

**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**

12 FEBRUARY 2026

DAY 24



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

PROCEEDINGS ON 12 FEBRUARY 2026

CHAIRPERSON: A very good morning to everyone. Good morning, Ntate Chauke. Good morning, Advocate Maema.

ADV MAEMA: Good morning, Chairperson.

CHAIRPERSON: Advocate Ngcukaitobi.

ADV NGCUKAITOBI SC: Thank you, Madam Chair.

CHAIRPERSON: But before you proceed, perhaps I should find out from the evidence leaders whether there is anything that you would like to place on record.

10 **ADV MTSWENI:** Thank you, Madam Chair. Madam Chair, save to record, there is nothing, save to ...[intervenes].

CHAIRPERSON: Ja, please speak to the mic and speaker.

ADV MTSWENI: I think there is nothing from our side, save to confirm what was stated to the panel in chambers, that Advocates Skosana is no longer part of the team. Other than that, there is nothing further from our side.

CHAIRPERSON: Thank you, Counsel. You do confirm that Mr Semele Mametja is an instructing attorney. You may just push the mic to Ntate Semele Mametja.

20 **MR MAMETJA:** I confirm, Chair.

CHAIRPERSON: Thank you, sir. Advocate Ngcukaitobi.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. This morning, Mr Chauke will open his case. His first witness will be Advocate Gladstone Sello Maema. In total, there are ten witnesses that we have spoken to. They cover both the Cato

Manor-related allegations and the General Mdluli-related allegations. One of the witnesses that we have spoken to out of the ten has conveyed to us safety concerns, which are perfectly understandable in the light of the nature of the issues covered in this case. Madam Chair, in due course, we will be approaching you to have the witness testify online or for arrangements to be made for his security, whichever is more convenient.

In relation to the balance of the witnesses, we have
10 some draft statements that we are working to finalization. For Mr Maema, who is testifying this morning, we have a full statement that has been signed. It is a lengthy statement, and it covers approximately 140 pages. It is supported by annexures that exceed 900 pages, so it is quite a voluminous document. We are working on preparing an index to the annexures in order to make the referencing easy. It is being finalized by Mr Ramogale, but it is not yet ready. We will hand it up during the course of the tea adjournment.

The annexures are marked with the GSM red bold
20 numbers. There are a couple of annexures that were not included in the documents that were discovered by the NPA, but we received them directly from the witness, but those will be clear during the course of his testimony.

One more thing I should record is that the NPA has still not disclosed the docket in relation to the murder of

Superintendent Chonco and the accompanying injuries to Inspector Khanyile. As you will see during the course of the evidence by this witness, the murder of Superintendent Chonco did become, I am not saying very important, but it did become a point of reference, and that is why we have been asking for it. We received correspondence from Mr Anton Du Plessis who is the former Deputy National Director of Public Prostitutions, who suggested that the NPA does not have the docket, but we do not accept that because in the NPA's own
10 documents, they refer to the contents of that docket. Nevertheless, we have addressed correspondence to the DPCI requesting access to that docket, but we have not yet received it.

I record that because it might play a role in the course of the hearing, but it is not an obstacle this morning to the commencement of Mr Maema's testimony. Having made those preliminary remarks, I will leave the witness to you, Madam Chair, for the swearing in so we can begin. Thank you.

20 **CHAIRPERSON:** On what basis is the DPCI involved in that matter?

ADV NGCUKAITOBI SC: It is because Mr Anton Du Plessis claims that the docket is with the DPCI.

CHAIRPERSON: Let me find out from Advocate Hulley, who is representing the NPA, whether he has any view with regard

to that. I know that, you cannot hear me?

ADV HULLEY SC: No ...[indistinct] [microphone off].

CHAIRPERSON: You can hear me? I am not totally out of the woods, but if you cannot hear me, do raise your hand. Advocate Hulley, I know that you have not done your decoupling application as yet, but just for interest's sake, are you in a position to assist in this regard?

ADV HULLEY SC: Thank you, Madam Chair. I was aware that the message was sent. I was not aware that the
10 representatives of Advocate Chauke remained concerned. If there remains a concern, I can discuss the matter with my learned friends and we can take it up with the powers that be within the NPA. But that was the message that was conveyed, and it is a matter of either going to go and seek it from the DPCI, and I am not in a position to give an undertaking that we will do so. But I think that if there was a concern, that the response was insufficient. I am not sure if it was persisted
in beyond that.

CHAIRPERSON: Thank you, Advocate Hulley. Advocate
20 Ngcukaitobi, see if you can discuss the matter with the NPA through Advocate Hulley, and if you do not find any joy, then do proceed with writing to the DPCI and see if you can find such information.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. I shall do so.

CHAIRPERSON: Anything from the evidence-leading team?

ADV MTSWENI: Nothing from my side, Madam Chair.

CHAIRPERSON: Thank you, sir. Advocate Maema, good morning once again.

ADV MAEMA: Good morning, Chairperson, and good morning, co-Chairpersons. Earlier on when I said good morning, Chair, I thought the co-Chairpersons would also greet me, but now that I have this opportunity, can I also greet the co-Chairs, Chairperson. Thank you.

10 **CHAIRPERSON:** Yes, I speak on their behalf, at least as far as greetings are concerned.

ADV MAEMA: Yes.

CHAIRPERSON: Let me just make a disclosure. I mentioned to Counsel and Chambers that me and you are well known to each other, Ntate Maema.

ADV MAEMA: Yes, Chairperson.

CHAIRPERSON: As we all live together as practitioners, as judicial officer me, you appearing before me in the North West, in Mmabatho.

20 **ADV MAEMA:** Indeed, Chairperson.

CHAIRPERSON: And I thought that it is appropriate that I make this disclosure right at the beginning. I mentioned to Counsel in chambers and no one is opposed to me presiding and hearing your evidence this morning.

ADV MAEMA: Thank you. Thank you, Chairperson. I must

also mention, Chairperson, as you do so, that Advocate Mohlamonyane is also known to me. When I did pupillage the last year, he was one of my co-lecturers in legal writing. So you are not the only person that is known to me. He is also known to me. Advocate Chauke, of course, is my colleague, I would know him.

CHAIRPERSON: Yes.

ADV MAEMA: Thank you, Chair.

CHAIRPERSON: Yes, I thought that from the angle of the
10 panel ...[intervenes].

ADV MAEMA: Yes.

CHAIRPERSON: It is proper to make such a disclosure. Advocate Mohlamonyane did mention in chambers that he knows you to the extent you have mentioned, and we all understand that. He is excused from being here this morning. He is busy doing some work in the evidence leading team's chamber, but he is in the building.

ADV MAEMA: Thank you, Chairperson.

CHAIRPERSON: That said, Advocate Ngcukaitobi, I think it
20 is appropriate for me, Advocate Chauke, to verify whether you will take the oath, administer the oath, or do the affirmation.

ADV MAEMA: Chairperson, I will take the oath, and, Chairperson, may I indicate that I prefer to stand when I take the oath?

CHAIRPERSON: Yes, you may do so. You may stand up.

Thank you, sir. Advocate Maema, do you swear that the evidence you are about to give will be the truth, nothing else but the truth, and if so, raise up your right hand and say, “So help me God”.

ADV MAEMA: So help me God.

GLADSTONE SELLO MAEMA (d.s.s.)

CHAIRPERSON: Thank you, sir.

ADV MAEMA: Thank you, Chairperson.

CHAIRPERSON: Advocate Ngcukaitobi.

10 **EXAMINATION BY ADV NGCUKAITOBI SC**: Thank you, Chair. Advocate Maema, in front of you, you have your statement, which is page 121. Is that correct?

ADV MAEMA: That is so, Counsel.

ADV NGCUKAITOBI SC: Yes. Now, it starts at paragraph 1, just describing your positions that you held in the NPA. Can you, using your own words, describe that?

ADV MAEMA: In my answer, I will be addressing the Chairperson, so I will say Chairperson.

ADV NGCUKAITOBI SC: Indeed.

20 **ADV MAEMA**: Yes. Chairperson, I am an advocate who was formerly in the employment of the National Prosecuting Authority in the capacity of a Deputy Director of Public Prosecutions. I was attached to the office of the Director of Prosecutions in the North West division, which is based in Mmabatho. The office is situated at Megacity Complex, East

Gallery 3139, Sekame Road, in Mahikeng.

CHAIRPERSON: I beg your pardon. May we all put our cellphones on silence? Thank you. Advocate, you may proceed.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. The statement that we have in front of you does contain your signature at the end, at page 1 to 139, dated the 11th of February 2026. Do you confirm that?

ADV MAEMA: I confirm that, Chairperson.

10 **ADV NGCUKAITOBI SC:** But it is not sworn, is that correct?

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Can you swear that the contents of those statements are true and correct and are binding on you and your conscience?

ADV MAEMA: Chairperson, I have read the statement. I do confirm that I know and understand the implication of the oath, and I confirm that I do take the oath.

ADV NGCUKAITOBI SC: Yes, but I need you to swear that the contents of the statements are true and correct and are
20 binding on you and your conscience.

ADV MAEMA: I do, Counsel. I confirm the contents are true and correct, and they are binding on my conscience, Counsel. Thank you.

ADV NGCUKAITOBI SC: Thank you very much. Now, I want to then skip those next passages up until paragraph 6. The

statement is supported by some 900 pages-odd annexures. I just wanted to confirm if you were involved in the collation of those annexures, you have read the annexures, you understand the annexures.

ADV MAEMA: Indeed, Chairperson, I have.

ADV NGCUKAITOBI SC: Yes. Thank you very much. Can we then go to the statement proper. It starts from paragraph 7, 8, 9, 10, 11, let us stop there for now, tracing your history. So just feel free and take us slow, tell us about yourself, not
10 from primary school, at least from matric.

ADV MAEMA: Chairperson, I matriculated in Thulare High School in 1981. Thulare High School is in Lebotlwane. Lebotlwane is in the Moretele district of the North West Province. And then I continued to study a B.Proc and an LLB degree at the University of Fort Hare in 1989 and 1991, respectively. I continued to serve articles of clerkship at the firm of attorneys which was doing predominantly criminal work. It is called Botha Du Plessis & Kruger Attorneys, which was in, which is still in Johannesburg. I commenced my
20 articles in November 1991. That is immediately after ...[intervenes].

ADV NGCUKAITOBI SC: Is that the famous BDK Attorneys?

ADV MAEMA: The famous BDK, yes.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: If I may, Advocate Ngcukaitobi, I know that

most of us are commissioning officers by virtue of the law. But you may consider later, just for completion, so that when the record is sent to the President at the end of this enquiry, he should be having a complete picture. You can have the statement commissioned before a Commissioner of Oaths.

ADV NGCUKAITOBI SC: Thank you, Madam Chair.

CHAIRPERSON: We know that he has now testified that the contents of this are correct and he aligns himself with everything that is in this statement. But I suggest that you
10 can later then cause the commissioning to be done and then file it off record.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. Yes, we will discuss it with our learned friends, if they have an objection to commissioning after signing, because sometimes this Commissioners will insist that the commissioning and the signing happen simultaneously.

CHAIRPERSON: Yes. Maybe we should just verify with your evidence leaders?

ADV MTSWENI: No, Madam Chair, we will not have any
20 objection.

CHAIRPERSON: Yes, ordinarily one could even do it right away, but I prefer that it is done by someone else. Later in the day you can do that.

ADV NGCUKAITOBI SC: Thank you, Madam Chair.

CHAIRPERSON: I suppose, Advocate Hulley, you have no

objection?

ADV HULLEY SC: There cannot be an objection.

CHAIRPERSON: There cannot be any objection. Yes, let us do the right thing so that we give the President the record that is fully complete.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Thank you.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. We are still at paragraph 8, Advocate Maema, where you say that you
10 did, after your LLB at Fort Hare in 1991, you did articles of clerkship at BDK Attorneys.

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes, carry on.

ADV MAEMA: Then as I was ...[indistinct] [microphone off] my apologies. I will leave it on, Chairperson. BDK is a firm of attorneys that does predominantly criminal work. Towards
the latter part of my articles, as I was working closely with prosecutors in various courts, I developed an interest to become one. and I applied and I was appointed a prosecutor.
20 I studied in Fort Beaufort in the Eastern Cape on the 8th of March 1993. Fort Beaufort, Chairperson, is a small town in the Eastern Cape, fairly rural. It is a farming town.

ADV NGCUKAITOBI SC: Yes, you do not have to convince me.

CHAIRPERSON: What do they refer to it as?

ADV MAEMA: Beaufort.

ADV NGCUKAITOBI SC: Beaufort.

ADV MAEMA: They say Emakhazeni.

ADV NGCUKAITOBI SC: Well, that part, I am not sure, but the people from Fort Beaufort would be very upset. There is a mental hospital there.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: That is how it ended up being as Emakhazeni.

10 **ADV MAEMA:** Yes, yes, yes. In fact, communities get a service at that hospital, which is very important.

ADV NGCUKAITOBI SC: Yes, and then you, from March 1993, you are prosecuting at Fort Beaufort. You then gain experience in Port Elizabeth, Grahamstown, and King Williams Town, is that correct?

ADV MAEMA: That is correct. What happens in the Eastern Cape is they pick their prosecutors that they identify and then they expose you to various work in various districts. So I started in the, although being a district court prosecutor when
20 I started in Fort Beaufort, when the regional court would come and sit there and a prosecutor from Grahamstown would not be available, I would then deal with the regional courts. That is how it started that I do the regional court in King Williams Town, in Grahamstown, as well as in Port Elizabeth.

ADV NGCUKAITOBI SC: And then, at paragraph 9, you then

get admitted as an advocate. Can you just explain that, because you have already been working for two years by this stage.

ADV MAEMA: As I was working in Grahamstown, I then received a call from one of the deputies in the Johannesburg office who saw that I am from Johannesburg, but I am working in Grahamstown. And then I then indicated an interest to come back to Johannesburg. On the 3rd of May, I applied for my admission as an advocate in the High Court. I was then
10 admitted in the then Witwatersrand Local Division, which is now South Gauteng.

And then, early in May, I think the 5th of May, I joined the office of the Director of Public Prosecutions in Johannesburg as a state advocate. I worked as a state advocate, as a senior state advocate, in the DPP office in Johannesburg until the establishment of the National Prosecuting Authority in 1998.

When it was established, the first National Director, Mr Bulelani Ngcuka, established what we called the Human
20 Rights Investigative Unit. This unit was intended to look at the cases that came from the TRC. It is the predecessor of what later came to be called the Priority Crimes Litigation Unit at the NPA head office.

ADV NGCUKAITOBI SC: So just before you proceed, I mean I am not sure if the statement contains an error or you made

an error, because it refers to Grahamstown there as a state advocate. But you are saying you were actually in Johannesburg.

ADV MAEMA: I started as a state advocate in the DPP office in Grahamstown.

ADV NGCUKAITOBI SC: Oh, I see.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Okay, so there is nothing wrong with the statement.

10 **ADV MAEMA**: There is nothing wrong in the statement.

ADV NGCUKAITOBI SC: Okay.

ADV MAEMA: And that is why, I think, what happened was a deputy in the DPP, Johannesburg spoke to a deputy in Grahamstown and said, but this name is known to me.

ADV NGCUKAITOBI SC: I see.

ADV MAEMA: And then that is when Kevin Edwell then phoned Les Roberts, the two deputies, and then Kevin then said, will you be interested to come to Johannesburg? I said, of course I will.

20 **ADV NGCUKAITOBI SC**: Were you in Grahamstown for a short period?

ADV MAEMA: I was in Grahamstown for a very short period.

ADV NGCUKAITOBI SC: Oh, I see.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Okay, not that is, so that is why,

actually, substantively you worked in Johannesburg.

ADV MAEMA: Substantively in Johannesburg.

ADV NGCUKAITOBI SC: You vied through Grahamstown.

ADV MAEMA: Indeed, indeed, indeed, Chairperson.

ADV NGCUKAITOBI SC: No, I understand. Okay, ,and then you did work at the PCLU, which is the TRC cases unit.

ADV MAEMA: Yes, yes.

ADV NGCUKAITOBI SC: Okay. And how long was that?

ADV MAEMA: It was for about less than a year when, you
10 see, with the introduction of the NPA Act in 1998, the NPA in
terms of the Constitution became a single prosecuting
authority and posts were then advertised for deputies. I
applied and I was appointed a Deputy Director of
Prosecutions in the North West. And then on the 1st of May
1999, I assumed my responsibility as a Deputy Director of
Prosecutions in the North West.

ADV NGCUKAITOBI SC: So you are at the national office
for 1995 to 1998. No, sorry, you are at the DPP's office in
Johannesburg up until 1998.

20 **ADV MAEMA**: Yes.

ADV NGCUKAITOBI SC: But then you are only at the
national office between November 1998 and May 1999.

ADV MAEMA: Indeed, indeed.

ADV NGCUKAITOBI SC: Okay, I understand. And then in
May 1999, you then go to Mmbatho.

ADV MAEMA: Indeed, Counsel.

ADV NGCUKAITOBI SC: Okay. And when you were in Mmabatho, you were working as the Deputy Director.

ADV MAEMA: Yes, I was working as a Deputy Director of Public Prosecutions.

ADV NGCUKAITOBI SC: Yes, and then you were there until you went on retirement recently on the 4th of December 2024.

ADV MAEMA: Yes, on the 4th of December, things took a turn, yes, and I decided, I penned a letter informing the NPA
10 that I was, I had now reached the age of 60. I intend going on retirement.

ADV NGCUKAITOBI SC: No, I think you should explain those circumstances to the panel. I think they want to know.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: What are the circumstances you say took a turn?

ADV MAEMA: Chairperson, in February 2019, Advocate Shamila Batohi was appointed as the National Director of Public Prosecutions. On a day in, on a Friday, I was part to
20 the office of the National Director of Public Prosecutions. PCLU is based in the National Director of Prosecutions office. And our office was on the same floor with that of the National Director.

So as I walked to the photocopy, I would from time to time bump into the National Director. As I did on that day,

in front of the lift, and Advocate Batohi then asked me, you are appointed for the North West, what are you doing here? And then I, I then informed her that I am busy with work that was allocated to me by your predecessor. Her predecessor would have been Advocate Sean Abrahams that I was specifically referring to. And then she thereupon said to me, no, you must go back to the North West.

I was a bit taken aback by that stance. I indicated to Advocate Batohi that I came to head office, to the office of
10 the PCLU, as a result of having been requested to do so in writing. So I said, well, I have no problem with it, but may you please put it in writing. And then she said to me, no, you can go to the North West, I will tell Johan. Johan then would be the Director of Public Prosecutions, Advocate Johan Smit SC.

This discussion, Chairperson, happens in the
passage and I would have expected a conversation that affects my work to have happened in a better, decent manner. I would have expected the National Director to call me to her
20 office and to say why, in her view, I should go back to the North West. It did not happen.

And then I went to my office, which is a few steps away from there, from the foyer where we met. Chairperson, I barely sat down. It means I was just about to sit down when Danie Smit, the office manager in the office of the National

Director, walked in. And when he walks in, he says to me, you know, he was rubbing his hands.

CHAIRPERSON: I beg your pardon, is that Advocate Smit?

ADV MAEMA: No, no, no, Danie Smit is a corporate manager in the office of the National Director.

CHAIRPERSON: Oh.

ADV MAEMA: He says, Advocate Maema, please do not shoot the messenger, but you must vacate the office. And I say, vacate the office? Well, the direction from the National
10 Director, Advocate Batochi, is that you must go back to the North West. I said, but I just indicated to her that I needed it in writing. And he continued rubbing his hands and said, do not shoot the messenger, but you must vacate the office, I need to use it on Monday, or the ensuing week. And I said, but Danie, I have files that I am working on. And then Danie then said to me, well, those files can be put in the safe.

So what they did was they then, Danie then, Danie Smit, approved that some of the files that could fit into the safe could go into the safe and those that cannot fit in the
20 safe, I should, then they gave me a bakkie, a van, that I loaded into the bakkie, and I drove home on that Friday, in Johannesburg, and on Monday morning at 8 o'clock, I was in Advocate Johan Smit's office, to his surprise. And Advocate Johan Smit said ...[intervenes].

ADV MAEMA: Who is Advocate Johan Smit now?

ADV MAEMA: He is a DPP in the North West.

ADV NGCUKAITOBI SC: So you were back in Mmabatho on Monday?

ADV MAEMA: I am back in Mmabatho now. And he was surprised, he was equally surprised. He said, well, I related the story to him. He said, no, you are most welcome here, we need additional hands, your experience, no, perfect. So that is how then I went back to the North West.

ADV NGCUKAITOBI SC: Yes. Now, at the time that you
10 were essentially hounded out of the office, the disciplinary steps you are talking about in paragraph 10, had they been commenced, started?

ADV MAEMA: They had not commenced yet.

ADV NGCUKAITOBI SC: Okay, were you aware of any impending disciplinary steps?

ADV MAEMA: I was completely unaware of any impending.

ADV NGCUKAITOBI SC: Yes. And then take us through then to how, we now know how you were pushed out of the office by Advocate Batohi, according to you ...[intervenes].

20 **ADV MAEMA**: Yes.

ADV NGCUKAITOBI SC: Without warning, without notice.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: And what we are still not aware of is what process led to the DC and what was the DC about?

ADV MAEMA: Chairperson, what happened then was I went

back to the North West and worked as a prosecutor normally. That means checking work of senior state advocates, checking work of advocates, and doing the work myself. Chairperson would remember that I am one of the deputies who, unlike other deputies in other offices, do not sit in the office. I will do chamber work, but I will bring my own bit of doing court work self. So, yes, I was doing the work of a Deputy Director of Prosecutions and work of advocates in the DPP office, which included decision dockets, appeals, and
10 doing circuit courts.

Yes, now in, I think it was in May 2019, I got a call from the Director of Prosecutions then, Advocate Mokhari, then said to me, well, you will have to return the criminal cases that you are busy with. She wanted an audit of all the cases that I was doing, and she informs me that her instruction is that I should not do any court work anymore. And then ...[intervenes].

CHAIRPERSON: When was this, the date you gave us?

ADV MAEMA: It was in May 2019. This happened a day
20 after I received a letter from Human Resources that was informing me of the commencement of a disciplinary hearing in 2019. But I was, what surprised me was the angle that it took. I had part-heards in the high court, in the regional court, and I was simply told, you must make an audit of the cases, all the cases that you have, and then return them to

the Director of Prosecutions, Advocate Mokhari.

CHAIRPERSON: Advocate who?

ADV MAEMA: Mokhari, Rachel Mokhari.

CHAIRPERSON: Oh, okay.

ADV NGCUKAITOBI SC: She was at the time the DPP.

ADV MAEMA: She was at the time the DPP. Chairperson, she is in the province called Rachel Nengovhela, yes. So and then I then returned all the files. I remember specifically that the next week I had made arrangements to go on circuit court.

10 I was on circuit court with the Deputy Judge President, Judge Djaje, and Ed Mogwasi.

That week when I was on circuit court - Chairperson?

CHAIRPERSON: Is that Madam Justice ...[intervenes].

ADV MAEMA: It is Madam Justice Djaje.

CHAIRPERSON: Yes, okay.

ADV MAEMA: I was then informed that I am going to be served formally with papers commencing the disciplinary hearing.

ADV NGCUKAITOBI SC: Sorry, just clarify something,
20 because there might be unintentional confusion.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: In 2019, the DPP of North West was Mr Smit SC.

ADV MAEMA: At the time of my, of this incident happening?

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: He had just left.

ADV NGCUKAITOBI SC: No, I understand that, but I just want the dates to be correct. In 2019, the DPP of North West was Mr Johan Smit SC, correct?

ADV MAEMA: Johan Smit, yes, yes, yes.

ADV NGCUKAITOBI SC: And when did he leave?

ADV MAEMA: I do not have a specific date when he ...[intervenes].

ADV NGCUKAITOBI SC: But your DC was not in 2019, it
10 was in 2024.

ADV MAEMA: Oh, yes. No, what happened was it was commenced in 2019.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: The papers were served in 2019.

ADV NGCUKAITOBI SC: Yes, correct.

ADV MAEMA: And I was then asked to do these things, but the files and everything was returned at the time that Advocate Mokhari was the DPP.

ADV NGCUKAITOBI SC: Yes, all right.

20 **ADV MAEMA:** Yes.

ADV NGCUKAITOBI SC: Okay.

ADV MAEMA: And then what happened then was the result of this, Chairperson, led to a prohibition to continue the court work that I was doing and to continue doing any checking work. So what would happen is that I would literally walk into

the office at 8 o'clock in the morning, I will sit in the office and read emails and read the newspaper, because I was prevented from doing any checking work. I was prevented from doing any work, with the big salary that I was earning in the NPA.

ADV NGCUKAITOBI SC: Yes, but you mentioned that Advocate Rachel Nengovhela told you that her instructions were that you should stop doing criminal work.

ADV MAEMA: Indeed, Counsel.

10 **CHAIRPERSON:** What does that mean, her instructions? Who is instructing her?

ADV MAEMA: The instruction came from the National Director that I should not get involved in any - my continued involvement, the letter that I received, my continued involvement in criminal cases places the name of the NPA in disrepute.

ADV NGCUKAITOBI SC: Yes, but that is ...[intervenes].

ADV MAEMA: Chairperson, this is an institution that I worked tirelessly for 31 years. Now, all of a sudden, because
20 of a decision that has been taken in the line and scope of my work, I am now in a position where my continued work will place the NPA's name in disrepute.

ADV NGCUKAITOBI SC: Yes, when you say the National Director, just call her by name.

ADV MAEMA: Advocate Shamila Batohi is the one who

instructed Advocate Mokhari to remove me from any active work within the NPA. The result, Chairperson, was that ...[intervenes].

CHAIRPERSON: Did you say that this message was conveyed to you whilst you were at the circuit court?

ADV MAEMA: The reason why I mentioned that week of the circuit court, when I was told that head office wants to find out where I was so that they can come and serve me with the documents, I was at circuit court in Mgwasi. And then, this
10 fear was there that, you know, what would then happen with the part-heard that I am doing? And then, during that week, in the morning in chambers, I indicated to Madam Justice Djaje that there is this pending thing that might happen and if it happens, I do not know whether it will affect my ability to continue prosecution in the matter that I was busy with. But then, what happened was we did the circuit court until the Friday and the letter of suspension did not arrive. So it arrived later.

So the result was that in 2019, after I was told, you
20 are not getting involved in any work, I then became redundant, coming to the office, reading the newspaper, and doing absolutely nothing. This is a man who was, who is used to running around, reading dockets, you know, working under pressure and all of a sudden, it is a complete dry land. I have nothing that I am doing in my office.

Chairperson, it went to an extent where I would, junior staff in the office would not know what is happening, so they would come to me and say, Advocate Maema, I have a challenge with this, and I would give them advice as to how to deal with it and say, go to the library, look at this and this. And then at some instance, when they have a challenge, because pressure in the DPP office is enormous, so I say, no, bring it, I will do it. So I would do work and not be able to sign that I have done that work and give it to that junior
10 advocate or that senior advocate to present it as his own. I would not be able to sign indictments.

You know what happens in the DPP office? A file comes to you, you issue queries on the murder docket. When it comes back, the admin section will bring it to you, then they would bring it to me, not knowing that I am not in a position to decide that docket. And then when they bring it to me, then I will take it back and say, I am not in a position to handle it.

So this redundancy happened from 2019. The
20 disciplinary hearing was pending. It was not commencing. You know, ultimately when I received the papers, Chairperson, I discovered that it is the decision that I took in the Johan Booysen matter that led to all of this that was happening.

ADV NGCUKAITOBI SC: Just tell me, on the point of the DC

not commencing, I mean, most of us have done labour law before.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: When there is a DC, a prosecutor is appointed, a proforma prosecutor is appointed ...[intervenes].

ADV MAEMA: Indeed, Chairperson.

ADV NGCUKAITOBI SC: Who must sign the charges ...[intervenes].

10 **ADV MAEMA**: Yes.

ADV NGCUKAITOBI SC: And then bring witnesses and prosecute.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Was a prosecutor appointed in your case, or an initiator? Yes, I am corrected.

