

**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**

**26 MARCH 2026**

**DAY 44**



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

**PROCEEDINGS ON 26 MARCH 2026**

**CHAIRPERSON:** Good morning, everyone. Good morning, Ntate Mtsweni, not Mtsweni. Perhaps it is your cellphone. The cellphone must be put in the chamber. It has distracted me. Good morning, Advocate Chauke. You are certainly not Mr Mtsweni.

**ADV CHAUKE:** Thank you, Chair.

**CHAIRPERSON:** Advocate Ngcukaitobi, as you are aware, we have just received the affidavit, or this file pertaining to  
10 the evidence of Advocate Chauke, contrary to the undertakings you and your team made regarding the filing thereof. Would you please just explain to us how we are going to have to proceed without having read, and what caused the delay?

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. I do not represent Mr Mtsweni. Let me take responsibility first. The document was not delivered at 12. It was delivered at 8 p.m. and the reason for that is, I think, we underestimated the scale of the work. But it was finished at around 12. The  
20 problem was a technical one.

It was placed on a platform called SharePoint, which messed up the formatting and the result was that it had to be redone the whole of yesterday's afternoon. They had to redo it, literally typing it up. The consequence was that they were only able to finish it at 8 o'clock. But they have worked day

and night to produce the statement, and I have nothing but praise for them. But the work was sizable. So I think the only responsible thing for me to do is to apologize to the panel for the ...[intervenes].

**CHAIRPERSON:** Pardon, you say that you are praising them?

**ADV NGCUKAITOBI SC:** Well, I have praise for them for the hard work, but I am critical of myself. That is the only point I am making, because I made the undertakings. But my team  
10 is not responsible, I am responsible, yes. So the only responsible thing is to apologize to the panel and to the evidence leaders for the delay in producing the statement.

I do not think that it is feasible to start now. I think that the panel will need time to go through the statement, but I am in the hands of the panel about how long that will be required. I am not even sure our learned friends can even start, because they themselves need to read the statement. Luckily, most of the information is already in the files, but it is organized differently and the defence is revealed in the  
20 statement.

And so I would ask them for leave to submit the statement, even though it is out of sequence and contrary to the directive, record our, my apology and ask for a stand down, perhaps until 1 o'clock to commence, or until 2 o'clock to commence with the Advocate Chauke's evidence. Thank

you, Madam Chair.

**CHAIRPERSON:** Yes, thank you, Counsel. We did mention to you in chambers that we are displeased by the delay, and particularly that we are now dealing with a very critical witness, who is the subject of this enquiry. In fairness to all of us, including the evidence leaders and NPA, who also have to read and understand the contents of the affidavit and the annexures, you can see it is a very long document, we will need time to peruse, at least until somewhere midday, so that  
10 everyone can understand the evidence.

And if we need to engage with Advocate Chauke, we must know why we are engaging with him. There may not be a need to engage, but we must be prepared. I was actually taken aback by the fact that this delay happens even after the recess. And I do not accept that it is your blame entirely. I mean, you have a team.

This team should have been working throughout the seven days when we were not sitting. It is not clear to me why this affidavit is only ready, was supposed to be ready  
20 yesterday, only yesterday, instead of at least last week. So I am speaking to your team, not only you, Counsel. You should have done better, Ntate Mkhabela, including you and the attorneys and all Counsel sitting, even new Counsel sitting behind Advocate Ngcukaitobi.

You have been sitting here throughout with Advocate

Chauke. You should have assisted Senior Counsel in preparing these documents way back when you started with this, because you understand the terms of reference. And Advocate Chauke has prepared affidavits not only before this forum, but also before the Zondo Commission, and I think also you also prepared some affidavit before Mokgoro Commission, if my recollection is correct. So this should have been an easy task, at least to finalize the statement before yesterday.

10 Be that as it may, before my sisters say their piece, speaking for myself, we will accept your apology, Counsel. And after hearing from my sisters, we will hear what the evidence leaders' position is regarding the proposed adjournment, whether that will suffice for them to go through the file and be ready.

**MS RAMAGAGA**: Thank you, Chair. Ja, the statement ought to have reached us by 12 o'clock noon, not at 12 o'clock noon, right. And unfortunately, I will have to repeat what my sister has said, that this is a critical witness. I think that is actually  
20 common knowledge. The inconvenience, I think more inconvenience, is on the evidence leaders. You work as a team, and you are able to say, I will bite the bullet because I am at the helm as the leader of the team, but nevertheless, you work as a team. This product, I want to believe this statement, is a product of the entire team. Now, the same

notion applies in respect of how to deal with the statement that you have now put before us.

The same applies in respect of the evidence leaders. I want to believe that it cannot just be about reading the statement quickly, because we are told most of what is in the statement is already on record. They need to satisfy themselves that it is indeed on record. And further, they need to satisfy themselves about how do we approach the statement. So it is not only about reading.

10            Maybe with us as a panel, we may just have to read, but still maybe do some cross-referencing. But for them, I think it is something more. I may be putting the cart before the horse. Maybe they do not do things that way. Maybe the one that is chosen to do a certain, or the questioning, is the only one that works on the matter.

                 But what we are aware of is that we have, since the beginning of this enquiry, been saying to the NPA, work together with the evidence leaders. Evidence leaders work together with the NPA. So while you are a solid team under  
20 Mkhabela Attorneys. But here it is a team, the evidence leaders that are appointed by the President, but there is also the NPA and they strategize as a team. So well, we will hear what they say as to whether a few hours will suffice for them to get ready to deal with the matter or not. Thank you.

**CHAIRPERSON:**            Thank you, my sister.            Advocate

Mohlamonyane, do you have anything to say?

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair and your sisters. We have noted what our colleague, Advocate Ngcukaitobi SC has said and we will have to make do with the time that is available to us and we will try our best to internalize the document and become ready. But as soon as he finishes, we do not know when he will finish, maybe tomorrow, we will have a weekend to prepare for cross-examination. That is all, Madam Chair. Thank you.

10 **CHAIRPERSON:** Yes, thank you. Advocate Ngcukaitobi, we have four days, in other words, from today until Tuesday to finish with your witnesses, all of them. All of your witnesses must be wrapped up by Tuesday so that we can afford the evidence leaders an opportunity to present their witnesses in April. Their time is already truncated by the holidays that we are going to have and we propose that we get to the chase and focus on what we really need to focus on so that we can hear other witnesses.

20 So please make sure that whatever you do from today is going to enable them to cross-examine, and you also re-examine and call the outstanding witnesses, be it virtually or otherwise. But by the end of this month, all your witnesses must be finished. That will make our task even easier so that we enable the evidence leaders to gather all their statements. I suppose you will also be ready. We are not going to adjourn

further in April.

You have had an opportunity during the week's recess to prepare those statements, consult, prepare statements, and those statements must be filed of record. We cannot afford to keep on postponing, because by May, we should be in a position to prepare that report that should be submitted to the President sometime in June. I suppose that that is workable, Advocate Ngcukaitobi.

**ADV NGCUKAITOBI SC:** Yes, Madam Chair, we will make it  
10 work. Yes, thank you.

**CHAIRPERSON:** With a smile, yes. That said, I think we should adjourn to enable us and the evidence leading team and NPA to go through the file that has just been presented to us. You will have tea and lunch. We will start at 2 o'clock.

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

**CHAIRPERSON:** We may have to work until late, given the fact that we are starting late. I am not sure what that late means. It may be late in the evening to make up for the time lost for your benefit, so let us see how far we go, and if the  
20 need arises, you may have to arrange dinner so that you have dinner here. We will adjourn until 2 o'clock this afternoon.

**ENQUIRY ADJOURNS**

**ENQUIRY RESUMES**

**CHAIRPERSON:** Adv Ngcukaitobi, we have not finished reading, but we have made progress. We are comfortable to

start with your witness. I suppose that the evidence leaders also have had a chance to go through the statement. We propose that we pause after one and a half hour to stretch our legs, reconvene and do the same thing. We will see how far we go, but we are going to need the comfort break from time to time. May I take this opportunity, Advocate Chauke, to administer the oath? Are you taking the oath or the affirmation?

**ADV CHAUKE:** I will take the oath, Chair.

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

**ADV CHAUKE:** So help me God.

**CHAIRPERSON:** Thank you, Counsel.

**ANDREW CHAUKE:** (duly sworn states)

**EXAMINATION BY ADV NGCUKAITOBI SC:** Thank you, Madam Chair. Mr Chauke, can we just start with the formalities? In front of you, you should have your witness  
20 statement that starts from page 1 to page 121. Is that correct?

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Okay, you have read it?

**ADV CHAUKE:** I did.

**ADV NGCUKAITOBI SC:** And you confirm that it is true and

correct?

**ADV CHAUKE:** I confirm, Chair.

**ADV NGCUKAITOBI SC:** And that it is binding on your conscience?

**ADV CHAUKE:** Indeed, I confirm.

**ADV NGCUKAITOBI SC:** Thank you. Now, you have obviously been listening to the case for or against you during the course of this enquiry. Is that correct?

**ADV CHAUKE:** Yes.

10 **ADV NGCUKAITOBI SC:** And so you know the gist of the allegations against you?

**ADV CHAUKE:** Indeed.

**ADV NGCUKAITOBI SC:** And you have looked at the terms of reference?

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** In relation to the allegations that are made against you?

**ADV CHAUKE:** Yes.

20 **ADV NGCUKAITOBI SC:** And you understand the case of Cato Manor, where there are certain allegations that you did certain things incorrectly?

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** And you are familiar with the case of Lieutenant General Mdluli?

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Yes. And so there is nothing you would say from the terms of reference, which substitute as a charge sheet, is not clear to you? You are happy to proceed?

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** All right. Thank you very much. Now, in your statement, we can skip paragraph 1 to paragraph 7. And then we start at paragraph 8, where you say that in relation to Cato Manor, you were not the decision maker. What are you trying to convey there?

10 **ADV CHAUKE:** I am trying to convey, Chair, that the decision was made by the Acting NDPP in respect of the racketeering charges.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** Advocate Chauke, try to speak louder, please. Yes. Maybe you should – is it possible for this mic to be pushed a little bit towards Advocate Chauke? I see there is virtually no space for him to put his files. You can even use the desk, if you wish. You may put some of the stuff on our desk, just at the corner there, Advocate Chauke.

20 **ADV CHAUKE:** No, thank you, Chair.

**CHAIRPERSON:** Are you comfortable?

**ADV CHAUKE:** I am comfortable, thanks.

**CHAIRPERSON:** Yes, thank you. Please speak loudly. Thank you.

**ADV NGCUKAITOBI SC:** So you say the first thing is that

the decision to authorise racketeering charges was taken by the Acting National Director of Public Prosecution.

**ADV CHAUKE**: Yes, indeed.

**ADV NGCUKAITOBI SC**: And it is common cause that that person was Advocate Jiba.

**ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: Now, it is also common cause here that there was a range of prosecution decisions that were taken in that case. Correct?

10 **ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: And who took those?

**ADV CHAUKE**: Most of them, they were taken by the prosecution team, to which I will have access and have come to know about them and interface myself with them. But the ultimate decision in respect of those racketeering charges was made by the Acting NDPP.

**ADV NGCUKAITOBI SC**: Yes. Now, and then in relation to the case of Lieutenant General Mdluli, in that one you accept that you are the decision maker?

20 **ADV CHAUKE**: Yes, I am the decision maker in respect of the General Mdluli matter.

**ADV NGCUKAITOBI SC**: Yes, and why do you accept that?

**ADV CHAUKE**: It is because I have considered the representations which were made to me and I went through the process and ultimately made a decision.

**ADV NGCUKAITOBI SC:** Yes. Now, I just want to also ask you just a general question. You know, we are in 2026. The enquiry started against you in 2025, but the decisions that we are talking about are decisions taken in 2012. And in between there have been various National Directors of Public Prostitution. Now, I want to ask you, starting with Advocate Jiba, did she ever see any need for you to go through a disciplinary process in relation to the decisions you took on the case of Lieutenant General Mdluli or in the case of the  
10 racketeering case of the Cato Manor Unit?

**ADV CHAUKE:** No, Chair. She did not.

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** To my knowledge, I am not aware that she had any inclination that there was anything wrong with those decisions.

**ADV NGCUKAITOBI SC:** Yes. Now, we know that Advocate Jiba was succeeded by Advocate Nxasana.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Did Advocate Nxasana ever think  
20 that there is any reason why you should go through a disciplinary process in relation to either the Mdluli matter or the Cato Manor matter?

**ADV CHAUKE:** Not at all.

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** Not at all.

**ADV NGCUKAITOBI SC:** Did you ever discuss the matters with him?

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** And what was his attitude?

**ADV CHAUKE:** His attitude was that prosecutors will differ. Others will see it differently. Others will see it positively, depending on the facts and where somebody is coming from. Naturally, in respect of the Cato Manor matter, he indicated to me that he was uncomfortable that I should continue to be  
10 the coordinator of the team. And that Acting DPP at the time, Advocate Noko, should take over and coordinate the teams. In respect of the Mdluli matter, he made a decision ultimately that confirmed my decision about the murder charge in respect of General Mdluli.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** Advocate Ngcukaitobi, if I may, for those who do not or have not read this record or have not followed the proceedings, I propose that you mention what these decisions are. The one as far as the Cato Manor is concerned  
20 and the one in relation to the Mdluli matter. Very briefly.

**ADV CHAUKE:** Thank you, Chair. The one in respect of the Cato Manor matter is the decision to charge General Booyesen, Mdluli and officers of the Cato Manor with a POKA, that is racketeering charges. The one in respect of General Mdluli is my withdrawal of the murder charge and referring it

to an inquest. And the final decision, which was made by me not to proceed with the murder charge but to proceed with the other charges. That decision was taken on review and after the review at the SCA, the matter was placed before Mr Nxasana, who was the NDPP then, who made a similar decision confirming the decision that I had made not to institute a murder charge against General Mdluli.

**CHAIRPERSON:** Yes, thank you.

**ADV CHAUKE:** Thank you, Chair.

10 **ADV NGCUKAITOBI SC:** Thank you. So we are now in the stage of Advocate Nxasana. So in relation to the decisions that you played a role in, which is the coordination over the criminal prosecution of Major General Booysen and others, and the decision-making in relation to Lieutenant General Mdluli, his view was that there was no need for any disciplinary steps against you.

**ADV CHAUKE:** Indeed. In fact, he did not see any misconduct or improper conduct on my part.

**ADV NGCUKAITOBI SC:** And we know that Advocate  
20 Nxasana was replaced by Advocate Sean Abrahams.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** What was his view in relation to these two decisions?

**ADV CHAUKE:** Advocate Abrahams, in fact, invited me into a meeting when he had just been appointed with the

prosecution team and those who were part of, one way or another part of the Cato Manor matter, in which he acknowledged my contribution that I made there, and then he thanked me for my contribution in that case.

**ADV NGCUKAITOBI SC:** Yes. So, but what was his view about whether your role in the Mdluli matter or your role in the Cato Manor matter amounts to misconduct, that you should be facing a disciplinary enquiry?

**ADV CHAUKE:** No, not at all, Chair. In fact, like I indicated,  
10 in respect of the Cato Manor, he thanked me for the role that I had played in assisting there because he was going to reconsider that matter of Cato Manor. In respect of the Mdluli matter, it was just an information sharing because the case had been placed on the roll and the decision of Mr Nxasana already was final, so he had really no issue to consider, especially in respect of the Mdluli matter.

**ADV NGCUKAITOBI SC:** Yes. And then Advocate Abrahams was then replaced by Advocate Batohi.

**ADV CHAUKE:** Yes.

20 **ADV NGCUKAITOBI SC:** Is that where things changed?

**ADV CHAUKE:** Indeed.

**ADV NGCUKAITOBI SC:** That is what I do not understand. I mean, three NDPPs have looked into this and they have said, according to them, there is no basis for this. And then some 15 years later, someone else comes and they say, no,

no, no, we should resuscitate something that happened 15 years ago. What is your comment on that?

**ADV CHAUKE**: My comment, Chair, is it appears suspicious, the motive. But as one would understand, there was this thing of the MK being captured and what have you, and I thought, I think Advocate Batohi, I became one of those that would have to undergo a form of some discipline or a form of enquiry because the media narrative and what she came to say within the NPA was that there are prosecutors, one way  
10 or another, who are in the NPA whose names were mentioned at the Zondo Commission and also were supposed to file a statement at the Zondo Commission. But that, of course, did not even consider that the issues that were being raised at the Zondo were dealt with by the other NDPPs as well.

**ADV NGCUKAITOBI SC**: Well, you were here when I asked Advocate Batohi whether she had any evidence of State Capture implicating you, and she said she did not.

**ADV CHAUKE**: Indeed, I am aware of that.

**ADV NGCUKAITOBI SC**: Now, how many other prosecutors  
20 were placed in some sort of a disciplinary process when Advocate Batohi came?

**ADV CHAUKE**: About six.

**ADV NGCUKAITOBI SC**: Who are they?

**ADV CHAUKE**: Advocate Mosing, Advocate Noko, Advocate Maema, Advocate Mathenjwa, and Advocate Ntlakaza, and

the other one who I do not even understand how he is related to Cato Manor and all sorts of things is Advocate Mokhatla, who is the SCCU regional head in Pretoria.

**ADV NGCUKAITOBI SC:** And then yourself?

**ADV CHAUKE:** I take it in respect of the Jiba so-called prosecutions. And out of that number, I am the last man standing.

**ADV NGCUKAITOBI SC:** Yes. And yourself?

**ADV CHAUKE:** Yes.

10 **ADV NGCUKAITOBI SC:** Yes. Are these black prosecutors?

**ADV CHAUKE:** All of them.

**ADV NGCUKAITOBI SC:** Yes. Is this an odd thing that Advocate Batohi came and then systematically purged black prosecutors?

**ADV CHAUKE:** Of course, it is a worrying trend. And I take it that each and every NDPP will come into the office space. They will come with their own style of management or

expectations or some of the background information that they will have. But unfortunately, in this instance, it looks like the

20 real people that had a problem and she had another one was this so-called black prosecutors.

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

**CHAIRPERSON:** But of course, and correct me if I am wrong, she seemed not to have had problems with Advocate Mlotshwa.

**ADV CHAUKE:** Indeed.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** And maybe because now we are on this point, I must take this opportunity without going ahead of you, Advocate Ngcukaitobi.

**ADV NGCUKAITOBI SC:** Indeed.

**CHAIRPERSON:** On the Advocate Mlotshwa's point, this point ties up with paragraph 8 that we have referred to about a decision also must be conceded, I think, in relation to  
10 paragraph 13, the jurisdictional struggling point.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** And then also can be read in conjunction with paragraph 70 of Advocate Batohi's affidavit. We may not have it right in front of us, but it is the paragraph in which she was dealing with the jurisdictional struggling. When I read the statement of Advocate Mlotshwa, which you have annexed after AC1, that statement of Advocate Mlotshwa is at page 6A-6 of your annexes.

**ADV CHAUKE:** I have it, Chair.

20 **CHAIRPERSON:** You have it. Yes, it appears at 6A-6 up to 7. It seems to me, on the reading of the statement, that Advocate Batohi seemed to have relied entirely on what Advocate Mlotshwa said or stated in this affidavit, among others, the fact that you led the prosecution team, and seemingly it was on that basis that probably, correct me if I

am wrong, Advocate Batohi seemed to have believed that you made or you took prosecutorial decisions. Am I correct?

**ADV CHAUKE**: Yes, I also suspected so initially, but as we go on, you realise that some of the opinions which were given to Advocate Batohi would be the ones who precipitated the sort of narration that I made, a prosecutorial decision. But in respect of Advocate Mlotshwa, it was the issue that I encroached into his jurisdiction and he was not aware of that. That is why I attached this specific annexure here, to  
10 demonstrate that it could not be correct that I encroached without his knowledge.

**CHAIRPERSON**: If you look at AC1, paragraph 1.1.

**ADV CHAUKE**: I am there, Chari.

**CHAIRPERSON**: Yes, so that is where Advocate Batohi says the decision not to prosecute in this matter, or rather she says:

“As you are aware, after reviewing the  
detailed internal report prepared by senior  
NPA prosecutors, I made a decision not to  
20 prosecute in this matter. Advocate  
Mlotshwa, previously employed by NPA as  
a Deputy Director of Public Prosecution,  
has testified at the State Capture  
Commission and filed an affidavit.”

In his evidence and in his affidavit, he states that you, as the

leader of the prosecution team – sorry, it was not at that annexure. It is in her affidavit to the Zondo Commission, where she suggested that you were the leader of that Cato Manor prosecution team, if I may put it that way. You acted as a lead prosecutor. Now, given that information, you remember that Advocate Batohi had decided not to take any step until the decision or the findings by the Zondo Commission?

**ADV CHAUKE:** Yes, I remember that.

10 **CHAIRPERSON:** Now, she writes to you, telling you about this statement by Advocate Mlotshwa, whereafter she then writes to the President. If it is correct, as you state in paragraph 8, that you did not make any prosecutorial decision, does the issue of jurisdictional struggling arise? You say it does not at 13.

**ADV CHAUKE:** Yes, it does not arise, Chair, because the decision in respect of racketeering matters can only be made by the NDPP.

**CHAIRPERSON:** I am trying to figure it out in my mind as to  
20 how Advocate Batohi comes to this conclusion, given the provisions of section 2.1 of POCA. What do you think might have actuated her to come to that conclusion?

**ADV CHAUKE:** Advocate Batohi was looking for something that will speak about the conduct or otherwise of Advocate Chauke. So, I think in the whole scheme of many of the cases

that I have dealt with in the division, this case of Cato Manor and Mdluli were the ones that she could have and where she wanted to impute a particular misconduct on my part. But on the reading and even on the record, we see it very clear that there was a prosecution team, there was a team leader, I was the coordinator in the supervisory role, and I could not have made a decision in terms of the law in any case in respect of the racketeering matters.

**CHAIRPERSON:** Now, we know, having listened to the  
10 evidence of Advocate Maema, Advocate Noko, and having read some of the statements in the record, that the role that you played was very limited. It is that of a coordinator.

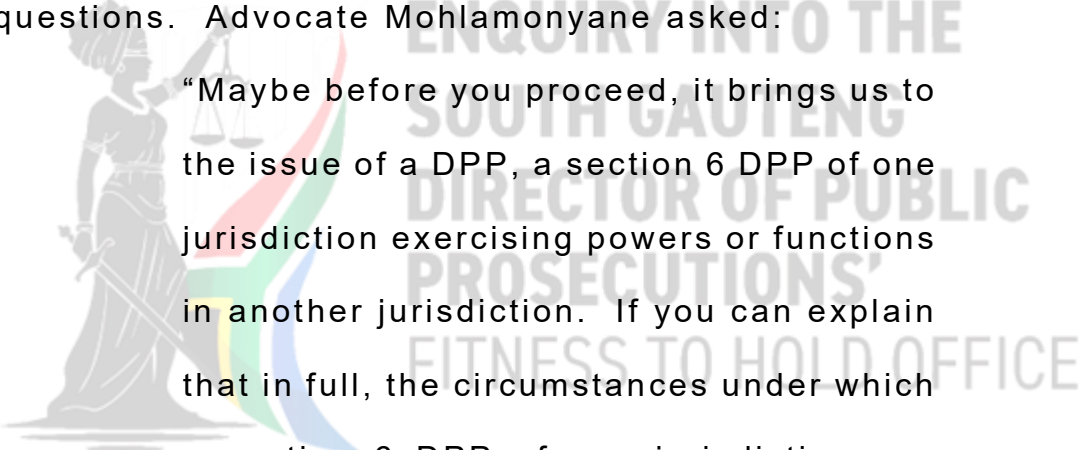
**ADV CHAUKE:** Indeed.

**CHAIRPERSON:** Now, when you look at the affidavit of Advocate Batohi at paragraph 70 of her affidavit, in relation to that aspect, the decision-making, she seemed to conflate different concepts. Perhaps you can read it from the transcript because that forms part of her evidence. In the transcript, she sought to explain the following, and I would  
20 like you to assist us in understanding these concepts that she refers to.

You may not have the transcript in front of you, but I am going to refer to the transcript of the 25<sup>th</sup>, day 4, the 25<sup>th</sup> of November 2025, day 4, page 28 of 98. This aspect was dealt with extensively, because she seemed to make much of

this jurisdictional struggling, and suggested that you acted unlawfully.

I am raising this well aware of the fact that this issue does not directly arise from the terms of reference. But because it was dealt with very extensively by her, where she also referred to the provisions of the Constitution, suggesting that you acted unconstitutionally and unlawfully in the sense that you did not comply with the NPA Act, I would like you to deal with it, and I will refer you to that part of the transcription  
10 where she said the following. She was asked the following questions. Advocate Mohlamonyane asked:



“Maybe before you proceed, it brings us to the issue of a DPP, a section 6 DPP of one jurisdiction exercising powers or functions in another jurisdiction. If you can explain that in full, the circumstances under which a section 6 DPP of one jurisdiction can exercise his or her functions in another jurisdiction.”

20 And Advocate Batohi answers as follows:

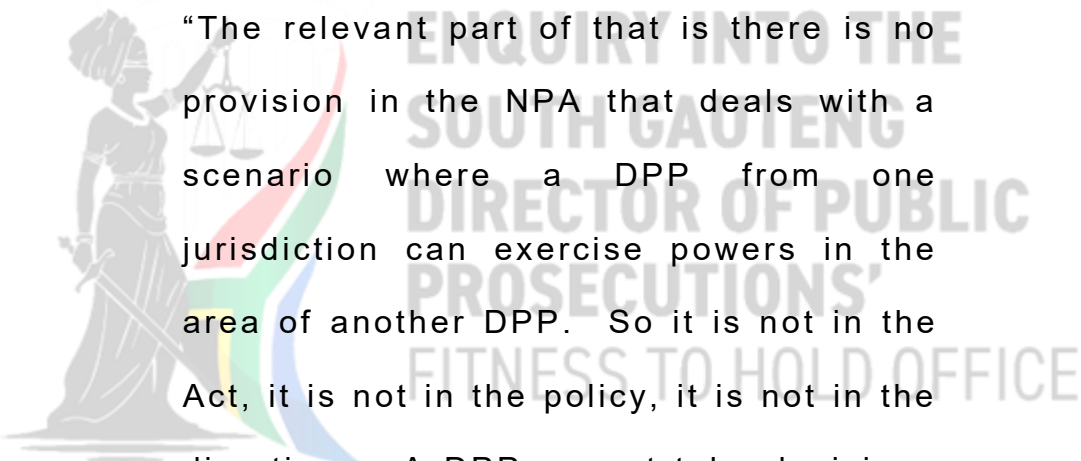
“So it is clear from the Act, the Constitution and the Act, a section 6 DPP has jurisdiction for all matters falling within his or her area of jurisdiction in which they have been appointed. In fact,

the Mokgoro Enquiry found that there is not a circumstance that is in fact, if one looks at the Act and the Constitution, it does not permit that a section DPP oversees prosecutors...”

You can underline that word:

“...taking place in the area of jurisdiction of another.”

Later, when I asked her questions, Advocate Batohi then read  
10 paragraph 70 of her affidavit, which reads at page 29 of 98:



“The relevant part of that is there is no provision in the NPA that deals with a scenario where a DPP from one jurisdiction can exercise powers in the area of another DPP. So it is not in the Act, it is not in the policy, it is not in the directives. A DPP cannot take decisions in respect of another DPP's area of jurisdiction. In other words, the DPP of  
20 one jurisdiction cannot exercise jurisdiction over prosecutions of another. It means that a DPP of one area cannot control, direct, run with, supervise, and coordinate a prosecution falling within the jurisdiction.”

