

**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**

23 MARCH 2026

DAY 42



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

PROCEEDINGS ON 23 MARCH 2026

CHAIRPERSON: Good morning, everyone. Good morning, Advocate Chauke, Advocate Ngcukaitobi. Good morning, Counsel.

ADV NGCUKAITOBI SC: Morning, Madam Chair.

CHAIRPERSON: Is the witness ready?

ADV NGCUKAITOBI SC: I am told the witness is ready. Yes, there is the gentleman. I am in your hands, Madam Chair.

CHAIRPERSON: Good morning, Mr Mhlongo.

10 **MR MHLONGO:** Good morning, Chair.

CHAIRPERSON: *Nthati* Sphamandla Mhlongo, your names.

MR MHLONGO: That is correct, Chair.

CHAIRPERSON: We are going to begin now. And I suppose that you have familiarised yourself with the terms of reference. Have you?

MR MHLONGO: That is correct, Chair.

CHAIRPERSON: Yes, thank you. I thought that I must clarify that before you take the oath. Would you like to take the oath or the affirmation?

20 **MR MHLONGO:** I will take the oath, Chair.

CHAIRPERSON: Thank you, sir. Do you swear that the oath, the evidence you are about to give will be the truth, nothing else but the truth? And if so, raise up your right hand and say so help me God.

MR MHLONGO: So help me God.

CHAIRPERSON: Thank you, sir. Advocate Ngcukaitobi?

SPHAMANDLA MHLONGO: (duly sworn states)

EXAMINATION BY ADV NGCUKAITOBI SC: Thank you, Madam Chair. Mr Mhlongo, what do you have in front of you? What documents are there?

MR MHLONGO: I have a witness statement, and I have got the bundle of evidence, which is SM5.

ADV NGCUKAITOBI SC: You should have from SM1, SM2, SM3, SM5. I think the last one is SM11. Do you have those?

10 **MR MHLONGO:** I have got SM. It starts from SM5, Chair.

ADV NGCUKAITOBI SC: It does not start from SM1?

MR MHLONGO: No, SM1, I am not too sure if you are referring to the witness statement.

ADV NGCUKAITOBI SC: No. What you should have in front of you is a witness statement that starts with 5 to 1 up to 5 to 52. Do you have that?

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: And then the first document after that is SM1.

20 **MR MHLONGO:** I think the way they bundled it, SM1, it should be, because I can see here on the very witness bundle, I have got SM4.

ADV NGCUKAITOBI SC: All right, well, keep looking. You are making progress.

MR MHLONGO: I think, yes, there is SM ...[intervenes].

CHAIRPERSON: Maybe you can just tell him what it is.

ADV NGCUKAITOBI SC: Yes. SM1 is the letter from Hlapane Attorneys, dated 5 September 2008. It is marked at the top, 5A-1.

MR MHLONGO: That is correct. It is just that, Chair, they have bundled on the witness statement, sir.

ADV NGCUKAITOBI SC: All right. Is it marked SM1?

MR MHLONGO: Yes, it is marked SM1.

ADV NGCUKAITOBI SC: All right. No, I think that is good
10 enough. And then can you also see if you have got SM2,
which is the letter from the South African Police, dated 11
September 2008, to KwaMaphumulo Taxi association?

MR MHLONGO: SM2?

ADV NGCUKAITOBI SC: Yes.

MR MHLONGO: Yes, I have got it.

ADV NGCUKAITOBI SC: All right. I think you should then
have SM3, SM4, SM5, which you have already confirmed you
have.

MR MHLONGO: Yes, SM3, yes, I have got. It is a South
20 African Police Service letter, which was addressed to
Hlapane from Mr ...[indistinct] and the likes.

ADV NGCUKAITOBI SC: Okay.

MR MHLONGO: Then there is another SM4, which is a
Hlapane Attorney as well, to the Provincial Commissioner,
which is a marked urgent.

ADV NGCUKAITOBI SC: Yes, all right, good. Look, I think you have what we are looking for, so do not worry. I just wanted to confirm that. Then just on your statement, you have read the statement from page 1 to page 52. Correct?

MR MHLONGO: That is correct.

ADV NGCUKAITOBI SC: Do you confirm under oath that its contents are true and correct?

MR MHLONGO: I confirm that, Chairperson.

ADV NGCUKAITOBI SC: And that they are binding on your
10 conscience?

MR MHLONGO: I do confirm it is binding on my conscience.

ADV NGCUKAITOBI SC: Yes, thank you very much. Now, if we turn to the start, can you just explain how it came about that you became a witness in this proceedings? What happened?

MR MHLONGO: It is because I also suffered the, I do not know if it is the correct word, but I suffered from the work of Cato Manor in 2009, where I was accused in the matter of Nkosi Zondi.

20 **ADV NGCUKAITOBI SC:** Yes.

MR MHLONGO: That is where I got involved and get to know about the Cato Manor Unit.

ADV NGCUKAITOBI SC: We will come back to Nkosi Zondi. I just want the process. What did you do? I mean, you are a unique witness because you volunteered yourself. So I just

want for you to put the Panel in a perspective of how you became to where you are today.

MR MHLONGO: It is because, Chairperson, I am the Chairperson of the KwaMaphumulo Taxi Owners Association currently and the reasons for me wanting to come and testify, it is because there is a lot that is happening even currently in our environment that involves the KwaZulu-Natal police and other departments, which I see emanates from what has happened during the Cato Manor times.

10 **ADV NGCUKAITOBI SC**: Yes, and what steps did you take to make sure that you are testifying today?

MR MHLONGO: I contacted the team, the Chauke team, in order for me to be able to assist them to unravel the truth of what has happened before.

ADV NGCUKAITOBI SC: Yes, thank you very much. Now, can we then go to your statement? You say that you are the current Chairperson of the KwaMaphumulo Taxi Association. Correct?

MR MHLONGO: That is correct, Chair.

20 **ADV NGCUKAITOBI SC**: Can you just explain? I mean, you know, we who are not in the taxi industry do not fully understand these associations, how it relates to another taxi association of Stanger or KwaDukuza. So just explain a little bit about this KwaMaphumulo Taxi Association.

MR MHLONGO: KwaMaphumulo Taxi Association is the one

of the longest serving association in the area. Just to give you a brief overview, my father was an operator in that taxi association. The feud between these two associations started long around 1983, 1984. And some of these members break away from the KwaMaphumulo Taxi Association. Then they formed this KwaDukuza or Stanger Taxi Owners Association.

The feud started to be more intense around 2003 when this association, there was a lot of people who lost their
10 life during that time. There was a commission that was formed by the former MEC of the time in KZN, Mr Bheki Cele. The judge who was chairing that commission was Pamenda [?] SC.

He recommended that both associations should operate in the same town because the KwaDukuza, they have started to say we should start operating from KwaMaphumulo other than starting from KwaDukuza. But the fact of the matter is, this association called KwaMaphumulo is based in KwaDukuza. We never operate from KwaMaphumulo. All
20 these years we have been operating from Stanger.

If you can look at the geographic area of these two associations or these two towns, KwaMaphumulo is just 37 kilometres away from Stanger and the only town, and KwaMaphumulo is not a town, it is just two shops, which is Spar and the post office, which are just there. And if you

want to go and buy, you need to go to Stanger in order for you to be able to buy all those necessities.

So the only town that the KwaMaphumulo people are able to buy is Stanger. So we operate from this area precisely because it is the only area where we are able to get those necessities for our living.

ADV NGCUKAITOBI SC: Yes. So you are saying that the Stanger Taxi Association or KwaDukuza Taxi Owners Association is a breakaway from KwaMaphumulo?

10 **MR MHLONGO:** That is correct, Chair.

ADV NGCUKAITOBI SC: Yes, but they share the same geographic area and primarily the commercial town is Stanger.

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes, okay, thank you very much.

CHAIRPERSON: What is the name of the judge that he referred to who chaired the commission?

ADV NGCUKAITOBI SC: What is the name of the judge?

MR MHLONGO: It is Pamenda SC.

20 **ADV NGCUKAITOBI SC:** Pamenda SC, I think is probably a senior counsel.

MR MHLONGO: Yes, I think it was a senior counsel.

ADV NGCUKAITOBI SC: Senior counsel, yes. Pamenda SC.

CHAIRPERSON: Yes, thank you.

ADV NGCUKAITOBI SC: Yes, thank you. When was that,

in 2003 the commission was held, you say?

MR MHLONGO: It was around 2003. Then the matter was around December in 2003. I can provide the commission with those documents because I have got it with me.

ADV NGCUKAITOBI SC: Okay, no, that is fine. But his recommendation was that it is impossible to separate Stanger from KwaMaphumulo. They should all operate from the same roots and the same ranks.

MR MHLONGO: That is correct, Chair.

10 **ADV NGCUKAITOBI SC:** Yes. Now, you mentioned a conflict between these two associations. What do you mean by that?

MR MHLONGO: The conflict, as I have said, it started long ago, but it was not severe as the one of 2003 building up to 2012, where members, they lost their lives. I was hoping that I am going to give you a picture of how many members that we have lost. In fact, both associations have lost a lot of members, but what is unusual about KwaMaphumulo was the fact that most of their members were killed by the police.

20 **ADV NGCUKAITOBI SC:** Yes. All right, no, we will come to that. But I just want to understand right now at the beginning, when you say conflict, what are you talking about? What is the disagreement about?

MR MHLONGO: The disagreement is it was all about the roots that were starting from KwaDukuza. If I can mention

them, it was Durban, Empangeni, Eshowe ...[indistinct] and Tongaat. Those were the main five roots which were in dispute. But later on, because there was an agreement that was signed in 2022, we are operating those roots in harmony. But there is now a new phenomenon, which started around 2023, when this what the KwaDukuza now has wanted another three roots from us.

And I have said to them in a couple of meetings that we sit down with them, asking them, guys, can you please at
10 least make us share other than taking from our side? Then they refuse profoundly to say they are unable to share with us, they only want to take from us. That is what is currently happening.

Because if I can just report to you, Chair, on the 14th, on the 13th of March 2025 there was a shooting between these two associations. Luckily, there was no one who was hurt, but about 52 firearm cartridges were found on the scene.

ADV NGCUKAITOBI SC: So the conflict was about roots?

MR MHLONGO: Definitely, it was about the roots,
20 Chairperson.

ADV NGCUKAITOBI SC: Yes, but how did this conflict emanate? When you say roots, presumably, there is someone who is operating the roots sometime in 2003 or in 2012, and then somebody else wants the roots, and then that is how it should start. But I just want to understand how, we

are now casting back to 2003 because a lot of these killings were happening in 2008, 2009, So I just want to get the sense of how this conflict began.

MR MHLONGO: Chairperson, the KwaDukuza, they never operated the long distances. They only started operating those routes around 2003, 2004, because they wanted, they saw that they are unable to operate those routes because passengers, they are used to ride in our, or to get into our taxis, which is KwaMaphumulo, to all these destinations.

10 They decided, because we said to them in one of the meetings, they can operate their routes on their end because in this Stanger town, the two ranks are just a stone away from each other. And we said to them they can operate their routes from that, of their point of departure, then we can operate as well from our point. But they decided to embark on the violence.

 They started shooting at our members, and a couple of cases were opened, and there was nobody who has been prosecuted for the murders of the members of
20 KwaMaphumulo. I can point out just one incident when one family, a mother and a husband, they were driving from Stanger. They were shot in that incident. I could remember it was on a Saturday. A husband was shot and killed. The mother managed to survive.

 She is a member now of the executive committee, of

my executive committee. The case was opened, and in that case one person was arrested and there was no prosecution. It is just one incident that I am making reference to. And the person in question, he has always asked questions how, because I gave the names, because I saw the people who was involved in my shooting, but there was never anyone who was arrested or being prosecuted for that crime.

ADV NGCUKAITOBI SC: Yes. You might want to give us some detail, because you know this is an enquiry. So if you
10 say a member was shot and lodged a criminal case and having identified the shooters, but the police failed to either investigate or prosecute, we do not understand what that means. If you could say so-and-so was shot in this time, and they had identified so-and-so as the killers, and they lodged the complaint at this police station in this time. So that is the kind of detail the enquiry would appreciate.

MR MHLONGO: I would appreciate to do that, Chairperson, but maybe I will have to get the blessings from the person involved because she gave me the case number, which I can
20 give it to you if you want to. Maybe you can check for yourself what has happened in that case number. Case number 3308/2003.

ADV NGCUKAITOBI SC: Yes, I think the screen seems to be freezing, Madam Chair, I am not sure if – can you still hear us, Mr Mhlongo?

MR MHLONGO: Yes, I can hear clearly on my side.

ADV NGCUKAITOBI SC: Okay, well, let us see.

CHAIRPERSON: And do you see us? We can see you perfectly well.

MR MHLONGO: Now I can see you. Previously, I did not see you. I was only speaking to myself, Chairperson.

CHAIRPERSON: That is terrible, Mr Mhlongo. You should see us because we can see you perfectly well. And if you do not see us ...[intervenes].

10 **MR MHLONGO**: I was only able to see you now.

CHAIRPERSON: Yes, if you do not see us, do let us know so that ...[intervenes].

MR MHLONGO: I cannot see you now, Chair.

CHAIRPERSON: You can see me?

MR MHLONGO: I cannot see you, Chair, now.

CHAIRPERSON: You can see my sisters, me and my sister.

MR MHLONGO: I can see you, Chair. I can see the other sisters there.

CHAIRPERSON: That is great. Mr Spokesperson, you will
20 assist us if we reach this kind of a situation. Mr Mhlongo must also have a privilege of seeing us.

ADV NGCUKAITOBI SC: All right, Mr Mhlongo, let us do this. Let us skip 5.1, 5.2, 5.3. Let us go to 5.4. Those pages are all introduction. And we start under the section background, paragraph 16. Can you see that of your

statement?

MR MHLONGO: Yes, I can see that, Chairperson.

ADV NGCUKAITOBI SC: Okay, thank you. Now, you want to narrate the events that happened immediately after the death of Senior Superintendent Choncho on the 27th of August 2008. Can you explain what your knowledge is of that incident?

MR MHLONGO: After the killing of Mr Choncho, there was a spate of killing of the members of the KwaMaphumulo Taxi Owners Association by the Cato Manor Unit. I could remember very well because I was actively involved in the association. I was appointed as the disciplinary member of the two associations because during the time, it was the time where we are forging the peace between these two associations.

I was the member as well because one of the recommendations by Pamenda SC was to have one rank where we could operate these two roles. And then during that time, I can safely say it started with Buthelezi who was killed in Stanger Manor. Then it went up to the killing of Mr Ndimande Magojela and his bodyguards.

And I could remember we had a very busy weekend on that particular weekend because we had to bury Ndimande on Sunday and we had to bury Mr Mthembu as well as Mr Ntuli on the very same weekend.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: It appears that we are now interrupted again. We do not see you, Mr Mhlongo. Gentlemen over there, are you experiencing problems?

MR MHLONGO: I am here.

CHAIRPERSON: Mr Spokesperson?

MALE SPEAKER: Yes, they are attending to it.

CHAIRPERSON: Are they attending to it? Yes, yes, thank you. Proceed, Counsel.

10 **ADV NGCUKAITOBI SC:** Yes, thank you, Mr Mhlongo. What was your role at the time? You said you played an active role. Were you in the executive or what other role were you playing?

MR MHLONGO: I was the member of the disciplinary committee for both associations, Stanger and KwaMaphumulo. As I have narrated before, Chair, that we were forging peace between these two associations. It was during the time where both associations were starting to work those five roots together.

20 **ADV NGCUKAITOBI SC:** Yes, okay, that is good. Now, that is how you became integrally involved in the activities of KwaMaphumulo. Now, if I could then ask you to look at paragraph 17, 18, 19, and 20. Those are the introductory paragraphs to the situation pertaining to the killing of Superintendent Choncho.

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. You mentioned there, particularly paragraph 19, that:

“Between the 29 August 2008 and 18 September 2008, several KwaMaphumulo members who were suspected of involvement in the Choncho murder were killed by members of the Cato Manor Unit in separate incidents.”

10 Now, earlier in your testimony, when you were still giving introduction, you said to the Panel that taxi violence is long in existence in KwaZulu-Natal, particularly in the conflict between Stanger and KwaMaphumulo. But what is unique about your association is that you are the one association whose members were killed by the police. Just explain that. What do you think is the reason why your association happened to be the only one whose members were killed by the police? And specifically, not by any random police, but by the Cato Manor Unit?

20 **MR MHLONGO**: Chairperson, it is a very strange way of operating here in KZN because people were killed by the police. And what is strange about it, it was the fact that during the 2003 and 2004, municipality manager of KwaDukuza municipality was killed. And there was no one who was killed because it was a well-known statement that

he was killed by the KwaDukuza Taxi Association, but there was nothing that happened to the KwaDukuza.

And furthermore, if you can look at, there was an incident that involved the KwaDukuza members. Two members hijacked the one member of the IFP, the prominent member of IFP, Mr Musa Zondi, at the highway at Umvoti Toll Plaza. And these members were just taken in and they were just arrested, they were not killed.

But what is strange about this situation is the fact
10 that if you are from KwaMaphumulo, the police will not arrest you, but they will just take you to the next mortuary area. You would be just killed.

ADV NGCUKAITOBI SC: Yes. I mean, bearing in mind your involvement in this, what is the explanation for that, that your members were targeted for killing, but you say municipal manager in Stanger who is suspected of having been killed by the Stanger Taxi Association members, there is no investigation at all. Why were you being targeted?

MR MHLONGO: I think, Chairperson, it emanates from, I am
20 being speculative here, Chair. I think it is emanate from the reception from Mr Cele, who was the MEC of Transport in KZN. There was one meeting where he came to KwaMaphumulo, as you could recall, around the time as he was appointed as the MEC for Transport in KZN, the first thing he did was to shut down these two taxi rank,

KwaMaphumulo and Stanger, and he had to convene a meeting with the members of the community.

And the members of KwaMaphumulo, or the community from KwaMaphumulo, they asked him a couple of questions and something happened, very strange thing happened on that particular meeting where he was shouting at the members of the community because they did not agree of his decision to close both the associations.

And it went up further to say we think as the members
10 of the KwaMaphumulo Taxi association that maybe it is because the municipality during the time was under IFP. Maybe that was the reason why he was not favouring our association. That is what we think as the association was the reason for Mr Cele not favouring us, but giving instruction to kill our members, as we will see during my testimony that he said very unusual ways to say ...[vernacular] which means these people – now the area is muddy and if they are swimming against the crocodile, the crocodile will just bite you.

20 **CHAIRPERSON:** Counsel, before you proceed, may I request our law researchers to favour one of our lady journalists there with a bottle of room temperature water. It might help you, madam.

ADV NGCUKAITOBI SC: Madam Chair, we were also given coffee, just me and Mr Mtsweni.

CHAIRPERSON: There is no favouring. I am just a bit concerned with her coughing. I am sure we can all be given coffee at one stage. We are just at the beginning of winter. They will bring some water to you, madam. And you gentlemen, if you wish. Coffee later. Yes, thank you. You may proceed.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. So, Mr Mhlongo, so you are saying one explanation is political and particularly you are placing the blame at the door of Mr Bheki
10 Cele. Correct?

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes, all right. Thank you. Now, if we go further in your statement, paragraph 21:

“On 25 August 2008, Mr Makhosabo, Makhosabo Swayo Mkhize and Gedwana Mhlongo attended court in Pietermaritzburg for a murder in which they were already on bail.”

Now, which murder was that? Do you remember?

20 **MR MHLONGO:** That murder was a murder of one member from Kranskop who was shot and killed somewhere in Kranskop. Then they were charged for that murder case and they were appearing in Pietermaritzburg.

ADV NGCUKAITOBI SC: Yes, that is right. We will come back to Mr Swayo Mkhize because his name features in the

dockets. Now, then when they are there in that matter, they are then arrested at paragraph 22, and taken to custody. Can you see that?

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. Now, then at paragraph 23, Constable Ndlovu transports Mr Mkhize and Mr Mhlongo. Now, who are these? Which Mr Mkhize is this?

MR MHLONGO: It is the same Makhosabo Swayo Mkhize who was transported to another matter which they were
10 arrested for, which I am not clear about. I know that they appeared in Stanger for that matter.

ADV NGCUKAITOBI SC: Yes. And then Mr Mhlongo is Gedwana.

MR MHLONGO: That is correct, but not Mhlongo as me. There is another Mhlongo named Gedwana. In fact, his real name is Ketonjane [?] Mhlongo. It is a nickname that he is called Gedwana.

ADV NGCUKAITOBI SC: Yes, all right, that is fine. So they are then transported to KwaDukuza Magistrate's Court so that
20 they could wait for the docket. Is that correct?

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Now, enroute, which is paragraph 24, they are then told that Mr Choncho has been killed.

MR MHLONGO: That is correct, Chair. It happened in the area of KwaMaphumulo called Eplangweni. There was a

detour there on that route. The road was pulled up somewhere. There was a construction going on there, and apparently Mr Choncho was killed there, if you remember.

I remember I was on my way to a court appearance for Mr Mkhize, as well for the support, and we were made to turn because we were told that someone has been killed, and I did not know around that time. Up until later on, we were told that it was Mr Choncho who was killed on that incident.

ADV NGCUKAITOBI SC: Yes. Now, the result of that is that
10 their own case that they were attending to related to the killing of a different person and cannot proceed, is then postponed to the 3rd of September. Correct?

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes, yes. Now, then paragraph 25, there is an issue you raise here that they request, your attorneys request that these members, Mr Mkhize and Mr Mhlongo, should not be kept at Cato Manor, but they should be detained at Westville. And the magistrate then issued the warrants for detention at Westville, is that correct?

20 **MR MHLONGO:** That is correct, Chair.

ADV NGCUKAITOBI SC: Why was there concern that they should not be detained at Cato Manor but at Westville?

MR MHLONGO: It is because of the abuse that they experienced before, and all the members of KwaMaphumulo who have went through, they will tell you itself, in my

experience there as we proceed with this testimony.

ADV NGCUKAITOBI SC: Yes, so you are saying by 2008 already, the instances of abuse were known to your members, and they were keen to avoid detention at Cato Manor?

MR MHLONGO: That is correct.

ADV NGCUKAITOBI SC: Yes. Now, the magistrate then agrees that they should be detained at Westville. What then happens thereafter is at paragraph 26, which is at 8 PM on the 27th of August, Mr Mhlongo and Mr Mkhize's attorneys are
10 told that contrary to the warrant of detention which is signed by the magistrate, they have in fact been taken to Cato Manor. Is that correct?

MR MHLONGO: That is correct, Chair. That is correct, Chair. And it was communicated to the Chair of the time, Mr Bongani Mkhize, that these guys have been taken to Cato Manor and he instructed them to go there in the morning to go and check on them.

ADV NGCUKAITOBI SC: Yes. And then when this incident is investigated, paragraph 27, it is established that the
20 magistrate has indeed endorsed the warrants of detention for Westville and the control prosecutor ...[intervenes].

MR MHLONGO: That is correct.

ADV NGCUKAITOBI SC: Yes, the control prosecutor has also endorsed the same warrants for Westville. But what happens is that there is somebody else who scratches out

Westville and replaces with Cato Manor. Correct?

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes.

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes, and then it is established that the person who has taken these detainees is Inspector Panday, which is paragraph 27.4. Is that correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Now, who is Inspector Panday?

10 **MR MHLONGO**: He is one of the members of the Cato Manor unit.

ADV NGCUKAITOBI SC: Yes. Do you know if he has any authority to override the decision of the magistrate if a magistrate says go to Westville? Does Inspector Panday have a right to override that decision and say that you should go to Cato Manor?

MR MHLONGO: As far as my understanding, it is incorrect. It is not supposed to happen that way.

20 **ADV NGCUKAITOBI SC**: Yes, because the judiciary is independent in this country. It is not controlled by the police.

MR MHLONGO: That is correct.

ADV NGCUKAITOBI SC: Yes.

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. Now, they are then at Cato Manor contrary to the decision of the magistrate and upon the

decision of Inspector Panday, who comes from Cato Manor. Then they are interrogated for the murder of Superintendent Choncho, which is paragraph 28. Is that correct?

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Then the attorneys ...[intervenes].

MR MHLONGO: What is, Chairperson, is the fact that...

ADV NGCUKAITOBI SC: I am not sure if you are speaking, Mr Mhlongo, but you are frozen on our side.

MR MHLONGO: I can hear you on my end.

10 **ADV NGCUKAITOBI SC**: I could not hear anything, but you wanted to add something to what I said about the interrogation.

MR MHLONGO: I do not know if you can hear me now.

ADV NGCUKAITOBI SC: Yes, we can hear you. It is just that your screen is frozen. That is what is disturbing.

MR MHLONGO: Okay.

ADV NGCUKAITOBI SC: But we can hear your voice.

MR MHLONGO: Okay. What I was saying is that it is strange that you can be interrogated for something where you were
20 in police custody and a crime was committed while you were in police custody and then you were interrogated about that. So that was a bit strange for me.

ADV NGCUKAITOBI SC: Yes, because your statement explains that they are already in detention for something else when Mr Choncho is killed.

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes, but then they are interrogated for the killing of Mr Choncho.

MR MHLONGO: That is where I am saying it was strange.

ADV NGCUKAITOBI SC: Yes, I understand. Thank you. Now, in the morning of the 28th of August, the attorneys are able to visit them. Is that correct?

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: And then according to paragraph
10 29, what do they report to the attorneys?

MR MHLONGO: They report that they have been tortured and assaulted during the interrogation.

ADV NGCUKAITOBI SC: Yes. And then what else?

MR MHLONGO: They also said that they have requested a legal representative and they were all refused that right to have an attorney to represent them.

ADV NGCUKAITOBI SC: Yes. And then the following day, the 29th, they are then transferred to Westville Prison.

MR MHLONGO: That is correct, Chair.

20 **ADV NGCUKAITOBI SC**: Yes. And then when they ask for bail, it is opposed by Inspector Maharaj. Who is he?

MR MHLONGO: He is a member of the Cato Manor Unit.

ADV NGCUKAITOBI SC: Yes, but the magistrate grants them bail.

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. Now, paragraph 32, we can skip that unless you want to comment on it because it is just your deduction of these events.

MR MHLONGO: No, I am covered, Chair. We can continue.

ADV NGCUKAITOBI SC: You have already commented on that. Thank you very much. Now, in paragraph 33, that you can also skip, that you believe that your members were being targeted for the killing of Mr Choncho because you have already explained that you found it odd that someone who is
10 in detention will be interrogated for killing of a person whilst that person was in detention.

MR MHLONGO: That is correct.

ADV NGCUKAITOBI SC: So you can skip paragraph 33. Paragraph 34, you already outlined here the six members of your association that were killed. Can you just take us through those names?

MR MHLONGO: The first person, I think, it starts with Magojela Ndimande, the Howick CAS 106/09/08. The second one is Thokozani Tembe, Howick CAS 106/09/08. Lindelani
20 Buthelezi, KwaDukuza case number 39/09/08. Nkosinathi Wilson Mthembu, Umgeni CAS 7609/02009. Mduduzi Mkhize, eMkhomazi CAS 235/10/2008, and Thuli aka Kopolota Mandeni CAS 7609/2009.

ADV NGCUKAITOBI SC: Yes. Now, according to your knowledge, why were these six gentlemen killed?

MR MHLONGO: We were told that they were involved in the killing of Superintendent Zethembe Choncho.

ADV NGCUKAITOBI SC: Yes, but a person who is involved in the killing, should they be killed or should they be arrested?

MR MHLONGO: As far as my understanding, a person should be brought to the court and the court should decide if the person was involved or not.

ADV NGCUKAITOBI SC: Yes. So, it is common cause, well,
10 let me not use that term. It is admitted by the NPA and the evidence leaders in this case that all the six were killed by the police. Correct?

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Now, I just want to ask you then, are they all associated one way or the other with the KwaMaphumulo Taxi Association?

MR MHLONGO: All these are the members of KwaMaphumulo Taxi Association, excluding the one who was the bodyguard to Mr Ndimande.

20 **ADV NGCUKAITOBI SC**: That is Mr Tembe.

MR MHLONGO: Yes, he was Tembe, who was the bodyguard.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Advocate Ngcukaitobi, I am sorry to take you back. Mr Mhlongo, when you look at page 5-6, paragraph

27, in the sub-paragraphs you are relating how these two members were detained. And ...[intervenes].

MR MHLONGO: That is correct, Chair.

CHAIRPERSON: And taken to the Cato Manor police detentions after the alteration of the detention warrant. Correct?

MR MHLONGO: That is correct, Chair.

CHAIRPERSON: In paragraph 30, you mentioned that these two were then returned to court and transferred to Westville
10 Prison on the 29th of August. Correct?

MR MHLONGO: That is correct, Chair. That is correct, Chair.

CHAIRPERSON: What I would like to know from you, if you are able to say, in terms of which detention warrant were they then transferred to Westville Prison? Because the initial detention warrant by the magistrate had been altered.

MR MHLONGO: I think it emanates from the intervention from the attorneys, the Hlapane Attorneys, who came and asked questions about why these people are kept here. And
20 the confirmation from the courts to say, yes, we have ordered to send these people to be lodged at Westville Prison. I think it is emanated from that. That is when they were moved to Westville.

CHAIRPERSON: Now, as an ordinary person, if I may use that word, what did you make of this conduct of the police

altering a detention warrant and then subsequently seeking to comply with the original detention warrant?

