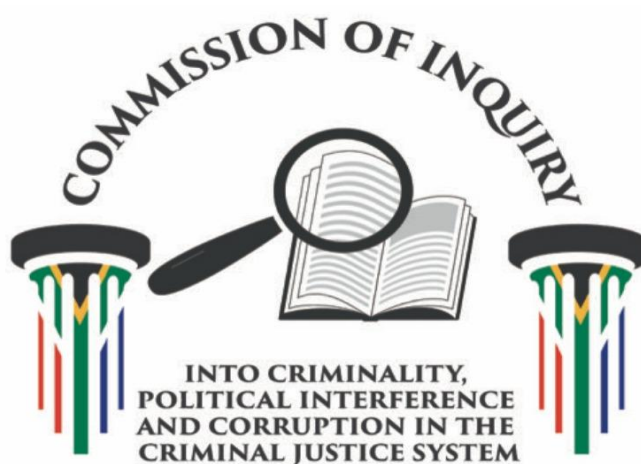


JUDICIAL COMMISSION OF INQUIRY INTO CRIMINALITY,
POLITICAL INTERFERENCE AND CORRUPTION IN THE
CRIMINAL JUSTICE SYSTEM

HELD AT
BRIGITTE MABANDLA JUSTICE COLLEGE

16 JULY 2026

DAY 141



PROCEEDINGS HELD ON 16 JULY 2026

CHAIRPERSON: Good morning, Ms Sello. Good morning, Mr Bodlani. Good morning to you too, Colonel.

COLONEL PADAYACHEE: Good morning, Chair. Good morning, Commissioners. Good morning, Counsel.

ADV SELLO SC: Morning, Commissioners, and morning, Colonel.

ADV BODLANI SC: Good morning, Commissioners. Good morning, Chair.

10 **ADV SELLO SC:** Commissioners, just to place on record, I learned this morning from the Colonel that the docket disclosed to us, which we have been working off from yesterday, is incomplete. So it transpires that there are some documents we did not get, and the explanation for that is that the actual docket is actually in two parts. We seem to have been furnished with the one part.

So we are running copies of what has since been provided to us, which is the second part of the docket, and we will be updating your files accordingly. I do not know
20 the extent to which the Colonel would like to refer to that second part of the docket, which we currently do not have, but I suggest that perhaps we proceed and we will see where we get.

Should we be confronted with that situation before the second part of the docket is furnished to all of you, we

will either stand the issue down or we will find a way to manage it. Colonel, would that work for you, that approach?

COLONEL PADAYACHEE: That will work, I think, Chair, because one of the documents that you have is the main affidavit of myself in that second bundle that came at the end of the bundle. So I may make reference to it at a later stage as you speak. I will be guided by that, Chair. Thank you.

10 **ADV SELLO SC**: Okay. So maybe I was not correct in what I communicated to the Commissioners. We might be missing, you say, some chunks within the docket. Because if we have the last one that I referred to, I had it, I think, as A32 in my files, which is what the Commissioners have. You want to refer to that. You are suggesting, if I understand, that we are missing – you explained that they go up to A36.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: And I thought that if our version goes up
20 to A32, we therefore are missing 33 to 36, but you seem to suggest that there is more, or what I thought was missing, in fact, is in the file. So are you able to shed light exactly ...[intervenes].

COLONEL PADAYACHEE: From what I ...[intervenes].

ADV SELLO SC: On what we are missing? It is okay. It is

all right. I paused. It is my mistake. Go ahead.

COLONEL PADAYACHEE: I took care of Chair's word yesterday for the transcript, so I pull back. You have A32. I think that is the main affidavit.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: So the rest up to A36, we can deal with that.

ADV SELLO SC: You will not be needing them at least until tea time.

10 **COLONEL PADAYACHEE**: It is not necessary unless something comes to the fore from your line of questioning, then we can go there.

ADV SELLO SC: Okay.

COLONEL PADAYACHEE: But I think you have A32 and A19. So it is fine. I was under the impression you only add up until A27.

ADV SELLO SC: Okay.

COLONEL PADAYACHEE: Because that is the first disclosure bundle, and then the remaining came on the
20 second disclosure bundle.

ADV SELLO SC: Thank you. That is fine. Then I think you accept my proposed approach. Should it become necessary to refer to something we do not have, we will stand down that issue and then come back to it after tea.

COLONEL PADAYACHEE: Thank you.

ADV SELLO SC: Thank you.

ADV KHUMALO SC: Advocate Sello, before you start, what you call A32, the affidavit we looked at yesterday, we have it as A19 and then one in brackets. That is why we were struggling ...[intervenes].

ADV SELLO SC: To locate it.

ADV KHUMALO SC: Figuring out where it is. So I am wondering if there are some documents that are duplicated in the docket and whether the second part does not contain
10 the same documents that are in the first part.

ADV SELLO SC: Could possibly be, based on your comment and question, Commissioner. But perhaps then to avoid confusion, we will try and refer to the documents by name, wherever they are located in the file, and avoid calling them A19 or A32 because that might create problems. So far, there is that one document we know that the Colonel wants to deal with. And during tea, hopefully, we will sort something out.

ADV KHUMALO SC: Thank you.

20 **ADV SELLO SC:** Thank you. Colonel, just a recap from yesterday. You recall that our exercise intended to determine what I call the start point and the end point. The end point being the application for the issue of warrants of arrest. And I had suggested that the start point is the A1 statement, which is the statement of Mr Fadiel Adams and

the end point, for my purposes, is that application for the warrant of arrest.

COLONEL PADAYACHEE: That is correct, as of yesterday.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: And you said you are in possession of the A32. The A32 statement is you got the A19, which is the application for the warrants, the affidavit for the warrants.

ADV SELLO SC: Yes.

- 10 **COLONEL PADAYACHEE**: Then you will have an affidavit. It is a complete affidavit that covers the whole thing, covers the start until the building of the warrants of arrest. Excuse me. Until the warrant of arrest. It means it gives you the whole package up until the warrants.

ADV SELLO SC: Okay. What is that affidavit called? So we can search. We have given up on A19, A32, the numbers. So if you could just give a description of that affidavit and we will try and see if we can track it down in the meantime.

- 20 **COLONEL PADAYACHEE**: How you would differentiate between the two, the one is an application in support of the warrants.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: That is how you distinguish that is A19.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: The other, A32, is just a plain affidavit. The heading is affidavit. I undersigned, Brian Padayachee. So that is an affidavit.

ADV SELLO SC: It does not say what it was furnished in support of. It does not say the purpose for which the affidavit was signed on the face of the document itself. It does not.

COLONEL PADAYACHEE: I am not getting you. I just
10 want to say something quickly.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: Excuse me. Chair, through you. Sometimes I cannot hear you. I have to lean front. That is why when we spoke earlier, when it came to the discussion between yourself and my counsel ...[indistinct] present, I could not really hear properly.

ADV SELLO SC: No, I do apologise. Please indicate each time my voice drops too low. I apologise for that. Thank you.

20 **COLONEL PADAYACHEE:** Thank you, Chair.

ADV SELLO SC: I think we will try and locate. Do you know how many affidavits you have, at least, so that we search amongst them? Then we will try and locate the one you specifically referenced.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: How many affidavits do you have in the docket?

CHAIRPERSON: Just before you itemise them, I too am interested to know what A32, for what purpose A32 was deposed to. You do explain 19, and then A32?

COLONEL PADAYACHEE: A32 is what we call an anchor affidavit.

CHAIRPERSON: Anchor affidavit?

COLONEL PADAYACHEE: Anchor affidavit.

10 **CHAIRPERSON:** Yes.

COLONEL PADAYACHEE: Yes. It contains the whole scenario of everything, from start up until the end.

CHAIRPERSON: Why would you have to depose to an anchor affidavit? For what purpose would you ordinarily do that?

COLONEL PADAYACHEE: It gives the whole start of everything, what we did, the investigation, up until the time that it finishes off where we go ...[intervenes].

20 **CHAIRPERSON:** And for whose consumption is it intended?

COLONEL PADAYACHEE: It is for the court.

CHAIRPERSON: Okay.

COLONEL PADAYACHEE: When I go and testify, I will be running from my anchor affidavit, because there is no real affidavit for myself, per se, like how you would have an A1

affidavit in the docket.

CHAIRPERSON: Okay.

COLONEL PADAYACHEE: So that is why us as investigators, we call it an anchor affidavit.

CHAIRPERSON: Okay, so it is intended for court.

COLONEL PADAYACHEE: Yes, it is intended for court. It is for court.

CHAIRPERSON: All right, all right.

COLONEL PADAYACHEE: All the A bundles.

10 **CHAIRPERSON**: Okay.

COLONEL PADAYACHEE: From A1 to A36 is intended for court.

CHAIRPERSON: All right. Thank you, thank you.

ADV SELLO SC: Thank you, Chair. Colonel, just then to clarify, this morning, in light of the recap I gave, I wanted us to deal with the timeline, basically to look at the chronology of events from the A1, from the moment a decision was taken to investigate up until the arrests were effected. I wanted to look at that timeline. Now, my
20 question is, the affidavit that you specifically referred to, is it relevant for that purpose?

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Can I try and work through the chronology as I have it based on that part of the docket that we had received, and then we will see whether it is

necessary to find this second affidavit you reference. I propose that we start, and then we see how far we can go without the affidavit for the moment.

COLONEL PADAYACHEE: We can, Chair, but when you look at my affidavit that I am talking about, it starts with factual background.

ADV SELLO SC: Okay.

COLONEL PADAYACHEE: It gives the introduction, and then it starts with the factual background of the flow of
10 events.

ADV SELLO SC: That is fine. Chair, may I propose a five-minute stand down just to sort out this affidavit? If we must run copies, at least it is before the Colonel, he then is able to give this chronology of events based on his own document.

CHAIRPERSON: I will not say five minutes. We will come in when you indicate we should do so. Thank you.

ADV SELLO SC: Thank you, Chair.

CHAIRPERSON: Adjourned.

20 **INQUIRY ADJOURNS**

INQUIRY RESUMES

ADV SELLO SC: Thank you, Chair. Commissioners, we have located – no, we have not located, we have been furnished with the affidavit that Colonel Padayachee refers to. Just to confirm, Colonel, it is an affidavit dated the 11th

of August 2025. It is a 13-page document. It just names it as an affidavit. Is that correct?

COLONEL PADAYACHEE: That is correct, Chair, Commissioners.

ADV SELLO SC: For the record, can you describe the affidavit so that future readers will know which affidavit? How would you formally describe this affidavit, either by way of reference to purpose or otherwise?

COLONEL PADAYACHEE: I will look at this affidavit, and I
10 know for the greater out that side that they would not understand what an anchor affidavit is, but we call it an anchor affidavit, which gives you a background into the whole investigation.

ADV SELLO SC: Thank you. And, Commissioners, your exhibit file goes up to CJC382. I propose for the purpose of the record, we mark this affidavit CJC383. It is not paginated for the moment, so we will make reference to the typed page numbers. Thank you, Chair.

CHAIRPERSON: Thank you. And as always, I rely on the
20 attorneys to sort out mine.

ADV SELLO SC: Indeed, Chair. Thanks.

COLONEL PADAYACHEE: And my apologies for it, Chair ...[intervenes].

CHAIRPERSON: On this I always say mine because my co-Commissioners have never moaned about this, but for

the first time Commissioner Baloyi is.

ADV SELLO SC: We apologise. It was unforeseen circumstances, Commissioners. Yes, Colonel, you wanted to say something?

COLONEL PADAYACHEE: Thank you, Chair, Commissioners. And I must tender my apology there on disclosure of the documents. We had two disclosures. The first one from A1 to A27, not to the Evidence Leader, but when we were disclosing at court. And then we had a
10 second disclosure.

So when we copied the bundles for the Evidence Leader, Counsel, we copied the first one. And then when I was looking into it, I see it is only up to A27 when there is an A36. So that is when I sent all the documents last night. Thank you.

ADV SELLO SC: Thank you, and understood. We have it now. So at least we have everything before us that would assist in determining the chronology of events. So I propose that we follow my chronology. You keep that
20 affidavit to the side. And to the extent that you conclude that I have either skipped an important step in my chronology, which is reflected in this affidavit, you will reference the affidavit, which I will include it. Would that work as an approach? Would that work? Okay. You distracted yourself somewhat. I will try again.

My proposal to you is we work off the chronology as I have prepared it based on the documents that I had. And if anywhere in that chronology or timeline there is a step I miss because I did not have a particular document, but that step is reflected in the affidavit we have just introduced, CJC383, that is how we marked it for ourselves, then please refer us to this affidavit and the particular paragraph or page that you would like us to take consideration of, and we will slot it in the chronology. Would that work as an
 10 approach?

COLONEL PADAYACHEE: Yes, Counsel. I will point it out to you.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: The importance of it is that it gives it in chronological order the factual background, how it started.

ADV SELLO SC: Okay. Then perhaps let us do it how it best works for you. I am just quickly flipping through it to see the dates. You recall we start with a date sometime in
 20 December of 2024. That is my start point. It would have been the 27th of November 2024, which is the date of the section 27 affidavit, but you did not see that one. You referenced a decision made by the Case Evaluation Committee, which you say is in December 2024. So for the record, that is what we have, December, and that is my start

date.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: So without going into the detail of the facts justifying the investigation, let us work through this affidavit and highlight the key dates that are important that you want the Commissioners to have regard to, and I will try and slot them into my timeline as we speak. Then we will deal with my chronology of events. I am happy to give you a first shot at this.

10 **COLONEL PADAYACHEE**: Thank you ...[intervenes].

ADV SELLO SC: And remember that we are not dealing with who did what and when. We are just looking at the key dates, what happened on what date that is reflected on this document.

COLONEL PADAYACHEE: Thank you, Counsel, Chair, Commissioners.

ADV SELLO SC: Thank you.

COLONEL PADAYACHEE: I think it will give us a better understanding from when we started with the 27. And first
20 of all, when it comes to the 27, as I indicated, I never received the 27. So there were people at management, legal minds, who made a decision that the investigation should be authorised.

As a result of that authorisation, we have the preliminary investigation, which comes down to our level.

We are authorised to investigate the matter preliminary. So the investigation starts from there. It is a broad investigation from the briefing given by the chief criminal investigator, who we directly report to.

The briefing is done in the form of a briefing. This is the scenario. This is this, whatever is there ...[intervenes].

CHAIRPERSON: Do you want to give a date? Because, as I understood it, Ms Sello is very much interested in dates.

10 **COLONEL PADAYACHEE**: In dates?

CHAIRPERSON: Yes.

COLONEL PADAYACHEE: Commissioner, I cannot remember specific dates, but it was during December 2024. And as I must remind Commissioner that during a certain part of December 2024 to January, I went on leave and I was out of the country. So the investigation starts preliminary investigation.

Obviously, as an investigator, as I explained, that when something is given to us, it is an allegation.
20 Sometimes the facts will be very, very minimum, but we have to investigate. So we start the investigation process. Say, for example, we start the investigation and we find that there is nothing, then we will have to close the investigation because there is nothing, or we cannot find anything to substantiate or support what is there.

But if we find something, a crime that is been committed, we have already started the investigation. We have commenced with it. We will start now by proving, getting more evidence to support this crime that has been committed. So the preliminary investigation is what it is all about.

That is why you will find that some affidavits are taken in January, which is a start, but at the end of the day, when we look at it, the docket is registered in June.

10 Because the preliminary starts first, the investigation starts first and it builds up until the time when you are saying, okay, it is now a full-blown investigation, and we are going to start. We need to register this docket.

Because IDAC does not have its own case dockets of IDAC, we use the SAPS dockets. So you would go and you would register the dockets, and you have taken a statement in January, but your docket is opened in June. So on your preamble, I call it the 3MA and 3MB, your preamble that we were discussing, that has to be

20 completed.

It is for the administration of the docket purposes on the system at the station. So therefore, you will have an affidavit that is taken earlier on, but it is in the docket or attached to the 3MA, 3MB, and that was the thing with the date there. So move on from ...[intervenes].

ADV BALOYI SC: Sorry, before you move on.

COLONEL PADAYACHEE: Commissioner?

ADV BALOYI SC: The preliminary investigation, what you refer to as preliminary investigation, is that the part that falls under an inquiry?

COLONEL PADAYACHEE: Inquiry ...[intervenes].

ADV BALOYI SC: Remember you mentioned an inquiry and you said it has its own number in the court file?

COLONEL PADAYACHEE: That is correct.

10 **ADV BALOYI SC:** Okay.

COLONEL PADAYACHEE: And to add on it, Commissioner, that inquiry does not have a CAS number. It will have a CIN, what we call it, a reference number. So whatever we do or whatever we do, if we have to travel somewhere, the reference is that CIN.

If we take and apply for summons or documents, that is the reference number. But once the case docket is registered, that inquiry number will fall off and you will start using the CAS number. So that is the start. The
20 investigation starts.

There are allegations that are made. So the next step is to now go and look for supportive evidence. You will subpoena documents. So that is exactly what we did. We compiled a subpoena and we served documents on the National Commissioner for various documents according to

the allegations.

So when you say there is a promotion, we want the appointment dockets, everything, we want the personal files, we want the vetting files, we want the secret service account, that, that, and that. Now, these documents are classified. So we also asked for the documents to be declassified.

So the National Commissioner at that moment was General Masemola. He declassified all those documents,
10 and there were quite a number of files that he brought to us. So when those files were brought to us, we perused those files and it is then that moment in time when some of the allegations came to light that, look, this is indeed so. It confirms the allegation.

But with that allegation, you still have to still get an affidavit, and that is how we go with the affidavits from there until we build up to a point. Now, Chair, Commissioners, we do the investigation. After we are done with the investigation, it is presented to the prosecutors. Is
20 there enough in your investigation to support a charge? Is there enough to support – the first person, is there enough? The suspect is identified. Is there enough evidence there to support the charge against the suspect?

So they make those decisions. Either they take what we give them and use it, or they reject it, or they say,

go further, and this is what further we need. So it may mean that with this further guidance from the prosecutors, you will have to requisition more documents, you may have to interview more people until they are satisfied, look, we are now at this point where we are ready.

The suspect is identified, we have evidence to support the charges, and then it moves to the next step of your application for – I do not want to jump a step. Once they are satisfied that they have sufficient, they will start
10 with a draft charge sheet. They will start with a memo, and then they will present that to the Deputy Director of Public Prosecutions who is responsible for that leg or team.

They will have to convince him to say, look, this is what we have. When he looks at it and he says, no, okay, fine, there is enough here to move forward to the next level. So he has to now take everything with the charge sheet and present it before management and the head of the office. So the head of the office has a look at the charges, what is there, and they give the go-ahead to say, okay, yes, we can
20 go ahead.

So I actually jumped into the full-blown investigation. The first is the preliminary where it is submitted to the prosecutors, presented to the Deputy Director, and then presented to management, and they are satisfied, yes, this should go into a full-blown investigation.

Then a full-blown investigation is authorised under section 28(1).

So it comes back again where we now build the case docket and then the draft charge sheet is done. The presentation to management and the head of the office where, after that, a consultation note is done to the Director of Public Prosecutions in that particular region to prosecute the matter.

That Director of Prosecution can say, yes, you can
10 proceed. He is satisfied or we are satisfied, you can prosecute the matter and go forward. So once that is done, then we have to, because of the nature of the offence when it comes to a schedule 5 offence or more serious, we prepare bail affidavits.

We have got the bail affidavits, we have got the charge sheets, then the next step is the making arrangements for the court. The applications for the J50s are done. You go to the Magistrate. You present your affidavit to the Magistrate, and it is scrutinised there, and
20 obviously sometimes they are not satisfied with it. They say they are not satisfied with it, so you have to go back and rectify whatever queries they have.

At the end of the day, the warrants are issued. Once the warrants are issued, the planning is done, and in most cases that what we do, Chair, Commissioners, we try

to do whatever we do in a professional way. Although we have a warrant of arrest, we do not go to your home. We phone you, please come with your attorney, your legal representative, I have a warrant for you. Please come to the police station with your legal representative where the warrant is executed and processed, and thereafter the court process.

So that is the flow process of my explanation, which I tried to explain, but I had some difficulty with it, but
10 now I have given it to you. But one thing I want to say, Commissioners, I have no insight into section 27, and yes, as Commissioner Baloyi said, you know, as an investigating officer you should have got that 27, but in our work space where we are, we are getting a briefing from the Chief. We believe in what he says. He gives us the guidance. There is that scenario there, and at all given times it is an allegation.

So we go out, we investigate, and if we find there is nothing we come back and we tell the Chief, there is
20 nothing here, and it ends there. We are not going to go and look and scratch for something that is not there or make up something, but that way it ends there.

With regards to the section 27 and the reversal, when the section 27 comes, it goes to the head of the office, and the head of office, together with their

management, whatever they do, they are legal minded in terms of the act and everything that they do, they will look at it. By the time it comes to our office or down to our level, it is authorised. That is our authority to carry on and be compliant. Thank you, Chair. Thank you, Commissioners.

CHAIRPERSON: Thank you. Thank you, Colonel. Was it only in this instance that an investigator did not get the section 27 referral, or is your testimony that the Chiefs
10 never, ever give that referral to investigators?

COLONEL PADAYACHEE: Commissioners, I have never received ...[intervenes].

CHAIRPERSON: You may have dealt with this, but there is no harm in you repeating it.

COLONEL PADAYACHEE: No problem, Chair. In all the investigations that I have conducted, and there are a few of them, I have never had insight into the 27. From the briefing, we are getting a briefing.

CHAIRPERSON: Yes.

20 **COLONEL PADAYACHEE**: Because it is, I will put it this way, because it is handled at management level and dealt with there, for us, it is just the authorisation, proceed with your investigation. That is what is important to us.

CHAIRPERSON: Okay.

COLONEL PADAYACHEE: Proceed, carry on with your

investigation.

CHAIRPERSON: So in your understanding, that is the case with your, or rather with other investigators as well. They, too never get the section 27 referral.

COLONEL PADAYACHEE: Would the investigators ...[intervenes].

CHAIRPERSON: To your knowledge.

COLONEL PADAYACHEE: I do not know. To my knowledge, I do not know.

10 **CHAIRPERSON**: You do not know.

COLONEL PADAYACHEE: There are many, there are not one chief criminal investigator.

CHAIRPERSON: I referred to Chiefs, plural.

COLONEL PADAYACHEE: Chiefs.

CHAIRPERSON: I referred to Chiefs, plural.

COLONEL PADAYACHEE: Yes, I would not have knowledge.

CHAIRPERSON: So you do not know about other investigators as well, whether they do get these from the
20 Chiefs.

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: You do not know?

COLONEL PADAYACHEE: Can I respond, Chair?

CHAIRPERSON: Yes, yes, yes.

COLONEL PADAYACHEE: The other Chiefs and their

teams, I do not know.

CHAIRPERSON: Okay, thank you.

ADV KHUMALO SC: Colonel, this is not the first case you have investigated. In previous cases that you investigated, did you get the section 27 referral?

COLONEL PADAYACHEE: No, sir. I did not get the 27 referral. In other cases, even where I assisted in the investigations, I did not have sight into a section 27. That is why, for me, when you are asking me about the section
10 27, it is like I have never. Thank you, sir.

ADV BALOYI SC: Can I just ask, does that mean, the fact that you do not, you rely on a briefing, does that mean you have no role at all in what charge is formulated?

COLONEL PADAYACHEE: That is correct. I have no authority. That is for the prosecutors to determine. It is their space because they must decide, because it is prosecution-led. They decide to prosecute or not to prosecute.

ADV BALOYI SC: Ja, I am asking a different question. So
20 here, for example, in the Mokwele matter, you have got charges of fraud, for example. You would not have had any input into whether what you have gathered in your investigation, whether preliminary or the main investigation, whether it supports that charge of fraud. You have no input in that.

COLONEL PADAYACHEE: From the investigation and what evidence we gather, for example, where you can see fraud, when we are presenting your investigation, what we found, we found there are misrepresentation fraud in your investigation because it shows on your investigation and your statements, you know, the crime is there. It is for them to see whether there is enough for that alleged crime to stand, for them to put that in the charge.

But where we – I am not sure this is going to
10 answer your question, Commissioner Baloyi, is that do we influence the prosecutor to say, no, look here, this is fraud, this is corruption? No. We do not have control over that. Thank you.

ADV BALOYI SC: Thank you.

COLONEL PADAYACHEE: Thank you, Commissioner.

ADV SELLO SC: Thank you, Commissioners. You are still dealing with CJC383, this extra affidavit you just submitted, and I just wanted to make sure that you have highlighted all the dates that you consider relevant, reflected in this
20 document. Do you have them?

COLONEL PADAYACHEE: Yes, Commissioner. Yes, Counsel. May I?

ADV SELLO SC: Absolutely. Yes, please.

COLONEL PADAYACHEE: May I ask, would it not be possible for me to read it into the record so that the flow

can come there or we flow? But I will ...[intervenes].

CHAIRPERSON: Please not.

ADV SELLO SC: No.

CHAIRPERSON: Just rather, yes.

COLONEL PADAYACHEE: Thank you, Chair.

ADV SELLO SC: It has got a whole lot of factual background that, though important, is not relevant for the particular exercise I want. But I assure you, we will get to the factual issues that are reflected here because I intend
10 to deal with them during the course of the day. Just not now.

Right now, it is just date issues, to know what happened on what date. So, is there anything in this affidavit? I do not see a date necessarily, but I could very well have missed it. Do you see a date between December 2024 and June 2025 when the members of the panel were arrested? Is there any date in this particular affidavit that I should have regard to and make sure that I do not skip in setting out my chronology?

20 **COLONEL PADAYACHEE:** I think I will be guided by you, Counsel, when you come to specifics and then we can look to see if there is a date or can you remember a date and then I will respond accordingly.

ADV SELLO SC: Okay. Just then to remind ourselves, if you look at section 27 affidavit, that would be at page 512,

CJC373, we have dealt with that affidavit. Yes, File 2.

COLONEL PADAYACHEE: File 2.

ADV BALOYI SC: CJC?

ADV SELLO SC: CJC373 at page 512, Commissioner.

COLONEL PADAYACHEE: I have it.

ADV SELLO SC: Thank you. Now, paragraph 1 of that affidavit tells us that the deponent, and I read:

“First opened three cases in Cape Town
Police Station with case numbers...”

10 And they are set out. Do you see that?

COLONEL PADAYACHEE: Correct.

ADV SELLO SC: It is on your version, the case numbers are not blocked out, so you can see. And all of them bear, you remember that middle, in the CAS number, that middle number. They all bear the number 10, which means October.

COLONEL PADAYACHEE: That is correct.

ADV SELLO SC: So they were all – the three we now know were opened in October.

20 **COLONEL PADAYACHEE**: That is correct.

ADV SELLO SC: Then the deponent deals with other issues. Do you know the date on which these dockets were opened in October?

COLONEL PADAYACHEE: I am not sure offhand, but I can just maybe try and check it on ...[intervenes].

ADV SELLO SC: Okay, maybe let me ask a different question. Do you have the dockets? Because the docket would tell us. It has a date.

COLONEL PADAYACHEE: The physical docket?

ADV SELLO SC: Do you have copies of the dockets in the main docket?

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: The docket you disclosed to us?

COLONEL PADAYACHEE: No, that docket was not
10 disclosed to you.

ADV SELLO SC: Okay.

COLONEL PADAYACHEE: The original dockets that were opened by Mr Adams has not been disclosed to you.

ADV SELLO SC: Okay. So, I did think that I could not locate them in what was disclosed to us, so I propose another way of trying to determine the date because that date becomes important.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: You have by your feet another file. It is
20 Mkhwanazi Annexures, and we are looking for MK15 in Mkhwanazi Annexures. These are the annexures to General Mkhwanazi's statement to the Commission and we are looking for MK15.

Now, MK15 is a report by Lieutenant General Jacobs, who is the Divisional Commissioner Inspectorate.

If you go to page 271, 270, that is where it starts, that is the cover page, and at 271 at the bottom it gives his designation. This report you will see is dated the 30th of July 2025.

COLONEL PADAYACHEE: That is correct.

ADV SELLO SC: But this report records everything, according to General Jacobs, that transpired from the moment they, as an inspectorate, became aware of the issues that are referenced in section 27, particularly the
10 dockets opened in Cape Town. Yes, please, go ahead.

COLONEL PADAYACHEE: Counsel, Chair, Commissioners, when I looked at the documents I think you sent yesterday, additional MK whatever, on that, I only have two pages. I do not have the remaining part of it.

ADV SELLO SC: No, they were not sent yesterday. I did not send any documents yesterday.

COLONEL PADAYACHEE: There were documents updated ...[intervenes].

ADV SELLO SC: I think they were provided to you on
20 Friday ...[intervenes].

COLONEL PADAYACHEE: Updated documents ...[intervenes].

ADV SELLO SC: Together with the exhibit bundle given to you on Friday.

COLONEL PADAYACHEE: There was an email that came

with updated documents and it said MK, but I will try and ...[intervenes].

ADV SELLO SC: Okay, let us not unduly detain ourselves. I will accept that you only got two documents, two pages of a bigger document. I do not know how that transpired. We will see where the glitch was in their administration. But for the moment, let us work off this document. We will perhaps have to go slower to give you an opportunity to wrap your mind around the contents of the report.

10 **COLONEL PADAYACHEE**: Okay.

ADV SELLO SC: Then just to give you perspective, as you see, I do not know which pages you got the two, but this is the report of the Inspectorate, the inspector of the Inspectorate, if that is – Lieutenant General Jacobs. That much you were able to deduce from the documents you got, the two.

CHAIRPERSON: Sorry, Ms Sello. May the attorneys just check what the Colonel has, please?

20 **ADV SELLO SC**: Chair, I think the Colonel is looking at the actual annexure bundle, so it would be the complete MK15. What I understood the Colonel to point out is that when this document was shared, MK15, the annexure was shared with him for purposes of preparation, he only got two pages of the entire bundle.

So perhaps during tea, we will look at what he

received by email and try and determine how he was provided with only two pages of what is more than 20 pages, yes.

CHAIRPERSON: Okay, so he has got what we have ...[intervenes].

ADV SELLO SC: Yes, what he has before him now.

CHAIRPERSON: In a different bundle.

ADV SELLO SC: Yes. Do you agree with my explanation, Colonel?

10 **COLONEL PADAYACHEE:** Counsel?

ADV SELLO SC: No, I was saying, do you agree with the explanation I provided to the Commissioners, which is the file you have before you is the original Annexure MK15 and should be complete for our purposes, and that the point you raised earlier was that the same annexure when it was shared with you previously for purposes of preparation, you appear to have received only two pages of that.

COLONEL PADAYACHEE: That is correct.

ADV SELLO SC: Yes. So I was proposing to the Chair
20 that during the tea break, we will try and see how that came to be, and I apologise for that to the extent that it may have happened.

COLONEL PADAYACHEE: That being said, Counsel, that I have not had insight into it, I would like to have the opportunity of looking at the annexures, and unless you are

going to deal with it now, I would like to have insight into it because what I am looking at here specifically is the date.

ADV SELLO SC: I will take you to the date.

CHAIRPERSON: May I make the suggestion that if you have something else that you may deal with, why do we not do that and give the Colonel an opportunity over the tea break, perhaps?

ADV SELLO SC: That is my difficulty.

CHAIRPERSON: If you have no difficulty doing it that way.

10 **ADV SELLO SC:** I have a huge difficulty, unfortunately, and as the Colonel was speaking, I was trying to think very fast if there is a solution to the problem. The problem is the docket as it stands, it is very difficult to determine the chronology.

What I have been able to establish in preparation is the chronology from October 2024 to, as I said, I am aiming for June 2025, and one of the best annexures before, that are on record already is MK15, which is what General Mkhwanazi submitted. So ...[intervenes].

20 **CHAIRPERSON:** May we stand down for five minutes for you, Mr Bodlani, and the Colonel to have a discussion and see how long he would require to go through whatever material, this exhibit and whatever else?

ADV SELLO SC: We shall do so, Chair. I am happy to.

CHAIRPERSON: We will come back when you indicate.

ADV SELLO SC: Thank you.

CHAIRPERSON: Let us adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Ms Sello.

ADV SELLO SC: Thank you, Chair. Chair, I think, firstly to say, we have resolved the challenge. But before we proceed, I think it is only appropriate to apologise to Colonel Padayachee. The Commission administration failed
10 him. It is correct, he only got three pages of Annexure MK15, which is made up of more than 20 pages. Technically, what appears to have happened is somebody decided to draw out only the first three pages of Annexure MK15 and provide him that and that basically are the cover pages to the report that we still need to engage with.

The dates that I wanted to reference in order to determine our timeline are included in the annexures to that report. The purpose, as the Commissioners would appreciate, of giving the witnesses the documents that
20 evidence leaders intend to rely upon ahead of their appearance, is to enable them to familiarise themselves with their contents and to consider them in the context of their own testimony. Now, we were denied that opportunity because of this administrative problem.

But most importantly, it serves two purposes. We

do not intend to prejudice witnesses. It is to make sure that the witness is fully appraised of the documents that the evidence leaders will rely on. But most importantly, it does not assist the Commission when we quote-unquote spring such documents on the witness and hope for a meaningful engagement. So, Chair, I think before we proceed, it is appropriate I place that on record.

Colonel Padayachee was quite correct. That is what he received. I do not understand how, but this is
10 where we are. But I think he is deserving of the Commission's apology. Thank you, Chair.

CHAIRPERSON: Which you are tendering.

ADV SELLO SC: Which I am tendering, unreservedly, Chair.

CHAIRPERSON: Thank you, thank you, thank you, Ms Sello. Colonel, oh, you want to say something? Please place yourself on record. I see that Mr Bondlani, he did ask to be excused. I think in my mother tongue and then filter and speak.

20 **MR RAMATSEKISA:** Good morning, Chair and the Commissioners. Unfortunately, you are left to deal with me now. I have noticed you have not been greeting me since we started, but only Mr Bondlani.

CHAIRPERSON: I never. Do not try to promote yourself. I never greet those who are being led.

MR RAMATSEKISA: Thank you, Chair.

CHAIRPERSON: Yes.

MR RAMATSEKISA: My surname is Ramatsekisa.

CHAIRPERSON: Yes.

MR RAMATSEKISA: Chair and the Commissioners, I confirmed the submission by the evidence leader and we appreciate that we have been afforded the opportunity for the witness to go through the annexures. And the witness is saying that it is not yet done and he was asking for a few
10 minutes just to complete perusing the documents that he has been given. So we are in the hands of the Court.

CHAIRPERSON: Commission, Commission not Court.

MR RAMATSEKISA: My apologies. My apologies. We are in the hands of the Commissioners. He was asking maybe until 12.00, but he might finish before that. He is just in the midway of the documents.

CHAIRPERSON: Thank you, Mr Ramatsekisa.

MR RAMATSEKISA: Correct.

CHAIRPERSON: Ramatsekisa. Thank you. I have written
20 it down. Colonel, it does seem you were hard done and Ms Sello has tendered an apology, I hope you accept it.

COLONEL PADAYACHEE: Yes, Chair. It is understandable. I mean, the same happened to us. So we offer counsel the same with the apology too as well.

CHAIRPERSON: Thank you. Thank you. Something I

have said repeatedly at this Commission was said by Ms Sello, when she was addressing us just now. And it is that this Commission does not want to ever disadvantage a witness or to treat a witness unfairly. Where there are documents a witness is seeing for the first time, we either proceed on the basis that the witness may file a supplementary affidavit afterwards to address whatever issues the witness was not able to address as best as they wanted to when they testified in open session. So we

10 always do our best to achieve that. That is fairness. Basic, basic fairness in treating all witnesses. When we said we would come back at 10 past, that was on the basis of what was indicated in an informal discussion outside, which was an expectation that you would be done going through the document by ten past. But we are now faced with the reality that you are not done. Sorry, how much longer or should we just adjourn and come back when it is indicated to us? What should we do? How much more time do you require?

20 **COLONEL PADAYACHEE**: I do not think it is... Can I speak, Chair?

CHAIRPERSON: Yes, yes.

COLONEL PADAYACHEE: Chair, Commissioners, I do not think it will be much time. So as you always indicate, when you are ready, call us back.

CHAIRPERSON: But you see where you are and you see what is left, please indicate how much longer you require.

COLONEL PADAYACHEE: Perhaps 20 minutes.

CHAIRPERSON: 20 minutes. We will come back at twenty to 12. Let us adjourn.

ADV SELLO SC: Thank you.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Ramatsekisa, ready now?

10 **MR RAMATSEKISA:** Thank you, Chair.

CHAIRPERSON: Is the Colonel ready now?

MR RAMATSEKISA: Ja, he is ready.

CHAIRPERSON: Thank you.

ADV SELLO SC: Thank you, Chair. Commissioner, I will... Colonel, I do apologise. I guess things got off to a bad start this morning. But I shall regroup. Colonel, as you now have become familiar with this Annexure MK15, you do notice that it is actually a report in its entirety. It is a report of Lieutenant-General Jacobs, as I had indicated,
20 dated 30 July 2025. And you were able to establish that attached to that report are a series of annexures that he references in his report.

So in working through this Annexure MK15, I will jump to specific documents for purposes of my timeline. You remember we still try to establish the timeline, and I do

apologise that we are only starting to do so now. Please bear in mind the affidavit you submitted in the morning, CJC383, so that if I skip any particular event in my timeline, we can pick it up from your affidavit, the one that you submitted this morning.

ADV KHUMALO SC: Mic, mic, please.

CHAIRPERSON: Your microphones.

COLONEL PADAYACHEE: Thank you, Chair. Thank you, Commissioner.

10 **ADV SELLO SC:** So the one you submitted this morning, and for the record we marked it, you know, we give each a specific marking, exhibit number. So it is CJC383. So I am saying as I work through my timeline based on the documentation I had, if there is a specific date that I miss somehow, and it is contained in your affidavit, please feel free to refer me there, and I shall include it in the timeline.

CHAIRPERSON: Your anchor affidavit, as you call it.

COLONEL PADAYACHEE: Thank you, Chair.

ADV SELLO SC: Okay. So now you recall we referenced,
20 I think, paragraph 1 of Mr Adams' section 27 affidavit to know that he said he opened the dockets in Cape Town in October.

COLONEL PADAYACHEE: That is correct.

ADV SELLO SC: Now, as you saw in this Annexure MK15, there are cover pages of those dockets, and I would like to

refer to the first. The first is at page 303 in that same pack, MK15. And it has got a case number. What is important for my purposes there is the date on which it is opened. And that should read, it reads on my copy 2024-10-29 at 14h30, I think. You confirm that?

COLONEL PADAYACHEE: I confirm.

ADV SELLO SC: So that is my first date. I have confirmed that the first docket in Cape Town was, at least that one of the dockets in Cape Town was opened on the 29th of
10 October at half past two. I then have the next one, which would be at page 305. And that too bears the date of 29th of October 2024 and inserted a timestamp of 14.30.

COLONEL PADAYACHEE: I confirm.

ADV SELLO SC: The third then would be at page 308, and that once again is 2024-10-29 at 14.30.

COLONEL PADAYACHEE: I confirm.

ADV SELLO SC: So now we know our Cape Town dockets were opened on the 29th. I then try to understand the next date. The next date would be when Mr Adams, as he
20 indicates in his affidavit, came to Gauteng to open what now we call the Orlando dockets. Unfortunately, I do not have those dockets. I cannot put a definitive date on which that happened. Do you by any chance have those dates in your docket? Do you recall having them at all? Do you recall having the docket covers of the Orlando cases so that

we can determine the date?

COLONEL PADAYACHEE: Yes, if Counsel can bear with me, I can just check quickly.

ADV SELLO SC: Okay, if it is not too far, because otherwise we could park it and go to the next date. Because the next date I deal with takes into consideration the Orlando dockets. So we know it will be between the 30th of October and this next date I am going to deal with. Then during lunch we will check for the actual dates.

10 **COLONEL PADAYACHEE:** No problem.

ADV SELLO SC: I am trying to save time because we have lost quite a bit. Okay, then the next date I have, we are still with MK15. We start at page 281. These are a series of emails that run until page 284. These have nothing to do with you. If you have never had sight of them, it is accepted. I do not expect you to comment about them, but you remember we are just trying to establish the timeline of different events.