I suppose she uses these phrases to suggest that these phrases mean you were making a decision according to her evidence.

**ADV CHAUKE:** Which is unfortunate, Chair. Unfortunate in the sense that the decisions that she is referring to are the decisions which the prosecution team would have communicated, which the ultimate decision, which the NDPP itself would make. I differ with her in terms of the interpretation of the powers of the NDPP in respect of  
10 allocation or delegation of work to a DPP of one jurisdiction or to another. That is common cause. Even as I am sitting here, to the extent that I am on suspension, there is a DPP sitting in Johannesburg who is from the Northern Cape.

Now, her blanket characterisation of that a DPP from one jurisdiction cannot do work in another jurisdiction is legally flawed. Consequently, the same scenario that in the DPP KZN, I was overseeing a matter, not the division of the DPP in KZN. It was a specific matter which my understanding, and in terms of the NPA Act section 20(3), I  
20 think that the NDPP has got the power to delegate responsibilities to a DPP, which is not explicitly excluded in the jurisdiction.

My understanding is that even then, Advocate Jiba did not delegate me to make decisions in respect of the matter that was based in KZN. And I do not know how she

come to the conclusion that I made the decisions because the record is very clear. I made no such decision.

**CHAIRPERSON**: But assuming that even the prosecution team, that is the Advocate Maema's team, were delegated to make decisions, the decision in relation to this very Cato Manor charges were the POCA charges.

**ADV CHAUKE**: Indeed.

**CHAIRPERSON**: And correct me, in respect of which only the NDPP could exercise her powers.

10 **ADV CHAUKE**: Indeed, Chair.

**CHAIRPERSON**: Meaning, if I am correct, that even the prosecution team of Mr Maema, they could not, alone, without the NDPP deciding, make any such decision insofar as there are Cato Manor charges were concerned.

**ADV CHAUKE**: Indeed, Chair.

**CHAIRPERSON**: So, if my understanding following your answers is correct, that issue of you having allegedly acted *ultra vires* because you exercised powers outside your jurisdiction fall away.

20 **ADV CHAUKE**: Indeed. Actually, in sheer studies of the reasons that I was asked, and I know I was advancing, and even when I demonstrated to her to say, look, this was happening, even on her own then she took the matter of the Cato Manor and she gave it to Advocate De Kok, who was the DPP in the Western Cape, for him to have a look with the

other people and the like. So, if on her interpretation that is not doable, she could not have done that. I am referring to the famous De Kok report.

**CHAIRPERSON:** Are you referring to Mr De Kok's report in which you were exculpated?

**ADV CHAUKE:** In fact, no. The panel where De Kok sat with Advocate Thenga and Advocate Mamabolo, where they made an assessment according to them that there were no justification for racketeering charges. But that report, of course, as I indicated, it also did not insinuate any misconduct on the part of the prosecution team or myself.

**CHAIRPERSON:** Yes. Thank you, Advocate Ngcukaitobi.

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. Mr Chauke, we have covered a lot of ground in this exchange with the Chair. Do you still want to talk about your CV?

**ADV CHAUKE:** I can readily do that.

**CHAIRPERSON:** Well, we know now who Advocate Chauke is.

**ADV NGCUKAITOBI SC:** Okay, all right.

**CHAIRPERSON:** You told us even earlier when we started.

**ADV NGCUKAITOBI SC:** Yes. All right, there is the first 10 pages we can skip.

**ADV CHAUKE:** Okay.

**CHAIRPERSON:** Thank you.

**ADV NGCUKAITOBI SC:** And then, on the allegations, I

think we have also covered a lot of this ground before, what the allegations against you are. So those two pages that seek to summarise the charges, we can skip. And then the background to the enquiry, I think everyone knows the background to the enquiry and the basis for the establishment of the enquiry. You may wish to say something about the opinions that appear from paragraph 47, just briefly.

**ADV CHAUKE:** Thank you, Chair. Let me start with the one that is very significant of Advocate De Kok. Which, after the  
10 opinions of Advocate Nalane SC, Advocate Maenetje and his assessment, he made that recommendation to Advocate Batohi that there is no basis for her to recommend that there should be an enquiry into my fitness to hold office.

I am saying this because this specific memorandum was neither disclosed to me then or to the President when the application for my fitness to hold office was made. I am saying this because Advocate De Kok, as you would have understood, he was the National Deputy Director of Public Prosecutions, who was reporting to Advocate Shamila Batohi,  
20 and who was internal with experience, and who advised her that there is no basis for her to institute.

But having said that, on the subject of that, you will see there is an opinion prepared by Doctor David Broughton. He is a senior state advocate in her office. I think he is a legal advisor and the like, who she asked. And even the

record will indicate that he gave an opinion, and his opinion was about jurisdiction, put it that way, in the main.

It did not deal with specifically in depth about the merits of the racketeering charges. And Doctor Broughton then made a recommendation that he thinks there is a case for me to answer in respect of the Booyesen matter, the so-called Cato Manor matter. But he also recommended that there is no basis for an enquiry into my fitness to hold office in respect of the Mdluli matter.

10 But you will see that Doctor Broughton was asked to make another opinion, which was to seek to get the reasons for her to be able to be justified to make that recommendation. Now let me get to the memorandum prepared by Advocate Garth Hulley SC. I am afraid and I am really concerned that ...[intervenes].

**ADV NGCUKAITOBI SC:** Just before you get there, the opinion, I am not sure how they have arranged this for you to make it easy for you to find. But the opinion of Doctor Broughton, the first opinion, which is dated the 23<sup>rd</sup> of  
20 February 2023.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** I do need to spend a few minutes with you on that one because it became the subject matter of discussion between myself and Advocate Batohi.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Now that is at LO00149. LO01, yes.

**ADV CHAUKE:** 00149?

**ADV NGCUKAITOBI SC:** Yes, 00149.

**ADV CHAUKE:** I am there, Chair.

**ADV NGCUKAITOBI SC:** Now, when you look at LO00163, okay, and under the heading analysis.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** And the first subheading is the  
10 withdrawal of the murder and related charges in the Mdluli case.

**ADV CHAUKE:** Indeed.

**ADV NGCUKAITOBI SC:** What did Doctor Broughton say?

**ADV CHAUKE:**

“In the light of the findings in the SCA FUL  
decision, as referred to above, no  
recommendation is made herein that the  
section 12(6)(a) enquiry be instituted  
against Advocate Chauke relating to the  
20 withdrawal decision in the Mdluli case and  
referring the murder charge to an inquest  
instead.”

**ADV NGCUKAITOBI SC:** Now, so when you read that, what does that mean?

**ADV CHAUKE:** It simply means that Doctor Broughton did

not see, like Advocate De Kok, that there is no basis for an enquiry to be held against me in respect of the Mdluli matter.

**ADV NGCUKAITOBI SC:** You see, the problem is this, the statement under oath signed by Advocate Batohi alleges that Doctor Broughton, she says:

“The reason I asked Advocate Hulley is because Doctor Broughton did not deal with the Mdluli matter in his opinion.”

Is that factually correct?

10 **ADV CHAUKE:** It is incorrect, it is actually misleading the Panel because the record is there. And I remember exactly when she was testifying here and when she was confronted about it, she could not explain.

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** She sought to say this is not a recommendation.

**ADV NGCUKAITOBI SC:** Yes, no, I understand whatever its status is, but the fact that she says, the words that she used is that Doctor Broughton did not deal. We can go to this. I  
20 think they have opened now for you in the statement of Advocate Batohi.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Paragraph 173.

**ADV CHAUKE:** Yes, I am there.

**ADV NGCUKAITOBI SC:** So if you read paragraph 173, it

says:

“On 23 February 2023, Doctor Broughton provided me with his opinion. He concluded that I should make a recommendation to the President regarding the fitness of Advocate Chauke to hold office in respect of his involvement with and the handling of the Booyesen matter.”

10 Now look at the following sentence there:

“He did not deal with the Mdluli matter.”

You see that?

**ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: We have now gone through paragraph 45 of Doctor Broughton's evidence and we have seen what it says. So it is not about what she said or what he said. It is the fact that Advocate Batohi under oath claimed that Doctor Broughton did not deal with the Mdluli matter.

20 **ADV CHAUKE**: Which is a misrepresentation, Chair.

**ADV NGCUKAITOBI SC**: Yes.

**ADV CHAUKE**: Because the record indicates clearly that Doctor Broughton dealt with the Mdluli matter.

**ADV NGCUKAITOBI SC**: Yes. Now, at paragraph 176, I think it is that same page, what does Advocate Batohi say

there?

**ADV CHAUKE:** She says:

“His opinion was based, once again, on Advocate Chauke's handling of Booyesen matter and aspects of it. He did not deal with the Mdluli matter.”

**ADV NGCUKAITOBI SC:** Yes. Now, what would you say about that?

**ADV CHAUKE:** It is a misrepresentation because the record  
10 as we have it indicates the contrary.

**ADV NGCUKAITOBI SC:** Yes. Now, we can then deal with how he dealt with it. You have not clarified that it is actually a misrepresentation that he did not deal with it.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Now, the way he dealt with it was that no recommendation is made.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** How did he deal with the Booyesen matter?

20 **ADV CHAUKE:** On paragraph 46 of his opinion, LO00163, to which you referred to.

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** There is there the Booyesen Cato Manor case:

“The evidence which Advocate Mlotshwa gave at the State Capture Commission has

not been presented to me. And thus, I am not at this stage, not able to comment thereon. Unless further time is afforded to me to search for the evidence on the official State Capture Commission website, if same cannot be provided to me by the NPA. Advocate Nalane SC had regards to this evidence, and the evidence presented by Advocate Mlotshwa at the

10 Mokgoro Enquiry, as well as the other evidence and findings made in the Mokgoro report relating to the Booyen Cato Manor prosecution.”

Now, I do not know if you want me to deal with that or to go immediately to his recommendation in which he was ...[intervenes].

**ADV NGCUKAITOBI SC**: No, no, no. I want you to deal with that up until paragraph 50 because...

**ADV CHAUKE**: Indeed.

20 **ADV NGCUKAITOBI SC**: There is a slight of hand in what has happened here versus what Doctor Broughton actually recommended.

**ADV CHAUKE**: Indeed:

“Advocate Nalane SC submits as follows.

If one reads Mlotshwa's affidavit to the

police, together with the report of the Commission, Mokgoro Enquiry, dealing with the evidence of Jiba and Noko and his evidence at the Zondo Commission, it seems that Chauke's involvement in the prosecution was much deeper and more involved than simple acting as a coordinator. He went to the extent of asking Mlotshwa to sign the indictment.

10 Mlotshwa refused to sign the indictment without the prosecution memo or report. The commission's report suggests that Mlotshwa considered that Chauke was asking him to do unlawful acts. It is respectfully submitted that evidence presented at the Mokgoro Enquiry and findings made in the Mokgoro report pertaining to Advocate Chauke's involvement with and role in the handling

20 of the Booyesen Cato Manor case support the submission being made to the President for the institution of section 12(6)(a) enquiry against Advocate Chauke."

**ADV NGCUKAITOBI SC:** Now, if you can just stop there?

You see, this is where I say there is a sleight of hand. The factual foundation for all of this that he is recommending is that you tried to force Advocate Mlotshwa to sign an indictment. Remember that?

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Now, that submission was made here in this enquiry.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** I asked the evidence leader who  
10 was cross-examining Advocate Maema to show us where Mr Chauke is attempting to force Mr Mlotshwa to sign an indictment. Do you remember that?

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** What did the evidence leader say?

**ADV CHAUKE:** He said there is no way that it is the case and he withdrew.

**ADV NGCUKAITOBI SC:** Yes, he withdrew the question.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Now, when you look at the actual  
20 affidavit of Mr Mlotshwa, which is what the Chair was talking about at 6A-6, read everything there and read it aloud and show me where there is a line that says Advocate Chauke forced me to sign an indictment.

**ADV CHAUKE:** Let me read it for the record, Chair.

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:**

“I, Cyril Simpiwe Mlotshwa, with ID, hereby state in English that I am currently employed by the National Prosecuting Authority as a Deputy Director of Public Prosecutions and I am stationed at the office of the Director of Public Prosecutions, Pietermaritzburg, KwaZulu-Natal. On 17 May 2010 until 9 July 2012, I was acting as a Director of Public Prosecutions, KwaZulu-Natal. Between January 2012 and March 2012, while driving to Port Shepstone, I received a call from Advocate Nomgcobo Jiba, who was acting as the National Director of Public Prosecutions at the time. She informed me that there was a matter where, because of pressure, we had to enrol as a matter of urgency. I informed her that I would first read the dockets and make a decision accordingly. She stated that the matter was urgent. I responded that I did not have prosecutors to urgently look at the dockets. She informed me that because she was at the OR Tambo Airport,

10

20

she was going to call me later. She did not call me later. A few days later, I received a call from Advocate Chauke, informing me that he had been instructed by Advocate Jiba to send a team of prosecutors to prosecute the accused in the Cato Manor case. He told me that there were very sensitive security issues surrounding the matter. I told him that I was going to attend the DPP's meeting at VGM on 29 May 2012, so we were going to discuss the matter further.”

**ADV NGCUKAITOBI SC:** So if you just stop there now, in the conversation you held with him, is there anything here where Advocate Mlotshwa says, in that conversation Advocate Chauke told me to sign an indictment?

**ADV CHAUKE:** No. Proceed.

**ADV NGCUKAITOBI SC:** All right, proceed.

**ADV CHAUKE:**

“On 29 May 2012, I attended the DPP's meeting at VGM. While the meeting was in progress, Advocate Chauke told me that Advocate Jiba wanted to see us urgently in the office. I went with Advocate Chauke to Jiba's office. In Advocate Jiba's office,

Advocate Chauke told Advocate Jiba that he cannot discuss everything relating to the matter as he had serious security concerns, and there was a possibility of investigation necessitating arrest or even advocates in the office of the DPP KZN. Advocate Jiba told the two of us that she had procured a legal opinion from Advocate Gerald Nel in the legal affairs section, stating that I can sign the delegation for the prosecutors who will be prosecuting in the matter. She further told us that the indictment would, in terms of this legal opinion, be signed by me.”

10

**ADV NGCUKAITOBI SC:** So now just stop there. Who is telling Advocate Mlotshwa who is going to sign the indictment?

**ADV CHAUKE:** It is Mlotshwa saying that Advocate Jiba said he is going to sign the indictment.

20 **ADV NGCUKAITOBI SC:** Yes. Is there anything that says it is Advocate Chauke who is saying that he will sign the indictment?

**ADV CHAUKE:** No, not at all.

**ADV NGCUKAITOBI SC:** Continue.

**ADV CHAUKE:**

“I told Advocate Jiba and Advocate Chauke that I was going to sign the indictment only if it was accompanied by the prosecutor's memo or report detailing evidence implicating each accused as individual and the evidence implicating the accused as a collective. This meeting ended. On 12 June 2012, Advocate Chauke's personal assistant, Ms Mamikie Suping, emailed me only the indictment without the prosecutor's memo or a report. I thereafter exchanged a number of emails with Advocate Chauke, copying in Advocate Jiba. Her personal assistant and Advocate Thoko Majokweni, requesting Advocate Chauke to give me the prosecutor's memo or report as per initial agreement. My acting appointment came to an end on 9 July 2012. I never had anything to do with the matter after 9 July 2012.”

**ADV NGCUKAITOBI SC:** Yes. Now, let us go through that. So, according to this affidavit, is there anywhere where Advocate Mlotshwa alleges that Advocate Chauke attempted to force me to sign an indictment?

**ADV CHAUKE:** No, Chair.

**ADV NGCUKAITOBI SC:** Now, we go to the underlying emails that were exchanged at the time. So, these you will find under B2. So, it is under the Booyesen Bundle, B2. Do you have those? I want to start at B579. It should be B3. No, you are right. It is B3. Sorry. Yes, you are correct. So, start at B579. Yes, because the emails are not sequential. They are in reverse. So, it starts at the back and it goes forward.

10 **ADV CHAUKE:** What is the B number on that?

**ADV NGCUKAITOBI SC:** B579.

**ADV CHAUKE:** Yes, I have it, Chair.

**ADV NGCUKAITOBI SC:** Thank you. So, if you remember, the last paragraph from the affidavit of Advocate Mlotshwa said that Ms Suping, who was your PA, sent him an indictment. But he says nothing about a message from you forcing him to sign the indictment. Remember that?

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Now, it says that was sent on the  
20 12<sup>th</sup> of June 2012. Remember that?

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Now, we know that email at B579. It is dated 12 June 2012, 01-29 from Mamikie Suping.

**ADV CHAUKE:** Suping.

**ADV NGCUKAITOBI SC:** Yes, and it has no message. It is

just an attachment.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Indictment Cato Manor. Is that correct?

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Now, thereafter, what we get is an email from him to you, from Mr Mlotshwa to yourself, where he refers to a telephonic conversation.

**ADV CHAUKE:** Yes.

10 **ADV NGCUKAITOBI SC:** Now, the telephonic conversations that were held between the two of you are recorded in his own affidavit, where he says it was Advocate Jiba who says it will be signed. He does not say sign it. He says it will have to be signed by you.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Now, he then says:

“Kindly finish me paragraph two with the prosecutor's memo or report so that I can have a wraparound view of the matter.

20 The report must also have the police station and case numbers so that we can open up the DPP's file.”

Correct?

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** So far, nothing from you says sign

this indictment.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** We then look at your response, which is on the 12<sup>th</sup> of June, 05:14 PM at page 578. Correct?

**ADV CHAUKE:** Mine is 577, on the B Bundle, B3.

**ADV NGCUKAITOBI SC:** Your response?

**ADV CHAUKE:** It is B0057. 577.

**CHAIRPERSON:** And also us. I think if you look at the numbering, Counsel, the first email was at 00578.

10 **ADV CHAUKE:** 8, yes.

**CHAIRPERSON:** My Mamikie Suping. Mr Mlotshwa, which is the first one. The second one was from Mr Mlotshwa at the bottom of 577 to Advocate Chauke. And the third one on the same page, 00577, by Advocate Chauke to Mr Mlotshwa.

**ADV NGCUKAITOBI SC:** I see. Okay, then I think the witness has the same numbering as the Panel.

**CHAIRPERSON:** Yes.

**ADV NGCUKAITOBI SC:** And I have a different numbering. So you say it is not 578, it is 577?

20 **ADV CHAUKE:** Yes, 577. The previous one of Mamikie to Mlotshwa is 00578.

**ADV NGCUKAITOBI SC:** Okay.

**ADV CHAUKE:** B00578.

**ADV NGCUKAITOBI SC:** Well, let us work on 577 because that I think is consistent with the Panel.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** So that is the email from you on the same day?

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** With one, two, three, four, five paragraphs.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now, you can read that and tell me where you find any instruction on him by you or Mr  
10 Mlotshwa by yourself to sign an indictment.

**ADV CHAUKE:** I can read the email onto the record, Chair?

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:**

“Dear, Advocate Mlotshwa. I have  
forwarded to you the indictment which has  
all the detailed summary, by which you  
ought to be in a position to open your  
...[indistinct]. I also forwarded to you  
20 details of the inquest with police case  
numbers, et cetera, to which you referred  
to Advocate Majokweni for reasons that I  
do not follow and understand. The  
indictment, with respect, gives you the  
whole view of the matter. You are kindly  
and fervently requested to please discuss

any issue, if any, with me. I really do not see any need for me to give you any report other than what I have forwarded to you already. Please, if I misunderstand you, make me understand. I do not want to play you or undermine your jurisdictional authority in any way whatsoever. There are serious issues of security in this matter, which, if necessary, you will be

10 briefed about, which are not relevant to you and I cannot expose such to you at this stage. I have also learned, with utter dismay, that you have now issued an instruction to the senior prosecutors that all dockets that are with us must be brought to you. What is not happening here, my brother? Please, if you have any issues again, talk to me or arrange that we see the Acting NDPP urgently. Another

20 issue of concern to me is the delay in you issuing the instruction of the reopening of the inquest in view of the fact that you have been requested to sign the indictment, which must be preceded by your decision to reopen the inquest.”

**ADV NGCUKAITOBI SC:** Just stop there. Now, what does that sentence mean? Because that is the only time there is a reference to the indictment, but what does it say?

**ADV CHAUKE:** It is saying that we need to consider the issue of the inquest so that it should precede the signing of the indictment.

**ADV NGCUKAITOBI SC:** But what does it say about the indictment?

**ADV CHAUKE:** It says that you have been requested to sign  
10 the indictment, which must be preceded by your decision to reopen the inquest.

**ADV NGCUKAITOBI SC:** That paragraph, that passage that talks about the indictment, what does it say? It says you have been requested.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** By who?

**ADV CHAUKE:** By Jiba.

**ADV NGCUKAITOBI SC:** Yes. And then you can continue the rest of it. It has got nothing to do with you saying to him  
20 he must sign the indictment.

**ADV CHAUKE:** Ja:

“If this makes you uncomfortable, please indicate so that I may take the matter up with the NDPP. I do not want to step on your toes. I was informed that you agreed

and arranged with the Acting NDPP for somebody from outside to do the prosecution in these matters. If you have now a change of heart, please indicate so that we may resolve it as soon as possible. Regards.”

**ADV NGCUKAITOBI SC:** You see, this is the problem. There is no other correspondence in this case that deals with this, except what we have read so far. Now, you have a scenario  
10 in which Doctor Broughton writes in a report that you gave an instruction to Mr Mlotshwa to sign an indictment. You also have another scenario in which there is a finding by the Mokgoro Commission that you attempted to force Mr Mlotshwa to sign an indictment. But there is no factual foundation for any of these things anywhere.

**ADV CHAUKE:** Indeed, there is none.

**ADV NGCUKAITOBI SC:** And then you have the evidence leaders here just repeating the line, just repeating it without verification whatsoever. Then you have Advocate Batohi just  
20 repeating it as well without any verification whatsoever. When you go to the underlying documents, you find this is a big lie. What do you say to that?

**ADV CHAUKE:** The State Capture narrative is what is at play. People have to find a reason to try and justify that narrative that there is something untoward that this person is

doing, especially in respect of this Cato Manor matter. That is, in essence, what it is, so that you can justify that people were acting improperly, inducing, forcing some people to do that which they are not supposed to do.

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** It is a real narrative.

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** And it is unfortunate that your colleagues would be found to be into that narrative as well, which I appreciate. But of course, if you do not have the time, having gone through these things, you might find yourself being misled as well.

**CHAIRPERSON:** Did the Commission itself make any adverse findings against you in relation to those allegations?

**ADV CHAUKE:** Not at all, Chair. The Chair will remember that Advocate Batohi herself, she said, I am quoting her verbatim, regrettably, the Zondo Commission did not make any findings or recommendations. I underline that word, regrettably, because she was disappointed that the Commission did not make that which she expected.

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

**MS RAMAGAGA:** Yes, I just want to ask, thank you. Advocate Chauke, as you were leading evidence, amongst others, you stated that the opinion of Advocate De Kok, which exonerated you, was not included in the documentation that

was sent to the President with a recommendation that an enquiry be held against you. Is that correct?

**ADV CHAUKE**: From my recollection, that is correct, because it came to my knowledge. In fact, I remember in the talks then in 2023 with Advocate De Kok, saying I cannot tell you, but I made a recommendation. I do not understand what is happening. So immediately when I was asked to say now I must respond by the President, I wrote to Advocate Batohi to say, no, look, this is what is happening and now it has  
10 come to my attention that there is Broughton, there is Hulley, and there is Advocate De Kok memorandum which was not disclosed, to which I did not have sight. Please, can you favour them to me? How I got to know that is when I understood from the President, when the President was asking me to explain. So that is how I understood that this would not have been disclosed.

**MS RAMAGAGA**: Now, in your view, was it proper for that opinion that was exonerating you to be not disclosed to the President and even to yourself?

20 **ADV CHAUKE**: It was improper, and I made that point even when I responded to the President. I indicated that it is unfortunate that this was not disclosed to the President and neither to me.

**MS RAMAGAGA**: Right. It is correct that the opinions from Advocate Hulley, Advocate Nalane, and maybe Advocate De

Kok were sought after the full SCA judgment had been released.

**ADV CHAUKE**: Yes. In fact, all the opinions.

**MS RAMAGAGA**: And that is, maybe let us talk about the ranking, the ranking of power, right?

**ADV CHAUKE**: Ja.

**MS RAMAGAGA**: Now, as a lawyer, you get a decision which now becomes precedent. And thereafter, you go and seek opinions that, amongst others, seek to negate that very  
10 judgment of the Supreme Court of Appeal. Is that proper?

**ADV CHAUKE**: It is highly improper, because you are second-guessing the Court. That is what it is.

**MS RAMAGAGA**: Ja. As an officer, I am looking at this report of Doctor Broughton. In particular, this portion that we were dealing with at LO00163, paragraph 45 thereof. LO00163. The one that we just had now, no?

**ADV CHAUKE**: Yes.

**MS RAMAGAGA**: Now, 163? It is LO01.

**ADV CHAUKE**: 163. Thank you, Chair. Yes, I have it.

20 **MS RAMAGAGA**: Are you there?

**ADV CHAUKE**: Yes.

**MS RAMAGAGA**: Now, it is clear from Doctor Broughton's opinion on that page at paragraph 45 in particular that his decision not to recommend that the President consider subjecting you to an enquiry was informed by the judgment of

the Supreme Court of Appeal.

**ADV CHAUKE**: Yes, indeed.

**MS RAMAGAGA**: As an officer of court, what is your understanding? Can you then put the Supreme Court of Appeal judgment and put it in competition with other opinions that you seek to obtain?

**ADV CHAUKE**: Not really, Chair. The upshot of it is Doctor Broughton understood that principle that once the court has made a decision on the matter, that is the end of the matter.

10 If you are unhappy one way or another, you have to indicate so by appealing or whatever. But absent that, you have to abide by the decision of the court.

**MS RAMAGAGA**: Either live with it or appeal it.

**ADV CHAUKE**: That is what it is.

**MS RAMAGAGA**: Now, maybe let us talk ...[indistinct].

**ADV CHAUKE**: Sorry, Chair.

**MS RAMAGAGA**: Advocate Batohi, thank you, because she is the person who decided to still insist on getting opinions and even seeking the President to take certain steps while  
20 aware of this judgment. Now, what do you think? Does she understand that the Supreme Court of Appeal judgment should rank as superior if we are talking about the hierarchy of powers? Or is it because of lack of understanding? And I am saying this because you say Doctor Broughton understood, and our concern is the understanding of

Advocate Batohi. Thank you.

**ADV CHAUKE**: Chair, I want to believe that she understood, but she was desperate. Desperate in the sense that she needed to find a reason for me to undergo this enquiry. Because if you remember, even when she was sitting here and then she was asked about the sanctity and the finality of the court, she agreed.

But she sought to try and get a narrow decision to say before this, before that, which is irrelevant and irrational  
10 in itself. But ja, I want to give her benefit that she understood the judgment. But from where I am sitting, it is a source of desperation that she had to find something that she needed for me to undergo an enquiry.

**MS RAMAGAGA**: Just to wrap it up, is it correct that the SCA judgment, the full SCA judgment, did not make a finding against your conduct in respect of the Mdluli case?

**ADV CHAUKE**: Indeed, Chair. That is the finding of the Supreme Court of Appeal, that my decision in respect of the Mdluli matter was rational.

20 **MS RAMAGAGA**: Thank you.

**ADV CHAUKE**: Thank you.

**ADV NGCUKAITOBI SC**: Thank you. I think on this topic, Mr Chauke, that Madam Ramagaga was dealing with you, we do need to take it to its logical end. So I do not know if you have got the terms of reference in front of you.

