

**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**

24 MARCH 2026

DAY 43



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

PROCEEDINGS ON 24 MARCH 2026

CHAIRPERSON: Good morning, everyone. Good morning, Advocate Chauke. Good morning, Mr Mhlongo.

MR MHLONGO: Good morning, Chairperson.

CHAIRPERSON: Advocate Ngcukaitobi, all is good?

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

CHAIRPERSON: You may proceed.

ADV NGCUKAITOBI SC: Good morning, Mr Mhlongo.

MR MHLONGO: Good morning, SC.

10 **CHAIRPERSON:** Mr Mhlongo, let me remind you that you continue to be under oath, sir.

MR MHLONGO: I do, Madam Chair.

SIPHAMANDLA MHLONGO (s.u.o.)

CHAIRPERSON: Yes, thank you.

ADV NGCUKAITOBI SC: Thank you. Mr Mhlongo, there is just a few loose ends from yesterday that I need to cover. Number one, you mentioned that Major General Booysen was aware or involved in your detention and was also aware of the threat to kill you. Do you remember that?

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

ADV NGCUKAITOBI SC: Can you explain why you say that?

MR MHLONGO: It is because Major General Booysen was at the crime scene when Mr Zondi was killed. And during the trial, it was established that the investigating officer was briefing the superiors, which will include Mr Booysen. And

there was a call that was made by my brother, as I mentioned yesterday, that my brother, WS Mhlongo, who was the head of the Hawks in KZN during the time, he phoned Mr Booyesen to tell him that I must not be killed under a false pretence that I have taken a gun or I have tried to take a gun from the police in the police cells. So he is aware because there was a communication with him from my brother, and my wife was present at the time.

ADV NGCUKAITOBI SC: Yes. And I mean, why would your
10 brother tell him that you should not be killed under a false pretence?

MR MHLONGO: It is because he is a police. He knew how these Cato Manor guys were operating.

ADV NGCUKAITOBI SC: Yes. And when did this happen, during your detention, before your detention, after your detention?

MR MHLONGO: It was during my detention. I think it was a day where I was appearing in court on the 5th of February 2020, 2009, sorry.

20 **ADV NGCUKAITOBI SC:** Yes. And what are the circumstances of that discussion between your brother? Your brother is a Welcome Mhlongo?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: What were the circumstances in which Mr Welcome Mhlongo ended up talking to Mr, Major

General Booyesen?

MR MHLONGO: Because, remember, on the 3rd, my family did not know where I was up until the 4th in the evening where I was made, or I was able to make a call to my wife. Then they visited me or come and see me in the holding cells at Sydenham Police Station. Because it was late at night, they needed to come and check on me on the following day, which was on the 4th, because I had to go and appear before the court. During that time, after my court appearance at Umlazi,
10 my brother drove to Cato Manor and my wife to check if the vehicle was with them and he told me that he found Van Tonder as well as Mr Olivier, who was at the office.

Then he told them that he is coming not to interfere with their investigation, but he wants to tell them that they should not do this, what they normally do, to say that I was trying to take a gun or trying to fight with the police, because he knows that I am not that kind of a person. And further, because Mr Booyesen was not there, he made a call to Mr Booyesen. But he was in the presence of my wife during that
20 time.

ADV NGCUKAITOBI SC: Yes. So at the station, he found Mr Olivier, and we know Mr Olivier as being Willie Olivier, who was working at Cato Manor as a Captain.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes, as well as Mr Van Tonder.

We also know Mr Van Tonder as one of the, I think inspectors who was working at Cato Manor.

MR MHLONGO: That is correct. Van Tonder was a Captain and Olivier was a Lieutenant-Colonel.

ADV NGCUKAITOBI SC: Yes. And then after that he then calls Mr Booyesen. That is, I was still asking why he calls him, because he has spoken to two other people.

MR MHLONGO: He told me that ...[indistinct] [audio dips] because he is the one who is responsible for these teams.

10 **ADV NGCUKAITOBI SC**: Yes.

MR MHLONGO: So he wanted to inform him that he is aware and ...[indistinct] they need to give me time to go to court and present my case if I am involved in the, really in that killing or the case that I was arrested for.

ADV NGCUKAITOBI SC: Yes. But you also mentioned that your brother was involved in law enforcement.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: In what capacity?

20 **MR MHLONGO**: He was in charge of the Hawks in KZN during that time.

ADV NGCUKAITOBI SC: He was in charge of the Hawks in KZN.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: So, would that give him access then to the police station and access to Major General

Booyesen?

MR MHLONGO: That is correct ...[indistinct] the police.

ADV NGCUKAITOBI SC: Yes. So you mentioned that that call is what saved your life yesterday.

MR MHLONGO: That is correct, Chairperson. I think that is a call that saved my life.

ADV NGCUKAITOBI SC: Yes, thank you very much. Now, there is also something else you wanted to expand on yesterday, and I said it was too early because we had not
10 heard your story, which is that right now you also fear for your life. Is that correct?

MR MHLONGO: [Indistinct]... currently we are having ...[indistinct] that is correct, Chairperson.

ADV NGCUKAITOBI SC: Okay, can you just explain what you wanted to say? Oh, sorry, it looks like we got cut off.

MR MHLONGO: [Indistinct]...

ADV NGCUKAITOBI SC: Okay. Look, I think there is a connection problem.

ADV NGCUKAITOBI SC: I can hear you clearly, sir, right.

20 **ADV NGCUKAITOBI SC**: Ja, but we cannot hear you. You break intermittently, and your screen is frozen.

MR MHLONGO: I can see here underneath that I am frozen, but on the top here I can see myself ...[indistinct].

ADV NGCUKAITOBI SC: All right, maybe let us continue. Let us see if it gets worse. So I am saying that yesterday you

mentioned that right now you fear for your life. Can you explain what you meant?

MR MHLONGO: Chairperson, I have instructed my attorneys to request an interdict against the police because currently we are having a similar problem that happened around the time of ...[indistinct] we are having problems with them and the same tactic of influencing the police against me and the members of the association.

CHAIRPERSON: I cannot hear whom he says is influencing
10 the police. Would you please repeat that, Mr Mhlongo?

MR MHLONGO: I am saying, Chairperson, what rules the Stanger Taxi Association have set, because there is also a fight between these two associations over the three rules now, which is ...[indistinct] and now the Stanger Taxi Association they have started using the police to advance or do their dirty work. I was informed around early January this year that there was a meeting that was held between the Department of Transport in KwaZulu-Natal as well as the Stanger Taxi Association over our routes and that meeting
20 escalated to the MEC of Transport in KZN on the 19th of January 2026. Furthermore ...[indistinct] or on the day, on the 27th of January 2026 there was a break-in in our office.

Around 6 o'clock in the morning, Operation Chanella, there is a unit that is used called Chanella in KZN, the law enforcement from the Department of Transport, started

impounding our taxis, even though, even the ones that got the operating licenses. At 10, on the very same day, on the 27th, there was a takedown by the police, NIU, targeting the members of the KwaMaphumulo and they were taken to the police station and they were detained without a charge. During that time ...[indistinct] Stanger Taxi Association started operating in our routes.

So for me, that means there was a really coordinated move in order to threaten us to surrender this route and the
10 police were used in order to assist ...[indistinct] to advance what they wanted to advance.

ADV NGCUKAITOBI SC: Yes, well, I wanted you to explain why you say your life is under threat at the moment.

MR MHLONGO: Chairperson, it is because I got the information that because I am the one who is stronger or who is standing firm to say this cannot happen and they are using the police and this is not the first time. In 2023, there was a letter that was written to the Police Commissioner of KwaZulu Natal. There was a police ...[indistinct] surname of Ngobozi,
20 who was going around saying that he wanted to kill me because I am involved in the tenders at Richards Bay coal, not the Richards Bay Coal, the Richards Bay Minerals. And there was a person who was killed there.

And because my companies and myself are never being involved in any dealings with RBM, I wrote a letter or

instructed my attorneys to write a letter to the Provisional Commissioner and they responded that they do not have any information that I was sought by the police. But recently, as I have mentioned that the police now, I have got the information as well that they are in a hunt for my head. I have written a letter to the Police Commissioner. They decided not to respond. Now we have, went to the high court to instruct the attorneys that now that they go to court and seek for an interdict against the police.

10 **ADV NGCUKAITOBI SC:** Yes, so why are the police trying to kill you?

MR MHLONGO: I think they are being instructed or trying to assist ...[indistinct].

ADV NGCUKAITOBI SC: Yes, and which police are trying to kill you? Is there a section in the police or is there a different individual that you can identify for the commission, for the panel?

MR MHLONGO: I am told that they will be using the National Intervention Unit.

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

ADV BALOYI-MERE SC: Sorry, before you proceed, can we get clarity. Mr Mhlongo, you referred to KwaDukuza, Stanger. Is it one association or is it two associations, because I am a bit lost. Thank you.

MR MHLONGO: It is one association. They are using two

names, because the name of the town was KwaDukuza. I mean, it was Stanger before. Now it was renamed to be KwaDukuza. So they changed the name to be KwaDukuza, but previously, it had been known as Stanger Taxi Association.

ADV NGCUKAITOBI SC: Yes.

ADV BALOYI-MERE SC: So when you say KwaDukuza, Stanger, it is the same thing?

MR MHLONGO: It is the same thing, Chairperson.

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

ADV NGCUKAITOBI SC: Yes, thank you. So you say that you have brought an interdict. Has that already been instituted or is it about to be instituted?

MR MHLONGO: It has been instituted, Chairperson. Yesterday, I signed the affidavit that is going to, in fact, I think it was on a Friday because first time we applied for it in court, they said it is not urgent. They said it lacks urgency.

ADV NGCUKAITOBI SC: Yes. And how are you surviving right now in terms of your security? I mean, we have seen in
20 this case someone who once did what you have done. They were literally killed within days.

MR MHLONGO: I am having a large number of security. I have got 15 bodyguards currently. So it is costing me an arm and a leg.

ADV NGCUKAITOBI SC: Yes. Well, I understand yesterday

you were accompanied by the police to get to where you are.

MR MHLONGO: That is correct, Chairperson. Even now, there are the ones, there is police that are guarding where I am at the moment.

ADV NGCUKAITOBI SC: Yes. Well, at least they can do some positive things. Thank you. Are you finished with what you wanted to say and I blocked you yesterday about your current security situation?

MR MHLONGO: I think, Chairperson, it was important so
10 that we, everyone can understand the severity of how the police are being used here in the province. And it is worrying because even on the, there was a shootout that happened on the 13th of March, which was on a Friday. I was called by the Provincial Commissioner to come and attend the meeting that he convened later in the afternoon. I told him that I am 300km away where he was calling the meeting and he was agitated because he felt that I am not respecting him if he calls the meeting. And I even told him that, Commissioner, I am staying far. I am staying far in the north of KwaZulu Natal,
20 so it is impossible for me to drive and you have arrested my security guards. I am not going to be able to drive without my bodyguards.

And I sent four members of the executive committee to attend that meeting. And he keep on questioning them if they know where is my residential, where is my residence.

So for me, that as well, it was disturbing because I do not know why he wants to know where I am staying and why he is questioning the members of my executive if they know where I stay.

ADV NGCUKAITOBI SC: Yes, thank you. Is there anything else you want to add on your security situation before we move on back to Cato Manor?

MR MHLONGO: No, I think that one, I am covered, Chairperson.

10 **ADV NGCUKAITOBI SC:** All right, thank you very much. Can you go back ...[intervenes].

CHAIRPERSON: I am sorry, Counsel.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Mr Mhlongo, where are you seated right now?

MR MHLONGO: I am seated ...[intervenes].

CHAIRPERSON: Are you in an office of an attorney or where are you?

MR MHLONGO: I am in court.

20 **CHAIRPERSON:** In court?

MR MHLONGO: Yes.

CHAIRPERSON: Please explain to me.

MR MHLONGO: I am in court in, I am not comfortable, Chair, to disclose the location of the court, but maybe the ...[intervenes].

CHAIRPERSON: Yes ...[intervenes].

MR MHLONGO: Nkabinde team ...[intervenes].

CHAIRPERSON: Yes, I understand, I understand. But you said that you are under police guard right now?

MR MHLONGO: That is correct, Chairperson.

CHAIRPERSON: And you feel safe?

MR MHLONGO: For now, I can say I feel safe, yes.

CHAIRPERSON: For now. Yes, for now. Yes, thank you.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. Can we
10 go back then to where we left the proceedings yesterday. So,
we were at page 541 of your statement. We left at paragraph
203.

MR MHLONGO: I am there, Chairperson.

ADV NGCUKAITOBI SC: Yes. Now, you can skip that
because we have sort of covered it, and go to the evidence
of Captain Naicker. We also dealt with that extensively
yesterday when we looked at the recorded confession of
Captain Naicker into the judgement. We had not dealt with
the judgement yesterday, which is at 544, correct?

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

ADV NGCUKAITOBI SC: Yes. Can you just take us through,
it says here at paragraph 214:

“After hearing the evidence of the state
witnesses in the trial within a trial, the
high court per Gyanda J delivered a

detailed judgment concerning the
lawfulness of my arrest, detention,
warning statement and pointing out.”

At paragraph 215, you deal with what the court found
in relation to your arrest and detention on the 3rd of February
2009. What did the court conclude about the lawfulness of
your arrest?

MR MHLONGO: The court found that, Chairperson, that I
was, I was detained and arrested unlawfully because there
10 was no evidence against me that give powers to the
investigating officer to come arrest. The easier way to do it
was for him to call me to the nearest police station and
question me, but not to arrest. That was the finding of the
court.

ADV NGCUKAITOBI SC: Yes. And what is interesting is at
paragraph 216.2, which is, if he had applied, if Warrant
Officer Zungu had applied for the warrant of arrest, what did
the court say would have happened?

MR MHLONGO: The court find that, or Mr Zungu himself, he
20 conceded that if he had gone to court, the court was not going
to grant him the warrant of arrest, for my warrant of arrest.

ADV NGCUKAITOBI SC: Yes, so that was the concession
he gave in the evidence in his cross-examination.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes, now, then, you remember yesterday, we went through that purported warning statement in which they said certain rights were read out to you and you confirmed that you did not want to exercise some of those rights, such as having a lawyer present. Remember that?

MR MHLONGO: I remember, Chairperson.

ADV NGCUKAITOBI SC: Now, that is dealt with at paragraph 218 of your statement. Can you just take us through there?

10 **MR MHLONGO**: The court find that it was, remember, there was letters that were sent to the officials or the senior management of the police, requesting, which we have seen on the SM5 and SM3 and the likes, where our attorneys have requested from the police to say, if you want one of our members, you should consult us so that we can be present and advise if needs be. And in this instance, they were not contacted and they kept me in isolation and they did not offer me an opportunity to be represented by my legal practitioner.

ADV NGCUKAITOBI SC: Yes. If you can go to page 5A-
20 261, which is the portion of the judgement where this is dealt with.

