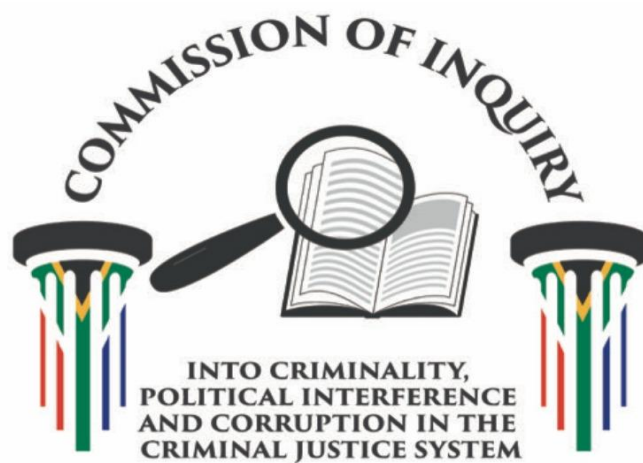


JUDICIAL COMMISSION OF ENQUIRY INTO CRIMINALITY,
POLITICAL INTERFERENCE AND CORRUPTION IN THE
CRIMINAL JUSTICE SYSTEM

HELD AT
BRIGITTE MABANDLA JUSTICE COLLEGE

15 JULY 2026

DAY 140



PROCEEDINGS ON 15 JULY 2026

CHAIRPERSON: Good morning, Ms Sello. Good morning, Ms Van den Heever. Good morning, Mr Matlala.

ADV SELLO SC: Morning Chair.

ADV VAN DEN HEEVER: Good morning, Chairperson, good morning, Commissioner.

CHAIRPERSON: Oh, your, please pull the mics closer to you and switch both of them on.

ADV SELLO SC: Morning, Chair, and morning,
10 Commissioners.

CHAIRPERSON: I greeted you and your mic was off. Good morning.

MR MATLALA: Good morning, once again, Commissioner.

CHAIRPERSON: Thank you.

ADV SELLO SC: Thank you, Chair. Chair, Commissioners, you will recall that Mr Matlala had been subpoenaed to appear on the 7th of July 2026 and on that date, Mr Matlala's legal representative and I presented ourselves before you and we had an engagement, the
20 outcome of which was that Mr Matlala's appearance was postponed to the 15th of July, today, and the Commissioners issued a ruling in that regard and on some other aspects.

Mr Matlala is present. We are back before you and Mr Matlala's legal representatives would like to address you, Chair. The issue about which she is about to address

you is contained in the folders that have been made available to you. But I will leave it to her to take the Commissioners through the contents of that folder. Thank you.

CHAIRPERSON: Ms Van den Heever.

ADV VAN DEN HEEVER: Good morning, Chairperson, Commissioners. We have prepared for your benefit and in support of our application for a postponement, an affidavit that was duly deposed to by our client. Due to time
10 constraints, however, we were only able to last night email an unsigned copy to my learned friend. The situation was that for a variety of reasons, this could not be done earlier.

I would like to very briefly, if it is necessary, Chairperson, Commissioners, just take you through our reasoning as to why we respectfully submit that a postponement in this matter should be granted and ...[intervenes].

CHAIRPERSON: Is there a signed affidavit now?

ADV VAN DEN HEEVER: There is indeed a signed, it was
20 commissioned this morning, and we thank the Commission's, my learned friend and her team for assisting us with that. Even at, I think, at 10 o'clock, there was another endeavour made to get it signed at the prison. There were some arrangements, but it just came to no fruition.

CHAIRPERSON: No, I do see it in a small folder in front of me. I read from my laptop, and that was the unsigned version. Thank you, thank you.

ADV VAN DEN HEEVER: Chairperson, in short, we set out the history of what has transpired *viz-a-viz* Mr Matlala, when he was arrested, how the events surrounding him has unfolded, and the most important aspect thereof is the fact that he is due to commence with a trial on Monday. We believe that he has got the constitutional right to attend this
10 trial and be regarded as innocent until proven guilty, together with the other constitutional rights that we have dealt with in this particular affidavit.

We respectfully submit that for him to deal with some of the issues, which issues play a very big part in the up-and-coming trial that starts in four days, would violate his constitutional right to actually challenge the evidence. We have indicated to you, for instance, that both Witness C and Lieutenant General Mkhwanazi relied on a statement that was given to them by Mr Matlala.

20 **CHAIRPERSON:** Before you get to that point, let me ask a general question. Is the submission that a person required to appear before a Commission, but who also happens to be facing criminal charges, can never ever testify before a Commission prior to the finalization of the criminal proceedings?

ADV VAN DEN HEEVER: May it please you. My respectful submission is, if I read, I have quoted for you from Justice Jafta's decision in the Zuma matter and it is quite ...[intervenes].

CHAIRPERSON: That was a minority judgment.

ADV VAN DEN HEEVER: Yes, but still, I would respectfully submit with the greatest of respect, Chairperson, that where you have constitutional rights, that those constitutional rights, especially in the very unique
10 situation that my client ...[intervenes].

CHAIRPERSON: You see, I am raising the point that that was a minority judgment to understand on what basis you can then rely on that *dictum* or on that legal statement to suggest, in response to my general question, to suggest that a person who is facing criminal charges can never ever testify before a Commission of inquiry.

ADV VAN DEN HEEVER: I respectfully submit that when you have a person that is either an accused or a suspect, I respectfully submit that your constitutional rights, with the
20 greatest of respect, overwrite the compulsion that there would be from the Commission's side for him to give evidence. He would literally forego a large number of his rights if he is compelled to give evidence under those circumstances.

I think what we have done, if you would just permit

me, please, Chairperson, I think ...[intervenes].

CHAIRPERSON: No, no, no, I just moved my shoulder.

ADV VAN DEN HEEVER: Ja.

CHAIRPERSON: I did not say anything.

ADV VAN DEN HEEVER: No, no, no, I think respectfully what I have endeavoured to show to you ...[intervenes].

CHAIRPERSON: You know what we always say in the legal profession, both amongst legal practitioners and people presiding, that when Counsel says respectfully, they
10 actually mean the opposite.

ADV VAN DEN HEEVER: I was told that many, many years ago by a good friend that presided over a trial where he said, you know, that was the impression, but I really ...[intervenes].

CHAIRPERSON: Sorry for interrupting you.

ADV VAN DEN HEEVER: No, that ...[intervenes].

CHAIRPERSON: I am sorry. Yes, please ...[intervenes].

ADV VAN DEN HEEVER: I fully understand.

CHAIRPERSON: Yes.

20 **ADV VAN DEN HEEVER**: The point is that that is the nearest that we could come to any authority on this point, and this issue to us was so important that we were going to try and see if we could actually deal with this matter if necessary elsewhere. Where we are right now, I respectfully submit, we do not have to go there.

CHAIRPERSON: Where is elsewhere? Is it what, a court application?

ADV VAN DEN HEEVER: Yes. No, only, the approach would have been to actually make, if the matter were to continue, to make the necessary full-blown legal arguments and submissions to you, and then depending on your findings, to take it on review. I am honest, I have indicated that to my learned friend before too. It is because we so strongly believe that your constitutional rights, where the
10 Constitution is the most important document in this country, those rights cannot be taken away from you by a Commission who has got a certain mandate and who has, to quote my learned friend, on a fact-finding exercise.

And more so, I think what we have done, Chairperson, we have tried to set out to you why we believe that the constitutional rights, especially in this case, overrides what, and we are not fighting with what our client is duty-bound to come and do at the Commission. What we say is, so far you have heard one side of the coin. This
20 side of the coin that you heard, and you see, I do not want to go into the details, as we said, we do not want to give away our litigation privilege in that regard. If we run out, we will show to you that what you have heard, potentially, is either not the truth or unlawfully obtained, et cetera. And for that reason, we will, at the end, of course, also assist

the Commission in finding the truth in this, what I respectfully say, is a quagmire of facts that you have to deal with. That is the one issue.

CHAIRPERSON: May I, before you go to the next issue, a difficulty that I have, and that, of course, is subject to your response, is that this is raised, or this is being raised in a blanket fashion, is the suggestion that any and everything that Mr Matlala could ever say before this Commission would be something that would be subject to the exercise of
10 his section 35 right, is that what has being suggested? And that there is nothing whatsoever that he could ever say which would be unaffected by his section 35 right, is that what is being suggested?

ADV VAN DEN HEEVER: That is not what I am saying and ...[intervenes].

CHAIRPERSON: If ...[intervenes].

ADV VAN DEN HEEVER: And I think I have made that quite clear when I discussed with my learned friend. The difficulties that we find ourselves in at this point in time,
20 and that was also the issue that prevented us from actually dealing with any affidavit beforehand, is that our client, and I was not party to that particular agreement, I only came up, came in later, through a different legal representative with IDAC, the gentleman that has been named here was part of that, entered into some, to a 105A plea agreement.

The magistrate then came back and found that the sentence was not just, and therefore gave all the parties time to go and reconsider. The issue that, that is when I got briefed to come back in because there were very material and important issues that were not raised in the 105A that we believe would have materially influenced potentially the outcome of such an agreement. The only time that that matter could be dealt with or the issues that was raised at that point, and if you bear with me, I have to
10 choose my words carefully at this point because it is a very difficult situation, was when the magistrate finally made a ruling.

So past Monday, that is a day ago, two days ago, he actually, in terms, I think it is a 105A(9)(b)(ii), if I am correct, he actually said, well, he asked the State, what is your contention? The State said, oh, we wish to continue. He asked us and we said, no, we assail from the agreement. What then happens in terms of the Criminal Procedure Act is that it is as if there was never any plea negotiations
20 happen.

The issue for me is, and this is where I want to answer your question, Chairperson, is we were not involved in those negotiations. We know what transpired and under what circumstances in those negotiations. It does not take somebody to be a genius to having regard to what one has

now learned, for instance, on Friday, what happened there. And my attorney and myself made the decision that we are not prepared to deal with any of these questions until such time as we are provided with the notes as to what transpired during these negotiations, as well as potentially any other documents that were drafted and signed, because from the say-so that we have heard, it impacts on a lot of the questions we were asked to answer and we are not prepared to just, on somebody's say-so, say, okay, we now
10 exercise our section 35 right on this and this and this.

We want to come here as officers of the court properly advising our client that these are questions that you have to answer, you are compelled to answer them. You cannot, let us say, invoke section 35 right. And as we sit here, Chairperson, we still cannot give you an answer to that question because we still do not have that. So there is, of course, and that is the long and the short of it, there is answers that you can answer, but at this point, I cannot come to you as an officer of the court in honesty and say to
20 you, okay, this is my instructions.

I need to, because of this quagmire of IDAC's involvement, be sure that what we say to you is truthful because there is also the penalty of perjury and of course, there is a previous inconsistent statement that can be raised at any stage. So for that reason alone, I agree with

you, there are issues, of course, you can never assail your compulsion to answer to those. But until such time as we can present to this honourable Commission an affidavit that we are satisfied contains, is based on facts and where we can invoke that right correctly, I cannot even go as far as to say we do not know this person.

For instance, I could have come to you now because I know from the list, Annexure A, we could give you a list and say we do not know these people, but for the rest,
 10 it is not in your interest that we present, in your, and I mean the Commission, the royal you, interest that we present in piecemeal fashion answers to questions.

The fact of the matter is that my client has been made out to be this mastermind by everybody and we respectfully, from our interaction, say that there is a fallacy in that. It is, and we intend to show ...[intervenes].

CHAIRPERSON: Please tell me when you are done with responding to my question.

ADV VAN DEN HEEVER: Ja, ja, ja. So ...[intervenes].

20 **CHAIRPERSON:** Before you move on to another point.

ADV VAN DEN HEEVER: So I have basically responded to your question.

CHAIRPERSON: Thank you, thank you, thank you. Let me tell you how my difficulty arose. It is because the affidavit does not clearly delineate the issues, either at all, or as

clearly as you have done now and that is because, for example, the application says the entire Commission process must be postponed pending finalization of the criminal process. So it is on that basis that I then ask you, does that mean there are no questions whatsoever that Mr Matlala could deal with before this Commission. Now, you have responded and said, no, no, no, there are. So there are issues that he can deal with before this Commission.

Now, my next question is, why can that not happen
10 before the criminal process has been finalized?

ADV VAN DEN HEEVER: Because I, as an officer of the court ...[intervenes].

CHAIRPERSON: At this level, just at ...[intervenes].

ADV VAN DEN HEEVER: Ja, but, no, but I am honest with you.

CHAIRPERSON: No, no, let me finish. At this point, focusing only on those, this, of course, is not a ruling on whether we agree on the section 35 point. That is something we are still to apply our minds to. But focusing
20 only on the issues that can be carved out of the section 35 issues, why can those not be heard or dealt with by this Commission before finalization of the criminal process?

ADV VAN DEN HEEVER: There is three reasons. The first, I have already dealt with. I said to you that there was negotiations ongoing, and I need to understand in those

negotiations who, what, and where and without that, I cannot, as a ...[intervenes].

CHAIRPERSON: Are you talking negotiations ...[intervenes].

ADV VAN DEN HEEVER: With IDAC.

CHAIRPERSON: Relating to the plea deal?

ADV VAN DEN HEEVER: Relating to the plea deal.

CHAIRPERSON: That is history now. I am asking you about now.

10 **ADV VAN DEN HEEVER:** No, it is ...[intervenes].

CHAIRPERSON: I am asking you about now, please.

ADV VAN DEN HEEVER: It is not history because it is only if I have regard to those and those are handed over that I can come and say, I can answer question A and B, but not C and D, because it is clear from what we have been given that he is a suspect on these issues. So you cannot answer that question.

20 So that is my first point. I cannot, at this point, in confidence say to the Commission, and I will not permit my client to deal with those until such time as I know what they have negotiated with him, what they have asked him, what he is committed to, what he is not ...[intervenes].

CHAIRPERSON: But is that not an issue relating to whether there should or should there not be a postponement, and that is not what I am asking you about.

ADV VAN DEN HEEVER: That is ...[intervenes].

CHAIRPERSON: I am asking you about the precedence ...[intervenes].

ADV VAN DEN HEEVER: Yes, but ...[intervenes].

CHAIRPERSON: Which of the two processes must precede the other. So I understood you to be referring to the plea deal in the context of saying, prior to that being finalized, I do not know what to do. I must wait until the end. That is something else altogether.

10 **ADV VAN DEN HEEVER:** No, that is not what my ...[intervenes].

CHAIRPERSON: It has nothing to do with whether once the plea deal is dead and buried, must the Commission process wait for the criminal process. So the earlier issue, the plea deal, its finalization or even non-finalization has nothing to do with the question I am putting to you.

ADV VAN DEN HEEVER: It does indeed, Commissioner, if you will permit me just to explain to you.

CHAIRPERSON: All right.

20 **ADV VAN DEN HEEVER:** During a plea deal, there is much more than the simple wording in the plea deal that takes place. There is other negotiations that happens between the investigators, the client, and the attorney and during those investigations, there is names that come up, there is information given, et cetera, and during that negotiations, a

person potentially is, and I am trying to keep it in the abstract, is told, you are a suspect on this matter. Let us say you are a suspect that you connived with General X to do A, B, and C. General X does not appear, for instance, in the plea deal. It is discussed there, there is questions made, there is recordings made, but General X appeared in the Regulation 10.6.

Now, for me to deal with whether he is a suspect or not in respect of anything to do with General X, I need to
 10 know what was discussed during the plea negotiations and it is not just somebody sitting there and now we are drafting a 105A.

CHAIRPERSON: For what purpose? We are doing that for what purpose?

ADV VAN DEN HEEVER: For the purpose of invoking my right to silence on that. I can say, I have been told ...[intervenes].

CHAIRPERSON: No, but then you do not get me altogether. Then you do not get me altogether. We have
 20 already, please listen to me. We have already made common cause that there are issues in respect of which Mr Matlala is able to deal with before this Commission. Now, you are talking about issues that post the plea deal may also fall under the section 35 dispensation that you are claiming.

I have said, let us put aside all of that. So what you are telling me falls, according to you, under that basket. I have said, let us put that aside and let us address our minds to those issues about which there is no question ...[intervenes].

ADV VAN DEN HEEVER: That is ...[intervenes].

CHAIRPERSON: Regarding them being heard by this Commission. That is what my focus is on and it is on that basis that I say to you, I do not understand your point about
10 the plea deal and its relevance to my question. I hope you get me now.

ADV VAN DEN HEEVER: Let me again try and explain to you, Commissioner, Chairperson. I can only say to you, we have made common cause on the issue itself, but I can only tell you, as an officer of the court, which of those ...[intervenes].

CHAIRPERSON: I am not, no, no, no. No, I will not give you time when you seem not to understand me. I am saying, I am not interested in the nitty gritty of what falls
20 under the section 35 bucket. I am not interested in that nitty gritty. I am looking at the broader question of, on those issues on which there is no question whatsoever, which can be dealt with by this Commission and you have agreed that there are, on those questions, why can those questions not be heard before the criminal process has

been finalized, whether, even accepting as you argue that there are some issues coming out of the plea deal which fall under the section 35 basket, even accepting that, you have said there are some which do not fall under that basket and my focus is only on those aspects that do not fall under that basket. So clearly, what you have just said about the plea deal is irrelevant to my question.

ADV VAN DEN HEEVER: With the greatest of respect, it is not irrelevant, Chairperson, because I cannot at this point
10 in all, as an officer of the court, distinguish between what we can answer and what we cannot answer. We can only say to you, the only things ...[intervenes].

CHAIRPERSON: You will never understand me. Please go on to your next point.

ADV VAN DEN HEEVER: No, I do understand you quite clearly.

CHAIRPERSON: You do not. You do not.

ADV VAN DEN HEEVER: The only issues that this, that my client can answer, Chairperson, at this point, that we say
20 that we form common cause on is who he does not know on the list of the 10.6. The rest of the issues, if I may please ...[intervenes].

CHAIRPERSON: Yes, let us go on.

ADV VAN DEN HEEVER: The rest of the issues, I cannot say to you, I am prepared to answer this because I do not

know if I can.

CHAIRPERSON: I have not asked you that. You are trying to answer a question which I have not asked you. I have not asked you that question. I have simply not asked you that question. I am asking you a general question. It has nothing to do with specifics, and that general question is, on those issues on which there is no question whatsoever, those issues, I will accept for a moment, for purposes of this debate, that there are plea deal issues that fall under
10 the section 35 basket and which, therefore, will not apply to my general question.

So I am asking you this general question again, and it is this, on those issues which even you, whether today, tomorrow, or by the end of this year, there can never, ever be a question about them falling under the section 35 basket. On those issues, and again, I repeat, this is a general question, on those issues, what would the basis of us not continuing with those prior to the finalization of the criminal process, what would the basis of not doing so be?

20 **ADV VAN DEN HEEVER:** The only basis would be that the evidence will then be presented piecemeal. I have said to you, Chairperson, and I stand by it, the only things that is, that he can say to you at this point, I do not know A, B, C, D, and E. The rest of the issues, we cannot deal with. And I, with the greatest of respect, do not think it would be in

your interest for him to sit here and say, I do not know this person, I do not know this person, I do not know this person. That is the only issues that we can form common cause on that he can, at this point, answer.

We are trying to come to the Commission and answer what we can. The problem is, and I am sorry to repeat myself, I can only do so if I know what he can answer is shown to me in black and white. I am trying to ensure that my client comes to this Commission and gives
10 evidence to you that is to your benefit, i.e. the work of the Commission, and not for him to answer things that we, as legal officers, and you have been in our position before, you can never allow a client to go on oath if you, as the lawyer, are not sure what he said there is right.

I will not perform my duty as an officer of the court if I allow that and for that reason, right now, I can claim privilege clearly on certain issues. I can say, this is my section 35 issues. The others, I say to you, I cannot at this stage because I do not know what has going on in the
20 background. So it might even be once I have got the documents that I think is necessary for me to decide it, that we can move on, on that, but right now, we cannot.

And I respectfully submit that, based on the remainder of the issues that we have put here, that this Commission should allow him the opportunity to finish the

trial. And more so ...[intervenes].

CHAIRPERSON: Again, please tell me when you are done responding to my question.

ADV VAN DEN HEEVER: Yes, I will. And then the last thing is, I think the thing that concerns me the most is, and we have taken the liberty of sharing a privileged document with you pertaining to the opinion, the one by the ...[intervenes].

CHAIRPERSON: I think that is something else. Then can I
10 come in?

ADV VAN DEN HEEVER: Ja.

CHAIRPERSON: Ja. When you ...[intervenes].

ADV VAN DEN HEEVER: And that is, for me personally, is very concerning at this point in time.

