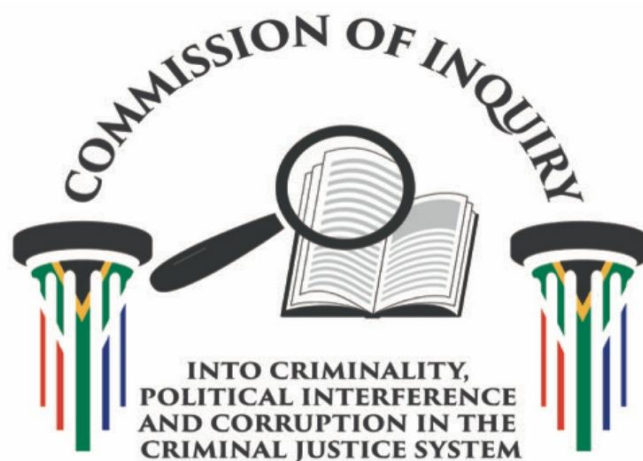


JUDICIAL COMMISSION OF INQUIRY INTO CRIMINALITY,
POLITICAL INTERFERENCE AND CORRUPTION IN THE
CRIMINAL JUSTICE SYSTEM

HELD AT
BRIGITTE MABANDLA JUSTICE COLLEGE

22 JULY 2026

DAY 145



PROCEEDINGS HELD ON 22 JULY 2026

CHAIRPERSON: Good morning, Ms Sello. Good morning, Mr Bodlani. Good morning, Advocate Johnson. Thank you.

ADV SELLO SC: Morning, Chair. Morning, Commissioners, and good morning, Advocate Johnson. Advocate Johnson, when we adjourned yesterday, you recall we were having a conversation about the teams within IDAC, and I think you were explaining that you have permanent teams in some instances, and I do not remember
10 whether or not, that is my deduction, that sometimes you have ad hoc teams, but if that is my deduction and I have my, you know, if my understanding is wrong, please feel free to correct me.

You gave an example of what you call the Transnet team, so we are discussing how they get to be constituted, and hopefully that will lead to the issue of whether or not any particular powers you have are delegated to such teams, if so, which powers, and if so further, in terms of which prescripts such delegation happens.

20 The idea, of course, being once you have taken us through the permanent teams, if you could cover the ad hoc teams and how those are constituted, when they are constituted. Of course, the idea being to eventually get to understand, and the matter that we colloquially refer to as the Mokwele matter, where that team falls. Is it a

permanent team or an ad hoc team? I will leave it to you to clarify to the Commissioners. Thank you.

ADV JOHNSON: Good morning, Chair. Good morning, Commissioners. In terms of the teams, there are not ad hoc teams. There are teams across the board dealing with different matters. However, what you can do is take people from different teams to constitute a team to deal with a specific matter.

At the moment, they are specific teams based
10 solely on the many matters we have received from the State Capture Commission of Inquiry, the Mpati Commission, the Nugent Commission. And so once a team became vested with a matter, all other matters related thereto invariably went to that team.

All prosecutors have the power to institute and conduct criminal proceedings for and on behalf of the State, and so those powers find themselves in section 20 of the NPA Act. And prosecutors are then so delegated to conduct, institute prosecutions and matters incidental
20 thereto, Chair, as a result of them being prosecutors within the NPA.

In terms of the investigative powers, the powers are derived from sections 29 of the NPA Act, the NPA Amendment Act, which allows for the Investigating Director,
29(A)(1):

“an investigator may subject to the...”

...[intervenes].

CHAIRPERSON: Sorry, I apologise. Just a correction. It is not of the Amendment Act. that has been inserted into ...[intervenes].

ADV JOHNSON: Inserted into the Main Act.

CHAIRPERSON: Into the Main Act.

ADV JOHNSON: Correct.

CHAIRPERSON: So it is section 29(A) of the NPA Act, not
10 of the Amendment Act.

ADV JOHNSON: As you have correctly pointed out, but what it does do is then give investigators powers to deal with aspects of investigation subject to the control and direction of the head of the Investigating Directorate, and so they exercise such powers and must perform such duties in as are conferred or imposed upon him or her under the Act and/or any other law and must obey all lawful directions which he or she may receive from a person having authority to give such directions.

20 And an investigator under subsection (2) has the same powers as a peace officer or a police official as provided for in the Criminal Procedure Act, and they therefore, in terms of that section, have the power to investigate offences, the ascertainment of bodily features of an accused, powers of entry and search of premises, the

seizure and disposal of articles, arrests, the execution of warrants, the attendance of an accused person in court, and the service or execution of any subpoena or summons. And (3) an investigator has the same powers as if he or she had been appointed deputy sheriff or deputy messenger or other similar officer of the court. So they do derive their functions from the legislation and are therefore delegated to exercise prosecutions for prosecutors, investigations with the investigators.

10 **ADV BALOYI SC:** What we see from (1) is investigators exercise their powers subject to your control and direction. They are not fleet agents who go about making decisions, determining what to do in a manner or in circumstances where you have no say over what they do and how they exercise their powers. It is subject to your control and direction.

ADV JOHNSON: That is correct.

ADV BALOYI SC: Yes.

ADV SELLO SC: Thank you, Commissioner Baloyi. Thank
20 you, Advocate Johnson. While we are on the topic of teams, in the investigation conducted by IDAC that culminated in the arrest of General Khumalo and others, just so we can bed this one, what was the constitution of the team? Which team was responsible for that investigation and subsequent prosecution, and are you able

to name the key members of that team, be they investigators or prosecutors?

We learned, at least from Colonel Padayachee, that he was the lead investigator. So if you could assist us in populating the rest of the team and to indicate who was the leader of that team. I would appreciate that. Thank you.

ADV JOHNSON: So, when the matter had initially come to IDAC, the matter was allocated to a – we chose a group of prosecutors that fell under the leadership, or the prosecutor
10 was Advocate Ramsamy and Advocate Joy Hlatshwayo. It was ...[intervenes].

CHAIRPERSON: Between the two, who was the lead?

ADV JOHNSON: When the matter first started, Chair, it was Advocate Ramsamy who led, and as the matters progressed, each one of them led a matter so that they were able to carry the burden of that matter. So Advocate Joy Hlatshwayo is the one who went to court on the Mokwele matter. Advocate Ramsamy would have been the one who went to court on the first matter, which was with
20 General Lushaba and others. But they would go to court together, and either/or having to deal with the matter as they dealt with it. And then, Chair, we had Chief Perumal, Mr Bellochun ...[intervenes].

CHAIRPERSON: Sorry, sorry. When you mention a name, please indicate what role they played. So Chief Perumal

played what role?

ADV JOHNSON: If you would just grant me a moment just to get my paper, Chair, so that I am able to guide it properly? Mr Perumal is a chief investigator and would have helped lead and coordinate the team of investigators, obviously under the leadership and guide of the prosecutors.

We had Mr Rapetsu, who is also an investigator. We had Mr Padayachee as an investigator. We had Mr
10 Wessels as the chief financial investigator. We had ...[intervenes].

CHAIRPERSON: And between Mr Rapetsu and Colonel Padayachee, Colonel Padayachee was on the Mokwele matter and Mr Rapetsu was on the Lushaba matter, or not?

ADV JOHNSON: That is correct, when they started, yes.

CHAIRPERSON: Okay, all right.

ADV JOHNSON: But that allocation gets determined amongst themselves on who would lead ...[intervenes].

CHAIRPERSON: Yes, yes ...[intervenes].

20 **ADV JOHNSON:** But you designate the team to the investigation ...[intervenes].

CHAIRPERSON: No, no, no. I just want to get the facts.

ADV JOHNSON: Thank you.

CHAIRPERSON: I just want to get the facts. Yes, yes.

ADV JOHNSON: Sorry. And then we had Mr Pat Mlambo

as an investigator. And in all the matters, we do have a project manager, and in this instance, the project manager was Mr Tlale. There was a deputy director as well ...[intervenes].

ADV SELLO SC: Sorry, apologies, Advocate Johnson. Did you say Tlale?

ADV JOHNSON: Tlale. T-l-a-l-e. Mr Tlale.

ADV SELLO SC: Absolutely.

CHAIRPERSON: And what role did Mr – was it Ms or Mr
10 Mlambo?

ADV JOHNSON: Mr Mlambo is an investigator.

CHAIRPERSON: No, no, no. I heard that he is an investigator. But what I want to know is, basically as I understand it, there is the Lushaba matter, there is the Mokwele matter, and I asked you whether between Mr Rapetsu and Colonel Perumal, one was investigating one of the two matters, and you said yes. So I want to know about Mr Mlambo, where did he fit in?

ADV JOHNSON: Mr Mlambo, as part of that team, would
20 have dealt with whatever taskings they gave him.

CHAIRPERSON: Okay.

ADV JOHNSON: Not necessarily only Lushaba and or only the Mokwele matter ...[intervenes].

CHAIRPERSON: Thank you ...[intervenes].

ADV JOHNSON: The team would have determined the

taskings and who was best to deal with that investigative task.

CHAIRPERSON: Thank you. That answers me. Thank you. Any other role player?

ADV JOHNSON: There was Advocate Manilall who ...[intervenes].

CHAIRPERSON: Did you explain about Ms or Mr Tlale?

ADV JOHNSON: Project manager.

CHAIRPERSON: Project manager. Okay. You have quite
10 a structure there. And then who else? Who else after ...[intervenes].

ADV JOHNSON: And Mr Manilall, who is, as I indicated yesterday, Chair, all the teams are led by Deputy Directors of Public Prosecutions, and that would have been Mr Manilall.

CHAIRPERSON: Yes.

ADV JOHNSON: At the stage when the matters first started, because Mr Manilall was busy in court, I think with the Transnet matter, on an informal basis, we did have
20 Advocate Peter Serunye, who would accompany the prosecutors to court, so that if there was anything, he was able to engage the office and to indicate if there were any challenges, but ...[intervenes].

ADV BALOYI SC: Is he also DPP?

ADV JOHNSON: He is a DDPP, yes, ma'am.

CHAIRPERSON: I just want to understand this. I have always understood DPPs to be attached to, not necessarily part of, but let me loosely say attached to a particular court. Like for example, you would have a DPP for the Gauteng in the sense of Pretoria High Court. Then another one in Joburg, another one in Mthatha, and so on, and so on. So when you talk about a DPP in this context, are you ...[intervenes].

ADV JOHNSON: Sorry, DDPP, Deputy Directors
10 ...[intervenes].

CHAIRPERSON: So they are DP. So Mr ...[intervenes].

ADV JOHNSON: Mr Manilall is a Deputy Director of Public Prosecutions.

CHAIRPERSON: Deputy, Deputy.

ADV JOHNSON: Yes.

CHAIRPERSON: Now I understand, thank you. I did not hear the Deputy, sorry.

ADV BALOYI SC: When you started, you mentioned the name of Bellochun. You have not mentioned him as you are
20 listing now, the specific list. Is there a reason for that?

ADV JOHNSON: I just want to check, Chair. I might have misspoke on the this, the document in terms of the later – n no, my apologies, Chair. I misspoke. He is not in these matters.

ADV BALOYI SC: Thank you.

ADV JOHNSON: My apologies, he is in the Matlala matter.

ADV BALOYI SC: Thank you.

ADV SELLO SC: Is that the make-up of the team?

ADV JOHNSON: That is the make-up of the team.

ADV SELLO SC: I think the time ...[intervenes].

CHAIRPERSON: I think the mention of Mr Bellochun, I forget the rank, was in your affidavit. Am I mistaken? Was it not in your affidavit? Where did I see it? Where would we have seen it? You do not remember? No, please look.

10 **CHAIRPERSON:** Please look. I am asking because ...[intervenes].

ADV JOHNSON: The mention, Chair, is because he was the person who had gone to Otia [?] to inform General Khumalo that there was a warrant of arrest.

CHAIRPERSON: That was the context?

ADV JOHNSON: That was the context.

CHAIRPERSON: That was the context. In your affidavit?

ADV JOHNSON: Yes.

CHAIRPERSON: Okay, all right.

ADV BALOYI SC: But that he would have gone there must
20 mean he was part of the team in some capacity.

ADV JOHNSON: So when they execute arrests and/or search and seizures, different people can form part of the execution teams. They must be put onto the application for the warrant of arrest or for the search warrant. It is there that he comes into play. There were other people as well

that were involved that are not involved in the investigation.
You can become for that specific purpose.

ADV BALOYI SC: Okay.

ADV JOHNSON: Chair, I just wanted to indicate, if you would allow me, the names that I gave you were the names of the team shortly after we had received the section 27 referral and we had the preliminary investigation authorised. As the investigation progressed and just before the arrests, there was an application for a section 28(1) full
10 investigation in terms of the NPA Act. I would just like to check if other names were subsequently added so that the Commission has the full ambit of who all other than these were then involved in the matter.

CHAIRPERSON: Please go ahead.

ADV JOHNSON: There are persons that then became – I had mentioned, Chair, that it was Advocate Manilall. I mentioned Advocate Ramsamy. I mentioned Advocate Joy Hlatshwayo. I mentioned Chief Investigator Perumal, Investigator Bellochun, Chief Financial Investigator Wynand
20 Wessels, Investigator P Mlambo, and then we have Investigator Charles Eals, E-a-l-s, and Investigator Ayanda Mbalo. They came in later into the team.

ADV BALOYI SC: Sorry, now I am confused. So, Bellochun did become part of the investigation team. He did not just go to the airport to inform General Khumalo that

there is a warrant for his arrest.

ADV JOHNSON: No, he did not become part of this investigation team. He is not of the people designated to the ...[intervenes].

ADV BALOYI SC: But you have just included him in the post section 28(1) process. You say there was a section 28(1) application for preliminary investigation.

ADV JOHNSON: Yes.

ADV BALOYI SC: You say that, and then you proceeded to
10 list who, arising from that, became part of the team. And you say Eals, you say Ayanda, and then you said Bellochun.

ADV JOHNSON: No, it is Charles Eals and Ayanda Mbalo ...[intervenes].

CHAIRPERSON: You just ...[intervenes].

ADV JOHNSON: Did I ...[intervenes].

CHAIRPERSON: You ...[intervenes].

ADV JOHNSON: I apologise ...[intervenes].

CHAIRPERSON: Unless you want to exclude him, you did mention him.

20 **ADV JOHNSON**: My apologies. It is on my document that it is Manilall, Ramsamy, Hlatshwayo, Perumal, Padayachee, Wessels, Mr Mlambo, Mr Eals, and Mr Mbalo.

CHAIRPERSON: But you seem to be reading. You are looking down, and you seem to be reading ...[intervenes].

ADV JOHNSON: I am prepared ...[intervenes].

CHAIRPERSON: Surely, surely ...[intervenes].

ADV JOHNSON: I am prepared to show this through ...[intervenes].

CHAIRPERSON: Okay, okay.

ADV JOHNSON: Yes, that ...[intervenes].

CHAIRPERSON: How did you vocalise the name then, looking down as if you were reading it from a list? How did you come to vocalise the name?

ADV JOHNSON: I do not know why I said his name.

10 **CHAIRPERSON**: Okay. All right. No, no, no. It is okay. It is okay.

ADV KHUMALO SC: The section of your affidavit Chair was referring to – good morning, Advocate Johnson. It is paragraph 13 of the original affidavit, where you list Ms Suneel Bellochun and Ayanda Mbalo as the investigators.

ADV JOHNSON: As the investigators who went to the airport and would have been authorised in terms of the warrant for execution.

ADV KHUMALO SC: But why do you call them
20 investigators if all they are doing is execute the warrant?

ADV JOHNSON: Because that is their designation, Chair.

ADV KHUMALO SC: But their role is that of investigators, their normal role?

ADV JOHNSON: Yes. Investigators executing a warrant of arrest.

ADV KHUMALO SC: Okay.

ADV SELLO SC: Thank you. I think from yesterday ...[intervenes].

CHAIRPERSON: Sorry, sorry, sorry, before you go on.

ADV SELLO SC: Absolutely, Chair.

CHAIRPERSON: You will remember yesterday when I even expressed myself in Afrikaans saying that ...[intervenes].

ADV JOHNSON: *Ek is deurmekaar.*

CHAIRPERSON: *Klaar deurmekaar.* When you responded
10 to me about whether or on whether Colonel Padayachee had
ever had sight of or received the section 27 referral
affidavit, my distinct impression was that you said, yes, he
did. But when immediately thereafter Commissioner Baloyi
engaged you, my sense was then that you were saying the
opposite. I am not sure as I sit here what your final
position is on that. I just want us to put that to bed. Did he
or did he not receive that section 27 referral affidavit?

ADV JOHNSON: Chair, as I undertook that I would get
clarity from the team.

20 **CHAIRPERSON:** Yes.

ADV JOHNSON: He did have sight of the section 27.

CHAIRPERSON: He was given. In the sense of being
given?

ADV JOHNSON: He had sight of it. That is the answer I
have. So ...[intervenes].

CHAIRPERSON: You may have sight, you know, in the same way as, for example, police officers will flash their ID cards just like that, or you may have sight in the sense that you are given the document. You read it, you internalise its contents. So was he given that document for him to personally read and internalise its contents?

ADV JOHNSON: So initially he would have had sight of it and later in the year when they gave, when he had all the dockets ...[intervenes].

10 **CHAIRPERSON**: No, explain having sight. That is what I am interested in. What do you mean by that?

ADV JOHNSON: That when the team met, they engaged the 27, and he is part of that team.

CHAIRPERSON: No, no, no, no. That does not answer me. What do you mean when you say he had sight of it? Surely you understand the essence ...[intervenes].

ADV JOHNSON: He saw the document.

CHAIRPERSON: Seeing as in he has a document, it is lifted and he does see it if it is lifted like this? But if it is
20 immediately put back on the table, it is as good as not having been seen by him. So what do you mean by he did have sight of it?

ADV JOHNSON: I am giving you an explanation I get because I am not inside of that room ...[intervenes].

CHAIRPERSON: Thus far you have not explained. That is

why I want, what do you mean when you say he had sight of it? You have not explained it.

ADV JOHNSON: He saw the document.

CHAIRPERSON: I want to understand seeing. Is it in the sense of it being fleshed? Here is a section 27 referral affidavit, boom, it has gone back to the top of the table and he does not see anything? Is that what you mean by seeing? Or do you mean it was given to him for him to peruse it for himself?

10 **ADV JOHNSON:** He was given the document to peruse for himself according to him and to the team much later on.

CHAIRPERSON: That is all I wanted.

ADV JOHNSON: Much later on.

CHAIRPERSON: Sorry, much later?

ADV JOHNSON: Much later on.

CHAIRPERSON: At what stage was that? At what stage was that? Was this before he started investigating or was it after he had commenced investigating?

ADV JOHNSON: After ...[intervenes].

20 **CHAIRPERSON:** If it is the latter ...[intervenes].

ADV JOHNSON: After ...[intervenes].

CHAIRPERSON: If it is the latter, that would mean his investigation was not informed by the affidavit. So you say after he had commenced ...[intervenes].

ADV JOHNSON: After he had commenced ...[intervenes].

CHAIRPERSON: Investigating.

ADV JOHNSON: That is correct.

CHAIRPERSON: So after the section 28 investigation had commenced?

ADV JOHNSON: Yes.

CHAIRPERSON: All right. Thank you. Now that answers me and the *klaar deurmekaar* is gone.

ADV JOHNSON: And apologies, but it is answers I had to seek because it is not my direct knowledge.

10 **CHAIRPERSON:** Yes, yes.

ADV JOHNSON: So if I did not convey it correctly, I do apologise, but it is the answer that I was given by ...[intervenes].

CHAIRPERSON: No, no. As I said yesterday, as I said yesterday that hearsay evidence is admissible in this commission. There is authority that says a commission of inquiry of this nature may inform itself in whatever manner it wishes to. The only issue, depending on the nature of the evidence, would be the probative value of such evidence.

20 Thank you.

ADV JOHNSON: Thank you.

ADV KHUMALO SC: Did they say exactly when? Because in your response to the Chair you said later in the year. Now that worries me because the arrests were mid-year. So if later in the year is after the arrests, that is a problem. So

when you say later in the year, what do you mean? Do you mean after June or before June 2025?

ADV JOHNSON: It would have had to have been before June 2025 because he became the investigator earlier on, which was ...[intervenes].

ADV KHUMALO SC: In January.

ADV JOHNSON: In January, yes.

ADV BALOYI SC: I do not think it is an answer that you, or that kind of question where you answer it would have
10 been. You have had opportunity to ask and you were told you saw it later on. You either did ask and were informed when later on, or you must still go back and find out when exactly did he see it.

