

**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**

27 MARCH 2026

DAY 45



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

PROCEEDINGS ON 30 MARCH 2026

CHAIRPERSON: Good morning, everyone.

ADV NGCUKAITOBI SC: Good morning, Madam Chair.

CHAIRPERSON: Good morning, Advocate Chauke.

ADV CHAUKE: Good morning, Chair.

CHAIRPERSON: The morning gets a bit difficult, but we are getting there. My apology for the delay. Advocate Chauke, you continue to be under oath.

ADV CHAUKE: I confirm, Chair. Thanks.

10 **ANDREW CHAUKE** (still under oath)

CHAIRPERSON: Thank you, sir. Advocate Ngcukaitobi.

ADV NGCUKAITOBI SC: Thank you, Madam Chair.

CHAIRPERSON: Let us see how far we can go.

ADV NGCUKAITOBI SC: Yes, no, I think we will be quick this morning. I have taken up more than I deserve. Mr Chauke, we had explored the Cato Manor situation, I think to the extent that we could, in the last two days of your testimony. So I want to shift the focus to the matter of Lieutenant General Mdluli, which you have already testified
20 about and you have explained what your defence is, namely that there is a binding SCA judgment on the matter and that there is no basis to overturn that. But I just want you to look at the charge or the terms of reference again, and then to close that issue. It is 3.1.2.

ADV CHAUKE: Yes, I am there, Chair.

ADV NGCUKAITOBI SC: So the way it is formulated it says that:

10 “The failure to continue with charges against Lieutenant General Richard Mdluli for his involvement in the murder of Mr Tefo Abel Ramogibe in that he, Advocate Chauke, caused the charge of murder relating to the killing of Mr Tefo Abel Ramogibe and related charges to be withdrawn, notwithstanding that there was strong evidence justifying the institution of a prosecution in the matter, which decision caused a significant delay in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.”

So, presumably when they say his involvement, they mean his alleged involvement, because his involvement was never actually established.

ADV CHAUKE: Indeed.

20 **ADV NGCUKAITOBI SC:** And then the next thing is this idea of causing the charge of murder to be withdrawn. What does that mean?

ADV CHAUKE: It means that when I withdrew the murder charge and referred it to the inquest.

ADV NGCUKAITOBI SC: Yes, all right. And then it says:

“Notwithstanding that there was strong evidence justifying the institution of a prosecution in the matter.”

So I think that is where the mistake is against you. That is what you are being criticized for.

ADV CHAUKE: Ja, that there was a strong case in respect of the murder charge, which is wrong.

ADV NGCUKAITOBI SC: Precisely, that is, but that is what they are saying.

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

ADV NGCUKAITOBI SC: And then there is also, I think there is a second issue they are taking up with you, which is that your decision caused a significant delay in proceeding with the charges concerned. I presume that means, I mean, there was confusion in the evidence of Advocate Batohi about what this part refers to, whether it refers to the murder charge or it refers to the other charges, the 17 other charges. Where was the delay?

ADV CHAUKE: Yes, I heard her when she testified.

20 **ADV NGCUKAITOBI SC**: Yes. But we shall presume here that the alleged delay, well, the alleged delay cannot be on the murder charges because there can be no delay there. That was closed up.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: So it can only be the delay in the

other charges.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: All right. But that is also fully dealt with in the SCA judgment.

ADV CHAUKE: Indeed.

ADV NGCUKAITOBI SC: Yes. So when they say charges concerned, they mean the 17 charges.

ADV CHAUKE: I presume so.

ADV NGCUKAITOBI SC: Yes. So, therefore, the scope of
10 the charge, it seems, would be you referred the murder to an inquest. That is number one. And they say that is wrong because there was good evidence, strong evidence. The second one is that you caused a delay in the 17 other charges. Would that be your understanding?

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: All right. Now, let us deal then with the first one. As I understand on Advocate Batohi's version, what she read here, according to her, was the opinion of Advocate Hulley.

20 **ADV CHAUKE:** Yes.

ADV NGCUKAITOBI SC: And what Advocate Hulley in turn read was a statement by, is it Captain Roelofse?

ADV CHAUKE: Lieutenant Roelofse.

ADV NGCUKAITOBI SC: Lieutenant Roelofse, which was given in the bail application.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: And nothing in the actual investigation of the murder.

ADV CHAUKE: That is my understanding from reading that opinion.

ADV NGCUKAITOBI SC: Yes. Yes, I mean, well, it is now common cause. I mean, that is why I am happy to tell you because it is established on the record that the one read an opinion, the opinion read another opinion.

10 **ADV CHAUKE:** Yes.

ADV NGCUKAITOBI SC: Yes. And by contrast, what did you actually read?

ADV CHAUKE: I read the statement in the case docket as well as the prosecution memorandum and the representations that were made on behalf of General Mdluli.

ADV NGCUKAITOBI SC: Well, if you look back at the document we circulated at the commencement of your evidence, which is a list of annexes to the witness statement, which listed everything you read in Cato Manor and
20 everything you read in the Lieutenant General Mdluli case.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: Can you just take us to page 6.

ADV CHAUKE: I am there, Chair.

ADV NGCUKAITOBI SC: And then take us through what you read in contrast to Advocate Hulley who read one document

and Advocate Batohi who read the opinion that read one document.

ADV CHAUKE: Thank you, Chair.

- The first one is the affidavit of Michael Ramogibe, which is on record VR00553 to VR000554.
- The statement, the second statement of Abel Ramogibe, which is at VR000028 to VR000030.
- The affidavit of Lina Ntsekiseng Ramogibe Mbuyisa, VR000071 to VR000073.
- 10 • A statement of Abel Ramogibe prior to being shot as VR000487 to VR000488.
- And the affidavit by Detective Sergeant Zelinda ...[indistinct] Gomo, which is at VR000546 to VR000548.
- The affidavit by Ms Maletsatsi Sophia Ramogibe, that is the mother of Mr Ramogibe, VR000042 to VR000046.
- And the affidavit by Ms Maletsatsi Sophia Ramogibe, mother, which was written in Afrikaans, VR00527 to VR00529.
- A post-mortem report at VR000108 to VR000111.
- 20 • A statement by ...[indistinct] Tshidi Modise, sorry, Buthelezi, dated 2nd March 1999, at VR000555 to VR000557.
- Statement by Alice Manana, VR000001 to VR0000010.
- Affidavit by Mohau Johannes Ramogibe, VR000047 to VR000058.

- J88 medical legal report, VR00002 to VR000027.
- Statement by Johannes Christiaan Du Plessis, VR000097 to VR000104.
- Statement by Manyathela, VR000193 to VR000195.
- Affidavit by Lieutenant General Seswantsho Godfrey Lebeya, VR000319 to VR000321.
- Statement by Ximba, VR000045 and 0, to 001, 171 to VR00173.
- Affidavit by Godfrey Seswantsho Lebeya, VR00322

10 to VR000325.

- Statement by Investigating Officer, Roelofse, Kobus De Meyer, VR00748 to, sorry, RM0078 to RM00814 and VR000326 to VR000430.

ADV NGCUKAITOBI SC: Yes, if you could just stop there. This is the statement that was read by Mr Hulley.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: The only statement he read from this document.

ADV CHAUKE: That is how I understand it.

20 **ADV NGCUKAITOBI SC:** It is not clear from his opinion whether he had access to the docket or not, but that is the statement he read. Now, what struck me was that this is a statement in the bail proceedings. It is not even a statement in the main case.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: And did Mr Roelofse give another statement in the main case?

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: He did?

ADV CHAUKE: He did. That is the one that is recorded as VR000326 to VR000430.

ADV NGCUKAITOBI SC: Yes. So he gave two statements?

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: Yes, all right. All right. It is
10 unclear then why ...[intervenes].

CHAIRPERSON: And the one that, if I may.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: The one that Advocate Hulley relied upon is which one of the two?

ADV CHAUKE: The RM00748 to RM00814. That is how I understand it.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Yes, thank you.

ADV NGCUKAITOBI SC: We will just confirm that, Madam
20 Chair. Now I have asked Mr Ramogale to do that job. Then continue. This is now a second statement of, well, it is a third if I am not, no, no, no. It is actually a repetition.

ADV CHAUKE: It is one and the same thing, ja.

ADV NGCUKAITOBI SC: Ja.

ADV CHAUKE: I just made a mistake. I repeated.

ADV NGCUKAITOBI SC: Ja.

ADV CHAUKE: [Indistinct]...

ADV NGCUKAITOBI SC: Yes, it is the same thing. So we can scratch that one.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: Because it is referred to in the second column.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: All right. And then carry on.

10 **ADV CHAUKE:** -:

- A statement, or supplementary by Mdluli, which is VR000453.
- And then affidavit by Mtembeni Mthunzi, VR000458 to VR000473.

CHAIRPERSON: Advocate Ngcukaitobi, the statement of Lieutenant General Lebeya, the one that you have just read, is it the same statement as the previous one because the dates are different?

20 **ADV NGCUKAITOBI SC:** Madam Chair, I am comparing it with the one at, which is in the second column of the same page.

CHAIRPERSON: Oh, the same page 8.

ADV NGCUKAITOBI SC: Yes, yes.

CHAIRPERSON: Oh, yes.

ADV NGCUKAITOBI SC: So it looks like he gave two

statements, not three.

CHAIRPERSON: Thank you.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: So we must scratch the second one.

ADV NGCUKAITOBI SC: Yes, yes.

CHAIRPERSON: Thank you, proceed.

ADV NGCUKAITOBI SC: Yes, thank you.

ADV CHAUKE: -:

- A statement by Area Commissioner Leonard Anthony
10 Van Tonder at VR000579 to VR000581.

ADV NGCUKAITOBI SC: Now, before you proceed, I just want to confirm something around the statement of Mr Roelofse, because it is the pivotal statement that became the – yes, Mr Chauke, let us just get some detail out of this. Just to go back to the issue of Mr Roelofse, because I am not sure if I understand precisely what is going on and I just do not want to leave the panel as confused as I am. So the first document is the opinion from Mr Hulley and Ms Wentzel, and that is dated, well, she is now Judge Wentzel, and that is
20 dated LO001047.

ADV CHAUKE: You say LO?

ADV NGCUKAITOBI SC: So, LO001047.

ADV CHAUKE: 10?

ADV NGCUKAITOBI SC: No, 1047, yes.

CHAIRPERSON: It is volume 4 of the legal opinions.

ADV NGCUKAITOBI SC: Thank you, Madam Chair.

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

ADV NGCUKAITOBI SC: So, do you have the, this is the opinion of Mr Hulley and Ms Wentzel, correct?

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: Now, the reason I say that it is common cause that they relied on the affidavit, it is paragraph 5 of that opinion.

ADV CHAUKE: Yes, paragraph 5 reads:

10 “Before delving into our process of reasoning and the evidence to support that reasoning, there are primary facts and observations ...” [intervenes]

ADV NGCUKAITOBI SC: Preliminary facts.

ADV CHAUKE: -:

20 “Preliminary facts and observations we should set out to better understand what is to follow. These are all derived from the affidavit of Colonel Kobus Roelofse, Kobus De Meyer Roelofse, who had investigated the charges against Lieutenant General Mdluli, who attached a copy marked A.”

ADV NGCUKAITOBI SC: Yes, now, the problem is that when the NPA gave us this, they did not give us annexure A itself,

what it says. What, but anyway, the fact that that is the only thing they read is clear from that report, from that opinion, because they never explained what is the other source of their information.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: But it is clear that they relied only on Mr Roelofse's affidavit.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: Now, that, we have to find it
10 somewhere else, the affidavit. We find the affidavit at, in another section, yes, in the Mdluli docket, what we find in RM00010, which is under RM1.

ADV CHAUKE: You say page?

ADV NGCUKAITOBI SC: So, the document I have here is RM00010.

ADV CHAUKE: 00010?

ADV NGCUKAITOBI SC: Yes.

ADV CHAUKE: Yes, I am there, Chair.

ADV NGCUKAITOBI SC: Yes. Now, if you look at that, that
20 is an answering affidavit by Kobus De Meyer Roelofse.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: Yes. And the reason he submits that is to oppose a bail application by Mr Mdluli, correct?

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: Yes. So, that is one candidate

about what that annexure A is about. And the grounds for opposing the bail would be at RM00029.

ADV CHAUKE: I am there.

ADV NGCUKAITOBI SC: Yes. And that is where he talks about the strength of the case at RM00030. In his opinion, the case is very strong. Can you see that?

ADV CHAUKE: Yes, I see that.

ADV NGCUKAITOBI SC: Yes. So, that is one potential candidate about what annexure A is, but we still do not know.

10 And then, there is another document also signed by Mr Kobus De Meyer Roelofse, which is under RM00748, RM3. So that is ...[intervenes].

ADV CHAUKE: 007?

ADV NGCUKAITOBI SC: 48.

ADV CHAUKE: Ja. Yes.

ADV NGCUKAITOBI SC: Now, that is another statement. I am not sure if it is an affidavit or a statement, but what caught my attention is that in paragraph 3, thereof he says he has

20 2011. Can you see that?

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: And the one we just looked at, it seems to be the one of the 11th of April and not the one of the 12th of April, so, the one we looked at, at RM00010.

ADV CHAUKE: It is 11 April, the one that we looked at.

ADV NGCUKAITOBI SC: Ja, so that is the 11th of April if you look at RM00047.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: Yes. And then, the 12th of April, I am not sure where that is. And so, when you look at annexure A, it is utterly confusing about which of those three affidavits Mr Hulley read.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: Yes. Now, this is where the
10 problem then becomes, you know, is that when you see Advocate Batohi, who is the person that must make a rational decision to charge you, saying I have relied on Mr Hulley's affidavit, and then, I am sorry, on Mr Hulley's opinion, when you look at the opinion, it talks about annexure A, it does not attach annexure A, you try and find out from the record, you find three different documents and you cannot work out what are they talking about.

ADV CHAUKE: I agree.

ADV NGCUKAITOBI SC: Yes. Regrettably, Advocate Batohi
20 left this chamber before we could cross-examine her on this point.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: Yes. All right. I needed to clarify that when we are talking about Mr Roelofse, that we are actually talking three different statements and we cannot

work out which statement was read and relied upon by, well, we know for sure that there is no statement read by Advocate Batohi, but we cannot work out which statement was read by Mr Hulley.

ADV CHAUKE: Yes, yes.

ADV NGCUKAITOBI SC: Unfortunately, he cannot testify, he is an advocate, he cannot testify here, so we would just never know.

ADV CHAUKE: Ja, we can just assume which one statement
10 and take it from there.

ADV NGCUKAITOBI SC: Well, we cannot make assumptions. This is your career at stake. There has to be proof. Now, you have dealt with the supplementary affidavit of Mr Mdluli.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: And there is also Mthunzi-Omhle.

ADV CHAUKE: Ja.

ADV NGCUKAITOBI SC: Mtembeni Mthunzi.

ADV CHAUKE: Ja, Omhle.

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

ADV CHAUKE: -:

- The other statement is a statement of Major General Harold Godfrey Engelbrecht in VR000608, VR000614.

CHAIRPERSON: In relation to, sorry, sorry, Counsel, in relation to the statement of Mr Mdluli's written statement by

supplementary, does it mean that this statement was supplementing a previous statement by Mr Mdluli?

ADV CHAUKE: Yes, when he was at the bail hearing.

CHAIRPERSON: Where is that statement in the list, because I see the supplementary statement, the one on page 8.

ADV CHAUKE: Ja, the statement, I am not so sure on record what is it, but it is marked A53 in the case docket. And here I see it is 000453, VR.

CHAIRPERSON: And this one, it is a supplementary affidavit
10 statement?

ADV CHAUKE: Yes.

CHAIRPERSON: And the initial one, what is it marked in the record? We can search later.

ADV CHAUKE: I will try and search, but the supplementary affidavit is the one that was written by hand. It is not typed.

CHAIRPERSON: Handwritten.

ADV NGCUKAITOBI SC: Ja, I think the question by the Chair is, in the docket, where is the first statement that is being supplemented? I think that is really the question, so we must
20 just try and find that.

CHAIRPERSON: Yes.

ADV CHAUKE: I will find that. It was submitting the affidavit that he made in the bail application.

ADV NGCUKAITOBI SC: Oh, I see.

ADV CHAUKE: I will trace it.

ADV NGCUKAITOBI SC: So ...[indistinct] [cross-talking] find that affidavit ...[intervenes].

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: We have got that.

CHAIRPERSON: It does not appear in the list. Where is it appearing in this list?

ADV CHAUKE: I omitted to list it on the list, Madam Chair. My apologies.

CHAIRPERSON: Ja, we understand you will get the
10 reference number of that statement.

ADV CHAUKE: Yes.

CHAIRPERSON: Perhaps Mr Ramogale can locate
...[intervenes].

ADV NGCUKAITOBI SC: Yes, I have no doubt
...[intervenes].

CHAIRPERSON: The place in the record where we can find
the main statement.

ADV NGCUKAITOBI SC: Yes. Thank you, Madam Chair, we
shall make sure. Mr Chauke, you are saying that was a
20 handwritten supplementary to the application in the bail
proceedings?

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: All right, well, that should be easy
to locate. All right, carry on then, the following page, page
9.

ADV CHAUKE: -:

- A statement by Deputy Provincial Commissioner Berning Mthandazo Ntlemeza at VR000831 to VR000846.
- A statement by Lieutenant Colonel Pieter Jansen Viljoen at VR00932 to VR000934.
- And representations by Mdluli at RM00338 to RM00355.
- The prosecution memorandum regarding representations by Advocate Van Zyl and the two others,
10 Gcaleka and Advocate Barnard at RM00881. I just did not take the last page there. I omitted to record how many pages are there.
- Inquest report which is at RM00889.
- And the inquest findings by magistrate at RM01002 to RM01044.

ADV NGCUKAITOBI SC: Yes. Now, what seems to have become, look, there is quite a lot of documents in this docket.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: Quite a lot of things that you read
20 ...[intervenes].

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: And you came to your conclusions. Now, what it seems, and I am speculating here because we were denied a chance to cross-examine the complainant by her walkout, is that if you look at the item referenced as

prosecution memorandum, we can go through that. It is RM00881. Maybe let us just do that. Let us know when you have it.

ADV CHAUKE: RM00881?

ADV NGCUKAITOBI SC: Yes, yes, yes. It would be under RM4.

ADV CHAUKE: It ends at RM00884.

ADV NGCUKAITOBI SC: Yes, all right. No, that is fine. But I am interested in where it starts, RM00881.

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

ADV NGCUKAITOBI SC: Yes. Now, there were many occasions when Advocate Batohi said, well, the prosecutor said that there is a good case on murder. You remember that?

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: Now, the only time I can find in this record is, that reference, is this document, this four-page document, RM00881, and that is a response to the representations that were made by Lieutenant General Mdluli.

20 **ADV CHAUKE:** Yes.

ADV NGCUKAITOBI SC: He raised a lot of things about a conspiracy against him, etcetera.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: But the analysis around the strength of the case of the state, you will find that at

RM00883, under issue 2.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: Yes. Now, item 1, they say:

“The case on the murder charge relies solely on circumstantial evidence. Those include a threat by the accused to the deceased family, that the deceased will be killed.”

2:

10 “The state has direct evidence linking the accused to kidnapping, assault, assault with intent to do grievous bodily harm and intimidation.”

And 3:

20 “All this evidence is of incidents that took place prior to the murder of the deceased and are in relation to the love triangle involving the deceased and General Mdluli. We have consulted with all of these witnesses extensively and hold the view that their evidence constitutes *prima facie* proof of these crimes.”

Paragraph 4:

“The attempted murder charge, count 13

and 14, are also based on circumstantial evidence.”

5:

“The overall picture painted by this evidence is that of a thwarted lover who was hounding the new love of his girlfriend and who would stop at nothing to get rid of his fellow suitor.”

And 6:

10 “The charge of defeating or obstructing the course of justice encompasses the whole history of the case and is now further confirmed by the fact that two dockets implicating him in this matter were discovered in his safe.”

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: Now, there is nothing else that I could see from this memorandum that analyses the underlying evidence in detail. I looked at the prosecution
20 memorandum that people like Advocate Maema did for Cato Manor and I saw the detail at which they were going through, analysing each witness, the weaknesses on each witness, the strengths on each witness, the likely questions from the bench, the likely attacks from the other side, and it went on to more than 100 pages. But here I found only six paragraphs

and no more than that. Did you find anything else other than these cryptic paragraphs?

ADV CHAUKE: You mean from the prosecution memorandum?

ADV NGCUKAITOBI SC: Yes, yes.

ADV CHAUKE: No, no, that is what was there in the prosecution memorandum. I had to interface with it against the evidence which are ...[intervenes].

ADV NGCUKAITOBI SC: I understand. I will deal with that.

10 But I just want to know if there was anything else that emanated from them other than these six cryptic paragraphs.

ADV CHAUKE: No.

ADV NGCUKAITOBI SC: Yes. Now, when Advocate Batohi repeatedly talks about the prosecution memorandum that outlined that there was a strong case, she never actually went through the prosecution memorandum herself on her own version.

ADV CHAUKE: Yes.

20 **ADV NGCUKAITOBI SC:** She just heard from someone that there was a prosecution memorandum and she never took the panel to the contents of the prosecution memorandum.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: Yes. Now, and when you look at the prosecution memorandum, it actually does not analyse the evidence. At least the only comparative analysis we have

here is the Maema dossier ...[intervenes].

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: That actually shows you how this is done. Now, so then you have these six cryptic paragraphs that basically say, look, we admit that the case is circumstantial, but we think it is strong.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: Yes. What then did you do after you received this?

10 **CHAIRPERSON:** But only in relation to the murder.

ADV NGCUKAITOBI SC: To the murder, yes.

CHAIRPERSON: And attempted murder.

ADV NGCUKAITOBI SC: Yes, yes, murder and attempted murder, yes. But the other, they say it is direct, yes, that is correct, Madam Chair.

ADV CHAUKE: After that, Chair, I called for the case docket to be placed before me ...[intervenes].

ADV NGCUKAITOBI SC: Yes.

20 **ADV CHAUKE:** So that I can read the case dockets as against their submission and the representations which came from General Mdluli.

ADV NGCUKAITOBI SC: And why do you call for the case docket? You see, because we have got a strange thing here where the NDPP takes a decision of monumental proportions.

It never read a single docket.

ADV CHAUKE: No, I needed to appraise myself so that the decision that I will make one way or another should be based on the facts and based on law.

ADV NGCUKAITOBI SC: Yes, yes. But I mean, did you feel that you could not make a decision as a decision maker without having read the underlying documents?

ADV CHAUKE: Indeed.

ADV NGCUKAITOBI SC: Yes. And then what happens
10 thereafter?

ADV CHAUKE: No, I got the case docket. I went through all the statements and discovered that even on the summary of the prosecution, a memorandum, there is an omission in respect of the evidence relating to the death of Ramogibe, which they did not analyse.

ADV NGCUKAITOBI SC: And what was that omission?

ADV CHAUKE: That after when there was this assault and kidnappings and the like, there was a friendship that developed between Ramogibe and Ximba and Mthunzi. And
20 even where Ramogibe borrowed the car from Xima to go to Nelspruit and came back. And then even on the attempt that happened to him firstly was he was driving that car of Ximba.

ADV NGCUKAITOBI SC: Yes.

ADV CHAUKE: And there the notion that it was now always fighting, having problems with Ximba, Mdluli and them, to me

that indicated that there is something more to that, and I understood why maybe the prosecutors would have omitted that because that is, negates the theory that a jilted lover was now busy pursuing him because these guys were also working with Mdluli at the police station at ...[indistinct]. And even that attempted murder, it was reported to them and this Dlomo was the investigating officer and Mthunzi was also the one who took Abel Ramogibe to the police station to open the case of attempted murder.

10 **ADV NGCUKAITOBI SC:** Yes.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: And those omissions, why were they important for you?

ADV CHAUKE: The theory that was developed to say he was killed by Mdluli because of the love affair, that he was angry about it and then it is negated by the fact that there was now a relationship that developed between him and Mdluli's associates.

ADV NGCUKAITOBI SC: I see.

20 **ADV CHAUKE:** Yes.

ADV NGCUKAITOBI SC: After the ...[intervenes].

ADV CHAUKE: Yes, after the kidnappings and then I got, it was almost about two or three months thereafter.

ADV NGCUKAITOBI SC: Yes.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: Now you had, I suppose, how many choices did you have, two or three choices? You could simply go ahead with the prosecutors.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: Or you could overturn them.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: And if you overturned them, you could have just withdrawn the charges, full stop.

ADV CHAUKE: Ja, I could not withdraw the charges. The
10 other charges said there was strong direct evidence linking all the three of them to the commission of the offences. I could have just said withdraw the murder charge and proceed with the other charges, but that was not going to be practical in the sense of the theory that was created by the investigation team which was given to the prosecution team.

ADV NGCUKAITOBI SC: Yes.

ADV CHAUKE: So, I had to test that theory through the inquest where the evidence would have been tested, and that is exactly what happened.

20 **ADV NGCUKAITOBI SC:** Yes. Yes, that is the point, that you could have withdrawn it.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: But your view was that an inquest would be better.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: And why?

ADV CHAUKE: To ventilate and investigate the theory, whether the theory that the investigating team is having and the prosecution team is supported by the evidence, because on the evidence, that was my problem, that there was no link. The theory is a theory. It does not suggest that factually you will be in a position to prove that. And then even if you apply inferential reasoning, whether that will be, the only inference that you can draw that this Ramogibe was killed only because
10 of the love affair that he had with Mdluli's girlfriend.

ADV NGCUKAITOBI SC: Yes. What would be the benefit of an inquest?

ADV CHAUKE: The benefit of inquest is that that theory was going to be determined, and witnesses were going to testify and will be subjected to questions from the magistrate and from the prosecution team and Mdluli's attorneys.

ADV NGCUKAITOBI SC: And what if the prosecutors say, let us go to trial instead of an inquest, how do you explain that to them?

20 **ADV CHAUKE:** No, no, exactly what I did that this is the decision that I have made that you recommend this. My view is this is what should happen. Ultimately, the decision to prosecute is a decision that must be made by the DPP, was made at that stage.

ADV NGCUKAITOBI SC: Yes, no, I understand. But the,

and what were the interactions, if any, between you and the prosecutors, Mr Van Zyl and Mr Barnard and Ms Gcaleka?