CHAIRPERSON: When you referred to a piecemeal hearing, this is just for clarity, does that mean you are going back on the earlier acceptance of what I posited to you which was, is it something that can be done for this Commission to entertain proceedings that relate to issues
20 that have nothing to do with section 35, and I understood you to be saying yes. But now, towards the end of your submissions, you said, I do not know, I am paraphrasing, I am not sure of the exact words you used, but you said something like, it would not be desirable to have a piecemeal hearing, something like that. Is that going back

on what you said earlier ...[intervenes].

ADV VAN DEN HEEVER: No, no.

CHAIRPERSON: Which was to agree with what I posited to you.

ADV VAN DEN HEEVER: Yes. As I said, and the reason why I say piecemeal is all that will happen at the end of the day, Chairperson, is he will sit here and say, I confirm I do not know these people, and that is literally all we can do at this point. That is the only part of the Regulation 10.6 that
10 we are *ad idem* with each other. I say nothing prevents him from going under oath and say, I do not know person A, B, C, D, E, and F, and sit back. The rest of the issues, again, I want to emphasize, we want to cooperate, we have put it in our paper, but give us an opportunity to ensure that what we come to the Commission with is truthful. It is based on facts.

CHAIRPERSON: Another thing which arises from what you said in the context of the plea deal, and if I understood you correctly, you said this in the context of dealing with why a
20 statement was not prepared, and again, if I understood you correctly, you made the point that you or your client had to wait until that plea deal process had been finalized so as to know whatever it is that related to the facts eventually. Here is a difficulty I have. Surely facts cannot change. Facts are facts and I do not quite get it why Mr Matlala

could not have made his statement. He knows what the facts are, regardless of what the outcome of the plea deal were to be. He knew the facts, and therefore, from where I am sitting, subject to your response, he could have said, these are the facts, and here are my responses to the notices that I have received.

ADV VAN DEN HEEVER: But, Chairperson, the situation is that ...[intervenes].

CHAIRPERSON: Just to finalize, the facts could not be
10 this or that, depending on the outcome of the plea deal. The facts are facts.

ADV VAN DEN HEEVER: No, it is different, because when people enter into plea deals, there is certain consensus reached, and it goes, it is dealt with in a totally different way, 105A's, than what we normally, as you say, admit certain facts. We go on a 220 or 115A, and you admit facts, it is a different story. A plea deal goes beyond it.

So very often, there is facts behind it. As long as that 105A stood there, and the magistrate has not ruled on
20 it, our submission is that those, that the issues there, he could not entertain section 35 rights on those. He could not come to the Commission and say, listen, I am a suspect or an accused on this particular matter, and therefore, I invoke my right to silence.

It is a live process, and that live process has many

complex issues behind it. So for that reason alone, he could not depose to that, to any affidavit here.

CHAIRPERSON: But ...[intervenes].

ADV VAN DEN HEEVER: I understand what you are saying, Chairperson. I understand what you are saying, but if he were to honestly depose, at that point, before Monday, to an affidavit, he had to answer questions that we believe, because of him assailing from the 105A, he now has the right to invoke a right of, a constitutional right.

10 **CHAIRPERSON:** But the Commission's interest would be facts in accordance with what Mr Matlala knows, and that has nothing to do with whatever it may be that informed what he said for purposes of concluding the plea deal. So on that basis, I do not follow your response.

ADV VAN DEN HEEVER: I stand by my response, Chairperson. I cannot, again, as an officer of the court, make my client say I invoke my right here and there, whatever, when I know in law, the situation is that that is a live process, and he cannot invoke that right at that point in
20 time. The facts, with the greatest of respect, you say that you have to answer facts, but facts have context, and facts have background.

You might see something as a fact, because you have got a General Mkhwanazi that comes and says, oh, he said A, B, and C. I come back, and I cannot exercise that

constitutional right before you and say, whatever General Mkhwanazi said, he got out because the client was forced unlawfully and unconstitutionally to answer questions. He was not allowed, for instance, to have access to a lawyer. He was questioned for over 6 hours without food, et cetera. That surely influences that fact. Then it becomes no more a fact that we can rely on. It becomes a fact, and we know you are dealing with it as a fact, because it is part of the process here, but it is a fact that was obtained unlawfully,
10 and we have the right to make sure that you also know down the line that the facts that you rely on, General Mkhwanazi, for instance, say so, are not lawfully obtained facts.

I cannot come here and now say, please call so-and-so, put him in the box so I can challenge him as to how these facts that everybody now relies on, were obtained. I can do that, however, because it is part and parcel of my trial that is starting on Monday.

CHAIRPERSON: It is exactly because there are those
20 allegations, not only by General Mkhwanazi, but by many others, that the Commission wants to hear from Mr Matlala, get his, and underline his, facts. You emphasize facts coming from General Mkhwanazi, and I add him and others. You emphasize those facts. What the Commission is interested in now is facts from Mr Matlala. But anyway,

unless you want to comment on that, Commissioner Baloyi wants to ask a question.

ADV VAN DEN HEEVER: Chairperson, as I said, those facts are facts that General Mkhwanazi rely on that he says he obtained from my client, and we say what he relies on, you should not accept, and we can show you in due course why you should not accept it.

CHAIRPERSON: We have not accepted anything.

ADV VAN DEN HEEVER: It is just one example.

10 **CHAIRPERSON:** We have not accepted anything at this stage.

ADV VAN DEN HEEVER: No, but I am saying to you, it is just one example.

CHAIRPERSON: Yes.

ADV VAN DEN HEEVER: If I can, unless you want to hear me ...[intervenes].

ADV VAN DEN HEEVER: Commissioner Baloyi has a question.

20 **ADV BALOYI SC:** I just want to make sure that I understand what you are saying. I have understood you to say that you want access to the negotiations and the documents and everything that went on in the lead-up to what would have been a plea deal that is approved by the court, and you say because you have not had access to that, you are unable to get Mr Matlala to respond to the

notice that he has been given. Did I understand you correctly?

ADV VAN DEN HEEVER: Indeed, because in that process that leads up, I am sure, Commissioner you have ...[indistinct] with those processes yourself. There is always deals that are made.

ADV BALOYI SC: Your microphone, your microphone is off.

ADV VAN DEN HEEVER: Sorry, there is deals that is
10 made, and that process to come to a finalization of a 105A involves a *quid pro quo*, and I need to see what the *quid pro quo* was, who ...[intervenes].

ADV BALOYI SC: But what does it have to do with the statement that must be submitted to the Commission?

ADV VAN DEN HEEVER: Because let us say ...[intervenes].

ADV BALOYI SC: Let me finish my point. That process has concluded, even if what you refer to or what you describe as the *quid pro quo* were to be relevant to the
20 answers in the statement to be submitted to the Commission, which I am not saying they are. Even if they were to be relevant, that process has concluded, has been declared in accordance with the law to be null and void. So for all intents and purposes, it never happened. That is what that concept means. Why is that a hurdle to Mr

Matlala submitting his statement, answering specific questions that have been put to him, and you know that in answering those questions, he is entitled to say, I do not know anything about this, if he does not know anything about it, and the assumption that we must make is he is going to be truthful in his responses, and if he does not know, that is what it is. Why are the notes and the documents that comprise or that constitute what you say is the *quid pro quo*, why are they relevant for our purposes?

10 **ADV VAN DEN HEEVER:** It is highly relevant, because let us speculate, I do not want to go into detail, but let us speculate for a second. In order for them to offer this deal, they sit around a table and they say to my client, we want information on A, B, C, and D, and A, B, C, and D forms part, let us say, of your list. But A, B, C, and D is not part of the plea agreement, that is the deal that we cut here. You give us this information as an example, and we will continue, we will enter into this deal with you.

20 So, for instance, if there is, let us say, a section 204 affidavit deposed to, I want to see that, because I want to see in that what transpired or what was admitted in that statement, number one. But number two, I want to see, and I feel very strongly about it, what transpired during this plea negotiations, because in law, normally what happens, it is recorded, because I have been quite vocal about the fact

that, no, I am trying to choose my words very carefully. The process that was followed, I have made it plain to you, I was not going to be involved in it, because I did not trust it, that is the 105A process, and subsequently, I am even more concerned about the process that was followed.

ADV BALOYI SC: I understand ...[intervenes].

ADV VAN DEN HEEVER: And what I am saying to you then is, in that negotiations, names could have been mentioned, admissions could have been made, evidence, or, now he
10 could have disclosed evidence to them and I cannot deal with it if I do not see what happened.

ADV BALOYI SC: But that is information that is within Mr Matlala's knowledge. I do not understand, I do not quarrel with you wanting to know for your purposes, for your purposes, I do not take issue with that, so you do not need to persuade me that you want to know, you are concerned about how that process was conducted. That is not the issue. The issue that I am raising with you is specific questions were asked of Mr Matlala to speak to in his
20 statement and those issues are the issues that have been identified as relevant to our terms of reference and for our purposes.

What I do not understand from you is, what is the problem or what is the hurdle to Mr Matlala answering those questions if you do not know what happened in the

negotiations, because where I am sitting, that negotiating process has nothing to do with us. It is completely irrelevant for purposes of the Commission and getting the answers that we require from Mr Matlala. Of course, you know, we know that Mr Matlala has the privilege to claim self-incrimination, I will not answer this question because it will incriminate me, I have a trial coming up. We have experience in this Commission about that. People have appeared and raised that, right, and we abide to the law
10 when it comes to those issues.

What I do not understand in the long engagement with the Chairperson that you have had is why it is that until you have received the notes and have an understanding of what happened in the *quid pro quo*, or what it is that was given in a process that, by the way, is null and void as matters stand, we could never as a Commission, you know that, we could never make any reference whatsoever to what happened in that process, even if we had insight into it. We do not have insight into it. We do not know what
20 was discussed. We do not know what documents were shared, what information was shared.

But even if we knew that, even if we knew that, we could never reference that because that is an entirely separate process from our process, but that process is now null and void. So nothing that is said in that process comes

before us by virtue of having been said in that process. If you accept that to be the correct position and the position of law, not just our conduct, but to be the correct position of law, you have not said or explained why Mr Matlala cannot submit his statement, answer the questions in whichever way he chooses, answer the questions asked of him until you have had insight into what happened between him and IDAC, the simple proposition being, he has been asked questions that are within, presumably within his personal
10 knowledge and he can give you instructions about those. And where he has no personal knowledge, he can say I know nothing and he will come and tell us that. I do not understand the basis on which you are resisting.

In fact, you say I can never advise my client to answer questions. Well, it is for your client to make the decision whether to answer. Clients work on Counsel's advice. It is not you who is answering questions. It is him who will tell you this is what this question means and you will say to him, well, that incriminates you, my advice is you
20 do not give them that answer because it incriminates you.

It is ultimately up to him to make the decision, not for Counsel to say you do not answer because it incriminates. So far, you have not said to us, Mr Matlala refuses to answer the questions that you have given to him. You have not said that. Your case throughout is I need to

see what was discussed with IDAC, which I say and I say it firmly, is completely irrelevant for purposes of your postponement and for our purposes. You keep on saying that, but in fact, what you should be saying to us is Mr Matlala refuses to submit a statement to the Commission because of A, B, C, D, then we deal with it on that basis. Thank you.

ADV VAN DEN HEEVER: Commissioner, there is a few issues. The one thing that I have noted in the 10.6 that
 10 you, I assume, take quite seriously, there is a specific question that says, has any person tried to influence you, intimidate you, et cetera. Now, you cannot say to me that that is not relevant to the Commission's work. That is ...[intervenes].

ADV BALOYI SC: The answer can only be yes or no, and the rest would be the detail. If we are interested in a yes, if he says yes, someone has tried to intimidate me, the Commission may well follow up when he presents evidence and say, well, give us the detail of that intimidation, but the
 20 answer is yes or no. There is nothing, there is no privilege about it. There is absolutely, and it is a matter that is within his personal knowledge. It does not depend on you seeing the documents from IDAC. It is an answer that Mr Matlala is in a position to give to you, so it is a bad example that you are choosing.

ADV VAN DEN HEEVER: No, I respectfully disagree with you because if there are, if, for instance, there is intimidation or, for instance, if there is undue influence, I, with the greatest respect I have come across, and I have got no problem that you yourself have come across people that do not understand that what they are subjected to is undue influence to get to a point, so I stand by my answer previously.

The other issue that I want to raise with you is as a
 10 litigator, we have got ethical obligations when we deal with clients to ensure, and you are right, I advise my client, that is my duty, but I do not know of a single attorney or an advocate in this country that will allow their client to depose to an affidavit if they are not satisfied that what is in that affidavit is correct. We all do this. We do litigation. We run trials. That is our ethical obligation, and if the issue is then that I am obstructing the process, I want to put obstructed in inverted commas, by insisting on making sure that what I have is correct, then blame me.

20 Do not blame my client, because I believe that in acting as I am, I am carrying out my ethical obligations. I have been doing this for long enough, so have you, to know things are not black and white. There is a vast grey area in between, and I want my client to come and assist the Commission, but I want him at the end of the day to do so

free of anybody coming and saying you are committing perjury because you have got something to the contrary. I want him to come here without later on falling foul of a previous inconsistent statement. It is my job to make sure that that does not happen.

ADV BALOYI SC: Can I ask you this question, just to make sure that I understand your position. Is your position, and Mr Matlala, when I say your, I really mean Mr Matlala, because he is the client, is your position that until you
10 receive the material from IDAC that you say you need to see what was given, what was offered, until you receive that, this Commission will never receive a statement from Mr Matlala, and he will never testify? Is that ...[intervenes].

ADV VAN DEN HEEVER: No.

ADV BALOYI SC: Is that what you are saying?

ADV VAN DEN HEEVER: No, that is not what I said.

ADV BALOYI SC: Then what is the relevance of the IDAC background material in a process that has been declared null and void?

20 **ADV VAN DEN HEEVER:** I am saying, maybe I must just go one step further and say that I have discussed with my learned friend, and I actually did not want to go there, that we can sit down at some stage and try and work out some of these issues. But I am saying to the Commission that all we want is we want an opportunity to comply with the 10.6.

I have never said we are not going to comply with that. We want an opportunity to do so. The second issue is, and I want to almost ...[intervenes].

ADV BALOYI SC: Sorry, what is the opportunity? I think ...[intervenes].

ADV VAN DEN HEEVER: I want a postponement ...[intervenes].

ADV BALOYI SC: I just want to make sure that we understand what it is you are seeking from us
10 Commissioners. When you say, you are not saying that until you have received the IDAC material, Mr Matlala can never submit a statement, and he can never testify, you are saying that is not your position?

ADV VAN DEN HEEVER: My position is not, it does not only relate to IDAC. Let us take it one step further.

ADV BALOYI SC: Let us ...[intervenes].

CHAIRPERSON: Sorry ...[intervenes].

ADV VAN DEN HEEVER: [Indistinct]... [cross-talking].

CHAIRPERSON: No, sorry, sorry ...[intervenes].

20 **ADV VAN DEN HEEVER:** Let me just go ...[intervenes].

CHAIRPERSON: Sorry, your mic, oh.

ADV VAN DEN HEEVER: Ja, it is on.

CHAIRPERSON: Thank you.

ADV VAN DEN HEEVER: It goes further. The Commission is in possession of recordings that was only disclosed to us

...[intervenes].

ADV BALOYI SC: No, hold on, hold on.

ADV VAN DEN HEEVER: So it goes further ...[intervenes].

ADV BALOYI SC: No, hold on, I want us to do one step at a time so that we tick off what is the issue. If we have resolved an issue, we both agree this is off the table now, now we are going to a different topic. I know that in your affidavit you do speak to recordings and transcripts. We will still get there. You have not engaged with that. I am
10 still, I just want to be clear because my understanding ...[intervenes].

ADV VAN DEN HEEVER: I am ...[intervenes].

ADV BALOYI SC: From the time when you were engaging with the Chairperson, and hence my questions that I have asked of you ...[intervenes].

ADV VAN DEN HEEVER: [Indistinct]... [cross-talking].

ADV BALOYI SC: My understanding of your position was, and still continues to be, that until you have received from IDAC, whenever that will be, if they will ever give you that
20 material, until that point that you have received that material, Mr Matlala can never depose to a statement because you would not let your client depose to an affidavit where in future he gets met with previous inconsistent statements and all of that. So I ask the question so that there is absolute clarity about what it is that we are dealing

with. Is your position, let me repeat, is the position that you are adopting that until you have received the IDAC material that led to the now collapsed plea deal, Mr Matlala will not be in a position to file a statement to the Commission, and Mr Matlala is not in a position to testify before the Commission?

ADV VAN DEN HEEVER: Chairperson, of course that is my position at this point in time, because I am ethically bound to act in that manner. I, again, I say to you, I cannot think
10 of any other Counsel that would act differently than I do.

ADV BALOYI SC: Yes.

ADV VAN DEN HEEVER: So, but this is not an impediment, because I truly believe we can get the information relatively quickly. So I am saying to you, please just take into account this plea deal collapsed on Monday, it is Wednesday, so we have got this very short period, but that is not the only thing that I say ...[intervenes].

ADV BALOYI SC: No, do not go to the other things. I am
20 more interested in the question of principle. I want to establish the principle. It is important to us. If by the time we finish here, you rise and your position is until he has received the IDAC material, or you have received the IDAC material, whenever that will be, maybe tomorrow, maybe day after tomorrow, maybe next year, maybe not ever, I

want to establish the principle to make sure I understand the principle position, is the principle position that until you have received and considered, as his Counsel, or his legal team, until you have received and considered the IDAC material, Mr Matlala will not file a statement and he will not testify. Is that the position you are conveying to us?

ADV VAN DEN HEEVER: Until such time, I am told by any person in the legal profession that I am wrong in going to a point where I say, part of what I am doing here is to protect
10 my client's rights, I stand by that.

ADV BALOYI SC: Ja, that is ...[intervenes].

ADV VAN DEN HEEVER: I say it is the way I was taught ...[intervenes].

ADV BALOYI SC: No, I must insist, Ms Van den Heever, I have asked a direct question. Let us stop this going around. I am not asking you about being advised by somebody, being told you are right or wrong, and I have not yet expressed a view that you are wrong, by the way. I am not saying your position is wrong, right? I am still at the
20 point where I want to understand the position, and it is a yes or no kind of question. You have motivated, you have argued, and you do not need to do that any further. I am now at a point where I want to understand, is the position that until you have the IDAC material, Mr Matlala will not file a statement, and Mr Matlala will not testify. The answer

is a yes or no.

ADV VAN DEN HEEVER: My instructions are that we will file a statement as soon as possible.

ADV BALOYI SC: What is your answer to my question?

ADV VAN DEN HEEVER: I have told you, Commissioner.

ADV BALOYI SC: So you will file a statement, even if you do not have the IDAC material?

ADV VAN DEN HEEVER: That is my instructions at this point.

10 **ADV BALOYI SC:** Okay, that you will file the statement.

ADV VAN DEN HEEVER: I got instructions from my attorney to deal with ...[indistinct].

ADV BALOYI SC: Thank you. Thank you, Chair.

CHAIRPERSON: May I just before Commissioner Khumalo asks a question, oh, he says his point is now covered.

ADV VAN DEN HEEVER: Okay.

CHAIRPERSON: You said earlier you had had a discussion about timelines or timing. I just want to find out at this stage, before you continue with the rest of your
20 submissions, to find out by when the statement that you say can be filed, by when will that be filed?

ADV VAN DEN HEEVER: Chairperson, I have not arranged for ...[intervenes].

CHAIRPERSON: I know perhaps it is something you may want to engage Ms Sello about, but I would just like to hear

from you.

ADV VAN DEN HEEVER: May I take an instruction just a moment?

CHAIRPERSON: Yes, yes.

ADV VAN DEN HEEVER: We are, we think we can do it in two weeks. Of course, please take into account we are starting a trial on Monday and that is, of course, also premised on the fact that we get the recordings that has been referred to and relied on by certain witnesses in the
10 Commission. And I have discussed another issue with my lawyer friend, but I am not going to deal with this on the record. Me and her have managed so far to, between us, sort these issues out. So if it is convenient and if so permitted by the Commission, my attorney says that we can probably do that in the next two weeks, because, of course, maybe just for the record, we can also obtain some of the information through the erstwhile attorneys.

CHAIRPERSON: On this and possibly any other issues that may require discussion between you and your
20 colleague, Ms Van den Heever, we will give you time. So we will adjourn before any ruling is made. But I do not think you are done with your submissions unless you tell us that you are. If not, you may continue.

ADV VAN DEN HEEVER: I think my submissions are quite clear pertaining to the upcoming trial. I think we have the

right to be presumed innocent. This Commission is watched by many, many people and I am just afraid, as it goes, the questioning of him, and I am not necessarily saying by yourselves, but I know my learned friend might give the perception that he is guilty, and he will go into his trial with baggage and I am trying to prevent that. I have set out for you, I think, quite clear the issues that we are dealing with.

