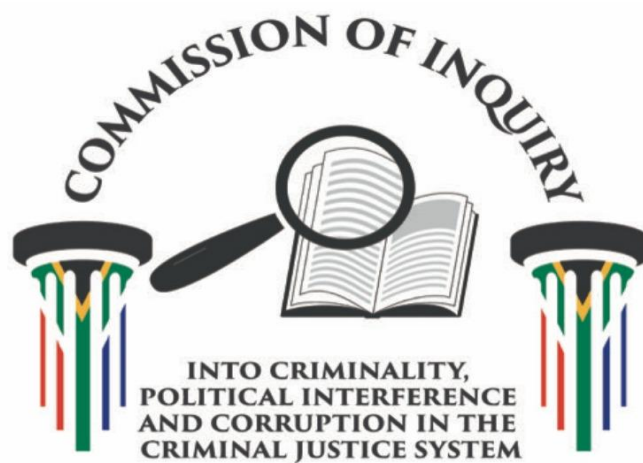


JUDICIAL COMMISSION OF INQUIRY INTO CRIMINALITY,
POLITICAL INTERFERENCE AND CORRUPTION IN THE
CRIMINAL JUSTICE SYSTEM

HELD AT
BRIGITTE MABANDLA JUSTICE COLLEGE

29 JULY 2026

DAY 150



PROCEEDINGS ON 29 JULY 2026

CHAIRPERSON: Good morning, Ms Sello. Good morning, Mr Bodlani.

ADV BODLANI SC: Good morning, Chair.

CHAIRPERSON: Good morning, Advocate Johnson.

ADV JOHNSON: Morning, Chair.

CHAIRPERSON: Let us start here. You remember yesterday we gave you some homework that stemmed from a question put to you by Commissioner Baloyi and that
10 question concerned the four counts that General Masemola is charged with, all of which are based on the Public Finance Management Act, or the PFMA as it is usually called.

Commissioner Baloyi's point was, Commissioner Baloyi suggested to you, and she wanted a response, that those charges cannot stand alone. They must be related to some other offences that do fall under the mandate of IDAC. Do you remember the question? I added to that question the fact that the section actually makes reference to
20 additional, and I said to you that surely this must mean that the offences under paragraph C of section 7(1A), those offences under the specified statutes there must therefore, because of the use of additional, be additional to something that is already referred to.

And if it is only offences under the statutes, then

IDAC does not have a mandate. I even said to you, you must give meaning to the word additional. In fact, I should actually have gone further than just additional. I should have said that this is additional related, so underlined “related” as well, statutory offences. So, you would have to give meaning to additional related statutory offences. And if what General Masemola is charged with are only the statutory offences, in fact in this case, statutory offences relating to only the one statute, the PFMA, on what basis

10 does IDAC have a mandate to charge General Masemola under the PFMA, standing all by itself? Unless you have a different, or you give the words additional related statutory offences a different meaning to the one I am suggesting to you. Can you please respond?

ADV JOHNSON: Good morning Chair and Commissioners.

CHAIRPERSON: Yes, good morning. Good morning, Advocate.

ADV JOHNSON: I have done the homework. I do not know if I am going to pass, so we are going to give it the best

20 shot that I could. I did go back, and it is correct, Commissioner Baloyi, that he faces charges relating to the PFMA and so we have got to go back into section 7, especially 7(1A), and say in the absence of. Now, we have several accused that are charged, and you will find that not all of the accused are charged for all of the same offences.

You may find that some face three or four, and some face just one, et cetera. But they all arise out of the serious complex corruption and commercial crime matter, which is the Medicare matter. It is in that vein that we go back, Chair, and when we look at section 7(1A), sub (a), our case, the Medicare matter, relates to serious, high-profile, or complex corruption, commercial, or financial crime cases.

That is the umbrella of the cases. The involvement of Commissioner Masemola in relation to the serious, high-
10 profile, or complex corruption, commercial, or financial crimes are as related to the PFMA. When these offences were allegedly taking place, the serious, complex, commercial, Mr, or General Matlou, from the Risk Audit of the police, brought it to the attention of the then Commissioner to say that there is these offences taking place.

There is unlawfulness happening in this contract, and Commissioner, as the Accounting Officer, you need to stop the contract, and therefore stop, it would therefore
20 stop the payment. It took him a long time to do so, and what then happened is, in not acting in terms of his duties as the Accounting Officer, to act promptly, to act diligently, monies were in fact then paid out because of these unlawful, corrupt activities in the approximate value of R50 million and then the contract was stopped.

We said it is all flowing out of the main transaction. It was brought to his attention, and the bringing it to his attention is because he is the Accounting Officer. And had he acted, then the perpetuation of this unlawful corruption, commercial, and financial crimes would not have taken place. It is so, Chair, we never said that he was party to the corruption, but he is being charged then for the PFMA arising out of those matters that he had become aware of, and that we say he then did not stop and that is as

10 ...[intervenes].

CHAIRPERSON: That is a valiant attempt, but I do not think it takes you to a pass mark. Let me make a very cruel example, and say, let us say all of the people that General Masemola is charged with were dead, all of them, and therefore, there was no question of them being charged with all the offences, with any of the offences, you are seeking to rely on and to suggest that General Masemola's charges are additional to. So, General Masemola then has to be charged under the PFMA all by himself. So, what would the

20 PFMA charges be additional to? What would the PFMA charges be additional to? Nothing. You get my point?

ADV JOHNSON: I understand, yes.

CHAIRPERSON: So, it is on that basis that I say your attempt to just force the PFMA charges being additional simply does not work. Do you agree?

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

CHAIRPERSON: It does not, because all that General Masemola is charged with are the PFMA offences. So, when you look at him, those offences, insofar as General Masemola is concerned, are not additional to anything, are not related to anything. It is just those PFMA offences only and you cannot force the additional by merely relating to charges faced by other people, charges that have nothing to do with him whatsoever. And the cruel example I give
10 actually makes the point abundantly clear. Do you agree?

ADV JOHNSON: I agree it makes the point clear.

CHAIRPERSON: Yes.

ADV JOHNSON: If you would allow me to, and then I stop.

CHAIRPERSON: Yes, yes.

ADV JOHNSON: In the manner in which it transpires, the PFMA is in relation to, and that is as far as I take it, it is in relation to the serious complex corruption, commercial and financial crimes. If those had not taken place, there is no need for the charge to be preferred, PFMA or otherwise,
20 against Commissioner Masemola. But that is as far as I can take that argument and I just wanted the opportunity to explain where I took that in relation ...[intervenes].

CHAIRPERSON: But for as long as ...[intervenes].

ADV JOHNSON: [Indistinct]... [cross-talking].

CHAIRPERSON: Oh, sorry, sorry, sorry, please finish.

ADV JOHNSON: No, no, I said ...[intervenes].

CHAIRPERSON: Yes.

ADV JOHNSON: That is as far as I am able to take it because it is in relation to ...[intervenes].

CHAIRPERSON: Yes, yes.

ADV JOHNSON: Had those not happened, there would not have been these charges.

CHAIRPERSON: Yes. You see, for as long as you agree with me and you are not able to argue against my cruel
10 example, that point simply does not work. It does not. Because if he was all by himself, it would be nonsensical to talk about additional, because it would be additional to what? Additional to what? Because that additional is a conscious choice of word by the legislature or the legislator. It is a conscious choice of word.

Otherwise, they would just have said relating to these statutory, or rather, offences arising from these statutes and then the statutes would be itemised. The use of additional is because there must first be other offences,
20 otherwise, additional simply does not make sense. You must accept that.

ADV JOHNSON: I leave it there, Chair.

CHAIRPERSON: Do you agree that, otherwise ...[intervenes].

ADV JOHNSON: I have to agree with your reasoning.

CHAIRPERSON: Sorry, sorry.

ADV JOHNSON: I have to agree with your reasoning.

CHAIRPERSON: Thank you, thank you.

ADV JOHNSON: I made the point I thought I need to make.

CHAIRPERSON: Yes, yes.

ADV JOHNSON: It is based on my understanding.

CHAIRPERSON: No, yes.

ADV JOHNSON: And I have ...[incomplete].

CHAIRPERSON: Ja, I suggest to you or as other people
10 would say, I put it to you that your reasoning in this regard
...[intervenes].

ADV JOHNSON: Will not hold water.

CHAIRPERSON: It simply does not. Thank you.

ADV KHUMALO SC: Advocate Sello, there is the further
issue on this. If you go to file 9 on page 3520, this is
General Matlou's own affidavit.

CHAIRPERSON: Oh, sorry. Advocate Johnson, you should
not leave your seat when your testimony is concluded being
under the belief that the Commissioners are suggesting that
20 General Masemola has no case to answer in so far as the
PFMA is concerned. We are not suggesting that at all.
What we are focusing on is IDAC's mandate. IDAC in so far
as the PFMA is concerned, on our reading, IDAC's mandate
is only if there are other charges and then the PFMA
charges are additional to that. That is all that we are

saying at this stage. It is about IDAC's mandate.

ADV JOHNSON: I hear you, Chair.

CHAIRPERSON: You see what I mean?

ADV JOHNSON: I understand.

CHAIRPERSON: So whether or not PFMA offences have in fact been committed is something else altogether. But it is not something that must be pursued by IDAC. That is all we are suggesting to you.

ADV JOHNSON: Thank you, Chair.

10 **CHAIRPERSON**: Thank you.

ADV KHUMALO SC: Yes, thank you, Chair. Good morning, Advocate Johnson.

ADV JOHNSON: Morning, Commissioner.

ADV KHUMALO SC: I am going to deal with process leading to the charges by IDAC. So the section 27 affidavit of ...[intervenes].

ADV JOHNSON: Sorry, Chair, I think that, sorry, Commissioner Khumalo, I do not know if the Chair found his file. You got file 9. Sorry.

20 **CHAIRPERSON**: Yesterday already I did. Thank you very much, Advocate Johnson.

ADV KHUMALO SC: In your response to Chair, you referred to General Matlou's affidavit. So if you look at General Matlou's affidavit starting on 3519, what she says in 3520 in relation to General Masemola is that, so first of

all, she is the Head of Risk and Integrity, so Head of Risk and Compliance at SAPS and she would have investigated these issues, as I am sure her job description requires her to. And then she says in paragraph 8 on 3520, she then advised General Masemola to consider terminating the contract with Medicare to save SAPS from irreparable harm and to diminish the financial prejudice suffered by SAPS. Then she says General Masemola terminated. So General Masemola accepted the advice. Do you see that?

10 **ADV JOHNSON:** Yes.

ADV KHUMALO SC: Now, if you read section 86 of PFMA with section 38, what it requires is wilful and grossly negligent conduct on the part of General Masemola. As I understand those two sections, they would kick in if notwithstanding the advice by the Head of Risk and Compliance, he does absolutely nothing, because then that would be wilful and grossly negligent. But if your Head of Risk says, I have investigated this, here is an audit report that shows that at the time when you did not know, some
20 members of SAPS in Supply Chain were colluding with Mr Matlala's company and as a result, this contract was concluded.

They were also colluding in relation to the issue of, I think it is in charge 3, of the orders, of the purchase orders, which is not something that as a Commissioner you

would generally know because it happens at Supply Chain level. If now Head of Risk investigates, gives you an audit report and says, the purchase order process and even the granting of the contract from the beginning were tainted by criminality, you as Accounting Officer, you come in at that level and you say, now that I have all this information, what do I do with it?

And if upon receiving that advice you terminate the contract, where is the wilful, intentional conduct and the
10 grossly negligence, because the way these charges are formulated, IDAC is basically saying from the date the tender was awarded, because they say from May 2024 until May 2025, so they say from the date the tender was awarded, already there was wilfulness and gross negligent, grossly negligent conduct on the part of General Masemola. But that cannot be if you look at the issue of the purchase orders, for example, in count 2.

Those only started coming in after the tender was awarded and payments only happened after services were
20 rendered. So it cannot be that from the 8th of May already, because there was no tender on the 8th of May. The service provider was appointed in June, and after they were appointed we have had evidence that there were then meetings about how the contract is going to be implemented, and the contract was then implemented much

later, from September onwards, if I remember Brigadier Matjeng's evidence correctly.

So it is not clear to me how in May, June, July, August, PFMA breaches could have occurred on the part of General Masemola. So do you see where I am going that you can only sustain the PFMA charges, the ones that are formulated at least. There may well be others that he is guilty of and we are not aware of, but the ones that you have in count 1 to count 4, you can only sustain them if,
 10 after he has received advice from the Head of Risk, he ignores that advice and allows SAPS to continue with this contract. I know I have said a lot, so maybe respond only to the last part, assume that everything I said before the last part was just background.

ADV JOHNSON: So how I understand it is that from the time that he was informed by the Risk Officer ...[intervenes].

ADV KHUMALO SC: Yes.

ADV JOHNSON: General Matlou, he took quite a bit of time
 20 before he acted on the information and the advice given. And it is precisely because he took a long time, it is in that period that monies became released. That is how I understand it.

ADV KHUMALO SC: But do you accept that, like any of us, when you get an opinion, you first have to consider it, you

first have to apply your mind to it before you act, because if you act in haste, you could be sued for breach of contract, you could be sued for failure to apply your mind. I mean some of the issues we have criticized you for was blindly accepting briefings without looking at underlying documents to satisfy yourself that you know, the section 27 read with the section 28 applications are actually consistent and they are relevant to the complaint of Mr Adams.

So one does not, in the normal course, you get
10 advice today, you act immediately. In the normal course, you would apply your mind to that advice and you would ask questions if there is a need to ask questions, because I do not see anywhere in General Matlou's affidavit where she says it took the National Commissioner 6 months after he was given the advice to act on it, because that paragraph 9 says, I gave the National Commissioner advice and then he terminated the contract.

So there is no suggestion by, if General Matlou is the complainant, there is no suggestion by General Matlou
20 that General Masemola did nothing with my advice or he took inordinately long before acting on that advice and as a result of his failure to act on the advice, there was the loss. How I read this affidavit, it says the 50 million is what was paid throughout, not after the advice was given. But the charge sheet creates the impression that the loss happened

after the advice was given.

ADV JOHNSON: If I could just indicate, Commissioner, that I asked if there was only the 27 at the time when they had this matter. I am given to understand that General Matlou submitted a preliminary report together with the section 27 affidavit. I am not sure if it is before the Commission, but that must be something that would then have to be asked, as it might just give a different context. But I am not seeking to take the point further in terms of the
10 conversation, Commissioner Khumalo, between you and I.

ADV KHUMALO SC: But looking at only paragraph 8, do you accept that the General says, I gave advice to the National Commissioner, the National Commissioner acted on the advice. The affidavit does not say the National Commissioner failed to act or did nothing with the advice given to him.

ADV JOHNSON: I understand that.

ADV KHUMALO SC: Ja.

ADV BALOYI SC: Still on this issue, my concern in the
20 debate about whether or not this falls within the IDAC mandate is that on the charge sheet itself, there is no allegation of corruption. You do not make that allegation in the charge sheet. The charge sheet and the charges are purely statutory contravention, PFMA, and working off the charge sheet as it is now, the impression that it creates or

that, in my mind, has formulated is that there was no good faith intention to prefer a charge because it is justified, it is supported by the facts. This was just a scheme to get him arrested or present to court, to have him appear in court and the purpose is achieved just by that fact alone.

So you do not even get to the validity of the charges. That is why we do not discuss with you whether there is merit in the charges themselves. That is for the court to determine eventually if it does. But that which is
10 obviously, at least in my view, which is obvious from the charge sheet and must have been obvious to the lawyers in your office and to the prosecutor who approves those charges, it must have been obvious just on the charges that we are not, hang on, we are not making an allegation of corruption against him.

How do we justify him being here? That must have been obvious. And accepting, because it is difficult not to accept that it was that obvious to the lawyers who dealt with this, accepting that it would have been obvious to them that
20 this charge sheet is wholly inadequate for purposes of our mandate, there has to be another reason why. Anyway, you approved the charge. If you did do a prosecution memo, you were prepared to do the prosecution memo and say to the prosecutor, I think you said it is the DPP, and for the DPP to approve this charge as it stands without saying to

you, hang on, go back, include corruption in there so that it falls within our mandate.

To me, it gives the impression that the whole purpose of this charge sheet was to just have him appear in court. Let us create a paper that presents him to court and he becomes an accused with a consequence that we now publicly know happened, which is he was removed from his position, whether it is a leave or suspension, whatever, but he is not in office. And I say that, and forgive me if I am
10 repeating myself, I say that because it is inconceivable to me that a whole lot of lawyers who looked at this charge sheet, none of them said, hang on, we cannot do this. This is not good enough for purposes of our mandate if we want to charge him as involved in corruption.

Even your interpretation that you gave to the Chair this morning, if that interpretation had been discussed, it would find reflection in the charge sheet. However, inelegantly expressed, if the idea was that, well, you know, he is implicated in the corruption, even if it is just these
20 sections, that connection, it would have found expression here with a lawyer's eye. And that it does not find expression suggests to me, it is because you could not do it. None of you could get to the point where an allegation of corruption is made or him as being linked to the other accused's conduct and for that, you could not go that far.

But it did not matter because the real intention was never to get a successful prosecution of corruption or a successful prosecution that comes under PRECA. That was never the real intention. In my view, the intention was, as I say, get him arrested with the spectacle that comes with it, get him charged with a consequence that naturally will follow, which is the Minister, and hopefully even he, National Commissioner, would say, it is untenable for me to remain in this position while I am undergoing a criminal trial
10 and that was its only purpose. That is what it looks like to me. You may comment if you want.

ADV JOHNSON: And I do understand your reasoning, Commissioner Baloyi, but at no stage was there an intention to make a spectacle of anything. The prosecutors looked at the case in its totality. And as I explained this morning, it relates to, I accept, the only part that I do accept is they did not draw the link between the two. That in itself does not make the conduct malicious and there was no intent to put him on show. It was to charge him as they did. That link is
20 not there. That cannot be taken away. But it should therefore not be seen as it was used as an instrument.

They still firmly believe in those PFMA charges as they put them and in my discussions yesterday, I did highlight that the Commission does find we have, where is the link between the two, hence my explanation this

morning. I took your point, but I have to clarify, there was never an ill intent.

ADV BALOYI SC: Thank you.

ADV JOHNSON: It might have been clumsily put in the way it is ...[intervenes].

ADV BALOYI SC: Yes, or incompetently drafted.

ADV JOHNSON: Incompetently put, but that does not make for ill intent at all. Thank you, Commissioner.

ADV BALOYI SC: Thank you.

10 **CHAIRPERSON:** Seeing that we are dealing with these PFMA charges, perhaps let me take you to a different but related issue. Ms Sello, please, please.

ADV SELLO SC: Yes, Chair.

CHAIRPERSON: Let me do so, Advocate Johnson. I am sure you know what sections 155 and 156 of the Criminal Procedure Act provide with regards to joining accused persons in the same set of criminal proceedings. Perhaps for the record and those viewing these for their benefit, those viewing these proceedings, let me read both sections.

20 155 ...[intervenes].

ADV SELLO SC: Chair.

CHAIRPERSON: Yes.

ADV SELLO SC: Apologies. We are trying to project, so perhaps when you read, it will be projected as well.

CHAIRPERSON: Oh, all right. All right, all right. Section

...[intervenes].

ADV SELLO SC: 157.

CHAIRPERSON: 155 and 156.

ADV SELLO SC: 155 ...[intervenes].

CHAIRPERSON: And 156 of Criminal Procedure Act.

ADV SELLO SC: It is coming up. 155 is headed:

“Persons implicated in same offence may
be tried together.”

So I would say please underline even that heading
10 itself. Of course, our law on interpretation says the heading
may be a guide but is by no means determinative, but I will
say let us underline it. Then the section, subsection (1)
reads:

“Any number of participants ...”

And I emphasize what follows:

“... in the same offence.”

So you underline same offence.

“May be tried together, and any number
of accessories after ...”

20 Again underline the same fact may be tried together
or any number of participants, again underline in the same
offence.

“And any number of accessories after
that fact may be tried together and each
such participant and each such

accessory may be charged in such trial
with a relevant substantive offence
alleged against ...”

I would say, them. Surely in charging General Masemola together with people charged with fraud and corruption, you did not rely on section 155(1). I must be correct in that view.

ADV JOHNSON: It must be correct.

CHAIRPERSON: That is correct. Okay, let us go to, I do
10 not think subsection (2) is relevant, so let us skip to section
156, which is headed:

“Persons committing separate offences at
same time and place may be tried
together.”

That, too, is quite crucial because I am interested
in the, if we look at what Commissioner Masemola is
charged with, one immediately wonders if it can be said that
he committed offences at the same time and place with the
people that he has been lumped with. But, again, I will
20 make the point I made earlier that a heading is merely of
assistance and not necessarily determinative of the
interpretation to be given to a statutory provision. Okay, let
us go to the provision itself.

“Any number of persons charged in
respect of separate offences committed

at the same place and at the same time
...”

Underline that. Now, it is in the substantive part of the provision, so no longer just the heading. And or at about the same time, so that, too, at about the same time.

“... may be charged and tried together in respect of such offences.”

And then here is another crucial part.

10 “If the prosecutor informs the court that evidence admissible at the trial of one such person will, in his opinion, also be admissible as evidence at the trial of any other such person or such persons.”

Do you think this subsection applies? Or, rather, this section, it has no subsection, section 156, do you think it applies? In what way has General Masemola, based on the PFMA charges, committed those PFMA charges at the same place and at the same time as the commission of the fraud and corruption? Surely that cannot be suggested. I
20 do not think. Same place, same time, about the same place, same time, as the commission of the fraud and corruption? Not by any stretch of imagination. I do not think.

ADV JOHNSON: Correct, Chair.

CHAIRPERSON: So General Masemola was wrongly

lumped with these other people. You must accept. You accept that?

ADV JOHNSON: I see.

CHAIRPERSON: You certainly must. Now, even when you look at jurisprudential precedent, I will refer you to, I know you are a good prosecutor. I watched you arguing, which appeal was it? The Pistorius appeal. You are actually a good advocate, I think, on my assessment. I will refer you to jurisprudential precedent with regard to the court's
10 exercise of discretion under section, one, under one of the sections I have just referred to. It should, I think, be relevant more to 156. Let me just see if the case was dealing with 156. Anyway, let me not waste time. Let me just read you what Trollip JA held. He says:

“In exercising his discretion, the trial court has to weigh up the likelihood of prejudice to the applicant/accused.”

That is, the applicant/accused would be the one saying, please, please, let my case be separated from the
20 cases of these other accused, so the applicant/accused.