ADV CHAUKE: No, no, we discussed that. I showed them my reasoning, and they accepted my reasoning, and that is why I issued the instruction and then issued the request to the magistrate to do a formal inquest, and I listed these witnesses who were supposed to be examined at the inquest.

ADV NGCUKAITOBI SC: Yes. Because, you see, we have this thing about the Cato Manor where the NDPP just makes
10 a decision, announces it publicly, has never engaged the prosecutors.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: And in your case, what did you do?

ADV CHAUKE: I engaged the prosecutors, like I indicated.

ADV NGCUKAITOBI SC: Ja.

ADV CHAUKE: And it is even them who were leading the evidence at the inquest.

ADV NGCUKAITOBI SC: Yes.

ADV CHAUKE: Yes.

20 **ADV NGCUKAITOBI SC**: So, but before the inquest, you spoke to them and you explained what approach you are following and why.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: Yes. And then what did they say to you?

ADV CHAUKE: No, no, they said they accept my decision and then they will consider a matter of that inquest.

ADV NGCUKAITOBI SC: Yes. I see. And then ...[intervenes].

ADV CHAUKE: So they had, I had to instruct them to withdraw all the charges because proceeding with the other charges in the circumstances that an inquest was going to be held, it will just create fragmentation of trials in case the inquest would elucidate further evidence or facts that would
10 convince me that, indeed, Mdluli needs to face a charge of murder.

ADV NGCUKAITOBI SC: Look, I mean, you know, the strange thing is that we went through this last week. The SCA says that is fine because it is not a problem to avoid fragmentation of trials.

ADV CHAUKE: Indeed.

ADV NGCUKAITOBI SC: And this is what they are charging you with now here that, you know, you should have proceeded with the other charges.

20 **ADV CHAUKE:** No, I took it and accept that that comes because of the misreading or not understanding the SCA judgment.

ADV NGCUKAITOBI SC: Yes. No, I understand. All right, so we are now at the stage where you have spoken to the, firstly, you have analysed the docket, you have looked at the

memorandum, you have identified weaknesses in the memorandum and in the evidence and there are gaps and you say, okay, to satisfy myself, let me rather follow a cautious route of an inquest.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: If the inquest finds that a case of murder is sufficiently established, what were you going to do?

ADV CHAUKE: I was going just to proceed to say proceed and charge him with all this, the murder charge and the
10 attempted murder charges.

ADV NGCUKAITOBI SC: You see, what I need to put to you is, you know, there was another theory that the NPA appears to have been working on and that is the theory contained in the opinion by Mr Hulley. Let me just take you through that. They seem to have thought that you had some kind of a double agenda, you know. And so if you go back to that opinion of Mr Hulley ...[incomplete].

ADV CHAUKE: If you can help me with the page.

ADV NGCUKAITOBI SC: L04. So I want to look specifically
20 at L001056.

ADV CHAUKE: 056?

ADV NGCUKAITOBI SC: Yes.

ADV CHAUKE: Sorry, 05?

ADV NGCUKAITOBI SC: Sorry, 001056.

ADV CHAUKE: That will be 1056.

ADV NGCUKAITOBI SC: Yes.

ADV CHAUKE: Yes, I am there, Chair.

ADV NGCUKAITOBI SC: Now, this seems to me to be the whole problem with this, is that ordinarily you have a prosecutor who is the DPP. He looks at the work of other prosecutors who report to him. And then he says, look, your work has got discrepancies. I need it to be checked by a magistrate, and everyone is happy with that.

ADV CHAUKE: Yes.

10 **ADV NGCUKAITOBI SC:** And that is in the normal course of doing your work.

ADV CHAUKE: Indeed.

ADV NGCUKAITOBI SC: Until somebody then introduces this theory, and I am going to show you what actually seems to have been the problem. In paragraph 13, this is what Mr Hulley writes:

“Lieutenant General Mdluli was obviously anxious not to be prosecuted on either set of charges. To avoid prosecution, he had to make representations to two different
20 persons, the Special Director of the Special Commercial Crimes Unit.”

Now, you were not involved in that one.

ADV CHAUKE: No.

ADV NGCUKAITOBI SC: That was Mr Mathenjwa.

ADV CHAUKE: No, no, it was Mr Mrwebi.

ADV NGCUKAITOBI SC: Sorry, Mr Lawrence Mrwebi.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: Now, and then he says, in respect of the fraud charges and the Director of Public Prosecutions in relation to the Ramogibe matter, correct?

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: And then he says:

10 “By March 2012, he had succeeded in doing so. The question is how. It is in this context that Advocate Chauke's decision should be considered.”

Paragraph 14:

20 “The chronology of the events and the context in which Advocate Chauke made the decision to withdraw the charges demonstrates that in all probability, he did not act without fear, favour, or prejudice in making the impugned decision. We summarize this case below.”

I mean, how do you respond to that?

ADV CHAUKE: That is a lot of nonsense.

ADV NGCUKAITOBI SC: No, well, let us not be rude. But how do you respond to that, that he is accusing you of not acting without, of acting with fear, favour, or prejudice?

ADV CHAUKE: No, it is very unfair to me.

ADV NGCUKAITOBI SC: Yes, but it is false.

ADV CHAUKE: It is false.

ADV NGCUKAITOBI SC: Yes. Now, paragraph 15:

“On 7 July 2009, Lieutenant General Mdluli was appointed as the Divisional Commissioner of Crime Intelligence. His appointment was not made directly by the former President, Mr Zuma, but it was made under highly suspicious circumstances which need not be explored here.”

10

Now, you know, I personally, as an advocate, cannot understand how you can make a statement like this without any underlying facts, because the opinion does not contain any facts that Mr Mdluli's appointment was questionable.

ADV CHAUKE: From what I understand, it is the theory that was developed because Mdluli said he was being prosecuted because they did not want him to be appointed as the Head of Crime Intelligence.

20

ADV NGCUKAITOBI SC: I understand that. Mr Mdluli can say anything. He is a witness. It is like Major General Booyesen. I do not care.

ADV CHAUKE: Ja.

ADV NGCUKAITOBI SC: What I care about is an opinion

that is relied upon by the NDPP to prosecute you, and that is why I want your comment on paragraph 15.

ADV CHAUKE: It is just unfortunate that the opinion was, came with this theory which is untenable and ...[intervenes].

ADV NGCUKAITOBI SC: But, I mean, are there any facts here that support what is being stated?

ADV CHAUKE: No.

ADV NGCUKAITOBI SC: Yes. Now, then paragraph 16.

10 “Lieutenant General Mdluli and Advocate Nomgcobo Jiba, the former acting NDPP, enjoyed a special relationship with, and the protection of President Zuma and both appeared to have a direct line of communication to the President.”

Now, again, are there any facts here that now Ms Jiba and Mr Mdluli have a close relationship to the President?

ADV CHAUKE: Not that I am aware of. Advocate Hulley would ...[intervenes].

20 **ADV NGCUKAITOBI SC:** No, no, in their opinion.

ADV CHAUKE: No.

ADV NGCUKAITOBI SC: Yes. What is the basis, then, for this?

ADV CHAUKE: It is, there is no basis at all.

ADV NGCUKAITOBI SC: Yes. Now, then:

“Advocate Jiba repeatedly told officials within the NPA and spoke openly within the NPA corridors that she had the ear of the President. Lieutenant General Mdluli lodged complaints with former President and it seems that his complaints were taken seriously. We explore that below.”

10 And is there any basis, factual basis set out here for this?

ADV CHAUKE: No.

ADV NGCUKAITOBI SC: Yes. And then paragraph 17:

20 “On 8 September 2010 President Zuma granted Advocate Jiba’s husband, Mr Booker Nhantsi, a presidential pardon despite warnings from the Minister of Justice, Mr Jeff Radebe, that Mr Nhantsi had not met the most basic requirements for such pardon. This evidence is documented in an affidavit of Advocate Karen van Rensburg that was filed with the State Capture Commission and appears on its website. This case is amply supported by the documentation attached to her

affidavit.”

ADV CHAUKE: Now, there you have it.

ADV NGCUKAITOBI SC: What do I have?

ADV CHAUKE: That the theory came from Karen van Rensburg.

ADV NGCUKAITOBI SC: Yes.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: Advocate Karen van Rensburg.

ADV CHAUKE: Sorry, Advocate Karen van Rensburg.

10 **ADV NGCUKAITOBI SC:** Yes. But it is not tested anywhere. There is no trial. There is no cross-examination. Nothing. It is just people's own thumb sucking.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: Yes. Then, 18:

“A day later, a person bearing the name of Nomgcobo Jiba ...”

And this is really, you have got to look at this, it is truly astonishing what is said here.

20 “A day later, on 9 September 2010, a person bearing the name of Nomgcobo Jiba, who apparently had a different identification number, and Lieutenant General Mdluli travelled together on a flight to Durban. Advocate Jiba was confronted with this evidence in the

Mokgoro Commission of Inquiry. She denied that the person in question was her. Given the surrounding circumstances, it seems with respect far too coincidental that it was not her.”

Now, what do you make of this? I mean ...[intervenes].

ADV CHAUKE: It is very unfortunate.

ADV NGCUKAITOBI SC: But in terms of the evidential
10 quality that you would expect from a senior counsel advising the NPA, that you just rely on your own speculation.

ADV CHAUKE: That is why I am saying, that he looked at the gossip and the innuendos from people in the NPA, like Advocate Karen Van Rensburg. You would remember, Advocate Karen Van Rensburg is the one who filed the affidavit in the, where the NPA was alleging that it was not represented in this inquiry, when the contrary is correct. So I am not surprised at all.

ADV NGCUKAITOBI SC: Yes. Then 19:

20 “On 11 November 2010, Lieutenant
General Mdluli addressed ...”

[intervenes]

ADV BALOYI-MERE SC: Sorry, before you continue, all these allegations that are being mentioned, especially at paragraph 17 and 18, went to the State Capture Commission.

ADV CHAUKE: Yes, correct.

ADV BALOYI-MERE SC: Do we know whether there was any pronouncement on any of this, or what was the outcome? I am looking at paragraph 17, where it is said that Mr Nhantsi, whom we know that it is Advocate Jiba's husband, was granted pardon despite warnings, and that he had not met the most basic requirements for such pardon. Did the State Capture Commission make a pronouncement on this, or was there an effort to review this decision, because if it was taken
10 arbitrarily, it is an administrative decision that can be reviewed. Was there any pronouncement, or was it reviewed?

And maybe let me just lump it with what is contained in paragraph 18, where Advocate Jiba says, the person that you are talking about is not me. Was there anything further done to try and prove that it was Advocate Jiba for us to be dealing with it now, entertaining it now here?

ADV CHAUKE: Chair, not that I am aware of. As indicated, when Advocate Shamila Batohi testified here, she said, regrettably, the Zondo Commission did not make any findings.
20 Now, what had happened here, because I also filed an affidavit at the Zondo Commission, when it was supposed to be our turn to respond to the allegations from Karen van Rensburg et al, the Zondo Commission said this was not within their terms of reference, and then they will refer them back to the NPA to be dealt with. That is why when she was,

Advocate Shamila Batohi, when she was here, she said, regrettably, Zondo Commission did not make any findings.

ADV BALOYI-MERE SC: So the NPA did not do anything after being told by the State Capture Commission that this is outside their terms of reference?

ADV CHAUKE: Not that I am aware of. What had happened thereafter is this process that we are in now.

ADV BALOYI-MERE SC: So we can simply disregard this because it does not take us anywhere. I mean, we do not
10 have to, Advocate Jiba is not before us. It is only her decision in relation to the Cato Manor that is before us. But other than that, the rest of this are not relevant to our terms of reference, unless if they show something that I am unable to grasp.

ADV CHAUKE: Chair, I just saw the appetite that Advocate Karen van Rensburg, Advocate Batohi, some civil servants ...[indistinct] groupings they had at Jiba. This is what, but I can sum it that way. This appetite about her ...[indistinct] I do not know.

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

ADV NGCUKAITOBI SC: Thank you.

CHAIRPERSON: If I may, Counsel. The issues referred to at RM00883, the cryptic issues, do you remember, the six paragraphs that Advocate Ngcukaitobi referred you to earlier?

ADV CHAUKE: 883?

CHAIRPERSON: 883. RM00883 is volume 4 of Mdluli. It is a prosecution memorandum in which representations by Advocate Mdluli ...[intervenes].

ADV CHAUKE: I am there, Chair.

CHAIRPERSON: I beg your pardon, General Mdluli, yes. The first issue regarding the murder charge and the attempted murder charges, they say it was based on circumstantial evidence.

10 **ADV CHAUKE:** Yes.

ADV NGCUKAITOBI SC: It is for that reason that you referred the matter for inquest.

ADV CHAUKE: Yes.

CHAIRPERSON: Can you just elaborate for those who do not understand what circumstantial evidence is?

ADV CHAUKE: Yes, Chair. Circumstantial evidence shows that you do not have direct evidence to link the accused with a particular offence. You rely on circumstances and inferential reasoning to conclude that this might be the person who is responsible. Now, in that kind of reasoning, when you reason, you must exclude other possibilities in respect of that circumstantial or inferential reasoning.

20

At the end of the day, circumstantial evidence, at times you will have some facts outside of that which might corroborate that circumstantial evidence. And in this

instance, my reasoning was that there are no other facts other than that there is this love triangle, which is supposedly the main cause for his death. And once one reason with those kind of circumstantial evidence, you must draw the conclusion that one inference which points to that, and in my thought and in my reasoning, that was not the only conclusion that one could reach based on the facts as I had them at the time.

CHAIRPERSON: Will I be correct, given your experience as a prosecutor, a very experienced prosecutor, that when you
10 are faced with circumstantial evidence and you have to make a decision whether to prosecute or not, or to go to trial, proceed to trial or not, you often encounter challenges in formulating a conclusive view that there is indeed a *prima facie* case?

ADV CHAUKE: Indeed, Chair.

CHAIRPERSON: Am I correct?

ADV CHAUKE: You are correct, Chair.

CHAIRPERSON: Now, with this background, looking at the opinion of Advocate Hulley, where they tabulate all these
20 things that they are mentioning, which seems to me to constitute gossip.

ADV CHAUKE: Indeed, at the highest level.

CHAIRPERSON: Is there anywhere in this opinion, I might have misread the opinion, wherein the writers of this opinion deal with those aspects of the circumstantial evidence?

ADV CHAUKE: Not that I am aware.

CHAIRPERSON: [Indistinct]...

ADV CHAUKE: Not that I am aware, Chair. I tried to also go through it from time to time when I knew that I was going to come here and I could not really see where they actually discussed the actual effects and the actual evidence.

CHAIRPERSON: In the absence of any analysis of the circumstantial evidence that you were confronted with, that might have assisted in coming to a reasonable conclusion
10 whether you were wrong or not, what do we then make of this opinion? From those paragraphs where reference is made to you having acted, that you did not act without fear, favour or prejudice, that you relied on those things that have been mentioned in those paragraphs, without the analysis that I am mentioning, what should we then make of those paragraphs?

ADV CHAUKE: I respectfully submit that they must be ignored and not be taken into account because it is untenable and not based on evidence, what is contained in those paragraphs.

20 **CHAIRPERSON**: No, the suggestion at paragraph 14 of the opinion that in all probability you did not act without fear, favour or prejudice, you know that is a serious allegation.

ADV CHAUKE: I know, Chair, and ...[intervenes].

CHAIRPERSON: It is serious because of your constitutional and legal obligation as a prosecutor, correct?

ADV CHAUKE: Correct, Chair.

CHAIRPERSON: Now, the averments that you did not act without fear, is it based on those paragraphs, for instance, paragraph 15 and 16, regarding the mentioning of the appointment of Mr Mdluli by President Zuma, and that General Mdluli had a relationship, a special relationship with Advocate Jiba, that Advocate Jiba's partner was given presidential pardon. I am just mentioning in summary those aspects, and I am just trying to determine what relevance are
10 these aspects to the allegation that you were fearful?

ADV CHAUKE: To the contrary, I was not fearful for that simple reason, that if I was acting with prejudice and the like and I was to confirm to this theory, then it means I would simply have withdrawn the charges against Mdluli in their entirety. But because I was acting without fear or favour or prejudice, I had to look at the facts and satisfy myself that there is justification for the charges, one way or another. In summary, Chair, I acted without fear or favour or prejudice.

CHAIRPERSON: Hence you ...[intervenes].

20 **ADV CHAUKE:** Because this reasoning, this reasoning which is here in this paragraph is prejudicial in themselves.

CHAIRPERSON: And it is not consistent with your decision referring the matter for inquest.

ADV CHAUKE: Indeed, Chair.

CHAIRPERSON: Yes, thank you.

ADV NGCUKAITOBI SC: Thank you. Mr Chauke, let us not poison this forum further by emphasis on the gossip.

ADV CHAUKE: Thank you, Chair.

ADV NGCUKAITOBI SC: I just want to just answer something directly on this line that the Chair was engaging you with, which is, you know, if it was true what Advocate Hulley had written there, all of that gossip, what did you actually do? Now you have got the results of the inquest. They say that on murder, it is no good. But what did you do
10 as a matter of fact?

ADV CHAUKE: I did nothing wrong, Chair, because immediately after the findings of the inquest, I called in the prosecution team to say, here we are. You guys must now amend your indictment and proceed with all these other charges.

ADV NGCUKAITOBI SC: Yes.

ADV CHAUKE: Then the team leader, Advocate Van Zyl, he says, no, I heard that your decision to refer the matter for the inquest is being reviewed by the High Court in Pretoria, and
20 in that sense we cannot proceed with the matter on trial given under the circumstances, which I agreed with him, because it made sense that one would have to wait for the judgment from the High Court, which was delivered by Murphy J.

ADV NGCUKAITOBI SC: Yes.

ADV CHAUKE: And then after the judgment was delivered

against the NDPP, that decision was appealed to the SCA, and the SCA came out with a judgment that determined that my reasoning and the process that I followed was rational.

ADV NGCUKAITOBI SC: Yes. But also they affirmed you on the fragmentation issue.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: Insofar as they are talking here about the delay in the other charges.

ADV CHAUKE: Yes.

10 **ADV NGCUKAITOBI SC:** Yes. But the point I am saying is, what did you actually do against Advocate, I mean, against Lieutenant General Mdluli? Remember that this is the person via gossip that they are associating you with, and Advocate Jiba and President Zuma, the whole conspiracy that they have cooked up at Advocate Van Rensburg's affidavit. But you have a choice to say, am I charging this person, because if you are part of this, you know, large conspiracy, what did you actually do?

ADV CHAUKE: No, I charged Mdluli in respect of all the
20 other offenses of kidnapping, assault, and on the victims. If I really had anything to do with him that was protecting him, I probably would have found a reason not to proceed with those charges, given that they were even more than 10, 11 years, which is irrelevant. The fact of the matter is, I was faced with a decision to make there, and I made it accordingly

without any fear, favour or prejudice.

ADV NGCUKAITOBI SC: But as I just said, you are in fact the only person who has ever charged Lieutenant General Mdluli.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: And then what happened after that? Once you charged him, you went to a trial.

ADV CHAUKE: We went to a trial, and they were convicted, and they were sentenced to 5 years imprisonment.

10 **ADV NGCUKAITOBI SC:** Yes.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: Which has never happened before.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: And then the only person who ever charged Lieutenant General Mdluli is now being accused here, strangely, of trying to protect him, but you sent the man to jail for 5 years.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: Yes.

20 **CHAIRPERSON:** During the testimony of Advocate Batohi on this aspect, when we asked her as to what the problem is in relation to you having withdrawn the murder charges, my recollection, subject to correction, was that she said you did not reinstate the charges.

ADV CHAUKE: Yes.

CHAIRPERSON: If my understanding is correct, she meant, unfortunately, she left before we could canvass those issues with her, my understanding of her testimony was that your failure to reinstate those charges after the decision of the Supreme Court of Appeal is what really gave the problem and led to her doing what she did, because she seemed to have understood that withdrawal, *per se*, does not put an end to a case, a criminal case. It can, at a later stage, be reinstated. Is my recollection of events correct?

10 **ADV CHAUKE:** They are correct, Chair. What has happened, as I indicated, there is a misreading or misunderstanding of the judgment. Once the SCA made that judgment it took the decision to decide on the murder and the murder charge back to the, took it to the National Director. I could not, in terms of that judgment, make a decision myself, because that decision became now the decision of the NDPP to make, which she made. So, how Advocate Batohi and those around her could concede, even the opinion concluded that I failed to reinstate the charges once they were
20 withdrawn, it is beyond comprehension.

CHAIRPERSON: If we can just, maybe if you remember where we find Brand J's order, Brand JA's order, rather.

ADV NGCUKAITOBI SC: Chair, it is at CL00371. That is CL2.

CHAIRPERSON: 003?

ADV NGCUKAITOBI SC: 71.

CHAIRPERSON: 71. Thank you, Counsel.

ADV CHAUKE: I am there, Chair. I got it.

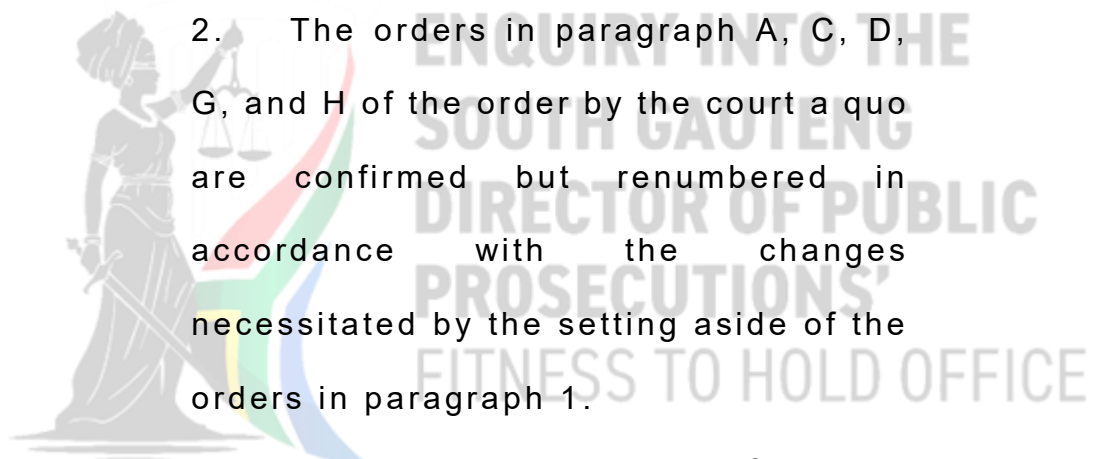
CHAIRPERSON: Paragraph 54, the order of the Supreme Court of Appeal, would you just quickly read the order?

ADV CHAUKE: Thank you, Chair.

“In the premises, it is ordered that:

10 1. The appeal succeeds only to the extent that paragraphs B, E, and F of the order of the court a quo are set aside.

2. The orders in paragraph A, C, D, G, and H of the order by the court a quo are confirmed but renumbered in accordance with the changes necessitated by the setting aside of the orders in paragraph 1.



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

(a) To decide which of the criminal charges of murder and related charges 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 reinstitute some, if any, of those charges.

4. There shall be no order as to costs in respect of the appeal.”

CHAIRPERSON: As regards order 3(a), as you mentioned, it was now, the matter was now in the hands of the NDPP.

ADV CHAUKE: Yes.

10 **CHAIRPERSON:** This time it was Advocate Nxasana, correct?

ADV CHAUKE: It was Mr Nxasana.

CHAIRPERSON: The matter was now out of your hands.

ADV CHAUKE: Yes.

CHAIRPERSON: Thank you, Counsel.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. Can you go to your bundle where there is your statement together with its attachment and go to page 6A-161?

20 **MS RAMAGAGA:** Maybe before we go to that bundle, I should ask questions. I thought you were still going to be working on this portion, but then, ja . Advocate Chauke, you say that your decision was different from that, or your view was actually different from that of the prosecution team that was looking at the Mdluli matter, the murder in particular, am I correct?.

ADV CHAUKE: Yes.

MS RAMAGAGA: And you engaged the prosecution team about what is concerning to you, and nevertheless, as a cautionary measure, you took this matter, you referred it for inquest.

ADV CHAUKE: Yes.

MS RAMAGAGA: And you say that the members of the prosecution team, the very prosecution team that had decided that the matter should be proceeded with on prosecution, are
10 the ones that led evidence, witnesses evidence at inquest.

ADV CHAUKE: Yes.

MS RAMAGAGA: At the inquest, yes.

ADV CHAUKE: Yes.

MS RAMAGAGA: And once the inquest was concluded, the magistrate gave its ruling, its decision.

ADV CHAUKE: Yes.

MS RAMAGAGA: Now, do you know as to, upon receipt of the decision of the magistrate, what was the view of the members of the prosecution team, the very ones that were
20 actually active at the inquest? Were they satisfied, according to your observation, or even what they said about the decision of the magistrate, or was there any issues from them?

ADV CHAUKE: According to me, they were satisfied, they understood the reasoning of the magistrate, and I did not take

it any further from them.

MS RAMAGAGA: Okay, yes. So they too now were satisfied with your thinking and agreed, based on the reasoning of the magistrate, that you were actually correct.

ADV CHAUKE: Yes.

MS RAMAGAGA: Now, after the receipt of the inquest outcome, you then directed the prosecution team, Van Zyl and them, to then proceed with the other matters.

ADV CHAUKE: Yes.

10 **MS RAMAGAGA**: And how can we describe this, can we say that you gave a directive that the other matters be proceeded with, without delay, or did you delay in some way or the other?

ADV CHAUKE: I did not delay at all. I think it was two or three days thereafter, once I received the record of the findings from the magistrate, and having studied that, I called the prosecution team and I explained to say, given what has happened and the reasoning of the magistrate, I am satisfied that the decision that I have made is correct, you can proceed

20 with the other charges.

MS RAMAGAGA: So this actually suggests that the question whether to proceed with these other matters depended on what the outcome would be, but with, in respect of those matters, you were resolute on proceeding with the prosecution. The only thing that you were trying to avoid was

staggering the matters. Is that a correct conclusion?

ADV CHAUKE: That is correct, Chair.

MS RAMAGAGA: And would you say that the NDPP or the NPA actually ought to have become aware of the fact, let me rephrase it. I do not think I am asking the right question. Right, now, but for the advice from the prosecution team that the decision of the magistrate was, the judgment of the magistrate was under review, these other matters would then have been proceeded with.

10 **ADV CHAUKE**: Yes.