MR MHLONGO: 5A-61?

ADV NGCUKAITOBI SC: 261.

MR MHLONGO: 261.

ADV NGCUKAITOBI SC: Are you there?

MR MHLONGO: I am just about, 261. I am there, Chairperson.

ADV NGCUKAITOBI SC: Yes, if you can just read from the top of that page, that is where the judgement deals with the importance of that communication that was written by Hlapane Attorneys. Just read that for the record, please.

MR MHLONGO: -:

10 “All of this was done in spite of the history in this matter, which has been set forward by the defence in two exhibits before the court during trial within a trial, namely exhibit D and H, where there was a communication between the attorneys acting on behalf of the accused, especially the Maphumulo Taxi Owners Association members and the authorities, including the Provincial Commissioner of the Police, the Provincial Head of

20 Organized Crime unit in the province, the Minister of the Police. In addition to this communication, there was also an application for an interdict to the court to prevent the police from harassing, assaulting, abusing members of the

Maphumulo Taxi Association, especially the members who applied for the relief. He is referred to the correspondence as Siphamandla Mhlongo and it is common cause that Siphamandla Mhlongo was shortly killed.”

I think that is where there is an ...[indistinct] [intervenes].

ADV NGCUKAITOBI SC: So that was Bongani Mkhize.

10 **MR MHLONGO:** Yes, it was supposed to be Bongani Mkhize.

ADV NGCUKAITOBI SC: Yes.

MR MHLONGO: -:

“That was killed shortly after he applied for, and obtained the interdict against the police.”

ADV NGCUKAITOBI SC: Carry on.

MR MHLONGO: -:

20 “But what is of special importance in exhibit D and H is that the police were told in no uncertain terms that the members of Maphumulo Taxi Association were no ...” [intervenes].

ADV NGCUKAITOBI SC: Were so petrified.

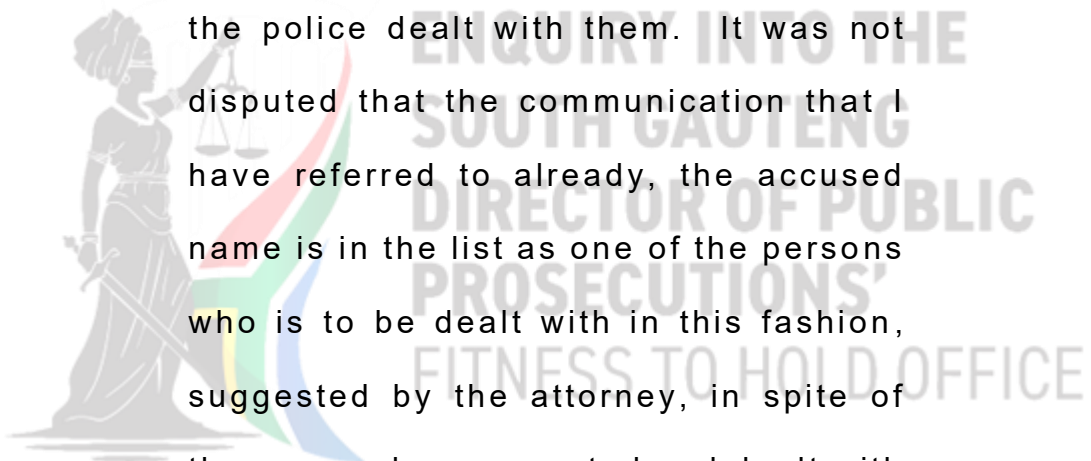
MR MHLONGO: -:

“Were so petrified of the police that in

the event of the police wanting to arrest any of their members, they should inform the attorney for the association and those attorneys would bring the person or persons wanted by the police to the police for them to interview, question what happened. It was highlighted to them that these members of the Maphumulo Taxi Association would want their attorney present when the police dealt with them. It was not disputed that the communication that I have referred to already, the accused name is in the list as one of the persons who is to be dealt with in this fashion, suggested by the attorney, in spite of the accused was arrested and dealt with without his attorney being informed and it is apparent from the evidence of the police witness who testified in this part of the trial that this information to which the counsel has made reference during the cross-examination and handed to the court as exhibit D and H did not ...[indistinct] down to the rank and file

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to the police, especially members of the Organized Crime unit who were dealing with these sort of cases. The accused rights of legal representation in these circumstances and against this background, in my view, were clearly infringed.”

ADV NGCUKAITOBI SC: Yes, you can stop there. So, what the Judge is finding here is that the attorneys have said if
10 they want to arrest people like yourself, they must notify their attorneys or people like Mr Bongani Mkhize. And the Judge says they did not do that and, as a consequence, your rights to legal representations were clearly infringed. Is that correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. Now, that is what is dealt with in your statement at paragraph 218, showing how crucial that correspondence was.

MR MHLONGO: That is correct, Chairperson.

20 **ADV NGCUKAITOBI SC:** Now, the Judge also makes another finding, which is that the senior employees of the police did not communicate the correspondence. It did not filter down to the members of the Cato Manor unit. But one of the senior employees who clearly had access to the correspondence and the interdict was Major General

Booyesen. Is that correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Because he was a respondent, he was a deponent in that application and was clearly aware of the interdict, which he described yesterday, as we saw, as being a worthless interdict. So would he be one of the employees who are responsible for the communication of this interdict to the rank and file of the police?

MR MHLONGO: That is correct, Chairperson.

10 **ADV NGCUKAITOBI SC**: And so when the Judge is critical of the failure by the senior leadership of the police to ensure that the court order is communicated to the rank and file, would he be referring to one of them?

MR MHLONGO: He should be referring to one of those senior management of the police because as far as we understood it, it was sent to the senior officials.

ADV NGCUKAITOBI SC: Yes. Well, I mean, we know for a fact that Major General Booyesen knew about it and the Judge finds that this was not communicated to the rank and file.

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

ADV NGCUKAITOBI SC: Yes. Now, the Judge also dealt with the warning statement. You remember that we dealt with the warning statement of Swayo Mkhize and how in the Umlazi case, it was deemed inadmissible because it was a product of torture. Now, in your own case, you described how

you were tortured to providing that warning statement in front of Captain Naicker, with the so-called pointing out. You remember that?

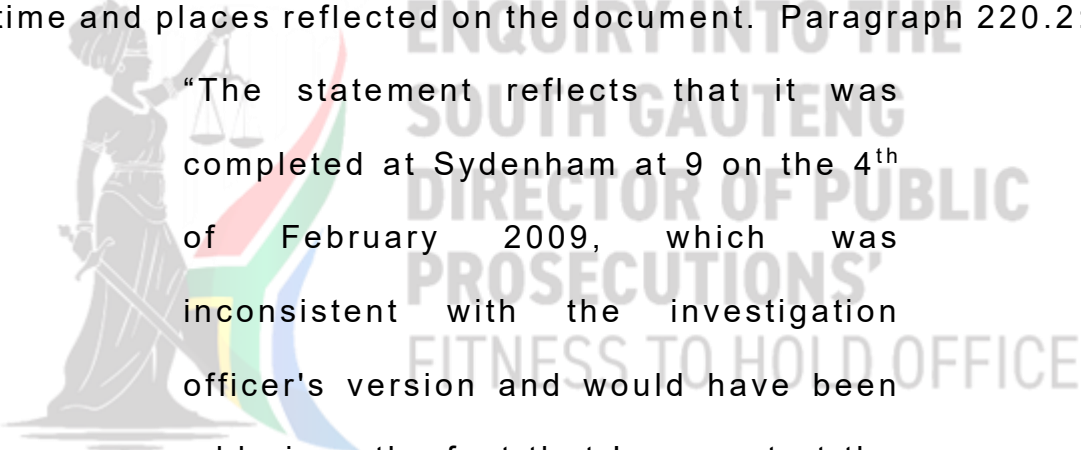
MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: And that matter then is dealt with from paragraph 220 of your statement.

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: And what does this say? What does your statement say in regard to that?

10 **MR MHLONGO**: There were discrepancies in the recording, time and places reflected on the document. Paragraph 220.2:



“The statement reflects that it was completed at Sydenham at 9 on the 4th of February 2009, which was inconsistent with the investigation officer's version and would have been odd given the fact that I was out at the pointing out at that time.”

ADV NGCUKAITOBI SC: Yes, carry on.

20 **MR MHLONGO**: 220.3:

“The investigating officer falsely testified that he had contacted my partner on the 3rd of February 2009. Objective cell phone record demonstrated that no such call was

made.”

ADV NGCUKAITOBI SC: Yes, if you can just stop here. Yesterday you gave evidence and we went through your warning statement where it is claimed that you did contact your partner at 7 p.m. on the 3rd and you said that was false.

MR MHLONGO: That was false because the cell phone records that were obtained, it shows that the call was only made on the 4th around 18:30 where Mr Zungu met me for the first time.

10 **ADV NGCUKAITOBI SC:** Yes, and the Judge also confirmed that the claim by Mr Zungu was a lie that your partner had been contacted at 7 p.m. on the 3rd of February 2009, correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. Now, then at 220.4, we also dealt with this yesterday, but what were the findings of the Judge on that score?

MR MHLONGO: -:

20 “The officer failed to rule off the statement in a manner that would prevent later insertion.”

We spoke about it yesterday, Chairperson. You remember, Me Ramagaga asked if I have been a police before. I said no, but it is just a common knowledge that if you want to block and not to allow anyone to interfere or add something, you

just have to cross the lines, as I have mentioned. So that we have seen for ourselves as we went through the statement of, or the, as we went through the statement of Mr Naicker as well.

ADV NGCUKAITOBI SC: Yes, but, no, the point is, what did the Judge find on that score?

MR MHLONGO: He found that it was incorrect to leave it open like that.

ADV NGCUKAITOBI SC: Thank you very much. Now, then
10 the Judge also made another finding at 220.5. What was that finding?

MR MHLONGO: -:

“The statement recorded that I elected to remain silent, yet simultaneously I elected to participate in the pointing out contradiction the court regarded as improbable.”

ADV NGCUKAITOBI SC: Yes, we went through your statement yesterday where there was one part which says you
20 will provide a statement and then another part which says you will remain silent.

MR MHLONGO: That is correct, Chairperson, because that was done because they wanted me, for me, I believe it was a way of them trying to see which one can implicate me. Then they decided, no, we are going to stick to the pointing out.

But I think they were keeping their options open.

ADV NGCUKAITOBI SC: Yes, thank you. Then there is another finding which we have not yet covered so far in evidence, which is in paragraph 221. Can you deal with that?

MR MHLONGO: -:

10 “The court concluded that the investigating officer elected improperly in taking the warning statement before I have been charged and in circumstances where no evidence existed against me.”

ADV NGCUKAITOBI SC: Yes, meaning what? That a warning statement can only be taken after you have been charged?

MR MHLONGO: That is correct, Chairperson, that is what the lawyers advised me of.

ADV NGCUKAITOBI SC: Yes, and then they take a warning statement before you are charged.

20 **MR MHLONGO:** That is correct, Chairperson, because I was only charged after the pointing out later on the 4th.

ADV NGCUKAITOBI SC: Yes, and the Judge found that Warrant Officer Zungu acted improperly by taking a warning statement before an accused is charged.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. Now, so far we have very,

very serious findings made by a Judge of the High Court against the conduct of the police, implicating very senior officers, including Warrant Officer Zungu and senior officers who failed to communicate the court order. Do you know if any action was ever taken against them, despite the findings of a Judge in your case?

MR MHLONGO: I do not know of any, Chairperson.

ADV NGCUKAITOBI SC: Yes. I mean, people like Warrant Officer Zungu, are they still employed in the police?

10 **MR MHLONGO**: I am not sure. That I, maybe I have to still check on it, but the way I saw him the last time I saw him, because this happened around 2009, that is like more than 15 years ago, so it might happen that maybe he is retired, but I am not sure.

ADV NGCUKAITOBI SC: Yes, but if he retired, then they left on good terms. It was a good leave, not that he was disciplined.

MR MHLONGO: I have not heard of anything that suggests that he was being disciplined for this case.

20 **ADV NGCUKAITOBI SC**: And the evidence in your case also showed that there was something improper done by the then Deputy Director of Public Prosecutions, Advocate Elaine Zungu, for making a handwritten insertion on an affidavit, which insertion was false.

MR MHLONGO: That is correct.

ADV NGCUKAITOBI SC: Do you know if anything happened against her?

MR MHLONGO: I do not know of any, Chairperson.

ADV NGCUKAITOBI SC: Yes. But this was all a public trial. Everyone watched your trial. It was open, in open court.

MR MHLONGO: That is correct, Chairperson, it was in open court.

ADV NGCUKAITOBI SC: Yes. Then we have a number of other people that were involved, Captain Naicker. We have
10 a number of people involved in your torture, Mr Van Tonder, Mr Mostert, Mr Maharaj, Mr Pandey. All of those people are implicated in your trial, and it is a public trial, and findings are made against them by the Judge. Did anything happen to them?

MR MHLONGO: I do not know of anything that has happened to them. And maybe to add on that, there was Mdlalose, and Warrant Officer Tata Mdlalose, as well as Mkhwanazi, who was a sergeant, whom were the one that were threatening me
20 all the way from Stanger to Durban, the ones that were driving that grey BMW.

ADV NGCUKAITOBI SC: Yes. Yes, but, I mean, all of that evidence that they purported to collect against you was rejected as inadmissible because it violated the law and it violated your rights. But up until now, we do not know if those people are still within the police. We know at least one of

them received a promotion. She is now the DPP.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. All right, thank you. So that deals with the warning statement and the discrepancies we saw yesterday in the trial and what the Judge found. Then you were accompanied on the 4th of February 2009 at about 9 o'clock to a so-called pointing out, which you said was a sham because you had no clue where you were going.

MR MHLONGO: That is correct, Chairperson.

10 **ADV NGCUKAITOBI SC**: Remember that?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Now you deal with that, yes, you deal with that from paragraph 222, which is how the Judge dealt with the pointing out.

MR MHLONGO: That is correct.

ADV NGCUKAITOBI SC: Now, paragraph 222 says:

“The court identified serious irregularities in relation to the pointing out conducted on 4 February 2009.”

20 Is that correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: And what were those irregularities that are dealt with from paragraph 223.1?

MR MHLONGO: Some of the things that was raised by the Judge was the fact that Mr Naicker was not supposed to be

part of that pointing out because he is attached to the same unit, which is a serious and violent crime unit.

ADV NGCUKAITOBI SC: Yes, we saw that yesterday when he was questioned. In fact, not only when he was questioned, in his own insertion, he says, I am from Serious and Violent Crime, and you look at the other officer who has brought you there, he is also from Serious and Violent Crime.

MR MHLONGO: Yes.

ADV NGCUKAITOBI SC: And there is no independent person
10 doing the pointing out.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: All right, paragraph 223.2.

