madam Chair, the guidance I get from my team is that whether the reasons are sufficient or not, it is for the Panel to decide. But what we have is, when you read from paragraph 191, yes, emphasis is made that there was no tangible evidence whatsoever, and they give reasons why they believe so. And from paragraph 191, 193 downwards. And on those basis, that is what Advocate Batohi says she relied upon and I think it is something that we can, with the

Panels leave, should be considered against the totality of the evidence of all the witnesses that would still come. And then that is the question that I will gladly answer during argument, after the evidence has been led. But if Chair can pinpoint me, then I will answer that question at that point.

**CHAIRPERSON:** Yes, we know that we have to make a recommendation and an assessment eventually, but I raised it because you referred us to it.

**ADV MTSWENI:** I appreciate that, Madam Chair. And it is something that I will ponder on moving forward, knowing that I owe the Panel a simple, prostrate answer on that.

**ADV NOKO:** May I comment, Chair?

**CHAIRPERSON:** Wait a minute, commenting on what?

**ADV NOKO:** On the very same issue, if I may.

**CHAIRPERSON:** Which issue, Madam Noko?

**ADV NOKO:** The very same issue in paragraph 191, what my view is with this underlined writing.

**CHAIRPERSON:** Well, I just wanted counsel to assist me because they are leading the evidence and he raised the paragraphs. So I am not sure whether you really want to go there.

**ADV MTSWENI:** Ms Noko is a witness, Madam Chair.

**CHAIRPERSON:** Should she do it?

**ADV MTSWENI:** No, no, she is a witness.

**CHAIRPERSON:** I think that you can do that.

**ADV NOKO:** Thank you, Chair. I just wanted to say this actually proves that they did not read the docket because anyone who read the docket would not say there was no shred of evidence, would not say there was no tangible evidence with all the evidence that is fully in that case.

**CHAIRPERSON:** You got it, Advocate Mtsweni.

**ADV MTSWENI:** That is Advocate Noko's conclusions, Madam Chair. I will still give my submission later on.

**CHAIRPERSON:** Yes.

**ADV MTSWENI:** So I think, Madam Chair, that from our side, that is all. Unless the Panel has got more questions for Advocate Noko, then she may be released.

**CHAIRPERSON:** Yes, thank you, Advocate Mtsweni. Thank you. My sister reminds me, actually our researchers noted the matters outstanding that were to be looked into, including the withdrawal of the predicate offences by Advocate Harrison. Did you find that information, Advocate Lekgetho?

**ADV LEKGETHO:** No, Madam Chair. I am informed that the dockets will have ...[intervenes].

**CHAIRPERSON:** You may speak into the mic, please.

**ADV LEKGETHO:** I am informed by NPA that the dockets themselves will have the inscription by the prosecutors for withdrawal of respective dockets. And Advocate Zungu ...[intervenes].

**CHAIRPERSON:** Advocate Harrison now.

**ADV LEKGETHO:** Thank you, yes. She has written a report to the NDPP. They were looking for it, and they will make it available.

**CHAIRPERSON:** Which would tell us about the withdrawal of the predicate offences?

**ADV LEKGETHO:** Most probably because they say she indicates what happened in each docket.

**CHAIRPERSON:** Yes, please do not forget.

**ADV LEKGETHO:** Yes.

**CHAIRPERSON:** Another matter pertains to the list of accused persons and their numbers. You remember during cross-examination this issue arose, and the list was to be compiled.

**ADV LEKGETHO:** I think it was for Advocate Mtsweni, Madam Chair.

**CHAIRPERSON:** Yes. Advocate Mtsweni?

**ADV MTSWENI:** Can I provide that tomorrow, on Monday, Madam Chair? Because I must have missed it, but if the Chair wants, the numbers, the contact numbers, or just the charges?

**CHAIRPERSON:** No, no, no, not contact numbers. Advocate Mtsweni, you are here this morning, please. You remember the cases in respect of the accused persons?

**ADV MTSWENI:** Yes.

**CHAIRPERSON:** We spoke about that, so if you can give us

a list of those accused persons and their numbers?