“Resulting from a joint trial against the likelihood of prejudice to the either accused or the state if their trials are separated, and decide whether or not, in the interest of justice, a separation of

trials should be granted. Prejudice there means prejudice in the sense that no injustice should be caused to the party concerned, including the State.”

If we look at this, but what is crucial is that you have already accepted that in any event, General Masemola ought not to have been lumped together with these accused persons that are charged with fraud and corruption. Bear in mind that yesterday you accepted already that General
 10 Masemola is not complicit in fraud and corruption. Now you accepted, now in my engagement with you now, that he ought not to have been lumped together with these people.

Now that he has been, surely, and based on this principle, you must also accept that he would suffer the sort of prejudice that Trollip JA says an accused person should not be subjected to. And I cannot see any countervailing arguments to the effect that the State will suffer any prejudice if he is not lumped with these other accused persons. Do you agree with me?

20 **ADV JOHNSON:** I think when it was flighted, section 157 ...[incomplete].

CHAIRPERSON: Can you just respond to what I suggested to you?

ADV JOHNSON: Yes, yes, and I wanted to say that because of, if you read 157 ...[intervenes].

CHAIRPERSON: Yes.

ADV JOHNSON: That that becomes a bit more, not become, is more appropriate in the circumstances and given the jurisprudence.

CHAIRPERSON: Yes, yes, but you basically agree with me, you have already agreed that he ought not to have been lumped together. Then I am making another point, although related, which is that he will definitely be prejudiced in a trial that lumps him together with these other accused who
10 are charged with fraud and corruption which, both of which he is not charged with. Do you accept that?

ADV JOHNSON: I accept that.

CHAIRPERSON: Now, a question that goes to what I have always emphasised, I think I did so even on the first day, which is that we are not trying to suggest that General Masemola has committed no offences, no. But, and this is something that Commissioner Baloyi's question touched on, we want to know why this was done. Why was this done? You have agreed very easily, you know these principles,
20 you apply these sections all the time. Why was this done? Why was Commissioner Masemola lumped with these people, charged with fraud and corruption, when he is not?

When he is charged with the statutory offences provided for in the PFMA, why was he lumped with these people? At face value, it seems to me that this must have

been done to embarrass him, to taint him and to make the public or to cause the public to see him as also being complicit in fraud and corruption. People are not going to, ordinary members of the public, are not going to analyse this. He stands there. People charged with corruption, fraud, he stands there with them and most of the noise when the case is talked about, it is going to be about the fraud and corruption. People are not going to delineate and say, but not Masemola. Do you see what I mean?

10 So, this was done, I suggest to you, to embarrass him, to taint him and to make him look as if he too has committed fraud and corruption. That was calculated, I suggest to you. What do you say?

ADV JOHNSON: Chair, I understand. I gave the contention that I did, that the prosecutors put him in one matter because there is this serious complex fraud corruption and it would be one matter when they lead the evidence with the PFMA. I am giving you the explanation that I have for the prosecution. I accept that this matter, he should be
20 separated, but at no stage, Chair, was there an intention to embarrass. I can understand the optics thereof, but at no stage in the charging of Commissioner Masemola was there an intention that he be embarrassed.

ADV BALOYI SC: Were you involved with the decision to join him as a co-accused in this, with the other accused?

Were you involved with that decision?

ADV JOHNSON: Yes, the prosecutors take the decision. When we were briefed, we agreed that he is charged only for the PFMA.

ADV BALOYI SC: No, my question is, someone made the decision that he will be accused number, whatever number, on that gallery, right.

ADV JOHNSON: The prosecutors.

ADV BALOYI SC: My question is when, before that
10 decision or when that decision was made, were you party to that decision when it was made?

ADV JOHNSON: That he would be added at the end?

ADV BALOYI SC: That he is added as a co-accused with the other, however number, whatever number they are.

ADV JOHNSON: Based on the contentions that I have given, which was given at the time, yes, ma'am.

CHAIRPERSON: You see, what is problematic with this is the fact that you have already agreed that in terms of the sections, he ought not to have been joined at all. He ought
20 not to have been. Now, what makes the situation worse is the fact that he is being joined down the line, not that it would have been correct if he had been joined at the same time the charges were brought. No, that would still have been legally wrong in terms of 155 and 156 and you have agreed to that.

Now, but what makes it worse here, he is joined down the line. Surely your minds should have focused on, we already have charges against all of these people, we are charging them with fraud and corruption. Now we want to put in an additional person. Is it in accordance with the law to join him in terms of 155 and 156? Surely your mind should have been focused on that. It is not as if a mistake happened. We just lumped these people together instantaneously. It sort of just happened.

10 But anyway, I say things like this cannot just happen. So if it is wrong in law, it would have been wrong even if he was lumped right at the beginning. But now, the point I am making is you lump those together. They are all charged with fraud and corruption. It makes sense to lump them together in terms of 155 and 156.

Now with him down the line, how is it that your minds are not specifically or particularly focused on but must we lump him together with them? Surely your minds should have been so focused. Otherwise I do not
20 understand why that was not the case.

ADV JOHNSON: I understand you, Chair.

CHAIRPERSON: Did you, did you, I may be repeating Commissioner Baloyi's ...[intervenes].

ADV JOHNSON: I know.

CHAIRPERSON: I may be repeating Commissioner

Baloyi's question but I will repeat it for emphasis. Did you, did you focus your own mind on this issue at all?

ADV JOHNSON: Yes, there was a discussion on whether he was going to be charged separately or whether he was going to be joined.

CHAIRPERSON: And, and ...[intervenes].

ADV JOHNSON: [Indistinct]... [cross-talking] argument. I can take it no further than what was given.

CHAIRPERSON: And after that discussion, after that
10 discussion or during that discussion, did you specifically focus on which basis under 155 or 156 we can join him? Did you focus your minds on that?

ADV JOHNSON: Not me specifically.

CHAIRPERSON: When you say there was a discussion, did that discussion not involve you?

ADV JOHNSON: The discussion involved 157, should he be charged separately or should he be charged jointly. The prosecution team ...[intervenes].

CHAIRPERSON: You cannot, sorry, sorry, sorry, you
20 cannot separate 157. It must relate to 155 and 156 as well. You cannot separate one, because you charge people in the same proceedings if they have committed the same offence.

ADV JOHNSON: That discussion happens and then we go to General, sorry, we then go to Commissioner Masemola.

CHAIRPERSON: So you were part of that discussion, you

say?

ADV JOHNSON: With the prosecutors? Yes, when they did the briefing?

CHAIRPERSON: Yes, yes.

ADV JOHNSON: Yes, there was an engagement with the prosecutors.

CHAIRPERSON: Yes, yes. And you concluded that there was a legal basis in terms of the Criminal Procedure Act to join him in these proceedings. And if you say so, and you
10 must have reached that decision. So if you say you found a legal basis, what was that legal basis and in terms of which section exactly?

ADV JOHNSON: So in terms of the legal basis that we found, Chair, it was that the argument was used as the, at the bottom of 156 of them being charged together because the evidence at the trial of the one would be used and may be admissible at the trial of the other person, so ...[intervenes].

CHAIRPERSON: Is evidence about the commission of
20 corruption, the commission of fraud, admissible as against General Masemola? If so, for what purpose?

ADV JOHNSON: Not admissible against him, but to lead that evidence to then ...[intervenes].

CHAIRPERSON: [Indistinct]... continue, continue. Please continue.

ADV JOHNSON: Okay. It was in having this one trial, you lead the evidence of the fraud, the corruption, all of those irregularities and it comes, it is all the same evidence that will then talk to the PFMA evidence because you would have to lead, if you take him and put him separately, you would still have to lead that same evidence to get to him to show what was it, what was the irregularities and all the unlawfulness that was happening, who all was involved and what were his duties.

10 So instead of duplicating that evidence, they put them all in one matter. We would lead that evidence. It will then in turn show that that serious complex corruption, et cetera, that happened. Had it been stopped when it should have been stopped, would not have led to this. Not doing it together, Chair, as was argued, would mean we would have to do two separate matters. That was the discussion at the time.

CHAIRPERSON: Was that correct, insofar as he is concerned? Remember you just said, in response to my
20 last question, you just said evidence of the commission of corruption and the commission of fraud is not admissible as against General Masemola. And if you look at 156, that is what a prosecutor must tell the court as to why the prosecutor is joining the accused persons together.

ADV JOHNSON: [Indistinct]...

CHAIRPERSON: So if you accept, as you did in response to my last question, that evidence of fraud and corruption is not admissible as against General Masemola, you do not get off the starting blocks under 156. Do you agree?

ADV JOHNSON: I agree.

CHAIRPERSON: So you are ...[intervenes].

ADV JOHNSON: I was giving you the discussions that we had.

CHAIRPERSON: Which were wrong, ultimately, in terms of
10 the decision that was reached. Do you accept?

ADV JOHNSON: I will accept that.

CHAIRPERSON: Thank you.

ADV SELLO SC: Thank you, Chair and Commissioners. Let us stay with, is it General, Major General Matlou's referral affidavit and that is file 9, page 3519. And based on your, I think, engagement yesterday with the Commissioners on matters relating to General Masemola's arrest, this is our starting point, correct? General Matlou's affidavit is what eventually triggered the arrest, the
20 eventual arrest and prosecution of General Masemola.

ADV JOHNSON: On your point of correction, I did indicate earlier that she submitted the section 27.

ADV SELLO SC: Yes.

ADV JOHNSON: Together with a preliminary report.

ADV SELLO SC: Which preliminary report has not been

provided to us. And I want to see how you reach that conclusion when on the wording, the very wording of the affidavit there is no suggestion that anything is attached thereto.

ADV JOHNSON: I checked with the team, this 27, did it have anything else because that is the question. In the absence of anything else, Counsel, which was the conversations we were having yesterday.

ADV SELLO SC: Yes.

10 **ADV JOHNSON**: Then a lot of things could not have happened. And I was informed that there was a preliminary report that was attached.

ADV SELLO SC: Well, it does not particularly help the Commission, because only you and whoever it is you spoke to know of an existence of some preliminary report. The document that triggers this entire process does not even suggest it is submitting any further documentation, preliminary or otherwise. If you go to paragraph 5 of that affidavit, it speaks of a comprehensive internal report is
20 currently being compiled. It does not say in the interim here is a preliminary report. So a logical interpretation of paragraph 5 is that an internal audit process was underway. The fact that she describes it, the outcome thereof as a comprehensive report does not detract from the fact that it is underway. Do you agree with me?

ADV JOHNSON: I understand.

ADV SELLO SC: So I look at the rest of the affidavit and there is nothing that suggests that even she as Component Head, Risk and Integrity Management had formed a view on the matter, however preliminary it is. Do you agree with me? At least based on the document itself. Do you agree with me?

ADV JOHNSON: I agree with you.

ADV SELLO SC: Ja. Now if we look at her paragraph 3,
10 she says she wants you to investigate ...[intervenes].

ADV JOHNSON: Sorry, paragraph 3?

ADV SELLO SC: Paragraph 3, yes, of General Matlou's affidavit. She wants you to investigate, you, IDAC, that is what I mean, the alleged unlawful awarding of a tender to Medicare24 Tshwane District. You see that?

ADV JOHNSON: Yes.

ADV SELLO SC: Now the charge sheet that came out of this entire investigation process involves section 38 of the PFMA, solely section 38. And you know that if we take a
20 step back, section 217 of the Constitution prescribes that all organs of state should establish a system and make appointments regarding bid adjudication, bid evaluation, and that entire formal structure to deal with the issues of public procurement. So the awarding would have been done by, the recommendation would have been done by that

procurement system. It then land somewhere where the decisionmaker has to determine whether they accept the recommendation and they reject the recommendation. Is that your understanding of how public procurement works?

ADV JOHNSON: Yes.

ADV SELLO SC: And in deciding to reject, administrative law tells us that that decisionmaker must set out the reasons which must be reasonable and rational because the responsibility and duty to manage matters of procurement
10 lies elsewhere in the organization. Do you agree with that? Are you with me thus far?

ADV JOHNSON: I am with you.

ADV SELLO SC: Now, with that understanding, if I go to the charge sheet and I look at charge 3, how do we rationally explain away charge 3, which is a charge of gross negligence for failure to comply in that General Masemola, him, I take it as the Accounting Officer of SAPS, failed to ensure that Medicare24 Tshwane District was properly screened and tax compliant? Whose duty is that?

20 **ADV JOHNSON:** That must be the bid evaluation.

ADV SELLO SC: So why, and now I am just trying to get some, why is he being charged for failings of, by the bid evaluation committee if we have since discovered that in the process of evaluation it turned out that this particular entity was not tax compliant and neither was it properly

screened? Unless we are suggesting the bid evaluation committee and the bid adjudication committee, after it has, they have discharged their duties, the whole tender process and documentation must go before General Masemola, where he must satisfy himself that this entity was tax compliant. Is that what you are suggesting?

ADV JOHNSON: Amongst others. It does not make sense.

ADV SELLO SC: I did not think it would. Stay ...[intervenes].

10 **CHAIRPERSON**: Please indicate to me when it would be appropriate to give Advocate Johnson the citation of the case I quoted from. I forgot to do that.

ADV SELLO SC: This would be good.

CHAIRPERSON: Thank you. I just gave you the name of the Judge.

ADV JOHNSON: The matter for ...[intervenes].

CHAIRPERSON: Ja, the matter ...[intervenes].

ADV JOHNSON: [Indistinct]... [cross-talking].

CHAIRPERSON: Yes, the matter is S v Nduli and Others.

20 **ADV JOHNSON**: Nduli?

CHAIRPERSON: And others 1978(2) South African Law Reports, page 69, Appellate Division. Thank you.

ADV BALOYI SC: Can I just add, without making a debate about it, a difficulty about this count that Ms Sello has referred to, and which is part of what, you know, leads to

my conclusion that I put to you earlier, is even this count, what that provision deals with is that the Accounting Officer must make sure that the institution complies with its tax obligations and everything that is listed there. So it is not even about that an Accounting Officer must make sure that people who are service providers have complied with their tax obligations.

There is quite a few obligations that are listed there. But all of it is about, you would have been entitled, 10 whoever charges him has jurisdiction, would be entitled to charge him for not ensuring that the SAPS complies with its tax obligations. Do you understand the differences ja.

ADV JOHNSON: The difference.

ADV BALOYI SC: So it is charges like that, a count like that, that reference to section 38 as one of the charges against him that feeds the suspicion that I have about the motive of putting these charges and me saying that lawyers could never have missed that that section 38(1)(e) has nothing to do with his involvement with the tax compliance 20 of Mr Matlala's company. It has to do with SAPS' own tax compliance. You understand what I am saying?

ADV JOHNSON: Correct, because there is supposed to have been other functionaries who would have gone through that process of the bid and the evaluation relating to Mr Matlala.

ADV BALOYI SC: I make a different point, that 38(1)(e) is not about service providers' tax compliance.

ADV JOHNSON: Yes.

ADV BALOYI SC: It is about SAPS' own ...[intervenes].

ADV JOHNSON: Compliance.

ADV BALOYI SC: Compliance with its tax obligations.

ADV JOHNSON: Yes.

ADV BALOYI SC: And so the charge, and I say do not, I mention it only to say it is part of what makes ...[indistinct]
10 suspicion about what was the purpose of these charges which clearly seem to be poorly conceived against the National Commissioner, at least by IDAC. Thank you. Ms Sello, thank you.

ADV SELLO SC: Thank you Commissioner. And, Advocate Johnson, that precisely makes the point because section 38(1)(e), as Commissioner Baloyi correctly points out, is in relation to SAPS' tax compliance, yet the reading of that charge suggests that Tshwane, is it Medi24, ought to have complied with that particular section and that General
20 Masemola failed to ensure that Tshwane complies with that section. You see that the challenge?

ADV JOHNSON: Yes.

ADV SELLO SC: And the interesting thing is the entire charge sheet is based on section 38 and I am just going to quickly project section 38, because I think this is what leads

to the challenges for instance in charge, in count 3.

Section 38 of the PFMA prescribes that:

“The Accounting Officer for a department,
trading entity or constitutional institution
- (a) must ensure that the department,
trading entity or constitutional institution
has and maintains ...”

And I will go to (iii):

10 “... an appropriate procurement and
provisioning system which is fair,
equitable, transparent, competitive and
cost-effective.”

On a reading of that you would agree with me that
that is the responsibility that General Masemola bears. He
must ensure SAPS maintains an appropriate procurement
and provisioning system that is consistent and compliant
with section 217 of the Constitution. Now it is that system
that receives interrogates bids. My logic which may very
well be faulty, would be his failing to the extent that it falls
20 within 38, the charge ought to have been, my view, that he
failed to comply with 38(1)(a)(iii). He did not ensure SAPS
has got such a system. Would you agree with that?

ADV JOHNSON: I agree with that.

ADV SELLO SC: Now if we go back to charge 2, and
charge 2 I will read with General Matlou's referral affidavit

at paragraph 3 just to remind you at 3519, General Matlou had indicated that she was initiating a criminal investigation into the unlawful awarding of a tender to Medicare and if one has regard to 6, we learned that, 7, we learned that Medicare²⁴ was awarded that tender and resulting in a contract being concluded. And at 8 we learned that General Masemola terminated that contract.

Firstly, if then we follow the logic of procurement of a bid process it culminates in a contract and as General
 10 Matlou points out, that contract brings into being contractual rights and contractual responsibilities and liabilities. So I suggest that once a contract has been concluded, which on the face of it brings about the rights and liabilities, that contract must be set aside, lawfully set aside. Do you agree with me?

ADV JOHNSON: Yes.

ADV SELLO SC: And in fact it would appear that becoming persuaded he actually chose to cancel the contract and I do not know if you are aware that Mr Matlala attempted to go
 20 to court or there was discussion between him and other members of SAPS to challenge what he termed the unlawful termination of the contract. Now I go back to the affidavit armed with the knowledge that we have in the affidavit, knowing what he did, appreciating the legal parameters of what he could do and not do, how do we even get to

investigation stage?

At which point do you say as the Accounting Officer yourself, if you are, you are an Accounting Officer of IDAC, the Head of IDAC, at which point do you say this is a non-starter insofar as Masemola is concerned? Remember I rejected the notion that there was a preliminary report and I rejected on the basis that this very affidavit does not even suggest one was tendered.

How? I still have a struggle with how this even saw
 10 the day of light insofar as Masemola is concerned and I was hoping that perhaps you might shed light and draw attention to some document that perhaps we may have overlooked.

ADV JOHNSON: No, I cannot take it any further other than if they had presented the preliminary report it might have given us a different perspective. Not having it means I have nothing to give you.

ADV SELLO SC: Yes. Now it is a pity the system is a bit slow. You recall yesterday I suggested to you that that internal audit report that General Matlou references at her
 20 paragraph 5, as I understand things it is what gave General Masemola the basis to terminate. You do not have to agree with me. It is what I have learned in the course of investigations. So when it does come before us, its date would precede the date of termination by General Masemola. So he acted upon the advice of Internal Audit

seemingly. Would you have difficulty with that proposition?

ADV JOHNSON: I have to take your word for it because I have not seen it and I do not know it and I do not believe you will put a proposition that later on you cannot back up. So I accept it, Counsel.

ADV SELLO SC: Thank you for the confidence.

ADV KHUMALO SC: The same point you made with paragraph (d) of section 38, sorry, with paragraph (e), applies with regard to count 2 and paragraph (d)
10 ...[intervenes].

ADV SELLO SC: Indeed.

ADV KHUMALO SC: Because if you look at (f), (f) says he must settle all contractual obligations and pay all monies owing. So for as long as the contract was alive, he had an obligation to pay Medicare24. So (d) deals with something completely different, so breach of (d) is not consistent with count 2, because count 2 is about management of, it is about maintenance and management of assets. So make sure that assets do not get lost. Make sure that, you know,
20 make sure that if you have liabilities, they are managed. But the charge says he should not have paid invoices. He should not have accepted orders. Now if he did, as the charge suggests, he would have breached (f) of section 38(1).

ADV SELLO SC: Indeed, Commissioner. And to assist you,

Advocate Johnson has projected sub-sections (d) and (f). We have spoken about (e), (d), (f), and (d) is relevant to count 2. It is on the screen and that is what Commissioner Khumalo is referring to.

ADV KHUMALO SC: So under (f), Advocate Johnson, for as long as the contract was alive, SAPS had an obligation to accept purchase orders and to pay invoices. But the charge suggests that General Masemola should have acted contrary to 38(1)(f) and not paid the invoices and not have
10 accepted the purchase orders.

ADV JOHNSON: I see.

ADV KHUMALO SC: Do you see the problem there?

ADV SELLO SC: Thank you, Commissioner. And then staying with the issue of the internal audit report which you accept my proposal that it is on the basis of that internal audit finding that General Masemola terminated the contract. And I, the proposition to you was if he terminated on the 15th of May, that audit report was available to him prior to the 15th of May. You do accept, you said you
20 accept, at least for the moment because you have not seen it.

ADV JOHNSON: No.

ADV SELLO SC: And I thank you for having the confidence in me to accept, accept my say so. The point I seek to make now though is the fact, the facts of that report and the

findings only came to the attention of IDAC on the 26th of June 2026. Now as I was complaining that the system is rather slow this morning, that was by way of a further affidavit by General Matlou dated the 26th of June 2026, which currently I guess is in printing and copying. It is a big document in that I think it is a 284 page affidavit in which the introductory paragraphs are the same as any affidavit. From paragraphs 2 to the penultimate paragraph, it is the entire reproduction of the report itself, together with
10 its findings and recommendations and everything. And then it has got whatever paragraph it will be as a concluding paragraph and she signs it on the 26th of June 2026.

So officially for purposes of investigation, that is the first time IDAC even becomes aware of the basis on which General Masemola eventually had to terminate on the 15th of May 2025. You would accept that. Logic would tell me, unless once again you or somebody within IDAC are able to explain that they obtained that audit report prior to the complainant, General Matlou, submitting it in a form of
20 an affidavit on the 26th of June 2026.

Now to the extent that your investigators told you there was a preliminary report, which of course I take issue with, did they indicate when they received that final audit report prior to the 26th of June 2026, if they ever did?

ADV JOHNSON: No, I just know that there was a

preliminary report with the section 27. Then I do not have the details, Chair, unfortunately.

ADV SELLO SC: We will await that affidavit and see. Now this is, again I am still staying with General Matlou's affidavit, and it is because these are now significant and important institutions in the country. This is IDAC, SAPS. When this affidavit is received in the terms that it is, it does not at least implicate General Masemola on the face of it, does it, the affidavit 3519?

10 **ADV JOHNSON:** Oh, you are talking about the section 27, sorry.