MR MHLONGO: -:

“This included the failure to secure a
genuine independent commissioner.”

ADV NGCUKAITOBI SC: Yes.

MR MHLONGO: As we have dealt with, that maybe the
proper way was to take me to the Judge or to the Magistrate
to do the confession or do the pointing out, but they opted for
20 a person who is attached to the same unit.

ADV NGCUKAITOBI SC: Yes, thank you. We have dealt
with that. 223.2, the following page.

MR MHLONGO: -:

“The denial by the officer that they had
met prior to the pointing out, despite

evidence establishing that they had in fact met and discussed the matters.”

ADV NGCUKAITOBI SC: Yes, I mean, that is part and parcel of the fact that this is done by the same unit. That is why they are meeting beforehand.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes.

MR MHLONGO: That is correct, Chairperson, because as I was picked up at Sydenham, I found Naicker and Ndlovu at
10 the office. They were already discussing the matter and the Judge was not happy about it that they discussed the matter before I was taken out for the pointing out.

ADV NGCUKAITOBI SC: Yes, thank you. 223.3.

MR MHLONGO: -:

“Documentation reported that my rights were explained to me was completed at
12:30 on the 4th, after the pointing out had already been taken.”

We dealt about this yesterday, that all these pages that were
20 filled were done after I was taken to the pointing out. That is why you see at the end that the time where these forms were filled, it was exactly around half past 12. So, the pointing out was already being done and this was supposed to happen prior in the warning statements and the rights should have been read out to me before I was taken to the pointing out,

to do the pointing out.

ADV NGCUKAITOBI SC: Yes, we covered that yesterday, but your point is that it was also the finding of a Judge that it was an irregularity.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: And 223.4.

MR MHLONGO: -:

“The fact that I was unable to locate the scene without the assistance.”

10 As we will see in the testimony of Naicker, he conceded that we had to ask a number of people in order for us to find the correct crime scene. As I have said yesterday, that for me what was important was to see the damaged railings on the side of the road. If I see that, I will ask them to stop and show this is the crime scene, and they will explain further as the police are aware that it should be the road markings where the ...[indistinct] would be found. So, we ended up looking for this area for a long, the longest time.

ADV NGCUKAITOBI SC: Yes, but I mean the fact that you
20 could not even identify the area shows why this entire pointing out was a sham. But at that point, the police should have known that you do not know what you are doing.

MR MHLONGO: That is correct, Chairperson, because even during the time that we were talking in the vehicle, they were asking me questions and I was telling them that no, guys, I

do not know this area. I have never been in the area and it is because I was beaten and I had to try and locate this area.

ADV NGCUKAITOBI SC: Yes, and the Judge also made the same finding that you could not identify the area without assistance.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: 223.5.

CHAIRPERSON: I beg your pardon. Mr Mhlongo, I am sorry.

MR MHLONGO: Yes.

10 **CHAIRPERSON:** Just give me a second. The reference in the footnote to the transcript does not seem to be correct. For instance ...[intervenes].

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Just look at footnote 45 to 48. References are made to page 190, 190 to 191 and the lines there. 191 is the front page of the transcript. I think it is a continuation. Just look at it.

ADV NGCUKAITOBI SC: Oh, okay. It looks like, all right, sorry. Let me just get clarity. I do not know, Madam Chair.

20 **CHAIRPERSON:** Yes, but I think ...[incomplete].

ADV NGCUKAITOBI SC: Oh, no, no, what I am told, Madam Chair, is that the numbers there, 190 are numbers of the, the original numbers of the original transcript and not the pagination that has been given for this panel.

CHAIRPERSON: Well, I do not know about the original

number. I am just looking at what I have right now.

ADV NGCUKAITOBI SC: Yes. No, I understand. So, 190 would be at 5A-266.

CHAIRPERSON: 190 would be at?

ADV NGCUKAITOBI SC: 5A-266.

CHAIRPERSON: 5A-266.

ADV NGCUKAITOBI SC: Yes, and 191 would be at 5A-267.

CHAIRPERSON: Meaning that the original numbering is that 190 there.

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

CHAIRPERSON: Yes.

ADV NGCUKAITOBI SC: That is what I understand to be the case.

CHAIRPERSON: Yes.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Because I was looking at the paginated numbers.

ADV NGCUKAITOBI SC: No, I am told that is not the correct numbering, yes.

20 **CHAIRPERSON:** Yes.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Yes, thank you.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. Mr Mhlongo, we were already, we were dealing with 223.5 of your statement. Now, that is in relation to the publicity of the

scene. Why would the scene be known already, publicly?

MR MHLONGO: It is because it was covered by all the newspapers as well as the electronic media as far as mid-January, because the shooting incident happened on the 22nd of January. So, even on the news later on the day the scene was also known because it was shown on the TV and on the newspapers.

ADV NGCUKAITOBI SC: But you also knew it from that source as well because you recalled that there were damaged
10 railings which you had seen from the media.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. And then 223.6?

MR MHLONGO: -:

“The only potential incrimination aspect of the pointing out consisted of alleged utterances attributed to me.”

ADV NGCUKAITOBI SC: Yes.

MR MHLONGO: That as well was the fact that Mr Naicker asked questions, and remember, by the time the so-called,
20 the filling up of that statement I said I will remain silent, then the question is how can I remain silent when I was asked a question and I responded. So that was the question from the Judge that how come that I said I will remain silent, on the other hand now I have asked and I have given answers to the questions. And that as well which was not true because I was

never asked anything. That was just Naicker building his case for his friends.

ADV NGCUKAITOBI SC: Yes, actually that is dealt with if you go to the transcript at 5A-267. Are you there?

MR MHLONGO: Yes, on 267.

ADV NGCUKAITOBI SC: Yes, and that is the third line and that is in the judgment of Judge Gyanda.

MR MHLONGO: That is correct, Chairperson, I am there.

ADV NGCUKAITOBI SC: Yes, so he says here:

10 “So, the pointing out of the scene does
not in itself help the state one iota. The
only assistance that the state was able
or would have been able to get had this
pointing out been declared admissible is
the utterances of the accused at the
time he did the pointing out.”

Can you see that?

MR MHLONGO: That is correct, Chairperson.

20 **ADV NGCUKAITOBI SC:** And that is the only thing that
would have incriminated you are your own words.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. Now, and then the Judge also dealt with Captain Bobby Naicker's evidence and the irregularities that he committed and that is at 224.1, 224.2 and 224.3. Can you deal with those?

MR MHLONGO: That he questioned me during the pointing out. That is where I have explained that he, one hand he says I will remain silent, on the other hand he is asking questions and I responded. That is where it was really confusing, Chairperson.

ADV NGCUKAITOBI SC: Yes, so if you go back to that page, I think the judgment is clearer than your statement. If you go back to that page 5A-267.

MR MHLONGO: I am there, Chairperson.

10 **ADV NGCUKAITOBI SC**: So after line 10, so 10, 11, 12, so where it starts with “in addition”. Can you see that?

MR MHLONGO: I can see that, Chairperson.

ADV NGCUKAITOBI SC: Just read that out to the record.

MR MHLONGO: -:

“In addition, it is quite clear from the evidence of Captain Bobby Naicker that he knew that he was not entitled in law to question the accused. During the process of pointing out, in the first place, he did not caution the accused of the right to remain silent and not to answer questions without the intervention of his attorney and for that reason alone, he ought not to have asked the accused any question. It is

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not disputed and in fact Captain Bobby Naicker acknowledged the fact that but for his questioning there would have been no utterances from the accused that will be said to implicate him in the commission of this offense. In addition, he acknowledged that his question of the accused in these circumstances was indirect contravention of the Judge's rule 2 and 4, which prohibits such questions so that answer from impermissible and unlawful questioning cannot be used by the state to help its prosecution of the accused."

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ADV NGCUKAITOBI SC: Yes, "to sum up".

MR MHLONGO: -:

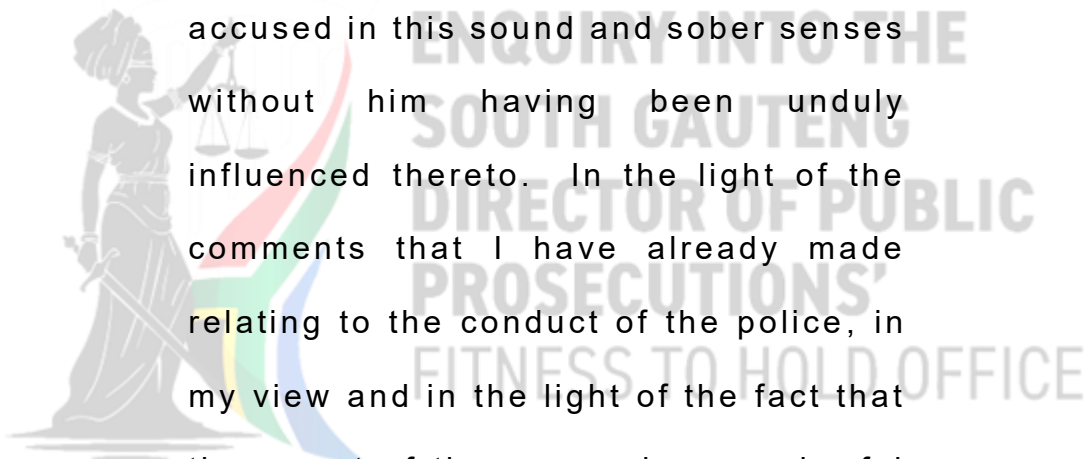
"To sum up, therefore, in my view, the evidence that the state wants this court to rule to be admissible against the accused is so much pathetic rather than poor quality. That is ...[indistinct] of this court to say enough is enough and not to insist upon the accused and their witnesses to go and testify in support of their version in relation to the

20

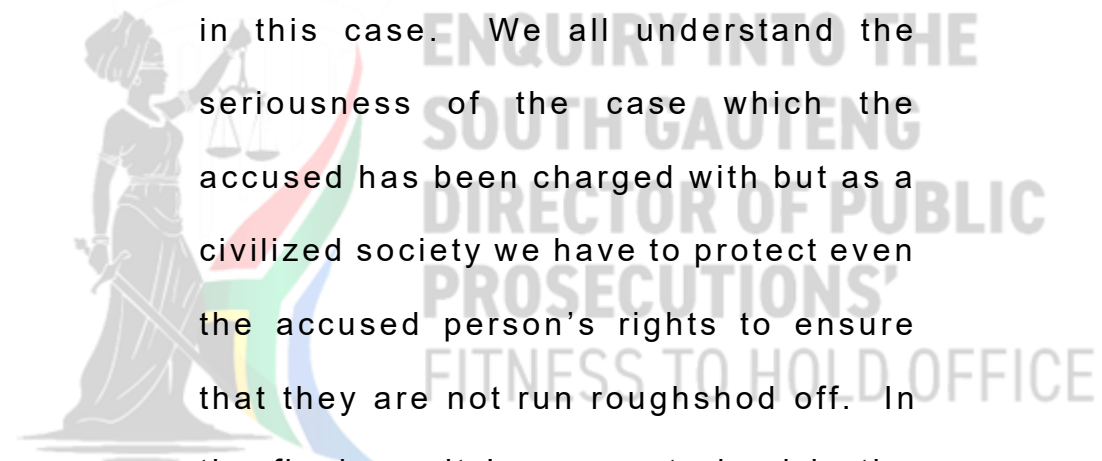
admissibility of the statement. Even if the accused and his witnesses were to go to the witness box and testify and cover themselves it ...[indistinct] mean rather than the glory by being the worst witnesses in the world. There is no basis whatsoever upon which I can find that the evidence tendered by the state in support of the version that the state was made freely and voluntarily by the accused in this sound and sober senses without him having been unduly influenced thereto. In the light of the comments that I have already made relating to the conduct of the police, in my view and in the light of the fact that the arrest of the accused was unlawful in circumstances where the police had no evidence against him, his arrest and subsequent detention were clearly unlawful and all the evidence obtained as a result of unlawful arrest and detention cannot be relied upon, especially since Zungu conceded that the only reason to arrest the accused

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was the hope that he might sometime something to implicate himself. In their desire to obtain some evidence against the accused they trampled roughshod over all his rights. I am of the view therefore the light of the evidence of the state the witnesses alone that I can say at this stage there is insufficient evidence to prove that the accused did in fact make an admissible pointing out in this case. We all understand the seriousness of the case which the accused has been charged with but as a civilized society we have to protect even the accused person's rights to ensure that they are not run roughshod off. In the final result I am constrained in the light of the evidence to rule that the pointing out ...[indistinct] done by the accused by OB Naicker is inadmissible in evidence against him for the reason I have already enumerated."



ADV NGCUKAITOBI SC: Yes thank you. I mean these are really, really serious findings made against the entire police service that they rode roughshod over your rights. They tried

to implicate you in a crime that they knew you were not implicated in and then they extracted a confession under false pretences and under torture. As you say you do not know if those people are still there in the police but Mr Chauke is here facing a charge for trying to do the right thing.

Now after the declaration by a Judge that the false confession against you was inadmissible, and that is written there in capital, what did the prosecutor say, Mrs Greeff?

MR MHLONGO: -:

10 “Mrs Greeff: As the court pleases,
M’Lord. There is no further evidence
that the state can present. I close the
state case.”

ADV NGCUKAITOBI SC: Yes, so their entire case was hanging upon the confession obtained under torture.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: And this is the point, Mr Mhlongo, you know your confession and the confession of Swayo both obtained under torture, then became the basis upon which a
20 lot of people were killed in relation to the murder of Mr Zondi. Mr Mkhize was killed in those circumstances. Mr Ndimande was killed in those circumstances. But the police knew that those confessions were illegal confessions.

MR MHLONGO: It is true, Chairperson, and it pains me to know that the police had to do whatever they have done and

they have left the offence. Mkhize, he was a family man and his family is suffering even today because he is no more and even the monies and I have met them since I have become the Chairperson, they have come to me with a lot of pain in their hearts and even my family as well is still suffering from what has happened to me.

ADV NGCUKAITOBI SC: Yes. And once the state closed its case your advocate applied for a section 174 discharge, is that correct?

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

ADV NGCUKAITOBI SC: And the Judge took one paragraph to grant the section 174 discharge.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes, and that at 5A-270 he says:

“You are entitled to acquittal and you are found not guilty and discharged.”

MR MHLONGO: That is correct, Chairperson.

20 **ADV NGCUKAITOBI SC:** Now so that covers the next three pages up to 549. I want you to read paragraph 232 of your statement.