**ADV MTSWENI:** We will do so.

**CHAIRPERSON:** Case numbers.

**ADV MTSWENI:** Meaning the dockets under which they were charged, et cetera, that can I provide? I will provide, I will put that information, it is okay.

**CHAIRPERSON:** I will have to go back to my exact notes as regards precisely what you said we should do.

**ADV BALOYI-MERE SC:** Remember there is somewhere where they are listed as accused 1, 2, and we could not identify, actually, who is accused 3, accused 5, and if memory serves me right, accused 6 was skipped. We need to know what happened. Accused 12, and from accused 17 to accused 20-something, there were gaps. So that is the list that we would like to have. If somebody is deceased, it should be, accused number so-so, deceased, and then we will know so that we can cross-reference whenever accused are mentioned.

**ADV MTSWENI:** Okay, we will do so, Madam Mere.

**CHAIRPERSON:** Maybe to help you, the transcript will be available soon. You can go to the transcript and just check precisely what we want you to do in relation to that issue. So the transcript will pick it up and provide that list on Monday.

**ADV MTSWENI:** We will do so, Madam Chair.

**CHAIRPERSON:** No, tomorrow, tomorrow is Saturday. You

can file it, and we will have a look at it on Monday. Do not forget, please.

**ADV MTSWENI**: Thank you.

**MS RAMAGAGA**: Advocate Noko, there is a question that Advocate Mtsweni asked about charging the persons that were suspected of having committed the relevant offences.

**ADV NOKO**: Yes.

**MS RAMAGAGA**: And the focus of that question was about the fact that General Booyesen was the manager, right? The manager, in terms of your assessment, he was seen to be the manager of the entire enterprise.

**ADV NOKO**: Yes.

**MS RAMAGAGA**: Right. Now, the question that he asked, and I do not think I have got the answer, or I understood the answer that you gave, and I am asking it again just in order to understand clearly what your answer is.

**ADV NOKO**: Yes.

**MS RAMAGAGA**: Now, the question was that, regard being had to the fact that General Booyesen was the manager, how come that he was not charged in respect of all the offences with the others, regard being had to the fact that, I mean, it is on record that Booyesen was the manager. Even at the time when Ayer was on the seat, he was on the seat, but not on the operations. He remained the *de facto* manager of the enterprise.

**ADV NOKO**: I am not sure how to answer this. He was charged with being a manager, 2(1)(f) and 2(1)(e), being participating. So that participation relates to all other offences, but then the requirements for racketeering, for predicate offences, relates to the other five, Count 8 to 12. So he was not charged for, say, count 21, somewhere in the indictment per se, but his part of the whole thing, like his part, his part, I do not know how to explain it, ja.

**MS RAMAGAGA**: Ja, ja, no, ja.

**ADV NOKO**: Ja.

**MS RAMAGAGA**: Maybe let me say I understand, I think everyone that has been sitting here understands that looking at the evidence presented thus far, he was part of this enterprise, right?

**ADV NOKO**: Yes.

**MS RAMAGAGA**: But then the question just relates to, regard being head to that, be it in predicate offences or even in the racketeering itself, why is it that he is not the common co-accused in all the cases? I think if I understood what he sought to get was that, and if I am wrong, nevertheless, I would like to know and understand.

**ADV NOKO**: I get the question now. Thank you, ma'am. Count 2, section 2(1)(a) covers that he participated in the commission of the offences in the racketeering. So Count 2, the racketeering one covers that because he participated.

The title of the charge is participating in the illegal activities. So it is covered there. So you do not necessarily charge him with possession of unlicensed firearm and another there. You just concentrate on the requirements of racketeering.

It is possible to charge a person only with being a manager as long as then the predicate offences are there two or more. But then with regards to Major General Boysen, it is not only being a manager, but also participating. So that participation relates to all other offences without him necessarily appearing in every count. It is covered under participation.