And then, of course, I am asking you to pay serious consideration to what is contained in the opinion that we
 10 have urgently obtained for you, because I find it very persuading, I hope you do, too, and we are endeavouring to deal with that issues the best we can. Thank you very much. Sorry, Chairperson, my attorney has just asked me to emphasise the point that part of the delay had to do ...[intervenes].

CHAIRPERSON: No, I will ...[intervenes].

ADV VAN DEN HEEVER: With the recordings that was not given to us, and which is quite important.

CHAIRPERSON: Sorry, sorry, we will, I will give you an
 20 opportunity, just ...[incomplete] [side discussion between Chair and Commissioners]. Ms Van den Heever, we heard what you say, and what you said you wanted to emphasise, unless you want to add to that.

ADV VAN DEN HEEVER: No, I have just been asked by the attorney to emphasise the point, those recordings are

vital. They have been referred to by witnesses. They have been, and the day we received the recording, and I thank my learned friend for her intervention in that, was the very day that the statement was due. As you can imagine, we have got limited access to the client. I personally had to phone the head of C-Max to ask, please, can the attorney go in. And he is not even finished listening to the recording. So it has also impeded quite a bit of the issues.

And then lastly, maybe I should also emphasise
10 that you please take into account, Commissioners, that whilst this process of the 105 was unfolding, we were not part of it. We could not get instructions on it because somebody else was dealing with it. So even if we wanted to, we were basically, and I say this respectfully, cut off from dealing with the issue for other reasons that I assume will at some stage come to light here. Thank you very much.

CHAIRPERSON: Thank you, Ms Van den Heever. Ms Sello.

20 **ADV SELLO SC:** Thank you, Chair. Chair, I have a witness whose testimony was deferred to later in the morning, and I am quite mindful of that witness, so that constrains me significantly as to how I respond. So I will try to be as brief as possible, and in so doing, perhaps to assist the Commissioners.

I would love to start with where my learned friend ended, which is an offer to file the statement in two weeks. That effectively takes care of the first part of the ruling, or was it the second part, but one part of the ruling of the 7th to file in two weeks. We have spent over an hour engaging, or my learned friend engaging you on matters that do not get to that conclusion. That is where she ought to have started, then it would have saved a significant amount of time.

10 I say this because on reading the affidavit in support of the application for postponement, one must bear in mind that we appeared before you on the 7th of July. Everything that is in that affidavit predates our appearance, and it is at that appearance, notwithstanding the facts as asserted in that affidavit, an undertaking was made. So if those facts were not relevant prior to the 7th, and the very facts, notwithstanding the very facts they were able to make specific undertakings, which included filing by the 8th of July and appearing on the 15th, I truly do not understand
20 how then they become relevant come the 15th. They revive, they suddenly become relevant. The challenge with this application is nothing in the affidavit speaks to the period between the 7th and the 15th. Nothing happened that even threatened the undertaking made to you on the 7th, Chair.

So the question is, why must I entertain this entire

argument if not to waste the Commission's time? Mr Matlala's legal representatives were informed by certain facts to conclude that they are in a position to make certain undertakings on his behalf. They do not come here and say, those facts have changed. They do not come here and say, since the undertaking was made, new facts have come to light that make it impossible for us to comply. So technically, that undertaking made is not worth the paper it is written on and this is a complete waste of the
10 Commission's time. Now ...[intervenes].

CHAIRPERSON: Can you, sorry, sorry, Ms Sello.

ADV SELLO SC: Yes.

CHAIRPERSON: Can you please make me understand something Ms Van den Heever said on the 7th.

ADV VAN DEN HEEVER: Yes, Chair.

CHAIRPERSON: Ms Van den Heever indicated that she was agreeing to the filing by the deadline ...[intervenes].

ADV SELLO SC: Yes.

CHAIRPERSON: That was indicated, something like
20 subject to the reservation of Mr Matlala's rights.

ADV SELLO SC: Correct.

CHAIRPERSON: Even as she said that, I was not sure in my mind what exactly that meant. What was your understanding?

ADV SELLO SC: My understanding ...[intervenes].

CHAIRPERSON: Of course, maybe I should have asked, I should have put that question to Ms Van den Heever.

ADV SELLO SC: Subject, of course, to Ms Van den Heever confirming.

CHAIRPERSON: Yes.

ADV SELLO SC: But I had understood that the proviso was file on the 8th, subject to Mr Matlala's right to supplement statement filed. That was the reservation made.

10 **CHAIRPERSON:** Because there could not be an undertaking to file, but at the same time, not to file, an undertaking not to file.

ADV SELLO SC: Yes. And in fact that ...[intervenes].

CHAIRPERSON: It is even wrong, it is even wrong for me to refer to the latter as an undertaking, ja.

ADV SELLO SC: And in fact, that proviso was discussed amongst ourselves because of the tight timeline they then had to file by, having missed previous deadlines. The only way to cure any potential prejudice to Mr Matlala was to
20 agree and place on record that he reserves the right to supplement. We thought it is a natural way to go, and he is entitled to supplement whether or not he has reserved that right in any event. But to the extent that it was necessary to articulate it in no uncertain terms, we were agreed to that. So that was the proviso, Chair, that was attached to

the filing.

CHAIRPERSON: All right, all right. Please continue.

ADV SELLO SC: Thank you. So at the end of the day, what the legal position is regarding Mr Matlala's constitutional rights, as posited by my learned friend, is irrelevant for our purposes. She may very well be correct, she may very well be wrong, but it does not advance the issue any further. Those rights existed on the 7th when she made the undertaking, unless she suggests that they have
10 since or very recently been earned.

I listen carefully and I resist the urge to argue that this is a moving target and each time we think we have got the target, then that target is going to move and we are continuously chasing a rabbit we cannot catch. And Chair, I implore you and Commissioners to please put an end to this. Witnesses come here and make undertakings. They give dates. We work on a very tight time schedule. Either witnesses respect the rulings given by the Commission and adhere to those rulings and file, or either appear on the
20 dates that have been either directed by the Commissioners or on which they have made undertakings, because otherwise, it makes the work of the Commission impossible.

We now have to change things about. We now have to find another slot for Mr Matlala. We now have to plan for him when to give an affidavit, a statement, and to

find a slot, and all this time, it is in circumstances where this Commission has got a limited time spent left to it. I am concerned about the approach being adopted by Mr Matlala's representatives and I do not think it is particularly appreciative of the challenges that the Commission faces.

As to whether or not the Commissioners and the Chair will permit the rulings handed down to be wantonly disregarded is for the Commissioners to decide but I would not be surprised if the Commission holds a dim view of that.

10 So, the difficulty we have, or I have personally, listening, is, and I do accept that I possibly misunderstand Ms Van den Heever, the plea agreement with IDAC, the aborted or stillborn plea agreement with IDAC, at the risk of stating the obvious, that has got absolutely nothing to do with this Commission. What this Commission is interested in is its terms of reference. It is interested in the issues that were raised in the rule 3 notice that was served on Mr Matlala, as well as the subsequent regulation 10.6 notice. That is all this Commission is interested in. I will rephrase
20 that. That is all the Evidence Leaders have indicated they are interested in. The Commissioners may expand those issues.

What position Mr Matlala assumes in response thereto, is his choice. We desperately do not want to be a part of a discussion on how does he respond to a particular

question. If a question posed invites a defence, a section 35 of the Constitution defence, so he must state, and then we will deal with the defence as raised when he appears.

CHAIRPERSON: And as I put it to Ms Van den Heever, it cannot be that everything he could ever say is covered by section 35.

ADV SELLO SC: Indeed.

CHAIRPERSON: Or bears relevance to the section 35 protection. It can never be, and Ms Van den Heever
10 accepted that.

ADV SELLO SC: Yes, Chair.

CHAIRPERSON: And facts are facts, and they should not change in accordance with whatever it was that went on under the plea deal. But as Commissioner Baloyi said, that is null and void anyway.

ADV SELLO SC: In any event. And once again, it depends on whether I understood her correctly, it gets worse, because now it sounds like the Commission shall be hamstrung by any plea deal that Mr Matlala may choose in
20 any criminal trial, whether ongoing or in the future, to conclude. So effectively, if Mr Matlala were to tomorrow face five charges in five different criminal trials, and he considers whether or not to conclude a plea deal in any one of them, then this Commission is hamstrung, unless I completely misunderstood Ms Van den Heever.

My understanding would be, I do not believe she would suggest that. But at the same time, then I struggle, what exactly is being suggested regarding these plea deals? And once again, I have no clarity. I submit Commissioners that the only position to assume is we have nothing to do with any plea deals that Mr Matlala chooses to conclude anywhere in any court. He has two defences in this Commission, the section 35 defence, or buttressed, in fact, by section 8(2) of the Commission's Act, that anything
10 he says that would incriminate him cannot be used against him in any criminal case. So he is got two. He can raise them.

So why we are having a debate about plea deals and whether or not his legal team understands the facts that underpins such a plea deal is a challenge to me. Now, the offer, mindful of the time, made to file in two weeks, I can accept. In any event, it is up to the Commissioners. However, the offer, if I understand it correctly, sounds to be conditional, and this is what the condition is. It is
20 dependent on whether or not they get the requested information from either IDAC to enable them to answer the questions posed.

If I misunderstood, because I think Commissioner Baloyi indicates, she is shaking her head as if I misunderstood her.

ADV BALOYI SC: I think the ultimate position was they will file a statement.

ADV SELLO SC: If it is wholly unconditional by a specified date, then I am happy, because my concern was that if they do not get the required information from IDAC, or IDAC just outright refuses, then they would be entitled in law to approach a court to compel IDAC to provide such information if they have a basis in law to do so, and if that case is unfavourable to them, there are appeal proceedings.

10 So the question would be, do we await that information and the challenge to, right to that information to run its course until the Constitutional Court before we get a statement? But I will accept what Commissioner Baloyi says, she says the filing in two weeks is unconditional. If that is the case, then we just need to set a date, and if the statement is not filed, we shall be back before you, Chair, and I suggest that the consequences will follow.

 What then must happen now is to lock in a date as we did of the 15th that has now collapsed as to when Mr
20 Matlala will appear. And I say so because we, as the Evidence Leaders, have to go re-check our program and accommodate the new dates, while at the same time making sure that there is sufficient time for everybody to prepare for Mr Matlala's appearance before you.

CHAIRPERSON: Would the preference be for the

postponement to be to a specific date or a date to be determined?

ADV SELLO SC: No, Chair, I would prefer a specific date at this point.

CHAIRPERSON: Specific, all right, all right.

ADV SELLO SC: Yes.

CHAIRPERSON: Please continue, then.

ADV SELLO SC: Thank you, Chair. And to assist, perhaps, the Commissioners to consider a possible date, my
10 learned friend will confirm, I understood that the upcoming trial that starts on the 20th ...[intervenes].

CHAIRPERSON: Just a minute.

ADV SELLO SC: Yes, Chair.

CHAIRPERSON: I think on your last point about the date, I think it would be better for you and Ms Van den Heever to engage and then, which, of course, would necessitate a stand down, and when we come back, hopefully we will get an agreed date.

ADV SELLO SC: Oh, no, no, no, I am happy with that
20 approach ...[intervenes].

CHAIRPERSON: Yes.

ADV SELLO SC: As long as I come out of this hearing with a ruling on a date, Chair. However that point is reached is irrelevant.

CHAIRPERSON: Yes, yes.

ADV SELLO SC: I will accept that, Chair.

CHAIRPERSON: Any further submissions?

ADV SELLO SC: No, Chair. I think that will suffice. I am looking at the time, as the Commissioners are away, there is another administrative issue to deal with before my witness returns to complete his testimony.

CHAIRPERSON: Any reply, Ms Van den Heever?

ADV VAN DEN HEEVER: I am going to be very brief, Chairperson.

10 **CHAIRPERSON:** Yes.

ADV VAN DEN HEEVER: I am not going to go back to the issues of the plea deal. I stand, I have got experience in that regard, and I know it is important and at some point in time, I will demonstrate to you what the importance of that is.

CHAIRPERSON: Yes.

20 **ADV VAN DEN HEEVER:** The second thing, my learned friend says that subsequent to the date of the 7th, nothing happened. The affidavit sets out quite clearly what happened subsequent to the 7th. The 13th we were back in court. There is also the issue on the 8th, the recordings were disclosed, and what happened there. So my learned friend's not correct when she says there is nothing. It has been set out chapter and verse what transpired from that date on.

And the thing that is quite important, Chairperson, is I do not believe this Commission, and I have said it before, as you recall, we are not here to ambush witnesses and it is for that reason that I am entitled to ask, if you are in possession of certain material that you wish to use against my client, I am entitled to ask for it, because that way, we level the playing field. So it is, also that also needs to be taken into account.

CHAIRPERSON: Wasn't the ...[intervenes].

10 **CHAIRPERSON:** Lastly, you were quite right ...[intervenes].

CHAIRPERSON: Sorry.

ADV VAN DEN HEEVER: I did reserve my right twice.

CHAIRPERSON: Oh, just before you move to a different point. Was everything that Mr Matlala required not given before the 7th of July?

ADV VAN DEN HEEVER: We wanted, so we asked, we said that there must be certain recordings. We were then given 7, no, 13 voice files. We then said, it is clear
20 somebody went and extracted, like, cherry-picked and given us 7 voice files. We now want the complete recordings from which these were extracted. We were then given, on the 8th, I think, recordings, 2 recordings. There is, in fact, a third recording that was not given to us. Then we were handed over, I discussed it with my learner friend, and she

made some enquiries. We were given a transcript, an unofficial transcript of the one. So, and these are long. They are over, the one is 6 hours, and the others together is longer than that. So, and the client must sit and listen to it because he needs to ensure himself. So that process was not even concluded.

CHAIRPERSON: Yes.

ADV VAN DEN HEEVER: And then lastly, as I said, it is just an issue of, I did reserve my right because I foresaw
10 what was going to happen at that point in time. It was not a condition, I will file and then amplify. I just could not because at that point, I still had not had any access to the client to discuss any of the issues relating to, as I said, what, let us call it the Medicare24 matter.

One more thing, Chairperson, I am going to ask you and the Commissioners to consider the following. I am going to ask that we be assisted and that an order is made that we get access to the client over weekends with electronic devices, in other words, with the computers, to
20 assist us in dealing with all of these things. It is very difficult if we cannot do that. It is, the times that you can see the client is limited. There is only a limited number of legal practitioners at any given time that can see the person. And if you were to see him in the normal way, there is a thick glass and you cannot listen to recordings.

So we would like, if there is any way that you see open, that we would be allowed for this weekend and the next weekend to get access. After that, we will not need it because the last weekend would be just before the filing, because we are also starting on Monday, he gets transported, very limited time in court because we are running the trial. So what we can do is we can get drafts, exchange that, he can look at that, but to finalize it, we will also need to have access to you next weekend at the prison.

10 **CHAIRPERSON:** How is it done for purposes of the criminal trial that is commencing, is it next week?

ADV VAN DEN HEEVER: We have had consultations long before. It is actually a much simpler matter than anybody has made it out to be and that is why, for that, it was easy. We have given the client the dockets that was disclosed. And when we had opportunities, we have discussed with him our defence, our plea, so that is, that was, and we had one or two person-to-person meetings that was allowed by the Head of the unit where he is. So we could actually sit, go
20 in with computers and have those, but for some reason, I think, because of what has been transpired, we are not getting access that easily anymore. I can just speculate why suddenly, after, you know, things have started going a bit differently. So all I am asking is if you can assist us in that regard, we would appreciate it.

CHAIRPERSON: Ja, I think something like that would have to be dealt with administratively. I cannot make a ruling here. But anyway, it is not that I understood you to be asking for a ruling, because, for example, I do not know what prescripts Correctional Services may put up and say we cannot comply. So ...[intervenes].

ADV VAN DEN HEEVER: No, so all I am basically asking, if some ...[intervenes].

CHAIRPERSON: But that should never be understood to
10 say, after agreement on a date, what happens or does not happen will then be a basis for saying, no, we are not able to file because. Please continue if there are further submissions.

ADV VAN DEN HEEVER: [Indistinct]... [microphone off]
simple. We will do our best, but maybe a, something from the Commission side that we should, without making a ruling, that, what the, from the DCS side that they should do whatever they can to assist us, I think that would go a long way. That would give us something in the hand to now go
20 and do from our side what we need to do. Thank you, I have got nothing else.

CHAIRPERSON: Nothing else.

ADV VAN DEN HEEVER: I agree with my learned friend that we discuss *inter partes*, the date.

CHAIRPERSON: Yes, all right.

ADV BALOYI SC: Ms Van den Hever, without getting into it, I just want to know its status. The opinion letter, I am not getting into it, was it filed just for the purpose of today's postponement? It was to deal with just today?

ADV VAN DEN HEEVER: [Indistinct]... [microphone off]. Oh, there it goes. It was done for today because of, as I said, ja, that is all I wanted to say at this point. There are other ...[intervenes].

ADV BALOYI SC: Ja ...[indistinct] [cross-talking].

10 **ADV VAN DEN HEEVER:** There are other reports and things that is, that has been drafted. We have been communicating with the Head of prison with regard to the issues, but I do not want to go into that further at this point in time.

ADV BALOYI SC: Ja, no, no, it was just ...[intervenes].

ADV VAN DEN HEEVER: You will see it is ...[intervenes].

ADV BALOYI SC: It was just for today's postponement, that is ...[intervenes].

ADV VAN DEN HEEVER: [Indistinct]... [cross-talking] and
20 the relevant part of it you will find about the issue of, ja, I mean if ...[intervenes].

ADV BALOYI SC: Leave it there. That is fine. Thank you, I am answered.

ADV SELLO SC: Chair, if I may, for the record, to correct for the record and posterity, Ms Van den Heever speaks of

being provided with random extractions from recordings. That is wholly incorrect. The recordings that were provided were recordings that were played in this Commission during the testimonies of witnesses. As we do when we provide our Rule 3's, we provide the evidence that implicates the particular witness who is served with the Rule 3. Those are the 13 recordings that were played in here. They were not random. Nobody went into the recordings and decided they liked the sound of the clipping from 1 hour 15 to 1 hour 17,
10 you know, 17 minutes. So that is one.

Those were provided on the 18th of June. They were given to Mr Matlala. It is only on the 7th of July after the ruling and their statement is due the next day on the 8th that they require the complete recordings and they were duly provided on the 8th. So it is not like information was denied them or we failed to respond positively to any request for information made. Each time it is made, it is given. The inescapable conclusion is nobody listened to those 13 clippings when they were provided and there,
20 because if they did, they would have made the determination at that time already that they require full clippings in order to prepare a statement. Thank you, Chair.

ADV VAN DEN HEEVER: Maybe just on that issue, Chairperson, we immediately on receiving those recordings

send it off to an official transcriber. It was in vernacular. It then had to be typed up and then transcribed and then upon seeing the client with the computer, it is only then that we realized that these were extracts from various other recordings and it was only at that point that we could approach the Commission, the Evidence Leader, my learned friend, and say we want the full recordings because we were then informed that it is extracts from other recordings.

CHAIRPERSON: We will, thank you, thank you to both of
10 you. We will, let me just look at the time. We will adjourn and come back when you tell us to and we hope that will be within a very short time. We are not taking the tea break at this stage.

ADV SELLO SC: Noted, Chair.

CHAIRPERSON: And this is for a discussion between the two of you on the date of the hearing and to the date of the filing of Mr Matlala's statement.

ADV SELLO SC: Thank you, Chair.

CHAIRPERSON: Let us adjourn.

20 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Good morning Mr Chaskalson, good morning Mr Premhid.

MR PREMID: Good morning Chair.

ADV CHASKALSON SC: Morning Chair, morning

Commissioners. Chair and Commissioners, you will recall that three weeks ago Mr Carrim was postponed to today's date. He is not here today and we received a doctor's note yesterday that refers to his admission to hospital on the 17th of June which is more than a month ago. When we received that doctor's note yesterday it seemed to explain Mr Carrim's apparent inability to appear today but it did not explain his inability to answer, at least in part, the Regulation 10.6 notices that had been served on him and
10 that I addressed in the Commission three weeks ago.

You will recall, Commissioners, that we are still waiting for Mr Carrim to tell us, for example, who the auditors of his companies are. There is nothing in his doctor's note that suggests that his health conditions are of such an order that he has been unable to do that for two months. Similarly, we are still waiting for Mr Carrim to furnish audited or even unaudited financial statements for three of his companies, Ziggy, Tasmica and Tameez. There is nothing in the doctor's note that suggests he would have
20 been unable to issue a simple instruction to the officers of his companies to do this.