ADV SELLO SC: Yes, the section 27 from General Matlou.

ADV JOHNSON: No.

ADV SELLO SC: It does not implicate General Masemola. The only reference I see to General Masemola is at paragraph 8.

ADV JOHNSON: Yes.

ADV SELLO SC: Wherein she states that she advised him to terminate, to consider terminating, which he eventually
20 did on the 15th of May.

ADV JOHNSON: Correct, but she does go on to say in her way that having advised the National Commissioner to terminate the contract with Medicare to save the SAPS from irreparable harm and to diminish the financial prejudice being suffered by the SAPS, General Masemola ultimately

terminated the contract with Medicare on or about the 15th of May. By that time, SAPS had suffered prejudice of approximately 50 million.

ADV SELLO SC: And that prejudice of 50 million being what SAPS was obligated to pay in terms of the contract. That is what you call prejudice?

ADV JOHNSON: At that time, when she told him about the termination, she indicated this contract is unlawful and should be stopped. So I do not know how the payments
10 then become legitimated.

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

ADV JOHNSON: I understand that the system, in terms of the system, there is a contract. Till it is stopped, payments will continue. I understand this to read ...[intervenes].

ADV SELLO SC: Advocate Johnson, apologies. You and I know she has no power to invalidate a contract which on the face of it is valid. So when she says stop that contract, in what capacity? She is not a court.

ADV JOHNSON: She is not a court, no.

20 **ADV SELLO SC:** Yes.

ADV JOHNSON: But she is the risk, she is the Head of Risk and Integrity and she is saying to him that this contract has been unlawfully awarded and we need to stop the contract. She says because of the time that has passed, the payments went out.

ADV BALOYI SC: Sorry, this affidavit does not say when she told him to stop. So on this affidavit, we, at least we who are reading it now, and maybe you had other information that is not in the affidavit, on this affidavit, we do not know whether she told him on the, in January, whether she told him on the 14th of May and what the expenditure was by the time she told him when it dawned on her that this contract should be terminated. So it is not, what you are telling us now is not in the affidavit.

10 So maybe tell us where did you get it from that she told him to terminate, he did not, and in the intervening period after that, end of the 15th of May, R50 million was spent which would not have been spent had he acted when she told him. There is facts that are not contained in this affidavit, and they hold only if you got them in another way.

ADV JOHNSON: I understand. It is how I read the affidavit, that there is, in paragraph 2 there is an unlawful awarding of a tender to Medicare for a period of 3 years to the value of 360 million. She sets out that, she suspects
20 that ...[intervenes].

ADV BALOYI SC: Please allow me to stop you. You have accepted in your discussion with Ms Sello that the only mention of General Masemola is paragraph 8. That is the first time she says anything about him. That does not mean that she has not investigated and this is what she has

found. She has done that, that is why she gives you the background story in this affidavit. And then at paragraph 38 she says something that now directs to General Masemola, and in fact, on a reading of this paragraph, the way she says it, she may not have intended to, but the way she says it is, I advised him to terminate and he did terminate. That is what paragraph 8 tells you.

You say, well she told him earlier, he took his own time to terminate when she had told him earlier, and all I
10 am putting to you is that which you are saying does not arise from this affidavit. On a sensible reading of this affidavit and paragraph 8 in particular, or any paragraph in the affidavit, those facts that you are now speaking to are not here. Where did you get them from?

ADV JOHNSON: Commissioner Baloyi, I read paragraph 8 as her having want, advised him to terminate the contract. General Masemola ultimately terminated the contract. That he does. I read it from that ultimately. There was not an immediate action. It was ultimately terminated and then
20 prejudice was suffered. I do not take it from anywhere else, but just that reading.

ADV BALOYI SC: But you see, to criticize him for not terminating immediately, you must know when was he informed.

ADV JOHNSON: I understand.

ADV BALOYI SC: Logic dictates that.

ADV JOHNSON: It does not come out of here.

ADV BALOYI SC: Yes, and that is a simple point I am making, that on this paragraph, in the whole affidavit, we do not know when she told him, right. So if we do not know when she told him, we are not in a position, and that you must accept, we are not in a position to say he delayed actioning her advice because she does not tell us when she informed him.

10 We are not in a position to say because of his delay, after she advised him, SAPS incurred R50 million expenditure, which it would not have incurred. It is not, there are not facts in this affidavit that make us able to conclude that therefore he delayed and he is liable, he failed to secure the monies or the assets of SAPS. You accept that?

ADV JOHNSON: I accept it.

ADV BALOYI SC: All right, thank you.

ADV SELLO SC: Thank you, Commissioner. And I take it
20 that it is General Matlou's affidavit that triggered the IDAC investigative powers and eventual prosecution of however many accused there are, am I correct?

ADV JOHNSON: Correct.

ADV SELLO SC: You recall, we started this conversation having considered what you stated, what you discussed with

members of *Ad Hoc*, and there I referenced page 586 where Mr Nqola asked, told you that there was an allegation that IDAC actively participating in a well-coordinated attack against General Mkhwanazi, General Masemola and General Khumalo, are you aware of it? You said you have heard of that allegation, but there is no truth to it. After this entire exercise we have gone through, do you still maintain that there is no truth or there is no basis to even believe such a narrative or an allegation?

10 **ADV JOHNSON**: Chair, I maintain that there was no, sorry, I do not have my file ...[indistinct] repeat the words.

ADV SELLO SC: Your engagement at *Ad Hoc*?

ADV JOHNSON: Yes.

ADV SELLO SC: It is page, it is file 3, page 586.

ADV JOHNSON: Sorry, file 3? Sorry, Chair.

ADV SELLO SC: It is quite in order, page 586.

ADV JOHNSON: 586.

ADV SELLO SC: 586, midway the page. This is after, I guess you do it faster to find your own name, after you say
20 that is correct, then Mr Nqola puts the question, there is an allegation, and then that is immediately followed by your response, and then you reference other criminal matters within the IDAC space, and you conclude while we are at it with the words, there is also no witch hunt against Lieutenant General Khumalo, because there were no

matters brought to IDAC prior to the referral by Mr Adams. That is the part I am reading, and I can very well perhaps appreciate the position you were in at the time you responded. Mine is slightly different. Do you still maintain the position after our one and a half days of engaging with specifically decisions by IDAC targeting, no, wrong word, aimed at at least two of these Generals and the PKTT? Can you still say the narrative is baseless?

ADV JOHNSON: Chair, the response I have is at no stage
10 did any of these cases start on the basis of wanting to target any individual, even those that are mentioned. We dealt with the investigations. In the course of these two days of engagements, and in the manner in which we have engaged, we would have to accept that we could have done things differently and could have done things better, but that does not in itself make it a witch hunt or a target. They were not targeted at all.

I accept that process is criticized. The manner in which things were done were criticized. I accept that
20 criticism, Chair, and what I am saying is that shortcoming does not make a targeting. It does not make it a witch hunt. It does not of itself say, we did it this way just to get to them. In the manner that these matters were presented, it is clear, and from the lengthy debates that poor Chair has had to have with me in getting us to understand our logic

versus that logic, it is clear that we worked on what we had, interpreted the law as we have. There is a difference of opinion, and that difference of opinion, Counsel, highlights that things look the way they do and should have been done differently.

ADV SELLO SC: We dealt with your, one of the many section 28 summons.

ADV KHUMALO SC: Are you leaving this?

ADV SELLO SC: No, I am coming back to it.

10 **ADV KHUMALO SC:** Okay, thank you.

ADV SELLO SC: And at 3361, file 9, and we dealt with that quite extensively yesterday. I am at 3363, where following Mr Adams' complaint in whatever terms it was expressed, you signed off on a summons that asked for a litany of documents that had no bearing on the complaint, including a list of all Provincial Heads and Section Heads who were stationed in Division Crime Intelligence, the performance assessment of all Major Generals for that year, the advertisements for that position, audio recordings and
20 interviews. Then you want documentary records that General Jacobs refused to return. We have established that all those factors have, they are no relevance to the complaint, and I think we settled that yesterday.

ADV JOHNSON: We have.

ADV SELLO SC: We have. Then you ask in the same

summons for documentary files and applications for promotions and Commanders and members of the Political Task Teams through deviation. According to you, the PKTTT did not feature anywhere. So once again, that is way beyond the scope of the original complaint by Mr Adams. You recall?

ADV JOHNSON: I recall. We then went to page 3531, which is Annexure, you do not have to go there, Annexure 397. That is the section 28 summons signed by Advocate
10 Manilall, which wanted the identities and certified travel documents of PKTTT members who went to arrest Mr Adams, and he does so under the CAS number relating to the Mokwele appointment. You could not explain that section 28, and I think we landed at a place where you said it ought not to have happened, correct?

ADV JOHNSON: Correct.

ADV SELLO SC: In light of at least the three that I have named, logic dictates that it was a concerted effort to either discredit or somehow prejudice them. How can you sit
20 there and you say the narrative is entirely wrong, and how do you suggest that it is just a difference of opinion? It is not. The facts at least are on the side of the narrative. What facts do you put forth to countenance that?

ADV JOHNSON: If you grant me an opportunity ...[intervenes].

ADV SELLO SC: Absolutely.

ADV JOHNSON: Just to answer on why, because I had to ask the question because I was not aware of this, Commissioner Baloyi. I did ask Advocate Manilall why this section 28 went out, and I give you the explanation as follows. Part of the bail conditions in that matter was that the accused, which at the time would have included Lieutenant General Khumalo, were not to have any contact, interfere with, and or intimidate state witnesses, one of
10 which was Adams. It is seen on television that there is a group of persons that have gone ahead to arrest Mr Adams.

That arrest has nothing to do with us. It is, the police must carry on and do their work. There were reports that it is PKTT members who went to effect the arrest. It is now at this stage not a secret, that the coordinator of the PKTT is Lieutenant General Khumalo, and the purpose behind it from the prosecutor was to determine whether someone else within the PKTT approved those trips, that is fine, and that if it was in fact General Khumalo who
20 authorized those trips, then he was sending people to deal with Adams, and it could have a potential of interfering with the bail condition. It was asked on that basis.

What subsequently happened is Mr Adams appeared in court. The charges are read, and Mr Adams has a way of how he expresses himself in public, and the

prosecutors decided the approval notwithstanding, can we just stand back and let them continue with their work. It was ...[intervenes].

ADV BALOYI SC: Okay, Advocate Johnson, I want to say if that is the explanation he gave you it is a false explanation. Those individual members and anyone else in the world was under no bail condition that they could not, that is one reason, that they could not deal with any witnesses. There was nothing like that. If indeed the issue
10 was to determine whether General Khumalo breached a bail condition, it was simply, and I am sure Advocate Manilall knows that, you know that, it was simply a matter of asking General Khumalo, did you authorize an arrest of Mr Adams? It is as simple as that. So if he gave you that explanation, it is false.

He is not telling you the truth about why those questions, because that does not answer who went there, what are the names, give us the flight details. It does not answer the question whether there was a breach by General
20 Khumalo of his bail condition. So no, I am sorry if you believe him, then something is wrong in this scheme of things. You should have, as soon as he said it, you should have seen it on his face, but that cannot be, it does not make sense that you would go that way to try and determine that General Khumalo, whether or not General Khumalo has

breached his bail condition. It is a false explanation.

ADV JOHNSON: So, Commissioner Baloyi, I hear you. I am conveying the reason that was given, but Commissioners would, and Chair, you would remember my answer yesterday. I did say that if in the manner that this process was used and what was requested by asking about PKTT, then it is an abuse of the process. I did stand by that and I did indicate that there would have been a better way for us to have engaged and to find out what had gone
10 on. I am not deferring from my point. I do not track my point. I just wanted to merely give clarity on, because I had to ask. I did not know, so ...[intervenes].

ADV BALOYI SC: My hope is you saw through that explanation and that is what I would have hoped you would say that this is what he says, but I have a problem with his explanation.

ADV JOHNSON: That is why I stand by the proposal I made yesterday. I cannot deviate from that proposal.

ADV BALOYI SC: Yes, thank you.

20 **ADV SELLO SC**: And the problem is in all that we have dealt with, particularly that arrest of Mr Adams, it does not seem like anyone bothered to establish why he was being arrested. Had he committed, is he a suspect in a particular crime? How it comes across is because he was a complainant in some matter against, *inter alia*, General

Khumalo, who happens to be the head of PKTT, a bigger SAPS unit, that therefore Mr Adams is somehow insulated from action by the PKTT, even where the PKTT has evidence of wrongdoing. That is the effect of it. So you are brandishing that condition over General Khumalo to say whatever wrong he commits, you dare not touch him, because he is my witness and if you do, you will be breaching a bail condition. That is quite a breach.

ADV JOHNSON: Of course it does not make sense because
 10 what I did do in that engagement, I asked ...[incomplete].

ADV SELLO SC: Please continue.

ADV JOHNSON: I asked this morning, if in fact, heaven forbid, but if in fact Mr Adams committed what one would consider a political killing, what would we have asked? Why would we have asked, because they would still have had to do their work. So it all comes down to the same thing. If they had a job to do, they should have been allowed to do the job.

ADV SELLO SC: Yes. Now, this is important, I am once
 20 again going to the narrative, because what appears, at least at first blush to me, is IDAC seemed to have this gunshot approach to everything. That gunshot approach has got serious unintended consequences.

CHAIRPERSON: Perhaps more appropriately, shotgun, not just any gun.

ADV SELLO SC: A shotgun approach. It has got more, it has got serious consequences. Let us go to General Matlou's referral, which we have agreed is wholly non-compliant with section 27, which based on our conversation over the past two days, did not trigger the mandate of IDAC. But we are where SAPS seems to have concluded an unlawful contract with Mr Matlala, but the prosecution for that sits on a highly questionable legal basis. Do you see the consequences, because if the investigation is unlawful,
10 the question must arise, what effect does that have on the prosecution, ongoing prosecution? Instead, had IDAC opted, in light of General Matlala's affidavit, General Matlou, I do apologize, I apologize to both General Matlou and Mr Matlala.

ADV KHUMALO SC: No, I think her second name is Madlala.

ADV JOHNSON: I was, yes, I was going to say that Commissioner Baloyi, I saw ...[intervenes].

ADV SELLO SC: Oh, yes.

20 **ADV JOHNSON:** I saw the words Charity Madlala Matlou.

ADV SELLO SC: Thank you. [Indistinct]... intended to say ...[indistinct] Commissioner Baloyi. It is just, thank you, General Khumalo. My eye must have fallen on that. My apologies for that.

ADV BALOYI SC: Now you call him General Khumalo.

ADV SELLO SC: Okay, it is time for a break. Commissioner, I will leave it there. The point I seek to make with you, Advocate Johnson, is that this affidavit ought to have at least triggered a conversation between yourself as Head of IDAC and General Masemola, who at this juncture is not even a suspect in any wrongdoing, to alert him to the fact that there is a contract in your environment that there is reason to believe is tainted with illegality, and I expect you to take steps. The point I made
10 that a faulty section 27 may affect subsequent prosecution, you remember the fruit of a peasant tree notion we discussed, and that is your challenge as IDAC.

But if SAPS had run with the matter, they would never have this challenge. So because of the approach that IDAC has adopted, that running roughshod over everything, there is a serious risk, and I put it no higher than that, that it may have placed in jeopardy the very prosecution that is currently being pursued. Do you have a comment?

ADV JOHNSON: My comment, and again you will tell me
20 but it is not here, so my comment is that that 27 was read, as I understood it this morning, with the preliminary report which sets out a more factual basis that links the different people and perhaps sets out the offences. It might be better if, so I see, sorry Chair, I am not being cheeky, I see from the time that my wish to finish by tea time might not

happen, and so I am tired, but I am thinking then that if we are going to have to take tea and we are going to have to finish by lunch, that I would have to ask if we could just get them to send us this preliminary report because I cannot agree to that contention. I am giving you what I have, that there was a basis for it. This 27 is not even open for a debate about the discussion we want to have, but I am unable to reconcile that they had nothing.

There was a preliminary report that went with the
10 affidavit. For me to agree to a contention in the absence thereof is highly irresponsible and one that I am not prepared to do to future jeopardise a case that in all likelihood has a sound legal and factual basis, and that is where I wanted to take the point. And then I will take my cue from the Chair about what we are doing for the rest of the day.

ADV SELLO SC: I would support your request. I think it is a fair request, right. You have accepted that at least on the documents that we have, on the reading of the affidavit
20 itself, it does not suggest that such a preliminary report was provided, but since you have been made to believe that it was, I think it is a fair point that you consider it. You receive it, you consider it, perhaps you give the Commission a copy, and then we see whether or not it addresses the concern that I have raised. And seeing as,

Chair, it is 10 past 11, this might be an appropriate time. And on the second point, if I may say, General, no, not General, Advocate Johnson ...[intervenes].

CHAIRPERSON: What is happening to you this morning?

ADV SELLO SC: I am mixing up all my ranks and titles and everything. Advocate Johnson, so far I know it was your wish, you expressed it yesterday, to finish by tea. If it is any consolation, my birthday was not too long ago, I reminded the Commissioners I did not get any gift. It does
10 happen.

ADV JOHNSON: So your gift will be to finish by lunchtime?

ADV SELLO SC: Yes, I have to. I have to finish by lunch.

CHAIRPERSON: That is why I was very cautious yesterday when you wanted to push for an undertaking that we would, and I refused. Please stick it out, it should not be that long, Advocate Johnson. All right, here is something I should say. In fact, I should have said when we started this morning. My ruling on the Carrim postponement application is ready. Why I am not delivering it now, or did not deliver
20 it in the morning, was because Mr Carrim's attorneys had not been advised. I gave an instruction to the Commission's attorneys to write to Mr Carrim's attorneys. So I will deliver the ruling at 2 p.m. before we commence. Let us come back at 11:45. Let us adjourn.

ADV SELLO SC: Thank you, Chair.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Ms Sello?

ADV SELLO SC: Thank you Chair. Advocate Johnson, were you able to locate the preliminary report that you had hoped to locate during the tea year adjournment?

ADV JOHNSON: That is correct Chair, I have sent it to Mr Maaga to make sure that it goes through that...

ADV SELLO SC: That we receive it?

10 **ADV JOHNSON:** Yes.

ADV SELLO SC: Okay, well I will await it. In the interim your file 9 has been updated. You recall on that audit report I indicated that it was availed to IDAC on the 26th of June. Now it is a huge document. It is now added as CJC398. That is from page 3534. And at paragraph 3, General Matlou states that her department, Internal Audit Risk and Integrity Management, received a request from the Minister of Police on the 9th of January 2025 and that is what initiated this process. And as I indicated to you, the
20 first three paragraphs are introductory.

From paragraph 4, she goes into the detail of the documentation that was reviewed in the course of this internal audit. And it will run for 284 pages to our page 3817. And at 3817 she concludes:

“The abovementioned transactions

constitute corruption. On behalf of the South African Police Service, I would like corrective, remedial and criminal action to be instituted in this regard.”

Then she has got the standard closing paragraph at 11, and there is my date of the 26th of June 2024, which is when this affidavit was commissioned. You see that?

ADV JOHNSON: I see.

ADV SELLO SC: I had referenced it and I said it does turn
10 out that we ran into printing challenges, but during the course of the tea adjournment they were overcome and I thought to point out to you the basis for my conclusions. Thank you. Commissioners, unless there are further questions on this topic, I would like to move to the next. Thank you.

ADV JOHNSON: Sorry, Chair. I may just enquire then that preliminary report you will make available for the Commission so that they are able to deliberate it as a result of the engagements that were had, my not being here
20 notwithstanding, because the purpose is to make sure that the Commission receives them.

ADV SELLO SC: Yes, definitely. And in fact, I hope it comes before you leave the stand, because if it does, then we can formally place it on record as well, and its date, and then the Commissioners will consider its contents. In the

context of the wording of the affidavit, the section 27 referral, I trust that there is an explanation as to why it is not referred to in the section 27 referral, but IDAC has it, and that there is a way to clear any doubt in the Commissioner's mind that it followed subsequent to the initiation of the entire investigation by General Matlou, but we can only comment on that once we have had sight of it.

ADV JOHNSON: And just to indicate, IDAC procured it from General Matlou.

10 **ADV SELLO SC:** Noted.

ADV BALOYI SC: Can I just clarify, especially if we are going to have sight of it after you are done, what are we looking for to see? Are we looking to see that she makes specific allegations against General Masemola, and she states when it is that she informed him, and that he delayed? Are you saying I do answer that?

ADV JOHNSON: Yes, and that there is an expansion of the offences, perhaps the other people, et cetera, but to your point as well.

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

ADV SELLO SC: Thank you, Commissioner. Advocate Johnson, you recall yesterday Commissioner Khumalo asked you, he first made an observation and asked you a question, that there seems to be an hand in all this that we have spent the last two days discussing, and if memory

serves me well, you denied. Now, my proposition to you is, all that we have discussed about these investigations and aiming at the Generals and the PKTT is wholly outside the mandate of IDAC as we understand it, as contemplated in terms of section 7(1)(A). That is my assessment.

And if you strongly deny that there is a hand in this, I would like you to explain to the Commissioners on what basis, because this entire effort and exercise cannot have been to the benefit of IDAC. It is not to the benefit of the
10 country to flout legislative prescripts in the manner that it would appear have been flouted by IDAC consistently and deliberately, and then to offer an explanation for why IDAC would conduct itself in such a manner, which conduct has the risk to destabilise the law enforcement environment and institutions. Thank you.

ADV JOHNSON: Chair, I did indicate yesterday, especially having been shown documents that I had not had sight of previously, if I can allude to perhaps two, is having a set of, if I get my days mixed, sorry, but having a set of four A1s
20 taken by a person, Mr Perumal, then you have four A1s taken by Mr Mansa, on a date when they are all supposed to have been together, executing one function together with the prosecutor.

It is not for me to determine, I am sure that exercise will still be done through engagement, on which is

the right set of affidavits, supplementary affidavits. That is one example. Towards, closer towards the end of the day yesterday, I am given a file, and in that file, we have the Public Service Commission report dated 2023, Commissioner Khumalo, which I see for the first time. I only allude just to these two because they are very pointed and they are very factual in the nature of what is before us.

I have had to ponder why we find ourselves in this position as IDAC, and why, while I accept, and I do not
10 think that there is meanness when questions are posed by the Commission about, but why you did not know you should have read. I think the Commission understands I cannot read everything and will not know everything, and I do have to trust and rely on my people. And I am, I sat with a conundrum last night of, why were these things not brought to my attention?