MS RAMAGAGA: Now, reference to, I see Advocate Hulley's opinion has spent a lot of time dealing with issues that concern Advocate Jiba, and I look at that opinion, it was written in 2023. Is it correct that that was long after Advocate Jiba had left the NPA?

ADV CHAUKE: Yes.

MS RAMAGAGA: Thank you.

ADV CHAUKE: And Mdluli, and then Mdluli and the others, by then I think they were in prison, serving the 5, 5 years.

20 **MS RAMAGAGA**: Right, thank you. That is a bonus answer. Thank you.

CHAIRPERSON: In relation to which charges?

ADV CHAUKE: In relation to kidnapping, assault, and defeating the end of justice charges.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: And – you may.

ADV NGCUKAITOBI SC: No, i am happy to ...[intervenes].

CHAIRPERSON: Yes, thank you. And I thought that the point that I asked you about order 3(a) of the Supreme Court of Appeal, just to take it to its logical conclusion, the charges were subsequently reinstated.

ADV CHAUKE: Yes.

CHAIRPERSON: That is the murder charge.

ADV CHAUKE: No.

10 **CHAIRPERSON:** What happened to those charges?

ADV CHAUKE: Mr Nxasana made the decision that there was not enough evidence to proceed on the murder and attempted murder charge, and he informed the Freedom Under Law, accordingly, through Cliffe Dekker Attorneys.

CHAIRPERSON: What decision then did he make, *nolle prosequi*?

ADV CHAUKE: He made a *nolle prosequi* in respect of murder and attempted murder charges and indicated that the trial is going to proceed in respect of the other charges, as
20 directed by me.

CHAIRPERSON: Yes. Was there any challenge to that decision by anybody?

ADV CHAUKE: Not that I am aware of, Chair.

CHAIRPERSON: Thank you.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. I think

we were actually on the same point. I was going to ask the witness to look at 6A-161 of the attachments to your statement.

ADV CHAUKE: Yes, I am there, Chair.

ADV NGCUKAITOBI SC: Yes. What is that document?

ADV CHAUKE: It is a letter written by Mr Nxasana, the National Director of Public Prosecution to Tricia Erasmus, senior associate at Cliffe Dekker Hofmeyr Incorporated, dated the 17th of June 2014.

10 **ADV NGCUKAITOBI SC:** And then can you just read the contents of that document?

ADV CHAUKE: -:

“Dear Tricia, the above matter and your letter/fax dated 5 June 2014, refer.

Kindly be advised that after careful consideration of the evidence contained

in the dockets, as well as the

transcription of the inquest record, the

state has taken a decision to reinstate

20 the following charges against Mr Richard Naggie Mdluli.

1. Five counts of contravening Section 1(a)(b) of the Intimidation Act, 72 of 1982.

2. Two counts of kidnapping.

3. Two counts of assault with intent to do grievous bodily harm.

4. Two counts of assault common.

5. One count of defeating and/or obstructing the end of justice.

Due to the high-profile nature of the matter, the state is considering arraigning the accused in the . Please

10

take note that the state is not in a position to proceed with the murder and attempted murder charges against Mr Mdluli at this stage due to the lack of evidence implicating him thereto.”

ADV NGCUKAITOBI SC: If we can just stop there.

ADV CHAUKE: Please ...[intervenes].

ADV NGCUKAITOBI SC: No, just stop there, because he is then talking about fraud and corruption, which was Mr Mrwebi’s department. Your department was murder and attempted murder.

20 **ADV CHAUKE:** Yes.

ADV NGCUKAITOBI SC: You had come to the exact same decision, conclusion yourself earlier.

ADV CHAUKE: Indeed.

ADV NGCUKAITOBI SC: And now your boss also comes to the same conclusion after reading the dockets.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: Now, the funny thing here is, a withdrawal does not mean the end of the prosecution. You can reinstate if you find the evidence at a later stage.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: After Mr Nxasana left, there was another NDPP who was Mr Sean Abrahams.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: Did he reinstate the charges of
10 murder against Mr Mdluli?

ADV CHAUKE: No.

ADV NGCUKAITOBI SC: After Mr Abrahams, there was another NDPP, Advocate Batohi, who seems to have been concerned about the withdrawal of the case. Did she reinstate the charges?

ADV CHAUKE: No, she did not. That is why I make it in my statement there to say, even as I am sitting here today, she has never taken that decision to charge Mdluli with murder and attempted murder.

20 **ADV NGCUKAITOBI SC:** Yes, and does murder prescribe?

ADV CHAUKE: No.

ADV NGCUKAITOBI SC: Yes. So, she had seven years to charge Mr Mdluli if she believed that there was a good case against him, and she did not.

ADV CHAUKE: Indeed.

ADV NGCUKAITOBI SC: Yes.

MS RAMAGAGA: Just to follow up on that one. Advocate Batohi, in her evidence and also even in her affidavit, she states that you weakened the murder charge by delaying prosecution. Can, are you able to help us understand what that means in the context of your work as a prosecutor?

ADV CHAUKE: No, to the contrary. One was able to determine whether that theory or the circumstantial evidence will stand scrutiny in court, which it was not. So, she is
10 saying directly the opposite, because the opposite will also be true, that at the inquest, it could be that the evidence there will come and show that, indeed, this circumstantial evidence is strong, and then it is the only inference that can be drawn that Mdluli ...[indistinct] at the exclusion of another person.

MS RAMAGAGA: Can you enlighten us about what could weakening a case mean, especially in the context of your exercise of your obligations as a prosecutor, instances where we can really point out that, indeed, these are factors which can contribute to the weakening of the case at the hand of
20 the prosecutor?

ADV CHAUKE: You will find the rare instances of that happening, because in a case where a witness is subjected to double cross-examination, that is, cross-examined at the inquest and then being cross-examined in the actual trial, there is a potential that you would think that the witness

might, may contradict themselves in the subsequent trial and the like. That is the only reasoning that I think maybe she was thinking about it.

MS RAMAGAGA: Yes.

ADV CHAUKE: Anything more than that, it will be a figment of an imagination that that will happen.

MS RAMAGAGA: Okay, thank you, sir. Thank you.

ADV NGCUKAITOBI SC: Thank you.

10 **CHAIRPERSON:** Advocate Ngcukaitobi, I am reminded that it is tea time.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: But before we pause, let me just clarify with the witness. Following the letter by Advocate Nxasana, or decision, let me refer to it as a decision, 6A-161, where he said:

20 “Please take note that the state is not in a position to proceed with the murder and attempted murder charges against Mr Mdluli at this stage due to the lack of evidence implicating him.”

You said that this is a *nolle prosequi* decision. You understand it to be that.

ADV CHAUKE: Ja, I understand it to be there at that stage.

CHAIRPERSON: Now, what avenues were, or options were open to Advocate Batohi if she was of the view that the

attempted murder charges against Mr Mdluli should have been proceeded with?

ADV CHAUKE: If she had evidence which would have come to light between then, when Advocate Nxasana made this decision, and her coming into office, she would be entitled to reinstate the charges, to make a decision to say the murder and the attempted murder charges should proceed.

CHAIRPERSON: That is where my problem is. I do not understand this sentence to mean withdrawal.

10 **ADV CHAUKE**: Yes.

CHAIRPERSON: I understand this sentence, and correct me if I am wrong, the decision Advocate Nxasana is taking here is not a withdrawal.

ADV CHAUKE: No.

CHAIRPERSON: It is a *nolle prosequi* decision.

ADV CHAUKE: Yes.

CHAIRPERSON: Now, I am asking you, in the face of that kind of a decision, in your understanding of criminal proceedings, what options was then open to Advocate Batohi
20 if she was of the view that the prosecution should have been proceeded with?

ADV CHAUKE: It was to go back to the court and ask for the court to review the decision and consider factors that she would have had in her position to indicate that that decision was unlawful or was irregular. In the same vein that Freedom

Under Law went to court to challenge the decision not to prosecute, she could have done exactly the same way, to indicate that she wants that decision reviewed and then that the court would consider and make a decision.

CHAIRPERSON: But the Freedom Under Law one was different because yours was a withdrawal.

ADV CHAUKE: Yes.

CHAIRPERSON: Not a decision not to prosecute.

ADV CHAUKE: Yes.

10 **CHAIRPERSON:** Is my understanding correct?

ADV CHAUKE: Correct, Chair.

CHAIRPERSON: Here, it is a final decision, if I may call it that, not to proceed with the prosecution.

ADV CHAUKE: Yes.

CHAIRPERSON: And in that instance, anyone who was of the view that the prosecution should have been proceeded with, would have taken certain steps and you say Advocate Batohi should have gone to court to review this decision of Advocate Nxasana.

20 **ADV CHAUKE:** Yes. Or Freedom Under Law then, when the decision was made and they were not satisfied, they would have approached the court for them to challenge that decision of Mr Nxasana.

CHAIRPERSON: Yes, Freedom Under Law is not before us. There is no complaint by them. The complaint is by Advocate

Batohi.

ADV CHAUKE: Indeed, Chair.

CHAIRPERSON: Yes. We have now crossed that first hurdle regarding the withdrawal by you. The SCA has pronounced on that. The matter has now gone to Advocate Nxasana, the NDPP, in whose hands the matter was, and he decided I am not proceeding.

ADV CHAUKE: Yes.

CHAIRPERSON: That should then have brought the matter
10 to an end.

ADV CHAUKE: Which is what has happened. The matter was concluded then.

CHAIRPERSON: Thank you.

ADV NGCUKAITOBI SC: Thank you, Madam Chair.

MS RAMAGAGA: [Indistinct]... [microphone off] just seeking clarity. Yes, the matter was then brought to a halt by the *nolle prosequi* as my sister has stated that I mean there is a clear difference between a withdrawal and you cannot exercise certain powers in respect of a withdrawal. Is it also
20 not so that maybe the only option open for a person, not just focusing on Advocate Batohi, because then we will talk about her office later if necessary, once a certificate of *nolle prosequi* has been issued, is it correct that those who have an interest in the matter would then have a right to institute private prosecution proceedings?

ADV CHAUKE: Yes.

MS RAMAGAGA: But looking at the office held by Advocate Batohi, would that, even that be open to her, because people go for private prosecution because they think or they believe that the prosecutor has failed to exercise its decision properly, and the decision that comes from the NPA becomes the decision of the NPA.

ADV CHAUKE: Yes, she is *functus officio*.

MS RAMAGAGA: She is *functus officio* and she would not,
10 that would also not be open to her.

ADV CHAUKE: Yes.

MS RAMAGAGA: Thank you.

CHAIRPERSON: On just the last question. On that aspect
of the terms of reference, reference term 3.1.2.

ADV CHAUKE: I am there, Chair.

CHAIRPERSON: If I may quickly just read it.

“The failure to continue with charges
against Lieutenant General Richard
Mdluli for his involvement in the murder
of Mr Tefo Abel Ramogibe, in that he,
20 Advocate Chauke, caused the charge of
murder relating to the killing of Mr Tefo
Abel Ramogibe and related charges to
be withdrawn.”

ADV CHAUKE: Yes.

CHAIRPERSON: We have crossed that hurdle.

ADV CHAUKE: Yes.

CHAIRPERSON: Notwithstanding that there was strong evidence justifying the institution of a prosecution in the matter, we also dealt with what seemed to have been relied upon by Advocate Hulley and others in the opinion that gave rise to this issue. Is there any other evidence, in your view, apparent from the affidavit of Advocate Batohi, other than what we have read in the opinion of Advocate Hulley,
10 suggestive of a strong evidence?

ADV CHAUKE: No, Chair. Even from the prosecution team themselves, they have never used this word, strong evidence. They said there was circumstantial evidence.

CHAIRPERSON: Well, we will probably have the benefit of hearing from Advocate Batohi if she decides to come back and take that stand, or from any other witness who may assist us in establishing whether indeed there was such strong evidence referred to.

ADV CHAUKE: Indeed, indeed, Chair. It would be nice to
20 hear the legal mind of Advocate Shamila Batohi in that respect.

CHAIRPERSON: Yes, thank you. Counsel, I do not know whether you want to close this chapter or you want to deal with other aspects. If you want to close it with a few questions, maybe we should do that so that you can leap into

the last few aspects of your case, if necessary.

ADV NGCUKAITOBI SC: Yes, Madam Chair. No, it is just to go back to the prosecution memorandum, which is the source of this. It is actually at RM00883. The witness points to the fact that the charge talks about strong evidence, and it is disconnected from the prosecution memorandum, which is the basis on which they are relying. Now, if you look at item 1 under issue 2, strength of the state's case, it says:

10 “The case on the murder charge relies
solely on circumstantial evidence.

Those include a threat by the accused to the deceased's family that the deceased will be killed.”

Now, then, if you look at item 4, which is the, actually, I think actually the attempted murder charge is irrelevant because it is not in the charge. The only issue to be concerned with is the murder charge.

ADV CHAUKE: I take it when they say, and related charges, when you read the terms of reference, that is how.

20 **ADV NGCUKAITOBI SC:** No, but where do they say related charges?

ADV CHAUKE: Where they say:

“A charge of murder relating to the killing of Mr Tefo Abel Ramogibe and related charges to be withdrawn.”

ADV NGCUKAITOBI SC: So you would read related charge to be murder and attempted murder.

ADV CHAUKE: Ja.

ADV NGCUKAITOBI SC: Okay, well, we can take that generous view. But then in paragraph 4, we are still back to where we started, paragraph 4 of the prosecution memo, it says:

10 “The attempted murder charges, count
13 and 14, are also based on
circumstantial evidence.”

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: So this is where the disconnect is. Then you look at the charges. The charge then invents a phrase, strong evidence.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: But that was not the opinion of the prosecution team.

ADV CHAUKE: Yes.

20 **ADV NGCUKAITOBI SC:** Yes. Madam Chair, I am just going to do literally the last 3.2, which are the conclusions, and then I would like to stop so that we can have enough time for the cross-examiners. So if I could just do that quickly in five minutes before we adjourn.

CHAIRPERSON: Counsel, I think you should then finish.

ADV NGCUKAITOBI SC: Yes, thank you.

CHAIRPERSON: On this aspect.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. If I can take you back to your terms of reference.

ADV CHAUKE: I am there, Chair.

ADV NGCUKAITOBI SC: So in paragraph 3.2, they say:

10 “Whether in fulfilling his responsibilities as Director of Public Prosecutions, Advocate Chauke complied with the Constitution, the National Prosecuting Authority Act, and any other relevant laws in his position as a senior leader in the National Prosecution Authority, and is fit and proper to hold this position and be a member of the prosecutorial service.”

What is your answer to that? Did you comply with the Constitution? Did you comply with the NPA Act? Are you fit and proper?

20 **ADV CHAUKE:** Fully. I complied fully, and I am fully fit and proper.

ADV NGCUKAITOBI SC: Yes. 3.2.2:

“Whether Advocate Chauke properly exercised his discretion in relation to instituting and conducting criminal proceedings on behalf of the state,

carrying out any necessary functions incidental to the institution and conducting such criminal proceedings, and discontinuing criminal proceedings.”

Did you properly exercise your discretion in relation to those three aspects?

ADV CHAUKE: Yes, Chair, I did.

ADV NGCUKAITOBI SC: Yes. And then:

10 “Whether you duly respected court processes and proceedings before the courts as required by the applicable prescripts, and as a senior member of the National Prosecuting Authority.”

Did you respect courts?

ADV CHAUKE: I respect courts directly opposite those who came before the inquiry because they do not respect the courts.

ADV NGCUKAITOBI SC: Ja, well, they are asking you to
20 revisit court findings, so that says a lot.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: And then:

“Whether you exercised your powers or performed your duties and functions in accordance with the prosecution policy

and policy directives as determined under Section 21 of the National Prosecution Authority.”

Did you respect prosecution policy and prosecution policy directives?

ADV CHAUKE: Yes, I did, Chair.

ADV NGCUKAITOBI SC: -:

“Whether you acted at all times without fear, favour, or prejudice.”

10 Did you act without fear, Favor, or prejudice?

ADV CHAUKE: Indeed, Chair.

ADV NGCUKAITOBI SC: Yes.

“Whether he displayed the required competence and capacity required to fulfil his duties by, among others, objectively engaging the facts presented to him impartially, in good faith and without fear, favour, or prejudice, subject to the Constitution of the Republic of South Africa and the law, in order to discharge his duties as a Director of Public Prosecutions.”

20

Did you fulfil your functions in accordance with the required level of competence and capacity?

ADV CHAUKE: That is my view, that I fully complied with

that.

ADV NGCUKAITOBI SC: Yes. And then:

“Whether he acted in a manner which brought the National Prosecution Authority into disrepute by any of his actions or omissions.”

Did you bring the NPA into disrepute?

ADV CHAUKE: Not at all.

ADV NGCUKAITOBI SC: Yes. Now, will you, I understand
10 that you have obviously not been happy that you have been suspended and you have been subjected to an enquiry and you feel there is a lot of unfairness.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: But the fact of the matter is that if you are not found guilty, you have to go back to the NPA and you have to work with some people that you would feel have been unfair to you, Advocate Karen van Rensburg is one of them that you have specifically mentioned, I do not know if there are others, but Advocate Batohi is gone, so there is no
20 issue there, but you have to work with people that you feel have caused you wrong, what is your view on that?

ADV CHAUKE: No, it happens in life and in the work environment that you will differ as colleagues and then work must continue. There is really no issue.

ADV NGCUKAITOBI SC: Yes.

ADV CHAUKE: Yes.

ADV NGCUKAITOBI SC: But you will be happy to go back and to continue with your work without any feeling of animosity?

ADV CHAUKE: Indeed.

ADV NGCUKAITOBI SC: And the President should not be concerned that this act of suspending you and taking you to a disciplinary hearing has somehow impacted your ability to fulfil the functions as the Director of Public Prosecutions?

10 **ADV CHAUKE:** Not at all, except that in terms of life outside there, you are familiar and what have you, that this obviously also would like it to be concluded. And if it is concluded, that indeed I am innocent and the like. The President has to follow this due process for him to be able to make a determination, and I have got no qualms in that.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. I have no further questions for the witness.

CHAIRPERSON: What are you saying about family?

20 **ADV CHAUKE:** Once you are being accused for almost seven years, you are in the media. You are corrupt. You are captured. You are, there are these decisions. It affects everybody around me to say, really, are you that corrupt? What is happening? And then like you have to explain yourself over and over again and at times, you sit with them and then you look through their eyes, you can see that they

are so much worried about this conduct and the like. But now that this inquiry, since the start of this enquiry, they hear that there is nothing about me being corrupt and all sorts of things, there just is that burden and all sorts of things and to me as a person as well.

CHAIRPERSON: They must be happy that the President agreed to institute this, to establish this enquiry.

ADV CHAUKE: Indeed, indeed. Everybody around me, they said that this is the best that could have happened, because
10 if this did not happen, I just maybe decided to resign, to leave, and what have you and the truth that South Africa knows now, they would not be in a position to know.

CHAIRPERSON: Well, this panel has not made any decision thus far.

ADV CHAUKE: Yes.

CHAIRPERSON: But at least South Africa has been listening, and your family has been following this proceedings, listening to witnesses, and making their own view.

20 **ADV CHAUKE:** Yes.

CHAIRPERSON: But this panel has not made any decision whatsoever.

ADV CHAUKE: Yes, I am now referring to my family, and I have to say to them, this has been a good opportunity, and that has presented them with the opportunity to really see

what is happening, and understand from that background.

CHAIRPERSON: Because they have listened to the witnesses who testified.

ADV CHAUKE: Yes.

CHAIRPERSON: Thank you. Counsel.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. I have got no further questions to the witness.

CHAIRPERSON: You are closing your case?

ADV NGCUKAITOBI SC: Well, after ...[intervenes].

10 **CHAIRPERSON:** I mean, insofar as this witness is concerned.

ADV NGCUKAITOBI SC: Insofar as this witness is concerned, yes. I am going to close my case very soon, Madam Chair. I know that I should.

CHAIRPERSON: Yes. That ends the evidence in chief of Advocate Chauke. We will take a tea break. Now that I have difficulties in walking upstairs, we will take 30 minutes.

ADV NGCUKAITOBI SC: Thank you, Madam Chair.

20 **CHAIRPERSON:** Yes, thank you. We will reconvene at 10 past 12.

ADV NGCUKAITOBI SC: Thank you.

ENQUIRY ADJOURNS

ENQUIRY RESUMES

CHAIRPERSON: Good day everyone. Good day, Advocate Chauke.

ADV CHAUKE: Good day, Chair.

CHAIRPERSON: You continue to be under oath.

ADV CHAUKE: Thank you, I confirm, Chair.

CHAIRPERSON: Advocate Mohlamonyane.

ADV MOHLAMONYANE SC: Thank you, Madam Chair. Good day, *Nthati* Chauke.

ADV CHAUKE: Good day, sir, how are you?

ADV CHAUKE: Fine, thanks and you?

ADV MOHLAMONYANE SC: I am okay. You read
10 documents, as you indicate in your document that you
presented before this Tribunal. You read quite a number of
documents. We do not have to go back to them.

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Now, in your role as a
coordinator, did you have to read so many documents and
dockets as well?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: The reason being?

ADV CHAUKE: When I had to assist Advocate Jiba in the
20 review application which was brought by Booysen.

ADV MOHLAMONYANE SC: To assist him by giving him a
briefing? Maybe, if you may explain that?

ADV CHAUKE: When there was a review application brought
by Johan Booysen, Advocate Jiba had to file an opposing
affidavit in respect of that matter.

ADV MOHLAMONYANE SC: Okay, apart from that, Advocate Chauke, you indicated in the document that you presented before this tribunal, documents that you read.

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Were all the documents that you read that you are indicating that document for the purposes of briefing Advocate Jiba?

ADV CHAUKE: Settling the affidavit with counsel who was preparing the opposition to the application by General Johan
10 Booyesen.

ADV MOHLAMONYANE SC: Okay, let us go to page 3 of the document.

ADV CHAUKE: Yes, I am there, Chair.

ADV NGCUKAITOBI SC: You are there. These are the documents that you read. Monetary awards for Booyesen and Cato Manor Unit and date of document was 14 October 2008. Was that for purposes of the review application?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Okay. The High Court
20 application by Bongani Mkhize, was it also for the High Court application?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: As well as the last one on that page, the meeting of 9 March 2012 with DPCI at the NPA's head office.

ADV CHAUKE: That is the meeting, sir.

ADV MOHLAMONYANE SC: Ja, but you are indicating that there is an email down, that you indicate that there is a bullet.

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Now let us go to the next page. I am not going to refer to each and every document, you have done so in your evidence-in-chief, all these documents that appear on this page, page 4, were for that purpose as well?

ADV CHAUKE: Yes.

10 **ADV MOHLAMONYANE SC:** To brief Advocate Jiba in the review application of General Booysen?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Okay. You also read the De Kock report on page 5, not so?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: That is also for that purpose?

ADV CHAUKE: No, sir.

ADV MOHLAMONYANE SC: Okay. Now in your evidence-in-chief, Advocate Chauke, you told this Tribunal that
20 Advocate Batohi purged black prosecutors. Do you remember?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Did he only charge black prosecutors with misconduct?

ADV CHAUKE: In relation to Cato Manor?

ADV MOHLAMONYANE SC: Yes, in relation to Cato Manor.

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Was there no coloured in the mix?

ADV CHAUKE: Coloured, as I understand it, is black.

ADV MOHLAMONYANE SC: Was there no Afrikaner in the mix?

ADV CHAUKE: Not that I am aware of.

ADV MOHLAMONYANE SC: Okay. Did Advocate Batohi
10 ever show any before that, if she, according to your evidence,
she purged ...[intervenes]

CHAIRPERSON: Coloured, do you mean people of mixed
race?

ADV MOHLAMONYANE SC: That is what I mean, Madam
Chair.

CHAIRPERSON: Thank you.

ADV MOHLAMONYANE SC: If you say she purged black
prosecutors, are you suggesting, correct me if I am wrong,
that Advocate Batohi is a racist?

20 **ADV CHAUKE:** I am not suggesting that, but that she is a
racist or not, you may check with her, because when she was
interviewed for that job, she was asked about this racism and
she had an answer then.

ADV MOHLAMONYANE SC: She had an answer?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: That she was not a racist, or what was her answer?

ADV CHAUKE: I do not know to what extent was the answer, but I remember her saying that she was surprised that there were those allegations against her.

ADV MOHLAMONYANE SC: Were you part of the panel that interviewed her?

ADV CHAUKE: No, no, I was also interviewed. I watched the interview.

10 **ADV MOHLAMONYANE SC:** I see.

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Did she ever show any, when you were colleagues, did she ever show any tendencies of being racist towards you?

ADV CHAUKE: Towards me?

ADV MOHLAMONYANE SC: Yes, you in particular.

ADV CHAUKE: No.

ADV MOHLAMONYANE SC: No, thank you. I will proceed to other issues. From your short résumé, Advocate Chauke,
20 one can decipher that you possess a wealth of skill and experience as a prosecutor, not so?

ADV CHAUKE: What is the meaning of decipher?

ADV MOHLAMONYANE SC: I could make out from your short résumé.

ADV CHAUKE: Okay.

ADV MOHLAMONYANE SC: Do you agree with me?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: You possess a wealth of skill and experience, which is commendable.

ADV CHAUKE: Thank you.

ADV MOHLAMONYANE SC: Now, let us take this general scenario. As a prosecutor, in particular as a DPP, after you shall have investigated a case, it is a general scenario, you should teach me if I do not get it right, you then prepare an
10 indictment, which is accompanied by a prosecution memorandum. Is that correct?

ADV CHAUKE: No.

ADV MOHLAMONYANE SC: How do you go about it?

ADV CHAUKE: About what?

ADV MOHLAMONYANE SC: About...

CHAIRPERSON: Are you asking just a general question about his prosecutorial function generally or in relation to a specific matter pertaining to this enquiry?

ADV MOHLAMONYANE SC: I am asking about the general
20 scenario where an accused person has to be arraigned in the High Court. After the investigation shall have been done, before you prepare an indictment, up to the stage of indictment, you then prepare an indictment and then a prosecution memorandum. How do you go about it?

ADV CHAUKE: No, if a prosecutor arranges to prepare an

indictment to arraign a person in the High Court or in the Regional Court, there is no prosecution memorandum.

ADV MOHLAMONYANE SC: At what stage do you prepare a prosecution memorandum in a normal course of events?

ADV CHAUKE: When you want somebody other than you, a DPP or NDPP, to make a decision.