I want to emphasise here that we are talking about a group of companies, including Ziggy, Tasmica and Tameez, that have been paid hundreds of millions of rands from the North West Provincial Government and North West

municipalities in the region of which he is the ANC Treasurer. Companies in this group continue to perform services for those organs of state and continue to be paid millions of rands by those organs of state. We are talking about multi-million-rand businesses, you know, not family-run small businesses that have to shut down if their owner is unwell.

So if Mr Carrim took the trouble to ask someone, he ought to have been able to arrange that we receive the
10 financials we have been asking for, for months now. That is where things stood yesterday. Mr Carrim seemed to have an excuse for not appearing, but he did not seem to have any excuse for failing to answer any of the questions in the Regulation 10.6 notice we sent him two months ago and for not providing any of the documents we sought in that notice, almost all of which he had undertaken to provide when he testified when he was healthy back in, I think it was April. That was yesterday.

And then after we received the doctor's note under
20 cover of a letter from his attorneys yesterday, late in the afternoon yesterday we received two different whistleblower reports, both confirming that Mr Carrim and an entourage had been seen yesterday going out for lunch at a shopping centre in the Western Cape. The two reports corroborated the same details. They seemed to be

independent of one another, and they have now been confirmed by eyewitnesses at that shopping centre who we have independently contacted.

So we now have it from multiple different sources that someone who seemed very much to be Mr Carrim arrived at the shopping centre with an entourage, went into Woolworths before going off to have a late lunch at a restaurant in the shopping centre. We have subpoenaed CCTV footage from the shopping centre and we expect to
10 have it received and we expect to have it thoroughly analysed by midday tomorrow. For now, we have a concern that Mr Carrim may be taking liberties with this Commission, and that concern is amplified by other whistle-blower reports that we have received indicating that Mr Carrim has been seen at social gatherings in the North West over his period of ostensible incapacity.

So we are going to issue a subpoena later today to the hospitals at which he has been receiving treatment, to establish when he was admitted and when he was
20 discharged, since he testified at the Commission. We are also going to be issuing a subpoena to his doctor, who is based in Cape Town, to establish the dates on which he has seen Mr Carrim. And we do not expect that it will take us more than a day to obtain this information. And what we would like is for the matter of Mr Carrim's appearance, or

non-appearance, to be stood down until Friday morning, or maybe Friday lunchtime, when it can be considered on the basis of a formal postponement application which we would ask this Commission to order him to bring by 10 o'clock tomorrow.

The evidence leaders will reply to that postponement application by 6 p.m. tomorrow, and it could be heard by Friday morning at 9.30. If Mr Carrim's legal team needs more time, if we can have that postponement
10 application by 5 p.m. tomorrow, we would undertake to respond to it by 10.00 on Friday, and it could be heard on Friday afternoon, not Friday morning. But what we do expect the postponement application to address is at least the following issues:

- The dates on which Mr Carrim has been admitted to hospital over the last four months,
- The dates on which he is attended medical consultations over the last four months,
- His travel movements over that period,
- 20 • Whether he is attended social engagements over that period, and
- Whether he is played any role in the management of his businesses over that period, and if not, who has been responsible for these businesses which continue to turn over in his absence.

ADV KHUMALO SC: Mr Chaskalson, can you please add one more thing? I am interested to know how he travelled from the North West to the Western Cape. Did he book flights? Did he fly there? Because if he can give instructions to people to book flights to him, surely he can give instructions to people to give you the names of accountants. Thank you.

ADV CHASKALSON SC: So that is our request, Commissioners, that the matter stand down to be decided
10 on the basis of a formal postponement application on Friday.

CHAIRPERSON: Thank you, Mr Chaskalson. Yes, Mr Premhid.

MR PREM HID: Good afternoon, Chair. Good afternoon, Commissioners. Five brief points in reply, if I may. Firstly, do you have the Commission's correspondence bundle? I was handed one about ten minutes ago by a Commission representative, but it is called Carrim Suleiman Correspondence and Sundry Documents Witness Bundle. I
20 am going to refer you to the confidential medical report in that. I am not going to discuss the contents, but if you can turn up page 128 of that medical report.

When you read paragraph 1 of that report, that will deal with my learned friend's contention that there is an inability to explain attendance and when you read

paragraph 2 of that same report, particularly lines 2, 3, and 4 of the second unnumbered paragraph, that is a direct response by a medical practitioner as to why, potentially, there is an inability to give answers. So insofar as my learned friend says there is just no explanation at all, that is contradicted by the medical evidence of an expert in a particular field of medicine, which my learned friend is not.

That is point number one. Point number two, my learned friend must choose his words very carefully, with all
10 due respect, because my learned friend talks about hundreds of millions of rands, companies that are continuing to service the state, multi-million rand businesses, and so on, and he uses the quantum of my client's otherwise legal business to evidence some or other gratuitous behaviour in front of the Commission. Until such time that a Court orders otherwise, that there was unlawful business dealings with the state to the tune of those hundreds of millions of rands, the fact that there is business that may or may not be done to the tune of hundreds of
20 millions of rands is neither here nor there.

So my learned friend must choose very carefully his words in elevating otherwise perfectly legal facts to be weaponised into some sort of smear, potentially, against my client and otherwise lawful activity. The third point that I would say in respect of Mr Carrim's undertakings to give the

evidence, is you will know that Mr Carrim, if you will give me one second... I am indebted to Ms Matlangwane. On the 13th of April suffered the medical incident, and at least on our version, he has been in medical treatment since then, and so his ability notwithstanding undertakings whilst given in the box, must be construed having regard in particular to that second paragraph that I referred you to on page 128 of the bundle.

Can I say, number four, in respect of these whistle-
 10 blower reports and the alleged corroboration or not corroboration that has occurred or not occurred, and this is a two-part point, so you will forgive me, the first part of which is we only learnt about these facts today. I know my learned friend says he also only learnt about these facts today, but apparently these social gatherings were known about before, and it is the first time we are learning about these things today, and I must place this on record.

Inasmuch as I do not for one minute question my learned friend's ability to rely on those allegations to raise
 20 a question about Mr Carrim's position in front of you, we would respectfully submit, and I know earlier there was an exchange about whether respectfully is respectfully or not respectfully, but I am respectfully submitting.

CHAIRPERSON: I am happy you were listening.

MR PREMID: Yes, no, no, the Commissioners are

warmed up by the time I come here, so I know what I am walking into. The point that I would make is that it is unfortunate we are learning about these in an open proceeding of this kind and that these demands about what this formal postponement application needs to entail in an open session of this, rather than to have had an opportunity, even after either a stand-down or a postponement was asked for today, given that the client is not here because he is presently in the hospital.

10 So it is unfortunate we have learnt about it in this way, but my learned friend and I throughout the morning have been talking intensely about what he can give me and what he cannot give me and whether he is going to give me the CCTV footage he has already got in his possession or he does not. I do not think we are in agreement on that, but my learned friend very kindly has apparently, not apparently, my learned friend has very kindly given me the licence vehicle registration of the vehicles that were apparently transporting my client or not transporting my
20 client yesterday, and we will deal with that in due course.

 All I am saying is that the manner in which we have learnt about this is regrettable, and the reason it is regrettable, and this is the second point of my fourth point overall ...[intervenes]

CHAIRPERSON: How do you suggest you should have

learnt about it?

MR PREMHD: May I... That is a segue, thank you, Chair, to the second point I want to make under this, is that, with all due respect, I am now concerned that we are inadvertently using the postponement application and the allegations regarding the movements of my client or otherwise, as a mechanism through the back door to undermine the otherwise unimpugned medical evidence in front of you.

10 And, Chair, you asked me how should we have learnt about it. With all due respect, I do not think it is for my client necessarily, unless you order otherwise. If you order it, well, then we have to do it, but if you do not order it, it is not for my client, with all due respect to answer these accusations in the ether, in the way that they are, where the overall purpose or effect is to create doubt about the medical excuse ...[intervenes]

CHAIRPERSON: That is a different issue or rather, you raised an issue, or rather you complained about having
20 learnt of the information in the manner in which that happened. So I am asking you the question, how do you suggest you ought to have gotten to know about the information? That is different to what you are saying.

MR PREMHD: Yes, Chair, thank you. The way in which we should learn about it, and I know Chair says to me it is a

different issue, I will respectfully say it is not a different issue, is because if the purpose or effect of that accusation is to raise doubt about my client's medical condition and whether there is a legitimate excuse for his attendance or non-attendance at the Commission, because that is what the sting of that accusation actually is, then actually the shoe should be on the other foot in the sense that it should be the Commission, the evidence leaders, bringing an application where they raise this evidence in the round of
10 questioning the medical advice or otherwise, or the medical reports or otherwise that have been tabled in front of you that otherwise serve as the excuse.

It is not the hill I am going to die on. All I am simply saying is that I am concerned that the way in which these accusations now have to be dealt with is almost reversing the onus that otherwise falls on my clients.

CHAIRPERSON: That still does not answer my question.

MR PREMHD: I apologise, Chair.

CHAIRPERSON: Yes, the question of how Mr Carrim must
20 respond is something other than your suggestion about – maybe the word I am going to use will be strong or too strong – the impropriety that you suggest with regard to how you came to know, is what I am addressing. That has nothing to do with how Mr Carrim then deals with the information. So my question is how do you suggest this

information ought to have landed on your or Mr Carrim's lap?

MR PREMHID: In writing and particularised, so that it is formally placed in front of us rather than as what happened between my learned friend and I, which was a conversation between colleagues regarding these issues that are now being raised. So that is when I talk, and Chair, with all due respect, impropriety is a far higher word than ...[intervenes]

CHAIRPERSON: That is exactly why I said maybe it is too
10 strong a word.

MR PREMHID: Because I am not accusing my learned friend or anybody of impropriety. I am just raising my concern about the manner, and then that is the direct answer.

CHAIRPERSON: Maybe instead of impropriety I should have said concern, which is the word you have just used now.

MR PREMHID: Yes, yes. So, Chair, I think we are *ad idem* then that it is concern, not impropriety, and formally in
20 writing because these are very serious accusations and I understand that my learned friend is under his collegial obligation to give me notice that he was going to raise it today at the hearing, but he could have perhaps, we could have reached some or other arrangement about being informed about this formally and then given an opportunity

to respond. But we are where we are now, so that is water under the bridge, I suppose.

CHAIRPERSON: Ja, I was going to say, why is it that the informal advice cannot serve the same purpose as written advice?

MR PREMHD: Well, I suppose the, the... Because my learned friend is not the witness, so when my learned friend, and neither am I. So when my learned friend says to me, you know, these are the core of the allegations, it might
10 turn out that some or other detail about that is going to change or not change, and there should never be a dispute between my learned friend and I as to what he said to me or what he did not say to me. I mean, if my complaint is at this point only boiling down to housekeeping about the form of communicating the information, I accept that that might not be an issue which needs to detain the Commission.

CHAIRPERSON: The issue, as I understand it, is not so much about the interaction between the two of you. It is about Mr Carrim addressing what we are told has since
20 been discovered.

MR PREMHD: Yes.

CHAIRPERSON: So the focus is less about the interaction ...[intervenes]

MR PREMHD: Exactly.

CHAIRPERSON: ...between the two of you.

MR PREMHD: Exactly.

CHAIRPERSON: And the point being, if indeed it is true that Mr Carrim was at some food outlet, out of town, I think reference was made to his vehicle or vehicles, I am not sure now whether one or two or more. So the point is, when you apply for the postponement, why is it, or rather when he, Mr Carrim, applies for the postponement, why is it that he should not, in the application for a postponement, deal with those? If he says, I was never out of town, I was never at
10 this alleged food outlet, and therefore my medical certificate stands, and it is to this effect, nothing has changed. I do not see what the hurdle is in Mr Carrim dealing with new information on that basis.

MR PREMHD: Agreed, but I think that is also, I am sorry, Chair, may I respond?

CHAIRPERSON: Yes, please.

MR PREMHD: Thank you, Chair. But that is the point, with all due respect, is that remember when we arrived here in front of you today, it was on the basis of what was known
20 before my learned friend disclosed the new information. But now what is happening is new information is being introduced, which may need to be dealt with to justify future postponement, but the basis upon which we are here in front of you today is the different historical facts, not the new facts introduced now.

CHAIRPERSON: But that is exactly why Mr Carrim is being afforded an opportunity, and it is not as if Mr Chaskalson is saying, and we want Mr Carrim to deal with this now, and that is it. Mr Chaskalson is suggesting to the Commission that Mr Carrim must be afforded an opportunity to file an application slash affidavit, dealing with these developments. So in the light of that, I would suggest to you, subject to what you say, in the light of that, it should not matter much what you originally came here for today. Things have
10 changed, and because things have changed, Mr Carrim is being afforded an opportunity.

So unless other submissions are made, I do not see what the unfairness to him would be. Mr Carrim, because of these developments, bring an application, which will be heard on Friday at whatever time, it could even be in the afternoon, and deal with these developments. Tell us why you are not able, for example, to provide the Commission with the information it required, or to give the necessary instructions to whoever may do so, to give the Commission
20 that information.

So in that application, he must deal with all of that ...[intervenes]

MR PREMHID: That is why...

CHAIRPERSON: ...and that is one issue, as I understood Mr Chaskalson being, this information was requested a long

time ago, and Mr Carrim has not provided it on the basis that he is not well. Now, these developments referred to by Mr Chaskalson, at face value, suggest that Mr Carrim is going on about his life. That raises the question, if that be so, and underline if, if that be so, how can it be that he is not able, either himself to furnish that information, or to do so through others, and he is afforded an opportunity to respond and say, I cannot, I simply cannot, and to do that, and to move the application on Friday. I am not saying that
10 is what we are going to rule, but that is what Mr Chaskalson is submitting should happen.

MR PREMHID: Yes, Chair, and I accept that. That is why I placed manner and form no higher than a concern, rather than using that favourite A word of ambush, and also claiming trial prejudice and fair trial rights. I was, with all due respect, simply placing on the record a more subtle concern from my client. That is all, and that is why I have resisted putting it higher than that.

May I just say that in respect of the face value
20 concern and the timing of the evidence and the way Chair posits to me what Mr Chaskalson put to you, Chair, you have already heard me on that page 128 paragraph of the bundle as the explanation, but in so far as the, and this is now ...[intervenes]

CHAIRPERSON: Please take me to the relevant lines of

the first paragraph, the first substantive paragraph, not the intro.

MR PREMHD: Yes, the first substantive paragraph is about whereabouts, so that is inability to attend, to use my learned friend's phrase.

CHAIRPERSON: In respect of the second paragraph.

MR PREMHD: Yes.

CHAIRPERSON: You referred us to specific lines.

MR PREMHD: The explanation, yes.

10 **CHAIRPERSON:** Specific lines.

MR PREMHD: If you look at the second sentence beginning on line two.

CHAIRPERSON: Starting 'after'? We are not going to read it.

MR PREMHD: No, no, we are not going to read it.

CHAIRPERSON: Is that the one starting 'after'?

MR PREMHD: No, 'given'.

CHAIRPERSON: Oh, given.

MR PREMHD: On my side, I have 'given'.

20 **CHAIRPERSON:** Oh, oh, okay, okay. All right, all right.

MR PREMHD: I am indebted to Commissioners Baloyi and Khumalo.

CHAIRPERSON: I thought you referred to the first paragraph as well.

MR PREMHD: Yes.

CHAIRPERSON: So I had no problem at all with the second or the last paragraph.

MR PREMHD: Yes.

CHAIRPERSON: So what I was raising with you was please direct me to something on the first paragraph. So are you saying you said nothing about the first paragraph?

MR PREMHD: Chair, just to be clear...

CHAIRPERSON: The first paragraph starting 'Mr Carrim'.

MR PREMHD: Well, the problem is they both start Mr
10 Carrim.

CHAIRPERSON: Oh, let me look. 'Has been', the big paragraph.

MR PREMHD: Yes, there.

CHAIRPERSON: 'Mr Carrim has been'.

MR PREMHD: The 'has been' paragraph, if we can call it that.

CHAIRPERSON: Do you have lines you want to refer to?

MR PREMHD: No, no, no. The 'been' paragraph is the whereabouts explanation.

20 **CHAIRPERSON:** Okay, okay.

MR PREMHD: And if I have to point you to particular lines, I would say from the date mentioned in 3 running on to 4 as it continues. And then there is an explanation there which I do not need to go into.

CHAIRPERSON: Okay, okay.

MR PREMHD: And then in the second paragraph.

CHAIRPERSON: Yes.

MR PREMHD: The 'remains' paragraph, not the 'been' paragraph. In that paragraph, I would ask you to look at the second line, the second sentence starting 'given'. And I would say that... I would say that second sentence which runs on to line four ending before the word 'his', is the critical one regarding inability to explain. The third sentence which starts 'his present', that also adds colour,
10 but the critical one is the sentence I have highlighted.

So that is the face value explanation. That is the response to Chair's point about face value and explanation. But Chair, can I, on my last, my fifth point, I said to you five points briefly. It is not that brief, but fifth point briefly is the timetable. I have heard my learned friend where he is given two options for the timetable. He says 10 o'clock tomorrow, reply by six o'clock Friday, 9.30 for argument. Alternatively, if I am not mistaken, he said 17h00 tomorrow, 10h00, they will respond the next day on the Friday, I think,
20 and then we will argue on the Friday afternoon.

Can I just make two points about that? Obviously, we are in, the first one is obviously we are in your hands regarding your directive and the timetable for the hearing of that application. Before we entered the room, I did specifically ask my learned friend if he would consider our

ability to have that argument next Friday because you will know that in the correspondence, there has consistently been the issue raised about our ability to take instructions directly from Mr Carrim and having to rely on the medical practitioner and the family ad so there might be practically some delays in obtaining the level of specific instructions that we have to now obtain, but as I say, I am in your hands on that. You will direct as you need to direct.

The second point, and I think my learned friend and
10 I have reached an in-principle agreement on this, but if I am wrong, no doubt he will correct me in reply, is that Friday insofar as, I am just using Friday as the placeholder date, Friday insofar as we end up needing to discuss medical conditions, hospitalisation dates, even identity of the medical practitioner and the speciality that they may or may not specialise in, obviously impinges potentially on my client's medical privacy rights and also around causing unnecessary public, in an open sense, public speculation about his state of being or not being.

20 And I have already flagged with my learned friend that we might need to be, because for the exact reason that I cannot read to you what the contents of the medical report actually says, I have to use all these sideways descriptions of directing your attention to content, it might be appropriate for us to have that debate at least, *in camera*,

without the journalists and the outside world reading in to the extent that we need to go into that medical history and the details.

So, never mind the timetable issue, Chair, I think in addition to, if you direct that we have to bring the formal postponement application in the way that it is posited, I am giving advance notice to you as the Chair and the Commissioners and I have flagged it and I have discussed it with my learned friend and he was very understanding, I am
10 grateful, that we might need to then have that as an *in camera* session, so that my client's medical privacy rights are protected and his dignity is not unduly impaired as a result of what information we, as the Commissioners, the evidence leaders and his legal representatives, need to have a frank debate about in a way that still manages to protect him.

So Chair, those are, may I just check with Ms Matlangwane who usually holds the purse strings?

CHAIRPERSON: Yes, yes.

20 **MR PREMHID:** Ms Matlangwane says I have done my job, so it is fine. Thank you Chair.

CHAIRPERSON: Thank you. Mr Chaskalson, any reply?

ADV CHASKALSON SC: A brief reply, Chair. Firstly in relation to the businesses, why I mention the businesses is not to say that these are unlawful earnings or that these

earnings are, you know, proceeds of crime or anything like that. It is to say there is a very substantial business group that is carrying on in the apparent absence of Mr Carrim.

And if the group can carry on in the apparent absence of Mr Carrim, then it is not clear to us why we cannot get, through a simple request from Mr Carrim, details like financial statements of three of those companies in the group, the identity of the auditor of three of those companies who we still have not been able to ascertain
10 from repeated requests to Mr Carrim. So if he can keep his businesses ticking over remotely from his sickbed, he can also issue an instruction that the information that exists external to him can be made available to us. And he has not done that for months now.

The second issue in relation to the medical report is it is curious to hear my learned friend saying we have not impugned the validity of the medical report, because last time we were here you will recall that there was a suggestion on the table that Mr Carrim should make himself
20 available for independent medical examination and we were told, oh no, you do not have the powers to do that. You are not a High Court with powers under the rules. You cannot do that. He will not make himself available without your, you know, and you do not have the power to do that.

So now we are told you cannot examine him, you

cannot get an independent medical report, but when you have extrinsic facts which give reason to doubt that he is unable either to appear or to furnish information that you have asked, you cannot raise them because you are not impugning the medical report. Well, they cannot have it both ways. If Mr Carrim wants to make himself available for our own independent psychiatric or other medical examination, we will do that.