20 And we know with emails we start from the last and work our way backwards. That is how they come out when they are printed. So our first email starts on page 283. At the bottom of 283, it is an email from somebody. It is addressed to Minister Mchunu. It is dated 1st of November 2024 at 8.21 in the morning.

COLONEL PADAYACHEE: Correct.

ADV SELLO SC: And if you flip over to page 284, it is from Honourable Fadiel Adams. Now that email reads thus.

“To Minister of Police. I have opened cases in the Western Cape on a number of senior SAPS personnel as per following CAS dockets as per Grant Central.”

Then he provides them. Second point:

10 “I was told that the dockets were intercepted. In my quest for justice, I travelled to Gauteng and opened following dockets as per Orlando SAPS.”

Then he provides the detail. The detail provided there, we can tell from the CAS numbers, that they too in Orlando were opened in October. You confirm that?

COLONEL PADAYACHEE: I confirm.

ADV SELLO SC: Then he continues.

20 “However, I have also been notified that the Gauteng Police Department has followed the same modus operandi as the Western Cape PC and is interfering in the investigative process. I urgently and humbly ask the Minister to intervene and ensure the integrity of the investigative process is maintained to ensure a fair and just outcome.”

So that is our next date. First is the 29th of October when they are opened in Cape Town. The next is that date yet to be determined in October when they are opened in Orlando. And the 1st of November is a complaint to the Minister regarding interference or interception of both sets of dockets.

Now, if you will stay on page 283, the email above is now an email from Nkabinde CM. When General Mkhwanazi testified, he advised that Nkabinde CM is the
10 Chief of Staff in the Minister's office and you see that is dated 1 November 2024, 09.04. And that is addressed to Major-General Sibula and Brigadier Lethoko. Subject line is:

“Charges laid by NCC”

And Mr Nkabinde writes as follows, I read the body of the email. second paragraph:

“The Ministry has received this complaint
from the Member of Parliament. In order
for the Ministry to respond accordingly,
20 please furnish this office with a report in
responding to this complaint and the
details of the investigating officer who was
assigned to investigate these cases. Your
report is expected on Monday 4 November
2024 at 15h00.”

So the Office of the Minister immediately acts upon this and directs the complaint to be dealt with and directs that complaint to Major-General Sibula and Lethoko. We need not concern ourselves about who they are, but that is what the email tells us. Then if we go back to page 282, at the bottom, at the bottom is now an email from somebody within SAPS. It is dated still 1 November 2024 at 11.45 and it is addressed to Complaints Nodal Point, copying the Divisional Commissioner Inspectorate and a few others.

10 And in this particular communication overleaf, before we go overleaf, at the bottom of 282, this person informs:

“Kindly see the email below for your urgent attention and important, feedback must reach the Office of the National Commissioner on Monday 12h00 and report to the Office of the Minister by Monday 4 November 2024 at 15h00.”

Then still staying at page 282, at the top, it is now 11.59,
20 about 12.00. This is from the National Inspectorate to a few other people and it reads:

“Please find email from Lieutenant-Colonel Setati for urgent attention as directed by the National Commissioner. After receiving the email, it was followed by a call to

humbly request for feedback to be submitted on or before 12h00 on Monday 4th of November 2024.”

You see that. Then lastly, at page 281, it is an email from one of the recipients of the previous email I just dealt with addressed to other members of SAPS and it would appear in particular to Colonel van Rooyen and reads:

“Please ensure that this is urgently registered into N16 of 2017 VS2.”

10 We do not have to worry ourselves about that. Further down it reads:

“Please take note and deal with this immediately and engage the province directly, please. Also note the deadline set for Monday 4th of November.”

So our next date is this flurry of activity on the 1st of November triggered by Honourable Adams' complaint to the Minister at 8.00 in the morning. So by 1 o'clock, I will then, it then records that it is being acted upon and eventually by
20 the, I do not know if it is appropriate to call them the Complaints Nodal, but the point where it was referred to as a complaint and with an urgent request to deal with, to enable the original person to whom the complaint was addressed from the Minister's office to respond to the Minister by the 4th of November.

ADV BALOYI SC: Just a detail, just in case it becomes relevant, it is also to note that the 1st of November according to these messages was a Friday.

ADV SELLO SC: Yes, I confirm it was a Friday.

ADV BALOYI SC: And this activity was supposed to be reported on, on the Monday.

ADV SELLO SC: On the Monday and in fact, that is confirmed in the email at page 282 from Lieutenant-Colonel Bapela, who specifically requests that the report be
10 provided by 12h00 on Monday, 4th of November. So that should take care of that. Thank you so much. So the next day then, I have nothing between the 1st of November, being a weekend, and the 4th. My next date would be the 4th of November. We have established that is a due date for the report.

Then the 4th of November, if we stay with that, next to MK15, we go to page 285. And it starts at 285, this particular document. But if we jump to 287, we see that it is a report by Major-General Acting Divisional
20 Commissioner Inspectorate NM Dladla dated 4th of November 2024. It is a three-page document. And then if we go back then to page 285, where it starts, it is an information note directed to the Minister. It provides a purpose, the background, which is, the background is as we have discussed. We know the opening of the two sets of

dockets.

Then there is a discussion and then it deals with the nature of the complaints in the dockets. Now, if we stay at page 286, it states that at 3.1.1:

“The criminal allegations in the six cases which were opened are levelled against Generals Khumalo, Lushaba, Madondo and Brigadier Ncube and are centred on four specific matters, namely:

- 10 1. Abuse of Secret Service Account.
2. Cover-up of criminal incident linked to Villieria CAS number...”

It is provided and there is a note that:

“The docket is locked in a safe at the police station and access there to will only be available from 11 November 24.

3. Failure to address Major-General Madondo's results of the polygraph examination, wherein two incidents of tax evasion were uncovered.
- 20

4. Practices of nepotism.”

So, that is his summary, the author's summary of the contents of those dockets. The most important is at 287 for purposes of a timeline. And at the top, recommendation

and at 4.1, it reads:

“This office recommends that an extension of ten working days is provided in order for the following to be conducted, where after a comprehensive report can be provided:

1. Interview the complainant and obtain a detailed affidavit.
2. Perusal of all criminal dockets including Villieria...”

10 CAS number provided.

“3. Determine if any other government department is investigating the same allegations.”

So, this is submitted on the 4th of November to the Minister. If you turn over, it is submitted by Major-General Dladla and still at 287, you will see that it is counted ...[intervenes]

ADV BALOYI SC: Just for accuracy, it is the 5th, not the 4th. It is submitted on the 5th of November. Do you see that because General Sibiya signs it on the 5th, on 287.

20 **ADV SELLO SC:** Yes, Commissioner, I was saying it is signed on the 4th. So, Major-General Dladla, on the 4th, dates it. He is the author of this document.

ADV KHUMALO SC: Yes.

ADV SELLO SC: Then the second signature I was going to go to is the signature at the bottom of the same page. And

I say it seems to have gone to General Sibiya, who signs it on the 5th of November 2025, with no comments. And then the third signature is, once again, overleaf, at page 288. And that appears to be the signature of the Minister of Police, ES Mchunu, MP. And it is dated 8th November 2024.

ADV KHUMALO SC: Advocate Sello, my point was that the Minister's Office appears to get this report on the 5th. And we see that from the date stamp on page 285.

ADV SELLO SC: I am with you. Thank you,
10 Commissioner.

ADV KHUMALO SC: So they missed that 4 November deadline by a day?

ADV SELLO SC: Indeed.

ADV KHUMALO SC: And then on the 5th, the stamp suggests that that is when the Minister's Office received it.

ADV SELLO SC: I misunderstood you. I thought it was the date on which Major-General Dladla signed, so I was reading the 4th. I completely agree with you. It would appear then that after General Sibiya had signed, it then
20 presumably got to the Minister's Office where it bears the receipt stamp of 5th November 2024. And then the Minister's final signature at page 288 on the 8th of November 2024. Now, where the Minister signs, there is a space for comments, but he does not seem to have made any comments.

Now, whether or not the Minister granted the request of an extension, I do not know. I cannot tell from this batch of documents. So I then look for my next date. And my next date would be the 11th of November. But that one now I find in a different document. And it is the second annexure that you are supposed to have been given together with MK15, but unfortunately were not. It is MK16 in General Mkwanaazi's annexure bundle. And that MK16 is a two-page document, mercifully. And it is the other
10 document you had opportunity to consider.

Now, this document at, it is page 310 of MK15. This document is, if we go to page, the second page of that. second page of that, it is signed Mthokozisi Nkabinde, Chief of Staff in the Ministry of Police and it is dated 11 November 2024. Now, when we go to the first page of this particular document, it is addressed to the Investigating Director, Brooklyn. And the subject line is:

“Referral and request for investigation in
terms of section 27 of the National
20 Prosecuting Authority Act, Act 32 of 1998,
read with the National Prosecuting
Amendment Act, Act 10 of 2024.”

And Mr Nkabinde, Chief of Staff, the Ministry of Police, states to the Investigating Director, and that is Advocate Johnson, correct?

COLONEL PADAYACHEE: That is correct.

ADV SELLO SC: Yes. States:

“Attached hereto please find for ease of reference a copy of written correspondence addressed to the Honourable Minister of Police, Honourable Senzo Mchunu, by Member of Parliament, Honourable Fadiel Adams. The allegations contained therein implicate very senior members of the South
10 African Police Service and are viewed in a serious light and CAS dockets were registered as follows.”

Then he provides one Langlaagte case and three of those Orlando cases that Mr Adams registered between the 29th of October and the 1st of November. And overleaf, most importantly, it concludes:

“Honourable Fadiel Adams was advised by this office to await your decision in this regard.”

20 So this document purports to refer Mr Adams' complaint to IDAC, specifically to the ID. You note that?

COLONEL PADAYACHEE: [No answer]

ADV SELLO SC: I say you note that?

COLONEL PADAYACHEE: I note that, Counsel.

ADV SELLO SC: Thank you. My next date ...[intervenes]

ADV BALOYI SC: I may have missed it. This letter from Mr Nkabinde refers to a Langlaagte CAS number. Did we deal with it when you were doing the dates? Is it one of the cases?

ADV SELLO SC: There are three Cape Town cases. There are three Orlando cases. And there is a Langlaagte case that we do not deal with because the complaints that culminated in the charge against General Khumalo and others seem to involve the Cape Town and Orlando cases.

10 There is also a 2022 Villieria case referenced. But once again, we do not deal with the contents of that particular docket because it is not relevant to the charges. But yes, there is a Langlaagte case. I do not know if the Colonel has a better understanding of what that case was about. But we know of its existence.

COLONEL PADAYACHEE: If I can explain these CAS numbers, it is a mess. In the sense that when you look at the actual docket, it says Villieria CAS403, 404, 405. The way we look at it is that he went to a station and he opened

20 those dockets there. But they were in a different police precinct. So this Orlando station was supposed to forward it to the respective station it belongs to. And then they would register it under their station name. So that is why when you look at it, I see Orlando CAS402. But I know the docket as Villieria CAS403 and 404. I know them as

Villieria.

But when you check in the Villieria CAS system, these CAS numbers do not exist. It is because it belongs to another station, not Villieria. So the docket cover is written Villieria 403. And it did cause a bit of confusion for us because we were looking at and investigating Villieria CAS403. And when we get to the station, after we finalise everything and we bring it onto the system, we find it is not Villieria 3. But a search on the system corrects that CAS
 10 number to Villieria CAS, for example, 278/10.

Same month, same year, but just a different station and both the dockets match with each other.

ADV BALOYI SC: Okay. All right. Maybe then let me just ask my question this way.

ADV SELLO SC: Yes, Commissioner.

CHAIRPERSON: The Langlaagte CAS number, is it one referred to in the affidavit, the section 27 Adams affidavit? I guess that is what I was trying to clarify.

ADV SELLO SC: In the section 27 affidavit?

20 **ADV BALOYI SC:** Ja.

ADV SELLO SC: I do not believe so. That is CJC373. At Paragraph 1 of that affidavit, Mr Adams refers specifically to the Cape Town cases with their CAS numbers. And beyond that, at paragraph 8, yes, he states:

“A few days after I opened the three cases

at Cape Town police station, I decided to go to Gauteng and I went to Orlando Police Station where I opened another three cases based on the three cases I opened in Cape Town. I did this to ensure that what I had reported in Cape Town does not disappear. I also opened a separate case at Langlaagte police station.”

And that is where he stops. He does not say what the
 10 Langlaagte case is about. That is as much as we can establish about that one.

ADV BALOYI SC: So unless there is another section 27 affidavit, Mr Nkabinde would have obtained this, which contains the Langlaagte CAS number. Mr Nkabinde would have obtained this CAS number elsewhere other than from an affidavit. I guess it is a question for him to answer.

ADV SELLO SC: In fact, I think we would have to go to the complaint laid by Honourable Adams to Minister Mchunu on the 1st of November at page 283, because he lists them and
 20 he states there that:

“I have opened cases in Western Cape on a number of senior police as per the following CAS dockets...”

Then he gives the numbers. He quotes three. Those are the Cape Town CAS dockets. Then he says he went to

Gauteng, and then he provides three dockets. Those, you understand, are the Orlando dockets. And he does not seem to reference the Langlaagte case. So, yes, I point this out to confirm that on the documents that we have, when he reported interference with these dockets, Langlaagte was not a part of them. So he would have had to advise Mr Nkabinde otherwise than in this trail of emails.

ADV BALOYI SC: Thank you.

ADV SELLO SC: Thank you.

10 **ADV KHUMALO SC:** While we are dealing with the chronology, I do not want to come back to it later, because it is at this point that I think this question is relevant. Colonel, I have looked at the description of the cases in the Cape Town dockets and the Orlando. Assist me if I am wrong. None of the complaints in the Orlando dockets and in the Cape Town dockets had anything to do with the Brigadier Mokwele case.

COLONEL PADAYACHEE: Can I respond?

ADV KHUMALO SC: Yes.

20 **COLONEL PADAYACHEE:** When you look at the way, you will get, like, in one docket, there is two or three allegations in one. It is mixed up, and then it is like nepotism, and it is in another docket. It is all mixed up. But I would have to look at the actual docket itself on what you are saying.

ADV KHUMALO SC: Because, remember, they were

opened in October 2024.

COLONEL PADAYACHEE: Yes, sir.

ADV KHUMALO SC: And there is one about nepotism, but it relates to the other Colonels in Crime Intelligence. That is what the story is. And there is complaints about defeating the ends of justice. That is what the other complaint is about in the dockets. But there was no case opened, either in Cape Town or in Soweto, Orlando, of corruption and fraud relating to the appointment of Brigadier
10 Mokwele.

COLONEL PADAYACHEE: I will have to just check on that, sir, because I think when you are looking at Orlando and Villieria, because I am sitting with Villieria.

ADV KHUMALO SC: It does not matter whether it is Orlando or Villieria. The point is it was in October 2024, we have established that. And I am saying in October 2024, no case was opened saying the appointment of Brigadier Mokwele was fraudulent or there was corruption in that.

COLONEL PADAYACHEE: Yes, specifically if I can recall,
20 sir, subject to correction, in the docket or the affidavit that was there, there was no specific name to a Brigadier or anything, just nepotism and family members and stuff like that that was mentioned.

ADV KHUMALO SC: And because she had not been appointed at that point.

COLONEL PADAYACHEE: Yes.

ADV KHUMALO SC: So the cases that were opened in Cape Town and Orlando related to this complaint that you see in the section 27 affidavit, that all the Colonels, he says:

“It is concerning to note that all the Colonels employed in Crime Intelligence, none of them are suitable for the post to which they are appointed.”

10 **COLONEL PADAYACHEE:** Commissioner, where are you reading that from?

ADV KHUMALO SC: I am reading the section 27 affidavit, paragraph 4. Colonel, maybe we can do this ...[intervenes]

COLONEL PADAYACHEE: Ja, I am with you.

ADV KHUMALO SC: Yes, in the interest of time. If I am wrong that the Cape Town cases and the Orlando cases did not concern the complaint about the appointment of Brigadier Mokwele, you can, after lunch, I assume you would have looked at this, after lunch you can say to me,
20 Commissioner, you are wrong, that was one of the complaints in the dockets, or you are correct, none of the dockets had to do with that case.

COLONEL PADAYACHEE: Yes, I will respond to that, sir.

ADV KHUMALO SC: All right.

ADV SELLO SC: We have made a note of that,

Commissioner, we will look into that. So the next date I am able to locate is the date of the 20th of November. And now I ask us to go back to MK15. We are done with MK16, which is that referral letter, quote-unquote. We will come back to it in a different context. But for the moment, at least we have established a particular date there. My next date I could locate is the date is the 20th of November 2024 and that date is at page 289 of MK15.

And if you go to page 291, it bears two names. It is
 10 signed, it is the name of Lieutenant-General Jacobs, but then it appears to be signed by Major-General Dladla, who affixes his stamp there and it is dated the 20th of November 2024. Do you see that?

COLONEL PADAYACHEE: Correct.

ADV SELLO SC: So I am not going to quibble about whether or not Major-General Dladla was authorised to sign on behalf of General Jacobs. That is not the point. It is just the date I am interested in.

COLONEL PADAYACHEE: Correct.

20 **ADV SELLO SC**: Below that looks like there is space for the Divisional Commissioner Legal Services S Chamane to sign, but no signature is appended.

COLONEL PADAYACHEE: That is correct.

ADV SELLO SC: Now, if we look at this information note, it states at page 289, under Background, it summarises the

essence of the respective dockets. At 2.2.1, it says:

“A report was compiled wherein the allegation that there was interference from both the provincial offices, were reported and found to be unfounded.”

Then if we go over leaf at 290, it gives the background, a discussion, basically summarising the gist of the complaints. But I am interested for our purposes at paragraph 3.3:

10 “As part of the protocols to address service complaints, an affidavit is obtained from the complainant. Colonel Phillips of this office was tasked to obtain the affidavit. However, after numerous attempts, it seems as if the complainant is evading the request. Please find Colonel Phillips' affidavit as proof hereof.”

You can jump then ahead at 2.92. That appears to be the affidavit of Colonel Phillips. It is what it is. Now, at 292,
20 that is the affidavit of Colonel Phillips. Staying with this particular document, at page 290, it concludes with a recommendation at 4.1 and states:

“Due to the sensitive nature of the allegations which has been being...”

Typo;

“...widely announced by the complainant, it is imperative that before any criminal investigation is launched, your office peruse the affidavits to provide a legal opinion on whether the element of a crime exists and to advise on a way forward.”

And overleaf at 4.2, the author states:

“If your office is in support of the request, please find the dockets for perusal.”

10 So we are now on the 20th. On the 20th ...[intervenes]

ADV BALOYI SC: And this is addressed to?

ADV SELLO SC: And this is addressed to the Division of Commission of Legal Services.

ADV BALOYI SC: SAPS.

ADV SELLO SC: SAPS, within SAPS. My understanding of this chain of correspondence is the Inspectorate is still seized with the complaint and trying to establish facts and to determine the complaint as proffered by Mr Adams. And for that purpose, at this point, they are now seeking a legal
20 opinion from the, internally, from the SAPS Legal Services Department. So that is where we are at.

CHAIRPERSON: Correct.

ADV SELLO SC: By now, they have failed, according to Colonel Phillips, to meet with the complainant, being Mr Adams. And most importantly, before we leave this

document, in 3.2 it notes, and I quote:

“The affidavits in the dockets are basic and, in the opinion of this office, lack the element of a crime.”

The author expresses that view, sends the dockets to Legal Services and say, can we get an opinion whether or not what is in the dockets discloses a crime? You agree with that?

ADV BALOYI SC: Crime was in 3.1.

10 **ADV SELLO SC:** Yes, as summarised under 3 point... I do not know the crimes, because 3.1 has got a number of complaints...

ADV BALOYI SC: Yes.

ADV SELLO SC: ...as I read them out from the other document, but those are basically the crimes. It would appear they were able to deduce from the contents of the respective dockets.

ADV BALOYI SC: Yes.

ADV SELLO SC: Expresses a view, as I say, at 3.2, he
20 says, the dockets are basic and, in their opinion, lack the elements of a crime, but directs all the dockets to Legal Services for an opinion. Okay?

COLONEL PADAYACHEE: That is correct.

ADV SELLO SC: Then we get to our next date, and our next date is the 21st of November. That is the date on the

referral affidavit of Mr Adams. We dealt with it. And next is CJC373. Commissioner, that is file 2, page 512, CJC373. So while all this activity takes place within the Inspectorate to get to the bottom of these issues, then, according to this document, Honourable Adams files his referral to IDAC, according to the document, the date on the document.

COLONEL PADAYACHEE: Correct. The document is dated the 21st of November 2024.

ADV SELLO SC: Indeed.

10 **COLONEL PADAYACHEE**: That is on the document.

ADV SELLO SC: Yes, yes, thanks.

ADV BALOYI SC: When was Mr Nkabinde's referral, the date?

ADV SELLO SC: MK16. That is dated the 11th of November 2024.

ADV BALOYI SC: So it would have been before the date of Mr Adams' affidavit.

ADV SELLO SC: Indeed.

ADV BALOYI SC: Thank you.

20 **ADV SELLO SC**: According to the documents, yes. Then we have the 6th of December, and on the 6th of December, we know from your testimony that that is when the team was briefed about the complaint received by IDAC, and if I recall, that is when the investigation team was constituted, and you learned that you were one of the investigators or

the lead investigator. Correct me anywhere that I am wrong.

COLONEL PADAYACHEE: The preliminary investigation was approved on the 6th.

ADV SELLO SC: Okay.

COLONEL PADAYACHEE: So maybe on the day after or a few days after, the team would have been briefed. I cannot say that on the 6th, unless I go back and look at my notes. So what I would answer you this way, is that the preliminary
10 investigation approval on the 6th of December, and we would have been briefed within that short period after that approval.

ADV SELLO SC: Okay. So I guess you would have to look at your notes to say definitively you could have been briefed on the 6th or the 7th, but from the 6th?

COLONEL PADAYACHEE: Yes, that is correct.

ADV SELLO SC: Okay. I think that is fair. Staying with MK15, before we do so, this is where I need your help in the timeline. The preliminary investigation is approved on the
20 6th of December. You are briefed 6 or 7 or shortly thereafter.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: What is the very first step you take once you are briefed? And when?

COLONEL PADAYACHEE: In the briefing, we get a

complete overview, or rather a complete briefing on the investigation, what we need to do, who is going to do what, what are the scenarios, who is going to do what, and then we start from there. So basically what you are looking at here is that we will start subpoenaing documents, looking for witnesses, engaging with the complainant. Ja, that is how it will start.

ADV SELLO SC: Okay. So at this point, you have not called for the dockets themselves at this early stage?

10 **COLONEL PADAYACHEE:** I cannot recall. I am about sure those dockets were requested in December.

ADV SELLO SC: You say you are not sure.

COLONEL PADAYACHEE: Ja. I think this is subject to correction.

ADV SELLO SC: Yes, of course.

COLONEL PADAYACHEE: But I know that those dockets were requested because we have them.

ADV SELLO SC: Now, do you recall who they were requested from and how? Was it in writing? And if so, is
20 that request part of your docket?

COLONEL PADAYACHEE: Chair, Commissioners, I do not know in what form they were requested and those dockets were requested by another investigating officer who was tasked to get hold of the dockets. So he would have handled getting the dockets from wherever it was, et cetera.

I have no knowledge of that.

ADV SELLO SC: And who would be that investigator?

COLONEL PADAYACHEE: It is investigator Rapetsu.

ADV SELLO SC: Ra?

COLONEL PADAYACHEE: Rapetsu.

ADV SELLO SC: Rapesu?

COLONEL PADAYACHEE: Rapetsu.

ADV SELLO SC: I take it he would have been reporting to you because you are the lead investigator. Did you instruct
10 him or direct that he request the dockets? Or he did so on his own volition?

COLONEL PADAYACHEE: Remember, as I said, it is not just one investigation. It is a broad investigation. After the broad investigation, there is specifics. So the tasking is given by Chief Perumal to Rapetsu, go and collect the dockets. That is what would happen.

ADV SELLO SC: So there would be that instruction to collect and then what? Disseminate the dockets amongst the various investigators. How does it work once they are
20 collected?

COLONEL PADAYACHEE: Trace the dockets. Find where they are. Get hold of the dockets. Bring it. Let the team sit with it. Let us look what is in these dockets. And then we will be further briefed by the Chief.

ADV SELLO SC: To your knowledge, at this point, had

there been any engagement between IDAC and SAPS, generally, about these dockets at all by the 6th of December?

COLONEL PADAYACHEE: During December, there was engagement.

ADV SELLO SC: No, no, I am interested in the 6th specifically. If you recall.

COLONEL PADAYACHEE: I cannot remember a specific date, but what I would say is safe to say is during
10 December, there were engagements with SAPS with regards to the dockets, to get these case dockets that were opened. Where are they? And then get the dockets so we can see what is in the dockets. So you would have went to the police station and from the police station tracked where are the dockets from there.

ADV SELLO SC: I ask this, because if you turn to page 300 of MK15, that is a screen grab of WhatsApp communication between DPC, I do not know, Detective Major-General Khumalo, I think. If you look at that screen
20 grab and you keep your finger there and let us go back to page 272. At 272, as part of the list of annexures, at item 2.6, that is described as WhatsApp message to Major-General Khumalo, Gauteng DPC Crime Detection.

COLONEL PADAYACHEE: That is correct, 2.6.

ADV SELLO SC: That is 2.6, yes. So that 2.6 is our

screen grab. And that screen grab reads thus, or the communication there. It is dated 6 December 2024:

“Good day, General. Please let me know when I can call. It is in connection with the Fadiel Adams dockets. IDAC is here with me pertaining to the dockets.”

So IDAC would seem to be at the Inspectorate by the 6th of December.

COLONEL PADAYACHEE: According to what I see from
10 the documents...

ADV SELLO SC: Yes, according to this, yes.

COLONEL PADAYACHEE: ...and the date, then the 6th, Rapetsu who went to fetch the dockets must have went on that same day, which means that the briefing would have taken place on that particular day too.

ADV SELLO SC: Okay. So, and here I guess I call for logic. How would Mr Rapetsu know where they are on the 6th? How did he know that they were at the Inspectorate?

COLONEL PADAYACHEE: Counsellor, just to be, I think it
20 is something that is best asked for him.

ADV SELLO SC: Yes.

ADV SELLO SC: What he would do. But if you are asking me, I am giving an opinion.

ADV SELLO SC: Yes, I accused person that.

COLONEL PADAYACHEE: My starting point would be the

police station. Go and see the branch commander, station commander, then the branch commander, and where is this docket, what is the status of it. That is what I would do. But I do not know what he did going and how he went about it.

ADV SELLO SC: Did he have any role, specific role in your investigation?

COLONEL PADAYACHEE: Remember, as I indicated initially, there is a team of investigators.

10 **ADV SELLO SC:** Yes.

COLONEL PADAYACHEE: One will assist the other, and one will carry the docket. So, with Rapetsu, and as I indicated, there were several dockets. So, with Rapetsu, he assisted on the first one and the second one, meaning with the Brooklyn CAS 542, which is the appointment of Mokwele. His starting point was getting the dockets, and I know that he worked on the Lushaba matter. Thank you.

ADV SELLO SC: Ja, my question was whether or not he worked on your, my question was whether you worked on
20 your investigation.

COLONEL PADAYACHEE: He would have assisted.

ADV SELLO SC: In what capacity and how?

COLONEL PADAYACHEE: If there was perhaps maybe a subpoena, or fetch something, or whatever. It is assistance to it. So, ja.

ADV SELLO SC: Is there, just for interest sake so I can understand, is he a junior to you?

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Okay. So, for purpose of this particular investigation, he would have been somebody who is rendering assistance to you, and he executes such duties as you direct.

COLONEL PADAYACHEE: Yes, but just to go back again, it is not me giving him directions and instructions. It is the
10 Chief that gives the instructions as to what we have to do, and then on my particular case, he assisted, and wherever assistance was needed, he would be tasked on it.

ADV SELLO SC: Okay. But you did not ask him to go retrieve the dockets from the Inspectorate?

COLONEL PADAYACHEE: That was not my tasking.

ADV SELLO SC: So, I guess his best place to answer who had instructed him and how that person knew where they are.

COLONEL PADAYACHEE: Correct.

20 **ADV SELLO SC:** With regard being had to the fact that the preliminary investigation is approved on the 6th, and on the very 6th, already Mr Rapetsu is at the Inspectorate.

COLONEL PADAYACHEE: Yes.

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

CHAIRPERSON: Sorry, sorry, just to understand this,

Colonel, are you suggesting that the chief investigator at every turn would be the one giving instructions for whatever was necessary to be done, to then be done? You are the lead investigator, so I do not quite get it why, for example, on simple issues like legwork, because it was basically legwork for Mr Rapetsu to go find the dockets. I do not understand for something like that why it would not be you giving the instructions.

At every turn, the chief investigator must give
 10 instructions at every turn. Is that what you are saying? Or if that is not the case, what would be the instances where the chief investigator would give instructions? And what would the instances be where you would be the one giving instructions to whoever you had to give instructions?

COLONEL PADAYACHEE: Thank you, Chair, Commissioners. At the start of the investigation, remember there is a number of allegations. So the specific, like for example, the dockets, now he has got that, but with the particular dockets that I am working with, if there is
 20 something I need in that, I would task him. It does not mean that I must go to the chief to tell him, he is working with me, we are together, and he is assisting on it, so I can say, you know what, do a section 28 there, or get me this, that.

I do not mean that every time I need him or

somebody else, it has to go through the chief. The chief is just there to brief on the different investigations, this is yours, yours, yours, you can do this, this, this, and it goes forward from there. And then obviously the feedback will go and the monitoring of the process will go back to him.

CHAIRPERSON: So with regard to the fetching of the dockets or retrieval, would the chief have been involved because there was more than just your docket?

COLONEL PADAYACHEE: That is correct, sir.

10 **CHAIRPERSON:** All right, thank you.

ADV SELLO SC: Thank you, Chair. And before we leave this particular annexure, just to record that it is dated the 6th of December 2024, as I indicated, with a timestamp of 14.56. You see it on the first message, the main message follows at 14.58, so we are on the 3 p.m. time mark.

COLONEL PADAYACHEE: Correct, I note the time.

ADV SELLO SC: My next event, now whether or not, if I may say, Mr Rapetsu obtained the dockets, I do not know, and when he did so, I do not have a date for that. Would
20 you by any chance know whether he did manage to locate the dockets, and if so, when?

COLONEL PADAYACHEE: Chair, Commissioners, I would not know a specific date when he got the dockets, but I know he did get the dockets because I saw the dockets.

ADV SELLO SC: When did you see them?

COLONEL PADAYACHEE: December.

ADV SELLO SC: Give a rough estimate?

COLONEL PADAYACHEE: I am not too sure when.

ADV SELLO SC: Okay, but it was in December still.

COLONEL PADAYACHEE: I am recalling quite deep into my memory, so I am not too sure when, because he had those six or seven dockets with him.

ADV SELLO SC: Okay, I will accept that. My next timeline, we are now back into SAPS Internal Systems, 10 staying with MK15, 293. This is, if you go to page 296, it is a document dated 11 December 2024, signed by the Divisional Commissioner, Legal Services Lieutenant-General Chamane, and if we go back to 293, which is the start of the document, on my reading of this document, which of course may be wrong, this is the legal opinion that was sought internally within the Inspectorate regarding the dockets.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Okay.

20 **COLONEL PADAYACHEE:** The document itself.

ADV SELLO SC: The document itself. Now, this is the last of the documents as I have to establish a timeline because my next date is the 6th of January 2025, which as we know is the date on which Chief Perumal obtained the A1 statement from Mr Adams.

COLONEL PADAYACHEE: Correct.

ADV SELLO SC: So that is where I am. So I take it, is it fair to assume that by the 6th of January 2025, you at least had the contents of the dockets? You had familiarised yourself with the contents of these various dockets?

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Okay. We have dealt with Mr Adams' A1 statement, and I think we can agree that it is rather sparse on fact. We dealt with that yesterday. It just has the two
10 paragraphs, Mr Adams' statement, where he speaks of manipulation of processes, and then how the other canals were prejudiced thereby.

COLONEL PADAYACHEE: Correct.

CHAIRPERSON: You seemed to strain your ears when Ms Sello said that affidavit, that A1 statement is sparse on the facts. You heard that part?

COLONEL PADAYACHEE: The paragraph 2 and the paragraph 3, if I can recall.

CHAIRPERSON: No, it was even before that. Ms Sello
20 said that A1 statement is sparse on facts. Did you hear that part?

COLONEL PADAYACHEE: No, I did not hear that part.

CHAIRPERSON: I thought so. I saw you straining your ears.

ADV SELLO SC: Okay, that is exactly what I said. Do you

agree with me that it is rather thin on facts, that A1 statement?

COLONEL PADAYACHEE: The A1 statement of Mr Adams?

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: It is an allegation.

ADV SELLO SC: I want to know, I am more interested in how much it assists with establishing facts, and I am saying it is rather thin in that regard.

10 **COLONEL PADAYACHEE:** It is a fact what he said.

ADV SELLO SC: We are talking past one another. We are talking past one another. I will try again. Let us go to it. I think it is easier. It should be your CJC377, which is at file 3, starting at page 681. Have you located it? CJC377, starting at page 681.

COLONEL PADAYACHEE: That is correct.

ADV SELLO SC: We dealt with it yesterday. It has got the cover page, two pages. The actual statement starts at page 683. Do you recall in dealing with this affidavit, the two-
20 page document, we concluded that the issues are addressed specifically in paragraph 2 and paragraph 3. That is all it tells you. The other paragraphs are either introductory or they give a conclusion by the deponent. So our key paragraphs are paragraphs 2 and 3, and that is all it tells us.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: And it is on that basis I say if there is a totality of it, it is rather sparse on facts. It is very thin on facts, this document. Would you agree?

COLONEL PADAYACHEE: Paragraph 2 and 3?

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: When I read it, and as I explained previously, it is an allegation, a serious allegation, and what I see here is an allegation. There is
10 no fact in it. It still has to be investigated further.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: Thank you.

ADV SELLO SC: So I am saying, yes, there are allegations, but those allegations are not based on any stated fact here, there are no facts to support the allegations expressed here.

COLONEL PADAYACHEE: It is an allegation at that time on the document.

ADV SELLO SC: Okay, does it have facts, this document?

20 **CHAIRPERSON:** Oh, oh.

ADV SELLO SC: Sorry, sorry, Chair.

CHAIRPERSON: Let me take you through this one by one. It says that high ranking police officials were involved in, open quote:

“...manipulating promotions...”

Even though that purports to be a fact, it is a concluding fact, as it were. You would have to state facts, concrete facts that make you come to the conclusion that this was manipulation.

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: Otherwise, standing on its own, it is bare and basically says nothing. Do you understand that, and do you agree?

COLONEL PADAYACHEE: Yes, I understand.

- 10 **CHAIRPERSON**: Yes, that is the point that Ms Sello is making. And then they say manipulative, and security, also:
- “...manipulating security vetting processes
to unduly benefit a civilian.”

On the same kind of logic, that applies here as well, because you would have to establish what the facts behind saying that you are manipulating security vetting processes to unduly benefit a civilian. Otherwise, you know nothing.

COLONEL PADAYACHEE: Yes.

- CHAIRPERSON**: So you agree it is bare, it is thin on facts.
- 20 Do you agree with that?

COLONEL PADAYACHEE: I agree with it as it is there.

CHAIRPERSON: That is the point Ms Sello is making.

COLONEL PADAYACHEE: Yes, Commissioner. The who and the what is still missing from there. That is what I am trying to say.

ADV SELLO SC: Thank you, Chair. Then we found each other. So this was, you get this A1 statement on the 6th of January or soon thereafter 2025.

COLONEL PADAYACHEE: 2025.

ADV SELLO SC: Yes, or soon thereafter. And at that time you are armed with the dockets. I would like to believe you said you received them sometime in December.

COLONEL PADAYACHEE: That is correct.

ADV SELLO SC: Are you able to say what conclusions you
10 drew based on the contents of the dockets and this affidavit to inform whether or not a case had been made out for an investigation?

COLONEL PADAYACHEE: When I looked at the affidavit and I looked at the docket, and as I said, the docket had sparse information on it. And I will just say, I must say how I looked at it and how I investigated it. When you look at the docket, it has got sparse information and it is not going into who, by name, how. There is the whos is and the hows that are missing from it. And when you look at the affidavit,
20 as Chair mentioned, there is the who and how that is not here.

So when I look at that now, I take that as a preliminary, that this is an allegation that has been made. I need to now go investigate and confirm what this is. Who this particular post or appointments or whatever, further

investigation to get more information. So therefore, went about to get the documents. But I do not want to go further. I am just saying to you that the information on the docket itself, the initial documents, was very, the complainant would have to be interviewed again, what are you talking about?

So from that, there is a second affidavit that is now taken on the specific regarding this appointment process. But still, there are things that are missing from there that
 10 need verification and investigation. So not on this now, you can go now and take it and just start arresting. You have got to look at it, investigate it. Is there something there? And you work from there. Progress from there moving forward. Thank you.

ADV SELLO SC: So we have the benefit of the A1 and we know what the A1 states. What I do not have is the benefit of the dockets. So regarding it to the A1 statement and what it tells you, what other extra information did the respective A1 documents in the dockets inform you?

20 **COLONEL PADAYACHEE:** The initial A1 on the docket, I will just have to just call it up just to refresh.

ADV SELLO SC: No, no, we can do that over lunch, but I just wanted a summary of what facts did you glean from those dockets?

COLONEL PADAYACHEE: The initial docket just talked

about General Khumalo, if I can recall, appointing family members and friends in positions at Crime Intelligence. So that is what it basically, so it was basically, you know, just nothing really there. It needed more information.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: So when you look at the docket, you needed to take the docket and interview this person. What are you talking about here? Because you are saying different things. I think there is an incident there, an
10 allegation here. Let us put it into context. Tell me about it.

ADV SELLO SC: Okay. I ask this because I am trying to reconcile it with where the legal department of SAPS ended, considering the same dockets. And for that purpose, I am still in Annexure MK15 at page 293.

COLONEL PADAYACHEE: 292?

ADV SELLO SC: 293. This, if we go to 296, you will see that we have touched on it. It is dated the 11th of December 2024. So this is where the legal department lands with nothing but the content of the respective dockets. That is
20 my summary of what this docket is about. You would not quibble with that, would you?

COLONEL PADAYACHEE: Ja, specifically paragraph 13 that you are referring to.

ADV SELLO SC: No, I want to start at paragraph 1, if you permit me.

COLONEL PADAYACHEE: Ja.

ADV SELLO SC: Now, we can skip for purposes paragraph 1 and 2. And then from paragraph 3.1, this document addresses the respective dockets. Lists the dockets and gives an overview of what it is about. At 3.1, 3.2, those are the same dockets. The two dockets, the Cape Town docket and the Villieria CAS404/10/2024. And I think that is the point you made earlier because that specific CAS number relates to the Orlando, to what we call the Orlando docket.

10 **COLONEL PADAYACHEE:** Yes.

ADV SELLO SC: Correct?

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: You did mention then that somehow Villieria creeps into the description of the docket.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Ja. So those two dockets, they are the same. At 3.3, overleaf, it states:

20 “The complainant states that evidence is available regarding the alleged cover-up of Villieria CAS38/08/2022. No supporting evidence is contained in the dockets to substantiate the claim or to afford the further investigation of leads in support thereof.”

That is the conclusion of the legal department. Do you see

that?

COLONEL PADAYACHEE: Correct.

ADV SELLO SC: At 3.4, it states:

“No details are provided regarding the identity of the friends and family members of Lieutenant-General Khumalo, who was allegedly appointed in the division. (This would at least have enabled the investigation into the allegations.)”

10 3.5:

“Neither the particulars or statements of the senior members of the service who were allegedly instructed to ensure that Villieria CAS38/08/22 is not investigated, nor the statement of the sex worker are filed in these dockets.”