And if, especially with the Public Service Commission report, which is somewhat quite different, it should have stopped the day the report came in, because it
20 should have been brought to the attention of the ID to say, ID, look, we thought we have a right to investigate this, but here it is. It has been done. Findings have been made. That would have set that matter aside. That was not done. And now the question is, why? Why was not I informed of the different statements?

And what is the purpose then, Chairs and Commissioners, and forgive me if I am rambling, but I have to think it out loud, because it does not make sense. And I am saying that there must then have been something else going on that I was not aware of. I cannot tell you what the something else was. I wish I could. I am not, therefore, disagreeing with you, Counsel. I just needed to put it in a way that I am able to, unfortunately, not reconcile, but try and understand about what it is that was going on. You
10 cannot reconcile yourself with bad when, at all times.

I know that I made mistakes as the head of ID, non-intentional, and a lot of them are perhaps administrative things, but at no stage did I apply my mind in a way to seek to vilify anyone. And so, when you do not always have the full knowledge of things, I think the challenge I set with Commissioners is, how will we as IDAC, IDAC will only be two years old on the 19th of August, and as a young institution, what will be the mechanisms that have to be put in place for these underlying hands, persons, and personas,
20 not to have the kind of influence this seems to have been had. I am unable to take it further than that.

CHAIRPERSON: What could the something, as you put it, possibly have been? Surely, you must have your ideas, because one could easily say it was improper motives, but I am not necessarily suggesting that I want your own

thoughts. What could the something possibly have been?

ADV JOHNSON: The something, Commissioner, I take it also from my time at the DSO, the Scorpions, as they were. A lot of the times, and history had shown that, you find that staff get overzealous in wanting to present their case, but more often than not, you find that they engage with persons outside the purview of the work we are supposed to do, and you are not privy to that engagement. And so the mind you expect them to bring to bear on the mandate and on the
10 cases is what you are engaging them on. It has been a past experience. In the way things happened this past week, it seems that there are other actors that might have been engaged with for us to be where we are.

CHAIRPERSON: When you talk about other actors, are you talking about undue influence, perhaps?

ADV JOHNSON: I do not want to put it so harshly without having any, but to say that persons might have, for motives known to them, cast certain narratives or provided certain information, and you find that without necessity, because
20 what you expect, everybody gives information. Lots of people like to say lots of things. Do you verify it? Do you consider the source? And do you ever stop to ask, why did that source come to you? It is a question I have had to ask in those very painful few days you have had with me on the section 27 referral of Adams, how it came about, what was

the purpose, and look at where we are today.

CHAIRPERSON: But you cannot seek to extricate yourself, as you appear to try to, from what happened, especially with regard to what you just referred to, which is the section 27 referral. That was there for you to see, and right from the first day, we took you through that document, and you agreed when I suggested to you that it had open quote, nothing close quote. You accepted that when I so suggested to you.

10 **ADV JOHNSON**: Correct.

CHAIRPERSON: So you cannot seek to say others may have acted wrongly. I will say to you, you too acted wrongly, and if there are questions to be asked about why, those must relate to you as well.

ADV JOHNSON: Correct.

CHAIRPERSON: On a document or on an affidavit that had nothing except for factual conclusions, you acted. It had to be your decision, you as the Head of IDAC. It had to be your decision, and indeed it was, for any investigation to
20 have gone on in the first place. To cut a long story short, I do not understand why you would want to blame others. As it should have, the buck stopped with you, and indeed from where I am sitting, it did.

ADV JOHNSON: And that is why, as I was carrying on with the Adams matter, that brought starkly home, from start to

finish, the responsibility across the board. In the first two instances, there are different instances that I used, as I had not been aware of them, but I sit here today knowing that I have to take responsibility for all the actions that we do, intentionally or unintentionally, and I will be judged for those actions.

CHAIRPERSON: But why I am going back to where we started on the first day of your testimony is because in the context of blaming others, you are referring to the section
10 27 affidavit, and it is in that context that I say you cannot blame others.

ADV JOHNSON: It is my responsibility.

CHAIRPERSON: It is and it was your responsibility.

ADV JOHNSON: I accept that, Chair.

CHAIRPERSON: Thank you.

ADV SELLO SC: Thank you, Chair. Thank you, Advocate Johnson. As I indicated, I would like to move to a different topic. I have a few small topics to cover with you quickly, and I hope we can wrap that up in an hour. We now have a,
20 it was not a promise, but I do hope that you will be done by lunch. I hope to at least deliver on that one.

ADV JOHNSON: Okay.

ADV SELLO SC: The next issue is do you have your statement file close by, and in particular the 1st October 25 statement? And at page 10, paragraph 30, you indicate:

“Once the investigation was concluded...”

This is the investigation following Mr Adams' section 27 referral. Once that investigation was concluded, you say you were briefed by the team that had conducted the investigation on behalf of IDAC.

10 “IDAC then applied for warrants of arrest against the accused. I then prepared a prosecution memorandum and submitted the same to the Director of Prosecutions, together with a draft charge sheet and a request for the enrolment of the matter.”

Now, that prosecution note, memorandum you prepared, is in file 8, page 3256, if you could lay your hands on file 8. It starts at 3256, and at 3257, paragraph 11, you state:

“Section 9(1) of the National Instruction 11/2017 states as follows:

20 “A selection panel may not be biased and must ensure that the selection process is free of nepotism or favouritism. A panel may never abuse its authority, and panel members may not influence each other to be influenced or to abuse their authority”.”

So you are quoting from the National Instruction, at 12 you state:

“Evidence collected proves that accused 1
to 6...”

These are the SAPS members;

“...contravened the provisions of the
above quoted sections to the benefit...”

I guess, of accused 7;

“...without just or reasonable cause.”

10 In your paragraph 30, you indicated you were briefed. I
take your use of the word at least implies engagement with
the investigators to satisfy yourself that the charges
suggested to be preferred against the accused, have some
factual and evidentiary basis. Is that a fair assumption on
my part?

ADV JOHNSON: That is correct. The prosecutor would
also...

ADV SELLO SC: Now, you state in paragraph 30 you
prepared this prosecution memorandum, so you are armed
20 with all that information. Are you able to quickly enumerate
the basis on which you say the evidence points to the
contravention of the provisions of that instruction by
accused 1 to 6? What convinced you of the contravention?

ADV JOHNSON: [No answer]

ADV SELLO SC: And at least, if we take the wording of

section 9 quoted, must show nepotism, it must show favouritism.

ADV JOHNSON: Sorry, I cannot remember all the facts, except for... except for what comes to mind, and I am sorry if it is short.

ADV SELLO SC: No, no, I will accept it.

ADV SELLO SC: I think what comes to mind is that the selection panel tampered with the panel documents. The panel was not who they initially purported the panel to be,
10 and when the investigation started, they had removed pages and inserted new pages, and that is what I recollect is in the docket, and there was an expert who does indicate that there was a tampering with that process, of the panel process, to misrepresent who in fact was the panel.

And the only other thing I can recollect, and I do not mean to frustrate the Commission, I have not got the docket, the other thing that I can recollect is that there was a document created, allegedly by one of the accused, to give the impression that the process had been approved,
20 but the person who should have authored that document was unaware that this document had been created and authored. It therefore gave credibility to the process and to the panel, which would not have happened had this not happened.

And I think finally the only other thing I do

remember is that there was fraud, a fraudulent averment in the CV, which was deliberately not picked up so that a candidate could go through, but sorry, Commissioners, that is the only ones that I can recall from my briefing with the prosecutors on that.

ADV SELLO SC: I am happy with that, and in fairness to you, I am asking you to recall off the top of your head, so I will accept what you say. Just the panel, you say that the panel was changed, that is your understanding?

10 **ADV JOHNSON:** That is my understanding, and apparently there is a document expert report that would show how pages were removed for a list of changed names to then be inserted.

ADV SELLO SC: Of the panel.

ADV JOHNSON: Yes, but I have not read that report, but I am aware that there is such a report.

ADV SELLO SC: I do not know if you are able to follow Colonel Padayachee's testimony, because insofar as the panel is concerned, we are not aware of such a claim. The
20 only complaint would appear as reflected in an affidavit, in a statement provided by General Kahn, but the only issue was that the panel did not include General Kahn, but there was no suggestion otherwise of the manipulation of the panel. Are you aware of that testimony, that the complaint was that General Kahn was excluded from that panel?

ADV JOHNSON: No, no, I am talking about something completely different.

ADV SELLO SC: Okay.

ADV JOHNSON: That there was a, when they had, the way it was explained, when they are done with the documents, they have a way of stapling the documents so that no one can tamper with the documents. I think it is a police process for security reasons, and it was found that the documents, in the way they were bound, was tampered with
10 for an insertion of a different page, and the expert is able to say that the documents were tampered with and something else was inserted. How that is all legitimated, I am unable, sorry, I am unable to explain. No, it was different from what, what is his name, Mr Padayachee. I am not talking about that, I am talking about something completely different.

ADV SELLO SC: Okay, and now this, and that insertion of this page, is that what reflects the manipulation with the panel?

20 **ADV JOHNSON:** Yes.

ADV SELLO SC: As you understand. Okay. The investigator and the docket does not suggest anything of the sort, I have not come across it, I do not think anyone has in this Commission. If the docket provided to us is to be believed and accepted, but nonetheless I will leave it

there. You proceed then at 3257, no, at 3258, to speak of the urgency. So, if one has regard to 3257, pages 3257, 3258, would it be safe to assume that the charges against these accused would technically be for, or revolve around the breach of section 9 of the National Instruction and would involve nepotism and favouritism?

ADV JOHNSON: Correct.

ADV SELLO SC: The charge sheet is attached to your memo. It starts at 3260. What I find in the charge sheet
 10 are significant, I think in respect of each charge, is extensive reference to an invocation of the provisions of the Prevention and Combating of Corrupt Activities Act 12 of 2004. I am trying to marry the content of your memorandum, which complains in large part of nepotism and favouritism, and trying to understand how that lends us into PRECCA, because the charges they face are predominantly PRECCA related, in circumstances where the charges based on PRECCA, including gratification and I think Commission of crimes in the future, I do not find
 20 reflection in the original memo. How do I reconcile the two?

ADV JOHNSON: Sorry, for someone who wants to be out by lunchtime, I am not reading very fast, am I?

ADV SELLO SC: It is okay, take your time. You have not seen these in quite a while.

ADV JOHNSON: For some of them, I see them on page 15.

ADV SELLO SC: Please reference the red number at the top. You said page 15, I think you are looking at the typed page of that whatever document.

ADV JOHNSON: No, it has got a black number.

ADV SELLO SC: Okay, the 3000 and something top number. Are you in file 8? Are you working off your own copy?

ADV JOHNSON: I am working on the charge sheet.

ADV SELLO SC: The charge sheet starts at file 8, 3260.

10 **ADV JOHNSON:** 3260. Sorry, I was in that.

ADV SELLO SC: Yes.

ADV JOHNSON: So the ones that I find relevant to the memo are on 3267. That will be points...

ADV SELLO SC: 3267?

ADV JOHNSON: Points 12.12, 12.13.

ADV SELLO SC: Okay.

ADV JOHNSON: 12.14, we agreed about 12.15, I am not going there.

ADV SELLO SC: So 12.15 is out?

20 **ADV JOHNSON:** Yes, we, I think, general, not general, Commissioner Khumalo and I dealt with that part of the gratification quite at length.

ADV SELLO SC: Yes.

ADV JOHNSON: So yes, that falls away.

ADV SELLO SC: So 12.12 speaks of accused 7, and that

is Mrs Mokwele, submitting false and misleading information in the application and curriculum vitae. 12.13 is misrepresentations made by the accused with regards to the vetting of accused number 7. And 12.14 speaks to accused 1, 2, 3, 4, 5, and 6 abusing authority vested in them by disregarding and not complying with SAPS National Instruction. I am still trying to get to PRECCA. And based on the content of your own memorandum, because that memorandum, you recall, you submitted to the DPP?

10 **ADV JOHNSON:** So at the time of the memorandum, we had worked on that which is in 12.15, talked about the gratification in the form of employment. But since we have had the conversation, that is what I am saying to you falls away. It no longer finds place there.

ADV SELLO SC: But it has got a different problem because your memorandum does not even invoke PRECCA at all. It speaks of no gratification. It speaks of nepotism and favouritism. That is a point I sought to make earlier. That if your memorandum is intended to inform and advise
20 the DPP, the only instrument you invoke at your paragraph 11 is section 9 of the National Instruction 11 of 2017, which you quote verbatim. And that speaks to nepotism and favouritism.

ADV KHUMALO SC: Is it maybe, and this is the best that they can do, paragraph 14 of the prosecution memo? That

is the only reference to gratification.

ADV SELLO SC: Ja, that is quite correct. You see what Commissioner Khumalo helps you with, reference to 14, that is your gratification. Now, you see after engagement with the Commission, you have accepted that the gratification cannot stand. Now, cause of my difficulty is that the charge sheet is with you as you prepare this memorandum. And in fact, in the memorandum, you say the draft charge sheet is attached. And yet, I seem to pick up a disjuncture between
10 your memo and the eventual charge sheet. I thought maybe I am misreading the memorandum and you might be able to help.

ADV JOHNSON: The charge sheet, sorry, the memorandum is a summary. But the charge sheet is also attached so that the DPP is able to apply her mind to both the prosecution memo and the charge sheet. So where one may have missed something in the summary, she is fully within her right, as is always the case, to go through the charge sheet and to also raise questions about the charge
20 sheet and/or any deficiencies in the charge sheet.

ADV SELLO SC: You recall when, I think it was on the first day or the second, you explained that your referral of the charge sheet to the DPP, you as the IDAC. It is not to seek the DPP's approval, but to inform the DPP in whose jurisdiction you intend to prosecute, that you are enrolling

in the matter.

ADV JOHNSON: Yes.

ADV SELLO SC: So it is an information sharing exercise.

ADV JOHNSON: No, but I say twofold. I did say twofold in the affidavit. I said twofold. It also is its own checks and balance that if there is anything, because the DPPs also have a right to ask questions and to engage the document. I did say that in the affidavit. They are not a rubber stamp and I do not believe that that is the impression that was
10 created Commissioners in...

ADV SELLO SC: Probably the error is mine. I might have brought in a wrong impression.

ADV JOHNSON: I said in the original affidavit:

“...was the first is the DPP is a measure for checks and balances. The second is so that the relevant DPP may grant permission for and/or agree to the enrolment of the matter unless satisfied on the information given to him or her that
20 there is reasonable and probable cause for the prosecution, the DPP will not place a matter on the role for criminal cases.”

So it does give them latitude. They are not a rubber stamp.

ADV SELLO SC: I accept that. What is the purpose of a prosecution memorandum? It is to enable the DPP to

precisely discharge the function that you just enumerated. To enable them to make a decision. Do you consider your prosecution memorandum sufficient for that purpose? If the DPP would potentially read the two documents in the manner that I have and not see a correlation between the memorandum and the charge sheet. Because if they would, then they ought to have declined to prosecute on the basis that I do not understand where the charges, what the charges arise from because they are not covered in your
10 prosecution memo. Am I being too pedantic?

ADV JOHNSON: I think Counsel is entitled to her view.

ADV SELLO SC: Yes.

ADV JOHNSON: And I give respect to the colleague who went through this exercise, applied her mind and was satisfied that based on the memo and the charge sheet, it was adequate.

ADV SELLO SC: The charge sheet is fully supported. Okay.

ADV BALOYI SC: I was going to ask, in fact, what it is
20 that the DPP has. You give them the prosecution memo and then you give them the draft charge sheet.

ADV JOHNSON: Correct.

ADV BALOYI SC: Is that all that they have?

ADV JOHNSON: That is all we give them.

ADV BALOYI SC: So where a charge is about vetting. So

I know we have had that conversation. But I want to use that as an example.

ADV JOHNSON: Okay.

CHAIRPERSON: That you have a count here which accuses Brigadier Mokwele in relation to her vetting position. And I think that is the very last count where you say:

“Accused 6 acting in concert with accused
7...”

10 I am looking at page 3279. It is the very last count. And it is just wanting to understand the conversation. So if you look at 3279, that is the very last count. And in there you are describing what accused 6 and 7 have done. And then you say:

20 “Accused 6, acting in concert with 7,
unlawfully, falsely, and with intent to
defraud, give out and misrepresent to the
SAPS, National Treasury, the public, that
accused 7’s application for security
vetting was registered on the e-Vetting
system, when in truth and in fact accused
7’s application for security vetting was
registered on the old Inkwazi system as a
service provider.”

That is in the charge sheet. There is nothing about it in the

prosecution memorandum. No detail whatsoever. And if all that the DPP has or had at the time was the memo and this draft charge sheet, how could they have properly exercised their mind to approve this particular charge, for example? Because they have nothing else. And it seems Ms Sello must be correct to say on this charge at least, the DPP should have said, no, we cannot have that unless you add, you give me more. You accept that?

ADV JOHNSON: I accept that.

10 **ADV BALOYI SC:** Okay. So at least on this, I mean, I am not talking about the others, on this, at least the DPP does not seem to have properly exercised their mind if all they had was your memo and the charge sheet.

ADV JOHNSON: Correct.

ADV BALOYI SC: Okay, thank you.

ADV KHUMALO SC: It is the same with saying...

ADV BALOYI SC: You wanted to say something.

ADV JOHNSON: Sorry, Commissioner Khumalo. What I wanted to say is in such matters, more often than not, and
20 not just in these matters, in a lot of other matters what we tend to do is we will send it to the DPP. We also do indicate, kindly contact the prosecutor should you require clarity. And sometimes those conversations happen. I do not want to create the impression it happened here. I am just saying there is room for engagement and then they

make up their mind. But there is also that process. I am not saying that it did or did not happen.

ADV BALOYI SC: You are not suggesting here it happened because we do not have a record, because we do not have a record, yes.

ADV JOHNSON: We do not have that record.

ADV BALOYI SC: Okay, thank you.

ADV KHUMALO SC: I was going to say it is the same with the charge that in her CV she misrepresented facts, but the
10 charge sheet does not say what fact is misrepresented and what is the correct fact. And Commissioner Baloyi's point that the DPP in file 62438, all he or she then says is that having considered your memo and the charge sheet, they are satisfied that a *prima facie* case has been made out against the accused and they concur with your decision to charge them. So it means they only considered the two documents that Advocate Sello and Commissioner Baloyi are referring you to.

ADV JOHNSON: I accept that.

20 **ADV KHUMALO SC:** And it is the following day. I mean there was not even a week to consider and come back to you and say where is this, where is that, what is Inkwazi, what is e-Vetting. They seem to have rubber stamped what was in the charge sheet and there was not any engagement or consideration because I doubt that any such engagement

would have taken a day to finalise.

ADV JOHNSON: I accept that, Chair.

ADV SELLO SC: Thank you, Commissioners. Now, do you know when the decision was taken to prosecute the seven, had SAPS advised or sought to interdict the employment of Mrs Mokwele? Was it suspended? Do you know what became of her?

ADV JOHNSON: No.

ADV SELLO SC: You are not aware?

10 **ADV JOHNSON:** No.

ADV SELLO SC: Having taken the decision to prosecute, did IDAC at least make a formal request to the National Commissioner to say we are proceeding with this prosecution and we have the applicant herself as accused 7 and we hold the position that her appointment is unlawful and either suspend her start date until the criminal case is disposed of, anything, just to get her not to be in office because you are suggesting that the appointment is tainted. Did IDAC take any such a step?

20 **ADV JOHNSON:** What IDAC does is we write up, I think the police call it a situational report, after we have an arrest of any SAPS personnel across the board. We just give them a summary of the charges, who was charged, when they appear, and that then goes to the police. It is for the police to decide what steps they are going to take, but we

have to put everybody in that was charged, not just one particular person, and then we escalate it to them for further action. Those are the kinds of reports I recall sending.

ADV SELLO SC: So the report itself does not even make a request for consideration by the powers that be within SAPS because considering the litany of sections of PRECCA that you have invoked, this sounds like a grave, serious, serious crime, and that in order to halt any adverse consequences
10 flowing from that appointment, you at least would say I urge you, National Commissioner, to consider suspending, giving effect to this appointment until the criminal case is done. It does not go that far.

ADV JOHNSON: Not for a specific individual. When it is sent, it is sent on the understanding that the police will take whatever action, almost invariably disciplinary action, and they will decide against whom that action is taken.

ADV SELLO SC: Staying then with your memorandum at 3258, you have under item E, Urgency, you say the case,
20 paragraph 17, page 3258, and you state:

“The case relates to crimes involving dishonesty and abuse of authority that were committed against an organ of state. The allegations also affirm that the accused relates to state capture in that

they sought through their actions and in the furtherance of a common purpose to circumvent systems and processes to unduly benefit another.”

I want to unpack that paragraph. I am interested in the urgency. What was the urgency here? Because overleaf at recommendations 19, you state:

10 “It is recommended that warrants of arrest of the persons involved in the Commission of the offences outlined in the draft sheet be obtained.”

So you are seeking these warrants of arrest as a matter of urgency. And the basis for the urgency, you set it out at paragraph 17. If Mrs Mokwele was to take up her position at SAPS and precisely be involved in what IDAC fears, which is state capture and circumvention of systems and processes to unduly benefit her, what was the urgency in the arrest?

20 **ADV JOHNSON:** I do not know why it has got urgency there, because when you read the content, the content does not make anything urgent.

ADV SELLO SC: It is your heading.

ADV JOHNSON: I know it is my heading. I am trying to figure out why the heading urgency, because the content does not talk to urgency.

ADV SELLO SC: I would have thought that the urgency is in the grave crimes that have been committed and the threat of state capture. At least that is how I read it.

ADV JOHNSON: [No answer]

ADV SELLO SC: And if I am correct in my reading, then the question is, how then do you allow that to take place by not at least stopping her assumption of office? But you are the author, and I do accept I may very well be misreading.

ADV JOHNSON: That notwithstanding, it is not our
10 decision.

ADV SELLO SC: No, I hear that.

ADV JOHNSON: About her not taking office. Ours is merely to summarise what the allegations are, what are the charges, and to escalate it to the office of the National Commissioner. Whether they act with urgency and/or not, whether they act against all of them and/or not, has nothing and should have nothing to do with IDAC, because that becomes an internal process that must be governed by themselves. And so if at the time, even when they received,
20 and I cannot remember the date, even when they received the situational report from IDAC, they still sought, if she was not already in office, to put her in office or keep her in office. That would have been their choice.

ADV SELLO SC: Yes.

ADV JOHNSON: Yes.

ADV BALOYI SC: And what you are doing is, you are telling the DPP that to get an arrest warrant, because that is what this memo is about, is an urgent matter. So the question is, why was it urgent to get a warrant? Why was it urgent to get them arrested? Because that is what this memorandum is about.