We will do that and we will arrange that an
10 appropriate specialist, dealing with whatever medical conditions he has raised, which range across a very wide spectrum, are investigated and a report is furnished. Finally, I want to emphasise one particular misconception and it is this. Mr Carrim comes here asking for a postponement without making a postponement application. We have information that makes us concerned about the bona fides of his claim to a postponement application.

We are giving him advance notice so that his postponement application can address those issues on
20 which he will have to satisfy the Commission. He seems to proceed from an assumption that he can have a postponement if he wants one and it is for the Commission to show that he should not have a postponement. It works the other way around. He needs to satisfy the Commission and in order to satisfy the Commission he is going to have

to address these concerns that we have raised.

That is why we have raised it and that is why we have raised them informally and that is why we have raised them in advance of a postponement application. In relation to the timetable, we have suggested Friday because we have had a succession of witnesses this week who were scheduled who have not appeared and who are not appearing. So scheduling this postponement application on Friday will no longer interfere with evidence time that we
10 have scheduled.

We have had in fact all five days of scheduled evidence, originally scheduled evidence or four of the five days of originally scheduled evidence this week fall away because of postponement applications. So this Friday is not going to interfere with scheduled evidence time. If we get to next Friday we will interfere with scheduled evidence time. And the debates in relation to Mr Carrim's evidence and appearance and non-appearance have thus far taken up days of Commissioned hearing time and we do not have
20 days to waste. So we want it done this Friday because this Friday currently is a day which is sitting fallow.

As far as the *in camera* concerns raised by my learned friend go, if there are legitimate concerns in relation to privacy, we are happy to accommodate them, but whatever happens in that regard needs to be tailored very

tightly, so that any *in camera* process is confined to that which is necessary to address the privacy concern. Those are our submissions and we would ask that this postponement application be brought on a timetable where we can give the extra time to our learned friends.

They can file their papers by close of business tomorrow. We will respond by 11 o'clock on Friday morning and the postponement can be heard on Friday afternoon.

MR PREMHD: Chair, excuse me, Chair, and may I seek
 10 firstly, as a matter of protocol, may I seek an indulgence to address you on one point that I must respond to that was raised by my learned friend? It is this point about my client cannot have it both ways, about the independent examination on one hand and then subpoena the doctor. You will remember in that general discussion we had the last time it is not one or the other.

My client placed on record that the power of independent examination is open to serious doubt and you will remember I explicitly said, I used the phrase, there are
 20 less intrusive means that are available to the Commission, if there is a doubt about the medical evidence and the subpoenaing of the doctor is one such option. So there is no inconsistency between what I have said to you today and what I have said to you previously and that is as far as I will take it. Thank you, Chair.

CHAIRPERSON: Thank you. On this, mister, oh, sorry, sorry.

ADV BALOYI SC: Mr Premhid, I understood Mr Chaskalson to simply be making the point that you are not correct to say this medical certificate has not, no doubt has been cast on it and all he was saying was we have said he should go for an independent examination. That is the only point I thought he was making.

MR PREMHIID: Then please strike what I have just said
10 from the record, if I was incorrect in my understanding of what my learned friend said. I just wanted to make sure on the record that there is no ground to suggest an inconsistency and that is as far as I will take it. Through you, Chair, obviously. Thank you.

CHAIRPERSON: Thank you, Mr Premhid. I guess there is no need to respond or is there, Mr Chaskalson?

ADV CHASKALSON SC: No, Chair.

CHAIRPERSON: Thank you. Just one aspect. I assume that the several issues you itemised are the sort of issues
20 that would have to go to a ruling or the ruling, or not? Remember, you itemised a few.

ADV CHASKALSON SC: Yes, I have certainly itemised. I am not suggesting they should go into an order, but if they are not addressed in the postponement application, we will ask the Commission to draw its own inferences.

CHAIRPERSON: We proceed on the basis that Mr Carrim, through his legal representatives, has heard the issues that you itemised.

ADV CHASKALSON SC: But just in fairness to Mr Carrim's legal representatives, maybe I should run through them again. And what we were asking for was the dates on which Mr Carrim has been admitted to hospital over the last four months.

CHAIRPERSON: I see the paper is being sorted out and I
10 think when you started, they were not ready yet. Please, Mr Chaskalson.

ADV CHASKALSON SC: The dates on which Mr Carrim has been admitted to hospital over the last four months. The dates on which Mr Carrim has attended medical consultations over the last four months. His travel movements over that period. How he travelled to Cape Town in the last week, or beforehand, if indeed he has travelled to Cape Town.

And it seems that he has travelled to Cape Town,
20 because one of the medical reports speaks to hospitalisation in Cape Town. Whether Mr Carrim has attended social engagements over the last four months, whether he has played a role in the management of his business over the last four months. And if not, who has been responsible for the management of his businesses.

MR PREMhid: Chair, as a clarity, I think Mr Chaskalson's extension of the travel arrangements covers Commissioner Khumalo's supplementation of the original list, so to speak.

ADV KHUMALO SC: Let me just clarify where it comes from. In his presentation, Mr Chaskalson said they have information that he has been travelling from the North West. So I know that there is no airport in the North West. So unless he drove to Cape Town, I am assuming he would have flown from either OR Tambo or the other airport. I
10 cannot remember what it is called for now. So that is relevant to me, because if you can give instructions to anybody to book flights for you, then you can give instructions to those who are running the business to provide the detail the Commission is looking for.

MR PREMhid: Yes, thank you. Thank you, Chair and Commissioner Khumalo.

CHAIRPERSON: Perhaps or before, I will give you another chance, Mr Premhid.

MR PREMhid: No, no, no, I was saying thank you for the
20 clarification and the amplification as to the travel arrangements because my learned friend said travel arrangements broadly but Commissioner Khumalo has a specific travel arrangement in mind that needs to then be dealt with. That is what I was saying thank you for. I am indebted to Commissioner Khumalo.

CHAIRPERSON: Thank you, thank you. And Mr Chaskalson, perhaps it is best for you to just give a piece of paper to your colleagues.

ADV CHASKALSON SC: I will do that immediately after this, Chair.

CHAIRPERSON: Thank you.

ADV BALOYI SC: Mr Chaskalson, you have narrowed down his activities, business activities, to management. Can I suggest that it be in the business affairs and not
10 narrow it down to management, because management would suggest, could easily be interpreted as being purely operational. And what we would like to know is what has been his involvement, if any, in the affairs of his businesses. Thank you, Chair.

ADV CHASKALSON SC: I will do so, Commissioner.

CHAIRPERSON: There is the matter of detail around the exact timing about filing, for example. Do not, let us leave you and Mr Premhid to discuss that detail and even the time when the application should be heard. But let me up front
20 say that, the decision I make is for that postponement application to be heard this coming Friday. But the question of when exactly tomorrow the application should be filed, when the answering affidavit should be filed and the exact time at which the application should be heard on Friday, may I ask the counsel to please discuss that? And

once you have agreed, Mr Premhid is excused and Mr Chaskalson can just bring that to our attention, say after lunch and a ruling then gets made.

ADV CHASKALSON SC: Thank you, Chair. We will do that.

MR PREMHD: Chair, may I please just ask a clarity, and I am sorry to do this, but you will remember on the last occasion when I argued for an *in camera* application in front of you, part of my submissions was to say well the horse
10 has already bolted because in trying to justify the *in camera*, we went to the details. I have already flagged the fact that there is going to be a request for *in camera*.

Obviously if the Commission through the evidence leaders opposes that request, that is a different story. I am just flagging now that come Friday it is not just the postponement that might need to be determined. There would also need to be consideration of the *in camera* and how it is going to be argued in front of you in a way that balances.

20 **CHAIRPERSON:** Yes, if in the light of what Mr Chaskalson said, which I thought was quite accommodative, if that would still be an issue, let us consider that if and when it arises.

MR PREMHD: I am indebted.

ADV CHASKALSON SC: Chair, can I suggest something

else? That pending Friday, this Commission issues a ruling essentially stopping speculation about Mr Carrim's medical condition, trying to contain speculation about Mr Carrim's medical condition pending Friday, because the issue is going to be, I do not know how to formulate it, but I do think that there is a risk that coming out of today's hearing, there may be wild speculation in the media. Can I speak to Mr Premhid about that, and when we come back to you with a timetable, we will do that. We will include a proposal in that
10 regard, but it may be, I do not know how we take that further.

CHAIRPERSON: On the last point you made, Mr Chaskalson, may I say please make it part of the discussion and let us see what comes out of that. We are subject to what Mr Louw says. We are minded to take an early lunch and come back at quarter to two. But of course we will hear Mr Chaskalson first, if Mr Premhid will not be coming back for whatever issue, he might still want to address. If there is agreement and there is a draft ruling, then Mr Chaskalson
20 will come back.

MR PREM HID: I am indebted. That is very kind. Thank you.

CHAIRPERSON: I have just been overruled and the suggestion is for us to come back at 2 p.m. We will adjourn and resume at 2 p.m. Let us adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Chaskalson.

ADV CHASKALSON SC: Thank you, Chair. Mr Prehmid and I were happily able to reach agreement relatively easily. I have an agreed ruling. Unfortunately, I have had printing difficulties, so if I might read it out to the Commissioner? The first paragraph is that:

10 “The postponement application is set
down for hearing at 14:00 on Friday, 17
July 2026.”

The second is that:

 “The application will be served and filed
on or before 20:00 on Thursday 2026.”

Third paragraph:

 “The answering affidavit will be served
and filed on or before 11:00 on Friday, 17
July 2026.”

And fourth paragraph:

20 “The replying affidavit will be served on
or before 13:00 on Friday, 17 July 2026.”

CHAIRPERSON: A ruling is so granted.”

ADV CHASKALSON SC: Thank you very much, Chair.

CHAIRPERSON: You are excused, Mr Chaskalson.

ADV CHASKALSON SC: Thank you, Chair.

ADV SELLO SC: Thank you, Chair. I have some technical challenges, Chair. There is a document I need to start with. I have it in my electronic version, and we are trying to locate it in your printed version. If it would help in any way, it is ...[intervenes].

CHAIRPERSON: Commissioner, let me say this. Commissioner Khumalo has a way of finding documents for us. Maybe what you should do is just to describe it sufficiently. He will probably find it for us.

10 **ADV SELLO SC:** That is exactly where I was going, Chair, to tell that it is A32. It is an affidavit by the witness seeking, I think, an arrest warrant. It is A32 in the docket. I have it. I can project it, but we are trying to find the file number and the page number for your purposes so that we work through it. And I have considered all possible clever means of doing so and I must say that thus far, it looks very encouraging with Commissioner Khumalo, Chair.

CHAIRPERSON: Apologies if I have put you on the spot, my colleague.

20 **ADV SELLO SC:** But perhaps while we do so, I wanted to – it is midday. I have not done the preliminaries. My apologies. Good afternoon, Colonel. It is as if we are continuing from morning.

COLONEL PADAYACHEE: Good afternoon, Chair. Good afternoon, Commissioner. Good afternoon, Counsel.

CHAIRPERSON: Good afternoon, Colonel. Good afternoon. Thank you.

ADV SELLO SC: Commissioner Baloyi had some questions for the witness, I think, regarding the section 27. Ja, section 27 affidavit, I think, from yesterday. It was not finished, but I wanted to move from that to jump back to section 27. But perhaps you would allow Commissioner Baloyi to deal with her issues regarding that affidavit. I will come back to it when I come back to it in my plan. That
10 should work.

ADV BALOYI SC: I appreciate how you are using me to buy time, Ms Sello. It is not lost on me. You can start. I will catch up.

ADV SELLO SC: Okay. Thank you. If that is the case, then I would invite the witness to CJC377. We have dealt with this before. It is in File 3, starting at page 681, and that is our A1 statement by Mr Adams. CJC377.

COLONEL PADAYACHEE: Chair, before we continue, may I just come and give some input? I think since yesterday,
20 there were three things that I said I would be guided by you, Chair, on aspects, as we discussed, on confidentiality and the docket which is currently before court. So what I want to bring to Chair's attention, the A1 statement ...[intervenes].

CHAIRPERSON: Sorry, sorry, I made a serious, serious

mistake. Good afternoon, Mr Bodlani, and apologies, apologies for not recognising you or greeting you.

ADV BODLANI SC: Good afternoon, Chair. Good afternoon, Commissioners. And apology accepted. It does not happen every day that the apology comes from that side of the table, but we take it. Thank you.

CHAIRPERSON: Thank you.

COLONEL PADAYACHEE: Thank you, Chair. Can I proceed?

10 **CHAIRPERSON**: Yes, yes, please, Colonel.

COLONEL PADAYACHEE: Thank you, Chair. I think after yesterday's proceeding, Chair, and as the investigating officer in the matter of the, let us call it the Mokwele docket that is before Court. The A1 statement forms part of the docket which is before Court, but I tend not to turn on and look at the media and everything that is going in my preparation, but the A1 statement is all over social media and on that aspect.

20 One thing about the affidavit, it contains the name of the complainants, and I have my concerns that that particular A1 statement is an exhibit and it is a statement that is going to be presented in court, and I am a bit concerned. And that is why I want to bring it to Chair's attention that I am not too sure whether there are further documents in this case file that is also going to be flighted

out there in the public domain when the case currently is before Court.

That is just my concern. And therefore, yesterday, I said I am here to assist the Commission to seek the truth, but at the same time, I have to be cautious that the matter is before a presiding officer in court and these witnesses and myself will have to testify. These are my concerns. Thank you, Chair.

CHAIRPERSON: Thank you, Colonel.

10 **ADV SELLO SC:** Thank you, Chair. I hear the witness's concerns. My concern is I am not clarified as to exactly what the witness is raising because IDAC's counsel is present. And what I think I deduce from what he says is that we should not dig into this particular docket because it is before Court. We are back to that *sub judice* issue. This particular docket is not the one that I indicated we had agreed would be treated with caution because that particular docket is still under investigation.

CHAIRPERSON: Which is docket number three, as I
20 understood yesterday ...[intervenes].

ADV SELLO SC: Yes, and ...[intervenes].

CHAIRPERSON: There is one, two, no problem, and then number three.

ADV SELLO SC: In fact, it is number four.

CHAIRPERSON: Okay.

ADV SELLO SC: There are four of them. One and two are unrelated dockets. This particular one we are dealing with and docket four concern about the same facts or arise from the same facts and I think it is common cause that they concern General Khumalo.

So docket four, the witness touched on it very briefly yesterday, and that is the docket that carries this particular caution that because that one is still under investigation, we should tread carefully. This current
10 docket is the one, the charges for which General Khumalo and other members of the panel were arrested, have appeared in court, are on bail.

And we confirmed that there are no further investigations in that matter. The docket in its entirety has been fully disclosed to the accused to prepare for the criminal trial. It was on that basis that it was decided that they will not pursue the confidentiality rights insofar as this particular docket is concerned.

So if that is where we landed yesterday, that we will
20 not apply confidentiality to this, how I understand the witness, the witness is raising a *sub judice* point, precisely the point that IDAC yesterday said it was no longer pursuing. That is why I say how to deal with it perhaps, I would require to get a better understanding because now I am in a space where the witness is reviving an application

that has been disposed of on the basis as we mentioned to the Chair yesterday and he placed on record.

So is he reasserting the *sub judice* rule to this docket? If not, is he invoking the right to confidentiality to this particular docket, in which event then we would have to have a full-blown argument as to why confidentiality attaches to this document. But at the same time, it is unfair for me to have that debate with a witness because it is a legal debate in circumstances where it is represented. So
10 maybe Mr Bodlani would like to come in and explain where we land. Do we reopen that application for argument or what do we do? Thank you.

COLONEL PADAYACHEE: Chair ...[intervenes].

CHAIRPERSON: Thank you, thank you, Ms Sello. Colonel, I was going to invite Mr Bodlani to be the person who addresses us on this issue. I do not know whether before raising the issue you had alerted him to the fact that you were going to be raising the issue. I do not know. Perhaps let me hear from Mr Bodlani.

20 **ADV BODLANI SC**: Thank you, Chair.

CHAIRPERSON: Yes.

ADV BODLANI SC: I do not understand the concern raised by the witness to be an invitation to the opening of a debate that we have had with our colleague and have closed it in the manner that we have. Indeed, I gave counsel before

these proceedings resumed this afternoon. The concern, as I understand it, is the documents being made public. I think it is the flighting of the documents, not that questions on the document cannot be asked. That is not what was referred to me by the witness.

So him being asked questions on the documents, it is something that he accepts has got to happen because otherwise we would be hindering this Commission from doing the very duties that it has to discharge. But his
 10 concern was, as indicated to me, the documents now being available out there in circumstances where some people are still going to deal with them in court. That is what was relayed to me. Not that our colleagues should not ask him questions about the documents.

CHAIRPERSON: All right. If some of the questions, because I heard the Colonel even refer to names of people, there is names that may be appearing on the documents. How should the documents be treated? Should there be a need to refer to the names in a context where it is quite
 20 clear that that is based on the content of the documents? How are we supposed to deal with it?

ADV BODLANI SC: It is a difficulty. I have tried to consider it with my colleague, Mr ...[indistinct] but we could not come up with a mechanism because, indeed, one cannot say this is a linear process where one can put a blanket

statement and say there shall not be reference to names. There are going to be circumstances where the context suggests that reference must be made to a particular name.

For instance, if one speaks about the A1 statement, for instance, somebody deposed to it, it is there. And one is not going to be able to speak about the A1 document without speaking about the person who deposed to it ...[intervenes].

CHAIRPERSON: And sometimes even the point being
10 made may only make sense if specific reference is made to the person.

ADV BODLANI SC: Indeed, indeed.

CHAIRPERSON: Ja.

ADV BODLANI SC: The A1 statement being, for instance, a case in point. I am in the hands of the Commissioners, really. There is no mechanism that we could come up with as to how do you deal with circumstances such as this, especially, for instance, the docket that we are dealing with. We know that it has been discovered. It is out there. The
20 accused have had access to it.

CHAIRPERSON: If I may ask what – is this the same one? Is this the same one we dealt with yesterday?

ADV SELLO SC: Confirm, Chair, it is.

CHAIRPERSON: Ja. What Ms Sello has done is to refer to page 61 thus far, or 681, I am sorry. 681.

ADV SELLO SC: 681, correct, yes.

CHAIRPERSON: Yes. And we have been dealing with this document backwards and forwards. So I do not quite understand how the issue arises all of a sudden today. There is the Colonel's concern. I know it is not your concern, the Colonel's concern. We dealt with this document backwards and forwards yesterday, and we referred to – was it in this one? Yes, there is reference to names here.

10 But, of course, in paragraph 3, that is reference to the people that were being investigated. But with regard to just this one document, I do not quite get it what the issue would be or what the concern would be.

ADV BODLANI SC: I follow you, Chair, because insofar as the document that appears at page 681, to the extent that we went in and out of it yesterday and mentioned names, there is no undoing that.

CHAIRPERSON: Yes.

ADV BODLANI SC: There is no taking back, for instance,
20 reference to a Mr Adams.

CHAIRPERSON: Yes.

ADV BODLANI SC: So, I do understand what you are putting to me, that how does it arise, because it is not a new document.

CHAIRPERSON: Yes.

ADV BODLANI SC: I, again, understood that concern, perhaps, even though I am not able to proffer to you a solution to the concern. To be referring to not necessarily this document, but further document, but your concern is where context dictates that reference must be made to a particular name, how does the Commission deal with it? I am not able to proffer assistance, unfortunately, to you.

CHAIRPERSON: Ja.

ADV BODLANI SC: But insofar as the document before
10 you now, if, for the lack of a better word, damage has been done, damage has been done, there is no undoing it now.

CHAIRPERSON: Thank you, Mr Bodlani. I do not know if you want to respond.

ADV SELLO SC: Yes.

CHAIRPERSON: My inclination is to rule that we continue as we did yesterday. We are not talking about any other document. It is a document that we engaged with at length, you, my co-Commissioners, and me. We dealt with the document at length. So I just do not follow what the
20 concern should certainly be.

ADV SELLO SC: I would agree, Chair, on the basis that the Chair posits that the horse technically has bolted on this particular document, but I have a bigger concern. There are a lot of documents in that particular docket I want to deal with, and that is the question that I need addressed.

Is the *sub judice* rule going to apply to them? Is confidentiality being asserted over those documents? And if so, I need to know how they are intended to be treated.

CHAIRPERSON: Perhaps let me ask this question of Mr Bodlani. Mr Bodlani, it is so, as Ms Sello says, that this particular docket does not fall or is not the one about which we were told yesterday. There must be caution in dealing with it. This document falls under the first category, which is those dockets will be dealt with as the Evidence Leader
10 pleases, as it were. I am putting it very loosely. No issue, no concern about that category of dockets.