Then it points out that the Legal Services department did not have this specific docket. At 3.6, it deals then with the next docket. Once again, Cape Town and Villieria, which
20 we know to be Orlando.

“The complainant alleges that Major-General Madondo failed her polygraph examination in July 2024, where after the Head of Vetting, Brigadier Ncube, was tasked to ensure that the matter would not

be addressed or investigated.”

3.7:

“The complainant does not reveal the identity of the person who allegedly tasked Brigadier Ncube in order to investigate the failed polygraph.”

Then the next, at 3.8, deals with the last two dockets with the relevant Cape Town CAS number and Villieria, and states that:

10 “The complainant alleges “none of the people appointed in CI have the necessary skills, qualification and experience”, and that many of these appointees are said to be associates and relatives of Lieutenant-General Khumalo.”

At 3.9:

20 “It furthermore alleges that the Secret Service Account was abused by Lieutenant-General Khumalo and Major-General Lushaba, who failed to pay authentic sources but channelled funds to purchase items such as vehicles for the KwaZulu-Natal Political Task Team. According to the complainant, this task team is a private service to or front for the former Minister of

Police, General Bheki Cele.”

3.10:

“The complainant does not reveal the identity of the associates and relatives of Lieutenant-General Khumalo, who are allegedly appointed improperly.”

3.11:

10 “No details such as dates, locations, amounts or proof of payment are provided of the alleged irregular purchases.”

3.12:

“At this stage, the complainant's allegations regarding General Cele are unsubstantiated and amount to no more than the complainant's personal opinion. No evidence or leads are provided to assist or afford an investigation into the allegations.”

Most importantly, 4:

20 “Only the complainant's A1 statements are contained in the six dockets. No other evidence is contained in the dockets. The lack of location information makes it impossible to determine proper jurisdiction at this stage.”

Is it fair to assume that he is correct as regards what was in the docket, what he expresses at 4? That is all there was, just the A1 statement and nothing more.

COLONEL PADAYACHEE: [No answer]

ADV SELLO SC: Am I correct? Is that what you found as well?

COLONEL PADAYACHEE: What is being said here is correct, yes.

ADV SELLO SC: Okay. So, what I have read from 3.1 to
10 3.12 technically is an analysis of these dockets and their shortcomings.

COLONEL PADAYACHEE: Just, can I respond?

ADV SELLO SC: Yes, yes, sir..

COLONEL PADAYACHEE: So, this is what is in this report, what they say is in there.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: That, as alleged from 3.1, yes.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: That is in the report, it is more
20 or less what is in the docket.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: And when you look at the docket, you will find that the appointments of family members is in one docket together with something else and it is repeated in another docket, as you can see from there,

which I said earlier. Must I continue?

ADV SELLO SC: No, I think we agree with each other, but I think that you confirm that you too only found the A1 statement in the respective dockets and it says no other evidence is contained in the dockets. Is that what you found as well in the dockets? Just the A1 statements. We can skip the rest for purposes until overleaf at page 8, at page 296, paragraph 8.

ADV KHUMALO SC: Advocate Sello?

10 **ADV SELLO SC:** Yes.

CHAIRPERSON: Maybe for my benefit, maybe paragraph 6.

ADV SELLO SC: Oh, let us go back to page 295. Thank you, Commissioner Khumalo. Page 295, same document, paragraph 6, the Commissioner highlights that that is a key issue.

20 “The three dockets that were opened in Gauteng are merely a duplication of the three dockets that were opened in Cape Town. No explanation is provided regarding the opening of the second set of dockets on the same allegations but in another province.”

So, describing the nature of the dockets.

ADV KHUMALO SC: We know that. We just confirmed that

they were a duplication. They were basically the same thing, but in Gauteng.

COLONEL PADAYACHEE: That is correct. The Cape Town dockets and the dockets that were Orlando or Villieria basically were the same thing.

ADV SELLO SC: Perhaps I should not run ahead of myself because the contents of this particular document are important. Can I ask us to backtrack to 5, where the following point is made, paragraph 5:

10 “In his report, Colonel Phillips states that
the complainant's statements were
superficial, based on hearsay and that they
did not contain all the elements of the
alleged offences. It further details his
communication with the complainant and
the attempts that he made to obtain
evidence in order to support the
allegations, which the complainant alleged
to be in possession of. These attempts
20 proved unsuccessful.”

We have dealt with 6 and 7 states:

“The correct charges must be identified
based on the content of the dockets in
order to determine whether or not all the
elements of a particular offence are

contained in the docket.”

It continued at 8:

“The dockets are sparse on details and based solely on unsubstantiated hearsay evidence, which make it difficult to determine the merits of the allegations and to identify the correct charges.”

Then I will jump to 13 which is the concluding paragraph.

10 “The current information contained in the documents is scanty and too vague to formulate charges against any suspects. As a result, Legal Services is unable to confirm that the required elements of any offence are contained in the dockets.”

This is where they landed on the 11th of December. Would you agree with that conclusion on your recollection and assessment of the contents of the dockets?

COLONEL PADAYACHEE: On the contents of the document, what is there?

20 **ADV SELLO SC:** The dockets, sorry.

COLONEL PADAYACHEE: Apologies, Chair. Yes, in the dockets, as they say, and the report. But on the basis of this report, if the Inspectorate, for me, they did not do their work because they should have investigated further. They are the Inspectorate. The Inspectorate does inspections.

There is an allegation that is made. These dockets are scant but in some of them, they have allegations. For example, in the one that... Chair, just let me go back to it.

ADV SELLO SC: Yes. We can start at 3.1. That is where an analysis of the respective dockets takes place.

COLONEL PADAYACHEE: Yes, but I will just take you to a generalised one.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: And that is the docket that was
10 locked up in a safe or whatever, which the Inspectorate
had, and the Villieria CAS404, because it was particularly
linked to that docket because it makes an allegation about a
cover-up of a case. If they took that docket and they looked
at the docket on the Villieria CAS38, as inspected, if they
looked in it, and they would have found discrepancies in it,
which would eventually confirm that there was a problem in
that docket, because affidavits were tampered with in that
docket.

So let us come back to the other dockets. You
20 have a docket. It is scant. It has got information
...[intervenes]

ADV BALOYI SC: Before you go, sorry, before you go on
to other dockets, I think you should speak in much better
detail than what you have done now. What was CAS404
and what was in the docket and what were the

discrepancies that you say the Inspectorate should have picked up?

COLONEL PADAYACHEE: Thank you, Commissioner. I am just going to go into... I am looking at page 292.

ADV SELLO SC: 292, that is... Is it Colonel Phillips' affidavit?

COLONEL PADAYACHEE: Colonel Phillips' report.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: When you look at Colonel
10 Phillips' report, I am just going to look. July 2024, it is an allegation:

“Major-General Madondo failed a polygraph examination as the officer was cited for two incidents of tax evasion invasion. Brigadier Ncube of the Division Crime Intelligence was tasked not to ...[intervenes]”

ADV BALOYI SC: Sorry, where are you reading?

ADV SELLO SC: No, he is reading from page 292, same
20 MK15, page 292. At the top, it is Faye Phillips states under oath. That is the affidavit of Colonel Phillips.

ADV BALOYI SC: Yes, I have the affidavit and you are reading under CAS403. I had stopped you because you were talking about CAS404 and I said to you, tell us more about this CAS404 that you say the Inspectorate, had they

looked at that docket, they would have seen that there were discrepancies in that docket, that there was tampering with affidavits. You said CAS404. So I expect that when we look at 292, you will refer to CAS404. You would read that, that is why I got lost. So can we talk about CAS404?

COLONEL PADAYACHEE: I will start with CAS404 and then go to the remaining. Because the significance of CAS404 was one of the dockets that we started with. But let me just go to CAS404. When you look at the docket of
10 CAS404 and if you see what, is it Colonel Phillips?

“Lieutenant-General Khumalo was involved in the cover-up of the CAS38 where in Major-General Lushaba, the Division Crime Intelligence, where an official laptop and cell phone was stolen by a sex worker. Monies from the Secret Service Account was utilised to pay for a sex worker and purchase new equipment.”

So we have a CAS number, an allegation made about a
20 specific CAS number and the station and CAS is given. So Colonel Phillips says he tried to get hold of the complainant. You are the Inspectorate. The first thing you would have also done, you also would have this docket, where is it? Fetch the docket, have a look what is in this docket, peruse the docket and on perusing the docket, you

would have found what we found. That there are discrepancies. Statements have been tampered with, et cetera, et cetera, which resulted in when we investigated the case, this one, we found that.

What I am basically saying to you here, Commissioner, you cannot take something and say, no, there is nothing here, when you have a lead on what to look for.

ADV BALOYI SC: Sorry, I thought and maybe I
 10 misunderstood. I thought you had said that in these dockets, all there was, the 404, the Cape Town in Orlando slash Villieria, you are saying all there was in those dockets were the A1 statements.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: Is that your testimony? Am I recollecting it correctly?

COLONEL PADAYACHEE: I just want to get more clarity before I – just repeat that slowly again, Commissioner, sorry.

20 **ADV BALOYI SC:** Okay. Did I understand or misunderstand your testimony to be that the dockets, the Cape Town dockets and the Orlando dockets, which are duplicate of the Cape Town dockets, but Orlando dockets also called Villieria dockets, all that there was in those dockets was the A1 statements. Did I mishear you?

COLONEL PADAYACHEE: The Cape Town and the Orlando dockets, they had an A1 statement in it, but those statements were very vague. According to the report, they are very vague. But when I talk about the lead, there is something, those dockets are now summarised of what is in there, in those A1 statements, what Colonel Phillips, he summarised summary of those documents of what he found in it and his comments on it.

Now, what I am trying to show to Chair and
10 Commissioner, that there are some things here that warranted further investigation from their part, Colonel Phillips. He is from the Inspectorate. There is an allegation. So when we come, like you say, let us take the 404 docket because the 404 docket and the CAS38/8/2022, as mentioned, they are linked.

And when you take the docket and you enquired into this docket, you would find that what is being said, and although it is scant, in the 404, where it just makes a vague allegation, it is being substantiated now in the actual docket
20 that he is referring to. So if I can, I think that is when I get back to your point. Bear with me, Chair, Commissioners.

ADV BALOYI SC: Remember that 404 says that General Khumalo was involved in a cover-up, and the summary, as I understand it, of this docket, 404, is it lacks the necessary facts to support the cover-up complaint.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: That is how I understand the issue to be here.

COLONEL PADAYACHEE: The allegation made against General Khumalo, you know, he is saying that General Khumalo, but there is nothing there to show on his original affidavit to say General Khumalo, no substance. So that is why I say, as I said now, what I am talking about on the CAS, go and go to the start of it. He makes an allegation of
10 a docket. He mentions the CAS number that there has been a cover-up, and this is what General Lushaba has done.

So this is the Inspectorate. The Inspectorate, any complaint that is given to them, they receive many complaints. They will go and look at what the complainant is saying, even if it is scant, go and look at it. Try to determine what is this person saying. But here you have a CAS number, a starting point, a link. Go to the station, you do not even have to go, you summon the docket. And when you look in it, then you verify that what is being said in
20 CAS404 is indeed fact.

ADV BALOYI SC: You are saying if the Inspectorate had done its job, they would have found evidence in CAS38 that says General Khumalo covered up. Is that what you are saying, CAS38 will show us that? So if today we were presented with CAS38 docket, are you saying looking at it

we will see that General Khumalo covered up, we will see the cover-up facts?

COLONEL PADAYACHEE: No, Commissioner, not at that point.

ADV BALOYI SC: You see, that is the difficulty I have with what sounds like a criticism of what Phillips says, because as I understand what Phillips has done in his affidavit, is he looked at docket, because remember, Member of Parliament Adams, what he complains about here in 404 is not against
10 Lushaba. Sorry, I forget his rank, I do not mean any disrespect. His complaint in 404 is not against Lushaba, it is against General Khumalo.

So Colonel Phillips says, I have looked at 404, it does not contain any facts in support of the allegation of a cover-up. Not the loss of a computer that you find in 38, but allegation being there has been a cover-up and the 404 statement, A1 statement, does not provide any information that points to that cover-up. What do you have a difficulty with that Colonel Phillips has done?

20 **COLONEL PADAYACHEE:** With regards to why I have difficulty with it, let us leave the allegation against him. Look, if he goes and looks at an allegation that General Khumalo covered it up, it is not going to get straightforward. He is not going to find it there. It looks at further investigation, but the starting point of it is a docket being

mentioned. What is in this docket? When you look in the docket, but hang on, this part has been found in the docket, that has been found, certain reports do not go with what he says.

That is there. There is defeating the ends of justice or whatever in this docket. He would have picked it up and in his report he would have said, I went to look at this docket. There is a problem with this docket. There are allegations here which have substance, but in this docket I
10 cannot find anything that links General Khumalo to a cover-up. So that is where he would stop because that is where he is. So I hope, Chair, Commissioner, you got what I am saying.

He cannot find an allegation there that General Khumalo covered up. When you take the docket on its own like what we have done and we found, we investigated it, then we found specific evidence there that points to defeating the ends of justice. From there it led us to an internal investigation that was conducted by Major-General
20 Pienaar, where she makes a report to say that Major-General Lushaba was a victim of so-and-so, that he was drugged.

When we looked there, Major-General Lushaba says he went to the hospital for examination. That hospital examination report, nobody looked at it to confirm whether

he was in fact drugged. So when we took that docket, we first found that the affidavits had been tampered with. We found defeating the ends of justice. We went to the hospital. We got the report. The report says there was no drugs in his system.

And then when we went and spoke to, this is all the follow-through, and I am coming to a part now. When we went to Major-General Pienaar and we asked her, you went on a fact, you were tasked by General Mosikili to go on a
10 fact, because this matter has been in the media, out there in the media, person taken home, et cetera et cetera. You conducted a fact-finding, you went to the station, you interviewed the station commander, you spoke. And then I said, but did you ask for further information?

And that is when she responded to me to say, no, I am not an investigating officer or whatever, but we leave it there. There was no proper investigation done by General Pienaar on that particular case. So the disciplinary of that fell away. So I want to move on without taking too much,
20 because we dealt with that docket there, and I want to move on to the other links or starting points which Colonel Phillips should have looked at further to substantiate.

ADV BALOYI SC: All right, okay. I think we can stop here. We may have to continue, we will see if we continue after lunch, it is ten past 1. Ja, I am still interested. I am

not sure, I do not think you have answered my question, but we can have a discussion after lunch.

ADV KHUMALO SC: I want you to think about this before lunch. It seems like what you have done, the complaint in the docket is Khumalo has interfered with the case. You do not investigate that. You say, let us go investigate the original case and the investigating officers in the original case, and let us go see whether their investigation was proper or not, because that is what seems to have
10 happened.

So you ignored your referral, and you said, oh, there was an earlier case that they say Khumalo interfered with. Let us ignore the interference allegation. Let us go get the original docket and see if investigating officers in that case investigated it correctly. That is what you seem to be saying.

COLONEL PADAYACHEE: Chair ...[intervenes]

CHAIRPERSON: No, you will comment. Please think about it. We are adjourning now, and we will come back at
20 ten past 2. Let us adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Good afternoon, Mr Sikhakhane.

ADV SIKHAKHANE: Good morning, Chairperson and Commissioners.

ADV KHUMALO SC: It is afternoon.

ADV SIKHAKHANE: Oh, it is afternoon.

CHAIRPERSON: What did I say? Sorry.

ADV SIKHAKHANE: I would not say it is a long day. Today we had or under subpoena was Warrant Officer Mpangase in relation to the Port Shepstone stream. He is present here under subpoena.

CHAIRPERSON: Yes, yes.

ADV SIKHAKHANE: Yes, and from what I have since
10 learned is that he would not be able to start this evidence today and I request that he be excused until tomorrow morning.

CHAIRPERSON: Okay, may I go ahead then, Mr Sikhakhane?

ADV SIKHAKHANE: Apologies, Chair?

CHAIRPERSON: Okay, okay. Good afternoon, Warrant Officer.

WARRANT OFFICER MPANGASE: Good afternoon, sir.

CHAIRPERSON: Yes, the hearing of your testimony is
20 postponed to 9:30 tomorrow morning. You must be here at 9:30 tomorrow morning.

WARRANT OFFICER MPANGASE: Understood.

CHAIRPERSON: 9:30, you heard that?

WARRANT OFFICER MPANGASE: I heard that, Commissioner.

CHAIRPERSON: Thank you, thank you. You are excused, Mr Sikhakhane.

ADV SIKHAKHANE: Thank you, Commissioner.

CHAIRPERSON: You are also excused, thank you. Yes, Ms Sello.

ADV SELLO SC: Thank you, Chair. Colonel Padayachee, Chair, you were displaced for a minute there. Settle down, just to make sure you have everything with you. All set? Thank you. Colonel, before we broke for lunch, there were
10 two questions from Commissioner Baloyi and Commissioner Khumalo, and they had requested that you apply your mind to them and you would provide an answer when we reconvene. Is it safe to assume that you remember the two questions or would you like them to be restated?

COLONEL PADAYACHEE: I prefer that it be repeated again so that I could answer them.

ADV SELLO SC: That is Commissioner Baloyi, because that ...[intervenes].

ADV BALOYI SC: Let me start, because Commissioner
20 Khumalo is following up to assist me. You referenced, in an answer to a question from the Evidence Leader, you referenced CAS 404, right?

COLONEL PADAYACHEE: Correct.

ADV BALOYI SC: The Orlando-Villieria 404, and you said there were discrepancies in there, there were, had they

looked at that file and done the investigation, they would have found that there were discrepancies in there and affidavits were altered. You said quite a number of things. And so what Colonel Phillip speaks to here is because they did not do the necessary investigation when they say the docket did not have anything. You recall that is the background to my question?

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: And I started off by asking, in fact, by
10 saying to you, but I understood your evidence to be that all these dockets, including CAS 404, only had A1 statements in them with nothing more, and those statements were scanty. You remember that kind of background?

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: Yes. So what I wanted to clarify with you is surely you are not criticising or you cannot criticise Colonel Phillips for saying that if that is what the docket 404 was about, if CAS 404 had only an A1 statement, which is scanty ...[intervenes].

20 **COLONEL PADAYACHEE:** Yes.

ADV BALOYI SC: And he says because it is scanty and they do not make allegations of who did what, what did Khumalo do? In fact, this is where the allegation is about Khumalo cover-up. That 404 A1 statement does not say what General Khumalo is supposed to have done.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: That is a cover-up, okay.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: You cannot criticise him for saying that about an A1 statement, that it is incomplete, therefore it is not helpful. We cannot formulate a charge. No charge can be formulated based on this A1 statement. You then say, but he should have investigated, he should have gone to 38, to CAS 38.

10 **COLONEL PADAYACHEE:** Yes.

ADV BALOYI SC: You remember that is the trend of your evidence.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: But what I am putting to you or what I am suggesting with you is that but the complaint that he is commenting about in that block 3 that relates to 404, it is not about CAS 38, it is about CAS 404. That is what he is commenting about.

COLONEL PADAYACHEE: Yes.

20 **ADV BALOYI SC:** Right?

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: So that you went and looked at CAS 38, well, it is your decision. You went to investigate a docket 38, but it does not make a lie that he comments the way he does about CAS 404, that it had only an A1 statement and

that A1 statement was scanty and it did not provide any details of the allegations and therefore it could not be investigated that General Khumalo interfered and covered up in the way that it is alleged. You understand that? That is all I needed to clarify with you.

COLONEL PADAYACHEE: Commissioner, I hear your question.

ADV BALOYI SC: Yes.

COLONEL PADAYACHEE: And I hear you what I said in
10 the affidavit which was scanty, did not have enough information. And yes, it did not have enough information, but there had to be investigation. So what I am coming to here and pointing out here is that in the docket itself, which we got later, which only had an A1, the statement is such that there should be further information gathered from there. But when you look at, just bear with me. When I am looking at the report that is placed before me, right ...[intervenes].

ADV BALOYI SC: This is the Philip report?

20 **COLONEL PADAYACHEE:** The 29, it is 292.

ADV BALOYI SC: Yes.

COLONEL PADAYACHEE: Same docket. Same docket, 404.

ADV BALOYI SC: Yes.

COLONEL PADAYACHEE: And whilst I am at that point,

the 404 is connected to two cases, to two allegations. One is Lushaba, and if you see under ...[intervenes].

ADV BALOYI SC: And 404 says what about Lushaba? What does 404 say about Lushaba?

COLONEL PADAYACHEE: 404, I am calling it the Lushaba matter, but his name is not here. I know it is the Lushaba matter because I have already been there and had the docket with me.

ADV BALOYI SC: Yes ...[intervenes].

10 **COLONEL PADAYACHEE:** This is to say ...[intervenes].

ADV BALOYI SC: But what does it say about it? What is the complaint in 404?

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: What is the complaint?

COLONEL PADAYACHEE: The complaint in 404 is that Lieutenant General Khumalo was involved in the cover-up ...[intervenes].

ADV BALOYI SC: Yes.

COLONEL PADAYACHEE: Of CAS 38/8/2022.

20 **ADV BALOYI SC:** Yes.

COLONEL PADAYACHEE: When General Lushaba, Crime Intelligence, which the laptop, et cetera was taken. So here, you know, the involvement of General Khumalo, you cannot pick it up from the statement, you have to go and look at the docket itself to see how did General Khumalo,

you go with that in mind. He is talking about a cover-up in a docket.

So when you get there and you pull the docket, you draw the docket, you do not find anything of cover-up by General Khumalo. You find a docket that where there is substance that this docket, there was interference with this docket in the sense that there was defeating the ends of justice in this docket.

So again, I say it, and for yourself, Commissioner
10 Khumalo, that nothing points to General Khumalo that he interfered with this docket at this stage. When we look at the docket further, we pull out that stuff in the docket, statements in the docket, et cetera, where he interfered with. When we looked further into the docket, we found that there was a disciplinary who needed further investigations into the docket itself.

ADV BALOYI SC: Maybe, let me try to cut it short and hopefully we get you an answer. Are you saying that if Colonel Philip had gone into CAS 38, the docket, CAS 38,
20 he would have found evidence that General Khumalo was involved in a cover-up?

COLONEL PADAYACHEE: No.

ADV BALOYI SC: Yes, that is all I wanted to clear with you.

COLONEL PADAYACHEE: Ja.

ADV BALOYI SC: Thank you. I know it took long to get there, but that is really all I wanted to know what are you faulting about this cover-up complaint. Thank you.

COLONEL PADAYACHEE: Yes. Yes, now I am with you there.

ADV KHUMALO SC: Colonel ...[intervenes].

COLONEL PADAYACHEE: Sir?

ADV KHUMALO SC: You seem to be missing the substance of the complaint in 404/10/2024. The essence of
10 it is that Crime Intelligence funds were used to cover up the fact that General Lushaba lost the laptop, involved in some other things, and they did this by using Crime Intelligence monies to buy a new laptop for him and to pay off the sex worker. That is the substance of this case. It is on the screen, Chair. It is not me coming up with that term. I do not want to use other terms. It is on the screen.

So that is the substance of it, not whether the original docket there are discrepancies in the dockets, there are statements missing, there are this and that and that,
20 because that is not what is referred to IDAC. What is referred to IDAC is abuses at Crime Intelligence. One of them is this specific incident where there is this cover-up. It is as simple as that.

COLONEL PADAYACHEE: Yes, Commissioner. Can I go from your question and go into it now? I hear what you say,

that this and you refer to the 27, the referral or where we must act within the boundaries of the 27. So this is my explanation for you, that here is an allegation here with regards to General Khumalo, interference with the docket, right.

And we go to the station, we pick up the docket. Now, picking up the docket, it is not showing anywhere when you look into it that General Khumalo factually interfered with this docket.

10 **ADV KHUMALO SC:** That is not even the, there is no complaint of interference with the docket.

COLONEL PADAYACHEE: Or covered up the docket.

ADV KHUMALO SC: There is a cover-up in relation to that case and the substance of it is that monies from secret service account were used to pay off the sex worker and to purchase the missing laptop. That is the essence of it, not that he tampered with the original docket or there is anything in that docket.

COLONEL PADAYACHEE: No ...[intervenes].

20 **ADV KHUMALO SC:** So you seem to be missing that, the substance of the complaint because all these complaints were about Crime Intelligence and what is referred to IDAC. And what is referred to IDAC is abuses of Crime Intelligence monies and one of the cases cited is this one.

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

ADV KHUMALO SC: So the simple question is, were monies of Crime Intelligence used to cover up the loss of the laptop and to pay off the sex worker. That is really it.

COLONEL PADAYACHEE: Commissioner, I hear your question and I appreciate the question. Thank you. So what I am saying, Commissioner, and help me to go forward, I hear what you say, I understand what you say. You are also taking it that with the referral, there is an allegation secret service funds money was utilised and
10 General Khumalo covered up this thing. So it says here in connection with a CAS38.

So looking at this CAS, go to the station, I go to see how or what is here in the allegation. Remember you are talking about abuse of secret service funds and you are talking about General Khumalo covering up a docket. I am going on the premise that what cover up is this? What is this? So I call for the docket. I have a look at the docket and I cannot find anywhere where General Khumalo covered this up yet.

20 When I peruse the document, the docket, I find that, hang on, this docket has been interfered with. Statements have been whatever, et cetera. So my focus in there, now I ask Commissioner, because this defeating the ends of justice or this docket does not fall within my mandate of, let us call it the act or the 27, do I leave it and

go? No. I looked at the docket. I looked further into it. I investigated it.

As I went on with the investigation, I looked at a disciplinary report and I looked at the disciplinary report in comparison to what we found in the docket and I found that the disciplinary report was actually, the word there is that it was not done properly. So I interviewed. This is followed through with something that I found, which is a crime. I am following through. Leave the 27, the mandate of IDAC. I
10 found a crime.

So I interviewed Major General Pienaar and I asked her certain questions and she did not come through with those questions. I asked her, did you see the report from the hospital, because you said that he was drugged. You are conducting a factual report which you must respond to General Mosikili regarding this matter because it has been in the media and there has been, and now I think there was a letter or something that she, they had to respond to from IPUSA, I think if it was, if I could remember that, where they
20 are querying, and they are calling it a cover-up. So looking at that, I could say that General Pienaar did not conduct a proper investigation. So I move on. We are coming to the point ...[intervenes].

ADV KHUMALO SC: Let me stop you there. There is no complaint against General Pienaar. There is no complaint

against investigating officers in that case. The complaint is funds of Crime Intelligence were used to hide the fact that a laptop is stolen, because the theft of a laptop, that is the case number in the other case, not that investigating officers in the original case did something wrong and they must be investigated.

And I think that is what you seem to be missing, because you are now investigating Pienaar's case and not investigating the referral sent to you. The referral sent to
10 you is limited. It was not an opportunity for you to go fish for other things that Pienaar did or did not do right. That is why the original question by Commissioner Baloyi was looking at this docket and only having an A1 that says funds of Crime Intelligence were used to buy an extra laptop to hide the fact that a laptop has been stolen, if Inspectorate says there is nothing there because I am not given enough information, you cannot criticize him for saying that, not to say he must go investigate Pienaar and check whether Pienaar did a good job, because that is not the referral to
20 IDAC.

COLONEL PADAYACHEE: Commissioner, I am also finding it hard to relate to your question and I ask please that you hear me through until I get to the point, a point at the end. The first of all, as I said, yes, there is a section 27 referral. Yes, there is a mandate. So I start this part of it

where General Khumalo was involved in a cover-up of a docket or cover-up of Lushaba or however it is. So for me, that is a starting point.

Colonel Phillip is the Inspectorate. He has this complaint with him or a docket with him. It is a complaint. How did this allegation that General Khumalo covered up a docket, go to the station, go for the docket, check what is there. Is there a cover-up? Did you check the docket, right? I am just talking about there ...[intervenes].

10 **ADV KHUMALO SC:** Can I interrupt you? I do not think we are going to get anywhere because what you seem to be doing is you are adding a new complaint to this complaint because you are now saying the allegation is the cover-up of a docket and I have already read to you what the allegation is. It is there on your screen.

COLONEL PADAYACHEE: Yes.

ADV KHUMALO SC: And because once you say what I was investigating is a cover-up of a docket, then you must go to that docket. But the allegation here has nothing to do with
20 a cover-up of a docket and I think that is where we are missing each other because you seem to be talking about something totally different. And just to, for sake of progress, I am going to leave it there and allow Advocate Sello to ask the questions she wanted to ask, because the simple point we were making on this document is that the

allegation of abuse of secret funds to cover up the theft and to use those funds to buy equipment and to pay off the sex worker, those are the allegations, not the tampering with the original docket. And your focus now is on the tampering with the original docket, so for the sake of progress I think I am going to leave it there.

COLONEL PADAYACHEE: Thank you, Commissioner, but I just want to respond. It is twofold. Lieutenant General Khumalo was involved in the cover-up in Villieria CAS 10 38/8/2002. What is Villieria CAS 38/8/2002? It is a docket. You are saying it is not, the way I am coming, understanding you, you are saying there is nothing to do with covering up a docket. But I am reading it from here, it is a docket.

The second part of it is monies were used from the secret service account to pay a sex worker and new equipment for General Lushaba, that second part of it. So I am going to restrain myself just to what is here. And when we come to my part of the investigation as to what I did and 20 how further I went to confirm that this indeed happened that monies from the secret fund was used to buy a new laptop for General Lushaba, but for the purposes of Colonel Phillip, the fact that they wrote this report and the way they wrote this report there is nothing there.

We did not find anything here. The fact remains is

that from the way I see you did not really try and do something. It is a complaint. And therefore, Commissioner, you we look at it at the South African public that write complaints to the police and sit in vain and wait for years, they get no response. Or they get, no, we do not find something there.

This is the very thing what I am talking about. The police do not do proper investigations. We thought about a link, a lead, follow the link, follow the lead and see where it
 10 takes you. So I am giving that part of it to give it into context. But when it comes to my, how I started with a scant affidavit that barely had nothing in it, how I managed to put it together and get to where I am today, I will explain it there, sir. Thank you, Chair.

ADV KHUMALO SC: To be fair to you, give you the opportunity to finish your answer.

COLONEL PADAYACHEE: Thank you, Chair.

ADV SELLO SC: Thank you, Commissioners. We have dealt with in 404 as appears at, in what is the title?
 20 Colonel Phillips' affidavit. I think that it is page 292 of MK15. You still have MK15 with you, Annexure MK15? Yes, we are looking for that document on the screen.

COLONEL PADAYACHEE: Yes, 292.

ADV SELLO SC: Yes. Do you have it before you, because I think it provides quite a useful summary of the various

dockets.

COLONEL PADAYACHEE: Yes, it is a summary of the dockets, correct.

ADV SELLO SC: Yes. Now staying with that, I, let us look at the next one and the purpose of this exercise, in fact, let us look at, now we are now left with two blocks, right. Three. Because of time constraints, may I ask you to cast your eye on that and tell the Commissioners in which block, in which docket does our matter, by our matter I mean the
10 “Mokwele matter”, where does it fit in there?

COLONEL PADAYACHEE: Chair, Commissioners, when I look at what is here in the dockets, and I am looking at the second block, the only thing that comes close to an appointment or something to do, when you look at nepotism, nepotism is something like an appointment. This is the only scant thing that comes close to that. And in the rest, with regards to family members and whatever, ja, those are the two things that is stated.

ADV SELLO SC: So as things stood then, so you agree
20 that the dockets as you received them had nothing to do with Brigadier Mokwele directly?

COLONEL PADAYACHEE: There was no name. There was just delegation that a person, a civilian from BMW was appointed.

ADV SELLO SC: No, no, where? Where was a civilian

from BMW now? I am saying in the docket. We know that a civilian from BMW is in the A1 that is yet to be obtained in January 2025. I am saying the dockets ...[intervenes].

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Do not seem to have anything to do with Brigadier Mokwele.

COLONEL PADAYACHEE: The A1?

ADV SELLO SC: The dockets.

COLONEL PADAYACHEE: The docket?

10 **ADV SELLO SC**: All of them.

ADV BALOYI SC: The 403, 404 and 405.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: You agree they have got nothing to do with Brigadier Mokwele.

COLONEL PADAYACHEE: [Indistinct]... docket.

ADV SELLO SC: So ...[intervenes].

COLONEL PADAYACHEE: There is nothing that I picked up on BMW.

ADV SELLO SC: So the only time we get to meet Brigadier
20 Mokwele and the appointment of Brigadier Mokwele is in the A1 statement of January 2025.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: And we know it is those two paragraphs. I want to suggest, I would like to share with you what I would consider to be armed with an affidavit such as Mr

Adams provided in January 2025, scant as it is, accepting that it does not, the dockets do not assist us as regards Brigadier Mokwele, for an investigating officer such as yourself who is looking into the manipulation of promotional and security vetting processes to unduly benefit a civilian person. What would be the logical starting point of your investigation? You have got nothing except that two-page A1 statement. What is the first step you take?

COLONEL PADAYACHEE: With that information that is
10 given there?

ADV SELLO SC: In the A1 statement, yes.

COLONEL PADAYACHEE: My first point that I would look at the appointment process for civilians within Crime Intelligence and the fact that now in this affidavit is mentioned BMW.

ADV SELLO SC: Sorry, please say that again?

COLONEL PADAYACHEE: Are we talking about the A1 of January?

ADV SELLO SC: All we, we are armed with the A1 of
20 January.

COLONEL PADAYACHEE: Okay.

ADV SELLO SC: Scant as it is. I want to find out as an investigator what is your logical starting point regard being had to the fact that the complaint is about manipulation of promotional and security vetting processes to unduly benefit

a civilian person and we learn from paragraph 3 that such person is Mrs Mokwele. That is all we know. Where do we start?

COLONEL PADAYACHEE: Okay, so we are looking on the A1 statement. That is paragraph 2, paragraph 2 and 3 which we have spoken about earlier on. So, here is an allegation of a high-ranking officer involved in manipulating promotional and security vetting, so the undue benefit of a civilian person who worked for BMW South Africa before
10 being appointed as a Brigadier and CI. She had no policing experience, no management experience and was appointed as the Head of Technical Support Services.

So here is the starting point. Number one, the Head of Technical Support Services, that is the post within Crime Intelligence. So that is my first lead with regards to this. Second, she is from BMW. Brigadier post. Head of Technical Support. I will start by subpoenaing the documents from Crime Intelligence on the TSSU post and which I indeed did and when I looked at it and then I
20 discovered that there was a person from BMW, a civilian that was appointed as according to paragraph 2 of this affidavit.

ADV SELLO SC: Yes. Now according to the docket you provided, or before I say that, maybe you start where you started because you know what the processes are I would

have said, but at some point you have to collect all the prescripts and policies of SAPS that relate to promotions and security vetting processes, unless you know them off by heart. That is what you would do, I presume.

COLONEL PADAYACHEE: Commissioner, Chair, Commissioner, Counsel, that is what I did.

ADV SELLO SC: Okay.

COLONEL PADAYACHEE: We requested all documentation on all the allegations from the National Commissioner.

10 **ADV SELLO SC:** Yes. Now and we have to know what the prescripts provide and require for us to determine when we get into the facts of the case whether there has been manipulation. So we must have put up something to say this is how the process should run. And when we look into the facts of this case, this is how the process ran and therefore we suggest manipulation or departure from the prescribed process. So I am saying to you that you need the base documents that tell you how the process should run.

20 **COLONEL PADAYACHEE:** That is correct.

ADV SELLO SC: So that is where you start before you see what went wrong.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: According to your docket though, the very first summons, section 28 summons you issued on the

31st of January 2025 is to BMW and you will find that at file 3 at page 802, file 3, page 802.

COLONEL PADAYACHEE: [Indistinct]...

ADV SELLO SC: Thank you. There are a few section 28 summons in the docket, but when I look at all of them, this is the first based on the date stamp. This is the first you issued, the 31st of January 2025. You have a few following on the 6th of February to the National Commissioner, on the 3rd of April and so forth. But this is your starting summons
10 and it is to BMW. If you go to page 804, that is where you list the documents you require from Mrs Mokwele.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: You want her application for employment at BMW, positions held, occupancy periods and salary paid, job descriptions and performance agreements, all qualifications, training and development, declarations of interest, letter of resignation, notice period and the like. What informed you to make this particular selection of documents from BMW? All you have is an A1 statement
20 thus far.

COLONEL PADAYACHEE: Your question is what made us request this?

ADV SELLO SC: These specific documents on the 31st of January 2025.

COLONEL PADAYACHEE: The applicant or rather Mrs

Mokwele worked for BMW.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: By the time we prepared the summons, we knew who she was. Through investigation we identified her and we knew who she was.

ADV SELLO SC: Well, I apologize for interrupting you. We know her name from the A1 statement by Mr Adams. We know she worked at BMW. I cannot find anything else that tells me about Mrs Mokwele in the docket and her
10 employment at BMW until I come across this section 28. And I assume that if that is the case you were in exactly the same position on the 31st of January 2025. All you knew was her name and BMW. And remember the target is to determine whether or not there was manipulation of processes within SAPS.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: And I am trying to understand why do you start at BMW with these specific documents, request for these specific documents. What informed this?

20 **COLONEL PADAYACHEE:** Thank you, Chair. First of all, on the A1 statement, paragraph 2, there is no name of Mrs Mokwele on there, just BMW.

ADV SELLO SC: It is at paragraph 3.

COLONEL PADAYACHEE: Paragraph 3 of the A ...[intervenes].

ADV SELLO SC: 3 of A1.

COLONEL PADAYACHEE: Of whose ...[intervenes].

ADV KHUMALO SC: [Indistinct]... [cross-talking] Mrs Mokwele over them, paragraph 3 of A1.

“CI management favoured Mrs Mokwele
over them.”

COLONEL PADAYACHEE: Yes. My apologies, yes, yes. But we already knew beside the name Mrs Mokwele, we already had details at that time through the investigation
10 processes.

ADV SELLO SC: If I may interject because this is very important for my understanding of what happened. Where in the, what in the docket tells me that your investigations revealed the details?

COLONEL PADAYACHEE: What in ...[intervenes].

ADV SELLO SC: In your docket, your first document is the A1 dated 6 January 25.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: In terms of the date stamp, your next
20 document is 31 January 2025, which is this document. What did I miss in your investigation file?

COLONEL PADAYACHEE: In my docket itself ...[intervenes].

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: There is no witness statement

there. A witness statement comes, I think it is further down in the docket ...[intervenes].

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: Amongst one of the statements where the full details is.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: But up until the leading of that we had the name and surname of the person and therefore I requested the documents.

10 **ADV SELLO SC:** Where did you get that name and surname from, and what in the file tells me you have the name and the surname?

COLONEL PADAYACHEE: Through the investigation process.

ADV SELLO SC: I hear how you obtained them.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: I want to know what in the docket tells me when you acquired her name and her ID number, because it is not in the docket, unless it is one of those
20 perhaps that because we started off with an incomplete docket, something was missing.

COLONEL PADAYACHEE: An investigation goes where you conduct enquiries, where you get the name, whatever, and the surname on the police system, PERSAL system, you get details there and you carry on with your investigation

from there. The next part of it is to get ...[intervenes].

ADV BALOYI SC: Sorry, before you get onto the system, you know what you are looking for. You already have some information and the question is, how did you, or from whom did you get the name? Now you say you have the PERSAL number, if that is what you used. Your ID number, where did you get that from, how and where, and where do we see that in the docket?

COLONEL PADAYACHEE: Thank you. Thank you,
10 Commissioner. What I am saying is through enquiries, speaking to people and during the course of the investigation you speak to people and the talk is, who is this lady? Through that investigation and asking questions and stuff like that I got these details. But it was not full details.

ADV BALOYI SC: Did you speak to Human Resources? Did you speak to Crime Intelligence that you end up knowing the person that is referred to in the complaint, in that A1 statement is Dineo Mokwele? Somebody told you
20 that, right.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: We know that, somebody told you that. The question is who told you that and where in the docket do we see, yes, this is how he got the information. He got it from General Masemola on this day because he had an

interview with General Masemola. He will be asked that kind of question.