ADV MAEMA: Yes, an initiator was appointed.

ADV NGCUKAITOBI SC: Who was the initiator?

ADV MAEMA: He is sitting here, it is Advocate Hulley SC.

20 **ADV NGCUKAITOBI SC**: I see. Was a Chairperson appointed?

ADV MAEMA: A Chairperson was not appointed yet. The charges remained pending and ja, we complained. We took the NPA to the CCMA and there was a postponement. There was a judgment ultimately. But the effect thereof was that I remained redundant in the office doing nothing.

ADV NGCUKAITOBI SC: So an initiator is appointed, but no Chairperson?

ADV MAEMA: Yes, yes.

ADV NGCUKAITOBI SC: All right.

ADV MAEMA: And then, on the 4th of December, 2024, I decided, no, I cannot be treated in this manner by an institution that I have given my entire life, 31 years of my life. On the 4th of December, I then penned my letter informing the employer that I am intending on taking retirement as I have
10 reached the age of 60. I was not the only one. Advocate Musing, who was also in the same position, did the same thing. In fact, he did it a bit earlier than me.

ADV NGCUKAITOBI SC: Yes, well, we will see Advocate Musing's name does feature.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: But maybe to complete that part now that you have introduced him, when you say he was in the same position, what do you mean?

ADV BALOYI-MERE SC: Counsel, if I may interpose, and I
20 apologize. You said you, after you went to circuit court, the letter of suspension was served on you a week later.

ADV MAEMA: Yes, yes.

ADV BALOYI-MERE SC: What did the suspension entail, were you supposed to sit at home or were you supposed to come, report at work and do nothing? Maybe clarify us on

that.

ADV MAEMA: The latter, Chairperson, come to the office, sit in the office and do absolutely nothing.

ADV BALOYI-MERE SC: Let me understand. You are suspended.

ADV MAEMA: Yes.

ADV BALOYI-MERE SC: But you come to the office and do nothing?

10 **ADV MAEMA**: I am sorry, Chairperson, suspended with full pay.

ADV BALOYI-MERE SC: Yes.

ADV MAEMA: You come to the office and there is a concerted effort to ensure that I arrive on time, arrive at 8 o'clock, because when I arrive, the securities will say, Mr Maema, please, because sometimes you walk in and you are rushing, you do not sign the register, say, no, no, please, you must sign. I say, what do you mean I must sign? I have something that I am rushing. There is no, please, it is important, you must sign. We have been asked to direct you
20 to sign. Then I would sign the register relating to the time at which you come to the office.

ADV BALOYI-MERE SC: Thank you.

ADV MAEMA: But then do absolutely nothing. Chairperson, there is nothing that frustrated me during that time, like coming to the office and wanting to do work and not being

able to do work, the work that I have done for that period of years. It was very frustrating to me, but I could not do anything about it.

ADV NGCUKAITOBI SC: Mr Maema, what might help ...[intervenes].

MS RAMAGAGA: Through you, Chair.

ADV NGCUKAITOBI SC: Oh, sorry.

MS RAMAGAGA: Thank you. Advocate Maema, you say you were suspended but expected to report at work at normal
10 working hours.

ADV MAEMA: Yes, yes, Chairperson.

MS RAMAGAGA: And is that spelled out in your notice of suspension?

ADV MAEMA: It was not in so many word, but I was told I am suspended with full pay. What was communicated to me by Advocate Mokhari at the time was you are not allowed to touch any work in the office. So it was not specifically mentioned in the letter of suspension. The letter of suspension indicated that here are the charges that you are
20 going to be facing and you are suspended with full pay. A disciplinary hearing will commence. These are the charges.

MS RAMAGAGA: Okay, and do you have that letter of suspension?

ADV MAEMA: Yes, I do.

MS RAMAGAGA: Right, thank you.

ADV NGCUKAITOBI SC: Yes, Madam Ramagaga, yes, is on this point because I was going to say what might be helpful is for you to bring us that letter at some point and we will share it with the panel.

ADV MAEMA: Indeed.

ADV NGCUKAITOBI SC: And the instruction for you to come to the office on time was conveyed verbally, is that your evidence?

ADV MAEMA: My evidence is that the securities in the office
10 indicated that I am compelled to indicate the time of arrival and to indicate the time of leaving the office.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: But when I was told by Advocate Mokhari about the suspension, she did not in any way mention you know, signing the register, attendance register.

ADV NGCUKAITOBI SC: All right. You mentioned also that the initiator was Advocate Hulley SC.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: How did you know that?

20 **ADV MAEMA:** We had various meetings with Advocate Hulley.

ADV NGCUKAITOBI SC: Oh, I see.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Meetings to do what?

ADV MAEMA: We were told to appear on a specific date and

we came to the CCMA office in Sandton here, and Advocate Hulley then had a meeting with the Counsel who was representing us, Advocate Mathibedi SC. Yes, and there were some discussions and I think there was a chairperson appointed because then the hearing was postponed to a further date. Advocate Hulley would remember.

Those are the sad parts that I do not really want, my brain does not have the capacity to keep that negativity. You think about it and you push it away because you do not want
10 it to drag you down.

ADV NGCUKAITOBI SC: Yes, all right. So you think your memory could be failing you that the chairperson could have been appointed or was definitely appointed?

ADV MAEMA: I think the chairperson was appointed because we went to the date, we went to the hearing, all of us, Advocate Mosing, Advocate Mathenjwa, Advocate Marshall Mokgathe, ja, and the matter was further, was postponed to a further date. This matter was postponed and postponed and postponed. That is why I said we, because of
20 the frustration we then went to the CCMA. We did not get a favourable judgment. But the effect thereof was wearing you down. I decided on the 4th of December, I have had enough. I said, no, I am going on retirement.

ADV NGCUKAITOBI SC: Now you said you discovered at a certain stage that all of this was caused by the role you

played in the prosecution of the Cato Manor accused.

ADV MAEMA: The charges were spelling it out, clearly that it is because of the charges in the Cato Manor that I was ...[intervenes].

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Or that I suffered the fate that I was facing. When I look at the terms of reference, the terms of reference are almost the same as what I faced.

ADV NGCUKAITOBI SC: Which terms of reference?

10 **ADV MAEMA**: The terms of reference of this Commission.

ADV NGCUKAITOBI SC: Of Advocate Chauke?

ADV MAEMA: Advocate Chauke's terms of reference. It refers to paragraph 3.1.1. Well, 3.1.1 talks about the institution of racketeering charges against Major General Booyesen. But 3.1.1 says:

“Advocate Chauke supported the decision to prosecute the accused, notwithstanding that there was no evidence justifying the decision.”

20 3.1.2:

“Advocate Chauke recommended to Advocate Jiba, the Acting NDPP, the application for issuing a racketeering authorization.”

Whereas there was no evidence justifying the

institution of prosecution. So it is a pattern of just accusing us of instituting prosecutions where there is no evidence. It is the same pattern of, what happened to me is the same as what is contained in the terms of reference relating to Advocate Chauke.

ADV NGCUKAITOBI SC: Yes, all right Madam Chair, we will come to – sorry to interject. May I ask, Madam Chair, it is hot, can we take off our jackets. It is raining on our backs. We are sweating. The aircon just now was switched on and
10 then it seems to have been switched off. I apologize. I know you asked me to make the request. I totally forgot.

CHAIRPERSON: Yes, Advocate Maema, we are all battling with the heat and the coldness. You would understand why some of us are in this state. Are you feeling cold where you are if we were to switch on the aircon?

ADV MAEMA: It would not affect me at all. I will welcome it, Chairperson. The seat is fairly hot.

CHAIRPERSON: Yes, I will request our assistants to help us, the lady, Colleen. If you can assist with the remote and
20 make sure that that air conditioning is well functioning over there.

ADV NGCUKAITOBI SC: Unfortunately, Madam Chair ...[intervenes].

CHAIRPERSON: But that does not detract from the fact that - I am talking to you now.

ADV NGCUKAITOBI SC: Of course.

CHAIRPERSON: That does not detract from the fact that you can take off your jacket if you wish.

ADV NGCUKAITOBI SC: The reason I am saying this is because that one only assist the Chauke team.

CHAIRPERSON: You can take off your jackets.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. Madam Chair, I am in your hands when I should proceed.

CHAIRPERSON: Advocate Maema, when you feel cold, you
10 can just regulate the air conditioning with that gadget.

ADV MAEMA: Thank you, Chair.

CHAIRPERSON: Or you can even take off your jacket if you are inclined to do so. I know you are smiling. I know you will not do it.

ADV MAEMA: I will not.

CHAIRPERSON: Knowing you from past experience, I know you will not take your jacket off.

ADV MAEMA: Court etiquette has taught me to do things in a particular way. That is why I am not comfortable
20 ...[intervenes].

CHAIRPERSON: I know you, Mr Maema.

ADV MAEMA: To take oath sitting down, really.

CHAIRPERSON: Thank you. You may proceed, Advocate Ngcukaitobi.

ADV NGCUKAITOBI SC: Thank you. Thank you, Madam

Chair. All right, so we are now at the point where you, according to you, have had enough of the unending disciplinary enquiry and you also know the substance of it is that you are being charged because of your role in the racketeering and predicate charges on Cato Manor, that you have had enough, you want to go. And you wrote a letter which is called the termination of service letter dated 4 December 2024. We also do not have that copy. Perhaps when you bring the suspension letter you can also bring that

10 one.

ADV MAEMA: Termination of service letter.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Because what happens, Chairperson, is you type it on your own computer and then you print it, you sign, you give it to HR. But I should have the version on my laptop, yes.

ADV NGCUKAITOBI SC: Now was there a separate charge sheet which explained what the allegations were?

ADV MAEMA: Yes, there was.

20 **ADV NGCUKAITOBI SC:** All right, so perhaps if you could also provide us with that one. So, so far, just out of paragraph 10 alone, we have three documents we have asked you for. It is your suspension letter and your notice of disciplinary charges and your resignation letter. Okay, and you say that your last date of employment was 31 January

2025.

ADV MAEMA: Indeed, Chairperson.

ADV NGCUKAITOBI SC: Yes. Now, what are you doing right now whilst you have had a year and a month since you left.

ADV MAEMA: Ja, what happened then is I then applied to do pupillage. I was admitted to do pupillage in Polokwane at the Limpopo Society of State Advocates. That is where I met Advocate Mohlamonyane who was then offering me legal
10 writing.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Yes, so I started there on the 1st of February until the end of August when you wrote exams. I think the results came August, September, I think the beginning of October the results came. But it was a long wait.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: You know, waiting for the results of that exam is also not a nice thing.

ADV NGCUKAITOBI SC: Yes. And are you practicing now
20 as an advocate?

ADV MAEMA: Chairperson, I am commencing to open my office as an advocate. I am at the moment seeking chambers from which to practice. But the sweet and short answer is yes, I am practicing as an advocate.

ADV NGCUKAITOBI SC: Where, in Limpopo, or in the North

West?

ADV MAEMA: Chairperson, because my house is in Gauteng, I am looking for chambers in Gauteng.

ADV NGCUKAITOBI SC: All right, thank you very much.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Now, okay, we have covered paragraph 10, because it is quite a lot of information that is condensed in one paragraph.

ADV MAEMA: Yes.

10 **ADV NGCUKAITOBI SC:** And then when we look at paragraph 11, we will also cover your experience that you have had as the DPP on an acting basis. Can you just take us through that?

ADV MAEMA: Indeed, Chairperson, I acted as a Director of Prosecutions on several occasions. This includes the times when Advocate Smit SC was sick. Advocate Smit is elderly. He has been very sickly since 2000. And in fact, the saying I acted for seven months is an understatement. I think seven months was a continuous period when he was admitted in
20 hospital. But because of his age and because of his frailty, I was acting in his steads you know, fairly regularly. And then in 2010 ...[intervenes].

CHAIRPERSON: Before that, after completing your pupillage, did you sign the red book at the Limpopo Bar or any other bar?

ADV MAEMA: I signed at the Limpopo Bar.

CHAIRPERSON: So you are currently the Limpopo Bar member?

ADV MAEMA: Yes.

CHAIRPERSON: Thank you.

ADV MAEMA: And I also informed them as practice requires that I will be testifying as a witness. I do from time to time when I am called by the DPP office to testify in respect of cases that I do in organized crime. So when I was asked to
10 consider coming here, I did inform them.

CHAIRPERSON: Yes, thank you. Proceed, sir.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. Okay, so we were still covering paragraph 11, which is really your experience as DPP, although your substantive post was Deputy.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: But you also had experience as DPP.

ADV MAEMA: Yes, I acted when my own DPP, Johan Smit, was not well. And when the then DPP of South Gauteng was, Advocate Karen De Beer SC, she is mentioned in paragraph, 20 the end of paragraph 11.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: She was also sick towards the end of her career and Advocate Mpshe who was then the Acting NDPP,

asked me to go and act in Johannesburg, which acting period was 1 December 2009 to 31 May 2010.

ADV NGCUKAITOBI SC: Yes, you also had experience as the Acting Head of the PCLU, that is the TRC cases unit.

ADV MAEMA: Yes. I would do that when Advocate Pretorius was out of the country or when he was ill or when he was unavailable for any other reason, then I would be given an acting appointment.

ADV NGCUKAITOBI SC: Yes. So, I mean, it does appear
10 that you have significant experience at high level inside the NPA. It is not just the time, but it is also the type of experience you have gained.

ADV MAEMA: And the kind of responsibility that the NPA is prepared to bestow upon you. It went to an extent where I said, no, I will not accept any other acting appointment. You appointed me as a Deputy, I am fine as a Deputy.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: I will execute my duties and responsibilities as a Deputy.

20 **ADV NGCUKAITOBI SC:** Yes, all right. Now, your functions as the Deputy Director are set out at paragraph 13. Can you briefly deal with those?

ADV MAEMA: Chairperson, as Deputy Director of Prosecutions in the office, I was entrusted with special prosecutions, I was entrusted with governance, and I was

entrusted with the organized crime, but predominantly my portfolio was organized crime and organized crime then leads you to dealing with the racketeering cases, serious, violent cases, yes.

ADV NGCUKAITOBI SC: But I mean South Africa's primary legislation on organized crime is the Prevention of Organized Crime Act, and racketeering is a feature of that act.

ADV MAEMA: Indeed, Chairperson.

ADV NGCUKAITOBI SC: So if you are a specialist in
10 organized crime, that would be your area of specialization.

ADV MAEMA: Indeed, indeed.

ADV NGCUKAITOBI SC: Yes. And also, not only were you in charge of organized crime, I mean you had specific knowledge and expertise in racketeering.

ADV MAEMA: Chairperson, I did, I have dealt with a number of cases.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Both as a prosecutor in court, and as well as the cases that I would push through or prepare and send to
20 the National Director for racketeering authorizations to be issued.

ADV NGCUKAITOBI SC: Yes. And that is what is in the last sentence of paragraph 13, is your experience specifically in racketeering.

ADV MAEMA: Indeed, Counsellor, I indicate that I

prosecuted five racketeering prosecutions in person.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Whilst I was in charge of about seven racketeering prosecutions where I would then supervise and guide and take the process through to the issuing of racketeering authorizations. The process of issuing of racketeering authorizations is the prosecutor must then prepare a prosecution memo where you summarize the case, where you summarize what is involved in the matter, where
10 you pinpoint the enterprise, the pattern of racketeering authority, pattern of racketeering activity, and then in a memo, depending on whether you do the prosecution in the regional court, in which case then you prepare a charge sheet. If it is in the high court, then you prepare an indictment together with the requisite racketeering authorizations for consideration by the office of the National Director.

ADV NGCUKAITOBI SC: Yes. No, I understand.

CHAIRPERSON: Let me just verify something you said
20 earlier with regard to the disciplinary hearing and when you appeared before the CCMA, you mentioned the names of Advocate Mosing, Mokgathla and Mathenjwa. Were they also subjected to disciplinary proceedings and charged?

ADV MAEMA: Yes, Chairperson, we were charged in the same matter. In fact, what happened, disciplinary hearing in

terms of the labour legislation, for some of us who have read labour law, is supposed to happen in the office where you are working. But the NPA was then, despite my being based in the North West, they said, well, because it is involving Advocate Mosing who is based in the DPP, Pretoria, Advocate Mokgathla who is based in the DPP, Pretoria but head, serious, office of the OCO, what is it, serious economic cases. Advocate Mathenjwa ...[intervenes].

CHAIRPERSON: You can refer to it as OCEO.

10 **ADV MAEMA:** Yes.

CHAIRPERSON: I think we know all of us ...[intervenes].

ADV MAEMA: OCEO, yes. And Advocate Mathenjwa who is a Deputy in the office of the DPP in South Gauteng. So, well, including myself, we were all officials of the NPA who were pursued disciplinary by Advocate Hulley SC.

ADV NGCUKAITOBI SC: No, Advocate Hulley was just an initiator. You were being pursued if by any person, by advocate Batohi.

ADV MAEMA: Indeed. Indeed.

20 **ADV NGCUKAITOBI SC:** Yes. Okay, I think the point I was trying to get to in paragraph 13 is to expatiate your knowledge and expertise in racketeering, which we have dealt with now, I think, unless you want to add anything on your experience and knowledge of racketeering.

ADV MAEMA: No, I have, except to say, Chairperson, when,

because of my experience in racketeering cases, and because of having dealt with the cases myself, I, this now leads me to paragraph 15, where I say, I think in my view ...[intervenes].

ADV NGCUKAITOBI SC: No, let us start with 14. There is a case ...[intervenes].

ADV MAEMA: Let us start at 14.

ADV NGCUKAITOBI SC: There is a case that is mentioned there, S v Ndlaleni[?].

10 **ADV MAEMA:** Oh, yes, the State v S Ngongoma Ndlaleni was a racketeering matter that we decided in 20, in 2008, 2010, where an individual was charged as an enterprise. And in the NPA, I, you know, I was applauded for having secured a conviction of an individual as an enterprise. And I always found that surprising because the enterprise is defined in section 2 of POCA, or in the definition section of POCA and an individual can be an enterprise. A group of individuals associated, in fact, can be an enterprise. Even a formal structure with hierarchy can be an enterprise.

20 So all you do is look at the legislation, look at the facts that you have, do they accord with the definition of an enterprise, and do you have sufficient evidence to prove an enterprise and all the elements, pattern of racketeering activity, there being more than one offence listed in schedule 1. If all the requirements outlined in the legislation are there,

then, you know, you commence a racketeering prosecution.

ADV NGCUKAITOBI SC: Yes, thank you. And then in paragraph 15, that is where you wanted to go to, that you think the reason you were recommended to be involved as a leader of the prosecution team on Cato Manor was because of your experience in racketeering.

ADV MAEMA: At the time, yes. At the time, when it happened, I thought, oh, well, it could be because of this, because every time when you go to a conference, they will
10 say, Maema got this conviction of an individual as an enterprise.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: So, I thought it was because of that involvement in the Ngongoma Ndlaleni matter that the Acting NDPP, Advocate Jiba, when it was brought to her attention that there is something in KZN that might mirror what is in racketeering offences, then she thought of Maema who has done racketeering cases and also thought about Mathenjwa. At the time in 2010, Advocate Mathenjwa had dealt with the
20 Jub Jub matter. It was not a racketeering matter *per se*, but it was a matter that caused a lot of, what do you call it, a lot of unhappiness in Soweto.

It happened at the time when I was acting in Johannesburg. So I actually allocated the Jub Jub matter to Advocate Mathenjwa and Advocate Khanyile, but Advocate

Mathenjwa dealt with the prosecution and dealt with it successfully. So when incidents in KZN were happening, which would mirror something that may be in that line, I thought that was the reason for the recommendation that I be part of the team. But then, having spoken to General Mabula, who was the lead investigator of the DPCI, the Director of Priority Crimes Litigation unit, then I gathered that when he approached Advocate Jiba for a prosecutor-guided investigation in respect of this incident, Advocate Jiba asked

10 him, is there a prosecutor that you know that would recommend?

General Mabula is in the North West, I am in the North West. I was his obvious choice, he said. I worked with Mahema in organized crime, yes. And because of Advocate Mathenjwa's involvement in Jub Jub, in my view, then we were the two that were designated to assist the DPCI team, as well as the IPID team in KZN, with what appeared to be offenses in KZN.

ADV NGCUKAITOBI SC: Yes, thank you.

20 **CHAIRPERSON:** Correct me if I am wrong, was the reason, the further reason also not the fact that there had also been a case involving someone in Rustenberg who then had to be prosecuted in KZN with all others, the Rustenberg case?

ADV MAEMA: No, the Rustenberg case was, in my view, not a consideration. I thought it was my experience in

racketeering matters and, Chairperson, there was a prosecution that I dealt with at the so-called “Skielik” prosecution. The “Skielik” prosecution was a racist attack in Swartruggens. So it was one of the prosecutions that was in the media a lot, so I dealt with that matter and ...[intervenes].

CHAIRPERSON: You are now going to my turf.

ADV MAEMA: Oh, yes. I have missed the question. My apologies.

CHAIRPERSON: No, the “Skielik” matter is in my turf.

10 **ADV MAEMA**: Oh, yes.

CHAIRPERSON: Yes. Yes, but I do understand those reasons why you were then recommended to go to KZN and lead the team. I thought that perhaps the Rustenberg matter was also a consideration, but I do understand your answer.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Yes, I was just checking, Madam Chair, that centralization case, I am just looking at my notes now. But I suppose that came after you were approached. That is your point.

20 **ADV MAEMA**: Yes. Remember the ...[intervenes].

CHAIRPERSON: Yes, I think it will come later.

ADV MAEMA: We will deal with it, yes.

CHAIRPERSON: Maybe we should not divert at this stage. Advocate Maema, I think just to save time, let Counsel take you there at a later stage.

ADV MAEMA: Thank you. Thank you, Chair.

ADV NGCUKAITOBI SC: Thank you. So paragraph 16, you already showed us your familiarity with the terms of reference, so I will not get into that because you mentioned that voluntarily when I was asking you about something else.

ADV MAEMA: Oh, yes, about the ...[intervenes].

ADV NGCUKAITOBI SC: I was asking you about your own DC and then you said it is actually mirrored in this DC and then you read out the terms of reference.

10 **ADV MAEMA**: Indeed, indeed.

ADV NGCUKAITOBI SC: Yes, so we can skip paragraph 16 then. And then in paragraph ...[intervenes].

CHAIRPERSON: Is it, I am now reminded it is the tea time.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Time flies.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: We had gone past the tea time. I am reminded it is now tea break time, so, Advocate Ngcukaitobi, do you want to pause now or do you want to pursue with that
20 question?

ADV NGCUKAITOBI SC: No, Madam Chair ...[intervenes].

CHAIRPERSON: Or you will park it here until we reconvene?

ADV NGCUKAITOBI SC: Yes, I would rather park it here.
Thank you.

CHAIRPERSON: Yes, thank you. Advocate Maema, we have agreed with Counsel that we take our lunch, pardon, the tea time at quarter past and then we will adjourn for 30 minutes. We will reconvene at 10 to ...[intervenes].

ADV MAEMA: 10 to 12?

CHAIRPERSON: 10 to, yes, at 10 to 12, for you to proceed. Remember, you are still under oath as we adjourn.

ADV MAEMA: Thank you, Chair.

CHAIRPERSON: Thank you, Counsel. We will adjourn for
10 tea for 30 minutes.

ENQUIRY ADJOURNS

ENQUIRY RESUMES

CHAIRPERSON: Good day everyone, Mr Malema, Mr Maema, not Mr Malema.

ADV MAEMA: It happens all the time.

CHAIRPERSON: Mr Maema remember you are still under oath, you may proceed Counsel.

ADV MAEMA: I do, Chairperson, thank you.

ADV NGCUKAITOBI SC: Thank you. Mr Maema, we have
20 skipped paragraph 16 and we are at paragraph 17 of your statement and where you say that you were:

“...responsible for coordinating the prosecution team, preparing the prosecution memoranda and draft indictments and engaging with the processes required for a

racketeering authorisation under POCA...”

And you have first-hand knowledge of the evidentiary material available at the time, the decision-making processes and the role played by Advocate Chauke. Could you just explain that?

ADV MAEMA: Indeed , Chairperson, I started saying I am well placed to deal with the allegations against the Advocate Chauke, that notion of no evidence because as a lead prosecutor I was confronted with that evidence, I went through that evidence, well obviously as a lead prosecutor
10 against, in the state case against Major General Booysen and member of the Cato Manor unit, I took the responsibility to coordinate the activities of the prosecuting team, which includes preparing the prosecution memoranda, I do not like the term draft indictment, the indictment and engaging the process required for racketeering authorisations under POCA. I confirm that I have first-hand knowledge of the evidential material that was available and the decision-making process within the NPA and Advocate Chauke who was coordinating in the beginning phases of the investigation,
20 I am convinced with the role that he played and I will be able to deal with the issues that are raised in the terms of reference.

ADV NGCUKAITOBI SC: Thank you very much, we can skip paragraph 18, 19 20, 21, 22, 23, 24 because they are just a guide to the reader of the statement about what is to happen

in the statement.

ADV MAEMA: Indeed, Chairperson.

ADV NGCUKAITOBI SC: And go to paragraph 25 where you say upfront Advocate Chauke did not fabricate the case or support the prosecution in the absence of evidence. Can you just in a snapshot explain what you mean there?

ADV MAEMA: Chairperson, I refer in the first sentence of paragraph 25 to proper institutional and evidential context and I say it is clear Advocate Chauke did not fabricate any
10 case to support the prosecution in the absence of evidence and I am emphatic that his involvement was a limited role, that of coordinating the role within the chain of command within the NPA. The decision to prosecute was grounded on extensive *prima facie* evidence which is contained in the dockets and taken through a collective prosecutorial process engaged with by the prosecution team which included the prosecutors, members of the DPCI as well as members of the
IPED.

When I talk about proper institutional context,
20 Chairperson, as a deputy within the NPA, I communicate through my DPP at all times when I communicate to the NPA and when I say when I communicate to the NPA it means when you communicate with the National Director the upper structure of the NPA. I do not have a direct line to Advocate Shamila Batohi or to Advocate Ramaite, as he then was, a

deputy National Director. So in my capacity as a deputy director I communicate through my DPP. Now we were based in the DPP office in South Gauteng, that is the office where we were working from. The majority of the staff was in that office.

So any communication that came from the prosecution team together with the investigation team had to be channelled through a DPP and the most appropriate DPP to channel it through is the DPP who is close by to us, who
10 is offering us a boardroom from which we could work, which was Advocate Chauke. But I must emphasise that the decisions that were taken is the decision of the prosecutors. All that Advocate Chauke did was a conduit to convey what we had decided to the upper echelon of the NPA. At no stage did he cede in any deliberations or at no stage did he question any of our decisions.

What he did was if I communicate to the National Director I will do a prosecution memo or do a covering letter in the name of a DPP and the nearest DPP was Advocate
20 Chauke who had offered us a boardroom from his office from where we were working. So he was just a conduit to convey any message that he wanted conveyed to the upper echelon of the NPA, to the National Director.

ADV NGCUKAITOBI SC: Yes. We will have to come back to this on the specific decisions but I think at the moment you

are probably at the right place to just explain the difference in role between the leader of the prosecution team of which you were and the coordinator of the prosecution of which Advocate Chauke was.

ADV MAEMA: All right. Now myself as a leader I was coordinating the functions and activities of the prosecution team and our relations with the team led by the DPCI as well as the team led by the DPCI. Advocate Chauke's role was strictly to update him so that he can update the National
10 Director, the command structure of the NPA, a deputy, prosecutors, chief prosecutors, everybody communicated through the DPP. So all he did was just you know a conduit through which our decisions or any hurdles or any challenges were, that we had, were channelled through him.

ADV NGCUKAITOBI SC: Yes. And in this enquiry there has been haggling certainly introduced by the evidence leaders about this concept prosecutorial decision.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: On the one hand the prosecutorial
20 decision is a decision to institute or attract a prosecution.

ADV MAEMA: Indeed, indeed.

ADV NGCUKAITOBI SC: But there is a range of other decisions in between.