ADV BODLANI SC: And I stand by the representations that were made here on day one.

CHAIRPERSON: Yes. So no issue about this specific docket. It falls under the category in respect of which you said no issue there.

ADV BODLANI SC: Maybe I should start here. The difficulty we have is we represent an institution that has lawyers in it and there is obviously going to be varying
20 views here and there, regardless of the counsel that one gives.

CHAIRPERSON: Yes.

ADV BODLANI SC: But insofar as what we presented here on day one as to the treatment of the documents, we stand by that. The documents, in our view, that are affected by

the *sub judice* rule are as identified by the Evidence Leader. That remains the position. We stand by that.

CHAIRPERSON: But you agree that this one is because there was a separation of the documents. There was one document in respect of which we were told caution must be exercised.

ADV BODLANI SC: Indeed.

CHAIRPERSON: Docket, I think I said documents, docket. And there was just one. And the rest, there was no issue
10 there and I called upon you to confirm and you did.

ADV BODLANI SC: Indeed.

CHAIRPERSON: So ...[intervenes].

ADV BODLANI SC: And I stand by that confirmation.

CHAIRPERSON: Ja, that is how we should deal with it. If this falls under the category in respect of which there is no issue, let us deal with it on that basis. And it should not matter whether IDAC has lawyers, as Mr Bodlani said. That should not matter. Thing is, when Mr Bodlani came, we assumed that he had instructions. And based on those
20 instructions, he adopted the position that he did on the first day of the hearing. And we should proceed.

ADV BODLANI SC: On that basis?

CHAIRPERSON: Yes, along those lines.

ADV SELLO SC: For avoidance of doubt, Chair, and just to be clear, we are proceeding with the docket on the basis as

we concluded yesterday morning.

CHAIRPERSON: Yes.

ADV SELLO SC: So no confidentiality attaches. There are no restrictions to what I can extract publicly from that docket. That is very key.

CHAIRPERSON: Yes, yes.

ADV SELLO SC: Because our hearings are public, anything that is ventilated in this room must be done so publicly. That includes flighting the documents that is part
10 of the public hearings, unless confidentiality is asserted in terms of Rule 10(4). So we cannot be between seats. And as I understand Mr Bodlani, I think I agree with him that we had a decision yesterday. There are no restrictions absolutely on this docket, except the usual POPI Act. Yes.

Otherwise, we deal with it as it is necessary. That is how I structured how I am dealing with the testimony of this witness. The witness seems to want to backpedal that and assert some level of confidentiality without necessarily invoking Rule 10(4) in its entirety. So if that is where we
20 land and IDAC's counsel and I are clarified as to the position regarding this particular docket, then perhaps I will call upon the Chair to explain to the witness.

CHAIRPERSON: Ja. I think based on what Mr Bodlani said, the issue is resolved. I will just say, purely as a matter of courtesy to the Colonel, you have legal

representation. If you have issues or concerns, you should raise them with your legal representatives before we come in so that submissions are made by your legal representatives. We cannot have a situation where you address us on legal issues when your legal representatives are here.

So from where I am sitting, the issue is resolved and this is not anything new. It is on the basis of what was agreed yesterday and I would assume that you were part of
10 the agreement or you or IDAC gave instructions in that regard. So from where I am sitting, the ruling is that we proceed.

COLONEL PADAYACHEE: Chair, may I respond?

CHAIRPERSON: All right, let me ...[intervenes].

COLONEL PADAYACHEE: Thank you, Chair. Let me set the record straight first, Chair.

CHAIRPERSON: Yes.

COLONEL PADAYACHEE: We are here for a purpose and that is to assist the Commission.

20 **CHAIRPERSON**: Yes.

COLONEL PADAYACHEE: And to get down to the truth of what is there.

CHAIRPERSON: Yes.

COLONEL PADAYACHEE: When my concerns have been relayed to counsel, they are aware. My concerns was also

during the consultation process given to the Evidence Leader, and that was that the matter, the docket is currently before Court. So what I want to say, I do not want to come across like we want to hide anything.

So when we started the process yesterday, there was no problem and I said, Chair, if you will remember, I will be guided by you because as the Chair, you would know where the docket, entry into the docket has been, you know. We will probably have prejudice in it.

10 My concern is that the A1 statement was flagged and it was posted all over social media. So we have dealt with the A1 yesterday and the questions that were asked there, which I responded to uncomfortably. But the main thing is, what other documents are going to be ...[intervenes].

CHAIRPERSON: How these documents get onto that platform has everything to do with the fact that they are being flighted, and they are being flighted because no confidentiality attaches to them. That was our
20 understanding. That was what was said at the beginning of the proceedings yesterday, and they were dealt with fully in open session yesterday.

So I would not understand why there should suddenly be an issue just because they happen to be out there on that platform. That is social media. We have no

control over that. Once they are public, they are flighted here, people can grab them and do with them whatever they will.

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: So you either claim confidentiality and say the documents should not be flighted, which has not been done here. There has been agreement that they can be flighted publicly, they can be dealt with publicly. So, or you could have said, no, no, no, they should not be, I am
10 claiming confidentiality for A, B, C, D reasons, and then the Commission would decide whether or not it agrees with what you say. That is not what happened. So I cannot understand why at this late hour you should be raising the issue that you are raising just because you happen to see the documents on social media. It cannot be.

COLONEL PADAYACHEE: I understand, Chair.

CHAIRPERSON: Yes.

COLONEL PADAYACHEE: But what I am saying is that ...[intervenes].

20 **CHAIRPERSON**: Can we please move on? If you want us to adjourn, I can give you five minutes for you to adjourn. We cannot be addressed by your legal representatives and by you on a legal question which should have been resolved between you and your legal representatives.

COLONEL PADAYACHEE: May I give ...[intervenes].

CHAIRPERSON: You give instructions. You give instructions to your legal representatives. We cannot have you – Mr Bodlani has said there is no issue with this. You are suggesting that there is an issue. What do we do? Do we reach a decision between contradictory positions placed before us by you on the one hand, and by your legal representatives on the other hand? That is the most awkward situation I have ever seen. If you want us, we can go out for five minutes and come back once we have been
10 told to come back.

COLONEL PADAYACHEE: Could I request that adjournment for five minutes, please?

CHAIRPERSON: Yes. We will come back when we are told to. Let us adjourn.

COLONEL PADAYACHEE: Thank you, Chair.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Bodlani?

ADV BODLANI SC: Chair, thank you very much for the
20 indulgence, it is much appreciated. We went beyond the five minutes that we had requested. An apology this time is to come from this side of the table, we apologise for that. We have had time with Mr Padayachee and explained how the process works.

In fact, it was not the first time that we did so. He

understands why we are currently where we are. There is no dispute about the fact that the docket in issue is with the accused. Nobody knows what he is doing with it. Nobody knows to whom has he revealed whatever content is there, and we have tried to explain those concepts to him and how they impact this process and why it is not available to claim confidentiality *sub judice* and so on. He is ready to testify and he is going to answer questions that are put to him on the docket. Thank you.

10 **CHAIRPERSON**: Thank you, Mr Bodlani.

ADV SELLO SC: And I, too, must extend my gratitude to my colleague, Mr Bodlani. I am happy that we could at least find common ground on this issue. It will facilitate our going forward. It is a pity that we have lost the time we have had, But I believe that going forward, it will be a smoother run now that these issues are clarified. Thank you, Chair. Mr Padayachee, I must thank you as well for engaging with your legal representatives and for facilitating that we reach the point that we have. Thank you.

20 **COLONEL PADAYACHEE**: Thank you, Counsel. As I indicated, we want to work together and to cooperate, but I cannot keep something inside when it comes to the witnesses. I had to lay it down, but I understand now, Chair, and we can carry on.

CHAIRPERSON: Thank you.

ADV SELLO SC: Thank you so much. I had said we will start at CJC377, which will be in your File 3, starting at page 681. That, as I indicated, is the A1 statement in this matter that we engaged with yesterday.

COLONEL PADAYACHEE: File?

ADV SELLO SC: File 3. You found it?

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Thank you. And I think it is necessary that perhaps I give you a sense of where our engagement
10 today, until it ends, where I am trying to get to so that the Commissioners can have the right understanding and to draw conclusions that they will in time do so on the basis of fact. So I bring us to this document, because for purposes of your investigation, this is the start point. Do you confirm that?

COLONEL PADAYACHEE: Yes, Chair.

ADV SELLO SC: Thank you. So we will be looking at where you started up to where you ended with General Khumalo, General Lushaba, and Madondo being criminally
20 charged. So those are the two end points. Then we will work through the steps until we get to the end. That is the ultimate purpose of the next exercise.

So then if we, on this document, on CJC373, if you could turn to page 683. You are now 681. Just go to 683 and we looked at this document yesterday, and we agreed

that the issues raised in the A1 are in truth at paragraph 2 and paragraph 3. Because paragraph 1 introduces who the deponent is, and paragraph 4 contains the views expressed by the deponent insofar as the contents of 2 and 3 are concerned. And the last one just simply confirms that he does not have an objection to taking the oath. So the middle of this document is 2 and 3.

My reading, and I want to test with you, is paragraph 2 as couched, which speaks of involvement of
 10 these high-ranking police officials in the manipulation of promotional and security vetting processes to unduly benefit a civilian person. My reading of that is that it speaks to potential criminal activity. Would you agree with me?

COLONEL PADAYACHEE: It is correct.

ADV SELLO SC: Then I go to paragraph 3. Paragraph 3 speaks to highly skilled and qualified senior police officers who applied for the post being overlooked by the CI management who favoured Ms Mokwele over them.

COLONEL PADAYACHEE: Correct.

20 **ADV SELLO SC**: Now, I analyse that to be definitely not criminal, based on the facts stated there. It sounds more like a HR complaint. Would you agree with me?

COLONEL PADAYACHEE: I agree ...[intervenes].

ADV SELLO SC: Or do you consider those allegations to point to criminal conduct?

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Please.

CHAIRPERSON: I wanted you to please start because you spoke over each other.

ADV SELLO SC: Okay. We are now in paragraph 3. We have agreed as to the allegations in 2, what they potentially point to. I say, from what is in 2, that points to potential criminal conduct.

COLONEL PADAYACHEE: That is correct, Chair.

10 **ADV SELLO SC:** Okay. Then I turn my attention to paragraph 3. I say:

“The deponent states that he was informed that there were several highly skilled and qualified senior police officers who applied for the post but were overlooked by the management who favoured Ms Mokwele over them.”

Now, I say my interpretation of that is this particular paragraph speaks more to HR issues regarding promotions
20 and appointments and does not suggest any criminal conduct as worded. I am checking whether that is your understanding, or do you see criminal conduct in paragraph 3?

COLONEL PADAYACHEE: When you look at paragraph 3 in isolation, it talks about it is like an HR, somebody that

did not get promoted or was overlooked for promotion.
Paragraph 3 only.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: But when you take paragraph 2 and paragraph 3 and you put it together, it flows from paragraph 2 that something took place and as a result, people that were more qualified did not get that particular post. But when you look at paragraph 2, paragraph 2 is telling you that there is possible criminality here.

10 **ADV SELLO SC:** Yes.

COLONEL PADAYACHEE: Paragraph 3 is just something that flows out. It is not so much of a focus because it is other people that did not get promoted. This is not about other people that did not get promoted. This is more about criminal conduct in paragraph 2, possible criminal conduct.

ADV SELLO SC: I see where you are going with this, but I would like to draw your attention to the wording. Paragraph 3 speaks to people being overlooked.

COLONEL PADAYACHEE: That is correct.

20 **ADV SELLO SC:** So, you understand paragraph 3 to mean that what is contained in paragraph 3 is a consequence of paragraph 2 and that cannot be because they were overlooked. It is not like they did not get the position as a result of the manipulation of promotion and security vetting. Is that how you – you say it is a consequence?

COLONEL PADAYACHEE: Chair, when I look at it, okay, there is an appointment and this appointment here stands out that there is possible criminal conduct here on what I am getting out of here. But with the appointment, all these, the appointment, the other people that applied, what the whole thing was about is an allegation of the person here being criminality in the appointment of an applicant.

So, that is why I would not separate the 3 from 2. I will take them all for purposes of the allegation so that
10 when I look at this and I start to prepare myself, I am requesting documentation. The documentation that I will request is all the documentation in respect of the post together with all the applicants, all who applied for the post. So, that is why I take 3, what 2, because when I do my investigation process, I am going to request documentation for the appointment.

ADV SELLO SC: Then on your understanding, we read 2 with 3 to conclude that there was criminal conduct that resulted in what at first blush might seem to be a purely HR
20 issue.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Would that be a fair summary?

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: But the criminal element is there and the sting is in paragraph 2.

COLONEL PADAYACHEE: Yes. Chair, just to make sure, if you look at paragraph 3 on its own isolated, it is HR. But when you put it together with your paragraph 2, it flows from your paragraph 2 because it is not one person. It is other people that applied for the post too as well that you are bringing together now when you conduct your investigation.

It means that I am not going to ask for the appointment particulars of the applicant. I am going to ask
10 for the whole process, if I am coming across more clear. When you look at paragraph 3 just alone, if there was no paragraph 2, it is HR.

ADV SELLO SC: Can we path and land here? It would appear at first reading to be an HR issue with some elements of criminal conduct. Would that be fair? Or is it both together is criminal? I have no particular preference. I just want to have your understanding.

COLONEL PADAYACHEE: For me, paragraph 2 is an allegation of criminality.

20 **ADV SELLO SC**: Yes. Okay. Then we start with this crime that you see in paragraph 2. We know where we land because we land in your submitting an affidavit in support of an application for a warrant of arrest. Now that, Commissioner Baloyi, is in File 6. That is the affidavit that I could not find in the hardcopy files but only on my

electronic version. It is File 6, please, at page 2373. Yes, Commissioner?

ADV BALOYI SC: Before you start with this document, let me just ask something about paragraph 2.

ADV SELLO SC: Yes. 2373.

ADV BALOYI SC: Colonel? Colonel Padayachee, I am here.

COLONEL PADAYACHEE: Sorry, Commissioner.

ADV BALOYI SC: Yes. Before you get to this 2373, let me
10 just clarify something about what you were discussing now with Ms Sello.

COLONEL PADAYACHEE: Sure.

ADV BALOYI SC: In that paragraph 2 of the A1 statement, what do you say, and I need you to say this and that and that, what do you say is the offence constitutes a crime in that paragraph 2?

COLONEL PADAYACHEE: Commissioners, Chair, Commissioners, these unlawful appointments, it is not something uncommon, but what people do not understand is
20 that when you appoint somebody and you give them a gratification, the giving of that appointment or employment and the receiving of that employment amounts to corruption in terms of the Corrupt Activities Act.

ADV BALOYI SC: Okay. You are moving too fast here. You are wanting to enter a discussion that is still going to

happen.

COLONEL PADAYACHEE: Yes, yes, yes.

ADV BALOYI SC: We will still get to that topic. I am looking at paragraph 2, and this is the paragraph in the document that gets you started, right? That is what you have received. So you proceed with your investigation based on what you receive in this paragraph, and I am asking for you to now engage in an investigation looking at this paragraph 2, and I am going to point out certain things
10 and see whether is that what you consider to be a crime.

So the deponent, Mr Adams, says that the allegations relate to certain high-ranking police officials being involved in manipulating promotional and security vetting process to unduly benefit a person, a civilian. So I am trying to find out from you, did you consider the crime to be the undue benefit, one? Two, it is a crime because they are benefiting a civilian. It is a crime because she had no prior policing experience. It is a crime that she had no management experience.

20 I am trying to bear it down so that I understand what, in fact, did you consider to be the crime that then results in you applying for the warrant that you are going to be discussing.

COLONEL PADAYACHEE: Commissioner, when you look at it, you do not just look at it because she is a civilian or

anything. I look at it that, in the circumstances of what is here, the allegation, that a person has been appointed or given an employment with, you know, for a better word, has been appointed irregularly, although the irregularity comes up like HR type of a thing. So you are looking at the appointment of a person from BMW, first of all, and ...[intervenes].

ADV BALOYI SC: Is that part of the problem? That ends my question. Is part of the problem that, and you can list
10 the others. I just want to make sure that we are on the same page. Part of the problem that constitutes this offence with other facts is they are appointing someone from an external company.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: We do not need to mention the name.

COLONEL PADAYACHEE: Yes, yes. I think the first thing is that it is, let us start with the starting point. This is Crime Intelligence. This is a specialised component. It is a component that I have experience in and where I have
20 worked, and it is Crime Intelligence and appointing a civilian or a person from the outside Crime Intelligence into, let us leave civilian, appointing a person outside Crime Intelligence into a highly specialised environment.

So these are the small flags that, you know, that comes to my notice. So that is the first one that I can

explain to you. And when you look at the Crime ...[intervenes].

ADV BALOYI SC: But you are not saying that is a crime. Are you saying the fact – because remember, I am still trying to understand what is the crime that gets you started or the allegation of a crime that gets you started to conduct an investigation. Are you, from what you have said now, are you saying it is a crime that they are – it is an indication of a crime that they have appointed someone from outside?

10 **COLONEL PADAYACHEE:** No.

ADV BALOYI SC: Okay.

COLONEL PADAYACHEE: We are just talking about the appointment as a whole, whether it is from outside, whether it is from inside, the unlawful appointment of a person, which for me ...[intervenes].

ADV BALOYI SC: Okay, at this point ...[intervenes].

COLONEL PADAYACHEE: Ja, that is the point, the unlawful appointment ...[intervenes].

ADV BALOYI SC: Okay, our language is very important.
20 The appointment is not yet set aside as matters stand, right? It has not been declared unlawful yet, the appointment.

COLONEL PADAYACHEE: Well, when it ...[intervenes].

ADV BALOYI SC: It is not been set aside ...[intervenes].

COLONEL PADAYACHEE: Ja, it is an allegation initially.

ADV BALOYI SC: Okay, yes.

COLONEL PADAYACHEE: That needs to be investigated to determine whether it is indeed unlawful or is it just from the flow of paragraph 3, somebody here that is reporting something because they are unhappy they were not promoted. So it is an allegation first that needs investigation ...[intervenes].

ADV BALOYI SC: But that in itself is not an offence, that they have appointed someone from outside. In itself, it is
10 not an offence.

COLONEL PADAYACHEE: No, that would not be an offence, just appointing somebody. It needs your investigation, it is an allegation until you can see. So when I look at the paragraph 2, it is an appointment and it is an allegation, which draws my attention to investigate.

ADV BALOYI SC: Okay. So that is it? That is all that drew, that made you think there is an offence here, possibly an offence.

COLONEL PADAYACHEE: Yes.

20 **ADV BALOYI SC:** It is that it was an appointment of someone from outside.

COLONEL PADAYACHEE: It is not, as I said, Commissioner, it is an alleged unlawful appointment. As I say, it does not matter whether it is from inside, whether it is from outside, it is an alleged unlawful appointment of a

person with no experience.

ADV BALOYI SC: Okay, thank you.

ADV KHUMALO SC: Just one question. I do not want to go into detail. Do you accept that in this specific case, the advert invited outsiders to apply for the post? So it was not an internal advert limited to people within Crime Intelligence. So even I could apply for this position.

COLONEL PADAYACHEE: Chair, Commissioner, at the moment, at that time, I did not have a copy of the
10 advertisement.

ADV KHUMALO SC: Sitting here now, do you accept that the advert invited outsiders to apply for this position?

COLONEL PADAYACHEE: That it was advertised externally, I got to know when I received the documents, Chair.

ADV KHUMALO SC: So sitting here now, do you accept that ...[intervenes].

COLONEL PADAYACHEE: Sitting here now, I confirm that the advert was an external advert ...[intervenes].

20 **CHAIRPERSON:** Sorry, sorry. Colonel, you must wait.

COLONEL PADAYACHEE: Thank you, Chair.

CHAIRPERSON: Do not speak over a Commissioner or even Ms Sello. We will have serious transcription problems, please.

COLONEL PADAYACHEE: Understood. Apologies, Chair.

ADV KHUMALO SC: Colonel, it is a simple point. I am not talking about in 2024, although that is the fact I am referring to. You are sitting here now giving evidence. Sitting here now, do you accept that the advert that led to the appointment of the Brigadier invited outsiders to apply?

COLONEL PADAYACHEE: That is correct. It is an advert.

ADV KHUMALO SC: Yes. So if an outsider did apply, limiting ourselves to that question only that it was an outsider who was appointed. There is nothing untoward
10 with that because that was the whole point of the advert, that outsiders are invited to apply for this position.

COLONEL PADAYACHEE: Yes, Commissioner.

ADV KHUMALO SC: Yes.