ADV MOHLAMONYANE SC: I see. Let me direct your attention, Advocate Chauke, to paragraph 117 of your statement, which you will find on page 6-32.

10 **ADV CHAUKE:** 11?

ADV MOHLAMONYANE SC: 7. It is on page 6-32.

ADV CHAUKE: Yes, I am there.

ADV MOHLAMONYANE SC: For the sake of the record, I will read it yet again, because it was already read. You say there:

“On or about 11 June 2012, I met with Mr Beetman of IPID and Advocate Mathenjwa to review the status of the investigation and on or about 12 June 2012, I convened a meeting with General Mabula and the prosecution team to discuss updates. On the same day, I received the draft indictment and supporting summaries prepared by the prosecution team.”

20

Unquote. Do you see that?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Now, from whom did you receive the draft indictment?

ADV CHAUKE: From the prosecution team.

ADV MOHLAMONYANE SC: In particular, from whom in the prosecution team?

ADV CHAUKE: I do not remember, but the head, the team leader, the head of the prosecution team was Advocate Maema.

10 **ADV MOHLAMONYANE SC:** In the same sentence, in the same paragraph, you refer to supporting summaries. I am lost here as to what supporting summaries mean. If you can explain to this Panel what are supporting summaries.

ADV CHAUKE: The prosecution memorandum.

ADV MOHLAMONYANE SC: Which you also received from the team, the prosecution team.

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: The sentence as it reads and as it is understood means that you received the prosecution
20 memorandum and the draft indictment on the 12th of June 2012. Not so?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Go to the next paragraph of your statement. That is paragraph 118 at page 6-33. I propose to read it into the record. It says:

“On this day, my personal assistant, Mamiki Shuping, emailed the draft cover letter to acting KZN DPP Advocate Mlotshwa. He had been acting in this position since December 2010.”

Unquote.

CHAIRPERSON: Sorry, Counsel, which paragraph is that?

ADV MOHLAMONYANE SC: 118, Madam Chair.

CHAIRPERSON: 118?

10 **ADV MOHLAMONYANE SC:** On the next page, 6-33. Just at the top.

CHAIRPERSON: Okay.

ADV MOHLAMONYANE SC: If you say on this day, we should understand it to mean the 12th of June 2012. Not so?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: You state in this paragraph, Advocate Chauke, that you sent a draft cover letter. You emailed, your PA emailed, personal assistant emailed the draft cover letter. I am confused. Can you direct this Panel
20 to what you refer to as a cover letter?

ADV CHAUKE: I refer to the indictment that she sent together with that covering letter that she emailed to him.

ADV MOHLAMONYANE SC: By a covering letter, you referred to the email that your PA, Mrs Shuping, sent to Advocate Mlotshwa.

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: You called it a covering letter.

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Let us go to it. Let us go to the covering letter and see what covering letter you are referring us to. Do you know where it is located, if you can assist?

ADV CHAUKE: From where I am sitting, I do not remember. I cannot locate it.

ADV MOHLAMONYANE SC: You cannot remember. Okay,
10 fine. We will locate it. In fact, you mentioned it elsewhere in your affidavit. You referred to the mail exchange between yourself and Advocate Mlotshwa, which appears in paragraph 144 of your statement.

ADV CHAUKE: Yes, even the following paragraph.

ADV MOHLAMONYANE SC: If you can go to...

ADV CHAUKE: Even the following paragraph. You read 118. You read 119. That is the follow-up to that.

ADV MOHLAMONYANE SC: Ja. I mean, we are trying to locate the email exchange, where the email of your assistant
20 appears. You mentioned the page there in paragraph 144 as B00574. Now, if you go to B00574, which is in bundle B2, Madam Chair, it starts in bundle B2, but specifically it goes to B3. 577, it is found in B3.

ADV CHAUKE: I am there.

ADV MOHLAMONYANE SC: Now, go to the previous page.

That is where Mamiki Shuping's email to Advocate Mlotshwa is located. Do you see that?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: And it says subject indictment, Cato Manor.

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: There was no message from Mamiki Shuping. Not so?

ADV CHAUKE: Yes.

10 **ADV MOHLAMONYANE SC:** There is no message here.

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Which one is a covering letter that you say was sent? Because there is no message here according to how we read this.

ADV CHAUKE: What you are reading, that email, is a covering letter that I am referring to.

ADV MOHLAMONYANE SC: It is a covering letter.

ADV CHAUKE: Yes.

20 **ADV MOHLAMONYANE SC:** Now, if you go to paragraph 119, remain on the same page. Remain on the same page, Advocate Chauke. If you go to 119, you are saying there:

“A disagreement subsequently arose regarding the sufficiency of the documentation with Advocate Mlotshwa refusing to sign the cover letter in the

absence of the prosecution memorandum or the original case dockets.”

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Was Advocate Mlotshwa refusing to sign a cover letter or was he refusing to sign an indictment?

ADV CHAUKE: The indictment.

ADV MOHLAMONYANE SC: You made a mistake by saying cover letter.

10 **ADV CHAUKE**: Yes.

ADV MOHLAMONYANE SC: Because it is incorrect.

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: I do not want to say you are lying. No, no, I will not say so.

ADV CHAUKE: No, no, it is okay, I can accept if you say ...[intervenes]

ADV MOHLAMONYANE SC: I am not going to say that, because I respect your office. Now, let us try the best of our ability to find whether the indictment that you sent, that you
20 say you found from the prosecution team, was actually received from the prosecution team. And in this regard, my colleague will assist me here to find evidence of Advocate Maema when he was under cross-examination and see what he said. If Madam Chair can bear with me, let me be assisted by Advocate Mtsweni.

CHAIRPERSON: Yes, what are you locating? Maybe we can help.

ADV MOHLAMONYANE SC: It is a transcript of day 30. Transcript of day 30 where Maema was under cross-examination.

CHAIRPERSON: Dated?

ADV MOHLAMONYANE SC: Dated 20 February, Madam Chair. February 2026. Where Advocate Maema was being asked about this indictment. On page 45 of 194, if you can
10 go there.

CHAIRPERSON: Page 3-5.

ADV MOHLAMONYANE SC: 4-5, Madam Chair. Of 194, of the transcript of day 30.

CHAIRPERSON: Yes, thank you.

ADV MOHLAMONYANE SC: Advocate Mtsweni was asking questions and he started as follows.

“ADV MTSWENI: Yes, and you then said
between the week from the week of the 27th
May you were attending in Durban on a
20 weekly basis.

ADV MAEMA: That is correct.

ADV MTSWENI: And at that time you were still busy sifting through all these dockets.

ADV MAEMA: Yes, we were analysing the docket, guiding the investigations.

ADV MTSWENI: Yes.

ADV MAEMA: Yes.

ADV MTSWENI: You had not taken the decision to arraign anyone.

ADV MAEMA: That is correct, yes.

ADV MTSWENI: And you had not drafted any indictment.

ADV MAEMA: That is correct.

10 **ADV MTSWENI:** Right, so therefore if anyone says and you said the decision to arraign when you then decided to arraign was taken, you then said you took the decision to arraign people on the 29th of June. Do you recall that?

ADV MAEMA: That is, I recall that.

ADV MTSWENI: Yes, and that is when you then embarked on the process of drafting the indictment.

ADV MAEMA: That is correct.

20 **ADV MTSWENI:** And therefore, if anyone says that prior thereto you had drafted an indictment, that would not be correct. Well, as the prosecution team.

ADV MAEMA: The prosecution team, remember the indictment is progressive, so

we concluded drafting it, yes, towards the end of June.

ADV MTSWENI: Yes.

ADV MAEMA: 2012.

ADV MTSWENI: But before the end of June there was no indictment that was ready to be signed.

ADV MAEMA: Yes, yes.”

Now, which indictment did you send to, because according
10 to, which you sent to Advocate Mlotshwa, because according
to Advocate Mlotshwa's testimony, I am sorry, I beg your
pardon, according to Advocate Maema's testimony, as at the
12th of June there was no indictment yet.

ADV NGCUKAITOBI SC: No, Madam Chair, I need to object.
My learned friend must read 46 and 47.

CHAIRPERSON: 46 and 47 of?

ADV NGCUKAITOBI SC: Of the transcript, Madam Chair,
that he stopped reading. If he is going to suggest to the
witness that as of the 12th of June there was no draft
20 indictment, he must read 46 and 47 and 48 of that cross-
examination.

CHAIRPERSON: We do not have the benefit of our
transcripts here right now, but we will rely on what you read,
on what you have, Advocate Mohlamonyane.

ADV MOHLAMONYANE SC: My learned colleague says I

should read also 47 and, you are saying 47 and 48?

ADV NGCUKAITOBI SC: Yes, I am just asking my learned friend to continue what he was doing, but through 46, 47, 48, 49, because this issue of the 12th of June was exhaustively conversed with Advocate Maema.

CHAIRPERSON: Perhaps you can look at the transcript, the 20th of February 2026, that you said you are reading from, and you referred us to page 45 of 194. Are you suggesting he must continue to page 46, 47, 48?

10 **ADV NGCUKAITOBI SC:** Madam Chair, it actually ends at 49, so I thought he was going to read through all of them, and then he stopped somewhere, which might not create a correct picture, but I do not want to make accusations at this stage, but he must just continue the line he had started.

CHAIRPERSON: Would you like to pause a bit, Advocate Mohlamonyane, and read pages 46, 47, 48, 49? If you consider that to be helpful, you can read it into the record so that we can also follow.

ADV MOHLAMONYANE SC: I am comfortable to do that,
20 Madam Chair. I ended at page, must be 47, where Advocate Maema said, yes, yes, I am continuing.

“ADV MTSWENI: Now I am asking this because if we turn back to Advocate Chauke’s affidavit, he said, quote:

“On the 12th, June 2012, I received

a draft indictment with summaries of the matters from the prosecution team. I forwarded the same to Mlotshwa through my PA.”

Do you see that?

ADV MAEMA: Where?

ADV MTSWENI: Paragraph 75.

ADV MAEMA: Oh, 75. Yes, it talks about the draft indictment.

10 **ADV MTSWENI**: Yes, but you just told us that you had not finalised the indictment at that point in time.

ADV MAEMA: It was, well, if there would be an indictment, it would be un-finalised, and it would be a draft indictment.

ADV MTSWENI: But then let us go and see and hear what Advocate Chauke says.

ADV MAEMA: Okay.

ADV MTSWENI: He says:

20 “On the 14th, June 2012, I attended a meeting at VGM and PA office with NDPP. In that meeting, arrangements were made that Maema will sign the indictment.”

Unquote.

ADV MAEMA: I see that, Chairperson.

ADV MTSWENI: Yes, now meaning that the indictment, in his view, was ready to be signed.

ADV MAEMA: No, it does not mean that.

ADV MTSWENI: Yes, but then let us go on. Are you aware that he sent the same indictment to Advocate Mlotshwa, asking Advocate Mlotshwa to sign the indictment?

10 **ADV MAEMA**: I became aware here in the enquiry.

ADV MTSWENI: Yes.

ADV MAEMA: And I also heard the exchange during that was referred to in the state capture.

ADV MTSWENI: And that despite you, the prosecution team, not having finalised that indictment ...[intervenes]

20 **CHAIRPERSON**: Sorry, before you answer, let me understand, are you pegging that question on paragraph 76?

ADV MTSWENI: Yes. It follows that to say, well, he says he received the indictment on the 12th, and then on the 14th, he was making arrangements for that, for Advocate

Maema to sign the indictment with Advocate Jiba. Now, I am saying to Advocate Maema that on his version, they had not yet finalised the indictment, and yet Advocate Chauke is already making arrangements for the indictment to be signed.

CHAIRPERSON: But should you not have regard to paragraph 75, where he says, that is Advocate Chauke, he received the draft indictment?

10

ADV MTSWENI: Yes.”

Advocate Mtsweni now intervenes.

CHAIRPERSON: On 12 June.

ADV MTSWENI: That is correct, Madam Chair.

CHAIRPERSON: Yes. So what is the point that you are making? I just want to understand clearly what our point is.

ADV MTSWENI: That that document, being a draft, and according to Advocate Maema, it not being a final document, Advocate Chauke was already making arrangements for it to be signed.”

20

It appears to be ending there. This must be page 49. I am not sure whether I read the whole thing that my learned friend

has referred to, but I am unable to read it.

ADV NGCUKAITOBI SC: No, no, no. I do not want necessarily. The only point is, I was objecting to the question that Advocate Maema's evidence is that there was no draft indictment on the 12th of June. That is the only objection.

ADV MOHLAMONYANE SC: So, Advocate Chauke, that ...[intervenes]

CHAIRPERSON: Let us deal with the objection. You hear what the objection is. Do you wish to respond to what
10 Advocate Ngcukaitobi is saying after reading those pages?
Because we have to make a ruling on the objection.

ADV MOHLAMONYANE SC: If, can I respond, Madam Chair?

CHAIRPERSON: Yes.

ADV MOHLAMONYANE SC: If there was a draft indictment, I would concede, I would accept that.

CHAIRPERSON: Are you suggesting there was none?

ADV MOHLAMONYANE SC: I am not.

CHAIRPERSON: So as at the time when Advocate Maema testified, there was a draft indictment, according to you?

20 **ADV MOHLAMONYANE SC:** Ja. If what we read here, that an indictment being a progressive process, I will then accept that there was a draft.

CHAIRPERSON: Meaning what you were putting to the witness was incorrect?

ADV MOHLAMONYANE SC: Not necessarily, Madam Chair.

Not necessarily incorrect. Because he says he sent an indictment. But if it is a draft, I will accept it is a draft, and then I will proceed with my questions. Further questions.

CHAIRPERSON: Well, the email B00578 simply says indictment, which was sent by Ms Shuping, as opposed to the instance of Mr Ma Chauke to Advocate Mlotshwa.

ADV MOHLAMONYANE SC: Yes.

CHAIRPERSON: Yes. And Advocate Chauke speaks of the events of the 14th of June, two days later. Is my reading
10 correct?

ADV MOHLAMONYANE SC: Yes, Madam Chair.

CHAIRPERSON: At that meeting, it appears, an intimation was made that, or an arrangement was made that Mr Maema will sign the indictment.

ADV MOHLAMONYANE SC: On the 14th, according to, of the 14th of June.

CHAIRPERSON: This is what was said at the meeting of the 14th of June.

ADV MOHLAMONYANE SC: 2012.

20 **CHAIRPERSON:** 2012. Is it unreasonable to assume that that which is mentioned at B00578 in that email might have been a draft?

ADV MOHLAMONYANE SC: It is not, Madam Chair. It is not unreasonable. May I proceed with my questions?

CHAIRPERSON: You see, we are dealing with an objection,

so I think, Advocate Mtsweni, if you can maybe give him a chance to listen first, so that we deal with this issue. We cannot leave the objection hanging, and when we are done with it, then you can confirm with him. Yes, thank you. [Deliberation] Yes, thank you. The objection is sustained pertaining to this issue about the indictment mentioned in the email communication to Mr Mlotshwa, and the subsequent testimony by Advocate Maema relating to the meeting of the 14th of June 2012.

10 Meaning that that which was mentioned at the meeting of the 14th of June 2012 related to an indictment that had to be signed by Mr Maema, according to the arrangement, but that which was sent on the 12th of June 2012, two days prior, can reasonably be understood to have been a draft indictment that was sent at the instance of Advocate Chauke to Advocate Mlotshwa. Accordingly, as I mentioned, the objection is sustained.

ADV NGCUKAITOBI SC: Thank you, Madam Chair, as it pleases.

20 **ADV MOHLAMONYANE SC:** Thank you, Madam Chair.

CHAIRPERSON: You may confer with your brother.

ADV MOHLAMONYANE SC: Thank you, Madam Chair.

[Deliberation] Thank you, Madam Chair. May I proceed?

CHAIRPERSON: Yes.

ADV MOHLAMONYANE SC: So, Advocate Chauke, we may

accept that the document that you sent to Advocate Mlotshwa on the 12th of June 2012 through your personal assistant, Mamiki Shuping, was a draft indictment, not so?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Do you sign draft indictments? Why must Mlotshwa draft, sign a draft indictment which was not final, not so? It was not final?

ADV CHAUKE: Yes.

ADV CHAUKE: Why must Mlotshwa sign a draft indictment?

10 **ADV CHAUKE:** For him to be appraised with the matter.

ADV MOHLAMONYANE SC: To be?

ADV CHAUKE: Appraised with the matter.

ADV MOHLAMONYANE SC: What is the purpose of signing an indictment, whether it be a draft or a final one? What is the purpose?

ADV CHAUKE: The purpose, when we are in court, is to place the accused before the Court.

ADV MOHLAMONYANE SC: So had Advocate Mlotshwa signed that document, it would have served before the High
20 Court?

ADV CHAUKE: It would have served before the Regional Court.

ADV MOHLAMONYANE SC: Oh, before the Regional Court.

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Okay. I want to refer you to a

document which I take was an indictment, and you should confirm whether it was the same document that you sent to Advocate Mlotshwa. You will find it in B2, bundle B2, from page B00484. Madam Chair, it starts from 484.

ADV BALOYI-MERE SC: Advocate Mohlamonyane, I do not mean to take you back, but you said something about Advocate Mlotshwa signing an indictment, and from the reading of paragraph 118, 6-33, Advocate Chauke says his PA emailed the draft cover letter to acting KZN DPP Advocate
10 Mlotshwa, and we now know that the draft cover letter refers to the indictment. That is what he admitted to.

ADV MOHLAMONYANE SC: Yes, Madam.

ADV BALOYI-MERE SC: But I do not see... Okay. Well, I am reading now the second paragraph that says:

“A disagreement subsequently arose regarding the sufficiency of the documentation, with Advocate Mlotshwa refusing to sign.”

But also, go back to the transcript, because as Advocate
20 Mtsweni, while cross-examining Advocate Maema, there was an objection raised by Advocate Ngcukaitobi, I think on page 49, the last sentence there, and it had something to do with the question whether Advocate Chauke instructed Mr Mlotshwa to sign the indictment. Not sure if you saw that while you were reading. That would be... It starts from... It

is the last sentence at page 49, and goes through the first two lines on page 50.

And, unfortunately, we only have extracts, so I do not know what was the final decision on that objection, and I would not want us to deal with an issue where an objection was raised and there was a pronouncement, and we repeat the issue. If you can look past page 50, because I only have up to page 50, where Advocate Mtsweni was, where the chairperson asked:

10 “**CHAIRPERSON**: That is why I asked you, who made the arrangements that Advocate Maema will sign the indictment, right?”

And then he, Advocate Mtsweni, refers to the same paragraph of the 14th of June 2012, but I only have three lines. That is, we only have up to page 50. If you can go up to page 51 and see how that objection... Okay, thank you.

ADV MOHLAMONYANE SC: How it was dealt with.

ADV BALOYI-MERE SC: How it was dealt with, so that we do not have... We do not have something that was objected
20 to repeated into the record. Thank you.

ADV MOHLAMONYANE SC: Ja, on page 50, starting from page 49, where Advocate Ngcukaitobi SC said:

“**ADV NGCUKAITOBI SC**: Madam Chair, could I just ask my learned friend to point us to the page where

Mr Chauke instructs Mr Mlotshwa to
sign the indictment?”

And then says, Chairperson:

CHAIRPERSON: Yes, I am on that point
because I am lost. That is why I am asking
counsel to assist me. From when you read
from paragraph 75, that is why I took
counsel there. Advocate Chauke says,
quote:

10

“On 12th June 2012, I received the
draft indictment with summaries. I
forwarded same to Mlotshwa
through my PA.”

And then it is written 76.

“On 14th June 2012, I (Advocate
Chauke) attended a meeting at VGM
head office. In that meeting it is
Advocate Chauke speaking.”

It is written Chokas there, but I think it is a misspelling.

20 Advocate Chauke speaking.

“Arrangements were made that Maema will
sign an indictment. That is why I asked you,
who made the arrangements that Advocate
Maema will sign the indictment?”

ADV MTSWENI: Madam Chair, he tells us

in his affidavit that he attended a meeting. If one reads, I just want to get to the document again. He says at paragraph 76, quote:

“On 14th June 2012, I attended a meeting at VGM NPA head office with NDPP. In that meeting, arrangements were made that Maema will sign the indictment.”

10 Unquote. So, meaning that the arrangement was being made between him and the NDPP.

CHAIRPERSON: [Indistinct, microphone off]

ADV MTSWENI: Advocate Chauke, because he said he attended, he does not tell us that there was anyone in that meeting. It was him and the NDPP, because he says, I attended a meeting at VGM NPA head office with NDPP and he does not tell us that there was anyone else.

20

CHAIRPERSON: Yes.

ADV MTSWENI: And then he says, at that meeting, arrangements were made that Maema will sign the indictment.

CHAIRPERSON: Yes.

ADV MTSWENI: Yes.

CHAIRPERSON: Yes, what was your question, Advocate Mtsweni? And the point is that the prosecution team had not finalised the indictment, and yet Advocate Chauke is already making arrangements with the NDPP that Maema will sign.”

I will pause there, Madam Baloyi-Mere SC, and you may indicate as to whether it is enough to the extent to which I
10 have read.

ADV BALOYI-MERE SC: I would like you to go further, because at page 52, Advocate Mtsweni then went on and said, because the objection was not dealt with, Advocate Ngcukaitobi still persisted with the objection, and Advocate Mtsweni then retracted the question. Oh, sorry. I will repeat. My microphone was not on. I am saying, if you proceed to read the text that you were reading, when you go to page 52, because the objection was not ruled on, Advocate Ngcukaitobi persisted with his objection. And then Advocate
20 Mtsweni's response was:

“**ADV MTSWENI:** No, Madam Chair, I retract the question. It was a mistake. I should not have said that.”

And then he went on and said:

“**ADV MTSWENI:** I retract that question and

that statement. I did not mean to put it that way. I just wanted to say he forwarded the indictment to Advocate Mlotshwa.”

The issue here was that it seemed like Advocate Mtsweni wanted to pursue a line that Advocate Chauke sent the indictment and said to Mlotshwa, sign the indictment. But when he retracted, he left his statement at, I just wanted to say the indictment was forwarded to Advocate Mlotshwa. And he left it there.

10 That is why, when I started, I said, I do not want us to deal with an issue where an objection was raised and an objection was ruled on. And in this instance, it was not ruled on, but Advocate Mtsweni retracted his statement and rephrased his statement, so that we do not go back and forth on the same statement that was then reformulated. Thank you. Thank you, Chair.

ADV MOHLAMONYANE SC: Thank you, Madam Chair. Do you allow me to proceed?

CHAIRPERSON: Yes, maybe, perhaps, when you look at the
20 retraction by Advocate Mtsweni, then, as my sister has just mentioned, we have gone back to the point, it will probably help you if you go to the emails.

ADV MOHLAMONYANE SC: Indeed, that is where I wanted to go. Thank you, Madam Chair.

CHAIRPERSON: I have to go there with you.

ADV MOHLAMONYANE SC: Please do so. And refer you to...

MS RAMAGAGA: To keep record of what was being read to us. The records that we were given is up to page 50 only. And fortunately, my dear sister does have a further record of that day. It will help if Advocate Mohlamonyane were just to tell us as to up to which page and paragraph did he read or line. At least we will have that on record and proceed as you are doing, Chair. Please.

10 **ADV MOHLAMONYANE SC:** Thank you, Madam Ramagaga. My colleague will help me here. I am not even sure what page is it.

MS RAMAGAGA: Page and line. Up to which page and line of the transcript?

ADV MOHLAMONYANE SC: I read up to page 52, Madam Ramagaga.

MS RAMAGAGA: Page 52.

ADV MOHLAMONYANE SC: And let me just find out as to... In fact, it was 51. Can you help me out? I think it was 51. I
20 made a mistake.

ADV BALOYI-MERE SC: You read up to page 51?

ADV MOHLAMONYANE SC: Yes. What line? If you can assist. I do not see lines here.

ADV BALOYI-MERE SC: From line 9.

ADV MOHLAMONYANE SC: Thank you, Madam Baloyi-

Mere, for rescuing me.

MS RAMAGAGA: Thank you very much. Through you, Chair, it will help, especially if what we do not have is being read out, that we just be given the information so that we record, at our own time we can read that. Thank you, Chair.

CHAIRPERSON: Thank you, my sister. We have gone back to that point. We have gone back to the issue of objection. What my sister was telling you, because you were not here when Advocate Mtsweni was cross-examining Mr Maema, he
10 retracted the questions.

ADV MOHLAMONYANE SC: I have seen the retraction, Madam Chair.

CHAIRPERSON: And then we accepted the retraction. I was saying earlier to you that the retraction by Advocate Mtsweni is consistent with the record when you look at the emails. So I was going to take you to those emails. If you look at the chronology or the sequence of those emails from page B00578, which Advocate Ngcukaitobi dealt with, you will see in those emails, the first one is the one at B00578, where Ms
20 Mamiki Shuping sends an indictment.

ADV MOHLAMONYANE SC: I see that, Madam Chair.

CHAIRPERSON: And the evidence is that that covering letter contained, it was a covering letter of the documents which included the indictment. You accepted earlier that we can reasonably assume that it was a draft indictment. This

is on the 12th of June 2012, when these documents were signed, sent to Mr Mlotshwa. Now, there is nowhere where Advocate Chauke or the email of Mamiki Shuping says sign the indictment. There is nowhere. Now, look at the subsequent email by Mr Mlotshwa himself, the same day, at 3.21pm.

ADV MOHLAMONYANE SC: The one on page B00577?

CHAIRPERSON: Yes. The bottom of that document...

ADV MOHLAMONYANE SC: I am there, Madam Chair.

10 **CHAIRPERSON:** ...up to the next page. You want to read that?

ADV MOHLAMONYANE SC: I think it is already on record, Madam Chair. It is not necessary to read it, but if you...

CHAIRPERSON: I just wanted to close this line of questioning because then we have to close it. We ruled over it. But it is clear that that which was discussed at VGM on the 14th, where arrangements were made on the 14th of June that Mr Maema would sign the indictment, was subsequent to this exchange.

20 **ADV MOHLAMONYANE SC:** Yes, Madam Chair?

CHAIRPERSON: You see now the third email, on the same day by Mr Mlotshwa.

ADV MOHLAMONYANE SC: Yes, I see. The one at the bottom, the one written ...[intervenes]

CHAIRPERSON: No, no, no, no. The first one was the first

one on B00578. You see that first email?

ADV MOHLAMONYANE SC: From Mamiki Shuping?

CHAIRPERSON: Yes.

