

**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**

**16 FEBRUARY 2026**

**DAY 26**



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

**PROCEEDINGS ON 16 FEBRUARY 2026**

**CHAIRPERSON:** Good morning, everyone. Good morning, Ntate Maema.

**ADV MAEMA:** Good morning, Chairperson.

**CHAIRPERSON:** Good morning, Ntate Chauke. I trust that you travelled safely to Thohoyandou and that your family engagements went well.

**ADV MAEMA:** Giyani.

**CHAIRPERSON:** Yes, Ntate, Thohoyandou.

10 **ADV MAEMA:** Giyani.

**CHAIRPERSON:** Giyani. Why do I have Thohoyandou in my mind? But we are happy to have you here and hope all went well. Thank you, sir. We condole with you, by the way. Good morning, Advocate Ngcukaitobi.

**ADV NGCUKAITOBI SC:** Good morning, Chairperson.

**CHAIRPERSON:** Have you paid your fine?

**ADV NGCUKAITOBI SC:** Well, the public does not know that we got fined here. But no, I have not paid it.

20 **CHAIRPERSON:** The public must know that when you come late, you get fined and then the fines are utilized to buy coffee and tea, is it not. It is part of the transparency of this enquiry. We are a family, are we not?

**ADV NGCUKAITOBI SC:** Indeed.

**CHAIRPERSON:** Yes, thank you. Advocate Maema, you are still under oath.

**ADV MAEMA**: That is correct, Chairperson.

**GLADSTONE SELLO MAEMA** (s.u.o.)

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

**EXAMINATION IN CHIEF BY ADV NGCUKAITOBI SC**

**(CONTINUED)**: Thank you. Mr Maema, good morning.

There is one aspect I just needed to clarify around the photographs of the crime scene at Melmoth. The, I think one of the researchers found the report of the photographer. You remember you said that you had relied on the photographer

10 in terms of identifying those photos.

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: Now, you do not have it in front of you, but it will be shown on the screen behind you. If you look behind you, oh, yes, but I think the short, yes, the closest to you is the one behind you. Yes, can you see that?

**ADV MAEMA**: I can see that, Chairperson.

**ADV NGCUKAITOBI SC**: If you look, it is page MM0103.

You obviously will not see that. No, no, it is not in front of you, so that is why I think you should just use the one on the  
20 screen. You will see at the top it is Melmoth CAS  
142/11/2008, correct?

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: And then at the extreme right is  
A39.

**ADV MAEMA**: Correct, Chairperson.

**ADV NGCUKAITOBI SC:** Yes. And then there is a small print. Maybe you will not be able to see it. I can, it is MM0103.

**ADV MAEMA:** I can see it, Chairperson.

**ADV NGCUKAITOBI SC:** Yes, all right, thank you very much. Now, if you look at who wrote that, that is an album compiled by Captain MV Zulu, correct?

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** Yes. And then in the following  
10 page, which is MM0104, that page starts with a heading, “Key to Photo Plan”. What is that, do you know?

**ADV MAEMA:** It is the key that the photographer would prepare to explain the photos that are included in the set of albums.

**ADV NGCUKAITOBI SC:** Yes, it is like an index to the photos.

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** Yes. Now, it is got photo 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14. It goes on up until photo  
20 36, correct?

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** Yes. Now, if we then go to the photos themselves, they are in black and white, but one can make some sense of them. Photo 1 seems to be the photo of the homestead.

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: And photo 2 is also a photo of the homestead from a different angle.

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: But what you can see from that photo are a number of vehicles. There are, I think, four that are visible.

**ADV MAEMA**: Correct, Chairperson.

**ADV NGCUKAITOBI SC**: They include that bakkie, the white  
10 bakkie.

**ADV MAEMA**: That is so, Chairperson.

**ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: Counsel, sorry to interrupt you. Maybe you can refer to the Cato Manor bundle, the dockets Melmoth. I think this bundle, all of us have it.

**CHAIRPERSON**: Yes.

**CHAIRPERSON**: It is that bundle, MM.

**ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: Evidence leaders, you have it? It is that  
20 one that you have referred to, MM.

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

**CHAIRPERSON**: The MM.

**ADV NGCUKAITOBI SC**: I am told that is correct, Madam Chair.

**CHAIRPERSON**: Bundle 1, pages MM0001 to MM0261, just

for the purpose of the record.

**ADV NGCUKAITOBI SC:** No, you still will not be able to find it in front of you. It needed to be printed, etcetera. It is just too many of this to print them.

**CHAIRPERSON:** Yes, but what you referred to is, the depiction corresponds fairly well with this bundle.

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

**CHAIRPERSON:** Okay.

10 **ADV NGCUKAITOBI SC:** All right, maybe then let us use the page referencing at the top. It is MM0107. That is where we are right now, at photo 3, correct?

**ADV MAEMA:** Correct, Chairperson?

**ADV NGCUKAITOBI SC:** Yes. That is photo 3 and photo 4, correct? So that is still depicting the homestead from different angles.

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** Photo 1 to photo 4 is from four different angles.

20 **ADV MAEMA:** That is so, Chairperson.

**ADV NGCUKAITOBI SC:** Yes. And then photo 5, which is MM0108, now there we start to see something we have seen before, correct?

**ADV MAEMA:** That is correct, Chairperson.

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

**ADV MAEMA:** We see the body covered with what looks like a blanket on top of those rocks.

**ADV NGCUKAITOBI SC:** Yes. And now we also can make sense of those rocks because they are, I would say, like a foundation, because in the villages, that is how we make a foundation ...[indistinct] them.

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** For those who come from the cities.

10 **CHAIRPERSON:** Who will those be?

**ADV NGCUKAITOBI SC:** Madam Chair, it is the youngsters.

**CHAIRPERSON:** Well, then all the youngsters in this hearing chamber must raise their hands. Well, you can have a look at the stones that forms the foundation, how we build in villages.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** Thank you, Counsel.

**ADV NGCUKAITOBI SC:** Yes, thank you. That is photo 5, Annexure C. And so that is the blanket covering the body of  
20 one of the deceased.

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** Yes. Then that same body, we see it from a different angle at photo 6, now marked as C, is that correct?

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** Yes. And then when you turn over the page, now this is the point, I think, Advocate Baloyi-Mere was raising, which is, I am not sure whether it was Advocate Baloyi-Mere or Madam Ramagaga, which is whether the second body was inside the house when it was, when he was shot. So if you turn to MM0109, so we can get the answer there to photo 7. Can you see photo 7?

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** What is depicted there?

10 **ADV MAEMA:** It is one of the “rondawels” in the homestead.

**ADV NGCUKAITOBI SC:** Yes. Then look at the following photo then, because there we also have a fuller picture of that okuku. Well, I call, I cannot remember now the Tswana word for okuku. Oh, he is Sotho. Mosemi[?].

**CHAIRPERSON:** Mosemi.

**ADV NGCUKAITOBI SC:** Mosemi, okay. What is the Tswana word, you can tell us. Are, you are Twana speaking, are you not?

**ADV MAEMA:** I am Tswana speaking, Chairperson.

20 **ADV NGCUKAITOBI SC:** Ja, what is the Twana word for okuku?

**ADV MAEMA:** Ke mosemi.

**ADV NGCUKAITOBI SC:** Mosemi.

**ADV MAEMA:** Ja.

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

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

**ADV NGCUKAITOBI SC:** Okay.

**ADV MAEMA:** I think Chairperson is correct, yes. My Tswana is all of a sudden leaving me.

**ADV NGCUKAITOBI SC:** All right, that is photo 8. Now we can see there a fuller depiction of the body and we can also see, do you see that it is inside the hut?

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** It is inside the “rondawel”.

10 **ADV MAEMA:** Yes, that is correct.

**ADV NGCUKAITOBI SC:** Yes, okay. And then you can see K1. What is in K1?

**ADV MAEMA:** K1 is a depiction of a firearm next to the body of the deceased.

**ADV NGCUKAITOBI SC:** Yes, thank you. And then what we also see if you go to the following page, which is MM0110 ...[intervenes].

**ADV BALOYI-MERE SC:** Advocate Ngcukaitobi, you are leaving us behind. I thought when you started with the  
20 pictures, I thought, with the photos, I thought you are going to allow the witness to at least explain some of the things for us, and I know that we are trying to pick up the pace, and I appreciate that, but, well, if we were to go back to photo 1 and 2, we have seen cars, but we do not know what to make of those cars, because he has not spoken to the cars. And

already I have another question on photo 8, if he can note my questions. On photo 1 and 2, if he can explain to us what should we make of the cars, because you mentioned the cars. And then at photo 8, my question is more on him using his experience.

If he cannot answer me, it is fine. I want to check, can we assume that the person at photo 8 was shot while sleeping or he was shot, then he fell on a sleeping position, which would be weird, because the way the hands are, it is  
10 like someone is sleeping. So, but if he cannot give an explanation, it is fine. But I would like to know what we should make of the cars in photo 1 and 2.

**ADV NGCUKAITOBI SC:** Yes, I have noted that, Madam Baloyi-Mere. If the cars are still coming. It is the last three photographs which are more clearer. I mean they, what I thought we would do is to look at the cars from a distance and then look at them closely. Yes, so they, but in relation to the explanation of the, of photo 8, I think the witness should explain, yes. You have heard the question, Advocate  
20 Maema?

**ADV MAEMA:** The question is assuming that the person at point 8 was asleep or fell.

**ADV NGCUKAITOBI SC:** Yes, fell to a sleeping position after being shot.

**ADV BALOYI-MERE SC:** Or was it a shooting position,

because the narration is that the police lives were in danger. So was he, was it a shooting position? I know very little about guns. I know that they kill, but that is all I know.

**ADV NGCUKAITOBI SC:** Yes, could you give a narration of that?

**ADV MAEMA:** Chairperson, the explanation that was given to us on the scene was that the deceased was in a sleeping position, in the position that he was at when the shots were fired at him.

10 **ADV NGCUKAITOBI SC:** Yes. Yes, I mean what we have seen before around this, certainly from the extract from the book of General Booyen, is that this killing probably took place between 4 a.m. and 6:22 a.m..

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** Because he says the photograph of the celebrating policeman was taken at 6:22 a.m. and they had been at work on this operation for three hours before, so presumably between 3:30 and 6:22, that is when the shooting happened.

20 **ADV MAEMA:** Early morning, yes.

**ADV NGCUKAITOBI SC:** Yes, but it was extremely early morning.

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** Yes. Yes, anything else you want to say about this photograph in response to the question from

the panel?

**ADV MAEMA:** Well, the firearm was placed on the scene after the blood had dried up. So the firearm, as you lift the firearm from the position at K1, it would be clean. It did not have any blood on it, and the firearm being a heavier object, if it was placed, if it was there before the blood had flown on that scene, the blood would have surrounded the firearm to leave a space depicting the shape of a firearm.

**ADV NGCUKAITOBI SC:** Okay, thank you very much.

10 **CHAIRPERSON:** Ja, before you proceed, let me just remind you that part of this evidence was dealt with last week when we were dealing with Captain Mangena's report.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** Now, the depictions in this bundle, some of them, are replicated in the report by Captain Mangena.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** And the witness has spoken to some of these photographs.

**ADV NGCUKAITOBI SC:** Yes.

20 **CHAIRPERSON:** I am not sure whether you are pursuing a different angle.

**ADV NGCUKAITOBI SC:** No.

**CHAIRPERSON:** But much of this is already on record, if my recollection is correct.

**ADV NGCUKAITOBI SC:** Yes. No, that is correct, Madam

Chair. The only point here, which is probably why I was moving quickly, was simply to say, when he said it was, it came from the photographer on the scene, we have taken him to the photographer on the scene and he has identified the photographs. Mr Mangena will be a witness here as well, yes.

**CHAIRPERSON**: Yes, thank you.

**ADV NGCUKAITOBI SC**: Thank you, Madam Chair. So, can we do that, if you go to the following page, which is MM0110,  
10 photo 9, and photo 10, now, again, we see something we have seen before at photo 10. Can you comment on that?

**ADV MAEMA**: On photo 10, we see the same body that we saw on the previous photos.

**ADV NGCUKAITOBI SC**: Yes.

**ADV MAEMA**: But this one, it is a close-by picture.

**ADV NGCUKAITOBI SC**: Yes, yes. This is a different brother to the one at photo 8.

**ADV MAEMA**: But still, at the very same homestead. It is correct, it is a different brother.

20 **ADV NGCUKAITOBI SC**: Yes, all right. Thank you very much. And then, so you can skip the next photos up to photo 16 at page MM0113. So then we have got a similar photo at photo 16. Can you see that?

**ADV MAEMA**: I can see that, Chairperson.

**ADV NGCUKAITOBI SC**: And you confirm that it is the photo

we looked at in the report of Captain Mangena?

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: Yes. And then the same photo, well, the same body, not the same photo, at photo 17.

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: Yes. Then we can skip that. I think we have done enough now to separate the bodies. I want to just go to the question that Advocate Baloyi-Mere was raising, which is the last three photos after photo, yes, yes, 10 yes, so after photo 36, which is at MM0123, then we get to the pictures of the cars at MM0124, pictures of the people standing next to the cars. So the page is MM0124. Let us just wait for him to adjust the position of the picture. Yes, that is the picture we are looking at. All right, there is someone coming to assist.

**ADV BALOYI-MERE SC**: What number ...[indistinct] [microphone off].

**ADV NGCUKAITOBI SC**: Yes, it does not have, it is, on the docket, it is A40, and then the page is MM0124.

20 **ADV BALOYI-MERE SC**: So all the other pictures were A39?

**ADV NGCUKAITOBI SC**: Yes, yes, yes. This one is A40.

**ADV BALOYI-MERE SC**: The other pictures had like ...[indistinct] this one does not have.

**ADV NGCUKAITOBI SC**: I think the next three do not have photo numbers, yes. Yes, okay, are you looking at A40, Mr

Maema?

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: Yes, and can you just tell us what you see there? We see members of the Cato Manor in vehicles sitting down. Only one is standing up. We see also the mother to one of the deceased further on next to the car.

**ADV NGCUKAITOBI SC**: Yes. We did last week go through the identification of the three gentlemen sitting down.

**ADV MAEMA**: That is correct, Chairperson.

10 **ADV NGCUKAITOBI SC**: By reference to their accused numbers in the indictment.

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: Then we see the following page, which is MM0125, now that is the picture we looked at, and we, well, perhaps not, but because the one we looked at, the two gentlemen are raising their hands here ...[indistinct] but they are smiling.

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: Yes, and the lady is distressed.

20 **ADV MAEMA**: That is correct.

**ADV NGCUKAITOBI SC**: Yes. And then there is the last picture, which is at MM0126, but the lady is not there.

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: Yes, but there are still gentlemen that is sitting next to that vehicle.

**ADV MAEMA:** That is so, Chairperson.

**ADV NGCUKAITOBI SC:** Yes. Now, the point of this exercise, okay, there is one more, but there they, which is MM0127. Can you see that?

**ADV MAEMA:** I can see that, Chairperson.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** Before you proceed, Counsel.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** MM0126, there is a gentleman wearing  
10 something like an overall on the extreme left. The one who is standing, the black gentleman over there, is he a member of the Cato Manor unit?

**ADV MAEMA:** Chairperson, he is also one of the members of the Cato Manor unit.

**CHAIRPERSON:** Who is he, do you remember?

**ADV MAEMA:** I cannot remember the name, Chairperson.

**CHAIRPERSON:** How do you know he is a member of the Cato Manor unit?

**ADV MAEMA:** Chairperson, all members of the Cato Manor  
20 unit appeared in court in my presence. I remember their faces.

**CHAIRPERSON:** That is why you remember them.

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** In fact, we probably should do the same exercise on MM0127, just to confirm whether all of the

gentlemen there are members of Cato Manor.

**ADV MAEMA**: I can see Danikas there in the centre of the picture and all of them ...[intervenes].

**ADV NGCUKAITOBI SC**: Well, there are three people that are in the centre of the picture. Which one is Mr Danikas?

**ADV MAEMA**: The one with his hand on his hips.

**ADV NGCUKAITOBI SC**: Okay.

**ADV MAEMA**: The one with glasses.

**CHAIRPERSON**: So you are looking at MM0127. Yes, you  
10 can tell us who they are.

**ADV MAEMA**: Chairperson, the one with his arm on his hips is Mr Aris Danikas, and the rest of them are members of the Cato Manor unit.

**ADV NGCUKAITOBI SC**: Thank you. So you can identify Mr Danikas.

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: Yes, at Melmoth.

**ADV MAEMA**: That is correct, Chair.

**ADV NGCUKAITOBI SC**: Yes, thank you very much. And  
20 then there are also a number of people surrounded by a police car and unmarked vehicles at MM0128.

**ADV MAEMA**: Chairperson, the pictures of the faces being a little bit further on, I can just say many of the members who were at that scene were Cato Manor members.

**ADV NGCUKAITOBI SC**: Yes, and then there is the last

picture at MM0129.

**ADV MAEMA**: This one is definitely a member of the Cato Manor members. I can see their faces.

**ADV NGCUKAITOBI SC**: Yes. Yes, so the point of this exercise has been to connect the pictures that came from the description by Captain Mangena with the pictures that were taken directly by the photographer on the scene.

**ADV MAEMA**: That is correct, Chairperson.

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

10 **ADV MAEMA**: Chairperson, this, the pictures that we have seen are members of the Cato Manor unit around the parked vehicles just after the shooting of the two victims.

**ADV NGCUKAITOBI SC**: Yes. Yes, but I am trying to get the point that you made last week that the photographs you were showing us, you remember them because they were taken from the photo album.

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: Yes, all right. And that is what I was trying to get your comment on when I say we have now  
20 gone back to the photo album ...[intervenes].

**ADV MAEMA**: Yes.

**ADV NGCUKAITOBI SC**: And we have seen the pictures we saw last week. What is your comment on that?

**ADV MAEMA**: Chairperson, as we say, these are the pictures that we saw last week of the Cato Manor members

relaxed and jovial, smiling after the deceased had been killed.

**ADV NGCUKAITOBI SC:** Yes, okay, but do you confirm that the pictures we have seen are the same pictures that are contained in the report by Captain Mangena?

**ADV MAEMA:** That is correct, that the same pictures are the same as those in the album of Captain Mangena.

**ADV NGCUKAITOBI SC:** Thank you. Can we then go back to the sequence of your statement and see if we can make  
10 progress on that front.

**ADV BALOYI-MERE SC:** Before you move on from the pictures, and I know this was canvassed last week, but from the number of pictures that we have seen, especially on the cars, how do we determine that these cars are in the same homestead? What is the link? What shows us from the pictures that they are in the same homestead? For example, the houses that I see on MM0128 are not the same as the pictures, the picture of the homestead that we were shown right at the beginning. So how do we make the connection?