**ADV CHAUKE**: In fact, I have them even in the ...[indistinct] of my statement. I just want to get to the actual paragraph where I summarised the terms of reference.

**ADV NGCUKAITOBI SC**: You have got it?

**ADV CHAUKE**: I have the copy, Chair.

**ADV NGCUKAITOBI SC**: You have it?

**ADV CHAUKE**: Ja.

**ADV NGCUKAITOBI SC**: Now, I want to follow up this point that Madam Ramagaga is asking, just on the Mdluli case.

10 Now, the Mdluli case is mentioned once in the entire terms of reference, which is 3.1.2 at page 5 of the terms of reference. Is that correct?

**ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: Now, what Advocate Batohi wants this Panel to investigate is whether you failed to continue with the charges against Lieutenant General Mdluli for the murder of Mr Tefo Abel Ramogibe:

20 “In that you caused the charge of murder relating to the killing of Mr Tefo Abel Ramogibe and related charges to be withdrawn, notwithstanding that there was strong evidence justifying the institution of a prosecution in the matter, which decision caused a significant delay in proceeding with the charges concerned.”

Now, that is what the Panel is meant to investigate. Now, the question as to whether there was evidence to proceed and whether your decision to withdraw the charge provisionally was fully litigated, initially there was a finding against you by Judge Murphy that your decision was irrational and it was set aside.

**ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: Then it goes to the Supreme Court of Appeal. Correct?

10 **ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: This very question that is posed in the terms of reference?

**ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: Now, the judgment of the Supreme Court of Appeal, you will find in the CL bundle, CL2, and it starts at CL00362.

**ADV CHAUKE**: I have it, Chair.

**ADV NGCUKAITOBI SC**: Now, you will see when you go to the – there is a specific heading that deals with the very  
20 question that is being debated, that we are supposed to debate in this Panel. Now, it is at page CL00369.

**ADV CHAUKE**: Yes, I am there, Chair.

**ADV NGCUKAITOBI SC**: Under the heading, the decision to withdraw the murder and related charge.

**ADV CHAUKE**: Indeed.

**ADV NGCUKAITOBI SC:** Yes. Now, paragraph 43 says the following:

“This brings me to the decision by Chauke to withdraw the murder and related charge.”

So you just compare that with the charge against you here. It is the decision to withdraw the murder and related charges.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Then the SCA says:

10 “It will be remembered that on Chauke's version he withdrew the murder charge pending the outcome of the inquest that he had requested, and that he withdrew the 17 other related charges to avoid a fragmented trial.”

Now, your affidavit here advances the same defence that you advanced before the Supreme Court of Appeal.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Then it continues:

20 “The contention by full was in essence that this decision was irrational. However, as I see it, the contention has not been substantiated in argument. On the face of it, the decision that the findings that an inquest could perhaps enable him to make

a more informed view of the prospects of the State's case with regard to the murder charge was not irrational. It is true that the outcome of the inquest could have no impact on the 17 related charges.”

Now, those are not the murder charges.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** These are the other charges.

**ADV CHAUKE:** Indeed.

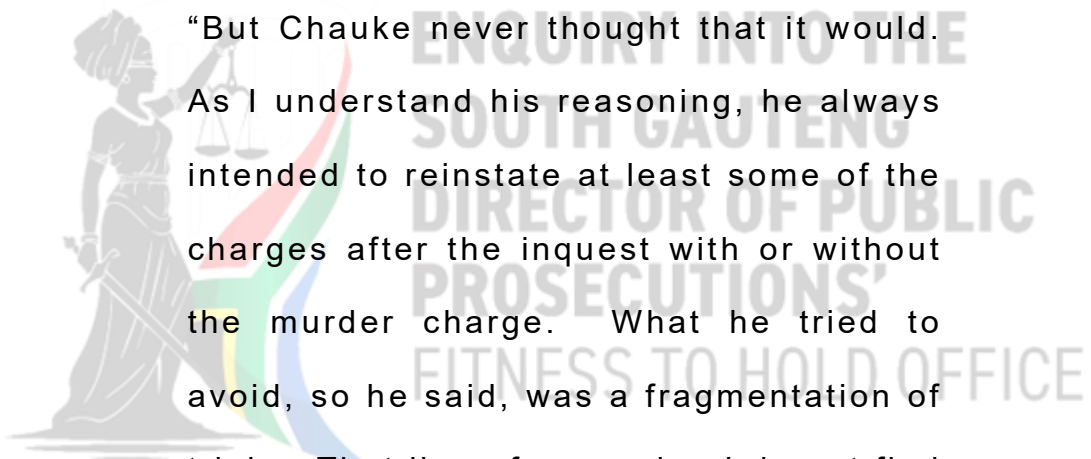
10 **ADV NGCUKAITOBI SC:**

“But Chauke never thought that it would.

As I understand his reasoning, he always intended to reinstate at least some of the charges after the inquest with or without the murder charge. What he tried to avoid, so he said, was a fragmentation of

20 trials. That line of reasoning I do not find irrational either, particularly since the evidence supporting the related charges would also impact on the murder charge.

It is true that he could have asked for a postponement of the 17 related charges pending the inquest, but we know that a postponement is not merely for the asking. It could be successfully opposed by



Mdluli, in which event the fragmentation, which Chauke sought to avoid for understandable reasons, may have become a reality.”

Now, it seems to me, you can tell me if I am wrong, that the entire paragraph 3.1.2, which is, should I proceed with the murder charge whilst I have referred this to an inquest, should I refer everything to an inquest, is covered fully in paragraph 43.

10 **ADV CHAUKE**: Indeed. That is my understanding of the judgment.

**ADV NGCUKAITOBI SC**: Yes. Now, then it continues, paragraph 44:

“[Indistinct]... real argument, which found favour with the court *a quo* at paragraph 183.”

Now, you remember that Advocate Batohi read to this court, to this Panel, paragraph 183 of the Judge Murphy judgment.

**ADV CHAUKE**: Yes.

20 **ADV NGCUKAITOBI SC**: Now, look at how the court deals with it:

“It is that Chauke's failure to proceed with the murder and related charges after the findings of the inquest became available was irrational. But that decision, or really

his failure to apply his mind afresh to the matter after the conclusion of the inquest, was not the subject matter of the review application. It will be remembered that the review application started in May 2012, while the results of the inquest only became available in November of that year. Stated somewhat more concisely, I do not believe that the earlier decision to withdraw the charges, which is the impugned decision, can be set aside on the basis that a subsequent decision taken in different circumstances not to reinstate all or some of those charges was not justified. To that extent, the appeal must therefore succeed.”

Now, who was the appellants that succeeded?

**ADV CHAUKE:** The NDPP.

**ADV NGCUKAITOBI SC:** Yes. Now, can you explain how you think that Advocate Batohi has invited this Panel to reappraise findings of the Supreme Court of Appeal?

**ADV CHAUKE:** As I indicated before, Advocate Batohi was desperate even in here to explain her understanding of the judgment of the SCA, which I found to be very wanting, that she did not entirely understand the findings of the SCA. What

she started to accept was that Murphy J was correct in everything that he is doing, regardless of the fact that the Supreme Court of Appeal has overturned that finding of Murphy J, because her idea and her narrative was being supported by the Murphy J judgment. That is why she placed more emphasis in respect of the Murphy J and forgot or else ignored the finding of the Supreme Court.

**ADV NGCUKAITOBI SC:** Yes. You were asked that question by Madam Ramagaga in terms of the hierarchy of the courts.

10 **ADV CHAUKE:** Indeed.

**ADV NGCUKAITOBI SC:** It really does not matter what she thinks. There is a law in this country.

**ADV CHAUKE:** In fact, if you were to ask me now that you are asking me now, I think she has got no clue about understanding the judgment.

**ADV NGCUKAITOBI SC:** Look, I do not want us to be too personal to her. We must just criticise her decisions and not her.

**ADV CHAUKE:** You will pardon me, Chair, unfortunately.

20 **ADV NGCUKAITOBI SC:** No, I understand.

**ADV CHAUKE:** It is me being criticised in my personal capacity now. It is very difficult.

**ADV NGCUKAITOBI SC:** No, it is also my job to keep the proceedings civil.

**ADV CHAUKE:** Yes.

**CHAIRPERSON:** And two wrongs do not make a right.

**ADV CHAUKE:** Indeed. I apologise. I apologise.

**ADV NGCUKAITOBI SC:** Yes. Now, so once we have done an analysis of the irrationality of the NPA's decision to prosecute you on a matter that the SCA has already precluded any findings on, you look at the sequence of events, Doctor Broughton says no charge because there is a binding outcome of the SCA. You wanted to move then to the opinion of Advocate Hulley, which you say is then sought  
10 after the opinion by Doctor Broughton. So I stopped you there, if you remember, 20 minutes ago.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Which is at 47.5.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** What did you want to say there?

**ADV CHAUKE:** The opinion of Advocate Hulley in respect of the Mdluli matter talks in the main about the affidavit of the investigating officer, which he made at the bail hearing. Absent of that, I need to understand and give this  
20 background, which I understood to be uncontested, that Advocate Hulley was assist with these matters in the NPA as early as from 2020 or 2021, thereabout.

Now, at the behest of how I understand it, he would have got institutional memory one way or another, would have formed a particular view about the matter, these matters,

which he was dealing with them when he was at the Zondo Commission. Now, to find himself having to be asked for an opinion on the matters which he has been dealing with, I find it that very strange.

My little understanding of the Red Book when I did pupillage then was that that would at the very least constitute conflict, that you assist with the matter and you are asked an opinion and you give an opinion as if you are independent of what is being asked of you.

10 But having said that, that opinion as well does not deal precisely with the findings of the SCA. It actually deals with the evidence of the investigating officer Roelofse. My understanding from reading that appeal is as if what the investigating officer would have said at the bail hearing is what should be considered by the prosecutor or made as the DPP that one should follow that reasoning of Roelofse, which I find untenable.

I say so, Chair, that if one looks at the background of this case, I should think Advocate Hulley would have done  
20 himself a favour to defer to another of his colleagues to give that opinion because he could not give an opinion on things that you were dealing with in seven years or so.

**CHAIRPERSON:** But an opinion is an opinion.

**ADV CHAUKE:** Indeed.

**CHAIRPERSON:** When an advocate's opinion is sought, it

does not mean that someone who is seeking that opinion cannot independently exercise his or her own discretion. In other words, you simply do not rubber-stamp what you are told in the legal opinion, especially when one is acting in the position similar to the one held by the former NDPP.

**ADV CHAUKE**: I accept and I understand.

**CHAIRPERSON**: Who is also an advocate and an officer of court. So I would like us not to be too personal in criticising the legal opinions that were presented to the President  
10 because the final decision to initiate or to request the initiation of this enquiry was that of the NDPP and not anyone of those advocates who prepared opinions.

**ADV CHAUKE**: Indeed, I accept, Chair. I was responding to my thoughts. What do I think about them? But I accept the counsel.

**ADV NGCUKAITOBI SC**: Thank you, Madam Chair. Now, if you look at that opinion by Advocate Hulley, now it appears in the LO4.

**ADV CHAUKE**: Yes.

20 **ADV NGCUKAITOBI SC**: But do you have it, Mr Chauke?

**ADV CHAUKE**: LO4?

**ADV NGCUKAITOBI SC**: Yes. You mean what page?

**ADV CHAUKE**: Page, yes.

**ADV NGCUKAITOBI SC**: 1047. 001047.

**ADV CHAUKE**: Indeed, Chair. I have it.

**ADV NGCUKAITOBI SC:** Yes. Now, there is just one slight correction that you must make to the evidence you gave, that he did not refer to the SCA judgment. At LO01060 at paragraph 35, footnote 2.

**CHAIRPERSON:** LO?

**ADV NGCUKAITOBI SC:** Chair, it is 001060.

**CHAIRPERSON:** Thank you.

**ADV NGCUKAITOBI SC:** Paragraph 35, footnote 2. Can you see that?

10 **ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Can you see that there is, in fact, a reference to the SCA judgment in that footnote?

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** But where you are correct is that the judgment is never engaged, particularly the paragraphs that make it clear that the decision to withdraw the charges pending an inquest is a rational decision.

**ADV CHAUKE:** Yes. What I also indicate, that paragraph, the footnote 2, relates to Lieutenant General Mdluli in as far  
20 as the fraud and related charges are concerned, and not the murder.

**ADV NGCUKAITOBI SC:** Yes, it is talking about Advocate Mrwebi.

**ADV CHAUKE:** Yes, that is the reference to Advocate Mrwebi.

**ADV NGCUKAITOBI SC:** I know, but I think it is still fair to say it does refer to the SCA judgment.

**ADV CHAUKE:** Indeed.

**ADV NGCUKAITOBI SC:** It is not fair to say it does not refer to the SCA judgment.

**ADV CHAUKE:** Indeed, I accept.

**ADV NGCUKAITOBI SC:** Now, the second point is if you look at page 001055, paragraph 10.4, can you see that?

**ADV CHAUKE:** I see that.

10 **ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** Indeed, I accept that it makes reference to Lieutenant General Mdluli and Chauke.

**ADV NGCUKAITOBI SC:** And the SCA judgment. But if you look at what it says, I mean, I think your broader point still remains if you just remove the other small jibes.

**CHAIRPERSON:** Which paragraph were you referring to?

**ADV NGCUKAITOBI SC:** 10.4, Madam Chair.

**CHAIRPERSON:** 10.4?

**ADV NGCUKAITOBI SC:** Yes.

20 **CHAIRPERSON:** Of the same LO001060?

**ADV NGCUKAITOBI SC:** Yes, it is now 1055.

**CHAIRPERSON:** 1055.

**ADV NGCUKAITOBI SC:** So it is a few pages.

**CHAIRPERSON:** 10.4, you said.

**ADV NGCUKAITOBI SC:** Yes, 10.4.

**CHAIRPERSON:** Yes, thank you.

**ADV NGCUKAITOBI SC:** Now, this is another reference to the SCA judgment. But if you look at what it actually says, it says:

10 “In any event, even if after receiving the findings of the inquest magistrate, Advocate Chauke was satisfied that there was insufficient evidence against Lieutenant General Mdluli, Advocate Chauke should have proceeded with the remaining charges as soon as the SCA judgment was delivered.”

Now, here, Advocate Hulley is not talking about the murder charge. He is talking about the other charges. He says that you should have proceeded with the 17 charges immediately after the SCA judgment. And then he says:

20 “It is in this regard inconceivable that he needed a further two months to make up his mind on whether to proceed with the murder charge, since he had the findings of the inquest magistrate as far back as November 2012. Then to make matters worse, he did not proceed with the murder charge.”

Now, I am not sure I understand what he is saying here

because it is after the SCA judgment which has found that your decision in relation to not proceeding with the murder charge is lawful.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Do you understand?

**ADV CHAUKE:** No, no, I do not understand. I thought, I accepted that maybe here there was a misunderstanding of the judgment or the sequence of what was happening. Because after the SCA judgment, the SCA judgment said  
10 within two months the NDPP must make the decision whether or not the murder charge should be preferred against Mdluli or not.

**ADV NGCUKAITOBI SC:** Yes, that is the point I wanted to refer you to. If you look at the order of the SCA judgment, the order is at CL00371, CL2.

**ADV CHAUKE:** I am there, Chair.

**ADV NGCUKAITOBI SC:** 00371, Madam Chair.

**CHAIRPERSON:** Yes.

**ADV NGCUKAITOBI SC:** Remember that the criticism in  
20 paragraph 10.4 of the opinion by Mr Hulley is that after the delivery of the SCA judgment, you took too long to decide. And in any event, you decided not to proceed with the murder charge. Okay? Now, what did the SCA actually say should happen, which is at paragraph 54.3 of the order in CL00371?

**ADV CHAUKE:** The order reads as follows:

“It is recorded that the following undertaking has been furnished on behalf of the first appellant.”

**ADV NGCUKAITOBI SC:** And who is the first appellant?

**ADV CHAUKE:** The NDPP.

**ADV NGCUKAITOBI SC:** Yes. And who was the NDPP?

**ADV CHAUKE:** Then it was Mr Nxasana.

**ADV NGCUKAITOBI SC:** Yes. Thank you.

**ADV CHAUKE:**

10 “a. To decide which of the criminal charges of murder and related crimes that were withdrawn on 2 February 2012 are to be reinstated and to make his decision known to the respondent within two months of this order.

b. To provide reasons to the respondent within the same period as to why he decided not to reinstate some, if any, of those charges.”

20 **ADV NGCUKAITOBI SC:** Yes. Now, this is the point. So, he does deal with it twice, but your point is that he deals with it in a manner that is inconsistent with the judgment of the SCA.

**ADV CHAUKE:** Indeed.

**ADV NGCUKAITOBI SC:** Yes. Thank you. Now, that would

be a fair criticism. That is not personalised. Is that correct?

**ADV CHAUKE:** I take your counsel, Chair. If I appear to be personal, I still apologise if it came out that way.

**CHAIRPERSON:** He is judge of appeal talking.

**ADV NGCUKAITOBI SC:** Now, thank you. Then there was an opinion by Ms Moroka SC. I think we have dealt with that.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** And then there is the memorandum by Advocate Batohi to the Minister of Justice and to the  
10 President.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Is this the memorandum you said omitted the opinion of Advocate De Kok which exonerated you?

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Now, I think we need to look at it because it is a very, very serious allegation that the piece of evidence that exonerated you from one of the Deputy National Directors of Public Prostitutions was actually withheld from  
20 the Minister and the President at a critical time when they had to make a decision about whether to convene this enquiry at all.

**ADV CHAUKE:** Indeed.

**ADV NGCUKAITOBI SC:** My learned junior will find it now. So, that is the – if you go back to the Ms Shamila Batohi

statement at SB10266.

**CHAIRPERSON:** Is Advocates Moroka's opinion not at LO001064?

**ADV NGCUKAITOBI SC:** Yes, it might be there.

**CHAIRPERSON:** This is the statement.

**ADV NGCUKAITOBI SC:** Yes. Now, I am looking at the opinion, at the letter from the Minister, sorry, from the NDPP to the Minister. At reference at 47.7 of Advocate Chauke's statement.

10 **CHAIRPERSON:** Yes.

**ADV NGCUKAITOBI SC:** Now, the allegation you make here is that it omitted the opinion of Advocate De Kok which exonerated you.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** That is what I am saying is a serious charge because it actually amounts to misleading when you do not give the President the right information on which he must make a decision. Now, that document is at SB10266. Do you have it?

20 **ADV CHAUKE:** I am trying to get it from the ...[indistinct]. I do not have it on me.

**ADV NGCUKAITOBI SC:** Yes, I think you had the annexures to the Batohi statement. Do you have it?

**ADV CHAUKE:** You are referring to the memorandum by De Kok to the NDPP?

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

**ADV CHAUKE:** The one from the NDPP to the Minister?

**ADV NGCUKAITOBI SC:** Correct.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** So, that is SB10266. Correct?

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Now, it is written by Advocate Batohi to Minister Lamola and it is dated the 18<sup>th</sup> of August 2023. Correct?

10 **ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Now, if you turn over the page where it deals with the information that is in front of the NDPP.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** So, the first one is, well, the annexures that are there is Annexure A, which is the De Kok report. Correct?

**ADV CHAUKE:** Let me get to that.

20 **ADV NGCUKAITOBI SC:** That is referenced in paragraph 2 of the statement.

**ADV CHAUKE:** Of the submission?

**ADV NGCUKAITOBI SC:** Yes, yes. So, if you look at paragraph 2, it has reference to Annexure A. That is the report by Advocate Rodney De Kok.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Now, then the next document is a request by Ms Batohi to yourself to make representations, which is Annexure B.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** The next document, which is paragraph 4, is your response, Annexure C.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Then, the next one is an opinion by Advocate Nalane, which is Annexure D.

10 **ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Then, there is an opinion by Advocate Maenetje and Scott, referenced in paragraph 6, Annexure E.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Then, there is an opinion by Doctor Broughton, Annexure F.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Where there is a summary of what Doctor Broughton said.

20 **ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Which is referenced in paragraph 7.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Then, it is then alleged in paragraph 8 that Doctor Broughton did not have the facts of

the Mdluli case outside the judgment of the Supreme Court of Appeal in the Freedom Under Law case.

**ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: Now, then there is a supplementary opinion by Doctor Broughton, paragraph 10, Annexure G.

**ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: Then, there is an opinion by Advocate Hulley and Advocate Wentzel, referred to in paragraph 11, Annexure H.

10 **ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: Then, there is an Annexure I, which is the letter from the NDPP to Advocate Chauke.

**ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: There is Annexure J, which is a response by Advocate Chauke to the NDPP, Annexure J.

**ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: Now, the one missing document is the opinion of Advocate De Kock that said that Mr Chauke should not be charged.

20 **ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: In relation to the role he played in Cato Manor.

**ADV CHAUKE**: Yes. Even on the statement that she filed here, it indicated that in 189 of her statement, she listed all those things, and then in respect of the De Kock memorandum

she said it was subsequently forwarded to the President.

**ADV NGCUKAITOBI SC:** Yes, but it was subsequently forwarded to the President after you raised it.

**ADV CHAUKE:** Of course. Of course.

**ADV NGCUKAITOBI SC:** But the point I am making here is this. When the Minister and the President were requested to make a decision, the advice and opinion of the Deputy National Director, which exonerated you, was omitted.

**ADV CHAUKE:** Yes.

10 **ADV NGCUKAITOBI SC:** And we have never been finished with any explanation whether that omission was deliberate, to mislead, or was inadvertent.

**ADV CHAUKE:** I will take the first option.

**ADV NGCUKAITOBI SC:** Yes. I am just saying that it is open for interpretation. As a fact, it was excluded.

**ADV CHAUKE:** Yes. I mean, me sitting here and knowing the background of the matters, I do not think it is a mistake that it was not sent.

20 **ADV NGCUKAITOBI SC:** And then you have a very strange reference here, because Doctor Broughton says to them, on the Mdluli case, the SCA has spoken.

**ADV CHAUKE:** Ja.

**ADV NGCUKAITOBI SC:** But the way they present that to the President and the Minister is to say that Doctor Broughton did not have the facts on the Mdluli case.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Do you understand what that means? I mean, is this also an attempt to mislead, to misrepresent the facts? What actually is going on?

**ADV CHAUKE:** That is how I understand it. Because on Doctor Broughton's analysis and his recommendation, this fact was there.

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** That there is no basis and he does not  
10 recommend that an enquiry should be instituted in respect of the Mdluli matter.

**ADV NGCUKAITOBI SC:** Yes, yes. So that is what you wanted to address in relation to paragraph 47.7?

**ADV CHAUKE:** Indeed.

**ADV NGCUKAITOBI SC:** Thank you very much. And that is what we have dealt with at 48, 49, 50, 51.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Yes. In your statement at AC9, maybe you can go there now.

20 **ADV CHAUKE:** You say AC9?

**ADV NGCUKAITOBI SC:** Yes. So it is 6A43. Remember that I was speculating about whether this was an inadvertent omission or a deliberate omission. Mr Ramogale shows me that if you go to 6A43 and you look at the email dated the 4<sup>th</sup> of April 2025. Can you see that?

**ADV CHAUKE:** I see that.

**ADV NGCUKAITOBI SC:** And there is a letter from, there is an email to yourself from Muzugai Fani Madala [?].

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Who is Muzugai Fani Madala?

**ADV CHAUKE:** He is the director in the NDPP's office.

**ADV NGCUKAITOBI SC:** He actually says:

10 “As per the NDPP's directive, please find Advocate De Kock's memorandum. The NDPP considered that this was an internal memorandum from Advocate De Kock that did not take into account all the evidence in the matter. In hindsight, however, the NDPP thought it is only fair to make the memorandum available to you.”

So it seems that the decision was a deliberate decision.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** She applied her mind to it and she elected not to disclose it.

20 **ADV CHAUKE:** That is how I understand it.

**ADV NGCUKAITOBI SC:** Yes. Then we have dealt with paragraph 51, 52, 53. It goes on to 56. Yes. We will come back to cover Mdluli in full, but we are just laying the foundation now. The case of Mr Mdluli in full, laying the foundation.

**CHAIRPERSON:** Before you proceed, Counsel, I am reminded by my sister that this is an opportune time for a comfort break. We propose to adjourn for 10 minutes. That is until 4 o'clock.

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

**CHAIRPERSON:** Advocate Chauke, you remain under oath.

**ADV CHAUKE:** Thank you, Chair.

**CHAIRPERSON:** We adjourn.

**ENQUIRY ADJOURNS**

10 **ENQUIRY RESUMES**

**CHAIRPERSON:** Yes, thank you. Advocate Chauke, you remain under oath.

**ADV CHAUKE:** Thank you, Chair. I confirm.

**ANDREW CHAUKE** (still under oath)

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

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. Mr Chauke, I think we need to just go a step back on this issue of the suppression of information by Advocate Batohi. In page 6A40, which is AC7.

20 **ADV CHAUKE:** AC7. Page?

**ADV NGCUKAITOBI SC:** 6A40.

**ADV CHAUKE:** I am there, Chair.

**ADV NGCUKAITOBI SC:** Yes. Now that is how this issue came about, you were responding to Advocate Batohi to try and understand the case against you where the President had

asked you to make representations about why you should not be suspended, correct?

**ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: Now, you then say in paragraph 2:

“I am in the process of finalizing the issue of financial assistance with the State Attorney to brief Counsel to assist me in the matter. I am hopeful that this issue will be resolved in a few days. In the meanwhile, I am aware that legal opinions were obtained by your office from the following  
10 Counsels, Dr Broughton, Advocate ...[indistinct] SC, and Advocate Rodney de Kock submission after having received written explanations from myself on his request. Now, this appears, this opinion of Mr de Kock appears to have been confidential, let me put it that way. Would you agree with that?

**ADV CHAUKE**: Ja, that is, from how it came about, that is how I understood.

**ADV NGCUKAITOBI SC**: And how ...[intervenes].

**ADV CHAUKE**: [Indistinct]... [cross-talking] it could not be  
20 confidential as against me and ...[intervenes].

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

**ADV CHAUKE**: With the nature of the proceedings as they were. To that extent, I do not think.

**ADV NGCUKAITOBI SC**: Yes.

**ADV CHAUKE**: Because ...[intervenes].

**ADV NGCUKAITOBI SC:** Certainly, it was not disclosed to you for various reasons, but how did you know of its existence? I mean, the fact of its existence is not something that was generally known.

**ADV CHAUKE:** That tells no tale.

**ADV NGCUKAITOBI SC:** Okay, dead men tell no tale.

**ADV CHAUKE:** Ja. Advocate de Kock had informed me then in 2023 when this was made to say, I made the recommendation, I do not know why she is still proceeding.

10 **ADV NGCUKAITOBI SC:** I see. Now, anyway, you asked for it, and then the ...[intervenes].

**CHAIRPERSON:** I beg your pardon, Counsel. If it was considered to be an internal memorandum, does that in itself suggest that it was confidential?

**ADV CHAUKE:** No, not at all.

**CHAIRPERSON:** Internal memo's at the NPA, are they considered to be confidential matters even for people or advocates who are within the NPA itself?

20 **ADV CHAUKE:** Not at all. That is why I was qualifying it to the extent that it is confidential to the outside, but here is a process that affects me, and this is about me, it cannot be confidential as against me.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** Yes, I would like to know, if no charges were preferred against you, but as a DPP, would you not be

entitled to know what was happening within the NPA as one of the senior advocates there?

**ADV CHAUKE**: Of course.

**CHAIRPERSON**: Would such an internal memo be hidden against you, or would you be deprived from knowing about such an internal memo?