ADV MOHLAMONYANE SC: I see it, Madam Chair.

CHAIRPERSON: On the 12th of June. Look at the time there. It is 1.29. The response from Mr Mlotshwa was at the same day, at 3.21. On the same day, Mr Chauke writes to Mr Mlotshwa. You see the third one?

ADV MOHLAMONYANE SC: I see it, Madam Chair.

10 **CHAIRPERSON:** You see the third one?

ADV MOHLAMONYANE SC: Yes, I see it.

CHAIRPERSON: From these communications, there is nowhere where a suggestion was made that Mr Mlotshwa must sign.

ADV MOHLAMONYANE SC: Will you allow me to respond after you shall have...?

CHAIRPERSON: I am asking you, is there any way in this communication where Mr Mlotshwa was told to sign?

20 **ADV MOHLAMONYANE SC:** May I take, Madam Chair and the Panel, to the third communication by Advocate Chauke and refer you to the last but one paragraph?

CHAIRPERSON: Yes.

ADV MOHLAMONYANE SC: If you permit me, I can read it into the record.

CHAIRPERSON: You may read it to the record.

ADV MOHLAMONYANE SC: It says, and I quote, it came at 5.14. He was responding to the one from Advocate Mlotshwa that came in at 3.21pm and Advocate Chauke, at 5.14pm says, among others, the following, and I quote:

10 “Another issue of concern to me is the delay in you issuing the instruction of the reopening of the inquests in view of the fact that you have been requested to sign the document which must be preceded by a decision to reopen the inquests. I leave it at that.”

Unquote. It would appear from what Advocate Chauke is saying here, Advocate Mlotshwa was required to sign the document, the indictment.

CHAIRPERSON: Do you read that from the first email by Mamiki? Because that is when documents were sent to him for the first time. And Advocate Mlotshwa then responds and says, give me a memo or report. Do you see that?

ADV MOHLAMONYANE SC: Yes, I see that, Madam Chair.

20 **CHAIRPERSON:** The third email must be read in the context of the second email. You cannot read that in isolation. You see the second email at the bottom of B00577. There was an exchange there. Mr Mlotshwa responds to Mr Chauke, where he says:

 “Kindly furnish me with the prosecutor's

memo or report so that I can have a wraparound views of the matter. The report must also have the police stations and CAS numbers so that we can open up the DPP's file."

Then it is that long email by Mr Maema. I see the point that you are addressing. After that email, you had just asked the witness about the arrangements made on the 14th of June at VGM, where Mr Maema was, where arrangement was made
 10 that Mr Maema was asked to sign the indictment. That is where you ended, before the interruption by my sister.

ADV MOHLAMONYANE SC: Yes, and there is a point, if you allow me, Madam Chair, on the second, the responding email of Advocate Mlotshwa on page 00577, B004, where in paragraph 1, it would appear that he had had a conversation, a telephone conversation with Advocate Chauke. I just wanted to place that on record. But perhaps he has responded through, before he wrote this email. But be that as it may, may I proceed with my next question?

20 **ADV NGCUKAITOBI SC:** I am sorry, Madam Chair, I really hate objecting when counsel is cross-examining. But it has to be clear what point is being made here. The original point made by Mr Mtsweni was that Advocate Chauke instructed Advocate Mlotshwa to sign the indictment. Is that the same point that is being made by my learned friend now? And if

so, I would ask that he shows us where the instruction from Mr Chauke to Mr Mlotshwa to sign the indictment appears.

CHAIRPERSON: Are you persisting with the point, Counsel?

ADV MOHLAMONYANE SC: Madam Chair, I am not persisting with the point that there was an instruction to sign, because it was retracted. The point I am persisting with is the one that appears in the paragraph that I have read that you were requested to sign.

CHAIRPERSON: Yes?

10 **ADV MOHLAMONYANE SC:** That is the point, which is a version of Advocate Chauke.

CHAIRPERSON: Yes. Advocate Chauke may address that point in your letter of the 12th June at 5.14, the third e-mail of that day. It is B3, Booysen 3 of 11, at page B00577. You remember I mentioned that there were three e-mails on that day. The first one was by Mamiki Shuping at page B00578. It was followed by the response by Mr Mlotshwa at B321.

That signals that after receiving this document, he communicated with you. You had a telephonic discussion.

20 And then after that e-mail, that is after B321, at about 5.14, same day, you wrote to Mr Mlotshwa. At the last but one paragraph, you made mention that he had been requested to sign the indictment. You can address that point.

ADV CHAUKE: To address what is the comment, may I make comments on what is the question?

CHAIRPERSON: Yes, on the content of that last but one paragraph.

ADV CHAUKE: It is correct that I wrote that e-mail to Advocate Mlotshwa.

CHAIRPERSON: Counsel is referring you, *Nthati* Chauke, Counsel, I am referring you to the last but one paragraph of your e-mail, the third one, the one at B00577, do you have that?

ADV CHAUKE: Yes.

10 **CHAIRPERSON:** That long e-mail.

ADV CHAUKE: Yes.

CHAIRPERSON: Look at the last but one paragraph.

ADV CHAUKE: Yes, I see there that I said he has been requested to sign the indictment.

CHAIRPERSON: Yes. He is dealing with that aspect that Mr Mlotshwa was asked to sign that draft indictment. Correct, Advocate Mohlamonyane?

ADV MOHLAMONYANE SC: Correct, Madam Chair.

CHAIRPERSON: So I am asking you to deal with the aspect.

20 **ADV CHAUKE:** Maybe I am misunderstanding the question. It is correct that I wrote and conveyed to Mr Mlotshwa that he should sign the indictment before the inquest can be reopened.

CHAIRPERSON: Yes. The point that was made earlier was that how could Mr Mlotshwa be expected to sign a draft

indictment? You remember the indictment that was sent to him of the 12th of June, which was sent by Ms Shuping, was a draft, and the point was made that how could he be expected to sign an indictment which was a draft? And you answered that he had to familiarise himself with what was contained in the indictment.

ADV CHAUKE: Yes.

CHAIRPERSON: It emerges now that in your email to him, after your communication, your telephonic conversation with
10 him, you then wrote what you wrote in that last but one paragraph.

ADV CHAUKE: Yes.

CHAIRPERSON: Meaning, if I understand your answer, you expected him to sign a draft indictment.

ADV CHAUKE: Yes.

CHAIRPERSON: Now, his question earlier on was how could he be expected to sign a draft indictment. Am I correct?

ADV MOHLAMONYANE SC: Yes, Madam Chair.

CHAIRPERSON: Yes, thank you. Are you able to answer
20 that?

ADV CHAUKE: Yes. That is why I indicated that draft for him to sign it would lay the basis for him to be able to reopen, make application to reopen the inquest.

ADV MOHLAMONYANE SC: May I proceed, Madam Chair?

CHAIRPERSON: Proceed.

ADV MOHLAMONYANE SC: Earlier on, I said I want to refer you to a document which apparently is that draft indictment, but you will confirm whether it is the one that you sent to Advocate Mlotshwa. Let me direct your attention to the index to folder B, Booysen, to the index number 32, which shows draft indictment at B00484. It says undated draft indictment, and then the page, it gives as B00484 up to and including B00529.

CHAIRPERSON: Are you referring to the index of Booysen
10 3? Is there Booysen 1, 2, 3 up to 11?

ADV MOHLAMONYANE SC: B2, Madam Chair.

CHAIRPERSON: B2.

ADV MOHLAMONYANE SC: Ja, B2, Bundle B2.

CHAIRPERSON: The index.

ADV MOHLAMONYANE SC: Ja, the index at number 32, where it is supposed to be under the column date, says undated. If you can locate that, Advocate Chauke.

ADV CHAUKE: Which page is that?

ADV MOHLAMONYANE SC: I am referring to an index. Let
20 us start first with the index.

CHAIRPERSON: There is a number in there, 1, 2, 3, 4, up to, if you can maybe refer to the number.

ADV MOHLAMONYANE SC: It says index to folder B, Booysen, and then it has numbers, and then at number 32, it says undated, where it is supposed to have a date, it says

undated. And then it, on the next column, shows draft indictment. And the last, the last, the last column.

ADV CHAUKE: Please, can you give me the page?

ADV MOHLAMONYANE SC: The page says, the last column says B00484 up to and including B00529.

ADV CHAUKE: Yes, I am at B00484 now.

ADV MOHLAMONYANE SC: On the document itself, or are you on the index? I am referring first to the index.

ADV CHAUKE: Which page is the index?

10 **ADV MOHLAMONYANE SC**: Maybe, perhaps, it is page 3 of the index. And item 32.

CHAIRPERSON: Please assist there and give the witness the document and show him the number. It is number 32 at page 3.

ADV CHAUKE: Yes, I see that, Chair.

CHAIRPERSON: Yes, and it is 32 undated, draft indictment, B00484 to B00529. Is that what you are referring the witness to?

ADV MOHLAMONYANE SC: Indeed, Madam Chair.

20 **CHAIRPERSON**: And he went to that document. Is that what you want him to do?

ADV MOHLAMONYANE SC: That is what, that is where we wanted, I wanted him to start. Now, you see that, Advocate Chauke? You see that you are there, on page 3?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Fine. Now, I go to the, I want you to go to the, the page itself, B00484.

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Are you there?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Fine. You see the, it is a document that reads in the High Court of South Africa, brackets underneath the Pietermaritzburg.

ADV CHAUKE: Yes.

10 **ADV MOHLAMONYANE SC:** It says, it reads as follows, and I will read only the... the top portion. It says:

“The Director of Public Prosecutions for the South Gauteng High Court, Johannesburg, who prosecutes for and on behalf of the state, hereby informs the Honourable Court that...”

Column, and the names of the accused there. The first one is Mostert, Paul, and their ages are not mentioned there. And then it goes on, so this is an indictment, not so. Go to page 20 2, the next page, 485.

CHAIRPERSON: It is a draft indictment.

ADV MOHLAMONYANE SC: Yes, I, I, I am getting there, Madam Chair. It is, my apologies, it is a draft indictment.

ADV CHAUKE: Yes?

ADV MOHLAMONYANE SC: Okay. Go to the last page,

Advocate Chauke.

ADV CHAUKE: The last page.

ADV MOHLAMONYANE SC: 521, it is B00521.

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: That document there, it is in your name.

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Can you explain that, the reason why it is in your name, as the DPP South Gauteng?

10 **ADV CHAUKE:** It was drafted by the prosecution team, Advocate .

ADV MOHLAMONYANE SC: Not yourself?

ADV CHAUKE: No, sir.

ADV MOHLAMONYANE SC: Is this the draft indictment that was, which you requested Advocate Mlotshwa to sign?

ADV CHAUKE: No.

ADV MOHLAMONYANE SC: Is this one?

ADV CHAUKE: No.

ADV MOHLAMONYANE SC: It is not this one?

20 **ADV CHAUKE:** No.

ADV MOHLAMONYANE SC: It is another one?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Similar to this one?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Okay.

ADV CHAUKE: That will be in the name of Advocate Mlotshwa, not in the name of Chauke.

ADV MOHLAMONYANE SC: Which one?

ADV CHAUKE: The one that would have been sent to Mlotshwa.

ADV MOHLAMONYANE SC: I see. But maybe, I am confused. Just help me out here. You are the DPP in Gauteng, in South Gauteng.

ADV CHAUKE: Yes.

10 **ADV MOHLAMONYANE SC:** A matter is supposed to be prosecuted in KZN.

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: But a draft is done in the name of South Gauteng.

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Why should that be?

ADV CHAUKE: Advocate Maema was here before the Panel. He explained that he was doing the draft cut and paste. He explained, was he?

20 **ADV MOHLAMONYANE SC:** Ja, maybe he might have explained.

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: But I ask you to explain to me.

ADV CHAUKE: I cannot explain to you something that I did not draft.

CHAIRPERSON: You see, the difficulty with this, Advocate Mohlamonyane, is that you were not here when Advocate Maema testified, and when he was cross-examined by Mr Mtsweni. If you go back to the transcript, I hope you had an opportunity to read the transcript. This aspect was dealt with by Mr Maema, and he explained all that as to why Mr Chauke, first of all, his office was used, and then they drafted documents, and he signed some of the documents to send them to the NDPP.

10 So probably you would have to ask your colleague to take you to the transcript and familiarise yourself with what Advocate Maema's evidence was, because we do not want to go back to that evidence and then rehash what he said. I do accept that you do not have the benefit of his evidence because you were not here, but if you say to me you have read the transcript to familiarise yourself with the evidence, I will accept that.

ADV MOHLAMONYANE SC: Madam Chair, I will accept that we should not rehash. Allow me to proceed. We should not
20 rehash the evidence that has been...

CHAIRPERSON: Have you read the transcript?

ADV MOHLAMONYANE SC: Not that part. I did not have time to read that part. And if it has been dealt with extensively, I will park it and proceed with other matters, other issues.

CHAIRPERSON: Yes, but what helps is that when you were not here, when a particular witness led evidence, and you would like to ask questions pertaining to that witness whose evidence you have not heard, it will help for you to read his evidence before you ask the questions, because otherwise it takes all of us back. We have now to go and read the transcription again.

And remember, we have been here listening to all the witnesses, noting their evidence, and that is why I can
10 remember, and I am saying to you, it will help that you familiarise yourself first with what happened when you were not here, and read the transcript, because transcription is a reflection or a recordal of what would have happened on a particular day with regard to the evidence of a particular witness.

ADV MOHLAMONYANE SC: That is why I say, Madam Chair, for the sake of saving time, allow me to proceed with other questions. If it has been dealt with extensively, I will accept. And there is just no time to go to the record now, because it
20 is going to take time. We are going to waste time, the Panel's time. I am amenable to proceed with other questions and leave this issue that has been extensively dealt with.

CHAIRPERSON: I am not stopping your cross-examination. I am saying to you, and I do not want you to just abandon the point, because it may well be a very important point. I am

simply advising that familiarise yourself with the transcription, the contents of the transcript, before you proceed, so that you know precisely what transpired during your absence, so that you do not go back and forth and try to tell you what happened, because your colleague was sitting here alone, and you are now cross-examining a witness about something that you did not, you were not even here when this particular evidence was led.

And it is taking us back to the transcript. And you
10 can see now they are bringing our files from the office, because we did not anticipate these questions. And I am advising you again, read the transcript before we proceed, so that you know what happened when you were not here. You may proceed, sir.

ADV MOHLAMONYANE SC: Madam Chair, in that event, I will ask for a short adjournment, to go and familiarise myself with that portion of the transcript.

CHAIRPERSON: No, I think you can park this question, so that we can make progress. We will note it. I would not just
20 like you to abandon it. And tomorrow, when you proceed, you can go back to this aspect, because you would have read the transcript.

ADV MOHLAMONYANE SC: As it pleases you, Madam Chair. I am advised by Advocate Mtsweni that it may be lunch break. I do not know whether what time was arranged for

lunch recess.

CHAIRPERSON: I do not know. Advocate Mtsweni, I have to confer with my colleagues. I even forgot that there is this thing called lunch. [Laughter] Just a minute. [Deliberation] We have gone beyond lunchtime. We will adjourn now, Advocate Chauke. We will pause from now. It is about quarter to two. We will take a 45-minute lunch break.

ADV CHAUKE: Thank you, Chair.

CHAIRPERSON: We will adjourn until half past two.

10 **ENQUIRY ADJOURNS**

ENQUIRY RESUMES

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

ADV CHAUKE: Good afternoon, Chair.

CHAIRPERSON: Advocate Mohlamonyane, you may proceed.

ADV MOHLAMONYANE SC: Thank you, Madam Chair.

ADV CHAUKE: I acknowledge, Chair, that I am still under oath.

20 **CHAIRPERSON:** That is the beauty of working with the advocates.

ADV CHAUKE: Thank you, Chair.

CHAIRPERSON: Thank you, Counsel.

ADV CHAUKE: Thank you, Chair.

COURT: Thank you very much. You may proceed, Advocate

Mohlamonyane.

ANDREW CHAUKE: (still under oath)

CROSS-EXAMINATION BY ADV MOHLAMONYANE SC

(CONTINUES): Thank you, Madam Chair. Advocate Chauke, we are still on page B00577.

CHAIRPERSON: May I recap?

ADV MOHLAMONYANE SC: Thank you.

CHAIRPERSON: Remind me where is 577?

ADV MOHLAMONYANE SC: It is in B3, Madam Chair.

10 **CHAIRPERSON**: B3?

ADV MOHLAMONYANE SC: Ja, it is part of the exchanges, email exchanges between Advocate Mlotshwa and Advocate Chauke. The one that we were busy with before the lunch recess.

CHAIRPERSON: Yes, thank you.

ADV MOHLAMONYANE SC: If you can go to the last part one that we read before we adjourned. The last part one paragraph. In that email of the 12 June 2012 at 05:14pm, which you addressed to Advocate Mlotshwa. You remember
20 the first sentence was read. Now I am going to read the second sentence. It says:

“If this makes you uncomfortable, please indicate so that I may urgently take the matter up with the Acting NDPP as well as the Minister.”

It is you addressing Advocate Mlotshwa. Let me ask you this. Advocate Mlotshwa refused to sign the draft indictment that you sent to him, not so?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Did that pose a problem to you and the prosecution team by his refusal to sign?

ADV CHAUKE: No.

ADV MOHLAMONYANE SC: But you threatened to report him to the NDPP to take the matter up with the NDPP and the
10 Minister.

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Which Minister were you referring to?

ADV CHAUKE: Minister of Justice.

ADV MOHLAMONYANE SC: Why should it be taken to the Minister?

ADV CHAUKE: It is because that was a high profile matter and the Minister was always being briefed by the NDPP about that matter.

20 **ADV MOHLAMONYANE SC:** Were you going to report to the Minister that Advocate Mlotshwa was refusing to sign?

ADV CHAUKE: No.

ADV MOHLAMONYANE SC: What were you going to report to the Minister?

ADV CHAUKE: To indicate his reluctance to cooperate.

ADV MOHLAMONYANE SC: To cooperate?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: If you go back to B00578 ...[intervenes].

CHAIRPERSON: Just to make a follow-up on that point so that we can have the context. And correct me if I am wrong, Advocate Chauke. From the record it appears that the reason why Advocate Jiba got involved in this arrangement is after the newspaper publications and the Minister had
10 communicated with the former Acting NDPP, raising a concern that these matters are urgent and that they needed to be enrolled or prosecuted. Something to that effect.

ADV MOHLAMONYANE SC: Yes, Chair. My understanding is that the Police General Mabula and them would have approached the NDPP, the Acting NDPP then, with this urgent request which they would have discussed with their Minister, with the Minister of Police.

CHAIRPERSON: And this matter ultimately landed on the table of the Minister of Justice.

20 **ADV MOHLAMONYANE SC:** Yes.

CHAIRPERSON: Then Minister Radebe.

ADV MOHLAMONYANE SC: Minister, Honourable Jeff Radebe, yes.

CHAIRPERSON: Yes. And that led to him communicating with the former NDPP, Acting NDPP, Advocate Jiba.

ADV MOHLAMONYANE SC: Yes.

CHAIRPERSON: Requesting that these matters should be urgently dealt with.

ADV MOHLAMONYANE SC: And that he should be updated because apparently he was also appearing in Parliament where he was supposed to answer to this.

CHAIRPERSON: Yes. Could that have been the reason why the Minister was then involved about the reluctance or the non-cooperation of Advocate Mlotshwa?

10 **ADV MOHLAMONYANE SC:** Yes, especially in respect of the issue of the inquest.

CHAIRPERSON: Thank you.

ADV MOHLAMONYANE SC: Go to page B00578, the previous page, Advocate Chauke. Madam Chair has already referred us to that communication from Advocate Mlotshwa. If you go back to it to refresh ourselves, to refresh our memories, paragraph 2 thereof reads. That was when Advocate Mlotshwa was responding to the draft indictment that you had sent him, and he says:

20 “Kindly furnish me with the prosecutor's memo or report so that I can have a wraparound view of the matter. The report must also have the police station or stations and CAS numbers so that we can open up the DPP's file. Thanking you in

advance. Best regards, Simphiwe.”

You would surely agree, Advocate Chauke, that what this advocate is saying in this paragraph does not reflect a person who does not cooperate or who is recalcitrant or who refuses. He merely says, please send me the memo.

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Now why do you say he was uncooperative?

ADV CHAUKE: The context of the email. I am referring to
10 the inquest, the opening of the inquest.

ADV MOHLAMONYANE SC: Was he uncooperative as far as the opening of the inquest are concerned or was he uncooperative as far as the signing of the draft indictment was concerned?

ADV CHAUKE: The opening of the inquest.

ADV MOHLAMONYANE SC: You requested him to reopen inquests.

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: I would have gone to inquest at
20 a later stage, but let me hasten to get to the inquest that you are now referring to so that you can enlighten us as to exactly what was happening. What is it that Mlotshwa was refusing to do? Go to page – no, it is the same document, same exchange, email exchanges, but revert to 577. You respond to his email of 03:21 PM at 05:14 PM and you are saying to

him:

“Dear, Advocate Mlotshwa. Who is the prosecutor that you are referring to? I forwarded to you the indictment which has all the detailed summary by which you ought to be in a position to open your office file. I also forwarded to you details of the inquests with police CAS numbers, et cetera, to which you referred to advocate Thokozile Majokweni for reasons that I do not follow and understand. The indictment with respect gives you the whole view of the matter.”

Now, which inquests are these? Can you explain to this Panel what inquests you were referring to so that we can know what you are talking about?

ADV CHAUKE: Cato Manor, the unnatural deaths.

ADV MOHLAMONYANE SC: So, in the Cato Manor killings, if I may use that pun, in the Cato Manor killings some of the dockets, some of the cases were referred to magistrates to hold inquests.

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: The magistrates finalised those inquests.

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: And what, in the majority of the cases, what were the findings of those magistrates?

ADV CHAUKE: That nobody is responsible for the killings of the deceased.

ADV MOHLAMONYANE SC: Those decisions that exonerated the police who fired shots or who killed those victims, those decisions, are they judicial decisions?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Which are contained on a
10 document called the J56?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Now, procedurally and legally, if you open such a judicial finding, how do you normally go about it?

ADV CHAUKE: You prepare a report, you submit it to the NDPP who must submit it to the Minister and the JP.

ADV MOHLAMONYANE SC: Judge President?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Now, for them to be before, to
20 place them before a judge?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Okay.

CHAIRPERSON: If I may, so that I do not forget this point, Advocate Mohlamonyane, I do not want to disrupt your line of questioning. The inquest in relation to the Cato Manor

matters, I am just remembering from the reading of the transcript, and correct me if I may be wrong. You remember there were statements that we read earlier to the effect that the police or investigating officers, and correct me, I am not sure who really did that. But it appears that the referral for inquests in those matters were made by the police themselves.

ADV CHAUKE: The police would have submitted the case documents to the DPP's office, and the DPP's office would
10 have made a decision to say in this case, an inquest must be had and submitted to the magistrate. In that case, the police will go back and then take down the statement from the case docket and then prepare an inquest docket which will be submitted to the magistrate.

CHAIRPERSON: The inquest dockets would have been prepared by the police themselves?

ADV CHAUKE: Yes, and submit them to the prosecutor, and the prosecutor would go through them and then submit them to the magistrate for the latter to hold the inquest.

20 **CHAIRPERSON:** I just want to know if you remember in relation to which cases. If you do, if you do not, I will request counsel to probably just list those cases so that we can determine the contents of those dockets. In relation to which decisions were then made that there should not be any prosecution, something to that effect?

ADV CHAUKE: Yes, indeed. I cannot remember the list from the top of my head, but I remember when Ms Shamila Williams was testifying, she alluded to some of them, where the inquests were held, and some of those where the inquests were not held, investigations were just not tested.

CHAIRPERSON: Yes. Advocate Mohlamonyane, have you familiarised yourself with that piece of evidence so that we can refer specifically to this matter? Because it is important as you ask these questions to look at it. That may necessitate
10 further questioning following your question.

ADV MOHLAMONYANE SC: Chair, at the moment, I cannot remember them from the top of my head, as my learned colleague is saying. I did read them some time ago. We may revisit them and list them and find out which ones were they, but I remember there were inquests that were held.

CHAIRPERSON: What is important for me is to ascertain what was contained in the investigative dockets for referral for inquests, because that is important before we even come to that conclusion. If you can ask your colleagues to assist
20 you before you finish with your cross-examination, refer us to the relevant bundles.

ADV MOHLAMONYANE SC: I may not be able to do so now.

CHAIRPERSON: No, no, I am saying ask your colleagues. Advocate Mtsweni is not here.

ADV MOHLAMONYANE SC: I will ask Advocate Lekgetho.

CHAIRPERSON: Yes, Advocate Lekgetho can note that we request that we be referred to the relevant part of the dockets containing the investigative dockets for referral to inquest, because those dockets would have been prepared by the police and we would like to see who did and what the contents of the dockets were. If you may do that, Advocate Lekgetho, and give Advocate Mohlamonyane that information either today or tomorrow before he finishes, then we can look at those relevant parts of the record. Thank you. Proceed.

10 **ADV MOHLAMONYANE SC:** Thank you, Madam Chair. What ...[intervenes].

MS RAMAGAGA: Through you, Chair. Just before you – I am going to ask a general question. Advocate Chauke, in your responses to Advocate Mohlamonyane's questions, you have now spoken about the criminal case dockets and the inquest dockets.

ADV CHAUKE: Yes.

MS RAMAGAGA: Now, in general terms, who would have called for the establishment or the creation of inquest
20 dockets? Who has the power?

ADV CHAUKE: The DPP and the staff working at the DPP's office, deputies and senior state advocates.

MS RAMAGAGA: So, the power to even enable or direct the police to open an inquest docket rests with the prosecution?

ADV CHAUKE: Yes.

MS RAMAGAGA: The police cannot, of their own accord, create an inquest docket?

ADV CHAUKE: No.

MS RAMAGAGA: Ja, maybe I am asking you this question or these questions because of what is already on record. And part of what is on record, I do not expect any of the parties to dispute that, but if it is in dispute, then we have got to get the records that will show that that is on record. What we have on record here is that there are those case dockets
10 which would be marked as inquests right from the beginning. And at that time, those dockets obviously would not have been seen by the prosecutors.

ADV CHAUKE: Yes.

MS RAMAGAGA: And I think you are the right person who can also enlighten us about that because Ms Williams also did enlighten us, but you being right there as a prosecutor, and as you tell us, is the prosecution that has the power to direct. What do you say about the fact that the dockets that were spoken about, especially by Advocate Williams, was that
20 right at the scene, as the matter is being reported, that docket that would be opened, it would already be marked inquest? What do you say about that?