20 **ADV MAEMA:** Chairperson, the pictures were taken from different angles of the homestead. There are a number of rondawels on the homestead, and they were taken from different angles.

**ADV NGCUKAITOBI SC:** Perhaps what we could do is to just go back to MM0104, to the description given by the

photographer himself, MM0104. Yes, that is the page. It is called key to photo plan.

**ADV MAEMA**: The key to photo plan, photo 1, indicates the scene of the crime at the Biyela homestead at Debe area in Melmoth, taken to the northern direction.

**ADV BALOYI-MERE SC**: Sorry to disturb. For those other photos up to photo 36, the explanation is there. What I struggled to find when I went through this was the explanation or the description from A40, where the car starts. Because 1  
10 to 36, we are clear they were taken from this angle, this angle. But A40 from MM028 ...[intervenes].

**ADV NGCUKAITOBI SC**: No, no, we see the question now, Madam Chair.

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

**ADV NGCUKAITOBI SC**: We will sort it out.

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

**ADV NGCUKAITOBI SC**: But I see the question. We will come back to that, but I need you to go back to your paragraph 73.

20 **ADV MAEMA**: I am there, Chairperson.

**ADV NGCUKAITOBI SC**: We have dealt with the motivation halfway, the motivation for monetary awards. You recall that?

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: Yes, and where we were when we

took the adjournment on Friday was 1A/156.

**ADV MAEMA**: I am there, Chairperson.

**CHAIRPERSON**: Where were we?

**ADV NGCUKAITOBI SC**: We were at ...[intervenes].

**CHAIRPERSON**: [Indistinct]... [cross-talking] affidavit.

**ADV NGCUKAITOBI SC**: In the affidavit we are in paragraph 73. You are at paragraph 73 of your statement?

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: And on the annexures, you were  
10 still dealing with the 1A/156, which is to take us back to the  
killing of Mr Magojela.

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: Correct, okay. And we had covered  
the entire Superintendent Chonco situation.

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: Madam Chair, I should record that  
we did get the docket of the murder of Nkosi Zondi from the  
NPA, but we still have not got the docket of the murder of  
Superintendent Chonco. Now, we had dealt with the first one,  
20 two, three, the third paragraph, which explains that this scene  
was taken over by the Cato Manor unit.

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: Yes. And the circumstances under  
which that happened, are they known to you or not known to  
you?

**ADV MAEMA:** Well, they travelled all the way from Durban to the north of KZN and it is very far, to take the scene over.

**ADV NGCUKAITOBI SC:** Yes. And then, the next paragraph, the same day, 2008 ...[intervenes].

**MS RAMAGAGA:** Advocate Ngcukaitobi, just before you leave paragraph 73, what I would like to know, I think it is apparent from the record that, who was ...[indistinct] when he was found at the scene? Please bear with me. I am trying to find the name of the police officer that was at the scene  
10 before the Cato Manor people came.

**ADV NGCUKAITOBI SC:** It was Superintendent Minnaar.

**MS RAMAGAGA:** Okay, thank you very much. Ja, Superintendent Minnaar, when he went to the scene, according to information at your disposal, was he alone or was he with other police officers from his station?

**ADV MAEMA:** He was together with someone from the station.

**MS RAMAGAGA:** Someone?

**ADV MAEMA:** Yes.

20 **MS RAMAGAGA:** An individual?

**ADV MAEMA:** Yes.

**MS RAMAGAGA:** One person. And ordinarily, when scenes like this happen where you have got to go to a crime scene, where people have died and so forth, does a superintendent go alone? Does he not then come along with members of his

unit or his police station? What is the position? I am just trying to understand as to how it came about that, because when one looks at the record, the record suggests that the Cato Manor people only arrived an hour later.

**ADV MAEMA**: That is correct, Chairperson.

**MS RAMAGAGA**: At around 11 o'clock. And Captain Minnaar was already there an hour before, at about 10 o'clock. Are you able to just explain, if you can, as to how come that that was the situation that his other members were  
10 not brought or invited, or brought, let me say brought because we do not know about the invitation, to the scene before the Cato Manor people came.

**ADV MAEMA**: Chairperson, Superintendent Minnaar, insofar as what was explained to us, was in the vicinity of where the scene is, shortly after the killing. He was the closest to the scene and he then drove towards the scene in the company of the colleague he was on duty with. And ordinarily what happens, when a scene is reported on the radio, the officials who are in the vicinity will then rush to the scene. And only  
20 on arrival at the scene, then summon additional assistance, depending on the assistance that is urgently sought on the scene.

**MS RAMAGAGA**: Ja, that I understand. Maybe it is lack of knowledge of where he was operating from. He may have been around the scene at the time or closer to the scene, but

where he is stationed, is it not closer to the scene than the Cato Manor?

**ADV MAEMA**: That is correct, Chairperson. Where he is based ...[intervenes].

**MS RAMAGAGA**: Yes, ja.

**ADV MAEMA**: Is very closer to the scene than the Cato Manor unit who were very far.

**MS RAMAGAGA**: Yes, and still the Cato Manor people came an hour later to find him with one person that was in his  
10 company.

**ADV MAEMA**: That is correct, Chairperson.

**MS RAMAGAGA**: Thank you.

**ADV NGCUKAITOBI SC**: Superintendent Minnaar was the Station Commissioner at Kranskop.

**ADV MAEMA**: Yes.

**ADV NGCUKAITOBI SC**: Yes. And then the record says then they took over the scene from him.

**ADV MAEMA**: Cato Manor came and took the scene over from him, Chairperson.

20 **ADV NGCUKAITOBI SC**: Now, if you recall, last week, I mean we had spoken about the fact that actually there were eyewitnesses, the statements were taken, but those do not presumably will be in the docket of Superintendent Chonco's murder.

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** Now, then it continues, on the same day, 27 August 2008, the investigation team, there is this phrase, investigation team, you will see later it becomes important. But who did it consist of, according to the statement?

**ADV MAEMA:** Chairperson, where on the statement?

**ADV NGCUKAITOBI SC:** The following paragraph, it says, on the same day, it says the same day, 2008-08-27, the investigation team, which at this stage consisted of. Who did  
10 it consist of?

**ADV MAEMA:** Chairperson, I cannot find where you are reading on the statement.

**ADV NGCUKAITOBI SC:** No ...[intervenes].

**ADV MAEMA:** Paragraph?

**ADV NGCUKAITOBI SC:** We have just looked at the, okay, well, let me – you know, under the summary of events, can you see that heading? Are you in the annexures at 1A/156?

**ADV MAEMA:** I am at the statement.

**ADV NGCUKAITOBI SC:** No, no, no, the annexures to the  
20 statement, ja.

**ADV MAEMA:** 1A?

**ADV NGCUKAITOBI SC:** 156.

**ADV MAEMA:** 156. Oh, here. I am here.

**ADV NGCUKAITOBI SC:** Yes, that is what we, you were being asked questions around by Madam Ramagaga, which is

under paragraph 2, summary of events, correct?

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: Okay, first, second, third paragraph, you see that where it refers to Superintendent Minnaar?

**ADV MAEMA**: Yes.

**ADV NGCUKAITOBI SC**: Yes, who is from Kranskop.

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: Yes, and then the paragraph that  
10 comes thereafter, it is still a narration of what happened in that scene.

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: Yes. Now, that is what I am asking, who is the investigation team, because we will see how they become important later.

**ADV MAEMA**: The investigating team would be members of Kato Manor.

**ADV NGCUKAITOBI SC**: Yes. No, but who are they? Just give us the names, sir.

20 **ADV MAEMA**: That would be General Booysen, Inspector Mostert, Captain Eva.

**ADV NGCUKAITOBI SC**: No, well, the investigation team is named there in the statement.

**ADV MAEMA**: That is correct.

**ADV NGCUKAITOBI SC**: But give us those names, because

it says the investigation team, which at this stage consisted of.

**ADV MAEMA**: Consisted of Superintendent Olivier, Captain Smith, Captain Eva, Captain Van Tonder, Inspector Mostert, Ndlalose, Zondi, Makanya, Peter George, Tabete, Pandey, Soltz, and Sergeant Mkhwanazi.

**ADV NGCUKAITOBI SC**: Yes. Then they say they concluded their investigation at the scene.

**ADV MAEMA**: That is correct.

10 **ADV NGCUKAITOBI SC**: Yes. And then at the same time the deceased who was shot at the scene by Inspector Khanyeke was removed and possession was taken of his cellphone.

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: Yes. Can you explain what this was about?

**ADV MAEMA**: Well, when they seized the cellphone of the person who was shot at the scene, it is to try and see if there are any clues that they will be able to obtain from the  
20 cellphone that will then assist them with the investigation.

**ADV NGCUKAITOBI SC**: Yes. Alright, and then just continue reading.

**ADV MAEMA**: -:

“Captain Eva, Inspector Mostert, and  
Constable Naidoo extracted vital

information from the phone. It was during this time that Inspector Mostert contacted Crime Intelligence and requested immediate assistance. Superintendent Olivier, Captain Eva, Van Tonder, Stoltz, and Pandey returned to the office while Inspector Mostert, Ndlalose, Makanya, Zondi, and Mkhwanazi remained at the scene to conduct further inquiries. Later, the members departed to Kranskop and Greytown areas. And the same day at 23:00, the investigation team, still consisting of the above members, met at Greytown. From Greytown, the above investigation team proceeded to an area called Matimatolo near Kwamaphumulo. However, it proved to be a fruitless exercise. The team then returned to the office.”

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

**ADV MAEMA:** Should I continue?

**ADV NGCUKAITOBI SC:** No, that is fine. We can skip all of that, the next paragraph, to under sub 3, the apprehension of two more suspects. So we have worked out who the team

was and what allegedly is the source of their information.

**ADV MAEMA**: That is correct, Chair.

**ADV NGCUKAITOBI SC**: Under paragraph 3, they first set out the details of the candidates. What are these candidates for?

**ADV BALOYI-MERE SC**: Sorry, before you move, I am sorry to do this. At line one, two, three, four of the paragraph that was just read into the record, there is mention of the deceased who was shot at the scene. Do we know who that  
10 deceased was, who was then later taken, removed and possession - because, let us read that sentence again. It seems like we are talking about someone who was shot at the scene.

**ADV NGCUKAITOBI SC**: Yes.

**ADV BALOYI-MERE SC**: Who was shot by Inspector Khanyile.

**ADV NGCUKAITOBI SC**: Yes.

**ADV MAEMA**: That is correct, Chairperson.

**ADV BALOYI-MERE SC**: Do we know who that person is?

20 **ADV MAEMA**: The identity of the person is known to my investigation team, that is, Sup Mabula and the IPID team.

**ADV BALOYI-MERE SC**: Okay, thank you.

**ADV NGCUKAITOBI SC**: Yes, could you just set out the context of that shooting? I mean the, this is the shooting in the murder of Superintendent Chonco.

**ADV MAEMA**: That is correct.

**ADV NGCUKAITOBI SC**: Yes, and then Inspector Khanyile was in that scene ...[intervenes].

**ADV MAEMA**: That is correct.

**ADV NGCUKAITOBI SC**: And then shot, allegedly, one of the attackers.

**ADV MAEMA**: That is correct.

**ADV NGCUKAITOBI SC**: Yes. So this person is one of the alleged attackers.

10 **ADV MAEMA**: Is one of the alleged attackers that was also firing at Inspector Khanyile.

**ADV NGCUKAITOBI SC**: Yes.

**ADV MAEMA**: So it was a firing in retaliation.

**ADV NGCUKAITOBI SC**: Yes. Now, so we have set the context there that the, who are these investigating teams and they allege to have found some leads. And then, under paragraph three, the apprehension of two more suspects. It starts with details of candidates. Do you know candidates for what?

20 **ADV MAEMA**: Candidates for the recommended monetary awards as well as certificates.

**ADV NGCUKAITOBI SC**: Yes. And who are they?

**ADV MAEMA**: General Booyesen, Captain Lockem, Captain Van Tonder, Captain Eva, Inspector Mostert, Inspector Makanya, and Inspector Neo.

**ADV NGCUKAITOBI SC:** Yes. Now, we have now moved on. It is a month later. It is on the 15<sup>th</sup> of September 2008. So what do they say happened, according to this narration? Just read it out.

**ADV MAEMA:** -:

“On Monday, the 15<sup>th</sup> of September 2008, Director Booyesen, the Provincial Commander, contacted Inspector Mostert and informed Inspector Mostert that he had information pertaining to the suspect that had organized the  
10 hit on Superintendent Chonco. He was hiding in Virginia, in the Orange Free State, and was on route to Pietermaritzburg to collect some cash in Pietermaritzburg. During this time, the informer remained in contact with General Booyesen, who continued to relay the information over to the investigation team.”

**ADV NGCUKAITOBI SC:** It is Director Booyesen, not General.

**ADV MAEMA:** My apologies. I just refer to him constantly as General Booyesen.

**ADV NGCUKAITOBI SC:** No, no, no, Mr Maeme, you  
20 remember last week, the Chairperson raised an issue that ...[intervenes].

**ADV MAEMA:** [Indistinct]... [cross-talking].

**ADV NGCUKAITOBI SC:** When you are reading the text, read it as it is. Do not put your own words.

**ADV MAEMA:** Okay. My apologies.

**ADV NGCUKAITOBI SC:** Yes. Can you just give a narrative of this? I mean the, you remember that one of the big defences of General Booyesen about this scene is that he came with a helicopter afterwards?

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** Yes, what do you say in relation to that version, bearing in mind what you have just read?

**ADV MAEMA:** Well, he is involved from the beginning, because he is the one who is contacting Inspector Mostert  
10 from the beginning.

**ADV NGCUKAITOBI SC:** Yes.

**ADV MAEMA:** And relaying information relating to the scene, even before the shooting happened.

**ADV NGCUKAITOBI SC:** Yes. And what is the relationship in terms of the hierarchy between General Booyesen and Inspector Mostert?

**ADV MAEMA:** Well, Inspector Mostert was reporting to Captain Olivier, who in turn was reporting to General Booyesen.

20 **ADV NGCUKAITOBI SC:** Yes. All right, then it continues, on Tuesday.

**ADV MAEMA:** -:

“On Tuesday, the 16<sup>th</sup> of September 2008, at 06:20, Director Booyesen contacted Inspector Mostert again, re

the movement of the suspect who was near Pietermaritzburg area, in a Hyundai Tucson 4x4 with registration NRB3904, and that he was armed and dangerous. The investigation team consisting of the above members immediately departed to Pietermaritzburg.”

**ADV NGCUKAITOBI SC:** So if you just stop there, I mean,  
10 the, so who is the person that is saying to Inspector Mostert that the suspect is armed and dangerous?

**ADV MAEMA:** That is General Booysen.

**ADV NGCUKAITOBI SC:** Yes, thank you. Now, then it continues. It is now later, about two hours later, at half past  
8.

**ADV MAEMA:** -:

“The same day at half past 8, the investigation team, still consisting of the above same members who went in the  
20 Pietermaritzburg area, continued to receive further information from Director Booysen, and at 10:10, information was received that the above vehicle was on route on the entry towards the Orange Free State.”

**ADV NGCUKAITOBI SC:** Yes. Now, this is now the fourth instance that the name of General Booysen appears.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** In what context is it now appearing?

**ADV MAEMA:** In the same context that he is now, he is continuing to relay information relating to the movement of this vehicle from Pietermaritzburg.

**ADV NGCUKAITOBI SC:** Yes. All right, continue.

10 **ADV MAEMA:** -:

“The vehicle was spotted near Cedara turn off by the investigating team, the occupants being two persons, a driver and a passenger, seated on the back of the vehicle. The investigation team, which at this stage consisted of Inspector Mostert, Nel and Makanya in one vehicle, while Captain Van Tonder, Lockem, and Eva, whom followed in a separate vehicle. Inspector Mostert managed to catch up to the vehicle, and in an attempt to get the suspect to pull over, the official blue light and siren was used. A shootout then took place between the passenger of the suspect's

20

vehicle and the investigation team, resulting in the driver of the vehicle being injured in the process, which resulted in the vehicle stopping.”

**ADV NGCUKAITOBI SC:** If you can just stop there. I mean, the, so firstly, we know when they say investigation team, we know the six members that are mentioned, is that correct?

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** We also know that they are acting  
10 under the direction of Director Booyesen.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** They have told us that.

**ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now, then they say a  
shootout happened. Do we know here how do they claim that  
they were under threat, if they were under threat at all?

**ADV MAEMA:** No, they were not under any, any threat.

**ADV NGCUKAITOBI SC:** No, I am just talking in terms of  
their own correspondence. Do we know, do we have any idea,  
20 if they claim to have been under threat, how they were under  
threat? I mean, does this letter tell us?

**ADV MAEMA:** It does not say.

**ADV NGCUKAITOBI SC:** Yes, then carry on. Were are under  
the passenger.

**ADV MAEMA:** -:

“The passenger in the suspect's vehicle during the shootout made an attempt to flee from the moving vehicle, which resulted in him being flung out of the moving vehicle. Both suspects were fatally injured in the shootout.”

**ADV NGCUKAITOBI SC:** Just stop there. So, the second person who is shot, there is a driver who is shot according to this document.

10 **ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** We have no idea that the driver posed any threat. Then there is a second person, the passenger. What is he doing when he is shot according to this letter?

**ADV MAEMA:** Attempting to flee.

**ADV NGCUKAITOBI SC:** Yes. I mean, you are a prosecutor of many, many years. Is this lawful to shoot a person who is attempting to run away?

**ADV MAEMA:** No, not at all. It is unlawful to do so.

20 **ADV NGCUKAITOBI SC:** Yes. And then, the next sentence.

**ADV MAEMA:** -:

“The driver was positively identified as Timson Magojela, Timson Magojela Ndimande, and was the main brain behind the assassination of Sup

Chonco. The other suspect was his bodyguard.”

**ADV NGCUKAITOBI SC:** Yes. Now is there any evidence here, from what you have read, that shows that Mr Magojela Ndimande was the so-called main brain behind the killing of Superintendent Chonco?

**ADV MAEMA:** No, there is nothing that shows that he was the main brain.

**ADV NGCUKAITOBI SC:** Yes. And then it continues under  
10 the following firearms.

**ADV MAEMA:** -:

“The following firearms were found in the vehicle. One AK-47 rifle with a loaded magazine, one Ruger Mini 14 automatic rifle and two magazines, as well as two 9mm Norinco pistols, both with loaded magazines.”

**ADV NGCUKAITOBI SC:** Yes, thank you. We went through that scene last week.

20 **ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** On how these firearms were allegedly found.

**ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** In what position were they found.

**ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** And then, they say they opened two cases, Howick CAS 106/08/08, for attempted murder and possession of unlicensed firearms. What is that about?

**ADV MAEMA:** The Howick CAS 106/08/08 would have been the killing of Timson Magojela.

**ADV NGCUKAITOBI SC:** No, but that is an attempted murder and not a murder.

**ADV MAEMA:** Yes, well, this is misinformation.

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

10 **ADV MAEMA:** Because that docket is that of murder of Magojela.

**ADV NGCUKAITOBI SC:** Yes, because here, there are two people that have been killed. It is Mr Ndimande and Mr Tembe.

**ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** But then, they talk about attempted murder to create the impression that no one has been killed.

**ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** Yes, and then, there is a second  
20 one, Howick CAS 107/08/08, inquest. What is that about?

**ADV MAEMA:** It is the death of the bodyguard, Mr Tembe. Here, an impression is created that when you say inquest, the circumstances around his death are very unclear, when they are very clear.

**ADV NGCUKAITOBI SC:** Yes, from their own document they

tell us that we, you know, we shot and killed them.

**ADV MAEMA**: Yes.

**ADV NGCUKAITOBI SC**: One of them was running away.

**ADV MAEMA**: One of them was running away, but here, they say it is an inquest.

**ADV NGCUKAITOBI SC**: Yes. Now, do you know what became of that inquest?

**ADV MAEMA**: No, nothing came of the inquest.

**ADV NGCUKAITOBI SC**: Now, just in terms of what you  
10 found, a policeman involved in the shooting of a suspect, I mean, where they admit here that they shot the suspects, and they even tell us the names of the investigating team that shot the suspects.

**ADV MAEMA**: Yes.

**ADV NGCUKAITOBI SC**: And they are asking for money, the law in this country is that there is an organization called IPID that is responsible for investigating, among others, death in police hands. Do you know what happened here? What happened with IPID? Did they investigate it? What  
20 happened?

**ADV MAEMA**: Well, IPID did come to this scene, but there was no investigation from IPID relating to the death of, to this shooting by the police.

**ADV NGCUKAITOBI SC**: Why?

**ADV MAEMA**: The, Chairperson, it is, this is the docket that

was later carried by one of the IPID officials from the North West after there were complaints.

**ADV NGCUKAITOBI SC:** Yes.

**ADV MAEMA:** But initially the circumstances surrounding this killing was not investigated until there were complaints.

**ADV NGCUKAITOBI SC:** Now, that is what I am trying to understand. Even when your team, your team got involved in 2012.

**ADV MAEMA:** That is correct, Chairperson.

10 **ADV NGCUKAITOBI SC:** Specifically on the 9<sup>th</sup> of March 2012, yourself.

**ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** But there had been a previous meeting on the 8<sup>th</sup> of March.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** Now, that is four years after these two gentlemen were murdered.

**ADV MAEMA:** Correct, Chairperson.

20 **ADV NGCUKAITOBI SC:** So I am trying to understand what happened in the four years.

**ADV MAEMA:** Absolutely nothing had happened. It was, it was, because of the planting of the firearm ...[intervenes].

**ADV NGCUKAITOBI SC:** Yes.

**ADV MAEMA:** Putting of the firearm on the scene, it was accepted to be a justifiable killing, because then an

impression is created that these persons were posing a threat to the life of the police, and that is why they were killed.

**ADV NGCUKAITOBI SC:** Yes, but who makes that call? You see, because I think what the public does not understand about Cato Manor, which I also do not understand, is that the policemen have written a letter where they say, we have killed these people.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** Yes. And then there is an inquest  
10 opened, and there is a docket opened.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** At a certain point it goes to a prosecutor.

**ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** Who has to make a decision whether to prosecute or not. At a certain point it goes to IPID, who have to look at whether this was a justifiable killing or not.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** Yes. Now unless the prosecutors  
20 themselves are not doing their job, or IPID is not doing its job, there has to be an explanation why for four years a man is killed, no investigation until your team comes onto the scene.

**ADV MAEMA:** The prosecutors accepted what the Cato

Manor police were saying, because the Cato Manor police were saying these are justifiable killings.

**ADV NGCUKAITOBI SC:** Yes.

**ADV MAEMA:** The result is no, you know, no concerted effort was done to examine the circumstances surrounding the killing of the deceased.

**ADV NGCUKAITOBI SC:** But does that mean that they issued a *nolle prosequi* or they just, nothing happened to the docket. The docket just gathered dust at the police station.

10 **ADV MAEMA:** No, what they did was the dockets were presented to the prosecutors, and the prosecutors decided on the holding of inquests. And in some of the inquests, there were people that were, the death of the deceased were, in terms of section 16, ascribed to the conduct of some of the members, but that is where the dockets were left.

**ADV NGCUKAITOBI SC:** Yes. Yes, you see, because if it is ascribed to a member of the police service, then a prosecutor must then make a decision about charging them, either with murder or with culpable homicide.

20 **ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** Why did that not happen? That is the point I am trying to understand.

**ADV MAEMA:** Or either guide the investigation towards getting evidence linking that police officer to the killing of the deceased, but nothing happened. The prosecutors and the

advocates in the DPP office did not do anything to ensure that the circumstances surrounding the killing of the deceased are investigated properly.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** But why? Why did the prosecutors not do anything?

**ADV MAEMA:** Chairperson, we were equally surprised that people die in the manner that they do, and nothing happens. We found it absolutely surprising why so many people would  
10 subsequently die and not an eyebrow is raised.

**CHAIRPERSON:** Now the IPID member who was investigating this matter, the one you said was in the North West, do you know who it was?

**ADV MAEMA:** Mr Mosiapo.

**ADV NGCUKAITOBI SC:** Is he still in the service? Is he still in IPID?

**ADV MAEMA:** Yes. No, no, he is retired but he retired in, whilst in the employ of IPID. But he is still in the North West.

**ADV NGCUKAITOBI SC:** But I mean he is someone that can  
20 come to this enquiry and give evidence.

**ADV MAEMA:** Absolutely.

**ADV NGCUKAITOBI SC:** Yes.

**ADV BALOYI-MERE SC:** If I may follow up. When an incident like this happens and IPID gets involved, does IPID come with its own investigators or it accepts the report as it

comes from the police? For example, we have a report here that we have been going through. Maybe, do they accept something like this that is written by the very same police that were involved in the incident or do they come and do their own investigation?

**ADV MAEMA**: Chairperson, IPID is supposed to do their own investigation. There is an IPID investigator who handled this matter. What is her name? Her name would be in the docket and ...[intervenes].

10 **ADV NGCUKAITOBI SC**: Well, I mean last week we spoke about Sharmilla Williams.

**ADV MAEMA**: Sharmilla Williams, yes.

**ADV NGCUKAITOBI SC**: Yes.

**ADV MAEMA**: She was the official who was in charge of this investigation. And Mr Mosiapo took over from Sharmilla Williams.

**ADV BALOYI-MERE SC**: And after the investigation, do they submit a report, or where, and also, if they do submit a report, where do they submit a report?

20 **ADV MAEMA**: Chairperson, when they complete the investigation, it is taken to the prosecutors. In this instance, it was taken to the DPP office in Durban. An inquest was held and there was no eyebrow raised. It was, ja, the matter then rested there. No proper investigations was done.

**CHAIRPERSON**: Who was the head of the IPID at that time,

or during these investigations, do you remember?

**ADV MAEMA**: Chairperson, I cannot remember who the head of IPID was. What I remember is that an official from the head office of IPID went to be part of the investigation. That is the official whose name I mentioned last week, Mr Angus, yes. Mr Angus then went to be part of the team that was investigating together with Mr Mosiapo, Kopoloto, and the others.

**CHAIRPERSON**: These are police officers. I am talking  
10 about the IPID investigators.

**ADV MAEMA**: Chairperson, they are former, most of them are former police officers. Some of them not.

**CHAIRPERSON**: Yes.

**ADV MAEMA**: Yes.

**CHAIRPERSON**: You have actually answered my question. But this, if I may put it just here in simple terms, these are police officers who are supposed to police the other police officers.

**ADV MAEMA**: Chairperson, when a police officer becomes  
20 part of IPID, he is supposed to undergo that metamorphosis and ensure that he is now a member of IPID who is supposed to look objectively at the facts.

**CHAIRPERSON**: You are not answering my question.

**ADV MAEMA**: Oh, I am sorry.

**CHAIRPERSON**: It is simple. These are the IPID members.

**ADV MAEMA:** Yes.

**CHAIRPERSON:** Are police officers who are supposed to police other police officers.

**ADV MAEMA:** That is correct, Chairperson.

**CHAIRPERSON:** Proceed, Advocate Ngcukaitobi.

**ADV NGCUKAITOBI SC:** Thank you.

**MS RAMAGAGA:** May I just come in here? Advocate Maema, at the inquest, witnesses to a crime scene which will be killing would be invited. Am I correct?

10 **ADV MAEMA:** In terms of section 8 of the Inquest Act, yes, witnesses should be invited.

**MS RAMAGAGA:** So, in this instance, the killings that happened, they happened in the presence of and at the hand of a team of investigators from Cato Manor.

**ADV MAEMA:** That is correct, Chairperson.

**MS RAMAGAGA:** And the witnesses to the killing would be expected to have made written statements.

**ADV MAEMA:** That is correct, Chairperson.

20 **MS RAMAGAGA:** And those written statements would also be taken into consideration when the inquest is made or a decision to prosecute or not to prosecute is taken.

**ADV MAEMA:** That is correct, Chairperson.

**MS RAMAGAGA:** So, we shall find the statements of the witnesses. And witnesses, my focus is on the investigation team of the witnesses.

**ADV MAEMA:** Yes.

**MS RAMAGAGA:** At the scene.

**ADV MAEMA:** Yes.

**MS RAMAGA:** Right, thank you.

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. You were asked about the head of IPID at the time. Who was the head of the DPP's office in KZN at the time?

**ADV MAEMA:** It was Advocates Simphiwe Mlotshwa.

**ADV NGCUKAITOBI SC:** Well, that, he was the head in  
10 2012, according to the evidence here, but the event was taking place in 2008.

**ADV MAEMA:** In 2008, the head was, it was Advocates Shamila Batohi.

**ADV NGCUKAITOBI SC:** Yes. So, is she the person who should have, in fact, taken steps at the time of the killing?

**ADV MAEMA:** Advocate Shamila Batohi and her staff were the people who were supposed to have ensured that the matters are dealt with appropriately.

**ADV NGCUKAITOBI SC:** Yes. And is that the office you are  
20 saying failed in its duty?

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** Yes. Now, the next section of the letter does not include ...[intervenes].

**CHAIRPERSON:** I beg your pardon, Counsel. Sorry to interpose. I am sorry. And after Advocate Batohi had left for

The Hague, she was succeeded by Advocate Mlotshwa.

**ADV MAEMA**: Advocate Simphiwe Mlotshwa, Chairperson.

**CHAIRPERSON**: Yes.

**ADV MAEMA**: Yes.

**ADV NGCUKAITOBI SC**: Did Advocate Mlotshwa become, was he acting through from 2009 to 2012?

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: Oh, I see. So, if there is anyone who should have taken action, it would have been Advocate  
10 Batohi first, and then she leaves at the end of 2009, and then second, it should have been Advocate Mlotshwa.

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: Yes. Now, the next section is dealing with additional suspects under paragraph 4, correct?

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: Yes. And then it is dealing with details of candidates, and you have explained in the previous one that these are candidates to receive money.

**ADV MAEMA**: Monetary awards, yes.

20 **ADV NGCUKAITOBI SC**: Yes. And what are their names?

**ADV MAEMA**: Captain Lockem, Captain Eva, Inspector Mostert, Inspector Makanya, Inspector Mdlalose, Inspector Stoltz, Inspector Zondi, Sergeant Mkhwanazi, and Constable Naidoo.

**ADV NGCUKAITOBI SC**: Yes. And what are the event, what

is the event that they are referring to?

**ADV MAEMA:** They are referring to an event on the 18<sup>th</sup> of September 2008 at 13:00.

**ADV NGCUKAITOBI SC:** Yes. Just read that out.

**ADV MAEMA:** -:

10 “Where Inspector Mostert received information about the hideout of two more suspects in the Mandini area. The investigation team consisting of the above members proceeded to Mandini,

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where the house was pointed out by the informer to Inspector Mostert. Inspector Mostert retained and briefed the members, and at 15:30, the investigation team proceeded to number 4 Oribi Place, Mandini. The following

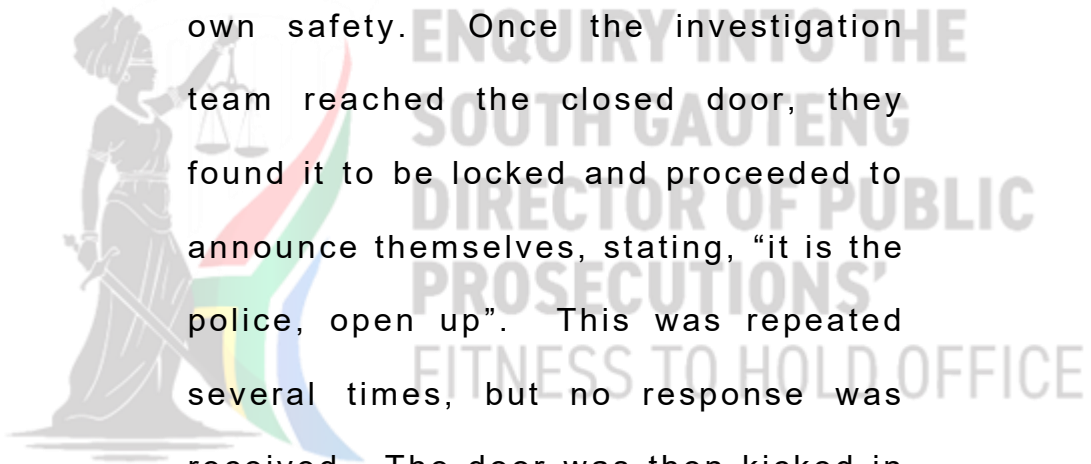
20

members entered the house, Inspector Mostert, Inspector Stoltz, and Constable Naidoo, whilst the remaining members stood guard outside the house. At the door, Inspector Mostert found a black male, and while in the process of identifying himself to this person, this male ran into the house. Inspector Mostert, Stoltz, and Constable Naidoo

then entered the house and systematically proceeded throughout the house, starting in the lounge area and proceeding down the passage. Turning left into the next passage, a young schoolchild was found standing in the doorway who pointed to a closed door and informed Inspector Mostert that they are hiding here. The child was asked to depart from the house for his own safety. Once the investigation team reached the closed door, they found it to be locked and proceeded to announce themselves, stating, "it is the police, open up". This was repeated several times, but no response was received. The door was then kicked in by Inspector Mostert, and at the same time a shot was fired from the room towards the investigation team, and the sound of glass breaking was heard. The team then entered the room and a shootout took place between the police and the suspects, fatally wounding the suspects. The two suspects were

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positively identified as Nathi Mthembu  
and Mdou Kopolota Ntuli.”

**ADV NGCUKAITOBI SC:** Yes, if you can just stop there, was this part of the cases that you pursued?

**ADV MAEMA:** Not at all. This is a misstatement of what ...[intervenes].

**ADV NGCUKAITOBI SC:** I mean, was it part of the Cato Manor cases that you and your team looked into?

**ADV MAEMA:** Yes, this was part of the ...[incomplete].

10 **ADV NGCUKAITOBI SC:** Yes, all right. Then you can answer the second question then, which you have already started.

**ADV MAEMA:** Well, I was saying it was a misstatement of the facts as it happened there.

**ADV NGCUKAITOBI SC:** Yes.

**ADV MAEMA:** They were presenting themselves as being attacked, when in fact there was no attack.

**ADV NGCUKAITOBI SC:** Yes. I mean, one of the unique parts about this particular event is that you would have found,  
20 because they say the firearm was in fact discharged.

**ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** So you would have found the firearm with residue and with a bullet.

**ADV MAEMA:** And cartridges that matched that firearm too.

**ADV NGCUKAITOBI SC:** Yes. But what happened here?

**ADV MAEMA:** But there was nothing. There was no firearm that was found. In fact, what they did was they would plant a firearm to create this narrative, to support this narrative that they are following.

**ADV NGCUKAITOBI SC:** Yes. All right, carry on, found in the room.

**ADV MAEMA:** -:

10 “Found in the room was one Z-88 9mm  
pistol loaded with a serial number  
erased. One CZ-75 9mm pistol also  
loaded with a serial number intact.

Inspector Mostert was in possession of  
a warrant of arrest for the suspect Mdou  
Kopolota Ntuli, Vide Kwamaphumulo  
2/2/2005, murder which was being  
investigated by Superintendent  
Chonco.”

20 **ADV NGCUKAITOBI SC:** Yes, I mean, according to the  
explanation they have given here, was there any attempt to  
arrest anyone?

**ADV MAEMA:** No, there was no attempt to arrest anyone.

**ADV NGCUKAITOBI SC:** Then, carry on.

**ADV MAEMA:** -:

“During the investigation, it was clear  
that Superintendent Chonco was a thorn

in the side of these criminals who did not hesitate to take the law into their own hands.”

**ADV NGCUKAITOBI SC:** Yes, just hold it. Do you know they refer to them as these criminals. I mean, were these people convicted of any crimes?

**ADV MAEMA:** They were not convicted of any crime.

**ADV NGCUKAITOBI SC:** Yes, all right, carry on.

**ADV MAEMA:** -:

10 “Investigation also revealed that the following suspects were directly involved in the assassination of Superintendent Chonco.”

**ADV NGCUKAITOBI SC:** Okay, yes. The next paragraph is crucial, just read that out.

**ADV MAEMA:** -:

“Dumisani Ndlovu, who was shot by Inspector Khanyile, one of Superintendent Chonco's crew.”

20 **ADV NGCUKAITOBI SC:** Yes, now, you remember that there was a question asked, the person who was shot by Inspector Khanyile, do we know his name. Is that his name?

**ADV MAEMA:** That is his name, yes.

**ADV NGCUKAITOBI SC:** Okay, carry on.

**ADV MAEMA:** -:

“One of Superintendent Chonco's crew,  
Lindelane Bhutelezi, who was shot by  
the investigation team ...” [intervenes]

**ADV NGCUKAITOBI SC:** So, Lindelane Bhutelezi, the  
investigation team here is referring to who?

**ADV MAEMA:** The investigation team would be the Cato  
Manor members.

**ADV NGCUKAITOBI SC:** Ja, but there is a specific group  
that killed Mr Bhutelezi.

10 **ADV MAEMA:** Yes, that I referred to above.