MR MHLONGO: I heard about it. That is why the attorneys for the association take it further to write to the commissioner and take this matter to court. As we will see, as we will go along, you will see these letters have been written and this matter has been raised sharply to say that this Cato Manor, they are law into themselves.

ADV NGCUKAITOBI SC: Yes. Madam Chair, we have got –
10 I have just asked my colleague to find it, but we do have the altered detention warrant because it was part and parcel of the trial of Mr Mhlongo when he was accused of murder. Mr Mhlongo, you remember that?

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: But I will ask for it to be found, just to complete this part of the evidence.

CHAIRPERSON: Yes, thank you, Counsel.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. Mr Mhlongo, we are still at paragraph 34. Now, we have
20 confirmed the one fact that all of those six people were killed by the members of the Cato Manor unit. Secondly, all of them were members of the KwaMaphumulo Taxi Association with the exception of Mr Tembe, but Mr Tembe had enough association with the KwaMaphumulo because he was the bodyguard of Mr Ndimande. Correct?

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. Now, we already have two other people in detention, Mr Mkhize and Mr Mhlongo, who are accused of having killed Superintendent Choncho. And then we have six others. That makes the number eight people, according to the police, that are the suspects. And six are killed and two are detained and tortured. Is that correct?

MR MHLONGO: That is correct, Chair.

10 **ADV NGCUKAITOBI SC**: Yes. Now, did you establish, I mean, what role each of these people were said to have played or what the evidence was that is said to have linked them with the killing of Superintendent Choncho? These six that are in paragraph 34.

MR MHLONGO: Chairperson, it will be impossible for us to know because the police, they should be the one who should tell us what was their role. And unfortunately, there is no one who have been taken to court for this matter. If maybe this matter had been ventilated in court, we should be in the
20 position to know what was their role, each person.

ADV NGCUKAITOBI SC: Yes.

MR MHLONGO: But as far as where I am sitting now, we do not know really what was their role at this particular moment.

ADV NGCUKAITOBI SC: Yes, but even the two that were detained, Mr Swayo and Mr Gedwana Mhlongo, what

happened to Mr Swayo? Where is he now?

MR MHLONGO: Swayo, he was first accused in the case of the matter of Nkosi Zondi. He was my accused. He was granted bail. Subsequently to that, he was shot and killed in a mysterious way where he was residing at KwaMashu.

ADV NGCUKAITOBI SC: Yes, and what happened to Mr Gedwana Mhlongo?

MR MHLONGO: Mr Mhlongo, he is still alive. He has decided to leave the taxi industry. I am told that he is a
10 musician now, but I still keep in contact with him because he sometimes phones me.

ADV NGCUKAITOBI SC: Yes, but in terms of the allegation, you remember the point we are trying to figure out is these people are accused of having killed Mr Choncho. He is at some point detained, and what you would expect then is that he would go to a trial. So what happened there?

MR MHLONGO: Chairperson, they were not charged for this murder of Mr Choncho. They were only released after, if you can go to the statement and see, that on paragraph 31, you
20 see that the murder was – that they were arrested or were sent back to court, which was a week. Then they were granted bail for that murder, but on this Choncho murder, they were not charged for it.

ADV NGCUKAITOBI SC: Yes, exactly the point. So no one out of these eight that are initially associated with the killing

is ever charged and taken to the courts to decide they are guilty or innocence. Correct?

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes, and seven have been killed. We know the six that have been killed by the police. We know one who has been killed mysteriously, but we know one where the charges just, where the allegations just vanished into thin air.

MR MHLONGO: That is correct.

10 **ADV NGCUKAITOBI SC**: Yes. Now, then that takes us then to paragraph 35, where the KwaMaphumulo Taxi Association decides to correspond with the government, starting with the letter of the 5th of September 2008. Were you involved in the instructions to the attorneys at that point?

MR MHLONGO: I was not involved. The executive committee was involved, but as the members will be briefed, the meeting will be called, then we are briefed by the Chairperson to say this is the next step that we are going to take, and you have input as the members of the association.

20 **ADV NGCUKAITOBI SC**: So you attended meetings that were convened by the Chairperson at the time?

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: And who was the Chairperson at the time?

MR MHLONGO: It was Mr Bongani Elphias Mkhize.

ADV NGCUKAITOBI SC: Yes. And we know that Mr Bongani Mkhize was also subsequently killed.

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. Now, the briefings that he was giving you would be what? That a letter is being written to the police for what reason?

MR MHLONGO: He told us that because of what is happening and we see that we cannot find help from anywhere, he has instructed the attorneys to write a letter to
10 the Human Rights Commission, to the ...[indistinct]
Directorate of Public Complaints Directorate, to the National
Commissioner, the Public Protector, and the likes in order for
us to try and see if they can assist, because the Cato Manor
Unit has become so volatile and we are unable to be helped
by anyone, but with a hope that if we are writing to these
people, they might intervene.

ADV NGCUKAITOBI SC: Yes. Well, the first letter is at SM1, page 5A-1, dated the 5th of September 2008. Is that correct?

20 **MR MHLONGO:** That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. It has been read several times into this record. I do not want to repeat it, but you can give your own summary of your understanding about why your attorneys, as the association, wrote to the Provincial Commissioner Brown and to Director Buys, who is from the

National Inspectorate, and what did they actually want. And specifically, I want to refer you to page 5A-7, in which your association says at Roman figure 2:

10 “Any member of the KwaMaphumulo Taxi Association who is arrested or detained, whether or not he is charged, requires to be legally represented and nominates our office in this regard. We require that our offices be contacted immediately if an arrest is made.”

Now, this would be a very odd thing to say that, look, if you want us as the association, these are our attorneys, we will make ourselves available. Why did you feel that it was necessary for your association to make that approach to the police?

MR MHLONGO: Chairperson, it is because, as I have said, the police or the Cato Manor Unit was uncontrolled. No one who has went to Cato Manor from KwaMaphumulo who has come out alive. I am the only, it is me, it is only myself and
20 Gedwana who has come back alive. All the members of the KwaMaphumulo who have been taken by Cato Manor, they were all killed.

And that is happening even currently, Chairperson. I wanted to state that as a fact, I am living in fear at the moment because the police here in KZN, they are used by our

competitors, which is KwaDukuza. I can mention a lot of things that has happened currently during my time up until today. I have also requested, I have applied for the same thing for the members. I have instructed my attorneys to do the same currently as we speak. So it is a problem that we are currently having here in KZN.

ADV NGCUKAITOBI SC: Yes, that is fine. We will come back to the current problem. Let us first finish the 2008 problem. You say the reason you felt the need to instruct
10 your lawyers that if you are wanted as the association, you would be available.

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: It was because this association was uncontrollable. Everyone who – I mean, sorry, this unit was uncontrollable. Everyone who has ever encountered them did not come out alive except yourself and Mr Mhlongo.

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. Thank you. Now, at paragraph 38 you deal with the instance of Mr Siphon Moses
20 Dlamini, who was an SAPS officer in the Taxi Violence Unit who surrendered himself to Cato Manor as a potential witness. What was he a witness for?

MR MHLONGO: Mr Dlamini, he was working for the Taxi Violence Unit. So he was asked to come and be interrogated by the members of Cato Manor. And during that time, Mr

Dlamini was interrogated there and he also suffered the trauma or the beating from the – he was assaulted by these members at Cato Manor where he suffered mostly the ear drum where it was damaged. And this guy, this Sipho Dlamini, he was working as a bodyguard as well of the Taxi Violence Unit, which was the company that was giving us the protection as the association.

ADV NGCUKAITOBI SC: Yes, but when he says he surrendered himself as a witness, what does that mean?

10 Witness for what?

MR MHLONGO: He was asked to come and testify if there are members of the KwaMaphumulo Taxi Association who was involved in the killing of Superintendent Choncho.

ADV NGCUKAITOBI SC: Yes, and when he got there, he was assaulted.

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: And the person who assaulted him is named in your statement. Well, the person who detained him, we do not yet know who assaulted him, is named as

20 Detective Inspector Panday.

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: And you have already testified that he is one of the employees of the Cato Manor Unit.

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. Now, that is what you have

addressed at paragraph 39. We are not going to repeat that.
Correct?

MR MHLONGO: That is correct, Chair.

ADV BALOYI-MERE SC: Counsel, sorry to interrupt.

ADV NGCUKAITOBI SC: Yes.

ADV BALOYI-MERE SC: Before you step off paragraph 38,
it is said here Mr Moses Sipho Dlamini is an SAPS officer.

MR MHLONGO: I think it is a misprint, Chairperson. He is
working for Taxi Violence Unit as the company that was giving
10 us a protection or was working – he was a bodyguard.

ADV NGCUKAITOBI SC: So it should be security officer
rather than SAPS.

ADV BALOYI-MERE SC: Thank you.

ADV NGCUKAITOBI SC: Are you hearing me, Mr Mhlongo?

MR MHLONGO: I can hear you. I can hear you, Chairperson.

ADV NGCUKAITOBI SC: I am saying we should correct that
to say he is a security officer. He is a security officer in the
private security industry.

MR MHLONGO: That is correct, Chairperson.

20 **ADV NGCUKAITOBI SC**: Thank you. Thank you. You have
already addressed paragraph 39. I will not repeat it unless
you feel the need to say something about that.

MR MHLONGO: We can proceed, Chair.

ADV NGCUKAITOBI SC: Thank you. Then we go to
Magojela Ndimande and Mr Thokozani Tembe. What was the

role of Mr Ndimande in the association?

MR MHLONGO: He was a member of the association. He was having a couple of taxis. Hence, he was provided a security guard because there was an information that the police wanted him. And subsequently, he presented himself to the police station at eMthunzini where he was interrogated by this Cato Manor Unit. But later on, he was released.

ADV NGCUKAITOBI SC: Yes. Yes, in this hearing, we have gone through the incident where he was detained and released because of insufficiency of evidence. This is what you are dealing with in paragraph 20. Correct? In paragraph 40?

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: All right, that is fine. And then you deal thereafter with the death of Mr Lindelani Buthelezi. Who was he?

MR MHLONGO: He was a member of the KwaMaphumulo Taxi Owners Association and he was residing just in town of Stanger. There is a place called Stanger Manor there where he was staying.

ADV NGCUKAITOBI SC: Yes, and he was then killed on the 3rd of September 2008. Correct?

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes, and the eyewitness who was there was his wife, Ms Thandeka Sokhulu, who gave a

statement. We dealt with that statement earlier. I will not ask you to go through it again. Is that correct?

MR MHLONGO: It is correct, Chairperson.

ADV NGCUKAITOBI SC: So we can skip then 41, 42, 43. So then we go to the response by the Provincial Commissioner to the letter of demand. So that you will find at SM2, page 5A-9.

MR MHLONGO: I am there, Chair.

ADV NGCUKAITOBI SC: Yes. Now I just want to go through
10 this letter in some detail because it is a reflection of what responses your association received when they raised the concern about the murder of their members. Now, it is dated the 11th of September 2008. Firstly, it complains that Mr Hlapane Attorneys' letter is unsigned and is without a reference and without annexures.

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. Now, I could not understand that because if you go to page 5A-8, the letter is in fact signed.

20 **MR MHLONGO**: That is correct, Chair.

ADV NGCUKAITOBI SC: Can you see that? Yes. Now, I also could not work out what they mean by references and annexures because the reference is in the body of the letter and it names specific individuals that were involved and it does not refer to any annexures. Can you see that?

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes.

MR MHLONGO: I can see that.

ADV NGCUKAITOBI SC: Yes, but just in terms of you as an ordinary person having instructed an attorney to raise an issue with the police that, look, our members are being killed, and you receive a response that is so technical that your letter is not signed, it has no annexures, it has no references. I mean, how do you respond to that as a lay person?

10 **MR MHLONGO**: It has become difficult. You come to a conclusion to say these people, they are inclined to a certain group or members of the community or a certain group of society if you are writing such a document or letter and you receive such a response.

ADV NGCUKAITOBI SC: Yes. Now, and then in paragraph 2, they say:

20 “It is unfortunate that your office writes to this office in such an unprofessional manner that is referred to in paragraph 1 above.”

Now, we have already looked at whether factually it is accurate that the letter is unsigned, it has no reference, it has no annexures. They label that to be unprofessional. I mean, would you expect the police who have been told that there is serious criminal activity to adopt the approach of

accusing the attorneys of being unprofessional instead of addressing the concerns that are being raised?

MR MHLONGO: I believe it was just a strategic way to say let us delay so that we can continue in what we wanted to do. That is the conclusion that I can come up into.

ADV NGCUKAITOBI SC: Then it goes further in paragraph 3. It says:

“Be that as it may, this office has enquired into your allegations...”

10 So they are now claiming they have investigated the allegations:

“...and denies that any unlawful act was performed by the SAPS members you referred to. And therefore, the allegations are without substance.”

So already between the 5th of September and the 11th of September, according to the provincial office, Director Naicker of the Provincial Commissioner Legal Services had done an investigation and had found that the killing of all of
20 those six people and the torture of those two people was without any substance. I mean, how do you respond to that? Because it seems that they were too quick to claim that there was an investigation and an outcome.

MR MHLONGO: As I have said, these people, they are working together. They know what was their end goal. And

it is just unfortunate that maybe they will come and testify as to why they were writing such letters and then maybe they will give us a clarity, they were working for who and who was giving them instruction to write these kind of letters. Because for me, where I am standing, I do not understand and I do not get it if you have not conducted the investigation, then you come up and write such a letter. More above that, life has been lost. Because the mandate of the police is to service the people, to protect, not to kill.

10 **ADV NGCUKAITOBI SC:** Yes, but I mean, is it realistic that there was in fact any investigation that was conducted in these five days?

MR MHLONGO: I do not think there was. That is my view.

ADV NGCUKAITOBI SC: Yes. You see, because a couple of weeks ago in this enquiry, and it is something you do not know, I am telling you now about it, is that one of the witnesses brought standing order 251 of the police, which says that if there is a killing at the hands of the police, it is the onus of the police to justify the killing and there must be
20 an enquiry in relation to each of those killings. And so one would expect that there should be a file in which the police justify the killing.

Now, when you see this written five days later saying the allegations are without substance after six people have been killed, the allegations are without substance, would you

say that that standing order was complied with?

MR MHLONGO: I do not think it was complied with. And I believe if you are conducting an investigation, you do not just look at one side. You look both sides in order for you to be able to determine the truth.

ADV NGCUKAITOBI SC: Yes. Well, we have not found any documents here proving that there was any investigation conducted, and we hear that Major General Booyesen will be giving evidence. Hopefully he will provide us with the files
10 showing these investigations. Now, then it says:

“The office further responds to your letter as follows:

3.1. Please clarify who is your client because your letter refers to the Taxi Association as your client. In paragraph 1 of your letter, you refer to your clients who are in detention.”

Now, again, I ask you, how do you respond to this? Because the letter is clear that they act for the association and the members of the association are in detention. Why is that not
20 clear enough to the police?

MR MHLONGO: It is really not understandable why. And you will see that later those names were put in for their clarity, but they were trying to be technical about everything.

ADV NGCUKAITOBI SC: Well, you say later, but the names are already in the letter that they are responding to.

MR MHLONGO: That is correct.

ADV NGCUKAITOBI SC: Yes, because all of these names of Swayo, Mkhize, of Gedwana, of Mhlongo, are all mentioned in paragraph 1 of the letter.

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes, but also the relationship between them and the association is clear from the letter. They are members of the association and the association says you must act for all of them. So they are all your clients,
10 the attorneys' clients.

MR MHLONGO: That is correct.

ADV NGCUKAITOBI SC: Then in paragraph 3.2 they say:

“Your complaints of assault, denial of legal representation, and alteration of the warrant will be investigated upon receipt of sworn statement of the prisoners and
copies of the documents you failed to
annex to this letter.”

What do you say to that? That they will not investigate the
20 assault until the person who has been assaulted signed a sworn statement. But the person who has been assaulted is in detention.

MR MHLONGO: That is something. They should be the one who should be doing that because if you are in custody, you have got limited rights. If you are in prison, like in Westville,

you come there and – like myself, I will speak for myself. I went there, I was supposed to go to the hospital in order for them to check the damage that was done to me, but they were told by these members of the Cato Manor I must not be taken to hospital, I must be taken straight to the holding cells. So it was going to be difficult for us to be able to get that information.

ADV NGCUKAITOBI SC: Yes. And then in paragraph 3.3, they say:

10

“It is for the court to decide who are the perpetrators or who are involved in the murder. You should know that this is a matter you need to raise before the magistrate. This office is not the forum to argue any defence of the prisoners.”

That I do not understand. The letter says our members have been killed because of the suspicion that they are involved in the murder, but the response from the police is that the court must decide who is responsible, but it is the same police who have killed them. What do you say to that?

20

MR MHLONGO: It is really strange because if you wanted them to come and present their case, you should take them to court, not kill them. If you kill them, they are unable to speak. That is a fact.

ADV NGCUKAITOBI SC: Quite. Then in paragraph 3.4:

“Your allegation in paragraph 12 to 16 will likewise be investigated upon receipt of the sworn statements from the appropriate persons. Here too, it is not clear who is your client.”

Now, this I also thought is very strange because these are the people that are, some of them have already been killed, but they are asking for sworn statements from them. Others are in detention, alleging torture by the police, but they are asking for sworn statements by them. How do you respond to that?

MR MHLONGO: It is unheard of. How can you get a statement from a dead person? And more above that, if you are to furnish a statement, you will be targeted, you will be found, they will kill you.

ADV NGCUKAITOBI SC: Yes. I mean, was that not the reason why you went to an attorney in order to obtain the protection of a lawyer?

MR MHLONGO: That is correct, Chair.

20 **ADV NGCUKAITOBI SC**: And in 3.5, they say:

“Once again, at paragraph 17 of your letter, it is not clear who are your clients.”

This is all characteristic of this. If you go to this paragraph 17, which is at 5A-6, this is what it says:

“Our clients are particularly disturbed by

the entire sequence of events and pattern of conduct outlined above, and particularly the method of investigation adopted by the police. Every person dealt with by the police has complained of serious abuse. This concern is exacerbated by statements which have been published in the various media, quoting high-ranking officials, including community safety ...[indistinct] and MEC, 10 Bheki Cele, and stating that the police officers should put criminals behind bars or send them to the nearest mortuary. Our clients believe that the police have acted as a law unto themselves and are conducting the investigation when they are understanding that they have a virtual licence to arrest and detain at will, to interrogate and assault, and even to kill 20 without adhering to the laws which govern due process.”

Now, again, the clients have already been set out as the association through its members. Why would they ask you to clarify your clients, which are already clear in the letter?

MR MHLONGO: That was the tactic as well. I will reiterate

that there is a pattern of doing things and there is a way of trying to delay so that they can achieve what they wanted to achieve, because they were targeting certain individuals and they were unable to find them. As soon as they find them, you will see that the killing stopped.

ADV NGCUKAITOBI SC: Yes. And then:

“Please clarify by sworn statements your complaint against the MEC, as well as other complaints.”

10 Now, that again, if you go to that paragraph 17 we have just read, the complaint against the MEC is clear that he has incited the murder of people because he says send them to a police station or to the nearest mortuary. That is the complaint. It is a complaint of incitement to murder. So how would a sworn statement change anything?

MR MHLONGO: Ja, and the MEC said that in a public platform, he did not just say maybe inside the police or inside the police station or maybe in the group that was investigating the murder. He said it in public, in the funeral
20 of Superintendent Choncho where he attended at Nongoma. So even the media was there.

ADV NGCUKAITOBI SC: Yes. Now, and then if you turn over the page at 3.6, it says:

“Once again, further at paragraph 18 of your letter, there is no clarity as to who

your client is and this office therefore demands that you finish proof as to who is your client. An association remains an association and you cannot be allowed by the KZN Law Society to act for clients who do not want to disclose their identities and physical residing addresses.”

Do you know what this is referring to? I mean, you are not an attorney, but I have never seen this requirement before.

10 **MR MHLONGO**: Very strange things was happening around this time. You will expect anything. And I have never heard before of Law Society wanting the physical address of these people. I have never heard, but it is something that is happening here in KZN and it is unheard of. Maybe if someone has heard it, you should come forward and tell us that it has happened to them. But for me, it is really strange.

ADV NGCUKAITOBI SC: Yes. Then they say:

20 “In doing so, there is potential financial prejudice to the Minister for Safety and Security. Should any litigation process ensuing out of this matter end up with a cost order against your client, we need to identify and access them to recover the state's costs. Also, you are obliged to disclose your clients in a criminal case.”

I mean, what are they talking about here? The association says we need your protection by the police. People are being killed. If you want to arrest them, we will surrender them. These are the names of the people that have been killed. These are the names of the persons we hear are being sought, but we will surrender them. The response from the government, from the Minister, from the Provincial Commissioner, is that there is likely to be litigation. And in that litigation, we want protection for costs. Do you
10 understand what they are talking about just as a lay person?

MR MHLONGO: I do not understand it. And maybe it was the way of trying to threaten the member to say if you continue with this, we might take you to court and we might be able to recover some monies from you so that you can get scared and step back a little bit.

ADV NGCUKAITOBI SC: Yes, but the issue here is about the protection of the members who are complaining about being targeted deliberately for murder by the Cato Manor Unit. How does that become litigious?

20 **MR MHLONGO**: I really do not know. I really do not know. Maybe Mr Ngidi, he should come and testify and say what he meant in this letter.

ADV NGCUKAITOBI SC: Well, the evidence leaders can call him. Then they talk about disclosing your clients in a criminal case, but the letter discloses all of the names of the affected

individuals.

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Then paragraph 3.7:

10 “As a firm of attorneys, you should be familiar with the relevant applicable provisions of the Criminal Procedure Act as far as the arrest and questioning of witnesses are concerned. The SAPS will not bend the provisions of the Act to suit your clients' personal needs. In any case, a mystery surrounds the identity and residential address of your clients. Once again, this office is willing to investigate any reasonable complaint, but the complainant is expected to cooperate and provide us with sworn statements. One cannot have his cake and eat it at the same time by threatening to obtain a court order whilst you are frustrating the investigation by not providing the sworn statements.”

20 Now, it is also unclear to me what they mean here. They are talking about the Criminal Procedure Act. Now, how does the Criminal Procedure Act assist when you are saying as a layperson I have got a problem because the cops are killing

my members? Do you understand?

MR MHLONGO: I do not understand the content of this paragraph, honestly, because hence we have said, Chairperson, that we are crying here. We are saying we are being killed, people are being killed, people with – we know that there is a list that has been compiled by the Cato Manor Unit to kill our members and we knew that list was compiled with Cato Manor in conjunction with our competitors, which was the Stanger Taxi Association. So we are trying to say,
10 can you at least investigate and see if what we are saying is true? But it seems as if the door was shut for us.

ADV NGCUKAITOBI SC: Yes. Well, I mean, the section of the Criminal Procedure Act that another witness testified about, Advocate Noko, is section 49(2) of the Criminal Procedure Act, which regulates the instances in which the police can use deadly force to apprehend a suspect. Now, where that has happened, it is up to the police to justify it. So when they are talking about bending the Act to suit your client's personal needs, how would you understand that as a
20 layperson, that the police have a licence to kill and that nothing will change or what?

MR MHLONGO: That is what I understand, Chairperson. If I read this line, it says the police, they are allowed to kill and you cannot do nothing about it.

ADV NGCUKAITOBI SC: Yes. Now, they also are talking

about submitting sworn statements to conduct an investigation. But if you look at paragraph 3, they already have said they have done the whole investigation and they found nothing.

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: So what are these sworn statements for then if they have already cleared everyone?

MR MHLONGO: It is confusing in simple terms.

ADV NGCUKAITOBI SC: Would you say contradictory?

10 **MR MHLONGO**: That is correct. It is contradictory in what they have said in paragraph 3 and paragraph 7.

ADV NGCUKAITOBI SC: 3.7.

MR MHLONGO: Sure, 3.7.

ADV NGCUKAITOBI SC: Yes. Then paragraph 4:

20 “You as a firm of attorneys are hereby required to provide proof of who are your clients and to assist the SAPS to obtain the sworn statements from these who may have complained to you. Should you not receive the same within two days thereof, a copy of this letter would be sent to the KZN Law Society for investigation.”

Now, this I also did not understand. The law firm that is raising a serious concern about killing of people is being threatened with a Law Society investigation. How did you

understand that as the members of the association?

MR MHLONGO: It is so unfair, Chairperson. And this is one of the instances where you see, and I will borrow the words from the previous person who testified in this commission, Mr Danikas, who said if you tell anyone that you are associated with Cato Manor, you will get whatever you want and people are threatened by them.

I am saying this because they were threatening this firm of attorneys and this is not the only one. We were
10 battling even to get anyone to represent us during that time because they were scared, including myself. During my trial, I had to wait for one counsel because the other one was not available. The other one that I wanted him to represent me was scared. He told me in my face to say, I will not be able to represent you because this matter is involving the Cato Manor people. If I represent you, I might get killed.

ADV NGCUKAITOBI SC: Yes. Now, thank you for that. Just to come back to this letter, we have now gone through it in detail to look at the absurdity of what the police were saying
20 to you, but I think there is a bigger problem. At that point in time only six people have been killed. But we know a lot more was killed after that, when the police were told, intervene now to avoid a further loss of life. Would you say that if actually the police had done their job at the time they were told at the highest level, because this letter is signed by Mr Ngidi, who

was the Provincial Commissioner, would this have resulted in avoiding further loss of life?

MR MHLONGO: I think it would have prevented a lot of loss of life and it would maybe assisted because now we have got too many members of the association who are females and they are unable to provide their kids because they lost their breadwinners, which is their husbands. So really, it was uncalled for. They were supposed to act because they should not take sides. They should have sat down with the Cato
10 Manor and find out what is the reason and find the version from our association as well, what has really happened.

ADV NGCUKAITOBI SC: Yes, and then there is also another issue. So there is one issue, which is further lives could have been saved if the intervention had happened at the time it was asked for. But there is another issue, which is what message is being sent by this letter to the killers? Are they being discouraged to kill or encouraged to kill?

MR MHLONGO: It encouraged them to say continue, we got your back, we are with you. That is what I understand with
20 this letter.

ADV NGCUKAITOBI SC: Thank you. All right. So we have dealt with paragraph 44 right up to paragraph 53. So I will not spend time on that. There is a further letter of the 18th of September 2008, which you will see at, I think it is SM4. Yes, SM4.

CHAIRPERSON: Counsel, may I please just clarify one aspect with Mr Mhlongo?

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Mr Mhlongo, when you dealt with paragraph 19 of your statement, that paragraph reads:

10 “Between the 29 August 2008 and 18
September 2008, several KTA members
who were suspected of involvement in the
Choncho murder were killed by members
of the Cato Manor Unit in separate
incident.”

And counsel asked you to comment on that. Part of your answer, you said it was a very strange way of operating by the police in KZN. You further then said if you were from KwaMaphumulo, the police will take you to the nearest mortuary. You remember?

MR MHLONGO: That is correct, Chairperson.

20 **CHAIRPERSON:** And counsel later read to you what had been said by the former MEC of police, Mr Bheki Cele, where he said something to the effect that people could be taken to the mortuary. Has that got anything to do with the statement by the former MEC? That those people who were killed were then taken to, according to you, to the nearest mortuary and they were killed there.

MR MHLONGO: Thank you, Chairperson. I think that is what

has happened because there is no one who has been a suspect in the Choncho murder, as well as in Nkosi Zondi, who has been survived beside myself. All of these people who...

CHAIRPERSON: Yes, proceed, sir.

MR MHLONGO: Yes, all of these people were killed. There is no one who has been taken to court and stated his case. So we feel that these utterances that was made by the MEC are the one who provoked and encouraged the members of
10 Cato Manor not to arrest our members, but to kill them. As you can see, Mr Choncho was killed sometimes in August and around September about four or five people were killed. And I am saying in a space of one week, four people were killed. In fact, five were killed in the space of seven days.

CHAIRPERSON: According to you, what made the conduct of the police strange in their operation when suspects were arrested? Instead of being taken to the police station, they were then taken to the nearest mortuary. Is that what you are saying?

20 **MR MHLONGO:** That is correct, Chairperson.

CHAIRPERSON: And these people were subsequently killed?

MR MHLONGO: They were all killed, Chairperson.

CHAIRPERSON: Yes, thank you.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. So we

are at Annexure SM4, which is the letter of the 18th of September.

MR MHLONGO: I am there, Chairperson.

ADV NGCUKAITOBI SC: We went through the letter from the police of the 11th of September, which was a plea for help before more lives were lost, and we have gone through it in detail to see the callous and indifferent manner in which the police responded. But your attorneys did not give up. On the 18th of September 2008, they wrote this letter. Now, if you
10 turn over that page, SM4, page 5A-13, it is referring to a letter whose enquiries is Director Naicker. I presume that Director Naicker is the person who actually wrote the letter, although it was signed by the Provincial Commissioner.

MR MHLONGO: I believe so.

ADV NGCUKAITOBI SC: And then it says:

“Your bare, unsubstantiated denial of any
unlawful act by the police has been
noted.”

We have gone through that:

20 “It is most unfortunate that you have responded to the detailed allegations in our letter with a bare blanket denial.”

We have gone through that. And then if you turn over the page, they are now answering these so-called concerns.