ADV MAEMA: There is a range of other incidental decisions that take that one takes in the in the processes, yes.

ADV NGCUKAITOBI SC: And who was taking those in this case?

ADV MAEMA: The prosecution team will take all the decisions.

ADV NGCUKAITOBI SC: I see. You were the person.

ADV MAEMA: That is myself and the list of advocates that I mentioned on page 16 of the affidavit, paragraph 57.

ADV NGCUKAITOBI SC: Yes. Yes, we will come back to those but the point is this the decisions about evaluation of
10 evidence, identification of witnesses, whether a charge is good or bad, all of the I would say classical prosecutorial decisions were taken by yourselves.

ADV MAEMA: Those decisions were taken by ourselves as a prosecution team.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: And where Advocate Chauke signed documents they were actually drafted by you but because you had no line of sight to them.

20 **ADV MAEMA:** Absolutely. I was the one drafting the documents and he was my mouthpiece, so to say.

ADV NGCUKAITOBI SC: Yes. Thank you very much. All right. We will come back to that.

CHAIRPERSON: And I assume, Counsel, that we are speaking in terms of the Cato Manor case, cases.

ADV MAEMA: Indeed, Chairperson.

ADV NGCUKAITOBI SC: Nothing outside that, at least for now.

ADV MAEMA: A hundred percent, Chairperson.

ADV NGCUKAITOBI SC: If I may, Advocate Ngcukaitobi, do you know why Advocate Chauke was made to depose the affidavit before the Zondo Commission of Inquiry?

ADV MAEMA: Chairperson, the Zondo Commission was investigating what was referred to as state capture. The capture of institutions of the state. And Advocate Chauke, just like myself, just like Advocate Mosing, like Advocate Mokgatla and Mathenjwa, we all deposed two affidavits outlining our roles in Cato Manor and basically showing that we have not been captured by anyone. We are merely doing our work as expected of us.

CHAIRPERSON: As I read Advocate Chauke's affidavit before the Zondo Commission, it seems that certain allegations were made against him by Major General Booysen and Advocate Mlotshwa, if my recollection is correct.

ADV MAEMA: Advocate Mlotshwa, who was the acting DPP of...

CHAIRPERSON: KZN.

ADV NGCUKAITOBI SC: KZN. And I am asking that...

CHAIRPERSON: You may not be aware of that, but I ask the point with a view to ascertain whether in your understanding

of the allegations levelled against him, if you do, it seems that the allegations were that he made decisions which were motivated by ulterior motives and were biased.

ADV MAEMA: Those are, in a nutshell, the allegations, yes.

CHAIRPERSON: Yes. Now, I ask this question because you have just been talking about decision, prosecutorial decision-making.

ADV MAEMA: Indeed, Chairperson.

ADV NGCUKAITOBI SC: Now, if you say that decisions that
10 were made in relation to the Cato Manor matter were all made by the prosecutorial team, including yourself as the leader of that team, that seemed to exonerate Advocate Chauke insofar as the prosecutorial decisions, the impugned prosecutorial decisions are concerned? Am I correct?

ADV MAEMA: You are hundred percent correct, Chairperson. Those decisions were taken by me and the prosecution team to the exclusion of Advocate Chauke. Those decisions are ascribed to us. They cannot be ascribed to anyone other than the decision-maker who is us, the prosecution team.

20 **CHAIRPERSON**: Yes.

ADV NGCUKAITOBI SC: Yes. Thank you, Madam Chair. There is a legal section from paragraph 28 which tracks from the Constitution to the Act up until paragraph 32. The Commissioners are familiar with the law, but I think in one sentence, what is the importance of those sections for your

statement?

ADV MAEMA: Those sections outline the single prosecution service which has been established in terms of the section 179(2), I think, of the Constitution?

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Yes. Section...

ADV NGCUKAITOBI SC: Well, you actually deal with that concept at paragraph 30.

ADV MAEMA: Yes. It was important in terms of section
10 179(1) for a single prosecution service to be established in 1998 because prior thereto, we had separate, we had Attorney Generals. And the Attorney General in Pretoria could take a decision, was independent, and he could take decisions relating to prosecution of matters in the Pretoria area. The DPP in South Gauteng, in the North West, in the Free State, in the Eastern Cape, they could all take their own decisions and their decisions could not be questioned by any other person.

So when section 179 introduced national legislation
20 in terms of which a single prosecution authority was established, the National Director was established. And that National Director could then, in terms of section 179(5), review decisions of DPPs. So my understanding, Chairperson, is that original prosecution powers rest in the DPPs and the prosecutors in the regions. The National

Director has review powers in terms of section 179(5), and those review powers are exercised where there is a representation from the accused person, from anyone affected by the decision concerned.

But there must be a complaint to the National Director, for the National Director to exercise the review powers that are in section 179(5). But the National Director can, of course, a matter of national importance or a matter that is causing uproar in the community, ask the consent
10 DPP, what is happening in this matter? And can you give me a report in respect of this matter? But my understanding of the NPA Act is that original prosecution powers vests in the DPPs and the prosecutors in the DPP's office.

ADV NGCUKAITOBI SC: There is a second element to this concept of single, which is there is now one boss who can instruct Advocate Maema to leave the North West and go to KZN.

ADV MAEMA: Of course.

ADV NGCUKAITOBI SC: He can also instruct Advocate
20 Chauke to leave Gauteng and to go to KZN.

ADV MAEMA: Yes, but national legislation, the NPA Act regulates how that should happen. Like Section 24A of the NPA Act, the 1998 Act, says a Deputy Director of Prosecutions can exercise the powers that he has within the area where he has been appointed in terms of Section 24A.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: But in terms of Section 24B, he can exercise powers, prosecution powers, in relation to those instances where he has been authorised thereto, in writing, by the National Director of Prosecutions. So, Maema being myself, appointed in the North West, I exercise prosecution authority in the North West. But should the National Director deem it appropriate in terms of Section 24B of the National Prosecuting Authority Act 1998, the National Director can
10 give me a delegation in writing and say, Maema, who has been appointed in the North West, I delegate you to go to KZN and to look at this incident and those incidents must be mentioned in the delegation. So it cannot be a wide, go and do whatever, it must be with specific reference to, like in the case of Cato Manor, the incident involving the killing of people, the killing of people within the taxi violence situation that was occurring in, that was happening in KZN.

ADV NGCUKAITOBI SC: Yes. And specifically in your case, we have got your delegation at page 1A/51. Just to confirm
20 the point you have just been making.

CHAIRPERSON: [Indistinct]

ADV NGCUKAITOBI SC: 151, yes.

ADV MAEMA: Chairperson, it is GSM4.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: It is a delegation issued by Advocate

Nomgcobo Jiba, who was then the acting National Director of Public Prosecutions at the time, who, in terms of section 20 related to 21, 22 and 24 of the National Prosecuting Act, authorised Sello Gladstone Maema, who is myself, to exercise powers set out in section 21. So in section 21, it is prosecution powers. In the lower Court and in the high Courts, within the area of jurisdiction of KwaZulu-Natal Division, in, now it mentions, if it did not have this section, I would have queried it.

10 “...in all offences committed by members of the South African Police Service in the province of KwaZulu-Natal, and to act on behalf of the state in any appeal, any review, or other applications arising from such criminal proceedings within the province of KwaZulu-Natal, subject to the prosecution policy of the NPA, in any direction of the National Director.”

ADV NGCUKAITOBI SC: Yes.

20 **ADV MAEMA:** So here, in addition to the power that I have in terms of section 24A, in terms of section 21, I am authorised by the acting National Director to go to KZN and look at what is happening in relation to all offences committed by members of the South African Police in the province of KwaZulu-Natal. So it is specific. I cannot go there and deal

with offences relating to any other things except those ones specified in the delegation.

ADV NGCUKAITOBI SC: Yes. I mean, is that why then you say you took all of the decisions and you asked Advocate Chauke to be your conveyor belt?

ADV MAEMA: To convey them.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: So Advocate Mathenjwa, who was in the same capacity as myself as a Deputy Director of Public
10 Prosecutions, also had a delegation worded similarly to this one.

ADV NGCUKAITOBI SC: Yes, well, we have got it here at the following page.

ADV MAEMA: Oh, yes.

ADV NGCUKAITOBI SC: 1A/52.

ADV MAEMA: Yes.

CHAIRPERSON: Before you proceed, if I may, before you proceed, the delegation, GSM4, is in terms of section 25 of the NPA Act. Am I correct?

20 **ADV MAEMA**: You are.

CHAIRPERSON: Among other provisions.

ADV MAEMA: Among other provisions, yes.

CHAIRPERSON: Other provisions.

ADV MAEMA: You are correct.

CHAIRPERSON: So you would have to read them together.

ADV MAEMA: We have to read them together, yes, yes.

CHAIRPERSON: And, of course 20 sub 5 does not specify whether the person delegated with the powers would then be acting outside of his or her jurisdiction.

ADV MAEMA: Outside the area of jurisdiction to which he has been appointed.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Yes, yes, Chairperson, you are very right.

CHAIRPERSON: Yes.

10 **ADV NGCUKAITOBI SC**: Thank you, Madam Chair. All right. We have covered, then, the import of 30, 31, and 32. And then there is also the code of conduct that you have referred to at 33, 34, and 35. And to some extent, 36. Do you want to just cover that?

ADV MAEMA: Well...

ADV NGCUKAITOBI SC: That has got to do now with the regulation of the decision making by prosecutors.

ADV MAEMA: Of course, yes. Now, that exercise of a prosecution discretion, in terms of section 32(1)(a),
20 paragraph 31, will have to be exercised impartially. Prosecutors have to carry out and perform their duties and functions in good faith, but importantly, without favour, fear, or prejudice. And most importantly, subject to the Constitution and the law. So a prosecutor exercises his discretion in terms of the law. So what it means in terms of

the law, it means I cannot do it in a vacuum. I must have a docket that has allegations that are under oath, which allegations I am of the view that amount to a *prima facie* case before I can prosecute, before I can take a decision to prosecute.

CHAIRPERSON: Let us assume, and I take into consideration your very clear answer that Advocate Chauke did not make any prosecutorial decision. But evidence has been tendered here that he made certain prosecutorial
10 decisions. Let us assume that they are correct, or Advocate Batohi is correct, that he did make certain prosecutorial decisions. Should we not then be taken to the provisions of the Constitution, read with the Act, to identify in what respect precisely did he deviate from the provisions of the Constitution and the law?

ADV MAEMA: Indeed, Chairperson, I submit you are very correct, Chairperson. If any allegation is made that he performed any function contrary to the law, then that section has to be referred to. But insofar as the Cato Manor matter
20 was concerned, I was the lead prosecutor. I and my team took all the decisions relating to the Cato Manor. And all we did was, because of the protocol in the NPA, of not being able to communicate directly to the National Director, he exercised a coordinating role of ensuring that whatever that we decide is communicated correctly to the National Director.

And this would happen by means of briefings that we do to him and reports that we write to him. So as until when Mr Nxasana directed that he should not be party, he should not partake because he is appointed only in South Gauteng, before then, being prosecutors who are based or being a team that was functioning from his office, we saw no other person to communicate the decisions that we have taken, to communicate prosecution decisions that we have taken to the National Director. We used the Director of Prosecutions who
10 was close by to us.

ADV NGCUKAITOBI SC: Thank you, Advocate Ngcukaitobi.

ADV NGCUKAITOBI SC: Thank you. You know, what I had not noticed until recently was that your delegation also included litigation. So if there is a case that comes to challenge the decisions, you actually had the mandate to defend it.

ADV MAEMA: Indeed, Chairperson, we did. It is specific in the delegation that if there is any review or any appeal, we are mandated to deal with it.

20 **ADV NGCUKAITOBI SC:** And you know now Mr Chauke is now charged, among others, for supporting the opposition, sorry, the institution, firstly the opposition to the review and the institution of the appeal.

ADV MAEMA: Which is very upset when the NPA knows who made those decisions. It is no secret the prosecution team,

Maema and his prosecution team made those decisions. And when the Gorven judgment came out ...[intervenes]

ADV NGCUKAITOBI SC: The Judge Gorven judgment.

ADV MAEMA: My apologies, Counsel, Judge.

CHAIRPERSON: Yes, thank you.

ADV MAEMA: Thank you, Counsel. When the Judge Gorven judgment came out, we had a meeting. We had a briefing session with the Counsel who dealt with Advocate Laurence Hodes SC and we registered our dissatisfaction with him and
10 we informed Advocate Chauke, our coordinator who was conveying all our decisions to the National Director. We informed him that we formed a view that we should appeal this decision because we do not agree with it.

CHAIRPERSON: Not only appealing, but opposing the review application also, I suppose.

ADV MAEMA: Initially, Chairperson, we considered appealing it. But if you go through the decision of Judge Gorven, you will see that there is a ...[intervenes]

ADV NGCUKAITOBI SC: You are not answering the right
20 question.

ADV NGCUKAITOBI SC: Okay.

ADV NGCUKAITOBI SC: The Judge is asking the decisions that the prosecution team took did not only include appealing, but also included opposing initially...

ADV MAEMA: Of course, yes.

ADV NGCUKAITOBI SC: ...*ab initio*, opposing the review.

ADV MAEMA: Yes, yes. You are very right.

ADV NGCUKAITOBI SC: Yes. Well, that is what the Judge was asking you.

CHAIRPERSON: Yes.

ADV NGCUKAITOBI SC: Just answer that question.

CHAIRPERSON: Thank you, Counsel.

ADV MAEMA: Thank you, Chairperson. We also had the authority to oppose any application that would have been
10 launched in challenging any decisions that we had taken.

ADV NGCUKAITOBI SC: But as a fact, who took the decision to oppose the application by Mr Booysen?

ADV MAEMA: The prosecution team took that decision. Myself and the prosecution team took that decision to oppose it.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: And at no stage was Advocate Chauke part of the decision. What we did was we communicated our decision to him to communicate it to the National Director.

20 **ADV NGCUKAITOBI SC:** Yes. Thank you. Madam Chair, we have finished the ...[intervenes]

CHAIRPERSON: And what is supposed to be obvious, the respondents. Who were the respondents in that matter, by the way?

ADV MAEMA: The respondent was the acting National

Director. Because what happened was Advocate Laurence SC, who was appointed, Advocate Laurence Hodes SC, who was appointed to deal with the matter, then dealt with an affidavit in the name of the acting National Director, Advocate Jiba. And as a prosecution team, we were kept in the dark. We did not see that affidavit until it was filed.

CHAIRPERSON: The appeal in the SCA, the NPA was the appellant. Correct?

ADV MAEMA: Correct, Chairperson.

10 **CHAIRPERSON:** And we are told that Advocate Chauke deposed an affidavit on behalf of Advocate Jiba insofar as that appeal is concerned. I am not sure whether I am mixing the facts. This is subject to correction. But even so, does the mere fact of deposing an affidavit or drafting an affidavit on behalf of the head of the NPA in and of itself mean that he was instituting an appeal himself, Advocate Chauke?

ADV MAEMA: No, no, no, Chairperson, not at all, because it was our view *ab initio* that that decision of Gorven J should be appealed against. And, Chairperson, maybe if I should
20 mention that when Advocate Nxasana was appointed later and the appeal was pending, he gave us instructions not to appeal that decision. He says, if you look at paragraph 39 of Honourable Gorven J's judgment, it says, if sufficient evidence emerges or if the state procures sufficient evidence, nothing prevents them from approaching the National Director

afresh to procure fresh racketeering authorisations. And that was a decision that we took instead of appealing when we were told that not in my name will you appeal. We said, well, the judgment allows us to go back to the drawing board and to secure evidence justifying the issuing of racketeering authorisations. And that decision was taken by the prosecution team with the exclusion of Advocate Chauke.

ADV NGCUKAITOBI SC: Yes. Thank you.

CHAIRPERSON: Counsel, I interrupted you because you are
10 talking about the delegated powers among others to litigate. That is where I was.

ADV NGCUKAITOBI SC: I was going to show you that specific paragraph. So if you go back to 1A/151.

ADV MAEMA: Say again, Counsel?

ADV NGCUKAITOBI SC: If you go back to 1A/151 at GSM4.

ADV MAEMA: I am there, Counsel.

ADV NGCUKAITOBI SC: Yes. So if you look at the last paragraph among the terms of your delegation. So you are given the delegation to exercise powers under section 20 of
20 the Act. But the more important one for the purposes of the review and the appeal is the last delegation. Can you confirm what that delegation says?

ADV MAEMA: Indeed, Chairperson. It says:

“...and to act on behalf of the state in any appeal, review or other applications arising

from such criminal proceedings within the province of KwaZulu Natal subject to the prosecution policy of the NPA and any other directive of the National Director.”

ADV NGCUKAITOBI SC: Yes. So the actual powers to oppose the application fell with you, who holds a position even below that of Advocate Chauke.

ADV MAEMA: Indeed, indeed, Chairperson.

ADV NGCUKAITOBI SC: Yes. And the same if you go to
10 the second authorisation of Advocate Mathenjwa, which is a page later, 1A/152. He also has delegated powers to oppose review proceedings and to institute appeals.

ADV MAEMA: Indeed, Chairperson.

ADV NGCUKAITOBI SC: Yes. That is then confirmed – who was Martie van Wyk, the name that appears at 1A/153? Sorry, I think that seems to have been...

ADV MAEMA: The next page.

ADV NGCUKAITOBI SC: Yes, the following page, yes.

ADV MAEMA: Okay.

20 **ADV NGCUKAITOBI SC:** That seems to be a PA, if I am not mistaken.

ADV MAEMA: Yes, Martie van Wyk was the PA to the DPP of the North West.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: We are now at GSM5.

ADV NGCUKAITOBI SC: GSM5.

ADV MAEMA: SGM5.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: She acted at both the PA of the DPP as well as the PA of the chief prosecutor.

ADV NGCUKAITOBI SC: Yes. But the point, if you look at the content of that email, Mr Smith is telling Advocate Jiba the following:

10 “I am informed by Advocate Maema that you
 have decided that he must be part of the
 team that will handle the Cato Manor case in
 KZN. He is not very clear as to what his role
 should be and has indicated to me that he
 would only be required to attend the initial
 planning sessions to help in putting together
 a plan of action and help in ensuring that all
 the agencies appreciate and understand
 their role in the operation, provide guidance
 and advice from time to time regarding the
20 investigation and prosecution. He would not
 be required to read the dockets and prepare
 the indictment and to do the prosecution. All
 his travelling and accommodation would not
 be carried by my office. In order for us to
 clearly understand his working relationship

with the rest of the team and to understand what would be required of him and indirectly of me as the head of his kindly confirm or correct our above-mentioned perceptions so that we at least could have some kind of MOU.”

It looks like at the beginning it was presented in a very vague way because at a later stage, in fact, you played more than what was initially described.

10 **ADV MAEMA**: In fact, at the beginning because Advocate Mathenjwa is a deputy, I am a deputy, that was my understanding of what my role would be. But when there is a letter that was written by Jackie Lepinka, because I wanted to find out exactly what my role would be because I thought Advocate Mathenjwa and I are on the same level. I mean, until I was told that you are the lead prosecutor and you will do prosecution. You will do everything what is contained in your delegation and not the things that are in GSM. Where is that email, Advocate Smith?

20 **ADV NGCUKAITOBI SC**: Can you look at 1A/150, GSM3?

ADV MAEMA: Yes. GSM3 was a communication from...

ADV NGCUKAITOBI SC: You said it was written by Jackie Lepinka.

ADV MAEMA: Yes, from the Office of the National Director.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Because I had communicated my uncertainty with the role that I am expected to be playing. When then I was told in no uncertain terms that my:

“...role will be determined by the events as the matter progress. This matter is a national project and therefore the cooperation from all the relevant identified officials is important and should not be hampered as it will have an impact on the said matter.”

10

Because at the initial beginning I thought I would be able to continue with the matters that I was dealing with in the North West and I will not be expected to deal with the prosecution decisions of those matters if they were to arise. But we were informed to the contrary that no, you will exercise powers that are in Section 24B, which is dealing with those matters. If it is prosecution, you prosecute. If it is an appeal, you deal with it, which means your full prosecution might, you go and exercise it in KZN.

20 **ADV NGCUKAITOBI SC**: Yes and I suppose unlike an ordinary prosecutor, here you have got something more substantive because they are saying if these people challenge this, oppose it. Do not come to me asking for permission.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: You have got the power.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: In fact, what we did was just as when we prosecute now, a prosecutor is expected, can be questioned, his authority to prosecute can be questioned at any time. So I am expected to have my prosecution delegation and to show it to anyone who wants to see it, be it a member of the public. My authority to prosecute when it is questioned, I should be
10 able to show any person what my authority is.

ADV NGCUKAITOBI SC: Yes. Madam Chair, we finished the index, which hopefully would be useful in referring to the annexures. It contains the GSM reference and the page number. So perhaps those could be handed up.

CHAIRPERSON: Yes, Counsel, thank you.

ADV NGCUKAITOBI SC: Mr Maema, do you have the index?

ADV MAEMA: I do have it.

ADV NGCUKAITOBI SC: Oh, sorry, I was waiting for you.

ADV MAEMA: Sorry. My apologies.

20 **ADV NGCUKAITOBI SC:** No, that is fine. I did not clearly get it.

CHAIRPERSON: I suppose this list will add up to the exhibit list that is now being prepared by Advocate Lekgetho?

ADV NGCUKAITOBI SC: Yes, Madam Chair.

CHAIRPERSON: Your team or your juniors will work with

her to make sure that there is a continuation from this list of annexures?

ADV NGCUKAITOBI SC: Yes, Madam Chair. Thank you. Mr Ramogale is in Court and is listening. All right, so now can we move on to Cato Manor now? I think we have done enough scene-setting. Okay.

ADV MAEMA: Indeed, Chairperson.

ADV NGCUKAITOBI SC: From Part B.

ADV MAEMA: Yes.

10 **ADV NGCUKAITOBI SC**: Okay. So take us through then Paragraph 38 and 39 and 40. We will deal with Colonel Ayer, but there you describe the command structure of the Cato Manor unit, the so-called Cato Manor unit.

ADV MAEMA: Yes, yes.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Chairperson, insofar as Cato Manor is involved, we considered, we looked at a number of case dockets of incidents which occurred during the period 2006 to 2007 involving the Cato Manor Serious Violence Crime
20 Unit, which was headed by General Johan Booysen, who was then holding the rank of a brigadier and he served as a director of that unit. Although the formal designation of the unit changed from time to time, for operational purposes, functional purposes, it remained essentially the same entity.

And I am saying this, Chairperson, because in 2006,

or in 2010, the concept of organised crime was introduced, where there was a specific focus now on organised crime. And what happened then from 2007 to 2010 was that Cato Manor SVC, Serious Violent Crime, became part of this new established organised crime unit. This organised crime unit was introduced in all the provinces. In the North West, in Gauteng, all the provinces had organised crime units and they had heads who were provincial heads of those organised crimes. In KZN, General Johan Booysen became the provincial head of organised crime. In the North West, General Mabula became the provincial head of organised crime.

10 **ADV NGCUKAITOBI SC:** Yes. And then in paragraph 40, you refer to the command structure, which is annexed as GSM1, 1A to 140.

ADV MAEMA: Chairperson, if you look at GSM1, if I can have a look at it. Chairperson, if you look right in the centre of GSM1.

ADV NGCUKAITOBI SC: 1A to 140.

20 **ADV MAEMA:** On GSM1, right at the centre there. Or let us say it is headed Provincial Organised Crime Organogram in KZN. Now, the provincial commander there, on top, would be General Johan Booysen.

CHAIRPERSON: Advocate Ngcukaitobi, I can hardly see, irrespective of my double lens.

ADV NGCUKAITOBI SC: Madam Chair, yes.

CHAIRPERSON: Can you see what is here?

ADV NGCUKAITOBI SC: Yes...

ADV MAEMA: Chairperson, I can see, because I worked on a copy that was more legible than this.

ADV NGCUKAITOBI SC: No, I think perhaps what we should do is to try and find a more readable copy, because I can see, but there are some parts that I also cannot see.

ADV MAEMA: Well, I can see all the parts. Provincial
10 Commander Organised Crime, KZN. Because I have worked on this matter. I have seen this document before.

CHAIRPERSON: Yes, we are not quibbling with that, Advocate Maema.

ADV MAEMA: Yes.

CHAIRPERSON: We need to have documents, because when we present this report to the President, you will not be there to explain to him. So we must have legible copies, at least.

ADV MAEMA: Indeed, Chairperson.

20 **CHAIRPERSON:** Or this document can be re-prepared. I do not know. Can you just get a clearer copy? Is it possible to get a clearer copy so I can read it into the record?

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: If you can read everything here, from Provincial Commander Organised Crime, KZN, and read what

is below that, I can, I see Booysen there.

ADV NGCUKAITOBI SC: All right.

CHAIRPERSON: Maybe you can take him through the document.

ADV NGCUKAITOBI SC: Yes, I think for now, then let us try and do it the hard way. We will try and find a better copy at a later stage. All right. What is this document we are looking at, the GSM1?

ADV MAEMA: GSM1 is a Provincial Organogram of
10 Organised Crime in KZN.

ADV NGCUKAITOBI SC: Yes, all right. And then do you know its origins, where it was produced?

ADV MAEMA: It is a document that we obtained that was in the command structures in KZN.

ADV NGCUKAITOBI SC: But it was produced from the SAPS itself?

ADV MAEMA: From the SAPS itself, yes.

ADV NGCUKAITOBI SC: All right, okay. Now, in the middle top, it is written Provincial Commander Organised Crime,
20 KZN, and Director JW Booysen. Is that correct?

ADV MAEMA: Yes, that is correct.

ADV NGCUKAITOBI SC: And what is that designation for?

ADV MAEMA: What it tells us is that General Johan Booysen, when organised crime was introduced in 2010, he then became the Provincial Head, Provincial Commander of

Organised Crime in KZN. The name that is not visible there, Director JW Booysen, it is the portfolio that he is holding.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Underneath him, straight with an arrow, you see...

ADV NGCUKAITOBI SC: Yes, there are two arrows. There is one arrow to the left. I suppose you can ignore that because it is for the secretary. That seems to be more of an admin role.

10 **ADV MAEMA**: Indeed, indeed, Chairperson.

ADV NGCUKAITOBI SC: All right, and then there is a straight arrow, which is... let me just see. OCIUK. OCIU, KwaZulu-Natal, Durban, Superintendent Ayer, Pietermaritzburg, Superintendent Lutz, Richard Bay, Superintendent Mtembu, Port Shepstone, Superintendent Nwuswa, Asset Forfeiture, Superintendent Wakefield. Can you just explain what that is?

ADV MAEMA: Chairperson, if one goes to paragraph, to page 11, paragraph 40 of my affidavit...

20 **ADV NGCUKAITOBI SC**: Yes, we are there.

ADV MAEMA: This is the document that is referred to, the Organogram of Provincial Organised Crime Unit. The Durban Organised Crime Unit fell under the... Now, the Durban Organised Crime Unit would be... if one looks at the... what do you call this?

ADV NGCUKAITOBI SC: The square in the middle.

ADV MAEMA: The square, yes. The square in the middle, that is Director JW Booysen. There is an arrow directly underneath it that says OCI KwaZulu-Natal. That is Organised Crime Investigative Unit in KwaZulu-Natal. Now, in paragraph 40, I spelled them out. It was Provincial Organised Crime Unit in KZN. That is the last but one line, comprised of Durban. Now, when you look at this square, the first on top there is Durban.

10 **ADV NGCUKAITOBI SC**: Yes.

ADV MAEMA: And then the next will be... In the organogram, it says PMB. In my statement, it says Pietermaritzburg. That was the second one. And then the third says Richards Bay, which I have mentioned in the statement. Now, in the next line is Port Shepstone. And then, lastly, Asset Forfeiture. So Durban was under the command of Senior Superintendent Ayer. Pietermaritzburg was under the command of Senior Superintendent Lutz. Richards Bay was under the command of Superintendent Mtembu. And Port Shepstone was under
20 the command of Superintendent Nwuswa. Nwuswa as in N-W-U-S-W-A.