**ADV CHAUKE**: No, not at all. But as I say, Chairperson, this is, was about the specific conduct of me. Now, it will be, it will not be in a position where if there is an ex-committee  
10 or whatever, it could not necessarily be discussed. Information could be said, we are in the process of doing this with Advocate Chauke, we are following the processes. But it is close to say this is what Chauke is doing and all sorts of things, and I do not think she will do that because within the personnel matters, the practice is that you do not discuss one's misconduct with another.

**CHAIRPERSON**: Yes, thank you.

**ADV NGCUKAITOBI SC**: Thank you.

**MS RAMAGAGA**: Just one follow-up. You have stated that  
20 Advocate de Kock told you that he is surprised that the NDPP is still pursuing the issue of enquiry, notwithstanding the fact that he has written an opinion to the contrary. Now, the fact that this was actually disclosed to you by the author of the opinion, would that remain or become a confidential opinion?

**ADV CHAUKE**: Not at all. That is why I was saying that he

informed me that he made a recommendation, but he is surprised that the recommendation is still being made.

**MS RAMAGAGA**: Ja, this I just ask over and above what my sister has already dealt with, but to say even over and above, the author never saw it as a confidential document.

**ADV CHAUKE**: No.

**ADV NGCUKAITOBI SC**: Yes. Now, it seems that when you made the request, you said, I am aware of this document, please give it to me. It was still not given to you if you look  
10 at AC8.

**ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: Because AC8, which is at 6A-42, is a letter by you to the NDPP, in which you say in paragraph  
2:

“I do notice, however, that item 3.3, Advocate Rodney de Kock's submission, after having received written explanations from myself on his request, was not included.”

20 **ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: Was there an explanation why they did not include it in the first response?

**ADV CHAUKE**: No, there was no explanation.

**ADV NGCUKAITOBI SC**: And then you said:

“Considering that my written

representations to the President are due on Monday, 7 April 2025, I would appreciate it if you could assist with this request urgently.”

So it is only in that context that on the 4<sup>th</sup> of April 2025, which seems to have been a Friday, at 5 minutes to 11 in the evening, that the memorandum was given to you.

**ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: Literally with one day left before  
10 you made representations.

**ADV CHAUKE**: Yes. I can disclose to you, Chair, that she was always under the impression that I am not aware of de Kock's submission.

**ADV NGCUKAITOBI SC**: Yes. Now, there is a further disturbing element of this suppression of this information. When you look at the opinion, well, not an opinion, the letter from the NDPP at, in the correspondence bundle C, at C00024.

**ADV CHAUKE**: I am there, Chair.

20 **ADV NGCUKAITOBI SC**: Yes, so specifically at page 00028, so this is a response to the Minister who has asked two things. One, explain the delay in the institution of this proceedings. Number two, explain the existence of these various opinions, why are you cherry-picking, taking some and not all. Sorry, the President, but it is written via the

Minister.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now, if you look at C00028, Advocate Batohi's response in the third bullet point.

**ADV CHAUKE:** I am there.

**ADV NGCUKAITOBI SC:** This is how she explains this.

10 “Deputy National Director of Public Prosecutions, de Kock, considered these opinions and submitted a memorandum to the NDPP, wherein he expressed his own opinion on the matter and made a recommendation.”

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

**ADV NGCUKAITOBI SC:** Now, when you look at this, it is the second time it seems the President is being misled about what Advocate de Kock said. Firstly, there was no disclosure at all.

**ADV CHAUKE:** Ja.

20 **ADV NGCUKAITOBI SC:** And secondly, when there is a request about it, the explanation that is given is that he has expressed his opinion and made a recommendation.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** But there is no disclosure of the views of Advocate de Kock.

**ADV CHAUKE:** What the recommendation is.

**ADV NGCUKAITOBI SC:** Yes. Now, would you not agree that it seems that you have a scenario in which the decision-makers are not being placed in a position to make an informed decision about your situation?

**ADV CHAUKE:** Indeed, that has always been my point, and I even raised this in my response to the President.

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Thank you. Now, I want to then go  
10 back to your statement. We have gone through up until page  
20.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** And we looked at the implications of various judgments in relation to the case against Lieutenant General Mdluli, but there are also judgments in relation to the case of Cato Manor.

**ADV CHAUKE:** Indeed.

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** And two judgments in particular. The first  
20 judgment is a judgment of Govind J, and the second judgment is a judgment of Legodi J. It is a full bench judgment with Madam Justice Hughes.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** The first judgment is referred to, at paragraph 57 of your affidavit.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** The second judgment referred to at paragraph 60 of your judgment.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** In your own words, can you just explain, you know, there is a lot of misunderstanding about this case, which has been fuelled by people with an interest in it, that essentially, Judge Govind exonerated the Cato Manor accused and proved that there was no case for  
10 racketeering.

**ADV CHAUKE:** Which is incorrect.

**ADV NGCUKAITOBI SC:** Yes, just explain.

**ADV CHAUKE:** The essence of Govind's judgment was ...[intervenes].

**ADV NGCUKAITOBI SC:** Govind J's judgment.

**ADV CHAUKE:** Sorry, the essence of Judge Govind's judgment, as we understood it, was that there is a *prima facie* case against the accused. However, what was presented and how it was presented to him, especially with reference to the  
20 so-called unsigned statements and information that Jiba relied on, Jiba did not adequately disclose that she relied on information, even if it is unsigned statements, with specific reference to Danikas and others.

And in that instance, he said he is unable to conclude that she acted rationally when she signed the decisions.

Nowhere in the judgment that Govind J indicated that he is actually exonerating General Booyesen and other accused in respect of the charges as a whole. That is our understanding, Chair.

**ADV NGCUKAITOBI SC:** Yes, now I am going to take you to that judgment. There are two critical paragraphs, 39 and 40.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** The judgment is at CL2, the first judgment by Judge Govind.

10 **MS RAMAGAGA:** [Indistinct]... [microphone off].

**ADV NGCUKAITOBI SC:** Yes, Madam Ramagaga, 00352.

**ADV CHAUKE:** I am there, Chair.

**ADV NGCUKAITOBI SC:** Thank you. Now that is where the judgment starts. Now go to paragraph 38, which is page 00359.

**ADV CHAUKE:** I am there, Chair.

**ADV NGCUKAITOBI SC:** Yes, what does it say there?

**ADV CHAUKE:** Paragraph 38.

20 “I hasten to emphasize that this outcome is based purely on the facts of the present case. It does not provide a basis for opening the floodgates to applications to review and set aside decisions to issue authorizations to prosecute under section 2(4) of POCA.

10 If the respondent has properly understood the principle of legality, it seems to me that their responses to demands for documents or reasons might have been different. As mentioned, there is reverence to the documents in the correspondence, and the NDPP states that she will not detail all the information placed before her prior to her making the first impugned decision. Had she outlined even in basic terms what these documents and information comprise, said that she had relied on them and shown that they had included information linking Mr Booysen to the offences in question, this application might not have seen the light of the day.”

20 **ADV NGCUKAITOBI SC:** So if you will stop there. So what is the Judge saying here that look, had you told me, so you tell me that you relied on three documents.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** But when I look at the docket, I find nine as an example. But if you had told me you relied on nine documents, then I would have found differently.

**ADV CHAUKE:** That is my understanding.

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

**ADV CHAUKE:** -:

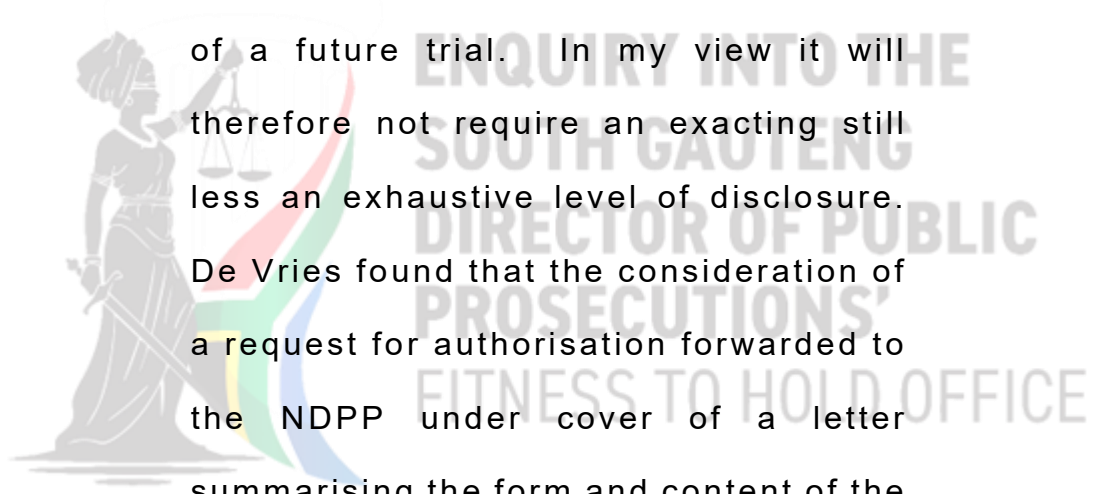
“The ...[indistinct] test for rationality might have been satisfied.”

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** -:

10 “The level of disclosure of the NDPP for offences of this nature cannot be such as to prejudice the state in its conduct of a future trial. In my view it will therefore not require an exacting still less an exhaustive level of disclosure. De Vries found that the consideration of a request for authorisation forwarded to the NDPP under cover of a letter summarising the form and content of the charge sheet, setting out the detailed background to the charges and summarising the evidence was sufficient. It is certainly not necessary to disclose every detail of the state’s case, strategy or evidence where this is not subject to the criminal discovery process. In the light of the provisions

20



of POCA it is also not necessary to have before her sworn statements from witnesses on which the state intends to rely. I expressly refrain, however, from making a positive finding as to the level of a disclosure necessary in meeting an application such as the present one, or detail required. This can only be assessed on a case by case basis.”

10 **ADV NGCUKAITOBI SC:** Continue. Paragraph 39.

**ADV CHAUKE:** Paragraph 39:

“It is important to note that the above findings do not amount to a finding that Mr Booysen is not guilty of the offences set out in counts 1 and 2 and 8 to 12.

That can only be decided by way of a criminal trial. Setting aside the

authorisations and decisions to prosecute also does not mean that fresh

20 authorisations cannot be issued or fresh decisions taken to prosecute if there is

a rational basis for this decisions.”

**ADV NGCUKAITOBI SC:** Yes. No, I mean this paragraphs, what do they tell you about the claim that the judgment of Govind J has put paid to this case?

**ADV CHAUKE:** No, no, those assertions are incorrect. They are based on a particular narrative that has been developed.

**ADV NGCUKAITOBI SC:** Yes. You see, because the reason why I am asking you this is because even your colleagues, Mr de Kock, Ms Tenga, Ms Riley and Mr Mamabolo, still understood this in their own, well, I mean we do not know if Ms Riley and Ms Tenga actually participated in this, because they did not sign it.

**ADV CHAUKE:** Yes.

10 **ADV NGCUKAITOBI SC:** It is signed by two out of four, which is itself questionable. But assuming they did, they still understood the judgment to mean that it is necessary for the statements in the docket to be signed by the potential witnesses. Even Advocate Batohi when she testified here, still understood this judgment to say that it requires signed sworn statements in the docket. Now you have just read for us paragraph 38. What does it say on that point?

**ADV CHAUKE:** It says it is not necessary for the statements to be signed or to be sworn in.

20 **ADV NGCUKAITOBI SC:** So the statements you got specifically from Mr Danikas ...[intervenes].

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Which was not signed, signed only later in 2014.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** What is the admissibility status of that statement?

**ADV CHAUKE:** In terms of the judgment and in terms of the law those statements are admissible for the issue, authorisation of the POCA racketeering certificate.

**ADV NGCUKAITOBI SC:** Yes, I understand. Now then there is another judgment which again we need to go to, because it has not been referenced by the NPA, but it explains the judgment of Judge Govind, J and which you refer to at  
10 paragraph 60 of your statement.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Now this is the judgment of the General Council of the Bar of South Africa versus Jiba and Others, which is in the same section, but at CL00411.

**ADV CHAUKE:** I am there, Chair.

**ADV NGCUKAITOBI SC:** Now if you, I do not know if you remember the facts around this case. What had happened is that Advocate Jiba was facing two proceedings. Proceeding number 1 was a fitness enquiry, similar to what you are going  
20 through.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Proceeding number 2 was a fit and proper enquiry brought by the GCB in the high court.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** This judgment was in respect of

the case brought by the GCB in the high court.

**ADV CHAUKE**: In the high court,, yes.

**ADV NGCUKAITOBI SC**: But it was still the same facts about her affidavit that had been criticized by Judge Govind and whether that criticism would constitute a basis to say she is not fit for office.

**ADV CHAUKE**: Indeed.

**ADV NGCUKAITOBI SC**: Yes. Now, the Judges deal with that extensively, and I want you to go to specifically starting  
10 at paragraph 51, which you will find at CL00421.

**ADV CHAUKE**: I am there, Chair.

**ADV NGCUKAITOBI SC**: Yes. That is where the Judges are explaining what her affidavit is and trying to show that Judge Govind may have been too quick in some of his conclusions.

**ADV CHAUKE**: Ja.

**ADV NGCUKAITOBI SC**: What do they say?

**ADV CHAUKE**: From paragraph 44, Chair?

**ADV NGCUKAITOBI SC**: No, 51.

**ADV CHAUKE**: Oh, 51.

20 **ADV NGCUKAITOBI SC**: Yes, it is CL00421.

**ADV CHAUKE**: Ja, no, I am there.

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

**ADV CHAUKE**: Paragraph 51.

**CHAIRPERSON**: CL?

**ADV NGCUKAITOBI SC**: CL00421, Madam Chair.

**ADV CHAUKE**: Can I proceed, Chair?

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

**ADV CHAUKE**: -:

“Having regard to what is quoted above,  
it does not seem the statement Jiba  
says that they are all statements made  
under oath, is correct.”

**ADV NGCUKAITOBI SC**: Just wait. Wait there. Where does  
that come from, that quoted part, “Jiba says that they are all  
10 statements under oath”?

**ADV CHAUKE**: It come, it is in accordance to what is being  
explained above in paragraph 50.

**ADV NGCUKAITOBI SC**: Which comes from?

**ADV CHAUKE**: Which comes from Jiba's answering affidavit.

**ADV NGCUKAITOBI SC**: No, no, no, that quotation, it says  
it is not correct, right?

**ADV CHAUKE**: Ja.

**ADV NGCUKAITOBI SC**: Does that not come from the  
judgment that we looked at?

20 **ADV CHAUKE**: No, that does come from judgment. It is an  
analysis in respect of the Govind J Judgement.

**ADV NGCUKAITOBI SC**: Precisely.

**ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: Carry on then. So in other words,  
it is saying the findings made in the Govind J Judgement does

not appear to be correct.

**ADV CHAUKE**: Yes, yes.

“Nowhere in Jiba's answering affidavit did she make such a statement, neither did she say any of Annexures NJ2, NJ3, NJ4, and NJ5 were under oath.”

**ADV NGCUKAITOBI SC**: Yes.

**ADV CHAUKE**: Under oath ...[intervenes].

**ADV NGCUKAITOBI SC**: Stop there, okay.

10 **ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: Was that one of the findings in the Govind J Judgement, that she has said that these NJ2, NJ3, NJ4, and NJ5 are under oath?

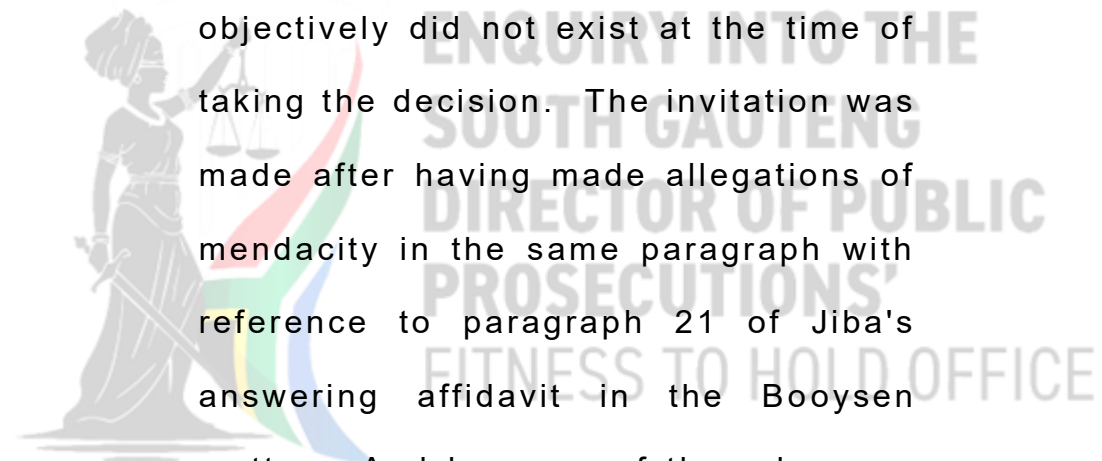
**ADV CHAUKE**: That is what it seems to have been what Govind J would have indicated, that they needed to be under oath.

**ADV NGCUKAITOBI SC**: Yes. Well, we can go through it, but look at paragraph 49 of the judgment you are reading now.

20 **ADV CHAUKE**: Ja. Paragraph 49 reads as follows:

“Before dealing with information placed before Jiba for written authorization in terms of Section 2(1) of POCA, it is important to reflect whether the invitation by Booyesen and the adverse

remarks by Govind J were based on a correct evaluation and understanding of Jiba's answering affidavit. The challenge or invitation by Booysen to Jiba was contained in the replying affidavit and at the risk of prolonging this judgment, I repeat the contents thereof in part. She is invited to explain how she must, she could have taken into account information on oath that objectively did not exist at the time of taking the decision. The invitation was made after having made allegations of mendacity in the same paragraph with reference to paragraph 21 of Jiba's answering affidavit in the Booysen matter. And because of the relevance thereto, paragraph 16.6, 16.7, and 17 of Jiba's answering affidavit, in that case, are repeated hereunder.”



**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** 16.1.

**ADV NGCUKAITOBI SC:** 16.6.

**ADV CHAUKE:** 16.6:

“The information under oath which was

placed before me also indicated that the applicant knew or ought to have known that his subordinates were killing suspects, as aforesaid, instead of arresting them.”

16.7:

10 “The information further revealed that unlawful activities of killing the suspects and or civilians were, in certain instances, motivated by the applicants and members of the unit’s desires to enrich themselves by means of state monetary awards and or certificates for excellent performance. In this regard, I annex the copy of an example of such a monetary award claim document as NJ1, in which, *inter alia*, the appellant is recommended for such an award resulting from the death of suspects.”

20 Paragraph 17.

“Particular references made in this regard to the statement made by Colonel ...[indistinct] Mr Aris Danikas, and Mr Ndlondlo, from which it is apparent that the applicant is well aware

of the information that the respondents have in their possession relating to the murder of at least 28 people and the monetary and non-monetary awards claimed by him, the applicant, for the instrumental part that he played in these crimes. Additionally, Mr Danikas has revealed some of the information that he has provided to the respondents and to the press and even posted video footage thereof on YouTube. I annex copies of this statement as NJ12, NJ13, NJ14, and NJ15 respectively.”

**ADV NGCUKAITOBI SC:** Yes, now, if you just stop there. I mean, you have seen here the Judges go back to the underlying pleadings in the case that was before Govind J.

**ADV CHAUKE:** Govind J, yes.

**ADV NGCUKAITOBI SC:** And they say, look, our job is to evaluate whether the allegations of mendacity that were made in that judgment are supported by the underlying evidence.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** And then they quote the underlying evidence in extenso.

**ADV CHAUKE:** Indeed.

**ADV NGCUKAITOBI SC:** Then they analyse it from paragraph 51.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** First thing they say, that Jiba never said that all of the statements she relied on were under oath.

**ADV CHAUKE:** Indeed.

**ADV NGCUKAITOBI SC:** And you have seen paragraph 16.6, 16.7, and paragraph 17. Is that consistent with paragraph 51?

10 **ADV CHAUKE:** No. In fact, it is to the extent that it is explaining that Jiba's assertion, it is, what the full court is saying is Jiba is consistent in respect of what is being alleged.

**ADV NGCUKAITOBI SC:** Yes. Yes. But also specifically, she has never, you remember the criticism in the judgment of Govind J?

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Is that you have said that you have relied on information under oath.

20 **ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** When in fact you have statements that are unsigned.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** And the Judges here are saying, she never said she relied on information under oath.

**ADV CHAUKE:** Indeed.

**ADV NGCUKAITOBI SC:** She said she relied on information.

**ADV CHAUKE:** Information.

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Now, I know this is not a case against Advocate Jiba, but she was condemned wrongfully and ultimately lost her job in the NPA.

**ADV CHAUKE:** That was my view then, and it is still my view  
10 now.

**ADV NGCUKAITOBI SC:** Yes. Then it continues there that  
it says:

“Under oath statements or information  
was made only in paragraph 16 and 16.6  
of the answering affidavit.”

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** -:

20 “Without suggesting that all of the annexures referred to in paragraph 17 of the answering affidavit in the Booyesen matter were made under oath, now, that is why the Judges are explaining that there is a difference between where she says I have relied on statements under oath and where she

says I have relied on information.”

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Then it continues, the final sentence:

10 “Therefore, the statement, the document referred to as a statement by Mr Danikas, Annexure NJ3, is not a sworn statement. As stated in paragraph 31 of Govind J's judgment, has to be seen in context insofar as it was understood that Jiba averred that NJ3 was a sworn statement.”

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** -:

20 “The truth is she never said NJ3 was a sworn statement and it could not reasonably have been so inferred, particularly reading in context paragraph 16.7 of her answering affidavit in the Booysen case quoted in paragraph 50 above.”

You see that?

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now you see, if you remember, when we were in this case, Advocate Batohi

repeatedly said Mr Chauke is complicit in the falsehoods that were told by ...[intervenes].

**ADV CHAUKE**: Advocate Jiba.

**ADV NGCUKAITOBI SC**: Advocate Jiba.

**ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: Now, yes, thank you. My junior has pointed this out. In Advocate Batohi's statement, if you have it in front of you.

**ADV CHAUKE**: Yes.

10 **ADV NGCUKAITOBI SC**: Paragraph 180.8.

**ADV CHAUKE**: Yes.

**CHAIRPERSON**: Paragraph 80?

**ADV NGCUKAITOBI SC**: 180.8, Madam Chair.

**CHAIRPERSON**: 180.8.

**ADV NGCUKAITOBI SC**: 180.8, yes. Do you have that?

**ADV CHAUKE**: I have that. It is on page 76 of the statement.

**ADV NGCUKAITOBI SC**: Yes.

**ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: It says:

20                    “There is *prima facie* evidence that Advocate Chauke was complicit in the fraud and perjury charges levelled against Jiba.”

                  You see that?

**ADV CHAUKE**: I see that, yes.

**ADV NGCUKAITOBI SC:** Now, why are you complicit? Because you signed a confirmatory affidavit to this affidavit.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Yes. And that you provided Mr Hodes SC, and Ms Manaka with the statements that were attached to the answering affidavit.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** And therefore, you are allegedly complicit in the fraud and perjury charges. Before we go back  
10 to the judgment, what became of those charges of fraud and perjury that were levelled against Advocate Jiba?

**ADV CHAUKE:** I have got no clue. I thought I was also going to be charged as an accomplice or something like that, but I literally do not know their status as at present.

**ADV NGCUKAITOBI SC:** Well, they were presented to Advocate Ivy Tenga.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Who issued a *nolle prosequi*.

**ADV CHAUKE:** Yes.

20 **ADV NGCUKAITOBI SC:** And refused to prosecute.

**ADV CHAUKE:** Yes, I remember, and I think even to the DPP of North West, JJ Smith.

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** He also was given to decide on that matter.

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** Which, by the way, was outside of their jurisdictions.

**ADV NGCUKAITOBI SC:** Yes, well, Advocate Ivy Tenga said no basis.

**ADV CHAUKE:** Ja.

**ADV NGCUKAITOBI SC:** Now the reason why that is important is because Advocate Batohi knows about that.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** When she is still accusing you of  
10 complicity in a non-charge. So, if you go to 377 of your statement.

**ADV CHAUKE:** I am there, Chair.

**ADV NGCUKAITOBI SC:** Yes, what do you say there?

**ADV CHAUKE:** -:

“The difficulty with Advocate Batohi's allegations compounded by a further material fact which her affidavit does not disclose. The allegations of fraud and perjury against Jiba were in fact referred for prosecutorial consideration. The matter was considered by Advocate Ivy Tenga, the Director of Public Prosecutions for Limpopo who declined to prosecute.”

20

**ADV NGCUKAITOBI SC:** And it is here, the actual decision

is referenced at B02199.

**ADV CHAUKE:** Ja.

**ADV NGCUKAITOBI SC:** So, go to B02199.

**ADV CHAUKE:** B?

**ADV NGCUKAITOBI SC:** B02199, which is B, sorry, I am also trying to work that out. It is B9.

**ADV CHAUKE:** You said B00?

**ADV NGCUKAITOBI SC:** 219.

**ADV CHAUKE:** 219.

10 **ADV NGCUKAITOBI SC:** 199.

**ADV CHAUKE:** 2199?

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** I am there, Chair.

**ADV NGCUKAITOBI SC:** Yes, I just need to find it as well. Yes, so if you are at B02199, it is ...[intervenes].

**ADV CHAUKE:** I am there, Chair.

**ADV NGCUKAITOBI SC:** is a decision by Advocate Tenga to Advocate Abrahams dated the 13<sup>th</sup> of August 2015:

20 “S versus Nomgcobo Jiba, Silverton CAS 622/10/2014. The case has to be dealt with in terms of Part A, prosecution of certain categories of persons, NPA policy directives, paragraph 6C. I decline to prosecute Advocate Nomgcobo Jiba in all the

charges preferred against her. Reasons for my decision are fully contained in my opinion.”

Now, the reason I ask you this is because you are now accused in paragraph 180.8 by Advocate Batohi of complicity in an offence that she knows was *nolle prosequi* by Advocate Tenga.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** How do you explain that?

10 **ADV CHAUKE:** The desperation with the narrative that she will find favour in respect of that I am guilty of some conduct, or that that is what is at play, Chair.

**ADV NGCUKAITOBI SC:** And she does so in circumstances where she does not take the panel into confidence and explain that I actually know that in 2015 this was *nolle prosequi*.

**ADV CHAUKE:** Indeed.

**ADV NGCUKAITOBI SC:** Yes. Now, we then go back to the underlying analysis by the judgment of Judge Legodi. So we  
20 have dealt with paragraph 50, 51. Then in 52, he deals specifically with the claim of mendacity.

**ADV CHAUKE:** Ja, I am there, Chair.

**ADV NGCUKAITOBI SC:** 52 ...[intervenes].

**ADV CHAUKE:** 52 says the fact that ...[incomplete].

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

**ADV CHAUKE:** 52 says:

10 “The fact that Jiba did not avail herself  
of the invitation to deal with the  
allegation of being mendacious,  
meaning not telling the truth, should  
also be seen in context. The allegations  
was made in the replying affidavit. This  
too, Govind J was mindful of. For the  
purpose of this proceedings, the  
criticism by Govind J should be seen in  
the context of what Jiba now has to say  
in this proceedings.”