Then it says:

“Our main concern, however, is the manner in which you have sought to sidestep our legitimate demands that the constitutional rights, bodily integrity, and safety of our clients be protected. You have sought to do this by repeatedly proclaiming ignorance of who precisely our clients are. You do so despite our letter spelling out with abundant clarity that our clients are the following, the KwaMaphumulo Taxi association, see opening paragraph of our letter dated 5 September 2008. You ought to be aware that it is quite acceptable for our firm to represent the KwaMaphumulo Taxi association as a whole, which includes all of its members. This would be plain to any informed reader.

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4.2. Swayo Mkhize and Gedwana Mhlongo, who we represent in various matters. Paragraph 1 to 6 of our letter dated 5 September 2008 refers.

4.3. Moses Sipho Dlamini, who consulted us following his unlawful arrest and abuse in the hands of the police.

4.4. Magojela and Tembe as individuals in their capacity as members of the KwaMaphumulo Taxi association.

4.5. Ms Sokhulu, who consulted us following the death of her common law husband, Lindelani Buthelezi.”

Now, firstly, it was already clear in the letter of the 5th of September who the clients are. But because the police are pretending not to know who the clients are, the attorneys
10 clarify by name who the clients are. Is that correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Then in paragraph 5, it says:

“You did not address the serious concerns expressed in paragraph 17 and 18 of our letter.”

Is that correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Is that correct that the police sidestepped the issues that were raised in favour of
20 technicalities?

MR MHLONGO: That is correct, Chair. They try every trick on the book to be technical about it.

ADV NGCUKAITOBI SC: Yes. Now, let us look at what happened, actually, after the 11th. Remember, the association says please help us because our people are

being targeted. Now, this is what has happened. Paragraph 7:

“Two of our clients referred to in our previous correspondence dated 29 August 2008 and 5 September 2008, namely, Magojela Ndimande and Thokozani Tembe, were shot and killed by the police on 16 September 2008.”

Is that correct?

10 **MR MHLONGO**: That is correct, Chairperson.

ADV NGCUKAITOBI SC: So that is after the 5th of September where they were told that Mr Ndimande's name is one of those that are in the list to be killed and we are pleading for you to protect him. Then we get a letter on the 11th saying we do not know who your clients are. And then five days later, he is, in fact, killed.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. In circumstances where I would ask for your comment, I mean, had the police really
20 done their job, the life of Mr Ndimande would have been saved. Do you agree with that?

MR MHLONGO: I fully agree with you, Chairperson. If they have acted in a proper manner, the life of Tembe and the life of Mr Ndimande should have been saved.

ADV NGCUKAITOBI SC: Yes. Now, and then it says:

“The official press release issued by Senior Superintendent Henry Butaran [?] indicates that the two deceased were being sought by the police for the murder of Senior Superintendent Choncho.”

Now, I assume that document is what we see at SM3, at 5A-11. That is the press release.

MR MHLONGO: That is correct.

ADV NGCUKAITOBI SC: Now, if you look at that press release, which is, I think it is issued by Senior Superintendent Henry Butaran. It is firstly, the heading says, which is at 5A-11, suspects apprehended. Do you know what it means to apprehend?

MR MHLONGO: Yes, it means someone has been caught or has been incarcerated or catch.

ADV NGCUKAITOBI SC: Yes, precisely. But if you look at the following page, these suspects that have been incarcerated are Mr Magojela Ndimande and Mr Tembe, which is at 5A-12, towards the end of that email.

MR MHLONGO: That is correct.

ADV NGCUKAITOBI SC: Were those people incarcerated?

MR MHLONGO: No, they were killed.

ADV NGCUKAITOBI SC: Yes. So, even this press release is actually misleading because it pretends in the heading that these were apprehended suspects. But only when you read

the body of the document, you see that actually they killed them. They called it fatally wounded. They were not trying to wound them, they were trying to kill them.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. So that is what is referred to in paragraph 7, 5A-15, when it says the official press release issued by Senior Superintendent Henry Butaran indicates that the two deceased were being sought by police for the murder of Senior Superintendent Choncho. And there is something
10 else about this. I mean, what do we know about these two? Well, we do not know anything about Mr Tembe. Was Mr Tembe ever sought for the killing of Mr Choncho?

MR MHLONGO: We never heard of the name of Mr Tembe. It was only Ndimande who was mentioned.

ADV NGCUKAITOBI SC: Yes, this is the point, because in the press release by the police they mix that up and they do not separate Mr Tembe, who was a bodyguard, from Mr Ndimande. You see that?

MR MHLONGO: I see that, Chairperson.

20 **ADV NGCUKAITOBI SC**: Yes, but we also know something about Mr Ndimande that, in fact, he had been detained. And what happened to him according to the letter that we looked at earlier?

MR MHLONGO: Mr Ndimande, he was detained at eMthunzini. He was released because they said there is no

evidence against him.

ADV NGCUKAITOBI SC: Yes, and now suddenly he is now also sought for the murder when they have released him on the basis that there is no evidence.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Now, then the letter continues at paragraph 8:

10 “We demand to know why our specific undertaking in paragraph 19 of our letter, dated 5 September, to surrender our clients, including the two deceased, to the police, was not acted upon and why it was necessary to intercept our clients in order to arrest them.”

You remember that, that the letter of the 5th specifically said we will surrender them.

MR MHLONGO: That is correct, Chairperson.

20 **ADV NGCUKAITOBI SC:** Yes, and there is a response on the 12th which is dismissive and evasive, and then on the 16th he is then killed.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes, paragraph 9:

“We further demand to know why the police sought our clients when they had been arrested and questioned by the

police on 29 August 2008. You are reminded that they were released following that questioning on 29 August 2008. We fail to understand how they could be considered suspects in these circumstances.”

You remember that?

MR MHLONGO: That is correct, Chairperson. I have said that they went to eMthunzini Police Station and they were
10 released.

ADV NGCUKAITOBI SC: Paragraph 10:

“We demand a transparent investigation into the deaths of these two deceased and into the death of Lindelani Buthelezi. We hereby advise that we have appointed a ballistic and forensic expert to undertake
20 investigation on our behalf and require that he be given access to the available evidence in order to perform his function. You are further advised that we have employed the services of private investigators to investigate the circumstances of the three killings in question.”

Now, you may or may not be aware of this, but Mr Steyl was

the appointed investigator, ballistic expert by the association.

Do you know?

MR MHLONGO: That is correct, Chair, and I was in consultation with Mr ...[indistinct] because of last week to brief me as he was also the Deputy Chairperson of the association. He did confirm that Mr Steyl was appointed by the association.

ADV NGCUKAITOBI SC: I see. Then paragraph 11:

10 “We pertinently repeat paragraph 17 to 18
of our letter dated 5 September 2008. In
order to avoid any proclaimed confusion
on your part, we have added a list of all
the members of the KwaMaphumulo Taxi
Association in this letter. In addition
thereto, we specifically mention the
following individuals who have been
directly or indirectly threatened. Bongani
Elphias Mkhize, Nkosinathi Wilson
Mthembu, Johannes Ntuli aka Kopolota.”

20 Do you know these names?

MR MHLONGO: That is correct, Chairperson. As we go along, we will see these members being killed. Bongani Elphias Mkhize, he was the chairperson during the time. Nkosinathi Wilson Mthembu, he was a member of the association. And Johannes Ntuli as well was a member of

the association. Both of these guys, or three of these guys were killed later on. You will see as we go along.

ADV NGCUKAITOBI SC: Yes, but again, the point here is this. This is now the 18th of September. They are also again warning, they had already warned them on the 5th that we know these people are also supposed to be killed. On the 18th they say here are further names that have received threats to their lives. Now on your testimony, these three names are also subsequently killed.

10 **MR MHLONGO:** That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. Then they say:

“This matter will be referred to the Human Rights Commission and to the Public Protector for their intervention.”

Do you know if it was referred to the Human Rights Commission and the Public Protector for their investigation?

MR MHLONGO: As far as my understanding, we have not received anything from these bodies.

ADV NGCUKAITOBI SC: Yes. Now, to just go back to your
20 statement, we can skip 54 to 63, and we then go to the letter of the 23rd of September 2008, which is referenced in paragraph 64. That letter you will find at SM5, page 5A-18.

MR MHLONGO: I am there, Chairperson.

ADV NGCUKAITOBI SC: Yes, now ...[intervenes].

CHAIRPERSON: I beg your pardon. Do you confirm, Mr

Mhlongo, that these matters were subsequently referred to the Human Rights Commission and the Public Protector? Do you know?

MR MHLONGO: That is correct, Chairperson.

CHAIRPERSON: Were they?

MR MHLONGO: That is correct, Chairperson. Yes, Chairperson, as you see, the letters were addressed to these bodies.

CHAIRPERSON: Yes, thank you. I thought that you said
10 you were not aware.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: But I see in paragraph 35 you speak to that aspect. Thank you.

ADV NGCUKAITOBI SC: Yes, thank you, Madam Chair. Now, if I take you to SM5, 5A-18.

MR MHLONGO: I am there, Chair.

ADV NGCUKAITOBI SC: Now, this is now the 23rd of September 2008. Your attorneys, Hlapane attorneys, are now writing to the Human Rights Commission, the head of the
20 Independent Complaints Directorate, the National Police Commissioner, and the Public Protector. Is that correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: And then here, the heading is Complaints Against the Organised Crime Unit in Durban. Now, the Organised Crime Unit in Durban is the Cato Manor,

that is what we are dealing with. Correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. Now, so they have now moved from everyone has been told. We have told Mr Cele, we have told the Provincial Commissioner, we are now telling the Human Rights Commission, ICD, the National Commissioner, and the Public Protector about what is going on. Is that correct?

MR MHLONGO: That is correct.

10 **ADV NGCUKAITOBI SC**: And why was there a feeling that this must be escalated to the national bodies?

MR MHLONGO: Chairperson, if you are in distress, you will try everything to try and seek help. We were desperate, trying to save lives, and there was no one who wanted to assist in the KwaMaphumulo Taxi Association. That was a desperate move for us to say, can you please save our people?

ADV NGCUKAITOBI SC: Yes. Now, I mean, you know the story of these policemen. They say, no, we found Mr Ntuli,
20 he had a gun. We found Mr Mkhize, he had a gun. We found Mr Ndimande, he had a gun. We found Mr Biyela, he had a gun. Everyone has a gun. What is your general response to that consistent justification?

MR MHLONGO: It is a well-known phenomenon in the Organised Crime Unit in KZN that if they kill you, the gun will

be found next to you, regardless that you were driving a car, you were in the toilet, or anywhere. If they have shot and killed you, you will be found with a gun next to you. So it is something that everyone knows, that you will be given a gun to say you were shooting at them. And the question is, why all of them they are being shot at, and how can you write a letter to their superiors and say I will present myself? If you want me, communicate with my lawyers, I will present myself to you, then here comes the police, then you shoot at them.

10 It does not make sense.

ADV NGCUKAITOBI SC: Yes, but I mean, as a person who was inside the association, I mean, what did you know about this idea that your members, all of your members that were killed – I mean, we looked at the six and we looked at the other three, each and every one of them is accused of having tried to shoot at the police. What did you know about this at the time you were in the association? I mean, was it generally understood that your members must carry guns to shoot at the police?

20 **MR MHLONGO:** That is not true, Chairperson. We respect law. We respect law, that is why you see these letters because we wanted to prove to everyone that we are law-abiding citizens, and if the police wants us, we will present ourselves. We cannot carry guns, illegal firearms, and shoot at the police. We will never do that. That has never

happened. I know for a fact that these guns were placed by the police in order to create an impression that these people, they were shooting at them.

ADV NGCUKAITOBI SC: Yes, thank you.

CHAIRPERSON: Counsel?

ADV NGCUKAITOBI SC: Yes?

CHAIRPERSON: If we may pause here for a tea break until quarter to 12?

ADV NGCUKAITOBI SC: Indeed.

10 **CHAIRPERSON:** Mr Mhlongo?

MR MHLONGO: Yes, Chair?

CHAIRPERSON: We will take a comfort break for 30 minutes to have tea. You can stretch your legs and come back at quarter to 12. Would that be okay with you?

MR MHLONGO: Thank you, Chairperson.

CHAIRPERSON: Will 30 minutes ...[intervenes].

MR MHLONGO: That is fine, Chairperson.

CHAIRPERSON: Will 30 minutes suffice for you?

MR MHLONGO: It is fine, Chairperson.

20 **CHAIRPERSON:** Yes, thank you. You are under oath, remember, and you understand what it means that when you are testifying under oath, you do not discuss the matter with anybody as we take an adjournment.

MR MHLONGO: I understand, Chairperson.

CHAIRPERSON: Thank you, sir. We adjourn for 30 minutes.

ENQUIRY ADJOURNS

ENQUIRY RESUMES

CHAIRPERSON: Please caution the witness, we do not want to hear the secrets over there. [Laughter] Good day everyone, good day *Nthati* Chauke, good day, Mr Mhlongo.

MR MHLONGO: Good day, Madam Chair.

CHAIRPERSON: We heard you talking over there, so if you can keep your talk, because we can overhear what you are saying there before your start.

10 **MR MHLONGO:** I am sorry, there was a gentleman here who disturbing me, I am sorry about that.

CHAIRPERSON: No, no, problem at all. Remember you are still under oath, Mr Mhlongo.

MR MHLONGO: I do, Chair.

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

ADV BALOYI-MERE SC: Before Advocate Ngcukaitobi proceeds, may I ask for your indulgence to say something about housekeeping?

20 **CHAIRPERSON:** Yes.

ADV BALOYI-MERE SC: Advocate Ngcukaitobi, we have already gone through most of the attachments, so if you can just wrap it up and be short, because I think we are reading these letters for the fourth or the fifth time, they are in the record. So maybe let us place whatever is not in the record,

but wherever we have already dealt with an issue, let us just, you can confirm with the client, but I am not trying to limit the way that you present your witness. I should not be seen to be doing that, but I am saying we might be a little bit pressed for time. Thank you.

ADV NGCUKAITOBI SC: Thank you.

CHAIRPERSON: Thank you, Counsel.

ADV NGCUKAITOBI SC: Yes, thank you, Madam Chair. Mr Mhlongo, we are at SM5A-18. Is that correct?

10 **MR MHLONGO:** That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. Now, that is the letter of the 23rd of September 2008. That is referred to the Human Rights Commission, ICD, National Police Commissioner, and the Public Protector. Is that correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. Now, in paragraph 37 of that letter, which is at page 5A-32.

MR MHLONGO: I am there, Chair.

20 **ADV NGCUKAITOBI SC:** Yes. Now, you remember that the last letter is the 18th of September 2008, in which the attorneys said they would write to the Human Rights Commission and the Public Protector.

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. But what they record here is that on that day, the 18th of September 2008, two of those

specifically mentioned in the letter:

“Inkosingathi Wilson Mthembu and Johannes Nduli, aka Kopolota, were shot and killed by members of the Organised Crime Unit in a house in Mandini. According to the police, they sought to arrest the two individuals and approached the house with this intention when they, quote, met resistance and were forced to kill the suspects.”

10 Now, in your previous responses here, you mentioned that after the 18th of September 2008, all three that were mentioned in the letter of the 18th were subsequently killed. Now, we see that confirmed, at least in relation to two, that they were killed on that day of the 18th of September 2008. Is that correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Now, those would have been the same names that we see at page 5A-16 and 5A-17. Mr Bongani Mkhize, but the following page, Nkosinathi Wilson
20 Mthembu, Johannes Nduli, aka Kopolota. And those are the names mentioned at paragraph 37.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. Now, again, it is the same theme, which is, the matter has now reached the attention of the provincial office, but no action is taken, but more lives

have been lost. Is that correct?

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: And even after the 23rd of September 2008, even more people get killed. Is that correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. Thank you. So, we can close this chapter on the correspondence, with the last letter being the 23rd of September. So, that is referenced in your
10 statement at 5-13 from paragraph 64 up to 69. So, we can skip all of those. And then we get into a meeting with Mr Bheki Cele, which is paragraph 70 to 81. Can you see that?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Now, did you attend that meeting or did you receive responses from what had happened?

MR MHLONGO: I was not part of that meeting, as it has been mentioned, that the top three of the association was part of that meeting, which was Mr Bongani Mkhize, who was the Chairperson, Mr Tengamandla Ngcobo, who was the
20 Deputy Chairperson, as well as the Treasurer of the association, which was Mr Bhengu, who was Bongani Bhengu, who was part of those discussions.

ADV NGCUKAITOBI SC: Yes. Now, there is an affidavit from one of the members, Mr Bhengu, which is at page 5A-36, from one of the members of your association who

attended that meeting. Is that correct?

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Now, if you look at page 5A-39, paragraph 9, they say that the accused, they confronted him, now that was your association confronted Mr Bheki Cele, and accused him of taking sides against KwaMaphumulo Taxi Association in favour of Stanger and enumerated various historical incidents. And then he made the following statement in Zulu. Can you see that?

10 **MR MHLONGO**: I can see that, Chairperson.

ADV NGCUKAITOBI SC: And what is that statement?

MR MHLONGO: [Indigenous language]

ADV NGCUKAITOBI SC: Yes. Which means what?

MR MHLONGO: This statement was made in response, which means the water is muddy, crocodile willing hunt in them.

ADV NGCUKAITOBI SC: Yes. But, I mean, obviously, it is not a literal meaning, what he is talking about. It has got a hidden meaning in the context of what you were discussing.

20 **MR MHLONGO**: That is correct, Chairperson, as I have said earlier on that I took liberty to go and visit one of the members, the surviving members, Mr Ngcobo, to try and understand, because I was not part of that meeting, to understand in what context that Mr Bheki Cele uttered those words. And he has told me that he remembers very well on

the day because they were trying to reach out to him, he declined to see them. Upon the way they managed to get hold of him using certain individuals who were closer to him, and he called them to the place called True House in Durban. That is where he uttered those words, because they came with the attorney, Mr Bormann, which was not from Hlapane, and he chased them away. He said you will not sit with them if they are coming with an attorney. They will have to sit only if they leave the attorney outside. So that is where he uttered
10 those words.

ADV NGCUKAITOBI SC: Yes, I think the question is what is the hidden meaning behind, the literal meaning?

MR MHLONGO: For me it means that you are getting to a very dangerous zone or you have entered a place where there is danger because we all know that the crocodile, you cannot be in the same pond or a pool with them. If you have to encounter a crocodile, you will get killed.

ADV NGCUKAITOBI SC: Yes, so who has entered the dangerous zone?

20 **MR MHLONGO:** That would mean KwaMaphumulo Taxi Association.

ADV NGCUKAITOBI SC: Yes, thank you. Now, you have dealt with that from paragraph 70 to 81 of your statement. But you also say something here, paragraph 79, which is of your statement, 5-16. It says:

“As we left, Mr Cele remarked, you must remember that this is war.”

MR MHLONGO: That is what Mr Ngcobo told me, that as they were leaving, he told them that they should remember this is war. In the war there are casualties.

ADV NGCUKAITOBI SC: Yes, and how was that interpreted by the association?

MR MHLONGO: It means that the association is fighting with the state or the government of KZN or the police in KZN.

10 **ADV NGCUKAITOBI SC**: Yes. Now, how did this happen to be a scenario in which your association was perceived as fighting with the government? I mean, what were you expected to do to end the war? Usually in a war, there is a war demand. But what are you expected to do from your side to comply?

MR MHLONGO: For them, I think it was for the association to surrender the routes that was contested between these two associations.

20 **ADV NGCUKAITOBI SC**: Yes, but what would be the interest of Mr Bheki Cele in ensuring that your association surrenders the routes to Stanger?

MR MHLONGO: I am not sure why he wanted us to surrender, but because the only dispute that was between these two associations was about these routes, I would think, as a layman, that if he utters those words, he means that you

have to surrender because this war is about the routes in these two associations. Because we never had a problem with the police before, but the only time where we started to see people killed by the police, it started only after there is the fight between these two associations.

ADV NGCUKAITOBI SC: Yes, I understand that could be the demand of Stanger that give us the routes, we will leave you alone. But why would Mr Bheki Cele also be interested in your surrendering the routes to Stanger?

10 **MR MHLONGO:** Chairperson, I would think he would be the better person because he is still alive to be called by the Commission and come and say why he was saying those words.

ADV NGCUKAITOBI SC: Yes, thank you. All right, that covers your involvement in matters relating to Senior Superintendent Choncho. I want to move on now to matters relating to the murder of Inkosi Zondi. That starts at paragraph 82 from page 5,-16.

MR MHLONGO: I am there.

20 **ADV NGCUKAITOBI SC:** Yes, are you here?

MR MHLONGO: I am there, Chairperson.

ADV NGCUKAITOBI SC: All right, thank you. Now, if we start at paragraph 82, we know that Inkosi Zondi was killed on the 22nd of January 2009 and you then were arrested in relation to that murder. Do you remember that?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: And you were arrested on the 3rd of February 2009, correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. And at the time of your arrest, you were at the FNB in Stanger to deposit money and you were apprehended by members of the National Intervention Unit, correct?

MR MHLONGO: That is correct, Chair.

10 **ADV NGCUKAITOBI SC**: Yes. And then when you were apprehended, which is at paragraph 85, you had a cash amount of R30,000. Is that correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. But you say only R12,000 was later returned.

MR MHLONGO: That is true, Chairperson. Just to give you the context on the occurrences before my arrest. During that time, I had four taxis and if you can look at the time, we normally make a lot of profits when it is in the beginning of
20 the month. Four of my taxis, I usually or I used to collect money every Monday. On that particular week, my wife, she was on leave and she was working in the northern of the KwaZulu Natal and she was on leave from January up until February. I had to take her to where she was working, at her place of work.

During that time, I received a call from one of my friends who was telling me that Swayo has been arrested by the police at the rank. I drove all the way to drop off my wife on the 2nd. On the 3rd, I came back. Remember, the 2nd was on Monday and I was unable to collect the monies from my taxis. So I collected those monies and some of the monies were left in one of the guys whom I believe now, he is the one who told the police where I am going to. I collected that money. It was over R30,000. Then I went to deposit the
10 money into the bank.

As I was counting the money, I saw that a white golf-marked police vehicle came from the other side. Suddenly, I heard someone knocking in my window, asking me to wind down my windows. I opened the windows. I saw that there was police. They were pointing guns at me and they asked me to leave the money there on the seats. I left the money, the phones and everything in the seat. They put me behind the car. They made me to sit. And I heard the sound of sirens coming and that money was there.

20 So I believe the money was going to be kept by the police. So I was surprised that later on, when my family was asked to come and collect my items, the money that was given to them was only R12,000.

ADV NGCUKAITOBI SC: Yes. Now, then you were transported to a park in Stanger, which is paragraph 86 and

your rights were not read out to you, correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Now, when you were ...[intervenes]

MR MHLONGO: But...

ADV NGCUKAITOBI SC: Yes.

MR MHLONGO: But I would like to say something on that as well, Chair.

ADV NGCUKAITOBI SC: Yes.

MR MHLONGO: Because I was not firstly taken to the park.

10 Firstly, I was taken to the taxi rank, where they asked me to show them Mr Nzuzza, Mr BM Nzuzza. They closed the rank before they took me to the park. From FNB, we went to the taxi rank to look for Mr Nzuzza, and they could not find him. Then they took me to the park, where I was beaten there for the first time.

ADV NGCUKAITOBI SC: Just explain the reference to Mr Nzuzza. What was the relevance of Mr Nzuzza?

MR MHLONGO: They said they were looking for Mr Nzuzza.

Mr Nzuzza was also the member of the KwaMaphumulo Taxi
20 Association.

ADV NGCUKAITOBI SC: Yes. So you were meant to go to the taxi rank to point him out?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Then did that happen? Did you go to the taxi rank?

MR MHLONGO: We did proceed to the rank, and because they did not know him, he was able to move around and be able to escape.

ADV NGCUKAITOBI SC: So when you arrived there, you also could not find him?

MR MHLONGO: We could not find him. That is correct, Chair.

ADV NGCUKAITOBI SC: Okay, and then from there, they took you to the park?

10 **MR MHLONGO**: They took me to the park. That is where the beating started, and they did not even tell me what I was arrested for by the time.

ADV NGCUKAITOBI SC: Yes. How many officers are we talking about here?

MR MHLONGO: Oh, it will be not less than 20.

ADV NGCUKAITOBI SC: Not less than 20 officers?

MR MHLONGO: That is correct, because the number of vehicles there, if I can recall, there was a bakkie. There was a couple of bakkies because I was put... First time they took
20 me from FNB, outside the FNB, I was put in a double-cab bakkie. Then we drove to the rank. While we were at the park, there was a couple of vehicles, including that Golf that I mentioned, the kombi, the Toyota Quantum. There was a BMW. There was a couple of bakkies. A couple of vehicles were there, that I can recall.

ADV NGCUKAITOBI SC: Now, your statement refers to the NIU, which is the National Intervention Unit, as the persons who arrested you.

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Were you aware at the time, or did you subsequently gain this knowledge?

MR MHLONGO: I subsequently gained that knowledge as we were making applications, the bail applications in court, that in fact these members were members of the NIU, but
10 which I will dispute it later because there were members of the Cato Manor Unit who were there, two African ones. I cannot remember their names, but I know that they were there, the one who transported me to Durban.

ADV NGCUKAITOBI SC: Yes, all right. While we are still at the time you were at the park, so you are taken from the taxi rank and then you have to go and look for Mr Nzuzza. You do not find Mr Nzuzza. They take you to the park and then at paragraph 87:

20 “At the park the officers began assaulting me by punching and kicking me.”

Yes, can you just deal with that?

MR MHLONGO: That is correct, Chair. I was assaulted in the park and luckily there was an Indian lady because that park is in the residential area. That lady who saw that what was happening, she screamed at them telling that they must

not kill, they must not do what they are doing to me. And they decided now that they should put me into that BM, the grey BMW, which was driven by the two African males.

ADV NGCUKAITOBI SC: Yes.

MR MHLONGO: Then we proceeded to Cato Manor by then.

ADV NGCUKAITOBI SC: Yes. Well, there is still a fact here in paragraph 87. It says:

10 “During this assault, an elderly Indian woman approached and shouted at the officers.”

Can you deal with that?

MR MHLONGO: That is what I was referring to, Chairperson, that during that time while I was at the park, because I was keep on asking questions, why I am arrested, I am arrested for what, then this is when they were kicking and assaulting me and the lady saw that happening and she screamed at the police and saying, you cannot do this, this is not an appropriate time. You should take a person to the police station if you want to, but you cannot do it like this. And I
20 think maybe that is what prompted them to take me to that grey BMW. Then I was transported to Durban.

ADV NGCUKAITOBI SC: Yes and then you say in paragraph 88:

“I was then transported in the great BMW driven by a black male officer from Stanger

to the offices of the Cato Manor Unit.”

MR MHLONGO: That is correct.

ADV NGCUKAITOBI SC: Yes.

MR MHLONGO: That is correct, Chairperson. It happened in that fashion.

ADV NGCUKAITOBI SC: And then:

“There were other police officers in the vehicle, although I was uncertain which units they belonged to.”

10 Which vehicle is this?

MR MHLONGO: There were a number of vehicles that escorted us from Stanger to Durban. I think the whole vehicles that were there at the park, we drove all the way to Durban with them. It is just that when we get to Cato Manor, I did not see where they disappeared to. But as we were passing all the toll gates, I could remember there were a number of vehicles, including my vehicle, and my vehicle was taken by the police. It was driven by an African guy, a tall one, and was thin in built with a khaki hat that he was wearing. I could remember because he was driving my vehicle like he is driving a stolen vehicle.

20

ADV NGCUKAITOBI SC: All right and then you say:

“During the journey to Cato Manor, the officers repeatedly pressured me to admit that I had participated in the murder of Mr

Zondi.”

Can you just deal with that?

MR MHLONGO: That is correct, because I was persistent, Chairperson, to ask why I am arrested. I am arrested for what? And they subsequently told me that, yes, you have killed the Ingo Zondi. You need to tell us what was your role.

ADV NGCUKAITOBI SC: And then, did you admit or did you not admit?

MR MHLONGO: I told them that I do not know. I have never
10 been participated in that, and I was never in Umlazi by any chance during that time.

ADV NGCUKAITOBI SC: And how did they respond to that?

MR MHLONGO: They told me that if I want to be alive, I have to admit what they are telling me to admit.

ADV NGCUKAITOBI SC: Yes. Then, you finally arrive at Cato Manor, which is at paragraph 90. What happened when you got there?

CHAIRPERSON: Is that, what you have just said, Mr Mhlongo, when you say that they told you that if you wanted
20 to save your life, is that what you mean when you say that they said that:

“If I fail to disclose my alleged involvement,
I will meet my fate.”

Is that what you understood them to mean?

MR MHLONGO: That is correct, Chairperson.

CHAIRPERSON: Proceed, Counsel.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. Mr Mhlongo, so you finally arrive at Cato Manor, which is, I presume, this is still the 3rd of February after your arrest at about 2 o'clock from the taxi rank. Is that correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: And what happens when you arrive at the Cato Manor police station?

MR MHLONGO: As we get into Cato Manor office, there were
10 a number of white guys, well-built, because I did not know their name, they did not introduce themselves to me and I was taken to that office of them, where it is written on the wall, do not say *angazi*. Then I was asked to strip naked.

ADV NGCUKAITOBI SC: So it is written on which wall?