ADV CHAUKE: No, no. Police usually do those things, but it is not here or not there. That, even if it is written inquest, it still left for the prosecutor for the prosecutor to determine

whether it is an inquest or a criminal prosecution should follow.

MS RAMAGAGA: So the label does not confer the powers?

ADV CHAUKE: No.

MS RAMAGAGA: The powers remain with the prosecutor in terms of the NPA Act?

ADV CHAUKE: Yes.

MS RAMAGAGA: Thank you.

ADV CHAUKE: Even in terms of the Criminal Prosecutor
10 Act, the prosecutor must first read the statement and determine whether the criminal prosecution should follow or an inquest should be directed.

MS RAMAGAGA: Yes. Then, in conclusion, that means that the power to undertake inquests would be derived from the prosecution.

ADV CHAUKE: Indeed.

MS RAMAGAGA: Thank you.

CHAIRPERSON: You may proceed, Mr Mohlamonyane.

ADV MOHLAMONYANE SC: Thank you, Madam Chair.
20 Maybe to take it to some conclusion, go to page B00573. It is B2, I believe. Ja, must be B2. Bundle B2.

CHAIRPERSON: Page?

ADV MOHLAMONYANE SC: 00573, Madam Chair. It is a communication by Advocate Chauke to Advocate Mlotshwa dated the 13 June 2012 at 11:20.

CHAIRPERSON: That should be Volume 3, not 2.

ADV MOHLAMONYANE SC: I got it ...[intervenes].

CHAIRPERSON: B3.

ADV MOHLAMONYANE SC: B3. Thanks for that. I thought that is 2. Thanks. Are you there, Advocate?

ADV CHAUKE: Yes, yes.

ADV MOHLAMONYANE SC: You then write to Advocate Mlotshwa the following day. B00573. It is an email addressed to Advocate Mlotshwa. You write to him the
10 following day. Remember, the previous day you had said to him you are taking exception maybe. I am just saying it in broad outline. Not necessarily that you said those words, but that you were not satisfied, you were not happy that he was not opening, reopening the inquests. You remember?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Now, the following day on the
13 June 2012, you write to him, you say:

20 “Kindly take note that I hereby withdraw the request for you to consider reopening of the inquests which have been listed on the memo. There will be no necessity for them to be reopened at this stage. I would, however, request copies thereof to be made and the current investigating team will approach your office or the

offices of the magistrates for such assistance. I will let you know if we are unable to get assistance in this regard.”

You know about this?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: So you were no longer requiring him to reopen them?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: But did you follow up with the
10 magistrate's offices?

ADV CHAUKE: The prosecution team and the investigating team would have done that.

ADV MOHLAMONYANE SC: Would have done that?

ADV CHAUKE: Yes. Not me.

ADV MOHLAMONYANE SC: Not you?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: But then prosecutions followed in the Cato Manor matters, not so?

ADV CHAUKE: Yes.

20 **ADV MOHLAMONYANE SC**: Were the inquests reopened?

ADV CHAUKE: No.

ADV MOHLAMONYANE SC: They were not reopened?

ADV CHAUKE: No.

ADV MOHLAMONYANE SC: Were they not supposed to have been reopened before the prosecution team could proceed

with prosecutions?

ADV CHAUKE: No. I realised they came to once I have discussed it with the prosecution team and then I went through and then I realised no, it will be necessary because we are not going to do inquests. We are going to do prosecutions.

ADV MOHLAMONYANE SC: But in some of those prosecutions, there were already judicial pronouncements made on the predicate offences, not so?

10 **ADV CHAUKE:** Yes.

ADV MOHLAMONYANE SC: But you continue to charge the officers.

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: On those predicate offences on which magistrates have already pronounced and exonerated those officers from blame?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Is that allowed in law?

ADV CHAUKE: Very much so.

20 **ADV MOHLAMONYANE SC:** Thank you. Now, I will park this issue of the inquest for now. I will get to the issue of you being a coordinator, and I direct your attention to your statement in the Zondo Commission, which you can find at LO1 Bundle, LO00296. That is where it starts. In fact, it starts at LO00243.

ADV BALOYI-MERE SC: Advocate Mohlamonyane, please pardon me. You asked a question whether this was allowed and Advocate Chauke said, yes, it is allowed in law. And I think you left us all hanging. Would it not have been better to take it further so that we know which law? Because, well, for me, I am left hanging. Advocate Chauke says, yes, it is allowed in law. And you seem to let it go, unless if you accept and you know the law and I am left hanging.

ADV MOHLAMONYANE SC: No, I do not want to elicit
10 argument with a witness. I intend to leave this for argument.

ADV BALOYI-MERE SC: Yes.

ADV MOHLAMONYANE SC: Because if I say the law says this, he is going to say, no, the law says this. I wanted to avoid argument, arguing with a witness, Madam Mere.

ADV CHAUKE: You said LO1, page?

ADV MOHLAMONYANE SC: It is 296. It is actually LO0243.

ADV CHAUKE: Yes, Chair, I am there.

ADV MOHLAMONYANE SC: Madam Chair, I thought I have it here. I asked my colleague, Advocate Lekgetho, to get it
20 for me. I thought I have it here. I do not have it. She will locate it for me electronically. I thought I have a hard copy. I have it somewhere, but I am missing it now.

CHAIRPERSON: I am trying to restrain myself, Counsel. You have had a weekend. I would have expected the evidence-leading team to have used the weekend to prepare

bundles, or at least a document, a file, for the purpose of cross-examination. You can see how difficult it is. We now get documents far away from our researchers as you are cross-examining. Was it not possible for you over the weekend to prepare for this cross-examination?

ADV MOHLAMONYANE SC: I thought of it, Madam Chair. I tried to avoid preparing bundles because most of them that I referred to are already on record. I had spoken to *Nthathi* Moerane and informed him about the ones that I will be referring to. My apologies that I cannot locate this one. I tried to avoid bundles, preparing a bundle.

CHAIRPERSON: But you are creating problems for yourself because you refer us to documents. We locate them ourselves, but you, the one who is asking the questions, do not have it. So preparation would have been helpful to you and also to us so that we can take all the relevant documents behind us.

MS RAMAGAGA: Through you, Chair.

CHAIRPERSON: Before that, if that may assist you, do you have a free document that you can give to Advocate Mohlamonyane? If it is possible. It is L01. You have it?

ADV MOHLAMONYANE SC: Indeed, Madam Chair. It is an electronic one.

CHAIRPERSON: It would have been helpful if Advocate Lekgetho could be sitting next to you. Tomorrow you must

make those arrangements so that she can be closer and to help you, especially in locating the documents that you are using.

ADV MOHLAMONYANE SC: Thank you, Madam Chair. I appreciate it.

MS RAMAGAGA: Through you, Chair. Advocate Mohlamonyane, I am just bringing it to your attention because I do not know whether Advocate Mtsweni told you, Advocate Lekgetho told you, and whether you are aware. Just to avoid
10 what happened earlier today, just to sensitise you to the fact that I trust that you are aware that on the 20th day of February 2026, Advocate Mtsweni did ask questions, put questions to Advocate Maema regarding this matter. It is just sensitising you to that, especially regarding the fact that of what happened earlier on, that you would ask questions apparently, maybe without being aware of anything.

ADV MOHLAMONYANE SC: This particular witness statement?

MS RAMAGAGA: Yes, I am just letting you know that. On
20 the 20th of February, when Advocate Maema was in the box, Advocate Mtsweni questioned him. As to what it is all about, I cannot give you the details. What I am aware of is that he did ask questions, put questions to Advocate Maema on that day. You can continue. Thank you, Chair.

CHAIRPERSON: Proceed, Advocate Mtsweni.

MS RAMAGAGA: Advocate Mohlamonyane.

CHAIRPERSON: Advocate Mohlamonyane.

ADV MOHLAMONYANE SC: Thank you, Madam Chair.

CHAIRPERSON: I am sorry to refer you to Advocate Mtsweni. My apologies.

ADV MOHLAMONYANE SC: Go to paragraph 60.

ADV CHAUKE: Paragraph?

ADV MOHLAMONYANE SC: Paragraph 60, Advocate.

ADV CHAUKE: 6-0?

10 **ADV MOHLAMONYANE SC:** 6-0, yes. It is on page 266.

ADV CHAUKE: Yes, I am there, Chair.

ADV MOHLAMONYANE SC: It starts with:

“Jiba requested me to assist with putting together a prosecution team which will guide members of the police and members of IPID, the Cato Manor team on the investigation and prosecution of the matters. I agreed to be the coordinator of the prosecution team. The prosecution team was comprised of the following advocates.”

20

We already know who they were. My concentration will be on you being the coordinator. Now, go to paragraph 62 of the same document.

ADV CHAUKE: Yes, I am there, Chair.

ADV MOHLAMONYANE SC: You set out your role as team coordinator. Now, 62.1, you say you deal with the logistics and administrative matters of the prosecution team. 62.2, you say ensuring coordination between the various stakeholders. 62.3 says my involvement excluded taking prosecutorial decision, whether to prosecute or not. And 62.4 says feedback and briefing on the team to Jiba, including the submission of documentation from the prosecution team to the NDPP. You confirm that, not so?

10 **ADV CHAUKE:** Yes.

ADV MOHLAMONYANE SC: Now, you continued to sing the coordination song. In other words, you continued that you were the coordinator, even in your current statement before this Panel.

ADV CHAUKE: I was not singing, Chair. I was talking.

ADV MOHLAMONYANE SC: I beg yours?

ADV CHAUKE: I was not singing.

ADV MOHLAMONYANE SC: I am sorry. I beg yours. My apologies.

20 **ADV CHAUKE:** Yes.

ADV MOHLAMONYANE SC: Maybe I used the wrong pun, but my apologies to you.

CHAIRPERSON: Of course, you did. Advocate Mohlamonyane, the issues of ...[intervenes].

ADV MOHLAMONYANE SC: The law.

CHAIRPERSON: Sensitivities are very important to all of us.

ADV MOHLAMONYANE SC: I agree, Chair.

CHAIRPERSON: I cautioned earlier that you are all advocates and you need to treat one another with the utmost respect and observe the decorum of this enquiry. We, as a Panel, give you the utmost respect, all of you, and you are legal practitioners. You must respect one another, as you do as officers of the High Court or of the courts. Please do that.

ADV MOHLAMONYANE SC: Thank you, Madam Chair. I
10 reiterate I apologise. Go to your own statement, Advocate Chauke. Go to page 6-26.

ADV CHAUKE: Which own statement? We are talking about the one at the Zondo Commission, and there is a statement that I made here.

ADV MOHLAMONYANE SC: No, no, in this enquiry. I have moved away from that one. Sorry if you do not hear me, but the statement that you made for this hearing.

ADV CHAUKE: Thank you.

ADV MOHLAMONYANE SC: Yes.

20 **CHAIRPERSON:** Before you go there, you had just referred him to another paragraph. Was that 61? When you said that he continued with his song?

ADV MOHLAMONYANE SC: I was getting into his own statement that he made before the enquiry.

CHAIRPERSON: Not a paragraph in this Zondo Commission

affidavit?

ADV MOHLAMONYANE SC: No, Madam Chair.

CHAIRPERSON: Which paragraph in his statement?

ADV MOHLAMONYANE SC: Let me start with paragraph 89 on page 6-26. The last sentence in paragraph 89 reads as follows:

“My role was limited to that of oversight and coordination in support of the prosecution team.”

10 You see that, no?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Go to 91 on the next page. The last sentence that reads:

“That position was conveyed in the course of my oversight role.”

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Go to 92, the same page. The last sentence reads:

“My role was to oversee the process at the request of the Acting National Director.”

20

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Now, my question is, coordination and overseeing, are they synonymous?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: It is one and the same thing?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Now, go to 99 on page 6-29.

MS RAMAGAGA: [Indistinct].

ADV MOHLAMONYANE SC: That is correct, Madam Ramagaga. You say in that paragraph:

10 “My role in the matter arose following a request by the Acting National Director that I coordinate and oversee the work of a prosecution team drawn from outside KwaZulu-Natal. My involvement was therefore supervisory and coordinative in nature.”

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Coordinative, supervisory, overseeing, do they mean the same thing?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: They mean what you have listed in paragraph 62, 62.1, 62.3, 62.4 of your affidavit in the Zondo Commission?

20 **ADV CHAUKE:** Yes.

ADV MOHLAMONYANE SC: Your role was supervisory?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: You were the supervisor, in other words?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: If we have to use that noun.

You were supervising the prosecution team?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: You are not managing the prosecution team?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Yes to what?

ADV CHAUKE: To the statement that you are making.

10 **ADV MOHLAMONYANE SC:** That we are not managing the prosecution team?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: You are overseeing it?

ADV CHAUKE: Supervisory and managing is one and the same thing. I do not know if we are going to play with those semantics of words there.

ADV MOHLAMONYANE SC: We have to address them because you are saying you are the coordinator and we need to know what were you doing when you were coordinating.

ADV CHAUKE: I understand.

20 **ADV MOHLAMONYANE SC:** Yes. Go to L04. Please just give him L04, page 00886. 00886.

ADV CHAUKE: Yes, I am there, Chair.

ADV MOHLAMONYANE SC: You will see that in that document it is an email that you sent from your iPhone to Doctor Ramaite.

ADV CHAUKE: Yes.

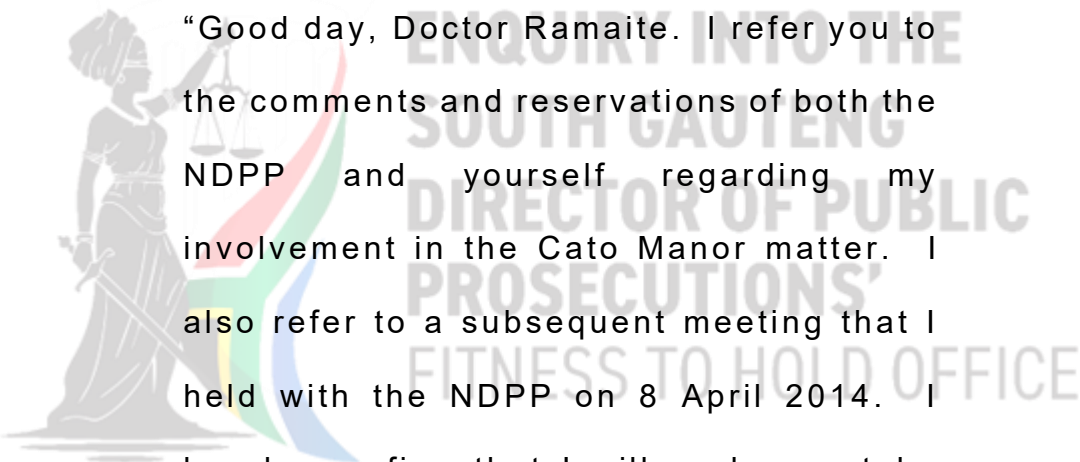
ADV MOHLAMONYANE SC: By the way, remind us, what position was Doctor Ramaite holding at this date when you were sending the email on the 11th of April 2014?

ADV CHAUKE: He was Deputy National Director of Public Prosecutions and Head of National Prosecution Service.

ADV MOHLAMONYANE SC: NPS?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: You say in this document here,
10 in this email:



“Good day, Doctor Ramaite. I refer you to the comments and reservations of both the NDPP and yourself regarding my involvement in the Cato Manor matter. I also refer to a subsequent meeting that I held with the NDPP on 8 April 2014. I hereby confirm that I will no longer take part in any way regarding the management and prosecution of this matter. I have

20 accordingly informed the team leader, Advocate Maema, and the DPP, KZN, Advocate Noko. Regards, MA Chauke, Director of Public Prosecutions, South Gauteng, Johannesburg.”

You are referring to management here?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Is this coordination?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Does this management and prosecution mean coordination?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: Now, why did we have to read dockets if we were coordinating? Why did we have to get into the trouble of reading all these dockets, so many dockets?

10 **ADV CHAUKE:** I did not read all the dockets. I listed the dockets that I have read in respect of the review application, which the NPA through the NDPP was opposing.

ADV MOHLAMONYANE SC: Would you agree that management involves more than mere coordinating?

ADV CHAUKE: No.

ADV MOHLAMONYANE SC: Do you also agree that your involvement went beyond mere coordination? You were managing.

ADV CHAUKE: No.

20 **ADV MOHLAMONYANE SC:** I have no further questions, Madam Chair.

ADV CHAUKE: Thank you, sir.

CHAIRPERSON: If I may just follow on the last question? If you do not intend to do so, feel free to say that. I would imagine that the evidence leaders could probably have

evidence to the contrary, to suggest that Advocate Chauke actually played a role more than that of a coordinator, but rather of a prosecutor taking a prosecutorial decision, because that is the key issue here.

And we really seek to make a determination to that effect, and if you can assist us, if there is probably any evidence to that effect that you can take us to, to demonstrate that in actual fact you were not simply a coordinator but rather a prosecutor who took a prosecutorial decision.

10 First, in relation to the Cato Manor matter, and second, in relation to the Mdluli matter, but as regards the latter there is no issue because he has just testified this morning that as far as the Mdluli matter is concerned, he is the one who took a prosecutorial decision. My concern relates to the Cato Manor matter.

ADV MOHLAMONYANE SC: Madam Chair, we would have pursued the issue of the prosecutorial decisions that we allege Advocate Chauke has taken, but we could read when Madam Chair said we have not – rather the issue of
20 prosecutorial decision does not form part of the TOR, and we decided not to pursue that aspect because it is not there in the TOR.

Because we would have pursued it in this fashion, all what he was saying he did, we would have argued that it constitutes prosecutorial decisions. But since it has been

indicated to us that it has not been alleged, we decided to abandon it, that aspect, not to proceed to argue along those lines.

CHAIRPERSON: I am not sure I understand what you are saying.

ADV MOHLAMONYANE SC: Maybe I should do it in this fashion.

CHAIRPERSON: Perhaps you must go to the terms of reference. I am not too sure what you are saying, and I really
10 need to understand the point that you are making.

ADV MOHLAMONYANE SC: That I am making, yes, Madam Chair.

CHAIRPERSON: Because the terms of reference tells you exactly what is it that is alleged against Advocate Chauke. If you look, for instance, at paragraph 3.1.1.1, he supported a decision to prosecute the accused notwithstanding that there was no evidence justifying the decision and he sought to improperly have the Acting Director of Public Prosecution, KZN, sign the case docket and all prosecution memorandum
20 detailing the alleged evidence implicating the accused on which the decision to indict had to be made.

ADV MOHLAMONYANE SC: Madam Chair, I stand to be corrected. I just want to refer Madam Chair to, I think he was still being led by my learned colleague, Advocate Ngcukaitobi SC, when Madam Chair indicated that in any event the issue

of prosecutorial decision that he would have taken are not part of the TOR. If it was not yesterday, it must have been last week, but it is somewhere on record.

CHAIRPERSON: I do not remember that. Do you have a transcript that reflects that?

ADV MOHLAMONYANE SC: Maybe we can check the transcript. Let me just check when it was done because I made some notes.

CHAIRPERSON: Because I am trying to ascertain with you,
10 Advocate Maema, as the evidence leaders, and I really seek you to assist us here. If you are aware of any evidence that points to Advocate Chauke having taken any prosecutorial decision insofar as the racketeering case of the Cato Manor is concerned, please bring that to our attention because it will assist us.

I am not sure what your answer is. If you are not aware of any such evidence, you have consulted with some of the witnesses who you are going to lead, maybe you can draw our attention to the record. Then we can look at that
20 evidence. Because you could see this morning Advocate Ngcukaitobi dealt with those aspects of the TOR to deal with this very specific issue regarding a prosecutorial decision insofar as Cato Manor is concerned.

ADV BALOYI-MERE SC: Advocate Mohlamonyane, I have checked my notes and the only issue that the Chair

commented on was the issue of jurisdictional straddling. And I will quote it as I have written it, it may not be verbatim:

“Jurisdictional straddling, although it does not arise in the TOR, but it was dealt with extensively when the section 60PP was explained.”

That is what I have in my notes when Advocate Ngcukaitobi started giving evidence. Thank you, Chair.

CHAIRPERSON: Do you remember that, Counsel?

10 **ADV MOHLAMONYANE SC:** Yes, I do remember that. You correct me if I am wrong. I remember that.

ADV NGCUKAITOBI SC: Sorry, Madam Chair, if I can intervene? I know it is not my turn but my learned friend's turn, but I think that it is incumbent upon us to just remember where we are. The question by the Chair is if there is evidence that Advocate Chauke performed prosecutorial functions, that must be put to him. Thank you, Madam Chair.

CHAIRPERSON: In other words, as you have consulted with the various witnesses, whilst this witness is still in the
20 witness box, it will be appropriate that you put those versions to him, if any. That is why I am asking the question because this is a very important part of this enquiry.

Before we even make a determination whether there was evidence or not, the key point is, was there any prosecutorial decision made by him or taken by him in relation

to the Cato Manor matter? And if there is such evidence, put it to the witness and direct the witness to that evidence so that we can hear his version in relation to that aspect. If any, of course.

If I may, Counsel, I ask this question because you have gone into the various phrases used in the statement by Advocate Chauke, where he says I was a coordinator, I was playing a supervisory role, I was exercising oversight, and I would like us to go to the real crux of the matter. Did he
10 make any prosecutorial decision insofar as the Cato Manor is concerned which pertains to racketeering? And if there is any such evidence, if you may assist us, and put it to the witness whilst the opportunity is still available before he leaves that witness stand.

ADV MOHLAMONYANE SC: Thank you, Madam Chair. May I be afforded an opportunity to reflect on it and then I will later proceed with it, maybe tomorrow?

CHAIRPERSON: The point is that, are you going to proceed with your cross-examination or would you like us to adjourn?

20 **ADV MOHLAMONYANE SC**: Maybe adjourn.

CHAIRPERSON: That would have been an appropriate moment for re-examination.

ADV MOHLAMONYANE SC: I will ask for an adjournment so that I can reconsider and then proceed with cross-examination along the lines which Madam Chair says I should

pursue.

CHAIRPERSON: I see your junior seeks to talk to you. You may confer with each other.

ADV MOHLAMONYANE SC: Thank you, Madam Chair.

CHAIRPERSON: Yes, counsel?

ADV MOHLAMONYANE SC: Thank you, Madam Chair.

Advocate Lekgetho apprised me of the fact that perhaps I should let you know that it is Advocate Nicole Mayet who should deal with the Mdluli matter. Maybe she can start to
10 deal with the Mdluli matter and then I can come back later, if that is appropriate.

CHAIRPERSON: You seek leave to revisit the cross-examination in relation to the Cato Manor matter?

ADV MOHLAMONYANE SC: Indeed, Madam Chair.

CHAIRPERSON: Yes, we will allow you to revisit this matter before she finishes or rather when she finishes with her cross-examination on the Mdluli matter. You can then come back to these aspects,

ADV MOHLAMONYANE SC: Thank you, Madam Chair, for
20 the opportunity.

CHAIRPERSON: Counsel, are you not too far from us? It will be convenient for us to look directly at you if it is not inconveniencing you or Advocate Mohlamonyane.

ADV MOHLAMONYANE SC: No, I will wait for her, Madam Chair.

CHAIRPERSON: Maybe as we rearrange our tables, we will take a 10-minute break to stretch our legs. And, Counsel, you can take that chair and we will start when we resume. We will start at 15:50. Advocate Chauke, we will pause for 10 minutes and we will continue with you at about 15:50. You are still under oath.

ADV CHAUKE: Thank you, Chair, I confirm.

ENQUIRY ADJOURNS

ENQUIRY RESUMES

10 **CHAIRPERSON:** Good afternoon, everyone. Good afternoon, Advocate Chauke.

ADV CHAUKE: Good afternoon, Chair.

CHAIRPERSON: It has been a long day. It has been a long day. Counsel, you are under oath.

ADV CHAUKE: Thank you, Chair. I am still.

CHAIRPERSON: Advocate Mayet?

ADV MAYET SC: Thank you, Madam Chair. Thank you. At the outset, let me commence by apologising to the Panel for not producing bundles in cross-examination. I honestly
20 laboured under the misapprehension that such resources were not available. I apologise, and in the event that the cross-examination does continue to tomorrow, you will have bundles by tomorrow.

CHAIRPERSON: Or, at the very least, a kind of a document that can guide us to enable our researchers to prepare the

documents timeously.

ADV MAYET SC: Indeed. I take the point. The second apology is on behalf of Advocate Khooe. We did not anticipate that we would begin our cross-examination today, and she was given leave of absence.

CHAIRPERSON: Yes, but are you in a position to start?

ADV MAYET SC: The issues, yes, I am in a position to start, Madam Chair. The issues are very narrow. What I propose to do in my approach in this cross-examination is to
10 commence by assisting the Panel by going to the terms of reference and adopting a process of elimination so that we can distil exactly which decision we are dealing with in Clause 3.1.2. If you would indulge me with that. I know my learned friend has canvassed much of the 3.1.2 already, so it will not be evidence-in-chief, but it is simply so that we are all on the same page, because 3.1.2 is rather cryptic.

CHAIRPERSON: Yes, thank you very much. If you can speak louder, Counsel, and secondly that roadmap will help all of us so that you know the areas of your focus.

20 **ADV MAYET SC:** Thank you, Madam Chair.

CHAIRPERSON: You may start.

CROSS-EXAMINATION BY ADV MAYET SC: Thank you.
Good afternoon, Mr Chauke.

ADV CHAUKE: Good afternoon.

ADV MAYET SC: Mr Chauke, I would like to refer you to the

terms of reference bundle, and it is on page 7 and Clause 3.1.2.

ADV CHAUKE: Yes, I am there, Chair.

ADV MAYET SC: Thank you, Mr Chauke. Now, Mr Chauke, when we read this clause, and I will read it for you so that we can just distil it, it says:

10 “The failure to continue with charges against Lieutenant General Richard Mdluli for his involvement in the murder of Mr Tefo Abel Ramogibe, in that he, Advocate Chauke, caused the charge of murder relating to the killing of Mr Tefo Abel Ramogibe and related charges to be withdrawn.”

Now, if we just stop there, we know that the SCA judgment found that your decision is not irrational.

ADV CHAUKE: Yes.

ADV MAYET SC: And this decision was not appealed.

ADV CHAUKE: No.