ADV JOHNSON: I think for me, Commissioner Baloyi, what does stand out in terms of memory, is that it related to the abuse of authority that was committed against an organ of
10 state and that these arrests take place so that that abuse, alleged abuse, does not continue.

ADV BALOYI SC: The abuse you are complaining about in your memorandum is they failed to comply with the instruction about employing this person and you have explained that your briefing, your recollection, is you were told there had been manipulation of the panel of documents. So we are talking about, on this memorandum, you are talking about past activities, something that has been done and completed.

20 You now want them to be arrested for that which you describe in paragraph 11 of your memorandum, because that is what you say is the problem. You want them to be arrested for noncompliance with that. And even your charge sheet, your charge sheet speaks to past activity, except for that part where you say if she had been in office and

continued to work, then she would have been doing, she would do what General Khumalo wanted her to do.

That is the only future thing, but it is not in your memorandum. And working on the basis that your charge sheet, rather your urgent request for warrants of arrest and that they be arrested is connected to the breach of that National Instruction. The question is why is that matter that warranted that they be arrested or that a warrant is issued on an urgent basis?

10 And it is not to say we are not yet at the conversation about why arrest. It is why was this urgent to do?

ADV JOHNSON: I just have that, Commissioner Baloyi.

ADV BALOYI SC: All right. I am going to ask you a question about the arrest itself, but I just want to propose to you that this again, in the absence of an explanation, it has appearances about it that the idea was to get them out of office, because once they are arrested, standard practice is when people are arrested and are presented before a Court,
20 they can never continue with their work. I think it is exceptional cases where people have been arrested and allowed to come back to work, but it seems this was the design yet again. Arrest them, present them to Court, then they will not be at work. That is my impression of what happened here. Do you want to comment before I ask you a

question?

ADV JOHNSON: When they were arrested, I know you and I are going to have a technical discussion about what in-office and out-of-office means. When they were arrested, they were not removed from SAPS. They were not able to go to the office, but they were still able to carry out their official functions. And I know technically, what is the use of carrying out your function in another place when you are supposed to be in one place? But if the motive was to
 10 remove them, then the ask would have been in that letter to the National Commissioner, when you are setting up the situational effects, they pose a risk and must be suspended immediately. And that was not done. We left it to the discretion of the police on how to deal with it.

ADV BALOYI SC: Okay, that is a different discussion. We do know that there is a bail condition that says they must never go to the office. We do know from the documents that are before us that, in fact, at least General Khumalo, I do not remember the others, the National Commissioner put
 20 him somewhere else in the meantime, put him somewhere else until the issue of his bail was resolved, and then he brought him back to his substantive position. So there was an effect that came out of the fact of their arrest. There was a consequence to it.

But my question, coming back to my question, why

was it necessary to have them arrested? You could have summoned them, as you did with the National Commissioner, to come to Court. As you have done in other cases, and I ask you this question because in the Ad Hoc Committee, this topic came up, and you said that there was no risk of them fleeing and not presenting themselves to Court. Why did you sign authority that they should be arrested?

ADV JOHNSON: No point of correction, I do not sign a
10 ...[intervenes]

ADV BALOYI SC: I misspoke. Why do you make a request? Because that is the sole purpose, in fact, of this memorandum under the heading Recommendation:

“It is recommended that warrants for arrest of the persons involved in the Commission of offences outlined in the draft charge sheet be obtained.”

So you are asking for warrants of arrest, and we know it is history now. We know you got that request. They were
20 arrested. My question is, if you go to Ad Hoc Committee and you say there was never any risk that they would run off, and Colonel Padayachee accepted that they could have presented, you knew where they worked, you knew their addresses, why do you make that kind of request that they should be arrested?

And you would have had the discussion, if you were following the evidence of Colonel Padayachee, you would have had the discussion about the least intrusive means, should be the first preference of presenting a person at court, because the whole point of an arrest, if that power is not exercised maliciously, the whole point of an arrest is to make sure that a person appears in court. Here, on your own words in the adult committee, you say there was no risk that they would run off.

10 Colonel Padayachee accepts that you knew their addresses, you knew where to find them. Why does Advocate Johnson request an arrest and that these people should be arrested?

ADV JOHNSON: I know that at the time, even though it was not immediately in that time, that we had had a lot of debates and there were criticisms where we invited persons to hand themselves over and we were seen to be selective when we asked people to hand themselves over. When we got the warrants of arrest, it was a method to secure their
20 attendance. However, the manner in which their attendance was secured was we did not go and arrest them where they were.

I am just explaining, I am not saying that it makes it any better. The investigators called the different suspects, asked where they were, asked if they would hand

themselves over, how much time they needed, told them where to come. And the actual execution of the arrest only took place then at the police station and that was the means of then securing their attendance.

But the process before that sought to be collegial and to ensure that they will get to us as they get to us within the time frames they give us, that they should indicate what they need, that they contact their lawyers, etc. It was not, the process did not seek to embarrass
10 anyone.

ADV BALOYI SC: It did, it did, because with another witness previously, there were pictures that were circulated of General Khumalo in handcuffs. So, there is no, and in fact the very fact itself of an arrest is traumatic for any person. So, you cannot sit there and seriously say, well, because of how we did it, that mitigates anything. It does not. If you accept that as a matter of law and fact, there was no compelling reason to arrest these people, to bring them to court, if you accept that, then you misuse, you must
20 accept that it was a misuse of the power and discretion to arrest, because its sole purpose is to bring a person to Court.

And if you have other ways of bringing them to court, that must be the default. And that is a default that is not only about respecting human rights, but, you know, we

live in a society where you cannot infringe, you cannot breach the law, infringe human rights, take the most intrusive action and then say, well, at that time we were subject to criticism in other cases that we are selective. Then there is an admission that you use that process of bringing a person to court for a purpose other than what the law permits and prescribes that should be used for.

So you, in fact, concede in your long explanation, that that power was used for a purpose that had nothing to do with ensuring that these people do come to court. What
10 do you say to that?

ADV JOHNSON: I hear Commissioner Baloyi's explanation and I am saying that is the route we followed. I accept your argument that it was not, there are these less intrusive means that should have been used.

ADV BALOYI SC: Yes, and that it was an abuse of that process that is available to you.

ADV JOHNSON: I am not taking it further than that.

ADV BALOYI SC: You accept that?

20 **ADV JOHNSON:** I accept that.

ADV BALOYI SC: Did they appear in court on the same day? Do you remember offhand?

ADV JOHNSON: I cannot remember offhand. I will have to check.

ADV BALOYI SC: All right, but more important, most

importantly, it is you accept that in these circumstances an arrest was not necessary. They could have been summoned to appear in court whenever you eventually presented them to Court and there would have been no harm to the state, to the state's case.

ADV JOHNSON: I accept.

ADV BALOYI SC: You accept that? Thank you.

ADV SELLO SC: Thank you, Commissioner. On that score, then let us go, you recall you effected corrections
10 and amendments to your original October 25 statement. In that statement, you deal with the arrest of General Khumalo. We now have deleted the entire paragraph 14, and in fact 15, and replaced it with what you set out in your third statement at paragraphs 10.1 and 10.2. Your third statement, page 3. So we will work off the latest version.

So your new paragraph 14 regarding General Khumalo's arrest, you state that:

20 “Lieutenant General Khumalo was arrested after he had landed at Oliver Reginald Tambo International Airport, ORTIA. I do not recall where he was travelling from. I was informed that at the time his co-accused had already been invited to report to Brooklyn police station.”

If whoever the arresting officers were, were aware that he was travelling from somewhere to Jo'burg, why was he not given the courtesy like others to report to Brooklyn police station upon his arrival in Johannesburg? Why did it become necessary to set up a welcome party, a welcome delegation for him? Because you stated, in your paragraph 15 then, the investigators went to ORTIA to inform General Khumalo that there was a warrant of his arrest, and for him to hand himself over. But that does not make sense. They
 10 did not go there to inform him so that he can walk himself to Brooklyn police station. They actually went there to arrest him.

ADV JOHNSON: [No answer]

ADV SELLO SC: So basically what I suggest, in your new paragraph 14 and 15, you try and downplay the arrest by suggesting that as with his co-accused, he was invited to report to Brooklyn police station, and I am saying it is not correct. Factually, we know that it is not correct.

ADV JOHNSON: Sorry, counsel, which part is not factually
 20 correct?

ADV SELLO SC: That they had gone to ORTIA to invite him, as they did with his co-accused, to report himself to Brooklyn police station.

ADV JOHNSON: But that is what they did.

ADV SELLO SC: No, they went to arrest him.

ADV JOHNSON: No, they caught all of the accused.

ADV SELLO SC: Yes.

ADV JOHNSON: Sorry, they were not accused. Caught all of the suspects and invited them to hand themselves over at Brooklyn.

ADV SELLO SC: Can you stop there? Was the same courtesy extended to Lieutenant General Khumalo?

ADV JOHNSON: That is what I understand. They went to...

10 **ADV SELLO SC:** That is not what you have in your statement.

ADV JOHNSON: They went to ORTIA to inform him that there is a warrant for his arrest, for him to hand himself over, and he then accompanied them to the Brooklyn police station.

ADV SELLO SC: Then I must accept that, sorry, in respect of all six, this is time that is putting pressure, I accept that the arresting officers went to all their homes and offices and told them to please leave their offices and go to Brooklyn.

20 It can only make sense in that manner. Because otherwise, I suggest, to invite them to report must be by means other than physically going to them. So you did a call, send a message, send an email, some other form of communication. And my argument is, if IDAC was able to extend that courtesy to all other six, did it do so in respect

of Lieutenant General Khumalo, such that if he says, oh, I am out of town, when are you coming in? I am coming in this afternoon. As soon as you arrive, please present yourself to Brooklyn police station. That is all it took. But it does not sound like you did, or by you, I mean IDAC did.

ADV JOHNSON: The investigators would be best able to answer only because they had that direct engagement with him and had the direct engagement with the rest of the accused.

10 **ADV SELLO SC:** But you have offered in your statement how they came to appear at Brooklyn police station.

ADV JOHNSON: Because I needed to account, and this is the account that I was given.

ADV SELLO SC: And so too must you accept that the purpose of going to ORTIA upon his arrival was not to inform him. I have a sneaky suspicion that he has got a telephone, he has got a cell phone, that somebody within IDAC, the number may have, including yourself, considering his seniority. And that was easiest to call him, to send him
20 a message, a WhatsApp signal, what is the other new one, the Swiss one, we learned something.

ADV JOHNSON: Okay, I do not know about the Swiss one, but I take your point.

ADV SELLO SC: Yes.

ADV JOHNSON: I am taking your point.

ADV SELLO SC: I am saying, actually what you are stating, it is rather misleading. They went to, at the airport to arrest him, period. They went there to arrest him. And by arresting, it does not mean they have to speak roughly to him. They could be very well nice, but at that point, he no longer had an option to go anywhere but straight to Brooklyn police station. That in any language constitutes an arrest. Would you accept that?

ADV JOHNSON: I am accepting your point.

10 **ADV SELLO SC:** Thank you. Now, as I understand, that was, I call it the first arrest, and not that there was a second, but I do so to distinguish it from what I call the aborted arrest, the one of June 18th, Yes, June 18th, 2020, ja, thank you. Now, that, the one of June 18th is in respect of docket 543-06-26, the second docket. Now, it was not that arrest or application for those warrants, they were not by any, in any manner, prompted by the arrest of Mr Fadiel Adams by the PKTT, no? There is no connection between the two?

20 **ADV JOHNSON:** No.

ADV SELLO SC: Okay. Did you ever have a conversation with DPP Advocate Harrison from KZN regarding Mr Adams' arrest, whether impending arrest, issue of arrest of a warrant, arrest warrant, or his actual arrest? Did you ever have a conversation, whether it is orally, by WhatsApp,

email, whatsoever? Did you have any communication with DPP Harrison regarding Mr Adams' arrest?

ADV JOHNSON: I did. I also think I wrote her a letter. The gist of the conversation was just to indicate, I am not sure if you are aware that Mr Adams is a witness, and in an IDAC matter, and I just wanted to know whether or not he is going to be arrested, just so that we know how to handle him, because we are one NPA. It is actually in a letter, and I think it is best that I make that letter available.

10 **ADV SELLO SC:** Yes, please.

ADV JOHNSON: I was already told I am overdue in my office, so I am going to go there when I have time this afternoon, and hopefully still have access to the emails. I did write her a letter, and I made it very clear in the letter, and I think that is why it is important the Commission get the letter. I said I do not want, I surmise, but I said I do not want her at any stage to think that IDAC is indicating that he should not be arrested if he committed a crime.

I just thought that because it was open knowledge
20 that he was a witness to IDAC, just give us a heads up, because witnesses become difficult, and they become difficult to manage. It is on that basis and that basis alone, and the letter is very clear about that.

ADV SELLO SC: Yes, but why do you address that enquiry to the DPP and not to the agency arresting him, the PKTT?

What does the DPP have to do with that? How would she potentially assist you?

ADV JOHNSON: The DPP would then be able to, when we write, we engage in that way. I write to the DPP if she wanted to know something that was happening in Pretoria, she would write to the DPP in Pretoria, and the DPP goes ahead and finds out if there is such a matter, and who is dealing with the matter, and what the matter is about, and the DPP was able to find out, and indicated not the details,
10 but that they were looking at a matter, there was a criminal matter, and we left it at that. We did not engage again, and after that we did see the arrest as it happened.

ADV SELLO SC: I still do not understand how she would assist you, because at that time, if she would have been involved in any manner, might have been by authorising the issue of the J50s. So as I think of things, that is the only issue you would have been talking to her about, but to find out why this person is arrested, you are directing the enquiry to a wrong person. It should be to the agency that
20 arrested him, which is the PKTT. Are you sure you are not engaging her to find out who authorised those J50s?

ADV JOHNSON: No.

ADV SELLO SC: Okay.

ADV JOHNSON: She did not indicate that there were any J50s at the time either. There was nothing to engage about

the J50s.

ADV SELLO SC: Okay. Because I am still at a loss as to why you could potentially call the DPP following an arrest of a suspect, in a matter that is not on your table.

ADV JOHNSON: It was not following the arrest.

ADV SELLO SC: Regarding the arrest, whether it was before, during, or after. I do not see, I correct myself, I take your correction.

ADV JOHNSON: Because we have had challenges in other
10 matters where an agency arrests a witness. The DPP did not arrest him.

ADV SELLO SC: No, no.

ADV JOHNSON: An agency arrests a witness in another matter, and that matter becomes prejudiced because the witness now no longer wants to testify in a matter where they had been a witness for quite some time and want to know from you, the team for whom they are going to be testifying, why did I not know I was going to be arrested? We do not know all their cases. What it is, is it becomes a
20 bit difficult to manage the relationship. And so within the NPA, we have undertaken to at least inform one another, not dictate, is to just indicate, the person you arrested is my witness. And that is it. And that is where we have taken it, and that is where we leave it.

ADV SELLO SC: Okay.

ADV JOHNSON: It is not the first matter.

ADV SELLO SC: I guess my challenge is, I do not see how a conversation with the DPP would go where you say to the DPP, the person you arrested, because the DPP did not arrest that person. So how that conversation even starts, to lend where you suggest it did, I cannot wrap my mind around, but I will catch up. It is exhaustion, perhaps. Okay. We have reached our crisis point, which is that it is 13.02.

10 **ADV JOHNSON:** And I can hear the Chair whispering there. He says, Johnson, you can go home, girl. [Laughter]

ADV SELLO SC: Did you hear me whisper back to him? No, chair, she cannot as yet.

ADV JOHNSON: No, and Commissioner Baloyi says, no, you do not get to do that, Chair. [Laughter]

ADV KHUMALO SC: All wishful.

CHAIRPERSON: Ms Sello, how much longer do you think you are going to be? I am asking because we could continue and have a late lunch.

20 **ADV SELLO SC:** Okay. Yes, we could. May I not attach a time, because I do not think I have kept to any that I have previously offered? Okay, I have three little matters to address.

ADV JOHNSON: No, when you do them like this, they do not look little to me at all.

ADV SELLO SC: No, no, the ones remaining, I promise you, they are very little.

ADV JOHNSON: It is a bit intimidating when she says three little.

CHAIRPERSON: Perhaps let us take the lunch adjournment then.

ADV JOHNSON: Chair, may I ask, I know you had an engagement already at lunchtime for a judgment. Will we come back, finish this, and then you proceed with the
10 judgement or you'd have us wait out?

CHAIRPERSON: Let me straight away say it will just be the ruling with no reasons. So...

ADV JOHNSON: We will be back.

CHAIRPERSON: Ja, you should rather either sit there or sit anywhere but inside so that we start immediately.

ADV JOHNSON: Thank you.

ADV SELLO SC: Thank you, Chair.

CHAIRPERSON: Let us begin and resume at 2 p.m.

INQUIRY ADJOURNS

20 **INQUIRY RESUMES**

CHAIRPERSON: The ruling I am going to make is in relation to the postponement application of Mr Carrim.

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RULING

Having considered all the papers filed and oral argument presented by both sides, I make the following ruling:

1. The hearing of Mr Carrim's evidence is postponed to 14 August 2026 at 09:30 at which hearing Mr Carrim shall be required to appear and testify in person subject to paragraph 2.

10 2. Mr Carrim will be excused from appearing on 14 August 2026 only if:

2.1 he has voluntarily subjected himself to an independent evaluation by a medical specialist agreed, by no later than Monday, 3 August 2026, between his representatives and the Commission's Evidence Leaders; and

2.2 such independent medical professional has provided a medical report to the Commission by no later than 12 August 2026 confirming Mr Carrim's inability to testify on 14 August 2026.

20 3. Failing the agreement envisaged in paragraph 2.1, the independent evaluation and report envisaged in paragraph 2.2 shall be performed by an independent medical professional nominated by the Chairperson of the association of medical professionals in the field of medicine in which Mr

Carrim's current doctor practices.

4. The reasons for the ruling will be issued at a later date.

I hand down the ruling.

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As usual, the ruling will be uploaded onto the Commission's website. Thank you.

ADV SELLO SC: Thank you, Chair. Advocate Johnson, you recall before we broke for lunch, you indicated that
10 there was a preliminary internal audit report that had been
availed. I confirm a document has been availed to the
Commission. Commissioners, you have run out of space in
File 9, so the little file marked Exhibit File 9A, and it should
have been put on your desk. Advocate Johnson, you have it
before you?

ADV JOHNSON: I do, ma'am.

ADV SELLO SC: It is marked for record purposes CJC399
and starts at 3818. I have just received this and I just
quickly scanned it. You recall that you indicated that it was
20 received at the same time as the General Matlou section 27.

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

ADV SELLO SC: That is what you are informed. And I
looked through this, so if we could just flip, and the purpose
really was to see the extent to which that section 27 even
implicates General Masemola. Looking at it, I see that it

gives a background to the bid itself. And at page 3823, it is signed 29 April 2025 at the bottom there.

And if we go beyond that, it seems to have annexure and addressed at 3824, accountability, responsibility and distribution. It kicks off with a detailed analysis of the bidding process and it gives all those details. The bid evaluation. And at 3838, it then makes certain observations regarding red flags and/or evidence of fronting in the bid of Medicare24 Tshwane. Sets out the
10 basis for concluding there were red flags.

Then addresses at 3839 the various companies registered to Mr Matlala. At 3840, registered to Mr Van Wyk, as well as other 12 companies registered to Mr James George Murray. Then at 3841, it makes general findings at paragraph 3.4, and they are set out there, but the interesting thing is at the conclusion 3.7 concludes:

“The Bid Adjudication Committee did not exercise due care in considering an evaluation report from the Bid Evaluation
20 Committee.”

Then it draws conclusions at 4. At 5, recommendations, 5.1.2, the recommendation is that:

“The bid should be terminated. The accounting officer should seek legal counsel on how to proceed with

termination. The termination of the bid is consistent with section 23(1)(c) of the general condition of contract which states that the purchaser without prejudice to any other remedy for breach of contract by written notice of default sent to the supplier may terminate.”

Overleaf at 3843, it states evidence 5.1.3:

10 “Evidence of procurement irregularities were observed in the bid. Therefore, the bid is currently being subjected to a forensic investigation with a view of pursuing a criminal investigation against the supplier.”

So, and that seems to be the conclusion. So, we know this is the preliminary report is available on the 25th of April 2025 and in terms of ...[intervenes].

ADV BALOYI SC: Ms Sello, where do we see the 25th?

ADV SELLO SC: Ma'am?

20 **ADV BALOYI SC:** Where do we see the 25th?

ADV SELLO SC: That is at ...[intervenes].

ADV JOHNSON: It is on the second page, Commissioner Baloyi, I think it is.

ADV BALOYI SC: Second page of the report?

ADV SELLO SC: It is 3823.

ADV BALOYI SC: Okay.

ADV SELLO SC: It is signed and dated ...[intervenes].

ADV BALOYI SC: Yes, thank you.

ADV SELLO SC: By Acting Chief Audit Executive TE Mogwana [?] and by Chief Risk Officer Major General Matlou. In fact, it is the 29th of April. 29th of April 2025. And we know from General Matlou's section 27 referral that by the 15th of May, General Masemola had terminated that contract.

10 **ADV KHUMALO SC:** So, two weeks later. Two weeks after this report, General Masemola had terminated the contract.

ADV JOHNSON: I get it.

ADV KHUMALO SC: And remember, as Advocate Sello said, 5.1.2 said he must seek legal counsel on how to proceed. So, one must assume that in those two weeks, he sought legal counsel.

ADV JOHNSON: That is correct.

ADV SELLO SC: Thank you, Commissioner. And I know I read it very carefully. Where I land is, insofar as General
20 Masemola is concerned, it does not cure the shortcomings in the section 27 affidavit as submitted by General Matlou because it is absolutely silent on either irregular conduct, unlawful conduct, or criminality attributable to General Masemola. Is that your – and I know perhaps you only had an hour as well to go through it – is that your interpretation

as well?

ADV JOHNSON: From this ...[intervenes].

ADV SELLO SC: From the document itself.

ADV JOHNSON: Yes.

ADV SELLO SC: Yes. Then I think that then settles the matter, and it goes back to the concession you refused to give me, and you say it is dependent on the contents of this document. You have seen the document now. Are you going to agree with me? You said it would be irresponsible,
10 I think, to agree with me without having had sight of the preliminary, the interim audit report you have now had sight of. So on the basis that the condition has been met, I take it that it will not be irresponsible to agree with my conclusions.

ADV JOHNSON: Let me think. We did not finish before lunch, so maybe I am still disagreeable. No, I agree.