MR MHLONGO: As you enter at the front of the room, you will see on the wall, it is written, do not say *angazi*, in red paint.

ADV NGCUKAITOBI SC: Which means what?

MR MHLONGO: You do not say I do not know.

20 **ADV NGCUKAITOBI SC:** Yes. Now, just to, before we get there ...[intervenes]

MS RAMAGAGA: Just before, this *angazi*, is it written in big letters, red letters, or just ordinary letters, sir?

MR MHLONGO: It is written in broad, in big letters, Madam Chair, on the wall. As you enter, you see that, if you come

here, you do not say *angazi*.

MS RAMAGAGA: So you are greeted by the big letters, red letters that say *angazi*.

MR MHLONGO: That is correct, Chairperson.

MS RAMAGAGA: Okay, that is fine, thank you.

ADV NGCUKAITOBI SC: Yes. Now, we will deal with that shortly, but I need you to complete paragraph 90. When you arrive there, who are the officers that welcome you into Cato Manor?

10 **MR MHLONGO**: I was later established, it was Captain van Tonder, Inspector Mostert, and Inspector Maharaj.

ADV NGCUKAITOBI SC: Yes. Well, there is a mention here of Inspector Pandey. Was he among them or not?

MR MHLONGO: He was there, because there was a couple of police officers there. I only get to know them, as I have said, Chairperson, that these people, they do not introduce themselves, and you never met them before. You get to know

them as you go along, that this is who. And I get to know them after, during the case, or during my trial, or during the
20 bail application, that these guys were Van Tonder, this was Mostert, and this was Inspector Pandey.

ADV NGCUKAITOBI SC: Yes. I mean, at the time you entered, you did not know them, but...

MR MHLONGO: I did not know...

ADV NGCUKAITOBI SC: Yes, over time.

MR MHLONGO: I did not know them, Chairperson.

ADV NGCUKAITOBI SC: Yes. Over time, you have established their identities.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Now, Mr van Tonder, Mr Mostert, Mr Maharaj, and Mr Pandey, it is common cause in this proceedings are all members of the Cato Manor Unit, and are accused in various atrocities. Now, when you were there, you say you repeatedly asked them for permission to contact your partner, Nolwazi. Is that correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Then what happened to that request?

MR MHLONGO: They refused. They refused to give me access to my wife and my family, or even to contact my lawyer. I was refused, and the reasons for that was for them to be able to beat me in order for me to accept and implicate myself in the crime.

ADV NGCUKAITOBI SC: Yes, all right. Now, you are then taken to this room where you will be interrogated. Paragraph 91. Is that where it is written on the wall, do not say *angazi*?

MR MHLONGO: That is where when you enter, you see on the wall it is written do not say *angazi*.

ADV NGCUKAITOBI SC: Yes. Now, then in paragraph 92:

“During this interrogation, I was subjected to

severe physical and psychological torture.”

Is that correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: And then from paragraph 93, you set out what actually happened during the torture and interrogation. Is that correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Perhaps you should explain in your own words what actually happened.

10 **MR MHLONGO**: As I walked in, there were a couple of personnels inside the room. The office is a big, it is like a hall. It is open with a lot of desks inside, on the side, but on the centre you will find it is an open space. That wall written, as I have said, do not say *angazi*, the chair was placed in the centre of the room and I was asked to strip naked and I was so uncomfortable because there were females here who was part of, or who was in that room. I stripped my trouser, my shoes, my shirt that I was wearing, but I could not take off my underwear. But because I was refusing to do that, that is
20 when they started kicking and torturing me.

ADV NGCUKAITOBI SC: They were kicking you and torturing you because you refused to take off your underwear.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes, and then what happens next?

MR MHLONGO: And I had to agree because I did not have

power. These people, they were a lot, if maybe it was one or two, I was going to be able to fight them, but there were so many for me and I had to comply. They forced me to sit on a seat.

ADV NGCUKAITOBI SC: So when you say comply, you mean you took off your underwear?

MR MHLONGO: I took off my underwear. I was completely naked in front of female officers.

ADV NGCUKAITOBI SC: Yes, all right. Now, these officers
10 you have mentioned here, Captain van Tonder, Inspector Mostert, Inspector Maharaj, Inspector Pandey, were they present during this interrogation?

MR MHLONGO: They were there, Chairperson.

ADV NGCUKAITOBI SC: Yes, so now we are at the stage where you are completely naked. What happens then?

MR MHLONGO: I was, my arms were pulled over the back
rest of a chair. I was handcuffed, and I was told that if I want
to talk, I will have to stamp my foot on the floor to say I want
to talk and my body was, they used a rope to put, to tighten
20 me on the chair so that I could not move. And on that back
rest of a chair, someone, one of them was pressing me with
a shoe so that I could not move. Then they placed the plastic
over my head so that I could suffocate.

It was done that repeatedly up until I urinated myself, defecated myself, not once but a couple of times. At some

point, I was unable to move. I was unconscious, and they threw water at me a couple of times, repeatedly, because I did not know what to say to them. As you will see as we go along, that I was there as early as 4 o'clock up until 20h00.

ADV NGCUKAITOBI SC: As early as 4.00pm?

MR MHLONGO: That is correct, Chairperson?

ADV NGCUKAITOBI SC: Yes. But what were they saying to you? Because presumably there is something they wanted you to say that you are not saying.

10 **MR MHLONGO:** They wanted me to implicate myself or say what I have, what was my role in the killing of Inkosi Zondi, which I was giving them a wrong story because as you are beating, you are trying to say something, and you place yourself where you are not supposed to place yourself and as I was trying to do that, I think it is because I was giving them the wrong statement, not the one that they were looking for. That is why I was kept there for that long.

ADV NGCUKAITOBI SC: But what do you mean you were giving them the wrong statement?

20 **MR MHLONGO:** I was implicating everyone, Chairperson. If you are there, you have to create a story to say, I have killed someone, and I was with someone else so that you can survive. Otherwise, if you say you do not know, you will be killed.

ADV NGCUKAITOBI SC: Yes. So is that what you mean in

paragraph 93.6?

“I was repeatedly threatened and pressured to implicate myself in the murder.”

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes and then you also mentioned Mr Mkhize, who then comes in during your interrogation. Can you just deal with that?

MR MHLONGO: Later on the day, Chairperson, Mr Mkhize, who was accused number 1, was brought to the room. He
10 came there screaming because the firearm was put in his forehead. He came crying and said to me, please say whatever they wanted you to say so that you can survive. I asked him, what do you mean? He said, just agree to say we are the ones who killed Inkosi Zondi.

ADV NGCUKAITOBI SC: Yes.

MR MHLONGO: And he also said that I have to mention Bongani Mkhize as the person who was also involved in the killing of Inkosi Zondi.

ADV NGCUKAITOBI SC: Yes.

20 **MS RAMAGAGA**: Mr Mhlongo, this person, this Swayo Mkhize, that actually appeared to be under a threat of being killed with the firearm against his head, is he the very person that you collected your taxi proceeds from?

MR MHLONGO: No, Chairperson, he is not. Swayo was accused number 1 in this matter of Inkosi Zondi. He was

already incarcerated on the 2nd and was arrested on the 3rd.

MS RAMAGAGA: I will check my notes again, but I think you spoke about Swayo earlier on, but that is fine, thank you. I will cross-refer, thanks.

ADV NGCUKAITOBI SC: Thank you.

MR MHLONGO: I am sorry, Chairperson, I did not hear Commissioner, what the Commissioner was saying. It was not audible this side.

MS RAMAGAGA: Okay. Ja, I say I will have to check again.

10 Thank you, but my sister, Chairperson, has just shown me that paragraph that makes reference to Swayo. Thank you, Mr Mhlongo.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: He was one of your co-accused with Mr Kedwane Mhlongo.

MR MHLONGO: Not in this matter, Chairperson. Kedwane and Swayo, they were attending another matters which was involving them. Kedwane was not part of this matter. This matter of Inkosi Zondi, it was, the accused was Swayo, myself, Bongani Mkhize, I believe, and the Ndimande
20 brothers. As we go along, you will see that they were all killed as well.

CHAIRPERSON: And Mr Kedwane is the gentleman who attended the court proceedings when you and Mr Swayo Mkhize were co-accused.

MR MHLONGO: No, no.

CHAIRPERSON: I am looking at your affidavit at paragraph 21, where you say:

“On 21st August 2008, Mr Makhosabo Swayo Mkhize, my co-accused in Bhekithemba CAS number ..., and Mr Kedwane Mhlongo attended court in Pietermaritzburg for a matter in which they were already on bail.”

But was he at any stage, Mr Swayo Mkhize, your co-accused?

10 **MR MHLONGO**: Chairperson, Swayo Mkhize was the accused, was my accused, in the case Bhekithemba CAS 113/01/2009. But, there is a matter which they were on bail on the 25th of August 2008. The matter was in Pietermaritzburg. It is a different matter, not the Bhekithemba one.

CHAIRPERSON: Yes, thank you.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. So if you look at paragraph 93.8 of your statement.

MR MHLONGO: Yes, Chairperson.

20 **ADV NGCUKAITOBI SC**: Yes. What happened there?

MR MHLONGO: During the interrogation, Chair, I was shown a picture of Mr Bongani Mkhize, who was my chairperson by the time. Remember, by the time I was arrested, I did not know that Mr Mkhize was killed. I was only shown a picture of him dead, leaning towards the steering wheel of a vehicle.

And they told me that if I do not agree or I do not cooperate with them, they will do the same to me and eventually, at that time, the information was not available to me to know that Mr Mkhize was already been killed.

ADV NGCUKAITOBI SC: Yes and then what did you say in response to being shown a picture of Mr Mkhize lounging in his vehicle after being killed? That vehicle was the black Lexus.

MR MHLONGO: [No audible answer]

10 **ADV NGCUKAITOBI SC:** I think the witness must have frozen. Can you hear us, Mr Mkhize?

MR MHLONGO: That was the Lexus. Yes, Chairperson. I think, yes, I can hear you, Chair.

ADV NGCUKAITOBI SC: I am asking about that vehicle that you say he was, you were shown a picture of Mr Mkhize lounging inside his vehicle. We have seen that picture before. It is a black Lexus. And Mr Mkhize is wearing a light T-shirt and a pair of jeans.

MR MHLONGO: That is correct, Chairperson. It is the same
20 picture that you see is the same picture that was shown to me.

ADV NGCUKAITOBI SC: Yes and in response to being shown this picture, what did you say?

MR MHLONGO: I vehemently deny that there was involvement up until they brought Swayo where he

collaborated in this story. I agree to that story because I saw, if I do not agree, I am going to...

ADV NGCUKAITOBI SC: I think we are losing connection.

MR MHLONGO: On my side, it is still clear.

CHAIRPERSON: Mr Mhlongo?

MR MHLONGO: Yes, Madam Chair.

CHAIRPERSON: We are losing you intermittently. Do you have somebody around you from IT?

MR MHLONGO: I will... I will say here I believe there should
10 be a technician around because I have asked for the technician if he is around if we find it difficult.

CHAIRPERSON: We keep on losing you. But you are now back on the screen. Counsel, proceed.

ADV NGCUKAITOBI SC: Yes, thank you. Now, in paragraph 93.9, you say you were again assaulted and suffocated and instructed to agree to conduct a pointing out on 4 February 2009. Is that correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: What was this pointing out for?

20 **MR MHLONGO:** It was for them to implicate myself in this crime.

ADV NGCUKAITOBI SC: Yes, but what were you going to point out?

MR MHLONGO: They said I need to go and point out the crime scene where Mr Zondi was shot and killed.

ADV NGCUKAITOBI SC: Yes, thank you. Now, you say in paragraph 94:

“Throughout the interrogation, the officers insisted that the police had sufficient information to arrest me, yet I knew that there was no such evidence.”

What do you mean here?

MR MHLONGO: I knew that I was never involved, Chairperson, in this case. During the day of the incident, 10 which was the 22nd of January 20, 2009, I was at home with my family. My wife, she was with me. I had an alibi that my wife, we were together on the day. On that particular day, I had a meeting with the members of Kranskop Taxi Association. I was part of that meeting. I had an alibi, but they decided to ignore all that and implicated me in this case.

ADV NGCUKAITOBI SC: Yes. Now, in paragraph 95, you say that:

20 “During the course of the interrogation, members of the Cato Manor Unit presented me with a prepared warning statement and attempted to compel me to sign it to indicate that I was willing to conduct a formal pointing out.”

What do you mean here?

MR MHLONGO: It will appear, Chair, that during the trial,

that there was a proof that these people, all these things were done without following the proper and the correct way of doing things. As we go along, that will be seen by the Commission that definitely the pointing out was well prepared and at some points, I was made to put thumbprints whereas I am able to read and write.

ADV NGCUKAITOBI SC: Yes. But what I am saying is that the statement that was put to you had been prepared already by them or was it a statement you were supposed to write
10 from scratch?

MR MHLONGO: It was supposed to be written in my presence, but it was well prepared. Then I was only compelled to put my thumbprints and sign.

ADV NGCUKAITOBI SC: Then in paragraph 96, you say:
“I was forced to sign a warning statement recording that I was willing to conduct a pointing out in order to assist the investigation. I did not voluntarily agree to do a pointing out. The warning statement
20 had already been completed in advance by members of the Cato Manor Unit and was later signed by Warrant Officer Zungu the following day. The warning statement is attached hereto as annexure SM7.”

Can you just deal with that? That is the question I was asking

you earlier, whether this is a pre-prepared statement which you are simply asked to attach your signature or is a statement you have to develop together with the police as you do ordinarily in the absence of coercion?

MR MHLONGO: As it was the first time, Chairperson, to be arrested, I thought it is the correct way of doing it, but during the time that in consultation with my lawyers, they established that this, as I have said, all these things were done only for me to come and, as you can see, on SM7, there
10 is only my thumbprint. There is none of my signature there. That one, as well, it was suspicious to the Court to say why I was not signing, why did I put a thumbprint, because I was only compelled to put a thumbprint.

ADV NGCUKAITOBI SC: If we then go to that warning statement, which is 5A-42...

MR MHLONGO: I am there, Chairperson.

ADV NGCUKAITOBI SC: Now, the first thing there that I need your comment on is under item 4, where it says here:

20 “Do you want to exercise any of these
 rights?”

Now, that is the right that has been encircled under item 2(f)(i), which is to communicate or to be visited by a spouse or partner and the answer there is yes, and it is recorded that you phoned Nolwazi, and then it gives a number, and that is at variance with your testimony that you were actually

prevented from calling a spouse or partner.

MR MHLONGO: Yes, Chair, that is correct, and unfortunately they were not talking the truth, because the facts would present itself as we go along that my legal team was able to receive the phone records of my wife Nolwazi to show them that she was not called on the day that they said they called her on the 3rd, but she was only called on the 4th after the pointing out.

ADV NGCUKAITOBI SC: Yes, so this statement here, when
10 you say you were forced to sign a warning statement that contains inaccuracies, will this be one of the inaccuracies?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Now, the same appears at item 6, where it gives you a choice to either phone a family member or a legal practitioner, and here it presents it as if you elected to phone a family member, which is Nolwazi, instead of phoning a lawyer. Was this correct?

MR MHLONGO: That is not correct, Chairperson. I will refer
20 again to say you will see as we go along that Mr Zungu was not even at Cato Manor on the day. He only came to see me on the 4th, later in the evening. That will be confirmed by the cell phone records of my wife, because I was only able to call her on the 4th, around 07.00 in the afternoon or in the evening, after the pointing out has been done.

ADV NGCUKAITOBI SC: Yes, and then just immediately

below that on the left, it gives the time when you supposedly made this choice of not calling a lawyer but phoning a family member on the 3rd of February 2009 at 19h00, that is 07.00pm. Was this correct?

MR MHLONGO: That was incorrect, Chairperson.

ADV NGCUKAITOBI SC: And then on the right side of that same line there is the signature of the accused, and that is the right-hand thumbprint. Is that correct?

MR MHLONGO: That is correct, Chair.

10 **ADV NGCUKAITOBI SC**: And what is your comment on that?

MR MHLONGO: Chairperson, I am able to read and write. There was no reason for me to put a thumbprint there when I am able to sign.

ADV NGCUKAITOBI SC: Yes, but why did you put it?

MR MHLONGO: I was coerced to do it.

ADV NGCUKAITOBI SC: Yes. What do you mean you were coerced? It was part and parcel of the interrogation and the assault and the torture?

MR MHLONGO: That is correct, Chairperson.

20 **ADV NGCUKAITOBI SC**: Yes. Now, and then, so that is the 4th element, and then there is a 5th element here that they say that the statement was interpreted from English to Zulu and vice versa, and then it gives the signature of the interpreter. Would there be a reason why you would insist on a translation of the statement from English to Zulu?

MR MHLONGO: There was no reason for that, Chairperson. As I am doing it now, I am able to communicate with you using my little English that I have.

ADV NGCUKAITOBI SC: Yes. Was that statement accurate, then, that there was an interpretation from English to Zulu?

MR MHLONGO: There was none.

ADV NGCUKAITOBI SC: Yes. Now, this person who signed as the interpreter, who is he? Do you know?

MR MHLONGO: This signature looks like of Mr Zungu.

10 **ADV NGCUKAITOBI SC**: Yes. Yes, it does. Then, if you look, then, under the, after the signature of interpreter, those are the names, full names, Sibusiso William Zungu, and then it gives a rank and a PERSAL number. Is that correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. Now, it seems that everything that is contained here is false.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. So, is this what you mean in paragraph 96, when you say you have, the warning statement
20 had already been completed in advance by members of the Cato Minor Unit and was later signed by Warrant Officer Zungu the following day, because here it appears as if it is signed on the 3rd of February 2009, but your testimony is that it is actually signed on the 4th of February.

MR MHLONGO: I wish, Chairperson, we had the full bundle

of the, but we have got the transcript of what happened in court, because that as well will be, you will see on the occurrence book where I was kept at Sydenham police station that Zungu only came and visited me only on the 4th, not on the 3rd. He was never around on the 3rd.

ADV NGCUKAITOBI SC: Yes, I understand. So, that is why you are saying actually all of the information that is here is false, and we have gone through this page now.

MR MHLONGO: That is correct.

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

CHAIRPERSON: And what is the handwritten, what are the handwritten words next to the thumbprint? Are you able to read that? I am struggling to read that, Counsel.

ADV NGCUKAITOBI SC: Yes, well, I can only see the signature, which is SW Zungu.

ADV BALOYI-MERE SC: Is not it R-H-T-D, right hand thumb?

ADV NGCUKAITOBI SC: Yes, but there are words there just before the R-H-T-P.

20 **CHAIRPERSON:** Witness, Mr Mhlongo, are you able to tell us what is written there?

MR MHLONGO: I am trying to see. It is difficult, but I can see there is SW Zungu. I think there is R-H-I-P or something.

ADV NGCUKAITOBI SC: It is T-P. Well, we can see that. It is really the words above SW Zungu that we cannot see.

All right, it looks like it is Mr Zungu's force number, 06281559.

MR MHLONGO: I think that is correct, that is correct, Chair.

ADV NGCUKAITOBI SC: Actually, it is his rank and force number and his signature. Yes, that is what it is.

CHAIRPERSON: I am looking at the words next to the thumbprint.

ADV NGCUKAITOBI SC: Yes, Madam Chair, those are the words. So it is warrant officer and then it gives a force
10 number and then his signature, SW Zungu.

CHAIRPERSON: Yes, thank you.

ADV NGCUKAITOBI SC: Yes.

MS RAMAGAGA: I think my sister is asking about the horizontal letters, R-H-T. Is it the horizontal letters next to the thumbprint?

ADV NGCUKAITOBI SC: The vertical letters, R-H-T-P.

CHAIRPERSON: Not the horizontal letters. The handwritten words there.

MS RAMAGAGA: No, that is fine. Thank you.

20 **ADV NGCUKAITOBI SC**: Yes, thank you. So anyway, Mr Mhlongo, just to make sure I cannot remember where we were now with your testimony, I think we have completed everything.

CHAIRPERSON: I am sorry. You had just completed...

MR MHLONGO: We are at 97. Paragraph 97, Chair.

ADV NGCUKAITOBI SC: Okay. Thank you. Thank you for the reminding us. [Laughter]

CHAIRPERSON: Yes, thank you, Mr Mhlongo. You were dealing with the inconsistencies in relation to SM7.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Thank you.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. I think we have finalised those six inconsistencies there. Then you say in paragraph 97:

10 “The document contains an obvious internal
contradiction. In one paragraph, it records
that I elected to remain silent, while the
following paragraph records that I was
willing to conduct a pointing out. This
inconsistency was canvassed during the
trial-within-a-trial concerning the
admissibility of the statement. I signed the
statement solely because I had been
tortured by members of the Cato Manor
20 Unit.”

Now, I just want to make sure that you can see where it says... Yes, it is actually at 5A-44. Are you at 5A-44?

MR MHLONGO: On the 5A-44. Yes, I am there.

ADV NGCUKAITOBI SC: Now, if you go to after the signature. So that is the signature of the police officer. That

would be Warrant Officer Zungu. Under paragraph 4.1, 4.2, and 4.3, it encircles 4.3 that you elect to make a statement, which will be taken down in writing below and then there is a right-hand thumbprint there. Can you see that?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: And then there are the initials of Warrant Officer Zungu. So on the one hand, the statement appears to be saying that you have elected to make a statement in writing.

10 **MR MHLONGO**: That is correct.

ADV NGCUKAITOBI SC: And then when you turn over the page, which is 5A-45, it actually gives a contradiction because it says:

“Remain silent, I would not make a statement.”

Can you see that?

MR MHLONGO: That is correct, Chairperson. I can see that.

ADV NGCUKAITOBI SC: And then it says:

“I will do a pointing out of the scene.”

20 But the previous page already says you will make a statement and then the following page says you will not make a statement.

MR MHLONGO: That is correct, Chairperson. It is a contradiction.

ADV NGCUKAITOBI SC: Yes. Is this what you are referring

to here, then, when you say in paragraph 97 that in one paragraph it says you elected to remain silent, and then in another one it says you were willing to conduct a pointing out?

MR MHLONGO: That is correct, Chairperson and more above that, if you can look at 5A-45, you will see that this page is supposed to be crossed off, but it remained open because they wanted to insert some other information later during the investigation.

10 **ADV NGCUKAITOBI SC:** Or in other words, the statement they were talking about, they wanted to put it here.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. So you say the rule is that if the statement ends there in the first three lines, the remainder of the page should be scratched out.

MR MHLONGO: That is correct. That is what I understand, Chairperson.

ADV NGCUKAITOBI SC: Yes, but in this case they left it open.

20 **MR MHLONGO:** That is correct.

ADV NGCUKAITOBI SC: And your conclusion is that the intention behind leaving it open was to insert further details.

MR MHLONGO: That was the thinking of me seeing this during the trial.

ADV NGCUKAITOBI SC: Yes. Well, I think it was part and

parcel of the cross-examination by your counsel that it is irregular to leave this without scratching it out because it leaves the possibility of ...[intervenes]

MS RAMAGAGA: May I just come in here? I have been trying to switch on, but ja. Just to understand when... Mr Mhlongo, when you say that, actually, it is your counsel who says it is a rule that a blank space should not be left, it has to be scratched out. Are you, have you been a police officer before?

10 **MR MHLONGO:** No, I have never been a police before, but ...[intervenes]

MS RAMAGAGA: The next question. The next question. Yes. Now, this statement that ordinarily... Well, I am saying ordinarily, but you said that that portion ought to have been scratched out. What is the basis of that statement?

MR MHLONGO: I am saying this, Chairperson, because, as you can see, here at 4.3, 5A-44, it says:

“I will make a statement which will be taken down in writing below.”

20 And if you go to the very next page, you will find that it says, I will remain silent. Now, if you look at it, it means they wanted to do some other thing before this thing is taken to court or it has been presented to the prosecuting team. And if they have crossed the lines, like normally if I go to the police station and make an affidavit, they tell you, you are

done. If you are done, they ask you to cross those vacant lines or open lines to say you are done with your statement. That is what I have read out into this, to say, in the back of my mind, I am saying they were supposed to cross it. In order for them to prevent anyone inserting another information in this page.

MS RAMAGAGA: Okay, so your source is knowledge of the normal practice that you do not leave a blank page without scratching the blank portion out.

10 **MR MHLONGO**: That is correct, Chairperson.

MS RAMAGAGA: Thank you, Mr Mhlongo.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. Mr Mhlongo, can I ask you to go to the last of your annexures, which is SM11 at page 5A-75. Can you see that?

MR MHLONGO: [No audible answer]

ADV NGCUKAITOBI SC: It is the transcript of the trial.

MR MHLONGO: [No audible answer]

MR MHLONGO: It could be frozen.

CHAIRPERSON: Mr Mhlongo, are you there?

20 **MR MHLONGO**: I am here, I am here, Chairperson.

CHAIRPERSON: The counsel was referring you to SM11, 5A-75. Do you have it?

MR MHLONGO: I have it, Chairperson.

ADV NGCUKAITOBI SC: Can I ask you to go to 5A-118?

MR MHLONGO: 5A-118.

ADV NGCUKAITOBI SC: Yes.

MR MHLONGO: I am there, Chairperson.

ADV NGCUKAITOBI SC: Yes, now this is the record of your trial, and the judge was Judge Gyanda. Is that correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: So at line 15, 16, 17, at line 18, when Judge Gyanda starts talking and questioning Mr Zungu, correct?

MR MHLONGO: That is correct. Here I have got line 10 in
10 A118.

ADV NGCUKAITOBI SC: Yes, so it will be after line 15. So if you count line 15, 16, 17, 18, it is the 18th line after line 15, where it says Gyanda J.

MR MHLONGO: Yes.

ADV NGCUKAITOBI SC: Can you see where it starts? It says:

“But I do not understand how you make an error, you have just agreed with counsel you completed this whole document at Cato
20 Manor. Is that correct?”

Can you see that?

MR MHLONGO: It looks like it is...

ADV NGCUKAITOBI SC: Well, if you can see line 15, just count 16, 17, and 18. The 18th line is the line I am referring to.

MR MHLONGO: On my documents, 15, then it jumps up to 20.

ADV NGCUKAITOBI SC: No, no, no, that is fine. Between 15 and 20, there are lines. You just count the lines literally. So 15th is a line, and then 16th is the following line. 17th is the next one. 18th is the next one. But Gyanda J appears on the 18th line. Can you see that?

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: So that is where he starts talking.
10 Now here he is talking in the middle of the cross-examination of Mr Zungu and you will see why I say that, at the top of the page, it says SW Zungu. That indicates that it is Mr Zungu who is giving evidence. Can you see that?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Now, he talks... The Judge talks to the witness right up until 5A-121. So skip three pages after that to page 5A-121.

MR MHLONGO: I am there, Chair.

ADV NGCUKAITOBI SC: So if you count again from line 10,
20 11, 12, and just stop on the 13th line. Can you see that?

MR MHLONGO: I can see that.

ADV NGCUKAITOBI SC: Where he says:

“Let me show you another mistake.”

Can you see that?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: So that is the Judge saying to the witness:

“Let me show you another mistake, which I think is more problematic. When you take a statement down, any accused person, do you leave this entire thing blank?”

Can you see that?

MR MHLONGO: That is... I can see that, Chairperson.

ADV NGCUKAITOBI SC: What does Mr Zungu say in
10 response?

MR MHLONGO:

“That is right, M’Lord. Why it was not done here...”

Oh, let me start with Zungu.

ADV NGCUKAITOBI SC: Yes.

MR MHLONGO:

“You are supposed to draw the line so that nobody can add.

So you are supposed to draw the line where
20 the statement ends.

To the end of the page, nobody can add into the page.

That is right, M’Lord.”

ADV NGCUKAITOBI SC: Yes, continue.

MR MHLONGO:

“Why it was not done here?

M’Lord, it was supposed to be that I had to draw a line, but I did not draw that line. I just ended up.”

ADV NGCUKAITOBI SC: Yes, continue.

MR MHLONGO:

10 “And you are a police officer for 24 years’ experience. You know the reason why you draw the line. So that the accused cannot say at a later stage that the other thing were added only afterwards. Is that not the reason?”

That is the reason, M’Lord.”

ADV NGCUKAITOBI SC: And continue.

MR MHLONGO:

20 “That is a very important reason why it was not done in this case.

M’Lord, sometimes with the line on the statement form, sometimes if the accused does not say anything on the page, like he will remain silent, do the pointing out, and he does not make a statement, that mistake do happen because he never made any statement.”

ADV NGCUKAITOBI SC: Yes, thank you. No, no, you can

stop there. It was in fact the evidence of Warrant Officer Zungu that the rule is that you scratch a line so that no additional facts can be added.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes, thank you. Now, if you go back to your statement from paragraph 98...

MR MHLONGO: I am there, Chair.

ADV NGCUKAITOBI SC: Yes. Now, you say that your co-accused Swayo Mkhize:

10 "...was also subjected to severe torture. His warning statement dated 2 February 2009 is attached as SM8. He was killed a few years after this incident."

Did you say Mr Mkhize was killed a few years or a few months after this incident?

MR MHLONGO: It is supposed to be a few months, Chair, because he was killed around June, July of 2009.

ADV NGCUKAITOBI SC: Yes, sorry. Look, before we deal with the statement of Swayo Mkhize, I need to complete something in your own statement. It is at 5A-46.