**ADV NGCUKAITOBI SC:** Yes. Carry on.

**ADV MAEMA:** -:

“Nathi Mthembu, who was shot by the  
investigation team.”

**ADV NGCUKAITOBI SC:** Yes.

**ADV MAEMA:** -:

“Mdou Kopoloto Ntuli, who was shot by  
the investigation team who was also  
wanted on Kwamaphumulo CAS  
20 2/2/2005, murder. Attached find J50  
warrant of arrest.”

**ADV NGCUKAITOBI SC:** Yes.

**ADV MAEMA:** -:

“Timson Magojela Ndimande and his  
bodyguard, Sibusiso Tembe, who were

also shot by the investigation team and who orchestrated the hit on Superintendent Chonco.”

**ADV NGCUKAITOBI SC:** Yes, now, if you just stop there. I mean, here, we know from the version of the police themselves that Mr Ndlovu, Mr Bhutelezi, Mr Thembu, Mr Ntuli, Mr Ndimande, Mr Tembe were all shot by the investigation team.

**ADV MAEMA:** That is correct.

10 **ADV NGCUKAITOBI SC:** And it is the same investigation team that must now receive awards.

**ADV MAEMA:** Yes, that is ...[incomplete].

**ADV NGCUKAITOBI SC:** Yes. What are these awards for?

**ADV MAEMA:** It is made out as if the awards are for a job well done, when in fact it is an award for killing people that they suspect of involvement in crime.

**ADV NGCUKAITOBI SC:** Yes. Then, there are two more passages there, so maybe just complete that.

**ADV MAEMA:** -:

20 “Attached find newspaper clippings from Daily Sun, the Natal Mercury and the Daily News, as well as a statement of members who were involved in the individual scenes. As depicted in this report, it is clear that several members

contributed and played an important role, of which some members were continuously confronted with the dangers of the apprehension of suspects, while other members played their individual roles which contributed to the success. These members should receive a benefit.”

**ADV NGCUKAITOBI SC:** Yes. Now, we know that the cover  
10 letter to this was sent by Major General Booysen, in which he identified himself as having played a critical role.

**ADV MAEMA:** That is correct.

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

**ADV BALOYI-MERE SC:** Before you proceed, based on that  
last paragraph and on the reading of this whole motivation,  
can we conclude that no individual was apprehended,  
everybody was killed?

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** Yes. Even in relation to the one  
20 individual where they claimed there was a warrant of arrest.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** Now, the following page contains  
the signature. It looks like initially it was meant to be signed  
by Director Booysen, but then he scratched his name,  
somebody scratched his name, and replaced it with Assistant

Commissioner PT Brown.

**ADV MAEMA**: That is correct, Chair.

**ADV NGCUKAITOBI SC**: But we know that, in any event, Director Booyesen actively supported this motivation.

**ADV MAEMA**: That is correct.

**ADV NGCUKAITOBI SC**: Yes.

**ADV MAEMA**: On – no, maybe I must not say anything because you have not asked me a question.

**ADV NGCUKAITOBI SC**: You can say it now that now that,  
10 you know, I do not want to stop a witness.

**ADV MAEMA**: I was just saying, I was going to say that, after having said Director Booyesen is the one who signed the covering letter, when you realize that he is himself a beneficiary, that is when his name was then removed and his supervisor, Assistant Commissioner Brown, then signed.

**ADV NGCUKAITOBI SC**: Yes. I was going to go to the nature of the awards which are set out in paragraph 5, award options. What we know is that these members would have received paragraph 5.16 and paragraph 5.17, or you know if  
20 they received more than 10,000 each?

**ADV MAEMA**: Our information was that all of them received 10,000 each.

**ADV NGCUKAITOBI SC**: 10,000 each.

**ADV MAEMA**: Together with the certificate.

**ADV NGCUKAITOBI SC**: Yes. All right, thank you. Now,

we have dealt with the first document that is mentioned in your statement at GSM6. If we go back to your statement, paragraph 73.

**ADV MAEMA**: I am there, Chairperson.

**ADV NGCUKAITOBI SC**: And then the sentence starts with, “furthermore”.

**ADV MAEMA**: -:

10 “Furthermore, General Booyesen in the application for an interdict in the ...[indistinct] Mkhize v Minister of Safety and Security and Others, deposed to an answering affidavit and it is attached, marked JSM7.”

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

**ADV MAEMA**: -:

20 “On a proper reading the answering affidavit demonstrate that General Booyesen was aware or at the very least ought reasonably to have been aware of the unlawful conduct of the Cato Manor unit.”

**ADV NGCUKAITOBI SC**: Yes.

**ADV MAEMA**: -:

“This inference is fortified by his position at the relevant time as

Provincial Commander, Organized Crime, KwaZulu Natal, and by the fact that the affidavit deals with operational matters falling squarely within his command and control.”

**ADV NGCUKAITOBI SC:** Yes. Now, that affidavit is attached to your statement as 1A/161.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** It is marked GSM7.

10 **ADV MAEMA:** That is correct, Chair.

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

**CHAIRPERSON:** Perhaps you can make it clearer, Counsel, that it is the answering affidavit by Major General Booysen to the interlocutory application by the late Mr Mkhize.

**ADV NGCUKAITOBI SC:** Yes, thank you, Madam Chair. Mr Maema, this answering affidavit is extracted from the papers in the case brought by Mr Mkhize for an interdict against the police.

**ADV MAEMA:** That is correct.

20 **ADV NGCUKAITOBI SC:** Do you, perhaps you should just tell us, actually, from your own recollection, what do you remember about that interdict?

**ADV MAEMA:** It was one of the extraordinary interdicts that I have ever read where the applicant seeks an order compelling the police not to kill him. Ordinarily, police do not

kill. Now, when an applicant approaches court to seek an interdict not to be killed, something has went horribly wrong, because it is not ordinarily the duty of the police to kill. The police should protect life. Now here is a man who approaches court seeking an interdict. It was extraordinary.

**ADV NGCUKAITOBI SC:** Yes. If you just go to file 1, file 1 of the black files, the cross-examination bundle. It is just to point you to where this appears, at page 43.

10 **ADV MAEMA:** I am there, Chairperson at the motion application.

**ADV NGCUKAITOBI SC:** Yes, and then you will see the applicant there.

**ADV MAEMA:** The applicant in the motion application, case 13759/2008, is Bongani Elvis Mkhize.

**ADV NGCUKAITOBI SC:** Yes, if you then over the page, page 44, at paragraph b(i).

**ADV MAEMA:** That is correct, chairperson. This is the extraordinary interdict.

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

**ADV NGCUKAITOBI SC:** Yes, is this what you are referring to?

**ADV MAEMA:** That is correct, Chairperson, killing and

injuring the applicant are extraordinary. I have never seen something like this.

**ADV NGCUKAITOBI SC:** Yes. Now, your statement focuses on General Booyesen and his knowledge and awareness of the conduct of these policemen.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** Yes. And you say that his own affidavit says that he has personal knowledge of the facts.

**ADV MAEMA:** That is correct.

10 **ADV NGCUKAITOBI SC:** Go to page 1A/162 in the annexure section.

**ADV MAEMA:** A?

**ADV NGCUKAITOBI SC:** 1A/162.

**ADV MAEMA:** I am there, Chairperson.

**ADV NGCUKAITOBI SC:** Yes. The first paragraph there is paragraph 2. Do you have paragraph 2?

**ADV MAEMA:** I am there, Chairperson.

**ADV NGCUKAITOBI SC:** What does it say?

**ADV MAEMA:** -:

20 “The facts stated herein are unless where indicated to the contrary, within my personal knowledge and belief, alternatively have been obtained by me from files and documents under, or in the control of the South African Police

Service.”

He further expounds that he is the fourth respondent in this proceedings.

**ADV NGCUKAITOBI SC:** Yes. Now, we know from that application its common cause what it comprises of. At the point the application was brought, five leaders of the Kwa Maphumulo Taxi Association had been killed by the police and it was alleged that there was a hit list that was circulating. Mr Bongani Mkhize’s name was alleged to be in  
10 that hit list.

**ADV MAEMA:** That is correct, Chairperson, and he would have been the next in line.

**ADV NGCUKAITOBI SC:** Well, certainly one of the people to be killed.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** Whether next or not.

**ADV MAEMA:** That is correct.

**CHAIRPERSON:** That is Mr who?

**ADV NGCUKAITOBI SC:** Mr Bongani Mkhize.

20 **CHAIRPERSON:** Mkhize.

**ADV NGCUKAITOBI SC:** Yes, Bongani Mkhize. Thank you. Now, those are the facts that General Booyesen said were within his personal knowledge.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** Yes. Now, in his own affidavit at

1A/166 ...[intervenes].

**CHAIRPERSON**: Before you go there, Counsel, let us stay at page 1A/162. You just testified that this was an extraordinary ...[incomplete].

**ADV MAEMA**: Relief that is being sought.

**CHAIRPERSON**: Relief that was sought because according to you the role of the police is not to kill people.

**ADV MAEMA**: That is correct, Chairperson.

**CHAIRPERSON**: Now, look at paragraph 3 of that affidavit.

10 Remember, Major General Booysen is cited as the fourth respondent.

**ADV MAEMA**: That is correct.

**CHAIRPERSON**: He is a Commissioner, Head of the Organized Crime unit, SAPS, KZN.

**ADV MAEMA**: That is correct, Chair.

**CHAIRPERSON**: He now says at paragraph 3:

20 “It is convenient that I depose to the principal opposing affidavit with the other respondents providing confirmatory affidavits and/or additional affidavits as they may see fit.”

**ADV MAEMA**: That is correct.

**CHAIRPERSON**: Now, in the principal affidavit as he is deposing thereto, look at paragraph 5, if you may read that into the record.

**ADV MAEMA:** Paragraph 5:

10 “Before responding to the applicant's affidavit, it is pertinent for me to point out that the relief sought by the applicant in paragraphs (b)(ii), (iii) and (iv) is not warranted by the matters disclosed in the founding papers, but more importantly constitutes an unwarranted and unjustified limitation of the powers, rights, obligations, and duties vested in and imposed upon the South African Police Service in terms of the Constitution, more specifically in terms of the Criminal Procedure Act, 51 of 1977. As such, that relief constitutes an improper interference with the duties of the police to investigate and combat crime.”

20 **CHAIRPERSON:** Now, in the context of the evidence that we have already that shows that many people had been killed in KZN in relation to the murder of superintendent Chonco, and these deceased people were seemingly killed by the police.

**ADV MAEMA:** That is correct, Chairperson.

**CHAIRPERSON:** Now, where in the Constitution are the

police given any powers to kill anyone?

**ADV MAEMA**: No, there is nowhere in the Constitution where the police have any powers to kill anyone.

**CHAIRPERSON**: I am asking this question because this paragraph 5 seems to suggest that the police have such powers.

**ADV MAEMA**: Indeed, Chairperson.

**CHAIRPERSON**: Because you remember the relief that is sought by Mr Mkhize ...[intervenes].

10 **ADV MAEMA**: Yes.

**CHAIRPERSON**: The interdict that is sought ...[intervenes].

**ADV MAEMA**: Yes.

**CHAIRPERSON**: Is to interdict the police from killing, injuring or threatening him.

**ADV MAEMA**: That is correct, Chairperson.

**CHAIRPERSON**: Mr Mkhize had already been aware that several people had been killed.

**ADV MAEMA**: Yes.

20 **CHAIRPERSON**: He rushed to court to seek the protection ...[intervenes].

**ADV MAEMA**: Protection, yes.

**CHAIRPERSON**: Of the court.

**ADV MAEMA**: That is correct.

**CHAIRPERSON**: Now, Major General Booysen, in paragraph 5, seeks to suggest, or rather makes a proposition that in

executing their duties as police officers they are protected or enjoined by the Constitution to do some of the things that they did. My reading of paragraph 5 seems to suggest that.

**ADV MAEMA**: That is correct, Chairperson.

**CHAIRPERSON**: And where in the Criminal Procedure Act are the police given powers to act in the manner the Cato Manor officers did in relation to all those matters?

**ADV MAEMA**: Nowhere in the Constitution, Chairperson. The list that one can go to, section 49(2) of the Criminal  
10 Procedure Act says where the police have been exposed to, where their lives are threatened, an amount of force commensurate to the threat being imposed to the police can be used. But there is nowhere in the Criminal Procedure Act, nowhere in the Constitution where the police can unjustifiably kill anyone in this country.

**CHAIRPERSON**: Am I correct that more so that there is no evidence, at least so far, that suggests that these police officers were threatened by the very people that they accosted and eventually killed?

20 **ADV MAEMA**: That is correct, Chairperson. In fact, Chairperson, there is no shred of evidence that is linking anyone of these people that they killed to any offence. Nothing, nothing at all.

**CHAIRPERSON**: I mean, Mr Tembe was running away according to the version of the police.

**ADV MAEMA:** That is incorrect.

**CHAIRPERSON:** Well, the version of the police is that he was running away when he was shot.

**CHAIRPERSON:** Are you saying it is incorrect? I thought that you say it is correct, he was running away.

**ADV MAEMA:** Well, he was running away.

**ADV NGCUKAITOBI SC:** Yes.

**ADV MAEMA:** But it is incorrect that he, he was running away from the imminence that he knew, because he knew his  
10 fate is what ultimately happened.

**ADV NGCUKAITOBI SC:** I understand that. I mean, I am saying even on their own version, when they shot him, he was running away.

**ADV MAEMA:** Yes, why do you shoot at anybody running away? When you know who that person is, you can even go to his home the next day or three months thereafter and arrest him. There is no need at all to shoot and kill him.

**ADV NGCUKAITOBI SC:** Yes, and the young man, Kwazi Ndlovu, was sleeping at home having watched football.

20 **ADV MAEMA:** That is correct, Chairperson.

**CHAIRPERSON:** Now, in the answering affidavit, those paragraphs that you have been reading, continue to read paragraph 6 of 7. There Major General Booysen is giving a kind of an introductory defence.

**ADV MAEMA:** That is correct, Chairperson.

**CHAIRPERSON**: Please read paragraph 6 and paragraph 7.

**ADV MAEMA**: Paragraph 6, Chairperson, reads:

“Apart from that relief sought in paragraph B1, constitute nothing more than mere lip service couched in interdictory language and joining the police to do exactly that which is their duty to perform.”

Paragraph 7 ...[intervenes].

10 **CHAIRPERSON**: No, before you go to 7, what do you make of that statement?

**ADV MAEMA**: Chairperson, this paragraph as well is a misstatement of the facts. It cannot be said that ...[intervenes].

**CHAIRPERSON**: Perhaps Advocate Ngcukaitobi can take you to the notice of motion in paragraph B(i).

**ADV NGCUKAITOBI SC**: Yes, just go back to file 1, the file that you, the black file. Yes, and we go back to paragraph 44.

20 **ADV MAEMA**: I am there.

**ADV NGCUKAITOBI SC**: Yes.

**ADV MAEMA**: Page 44.

**ADV NGCUKAITOBI SC**: Yes. So this was, at the time, the rule nisi that was sought.

**ADV MAEMA**: Yes.

**ADV NGCUKAITOBI SC:** And B(i) says:

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

**ADV MAEMA:** That is so.

**ADV NGCUKAITOBI SC:** Yes. Now, General Boysen says in paragraph 6:

10 “Apart from that, the relief sought in paragraph B(i) constitutes nothing more than mere lip service.”

Now, let us just start there. I mean, if someone says, so if you are in that same document, that black file, at page 58, I just want to put the full context to you so that you will remember what I am talking about.

**ADV MAEMA:** I am there.

**ADV NGCUKAITOBI SC:** At the bottom of that page, he is narrating the people that have been killed, which is why he is coming to court to say, I fear that I will also be killed. So it  
20 is my Magojela and Ndimande and Tembe, you remember that?

**ADV MAEMA:** That is so.

**ADV NGCUKAITOBI SC:** Yes, now you turn over the page, page 60. Mr Lindelane Buthelezi has already been killed, correct?

**ADV MAEMA**: That is so.

**ADV NGCUKAITOBI SC**: Paragraph 32, Kopoloto Ntuli and Nkosinathi Mthembu, correct?

**ADV MAEMA**: That is correct, Chair.

**ADV NGCUKAITOBI SC**: And then the next page is page 61, Mdu Mkhize, correct?

**ADV MAEMA**: Also having been killed, that is correct, Chair.

**ADV NGCUKAITOBI SC**: Yes. Then look at the paragraph at 62, paragraph 35. That explains why he is coming to court.

10 Just read that.

**ADV MAEMA**: -:

“Of the people whose names are mentioned on the list, I am the only one who remains alive. However, on Sunday, the 19<sup>th</sup> October 2008, I was telephoned by my source from the Kwamaphumulo Police Station and informed that a considered effort is now being ...[indistinct] by police men investigating Chonco’s murder to eliminate me. To this end, I was informed further that the warrant for my arrest has been obtained, a precursor to justify taking me into custody. Thereafter, the plan is to kill me and to

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allege that I have been killed while threatening the lives of the policemen involved in my arrest.”

**ADV NGCUKAITOBI SC:** Now this is why he then says in paragraph B(i), I do not want to be killed. He says you have killed five people before. I have heard that my name is the next one to be killed.

**ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** Then General Booysen in that  
10 context and response in paragraph 6, the first thing he says is that this is lip service, paragraph 6 at page 1A/163.

**ADV MAEMA:** That is so.

**ADV NGCUKAITOBI SC:** Now that is the comment I would like you to give to this kind of a response when he is responding on behalf of all of the respondents. He says, well, this is a mere lip service.

**ADV MAEMA:** It cannot be lip service. Five people have already been killed together with one bodyguard. So it cannot be ...[intervenes].

20 **ADV NGCUKAITOBI SC:** But he also has evidence that he himself is next.

**ADV MAEMA:** He also has evidence that he himself is appearing on the list that the, on the basis of the list that was in existence.

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

“Couched in interdictory language and joining the police to do exactly that, which is their duty to perform.”

Now this is the most bizarre thing because it is about killing, injuring, threatening, harassing, or in any way intimidating the applicant. So unless there is something I am missing from what he means, he surely cannot mean that the police are enjoined as their duty to perform these things that are in paragraph B(i).

10 **ADV MAEMA**: I agree, Chairperson.

**ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: Counsel, Advocate Maema, you will continue to read paragraph 7 into the record when we reconvene. I am reminded that we have passed tea time. Please pardon me. It took a bit longer here. So we will adjourn for tea. We will adjourn until about 5 to 12.

**ADV NGCUKAITOBI SC**: Thank you.

**CHAIRPERSON**: You are still under oath, Counsel.

**ADV MAEMA**: That is correct, Chair.

20 **CHAIRPERSON**: We adjourn.