ADV NGCUKAITOBI SC: All right. Now, just before we move from there back to your statement, I mean, is there anything in the organogram that is crucial other than to show that Director Booysen was directly overseeing organised crime in

Durban?

ADV MAEMA: Counsel, you are hundred percent, all it says is that Director Booysen was in control of all those organised crime units in Durban, Pietermaritzburg, Richards Bay, Port Shepstone, and the Asset Forfeiture, which were headed by Durban, Superintendent Ayer, Pietermaritzburg, Superintendent Lutz, as I have noted in paragraph 40 of my statement.

ADV NGCUKAITOBI SC: And the arrow on the left and the
10 right, for the current purposes, we can ignore them?

ADV MAEMA: Yes, because on my left, it would be policy, and on the right, it would be something else. But operationally and effectively, the unit is the one in the centre.

ADV NGCUKAITOBI SC: Yes. Well, there are two squares that are important. It is the top and the centre.

ADV MAEMA: The top and the centre, Counsel.

ADV NGCUKAITOBI SC: All right. Thank you very much.
Now, we come back then to your paragraph 40. Is there
anything you wish – because there is still that last sentence
20 there that is crucial that you have not touched upon?

ADV MAEMA: Within each of these units were various sections. One such section, a small and tightly knit group of officers stationed at Cato Manor, which was referred to as a Cato Manor SVC, Cato Manor Serious Violent Crime.

ADV NGCUKAITOBI SC: Do you want to explain what that

means?

ADV MAEMA: When organised crime was introduced in 2010, as I outlined in paragraph 39, the Cato Manor Serious Violent Crime was introduced to deal with the serious organised crime in the province.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: So the unit that was dealing with organised crime was this Cato Manor Serious Violent Crime ought to have been part of the Durban organised crime which was
10 under the command of Senior Superintendent Ayer.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Senior Superintendent Ayer, who is mentioned in...

ADV NGCUKAITOBI SC: Paragraph 41.

ADV MAEMA: In paragraph 41, yes, just there.

ADV NGCUKAITOBI SC: Yes. All right. So the point is that there is the provincial organised crime.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Under it, there is the Durban
20 organised crime, which is led by Colonel Ayer.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Under Colonel Ayer is...

ADV MAEMA: You have section commanders.

ADV NGCUKAITOBI SC: And then who, according to your statement?

ADV MAEMA: Now, those section commanders are Colonel Olivier.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Now, Colonel Olivier, Willem Olivier...

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: ...is a person that I refer to. Chairperson, will I be able – can I ask to refer to them when I refer to the indictments as accused 9? Knowing full well that the matter has been withdrawn and they are not accused persons.

10 **CHAIRPERSON:** Maybe you can just deal step by step with what Counsel is dealing with now.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: He is dealing with 41.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: He is trying to look at those people who were under the command of Colonel Ayer.

ADV MAEMA: The people who were under the command of Colonel Ayer was Colonel Olivier, the section commander. Colonel Olivier was supposed to report to colonel Ayer.

20 **ADV NGCUKAITOBI SC:** Yes. All right, so what we know, at least from the structure you have depicted, is you have got Mr Booyesen at the top.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: And then you have Mr Ayer or Colonel Ayer.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: And then you have Mr Olivier, Lieutenant Colonel Olivier.

ADV MAEMA: As a section commander.

ADV NGCUKAITOBI SC: In that chain of command.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Yes, all right, thank you very much. Okay, so then you mentioned – we can skip the rest of Paragraph 41. I do not think it touches upon – we are still
10 laying the structural foundation.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Paragraph 42. You mentioned there that over time these sections changed, but that core group remained unchanged. Can you just explain that?

ADV MAEMA: The core group, that means the core member of Cato Manor SVC.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: It remained the same, despite the changes that were referred to – remember I referred to 2010 when
20 organised crime was introduced? This member of Cato Manor SVC, they literally just remained the same. Which means, in police terms, when you deal with serious violent crime, when you are paired with – when I am paired with Advocate Ngcukaitobi, for example, he should be somebody that I have worked with, that I trust with my life. Because serious violent

crime is serious violent crime and it can take your life.

So when I am paired with a particular individual, it is an individual that I should be able to bet my life with. I should say, if an incident arises and my life will be at stake, he will cover for me. I will do the same for him. Which means, if you are in an instance of, Chairperson, say a bank robbery and attackers fire at the police who are trying to arrest them and Officer A works with Officer B, Officer B must be confident that Officer A will protect his life with his own life.

10 Must be confident that I can bet my life on my partner.

ADV NGCUKAITOBI SC: Yes. I mean, for the purposes that we are dealing with, the continuity, despite the changes, includes two facets. One is that General Booysen was promoted to the province.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: That is the change.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: The second is that a new unit or a new provincial unit for organised crime was created.

20 **ADV MAEMA:** Yes.

ADV NGCUKAITOBI SC: But that did not affect the people that actually occupied the positions at Cato Manor. Except, of course, Mr Booysen had to be replaced and we know he was replaced by Colonel Ayer.

ADV MAEMA: Indeed. Chairperson, what happened is,

despite General Booyesen being in the province now as a provincial commander, and Cato Manor, which was part of organised crime in Durban, having to report under Superintendent Ayer, Superintendent Ayer was rendered redundant and General John Booyesen continued making Superintendent Ayer redundant and leading the Durban organised crime, leading these members of the Cato Manor SVC.

ADV NGCUKAITOBI SC: Yes. So that is the continuity you
10 are talking about.

ADV MAEMA: That is the continuity, yes.

ADV NGCUKAITOBI SC: All right, thank you. Now, if we
can then move to paragraph 43, because there you are
distinguishing now the people that were de facto managers
from those that were participants. We are beginning to do
the foundation of the charge, but let us start with who you
have identified there as holding managerial or command
positions.

ADV MAEMA: Now, for the purpose of POCA, certain
20 members of the Cato Manor SVC occupied managerial or
command positions within this group. I mentioned that Ayer,
Colonel Ayer was rendered redundant. So General Booyesen
replaced him, although being in the province, but then he
continued having a close relation with Colonel Olivier, Neville
Eva, who has now passed, may his soul rest in peace.

Accused 15, Anton Loken, and Eugene van Tonder. So those were the people that were occupying the managerial positions within Cato Manor SVC.

ADV NGCUKAITOBI SC: Yes. Now, we will deal with this later when we deal with the requirements of POCA, but it might be a convenient time to just debunk one myth that has percolated the De Kock report, so-called, that you cannot just duplicate, that is what they say, I am not saying they are correct, duplicate the formal structure and say that
10 constitutes management of the enterprise. How did you see it as the lead prosecutor?

ADV MAEMA: Well, as a prosecution team, we saw General Johan Booysen, although he has to be as a provincial commander in the province, and not in Durban organised crime, or in serious violent crime, we saw him rendering Ayer redundant and taking over what Ayer is supposed to be doing, what is instead of the commanders reporting to Ayer, they report to him, and the core managers then were Olivier, Lieutenant Colonel Olivier, Captain Eva, Captain Loken, and
20 Captain van Tonder. So all of them, instead of reporting to Ayer, then they reported to General Booysen, as if General Booysen was a unit commander. Instead of being the provincial commander, he then doubles up as provincial commander and as unit commander, rendering Ayer redundant.

ADV NGCUKAITOBI SC: So the accusation that all you did was just to take the formal structure and to substitute it for an enterprise, is that...?

ADV MAEMA: No. What you did is, we looked at the activities of the unit, what actually happened, and we saw that, for instance, when an incident happens, Lieutenant Colonel Olivier, Captain Eva, all the managers, would then inform General Booyesen, instead of informing their unit head who is supposed to be Colonel Ayer. So incident will happen
10 without Ayer's knowledge, but with the full knowledge of General Booyesen, full knowledge and support of General Booyesen.

ADV NGCUKAITOBI SC: So in sum, you regarded them as de facto in management of the enterprise.

ADV MAEMA: We considered them as the de facto managers of the enterprise.

ADV NGCUKAITOBI SC: And then their balance were then participants.

ADV MAEMA: Their balance were then participants in terms
20 of section 21(f).

ADV NGCUKAITOBI SC: Yes, thank you very much. Now, in the following page, at paragraph 44, you give the context to these events. And you start with the taxi conflict between Stanger Taxi Association and KwaMaphumulo Taxi Association. Can you just outline that background?

ADV MAEMA: Thank you, Chairperson. Superintendent Chonco was a member of the Taxi Violence Task Team in KZN. He investigated taxi violence killings in KZN. There was a continuous feud between the Stanger Taxi Association and the KwaMaphumulo Taxi Association that he was investigating. And then he would, from time to time, transport those accused persons, or take those dockets to Court and take those accused persons to Court together with his team. Now, on the paragraph 25...

10 **ADV NGCUKAITOBI SC**: 45.

ADV MAEMA: 45. On the 27th of August, Superintendent Chonco was taking...

ADV NGCUKAITOBI SC: The 27th of August 2008, just to announce it.

ADV MAEMA: Oh, yes. 27th of August 2008, Superintendent Chonco was taking accused persons to Court when an ambush happened. Superintendent Chonco was in the company of Inspector Kanyile together with others. What happened there was there were roadblocks, the road was
20 being refurbished. The result was that the vehicles, when they arrived, they had to slow down. Now, at that time, where they slowed down was the time when shots were fired at the two vehicles that were transporting the accused persons to Court. But from the members of the investigation team that saw the car in which Superintendent Chonco was travelling,

the concentration of the shots were fired at the vehicle in which he was travelling.

That is why you see him then dying at the scene of the shooting. And Inspector Kanyile, who was in a different car with the accused persons, was injured but survived. So what happened then was then Cato Manor Serious Violence Crime Unit then followed up, analysed the information that they procured from that scene and followed up on the killing of Superintendent Chonco. Chairperson, I must just mention
10 that when this incident happened on 27 August, two other police officers had been killed. Superintendent Govender had been killed and Nkosi Zondi was killed.

CHAIRPERSON: Was this in the same incident?

ADV MAEMA: No, no, no. Different incident. What I am saying is that Nkosi Zondi was killed Nkosi Zondi was a member of Cato Manor Unit, was killed in a separate incident. So Govender was killed in a separate incident. But now
...[intervenes]

ADV NGCUKAITOBI SC: Look, Nkosi Zondi was killed on the
20 22nd of January 2008. And Superintendent Chonco was killed on the 27th of August 2008.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: So there is at least about a year in between the killing. But let us just concentrate on the killing of Superintendent Chonco. That is where we are right

now. We will come back to Nkosi Zondi.

ADV MAEMA: Okay. Now, what happened then was when Superintendent Chonco was then shot at and killed Cato Manor SVC felt enough is enough. You cannot have men in blue killed in the manner that are being killed by thugs. Criminality is taking over. They felt they must follow information that they collected from the scene of Superintendent Chonco's killing. So paragraph 46, following the shooting of Superintendent Chonco members of Cato
10 Manor SVC then targeted individuals that they suspected of involvement in his killing. And then the pattern that emerged from there was anybody that they suspected of involvement was raided.

And all of these incidents, we see them happening after the killing of Sup Chonco, which gave us the impression that Cato Manor said enough is enough. Criminals are not going to take over. We will deal with this criminality in KZN. And dealing with criminality in terms of the law means arresting them and bringing them before Courts of law for
20 Courts of law to determine their guilt or otherwise. But what we saw happening after the killing of Sup Chonco was Cato Manor went on a rampage of raiding suspects that they or people that they suspected of involvement in in a tax violence or in the killing of Sup Chonco and killing all of them.

ADV NGCUKAITOBI SC: Could I just ask you on this point,

this idea about the killing of Superintendent Chonco, the one view is that it was used as cover for the elimination of KwaMaphumulo members of the KwaMaphumulo Tax Association. We have asked for this docket. We have not seen it. The promise is that it will be made available so that we can actually see what happened in the investigation of Superintendent Chonco. From your point of view as the investigators, sorry, as the prosecutors in the team, I mean were you given access to the docket of the murder of

10 Superintendent Chonco?

ADV MAEMA: Chairperson, we asked for this docket. It never came forth. We asked to speak to the investigators asked to see Inspector Kanyile who had survived the ambush. We, so far we have not seen a statement that he had made. At the time that we were dealing with this matter, he was hospitalised and a statement has never been obtained from Inspector Kanyile.

ADV NGCUKAITOBI SC: Yes. So it remained an open question as to whether the Cato Manor unit had any legitimate

20 basis to connect anyone to the murder of Superintendent Chonco.

ADV MAEMA: Indeed, Chairperson. In fact, Superintendent Chonco in KZN the witnesses that we consulted with said he was a straight cop. You know, he would not, he was dealing things in the right manner, taking accused persons to Court

and there was a view at some stage that Cato Manor would have been jealous of the successes that he was having in Cato Manor in dealing with, in quelling taxi violence in KZN.

ADV NGCUKAITOBI SC: Yes. Well, there is a statement but we will deal with that that actually says in fact, even Cato Manor could have had a role in the elimination of Superintendent Chonco.

ADV MAEMA: Indeed, indeed.

ADV MTSWENI: Madam Chair without being seen to be
10 intrusive ...[intervenes]

CHAIRPERSON: Please speak to that mic and speak loud.

ADV MTSWENI: Yes. Without interrupting Advocate Ngcukaitobi is leading of evidence, but perhaps one should be reminded that he is leading the witness in chief, he is not cross-examining the witness and therefore he should be testifying through the witness and not put the evidence to the witness for the witness to testify. If, for example, he wants to put a particular point, maybe we should draw the witness' attention to that point and let the witness tell us in his own
20 words and not in Advocate Ngcukaitobi's words as to what conclusions and what were the propositions, because it is his witness, he is not cross-examining the witness. If it was cross-examination, we would accept that but it is his evidence, it is his witness and the witness's evidence-in-chief.

CHAIRPERSON: Are you suggesting that Advocate Ngcukaitobi is coaching the witness?

ADV MTSWENI: He is leading the witness, he is leading the witness per section, not that he is coaching the witness but he is leading the witness, he should be asking the witness his questions and not put propositions to the witness for the witness to just confirm.

CHAIRPERSON: Advocate Ngcukaitobi?

ADV NGCUKAITOBI SC: No, my learned friend must point
10 out to the question that he is objecting to, what is unacceptable is for him to make a generic statement. If he has got a question that I have asked that is leading, he must tell me what that question is.

ADV MTSWENI: For example the latest question that he just asked about the matter of Chonco, that in fact the proposition is that the matter of Chonco was used as a cover up by the Cato Manor squad to eliminate members of the KwaMaphumulo Taxi Association. The witness has not told us that, he is the one telling the witness and the witness
20 simply agrees with him. He should perhaps lead the witness, point the witness to that evidence and get the witness to tell us in his own words as to whether what is the witness's, what was the witness's interpretation of that evidence. Remember the witness is here to tell us that he is the one who studied the documents and it is the evidence that he considered. I

am sure whatever proposition that Advocate Ngcukaitobi wants the witness to say, the witness can say it himself.

CHAIRPERSON: I thought, subject to correction I thought Advocate Ngcukaitobi was saying there are allegations that this was a cover up, something to that effect. Did you understand him to say that?

ADV MTSWENI: But then the witness simply agrees with him. If there are allegations, if there is any evidence, he should maybe draw the witness's attention and say there is
10 this evidence, what is your comment on that? Instead of saying there is evidence that this is just a cover up and the witness says yes. The witness does not know what evidence is that.

CHAIRPERSON: If I may... do you know of anything that counters what he says? As you are objecting?

ADV MTSWENI: We are not objecting to the evidence but the manner in which the witness, that evidence is being sought to be extracted from the witness.

CHAIRPERSON: Yes.

20 **ADV MTSWENI:** That is what we are asking him to do. If there is evidence that, for example, there is a document in the bundle that seeks to support that proposition let him go to that document and say this is the evidence. What is your comment on that? Let the witness speak for himself.

CHAIRPERSON: Yes, Advocate Mtsweni, sometimes the

procedures under the enquiry, bearing in mind your role, this is not a criminal prosecution, your role as evidence leaders is to assist us. I am not sure as you object, you object with a view to protect who or what?

ADV MTSWENI: No, Madam Chair, we are not seeking to protect we are just saying that it is part of our role to make sure that the evidence comes out, not propositions from Advocate Ngcukaitobi. If there is evidence that Advocate Ngcukaitobi wants to point out, let him point out that evidence
10 and not let him put conclusions to that witness. That is the premise from which we are asking him to do.

CHAIRPERSON: Now the evidence that he was referring to or allegations of a cover up, that is where your uneasiness is?

ADV MTSWENI: Yes, because what we are asking is that if there is that evidence, let him show the witness he has a statement by a witness who says, or if there is going to be evidence later on, at least let him preface that to say I will take you to a statement that says this was the cover up, so
20 that the witness can at least be able to comment on that but on the basis of tangible evidence.

CHAIRPERSON: Yes.

ADV MTSWENI: We are not seeking to prevent any evidence from coming out, Madam Chair. We want that evidence to come out.

CHAIRPERSON: Advocate Ngcukaitobi?

ADV NGCUKAITOBI SC: Madam Chair, with the greatest of respect, I mean, firstly, my learned friend is just wrong when he says that the witness confirmed. The witness did not confirm. I said the allegations are that this was used as a cover for the killing of Superintendent Chonco. The person who gave that evidence is Advocate Noko. Everyone was here. Now, does he want me to go to the transcript and say this is what Advocate Noko says? This is a waste of
10 everyone's time. There is a statement at page 1A/179, GSM8, by Bhekinkosi Mthiyane Ndlondlo. And you can go to page 1A/180, which says exactly what the witness has just said. This was a straightforward cop who did not take favours, and the suspicion was that the reason he was killed, it was to eliminate him. Do you want to go through to that? Maybe that will simplify all of this.

CHAIRPERSON: Sorry, what paragraph are you reading from?

ADV NGCUKAITOBI SC: I am now at, so if you could, thank
20 you, Madam Chair, if you could go to GSM8, 1A/179. So that is where the statement of Ndlondlo starts. But he then discusses Chonco specifically at 1A/180. And 1A/181. Yes, he says, the cause of Mr Chonco's, paragraph 7:

“The cause of Mr Chonco's death was that
he was investigating and arrested

KwaMaphumulo Taxi Association members.

Mr Chonco was killed by KwaMaphumulo

Taxi Association. Nkosi Zondi was a

policeman working for Cato Manor Unit.

Information was taken to Nkosi Zondi, and

Nkosi Zondi arranged with his unit, Cato

Manor, and also Booyesen, his commander.”

I mean, this has been here since we began, so really this
objection is a waste of everyone's time. Do you want to
comment on that? I mean, they were saying I should give you
the actual statement, which is there, so maybe you can
comment.

ADV MAEMA: My understanding, Counsel, comes in this
way. We are starting ...[intervenes]

ADV NGCUKAITOBI SC: Just deal with the statement. Do
not make the argument for me. I have made the argument.

ADV MAEMA: Thank you. Thank you, Chairperson. Yes,
the statement of Bhekinkosi Mthiyane, who was referred to
as Ndlondlo, is the statement that tells us what happened.
His perspective of Superintendent Chonco's killing, if one
looks at paragraph 7, it specifically deals with his view of
Superintendent Chonco's killing. Because of he says Mr
Chonco ...[intervenes]

ADV NGCUKAITOBI SC: I have read it to the record.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: But I just wanted to make sure that there is a statement there. This thing is not made up by me.

ADV MAEMA: Yes, as well as Nkosi Zondi. His name is also mentioned in the same paragraph.

ADV NGCUKAITOBI SC: Exactly. Thank you. Let us move on, then, back to your statement.

CHAIRPERSON: And before you do that, we are still on the objection.

ADV NGCUKAITOBI SC: Yes.

10 **CHAIRPERSON:** Counsel seemed to be concerned about what you said was an allegation of a cover-up. Am I correct?

ADV MTSWENI: Madam Chair, I think the manner in which he just asked the question clarified it, because the proposition he made to the witness was that there was a cover-up. What we wanted was to let him point the witness to that evidence, and he has just addressed it, so that deals with our concern.

CHAIRPERSON: So the objection cannot be sustained?

20 **ADV MTSWENI:** Not after what Advocate Ngcukaitobi has done, Madam Chair.

CHAIRPERSON: Yes, thank you.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. I may proceed, then. Yes, thank you. All right. Now, you then – we were at paragraph 47, so we have addressed that Chonco is the alleged trigger, but we know what the witnesses

subsequently told you.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: And then – well, Superintendent, Chonco is the alleged trigger.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: And then from paragraph 47, you referred to media reports.

ADV MAEMA: Chairperson, just before this last aspect escapes me, in paragraph 46, six persons as at that date were
10 killed, and one will see that in the indictment. And the six persons that had already been killed at that time would include Lindelani Buthelezi in KwaDukuza, CAS 8/9/2008, Magojela Ndimande, as well as Sibusiso Thokozani Tembe in Howick, CAS 106/9/2008. On the 18th of September, Nzamene Johannes Ntuli, who was generally there, called Kopolota, as well as Nkosinathi Wilson Mtembu, and the seventh person would then be Ndumkize.

ADV NGCUKAITOBI SC: Is that six or seven?

ADV MAEMA: Six, six.

20 **ADV NGCUKAITOBI SC**: Yes, okay.

ADV MAEMA: So six persons would have already been killed. But what I wanted to say is five are members of the Taxi Association, whereas one was a bodyguard. Tembe was a bodyguard.

ADV NGCUKAITOBI SC: Yes, Mr Tembe was a bodyguard

of Mr Ndimande.

ADV MAEMA: He was a bodyguard of Mr Ndimande. They were killed together on the N3 Howick freeway towards Johannesburg.

CHAIRPERSON: The names of these people that you have read into the record now or mentioned them, where are you reading them from?

ADV MAEMA: Chairperson, I am reading them from the indictment, from the summary of substantive facts.

10 **CHAIRPERSON**: Please take us there. When you move from your affidavit and you go to another document, and that, Advocate Ngcukaitobi, that you are now referring to a document, so that we can go to that document.

ADV NGCUKAITOBI SC: What might work for you is perhaps to look at GSM75, if you want to do that exercise, which is 1A/711 in 53.

CHAIRPERSON: 1A?

ADV NGCUKAITOBI SC: 711, Madam Chair. Yes, that is the prosecution memo. So GSM75, and then you can go then
20 to the names you wanted to mention.

ADV MAEMA: Chairperson, GSM75, paragraph 3 mentioned killings, unlawful activities, which were...

ADV NGCUKAITOBI SC: And if you look specifically at 1A712 under paragraph 5.

ADV MAEMA: Yes. The names that I had mentioned are the

names that are in the prosecution memo, GSM75. The very same names are also in the indictment. These names of the deceased who are in the indictment. In paragraph 5, Chairperson, the taxi violence killings are directly related to the killing of Superintendent Chonco, Zethembe Mawakile Chonco, and the killing of Nkosi Wellington Zondi.

10 “Superintendent Chonco was a coordinator dealing with the taxi violence killings between KwaMaphumulo Taxi Association and Stanger Taxi Association. He was killed whilst transporting prisoners to court, or
15 accused persons to Court, on the 27th of August 2008.

Certain members of KwaMaphumulo Taxi Association...”

And I will mention those names;

20 “...were suspected of having a role in the killing of Superintendent Chonco, and were subsequently tracked and killed from 3 September 2008 to 18 October 2008.”

And this is the subject of the dockets that I referred to in the table. We refer to an incident on the 3rd of September 2008. The docket reference number is KwaDukuza, CAS 39/9/2008, is the killing of Lindelani Buthelezi. On the 16th of September

2008, the docket reference number being Howick CAS 106/9/2008, where Magojela Timpson Ndimande, as well as a bodyguard, both Lindelani Buthelezi and Magojela Ndimande are taxi owners. Now, Sibusiso Thokozani Tembe was the bodyguard to Ndimande, who was the vice chairperson of Stanger Taxi Association.

On the 18th of September in ...[intervenes]

CHAIRPERSON: This GSM75 is your prosecution memo.

ADV MAEMA: Indeed, Chairperson.

10 **CHAIRPERSON:** What is the date in this memo? If you look at the conclusion at B01062, I do not know what is the right numbering, Advocate Ngcukaitobi. But at the end of that document, which is your prosecution memo, am I correct? Or is it something else? I see the fonts are different.

ADV NGCUKAITOBI SC: Oh, yes. Madam Chair, if you go to... Paragraph 397 of the statement. Of the witness statement.

CHAIRPERSON: Pardon?

20 **ADV NGCUKAITOBI SC:** 397. At page 104, 1-104. So that is the reference to GSM75.

CHAIRPERSON: The date is 15 August 2012.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: It does not appear on the memo itself.

ADV NGCUKAITOBI SC: Yes, I looked at that. You are correct.

CHAIRPERSON: Yes, thank you.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. I am going back to... Thank you. You remember where we started? The Chairperson wanted to know the six names you were reading. Where were you reading them from? You have confirmed that they are at 1A/711. 712, actually.

ADV MAEMA: Indeed.

ADV NGCUKAITOBI SC: Under paragraph 5?

ADV MAEMA: Yes.

10 **ADV NGCUKAITOBI SC:** Yes, all right. Thank you. And that is a prosecution memorandum that you prepared on the...

ADV MAEMA: 15 August 2012.

ADV NGCUKAITOBI SC: 15th of August 2012?

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: All right. And those are killings related, allegedly, to the murder of Superintendent Chonco.

ADV MAEMA: Yes, those are the killings of people that were suspected to have been involved in the killing of Sup Chonco, who were then tracked and traced by the Cato Manor SVC.

20 **ADV NGCUKAITOBI SC:** Yes, all right. Good. Yes, we were just about to start the issue of the media reports at paragraph 47.

ADV MAEMA: Chairperson, can I also mention that these names are subject of the indictment? So the names of the deceased in the prosecution memo would be the deceased

that are mentioned in the indictment.

CHAIRPERSON: In the indictment, in respect of the dockets or the cases against those accused people in the Cato Manor cases?

ADV MAEMA: Indeed, Chairperson, yes.

CHAIRPERSON: Okay.

ADV MAEMA: So in the indictment, I will also refer you to these very same names. In fact, right now I can tell you Lindelani was a deceased in whether count, yes.

10 **ADV NGCUKAITOBI SC:** Yes.

ADV MAEMA: But I have not been asked that question.

ADV NGCUKAITOBI SC: No, not yet. It is coming. All right. So the article that is referenced at paragraph 47 is GSM2, which you will find at 1A/141. Is that correct?

STENOGRAPHER: 1A stroke?

ADV NGCUKAITOBI SC: 141.

ADV MAEMA: 141. It is a different file. 141. I am there, Counsel.

20 **ADV NGCUKAITOBI SC:** Can you confirm, is that what is referred to at paragraph 47?

ADV MAEMA: Yes, at paragraph 47 when I refer to media reports, this is the media report.

ADV NGCUKAITOBI SC: And that media report is a report by the Sunday Times of the 11th of December, 2011. A report by the journalists Stefan Hofstadter, Mzilikazi wa Afrika, and

Rob Rose. Is that correct?

ADV MAEMA: That is correct, Chairperson. And this is the article that caused a real outcry within the community. You can see from the shoot to kill that it was not sending a good message.

ADV MOHLAMONYANE: Yes. And that 1A/142, it is apparent that the journalist had access to the photos, which subsequently became used in the docket.

ADV MAEMA: Indeed, Chairperson.

10 **ADV NGCUKAITOBI SC**: Yes.

ADV MAEMA: Now on 142A, I think it is important in the centre of the picture there, there are two vehicles there.

ADV NGCUKAITOBI SC: Yes. So that is 1A/142?

ADV MAEMA: 1A/142.

ADV NGCUKAITOBI SC: Okay.

ADV MAEMA: There are two vehicles there, the centre of the picture.

ADV NGCUKAITOBI SC: Is that the picture where there are two gentlemen shaking hands?

20 **ADV MAEMA**: Ja, the two gentlemen that are shaking hands, one of them is General Booyesen, the one in a blue jacket.

ADV NGCUKAITOBI SC: Okay.