Paragraph 53:

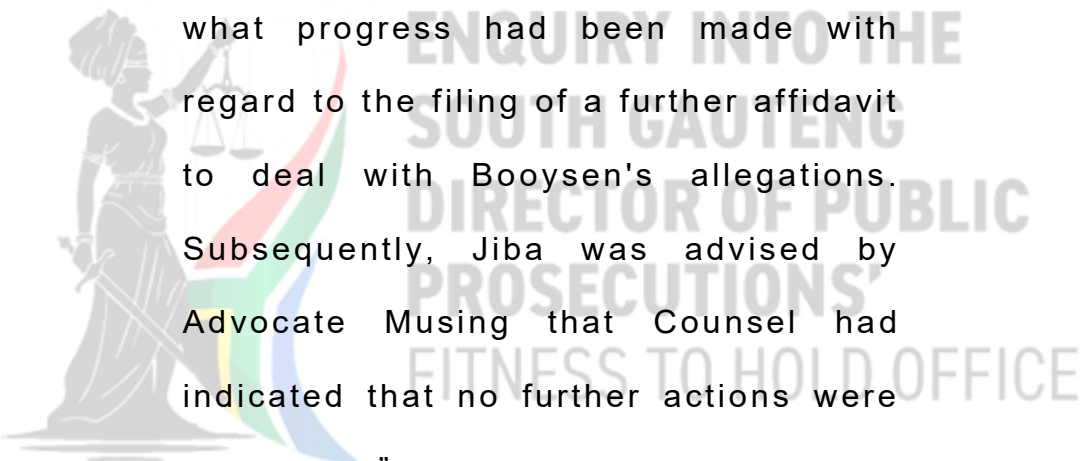
20 “When it was discovered that Booysen  
had raised certain issues in his replying  
affidavit, the prosecution team felt that  
it needed to respond thereto. On 14  
August 2013, a meeting of the  
prosecution team was held. Subsequent  
to the meeting, a memorandum was  
prepared and forwarded to the defence  
team led by Hodes SC in terms of which  
it was expected that a supplementary  
affidavit will be filed to explain the  
criticism against Jiba with regard to the

annexures. On August 19, 2013, an email by Advocate Musing of the NPA was sent to Advocate Chauke ...”  
[intervenes]

**CHAIRPERSON:** 19 August.

**ADV CHAUKE:** Sorry.

10 “19 August 2013, an email by Advocate Musing of the NPA was sent to Advocate Chauke, Director of Public Prosecutions, Johannesburg, enquiring what progress had been made with regard to the filing of a further affidavit to deal with Booysen's allegations. Subsequently, Jiba was advised by Advocate Musing that Counsel had indicated that no further actions were necessary.”



Paragraph 54.

**ADV NGCUKAITOBI SC:** Yes.

20 **ADV CHAUKE:** -:

“Based on the explanation above, it is clear that Jiba did not ignore the serious allegations of mendacious made by Booysen. By seeking to file a further affidavit to explain the annexures after

the replying affidavit was filed, is a clear indication that she was mindful of the need to explain and correct any inaccuracies created by Booyesen in his replying affidavit. Therefore, the statement, despite this, the invitation by Booyesen was not taken up by the NDPP by way of a request or application to deliver a further affidavit. In response to Booyesen's assertion of mendacity on her part, there is a deafening silence made by Govind J in paragraph 34 of his judgment, ought to be seen in the context of what is explained in paragraph 53 above.”

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Paragraph 55:

“Similarly, the statement that regards the inaccuracies, the NDPP, referring to Jiba, is after all an officer of the court. She must be taken to know how important it is to ensure that an affidavit is entirely accurate, should be seen in the context of what is stated in paragraph 53, but even most importantly, in the context of her

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explanation now offered in the present proceedings.”

**ADV NGCUKAITOBI SC:** Yes, no, thank you. Now, that deals fully with the claims of mendacity, which you are now associated with it.

**ADV CHAUKE:** Indeed.

**ADV NGCUKAITOBI SC:** Directly by Advocate Batohi.

**ADV CHAUKE:** Indeed.

**ADV NGCUKAITOBI SC:** When she does not disclose to the  
10 panel that these findings by the full bench.

**ADV CHAUKE:** Indeed.

**ADV NGCUKAITOBI SC:** Now, then finally, the full bench deals with the question of the case that was presented. You remember that that issue was left open by Judge Govind who said, I do not want to get into it, whether there is a good case or not.

**ADV CHAUKE:** Indeed.

**ADV NGCUKAITOBI SC:** NPA must decide.

**ADV CHAUKE:** Yes.

20 **ADV NGCUKAITOBI SC:** And if it wishes to reissue, it can reissue.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** But on the same facts, another group of Judges came to a somewhat different conclusion, which is set out now at paragraph 57.

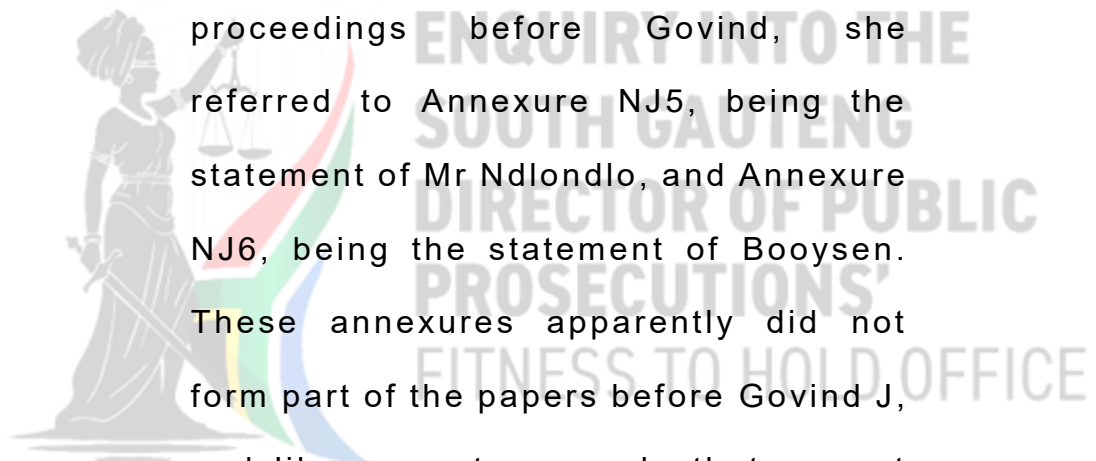
**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Carry on there, what does it say?

**ADV CHAUKE:** Paragraph 57:

10 “At the time Jiba deposed to the answering affidavit in Booyesen's matter, the facts and the evidence against Booyesen had been presented to her on many occasions, and she was acquainted with the case against Booyesen. In her affidavit, during proceedings before Govind, she referred to Annexure NJ5, being the statement of Mr Ndlondlo, and Annexure NJ6, being the statement of Booyesen. These annexures apparently did not form part of the papers before Govind J, and Jiba was not aware why that was not done. I revert to the essence of Annexure NJ5, and NJ6 later when

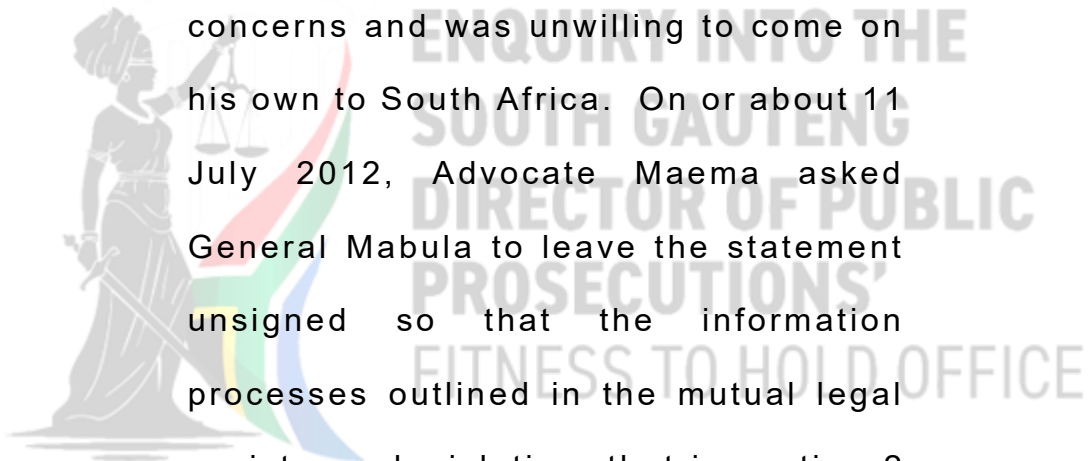
20 dealing with whether Jiba had information implicating Booyesen when she issued the authorization on 17 August 2012. NJ3 was the statement of Ari Danikas, which was obtained round about 18 April 2012 by General Mabula,



who led the Hawks investigation team against Booyesen. The draft statement of Danikas was handed over to the prosecution team during June 2012, and formed part of the information she considered in authorizing the prosecution of Booyesen. Danikas was a police reservist in the Durban Organized Crime unit in Cato Manor, and was at that time in Greece. He had security concerns and was unwilling to come on his own to South Africa. On or about 11 July 2012, Advocate Maema asked General Mabula to leave the statement unsigned so that the information processes outlined in the mutual legal assistance legislation, that is section 2 and 3 of the International Cooperation in Criminal Matters Act, 75 of 1996, be followed to formalize the statement. Although the witness was willing to have it signed at the South African Embassy, the prosecution was confident that the statement would ultimately be signed through the process outlined as

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contemplated in Act 75 of 1996, but it formed the basis of the briefings to be considered by her in issuing the authorization. However, the process of signing the statement could not be finalized since the incumbent, Mr ...[indistinct] at the time of deposing to the answering affidavit in the present proceedings, had instructed to halt the process.”

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Paragraph 58:

“Whilst the statement in question did not relate to the specific incident covered in the indictment, it was, however, intended to corroborate the evidence in possession of the prosecution team that Booyesen was involved in the various activities giving rise to the charges against him of similar fact evidence which is admissible in racketeering prosecutions.”

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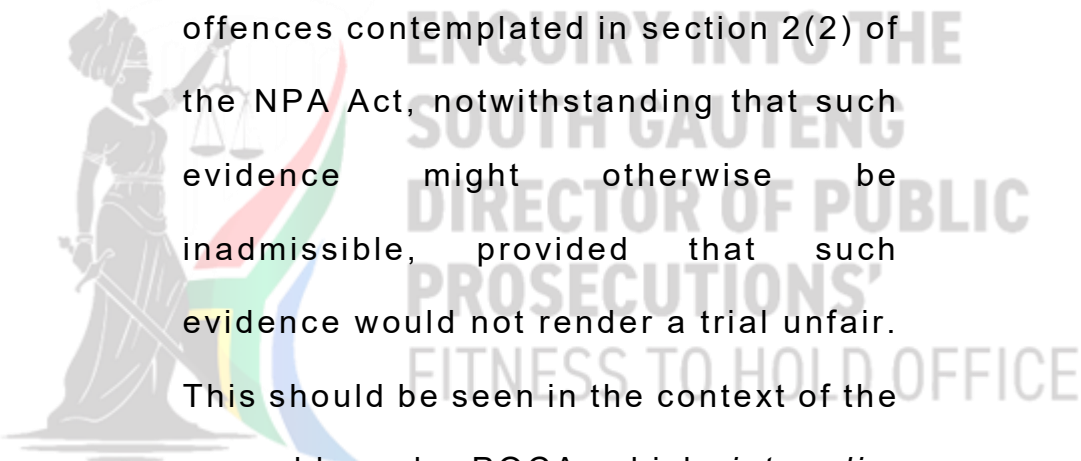
Paragraph 59:

“An explanation ...” [intervenes]

**ADV NGCUKAITOBI SC:** You can skip that. I need you to go to paragraph 62.

**ADV CHAUKE:** Paragraph 62:

“As far as the allegation of lack of information implicating Booyesen is concerned, an understanding of the applicable legal framework that was placed before Jiba and core function of the prosecuting authority is necessary. The court may hear evidence, including evidence with regard to hearsay, similar facts or previous convictions related to offences contemplated in section 2(2) of the NPA Act, notwithstanding that such evidence might otherwise be inadmissible, provided that such evidence would not render a trial unfair. This should be seen in the context of the preamble under POCA, which, *inter alia*, reads.”



**ADV NGCUKAITOBI SC:** Yes, you do not need to read that. It is common ground.

**ADV CHAUKE:** Okay.

**ADV NGCUKAITOBI SC:** Paragraph 63.

**ADV CHAUKE:** Paragraph 63:

“In my view, the provisions of section 2(1)(e) and (f) referred to in paragraph

44 of this judgment are meant for the criminalization of such activities. The point I am making is this. Courts, for the purposes of an exercise of its discretion in terms of section 2(2), referred to in paragraph 62 of this judgment, may rely on hearsay evidence and information and or documentation collected by the police and presented to it by the prosecution. If that is so, and courts are entitled to have regard to hearsay during trial, so should the National Director of Public Prosecution, Jiba and Booysen’s case, be entitled to rely on hearsay and similar fact evidence for the purpose of authorization as contemplated in section 2(4) of POCA. Otherwise, pervasive presence of criminal gangs will continue to rule with impunity and fear in many of our communities and resultantly pose harm to the well-being of many communities.”

Paragraph 64:

“As I said, one needs to be careful not

to be understood as upsetting Govind J's judgment for having reviewed Jiba's decision to prosecute Booysen. That is not an issue before this court. The issue, however, is whether in granting authorization in terms of section 2(4), Jiba was *mala fide* or had ulterior motive, in which event the requirements of fit and proper person to remain on the role of advocates becomes relevant.”

10

**ADV NGCUKAITOBI SC:** Okay, you can skip those until, start at paragraph 66 again.

**ADV CHAUKE:** -:

“The essence of the information before Jiba can be summed up as follows. In addition to what is stated in paragraph 56 to 57 and 60 of this judgment, Booysen was the head of the Cato Manor Organized Crime unit in South African Police Services. Members of the police in this unit and under his command had allegedly committed crimes of a serious nature, including murders against suspects who were sometimes framed in the commission of

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offences. Booyesen knew, approved, and ought to have known of the commission of these offences. As a reward for the members' unlawful activities ...”  
[intervenes]

**ADV NGCUKAITOBI SC:** Could you just stop there for a moment. You know, this paragraph 66 is a critical summary.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** It says this is the information that  
10 was before Advocate Jiba, in other words, before the NDPP and the prosecutors.

**ADV CHAUKE:** Indeed.

**ADV NGCUKAITOBI SC:** Just repeat what it says about Booyesen. It says, Booyesen what?

**ADV CHAUKE:** Let me just start here.

“Booyesen was the head of the Cato  
Manor Organized Crime unit in the  
South African Police Services.  
Members of the police in his unit and  
20 under his command had allegedly committed crimes of a serious nature, including murders against suspects who were sometimes framed in the commission of offences. Booyesen knew, approved, and ought to have known of

the commission of these offences. As a reward for members' unlawful activities, Booyesen motivated for an incentive of 10,000 for each of the 26 members of the Cato Manor crime unit, including Booyesen himself. Booyesen was also commended for outstanding services rendered in that he was part of a team who through their commitment and dedication arrested several crime and dangerous suspects for the murder of a police officer.”

**ADV NGCUKAITOBI SC:** Now, you just stop there. You see, this is the full bench has already made a finding.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** That the information that you had in front of you ...[intervenes].

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Showed that Booyesen knew, approved, or ought to have known about the commission of the offences.

**ADV CHAUKE:** Indeed.

**ADV NGCUKAITOBI SC:** That there were a number of offences committed by this unit when Booyesen was at the head, Mr Booyesen was at the head of it.

**ADV CHAUKE:** Indeed.

**ADV NGCUKAITOBI SC:** It could not be clearer. Now, you have a scenario here that Advocate Batohi is now asking this panel to reappraise whether there was information or not, because the charge is no evidence.

**ADV CHAUKE:** Indeed.

**ADV NGCUKAITOBI SC:** This is the second time where they are asking the panel to overturn a court.

**ADV CHAUKE:** Indeed.

10 **ADV NGCUKAITOBI SC:** Can you explain how this, we found ourselves in this situation? There is a rule of law in this country. The courts are supreme.

**ADV CHAUKE:** The state capture narrative, Chair.

**ADV NGCUKAITOBI SC:** Okay, so you cannot explain it.

**ADV CHAUKE:** That has been sung and the NDPP herself was here singing state capture until you had to ask whether Chauke is involved in the state capture and said no, there is no evidence to that effect.

20 **ADV NGCUKAITOBI SC:** Yes, yes, yes. Now, this is how they then concluded in paragraph 67, that given the information we have summarized was in front of you, that shows all of these elements, somebody is a leader, people are committing crimes, is motivating for them to be paid, he himself knows or ought to have known about the commission of these offences. So given all of that, we cannot find that

your decision is based on an ulterior motive. Now we have you also being charged of the same thing, that you have prosecuted someone without evidence. But a Judge has spoken on this.

**ADV CHAUKE**: Indeed.

**ADV NGCUKAITOBI SC**: Yes. Now, we have covered then in your statement ...[intervenes].

**MS RAMAGAGA**: Before you proceed to there, I think you are going to the next topic.

10 **ADV NGCUKAITOBI SC**: Yes, I am.

**MS RAMAGAGA**: Okay, thank you. Advocate Chauke, can you just maybe enlighten us about the question of whether, you will remember, in fact, let me rephrase. There is a time when evidence was led, especially about the judgment of Govind J, that in his judgment, he had indicated that there are concessions that Advocate Hodes had made.

**ADV CHAUKE**: Yes.

**MS RAMAGAGA**: And outside court, this became a dispute, because he said there are no concessions that had been  
20 made, and the court erred by alleging that he had made concessions. The question I would like to ask you is whether these corrections that were made by the full bench, do they, in some way or the other, also touch on the concessions that were, according to the Judge, made by Advocate Hodes?

**ADV CHAUKE**: Not in a specific way, Chair, but at the time,

and that is the Advocate Lawrence Hodes SC felt very strongly about that, and even when he made an advice that this judgment should be appealed, because he felt strongly that he did not make any such concession.

**MS RAMAGAGA:** Ja, I understand, that is why I said there was a dispute. I understand that he said there were no concessions that he made.

**ADV CHAUKE:** Ja.

**MS RAMAGAGA:** And I also understand that there was  
10 initially a desire to appeal the case, but then ultimately, a decision was that but it is not necessary, because Judge Govind had not closed the door ...[intervenes].

**ADV CHAUKE:** The door.

**MS RAMAGAGA:** To the NPA pursuing the matter further.

**ADV CHAUKE:** The matter.

**MS RAMAGAGA:** So all I just wanted to know is whether, not necessarily the entire corrections that were made, but whether there are elements in the corrections that were made that also have some relation to the concessions.

20 **ADV CHAUKE:** Indeed. If one reads the passages that I have just read to you, Chair, which indicated about whether there was evidence or not, whether there was evidence of racketeering, that, because the concession, as it was said then, was said that Hodes SC considered that there was no specific evidence to relate to racketeering.

**MS RAMAGAGA:** Thank you. Thank you.

**ADV NGCUKAITOBI SC:** Thank you, Madam Ramagaga. In fact, Mr Chauke, let us actually answer the question directly. The alleged concession was that there was no evidence from the statements implicating Mr Booysen.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** That was the alleged concession.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Now, when you understand the  
10 concession in those terms, we can go back, because the whole thing is dealt with fully in the statement by Advocate Sean Abrahams.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** I think it is in bundle 3 of the cross-examination bundle.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Now, if you accept that this, the concession is there is no evidence from the sworn statements, from the statements, rather, implicating Major  
20 General Booysen.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Now, the corrections that were made by the full bench, do they address that or not?

**ADV CHAUKE:** They do, yes.

**ADV NGCUKAITOBI SC:** Now, yes, so we can, we have now

covered right up to paragraph, sorry, page 22, so that has been four pages. Then you have a constitutional and legal framework that goes on for three pages and then, we do not have to go there. You have already started to deal with your role as the Director of Public Prosecutions.

**ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: And you addressed the question that the Chair had asked, that this was a POCA prosecution, which falls under the purview of the national head of the  
10 prosecution service.

**ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: So we can skip that. Then we deal from page 28 with the Cato Manor and the Booyesen prosecution. Yes, I mean, maybe you can just, because we have heard so much about this, but you know, just summarize your involvement, how you got involved, etcetera.

**CHAIRPERSON**: Before he does that, Counsel, going back to the critical paragraph 66 of the full court, we know that Advocate Batohi did not read the dockets. She said so.

20 **ADV NGCUKAITOBI SC**: Yes.

**CHAIRPERSON**: Had she read at least the paragraph 66 and other paragraphs that are critical in this judgment, would she have come to the same conclusions to refer the matter to the President?

**ADV CHAUKE**: Objectively, I would say no, but what I know

now is she was hell-bend to make the recommendation anyway.

**CHAIRPERSON:** But not only that, had she read the affidavit of Advocate Jiba, who was seized with the powers to authorize the racketeering, she could only do that on the basis of the information in the indictment, in the dockets.

**ADV CHAUKE:** Indeed, not even only Advocate Jiba, even Advocate Sean Abrahams.

**CHAIRPERSON:** Had she read those affidavits, which were  
10 part of the court papers, would she not have thought otherwise?

**ADV CHAUKE:** Objectively, one would have thought ...[intervenes].

**CHAIRPERSON:** I know it is unfair to ask you this question.

**ADV CHAUKE:** No, no, I understand, Chair. Objectively, one would have expected her to have reconsidered the position. But remember, as I say, the narrative was out there, that this is what is, this was, she said a state capture and all sort of things ...[indistinct]. My understanding that she was  
20 looking for every reason to be able to fit into the narrative.

**ADV NGCUKAITOBI SC:** Yes, I suppose, Mr Chauke, the question really is, an NDPP acting reasonably, if they had read this, would they have proceeded? I know there is a lot of subjective views about this.

**ADV CHAUKE:** Ja, that is why I am saying, Chair, that

objectively, one would have expected her to have reconsidered in her position, to have reconsidered the position that she had taken.

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

**CHAIRPERSON:** Yes, thank you.

**ADV NGCUKAITOBI SC:** Thank you.

**ADV CHAUKE:** Thank you, Chair.

**ADV NGCUKAITOBI SC:** Yes, so I was saying that when we start at paragraph, at page 28, rather, take into account that  
10 you know, for three months, we have had a lot of evidence about Cato Manor, but what we just need is a narrower issue about your own personal involvement. So you can just take us through that.

**ADV CHAUKE:** As I indicated, in my coordination role, obviously, when the ...[intervenes].

**ADV NGCUKAITOBI SC:** No, no, I think what I need is for you to say, look, in 2012, I was phoned by Advocate Jiba. He said, there is a big case, please get involved, etcetera.

**ADV CHAUKE:** Ja. On the 8<sup>th</sup> of March 2012, Advocate Jiba  
20 called me to say, look, there is a situation, we have got a situation where there is a case in KZN where the suspects are the members of the South African Police Services who have worked closely with the suspects and the prosecutors, and then there is a request that prosecutors from outside the province should be deployed to look into these matters, can

you please arrange to get me the prosecutors from your office who will be deployed to KZN to look into these cases with the members of the DPCI and the IPID.

I accepted the request and indicated to her that I will do so. And then she said, there was a request that at the following day, I think the 9<sup>th</sup>, that I should put together those prosecution team to meet with her in her office for the briefing. And indeed, the following day, on the 9<sup>th</sup> of March 2012, as appears from my statement, where I had identified  
10 Advocate Raymond Mathenjwa, who was a deputy in my office, and Advocate Jabulani Mlotshwa who was a senior state advocate, and Advocate Ntlakaza, who was also a senior state advocate in my office. We proceeded to the meeting with Advocate Jiba, where we met with even police, I think Mabula and others.

Then there was a discussion, then Advocate Jiba, indicated that the leader of this prosecution team would be Advocate Maema, but he has got some commitment, he will join later, after finalizing the issues with his DPP, JJ Smith.

20 **ADV NGCUKAITOBI SC:** So that is dealt with at paragraphs 108, 109, and 110 of your statement, page 631.

**ADV CHAUKE:** Ja, and then in the same breath, she remarked that the prosecution team is too male-dominated, we should be in a position to get female advocates there, and that is what ...[intervenes].

**ADV NGCUKAITOBI SC:** Who had put this prosecution team together, yourself?

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Is that why it was male-dominated?

**ADV CHAUKE:** Probably, in hindsight, I thought traveling to KZN is dangerous ...[indistinct] I did not want to expose females.

**ADV NGCUKAITOBI SC:** I am sure you did not.

**ADV CHAUKE:** Ja.

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

**ADV CHAUKE:** So that is when I also nominated Advocate ...[indistinct] and Advocate Patience Moleko to form part of the prosecution team.

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** And then the prosecution team now ...[intervenes].

**ADV NGCUKAITOBI SC:** So just before you go there, because I want you to explain to the panel what was explained to be your role, because we know the role of  
20 Advocate Maema. Why? Because it was set out in a memorandum. You are there, you are to prosecute, you are going to defend any reviews, you are going to institute any appeals, you are going to defend any appeals, because the terms of reference are there. But you are not part of the prosecution team.

**ADV CHAUKE:** Ja.

**ADV NGCUKAITOBI SC:** You are coming in to play a coordinating role. And you know the evidence leaders, they repeatedly say there is a section in the act that talks about coordination, and it gives that role to the DPP of the province. Now, here you are doing this job on behalf of the ...[intervenes].

**ADV CHAUKE:** NDPP.

**ADV NGCUKAITOBI SC:** NDPP.

10 **ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** All right, carry on. Just explain that discussion, how it happened.

**ADV CHAUKE:** So, the discussion was that once I was told, and I accepted it, that they said the DPP in KZN and the prosecutors, they are working close relationship, and that is how they accepted. Then she indicated that my role would be doing the coordinating role and support to the prosecution team in terms of logistics and everything associated with their activities of prosecutions and that.

20 Now, that to me included the supervisory of them, their activities, which excluded that I cannot make decisions whether or not to prosecute in respect of these cases, because they fall under the jurisdiction of the DPP in KZN and she was not going to issue me with that delegation, because it was not necessary. The prosecution team is the

one that is going to handle that.

But there is a suspicion that probably this is, this being POCA, the decision that is going to ultimately be made, it will be made by her anyway.

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** So, I understood that ...[intervenes].

**ADV NGCUKAITOBI SC:** Well, I understand the issue of POCA. I suppose at the time, there are two considerations. One, there is POCA.

10 **ADV CHAUKE:** Ja.

**ADV NGCUKAITOBI SC:** Which is exclusively national, but there are also all of these other subsidiary offences, which are provincial.

**ADV CHAUKE:** Yes. Ja, that the prosecution team, especially under the leadership of Maema will make decisions whether or not to prosecute those cases in KZN. I understood and I was conscious about that that I should not find myself

being, make decisions which, if they are reviewed and they are like, I might not, they are not, they will be sustainable,  
20 because I did not have been given that specific delegation.

Like, in most cases that once a case is ...[indistinct] by the DPP is being sent, and then the specific request from the NDPP to say, here is the docket from another division, you are hereby appointed to decide it. That did not happen.

**ADV NGCUKAITOBI SC:** Yes. So, to try and explain this

role that you are playing, which is coordinating advisory, were you doing this on behalf of Advocate Jiba?

**ADV CHAUKE**: Indeed.

**ADV NGCUKAITOBI SC**: Because the other option could have been for Advocate Jiba to do it herself.

**ADV CHAUKE**: Of course. Or to get any other DPP and like, and if DPP Mlotshwa was comfortable that these things of a close working relationship with the Cato Manor team was something that was comfortable, could do that, that is, my  
10 understanding will be, it will have been not necessary for me to be roped in to coordinate the activities of the team.

**ADV NGCUKAITOBI SC**: Yes, but I mean, on the assumption of what I have put to you, that she has the option of doing it herself or asking someone else, because this is exclusive jurisdiction.

**ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: I mean, what would be the impact of that on the office of the NDPP?

**ADV CHAUKE**: Well, the NDPP, there is no way that she will  
20 be in a position to coordinate things in Durban without having to go to Durban and attend meetings, some of the briefings and all sorts of things and the like. And given the nature of the office, that you are running the whole of South Africa, you are not only running a specific division, it is untenable, it will not be possible.