MR MHLONGO: 5A-46.

ADV NGCUKAITOBI SC: So it starts with questions and answers. Again, it leaves that space blank. We have covered that. And then it says:

 "Were you in any way threatened,

compelled, assaulted, or influenced to make the statement and answer the question where applicable?”

And then it is encircled, no, it was my own choice. Was that correct?

MR MHLONGO: 5A-49.

ADV NGCUKAITOBI SC: 46.

MR MHLONGO: 46, sorry, sorry, Chair.

ADV NGCUKAITOBI SC: Yes.

10 **MR MHLONGO**: Yes, Chair, I am there.

ADV NGCUKAITOBI SC: Now, if you look at the question asked, were you in any way threatened, compelled, assaulted, or influenced to make the statement and answer the question where applicable? In the statement, it is encircled, no, it was my own choice and you can see Mr Zungu signs, but there is also a right-hand thumbprint of yourself and so the impression you gain from this is that you in fact confirmed that you were not assaulted.

20 **MR MHLONGO**: That is what is said here, but it is not the truth.

ADV NGCUKAITOBI SC: Yes. All right, thank you. Now, to go back then to paragraph 98, you mentioned here that Mr Mkhize was also subjected to torture. How do you know that?

MR MHLONGO: It is because even during the time where they brought him, he was tortured in front of me and we went

to Westville, both of us. We spent time there from the 4th of February 2009. We were together in the same cell. We were sharing of what has happened between ourselves.

ADV NGCUKAITOBI SC: Yes. All right. But, I mean, you witnessed it yourself.

MR MHLONGO: I have witnessed it myself, yes, that is correct.

ADV NGCUKAITOBI SC: Now, the consequence of that is the statement that he subsequently gave.

10 **MR MHLONGO:** That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. Was he, was Mr Mkhize literate? Could he write and read?

MR MHLONGO: Yes, he could read and write.

ADV NGCUKAITOBI SC: Yes, because if you actually look at his warning statement, which is at SM8, page 5A-47, all of the portions where he should be writing on his own are in a right-hand thumbprint.

MR MHLONGO: That is what these guys, they were doing. As you can see, even on myself, you see that most of these
20 documents are made to put a thumbprint.

ADV NGCUKAITOBI SC: Yes.

ADV BALOYI-MERE SC: Advocate Ngcukaitobi, before you proceed, on both SM7 and SM8, when the detainee is asked a question where there is a yes or no, please help me understand, do they scratch off the answer of the detainee or

they leave what the detainee has said or the detainee's response? For example, in both questionnaires at 3, do you understand the above rights? And we have a yes. And we have a yes on both. But then when you go to 5, do you wish to have an attorney or legal aid present now? Then we have the yes scratched off on both statements. If you can assist me by putting it to the witness in a way that the witness will be able to understand. He can even respond only on his section 35 document only.

10 **ADV NGCUKAITOBI SC:** Yes, thank you, Madam Chair. Mr Mhlongo, can you go to 5A-42?

MR MHLONGO: I am there, Chair.

ADV NGCUKAITOBI SC: All right. Now, there are a number of questions that are asked from paragraph 3. Can you say that?

MR MHLONGO: I can say that, Chair.

ADV NGCUKAITOBI SC: So the first question is, do you understand the above rights? Now, those rights include the rights to be informed promptly of the reason for detention.
20 They are identified from item 2(a) to (f) and also item 1(a) to (f). Correct?

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Now, then the question is then asked, do you understand the above rights? Now, you could either answer yes or no and they have scratched out no and

left yes. What do you understand that to mean?

MR MHLONGO: Chairperson, this thing was done before you came. So they just chose for you what to say. I could not say I do not want to speak to my wife and tell her where I was, because they were unable to find me for two days. And in our African culture, there was something wrong that happened to my family, because the assumption or someone told them that I was shot and killed, and the police have hidden me in one of the mortuaries. Then they had to sit
10 down and prepare for the funeral. So what I am trying to say here, this thing is done without you being consulted.

ADV NGCUKAITOBI SC: Yes, I understand.

MR MHLONGO: They just chose for me.

ADV NGCUKAITOBI SC: Yes. No, thank you. I understand.

But I think just go back to paragraph 3, because we need to answer something narrower, which is the choice between yes or no. No is scratched out, and yes has been left. Now, does that mean that the answer you gave the police is yes, and so they scratched out no because it was inapplicable? I know
20 that you did not, but the interpretation of this would be the answer you gave to the police was that yes, you understood your rights.

MR MHLONGO: That is what they were saying. They will say so as if you said yes.

ADV NGCUKAITOBI SC: Yes. And then does the same

apply to the next question, do you wish to exercise any of these rights? No is scratched out, yes has been left there, which means you indicated yes, you wish to exercise them.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Which is then why they say that you exercise them by calling Nolwazi, correct?

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes, and then it goes on for the following one, that do you wish to have an attorney, and then
10 you apparently said no.

MR MHLONGO: That is correct.

ADV NGCUKAITOBI SC: Yes, all right. Which is actually a very strange one because most people that are detained want an attorney.

MR MHLONGO: That is normal. If you are in trouble, you want your attorney to be involved to come and assist.

ADV NGCUKAITOBI SC: So why would you say no, you do not want an attorney?

MR MHLONGO: It shows that these people, they are just
20 doing things the way they want to do it, and you have got no choice and I have asked them repeatedly to at least phone Hlapane because I knew that Hlapane was the one who was representing our association, and they refused completely.

ADV NGCUKAITOBI SC: Yes, all right, thank you.

CHAIRPERSON: But then when you look at 6, which is an

apparent inconsistency, at 5 they ask, do you wish to have an attorney or a Legal Aid person now? And you say no, or it is written no. At 6, would you like to phone any family member or legal practitioner, et cetera? You say yes. Is that not an apparent inconsistency there?

MR MHLONGO: It is, Chairperson. It is one of those things that was picked up by my legal team during the trial.

CHAIRPERSON: Yes, thank you.

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

10 **ADV BALOYI-MERE SC**: And I am comparing this with Mr Mkhize's responses because it seemed like Mr Mkhize did not even want to call anyone or have a legal representative because all his answers are no. So that was a bit confusing for me because I thought maybe they are scratching off what you want. It is like, take the correct answer. So, ja, thank you.

ADV NGCUKAITOBI SC: The audit to hear is that he understands the rights, but he does not want to exercise any of them.

20 **MS RAMAGAGA**: Just one or two more questions. Now, it is correct that at the time when this statement was obtained, Mr Bongani Mkhize had already obtained an interdict against Cato Manor.

ADV NGCUKAITOBI SC: Yes.

MS RAMAGAGA: You are aware of that, Mr Mhlongo?

MR MHLONGO: That is correct, Chairperson.

MS RAMAGAGA: And you were a member of the KwaMaphumulo Taxi Association?

MR MHLONGO: That is correct, Chairperson.

MS RAMAGAGA: And if I am correct, the interdict was not only meant for Mr Mkhize alone, was it? Or rather, the correspondence from Attorney Hlapane was not only meant for Mr Mkhize alone, but it was meant for even other members of the taxi association.

10 **MR MHLONGO**: That is correct, Chair. As we will go along, you will realise that it was part of the documents that was presented by my legal team in court to say, Zungu, you were not supposed even to take him to Cato Manor because there was a letter that was saying if you want him, you should have called the attorney for the association and my name was on the list as well.

MS RAMAGAGA: Yes, which means that a pre-booking for an arrangement for detention had already been done by your attorneys and also through the courts and notwithstanding,
20 that pre-booking for arrangements to be made was not observed or implemented.

MR MHLONGO: That is correct.

MS RAMAGAGA: Thank you.

MR MHLONGO: That is correct, Chairperson. The court order was not respected.

MS RAMAGAGA: Thank you, Mr Mhlongo. Thank you, Advocate Ngcukaitobi.

ADV NGCUKAITOBI SC: Thank you. In fact, Madam Ramagaga, just to deal with the question of the scope of the court order. So we have got that at DC000826.

MS RAMAGAGA: 826?

ADV NGCUKAITOBI SC: Yes, DC000826.

MS RAMAGAGA: Would you like to read the relevant extract into the record? Or are you looking for that?

10 **ADV NGCUKAITOBI SC:** Yes, I am looking for that.

MS RAMAGAGA: Okay, thank you. Thanks.

ADV NGCUKAITOBI SC: Sorry. The... So paragraph B says:

“A *rule nisi* is issued calling upon the respondents to show cause on the 5th of November 2008 at 9.30 why the following relief should not be confirmed:

- 20
1. That the respondents be interdicted from killing, injuring, threatening, harassing, or in any way intimidating the applicant.
 2. Ordering the respondents to receive the applicant from his lawyers, thus effecting the warrant of arrest in the presence of the applicant's legal

representatives.

Orderly the respondents to conduct the applicant's interrogation at a prearranged place, date, and time in the presence of the applicant's representatives for interdicting and preventing the respondents or any of their servants from removing the applicant from his cells with a view of conducting further investigations unless accompanied
10 by his legal representatives.”

So that was part A. I think part B confirmed some parts and not when it came to court on the 11th of November 2008.

MS RAMAGAGA: Okay, thank you. I think we will look at it unless there is still something. Am I...

ADV NGCUKAITOBI SC: No, no, no, no, nothing.

MS RAMAGAGA: There is nothing. So in terms of the court order, it would have been maybe be only in relation to Mr Mkhize, but then we know that also by extension there was a letter from Hlapane Attorneys, which was written far much
20 earlier. The first one was on the 5th of September. That is fine. Thank you.

ADV NGCUKAITOBI SC: Thank you, Madam Ramagaga. In fact, that letter named, I think, about eight of the members of KwaMaphumulo. So, Mr Mhlongo, we were looking at your co-accused Mr Swayo Mkhize In terms of SM8, the items 3 to

6 have already been dealt with, so I will not spend time on that except to point the fact that he apparently did not want to exercise any of the rights that are there, but you remember him coming to you crying like a child.

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. Then if you look at the following page, there is a constitutional warning, which is 5A-48.

MR MHLONGO: That is correct, Chair.

10 **ADV NGCUKAITOBI SC**: And then it states here that he:

“...understands that the reason for his detention is the murder because on the 22nd of January 2009 at that Z Section of Umlazi Township, the deceased, Mr Mbongeleni Zondi, was shot and killed inside his vehicle.”

Can you see that?

MR MHLONGO: I can see that, Chair.

20 **ADV NGCUKAITOBI SC**: Yes. Now, there is a right-hand thumbprint, but also there is a signature that he put there, which makes it unclear to me why he would put the thumbprint and sign at the same time.

MR MHLONGO: That is strange because normally if you have signed, there is no need for a thumbprint, but maybe the police will tell us why they had to do it both.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: And in your case, there was only a thumbprint, and yet you seem to be very literate. You said that you can read and write.

MR MHLONGO: That is correct, Chair, but in certain documents you will see as we go along that there are those who I was made to sign, but the thumbprint was always there.

CHAIRPERSON: No, I am talking about your SM7.

MR MHLONGO: That is correct, Chairperson.

10 **CHAIRPERSON:** It is only your thumbprint.

MR MHLONGO: That is correct, Chair.

CHAIRPERSON: And earlier on, counsel asked you a question and you answered that you can read and write.

MR MHLONGO: That is correct, Chair.

CHAIRPERSON: Thank you.

ADV NGCUKAITOBI SC: Yes. Thank you. Now, if you turn over the page at 5A-49, this is still part of the statement of Mr Swayo Mkhize, where right at the bottom it says:

20 “After being warned, as I have
acknowledged above, I elect to...”

Paragraph 4.3, which is the encircled part:

“Make a statement which will be taken down
in writing below.”

So they suggest that Mr Mkhize has elected to make a statement. Is that correct?

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. Now, you then turn over the page, which is 5A-50. Here, Mr Mkhize purports to be making a commitment to a pointing out. It states, pointing out by Makhosabo Swayo Mkhize and then at the bottom you can see it is S Mkhize, signature of the accused and then it puts a right-hand thumbprint. Can you see that?

MR MHLONGO: I can see that, Chair.

ADV NGCUKAITOBI SC: You know, what I could not work
10 out is that if you compare 5A-49 and you look at the signature of Mr Mkhize at the bottom of that page, can you see that?

MR MHLONGO: I can see that, Chair.

ADV NGCUKAITOBI SC: And juxtapose that to 5A-50 and you look at his signature there.

MR MHLONGO: It looks different, Chairperson.

ADV NGCUKAITOBI SC: Yes, well, it is totally different. So
I do not understand then how a man who has signed this document, presumably on the same day and same time, has somehow managed to have two different signatures.

20 **MR MHLONGO**: That is strange. Even the person who was involved should have asked him if he signed differently. Why are you signing differently from what you have signed before?

ADV NGCUKAITOBI SC: And the second thing is that, I mean, I admit to being not an expert in right-hand thumbprints, but I found it very strange when I compared 5A-

49, the right-hand thumbprint there, with the right-hand thumbprint in 5A-50. They are, to me, glaringly different.

MR MHLONGO: That is true. If you look at it, it looks different.

ADV NGCUKAITOBI SC: Yes. So I honestly do not understand what they were doing here because why would they get a different thumbprint and why would they get a different signature from the same person on the same day at the same time? Do you understand? Maybe you can help us
10 there.

MR MHLONGO: I really do not know, Chairperson. It is hard for me. It is hard to think of why and how it happened.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Counsel, what about the signature at 5A-51? Is it similar to the one at 5A-50? As you look at it?

ADV NGCUKAITOBI SC: Actually, not.

CHAIRPERSON: It is the third different signature?

ADV NGCUKAITOBI SC: Yes. Mr Mhlongo, can you look at 5A-51?

20 **MR MHLONGO**: I am there, Chairperson. I can see what the Chairperson is pointing out.

ADV NGCUKAITOBI SC: And compare it with 5A-50.

MR MHLONGO: It is totally different. It looks like a different handwriting altogether.

ADV NGCUKAITOBI SC: Yes. But it is the same document.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. But even the thumbprint itself, if you look at the thumbprint at 51, it has got something at the bottom there which is missing from the one at 5A-50.

MR MHLONGO: That is correct. It looked like the thumb there got other piece apart from the thumb.

ADV NGCUKAITOBI SC: Missing at the one at 5A-50. Now, we will see why the statement becomes very, very crucial. Because this is at 5A-50, Item D, where they say:

10 “Hereafter the said person departs with me,

the aforesaid interpreter, and the photographer. Before the departure, the photographer takes the photos of the accused as follows. Photo 1:

Accused’s front with clothes.

Photo 2:

Accused’s back with clothes.

Photo 3:

Accused’s front without clothes.

20 Photo 4

Accused’s back without clothes.

MS Mkhize.”

Now, presumably that is a signature of the same Mr Mkhize that you see in that same page, which, as the Chairperson correctly points out, actually even those signatures on the

same page are different.

MR MHLONGO: That is what I see, Chairperson. It looked very different.

ADV NGCUKAITOBI SC: It looks like a clumsy forgery. They are not even competent at forging. Now, then you go to 5A-52. Now, this is where people are now implicated, names of people are mentioned.

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. Now, after the words:

10 “And we continue on a separate folio to
record all of the movements, observations,
and all of the aforesaid persons of
eminence, his exact words and all questions
by the officer must be recorded verbatim,
and within quotation marks.”

And then it says:

“Accused states and indicates:

I want to show you where myself, Sphe
Mhlongo, Ska Ndimande and Sifiso
20 Ndimande shot and killed the person whom
they told me that he was Inkosi Zondi, by
using the firearms at Z Section in Umlazi.
Furthermore, I want to show you the house
where we picked up the VW Polo and
exchanged cars, as well as the firearms.

Left Organised Crime Cato Manor office, HR
32, time 17h00, kilometres 40028.

Accused indicates: Bella Road, Edwin
Swales, N2 Port Shepstone, Umlazi,
Mangosuthu Highway, Solomon Mahlangu,
[indistinct].

Accused indicate:

Stop here, time 17:25.

Accused indicates:

10 This is the house where we picked up a
male.”

Now, this is the ultimate confession of Mr Swayo Mkhize,
which we know is being repeated by people like Major
General Booysen as the basis on which these people were
then classified to be suspects. Mr Sphe Mhlongo, Mr Ska
Ndimande, and Mr Sifiso Ndimande. Now, in the statement
relating to yourself, were you given the names of people to
implicate?

MR MHLONGO: Yes. As I have said before, you try and
20 implicate people so that you can be alive. Because if you do
not say anything, as I have said it, that if you go into that
room, you will see, *angazi* do not work. Which means literally
say, you do not say I do not know and Swayo was, as well, I
think he was asked and he was schooled to say whatever he
said, whatever he has said.

ADV NGCUKAITOBI SC: Yes, but in your case, were you given the names of the people to implicate?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Who were those names?

MR MHLONGO: I was told that I have to implicate Ska Ndimande, Sifiso Ndimande, as well as Mr Nzuzza and Ronny Khanyile.

ADV NGCUKAITOBI SC: Yes and who are those people?

MR MHLONGO: Sifiso Ndimande and Ska Ndimande are one
10 of those Ndimande brothers. One was killed in Pinetown, the other one was killed in North West. Ronny Khanyile, unfortunately, as he was trying to run away from the police because he knew that they would kill him, he got sick and he passed away around May or April of 2009. Later on, Mr Nzuzza, he was shot in his house, but later, I think it was around 2014 or 2015. Mysteriously, because we do not know even today who killed Mr Nzuzza.

ADV NGCUKAITOBI SC: Yes. Now, these names of Mr Ndimande, Mr Mkhize, all of these names that were
20 supposedly to be implicated in the murder, what was their relationship with the KwaMaphumulo Taxi Association?

MR MHLONGO: These Ndimande brothers, they were brothers to Magojela Ndimande. Magojela was the member of the Maphumulo, and they were brothers and I would say, in extension, they were part of the association, because

these Ndimandes, they were brothers working together, but you can only have one as a member, but all of them, they are involved. In extension, they were part of the KwaMaphumulo Taxi Association.

ADV NGCUKAITOBI SC: Yes. Thank you very much. Now, the balance of that statement, you will find in the Bhekithemba docket, from BH0018 to BH0027.

MR MHLONGO: On the bundle, Chair?

ADV NGCUKAITOBI SC: No, I think it will have to be played
10 out for you on the screen. Do you have a screen there?

MR MHLONGO: I do have, but I have not seen anything
flighted here.

ADV NGCUKAITOBI SC: All right. I am sure it will be. So
it will be at BH0018 to BH0027. Yes. So if you look at
BH0021, which is where your statement stops.

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: I just want to complete the
confession that was taken. Yes. So that is the direction that
is taken to find the pointing out. But there is a part where he
20 should be.... Yes, I found it. At BH0022. Are you there? So
you will see that if you skip the first paragraph, there is a
question:

“Did you understand what I said to you?”

And then it says:

“Yes, I do.”

And then there is a question.

“I then obtain the actual statement in the following manner.”

Can you see that?

MR MHLONGO: I can see that, Chair.

ADV NGCUKAITOBI SC: And then it says:

10 “On Sunday, 2009-01-18, at about 12h00, I was at Maphumulo taxi rank. I was approached by one taxi owner whom I knew as BM Nzuza. Mr BM Nzuza informed me that there was a speech from Ndimande boys, namely Sifiso Ndimande and Ska Ndimande. He said, we will have to go to meet them in Durban on the next day.”

Are these the same names that you were also asked to implicate, BM Nzuza and the Ndimande, it says Ndimande boys. Let us call them the Ndimande brothers.

MR MHLONGO: That is correct, Chairperson.

20 **ADV NGCUKAITOBI SC**: Yes and thereafter, the statement continues.

“On Monday, 2009-01-19, I met with Sphe Mhlongo, BM Nzuza, and I think is it Conny Khanyile at ...[intervenes]”

MR MHLONGO: It is Ronny.

ADV NGCUKAITOBI SC:

“...Ronny Khanyile at KwaMaphumulo taxi rank. We jumped into a Golf 4, which belongs to Sphe Mhlongo, and we drove to Durban. While we were driving along the freeway, Mr BM Nzuza phoned for Thobekane Mkhize and asked him about the place where we were going to meet. Thobekane Mkhize said we must meet at Durban North. We drove to Steers at Durban North at about 11h00. We sat down at Steers and had something to eat. While we were at Steers, we were joined by Thobekane Mkhize, Bongani Mkhize, Ska Ndimande, Sifiso Ndimande, and Kedwane Mhlongo. Ska Ndimande then started the meeting. He first said Magojela Ndimande, who was his brother, was sold to the police by Inkosi Zondi. He said Inkosi Zondi gives the information to the police that Magojela was driving to Mpumalanga province on that day. Mr BM Nzuza then insisted and said Inkosi Zondi need to be killed. Thobekane said he supported the idea of killing Zondi. Thobekane also requested to know what was going to be the amount for killing Zondi. The

two Ndimande brothers, Ska Ndimande and Sifiso, volunteered and said they can pay R50,000. Mr BM Nzuza said the Maphumulo Taxi Association can pay 150,000, which will make it 200,000. Thobekane asked as to where we can get the *izinkadi*. Nzuza pointed at myself, Ska, Sifiso, and Sphe, and said we can be the killers.”

Now, this is the entire plot, which then became the basis for
 10 people like Major General Booysen to claim that all of these people that are mentioned here were implicated in the murder of Inkosi Zondi. Now, the names I have been reading out and the story I have been reading out, was this different or similar to the story you were told to confirm during your torture?

MR MHLONGO: Chairperson, it is the same story which was told to me that I must narrate as it is and there are certain things that I think the police should ask themselves. How was it possible? One, if there was a meeting in Durban North. Durban North is a small area in Durban. They should have
 20 went there and get that footage. Every, most of the shops, they will have cameras to see if there was any meeting. More above that, there is a person who has been mentioned here, which is Thobekane Mkhize, who is a brother to Bongani. He is not a member of the Maphumulo Taxi Association, and he was never asked to come and testify or be questioned about

this matter. Why was that?

If he was part of that, he should have confirmed it, or should have been asked to come in and be interrogated as well. But the focus was only in these members of the Maphumulo Taxi Association, which does not make sense even further. If this meeting that has been purported, Mr Mkhize, who was the chairperson, how come that Mr Nzuza, who is not even the chairperson of the association, can pledge a money on behalf of the association? That does not
10 make sense. At that meeting, I can confirm with you, it never happened.

ADV NGCUKAITOBI SC: Yes. Thank you. You see, there is something about this so-called confession. Why would they beat the confession out of you and Mr Swayo Mkhize?

MR MHLONGO: I am not sure why they chose us, but maybe Swayo was the first one to be caught. Then he did confirm what they wanted him to confirm. Then, unfortunately, I was also arrested very quick. And remember, Bongani was killed for this very same matter.

20 **ADV NGCUKAITOBI SC:** But I am saying that if you want a confession, why would you need to beat the person up to get the confession? Because the confession must be made voluntarily. You do not need to assault a person to get a confession.

MR MHLONGO: It is unfortunate that that is how this Cato

Manor, they have been operating for the longest time. As I was in Westville, every prisoner that has went through Cato Manor, they will tell you, they were all beaten and they will tell you that you cannot tell me you are here, you came from Cato Manor, you never urinated yourself, you never defecated yourself. That is a standard. If you go there, you will come out of that office, have done that.

ADV NGCUKAITOBI SC: Yes. Now, what became the fate of this statement? And it is a crucial statement in relation to
10 Zondi killing, because it was the basis on which they claimed that everyone else deserved to die, because they now had this confession from Mr Mkhize and yourself. It is set out in paragraph 103 of your statement, where you say:

“However, in separate proceedings in Umlazi, Swayo Mkhize deposed to an affidavit retracting his pointing out
statement and alleged confession. In that
affidavit, he stated that both were obtained
as a result of torture inflicted by members of
20 the Cato Manor Unit. During the trial-within-a-trial in my case, Warrant Officer Zungu confirmed under cross-examination that he was aware of Swayo's retraction and allegation that the statement had been procured through torture.”

Now, the police knew during your trial that this statement we have just read was actually procured through torture. If you go to the transcript of your trial, which is page... It is actually page 5A-160. So 5A-160, line 10 to 20.

MR MHLONGO: Should I read, Chairperson?

ADV NGCUKAITOBI SC: Yes, so it starts off by saying, if you look at the question first, it says:

10 “And yet, despite all of that, nobody came to you and said to you, look, we have got correspondents regarding these people's rights. They are very afraid that their rights will be infringed. Be sure that their attorney is present.”

Then it says:

 “Nobody, M’Lord, came to me or informed me about this letter.”

Now, he is talking about the letter of the 5th of September 2008. Mr Zungu says he was unaware of that letter. He then says:

20 “And then a confession was taken from Swayo Mkhize.”

That is the confession we have just read.

 “Well, I think it was also a pointing out, was it? A pointing out was done by Swayo Mkhize, accompanied by a statement on 2

February 2009, right?

If I can recall, M'Lord, the confession, yes, was done by Swayo Mkhize.

And you will also remember, Warrant Officer, that the moment Swayo Mkhize was in the sanctity of the courtroom, he immediately said that he was forced, that this was a forced pointing out and confession.”

10 Then he says:

“I heard that, M'Lord, on the bail application. And then he said, and he stated that in an affidavit on oath prior to his death.”

And then he says:

“Yes, I have seen that, M'Lord.”

So, Mr Zungu knew that this was a confession procured according to Mr Mkhize, it was a confession procured through force, correct?

MR MHLONGO: That is correct, Chairperson. He voluntarily
20 told me while we were in custody that, to be fair to you, Mr Mhlongo, I will make this statement and I will make this affidavit so that you will see that there was no intention from my side to implicate you in this case. I was compelled and I was forced, I was beaten. So they prepared the names and the statement for me so that I can implicate people. That is

what he told me.

ADV NGCUKAITOBI SC: Yes, but more importantly, the police knew, you know, this is the strange thing in this case we are dealing with. We still have people like Major General Booyesen that are relying on the so-called confession from Swayo, when they have known as early as 2011, 2010, that that confession was obtained through force.

MR MHLONGO: Well, Chairperson, it is his view, but the fact will speak for itself. We knew what had happened to us.
10 He was not there. And he knows how his team were operating during that time.

ADV NGCUKAITOBI SC: Yes, well, we will deal with him shortly because you say he was not there, but your statement, at least in your case, shows that he was there. Now, that takes us to paragraph 104 and then we come back to you. We have now dealt with the so-called confession of Mr Swayo that became the justification for the killing of at least three people. You say:

20 “Later that day, I was transported to Sydenham Police Station by Inspectors Raymond Lee and Maharaj of the Cato Manor Unit, where I was detained overnight.”

Now, later that day is still the 3rd of February 2009, correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: And Raymond Lee, we have also encountered him having killed a person who was in a rubbish bin. He is also a member of Cato Manor Unit, is that correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: And Inspector Maharaj, we obviously know him, also having a few people that he also killed. Then you were detained at Sydenham. On the following day, you remember your statement contains that contradiction where you are remaining silent, but you are
10 committing to do a pointing out. You remember that?

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: And the pointing out takes place on the 4th of February 2009, is that correct?

MR MHLONGO: That is correct, Chairperson.

CHAIRPERSON: Counsel, it is ten to two now.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Would you like to exhaust this point, or would you like us to start when we reconvene?

ADV NGCUKAITOBI SC: It is going to be a little bit long,
20 Madam Chair, so I think it is probably best to adjourn and continue when we reconvene.

CHAIRPERSON: Yes, before we do that, may we go back to the confession statement, before I forget? If you can, the witness can assist me there. Because this seemed to be a critical confession, or a critical purported confession.

BH0020, Mr Mhlongo, do you have that document in front of you?

MR MHLONGO: [No answer]

CHAIRPERSON: Mr Mhlongo? Yes.

MR MHLONGO: I can hear you, Madam Chair.

CHAIRPERSON: Yes, may we go back to BH0020? This is the page you have in your statement, but let us look at the docket itself. Would you please take him to BH0020, page 20? It does not appear to be that page.

10 **ADV NGCUKAITOBI SC**: That is the one.

CHAIRPERSON: Yes. Would you please scroll that page down where the statement begins?

MR MHLONGO: Yes, I can see that, Chair.

CHAIRPERSON: Mr Mothlokwane, please scroll down so that the witness can see the statement. Yes. Do you see the writing there? At the bottom is page 12 of 16. Do you see that?

MR MHLONGO: Yes, that is correct, Chair.

20 **CHAIRPERSON**: Turn over to the next page. That seems to be a continuation. It is now BH0021, and the bottom is page 13 of 16. Do you see that?

MR MHLONGO: Yes, I can see it on the other screen, Madam Chair.

CHAIRPERSON: What I imagine to be the correct next page should be 14 of 16, am I correct?

MR MHLONGO: That should be.

CHAIRPERSON: What is on the next page? The next page is 15 of 16?

MR MHLONGO: Yes, it is 15 of 16.

CHAIRPERSON: Meaning that page 14 of 16...

MR MHLONGO: Is missing.

CHAIRPERSON: ...is missing. Am I correct?

MR MHLONGO: That is correct, Chairperson.

CHAIRPERSON: Look at the next page of that statement. It
10 seems to be a totally different handwriting and font, and the page on top is 11. Do you see that?

MR MHLONGO: That is correct, Chair.

CHAIRPERSON: But the number on top is BH0023.

MR MHLONGO: 23, that is correct, Chair.