CHAIRPERSON: All these documents following [indistinct]... I beg your pardon. All these documents following GSM2 at 1A-141 are part of that annexure. It is a bundle of documents

forming part of that annexure?

ADV NGCUKAITOBI SC: That seems to be the case, Madam Chair, because if you look at the top, they are all 11 December 2011.

CHAIRPERSON: Yes, and they are all one capital A, and then subsequent numbering.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Should we assume or accept that they are all part of that annexure, GSM2?

10 **ADV NGCUKAITOBI SC:** Yes. Well, do you want to confirm, mister...

ADV MAEMA: I confirm. I confirm they are about, Chairperson.

CHAIRPERSON: You should please confirm. Advocate Mtsweni will take you to task.

ADV MAEMA: Chairperson, if I can just mention...

ADV NGCUKAITOBI SC: I have learnt the hard way. I will never do it again. [Laughter]

CHAIRPERSON: I beg your pardon, Counsel?

20 **ADV NGCUKAITOBI SC:** I will never do it again.

CHAIRPERSON: No, you are within your right, Counsel, to object if you do not follow something. We are all here to make sure we are doing the right thing. Yes, so this bundle, the one A's, capital A's, are all forming part of that GSM2.

ADV NGCUKAITOBI SC: No, there is...

CHAIRPERSON: I see in the list, it is up to one A, up to 149. I think that is correct.

ADV NGCUKAITOBI SC: Yes, because there is a different...

CHAIRPERSON: Before GSM-A3. You see the list of annexures you gave us?

ADV NGCUKAITOBI SC: Yes, that is correct.

CHAIRPERSON: It seems to confirm that, Counsel.

ADV NGCUKAITOBI SC: Yes, yes, yes.

CHAIRPERSON: Yes, so we just deal with those as forming
10 part of the bundle. Before GSM3.

ADV NGCUKAITOBI SC: Yes, yes.

CHAIRPERSON: I am sorry with my irritating voice.

ADV MAEMA: I confirm, Chairperson, that is my understanding.

ADV NGCUKAITOBI SC: All right, thank you. Yes, the only thing that seems to be different ...[intervenes]

CHAIRPERSON: Sorry, Counsel, when I interrupted, you had just gone to the next page, 1A-142.

ADV NGCUKAITOBI SC: 142.

20 **CHAIRPERSON:** And then you referred to those pictures and the vehicles there.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: I missed the point?

ADV NGCUKAITOBI SC: I think the witness was drawing our attention to the picture in the middle of the page. Perhaps

you should start from there, Advocate Maema.

ADV MAEMA: Chairperson, what I was saying, the picture in the middle, we see two vehicles there. The one in the blue light, that would be the police vehicle. And the silver ...[intervenes]

ADV NGCUKAITOBI SC: The one in the front.

ADV MAEMA: The one in the front.

ADV NGCUKAITOBI SC: Okay.

ADV MAEMA: The silver vehicle, it would be the Hyundai
10 Tucson that was driven on the 16th of September 2008. As I
look at A1-712 of the prosecution memo. That is the vehicle
that is the grey Tucson. It is a vehicle that was driven on the
16th of September 2008. Incident Howick CAS 106/9/2008,
it was driven by the Deputy Chairperson of the Stanger Taxi
Association, Magojela Timpson Ndimande, as well as his
bodyguard, Sibusiso Thokozani Tembe. That was the vehicle
they were travelling in. Chairperson, if you look
...[intervenes]

CHAIRPERSON: Take me to that paragraph in the
20 memorandum that you have just been referring to.

ADV MAEMA: Chairperson, I said on GSM75?

CHAIRPERSON: Yes.

ADV MAEMA: On page... It starts at A1-711.

CHAIRPERSON: It starts at?

ADV MAEMA: It starts at GSM75.

CHAIRPERSON: Yes.

ADV MAEMA: It starts at A1-711.

CHAIRPERSON: Maybe just give me the page numbering there.

ADV MAEMA: The page number is A1-712.

CHAIRPERSON: 712.

ADV MAEMA: Just the next page.

CHAIRPERSON: Yes.

ADV MAEMA: There is a table, Chairperson, there.

10 **CHAIRPERSON:** Yes.

ADV MAEMA: With dates, docket reference number, name of deceased.

CHAIRPERSON: Yes, thank you.

ADV MAEMA: Now, what I just said was that this vehicle, the grey Tucson... You will not see the registration number, but I know it because I worked on this matter. It is an NRB registration. It was a vehicle that was driven by Timpson

Magojela, Magojela Timpson Ndimande and Sibusiso Thokozani Tembe on the 16th of September 2008. And that

20 one sees on GSM75 on page A1-712. In the table there, Chairperson. The second incident on the 16th of September 2008.

CHAIRPERSON: Yes, thank you.

ADV NGCUKAITOBI SC: Thank you. I think just to correct yourself, the people that were targeted on the thesis of the

prostitution were KwaMaphumulo, not Stanger.

ADV MAEMA: Oh, did I say? Oh, no, KwaMaphumulo Taxi Association.

ADV NGCUKAITOBI SC: Yes, exactly.

ADV MAEMA: The Stanger were the people that were financing, that were colluding with Cato Manor to...

ADV NGCUKAITOBI SC: Yes, so there is no way that Mr Ndimande could have been the Vice Chairperson of Stanger.

ADV MAEMA: No, no, no. It is KwaMaphumulo. I was not
10 hearing myself.

ADV NGCUKAITOBI SC: Yes, all right. That is fine. Now, let us go back to the article, that page you were looking at, which is the 1A/142.

ADV MAEMA: I am there, Chairperson.

ADV NGCUKAITOBI SC: Yes. Is there anything you want to add on what you have just been describing, that the Major General Booyesen is there at the crime scene? There is a vehicle there that was driven by Mr Ndimande and Mr Tembe. The date is the 16th of September 2008.

20 **ADV MAEMA:** I confirm, Chairperson.

ADV NGCUKAITOBI SC: But I am saying is there anything, I am just repeating what you have said, but is there anything you want to add on top of what you have said?

ADV MAEMA: Chairperson, if you look behind the vehicle, behind the Tucson, the silver-grey Tucson...

ADV NGCUKAITOBI SC: Yes, there is a dead body. Well, an apparently dead body. I do not know if it is dead.

ADV MAEMA: Yes, there is a dead body. And the vehicle that one sees in the blue light would be the police vehicle that was pursuing the Hyundai Tucson that was being driven out of Pietermaritzburg. This incident ...[intervenes]

CHAIRPERSON: The body, there is a body lying behind that grey vehicle. Tell us about it.

ADV MAEMA: Chairperson, there are doors on the right-
10 hand side of the vehicle. At the back, there is a rear door which is opened. Now, if one looks at the... there is a driver's door and there is a passenger door. Underneath the passenger door, there is a body of a person lying there. That was the bodyguard.

ADV NGCUKAITOBI SC: The bodyguard was Mr Tembe.

CHAIRPERSON: Is that underneath the passenger door or at the rear of the vehicle?

ADV MAEMA: On the picture, you see it underneath the door, but it is at the rear of the vehicle.

20 **CHAIRPERSON:** Yes, because there is a tyre there.

ADV MAEMA: Yes, there is a tyre.

CHAIRPERSON: There is a back tyre there.

ADV MAEMA: There is a beige, something that looks with a beige, beige, beige, covered with something beige. That is the body of Sibusiso Thokozani Tembe.

CHAIRPERSON: So that body is at the back of the vehicle?

ADV MAEMA: It is at the back of the vehicle.

CHAIRPERSON: Yes.

ADV MAEMA: Chairperson, we will show you pictures where this body can be seen.

CHAIRPERSON: Ja, no, it is fine, it is just you said that the body is at the passenger door, so I just wanted to make sure that I understand that.

ADV MAEMA: It is actually at the rear of the vehicle.

10 **CHAIRPERSON:** The depiction makes that very clear.

ADV MAEMA: Yes.

CHAIRPERSON: Now the two gentlemen who appear on this picture, do you know any one of them?

ADV MAEMA: The gentleman in a blue, blue jacket with beige pants, that is General Johan Booyen.

CHAIRPERSON: That is the gentleman wearing a police vest?

ADV MAEMA: Yes. And the one wearing, the one in white, in a white shirt. Chairperson, here I will speak under
20 correction, because then I would need to look at the line-up. But my recollection says it is Colonel...

CHAIRPERSON: Please, if you are not sure, you can defer your answer, unless of course you are sure about that.

ADV MAEMA: It is a police officer that came in a helicopter with General Johan Booyen. His name is in the statement

later.

ADV NGCUKAITOBI SC: Well even the article just identifies General Booysen.

ADV MAEMA: Oh yes, the article in fact says Major General Booysen, head of the Hawks in KZN, on the right, in the picture, yes, arrived by police helicopter at the scene of one of the killings. So this is the scene of the killing of Magojela Timken Ndimande and Sibusiso Thokozani Tembe, on the 16th of September 2006, on the N3 highway, between, just
10 after Howick, on the freeway.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Yes, we ask these questions because you only get the statements and the documents this morning, just as the evidence leaders, so we will ask you to clarify. I did not see this recorder in fine print, but I see they explain who these gentlemen are. Yes, thank you.

ADV NGCUKAITOBI SC: Yes, thank you. Thank you, Madam Chair. If you can go to the ...[intervenes]

CHAIRPERSON: It is quarter to two, Advocate Ngcukaitobi.

20 **ADV NGCUKAITOBI SC:** Yes.

CHAIRPERSON: Are we moving at a snail's pace? I even forget the time.

ADV NGCUKAITOBI SC: Yes, I think we are moving at a detailed pace. I am happy to adjourn, Madam Chair, for lunch.

CHAIRPERSON: We promised you to adjourn for an hour for lunch, but if you like, we can adjourn for 45 minutes. Advocate Mtsweni?

ADV MOHLAMONYANE: Madam Chair, any time the panel proposes, will be fine with us. Even 10 minutes will be fine with us.

CHAIRPERSON: Advocate Hulley, are you happy with 45 minutes? One hour?

ADV HULLEY SC: I prefer to have an hour.

10 **CHAIRPERSON**: An hour.

ADV HULLEY SC: There are certain matters that I have to attend to, unrelated to this, and I am sorry to look into some of the issues that Advocate Ngcukaitobi made or he is going to make.

CHAIRPERSON: Yes. Advocate Ngcukaitobi, we promised you one hour this morning for lunch.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Perhaps you should adjourn for one hour, which will take us to... It is now quarter to two, quarter to
20 three.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. We would also appreciate an hour, like Mr Hulley.

CHAIRPERSON: Yes.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: And you might look in also, just casually

go through the application that he filed this morning.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Yes, thank you. We will adjourn until quarter to three.

ADV NGCUKAITOBI SC: Thank you.

CHAIRPERSON: We adjourn. Remember, you are still under oath, Counsel.

ADV MAEMA: I do, Chairperson, thank you.

CHAIRPERSON: Yes, thank you.

10 **ENQUIRY ADJOURNS**

ENQUIRY RESUMES

CHAIRPERSON: Good afternoon, everyone. Good afternoon, Advocate Maema.

ADV MAEMA: Good afternoon Chairperson.

CHAIRPERSON: Good afternoon, *Nthathi* Chauke. You are still under oath, sir.

ADV MAEMA: Indeed Chairperson.

CHAIRPERSON: You may proceed.

GLADSTONE SELLO MAEMA: (still under oath)

20 **EXAMINATION BY ADV NGCUKAITOBI SC (CONTINUES):**

Mr Maema, we have finished 1A142. Can we turn to 1A-143?

ADV MAEMA: 1A-143?

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: I am there.

ADV NGCUKAITOBI SC: There is a picture there on the

right. Do you have any recollection of where that picture could have related to?

ADV MAEMA: This picture on the right, we had actually worked out who the members are.

ADV NGCUKAITOBI SC: No, I understand, but I want to know which scene, what?

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Ja.

ADV MAEMA: This is a scene at the homestead at the north
10 of Debe.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: If you could just bear with me?

ADV NGCUKAITOBI SC: No, it is fine, yes.

ADV MAEMA: It is a scene in Melmoth, I am just looking for the Melmoth docket.

ADV NGCUKAITOBI SC: Melmoth, okay, yes.

ADV MAEMA: I will go to the same ...[indistinct] ostensible facts.

ADV NGCUKAITOBI SC: Melmoth is 23 November 2008,
20 Biyela, Bongani Biyela and Khayisani Biyela. That is the Melmoth docket, CAS 142/11/2008.

ADV MAEMA: That is the counts referred to in, the dockets referred to in Count 39 to 52 of the docket. Because you referred to the prosecution memo, let me go to the prosecution memo.

CHAIRPERSON: Before that, you said it is in relation to Count 2 in the prosecution memo.

ADV MAEMA: I said it is in relation to – no, it is not Count 2, Count 39 to 52. Melmoth CAS 142/11/2008, it is an incident that happened on the 23rd of November 2008.

CHAIRPERSON: You are describing this scene from your memorandum. Where do you get the information that you are referring to now?

ADV MAEMA: Chairperson, it is in the indictment.

10 **CHAIRPERSON:** Where is it? Were you reading from something or were you just explaining? So that we can look at the document if you have it right away.

ADV NGCUKAITOBI SC: Yes. Madam Chair, the easiest is just to go back to the prosecution memorandum because that is the document we have in front of us. The memorandum was at 71, well it starts at 710. Mr Maema, just go back to ...[intervenes].

CHAIRPERSON: It is GSM75.

ADV NGCUKAITOBI SC: Yes, GSM75.

20 **CHAIRPERSON:** Yes.

ADV NGCUKAITOBI SC: And it is at page A1-711.

CHAIRPERSON: 711?

ADV NGCUKAITOBI SC: Yes, and then by reference to that then maybe you can tell us.

ADV MAEMA: A1?

ADV NGCUKAITOBI SC: It starts at A1. Sorry, 1A711.

ADV MAEMA: 711 is File 3.

CHAIRPERSON: Yes, your memorandum, the prosecutorial memo, GSM75.

ADV MAEMA: Chairperson, my GSM ends at 60.

ADV NGCUKAITOBI SC: No, but you had it before the adjournment.

CHAIRPERSON: Yes. It is in the second file.

ADV MAEMA: File 2?

10 **CHAIRPERSON:** It is marked File 3 of 3.

ADV MAEMA: GSM75 on File 3, I see it.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Yes, so the Melmoth is referred to at 1A713 under paragraph 8.

ADV MAEMA: Melmoth is referred to under paragraph 8 on the table, the second matter, incident that happened on the 23rd of November 2008, Melmoth CAS 142/11/2008, where the Biyela brothers lost their lives.

ADV NGCUKAITOBI SC: Yes.

20 **CHAIRPERSON:** So the depiction at A1-143, you are describing it as you are referring to this Melmoth CAS number.

ADV MAEMA: Indeed, Chairperson. So the three persons that you see depicted there are members of the Cato Manor SVC, but you see a woman in a pink top and a navy blue skirt,

who one can see on the picture that is crying, whilst the Cato Manor SVC members are raising their arms in celebration. She is crying, mourning the death of Bongani. It is a relative of Bongani Velaphi Biyela and Khayisani Biyela, who just lost their lives on the 23rd of November 2008.

ADV NGCUKAITOBI SC: Yes, perhaps to assist you Mr Maema, I should take you to the actual NPA documents. We will come back to the Sunday Times, but it is 1A-352 where Melmoth starts.

10 **ADV MAEMA:** 1A?

ADV NGCUKAITOBI SC: 352.

ADV NGCUKAITOBI SC: File 2.

ADV MAEMA: In File 2?

ADV NGCUKAITOBI SC: GSM29.

ADV MAEMA: I am there, Counsel.

ADV NGCUKAITOBI SC: Yes, let us just wait for the Panel.

ADV MAEMA: So it is on GSM?

ADV NGCUKAITOBI SC: 29?

ADV MAEMA: 29.

20 **ADV NGCUKAITOBI SC:** Yes, that is the entire Melmoth photograph album.

ADV MAEMA: Chairperson, if one looks at the picture on A1-353.

ADV NGCUKAITOBI SC: Okay, can we call them 1A, not A1?

ADV MAEMA: Yes, I keep on saying A1.

ADV NGCUKAITOBI SC: Yes, no, it will confuse the record.

ADV MAEMA: It will, Chairperson, but remember I am a prosecutor who refers to dockets as A1, A2, A3, ja. 1A.

ADV NGCUKAITOBI SC: Yes, look, I do not know where that numbering comes from, but I am sticking to it. All right, so the Melmoth photograph album starts at GSM29, 1A-352. So what are you saying we should do?

ADV MAEMA: What I am saying is the picture that we
10 ...[intervenes].

CHAIRPERSON: Just give me a second. You must remember, Counsel, that we have never gone through this part. So, we are seeing them for the first time. So we need to page through as you lead the witness just familiar ourselves with the content of this document.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: I am seeing GSM31.

ADV MAEMA: GSM29.

ADV NGCUKAITOBI SC: Yes, yes.

20 **CHAIRPERSON:** And then I see the same picture at A1, 1A-361, photo 10.

ADV NGCUKAITOBI SC: Correct.

CHAIRPERSON: And then again at 1A-359, photo 8, something like that.

ADV NGCUKAITOBI SC: Yes, correct, Madam Chair. What

I was simply saying to the witness is that the entire photo album, including the deceased, commences at 1A-352.

CHAIRPERSON: 352?

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Okay.

ADV NGCUKAITOBI SC: Yes, that is photo one of Melmoth.

CHAIRPERSON: Yes, I got it, thank you.

ADV NGCUKAITOBI SC: I think everyone has got it. Please proceed, Mr Maema. So I was bringing to your attention that
10 Melmoth case 142/11/2008, the photo album commences at 1A-352 under GSM29. Then you can continue with your narrative.

ADV MAEMA: That is correct, Chairperson. What I was saying is that the photo that we see on 1A-353 of a number of hearts there.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: One sees a, just on the stones there, there is a blanket that is covering. Chairperson, when you remove this blanket, when you remove this cover, you find the
20 deceased who is lying on photo 1 on A1-352.

ADV NGCUKAITOBI SC: On top of those rocks?

ADV MAEMA: On top of those rocks. Who is one of the Biyela brothers who is the deceased, on the prosecution memo that I referred to on A1-713. A1-713. Incident on the table that happened on the 23rd of November 2008, Melmoth

CAS 142/11/2008.

So the deceased persons that we see depicted on these pictures are Bongani Velaphi Biyela as well as Khayisani Biyela. Now, what I wanted to say, Chairperson, is that the pictures that you referred to, that is A, that is 1A-143 that we see again on...

ADV NGCUKAITOBI SC: So that picture you will see again at 1A-359.

ADV MAEMA: Yes, 359.

10 **ADV NGCUKAITOBI SC:** Yes, so if you compare the picture we have just looked at from the Sunday Times and 1A-359.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Are you saying they come from that incident, the shooting of the Biyela brothers?

ADV MAEMA: They come from the shooting of the Biyela brothers and the woman that we see with the blue cloth covering the head and a pink t-shirt is the relative of the Biyela brothers.

ADV NGCUKAITOBI SC: Yes. Now, that lady, it is clearer
20 in the Sunday Times article, she appears distraught and possibly crying.

ADV MAEMA: Indeed, Chairperson, she is crying whilst the gentlemen appearing in the photos, which I say are members of the Cato Manor SVC, are raising their arms in celebration.

ADV NGCUKAITOBI SC: Yes, we will come back to the

identification. So, just to stick then to 1A-143. If you look at the ...[intervenes].

CHAIRPERSON: But before you proceed there, Counsel, when you look at the scene there, I see that motor vehicle and the pictures of 467 and the lady, and then when you look at the earlier picture where there are rondavels and a body covered with a blanket, is this the same area? Or is it different?

ADV MAEMA: Chairperson, it is the same area, it is just on
10 another side of the same area.

CHAIRPERSON: How do you know that? Have you been there?

ADV MAEMA: We went to Melmoth and we spoke to witnesses there.

CHAIRPERSON: You went there?

ADV MAEMA: Yes. Some of the witnesses, I will later specify who we spoke to at the Melmoth homestead.

CHAIRPERSON: Yes.

ADV MAEMA: We visited ...[intervenes].

20 **CHAIRPERSON**: It is enough. I mean, if you say you went there.

ADV MAEMA: Yes.

CHAIRPERSON: You are familiar with the area.

ADV MAEMA: Yes.

CHAIRPERSON: Because when you look at the pictures,

they do not give a sense that the place is the same as the one that appears at 42, from the look of things. But if you say it is on the other side ...[intervenes].

ADV MAEMA: It is on one side of the homestead.

CHAIRPERSON: Yes.

ADV MAEMA: What happened in ...[intervenes].

CHAIRPERSON: No, I understand. I think you can leave it there.

ADV MAEMA: Okay. Thank you, Chairperson.

10 **ADV BALOYI-MERE SC**: As a follow-up to your question. I am just curious. At 1A-143 and at 1A-359, do you perhaps know why are these people sitting with this weeping woman and celebrating? It seems weird and bizarre that two of the family members are killed by the police and then they come and sit, maybe pose for pictures and they are celebrating while a family member is mourning. If you do not have an explanation because you were not there or if you do not know, it is fine. But for me, it is quite bizarre that we have such a picture. Do you care to comment on that?

20 **ADV MAEMA**: Chairperson, I agree it is quite bizarre, but it is what was reported to us that members of the SVC in Cato Manor were celebrating while the family member of the deceased is just next to them crying. At the same scene as well, there was also an intake of alcohol. There is going to be a picture somewhere that will show them in the vicinity of

the same vehicle enjoying alcohol whilst a said family member is sobbing in their presence.

CHAIRPERSON: I assume that as you went there to consult with the people, including the family, you would have taken statements to that effect.

ADV MAEMA: Chairperson, from this scene specifically, we took a statement from a man that I refer to as Ubaba Biyela, but he was actually a bit younger than I am.

CHAIRPERSON: But does the witness confirm what you are
10 saying now in his statement?

ADV MAEMA: He gives us a narrative of how the shooting that led to the two deceased persons meeting their death happened.

CHAIRPERSON: No, no, I am talking about what you are describing to us now, describing these pictures and that you say these people were there celebrating whilst the lady was distressed. You were not there and you say you had gone there at one stage and you then spoke to people there.

ADV MAEMA: Yes.

20 **CHAIRPERSON:** I suppose you took statements of those people.

ADV MAEMA: Statements were taken.

CHAIRPERSON: Would have been in a position to describe this scene.

ADV MAEMA: Indeed, Chairperson.

CHAIRPERSON: The celebration while someone was in distress at the homestead of the deceased.

ADV MAEMA: Yes.

CHAIRPERSON: You do have such a statement?

ADV MAEMA: There is such a statement.

CHAIRPERSON: At one stage, Advocate Ngcukaitobi, you will refer us to that statement because we are now speaking to that aspect.

ADV NGCUKAITOBI SC: Yes, indeed. We will look
10 specifically for that, but there is a statement which perhaps the witness can refer to right now, which is at GSM30 at 1A-362. But that is given not by Ubaba Biyela, but Umama Biyela, African female. That also comes from that same incident, Melmoth CAS 142/11/2008. Do you have it, Mr Maema?

ADV MAEMA: I am there, Chairperson.

CHAIRPERSON: Okay, take me there. Take me there, please. Page?

ADV MAEMA: Page A1, 1A-362.

20 **CHAIRPERSON:** 162?

ADV NGCUKAITOBI SC: No, Madam Chair, 362.

CHAIRPERSON: Yes. Is that GSM30?

ADV NGCUKAITOBI SC: Yes, Madam Chair.

CHAIRPERSON: Thank you.

ADV NGCUKAITOBI SC: Now, you said that you have a

statement from a witness who describes what happened.

Now, this statement here, if you go to 1A-363, she says:

“Whilst we were sleeping there, we were both woken up by a strange noise outside the homestead yard, as if somebody was shooting. My husband stood up and opened the door.”

ADV BALOYI-MERE SC: Advocate Ngcukaitobi?

ADV NGCUKAITOBI SC: Yes?

10 **ADV BALOYI-MERE SC:** Is it not better that the witness read the statement into the record, or you think he might struggle with seeing the handwriting?

ADV NGCUKAITOBI SC: Ja, it is possible that he can read it himself. I have no preference either way, but perhaps you should read it, Mr Maema.

ADV MAEMA: Yes. Chairperson, on page 1A-363, paragraph 3 of GSM30.

CHAIRPERSON: Perhaps, for completeness, we can start at paragraph 2.

20 **ADV MAEMA:** To put the context, yes.

ADV NGCUKAITOBI SC: Yes, yes. Perhaps at the beginning, because there it describes who the deceased was and the relationship between the two of them.

CHAIRPERSON: Yes, Counsel.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Paragraph 2, Counsel, you said?

ADV NGCUKAITOBI SC: No, I think start at the beginning, because that is where we know why she is giving the statement.

ADV MAEMA: Okay. Chairperson, it is a statement of Bonguhle Makosazane Biyela, who stays at Debe area, Melmoth, the very area that we are seeing the homestead. She says:

10 “I am an adult female of the abovementioned particulars, and I am unemployed, and the deceased, Bongani Velaphi Biyela, was my husband.”

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Now, Bongani Velaphi Biyela is the deceased 1 on the incident referred to in Melmoth CAS 142/11/2008. One sees that on the prosecution memo on page 1A-713.

CHAIRPERSON: We have seen that. You may proceed.

ADV MAEMA:

20 “On Thursday, the 22nd of November 2008, at 02:30 early morning, I was at my homestead being sleeping with my husband, the deceased, and in the same house, which is a rondavel. We were sleeping in the rondavel house.”

Paragraph 3 ...[intervenes].

CHAIRPERSON: Are you reading the same statement that I have? Because you seem to be reading something else.

ADV MAEMA: I am reading it in a – perhaps I should read it the way it is.

CHAIRPERSON: Of course, you have to read it the way it is. You cannot edit it.

ADV MAEMA: Well, I am reading it in a way that it makes sense.

CHAIRPERSON: Mr Maema, please, just read the statement.

10 **ADV MAEMA:**

“On Thursday, the 28th of November 2008, at plus minus 02:30, I was at my homestead being sleeping with my husband (deceased) in one and the same house, which is a rondavel house.”

Paragraph 3:

“Whilst we were sleeping there, we were both woken up by strange noise outside the homestead, yard, as if somebody was shooting.”

20

Paragraph 4:

“My husband stood up and opened the door and he went out so as to see as to what was happening. While the deceased was already gone out of the house, some

gunshots were heard, but I did not know as to who was being shot.”

Paragraph 5:

“I stood up and tried to go out to see as to what was happening, but immediately three males entered my house being pointing big firearms at me and there was enough torch lights us the house. And such torch were being in possession of those males. And it is also where I noticed that it was two Indians and one black male. Those males identified themselves as policemen from Durban, but they were not wearing police uniform. They then ordered me to sit down and I complied with their instructions. Those males or policemen demanded my cell phone as well as of my husband. They also demanded my husband mu a car and I gave them all those things.”

ADV NGCUKAITOBI SC: Items.

ADV MAEMA:

“...all those items.”

My apologies:

“Those policemen pulled me out of the

house and as I was outside, they then started assaulted me with open hands on my face and kicking me too in my buttocks.”

Paragraph 8:

“The policemen further demanded me to hand over to them my husband’s firearm, but I denied the knowledge of any firearm. I further told them that the deceased do
10 not have any firearm whatsoever.”

Paragraph 9:

“After that, they escorted me as far as to a certain police condo where they locked me inside it. It is where I noticed many police vehicles around my homestead. I could see a lot of policemen moving up and down at my homestead yard. At that stage, I had no knowledge as to what had happened to my husband, the deceased.”

20 Paragraph 10:

“After some times, one of the Indian policemen as well as one black policeman came to me and ordered me to get out of the condo and they reported to me that they had already killed my husband, and

they also told me that I should go and see him (the deceased).”

Paragraph 11:

“After having received such shocking message, I went to the scene, but I did not reach the scene as I became powerless. I do not know as to what happened to me as I found myself sitting in other house together with my family members. Later, I was informed by my mother-in-law that my husband was shot dead. I also...”