Because the way you are answering, you do not have personal knowledge of it, so you have to check with other people and I do not want – we should not be left with the impression that, yes, he saw it before the arrests because of how you have answered. I think it is a question that you must verify and come back to us with a specific
20 period.

ADV JOHNSON: I will do that, Commissioner Baloyi, with the exact answer.

ADV KHUMALO SC: Finally, do you dispute his version when he says before this Commission that he did not see the section 27 affidavit? Do you dispute his version? Do

you say he is not telling the truth?

ADV JOHNSON: I am unable to dispute his version because he is in that team. That is why I am saying I have to ask the questions after the fact.

ADV KHUMALO SC: Thank you.

ADV JOHNSON: It is not my place to say he lied. He would have to – he explained as he did. Yes.

ADV SELLO SC: Thank you. And thank you, Advocate Johnson ...[intervenes].

10 **ADV BALOYI SC**: Ms Sello, you are still going to be discussing the section 27 notice? I do have a question, but if it is a topic ...[intervenes].

ADV SELLO SC: Section 27 affidavit?

ADV BALOYI SC: Affidavit.

ADV SELLO SC: Yes.

ADV BALOYI SC: All right.

ADV SELLO SC: Yes, we are still going to.

ADV BALOYI SC: All right. I will leave my question for now.

20 **ADV SELLO SC**: Thanks, Commissioner. You gave this long list. It is quite a big team. You are informed of, I think, Ayanda Mbalo, Charles Eals. From yesterday, you keep referencing Chief Perumal. Chief is not his name, is it?

ADV JOHNSON: No, it is the rank. He is Dylan Perumal.

ADV SELLO SC: Dylan. Thank you. Now, you now have, as I understand, a group of prosecutors. Well, the prosecutors, there are two, and then a group of investigators. Who leads then this entire team? Who is the leader of this particular team?

ADV JOHNSON: It is the Deputy Director of Public Prosecutions who leads the team. And then within the team, you will have, as you have a chief investigator who will lead the investigative part of the investigations, but the
10 team is led by the Deputy Director of Public Prosecutions.

ADV SELLO SC: Okay, and in this case that would be Mr Manilall.

ADV JOHNSON: That is correct.

ADV SELLO SC: That is the leader of this team.

ADV JOHNSON: Yes.

ADV SELLO SC: Not Chief Perumal?

ADV JOHNSON: No.

ADV SELLO SC: Because I understood Colonel Padayachee to refer to Chief Perumal as the leader of the
20 team. Was he perhaps wrong, in your understanding?

ADV JOHNSON: Not wrong. I think as an investigator, having the chief criminal investigator in the team, they look to him as the leader of the investigations. They almost invariably engage with him in terms of the taskings and the activities, reporting back and getting guidance. The

everyday investigator functions would be dealt with by the chief criminal investigator or a senior investigator, as is the case in other teams as well.

ADV SELLO SC: So then what is the role of the leader of the team? What is Mr Manilall's role as leader?

ADV JOHNSON: So, Mr Manilall's role is because IDAC has a prosecution-led investigative methodology, they have to sit together to work out what the prosecution strategy is, what investigations must take place. They look at the
10 resources that may be required.

And so what his role is, is to coordinate and direct the evidence, the investigation that must be undertaken for the evidence to be collected and the relevant evidence that would be required. And then there is that constant to-and-fro as things come in, perhaps to look at the legal prescripts. Have they been met? Are there things that are outstanding? And that is the guidance, et cetera, within the team, both of the prosecutors and investigators.

ADV SELLO SC: So then in this team led by Mr Manilall,
20 who gets to decide whether the section 27 referral is distributed to members of the team? Who makes that decision? Is it Mr Manilall as the leader, or who is it?

ADV JOHNSON: Ordinarily, it should be the team leader, which is Mr Manilall, but it would depend on who had the document at the time. There is no rules about who gets

what and who decides who gets what. I think it is a ...[intervenes].

ADV SELLO SC: What is the purpose of being a leader?

ADV JOHNSON: I see where you are ...[intervenes].

CHAIRPERSON: Sorry, sorry, sorry. You spoke at the same time.

ADV SELLO SC: I apologise ...[intervenes].

ADV JOHNSON: I apologise ...[intervenes].

ADV SELLO SC: [Indistinct]... was mine. I apologise,

10 Chair.

ADV JOHNSON: Apologies, Chair.

CHAIRPERSON: Please finish what you were saying.

ADV JOHNSON: What it is, is you have the team leader who will decide what all must happen. So obviously, invariably, it is the team leader who should distribute all the documents. I do not know that there is a decision who to give and who not to give. It works in terms of what is required at the time and who is the person who should have access to the document.

20 You may find that it is a prosecutorial document and not necessarily something you need to distribute at the time to everybody else. So they will work it out amongst themselves who gets what when, but there is not a prescript or any rule that says or precludes anyone in the team from not having access to documents in an investigation.

ADV BALOYI SC: Okay. Let us come back to the section 27 affidavit. Who decides between you, Mr Sesoko, Deputy Director Manilall, Chief Investigator Perumal, of the four of you, who decides that Colonel Padayachee, as the lead investigator, will or will not have the section 27 affidavit? Somebody makes that decision. It is not a team decision.

ADV JOHNSON: No, once the document is, after Mr Sesoko and myself have gone through it and we decide falls within the mandate, we give it to the team leader.

10 **ADV BALOYI SC:** Team leader here is, because we have got two people now, we have got Deputy Director Manilall and Chief Investigator Perumal, who is that team leader?

ADV JOHNSON: It is Mr Manilall.

ADV BALOYI SC: Mr Manilall?

ADV JOHNSON: Is the team leader, yes.

ADV BALOYI SC: So he is the one that decides whether or not the investigators, and when I say Colonel Padayachee, also Rapetsu because you say Rapetsu is in the other matter, so it is Chief Manilall who decides?

20 **ADV JOHNSON:** Advocate Manilall, yes.

ADV BALOYI SC: Sorry, Advocate Manilall who decides whether or not the investigator should have the section 27 affidavit. Thank you.

ADV SELLO SC: Thank you. Before we leave this topic, you are reading off some documents and you reference a

preliminary investigation authorisation and the second is an application for a section 28(1) investigation. You seem to be reading from documents. And from my recollection, those are part of the documents that we had requested in terms of the subpoenas issued, but we unfortunately do not have at hand.

As you look at them now, could you provide us the date for the preliminary investigation authorisation from the record you have in your hand? What is the date of that?

10 **ADV JOHNSON**: Apologies, has the documents not come through to the Commission?

ADV SELLO SC: Is that the lot that was coming in through this morning? If it was coming in through this morning, it has to make its way through the system so it will eventually get here. So ...[intervenes].

CHAIRPERSON: Mr Bodlani, are you able to assist on this?

ADV BODLANI SC: Yes, Chair. As I understand it, it is part of the documents that were made available this
20 morning. It may very well be that it is yet to find its way to my colleague, but as she says, there is a system and maybe it has bottlenecks here and there, but it is part of those documents, yes.

CHAIRPERSON: Thank you, thank you.

ADV SELLO SC: Thank you, Chair. Then we shall be

sorted later by tea. There will be printing. But in the interim, can you give me the date for the preliminary investigation authorisation?

ADV JOHNSON: 6 December.

ADV SELLO SC: Yes?

ADV JOHNSON: 2024.

ADV SELLO SC: And the application for a section 28(1) investigation?

ADV JOHNSON: It would have been 30 May 2025.

10 **ADV SELLO SC:** 20?

ADV JOHNSON: 25.

ADV SELLO SC: Thank you. This detail and this structure helps. Now, we have been talking a lot about the section 27 referral in the Mokwele matter. This is in your File 2, page 512. It is CJC373. Page 512. I need you to keep open that file for the moment. There is another document I would like us to have at hand. It is from General Mkhwanazi's annexures. MK16, 1-6.

ADV BALOYI SC: Ms Sello, this is the information note?

20 **ADV SELLO SC:** MK16, 1-6. It is a letter from the Office of the Minister of Police.

ADV BALOYI SC: Yes. Sorry, I was in the wrong ...[indistinct].

ADV SELLO SC: Okay, thanks. Chair, I think we have a spare copy of that. It has been availed to you now. MK16

would start at page 310 in that bundle. Thank you. Let us start with MK16. If you look overleaf, it is dated 11 November 2024.

ADV JOHNSON: Correct.

ADV SELLO SC: Okay. And if you just cast your eye at page 516 of File 3, that you have opened the referral that is dated 21 November 2024. So, let us follow the events sequentially. And I think you did reference this document that is marked MK16, which is a letter signed by, it would
10 appear, the Chief of Staff Minister of Police, Mr Nkabinde, and it is directed to the Investigating Directorate, yourself. And it shows as a heading referral and request for investigation in terms of section 27 of the National Prosecuting Authority Act, Act 32 of 1998, read with the National Prosecuting Amendment Act, Act 10 of 2024. You confirm receipt of this letter?

ADV JOHNSON: Of the MK16?

ADV SELLO SC: Yes, ma'am.

ADV JOHNSON: Yes.

20 **ADV SELLO SC:** And this letter purported to refer to your office, complained by Mr Adams, a member of Parliament, and concludes overleaf with the following statement:

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

You see that?

ADV JOHNSON: I see.

ADV SELLO SC: Now, kindly inform the Commissioners what you did upon receipt of this letter.

ADV JOHNSON: This letter came to us by hand and it did not have any attachments to it. I looked to see if we did even reply to it. I can see the letter come in, but we do not have a response to the Ministry acknowledging receipt of this letter. And it is afterwards that we got an envelope that
10 was delivered to the office with the 27 ...[intervenes].

ADV SELLO SC: We will get to the 27. For the moment, let us stay with this letter.

ADV JOHNSON: Yes, ma'am.

ADV SELLO SC: Did you act upon it?

ADV JOHNSON: Sorry, I did not hear.

ADV SELLO SC: Did you act upon the letter? There is a specific request there to look into the complaint by Mr Adams in respect of the cases listed there and, as I see at the end, to inform Mr Adams of your decision. Mr Nkabinde
20 says:

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

So, I want to know upon receipt of this letter, what steps did you then take? You have clarified that you cannot find a

response to this letter, nor an acknowledgement of receipt.

ADV JOHNSON: I could not act on this letter because there were no attachments to it.

ADV BALOYI SC: What you are being asked is that last paragraph says:

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

And the question is, having received a letter from the
10 Ministry, what did you do? Not did you institute an investigation, was the letter sufficient to act on it, that is not the question. The question is you have correspondence directed to you.

I assume you do not just file away letters when they come in, especially when you are told that the complainant is awaiting to hear from you. The question is, what did you do? Either you did nothing and filed this away, or you did do something about it. And you have to say, what did you do?

20 **ADV JOHNSON**: What I would have done, and that is why I am saying I cannot find if we would have acknowledged receipt of the letter, and that is as far as I would have been able to take it because there was nothing to do. There was not anything attached to this letter for me to be able to act upon it.

CHAIRPERSON: That is not an answer. Surely that is not an answer, Advocate Johnson. You cannot just acknowledge receipt and then keep quiet. How will the Ministry know what your issue or problem is? Why not raise it with the Ministry that I am not able to do anything with this because, as you put it, there are no annexures to your letter? Why do you just acknowledge and then fold your arms and do nothing? That escapes me.

ADV JOHNSON: Not do nothing. I ...[intervenes].

10 **CHAIRPERSON**: You have just told us ...[intervenes].

ADV JOHNSON: I am saying I acknowledge receipt ...[intervenes].

CHAIRPERSON: Sorry, sorry, sorry. Thus far you have basically told us that you did nothing. All you did was to acknowledge receipt of the letter.

ADV JOHNSON: Yes.

CHAIRPERSON: What did you do then if you did do something? What did you do?

20 **ADV JOHNSON**: I honestly cannot remember. I have to cast my mind back to – in the acknowledgement of the receipt of the letter, I speak under correction, I am not sure that I asked and indicated that there was nothing attached to this letter because a few days later, by way of envelope, we get the section 27.

ADV BALOYI SC: You would have been told to file a

section 27. He did not make it up. He did not wake up one morning thinking, oops, I have to put in a section 27 affidavit. Someone would have advised him to file that. That is why it is important to know what did you do, what did you say in that acknowledgement of this letter. You must have said something before we get to you then received an envelope.

ADV KHUMALO SC: And the acknowledgement would have been typed from an internal computer. Surely you have that
10 letter in your possession or a draft of it somewhere in the computer and it can be made available to the Commission.

ADV JOHNSON: We have looked for it. I am going to ask them to look for it again because I also have to apply my mind. That is why it sounds like a fumbling answer because I cannot recollect what I would have written over and beyond we acknowledge the receipt. And in all likelihood would have alluded to the fact that there is nothing there because it talks to this envelope coming with the 27 a week later.

20 **ADV KHUMALO SC:** But you see, speaking for myself, Advocate Johnson, the answer you have just given now creates an impression that a draft of this letter was deleted. That is why it is not available because you use a laptop to draft a letter and then your PA, I assume, would have then either printed it from that computer or emailed it to you.

And if you are happy with it, you would have appended your signature and it would have gone to the Minister's Office.

Now, if you are saying we have looked and it is not there, the question is what would have happened to that draft unless somebody deleted it so that it is no longer available.

ADV BALOYI SC: And maybe to correct what you have said, this letter does not say here is a copy of an affidavit. It says a copy of a written correspondence addressed to the
10 Minister. So if it lacked anything, it was the letter which Mr Adams addressed to the Minister, not an affidavit. You are not on suspension. You have your laptop. You are able to check this and give us a copy of your response, right?

ADV JOHNSON: Correct. And I will look for it again. I will have the PA look for hers again. We did try that exercise, or we did do that exercise, not try the exercise. But if you give me till lunch today, we will go back. I will ask the IT perhaps, Advocate Mhaga, if we could just engage with the IT to check through the email correspondence of both
20 myself and my PA. It could have been I drafted a response and emailed to her, or she would have emailed to me so that we are able to give the Commission a full account.

CHAIRPERSON: From what you are saying, so it means the letter should be in both your inboxes ...[intervenes].

ADV JOHNSON: Should ...[intervenes].

CHAIRPERSON: Your PA's. On your side, if you sent to her, it will be on your sent items and then in her inbox. If she drafted it and sent it to you, it is in her sent items and in your inbox.

ADV JOHNSON: Correct.

CHAIRPERSON: So again, going back to what Commissioner Khumalo said, it is unlikely that it would disappear on both ends. That is just unlikely. Do you agree?

10 **ADV JOHNSON:** Correct. And if I may, just one point of correction is there are times as well, Chair, where I would type a document, print it myself, sign it, and then hand her the hard copy to distribute. That is just ...[intervenes].

CHAIRPERSON: Ja, I was ...[intervenes].

ADV JOHNSON: Just for purposes of clarity.

CHAIRPERSON: You are correcting yourself because what I suggested to you now was based on what you had said, which was you sending or she sending, or he because your PA could be a he or she. So I was basing it on what you
20 had said, but you are correcting yourself and now saying it could be on one end only.

ADV JOHNSON: Correct.

CHAIRPERSON: All right, okay.

ADV KHUMALO SC: Sorry, there was a question by Commissioner Baloyi that got lost in this engagement, which

was how else would Mr Adams have known to contact IDAC and prepare section 27 affidavit? Did IDAC contact Mr Adams and say, we need an affidavit from you? Because this is 13 days later, so the Minister's letter is 11th of November. On the 21st, so it is about 11 days, 10 days, Mr Adams then has this affidavit. I do not know how it gets to IDAC, but how did Mr Adams know that he must do a section 27 affidavit for IDAC?

ADV JOHNSON: Mr Adams would have had to be
10 contacted by IDAC.

ADV KHUMALO SC: Following upon receipt of this letter, IDAC contacted Mr Adams?

ADV JOHNSON: IDAC could have had to have contacted him, yes.

CHAIRPERSON: Who did that? Who contacted Mr Adams?

ADV JOHNSON: In this instance, it would have had to have been Chief Criminal Investigator Perumal.

CHAIRPERSON: Do you know for a fact or do you not?

ADV JOHNSON: That is why I say it would have, in all
20 likelihood, would have been Chief Investigator Perumal.

CHAIRPERSON: So you do not know for a fact?

ADV JOHNSON: I do not know for a fact.

CHAIRPERSON: But why do you think him?

ADV JOHNSON: Because later on the engagements with Mr Adams were with Mr Perumal and the other investigators.

We would not have then sent people that have not already engaged with him.

CHAIRPERSON: Sorry, Ms Sello, we ...[intervenes].

ADV SELLO SC: Indeed, Chair.

CHAIRPERSON: It was your question we took over.

ADV SELLO SC: No, no. These are follow-up questions to a question I had asked, so they flow from the question.

CHAIRPERSON: Yes.

ADV SELLO SC: I am happy.

10 **CHAIRPERSON**: Please go ahead. Please go ahead.

ADV SELLO SC: Thank you.

ADV BALOYI SC: Can I ask on the back of that? Your response, the way that I have understood your description of how your processes work, it is you get a section 27, you then discuss it, you take a view, you then discuss it with Mr Sesoko, you give it to him to then take his own view, the two of you agree something, and after you have agreed that there is an offence in this referral, you then refer it to the team, right? That referral to the team, who in particular
20 does it go to from you and Mr Sesoko? Who does it go to when you say we then refer it to a team?

ADV JOHNSON: The office would usually call the project manager to hand over the document, and then it goes then into the team for the deputy and all of them to work through the document.

ADV BALOYI SC: So is Mr Tlale a forever standing project manager? At that point, it is you and Mr Sesoko. When does a project manager get appointed to be responsible for this now?

ADV JOHNSON: It depends which team you are sending it to. They have standing project managers.

ADV BALOYI SC: So there was already a team to which you referred yours, and I am going to call you the intake committee for now until you have that discussion with Ms
10 Sello and the rest of us, but for purpose of our discussion, you are the intake committee.

You have made a decision. Is there a project manager already at that point, or do you then proceed at that point to appoint a project? I am just trying to understand how you then process it from that point, and we will come back to the question about who contacted Mr Adams.

ADV JOHNSON: There are four project managers in the office, and when you allocate a matter to a team, that team
20 already has an existing project manager. So it is the project manager may have been there because of other matters, and like I said, for example, that team deals with the Transnet matters under Mr Manilall. So when we gave the matter to Mr Manilall, the project manager who has been in that team is Mr Tlale.

ADV BALOYI SC: Okay. Now, if Chief Perumal is the one that contacts Mr Adams following this letter, where does he get that from? This is Chief Perumal. Where does he get it from that he must contact a member of Parliament, Adams, because at this point there is no section 27 yet that has come in.

So that process of you and Mr Sesoko has not yet happened. Nothing has yet been referred to a team or to a project manager in team. How does Chief Perumal come
10 into it after you have received MK16?

ADV JOHNSON: I speak under correction. When Mr Sesoko is not there for me to ask or request that he engage with somebody, I usually, it would depend who is acting in his place, and I need to check if Mr Perumal was acting at the time, or we also have Chief Criminal Investigator Lusanda Booi to whom we would allocate.

It might be on that basis that he was therefore approached to deal with this matter because we would need an investigator to be able to interview Mr Adams.

20 **ADV BALOYI SC:** So for Chief Perumal to have been the one, or Mr Booi for that matter, whoever you have appointed, but for now you say you think it must have been Chief Perumal, for him to contact Mr Adams following you receiving this letter because at that point that is all you had.

ADV JOHNSON: Yes.

ADV BALOYI SC: You would have had to say to him I have received this letter, contact Mr Adams.

ADV JOHNSON: That is correct, Chair.

ADV BALOYI SC: Okay, thank you.

ADV SELLO SC: Thank you, Commissioners ...[intervenes].

CHAIRPERSON: So at that stage, neither Mr Sesoko or whoever else was involved, it was you and you directly said
10 to Mr Perumal, contact Mr Adams? No involvement of Mr Sesoko?

ADV JOHNSON: No, because we have not had the 27 yet.

CHAIRPERSON: All right, all right. I am asking to be sure because earlier when the same question was asked, you mentioned Mr Sesoko, you mentioned somebody else, and that just confused issues. So all right, thank you, I understand.

ADV SELLO SC: Thank you, Chair. So then just so we understand where we are at, you have now received MK16.
20 You indicated that you did not refer it to an investigation because it did not have attachments, but we know from the letter itself that it had written correspondence addressed to the Minister of Police. What attachments did you consider were lacking that made it the absence of which made it difficult for you to act on this letter?