**ENQUIRY ADJOURNS**

**ENQUIRY RESUMES**

**CHAIRPERSON**: Good afternoon, good afternoon, Nthati Maema. Good afternoon, Nthati Chauke. You are still under oath.

**ADV MAEMA**: That is correct, Chairperson. I confirm.

**CHAIRPERSON**: When we adjourned, you were looking at the answering affidavit of Major General Booysen.

**ADV MAEMA**: That is correct, Chairperson.

**CHAIRPERSON**: At page 1A/163, paragraph 7, that you have to read into the record?

**ADV MAEMA**: That is correct, Chair.

**CHAIRPERSON**: Please do.

**ADV MAEMA**: It reads as follows. In 7:

10            “In seeking that relief and as a general statement, the applicant relies on nothing more than innuendo, hearsay, unconfirmed rumour, and generalised, unconfirmed reports made in the popular press.”

**CHAIRPERSON**: What do you make of this statement, this statement that the applicant, the late Mr Mkhize, relies on nothing more than innuendo, hearsay, and unconfirmed rumour?

20            **ADV MAEMA**: Chairperson is a misstatement of what the real facts are because Mr Mkhize relies on facts that have happened to members of his own taxi association.

**CHAIRPERSON**: Let us assume that Major General Booysen is correct, that the reliance is on innuendo and hearsay for the purpose of the POCA, racketeering. Those allegations will still be admissible, not so?

**ADV MAEMA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** Thank you, Counsel.

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. I suppose, you know, if you go to court and you say, I hear that the police themselves are trying to kill me, and there is a list, and you do so on an urgent basis, I mean, does not the law say that in those circumstances hearsay would be admissible?

10 **ADV MAEMA:** It will be admissible, Chairperson.

**ADV NGCUKAITOBI SC:** There is also something more fundamental with this approach of Major General Booyesen. What we have here, you have a person, a member of the public, who says that I am targeted by the police themselves, and I want an order from the Court, and you have the police opposing the application. I do not know if that tells you anything about the attitude of Major General Booyesen.

**ADV MAEMA:** It is just most bizarre. Ai, ja, it is a sad, sad state of affairs.

20 **ADV NGCUKAITOBI SC:** Yes. But, I mean, insofar as the question of endorsement to commit murder, the licence to kill, which is really what is at stake in this case, the members of Cato Manor had licence to kill, endorsed by Major General Booyesen.

**ADV MAEMA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Now, when he opposes an application by a person who says, I do not want to be killed by Cato Manor, what does that tell you?

**ADV MAEMA:** It tells you things have gone horribly wrong. In fact, I would have expected him to, I would have expected him, as a police officer serving under the Constitution, to support this application and say, the police will not kill, they will not harm you. To the contrary, he opposes somebody who approaches court and who wants to preserve his own  
10 life.

**ADV NGCUKAITOBI SC:** Yes. But does it confirm or dispute the notion that under his authority, the Cato Manor police had licence to kill?

**ADV MAEMA:** It confirms that narrative, that they have a licence to kill and he will go all the way to support them.

**ADV NGCUKAITOBI SC:** Yes. Now, I wanted to take you to 1A/166, which is where he deals with Superintendent Chonco.

**CHAIRPERSON:** Before you proceed, Counsel, I am sorry to interpose this. When you look at page 74, 1A/166,  
20 paragraph 20. Paragraph 20?

**ADV MAEMA:** I am there, Chairperson.

**CHAIRPERSON:** Major General Booyesen reminds us that Superintendent Chonco was murdered on 27 August 2008.

**ADV MAEMA:** That is correct, Chair.

**CHAIRPERSON:** And you earlier on testified that, yes, at

that time, Advocate Batohi was still the DPP KZN.

**ADV MAEMA**: That is correct, Chair.

**ADV NGCUKAITOBI SC**: Yes, thank you. I suppose you could now skip paragraph 19 and 20 because they are both about the murder of Superintendent Chonco.

**ADV MAEMA**: Yes.

**ADV NGCUKAITOBI SC**: And we have dealt with that extensively.

**ADV MAEMA**: That is correct, Chair.

10 **ADV NGCUKAITOBI SC**: But the one question still remains about the knowledge of General Booysen. Remember that there is the whole thing that I came after the event. But given that he is testifying expressly about the murder, what does that tell you about his knowledge of this case?

**ADV MAEMA**: He is misstating the facts. He knows exactly what is happening. It is clear from the affidavit that he has filed.

**ADV NGCUKAITOBI SC**: Yes. And then the same allegation about knowledge appears at paragraph 21, the following  
20 page, 1A/167. And that is where the applicant, Mr Mkhize, says, we as KwaMaphumulo Taxi Association hired a private security to guard us.

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

**ADV NGCUKAITOBI SC**: What does he say here?

**ADV MAEMA**: At paragraph...

**ADV NGCUKAITOBI SC:** 21.

**ADV MAEMA:** 21.

**ADV NGCUKAITOBI SC:** Ad paragraph 18.

**ADV MAEMA:**

“Although I am aware of the fact that the services of a security company were retained by the association, I am not aware of the remaining allegations contained in this paragraph.”

10 **ADV NGCUKAITOBI SC:** So here he confirms even the detail that he was aware that KwaMaphumulo had hired a security company.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** Yes. And why would they hire a security company?

**ADV MAEMA:** To protect themselves and their properties.

**ADV NGCUKAITOBI SC:** Yes. Because they knew that they were under threat.

**ADV MAEMA:** Exactly.

20 **ADV NGCUKAITOBI SC:** Yes. And he knew that they had hired a security company.

**ADV MAEMA:** Yes.

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

**CHAIRPERSON:** If you can just remind me. I am sorry, Counsel.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** It appears Major General Booyesen hold a view that one of the assailants in the murder of Superintendent Chonco and injuring Mr Kanyile was in exchange killed with an AK-47.

**ADV MAEMA:** That is true.

**CHAIRPERSON:** Is that correct? That an AK-47 was used?

**ADV MAEMA:** No. It is incorrect.

**CHAIRPERSON:** And in any of the ballistic reports or the  
10 evidence that were tendered by the witnesses, there is no suggestion, even in those photographs that were seen earlier, that no AK-47 was used in the murder of any of the assailants or of the suspects.

**ADV MAEMA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. Yes. Sorry, Madam Chair, which paragraph is the Chair referring to?

**CHAIRPERSON:** I am referring to Major General Booyesen's affidavit at paragraph [indistinct]...

**ADV NGCUKAITOBI SC:** Oh, yes, yes, yes, yes. I see it  
20 now. Yes. The assailant was found in possession of an AK-47 rifle. Thank you, Madam Chair. In fact, I suppose there is one more fact that is relevant there. You would recall when we looked at the scene of the killing of Superintendent Chonco, the rifles that were used in that scene, we identified them last week.

**ADV MAEMA:** Yes, yes, yes, we did.

**ADV NGCUKAITOBI SC:** And what were they?

**ADV MAEMA:** Chairperson, it was an R1 and R5?

**ADV NGCUKAITOBI SC:** No, R4.

**ADV MAEMA:** Either R1 or R4.

**ADV NGCUKAITOBI SC:** R4 and R5.

**ADV MAEMA:** Yes, yes.

**ADV NGCUKAITOBI SC:** And specifically, why are they relevant?

10 **ADV MAEMA:** Well, the R1s and R5s will be official firearms, not an AK-47.

**ADV NGCUKAITOBI SC:** Official by who?

**ADV MAEMA:** Yes, that is firearms that would ordinarily be in the use of the police.

**ADV NGCUKAITOBI SC:** Yes. And is it not interesting that in his narrative he does not mention the use of the R4 and the R5, which are official police guns?

**ADV MAEMA:** Yes. Instead, he throws in an AK-47 rifle.

20 **ADV NGCUKAITOBI SC:** Sorry, I have now missed the part I wanted to take you to. Oh, yes. If you go back to this document, the file 1, the black file 1, you will recall that there is an issue around what is the extent to which these people that were killed were implicated in the murder of Superintendent Chonco. Not that if a person is implicated, he cannot just be murder, but it is an issue nevertheless.

**ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** If you look at page 56, paragraph 24.

**ADV MAEMA:** I am there, Chairperson.

**ADV NGCUKAITOBI SC:** Yes. Now we know that Moses Dlamini had at some point been arrested in relation to this incident.

**ADV MAEMA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** And then what does paragraph 24  
10 of the founding affidavit say?

**ADV MAEMA:**

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

**ADV NGCUKAITOBI SC:** Yes. So arrested and released.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** And that was also the same thing with Mr Magojela Ndimande.

**ADV MAEMA:** That is correct.

20 **ADV NGCUKAITOBI SC:** Yes. And then there were also allegations that after they were detained, they were also assaulted, both Moses Dlamini and Magojela Ndimande. You recall that?

**ADV MAEMA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. And then he responds, Major

General Booyesen in response to those allegations at paragraph 24, which is 1A/167, as well as the following paragraph 25, and 26, and 27. Can you just read those into the record?

**ADV MAEMA**: Starting with paragraph 24?

**ADV NGCUKAITOBI SC**: Yes. Paragraph 24 of Major General Booyesen's affidavit, yes, correct.

**ADV MAEMA**:

“Ad paragraph 21:

10 I admit that a person was detained and questioned. I deny that that person was in any way assaulted. In any event, these allegations constituted hearsay and ought to be struck out.”

**ADV NGCUKAITOBI SC**: So he is confirming here about his personal knowledge of the detention.

**ADV MAEMA**: That is correct.

**ADV NGCUKAITOBI SC**: Yes. He is also claiming from personal knowledge a denial of the assault.

20 **ADV MAEMA**: Yes.

**ADV NGCUKAITOBI SC**: Do you know where he would get the information from if he claims to have come after the event?

**ADV MAEMA**: It begs to reason where he would get it. It only shows that his version that he came after the event is

false.

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

**ADV MAEMA:** Paragraph 25:

“Ad paragraph 22

I note the contents of the documents purporting to be an affidavit by Moses Dlamini. It is improper for that affidavit to be put up by the applicant unless and until Moses Dlamini puts up an affidavit in this manner. That affidavit was not designed for

10

the purpose for which the applicant intends to employ it and is therefore in the context of this application hearsay and ought to be struck out. In any event, Moses Dlamini was never assaulted and I refer to the affidavits of Panday and Maharaj filed evenly herewith.”

**ADV NGCUKAITOBI SC:** There are just two points around this paragraph. Someone says, look, I have been assaulted in police custody. They report to the head, the provincial head of the police the assault. What is the correct response to that allegation?

20

**ADV MAEMA:** He ought to have it investigated.

**ADV NGCUKAITOBI SC:** Yes. But it looks like what he does is just to rely entirely on the version of the police.

**ADV MAEMA:** Instead of doing anything, any concrete investigation.

**ADV NGCUKAITOBI SC:** Yes. Now, what does that tell you about the extent to which the police in Cato Manor had a licence not just to kill but to torture and assault suspects as well?

**ADV MAEMA:** Well, they would do so because they have the begging and support of the provincial commander himself.

**ADV NGCUKAITOBI SC:** Yes. Now, then, he then goes  
10 further. Paragraph 26.

**ADV MAEMA:** He says:

“Ad paragraph 23

The information received from Moses Dlamini is hearsay and ought to be struck out. In any event, I deny the existence of any list that is referred to by the applicant and deny that Dlamini was assaulted.”

**ADV NGCUKAITOBI SC:** Yes. Again, this is something  
20 curious. He is the head of the police, and he is asking for hearsay to be struck out. Is that the correct approach?

**ADV MAEMA:** No, I differ. You know, as a responsible head of the police, as I say, the appropriate thing was to ascertain what the true facts are by investigating rather than just mere denying.

**ADV NGCUKAITOBI SC:** Yes.

**MS RAMAGAGA:** In an instance like this where it came to the attention of General Booysen that there are allegations of assault and torture, if the investigations were to be done, would it have to be done internally by the police, or would he have to refer it to IPID?

**ADV MAEMA:** He would have to refer it to IPID for an objective investigation to be done.

**MS RAMAGAGA:** And it is the IPID that would investigate at his instance?

10 **ADV MAEMA:** That is correct.

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

**ADV NGCUKAITOBI SC:** Thank you.

**ADV BALOYI-MERE SC:** Sorry, before you go ahead, can the witness put the position in terms of the organogram and who reports to whom in its proper context, so that we understand under which authority does Major General Booysen respond to these allegations? I am not sure if my

question is clear. I want it to be put in its proper context, so that we understand how the information flowed and how would  
20 Major General Booysen say the information contained in this affidavit are in my personal knowledge.

**ADV NGCUKAITOBI SC:** Yes, thank you. Do you want to address that there is a, I think, a...?

**ADV BALOYI-MERE SC:** Sorry, I am asking this question. I am aware that there is an organogram, but we dealt with it

last week. It might be that we lose it along the way. So I want it to be clear in which capacity is Major General Booyesen making these allegations where he says they are within my personal knowledge.

**ADV NGCUKAITOBI SC:** All right, thank you. Could you explain that question perhaps in your own words, Mr Maema?

**ADV MAEMA:** Chairperson, General Booyesen is the provincial head of Organised Crime in the province, in KZN. And he has close working relations with the Cato Manor, the  
10 unit that is responsible for all of this. So there are complaints that Cato Manor unit is responsible for all these atrocities. But instead of him acting as an impartial provincial commander would do, he does not do that. He supports the conduct of the Cato Manor unit without referring it appropriately to the IPID for proper investigations to be done. But this is a man who is himself involved in these atrocities. So he lacks impartiality. He lacks independence. That is why he acts in the manner that he does.

**ADV NGCUKAITOBI SC:** I suppose the question is really  
20 this. Mr Mkhize comes to court and he says there is a unit in Cato Manor that is terrorising members of my association.

**ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** They have killed five so far. They have a hit list. My name is in the hit list.

**ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** Ordinarily, you would expect someone either from the unit or someone who works with the unit to know the facts personally to respond.

**ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** You would not expect someone from the province to come to court and say I have personal knowledge, because that is how the formal structure looks like.

**ADV MAEMA:** Yes, yes.

10 **ADV NGCUKAITOBI SC:** And that is what I think is being asked, is that you have got the formal structure that elevates Mr Booyesen to the province, but you have got the factual position where an application is brought, but it is him who responds with personal knowledge. So how does that link now to the formal structure?

**ADV MAEMA:** So one would have expected that Superintendent Ayer or Olivier, as a section commander, would be filing an affidavit as the people that are directly involved with the Organised Crime. But instead of that  
20 happening, you have somebody who is supposed to be based at province, and replacing the section commander and unit commanders as he has personal knowledge of what is happening in the unit.

**ADV NGCUKAITOBI SC:** But where does he get the personal knowledge from? That is the question.

**ADV MAEMA**: He gets the personal knowledge from his own involvement in the activities of Cato Manor.

**ADV NGCUKAITOBI SC**: Yes.

**ADV BALOYI-MERE SC**: Assuming that we accept that Major General Booyen is the, or first let us assume that the Cato Manor complies with the definition of an enterprise. And then we further assume that Major General Booyen is the manager of that enterprise. That would then mean that the members of Cato Manor, which we would have assumed is an  
10 enterprise, are under his direct command and management. That is why they report to him. Correct me if my assumption is wrong.

**ADV NGCUKAITOBI SC**: Yes, we have got an expert here on racketeering.

**ADV MAEMA**: That is my understanding of, the supposition so far is correct. And it follows how we concluded that the Cato Manor unit was an enterprise within the meaning of POCA.

**ADV NGCUKAITOBI SC**: Yes.

20 **MS RAMAGAGA**: I just want clarity on the citation of the parties. On that application, it cites the Minister Bongani Mkhize as the applicant.

**ADV MAEMA**: That is, Chairperson, the interdict?

**MS RAMAGAGA**: Yes, the interdict application, page 43. Page 43 of the cross-examination file.

**ADV MAEMA**: I am there.

**MS RAMAGAGA**: You are there, thank you. Now, I see from the citation that... No, no. I need to correct myself. It is not necessary to ask the question. Looking at it again, I am clarified. Thank you.

**ADV MAEMA**: Thank you.

**ADV NGCUKAITOBI SC**: Thank you, Madam Ramagaga. Yes, we are still dealing with the issue of the personal knowledge and the personal involvement, or let us call it  
10 direct involvement of General Booysen.

**ADV MAEMA**: Yes.

**ADV NGCUKAITOBI SC**: We are at paragraph... We have skipped 26, we are at 27, which is 1A/168.

**ADV MAEMA**: Oh, yes.

**ADV NGCUKAITOBI SC**: If you could read that into the record.

**ADV MAEMA**: 28:

“Ad paragraph 25

I deny the allegations ...[intervenes]”

20 **ADV NGCUKAITOBI SC**: No, no, 27.

**ADV MAEMA**: Ad paragraph 27?

**ADV NGCUKAITOBI SC**: No, paragraph 27 ad paragraph 24.

**ADV MAEMA**: My apologies. 27:

“Ad paragraph 24

I admit that Moses Dlamini was released.

Any information received by the applicant from Moses Dlamini, as referred to in the founding affidavit, is hearsay and ought to be struck out. I have no knowledge as to why the applicant became concerned for his well-being and denied that he had any reason to be so afraid. The letter Annexure B needs to be placed in context.

10 In 5 September 2008, Hlapani Attorneys addressed inter alia the Provincial Commissioner. A copy of that letter is annexed here to Marks JWB 1. That was responded to on 11 September 2008, a copy of which is annexed here to SJWB 2. Annexure B to the founding affidavit was then received. In any event, in the absence of an affidavit from the author of the letter, the contents thereof are hearsay.”

**ADV NGCUKAITOBI SC:** Yes. Now, that letter of 5  
20 September 2008, we have it in file 1, at page 1.

**ADV MAEMA:** That is so, Chairperson.

**ADV NGCUKAITOBI SC:** Now, that is dated 5 September 2008, correct?

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** Yes. Now, it was also a, I suppose,

a plea for help, for lack of a better word, by the attorney, saying, we know that our members are being targeted and at that stage, Mr Ndimande and Mr Tembe had not been killed.

**ADV MAEMA**: That is correct.

**ADV NGCUKAITOBI SC**: But they were mentioned in that letter that these are some of the people that are being targeted.

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: And we know they were killed  
10 subsequently on the 16th of September.

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: And that was before the application was brought, which is the 21st of October.

**ADV MAEMA**: That is correct, Chairperson.

**ADV NGCUKAITOBI SC**: Now, what did you make of this letter in your own investigations? The letter is sent on the 5th saying, please help us. Apparently, nothing happens. More people get killed. And then an application is brought. Even that one, more people get killed, even after the  
20 application.