ADV SELLO SC: Thank you. We had just dealt with the arrest and second intended arrest that did not take place of General Masemola. I would like to move on. Yes, we are
20 closing. Thank you, Commissioner. Chair and Commissioners are suggesting that I move on from the issue of the arrest of General Masemola and the intended arrest of June 18th, 2026, which was not executed. Sorry, it is Khumalo and Madondo.

ADV SELLO SC: What did I say?

ADV JOHNSON: Masemola.

ADV SELLO SC: I am getting everything wrong today, am I not? My apologies. There was never an intended arrest for General Masemola, General Khumalo and General Madondo. Advocate Johnson, a document will be distributed to you. Do not mind it for the moment. We will refer to it when the time comes and we will have a discussion on it.

I then want to move. Are you aware that after the
10 arrest – yes, you are – after the arrest, the accused applied for bail in the Magistrate’s Court and they were granted bail. You are aware of that?

ADV JOHNSON: Which matter are we talking about?

ADV SELLO SC: In the Mokwele matter.

ADV JOHNSON: Correct.

ADV SELLO SC: Yes, and if you turn to, I think it is – if you bear with me. File 7, page 381. CJC381, page 2948. Apologies, Commissioner. It is CJC381, page 2948. Those are the Magistrate's notes taken during the bail hearing.
20 Are you aware of the condition granted, bail condition granted by the Magistrate at 2949? It is condition 3, that:

“Accused number 1, 3, 4, 5, 6 and 7 are prohibited from being at any premises of Crime Intelligence within the country, RSA, while the matter is pending.”

Fourth condition was:

“Mr Brian Padayachee will assist the accused with the collection of any matters or items of personal nature the accused may have at the premises in the Crime Intelligence offices.”

I do not see everything there, but that is a gist of the fourth condition.

CHAIRPERSON: May have left.

10 **ADV SELLO SC:** May have left, thank you, Chair:

“May have left at the premises of any Crime Intelligence office.”

Now, you were asked about this condition at the Ad Hoc Committee. You recall?

ADV JOHNSON: I must have been.

ADV SELLO SC: Let me see if my record keeping is what it ought to be. I have lost my place.

ADV BALOYI SC: Are you perhaps looking for page 543? It might give you a sense of where you are trying to go.

20 **ADV SELLO SC:** Could very well be, Commissioner. Yes, it is page 543, thank you. Thank you. And it starts at 542 at the bottom. At the bottom, Advocate Arendse referencing some of the complaints by Lieutenant General Mkhwanazi at the press conference of the 6th of July 2025, states:

“Now he makes, he, being referenced to

General Mkhwanazi, makes reference to one of your investigators, Mr Brian Padayachee. Let me put to you two allegations made by Lieutenant General Mkhwanazi made in his affidavit. He said a further condition is that if the accused required anything related to their work, it could only be obtained through the intervention of the investigating officer.

10 This is in relation to General Khumalo.”

Then at the bottom of 342, he indicates that:

“Lieutenant General Khumalo has applied for the bail conditions to be amended, but the hearing of this application to amend has been postponed on numerous occasions.”

Then you respond to this bail condition at page 543, and you state:

20 “The assertion being that Mr Padayachee would be allowed to have access to Criminal Intelligence is incorrectly interpreted, mainly because we have witnesses at CI. Those witnesses had indicated that they had been intimidated and victimised. The condition for them

not going to CI was to ensure that the witnesses were not intimidated. Mr Padayachee would not have been allowed to access any documents from CI. If after that one identified that there were documents from CI, we would have had to follow the process we had followed initially, which would have been to issue a section 28 subpoena to the National Police Commissioner. No one would have been allowed to go to CI, engage any personal or take any documents. It is Mr Padayachee who in fact would call Lieutenant General Mkhwanazi to let him know that he is going to be in the province.”

10

There are a lot of points raised in your response. I will for the moment not deal with the issue of Lieutenant General Mkhwanazi and Mr Padayachee having to call him because I do not understand what he has got to do with this particular bail condition.

20

I am interested in the point you make that it would be wholly wrong to have a condition that entitled Mr Padayachee to access to CI documents. That was your view, correct?

ADV JOHNSON: Yes.

ADV SELLO SC: Are you aware that when Lieutenant General Khumalo, I think there were three of them who challenged this condition, that Colonel Padayachee filed an affidavit in opposition of the amendment of that condition in circumstances where you, as his leader, knows that that condition would not make sense because Mr Brian Padayachee himself does not have any security clearance to access information that is within the CI offices?

10 **ADV JOHNSON:** Correct.

ADV SELLO SC: What is your comment to that?

ADV JOHNSON: First of all, and that is why I said what I did at Ad Hoc, we have no right to enter those premises. And if, as per the bail condition number three, that bail condition was way too wide for every Crime Intelligence within the country. These were Crime Intelligence officials, Chair, at head office.

20 So, and the purpose for which I understood they were going to ask for that condition was merely based on the fact that there were witnesses still employed within Crime Intelligence and that these witnesses feared any of the accused coming back. That part made sense, but not the barred them from every Crime Intelligence office in the country and that the only role that Mr Padayachee was to play was to accompany them. They would take what they

needed to take for whatever reason they needed it. That is how I understood the condition was supposed to work.

ADV SELLO SC: Well, I guess that might be because you had discussed it in the office. Are you aware that such a condition was not even sought by the prosecutor? Even a watered down version as you put it, that they be allowed to go into CI offices but accompanied by Mr Padayachee, even that was never sought.

ADV JOHNSON: Sorry, Counsel, I do not follow. If the
10 prosecutors did not ask, who made this condition?

ADV SELLO SC: Sorry, say that again.

ADV JOHNSON: Sorry, I did not follow.

ADV SELLO SC: Ja, I missed your last point. Please repeat.

ADV JOHNSON: You say that the conditions were not sought by the prosecutors. Who sought and how would these conditions be imposed? Because, and please, I do not mean to be condescending.

ADV SELLO SC: Ja.

20 **ADV JOHNSON:** As a career prosecutor, we always stand up and we ask. We will suggest bail, whether we oppose bail, we will agree to bail and the Court will ask, are there conditions? And then we say yes, and we have either agreed or no agreement, but these are the conditions. You have to give the conditions to the presiding officer who must

either accept, reject, engage and then conditions are set. So that is the purpose of my question, Counsel. I am not doubting what – I am trying to understand how do we have conditions then?

ADV SELLO SC: Well, that is exactly what we were trying to understand and we put the question Colonel Padayachee. His explanation was he cannot testify to that because I think by the time the prosecutor finished her address to Court as regards to bail conditions, he had since left court.

10 Alternatively, that maybe the Magistrate overheard him and the prosecutor conferring in a corner and without it being requested in open court, the Magistrate then decided to add that condition. That is his explanation. Please do not ask me as to the logic of this.

ADV JOHNSON: I have to disagree, and the prosecutor, Joy Hlatshwayo, is an experienced prosecutor. She is not going to be standing in some corner having a chitchat with whoever. If there were conditions to be asked, she would have asked them. So the fact that he walked out of court
20 should not cast dispersions on anyone in there. I am of the firm belief that, and I do not know this Magistrate. I am of the firm belief that the prosecutor would have had to ask for these conditions and they were then endorsed by the Court.

I do recall, Commissioner Baloyi, that I think everyone was flustered after his testimony. I just do not

have it. I will ask someone to get it. There was a video clip where Advocate Hlatshwayo, Joy, was addressing the Court and asking for conditions, and even when the Court, I cannot remember all the conditions that were being asked, but she was addressing the Court. And at a stage the Court then asked, but who is the investigator? And she is the one who said it is a Mr Padayachee or a Mr Brian Padayachee.

ADV SELLO SC: Yes.

10 **ADV JOHNSON:** That is what I took from that clip, not having my own personal knowledge. So I do not agree that even if he left, that I cannot dispute, but a Magistrate would not just endorse that which is not asked. It is just out of practice. I find that highly unlikely.

ADV SELLO SC: I agree with you. I fully agree with you. You see, that is the most striking part of this condition. Firstly, we do have a clip of the prosecutor addressing the court and we hear all her complete address and engagement with the Magistrate until she finishes. It is a longish clip. We do not have the time to play it.

20 **ADV JOHNSON:** Yes.

ADV SELLO SC: We can avail it to you. You will watch it at your leisure. Firstly, during that particular address, which I understood to be the application which is the application for bail, Mr Padayachee is visible behind her at all times.

ADV JOHNSON: Yes.

ADV SELLO SC: So I do not know which point he left, but that was his testimony. That is the first. Second, on listening to that clip, nowhere is a condition in the terms expressed ever requested by the prosecutor. The only term was – the only engagement we seem to have is about protection of witnesses, to which the Magistrate asks about who the witnesses are, and the response is that they are not ready to reveal the names.

10 There was an engagement about their safety and concern, and the Magistrate was assured that that is not an issue, it is not a problem because they are not even known. So let us not conflate the condition regarding the security of witnesses with access to their CI documents and material.

ADV JOHNSON: Correct.

ADV SELLO SC: But somewhere somehow the Magistrate ends with that condition and specifically nominates Mr Brian Padayachee as the go-between between the accused and the material in their offices. So the questions you are
20 asking yourself, I thought that ,I hoped you might be able to shed light because Mr Padayachee's excuse is that he probably had left court by the time the condition was discussed. We see from the clip he never left court. That then brings to the fore the question again, where does the Magistrate get this condition from because it was not a

matter ventilated in open court?

ADV JOHNSON: It had to have been ventilated in open court.

ADV SELLO SC: But it was not.

ADV BALOYI SC: Maybe to be of assistance, you could look at 2956. This is the judgment, the appeal judgment. If you have not seen it before, it sets out the exchange in court. The Judge in the appeal sets out the exchange on this issue of bail and the condition, and none of it indicates
10 that the prosecutor asked for this bail condition.

ADV SELLO SC: If I may, Advocate Johnson?

ADV JOHNSON: Sure.

ADV SELLO SC: I think it might be helpful for you to jump to 2959. That is the judgment, under paragraph 19 where the Judge, the High Court Judge then analyses the appeal.

ADV KHUMALO SC: Before you get there, 18.3 where both counsel agree that the Court did not seek submissions from them about the condition it intended.

ADV SELLO SC: I think that 18.3 wraps it up.

20 **ADV JOHNSON**: I see that.

ADV SELLO SC: And then the Judge considers the appeal, at 19.3 points out that:

“The legal issue to determine in these proceedings, namely, whether the Magistrate erred in imposing the bail

condition, must be assessed based on the material that was before him and the way he dealt with that information or evidence.”

And then from page 2960, he references applicable legal principles and he concludes that, at 2962, at paragraph 19.17:

10 “I am unable to find any judicial basis on the evidence and submissions before the Court a *quo* for the bail condition that was imposed. In exercising his judicial discretion, the Magistrate did not confine his assessment to the facts presented before the Court.”

ADV BALOYI SC: It seems from your discussion with Ms Sello that you were not aware that the prosecutor did not ask for this bail condition. Am I correct?

ADV JOHNSON: Yes.

20 **ADV BALOYI SC:** How does it work? You would have received a report back. No? Is that not how it works? Because this is a big case, so I think, and correct me if I am wrong, I assume because it is not a run-of-the-mill case because of the personalities involved and the organisation that is involved, it is playing out in the media, so you would have been getting reports even after court. Firstly, I would

have thought when they go to court, there has been an internal discussion about this is the position we take about bail and that ...[intervenes].

ADV JOHNSON: The prosecutors and investigators would have, yes.

ADV BALOYI SC: You are not part of that discussion?

ADV JOHNSON: No.

ADV BALOYI SC: But when they come back, you must get a report back about what happened. Does it mean that the
10 prosecutor and the investigator did not disclose to you that they got the bonus of a condition that was not asked for?

ADV SELLO SC: From my recollection, Commissioner Baloyi, the condition that I recollect is that the accused, they raised the issue of the witnesses and that the witnesses being at head office and that there was a condition that the accused would not be allowed to go to head office, and that should they want to go there, they would contact Mr Padayachee. And that was it because of the witnesses. That was the feedback.

20 **ADV BALOYI SC:** You see, if they told you, both of them, if they told you that the names of witnesses were raised in court, that is false, because in fact the exchange between the Magistrate and the prosecutor. The prosecutor specifically says the accused do not know who the witnesses are, as the Magistrate says but how do you

protect witnesses? And the prosecutor says I have no concern about that because we have not disclosed their names and we are not going to disclose their names because these accused face other charges to which these witnesses are of assistance.

So the names were never raised in court. And if that is the report that you got, it would be most disappointing that a prosecutor would give you that kind of report when in fact it did not happen in court. At the very
10 least, it is disappointing. Had you known that this is a bail condition that was not asked for, what would you have done about it? Had Ms, I think you said it is Prosecutor Hlatshwayo.

ADV JOHNSON: Yes.

ADV BALOYI SC: I think that is the surname.

ADV JOHNSON: Yes.

ADV BALOYI SC: Had she done what I think every officer of the court has a duty to do, is if things have happened that should not have happened, in fairness to the accused,
20 as your code of conduct says, that, you know, prosecutors must be fair to accused people as well. If she had done what a prosecutor is required to do or an officer of the court, which is come back to you and say I did not get the chance to correct the Magistrate for whatever reason, but you know we got this bail condition and we did not ask for

it, and I do not know what happened ...[intervenes].

ADV JOHNSON: Then they have to go back to court.

ADV BALOYI SC: Yes.

ADV JOHNSON: Recall the matter.

ADV BALOYI SC: Yes.

ADV JOHNSON: And indicate afresh, which would have happened the very next day, what the conditions were that the State requested and that there were in fact conditions they did not request and that the bail conditions be
10 accordingly amended to reflect only what the State asked them for.

ADV BALOYI SC: Okay, and it takes me to a question that I was going to ask you, which is, on what basis do you oppose the appeal? We know there is an appeal. You oppose, in fact, it starts off with you in the Ad Hoc Committee saying that bail condition was obtained to protect witnesses.

ADV JOHNSON: Yes.

ADV BALOYI SC: We know that is false. It is
20 ...[intervenes].

ADV JOHNSON: It was that small one that I understood.

ADV BALOYI SC: Yes.

ADV JOHNSON: Yes.

ADV BALOYI SC: So we know that is incorrect now. You now know that, if you did not know it before. My question

was going to be to you, you oppose the bail appeal on a condition that in fact was never asked for and the prosecutor, in fact, must explain how it got there, how the Magistrate got there and why the prosecutor did not correct it, and you oppose it. On what basis do you proceed to make the decision to oppose the appeal?

And maybe let me ask you, to be fair to you. Had you known these facts that we have now put to you, that this condition at best the Magistrate made it up for himself
10 ...[intervenes].

ADV JOHNSON: It is a very amplified – sorry, I interrupted you.

ADV BALOYI SC: No, I am saying let me actually ask you a much more fair question. Had you known these facts now that I have just shared with you for the appeal, with the appeal, what would have been your posture to the appeal?

ADV JOHNSON: There would not have to be an appeal. There would have been the exercise I earlier indicated. The prosecutors would have had to go back to the same
20 Magistrate at the Lower Court and indicate that there is an imposition of a condition not either in line with what we asked or not what we asked at all, and we hereby request that that bail condition be amended. Because bail conditions and bail always go back to the court of first instance.

ADV BALOYI SC: Yes.

ADV JOHNSON: He was the court of first instance, and so it makes sense to go there. And that is why I say that in terms of my knowledge, it was a very limited, and that is why as I read here, I did not understand why they could not go to any Crime Intelligence office in the country. It was just that office where there were witnesses.

ADV BALOYI SC: Yes.

ADV JOHNSON: And just even on that, one should have
10 gone ahead and said but we cannot preclude them from every other office, but it is in this office where the witnesses are that we were asking for their exclusion from the office.

ADV BALOYI SC: Lastly, can I assume, am I correct to assume that had you known these facts, you would not have opposed the recusal of the Magistrate?

ADV JOHNSON: Correct.

ADV BALOYI SC: Thank you.

ADV SELLO SC: Thank you, Commissioners. And I accept
20 what you say, and particularly what you say ought to have been the right approach to the issue of the removal of that condition. But what actually happened is the contrary. IDAC, through Mr Padayachee and perhaps the prosecutor, actively opposed the amendment to an extent that if we go to File 8, and at File 8 if we go to page 3028.

ADV JOHNSON: 30?

ADV SELLO SC: 28. That should be an affidavit of Mr Brian Padayachee. Located it?

ADV JOHNSON: Ja.

ADV SELLO SC: If you go to 3029, paragraph 5, Mr Padayachee explains:

10 “The purpose of this affidavit is to inform
the Honourable Court why it is not in the
interest of justice to admit the bail
conditions of accused 3. The confidential
documents referred to herein have been
declassified by the National
Commissioner of SAPS for purposes of
enabling IDAC to conduct criminal
investigations and, where necessary, to
institute criminal proceedings pursuant to
these criminal investigations.”

Let us move on to page 3030, paragraph 7.2. Mr Padayachee states:

20 “Accused 3 is still gainfully employed as
the National Commissioner has reposted
her. She does not have a top secret
security clearance, which is a
requirement for her to be employed as
senior manager in the Crime Intelligence

Division. I am convinced that any other tangible vetting, investigation, and processes will not change the prevailing findings that she is dishonest and has the propensity to commit criminal offences, as evidenced by her own affidavits which are attached to ...[indistinct] affidavit.”

Paragraph 8:

10 “The rationale for accused 3’s application before the Court raises important and relevant questions. The first being why accused 3, who is accused of committing serious offences with a specific workplace, wants to return to the same workplace where many of the witnesses are based, and therefore she has been exonerated?”

It is a question:

20 “The second question is, why does she want to return to the Division Crime Intelligence when she is fully aware that she does not have the requisite top secret security clearance to manage a very sensitive operational section of the

Division Crime Intelligence at national level?”

He concludes overleaf at 3031, paragraph 10, and I read midway:

“I am of the view that there is no exceptional or compelling needs or circumstances for her to return to Crime Intelligence.”

He is mounting quite a ferocious wall to protect a condition
10 that was never requested by either, not requested by the prosecutor, at least in open court, and goes so far as paragraph 7.2 shows, that his view is it should not be amended in respect of accused number 3 and, for our record, accused 3 as Mr Josias Lekalakala. That is accused 3.

And says – no, I might be wrong, that is applicant
3. This is Madondo, and says it is accused 3 in the charge sheet, that she has a propensity to commit criminal offences. Okay. As if that was not enough, if you go to
20 page 2985, same file, that is the affidavit of Charity Matlala Matlou. She is the chief risk officer. You recall we came across section 27 affidavit in the SAPS Medicare contract. And she at 2986 paragraph 8, she speaks of the that Madondo's rank as Major General and employed as a member of senior management, she should have a top

secret security clearance:

“The fact that no action was taken by
Division Commissioner Lieutenant
General Khumalo since 2024 February,
raises serious concern as Madondo's
mere presence in the Division Crime
Intelligence poses a serious security risk
to Crime Intelligence and the SAPS. By
virtue of the case which Madondo is
10 facing...”

I am at 9:

“...most of the State witnesses would be
from Crime Intelligence environment.
Her access being granted to the same
environment increases the likelihood of
witnesses being influenced or
intimidated.”

And at 10, she concludes:

“There is therefore no compelling need or
20 circumstance for her to return to Crime
Intelligence, especially with the
knowledge that her repeated applications
have been denied. I suspect that
Madondo has an ulterior motive for
wanting to be authorised by the court to

return to Crime Intelligence
environment.”

Now, this resistance to an amendment of that condition has invited Mr Padayachee, General, what is their name, Matlou, to seriously impugn General Madondo's integrity and by throwing wanton claims against her and accusations. That is the first.

Second, these were filed in opposition of an application. This tells me that IDAC put up a formidable
10 fight which would have required both human resources and financial resources, but it also had an impact in that the applicants were seeking to amend the very condition had to obtain presumably legal services in order to have that condition amended.

And all this is happening in circumstances where it ought not to have been there in the first place. I know you have left IDAC. If you learned what you learned today about what Mr Padayachee did, and perhaps others, I do not know, but at least we know his name is there and is
20 quite active, is there any action you would suggest be taken against Mr Padayachee? If so, what kind of action?

I mean, clearly he is gone to SAPS to go solicit an affidavit from General Matlou. I do not know what he has to do with these issues, but he got it. There might be others that he also solicited to go resist that application. Now, is

that not abuse, honestly? Is it not?

ADV JOHNSON: Out of my own personal experience, Chair, when we do decide to go to court after the bail has, even the state, when we want to bring in a bail appeal, we can only go, as I know the law, and maybe someone else changed the law in the meantime, we are only able to go ahead and appeal on the bail record. That is it.

If there are certain aspects, be they legal or factual, personal, mitigating or aggravating, that were never
 10 part of the record, you cannot bring in anything new and you cannot bring in anything emotive. The only thing we are supposed to have told any Court, higher than the Court a *quo*, is the Court a *quo* erred for the following reasons, but it must have erred on the reasons as already espoused to in the Lower Court.

These things, I am assuming, were not said in the bail affidavit in the Lower Court. I would assume, and I hope I am correct, that General Matlou also did not depose to anything in the Lower Court. So, the action in which this
 20 part is taken is both excessive, unnecessary, and beyond the scope of what the bail appeal allows us to do. It is very prescriptive.

I did learn in my young days once, I took a chance, because I did not know any better, and the Judge told me very nicely, which record did you read? Because in the one

I read, the thing you are telling me is not in there. And you learn very quickly to confine yourself, Chair. So, you used the word.

ADV BALOYI SC: A different point about it, for your comment, the affidavit of General Madondo, it does not seem to even speak to anything that would be relevant. Even if it were permissible. I mean, she is not alleging facts. She says she works in Crime Intelligence. She has a propensity to be dishonest. She does not have security.

10 That has nothing to do with this appeal. Am I correct?

ADV SELLO SC: Before you answer, a correction. I, too, hear errors. It is the affidavit of General Matlou, not Madondo, but it is about General Madondo.

ADV BALOYI SC: Yes, thank you. The affidavit of General Matlou, I mean, I am looking from paragraph 6, the kind of material, the kind of things that she is speaking to. It is all about a security vetting panel. Among the documents in the security vetting file, I note that she has three affidavits, and then eight, nine, pretty much nothing.

20 And then there is a fear that she will interfere with witnesses, but nothing that says we have witnessed so-and-so, and this is the access she has to them. So it is truly, truly irrelevant, other than to create atmosphere in the appeal.

ADV JOHNSON: Yes, and if one wanted to say propensity

to commit crime, it ought to have been raised in the Lower Court that she did in fact commit crime.