ADV JOHNSON: I only have these two pages.

ADV SELLO SC: Ma'am?

ADV JOHNSON: I only got these two pages.

ADV SELLO SC: Let us go to the very letter. It reads in the first paragraph:

“Attached hereto please find for ease of
reference a copy of written
correspondence addressed to the
Honourable Minister of Police,
10 Honourable Senzo Mchunu, Member of
Parliament, Honourable Fadiel Adams.”

ADV JOHNSON: Yes.

ADV SELLO SC: So you say it did not have ...[intervenes].

ADV JOHNSON: I only had these two pages that you have
here, page 310 and 311.

ADV SELLO SC: Please say that again.

ADV JOHNSON: I only had these two pages
...[intervenes].

ADV SELLO SC: [Indistinct – cross-talking].

20 **ADV JOHNSON:** 310 and 311, yes.

ADV SELLO SC: So did you go back to Mr Nkabinde and
say you forgot to attach the written correspondence
between the Minister of Police and Mr Adams, which you
had kindly offered for ease of my reference? You did not do
that?

ADV JOHNSON: That is why I am saying we need to look for the response to this letter where I would have acknowledged the letter and in all likelihood would have asked for that which is short, attached, please find a reference. I would have asked for the written correspondence.

ADV SELLO SC: But definitely you recall you did not have that correspondence attached.

ADV JOHNSON: I recall I did not have that
10 correspondence.

ADV SELLO SC: You then, as you testified, you instructed Chief Perumal to be in contact with Mr Adams to obtain section 27 affidavit.

ADV JOHNSON: That is correct.

ADV SELLO SC: Now, I want to suggest to you, so effectively IDAC solicited a section 27 affidavit from Mr Adams.

ADV JOHNSON: I will tell you now. When you look at the 27, we did not take the 27. They would have contacted him
20 and I guess this is what we got. I speak under correction. Mr Perumal would have to answer what he got from Mr Adams, but what we got was a 27 dated the 21st of November 2024.

ADV SELLO SC: That is right. My question is that document you are holding in your hand, IDAC solicited it

from Mr Adams. You received a letter from the Minister. You then directed Mr Perumal to act on that and contact Mr Adams and ask him ...[intervenes].

ADV JOHNSON: Ask him for his ...[intervenes].

ADV SELLO SC: So you solicited a section 27 affidavit from a would-be complainant.

ADV JOHNSON: I do not agree with the solicited.

ADV SELLO SC: Ma'am?

ADV JOHNSON: I do not agree with solicited. We would
10 have asked him. Because, you see, I am going into the detail that is not mine and not in my head and I do not want to sound like I am ...[intervenes].

CHAIRPERSON: It is yours, it is yours, it is yours, Advocate Johnson. You are the one who gave an instruction to Chief Perumal to contact Mr Adams. So Ms Sello's question relates to that. That has nothing to do – Mr Perumal would then have been the actor, actor on your instruction. That is where the question is. It has nothing to do with what Mr Perumal then did down the line. So please,
20 please do not deflect the question and refer to what Mr Perumal would have done or not done. Can you please respond to the question?

ADV JOHNSON: Then we would have obtained the statement.

CHAIRPERSON: At your instance, that is the substance of

the question.

ADV JOHNSON: That is correct.

CHAIRPERSON: That is what Ms Sello means when she says to you, so you solicited the affidavit because what came out of your instruction that please contact Mr Adams was the submission of the section 27 affidavit. So it is on that basis that Ms Sello is suggesting to you, you solicited that affidavit. Do you now agree?

ADV JOHNSON: I agree.

10 **ADV SELLO SC:** As you sit here today, is that appropriate of IDAC to be soliciting complaints from members of the public on the basis of which then IDAC initiates investigations?

ADV JOHNSON: No, we are not supposed to solicit. And that is why I am saying the engage – I tell Mr Perumal to engage Mr Adams. I do not know if this was a prepared affidavit already. It was to say to him, we received a letter from the Minister, we are engaging you. So whether this was already prepared or not at the time, we got this
20 affidavit.

ADV SELLO SC: Okay. So then you recall when we are looking at MK16, the last sentence in MK16 before the signature by Mr Nkabinde states:

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

this regard.”

So it is fair then to conclude that your decision that you communicated to Mr Adams is prepare an affidavit, section 27 affidavit and submit to IDAC. That is what you must have advised Mr Adams based on your testimony.

ADV JOHNSON: That is what the advice would have been.

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

CHAIRPERSON: Just on something you said in response to Ms Sello's previous question. You touched on the
10 possibility that, not stating it as a fact, that the affidavit, you do not know whether the affidavit had already been prepared at the time of your instruction to Mr Perumal. Did I understand you correctly?

ADV JOHNSON: That is correct, Chair.

CHAIRPERSON: No, that is not a fact. Look at that affidavit. It is dated 21 November 2024.

ADV JOHNSON: Yes.

CHAIRPERSON: And the Minister's letter is the 11th of November 2024. So there was no prepared affidavit. I
20 thought I should just put that out of the way. That is something you must accept. Correct?

ADV JOHNSON: I hear what the Chair is saying.

CHAIRPERSON: Yes, yes. All I am saying is let us forget about the possibility of an affidavit that could already have been in existence between the time that you got the letter

from the Minister and the time that this affidavit was eventually submitted to IDAC. That is not a possibility.

ADV JOHNSON: Correct, Chair.

CHAIRPERSON: We do see the correct facts here. Thank you.

ADV KHUMALO SC: So the upshot of all of this is that the referral to IDAC was by the Minister's Office. And following that referral, IDAC then made a decision to engage with Mr Adams to obtain an affidavit from him.

10 **ADV JOHNSON:** It follows, Commissioner, yes.

ADV KHUMALO SC: Yes.

ADV SELLO SC: Thank you, Commissioners. I suggest to you that you did that because you knew as ID that the Minister's letter does not constitute a section 27 referral and IDAC decided to cure that deficiency. If we look at section 27, it says the complaint must be on affidavit. So you knew that the Minister's letter would not be sufficient to trigger your mandate and you sought to cure that shortcoming. I am trying to flight section 27. If you have it
20 close by. There, it is on the screen. You see it? Section 27 states:

“If any person has reasonable grounds to suspect that a specified offence has been or is being committed or that an attempt has been or is being made to commit

such an offence, he/she may report the matter in question to the Head of the ID, Investigating Directorate, by means of an affidavit or affirm declaration.”

You see that? And you are quite familiar with section 27. You nod. Please articulate your response, thanks.

ADV JOHNSON: Yes.

ADV SELLO SC: So because you read the Minister's letter and you saw the difficulty that it would not trigger your
10 power to investigate, you contact Mr Adams through Mr Perumal to cure that problem and to provide a section 27 affidavit.

ADV JOHNSON: Yes, as the Minister refers, referral and request for investigation in terms of section 27, but there is not a section 27 there. And so by virtue of what you are saying, we had to go ahead then and get a section 27.

ADV SELLO SC: Why?

ADV JOHNSON: Because there is no 27 that is referred to us through that letter.

20 **ADV SELLO SC**: Please go to MK15 and look at the correspondence that I understand that you received attached to the letter by Mr Nkabinde. And MK15, I would like to refer you to page 28 – let us start at 282, but then in particular, I would like us to have regard to 283 and 284. From our records, we are aware of a letter to, no, sorry, an

email to the Minister at the bottom, starting at the bottom of page 283 of MK15, and from Mr Adams. If you look over leaf at 284, and in that email, having stated what his issues are at five, he states:

“I urgently and humbly ask for the Minister to intervene and ensure the integrity of investigative processes maintained to ensure a fair and just outcome.”

10 You see that? Do you see what I am reading?

ADV JOHNSON: Yes.

ADV SELLO SC: And then if we go back to 283, then we see communication from Mr Nkabinde to Major General Sebola, referring this complaint and requesting that a report be filed with the Minister or the Minister's Office by Monday, the 4th of November. Now, if the email at page 283 at the bottom from Mr Adams reflects a complaint, as reflected in sub two at the bottom of the page, he said to Minister of Police:

20 “[1] I have opened cases.”

You see that?

ADV JOHNSON: Correct.

ADV SELLO SC: And if we go to two, he says:

“I was told that the dockets were intercepted.”

And then in his quest for justice, he says he would travel to Gauteng to open dockets:

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

So, my understanding of this email is what Mr Adams wanted was that the investigative process of the cases, the dockets he had opened, the integrity of that process be maintained.

ADV JOHNSON: Correct.

ADV SELLO SC: You have the same understanding as well. Now, assuming for a moment that this is the communication that was attached to MK16, the letter addressed to you, what in this would trigger your mandate? Remember, in your affidavit, you set out your section 7(a) of the NPA Act. You do so at paragraph 8, page 3 of your first statement and you do quote the Act that your mandate is to investigate serious, high-profile, or complex corruption, commercial, and financial cases. That is (a). (b), relating

to additional related offences or categories of offences, including, and then it lists, and then at (c), relating to additional related statutory offences or categories, including contravention of specified Acts.

If we take MK16 and we take this communication that I suggest was attached to that letter, what in these documents triggers your mandate in terms of section 7(a)? Do these documents reflect a serious, a high-profile, or complex corruption, or a serious, high-profile, or complex, however that is read? What about the contents of those documents bring this within the mandate of IDAC to justify your initiative to direct Mr Perumal to go obtain a section 27 affidavit?

ADV JOHNSON: If this was, in fact, the document that was attached, it does not trigger.

ADV SELLO SC: And if that document was not attached, it is even worse because the MK16 itself gets nowhere close to section 7(a) on its own without this communication.

ADV JOHNSON: So there is the two possibilities.

20 **ADV SELLO SC:** Yes.

ADV JOHNSON: If this was attached, the only time that it would have triggered anything:

“However, I have been notified that the
...[indistinct] interfering in the
investigative process.”

That might have triggered looking at whether or not it was defeating, but I can honestly tell you I cannot recall this document, so it cannot have triggered IDAC's mandate.

CHAIRPERSON: Are you referring to the emails now? When you say this document, are you referring to MK15, the emails?

ADV JOHNSON: The 283 and 284.

ADV SELLO SC: Pages 283 and 284.

CHAIRPERSON: That is the emails?

10 **ADV SELLO SC:** The emails, yes.

CHAIRPERSON: You are referring to a document singular, but Ms Sello's question, as I understood, it was referring to both the emails and MK16, which is the letter from the Minister. So do not leave that out. What about that letter? From that letter, do you see anything that triggers IDAC's mandate?

ADV JOHNSON: Sorry, let me just go back here, Chair. Chair, if that was attached, and when you look at paragraph 2 ...[intervenes].

20 **CHAIRPERSON:** Starting with what was ...[intervenes].

ADV JOHNSON: The allegations.

CHAIRPERSON: Yes.

ADV JOHNSON:

“...contained therein implicate very senior
members of the South African Police

Service and are viewed in a serious light,
and case dockets were registered as...
and due to the nature of the allegations
made by the Honourable Adams, which is
deemed to be quite sensitive and which
contains allegations of criminal conduct,
the office requests the Investigating
Director to consider investigating the
same.”

10 **CHAIRPERSON**: That says nothing. That says nothing
altogether. We do not even know what those allegations
are, whether serious or not. That basically says nothing.
And if I were to refer you to one of your own statements, I
think that is your second statement where you were
required to respond to issues about the docket which you
are alleged to have shared with General Khan.

You had, in respect of that issue, the ability to say
this is vague, it does not say when, it does not say by
whom, it does not say, and you went on and on to
20 demonstrate that it was vague. That same thought process
by you ought to have applied here as well. There are so
many whys, how, by whom, when, about what exactly.
There are so many of those.

If you are able to apply that thought of process or
that kind of reasoning, why did you not apply it here? It is

on that basis that I say this says nothing at all. So by parity of reasoning, in accordance with your own reasoning, when you concluded that what you were being asked was vague, why did you not see this as vague as well? It says nothing, I suggest to you. Do you agree or not?

ADV JOHNSON: It may say nothing in there, it refers to the dockets.

CHAIRPERSON: So you are happy that it says nothing?

ADV JOHNSON: It does not make out any allegations.

10 **CHAIRPERSON:** Exactly, exactly. Now, go to section 32 of the NPA Act, and please tell me when you are there. 32, 32.

ADV JOHNSON: I am there, Chair.

CHAIRPERSON: Do you see that in subsection (1), that is section 32(1), there it is stated how you are to carry out your functions and that is amongst others without fear, favour or prejudice. And what I want to emphasise here is without fear. And then in subsection (2), that is section 32(2), the oath of prosecutors is actually set out there. You
20 do see it?

ADV JOHNSON: I see that, Chair.

CHAIRPERSON: It also captures the same words, without fear, that is you will exercise your functions as a prosecutor, and you happen to be a senior one at that, so you will exercise your functions as a prosecutor without

fear, favour or prejudice. Again, I emphasise without fear.

Now, if you accept as you have just done that there was nothing whatsoever in the Minister's letter, what stopped you from writing back to the Ministry and saying we do not have a section 27 referral, therefore we cannot do anything about this? And you did not even have to go to the content of the letter, but because there was nothing, nothing in the content of the letter that should also have given you comfort as a prosecutor that I do not have to
10 follow up on anything here because there is nothing.

You have accepted that there was nothing. Why did you not write back to the Minister and say in the absence of a section 27 referral, we as IDAC cannot do anything? So that it would then have been the Ministry that saw to it that a section 27 referral was placed before IDAC. Why did you not write such a letter? Were you fearful of the Minister?

ADV JOHNSON: Not at all, and ...[intervenes].

CHAIRPERSON: Why then did you not write such a letter?

ADV JOHNSON: As I said, Chair ...[intervenes].

20 **CHAIRPERSON:** Sorry, sorry, you spoke over me. Why then did you not write such a letter?

ADV JOHNSON: That is why I said, Chair, we would have to look for the letter, the response, what did I write in my response to the Minister. I do not ...[intervenes].

CHAIRPERSON: But surely, surely ...[intervenes].

ADV JOHNSON: [Indistinct] ...[intervenes].

CHAIRPERSON: Sorry, sorry, sorry, sorry, but surely that letter could not possibly have said, Minister, we are not going to do anything about this because there is no section 27 referral, because that would have been at variance with or at odds with you instructing Mr Perumal to follow up with Mr Adams. So that letter, even if we were to look at it, it is not likely to have said what I am suggesting you ought to have done. So do you think that letter is going to assist

10 you?

ADV JOHNSON: I would have to look at the contents of ...[intervenes].

CHAIRPERSON: Do you think it is going to assist you as you sit there, seriously? Do you think it is going to assist you?

ADV JOHNSON: Not at all.

CHAIRPERSON: It cannot possibly do so. It cannot possibly do so because such contents would have been, as I say, at odds with the instruction you gave to Mr Perumal.

20 You agree?

ADV JOHNSON: I agree, Chair.

CHAIRPERSON: Thank you.

ADV BALOYI SC: Can I just follow up on that? And I want to make a proposition to you that when you look at the letter from Mr Nkabinde, as you agree, it says nothing. It says I

attach a copy of written correspondence from Mr Adams to the Minister, not to you, and then it gives a list of cases. It says:

“Allegations contained therein implicate very senior members of the SAPS and are viewed in a serious light and case dockets were registered...”

And he gives you those case dockets, and then he says:

10 “Due to the nature of the allegations made by Fadiel Adams, Honourable Fadiel Adams, which is deemed to be quite sensitive and which contains allegations of criminal misconduct, this office requests the Investigating Director to consider investigating the same.”

And then the last is you will advise him what you are doing, you will advise Mr Adams. Now, for you, the proposition that I want to make to you is for you to instruct Chief Perumal to speak to Mr Adams, you must have had sight of
20 these emails for you to form a view that there is possibly a matter that falls within our section 27.

You must have looked at MK15, 282, otherwise your decision does not make sense that just on MK16, on MK16, you say to Mr Perumal speak to Mr Adams. When 16 says nothing, as the Chair says, it does not allege what crime it

speaks about, allegations are sensitive, does not tell you anything.

So you do not know whether they are talking about theft of a notebook on MK16, it could have been anything. So it cannot be, and I would be surprised if you acted on MK16 to say to Mr Perumal speak to Mr Adams, so that we can get an affidavit from him.

That conduct of yours to say to Mr Perumal, to Chief Perumal, speak to Mr Adams, makes sense only if you
10 have seen these emails and you have seen that there are allegations of interception of dockets, as you were starting to say that the email seems to speak to corruption of sorts. You have to have seen this.

That is my proposition to you, that you must have seen these emails by the time or before you spoke to Perumal and that is what informed you, saying to Mr Perumal speak to Mr Adams. What do you say to that?

ADV JOHNSON: I cannot disagree with you, Commissioner Baloyi.

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

CHAIRPERSON: Sorry, sorry, let me just follow up on a response you gave when I engaged you. So in the end, you accepted that you could not possibly have written a letter to the Minister saying there is nothing we can do in the absence of a section 27 referral. So you accepted your

letter could not possibly have said that.

I asked you, did you act in the manner in which you did because you were fearful of the Minister and I thought your response was in the negative. Correct? If you are not fearful of the Minister, why then did you act? What motivated you to act in circumstances where there was nothing in the content of the letter from the Minister, you were not fearful of the Minister, as you suggest, but you still went ahead regardless and gave the instruction that you
 10 gave to Mr Perumal?

What motivated you? What was the motive behind your action? If it was not fear of the Minister, what then was the motive for you to act in the manner in which you did?

ADV JOHNSON: Is to follow up on, is there a section 27?

CHAIRPERSON: Is that all you asked Mr Perumal to do?

ADV JOHNSON: That is all because there is a reference to a section 27. There is no section 27. Mr Perumal, to contact Mr Adams to find out if there is a 27 or to get a 27.

20 **CHAIRPERSON:** Did you say this before or are you saying it for the first time? If you did say it, I may have not heard you. What I am referring to as to whether you are mentioning it for the first time now is whether your instruction to Mr Perumal was for him to find out if there was a section 27 referral. Did you say that before?

ADV JOHNSON: No, Chair, I did not say that before.

CHAIRPERSON: You are saying it for the first time now. I would have expected you to say that much, much earlier, but I will leave it at that.

ADV JOHNSON: I am reading again.

CHAIRPERSON: Sorry?

ADV JOHNSON: Sorry, I was reading again and going through what you asked.

CHAIRPERSON: Okay, thank you, thank you.

10 **ADV SELLO SC**: Thank you, Chair. Okay, if I ...[intervenes].

ADV KHUMALO SC: Sorry, one last one. Do you see that as far as the Minister is concerned, his letter was the section 27 referral? Because if you look at the heading, they say referral and request for investigation in terms of section 27. So as far as the Minister was concerned, this is the section 27. So the appropriate answer from you would have been this does not comply with section 27, that is the end of the story.

20 **ADV BALOYI SC**: In fact, to add to that, nothing in this letter leads you to Mr Adams. As Commissioner Khumalo says, it is the Ministry that is referring and purporting to refer in terms of section 27. And if you were going to ask for a section 27 affidavit, it is from Mr Nkabinde that you ask for because he is the one that is purporting to refer. It

does not direct you to Mr Adams.

The complaint has been laid with them, and Nkabinde says I am lodging a section 27 complaint. And you have no business, at least on the basis of this letter, to go to Mr Adams for a section 27 affidavit. You go to Mr Nkabinde for a section 27 affidavit. You say to him this is not a proper referral. If you want us to investigate in terms of section 27, as Commissioner Khumalo says, give us an affidavit.

10 **ADV JOHNSON**: I read it differently, Commissioner Baloyi ...[intervenes].

ADV BALOYI SC: How do you read it differently?

ADV JOHNSON: It says referral and request for investigation in terms of section 27 and it does make reference to the Honourable Fadiel Adams. We do not have anything from Fadiel Adams. And so the request to Perumal to get a section 27 from Fadiel Adams is based on the referral and request for investigation in terms of section 27.

ADV BALOYI SC: Mr Nkabinde is asking you to
20 investigate. Mr Adams is not asking you to investigate. He has not communicated with you. He has not. Even on the version, on the proposition that I made to you that you must have seen the emails that he sent to the Minister, even on that, he is not directing anything to you. It is Mr Nkabinde, he raises his complaint with the Minister. That is what he

does.

ADV JOHNSON: Yes.

ADV BALOYI SC: The Minister's Chief of Staff lodges with you a complaint and he calls it a section 27 complaint. The only reference he makes to Mr Adams is to say we have received, the Minister has received a complaint from Mr Adams, please investigate and I refer this to you in terms of section 27.