ADV NGCUKAITOBI SC: Looks like it is learned out.

CHAIRPERSON: Yes, learned out that.

ADV MAEMA:

“...learned out that a young man, Khayisani Buthelezi, was also reported shot dead. I did not see the both Khayisani and my husband after being killed. I later...”

20 There is a word written and then it is cancelled:

“...made to understand or I later made to understand that all the deceased were taken away by the mortuary van. I do not know the reason of the brutally attacked. According to my knowledge, my husband

had no firearm. I did not see the person who shot the both deceased. I know and understand the content of this declaration. I have no objection in taking the prescribed oath. I consider the prescribed oath binding on my conscience.”

It is signed by Makosazane Biyela. It is commissioned by Inspector, I cannot make out the name, at 11:20 on the 24th of November 2008.

10 **ADV NGCUKAITOBI SC:** Yes.

CHAIRPERSON: Do you remember the reason why we came where we are now? It was when we were dealing with the scene at Melmoth where we see at 1A-143 those police officers with their hands raised up as if they were celebrating and the lady on the extreme left sobbing, seemingly, in a distressed position. And you were trying to deal with that and you said that you had been informed when you visited Melmoth by the witnesses as to what happened. They described the scene to you and you were asking whether you
20 had taken a statement clarifying that part that you had just explained to us.

ADV MAEMA: Indeed, Chairperson.

CHAIRPERSON: And this statement does not go that far. It describes the killing.

ADV MAEMA: Yes.

CHAIRPERSON: Yes, but you have to take us back to that picture at page 1A-143.

ADV NGCUKAITOBI SC: Yes, there is 359 which is basically the same. 1A-359 which has the numbers.

ADV MAEMA: The numbers on 1A-359 that we see 467 are ...[intervenes].

ADV NGCUKAITOBI SC: No, no, no. I am not taking you away from what the Chair asked you, but I am just saying there is that picture which depicts the same people we see at
10 1A-143. Because if you look at the lady there, she is in a different position. She is still crying but in a different position.

ADV MAEMA: And the vehicle is also still there, the Nissan the Nissan bakkie.

CHAIRPERSON: The only difference is that in respect of the photo at 1A-143, the officers seem to be in a joyous mood. You see that?

ADV MAEMA: I see that, Chairperson.

CHAIRPERSON: But in the other one, photo 8 of 1A-359,
20 they are sitting there, one or two extreme right are smiling, the middle one with a blue t-shirt, folded arms, is looking in front of himself there and the lady is still sobbing.

ADV MAEMA: Indeed, Chairperson.

CHAIRPERSON: You can see that she is crying.

ADV MAEMA: She is still crying, Chairperson.

CHAIRPERSON: Now, you were describing this 1A-143 and that is where the issue of the statement arose. As you went to Melmoth, you said that witnesses spoke to you about the scene and you took statements. Maybe at the later stage, Advocating Ngcukaitobi, the witness will be in a position to find that statement so that we can make some progress.

ADV NGCUKAITOBI SC: Yes, Madam Chair. I think the statement, the witness had said there is a statement where a witness described to them how the killing happened.

10 **CHAIRPERSON:** Yes.

ADV NGCUKAITOBI SC: So I think that is the statement we have just read.

CHAIRPERSON: Yes.

ADV NGCUKAITOBI SC: But we have made note of the statement particularly pertaining to this picture. Mr Maema, you will recall the question that came from Advocate Baloyi-Mere, which is it is bizarre that policemen are celebrating while there is a lady who is distraught next to them. Do you know why? And that is how we started here, that actually
20 when you went there, witnesses told you that this is what happened.

ADV MAEMA: Chairperson, we also found it very bizarre that police officers would be in this mood, jovial, celebrating, whilst a family member of the deceased, the wife of one of the deceased persons, is seated there sobbing. It is a

contrast of feelings. The men there, the two of whom are celebrating, one with folded arms, whilst a wife of the deceased person is sobbing and crying the loss of her husband.

ADV NGCUKAITOBI SC: All right, thank you. I think we have got direction from the Chair about how to deal with this part. I want to move on to 1A-144, which is not the Sunday Times, but the Sunday Independent.

ADV MAEMA: Which is just on the next page?

10 **ADV NGCUKAITOBI SC:** Which is the following page, yes. That seems to be the following year where the members of the Cato Manor are taken to court on these charges. But can you describe that picture and who is there and what are they doing?

ADV MAEMA: That picture shows, very strangely, the former Police Commissioner Bheki Cele, who was at court during the bail application, openly in support of the members of the SVC at Cato Manor.

ADV NGCUKAITOBI SC: Why do you say that Bheki Cele
20 was openly in support of the, was it the shooters, the killers, the alleged killers?

ADV MAEMA: Well, I am saying it on the basis of what was told to us when we were there. On the day of the bail application itself ...[intervenes].

CHAIRPERSON: I think you have to tell us which court,

because I see they are referring to court on 71 charges. Is it when the Cato Manor officers were charged?

ADV MAEMA: That is their first appearance during the bail application. I did not go to the court.

CHAIRPERSON: I am asking you, Mr Maema, is it when those Cato Manor officers were charged and they went to court?

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: And presumably applied for bail?

10 **ADV MAEMA**: Yes, they applied for bail when my colleague, Advocate Mathenjwa, opposed the bail application, which is a decision that we made as a prosecution team.

ADV NGCUKAITOBI SC: Yes, thank you. I wanted to just clarify your answer when you said there is a former Minister Bheki Cele openly in support of the killers. Just to contextualise that.

ADV MAEMA: Chairperson, it has been widely reported that the former police commissioner, General Bheki Cele, went to this bail application in support of his men.

20 **MS RAMAGAGA**: When you say it is widely reported that this was the case, where did we get the report from?

ADV MAEMA: It was reported in the media after the bail application. He himself openly said he was there to support his men. He himself, former police commissioner, Bheki Cele, said he was there too. It was reported soon after the

court bail application.

MS RAMAGAGA: Yes, through you, Chair. Can we get the clip? Do you have something to show that his support was widely reported in the media?

ADV MAEMA: Chairperson, I was in court on the day in question and I followed the media. There was a media report on the day that General Bheki Cele was there. He was interviewed by the media and he indicated himself that he was there to support his men.

10 **CHAIRPERSON**: I thought you earlier said that as regards to this picture 1A-144, you were not in court.

ADV MAEMA: I was not in court myself, but I followed the media reports as I was in the North West.

ADV NGCUKAITOBI SC: You were in a different court?

ADV MAEMA: Yes, as I was. Chairperson, I could have attended the bail application if I was available.

CHAIRPERSON: Let us not go there.

ADV MAEMA: Yes.

20 **CHAIRPERSON**: We are not blaming you for attending or not attending. We are just following your evidence.

ADV MAEMA: Yes.

CHAIRPERSON: We are talking about this picture and my sister, Madam Ramagaga, is asking you where do we find this information that former Minister Cele made the utterances that you have referred to now, or rather that he supported the

Cato Manor team?

ADV NGCUKAITOBI SC: Mr Maema, if you go to 1A-145.

ADV MAEMA: 1A?

ADV NGCUKAITOBI SC: 145, yes.

ADV MAEMA: 1.5?

ADV NGCUKAITOBI SC: 145, which is the same article.

ADV MAEMA: The next page?

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: I am there, Counsel.

10 **ADV NGCUKAITOBI SC:** Now, if you see the – let me count.

One, two, three, four, five, six. Six paragraphs from the bottom. After the line, the saga has been widely politicised.

ADV MAEMA: I am there, Chairperson.

ADV NGCUKAITOBI SC: After that, it starts with police Minister Nathi Mthethwa. Can you read that?

ADV MAEMA:

20 “Police Minister Nathi Mthethwa and the new police commissioner, Riah Phiyega, appear to have squared up against ex-commissioner Bheki Cele after he expressed support for members of the disbanded Cato Manor Unit by showing up in court.”

ADV NGCUKAITOBI SC: Yes. Then it continues. There is also another mention there of Commissioner Cele.

ADV MAEMA: I will continue reading from where I read, or maybe I should just continue it as it follows.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA:

10 “Although publicly distancing themselves from the arrest of the Cato Manor 18, Mthethwa and Phiyega flew to Durban this week to stamp their authority. A police department source said they came to Durban to show who is boss. Cele's move is believed to have caused consternation within the ANC, which earlier this week issued a statement commending the arrest of the Cato Manor 18.”

ADV NGCUKAITOBI SC: Yes. Thank you.

20 **ADV MAEMA:** And maybe, Chairperson, just to say, at the time, it was only 18 officials that were arrested. We initially, the arrest happened in two phases. We first arrested, or the police first arrested the 18. Chairperson, when I am saying we arrested, I have no powers to arrest. I am a prosecutor with the Prosecuting Authority. But the police arrested, on the 20th of June, first 18 SVC members. And they arrest ...[intervenes].

CHAIRPERSON: I am not sure where you are. I think you must wait for Advocate Ngcukaitobi to lead you, Mr Maema,

because you are now moving from where we were. I know you know this case very well, but you have just been on a particular paragraph, and we are trying to verify a few things. And the issue relating to the context, excuse me, in relation to that picture that we looked at, at ...[intervenes].

ADV MAEMA: At 1A-359?

CHAIRPERSON: No, wait a minute, let me finish.

ADV MAEMA: My apologies.

CHAIRPERSON: At 1A-144. It is that picture showing the
10 former Minister at court, and this is why we came to where we are now, where counsel is taking us to 1A-145, with that extract.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Confirming that former Minister Cele supported the Cato Manor team.

ADV MAEMA: Indeed, Chairperson.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: So I am saying, wait for counsel to lead you. Otherwise, you are going to confuse our line of
20 understanding, this evidence.

ADV MAEMA: My apologies, Chairperson.

CHAIRPERSON: Do not run ahead of him, please. I know you are a prosecutor, but you have counsel in front of you.

ADV MAEMA: Thank you, Chairperson. It is the 18 that drew me, I will restrain myself.

ADV NGCUKAITOBI SC: No, no, do not explain yourself. It is okay, once you have apologised, it is okay.

ADV MAEMA: Ja.

ADV NGCUKAITOBI SC: If we go to 1A-146 on the same theme. 146, yes, it is just the following page. We are on the theme of Minister Cele publicly supporting, that is what Madam Ramagaga had asked, that is what we are trying to answer.

ADV MAEMA: Yes.

10 **ADV NGCUKAITOBI SC:** Now, if you go to that page, count 1, 2, 3, 4, 5, 6, 7, 8 paragraphs from the top. What does that say?

ADV MAEMA: It starts with:

“Cele defended his decision to support the beleaguered cops this week, saying he was doing so as an ordinary member of the public.”

ADV NGCUKAITOBI SC: Yes. We have gone to three paragraphs where it is stated that former Commissioner Cele
20 publicly supported the decision, is that correct?

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: So, will that ...[intervenes].

CHAIRPERSON: So, that means that 1A-146 ...[intervenes].

ADV NGCUKAITOBI SC: Yes, 1A-146. Yes. So, 1, 2, 3, 4, 5, 6, 7, 8. So, it is the eighth paragraph from the top, it starts

with Cele defended his decision.

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

ADV NGCUKAITOBI SC: All right. Thank you. So, is that the sort of publicity to the support you are referring to?

ADV MAEMA: Indeed, Chairperson, that is the support that I am referring to.

ADV NGCUKAITOBI SC: All right, thank you. Could we move then from this part of the public show of support by Minister Cele and go back to your statement? We have
10 covered both the Sunday Times and the Sunday Independent publications. And in your statement, we are at paragraph 48, which is 1-13. You have got that?

ADV MAEMA: I am there, Chairperson.

ADV NGCUKAITOBI SC: Yes. We can skip paragraph 48, it is not adding any new fact. Into the following page, which is 49.

ADV MAEMA: Which is paragraph 49?

ADV NGCUKAITOBI SC: Sorry, yes, paragraph 49. Now, that is now telling us formally how you got involved into the
20 case.

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Just take us through that.

ADV MAEMA: Chairperson, following these public publications in the Sunday Times that we just referred to, on the 8th of March 2012, a representative of the Independent

Police Investigative Directorate, IPID, met with senior officials of the NPA and reported that they, together with the Directorate for Priority Crime Investigation, the DPCI, were investigating numerous cases involving the death caused by police officers attached to the Cato Manor Unit.

Now, when we refer to senior officials of the NPA, we are referring to Acting NDPP, Advocate Jiba, who was with Advocate Mosing, the head of Special Projects in the office. They are the ones that had a meeting on the 8th of March 10 2012 with representatives of the DPCI, as well as those of the IPID, the Independent Police Investigative Directorate.

In that meeting, they indicated that more than 50 dockets were under investigation and that a number of those matters, and that in a number of those matters, the investigations had reached an advanced stage and required prosecutorial direction. Chairperson, when we are talking about prosecutorial direction, we are talking about prosecutor-guided investigation was what was required.

It was explained that the matter was being treated as 20 urgent at a national level and that a coordinated prosecutorial response, PGI, that I referred to, Prosecutor-Guided Investigation, was required. This is explained in the affidavit of Advocate Anthony Mosing, the then head of Special Projects in the office of the National Director of Public Prosecutions.

I understand that his affidavit is before the enquiry in the Judicial Commission of Enquiry into Allegations of State Capture in the Public Sector, including Organs of State, the State Capture Commission, which was chaired by...

ADV NGCUKAITOBI SC: Well, I think all of us know who chaired the Zondo Commission.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: But you attended that meeting of the 8th of March 2012. Correct?

10 **ADV MAEMA:** Chairperson, I was not at the meeting of the 8th of March.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: I attended the next meeting on the 9th of March.

ADV NGCUKAITOBI SC: 9th of March, sorry.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: You were told about the meeting on the 8th?

ADV MAEMA: Indeed, Chairperson.

20 **ADV NGCUKAITOBI SC:** And then you were invited on the 9th?

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Yes, okay. Now, we have already covered paragraph 50, 51, and 52. Those were the documents from Jackie Lepinka as well as Advocate Jiba.

ADV MAEMA: Indeed, Chairperson.

ADV NGCUKAITOBI SC: Yes. And then we also covered paragraph 53, which was the email from Advocate Smith SC.

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. So I would like to go straight to 56, which is why was it necessary that the prosecution team comprises of prosecutors from outside KwaZulu-Natal. Can you explain that?

ADV MAEMA: Chairperson, can I take it from paragraph 55
10 at the bottom of page 15?

ADV NGCUKAITOBI SC: As you please.

ADV MAEMA: Or 1-15. As explained to me by my former DPP, Advocate Johan Smith SC, and Major General Mabula, who at the time was the Provincial Head of DPCI in the North West, and a member of the investigating, or a lead member of the investigating team appointed by the DPCI in January 2012 to investigate the Cato Manor Unit. The decision to constitute a prosecution team drawn from provinces outside KwaZulu-Natal was taken following consents that were raised
20 by the then acting DPP advocate, acting DPP KZN Advocate Simphiwe Mlotshwa. These consents were raised in a discussion that Advocate Simphiwe Mlotshwa had with Major General Mabula at the police headquarters in KZN.

ADV NGCUKAITOBI SC: Yes, thank you very much.

CHAIRPERSON: And you were informed about that

discussion by?

ADV MAEMA: General Mabula, who is the head of the DPCI team, then informed me about this discussion.

ADV NGCUKAITOBI SC: Yes, thank you. And then I want to move, you have already touched upon this, but just to confirm whether paragraph 57.1 up to 57.6 accurately reflect the members of the prosecution team?

ADV MAEMA: Chairperson, it does. It has a list of prosecutors who were members of the prosecution team.

10 **ADV NGCUKAITOBI SC**: Yes.

ADV MAEMA: I am at paragraph 57.1. And myself as a Deputy Director of Prosecutions in the North West Division. Advocate Mathenjwa, the same capacity, but as a Deputy Director in the South Gauteng Division, Advocate Chauke's office, who was the core team leader. And now the balance of the team, Advocate ...[indistinct] Hlakaza, Advocate Jabu Mlotshwa, Advocate Pumeza Futshane, as well as Advocate Patience Moleko, who are senior state advocates, all in the office of the DPP South Gauteng, the office of Advocate
20 Chauke.

ADV NGCUKAITOBI SC: Just tell me, I understood somewhere in the evidence that there was an Advocate Mlotshwa from the Free State who was part of the prosecution team.

ADV MAEMA: Advocate Jabu Mlotshwa, who is mentioned

in 5.7, was a senior state advocate in Advocate Chauke's office, the DPP office South Gauteng.

CHAIRPERSON: Pardon, where is 5.7?

ADV MAEMA: 57.4, my apologies.

CHAIRPERSON: I beg your pardon?

ADV MAEMA: 57.4 on page 16. Advocate JJ Mlotshwa, who is referred there as a senior state advocate based at South Gauteng Division, applied for a deputy post in Free State and got the deputy post. But at the time when he started with us
10 in the team, on the 9th of March, he was still a senior state advocate in the DPP office in South Gauteng. What I am saying is that he later got a post of a deputy in the DPP office in the Free State.

ADV NGCUKAITOBI SC: And then he continued in the team?

ADV MAEMA: He continued in the team, just like I had continued in the team from the North West.

ADV NGCUKAITOBI SC: All right. Madam Chair, I am going to say to the witness again to keep the answer to the question. I know you have done that job and I do not know
20 how to do it on your behalf, but can I ask for permission to just remind the witness to answer the question I have asked?

CHAIRPERSON: Please, Advocate Maema, I am sure you do the same thing when you lead witnesses as a senior prosecutor. Do not be ahead of anyone.

ADV MAEMA: I apologise.

CHAIRPERSON: You are a witness and you have a team in front of you who called you to testify. It will also help us so that we are not all over the show because you only got your papers this morning and we have been through and we have been referred to bundles and you explained from one bundle to another. So just let counsel to lead you, please.

ADV MAEMA: I apologise.

CHAIRPERSON: Thank you.

ADV NGCUKAITOBI SC: Thank you. Just to go back then
10 to the list at 57.1 to 57.2. So as I understand, one person came from the North West being yourself. The rest came from the South Gauteng Division. Mr Mlotshwa was initially in South Gauteng, went to the Free State but continued in the team as a Free Stater now, no longer as a South Gautenger.

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: All right, thank you very much.
Now, paragraph 58 reaffirms what we looked at, a paragraph 56 around the justification for getting outsiders to be involved. Can you just expand on that?

20 **ADV MAEMA:** Paragraph 68 refers to ...[intervenes].

ADV NGCUKAITOBI SC: 58.

ADV MAEMA: 58?

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: All members of the prosecution team being experienced prosecutors drawn from outside KwaZulu-Natal

to ensure independence, objectivity, and public confidence in the investigation and any ensuing prosecution.

ADV NGCUKAITOBI SC: Yes. I mean, I think the reason I am asking this question is just to get the context of the bringing of outsiders into a province, because this is exclusively made by people from outside. And the explanation you give here is independence and objectivity and public confidence. And why would that be the case or not be the case in the context of KZN prosecutors?

10 **ADV MAEMA:** I follow, Chairperson. What happened, Chairperson, was the discussion that General Mabula had with the then acting DPP of KZN, Advocate Simphiwe Mlotshwa, it was on the basis of staff in the office of the DPP KZN having worked closely with members of Cato Manor in other matters, that a view was held that perhaps an independent mind should bear on those matters and prosecutors from outside KZN should be asked to come in and consider this docket.

ADV NGCUKAITOBI SC: Yes.

20 **CHAIRPERSON:** When you say that at paragraph 56, I think you read it in, at paragraph 56 of your affidavit.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: So that may be read in conjunction with paragraph 58.

ADV MAEMA: Thank you, Chairperson.

CHAIRPERSON: I am asking you.

ADV MAEMA: Yes, yes. That is the close working relationship that I refer to, to safeguard the integrity of the investigation and the independence there. In any subsequent steps that would follow, whether a prosecution or a *nolle*, it was considered very prudent that a team from outside the province should come in to bear on the, or to apply their minds to issues arising from those incidents, from those dockets.

10 **ADV NGCUKAITOBI SC:** Now, there have previously been, in this enquiry, a reference to the prosecutions of the police arising from the Marikana incident in the North West. It was referenced by Advocate Noko. How was that handled in relation to this need for objectivity?

ADV MAEMA: The Marikana prosecution as well, Chairperson, was dealt with by prosecutors outside the North West.

ADV NGCUKAITOBI SC: Yes.

20 **ADV MAEMA:** It was, there was a team that was put together that also considered the dockets in the incidents relating to the Marikana incident.

ADV NGCUKAITOBI SC: Yes. Thank you very much. All right, so now we are at paragraph 59 where a meeting on the 9th of March 2012 is held, which you attended. Correct?

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. Where was this meeting?

ADV MAEMA: This meeting was held at the VGM head office in the boardroom of the NDPP.

ADV NGCUKAITOBI SC: Who attended the meeting?

ADV MAEMA: I attended the meeting.

ADV NGCUKAITOBI SC: Yes?

ADV MAEMA: Advocate Chauke was present. The acting NDPP Advocate Nomgcobo Jiba was present. General Mabula was present, who was the head of the DPCI at the
10 time, or the DPCI team, as well as Mr Glen Angus, who was the head of the IPID team.

ADV NGCUKAITOBI SC: Yes. What was discussed in that meeting?

ADV MAEMA: At this meeting, we were informed about this incident involving police and the killings in KZN. On the 8th of March, some dockets were handed to Advocate Mosing, the head of – Advocate Mosing was also present.

ADV NGCUKAITOBI SC: Okay.

ADV MAEMA: Dockets that were handed to him the previous
20 day, that he read overnight, were then handed to us as a prosecution team who would now take charge of analysing those dockets and ensuring that there is a prosecutor-guided investigation.

ADV NGCUKAITOBI SC: Earlier, you referred to 50 dockets that were initially the subject of this investigation. That is at

paragraph 49, where you say that the DPCI indicated that more than 50 dockets were under investigation. Correct?

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: And then when you met on the 9th, how many dockets, 9th of March 2012, how many dockets were you dealing with?

ADV MAEMA: Advocate Mosing gave us a few, six to eight dockets.

ADV NGCUKAITOBI SC: What, per person or just a sample?

10 **ADV MAEMA**: No, he gave us the individual, there were six dockets that were handed to him the previous day.

ADV NGCUKAITOBI SC: I see.

ADV MAEMA: That were then handed over to us to consider together with the rest of the dockets that we would look at later in KZN.

ADV NGCUKAITOBI SC: Now, what I am asking is ...[intervenes].

CHAIRPERSON: I beg your pardon. the question is how many dockets were handed in, and he says six dockets
20 together with other dockets.

ADV MAEMA: I said six to eight dockets.

CHAIRPERSON: Six to eight dockets.

ADV MAEMA: Were handed to us by Advocate Mosing.

CHAIRPERSON: Together with?

ADV MAEMA: Now, what we did was we then ...[intervenes].

CHAIRPERSON: No, no, you said together with other dockets. Can you just clarify that part because it is making difficult to follow? Counsel asked you how many dockets were you handed to you. Just tell us how many dockets.

ADV MAEMA: Six to eight dockets were handed to us.

CHAIRPERSON: Thank you.

ADV NGCUKAITOBI SC: Okay, all right. Okay, yes. So in the meeting itself, how many dockets were there?

ADV MAEMA: In the meeting, reference was made to
10 dockets, and when the meeting concluded, Advocate Mosing handed to me those six to eight dockets.

ADV NGCUKAITOBI SC: So, okay, I see what you mean. So Advocate Mosing gave you about six to eight dockets.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Okay, to do what with them?

ADV MAEMA: To consider them and apply prosecutor-guided investigations.

ADV NGCUKAITOBI SC: And these were dockets from Cato Manor?

20 **ADV MAEMA:** These were dockets from incidents arising from Cato Manor.

ADV NGCUKAITOBI SC: Yes, okay. Thank you very much.

ADV BALOYI-MERE SC: Sorry, Advocate Ngcukaitobi, do not leave us behind. Always keep in mind that we have not read.

ADV NGCUKAITOBI SC: Yes.

ADV BALOYI-MERE SC: We have not had a chance. Is it 68 dockets or six to eight dockets?

ADV NGCUKAITOBI SC: Well, I think I explained that because I could also be confused.

ADV MAEMA: Chairperson, six to eight dockets were handed to us by Advocate Mosing on the 9th of March after the meeting.

ADV BALOYI-MERE SC: And that answer came after
10 Advocate Ngcukaitobi started his question by saying at paragraph ...[intervenes].

ADV MAEMA: 49.

ADV BALOYI-MERE SC: 49, you referred to 50 dockets.

ADV MAEMA: More than 50 dockets.

ADV BALOYI-MERE SC: More than 50 dockets. And now you say you were handed up six to eight dockets. What happened to the other 42 or the six to eight dockets were the different dockets from the 50 that you were told about emanating from the meeting of the 8th?

20 **ADV MAEMA:** The six to eight dockets were the ones that were handed to Advocate Mosing on the previous day. So what then happened was they then were handed over to me to consider. Now, we considered those together with other dockets that we then considered when we travelled to KZN later.

CHAIRPERSON: Perhaps the answer lies at paragraph 49 in the middle, where, if you can look at it, Counsel, that sentence, I think the second sentence, they indicated that:

“More than 50 dockets were under investigation and that in a number of those matters the investigations had reached an advanced stage and required urgent prosecutorial directive.”

10 Could it be that they then took out six to eight dockets that they believed required urgent prosecutorial directives and handed them to you at the meeting of the 9th of March? Could that be the reason?

ADV MAEMA: No, that is not the reason, Chairperson. What I am saying is the six to eight dockets that were handed to Advocate Mosing the previous day was part of the dockets that we had, part of the 50, part of the more than 50 dockets that we had to consider and apply PGI. So six to eight were handed to us after that meeting and when we then proceeded ...[intervenes].

20 **CHAIRPERSON:** Wait a minute.

ADV MAEMA: My apologies.

CHAIRPERSON: We are to deal with this point at paragraph 59, where reference is made to 50 dockets and at paragraph 58, as we deal with paragraph 58, is that the – or rather the last question, 59, Counsel was asking you about those

dockets and you said how many dockets were handed to you at the meeting of the 9th and you said six to eight dockets. Correct?

ADV MAEMA: That is correct, Chairperson.

CHAIRPERSON: And my sister is now taking you back to paragraph 49 and said at paragraph 49 you spoke of 50 dockets, more than 50 dockets that were under investigation.

ADV MAEMA: That is correct, Chairperson.

CHAIRPERSON: And I am trying to say to you, perhaps the
10 reason, and correct me if I am wrong, perhaps the reason why you were only given six to eight dockets at the meeting of the 9th of March and not more than 50 dockets is because those six to eight dockets could have been investigated and had reached an advanced stage that required you to make an urgent prosecutorial directives, as is written at paragraph 49.

ADV MAEMA: Chairperson, my response is six to eight dockets were given to us on that day. We looked, those dockets, they were given to us, we took them and we are going to read them. But there were more than 50 dockets
20 that we considered, which means the six to eight that was given to us by Advocate Mosing were not ripe yet. We identified investigations to be done in those dockets. And as we proceeded to KZN, we read more other dockets in addition to the six to eight that was given to us.

ADV NGCUKAITOBI SC: Could I ask?

MS RAMAGAGA: Let me just, ja, I also want to see whether this can be clarified for my own understanding. When one looks at paragraph 49, it makes reference to an indication that there were about more than 50 dockets. So it is not the physical dockets being present, it would appear at the meeting. But as they hold a meeting and as you were informed by this meeting that you did not attend, yes, then ...[intervenes].

ADV MAEMA: The meeting of the 9th I did attend.

10 **MS RAMAGAGA**: Yes, there is an indication, like in any other meeting where I can see we have about 100 dockets. And then at the next meeting when the dockets get discharged, they bring a few of those dockets, which could be the six to eight or the seven to six or whatever. But that does not imply that the other dockets were left out. But at the time when they held the meeting previously, they mentioned that there is about more than 50 dockets that are in existence. Is that the correct understanding? If not, please just modify it.

20 **ADV MAEMA**: That is a correct understanding, co-Chairperson. What I am saying is on that day, at the conclusion of the meeting ...[intervenes].