ADV BALOYI SC: Yes.

ADV JOHNSON: What were those crimes, and were they then relevant to the adjudication of the matter as it was in the Lower Court? Using the word propensity must have a basis. A crime must have been committed, relevant to.

ADV BALOYI SC: Ja. So it is a relevant question, a necessary question that you, not for you to answer, but
10 what interest did she have to file this kind of affidavit opposing a bail application where she is not involved whatsoever in the matter, and here colluding with Colonel Padayachee because he says pretty much the same things which have nothing to do with the bail appeal.

So the picture that emerges is General Matlou married herself, married in quotes, to Colonel Padayachee's cause in opposing this bail application, and whoever approved that Colonel Padayachee opposed this bail application. Do you accept that as a fair assessment?

20 **ADV JOHNSON:** I do.

ADV BALOYI SC: Okay, thank you.

ADV JOHNSON: This is not the Medicare matter, so I would have understood differently if she had an input in the Medicare matter.

ADV BALOYI SC: Absolutely, thank you.

ADV SELLO SC: Thank you, Commissioner Baloyi, and thank you, Advocate Johnson, I agree with you. There is another small problem, I think. It goes back to your signing documents based on what your investigators tell you. On the 30th of June 2025, you penned, signed, and addressed a letter to the National Commissioner informing him that General Lushaba, General Khumalo, General Madondo, it is going to be projected here, General Lekalakala, and General Gabela, as well as Ncube, I apologise, I do not
10 remember her rank, and Brigadier Mokwele.

You state in this document, if you go to the bottom, it is signed by you, it is dated the 30th of June 2025, and at the fourth paragraph thereof, you state:

“Kindly note that none of the abovenamed officers are allowed to enter any premises or office which forms part of the Division Crime Intelligence, or have any contact with its personnel as ordered by the Court.”

20 You then conclude that any further enquiries be directed to Chief Investigator Perumal, and you provide the email address. So, I do not know, perhaps inadvertently you are perpetuating this injustice. Was the letter prepared for you?

ADV JOHNSON: It was prepared for me by Chief Perumal

because I was not linked to the conditions and I do see that problem of allowed any premises.

ADV SELLO SC: Yes, yes, yes. So ...[intervenes].

ADV JOHNSON: They would have put it in as the conditions as they then saw them there and had them.

ADV SELLO SC: Okay.

ADV JOHNSON: Yes.

ADV SELLO SC: So, you would have had to work off a court order.

10 **ADV JOHNSON:** Of the court order, or at least the summary that they gave me.

ADV SELLO SC: So, you are not seeing for the first time here in this hearing that actually there was this condition?

ADV JOHNSON: No, no. I see for the first time in this hearing this condition as it is. That was the summation that they gave me. It was ...[intervenes].

ADV SELLO SC: It was not the actual order?

ADV JOHNSON: It was not the actual order.

ADV SELLO SC: Okay. So, they drafted a letter for you,
20 explained it, I take it, and you took them at face value and you trusted them implicitly and signed. That is about what happened.

ADV JOHNSON: Because it had to go to the National Commission, yes, what had transpired in court.

ADV SELLO SC: And once again you did not satisfy

yourself that those were the correct conditions actually.

ADV JOHNSON: No, I did not ask to look at the conditions.

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

ADV BALOYI SC: And I think it is more, especially in the light of what you said now as you are sitting there, that this bail condition is too wide, these people are employed in head office. You may not have seen the order itself, but you signed a letter that says they may not go anywhere in
10 the whole country, that is Crime Intelligence.

ADV JOHNSON: I did not read it that way in the whole country. For me it was any ...[intervenes].

ADV BALOYI SC: Crime Intelligence.

ADV JOHNSON: Crime Intelligence office, and for me they are bound here in Pretoria. I did not see that as in the whole country. That is why I am saying, Chair, when I see the handwritten condition as it is, that is more explicit than what that paragraph was. It is incorrect to have asked for that condition. And I am not sure if that is a condition that
20 was asked for because ...[intervenes].

ADV BALOYI SC: No, take it from us, it was not asked for.

ADV JOHNSON: Okay, because ...[intervenes].

ADV BALOYI SC: Because your investigator says he does not know where it comes from, that is what he told us, because at some point he left. So he does not say I was in

court when it was asked for. He said I do not know. And we have referred you to the judgment where there is this, where the Judge sets out the engagement about this condition and in fact says that was not asked for. So I think it has been, at least on the evidence of Colonel Padayachee and the judgment itself, the appeal judgment, we can accept that it is established that the condition was not asked for. Thank you. Thank you, Ms Sello.

ADV SELLO SC: Thank you. And if I could just perhaps
10 add to that, you do not have to take our word for it that it was not asked for. The Judge in the High Court, that is precisely the basis of his overturning it because it was not asked for, and the judgment states as much.

ADV JOHNSON: It is just that I am taken aback that there is a condition that was not asked for. It is not something that I have experienced or engaged with other colleagues about.

ADV SELLO SC: It is not something that – it is something that you would not expect to happen in any event.

20 **ADV JOHNSON:** Not at all.

ADV SELLO SC: Absolutely. Then I would like to move to the next issue. You have a, and I think we have dealt with the issue, you have an investigator, let us start at the Ad Hoc page, transcript page 626, File 3.

ADV BALOYI SC: Ms Sello, you said file?

ADV SELLO SC: File 3, the transcript, Ad Hoc transcript page 626, midway that page you are having an engagement with Ms James.

ADV JOHNSON: Correct.

ADV SELLO SC: And Ms James enquires from you:

“Do you know Suneel Bellochun?”

You say:

“That is correct, he is employed by IDAC.

He has not been arrested or convicted on

10 any matter that we are aware of.”

I take it that comes perhaps from some previous conversation or engagement with some other member of the Ad Hoc Committee, so possibly it is not the first time that Mr Bellochun is being referred to here. So you confirm that he has not been arrested or convicted in any matter you are aware of. Ms James says:

20 “There is currently a case, you said there are no rogue elements within this organisation. Here you have a member that you have appointed. There was red flags from 2014, again in 2024. You said there is no rogue elements. Whether he has been found guilty or not, there is a pending case against him registered in 2024.”

Your response is:

“If you say so. I have not seen it.”

Then she enquires about vetting systems in place. If we go to page 627, midway 627, Ms James says:

“Can we agree that you have a member employed in IDAC that has two cases and the one has not been finalised and IDAC is compromised?”

Your response is that:

10 “If there are cases, they will be investigated.”

Now, if you run ahead in the same file to CJC376, that is an article at 678 ...[intervenes].

ADV JOHNSON: 678?

ADV SELLO SC: 678, yes. And this article, I think it is informed by comments by Pop Crew. First paragraph states that:

20 “It was a startling revelation that IDAC appointed Suneel Bellochun as a senior investigating officer, despite him having a warrant of arrest for alleged fraud.”

The second paragraph of that page then gives the detail of the docket from which the warrant of arrest comes from. We have a witness who has testified before the Commission regarding the existence of this warrant.

ADV JOHNSON: Okay.

ADV SELLO SC: Ms James at Ad Hoc brought your attention to the fact that there are cases pending against Mr Bellochun, and your parting shot was that the matters will be investigated, that is the one. We have a witness who appeared before the Commission about two weeks ago, Witness N.

Witness N once again testified on complaints by, and I use the term liberally, the Pakistani community living, 10 is it East London or PE, that which is said, East London, I think. It is alleged that investigator Bellochun is extorting monies from, and otherwise dealing with them harshly, and it is a very general summary. That is complaint number two.

The third we dealt with in this hearing, which is by Sergeant Nkosi, of Mr Bellochun leading a team of nine, let me say people, investigators and maybe others, from IDAC of the 13th of July 2026, to meet with him in the absence of his attorney and to solicit, again, it is my own summary, testimony from him that would implicate Generals Khumalo 20 and Masemola.

So these are three independent, these are three separate complaints. At least as regards the first, you undertook in November 2025 to the Ad Hoc Committee that you will investigate. My question is, did you ever investigate that matter in particular?

My second is, upon hearing the testimony of Witness N as regards the alleged misconduct of Investigator Bellochun, I think the, and upon receipt of the exhibit file, because, I say receipt because we ventilated the issue of Sergeant Nkosi yesterday, and by then you had retired, but you received the exhibit file, and that complaint was in the exhibit file while you were still ID. Did you investigate any of these matters to determine whether or not Investigator Bellochun's action should be taken against him? And I will
 10 not say of what kind. And if you did, what did your investigations yield? Thanks.

ADV JOHNSON: Thank you. Chair, if you will just give me a moment, there is a document I just quickly want to look for in my bag, if that is fine. Thank you, Chair. On the first matter that was raised, and we call it the Pretoria North.

ADV SELLO SC: Yes.

ADV JOHNSON: Is it Pretoria North or Pretoria West? Pretoria North.

ADV SELLO SC: North, I think.

20 **ADV JOHNSON:** I think. On the Pretoria North matter ...[intervenes].

ADV SELLO SC: Sorry, sorry, it is Pretoria West CAS number 97/05/2021. West, Pretoria West.

ADV JOHNSON: Correct.

ADV SELLO SC: Yes.

ADV JOHNSON: When we had returned, we had asked for everyone to give us feedback, including Mr Bellochun, because we need to follow up on what had arisen at the Ad Hoc.

ADV SELLO SC: Yes.

ADV JOHNSON: Mr Bellochun had gone ahead and on his own, through the Local Criminal Record Centre, put through the fingerprints to see if there were any matters outstanding, because that is where we find outstanding
10 warrants or outstanding matters on the LCRC. He gave a report back that there were no matters that were outstanding on the LCRC.

And it is on that basis that prior to Advocate Batohi leaving office, we had compiled a report, Chair, which said that there was no one in IDAC, or investigators especially, that had outstanding cases, previous convictions, or pending misconduct. We fast forward to now, and we are faced with this issue again.

And I was faced with it about two Sundays ago in
20 preparation for the Commission, because I see it then in the bundle of documents that are sent to me is a J50. And in our legal language, it is alive. It dies only if it has two lines across where the Magistrate would have to say cancelled and sign. And it must invariably go to the Magistrate who would have authorised it. I immediately called Mr Bellochun

and I said to him, okay, what am I doing at the Commission with a live warrant? Why is there a live warrant ...[intervenes].

ADV SELLO SC: If I may? I do apologise. Commissioners, that would be in Exhibit File 1, page 136.

ADV JOHNSON: Yes, sorry. And maybe before we go there, sorry, this was the document I looked for, Commissioner. When we asked him in December/January, how are we responding to the Ad Hoc Committee, and he
10 went ahead and on his own got the report from the Local Criminal Record Centre. It shows no illicit activity identified.

It is on that basis we were able to compile the report. And I am happy for this to become part of the record. We will share that. That is a copy. I will give it as a pack for the Bellochun matters, if that is okay with you and ...[intervenes].

ADV SELLO SC: But the question is, he has an active warrant of arrest.

20 **ADV JOHNSON:** Now we ask, why am I looking at an active warrant?

ADV SELLO SC: Yes.

ADV JOHNSON: Mr Bellochun then indicates that this all happened prior my time, but it was in 2021. A case had been opened of assault against him. My predecessor,

Advocate Herman Cronje, had engaged with the Office of the DPP Pretoria. She had written to Advocate Mzinyathi about this whole matter, and Advocate Mzinyathi then responded to her. And I am prepared to share this as well. I tried to get what I could because I do not have a recollection. But on the 8th of June 2021, Chair ...[intervenes].

CHAIRPERSON: What are you looking at now?

ADV JOHNSON: No, it is a letter that I am prepared to
 10 share that I found to find as support for what I say. Advocate Mzinyathi wrote to the then Head of IDAC on the 8th of June 2021, refers to the conduct of a prosecutor, Mr Ledwaba, that surrounds Pretoria CAS 97/05/2021, And that is the CAS number in question. I will just read relevant portions as I intend handing this in:

20 “In respect of Pretoria West CAS 97/05/2021, I have instructed the Acting Chief Prosecutor to request that the warrant of arrest be cancelled pending the finalisation of the police investigations. I have further directed that the matter may not be enrolled without my written authorisation to that effect. I will decide whether or not a prosecution will be instituted in respect

of this case upon finalisation of the
outstanding investigations and the Acting
Chief Prosecutor's report.”

That is the gist of that letter that was received.

ADV SELLO SC: If I may, I take that that is what the
prosecutor expressed in that letter.

ADV JOHNSON: That is what the DPP of Pretoria
expressed in that letter.

ADV SELLO SC: Yes. You earlier testified what a
10 cancelled warrant looks like.

ADV JOHNSON: Correct.

ADV SELLO SC: The warrant remains active.

ADV JOHNSON: The warrant remains active.

ADV SELLO SC: And that is really the issue that he
continues to be in office investigating, arresting other
people when he himself is under an active warrant.

ADV JOHNSON: I got a hold of that letter. I then engaged
as follows, and maybe just to make this engagement
shorter. I then asked him, but this was 2021. Why is
20 Andrea Johnson faced with it in June/July of 2026? What
did you do to go and find out if the warrant is cancelled?
So what he had subsequently done after my asking,
because he took the word off my predecessor, he went to
ask at the police station on the CAS system if they could
determine what had happened with the warrant and/or the

docket.

According to him, the docket is closed, marked undetected, and this docket would have been closed in October of 2024. October of 2024 or October of 2023? But it was in that time that the docket was closed. I said to him, but that still does not help me. The warrant is active. Now, the reason it is not found, Chair, on the Local Criminal Record Centre document is it is only found there if an investigator circulates his warrant, and that is when it is
10 seen.

I have no explanation for why the warrant was not circulated, nor do I have any explanation for why, despite there being an instruction that he cancel the warrant, finalise the investigation, take it back for decision. Warrant is not cancelled, docket is closed, and docket is filed. This is a police warrant, and the police will do with this warrant what they do with warrants that are not cancelled.

ADV SELLO SC: Okay.

ADV JOHNSON: It is not my decision to make. Most
20 certainly ...[intervenes].

ADV SELLO SC: I think your decision was confronted with what you are confronting. One of your investigators has got an active warrant. He, in the course of his duties, is arresting other people. That is a problem for you, as the Head of IDAC. The warrant is for the police to deal with, to

execute, but the question was, what do you do with that? Can he morally be permitted to be arresting other suspects out there when he himself is under an active warrant of arrest?

ADV JOHNSON: No. This matter, the police must act as they want to act ...[intervenes].

ADV SELLO SC: And what does IDAC do in the interim?

ADV JOHNSON: This has to go to the Judge, the IDAC Judge, because this becomes one of those issues.

10 **ADV SELLO SC:** Should it be a consideration to strip him, at least temporarily, of his arrest powers while he sorts out his own warrant? Just a thought, I am not imposing it, I am asking.

ADV JOHNSON: I do not want to say anything, lest the IDAC Judge think I am trying to be prescriptive in his independent duties, it would be wrong.

ADV SELLO SC: You cannot be, you are no longer a member of IDAC. You are just like me.

ADV JOHNSON: Trust me, every word I say, including if I
20 breathe too hard, can be problematic.

ADV SELLO SC: Okay.

ADV JOHNSON: So I leave that to the discretion of the Judge.

ADV SELLO SC: Okay.

ADV JOHNSON: Then you asked me about Witness N.

ADV SELLO SC: Witness N, yes.

ADV JOHNSON: So Witness N's testimony was quite harrowing, to say the least. And after that evidence, I wrote a letter to the National Director, wherein I indicated that the witness has testified, the record should be available at the Commission, and that through the Office of the National Director, it please be escalated to the IDAC Judge. And I did this a week ago, or a little more than a week ago when it came out.

10 I am given to understand that Mr Bellochun received a notice yesterday indicating an intention for him to be suspended. And I would assume it comes only out of that matter because, Chair, that was the first matter that I have escalated to the IDAC Judge. So I took the steps that I thought should be taken in that time.

ADV SELLO SC: Okay.

ADV JOHNSON: The Sergeant Nkosi complaint, we dealt with it yesterday.

ADV SELLO SC: Yes, we dealt with it yesterday. It is
20 about the events of the 13th of July. It is what, two weeks ago?

ADV JOHNSON: Yes.

ADV SELLO SC: But like I say, you were not hearing of it for the first time yesterday because I had shared that particular part of the exhibit file with you while you were

still ID, yes.

ADV JOHNSON: Yes. I did not do anything with it yet because I was coming here to the Commission. But I had, I did ask, not I had, I did say to Mr Bellochun that there is allegations against him by Sergeant Nkosi and the allegations are serious. He has a version, but that version, again, will have to be dealt with through the channel of the IDAC Judge.

If I take that version, I am usurping the powers of
10 the IDAC Judge because what Nkosi is raising is not a labour issue that I can deal with. And so this matter, similarly to Witness N, must go to the IDAC Judge. And because it came to my attention in my time last week or week before as the ID, I would have to escalate it before the end of this week to the National Director for him to then take further with the IDAC Judge together with the issue of the live J50 warrant. However the police deal with it, but the Judge would have to know about the warrant.

ADV SELLO SC: Okay. I would like to move on to another
20 topic. And thank you for the report backs on those matters. In the course of consultation with the Evidence Leaders, we having, I think, thought that we understood the mandate of IDAC in terms of section 7(1)(A). A question was put to you whether or not IDAC is investigating, I will call it generally, the Tembisa Hospital matter. And if so, where the matter

was at.

You had a response for the Evidence Leaders, and by extension you have a response to that question for the Commissioners. You provided a document which speaks to those matters and you will address momentarily, but you highlighted the sensitive nature of that document and its contents and requested that it not be made publicly available because it provides detail as to progress of investigations.

10 That is a single page that was circulated just after lunch amongst the Commissioners. You have been provided with a copy. So we will not necessarily read from it to protect its contents, but you may address yourself to the state, the position of the Tembisa Hospital investigation, who is responsible for it, and whatever report back you can give as regards its status.

ADV JOHNSON: Okay. Commissioners, I just also wanted to add the confidentiality, if I can use that, it is not just based on the state of the investigations. We report to FATF.

20 All FATF documents have an embargo unless FATF allows us to release documents. This document is shared with me because I am part of the law enforcement team that writes up reports. I write for IDAC. The DPCI writes up their case studies.

So this is a case study write-up for FATF, and that

is predominantly the reason why we do not put it out in the public. It is part of our confidentiality agreement with them. However ...[intervenes].

ADV BALOYI SC: Maybe for the record, if you would say what is FATF, as in the full name, and then spell out the short name.

ADV JOHNSON: Thank you. The Financial Action Task Force, which grey-listed South Africa in January 2023, has had us on a watch list. And part of what we do is we
10 identify matters that we will be presenting to them, and we meet as law enforcement every month to update ourselves jointly. SARS, where are you on this? SIU, IDAC, the different units in the NPA, DPCI, as well as Detectives.

And this is where we all sit and are able to glean knowledge of the work of one another. There has been a lot of questions in the media and in the public space about why IDAC is not doing anything about the Tembisa hospital matter. More pertinently, questions in the recent past, Commissioners, have been raised about, so why does IDAC
20 act on Matlala but not on Maumela?

And I saw it fit to raise this with the Evidence Leader to quash it once and for all. The Tembisa hospital matter, in all of its forms, in however many legs of investigation it has, whomever the persons and entities of interest are, had been referred around about 2020 or

thereabouts by the SIU to the DPCI. The DPCI has always been vested with this matter. The Tembisa hospital, whether it is skinny jeans, whoever they are, who is behind the scenes, whether Maumela is involved or not, et cetera, all of it lies within the ambit of the DPCI.

And it was important because we are supposed to account to South Africa and IDAC has been quiet, but only because this matter, as big as it is and as tragic as it is, is not being accounted for.

10 **ADV BALOYI SC:** Does the SIU, only because you mentioned them, does the SIU get to choose whether a matter goes to DPCI or it comes to IDAC? What guides that decision?

ADV JOHNSON: I think back then it was still early days. The ID had only been created by proclamation, but there is a challenge, and the challenge is with the legislation. The SIU must refer its matters to the NPA. NPA then distributes the matters to the DPCI and in turn now with IDAC. We had to come up, government really loves papers, but we had to
20 come up with a memorandum of understanding that where a matter comes to the NPA and the NPA is able to assess it is an IDAC matter, they then refer it to IDAC.

But the SIU, because there is a lacuna in the legislation, are not allowed to refer directly to the DPCI or directly to IDAC. It goes to the NPA as a conduit, and that

has to be something that must be looked at because it does take up a lot of time between receipt, assessments, allocation. I hope that helped.

ADV BALOYI SC: That answers me, thank you.

ADV SELLO SC: Have you made all the comments you wanted to make on the matter?

ADV JOHNSON: Can I say one more time, we do not have the Maumela matter. Thank you.

ADV SELLO SC: Thank you. I think that came across very
10 clear. I think I am ready to turn to my last topic.

CHAIRPERSON: Ms Sello, do we give this back to you?

ADV SELLO SC: The Commissioners could retain it for record purposes.

ADV JOHNSON: Yes.

ADV SELLO SC: It is just a question, I think the request is that it be embargoed so it will not form part of our public record, but the Commissioners may have regard to it as a response to that specific question that was put to Advocate Johnson. And maybe as a matter that then the Commission
20 may pick up with DPCI at the relevant time. Thank you.

CHAIRPERSON: Thank you.

ADV SELLO SC: Okay. Thank you, Chair.

CHAIRPERSON: Did you say last issue?

ADV SELLO SC: The one I am dealing with next.

CHAIRPERSON: Okay. Thank you very much.

ADV SELLO SC: But I have not committed myself as regards its breadth or depth, but it is the last issue. Advocate Johnson, in your statement, your third statement, the statement of the 10th of July 2026, in response to a question posed to you through subpoena, no, through a Regulation 10(6) notice, I am at page 7 of that statement, paragraph 16.

The question had been your relationship with General Khan and how well you know him. Your response
10 was a fairly terse one, stating that you know that he is a General based at Crime Intelligence before you became the investigating director in March 2022, you engaged with him in meetings with other stakeholders and attended net joints or other SAPS meeting at which he was present and to which you had been invited by relevant component heads, Deputy National Commissioner or Divisional Commissioner.

So according to your statement, you significantly played down that relationship. In the course of engagement, we have subsequently established that that
20 relationship is actually deeper than as you described at paragraph 16. And I think it was Commissioner Khumalo who informed you of testimony before this Commission regarding the fact that you attended General Khan's 50th birthday, whenever that was, and I think that shed some light on this relationship that besides the professional

relationship, you have this personal one.

As you are well aware, you may very well have heard, the Commission is in possession of General Khan's chats downloads. And for that purpose, I would like to refer you to, I think it is File 9, Annexure CJC388.