So the person that must give you the affidavit is Mr
10 Nkabinde. And it is not apparent why you thought that this is a complaint to IDAC from Mr Adams because it is not a complaint from Mr Adams to IDAC. At this point, it is not.

ADV JOHNSON: I see where you are going to, Commissioner Baloyi.

ADV KHUMALO SC: It is like this, Advocate ...[intervenes].

CHAIRPERSON: No, no, no, sorry, sorry. Do you agree? Do you agree?

ADV JOHNSON: I agree with her interpretation, yes.

20 **CHAIRPERSON:** Thank you, thank you.

ADV KHUMALO SC: It is like this. So Mr Adams writes to the Minister's Office. He is unhappy about the four dockets and he asks the Minister's Office to intervene. So the Minister's Office has at least three choices. One is the Inspectorate, the other one is IPID, and the other one is

IDAC. So they have those three. So far, you are with me.
You agree?

ADV JOHNSON: I agree.

ADV KHUMALO SC: Based on the nature of the allegations, as vague as they are, they have those three options. The Minister's Office then picks one and they say we pick IDAC, and we will do a referral to IDAC in terms of section 27 of the NPA Act. It is not Mr Adams who says I choose IDAC. It is the Minister's Office, based on what we
10 see in this letter. Do you agree so far?

ADV JOHNSON: I agree so far.

ADV KHUMALO SC: Yes. And they say, as far as the Minister's Office is concerned, the allegations in the correspondence by Mr Adams, they regard them as quite sensitive. That is the Minister's Office. And they contain allegations of criminal misconduct. That is the Minister's Office.

They then say, this office, that is the Minister's Office, this office requests Advocate Johnson to consider
20 investigating the matter. That is the last paragraph on 310. So do you see that it refers to this office being the Minister's Office? Do you see that?

ADV JOHNSON: I see that.

ADV KHUMALO SC: And it is the Minister's Office that is asking IDAC to investigate.

ADV JOHNSON: Correct.

ADV KHUMALO SC: Yes. So the request is by the Minister's Office, and they say Adams was advised to await Advocate Johnson's decision, a decision on the request by the Minister's Office.

ADV JOHNSON: Yes.

ADV KHUMALO SC: Do you accept that? Yes.

ADV SELLO SC: Thank you, Commissioners. If I could then add, and what the Minister's Office requested IDAC to
10 investigate is the alleged interception of the dockets. That is it. Not the allegations set out in the respective dockets. That was never the request to you. Do you accept that?

ADV JOHNSON: I accept that.

ADV SELLO SC: So if you understood the request to be an investigation into the alleged interception and interference of dockets opened by Mr Adams, that surely should have been the confines of your investigation. Whether or not dockets were opened and intercepted, whether there has been interference with the dockets, regardless of the
20 content of the dockets, because otherwise you would have been investigating what you were not requested to investigate. Would you accept that your investigation would have been that narrow, would be looking into the interception only?

ADV JOHNSON: In terms of this letter, yes.

ADV SELLO SC: Yes. So we then – if we look at the emails at 283 and 284, that is consistent with what Mr Adams complains about in his emails to the Minister. It is the interception. After tea, perhaps you will shed light on having solicited the section 27 affidavit as IDAC did, how do we end up with claims of Khumalo, Lushaba, Madondo syphoning money from the secret account fund with cover-ups of General Lushaba's incident with the appointment of a lady working at BMW in a sensitive post?

10 How does that fit into the request, specific request made to you of interception? Why is Mr Adams' affidavit not confined specifically to the complaint he had laid with the Minister? Was that at the instigation by IDAC? It can only be at the instigation of IDAC.

So there is Mr Adams' complaint of interference, and then there seemingly is a parallel investigation attached to that complaint initiated by IDAC, is that where we are at.

ADV JOHNSON: I am going to come back to you after tea
20 because I would have to speak to Mr Perumal about what he spoke to Mr Adams about and how we arrived at this.

ADV SELLO SC: No, no, no, no, no. You will come back ...[intervenes].

CHAIRPERSON: At that point, perhaps, let us take the adjournment and come back at 11:35.

ADV SELLO SC: Thank you, Chair.

CHAIRPERSON: Let us adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Ms Sello.

ADV SELLO SC: Thank you, Chair. Advocate Johnson, when we broke for tea, we had established that the Minister's office complaint was based in turn on Mr Adams' complaint of interception of his dockets. We agreed that?

10 **ADV JOHNSON:** Correct.

ADV SELLO SC: Okay. We know that upon receipt of that communication from the Minister's office, with or without annexures, you then instructed Mr Perumal to obtain a Section 27 affidavit from Mr Adams. My question was, if the complaint was interception of the dockets, not the content of the dockets, you, by you, I mean IDAC, must have instructed Mr Adams to include in his Section 27 matters that do not constitute interception. You indicated that you needed to talk to Mr Perumal. I take it you have had a
20 chance to, and are able to shed light on how we end up with a Section 27 affidavit, reading as it does, inconsistent with the complaint laid before IDAC by the Minister's office.

ADV JOHNSON: Commissioners, I did call Mr Perumal during the tea break, and I give feedback as follows:

“The referral and request for investigation

in terms of Section 27 in the letter by the Minister referred to Honourable Fadiel Adams and referred to dockets. The ID asked Mr Perumal to contact Mr Adams to find out if he had a 27, which he did. He called Mr Adams to indicate that IDAC cannot assist you in the absence of a Section 27 referral. Mr Adams said, I have dockets opened already that make out allegations. Mr Perumal advised him that we cannot just take those dockets in the absence of a Section 27. He told him to see a legal person and look at Section 27, and if he was of a mind to refer a matter in terms of Section 27. Accordingly, there is a 27 dated 21 November, signed in the Western Cape, that was compiled by Mr Adams, without IDAC, which he sent and which has the detail it has.”

ADV SELLO SC: The only complainant as of 11 November was the office of the Minister, and that complaint concerned interception of dockets. So the complaint itself does not concern itself with the contents of the dockets. It is only the act of interception. Do you agree with me?

ADV JOHNSON: [No answer]

ADV SELLO SC: That is what was communicated to you by the Minister's office on the 11th of November in terms of annexure MK16.

ADV JOHNSON: I beg to differ, if I could explain?

ADV SELLO SC: Yes, please.

ADV JOHNSON: The Minister is not just referring to the dockets. The Minister says:

10 “The allegations contained therein
implicate very senior members of the
South African Police Service and viewed
in a serious light, and case dockets were
registered as per the following CAS...”

Meaning whatever allegations that implicate senior
members of SAPS are in these four dockets referred on
310. It goes further to say:

20 “Due to the nature of the allegations made
by Honourable Fadiel Adams, which is
deemed to be quite sensitive, and which
contains allegations of criminal
misconduct, this office requests the
Investigating Director to consider the
same.”

ADV SELLO SC: Okay. Now let us look at the paragraph
you just read, the allegations contained therein. What the

reference to the therein, and I propose to you the therein is the correspondence addressed to the Minister. So the allegations contained in the correspondence from Mr Adams to the Minister implicate very senior members of the South African Police, and the implication is that they intercepted the dockets.

ADV JOHNSON: I do not read it like that.

ADV SELLO SC: How do you read it?

ADV JOHNSON: I read that the allegations contained
10 therein, in these dockets, in the dockets, implicate very senior members of the South African Police Service.

ADV SELLO SC: What in this communication gives you a sense that the Minister or Mr Nkabinde has seen the contents of the dockets?

ADV JOHNSON: I am not saying they saw the contents of the dockets. They referred to Mr Adams, and they say the allegations contained by Mr Adams implicate very senior members of the South African Police Service, and are viewed in a serious light, and case dockets were registered
20 as per the following CAS numbers.

ADV BALOYI SC: But if your reading of this letter is correct, then the Minister's office must have seen the dockets. Otherwise, they are not in a position to express a view that the allegations are viewed in a serious light, and that they are quite sensitive, what is contained therein, if it

is a reference to the dockets. The Minister must have seen these dockets, for your reading to be correct, it must be so.

ADV JOHNSON: For the way I read them, Commissioner Baloyi, he refers to Adams. Adams would have made the allegations. I am not sure in what form he made them to the Minister.

ADV BALOYI SC: No, no. What we know from this letter is the Minister has been given correspondence by Adams. That is what that letter says. There is correspondence from
10 Mr Adams. You say the second paragraph and the third paragraph do not refer to that correspondence, unless you are suggesting the Minister must have had a telephone call with Mr Adams, and that is why he is able to talk about these dockets, the content of these dockets. And I suspect that is not what you want to say, because the next question would be, how do you know they had a conversation about the dockets and what is contained in the dockets? So let us read the letter sensibly. Paragraph 1 says:

20 "I attach a copy of the correspondence
received from Mr Adams."

That is what it says.

ADV JOHNSON: Yes.

ADV BALOYI SC: And then paragraph 2 says:

"The allegations contained therein
implicate senior members of the South

African police.”

I want to say to you that a sensible reading of this first paragraph and the second paragraph is, the ‘contained therein’ refers or must refer to the attached correspondence. That is a sensible reading, otherwise why does he mention that letter to you?

ADV JOHNSON: That is correct.

ADV BALOYI SC: Yes. So your reading of it to say, well, when he talks about implicating senior officers and
10 containing sensitive matter, he is referring to what is contained in the dockets. It does not work. It is not a sensible way of reading this letter, but more importantly and seriously, it works only if you say that the Minister must have had a conversation with Mr Adams about these dockets, to know that matter contained therein, in those dockets, is sensitive and it implicates senior police officers and who are those senior police officers. You agree with me? You must agree with me.

ADV JOHNSON: I agree with the reading of a copy of a
20 written correspondence, which would have set out those serious allegations as contained and therefore the reference to the dockets because he refers to the dockets, but that the written correspondence would have set out these serious allegations.

ADV BALOYI SC: That is the only way it works. Thank

you.

ADV KHUMALO SC: And for that, you would have to go to page 283 of the same bundle.

ADV JOHNSON: Two?

ADV KHUMALO SC: 283.

ADV SELLO SC: That is the correspondence we suggested was attached to the Minister's letter.

ADV KHUMALO SC: The serious allegations implicating senior officers are contained there, because...

10 **ADV SELLO SC:** Apologies, Commissioner. MK15, please go to MK15.

ADV JOHNSON: I am there.

ADV SELLO SC: And then to page 283.

ADV JOHNSON: I am there.

ADV SELLO SC: Thank you.

ADV KHUMALO SC: So that email of 1 November 2024 at A21, that is the correspondence addressed to the Minister and the docket numbers are there. And then allegation two is that I was told the dockets were intercepted. And then he
20 says, I travelled to Johannesburg, Orlando, opened new dockets, you see there. Then he implicates senior officers because he then says they interfered in the investigative process and he was notified that Gauteng is following the same process. And the request to the Minister is:

“I urgently and humbly ask the Minister to

intervene to ensure the integrity of the
investigative process is maintained.”

So this is the request that gives rise to the referral to IDAC. And that was Advocate Sello's point, that the referral to IDAC was about these allegations implicating senior officers. Not for IDAC to go take over the dockets that were opened in Orlando and the Western Cape and investigate those underlying allegations in those dockets.

So having seen this, you can now go back to the
10 letter, it is on 310 and respond to Advocate Sello's question.

ADV JOHNSON: I still maintain that although you have that email, this letter tells you referral and request for investigation in terms of Section 27. It does talk to copy of written correspondence to the Minister by Fadiel Adams. And therein are serious allegations. And due to the nature of these allegations, they are referring them to those, to the allegations as he makes out in his written correspondence, which must almost invariably, it would seem, refer to the
20 dockets.

That is my reading, Commissioner. I am not saying that it cannot be read differently. I am saying that is my reading. And I cannot take it further than that is my reading of the title, what is referred to, and what subsequently happened.

ADV SELLO SC: And you insist on that reading, notwithstanding the fact that it belies any logical form of interpretation. But you insist on that wording, on that interpretation.

ADV JOHNSON: I believe that the interpretation is logical.

ADV SELLO SC: Okay. Now, under which CAS number or inquiry number did IDAC investigate the claim of interception? That is the original claim by Mr Adams. That is the complaint that the Minister purported to refer to
10 IDAC.

ADV JOHNSON: So in the communications with Mr Adams, he was asked for his Section 27.

ADV SELLO SC: I am asking under which case number or inquiry number?

ADV JOHNSON: It would all have been under the one inquiry under which the Section 27 came. There was not a separate inquiry for an interception or a separate inquiry for something else. When the 27 came in, if I may, Counsel, when the 27 came in, it was given a reference number. And
20 all those matters that flow from whatever the allegations are, including in the 27, where he says in one of the paragraphs that the dockets were intercepted or the dockets were taken for reasons that are not explained, they form part of his complaint, all one complaint.

ADV SELLO SC: Yes, I am interested in the investigation

into the interception, because I did not see it in the docket, what we call the Mokwele matter. I did not see that particular investigation in the docket, and I wanted to find out whether IDAC ever pursued that complaint, that specific complaint of interception of Mr Adams' docket, or whether it concentrated more on that part of the Section 27 referral that, as I suggest, was initiated by IDAC.

ADV JOHNSON: When the referral had come in, we had to find out where these dockets are. That was part of that
 10 exercise. In order to locate the dockets, to determine whether these dockets had in fact been intercepted and were no longer where they were, to that end, Counsel, what we did is we wrote, because his last reference is, I opened dockets in Gauteng. A letter was written to the provincial commissioner detectives, Major General Khumalo, requesting the dockets.

ADV SELLO SC: I am sorry to interject. Do you possibly have a date for that letter immediately at hand?

ADV JOHNSON: Will you please give me a moment? It
 20 should have been in the... That would have been the 6th of December. I speak under correction, but in all likelihood, it is the 6th. – sorry, I made a small note. 6th of December.

ADV SELLO SC: And did you receive a response while we are on that point? Did you receive a response, and if so, when?

ADV JOHNSON: General Khumalo, and sorry, this is a different Khumalo, not General Dumisani Khumalo. The PC for detectives indicated that he knew about these dockets, but that these dockets were not with him. He was going to tell us where to find those dockets. In the interim, we – he then indicated that the dockets could be with the DPCI. When we contacted the DPCI, these dockets were not with them. And in that process, one of the investigators found out that the dockets actually were with the SAPS
10 Inspectorate, more so the head of the Inspectorate, General Peter Jacobs.

ADV SELLO SC: And when was this discovery?

ADV JOHNSON: All on the 6th.

ADV SELLO SC: All on the 6th?

ADV JOHNSON: All on the 6th, because we are looking for the dockets. He is saying the dockets are missing.

ADV SELLO SC: Do you know how he discovered that, by any chance?

ADV JOHNSON: The... I know that the investigator
20 indicated that he received information. I do not have the detail of the information, but he received information that the dockets were with the head of the Inspectorate, Lieutenant-General Peter Jacobs.

ADV SELLO SC: Going back to your team, we had quite a number of investigators there that you identified. Which

particular investigator is it?

ADV JOHNSON: It would have been Mr Rapeso.

ADV SELLO SC: Okay. We got a bit side-tracked. Remember, going back to the letter from the Minister regarding interception, I wanted to find out the case of interception of the specific dockets listed there, where did that investigation end?

ADV JOHNSON: The dockets were found on that day.

ADV BALOYI SC: It might have been the end of your
10 inquiry then.

ADV JOHNSON: No.

ADV BALOYI SC: His complaint, remember his complaint, is that dockets have been intercepted. That is what his emails are about. He is not making the allegations that you later find in the Section 27 that you have accepted, you solicited. We are still at the earlier stages where you get a complaint that dockets have been intercepted. You are telling us that you then inquired and in fact found that they are accounted for in the SAPS system.

20 **ADV JOHNSON:** Yes.

ADV BALOYI SC: You get told that. Is that not the end of his complaint and should that not have been the end of the complaint?

ADV JOHNSON: Commissioner Khumalo, that was one part of the ...[intervenes]

ADV BALOYI SC: I am still Commissioner Baloyi.

ADV JOHNSON: He looks and smiles there the entire time. So one invariably, I do apologise, looks at him. Please do not frown, sir.

ADV KHUMALO SC: I have to change because clearly that is a problem. [Laughter]

ADV JOHNSON: It is the one thing that gives comfort when you sit here as a witness is a smiling face. And we digress and I apologise. It could not stop there, because
10 we now need to see what is in these dockets because here's an allegation that Adams is saying there are serious allegations I am making. They are contained in these dockets. But beyond the dockets, I have an issue because these dockets are missing. He does say so in the 27.

So once we determine, Counsel, that the dockets are with the Inspectorate, we cannot ask the Inspectorate for the dockets. And I will tell you why I say that. It is out of just normal practice ...[intervenes]

ADV BALOYI SC: No, no, just hold on your explanation.

20 **ADV JOHNSON:** Sorry, Commissioner Baloyi.

ADV BALOYI SC: My question is pre the 27. We are still at... Oh, the 27th is in November. Okay, now carry on. I do apologise.

ADV JOHNSON: We get the Section 27 on the 21st of November. That allows us to be able to look for what the

allegations allude to. In order for us to have access to the dockets, police will not give IDAC dockets if IDAC does not have an investigation. On the 6th of December, having had the Section 27 since the 21st of November, the prosecutor, Advocate Ramsamay, is able to submit a Section 28(13) application which initiates an investigation. It is on that basis, Commissioners, that we are able to write now to the Head of Detectives because ordinarily the custodians of the dockets, especially under investigation, are the detectives.

10 We write to the Head of Detectives, indicating that IDAC has initiated an investigation and the investigation requires that we have access to these dockets.

ADV SELLO SC: Perhaps this might be the appropriate point to turn to the referral affidavit itself, but I do so momentarily for purposes of the complaint of interception. That would be at your file 2, page 512. That will run until 516. If we just run ahead to page 516, you confirm that it is signed, above the name F Adams. Adams is misspelt, but I take it to be F Adams MP, dated the 21st of November 24, in
20 Cape Town. And commissioned by Commissioner of Oaths, as indicated. You confirm that?

ADV JOHNSON: I confirm, I see that.

ADV SELLO SC: The conversation we are having, if we go back to paragraph 1, paragraph 1 reads as follows:

“In my capacity as a member of

Parliament for the Republic of South Africa, I first opened three cases in Cape Town police station with case numbers Cape Town...”

And they are stated;

“After I opened these cases, (I take it I) was informed that the cases were taken from the Cape Town police station to the office of the Provincial Commissioner Western Cape. I do not trust the Provincial Commissioner General Patekile, and believe that a deliberate attempt is taking place to get rid of the cases I had reported and to protect those against whom I made the cases.”

End of quote. That is the investigation I am asking about. Did you ever investigate the claims against General Patekile? That is the interception. And I still do not understand whether or not you investigated that, you being IDAC, or you did not, and if you investigated, where you ever landed.

ADV JOHNSON: In all honesty, Counsel, I cannot tell you that there was a separate investigation about that interception. I know that we sought to find those dockets, and we then in fact found those dockets.

ADV SELLO SC: Your finding of the dockets surely does not address the complaint of interception?

ADV JOHNSON: No, it does not.

ADV SELLO SC: Yes.

ADV JOHNSON: And what I am saying is there must be an investigation. I can come back to you with a reference to an investigation, but I know that at the time the purpose was to first find these dockets, which we infected, and to then determine what the allegations are in those dockets,
10 do they talk to the 27, and what is the way forward.

ADV SELLO SC: Okay, so...

ADV BALOYI SC: Would there be an investigation in your office that you do not know about? Because your answer suggests that your people may well be conducting investigations that you are not aware of.

ADV JOHNSON: Not that I will not know of an investigation, but when you have matters of this nature, Commissioner Baloyi, they divide the matters up into different legs of investigation so that they can deal with
20 them differently. I may not be aware of a specific leg of investigation, but I am aware that there is an investigation or investigations arising out of the Section 27.

ADV BALOYI SC: So you would expect?

ADV JOHNSON: I would expect.

ADV BALOYI SC: And we should expect that when you

come back to us after lunch, you will tell us there is an investigation into this interception. This is the team that is dealing with that, and it is being done under CAS number so-and-so. That is information that you should be able to get.

ADV JOHNSON: I will do that.

ADV BALOYI SC: Thank you.

ADV SELLO SC: Thank you, Commissioner Baloyi. So then just to recap where we are at. We know that we
10 started with email communication by Mr Adams to the Office of the Minister. The Minister then directed the letter dated, the Minister's office, directed the letter dated the 11th of November 2024 to yourself, and we know that subsequent to that you directed Mr Perumal to obtain an affidavit from Mr Adams. We are in agreement there.