COLONEL PADAYACHEE: Thank you, Chair. Thank you, Commissioner. I would have spoken to people from Crime Intelligence from the environment who are working in that environment. It could have been Colonel Holtzhausen, one of our witnesses that the statement is in the docket. I could have got that information from her at the beginning stage of this investigation that is conducted.

10 But where do I have to put a statement and an affidavit that I identified this particular person from so and so, that is not in my docket. I did not put it there. I did not feel that it is necessary because I am still busy with my investigation. So through those nip bits and pieces that you pick up together I got that information and I utilized that information.

ADV SELLO SC: My question then, how did you know who to target at Crime Intelligence to determine her name, there it is, Ms Dineo Mokwele, and to determine her ID number?

20 Who did you speak to and on what basis did you identify who to speak to, because all you have is your A1, remember?

COLONEL PADAYACHEE: Ja.

ADV SELLO SC: All we have is our two-pager A1.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Who did you speak to, to obtain those details and how, on what basis did you identify who to talk to in Crime Intelligence?

COLONEL PADAYACHEE: It is people that I know that I worked with previously. There is quite a few of them that I spoke to, gathered bits and pieces of information from the environment itself. But the person that came up with Mokwele and the details is when, which, who I called and interviewed and eventually took a statement from, which is
10 in the docket, was Colonel Holtzhausen.

ADV SELLO SC: Which is much later than this date.

COLONEL PADAYACHEE: [Indistinct]... [cross-talking].

ADV SELLO SC: My logic tells me then all you had is Mrs Mokwele. All you had is appointment in a certain function. Why did not you ask the National Commissioner to please establish on your behalf what is happening here, who is this person and give you files pertaining to that appointment? Why did not you do so rather than, because what you are coming across as suggesting that you walked the passages
20 of CI and relied on previous relationships you had to ask people to go snooping around to find is there a lady from BMW employed here? Why did not you just direct that question to National Commissioner?

COLONEL PADAYACHEE: No ...[intervenes].

ADV SELLO SC: You are investigating, sorry, apologies,

you are investigating, you are authorized to investigate, you have your appointment letter from IDAC, why do you not do things in a straightforward manner, particularly in light of the fact that you are going to, you are here to fire three more summonses to the National Commissioner but only in February. Why was that not your starting point?

COLONEL PADAYACHEE: Chair, Commissioners, Counsel, when you do an investigation it is fine, you can speak from a platform like this. You go, you speak to
10 people, you investigate and you take leads from there and you go on and then you get names, you follow through with the names with the National Commissioner and BMW. It is when we got these, when we got the actual documents from the National Commissioner and that you will see we got it in February.

This thing here from BMW, all we had was the name. We did not know exactly initially which BMW it was because initially we went to, I think it was Acacia or, but there is two, two BMW's, but eventually we found it and
20 once we got those details we requested this from them. That is in January. Remember I am trying to get the message across to you when you conduct an investigation. It is not just you investigate, you speak to lots of people you are busy, you are trying to confirm allegations and where you can find and you can confirm allegations you

reduce that into a statement, into an affidavit.

When you are confirmed and you are sure that is that because if we go around taking affidavits from every Tom, Dick and Harry and most of those will just be, you cannot use them. So what I am trying to explain here, when you investigate, you will go, you look at places, you will talk to people you will pick up a bit of information there and you will continue until you reach a point where you have some information on a platform that you can utilise to get more,
10 proper details starting with one, with this 28 from BMW.

The next one was to get now broader information and that is when we subpoenaed the National Commissioner for relevant documents that was applicable for this information and in that we got all the extra additional information that we have. Thank you.

ADV SELLO SC: Okay, I understand that you investigate. I am not an investigator, so my knowledge of that area I confess is fairly limited. But I am talking to a lead investigator of IDAC whose conduct is informed by a letter
20 of authority who has got authority to investigate such matters, who does not direct his first salvo of questions to the person responsible for the institution that is affected by the investigation but who does it otherwise by talking to people. So you come across to me, and I do not know if I understood you well, that in the course of investigations we

can ignore completely the Head of the institution, National Commissioner and be snooping around. You know, this investigation, to establish an ID number who did you ask?

You had to have dug within CI to establish Mrs Mokwele's ID number which you reflected there when you made a request to BMW. You could have gotten it in exactly less than an hour from the National Commissioner. It cannot be that the answer is that when you investigate you talk to people, unnamed people, you give sources and
10 this is nothing complex. You are just establishing a starting point, surely, Colonel.

COLONEL PADAYACHEE: Can I answer you?

ADV SELLO SC: Please do.

COLONEL PADAYACHEE: Thank you. We can say a whole lot of things here of how we should conduct our investigation and on what authority and et cetera. I use my powers of authority when I require them to subpoena people or subpoena documents. But with an investigation, let me use the word that you use, Counsel, snooping is part of
20 investigation. You snoop to get information and that is where your starting points of all investigations and all investigating officers will know that.

And when it comes to a point where you snoop enough and you got some facts that you can put down now in a subpoena, in a summons, and get that information, you

go ahead. So, I am not going to say that I did not use my powers or I used my powers for this and did not use it for that. I am basically saying that the investigation is dynamic. Thank you.

ADV SELLO SC: The investigation is dynamic. Like I said, I know nothing about investigations but I trust through your engagement I will catch up with something. Now, because of time, I would like you to listen carefully to what I am going to propose to you and correct me if I am wrong or I
 10 am missing something. You start with your summonses, with this particular one. From there, on the 6th of February, you issue a summons to the National Commissioner.

But just like this one, the summons has to be specific. In Annexure, it has to list the specific documents that you require. The next one I have, we do not have to go there, and I need your attention on this lest I have missed anyone. It is the 6th of February 25, to the National Commissioner, but here you request security clearances and vetting files for seven people. This is the six people
 20 plus, this is the six SAPS members plus Mokwele. That is what you request. You recall that issuing such a summons, right?

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: File 3, page 936.

COLONEL PADAYACHEE: Page?

ADV SELLO SC: File 3, page 936.

COLONEL PADAYACHEE: I have it.

ADV SELLO SC: Okay, if you cast your eye there, you will see, I think you could go to the end of it. In the front of it, I think it has got a stamp, a date stamp. I have it as 6th of February 2025. Is that what you have?

COLONEL PADAYACHEE: 2025, 6th of February 2025.

ADV SELLO SC: Yes, yes. And that particular summons, if we go to Annexure B, we will see what it requests. It is
10 security clearances, security clearances of the persons listed therein.

ADV BALOYI SC: And vetting files.

ADV SELLO SC: And vetting files. I see in this summons, you were requesting from the National Commissioner ...[intervenes].

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: To provide you with security clearances and vetting files for the people listed in Annexure B.

COLONEL PADAYACHEE: Correct.

20 **ADV SELLO SC:** Okay. This is January, including Mrs Mokwele.

COLONEL PADAYACHEE: Including Mrs Mokwele.

ADV SELLO SC: Yes.

ADV BALOYI SC: Is this still relating to the Mokwele file?

COLONEL PADAYACHEE: Yes, but this particular

subpoena I would like to explain. We do one subpoena for all the files of people that we are investigating. So when you see Mrs Mokwele here, on this document here for the 28, so this section 28 with all her documents is in this docket. When you go down and you look at the next person, General Lushaba, in his matter, you will find a copy of the very same 28 with his documents in his docket. So it is one summons that is utilised for ...[intervenes].

ADV SELLO SC: For all seven.

10 **COLONEL PADAYACHEE:** Yes.

ADV SELLO SC: Right. So we know now that you are investigating the appointment of Mrs Mokwele and we know from A1 that there is an issue about possible manipulation of vetting processes. Why did you need the vetting, clearance certificates and vetting files for all these people? Was their clearance or vetting processes they were subjected to ever in question?

COLONEL PADAYACHEE: Can I get your question, Counsel?

20 **ADV SELLO SC:** Okay. The target of your investigation here as regards vetting and security clearance ...[intervenes].

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Is the person from BMW who was employed ...[intervenes].

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Through some manipulation of process.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Okay. The other people, all the SAPS members there are not in your crosshairs for that purpose, to determine whether they were employed through manipulated vetting processes. They are not. They are not the subject of your investigation.

COLONEL PADAYACHEE: They are not the subject in this
10 docket. They are subjects in other dockets. Remember as I said that we utilized one section 28 to request all the vetting files of implicated people.

ADV SELLO SC: Oh, I see.

COLONEL PADAYACHEE: All the files of implicated, you will find this here together with personnel files, all the implicated people. So whichever you investigated, it is all the implicated people.

ADV SELLO SC: Okay. So the fact that the first six happened to be the panel members that recommended Mrs
20 Mokwele is neither here nor there. Their own vetting and clearance is subject to query based on other investigations. Is that where we land, starting with General Khumalo?

COLONEL PADAYACHEE: Yes. When you look at this here, the focus is on Mokwele. With regards to the other files, as I said, it is other investigations that were being

conducted, so therefore all the documents of the implicated people, so ja.

ADV SELLO SC: Which section 27 affidavit triggered an investigation into the clearance and vetting of General Khumalo by way of example?

COLONEL PADAYACHEE: I have explained it.

ADV SELLO SC: No, please help me.

COLONEL PADAYACHEE: Okay.

ADV SELLO SC: I am new in this field.

10 **COLONEL PADAYACHEE:** We are conducting an investigation, right. These are the implicated people in our investigation.

ADV SELLO SC: Implicated in?

COLONEL PADAYACHEE: In our investigations.

ADV SELLO SC: Ja, but what are they implicated in? What is, how are they implicated?

COLONEL PADAYACHEE: They are implicated in other matters linking to other crimes. Investigations, as I said, there are various, when you look at for example General
20 Lushaba ...[intervenes].

ADV SELLO SC: No, no, let us, I would like to stick, let us stick with the first.

COLONEL PADAYACHEE: So, so ...[intervenes].

ADV SELLO SC: Do not, please do not pick and choose. Take me through, make me, if you make me understand with

reference to General Khumalo, I think I can extend that understanding to the rest of them. Let us stick with General Khumalo.

COLONEL PADAYACHEE: You mean just on General Khumalo with regard to his vetting file?

ADV SELLO SC: Ja.

COLONEL PADAYACHEE: There is an investigation with regards to General Khumalo and his vetting file.

ADV SELLO SC: Okay, now ...[intervenes].

10 **COLONEL PADAYACHEE:** Which is part of another investigation that is there.

ADV SELLO SC: Ja, okay.

COLONEL PADAYACHEE: So that is why I said in this matter here where all these files are requested, it is all people that is implicated in various investigations that we looked at their personnel files, their vetting files and not to say that we want the personnel file for this or the vetting file for this, we want all the files to look at holistically what is there.

20 **ADV SELLO SC:** And presumably all those investigations are backed up by the requisite section 27 affidavits.

COLONEL PADAYACHEE: It is backed up by the investigation that we conducted.

ADV SELLO SC: Section 27 affidavit. We agreed yesterday that is the trigger.

COLONEL PADAYACHEE: Remember again, Counsel, as I said in the beginning, I did not see the section 27 ...[intervenes].

ADV SELLO SC: Sorry, sorry ...[intervenes].

COLONEL PADAYACHEE: But now ...[intervenes].

ADV SELLO SC: Colonel, Colonel.

CHAIRPERSON: You see, Colonel, I engaged you quite extensively yesterday on the trigger. You remember that, quite extensively. Now the very fact that you must now in
10 response to these questions about the trigger say you never saw the referral, that creates a serious problem. It actually buttress the point that you must see, you must see that referral, otherwise you are investigating in the dark. Do you see what I mean? Do you see what I mean? Do you understand what I mean?

COLONEL PADAYACHEE: I understand.

CHAIRPERSON: You are investigating in the dark because for you to even begin, you begin because there is that trigger as provided for in section 27, otherwise what are you
20 going on about? Sorry to interrupt. You want to comment?

ADV SELLO SC: Thank you, Chair, that is helpful.

COLONEL PADAYACHEE: Yes, I want to respond.

CHAIRPERSON: Please, please, yes.

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

CHAIRPERSON: We know, and please do not repeat that

you did not see the section 27 referral. We heard you umpteen times on that. Please comment.

COLONEL PADAYACHEE: Thank you, Commissioner, can I respond?

CHAIRPERSON: Yes.

COLONEL PADAYACHEE: Commissioner, I know and I understand that I have referred to it various times and it comes up every now and again and I am standing before yourself, Chair and the Commission and I am trying to
10 answer in the best way I can.

CHAIRPERSON: Yes.

COLONEL PADAYACHEE: But it always comes back to the 27.

CHAIRPERSON: And it must.

COLONEL PADAYACHEE: And it must.

CHAIRPERSON: It does. It does. Sorry, sorry, it does so because it must. That is the problem for you.

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: Please continue with your comment.

20 **COLONEL PADAYACHEE**: As Commissioner, as Chair has pointed out, the importance of the section 27, how important it is for the investigating officer going forward, something which we never bothered about because we have our chief criminal investigator, we have a briefing. If one has to come and see how we operate in terms of the briefing, it is

different. One expects that okay, this is how it is, but it is not like how it is. But you have pointed out something important and what is important about this current matter is that there are suspicions, allegations surrounding this investigations.

So moving forward to avoid this type of stuff, and it is a fact, Commissioner, that around IDAC there has been many allegations and when you look at it, you look at the timings, you look at a whole lot of things and it points to
10 there must be something wrong. And then I sit here before you and the one time I am a witness and at another time I am an accused. So bear with me when I respond with that because for me I conducted an investigation that flew from a briefing from my chief investigator.

I did a *bona fide* investigation. Whether some of these things fell out of the mandate of IDAC during the course or in the course, I cannot say you know, I did something wrong. I proceeded with it. And that is the honest thing that I am saying.

20 **CHAIRPERSON:** I will tell you that you actually did do something wrong. You get the A1 after the briefing by your chief, which I am sure did not tell you much. You then get the A1 which you have agreed when Ms Sello was questioning you that it is sparse. Here is what was wrong.

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: You have this A1. It is sparse. It should have triggered in your mind, that should have triggered in your mind what was referred to us in the first place and you should have gone to see what was referred. If all you see is this A1 that does not have anything basically, you should, but on what basis could this ever have been referred to us and you ought to have gone back to the referral, please chief give me that referrals. Do you not agree?

COLONEL PADAYACHEE: That is noted, Chief.

10 **CHAIRPERSON**: Sorry?

COLONEL PADAYACHEE: Apologies, Chair ...[indistinct].

CHAIRPERSON: And I happen to have an aversion to that chief thing. I personally do. So what is your comment?

COLONEL PADAYACHEE: No, Chair it is noted. And the concern is ...[intervenes].

CHAIRPERSON: No, no, no, I am asking you whether you agree. Do you agree?

COLONEL PADAYACHEE: Sir, at this time, and remember my ...[intervenes].

20 **CHAIRPERSON**: I am asking you this one time.

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: I am asking you, so for you to say this time as if you have another time to disagree. Do you agree?

COLONEL PADAYACHEE: Chair, at this time and this

moment this is the best that I can do and answer
...[intervenes].

CHAIRPERSON: You agree.

COLONEL PADAYACHEE: When you say that I
...[intervenes].

CHAIRPERSON: You have heard me, please do not
repeat. You have heard me, please do not repeat. Do you
agree?

COLONEL PADAYACHEE: No, sir, I cannot say I agree,
10 sir.

CHAIRPERSON: Why do you not agree?

COLONEL PADAYACHEE: Because at that moment
...[intervenes].

CHAIRPERSON: Why do you not agree?

COLONEL PADAYACHEE: Sir, because at that moment in
time when I received the briefing compared to the time now
that you are asking me and telling me these questions about
the importance of the section 27, yes, but at that time, at
that time I did not worry about it or think about it or even 27
20 came to my mind at that moment in time. There was no 27
in my mind except the briefing.

CHAIRPERSON: So you have this A1 that is empty or the
content of which is sparse and you just close your mind to
the question whether there was a basis for referring in the
first place. You just close your mind to that.

COLONEL PADAYACHEE: No, sir. I took what ...[intervenes].

CHAIRPERSON: You did not, you did not close your mind?

COLONEL PADAYACHEE: Chair?

CHAIRPERSON: I am saying did you then close your mind to the fact that I have an A1 ...[intervenes].

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: That is very sparse in content. Did you close your mind to that?

10 **COLONEL PADAYACHEE:** No, I did not close my mind to it, Chair.

CHAIRPERSON: Why did you not check then?

COLONEL PADAYACHEE: I went on what little was there and I conducted further investigations to expand on it, Chair. As it was there, it needed me to look further into it.

CHAIRPERSON: Not if you know what the provisions of section 27 are for purposes of making a referral and up to now you have not suggested that you do not know what section 27 provides.

20 **COLONEL PADAYACHEE:** Yes, sir.

CHAIRPERSON: So you could not proceed on the basis of this A1 without satisfying yourself is there enough to proceed at all and the basis for proceeding would have been the referral. This is sparse than what was referred in the first place. That you would find out from the section 27

referral. It is on that basis that I am asking you so you closed your mind to that.

COLONEL PADAYACHEE: Sir, when you put it that way, close your mind, it is, let me say I cannot take it any further, Chair, and I have to stand by what you say.

CHAIRPERSON: All right, thank you.

COLONEL PADAYACHEE: Because we have spoken about it and ...[intervenes].

CHAIRPERSON: Thank you, thank you ...[intervenes].

10 **COLONEL PADAYACHEE**: [Indistinct]... [cross-talking].

CHAIRPERSON: Thank you.

COLONEL PADAYACHEE: That is the best answer I get and although I am caught in the middle there ...[intervenes].

CHAIRPERSON: Yes, yes.

COLONEL PADAYACHEE: And I have to leave it there, caught in the middle, and I cannot take it any further.

CHAIRPERSON: Yes. You seem to have performed your functions perfunctorily. You just ...[intervenes].

COLONEL PADAYACHEE: No, sir. But ...[intervenes].

20 **CHAIRPERSON**: Yes, Ms Sello.

ADV SELLO SC: Thank you, Chair. Colonel, can I invite you to the page before? I am looking at the summons. We are still with the summons. Can I take us to a page before 2117? 2117. Remember, we are looking at 2118, so just go a page before.

COLONEL PADAYACHEE: 2117?

ADV SELLO SC: Wait.

COLONEL PADAYACHEE: The summons are 938.

ADV SELLO SC: Or 936. Then I am looking at a different version. I want us then to go to a page before. It is a duplication. That would be 937. My apologies. So we ended up with duplications instead of, it appears at 2117 as well. Now we are, we know it starts at 936, that is summons of the 6th of February 2025. I then go to 937 and
10 I look under background and I see that it states under background:

“The information required from you relates to the conducting of an investigation into serious fraud and corruption committed within SAPS.”

Then you state that you invoke section 28(13) of the NPA Act and you say you are looking into allegations of the Commission of the following offenses, one fraud, two corruption. So that is what you are investigating here.

20 **COLONEL PADAYACHEE:** Okay.

ADV SELLO SC: Now at, if we go back then to our 938, your response to why you are looking into the security clearances and vetting of such a wide list of people beyond Mrs Mokwele was that this particular summons was not issued specifically in relation to the Mokwele appointment

investigation but was broader and included other investigations.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Okay. So is it then fair to assume, to conclude, and I see at the bottom it is signed by Advocate A Johnson.

COLONEL PADAYACHEE: That is correct.

ADV SELLO SC: Is it correct to assume that each separate investigation into the security clearances and
10 vetting files of Khumalo, Lushaba, Madondo, Ncube, I will skip 1.5 and 1.4, 1.5 and 1.6 because these were the contenders for this position we are discussing, and Dobie, I must accept that somewhere within IDAC lie either one or more section 27 affidavits authorizing an investigation into the vetting processes or security clearances of these individuals, alternatively, that IDAC, the ID, has taken on their own volition a decision to investigate those issues.

So we know in IDAC it is either by way of section 27 affidavit or where the ID has taken a decision. I must
20 assume for purposes of this summons that one of them apply in relation to all these people listed here, excluding the person at 1.5 and 1.6. So when we make a request to IDAC to be provided with a section 27 affidavit or section 28(1) authorization in respect of Khumalo, Lushaba, Madondo, Ncube, and Dobie, that it should be found. There

would be one of them.

COLONEL PADAYACHEE: As I indicated, these are all implicated people in other investigations. Whether they, as I said again, we are coming back to touch on the 27. Here, as I indicated before, the briefing on the investigation is done. It has got to do with vettings. It has got to do with a whole lot of allegations which can result in investigations.

So these documentation which is required for the purpose of these investigations were put in there. It is all
10 implicated people. Whether there will be something tangible found or whatever, it is only discovered when we receive the documents, which has happened in some of the cases that there is nothing tangible to that. But it is all part of the investigations. These files and documents are all part, when I say the investigation, the different investigations that we conducted.

ADV SELLO SC: Okay.

COLONEL PADAYACHEE: Because one investigation will flow into another investigation.

20 **ADV SELLO SC:** So then ...[intervenes].

ADV BALOYI SC: Sorry, Ms Sello. I was going to ask that question. Let me just try to amplify her question. We may get a better answer, hopefully. Ms Sello has read for you that last paragraph, details of the matter or other information. So we know, we know that these, these are, in

fact, it reads, let me remind you how it reads. It reads:

“The investigation pertains to manipulation of security services vetting processes which resulted in the unlawful issuing of security clearance.”

That is what the investigation is about. That is why these people's vetting files are being sought.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: The question is, we must therefore have
10 in the IDAC dockets that raise complaints or an allegation about these individuals that have been listed. There cannot be a random, if things are done properly, there could not be a random list of people.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: There must be a docket for each one of them that raises issues about their vetting and security clearance.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: You agree that is the case, there must
20 be a document?

COLONEL PADAYACHEE: Yes. When you say you would not get individual dockets, it could be one docket where a few people are implicated in ...[intervenes].

ADV BALOYI SC: Yes.

COLONEL PADAYACHEE: With regarding to manipulation

of processes. And, but particular, Chair, Commissioner, there is one specific docket as a result of it that has been opened and which is finalized and pending on the process.

ADV BALOYI SC: Yes.

COLONEL PADAYACHEE: Thank you.

ADV BALOYI SC: So, in fact, if you look at 936, you have a CIN number, and I think you said a CIN number is an inquiry number.

COLONEL PADAYACHEE: Yes.

10 **ADV BALOYI SC:** Right. So if we get that docket or file, let us call it a file because at this point it is an inquiry, if we get a copy of that CIN file, we should find in it the allegation, the original allegation about the vetting and security clearance, whatever complaint it is. We should find it in that file.

COLONEL PADAYACHEE: Yes, it will be CIN first, and then it will change to the docket number.

ADV BALOYI SC: I am still at CIN because this summons here, it is not yet at docket stage. It gives a reference, a
20 CIN reference. So if I go into the CIN file, we should find the complaint that lists all of those people ...[intervenes].

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: As involved in vetting and vetting manipulation.

COLONEL PADAYACHEE: Yes, you will find the allegation

and the summons and everything in the file.

ADV BALOYI SC: Okay, thank you.

ADV SELLO SC: And if I may just follow up on that. In the very same files that Commissioner Baloyi references, we will find an authorization to inquire into their own personal security clearances. Let us take Khumalo as a start, issued for the ranks of Brigadier, Major General, and Lieutenant General, because now you are investigating these people and their own vetting.

10 **COLONEL PADAYACHEE:** Yes.

ADV SELLO SC: So in that, in some CIN file within IDAC is authorization to inquire and investigate into the security clearances of those particular people. Not for purposes of being on a panel, but they themselves are subject to investigation by IDAC and their vetting and security clearances are brought into question. We will find that.

COLONEL PADAYACHEE: Can I?

ADV SELLO SC: Yes, please.

COLONEL PADAYACHEE: Thank you, Chair,
20 Commissioners. During the course of the investigation, when you are investigating one part or you are investigating something, you will pick up something else along the way with regards to the same allegation. So therefore, you will find that a number of other files are requested in that. During the course of the investigation, other things come up

which you have to investigate. So when you say, but no, you need an authorization now to continue, no, we continued. If something else came up where we found more corruption or we found more fraud, we continued with it because that investigation started at a point where it uncovered other stuff.

ADV SELLO SC: Okay. But then that would mean by the 6th of January, of February 2025, some or other investigation was ongoing that led into the investigation of
10 these particular individuals in so far as their security clearances and vetting is concerned. That is what you are saying.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: It may very well have started somewhere and those files exist in IDAC because I would take it, it is on that basis that Advocate Johnson would authorize that now.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: And that is important because otherwise
20 it would appear that on the basis of investigating one issue, then IDAC can run around inquiring into, in this case in SAPS, everybody's security clearances and vetting in circumstances where there is neither a referral complaint in terms of section 7 or a specific authorization in terms of section 28(1)(a) by the Investigating Director. You say that

would never happen.

COLONEL PADAYACHEE: Chair, Commissioners, Counsel, the investigation ...[intervenes].

ADV SELLO SC: Can I just finish? Because, just to finish, because what I have just painted would be patently unlawful. IDAC cannot decide to wake up in the morning and decide that it is going to inquire into security clearances and vetting of the various Generals and Brigadiers here in circumstances where it is lacking in a
10 section 27 affidavit or it does not have a written authorization in terms of section 28. If you do not have those, that investigation would be patently unlawful, unless it can be justified on another basis.

And using that basis would be, as you were busy investigating a robbery somewhere, I do not know how you would, but you come across General Lushaba and you say, I do not know, I might as well look into his vetting kind of scenario. Am I getting the right picture here?

COLONEL PADAYACHEE: I am with you, Counsel, Chair,
20 Commissioners. You just do not go around and just investigate anybody for the purposes of investigation.

ADV SELLO SC: Absolutely.

COLONEL PADAYACHEE: We are investigating Crime Intelligence, right, Crime intelligence with the allegations made. During the course of those investigations, what you

find is another link to that investigation that is there that you have to look at where criminality has taken place. During the course of it, too, as well, there are allegations and those allegations, because it is a preliminary investigation, you have to eliminate, is it there, is it not there?

ADV KHUMALO SC: Can I just say something.

COLONEL PADAYACHEE: I hope that I ...[intervenes].

ADV KHUMALO SC: My difficulty, this is your starting
 10 point. This is your first subpoena to the National Commissioner. The allegations that are brought to you is that a civilian from BMW has been favoured. It seems to me that the starting point would be, what was the advert? What did this role, what are the descriptions, what is the description of the role? Did it allow for civilians from outside to be appointed? If the answer is yes, then it does not matter whether the person is from BMW or Mercedes, because the requirements of the job said an outsider can be appointed.

20 The advert said outsiders can apply. So the first leg of your complaint gets resolved. Then you look at, what are the minimum requirements for the role? What is required of the applicants? It requires a B degree. Does the person have it, yes or no? What kind of B degree? Is it an engineering degree? Does the person have it? And you

find that in the application for the job, yes or no? If they do not have it, there is a problem. If they have it, that box is ticked.

Then you close that leg, and you go into, was there anything untoward in the vetting? Then you approach it that way. The fact that the very first subpoena you send to the National Commissioner, you are looking into security clearances of people from Brigadier level to Major General level, to Lieutenant General level, that is your starting
10 point.

Remember, that is where Advocate Sello started, that the first subpoena, according to the record, is to BMW. The second subpoena is this one. Immediately, you ask for security clearances issued and all the other things and then you justify that by saying, well, other investigations led you to this. That cannot be, because you are starting in January. End of January, subpoena to BMW. Within four weeks of you being given this file, or at least you getting the A1, then you are already investigating security
20 clearances of all the Generals and Brigadiers at every stage along their climb within SAPS.

COLONEL PADAYACHEE: Can I respond, Commissioner? Commissioner, I am trying as hard as possible to get the message out, and I am trying. The investigation, with regards to the request for appointments, when I initially

said, when we looked at this investigation, we looked at the allegations and as we continued with the preliminary investigations, this came out as the capture of Crime Intelligence through various appointments. Now, I know you do not want me to go in that space, but I am trying to get out what I want to explain, so ...[intervenes].

ADV KHUMALO SC: Referring to the future capture, as you said yesterday, or past capture, I just need to be clear.

COLONEL PADAYACHEE: No.

10 **ADV KHUMALO SC:** Future capture.

COLONEL PADAYACHEE: No, no, no.

ADV KHUMALO SC: Past capture.

COLONEL PADAYACHEE: Can I respond, sir? Thank you. When we come back to the future capture and the way it was put over yesterday, and when I am given the opportunity to explain and quantify it, you will understand, sir. So the thing about future capture or whenever, we will put that to rest, sir. Definitely. Thank you, sir.

ADV KHUMALO SC: When you say here you were looking
20 at capture of Crime Intelligence, is it past capture? Your answer to my question was, you are looking at this thing holistically, you are investigating Crime Intelligence, and you are looking at the capture of Crime Intelligence. That is when I came in and said, just to be clear, are you referring to past capture or future capture? So you said we

must pack the future capture issue. So am I to assume that looking at this document, what you were looking at was past capture of Crime Intelligence?

COLONEL PADAYACHEE: When you look at the documents and what has already happened, the people are appointed. There were some still to be appointed, and they are still acting, waiting to be appointed. So when we look at it past, when you look at incidents of past capture or past appointment that took place, Mokwele was appointed. She
 10 was appointed in October, but she only took up her post because she had to put in notice in work, but she was appointed on the 1st of October there. But the date of appointment will be a month later when she reported on duty.

So when I talk about past and future, there are people that is already appointed. One of those appointments is a subject of the investigation. So people that are acting in the post, where they are or they were going to be appointed, so that is not already, when you are
 20 saying past and still future, it is those various things that happen and are still happening that we talk about the capture of Crime Intelligence.

ADV BALOYI SC: Colonel, just so that I understand, are you saying these people at page 938 that are listed there, their security clearance and vetting files were required

because they are implicated in a capture of the, we know one of them is Mokwele and you are quite insistent that she was part of a scheme to capture Crime Intelligence. We know you say General Khumalo was. So there are names there and there is the panel, members of the panel, and Ncube.

So we know all of those you have accused of being part of the plan to capture Crime Intelligence. But we have other names here that are appearing for the first time. You
 10 have 1.5, Ms Sello says that was a competitor for the position that Ms Mokwele was finally appointed to. And then 1.7, it has not been said who that person is. But are you saying this information about them was required, it was requested, because in your investigation, you came upon indicators that they are planning to capture Crime Intelligence if they have not already?

COLONEL PADAYACHEE: Commissioner, the allegations, and the allegations only come forward to fact when we find that the processes have been manipulated, so
 20 ...[intervenes].

ADV BALOYI SC: Say that again?

COLONEL PADAYACHEE: There were allegations.

ADV BALOYI SC: Yes.

COLONEL PADAYACHEE: Our investigation led us to these allegations, to investigate these allegations. When

you ...[intervenes].

ADV BALOYI SC: And the allegation is what? What is the allegations? What are the allegations about these people that are listed from 1.1 up to 1.7 that creates a basis for you to seek their files?

COLONEL PADAYACHEE: Appointments, vetting processes. That is it, the appointments and vetting processes of the people who are alleged to have been unlawfully appointed, if I can put it, or irregularly placed in
10 a place for, like as I explained it yesterday, in a position of where you have power, you know, and ja.

ADV BALOYI SC: Ja, no, we have had that discussion.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: I think that discussion of yesterday, you know, you do remember how it went.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: You are not answering my question. You, Ms Sello read for you what Ms Johnson says is the reason that she is asking for this information, right.

20 **COLONEL PADAYACHEE:** Yes.

ADV BALOYI SC: And I know you remember it. I do not, let me not ...[intervenes].

ADV SELLO SC: 937.

ADV BALOYI SC: Ja, 937, it says it pertains to manipulation of security vetting processes. Now, her list in

Annexure B has got seven people and it requires their files from what looks like the beginning of their rise in the SAPS, from Brigadier, that is Khumalo, you say from Brigadier to Major General and when he becomes Lieutenant General. You do the same with Leshaba, you say when he was Colonel, we want that file, when he is Brigadier and when he is Major General.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: Madondo, you do the same. Up to the
10 end, you do that. So my question is, you, and when I say you, I mean IDAC and you are the witness, so you know something about this. You keep telling us that you are investigating a bigger scheme. Are you saying to us that this information required of these seven people, it is because they have been identified in a complaint or in allegations on some reasonable basis of the Investigating Director that they are involved in a scheme to capture Crime Intelligence, these people, these seven people?

Because if your answer is no, and I may be helping
20 you with answering, but I think in fairness, I am going to say that to you, that if your answer is no, they have not been identified, then we would have to say, well, Ms Johnson says that it is because you are looking at manipulation of vetting processes, and there may well be a case of abuse of powers. Hence my question of wanting to

know, has an allegation been made that these seven people are involved in a scheme to capture Crime Intelligence? Is there such an allegation?

COLONEL PADAYACHEE: Can I respond?

ADV BALOYI SC: Yes, you may.

COLONEL PADAYACHEE: When we say the persons are involved in the capture of Crime Intelligence, the, when I say the capture of Crime Intelligence is that the activities that are taking place there through the Head of Crime
10 Intelligence with the appointments, these appointments are strategic for the capture of Crime Intelligence. It is not to say that particular person there have got together and now they are going to go on the capture of Crime Intelligence. It is the way the appointments took place.

Then the other thing, there were reasonable grounds to suspect that these people were involved in some of the allegations, so therefore, on reasonable grounds, these documents were requested to verify and eliminate.

ADV BALOYI SC: Okay, so ...[intervenes].

20 **COLONEL PADAYACHEE**: And where ...[intervenes].

ADV BALOYI SC: Ja, sorry.

COLONEL PADAYACHEE: Where positive stuff was found, we took action and where ...[intervenes].

ADV BALOYI SC: Ja, I am not at where you take action. I just want to understand what your testimony is about this.

COLONEL PADAYACHEE: Absolutely. I have answered it.

ADV BALOYI SC: So I am going to try one last time. Is there in the file, in that CIN file or any other document, is there a complaint or an allegation, and please listen to how I express this very carefully, is there an allegation or a complaint that says, Major General Madondo is involved in a scheme to capture Crime Intelligence? Will we find such a complaint?

COLONEL PADAYACHEE: No.

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

COLONEL PADAYACHEE: You will not find a complaint like that.

ADV BALOYI SC: All right, thank you.

ADV SELLO SC: Thank you. So if you ...[intervenes].

CHAIRPERSON: Sorry.

ADV SELLO SC: Chair.

CHAIRPERSON: I am sorry, sorry.

ADV SELLO SC: Yes, Chair.

CHAIRPERSON: If you cannot, if you cannot, forgive me if
20 Ms Sello has already asked this question because I remember you touching on section 28, but if we cannot find such an allegation and this not being a referral under 27, you would then have to look to section 28(1)(a), am I correct?

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: For you to be able to investigate, is that correct or not?

COLONEL PADAYACHEE: Chair, I cannot say at the moment, 21(a) ...[intervenes].

CHAIRPERSON: 28(1)(a), a small A this time.

ADV SELLO SC: If I may assist, Colonel, Colonel please look to your screen. It is about to be projected. That is section 28 of the NPA Act.

COLONEL PADAYACHEE: Yes.

10 **ADV SELLO SC:** All right, that is what the Chair would like to engage you on. It will be projected soon. I hope you can see from the screen close to you. Enlarge. Oh, I understand they are providing you with a copy of the NPA Act. We are looking at 28(1)(a).

COLONEL PADAYACHEE: I see.

ADV SELLO SC: You can, oh, I thought you would look at the document in your hand. And that is what the Chair wants to engage you on.

CHAIRPERSON: So I am saying, because there may be a
20 referral, but now the focus is on what was not in the referral.

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: And that came out quite clearly when Commissioner Baloyi was engaging you. You have agreed that we will not find this anywhere in the documentation that

we have before us.

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: Now, my question is, if it is not a section 27 referral ...[intervenes].

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: Your next point of entry would have to be section 28(1)(a).

COLONEL PADAYACHEE: 28(1)(a).

CHAIRPERSON: Is that correct, do you agree?

10 **COLONEL PADAYACHEE**: That is correct as I read it, sir.

CHAIRPERSON: Is that what happened here?

COLONEL PADAYACHEE: I would not say I referred to 21(a), but the way I conducted ...[intervenes].

CHAIRPERSON: It would not be you anyway. It would not be you anyway, because it is the Investigating Director that must be satisfied that there is a reason to suspect. Yes, of course, that does not mean the Investigating Director would then have to investigate personally. She would be inundated if she were to try to do that. But when it comes
20 to you, would this have been on the basis of the satisfaction of the Investigating Director that there was reason to suspect? Would that, was that the basis?

COLONEL PADAYACHEE: Of the further investigations?

ADV BALOYI SC: Yes, let me call them the additional investigations.

COLONEL PADAYACHEE: Additional investigations that came out of it. Sir, I would not go to the 28. I just would go ...[intervenes].

CHAIRPERSON: Where would you go? Where would you go?

COLONEL PADAYACHEE: With the current investigation that is there, that we are conducting, and these other implicated persons come in, it is just I would continue with the same investigation with that.

10 **CHAIRPERSON:** But where do you get the power to do that from, because you are created by statute and you possess your powers as IDAC, not you personally ...[intervenes].

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: You possess your powers in terms of statute. So where would you get this power from? If it is not a referral, and if it is not in terms of section 28(1)(a), what would your power be?

COLONEL PADAYACHEE: Sir, then I would provide
20 ...[intervenes].

CHAIRPERSON: As a functionary within IDAC.

COLONEL PADAYACHEE: Yes, sir. As I say, that if I am investigating something and it is related to this investigation that I am conducting, let us say, for example, it is a process of, I just want to just pause for an example.

CHAIRPERSON: You see, as you are thinking, as you are thinking, I do understand the legal principle that when you have a power ...[intervenes].

COLONEL PADAYACHEE: Yes, sir.

CHAIRPERSON: To perform X, you also have the power to do something that is ancillary to X. So it is taken as being part of X. You are still basically exercising the same power. That I understand.

COLONEL PADAYACHEE: Yes, sir.

10 **CHAIRPERSON:** But I am not so sure that going on to vetting and so on and so on would be something ancillary to what had been referred in terms of section 27. That I would not understand. So it is on that basis that I say, if it is not a 27 referral, then it would have to be on the basis of section 28(1)(a). Do you follow me?

COLONEL PADAYACHEE: Yes, sir.

CHAIRPERSON: So I go back to my question, where would you get the power from then? Are you suggesting that this vetting issue is ancillary to what had been referred? And if
20 you do, I will find that quite strange.

COLONEL PADAYACHEE: Sir, as you mentioned, section 21(a), that the Investigating Director is empowered there, it would have to come down as an authority for us to investigate further.

CHAIRPERSON: Did you get that authority?

COLONEL PADAYACHEE: No, sir.

CHAIRPERSON: Then on what basis, then, in law, did you do so?

COLONEL PADAYACHEE: In law, sir, look, you are investigating an allegation here, or you are investigating something that has taken place there, but further stuff coming, I will continue on the same basis. On the law part of it, you know, it is there, there is a crime being committed, so I am applying that to that specific thing, if there was a
10 criminal offense committed there. Like, let me just jump on ...[intervenes].

CHAIRPERSON: So are you basically saying, are you basically saying, despite the provisions of section 28(1)(a), you have a free hand to investigate whatever you come across, even if you have not been authorized in terms of section 28(1)(a)? And I am talking authorized because that section does not refer to authorized. I am saying that purely on the basis that I accept that there is no way that the Investigating Director can investigate everything
20 herself.

COLONEL PADAYACHEE: Yes. Yes, sir.

CHAIRPERSON: So you are saying, even without authorization, you come across something, and it is not even ancillary to, for example, what had been referred, you have a free hand to investigate as you please. Is that what

you are saying?

COLONEL PADAYACHEE: No, sir, it is not ...[intervenes].

CHAIRPERSON: What are you saying, then?

COLONEL PADAYACHEE: It is not about a free hand to investigate everything and anything. We are in the same scenario or the same investigation of Crime Intelligence within there, where the allegations is falling within Crime Intelligence, and within that same investigations, you are picking up similar stuff that is there, similar offenses that
10 are there. We continue with it because it is still there. But if it is something else ...[intervenes].