MR MHLONGO: Paragraph 232:

“The statement which had been prepared by the Cato Manor police for me in the pointing out contain some of the names that were subsequently killed

by the same unit, including Bongani Mkhize, at the time the Chairperson of the association, ...[indistinct] Ndimande, Sifiso Ndimande, ...[indistinct] Mkhize, another name also inserted by the Cato Manor Police in the confession of Swayo included that of Magojela Ndimande who were also later killed. The Cato Manor unit knew that

10 these people were not involved in the killing of Inkosi Zondi. General Booysen specifically knew that they were not involved as he was personally responsible to oversee the investigation of the killing of Inkosi Zondi. As per instructions they were alleged were

20 communicated by the KZN Provincial Commissioner, Hamilton Ngidi. In that capacity there is a lot that he knew about my own ordeal and how the false confession was obtained from me. Added to that fact, my own brother called him about my situation. He was aware of the conduct of the members of the Cato Manor unit in relation to the

killing of the people that were innocent.”

ADV NGCUKAITOBI SC: Thank you. Is that what you were talking about that a lot of people were linked to the murder of Mr Zondi by the false confessions of yourself and Mr Swayo and those people were killed by the Cato Manor unit?

MR MHLONGO: That is correct, Chairperson, because Bongani Mkhize was killed on the day that I was arrested on the 3rd at Umgeni Road and I was informed that one of the Ndimande brothers was killed in Pinetown and the other one
10 was killed in North West and Swayo Mkhize was granted a bail and he was shot and killed in the shack at KwaMashu. So, those are the people I believe were killed because there was these confession statements, false confession statements that was obtained by the police and subsequently these people were killed.

ADV NGCUKAITOBI SC: Yes, and Major General Booysen himself says in his book that the only link to Mr Zondi's killing was the confession by Mr Swayo Mkhize, which linked Mr Bongani Mkhize.

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

ADV NGCUKAITOBI SC: And this is before then they had no evidence at all.

MR MHLONGO: That is correct, Chairperson, and that also was confirmed by Mr Zungu if we go through his cross-examination. He conceded that he did not have any evidence

against myself, Swayo and Mr Mkhize.

ADV NGCUKAITOBI SC: Yes. All right, thank you. And then you deal with life after your case. Do you want to deal with that briefly from 233 to 237.

MR MHLONGO: 233:

10 “Following the conclusion of the criminal proceeding I instituted civil actions against South African Police arising from my arrest, detention and treatment in custody. The matter was ultimately settled out of court in approximately 2016 for the total amount of 2,8 million.”

Chairperson, yes, the, it is the, what has happened and unfortunately I have tried to get the documents from my attorney who was doing the civil matter for me and he told me and Mr Mkhabela as well we tried to communicate with him in order for him to provide us with all the documents and unfortunately he said it is after 5 years the documents were destroyed but then I can confirm that the state has settled 20 the, an amount of 2,8 million for the damages and the trauma that I went through.

ADV NGCUKAITOBI SC: But did they even oppose the case and did it go to trial?

MR MHLONGO: That is correct, Chairperson, it was settled out of court because they knew that if they go to court we

were looking for a bigger amount.

ADV NGCUKAITOBI SC: Yes, that is the point, they did not even go to trial to justify themselves.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. All right, thank you. So you got a damages claim of R2,8 million and the attorney who acted for you in that case cannot find the records. It is too long ago.

MR MHLONGO: That is correct, Chairperson.

10 **ADV NGCUKAITOBI SC:** Yes. And then your criminal case was concluded with an acquittal. You then left KwaZulu Natal. Why?

MR MHLONGO: It was because there was a threat that was consistent. My family went through a lot during that time. I think there are certain pages that we have omitted where it will appear that my family was attacked by the police. It was around August 2009 where they came to my house, or my

mother's house so to speak, because at that time I did not have a house. They broke the doors, they took stuff and the
20 case was opened at Maphumulo Police Station and there was nothing that was done about it, because they came and they said that they were looking for the gun that killed Inkosi Zondi, so they were calling themselves the police but for me it is, I cannot prove it exactly it was the police, but as they were coming to the house they introduced themselves as the

police.

ADV NGCUKAITOBI SC: Okay, well is that the, at page 5-28 that you are saying there were pages that were skipped?

MR MHLONGO: I cannot remember where we ...[intervenes].

ADV NGCUKAITOBI SC: Well, look at 5-28.

MR MHLONGO: 5-28.

CHAIRPERSON: Where do I find 528?

ADV NGCUKAITOBI SC: 5-28 of the statement, Madam Chair, yes.

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

ADV NGCUKAITOBI SC: Okay, what do you want to say about that? I do not want to skip pages that you feel are important.

MR MHLONGO: Ja, it is important, Chairperson, that my family as well went through the worst experience during my incarceration, that my mother suffered, she had just gone through the operation in the head because she was beaten in the head by the barrel of a gun and she suffered from then and she never recovered. They recently done, and she was
20 immobile for the longest time, it is just now that she is able to walk slowly but she suffered through that trauma she got during the time when this so-called police came and raided my mother's house to look for that gun.

ADV NGCUKAITOBI SC: Yes. Well, I mean ...[intervenes].

MR MHLONGO: Ja, and there was nothing that was done on

that matter. As you can see, I have given the case number, CAS 75/08/2009 and there was no follow up or any reports that was given to my family about this situation.

ADV NGCUKAITOBI SC: All right. Is that all you want to say about the ordeal of your family?

MR MHLONGO: I think that that it is. And ja, I have suffered more. I have suffered more, because at some point the association there was no leader and they were unable to pay my legal fees, I had to sell a couple of vehicles in order for
10 me to pay for my legal fees.

ADV NGCUKAITOBI SC: Yes, thank you very much. So, I was still at paragraph 236 just to understand that, of your statement, which is at 5-50 for you to give evidence about why you had to leave KwaZulu Natal after the conclusion of your criminal trial.

MR MHLONGO: I had to leave because, Chairperson, there was also a threat that remember Swayo was given a bail and he was killed, so my family felt that if I remain in the province of KwaZulu Natal, I might be assassinated as well again, so,
20 or be killed by these members of the Cato Manor, so they said let me move out of the province. Then I moved out of the province. I spent some time in the Northern Cape. Then I moved to Pretoria, ended up working for Transnet. I moved to Mpumalanga, then ended up in Richards Bay.

ADV NGCUKAITOBI SC: Yes, and you only returned in 2021.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes, after more than ten years.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. Thank you. Then you have certain conclusory statements you make from paragraph 232 up until 248. I think most of those we have covered already, unless there is something there that you have picked up you have not covered.

MR MHLONGO: I think I am covered, Chairperson.

10 **ADV NGCUKAITOBI SC**: Thank you. And then in paragraph 249 you say you make the statement in good faith.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Do you have anything else you wish to add or are you happy that you have said your piece?

MR MHLONGO: Let me thank the Commission for the opportunity to state my case. Hopefully it will assist and maybe those who are in power to look into this ordeal where the members of KwaMaphumulo Taxi Owners Association has suffered. It has been long and if these situations are not
20 attended to, it will give those who are able to manipulate the systems of the Government to continue doing whatever they are doing now.

As I have said it that we are experiencing similar situations at the moment. Even if I will pass on, the generation that will come after me will know that I have come

out and state this case on behalf of the members of the KwaMphumulo Taxi Owners Association, because this is not about me, but it is about the families that have lost their members, their fathers, their spouse, their husbands and the community in general. They have lost good leaders at some point.

ADV NGCUKAITOBI SC: Thank you, Mr Mhlongo. Madam Chair, I have no further questions. Thank you Madam Chair, no further questions.

10 **CHAIRPERSON:** Thank you, Advocate Ngcukaitobi. Advocate Mtsweni, are you ready to start?

ADV MTSWENI: Yes, Madam Chair/

CHAIRPERSON: Yes, thank you.

CROSS-EXAMINATION BY ADV MTSWENI: Mr Mhlongo, good morning.

CHAIRPERSON: Before you do that ...[intervenes].

MR MHLONGO: Good morning, good morning, sir.

CHAIRPERSON: I beg your pardon. Mr Mhlongo, your evidence in chief ...[intervenes].

20 **MR MHLONGO:** Madam Chair.

CHAIRPERSON: Has just ended and we will afford one of the evidence leaders a chance to ask you questions and if a need arises we will also ask you further questions.

MR MHLONGO: No problem, Chairperson.

CHAIRPERSON: You may proceed, Counsel.

ADV MTSWENI: Yes. Mr Mhlongo, good morning again.

MR MHLONGO: Good morning, good morning, Mr Mtsweni.

ADV MTSWENI: And how are you doing?

MR MHLONGO: I am good and yourself?

ADV MTSWENI: I am good. Mr Mhlongo, I just have a few questions for you and the first one being is you mentioned in your statement that you suffered at the hands of the Cato Manor squad on the date of your arrest, is that correct?

MR MHLONGO: That is correct, Chairperson.

10 **ADV MTSWENI:** But, and you also say in the introductory part of your statement that you had familiarized yourself with the terms of reference of this enquiry.

MR MHLONGO: That is correct, Chairperson.

ADV MTSWENI: That would be at paragraph 6.

MR MHLONGO: That is correct, Chairperson.

ADV MTSWENI: And you are aware that the enquiry is investigating the conduct of Advocate Chauke in relation to his involvement in the decision-making relating to the prosecution of the Cato Manor squad for amongst others
20 racketeering charges in August 2012.

MR MHLONGO: That is correct, Chairperson.

ADV MTSWENI: Yes, and then that amongst the predicate charges which the members of the Cato Manor squad were charged with, were the dockets related to the Bhekithemba case which you were arrested under.

MR MHLONGO: That is correct, Chairperson.

ADV MTSWENI: But then that charge did not relate to your assault and torture.

MR MHLONGO: That is correct.

ADV MTSWENI: So, therefore, insofar as your involvement is concerned, the Cato Manor squad were never charged with any of the violations that occurred to you.

MR MHLONGO: They were not charged for the Bhekithemba CAS, but, remember, there is exemption here of Mr Bongani
10 Mkhize who was killed because he was purported as the person who was involved in this matter.

ADV MTSWENI: No, no, I am talking about in relation to you, Mr Siphamandla Mhlongo.

MR MHLONGO: That is correct, Chairperson.

ADV MTSWENI: Yes. And I take it that this, other than you having ventilated your plight in your, your plight having been ventilated in the criminal case before, in your criminal case as well as in your lawsuit this is the first time that you have come out to speak about your ordeal.

20 **MR MHLONGO**: In fact, this is not the first time, Chairperson. At some point in 2011 or 2012 there was people or persons I could remember we have met, I had to travel all the way from Ermelo to KwaMaphumulo. I have met a guy name of ...[indistinct] or Mabunda, I cannot remember his surname.

ADV MTSWENI: Would it be Mabula?

MR MHLONGO: I have narrated this story – Mabula or Mabunda. He came, I could remember he was driving a grey Q5 and I have met him at Maphumulo because I was not comfortable for him to come where I was residing. I drove all the way to Maphumulo and I gave him my side of the story and I do not know why he never contacted me thereafter but all this I have told this Commission, I have told Mabula or Mabunda.

10 **ADV MTSWENI:** I assume that would ...[intervenes].

CHAIRPERSON: Sorry, Counsel, we are getting disrupted again. Do try, do try again, Mr Mhlongo. Counsel, did you ...[intervenes].

MR MHLONGO: I am ...[indistinct].

CHAIRPERSON: Understand the answer to your question?

ADV MTSWENI: Indeed, Madam Chair. In a nutshell, do I understand you to be saying that there was a gentleman called Mabula, I think it would be General Mabula, who came and you spoke to him at Maphumulo Police Station.

20 **MR MHLONGO:** No, it was not at Maphumulo Police Station. I ...[indistinct] there was a place called ...[indistinct] where we met, because I was not comfortable because he called me, I did not know where he found my number, but he called and we arranged that we met, because he told me he was coming from national office, he is investigating the conduct of this

Cato Manor people.

ADV MTSWENI: It looks like, Madam Chair, the connection is terrible. Are you able to hear us, Mr Mhlongo, because on our side, you are frozen.

MR MHLONGO: I am hearing you nice and clear. It is just that the picture underneath here ...[indistinct] frozen.

CHAIRPERSON: Just a minute, Counsel, just a minute. Would you please help us over there?

MALE SPEAKER: Good morning, Madam Chair. It seems
10 like he is experiencing network problems because our network today is very stable.

CHAIRPERSON: Yes, thank you.

ADV MTSWENI: Madam Chair, can we stand down?

CHAIRPERSON: Thank you. Thank you, sir. I do not see our spokesperson. Will somebody, Madam Colleen, If you can locate the spokesperson. We may have to adjourn for a few minutes so that you can address this challenge from KZN and when you are ready, Advocate Mtsweni, do send a message.

20 **ADV MTSWENI:** Will do so, Madam Chair.

CHAIRPERSON: The spokesperson will come and try to communicate with the KZN people. Let us know when you are ready.

ADV MTSWENI: Will do, Madam Chair.

CHAIRPERSON: We will adjourn for a few minutes.

ENQUIRY ADJOURNS

ENQUIRY RESUMES

ENQUIRY RESUMES

CHAIRPERSON: Good day, everyone. *Nthati* Chauke, good day to you. Mr Mhlongo, good day.

MR MHLONGO: Chairperson, good day to the Chairperson.

The TEMPORARY CHAIRPERSON: You continue to be under oath. You may proceed, Advocate Mtsweni.

ADV MTSWENI: Thank you, Madam Chair. Mr Mhlongo, just
10 before we were technologically interrupted, you were asking, you were asked, I asked you a question, whether this is the first time that you came out and told anyone about your ordeal. And insofar as I may have gotten your response, and I speak on the correction, was that you had at some point met with a gentleman called Mabu, Mabula or something. Do you recall that?

MR MHLONGO: I do recall, Chairperson.

ADV MTSWENI: And is my recollection correct?

MR MHLONGO: That is correct, Chairperson.

20 **ADV MTSWENI:** Yes. Now, what I want to find out from you is, did you make a statement to Mabula, the gentleman you spoke to?

MR MHLONGO: No, there was a note that he was taking during our discussion, but there was no formal statement that was asked, that was procured from me.

ADV MTSWENI: Yes, and you never spoke to the prosecutors who had been appointed to oversee the prosecution of the Cato Manor squad?

MR MHLONGO: No.

ADV MTSWENI: And therefore, would I be correct to say, you were not lined up as one of the witnesses to testify against the Cato Manor squad?

MR MHLONGO: That is correct.

ADV MTSWENI: Yes. And then, the second aspect that I
10 just want to clarify with you, it is in relation to the torture and assault of, I will call him Mr Swayo.

MR MHLONGO: Yes, Chair.

ADV MTSWENI: As I understand, your evidence is that whilst you were at the Cato Manor station, the only time that you saw Swayo, I use the word, at the Cato Manor station after your arrest, the only time that you saw Swayo was when he was brought in and had a gun put against his head, and when he was told, he told you that, just admit whatever they say you should admit to, is that correct?

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

ADV MTSWENI: Yes, and the next time you saw Swayo was when you went to Court?