ADV SELLO SC: Thank you, Commissioners. I had understood, perhaps I had misunderstood you. I thought this thing of paragraph 2, to constitute criminal conduct, lies in the act of manipulation. Did you so understand it as well? Because that is what I thought you had agreed with me about, but from the engagement with the Commissioners
20 it would appear that perhaps I did not understand you correctly.

Just so we are clear, what did you say is the criminal act in 2? I thought you and I had agreed that it is manipulation, but you seem to now hold a different view. Just to clarify, what is the criminal act? Remember, avoid

or resist the temptation to go forward and claim information you subsequently acquired. As you read it, the words in front of you, in which word of those many lies the criminal conduct?

COLONEL PADAYACHEE: Chair, Commissioners, I am going to respond like this.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: Is that when you look at the allegation, an appointment with no experience, et cetera, et
10 cetera, remember that this is an allegation and it is a preliminary investigation. Initially, when you look at it, unlawful appointment, what comes up with an unlawful appointment? An unlawful appointment could be a gratification, but first you have to ...[intervenes].

ADV BALOYI SC: But you do not have that on this affidavit. Remember, we are still here at this affidavit where the allegation is there has been an appointment of an outsider with no police experience, no management experience, at least that you have been told by this
20 affidavit.

There is no suggestion. This affidavit does not say to you there is gratification. It does not, and I would have been surprised if the deponent said that because then one would have to ask, what more do you know? But as it stands here, it does not speak to gratification. And you

captured it correctly. You say there is an irregular appointment. That is the allegation. It is an irregular appointment.

The irregularity that you are told here is that they manipulated the processes in order to benefit an outside person, unduly benefit, that is the language used. They appointed someone with no policing experience and no management experience. That is what this affidavit tells you.

10 **COLONEL PADAYACHEE**: Yes.

ADV BALOYI SC: So when you start talking about matters of gratification and, and, and, it does not come from this affidavit. That is not what Mr Adams alleges on this affidavit.

CHAIRPERSON: And please bear in mind what I engaged you on more than once yesterday, which was you cannot look at an affidavit that does not satisfy the requirements of section 27. You cannot look at it, find that it does not satisfy the requirements, but go ahead and investigate in
20 any event. And only after investigating, you then establish that there is gratification here, there is that and that and that, and then, with reverse reasoning, you rely on that. Now, can you please, with that in mind, you remember me engaging you on that several times? I said that is not where to start. That is not where to start. Now, with that in

mind, can you please respond to Commissioner Baloyi's question?

COLONEL PADAYACHEE: Commissioner, Chair, I am trying to make logic of it. As a layman, please excuse me on that. I am a policeman, I am an investigator. An allegation is made. We have the section 7(1)(a). We have – apologies, I have to go there. It is authorised, the investigation, and I cannot speak from management what they utilised to authorise this investigation. But it is down
10 on my level, it has come down on my level with regards to this allegation.

So when I look at this affidavit and I read at this allegation, and in terms of my preliminary investigation there is a serious allegation here that is made, where processes, we use the word, manipulated or whatever. So I start my investigation from there. I am not looking for any word of civilian or anything else. I am talking about basic as I am trying to explain myself as a layman.

And I cannot take it any further except what I say
20 here. A person was appointed, processes were manipulated, the person had no experience. That is my start to go out there and look at it and confirm it with further investigation. Commissioner, Chair, I can take it no further than what I have said here.

ADV BALOYI SC: In how you have described it, just how

you have captured it now, that seems a typical HR matter that the Public Service Commission would deal with. If you had taken this affidavit to the PSC, and I am saying just from how you have captured it, that it seems something that falls squarely within the powers of the Public Service Commission.

And you took exception yesterday, quite strongly, to General Mkhwanazi saying you lack the experience to investigate matters. Rightly so, because you have taken us
10 through your qualifications. But as an experienced investigator, even acting on your superior's decision, Ms Johnson, maybe Perumal, and whoever the committee is, them having made a decision that this is a matter to be investigated, I would expect that you, as an experienced investigator that you are, you would have looked at this affidavit and said, but this is an HR matter, where government has an institution that deals with these kinds of complaints.

There is nothing, at least when I look at it now –
20 maybe let me rephrase what I want to say. Looking at this paragraph 2, I do not see how you would have thought this is a criminal offence when you look at the facts that are alleged in paragraph 2. And yet I can see how you would say, but this is an HR matter, what are we doing with it? Because remember, at this point, you do not know anything

else.

At this point, when you get this affidavit, you do not know what you later find out, you say you found out. But of this affidavit, it is difficult to see how you as an investigator would have said, yes, this information speaks to a potential crime being committed that warrants me to investigate further. That is a difficulty I have.

COLONEL PADAYACHEE: Thank you, Chair, Commissioner. This is just one allegation, an appointment
10 that came through, amongst others. So it is not just one thing. It was a whole lot of allegations on different vetting issues, security clearance, vetting manipulators, so it is a whole lot of different allegations that stay.

So I am not looking at the one and singling it out as an appointment. I am looking at it holistically. There are allegations, serious allegations here with regards to other matters. That is where I am taking it from. Not just one single allegation has come to me about just that one, an appointment of a person, bordering on an HR thing, with all
20 the work that we have. This comes in a package of alleged corruption and Crime Intelligence. So ...[intervenes].

ADV BALOYI SC: All from Mr Adams. Remember we are dealing with the section 27 referral, which results in you investigating a warrant of arrest, people appearing before court, but the genesis of it is what we are discussing now,

that referral. Now these other things, other allegations that you say they are there about corruption in Crime Intelligence, and they are not contained, at least that we can agree that they do not come from this affidavit.

COLONEL PADAYACHEE: The only thing that comes from this affidavit is the appointment.

ADV BALOYI SC: Yes.

COLONEL PADAYACHEE: But on other affidavits, it singles out the other offences.

10 **ADV BALOYI SC**: Okay.

COLONEL PADAYACHEE: So there is not one Mr Adams affidavit. There are a few. There is not one docket, there are a few dockets.

ADV BALOYI SC: Okay, thank you.

COLONEL PADAYACHEE: Thank you.

ADV SELLO SC: Thank you, Commissioner. I had suggested we move on, but perhaps not yet. You recall yesterday you sought to persuade the Commissioners that you had never seen the section 27 affidavit. You saw that, I
20 think recently, I do not remember under what circumstances you say you were able to see it with your own eyes and read it.

If I understood your evidence correctly yesterday, you testified that the chief investigator told you, related perhaps what could be the content of the section 27. This

A1 is the first document you see, official document that is signed, relating to any of those issues. So when now we are dealing with this particular one, which is very narrow in its terms, you then suggest that we look at it holistically and look at other facts. Facts from where? Please point me to a document that will point out the other facts that prop up this affidavit. Which document should I go to?

COLONEL PADAYACHEE: Thank you, Chair. Thank you, Commissioner. Counsel, as I explained yesterday, and I
10 stand by what I said yesterday, I did not see the section 27.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: Chief Perumal assembled us as investigators. We have this investigation in Crime Intelligence, and these are the allegations. So there was a briefing on those allegations. So that was the briefing from him which started the whole investigation and the guidance from him.

And as I indicated yesterday, that I can take that no further than Chief Perumal when he comes to explain what
20 he did on that particular time. So what I can say is in a briefing, and we have been briefed like that on many occasions, not only with Chief Perumal but with other investigations that I worked with, we get a briefing and we start off an investigation and we run with it, but there is a difference.

An ordinary detective working in a police station and an ordinary policeman working just your normal duties where you go, you open a docket, you register the case, you go, you arrest the person, you take him to court, et cetera, et cetera. Whereas with us, there is this, as I say, the procedure that came through until it came to my level in the criminal investigation side under Chief Perumal.

And as I said to Commissioner, that this is one affidavit of many. So when it was spoken about, various
10 affidavits were taken for the different allegations. And as I said, it was more than one docket.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: So that is as far as I can take it.

ADV SELLO SC: Here is my challenge, and I think you will have to make a decision. Either you read this A1, which is the first statement in your docket, either you read it in the context of another document, which could, the only one I can think of is the section 27 affidavit, but as you correctly
20 point out, you testified that you said you have never had sight of it, you only had sight of it recently.

I have got no basis to gainsay that, so I accept what you say, you did not see the section 27. But I want to know the document that precedes this one, this statement, that you took into consideration to understand that the

issues are bigger than just employing that civilian. Which document is that ...[intervenes].

COLONEL PADAYACHEE: As I ...[intervenes].

ADV SELLO SC: Sorry, if I may finish? I do apologise. I know I am aware of the various other statements in the docket, but they all succeed this document. They come after this document. So they are not relevant for purposes of my question.

The only other document you would have taken into
10 consideration is one that either came into existence at the same time as that one or preceded this one that we have. What document is that?

COLONEL PADAYACHEE: Thank you, Chair, Commissioners. Here is my response, and which I have said before, that there is no other document, and I said the section 27, I had no insight into it. The briefing from Chief Perumal on the investigations and what has been done there and what we need to do moving forward. These are the allegations.

20 There are dockets that were opened in Cape Town, there were dockets opened here. These dockets are with the inspectorate. So the first was to retrieve the dockets. And on the basis of what is being said, the investigation starts where we request documents and subpoena documents, and where we identify witnesses, we start from

there.

ADV SELLO SC: Okay, I am happy to park it there for now. We will come back to the point you have just made. But you remember I said this is my starting point and I am going to tell you what my end point is and then we go back and we walk the steps to my end point.

My end point is your, as I said, the File 6 opened before you, page 2373. That is the affidavit you deposed to when you applied for the arrest warrant of these panel
10 members, that panel that was headed by General Khumalo. Now, it runs from page 2373 to page 2401. It is quite an extensive affidavit and I see it is dated at 2401, 24th of June 2025. Page 2401.

COLONEL PADAYACHEE: That is correct.

ADV SELLO SC: And you confirm that is your signature?

COLONEL PADAYACHEE: That is my signature.

ADV SELLO SC: It is dated 24th of June 2025.

COLONEL PADAYACHEE: That is correct.

ADV SELLO SC: You recall that our A1 statement is dated
20 the 6th of January 2025.

COLONEL PADAYACHEE: That is correct.

ADV SELLO SC: So you have got like a six-month run to get from start to finish.

COLONEL PADAYACHEE: That is correct.

ADV SELLO SC: Now, looking at this document, you deal

extensively with the unlawful appointment. You then, if you turn to page 2380, at paragraph 11 at the bottom of 2380, you state:

“The attached draft charge sheet outlines the acts committed by each of the seven suspects in a very comprehensive way, which includes charges of corruption, defeating or obstructing the administration of justice and perjury.”

- 10 Then you say, see Annexure A. Now, our Annexure A that was part of this affidavit is at 2418, same file, and that is the charge sheet against Khumalo, Lushaba, Madondo, Lekalakala, Mkabela, Ncube, and Mokwele. You confirm that?

COLONEL PADAYACHEE: Correct.

ADV SELLO SC: Am I correct? I told you that is the ...[intervenes].

COLONEL PADAYACHEE: 2418, the charge sheet.

ADV SELLO SC: It does not see your nodding.

- 20 **COLONEL PADAYACHEE**: Yes.

ADV SELLO SC: So I need you to verbalise the answer. Okay. So now we know six months later, we started with that HR appointment of a civilian, possible manipulation of the processes leading to that appointment, overlooking senior Generals. That was our start point.

We end here, where now we are proffering charges of corruption, defeating or obstructing the administration of justice and perjury. Now, staying on page 2418, which is your charge sheet, if you turn to – if I may just find my place? But while I find this place, but in this charge sheet, you rely extensively on PRECCA, the Act, and you actually unpack the provisions of PRECCA at page 2427. And it states this is under your ...[intervenes].

CHAIRPERSON: Sorry, can you please state what
10 PRECCA is for the record?

ADV SELLO SC: Prevention and Combating of Corrupt Activities Act, number 12 of 2004. PRECCA, for short. And you introduce PRECCA from page 2426. You quote from the preamble of the Act and then you quote section 1, and in particular, the definition of gratification.

And at 2429, you quote the provisions of section 3. At 2430, the provisions of section 4. And at 2432, the provisions of 26(1). So those are the sections that you rely on to culminate in the charge sheet at 2433, which charges
20 against the seven are more or less similar, except for accused number 7, who is the employee, the civilian. But in respect of the others, accused 1 to 6, most of them, if not all, are accused of contravening the provisions of section 3(a) of PRECCA, read with sections 1, 2, 24, 25, 26(1)(a)(ii) and 26(3).

So these are very specific sections, and therefore very specific crimes. You may refresh your mind by looking at these documents, but if you could assist us to understand, we moved on the 6th of January from employing a civilian. We are now, we have introduced concepts of gratification, we have introduced concepts of corruption, and related.

And perhaps if you help us understand your affidavit so that we land where you have landed in the charge sheet, starting at page 2433. And as you do so, if there are any documents, remember I said there is the steps between the 6th of January to the 24th of June. If there are any particular documents in the docket that you say point towards gratification, point towards corruption, feel free to point them out, and we will turn to them.

But for the moment, what I personally am desperate for is to understand how employing a civilian, that act ends up with a charge, ends up with – including concepts such as gratification as defined in section 1.

20 **COLONEL PADAYACHEE**: Thank you Chair, Commissioners, Counsel. Let me start off first with the affidavit itself. The investigators do the investigation, and the investigation is presented to the prosecutors who draft the charges, and who to charge, and what charges they are. So I am going to move from there.

When we look at the charges that are there, the gratification, in terms of section 1 of gratification, the definitions of gratifications in section 1, and it describes what a gratification is. That is an offer of employment, agreement to employment. So this deals with the employment of a person which falls under the definition of a gratification in terms of PRECCA. So when we ...[intervenes].

ADV SELLO SC: I apologise, I apologise, but do not rush
10 through it because I am very concerned by what you have just said. Gratification cannot be an offer of employment. Let us go to the definition and perhaps read it correctly because what you have just said I do not think is legally correct.

COLONEL PADAYACHEE: Gratification in the definition of gratification under PRECCA, employment, contract of employment falls within the definition of gratification in the Prevention of Corrupt Activities Act.

ADV SELLO SC: I refer to your page 2427 and let us read
20 it correctly because you do not want to create the impression that offering somebody, giving somebody an offer of employment constitutes gratification. That is not what you intend to say. And I know that you want to use that definition for us to understand what gratification includes and that is why I said this was what, June 2024/25.

So read and reacquaint yourself, and then let us try again.

COLONEL PADAYACHEE: Where are you referring to me?

ADV SELLO SC: 2427, your page 2427. That is where you give the full definition of gratification.

COLONEL PADAYACHEE: Thank you.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: Chair, PRECCA in section 1 defines gratification as:

10 “Including money, within cash or
 otherwise, any donation, gift, loan, fee,
 reward, valuable security, property or
 interest in property or any description,
 whether movable or immovable or any
 other similar advantage. The avoidance
 of a loss, liability, penalty for future
 punishment or other disadvantage. Any
 office, status, honour, employment,
 contract of employment or service or any
 agreement to give employment or render
20 services in any capacity and residential
 or holiday accommodation. Any payment,
 release, discharge or liquidation of any
 loan, obligation or other liability, whether
 in whole or in part. Any forbearance to
 demand any money or money worth or

value thing.”

My emphasis is on gratification in (d).

ADV SELLO SC: And I think that is our first challenge. We cannot read that definition on its own. We go to the definition after we have been to the section ...[intervenes].

COLONEL PADAYACHEE: I am going to the section ...[intervenes].

ADV SELLO SC: Because the section that will tell us about gratification and the definition then, for purposes of
10 the Act, tells us the list of what includes gratification. So gratification is not the act of giving somebody employment. Gratification resides in other, in another section in the Act. And then your definition tells you what falls within the definition of gratification for purposes of what is stated in the Act.

COLONEL PADAYACHEE: Counsel, yes, Counsel. You took me to 247.

ADV SELLO SC: Okay.

COLONEL PADAYACHEE: Let me explain it.

20 **ADV SELLO SC:** Yes.

COLONEL PADAYACHEE: I just mentioned that employment falls under gratification, the definition of gratification, but let me explain it to you or tell you that section in the Act where the gratification comes in.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: It is section 3(a) of PRECCA. That is where a person receives a gratification.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: Section 3(a) where a person receives a gratification, and that gratification, as I said, is defined in section 1 under the definition of gratification which is employment. Then you deal with section 3(b) of PRECCA, which where a person gives or agrees to give and offer somebody else a gratification.

10 And when you look at the both together with the definition in gratification, you look at the, let me say, let us talk to the relevant matter. The person that was employed, she received a gratification. When we looked at the remainder of the accused, they gave her a gratification. So that is where section 3(a) and 3(b) of the Prevention of Corrupt Activities came in.

ADV SELLO SC: Does your answer perhaps not lie in section 3? Part of what you have just said, but read with – do you have the PRECCA Act with you? Before you? You
20 do not? Because I think there are some parts of section 3 you are skipping. You have quoted it at page 2429.

COLONEL PADAYACHEE: I am reading it from your ...[INTERVENES].

ADV SELLO SC: You have quoted it ...[intervenes].

COLONEL PADAYACHEE: 2429.

ADV SELLO SC: Page 2429.

COLONEL PADAYACHEE: 2429, that is where I am reading it from.

ADV SELLO SC: Yes. If you are reading the actual section, you stop too soon because it must continue after 3(a) and (b):

“In order to act personally or by influencing another person so to act in a manner...”

10 Continued:

(1) that amounts to the;

(aa) illegal, dishonest, unauthorised, incomplete or biased, or;

(bb) misuse or selling of information or material acquired in the course of the exercise carrying out the performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation.

20

(ii) that amounts to the abuse of position of authority, abuse of trust or the violation of a legal duty or a set of rules.

(iii) designed to achieve an unjustified result, or;

(iv) that amounts to any other

unauthorised or improper inducement to
do so.”

So, the offer of employment must fit in with the remainder of
section 3 to fall within the definition of gratification. Do you
agree with me?

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Now, that forces us then to look at your
docket to see whether any of the listed activities there are
to be found in your docket. Is there evidence of anyone
10 acting personally or by influencing another person in a
manner that amounts to the illegal, dishonest, unauthorised,
biased acts that amounts to the abuse of position? Any
one of them? Is there such evidence in your docket? Will
we find it there?

COLONEL PADAYACHEE: Yes, Commissioner.

ADV SELLO SC: Okay. You do not have to remember off
the top of your head. We will look for it overnight, but then
if you could just tell us the nature of the documents that
provide that evidence in the docket.

20 **COLONEL PADAYACHEE**: The?

ADV SELLO SC: Sorry, I was going to say would it be
statements, witness statements, would it be any other
documents? So, I am more interested in the description of
the document if it is in a witness statement than for you to
say the statement of X, Y, Z.

COLONEL PADAYACHEE: The panel that gave the gratification ...[intervenes].

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: To Mokwele, they gave a gratification to Mokwele. Mokwele received the gratification. The gratification that she received was the employment which was not due. The investigation and evidence that we looked at, we looked at the documents, we looked at the application and where we could clearly see
10 that the applicant should have not been appointed. There was manipulation.

When we looked at what she received the appointment, what was she going to be given in return? In return, the post that she applied for is a very powerful post. So, in terms of the Act, the giving back or return for the gratification does not have to be immediately. It can be at some other time.

And given the situation that she is appointed in a very powerful post and the Chairperson of the PANEL who
20 was the Commander of that whole section. So, although it was not given immediately, it is said at any given time. So, he held a position of power over her and then the ...[intervenes].

ADV KHUMALO SC: Colonel, I think you are missing the point. I am sorry to interrupt.

ADV SELLO SC: No, by all means, Commissioner.

ADV KHUMALO SC: The point here is that accepting for a moment that employment is gratification, you must be giving that in order to influence the other person to do something illegal.

COLONEL PADAYACHEE: Yes.

ADV KHUMALO SC: Because reading that section, it says:

10 “In order to act personally or by
 influencing any other person so as to act
 in a manner that amounts to illegal,
 dishonest, unauthorised...”

And all of those things. Now, in this case where your offer of employment and contract of employment says your job is to provide services the South African Government because we have the contract of employment here commencing 1 November 2024.

COLONEL PADAYACHEE: Yes.

20 **ADV KHUMALO SC:** And it says when you get into this role, you must provide these services to the government.
So, it is in that context that the question is asked. So, it cannot be that she is going to give something in the future because her providing a service or a labour to her employer, that is not what the section contemplates and what the definition contemplates. It contemplates that in return she must do something illegal, something improper,

something unlawful.

COLONEL PADAYACHEE: Yes, sir. That is what I am saying is that what she was going to do is not going to be done immediately, but what she is supposed to give back was not going to be immediately, but can be given at a later stage because of the position that she was appointed in.