CHAIRPERSON: Now, similarly to that page, the next one is page 12. Do you see that?

MR MHLONGO: Yes, it is page 12. That is correct, Chair.

CHAIRPERSON: And the font and the writing seems to be totally different from the initial first two pages of the
20 statement?

MR MHLONGO: That is correct, Chair.

CHAIRPERSON: The next page from 12 is 13. Do you see that?

MR MHLONGO: That is correct, Chair.

CHAIRPERSON: It is written at the end, date retained 2009,

apparently -02-02 at 21:30. Do you see that?

MR MHLONGO: That is correct, Chair.

CHAIRPERSON: The handwriting there seems to be similar to the handwriting at page 11 and 12. Am I correct?

MR MHLONGO: You are correct, Chairperson.

CHAIRPERSON: Now look at the last page. The last page is now page 15 of 16. You remember the pages that earlier followed?

MR MHLONGO: Yes.

10 **CHAIRPERSON**: It was 12 of 16, 13 of 16, 15 of 16. You remember?

MR MHLONGO: That is correct, Chairperson.

CHAIRPERSON: But then again, after those strange pages, 11, 12, and 13, you have the last page written 15 of 16.

MR MHLONGO: That is correct, Chairperson.

CHAIRPERSON: What do you make of this?

MR MHLONGO: It shows that these things were prepared and I do not know if it is the correct term, concocted, in order for them to achieve what they wanted to achieve. Because if
20 they were doing it, if it is the same person who did this document, why it has different handwriting and why other pages are missing? That should be the question that must be posed to the investigating officer, Mr Zungu, who was in the centre of this case.

CHAIRPERSON: And the signature at page 15 of 16, that is

what is supposed to be the last page, is that of an officer. Can you read that surname there? Just below the signature of Mr Mkhize, his thumb and his signature. Who is this officer? Can you read?

MR MHLONGO: I cannot read this. Maybe it is Gasa or something.

CHAIRPERSON: And you understood this document to be a confession allegedly made by Mr Mkhize?

MR MHLONGO: That is correct, Chairperson.

10 **CHAIRPERSON**: Yes, thank you. Counsel, perhaps, unless you would like to make a follow-up on my question so that you do not leave it hanging, if not, we can adjourn and then you can start where you intended to begin on the statement.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. I need to look closely at the questions you have been raising. I could have follow-ups, but I can only do that after I have read it properly.

CHAIRPERSON: When we reconvene?

ADV NGCUKAITOBI SC: Yes.

20 **CHAIRPERSON**: Yes, I think we will do that. Mr Mhlongo, we are going to take a lunch break until 3 o'clock.

MR MHLONGO: Thank you, Chairperson.

CHAIRPERSON: You are still under oath.

MR MHLONGO: I do.

CHAIRPERSON: Yes, thank you. We adjourn.

MR MHLONGO: Thank you.

ENQUIRY ADJOURNS

ENQUIRY RESUMES

CHAIRPERSON: Good afternoon, everyone. Good afternoon, Mr Chauke. Good afternoon, Mr Mhlongo.

MR MHLONGO: Good afternoon, Chairperson.

CHAIRPERSON: You continue to be under oath.

MR MHLONGO: I do, Madam Chair.

SIPHAMANDLA MHLONGO (s.u.o.)

10 **CHAIRPERSON**: Thank you, sir. Advocate Ngcukaitobi.

ADV NGCUKAITOBI SC: Thank you, Madam Chair.

CHAIRPERSON: Proceed.

ADV NGCUKAITOBI SC: Mr Mhlongo, can we just go back to the issue of Mr Swayo, who I pointed out to you that the reason why that confession is important is because it is the confession that was used by Major General Booyesen to justify why Mr Bongani Mkhize was a wanted man, according to him. Remember that?

MR MHLONGO: That is correct, Chair.

20 **ADV NGCUKAITOBI SC**: In fact, it is clear that Major General Booyesen says absent that confession from Swayo, there was no evidence linking Mr Bongani Mkhize with criminality or the death of Mr Nkosi Zondi. Now, I have got access now to the portion I had in mind. It is not an affidavit. It is actually a portion from Mr Booyesen's book and there are

portions I want to put to you for your comment in the light of what we have just seen. Perhaps it could be, what page is it? Apparently, in the actual book, it is page 66. All right, apparently in the book it is page 66 where it starts, where I want you to look at is where it starts, it says, “in his reply”. Can you see that?

MR MHLONGO: I can see that, Chairperson.

ADV NGCUKAITOBI SC: Johan, that is Johan Booysen, said:

10 "Mkhize was not a suspect, nor had a warrant of arrest been issued for him."

Now, that was the reply to the affidavit in the case that was brought by Mr Mkhize for an interdict, just to put you in a correct perspective. He said there was no hit list. You will remember that the allegation made by Mr Bongani Mkhize was that there had been a hit list. And then he says:

20 "The information received from Moses Dlamini is hearsay. I deny the existence of any list that is referred to by the applicant."

Now, he is quoting a portion from his affidavit. Then he says:

"Mkhize and SAPS reached an agreement, and the final order stated that the police could not unlawfully kill,

intimidate, or harass him."

You remember that court order, we looked at it earlier, and you were also party to the clients that instructed Hlapane Attorneys to bring that application. You remember that?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Look at what he says next. He says:

10 "It was a meaningless and nebulous
interdict, Johan thought."

Do you have any comment to Mr Booysen, who is a member of law enforcement, describing a court order as meaningless and nebulous?

MR MHLONGO: Chairperson, hence, I have said it before, that the Cato Manor unit, they felt they are superior to everyone. As you can see, this is not the first time where they disregard the court decision or the court orders. As we have seen that before, during my testimony that Makhosabo Mkhize, as well as Gedwane Mhlongo they were, the court
20 gave the clear instruction that they have to take these two individuals and lodge them at Westville Prison, but they decided to scratch off Westville and inserted Cato Manor. That itself speaks volumes about the disrespect that this unit has. And they thought it is all about them, and nobody else will ever tell them what to do.

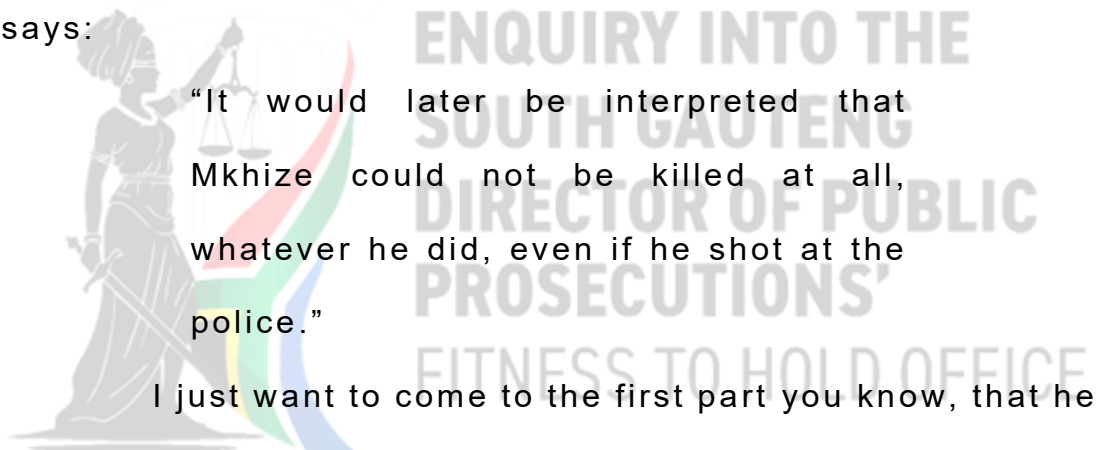
ADV NGCUKAITOBI SC: Yes, and what about Mr Booysen himself? I mean, he writes in a book that a court order by the high court is meaningless and nebulous. Does that show disrespect for the court?

MR MHLONGO: It is the disrespect at its highest order.

ADV NGCUKAITOBI SC: Yes.

MR MHLONGO: Because all the citizens of the country has to abide by the law and listen to the courts. The courts is above everyone else.

10 **ADV NGCUKAITOBI SC:** Yes. And then he continues, he says:



“It would later be interpreted that Mkhize could not be killed at all, whatever he did, even if he shot at the police.”

I just want to come to the first part you know, that he says this court order was interpreted to mean Mkhize could not be killed at all. Why would a policeman be concerned that there is a court order that says someone should not be
20 killed? Is that not what the police are there to do, to uphold the law, to make sure that people are not killed?

MR MHLONGO: That is the reason why we have police, to safeguard and keep everyone safe. If they are the ones now who have a license to kill, it is something which is uncalled for and maybe they should, as you have said, Chairperson,

that Mr Booyesen will have to come and say why he was uttering all these words.

ADV NGCUKAITOBI SC: And then he continues.

“Surely that would be an act of self-defence on the police's part. Years later, it would be used against me ...”

That is Mr Booyesen.

10 “To suit a very particular agenda, an agenda that had nothing to do with the lawful or unlawful death of Bongani Mkhize.”

Now he says the court order is being used against him to suit an agenda. I do not know if you want to comment on that, because the court order is clear about what the police are allowed and not allowed to do. There is no agenda behind that. Do you want to comment on that?

20 **MR MHLONGO:** Chairperson, for me, my understanding to this paragraph or this portion of the book, he is trying to defend himself and say or justify the conduct of his unit to be seen or people to be sympathetic to him to say that this would be used against him. Definitely it should be used against him because he broke the law. The court has ventilated to say, you must not kill Mr Mkhize, but they just ignored the decision of the court and continued killing him.

ADV NGCUKAITOBI SC: Yes, and then it continues. He

says:

“Mkhize did not become a suspect until the death, months later, of Nkosi Zondi, who happened to be the great-grandson of Nkosi Bhambatha kaMancinza who led a Zulu rebellion against British rule in 1906.”

So the point I had made to you earlier is that on the common cause facts that Booyesen himself, Major General
10 Booyesen himself admits, Mr Mkhize was not a suspect until this case of Zondi, of Nkosi Zondi. Do you understand that?

MR MHLONGO: I do understand that, but my understanding can differ a little bit because in court papers before, or during my trial, or as we applied for the bail, it appears, and it was said in court papers, that Bongani Mkhize was also in the list of those who were looking for by the police in connection with the murder of Superintendent Choncho.

ADV NGCUKAITOBI SC: Yes, well, the letter we looked at earlier of the 5th of September 2008, says that exactly.

20 **MR MHLONGO**: That is correct, Chairperson.

ADV NGCUKAITOBI SC: And then Major General Booyesen continues:

“We had the phone calls from suspects that pointed a finger at Mkhize, but more evidence was needed to pull him in for

questioning. The Zondi case would provide that evidence.”

So that is, Major General Booyesen says, it is this case that led them to Mr Mkhize. Then he explains the following paragraph:

10 “On 22 January 2009, Zondi was killed while visiting family members in Umlazi, his car sprayed with AK-47 gunfire. Apart from being of royal ancestry, he was a relative of President Zuma, who said at Zondi's funeral, it is a bitter irony that Ndaba, being a former cop detective in the Murder and Robbery Unit, would lose his own life in this manner. We appeal for calm and restraint. Let the law enforcement agencies deal with the investigations and track down the killers and bring them before the law.”

20 What would be the relevance of a person being a relative of the President for purposes of law enforcement by the police? Does it matter?

MR MHLONGO: For me, it does not matter. If you are just a human being like anybody else, you have got a right to life, and like anybody else, it was unfortunate that Mr Zondi was

killed. I wish we had people who really killed Mr Zondi and be brought to the court and tell everyone why they killed Mr Zondi, because definitely it was not us who were arrested for this murder.

ADV NGCUKAITOBI SC: Yes. And then Major General Booyesen continues, he says:

10 “Provincial Commissioner Ngidi insisted that Johan, who had known Zondi, personally handled the crime scene. It was a top priority case, says Johan.”

So I want to ask you this question. Major General Booyesen has given various accounts in different parts, but one of the accounts that he has given is that he was too far removed from the activities of the Cato Manor Unit. But he writes in his book that he was instructed by Provincial Commissioner Ngidi to personally handle the crime scene of Nkosi Zondi. What would that tell you?

20 **MR MHLONGO:** It says, or it confirms what transpired during my case at Scottburgh, because there was, I think it was Sergeant Ndlovu or someone who testified that, if you can check on the transcript, you will see that Mr Zondi, I mean, Mr Booyesen was at the scene of the crime that was committed at Umlazi. He was there personally.

ADV NGCUKAITOBI SC: Yes. I mean, even his own version is that this was told to him to personally attend to it. Now,

he then continues - sorry, you wanted to speak?

MR MHLONGO: No, I wanted, that is correct. It has been confirmed that he went to the scene.

ADV NGCUKAITOBI SC: Yes. He then continues:

“Although he was a Zulu chief ...”

He is talking about Nkosi Zondi.

“Zondi had also once been a detective based at Cato Manor, but had been transferred years before to KwaMakuthu and had been off sick for a year. At this

10

stage, I was unaware that the Zondi case had anything to do with the Choncho killing.”

Now, what do you say about his version that he was unaware of the connection between the Zondi case and the Choncho case?

MR MHLONGO: I believe as the person who was in charge of this unit, they should have informed him. And if you can look at the testimony of Mr Zulu, it appears that they were briefing their principals about what is happening and the breakthroughs that they have made on the case of Nkosi Zondi.

20

ADV NGCUKAITOBI SC: Yes, but the ...[intervenes].

MR MHLONGO: So we cannot say ...[intervenes].

ADV NGCUKAITOBI SC: Sorry, yes, carry on. I think you

are providing the answer in your last sentence.

MR MHLONGO: So he cannot say he was not aware of the connection between the two, because he knew that Mkhize have written a lot of letters requesting them not to kill him in connection with the murder of Choncho.

ADV NGCUKAITOBI SC: Yes.

MR MHLONGO: So now, he cannot just come and say, if it is true that Mr Zulu and the team have briefed him that there are, there was a breakthrough on the 2nd of Mr Mkhize Swayo
10 who was arrested, then they were briefed. Then there were other people who were ...[indistinct] the suspect in this case.

ADV NGCUKAITOBI SC: Yes, thank you. Then he says:

“The day in January when Zondi was killed was blazing hot in Umlazi. Johan had the area swept with brooms and got labourers to cut the grass. They found
dozens of AK-47 bullet casings. The
breakthrough came when the getaway
car was recovered. A fingerprint
20 showed that Swayo Mkhize had been in the car, the same Swayo who has been transported to court when Choncho was killed, but who had once again been given bail by the courts.”

There are just two questions I want to ask you here.

The first one is that he is talking about fingerprints that showed that Mr Mkhize had been in the car. We have got access to some documents that come from the case docket in Bhekithemba, and we have not found any fingerprints there at all. Would that suggest that if the fingerprints existed, they have been removed from the docket?

MR MHLONGO: I do not think it is the truth, Chairperson, because even during the case there at Scottburgh, Mr Zungu, who was the investigating officer, did confirm that there was
10 no fingerprints that was linked to any of the accused or the person that were being accused in this matter.

ADV NGCUKAITOBI SC: So that was the evidence of Warrant Officer Zungu who was the investigating officer in the case, in your case.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: And in that case, he confirmed that no fingerprints could be attributed either to yourself or to Mr Swayo Mkhize.

MR MHLONGO: Or to Mr Mkhize for that matter.

20 **ADV NGCUKAITOBI SC:** And that explains why the docket does not contain any fingerprints.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. Now, then the second thing I want to ask you here is that he seems to be raising an issue that because Swayo had been suspected of involvement in

the Choncho murder, he had, what he calls once again, been given bail by the courts. Why would Major General Booysen take an issue with a suspect who has received bail?

MR MHLONGO: I do not get it how he can implicate Swayo in the murder of Superintendent Choncho, because Swayo was kept by the police during the time. The bail that he received, it was for the murder that was committed around Stanger as they were appearing in Stanger. As we have said, and we have seen on the documents that the case was weak.

10 They could not oppose the bail or have a grounds to oppose the bail because their case was very weak.

ADV NGCUKAITOBI SC: Yes, well, I think what he is saying, in fairness to him, is that the link is that it was the same Swayo who was being transported to court when Choncho was killed. Now, I mean, I understood that what was being transported to court were case dockets. I had not seen any evidence that Mr Swayo Mkhize was himself being transported.

MR MHLONGO: That is correct, Chairperson.

20 **ADV NGCUKAITOBI SC**: Yes. Now, yes, perhaps before I leave this topic, I need to take you to 5A-152.

MR MHLONGO: 5A-152.

ADV NGCUKAITOBI SC: Yes.

MR MHLONGO: I am there, Chairperson.

ADV NGCUKAITOBI SC: Now, that is still the evidence of

Mr Zungu, and he is still being questioned. Well, in this case, he is being questioned by your Advocate, Mr Howse.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: So this is what your Counsel says from line 5. If we can start the line following line five, which should be the sixth line. He says:

10 “Then from the 22nd January, that is the date of the shooting, the date of the incident until the date of the month, would I be correct to say there was no real breakthrough? There was no evidence forthcoming as such.”

Can you see that?

MR MHLONGO: I can see that, Chairperson.

ADV NGCUKAITOBI SC: And what does the witness say, Mr Zungu?

MR MHLONGO: He said:

“That is correct, M’Lord.”

ADV NGCUKAITOBI SC: Then here is the crucial question.

20 He says:

“It seems the most you had was a fingerprint, and that was not the fingerprint of the accused now before court.”

Which was yourself, correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: -:

“Or the person who was formerly
accused number 1, which was Swayo
Mkhize.”

Correct?

MR MHLONGO: That is correct, M’Lord.

ADV NGCUKAITOBI SC: And then what does ...[intervenes].

MR MHLONGO: That is correct, Chairperson.

10 **ADV NGCUKAITOBI SC**: Yes. And then what does Mr Zungu
say?

MR MHLONGO: He said:

“That is correct, M’Lord.”

That was the reference that I was making before, that
Mr Zungu did consider in court that there was no fingerprints
that matched any of us.

ADV NGCUKAITOBI SC: Yes, but you were both specifically
mentioned, yourself and Mr Swayo, you were specifically
mentioned that you said there were no such fingerprints.

20 **MR MHLONGO**: That is correct, Chairperson.

ADV NGCUKAITOBI SC: And this is why the statement in
the book of Mr Booysen that a fingerprint showed that Mr
Swayo Mkhize had been in the car, cannot be a correct
statement. That is a lie.

MR MHLONGO: It is a blatant lie, Chairperson.

ADV NGCUKAITOBI SC: Yes. Now, I had asked you about what your comment is to the fact that Mr Booyesen seems to decry the fact that Mr Swayo had received bail, granted bail by the courts.

MR MHLONGO: It is because he is questioning, he want to be in charge of everything. If he respect the court, he should have accepted that he has been given, based on the evidence that was being presented to the court, not him, not using his feelings.

10 **ADV NGCUKAITOBI SC:** Yes, and then he continues:

“Cato Manor officers went to arrest Swayo and he spilled the beans in a statement.”

Now, the statement we were talking about is the statement we just read just before the lunch adjournment. You remember that?

MR MHLONGO: That is correct, Chairperson.

20 **ADV NGCUKAITOBI SC:** Now, when he talks about spilling the beans, I mean, knowing what you know about how that statement was obtained, what is your comment to Major General Booyesen relying on that statement as somebody having spilled the beans?

MR MHLONGO: He should know better that this statement, Swayo was threatened, he was beaten, he was under a lot of pressure for him, and he was taught what to say, like they did

to me.

ADV NGCUKAITOBI SC: Yes, but we also looked at the evidence given in your case, where there was a concession by Mr Zungu, that actually that statement was ruled inadmissible because it was procured by force.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: In the case of Umlazi.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes, so the fact that he now relies
10 on a statement he knows to be discredited, years later in his book, what does that tell you?

MR MHLONGO: Maybe he is trying to save his pride so that he can be seen as this person he wanted to portray as a hero, but with a lot of skeletons in the closet because you cannot lead a team of killers because that was a killing enterprise.

ADV NGCUKAITOBI SC: Then he purports then to summarize the contents of the statement. But at this point in time, he already knew the statement was discredited. It was disowned by Mr Zungu, and he says nothing about that in the
20 book. Then he says:

“He told police how Bongani Mkhize and several other men, among them Magojela Ndimande’s brother and nephew, Badumile and Sifiso, had met at Steers in Durban North and hatched

a plan to kill Zondi for selling out Ndimande. Swayo said that Mkhize's Kwa-Maphumulo Tasi Association had put forward R150,000.00 for the operation. Now, because of Swayo's confession ...”

This is the point.

“Because of Swayo's confession, Bongani Mkhize was wanted for questioning about the death of Nkosi Zondi.”

What is your comment about that?

MR MHLONGO: Chairperson, I would say it is so unfair that a person lose his life in such situation or under such statements which was made by Swayo, because I believe the police should have done their work. If you are a police, we are taught how to investigate. You, if they have done the proper investigation, they would have find out that what has happened or what has been told them, or if it is true, that that is not true. As I have said, if they have done their work, they should have went to that Steers in Durban North. Durban North is a very small area in Durban. You can just find Steers and check the records or maybe check the phones and see if these people, they have been in the same vicinity around the same time. Then you can conclude and say, yes, they were

together or they were not together.

ADV NGCUKAITOBI SC: Yes. Now, we can see from this book that the only link that Major General Booyesen had, according to him, was the statement of Swayo. The only link to Mr Mkhize was the statement of Swayo. Mr Mkhize had an interdict against the police. Mr Booyesen says that that interdict did not mean he could not be killed. But he also says we had a statement that connected him. Now, assuming those things to be correct, I know you are saying they were
10 false and you have given your evidence why, including the evidence that came from the trial. What would give the police the authority to kill a person?

MR MHLONGO: I think you, they can only kill a person if it is causing threat to them. I think that can be justifiable but other than that, I do not see the reason because Mkhize was ready, even if they have made a call or came to our association saying we want Mkhize, he was going to present himself to the police.

ADV NGCUKAITOBI SC: Thank you very much. Now, that
20 has covered the issue of the statement from Mr Swayo and the reliance on that statement by Major General Booyesen as justification for claiming that Mr Mkhize was a wanted man. There is something else about that. That pointing out statement that we looked at earlier is signed at 9:30 p.m. on the 2nd of February 2009. You do not have to look at it. You

can accept for now that what I am saying to you is correct.

MR MHLONGO: It is correct. I have got the statement with me. I was able to get it.

ADV NGCUKAITOBI SC: Yes, you can see at the end that it is 9:30 p.m. on the 2nd of February 2009.

MR MHLONGO: Yes, I saw that. I saw that, Chairperson.

ADV NGCUKAITOBI SC: Yes. Now, you were detained on the 3rd of February 2009 at quarter to 2, correct?

MR MHLONGO: That is correct.

10 **ADV NGCUKAITOBI SC**: But by 4 o'clock, you were at Cato Manor after you were taken to a park and tortured there and then driven to Cato Manor where you were tortured, correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: But by that time, you were already shown the photograph of a dead Mr Mkhize.

MR MHLONGO: Yes, it was, it has been shown to me.

ADV NGCUKAITOBI SC: Yes, which means that they killed Mr Mkhize that day at about, our own estimate, between 1 and 2. I mean, you went to prison at 13:45, not being aware
20 that Mr Mkhize was killed. But when you were inside, you were shown a picture that he was killed. So it was in a couple of hours between your detention and his killing.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: So which means that they got this supposed confession at half past 9 p.m. Then the following

day, they went looking for him and when they found him, they killed him.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. And there is absolutely no evidence that they attempted to arrest him or send him to court.

MR MHLONGO: There is no evidence such as that Chairperson, he was killed ...[indistinct].

ADV NGCUKAITOBI SC: Yes. Now, if on their version, on
10 Major General Booysen's version, is that until that confession, nothing linked this man to the crime and the confession came at 9.30 p.m. And they already have an interdict and a letter committing that this man will show up. They had enough time to tell him to come to court. Correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. Yes, I have actually just been told that according to Mr Stoltz, Inspector Stoltz, and Inspector Padayachee, they confirmed that they killed Mr Mkhize at 10 past 1 on the 3rd of February, 2009.

20 **MR MHLONGO**: That make sense because it has happened, that information was never in my possession up until I was at Cato Manor offices at around 4, half past 4, where these pictures were shown to me that Mr Mkhize was no more.

ADV NGCUKAITOBI SC: Yes, well, I am also interested in why they would show you the picture because they killed him

three hours before they showed you the picture, or two hours before they showed you the picture. I have never seen a scenario in which a suspect is killed by the police, and then they take the picture of the deceased and go around showing other potential suspects. What would be the reason for that?

MR MHLONGO: It was to instil fear and show that if I do not follow or do whatever they are attempting me to do, I will suffer the same fate, or I will get killed like how they did to Mkhize because this is the person that I respect, he is the
10 Chairperson of the association. He is the person that I look up to, but he is no more, in the same case that I am arrested for.

ADV NGCUKAITOBI SC: Yes, I mean, the reason I am putting this to you is that the reason these pictures are taken of the crime scene is to assist in the investigation of that crime. These are not pictures taken to show other suspects what their fate would be.

MR MHLONGO: Chairperson, if maybe I can take it further than that, the very same picture that you will see on, that was
20 shown to me is the same picture that was on the headline the next morning on the 4th. If you can check for Isolezwe, the newspaper, which was, is based here in KwaZulu Natal, it is the very same picture, the one that Mr Mkhize was leaning on the steering full of blood. That was the picture that was on the newspaper the following day. For me, it says this picture

was not shared to me only, but as well as the journalist had this, or they were given the very same picture.

ADV NGCUKAITOBI SC: Yes, well, we have some evidence here from Mr Danikas about the connection of Mr Booysen and journalists of certain newspapers and giving them a prior access to crime scene photos. Now, by the 3rd of February 2009, you have been shown that Mr Mkhize has been killed. Why are you still required to do a pointing out on the 4th? What are you supposed to point out?

10 **MR MHLONGO:** I was told to do the pointing out so that I can incriminate myself or show that what has happened on the day when Mr Zondi was killed.

ADV NGCUKAITOBI SC: Yes, but I mean, for what purposes, because the person, according to them, who is responsible for planning the murder has already been killed on the 3rd, and that was Mr Bongani Mkhize.

MR MHLONGO: I think their reasoning would be maybe because they wanted to take me to court because subsequently to that, I did went to court on the 5th of February
20 2009.

ADV NGCUKAITOBI SC: So you were one of the persons who were the suspects?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. Now, that is what is covered from page, from paragraph 106 of your statement at page

522.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: So after they had tortured you in the evening of the 3rd, they took you to Sydenham and you were driven by Mr Raymond Lee, Mr Maharaj. In the morning ...[intervenes].

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Of the 4th, you were then taken from that station by Inspector Gasser. Is that correct?

10 **MR MHLONGO**: That is correct, Chairperson. But maybe if I can go back a little bit, Chairperson ...[intervenes].

ADV NGCUKAITOBI SC: Yes.

MR MHLONGO: So that maybe I can give you a comprehensive picture of what happened on that night.

ADV NGCUKAITOBI SC: Please.

MR MHLONGO: I was lodged at Sydenham Police Station and I was isolated. I was not allowed to be put or ...[audio dip] that room was leaking. There was water all over. I could not sleep even on the floor because there was no blanket,
20 there was nothing. I was kept there on that separate room alone the whole night. I could not sleep for that night. I stand with my feet the whole night up until in the morning.

ADV NGCUKAITOBI SC: Yes.

MR MHLONGO: I think that is important for me to mention because there was a reason for that, why I was kept in

isolation.

ADV NGCUKAITOBI SC: Yes. Now, in the morning at 8 a.m., Inspector Gasser comes to fetch you. You then meet Captain Naicker, Inspector Ndlovu and Sergeant Kennedy. Is that correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: And where did you meet them, at Sydenham or at ...[intervenes].

MR MHLONGO: Correct.

10 **ADV NGCUKAITOBI SC:** Yes.

MR MHLONGO: We met at Cato Manor office, Chairperson.

ADV NGCUKAITOBI SC: Oh, you met at Cato Manor.

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Then, this is, and your statement says this was for a pointing out. Is that correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. Then you say that you were not properly consulted in the structured and careful manner that was later suggested by the police.

20 “The official pointing out documentation was not completed in a proper question and answer format in my presence as it appears on the face of the document. At the time, I had visible marks on my wrist caused by handcuffs. These were not

recorded in the documentation.”

What are you referring to there?

MR MHLONGO: Hence, I have said before, as we went for the pointing out, I was taken from Sydenham to Cato Manor. At Cato Manor, I have met these white guys and they continued threatening me that if I am not complying, they are going to kill me in front of these other policemen. And I was compelled to go with that Mr Naicker, Mr Ndlovu, as well as this Mr Kennedy, who was the photographer. The photograph
10 of me was taken naked and others where I was wearing my clothes. And there was no form that was filled before we went for the pointing out. We went to Umlazi and we get lost. But the forms that you see here, as SM ...[intervenes].

ADV NGCUKAITOBI SC: 9.

MR MHLONGO: SM7.

ADV NGCUKAITOBI SC: 7.

MR MHLONGO: It is SM7, yes. Those forms were filled later on the 4th, later in the afternoon, not on the day where I was, I went for the pointing, or on the day that I went for the
20 pointing out, but not before I went for the pointing out. It was after the pointing out has been conducted.