MR MHLONGO: No. I went to Court, then I was transferred to Westville. I requested Westville because I knew that they wanted to keep me at Sydenham, but because of the

information that I received from one of the detainees, they advised me that I need to raise my hand in Court and request Westville, because if I remain at Sydenham, they will come and book me out at night, be beaten or might be killed. So, I raised a hand in Court at Umlazi that I requested to be housed in Westville. That is where I met Swayo on that particular day.

ADV MTSWENI: Yes, so the next time after you had seen Swayo at the Cato Manor station, the next time you saw him
10 was at the Westville prison?

MR MHLONGO: That is correct, Chairperson.

ADV MTSWENI: So, therefore, would I be correct to say you never witnessed Mr Swayo being assaulted or tortured?

MR MHLONGO: Hence, I have said that he was, there was a gun in his head and he was kicked in front of me.

ADV MTSWENI: But you never mentioned that in your evidence-in-chief. All you said was that ...[intervenes]

ADV NGCUKAITOBI SC: No, no, no, Madam Chair, I apologise. That is just wrong. He did mention it.

20 **ADV MTSWENI:** Okay, okay. Other than the kick, those were the only incidents of assault or torture on Swayo that you witnessed?

MR MHLONGO: That is correct, Chairperson.

ADV MTSWENI: And would I be correct that you never witnessed or were not present when Swayo made his

statement?

MR MHLONGO: Yes, I was not there, Chairperson.

ADV MTSWENI: Yes. And now, speaking on that, you said that there was evidence during your trial that in Umlazi, Swayo had, in separate proceedings, made a statement that the confession that was extracted from him was extracted through assault. Is that correct?

MR MHLONGO: That is correct, Chairperson.

ADV MTSWENI: But ...[intervenes]

10 **CHAIRPERSON**: Mr Mtsweni, you are continuing very fast. There was an objection to your questioning and I could not even make a ruling on it. Whether I sustained the objection or not, and you are running so, so fast.

ADV MTSWENI: I apologise, Madam Chair. I think I just, maybe I should have explained to the Court. I accepted the correction by Advocate Ngcukaitobi, if I missed that part.

CHAIRPERSON: Yes, thank you.

ADV MTSWENI: Yes.

CHAIRPERSON: Objection sustained.

20 **ADV MTSWENI**: Thank you. Now, Mr Mhlongo, you were not present when Swayo made those statements in Court. Am I correct?

MR MHLONGO: That statement in Court, I was there. Remember, we were accused. I appeared with Swayo, I appeared alone on the 4th of February 2009. On the next

appearance, we were together and we had to be detained, remanded for 7 days so that we can apply for formal bail applications. During that time, my attorney, Mr Abdul Karim, he was there. And he should be in the possession of that statement that was made by Swayo. And if he may contact a Hlapane Attorneys, because they were the one who was representing Swayo on the matter.

ADV MTSWENI: Yes. Now, the reason I am asking this is if one looks at the judgment, I am just going to ask you to go to
10 your bundle at 5A-269.

MR MHLONGO: I am there, Chairperson.

ADV MTSWENI: If you look at the pronouncement, is the bundle there, Madam Chair?

CHAIRPERSON: Is it 5A-269?

ADV MTSWENI: Yes.

CHAIRPERSON: Yes, Counsel.

ADV MTSWENI: I am just going to, for the sake of time, do you see the pronouncement by the Judge that says:

20 “In the final result, I am constrained in light of the evidence to rule that the pointing out purportedly done by the accused to Captain Bobby Naicker is inadmissible as evidence against him for reasons I have already enumerated.”

Do you see that?

MR MHLONGO: I see that, Chairperson.

ADV MTSWENI: Now, to find out from you, was there similar pronouncement made by the Court in Umlazi in relation to the confession made by Mr Swayo?

MR MHLONGO: In Umlazi, the case was, we were only, during the time that we were in Umlazi, we were just there for bail hearing. And Swayo, subsequently to that, he was granted a bail and he was killed.

ADV MTSWENI: No, the point I am making is that, do you
10 have any judicial pronouncement on the admissibility of Swayo's confession that you may be aware of?

MR MHLONGO: I know the statement. There was a statement during my bail application that Swayo did confirm that he only gave my name to the police because he was coerced, he was beaten.

ADV MTSWENI: No, I understand that, Mr Mhlongo. The question is, are you aware of any ruling or pronouncement either by a Magistrate or a Judge that Swayo's confession was inadmissible?

20 **MR MHLONGO:** No, I do not know.

ADV MTSWENI: Yes. So you cannot confirm whether, as a matter of fact, Swayo's confession was declared inadmissible?

MR MHLONGO: Yes, Chairperson.

ADV MTSWENI: Yes. Now, the other topic that I want to

clarify with you, you relate, you have made a statement, in your statement you list a number of people, in fact let me just find it, who you say were killed as a result of the confession that was unlawfully extracted from you and Swayo. That would be at paragraph 232. Do you see that?

MR MHLONGO: 232?

ADV MTSWENI: Yes, and then page 5-49 of your statement.

MR MHLONGO: Page 5-49. Am I there, Chairperson?

ADV MTSWENI: Yes. And you name Mr Mkhize, Ska
10 Ndimande, Sifiso Ndimande, Tokhozani Mkhize and Swayo.
Do you see that?

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

ADV MTSWENI: And I just want to take you, insofar as, do
I, am I correct to understand that you also blame the Cato
Manor squad for the murder of Swayo?

MR MHLONGO: That is correct, Chairperson.

ADV MTSWENI: But just to be fair, on the Cato Manor squad
and to you, there is a document that will be flighted to you
20 now, Madam Chair, it is the annexure to Advocate Maema's
statement on page 244, GSM23. I had asked your assistants
to make sure that the document is available to you, and Mr
Mathlakwane will beam that document shortly.

CHAIRPERSON: Thank you, Counsel.

ADV MTSWENI: Mr Mhlongo, do you see that document that

has been flighted?

MR MHLONGO: Yes, I can see it.

ADV MTSWENI: That is a statement by a person called Simphiwe Sipren Mathonzi.

MR MHLONGO: That is correct.

ADV MTSWENI: And Mr Mathonzi tells us that in 2004, he was employed by Excalibur VIP Protection, guarding the taxi rank of Stanger. Do you see that in paragraph 2?

MR MHLONGO: That is correct, Chairperson.

10 **ADV MTSWENI**: And then, other than him telling us how the Stanger Taxi Association used to pay the Cato Manor squad, at paragraph 10, that would be on page 245, he said, he talks about how the murder of Choncho was orchestrated. He says:

“I heard them talking about the plan to kill Superintendent Choncho. Sanele and Bongisiwe arranged with someone who was a member of Maphumulo Taxi Association to organise a hitman for Choncho. Sanele and Bongisiwe did not want to arrange or hire hitmen themselves. They, Sanele, wanted it to be seen as Maphumulo was the one that planned the killing of Superintendent Choncho. Hitmen for Choncho was Kopolota, Lee, Mthembu, Swayo, and others.”

20

Do you see that?

MR MHLONGO: That is correct, Chair.

ADV MTSWENI: Was Swayo a member of... what you call, Maphumulo Taxi Association? Your association, basically. Because I know that there is, I am confused as well, that there is Stanger and I cannot, maybe you can just clarify.

MR MHLONGO: Okay, let me take you through this. There is inconsistency in this statement, why I am saying so. During this time, this occurrence is happening, there would be no way where a member of KwaMaphumulo would be in contact with the members of KwaDukuza or Stanger Taxi Association. Because it was in the heights of the fights between these two associations and ...[intervenes]

ADV MTSWENI: No, Mr Mhlongo, can I just interrupt? I am not asking you to comment on the correctness or otherwise of what is in the statement. I just want, the reason I am taking you to this statement is I just want to show you the circumstances under which Swayo was killed. Because it is detailed in the document.

MR MHLONGO: Chairperson, I think the context is important so that if I give you an answer, you understand where I come from. Yes, I see the statement. And the statement is made, but where I am sitting and my understanding is that Swayo was killed in the house with high calibre firearms and there was no one who has been arrested for his murder and there

is no one who will take accountability. And for me, the only people or the only people who were against him or have a problem with was these Cato Manor people. Because he changed, shortly after he changed his statement to say that I was not part of the people who killed Inkosi Zondi, he was granted bail. Then shortly after that he was killed. I do not think he spent even two weeks outside after he has been released on bail.

ADV MTSWENI: Yes.

10 **MR MHLONGO:** That is why I am saying, I am suspecting, I am not saying it is a fact, but my suspicion says it should be Cato Manor.

ADV MTSWENI: Now, let us just go to paragraph 12. He says:

“During my time, I was told that at Msinga homestead of Sanele and his brother Inkosi Chief ...[intervenes]”

ADV BALOYI-MERE SC: Sorry, Advocate Mtsweni, just to be fair to the witness, read even paragraph 11, for context.

20 Sorry, I am told my mic was too far. For context and to be fair to the witness, please let us read even paragraph 11.

ADV MTSWENI: We will do so, Madam Baloyi-Mere. Okay, let us just go to paragraph 11.

“Cato Manor Unit was also part of the plan.

Choncho was gunned down. After the killing

of Choncho, Cato Manor started killing all hitmen behind the killing of Choncho. I heard Sanele saying he had a list of all people that needed to be killed by Cato Manor. Bongani Mkhize was the chairperson of Maphumulo Taxi Association. He was also on the hit list and he was the last person to be killed. It was difficult for Cato Manor to get Mkhize because of the reporting he, Mkhize, did to high authorities.”

Do you see that?

MR MHLONGO: I see that, Chairperson.

ADV MTSWENI: Yes, but now, this is, this go, the reason, the paragraph I am about to tell you, talks about how the killing of Mbongeleni Zondi came about. It says:

“During my time, I was told that at Msinga homestead of Sanele and his brother, Inkosi Chief Mbongeleni Zondi, there was a hotel, Home Affairs and Game Reserve. Office park around their homestead was named after Mbongeleni Zondi. I think even today the office is named after Mbongeleni Zondi. Mbongeleni was the acting chief. Mbongeleni was about to be given the

position to be the full-time chief. Sanele was not happy with that. Sanele used to complain to me that he was not happy because Mbongeleni was about to be given the position to be chief.”

Right? And then he says:

“Mbongeleni Zondi was gunned down. Swayo was arrested and granted bail. Within a short period of Swayo was gunned
10 down too. I heard saying, “[indigenous language]”, meaning that hit the hitman and cried inside the shack, referring to Swayo who was killed inside the shack.”

Do you see that?

MR MHLONGO: I see that.

ADV MTSWENI: Yes. There is no mention or reference made to the Cato Manor squad being the ones who shout [indigenous language].

MR MHLONGO: Chairperson, Zondi, in the evidence that
20 has been presented in this forum, it has been mentioned that they were paying these members of the Cato Manor doing their dirty work as it has been mentioned in part of the statement. So for me, my interpretation is that it cannot be Zondi himself who conducted this hit. There were people. The people that I suspect will be Cato Manor.

ADV MTSWENI: Yes. So but I take it, you do not have concrete evidence to support that suspicion, am I correct?

MR MHLONGO: That is correct, Chairperson.

ADV MTSWENI: Yes. Now...

CHAIRPERSON: Is that in relation to Mr Swayo?

ADV MTSWENI: Yes, Swayo. Now, Mr Zondi, sorry, Mr Mhlongo, do you, are you aware of the circumstances which surrounded the killing of all these other members of Cato Manor, that would be Mr Mkhize and the others?

10 **MR MHLONGO:** We were told that they were sought by the police. The cases that were popular at the time that they were said they were looked for or they were sought for, it was the case of Superintendent Choncho. Those cases, I think, will start from Lebo Buthelezi, who was killed earlier. The second casualties, it should be Mr Ndimande and his bodyguard, Mr Thembe. The third one will be Mr Ntuli, Kopolota Wilson Mthembu in Mandini. Later on, Mkhize who I was with him on the day he was taken by the police. He was killed somewhere in Scottburgh or Umzinto around the
20 area.

ADV MTSWENI: Yes. So that is all that you know. What you know is what you were told.

MR MHLONGO: Yes.

ADV MTSWENI: Yes. Now, just to go back, when you started introducing this whole thing in relation to mister, what is this,

the gentlemen, Mr Mkhize and Mhlongo on the 27th of August 2008. That would be on paragraph 23 of your statement. 5-5, Madam Chair.

MR MHLONGO: I am there, Chairperson.

ADV MTSWENI: You tell us at paragraph 25 that:

“They had asked to be detained at Westville Prison.”

That would be at paragraph 25.

MR MHLONGO: Yes, yes, Chair.

10 **ADV MTSWENI**: And then you say:

“Despite that arrangement being sanctioned by the Magistrate, they were nonetheless taken to Cato Manor station.”

MR MHLONGO: That is correct, Chairperson.

ADV MTSWENI: And that would be on the basis of an altered warrant of detention.

MR MHLONGO: That is correct, Chairperson.

ADV MTSWENI: Now, you say that the investigation revealed that:

20 “The Magistrate had signed the warrant for them to be detained at Westville and he or she had not altered it. The control prosecutor confirmed the detention at Westville and the detention was – but then nonetheless, the warrant was altered by

deleting the word Westville and substituting
it with Cato Manor police cells.”

Do you see?

MR MHLONGO: That is correct, Chairperson.

ADV MTSWENI: But would I be correct to say that you never
saw the altered warrant yourself?

MR MHLONGO: It was presented in Court and if maybe I
can be given a chance to go and have this because I know
that Mr Houser, who was my representative, he did produce
10 this warrant of... this... it was J something, I cannot get the
term correct, this form that was altered. He did produce it in
Court.

ADV MTSWENI: But you were not part of the investigation
that you referred to at paragraph 27?

MR MHLONGO: The legal team, the team that was appointed
by the... by the KwaMaphumulo Taxi Association, they are
the ones who reported back to – remember, if you have the
legal team, they report to the organisations, the Executive
Committee of the association, then the members of the
20 Executive Come back and cascade that information back to
the lower members of the association. So that is when we
get to know that there is a team that was assigned to look
into this matter.

ADV MTSWENI: Yes. So what you are telling us is on the
basis of the reports that you got?

MR MHLONGO: That is correct, Chairperson.

ADV MTSWENI: Yes. But the investigation never revealed who exactly altered the warrant?

MR MHLONGO: I was told, we were told that it was Inspector or Captain Pandey is the one who altered the form.

ADV MTSWENI: Okay. Madam Chair, can I just have a few minutes just to make sure that I have traversed everything that I wanted to traverse with the witness?

CHAIRPERSON: Yes, thank you, Counsel. If I may just
10 maybe follow up quickly. In relation to the altered detention warrant, are you taking issues with the fact that it was altered? Or you are making a point as regard to who actually altered it?

ADV MTSWENI: Who altered it.

CHAIRPERSON: Who altered it?

ADV MTSWENI: Yes.

CHAIRPERSON: You do not take issue with the fact that it was altered?