ADV KHUMALO SC: She was going to do something illegal ...[intervenes].

COLONEL PADAYACHEE: Correct.

10 **ADV KHUMALO SC**: Some years later.

COLONEL PADAYACHEE: No, we do not know when that will be, but ...[intervenes].

ADV KHUMALO SC: Because we do not know that is precisely the problem ...[intervenes].

ADV BALOYI SC: That is precisely the problem with this.

ADV KHUMALO SC: Yes.

ADV BALOYI SC: That you have formulated a charge, you got a warrant of arrest, you got people arrested, you have people appearing in court and continue to do so on the
20 basis of something that you say, and rightly so, fairly so, you say, well, we do not know, maybe in future she was going to do that.

How does that for a seasoned investigator, how does that sound right as you say it? We do not know maybe in future she was going to do that, and you have taken all

these drastic steps that have a consequence on people's lives and have had a consequence, and you sit there now many months later you say, well, we do not know, maybe she was going to do it in future.

It cannot be right that that is a basis on which you went and instituted this prosecution and got a warrant of arrest. That is precisely the problem with this.

ADV KHUMALO SC: And my concern, Colonel, is that the date of the offence is listed in A1 in the supporting
10 annexure as October 2024, but she signs the contract of employment in December 2024, so two months after the date of the offence. And the effective date is 1 November 2024, and if you are saying this offence which amounts to acceptance of gratification, the material facts relevant to it happened in October, but some years from now we do not know, when we think it is in exchange of her doing something illegal.

I mean, that is a circuitous reasoning, which I just do not get. And let me be clear to you. We do not want to
20 go into the merits of whether people are guilty or innocent. That is for the Court. That is for the Criminal Court. What we are concerned with is what was IDAC's motive? Was IDAC doing these things because they were influenced by politicians, or there was some ulterior motive, or they were acting contrary to the NPA Act?

That is really what we are looking at. It is not our place to say people are guilty or innocent of a crime. That is for the Criminal Court. So I hope you understand that. But to get to that, my interest in particular, my interest is what did IDAC do from the moment it received the complaint? Did it comply with statute? Did it follow correct procedures, and what was the reason behind how IDAC acted?

And all these questions and what we elicit from
10 you, we may have to draw inferences from those at a later stage, but just so you are clear, we are not focused on whether people are guilty or innocent of a crime. And I hope that assists you and you are able to come down and when you respond to questions with that in mind. We have taken Advocate Sello's time, but I did so because I could see that you were struggling with the second part of that definition of gratification.

COLONEL PADAYACHEE: Commissioner, noted. What I have explained and what you have explained now, that what
20 you are looking for is that whether IDAC was influenced in any way with regards to this particular matter and that is where, I am saying that is where the emphasis was, but when we are going deeper into the matter and this single matter, we are going right into the merits of the whole matter ...[intervenes].

ADV KHUMALO SC: No, Colonel, we are going into how you conducted yourself in the lead up. That is what we are focussing on. So your affidavit where you were asking for a warrant, that is the lead up. That is not in the criminal court people answering to charges. That is IDAC's conduct in the lead up. How did you deal with documents?

For example, I asked you a question, let me give you an example. I asked you a question earlier about whether the advert was, you know, inviting people from outside to apply and your answer to me was you were not
10 aware at the time, you became aware now.

Now, I have read your affidavit, the same affidavit we are looking at from June 2025 and in that affidavit you say so, in so many ways that this position was advertised externally. So it means in June last year already you knew that to be the position because you put that in your affidavit. Again, that is the lead up, that is not what happens in the criminal court.

COLONEL PADAYACHEE: Commissioner, if I could just
20 stress the affidavit part of it and the advert? I did not say that it is now, only get to know now. When the documents were subpoenaed and we got the documents, the whole appointment documents, the advert was there. So it was clear when we received those documents in March, February/March 2024, no, 2025, just got to get the date

right, when we received those documents, then the advert was there.

All the applicants documents were in the bundle, so there we saw it externally and we also noticed that it was advertised previously too as well. Thank you, Commissioner.

ADV SELLO SC: Thank you, Commissioners. Just staying with the definition, I think you stated that this employee was to act illegally in the future in order for the employment to
10 constitute gratification.

COLONEL PADAYACHEE: She would, as I explained, and I did not want to go too much deep into the merits of that response ...[intervenes].

ADV SELLO SC: No, no, it is okay, I am just testing, did I understand you correctly? So basically, in so saying, you were indicating that if it is a quid pro quo, her part was not done yet, that part would subsequently come after the employment. That is what you sought to communicate ...[intervenes].

20 **COLONEL PADAYACHEE:** Yes, it would come after that process. It did not have to be immediate.

ADV SELLO SC: And I appreciate that you cannot put a timeline to it. You do not know when. What I am interested – sorry, ask me.

COLONEL PADAYACHEE: No, carry on.

ADV SELLO SC: Okay. And I say I accept that you cannot put a timeline to it as to when it shall be done, when she will so act. Correct? I am happy to accept that.

COLONEL PADAYACHEE: At this stage, Commissioner, at this stage we could not say.

ADV SELLO SC: Indeed.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: And I accept that.

COLONEL PADAYACHEE: Yes.

10 **ADV SELLO SC:** What I am interested in is the act, what act was she to perform, to your understanding?

COLONEL PADAYACHEE: When we are dealing with investigation as a whole and we look at what is there, it was the capture of Crime Intelligence and we were still busy with the investigations on the other aspects with it ...[intervenes].

ADV SELLO SC: So, I apologise to interject, I want us to take it a step at a time. The act that you suspected she would in time commit is the capture of Crime Intelligence?

20 **COLONEL PADAYACHEE:** Yes.

ADV SELLO SC: What is that?

COLONEL PADAYACHEE: When you look at the various appointments that were taking place within Crime Intelligence for a specific purpose and a specific reason from the flow out of the other investigations, that people

were being brought in and appointed for specific reasons to be compliant with – those particular reasons would actually be unlawful.

ADV SELLO SC: I am interested in the act you said is the capture of Crime Intelligence. So I would like, if you can, to explain to the Commissioners the act of capture. What is that? I am pleading ignorance here, I am not sure. If we speak of an act, one would say they would in time do acts, steal from one to give to the other. So, specifying the
10 particular act you suspect she would perform.

Now, in response to my question, you say that act would be capture of Crime Intelligence is what the capture is directed at. I am interested, what is the act of capture?

COLONEL PADAYACHEE: Chair, Commissioners, when we look at the investigation of Crime Intelligence, and when we talk about capture, it is when the division, your people are placed in specific positions to do certain things. Certain things could mean, it could mean tenders, manipulating of tenders, it could be giving out information on operations
20 that are there.

The applicant was the head of a very sensitive post which deals with high profile operations. When we look at the other appointments in terms of different places where people were appointed as Commanders of the Secret Service Account, and when we look at some of the other

investigations which were properties, there people are put strategically in place, and that is why we call it capturing of the unit, where you control every subcomponent and every person that is there, that is pliant to do what you want them to do.

ADV SELLO SC: Okay.

COLONEL PADAYACHEE: That is more or less what we say capture.

ADV SELLO SC: Can I just? I am interested in her act,
10 not the act of the collective. Interestingly, you did not say the act would be to steal, for instance. You say the act would be to capture. Now at the time you made that determination, what about her employment led you to conclude that the act she would in time perform is that of capture?

COLONEL PADAYACHEE: When we looked and you look at the investigation itself and the charges, we looked at, she applied for the post.

ADV SELLO SC: Yes.

20 **COLONEL PADAYACHEE:** Investigations revealed that she lied, misrepresented herself on that. The panel were aware of it. Each of the panel members to themselves, if we look at our other investigations that are there, why they also would have went with the Chairperson of the panel to appoint the specific person because they also had

investigations against them.

So to give you an example, when you look at one panel member, and I am actually branching out into something that I did not want to, but when you look at the first docket that we were investigating, that is the matter of General Lushaba and the alleged housebreaking, and where a classified laptop together with an iPhone cell phone that was stolen.

There was no real investigation done there.
10 However, General Lushaba was supposed to be charged, but he was not. When General Khumalo took over as the Acting Divisional Commissioner a couple months after this incident took place, Khumalo put in documents for the loss of the state property.

In the lost property, in those statements, it was said that he was drugged. A board of inquiry should have been instituted, and disciplinary steps should have been taken against Lushaba. General Khumalo did not do that. General Lushaba was not charged.

20 Fast forward, investigation takes place. General Lushaba is charged for defeating the ends of justice. A disciplinary takes place, and he is found guilty for the negligent loss of property, which is also that loss of property and the disciplinary is also that we are also still looking at, because a formal investigation was taking place

directly after he reported that incident, and the General that investigated, who was tasked to investigate it, said he was a victim of being drugged by these ladies of the night.

When we looked further into the investigation, which they did not even look and probe at, we found that he was not drugged. So here you have somebody who is sitting there at Crime Intelligence with General Khumalo there, and General Khumalo is aware of it because he signs off on those documents when it goes to the loss
10 management.

But here, come forward, after the criminal case is investigated and it is found that and he was arrested, a disciplinary action is taken, a disciplinary case is opened, and he is found guilty. So that is just one example. There is more on this, which I do not want to get into ...[intervenes].

ADV BALOYI SC: Ja, no, so is the complaint – remember we are talking about these charges here, the institution of these charges relating to the appointment of Ms Mokwele,
20 and we are still at the point where we are discussing how you moved from Mr Adams' affidavit to formulating a charge sheet in the manner that you have done. That is the discussion at this point.

Are you prosecuting or the charge sheet, are you charging General Lushaba and General Khumalo for

including General Lushaba in the panel? Is that part of the complaint? Is that why you are telling us this story about the loss of his laptop?

That because there is that history, the charge relating to this appointment, insofar as it includes him and General Khumalo is further justified by the fact that he had not been disciplined previously or discipline happened, you are not happy with it, and the outcome and the conduct of Khumalo, and therefore his inclusion in the panel that
10 appointed Ms Mokwele was part of state capture, of Crime Intelligence. Is that the logic you say you have applied?

COLONEL PADAYACHEE: No. The point I am trying to get across – sorry, Commissioner, are you done?

ADV BALOYI SC: You may proceed.

COLONEL PADAYACHEE: The point I am trying to get at when it comes to the appointments, and as I explained with regards to how the systematic capture took place, where you have the panel that appointed Mokwele, when we spoke about the gratification and when a gratification is going to
20 be given at a later stage or whenever, when we look at Mokwele, the application that she made, the panel was fully aware the processes were manipulated, and that is all in the documents, to appoint her.

So, she was, the appointment of Mokwele was clearly, one, fraud, and two, there was a gratification

...[intervenes].

ADV BALOYI SC: I just wanted to understand the relevance of General Lushaba's loss of a computer and how that was handled to this case that relates to Ms Mokwele, and in particular your having concluded this is part of capture of Crime Intelligence, the relevance of that, because you seem to have told us something on the face of it, and having listened to you, there is no clear connection that you are making why that case has anything to do with
10 this case and your gratification suspicion. Because we must accept, at that time, certainly, of drawing the charge sheet, you just had a suspicion. And I think even now you say we do not know what she was going to do in the future. So, at the time of drafting the charge sheet, we were dealing with your suspicion and whoever is behind or has given instructions to investigate this matter. Why is it relevant, the computer story, to this charge?

COLONEL PADAYACHEE: May I respond, Commissioner?

ADV BALOYI SC: Yes, you may.

20 **COLONEL PADAYACHEE:** Thank you, Chair, Commissioner. I am pointing out to a panel member that sat on the panel, and when I say about capture, what I am trying to say here is that you have people or members that are obligated to General Khumalo, who is the Chair of the panel. He controls the panel. So panel members

...[intervenes].

ADV BALOYI SC: Did he pick the panel?

COLONEL PADAYACHEE: Excuse me?

ADV BALOYI SC: Did he pick the panel?

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: He picked the panel?

COLONEL PADAYACHEE: The panel was – maybe I should have started there.

ADV BALOYI SC: Yes.

10 **COLONEL PADAYACHEE:** My apologies, Commissioner. The panel was selected by General Khumalo. He selected the panel. The members on the panel, together with General Khumalo, it was very clear that they manipulated the process of appointing. When you look at the documents, the evidence, what we collected, this is what came out there. When we looked at ...[intervenes].

ADV BALOYI SC: When you say part of him selecting the panel, or the fact of him selecting these members as a panel and they are collectively manipulating the process,
20 you are saying that is all part of inference of gratification to Ms Mokwele for something that we do not know what she would do in future, but you also say that is part of a scheme, or it is a scheme in fact, to capture Crime Intelligence. That is what you are saying happened here?

COLONEL PADAYACHEE: Yes. With the appointment.

That is the panel that has selected, manipulated the process to appoint Mokwele when she clearly should not have been appointed. That is the panel. So when you look at that, here is another appointee coming in to Crime Intelligence, and there are a few more appointments that are there to as well that were appointed for a specific purpose.

So when you look at it from a capture point of view, Commissioners, you have a person in a position as a
10 Commander of that specific subcomponent or section that is now you control because you appointed them ...[intervenes].

ADV BALOYI SC: Ja, well, I was going to ask you exactly that last part, that I do not know the processes of the SAPS, so maybe enlighten. Does the panel that interviews make the appointment?

COLONEL PADAYACHEE: Commissioner?

ADV BALOYI SC: You want me to repeat my question?

COLONEL PADAYACHEE: Yes, Commissioner.

ADV BALOYI SC: The panel that interviews, and in this
20 case, let us be specific to this case, the panel is constituted, you say it was constituted by General Khumalo, you say that. And you say he holds this very powerful position, and having appointed Ms Mokwele, that General Khumalo would have been able to control her or to influence her.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: My question is, does the interviewing panel make the appointment of the employee in the SAPS?

COLONEL PADAYACHEE: Thank you, Chair. Thank you, Commissioner. I think this part of it comes up, well, I recommended, I did not appoint. When you look ...[intervenes].

ADV BALOYI SC: What is your answer to my question? Let us not do a long explanation. Does the interviewing
10 panel in the SAPS, and in particular the interviewing panel that interviewed Ms Mokwele, did it appoint her? Is it this panel that appointed her?

COLONEL PADAYACHEE: That is the panel that appointed her.

ADV BALOYI SC: The panel appointed her?

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: Thank you.

COLONEL PADAYACHEE: Sorry, Commissioner. I did not understand the first time.

20 **ADV BALOYI SC:** Okay, thank you.

COLONEL PADAYACHEE: It is that particular panel, chaired by General Khumalo, appointed by General Khumalo, chaired by General Khumalo, that appointed Ms Mokwele.

ADV BALOYI SC: Okay. So they did not make a

recommendation to somebody else. And I started off by saying I am ignorant about the SAPS processes, select recruitment processes, so I come from a different field, which is you interview, you recommend, somebody appoints. You are saying, in this case, the very panel that interviewed her made the appointment.

COLONEL PADAYACHEE: Chair, Commissioner, let me disqualify what I said. It is recommend, but that recommend for me, although it is recommend, it is a given
10 that she is going to be appointed.

ADV BALOYI SC: Well, my question, let us go back to my question then. Do not tell me it is a given because that is an opinion. You are expressing an opinion. I am not interested in your opinion. I am interested in facts. This panel that interviewed Ms Mokwele, is your evidence or testimony that that panel appointed her? Because it is a simple matter.

There is a letter of appointment somewhere, right? Or there is a minute somewhere. So we can verify that if
20 we need to. But right now, I am speaking from your knowledge, because you are testifying and you took certain steps. So my question is simply this. Are you saying this panel appointed as a matter of fact and as a matter of law, because it has consequences, that she was appointed by the panel?

COLONEL PADAYACHEE: Can I respond, Commissioner?

ADV BALOYI SC: That is what you say. Thank you.

COLONEL PADAYACHEE: Thank you, Chair. Thank you, Commissioner. Let me be clear on it, Chair. This panel recommended Mokwele to the National Commissioner to be appointed, which eventually led to her appointment indeed. That is my answer.

ADV BALOYI SC: Okay. Let us reprise your answer. So you say now she was appointed by the National
10 Commissioner.

COLONEL PADAYACHEE: Correct.

ADV BALOYI SC: See, it was easy. That is all I wanted from you.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: Thank you.

COLONEL PADAYACHEE: He is the one that eventually signs off.

ADV BALOYI SC: He is the one that appoints. He is the one that appointed her.

20 **COLONEL PADAYACHEE**: Finally, yes. He signs off on the appointment.

ADV BALOYI SC: Thank you.

COLONEL PADAYACHEE: Thank you, Chair.

ADV BALOYI SC: Just to close up on that, the issue that Commissioner Baloyi just conversed with you, let us just go

back to the panel. You say Khumalo established the panel.

COLONEL PADAYACHEE: Correct.

ADV SELLO SC: In the course of your investigations and considering applicable prescripts regarding recruitment and promotions, I just want to understand what you were able to establish. That panel that you say Khumalo put together, the composition thereof, is it subject to approval by some higher authority, an authority higher than Khumalo, or a designated authority within SAPS?

10 So the constitution of that panel, as your evidence has shown, is it subject to approval by a different authority within SAPS? Secondly, if the answer is yes, was such authority obtained with the result that the panel was approved or not approved, or the authority was never sought? Where do we land?

COLONEL PADAYACHEE: General Khumalo selected the panel.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: The panel selection is sent to
20 the head office. The head office approved the panel that he selected.

ADV SELLO SC: Okay. So in so doing, the head office, whatever you mean by head office ...[intervenes].

COLONEL PADAYACHEE: The National Commissioner's office.

ADV SELLO SC: National Commissioner's office?

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Okay. You do not have HR or some division that deals with these matters? Everything goes to National Commissioner to approve?

COLONEL PADAYACHEE: No.

ADV SELLO SC: Is that how it works? What did your investigations show?

COLONEL PADAYACHEE: It goes to the HR department of
10 the National Commissioner's office. So when I say National Commissioner, it is that specific department that deals with ...[intervenes].

ADV SELLO SC: What is the HR office of the National Commissioner's office?

COLONEL PADAYACHEE: It is the national office, the national HR office for the whole country.

ADV SELLO SC: So why do you make it the HR office of the National Commissioner's office ...[intervenes].

COLONEL PADAYACHEE: Because you ...[intervenes].

20 **ADV SELLO SC:** It resides in the National Commissioner's office. It does not, and you know that for a fact.

COLONEL PADAYACHEE: There is an HR department ...[intervenes].

ADV SELLO SC: It is a division within SAPS. Correct?

COLONEL PADAYACHEE: There is an HR department in

every province. You have a Provincial Commissioner where the provincial HR department is also. So you have the National Commissioner's office where you have the national HR office that is there.

ADV SELLO SC: Okay. So you say the selected panel is selected by Khumalo, was sent for approval to that particular office?

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: And that complied with the prescripts,
10 applicable prescripts?

COLONEL PADAYACHEE: It complies with it.

ADV SELLO SC: Was approval granted to the best of your knowledge?

COLONEL PADAYACHEE: Approval was granted.

ADV SELLO SC: So does your charge sheet reflect that the eventual panel was as approved by that division or body? Does your charge sheet take into consideration that approval, or that approval becomes irrelevant because it was Khumalo who selected the panel and put it up for
20 consideration with the result that it is approved or rejected?

COLONEL PADAYACHEE: When it was stated that it actually meant that Khumalo selected the panel himself.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: And it was sent up to the HR department of head office, which was approved.

ADV SELLO SC: Now, whoever was approving, did they have the power to disapprove or reject some members of that panel? Do they have any powers to your understanding, or is it to rubber stamp and it just goes back and they work?

COLONEL PADAYACHEE: The document that is sent, they will compile a document, General Khumalo and his office, and say this is the panels that I have selected. Head office will receive it, they either approve it or turn it down.

10 **ADV SELLO SC:** Yes.

COLONEL PADAYACHEE: When they respond, they say your information note or your correspondence dated so and so, the panels are approved.

ADV SELLO SC: Okay. Now, the approval, if it were granted, what effect would it have on the validity of the panellists selected by Khumalo? Would it have any impact at all?

COLONEL PADAYACHEE: Well, if the panel is approved by head office, it is approved. It is an approved panel.

20 **ADV SELLO SC:** Okay.

COLONEL PADAYACHEE: So that means the recommendations given by Khumalo is approved by head office.

ADV SELLO SC: Okay. Chair, I see it is gone six, gone four, 16:09. I will be moving on to a different topic, so this

might be an opportune moment to stop.

CHAIRPERSON: Thank you. Let us adjourn and resume at 09:30 tomorrow morning.

ADV SELLO SC: Thank you, Chair.

CHAIRPERSON: Thank you.

INQUIRY ADJOURNED TO 16 JULY 2026

INQUIRY ADJOURNS

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