20 **ADV MAYET SC**: And the NPA is bound by the SCA finding that your decision to refer to inquest was not irrational.

ADV CHAUKE: Yes.

ADV MAYET SC: So we can accept that up until 3.1.2 does not concern your decision of the 2nd of February 2012.

ADV CHAUKE: Yes.

ADV MAYET SC: And we also know that the SCA ordered the National Director of Public Prosecutions to take the decision post-2014.

ADV CHAUKE: Yes.

ADV MAYET SC: And we know that this decision was taken in April 2014.

ADV CHAUKE: Yes.

ADV MAYET SC: So we can accept that 3.1.2 does not concern the decision in April 2014 post.

10 **ADV CHAUKE:** Yes.

ADV MAYET SC: Thank you. Now, before we go further to find out what decision we are dealing with, I would just like to take you further, staying on 3.1.2. It reads:"

“Notwithstanding that there was strong evidence justifying the institution of a prosecution in the matter, which decision caused a significant delay in proceeding with charges concerned.”

Now, it took me a while, but I referred to the judgment of the
20 trial court, and you will find that in RM1059.

CHAIRPERSON: Please repeat that.

ADV MAYET SC: It is RM1059. The judgment itself begins on RM1047.

ADV CHAUKE: Sorry, you said page?

ADV MAYET SC: 1059.

MS RAMAGAGA: 1059?

ADV MAYET SC: 59, yes. 1059.

ADV CHAUKE: Yes, I am there, Chair.

ADV MAYET SC: Thank you. And if you refer to line one on that page, if you could read it into the record, please?

ADV CHAUKE:

10 “So the delay, if any, started running from the 31st of March 2011 and 1 April 2011, respectively, when the two accused before the court were arrested, respectively.

Only then did the delay commence. Let us then accept...” ...[intervenes].

ADV MAYET SC: You can stop there. Thank you, Mr Chauke. If I could then refer you to page 1063. And on that page, if you could go to line 14, if you could read what the trial court found?

ADV CHAUKE:

20 “It is not that one cannot bring an application to challenge the decision of the NPA to prosecute an individual, but in this case...” ...[intervenes].

ADV MAYET SC: Sorry to interrupt you, Mr Chauke. If you could just ...[intervenes].

CHAIRPERSON: We have to go to those parts of the record that you are referring us to.

ADV MAYET SC: I apologise.

CHAIRPERSON: After referral to RM01059, the top paragraph, which ...[intervenes].

ADV MAYET SC: Then it is RM1063. 1063.

CHAIRPERSON: 1063?

ADV MAYET SC: Yes. I do apologise. I was watching Mr Chauke.

CHAIRPERSON: [Indistinct].

ADV MAYET SC: I am referring to line 14. It is the third
10 paragraph. It begins with consequently.

ADV CHAUKE:

“Consequently, it cannot be correct for Mr
Motloug to argue that because the
murder of Opara [?] Ramogibe occurred on
19 February 1999, and General Mdluli is
only facing charges in June 2015,
therefore there has been an unreasonable
delay, and also that because the inquest
absolved this client from any capability,
there cannot, therefore, be any lawful
reason to prefer charges against General
Mdluli.”

ADV MAYET SC: Thank you, Mr Chauke. So we can accept
that the period that we are talking about is post-2011?

ADV CHAUKE: Yes.

ADV MAYET SC: And if we could go back to the terms of reference, this 3.1.2, when I read this clause excluding your 2 February decision, excluding the later decision in April 2014, the only period that it could possibly refer to, given that the trial court found that there was no unreasonable delay for the longer period, it could only be after the inquest judgment on 2 November?

ADV CHAUKE: Yes, maybe before the inquest judgment, because that is what I thought when Advocate Batohi testified, that is what she was referring to.

ADV MAYET SC: So you would agree that the period that clause 3.1.2 is concerned with is the period October, maybe October 2011 to 2014?

ADV CHAUKE: I am not so sure about that.

ADV MAYET SC: But it certainly commences from October 2011?

ADV CHAUKE: It will commence from November 2011, when I receive the representations from General Mdluli.

ADV MAYET SC: You will recall that the representations from General Mdluli came on the 26th of October?

ADV CHAUKE: Yes. I believe so. I thought it was in November, but yes.

CHAIRPERSON: When did you receive them? Do you remember?

ADV CHAUKE: Off the head, I cannot remember, but I

accept what counsel is directing to the date in October.

CHAIRPERSON: October?

ADV CHAUKE: Yes.

CHAIRPERSON: Do you want to refer us to that part of the record? No, it is the representation in the record. Did you check that?

ADV MAYET SC: I do have it in the record, Madam ...[intervenes].

CHAIRPERSON: We will make our own note. You may
10 proceed.

ADV MAYET SC: Thank you, Madam Chair. I will return with that. I will make a note of it. Mr Chauke, at that point you had been newly appointed. I understand you to have commenced in September 2011.

ADV CHAUKE: Correct.

ADV MAYET SC: And the NDPP at that stage was, if you could just remind us?

ADV CHAUKE: It was Mr Freedom Under Law.

ADV MAYET SC: We can accept that you made your decision
20 in 2011 to refer the matter to inquest, and the inquest was done in 2012?

ADV CHAUKE: Yes.

ADV MAYET SC: And you received the results of the inquest on the 2nd of November 2012?

ADV CHAUKE: Yes.

ADV MAYET SC: Now, if I could refer you to the SCA judgment? And I am told, and Madam Chair and the Panel, I do apologise for my fumbling with the record. I have tried my best to make myself familiar, but it is in the court case bundle.

ADV CHAUKE: Sorry, Counsel, to which judgment you are referring to?

CHAIRPERSON: Pardon. CL00362. That is the judgment of the SCA in the *National Director of Public Prosecutions v Freedom Under Law*.

10 **ADV MAYET SC:** Thank you. Madam Chair, I am indebted to you. Are you there, Mr Chauke?

ADV CHAUKE: Which page, Chair?

ADV MAYET SC: It is 0062.

ADV CHAUKE: Yes, I am at page 00626.

ADV MAYET SC: And if we could turn to paragraph 44 of the judgment?

CHAIRPERSON: Paragraph?

ADV MAYET SC: 44.

ADV CHAUKE: Yes, Chair, I am there.

20 **ADV MAYET SC:** Thank you, Mr Chauke. If we read the paragraph, it says:

“FUL's real argument, which found favour with the court a *quo*, paragraph 183, 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 of the review application.”

ADV CHAUKE: Yes.

ADV MAYET SC: So we can accept that as at the 2nd of November, you have the inquest report before you and this
10 is, by a process of elimination, presumably what 3.1.2 concerns, your actions and decisions in this period going forward.

ADV CHAUKE: I accept if that was what you are telling me.

ADV MAYET SC: Thank you. I do not have any other interpretation.

ADV CHAUKE: Yes.

ADV MAYET SC: And we can accept that the judgment, if you also refer to paragraph 54, paragraph ...[intervenes].

ADV CHAUKE: I am there. CL00286. Are you referring to
20 that one?

ADV MAYET SC: It is It is 371. It is 00371.

ADV CHAUKE: Yes, I am there.

ADV MAYET SC: 54(3)(a) refers to your 2nd of February 2012 decision. Do you agree?

ADV CHAUKE: Yes.

ADV MAYET SC: So, as at the 2nd of November 2012, we are not dealing with the SCA judgment.

ADV CHAUKE: Yes.

ADV MAYET SC: Thank you. Now, Mr Chauke, because this is a commission of enquiry and we want to understand your thinking, so it is my duty to put what was before you on the 2nd of November, so that the Panel can understand what was before you. So, if you could just work with me, and I understand that you would have the inquest report in front of
10 you.

ADV CHAUKE: Yes.

ADV MAYET SC: And you would have also had the heads of argument which your prosecutors submitted during the inquest.

ADV CHAUKE: Yes.

ADV MAYET SC: And you would also have had the docket in front of you.

ADV CHAUKE: Yes.

ADV MAYET SC: And at that stage, FUL had launched its
20 review application on the 15th of May 2012.

ADV CHAUKE: Yes.

ADV MAYET SC: And you had filed a record sometime in July 2012.

ADV CHAUKE: Yes.

ADV MAYET SC: But and on the 26th of October, Mr Mdluli

had – sorry, General Mdluli had submitted representations to you.

CHAIRPERSON: 2012?

ADV MAYET SC: It is ...[intervenes].

CHAIRPERSON: Give us full dates.

ADV MAYET SC: It is the 26th of October 2012.

CHAIRPERSON: Yes, thank you.

ADV CHAUKE: No. The representations from on behalf of General Mdluli came in October 2011, not 2012.

10 **ADV MAYET SC:** I will accept your better knowledge of this, but if I could just ...[intervenes].

CHAIRPERSON: I think the document was referred to earlier.

ADV MAYET SC: Yes.

ADV BALOYI-MERE SC: It was referred to earlier, and the only question was whether it was October or November 2011. And Advocate Chauke said he does not remember, but he will accept when your suggestion that it was October 2011.

ADV MAYET SC: Yes, but to ...[intervenes].

20 **ADV CHAUKE:** I understood then she was referring to October 2011.

ADV BALOYI-MERE SC: Yes.

ADV CHAUKE: It could not be October 2012 because by then they were awaiting the findings of the inquest, which came in November 2012.

ADV MAYET SC: I will accept your better knowledge of the – it is 2012.

ADV CHAUKE: Yes.

MS RAMAGAGA: I just want to address this issue of basing the acceptance on the better knowledge of the witness. It is my understanding that this enquiry is constituted mainly or reliance is made heavily of the documents that are available. And I want to believe that we all have similar information. I am just trying to avoid a situation where again you hear that,
10 no, no, but you had said this. So you rely on what you have. You ask questions because you know answers to the questions.

ADV MAYET SC: I do apologise, Honourable Panel Member. The document you will find on RM00338. And Mr Chauke is quite correct that it is 26 October 2011. RM00338.

CHAIRPERSON: Is it the representations by Mr Mdluli?

ADV MAYET SC: Indeed.

CHAIRPERSON: Is it not RM00881? You see the document marked AC5 earlier and the document that was referred to by
20 Advocate Ngcukaitobi is RM00881. It is Mdluli Volume 4. If you are referring to the representation, RM Mdluli.

ADV MAYET SC: Madam Chair, perhaps there is a bit of a duplication.

ADV CHAUKE: Chair, I have it in RM2, the representations from Maluleke Seriti Makume Matlala Incorporated. It was

RM00338.

CHAIRPERSON: 0000, okay.

ADV CHAUKE: 008, 00338.

CHAIRPERSON: What was referred to was the prosecution memo in relation to the representation. Thank you. Thank you. Yes, you are correct. It is 338. You may proceed now.

ADV MAYET SC: Thank you, Madam Chair. So, Mr Chauke, just to come back to see what was before you. You had the inquest report, the heads of argument, and the docket.

10 **ADV CHAUKE:** In November 2012.

ADV MAYET SC: In November 2012.

ADV CHAUKE: Yes.

ADV MAYET SC: After the inquest has happened.

ADV CHAUKE: Yes.

ADV MAYET SC: Because we already know that the period before that, the SCA has said that your decision was not irrational.

ADV CHAUKE: Yes.

20 **ADV MAYET SC:** So, we can only, by a process of elimination and purely to assist the Panel when they examine the permutations of clause 3.1.2, it would necessarily concern your decisions that you made once you had the inquest report in your possession.

ADV CHAUKE: Yes.

ADV MAYET SC: And if we were to understand the

underlying instruction that you gave to the magistrate, when we look at your letter of instruction to the magistrate, and that you would find on RM178.

ADV CHAUKE: You said page?

ADV MAYET SC: RM00178.

ADV CHAUKE: Yes, I am there.

ADV MAYET SC: And if we look at this letter, it is dated the 14th of March 2012.

ADV CHAUKE: Yes.

10 **ADV MAYET SC**: And it is your formal request to the magistrate to conduct an inquest. Do you agree?

ADV CHAUKE: Yes.

ADV MAYET SC: And if you look at paragraph 3 of that instruction to the magistrate, you set out a list of names of witnesses.

ADV CHAUKE: Yes.

ADV MAYET SC: And the list is quite extensive.

ADV CHAUKE: Yes.

20 **ADV MAYET SC**: Amongst the list is, I would just like to highlight this. Amongst this is the brother of the deceased. We find him at F. And there are also certain police persons, such as in M and in X.

ADV CHAUKE: Yes.

ADV MAYET SC: Now, this, you can agree, was the evidence that was presented before the magistrate.

ADV CHAUKE: Yes.

ADV MAYET SC: And if we were to look at that evidence, because we know, and I am sorry to jump around, but as the SCA made the finding, the magistrate's, the outcome of the inquest was somewhat peculiar, as the SCA said.

ADV CHAUKE: Yes.

ADV MAYET SC: So in November 2012, you have before you certain information, and I would just like to explore your thinking. If I could refer you to VR, Bundle VR? It is the
10 Vosloorus docket.

CHAIRPERSON: Give the full details of that case number, if you have it.

ADV CHAUKE: It reads, index to folder, Mdluli case docket, Vosloorus CAS 340/02/1999.

MS RAMAGAGA: You say it is a VR?

ADV MAYET SC: It is a VR. Panel Member, I am similarly very confused with the record, and I am reliant on my...

CHAIRPERSON: Where is Advocate Lekgetho?

ADV MAYET SC: I am told that, because I discussed it with
20 the researchers earlier, that they know exactly where I am going and they will produce it.

CHAIRPERSON: Yes. I thought that you will have the assistance of the NPA next to you, Advocate Lekgetho. Is she assisting Advocate Mohlamonyane? Where is she?

ADV MAYET SC: She is assisting Advocate ...[intervenes].

CHAIRPERSON: Advocate Mohlamonyane. If you need assistance, our researchers will come closer to you and locate the documents that you need to use.

ADV MAYET SC: Thank you, Madam Chair. I do have the documents in front of me. I just want to make sure that the Panel has the documents as well, as well as Mr Chauke. I am referring to VR, and the page reference number is 000028.

CHAIRPERSON: It is Vosloorus?

ADV MAYET SC: It is the Vosloorus bundle.

10 **MS RAMAGAGA:** Two zeros, three zeros?

ADV MAYET SC: It is four zeros.

MS RAMAGAGA: Four zeros. Thank you.

ADV CHAUKE: Yes, I am there, Chair.

ADV MAYET SC: May I proceed?

CHAIRPERSON: Proceed, Madam.

ADV MAYET SC: Thank you. Mr Chauke, this document which is before you, we can accept is the affidavit of Mr Tefo Abel Ramogibe.

ADV CHAUKE: Yes.

20 **ADV MAYET SC:** And it is his complaint with regards to the attempted murder.

ADV CHAUKE: Yes.

ADV MAYET SC: And if we read the second paragraph, if you could please assist me and read it for us? I think your voice is better than mine.

ADV CHAUKE:

“On 1998-12-2...”

I think it is about three:

“...at about 22:30 and 23:00, I talked with Kila [?], one of the persons who is known to me, and the policeman at Vosloorus Police Station about the car because I had a journey to Nelspruit and he told me that he does not know the person who can borrow me the car, and I will...”

10

There is something missed there.:

“He said he will give me his car, and wanted an amount of R500, which was paid to him. I was accompanied by Alfred and Patience. Patience stays at Nyashigo [?] Street, second house to the right.

Contact number is 804 6122. Alfred's car.

We travelled to Kila's place and dropped him there. We were on our way.”

20 **ADV MAYET SC:** And if you could continue to the next paragraph, please?

ADV CHAUKE:

“When we approached the stop sign next to a certain street at Extension 9, I had several shots towards us and saw next to

a fence shooting at us. I did not stop and drove away towards the street, and decided to go back and drop the two and I went straight to deliver Alfred at Extension 3, and later Patience at her place, and I decided to sleep at a place where the following day I went to the owner of the car to report the matter. And they accompanied me to the scene of crime, where two empty cartridges were found, and then I decided to open the case at Vosloorus Police Station as CAS 475/12/1998, attempted murder.”

10

ADV MAYET SC: Now, Mr Chauke, earlier you testified that when you read the docket, you were of the view that all these people were friends. But reading this statement, there is no mention of – there seems to be quite a distant relationship.

Do you agree?

ADV CHAUKE: Yes.

20 **ADV MAYET SC:** Now, on the same bundle, if you could ...[intervenes].

CHAIRPERSON: If I may just clarify one aspect in relation to what was read into the record now, because I realise that you refer to portions, and you do not pursue the point. What point do you seek to make in relation to the statement of Mr

Abel Ramogibe?

ADV MAYET SC: The point is, Madam Chair, that Mr Chauke was of the view that he did not pursue the theory, as he called it, the theory of the relationship, and that General Mdluli had a vendetta against the deceased, because he was of the view that they were friends. They were all friends because there was a car that was lent, and that was my understanding. I will clarify. Mr Chauke, was that my correct understanding of your testimony?

10 **ADV CHAUKE:** That he was having a cordial relationship with people who were associated with Mdluli.

ADV BALOYI-MERE SC: But maybe just for clarification, who is Kila?

ADV CHAUKE: It is Mthunzi, one of the accused.

ADV BALOYI-MERE SC: Is it Ximba ...[intervenes].

ADV CHAUKE: Ximba. Let me just get, before I confuse the names now.

CHAIRPERSON: Is that the one who was mentioned at RMW0178C, Sebastian Nkosana Ximba?

20 **ADV CHAUKE:** Yes, his nickname is Kila.

CHAIRPERSON: His nickname is Kila?

ADV CHAUKE: Yes.

CHAIRPERSON: How do we know that? How do you know that?

ADV CHAUKE: I can just quickly go through the other

statements where there is reference to him as Kila. I might not have it here, but that is what it was known.

CHAIRPERSON: So your counsel will accept your word for it? If so, we will search through the record.

ADV CHAUKE: Indeed.

ADV MAYET SC: Madam Chair, I will also endeavour to find the cross-reference. On that same bundle, Mr Chauke, if we could turn to BR000087? It is A19.

ADV CHAUKE: Sorry, when you say the very same way I
10 was reading the statement.

ADV MAYET SC: The same bundle.

ADV CHAUKE: You say page?

ADV MAYET SC: The same, no different page. If you could turn to page 87.

CHAIRPERSON: Whose statement is that? Whose statement is that?

ADV MAYET SC: This is the statement of Detective Lieutenant Colonel – I do not want to mangle her surname. Let me just...

20 **CHAIRPERSON:** [Indistinct].

ADV MAYET SC: A19.

CHAIRPERSON: A19, sorry. Colonel Ngcobo.

ADV MAYET SC: Indeed, Madam Chair. Are you there, Mr Chauke?

ADV CHAUKE: Yes.

ADV MAYET SC: Mr Chauke, we can accept that this statement under oath, which if I could just get directions from the Panel, I am not sure as to the agreement with the Panel Members. The statements which are contained in the bundles, am I required to verify or prove them? Or may I just allow Mr Chauke to read from them?

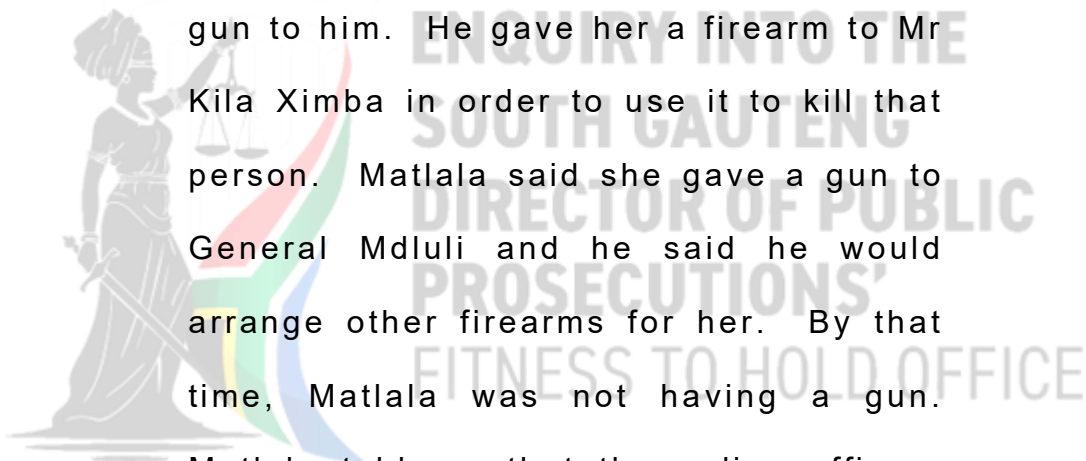
CHAIRPERSON: Refer to them and the relevant parts thereof that you seek to rely on. And if you wish, you can read the relevant portion, or you can ask Mr Chauke himself
10 to read into the record.

ADV MAYET SC: Thank you, Madam Chairman. Mr Chauke, this statement, if I could refer you to the third paragraph, the fourth paragraph? And if you could just read into the record from the fourth paragraph, the fourth, the fifth, the sixth, and the seventh paragraph?

ADV CHAUKE:

“We used to talk when we drive, but that
day Captain Matlala told me a shocking
story. She asked me if I was aware that
20 the community of Vosloorus came to the
police and submitted the petition that
demanded General Mdluli to be removed
and transferred from Vosloorus to other
stations. I told her that yes, I heard about
that, but I do not know the reason. She

said people said he is a murderer. I asked her how. She said there was a complainant he was shot dead while he was doing pointing out. He was pointing out the scene of crime where he was shot before. She, Matlala, told me that the firearm that was used to kill the deceased was hers. I asked her how did a state firearm used to kill somebody. She told me that General Mdluli told her to bring a gun to him. He gave her a firearm to Mr Kila Ximba in order to use it to kill that person. Matlala said she gave a gun to General Mdluli and he said he would arrange other firearms for her. By that time, Matlala was not having a gun. Matlala told me that the police officers that were with the deceased were Warrant Officer ...[indistinct] and Warrant Officer Xulu. She said they were fully aware with the plot. She told me that the person who shot the deceased was Kila Ximba. She said she was told to report the missing firearm. I was afraid to ask her many questions. I was just listening to her. I



did not believe her. After a year, Captain Vilakazi from Vosloorus, she phoned me asking the whereabouts of Captain Matlala. I asked her why she was looking for her. She said Matlala opened the case of lost firearm but was not circulated. Captain Vilakazi wanted her for that. I did not relate this story to anybody until 2009 when I told Inspector Makubu [?].”

10 **ADV MAYET SC:** Thank you, Mr Chauke. I beg leave for the Panel's indulgence. I have lost my reference to the Xulu statement.

CHAIRPERSON: To who?

ADV MAYET SC: Mr Warrant Officer Xulu.

CHAIRPERSON: Warrant Officer Xulu.

ADV MAYET SC: Whose name appears in the seventh paragraph. If I could just beg leave your indulgence to find the reference to that statement? It appears on VR000498 to 504. Thank you, Mr Chauke. Are you there?

20 **ADV CHAUKE:** Yes.

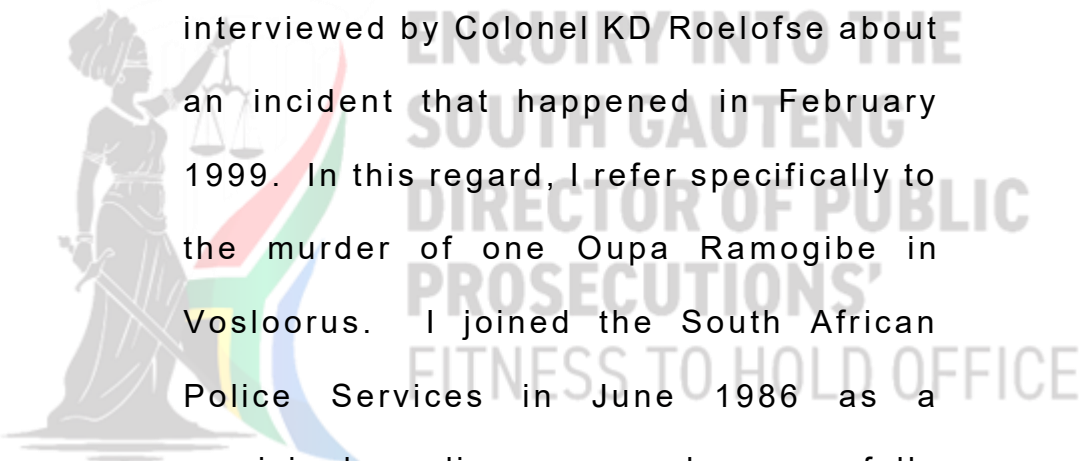
ADV MAYET SC: I know this is a long statement, but it is the last statement I will ask you to read into the record. I think it sums up the entire case. It has everything, all the relevant details. If you could please read the statement?

ADV CHAUKE: From paragraph 1?

ADV MAYET SC: Yes, please, Mr Chauke.