CHAIRPERSON: Let us focus on the appointment of Ms Mokwele. I do not see what is similar between that and investigating issues around vetting. I do not see the similarity.

COLONEL PADAYACHEE: Sir, like I said, there is the investigations of Mrs Mokwele, and there are other investigations ...[intervenes].

CHAIRPERSON: Just show me, just show me the similarity
20 between issues of vetting and the allegedly improper appointment of Mrs Mokwele. Where is the similarity?

COLONEL PADAYACHEE: Let me take you to another example, sir.

CHAIRPERSON: No, no, no, let us just deal with this one, please.

COLONEL PADAYACHEE: Mrs Mokwele?

CHAIRPERSON: Yes.

COLONEL PADAYACHEE: If we find, for example, there is another Brigadier, right, a person that is appointed, irregularly, processes were manipulated, appointments, too were manipulated in the sense that there was corruption, there was fraud, there was misrepresentation, we will investigate that, too, as well whilst we are there. It is in the same component, it is in the same ...[intervenes].

10 **CHAIRPERSON:** Colonel, when you said you were giving me an example, I refused to accept that you have gone to an example. Anyway, I am saying, show me how the issue of the allegedly improper appointment of Ms Mokwele is similar to the vetting issues that you then proceeded to investigate. Show me the similarity.

COLONEL PADAYACHEE: You have the appointment of Brigadier Mokwele. I am trying to answer you, Chair. You have the appointment of Brigadier Mokwele. You have the allegations of the vetting process to as well within that, that
20 she was a civilian and there was a certain process that followed, that did not follow the normal process. For example, she did not have a PERSAL number, but it is stated there that her vetting was captured on the system.

CHAIRPERSON: And does all of that then take you to vetting?

COLONEL PADAYACHEE: Yes, the vetting part.

CHAIRPERSON: And the two are similar?

COLONEL PADAYACHEE: Yes, it is coupled together because your appointment goes to the vetting.

CHAIRPERSON: All right, all right, I will leave it. Ms Sello.

ADV SELLO SC: Thank you, Chair. That would be the one summons and now, because I am terribly pressed for time, let us look at the next section 28 summons.

10 **CHAIRPERSON**: How much time do you ...[incomplete].

ADV SELLO SC: A lot. A lot, unfortunately, Chair.

CHAIRPERSON: No, no, no, I was going to say let us sit late.

ADV SELLO SC: Yes, thank you, Chair. We are indebted to you.

CHAIRPERSON: So that I wanted to have an idea how long we will be sitting late.

ADV SELLO SC: No, I think we will be here for quite some time. I apologize. Colonel, then we go to file 4. File 4, you
20 will get assistance now. I am going to page 1083, 1083. And this is, once again, a section 28 summons dated the 6th of February 2025, file 4. It starts, the actual document, summons starts at 1081 and if you see to the bottom of that page at 1081 is a date stamp, 06/02/2025. So that is when it was issued, signed by Advocate Johnson.

And on this particular now summons, if we go to page 1083, perhaps 1082, it says the details of the matter or other information. You have the background and below that you have details of the matter. It is still fraud and corruption. Details of the matter or other information. And you advise the addressee that this investigation pertains to unlawful promotion appointment of personnel within the division Crime Intelligence.

Now, you will recall that all we know about
10 investigation into appointments in Crime Intelligence is set out in the section 27 affidavit by Mr Adams. And you do not have to go there, you can take my word, at paragraph 4, he states:

“I suspect that General Khumalo and
some other officers in Crime Intelligence,
including Madondo Lushaba, were
manipulating procurement processes and
processes to appoint and promote certain
members of higher strategic positions
20 within Crime Intelligence.”

That is the allegation. You heard that. Did you hear what I read?

COLONEL PADAYACHEE: Yes, I heard part of it.

ADV SELLO SC: And now, the bottom of paragraph 4 of that same affidavit, no, it is not here, we dealt with it

extensively yesterday. Just to remind ourselves, if you have it close by, you can look at it. That is the section 27 affidavit. And I go back to this section 27 affidavit because of what you said previously, and I just want to test my understanding. Have you found the affidavit?

COLONEL PADAYACHEE: I will give you now.

CHAIRPERSON: Okay, we might as well, CJC373, file 2. Go to file 2, page 512.

COLONEL PADAYACHEE: I have it.

10 **ADV SELLO SC**: Okay. And on paragraph 4 of that affidavit, you see where it starts with:

“I suspect that General Khumalo and some other senior officers in Crime Intelligence, including Madondo and Lushaba, were manipulating procurement processes and processes to appoint and promote certain members to higher strategic positions within Crime Intelligence positions.”

20 So that is his suspicion. He then gives you the detail, and that is where he references the BMW civilian lady. But I am interested in the bottom of that, at the end of that paragraph. He concludes:

“The appointments of the various secret service offices in the country must be

investigated as these are likely points to
launder money out of Crime Intelligence
without it being detected.”

So, Mr Adams would like IDAC to please investigate
appointments of the various secret service offices, not
officers, offices in the country, because that is the likely
point for that money will be laundered. You can cast your
eyes through the rest of the affidavit. I did not see anything
else about appointments, general appointments into,
10 investigation into the appointments at CI. That is all I see.
Is that a correct understanding of the affidavit?

COLONEL PADAYACHEE: Just repeat the last one,
Counsel.

ADV SELLO SC: I am saying. All we have is this section
27 affidavit before us.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: And insofar as appointments other than
that of Mrs Mokwele, what Mr Adams says is at paragraph 4
at the conclusion thereof, where he suggests the
20 appointments at the various secret service offices in the
country must be investigated.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: You agree that is what he is asking for?

COLONEL PADAYACHEE: Yes, he is asking for the
appointments at the various secret service offices in the

country to, must be investigated ...[intervenes].

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: As a likely point to launder money.

ADV SELLO SC: Yes. So this he asks, we know now on the 21st of November. He does not specify which office, he does not specify which appointments are being queried. He specifies absolutely nothing. So basically, he is inviting a blanket investigation to IDAC to say go look in there and
10 investigate every appointment because those offices are the likely points to launder money out of Crime Intelligence without it being detected. You cannot quibble with that interpretation of mine. You agree with me, that is what he is asking.

COLONEL PADAYACHEE: Ja, he is asking for all the secret services offices in the country to be investigated and ...[intervenes].

ADV SELLO SC: No, for the appointments in those offices.

COLONEL PADAYACHEE: The appointments in those
20 offices to be investigated.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: So from my understanding there, is that in each province, we have a secret service account at Crime Intelligence Office.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: So the Commanders of those secret service accounts, that is the way I understand it.

ADV SELLO SC: Yes, and also across the country.

COLONEL PADAYACHEE: Yes, there is nine provinces.

ADV SELLO SC: So that is what he had requested.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Now, in the course of conducting the Mokwele investigation, we are now, you remember, at 1081, when you are issuing those section 28 subpoenas. We
10 looked at the request for the vetting results and security clearances for those various people identified therein. In this one, I had referred us to 1082, details of the matter or other information, and it reads:

“This investigation pertains to unlawful promotion, appointment of personnel within the division, Crime Intelligence of the South African Police Service.”

Do you see where I am reading?

COLONEL PADAYACHEE: Yes.

20 **ADV SELLO SC:** Then, over leaf at 1083, you then request, no, by you I mean IDAC, not you, Colonel Padayachee. Advocate Johnson then requests:

“1. Original personnel files for the following senior officers of SAPS.”

Once again, Khumalo, Lushaba, Madondo, there is

a new one now, Moyana, Crime Intelligence head office, Ncube, we have seen that name before, Janse Van Vuuren, Mokwele, and Bobi. At 2:

“This summons requires all original files, records, correspondence, and documents regarding the promotions, appointments of the following senior officers, Khumalo, Lushaba, Madondo, Ncube, Van Vuuren, Mokwele, Bobi.”

10 Now, 2 does sound, appears not to be particularly interested in Brigadier T Moyana, although he or she is relevant in 1. This summons, it is in your docket. You will agree it is way beyond the scope of determining whether or not the appointment of Brigadier Mokwele was as a result of manipulated processes, recruitment processes and vetting processes. You are now investigating the appointment of Khumalo, Lushaba, Madondo, Moyana, Ncube, Van Vuuren, Mokwele, and Bobi. Why?

COLONEL PADAYACHEE: First of all, this section 28
20 summons is in this docket. As you can see, this is Mokwele's docket. So this section 28 summons refers to the documentation requested for documentation of Mokwele and the promotion documents of Mokwele. With regards to the other persons listed here, those documents were also requested for the purposes of the investigation as, ja, also

requested too for the purposes of investigation.

ADV SELLO SC: Which investigation, can you help us with the detail? Then perhaps when Advocate Johnson comes, she might be able to assist with the document.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Which investigation is that that requires these documents?

COLONEL PADAYACHEE: During the briefing by Chief Investigator Perumal, the appointments of these people
10 mentioned here, right, and this is what we were requested to subpoena because the appointments are also under investigation.

ADV BALOYI SC: When you say their appointments, you mean their employment by SAPS, is that what you mean?

COLONEL PADAYACHEE: No, it means their promotions.

ADV BALOYI SC: So ...[intervenes].

COLONEL PADAYACHEE: Appointments, not in the SAPS, the appointments in the ranks.

ADV BALOYI SC: So you are saying there is a complaint
20 and an investigation about the appointment of Lieutenant General Khumalo to the rank. You say there is such a complaint.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: The same with Lushaba, Madondo, Moyana, Ncube.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: Van Vuuren, Mokwele and Bobi.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: There is such a complaint.

COLONEL PADAYACHEE: Yes, correct. Commissioner.

ADV SELLO SC: Before you answer, may I add, that complaint, I take it is a section 27 affidavit. It is a section 27 affidavit because that is the only way that a complaint can come to IDAC. So you confirm that somewhere in IDAC
10 lies such an affidavit?

COLONEL PADAYACHEE: This is from the briefing of Chief Investigator Perumal. When he comes here ...[intervenes].

ADV SELLO SC: No, no, Colonel, I apologize, I interjected. It is getting late in the day. The Chief's, what do you call it, briefing does not assist me because the Chief's briefing does not give legitimacy to the investigation. As the Chair and I were having that engagement with you, the only way you legitimize that
20 investigation by IDAC is in terms of section 27 and section 28(1)(a). Neither of them include the Chief's briefing. So do not tell me about Chief's briefing. So I need you only, and if you answer me yes, I will leave this inquiry and then I will take it up with the right person. But do you tell me confidently that insofar as the appointment and promotions

of those other people, other than Mokwele, for now I will say other than Mokwele, those are subject of a legitimate lawful investigation by IDAC as initiated by a section 27 affidavit or in terms of section 28(1)(a). Is that what you are telling me? And no Chief's briefing, I beg.

COLONEL PADAYACHEE: I want to come back again. And as the Chair mentioned, and I am at pains trying to get through it, Counsel, and I have thought already that we have addressed it. I cannot answer for somebody else and
 10 I cannot go any further than that. And I will say again, as investigators, we are briefed by the Chief Investigator, given the scenario, what we have to do, who has to do what, who has to subpoena, what documents are required. Whatever is within my investigation, for example, Mokwele docket, which I have before you, I will do it. There is, I must say, I am being called to answer quite a few times on something that is not beyond me. It is up at the upper management and where now I am also asked to expect an opinion on it, which puts me in a very awkward situation.
 20 So what I am saying is, the question should be relevant to me and my investigation. The people that can answer to the section 27, 28, they have to come and respond.

ADV SELLO SC: I agree.

COLONEL PADAYACHEE: Thank you.

ADV SELLO SC: It is only fair. But at the same time, I

must say that you invited this line of questioning because in justifying the broad first section 28 that was looking into the vetting of everybody beyond Mokwele, including Lushaba and them, you informed the Commission that there are other ongoing investigations by IDAC. So I assumed you have some level of knowledge about those investigations, although you are not involved in them. And that is why I am having this discussion with you. But if you say your information is, or your knowledge is just very general and
10 broad, and if I need any further detail, I should ask management, I will accept that. I will pick it up with management.

COLONEL PADAYACHEE: Thank you, Chair. Thank you, Counsel. May I just respond from your ...[intervenes].

ADV SELLO SC: Yes, please.

COLONEL PADAYACHEE: Thank you, Counsel. I appreciate that fact and what I am saying is that the Chief Investigator knows all the investigations. He can explain them in detail. My investigation is this matter and therefore
20 you have seen throughout the couple of days that I have been here, I have been at pains trying to explain something from people that will come and account for. I can account for what is mine. But it has been, I know that we have lost a day on Monday, and where I was supposed to follow up and slot in, but it has made my testimony here challenging

and difficult and therefore sometimes I am at pains to explain something.

And I must say, Chair, it is also affecting me. I am trying to be open and honest with the Commission, but every day I go back, and I try not to look at the TV or social media, but it is there. And I come in with that every morning. So what I am saying, Counsel, that I want to assist the Commission. But on the one side, it is coming across that like I am an accused and on the other side, I am
10 coming out as a witness. So I am either here as an accused or a witness.

But what I want to say to you and to the Commission, I am coming here as a witness to assist the Commission and be of assistance. There may be difficulty in explaining some of the stuff that is here, but it is not done deliberately. It is not done to deceive anybody. I conducted a *bona fide* investigation. I did what I did according to what I know and according to how I am briefed, and I have done it. Thank you.

20 **CHAIRPERSON:** Ja, I think I owe you this explanation, Colonel. You may think that we are repetitive. We are not. Yesterday, when we engaged you extensively, we did so in the context of two affidavits, the first being the section 27 referral affidavit, the second being the A1 statement/affidavit. Today, Ms Sello is taking you through

the summonses and the summonses raise issues that are different to what we dealt with yesterday. So we must naturally go back to the empowering provisions of the NPA Act in order to understand how these summonses and therefore their content, or rather how those provisions bear relevance to the summonses and whatever else may be coming out, because that helps us understand whether what is being done, whether the issuance of the summonses was, or rather had a basis in terms of the empowering provisions.

10 That is why it appears that we are repetitive. We are not. We have to engage with each step that Ms Sello wants to deal with to be satisfied that yes, indeed, there was a legal basis for each one of these various steps to be done. So we will keep going back to the sections and to you it may appear I have already dealt with section 27, I have already dealt with section 28, I have already dealt with that and that you know, but we must do this, we must engage in this exercise. Do you understand that?

COLONEL PADAYACHEE: I understand, Chair.

20 **CHAIRPERSON:** Thank you.

COLONEL PADAYACHEE: May I please respond?

CHAIRPERSON: Yes, yes, please.

COLONEL PADAYACHEE: Thank you, Chair, Commissioners. I must also apologize, it is been a long week and I am just human.

CHAIRPERSON: Yes.

COLONEL PADAYACHEE: I am committed to the job that I do.

CHAIRPERSON: Yes.

COLONEL PADAYACHEE: Very much, and the 44 years speaks for itself. I come here in a *bona fide* way, for *bona fide* work and investigation that I conduct. At the Commission itself, I want to answer and give the answers, but sometimes I would struggle with it, but it is not
10 intentional.

CHAIRPERSON: Yes.

COLONEL PADAYACHEE: Because some of it borders on somebody else that has to come and explain it. But there are a lot of factors there that leads to the way I sit here. Part of it is media. I mean, just the day before yesterday, we had a security expert, Eldridge or Eldrick or whatever. He referred to me as an enabler that is attached to Brown-Mogotsi or similar to Brown-Mogotsi ...[indistinct]. Now I am saying, Commissioner, I am coming here to assist the
20 Commission.

It is a long week. And so far, some of the questions that I am trying to answer, trying to get across, there are emotions mixed with it. And that is why, Commissioner, I need you to give me the permission, yesterday with regards to how I spoke about a gratification

and then when it was put to a future date, understand, Commissioner Baloyi, that I was trying to explain it.

But when you want to get the words to get out, it is finally challenging. So Commissioner Baloyi, when we talk about a gratification and we talked about the employment as a gratification, but it is also some advantage that you put a person and you appoint a person in a place for a particular advantage, and to elaborate on that, you go to a person and you give him 500,000 or whatever and you leave him there.

10 And we go to a typical example when I applied my mind, when we look at the matter, in the Thales matter of the former President, Jacob Zuma and Thales, a retainer was given. When does he have to act? It is any given time. We do not know when it is.

So I tried to bring that over to explain it in that. But when the message went out, it is like, oh, you are going be there for, I am not saying, with respect, Commissioner Baloyi, but it is trying to get that message over to say, within PRECA, the advantage is where to describe it you
20 know in the second part of the employment, promise of employment and the advantage. A person is appointed there. We appointed you there. You are now obligated to us and to perform. It is at some or later stage, you know. But there is an example. You give a person 500,000 and say, sit there.

ADV BALOYI SC: Ja, so ...[intervenes].

COLONEL PADAYACHEE: When I come back to you ...[intervenes].

ADV BALOYI SC: Sorry, but that would be, and that is a discussion that I thought you settled yesterday, that you were asked directly the question and I think by Commissioner Khumalo, he asked, so does accepting employment constitutes a gratification, because that is where he had stopped. And I am not opening that debate
10 afresh, I am saying even with this explanation, there is still the problem that, in PRECA itself, gratification is when you receive in exchange for something and that something is what the problem was yesterday. And I do not think you are going to explain it any better than you did and my suggestion would be, let us rather leave it. It is what it is. I do not see you giving us a better answer about it.

COLONEL PADAYACHEE: Yes, that, that, thank you, Commissioner. That was the best I could answer. But just to conclude, Chair, that is the way I am coming across,
20 because you are trying to be, to have courage and strength and do the right thing. And what I have done, and I feel, and I know, deep inside me, I have done the right thing. So if I come across and I take long or whatever, I am energizing myself to try and respond. But like I say, there is a lot out there with the media and I say, and a security

expert, I am now an enabler. So maybe I should not turn the TV on tonight, because I have to go home tomorrow. Not to delay you any further, Chair, Commissioners, Counsel, we can proceed.

ADV SELLO SC: Yes, thank you.

CHAIRPERSON: Commissioner Khumalo has a question.

ADV KHUMALO SC: It is ...[intervenes].

ADV SELLO SC: Before ...[intervenes].

ADV KHUMALO SC: More a comment than a question,

10 Colonel.

ADV SELLO SC: Okay, ja.

ADV KHUMALO SC: Just a quick point. It is the transcript in this Commission that will speak for itself.

COLONEL PADAYACHEE: Sorry, sir.

ADV KHUMALO SC: Not, it is the transcript in this Commission that will speak for itself, not the media pundits or social media. So do not worry about that. Just answer truthfully to the best of your ability. And we are only engaging you on the contents of your dockets. This is your
20 docket. You are the docket carrier and we are engaging you because if we leave these issues and those people come here and we ask them, they will say, this is not my docket, you should have asked Colonel Padayachee. We do not want to run into that problem. So I hope you understand that. Now, my question before we go to tea

...[intervenes].

ADV SELLO SC: Commissioner Khumalo, if I may, before you pose a question, because I would also want to address the Colonel on this matter.

ADV KHUMALO SC: [Indistinct]... [cross-talking].

ADV SELLO SC: And Commissioner Khumalo has made the one point I wanted to make, which is to clarify that I am engaging with you as I do on these documents because it is “your docket” and I depart from the premise that you are
10 very familiar with it, as you would become over time, and you are able to easily and quickly shed light over the documents that are contained in there to the extent that we may not understand them. So that is why we are having this engagement. I would like to assure you that I am absolutely clear that you are a witness before this Commission. You are anything but an accused. You are not an accused. I do not intend to engage with you as an accused. And to the extent that I may have come across as such, I would like to tend to my apologies. I consider it to
20 be perhaps a robust engagement on some of these documents, but it was never intended to leave you with a sense that I am dealing with you as if you are an accused or I am accusing you of anything in particular. So to the extent that I may have come across as such, I apologise, it was never my intention. Thank you.

COLONEL PADAYACHEE: Thank you and I appreciate it, Counsel.

ADV KHUMALO SC: Colonel, these documents we were looking at, the subpoenas with the annexures, who prepared these documents? I know they are signed by Advocate Johnson. Who prepared them for his signature?

COLONEL PADAYACHEE: The section 28, it would have been done by Chief Perumal.

ADV KHUMALO SC: You had no involvement in the
10 preparation of these documents?

COLONEL PADAYACHEE: No, sir. I would have had maybe, you know, looked at, whilst he was preparing the document, maybe been next to him and looked at what, you know, Mokwele, what document or something, but he prepared it.

ADV KHUMALO SC: So as investigating officer, you had no knowledge of what IDAC was asking for from SAPS or from BMW or from other people?

COLONEL PADAYACHEE: [Indistinct]...

20 **ADV KHUMALO SC:** You would not have had knowledge that ...[intervenes].

COLONEL PADAYACHEE: I had knowledge. The request from BMW, I had knowledge.

ADV KHUMALO SC: And this one we are looking at, at 1083?

COLONEL PADAYACHEE: This one as well, I had knowledge. What I am saying here, Commissioner, is that I had knowledge because I was right there when he was preparing it. So it is not that I do not know about it, I am aware about it and I confirmed it.

ADV KHUMALO SC: So you were there when these documents were prepared?

COLONEL PADAYACHEE: Yes, sir.

ADV KHUMALO SC: So you can speak to them?

10 **COLONEL PADAYACHEE:** Yes, sir.

ADV KHUMALO SC: Yes.

COLONEL PADAYACHEE: Thank you, Commissioner.

ADV BALOYI SC: Colonel, can I just follow up on that. The, and I am happy to limit it to the Mokwele docket because it is your docket. That is the docket you are responsible for. Now, in respect of the Mokwele docket, the information that is requested eventually signed off by Advocate Johnson in this summons, who determines what to ask for? So for example, the one that we are looking at, at
20 1083, it requires the personnel file of Mokwele. Who says, let us get the personnel file of Mokwele? It is your docket, remember? You are the lead investigator.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: The second part requires files, records, correspondence, documents relating to the promotion of

Mokwele. And then 3, certified copies of SAP96, service records for Mokwele, among others, but I am limiting to Mokwele.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: And then 4, SAPS101 personal equipment records for Mokwele. Who makes the determination or who identifies the documents or the information in respect of your docket that must be sought and to be included in this summons?

10 **COLONEL PADAYACHEE:** Chair, Commissioner, thank you. Let me just correct one thing first. Paragraph 4, the 108 ...[intervenes].

ADV BALOYI SC: Yes.

COLONEL PADAYACHEE: Mokwele would not have a 108. Those are personal equipment, firearms and stuff like that, I presume at that time. So that 108 was not, I know because when you look at Mokwele's personnel file and Mokwele's original records, that would have been a request from myself. That is why I mentioned it.

20 **ADV BALOYI SC:** So you identify the information and the documents that must be sought in respect of Mokwele.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: So you would, because it is your docket, so you would have done the same with respect to information relating to General Khumalo, because it is in

your docket. You are investigating the panel, remember?

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: So you would have been the one that says, I require the personnel file of Khumalo, am I correct?

COLONEL PADAYACHEE: No.

ADV BALOYI SC: Okay, explain.

COLONEL PADAYACHEE: Remember that when you look at General Khumalo and the other people that are there, right, they are on the other investigation. So the Chief is
10 requesting these documents because he has got the whole picture to complete all the investigations. Myself is, for example, Lushaba and Mokwele. So that would be my request there. As far as ...[intervenes].

ADV BALOYI SC: Because Lushaba is your docket.

COLONEL PADAYACHEE: Lushaba is ...[intervenes].

ADV BALOYI SC: The Lushaba docket, the other docket is yours.

COLONEL PADAYACHEE: The other docket.

ADV BALOYI SC: Okay.

20 **COLONEL PADAYACHEE**: So whichever accused in my matters, I would be there. But when you look at this here, because General Madondo and the other people are also in other dockets, so the Chief handles that. But my specific one would be a request for Mokwele and Lushaba.

ADV BALOYI SC: Okay. So where you say, so the

correspondence to BMW, you would be the one that said, we need to get this from BMW. It is not simply you became aware of it. It is, in fact, you who identified what should be sought.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: Okay.

COLONEL PADAYACHEE: Yes. And it would have, I would have asked, okay, I want the employment, the history, everything from BMW. And it would also, the Chief
10 would have been there with me while we discuss it and then I would have said it like that.

ADV BALOYI SC: Okay.

COLONEL PADAYACHEE: Ja.

ADV BALOYI SC: And then another question before we take the break, and it is really just to clarify because I thought from yesterday's evidence, I had understood about this reference number, the inquiry reference number, and now this summons confuses me.

COLONEL PADAYACHEE: Yes.

20 **ADV BALOYI SC:** My understanding of how you testified yesterday was once you had received the complaint, when I say you, I mean IDAC, and the case was decided to be taken on, you do not allocate it a CAS number. It gets allocated an inquiry number ...[intervenes].

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: Until it graduates to a CAS number at some point along the way.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: Now this summons, they bear a reference number, and I have understood you to say the reference number, which is the CIN number, is the same as an inquiry number.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: Now here we have only one inquiry
10 number. We have only, so if you look at 1081, we have given a single inquiry number.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: And yet you are telling us that the rest of the information, for example, on 1083 relates to other dockets.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: Can you just explain how it works?

COLONEL PADAYACHEE: From the way this
...[intervenes].

20 **ADV BALOYI SC:** And what it means that we now just have one inquiry number in respect of many cases, in fact.

COLONEL PADAYACHEE: Yes. When you look at all the cases, the inquiry is on Crime Intelligence. It is, how can I put it to you, it is one investigation that has many legs, so it is got one inquiry number, so we use that reference. Then

if you look, Commissioner, remember when you, we were talking about an inquiry file, you will notice that what is in the inquiry file is transferred into the docket. For example, the section 28, and it is together with what we requested is the documents. So that is how it is.

And if you look in the other dockets, you will find a CIN number, 28. This very same 28, together with the relevant documents, that is for that particular docket will be filed in that docket under that CIN number. So the inquiry
10 number is CIN with different legs in it.

ADV BALOYI SC: Okay. So this number, look at 1081, you have CIN0130/02/12/2024. What are those numbers? What do they represent? Just look at it.

COLONEL PADAYACHEE: It is a serial number.

ADV BALOYI SC: With a date.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: What is the date there? Which part is the date?

COLONEL PADAYACHEE: When you look at it, it is
20 December 2024.

ADV BALOYI SC: 02 December 2024.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: That is the date.

COLONEL PADAYACHEE: No, the 12th December 2024.

ADV BALOYI SC: So this inquiry opens in December 2024.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: And before December 2024, there was no Crime Intelligence investigation broad, because you say this represents a broad Crime Intelligence Investigation, which has many legs.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: So we can accept from this date that the first time that an inquiry is open and registered on your system is in fact in December 2024, and it is a broad
10 inquiry.

COLONEL PADAYACHEE: When you look at the 2813, when it was authorised, 2813, in December 2024, so that is where we take our cue from an inquiry in December 2024.

ADV BALOYI SC: Yes, I think my question is simpler. In December 2024, in fact, let me rephrase. Does the date on this inquiry file, this reference number, which says December 2024, does it denote or tell me that this broad big inquiry into Crime Intelligence that you are talking about, which has many legs, was open in December 2024?

20 **COLONEL PADAYACHEE:** December 2024.

ADV BALOYI SC: That is what that date tells me.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: All right, thank you.

COLONEL PADAYACHEE: Yes, thank you, Chair.

ADV SELLO SC: And I note that Commissioner Khumalo

first and then Commissioner Baloyi mentioned a very interesting concept of a tea break, but before I enquire further into that, just to follow up to Commissioner Baloyi's question to close on this subject. That CIN number, no, I will restart. We now have come to understand that you are investigating specifically the Mokwele appointment, but that happens in the context of a broader investigation, as you say, with many legs.

10 So we are trying to find documents pertaining to the investigations of the appointments and promotions of the General Khumalo, General Madondo, all those people listed there. correct? That is what we are now interested in, to understand that bigger investigation that you say is underway into Crime Intelligence.

COLONEL PADAYACHEE: Yes. Yes.

ADV SELLO SC: If I understand you correctly, as a guidance, that investigation will be part of that CIN number 0130/02/12/2024.

COLONEL PADAYACHEE: Yes, December.

20 **ADV SELLO SC:** So it is all part of the same file.

COLONEL PADAYACHEE: The same, ja, it is part of the same investigation.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: What happens is that the inquiry, the CIN where the investigation is, that is where

your 2813 document is in.

ADV SELLO SC: Yes, yes.

COLONEL PADAYACHEE: Now, all the things that initially would have been in that file, for example, now most of them will be summonses or any other attachments, it gets transferred into the docket.

ADV SELLO SC: I appreciate that, as has happened in your particular investigation.

COLONEL PADAYACHEE: Yes. So you will not find this
10 now in a CIN file because this is the docket now.

ADV SELLO SC: Yes. No, no, I appreciate that. Remember now we are in pursuit of this bigger investigation into Crime Intelligence.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: And we are trying to establish the authorization for that investigation.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: We know from your description of the CIN number that it would have been initiated in December of
20 2024 and we just want to see whether, how was it, on what basis it was initiated. Was it a section 27 affidavit or was it a decision by the ID in terms of section 28(1)(a), because there is no other way.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: So that you and I understand what our

next step is. It is perhaps, and I think, ja, the enquiry is best addressed to Advocate Johnson as the head of the institution and then she will direct our request and, you know, subpoena to the right person.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Thank you. That tea break would be more than welcome, thank you.

CHAIRPERSON: Let us adjourn and resume at 10 to 5.

ADV SELLO SC: Thank you, Chair.

10 **INQUIRY ADJOURNS**

INQUIRY RESUMES

ADV SELLO SC: Thank you, Chair. Colonel, the last mile and I hope we can go through that one quickly. It is not necessary, I think, for us to go through the various files, but I realize that the next summons you issued is on the 4th of April. For the record, Commissioners, it is page 1978. We need not go there. And this one specifically requests the original meant for post 24/04/3622 and that is the post that Mrs Mokwele was recommended for and this requests
20 records of the questions and scenarios posed to the undermentioned candidates, their practical and/or written assessments, written responses or replies, and it is in respect of the three candidates that were finally interviewed and from which selection, from which list Mrs Mokwele was selected for recommendation. You recall that summons?

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Ja, I do not think it is contentious. Beyond that, I have another one which is addressed to the South African Qualifications Authority and that was requesting documentation in respect of Mokwele's qualifications. And in all this sheaf of papers, I could not find, no, there is another one at page 1977. And this, again, to the National Commissioner, also dated the 3rd of April, but this one was requesting questions posed to the
10 three candidates.

Do you recall, do you have a vague recollection of that one? So it was very specific to the questions that were posed to the three candidates when they presented themselves for the interviews. And that, for the record, will be page 1977. I think that will be file 5 if I still, yes, it is confirmed file 5, page 1977. And beyond that, then, there is another of the requesting details on manipulation of vetting processes resulting in unlawful issuing of security clearances. So that is where it is, security clearance is
20 specific.

The point I seek to make is, in all these summonses, at no point do I see you requesting the entire, I will call it, record of decision from advertisement through to appointment of Mrs Mokwele. You do not call for that entire file. You call for some parts of the file, including, as I say,

at page 1977, where you specifically request questions posed to the three candidates. You do not request the advertisement. You do not request any other background documents in respect of that advertisement. You do not call for the full compendium of the steps taken in the process of this recruitment.

And my thinking was that your life could have been made much easier if, in one of the summonses, you requested the complete file of this entire recruitment
 10 process. Why did you not request it in that manner, which is a very general manner, say give me everything relating to this appointment, starting with the advertisement and everything in between, rather than pick and choose documents in that process, including questions posed to them? Why did you not approach it that way?

COLONEL PADAYACHEE: Chair, Commissioner, we did. We have that in the original subpoena that we served in February, where we have the whole appointment process from the advert right down to the final part where it is,
 20 Mokwele is appointed.

ADV SELLO SC: Firstly, I could not find it, and I say that mindful of the conversation we had in the morning that I may very well not have the full docket. But I could not find it. But if it exists in the terms that I described, then it creates another problem, because the charges that you

draw up are inconsistent with the contents of that big file and I would like us to turn our attention to it. We have obtained a version of that file and if we could go to file 2. For the moment, Commissioners, we can close the piles that have caused you to have opened and look at file 2.

And in file 2, I invite us, Commissioners, to CJC370 and that starts at page 172 with an index and what I call record of decision, that entire file. The first document there under tab A in that file is the request for advertisement. It
 10 is followed by an internal advertisement. The internal advertisement referred to the advertisement for the position as circulated within SAPS. You agree?

COLONEL PADAYACHEE: Yes, 174, yes.

ADV SELLO SC: Yes. Then it has got a copy of the external advertisement. It has what it calls an erratum and an extension of the closing date. That was the closing date for the applications. It was pushed out. Then it has got a list of those who applied. Then it has got a list of approved selection panel, declaration of interest and confidentiality,
 20 shortlisted candidates, approval of shortlisted candidates, applications for shortlisted candidates, invitation letters, security clearance, assessments, centre mark sheets, list of recommended candidates, minutes and announcements.

Now, you are aware that this particular post was filled on the third attempt, the first having been in 2022, the

second in 2023 and finally now in 2024, culminating in the recommendation of Ms Mokwele. You are aware of that?

COLONEL PADAYACHEE: Correct. Correct, Chair.

ADV SELLO SC: And for the record, Commissioners, the 20 excerpts or extracts from the 2023 process that was withdrawn after some time is at your CJC371, and extracts from the 2022 process, it is CJC372. Now, yesterday we, you had, let us start with the advertisement. Please go to page 174. Page 174 is the request for advertisement and at
10 item 3, the one highlighted in yellow, it states:

“This office requests that the post be advertised internally with the exception of the post of Section Head: Technical Support Services that should be advertised externally.”

And this is by General Khumalo dated the 9th of February 2024, addressed to the Divisional Commissioner: Human Resources. And if we turn over to 176, it is a list of all posts that there was a request to advertise with the
20 exception of this particular one and these were to be internal, except for the particular post we are talking about. And that at 190 is signed by Lieutenant General Acting Deputy National Commissioner, Support Services, L Nkhuoa, dated the 10th of April 2024. So, now we place, I will call it our post, in its proper context.

Our post appears at page 178 at item 3.2. You see that. But this is in the middle of many other posts. There are quite a significant number of them. So, understanding the covering letter, the request at 174, all these would first be advertised internally except for our post, because there had been two previous attempts to fill that post.

If we then follow how they went about things, there was then both an internal advertisement and an external advertisement, as I said, including an erratum and
10 extension of closing dates. I want us to turn to page, to CJC370.1. The tabs on the side, 370.1. No, it is not point 1, definitely. It is late in the day.

ADV KHUMALO SC: What is the document, Advocate Sello?

ADV SELLO SC: It is the approved selection, 370.7, not point 1. Point 7, right? Okay, thanks. And you recall yesterday the engagement you had with Commissioner Khumalo about the selection panel. You testified at length that this panel was constituted by Khumalo and
20 Commissioner Baloyi wanted to understand about, no, I asked you. She asked you a different question. I asked whether or not that panel had been approved by a higher authority, higher than Khumalo. And if it was so approved, whether then is it appropriate to say that it was constituted by Khumalo, because it is subject to approval or rejection

by the higher authority.

And I look at page 200 and on this particular page, at 201, it is signed again by L Nkuoa, Lieutenant General, Acting Deputy National Commissioner, Support Services, dated the 6th of June 2024. At page 200, one sees that, and it reads:

10 “Approval is hereby granted for the following selection panels to conduct the selection processes for the indicated posts.”

The first bullet point relates to some posts. The second bullet point highlighted in yellow is our post. So, in both cases, the selection panels were approved. Do you agree?

COLONEL PADAYACHEE: Yes, I agree.

20 **ADV SELLO SC:** So, I would suggest that there were legitimate panels put forward to, who I take to be the final decision maker, General Nkhuoa, Support Services, who had the authority to reject the proposed panel or to accept it or to recommend amendments and changes. So, at the end of the day, she had the final say as to who constitutes the panel.

COLONEL PADAYACHEE: Yes. Yes, Commissioner, Chair, Commissioners, the request or election of the panel, when you look at A1 on page 200.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: Page 200.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: When you look at A1, this A is the Divisional Commissioner, Crime Intelligence. So, this letter is coming from the Divisional Commissioner or addressed to the Divisional Commissioner, Crime Intelligence. So, it is saying to you, your Office Information Note 451, Volume 49, signed by the Deputy National
10 Commissioner, Crime Detection, refers, right.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: There is a letter or, rather, the panels are requested from Crime Intelligence, meaning these are the people that, you know, they request to be on the panels. So, it is a request from Crime Intelligence, General Khumalo, these are the people that I select for the different posts and panels and it is sent to Head Office, Human Resources and it gets approved there. So, the approval of the panel takes place there and the Acting
20 Deputy National Commissioner at that time was General N Nkhuoa. She approved it.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: So, the only point I sought to make that it is not correct to say Khumalo constituted this panel,

conducted interviews and ended up recommending Mrs Mokwele and suggesting that there was anything wrong with the constitution of the panel and I say so because the proposed panel, which I accept would have been put together by General Khumalo, was approved by the right authority within SAPS, which would be Lieutenant General Nkhuoa in this case.

COLONEL PADAYACHEE: That is correct, Counsel.

ADV SELLO SC: Yes.

10 **COLONEL PADAYACHEE:** But I must emphasize the point, the panel was selected at the Crime Intelligence office. The panel was selected by him. It was not approved by him.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: So, let us get that clear.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: The panel was selected by General Khumalo, sent to approval for Head Office because he cannot sit or have those panels without approval. Head Office must approve it. So, that is basically the standard
20 procedure. You nominate who you want on your panel and send it to Head Office. But the emphasis on the panel was selected by General Khumalo for, he recommended it for approval to Head Office.

ADV BALOYI SC: Colonel, can I just ask, Colonel, that it was recommended by General Khumalo, is that not in

accordance with SAPS protocols that he, as the Head of Crime Intelligence, would constitute or recommend a panel?

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: You accept that to be, I do not know it to be the position. I am asking you because you have done the investigation. Is the constitution or the recommendation of a list by General Khumalo, who is the Head of Crime Intelligence, is that contrary to SAPS prescripts?

COLONEL PADAYACHEE: No, it is not. As I explained, it
10 is normal. You are the Head of office, you select the panel, these are the people on the panel, and it goes to Head Office for election, so ...[intervenes].

ADV BALOYI SC: So, we cannot make anything of that fact alone. You cannot just say, as you were doing yesterday, you cannot just say, it seems to me, you cannot just say, he constituted the panel, therefore, or he recommended the panel, therefore, that is a sign of capture. The people that constituted it means it is an indicator, rather, of a plan to capture Crime Intelligence. It does not
20 go that far. If the prescript allows him to recommend a panel, there is nothing wrong with that.

COLONEL PADAYACHEE: If the prescript allows him, yes, Commissioner. That is my answer.

ADV BALOYI SC: And you say, and you accept that the prescript allowed him to do that?

COLONEL PADAYACHEE: I accept. Yes, the prescripts gives him the authority to choose that panel and then send it for approval and I think that is more or less what I meant yesterday, not that he approved his own panel and carried on. That panel had to be approved by Head Office. Thank you.

ADV BALOYI SC: Can I just check this for clarification also. In that A1, it refers to an Information Note by the Deputy National Commissioner, Crime Detection, on 14 May 10 2024. So who would that be at the time? It was not General Khumalo.

COLONEL PADAYACHEE: The Deputy National Commissioner, Crime Detection ...[intervenes].

ADV BALOYI SC: Would be Sibiya, would be General Sibiya.

COLONEL PADAYACHEE: Would be General Sibiya, under which the Division Crime Intelligence reports.

ADV BALOYI SC: Yes.

COLONEL PADAYACHEE: So basically, General Khumalo 20 would have selected his panels.

ADV BALOYI SC: Yes.

COLONEL PADAYACHEE: And then it would have went to Deputy National Commissioner Sibiya to sign off and approval comes from the Head Office. That is the theory.

ADV BALOYI SC: Okay, thank you.

COLONEL PADAYACHEE: Thank you.