ADV JOHNSON: [No audible answer]

CHAIRPERSON: Okay, where did I lose you?

ADV JOHNSON: Sorry. Correction on the last part. Let us leave it at that. I think it is semantics. It is okay.

20 **ADV SELLO SC:** Okay.

ADV JOHNSON: I am not going to fight about the semantics. Sorry, Chair.

ADV SELLO SC: And then having done so, and the issue at the time was interception of the dockets. A claim by Mr Adams was this interception of the dockets. What we do

not have before us is a file on the investigation regarding that particular complaint. What we then have, instead, is what we have come to call the Mokwele matter, which then is born of claims advanced by Mr Adams at the instance of IDAC, as reflected in the Section 27 affidavit. Do you agree with me thus far?

ADV JOHNSON: Yes, and that we miss a matter before the Mokwele matter, which was the Lushaba matter. That was the first matter that was dealt with, and then it was the
10 Mokwele matter.

ADV SELLO SC: Okay.

ADV JOHNSON: I just did not want us to miss that.

ADV SELLO SC: I am not sure I understand, because in this complaint we are going to come across the Lushaba matter.

ADV JOHNSON: Yes, and...

ADV SELLO SC: Now, is that a separate investigation?

ADV JOHNSON: That was dealt with sep – so what the prosecutors did ...[intervenes]

20 **ADV SELLO SC:** Let me just say something to, I guess, clear the cobwebs in my head. I want to determine how many separate investigations there are. My first was that the first investigation would at least have involved an investigation into the conduct of General Patekile, as set out in paragraph 1. That you say you will check on the file

regarding that investigation. The second is the Mokwele matter, quote, you know, quote, unquote. Unfortunately, we have to use a name in that manner, but it is the quickest way of making reference without confusing each other. Now, you are suggesting that there is a third investigation on the Lushaba matter.

ADV SELLO SC: When the prosecutors got the Section 27 referral, Counsel, they broke it up as follows. Started with the General Lushaba matter.

10 **ADV SELLO SC:** Yes.

ADV JOHNSON: That is the first matter. The Mokwele matter being...

ADV SELLO SC: Apologies, just a second. Thanks. You may continue.

ADV JOHNSON: Thank you, Commissioner. So when the matters were broken up, and I think they were broken up, as their prosecutor explained, in terms of the different categories of offences, if you took them all as one, we would have had a lot of issues from misjoinder to ten people
20 standing in the dock, one facing one count of something and someone facing ten of the other, and it would have been a mismatch. So they took it in terms of the allegations and grouped them accordingly. In terms of what happened in the sequence, the sequence would have been, as they identified, the housebreaking incident of General Lushaba.

That was the first investigation.

That was the first matter, Counsel, that was enrolled. Thereafter, it was the Mokwele matter. There is then a third investigation. That is the one for which the warrants were held over, just for context, in terms of Lieutenant-General Khumalo and General Madondo. And then there are other matters that also emanate from this complaint.

ADV SELLO SC: How many other matters?

10 **ADV JOHNSON:** There are... I know of four... five, six, there would be six.

ADV SELLO SC: Six other matters?

ADV JOHNSON: Six other matters.

ADV SELLO SC: And you say they all emanate from this Section 27?

ADV JOHNSON: That is correct.

ADV SELLO SC: Are you able, over the course of the lunch break, I guess, to prepare a list for us of those matters and to indicate whether they are filed, they have
20 different CAS numbers or inquiry numbers or any other useful reference?

ADV JOHNSON: I do know that with the Lushaba matter, it is a separate CAS, of course, as is with the Mokwele matter, and that had the other matter been enrolled, it would have also had its own case.

ADV SELLO SC: Yes, okay, and that is why I say it might possibly be a CAS number or an inquiry number, just so we know which we are pursuing. Now that we have started with the Section 27 referral, let us for a moment go back to Section 27 of the NPA Act.

ADV KHUMALO SC: Before you do that, can I just check that the attorneys have given you a copy because I saw that you were struggling. Can they just make sure that they give you the copy of the Act?

10 **ADV SELLO SC:** Apologies, I had assumed the witness perhaps was...

ADV JOHNSON: I do. I will keep this one here.

ADV SELLO SC: Yes, she has got her own version.

ADV JOHNSON: Out of habit.

ADV KHUMALO SC: I noticed that when Chair was engaging you, you were struggling finding ...[intervenes]

ADV JOHNSON: I think it is because I had too many documents on my table, Commissioner Khumalo.

ADV KHUMALO SC: So we took the extra effort to ask the
20 attorneys to make a copy and put it in a file.

ADV JOHNSON: Thank you very much.

ADV SELLO SC: Thank you, Commissioners.

ADV JOHNSON: And then I am going to be respectful and use the file that was made available. Thank you.

ADV SELLO SC: I think so, Advocate Johnson, after all

that effort, right?

ADV JOHNSON: That is and the few trees that we might have...

ADV SELLO SC: Absolutely. We are now at section 27. And section 27 tells us the affidavit – what the affidavit contemplated therein must contain. Correct?

ADV JOHNSON: [No answer]

ADV SELLO SC: I am sure it is a section you are well familiar with. You have had a number of referrals.

10 **ADV JOHNSON:** I just went to the... Just went to the wrong side. Sorry. I am there. Thank you.

ADV SELLO SC: Section 27. So you do agree section 27, sub A, sub B, and to some extent sub C, if there should be other relevant information, dictates what the affidavit should contain, section 27 affidavit.

ADV JOHNSON: Correct.

ADV SELLO SC: What are the consequences where an affidavit lacking in complete compliance with section 27, what would be the consequences insofar as IDAC's trigger
20 is concerned?

ADV JOHNSON: Where a section 27 affidavit is insufficient for any one of a number of reasons, we ordinarily would ask the complainant to supplement or amplify and indicate what the shortcomings are, which parts are short. If the complainant is unable to amplify any one

portion or portions that would then fulfil the requirements of section 27, we then have to indicate that we are unable to take the matter because the matter must fulfil certain requirements.

ADV SELLO SC: Okay. Thank you. Let us turn then to the section 27 affidavit that we received.

CHAIRPERSON: Do you do this, that is the request for a supplement, do you do that in all instances where an affidavit is lacking in the necessary detail?

10 **ADV JOHNSON:** Chair, especially where just from a glance it would seem that they are just missing something and there is a likelihood it falls within the mandate, you ask them and when they amplify you say, okay, it still falls short.

CHAIRPERSON: Okay, so that is exactly what I wanted to find out. So reading it, you are of the view that it does fall within your mandate but you just want a supplement on certain specific issues or on a specific issue. But at least it is already there within the realm as it were.

20 **ADV JOHNSON:** Correct, Chair.

CHAIRPERSON: Meaning, if it is woefully hopeless, you just reject that, correct?

ADV JOHNSON: That is correct.

CHAIRPERSON: All right, thank you.

ADV BALOYI SC: Just follow up on that by way of an

example or question. So we are looking at 27 and the requirements thereof. If you are given an affidavit that says, I suspect that money is being stolen, that is A, so they have told you the nature of the suspicion and then they do not tell you the grounds on which the suspicion is based, and whatever else they say in C does not tell you the grounds on which the suspicion is based, there has been a noncompliance with B, right? What do you do?

ADV JOHNSON: You would then check if they have a
10 source of information...

CHAIRPERSON: So you would still ask them.

ADV SELLO SC: ...that they base it on.

ADV BALOYI SC: Sorry, so you would, even if they have not set out grounds in their affidavit, they simply say, I suspect money is being stolen. You are saying you then ask them for a supplementary affidavit.

ADV JOHNSON: No, if it is just, I suspect, and there is nothing more to it, then it does not fulfil.

ADV BALOYI SC: And so...

20 **ADV JOHNSON:** Sorry, Commissioner.

ADV BALOYI SC: Ja, no, carry on.

ADV JOHNSON: It is... you have to be mindful of the prodding and trying to elicit something they know they should tell you. Because what does happen is, ordinarily, without saying what you want, we are able to engage a

section 27 referral and indicate these are the requirements. Your affidavit does not make out these requirements. And there and then, in almost most cases, people are able to say, well, I gave you what I have. And that just finishes that part of it.

ADV BALOYI SC: Thank you.

ADV SELLO SC: And when people tell you, I gave you what I have, and there are clearly no grounds in that affidavit, what does IDAC do?

10 **ADV JOHNSON:** It may be, Counsel, that it is insufficient for the purposes of IDAC. Where it has been insufficient for the purposes of IDAC, but we are aware that it could go to the detectives, and/or it could go to the DPCI, we write to the referral, to the referee, I apologise, to indicate, whilst this does not comply with IDAC's mandate, you are able to refer this matter to the detectives, we are writing to...

20 So we do two things. We inform the complainant where they can go to, and then we also write to the agency that we are able to send it to, together with a copy of whatever information might have been received. We have also been able to do that where, for example, it is something that is civil in nature, but falls within the mandate of the SIU. And we would say to them, you might be able to find recourse here with the SIU. So we do not just leave them in the lurch if, in fact, it does make out

allegations that are investigated by a different agency. We write to them, we write to the agency, and we send that material as well.

ADV SELLO SC: So at least what we learned, and I am testing my understanding of section 27, there are two main requirements in that section. The affidavit must spell out the suspicion that the referee holds, and then to advance grounds to support every specific suspicion. IDAC has got the power to request maybe substantiation, clarification
10 from the referee, where there are shortcomings with compliance with section 27. In the event that the suspicions are not substantiated and grounds not advanced by way of example, then IDAC cannot investigate the matter. It would normally refer it to another appropriate law enforcement agency.

ADV JOHNSON: Correct, Counsel.

ADV SELLO SC: Is that a fair summary? Let us look then at the section 27 referral received from Mr Adams. We will work through it in detail, but my summary of it I would like
20 to share with you. What that affidavit, and that is file 2, page 512.

ADV JOHNSON: I do have it.

ADV SELLO SC: Thank you. That affidavit states the following. It highlights or shares with the reader three key suspicions that Mr Adams harbours. The first is at

paragraph 2. There in paragraph 2, it says, it expresses his growing concern that the Head of Crime Intelligence, General Khumalo, General Lushaba, General Madondo, and other senior Crime Intelligence officers are busy with systematic capture of Crime Intelligence division. That is his first suspicion.

ADV JOHNSON: Counsel, may I ask a question? Am I allowed to make marks?

ADV SELLO SC: Yes, ma'am, of course.

10 **ADV JOHNSON:** Am I allowed to write on this document?

ACCUSED: Yes, yes, yes.

ADV JOHNSON: Okay, thank you.

ADV SELLO SC: If it is in the witness file, we will just replace it with a fresh copy.

ADV JOHNSON: Sorry, Counsel, you say that is the first allegation?

ADV SELLO SC: Yes, first suspicion. Remember that the affidavit actually requires the deponent to state what suspicions that they harbour. The first is there in paragraph

20 2. On my reading, the second would be at paragraph 4.

CHAIRPERSON: Let us take it step by step. Do you agree that that is the first suspicion?

ADV JOHNSON: That is the first one.

CHAIRPERSON: All right, thank you.

ADV SELLO SC: Thank you, Chair. Paragraph 3, for

purposes then of completeness, the deponent speaks to what became clearer to him, how his suspicion became clearer to him, but he adds nothing more. He references an envelope, he says, was slipped under the door of his office in Parliament, containing some Crime Intelligence procurement documents using secret funds of Crime Intelligence and vetting documents. So he tells you that I have that, but he does not share the contents of those.

ADV JOHNSON: Yes, yes.

10 **ADV SELLO SC:** The second suspicion is reflected at paragraph 4 and on my reading, that speaks to two suspicions. The first being manipulation of procurement processes and processes to appoint and promote certain persons within Crime Intelligence. That is at paragraph 4, the first part of paragraph 4. The second part calls for the need to investigate appointments at various Secret Service offices. Do you agree with me?

ADV JOHNSON: I have that.

ADV SELLO SC: At paragraph 5, he expresses a suspicion
20 that some funds are being taken unlawfully from the secret funds account and given to police Minister Bheki Cele. At paragraph 6 ...[intervenes]

ADV BALOYI SC: Maybe before you do paragraph 6.

ADV SELLO SC: Yes, Commissioner.

CHAIRPERSON: Paragraph 5, did you consider it to

contain two complaints? I mean, there is the first about money being suspected to be given to former Minister Cele, and then it seems to me there is a second leg to it, an allegation that the former Minister appointed General Khumalo without an interview process and without Khumalo having worked as a... Did you consider that another suspicion and complaint? Or did you not?

ADV JOHNSON: I would check the number of ...[intervenes]

10 **ADV BALOYI SC:** I must say before you answer, that considering how the Mokwele matter has gone, I expect that you ...[intervenes]

ADV JOHNSON: That would have been one of – it is a separate point and issue.

ADV BALOYI SC: And if you have not, there has to be an explanation why this was not investigated.

ADV JOHNSON: No, it is part of other appointments.

ADV BALOYI SC: Okay, so you will come back to us with a detail of it, thank you.

20 **ADV JOHNSON:** We will come back to you. And may I just pause just to indicate, Commissioners, at the bottom of paragraph 4, it is not separate, but there is reference in the last line which we had to look at as we go through all of the matters, likely points to launder money. So the money laundering is an aspect to consider when you look at money

flows that may run through the course of all of these. And they are not – it is not a stand-alone matter.

ADV SELLO SC: Noted.

CHAIRPERSON: Sorry, you say that one and you are referring to the last sentence of 4.

ADV JOHNSON: Correct, Chair.

CHAIRPERSON: And you say it goes with what?

ADV JOHNSON: It would go with 2, which is the manipulating of procurement processes, and then with 5,
10 which counsel had pointed out about the taken unlawfully from the secret funds.

CHAIRPERSON: Which sentence are you referring to in 2? Sentence or sentences?

ADV JOHNSON: Sorry, paragraph 4.

CHAIRPERSON: Paragraph 4.

ADV JOHNSON: Line 2.

CHAIRPERSON: Line 2. Oh, okay.

ADV JOHNSON: Yes, Chair, about the manipulating procurement processes. Just to indicate that money
20 laundering is considered, but not as a stand-alone, just within the ambit of those matters, yes.

CHAIRPERSON: Okay.

ADV SELLO SC: Thank you, Chair.

ADV JOHNSON: May have interrupted counsel.

ADV SELLO SC: No, no, it is okay. Just on the point you

have made, it is a suspicion, but couched more in request terms, because he is requesting that you look into these matters, I guess, because the Secret Service offices in the country are likely points to money laundering out of Crime Intelligence. So, in that, I can accept that there is a suspicion that there is money laundering, except that he would like IDAC to investigate whether that laundering happens through various Secret Service offices.

ADV JOHNSON: Correct.

10 **ADV SELLO SC:** Okay. Then we agree that in 5, the suspicion about secret funds being given to the former Minister Bheki Cele.

ADV JOHNSON: Yes, ma'am.

ADV SELLO SC: 6, I do not see a suspicion in 6, so I would skip it for now, we will come back to 6. The last suspicion that he then highlights is at 7, at page 515.

20 “My suspicion is that General Khumalo, Lushaba, Madondo and many of those who they have appointed are actively syphoning money from the secret fund accounts in the country. I understand that there are about 10 secret fund points in the country where monies can be drawn from and all of these extraction points need to be investigated.”

That is another suspicion at 7.

ADV JOHNSON: May I take you back to 6, Counsel?

ADV SELLO SC: Yes, ma'am.

ADV JOHNSON: That is the Lushaba matter and therein he has been charged not just with the housebreaking, but with the defeating and obstructing with regards to the loss of the equipment of Crime Intelligence and the non-disclosure thereof and the fact that there is secret information contained therein. So what I am saying is that 6 is the
10 Lushaba matter that is currently in Court.

ADV SELLO SC: Yes, I had asked that we skip that because we are trying ...[intervenes]

ADV JOHNSON: Okay, only the...

ADV SELLO SC: ...to distil from the affidavit what the deponent suspects and what suspicions he has put forward to IDAC. So we have dealt with the suspicion at 7. Then 8 and 9 basically reverts to the dockets he had opened, the three cases in Cape Town and the other three in Orlando police station and it ends at 516. So if we at least roughly
20 summarised his suspicions, I can see how he has complied with section 27A, which is to set out the suspicions of a crime that he complains of. I am missing part B of that, which requires him to set out the grounds on which the very suspicions that we have referenced are based. Do you find the grounds in this affidavit?

ADV JOHNSON: There is suspicion.

CHAIRPERSON: May I just raise an issue with you?

ADV SELLO SC: Yes, Chair.

CHAIRPERSON: Which is a legal question with regard to...
Oh, you are looking at A, B, C.

ADV SELLO SC: Indeed, Chair.

CHAIRPERSON: Okay, that is the nature of... I am looking
at the introductory part of the section itself. If any person
has reasonable grounds... I would not go to A, B, C,
10 without first ensuring that that introductory part has itself
been satisfied. And that I would do on the basis that this is
an objective test.

ADV SELLO SC: Yes.

CHAIRPERSON: You and I do not have to rely on what Mr
Adams subjectively thought.

ADV JOHNSON: Yes.

CHAIRPERSON: So I would start there. Is there, were
there reasonable grounds? But anyway, let me leave it...

ADV SELLO SC: My approach is slightly different.

20 **CHAIRPERSON:** But I am just making...

ADV SELLO SC: Yes, I take the point.

CHAIRPERSON: I would not get to A, B, C before...

ADV SELLO SC: I take the point, Chair. That is an
approach. But I decided to adopt a different one. Here is
IDAC having solicited an affidavit, receives the affidavit.

Before a decision is taken, even for a preliminary investigation, that affidavit must fall in, must comply with at least A, B, C.

CHAIRPERSON: Yes, yes.

ADV SELLO SC: And I conclude that the grounds advance in terms of B would lead to the conclusion at the start of that, whether they are reasonable grounds. So it is sort of a reverse.

CHAIRPERSON: In the end, perhaps it works the same
10 way.

ADV JOHNSON: Because I am trying to test at which point, insofar as IDAC is concerned, a section 27 referral dies for noncompliance, if ever there is such a point.

CHAIRPERSON: No, please go ahead, Ms Sello. Thank you.

ADV SELLO SC: Thank you, Chair. So I am now looking at 27B and my reading of this affidavit is that it is replete with suspicions, but absolutely no grounds to support any of the suspicions advanced. Unless you can find any that
20 perhaps I may have missed. I adopted the approach I did to say, let us summarise and see if we can quantify the suspicions. So let us start with the suspicion at 2. That General Khumalo, Lushaba, Madondo and other senior Crime Intelligence officers were busy with the systematic capture of the Crime Intelligence Division. Let us just sit

with that one suspicion. Where in this affidavit do I find grounds to support that suspicion, which then would tick A and B of section 27?

ADV JOHNSON: So first, in paragraph 2, line 1, Commissioners, he says, so the cases he refers to above must refer to what follows. And he says:

10 “The cases were opened based on
information I received from time to time,
which places the SAPS Crime
Intelligence...”

And then it follows. So he receives information from time to time. And he then says in paragraph 3 that that suspicion became even clearer when an envelope pushed under his door at Parliament contained Crime Intelligence procurement documents using secret funds of Crime Intelligence and vetting documents. So the grounds on which he bases it is information he receives. Information he receives from time to time and further expounded by the fact that he has this envelope with further information that
20 is pushed under his door. That is the genesis for the grounds on which his suspicion is based.

ADV KHUMALO SC: But you said he did not give IDAC that information which was slipped under his door.

ADV JOHNSON: That is correct.

ADV KHUMALO SC: So that is like saying I have grounds,

but I will not tell you what they are.

ADV JOHNSON: May I explain a further process that then happened? Sorry, Counsel, may I?

ADV SELLO SC: Absolutely.

ADV JOHNSON: Because it might seem to jump the gun, but it will then perhaps provide more clarity. We received the section 27. We received the dockets. IDAC takes the stance that an engagement has to happen with Mr Adams because this 27 he did on his own and sent through to us.

10 We have the dockets, but when they had the engagement, having read the dockets, having read the 27, it goes back to what I said. You then engage the person to see if there is other grounds that need to be covered. And further statements, Commissioners, were then taken in the engagements had with him in January of 2025.

ADV KHUMALO SC: I think where we are, Advocate Johnson, is that 27 says these things must be specified in the 27 affidavit. Because if you read 27, it says by means of an affidavit or a firm declaration specifying A, B, C. So

20 A, B, C are to be specified in the affidavit.

ADV JOHNSON: Correct.