ADV NGCUKAITOBI SC: Yes, well, I think the notes of the pointing out is not SM7, it is SM9 at 5A-53.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes, now this is what I just need

to go through with you then. So if you look at the beginning of this document, it is talking about Captain Bobby Naicker, who was approached to take charge of a pointing out by Detective Inspector Zungu at 7 p.m. on the 3rd of February 2009 by telephone. Do you have any comment on that?

MR MHLONGO: I can comment because it would appear, Chairperson, that on the cellphone records of Mr Zungu that it did not happen in that fashion.

ADV NGCUKAITOBI SC: He did not call Mr Naicker at 7
10 o'clock on the 3rd of February 2009.

MR MHLONGO: Yes, it will appear during the transcript of the court proceeding that it happened later on the day, not at 7.

ADV NGCUKAITOBI SC: Yes. Yes, well, I mean, you have given the evidence that during that period, between 4 and much later, you were either being tortured at Cato Manor or being transported to Sydenham. It was only on the 4th and the following day that Inspector Zungu came to talk to you.

MR MHLONGO: That is correct, Chairperson.

20 **ADV NGCUKAITOBI SC**: Yes, so the idea that at 7 o'clock on the 3rd of February 2009, he was talking to Captain Naicker about a pointing out that you had agreed to, is irreconcilable with what actually happened.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Now, then it continues:

“The exact words of the said member of the service when he approached me to take charge of such pointing out were, Captain, please can you assist with a pointing out?”

Now, the person who has writing the statement is Captain Bobby Naicker, correct?

MR MHLONGO: That is correct.

ADV NGCUKAITOBI SC: So he too seems to be part of the
10 lying because he should tell the truth about when he was approached by Detective Inspector Zungu.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes, can you explain why he is lying about when he was approached for this pointing out?

MR MHLONGO: I think as we were in court, it appears that they were not supposed to use the services of the same organized crime unit. They are supposed to use someone independent or take me to the, it is either a judge or the magistrate for the confession.

20 **ADV NGCUKAITOBI SC**: Yes, that is correct. And the confession here, you make it to them, to the same police officers that were interrogating you.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes, and did anyone explain to you why a confession must be made before an independent

person, like a judge or a magistrate?

MR MHLONGO: It will be, I think, as a layman, it will just be for the comfort of that person who wants to tell the story and tell the story that he really wants to tell, unlike the story that you were compelled or you were forced to agree on when you were compelled by certain individuals or you were forced by other people to say what they wanted you to say, because in this instance, we were forced and we were compelled to say whatever we have said to them.

10 **ADV NGCUKAITOBI SC**: Yes, I understand, but the reason why it must be made before a judge or a magistrate, I mean, was that explained to you why that is important? You have explained that it is for the comfort of that person, but there may also be another reason, which is that it is part and parcel of your rights that are protected in the Constitution against self-incrimination.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Because a confession is self-incrimination.

20 **MR MHLONGO**: That is correct, Chairperson.

ADV NGCUKAITOBI SC: So, if ...[intervenes].

CHAIRPERSON: I think what Counsel is asking you is whether any one of them explained to you this point that he is making.

MR MHLONGO: No, no one explained to me that they will

send someone. I was only told in the morning that you will have to go with these people to go and do the pointing out. So there was no agreement between myself and them. I was told what to do.

ADV NGCUKAITOBI SC: Yes, so none of the people that were questioning you explained to you that, look, you have a right to go to a magistrate or a judge where you can make a full confession?

MR MHLONGO: There was none. If there was that option, I
10 was going to go for that option because I knew that I was going to tell the magistrate or the judge that this thing, it has never happened in the way that I was told to say it.

ADV NGCUKAITOBI SC: Yes, thank you very much. Now, then it continues here. It says:

“At 8:20 on the 4th of February ...”

That is when it is happening.

“At Organized Crime office, Cato Manor,
Durban, a person, Siphamandla
Mhlongo ...”

20 And then it gives your ID and your cellphone.

“Apparently of sound and sober senses,
appears before me, Captain Bobby
Naicker, stationed at Organized Crime
Unit. The said person is brought by
Detective Inspector Gasser, stationed at

Durban, at Organized Crime unit, Cato
Manor, Durban.”

So these are people from the same unit, Organized
Crime unit.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes, the other appears before the
other. It looks like they are just moving chairs around.

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Now, then if you look at the bottom
10 of that page, there are three signatures. There is the first
signature of the said person. Now, that said person is Mr
Siphamandla Mhlongo.

MR MHLONGO: That is correct.

ADV NGCUKAITOBI SC: There is then the signature of the
interpreter.

MR MHLONGO: [Indistinct]...

ADV NGCUKAITOBI SC: Sorry?

MR MHLONGO: Yes, on the signature of the said person,
that is me, that is my signature, Chairperson.

20 **ADV NGCUKAITOBI SC**: Yes, and then there is the
signature of the interpreter and the signature of the officer,
that is Captain Naicker, correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes, now why did you sign here?

MR MHLONGO: It is because I was forced to sign.

ADV NGCUKAITOBI SC: Yes. Now, then if you go to the following page, it says:

“Only the said person, the interpreter, Detective Inspector MM Ndlovu, stationed at Organized Crime unit ...”

I think it is Pietermaritzburg.

“Interpreting from English to Zulu, the photographer, Sergeant Kennedy, and I are present in my office and nobody else.

10

So was there an interpreter from English to Zulu?

MR MHLONGO: Mr Ndlovu was the one that who was acting as an interpreter.

ADV NGCUKAITOBI SC: Yes, okay. Now, and then it continues. If you skip the following two paragraphs, it says:

“I explained to the said person that when I hereafter refer to a pointing out, I have in mind a situation where a person takes a police officer to a place or places and shows him certain scenes or points where some event or events have occurred with or without explanation. His reaction is as follows. I understand, I want to show you the crime scene.”

20

Did you say this?

MR MHLONGO: No, no, I never said this. This thing, it was filled before, not in my presence, it was filled, then I was asked just to come and sign in all these papers. I was not even given a chance to read through this document.

ADV NGCUKAITOBI SC: I see. So that would also apply to under item A:

“I now convey the following information
to the said person.”

10 And then it says:

“Do you understand this? Yes.

Do you understand this information?

Yes.”

And there is a signature at the bottom. So that was all already completed by the time you came.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. Now then if you follow, turn over the following page, all of those item 3, 4, 5, 6 and 7, those were also completed beforehand.

20 **MR MHLONGO**: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. And when you turn to 5A-56, again, things that are attributed to you, 8, 9, 10, 11, 12, 13, 14, that was also completed before this was brought to you.

MR MHLONGO: It was all completed and the only spaces that were left was for me to sign.

ADV NGCUKAITOBI SC: Yes.

MR MHLONGO: There was nothing else because I should have asked questions about it if it was read through to me. And I was going to ask if they can bring the attorney for me so that I will be in the comfort of my attorney to go through this document.

ADV NGCUKAITOBI SC: Yes. Now item 15 is relevant, which is at 5A-57.

10 “Were you in any way assaulted or threatened by any person in order to influence you to point out the sins and all points?”

And the answer here is:

“No.”

What do you say to that? This demonstrate exactly that, how should I say no when I know exactly and the marks and everything, the way I was, everyone which was visible, that I was beaten.

ADV NGCUKAITOBI SC: Yes, well that ...[intervenes].

20 **MR MHLONGO:** So, it should not be correct to say no, it should be saying yes. So it is why I am saying it was filled, then I had no option but just to sign at the bottom of each page.

ADV BALOYI-MERE SC: Sorry, before you continue, just for clarity, Mr Mhlongo, did you have any visible injuries on your

body before you went for the pointing out as a result of your alleged torture and assault by the police the previous day?

MR MHLONGO: Yes, Madam Chair, there were a lot. As you will go through my, the transcript, you will see that even Mr Naicker, as he will come and testify, he will accept that there were marks on my wrist and on my legs, but he did not bother himself to record it on this form.

ADV BALOYI-MERE SC: Did the photographer, Sergeant Kennedy, take pictures because I saw somewhere where they
10 say they took pictures of you from the front, from the back, with your clothes on, with your clothes off. Did they take those pictures and did the pictures show the signs of assault and torture?

MR MHLONGO: It will because pictures were taken, Madam Chair, and if maybe you can request those pictures, you will see.

ADV BALOYI-MERE SC: And were the pictures used during your trial, especially in the trial, within the trial, because I take it that is where you disputed the confession and
20 indicated to the court that it was extorted from you through assault and torture.

MR MHLONGO: No, it was not used, Chairperson. I think the court believed the version of Mr Naicker, as well as Mr Zungu, because in a later stage he did confirm that he saw the marks on my wrist and on my legs and I was swollen as

well in my face.

ADV BALOYI-MERE SC: So there was no need to use the pictures?

MR MHLONGO: That is correct, Chairperson.

ADV BALOYI-MERE SC: Do you perhaps know what happened to the pictures? Have you ever seen them somewhere?

MR MHLONGO: No, I never seen them, Chairperson, but I know pictures were taken.

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

ADV NGCUKAITOBI SC: Thank you, Madam Baloyi-Mere SC. Perhaps you can look at question 16 and answer it, 5A-57.

MR MHLONGO: -:

“Do you have any injuries, bruises, wounds, or scars on your body of any nature whatsoever?”

“No ...”

I cannot see.

20 **ADV NGCUKAITOBI SC:** Visible.

MR MHLONGO: -:

“No visible injuries.”

That is what it says.

ADV NGCUKAITOBI SC: And then look at the question after that and the one that is written in upper caps.

MR MHLONGO: -:

“If so, can you show them to me, please.

Note down all the injuries. No injuries.”

ADV NGCUKAITOBI SC: Yes, and then:

“Observation by the officer.”

Now here is not your answer, it is what the officer can observe. What does this say?

MR MHLONGO: -:

“No injuries.”

10 [Indistinct]... handwriting here.

ADV NGCUKAITOBI SC: Yes, it says:

“No visible injuries.”

So if you then go to the following page, which is 5A-58, paragraph 16.2, Captain Naicker says:

“Well, tell me how you sustained these injuries.”

And then he says, what does he say?

MR MHLONGO: -:

“No injuries.”

20 **ADV NGCUKAITOBI SC**: Now, having looked at paragraph 16 in particular and comparing it to page 5A-229, so just go to your transcript again, 5A-229.

MR MHLONGO: On the transcript, 5A-229?

ADV NGCUKAITOBI SC: Yes.

MR MHLONGO: That is correct, I am there, Chairperson.

ADV NGCUKAITOBI SC: Now, Mr Howse, at line 10, if you look at line 10, the following line is Mr Howse questioning Mr Naicker. That is the person who completed that form and said ...[intervenes].

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: That there were no injuries. Now, he says to him:

“I beg the court's pardon, M’Lord, thank you. I see that, yes, I beg your pardon.

10 Page 5, paragraph 16 ...”

That is the paragraph we have just read.

“Thank you, M’Lord. And do you see at the end of paragraph 16, it reads in big capital, observation by the officer? That is correct, M’Lord. Is that your writing?

That is correct, M’Lord. Now, you will remember, Captain, in your evidence, you indicated that there were handcuff marks visible on the accused's wrists in the form of bruises. Do you recall that?”

20

What does Mr Naicker say?

MR MHLONGO: He said:

“That is correct, M’Lord.”

ADV NGCUKAITOBI SC: So then the Advocate says:

“So the truth of the matter then is that

he had visible injuries.”

What does he say? What does Mr Naicker say?

MR MHLONGO: -:

“That is correct, M’Lord.”

ADV NGCUKAITOBI SC: And then the Advocate says:

“So, what you have recorded here is
incorrect.”

What does Mr Naicker say?

MR MHLONGO: -:

10 “It was an error on my side, M’Lord.”

ADV NGCUKAITOBI SC: Yes. So, again, we go back to this
form that is completed to pretend that you had no injuries.
This is a fabrication, is it not?

MR MHLONGO: It is a fabrication, Chairperson. And as it
was in court, it was made bare that these guys or these police
officers, they were busy not doing what they were supposed
to do but building up the case which was not there.

ADV NGCUKAITOBI SC: Yes.

MR MHLONGO: Or creating a case which was not there, if I
20 may put it in that way.

ADV NGCUKAITOBI SC: Yes. But the point here is this
form they have completed, which is all done, if you go to the
end of it, this is all done under oath, is a fabrication which
would amount to an offence. Do you know if any steps were
ever taken against Mr Naicker for fabricating this form?

MR MHLONGO: I do not know anything of that sort, Chairperson. I have never heard.

ADV NGCUKAITOBI SC: Yes. So it then continues when you look at 5A-59 where you are now admitting of an incident that took place on the 22nd of January 2009 between 7 and 8, 7 a.m. and 8 a.m. Now that is the killing of Nkosi Zondi, you remember that?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: And you are admitting that you
10 were personally there and you were present at paragraph 22
and 23, correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Now, is this false or true?

MR MHLONGO: It is false, Chairperson, because this, as I
have said, this form was written and the only space that was
left is for me to put a signature on, otherwise I was going to
get killed if I am not signing this form.

ADV NGCUKAITOBI SC: Yes. So even these so-called
confessions are fabrications by Mr Naicker and his
20 colleagues?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: And Mr Zungu is also present
throughout here or not?

MR MHLONGO: Mr Zungu was not present. He only came,
you will see, that he came after 7 on the 4th. This is on the

4th during the day. This form was filled up at around 12, half past 12 after we came from the pointing out. It was not filled. That is when I was asked to put a signature on the papers. And I was very hungry during that time because for the last day, I did not have food or anything, even anything to drink for the last, maybe, 16 or 17 hours.

ADV NGCUKAITOBI SC: So you say this form was completed at 12 o'clock when you returned from the pointing out?

10 **MR MHLONGO:** That is correct, Chairperson.

ADV NGCUKAITOBI SC: I mean, the problem is that that might expose another fabrication in this form because at 5A-53, it says that the form was completed at 8:20, now that was before the pointing out.

MR MHLONGO: That is not true. That is not true, Chairperson. It was done after we came from the pointing out.

ADV NGCUKAITOBI SC: Yes, because it looks like the portion that should be completed after your return is only the
20 one at 5A-60, which is date returned and time returned.

MR MHLONGO: But this whole form was done after we came from the pointing out.

ADV NGCUKAITOBI SC: I understand what you are saying. I mean, it would also make no sense to do it afterwards because in the earlier portions we looked at, that is where

you are promising the police that you are going to do a pointing out and you have done it voluntarily without any form of coercion. So why would you do that afterwards?

MR MHLONGO: That should be the question.

ADV NGCUKAITOBI SC: Yes. Then we have looked at the, there is a section for the photographs, but you have already been asked about where those photographs are, so I will not ask you, under item D. And then at 5A paragraph, sorry, at 5A-61 and -62, it is the same theme where you are
10 cooperative and you have no questions and there is a certificate by the interpreter at 5A-63. Now, there is also the actual notes that are given by Mr Naicker. That you will find at 5A-65, which are part and parcel of this confession.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Now, he commences at 757, where he explains all of the steps, that you are booked out from Sydenham. The interview starts at 8:25 and the photos are taken at 9:20. And you drive around with Captain Naicker and certain questions are asked, certain answers are given,
20 until you come back at page 5A-68 at 11:54.

So what do you say about that whole, again, it is another confession of what you were going around, pointing out and even telling them who were your, who were the other persons that were involved with you, Ska Ndimande, Swayo, I think I saw Mkhize as well mentioned. So what do you say

about that, those four pages of a recorded confession that you made to Mr, to Inspector Naicker?

MR MHLONGO: Chairperson, just to expose it from the start, as you can see there, it is 7:57. I was not with Mr Naicker at 7:57. If we can go back, you will see that the person that picked me up from Sydenham Police Station, it was Mr Gasser, not Mr Naicker.

ADV NGCUKAITOBI SC: Yes.

MR MHLONGO: So it shows you that these guys, they were
10 just making up things for no apparent reason. I was not with Mr Naicker around this time. I was brought to him around 20 past 8. That is where I was made to take out my clothes. Pictures were taken. Then they asked me to try and locate the area in Umlazi.

We tried, and you will see, if you can look at the mileage of the vehicle, that there was a lot of kilometres that we went through because we could not find the place, because I did not know. We had to ask for directions from a couple of people. If you can look at Swayo's pointing out,
20 they took them only about 20 kilometres. But for me, it took around 60 kilometres in order for us to be able to locate the area where we were looking for, the area that we were looking for.

And on our way back, you will see the distance is even shorter. It take us even 25 minutes from the crime

scene to get to the office, because by the time that we were going there, we were looking for the area that we all do not know. So what is said here, it is not true, and it was prepared by Mr Naicker, and I was made to sign at the end of it.

ADV NGCUKAITOBI SC: Ja. So, in other words, you did not know where you were going?

MR MHLONGO: I did not know where we were going.

ADV NGCUKAITOBI SC: And who knew where you were going?

10 **MR MHLONGO:** In all of us, there was no one, because even Naicker, he did not know. We had to enquire for directions in a couple of people, because for me, it was safe to say, if I saw, because on the news, I know that there were railings that were damaged on the side of the road. So each and every damaged lines or the damaged railings on the road, I would stop there and say, this is the area.

ADV NGCUKAITOBI SC: Yes.

MR MHLONGO: And they would say, no, we have to have the markings on the road where the bullet shells were and all
20 those things. They were saying things that I did not know. But for me, to save my life, it was for me to show any damaged railings to say this is the area.

ADV NGCUKAITOBI SC: Yes. But I mean, according to you, what are you looking for?

MR MHLONGO: I was looking for the crime scene where Mr

Zondi was killed, and I saw on the TV that the vehicle did damage the railings. So, I was looking for any damaged railings on the side of the road while we were at Umlazi.

ADV NGCUKAITOBI SC: Yes. I mean, were you familiar with it, because according to the evidence, he was killed in the Z section of Umlazi. Were you even aware of that?

MR MHLONGO: I did not know Umlazi. I was, I am coming from Maphumulo. Maphumulo is like 140 kilometres away from Durban. So with Umlazi, I only went there when there
10 were soccer matches. The only place that I knew was the stadium, which was there at Umlazi. But other than that, I was not familiar with Umlazi, even today.

ADV NGCUKAITOBI SC: Yes, yes, yes. So ...[intervenes].

MS RAMAGAGA: Just one thing. You say that it took those that were transporting you about 60 kilometres to locate the crime scene, that is, the distance travelled was about 60 kilometres.

MR MHLONGO: That is correct.

MS RAMAGAGA: And then you say for the pointing out to
20 be done by Swayo, it took them about 20 kilometres travel. Now, the first question that I want to ask is whether you and Mr Swayo were still from the same police station? Were you detained at the same police station?

MR MHLONGO: No, Chairperson, we were detained in different stations. Swayo, he told me that he was detained in

Westville Police Station. I was detained at Sydenham. So we have not met. Oh, I saw him only by the time they brought him on the 3rd, just after 7, where he came crying. But shortly after that, they took him away as well. So on the next day, I was all by myself trying to locate this area. And you will see on the notes of Mr Naicker from where he is starting at 7552 of the kilometres on the vehicle, then when he come back, it appears that it was 7625. So you will see that we travelled a lot.

10 **MS RAMAGAGA**: Okay, may I just follow up? Do you know as to whom between yourself and Mr Swayo was taken to the alleged scene crime, scene of crime, I beg your pardon, to the scene of crime on that day? Who between you was taken there first and the other followed, or do you not know?

MR MHLONGO: I believe according to the notes that we see here, Swayo was taken on the 2nd. So I was taken on the 3rd. So it means Swayo went there first, then on the following day, it was my turn.

MS RAMAGAGA: Which means that they already knew the place. Well, on the assumption that it was the same driver.

MR MHLONGO: No, there were different drivers if you look at the documents, Chairperson.

MS RAMAGAGA: No, no, that is fine then. So it was a different driver and you were both blind mice looking for this place?

MR MHLONGO: That is correct, Chairperson.

MS RAMAGAGA: Okay, thank you.

ADV NGCUKAITOBI SC: Yes, thank you. So you said that you did not know the place and none of the people in the car appeared to know the place and you were just guessing because of what you had seen on television.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes, and then what happened when you finally arrived at the supposed scene of the crime?

10 **MR MHLONGO**: I was made to point certain points at the crime scene and pictures were taken, then we, because they were angry because we travelled for too long and they took me back to Cato Manor. That is when we were, these forms and these statements were brought to me and I was made to sign.

ADV NGCUKAITOBI SC: Yes.

MS RAMAGAGA: Just one more question just to close this up. It took you, you say it took you a long time, which could be estimated at 60 kilometres, the trip to the alleged crime scene, but then going back, did it take you another long time
20 or what can you say about the period spent to go back to the police station?

MR MHLONGO: It was very quick, Madam Chair. It took us less than 20 minutes from the crime scene to, back to the Cato Manor office.

MS RAMAGAGA: Thank you.

ADV NGCUKAITOBI SC: Thank you. You have covered in your statement at 522, paragraph 106 up to paragraph 120, which is at 524. So I am not going to ask you that. We have been dealing with that now. Now, you were then detained after your pointing out and you applied for bail, which was opposed. Is that correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. And we have got the affidavit
10 opposing your bail, which is at SM10, 5A-69 signed by Mr Sibusiso William Zungu. Is that correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. The upshot of it is that bail was refused.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes, which meant that you spent the whole time, I think, how long was it before you went to trial?

MR MHLONGO: It took us 19 months.

20 **ADV NGCUKAITOBI SC:** 19 months before you went to trial.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: But that whole time you were incarcerated.

MR MHLONGO: Yes, I was housed in Westville prison.

ADV NGCUKAITOBI SC: Yes, now that is what you deal with

at 133, 134, at 527. And then you, by the way, we have been talking about Detective Inspector Zungu. I mean, who was he?

MR MHLONGO: He was an investigating officer in the matter.

ADV NGCUKAITOBI SC: Yes. And who was the prosecutor?

MR MHLONGO: It was Ms or Mrs, Ms Elaine Khuzwayo.

ADV NGCUKAITOBI SC: Ms Elaine Khuzwayo.

MR MHLONGO: That is correct, Chair.

10 **ADV NGCUKAITOBI SC:** Yes. Well, the current DPP of KwaZulu-Natal is Ms Elaine Harrison. Are they different or is it the same person?

MR MHLONGO: I am told it is the same person.

ADV NGCUKAITOBI SC: Same person, yes. No, the reason I ask you this is because this is the person who has now withdrawn all of the charges against the Cato Manor accused, and I am surprised that she was once assigned as a prosecutor in your case.

MR MHLONGO: It is strange, Chairperson, because I was
20 later informed that she got married to Mr Zungu.

ADV NGCUKAITOBI SC: Which Mr Zungu?

MR MHLONGO: The investigating officer, Mr Sibusiso Williamson.

ADV NGCUKAITOBI SC: The same person who was an investigating officer in your case?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. Now, does that explain why, in some of the documents, we see the reference to Advocate Elaine Zungu?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. But I do not understand, how would she be able to exercise judgment on the withdrawal of the cases? Is that not a conflict of interest?

MR MHLONGO: As a layman, I would think so. It is, it has
10 a conflict of interest. She was supposed to excuse herself because she had, or she had a relationship with one of the accused persons.

ADV NGCUKAITOBI SC: Yes. Well, I mean, the fact that she was a prosecutor assigned for your case, which was one of the Cato Manor cases, and later on becomes the DPP, but then withdraws the charges against all of the Cato Manor accused, and at some point was married to a member of the Cato Manor unit, I mean, do you understand how that happens?

20 **MR MHLONGO**: I could not comment on it, but I think the National, the NDPP or the NPA should be the one who can, who can answer on that.

ADV NGCUKAITOBI SC: Well, Mr Mtsweni is asking me whether Mr Zungu was part of Cato Manor or not. What is your answer to that?

MR MHLONGO: I would think Mr Zungu was part of Cato Manor because everything that was happening, it happened in Cato Manor. So how could he not be part of Cato Manor if his accused persons or the people that he is investigating are being interrogated at Cato Manor? So for me, it would make sense if he is part of Cato Manor, but I stand to be corrected as I am not a policeman and I am not familiar with what is happening in the police force.

ADV NGCUKAITOBI SC: Yes.

10 **ADV MTSWENI:** Sorry, Madam Chair, just for the record, I was merely chipping. I was not asking Mr Ngcukaitobi that question. I was just chipping aloud.

ADV NGCUKAITOBI SC: All right.

CHAIRPERSON: I am not sure whether it is appropriate, Counsel, also to do that, but you remember you are now on record where Counsel, Advocate Ngcukaitobi exposes what you are whispering to yourself, or whispering to him. But maybe on that point as well, Counsel, something that just struck me and that I need clarity on, when you look at
20 paragraph 180, 5-36, the witness refers to the cross-examination at the trial within a trial. And this is Warrant Officer Zungu was questioned about the source of my name and the purpose of my arrest. And you look at 181, there he speaks of the affidavit that was deposed to by a warrant officer during the bail proceedings, and this was prepared by

Advocate Elaine Khuzwayo, now Harrison. And this affidavit was signed and commissioned by him, Mr Zungu. Is my reading correct? If you look at footnote 26, the transcription of the trial within a trial is at page 90-91. Counsel?

ADV NGCUKAITOBI SC: Yes, Madam Chair.

CHAIRPERSON: Yes, maybe before we pose questions to the witness, let us just get that sequence correct. Yes, page 5-37, paragraph 181, it refers to that affidavit that was deposed to by him.

10 **ADV NGCUKAITOBI SC:** Yes, that is at 5A-166 where the questioning takes place.

ADV CHASKALSON SC: Yes, 5 – ja, no, sorry, it is at page 5-36, 5-36 of the affidavit of the witness, paragraph 180.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Maybe we can read that.

“During cross-examination in the trial within a trial, Warrant Officer Zungu was questioned about the source of my name and the purpose of my arrest. He was referred to an affidavit.”

20

That is paragraph 181.

“He was referred to an affidavit deposed to by him in the bail proceedings in my matter, which was prepared in the handwriting of the Deputy Director of

Public Prosecutions, Advocate Elaine Khuzwayo, now Harrison, and signed and commissioned by him.”

Is my understanding correct that it is Mr Zungu who commissioned that affidavit? Now, if you look at the transcript of the trial within a trial at paragraph pages 90, 91, they deal with it there. But the point that I am trying to ascertain with the witness is whether it is this investigating officer, Mr Mhlongo, are you there?

10 **MR MHLONGO**: I am here, I am here, Chairperson.

CHAIRPERSON: Yes.

MR MHLONGO: I am going through with you.

CHAIRPERSON: Is this investigating officer, Mr Zungu, the one who commissioned the affidavit referred to at paragraph 181, your paragraph 181? Do you want to read your paragraph 181 first and probably take it from there and answer my question?

MR MHLONGO: -:

20 “He was referred to an affidavit deposed to by him in the bail proceeding, in my matter, which was prepared in the handwriting of Deputy Director of Public Prosecution, Advocate Elaine Khuzwayo, now Harrison, and signed and commissioned by him.”

As mentioned, it was Advocate Elaine Harrison who was working in my matter together with Warrant Officer Zungu. The affidavit is prepared by Advocate Harrison containing material inaccuracies. Here, Chairperson, if you look at this affidavit at 5A4-71, there are notes that at paragraph 19, we refer to these notes that were made by, handwritten there. If you can see, on paragraph 19, I am not too sure if you can see that, Chairperson.

CHAIRPERSON: 5A-71?

10 **ADV NGCUKAITOBI SC:** 57, Madam Chair.

MR MHLONGO: 5A-72.

CHAIRPERSON: 5A-72.

MR MHLONGO: Yes.

CHAIRPERSON: Yes, I see paragraph 19.

MR MHLONGO: You see, paragraph 19, you can see there, Zungu has put signature on the side. That is SW Zungu, and the handwritten notes there are made by the prosecutor, Ms Elaine Khuzwayo.

20 **ADV NGCUKAITOBI SC:** Just before you proceed from there, just read precisely what Ms Khuzwayo said. What is the insertion there?

MR MHLONGO: The insertion here is:

“The applicant was when brought back to Durban, the applicant has not been assaulted by any officer at his arrest.”

ADV NGCUKAITOBI SC: From the time.

MR MHLONGO: From the time of the arrest, sorry.

ADV NGCUKAITOBI SC: Yes, now, that is the point that is being asked, is your statement says this affidavit contains inaccuracies which were introduced by Ms Elaine Harrison. Is this one of them?

MR MHLONGO: That is correct, because if you go to the transcript, you will see that Mr Zungu did concede that I was beaten and I was coerced by these members.

10 **CHAIRPERSON:** Who commissioned this affidavit?

MR MHLONGO: Come again, Chairperson?

CHAIRPERSON: Who commissioned this affidavit?

MR MHLONGO: It was commissioned by Ms Yvonne, I think it is Yvonne ...[indistinct].

ADV CHASKALSON SC: Yes, that takes me back to paragraph 181, where you state that, if you read that paragraph again:

20 “He was referred to an affidavit deposed to by him in the bail proceedings in my matter, which was prepared in the handwriting of a Deputy Director of Public Prosecutions, Advocate Elaine Khuzwayo, now Harrison, and signed and commissioned by him.”

Who is by him?

MR MHLONGO: We meant Mr Zungu. As you can see, he signed on the side to say, yes, he agree of what has been changed or what has been inserted here by hand.