ADV SELLO SC: Thank you, Commissioner Baloyi. And if we could just run forward then to page 453, page 453 under CJC371.3. Starting at page 419, 371.1, that now is the pack for the recruitment process in 2022. And just to compare with the approval process that we have just discussed, this is what transpired in 2022. And in 2022, we see once again it is the same, and at item 2, it is approval is granted for the following selection panels.

10 Now, if you flip through that document to the end, if I did not mention, I forget if I did, but this is dated 3/05, no sorry, 2023, my mistake. This is for the 2023 process. At 457, it is signed by ...[indistinct] Lieutenant General, Acting Deputy National Commissioner, Support Services. And this particular one now had a litany of panels. So if you start at page 453, it is different panels all the way to that last page. These are now the panels during the 2023 recruitment process or cycle and it is got a litany of posts with different members constituting different panels.

20 My interest lies at 454, page 454. That post 2302 at 3462 highlighted in yellow, that is what I call our post. And in 2023, that was the panel that was approved, led by General Khumalo, members, General Lushaba, General Molatjana, yes, I am correct, and General Khan. And so the 2022 as well has got a list of approved panel members. So

this seems to be the usual process that panels are put to some authority who decides whether or not the proposed panel is approved or not.

COLONEL PADAYACHEE: That is correct.

ADV SELLO SC: And the same process was followed in 2024, resulting in the appointment of Mrs Mokwele. So would you agree that, insofar as the issue of panel and constitution of panel that appointed Mrs Mokwele, there is no concern there? Is there still a concern about that particular panel?

COLONEL PADAYACHEE: On the particular panel that we have concerns with ...[intervenes].

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: And as I see, as we know that General Khumalo can only put up a recommendation that these are the panel members and it is Head Office approves it.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: And, but when we look at the panel of Mokwele, we had concerns there because he selected those people, although he did not approve them, those panel members, right, but you can see from the recommendations of the panels that is sent to Head Office for approval, those recommendations hardly changed. If we look at all three of the advertisements and the

recommendations from Head Office with approval, nobody was removed from the panel and said, no, do not put this one, put that one. So that is the only comment I have there, if you understand me, Commissioner.

ADV SELLO SC: I am trying to understand because I wanted to clarify whether or not the constitution of the panel that appointed Mrs Mokwele is an issue. Is there an issue as regards its legitimacy, that panel, because I thought we had just established because it was approved by
10 seemingly the person who is mandated or empowered by SAPS to approve such, once approved by that person, then there can be an issue about the panel unless the challenge is to the approval itself by the higher authority. But that does not seem to be your case.

Yesterday your challenge was to the constitution of the panel and I just wanted to clarify that now that it is approved by, I think it is General Nkhuoa this one time, is that a properly constituted panel or do you still, are there still concerns that the Commissioners should have regard
20 to?

COLONEL PADAYACHEE: The panel is approved by Head Office.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: There is nothing more we can say about it.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: It is approved by Head Office. So when I say it is approved by Head Office, it means it is authorised. So the point that I wanted to make yesterday is that the panel was selected by, although it was not approved by him because he could not approve it, it was selected by him. It went to Head Office, it was approved. So that is an approved panel. That is it.

ADV BALOYI SC: You said something about the panel not
10 changing. I think you started that. You said, well, ja, it was approved but if you look at the three different panels constituted, they never changed and then you stopped at but. I think there is a point you wanted to make about the changes to the panel over time.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: Maybe you should make that point.

COLONEL PADAYACHEE: Yes. When we look at the selection, or let us look at the three sets of advertisements where the panels that are recommended to Head Office to
20 approve, the recommendations that is sent, they all were approved without any changes. So it flows through. So your recommendation that you sent, that is the panel, Head Office approves it. So in not one of those three was it not approved. That is the point I want to take. So normally to reach out, meaning that the recommendation that you make,

you know, it is very rare that head office is going to change it, put it that way. Taking it from the three, you can see the pattern that it is not changed. So that is just what I want to say.

ADV BALOYI SC: But you are not saying that is a problem of General Khumalo.

COLONEL PADAYACHEE: No, it is not a problem because it is approved by Head Office.

ADV BALOYI SC: Okay.

10 **COLONEL PADAYACHEE:** Unless, you know, there is something else there. So let us take it as the panel is approved by Head Office. It is an approved panel.

ADV BALOYI SC: Yes. Okay.

ADV KHUMALO SC: Colonel, in your affidavit where you applied for warrants of arrest, you took issue with the constitution of the panel. IDAC inserted itself in the panel process, and IDAC said, why was Khan not put in the panel? Why was so-and-so put in the panel and not General Khan? Why does IDAC have that difficulty? Why is
20 it IDAC's business who should or should not be in the panel that interviews at Crime Intelligence? Why is it IDAC's business?

COLONEL PADAYACHEE: Can I respond?

ADV KHUMALO SC: Yes.

COLONEL PADAYACHEE: Thank you, Chair. Thank you,

Commissioner. Sorry, Commissioner, I thought you were raising your hand. We are charged with an investigation, and we draw that inference from the investigation that we are charged with. So when you look at the panel is recommended by Khumalo, it is chosen by him there, although he does, that is what we are speaking to. The panel is not chosen by anybody else at that office like who can we say ...[intervenes].

ADV KHUMALO SC: No, we know who chose it.

10 **COLONEL PADAYACHEE:** Yes, he chose the panel.

ADV KHUMALO SC: [Indistinct]... [cross-talking].

COLONEL PADAYACHEE: So what we are saying there is that he chose that particular panel and sent it for recommendation, and it was approved. And the issue we have there with it is that there was other Crime Intelligence Generals that he could have used to sit on the panel because it is a sensitive Crime Intelligence post. It is a covert post.

ADV KHUMALO SC: Is that not for General Nkhuoa and
20 General Sibiya to say, I am not happy with this panel or I am happy with it? If they are happy with it and they approve it, what business is it of IDAC to say, we would have preferred Khan there and not that person? Why does IDAC involve itself in those things? IDAC does not constitute panels that interview candidates in Crime

Intelligence. Why does IDAC go to court and say to court, I want warrants of arrest issued because I am not happy that in that panel that General was there and General Khan was not there. Why is it the business of IDAC?

COLONEL PADAYACHEE: Thank you, Chair. Thank you, Commissioner. The panel was one of many reasons, many causes in the application. It is not just only ...[intervenes].

ADV BALOYI SC: No, let us talk about the panel.

COLONEL PADAYACHEE: Yes.

10 **ADV BALOYI SC:** Do not discuss the others. Commissioner Khumalo is raising specifically the constitution of the panel and that in your application for a warrant, it was important enough and in your charge sheet, it was important enough that you mention it, that one of the problems or one of the issues is that they did not include other Generals, and you specified General Khan. You do not mention anyone else.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: You said like General Khan. And the
20 question remains, why does it matter to IDAC? What business of IDAC is it that SAPS senior managers have approved the constitution of this panel? Where do you come in as IDAC?

COLONEL PADAYACHEE: Chair, Commissioners, this is the response that I can give to it. It follows from my

investigation. Although I am saying to you, the panel has been approved by Head Office, but the recommendation of that particular panel started with General Khumalo. So it is one of the inferences drawn from the ...[intervenes].

ADV BALOYI SC: How can you draw an inference when the prescripts gave him the power to constitute a panel? What inference can you ever draw from the constitution of a panel? If the prescript says the power lies with Khumalo to constitute this panel, what inference is there to draw when
10 he does exactly that which the prescript does? And in this case, you are not drawing an inference of anything. There are no facts on which you draw an inference that is problematic.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: You actually say, well, he should not have included, I think it is Gabella. He should have put in other Crime Intelligence officers, for example, General Khan.

COLONEL PADAYACHEE: Yes.

20 **ADV BALOYI SC:** Quite interestingly, you say, for example, General Khan. The question is, what does IDAC care that General Khumalo has proposed, recommended a panel which his superior, General Sibiya, has approved, and you do not arrest General Sibiya for approving. General Nkhuoa approves. You do not arrest them. You do not

include them in your list of the people who did wrong about constituting the panel. The bottom line is, why is it IDAC's business when General Khumalo constitutes a panel that he is allowed to do by the prescript, which does not say it must be constituted by people from Crime Intelligence. It does not. So, you make up your law or your rules or your policy and say there should have been only people from Crime Intelligence because that is a sensitive area. Where do you, what is your standing to prescribe that? And I would
10 like you to answer that question. Commissioner Khumalo asked the question, what is your business in how SAPS, prescripts, because this is provided by prescript, in what SAPS prescripts allow, and in this case was complied with, superiors approved. What is IDAC's business and interest in constituting SAPS panels? You can answer if you have an answer.

COLONEL PADAYACHEE: Thank you. Thank you, Chair. Thank you, Commissioners.

ADV SELLO SC: Colonel, if I may, Commissioner, perhaps
20 let us go to the charge sheet and see how you had expressed yourself in that charge sheet in the context of this question. If we could go to file 6, if we are not already, file 6. We dealt, from page 2373, that is your affidavit in support of an application for a warrant of arrest.

CHAIRPERSON: Page again, sorry?

ADV SELLO SC: 2373. And that affidavit, in support of that application for a warrant of arrest, you do make a number of points, including this issue, but perhaps it would be easier if we go to 2424. 2424 is the charge sheet which starts at 2418, same file. That is the start of the charge sheet. And at 2424, page 2424, you have a chapter there:

“The appointment of Accused 7 ...”

We know Accused 7 is Mrs Mokwele.

10 “... as Section Head of the Technical
Support Services, TSS, Crime
Intelligence, CI, Head Office at the level
of Brigadier Post number ...”

You provide the number. At sub 1, you start by mentioning that TSS is a national covert operations unit located in CI and is highly specialized. At sub 2, you say it was advertised on that particular date. Then you reference the national instruction. At 12.4, item 4, you state:

20 “The selection panel was chosen by
Accused 1, and it comprised of Accused
1 as the Chairperson and the other panel
members were Accused 2, 3, 4, and 5.”

You see that?

COLONEL PADAYACHEE: Correct.

ADV SELLO SC: That is incorrect.

COLONEL PADAYACHEE: It is correct.

ADV SELLO SC: That is incorrect. It was not chosen by General Khumalo. The panel here, you are suggesting that the panel that interviewed these candidates was chosen by General Khumalo. We have just established that it was recommended perhaps by General Khumalo ...[intervenes].

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: For approval by the higher authorities and was approved. So that statement is misleading. Will you accept that?

10 **COLONEL PADAYACHEE:** In my 12.4, the panel was chosen by Accused 1. It was chosen by Accused 1.

ADV SELLO SC: Okay.

COLONEL PADAYACHEE: Meaning that comes from the recommendation part of it, yes.

ADV SELLO SC: You just omitted ...[intervenes].

COLONEL PADAYACHEE: It was chosen by General Khumalo, but it still has to be approved by Head Office, which is the prescripts as Commissioner ...[indistinct] explained. The panel was chosen by him at that level.

20 **ADV SELLO SC:** Okay. You ...[intervenes].

ADV BALOYI SC: But do you accept that it is misleading to have put it that way, because a reader of that paragraph understands only that General Khumalo constituted this panel and he presided over it. That is a misleading statement because if you had intended to be fully

transparent about it, you would have said it was recommended and it was approved by his superiors. You did not. It is a misleading statement. Do you accept that?

COLONEL PADAYACHEE: Noted, Commissioner.

ADV SELLO SC: And just to confirm, nowhere in this charge sheet do you speak of that panel being approved. That somehow is omitted in this charge sheet. Oversight, perhaps, or whatever, I just want to establish as a fact that it is not there. The approval is not referenced here in the
10 charge sheet at all.

COLONEL PADAYACHEE: The approval is not referenced here.

ADV SELLO SC: Okay. Then we go to 12.5.

“Accused 5 was not based in the CI environment.”

And Accused 5, for the record, is Gabela.

“She was not based in CI environment and at that time, there were at least six other Major Generals based within CI, in
20 parenthesis, Provincial Heads CI, which included Major General Khan, who was based at the CI head office.”

That is what you state.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Now, I referred you to this part of the

charge sheet, which you drew up, presumably, or at least you approved, so you present to court. You present this charge sheet to court in the terms that it states. It is under your affidavit.

COLONEL PADAYACHEE: I just want to correct you.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: You said, I drew up the charge sheet.

ADV SELLO SC: Ja, it is an assumption on my part.

10 **COLONEL PADAYACHEE**: The prosecutors are responsible for drawing up the charge sheet.

ADV SELLO SC: Okay. You presented it to court in arguing for the issue of a warrant. So, you made ...[intervenes].

ADV KHUMALO SC: Sorry, sorry, I apologize. It is semantics because you give the prosecutors this facts. Where would the prosecutor get 12.4 and 12.5? Where would the prosecutor get these facts that are put in 12.4 and 12.5 of the charge sheet?

20 **COLONEL PADAYACHEE**: That is correct, Commissioner.

ADV KHUMALO SC: They come from you.

COLONEL PADAYACHEE: I hear you.

ADV KHUMALO SC: Yes.

COLONEL PADAYACHEE: But the word is, I drew up the charge sheet. We are correcting that.

ADV KHUMALO SC: No, no, that is the – Colonel, it is semantics. You give him the facts, he draws it up. It is like me when I say to my PA, type this for me, and they type. They do not know the facts, they type. So, here he draws it up because you gave him this fact. He did not make them up. They do not come from him. They come from you as the IO.

COLONEL PADAYACHEE: Noted, Commissioner.

ADV SELLO SC: Thank you, Commissioner Khumalo. And
10 I drew you to this document because you were a part of its creation, alternatively, you approved it, and I say that in a very, you know, not in the strictest sense, but you made common cause with it, enough to present it to a court of law in support of your application or an application based on an affidavit you deposed to for the issue of the warrants. So, you have to accept responsibility for this. Whether in its creation or presenting to court to argue for the issue of the warrants, it cannot be a challenged. It is your affidavit. It is your annexure. Can you accept that?

20 **COLONEL PADAYACHEE:** Noted, Counsel.

ADV SELLO SC: Okay. Noted is not very helpful, because I do not know if you agree, you disagree, or Swiss air, I do not know. Do you take some level of responsibility for the facts placed before the court?

COLONEL PADAYACHEE: I say noted, Commissioner, and

the reason why I say noted is that I still got to appear with the same affidavit before a criminal court, so I am saying noted.

ADV SELLO SC: So, if you are still to appear, it is already on record. You cannot change ...[intervenes].

CHAIRPERSON: We want to know where you stand on the facts, Colonel.

COLONEL PADAYACHEE: Yes, I am saying noted on it, Chair, and that is the furthest I am going to take it.

10 **CHAIRPERSON:** That sounds evasive.

COLONEL PADAYACHEE: Chairperson?

CHAIRPERSON: That sounds evasive.

COLONEL PADAYACHEE: Chair, I am not going to take it further than to just say noted.

ADV BALOYI SC: I am going to ask the question differently, and hopefully we get an answer. In the IDAC, when you have told us that this is drafted by the prosecutor, it is prepared by the prosecutor, you said, and then you say you have accepted that it is based on information that you
20 give. In your internal processes, what happens? How does this get approved? Does it go through, does the chief investigating officer get a look at the charge sheet before it goes out? Does the Head of institution, Advocate Johnson, do they look at this before it goes out?

COLONEL PADAYACHEE: Yes, the prosecutors draft the

charge sheet. The charge sheet is presented to the deputy, and from there it goes to the Head of office and the management from their process, as I explained to you.

ADV BALOYI SC: Okay.

COLONEL PADAYACHEE: Thank you.

ADV BALOYI SC: All right, thank you.

ADV SELLO SC: You remember we took this route to try and assist you in answering your question Commissioner Baloyi had put to you, and the question was, what business
10 does IDAC have in approaching a court on the basis that, as in this instance, Crime Intelligence constituted a panel one way or the other and did not include a specific person. That was the question and to show to you that that is actually the issue that was put before court. So perhaps you may answer, Commissioner Baloyi.

COLONEL PADAYACHEE: On the charge sheet with regards to Khumalo appointed the panel?

ADV SELLO SC: Why was it IDAC's business, the fact that General Khan was not part, for instance, of that panel?

20 **COLONEL PADAYACHEE:** It is not part of the business, or IDAC, why was it IDAC's business. It is an investigation where we are saying the business part of it is something else. The, Khumalo chose the panel and we bring it to attention that we are showing a part that he played in the initial process, if I can explain it better that way, with

regards to the remaining steps of the eventual appointment of Mokwele. I am not saying he, there is no way here that I say he approved the panel. He chose the panel. So that is one of the starting steps of it.

Although the panels, when they get approved, not by him, it gets approved by National. But the starting point is that he chose the panel. So that is just one part of the remaining irregularities or whatever you want to call it, to the bigger picture which flows from there.

10 **ADV KHUMALO SC:** Do you insist that it is an irregularity? Do you still insist that the constitution of the panel was irregular, because you are now saying it is one of the irregularities in the big picture. So sitting here today, having seen the approvals, do you still insist that the panel was irregularly appointed?

COLONEL PADAYACHEE: Can I ask one question?

ADV KHUMALO SC: Can you just say yes or no, please, Colonel. It will save us a lot of time. And you, I know you are stressed. You said you have been here for the whole
20 week now. Either the panel was irregularly constituted or it was irregularly constituted. It is really that simple. So to keep going back and say he chose it, he recommended it, somebody else approved it, those facts are already in. We have those facts already. Knowing all those facts, do you still insist that the panel was irregularly constituted, yes or

no?

COLONEL PADAYACHEE: Commissioner, the panel was, when it was approved, it was properly constituted, yes. My point that I am drawing on often, and I have to explain it, and it just cannot be a yes or no. What I am pointing out to the fact here that Khumalo chose that appointment but it was authorized, meaning that it was properly constituted when it was authorized there. But the choosing of the panel by him, where he chose particular people to be on the
10 panel, that is what I found as irregular, the start of what led to the appointment of Mokwele.

ADV KHUMALO SC: But the impression you are creating to the court, because you have completed the investigation and you do not say to the court, this panel was nominated and approved in accordance with the prescripts. You do not say that. What you are saying to the court is he appointed the panel, look who is there, look who is not there. That is what you are saying to the court after you have done the investigation. By that time, you knew that the panel was
20 properly constituted in accordance with the prescripts. And if it was not, you can tell us that national instruction so and so of this year does not allow him to nominate members of the panel to be approved by General Nkhuoa and General Sibiya. You can tell us that if you have that fact.

COLONEL PADAYACHEE: Thank you. Thank you, Chair,

Commissioner. The fact that it is not in the charge sheet where Head Office properly constitutes a panel and it is not there, I can take that no further. That is my answer to it. This is what I wrote in my affidavit, hand it to the prosecutor. She could have changed, or he could have changed it in any way, but to answer the question and not to drag it on, and I cannot take it any further, is the fact, this is what I wrote in my affidavit, that he chose the panel. The fact that I did not put in that this panel was also
10 approved and constituted, that is my answer and I can take it no further, Chair.

ADV SELLO SC: And then, just to close off on that point, as you say in 12.5, of what relevance is the fact that General Khan was not part of that panel? Of what relevance is that to the question of criminality, because this is in the charge sheet. What is the relevance of the fact that General Khan was not part of that panel?

COLONEL PADAYACHEE: You are talking about criminality, about General Khan or whatever, that he was
20 not on the panel, so that is criminal. No, that is not the inference that he was not on the panel, so now it is criminal.

ADV SELLO SC: Oh, okay.

ADV BALOYI SC: [Indistinct]...

ADV SELLO SC: Yes, the relevance. Thank you. Sorry.

COLONEL PADAYACHEE: We have nine provincial Heads in the country, Crime Intelligence. We have maybe three Generals at Crime Intelligence. Any one of those nine plus the three at Head Office could have been chosen to sit on the panel, not specifically Khan.

ADV SELLO SC: No, but you specified him here.

COLONEL PADAYACHEE: Any one of them. The fact that Khan's name is mentioned here, but it is also mentioned here that Provincial Head, CI, which included Khan, were
10 available.

ADV BALOYI SC: The question is, why did you not pick any other name of the Provincial Heads? Khan was not or is not the only General in Crime Intelligence who is a Provincial Head, if he is a Provincial Head, but it is not just him, so why did you not mention any other name? And I will say to you before you answer that the impression you have created with specifying him is that this may well have been about his exclusion. You were punting for him. Taking issue in 12.5 is in fact about the exclusion of General Khan
20 in particular from the panel, from the interviewing panel. That is the impression this paragraph creates, because you cover it by mentioning that there were other six Major Generals that could have been chosen within Crime Intelligence, but curiously it is General Khan that you mention, and what we know about him is he was in the

previous panel, of the previous panel that did not succeed in filling this post. We know he was there.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: Now he is not in, and you take issue and you give him as an example and it gives the impression that in fact the complaint in 12.5 is about him and not any other Crime Intelligence officer that could have been part of the panel. What do you say to that?

COLONEL PADAYACHEE: Thank you, Chair,
10 Commissioners. Let me first start by General Khan. As of today and or everything that is surrounding General Khan and his activities, his name will stand out now no matter where it gets mentioned. It puts a question mark there. When I put this in, the other Provincial Heads, including General Khan, who sits at Head Office right next door to the panel, that is what I wanted to say, he is there. So it was including him there is not to say but you know, him particularly in that instance. And at that moment in time, mentioning this name meant nothing, but mentioning it now,
20 in any way in our investigations, raises that, stands out. So I take it from there, Commissioner Baloyi.

ADV BALOYI SC: No, Colonel, I do not, it is your answer, but I have to leave you with this. I do not accept that mentioning him here meant nothing. I do not. It is curious that it is him specifically that you mention. So I hear your

answer. You have given your answer. It is your best answer, but I do not accept that it was as innocent as you want us to believe.

COLONEL PADAYACHEE: Noted, Commissioner. I noted that inferences can be drawn for that. I acknowledge that.

ADV BALOYI SC: Maybe related to this, sorry, Ms Sello, let me just finish off here.

ADV SELLO SC: Yes, Commissioner.

ADV BALOYI SC: You are not suggesting where you say
10 Accused number 5 was not based in the CIA environment at the time, you are not suggesting that the prescripts that apply to constitution of panels precluded the inclusion of someone who does not belong to the CIA environment. You are not suggesting that there is such a prescript. Ja, you may answer.

COLONEL PADAYACHEE: Thank you, Chair, Commissioner Baloyi. There is no prescript on that. Anybody can sit in the panel. The reason why it is drawn out, I have mentioned it and drawn it out, the particular post
20 is a covert post, meaning that it is a sensitive post in a place that not really much people know about it, and the activities are also covert. So that is why it is brought in. But there is no prescript to say you cannot be on the panel, you cannot be on the panel, there is no. You choose your panel, and that is it. It is approved by the office, you carry

on.

ADV BALOYI SC: You have answered me, thank you.

COLONEL PADAYACHEE: Thank you.

ADV KHUMALO SC: And General, just to be clear, sorry, Ms Sello, it is not for IDAC to determine the job requirements for the post. The job requirements for the post are as advertised and as approved by SAPS. When we get to the job requirements, you will see that the things you are saying are not there. The requirement is quite clear,
10 this is about mechanical and electronical, and you need a B degree of 3 years, including law. My point to you yesterday, that even I could apply, because the requirements of the job say you need a 3 year degree, which could be law, or a B.Tech, or whatever. So IDAC cannot make up the requirements of the job and say the post is secretive, it is this, it is that. The requirements are as advertised, because members of the public, when they apply for the position, what they look at is not what IDAC says. What they look at is what the job requirements are,
20 and what the advert says and they apply on the basis of those things alone. IDAC cannot add requirements after the event and say it is covert, it is this, it is this, it is that. That is not how it works. When you advertise a position to the public, you are bound by that advert and the job requirements, and you cannot use unknown things when you

determine who should be appointed and who should not be appointed. That is not how it works.

COLONEL PADAYACHEE: Noted, Commissioner.

ADV KHUMALO SC: I could not be disqualified as a person with a law degree because this is covert, because that is not what is in the requirement. When I apply, I apply based on what the requirements say.

COLONEL PADAYACHEE: Noted, Commissioner. Anybody can apply for the post. It says it is external, anybody can
10 apply for the post. That is noted, Commissioner.

ADV SELLO SC: And in fact, on that point then, it undermines the point you make at 12.6, precisely what you have just said. You say:

“TSS is a very secretive operations unit.
TSS working on operations methodology
practices and capability unknown to the
majority of members of SAPS. It would
have been reasonable to expect Accused
1 to have chosen Major Generals from CI
20 to reduce compromising TSS and its
operations. In so doing, TSS would
maintain its secrecy and strategic
operations advantage.”

That would then go to the very advert. It cannot be advertised outside the Crime Intelligence environment

because it would undermine functionality if you introduce people from outside who know nothing about Crime Intelligence and they are exposed to the covert operations of this unit. To take issue or to reason as you do at 12.6, for an external advertisement which you accept is legitimate and that SAPS and this unit can draw from members of the general public, why? Why is that an issue as to how secretive the operations are if you are trying to recruit from members of the public?

10 **COLONEL PADAYACHEE**: May I respond?

ADV BALOYI SC: Can I just add to that, that why is it your business as IDAC? SAPS is happy to have people who do not belong there for you to raise it there. You may well eventually find there was a crime in it, maybe the court will find that, but I am just asking IDAC as an institution, why is it your concern that SAPS has allowed Accused 5 to be part of a panel and it is advertising externally in this what you describe as a secret environment. It seems to me that you are overreaching as IDAC.

20 It is not your issue. SAPS is a separate institution from you. Why is that a problem to IDAC? Where do you come in? Your mandate, remember you have a mandate. You are a creature of statute. You do not go about looking at facts and say, oh, I think they did wrong there, let us charge them or let us create a complaint. You do not do

that. You are a creature of statute. When you raise a complaint, as you are doing, because you did not write this stuff for the sake of it.

You were influencing the decision maker who is going to give you the warrants that you are applying for, right. And you are influencing whoever is going, because they are going to listen to your evidence. Why is it IDAC's problem that SAPS has decided to include someone in the panel who is outside of the environment of Crime
10 Intelligence?

Not only that, two, that it is going to be interviewing and possibly appointing someone from outside if it is not precluded by the law or by prescripts. This is not, it does not require you to give an answer that speaks to the case about testimony that you are going to give. It has nothing to do with it. You formulated your charges. I am trying to understand IDAC's understanding of its mandate and you, as an investigator in this docket, your understanding of the mandate, what about what you say in these paragraphs has
20 anything to do with your mandate prescribed by law, not what you feel like in the office that, ooh, that feels wrong. You can comment if you want. I hope you have an answer for my question, because I think it is an important question. It is about your understanding of the mandate of IDAC. That is what these questions are about, why is it your

business? You can say to us, in terms of section 7(1)(a), look at that section. Issues like this fall in there, or whatever other provision of law that you say covers something like this.

COLONEL PADAYACHEE: Chair, Commissioner, thank you. I know that sometimes I give a long story, but let me just give a quick comment. We say that SAPS chose a panel, approved a panel, advertised it externally. When we look at SAPS today, and the number of senior managers,
 10 allow me to comment on this, when you look at the state of the national head office, and the serious corruption with National Commissioners and Deputy National Commissioners, and senior officers being arrested for corruption, then we have to ask ourselves the question is, what is it IDAC's business to go into a space like that?

CHAIRPERSON: Has the National Commissioners been arrested for corruption? Has the National Commissioner been arrested for corruption?

COLONEL PADAYACHEE: The National Commissioner
 20 ...[intervenes].

CHAIRPERSON: I think you included him when you stated who has been arrested for what.

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

CHAIRPERSON: Has he been arrested for corruption?

COLONEL PADAYACHEE: The National Commissioner has

been arrested for contraventions of the PMFA.

CHAIRPERSON: Is that of necessity corruption?

COLONEL PADAYACHEE: That does not amount to corruption at this stage, sir.

CHAIRPERSON: But you lumped his name with corruption charges.

COLONEL PADAYACHEE: Can I correct myself, sir?

CHAIRPERSON: Please do.

COLONEL PADAYACHEE: What I meant, and let us go
10 with the arrest, the arrest of senior National Commissioner, Deputy National Commissioner, and the current situation at SAPS as it stands and the same with Crime Intelligence currently and previously, then when you ask is it what business of its IDAC in terms of the mandate? So, the only way I can put it this way, if it is not IDAC's business and I am investigating and it comes to my attention and I have the evidence, I will go into that space if it flows through from my investigations. Yes, there is a section 7, there is a section 28 that regulates us in terms of what, where we can
20 go and whatever. But during the course of my investigations, if these things come during the course where I picked it up, I will continue to investigate it. As a law enforcement officer, I cannot ignore it. But what I am pointing out to you, and I will cut it off now, is that SAPS at the current moment, when you look at approving of a panel,

approving of many other documents that I have seen and had insight into, when you look at that, I do not trust the documents that they signed. In this particular case that we have now, there is a document during this process that was forged.

CHAIRPERSON: So ...[intervenes].

COLONEL PADAYACHEE: Signed and approved by Head Office ...[intervenes].

CHAIRPERSON: Yes, yes.

10 **COLONEL PADAYACHEE:** But the document was sent through forensics and it came back that it was forged.

CHAIRPERSON: So, Colonel, IDAC has arrogated to itself the power to be an overseer over SAPS. Is that what you are saying?

COLONEL PADAYACHEE: No, sir.

CHAIRPERSON: You are. That is what you are saying. You say there is everything wrong with the management, top management of SAPS. If I come across something, I will investigate it. I am using something deliberately
20 because my other question before you said the last things you said, my other question was, if you come across what exactly? If you come across what you believe to be criminality or which is what you say, I will investigate it. If you come across what?

COLONEL PADAYACHEE: During ...[intervenes].

CHAIRPERSON: What appears to be criminality, please let us not lengthen it, if you come across what you consider to be criminality, you will investigate it.

COLONEL PADAYACHEE: Yes.

CHAIRPERSON: That is exactly what Commissioner Baloyi has been engaging you on. Where is the criminality? And in fact, Commissioner Khumalo was there as well, where is the criminality with regards to this panel? Where is the criminality, especially, especially regard being had to the
10 fact that SAPS is happy with that list. So you are saying you cannot rely on SAPS because there is a lot wrong with SAPS top management, therefore, you cannot rely on what they are happy with. Is that what you are telling us?

COLONEL PADAYACHEE: Commissioner, Chair, Commissioner ...[intervenes].

CHAIRPERSON: And bear in mind, you are not able to say that panel was drawn or selected in accordance with prescript. You are not able to say that. So on what basis are you telling us what you are telling us?

20 **COLONEL PADAYACHEE**: What I said initially, Chair, Commissioners, is that during the course of whatever investigation that I am busy, working with, and I come across corruption that is linked to what I am busy with, I will investigate that.

CHAIRPERSON: Let us stop there. Let us stop there. So,

in this instance, you came across corruption which you found to relate to the selection of the panel. Is that the corruption you came across?

COLONEL PADAYACHEE: The panel in question.

CHAIRPERSON: Is it the selection of that panel which constitutes what you consider to be corruption, which corruption you came across and therefore decided to investigate? Is that the corruption, the selection of this panel?

10 **COLONEL PADAYACHEE**: The choosing of the panel, the panel members, that is where I saw the corruption during the investigation.

CHAIRPERSON: I am not sure that you were able to answer Commissioner, my two colleagues, on exactly where the corruption lay. I am not sure you were able to answer that, especially if you are not even able to say that that selection was not in accordance with prescripts. In fact, even if it was not, I am not sure that that would automatically translate to corruption, but we are not even
20 there. Just at the level, just at the level of the lack of, the lack of non-compliance with prescripts, so on what, just on what basis would you make the jump and say therein lay corruption? Just on what basis would you say that?

COLONEL PADAYACHEE: Chair, Commissioners
...[intervenes].

CHAIRPERSON: Yes, yes.

COLONEL PADAYACHEE: The basis that I lay on it is that during the investigations, we found corruption with regards to the panel, during the investigations.

CHAIRPERSON: Do not get to the conclusion. Do not get to the, that is the conclusion. What I want to find out are the antecedent facts that lead you to that conclusion. You are not able to say that there was non-compliance with prescripts and then you jump to a conclusion that says
10 corruption. Just on what basis do you come by that conclusion?

COLONEL PADAYACHEE: Commissioner, it is as I answered, Commissioner. And it is as I answered now, that during the course of the investigation, Commissioner, that we found that there was corruption with the panel. I am not talking about ...[intervenes].

CHAIRPERSON: No, no, no, that is very illogical. That is very illogical reasoning, Colonel. So you start with the conclusion, and then you work your way backwards. Do you
20 not start with an investigation? Of course, that being an investigation, that is authorized in terms of the law. sections 27 and 28.

COLONEL PADAYACHEE: Yes, sir.

CHAIRPERSON: So you start with establishing facts, and those facts lead you to the conclusion and not the other way

around. You repeatedly start with the conclusion. That cannot be, surely. Do you agree?

COLONEL PADAYACHEE: Commissioner, maybe it is the way I am explaining it.

CHAIRPERSON: I have asked you several times. Surely you would have understood by now, and you would have come up with a better explanation than repeating yourself.

COLONEL PADAYACHEE: Yes, Commissioner.

CHAIRPERSON: I do not want to say like a broken record.

10 **COLONEL PADAYACHEE**: I understand, Commissioner. I am at pains to explain it. Like you say, I am coming at the conclusion of it. What I am saying is conducted an investigation, that during the course of the investigation, this is what we found amongst whatever else. It is not that we found now the panel is corrupt. I do not know if I am understanding you correctly, because you have asked me many times, and it seems like it is drawn out, but I am trying to answer it in the best way I can.

CHAIRPERSON: It must be drawn out if I do not
20 understand you, and especially if you keep repeating a conclusion without telling us the factual basis for getting to that conclusion, it must be long drawn out. You want me to end it here now?

COLONEL PADAYACHEE: No, Commissioner. If you want me to go into the specifics on each panel member and how I

came to that conclusion, if that is what Commissioner is looking for, then I, then ...[intervenes].

CHAIRPERSON: No, I would not want you to go there because you have not specified, at least as I understand this, you have not specified anything that relates to each one of the individuals on the panel with regard to, with regard their membership of the panel. I am not aware that you have stated that, so I will not allow you to get there.

COLONEL PADAYACHEE: I am still at a loss.

10 **CHAIRPERSON**: I am sorry?

COLONEL PADAYACHEE: I am still at a loss, Commissioner.

CHAIRPERSON: Okay, I will ...[intervenes].

COLONEL PADAYACHEE: Maybe ...[intervenes].

CHAIRPERSON: Let me, let me, maybe you will understand me now. I will go back to an earlier question I asked you, and I am not sure that you answered it and it was this. You say there is a lot wrong with the senior management of SAPS starting from the National
20 Commissioner, a substantial number of whom have been arrested for whatever offences. And you then basically say therefore, you do not trust senior management and you say this in the context of the selection of the panel. And my question was, so does IDAC then arrogate to itself the power to oversee SAPS?

COLONEL PADAYACHEE: No.

CHAIRPERSON: That is exactly what you are doing. Why can you say no? Why can you possibly say no? On the explanation you gave in response to Commissioner Baloyi's last question, that is exactly what you said, or rather the impression you created.

COLONEL PADAYACHEE: Noted, Commissioner.

CHAIRPERSON: Explain yourself. You cannot just say no without explaining yourself. Explain yourself then.

10 **COLONEL PADAYACHEE**: Commissioner ...[intervenes].

CHAIRPERSON: Bearing in mind that this question comes from your response to Commissioner Baloyi's last question.

COLONEL PADAYACHEE: Yes, Commissioner.

CHAIRPERSON: Yes.

COLONEL PADAYACHEE: I will try and look for one of the other police documents that is in this file. I think maybe General Nkhuoa signed in some places, and then we can see. You may find Major General ...[intervenes].

ADV BALOYI SC: No, no, we have seen those kind of
20 letters.

COLONEL PADAYACHEE: Yes, yes.

ADV BALOYI SC: We have been through enough SAPS documents in this Commission of Inquiry that we have seen letters which have different people signing. You are making a different point. You say something is wrong with this

letter because it does not contain where General Khan should have signed.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: And my question is simply, in terms of what is that required? Where do I go to check and confirm that you are correct indeed when you say this letter should have indicated – I know Ms Sello is having a different discussion with you.

COLONEL PADAYACHEE: Yes.

10 **ADV BALOYI SC**: But in answering here you have raised something. And so my question is, what instrument, whether national instruction, whether policy, whatever, what do I look at to see that what you are saying is wrong with this letter in that it does not contain General Khan's details? Where do I find that?

COLONEL PADAYACHEE: Commissioner, I am not too sure whereabouts you will find it in the prescripts, but what I can say to you is because I have been there and how we write it in an official way. When you put my name in the
20 front, my name is not there. If you put my name on a document, I must be aware of it. That is the first part of it.

The second part of it, it has Major General Khan and Brigadier Ncube on it. So what I am saying is what I am seeing that is wrong with this letter. And I am saying this is Brigadier Ncube, she did this letter, but you put

General Khan's name here on the top, who is the senior officer that should have signed off at the bottom.

That is what I am saying, but if his name was not there at all, then he has got no business on this letter because she is writing it and she is the enquiries and she is putting her title at the bottom. That is the message I am trying to get over.

ADV BALOYI SC: Thank you.

COLONEL PADAYACHEE: Thank you.

10 **ADV SELLO SC:** Thank you, Commissioner. Thanks, Colonel. So by the time we get to paragraph 5 of General Khan's statement, the issue about which you approached him is dealt with. However he deals with it, wrong or right. That would be the end of what you required him for because you said you approached him regarding this particular letter, correct?

COLONEL PADAYACHEE: It was for the letter and to interview him with regards to the technical support post because he has been there in Crime Intelligence and was
20 there at that time.

ADV SELLO SC: What about the post did you think he could add?

COLONEL PADAYACHEE: It is his knowledge and experience in the post as laid out in the affidavit obtained from him.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: But before we move over on this and move away from the relevance of the letter, the relevance of this letter is that it says that the confirmation letter is to officially state that on the 25th of July, the applicant, Ms D Mokwele, submitted an online application in the South African Police e-Vetting system for top security clearance with reference that and that. This letter is incorrect. She could not submit an application on the e-
10 Vetting system because you have to have a force number. So that is the relevance ...[intervenes].

ADV SELLO SC: No, if I may stop you? I do not take issue with that. That is his view as he has expressed it, right?

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: But I am saying your engagement regarding the letter ends at this paragraph. He has given you an answer and his views on the letter.

COLONEL PADAYACHEE: Okay.

20 **ADV SELLO SC:** So that was the one fact you wanted to establish with him. What was the other fact, if any? You keep referencing other facts that you needed to establish with General Khan. What fact is that?

COLONEL PADAYACHEE: It is as indicated on my paragraph 6, moving down.

ADV BALOYI SC: It is not yours, it is General Khan's paragraph 6. I think it is because they are the same.

ADV SELLO SC: Exactly, because you copied from General Khan's affidavit.

ADV BALOYI SC: It is exactly what you have in your affidavit that you say it is yours.

COLONEL PADAYACHEE: Yes, it is General Khan's statement. Chair, Commissioners, it is that time of the day. It has been a marathon.

10 **ADV SELLO SC:** Okay, now this is the second half of General Khan's affidavit. You confirm that from paragraph 6, he is now dealing with the issue you raised in your affidavit when you sought the arrest warrant, to the effect that this is a very critical covert Crime Intelligence. This is the second line of paragraph 6. He notes:

“I also cannot understand why Khumalo invited Major General Gabela to form part of this interviewing panel as I was available.”

20 **COLONEL PADAYACHEE:** Thank you.

ADV SELLO SC: Of what relevance is that to your investigation?

COLONEL PADAYACHEE: Excuse me?

ADV SELLO SC: Of what relevance is that to your investigation?

COLONEL PADAYACHEE: It is his affidavit, which you spoke about during the course of the interview.

ADV SELLO SC: Say that again, please.

COLONEL PADAYACHEE: It is his affidavit ...[intervenes].

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

COLONEL PADAYACHEE: That ...[intervenes].