ADV NGCUKAITOBI SC: No, it is enough to say it is a correct understanding.

ADV MAEMA: Thank you.

ADV NGCUKAITOBI SC: Yes, thank you. Could I ask you to move to paragraph 64? That seems to be the first time when all of this 50 is then handed over to you.

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Just explain that. You said that in relation to the six or eight, you took the view that they were not ripe for prosecution.

ADV MAEMA: Indeed, Chairperson.

ADV NGCUKAITOBI SC: Okay. And then you move from
10 the 9th. It is not clear from the statement when exactly you went to KwaZulu-Natal, but you say you attended the first meeting in Durban. Do you have a date?

ADV MAEMA: The first meeting when we went to Durban was the 27th, the week of the 27th to the 1st of June 2012.

ADV NGCUKAITOBI SC: Yes. Then you will have to explain.

ADV MAEMA: The 27th of May to the 1st of June 2012, yes.

ADV NGCUKAITOBI SC: No, that is fine. You will have to explain the gap between the 9th of March and the 27th of May, because then you were given these dockets. You studied
20 them. They are not ripe. And then what happened during the April period before you jump into May?

ADV MAEMA: What happens is, remember I had certain matters to round off in the North West.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: So I joined the team on the 27th of May to the

1st of June, but the team went to Durban prior to the 27th of May. In my absence, they went under the leadership of Advocate Mathenjwa.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Because what happened, Chairperson, after the 9th of March, I do not want to run ahead of myself. We had a meeting on the 12th of March as a prosecution team.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: And then we formulated a strategy. I
10 indicated my unavailability, and Advocate Mathenjwa would then take charge. And they proceeded to go to Durban, whilst I was rounding off the matters that I had pending in the North West.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: So I only joined them on the 27th of May after they had already commenced perusing some of the dockets and guiding the investigation.

ADV NGCUKAITOBI SC: That is fine. That is the gap I was asking you to fill, but thank you.

20 **ADV MAEMA:** Yes.

ADV NGCUKAITOBI SC: So paragraph 64 refers to your attendance in KZN on the 27th of May 2012.

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. So what happens there is that you were now presented with the 50-plus dockets. And

then what did you do with those dockets?

ADV MAEMA: Chairperson, what happened then is we would then peruse the dockets, the more than 50 dockets that were presented. Peruse the docket, guide them, and guide the investigation towards getting them ripe for decisions to be made. We would review the contents of the dockets. And having reviewed, having looked at the dockets over a period of time, the more than 50, we then identified 23 dockets, 23 murder dockets involving 28 deceased persons in which
10 killings by Cato Manor Unit appeared to have been unjustified.

ADV NGCUKAITOBI SC: Yes. Can you just explain in relation to the other dockets that were given to you, what was the basis for giving those dockets to you and what was the basis for you saying this should not be proceeded with?

ADV MAEMA: Chairperson, what we did was we did a, what do you call it, sifting. We looked at those dockets. There are things, there are cases that are referred to as dead cases where there is somebody that passed on, but there is, it is
20 difficult to ascertain what happened, who can be ascribed to have caused the death of the deceased. But on the 23 dockets, it was dockets that we felt we are able to make headway as to who may be held responsible for the deceased death. So from the more than 50, we worked on the 23 and said these are the 23 in respect of which we are of the view

that there is a *prima facie* case for a decision to prosecute to be made.

ADV NGCUKAITOBI SC: Yes, thank you. So you are saying for the, let us say 27 that you discarded or whittled down, there were dead people that killed at the instance of the police.

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: But you did not think there was enough evidence to identify the killers and to charge them
10 with offences?

ADV MAEMA: Exactly, Chairperson.

ADV NGCUKAITOBI SC: Yes. And so the 23 was really after a thorough process of whittling down the wit from the chaff.

ADV MAEMA: That is correct, Chairperson. We did the guiding of the investigation. Yes, I do not want to give a long answer. Yes, the 23 are the ones we have the view that there is merit, a *prima facie* case can be made out that points to who would be responsible for the deceased's death.

20 **ADV NGCUKAITOBI SC:** Yes. Can you just explain the process through which you came to these conclusions? The reason I ask is because in this case, you have already seen the De Kock report.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: In this case, Advocate Chauke, you

have also seen the terms of reference.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Advocate Chauke is being told that you supported wrongfully the prosecution in 23 of these dockets when there was no evidence.

CHAIRPERSON: Might I interpose here before you get to the terms of reference?

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: We are going to take a few minutes
10 adjournment.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Advocate Ngcukaitobi.

ADV NGCUKAITOBI SC: Yes?

CHAIRPERSON: We need to stretch our legs.

ADV NGCUKAITOBI SC: Thank you.

CHAIRPERSON: May we adjourn for just about 10, 15
minutes and reconvene at half past four?

ADV NGCUKAITOBI SC: Thank you.

ENQUIRY ADJOURNS

20 **ENQUIRY RESUMES**

CHAIRPERSON: Thank you, Advocate Maema. You are still under oath. You may proceed, Advocate Ngcukaitobi.

GLADSTONE SELLO MAEMA: (still under oath)

EXAMINATION BY ADV NGCUKAITOBI SC (CONTINUES):

Thank you, Madam Chair.

CHAIRPERSON: You were starting on the terms of reference.

ADV NGCUKAITOBI SC: Yes. I wanted to ask you the reference you made earlier on the terms of reference. Can I ask you to do the following, just a big favour? You have got the counter book on your right, that notebook on your right. Just close it. And then you have got your own charge sheet on your left. Close that as well. Then what I would like you to have in front of you is just your statement. That would be
10 very, very helpful so that we are all looking at the same thing at the same time.

CHAIRPERSON: I will do the same.

ADV NGCUKAITOBI SC: Thank you.

CHAIRPERSON: So we should only have Bundle 1?

ADV NGCUKAITOBI SC: Yes, which comprises of three files. Now, I was asking you about the Cato Manor charge, which is prosecution with no evidence. To ask you whether that exercise of determining whether there is evidence or there is no evidence to justify a prosecution had already been
20 undertaken or not by your team.

ADV MAEMA: Chairperson, we engaged in that exercise. And what we did was after the planning meeting, we felt it appropriate that we should take a week at a time to go to KZN to look at the dockets, to evaluate the evidence that is in the dockets. And where possible, guide the investigation. That

happened over a period of time.

ADV NGCUKAITOBI SC: Yes. In these weeks that you went there, who was present in the meetings? So let us start with the first one. You mentioned the 27th of May 2012. Correct?

ADV MAEMA: That is correct, yes.

ADV NGCUKAITOBI SC: And how long did that last?

ADV MAEMA: What we decided to do at the planning meeting was let us go there week by week, the entire week, Monday to Friday.

10 **ADV NGCUKAITOBI SC:** Okay.

ADV MAEMA: The plan was we leave on Sunday afternoon. Monday morning, 8 o'clock, half past 8, we start perusing the dockets, guiding the docket, writing the queries in the dockets.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: You know, assessing the contents of the dockets and guiding the police to do the investigations in those dockets.

20 **ADV NGCUKAITOBI SC:** Yes, all right. So how long did the meeting of the 28th, so the 27th would have been a Monday presumably?

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: And it would be that week?

ADV MAEMA: When we started that week, we were there the entire week. Then what do we do in the morning? Come

together, sit around the table ...[intervenes].

CHAIRPERSON: Please just answer the question, Mr Maema. Do not go ahead of counsel.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: So the idea would be that would be that week, that five days?

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: Now you would then postpone for another week, for another two weeks?

10 **ADV MAEMA:** Then we would come another week. We would come on a week by week basis, assess the progress that has been done in the investigation. If we are satisfied, then we put that docket aside. Those in respect of which you are not satisfied, we continue guidance. We require this, look at this, we guide the investigation, prosecutor-guided investigation.

ADV NGCUKAITOBI SC: I understand. Now I am just working on the time now.

ADV MAEMA: Yes.

20 **ADV NGCUKAITOBI SC:** I will come back to the substance of what you did.

ADV MAEMA: Okay.

ADV NGCUKAITOBI SC: So the first one is 27 May until presumably the end of that week.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: And then you skip a week.

ADV MAEMA: We would, I have made the notes of ...[intervenes].

ADV NGCUKAITOBI SC: Ja, all right. Let us ...[intervenes].

ADV MAEMA: I have made a note and those notes are compiled on the basis of the trip authorities. Because what you do as a prosecutor when you travel, you ask for a trip authority.

ADV NGCUKAITOBI SC: Yes, that is fine. You can tell us exactly if you want to refer to your notes, refer to your notes.

10 **ADV MAEMA:** Yes.

ADV NGCUKAITOBI SC: But I need to get the weeks you were there doing this job.

ADV MAEMA: I have noted those weeks from my trip authorities.

ADV NGCUKAITOBI SC: That is fine.

ADV MAEMA: Which are in this book that I have now.

ADV NGCUKAITOBI SC: No, that is fine. You can open it now. But the only point is this, is simply that we must move together, me and you. So if your notes are in the book, that
20 is fine. You may open it and tell us your notes.

ADV MAEMA: They are in the book.

ADV NGCUKAITOBI SC: Yes, that is fine.

ADV MAEMA: Can I give you the weeks?

ADV NGCUKAITOBI SC: Yes. So the first week is 27th of May until when?

ADV MAEMA: 27th of May until the 1st of June 2012.

ADV NGCUKAITOBI SC: Yes, that is the first week you were there.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Yes. And then what happened? Did you skip a week after?

ADV MAEMA: We did not skip a week. We went the next week.

ADV NGCUKAITOBI SC: The following week?

10 **ADV MAEMA**: Yes, the 4th to the 8th of June.

ADV NGCUKAITOBI SC: All right.

ADV MAEMA: No, let me see. 4th to 8th of June. Oh, yes. No, we skipped this week. The 4th to the 8th of June was – what happened week 27 May to 1 June, some of the advocates to whom dockets were allocated, drafted single ...[intervenes].

CHAIRPERSON: Mr Maema, please do not give us the details. Just give us the dates.

ADV NGCUKAITOBI SC: Yes.

20 **ADV MAEMA**: Well, the ...[intervenes].

CHAIRPERSON: It was the 27th of May to the 1st of June.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: The next meeting, when was it?

ADV MAEMA: The next meeting was the 12th to the 15th of June.

ADV NGCUKAITOBI SC: 12th to the 15th?

ADV MAEMA: The 4th to the 8th of June was the meeting in South Gauteng itself.

ADV NGCUKAITOBI SC: I see, I see.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: But it was still about Cato Manor?

ADV MAEMA: It was still about Cato Manor.

ADV NGCUKAITOBI SC: All right, okay. So let me just get this right. 27 May to the 1st of June you are sitting in KZN?

10 **ADV MAEMA:** Yes.

ADV NGCUKAITOBI SC: 4th of June to the 8th of June you are sitting in South Gauteng?

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: Yes. 12th of June to the 15th of June you are back in KZN?

ADV MAEMA: We are back in KZN.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: As well as the 17th of June to the 6th of July.

20 **ADV NGCUKAITOBI SC:** To the 6th of July. Yes. Now, when was the decision taken that the Cato Manor accused ought to be arraigned?

ADV MAEMA: By the end of June we had already decided that we, by the 29th of June.

ADV NGCUKAITOBI SC: 29th of June?

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Can you recall the arrest? The date we have here is the date for the bail. That is only because we got it from the newspapers.

ADV MAEMA: Is that the 21st of June 2012?

ADV NGCUKAITOBI SC: I will check for you now. This is the – it is the 24th. The newspaper report is the 24th of June 2012.

ADV MAEMA: The arrest was effected on the 20th of June. The initial 20 were arrested on the 20th of June. And there
10 was a second batch of arrest a week thereafter.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: But by the end of June we had decided that there are dockets in respect of which there is sufficient evidence to prosecute.

ADV NGCUKAITOBI SC: So the decision ...[intervenes].

CHAIRPERSON: That is the 29th of June?

ADV MAEMA: That is correct.

CHAIRPERSON: When you arraigned them?

ADV MAEMA: 29th of June 2012 we had decided
20 ...[intervenes].

CHAIRPERSON: To arraign them.

ADV MAEMA: Yes.

CHAIRPERSON: Okay.

ADV NGCUKAITOBI SC: Okay, thank you. So by the time, because that is what I was looking at, by the time you made

the final call that they should be arraigned. It was after three weeks of intense work.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: It is 27th May to the 1st of June, 4th of June to the 8th of June, 12th of June to the 15th of June.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: Yes, thank you. Now, we can then go to the substance of what was discussed in these meetings. Firstly I want to know who attended the meetings.

10 **ADV MAEMA**: It would be the prosecution team.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Which comprised of myself, Advocate Mathenjwa. There is a list on the paragraph.

ADV NGCUKAITOBI SC: So you have the list of your prosecution team?

ADV MAEMA: Yes. The entire team was there.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: On the ...[intervenes].

ADV NGCUKAITOBI SC: At 57.1 to 57.6.

20 **ADV MAEMA**: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. All right. So in these meetings over three weeks everyone who was there was present.

ADV MAEMA: That is correct. It is the prosecution team.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: And then it is the DPCI team headed by General Mabula and Brigadier Mokwena. And then it was the IPID team headed by Mr Angus.

ADV NGCUKAITOBI SC: I see. Now, what about the two experts? Captain Mangena, I think he is now a Colonel. As well as Mr Wikus Steyl.

ADV MAEMA: Captain Mangena and Mr Steyl were witnesses that we consulted.

ADV NGCUKAITOBI SC: Yes. In the course of that three
10 weeks?

ADV MAEMA: In the course of not only the three weeks. Captain Mangena was with us most of the time. Mr Steyl would come from time to time.

ADV NGCUKAITOBI SC: Yes. I understand, but I am saying before the decision was taken to arraign the accused, you had taken also expert advice.

ADV MAEMA: That is correct, Chair.

ADV NGCUKAITOBI SC: From Captain Mangena.

ADV MAEMA: That is correct.

20 **ADV NGCUKAITOBI SC:** Yes. Did you take expert advice from Mr Wikus Steyl?

ADV MAEMA: We took advice from Mr Steyl too.

ADV NGCUKAITOBI SC: Yes. And then how was that procured? Did he consult with you or what happened?

ADV MAEMA: He came to consult with us.

ADV NGCUKAITOBI SC: Yes. In those meetings?

ADV MAEMA: In those meetings, yes.

ADV NGCUKAITOBI SC: And how was the expert advice of Captain Mangena procured?

ADV MAEMA: How it was procured? It was Colonel Mangena visited the scenes post, after the scenes.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: *Post facto.*

ADV NGCUKAITOBI SC: Yes.

10 **ADV MAEMA:** He then looked at the post-mortems.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Looked at the damaged vehicles. Looked at the scene and did a reconstruction of the scene, which means he would then look at the scene and say the deceased was in this position when he was fired at. Looking at the tract of the bullet wounds in the post-mortem and looking at the damages in various parts of the car, whether it is the driver's side, whether it is the rear window, whether it is the headrest of the car.

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

CHAIRPERSON: In the report of Captain Mangena that was referred to us earlier, it seems he referred to himself as a captain, not colonel.

ADV MAEMA: At the time that we did the analysis, he was Captain Mangena.

CHAIRPERSON: After his report?

ADV MAEMA: Yes. At the time of compilation of the report, he was Captain Mangena. But then during the duration of the investigation, he was appointed Colonel Mangena. So out of respect, I refer to him at – I looked at the latest, the last rank that he...

CHAIRPERSON: Yes.

ADV MAEMA: But at the time that he did it, he was Captain Mangena.

10 **ADV NGCUKAITOBI SC:** Thank you very much.

CHAIRPERSON: Yes, thank you.

ADV NGCUKAITOBI SC: Yes. I just want to understand how exactly they did it. So I understand the method he used, right, which is reconstruction of the crime scenes by visiting the scenes and inspecting the available physical and non-physical evidence. But in relation to communicating it to yourselves so that you could be satisfied or not satisfied, how did that happen?

20 **ADV MAEMA:** Reports were compiled. Ballistic scene reconstruction reports were compiled.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: That were attached to all the dockets. And he would sit with the prosecution team in the presence of the IPID and the DPCI team and he would brief us. We would go to that docket, look at the photos of the scene, look at the

post-mortem reports and then he would work it out and show us on the – he had a laptop.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: That was showing the tracks and showing us how he comes to the findings that he came to.

ADV NGCUKAITOBI SC: But you say he was there throughout the three weeks.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: All right. And then did he do an
10 analysis of each of these 23 dockets that were opened?

ADV MAEMA: He did the analysis of each of the incidents in addition to the analysis that was done by Mr Steyl.

ADV NGCUKAITOBI SC: Mr Steyl.

ADV MAEMA: And in conjunction with the post-mortems that were compiled by doctor, I will get to the name.

ADV NGCUKAITOBI SC: There are two doctors here. There is Doctor Perumal and Doctor Naidoo.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: And both of them seem to give
20 reports regularly.

ADV MAEMA: Yes. Both of them dealt with different dockets. But you are correct, Doctor Perumal and Doctor Naidoo.

ADV NGCUKAITOBI SC: Yes. Did they present to you or did you just rely on their findings?

ADV MAEMA: They were very busy. We wanted to consult with them, but we never got to consult with them.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: We relied on the post-mortems as they were furnished to us, as well as Mangena's ballistic reconstruction.

ADV NGCUKAITOBI SC: Yes. Now just to go then to Mr Wikus Steyl, who was the second expert. So we have worked out the procurement of the evidence and the method of presentation to yourselves. What we know about Mr Steyl
10 from facts that are now common cause is that he went to these scenes shortly after the incidents. Unlike Mr Mangena who went three or four years after the event. But in relation, for instance, to the ...[indistinct] scene, he was there four days after the incident.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: Yes. And similarly to the Buthelezi, he was there almost immediately.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: Can you just explain how, what
20 methods he used to gather the evidence and versus how he presented it to you?

ADV MAEMA: Chairperson, he did not make a physical presentation. As I say, we never got to meet Mr Steyl.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: We got to meet Colonel Mangena. But he

went to the various scenes, compiled reports in the course of his duty, and filed those reports in the dockets.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: And as we perused the dockets, his reports would be in the dockets, in most of those dockets.

ADV NGCUKAITOBI SC: Can you just explain that? Because what I have certainly seen in the dockets is that there are instances where he gives what is called a provisional report, okay, which is immediately after the event.

10 And then there are later scenes when he then confirms that report which seems to be aligning with the time when you were doing your investigation.

ADV MAEMA: That is correct. What happens, Chairperson, is on the day that he is at the scene, he does his observations and analysis. And then he would then go and do a scientific analysis that they do and then compile, as you say, preliminary report and then a final report.

ADV NGCUKAITOBI SC: Yes. When you say you did not consult with him, what was the plan? I mean, I know that
20 Captain Mangena was meant to be a witness, an expert witness. What was the plan with Mr Steyl if you did not actually speak to him?

ADV MAEMA: The plan was to consult with him and ultimately to lead him, because the collection of the information at the scene was very crucial.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: So if he was available, we wanted to consult him.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: But we never got to consult him.

ADV NGCUKAITOBI SC: Yes, all right. And then his reports, how did they make their way to the docket?

ADV MAEMA: Well, as he goes to the scenes, he will do the analysis and then file them in the docket and reflect them in
10 the C portion of the docket.

ADV NGCUKAITOBI SC: But there must have been someone responsible for the collation of that information. I mean, he would not have just voluntarily gone to the scenes and then brought reports to the C part of the docket. Someone in the investigation team must have been working with him, and that is what I am trying to understand.

ADV MAEMA: Members of the IPID, I think it is Williams. I cannot, it is a ...[intervenes].

ADV NGCUKAITOBI SC: The Williams we have seen is
20 Sharmila Williams.

ADV MAEMA: Yes, she was the IPID official who was initially tasked with the investigation of these cases.

ADV NGCUKAITOBI SC: But when you say members of IPID, what did she actually do? That will answer my question about how these reports ended up in the C part of the docket.

ADV MAEMA: Say again, counsel.

ADV NGCUKAITOBI SC: I am saying you mentioned Ms Sharmila Williams, but you did not complete the sentence about what did she do. That would answer the question I asked about how did the reports from Mr Wikus Steyl end up in the C part of the docket.

ADV MAEMA: What she would do is she would then, once there is a shooting incident, IPID would then be informed and then IPID would then come to the scene. But on arrival at
10 the scene, Captain Eva would be in charge of the scene and the scene would be cordoned off and they would not be allowed to enter the scene until Captain Eva and Cato Manor had effectively doctored the scene by planting a firearm next to the deceased to create an impression that the deceased would have posed some danger to the police officers who would have fired shots at that very scene.

ADV NGCUKAITOBI SC: I understand. We will come back to that, but I am still trying to understand the reports of Wikus Steyl.

20 **ADV MAEMA:** Okay.

ADV NGCUKAITOBI SC: We know how the reports of Captain Mangena got into your possession because he was part and parcel of your investigation team. But Wikus Steyl, as I understand, did not attend your consultation meetings.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: But his reports are everywhere.

So how did that happen?

ADV MAEMA: He filed them in the dockets, in the respective dockets.

ADV NGCUKAITOBI SC: Yes, but there must have been someone who asked them to file them in the investigation dockets.

ADV MAEMA: Sharmila Williams, as the investigator, would do that.

10 **ADV NGCUKAITOBI SC:** Okay, that is fine. So they were procured by Miss Sharmila Williams.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: Who was an employee of IPID.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: All right, thank you very much. Now there is another category of ...[intervenes].

ADV BALOYI-MERE SC: Sorry, I am sorry to do this to you. I am taking you a step back. The witness answered that once there is a shooting, the IPID got involved. And can he repeat
20 and take it from there? Because what I heard was like the IPID would secure the scene until someone comes and fiddle with the scene and plant stuff. Can he?

ADV NGCUKAITOBI SC: Thank you, Advocate Maema. I think you have heard the question.

ADV MAEMA: I have heard the question.

ADV NGCUKAITOBI SC: So can you please deal with it?

CHAIRPERSON: Might I suggest that I think the witness digressed and he started mentioning all those things, not actually answering your question. And I suggest that we stick to the questioning and not to the answers.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Because that answer came as a result of his digression.

ADV NGCUKAITOBI SC: Yes, thank you, Madam Chair. Let
10 us just go back then to what we were addressing, which is the reports of Mr Steyl came via Sharmila Williams, who was an employee of IPID.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: And that is how you formed the view that he would be a potential witness.

ADV MAEMA: That is correct, yes.

ADV NGCUKAITOBI SC: Now, there is another category of investigation and evidence, which is eyewitness accounts. Now, how did you work on that in those three weeks that you
20 were in KwaZulu-Natal?

ADV MAEMA: The eyewitness versions of the witnesses, the statements would be filed, would be in the dockets. We would peruse those dockets and then identify the witnesses that we wanted to consult.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: And then indicate to both General Mabula and Mr Angus that we would want to consult a particular witness in a particular docket, and we would require that they procure that witness for us.

ADV NGCUKAITOBI SC: Did you, in fact, consult with any eyewitnesses?

ADV MAEMA: Yes, we did.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: We consulted a number of witnesses. I think
10 they are mentioned somewhere.

ADV NGCUKAITOBI SC: Yes. No, we will go through them when we do the docket by docket analysis. But I just want the methods of evidence gathering because at the moment we are dealing with this scenario in which we are told there is no evidence, but I just want to check how you ensured that there was evidence. So you said you would go through the dockets, identify factual witnesses.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: Ask the police investigators to
20 bring them to you.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: You would consult and take statements.

ADV MAEMA: We will consult, counsel, not take statements. Statements would be taken by the police themselves.

ADV NGCUKAITOBI SC: Yes, but it would be in the same room.

ADV MAEMA: Yes. What we would take is consultation notes.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: But their statements would be, statements under oath would be in the respective dockets.

ADV NGCUKAITOBI SC: Yes. No, but what I am asking is whether you personally were sitting in consultation rooms
10 with factual witnesses.

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes, where the police were taking the statements of those witnesses.

ADV MAEMA: Police would take the statements separately.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: And file it in the docket.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: And we would say, ja, these witnesses we would want to consult with. Please bring them.

20 **ADV NGCUKAITOBI SC:** Yes.

ADV MAEMA: And then the witness will be brought and we would consult with that witness.

ADV NGCUKAITOBI SC: Then there is still another category of this evidence when you go through these dockets, which is the warning statements of the accused. How did that

happen?

ADV MAEMA: The warning statements of the accused or the shooters or shooters, depending on what ...[intervenes].

ADV NGCUKAITOBI SC: Let us call them the suspects.

ADV MAEMA: Oh, the suspects, yes. Would be filed in the dockets.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Warning statements, we would find them filed in the dockets already.

10 **ADV NGCUKAITOBI SC**: Yes. I am going to ask you some details about these statements by the suspects. The one thing that you pick up in the dockets is that most of them would generally, at the time of the incident, refuse to give a warning statement, but then they give warning statements later, like in 2012 or in 2013, when there is an investigation. Can you just explain how that process was handled?

ADV MAEMA: What would happen is that ...[intervenes].

CHAIRPERSON: Sorry, may I understand? You referred to the statements of suspects.

20 **ADV NGCUKAITOBI SC**: Of the suspects, yes.

CHAIRPERSON: Yes. The suspects, we spoke about suspects in relation to the victims, the people who were suspected by the Cato Manor to have committed crimes, and then we spoke later of the accused persons.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Should we not make it clearer?

ADV NGCUKAITOBI SC: I apologise, Madam Chair, I see the problem. Yes, so in this category I am dealing with now, Mr Maema, I am dealing with the Cato Manor accused who were at the time suspects. Now, what I am saying is that when I have read this, you can correct me if I have got this completely wrong, but when I have read these dockets, I find instances, many instances, where these suspects do not give warning statements at the time of the incident.

10 So if a shooting took place on the 23rd of September 2008, there is no warning statement dated 23rd of September during the investigation, but there are statements that come in during your investigation. So I wanted to understand how did this happen and whether or not you have any insights on that.

ADV MAEMA: What would happen is that on the day of the shooting, the identified person, the suspect, who would allegedly have fired shots, would not make a statement on that day.

20 **ADV NGCUKAITOBI SC:** Yes.

ADV MAEMA: And then will make a statement on a later date, subsequent to the day of the incident. But those statements then would be made, those warning statements would then be made and then filed in the dockets. So we would then find those warning statements in the dockets.

ADV NGCUKAITOBI SC: Yes. I mean, is it usual that, I suppose it is part and parcel of the presumption of innocence, that if a suspect is confronted by the police and they ask, do you want to say anything, they are entitled to say no.

ADV MAEMA: What happened in most of these incidents was when there is a shooting involving the police, a duty officer is, in terms of the standing orders, compelled to visit the scene. So the duty officer would visit the scene and ascertain what happened there and compile a report and
10 identify the circumstances around the shooting.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: But instead of the suspects then making statements immediately on the day of the incident, then most of the Cato Manor SVC members would be asked to submit their statements later. So the statements, ordinarily what happens is you are as a suspect, particularly when the duty officer finds you at the scene, in determining the circumstances around the shooting ...[intervenes].

CHAIRPERSON: Advocate Maema, the question that you
20 asked is whether is it normal or usual for whoever intends taking a warning statement to inform the suspect of its right to remain silent, that they have an election. That is the question asked. I waited patiently for you to come to the asked question, and you are answering an unasked question. Please.

ADV MAEMA: I apologise.

CHAIRPERSON: Please just be attentive. I am sure you came here with expectations that certain questions are going to be asked. But be patient, listen to the evidence leader. At the end I am sure he will ask you as to whether is there anything that has been left out and that will be your opportunity then to say what you would like to say that has been omitted. Thank you. So are you going to answer the question, please?

10 **ADV NGCUKAITOBI SC:** Yes. I think just to repeat the question if you would like, which is, is it normal that a criminal suspect when confronted by a police officer would be reminded of their right to remain silent as part of the presumption of innocence and they would say, no, I do not want to give a statement?

ADV MAEMA: It is normal for a suspect to be informed of his rights and for the suspect to make an election whether he makes a statement or he wishes to remain silent.