ADV MTSWENI: Yes, I just wanted to clarify with the witness
20 as to who exactly, does he know who altered it?

CHAIRPERSON: Yes. Okay. Thank you.

ADV MTSWENI: Yes. Now, Mr Mhlongo, the last issue that I want to traverse with you relates to the [indigenous language]. Do you recall that part?

MR MHLONGO: I recall, Chairperson.

ADV MTSWENI: Yes. And what we know is that you were not at the meeting.

MR MHLONGO: That is correct, Chairperson.

ADV MTSWENI: Yes. And what you know is what Mr Ngcobo presented to you.

MR MHLONGO: That is correct, Chairperson.

ADV MTSWENI: Yes. Now, let us look at, if I am on the same bundle, mister, can I just ask that annexure GSM24B please, be made available on the screen?

10 **CHAIRPERSON:** It is GSM?

ADV MTSWENI: 24.

CHAIRPERSON: 24. Place on record what GSM24 is?

ADV MTSWENI: Yes. Mr Mhlongo, there is a document that will be beamed through to you. It is GSM 24. It is an affidavit made by Mr Thengamandla Walter Ngcobo, who I understand was the chairperson, I think, after Mr Mkhize was murdered, of the KwaMaphumulo Taxi Association. Do you recall that? Do you know him?

MR MHLONGO: That is correct, Chairperson. That is
20 correct. That is the guy that I have met last week on Thursday.

ADV MTSWENI: Yes. And he is the one that reported to you what happened at the meeting with Mr Cele.

MR MHLONGO: That is correct, Chairperson.

ADV MTSWENI: Yes. And just before we go to his

statement, and you, at paragraph 76, you tell us what your interpretation of the metaphor of the statement by Mr Cele, where he says [indigenous language], do you recall? Do you see that?

MR MHLONGO: I see that, Chairperson.

ADV MTSWENI: And then you say, your understanding is that, to mean that:

10 “In unstable or violent circumstances, aggressive action would follow. The statement was interpreted by KTA as contextualising or justifying the police operations that had resulted in the deaths of our members.”

Do you see that?

MR MHLONGO: I see that, Chairperson.

ADV MTSWENI: But let us look at what Mr Ngcobo interpreted Mr Cele's statement at paragraph 13. And that would be on page 18-310, Madam Chair. At paragraph 13, Mr Ngcobo says:

20 “Mr Bheki Cele made it clear to us he just did not care about the death of our members. He boasted to us by saying that [indigenous language]...”

Madam Chair, can I just, my device just died on me. Can I just be given a few moments? But just to continue, I think

you will see there he says, he says:

“Mr Bheki Cele made it clear to us that he just did not care about the death of our members. He boasted that, he boasted that to use his words, [indigenous language].”

Do you see that?

MR MHLONGO: I see that, Chairperson.

ADV MTSWENI:

10 “This meant that he was happy that his members were killing our members.”

Do you see that part?

MR MHLONGO: That was his interpretation, Chairperson.

ADV MTSWENI: Yes. The point I was trying to make is that the statement itself can be interpreted differently depending the position from which one interprets it. Do you agree with me?

MR MHLONGO: I agree with you, Chairperson.

ADV MTSWENI: Yes. So the interpretation that you accord is different from the interpretation that Mr Ngcobo accorded
20 to the statement.

MR MHLONGO: That is correct, Chair.

ADV MTSWENI: Yes. Now, the point is, so therefore you agree to me that Mr Cele's statement might have, might also have interpreted the statement differently.

MR MHLONGO: That is correct, Chair.

ADV MTSWENI: Yes.

MR MHLONGO: But in a context that he was saying this, if we can go further than that, according to, if you can go to paragraph 79, you see that:

“As we left, Mr Cele marked, you must remember this is war, what the war does, it kills people.”

CHAIRPERSON: Are we not rather speculating of what Mr Cele would probably have interpreted the words to mean?
10 Should we go there, Counsel, on that route of speculation?

ADV MTSWENI: Madam Chair, that would be our submission at the end of the day, that the interpretation that is given is speculative. Everyone is speculating about what Mr Cele would have said, meant, basically.

CHAIRPERSON: Yes, I hear what you are saying, but I am saying to you, based on your statement or your comment to the witness that Mr Cele, given the fact that Mr Mhlongo and Mr Ngcobo seem to be interpreting the phrase differently, and you suggest that even Mr Cele may interpret the words
20 differently. Is that what you are saying?

ADV MTSWENI: That could be so, yes, Madam Chair.

CHAIRPERSON: Which is speculative because we actually do not know. At least we know what these two witnesses are saying, what meaning they attribute to the phrase. But as regards Mr Cele, you are mentioning this speculation, that I

am wondering whether we need to go there. Is he going to, has he consulted with you to tell you that he understood the words to mean something different? Because otherwise, it is pure speculation. As regards Mr Cele, do you want to persist with that?

ADV MTSWENI: Madam Chair, I have not spoken to Mr Cele and we have not lined him up. But the point that we simply said, rather so that I can show the witness that the phrase, I may not insist on what Mr Cele might say, but the argument we intend making is that the phrase can be interpreted differently and it may not mean what the witness means, interpreted to mean. That might be the witness's own subjective interpretation.

CHAIRPERSON: You may proceed.

ADV MTSWENI: Yes. In fact, Madam Chair, on that note, I think I have covered everything that I wanted to cover with the witness. Mr Mhlongo, thank you for your time and your cooperation.

MR MHLONGO: Thank you so much.

CHAIRPERSON: Just on that point, Counsel, do you remember the meaning attributed to the phrase by Advocate Maema? I am not sure whether you were in the hearing chamber that time.

ADV MTSWENI: I was always here, Madam Chair.

CHAIRPERSON: You were here. And you remember what

he attributed these words to mean in Zulu and we engaged with him.

ADV MTSWENI: I would have to re-look at the record

CHAIRPERSON: You can look at the transcript.

ADV MTSWENI: Yes. So, unfortunately, I am unable to. But even on that, Mr Maema had his own interpretation as well.

CHAIRPERSON: Well, you have to look at the transcript.

ADV MTSWENI: Yes.

CHAIRPERSON: Yes. Yes, thank you, Counsel. Is that all?

10 **ADV MTSWENI:** That will be all from our side, Madam Chair.

CHAIRPERSON: Thank you. Advocate Ngcukaitobi?

RE-EXAMINATION BY ADV NGCUKAITOBI SC: Thank you, Madam Chair. Mr Mhlongo, can I ask you to go back to that statement of Mr Mathonzi?

MR MHLONGO: If you can flight it Chairperson because it is not in my possession.

ADV NGCUKAITOBI SC: Of course, of course, of course, of course.

CHAIRPERSON: I think it is, Counsel, it is GSM?

20 **ADV NGCUKAITOBI SC:** 23. GSM 23.

CHAIRPERSON: 23. Mr Maema's bundle.

ADV NGCUKAITOBI SC: Yes, yes. Do you have it in front of you, Mr Mhlongo?

MR MHLONGO: Yes, it is appearing on the screen here, Chairperson.

ADV NGCUKAITOBI SC: Now, the problem is I do not know whether the evidence leaders are going to rely on the statement or whether they will rely on certain portions. But I think that if there will be any reliance on it, the full statement must be relied upon. Now, starting at paragraph 2 of that statement, he explains who he is.

“Year 2004, I was employed by Excalibur
VIP Protection, guarding the taxi rank of
Stanger.”

10 Is that correct? Do you know who Mr Mathonzi is at all?

MR MHLONGO: No, I never met him. I do not know him.

ADV NGCUKAITOBI SC: Okay, well, he describes himself as having been a guard for Stanger. And Stanger is also known as KwaDukuza, because if you look there in brackets, Stanger Taxi Association, it is putting in brackets KwaDukuza Taxi Association. So that would be correct, is it not?

MR MHLONGO: That is correct, Chairperson. As I have alluded before, that this association, it uses these two names intertwined to say it is a Stanger and KwaDukuza. The
20 reasons for that is because the town which is KwaDukuza now previously was called Stanger. So they are using the name of the town to say it is Stanger and KwaDukuza.

ADV NGCUKAITOBI SC: Yes. And then he continues about his mandate.

“My mandate was to guard the rank. The

owner of the company was Mr Andre van der Byl.”

That is presumably Excalibur. Then it says:

“The contract expired year 2005, the contract given to Pentagon VIP Protection and the owner was Mr Anwar Khan. My mandate was to give protection to Mr Ngcobo Mapholoba...”

Do you know who Mr Ngcobo was?

10 **MR MHLONGO**: Yes, I know him. His name is Beziwe Ngcobo. He was the deputy chairperson or the treasurer of the Stanger Taxi Association but he is still alive. I know that for a fact.

ADV NGCUKAITOBI SC: So that seems to also be true.

“...who was the vice chairman of the Stanger Taxi Association. The chairman of the association was Mr Khanyile, I gave protection in the year 2005.”

Do you also know who Mr Khanyile was?

20 **MR MHLONGO**: Yes, he is late now but I know him.

ADV NGCUKAITOBI SC: Yes. Now, in paragraph 3 he says:

“Sometimes I was also given the task to guard Mr Bibi Gwala.”

Do you know him?

MR MHLONGO: Yes, I know Mr Gwala.

ADV NGCUKAITOBI SC: Yes, so that also seems to be accurate in relation to what he says. And who was he?

MR MHLONGO: Mr Gwala I believe during the time of 2004 he was not a member of the Executive Committee but he was upgraded to the member of the committee around 2011, 2012 as a PRO then he was moved to be the chairperson around 2016, 2017 then he was recalled.

ADV NGCUKAITOBI SC: Of Stanger?

MR MHLONGO: That is correct, Chairperson.

10 **ADV NGCUKAITOBI SC:** He says:

“I was close to all executive members of the association, I was a trustee to all executive members of the association. Even when they planned to do something wrong like hire a hitman to kill someone, they would discuss in my presence, some of the members of the association were close to the unit called Cato Manor. These members were Sanele Zondi and Mbongeleni Zondi who was a member of the Cato Manor Unit.”

20

Do you know these people Sanele Zondi and Mbongeleni Zondi?

MR MHLONGO: I think Sanele he used to be the chairperson, he is late now, he was he was gunned down sometimes late last year or early last year and Mbongeleni I

would think is relating to the late Mbongeleni Wellington Zondi, who was the chief who was killed at Umlazi.

ADV NGCUKAITOBI SC: Yes but he was also a member of Cato Manor Unit. At the point here about this paragraph 3, he says that his association was close to the unit called Cato Manor Unit. Is that also in accordance with your understanding?

MR MHLONGO: That was, we have always said, if you can go through the documents, as part of the documents that was
10 sent to the high authority because the Maphumulu has been having this issue of Cato Manor only taking a side. And as I have said in my previous statements or earlier in my testimony, that the problem was that the only one side was killed and the other side was not killed. And I have made an example, if you can remember Chair, of Mr Mthembu, who was the municipal manager at KwaDukuza who was killed and there was no one who was arrested or killed. But the rumour on the street was that he was killed by the KwaDukuza Taxi Owner Association.

20 **ADV NGCUKAITOBI SC:** Yes, and just to come back to the question I was asking, the testimony that he is giving in paragraph three is that Stanger Taxi Association were close to the Cato Manor Unit. Is that also consistent with your understanding?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes, now he goes on in paragraph 4:

“Mbongeleni Zondi...”

That is the person you assume is referring to as Inkosi Zondi’

“...had a taxi within Stanger Taxi Association.”

Right, so he is a policeman, but he also has a taxi in Stanger Taxi Association.

10 “The taxi were registered under his younger brother, Sanele.”

Do you see that?

MR MHLONGO: I see that, Chairperson.

ADV NGCUKAITOBI SC: Yes. Do you have any comment on that?

MR MHLONGO: It can be true, but it would be hard for me to prove it, because it is something that might happen between the two people, so it is going to be hard for us to prove it, for me to prove it, sorry.

ADV NGCUKAITOBI SC: No, I understand, but I am saying 20 that the same Mr Mathonzi, whose testimony is put to you by the evidence leaders, also testified of the close relationship between Cato Manor and Stanger, and also testified that Mr Zondi, the gentleman who was killed, in fact, did have taxis under Stanger, but they were under his younger brother, Sanele. But as you say, you would not be able to testify on

that. But let us look further. He says:

“Somewhere in 2007, I accompanied Sanele Zondi and Bongisiwe Mhlongo to meet Mr Mostert, and now General Booysen.”

Can you see that?

MR MHLONGO: I can see that, but I think we have to correct, it is not Bongisizwe, it is Bongizwe.

ADV NGCUKAITOBI SC: Oh, it says Bongizwe, it should be Bongizwe?

10 **MR MHLONGO**: It should be Bongizwe, not Bongisiwe.

ADV NGCUKAITOBI SC: All right, thank you very much. But who are these people, Bongizwe, Mhlongo, Sanele Zondi?

MR MHLONGO: Bongizwe, he was a member of the Executive Committee, I believe he was a PRO of the Stanger Taxi Association during the time, and Sanele, he ended up being the chair after the passing of Mr Khanyile.

ADV NGCUKAITOBI SC: So these are senior officials of the Stanger Taxi Association, Mr Zondi and Mr Mhlongo?

MR MHLONGO: That is correct, Chairperson.

20 **ADV NGCUKAITOBI SC**: Now, what Mr Mathonzi is saying is that he was present in 2007 when these two gentlemen met Mr Mostert. Do you know Mr Mostert?

MR MHLONGO: Yes, I know him.

ADV NGCUKAITOBI SC: Who is he?

MR MHLONGO: He is one of the police officers from Cato

Manor Unit.

ADV NGCUKAITOBI SC: And General Booysen, everyone knows who he is. He was at one point in charge of the unit and then he went to the province. So where we are right now is in 2007, according to Mr Mathonzi, Mr Zondi, Mr Mhlongo have met Inspector Mostert and Major General Booysen. Now, he explains what happens in that meeting. He says:

10 “The meeting place was near Gateway shopping mall by the Shell Garage behind private hospital. After the meeting, I heard their conversation about what was the meeting all about. Sanele and Bongizwe wanted Mostert and Booysen to cover up if police want to arrest members of Stanger Taxi Association.”

Now let us stop there. Do you have any comment on that?

He says he witnessed this meeting and he heard the conversation when they reported to each other about what it was about. But the gist of it was that the Stanger officials
20 wanted Cato Manor to cover up for them if the Stanger people have been arrested. Do you have any comment on that?

MR MHLONGO: I think it is possible, because if you can look at all the cases, from 2004 up until 2012 or 2013 on, if you go further than the 2017 or 2019, you would realise that so many people were killed in both associations, but there

was no one who has ever been taken or questioned by the Cato Manor from the KwaDukuza side or Stanger Association side. So that will tell you that they had a very close relationship with them. If for this time, and people are being killed in both sides, but you only persuading people from one side and the other, you are not paying attention to.