ADV SELLO SC: I am interested to find out what question had you posed to receive that answer from him, or did he just volunteer the information?

10 **COLONEL PADAYACHEE**: It was a flow. It was a flow.

ADV SELLO SC: Okay.

COLONEL PADAYACHEE: It came in the flow.

ADV SELLO SC: All right. So, we realise here his unhappiness about General Khumalo choosing Major General Gabela over him. He continues ...[intervenes].

ADV BALOYI SC: Before you continue, because of the similarities, nearly word for word, of this paragraph 6 and the next one is that Ms Sello is going to be discussing with you, did you base your affidavit on General Khan's
20 statement?

This affidavit, where you make allegations about TSS being a very critical covert Crime Intelligence operational post. You have said exactly that. I also cannot understand why Khumalo invited Gabela and so on. I just want to know who of the two of you is the original source of

that kind of complaint, because it is exactly the same that you have got. Did you take it from his affidavit into your affidavit, in which case it is his complaint about this, not yours? Or did he copy your affidavit?

COLONEL PADAYACHEE: Thank you, Chair, Commissioners. It is part of mine, because I know the environment I worked with it. I know the Technical Support Unit post, and I am acquainted with the environment. So, it is part of mine. So, with regards to General Khan and his
10 affidavit, it is a flow from his. It is not that it is like I did not know about it, and then now he is telling me I am getting to know it. I already know about it, and he is just talking about it, and it is a flow in it. So, that is the explanation that ...[intervenes].

ADV BALOYI SC: The reason I ask is, for example, in an earlier discussion, we agreed that there is nothing wrong, at least according to policies and subscripts, in having brought in somebody from outside Crime Intelligence that is accused
20 number 5, right? We have agreed it is not precluded by the policies. And yet, in paragraph 6, General Khan says:

“I also cannot understand why Khumalo invited Major General Gabela to form part of the interviewing panel as I was available.”

He says that.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: You say exactly the same thing in your affidavit.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: So, I am asking, do you say it in your affidavit because that is what Khan complained about, General Khan complained about it, and that is why it is reflected in pretty much the same terms in your affidavit?

COLONEL PADAYACHEE: Yes.

10 **ADV BALOYI SC:** Or did he look at your affidavit and then included it in his affidavit?

COLONEL PADAYACHEE: No, he had no insight. Sorry, Commissioner, can I?

ADV BALOYI SC: Ja, no, sure, you can.

COLONEL PADAYACHEE: Thank you, Chair. Thank you, Commissioners. No, he had no insight into my affidavit. Like I said, I have already known about the post. I ...[intervenes].

ADV BALOYI SC: But you had insight into his, I assume. I
20 mean, you had already taken his statement by the time you were applying for a warrant?

COLONEL PADAYACHEE: My affidavit was taken, my anchor affidavit was taken during that time, but also I think it was just when I did the arrest warrant, in the arrest warrant affidavit when it was in there, but he did not have

insight into it.

I think Major General Khan was the only General at that time at Crime Intelligence beside General Khumalo. I think, if I am not mistaken, the other General that was available was not there. He was suspended or I am not sure, but there were just the two generals there. So that is why it comes up as that General Khan at head office and the Provincial Heads. Thank you, Chair.

ADV BALOYI SC: Thank you.

10 **ADV KHUMALO SC:** Can we do this, Colonel? Let us just put this idea to bed that the requirements of the job were somehow fashioned to favour a candidate. Those requirements have always been like that. Three years prior, if you go to the 2022 advert on page 470 of File 2, they are identical. So it is not something new that was fraudulently introduced in 2024.

If you go to 470 of File 2, you will see that it was always the case that they wanted somebody with LLB, somebody with public administration, somebody with three-
20 year degree. Are you there?

COLONEL PADAYACHEE: Yes, I am with you.

ADV KHUMALO SC: Ja. So the idea that they do not know why it should have gone outside, why it was done so in 2024, but even the approved post in 2022, if you look at the date, April 2022, on page 470, it is exactly that.

COLONEL PADAYACHEE: Chair, yes. 2022, 2023, when you look. Chair, what I want to point out, when we requested for the documents on the advertisements, these earlier ones, we did not get it. They did not put it in the ...[intervenes].

ADV KHUMALO SC: Now that you have seen them.

COLONEL PADAYACHEE: Now that I have seen them, when you look at 2022, 2023, and 2024, the requirements are the same.

10 **ADV KHUMALO SC**: They were still the same over three years.

COLONEL PADAYACHEE: They are still the same. It is just that the first two were internal and the last one was external.

ADV BALOYI SC: And maybe something else to put to bed arising from this discussion with Commissioner Khumalo, is that Van Vuuren that you say has 40 years' experience and could not, have not qualified for this position, was in fact overlooked, was not shortlisted in a previous round, which
20 included General Khan. Because remember, General Khan was part of the panel previously.

COLONEL PADAYACHEE: Yes, I ...[intervenes].

ADV BALOYI SC: So he did not make the shortlist.

COLONEL PADAYACHEE: I just have to check whether he was part of the panel. I am not sure. I did not check on

that.

ADV BALOYI SC: I think he was. I think I can be corrected if I am wrong, but my recollection of that panel is he was there. But the important point that I am making about it is the very person that you say has 40 years' experience and in fact would have been the most suitable for that position, in fact was not even shortlisted in a previous round, which comprised Crime Intelligence people.

COLONEL PADAYACHEE: Yes.

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

COLONEL PADAYACHEE: No, no, just ...[intervenes].

ADV KHUMALO SC: So remember, we are still dealing with General Khan's affidavit where he says, you know, this is a specialised, this is internal, this is this. And I am pointing out to you that even two, three years prior, lawyers were invited to apply. People in public administration were invited to apply.

COLONEL PADAYACHEE: Yes.

20 **ADV KHUMALO SC:** People who were electrical and mechanical engineers were invited to apply. So it is not something new that is introduced in late 2024 to favour a particular individual. Even in prior years when she was not even in the picture, those were the requirements for the job. They did not change to favour her.

COLONEL PADAYACHEE: Those were the requirements on

the 22, 23, and 24.

ADV KHUMALO SC: Exactly.

COLONEL PADAYACHEE: Yes, Commissioner.

ADV SELLO SC: Thank you, Commissioners. And just, Commissioner Baloyi, you are correct. In the 2023 panel, General Khan was a member. I put it up, you know, it is there.

COLONEL PADAYACHEE: Thank you. Thank you.

ADV SELLO SC: Let us continue to his paragraph 7. He
10 says:

“I have viewed the file regarding Mokwele's appointment and what is evident from the file is that Khumalo, Madondo, Lekalakala, and Gabela, unduly favoured Mokwele above experienced Colonels within the immediate environment who met all the requirements during the panel sittings.”

Do you see that?

20 **COLONEL PADAYACHEE:** Yes.

ADV SELLO SC: Now, my first question is, he says I have viewed the file regarding Mokwele's appointment. Did you provide him with that? Did you provide General Khan with the file regarding Mokwele's appointment?

COLONEL PADAYACHEE: During the course of the

interview, I had the file in front of me.

ADV SELLO SC: So that is the one he viewed?

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: So you provided him with that file?

COLONEL PADAYACHEE: No, he was not provided the file. During the course of the interview ...[intervenes].

ADV BALOYI SC: No, Colonel. No, Colonel.

ADV KHUMALO SC: General, for him to view the file, you must give it to him. If you are interviewing him and it is
10 with you, he cannot view it. So you must have given it to him to view it for him to form that view in that paragraph.

COLONEL PADAYACHEE: Yes, sir, during the course of the interview.

ADV SELLO SC: Was that, we are seeking to obtain a statement from a witness, is it proper to give him that file for him to prepare a witness statement in circumstances where you intend to proffer criminal charges against senior members of Crime Intelligence? Do you consider that appropriate to do?

20 **COLONEL PADAYACHEE:** Counsel, Commissioner, Chair, during the course of the interview, whilst I was busy with it, I had the file open and I was going through the file to ...[intervenes].

ADV SELLO SC: Colonel ...[intervenes].

COLONEL PADAYACHEE: Yes, I acknowledge what you

are saying, that is it proper for him to view the file?

ADV SELLO SC: No, you just conceded to the Commissioners that, yes, actually you gave him the file, so you gave him access and permission to view that file. So we are past that now.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: I am asking as to the propriety of that decision and conduct on your part, do you consider that proper? In circumstances where you are seeking him to
10 provide you with a witness statement for potential criminal charges to be brought against senior members within the institution you are investigating. Is it that you consider it proper or it is not proper? There is nothing to debate. If you are happy with it, I will move on.

COLONEL PADAYACHEE: Chair, Commissioner, at that moment in time, I did not consider that.

ADV SELLO SC: You did not?

COLONEL PADAYACHEE: I did not consider that.

ADV SELLO SC: Okay. Now that we are here, in
20 retrospect, do you think it was proper for you to have done that?

COLONEL PADAYACHEE: No, I do not think it was. I mean, I am sitting there and I am interviewing him and I am listening to him and taking an affidavit and then referring to the file. So I cannot see the reason why you say that I

would have done something wrong by showing him the file.

ADV SELLO SC: Because you are influencing the content of his witness statement, so he is no longer deposing to an affidavit on facts he knows something about. You are feeding him the information and thereby influencing what goes into his witness statement. That is the problem. Did you ever give any other witness this file to say these are the contents of the file, now go give me a witness statement? Have you done that in this investigation?

10 **COLONEL PADAYACHEE:** That is noted, Counsel.

ADV SELLO SC: Okay.

COLONEL PADAYACHEE: But at that moment in time, taking the affidavit and the process of interviewing him, it is a referral to the file. But as you put it, I did not see it like that at that time. Is my witness – not putting words in his mouth, you know, and saying, listen, look at this, look at this, look at this. I am busy interviewing him, referring to a file, you know, and going on with it. It is at that matter in time, Chair, Commissioners. Thank you.

20 **ADV SELLO SC:** My comment to you that is highly improper. You are affecting the objective quality and the probative value of that witness statement because you have, as an investigator, you have influenced the content of that statement. That witness is no longer talking the absolute truth from the basis of what they know. It is what

they know embellished by what you have told them, and I say that is improper. Do you have a comment to that?

COLONEL PADAYACHEE: Noted.

ADV SELLO SC: Ja, okay, noted. Now, if we move on at paragraph 9. Paragraph 9 and 10, he concludes:

10 “If I was consulted prior to the post being advertised externally, I would have advised Khumalo against doing so because the post is very specialised and operates in secret within the operational covert Crime Intelligence policing environment.”

At 10:

 “I believe that Khumalo did not nominate me to form part of this interview panel as I would have opted to appoint a more competent and experienced senior officer from within the Crime Intelligence environment.”

20 We know that he was a member of the panel in 2023. He failed to achieve precisely what he sets out in paragraph 10, from officers within the Crime Intelligence environment. He failed. He was not part of that panel. And in 2024, miraculously, he would have found one.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: So, what is the value of this statement to the criminal case that you are trying to investigate, if not a gripe session by General Khan that he happened not to be a part of an interview panel that appointed Ms Mokwele in circumstances where neither the policy, prescripts, Constitution, or any religious belief entitled him to be appointed to this panel? What value is that to your investigation?

COLONEL PADAYACHEE: This is his affidavit. In the
10 interview, this is his affidavit, And that is what I can say for you, Chair.

ADV SELLO SC: Yes. Now, you remember we discussed the letter that he commented on. And in fact, you go further in your affidavit, in the arrest warrant, you deal with the issue of vetting. 2379, we are at the tail end. Page 2379. It is file what? File 6.

ADV KHUMALO SC: We are at the tail end of the file, or the tail end of today's session?

ADV SELLO SC: Of today's session, Commissioner.

20 **ADV KHUMALO SC:** Okay.

ADV SELLO SC: That is still your affidavit that we had looked at. At 8.9, 2379, you say:

“Ncube compiled a letter wherein she represented that Mokwele had applied to be vetted. This was not true, as it would

have been impossible for Mokwele to apply as she did not have a PERSAL number.”

You see that?

COLONEL PADAYACHEE: Correct.

ADV SELLO SC: Now, you recall if we go to our File 2, that File 2 is where we have the file on this entire recruitment process. In there, you will find under CJC370.12.

10 **COLONEL PADAYACHEE**: Do you know which one it is?

ADV SELLO SC: CJC370.12. 373 – no, 370.12. Page 373.

COLONEL PADAYACHEE: 370?

ADV SELLO SC: 370.12. That is the exhibit number. The page is 373, File 2. Are you winning?

COLONEL PADAYACHEE: Getting there.

ADV SELLO SC: No, we need to get there. They will help you now.

COLONEL PADAYACHEE: 370.

20 **ADV SELLO SC**: Okay. Now, under CJC370.12, it is a series of letters. The first at 373 is to Commander G Janse van Rensburg. If you go to 370 ...[intervenes].

CHAIRPERSON: Van Vuuren. Van Vuuren.

ADV SELLO SC: Van Vuuren, for the record I correct. I apologise, Chair. Commander G Janse Van Vuuren. At

page 375, to G Mokwele. And at 377, it is to Colonel Bapela. All these letters are the same, if you look at them. They are invitation letters. They are worded exactly the same. What only differs is the addressee.

And midway, let us take 373, which is Commander Van Vuuren's letter, invitation letter. At paragraph 3, paragraph 1, of course, it congratulates. It tells him that he is part of a short list. Three, and then it speaks about the evaluation process that will be over two days. And then at
 10 the bottom in bold, it says:

“Kindly take note of the following request.”

At 373, it reflects that the candidate should bring original certificates and copies of all qualifications, driver's licence, and some such documents. Overleaf, at bullet point 2, it says:

“If you are not in possession of a valid security clearance to the level of top secret, proof of application for such
 20 clearance must be submitted on the first day. Please note that all applications for security clearances are done via e-Vetting.”

Do you see that?

COLONEL PADAYACHEE: Correct.

ADV SELLO SC: Now, if you go to 375, that is the start of Ms Mokwele's letter, similar letter. And the same at 376, she is informed that if she is not in possession of a valid security clearance to the level of top secret, proof of application for such clearance must be submitted. So, my interpretation of this document, and it might be wholly wrong, I accept, is that all the shortlisted people, when they presented themselves for the interview, were required to at least produce a top clearance certificate or an application
10 for one.

Now, Ms Mokwele does not have a PERSAL number, which is the point you make at your paragraph 8.9 of the affidavit. How was she to provide proof that she has applied for a clearance certificate? Because the invitation letter actually instructs her to bring proof of such application. She does not have a PERSAL number. How was she to do that?

COLONEL PADAYACHEE: First of all, the application, when you apply for the post, it is in the application
20 regarding the security clearance. It says there that you must get a security clearance within six months of your appointment. Now, she is a civilian. She cannot apply via the e-Vetting system.

So this should have been brought to the attention of the panel when she went to the assessment centre or

spoken to somebody, I am a civilian, I cannot apply ...[intervenes].

ADV SELLO SC: Colonel, they issued an advert for civilians to apply. They do not have PERSAL numbers.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: But the process requires that by the time they present themselves for an interview, they must at least show that they have applied for vetting.

COLONEL PADAYACHEE: Yes. She could not apply. So
10 that is valid. She could not apply because she does not have a force number, right? So what Brigadier Ncube did is that she went and did it via how you appoint a service provider.

ADV SELLO SC: Okay.

COLONEL PADAYACHEE: And wrote a letter to say it is done in the e-Vetting system, whereas you write a letter to say that Ms Mokwele does not have a force number, but her application form for vetting has been completed and acknowledged that she is received it. But to apply for it and
20 register it on the e-Vetting system, you cannot because you do not have a Commander.

The Commander must sign off on it, and it cannot be captured. So the Inkwazi that deals with service providers, she went and did it there, where it is totally unnecessary. As a civilian, you do not have a force number.

So you put in your application. You have a copy of your application form completed, but the details of your Commander would not be there. I am just saying now what should have been done, not to manipulate the system.

ADV SELLO SC: Okay.

COLONEL PADAYACHEE: This is what should have been done with Brigadier Mokwele, who is the head of the vetting system, should know better. Write a letter ...[intervenes].

ADV SELLO SC: Brigadier Ncube, I think.

10 **COLONEL PADAYACHEE:** Yes. Write a letter to say that the applicant is a civilian and does not have a force number, and therefore she cannot apply via the e-Vetting system.

ADV SELLO SC: Okay.

COLONEL PADAYACHEE: But Brigadier Ncube went and took the same thing and done it on the Inkwazi. Then she writes a letter, and in the letter she lies.

ADV SELLO SC: Okay. Let me just test this logic, and this is just logic. I apply logic to this process. People are
20 coming in for an interview for consideration to be appointed to that very sensitive environment, as you have so extensively described in your affidavit.

That letter seemed to suggest that before you come into the interview, you must have entered your details into some system because that system begins to check me,

because they could very well be wasting their time interviewing somebody who has got four active warrants of arrest out there.

That would make sense if that is the purpose, right? To start checking me as I come for the interview. So they do not want to interview somebody who has not begun a process of vetting. Now, how does a civilian achieve that? You say you complete a form, a written form that is going to be filed, but there is nothing that is acting on my
10 details to see whether or not I should even be considered for an interview.

COLONEL PADAYACHEE: You got your invitation letter.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: Your ID. You go to the assessment ...[indistinct]. That is all you need.

ADV SELLO SC: No, that is fine, but it is this invitation letter that requires a start of a vetting process.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: And we agree that because she is not a
20 government employee, she does not have a PERSAL number, she cannot be vetted like Commander Van Vuuren and I forget his – I apologise, I forget the rank. But she is a civilian, but the process must start.

So, for me, logic would dictate that say we have to enter your name into the system to start finding out about

you. Because, perhaps, I do not know how the systems work, but they might just throw a red flag and communicate directly to the panel that they should not even let me through that door. If anything, they should call SAPS because I am a wanted person. That might be the value.

COLONEL PADAYACHEE: The time when ...[intervenes].

ADV SELLO SC: Do you have a difficulty with that?

COLONEL PADAYACHEE: Counsel?

ADV SELLO SC: Do you have a difficulty with that logic
10 that I am applying to why ...[intervenes].

COLONEL PADAYACHEE: I do.

ADV SELLO SC: Okay, tell me your difficulty.

COLONEL PADAYACHEE: It is basically straightforward.

She has got an invitation letter at the bottom:

“Kindly take note of the following.

Original certificate and copies of
qualifications, driver's licence and ID.”

You must come with it ...[intervenes].

ADV SELLO SC: To go where?

20 **COLONEL PADAYACHEE**: The fact remains here is that
you cannot – it is a vetting system. It is security clearance.
You cannot get into the e-Vetting and log it because you do
not have a PERSAL number and you do not have a
Commander. This is identified by – the people that sent the
letter to her and invited her would have known.

But, beside the fact, just write a letter addressed to the panel that Ms Mokwele has completed an application. There is no Commander on it. It cannot be captured on the e-Vetting system because she does not have a PERSAL number. She is not yet appointed, finished.

ADV SELLO SC: Okay.

COLONEL PADAYACHEE: But now you cannot go to the Inkwazi system and register there as a service provider just to get that there, that proof.

10 **ADV KHUMALO SC:** Is that not then an internal irregularity? Because if the Chairperson of the panel says go through the e-Vetting system, these letters are from the Chairperson of the panel addressed to all the candidates to say that is how you should go about it and that is the person you should contact. So it is not the case of candidates themselves doing something that is improper.

COLONEL PADAYACHEE: Commissioner, Chair, Commissioners, we are not talking about Ms Mokwele doing something irregular. We are talking about Brigadier
20 Mokwele who is the head of the vetting system that should have known better.

ADV SELLO SC: Ncube.

ADV BALOYI SC: [Indistinct]... You have one of your charges. The charge against Ncube on this issue is Ncube and Mokwele.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: So, according to you, Mokwele has done something wrong by being put on the, what do you call it? Inkwazi.

ADV KHUMALO SC: On the service provider.

ADV BALOYI SC: Ja, you say she has done something wrong.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: And yet I understand you now to be
10 saying it is a Ncube problem. Why would you charge her with this?

COLONEL PADAYACHEE: All that we have there, Commissioners, we do not know what was the communication between Mokwele and Ncube. But what we know, we have a letter from Ncube where she is saying that Ms Mokwele has been registered on the e-Vetting system, and Ms Mokwele herself knows that is not the fact. She is registered on the Inkwazi system.

But be that as it may, both of them are charged,
20 and according to the charge sheet, is that what you say, Commissioner Baloyi? I think that charge sheet that you have, that must be the initial draft charge sheet that is there. Bear in mind that as you go into the court processes, and just before pre-trial, those charge sheets are finalised as to way forward.

ADV BALOYI SC: Even so, even allowing for that, you remember why we are having this long discussion with you since yesterday. Keep that in mind. So even allowing for that, this is not necessarily the last, the final charge sheet, that you would, from the onset, charge her in your first draft charge sheet that you include her under this charge that she was placed on the service provider in Inkwazi platform, when the letter you are referring to from Brigadier Ncube does not say anything about her, her collusion, and your
10 charge is she colluded.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: And if that letter is the only basis on which you have included her in that charge, in that charge about her vetting being on the Inkwazi, one, on the face of it, it seems truly, truly petty to charge her with that when you have absolutely no basis, but also considering that you understand she could not have been on the e-Vetting system because you say you understand it, you know that she could not have been there.

20 In fact, when I say it is petty, at best it is pettiness, but it suggests something much more sinister because you do not have facts that implicate her in being on the Inkwazi platform, vetting platform. You do not implicate her in the Ncube letter because that letter says nothing about her. And if you want to say, oh, it is that letter that makes me

include her with this charge, then I am going to say, well, you seem to be prepared to suck up facts out of thin air which are not supported by anything if you say this letter implicates her. The letter does not on its terms. It makes absolutely no reference to her.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: You know she could not have been on the e-Vetting platform according to you, because she does not have a Commander, she does not have a PERSAL
10 number. She gets put onto the service provider platform by somebody else. You include that against her. You make her complicit.

You say that is your wording. You say she was in a conspiracy, she colluded with Ncube in a document that is seeking to get you an arrest warrant against her. So it is not just an affidavit that is lying around in your office. You make those allegations in a charge sheet that you are going to present when she applies for bail.

The Court sees, the Magistrate sees a charge sheet
20 at that point that says she colluded with Brigadier Ncube to be placed on this platform when you have absolutely zero facts that justify that. That is a problem. It is a serious problem, Colonel. It is.

You had no facts whatsoever. You made it up. You made it up to include her in this charge, and that is deeply

problematic. In fact, it speaks to, until it is explained properly and satisfactorily why you included her on this charge, it speaks to an abuse of your power and authority to victimise an innocent person, at least on this charge, when you have no facts about it. You can comment if you want to.

COLONEL PADAYACHEE: Thank you, Commissioner. I note, and I note you say I included her on the charge sheet. I am at pains at that. It is my affidavit, my investigation, my
10 affidavit ...[indistinct]. I do not draft the charge sheets and say who must be charged for, who must be charged, what charge is there. I do not. That is at the prosecutor's door. They make that determination. So ...[intervenes].

ADV BALOYI SC: I am prepared to accept that. And what you are doing with that answer, in fact, what that answer does is it causes us to call the prosecutor to come and explain how these charges were formulated. I do accept your answer, and I will not persist in this.

COLONEL PADAYACHEE: Thank you.

20 **ADV SELLO SC**: If we then move on, on this vetting issue, and I invite you to CJC37013, same file, page 381. Once again, it is a pack of letters. It is the same. I think it starts at 380. It is the same letter addressed to the three candidates and it is said it is a letter of confirmation. We can look at the one at 380. And it is signed by Brigadier

Ncube. That is that letter we consider that you put before General Khan because it has got his name at the top there under enquiries. Do you remember this letter? Do you remember this letter that we are looking at, at 380? That is the letter that General Khan speaks to which Brigadier Ncube signed.

COLONEL PADAYACHEE: 380, yes, confirm.

ADV KHUMALO SC: Advocate Sello, to be fair to Colonel, the one we were looking at was the Mokwele letter at 381.

10 **ADV SELLO SC**: Let us go to 381. Let us go to 381. Okay, the point, let us start at 380. We are looking at 381, right? And that is a Mokwele letter. It is worded in the exact same terms as the one at 380 for Van Vuuren. You confirm?

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: And similarly for the one at 382 for Bapela.

COLONEL PADAYACHEE: That is correct.

ADV SELLO SC: So it is the same letter.

20 **COLONEL PADAYACHEE**: Yes.

ADV SELLO SC: Okay. If it is more comfortable to look at the Mokwele one, let us go to the Mokwele one at 381. It is signed by Brigadier Ncube. It is the one that has got the name of General Khan at the top under enquiries, the one that General Khan speaks to in his affidavit. You remember

we discussed it?

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: You nod. And at paragraph 1 it says:

“This confirmation letter is to officially
state that on 25 July 2024, the applicant,
Ms Mokwele...”

It has got an ID number there:

10 “...will ...[indistinct] submitted an online
application on the South African Police
Services, SAPS, e-Vetting system for top
clearance security...”

With that particular reference. It then says:

20 “The top secret security clearance
application of Ms Mokwele was received
by the vetting authority for review and
approval in potentially granting the
required security clearance for his
specific position in SAPS. It concludes,
however, the top secret security
clearance application of Ms Mokwele, Ms
Mokwele's I think eligibility is pending
and not yet finalised.”

Do you see that?

COLONEL PADAYACHEE: I see that.

ADV SELLO SC: This is dated 25 July 2024.

COLONEL PADAYACHEE: Correct.

ADV SELLO SC: You remember we had those invitation letters that say go via the vetting department there and submit your details and then they come back with this letter of confirmation that they have subjected themselves to that process as prescribed by the letter of invitation.

COLONEL PADAYACHEE: Yes, the letter of invitation.

ADV SELLO SC: None of these two letters constitute giving Ms Mokwele a clearance certificate. Do you confirm?

10 Because this very letter we are talking about, we are looking at, he says that clearance, that top security, top secret security clearance application of Ms Mokwele, it says is eligibility pending and is not yet finalised. There is some wording issue there, but the key issue is that it is not finalised. It just acknowledges that they have received something from her. Do you agree?

COLONEL PADAYACHEE: Yes, I agree.

ADV SELLO SC: Okay.

20 **COLONEL PADAYACHEE:** I can agree to what you are saying here and the fact that they have received it, but the content of it that she confirms, she submitted an online application.

ADV SELLO SC: No, I hear that. All I am saying is neither of the two letters we have looked at constitute approval or grant of a top secret clearance. They are not doing that.

They are just recognising and acknowledging that a process was initiated.

COLONEL PADAYACHEE: No, it does not refer to them giving a top secret clearance.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: It just talks to an application. TO give a clearance would be impossible to give it almost immediately.

ADV SELLO SC: Now, that is what we have in that
10 recruitment file insofar as vetting is concerned. If we go
back to your affidavit 2378, I hope you have not lost it, that
is their warrant of arrest affidavit. 2379, my apologies.
2379. About the panel referring, amongst others, Ms
Mokwele to go to the e-Vetting system and be registered
there before she comes for the interview and now we know,
after that process, she receives the letter we have just
looked at that confirms that, yes, she did subject herself to
that process. At 8.11, you conclude:

20 “Ncube should not have done this as
Mokwele was only supposed to apply for
vetting after she received a letter of
conditional appointment.”

You are now after the appointment, but where we are is
even pre-interview. So, are you suggesting that she ought
not to have been subjected to any vetting process until she

was awarded a letter of conditional appointment? Is that how I should understand it?

COLONEL PADAYACHEE: Your whole vetting process will kick off once you receive a conditional letter of appointment.

ADV SELLO SC: Okay.

COLONEL PADAYACHEE: That is how you understand it.

ADV SELLO SC: I am with you.

COLONEL PADAYACHEE: So, according to the advert,
10 according to the application, it is all there. And even though you have this letter of invitation to come and this is what must be done as proof.

ADV SELLO SC: So, your problem is that she was subjected to a vetting process, some form of vetting process or an attempt to do so prior to her receiving a letter of conditional appointment. I am trying to understand what is this thing in the complaint.

COLONEL PADAYACHEE: The vetting process had not started. What she did to get through and comply with the
20 letter, she could not register on the e-Vetting system because she has no force number and no Commander. Right ...[intervenes].

ADV KHUMALO SC: Then, Colonel, all that means is that the letter of 24 July was disadvantaging her or the letter before this one because that letter said, before you come to

the interviews, bring your IDs and other things and then submit your vetting application through the e-Vetting system. That was not required. It could have been done within six months after her appointment.

COLONEL PADAYACHEE: Correct.

ADV KHUMALO SC: So, the fact that that letter was sent to her means it was disadvantaging her because it was requiring her to go through something which was actually not required.

10 **COLONEL PADAYACHEE**: Chair, Commissioners, exactly so. She ...[intervenes].

ADV KHUMALO SC: So then why would you charge her for that, that she is being disadvantaged? She is not being benefited by that thing. She is being disadvantaged. Why would that then constitute a charge or an offence by her? She is being required to do something that she is not even supposed to do because vetting is required within six months of appointment, not before you come for an interview.

20 **COLONEL PADAYACHEE**: Exactly, Chair. As I said initially to Commissioner Baloyi in my response to her, I do not draft the charges.

ADV KHUMALO SC: We have been there before.

COLONEL PADAYACHEE: Yes.

ADV KHUMALO SC: But the prosecutor gets all that

information from your affidavit, takes your affidavit and says, here is the affidavit, this is what it says, these are the facts it puts up, this is what it says is wrong with this whole process. Then they put it in a charge. So what Advocate Sello was showing you in 2379, that is not the charge sheet, that is your affidavit because the charge sheet follows at 2418. 2379 that she was referring you to, that is your affidavit which formed the basis of a later charge.

COLONEL PADAYACHEE: Noted, Chair. My affidavit, 8.9, 10 8.10, 8.11 and 8.12, I am trying to understand where Commissioner draws that, that I mentioned Mokwele.

ADV KHUMALO SC: In 8.9, Ncube compiled a letter, she misrepresented that Mokwele had applied on the e-Vetting system. This was not true, as it would have been impossible for Mokwele to apply, so she did not have a PERSAL number. Through Ncube's unlawful and intentional action, Mokwele's application was registered to trigger the vetting process. And that formed the basis of the charge sheet, which was later formulated. Because absent this 20 information, there is no way a prosecutor should have said, oh, there is a charge there too, there is a charge there too.

COLONEL PADAYACHEE: Therefore, Chair, Commissioners, what I am saying to you, my affidavit does not say that Mokwele must be charged for corruption because she colluded with Ncube. This affidavit is done,

the prosecutors prepared the charges for Mokwele. But my affidavit here, as you can see, Chair, it does not show that Mokwele colluded with Ncube. It talks to Ncube only.

ADV KHUMALO SC: But you see, it also does not say Mokwele had nothing to do with what I have set out in 8.9, 8.10 and 8.11.

COLONEL PADAYACHEE: Sorry, Chair, I cannot hear you.

ADV KHUMALO SC: I am saying your affidavit also does not say Mokwele had nothing to do with what is set out in
10 8.9, 8.10 and 8.11.

COLONEL PADAYACHEE: Chair, Commissioner, the fact that it is not there, I would put it there, she had something to do with it. The fact that it is not there, does it make it wrong? I do not know.

ADV KHUMALO SC: You see, Colonel, your problem is this. You must know that the prosecutor is going to rely on your affidavit to draft the charge sheet. And anything that is not clear, you have to clarify it because if you leave it open-ended, reading 8.9, 8.10 and 8.11 together suggests
20 that Ncube and Mokwele did something wrong. And nowhere do you say I do not blame Mokwele for this, this is on Ncube. So it must be left to Brigadier Ncube.

COLONEL PADAYACHEE: Can I respond, Chair?

ADV KHUMALO SC: Yes.

COLONEL PADAYACHEE: Chair, Commissioners, this is

my affidavit. In my affidavit, I believe that I have put in here Ncube and I have not put in Mokwele here, and this is my affidavit. And as Commissioner says, no, you should have put Mokwele in here to say there is nothing, I can take that no further except to say there is my affidavit, I have put it in there, I have referenced to Ncube what she has done, I did not indicate that Mokwele – so she and Ncube got together and they did something wrong, and this is my affidavit and I can take it no further.

10 **ADV KHUMALO SC:** Just one last point on this. So when the prosecutor drafts the charge sheet, I am assuming they will start with a draft, do they not discuss it with you before they finalise it? Just to make sure that the facts they have put in their charge sheet are consistent with your investigation and your affidavit. Do they not say to you, I have looked at everything, I have looked at the docket, I have looked at your affidavit, I have now drafted a charge sheet. Have a look at it and confirm that I have recorded the facts correctly. Do they not do that?

20 **COLONEL PADAYACHEE:** That has not happened on this occasion, Chair. If I say that it had happened, then I will be lying. It did not. The ...[intervenes].

ADV KHUMALO SC: Does it happen on other occasions?

COLONEL PADAYACHEE: Sorry, sir?

ADV KHUMALO SC: Does it happen on other occasions?

COLONEL PADAYACHEE: No, Chair, not that I could recall.

ADV KHUMALO SC: So the IO does not have sight of the charge sheet before it is finalised?

COLONEL PADAYACHEE: The charge sheet, the affidavit is compiled, it is given to the prosecutors. They compile the charge sheets and most often the charge sheet is in draft format. In this case, it was attached to the affidavit. In other cases, I cannot really recall that, you know, maybe
10 there was discussions on other matters, but the affidavit is done, it is given, the prosecutors draft it out and that is as far as I am concerned.

ADV KHUMALO SC: So you say in this case you annexed the draft charge sheet to your affidavit?

COLONEL PADAYACHEE: Yes, sir.

ADV KHUMALO SC: Now, did you not see that there were inaccuracies in the charge sheet to the extent that the charge sheet suggests that Ms Mokwele had anything to do with what is set out in 8.9, 8.10 and 8.11 of your affidavit?
20 Did you not ask the same question that Commissioner Baloyi asked, why is she included in the charge if she had nothing to do with that? Did you not ask the same question?

COLONEL PADAYACHEE: Yes, Chair, Commissioners, I did not take notice of it on the charge sheet and that is my

saying. I did not take notice of it on the charge sheet. It was a draft charge sheet, I attached my affidavit to it and I went forward from there. To say anything else means I am building up another story.

ADV KHUMALO SC: The concern, Colonel, is that you are presenting that charge sheet to the Court because you want the Court to authorise you to take certain steps, including arrests, including many other things. One would expect that if you were relying on that draft charge sheet in your
10 affidavit, you should make an effort to study it and satisfy yourself that it accurately reflects what IDAC's case is against the people you seek to arrest and to charge.

COLONEL PADAYACHEE: Thank you, Chair, Commissioner. Noted, your comment noted, Chair.

ADV SELLO SC: I think my concern is deeper than that. I do not, with respect, accept your explanation, Colonel. You caused for somebody to be arrested. Somebody who, on your own facts, was not complicit in the crime that you describe in the charge sheet. But because of your affidavit
20 and the way the charge sheet is drafted, you caused for her arrest.

That is irresponsible in the extreme. That is abuse of power, and it is not enough for you to say noted. No, Colonel, I do not accept that. I worry for the rest of the citizenry. Must I? I do not accept your answer. I do not.

No, Colonel.

COLONEL PADAYACHEE: Chair, Commissioners, Counsel, I note your comment. When I applied for the warrant, there are two charges on the warrant which I took notice of. As I said, with regards to the charge sheet, the prosecutors are the legal experts in compiling the charge sheet. And I note that you are saying that, what you are saying in your comment against me.

I also have a concern, but as I am saying, and I
10 note what you say, is that the prosecutors are the legal-minded people that put the charges together. I have my affidavit. I have explained it to Chair and Commissioners. And moving from here, I can take that no further. Your comment is noted.

ADV SELLO SC: Thank you. It has been a tad unfair ...[intervenes].

ADV BALOYI SC: You know, Colonel, you have explained the approval processes, that a charge sheet is drafted and then it will be submitted to management. Eventually,
20 somebody higher up gets to approve. Now, that higher up people, beyond you, so it is you, but it moves on through the stages, they relied on your affidavit. They can say that, that they relied on your affidavit to approve this charge sheet.

And it is simply not good enough that you have it

attached to your affidavit, and the charge sheet is attached to your affidavit and then you say, well, I did not see it. It is simply not good enough because you represent, when you sign this affidavit, as you would know, and I am not lecturing you or speaking to you about something that you do not know.

As you would know that when you sign and stand before a Commissioner of Oaths, you represent that you know, and these are facts that are within your personal
10 knowledge, you take ownership. So that it is drafted by a prosecutor does not excuse you whatsoever. It is your affidavit. You represent, I have read the pages. That is why you are asked, when you take the oath, do you know and stand by what is in this affidavit?

So from where I am sitting, I hold that you know, you must be held to have known the contents of your affidavit and of the charge sheet, and you were happy to depose under oath that that is your affidavit and you stand by it, including the charge sheet, and you cannot be
20 excused on the basis that it is drafted by a prosecutor, but also I did not notice.

It simply does not. It is an excuse that is not available to you. You are responsible for this affidavit. You represent it to a Court that this is your affidavit. It contains your truth, and you must be held to that. You can comment

if you want to.

COLONEL PADAYACHEE: Noted, Chair. You have mentioned it.

ADV BALOYI SC: Thank you.

ADV SELLO SC: Staying with that paragraph 8.11, we are still at page 2379 of your affidavit. We just dealt with the point you make that Ms Mokwele was only supposed to apply for vetting after she had received a letter of conditional appointment. I am interested in the concluding
10 sentence in that paragraph:

“Civilian vetting where required must be done through the State Security Agency.”

You see that?

COLONEL PADAYACHEE: [Indistinct].

ADV SELLO SC: Your affidavit, the application for warrant of arrest, I am at 2379. We dealt with the first part of paragraph 8.11. I am now at the tail end of that paragraph 8.11. Do you see where I am reading from?

20 **COLONEL PADAYACHEE**: At the bottom of 8.11?

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: Civilian vetting required must be done through State Security Agencies.

ADV SELLO SC: That is correct.

COLONEL PADAYACHEE: That is more or less for civilian

people ...[intervenes].

ADV SELLO SC: I see what my question is coming. What is the source of that claim? On what basis do you say that she ought to have gone through the State Security Agencies there and act a policy, some form of prescript, that so prescribes? For a civilian, the vetting must happen through the SSA.

COLONEL PADAYACHEE: What is in there is that what I stated there, that civilian vetting are normally done through
10 State Security Agents.

ADV SELLO SC: No, you say must be done through SSA. That there has to be a source of that somewhere. What is the source? Is it an Act? Is it Regulation? Anything that you can point us towards?

COLONEL PADAYACHEE: Act, Regulation with regards to security vetting at the state level ...[intervenes].

ADV SELLO SC: Ja, what prescribes that civilians in these circumstances must be vetted by SSA?

COLONEL PADAYACHEE: There is no particular Act or
20 Regulation that I refer to.

ADV SELLO SC: Okay.

COLONEL PADAYACHEE: It is just a statement that I made.

ADV SELLO SC: So, you cannot then be correct that civilian vetting where required must be done through SSA.

That is not a fact.

COLONEL PADAYACHEE: No.

ADV SELLO SC: It is a suggestion of perhaps how ...[intervenes].

COLONEL PADAYACHEE: Yes, it is ...[intervenes].

ADV SELLO SC: It could have been ...[intervenes].

COLONEL PADAYACHEE: It is not a suggestion. I cannot take that further. Thank you, Counsel.

ADV SELLO SC: Thanks. Then lastly, I guess, to close on
10 this topic ...[intervenes].

ADV KHUMALO SC: Can we do this just for completeness? On the following page, 2380, at paragraph 11.

ADV SELLO SC: Yes.

ADV KHUMALO SC: It is an issue we discussed a few minutes ago. You say to the Court:

20 “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. See Annexure A.”

So you are telling the Court that what is in the charge sheet is an outline of the acts committed by each of the seven

accused. It is you who is saying that to the court.

COLONEL PADAYACHEE: Noted, Chair. I acknowledge that.