CHAIRPERSON: He is the deponent.

MR MHLONGO: That is correct.

CHAIRPERSON: At page 58-74.

MR MHLONGO: That is correct, Chairperson.

CHAIRPERSON: So he is not a commissioner of oath there. The commissioner is somebody different.

10 **MR MHLONGO**: That is correct, Chairperson.

CHAIRPERSON: It is Yvonne Mkhize.

MR MHLONGO: That is correct, Chairperson.

CHAIRPERSON: So that part of your statement must be corrected, am I right?

MR MHLONGO: That is correct, Chairperson.

CHAIRPERSON: Would you like to go through that, Counsel?

ADV NGCUKAITOBI SC: Yes, Madam Chair. Can you go to paragraph 180 of your affidavit, well, rather your statement,
20 537.

MR MHLONGO: 536.

ADV NGCUKAITOBI SC: No, 181 at 537.

MR MHLONGO: 181. That is correct, Chairperson, I am there.

ADV NGCUKAITOBI SC: Yes, I just want to read that

sentence. So it says:

“He was referred to an affidavit.”

Now, this is what is going on in the trial, but we have seen the affidavit.

“Deposed to by him in the bail proceedings in my matter, which was prepared in the handwriting of the Deputy Director of Public Prosecutions.”

So let us start here. The affidavit is not prepared in
10 the handwriting, but it has handwritten insertions, correct?

MR MHLONGO: Yes, that is correct, Chairperson.

ADV NGCUKAITOBI SC: So shall we correct that to say, which had handwritten insertions.

MR MHLONGO: Insertions.

ADV NGCUKAITOBI SC: And then we can then say, by the Deputy Director of Public Prosecutions, Advocate Elaine Khuzwayo, now Harrison, and signed by him. We scratch out and commissioned by him. Is that correct?

MR MHLONGO: That is correct, Chairperson.

20 **ADV NGCUKAITOBI SC**: So the new reading of that sentence should be:

“He was referred to an affidavit, deposed to by him in the bail proceedings in my matter, which had handwritten insertions made by the

Deputy Director of Public Prosecutions,
Advocate Elaine Khuzwayo, now
Harrison, and signed by him.”

Is that correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes, thank you very much. Now,
you have also then stated that it was Advocate Elaine
Harrison who was working on your matter together with
Warrant Officer Zungu. The affidavit, as prepared by
10 Advocate Harrison, contained material inaccuracies. Now,
the one inaccuracy which you say is material is that the
handwritten insertion says you were not assaulted, but the
whole thing was that you were, in fact, assaulted.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Yes, thank you.

ADV NGCUKAITOBI SC: Thank you.

CHAIRPERSON: Thank you, Counsel.

ADV BALOYI-MERE SC: If I may ask, how did you know, Mr
20 Mhlongo, that this is the prosecutor's handwriting, or is the
prosecutor who wrote here?

MR MHLONGO: It was done while we were in court. And
you will see that in our transcript, Mr Howse did mention of
it, and Mr Zungu did concede to that. Yes, it was Ms Elaine
Khuzwayo who inserted that, those handwritten notes.

ADV BALOYI-MERE SC: Thank you.

ADV NGCUKAITOBI SC: Yes. If you can go to 5A-166 of the transcript, perhaps start off with 5A-165. Can you see that?

MR MHLONGO: I am there, Chairperson.

ADV NGCUKAITOBI SC: All right, now, between line 15 and 20, this is the cross-examination of Mr Zungu by Mr Howse, and where it starts with, “well”. Can you see that?

MR MHLONGO: Well. Yes, yes, I can see that.

10 **ADV NGCUKAITOBI SC:** Ja, he ...[intervenes].

ADV BALOYI-MERE SC: What page?

ADV NGCUKAITOBI SC: 5A-165, Madam Baloyi-Mere.

ADV BALOYI-MERE SC: 165.

ADV NGCUKAITOBI SC: Yes, between line 15 and 20, which starts with the words, “well”. So this is the question that is asked by your Counsel to Mr Zungu.

20 “Well, I am going to show you this affidavit. Have a look at it. This is the entire bail proceedings. Just have a look at the affidavit and confirm that it is yours.”

Then Mr Zungu says:

“M’Lord, I cannot see if it is mine.”

Then he says:

“Well, just page, no, go back, no, the

other way. Just go back and see there where it starts. I think the handwriting was Counsel's handwriting. I think it is Deputy Director of Public Prosecution, Elaine Khuzwayo's handwriting.”

The witness then says:

“Yes, M’Lord.”

Can you see that?

MR MHLONGO: That is correct, Chairperson.

10 **ADV NGCUKAITOBI SC**: Yes, and then the Advocate continues:

“And your affidavit, do you confirm that?”

And then he says:

“M’Lord, I only confirm. I was not told by the other accused.”

Then the Judge intervenes.

“You are being asked a question. Let us stick to the question first. Is that your affidavit?”

20 Then the witness says:

“M’Lord, I did give an affidavit to Advocate Khuzwayo.”

Then the question says:

“Well, is that your affidavit, the one you are being shown?”

Then the witness says:

“No, I am not sure, M’Lord, if it is the same one.”

Mr Howse then says:

“Well, please, Warrant Officer, you must satisfy yourself, because it certainly purports to be yours. Is it signed by you? Tell us that.”

Then he says that:

10 “There is my signature, M’Lord.”

Then he says:

“Is it commissioned?”

Yes, it is commissioned, M’Lord.

And does it have your name on the front? Does it purport to be yours?

Does it say, I, the undersigned?”

Then he says:

“Well, then you have every indication that it is yours.”

20 Then he says:

“The indication, it looks like mine, M’Lord.”

Then he says:

“And if you read it, can you see, put up specifically as a replying affidavit in a

bail application?”

And then he says:

“That is correct, M’Lord.”

Can you see all of that?

MR MHLONGO: That is correct, I can see that, Chairperson.

ADV NGCUKAITOBI SC: Then look at what happens next.

And then he says:

“And that is the handwriting of Deputy
Director of Public Prosecutions, Elaine
Khuzwayo.”

10

What is the answer?

MR MHLONGO: -:

“That is correct, M’Lord.”

ADV NGCUKAITOBI SC: Yes, and then the Advocate says,
now he is finally got the concession you wanted, he says:

“So what is your difficulty then, Warrant
Officer? Surely you admit that this is
your affidavit.”

And then he says:

20

“M’Lord, I look, it is my signature and
my name is on this affidavit.”

And then the Advocate says:

“So what is your problem with admitting
that it is your affidavit?”

Then he says:

“M’Lord, I do not have any problem.”

The Judge then says:

“So it is your affidavit?”

The witness says:

“That is my affidavit, M’Lord.”

So we have three basic facts that are common cause from this exchange. The one is that the affidavit was prepared by Mr Zungu and it was given to Ms Elaine Khuzwayo or Ms Elaine Harrison. The second is that it was an affidavit intended to oppose a bail. And the third is that the handwritten insertions were made by Advocate Elaine Khuzwayo. Do you accept all of those?

MR MHLONGO: It is correct, because it was done in my presence. We were in court at Umlazi.

ADV NGCUKAITOBI SC: Yes. Now, we come back then to where we started on this topic, which is, how does it come about that the same Advocate that was the Prosecutor assigned for your case, where you were tortured by Cato Manor and the evidence was laid bare in the trial within a trial, now, as Director of Public Prosecutions, withdraws all of the charges against the Cato Manor. I am not sure if she even disclosed that to the families or not. Do you understand how it happens that this same person withdraws these charges? Should they have recused themselves, according to you, as a layperson?

MR MHLONGO: Ja, I think, for me, it is common knowledge that if you have to take a decision, like currently I am the Chairperson of the association, if there is a matter that involves a person who is closer to me, I could not be part of that. I have to recuse myself and give others who are going to be impartial.

ADV NGCUKAITOBI SC: Yes. But you then added another angle to it, which is, actually, there is also a personal relationship between Advocate Khuzwayo and Warrant
10 Officer Zungu, that at some point, they were married.

MR MHLONGO: That is correct.

ADV NGCUKAITOBI SC: Would that not also be a basis for Advocate Zungu to recuse himself from this case, Advocate Harrison?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. Now, we know as a fact, she did not recuse herself. She made all of the decisions.

MR MHLONGO: Unfortunately, she will have to tell the people of South Africa how come that she did not excuse
20 herself.

ADV NGCUKAITOBI SC: Yes. Well, there is one letter that my junior says is absolutely essential to put up. Okay, well, apparently, it is not in the record as yet, but we will exchange it. Oh, yes, it is already on the screen.

CHAIRPERSON: Maybe before that, before we look at the

letter, as at February 2008 ...[indistinct] Mr Mhlongo, when this affidavit was prepared by Advocate Harrison, do you know, as a matter of fact, that she had been a partner or a wife to Mr Zungu?

MR MHLONGO: I will not know, Chairperson, because I was later on told that they were married. And my brother used to tease me with it that, in my case, people were able to have a romantic relationship and they got married. So in my case, I have made people to, I have built a family out of it. My
10 brother used to tease me with that because he was working with them.

CHAIRPERSON: Your brother was working with them? Who?

MR MHLONGO: As we go along, it will appear that, Chairperson, my brother, who is Mr SW Mhlongo, he was working for the Hawks in KZN, and he is the person that assisted me not to be killed. But that would, it will appear as we go along, Chairperson.

CHAIRPERSON: That is why he was able to make those
20 remarks about ...[intervenes].

MR MHLONGO: That is correct, Chairperson.

CHAIRPERSON: The relationship.

MR MHLONGO: Yes, I was told by my brother that the relationship started shortly after my case. So I do not know how true it is. Maybe Mr Zungu and Ms Elaine, they will be

the one who will be able to tell us when and how their relationship started. But my brother used to tease me with it.

CHAIRPERSON: I understand. Thank you.

ADV NGCUKAITOBI SC: Yes. Perhaps there is a shorter answer, Mr Mhlongo. The document that has been uploaded is a letter written by Advocate RJ de Kock, who was the Deputy National Director of Public Prosecutions on the 17th of May 2022, to Ms Mary de Haas, in which there is apparently
10 a query from Ms de Haas about whether or not Advocate Zungu is married to a retired member of the SAPS, Cato Manor Organised Crime unit, who is Mr Zungu. Now, the third paragraph, can you see the third paragraph? It starts with “Advocate Zungu”.

MR MHLONGO: Yes:

“Advocate Zungu is now divorced from
Captain Zungu. However, at the time
the dockets were referred to the NDPP
office, Advocate Zungu was still married
20 to Captain Zungu.”

ADV NGCUKAITOBI SC: The DPP's office. So at the critical time when the decision was made, they were still married.

MR MHLONGO: That is what this letter is saying.

ADV NGCUKAITOBI SC: Yes. All right, thank you. That explains then the status of the marriage, that when the

dockets were referred, they were still married. Now, we have been dealing with the evidence during the course of your trial within a trial. We have dealt with the unreliability of the evidence given by Warrant Officer Zungu, but in particular, I want to look at paragraph 190 of your statement in relation to the type of concessions that were made by Warrant Officer Zungu, page 5-38.

CHAIRPERSON: Page?

ADV NGCUKAITOBI SC: 5-38, paragraph 190. Thank you.

10 **MR MHLONGO:** I am there. I am there, Chairperson.

ADV NGCUKAITOBI SC: Yes, now, what concessions were made by the state witnesses under cross-examination?

MR MHLONGO: I was arrested without evidence. My continued detention depends upon my implication, implicating myself. Without self-incrimination, I would have had been released.

ADV NGCUKAITOBI SC: Yes.

MR MHLONGO: The objective of the interview process was to secure incrimination evidence from me.

20 **ADV NGCUKAITOBI SC:** Yes. And then about the pointing out that is dealt with from paragraph 192 to 199. Can you just read those into the record, because we went through in detail what happened during the pointing out, but now we are in the trial. What happened there?

MR MHLONGO: -:

“During his evidence, Warrant Officer Zungu made an important concession regarding the evidential significance of the pointing out. He accepted that the location of the alleged crime scene had been widely publicized prior to my arrest.”

Paragraph 194:

10 “He further agreed that the mere physical identification of the location by an accused person would not itself constitute proof of involvement in the commission of the offence.”

Paragraph 195:

“He acknowledged that the only potential incrimination aspects of a pointing out in such circumstances would lie in the words alleged spoken by the accused during the process.”

20 196:

“In the case, the physical location was neither secret or unique within the knowledge of the perpetrators. It was already known to the police and to the public.”

197:

“Accordingly, the probative value of the pointing out depends entirely upon the alleged utterances attributed to me.”

198:

“As set out above, those allegations, utterances were obtained only after I had been assaulted, threatened, coerced, and further arose in response to the question by the commissioner officer during the pointing out.”

199:

“In those circumstances, the pointing out did not constitute independent collaboration of guilt, but rather culminating of a process initiated by an unlawful arrest and sustained through the coercion.”

ADV NGCUKAITOBI SC: Yes, thank you. So that explains why the pointing out evidence was then rejected by the Judge.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. Now, in relation to your connection to the offence, that is dealt with at paragraph 201, 201-2, 201-3, 201-4. There was no admissible evidence

implicating you. The warrant of arrest should not have been granted. You could have been invited for questioning rather than being arrested. There was no proper gathering of intelligence or information before you were arrested. Is that correct?

MR MHLONGO: That is correct, Chairperson. And when I listened to this commission and on the statement that was from Mr Zungu, it appears to me that the person who gave him the information was the person who was working for
10 Stanger Taxi Association. And this said person, by the time, because he was the rank manager during the time, he was paid or being remunerated by giving the membership of the association.

I am saying this because he was the last person that I was with. And now I was made to understand in the statement that was made by Mr Zungu to say that the person who, or their informer was that I was going to the bank, so he was the last person that I told that I am going to the bank. So the information definitely came from the person who was
20 from the Stanger Taxi Association.

ADV NGCUKAITOBI SC: Yes. We would have to look at that statement because that is where Warrant Officer Zungu says, he never sent any of the officials or any of the police to Mr Mkhize, and he does not understand on what basis they went there without him. Is that the statement you are

referring to?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. It is in, I think it is one of the Durban Central dockets. I just want to put that to you. So if it is in one of the Durban Central dockets, it will be in DC000252. Madam Chair ...[intervenes].

MR MHLONGO: [Indistinct]... [cross-talking].

ADV NGCUKAITOBI SC: ... they will put it up now. Sorry, just give us a second, Mr Mhlongo. But it will be placed on
10 the screen for you.

MR MHLONGO: Thank you, Chairperson.

CHAIRPERSON: If you can remind me so long, Counsel, is this Mr Zungu who had earlier said that he never sent the police?

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Because at that stage, he was still going to question the witness.

ADV NGCUKAITOBI SC: Yes, this is the affidavit where he says that.

20 **CHAIRPERSON**: Thank you.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: I suppose we can proceed whilst our law researchers are searching, as long as the witness has the statement.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: We do remember that affidavit.

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

CHAIRPERSON: Just proceed so long.

ADV NGCUKAITOBI SC: Yes. Mr Mhlongo, the evidence you have just given now about the statement given by Mr Zungu is correct. It comes from a different case docket, which is Durban Central CAS 185/02/2009. It is at page DC000252. It is flighted on the screen in front of you. And this is a statement by Sibusiso William Zungu who says, I am
10 number, he gives his first number, detective inspector employed by the police, and then he gives where he is stationed. He then says he is the investigating officer at Bhekithemba. Bhekithemba is the docket opened after the murder of Nkosi Zondi. Paragraph 3:

“During the course of my investigation, information became available through an informer network indicating various names of suspects that were involved in the planning regarding the killing of
20 Nkosi Zondi. The Chairman of the Maphumulo Taxi Association, Mr Bongani Mkhize, was amongst those who conspired to kill Nkosi Zondi.”

Now you remember here that according to Major General Booyen, the only evidence that linked Mr Mkhize

was the statement by Mr Swayo, which was discredited in the Umlazi case, correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: And Mr Zungu does not give any other evidence to show that there was objective evidence linking Mr Mkhize to the killing of Nkosi Zondi, correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Then he says:

10 “The information further indicated that
one of the suspects among those who
carried out the killing was at Stanger
Taxi Rank. I proceeded to Stanger Taxi
Rank with the assistance of members
from National Intervention Unit and the
suspect was arrested.”

Was that yourself?

MR MHLONGO: It was myself, Chairperson.

ADV NGCUKAITOBI SC: Yes, so you were the person he was talking about at paragraph 4.

20 **MR MHLONGO**: That is correct, Chairperson.

ADV NGCUKAITOBI SC: And as we now know, the Judge found that there was no evidence linking you to this at all.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes, in fact, the only evidence that was linking you was the evidence of your own torture where

you were forced to sign a false statement.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. Then he says:

“On the following day, the information was provided to me regarding the second suspect who allegedly took part in the killing of Nkosi Zondi and it was indicated that he was at Stanger Taxi Rank. This operation was also conducted with the assistance of National Intervention Unit and the suspect was arrested at Stanger Taxi Rank.”

10

We know that you were arrested at Stanger on the 3rd of February 2009, correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: -:

“Both operations were conducted by myself with the assistance of members from the National Intervention Unit as they were deployed at Stanger and surrounding areas.”

20

And you have testified that you later learned that the people that arrested you were members of the NIU, correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: -:

10 “It was my intention at some stage in the future to question Mr Bongani Mkhize with regards to information on hand, including certain information provided to me by various sources of information. In the interim, my focus was on extensive search for other suspects that were identified to me as the ones who carried out the killing. While I was busy conducting the second operation at Stanger, I heard on the radio that Mr Bongani Mkhize was shot and killed at Umgeni by the police. On my arrival back from Stanger, I was informed by somebody of the killing of Bongani Mkhize, but I cannot recall who that was.”

20 Now, we know that your arrest and the killing of Mr Bongani Mkhize coincided. It all took place between 1 and 2 on the 3rd of February 2009, is that correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: So that is what he is talking about here. He then says:

“I did not attend the scene where

Bongani Mkhize was fatally wounded. I was not aware of any operation regarding the tracing of Bongani Mkhize, nor did I request anybody to trace Bongani Mkhize. I did not request any of the shooters to trace Bongani Mkhize.”

Is that correct?

MR MHLONGO: That is what the statement is saying, that
10 is correct, Chairperson.

ADV NGCUKAITOBI SC: And what are you saying?

MR MHLONGO: It is disturbing to hear that if it is anything to be believed about it, because if he, if this NIU and other Cato Manor team voluntarily go and search Mr Mkhize, for what reason? Mr Zungu has to speak the truth why he ordered these guys to kill Mr Mkhize, because I do not believe it is true. There is no one who can just wake up in the morning and say, I am going to look for this particular person.

And this particular person was also mentioned on the
20 previous night by other accused. Then later, few hours, because I will say maybe 10 hours later, or 15 hours later, he was killed. Because according to the papers that are in front of us, Swayo Mkhize was giving the statement at around half past 9 at night. Then at 1, the next morning, or midday the next morning, the next day, then Mkhize was killed.

So how did the information went to the members of Cato Manor and the members of the NIU who was involved in the shooting of Mr Mkhize? It cannot be correct. He needs to tell us the truth.

ADV NGCUKAITOBI SC: So your point is that because he was the only person from Cato Manor involved in the interrogation of Mr Swayo, it stands to reason that the information came from him to the members of Cato Manor who then killed Mr Mkhize.

10 **MR MHLONGO:** For me, that is what makes sense. Other than that, he will have to tell us how come these members get to know that Mr Mkhize was wanted for this matter.

ADV NGCUKAITOBI SC: Yes. And so the attempt for him to distance himself from the Cato Manor, you say that it should be rejected.

MR MHLONGO: It should be rejected.

ADV NGCUKAITOBI SC: Yes.

MS RAMAGAGA: Mr Mhlongo, can we not safely say that it had become almost public knowledge that Mr Mkhize was
20 actually one of the enlisted suspects? And I am talking about public knowledge because of the application for an interdict that had been done already by then, by the time these confessions were taken.

MR MHLONGO: Chairperson, I would say if the reasons for killing Mr Mkhize was coming from the case or the murder of

Mr Choncho, I would agree. But if you look at the statement or you read the statement of Mr Zungu, it purports to me that Mr Mkhize was killed or it has been confirmed by the statement of, or the confession statement that was made by Swayo to say he was on the list, and if you look at the transcript, even Mr Zungu did concede in court proceedings to say, yes, Mr Mkhize was wanted in this case ...[indistinct] [intervenes].

MS RAMAGAGA: Okay, I would like you to understand my
10 question, and this question is being asked because you are suggesting that the sole owner of information or who knew about the fact that Mr Mkhize was being sought after, it is Mr Zungu, who had been allocated the docket. And you are answering the question in the manner that you have, taking into consideration already that he was assigned this case as an investigating officer.

But then maybe just divorce yourself from that context and answer the question that I am asking and that question is, would you agree that by the time these
20 confessions, and in inverted commas up to now, were taken, already there was a court application that was made in public that Mr, and that disclosed information that Mr Mkhize was being sought after by the police for the killing of Mr Choncho. That information does appear in the court application in broad strokes. Would you agree or you do not know or you

disagree?

MR MHLONGO: Madam Chair, I will agree with you that he was sought for the murder of Choncho and the concession or the agreement that it had between the lawyers and the police was that he would surrender himself if he is needed. But we all know that subsequently he was killed. Now, if I read the affidavit or the statement that has been made by Inspector Zungu, he is telling us that he never, or he never instruct anyone to look or sought Mr Mkhize. That is where my
10 problem is.

MS RAMAGAGA: Ja, your problem is addressing some other concern that you have. But I am just asking about whether you would agree that by virtue of the fact that the application was made in an open court, then it must have become, actually, it was in the public domain that Mr Mkhize was being sought after by the police. He was in the hit list.

MR MHLONGO: That is correct, Chairperson.

MS RAMAGAGA: Thank you.

ADV BALOYI-MERE SC: Can I ask a follow-up to that
20 question ask Mr Mhlongo. Mr Mhlongo, can we give Detective Inspector Zungu a benefit of the doubt by going back to your affidavit at paragraph 90, page 5-18, where you say upon arrival at Cato Manor, you encountered Captain van Tonder, Inspector Mostert, Inspector Maharaj, Inspector Panday. And these names, we know that they are part of the Cato Manor

unit and you encountered them when you arrived at Cato Manor, where you were then assaulted and tortured.

Would you be opposed to the proposition that I will put to you now, that these people, these officers that you encountered at Cato Manor could have, on their own, gone out to look for Mr Mkhize and gunned him down without having been sent or instructed by Detective Inspector Zungu, who was rightfully investigating the murder of Nkosi Zondi, but had decided that he will defer interviewing Mr Bongani Mkhize to a later stage when he was done with other suspects? I hope it was not too long.

ADV NGCUKAITOBI SC: Let us see.

MR MHLONGO: No, certainly it was, but let me try and put it in a simple term. I am not disputing that it might happen that they, out of their own will, went to look for Mr Mkhize. But my fear, or my reasoning behind what I have said, is that Mr Mkhize has always been there. But after Swayo was incarcerated, now Mkhize is being killed, and after Nkosi Zondi has been shot and killed, now they come back and kill Mr Mkhize, because if you can look at the sequence, Mr Choncho was killed around August 2008. There was this killing of the Maphumulo members that happened around September and October of 2008. There was a break in between.

Then there was a killing of Nkosi Zondi in January

2009. Shortly after that, Mr Mkhize now has been killed. So that is where I think it is, for me, the killing of Mr Mkhize was triggered by the killing of Nkosi Zondi. So the person who was responsible for the investigation was Zungu. That is why I am, he is the one that I am saying he is responsible for that. I might be wrong.

ADV BALOYI-MERE SC: Thank you.

ADV NGCUKAITOBI SC: Thank you. Well, we have got Major General Booyesen, who says that he was assigned to be
10 personally responsible for this investigation. I understand that he is the most senior, but you are putting the finger on Mr Zungu, but there is also the big fish that we should not lose focus on.

MR MHLONGO: Definitely, Chairperson. Mr Booyesen as well will have to tell us, because there were letters that was addressed to him, and Chairperson, you will see as well during the transcript that Mr Booyesen, there were a couple of letters that was addressed to him, and he did not bother in assisting our members.

20 **ADV NGCUKAITOBI SC:** Thank you. Madam Chair ...[intervenes].

CHAIRPERSON: If I may, just to clarify one small aspect, Counsel. Mr Mhlongo, we know from that affidavit at DC000252, that Mr Zungu was employed by SAPS, stationed at Durban Organized Crime, attached or detached at Political

Violence Task Team. Is this the same task team in relation to which the Cato Manor members were involved, do you know?

MR MHLONGO: I do not know. I do not know, Chairperson.

CHAIRPERSON: Is it possible that he might have been appointed to investigate and work with NIU, because he was not necessarily a member of, direct member of the Cato Manor unit as we know it now?

MR MHLONGO: Chairperson, some of these Cato Manor
10 guys or police officers, they were there when I was arrested. They were there. Two of them, two African ones. It is just that I forgot their names, but I can give you tomorrow the names of these two officers who were driving me with that grey BMW.

CHAIRPERSON: Yes, but I am asking a separate question, whether Mr Zungu, the investigating officer, was part and parcel of the Cato Manor unit, do you know? Or was he ...[intervenes].

MR MHLONGO: I do not know.

20 **CHAIRPERSON**: An independent investigator who was working with NIU?

MR MHLONGO: I do not know, Chairperson, if he was attached to Cato Manor, but I know that I was taken to Cato Manor.

CHAIRPERSON: Yes, thank you.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. Could I ask you to go to page 5A-150, which is the transcript.

MR MHLONGO: 5A?

ADV NGCUKAITOBI SC: Stroke 150.

CHAIRPERSON: Before you do that, Counsel, we are now at 10 past 5.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: I would like to ascertain with my sisters whether we should run until half past 5 or whether your
10 questions are going to be long, so that if they are, we should adjourn now. Yes, Counsel, we are agreed with my sisters that if your outstanding questions are going to be long, we may have to adjourn right now, but if it is going to take a short time to wrap up, you can proceed.

ADV NGCUKAITOBI SC: Madam Chair, I think let me just clarify one issue, thereafter adjourn, because I have got another longish topic afterwards, but I think it is crucial to resolve this particular one.

CHAIRPERSON: Yes.

20 **ADV NGCUKAITOBI SC:** 5A-150.

MR MHLONGO: I am there, Chairperson.

ADV NGCUKAITOBI SC: After line, well, at line 20. So this is now, I think it is the Advocate that is cross-examining Mr Zungu and he says:

“Now, as far as the hierarchy in the

provisional organized crime unit is concerned, will you confirm for us that the head of the unit is, or at that stage, was Director Johan Booysen?”

And Mr Zungu says:

“That is correct, M’Lord.”

Then here is the next question.

10 “So yourself, the likes of Captain Naicker, and those of Cato Manor, would ultimately be under the control of Director Booysen.”

And what does Mr Zungu say?

MR MHLONGO: -:

“That is correct, M’Lord.”

ADV NGCUKAITOBI SC: Yes. Thank you, Madam Chair. Sorry, Madam Chair, it looks like there is one more. Oh, yes, actually, it might be more direct. That is a page before, which is at 5A-149, at line 5. Can you see that?

MR MHLONGO: I can see that, Chairperson.

20 **ADV NGCUKAITOBI SC**: Yes, so he is also asked by Mr Howse:

“All right, now I just want to move to something else altogether. Just going back in time, do I understand that you have been with this unit, the provincial

organized crime, for 8 years now?”

What does he say?

MR MHLONGO: -:

“That is correct, M’Lord.”

ADV NGCUKAITOBI SC: And then it goes on, but just wait a little bit. It says:

“Am I further correct that the unit, which is housed at Commercial Road, is the one that specializes in taxi violence matters?”

10

And then he says:

“That is not correct.”

And then it continues to say:

“Let us just explore that, Warrant Officer. Am I wrong if I say that your unit does investigate taxi violence matters?”

And then he says:

“No, M’Lord.”

20

Then he says:

“So it follows that your unit does investigate taxi violence matters.”

He says:

“No, M’Lord, it investigates political violent cases.”

Can you see that?

MR MHLONGO: I can see that, Chairperson.

ADV NGCUKAITOBI SC: Yes. Now, what we do not have directly, except for that one letter we read to you, the one letter that is clear is the letter from Mary de Haas, Ms Mary de Haas, that says Mr Zungu was part of Cato Manor, and the NPA confirms as much, and says that the only difference is that at the time of the request, they were still married, but at the time of the enquiry, they were no longer married. So it
10 seems unclear why the NPA would say Mr Zungu was part of Cato Manor if he was not part of Cato Manor.

MR MHLONGO: On the documents, it appears as he was part of Cato Manor.

ADV NGCUKAITOBI SC: Yes, thank you very much. Thank you, Madam Chair. I think we could end here. I will move to another topic tomorrow.

CHAIRPERSON: Thank you, Counsel. Mr Mhlongo ...[intervenes].

MR MHLONGO: Yes, Ma'am.

20 **CHAIRPERSON**: We are going to pause now and resume tomorrow morning at 9 o'clock. Will that suit you?

MR MHLONGO: That is correct, Madam Chair, no problem ...[indistinct].

CHAIRPERSON: As we adjourn, remember you are still under oath. Yes, thank you. We adjourn.

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