ADV NGCUKAITOBI SC: Yes, and then he continues.

10 “Sanele and Bongizwe were untouchables because they had senior officers on their side. The day of the meeting, Sanele said the Executive have to pay money to Cato Manor Unit senior officers, referring to Mostert and Booysen that they met.”

So again, Mr Mathonzi says on that day in 2007, the decision of the Executive of Stanger was to give money to Mr Mostert and Mr Booysen. Do you have any comment on that?

MR MHLONGO: That can be possible. That can be possible, because if you speak to the members of the Stanger Taxi Association, they will tell you that a lot of money were
20 collected during that time. So maybe they will know, or maybe they were told it was when I was not part of them, but if maybe we can find any one of them, but as Mr Mathonzi is saying, he was in a better position to narrate the story.

ADV NGCUKAITOBI SC: Yes, and in paragraph 6:

“After a week I was called to accompany

Sanele and Bongizwe. We went to the Gateway shopping mall of McDonald parking. Bongizwe had an envelope containing money, it was notes inside, upon arrival.”

Now what he is saying is that, look, we collected, the Executive decided money must be paid to Cato Manor. Then a week later, he is part of this trip to Gateway shopping mall, and there is an envelope which contains money inside. Can
10 you see that?

MR MHLONGO: I can see that, Chairperson.

ADV NGCUKAITOBI SC: He then says:

“We met now General Booysen and Mostert, two senior officers were travelling in a grey BMW 5 series. The driver was Mostert. Booysen was on the passenger seat, seated at left front. There were two in the BMW car.”

So now he says, well, we have arrived here, and we find Mr
20 Booysen and Mr Mostert in a BMW 5 series.

“And then they, Bongizwe and Sanele got out and went straight to the BMW. Bongizwe had the same envelope containing cash.”

Says contained cash.

“I did not know how much it was, and it was

a lot. Sanele and Bongizwe remained in the car, BMW, for about 45 minutes to an hour. In the process, there was a conflict between Stanger Taxi Association and Maphumulo Taxi Association. According to my knowledge, during those years I was there, nobody from Stanger Taxi Association was either arrested or killed by Cato Manor Unit.”

What do you say about that?

10 **MR MHLONGO**: That is what I have been saying, Chairperson, that if you see the sequence and the pattern of how they were doing things, I have made a reference to this a couple of times to say, there is no one that can be pointed to say he came from Cato Manor or he was being arrested by Cato Manor or killed by the Cato Manor Unit for the last 20 years.

ADV NGCUKAITOBI SC: Yes, and then...

MR MHLONGO: Or even more.

ADV NGCUKAITOBI SC: Thank you very much. And then
20 he explains the situation of Superintendent Choncho. Paragraph 9, he says:

“The only police officer who was a threat to Stanger Taxi Association was the Superintendent Choncho. According to the association, Choncho was a straight police

officer. Choncho did not take bribery from either Stanger or Maphumulo Taxi Association. If somebody committed murder relating to taxis, he would go out and arrest the suspect without involving the Cato Manor Unit. Without involving Cato Manor Unit was not happy with Superintendent Choncho.”

I presume that means the Cato Manor Unit was not happy with
10 Superintendent Choncho.

“Sanele and Bongizwe were not happy too with Choncho. I heard them, Sanele and Bongizwe, saying Choncho was a trouble and they will talk to senior officers referring to Booyesen and Mostert to sort him, Choncho.”

Do you have any comment on this? What he is saying is, look, the killing of Choncho is also to be traced back to Cato Manor and Stanger.

20 **MR MHLONGO**: That is possible, Chair. Remember, on these documents, we have seen that Swayo and Gedwane was in the possession of the police, but they ended up taking them for questioning of the murder of Choncho while these two, they were with them. It tells you that there was a plan for them, for them, Gedwane and Swayo, to implicate certain

individuals. And unfortunately, what happened thereafter, it was a lot of life were lost.

ADV NGCUKAITOBI SC: Yes. Now, then paragraph 10, which I think is one of the paragraphs you were referred to, says:

“I heard them.”

Now, the them there is talking about Sanele and Bongizwe. He says:

10 “I heard them talking about the plan to kill Superintendent Choncho. Sanele and Bongizwe arranged with someone who was a member of Maphumulo Taxi Association to organise a hitman for Choncho. Sanele and Bongizwe did not want to arrange or hire a hitman themselves. They, Sanele and Bongizwe, wanted it to be seen as Maphumulo are the ones who planned the killing of Superintendent Choncho. Hitmen for Choncho were Kopolota, Lee, Mthembu, 20 Swayo, and others.”

Now, that is where the whole point was made, that it looks like Swayo had been hired as a hitman by Sanele and Bongizwe on behalf of Stanger Taxi Association, intentionally having been drawn from Maphumulo to create a false impression. Do you want to comment on that?

MR MHLONGO: I can comment, Chair, because it is, it is paining because, as I have said before, Swayo was not anywhere in position of being a hitman on the day because he was in police custody. So it cannot be that he was in police custody, then he is killing someone at the same time. That was really impossible. The others, I could not comment because I was not with them on the day, but I know that thereafter, they were all killed, as they have been mentioned in this paragraph.

10 **ADV NGCUKAITOBI SC**: Yes, but I mean, I suppose, theoretically, it is possible that in the discussion between Sanele and Bongizwe, Swayo's name could have been mentioned, but that does not mean he was a hitman because he was in detention at the time of the killing.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. Now then, paragraph 11 says:
“Cato Manor Unit was also part of the plan.”

Now, the plan that is being referenced there is the plan mentioned in paragraph 10, which is the plan to kill
20 Superintendent Choncho, correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Now:

“Choncho was gunned down. After the killing of Choncho, Cato Manor started to kill all hitmen behind the killing of Choncho. I

heard Sanele saying he had a list of all people that need to be killed by Cato Manor.”

Now, Sanele, we remember, is from Stanger. He has a list that must be killed by Cato Manor. Is that correct, according to the statement?

MR MHLONGO: That is correct, Chairperson. And that list, it was leaked to one of the police and that police gave to Mr Mkhize. Then he mentioned that list that he had and he know
10 that there is a list, as we have seen on the documents that names were mentioned. And those names are all the people that definitely were killed.

ADV NGCUKAITOBI SC: Then it continues:

“Bongani Mkhize...”

That is the person you were talking about;

“...was a chairman of Maphumulo Taxi
Association. He was also on the hit list and
he was the last person to be killed.”

I suppose when he says last person, he means last person to
20 be killed in relation to senior superintendent Choncho because the killings began again in January 2009 after the 22nd, which is the day that Inkosi Zondi was killed. Is that correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. And then he says:

“It was difficult for Cato Manor to get Mkhize because of the reporting he Mkhize did to high authorities.”

Do you know what this is referring to?

MR MHLONGO: I think he was referring to the letter that was read, which is at SM5.

ADV NGCUKAITOBI SC: Yes, the application to court.

MR MHLONGO: That is correct.

ADV NGCUKAITOBI SC: And the letters to the Minister.

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

ADV NGCUKAITOBI SC: Yes. And paragraph 12, which is the paragraph that was read out.

“During my time, I was told that Msinga homestead of Sanele and his brother Inkosi Chief Mbongeleni Zondi, there was a hotel, Home Affairs, and game reserve. Office park around their homestead was named

after Mbongeleni Zondi. I think even today, the office named after Mbongeleni Zondi.

20 Mbongeleni was the acting chief. Mbongeleni was about to be given the position to be the full-time chief. Sanele was not happy with that. Sanele used to complain to me that he was not happy because Mbongeleni was about to be given

the position to be chief.”

Now, the Sanele referenced here is a man from Stanger, correct?

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes, and it looks like there is another theory, that there is a dispute about chieftaincy.

MR MHLONGO: That is correct, Chairperson, if you read this paragraph.

ADV NGCUKAITOBI SC: Yes, but it seems to be an
10 additional theory to what Stanger and Cato Manor were planning, which is referenced in paragraph nine, 10, and 11 of the statement.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: The other is in relation to Superintendent
Choncho.

ADV NGCUKAITOBI SC: In relation to Mr Zondi. This is now about the killing of Mr Zondi. That is why I am saying it is a different theory to what we were dealing with before.

20 **CHAIRPERSON**: Yes, the earlier one is in relation to Superintendent Choncho.

ADV NGCUKAITOBI SC: Superintendent Choncho, correct.

CHAIRPERSON: Thank you.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. Yes, now, Mr Mhlongo, do you want to comment on the question

by the Chair? I mean, just to make it clear that we were dealing in nine, 10, and 11 with the killing of Superintendent Choncho. We are now dealing with the killing of Inkosi Zondi.

MR MHLONGO: Yes, Chair. I think this can be the true story of what happened, because even today, we do not know who killed Inkosi Zondi. It is still a mystery. And according to the investigating officer, there were fingerprints that were picked up from the vehicle that was in the crime scene. But who are those people? And why they were not brought to court to answer who sent them to kill Inkosi Zondi? So in that context, I would think what the statement is saying, it need to be looked at.

CHAIRPERSON: Yes, the point in relation to that paragraph 12, read in conjunction with paragraph 9, is that as far as Sanela's involvement, as mentioned in paragraph 9, is about the planning in relation to the killing of Superintendent Choncho, correct?

MR MHLONGO: That is correct, Chair.

CHAIRPERSON: And Sanela was involved in that planning.

20 Is that your understanding?

MR MHLONGO: That is my understanding, Chair.

CHAIRPERSON: Now, counsel is making another point in relation to paragraph 12, regarding the killing or the planning of killing Inkosi Zondi. And he mentions that there appears to have been an issue about the chieftaincy, which Sanela

was not happy about. Do you understand?

MR MHLONGO: I understand that, Chairperson. Yes, it is. If you read this paragraph 12, it suggests that the chief, or Mr Mbongeleni Zondi, he was about to be given a full-time position of being a chief, and maybe Mr Zondi, or Mr Sanela Zondi as well, was looking into that, maybe having a wish or a prospect of being a chief as well. So it brings another spin on what might be the reason of the chief being killed.

CHAIRPERSON: Yes.

10 **ADV NGCUKAITOBI SC**: Thank you, Madam Chair. Now, we come then to paragraph 13, which was also read out. You have now seen all of the, the full context of what he was talking about. But he then says:

“The chief, Mbongeleni Zondi, was gunned down.”

We know Mr Zondi was shot and killed on the 22nd of January, 2009, between 7.00 and 8.00am in the Z Section of Umlazi. Then he says:

“Swayo was arrested and granted bail.”

20 Now, that you have also confirmed, is that correct?

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes.

“Within a short period, Swayo was gunned down too.”

In other words, Swayo is also killed during the period when

he was on bail, is that correct?

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. Now, which is one of the oddities of this issue, because you were challenged by the evidence leader that did you ever see a judgment in which the statement of Mr Swayo was declared inadmissible? And your answer was, he never went to trial because he was killed during the bail proceedings. I mean, once he was out on bail proceedings, that is when he was killed, so he never went to
10 trial. But he had, in the application for bail, written a statement which was used in court, in your own trial, is that correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. Now, your point is that when he was killed after being released on bail, that could be linked to the fact that he retracted the false confession, is that correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Now, it is in this context that the
20 words in the brackets appear. It says:

“I heard saying, [indigenous language], meaning hit the hitman and cried inside the shack, referring to Swayo who was killed inside the shack.”

So it is not Swayo killing a person, it is Swayo being killed

that they are talking about here, is that correct?

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. So it is unclear to me what point is being made that Swayo could in fact have correctly confessed to have been responsible for the killing of the chief.

ADV MTSWENI: No, Madam Chair, I think, if I might just interject, we never said that Swayo was, I said that the reference was made in the context to say that Swayo was,
10 there is no evidence that Swayo was killed by the Cato Manor. The reference that the person who was being shot in the *mjondolo* was a reference to Swayo, not Swayo hitting someone else in the *mjondolo*.

CHAIRPERSON: In other words, you are in agreement with what counsel is now saying?

ADV MTSWENI: Yes, but the...

CHAIRPERSON: What he is reading there.

ADV MTSWENI: Yes, but I just want to contextualise that the question was not to mean that Swayo was the one killing
20 someone. It was in relation to, the point I wanted to make was that according to Mathonzi, it was not the Cato Manor that killed Swayo because he said he blamed the Cato Manor.

CHAIRPERSON: Yes, I am not sure whether I understand, but, Advocate Ngcukaitobi?

ADV NGCUKAITOBI SC: Yes, no, I appreciate.

CHAIRPERSON: Do you wish to persist with that? Because I think if the reading of paragraph 13 is what you understand it to mean, and Advocate Mtsweni also understand it to mean exactly what you say, that should close the issue.

ADV NGCUKAITOBI SC: Yes, no, I appreciate my learned friend's correction.

CHAIRPERSON: Thank you.

ADV NGCUKAITOBI SC: So I will leave the question and move to the next one.

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

ADV NGCUKAITOBI SC: Now, in paragraph 14, the affidavit says, money was collected at the rank, Stanger taxi rank, to pay Cato Manor unit. Can you see that?

MR MHLONGO: I can see that, Chairperson.

ADV NGCUKAITOBI SC: Yes. Now, and that is after the killing of Swayo.

“Sanele orchestrated the killing of Bongani Mkhize.”

Now, Sanele, as you have pointed out, is in the Executive of
20 Stanger, is that correct?

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: And he is the one fingered by Mr Mathonzi as having orchestrated the killing of Bongani Mkhize.

MR MHLONGO: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes, and it says:

“Somebody was given the task to phone Brigadier Madonsela that Bongani Mkhize was planning to kill Mandla and Nxaba and Bheki Cele.”

Do you know these people, Mandla and Nxaba? We know who Bheki Cele is.

MR MHLONGO: I think it is one person, it is Mandla Xaba. I think he is one of well-known business persons here in KZN, and he come from the Nxaba family. He played a role at some point in trying to resolve the conflict between these two associations. So I do not know how it comes that he wanted to be killed because he was never involved in anything to be in favour of anyone, because he was trying to resolve the conflict between these two associations.

ADV NGCUKAITOBI SC: No, I think the statement is not that he was meant to be killed, but that an impression was supposed to be created that he is a target for killing.

MR MHLONGO: That is correct, if you read the statement.

20 **ADV NGCUKAITOBI SC:** Yes. And then it says, this is now what is coming in the next sentence.

“Sanele wanted the police to think that Bongani Mkhize was a troublemaker who killed Choncho and now was planning to kill Mandla Nxaba and Bheki Cele. Within a

short period, Bongani Mkhize was killed by the Cato Manor Unit. Money was collected at Cato Manor as paid for a job well done. I was not there when the money was paid to Cato Manor. I heard that Cato Manor paid. Bongani Mkhize should have been killed long time back. He was most of the time he escaped. Cato Manor will phone Sanele and give the report that they missed him.”