**ADV MAEMA**: But, Chairperson, you know, what is even more worrying is the fact that Magojela and Ndimande want to hand themselves over if the police are looking for them. And Cato Manor then says, no, we do not want you. Because they are arrested by the Mtunzini police, and they get taken

to Cato Manor. Cato Manor says, no, we do not want them. We do not want to question them now. We do not have anything against them. Release them. And they get released. And two weeks thereafter, Magojela then gets killed on the freeway, on the Howick freeway. Very concerning.

**ADV NGCUKAITOBI SC:** Yes. What is also apparent here, and I want your comment on this, is that the letter of the 5th of September, way before the application, already says, look,  
10 these people are being killed. Because it is coming within a week after the killing of Superintendent Chonco.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** And they are saying, well, we know that you are looking for us, but we are available.

**ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** Does General Booysen deny knowledge of this letter?

**ADV MAEMA:** No, he does not.

**ADV NGCUKAITOBI SC:** Yes. So this would mean what?  
20 That he was aware of this letter on the 5th, he was also aware of the application.

**ADV MAEMA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. And all of this are about Cato Manor.

**ADV MAEMA:** Cato Manor, that he is actually literally in

control of.

**ADV NGCUKAITOBI SC:** Yes. And receiving a letter like this on the 5th of September, that is a plea for help, I mean, what would you expect of someone in General Booyesen's position?

**ADV MAEMA:** You would expect of a responsible provincial commander in the shoes of General Booyesen to take steps to ensure that if there is any questioning, if there is anybody who needs to be arrested, he would take proper steps to  
10 ensure that that happens within the context of the law.

**ADV NGCUKAITOBI SC:** Yes. You know, the other thing about these letters, so we have the letter of the 5th of September, right? That is before the killing of Ndimande and Tembe.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** And then after their killing, shortly after that, there is another letter which is at page nine of file 1, the black file.

**ADV MAEMA:** That is correct, Chair.

20 **ADV NGCUKAITOBI SC:** And what is the date of that letter?

**ADV MAEMA:** It is the 23rd of September 2009.

**ADV NGCUKAITOBI SC:** Yes. Now, you will see that letter at... the content of that letter. I think it is page... 21. Paragraph 29, 30, 31 and 32. And 33. And 34. What are they dealing with there?

**ADV MAEMA:** In paragraph 29:

“By way of background to the fourth respondent's complaint, it is necessary to understand that ...[intervenes]”

**ADV NGCUKAITOBI SC:** It is his fourth complaint, so in other words, it is the fourth time we are complaining.

**ADV MAEMA:** Oh, my apologies.

10 “By way of background to the fourth complaint, it is necessary to understand that Magojela Ndimande and Tembe were arrested by members of the Organised Crime Unit on the 29th of August 2008, two days after Chonco’s murder, and taken to the Mtunzini police station, where they were detained, interrogated, and assaulted. They were denied legal representation despite requesting same.”

**ADV NGCUKAITOBI SC:** Yes, carry on.

**ADV MAEMA:** Paragraph 30.

20 “When it came to our attention that Ndimande and Tembe had been arrested by the police and denied legal representation, we immediately addressed a letter to the officer commanding Organised Crime Unit, as well as the director in overall charge of

that unit, demanding that their legal rights be respected. This letter, which speaks for itself, is annexed here to marked I.”

**ADV NGCUKAITOBI SC:** Yes, carry on.

**ADV MAEMA:**

10 “After questioning and assaulting Ndimande and Tembe, the police released them on 29 August 2008 without charging them. This is significant because it clearly illustrates that the police did not have sufficient evidence against them. If they had evidence, they would certainly have charged them and taken them to court. On 16 September 2008, more than two weeks later, the Organised Crime Unit, acting on reliable information, again sought Ndimande and Tembe. This much is contained in an official press release by Senior Superintendent Henry Boodram. The undertaking had been made to the Organised Crime Unit on 5  
20 September, see letter annexed as E, to hand over any suspects who were sought by the police. This, notwithstanding, no request was made to our office or to KwaMaphumulo Taxi Association to surrender Ndimande or

Tembe.”

Paragraph 33.

“On 16 September 2008, the police pursued Ndimande and Tembe who were travelling in a motor vehicle and fired upon them to the extent that both were killed. No police officers were harmed and it is believed that the police vehicles involved were unscathed.”

10 Then paragraph 34?

**ADV NGCUKAITOBI SC:** Paragraph 34, yes.

**ADV MAEMA:**

“Once again, instead of apprehending the suspects and bringing them to justice, members of the Organised Crime Unit used deadly force and shot the two individuals to death. The widely reported response by those in command of the police officers concerned, including Bheki Cele, was  
20 applause and congratulations for killing, “the criminals”.

Once again, we are not told what evidence, if any, the police had against these individuals of their involvement in Senior Superintendent Chonco's murder or any

crime for that matter. The chilling fact is that these are the same two people in respect of whom the police were unable to lay charges on the 29th of August 2008 due to insufficient evidence. It will be recalled that on that day, the police were forced to release them following our letter.”

**ADV NGCUKAITOBI SC:** Carry on. Paragraph 35.

**ADV MAEMA:** Paragraph 35:

10 “Once again, the presumption of innocence appears not to have come into reckoning at all. The police officers were certainly given the impression that they had done a great job in killing this suspect and should continue in similar vein.”

Paragraph 36.

20 “Following these killings and the evasive response to our letter of 5 September 2008, member of KwaMaphumulo Taxi Association justifiably felt that their lives were in serious danger and that they too could face violent death based on no more than reliable information gathered by the police. Following a consultation with a member of the KwaMaphumulo Taxi Association, we

addressed a further urgent letter to the Provincial Commissioner on 18 September 2008. This letter speaks for itself and we annex same marked J. This letter clearly identifies three individuals who had been threatened by members of the Organised Crime Unit and feared for their lives. Two of these are Nkosinathi Wilson Mthembu and Johannes Ntuli, also known as Kopolota.”

10 **ADV NGCUKAITOBI SC:** Paragraph 37.

**ADV MAEMA:**

“We received no response to this letter. The very same day, however, 18 September 2008, two of these specifically mentioned in the letter, Nkosinathi Wilson Mthembu and Johannes Ntuli, also known as Kopolota, were shot and killed by members of the Organised Crime Unit in a house in Mandeni. According to the police, they sought to arrest the two individuals and approach the house with this intention when they met resistance and were forced to kill the suspects.”

20

Paragraph 38.

“What simply cannot be ignored in this case

is that the police at the level of Provincial Commissioner had been informed in writing on two occasions that particular individuals sought by the police would be handed over in order to specifically avoid a situation where the police could claim that they were forced to kill the suspect. We submit that it is entirely unacceptable that no approach was made to ourselves or to KwaMaphumulo Taxi Association to surrender these individuals, especially as they had been specifically named. Instead, the police deliberately chose a course which ended in the killing of two more people who are presumed innocent. As always, no police officer was injured, which in itself seriously calls into question the so-called resistance put by these individuals.”

**ADV NGCUKAITOBI SC:** The last one, paragraph 39.

20 **ADV MAEMA:** 39:

“Indeed, in the space of two weeks, seven suspected criminals have been killed in matters investigated by the Organised Crime Unit. The notorious shame murders and the Chonco murder. The real horror in all of this

lays in the fact that not a single person has been placed before Court in regard to either of these murders. Certainly, the inferences which flow from these statistics are too obvious to mention.”

**ADV NGCUKAITOBI SC:** If you could just stop there. So we start with the letter of the 5th of September which says, look, two people have been killed and we are pleading for your intervention.

10 **ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** And nothing happens. Then we come to the 23rd of September where five more people have been killed. Then they say, well, seven people have been killed. We are pleading for your intervention. If you go to page 9, who is being asked there to intervene?

**ADV MAEMA:** On page 9, it is the National Police Commissioner.

**ADV NGCUKAITOBI SC:** Yes. It is the Human Rights Commission.

20 **ADV MAEMA:** Well, the National Chairman of the Human Rights Commission, the Head of the Independence Complaints Directorate, the National Police Commissioner, and the Public Protector.

**ADV NGCUKAITOBI SC:** Yes. And then this is where we get into the 21st of October where by the time they go there,

they say, well, ten people have now been killed.

**ADV MAEMA**: Yes.

**ADV NGCUKAITOBI SC**: And then even that person who brings the application is himself killed.

**ADV MAEMA**: That is correct, Chair.

**ADV NGCUKAITOBI SC**: Now, as a racketeering expert, what do you see here?

**ADV MAEMA**: We see a clear pattern of racketeering activity.

10 **ADV NGCUKAITOBI SC**: Yes.

**ADV MAEMA**: Continuous, ongoing. It fits the definition of the definition of racketeering as in the POCA legislation.

**ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: Do you accept that you are a racketeering expert? Do you want to put it in your own words differently?

**ADV MAEMA**: Chairperson, I will put it differently. I will say, as a prosecutor who has dealt with racketeering cases, as a prosecutor who has approved, who has recommended racketeering charges which were agreed to by the National  
20 Director, about five to seven of them, I was convinced that the conduct complies with the definition of racketeering as in the POCA legislation.

**CHAIRPERSON**: Thank you.

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

**ADV NGCUKAITOBI SC**: Thank you. Then just to finalise

the answering affidavit of Major General Booysen, I want to just refer you to 1A/170. Paragraph 31. Again where he is talking about Mr Ndimande and Mr Tembe.

**ADV MAEMA:** Yes, Chair. At paragraph 31, it is ad paragraph 28.

10 “Ndimande and Tembe were arrested and questioned. They were subsequently released. On 16 September 2008, information was received which necessitated Ndimande and Tembe to be questioned again. Information was also received that the two individuals were in the process of fleeing the province of KwaZulu Natal, making their way to the Free State. On the busy N3 freeway between Pietermaritzburg and Murrayvale, an attempt was made to apprehend them. Police vehicles employed their sirens and appropriate flashing lights attempted to stop them. They resisted and shot at the police. The police returned fire and they were killed.”

**ADV NGCUKAITOBI SC:** Can you just hold that? Now, this is a document under oath. And the previous document we looked at, the statement made by the same Major General

Booyesen endorsing the payment, was that one of the suspects was running away.

**ADV MAEMA**: That is correct.

**ADV NGCUKAITOBI SC**: And never mentioned anything about the driver shooting at the police. Now, if you look at what he says under oath, he has now twisted the facts.

**ADV MAEMA**: That is correct.

**ADV NGCUKAITOBI SC**: What is he saying under oath?

**ADV MAEMA**: He is now saying that the suspects who are  
10 fleeing an attempt by the police to apprehend them are now, were now firing shots at the police.

**ADV NGCUKAITOBI SC**: Yes. Now, what is the effect of giving a statement under oath that is false?

**ADV MAEMA**: It is a criminal offence to give a false statement under oath.

**ADV NGCUKAITOBI SC**: Yes. And can you continue then, under two handguns?

**CHAIRPERSON**: Before you continue, Counsel, my understanding, and correct me if I am wrong, I remember that  
20 the witness spoke to the deletion of the names of Major General Booyesen in that award document. And then substituted it with that of that is it General or Lieutenant Brown.

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

**CHAIRPERSON**: Now, what do we say about that? You

testified that the Major General Booyesen's name was removed because he was one of the people who received the awards?

**ADV MAEMA:** He would have been a recommended recipient.

**CHAIRPERSON:** Yes.

**ADV MAEMA:** That is correct, Chair.

**CHAIRPERSON:** So you think that there is a mischief there in his name now being substituted by that of Mr Brown?

**ADV MAEMA:** As if it is now a genuine plea from or  
10 application from General Brown that Booyesen must also be rewarded for the good work that he had done.

**CHAIRPERSON:** Now counsel is referring you to that document. Am I correct, Counsel?

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

**CHAIRPERSON:** It is in file 1 at 236? I beg your pardon?  
237.

**ADV NGCUKAITOBI SC:** It starts at 236, you are correct, Madam Chair. And then the attachment at 237.

**CHAIRPERSON:** Yes. And counsel is referring to that  
20 statement. So if the statement now reflects Provincial Head Director's Directive Services, I do not know what that is, or Detective Services, KZN...

**ADV MAEMA:** Chairperson, it will be 236 in file 1?

**ADV NGCUKAITOBI SC:** Yes, you have got the correct one.

**CHAIRPERSON:** The cross-examination file 1, that black

one.

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

**CHAIRPERSON:** Is that page 242? I beg your pardon? At 237 from 236.

**ADV NGCUKAITOBI SC:** You can look in the middle. It should be 27. The number in the middle.

**ADV MAEMA:** The one in the middle.

**ADV NGCUKAITOBI SC:** Ja, the one in the middle, just go to 27 and then turn the page to 28.

10 **ADV MAEMA:** 27. I am there.

**ADV NGCUKAITOBI SC:** Yes, I think the Chair is in the document that starts at 28.

**ADV MAEMA:** Oh, yes.

**CHAIRPERSON:** In this regard, I just want to verify from you, following on the last question by counsel, referring to that document.

**ADV MAEMA:** Yes, Chairperson.

**CHAIRPERSON:** Should we accept it as a fact that it was a misleading substitution?

20 **ADV MAEMA:** That is correct, Chair, it was misleading and when he realised that his name was then deleted, and Commissioner Brown then signed.

**CHAIRPERSON:** Am I correct that your answer should be conceded then in line with what appears on page 27, which is the letter from Monetary Awards by Major General Booysen

himself?

**ADV MAEMA**: The covering letter.

**CHAIRPERSON**: The covering letter.

**ADV MAEMA**: Yes.

**CHAIRPERSON**: And when you look at the dates of these letters, that covering letter was written three days after the letter that appears at page 28, although it is paginated before it. In other words, the date on the Monetary and Non-Monetary Awards is 14th October 2008.

10 **ADV MAEMA**: That is correct, Chair.

**CHAIRPERSON**: That was the first one. And then three days later, Major General Booysen writes concerning these Monetary Awards. To whom was he writing?

**ADV MAEMA**: He writes to the Provincial Head of Detective Services in KZN.

**CHAIRPERSON**: Who is that?

**ADV MAEMA**: It appears to be him writing to a committee that will consider the recommendations.

**ADV NGCUKAITOBI SC**: Who is the Assistant  
20 Commissioner? Who is the Provincial Head of Detective Services? That is the question.

**CHAIRPERSON**: Yes.

**ADV MAEMA**: The Provincial Head of Detective Services is Commissioner Brown.

**CHAIRPERSON**: He is writing to Commissioner Brown.

**ADV MAEMA:** That is so, Chairperson.

**CHAIRPERSON:** Does it then make sense that Commissioner Brown could then have written earlier, on the 14th of October, to recommend Monetary Awards when you look at the sequence of those letters?

**ADV MAEMA:** No, no, Chairperson. When one looks at the sequence of the letters, it is not possible.

**CHAIRPERSON:** It seems nonsensical.

**ADV MAEMA:** It is nonsensical. Whether the letter would  
10 be emanating from Commissioner Brown or from General Booyesen himself is nonsensical.

**CHAIRPERSON:** It is nonsense.

**ADV MAEMA:** That is correct.

**CHAIRPERSON:** Thank you, Counsel.

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. Now, then we were still in the middle and I was asking you that when he is now giving a narrative that is in conflict with the original narrative, one of the statements is false.

**ADV MAEMA:** That is correct.

20 **ADV NGCUKAITOBI SC:** If the statement that is false is what is in the affidavit, what are the consequences?

**ADV MAEMA:** It amounts to a criminal offence because you are lying under oath.

**ADV NGCUKAITOBI SC:** Yes. Amend then, if he lied to his employer because that was the narrative in the 2008

documents, what are the consequences there?

**ADV MAEMA:** His employer ought to have taken steps to have him dealt with.

**ADV NGCUKAITOBI SC:** But I am saying he is lying to the employer in order to get a cash pay-out. What are the consequences in criminal law?

**ADV MAEMA:** It is a criminal offence.

**ADV NGCUKAITOBI SC:** What is the offence?

**ADV MAEMA:** It is fraud.

10 **ADV NGCUKAITOBI SC:** Yes, thank you. Now, he then continues two handguns, in that same paragraph you are reading, paragraph 31 of the main bundle, not the bundle you have, the main bundle with annexures, yes.

**ADV MAEMA:** Paragraph?

**ADV NGCUKAITOBI SC:** The same paragraph you are reading. You stopped when I said you should stop after reading police vehicles employing their sirens and appropriate flashing lights attempting to stop. They resisted and shot at the police. The police returned fire and they were  
20 killed. That is why I stopped you. The next line is two handguns.

**ADV MAEMA:**

“Two handguns, a Luger assault rifle and an AK-47 assault rifle were recovered by the police. To the extent that the information

contained in paragraph 28 is at odds with what I say here, I deny same. I also deny the contents of the press report from the Daily Sun to the extent that it is at odds with what I say.”

**ADV NGCUKAITOBI SC:** Now, if you just talk about these guns they claim to have recovered from the scene, what was your investigation outcome?

**ADV MAEMA:** Well, from the investigation it was clear there  
10 was no Luger assault rifle, there was no AK-47 that was found at the scene.

**ADV NGCUKAITOBI SC:** Yes. And so this statement here that they claim to have found made under oath by General Booyesen, would it be a false statement?

**ADV MAEMA:** It would also be a false statement, also a criminal offence.

**ADV NGCUKAITOBI SC:** Yes.

**ADV BALOYI-MERE SC:** Advocate Ngcukaitobi, can I be assisted? In I think at 1A/159 where there is a motivation for  
20 the monetary award, the information that is put there was that and I think it is by the person who was motivating oh, no, no  
Director Booyesen:

“The Provincial Commander contacted...”

And I am reading at 1A/157 the third paragraph from the end of the page;

“...was informed that he had information pertaining to the suspect that had organised the hit. They were in Virginia in the Orange Free State and was en route to Pietermaritzburg to collect some cash in Pietermaritzburg.”

That is what it is said in motivation for the monetary award. But then let us go to paragraph 31 at A1/170 that is where the witness was reading from.

10 **ADV NGCUKAITOBI SC:** Sorry, Madam Chair, I am just trying to catch up.

**ADV BALOYI-MERE SC:** Okay, I am in the same file, it is file 1 of 3.

**ADV NGCUKAITOBI SC:** So page A1?

**ADV BALOYI-MERE SC:** A1/170.

**ADV NGCUKAITOBI SC:** 170. Yes, yes, I have now caught up. Thank you.

**ADV BALOYI-MERE SC:** Now do you ...[intervenes]

**ADV NGCUKAITOBI SC:** Do you have it, Mr Maema?

20 **ADV MAEMA:** I am there.