**ADV NGCUKAITOBI SC:** The office will just grind to a halt.

**ADV CHAUKE:** Of course.

**ADV NGCUKAITOBI SC:** Now, earlier you said, this is actually not unique.

**ADV CHAUKE:** Ja.

**ADV NGCUKAITOBI SC:** Even Advocate Batohi, when she had to deal with this case, she asked someone from, a DPP from Western Cape.

**ADV CHAUKE:** Western Cape and a DPP from Limpopo.

10 **ADV NGCUKAITOBI SC:** Yes, who said, look, help me with finding out whether to continue with this case or withdraw it.

**ADV CHAUKE:** Ja.

**ADV NGCUKAITOBI SC:** Yes. Now, is there a reason why, and I know it is unfair to ask you, because, you know, it is unclear to me what they say you should have done in ...[intervenes].

**ADV CHAUKE:** I should have refused.

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** That is my understanding, is that  
20 ...[intervenes].

**CHAIRPERSON:** Counsel has not finished asking the question.

**ADV CHAUKE:** Sorry, sorry.

**ADV NGCUKAITOBI SC:** Yes, because if you look at the, I think it is the opinion by Advocate Hulley, who says, the fact

that you have been asked by the NDPP does not exonerate you of your own responsibility and analysis of the law in order to know the scope of your powers.

**ADV CHAUKE:** Indeed.

**ADV NGCUKAITOBI SC:** Now that is what I need you to respond to, so I am thankful to the Chair for having assisted me to get my question out.

**ADV CHAUKE:** As I say, Chair, my understanding of the NPA Act and the powers of the NDPP, I have got a different  
10 understanding from what the opinions and them, Advocate Shamila Batohi was saying that it is not incumbent, the NDPP cannot delegate another DPP to do work of a case from another division. I beg to differ, but that probably I should, because I am a witness, I should leave to the evidence leaders and yourself to, to ...[intervenes].

**ADV NGCUKAITOBI SC:** No, no, I think the question I am asking you is this. Bearing in mind that you are dealing with a crime that is within the exclusive preserve of the NDPP, and the NDPP comes to you and says, Mr Chauke, I need you  
20 to go and coordinate this on my behalf in KZN, I just do not have the time for it, and you must come and report to me on a regular basis what is going on.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now, is the expectation of you that you should read the act and say, I am sorry, Madam

NDPP, this is outside of your powers? I suppose that that would be a fair expectation.

**ADV CHAUKE**: That is how I understood it, that this seemed to be what was being expected of me to have done.

**ADV NGCUKAITOBI SC**: Yes.

**ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: But that is the point I am asking, is that what would be the outcome of that exercise on these facts? You would still come to the conclusion that it was  
10 lawful?

**ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: Yes, thank you. Now, you have addressed here ...[intervenes].

**MS RAMAGAGA**: [Indistinct]... [microphone off].

**ADV NGCUKAITOBI SC**: Yes.

**MS RAMAGAGA**: May I. Advocate Chauke, I am actually really trying to understand this issue here, the NDPP's exclusive powers, especially in relation to the racketeering, issuance of the certificates and institution of the action. Now,  
20 there may be other cases where such applies. We see the issue of issuance of the certificates of institution of the action in respect of transgressions of these laws, lies with the NDPP.

What I will request you to assist us with is, ordinarily, what is the norm? If the matters, the crime is committed in a

particular jurisdiction, and the matters are to be tried even in that jurisdiction, when the NDPP seeks for, or identifies the DPP that should deal with that matter, is the NDPP entitled to choose from any of the DPP's, or is the NDPP entitled to appoint the Director of Public Prosecutions of a particular or the affected area?

**ADV CHAUKE:** My understanding is that the DPP of the particular area should take responsibility for those matters.

**MS RAMAGAGA:** Right, thank you. And that would also  
10 include even motivations for application for the certificates of racketeering.

**ADV CHAUKE:** Yes.

**MS RAMAGAGA:** Now, let us talk about this case in particular. We understand the record says you were acting as the, just the coordinator.

**ADV CHAUKE:** Yes.

**MS RAMAGAGA:** You were playing that role of the coordinator. And maybe the relevant period is the period where it was Advocate Mlotshwa who was the acting then  
20 ...[intervenes].

**ADV CHAUKE:** DPP.

**MS RAMAGAGA:** And then it is Advocate Noko who was acting at some point and then became the permanent appointee for the position. In her evidence, Advocate Noko says that in or around August 2012 ...[intervenes].

**ADV CHAUKE:** 2012.

**MS RAMAGAGA:** Yes, you called her, inviting her to accompany you to the Judge President of KwaZulu-Natal to go and make certain arrangements regarding the bail application. You remember that?

**ADV CHAUKE:** Yes.

**MS RAMAGAGA:** Yes. Now, what caught my attention is that she says, you invited her to accompany you. And ja, well, you did then go to the Judge President to see him and  
10 make arrangements. But then the Judge President then said he could only attend to the matter, even if it is not exactly that, upon receipt of a letter written on the letterhead of the KwaZulu-Natal Director of Public Prosecutions. Do you know as to why it is that the Judge President made that request?

**ADV CHAUKE:** My understanding is that the authority to indict and appear in the high court in KZN rest with the DPP of KZN. Now, what has happened is I had to brief Advocate Noko, because she had just come in and then the following day, that is when we had to meet with the Judge President.  
20 So I had to brief her to say this is what is happening so that she is on the loop and then me going with her to the Judge President.

**MS RAMAGAGA:** Now, you will remember that during questioning of Advocate Noko, I think it was by Advocate Mtsweni so, but during the questioning, amongst others, she

was asked a question as to whether does she see making arrangements with the Judge President, especially with regards to the bail application, whether Advocate Noko would see that as an exercise of prosecutorial powers or anything else, and she said, making that arrangement constitutes, according to her, of course, constitute exercise of prosecutorial powers, and it was left at that.

Now, you are in, you are now here as a witness and I think it will assist for you to clarify that issue as to whether  
10 you agree with Advocate Noko's understanding or you have a different understanding, and if you do, what is your understanding with regards to just exercising that power or undertaking that duty to arrange, to make arrangements with the Judge President.

**ADV CHAUKE:** Ja.

**MS RAMAGAGA:** Thank you.

**ADV CHAUKE:** My understanding is that that prosecutorial power is not a decision-making power. It is an arrangement for the matter to say it is going to be enrolled, and that it is  
20 not a decision whether to prosecute or not. That is how I understand it.

**MS RAMAGAGA:** Okay, ja, so what you are saying, because I have got to understand you, is that, well, it is a prosecutorial power, but it is not a decision-making power.

**ADV CHAUKE:** Yes.

**MS RAMAGAGA:** Right, thank you. Another thing that I would like to ask is about, I am looking at the time lapse, né, that Advocate Noko was appointed in or around the 14<sup>th</sup> of July 2012, to act, to succeed Advocate ...[intervenes].

**ADV CHAUKE:** The 9<sup>th</sup>.

**MS RAMAGAGA:** Mlotshwa. Ja, okay, on the 9<sup>th</sup>. The record says the 12<sup>th</sup>. Thank you for the correction. On the 9<sup>th</sup>, and in her evidence, when she testified, she also said that after, or around the time when the meeting was arranged, 10 né, that is when she became aware of the Cato Manor matters, and that there were about 23 dockets involved therein. I think that can be found in paragraphs 39 to 40 of her evidence. We will check that. But do you remember that as you are sitting there?

**ADV CHAUKE:** I remember, my recollection is that I had to brief her before we met with the Judge President and that is where she would have got all the background about the cases and what the case is all about.

**MS RAMAGAGA:** Well, I think I will take you, maybe, well, 20 I do not have time today, to the statement. It does not suggest that, but nevertheless, what it suggests is that there was a communication that you did correspondingly, and possibly even telephonically to say you will be coming for that, and she should accompany you there to make arrangements. And then she goes on to say, it is at this time

that it came to my attention that the Cato Manor cases, there were about 23 Cato Manor cases and so forth.

Now, the question that I want to ask is, when a person is to take over from another acting prosecutor, in this case, when she, ordinarily, when she takes over from Advocate Mlotshwa, what is the expectation and what is the practice in the National Prosecution's environment? Is there supposed to be a handing over, or a person just, this one, that is the end of the term, and the other one comes in and starts struggling, finding his or her way, or what is the position?

**ADV CHAUKE:** There is a handing over, Chair, and my understanding on record is that Advocate Mlotshwa did a handing over in respect of this specific matter to briefing Advocate Noko.

**MS RAMAGAGA:** And do you know as to whether the, post the arrangement of, with the Judge President as to whether there was then constant communication with Advocate Noko about these matters of the Cato Manor, because the KZN were involved in the Cato Manor cases only.

**ADV CHAUKE:** From how I understand it, the prosecution team led by Maema would be from time to time, if they were to go to KZN, then they will communicate with her. That is how I understood it.

**MS RAMAGAGA:** So at the time when you were then told by

attorney Masana that you should no longer work on the Cato Manor cases, Advocate Noko will then continue with the job, at the time, was it or was it not necessary for you to do the handing over, or had it already been done?

**ADV CHAUKE**: No, the handing over between me and Noko happened as at when the coordination, to say I should stop coordinating, because Noko was not necessarily long, she was new in the division, so the predicament that Advocate Mlotshwa had about the working, close working relationship  
10 with the Cato Manor people, Noko did not have that same thing. So on the basis of that, we spoke, and then from there, she would communicate with Advocate Maema, the team leader.

**MS RAMAGAGA**: Okay, thank you.

**ADV CHAUKE**: Ja.

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

**MS RAMAGAGA**: Thank you.

**ADV NGCUKAITOBI SC**: Thank you, Madam Ramagaga. So where we were, we have dealt with 108, 109, 110, 111, I just  
20 wanted to ask you the, you are now the supervisor and the coordinator of the prosecution team, and there is a legal issue that the evidence leaders wish to raise. I am sure they'll raise it with you extensively, you can discuss it with them.

**ADV CHAUKE**: Ja.

**ADV NGCUKAITOBI SC:** But factually, when the prosecution team would meet, would you attend, what would happen? Or you would attend some meetings and not all?

**ADV CHAUKE:** I would attend some meetings, and some meetings I will not attend between them and the prosecution, especially the meetings which were intended to brief the NDPP. I would always be in attendance in those meetings.

**ADV NGCUKAITOBI SC:** Yes, so it is per invitation, or when you have got something to communicate?

10 **ADV CHAUKE:** When I have got something to communicate. Remember, they will say, this is where we are, and the like, and the NDPP needs to be kept in the loop, because it is a high-profile matter, she need to, once she is being asked by the authorities, she should be in a position to explain progress, to say this is what is happening with this matter.

**ADV NGCUKAITOBI SC:** Yes, all right, thank you. And then, if you turn over the page, there are further meetings that you attend, 3 May 2012, 17 May 2012, 22 May 2012, 24 May 2012, 29 May 2012, 11 June 2012, so clearly May was very busy

20 ...[intervenes].

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Up to June.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Because this is the period when the indictment was being drafted, because the draft

indictment was produced on the 12<sup>th</sup> of June.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Yes, and so how would you describe what was going on in those meetings?

**ADV CHAUKE:** No, I had ...[indistinct] and for me to be able to understand what the case is all about, so that I am able from time to time to brief the NDPP.

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** Yes.

10 **ADV NGCUKAITOBI SC:** Because you know the accusation, you have heard it, is that if you look at the number of meetings that Advocate Chauke attended, it contradicts his claim that he was not involved in the prosecution decision-making, he was merely coordinating. That is really the case that is being made.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** What do you say to that?

**ADV CHAUKE:** No, it is relative, Chair. You cannot be a coordinator and then you are passive, you sit in your office,  
20 you do not really get involved in terms of logistics and understand what these guys are going through, and they are like in terms, as you see, some it is about security, some it is about the stakeholder engagement where they would have these differences with the investigation team or the IPID and the like, so I needed to coordinate and do those kind of

things. And in some of the instances, because of the high-profile nature of the cases, I would attend meetings where there would be, being briefed by the investigation teams and the like.

**ADV NGCUKAITOBI SC:** Yes, and you would also need to know something about the merits of the case.

**ADV CHAUKE:** Of course, ja.

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** I mean, if you are there, if you are a  
10 coordinator, you cannot say, because I am a coordinator, I cannot listen to say, this case is this about, and whatever, and this is what we want to do, and this is the evidence.

**ADV NGCUKAITOBI SC:** You see, this is where I want to really get your comment on. We have a strange scenario in this case of Advocate Batohi saying the only thing she ever read about Cato Manor was the report by Advocate de Kock.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Only thing she ever read. She has got no other reference point other than that report.

20 **ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Yet she has made so many significant decisions of withdrawing a case and recommending to the DPP of KZN that against Mr Booysen, the case must be withdrawn, but the only document she has is that instrument. Now, and I put to her that, look, contrary

to what you have done, Advocate Chauke actually has read the material from the dockets, although he is a coordinator, but he is steeped in the facts. He knows what is going on in the case. Now that is where I want you to tell us what you actually read coming from these dockets.

**ADV CHAUKE**: There is a list that I prepared, Chair. I am not so sure if copies would have been made ...[indistinct].

**ADV NGCUKAITOBI SC**: I thought it had been handed up. It has not been. All right ...[intervenes].

10 **ADV CHAUKE**: Not that I am aware, Chair.

**ADV NGCUKAITOBI SC**: No, no, no, that is fine, do not worry. Perhaps, Madam Chair, could I just ask for leave? It is probably a useful index anyway. It is a list of annexures, and then it is documents considered by Advocate Chauke before the review, post the review, and then in relation to the racketeering, and then it is the documents in relation to the Mdluli matter. Do you have it with you?

**ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: Oh, yes, wonderful, thank you.

20 **ADV CHAUKE**: So what would, I have seen, I have ...[intervenes].

**ADV NGCUKAITOBI SC**: So, what page are you at?

**ADV CHAUKE**: It is page 3 of the document.

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

**ADV CHAUKE**: The first two pages, it is a list of annexures

to the statement, to witness statement.

**ADV NGCUKAITOBI SC:** Sorry, just wait a second, I think the Chair wants to ...[incomplete].

**CHAIRPERSON:** Yes, this list of annexures is just to help us to locate where these documents are.

**ADV CHAUKE:** Yes.

**CHAIRPERSON:** We already have them in this bundle?

**ADV NGCUKAITOBI SC:** Yes, they are already there.

**ADV CHAUKE:** Yes.

10 **ADV NGCUKAITOBI SC:** Yes, they are already there.

**CHAIRPERSON:** Just to help us to locate them.

**ADV NGCUKAITOBI SC:** To locate where they are, yes, Madam Chair. And then, Mr Chauke, you are where now?

**ADV CHAUKE:** No, I was in page 3, where I said the first two pages is the index to the annexures which are part of the statement. So the annexures are there in the statement, but they have not been identified in it.

**ADV NGCUKAITOBI SC:** That is what the Chair wanted to understand.

20 **ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** My question here is this, you have a scenario in which someone in the position of the NDPP says to the panel, the only thing I ever read about this was the de Kock panel, and makes sweeping decisions about what should happen in the future of the prosecution. [Indistinct]...

they never opened the docket or anything that is coming from the docket. And that person also says, Mr Chauke must be charged because in his role as a coordinator or convener or supervisor, he supported the prosecution without evidence.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** This is an extremely serious charge made by someone who only read the de Kock report. Now, when you were there at the time, what documents did you yourself personally consider?

10 **ADV CHAUKE:** That is the one that I am saying on page 3 on that index, I have listed them.

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** Chair, I can read them quickly on the record.

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

**ADV CHAUKE:** Because I would not even be able to brief Jiba about this case if all I do is to have documents without reading them.

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

**ADV CHAUKE:** It is monetary awards ...[intervenes].

20 **ADV BALOYI-MERE SC:** Before you proceed, Advocate Chauke, can we give Advocate Jiba her title? She is Advocate Jiba, and the whole day she is been referred to as Jiba.

**ADV CHAUKE:** I am sorry, I am sorry. My apologies, my sincere apologies. My sincere apologies, Chair.

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

**ADV CHAUKE:** I have listed them under the heading that documents considered by Advocate Chauke in respect of the racketeering charges. The first one is monetary awards for Booyesen and Cato Manor unit.

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** With the reference on the record, filed in the record as B00017 to B0034. And then the second one is High Court application by Bongani Mkize, DC00767, to DC0095.

10 **ADV NGCUKAITOBI SC:** Yes, and that includes its annexures, the whole pleadings and court orders.

**ADV CHAUKE:** [Indistinct]... ja.

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

**ADV CHAUKE:** The third one is meeting on 9<sup>th</sup> March 2012 with the DPCI at NPS head office. Documents considered, email dated 8 March. This is the meeting that, as referred to, I was called on the 8<sup>th</sup>, and on the 9<sup>th</sup> there was a meeting at national office. And then the email that I sent to Jiba, adding the prosecution ...[intervenes].

20 **ADV NGCUKAITOBI SC:** Well, okay, it is Advocate Jiba.

**CHAIRPERSON:** I am not sure whether it is easy when people have been working together as colleagues.

**ADV CHAUKE:** Ja.

**CHAIRPERSON:** For many years.

**ADV CHAUKE:** Ja.

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

**ADV CHAUKE:** I am very sorry, I am very sorry.

**CHAIRPERSON:** You heard us last year, cautioning Advocate Batohi.

**ADV CHAUKE:** Indeed, indeed.

**CHAIRPERSON:** Yes, so ...[incomplete].

**ADV CHAUKE:** My apologies.

**CHAIRPERSON:** You can try, you can try.

**ADV CHAUKE:** Statement of Simphiwe ...[indistinct]

10 Mathonsi.

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** DC001000 to DC001011.

**ADV NGCUKAITOBI SC:** Yes, we looked at that statement extensively two days ago.

**ADV CHAUKE:** Ja. Two days ago, that is the one that I referenced.

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

**ADV CHAUKE:** Prosecution team briefing of 24 May 2012. Documents considered, memorandum dated 23-12-2012  
20 which is on the record as B00459 to B00462. The other one, I accompanied the prosecution team and the investigation team to Melmoth in respect of the Biyela matter. This is the matter which was in the front pages of the newspapers.

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** So I went there, I accompanied the

prosecution team and the investigation team when they went there to see the families and the like. And on the same date, I accompanied the prosecution team and the investigation team to Esikhawini in respect of the Kwazi Ndlovu matter which was also making high waves about a child who was killed while sleeping, sleeping with, and watching soccer.

**ADV NGCUKAITOBI SC:** Yes, and I mean, the people that have withdrawn these cases have not even been to the families.

10 **ADV CHAUKE:** I understand so.

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** Yes.

**CHAIRPERSON:** Advocate Ngcukaitobi, I am going to request that you pause here.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** We said that we will take adjournments after every one and a half hour.

**ADV NGCUKAITOBI SC:** Indeed.

20 **CHAIRPERSON:** I think we can take a longer break for some of you who eat dinner before 6 o'clock, you can maybe go and have a snack. I think 30 minutes will be appropriate.

**ADV NGCUKAITOBI SC:** Thank you.

**CHAIRPERSON:** You remember we said we will work until a little bit late so that you can make good progress. I think it is opportune, Advocate Chauke, to pause for 30 minutes.

**ADV CHAUKE**: Thank you, Chair.

**CHAIRPERSON**: We have asked that they boil water for you to have coffee.

**ADV NGCUKAITOBI SC**: I am sure we can do that.

**CHAIRPERSON**: You are under oath. We adjourn.

**ADV CHAUKE**: Thank you.

### **ENQUIRY ADJOURNS**

### **ENQUIRY RESUMES**

**CHAIRPERSON**: Good evening. Good evening, Advocate  
10 Chauke.

**ADV CHAUKE**: Good evening, Chair.

**CHAIRPERSON**: Advocate Ngcukaitobi.

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

**CHAIRPERSON**: I interrupted you when you were at... You had just dealt with the meetings at 112. I cannot remember what else you were dealing with.

**ADV NGCUKAITOBI SC**: Yes, Madam Chair. I was looking at the documents that the witness had regard to.

**CHAIRPERSON**: Oh, yes.

20 **ADV NGCUKAITOBI SC**: Yes. From the note that was circulated before we adjourned.

**CHAIRPERSON**: It is the documents considered by Advocate Chauke in respect of the racketeering charges.

**ADV NGCUKAITOBI SC**: In respect of racketeering, yes, Madam Chair.

**CHAIRPERSON:** With a view to brief the NDPP or...

**ADV NGCUKAITOBI SC:** Yes, with a view, yes, to brief the NDPP and to play his coordinating role.

**CHAIRPERSON:** Yes. Thank you.

**ADV NGCUKAITOBI SC:** Yes. Thank you, Madam Chair. Mr Chauke, we are at page 4, just before the draft indictment.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Now, the draft indictment is produced sometime in June 2012, correct?

10 **ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Yes. In fact, I think that it was circulated to you on the 12th of June.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now, at that point, I mean, what meetings had you already held and how were you familiar with the case?

**ADV CHAUKE:** I will not remember how many meetings, but I would have attended the meetings where there was a briefing to the acting NDPP, I think two meetings, and then I  
20 would have attended, as I indicated, the meeting with the prosecution team, even when they had to prepare the briefing that they would do to the NDPP.

**ADV NGCUKAITOBI SC:** Yes. Well, according to this, the substantive meetings you attended would be on the 3rd of May, 17th of May, 22nd of May, 24th of May, 29th of May.

That is five meetings.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Yes. And then we know that the draft indictment was prepared by Advocate Maema, Advocate Matenjwa, and the rest of the prosecution team.

**ADV CHAUKE:** Yes, yes.

**ADV NGCUKAITOBI SC:** So, when it was circulated to you, what was the intention?

**ADV CHAUKE:** The intention was for me to also update and  
10 appraise the NDPP of KZN.

**ADV NGCUKAITOBI SC:** Yes. I mean, did you regard yourself as being able to comment and say, look, my view is that this particular charge should be phrased differently, or?

**ADV CHAUKE:** No, there was not even a necessity for me to comment then.

**ADV NGCUKAITOBI SC:** Yes, but you had to be sufficiently familiar to play your role.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Yes. All right. So, we know you  
20 had that before it was finalised. There was an issue taken – maybe you can help us with this – there was an issue taken with Advocate Maema about when – well, it was not taken with Advocate Maema, it was taken with Mr Mangena about Advocate Maema, which is at the time at which the reports were prepared by the ballistics, because they appeared to be

signed in September 2012, but there already was a draft indictment by the 12th of June. And I could not work out what the point of the criticism, whether the point of the criticism was that the prosecutors had decided what the case is and they were just looking for evidence to justify it. I mean, what was your sense as a coordinator?

**ADV CHAUKE:** My sense is that there is a misunderstanding, that the signing of the ballistics report should precede the indictment, which is not accurate, 10 because Mangena and the investigation team were always meeting with the prosecutors and they would have drafts of what Mangena says this is what is going to happen. Remember, in most cases, in the majority of cases, the ballistics test results, you require them when you say you want to go on trial, you prepare for trial, then you get that. But in terms of preparation, you always have the drafts which have not necessarily been signed.

**ADV NGCUKAITOBI SC:** I see. So the signing in September has nothing to do with when they are actually prepared?

20 **ADV CHAUKE:** No.

**ADV NGCUKAITOBI SC:** Yes. All right. So that is just a basic misunderstanding of how the criminal process works?

**ADV CHAUKE:** Yes, precisely.

**MS RAMAGAGA:** Advocate Chauke, would you say that the experts, like Mr Mangena, can also be seen as part of the

investigation team?

**ADV CHAUKE:** Yes.

**MS RAMAGAGA:** Yes. Because when you look at the prosecution, normally they guide even the police officer on which way to go and so forth.

**ADV CHAUKE:** Yes.

**MS RAMAGAGA:** So he would have been also part of the investigation?

**ADV CHAUKE:** Yes. So if you say in instances where Mr  
10 Mangena and Mr Steyl, they would have sat with the prosecutors and the prosecution team where they were doing the briefings showing them in respect of this document, this is a space and what have you. So that does not necessarily mean that he must first go and draft a statement and then come in and say, it does not work that way.

**MS RAMAGAGA:** Thank you.

**ADV NGCUKAITOBI SC:** So can you repeat your answer? The question is, do you regard the experts like Mr Mangena and Mr Steyl as part of the investigative team?

20 **ADV CHAUKE:** Ja.

**ADV NGCUKAITOBI SC:** So the answer is yes?

**ADV CHAUKE:** Ja.

**ADV NGCUKAITOBI SC:** All right. Thank you. Now, if you turn over then the page to page 5, the more documents there that you had access to and considered.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Just take us there.

**ADV CHAUKE:** The statement of Nkosi Mthiyane Ndlondlo, DC00640 to DC00646. Statement of Colonel Aiyer, B00926 to B00929, B01266 to B01271.

**ADV NGCUKAITOBI SC:** Yes. If you can stop here, there was also another issue taken about the statement of Colonel Aiyer that was produced on the 31st of August 2012. So the suggestion was, well, how could this statement be taken into  
10 account because the indictment was served, the racketeering indictment was served on the 17th of August 2012. Do you remember that?

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Yes. And I think it was Mr Mangena, sorry, Mr Maema was challenged with this and then he says, well, but the information was taken before although the statement was signed later.

**ADV CHAUKE:** Certainly. You would say that the other statement is 4 August, the other statement is 31 August.

20 **ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** Ja.

**ADV NGCUKAITOBI SC:** Okay.

**CHAIRPERSON:** But does it not happen in a criminal trial or in a criminal case where charges are preferred against someone and the trial commences yet the investigation

continues?

**ADV CHAUKE:** Indeed, Chairperson.

**CHAIRPERSON:** In other words, the investigation never ends.

**ADV CHAUKE:** No.

**CHAIRPERSON:** Until the Judge says, this is the pronouncement.

**ADV CHAUKE:** Or until if on the part of the state we say we have closed the case for the state.

10 **CHAIRPERSON:** Yes, indeed.

**ADV CHAUKE:** Yes.

**CHAIRPERSON:** So you can come up with statements even when the trial has begun, correct?

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Does it really stop when the state has closed its case? I thought even when you listen to the version of the other side and there are things to be followed up, you are still entitled to follow those up.

20 **ADV CHAUKE:** No, no. I am talking now in terms of the investigation leading to the trial.

**ADV NGCUKAITOBI SC:** Oh, I see.

**ADV CHAUKE:** At that stage. Because the determination you can only make it after when there is evidence from the defence and then that will call for you to respond. Then you will go and investigate those aspects that you think needs to

be done.

**ADV NGCUKAITOBI SC:** Okay. And then the statement by Commissioner Brown.

**ADV CHAUKE:** Statement by Commissioner Brown, DC 00945 to DC 00992. DC 00998 to DC 00999. And then statement by Danikas, cross bundle, which is in file 1-454 to 472.

**ADV NGCUKAITOBI SC:** Tell me, I mean, what was your – this statement became a subject of a major controversy. But, 10 you know, when the witness finally testified, nothing meaningful was put to him. What was the issue from your understanding at the time about Mr Danikas?

**ADV CHAUKE:** The signature.

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** Yes. Which was irrelevant in any case, whether the signature was there or not. But the information about what is it that was being contained in the statement, that is what served before Advocate Jiba.

**ADV NGCUKAITOBI SC:** Yes.

20 **ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** But, I mean, what was the prosecution team's strategy around this issue?

**ADV CHAUKE:** The strategy, as I understood it then, was they always – because of Danikas having raised the issue of security and all sorts of things, they said they were not going

to identify him as the witness in the case because that rendered him susceptible to security threats that he has always been sharing with the prosecution team. That is how I understood it.