ADV CHAUKE:

10 “The facts deposed to herein are true and correct, and save where the context indicates otherwise fall within my personal knowledge. I am a warrant officer in the South African Police Services stationed at Germiston Detective Services. I can be contacted on that number and the cell phone number. On 7 June 2011, I was interviewed by Colonel KD Roelofse about an incident that happened in February 1999. In this regard, I refer specifically to the murder of one Oupa Ramogibe in Vosloorus. I joined the South African Police Services in June 1986 as a municipal policeman and was fully integrated into the SAPS in 1989. I continued working at Vosloorus SAPS as a uniformed policeman doing administrative work until 1994. I then applied to join the Detective Services at Vosloorus and started working as a detective in 1994. I was still a constable at the time. I think I left Vosloorus SAPS



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at the end of 1999 or the beginning of 2000 after I heard that there were posts available at the Detective Services at Bedfordview SAPS. At the time, I did not want to work at Vosloorus anymore due to various incidents that had taken place over time. I was a sergeant at the time. I worked from 2000 to 2004 at Bedfordview SAPS and was promoted to warrant officer during that time. I resigned in 2004. I joined the SAPS again in 2010 and started working as a detective at Germiston SAPS. I am familiar with all the accused in this matter as we were all with the Detective Services at Vosloorus during 1988/1999. I was a sergeant and Richard Mdluli, a senior superintendent at the time. Nkosana Ximba held the rank of constable and Mthunzi ...[indistinct]

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Mthunzi was either a sergeant or a warrant officer. Samuel Zamondaho [?] Dlomo was a sergeant at the time. I am, however, better acquainted with Ximba and Mdluli. I have known Mdluli since 1986. At that stage, a few of my friends

and I were playing together in a band and we asked Mdluli to be our manager. During that same time, I was in a relationship with a girl from Vosloorus. I became aware that Mdluli began to visit my girlfriend behind my back. Mdluli knew at the time that she was my girlfriend. I wanted to continue to see her but was advised by my friends not to continue with the relationship as Mdluli does not take kindly to competition. I stopped seeing her. This event did, however, put a strain on my relationship with Mdluli. The band also stopped to exist shortly after that. I knew Ximba since 1994 and we started to work together since approximately 1997. As I started to get to know Ximba, I found out that he is very well acquainted with my mother-in-law and that he came there often. We got closer during that time due to working together. I also knew Tshidi Buthelezi, now deceased, from before 1990. I knew Buthelezi because I used to visit the house next door to where she stayed. At that time, she still was staying

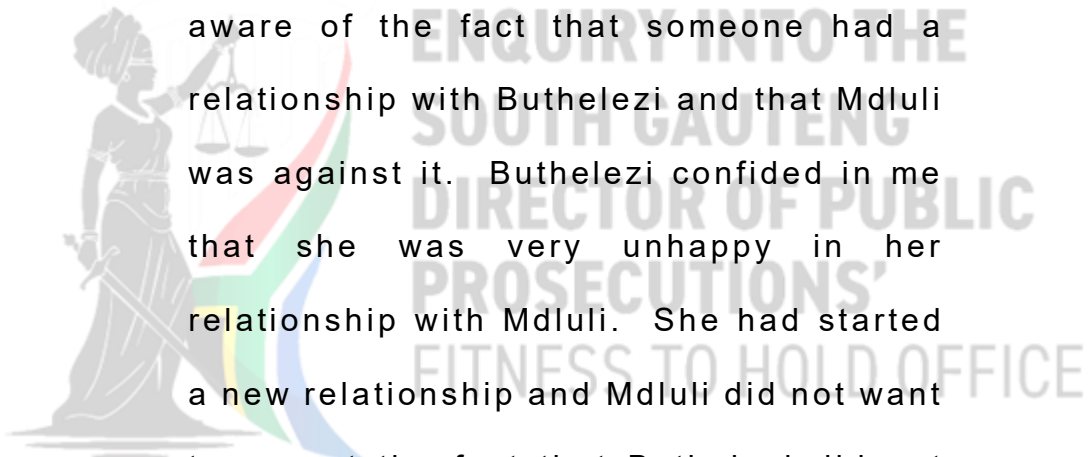
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with her family. Buthelezi was attractive and a lot of men wanted to get to know her better. She later went to stay at Windmill Park. I know this house belonged to Mdluli. Buthelezi told me that she had a relationship with someone. She never mentioned his name. After the murder of Alfred Ramogibe Oupa, deceased, I realised that it might have been the same person she was talking about. I was thus aware of the fact that someone had a relationship with Buthelezi and that Mdluli was against it. Buthelezi confided in me that she was very unhappy in her relationship with Mdluli. She had started a new relationship and Mdluli did not want to accept the fact that Buthelezi did not want to see him anymore. I also knew that she had a child with Mdluli. These conversations with Buthelezi happened prior to the murder of the deceased. I was not aware of an attempt on the life of the deceased. I only learned about it after the deceased got murdered. I cannot remember the date, but I remember the

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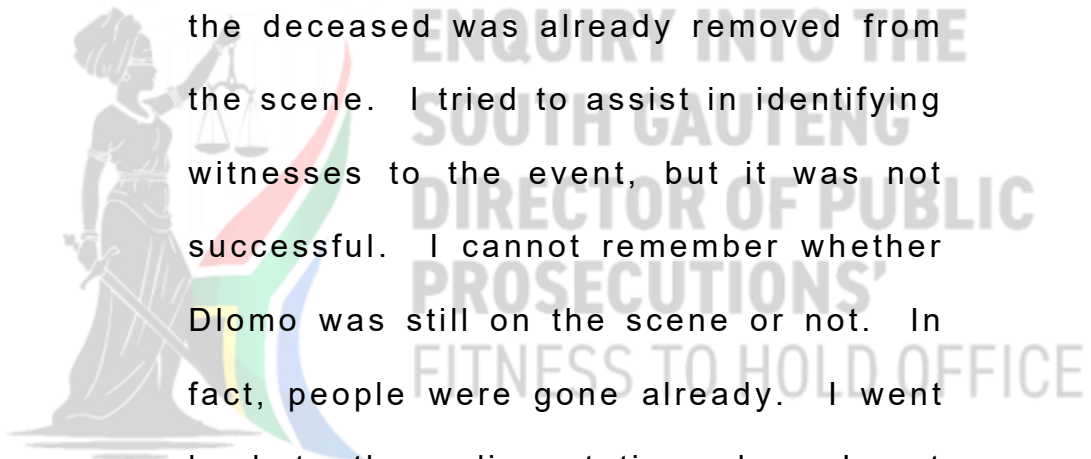
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day the deceased was murdered. I was in my office and on duty. Later that day, I think after lunch, I heard there was a shooting incident and that Dlomo was involved in the shooting. I shared the office with Sergeant Nxumalo at the time. I do not know whether he was also in the office when the news came of the shooting incident. I went to the crime scene with some of my colleagues. When I got there, the deceased was already removed from the scene. I tried to assist in identifying witnesses to the event, but it was not successful. I cannot remember whether Dlomo was still on the scene or not. In fact, people were gone already. I went back to the police station where I met Dlomo. He told me that he was attacked by two or three guys who were passing by whilst he was busy attending to the scene. He informed me that the deceased wanted to show him the crime scene where he was attacked previously. He also said that they, the attackers, took his firearm. Shots were then fired and the deceased

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was killed. He said that the attackers had a firearm with them before they took his. The day after the incident, people started talking and it became known that the person that was killed the previous day had a relationship with the Buthelezi. I already knew the previous day that Dlomo used Mdluli's Green Force ...[indistinct] to do the pointing out. I was surprised to

10 hear that Dlomo was allowed to use Mdluli's car. I have been a pastor's assistant since 1998 and started practicing as a pastor since 2000 and 2001. In 2000, I was in jail with Ximba. We were accused of stealing a car and we were both arrested for it. There was a

20 third person also detained on this incident, but he has died since. I cannot remember his name, but he was also a member of the SAPS. We were detained at Johannesburg prison for five months after bail was refused. During this, Ximba and I became close. Ximba told me that the reason why he is there is because he refused to submit a statement against me

in this case. He started opening up to me and he told me if Mdluli does this to him, he will also do the same because he knew everything about him. Ximba then told me that Mdluli was involved in the killing of the deceased. He was referring to the incident where the deceased was shot and killed. Ximba told me that Mdluli hired two people to kill the deceased. They came from one of the two hostels in Vosloorus.

10 He gave me the nicknames at the time, but I cannot recall the names. I told him to wait until we get out and then he must go to the Scorpions to inform them as to what had happened. I do not know whether he did in fact go to the Scorpions. After we were released, we kept in contact and he used to come to church with me. I heard a colleague of mine talking about this case

20 last year. I told him that I know certain information regarding this case. Not long after that, Lieutenant Colonel Du Plessis approached me. He informed me that my colleague informed him that I had certain information relating to this matter. I told

him I knew and then he referred me to Lieutenant General Lebeya. I had a meeting with Lebeya in which I informed him about my knowledge in this matter. I am also aware of the firearms that were taken from Mdluli's safe. I think this happened just prior to the murder of the deceased. As far as I can remember, various R5 rifles and handguns were

10 stolen from Mdluli's safe. I was told that someone broke into Mdluli's office. This person allegedly came through a first floor window which opened up into Mdluli's office. The window is directly above the entrance to the charge office. I understood the case was open but I saw a

case docket.”

ADV MAYET SC: Apologies. Thank you very much, Mr Chauke. We can accept that on the 2nd of November 2012,

20 you had all these statements in front of you. The police docket, the heads of argument of your prosecutorial team argued quite vociferously in favour of pressing forward with the murder charges. Is that correct?

ADV CHAUKE: You mean at the inquest?

ADV MAYET SC: At the inquest.

ADV CHAUKE: Yes.

ADV MAYET SC: And I am assuming that at this point, with the inquest judgment and the heads of argument in the docket with all these statements inside, you now were at a stage where you could choose. You could choose to continue with the murder charges and the related charges or you could continue with the full review.

ADV CHAUKE: Yes.

ADV MAYET SC: Because at this stage, we can accept that
10 you had not filed an answering affidavit.

ADV CHAUKE: Yes.

ADV MAYET SC: And I am assuming that you consulted with your prosecutorial team.

ADV CHAUKE: Yes.

ADV MAYET SC: And your prosecutors were very senior. Is that not correct?

ADV CHAUKE: Yes.

ADV MAYET SC: You had Advocate Van Zyl, Advocate Barnard and Advocate Gcaleka.

20 **ADV CHAUKE:** Gcaleka, yes.

ADV MAYET SC: Gcaleka.

ADV CHAUKE: Gcaleka, yes.

ADV MAYET SC: Thank you. And they were all very senior members.

ADV CHAUKE: Yes.

ADV MAYET SC: In fact, Advocate Van Zyl is one of the few senior counsel.

ADV CHAUKE: Yes.

ADV MAYET SC: And they were satisfied that there was a *prima facie case* to continue with the murder charges.

ADV CHAUKE: Yes.

ADV MAYET SC: And Van Zyl was of the view that although there was circumstantial evidence ...[intervenes].

CHAIRPERSON: Advocate Van Zyl.

10 **ADV MAYET SC:** Sorry, Advocate Van Zyl. I do apologise. Advocate Van Zyl will be coming to the hearing. And I do apologise, Mr Chauke, for not producing his witness statement timelessly, but you will have it very soon. But Advocate Van Zyl ...[intervenes].

CHAIRPERSON: I beg your pardon. Is the statement of Advocate Van Zyl available?

ADV MAYET SC: It is 80% done, Madam Chair. We are in the process of finalising it. It is where Advocate Khoee is today. We were hoping to have it done by this morning to
20 give to Advocate Chauke.

CHAIRPERSON: Are you going to be in a position to cross-examine the witness about what Advocate Van Zyl is going to say?

ADV MAYET SC: I think Mr Chauke knows Advocate Van Zyl' position. It is in the various correspondence which I

intend to take the Panel later.

CHAIRPERSON: You see, we were referred to the prosecution ...[intervenes].

ADV MAYET SC: Indeed, he holds the same view as in the prosecutorial ...[intervenes].

CHAIRPERSON: Let me finish. We were referred to the representation which is the prosecutor's memorandum in relation to Mr Mdluli's representation. Is Advocate Van Zyl SC, the one mentioned at RM00884, the one that you are
10 referring to together with Advocate Gcaleka and Advocate Barnard?

ADV MAYET SC: That is correct, Madam Chair.

CHAIRPERSON: The conclusion they reached, which was read earlier, was that there is no merit in the representations and that the trial should proceed?

ADV MAYET SC: That is correct, Madam Chair.

CHAIRPERSON: Yes. Let me just find out from Advocate Chauke. My recollection was that Advocate Chauke was asked about this representation and this memorandum and he
20 testified to the effect that he subsequently discussed this matter with the team insofar as his intention to refer the matter for inquest was concerned and they agreed with him.

ADV MAYET SC: Madam Chair, just to give you timelines, this is ...[intervenes].

CHAIRPERSON: Before that, let me just check if I am

correct.

ADV CHAUKE: Yes, before the inquest was held, when I directed that an inquest should be held.

CHAIRPERSON: And they shared your sentiments?

ADV CHAUKE: Of course. They have always been saying that they think that it is a strong case and I disagreed with that. That is why I referred the matter to the inquest.

CHAIRPERSON: Yes, thank you.

ADV MAYET SC: Thank you, Madam Chair. Just to clarify,
10 we are dealing with the period post-inquest where we have the inquest judgment.

MS RAMAGAGA: So you say you referred the matter for inquest because of the disagreement of views between the team and yourself?

ADV CHAUKE: No, the disagreement of views is one thing, but the decision that was supposed to be made, it was made by me as the DPP.

MS RAMAGAGA: No, no, that I understand.

ADV CHAUKE: Yes.

20 **MS RAMAGAGA**: I am just following up on the answer that you have just given now.

ADV CHAUKE: Yes.

MS RAMAGAGA: And I am just checking as to whether I have recorded it correctly.

ADV CHAUKE: Yes, their view was that there was a strong

case. That is correct.

MS RAMAGAGA: Yes, that is prior to the inquest.

ADV CHAUKE: Yes.

MS RAMAGAGA: Thank you.

CHAIRPERSON: I just want to get the sequence right in my mind. You withdrew the charges and referred the matter for inquest.

ADV CHAUKE: Yes.

10 **CHAIRPERSON**: The counsel refers to the post-inquest events.

ADV CHAUKE: Yes.

CHAIRPERSON: The issue in terms of the terms of reference relates to your action of withdrawing the charges before the matter was referred to inquest.

ADV CHAUKE: That is how I understand it as well.

CHAIRPERSON: Not any decision you took, if any, post the findings of the magistrate.

20 **ADV CHAUKE**: Yes, but counsel was saying her understanding is that post that inquest, and the delay that I had to make a decision after the inquest, that is the delay that is being referred.

CHAIRPERSON: The issue is about the delay?

ADV CHAUKE: Yes.

CHAIRPERSON: Yes, thank you. Proceed, Counsel.

ADV MAYET SC: Thank you, Madam Chair. Would you like

me to clarify further, which is why I took Advocate Chauke to the terms of reference?

CHAIRPERSON: Yes.

ADV MAYET SC: Because I was really ...[intervenes].

CHAIRPERSON: No, you do not need to clarify. I do understand.

ADV MAYET SC: Thank you.

CHAIRPERSON: Yes.

ADV MAYET SC: So, Advocate Chauke, at this point in
10 November 2012, you had a choice. You could continue with either the murder or the related charges, or you could put in the answering affidavit to the full review.

ADV CHAUKE: What do you mean, putting the affidavit to the full review?

ADV MAYET SC: You could continue with the full litigation, which was still pending.

ADV CHAUKE: Yes, the litigation was still pending, but I do not understand why you say I should have put an affidavit there. What are you referring to?

20 **ADV MAYET SC:** No, let me explain.

ADV CHAUKE: Yes.

ADV MAYET SC: At this point, you have the inquest report in front of you and you now know the findings of the magistrate.

ADV CHAUKE: Yes.

ADV MAYET SC: The full litigation took your decision on review, and the decision that they took on review was your withdrawal of the murder charges and your decision to refer it to inquest. Is that true?

ADV CHAUKE: Yes.

ADV MAYET SC: So, in November 2012, you have the outcome of the inquest.

ADV CHAUKE: Yes.

ADV MAYET SC: And you can reinstate the murder and
10 related charges and continue with the trial.

ADV CHAUKE: Yes.

ADV MAYET SC: And then you would effectively get rid of the full review because they would not have any complaint.

ADV CHAUKE: Yes.

ADV MAYET SC: Or you could elect to either only proceed with the murder charges or only proceed with the related charges.

ADV CHAUKE: Yes.

ADV MAYET SC: Are we on the same page?

20 **ADV CHAUKE:** Yes.

ADV MAYET SC: And at this point, as you have confirmed, your prosecutorial team was of the view that you should go ahead and proceed with the trial.

ADV CHAUKE: No, not that I am aware of. At that time, I had to make a decision whether to proceed with the murder

charges or to proceed with the other related charges, and I decided then to proceed with the other charges except murder and attempted murder.

ADV NGCUKAITOBI SC: Madam Chair, I should have sort of kept waiting for the right moment to object. This point around whether this charge, 3.12, refers to the pre-inquest or the post-inquest, has been dealt with Advocate Batohi, who has told us that it refers to the pre-inquest period. But I see the line is just continuing on the assumption that everybody
10 accepts that the charge is about the post-inquest period. The testimony of Advocate Batohi is that this is about the pre-inquest period.

CHAIRPERSON: That is why I ascertained with Advocate Chauke, because the pre-inquest event relates to his action of withdrawing the charges before referring the matter for inquest, and that is what we dealt with extensively with Advocate Batohi.

ADV NGCUKAITOBI SC: Indeed, and on several occasions she confirmed that it was when, in fact it was even before the
20 cross-examination, it was when she was engaging with the Panel. And in the cross-examination I confirmed that we can pull all of the parts in the transcript. But we do not accept the premise of our learned friend that this is about the post-inquest. That is not the evidence before us.

CHAIRPERSON: The recollection was correct, and I will

probably have to go back and read Advocate Batohi's statement. No mention was made of this aspect of the delay post-inquest.

ADV NGCUKAITOBI SC: No, she never mentioned the delay. What she complained about was that the decision to refer the matter to an inquest, which is pre-inquest, weakened the case of the state. She never complained about the delay. She said your decision to take it to an inquest has weakened the case of the state, and that is clear also from her witness
10 statement.

CHAIRPERSON: Counsel, perhaps this is an appropriate moment to pause so that you can have a look at Advocate Batohi's statement and the transcript. I suggest so because you came into this matter quite late when Advocate Batohi had walked away and before she finished her evidence, at least under cross-examination.

ADV MAYET SC: Thank you, Madam Chair.

CHAIRPERSON: You can then proceed tomorrow bearing this in mind because I am also getting confused why we are
20 focussing on the post-events after the inquest.

ADV MAYET SC: Madam Chair, I ...[intervenes].

CHAIRPERSON: Maybe you can assist us when you refer to all these documents and guidance as to what you seek to establish.

ADV MAYET SC: Madam Chair, I understood my role as the

evidence leader was to, when you are writing the report and you are discussing the permutations of what this clause means, to present all the evidence before you. It might very well be that you accept Mr Chaukes' and Ms Batohi's interpretation or evidence regarding, relating to this charge. In that event, the SCA has pronounced on it and has found that Mr Chaukes' decision was not irrational. And subsequently, the subsequent decision was then the NDPP's decision to the *nolle prosequi*.

10 And then it is ...[indistinct] because then that is a full and complete answer. I am simply dealing with a situation which if the Panel then says, but what does this really mean? What could it possibly mean? And it might very well be that you, that the Panel is of the view that, well, we are not interested in the interim period. It only concerns the 2nd of February decision and it only concerns the April 2014 decision. And in that event, the SCA judgment is a full and complete answer.

CHAIRPERSON: Yes. My suggestion to you is to read
20 Advocate Batohi's affidavit and read the transcript relating to her evidence insofar as this aspect is concerned because it does not appear to me that what you are pursuing with the witness, and correct me if I am wrong, is a matter that Advocate Batohi dealt with.

ADV MAYET SC: I will take your ...[intervenes].

CHAIRPERSON: Remember, she is a key witness here and we rely on that foundational statement by her as the one who initiated this enquiry. We will also look so that we can understand also your way so that we can understand what you seek to pursue with the witness. I am really lost. I am getting lost.

But as we adjourn tomorrow, you will probably assist us much better because all along we have been working on the premise that Advocate Chauke's alleged unlawful conduct was his withdrawal of the charge, murder charge against Mr General Mdluli. Is that your understanding?

ADV MAYET SC: It is my understanding, Madam Chair, but you will note from the timelines, and I do not wish to argue because I do wish to take your point, but just to clarify, in 2012 the charges were not reinstated. But I will take your guidance.

CHAIRPERSON: Yes, maybe let us look into that. Who was supposed to reinstate the charges?

ADV MAYET SC: I understand it would be Mr Chauke. Because at that stage, we did not have a SCA judgment. In November 2012, we had an inquest report, Madam Chair, and the full litigation, the NPA had not put in the answering affidavit as yet. So in November 2012, what we had is we had a magistrate's report of the inquest and we had a pending full litigation, which at that stage the record had been

produced and there was a supplementary founding affidavit. But the NPA's founding affidavit had not been filed in November 2012.

CHAIRPERSON: But if at that time there was a pending litigation, what could Mr Chauke have done?

ADV MAYET SC: The pending litigation was precisely of relating to continue with the murder charges or the murder and attempted murder and related charges. So in my understanding is that Mr Chauke could have gotten rid of the
10 litigation if he decided, based on his own understanding, to reinstate the charges against the accused.

CHAIRPERSON: To reinstitute the charges?

ADV MAYET SC: Indeed.

CHAIRPERSON: After which event?

ADV MAYET SC: After the inquest judgment.

CHAIRPERSON: But there was pending litigation at that time, immediately thereafter.

ADV MAYET SC: But the pending litigation regarded precisely that, the withdrawal of the charges.

20 **CHAIRPERSON:** Yes.

ADV MAYET SC: So by reinstating the charges, the pending litigation would naturally fall away because it seeks a review of the withdrawal of the charges.

CHAIRPERSON: But the complaint is about his withdrawal of the charges.

ADV MAYET SC: Correct. Because at that stage Mr Chauke did not reinstate, so it continued to be withdrawn.

CHAIRPERSON: Yes, and then they are full litigated. What did the SCA say?

ADV MAYET SC: The SCA in 2014 said that his decision was not irrational.

CHAIRPERSON: And what is the order saying?

ADV MAYET SC: The order then said that the NDPP would take the decision.

10 **CHAIRPERSON:** Advocate Nxasana?

ADV MAYET SC: Indeed.

CHAIRPERSON: Now why should Advocate Chauke be held responsible for the decision that was taken by Advocate Nxasana?

ADV MAYET SC: I am not saying that, Madam Chair. I am definitely not saying that. In fact, I specifically canvassed with Advocate Chauke that the SCA has exonerated his decision of the 2nd of February 2012, as well as the subsequent decision in 2014 of the NDPP. So we cannot have
20 those two. This clause 3.2.1, it does not make sense if you read it with regard to those two decisions because the SCA has pronounced on them.

CHAIRPERSON: So the issue you are now pursuing relates to the delay, or what?

ADV MAYET SC: So the issue is the only possible

interpretation of 3.1.2 is in 2012 when Mr Chauke had the inquest judgment before him. He did not reinstate the charges.

ADV CHAUKE: Can I comment, Chair, in respect of that?

CHAIRPERSON: Give me a chance, please. Yes, please do.

ADV CHAUKE: I heard counsel that she is also referring to Van Zyl and I gave evidence and indicated that in 2012 when I instructed them to proceed with the other related charges,
10 Advocate Van Zyl is the one who advised me that there is this pending review proceedings, which I would have to await for because my decision might be found to be irrational. And on that advice, I did not insist that they should continue with the prosecution of the other related charges without the murder and the attempted murder charge. I believe that is what counsel is trying to look at.

ADV NGCUKAITOBI SC: Madam Chair, could I just finalise the objection? So I have made one objection on the basis that Advocate Batohi's evidence is clear and unequivocal that
20 that charge relates to the pre-inquest. But my learned friend, Mr Ramogale, also points me to another facet of this. The NPA actually attempted – sorry, the evidence leaders instructed by the NPA attempted to amend the charges in order to include the post-inquest period in Clause 3.1.2.3 of the application for an amendment. That was dismissed. So

they knew that the charge is about the pre-inquest. They applied to amend it. It was dismissed.

CHAIRPERSON: You are referring to the application to amend the terms of reference?

ADV NGCUKAITOBI SC: Yes, Madam Chair.

CHAIRPERSON: In terms of which this Panel made a recommendation to the President?

ADV NGCUKAITOBI SC: Yes. Yes, Madam Chair.

CHAIRPERSON: The President has not made any decision.

10 We are still waiting.

ADV NGCUKAITOBI SC: We have a long wait ahead of us.

CHAIRPERSON: You remember we can only recommend as a Panel. We wrote a ruling and submitted it to the President, to the Minister. We are awaiting the decision of the President. But we take note of the point that we are making in an attempt to amend the terms of reference. And I think, in fairness to counsel, Advocate Mayet, she came quite late into the matter.

ADV NGCUKAITOBI SC: Yes.

20 **CHAIRPERSON:** Even long after that application to amend the terms of reference, after Advocate Batohi had testified. That is why I advised her to have a look at her statement and the transcript. The transcript will also assist her in relation to what was contended by the evidence leaders and the NPA in relation to amending the terms of reference.

ADV NGCUKAITOBI SC: Yes, Madam Chair.

CHAIRPERSON: So I do not think that we should make any ruling at this stage on that point. We will afford counsel to have a look and read. As you can see with the kind of questions we are posing to you, we are getting even more confused because the case that has been before us, in accordance with the terms of reference, seems to be now shifting. And it is confusing us even more. So, perhaps, unless my sisters would like to ask you any questions, perhaps we should adjourn now.

MS RAMAGAGA: As you prepare and look at material in preparation for tomorrow's continued questioning, you should be mindful of the fact that according to information at the enquiry's disposal, there has just been one withdrawal that was made by Advocate Chauke and that is the withdrawal of prior the inquest. And I am not aware of any other withdrawal that took place. So there is just one withdrawal, but if you come across any, also please address that. Thank you.

ADV MAYET SC: Thank you. I am indebted to the Panel's guidance. I will certainly read. It is only my third week.

CHAIRPERSON: We undertake cognisance of that. That is why we advise that you read the statement of Advocate Batohi and the transcript. Particularly in relation to the Charge 3.1.2. She was asked questions extensively about that, as to what failure to continue means. If you can read that, it might

just assist you. And tomorrow you can give us a road map. I assume that you have familiarised yourself with the evidence that is already before us of Advocate Batohi and you will be in a position to assist us.

ADV MAYET SC: Thank you, Madam Chair. I am indebted.

CHAIRPERSON: Advocate Chauke, we will pause now and reconvene tomorrow morning at 9 o'clock.

ADV CHAUKE: Thank you, Chair.

CHAIRPERSON: You are still under oath.

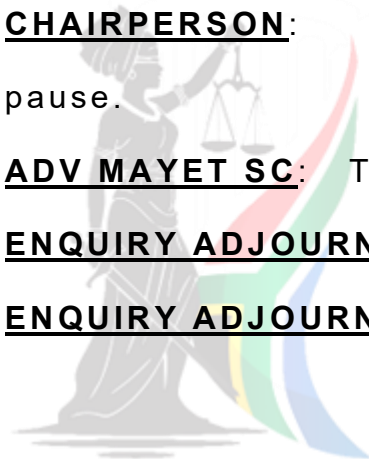
10 **ADV CHAUKE:** I confirm that, Chair.

CHAIRPERSON: Thank you, Advocate Mayet. We will pause.

ADV MAYET SC: Thank you.

ENQUIRY ADJOURNED UNTIL 31 MARCH 2026

ENQUIRY ADJOURNS



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