**MS RAMAGAGA:** Right, thank you. I think you have clarified. Thank you, ma'am.

**ADV NOKO:** Thank you.

**CHAIRPERSON:** Advocate Mtsweni, that brings us to the end with this witness.

**ADV MTSWENI:** Indeed so, Madam Chair.

**CHAIRPERSON:** Advocate Ngcukaitobi, you have had your bite. Yes, thank you. Advocate Noko, we, the Panel, take this opportunity to thank you for having made time, three days to come and testify at our instance.

**ADV NOKO:** Yes, Chair.

**CHAIRPERSON:** We thank you and would like to excuse you so that you can travel to wherever you are travelling safely before dark.

**ADV NOKO**: Yes, Chair.

**CHAIRPERSON**: Once again, thank you, we wish you well.

**ADV NOKO**: Yes, I would also like to thank the Panel, the enquiry for giving me an opportunity to come and assist them as well and also making my stay here secure. I thank you.

**CHAIRPERSON**: We thank you. You are excused, Madam.

**ADV NOKO**: Thank you.

**NO FURTHER QUESTIONS**

**CHAIRPERSON**: We have some other business to deal with as you leave.

**ADV MTSWENI**: I just wanted to indicate regarding what the Panel also raised in relation to the outstanding issues.

**CHAIRPERSON**: Yes.

**ADV MTSWENI**: The MSC's affidavit, it has been reported to us that I think the NPA team has difficulty finding that affidavit. Remember the MSC's affidavit in relation to the Mkhize case. I just wanted to say because that might be relevant to this witness while she is being excused. I am not sure.

**CHAIRPERSON**: I am not sure, the witness just left now. Yes, I remember that that affidavit of the second respondent in the Mkhize application, that interdictory application by Mr Mkhize. Well, if it cannot be found, it cannot be found, I suppose. If it can be found later, I do not think the witness can say anything about it because those are the questions

that arose from us. I wanted to see what was referred to in that paragraph by, I think, General Booysen, referring to that affidavit. But let us leave it there. If you cannot find it, you can only do so much. We will make a note. Thank you, Counsel. We will leave it at that.

And the matters that we raised, you raised this morning in Chambers, was it for a private meeting or you would like to raise it here? But before we get there, you owe us a report as regards what you are going to do when we postponed the matter a week ago regarding whether a conflict of interest has arisen.

And I reminded you yesterday, Advocate Skosana, that remember, your witness is still under oath, under cross-examination. We have not been told by you as to what we are to do or to make of the fact that that witness has not come back. When is she coming back? If she comes back, how far are you with your intended approach to the Minister regarding that purported conflict of interest?

**ADV SKOSANA SC:** Ja, Madam Chair, the report I have is as follows. That issue has, to some extent, been resolved and I have been informed by the NPA team that she has now been granted permission to appoint a legal team, shall I say an attorney, who will then appoint counsel for her to assist her in relation to the legal counsel that she requires.

And that has only occurred, I think, yesterday, so it

was reported to me. And I am not sure whether that counsel has now been formally appointed. And I discussed it with Advocate Hulley earlier on, and when we actually thought it will be part of our report in chambers, where he will also participate in giving that report, the finer details of that, of what is happening.

**CHAIRPERSON:** Suppose you were advised by Advocate, Mr, your attorney, the state attorney.

**ADV SKOSANA SC:** The state attorney.

**CHAIRPERSON:** The state attorney.

**ADV SKOSANA SC:** I was advised by my state attorney, yes.

**CHAIRPERSON:** Should you not get further instructions from the state attorney? Mr Mametja is here. As to, we need to get details because we have to move forward. It is not enough to be told that he has now been afforded an opportunity to be assisted. Then the question arises, what then? Because we are still waiting. Somebody must tell us when she is going to come and take the seat, the witness seat. When will that be? If she intends to come back, will we know when? Mr Mametja, you are the state attorney.

**ADV MAMETJA:** Chair, I was informed by the head of the office, Mr ...[indistinct] yesterday night that the NPA ExCo has since taken a decision to afford the former NDPP with a legal team of her choice. So what is going to transpire is,

because I am the attorney for the evidence leaders, there is an attorney, Mr Matubatuba, for the NPA. So he is the one who is going to appoint a private attorney who in turn is going to appoint a counsel of Advocate Batohi's choice. So I am not sure if that process has been finalised of date. I am not involved in that process. I was just informed because I had to update the evidence leaders. Yes.