10 So although he says he was not there when the money was transferred, he was there when the money was collected and the purpose was to pay for Cato Manor. Do you have any comment on that?

MR MHLONGO: Ja, no, it is one of those things. If the statement, it is true, it is said that, as I have said that, the police have been used for the longest time. And as I have mentioned before, it is said that the person can be killed without following the proper, an investigation being done that he has really maybe committed those crimes or wanting to
20 commit those crimes.

ADV NGCUKAITOBI SC: Yes, well, I mean, the point is that if a paragraph from the statement is put to you, then it has got to be clear that that is the case of the evidence leaders. Then the full statement is part and parcel of that case. It cannot be cherry-picked.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes, can I ask you about something else? You know, there was a discussion between you and the evidence leader about the meaning attributed to the phrase, *amanzi atungegile, ingwenyenz bogutaguon [?]*. Is there any controversy about the literal meaning of that phrase? Is there any dispute what the literal meaning is? Because anyone who vaguely understands Zulu knows what the literal meaning is.

10 **MR MHLONGO**: I do not know what might be the reason of not understanding the way I have interpreted it. But for me, it meant what I have said, the water is, when the water are muddy, crocodile enjoy swimming in them. And for me, that means you cannot swim with a crocodile. If you swim with a crocodile, it will bite you. It will kill you. So for me, that was my understanding of this statement that was made by Mr Cele.

ADV NGCUKAITOBI SC: Yes, but if you forget about the figurative and the literal meanings, the fact of the matter is,
20 why did your association go to Mr Bheki Cele? What was the reason?

MR MHLONGO: It was because people were killed.

ADV NGCUKAITOBI SC: Yes, but what did you want him to do?

MR MHLONGO: The reasons was that, can you please

intervene?

ADV NGCUKAITOBI SC: Yes.

MR MHLONGO: Speak to your members. You, the person who is in charge of the community safety and liaising in the province, can you maybe set up a meeting and iron things out between the police and the members of KwaMaphumulo?

ADV NGCUKAITOBI SC: And did he do that?

MR MHLONGO: No, it never happened.

ADV NGCUKAITOBI SC: Yes. Is that not the really crucial
10 issue? It is not about the literal meaning of the phrase that he used. It is whether or not he fulfilled his legal obligations when he was told that there is a real crisis of people being killed by police.

MR MHLONGO: It is, Chairperson, that it was important for him to try and, even if he wanted to be biased, but for me, where I am sitting, it was important for him to convene a meeting, try and resolve and find the reasons of why there was this crime from the members of KwaMaphumulo.

ADV NGCUKAITOBI SC: Yes. Thank you. I think I must
20 just get one second, Madam Chair. I think I am finished with my questions.

CHAIRPERSON: Yes.

ADV NGCUKAITOBI SC: Yes, there is one more point, Madam Chair. Thank you. Mr Mhlongo, can I ask you to go to page 5A-160?

MR MHLONGO: 5A-160, I am there, Chair.

ADV NGCUKAITOBI SC: Yes, now this is the discussion in the cross-examination of Mr Zungu, who has been cross-examined by Mr Houser, your counsel, about whether or not Swayo Mkhize had retracted the confession that was beaten out of him prior to his death or not. And your evidence earlier was that you were present in court when this debate took place, is that correct?

MR MHLONGO: That is correct, Chair.

10 **ADV NGCUKAITOBI SC**: Yes. Now, if you go to line 10, can you see line 10?

MR MHLONGO: Correct, Chair. Yes, I am there, Chair.

ADV NGCUKAITOBI SC: Yes, now the line immediately thereafter, your advocate puts to Mr Zungu the following. He says:

“And then a confession was taken from
Swayo Mkhize.”

Can you see that?

MR MHLONGO: I can see that, Chair.

20 **ADV NGCUKAITOBI SC**: Yes, and then he says:

“Well, I think it was also a pointing out. A pointing out was done by Swayo Mkhize, accompanied by a statement on 2 February 2009, right?”

And Mr Zungu says:

“If I can recall, M’Lord, the confession, yes, was done by Mr Swayo Mkhize.”

Then he says, then the advocate says:

“And you will also remember, Warrant Officer, that the moment Swayo Mkhize was in the sanctity of a courtroom, he immediately said that that was a forced pointing out and confession.”

Then the witness says:

10 “I heard that, M’Lord, on bail application at Umlazi.”

Then it continues:

“Yes, and he stated in that affidavit an oath prior to his death.”

And then it says:

“Yes, I have seen that, M’Lord.”

Can you see that?

MR MHLONGO: I can see that, Chairperson.

ADV NGCUKAITOBI SC: So does this assist to jog your
20 memory that, in fact, the so-called confession was retracted in court in the bail proceedings? Your bail proceedings were what, on the 5th of February 2009?

MR MHLONGO: It was later than that. On the 5th, it was the first appearance. The application was done a little bit later. I think it was a week later. Yes, there was an affidavit

which was prepared and signed by Swayo to say that he retracted all what he has said. I was not part of the people who was involved in the killing of Inkosi Zondi.

ADV NGCUKAITOBI SC: Yes, but the point is that this was done already in February 2009. The entire hierarchy of the police knew in February 2009 that that confession had been retracted.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes, now that comes back to this
10 thing that we have a book written by Mr Booyesen many, many years later that does not refer to the retraction of the confession and pretends as if the killing of Mr Bongani Mkhize was justified by the confession that was made by Mr Swayo when he knows that it was retracted in open court in February 2009. Do you have any comment on that?

MR MHLONGO: They should have briefed him. He cannot just say he do not know about it because it was happening in open court and I believe Zungu and the team should have should have informed him of what has transpired in court or
20 even given the transcript of what has happened in that court.

ADV NGCUKAITOBI SC: Yes. And the last thing is that you were told at the commencement of the questioning that no one was charged in relation to your specific case. Your assault and your torture.

MR MHLONGO: That is correct.

ADV NGCUKAITOBI SC: Now, I think it is common cause that no one was charged.

MR MHLONGO: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Can I ask you, who was supposed to charge them?

MR MHLONGO: It should be the person responsible or the head of the department.

ADV NGCUKAITOBI SC: Which department?

MR MHLONGO: The police department.

10 **ADV NGCUKAITOBI SC:** Yes, that is exactly correct. So to now be asked no one was charged in relation to your torture, when the police who should have charged the persons who tortured you never did their work. Does not that simply confirm the problem you have been trying to outline? That these people have been doing this thing for more than 20 years. Even today, they are still putting your life at risk.

MR MHLONGO: That is correct, Chairperson. That is what I was trying to put through to the leading counsel to say really, for me, it is impossible to have or to tell the police
20 what to do. But if you are a manager managing a unit or any other entity, you know your duties. If someone has gone wrong, you should take a disciplinary action against those individuals.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. I have nothing further.

MS RAMAGAGA: Mr Mhlongo, it is on record that Mr Cele was also approached to try to resolve this problem of the feud between KwaDukuza and KwaMaphumulo. Now, at the time when Mr Cele was also brought in to assist, were you in the leadership of the KwaMaphumulo Taxi Association?

MR MHLONGO: No, Chairperson, I was not. I was only in the lower structures of the association. I was only responsible for the disciplinary of the two associations in the long-distance routes for these two associations, because we
10 were just forging the relationship between the two. But I was not in the structures, in the formal structures of the leadership of the association.

MS RAMAGAGA: While in that position, you would nevertheless be able to observe or see if there are any steps that were taken by the political head to try and resolve this feud.

MR MHLONGO: Chair, even in our current situation, if there are issues like here today, I am appearing in this Commission, that would be, I would have to go and make a
20 report to the members of the association to say, I have appeared here. This was what happened in this meeting, so that everyone will have the same understanding. So even during those times, if there was a meeting between the Executive Committee of the association, a general meeting would be called and the Executive Committee will cascade

this information to the members of the association so that we all have the similar understanding.

MS RAMAGAGA: Are there any steps or some meaningful steps that came to your attention as having been undertaken by Mr Cele to try to quell this feud?

MR MHLONGO: There is none, Chairperson, that I know of.

MS RAMAGAGA: Thank you. Thank you, Chairperson.

CHAIRPERSON: Mr Mhlongo, I just want us to go back to one aspect that I think we need to clarify further in relation
10 to the confession or the alleged confession by Mr Swayo. Counsel Advocate Ngcukaitobi referred you to 5A-160. That reflects the retraction of the confession by Mr Swayo as per the evidence of Mr Zungu. Do you remember?

MR MHLONGO: That is correct, Chairperson.

CHAIRPERSON: Now, in relation to that point, and I think in fairness to the evidence leader, Advocate Mtsweni, my recollection of his question was that, and please correct me if I am wrong, he was saying to you, are you aware of any
20 decision or judgment in relation to which the confession of Mr Swayo was considered or found to be inadmissible? Do you remember?

MR MHLONGO: I remember that.

CHAIRPERSON: Now, counsel referred you to paragraph 13 of the statement of Mr Mathonzi. Do you remember?

MR MHLONGO: I remember that.

CHAIRPERSON: That shows that actually Mr Swayo was gunned down when he was on bail, correct?

MR MHLONGO: That is correct, Chairperson.

CHAIRPERSON: Does it not then follow that there could not have been any decision or judgment regarding that confession because he was killed whilst he was on bail?

MR MHLONGO: That is correct, Chairperson.

CHAIRPERSON: And have you been consulted, or have you met any of the prosecutors in KZN following your criminal
10 case? Or the finalisation of your criminal case?

MR MHLONGO: No.

CHAIRPERSON: I remember you said that after the conclusion of your criminal case, you were relocated from KZN.

MR MHLONGO: Correct, Chairperson.

CHAIRPERSON: Is my recollection correct?

MR MHLONGO: [indistinct]...

CHAIRPERSON: Is my recollection correct, Mr Mhlongo?

MR MHLONGO: It is look like an internet problem.

20 **CHAIRPERSON:** Maybe the system would like me to stop with my questions. [Laughter] We are just before lunchtime, so we can utilise this few minutes to clarify a few issues. Do you hear me, Mr Mhlongo?

MR MHLONGO: I can hear you, Chair.

CHAIRPERSON: You can hear me?

MR MHLONGO: You are audible, I can hear you, Chair.

CHAIRPERSON: Yes, I just wanted to hear from you. After the finalisation of your criminal matter, you said you relocated from KZN. Am I correct?

MR MHLONGO: That is correct, Chairperson.

CHAIRPERSON: And since then, have you ever been in, or rather been consulted? Or have you had a meeting with any of the prosecutors in KZN?

MR MHLONGO: No, there was no meeting between myself
10 and any prosecutor in KZN.

CHAIRPERSON: Thank you. Yes, thank you. Advocate Ngcukaitobi, Advocate Mtsweni, I suppose that that brings us to the end of the testimony of this witness. Am I right? Do you have anything?

ADV MTSWENI: No, there is nothing from our side.

ADV NGCUKAITOBI SC: Nothing from us, Madam Chair.

NO FURTHER QUESTIONS

CHAIRPERSON: Let me take this opportunity, Mr Mhlongo, to thank you on behalf of the Panel, the evidence leaders,
20 and the team of Advocate Chauke for having come to testify before this enquiry.

MR MHLONGO: Thank you so much, Chairperson. It is really appreciated, and I humble myself to be offered this opportunity.

CHAIRPERSON: We are indebted to you. We will deal with

your evidence to the extent it is relevant and necessary when we prepare the report for the President.

MR MHLONGO: Thank you, Chair.

CHAIRPERSON: We thank you, sir, and you are excused.

MR MHLONGO: Thank you.

CHAIRPERSON: Advocate Ngcukaitobi, housekeeping matters?

ADV NGCUKAITOBI SC: Yes, Madam Chair. Could I request that we address the Panel now during the adjournment, but
10 in chambers? We have changed the plan a little bit. We had three witnesses to call, but we think given the time and the comments made yesterday, particularly by Madam Baloyi-Mere SC, that we should expedite matters up and call Mr Chauke, but we want to discuss that privately.

CHAIRPERSON: Yes, thank you. Madam Baloyi-Mere I see was expressing herself. [Laughter]

ADV NGCUKAITOBI SC: I suspected.

CHAIRPERSON: I am told I must be on record. Advocate Ngcukaitobi, I was saying that Madam Baloyi-Mere SC was
20 yesterday, as she was doing housekeeping, was addressing our sentiments as the Panel. It is sometimes very easy for me to send someone around. [Laughter] Yes, thank you, Counsel. Let me just confer with my colleagues. Yes, thank you. Advocate Mtsweni, we are requested to have a discussion in chambers. Are you opposed to that?

ADV MTSWENI: No, Madam Chair, I would never be opposed to that.

CHAIRPERSON: It is always better to do housekeeping in the room and discuss all family issues in chambers. Yes, thank you, Counsel. We will adjourn, and as soon as you are ready, you can follow us in chambers, and then we can have a discussion.

ADV NGCUKAITOBI SC: Madam Chair, are we going to come back here or are we, in relation to the rulings, going forward, I suggest the adjournment of the matter to either tomorrow or whatever day?

CHAIRPERSON: Well, we do not know what counsel is going to talk to us about in chambers, so we cannot anticipate. Even if it arises, we will come back and say whatever needs to be said in an open hearing.

ADV NGCUKAITOBI SC: Thank you, Madam Chair.

CHAIRPERSON: We will adjourn until further notice.

ENQUIRY ADJOURNS

ENQUIRY RESUMES

20 **CHAIRPERSON:** Good afternoon, everyone. Advocate Ngcukaitobi, you can confirm our discussions.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. We have decided to call Mr Chauke next. His statement is not ready. It will be ready tomorrow at 12.00pm, when it will be circulated. We have requested the consent of the Panel to

commence the proceedings on Thursday at the usual time, 9.00am. We have spoken to our learned friends, and they do not object. So we would request then a directive that the matter is postponed to Thursday at 9 o'clock, and the statement of Mr Chauke to be circulated tomorrow at 12 o'clock. Thank you, Madam Chair.

CHAIRPERSON: Advocate Mtsweni?

ADV MTSWENI: Thank you, Madam Chair. I confirm the discussion and arrangement regarding both the statement of
10 Advocate Chauke as well as the matter being adjourned until Thursday, and we have got no objection to that.

CHAIRPERSON: Yes, thank you, Counsel. Yes, indeed, we have agreed as per your request that we will postpone this matter to enable Advocate Chauke's team to finalise Advocate Chauke's statement, that will be circulated by noon tomorrow, the 25th of March, and we will therefore adjourn now and reconvene on Thursday morning at 9 o'clock.

ADV NGCUKAITOBI SC: Thank you, Madam Chair.

ADV MTSWENI: Thank you, Madam Chair.

20 **CHAIRPERSON:** Yes, thank you. We adjourn.

ENQUIRY POSTPONED UNTIL 26 MARCH 2026

ENQUIRY ADJOURNS

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