ADV KHUMALO SC: They are not to be established at a later point. So the entry point is the affidavit which specifies A, B, and C.

ADV JOHNSON: And it is for those reasons, Commissioner

Khumalo, that I referred to those two paragraphs. That is where I took that from. Where I were based, where we are open based on information I received from time to time and the information placed under his door.

ADV SELLO SC: If perhaps you may assist us then. The suspicion is General Khumalo, Lushaba and Madondo and others are busy with systematic capture of the Crime Intelligence Division. That is the suspicion. You are satisfied that that affidavit contains grounds to support that
10 suspicion. Can you summarise those grounds for us?

ADV BALOYI SC: With reference to the affidavit itself, right?

ADV SELLO SC: Indeed. Thank you, Commissioner.

ADV JOHNSON: On my reading, Counsel, that that suspicion is – he refers to the suspicion and he proceeds to explain, as he does in paragraph 4.

ADV SELLO SC: And what grounds are articulated in paragraph four?

ADV JOHNSON: He says that he suspects that General
20 Khumalo and some senior officers in Crime Intelligence, including...

ADV SELLO SC: I apologise, I thought we agreed that paragraph four contains other suspicions. I am still looking for the grounds for the suspicion that Khumalo et al are busy with systematic capture of Crime Intelligence. Where

are the grounds for that? The manipulation of procurement processes and processes to appoint is another suspicion. It is a different one.

ADV JOHNSON: Yes, and I am saying that it is based on... I do not read it to mean that every single suspicion is supposed to have a ground. If my reading is incorrect...

ADV SELLO SC: No, no, no.

ADV JOHNSON: I am saying that is how I read it. I read it as I received information from time to time. From that
10 information I received from time to time, there are all of these allegations, inclusive of the documents under my door.

ADV SELLO SC: You wanted to invoke paragraph 4 to establish the grounds. Remember, we still have to comply with section 27B.

ADV JOHNSON: Yes.

ADV SELLO SC: So we are going to have to at least find the grounds for the suspicion reflected in paragraph 2. You say those grounds lie in paragraph 4. And if you could just
20 summarise them quickly for us. And simply because my reading of paragraph 4 is slightly different, but I will take your perspective.

ADV JOHNSON: So the suspicion of the systemic capture lies in his suspicions in paragraph 4 in terms of he refers to the procurement, manipulation, for lack of a better

description, manipulation of appointment processes, bypassing of the vetting. Those are the ones that talk to the systemic capture of the Crime Intelligence Division.

ADV BALOYI SC: Is paragraph 4, and what you are referring to now, he is not giving you facts that support his suspicion, because that is what 27B requires, the basis for his suspicion. What he does in 4, on its terms, he says, I suspect, that which you are referring to now, he says:

10 “I suspect that General Khumalo and
other senior officers in Crime Intelligence,
including Madondo and Lushaba, were
manipulating procurement processes and
processes to appoint and promote certain
members to higher positions.”

So it is a suspicion. So you cannot say, when we ask you that, okay, he is made the suspicion to you, so let us say he complies with A, what are the grounds that he has stated in his affidavit in support of that suspicion? You cannot say, where he states manipulating processes, procurement
20 processes and processes to appoint, and then you say, those are the grounds. That is faulty reasoning. It is a suspicion on his terms. It is, he tells you, that is what I suspect.

The question to you is, where in the affidavit did you find that he has put down grounds for that suspicion?

ADV JOHNSON: On my reading, Commissioner Baloyi, it is found for those ones on paragraph 3, where he says:

“My suspicion about General Khumalo and others became more clearer when I found an envelope pushed under my office door at Parliament, which contained some Crime Intelligence procurement documents using secret funds of Crime Intelligence and vetting documents.”

10 I can take it no further than that is my reading of where he finds these suspicions.

CHAIRPERSON: Factual conclusion after factual conclusion, Advocate Johnson, can never give you the facts that undergird those factual conclusions. All of the things you are addressing now are themselves factual conclusions. Do you understand what I am saying?

ADV JOHNSON: [No answer]

CHAIRPERSON: Do you understand what I am saying?

ADV JOHNSON: If you could just take it back, sir.

20 **CHAIRPERSON:** Those are factual conclusions.

ADV JOHNSON: Yes.

CHAIRPERSON: Let me give you, you agree, do you agree?

ADV JOHNSON: I understand.

CHAIRPERSON: Those are factual conclusions. Do you

agree?

ADV JOHNSON: I agree.

CHAIRPERSON: So, if we go back to Ms Sello's question, she wants to understand what that factual substratum is. What facts do you rely on to say those factual conclusions, and you now accept that they are factual conclusions, what facts underlie those conclusions to lead to the fact that B of 27 is satisfied? On what basis? It cannot be on the conclusions. Let me give you an example. If someone
10 says, I suspect that Tom and Dick killed Harry, that is a conclusion. For you to be satisfied that there is a reasonable suspicion that Tom and Dick killed Harry, there must be some substantiation before you say Tom and Dick killed Harry. Do you get me?

ADV JOHNSON: I understand.

CHAIRPERSON: Otherwise, it is a factual conclusion to say that Tom and Harry killed Dick. And I suggest to you that this is exactly what you are doing. You are relying on factual conclusions to say that B of section 27 has been
20 satisfied. Do you agree?

ADV JOHNSON: I agree.

CHAIRPERSON: Do you accept that proposition?

ADV JOHNSON: I accept your proposition.

CHAIRPERSON: Yes, Ms Sello.

ADV SELLO SC: Thank you, Chair. And then, following

that very same approach to all the concerns, I am going to put it broad. Where in this affidavit do you find any grounds that can potentially get anywhere close to section 27B? And I say, I put it that way because I am talking to a lawyer of 30 years' experience who appreciates that when a statute prescribes what jurisdictional factors must exist before certain outcomes are achieved, you would understand that they have to be satisfied independently of one another. It is first A, the suspicion, B, the grounds. Where in this
 10 affidavit do you find the grounds that would satisfy the requirements of section 27B?

ADV JOHNSON: I have referred to those grounds and say that having heard what the Chair has indicated, there is no... there is nothing more than just what he said here. It is a matter of, he says, this is what I have, information and documentation. I think the question, and sorry, Commissioners, I do not mean to be asking you all a question, but what I am trying to pose for myself is, the question then is, is that sufficient for B?

20 **CHAIRPERSON:** Was there a sufficient factual substratum to satisfy B of section 27? That is the question. And I think in response to my question, you have accepted that there was none.

ADV JOHNSON: In terms of the factual basis of it, yes.

CHAIRPERSON: Yes, the factual basis that undergirds or

supports the factual conclusion.

ADV JOHNSON: Correct.

CHAIRPERSON: You have accepted that there was none.

ADV JOHNSON: Yes.

ADV SELLO SC: Do you then accept, on that basis, because my and your engagement has started on the basis of the first suspicion, which is state capture, would you accept that there is no factual basis advanced in this affidavit in respect of all the suspicions as you have
10 identified them? Would that be correct?

ADV JOHNSON: That would be correct, except he says so of...

ADV SELLO SC: His conclusions.

ADV JOHNSON: His conclusions of, I have information and I have a... I receive information and I also had information.

ADV SELLO SC: Now...

ADV JOHNSON: It is on that basis, yes.

ADV SELLO SC: ...if that is where we land, would such an
20 affidavit comply with the requirements of section 27 and what would be the consequences of non-compliance?

ADV JOHNSON: So, given the questions that were posed by the Chair, it was – I had not looked at ...[intervenes]

CHAIRPERSON: And not only the questions. The questions and the responses.

ADV JOHNSON: Yes. So, on the basis thereof, Commissioners, I have applied my mind differently. The Commission has pointed something out quite differently that ought to have been considered. I am saying in the manner in which I applied my mind at the time, based on how I understood section B, or what section B to mean, at the time, yes, I agree that it fulfils that requirement because he had knowledge. He had grounds on which it was based. I have given the answer, Commissioner. I cannot change that
10 answer.

CHAIRPERSON: Are you seriously telling us that since what – you have been the Director since 2022, is it?

ADV JOHNSON: Yes.

CHAIRPERSON: Are you telling us that since 2022, this is how you have understood your legal mandate?

ADV JOHNSON: No.

CHAIRPERSON: Or IDAC's legal mandate?

ADV JOHNSON: No.

CHAIRPERSON: Did I understand you correctly to suggest
20 that you understood that the suspicion required has to be viewed subjectively? Did I understand you to say that? I am asking you this because you said you believe that he had the required suspicion. He, he, Mr Adams.

ADV JOHNSON: Yes.

CHAIRPERSON: Did I understand you correctly?

ADV JOHNSON: Correct.

CHAIRPERSON: So that is subjective as opposed to objective. So did you understand the test to be a subjective test as opposed to an objective test?

ADV JOHNSON: For me, the grounds on which the suspicion is based is a subjective test.

CHAIRPERSON: I will...

ADV JOHNSON: I am not going back on the argument.

CHAIRPERSON: Okay.

10 **ADV JOHNSON:** I am saying in the way I have applied my mind. This is a reasonable suspicion that must be borne by a reasonable man ...[intervenes]

CHAIRPERSON: Person.

ADV JOHNSON: Person, by a reasonable person who must have access to knowledge and information that brings them to that point. If you would allow me to just take it just a moment further.

CHAIRPERSON: Yes?

ADV JOHNSON: Mr Adams is a member of the Police
20 Portfolio Committee. These allegations come to them from time to time. There is active engagement with the police. There are documents that are shared. There is information that is shared. I did not take his to be just the test of a subjective mind of just a reasonable man.

CHAIRPERSON: No, no, no, no. You cannot obfuscate

issues in the manner in which you are saying. You said you considered the test to be subjective. Now you are saying something that suggests that somehow you also considered it to be objective. You cannot have it both ways, please, Advocate Johnson. Let me ask you the question again. Did you consider the test to be subjective?

ADV JOHNSON: Correct.

CHAIRPERSON: Now what are you saying? You have just said something that seems to suggest that you also
10 considered it to be objective. Make me understand what you are saying.

ADV JOHNSON: Maybe I did not express myself correctly. I am saying that the reasonable man test ...[intervenes]

CHAIRPERSON: Person.

ADV JOHNSON: The person test, applies. But Adams ...[intervenes]

CHAIRPERSON: You see, therein lies the problem. Once you say that the test is subjective, then you look to what was going on in a specific person's mind. That is
20 subjective. It has nothing to do with a reasonable person. That is subjective. You cannot have it both ways. Law 101 says, subjective, you look to the person's mind. Objective, you test that in accordance with how a reasonable person would view the situation. The two are totally different. You cannot, you cannot want to compound them. You simply

cannot. You cannot say it is subjective, but then also refer to a reasonable person test. You cannot.

I mean, even a law student during first year would know that at a later stage during their first year of legal studies. In fact, across the board within legal studies, you go to your law of delete, you go to even criminal law, criminal law, your culpable homicide, you encounter the reasonable test across the board. So how you could mix the subjective test and the objective test completely
 10 escapes me. So back to my question, you have said you accept, or rather, you say, you say, the test under section 27 is a subjective test. Do you stand by that?

ADV JOHNSON: [No answer]

CHAIRPERSON: Because if you do, it raises very serious issues about your application of the section over all these years. Are you sticking to your assertion that the test is subjective, even though it uses reasonable? Once you have reasonable, that leads to the objective test. You should know that. Are you insisting that the test is subjective?

20 **ADV JOHNSON:** It is an objective test of the reasonable person.

CHAIRPERSON: It is an objective test?

ADV JOHNSON: Yes.

CHAIRPERSON: You do not even need to go to reasonable person. Reasonable person is implied in the concept of an

objective test. So you do not even need to go there. Now, if it is objective, did you operate, when you looked at this referral, did you operate on the basis that here I am concerned with the objective test? Is that how you applied it? Because my sense when you responded to Ms Sello was that you thought it is subjective. And indeed, even here, until my two or so questions before now, you were saying it is subjective. It is subjective. So that must clearly mean that you looked at this referral affidavit on the basis that the
10 test was subjective. Is that so?

ADV JOHNSON: [No answer]

CHAIRPERSON: Is that so?

ADV JOHNSON: I looked at the section 27 on the test of ...[intervenes]

CHAIRPERSON: Subjective, subjective, it must be. It must be. Because that is what you believed. Hence your answers. On a few good times, now, during this engagement, your answers that the test is subjective. So you looked at this on the basis that it is subjective. You
20 agree again.

ADV JOHNSON: Yes.

CHAIRPERSON: So that means in your case, the word reasonable, which appears in so many words in section 27, did not come into the equation whatsoever. Is that so?

ADV JOHNSON: It does, because ...[intervenes]

CHAIRPERSON: No, it could not. Not if the test is subjective, according to you. It would not. Because once you talk reasonable, that takes you to the objective test. And you have said in your mind that did not apply. So you looked at this on the basis that it was the subjective test that applied. Correct?

ADV JOHNSON: Correct.

CHAIRPERSON: So reasonable did not come into the equation to your mind. Correct?

10 **ADV JOHNSON:** The reasonable that comes to mind is as per any person has reasonable grounds to suspect. It dealt with the offences, which was part A.

CHAIRPERSON: It is there fine, and you are reading it fine. But what I am saying is, if you believe that the test is subjective, then reasonable, on your understanding, does not come into the equation. Because once you bring into the equation the word reasonable, that is already taking you to the objective test. You have said, on your understanding, the test was subjective. Therefore, reasonable would not
20 have come into your equation, not on your approach. You must accept that.

ADV JOHNSON: I hear you, Commissioner.

CHAIRPERSON: Do you accept it?

ADV JOHNSON: I accept that.

CHAIRPERSON: Thank you.

ADV SELLO SC: Thank you, Chair. Based on the engagement you just had with the Chair, is it – window it be a fair understanding that all your approaches to all section 27 referrals you have had is the attitude you had to this particular one? So IDAC initiated investigations based on numerous of such affidavits, which do not advance any grounds to support suspicions expressed therein. Has that been the case throughout the years you have been at IDAC?

ADV JOHNSON: No, ma'am.

10 **ADV SELLO SC:** And why then do you – how have the others been, the other affidavits been dealt with? Have you interrogated their compliance with section 27 before initiating an investigation?

ADV JOHNSON: Yes, the other affidavits were quite different. You would also see, I think you requested from us, the affidavit of a different witness. When you read those as well, you can see the compliance with these sections.

ADV SELLO SC: Why did you not bring to bear that
20 particular need for compliance to this particular affidavit, which is dated less than two years ago, November 24? Why did you treat this affidavit as an exception to the rule that you say you had come to apply to all other section 27 affidavits?

ADV JOHNSON: So I... I am not going back.

ADV SELLO SC: Yes.

ADV JOHNSON: And I think that is where my fault line lay, is understanding the reasonable, what the reasonable person and went back into subjective. That was... that was my error. It is an error. It was an honest error. The test is not subjective. The test is objective. Here I brought a subjective mind to bear on the information the person gave us.

ADV KHUMALO SC: And, Advocate Johnson, that is
10 apparent from paragraph 4, because Mr Adams says none of these people were suitable to be appointed to the post. That is his personal view, without grounds to support that.

ADV JOHNSON: Correct.

ADV KHUMALO SC: He does not even say they did not meet the minimum criteria, they did not have the qualifications. He just says you appointed somebody from BMW as a brigadier, and then he says not suitable. Full stop. Why are they not suitable? Do they not meet the qualifications? He does not even identify the offence that
20 he suspects is being committed there. Because appointment of somebody from BMW on its own does not tell you anything. Because my immediate question would be, what is wrong with appointing somebody, an engineer from BMW, if the position required an engineer? What would be wrong with that?

ADV JOHNSON: Correct.

ADV KHUMALO SC: That would be my immediate question, and I would need that to be addressed in the affidavit itself. Because the entry point, according to section 27, is that the affidavit must specify 1, 2, 3. Not that it must set out the suspicion, and then the grounds IDAC will figure them out for itself.

ADV JOHNSON: Understood.

CHAIRPERSON: Just on an answer you gave in response
10 to Ms Sello, you said an error that you committed was to apply the subjective test. The test is, in fact, objective. In that response, based on the answers you gave to me, and repeating the same thing a good few times, throughout until your engagement with me, the distinct impression I got was that you have always understood the test to be subjective. Correct?

ADV JOHNSON: I understood the test to be the reasonable man, a reasonable person test, which is an objective test.

20 **CHAIRPERSON:** Okay, I will not go back. I engaged you on the subjective and so on, because you cannot marry subjective and objective, it simply cannot. Let me ask you this question. So, throughout, your understanding of section 27 was in accordance with the responses you gave when I engaged you, as to what those were, the transcript

will assist us. Throughout, that was your understanding. It is only now that you have clarity as to what exactly the test is – that is, a test which is not subjective, as you suggested it was, or a test which does not seek to mix a subjective and objective test. It is simply objective. So, before now, you had, I feel bad to have to use this word, but your understanding was this muddled view of what the test was, which muddled view came out as I engaged you. So, that was your understanding until now, until during this
10 engagement. Is that a fair suggestion to you?

ADV JOHNSON: It is fair.

CHAIRPERSON: Thank you.

ADV BALOYI SC: Can I just say, Ms Johnson, that even allowing for it was an error, you applied the subjective test because of your misunderstanding of the test that applies, even on that, in this affidavit, insofar as 27B requires him to set out grounds, this affidavit does not set out any grounds. To say I received an envelope that has procurement matters, that is not a ground. It does not tell you anything
20 about the contents of the envelope. For all I care, those procurement documents may well not demonstrate anything wrong.

So, it is not clear to me when you say, well, I accept it because he is a member of Parliament, he serves in the Portfolio Committee, that when he says he has an

envelope, that is sufficient. You surely must know and understand that for you to say this falls within our mandate, you need to satisfy yourself with whatever it is he is relying on. So, I do not accept that what you say is an error on your part of applying the wrong test, that it explains what happened here. It does not.

Even on that error, I would expect you, as you understand the section, it says he must set out grounds, and he does not. He does not. When he goes on to say
10 four other colonels who qualified or were employed in Crime Intelligence, none of them were suitable to be appointed in this post, it does not tell you anything about this candidate that was appointed. It does not.

So, it is clear in 27B that he does need to tell you facts. Subjectively, he thinks those facts meet the test, but you have to know those facts before you say, yes, our mandate is triggered. You must agree with me. I must be correct in what I am saying.

ADV JOHNSON: I am not about to disagree.

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

ADV SELLO SC: Thank you, Chair. I see it is 12.59, but an opportune time to take a lunch adjournment.

CHAIRPERSON: Thank you, Ms Sello. Let us adjourn and come back at 2 p.m.

ADV SELLO SC: Thank you.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Ms Sello.

ADV SELLO SC: Thank you, Chair. Chair, before we continue with the witness this afternoon, Advocate Johnson has made a request to us as Evidence Leaders, which request I table to the Commissioners for consideration. Advocate Johnson has requested that we sit until 4, but may she be excused at 3 this afternoon. She is, as the Chair is
10 aware, currently on medication following her illness last week and I am made to understand that the medication she is on is having some debilitating effect on her, so she has requested an early stand down today at 3 o'clock.

ADV BODLANI SC: I confirm that, Chair, there was that communicated to me by Ms Johnson. I communicated it to Ms Sello, and that is where we are. Thank you.

CHAIRPERSON: Thank you, Ms Sello. Thank you, Mr Bodlani. We will adjourn at 3 p.m. then.

ADV SELLO SC: Thank you, Chair.

20 **CHAIRPERSON:** Thank you.

ADV SELLO SC: Ms Johnson, then we have an hour to run through some of the issues we had wanted to engage you with on today. I hope you feel better tomorrow.

ADV JOHNSON: Thank you. And thank you, Chair.

ADV SELLO SC: Thank you. We had just looked at the

affidavit and its compliance or the lack thereof, of section 27. So now we are at a point where you are in receipt of this affidavit. Can you take the Commissioners through every step you took regarding this affidavit, any discussions you had and with whom until the point of the 6th of December when you say you took a decision to refer the matter for a preliminary investigation. Thank you.

ADV BALOYI SC: Maybe before you do that, let us, remember earlier we discussed that after you received the
10 letter, you, from the Minister's office, you then spoke to Mr Perumal ...[intervenes].

ADV JOHNSON: Correct.

ADV BALOYI SC: Who then took it from there. Now, when Mr Perumal, after you speak to him and he takes it from there, does he come back to you to say anything before we get to this point of the section 27 affidavit? Commissioner Baloyi, what he does come back and say, the gist of which is he has communicated with Mr Adams. Mr Adams indicated that he had reported these four dockets that we
20 see in the letter. He informed Mr Adams that as per IDAC, if you want IDAC to look at a matter, you would have to depose to a section 27 affidavit.