**CHAIRPERSON:** May we request you, and I am sure I am speaking on behalf of my sisters, let me just confer with them. We request that you request Mr Matubatuba to be here on Monday, 08:45, and give us a report, a full report because we need to know when we should expect this witness to come back and testify.

**ADV MAMETJA:** Thank you, Chair, I will do so.

**CHAIRPERSON:** Yes, thank you. Another matter that you were to raise in chambers, Mr Skosana, was it a matter for chambers deliberations or want to raise it here?

**ADV SKOSANA SC:** We would prefer to raise it in chambers, Madam Chair.

**CHAIRPERSON:** I hope it is not a matter that is going to detain us for the better part of this afternoon, especially because we do not even have an idea what it is.

**ADV SKOSANA SC:** We think not.

**CHAIRPERSON:** And all counsels will come to chambers hereafter, and we will listen to you. Tell us about the

process. We postpone this matter to Monday?

**ADV SKOSANA SC:** Well, Madam Chair would suggest, subject to the Panel, to stand it down for us to have that discussion, which we hope will not take long, and then the way forward will be checked.

**CHAIRPERSON:** And come back.

**ADV SKOSANA SC:** Indeed.

**CHAIRPERSON:** Yes, thank you. We will adjourn for a few minutes and reconvene.

### **ENQUIRY ADJOURNS**

### **ENQUIRY RESUMES**

**CHAIRPERSON:** Good afternoon, everyone. Good afternoon, *Nthati* Chauke, *Nthati* Mohlamonyane.

**ADV MOHLAMONYANE SC:** Good afternoon, Madam Chair, and your two sisters. I am placing myself on record. I have not been active in the proceedings for the past few days. As discussed in chambers, Madam Chair, I wish to place on record as evidence leaders that we have no witnesses available on Monday for reasons that have already been put forward.

We need not go into details as far as that is concerned, but we have experienced challenges and difficulties in securing some of those witnesses. We are therefore not in a position to proceed on Monday, Madam Chair, and we humbly request an indulgence to be granted a

postponement to Wednesday, the 11<sup>th</sup> of February 2026.

Thank you, Madam Chair.

**CHAIRPERSON:** Madam Chair, before we hear from Advocate Ngcukaitobi, Advocate Mohlamonyane, it is not clear to us why we were approached only today about the possible postponement. Secondly, you are all aware of the fact that if you wish to postpone or to seek any indulgence, you have to apply. I have not been told why you have not applied to seek a postponement, so that we can get all the reasons that you wish to put forward as a basis for the postponement.

You know our attitude already that we are disturbed by the fact that we seem not to be making progress. This matter was postponed several times at your instance as evidence leaders because of the problems that you say you are encountering. And we impressed upon you last time that when you seek to apply, *Nthathi* Skosana, you came here and made an application from the bar for a postponement, as you are doing today.

Now, without a full explanation as to why you seek the indulgence, we do not take kind to that. It makes it even more difficult, I suppose, for your opponent or for Advocate Ngcukaitobi's team to consider whether to oppose or not to oppose, because he does not have reasons in writing that he can consider.

We are really unhappy that you approach these matters not once, but again and again in the same fashion. Let me hear from my sisters if they have any questions. You have informed us in chambers, I must place it on record, that you sought to explain that some of the witnesses are not cooperating, some of the witnesses are not ready to come, and that some of the witnesses may want to be called by Advocate Chauke.

But I think it is proper that, and I am saying this as our preliminary view, that you should be placing an application before us. I will hear whether Advocate Ngcukaitobi, let us hear whether he is opposed to the request, then we can take it from there.

**ADV NGCUKAITOBI SC:** Madam Chair, yes, Mr Chauke opposes any application for a postponement, but he agrees that the correct procedure is that there should be a formal application. And if the matter stands down to Monday to bring that formal application, he is not opposed to that.