**ADV NGCUKAITOBI SC:** You know, the odd thing about this complaint that Danikas' identity was not disclosed is that if you look at another witness, Mr Mathonsi, whose statement is referred to at page 4 of your list, item 2, you know, it is common cause he was murdered.

10 **ADV CHAUKE:** Yes, yes.

**ADV NGCUKAITOBI SC:** And if you also look at page 5, Mr Bhekinkosi Ndlondo, whose statement is referred to as the first item, it is also common cause he was murdered.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** You know. And so it makes one wonder why Major General Booyesen was so interested in the inclusion of Mr Danikas in the list of witnesses when everyone knows that witnesses were killed.

20 **ADV CHAUKE:** Ja, the thing, as I understand it, which is natural, is once the prosecutor decides this witness is in danger, to identify him to the defence without just giving a statement and redacting his name and address is precisely for that purpose. And that is the provision which is in the Criminal Procedure Act. .

**ADV NGCUKAITOBI SC:** Yes. And then the next item is the

prosecution memorandum.

**ADV CHAUKE:** Which is at B00993 to B01027. In ballistic reports of Captain Mangena, it is 2A1 to 2A338 of Captain Mangena's statement.

**ADV NGCUKAITOBI SC:** Why have you not included the ballistics of...

**ADV CHAUKE:** Mr Steyl?

**ADV NGCUKAITOBI SC:** ...Mr Steyl?

**ADV CHAUKE:** At the time when I considered these ones  
10 because these to me were the ones that I was submitting  
when we were defending the review application.

**ADV NGCUKAITOBI SC:** Yes. In fact, my junior corrects me that the reports by Mr Steyl were part of the annexures in the Mkhize application.

**ADV CHAUKE:** In the Mkhize application, yes.

**ADV NGCUKAITOBI SC:** Yes. Which actually covers what I was asking you about. Yes, now, these documents, I mean, they are obviously taken from various parts of the dockets, but they are the key. Well, are they the key in racketeering?

20 **ADV CHAUKE:** That is what I am indicating. That is why even the name there on top, I am naming the message, the heading, the document, because that was taken in respect of the racketeering charges.

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** Because this is when we had to defend the

review application for a certificate to be set aside.

**ADV NGCUKAITOBI SC:** Yes. Now, I mean, I understand there are two stages to it. The one is what the time a decision is taken to indict.

**ADV CHAUKE:** Ja.

**ADV NGCUKAITOBI SC:** So that is all of the things you were looking at in May and in June where there is a draft indictment right up to the 17th. Then the indictment is then prepared and served. Now, when was the review brought by Major  
10 General Booyesen?

**ADV CHAUKE:** You can just help me with the date. I just do not necessarily have the date.

**ADV NGCUKAITOBI SC:** I think it was brought the following year in April 2013. I think we will find it now.

**MS RAMAGAGA:** Is it not May 2013?

**ADV NGCUKAITOBI SC:** It could be, Madam Ramagaga.

**ADV CHAUKE:** Somewhere during the start of the year 2013.

**ADV NGCUKAITOBI SC:** Turns out my memory is not that bad. 13th April 2013. [Laughter]

20 **ADV CHAUKE:** Thank you, Chair.

**MS RAMAGAGA:** [indistinct]...

**ADV NGCUKAITOBI SC:** Yes. [Laughter] Yes, I apologise, Madam Ramagaga, on the Olympics of memory. Yes, so it is brought in April 2013, but I understood that prior to this being brought there was in fact a request for further particulars.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Can you remember that?

**ADV CHAUKE:** It was when the case was transferred from the Regional Court that was going to be transferred to the High Court.

**CHAIRPERSON:** Yes.

**ADV CHAUKE:** I think when it made the appearance, they filed the request for further particulars, which the prosecution team was responding to the defence and back and forth.

10 Then after the prosecution team, as I understand it, had submitted the further particulars, that is when the accused through Mr Booysen and lodged the review application.

**ADV NGCUKAITOBI SC:** Yes, and the response Mr Maema spoke about, I think the document we have, it is somewhere about 200 pages long. All of the further particulars.

**ADV CHAUKE:** Yes, where he was dealing with the further particulars that were filed.

**ADV NGCUKAITOBI SC:** And then the review was then brought.

20 **ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Now, you remember that one of the issues that are taken, we have now covered what you were looking at prior to the institution until August 2013, sorry, 2012. Then the review is brought in April 2013. You have to assemble together and defend it. Now, the charges against

you here or the issues to be investigated as per the terms of reference also criticise you for the role you played in defending the review application.

**ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: How do you defend yourself there?

**ADV CHAUKE**: The acting NDPP had taken a decision that the application for review, even on the advice of the prosecution team who felt strongly that there was a case, that is what happened. The defence of that review would never  
10 have been undertaken if the acting NDPP then would have decided otherwise.

**ADV NGCUKAITOBI SC**: Yes. So the decision to oppose was taken by the acting NDPP.

**ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: Yes. Well, you know that we looked at the Advocate Maema's delegation of authority, which entrusts him with the authority to oppose not only reviews but appeals and also institute reviews and appeals.

**ADV CHAUKE**: Yes.

20 **ADV NGCUKAITOBI SC**: So he had authority to do it.

**ADV CHAUKE**: Yes. Well, the application, the notice of motion was against the NDPP.

**ADV NGCUKAITOBI SC**: Yes.

**ADV CHAUKE**: So even if Maema had the delegation to oppose, obviously it would have been with the concurrence

of the respondent who was the NDPP.

**ADV NGCUKAITOBI SC:** Yes. Your point is that the decision is taken not by you but by the NDPP.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** And then what role are you assigned there?

**ADV CHAUKE:** The coordination. She has to prepare affidavits. She has to file the opposing affidavit. And I got into that and I advised, liaising with Laurence Hodes with all  
10 the documents as I listed them here, that which I had to consider, got them from the prosecution team, gave them to Advocates Laurence Hodes SC and Advocate Manaka. They drafted the draft. I shared the draft with the NDPP, corrections here and there, and then take it back and forth. I settled it on her behalf and then sent it to her and then she signed.

**ADV NGCUKAITOBI SC:** Yes. I mean, it comes back to the point I asked earlier. I mean, what exactly is Advocate Batohi expecting would happen? There is a big case launched and  
20 it is against the NDPP. But there are many cases against the NPA. So she has to rationalise her time. So it is either she attends to this case individually or she assigns a person that she trusts to look after it. In this case, she asks you.

**ADV CHAUKE:** Indeed.

**ADV NGCUKAITOBI SC:** And what are you expected to do?

Just say no.

**ADV CHAUKE:** The expectation with the narrative, as I understood it, it looks like as if when Advocate Jiba in her capacity of NDPP would have delegated people, those were seen to be state capture and what have you. But when the others would do exactly the same thing to delegate, it is very normal, including herself, Advocate Shamila Batohi.

**ADV NGCUKAITOBI SC:** So what attaches to this criticism is this notion that, well, the affidavit contained falsehood, mendacity, et cetera, and you are part and parcel of that. We have looked at that. We have shown that actually the foundation to this entire thing was a flawed foundation.

**ADV CHAUKE:** Indeed.

**ADV NGCUKAITOBI SC:** Yes. Now, before the review, there were certain other, I would say, incidental decisions that you were involved in.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Now, there are two that I am interested in. The one is the centralisation. You remember the whole issue that, you know, why is Advocate Chauke signing centralisation? And now the reason why centralisation became important here is because these Cato Manor police followed a man of one of the Ndimande brothers to Rustenburg, and they killed him in his flat. And the question had to be made by the DPP of North West, Mr Smit,

to prosecute or not to prosecute. He issued a *nolle prosequi*, after which it was rescinded, that *nolle prosequi*. But then there was a request that all of this must go to KZN, which is where we see your signature there. But can you just explain yourself there?

**ADV CHAUKE:** Inadvertently, as it were, I should not have signed the application for centralisation to Johannesburg, using the head of Johannesburg, because that was supposed to be done in the name and direction of the DPP KZN. And  
10 once that mistake was realised, that was the way you are talking about restriction and whatever, to correct what was supposed to be wrong. And I accepted that one made an omission there. It was not supposed to be made by me, because those that were in respect of my jurisdiction, the one which was in Don Park and Germiston and the like, they were still not added there. And I was not going to have to consent to them, because I was going to consent in respect of those for them to be centralised in KZN as well.

**ADV NGCUKAITOBI SC:** Yes, but can you give just a  
20 narrative of what actually happened? So this whole thing happens after the 17th of August 2012.

**ADV CHAUKE:** So Advocate Maema has prepared this draft request and asked me to sign it. Now when I signed them, I think Advocate Mosing or Advocate Smit picked up that the letterhead is coming from Johannesburg, not necessarily from

KZN. And that is how Advocate Maema went back to correct it.

**ADV NGCUKAITOBI SC:** The reason for that is because at the time, Advocate Maema, according to him, is working in your office.

**ADV CHAUKE:** He was sitting in my office, ja.

**ADV NGCUKAITOBI SC:** You were giving him space. And then what they do is they use your letterhead to type...

**ADV CHAUKE:** To send out correspondences and the like,  
10 which in this instance of centralisation, they could not. Because in terms of submitting a memorandum or something that the NDPP wanted, it was no issue. I could send it under my letterhead because it was of no consequence. But this one, which in terms of statute and lack of jurisdiction, it had to be done under the letterhead of the DPP KZN.

**ADV NGCUKAITOBI SC:** Yes. Now, there was some issue raised with the Advocate ...[intervenes]

**MS RAMAGAGA:** Before we get there, I am sorry to do this  
20 once you have begun to ask your question. But I just want to clarify, Advocate Chauke, on this issue of centralisation. You are speaking about two documents, the one that had been drawn on the letterhead of Gauteng South and then the subsequent one that was then drawn from the KZN. What you should inform us about is as to on which application of the two, on which application did the NDPP act? On the strength

of which one?

**ADV CHAUKE:** I think she acted on the strength of the corrected one.

**MS RAMAGAGA:** Thank you,

**ADV NGCUKAITOBI SC:** Yes. Thank you very much. So there was an issue raised by the evidence leaders around what is the significance of the signature appearing in a document. Are you taking ownership of it? Are you not taking ownership of it, et cetera? That was asked in relation to Mr  
10 Maema, who says, listen, I drafted the document, but I have no access to the NDPP. The person who has access to the NDPP is Mr Chauke. And so I am drafting it in his name, and I am expecting him to send it on my behalf. And then they look at the memorandum. They say, well, the memorandum does not say it is being sent on behalf of Mr Maema by Mr Chauke. I just want you to take us through how actually you worked with this prosecution team.

**ADV CHAUKE:** Look, let me give you an example. They prepared a presentation, and the presentation must be sent  
20 to the NDPP in a meeting that we will would have arranged, as I indicated. They will give me that presentation. They will type a letter under my letterhead, and then I will send the presentation to the NDPP. All right, in terms of the decisions as it were, once they would have made that decision, the natural thing was, it is supposed that if it is a recommendation

about the decision to prosecute, the letterhead that was supposed to be used, the letterhead of the DPP KZN, which you would have noticed when Maema testified that he asked me to PP for Advocate Noko. So that is the difference. But most of the presentations, the meetings that I referred to here, all those presentations, I sent them from my office letterhead, because it had nothing to do with recommending a prosecution or not. It was information that had to be conveyed to the NDPP.

10 **ADV NGCUKAITOBI SC:** Yes. I suppose there was an element of trust as well, that no one would abuse a letterhead of the DPP South Gauteng.

**ADV CHAUKE:** No, no, of course. These are seasoned prosecutors, especially Maema. Maybe I had this advantage that when I was a senior state Advocate in the DPP's office, we were together as senior state Advocates in that office.

**ADV NGCUKAITOBI SC:** Yes. So when he puts something in front of you and he says, Mr Chauke, we have decided as the prosecution team to send this to Advocate Jiba, it is not  
20 like you sit down and you say, no, I am questioning you. You sign it. You trust them.

**ADV CHAUKE:** No, no, really. As colleagues, you start from the question of helping each other, you cannot second guess each other.

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** If we were to do that, the work strength is going to suffer.

**ADV NGCUKAITOBI SC:** Yes. And similarly, when this error was made, it is not as if it is an error that is picked up by a stranger. It is picked up inside the team and it is internally corrected.

**ADV CHAUKE:** Precisely.

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** And that error, the decision maker did not  
10 take issue about it. She understood then that there was error. The NDPP who replaced them, Mr Nxasana, did not think you have to make a meal out of it. Equally, the Advocate Sean Abrams did not take issue about it either.

**ADV NGCUKAITOBI SC:** Yes. I mean, I think there is a difference in somebody picking up later that you made a mistake and you picking up that you have made a mistake and then correcting it on your own. Because it is all showing that everyone is acting in good faith.

**ADV CHAUKE:** Of course.

20 **ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** Bearing in mind that all these issues we are talking about, insofar as the Cato Manor matter is concerned, we are dealing with the POCA racketeering provisions.

**ADV CHAUKE:** Indeed, Chair.

**CHAIRPERSON:** Even if you signed and you did not pick up the error, why then does it seem to be an elevation of form over substance? Am I right in thinking that way?

**ADV CHAUKE:** Yes, indeed. That is why I am trying to explain to say, look, there were three NDPPs. And then 10 years later, another NDPP says, no, look, this is something, it is done with malice, it is done with all sorts of things, which is just unfortunate.

**CHAIRPERSON:** Because what troubles me, Advocate  
10 Chauke, is that this case has become such a big case. And yet the terms of reference should be guiding us. You explain in your affidavit from paragraph 6, and you deal with this critical aspect of the terms of reference, a decision.

**ADV CHAUKE:** Yes.

**CHAIRPERSON:** If we find, and I need to be helped there, if we find that the terms of reference, insofar as the Cato Manor matter is concerned, paragraph 3, the entire of paragraph 3, none of those things refer to the supporting, the recommendations allegedly made by you, the defending of  
20 the review application, the appealing against the decision of Govern J, and any attempt to reinstate those charges. If we find that those things, given the fact that these are racketeering issues within the context of POCA, does this not fall on the wayside?

**ADV CHAUKE:** Indeed, Chair.

**CHAIRPERSON:** If we find that these things do not constitute a decision, a prosecutorial decision, because neither you nor Advocate Maema or his team could make such a decision, but only the NDPP. So if we find that these alleged conducts on your part do not constitute a decision, what then remains?

**ADV CHAUKE:** What remains is that there is no basis for the charges as they stood, or the allegations as they stand now.

10 **CHAIRPERSON:** Because the case has proceeded on the premise, as I understand it, that there was no decision, and I stand to be corrected, Advocate Ngcukaitobi. But then your case went further to gather evidential material to prove that, in fact, there was evidence that justified the institution of the racketeering charges. Is my understanding correct?

**ADV CHAUKE:** Indeed, Chair. My understanding, your understanding is exactly as I understand it, that if there is indeed evidence that there is a case that has been committed, that should be the end of the matter.

20 **CHAIRPERSON:** So the point is, there is no decision that you have taken, according to you?

**ADV CHAUKE:** Yes.

**CHAIRPERSON:** And if there is no decision, do we even consider the evidential material?

**ADV CHAUKE:** No, no. To the extent that I accept and I

know that I supported that decision, as it were, in terms of me having to send the documents and then prepare these documents to Advocate Jiba and whatever. I am saying, still, that does not make me a decision maker.

**CHAIRPERSON:** Yes. That is what I am trying to probe with you. But I am saying, once you have crossed that hurdle, the first hurdle of determining whether these things that the terms of reference speak about do not constitute a prosecutorial decision in the context of racketeering charges, in terms of  
10 POCA, then what remains of these claims against you?

**ADV CHAUKE:** They have got no merit. And that is why, as advised, that one had to make that point in the opening statement, that you are charging a person who did not make any decision.

**CHAIRPERSON:** What then remains is, even if we assume in the favour of the NPA that you participated in a prosecutorial decision, that is, having crossed that first hurdle, the allegation that there was no evidence is flawed.

**ADV CHAUKE:** It is flawed. It is without merit.

20 **CHAIRPERSON:** Yes. Because what we have been about was to gather information that says, here is the evidence that justified the institution of the racketeering charges.

**ADV CHAUKE:** Yes.

**CHAIRPERSON:** Is my understanding correct?

**ADV CHAUKE:** That is very correct, Chair.

**CHAIRPERSON:** Advocate Ngcukaitobi, are you helping me to understand how?

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

**CHAIRPERSON:** Because this has been, I thought that we have so much in front of us, and I am not sure what we are now pursuing. I thought that we should really focus on the terms of reference.

**ADV NGCUKAITOBI SC:** Yes, Madam Chair, you are correct. There is just one issue that my junior wanted to bring to my attention to conclude that part about the centralisation. It is the document at B01254.

**ADV CHAUKE:** B?

**ADV NGCUKAITOBI SC:** At B5.

**CHAIRPERSON:** Is it in the list that you have just submitted to us?

**ADV NGCUKAITOBI SC:** No, apparently not, Madam Chair.

**CHAIRPERSON:** Should it be included?

**ADV NGCUKAITOBI SC:** Yes, I think we should include it.

**CHAIRPERSON:** Before post-review period?

**ADV NGCUKAITOBI SC:** Before the, yes, it is 27th August. Yes, it will be before the review period, yes. It is B01254.

**ADV CHAUKE:** I have it, Chair. It is the one that is addressed to from Advocate Mosing to Advocate Jiba.

**ADV NGCUKAITOBI SC:** Yes, it is relevant in the context of the answer you gave, which was the actual decision maker

who was Advocate Jiba.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** He is the person who was deciding on centralisation.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** What was going on between the DPPs was which route, you know, it should take? Not that the DPP will decide, but which channel will be followed? Is it the channel of Johannesburg or the channel of KZN?

10 **ADV CHAUKE:** Ja, ja, the issue that is being taken is a consent of the DPP of its jurisdiction is required.

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** If I am not the DPP of KZN, I cannot issue a consent in respect of...

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** Ja, so if the offences were committed in Johannesburg and they needed to be tried in KZN, I needed to issue my consent, which must go to the NDPP for the NDPP to issue the centralisation.

20 **ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** So that is what is being made. I cannot sign a consent to say I consent as the DPP of KZN that the offence committed in KZN should be done in North West and vice versa.

**ADV NGCUKAITOBI SC:** Yes, but the point we are making

though is a slightly different one, which is the decision maker did not make an issue of the error that had been committed in the previous document.

**ADV CHAUKE**: Exactly.

**ADV NGCUKAITOBI SC**: And this is what is here.

**ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: That is where he says, Advocate Mosing says:

10                   “The directive in respect of the above mentioned provisions have already been approved and signed by you in the above matter in respect of the offences committed within the area of jurisdiction of the DPP North West. However, the application was erroneously submitted under cover of a letter from the DPP South Gauteng inside of DPP KZN and your request has now been submitted under cover of the attached letter from the DPP KZN dated 20 August 2012. It is requested that the acting NDPP issue a new centralisation directive as per the attached draft. It is notable that the consent from Advocate Smit SC is directed to the DPP KZN. The facts are otherwise unchanged.”

20

**ADV CHAUKE:** Indeed.

**ADV NGCUKAITOBI SC:** So when you picked up the error internally and you asked the decision maker, here it is, no one said, Mr Chauke, go to a disciplinary hearing over this. It is now coming now here that you should be disciplined over this.

**ADV CHAUKE:** Ja, that is why I am saying that other than that Advocate Jiba would have accepted that correction. The others who followed her as well did not think that there is  
10 anything untoward about that.

**ADV NGCUKAITOBI SC:** All right, can I ask you, sorry, finish.

**ADV CHAUKE:** But sitting where I am sitting now and the narrative like indicated, you would have seen once we come into some, when we go some of the opinions, you see there is a specific opinion that is a source of this state capture things other than the other opinions. And then again, that is where lies the problem.

**ADV NGCUKAITOBI SC:** Well, I mean, there is one opinion  
20 that talks about state capture. It is from Advocate Hulley.

**ADV CHAUKE:** Indeed.

**ADV NGCUKAITOBI SC:** Yes. But state capture has become irrelevant, Mr Chauke, because I asked the NDPP, do you have evidence of state capture? She said no. So let us forget about state capture. It is irrelevant.

**ADV CHAUKE:** I understand, Chair, but unfortunately I am sitting here because of state capture.

**ADV NGCUKAITOBI SC:** No, but it is irrelevant. There is no point in you repeating state capture. Because the person who brought the charges, I confronted her, she said no evidence of state capture. So whatever opinions from Mr Hulley are irrelevant.

**ADV CHAUKE:** I take the point, I take it, Counsel.

**ADV NGCUKAITOBI SC:** Okay, so no state capture again.

10 [Laughter]

**MS RAMAGAGA:** Thank you, Advocate Ngcukaitobi, thank you. I have been resisting the temptation. In every sentence that comes I see I hope I am not going to [indistinct]...

**ADV CHAUKE:** Sorry, Chair, I accept. I understood. I take the point.

**ADV NGCUKAITOBI SC:** Now, can I ask you to take your terms of reference again? Let us just do this exercise.

**CHAIRPERSON:** And now that you were going there where I [indistinct], Counsel, now that we are going there, there is  
20 a, the catch-all clause there in 3.1, I do not know what you understand that to mean. 3.1 of the terms of reference. I mean I am sure counsel will take you through that so that you can help me. We dealt with this aspect when Advocate Batohi testified. But it was left no wiser. So perhaps we will understand better from you and further witnesses will come

and testify. What if you understand 3.1 to mean?

**ADV NGCUKAITOBI SC:** So if you have... Is it easier to get a hard copy?

**ADV CHAUKE:** Yes, I actually had it. I do not know why. I think I just misplaced it. 3.1, Chair.

**CHAIRPERSON:** You can look at the hard copy from our researcher.

**ADV NGCUKAITOBI SC:** So it is on page 3 of the terms of reference and the sentence starts with:

10           “The fitness of Advocate Chauke to hold office as a prosecutor in the prosecutorial services, in particular in the capacity as a director of public prosecutions, insofar as it relates:

3.1 His direct or indirect conduct of Advocate Chauke relating to his fitness and propriety to hold office based on information including but not limited to matters related to the following  
20           allegations...”

So I think the question is what do you understand the direct or indirect conduct relating to your fitness to hold office?

**ADV CHAUKE:** The conduct whether I did it directly or indirectly in supporting or otherwise recommending the issuing of the racketeering certificates.

**ADV NGCUKAITOBI SC:** Can I ask you a different question?

**ADV CHAUKE:** Ja.

**ADV NGCUKAITOBI SC:** What is direct conduct as far as you understand it?

**ADV CHAUKE:** Direct conduct, maybe let me put it this way. I say physically that here is my view, my recommendation that this should happen. The other one is that which will be inferred to say in fact he did not do it directly. It was done, he used someone to convey this particular message. I am  
10 trying to simplify it in that sense.

**ADV NGCUKAITOBI SC:** But that is also still direct conduct.

**ADV CHAUKE:** Ja.

**ADV NGCUKAITOBI SC:** Both of those are direct conduct.

**ADV CHAUKE:** I try to make sense and understand what is being conveyed.

**ADV NGCUKAITOBI SC:** And then what is indirect conduct?

**ADV CHAUKE:** I really find difficult to explain what indirect conduct is. Except that as I say, let us take the facts of Cato Manor in respect of Mr Booyesen that says he is not on the  
20 scene but is able to drive and direct what should be happening at the scene.

**ADV NGCUKAITOBI SC:** But that is still direct conduct, he is giving the instructions.

**ADV CHAUKE:** In that sense, Chair, I really do not have the description of indirect. It is intended to convey an insinuation

of *mala fide*.

**ADV NGCUKAITOBI SC:** No, but it is conduct, it is not motive. Because the law usually recognises either conduct or an omission. But conduct is conduct. And omission is where there is no conduct but you should have acted but you failed to act and that is where you have omitted. And there is liability attaching to conduct and liability attaching to omission. Where there is a legal duty to act and you fail to act. What is unclear in law is what can indirect conduct be?

10 **ADV CHAUKE:** Really, my understanding there was that the direct and indirect amount to one and the same thing. But I am trying to understand and describe it positively as opposed to negatively.

**ADV NGCUKAITOBI SC:** No, but what is the positive description?

**ADV CHAUKE:** That the direct and indirect means one and the same thing.

**ADV NGCUKAITOBI SC:** Yes, all right. But I mean, your statement says these charges are vague and embarrassing.

20 **ADV CHAUKE:** Indeed, that is what I was trying to indicate in my opening.

**ADV NGCUKAITOBI SC:** Embarrassing part simply means you do not understand what they mean and therefore you cannot respond to them

**ADV CHAUKE:** Indeed.

**ADV NGCUKAITOBI SC:** Yes.

**MS RAMAGAGA:** So you understand the difference now?

**ADV CHAUKE:** No, I understand the difference. That is why, Chair, I was indicating that to me it would have been one and the same thing. But absent an explanation about it, I accept it and on the advice which I accept.

**MS RAMAGAGA:** You align yourself.

**ADV CHAUKE:** Ja.

**MS RAMAGAGA:** Yes. Thank you.

10 **ADV NGCUKAITOBI SC:** All right. Thank you. And then, based on information, and then there is another ambiguity, which is including but not limited. Do you understand what that means? Because if you are going to go to a hearing, you need to know the scope of what is alleged against you. Where does it start? Where does it stop? Now, a phrase like including but not limited seems to imply unlimited liability in time and in scope.

**ADV CHAUKE:** If I am sitting here and somebody out there thinks that I must go and say something about Chauke 15  
20 years or 20 years ago, it should come to this forum. I do not say mischief. That is how I see that this is coined, to be able to open the wider net. What in criminal prosecution, we throw the book at the accused.

**ADV NGCUKAITOBI SC:** Yes and does that explain why throughout up until now, we still do not know the full scope?

Because sometimes you have signed a prosecution. You forced someone to sign a prosecution memoranda. Sometimes you forced someone to sign a docket. And then sometimes the problem is the centralisation. You just never know because these charges are a moving target.

**ADV CHAUKE:** At times, the description of when you say you are arranging with the JP which court, that is a prosecutorial decision. You are deciding to prosecute when you arrange a court.

10 **ADV NGCUKAITOBI SC:** And then they keep questioning you about exceeding your jurisdiction, but it is not in the charges. Because they have done this unlimited scope.

**ADV CHAUKE:** You understand, as I understood it, that is why there was an attempt to say that the terms of reference must be amended to be in line with what is now being presented.

**ADV NGCUKAITOBI SC:** Well, after cross-examination.

**ADV CHAUKE:** Precisely. Which is very convenient.

**CHAIRPERSON:** If you look at – we dealt with this during  
20 the evidence-in-chief of Advocate Batohi. Because we really wanted to understand what this part of the terms of reference means. I am looking at the transcript here, where Advocate Batohi said the following. And you may comment if you wish.

“Chairperson, if I may at this point explain that paragraph 62.3 refers to taking a

prosecutorial decision, whether to prosecute or not. My evidence will include the fact that a prosecutorial decision is not one that is limited to whether to prosecute or not.”

Your comment?

**ADV CHAUKE**: Precisely, that is the point that I was trying to make. It is opening a wider net so that if you cannot get this, you should be in a position to rely on this. Because once you say you are talking about organised crime, racketeering charges, that wording is actually saying you can also bring any other thing that does not relate to what is in here. And that is why there is an issue of jurisdiction when in fact that is not even an issue. But as I understood it, the first five or six days of the testimony was about jurisdiction.

**CHAIRPERSON**: Yes, but the point is that this answer does not seem to address the fact that we are dealing with racketeering charges here.