He told him it will be best if he maybe sat with a legal representative, told him where to find the provisions of section 27, and for him to then, should he still be of a mind,

to then depose to an affidavit. That is where that part stopped, and then on the 21st of November, we were in fact then furnished with the section 27 referral, which is currently in the docket, at least part of the bundle.

ADV BALOYI SC: Okay, thank you. Then back to Ms Sello's question then.

ADV JOHNSON: Thank you, Commissioner.

CHAIRPERSON: Perhaps for my benefit as well, please ...[intervenes].

10 **ADV SELLO SC:** Absolutely. The question was, we had just very quickly looked at the content of section 27 affidavit and as I understand from the witness' testimony, she has seen it and perhaps has engaged with the affidavit. We are aware that on the 6th of December 2024, she took a decision to initiate a preliminary investigation based on the affidavit. So I would like her to inform the Commissioners of the steps she took subsequent to the receipt and consideration of this affidavit up until she took that decision.

20 **CHAIRPERSON:** Oh, thank you. May I find out if you will be dealing with her reason to suspect, at some stage, I am not pushing you there, not now ...[intervenes].

ADV SELLO SC: Yes.

CHAIRPERSON: ... has reason to suspect in 28(1)(a) at some stage.

ADV SELLO SC: Yes.

CHAIRPERSON: All right.

ADV SELLO SC: I intend to do so.

CHAIRPERSON: Thank you. Thank you.

ADV SELLO SC: Thank you, Chair.

CHAIRPERSON: Please respond to the question, Ms Johnson.

ADV JOHNSON: Thank you, Chair. I received the section 27 referral. Once I received the referral, I myself perused
10 the referral. I then decided to give the referral to the team of Advocate Manilal. At the time, I cannot recall where he was, but I gave it to the advocate in his team, which is Advocate Ramsami. The purpose is, as was explained previously, that once you allocate it to a team, Commissioners, they would then peruse, see whether there is sufficiency, what next steps must flow. Mr Ramsami, Advocate Ramsami then perused the section 27 and brought a section 28(13) application and the purpose ...[intervenes].

ADV BALOYI SC: Sorry, can I just interrupt you before
20 you speak to the purpose. You have not said anything about Mr Sesoko. Is that, is it ...[intervenes].

ADV JOHNSON: That is correct.

ADV BALOYI SC: Because at that time, he has not featured?

ADV JOHNSON: It is not featured, and because this was

really, some of the 27's are really voluminous, and I like that two-mind approach. This was just a small document where I could quickly apply or apply my mind. And I looked at it and said, let me give it to a team, as we would then ordinarily do, because on the face of it, there were offences that fell within the mandate. I gave it to Advocate Ramsami, who then perused the section 27. She realized that there were references made to dockets, and because we did not have those dockets, the best way, instead of
 10 asking Mr Adams to amplify the 27, as one would ordinarily have done, is to first get these dockets, because he is talking to allegations in these dockets, and he makes reference thereto. So, in order to get those - sorry, Counsel.

ADV SELLO SC: No, no, please proceed. Never mind me.

ADV JOHNSON: No, no ...[incomplete].

ADV SELLO SC: No, no, continue. I do not intend to interrupt at all. Thank you.

ADV JOHNSON: And in doing that, she applied for a
 20 section 28(13), which is a preliminary investigation on the 6th of December. It was a mechanism, Commissioners, for us to then have an authorized investigation in order for us to now determine where these dockets were, bearing in mind that Mr Adams has already alluded to the fact that in Cape Town, these dockets were no longer there. He makes

allegations, but he then says he opened dockets in Gauteng. So, there is no need for us to go to Cape Town. If you open similar dockets in Gauteng, we engage then with detectives in Gauteng. It would have been one of the investigators, it would either have been Mr Perumal or Mr Rapetsu who indicated that we need to write a letter to the Head of the detectives in Gauteng, who was a Major General Khumalo. It is a formal approach in terms of acquiring those dockets.

10 I did pen a letter under my hand to the Major General, indicating that IDAC was now vested with an investigation and would require the dockets as per the letter, which were the dockets that were referred to in the Minister's letter and subsequently by Mr Adams.

ADV BALOYI SC: And by this stage, you have now made a decision that IDAC is investigating this matter ...[intervenes].

ADV JOHNSON: Preliminary.

ADV BALOYI SC: By the time you are now asking for
20 dockets.

ADV JOHNSON: A preliminary investigation, yes.

ADV BALOYI SC: Okay.

ADV JOHNSON: And a preliminary investigation, if I may, is, it might pan out to nothing. That is why it is safer to have done a preliminary investigation, because not knowing

what is in the dockets, it could be a futile exercise having a full investigation, using all of the time and resources, and find that actually it is insubstantial to support.

CHAIRPERSON: And you did this in terms of section 28(13)?

ADV JOHNSON: One three, Chair.

CHAIRPERSON: Section 28(13).

ADV JOHNSON: Yes.

CHAIRPERSON: Thank you.

10 **ADV SELLO SC:** Thank you, Chair. In the morning, I had understood that your approach to the Head of detectives, I think you said General Khumalo ...[intervenes].

ADV JOHNSON: Major General Khumalo.

ADV SELLO SC: Major General Khumalo was, requesting the dockets was on the 6th of December.

ADV JOHNSON: That is correct.

ADV SELLO SC: That is the same day a decision was taken to authorise a preliminary investigation.

ADV JOHNSON: That is correct.

20 **ADV SELLO SC:** So it cannot be on the 6th of December that Advocate Ramsami made an application, because you are only making a decision on the 6th of September to initiate a 28(13) preliminary investigation.

ADV JOHNSON: The authorisation was dated the 6th.

ADV SELLO SC: That is your authorisation?

ADV JOHNSON: My authorisation. She would have given me the papers prior. I just cannot tell you which day prior.

ADV SELLO SC: What papers would she have given you?

ADV JOHNSON: So, it is an application for an authorisation, which the ID must consider to approve. So she would not have given it to me on the day to approve on the day.

ADV SELLO SC: So at the time she gives you whatever application she does, what is she armed with?

10 **ADV JOHNSON:** She would have been armed with the section 27.

ADV SELLO SC: She also, at least she got a copy.

ADV JOHNSON: She had the 27.

ADV SELLO SC: Okay.

ADV JOHNSON: Yes, ma'am.

ADV SELLO SC: Now, I think it was yesterday or this morning, I came to understand, and maybe I was wrong in my understanding, that prior to the 6th, you and Mr Sesoko, I thought you said, engaged extensively over this section 27
20 affidavit, on the basis of which you then took the decision you did on the 6th of December. Now, in the narrative you just provided, you have not said anything about your engagements with Mr Sesoko.

ADV JOHNSON: The Chair did ask earlier. I said, in most of them, I would engage with Mr Sesoko. This was a very

small section 27. I do not have to give him. It is a practice I do, and usually with the more bulky ones. They have been on the off chance, where it is really a small, not small, it is not nice to say small, it might not be substantial, and I am able to go through it myself, apply my mind, and make a decision.

ADV SELLO SC: So, are you suggesting my understanding all this time has been wrong, that you engaged with Mr Sesoko on this particular referral, because that is what I
10 had understood from your testimony.

ADV JOHNSON: I did not engage him on this referral.

ADV BALOYI SC: It is not a misunderstanding. It is what you said, throughout, that you did consult with him. If you recall, even yesterday, when I said to you that Colonel Padayachee spoke of a committee, an intake committee, and you said, well, on paper we have it, but we have not yet implemented it and so what I do, this is what you said, what I do is, I receive it, I consider it, I form a view, I give to Sesoko, and he then took that into account, and he came
20 back to me, and we agreed that this falls within our mandate. That was your testimony yesterday. So, it is not a case of misunderstanding. It is you are revising what you said to us yesterday.

ADV JOHNSON: Sorry, if I created the wrong, I meant, when we talked about the intake committee, I was trying to

explain that there is no committee, how the section 27's worked. So, if I created that impression, or that was, it is incorrect, I did not share the section 27 with Mr Sesoko.

ADV SELLO SC: So, too, then, was Colonel Padayachee wrong in testifying that the briefing was given to the team by Chief Perumal after the case management committee had considered the section 27. That is utterly wrong.

ADV JOHNSON: No, that is wrong.

ADV SELLO SC: Because you are not a committee. You
10 are one person.

ADV JOHNSON: We are not a committee.

ADV SELLO SC: Yes.

ADV JOHNSON: And sorry, Chair, I did indicate yesterday, there is no committee, and I cannot call Mr Sesoko and I a committee. I give it to him because he is an investigator, and with me being a prosecutor, it helps that perspective. But there is no committee at the moment that deals with any of the 27's as they come in.

ADV SELLO SC: It might be a speculation on your part,
20 but what could possibly have led Colonel Padayachee to conclude that the investigation referred to the team was following a decision by a committee? What could have?

ADV JOHNSON: I think I alluded to yesterday that we are in the process of putting together a draft standard operating procedure manual, it is one of the things that is proposed in

the manual, but it is not implemented currently or in effect.

ADV SELLO SC: Okay.

ADV JOHNSON: I think I did allude to that yesterday.

ADV SELLO SC: So, please have regard then to section 27. Seeing as you are the person who received the section 27 referral, who considered it, I think now we are at that point, the question the Chair wanted to engage you on, is it correct to say that on your reading of that affidavit, you considered that there were reasonable grounds to proceed
10 with this investigation?

ADV JOHNSON: Correct.

ADV SELLO SC: That is what you considered. On what basis?

ADV JOHNSON: There were reasonable grounds for us to consider the matter based on the allegations made out.

ADV SELLO SC: Just the suspicions and nothing more?

ADV JOHNSON: Just the reasonable suspicions.

ADV SELLO SC: And at that juncture, you had nothing but the section 27?

20 **ADV JOHNSON:** That is correct.

ADV SELLO SC: And then if we go to section 28(13), that section provides:

“If the Investigating Director considers it necessary to hear evidence in order to enable him or her to determine if there

are reasonable grounds to conduct an investigation in terms of subsection (1)(a), the Investigating Director may hold a preparatory investigation.”

So, by this point, you had, based on just the affidavit, you considered necessary to hear evidence on these suspicions?

ADV JOHNSON: That is correct. And the hear evidence is not of necessity oral evidence. It is getting the evidence to support, if there is, in fact, to support those reasonable grounds.

CHAIRPERSON: What do you make of the word “hear”, “hear” evidence?

ADV JOHNSON: Chair ...[intervenes].

CHAIRPERSON: What do you make of just that word, “hear”?

ADV JOHNSON: It is the conducting of the interview with the witnesses, prospective witnesses.

ADV SELLO SC: And, thank you, Chair.

20 **ADV BALOYI SC:** And would that be a formal process, a recorded process, those interviews?

ADV JOHNSON: It can be a recorded process, yes. More often than not, the 28’s are a recorded process, or it is an interview process, and then the statement is taken.

ADV BALOYI SC: Ja, but what I am asking is, what

happened in that interview, there must be a record of it.

ADV JOHNSON: There should be a record of it, yes.

ADV BALOYI SC: That on this day, so-and-so met with Mr Adams at Pretoria, from this time to that time, this is what was discussed. Yes, it will culminate in a statement, but there is a recordal of what happened.

ADV JOHNSON: There should be a recording, yes.

ADV BALOYI SC: Thank you.

CHAIRPERSON: And you know this for a fact?

10 **ADV JOHNSON:** I do not want to ...[intervenes].

CHAIRPERSON: We do not want you ...[intervenes].

ADV JOHNSON: I am saying ...[intervenes].

CHAIRPERSON: We do not want ...[intervenes].

ADV JOHNSON: That is ...[intervenes].

CHAIRPERSON: Sorry, sorry, sorry, just a minute. We do not want you going back on what you have just said in response to my colleague, Commissioner Baloyi.

ADV JOHNSON: I did say, Chair, there should be a recording. I will confirm that, whether or not there was a
20 recording. There ...[intervenes].

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

ADV JOHNSON: Should ...[intervenes].

CHAIRPERSON: When you say there should be, are you referring to this instance, or are you saying there should be a recording generally, as a general statement?

ADV JOHNSON: In these matters, generally, there is a recording.

CHAIRPERSON: There is a recording.

ADV JOHNSON: A recording, yes.

CHAIRPERSON: As a matter of course ...[intervenes].

ADV JOHNSON: As a matter of course.

CHAIRPERSON: There is a recording.

ADV JOHNSON: Yes.

CHAIRPERSON: All right, all right. May I just ask one
10 more thing?

ADV JOHNSON: Absolutely, Chair. Thank you.

CHAIRPERSON: The section 28(13), hearing of evidence, let me loosely call it that, surely the need for that does not undo the requirements of section 27. Section 27 must have been satisfied. The requirements of 27 must have been satisfied. You cannot, if the affidavit does not meet those requirements, you cannot get to 28(13), is that correct? Do you agree?

ADV JOHNSON: That is correct, Chair.

20 **CHAIRPERSON:** Thank you. So basically, as you would have learned in your administrative law, those are the jurisdictional facts for, or to trigger anything that gets done under 28.

ADV JOHNSON: Correct.

CHAIRPERSON: Those are the jurisdictional facts.

ADV JOHNSON: Correct.

CHAIRPERSON: Thank you. Thank you.

ADV KHUMALO SC: Just one from me. To hear evidence under subsection (13), do you have to summon the witnesses who are going to give that evidence? Do you have to issue a summons to Mr Adams, for example? How do you hear the evidence in the absence of a summons?

ADV JOHNSON: There are often times, Commissioner Khumalo, where you contact the person and they are
10 prepared to come in, or where they do not want to come in, then you do issue the summons in terms of section 28.

ADV KHUMALO SC: So in this specific case, what happened?

ADV JOHNSON: In this specific case, Mr Adams was contacted, he was prepared to cooperate, and the investigators and a prosecutor then went ahead to interview him.

ADV BALOYI SC: [Indistinct]... [microphone off] Now it works. Ms Johnson, can we have a record of that section
20 28(13) process that you say happened? Can we just have a complete record of that?

ADV JOHNSON: For this?

ADV BALOYI SC: Yes, that 28(13) process.

ADV JOHNSON: Is that what would have happened with Adams in January?

ADV BALOYI SC: Yes, thank you.

ADV SELLO SC: Thank you, Commissioners. So, I think earlier, oh sorry, she is still writing.

ADV BALOYI SC: Thank you.

ADV SELLO SC: You made a note, okay. Earlier you indicated that Advocate Ramsami prepared the section 28(13) application.

ADV JOHNSON: Correct.

ADV SELLO SC: Are you, we do not have a copy of that
10 application. Are you able to provide one?

ADV JOHNSON: May I just check with my Advocate Mhaga if they did not ask for the section 28(13)?

ADV SELLO SC: No, we had not requested it in the subpoena. It is not one of the subpoena documents. So I am saying now that you reference it, are you able to provide us with a copy. So then if I understand your testimony, you give an instruction to Advocate Ramsami and the section 27 affidavit.

ADV JOHNSON: Correct.

20 **ADV SELLO SC:** And you want Advocate Ramsami to make an application back to you in terms of section 28(13). Please explain how that works.

ADV JOHNSON: It, I have applied my mind to the section 27.

ADV SELLO SC: Yes.

ADV JOHNSON: But I have to give it to a team to also apply their mind and to see whether or not an investigation can be instituted. I took the view at the time that it fell within the mandate of IDAC. But in terms of the prescripts, no investigations can happen if you are unable to comply with an application for an investigation. So we hand it over to the prosecutor, who must look at the 27. She did not have to apply for a 28(13) if she then, after having assessed it, decided it does not fulfil all the requirements.

10 It is consider this matter and if you agree that it falls within the mandate, we are all lawyers to apply our minds, then please lodge a section 28 application. She decided to lodge a section 28(13) application.

ADV SELLO SC: You said the first part you give it to the prosecutor and ask her to apply her mind to the section 27 affidavit and then express an opinion to you and then thereafter she lodges an application. Is that correct?

ADV JOHNSON: Instead of an opinion, if you agree that it falls within the mandate, you then apply for a section 28.

20 **ADV SELLO SC:** Okay. Where is that? Was that your instruction to her, here is a section 27 affidavit, consider it. If you agree that it at least discloses a basis for a preliminary investigation, please provide me with a section 28(13) application. Is that more or less how it goes?

ADV JOHNSON: A section 28 application, yes.

ADV SELLO SC: Is that how it normally happens?

ADV JOHNSON: That is how I recall it happens, yes.

ADV SELLO SC: Did Advocate, it is Advocate Ramsami, ever express a view to you on the content and depth of the section 27 affidavit? Did she ever express her views on that affidavit?

ADV JOHNSON: No. When she brought the section 28 application, I realized that she agreed with the contents of the section 27.

10 **ADV SELLO SC:** And she never expressed a different view that it is deficient, it does not comply?

ADV JOHNSON: No.

ADV SELLO SC: She did not ...[intervenes].

ADV JOHNSON: No.

ADV SELLO SC: She also did not pick up the fact that it does not comply with section 27?

ADV JOHNSON: No.

ADV SELLO SC: She did not. You, Commissioners, yes, please go ahead.

20 **ADV BALOYI SC:** This application, it is made in terms of what, because my reading of 13, and it may well be that there is another section to read before I get to 13, but my reading of 13 seems to contemplate that you, for example, upon receipt of that Mr Adams' section 27, if you determined on the face of it that it is necessary to hear

evidence, you would proceed to instruct that such a process should happen. Where do we see that Ms Ramsami had to make an application before that enquiry, that hearing of evidence could be held? I would not have a difficulty reading 13 if you said, I looked at this affidavit and determined that we need to hear more, and then I authorized a preliminary, a preparatory investigation. I would not have a difficulty with that because I read 13 to empower you to do that, but you speak of a more involved
10 process where you make the determination that this falls within our mandate, you give it to somebody else for their opinion and execute, and then you say to them, if you think we must do a preparatory investigation, bring that application and I would like to see where is that contained, that step.

ADV JOHNSON: So I take it, Commissioner Baloyi, from the section that I had referred to, which was the section 28(13):

20 “If the Investigating Director considers it necessary to hear evidence in order to enable him or her to determine if there are reasonable grounds to conduct an investigation in terms of subsection (1)(a), the Investigating Director may hold a preparatory investigation.”

ADV BALOYI SC: Yes.

ADV JOHNSON: That is where we take it from.

ADV BALOYI SC: No, I am not questioning that you could convene the hearing of evidence, or you can convene a preparatory investigation, or hold a preparatory investigation. I am not taking quarrel with that. I accept that in terms of (13) you have the power. I am just trying to understand this process that you have just described to Ms Sello, where you get the section 27, you look at it, you
10 make a determination that it falls within what is raised there, falls within your mandate, so you should investigate, and then you give it to Ms Ramsami, you give it to the team, I assume at that point, to execute.

ADV JOHNSON: Yes.

ADV BALOYI SC: But I understood you to say to Ms Sello that in that discussion with Ms Ramsami, you said to her, look at it, if you think it is necessary to hold a preparatory investigation, make an application. That is what I understood you to say.

20 **ADV JOHNSON:** Look at it and see if it is necessary to make a section 28 application.

ADV BALOYI SC: Yes.

ADV JOHNSON: Yes.

ADV BALOYI SC: Then my question is, a section 28 application in terms of what? Is this one of those where in

your office you have ways of doing things? I mean, you have encountered these subsection (13) many, many times. So if it was in the Act, I think if that requirement to apply to you, if it was in the Act, I would have expected you would go straight to it because it is something that you encounter every day. If you are not able to find it, can we conclude that this is one of those instances where you practice things, you have ways of doing things, they are just not written down?

10 **ADV JOHNSON:** That are procedural based on the requirements of what would initiate an investigation.

ADV BALOYI SC: Yes. So it is not written down anywhere. You just have a practice in the office.

ADV JOHNSON: It is a practice, yes.

ADV BALOYI SC: Thank you.

ADV KHUMALO SC: Both 27 and 28, so if you look at the main body of 27 and 28(1), because those are the two sections that take you to 28(13) ...[intervenes].

ADV JOHNSON: Yes.

20 **ADV KHUMALO SC:** For you to determine that what is reported to IDAC falls within your mandate, there must be a reasonable suspicion or reasonable grounds to suspect that a specified offence has been committed. So in what was presented to you, what is that specified offence that you looked at and then said this falls within our mandate?

ADV JOHNSON: In terms of the 27?

ADV KHUMALO SC: Both 27 and 28, because that is where you start.