**ADV BALOYI-MERE SC:** Now here the information is that they had received information that the two individuals were in the process of fleeing the province of KwaZulu-Natal on making their way to the Free State. Unless if my understanding is wrong, but in the motivation for the

monetary award the information is that the two are fleeing KZN. I do not know to where. But in the in the answering affidavit, the information that they seem to have received is that they are fleeing the KZN province. Please assist me.

**ADV MAEMA**: Chairperson, Ndimande, being a taxi owner, owns ...[intervenes]

**ADV NGCUKAITOBI SC**: No, no, let us just start with the basics. Is it correct that in the motivation, the allegation is that, I mean firstly the source of this information according to  
10 the motivation is Director Booyesen himself, correct?

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

**ADV NGCUKAITOBI SC**: Now is it correct that what he says is that these individuals are in Virginia in the Free State and where...

**ADV MAEMA**: They are hiding.

**ADV NGCUKAITOBI SC**: Hiding, yes. En route to Pietermaritzburg, is that correct?

**ADV MAEMA**: That is what is in the monetary award.

**ADV NGCUKAITOBI SC**: To collect some cash in  
20 Pietermaritzburg.

**ADV MAEMA**: That is correct.

**ADV NGCUKAITOBI SC**: Now is it correct that in the answering affidavit the same Director Booyesen says, because you remember he is the original source who gave the information to Mostert.

**ADV MAEMA**: That is correct.

**ADV NGCUKAITOBI SC**: The same Director Booyesen in paragraph 31 he says in the fourth line:

“Information was also received that the two individuals were in the process of fleeing the province of KwaZulu-Natal making their way to the Free State.”

Correct?

**ADV MAEMA**: That is correct.

10 **ADV NGCUKAITOBI SC**: Is it correct that that is a clear contradiction?

**ADV MAEMA**: It is a clear contradiction.

**ADV NGCUKAITOBI SC**: Then you can make the comment you wanted to make.

**ADV MAEMA**: Yes, the comment I wanted to make was that Mr Ndimande had taxis operating in Pietermaritzburg. So at this time he was hiding in the Free State to prevent any eventuality that could happen to him. To prevent Cato Manor coming to look for him and then him being killed in the  
20 process.

**CHAIRPERSON**: I thought counsel was asking you to explain what you said is a contradiction in relation to the summary of events at 229 of that letter, the monetary and non-monetary award letter, and then what he now says under oath in the affidavits.

**ADV MAEMA:** Yes.

**CHAIRPERSON:** If you look at the statement, the summary of events, at page 229, written 239, you see that paragraph?

**ADV MAEMA:** I am there. Chairperson.

**CHAIRPERSON:** I think counsel is contrasting that paragraph of his statement or his letter with what he says under oath at paragraph 31 1A/170.

**ADV MAEMA:** That is correct.

**CHAIRPERSON:** Ad paragraph 28.

10 **ADV MAEMA:** Yes.

**CHAIRPERSON:** And you said that it is clearly a contradiction and I think counsel asked you to explain. Am I correct, Counsel?

**ADV NGCUKAITOBI SC:** Yes, indeed. That was the question.

**ADV MAEMA:** Well, the contradiction amounts to a criminal offence. In one voice he says they were travelling in one direction in the same voice he says they were travelling in the other direction. Yes, that is from the Free State to KZN

20 or from KZN to the Free State.

**CHAIRPERSON:** Perhaps it will be helpful if you read the first paragraph of the summary of events at paragraph 239 of that letter. Do you have it?

**ADV MAEMA:** I do have it.

**CHAIRPERSON:** Read that paragraph.

**ADV MAEMA:**

“On Monday, the 15th of September 2008, Director Booyesen, the Provincial Commander, contacted Inspector Mostert and informed Inspector Mostert that he had information pertaining to the suspects that had organised the hit on Superintendent Chonco. He was hiding in Virginia in the Orange Free State and was en route to Pietermaritzburg to collect some cash in Pietermaritzburg. During this time the informer remained in contact with Director Booyesen who continued to relay the information over to the investigation team.”

**CHAIRPERSON:** Now read A1 page 170 and then draw our attention to the contradiction that you referred to.

**ADV MAEMA:** Paragraph 31 deals with ad paragraph 28:

“Ndimande and Tembe were arrested and questioned. They were subsequently released. On 16th September 2008 information was received which necessitated Ndimande and Tembe to be questioned again. Information was also received that the two individuals were in the process of fleeing the province of KwaZulu

Natal and making their way to the Free State. On the busy N3 freeway between Pietermaritzburg and Murrayvale, an attempt was made to apprehend them. Police vehicles employing their sirens and appropriate flashing lights attempted to stop them. They resisted and shot at the police. The police returned fire and they were killed. Two handguns and a Luger assault rifle and  
10 an AK-47 rifle were recovered by the police.”

**CHAIRPERSON:** Yes, the point there, I think what my sister is drawing counsel's attention to, is that in the paragraph, the summary of events, a statement is made that this people or somebody, this person was hiding in Virginia in the Orange Free State.

**ADV MAEMA:** That is correct.

**CHAIRPERSON:** And was en route to Pietermaritzburg to collect money. In paragraph 31 of his answering affidavit, an allegation is made that he was in the process of fleeing the  
20 province of KwaZulu-Natal. He was in the process of fleeing the province of KwaZulu-Natal and making their way to the Free State. They are no longer hiding.

**ADV MAEMA:** That is correct.

**CHAIRPERSON:** I think that is the point of contradiction that my sister is drawing your attention to.

**ADV MAEMA:** That is correct, Chair.

**CHAIRPERSON:** So you confirm that there is some inconsistency.

**ADV MAEMA:** There is a definite inconsistency.

**CHAIRPERSON:** By one and the same person.

**ADV MAEMA:** By one and the same person.

**CHAIRPERSON:** Yes, thank you.

**ADV NGCUKAITOBI SC:** Thank you. We have now identified two inconsistencies from the monetary awards and the  
10 affidavit.

**ADV MAEMA:** Affidavit, that is correct.

**ADV NGCUKAITOBI SC:** I do not know which one is false, which one is true. But there is one other inconsistency around what they say they found. Now, in the letter, which is the same page we are looking at, the same paragraph you are reading, the letter itself, if you turn the page, you go to that first paragraph and the last sentence, which starts with, the following firearms were found. Do you see that? In the first paragraph, the last sentence of the first paragraph.

20 **ADV MAEMA:** No, I am not there, Counsel?

**ADV NGCUKAITOBI SC:** All right, well perhaps just use the bundle, file 1, go to page 31. That might be easier.

**ADV MAEMA:** I am there, Counsel.

**ADV NGCUKAITOBI SC:** Now, in the last sentence, which starts with, the following firearms were found. In the first

paragraph, the last sentence.

**ADV MAEMA**: Oh, yes, I am there.

**ADV NGCUKAITOBI SC**: Okay, just read that.

**ADV MAEMA**:

“The following firearms were found in the vehicle. One AK-47 rifle with a loaded magazine. One Ruger Mini 14 automatic rifle and two magazines as well as two 9mm Norinco pistols both with loaded magazines.”

10

**ADV NGCUKAITOBI SC**: Yes, so what you would expect then is an AK-47, a Ruger Mini 14, two magazines and two 9mm Norinco pistols. Correct?

**ADV MAEMA**: That is correct.

**ADV NGCUKAITOBI SC**: Now, if you look at the affidavit, he says two handguns, a Luger assault rifle and an AK assault rifle were recovered by the police. We no longer know what happened to the magazines, the two magazines.

**ADV MAEMA**: That is correct, Chair.

20 **ADV NGCUKAITOBI SC**: Yes. Now, this is the part and parcel of the issues around the affidavit he gives, which is inconsistent with the letter that he supported at the very least.

**ADV MAEMA**: That is correct.

**ADV NGCUKAITOBI SC**: Yes. Now, either he lied in the

letter or lied in the affidavit, but there are consequences on either.

**ADV MAEMA:** That is correct, Chairperson.

**ADV NGCUKAITOBI SC:** Yes. Now, I wanted to just finalise this section of Mr Ndimande and Tembe. If you turn over the page 1A/171 at paragraph 29 ad paragraph 32.

**ADV MAEMA:** Ad paragraph?

**ADV NGCUKAITOBI SC:** Yes. Ad paragraph 29, paragraph 32.

10 **ADV MAEMA:** Yes, I am there.

**ADV NGCUKAITOBI SC:** Yes. Where he says, I have already, which is the third line, second sentence, I have already explained.

**ADV MAEMA:**

“I have already explained that Ndimande and Tembe were again sought as a result of new information received. There is nothing untoward about that. In any event, why the applicant refers to the N3 highway as a...”

20 **ADV NGCUKAITOBI SC:** Should be quiet.

**ADV MAEMA:**

“...as a quiet back road escapes me, unless it is nothing more than a thinly veiled attempt to colour the information, whether true or not, placed before this Court.”

**ADV NGCUKAITOBI SC:** One thing that struck me about this is that his letter never identifies the new information. Remember that these are people that have been detained and released because there was nothing to link them to the crime.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** And did you ever find out what new information is he talking about?

**ADV MAEMA:** No, we could not find out any new information. That could have led to the change of heart.

10 **ADV NGCUKAITOBI SC:** But I mean, assuming he had new information that linked them, what would be an appropriate thing to do? Would it just be to execute them on the road?

**ADV MAEMA:** The appropriate thing would be to bring the information to the attention of the prosecutors and the Courts for a correct finding to be made, not to take the law into their own hands as they did.

**ADV NGCUKAITOBI SC:** Yes. Now, we have dealt with Ndimande and Tembe, and what he says about them. Remember that the affidavit already covered so many dead  
20 bodies.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** At paragraph 33, he then attempts to deal with the case of Mr Lindelani Buthelezi.

**ADV MAEMA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** What does he say there?

**ADV MAEMA:**

“I have already said there was no list in existence. On 3 September 2008, an attempt was made to arrest Buthelezi. He resisted arrest and attempted to shoot at members of the South African Police Service, who returned fire in self-defence. Buthelezi was killed in that exchange of fire. His firearm, a CZ 7.65 automatic, was recovered at the scene. Whether or not

10 Buthelezi was a prominent member of the applicants' association is unknown to me. I accordingly deny the allegations contained in paragraph 30 and 31 to the extent that theirs are at odds with what I say here. The affidavit put up from Sokolu is hearsay, and must be struck out. It was not obtained or put up for the purpose of this application, and she has not confirmed those facts for

20 the purpose of this application. In any event, I deny the allegations contained in that affidavit to the extent that they are at odds with what I say herein. Buthelezi was killed whilst he resisted arrest and shot at the police.”

**ADV NGCUKAITOBI SC:** Now, here he is again testifying about the circumstances of the killing of Mr Lindelani Buthelezi.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** And I would like you to just go through I think it is GSM12 at 1A/204. We know that Mr Booyesen has now given a version of the police that this man shot at the police, not attempted, but shot at them.

**ADV MAEMA:** That is correct.

10 **ADV NGCUKAITOBI SC:** Attempted to shoot at the police, but I do not know what that means. It says returned fire in self-defence, so it is either you shoot or you attempt to shoot, but there is no fire to be returned unless the fire has been shot.

**ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** Can we go to page 1A/204?

**ADV MAEMA:** I am there, Chairperson.

**ADV NGCUKAITOBI SC:** Yes. No these are the – what are these photographs? Let me ask you.

20 **ADV MAEMA:** Could you repeat the last part?

**ADV NGCUKAITOBI SC:** What are these photographs? They go up until... They go on and on. Up until 217.

**ADV MAEMA:** They go until 1A/217 photo 25.

**ADV NGCUKAITOBI SC:** Yes.

**ADV MAEMA:** Chairperson, these are photos of the scene.

**ADV NGCUKAITOBI SC:** You can go to your own paragraph 94 of your statement. Starting at paragraph 85.

**ADV MAEMA:** I am there, Chair.

**ADV NGCUKAITOBI SC:** You have dealt with that particular incident, and I want you to contrast it with what Mr Booyesen says, where he says he knows for a fact that this man attempted to shoot, and he was shot in retaliation.

**ADV MAEMA:** The assertion of General Booyesen that there was any shooting in retaliation is in fact incorrect.

10 **ADV NGCUKAITOBI SC:** Yes.

**ADV MAEMA:** It is false.

**ADV NGCUKAITOBI SC:** But what happened? Just explain that to the Panel.

**ADV MAEMA:** What happens on this scene is that the deceased is found in the house asleep.

**ADV BALOYI-MERE SC:** Which paragraph is he referring to in his affidavit?

**ADV NGCUKAITOBI SC:** From 85 to 93 of his statement.

20 **ADV BALOYI-MERE SC:** The paragraph starting on 3 September?

**ADV NGCUKAITOBI SC:** On 3 September, yes, to 93 of his statement. That is what the narrative is. Could you explain what happened now? It is in the context where General Booyesen signs under oath that this man attempted to shoot, and then my man executed him in retaliation.

**ADV MAEMA:** Just to follow what happened, if I can take it from paragraph 87:

“The police came to the house during the early hours of the morning, broke open the door, they found the deceased in the bedroom with his girlfriend, Thandeka Sokulu. According to Thandeka, as the police entered the bedroom, the deceased raised his hands in the air as a sign of surrender, and he was not armed. The police took the deceased into another room. Thandeka alleged that she was assaulted with open hands and kicked, and they covered her head with a blanket. She then heard gunshots from the room where the deceased was taken. The police had the deceased under their control from the moment police entered the bedroom, and the deceased raised his hands in surrender. The allegations that the deceased posed a threat to the police is improbable. The deceased was shot in the head and in the chest. A firearm was placed next to the body on the floor. I attach hereto the statement of Thandeka Sokulu, which is marked

GSM11.”

**ADV NGCUKAITOBI SC:** GSM-11, I think, comes after those photos. No, sorry, I think before the photos.

**ADV MAEMA:** Before, yes.

**ADV NGCUKAITOBI SC:** Yes, I would like you to just take us through that statement, because this is the only eyewitness available. You will find it at 1A/202.

**ADV MAEMA:** That is correct, Chair. It is a statement of Thandeka Sokulu of KwaMaphumulo near Hlalakahle Primary  
10 School. It states in English:

“1. I am an adult female with the above mentioned particulars, and I am a witness in this case.”

Paragraph 2.

**CHAIRPERSON:** Sorry, this is the one marked GSM11.

**ADV NGCUKAITOBI SC:** GSM-11.

**ADV MAEMA:** That is correct, Chair.

**CHAIRPERSON:** Okay.

**ADV NGCUKAITOBI SC:** Yes. I suppose you could start by  
20 reading everything that is there, which is starting with Kwadukuza CAS 390902000.

**ADV MAEMA:** Oh, yes. Chairperson, it is Kwadukuza CAS 39/9/2/2008. It is a statement of Thandeka Sokulu. There is a date, which is covered by the marking, of KwaQwabe KwaMaphumulo...

**ADV NGCUKAITOBI SC:** Umvoti.

**ADV MAEMA:** Oh, Umvoti near Hlalakahle Primary School.

Unemployed. The telephone number is given. State under oath in English, paragraph 1:

“1. I am the adult female with the above mentioned particulars, and I am a witness in this case.

2. I would like to state that I was with my boyfriend and my children sleeping at my boyfriend's room. My boyfriend's name is Lindelani Buthelezi, who is a taxi owner. While sleeping last night on the on 2008/09...”

10

The date is missing;

“...people knocked at where we slept. I did not understand what they said as they spoke in English. Lindelani woke up, switched the lights on, and put on his trouser. While Lindelani was busy dressing up, people came in. It was a group of black and white men. One of the white men spoke to him, and I saw him lifting up both his hands.

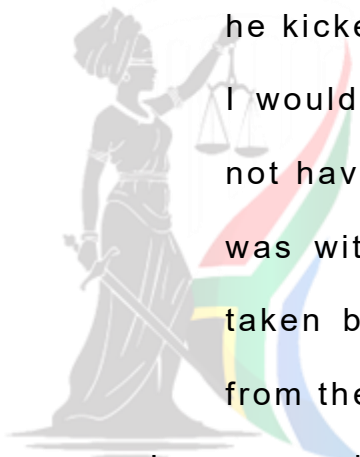
20

Two white males pushed him out of the room where we were sleeping, to the

other room in the same house where we were. One of the white men put a blanket all over me, covering me with it. After some seconds/minutes, I heard gunshots. I cannot really say how many, but it was more than one gunshot. After the gunshots, one of the white males assaulted me with two hard open hands, and I fell down because of the force and when I was on the ground, on the floor, he kicked me with boots at my back.

10

I would like to state that Lindelani did not have any weapon with him when he was with me, and by the time he was taken by the police. He just woke up from the mattress.



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

I now understand the contents of this statement.

20

I have no objection in taking the prescribed oath.

I consider the prescribed oath binding on my conscience.”

The deponent's signature, it is signed by Thandeka Sokulu.

“I certify that the deponent has acknowledged that she knows and

understands the contents of this statement, which was sworn to before me, and her signature was placed thereupon, thereon, in my presence, on the 3rd of September 2008 at 02.00.”

It is commissioned by N Gibson, Nthombi Gibson, of 22 Garner Street, 3rd floor, Marine, Durban, who is a senior investigating officer in the [indistinct – 1:25:30], but it appears to be in KZN.

10 **ADV NGCUKAITOBI SC:** Yes. So, in the photos that come immediately after that, there are just three that I would like your comment on. So, the first one is at 1A/211, photograph 15.

**ADV MAEMA:** 211. I am there.

**ADV NGCUKAITOBI SC:** Yes. Whose photograph is that?

**ADV MAEMA:** It is a photograph of the deceased Lindelani Buthelezi.

**ADV NGCUKAITOBI SC:** Yes. Now, that seems that he is injured literally at the back of the head.

20 **ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** Yes. And that seems to be the place where the bullet entered.

**ADV MAEMA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Now, how is that reconcilable with the notion that he attempted to shoot the police and then he

was shot in retaliation?

**ADV MAEMA**: Completely not reconcilable with that version at all.

**CHAIRPERSON**: Yes. And then?

**CHAIRPERSON**: Advocate Ngcukaitobi, it is lunchtime and to all counsel, we had anticipated that we will have lunch for an hour, but remember we will adjourn at three o'clock. We are thinking that you can have a late lunch at say quarter to three. We can adjourn for 15 minutes and stretch our legs. I  
10 do not know what you prefer. Would you like to have your lunch now? 45 minutes and we reconvene and we sit for the last few, the remaining time.