**ADV CHAUKE**: Indeed.

**CHAIRPERSON**: It seems to be answering just a general question in a criminal case. Am I correct?

**ADV CHAUKE**: You are indeed correct, Chair.

**CHAIRPERSON**: Further, we referred to Advocate Mlotswa’s point in his affidavit that he did not want to sign the indictment because he had not been provided with the memo and the dockets.

**ADV CHAUKE:** Yes.

**CHAIRPERSON:** And Advocate Batohi says:

“Precisely, Chairperson.”

Then I asked:

“Yes, but that begs the question, does that impact on the terms of reference in relation to Advocate Chauke's direct or indirect alleged, indirect conduct?”

And she answers:

10 “Chairperson, if you go to the terms of reference, this aspect of the evidence will relate specifically to, and let me, if I may explain something. I know I have been asked to keep it short, and I really do, but I want to try to help, I want the Panel to understand the circumstances. So these terms of reference were drawn up. It appears that it was taken primarily from my letter that I sent to the President

20 recommending an enquiry to be held. The terms of reference were not discussed with the NPA, but it was taken from there.”

So we still do not get an answer as to what this part of the terms of reference really means. And when you go back to the question of a decision, prosecutorial decision, I still battle

to understand what this aspect covers and it seems just to be a wide clause, and we have not been presented with evidence, at least so far, that seems to support this allegation under the POCA provisions.

**ADV CHAUKE**: Indeed, it is unfortunate, Chair, that is what it is. But if one looks at how we understood the process that led to the drafting of this, it is confirmed on record that it was drafted after the opinion which it was making reference to. I am no longer going to use that word. [Laughter] So in that  
10 opinion, there is confirmation that these terms of reference were settled by an Advocate Hulley on behalf of the NPA.

**CHAIRPERSON**: Yes.

**ADV CHAUKE**: So my understanding is to try and widen the net, that if we do not get you here, we must get you here.

**CHAIRPERSON**: Yes, I see Advocate Ngcukaitobi tried also to assist there.

“Can I also assist you? The charge itself limits the factual basis to the finalisation of the answering affidavit. It does not include  
20 any other thing.”

Advocate Batohi:

“If I may on that point say that these charges, if you want to call them charges, for want of a better word, states at 3.1 (that I have referred to), his direct or indirect

conduct should be direct or indirect conduct of Advocate Chauke relating to his fitness and propriety to hold office based on information, including but not limited to matters related to the following allegations. And my point is that in as much as this attempt to set out or do set out conduct of Advocate Chauke in this context, it is not limited to this.”

- 10 So I still do not know what this part of the terms of reference means because we have to make an assessment based on this aspect of the charge as well. And probably the evidence leaders will assist us when they call any other witnesses, if there is evidence to support these very allegations in the terms of reference. Anything else that follows under 3.1, those specific aspects have been addressed. But it is this kind of a casual clause in 3.1 that I struggle with. Hence the questions to Advocate Batohi, but I still find it difficult to understand. Advocate Ngcukaitobi, maybe you would
- 20 understand it better.

**ADV CHAUKE:** All I can say, Chair, is that I understand and I look forward to the evidence leaders taking issue with me about that.

**CHAIRPERSON:** Yes, Counsel, is your understanding maybe better than my understanding? I struggle with this concept.

**ADV NGCUKAITOBI SC:** Madam Chair, the only thing I was going to suggest is the actual cross-examination on this point is illuminating. I had not actually realised that it is as useful as it is. [Laughter] Now, because what... Let me just go to, I think it is day 14, yes, at page 48.

**CHAIRPERSON:** The 8th of December, 2025.

**ADV NGCUKAITOBI SC:** Yes, Madam Chair, yes, day 14. If we go to the bottom of that page, it is line 20. I asked Advocate Batohi:

10                    “Well, this is what I am debating with you, Advocate Batohi. What is the indirect conduct that is referenced?”

That was the question. She then says:

“So I need to think about all of the evidence that I have provided thus far.”

So I then continue.

20                    “But I am asking you, I am putting to you that the charge 3.1.1.3, you are saying the answer to me, no, no, no, look at the indirect evidence. And I am asking you, what is the indirect evidence?”

She then says:

“With all due respect, I did not say look at the indirect evidence. What I said is that I was reading out the chapeau (that is the

introduction) and I said it states including but not limited to matters relating to the following allegations. My point being not about indirect conduct, but about the fact that the allegations are not limited to what is set out in 3.1.1 until 3.1.5. That was the point.”

Then I say:

10 “Now, what are the other allegations that are not included? What do we not have?”

Then she says:

“Well, for example, the allegations relating to the signing of the Advocate Chauke's request for Advocate Mlotswa to sign the indictment.”

I said:

“No, please.”

Then she says:

“That should have been included here.”

20 I said:

“Please Advocate Batohi, we are at 3.1.1.3. At the stage at which Major General Booyesen is in court, the NDPP is filing an answering affidavit. The charge tells us that its scope is the finalisation of the answering

affidavit. You are resisting my submission to you that the scope is limited. You are saying it is unlimited. I am asking you, what are the other facts that support the defence of that review application?”

And then she says:

“I do not know if there are any other facts.”

So where we ended the discussion is when she said she just did not know herself. So I do not think anyone will ever know.

10 And because the first witness of the evidence leaders is Major General Booysen, I do not think she will educate us more about the terms of reference.

**MS RAMAGAGA:** May I just come in here, Advocate? Advocate Chauke, much as at the end they have that catch-all phrase where it is clear that the list is not closed, but if we are to focus on the reason for Advocate Mlotswa’s refusal to sign the document, it is quite clear and it is a closed list.

And it says:

20 “Advocate Mlotswa refused to sign the letter in the absence of only two or either of the two.”

And that is either the prosecution memorandum or the original case docket. So as far as that requirement of the signing or the reasons for not signing, we have a clear and closed answer. It is not an open-ended answer that we get. Are we

in agreement about this?

**ADV CHAUKE**: Yes, I accept.

**INTERPRETER**: All right. Thanks. Yes. Right.

**ADV NGCUKAITOBI SC**: Thank you. If we then proceed from there, 3.1.1 talks about:

“The institution of the racketeering charges in terms of section 2(4) of POCA against Major General Booysen and members of the Cato Manor Unit and the defence of those actions in subsequent review proceedings brought by Major General Booysen to have the racketeering certificates set aside.”

10

Now, the institution of the racketeering charges, whose decision is that?

**ADV CHAUKE**: It is the NDPP.

**ADV NGCUKAITOBI SC**: Now and then the defence of those actions, I presume this means the review in Court. Whose decision was that?

**ADV CHAUKE**: The NDPP.

20 **ADV NGCUKAITOBI SC**: Yes. Now, then they try and set this out. 3.1.1.1:

“Supported a decision to prosecute the accused, notwithstanding that there was no evidence justifying the decision and it sought to improperly have the acting

Director of Public Prosecutions to sign the case docket and or prosecution memorandum detailing the alleged evidence implicating the accused on which the decision to induct had to be made.”

So if we look at the first one, the evidence of Mr Maema is that he is the one who recommended the decision. And in fact, it goes further. He says it is not Advocate Chauke. And you know, the interesting thing is that he is never cross-  
10 examined on that point. What is your testimony on this supporting a decision?

**ADV CHAUKE:** Like Advocate Maema indicated, I would in the coordinating role be able to understand this is the case all about.

**ADV NGCUKAITOBI SC:** No, no, no, Mr Chauke, what is your evidence on whether you supported the decision or not in the light of the evidence of Mr Maema?

**ADV CHAUKE:** I did not. The person who supported is Advocate Maema on behalf of the prosecution team.

20 **ADV NGCUKAITOBI SC:** Yes. Now, then there is another issue here. You sought improperly to have, that is Mr Mlotswa, sign case documents. Did this happen?

**ADV CHAUKE:** No.

**ADV NGCUKAITOBI SC:** Then there is another thing here that you sought improperly to have Mr Mlotswa to sign a

prosecution memorandum. Did this happen?

**ADV CHAUKE:** No.

**ADV NGCUKAITOBI SC:** You know, the oddity about this is that Mr Mlotswa's email says he never got the prosecution memorandum. Now you have a charge that says you tried to force him to sign it.

**ADV CHAUKE:** Remember, the discussion between me and Mlotswa is about him signing the indictment, not what is being set out in it.

10 **ADV NGCUKAITOBI SC:** Yes, but I am saying that he said he did not have it.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** The charge is that he said he must sign it.

**ADV CHAUKE:** Ja.

**ADV NGCUKAITOBI SC:** But how does he sign a document that he does not have?

**ADV CHAUKE:** Precisely.

**ADV NGCUKAITOBI SC:** Yes.

20 **ADV CHAUKE:** Because in terms of that email, he was requesting me that I must provide him with a prosecution memorandum.

**ADV NGCUKAITOBI SC:** Then you are being charged for saying he must sign it.

**ADV CHAUKE:** He must sign the prosecution memorandum.

**ADV NGCUKAITOBI SC:** Now, they tried to change this through the evidence of Advocate Batohi. They said you tried to say he must sign an indictment.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** But then it fell apart when Advocate Mtsweni withdrew the question.

**ADV CHAUKE:** Yes. That is the testimony of Advocate Maema.

**ADV NGCUKAITOBI SC:** Yes. Now, then 3.1.1.2:

10

“You recommended to the then-acting National Director of Public Prosecutions, Advocate Jiba, the application for issuing a racketeering authorisation in terms of section 2(4), whereas there was no evidence justifying the institution of racketeering charges.”

Now, what is your evidence in this? Again, in the light of what Advocate Maema said.

**ADV CHAUKE:** The prosecution team recommended the application, and I forwarded that recommendation to the...

**ADV NGCUKAITOBI SC:** You know, the strange thing is that Advocate Maema said that and was not cross-examined on this.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Now, then there is this thing about

no evidence justifying the institution. I mean, is there any person who is reasonable in their head who can say, after having listened to the three months of evidence, that there is no evidence for the justification of the prosecution?

**ADV CHAUKE:** Chair, what I could read from this is that the people, especially Advocate Batohi and others, they did not necessarily read the actual evidence. They relied on what somebody would have told them, because if they themselves had taken the time to go through the statements or the  
10 dockets, even one or two dockets, they would have realised that this assertion does not necessarily stand the scrutiny of justification.

**ADV NGCUKAITOBI SC:** So there is no reasonable person who can say there is no evidence?

**ADV CHAUKE:** No. Not at all.

**ADV NGCUKAITOBI SC:** Because we are told that Mr Major General Booysen is coming to give evidence, apparently for eight days. Now, what is the relevance of a witness who is an accused in a decision, making a prosecution decision?

20 **ADV CHAUKE:** I am surprised that the majority of the NPA prosecutors, most of them, they are asking to say, what is it that the NPA goes out of its way to defend an accused person?

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** It is really the prosecutors, most of the

people who understand what we do as prosecutors, they are surprised, what is it that is in this so-called Cato Manor case that the NPA goes out to defend an accused person?

**ADV NGCUKAITOBI SC:** Yes, but is not it something beyond that? The NPA relies on its case, on a person who is an accused, who was an accused.

**ADV CHAUKE:** Precisely. As if it was going to say, you charged me correctly, please prosecute me.

**ADV NGCUKAITOBI SC:** Yes. But if you were to make a  
10 decision to charge a person, I do not understand, would you go and ask them, are you guilty or innocent?

**ADV CHAUKE:** This is what the NDPP has done.

**ADV NGCUKAITOBI SC:** Yes. You see, because that is what I really just struggle to understand, is that if every potential criminal in this country was asked by the NPA, go to an enquiry and say you are not guilty, where would the NPA be?

**ADV CHAUKE:** Worse still, it is how many cases are we charging people and then they go to court, they get acquitted  
20 or they go to court on review, they succeed? Why have those not been complained of and then enquiries in respect of those prosecutors or DPPs instituted? There is something, in this one, there is something more than what is being presented here.

**CHAIRPERSON:** But if that happens, that will have a chilling

effect on the prosecutorial discretion.

**ADV CHAUKE**: Indeed. And prosecutors, some of them are even afraid to make decisions now, against the background of what is happening. It looks like when you make a decision that is not in accord with the current leadership, then you are likely to go through a misconduct. And it is problematic because that is no longer prosecutors exercising prosecutorial decision without fear, fear or prejudice.

**CHAIRPERSON**: At least here, you have told us, and we are  
10 yet to hear further evidence, you have told us that you did not make any prosecutorial decision.

**ADV CHAUKE**: Indeed.

**CHAIRPERSON**: And Advocate Maema's evidence corroborates that. Am I correct?

**ADV CHAUKE**: Indeed.

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

**MS RAMAGAGA**: Ja, we are talking about the prosecution responsibilities and obligations. Now Advocate Ngcukaitobi told us that a DPP has a duty to prosecute if there is a *prima*  
20 *facie* case and if there is no compelling reason for a refusal to prosecute. Now, this duty, is it correct to say that duty also lies with the NDPP?

**ADV CHAUKE**: Precisely. And the scale is even higher than when you refer to an ordinary prosecutor.

**MS RAMAGAGA**: Now, looking at the facts and the evidence

that is before this Panel thus far, would you say that there is *prima facie* a case on which these cases complained of should have been prosecuted? And I am asking this in particular with reference to the Booyesen's case.

**ADV CHAUKE:** There is overwhelming *prima facie* a case against General Booyesen and members of the Cato Manor.

**MS RAMAGAGA:** Advocate Chauke, you are teaching me something, overwhelming. [Laughter] Okay, for the purposes of this enquiry, maybe one should adopt that. Now, if there  
10 is overwhelming *prima facie*, or rather let us drop that overwhelming out of the engagement. If there is *prima facie* a case or *prima facie* evidence, would it be proper for the NPA, and when I am talking about the NPA I am talking about the entire prosecution, be at a provincial level or what, would it be proper then not to prosecute the case if there is *prima facie* a case?

**ADV CHAUKE:** No, it is very improper. It is not in the interest of justice. Once you get to a *prima facie* a case, it says you should prosecute. Unless if evidence, when you  
20 have made that decision, comes to the fore, that indicates that your *prima facie* a case is no longer sustainable. That is why you have to reconsider decisions as and when you proceed.

**MS RAMAGAGA:** But in her case, she actually explained that unless there are compelling reasons for refusal to

prosecute, and I remember talking about in cases like where maybe the parent has...

**ADV CHAUKE**: Accident.

**MS RAMAGAGA**: ...an accident.

**ADV CHAUKE**: A parent who has run over a child without – when reversing a car.

**MS RAMAGAGA**: Those are examples that she gave. But in this case that we are now talking about, especially with regard to the Booyesen's case, are there any compelling reasons that you are aware of that have been advanced for the decision of the NDPP to then withdraw the charges against the General Booyesen and four co-accused?

**ADV CHAUKE**: I am not aware of any. In fact, I have not seen even on record where General Booyesen has made written representations to the NDPP for her to consider this matter.

**MS RAMAGAGA**: Who bears the honours to show that there are compelling reasons for this position to be taken, a position to withdraw or not to proceed with the matter?

**ADV CHAUKE**: The accused persons', through representations.

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

**ADV NGCUKAITOBI SC**: Thank you, Madam Ramagaga. Now, so we have dealt with 3.1.1, 3.1.1.2. 3.1.1.3, now, it is talking about:

“You sought to defend the institution in the review proceedings brought by Major General Booysen.”

Now who took the decision to defend the case?

**ADV CHAUKE**: The acting NDPP, Advocate Jiba.

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

10 “You finalised the answering affidavit of the then acting National Director of Public Prosecution in the Booysen review proceedings in opposing the review application, notwithstanding that there was no evidence justifying the institution of racketeering charges against the accused.”

Now, the case here seems to be that you defended the decision by assisting the NDPP to prepare an answering affidavit. Can you just explain that?

**ADV CHAUKE**: The counsel appointed in the matter is Advocate Hodes SC and Advocate Manaka. They prepared the opposition to the application, discussed it and showed it  
20 to Jiba. Jiba says no, finalise it with the legal team for us to be able to say this. And I get into the nick of things. I sit with the counsel. They send me, I send my comments and then I send it to Advocate Jiba. I say I am satisfied. This is what is coming from counsel and it is in accord with what has been presented to you for the decision that you have made,

which is now being challenged. And she was happy. She signed the...

**ADV NGCUKAITOBI SC:** You know, the problem is, you see, whenever you see something called misconduct, it is usually deviation from expected standard or expected conduct. What I cannot work out here is what were you expected to do? There is a case brought against the NDPP. The person cited nominally is the NDPP. She then says, Mr Chauke, please assist me to draft the application, I mean to draft the answering affidavit, which you then do with the Advocates on the brief. What on earth are they saying you should have done?

**ADV CHAUKE:** It is because it is Jiba. You should not have done it.

**ADV NGCUKAITOBI SC:** No, but I am saying from your perspective, what were you expected to do? What is the expected conduct when your boss says, help me to draft an answering affidavit?

**ADV CHAUKE:** I must refuse and say no, I cannot do it.

20 **ADV NGCUKAITOBI SC:** But I mean, is that a sensible thing?

**ADV CHAUKE:** Of course, it is nonsensical to say this. There is no justification for that and I cannot. It is a colleague, my supervisor, she is asking for assistance, which is lawful and then within my work environment and then how

do you do that?

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** I can tell you now that even in the past seven years that Advocate Shamila Batohi has been here, she has never finalised the affidavits and all those things by herself without anyone assisting her. It just does not work that way.

**ADV NGCUKAITOBI SC:** Yes. And then the only way then to justify this charge is this catch all, no evidence. But as soon as you cross that line, that is the end of this charge.

10 **ADV CHAUKE:** Indeed.

**ADV NGCUKAITOBI SC:** Yes.

**MS RAMAGAGA:** Advocate, still on this issue of the counsel that were appointed to deal with this matter, to oppose the review application, the brief to counsel, who issued the brief to counsel? Is it the Office of the NDPP or is it the Office of the DPP?

**ADV CHAUKE:** The Office of the NDPP through the State Attorney.

20 **MS RAMAGAGA:** And that makes it clear as to who is actually opposing the review application.

**ADV CHAUKE:** Indeed.

**MS RAMAGAGA:** Thank you.

**ADV NGCUKAITOBI SC:** Yes, thank you. And then 3.1.1.4 says:

“You instituted an appeal against the

judgment of Judge Govern without the approval of the then National Director of Public Prosecutions, Mr Mxolisi Nxasana.”

We have dealt with the catch all, no evidence. I just want to get the facts straight around how does this appeal story unfold?

**ADV CHAUKE:** What had happened, a decision that Govern J has made, it is given to the prosecutors to say this is what is happening. The prosecutors looked at the decision and  
10 then they said, no, look, in view of this, we cannot appeal because we are being told that there is a concession that was made by Mr Hodes. They sent me that view of them. I take that view, I send it to Mr Laurence Hodes to say this is the view of the prosecution team. What is your view?

And Laurence Hodes says, no, look, let us have a meeting with the prosecution team because there is nothing that I had conceded. And Advocate Maema, the lead prosecutor, like he indicated after the discussions with counsel, it was decided an approach must be made for the  
20 NDPP to appeal this ruling by Govern J. Now, the dice is running and I was requested to brief Advocate Dr Ramaite to say, we have got this scenario, can we get approval from the NDPP for the latter to authorise the filing of the appeal?

Of course, it was taking some time that Advocate Ramaite did not come back to me to confirm and then the dice

was running and counsel advised to say, look, what we should do is we can file provisionally so that we do not have to do condonations and all sorts of things. In the event that the NDPP approves, then we will proceed. If it withdraws, then it will withdraw. And then, indeed, that is what has happened.

Unfortunately, Advocate Dr Ramaite omitted to timeously brief the NDPP. And it came out in the press. And then Mr Nxasana said in the press that the NDPP NPA is appealing the Govern judgment. Of course, he became  
10 unhappy and not appreciating that this kind of decision would have been taken without his knowledge or approval. Consequence to that, we were called to a meeting between me, the prosecutor, I think it was Advocate Maema, and Matenjwa, and the NDPP with its advisors and Dr Ramaite.

And in that meeting, Dr Ramaite acknowledged to say, apologised to say, no, look, indeed, I was advised that I should brief you timeously with the documents to say this is what should happen in view of the Govern judgment and the like. Of course, Mr Nxasana then indicated his unhappiness  
20 about that, and then he said he accepted the apology from Dr Ramaite, but he has decided that there should not be an appeal, and then instructed me that I should inform the State Attorney to withdraw the appeal accordingly.

And that is exactly what I did. After the meeting, I sent the email to the State Attorney to say the NDPP has

decided not to appeal, and that the appeal should be withdrawn.

**ADV NGCUKAITOBI SC:** Yes. You see, because Mr Maema confirmed exactly what you are saying, that actually the decision was that of the prosecution team, and it had to be filed with some urgency because of the time limits.

**ADV CHAUKE:** Yes, ja.

**ADV NGCUKAITOBI SC:** And then when it was decided not to proceed with it, it was withdrawn.

10 **ADV CHAUKE:** Ja.

**ADV NGCUKAITOBI SC:** But more importantly, for your purposes, the person who you would have undermined, quote unquote, by appealing without their consent is Mr Nxasana.

**ADV CHAUKE:** Ja.

**ADV NGCUKAITOBI SC:** What was his view about this? Did he think, well, this is now a big misconduct charge I should now go after?

**ADV CHAUKE:** No, no, you would know. If need be, probably, if time allows, he will come and testify, or he will  
20 send a statement to indicate that. He is even surprised that that has been made to be a charge which relates to him, and this was not even discussed with him.

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** I can say for a fact that he is surprised, even as I am sitting here. He is surprised that there is that kind of

a charge that relates to him, and it has never even been consulted.

**ADV NGCUKAITOBI SC:** Yes. I mean, if he thought there was a misconduct problem, you would have instituted charges back then in 2012.

**ADV CHAUKE:** Indeed.

**MS RAMAGAGA:** Through you, does this now suggest that Advocate Nxasana is the appropriate person who can talk about whether it was you, in some way or the other, that  
10 constituted misconduct, or your actions constituted misconduct by pursuing or instituting the Notice of Appeal? It was not even pursuing the appeal, but instituting that Notice of Appeal.

**ADV CHAUKE:** Indeed, indeed, indeed, Chair. That is why I am saying, as a matter of fact, because when he saw this and when I approached him then, he was surprised, and then he said, how can the NPA and the DPP do something like this without even consulting me? As if I am the one who is complaining that this is what Chauke and the prosecution  
20 team have done.

**ADV NGCUKAITOBI SC:** And it is the usual story, no charges, well, no justification for the charges. And then the last one, under Cato Manor, is:

“Attempted to have racketeering charges  
against Major General Booysen and

members of the Cato Manor Unit reinstated by the then National Director of Public Prosecution, Mr Nxasana.”

So let us just stop there. What does this mean, that you attempted to have these charges reinstated?

**ADV CHAUKE:** Chair, on the record, what has happened, after when that meeting that I referred to where Nxasana issued instructions to withdraw the appeal, he immediately said set up a date to say he needs, wants to have a full  
10 briefing of the matter because he did not have the background and all sorts of things and the like. And the matter, the date was arranged, I think the 20, I will get the actual date on the statement, but it was, I think, seven days or 14 days after the date when we met about the, him withdrawing the appeal.

And in that meeting, the prosecution team, Maema and Matenjwa, they were doing the presentation. In that meeting, Advocate Noko was also invited to be present in that meeting. And that is where, in that meeting where he said, okay, I understand you guys go and find more because the  
20 judgment does not say we cannot reissue this statement. He made even reference also to our signed statement of Danikas, and they like to say, once you are ready and have got more, bring the application, I will consider it.

I understand that that meeting is the one that is said to be an influence for him to consider reissuing of the

racketeering. Other than that, where it is coming from, I really do not know. But I can tell you now that Mr Nxasana is also surprised that there is this allegation that there was an attempt, a subtle attempt or with a *mala fide*, that he was supposed to issue a racketeering certificate, which is not true.

**ADV NGCUKAITOBI SC:** The actual evidence we have so far, even if you forget about Mr Nxasana for a moment, is from Mr Maema, who says that his view remained throughout  
10 the tenure of Mr Nxasana and the tenure of Mr Abrams, that these charges should never have been withdrawn, they should be reinstated.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** And he motivated Mr Nxasana to reinstate the charges.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** And Mr Nxasana felt that there were certain evidential gaps to be filled.

**ADV CHAUKE:** But when that motivation was done, the  
20 second motivation, I was not there. The meeting that I attended, in which Nxasana said, from now on, Chauke, because Noko is not as conflicted as a predecessor, you must now stop being the coordinator, Noko should take over.

**ADV NGCUKAITOBI SC:** That was in April 2014.

**ADV CHAUKE:** Ja, that was the period of the appeal and

what have you. So, like Advocate Maema said, he did those presentations and then they were told to go and find more. They went to go and find more and then they did the presentation to Mr Nxasana, but he was still not satisfied, he had all those queries and whatever. So the reality is Advocate Maema would have been the one who would have went back to consider the case to be re-enrolled and the like.

**MS RAMAGAGA:** Just coming in here, that portion of the evidence, it is correct that also Advocate Nxasana, I beg your  
10 pardon, Attorney Nxasana...

**ADV CHAUKE:** Yes, Mr Nxasana.

**CHAIRPERSON:** Yes, Mr Nxasana made it clear at some point that he is conflicted and that could have been also part of the delay. He is conflicted in respect of the Cato Manor case, because of his relationship.

**ADV CHAUKE:** Ja, he said to some of the, whether they were the victims of the accused, that he would have been his client or something to that effect, but like Advocate Maema had explained, there was something like that and then he had  
20 indicated, ultimately I might have to delegate the issue, the authorisation of this to one of my deputies.

**MS RAMAGAGA:** Yes, but I am just saying there is not advance, according to the evidence that is now on record, is that he had a relationship, be it business relationship, working relationship, whatever, but the relationship with

some of the Cato Manor officials.

**ADV CHAUKE:** Some were his clients.

**MS RAMAGAGA:** Ja.

**ADV CHAUKE:** I cannot remember whether it was the officers or the victims in respect of, ja, but something to that effect.

**MS RAMAGAGA:** Okay, thank you.

**ADV NGCUKAITOBI SC:** Thank you.

**CHAIRPERSON:** Advocate Ngcukaitobi, I know that you  
10 have now exhausted the terms and the rubric of Cato Manor  
matter.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** Should we not pause here? It is five to  
eight. It is late in the hour. We are not going to sleep here.  
[Laughter] I hope I did not interrupt your clarification.

**ADV NGCUKAITOBI SC:** No, this is the right time.

**CHAIRPERSON:** I think we should pause, Advocate Chauke,  
until tomorrow morning at 9 o'clock.

**ADV CHAUKE:** Thank you, Chair.

20 **CHAIRPERSON:** And I suppose, Advocate Ngcukaitobi, we  
will run to finish with the witness tomorrow?

**ADV NGCUKAITOBI SC:** Madam Chair, I think we have done  
60 percent of the job today, so we could even have a short  
day tomorrow.

**CHAIRPERSON:** Can I rely on that undertaking? [Laughter]

**ADV NGCUKAITOBI SC:** No, do not rely. No more public undertakings. [Laughter]

**CHAIRPERSON:** Yes, thank you very much. Sorry we kept you until late in the hour, but we have made some progress. Advocate Chauke, you remain under oath, and you will continue tomorrow morning at 9 o'clock.

**ADV CHAUKE:** Thank you, Chair, I confirm.

**CHAIRPERSON:** Thank you, we will adjourn.

**ENQUIRY ADJOURNED UNTIL 27 MARCH 2026**

10 **ENQUIRY ADJOURNS**



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