ADV SELLO SC: Okay.

ADV BALOYI SC: And the perjury here would have been what?

COLONEL PADAYACHEE: The perjuries would have been where you signed under oath that the information that you provided is true and correct.

10 **ADV BALOYI SC**: And what was the information that was incorrect?

COLONEL PADAYACHEE: I think it was on the application form. I just got to look back on my memory into it.

ADV BALOYI SC: You do not remember offhand?

COLONEL PADAYACHEE: Not offhand.

ADV BALOYI SC: Okay. And then defeating or obstructing the administration of justice would have been what here? Remember we are talking about the recruitment process, a panel, vetting, scoring. What would have been obstructing
20 the course of justice here?

COLONEL PADAYACHEE: I will have to look at this again and go through my stuff, Commissioner, to respond on that in terms of the charges that are there. To just pop it out now, also it has been a long day. But nonetheless, what I am saying is that I have to go back and look at this part of

the thing you brought to my attention now.

ADV BALOYI SC: Okay. But for now, you do not have an answer to my question. So I must deal with it on that basis. My question is not answered.

COLONEL PADAYACHEE: Your question is not answered, Chair.

ADV BALOYI SC: Thank you.

ADV SELLO SC: Staying on the page, if we go to the top, your affidavit states at the top of 2380, at paragraph 8.12:

10 “Ncube therefore ensured that Mokwele
 received an undue advantage in
 circumstances where it prejudiced the
 SAPS ...[indistinct].”

What undue advantage is this and what was the prejudice to those institutions? Because this is a conclusion.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: I do not understand what undue advantage did Ms Mokwele receive by being subjected to a vetting process before the interview and then bringing back
20 the letter signed by Brigadier Ncube to say that she has submitted. But no, you know, it is still underway, the vetting process. What undue benefit did she derive and what prejudice did SAPS suffer?

COLONEL PADAYACHEE: The fact that of the manipulating of the vetting process of the application and

the letter that is there, that it prejudiced, I put there that it prejudiced the SAPS ...[indistinct] one component. That is what I meant.

ADV SELLO SC: Okay. And the undue advantage she received, what is that advantage?

COLONEL PADAYACHEE: The undue advantage is that a clearance has been done, meaning the application process that she is registered on the system.

ADV SELLO SC: But she has not been cleared, we do
10 know that.

COLONEL PADAYACHEE: It is not the security clearance that is approved.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: That to say that that process of being registered on the system.

ADV SELLO SC: Of being subjected to a vetting process, it has begun. That is what we agree the two letters mean. That she is not cleared yet.

COLONEL PADAYACHEE: That the application form has
20 been done on the e-Vetting system.

ADV SELLO SC: Yes.

COLONEL PADAYACHEE: When it was not.

ADV SELLO SC: So what is the advantage to her?

COLONEL PADAYACHEE: Well, the requirements that was meant for her with regards to getting registered on the e-

Vetting system and putting the application in, it was not done. So that just gave her the advantage of her now going for the interview. That process is met when it is not met.

ADV SELLO SC: Okay. And lastly, then, let us just look, having worked through this vetting issue, let us go to the charge sheet as drafted by whoever. At 2425, we stay with the same file of your affidavit. The charge sheet on this issue concludes misrepresentation at 12.13. That is where I am at, page 2425. At 12.13, it states:

10 “Misrepresentations were also made by
the accused with regards to the vetting
application by accused number 7, Ms
Mokwele, resulting in her getting a
security clearance she was not qualified
to get.”

Where does anyone get the idea that as at the time this charge sheet was drafted, Ms Mokwele had a security clearance?

COLONEL PADAYACHEE: When I look at this paragraph
20 now in hindsight, it is the vetting application.

ADV SELLO SC: Okay. What about the vetting application?

COLONEL PADAYACHEE: That is to get it registered on the system.

ADV SELLO SC: Okay. So the part that resulting in her

getting a security clearance, that is factually incorrect because she did not get a vetting clearance.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: Okay. And in fact, we know that she was – having been recommended, she had six months to get through the vetting process.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: So her appointment was conditional amongst others on her being cleared, but for that she had
10 six months.

COLONEL PADAYACHEE: That is correct.

ADV SELLO SC: Okay.

ADV KHUMALO SC: And then she was charged before that six months even expired.

COLONEL PADAYACHEE: Chair?

ADV KHUMALO SC: She was arrested before that six months even expired.

COLONEL PADAYACHEE: That is correct, Chair.

ADV SELLO SC: I would like to move to a very short topic,
20 which is my last topic.

ADV BALOYI SC: Sorry, can I?

ADV SELLO SC: Absolutely.

ADV BALOYI SC: I just want to clarify something before you leave the charge sheet. Colonel, I am looking at, in that charge sheet, I am looking in the bundle page 2426

under the heading legal framework, if you would just go there.

COLONEL PADAYACHEE: 2426, Commissioner?

ADV BALOYI SC: 2426, ja. And then you have got a capital A legal framework. You see that? Legal framework, the heading at 2426?

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: Are you there? Are you there? Are you on that page?

10 **COLONEL PADAYACHEE**: Yes.

ADV BALOYI SC: Okay. So under that heading of legal framework, you set out provisions of PRECCA, right? And up to page 2432, that is the framework, the legal framework you set out.

COLONEL PADAYACHEE: Yes, Chair.

ADV BALOYI SC: And then that is the only legal framework that you discuss in this document. So we can take it that you place reliance solely on PRECCA for these charges because that is the only legal framework you are
20 discussing. I just want to make sure if that is correct. That is what I am reading correctly.

COLONEL PADAYACHEE: No, it is not the only one.

ADV BALOYI SC: Okay, what else? And where do I see that in the charge sheet?

COLONEL PADAYACHEE: In my affidavit, yes, I put in this

legal framework of PRECCA, but PRECCA was not the only thing that was there.

ADV BALOYI SC: Okay, what else? I am looking at the charge sheet, remember? I am not looking at the affidavit at this stage. I am looking at the charge sheet. And I just want to propose something, but I need first to know that I am correct in the way I am reading your charge sheet. It has one heading, which is legal framework.

COLONEL PADAYACHEE: Yes, the charge sheet.

10 **ADV BALOYI SC:** And then it discusses PRECCA, which sort of suggests that that is the big – and then you have got a heading at 2433, which is corruption charges.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: So, and then I ask, this must mean that you based these charges on PRECCA.

COLONEL PADAYACHEE: According to the charge sheet?

ADV BALOYI SC: Yes, according to the charge sheet. According to the charge sheet.

COLONEL PADAYACHEE: Yes.

20 **ADV BALOYI SC:** Okay, all right. And the charges accordingly, in fact, the way that the charges are formulated, the counts, Count 1 up to the last one, you make reference to PRECCA.

COLONEL PADAYACHEE: On ...[intervenes].

ADV BALOYI SC: On all the counts. All your counts are

PRECCA-based counts, except for one. There is the fraud, which you base on the Criminal Procedure Act. You are right. So you do not rely only on PRECCA.

COLONEL PADAYACHEE: No, I do not only rely on PRECCA because ...[intervenes].

ADV BALOYI SC: Okay, you rely also on the CPA, the Criminal Procedure Act.

COLONEL PADAYACHEE: Sorry?

ADV BALOYI SC: You rely also on the Criminal Procedure
10 Act.

COLONEL PADAYACHEE: Criminal Procedure Act, yes. This charge sheet, Commissioner, as I said, this is drafted by the prosecutor.

ADV BALOYI SC: Ja, but it is your charge sheet.

COLONEL PADAYACHEE: It is my charge sheet.

ADV BALOYI SC: Okay, all right. No, I was just confirming that is it solely PRECCA, or you rely on other provisions as well of the law?

COLONEL PADAYACHEE: Yes, you rely on other
20 prescripts of the law, the Criminal Procedure Act, et cetera.

ADV BALOYI SC: I have to correct myself. Thank you, Chair. It is Criminal Law Amendment Act. You did not correct me. You should have corrected me. Not Criminal Procedure Act. Criminal Law Amendment Act.

COLONEL PADAYACHEE: I am sorry, Commissioner. It is

that time.

ADV BALOYI SC: For me, too. Thank you.

COLONEL PADAYACHEE: Thank you.

ADV SELLO SC: Colonel, and I promise this is the last very small point. We are now at a point where they have been arrested. They have applied for bail. They are granted bail. You recall they then approached the court to amend the bail conditions. Now, that is where we are at. For this, I would like us to go to File 7, page 2950.

10 **ADV KHUMALO SC:** Advocate Sello, I want to ask very quickly, 2438.

ADV SELLO SC: Absolutely, Commissioner.

ADV KHUMALO SC: We discussed this earlier in File 6. I want to make sense of the file where the charge sheet is. Sorry, the file where the charge sheet is, is File 6. I am looking at page 2438.

COLONEL PADAYACHEE: Two?

ADV KHUMALO SC: 2438.

COLONEL PADAYACHEE: Sorry, 242?

20 **ADV KHUMALO SC:** 2438. Now, in our earlier engagement, you gave us the process and you created the impression that it is the prosecutors who decide to charge, and IDAC, you know, sits in the back. But reading this letter, this letter is from the acting Director of Public Prosecution Gauteng Division, Pretoria, and it is addressed

to Advocate Johnson, Director at IDAC. And it says:

“Your correspondence dated 24 June 2025 in connection with the above matter refers, I have read the consultation note as well as the draft charge sheet attached to the above correspondence.”

Now, that suggests to me that IDAC put together the draft charge sheet and not the other way around. And then look at the last paragraph:

10 “Having considered the contents of all this documentation, that would include the draft charge sheet, I am satisfied that a *prima facie* case has been made out against the accused and the suspects, and I concur with your decision to charge...”

So IDAC's decision to charge:

“...them on the offences that set out in the charge.”

20 So is that not how it happened and not the other way around?

COLONEL PADAYACHEE: Commissioner, Chair, Commissioner, this is a consultation note that is between the head of office, the ID, and the Director of Public Prosecutions. I have no role in this.

ADV KHUMALO SC: But do you doubt the accuracy of this document? It does not reflect what happened.

COLONEL PADAYACHEE: I am not saying I doubt the accuracy of the document. What I am basically saying is that this is a communique between the head of IDAC management and the Director of Public Prosecutions, if there is something specifically that you want me to say on it.

ADV KHUMALO SC: No, I am saying it sets out what
10 happened from the 24th, and it says there is a consultation note as well as a draft charge sheet attached to the above correspondence. That is the correspondence of 24 June 2025, and then it says, having considered all the documents, I concur with your decision to charge on the offences. So the decision was by IDAC to charge, and also the draft charge sheet was prepared by IDAC.

COLONEL PADAYACHEE: Yes.

ADV KHUMALO SC: And the acting Director of Public Prosecutions looked at all of those and said, I agree with
20 IDAC.

COLONEL PADAYACHEE: Chair, Commissioners, no, thank you. I understand what you are saying. Yes, it is IDAC that is presenting this to the Director of Public Prosecutions, not the other way around.

ADV KHUMALO SC: Including the draft charge sheet.

COLONEL PADAYACHEE: Yes, including the draft. It is not done by the Director of Public Prosecution. From the way I understand this and the way I have learned it in the office is that we want to prosecute this in your province, and there is the consultation note together with that. That is how I understand it.

ADV KHUMALO SC: So your earlier evidence to distance yourself from the draft charge sheet, that cannot hold because the draft charge sheet comes from the
10 investigators, which is IDAC.

COLONEL PADAYACHEE: Chair?

ADV KHUMALO SC: Remember earlier you sought to distance yourself from the draft charge sheet by saying, I am only responsible for my affidavit. I am not responsible for the draft charge sheet. That is done by the Director of Public Prosecutions. Now this letter says the opposite. This letter says the Director of Public Prosecutions received the consultation note with the correspondence dated 24 June 2025. Attached to that was a draft charge sheet. And
20 what the Director does is they concur with your decision, being IDAC's decision, to charge the suspects.

COLONEL PADAYACHEE: Yes, Chair. Correct. That is in the document, yes.

ADV KHUMALO SC: Yes.

COLONEL PADAYACHEE: Thank you.

CHAIRPERSON: But can you really hide behind the fact that the signature on that communication to the DPP is Advocate Johnson's signature? In response to an earlier question, maybe two questions or so before by Commissioner Khumalo, you said, but no, no, no, no, no, that is a communication between the Director, the investigating director and the DPP, which seems to suggest that you had nothing to do with the charge sheet. Did I understand you? Did I not understand you correctly?

10 **COLONEL PADAYACHEE:** With regards, I am not ...[intervenes].

CHAIRPERSON: You said, you even used the word communique. I am choosing to use the word communication. Do you remember saying something like, but that was a communication between, or rather sent by Advocate Johnson to the DPP?

COLONEL PADAYACHEE: Let me put it in context.

CHAIRPERSON: Please, yes.

COLONEL PADAYACHEE: A consultation note is drafted
20 by the head of office, which is Advocate Johnson, to the Director of Public Prosecution.

CHAIRPERSON: Yes.

COLONEL PADAYACHEE: This is it, writing to her, and as it indicates the documents which is given to her. And then she looks at it, and it is the Director of Public Prosecutions,

that is her signature at the bottom, and so IDAC wrote to her, so that is correct.

CHAIRPERSON: Yes, what I am saying then is in the context of Commissioner Khumalo's question, you seem to be continuing to distance yourself in the sense that you are basically saying, even though there is a draft charge sheet from IDAC, a draft which was sent to the DPP by Advocate Johnson, you are distancing yourself and saying that was not sent by me. It was sent by Advocate Johnson. So
10 again, distancing yourself, but in a slightly different context now.

My question is, but can you do that? You have lived closer to all of this than Advocate Johnson has, and I find it difficult to believe or accept that you would not have had a hand in the drafting of that draft charge sheet.

COLONEL PADAYACHEE: Commissioner, I think we are missing each other somewhere.

CHAIRPERSON: Yes, please, let us meet each other.

COLONEL PADAYACHEE: Commissioner, as I said, the
20 draft charge sheet goes up to the Deputy Director of Public Prosecutions. It is presented before management, and once management has done ...[intervenes].

CHAIRPERSON: Which management? It goes to the DPP?

COLONEL PADAYACHEE: The IDAC, the head of office with their management.

CHAIRPERSON: Okay.

COLONEL PADAYACHEE: Yes. They have it there, and then it goes to the Director of Public Prosecution. So when you say I am distancing myself, now I am trying to understand how you mean that I am distancing myself when it is there with the head of office and their management, and now it has gone to the Director of Public Prosecutions.

CHAIRPERSON: In the sense that everything starts with you, basically.

10 **COLONEL PADAYACHEE**: From the investigation side, Chair.

CHAIRPERSON: Yes.

COLONEL PADAYACHEE: That I acknowledge.

CHAIRPERSON: And then you ...[intervenes].

COLONEL PADAYACHEE: I am part of the process, if I could answer that in a better way. I am part of the process. I am one leg in the process on the investigation side. So when you look at ...[intervenes].

CHAIRPERSON: The most important leg.

20 **COLONEL PADAYACHEE**: Yes, Chair.

CHAIRPERSON: You may be part of it, but the most important leg of the process.

COLONEL PADAYACHEE: Yes, the investigative leg, Chair.

CHAIRPERSON: All right, thank you.

ADV SELLO SC: Thank you, Chair. I said we are going to our last very small topic, and for that purpose, I would invite us to go to File 7, page 2950. You will recall I made the comment to you that we are now at post-arrest, post-bail application, and we know that some of the accused, the three, Khumalo, Madondo, Lekalakala, appealed one bail condition. You recall that? And what we have at 2950 is the judgment of the High Court in that appeal. You recall this judgment? I think the State opposed it.

10 **COLONEL PADAYACHEE:** Yes.

ADV SELLO SC: Yes. So if we turn to 2951, Generals Khumalo, Madondo, and Lekalakala have been granted bail with certain conditions. At 2951, it specifies a paragraph 1(b) that they appeal only one condition, and that is the bail condition that they were prohibited from being at any premises of Crime Intelligence within the Republic while their criminal trial is pending. You remember that condition?

COLONEL PADAYACHEE: Yes.

20 **ADV SELLO SC:** Yes. Now, there is a whole lot of detail. The Judge then considers what was argued on their behalf and on behalf of the State. If we go to page 2959, at paragraph 19.3 under the heading analysis of the appeal, the Court notes:

“The legal issue to determining these

proceedings, namely whether the Magistrate erred in imposing the bail condition must be assessed based on the material that was before him and the way he dealt with that information or evidence.”

So as I understood the argument, it was that that particular condition they were appealing was a condition not requested by the State. Do you agree with me?

10 **COLONEL PADAYACHEE**: Not requested by the?

ADV SELLO SC: By the State at the time that they were applying for bail, that the State never requested that they be denied access to all Crime Intelligence offices.

COLONEL PADAYACHEE: Yes, the presentation by the prosecutor. Yes.

ADV SELLO SC: The prosecutor never made such a request. And it concludes at page 2960, paragraph 19.7, having considered then these facts and then the Judge notes that at 19.7:

20 “Judges and Magistrates are expected to give reasons to ensure accountability, transparency, fair appeals, guidance in future cases and the public's access to justice, even though the Constitution does not explicitly require it. Where a

condition is imposed without any party requesting it, the reasons should be recorded so parties understand the decision. Stating reason deters unnecessary appeals and helps the Appellate Court assess the correctness of the decision.”

Now, if we go forward again to page 2961, and at 2961, at 19.4, the Judge quotes the law and points out that Courts
10 are discouraged ...[intervenes].

CHAIRPERSON: 14.

ADV SELLO SC: 19.14.

CHAIRPERSON: You said 4-1.

ADV SELLO SC: 19.14, thank you, Chair. For the record at 2961, paragraph 19.14, the Court quotes that Supreme Court of Appeal case and highlights that:

“Courts are generally discouraged from *mero motu* dealing with disputes not raised by the parties.”

20 At the conclusion of that paragraph, it notes:

“A key aspect of this system is that the parties define the issues for determination, present their arguments and leave the Court to act as a neutral arbiter of matters raised.”

And then I will invite us to go to 2962, where at 19.17 the Court concludes, or the Judge concludes:

“I am unable to find any judicial basis on the evidence and submissions before the Court a *quo* for the bail condition that was imposed. In exercising his judicial discretion, the Magistrate did not confine his assessment to the facts presented before the Court.”

10 And in upholding the appeal, the Judge concludes at paragraph 20.1:

“The Court a *quo*’s decision to impose the bail condition appealed against was made without identifying any supporting facts. It is arbitrary and incorrect and does not reflect a proper exercise of judicial discretion.”

In summary, the High Court concluded that that bail condition, which is the only condition that the three were
20 appealing against, that they should not enter any office of Crime Intelligence until the trial is disposed of, was not requested by the prosecutor. It had no basis and the Magistrate did not have the power to impose such a condition. You understand that?

COLONEL PADAYACHEE: That is understood.

ADV SELLO SC: Now, we have there from the record the notes made by the Judge of the conditions and for that same file, please go to page 2949.

ADV BALOYI SC: The Judge? Made by the Judge or the Magistrate?

ADV SELLO SC: The Magistrate. The Magistrate. Apologies. I am confusing my judicial officers' titles. I am at 2949. It starts at 2948. If you look at the case above there, that is the case that is reflected at 2954 in the
10 judgment. The judgment has got the High Court case and the Magistrate's Court case. The A16/463/2025.

So, these are the notes coming out of the Magistrate's Court. Now, I invite us to 2949 and there is that bail condition that is being appealed against because the Magistrate, Item 3 under condition, states:

“Accused number 1, 3, 4, 5, 6 and 7 are prohibited from being at any premises of Crime Intelligence within the country RSA while the matter is pending.”

20 So, that is the condition. Do you know, would you know where the Magistrate could possibly have sourced this condition if the prosecutor did not ask for it?

COLONEL PADAYACHEE: Can I comment?

ADV SELLO SC: Yes, please.

COLONEL PADAYACHEE: Thank you, Chair. Thank you,

Commissioners. I am not too sure where the Magistrate could have picked this up from.

ADV SELLO SC: Okay.

COLONEL PADAYACHEE: But I left court before they could pronounce on this bail condition. But before leaving, I spoke to the prosecutor and it is one of the conditions that I requested that the Crime Intelligence officers with the Secret Service account is that they be prohibited from entering those premises because witnesses, documents that
10 we will require and documents that we require and therefore she must, you know, in addressing the Court, she must address it, and then I left the court.

So, I was under the understanding that that bail condition, you know, the prosecutor brought it up. And even when I was contacted to say that this bail condition was not implemented, I think it was with General Lushaba. And, ja. So, but the bottom, the main fact of it is that the Magistrate, the prosecutor, did not request for it.

ADV SELLO SC: Yes.

20 **COLONEL PADAYACHEE:** I was under the impression she did. Before I left court, I said to her, this is, please, I whispered to her and then I had to leave court because I had to rush out. But it was never asked from the Magistrate.

ADV SELLO SC: Yes. And that is what the High Court

found by saying it was never asked from the Magistrate.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: It was not done in open court, it was, you know?

COLONEL PADAYACHEE: Ja.

ADV SELLO SC: But accepting that and you confirming that did not happen, the next condition becomes more concerning. Did you ask personally the Magistrate to impose that condition?

10 **COLONEL PADAYACHEE**: That condition there is, and I think when ...[intervenes].

ADV SELLO SC: For the record, let us say, it reads:

“Mr Brian Padayachee will assist the accused with the collection of any matters or...”

Something:

“...items of personal nature the accused may have on same left at the premises of any Crime Intelligence office.”

20 The sum effect of it is because they are prohibited from entering any Crime Intelligence facility, Mr Brian Padayachee, that is yourself, correct?

COLONEL PADAYACHEE: That is correct, Chair.

ADV SELLO SC: Will assist the accused to collect any items they have left in their offices, whether personal or

whatever nature, at these Crime Intelligence offices. If this condition was never requested and the Magistrate imposed it nonetheless, why does the Magistrate pick on you to be the person to collect anything that these accused require? How do we land there?

Are you able to shed some light? You say you did not personally request it from the Magistrate. You confirm that the prosecutor did not put it to the Magistrate in open court. Does the Magistrate know you personally? Do you
10 know the Magistrate personally?

COLONEL PADAYACHEE: No, I think it was my affidavit or something. My name was mentioned there. It is a while back. I am trying to recall. But when I was standing next to the prosecutor, which is quite close to the bench, as in the way I can see where he put it there, is I as the investigating officer. If they want to go to the office, they have to contact me before they go there to their respective offices. So that would have flowed from that bail condition that was set up about the premises.

20 But I left court at that time and it was only at the later stage that I found that no, this bail condition was put in as they are not allowed. So I, as the investigating officer, that is how the second part we are looking at for, Chair, Commissioners.

ADV SELLO SC: So we have a situation where there is a

very stringent bail condition that was not requested by the prosecution being imposed.

COLONEL PADAYACHEE: Yes.

ADV SELLO SC: And then it goes further and identifies you personally as the person to assist the accused should they want to retrieve anything from their offices, in circumstances where it was never discussed with the Magistrate that that is a possible solution to the effect of that stringent prohibition.

10 So the Magistrate just came up with your name. I am trying to – perhaps you do not know the facts. I do not know, but I am trying to understand how does your name make it into a bail condition that was not even requested by the prosecution? Can you shed some light?

CHAIRPERSON: A condition that is so stringent that its effect is to suspend the accused because what it meant is that they could not go to work. So effectively it suspended them when SAPS itself had not suspended them. No, but answer the question. I am just adding to the nature of how
20 stringent it was.

COLONEL PADAYACHEE: Thank you, Chair. As I indicated that I spoke to the prosecutor before I left, but during the early deliberations in the court whilst we are deliberating with bail or whatever, I am not sure whether anything came up during the deliberations before the bail

conditions of not going to the office, et cetera. As far as I know, is that the prosecutor did not speak anything about not going to the office, and that is what I heard because I left there during that moment in time. So I do not know what really happened, but I told the prosecutor, look, those are crime scenes.

And I think if I am not mistaken, and if I can maybe just have a look at one of my notebooks that I was writing whilst I was sitting behind her, that I made a note there on
 10 it. But the fact remains of the whole thing is that from what I gathered, and is that the prosecutor never requested that particular bail condition.

How my name came about there is that during the deliberations with the bail or whatever, perhaps there where my name came up. It came up during the processes during the course of it. So that is where he probably picked it up from, but I know that the prosecutor did not mention it. Thank you.

ADV BALOYI SC: May I?

20 **ADV SELLO SC:** Yes, Commissioner.

ADV BALOYI SC: Why did you want this bail condition that they must not go to the office, that you say you did not discuss with the Magistrate? Somehow he comes to know about it. Why did you want that condition?

COLONEL PADAYACHEE: Yes, Commissioner. As I

indicated, we were busy with investigations on the Secret Service Fund documents, et cetera, and I ...[intervenes].

ADV BALOYI SC: But this matter had nothing to do with the Secret Fund. It had absolutely nothing to do with it.

COLONEL PADAYACHEE: This?

ADV BALOYI SC: This case, this Mokwele matter. It was about the recruitment and appointment of Brigadier Mokwele.

COLONEL PADAYACHEE: Yes.

10 **ADV BALOYI SC:** And why are you introducing other cases that under this bail condition?

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: Yes, you may.

COLONEL PADAYACHEE: Thank you, Commissioner. I think it was mentioned during the course of the proceedings there that the accused before Court are also implicated in other matters that we are investigating.

ADV BALOYI SC: Yes.

20 **COLONEL PADAYACHEE:** And during that process of not just the Mokwele case, but the other cases that we are investigating, I am digging into my memory that was said there, that we consider the Crime Intelligence officers, especially where the Secret Service Fund was, as crime scenes.

ADV BALOYI SC: So you were getting a bail condition or

you were asking for a bail condition that in fact has absolutely nothing to do with the matter that is before this Magistrate. It has to do with other cases where you must justify bail, or other condition, bail conditions in other investigations that you are still conducting. You are using this case to get a benefit in respect of other investigations that are not yet complete.

COLONEL PADAYACHEE: Commissioner ...[intervenes].

ADV BALOYI SC: Ja, you may respond.

10 **COLONEL PADAYACHEE**: Chair, Commissioners, it is with the current case before Court. Current case was mentioned before court and other cases that we are investigating ...[intervenes].

ADV BALOYI SC: No, you have said you did not want them to go there because that is where the Secret Fund ...[intervenes].

COLONEL PADAYACHEE: Secret Fund's witnesses.

ADV BALOYI SC: Witnesses, you had completed your investigation and you have seen this judgment. There is an
20 exchange between the prosecutor and the Magistrate. And the prosecutor says our investigation is complete, we do not have a problem about witnesses being intimidated. In fact, we have not even produced a list of witnesses. So these people, these accused, are no risk or pose no risk to our witnesses in this case.

That is the position of this prosecutor, right? The Magistrate keeps pushing, but they must be protected. What about members of the public? You know this judgment. I am not going to read, interesting as it is to read.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: The Magistrate keeps saying, but what about this? What about that? Your prosecutor says the witnesses, we are not going – if I am to preclude, if I am to
 10 get an order, that is a condition rather that says they should not go to the office, then I have to mention the witnesses in this case, and we are not going to mention the witnesses because it would be to endanger them. So there is no risk to witnesses.

Investigation is complete. So I do not need this condition, which the Magistrate is very keen to give *mero motu*, without it being asked for, at least not in open court, is keen to give. So your other cases have absolutely nothing to do, even on the Magistrate's own enthusiasm.
 20 Your other cases are no reason that he has imposed this condition.

On this transcript that is quoted in the appeal judgment, those other cases have nothing to do with it. He gave this condition because he is protecting the witnesses in the Mokwele matter. My question to you is, why would

you want this condition, as you say you did, for cases that have nothing to do with this Mokwele matter that are still incomplete?

They are not before court. You do not know whether eventually they will result in prosecution. Is that not another instance of an abuse of your position, where you are sitting with this particular case, which is done and complete, investigated, it is before Court, you have effected the arrest, but you use this case to gain a benefit in respect
10 of other cases that have nothing to do with this case.

That must, you must accept, it is on the face of it, an abuse of your position that you are holding at the time when it comes to this case. You can comment.

COLONEL PADAYACHEE: Thank you, Commissioner. I did not see it in that light. And as I said in chief and the way I looked at what we were doing, and this is what it is, it is what it is, is that I spoke to the prosecutor and said to her that, listen, I am leaving now. And I wrote in the notebook or I wrote something, I might just have to check on that.

20 When you are addressing the bail conditions, just take this to say that they are not permitted to go to the Crime Intelligence offices because of the witnesses and that the Crime Intelligence offices is where, it is a crime scene where all the documents and everything that is going to assist us ...[intervenes].

ADV BALOYI SC: On the investigation that has been completed according to the prosecutor, your prosecutor, the investigation has been completed, there is no risk of interference. That is what he tells the Court.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: Yes.

COLONEL PADAYACHEE: And what happened, I do not know what took place after that, but she did not ask for it. So that is what happened at the end of the day. I made that
10 suggestion and then she did not put it up to the Magistrate. So that is where it stands there, Commissioner.

ADV BALOYI SC: All right. A related question. This appeal was opposed.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: That is correct?

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: What role did you play in the decision to oppose an appeal on a bail condition that you and everyone in IDAC did not ask for? What role in that decision did you
20 play, if any?

COLONEL PADAYACHEE: We opposed the bail conditions on what I put forward before you now, Commissioner. The fact that the Crime Intelligence offices were busy with investigations. The ...[intervenes].

ADV BALOYI SC: So you are ...[intervenes].

COLONEL PADAYACHEE: That is ...[intervenes].

ADV BALOYI SC: No, I am not asking for reasons. I am asking for your role in it. So you were part of the collective that if it is a collective or it is your decision alone, you were part of a collective that made the decision to oppose this appeal on a bail condition that you did not ask for and that you got because you wanted to protect other investigations, even though that is not why the Magistrate gave it. You were part of that collective that made that decision.

10 **COLONEL PADAYACHEE**: I was part of the collective. I cannot disown the persons that were involved in the appeal process and ...[intervenes].

ADV BALOYI SC: And who was involved in it? It is you and?

COLONEL PADAYACHEE: That would have been myself and the prosecutors that were in the matter that put together documents for the appeal.

ADV BALOYI SC: Okay. It did not require approval by your superiors to oppose this bail, this appeal?

20 **COLONEL PADAYACHEE**: Whatever documents that would have been compiled at that moment would have went up to management to look at it further and file it. I am not too sure whether management did have access into the documents, but the documents was compiled by the prosecutors and it was filed. There were filings within

...[intervenes].

ADV BALOYI SC: I guess my question is, where in IDAC does the decision lie? Who is the decision maker when an appeal comes up and someone must decide we are opposing or we are not opposing? Who is the decision maker of that?

COLONEL PADAYACHEE: That would be the head of the office.

ADV BALOYI SC: Okay.

10 **COLONEL PADAYACHEE:** That would be the head of office because you cannot take any decisions outside of that.

ADV BALOYI SC: Okay.

COLONEL PADAYACHEE: Thank you, Commissioner.

ADV BALOYI SC: Thank you.

ADV SELLO SC: Okay.

ADV BALOYI SC: I wanted to ask on an unrelated topic.

ADV SELLO SC: Indeed, please go ahead.

COLONEL PADAYACHEE: The decision to, maybe not the decision, let us talk about the arrest of all these accused.

20 Is there a policy in IDAC which guides and informs how you exercise the discretion to arrest, to summon, because we know in some cases you are summoned. The most recent that we can all take judicial notice of is the National Commissioner, right? He was called and he presented to Court, but we are also aware of other cases.

Here you arrested these seven accused. Is there a policy, a guideline in IDAC that informs, that guides you as the investigating officer how to go about making that election of how you present or you get an accused person to present to court?

COLONEL PADAYACHEE: The way I understand you, Chair, Commissioners, is that is there a policy in how we go about our arrests in respect of the cases?

ADV BALOYI SC: It is more specifically how you get to
10 make the decision whether you are arresting or you are summoning. So I am not talking about the practicalities of where, how, when do you arrest. It is not my question. My question is you have options of how you secure the appearance of an accused person at court and you know those options that are available to you.

So my question is, is there a policy position, a protocol, an instruction, whatever it is called, is there an instrument in IDAC which informs and guides investigating officers when to arrest, when to summon, when to, I think
20 there is a warning or something, the different options that you have. Is there such an instrument?

COLONEL PADAYACHEE: Thank you, Chair, Commissioners. There is no policy or protocol that exists. With regards to the arrest warrants or whether J175, we look at the seriousness. In most cases, if it is schedule 5,

schedule 6, the onus is on the accused persons to put forward why they should be released on bail. So when it comes ...[intervenes].

ADV BALOYI SC: No, we are not at bail. We are not at bail yet. We are at how do you bring this accused to court. You have options.

COLONEL PADAYACHEE: Okay.

ADV BALOYI SC: So the conversation is about you exercising that discretion because it is a discretion.

10 **COLONEL PADAYACHEE:** Yes.

ADV BALOYI SC: Right, unless you tell me or you tell us that there is a prescript in IDAC which says if it is this kind of charge, they must be arrested, right? Unless there is something like that and you can point us to that. So I am assuming that in accordance with prevailing law, IDAC's position is investigating officers have a discretion depending on the charge.

Well, not depending on the charge. They have a discretion and you can say depending on what. And is that
20 written or there is nothing. If there is nothing, there is nothing and you go about making your selection of the options available to you. So I am not prescribing to you that there has to be. I am trying to understand whether there is anything at all.

COLONEL PADAYACHEE: Yes. What I am saying,

Commissioner, thank you, Chair ...[intervenes].

ADV BALOYI SC: Yes, you may.

COLONEL PADAYACHEE: Is that there is no particular policy that I know of there. It is when you are finished and you are ready and you are prepared to go for your, apply for your warrants, you have your chief criminal investigator that is there that says, okay, we are going to now prepare for the arrest, prepare for the takedown. What is the offence? It is a schedule 5 offence, and we proceed.

10 So like, for example, I will give you something out of the normal. When the matters like one of the recent ones was done and why it was a J175, when you look at it, it was a PMFA. So a J175 will be issued. So when as a team that we are sitting together, we look at what is the charges, it is corruption, it is schedule 5, we have to prepare bail affidavits.

 So that is where it is taken there. And the other considerations, the person is armed, may make a way with intimidate witnesses, et cetera, et cetera. But the basic
20 thing is what I am saying is, first of all, there is no policy that says this is an office policy. It is a decision taken there by the team and that is where it is.

ADV BALOYI SC: So is it irrelevant to the decision that is made by the team that you know where the accused lives? If you know, and let us come back to these facts.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: You know where General Madondo lives or you can easily get her information. You actually now have a full docket. So you have her address, you know where she works. Are you saying, notwithstanding that I know where to find her and I can survey with the summons to appear, notwithstanding all of that, all I look at is, it is a schedule 5 offence that I am charging her with. It follows, I must arrest her.

10 Is that what you are saying? That it does not matter that you know that you can bring her to court in a less drastic and less intrusive way than an arrest because you know her address, her details and her workplace.

COLONEL PADAYACHEE: Chair, Commissioners, it is a schedule 5 offence. Let us put it there. But the way we apply for a J50, it is a warrant, but we do not go to the person's house to execute the warrants or since I have been at IDAC, we phone the person, come to the police station with your legal representative. We do not go to their homes
20 and place them in handcuffs and blue lights, whatever. The warrant is just there so that we have it and what we call them to the station.

ADV BALOYI SC: And you place them under arrest at the station.

COLONEL PADAYACHEE: We place them under arrest at

the police station where they are processed, but it is not something that where we go to the house ...[intervenes].

ADV BALOYI SC: Ja. You see, we are going in circles and maybe I should leave it. You probably have answered as best as you can and I will tell you what it is that I am looking at when I ask this question.

COLONEL PADAYACHEE: Yes.

ADV BALOYI SC: We are back at, you call them to the police station where you arrest them. My very question is,
10 if you call them to the police station, why do you not give them a summons? Because you know that they will appear. The point I am making to you is, you know their details, you know where they work, you know that if they do not appear, you will find them. Why do you not issue – as under what circumstances would you not issue a summons in that circumstance where you know a person's details?

And I ask you this because the SAPS has got a policy position about it and that policy position that has been adopted in the National Instruction 11 of 2019, and it
20 may be that IDAC should consider this very seriously to have something similar.

First, this national instruction, it is bedrock is the law, the position of law, right? And what they have done is they say there are various methods by which an accused attendance at a trial may be secured. I see they have given

you a copy. Apparently they have given you a copy. If you go to Item 6, it is at page 7. At page 7:

“Securing the attendance of an accused at the trial by other means than arrest.”

And 1 says:

“There are various methods by which an accused attendance at a trial may be secured. Although arrest is one of these methods, it constitutes one of the most
10 drastic infringements of the rights of an individual and a member should therefore regard it as a last resort.”

This is what SAPS is saying to its members, not to you. I accept it is not to you.

Arrest is never an obligation irrespective of the offence, but you seem to consider it an obligation when you say, well, in a schedule 5 offence, I have to arrest. They must come and argue for bail. That is contrary to the SAPS' position and guidance to its members.

20 **COLONEL PADAYACHEE**: Yes.

ADV BALOYI SC: And then the next paragraph recognises that:

“It is impossible to lay down hard and fast rules. Each case must be dealt with according to its own merits. A member

must always exercise his or her discretion in a proper manner when deciding whether to arrest or not.”

And then 3, I will just read the one. It says that:

“A member, even though authorised by law...”

And you are not saying – I am mindful that you are not saying because it is a schedule 5 charge, the law requires me to arrest. I am mindful you are not saying that. 3 says:

10 “A member, even though authorised by law to arrest in appropriate circumstances, should always refrain from arresting a person if the attendance of the person may be secured by means of a summons as provided for in section 54 of the Criminal Procedure Act.”

Mindful this is SAPS, why could you not do that with these accused? Why could you not, instead of arresting them, why could you not issue them a summons to come and
20 appear?

Because remember there is no law that says because it is a schedule 5 or even 6, they must be arrested. Why was that not an option that is available to you? Why did you not choose that option and chose the more intrusive and quite punitive way of bringing them to court?

COLONEL PADAYACHEE: Thank you, Chair, Commissioners. I see the SAPS Regulation and the manner in which they do and each case is decided on its own merits. However, ever since I have been at IDAC with regards to matters that has been investigated, when the matter is serious, it is a serious charge, I know I am mentioning schedule 5, the other circumstances with regards to this firearm, witnesses, et cetera.

The normal thing is that we apply for J50s and as
10 far as I have known or the operations that I have been involved in myself is that the J50 that we have is not taken to the person's house and where they are being arrested. They are brought to the station and they are processed there.

So all that I can say is that, Commissioner, but then the question is why apply for a warrant then? The warrant is there, we have it in case there is something that where the person does not report or the person decides he is going to now evade justice or whatever else is there. Thank
20 you.

ADV BALOYI SC: Well, I think the correct way, the correct thing to say to express how IDAC does things is to say that as a matter of course, we apply for warrants and we arrest them at the police station, because that is what you are saying. We call them to come to the police station and

when they arrive, we arrest them. So your modus is an arrest. We are charging this person, we arrest. That is how IDAC operates.

COLONEL PADAYACHEE: That, you are correct.

ADV BALOYI SC: Okay, thank you. Thank you, Ms Sello.

ADV SELLO SC: Thank you, Commissioner Baloyi. Chair and Commissioners, that would bring me to the conclusion of my questions for the witness. I do not know if that...

CHAIRPERSON: Colonel?

10 **COLONEL PADAYACHEE**: Chair?

CHAIRPERSON: Thank you very much. You are excused.

NO FURTHER QUESTIONS

COLONEL PADAYACHEE: I thought she was going to ask me more questions.

CHAIRPERSON: We will resume at 09:30 tomorrow.

ADV SELLO SC: Indeed, Chair.

CHAIRPERSON: Let us adjourn.

ADV SELLO SC: Thank you.

CHAIRPERSON: Thank you.

20 **INQUIRY POSTPONED TO 17 JULY 2026**

INQUIRY ADJOURNS

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