ADV NGCUKAITOBI SC: Yes. Now, can I just give you one
20 assurance ...[intervenes].

CHAIRPERSON: Advocate Ngcukaitobi, you speak of it being normal. Is it not a constitutional prerogative of anyone who is confronted by the police to be warned of their rights?

ADV NGCUKAITOBI SC: Yes, indeed.

CHAIRPERSON: So it is just not normal. It is an entrenched

right. Not so?

ADV MAEMA: It is actually the law. It is the right of a person who is informed that he is suspected of involvement to make an election, whether to make a statement or whether to remain silent or whether to get a lawyer before he makes a statement.

ADV NGCUKAITOBI SC: Yes. Thank you, Mr Maema. I just wanted to give you one assurance. I will take you to the statements that were eventually made when they were made
10 and take you through to some features of those statements and ask for your comment when we do a docket by docket analysis. I will use no more than five examples from those and you can expand on the answers. Thank you very much.

ADV MAEMA: I understand, Chairperson.

ADV BALOYI-MERE SC: If I may piggyback on your question and ask this general question? What is the normal procedure or process that is followed if a police officer discharges his or her firearm and a suspect ends up dead? What is the process that happens immediately when they say get back to
20 the station or whatever? Maybe I can expand and ask, is there a report that is submitted by the police officer or is there a statement or it is just an entry that I discharged my firearm, someone died and that is it?

ADV MAEMA: Chairperson, when a police officer discharges a firearm and somebody is killed, a duty officer is supposed

to visit that scene in terms of the standing orders. Standing order 251, yes, it has subsections. But when there is a shooting, a duty officer must visit that scene. Then the officer that fired the shots on the very same day of the incident is asked to provide an account of the shooting, which account will accompany the report of the duty officer when the duty officer outlines the circumstances surrounding the shooting.

ADV NGCUKAITOBI SC: Yes.

ADV BALOYI-MERE SC: Thank you.

10 **ADV NGCUKAITOBI SC:** Thank you very much. All right, just on your timeline then, the last date we have before the arraignment is the 21st of June and they are arraigned on the 29th of June. Is that correct?

ADV MAEMA: Arraigned means brought before court.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Yes, yes.

ADV NGCUKAITOBI SC: Now, any other attendances there subsequent to that? I want to make sure that we have closed the loop on your visit to KZN in preparation for the indictment.

20 **ADV MAEMA:** As I indicated, I am not sure if I follow your question.

ADV NGCUKAITOBI SC: I am asking about these big meetings of prosecutors, investigating officers, IPID and experts where you are evaluating the evidence, whether it is correct that the last of those meetings is the 29th of June?

ADV MAEMA: I indicated that the 29th of June was the date on which we decided that there is evidence to proceed. But what we did was that we continued going to KZN subsequent weeks to follow up on the investigations that we had given the police to ensure that the investigations that we wanted done gets in fact done and those statements that we had identified are outstanding, get filed in the dockets.

ADV NGCUKAITOBI SC: Yes. I see, but I am just talking now before the decision was made that these accused must
10 go to court.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: So that would be correct, that would be the last date?

ADV MAEMA: Yes, the 29th of June.

ADV NGCUKAITOBI SC: Yes, okay, good, good. Now, you were also mentioning about the collection of factual statements. Now, this enquiry has been exercised in the same way as the courts before Judge Gorven exercised about unsworn statements, and particularly one unsworn statement
20 that came from Mr Ari Danikas. Do you remember that?

ADV MAEMA: I do remember Mr Ari Danikas.

ADV NGCUKAITOBI SC: Can you just explain to the Panel how, as a person who was actually engaged in the subject, how that entire collection of that statement took place?

ADV MAEMA: Okay. I received a call from General Mabula,

who was in the company of Mr Ari Danikas. They were in Greece.

ADV NGCUKAITOBI SC: And before you went there, you were not aware that he was likely to travel to Greece.

ADV MAEMA: I was aware that General Mabula would go to Greece to meet Mr Danikas in respect of the consents that Mr Danikas had.

ADV NGCUKAITOBI SC: Yes. Well, perhaps then start us earlier than that in the statement. You just say, well, he was
10 identified on X date or during this period as a potential witness, and these were the steps taken to secure his witness testimony.

ADV MAEMA: All right. What happened was his name came up during the weeks that we were in Durban. There was this Greek national who had left the country. And ...[intervenes].

ADV NGCUKAITOBI SC: Can you recall right now how the name came up?

ADV MAEMA: The name came up as a, what do you call this? A police reservist who was attached to Cato Manor had
20 left the country in fear of his own life. But he has information relating to the killings or relating to how some of the incidents unfolded, and he was prepared to provide a statement relating to the incidents that happened when he was present, when he was a reservist in the company of Cato Manor.

ADV NGCUKAITOBI SC: Who raised his name?

ADV MAEMA: It was raised by both the IPID and the DPCI.

ADV NGCUKAITOBI SC: So General Mabula?

ADV MAEMA: General Mabula in particular, yes.

ADV NGCUKAITOBI SC: Okay. And then on the IPID side?

ADV MAEMA: It was, it was not Mr Angus. I think it was Mr Mosia Bua [?].

ADV NGCUKAITOBI SC: Okay.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: So when they raised it, was it
10 because they had spoken to him before?

ADV MAEMA: That is correct, Counsel.

ADV NGCUKAITOBI SC: All right. So then take us from the
moment the name is raised, what happens?

ADV MAEMA: Chairperson, what happens, we continue with
the rest of the other work with the investigation team. Whilst
then General Mabula gets his authorisation to travel overseas
and he goes to go and see Mr Danikas around, before the
29th of June.

Now what happens was, I then receive a call from
20 General Mabula who says, I am with Mr Danikas, he is
prepared to testify. He wants to make a statement. Can I go
to the South African Embassy and have his statement taken
and commissioned? South African Embassy would be like
South Africa. It is our land in another land.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: So I said, no General, we do not work that way. If I intend using that witness in a subsequent trial, that witness statement must be obtained in terms of the Mutual Legal Assistance Act. So obtain a draft so that we can at least have an idea of what he is talking about. And because he had gone there for two days, come with that statement. We will look at that statement in the light of the incidents that we have and the documents that we have.

And then we will indicate what is missing in the
10 statement if there is anything missing. And then that statement will have to be sent back to him. He will be having a copy. He will then be told what the queries are in respect of the statement. Deal with those queries. When they are settled, sign that statement. And then it will be channelled in terms of section 2 of the Mutual Legal Assistance Act.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: What would happen is that I then compile a request for Mutual Legal Assistance ...[intervenes].

ADV NGCUKAITOBI SC: Yes, no, we will come to that. I
20 just want to get the facts right.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: So he then says to you, I am in Greece, I want to take a statement. The witness is willing. You say, look, take a draft statement because I have this Mutual Legal Assistance process.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Did he in fact take the draft statement?

ADV MAEMA: He did take a draft statement.

ADV NGCUKAITOBI SC: Did he come back with that draft statement?

ADV MAEMA: He came back with his draft statement and gave us the draft statement.

ADV NGCUKAITOBI SC: And was that draft statement, you
10 said if there were queries, we will correct them and send them
back. Were there any queries that were corrected and sent
back to Mr Danikas?

ADV MAEMA: There were some queries that we raised in
respect of some of the incidents that I communicated to Mr
Danikas through his lawyer, Mr ...[intervenes].

ADV NGCUKAITOBI SC: Angela Knight.

ADV MAEMA: Spirio [?], that is a name that I cannot say.

ADV NGCUKAITOBI SC: Through his South African lawyer?

ADV MAEMA: No, it is a Greek lawyer.

20 **ADV NGCUKAITOBI SC:** I thought it was a South African
lawyer.

ADV MAEMA: The South African lawyer was Mr Julian
Knight.

ADV NGCUKAITOBI SC: Julian Knight, yes.

ADV MAEMA: Mr Julian Knight was in the employ of Legal

Aid South Africa.

ADV NGCUKAITOBI SC: Okay, I see.

ADV MAEMA: Yes, and Mr Julian Knight addressed some enquiries to me in respect of the use of Mr Danikas as a witness or otherwise.

ADV NGCUKAITOBI SC: Yes. I just want to take you through to that statement, that initial statement that was given. There is one or two questions. Yes, so if you go to – yes, okay. My junior tells me it is GSM74, so I do not need
10 to go to the previous bundles. So GSM74 is 1A...

ADV MAEMA: 1A-696, which is GSM74.

ADV NGCUKAITOBI SC: No, there is actually another statement that I am looking for, not this one, that my colleague has pointed out.

CHAIRPERSON: You must take us to the correct bundle, Counsel. Are we at Volume 2?

ADV NGCUKAITOBI SC: No, Madam Chair, let me find the statement first. I think Mr Ramogale is pointing me not to the statement I have in mind. Yes. So it is in File 3. Yes, I have
20 actually got it. It is File 2. No, not your files. It is File 2 of the main cross-examination bundle. Okay, Madam Chair, what seems to happen is that the witness files are put there and then they get taken. So by either people that are ...[intervenes].

CHAIRPERSON: Taking the witness files.

ADV NGCUKAITOBI SC: I do not know. So I just always assume that they sit there next to the witnesses. So File 2, page 454. Yes. Yes, it is the cross-examination bundle. File 2.

ADV MAEMA: Counsel, page?

ADV NGCUKAITOBI SC: Do you have it? 454.

ADV MAEMA: 454.

ADV NGCUKAITOBI SC: Do you have it?

ADV MAEMA: I do have the electronic version. Draft
10 statement by Ari ...[intervenes].

ADV NGCUKAITOBI SC: Precisely, ja. That is why I wanted to start because you said, go and get me a draft statement.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Now, if you go to the end of that statement at 457. Madam Chair, my junior keeps telling me that the Panel does not have the statement and I say, but I am looking at the Chair. She has it.

CHAIRPERSON: I have the statement.

ADV NGCUKAITOBI SC: So I am done fighting with him, so
20 I am just reporting myself that I do not know what is the truth.

CHAIRPERSON: Well, my sisters do not have their files. I do have my File 2.

ADV NGCUKAITOBI SC: All right. It looks like it is being brought.

CHAIRPERSON: You can kindly proceed. My sister will get

her file later.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. Okay, so if we start at 454, all right, the heading of that is draft statement by Aris Danikas, which seems to coincide with your earlier evidence that you instructed the obtaining of a draft statement. Is that correct?

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Now if you then go to the end of that statement at 457, right at the bottom there, there is a
10 handwritten inscription by ...[intervenes].

ADV MAEMA: I can see that, Chair.

ADV NGCUKAITOBI SC: It appears to be HJ Mabula. Can you see that? The signature, I think is it? Major General.

ADV MAEMA: Major General NJ Mabula.

ADV NGCUKAITOBI SC: Oh, NJ, it was not H. Okay. NJ Mabula. What does that inscription say, the handwritten inscription?

ADV MAEMA: It reads:

20 “The draft was prepared and handed over to me at the South African Embassy on the 18th of April 2012 at 16:50 by Mr Aris Danikas of Athens, Greece.”

ADV NGCUKAITOBI SC: Yes. Now, this seems to be, or let me ask you an open question. Is this the statement that you were referring to?

ADV MAEMA: This is the draft statement that I discussed, that I advised General Mabula to obtain a draft, look at it, and let us procure it in terms of the Mutual Legal Assistance.

ADV NGCUKAITOBI SC: Yes, because the way he records it is that the draft was prepared and handed over by Mr Danikas. It looks like it is Mr Danikas who did the statement himself and then gave it to him at the embassy.

ADV MAEMA: At the embassy, that is correct.

ADV NGCUKAITOBI SC: Do you know whose signatures
10 those are? We know the first one is Mr Mabula, is General Mabula. The second one?

ADV MAEMA: The second one was Colonel MJ Khola who was part of the investigation.

ADV NGCUKAITOBI SC: Was he based in South Africa or based in Greece?

ADV MAEMA: He is part of the DPCI.

CHAIRPERSON: The second one is the one at 5458.

ADV NGCUKAITOBI SC: No, Madam Chair, I am talking about the second signature.

20 **CHAIRPERSON:** Where is the second signature?

ADV MAEMA: At the bottom of 457.

CHAIRPERSON: Next to Major General Mabula?

ADV NGCUKAITOBI SC: Next to Major General Mabula, yes. So, this is then the history of the statement, The statement we have been looking at.

ADV MAEMA: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. Now, the reason I am asking these questions ...[intervenes].

CHAIRPERSON: Counsel, sorry. And who is signing there, the second signature?

ADV MAEMA: I identify it to be a signature of one of the members of the DPCI investigation team, Colonel Khola. But there is also a signature of the IPID investigating member, Colonel Mote [?], who was a member of the IPID. So it is the
10 signature of Major General Mabula, Mr Kholomothe [?], as well as Major General, as well as Colonel Khola.

ADV NGCUKAITOBI SC: So there are three signatures, not two?

ADV MAEMA: There are three.

ADV NGCUKAITOBI SC: I see. I understand why there would be the signature of General Mabula, because he was the one obtaining the statement. And what are the – do you know how the other two signatures ended up being there?

ADV MAEMA: It was reported to me that when he came that
20 he would hand the statement to the investigators and then the investigators then, for one reason, just signed it.

ADV NGCUKAITOBI SC: Yes, no, I understand. I mean, you signed to confirm that you have received it. But my real point is, were these two gentlemen also in Athens at the time?

ADV MAEMA: It was not reported to me that way. My

understanding was just General said, I am with Ari Danikas. I understood that it is only him and Danikas. So Colonel Khola and Mr Kholomothe were not with the two of them in Greece.

ADV NGCUKAITOBI SC: Yes, that is fine. Thank you.

CHAIRPERSON: Did you not find out how their signatures found their way in this document which was signed, drafted, prepared, and signed in Greece?

ADV MAEMA: The explanation that was given to me was
10 that when they received it from General Mabula, they just signed it. I do not know why they would sign it.

CHAIRPERSON: Thank you, Counsel.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. So what is the point? The point is that you do not know whether they were in Athens or not. You know that at a certain point in time they were given the document by General Mabula who was in Athens.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: Yes, all right. So really the most
20 important signature is that of General Mabula who is the person who took the statement.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: And explain why he took the statement the way he did.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: Yes. And then when he came back, did he give you this document?

ADV MAEMA: The document was then given to me. Then I perused it.

ADV NGCUKAITOBI SC: Yes, all right.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Thank you. Now, there are two other statements, but they are not important for now because we are still dealing with the period before August 2012 when
10 these processes were unfolding. Because if you look there, it is the 18th of April 2012. So that is quite early on in the process. So that is why I am asking you this question. I mean, according to the inscription there of General Mabula, this is the 18th of April 2012.

ADV MAEMA: That is correct. At the South African Embassy in Greece.

ADV NGCUKAITOBI SC: Yes, I understand. But I think the only challenge I am having with that is trying to reconcile that with your involvement starting on the 9th of March and then
20 having more intense conversations during June and July, but the statement seems to have been taken on the 18th of April. So the question is whether the statement was taken at your instance or was taken at someone else's instance.

ADV MAEMA: The statement was taken at General Mabula's instance.

ADV NGCUKAITOBI SC: Okay.

ADV MAEMA: And he was in Greece with the witness.

ADV NGCUKAITOBI SC: I see.

ADV MAEMA: And all that he called me for was, should I finalise it in Athens in Greece and commission it myself or have it commissioned by a diplomatic official in the South African Embassy in Greece? Now, knowing the provisions of the Mutual Legal Assistance Act section 2, the statement that as a prosecutor I intend using in a ensuing trial, in order to
10 use a statement obtained outside the country, you have to procure it in terms of ...[intervenes].

ADV NGCUKAITOBI SC: No, I do not have a problem with that. I am just trying to make sure that I have got the sequence of the timing right because we know on what you have testified that you became involved on the 9th of March but you went back to the North West to finish up outstanding cases and only returned to this case on the 27th of May.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: Yes. The statement is taken on
20 the 18th of April.

ADV MAEMA: The statement was not brought to my attention in April or in May or in June. The statement came to my attention later after June. That is when I saw the statement. That is when I realised that it was taken earlier.

ADV NGCUKAITOBI SC: Yes, but you are saying the

conversation itself took place on the 18th of April or on the 17th?

ADV MAEMA: The conversation took place on the day that General Mabula was with the witness in Athens. So it is the 18th of April 2012.

ADV NGCUKAITOBI SC: Yes, or earlier than that.

CHAIRPERSON: You were in the North West at that time.

ADV MAEMA: I was in the North West at the time.

CHAIRPERSON: Yes, that is the point that counsel is
10 making.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Good, thank you. Now, you know what happened ...[intervenes].

CHAIRPERSON: Before that, pardon me.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: When you look at that statement at 457, at the bottom before the handwritten note by Major General Mabula, there is a reference there. Is that a reference of the OB in May 2008/24/25, 11 o'clock to 1 o'clock?

20 **ADV MAEMA:** Chairperson, that appears to me to be a reference to a case number, Berea CAS 288/5/2008.

CHAIRPERSON: What is OB there?

ADV MAEMA: I do not see any OB.

ADV NGCUKAITOBI SC: No, it says, is it OB or 08?

CHAIRPERSON: Look at the last sentence.

ADV MAEMA: Oh, with the ...[intervenes].

CHAIRPERSON: The last typed sentence, the statement.

ADV MAEMA: The last typed, R, something that looks like an EFF, OB, May 2008/24/25, 11:00 to 01:00.

CHAIRPERSON: Because this is not your statement, if you cannot describe to us what that is, I thought perhaps, because you can see it is 2008, it may be referring to incidents of 2008 from the occurrence book.

ADV MAEMA: It is possible, Chairperson, particularly when
10 one looks at that Berea inscription. It could be saying it is an inscription that relates to Berea 288/5/2008.

CHAIRPERSON: I was just wondering what it is, but Advocate Ngcukaitobi, will you proceed?

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

CHAIRPERSON: I am getting more blocked because of the air conditioning.

ADV NGCUKAITOBI SC: Could we ...[intervenes].

CHAIRPERSON: I am really struggling now.

ADV NGCUKAITOBI SC: Could we take the day's
20 adjournment? It is 17:34. And I am going to move from the statement, if that would be helpful.

CHAIRPERSON: Yes, is it possible to switch off this air conditioning right in front of us? And I see one of my staff members, I might have caused her trouble. She is sneezing quite a lot. I hope we are all not going to be infecting one

another. We might have to wear masks, Advocate Ngcukaitobi. You may proceed, sir.

ADV NGCUKAITOBI SC: Madam Chair, I had made the possibility of an adjournment now, if it would be better. But if I am asked to proceed, I am happy to.

CHAIRPERSON: You were still on the, with regard to Mr Danika's statement?

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: And we are just at the end of the statement.

10 Are you going to be continuing on his statement?

ADV NGCUKAITOBI SC: No, not on the statement. There is one more question related to the use of the statement afterwards. But the way it was procured, we have exhausted it now.

CHAIRPERSON: Yes.

ADV NGCUKAITOBI SC: Advocate Maema, there is this issue that arose in the subsequent litigation involving Mr Booyesen and the attachment of the statement to the affidavit by the NDPP where the criticism was that the statement is

20 unsworn. Do you recall that?

ADV MAEMA: I do, Chairperson.

ADV NGCUKAITOBI SC: And the judge, you have referred to this paragraph yourself, paragraph 39, says if the NDPP had stated that she had relied on a sworn statement, it might have changed the outcome, et cetera. But the one thing I

want to ask you directly as a person with experience and expertise in racketeering, was it a legal requirement or not that the statement ought to be sworn prior to its inclusion into the investigation docket?

ADV MAEMA: It is not a legal requirement at all. POCA does not require the statement to be under oath.

ADV NGCUKAITOBI SC: Yes. Thank you, Madam Chair. Could we then, there is two pages that I think we can skip from paragraph 68, 69, and 70. And that will take us to the
10 heading evidence in the dockets, 1-22. So I am going to start that topic, Madam Chair. If you are still not feeling 100%, I am happy to stop now.

CHAIRPERSON: I think we can proceed.

ADV NGCUKAITOBI SC: Yes. All right, thank you. Now, if we start with paragraph 71 and 72, and that is now Count 1, and you can make reference to the prosecution memorandum to remind yourself of what those counts are, which is GSM75, 1A-711.

ADV MAEMA: The question again, counsel, is?

20 **ADV NGCUKAITOBI SC:** Is for you to explain to the Panel what that count related to.

ADV MAEMA: Count 1 in the indictment refers to contravention of section 2(1)(f) of the Prevention of Organised Crime Act, which relates to management of a racketeering enterprise.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: And then what we did on analysis of the working methods of the SVC unit in Cato Manor, we were convinced that the officials of Cato Manor SVC that could be ascribed as managers of the racketeering enterprise are the ones listed in paragraph 7.1 to paragraph 7.5.

ADV NGCUKAITOBI SC: 71.1.

ADV MAEMA: 71.1 and until 71.5, which are accused number 1, Major General Johan Booyesen, Captain Neville
10 Eva, Captain Cornelius Olivier, Captain Anton Lockham, and Captain Eugene Van Tonder.

ADV NGCUKAITOBI SC: Why?

ADV MAEMA: In respect of General Johan Booyesen, although one can see in the organogram of the Provincial Organised Crime Unit, as it were in 2010, that he is a Provincial Commander. The unit commander of Durban Organised Crime, who is supposed to be Aiyer, was rendered
redundant.

So the section commanders, Neville Eva, Cornelius
20 Olivier, Anton Lockham, and Eugene Van Tonder, reported directly to General Johan Booyesen. And from the activities that we analysed, we are convinced that they were the managers of the enterprise.

The enterprise, despite General Booyesen being in the province, he skips the head of the Durban Organised

Crime, and he works directly with the serious violent crime unit of Cato Manor, and he then manages the enterprise together with the captains at Serious Violent Crime. So we were of the view that General Booysen and the captains were the managers of the enterprise.

ADV NGCUKAITOBI SC: Yes. Thank you. And then, if you skip 72, and you go to some of the evidentiary material underpinning that charge, which is the motivation for monetary awards, dated the 14th of October 2008, attached
10 as GSM6, which is at page 1A-160.

ADV MAEMA: 1A-160?

ADV NGCUKAITOBI SC: Yes, 1A-160, yes, correct.

ADV MAEMA: I am there, Chairperson.

ADV NGCUKAITOBI SC: Yes. Now, what is the significance of that document for the purposes of your decision? So it starts ...[intervenes].

ADV MAEMA: It starts on page 1A ...[intervenes].

ADV NGCUKAITOBI SC: No, sorry, 1A-154, sorry. It ends at 160, sorry.

20 **ADV MAEMA:** It ends at 160.

ADV NGCUKAITOBI SC: No, sorry, I have misled you. So let us start at 154.

CHAIRPERSON: What is it?

ADV NGCUKAITOBI SC: Describe the document.

ADV MAEMA: It is a document that we refer to as the

monetary awards.

ADV NGCUKAITOBI SC: Yes, but what is it from the face of the document?

ADV MAEMA: It is a recommendation for monetary rewards to be considered by the provincial head of the Detective Service in KZN. The document comes from the provincial commander of Organised Crime in KZN, Director Johan Booyesen, as he then was. And the document is dated the 15th of October 2008.

10 **ADV NGCUKAITOBI SC:** Yes.

CHAIRPERSON: Are you saying it was coming from Director Booyesen?

ADV MAEMA: That is correct, Chairperson.

CHAIRPERSON: But it says, attention, Director Booyesen, as if it was written to him by someone else for his attention. You see on the face of the document at page 155, or am I at the wrong place?

ADV NGCUKAITOBI SC: Are you referring to 154 or 155, Advocate Maema? The document you are reading, is that 154
20 or 155?

ADV MAEMA: 1A-155.

ADV NGCUKAITOBI SC: No, I am asking the one you are reading, not the one that the Chair has referred you to.

ADV MAEMA: I was reading 1A-154.

CHAIRPERSON: 154? Yes, thank you.

ADV NGCUKAITOBI SC: Continue then describing the document. You have described the heading and the source, what is it all about?

ADV MAEMA: And that it is directed to the Detective Service KZN.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: It is seeking approval for consideration to be given for reward of certain members. Paragraph 1 says:

10 “On the 27th of August 2008, Sup Choncho and Inspector Khanyile was waylaid on their way to court by assassins. Sup Choncho was the provincial coordinator for Taxi Violence. His success in these investigations has raised an ire of perpetrators of violence in the taxi industry. Sup Choncho was shot dead and Inspector Khanyile was seriously wounded. The killing of Sup Choncho had sent shockwaves through the community.

20 This criminal attack was seen as a direct attack against an Organ of State. The solving of this case was widely reported and applauded by the media and public alike. It most surely restored faith and confidence in the SAPS to deal with



ruthless killings. It is recommended that the members on the enclosed list be rewarded with a cash incentive of R10 000 each as well as a certificate by the National Commissioner.”

ADV NGCUKAITOBI SC: Yes. Before you go to the next page, what was the significance of this document for you as the leader of the prosecution?

ADV MAEMA: General Booyesen motivates for the
10 consideration of monetary awards for members of the Durban Cato Manor Unit.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: The unit which is headed by Aiyer.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: I was expecting this, if Colonel Aiyer was indeed the head of the Serious Violent Crime in Durban, to be the one who is applying for the issuance or consideration of monetary awards for the members.

ADV NGCUKAITOBI SC: Yes.

20 **ADV MAEMA:** Instead, it is General Booyesen and not Colonel Aiyer.

ADV NGCUKAITOBI SC: Yes. Any other reason why it was significant?

ADV MAEMA: Well, because General Booyesen is directly involved and he knows the role of these members in what I

read on paragraph 5, solving of this case referring to the killing of Superintendent Choncho.

ADV NGCUKAITOBI SC: Yes. Do you know what he means that the case was solved?

ADV MAEMA: Chairperson, a case is only solved when suspects are brought before Court and Court determines on the basis of evidence what happened there. My understanding, General Booysen now here says, on the basis of what Cato Manor SVC has done, consideration must be
10 given to awarding members for solving crime. What solving crime? There is no solving crime. People have been killed.

ADV NGCUKAITOBI SC: Yes. Now, you wanted to move ...[intervenes].

CHAIRPERSON: Advocate Ngcukaitobi, my sister has just reminded me that we agreed that we will adjourn a little earlier. I know that I have given you a carte blanche to proceed, but we may have to adjourn now because we need
20 to have a meeting with you. There is a substantive application filed by Advocate Hulley and we may have to converge in chambers and talk about it very briefly.

ADV NGCUKAITOBI SC: Thank you, Madam Chair.

COURT: Unless, of course, you are going to tie up this point so that you do not forget where you ended. If it is going to take a long time, we may park it until tomorrow morning.

ADV NGCUKAITOBI SC: No, Madam Chair, this is going to

be long, the next letter.

CHAIRPERSON: It is going to be long?

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Mr Maema, I assume this has also been a long day for you. It has been a long day for me. So maybe we should take an adjournment before I affect you with my flu. But we have some business to attend to before we all disperse from here, and we propose that we adjourn until tomorrow morning. Perhaps it is safe to say until 10 o'clock.

10 I need to attend to some medical consultation in the morning.

ADV NGCUKAITOBI SC: I see, Madam Chair, there are smiles across the site.

CHAIRPERSON: I have seen Advocate Mtsweni smiling for adjourning, at least starting at 10 o'clock tomorrow instead of before 9 o'clock. Am I correct, Counsel? He is showing me an emoji of saying nothing.

ADV NGCUKAITOBI SC: Chairperson, I understand.

CHAIRPERSON: Yes. Yes, Counsel, let us adjourn. Remember you are still under oath, Mr Maema. We will start
20 tomorrow at 10 o'clock, but we will see Counsel as we normally do at quarter to 10. I hope to be here by that time. But as we adjourn, may Counsel approach us in chambers, all of you, as we normally do, to discuss the business with regard to the application that is now filed on record. We will take an adjournment. You are still under oath there. Thank

you.

ENQUIRY ADJOURNS TO 13 FEBRUARY 2026

ENQUIRY ADJOURNS



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