**CHAIRPERSON:** I beg your pardon, the latter part?

**ADV NGCUKAITOBI SC:** If the matter stands down to Monday to enable the evidence leaders to bring a formal application, then he will not be opposed. But the current application that is being pursued is opposed.

**CHAIRPERSON:** In that event, Advocate Mohlamonyane, all of you understand how the urgent court works?

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

**CHAIRPERSON:** If we are to place you on terms to file that substantive application for a postponement by tomorrow noon, 12 o'clock tomorrow, you file it off record tomorrow, that should be possible.

**ADV MOHLAMONYANE SC:** May I confer with my colleagues, with your permission, Madam Chair?

**CHAIRPERSON:** Yes.

**ADV MOHLAMONYANE SC:** My learned colleagues are requesting that the latest be 14:00 hours.

**CHAIRPERSON:** No, you start working on that application when we step out of here, because you already know the reasons. Remember, Advocate Chauke's team must respond to that application and we are inclined to afford them an opportunity to file their answering affidavit by noon on Sunday. And if a need arises for you to file a reply, you will file it in the evening on Sunday. Evening, any time before 12 o'clock midnight, so that by Monday morning this application can be argued. I do not think you need written submissions, you can argue from the bar on Monday morning.

**ADV MOHLAMONYANE SC:** That will be in order, Madam Chair.

**CHAIRPERSON:** Remember you are seeking an indulgence, which I am sure you knew about it even by yesterday or the day before yesterday. When we started with Witness

Advocate Noko, by that time you ought to have known who will be next. But when you come today, last minute again, like last time, without even explaining why only today, we will have to place you on very strict terms to file your application by tomorrow, by noon. Advocate Chauke will file his answering affidavit by noon on Sunday. And your reply will be filed on Sunday, before midnight.

**ADV MOHLAMONYANE SC:** If so advised, if there is a need.

**CHAIRPERSON:** This is an urgent application, is it not?

**ADV MOHLAMONYANE SC:** It is, Madam Chair.

**CHAIRPERSON:** We cannot wait until Monday. And on Monday you will then argue this postponement application. May I hear from Advocate Ngcukaitobi about the terms? We are of the view that you should be able to file your answering affidavit by Sunday noon, 12 o'clock.

**ADV NGCUKAITOBI SC:** Yes, Madam Chair, I have enough resources. We will file it.

**CHAIRPERSON:** We appreciate that.

**ADV NGCUKAITOBI SC:** Thank you.

**CHAIRPERSON:** And the evidence-leading team, you have much resources. You have the state attorney on your side. You have the junior counsels who can assist with that. It is not a huge kind of an application. Substantive as it should be, or is, it should be done. You already have your reasons that you mentioned in chambers. So that should not take

time. And please adhere to the time frames because if you delay, it is going to make it difficult for the Chauke team, Advocate Chauke's team, to answer on time. Let me confer with my sisters. Yes, thank you.

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**ORDER**

Take the following order:

- [1] This matter is postponed to Monday, the 9<sup>th</sup> of February 2026, at 9 o'clock.
- [2] The evidence-leading team on filing an application for a postponement, as they indicate, by tomorrow, Saturday, the 7<sup>th</sup> of February 2026, on at or by noon, 12 o'clock.
- [3] Advocate Chauke will then file his answering affidavit on the 8<sup>th</sup> by noon of Sunday. That is by 12 o'clock.
- [4] The evidence-leading team, if so minded, will file their replying affidavit before midnight on Sunday, the 8<sup>th</sup> of February 2026.
- [5] This application will be argued on Monday, the 9<sup>th</sup>, at 9 o'clock.

We so order.

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**ADV MOHLAMONYANE SC:** As it pleases the Chair.

**CHAIRPERSON:** We adjourn until Monday, the 9<sup>th</sup> of

February.

**ENQUIRY ADJOURNS TO 9 FEBRUARY 2026**

**ENQUIRY ADJOURNS**

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

**TRANSCRIBER'S CERTIFICATE**

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3. Microphones not always activated.

20 **NB:** A transcriber can only transcribe what is recorded and what is clearly audible.

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30