**ADV NGCUKAITOBI SC**: It looks like everyone who is speaking, says lunch now.

**CHAIRPERSON**: Would you like to have – I see the lady in the corner in front of me. I think maybe we should, in fairness to everybody, I think we can adjourn for lunch for 45 minutes. It is going to take us to quarter past two. It is now half past one, so we can have lunch for the next 45 minutes. We will  
20 then reconvene and proceed until about quarter to, ten to three.

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

**CHAIRPERSON**: Then we will adjourn around that time. I hope that I did not interrupt your questioning. If you can just maybe flag it there?

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** Then we will take it from there.

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

**CHAIRPERSON:** Thank you. We will adjourn for lunch.  
Remember you are still under oath, Advocate Maema.

**ADV MAEMA:** That is correct, Chair.

### **ENQUIRY ADJOURNS**

### **ENQUIRY RESUMES**

**CHAIRPERSON:** Good afternoon, everyone. Good  
10 afternoon, Advocate Hulley. Good afternoon, Advocate  
Maema.

**ADV MAEMA:** Good afternoon, Chairperson.

**CHAIRPERSON:** Advocate Chauke, good afternoon. You  
are still under oath, Counsel.

**ADV MAEMA:** That is correct, Chairperson.

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

**GLADSTONE SELLO MAEMA:** (still under oath)

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

Thank you, Chair. Advocate Maema, we had finished looking  
20 at the photograph number 15 at 1A-211 and we looked at the  
bullet wounds lodged at the head, back end of the head.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** Of the deceased, Mr Lindelani  
Buthelezi.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** And I said there were two more photographs of a similar hue. Next one is photograph 16, which is 1A-212.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** Now, that is, what can we see there?

**ADV MAEMA:** It is a bullet entrance wound on the left shoulder of the deceased.

**ADV NGCUKAITOBI SC:** But we see the deceased's back.

10 **ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** Yes, and then we see that he is also shot at the back, not only in the head but also on the, I think it is the right shoulder blade.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** Yes. And then there is also, in that same page, photograph 17, that shows a different location of a bullet wound, 1A-212.

**ADV MAEMA:** That is correct.

20 **ADV NGCUKAITOBI SC:** Which is around the ribcage on the back of it.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** On the right side of the body.

**ADV MAEMA:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now, when you compare photograph 15, photograph 16, and photograph 17, what

conclusions can you draw from that in relation to the version of Major General Booysen that this is a person who was shooting at the police?

**ADV MAEMA**: You can see that this is a person who had his back facing the Cato Manor police who fired shots at him. He was shot at from the back.

**ADV NGCUKAITOBI SC**: Yes. Now, we discussed earlier about the nature of the investigations that the ICD or the IPID would conduct in cases like this.

10 **ADV MAEMA**: That is correct.

**ADV NGCUKAITOBI SC**: Now, in the docket on this case, which is KwaDukuza 39/09/2008, there is a copy of the ICD report. It is at page KD0019. I am not sure if they gave it to you.

**ADV MAEMA**: A statement of?

**ADV NGCUKAITOBI SC**: Well, it is a report by the ICD. It is not a statement of anyone.

**ADV MAEMA**: I have the statement.

20 **ADV NGCUKAITOBI SC**: What have you got? Just read the front to show that it is the same document that everyone has.

**ADV MAEMA**: At the top, Republic of South Africa, Independent Complaints Directorate, Case Investigative Report, CCN2008090103.

**ADV NGCUKAITOBI SC**: Yes, now, there are just a few aspects of this report that I would like to draw your attention

to. The first is the date of the incident. What is the date there?

**ADV MAEMA**: The date is the 3<sup>rd</sup> of September 2008.

**ADV NGCUKAITOBI SC**: So is that the same date that Mr Buthelezi was shot and killed by the police?

**ADV MAEMA**: That is correct.

**ADV NGCUKAITOBI SC**: And then what is the date of the report?

**ADV MAEMA**: The report date is the 4<sup>th</sup> of September 2008.

10 **ADV NGCUKAITOBI SC**: And if you turn the page to KD0020, the following page, and in the last section, the time required to complete the investigation, can you see that?

**ADV MAEMA**: I can see that.

**ADV NGCUKAITOBI SC**: What do they say there?

**ADV MAEMA**: Investigation is complete.

**ADV NGCUKAITOBI SC**: So it took them less than a day to complete the investigation?

**ADV MAEMA**: That is correct.

20 **ADV NGCUKAITOBI SC**: Yes. And then when you turn the page, there is someone who signs as an acting provincial head. Do you know who that person is? I think it is Janene [?] or I do not know.

**ADV MAEMA**: No, I do not know this person at all.

**ADV NGCUKAITOBI SC**: But what is the handwritten inscription there?

**ADV MAEMA:** The inscription says, acting provincial head.

**ADV NGCUKAITOBI SC:** No, the actual words on the lines.

**ADV MAEMA:** Closed unsubstantiated.

**ADV NGCUKAITOBI SC:** What does that mean?

**ADV MAEMA:** It means the investigation is closed. They could not find a head and tail as to what caused the death of the deceased. That is what I understand unsubstantiated means.

**ADV NGCUKAITOBI SC:** Yes. And if you then go to the  
10 middle page, the one we looked at, to find the reasons why they say they closed the report, they closed the investigation as being unsubstantiated. Under section 4, they explain what information they were working on. Summaries of statements obtained during this phase of investigation. Can you see that?

**ADV MAEMA:** I can see that.

**ADV NGCUKAITOBI SC:** Now, who did they interview according to that statement?

**ADV MAEMA:** They interviewed the suspect.

20 **ADV NGCUKAITOBI SC:** Yes, and who else?

**ADV MAEMA:** And the branch commander of KwaDukuza Police Station, as well as the investigating officer.

**ADV NGCUKAITOBI SC:** Yes. Now, there is a thing that says the only witness did not witness the actual shooting. Can you see that?

**ADV MAEMA:** I can see that, yes.

**ADV NGCUKAITOBI SC:** Now, that is what I need your comment on. What we know in this case from what we read before lunch is that the wife of Mr Buthelezi was in the house at the time. She was woken up and then covered with a blanket, and then at the same time, she had several shots. When the blanket was removed, her husband lay dead. Now, you have a report that says the only witness did not witness the actual shooting. I mean, what does that tell you?

10 **ADV MAEMA:** It is actually appalling to see a report of this nature when there was somebody in the company of the deceased shortly before the deceased was killed.

**ADV NGCUKAITOBI SC:** Yes, but what does it show about IPID? I mean, are they just incompetent or are they deliberately covering up for the police?

**ADV MAEMA:** I would believe the latter, that they are deliberately covering up for the police. It is not difficult to ascertain what could have happened there. So, to write a report of this nature is completely, it is a complete cover-up.

20 **ADV NGCUKAITOBI SC:** Yes. Because, I mean, they also, the statement that you read earlier says I know that my husband was not carrying a gun.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** But then when the blanket is taken off, I see that he is dead, covered in blood.

**ADV MAEMA**: That is correct.

**ADV NGCUKAITOBI SC**: Now, is this the type of report you would generally get from IPID? Or is this more of an exception?

**ADV MAEMA**: This is more of an exception. You would not ordinarily get a report of this nature.

**ADV NGCUKAITOBI SC**: Yes. And it also does not appear that they analysed even the photos on the scene.

**ADV MAEMA**: That is correct.

10 **ADV NGCUKAITOBI SC**: And they do not appear to have conducted any ballistics?

**ADV MAEMA**: At all. Nothing.

**ADV NGCUKAITOBI SC**: They also do not appear to have asked for a doctor to examine the wounds and the position from which they took place?

**ADV MAEMA**: That is correct.

**ADV NGCUKAITOBI SC**: Yes. So, if this is the end of the matter, because they closed the investigation after one day, I mean, what would that say about IPID?

20 **ADV MAEMA**: Ja, it really needs a lot to be taken into account that somebody has lost his life at the scene. As if it is just a shooting incident without loss of life. It is just a, what do you call it? An exemplary of a cover-up by ICD.

**ADV NGCUKAITOBI SC**: Yes.

**ADV RAMAGAGA**: Maybe before you, proceed, Advocate,

just one question. Will you please turn over to KD0021?  
0021.

**ADV MAEMA**: Chairperson, I do not have 0021. Would it be  
...[intervenes].

**ADV RAMAGAGA**: Okay, take that very document that you  
have, the one that – ja, you have been referred to the third  
page. The third page of that document.

**ADV MAEMA**: There is three pages, yes.

**ADV RAMAGAGA**: Is it three pages, or have I been looking  
10 at the wrong document? I do not think so. Ja, it is three  
pages.

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

**ADV RAMAGAGA**: And the third page on top, you see  
KD0021, those small letters?

**ADV MAEMA**: I can see that, Chairperson.

**ADV RAMAGAGA**: Now, on that page, there is a date that  
appears under the signature and it appears as the 30<sup>th</sup> day of  
March 2009.

**ADV MAEMA**: That is correct, Chairperson.

20 **ADV RAMAGAGA**: Now, what does that date signify? I see  
the report. The incident is the 3<sup>rd</sup> of September. The report  
is of the 4<sup>th</sup> day of September, the very following day. But  
then the signature on the report is the 30<sup>th</sup> day of March 2009.  
Do you see this?

**ADV MAEMA**: I can see that, but I do not understand

...[intervenes].

**ADV RAMAGAGA**: What do you understand?

**ADV MAEMA**: I do not understand why there would be a date of the 30<sup>th</sup> of September, 30<sup>th</sup> of March 2009.

**ADV RAMAGAGA**: Okay, thank you.

**ADV NGCUKAITOBI SC**: Thank you.

**ADV BALOYI-MERE SC**: Before you proceed, should we read what is at section 4, the only witness did not witness the actual shooting, as to mean that during this incident there  
10 was only one person who could possibly be the eyewitness or the witness, but he did not, he or she did not witness the actual shooting? So, meaning it leaves us in the dark that we do not know who shot at Mr Lindelani Buthelezi. Because from the statement, is it Ms Sokulu [?], it was just herself and Buthelezi and the children and the police burst in, but if we were told in the final report that the only witness did not witness the actual shooting, meaning it was just one witness who did not witness the actual shooting, so we do not know who killed, who shot at Mr Buthelezi.

20 **ADV MAEMA**: That is correct, Chair. That is what it means. It is actually nonsensical, as I say.

**ADV BALOYI-MERE SC**: That is very bizarre.

**ADV MAEMA**: Very bizarre, yes.

**ADV NGCUKAITOBI SC**: Well, I think it is actually, ja, it is more bizarre because if you look under the section just above



...[intervenes].

**ADV RAMAGAGA**: May I just come in here? If you look at section 1, it identifies Inspector Mostert as the person who shot the deceased. Section 1, the second line from the bottom of that section, do you see it? He was then shot by Inspector Mostert and he died at the scene.

**ADV MAEMA**: That is correct, I can see that.

**ADV RAMAGAGA**: Thanks.

**ADV NGCUKAITOBI SC**: And then more bizarrely, they then  
10 say the suspect is Lindelani Buthelezi.

**ADV MAEMA**: Well, they could – it does not make sense, unless if you say, no, no, no, it just does not make sense. Lindelani Buthelezi cannot be the suspect.

**ADV NGCUKAITOBI SC**: Yes, because the allegation is death as a result of police action.

**ADV MAEMA**: Yes.

**ADV NGCUKAITOBI SC**: The person who is dead as a result of police action is Mr Buthelezi, the suspect is Mr Mostert.

**ADV MAEMA**: That is correct.

20 **ADV NGCUKAITOBI SC**: Yes.

**ADV BALOYI-MERE SC**: So could it be that it is Inspector Mostert who says he did not witness the shooting? Because he is the witness and he is now named as the person who shot. So, I mean, we know from the reading of this that it is Inspector Mostert who should be interviewed because he is

the one who shot at the person. But we are told then at four that the only witness did not witness the actual shooting.

**ADV MAEMA**: That is the bizarreness of the entire thing, that the person who witnessed or who fired the shots did not witness, it does not just make sense.

**ADV NGCUKAITOBI SC**: Yes. I mean, could this explain why these matters like this, the death of Mr Buthelezi, are not investigated properly and where they are investigated, there are signs of a cover-up and then that is why it took four years  
10 for this matter to actually be looked at properly by yourselves?

**ADV MAEMA**: That is correct.

**ADV NGCUKAITOBI SC**: It is because you have got organisations like IPID that are just not doing their job.

**ADV MAEMA**: That they are not carrying out their constitutional mandate.

**ADV NGCUKAITOBI SC**: Yes. And then, in addition ...[intervenes].

**CHAIRPERSON**: Who signed the report?

20 **ADV NGCUKAITOBI SC**: Yes, sorry, sorry, Madam Chair. after you?

**CHAIRPERSON**: After you, thank you.

**ADV NGCUKAITOBI SC**: No, Madam Chair, I am happy to come after you.

**CHAIRPERSON**: Who signed this report? Acting Provincial

Head, SJ? Who is that?

**ADV MAEMA**: It looks like SJA Nene.

**CHAIRPERSON**: Who is he?

**ADV MAEMA**: The name is not known to me.

**ADV NGCUKAITOBI SC**: Madam Chair, I am told that after that page there is also 22, which has not been copied and that one has signatures. We have just put it on the screen, which actually is worse than the previous page because here it says the SAP members acted accordingly. And it is signed  
10 by Ms P Dlamini, who is the senior investigator. Do you confirm that, Advocate Maema?

**ADV MAEMA**: I confirm that.

**CHAIRPERSON**: Let us ...[indistinct] AD00 ...[indistinct] KD0019.

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

**CHAIRPERSON**: I beg your pardon.

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

**CHAIRPERSON**: I was asking ...[intervenes].

**ADV NGCUKAITOBI SC**: the witness.

20 **CHAIRPERSON**: No, no, no, I had not put on my microphone.

**ADV NGCUKAITOBI SC**: Okay.

**CHAIRPERSON**: This document that you have just referred to signed by Ms P Dlamini, senior investigator, at KD0022, is a continuation of KD0019.

**ADV MAEMA**: That is correct, Chairperson, because this

one ends at section 6 and this one continues at section 7.

**CHAIRPERSON:** Why would you have two people signing one document? One is the senior investigator and the other one is the acting provincial head, SJ Nene, IPID ICD, I suppose. Why is Ms Dlamini signing there under section 7?

**ADV MAEMA:** Chairperson, our understanding was if one looks at the first page, the reporting staff member is P Dlamini. So, it is the same person that then signs the report that she compiled on this case.

10 **CHAIRPERSON:** Is reporting to whom?

**ADV MAEMA:** It is reporting to her seniors at the Independence Complaints Directorate.

**CHAIRPERSON:** The Provincial Head SJ Nene?

**ADV MAEMA:** That is correct, Chairperson.

**CHAIRPERSON:** At KD0022, she makes a recommendation. Is it her? Or writes comments there. I see there is somebody else there, supervisor.

**ADV MAEMA:** It is a ...[intervenes].

**CHAIRPERSON:** Voster.

20 **ADV MAEMA:** Yes, it is a recommendation endorsed by CS Voster. Recommended that the file be closed as unsubstantiated.

**CHAIRPERSON:** And there is another one. There is a further comment by head of component. Do you know who that is?



which are from paragraph 95, so I am not going to waste time and go through those. We looked at that in detail up until 112, so you can skip those paragraphs.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** And then we can now focus on the next one, which is Nzameni Ntuli (Kopolota) and Mr Nkosinathi Mthembu. Now, those are also some of the cases that are specifically referenced by Mr Booyesen in the answering affidavit, correct?

10 **ADV MAEMA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. Now, we can look precisely where, at paragraph, page 1A-172. Do you have 1A-172?

**ADV MAEMA:** I am there, Chairperson.

**ADV NGCUKAITOBI SC:** Yes. Now, under paragraph 34.

**ADV MAEMA:** There is a response to ad paragraph 32.

**ADV NGCUKAITOBI SC:** Yes.

**ADV MAEMA:**

20 “Information was received that implicated Ntuli and Mthembu in tax violence-related incidents. On 18 September 2008, as a result of that information, members of the South African Police Service attempted to arrest Ntuli and Mthembu. The police were fired upon and had to return fire. As a result, both Ntuli and Mthembu were

killed. Their firearms, a Z-88 and CZ-75, were recovered from the scene. I accordingly deny the allegations contained in paragraph 32 to the extent that it differs from what I say herein.”

**ADV NGCUKAITOBI SC:** Yes. Now, again, General Booysen is saying he knows for a fact that the police were being attacked.

**ADV MAEMA:** That is correct.

10 **ADV NGCUKAITOBI SC:** And they retaliated with fire.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** Now, by the 18<sup>th</sup> of September 2008, we know from the previous letter that seven people had been killed in exactly identical circumstances.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** An alleged attempt to arrest, a retaliation and a shooting by the police.

**ADV MAEMA:** That is correct.

20 **ADV NGCUKAITOBI SC:** Yes, and where firearms are miraculously recovered.

**ADV MAEMA:** That is correct.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** Advocate Ngcukaitobi?

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** We are moving quite slowly. It is now

14:50 and we have to adjourn.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** I have to attend to personal matter on medics.

**ADV NGCUKAITOBI SC:** Yes, I understand.

**CHAIRPERSON:** My appointment is at 15:30, so I have to leave this venue as soon as possible.

**ADV NGCUKAITOBI SC:** I understand.

**CHAIRPERSON:** May we then pause here, Advocate  
10 Maema? We will proceed from here tomorrow, Advocate Ngcukaitobi.

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. I think we have the whole day tomorrow.

**CHAIRPERSON:** We have the whole day tomorrow.

**ADV NGCUKAITOBI SC:** I think we will make a lot of progress.

**CHAIRPERSON:** Then we will have the whole day on Wednesday. On Thursday we will work until 1 o'clock, for  
20 reasons that have been disclosed to you in chambers. I have to leave Johannesburg at 14:40. Yes. So let us try to move faster because when I look at this affidavit, we are still very far. Let us try to move faster and make more progress from tomorrow. I am not pressurising you, Advocate Ngcukaitobi.

**ADV NGCUKAITOBI SC:** No, I understand, Madam Chair. We are doing a case-by-case analysis now. It should be fairly

quick.

**CHAIRPERSON:** Yes.

**ADV NGCUKAITOBI SC:** Thank you.

**CHAIRPERSON:** Yes, thank you very much. You are still under oath, Counsel. We will adjourn now and reconvene tomorrow at 9 o'clock. We will adjourn.

**ENQUIRY POSTPONED TO 17 FEBRUARY 2026**

**ENQUIRY ADJOURNS**

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**ENQUIRY INTO THE  
SOUTH GAUTENG  
DIRECTOR OF PUBLIC  
PROSECUTIONS'  
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