ADV JOHNSON: Yes.

ADV KHUMALO SC: Chair has engaged you on the test subjective, objective. We have moved past that. Something further must exist and that is a suspicion that a specified offence has been committed or is being committed or there is an attempt to commit such an offence. So what
10 is the specified offence here that made you believe that this falls within IDAC's mandate?

ADV JOHNSON: It would have been where the procurement portion was. It was contraventions of PFMA and of fraud, where the siphoning of the monies and or the, that was the theft and the financial crime with the money laundering aspect and where the issues of the vetting and the appointments, it was in the way that it was couched, the capture of those systems and processes.

ADV KHUMALO SC: So are those specified offences as
20 contemplated in 27 and 28?

ADV JOHNSON: Those are the offences as set out in section 7 of the Act that set out the offences that IDAC, falls within IDAC's mandate.

ADV KHUMALO SC: No, that is a different question. 27 and 28(1) do not say any offence, unless you read specified

offence in 27 and 28(1) to mean any offence referred to ...[intervenes].

ADV JOHNSON: In section 7.

ADV KHUMALO SC: In section 7. Is that how you read it?

ADV JOHNSON: Yes, because we have no other offences. That specified offence is the one that was deleted and they did not ...[intervenes].

ADV KHUMALO SC: So let us just be clear then. So your determination was that because these offences are offences
10 referred to in section 7(1A), that is good enough?

ADV JOHNSON: Correct, Chair.

ADV KHUMALO SC: Even if they are not specified offences as contemplated in this statute.

ADV JOHNSON: Yes, because ...[intervenes].

ADV KHUMALO SC: As far as you are concerned, you still had a mandate to investigate them.

ADV JOHNSON: That is correct.

ADV KHUMALO SC: And that was your understanding.

ADV JOHNSON: Correct.

20 **ADV KHUMALO SC:** Okay.

ADV SELLO SC: Thank you, Commissioners. And you then subsequently received, I take it the section 28(13) application from Advocate Ramsami and then you authorised the preliminary investigation.

ADV JOHNSON: That is correct.

ADV SELLO SC: On the 6th of December. And then prior to your authorisation, is there any investigation that Advocate Ramsami or a member of her team undertakes or does she apply her mind to the section 27 affidavit and perhaps the law and then drafts the application in terms of 28(13), meaning she does not seek to obtain documents extraneous to the affidavit?

ADV JOHNSON: Correct.

ADV SELLO SC: So she works purely on the affidavit?

10 **ADV JOHNSON:** That is correct.

ADV SELLO SC: And forms a view?

ADV JOHNSON: Correct.

ADV SELLO SC: And now this morning as I think Mr Bodlani indicated, documents were forwarded to the Commission as part of the subpoena requests made and these have been received, we confirm. In a moment we will be turning to them.

ADV BALOYI SC: [Indistinct]... [microphone off].

ADV SELLO SC: Yes, Commissioner. No, I had not, I said
20 I will be referring you to something. The Commissioners will recall that this morning I referenced documents that were requested. Yesterday I indicated that they had started trickling in and Advocate Johnson read of some documents she had at hand and she indicated that they had been provided to us and Mr Bodlani confirmed that. The

documents have been received and I would like, they should be included in your files. I pray they are. We are now in file 8 and I am interested in particular ...[intervenes].

CHAIRPERSON: Should we put away those we were using this morning or not really?

ADV SELLO SC: Judging by the time, yes, I think so, considering we are ending at 3, yes.

CHAIRPERSON: There is quite a clutter in front of us.

ADV SELLO SC: I can well imagine. I apologize. Except
10 for the file containing the referral affidavit, file 2, page 512.
Thank you, Chair.

ADV BALOYI SC: [Indistinct]... [microphone off].

ADV SELLO SC: Thank you, Commissioners. In particular, I wanted us to go to page 3282. That is the authorization in terms of section 28(13) of the NPA Act. Advocate Johnson, I need us to put a finger on that page in that file. Please do not close it. And let us go back to the referral affidavit. That would be file 2, page 512. Now, in this affidavit, I note at paragraph 2 ...[intervenes].

20 **ADV JOHNSON:** Sorry, 51?

ADV SELLO SC: 512 of file 2. Help is coming.

ADV JOHNSON: This is file 2.

ADV SELLO SC: Page 512.

ADV JOHNSON: I do not have this.

CHAIRPERSON: The referral affidavit.

ADV JOHNSON: Yes.

CHAIRPERSON: Yes.

ADV JOHNSON: I have given the file back. I am not sure why I am not seeing it.

ADV SELLO SC: Did you perhaps, because of the clutter around you, did you take it out of the file?

ADV JOHNSON: No, I did not take it out of the file. File 3.

ADV SELLO SC: May I request your Counsel to, I do not know how many copies they have available of the referral
10 affidavit, page 512 of file 2. And for your purposes, Mr Bodlani, we will be flighting it, so you will follow it on the screen if you could. Thank you so much.

ADV JOHNSON: Thank you, Counsel.

ADV SELLO SC: My pleasure, ma'am. Now, if we go to paragraph 2, on this affidavit I see concerns regarding General Khumalo, General Lushaba, General Madondo. You see that?

ADV JOHNSON: I see that.

ADV SELLO SC: And overleaf at paragraph 4, that is
20 regard, the suspicion regarding manipulation of procurement processes. At second sentence of that paragraph, I see it says:

“I suspect that General Khumalo and other senior officers in Crime Intelligence, including Madondo and

Lushaba, were manipulating procurement processes and processes to appoint and promote certain members.”

You see where I am reading?

ADV JOHNSON: Yes, ma’am.

ADV SELLO SC: If we drop further down in that paragraph, fourth line from the bottom, once again, it speaks of persons being appointed to strategic positions and that such persons are suspected to be loyal and close
10 to Khumalo, Lushaba, and Madondo and those close to them. I go overleaf at 5. I see reference to General Khumalo where an allegation is made about the former Minister of Police, Minister Cele. And as we know, paragraph 6 concerns General Lushaba and the theft that occurred at his home.

Paragraph 7, once again, it is Khumalo, Lushaba, and Madondo. And I think that is about, then we get to paragraph 8 and 9 and 10 which are concluding paragraphs of that affidavit. You confirm that?

20 **ADV JOHNSON:** Correct.

ADV SELLO SC: Now this is the same affidavit that Advocate Ramsami was armed with.

ADV JOHNSON: Yes.

ADV SELLO SC: Now, let us get back to our file 8, page 3282.

ADV JOHNSON: Correct.

ADV SELLO SC: Now, at 3282, that is an authorization signed by you. If you look at 3283, it is dated the 6th of December 2024.

ADV JOHNSON: Correct.

ADV SELLO SC: And in the first page, you say, I, Andrea Johnson, and you continue regarding your authority. And you indicate that you have reason to suspect that the following offenses have been committed, and you list them.

10 Am I reading your authorization correctly?

ADV JOHNSON: Yes.

ADV SELLO SC: So these are all the offenses?

ADV JOHNSON: Yes, all the possible offenses.

ADV SELLO SC: Possible offenses.

ADV JOHNSON: Yes.

ADV SELLO SC: And you clarify that overleaf at 3283 where you state that:

20 “These have been committed or are being committed or attempts have or are being made to commit such offenses in an organized fashion by *inter alia* the persons or entities in the annexures to be the institution of the investigation in terms of section 28(13) of the Act in relation to the activities of South African

Police Services and Crime Intelligence
and any other entity.”

My question is, that conclusion you draw that that
litany of crimes has been committed or being committed or
attempts have been made, that can only derive from the
section 27 affidavit.

ADV JOHNSON: Correct.

ADV SELLO SC: What in the section 25 affidavit leads you
to the conclusion that the crimes listed in there, all or any,
10 have been committed or were being in the process of being
committed?

ADV JOHNSON: The Prevention and Combating of Corrupt
Activities Act falls within the ambit of the allegations in
paragraph 4.

ADV SELLO SC: Paragraph 4?

ADV JOHNSON: Yes.

ADV SELLO SC: Noted.

ADV JOHNSON: Not knowing what all would have
happened in the alleged placement and appointment of
20 persons. So it could not rule out the corruption. The
Prevention of Organized Crime Act would relate to
paragraph 4 and likely points to the laundering of money out
of Crime Intelligence.

ADV SELLO SC: Yes.

ADV JOHNSON: The National Strategic Intelligence Act

would relate to the vetting issues.

ADV SELLO SC: Okay.

ADV JOHNSON: And the secret services account relates to the allegation of, sorry, paragraph, at the end of paragraph 3, the use of secret funds and then there is the further allegation in paragraph 5, some of the funds became taken unlawfully from the secret funds account. So wherever there was a relationship with the secret funds account that act becomes applicable. The procurement
10 fraud, the alleged procurement fraud under the Public Finance Management Act, the Financial Intelligence Centre Act also relates in part to paragraph 7.

ADV SELLO SC: Yes.

ADV JOHNSON: And then the contravention of the Police Act because of the appointments and the vetting that is referred to and then the allegations of fraud, theft, forgery and uttering and or defeating, obstructing the administration of justice, which would relate in part to, not in part, in the main to the charges against General Lushaba.

20 **ADV SELLO SC:** Okay, now what would be the theft, what would relate to the theft here?

ADV JOHNSON: The theft was the actively siphoning money from the secret services account.

ADV SELLO SC: Okay.

ADV BODLANI SC: And then there was the one

...[incomplete].

ADV SELLO SC: And the forgery ...[intervenes].

ADV JOHNSON: [Indistinct]... and I suspect that funds became taken unlawfully from the secret service funds account under paragraph 5.

ADV SELLO SC: Thank you. And the forgery and uttering?

ADV JOHNSON: That would have been in relation to manipulating of the procurement processes and processes
10 for the appointment that there could be allegations there of forgery and uttering.

ADV SELLO SC: How do we start with manipulation of processes and then we suggest that there was forgery or that manipulation involved forgery, because the process could have been manipulated in so many different, thousand ways. How do you land on forgery and uttering?

ADV JOHNSON: It is a possible offense.

ADV SELLO SC: Okay.

ADV JOHNSON: Yes. So perhaps if you would allow me to
20 just say is that these are the offenses that one is looking at. They are not open, nor are they limited in terms of you go with what you have but if you do not put in the possibility, usually when you have fraud and or theft there often does happen to be forgery and uttering and so if you have not listed that offense it might become a challenge later on.

ADV SELLO SC: But so this is a list of all possible crimes ...[intervenes].

ADV JOHNSON: Within the ambit of the 27.

ADV SELLO SC: Of the 27, yes, and you so maintain.

ADV JOHNSON: Yes.

CHAIRPERSON: Okay.

CHAIRPERSON: Please define forgery.

ADV JOHNSON: It is where in terms of for example with the documents that someone would have forged someone's
10 signature either in the procurement documents, in the appointment documents or in the vetting documents. It purely relates to the forgery in terms of putting in ...[intervenes].

CHAIRPERSON: And there was a basis for suspecting that this, this had a reasonable suspicion that this had happened?

ADV JOHNSON: Reading it in its totality.

CHAIRPERSON: Would there be a reasonable suspicion that this had happened?

20 **ADV JOHNSON:** Correct.

CHAIRPERSON: On what basis?

ADV JOHNSON: That if ...[intervenes].

CHAIRPERSON: Is there anybody who ever suggested that documents had been forged, for example that certain people had signed documents purporting to be other people?

ADV JOHNSON: That has come afterwards in the investigation, yes.

ADV BALOYI SC: Ja, the question is at ...[intervenes].

ADV JOHNSON: In this instance.

ADV BALOYI SC: At this point when you are writing this document ...[intervenes].

ADV JOHNSON: Yes.

ADV BALOYI SC: That what were you relying on to get to the point where you say forgery and uttering is implicated.

10 **ADV JOHNSON:** I read it, Commissioner Baloyi, in paragraph 4 where we talk of the manipulating of procurement processes and processes to appoint and promote certain members to higher strategic positions within the Crime Intelligence, that in that manipulation there can be fraud, forgery or uttering.

CHAIRPERSON: Speaking for myself I do not see how that takes you to forgery. Remember you have said here, you have said in the introductory part before you itemise the offences you refer to, you have said you have “reason” to
20 suspect. I do not see the reason for you to suspect in what you have said thus far. I just do not.

ADV JOHNSON: I take your point.

CHAIRPERSON: Thank you.

ADV JOHNSON: This is what I have got.

CHAIRPERSON: Thank you. Thank you.

ADV SELLO SC: Thank you Commissioners. Then just to conclude at 3283 having then itemised those crimes you say those offences are being committed or have been committed by, I am reading the second line, persons or entities in the annexure. Now that annexure appears at 3284 overleaf. That is the annexure. Now we have General Khumalo, General Madondo, General Lushaba and a list of others. I know as I indicated to you that the section 27 affidavit specifically identifies General Khumalo, General Madondo
 10 and General Lushaba. We just did that exercise at the various paragraphs ...[indistinct]. I cannot find in the section 27 the persons identified under items 4 to 12 and you recall that your testimony was all you had at the time was the section 27 affidavit. It does not reference any of the people listed from 4 till 12. Where does your annexure get them from?

ADV BALOYI SC: Advocate Johnson, I think the question is who gave you these names? They are not in the affidavit. We can look at it for the next hour, you will not
 20 find the names in 4 up to 12. Somebody gave them to you. Who gave you these names?

ADV JOHNSON: Yes, Commissioner ...[intervenes].

ADV BALOYI SC: And under what circumstances?

ADV JOHNSON: This application came to me from the prosecutor.

ADV BALOYI SC: So Ms Ramsami will have to tell us where she got these names from?

ADV JOHNSON: That would be correct.

ADV BALOYI SC: Okay.

ADV SELLO SC: Did you inquire from her where she got the names from when you know that you only gave her the section 27 affidavit and you are quite familiar with it? Do you engage and say who are these ones now? Where do they come in? How do they come in? They are not in the
10 affidavit. You are not conducting an investigation yet so you are not obtaining your own evidence. Where do these names come from? Did you have that engagement with her?

ADV JOHNSON: I did not have that.

ADV SELLO SC: Why not? Should you not have, because from what you are suggesting it is like she looked at those three names and said no, three is not a good number, I prefer 12 and start like “sommer gooing” other names in there and you signed and you are happy with that. How
20 come?

ADV JOHNSON: As I indicated, according to me she only had the 27.

ADV SELLO SC: Yes.

ADV JOHNSON: And she would have then put together the 28.

ADV SELLO SC: Yes.

ADV JOHNSON: Yes.

ADV SELLO SC: Which we are looking at.

ADV JOHNSON: Yes.

ADV SELLO SC: And you know the 27 does not contain the names from 4 to 12.

ADV JOHNSON: That is correct.

ADV SELLO SC: So why do you sign it in the form that it is where suddenly it includes a litany of other people who
10 are not mentioned in the 27 affidavit?

ADV JOHNSON: Sorry. Counsel, you refer to only the first four?

ADV SELLO SC: The first three.

ADV BALOYI SC: First three.

ADV JOHNSON: The first three.

ADV SELLO SC: Yes.

ADV JOHNSON: Sorry Commissioner Baloyi, that I am now a bit slow. I do not intend taking the whole afternoon to ...[incomplete].

20 **ADV BALOYI SC:** I am just trying to be helpful.

ADV JOHNSON: No, I ...[intervenes].

ADV BALOYI SC: Because you ...[intervenes].

ADV JOHNSON: I am trying to figure out how she would have arrived at the names because there are official capacities mentioned but the names are not mentioned. I

take the point.

ADV BALOYI SC: You accept that it is not from the section 27 affidavit that she got the names.

ADV JOHNSON: Yes.

ADV BALOYI SC: You accept that someone must have, if they come from her, someone must have given her these names.

ADV JOHNSON: Correct.

ADV BALOYI SC: Yes.

10 **ADV JOHNSON:** And I will find out.

ADV BALOYI SC: And you accept that at this point when she approaches you with this application, the investigation has not started yet.

ADV JOHNSON: Yes.

ADV BALOYI SC: You gave her the affidavit, she looked at it and she came back to you ...[intervenes].

ADV JOHNSON: That is correct.

ADV BALOYI SC: And said we need to have a preliminary investigation. So you accept at this point there is no
20 investigation yet.

ADV JOHNSON: Correct.

ADV BALOYI SC: All right, thank you.

ADV SELLO SC: My challenge is this, Advocate Johnson, you are authorizing an investigation into eight people who are not mentioned in the singular document you have. They

are not referred to you. There is no complaint regarding them, but you are authorizing an investigation into them. In terms of what section are you acting in so doing?

ADV JOHNSON: A conversation must have happened.

ADV SELLO SC: With who? That is the question.

ADV JOHNSON: With Advocate Ramsami.

ADV SELLO SC: No, she is not conversing by her soul self. Who is she conversing with?

ADV JOHNSON: What I am saying is she and I must have
10 had a conversation.

ADV SELLO SC: Oh, so you are aware of that.

ADV JOHNSON: I am saying she and I must have had a conversation and I will follow that up because I do not have an independent recollection of a conversation and I will, she would have to indicate then if she had a conversation with somebody else. I would not just have blindly signed it without finding out from her.

ADV SELLO SC: Did you perhaps suggest these names to her?

20 **ADV JOHNSON:** No, these are not people I know.

ADV BALOYI SC: Can I say, the difficulty is that you do not seem to abide the terms of this section 27. Even if she proposes the names to you, you are the final decision maker. You are the in charge. You are the one that is authorizing an investigation. It is difficult to conceive of a

situation where she comes back to you and she gives you a list of names and you do not say, no, we cannot do that because it does not arise from this affidavit. We have not started an investigation so I know you did not get those names from an investigation. I know you did not do that. We have at this point only this affidavit and you do not say we are obliged to work with what we have got. We cannot do whatever we feel like. It is difficult to understand that you would be party, if this is her giving, she gave you these
10 names, that you are happy to sign off a truly invasive investigation because your powers to hear evidence means you can call these people, you can look into their affairs.

That is what it means. And you do it outside the corners of the only document you have on which you could work with. You, the Head, are not in a position and you do not say to your prosecutor that we are not doing that. We are bound by law, we are bound by rules to investigate that which is properly given to us. It is a misuse of powers, whether it comes from her or from you at this stage this is a
20 misuse of powers to take intrusive steps and action against people on this affidavit.

You have no justification whatsoever on this affidavit to be looking into Lekalakala, Ncube, Moyane, Sebola, Madileng, Mokwele even by name, Duvhalo, whoever is Automotive Engineer, you have absolutely no

legitimate and valid basis to look into them. Maybe there is something to look at later on, but we are still at this affidavit stage where you are authorizing that they be called in, that their affairs, their bank statements be looked into, and their lifestyles and everything about them. And they come, they must come to interviews under threat of if you do not cooperate it is a criminal offence.

You are happy to do all of that when in fact the document, the only document on which you rely to act as
 10 you do in this document, does not create a basis for it. It is, to me it is yet another instance where you in particular have misused your powers to go where you are not authorized to go. There is no legitimate basis to do this. Do you want to comment?

ADV JOHNSON: I have no comment, Chair.

ADV BALOYI SC: Thank you.

ADV KHUMALO SC: Advocate Sello, you can clarify it or Advocate Johnson can clarify it, maybe I am too slow now. Before this authorisation, I thought there is an application,
 20 then the authorisation, or does the application come after?

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

ADV KHUMALO SC: Or maybe you can answer.

ADV JOHNSON: Yes, yes.

ADV KHUMALO SC: I had understood that what should precede this authorisation is an application.

ADV JOHNSON: That is correct.

ADV KHUMALO SC: Then this authorisation authorises the application.

ADV JOHNSON: That is correct.

ADV KHUMALO SC: Now can you show us where that application is, because it may be that the questions you are being asked, the names were in the application.

ADV JOHNSON: I see that it is not part of, I do not see it here and I will ask that they make the application available.

10 **ADV KHUMALO SC:** Okay.

ADV JOHNSON: I am not sure why the application is not with the authorisation.

ADV KHUMALO SC: The one that I see here, I suspect you are going to be dealing with it later, so I do not want to go there.

ADV SELLO SC: Yes, that is a different authorisation now.

ADV KHUMALO SC: Yes.

ADV SELLO SC: Yes, it is not the 28(13) authorisation. Thank you. Chair, it is 15:02, as I had indicated.

20 **CHAIRPERSON:** Let us adjourn and resume at 9:30 tomorrow.

ADV SELLO SC: Thank you, Chair.

INQUIRY POSTPONED TO 23 JULY 2026

INQUIRY ADJOURNS