ADV JOHNSON: Sorry, Counsel, which page? File 9?

ADV SELLO SC: File 9, the version I have started one. Please bear with me, I will find the page for you.

ADV JOHNSON: I think it is in File 8.

10 **ADV SELLO SC:** File 8, 3194. Apologies. 3194. 3194, Commissioner. And yes, I confirm marked CJC388. Now, up to page 3253, these are the chats between yourself and General Khan over a period. Just as a general note, would you agree that those chats reflect a deeper relationship than just being invited to a 50th birthday celebration by a colleague? You have a personal and deeper relationship with General Khan. Would you agree with that?

ADV JOHNSON: Yes, ma'am, I consider him a very good friend.

20 **ADV SELLO SC:** A very good friend. And in fact, on reading of this, it sounds like you visited each other's families.

ADV JOHNSON: No, we did not.

ADV SELLO SC: You have been, I do not want to flight them, personally, I do not.

ADV JOHNSON: But I can indicate that there might have been an occasion where he would have invited us, but we have not, I have not gone to his home. He has not come to my home. We have not socialised.

ADV SELLO SC: What happened to the, you and General Khan had agreed that you, your family, together with your parrot, will visit General Khan, and you agreed what his family would cook for you for that day.

ADV JOHNSON: Yes.

10 **ADV SELLO SC:** So what, did that not come to pass?

ADV JOHNSON: It did not come to pass.

ADV SELLO SC: Okay. That is the kind of relationship you have?

ADV JOHNSON: Where we would talk, yes. I have met him for lunch once or twice, but not at his home, not at my home. And the first time that I attended a social-social gathering, Chair, was at the 50th birthday, and both my husband and I had been invited, and we attended the birthday, but I have never been to his home, and nor he to
20 my home.

ADV SELLO SC: I think I do not want to flight these. They do not take my point and ...[intervenes].

ADV BALOYI SC: Can I suggest a way ...[intervenes].

ADV JOHNSON: Read it to me.

ADV BALOYI SC: Can you just look at 3245?

ADV JOHNSON: 32?

ADV BALOYI SC: 3245. It might jolt your memory.

ADV JOHNSON: Yes.

ADV BALOYI SC: 3245, right at the bottom of the page, if you like, you can go to the next page. And, as you answer the question.

ADV JOHNSON: That for me was, that was for me saying, I cannot remember what we had been talking about, but that was for me in jest where I said:

10 “I am bringing husband, daughter, and
 parent to your home for supper tonight.
 Start cooking.”

We did not go to his home for, if I could just use
...[intervenes].

ADV BALOYI SC: Go to the next page.

ADV JOHNSON: Yes. Ja, he asked us what would we have liked to eat. I indicated what we liked to eat. Yes, but we never went to his home. I am dead serious, Commissioner. We did not go to his home. And we talked
20 often like that, about what is for supper, what you cooked, I am coming over for supper, but you do not go over for supper. Sorry, Commissioner. Go ahead, Commissioner.

ADV KHUMALO SC: Are we still on home visits?

ADV JOHNSON: We are, we are.

ADV KHUMALO SC: 3249. At 7, and it continues all the

way to 3251.

ADV BALOYI SC: Ms Sello, maybe while Advocate Johnson considers this, you should think about providing an explanation why you are not fighting this. We have flighted people's WhatsApp exchanges, and I think there has to be an explanation why.

ADV SELLO SC: There are a number of messages where they are communicating about minor children. And we have tried to do some deductions. In some places, we end up
10 with quite a lot of blacked-out parts. And the purpose of my referring to the chats is to establish a very, very close relationship between General Khan and ...[intervenes].

ADV JOHNSON: And myself.

ADV SELLO SC: Advocate Johnson. And if Advocate Johnson were to confirm to you that there's a very close relationship to a point that they greet each other by stating, you know, saying words like, hi, gorgeous, then it makes my point without necessarily having to use the chats. So the chats are not going to give me any relevant evidence for
20 anything except to establish this very close relationship contrary to what she had stated originally in her statement. Thank you.

ADV KHUMALO SC: So, Advocate Johnson, if you just look at chat 5, 6, 7 on 3249 and then it continues to ...[indistinct], that is a sign of people who have a close

personal relationship. And you can see there that it is not an IDAC investigation. It is really two people who are friends and this relates to a favour to him. It has nothing to do with IDAC's work. If you just look at 3249, I will just read, for example, where he wants to know who is plotting against him and you are to assist him. And he suspects that it is the Hawks that are plotting against him and the two of you decide to meet and you arrange for him not to sign in in the normal course but to come in via the VIP
10 entrance and come directly to your office without going via reception. I mean, that is a summary of it. I do not want to go into ...[intervenes].

ADV JOHNSON: Yes.

ADV KHUMALO SC: That is what it shows, at least to me. And if I am wrong, you can say you are getting it incorrectly.

ADV JOHNSON: So usually, just on a point of correction, usually when we do, and he is not an exception to the rule, when we do invite high-ranking police officers to the office, we usually let them use the side entrance. And you will see
20 even if you go now, if there is high-ranking police officials there at the head office, we grant them that entrance.

ADV KHUMALO SC: But you see here, the purpose of the visit was to come and see you on a personal matter.

ADV JOHNSON: And he did.

ADV KHUMALO SC: Ja.

ADV JOHNSON: And it was a personal matter and the matter ...[intervenes].

ADV SELLO SC: Advocate Johnson, if I may, with your leave, if I may? I have argued against projecting these messages because they have a lot of personal material involving children, and I now have a difficulty with your response to Commissioner Khumalo's question. What Commissioner Khumalo refers to is not how VIPs visit your office.

10 He was not coming in his capacity as a VIP. He was coming in his personal capacity requesting a favour from you regarding suspicions that he is being investigated by the Hawks and the like. And from that conversation, you pick up, one picks up that the two of you are planning at some clandestine meeting. You end up, because of diary issues, you end up inviting him to your office. And then to avoid a record of the visit, you suggest he use that entrance. I beg of you, please do not make me do it.

ADV JOHNSON: No, I am not disputing that he used the
20 entrance. I am telling you, ordinarily, it was done. Here, he did come to visit me. And unfortunately, when he did come to visit, it turned out it was not anything to do with the Hawks, but he had an issue about somebody plotting against him. It did turn out that it was not the Hawks. I want to make that clear, but it was ...[intervenes].

ADV KHUMALO SC: The point is this is not a VIP visiting IDAC office ...[intervenes].

ADV JOHNSON: No, this was my friend ...[intervenes].

ADV KHUMALO SC: This is a personal visit by a friend. And when you say to him come via VIP entrance and do not sign in, you are not doing that for a VIP coming in in his official capacity. You are doing it for your friend, who is coming there to discuss personal issues.

ADV JOHNSON: I accept that, Chair.

10 **ADV SELLO SC:** And that is the whole point, to demonstrate that you have a very close relationship and the lengths you go to, to accommodate one another. I referenced how you address each other at times. They are calling each other gorgeous. You tell each other how much you miss each other. And that is, yes, dearest. Okay, now have we established the relationship? It is a very deep and personal one.

ADV JOHNSON: Yes.

ADV SELLO SC: And a very close one.

20 **ADV JOHNSON:** Correct.

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

ADV BALOYI SC: Can I just add that that what also seems to appear from this personal relationship is, you also discuss as friends, close friends, you discuss things that have to do with your work. For example, you have

mentioned the Hawks issue. I am looking at page 243, where he wants you to tell him who said something, and you say:

“I will tell you when I see you. For now, be smart.”

And it is this second part that I am reading that can be a source of concern. You say:

10 “For now, be smart about who you trust at work. Please do not say anything to anyone about you heard someone is out to get you because you could be talking to the culprit.”

So you and him are discussing matters that have something to do with what is happening in his workplace and you are advising each other, and you are reporting to each other.

ADV JOHNSON: Correct.

ADV BALOYI SC: That is what that message is. Okay, thank you.

20 **ADV SELLO SC:** And if I then may conclude on that note, it goes further, and one picks up from the chats that both of you have a very close relationship with General Senthumule.

ADV JOHNSON: Yes, well, I do not know how close his relationship was with her, but I had a very close relationship with her.

ADV SELLO SC: No, no, you must be aware, because when General Senthumule, according to this chat, was down with Covid, you and General Khan were planning what you should cook for General Senthumule. Some dal soup and other fancy soups. And there were complaints that she is not picking up. You advise, no, she is not picking up because due to her level of incapacity, she was advised to switch off the phone.

Then he comes back to you at some point, oh, I
10 eventually managed to talk to her. So you do know that he too has got a close relationship with General Senthumule. The issue is that both of you have this relationship, and you are both concerned when she contracted Covid.

ADV JOHNSON: Correct.

ADV SELLO SC: Okay. Now, all this is relevant to the testimony of witness, I have run out of alphabets.

ADV JOHNSON: Witness Roelofse?

ADV SELLO SC: Witness O. Witness O, thank you. Before we get to Witness O, you will recall that on the 7th of
20 July 2025/26, the Commission issued you with a subpoena requesting that you submit certain documents, and that subpoena is dated the 7th of July 2026. I think you have been provided with a copy. The request there concerned certain dockets. Firstly, it was 1.1, recopying an affidavit received, a copy of that affidavit received by IDAC

regarding Brigadier Mokwele's appointment. The second was:

“All emails and/or other written communication between yourself and Witness O stationed within the Division Crime Intelligence on or about the 4th of July 2018 regarding the complaint lodged and criminal case opened by Brigadier Phetlhe against General Feroz Khan for an alleged assault.”

The third request was in respect of dockets into the investigation of Mr Inbanathan Kistiah. I apologise if I mispronounce.

ADV JOHNSON: Inbanathan Kistiah.

ADV SELLO SC: Excuse me?

ADV JOHNSON: Inbanathan Kistiah.

ADV SELLO SC: Inbanathan Kistiah, thank you. And the last was dockets in respect of investigations into General Masemola's and General Mkwana's alleged receipt of the Louis Vuitton bags from a SAPS supplier. So those were the documents requested of you.

You were able to provide all the documents requested except for the emails and the written communication between yourself and Witness O regarding an incident of around July 2018 involving General Khan, in

which he is alleged to have assaulted Brigadier Phetlhe.

ADV JOHNSON: That is correct.

ADV SELLO SC: Your explanation for failure to provide that information was that this goes back to 2018, or eight years ago, seven, eight years ago, and that your emails do not go that far.

ADV JOHNSON: My Gmail.

ADV SELLO SC: Your Gmail does not go that far, and therefore, you are unable to retrieve any record of
10 communication between yourself and Witness O. I then informed you that Witness O has made available certain documents and emails, and I gave you her complete bundle regarding this matter, which is what she testified to, and I asked you to consider whether upon consideration of these documents, is there anything you dispute that you take issue with that, although you do not have your own, you do not recall being correct and accurate, and you led me to understand that you have no basis to challenge the accuracy of the documents provided by Witness O. Am I
20 reflecting your position correctly?

ADV JOHNSON: Correct, because I did not have my own emails, and I did not have a recollection. I cannot dispute what she had.

ADV SELLO SC: What you recalled was the act itself that Witness O testified to, and that was the act of your sharing

the docket in respect of Brigadier Phetlhe's complaint with General Khan. You recall? You admitted at least having that recollection.

ADV JOHNSON: I had a recollection, as I explained in our consultation, that I had shared documents with her. It is when you showed it to me that I realised what it was that was shared. I just wanted to correct. I did not dispute what was shared.

ADV SELLO SC: Yes.

10 **ADV JOHNSON:** I could not recollect what was shared, and because of her record, I was able to look at it and confirm.

ADV SELLO SC: And we engaged about the contents of the exhibits of Witness O's annexures, including the statement by Mr Barry Bateman explaining the circumstances under which the docket was shared with Mr Khan. At the time, you had an explanation for what transpired there.

20 So I point that out to state that the fact that you have an explanation as to what transpired based on documents you did not give means that they triggered your memory upon considering and reading the papers. Your memory was triggered, and you remembered what transpired. Am I correct thus far?

ADV JOHNSON: Correct.

ADV SELLO SC: And lastly, you indicated that you cannot shed any featherlight because of a non-personal relationship you have with General Khan, and you expressed your relationship at least to me during consultation in the same terms that you have in your statement, but we know that is not correct.

We have established that this is a very, very close and personal relationship. So I say you must know why and under what circumstances you shared that docket with
10 General Khan. It cannot be I do not remember because I do not have such a close relationship with him. We have established that cannot be a basis. You have had these documents for two weeks now. I am sure you have read and re-read them and are able to assist.

ADV JOHNSON: Sure. It is – sorry, if you will just let me.

ADV SELLO SC: If you are looking for the documents, it is EXHIBIT 1, CJC368, starting from page 1.

ADV JOHNSON: No, I was just looking for my supplementary statement.

20 **ADV SELLO SC:** Your supplementary statement to the Commission?

ADV JOHNSON: To the Commission.

ADV SELLO SC: Have you located it?

ADV JOHNSON: We have located it.

ADV SELLO SC: All right.

ADV JOHNSON: And, Commissioners, it is in File 1. And I do not wish to belabour a point. I have read this into the record. And at the stage where we are, and I am expected to perhaps respond and answer a question, I just wanted to indicate, Chair, that the, and it would be on – there is a red number 2 on the page.

ADV SELLO SC: Okay.

ADV JOHNSON: And it would be the supplementary dated the 20th day of July, Chair and Commissioners. May I
10 proceed, Chair?

ADV SELLO SC: Yes, please do.

ADV JOHNSON: Sorry, I proceed at paragraph 5, where I read on day one, and if Chair would allow me to just reiterate. I said:

“The notice requires me to deal with
allegations against me testified to by
Colonel Kobus Roelofse, Captain
McClean, and Witness O. The
allegations, as summarised, implicate me
20 in alleged criminal conduct. The
allegations are contained in a docket,
which is now with the NPA for a decision
on whether I should or not be prosecuted
and further handling.”

That this is so, Chair, was confirmed by the NPA on the 10th

of July 2026, as well as by the Witness McLean when he testified on that day. Now that the matter is before the NPA on the basis set out above, Chair, for a decision on whether I should or not be prosecuted, various consequences emerge.

One of those consequences of the need of that are the need for me to have my rights protected. Thus, when I testify on those matters, should I be called upon to do so, Chair, I will humbly exercise my right not to incriminate
 10 myself under section 35(3)(j) of the Constitution of the Republic of South Africa, read with section 34 of the Commissions Act of 1947. These instruments guarantee my right against self-incrimination. If I could just read the last paragraph, then, Chair:

“I hold the view that the Commission's fact-finding mandate does not override my constitutional protection against self-incrimination under any circumstances, and it is for those reasons that this
 20 affidavit is submitted to place my position in regard to the testimony of the witnesses identified above formally before the Commission.”

ADV SELLO SC: You, in two things, you say you were informed that the matter is before the DPP to decide

whether or not to prosecute. Is that correct?

ADV JOHNSON: That is correct.

ADV SELLO SC: Or to proffer charges against you. So that decision is not in yet, it is not there. Correct? There is no decision to prosecute right now.

ADV JOHNSON: There is a docket that has been sent for prosecution with its evidence, meaning that a decision must now be made, Chair, on whether or not I should be prosecuted.

10 **ADV SELLO SC:** And I maintain there is no decision to prosecute. There is not. It is awaited, that is the first. And if the decision has not been made and you are not under prosecution, I am sure you appreciate you cannot invoke the rights set out in section 35 of the Constitution because those are the rights of an accused person.

ADV JOHNSON: Correct.

ADV SELLO SC: Okay.

ADV JOHNSON: But I do invoke the rights of the Commission.

20 **ADV SELLO SC:** Indeed.

ADV JOHNSON: And as I appear before the Commission, Ms Sello, I therefore invoke those rights as those rights are also set out to protect me in terms of my right not to incriminate myself.

ADV SELLO SC: I have lost my note, Chair, and you

rightly referred to section 34 of the Commission's Act, but you know it must be read with the regulation. You are aware that anything anyone states and testifies to in the Commission that has the potential to self-incriminate cannot be used against them in any subsequent criminal proceedings.

ADV JOHNSON: It can, however, be used by investigators, as has been the case, to road map further investigations against you to enhance and bolster their case.

10 **ADV SELLO SC**: My question remains unanswered. You have, there is that guarantee that anything you say in this Commission cannot be used against you in subsequent criminal proceedings. How that information can be used is the second part and we will deal with it, but what it cannot do, that information cannot be used against you. Things that you uttered, they cannot be used against you. It is a legal position. You have to accept that. It is what it is. I quite appreciate the risks that you highlight. We will get to them, but you have to accept that that is what the law
20 provides.

ADV JOHNSON: [No reply].

ADV SELLO SC: Advocate? No, no, no, the Commissioners can multitask. They do through papers while listening.

CHAIRPERSON: Sorry, Ms Sello. Yes, section 35(3)(j)

refers to an accused person, but does the issue of accused person apply to section 3(4) of the Commission's Act with regard to the privilege against self-incrimination?

ADV SELLO SC: No, I distinguish between the two.

CHAIRPERSON: Yes, yes.

ADV SELLO SC: In her affidavit she has raised both, section 35 of the Constitution, and I say that does not apply in this case because she is not an accused.

CHAIRPERSON: Okay.

10 **ADV SELLO SC:** So she can only resort to 3(4) of the Commission's Act.

CHAIRPERSON: And then you raise the issue that such evidence cannot be ...[intervenes].

ADV SELLO SC: Exactly.

CHAIRPERSON: But what about the point of derivative evidence ...[intervenes].

ADV SELLO SC: And I think this is ...[intervenes].

CHAIRPERSON: Which may be quite prejudicial in certain circumstances, depending on what has been derived, even
20 if they do not use what a witness may themselves have said.

ADV SELLO SC: Which is the second point she raised, and I said I distinguish between her acknowledging that there are those provisions in the law. She mentions precisely the issue that it may provide a roadmap for future

investigations, precisely to ensure a successful criminal prosecution. So I say that is the second leg.

CHAIRPERSON: Yes.

ADV SELLO SC: So the Chair is slightly ahead of us. We were still recognising that what she says by law ought not to be used against her.

CHAIRPERSON: Yes.

ADV SELLO SC: It is not lost on me the value of whoever wants to initiate criminal prosecution to follow the evidence
10 of the Commission.

CHAIRPERSON: Yes.

ADV SELLO SC: And perhaps have a thinking and an investigation angle that they would otherwise not have had to arrive at the very conclusion that the Act seeks to protect the witness against.

CHAIRPERSON: Also, perhaps you will again say I am already ahead. I am thinking under what circumstances then would this privilege work in practical circumstances if a witness can always be told, but what you have said
20 cannot be used against you? Would that not bring to naught the very entitlement under section 3(4)?

ADV SELLO SC: Yes, but the witness in her statement suggests that any issues pertaining to, I will say Witness O's evidence, she cannot respond to. So her invocation of that section is way too wide.

CHAIRPERSON: Yes.

ADV SELLO SC: I think she is entitled to say I cannot answer maybe for fear of self-incrimination, but she may do so only in response to a specific question. Her affidavit suggests do not ask me anything.

CHAIRPERSON: Yes, no ...[intervenes].

ADV SELLO SC: So that is the practicality of it as I see it, Chair.

CHAIRPERSON: That I get, that I get, which is why we
10 engaged in the rather schizophrenic approach, which I think was forced on us by circumstances with Mr Mogotsi. It was question by question and he raised his entitlement not to incriminate himself ...[intervenes].

ADV SELLO SC: And that is exactly what I seek ...[intervenes].

CHAIRPERSON: We still went through the process and I felt like dying.

ADV SELLO SC: I shall not be the cause of your death, Chair, I promise.

20 **CHAIRPERSON:** No, no, no, no, no, no.

ADV SELLO SC: I understand.

CHAIRPERSON: I have just made the point that I understood why we had to do it.

ADV SELLO SC: Yes.

CHAIRPERSON: So which automatically means that even

in this instance, I understand why it should be done.

ADV SELLO SC: In fact, I think we are about all running on empty now. It is an approach I would prefer not to have to engage in. It is laborious. And at the end of the day, it achieves, I think, for purposes of the Commission, very little, if anything.

CHAIRPERSON: In this case, actually, I agree with the point you have just made.

ADV SELLO SC: Yes.

10 **CHAIRPERSON:** In this case, Advocate Johnson, witnesses have given what, on the face of it, appears to be very strong evidence that you did share the docket with General Khan. Very strong evidence. What could have countered that would have been testimony from you, which, as we now see, you are not willing to do. Without contradiction, that very strong evidence may lead to a conclusion by us that those witnesses were telling the truth.

ADV JOHNSON: I understand.

20 **CHAIRPERSON:** I hope you understand that this has nothing to do with the unacceptable drawing of inferences from your failure to testify. That is not what I am talking about. What I am saying is the evidence on its own is so strong that if not countered, it may easily lead us to the conclusion that you did share the docket with General Khan.

ADV JOHNSON: I understand.

CHAIRPERSON: So which perhaps may obviate the need for us to go through this laborious and painful exercise.

ADV SELLO SC: Indeed, Chair. It is too horrific to contemplate. I, too, would not want to go through it. But then it goes further as regards inferences that we suggest be drawn by the Commission as all the evidence tendered by Witness O must therefore be accepted, particularly in circumstances where you were provided with an opportunity in this Commission to contradict any aspect of her
10 testimony.

If you do not, then the Commission will have no basis to reject any suggestions and any conclusions she could potentially have drawn from the evidence that she has tendered. Are you happy with that?

ADV JOHNSON: I understand. May I ask the Chair just for a five-minute indulgence, just to speak to the legal team?

CHAIRPERSON: Thank you.

ADV SELLO SC: And then we also would like to make this as painless as possible, but I hope that there is an
20 appreciation that there are rights that I would like protected.

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

ADV JOHNSON: Thank you, Chair.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Ms Sello?

ADV SELLO SC: Thank you, Chair, and thank you for granting Advocate Johnson an opportunity to confer with her legal counsel. Advocate Johnson, then to recap, as you correctly pointed out, Mr Matling [?] testified, so did Mr Roelofse and Witness O, and all of them testified on matters relating to your sharing of the docket implicating General Khan in an assault with General Khan, pursuant to
10 which General Khan then prepared his own statement to the police. That is, in summary, what their evidence was about.

We are at a point where I must give you an opportunity to challenge any of the evidence that they tendered to the Commission, and if you elect not to, I think it is incumbent upon me to draw to your attention that that evidence as tendered by them stands uncontroverted and the Commission would have no basis to reject any aspects thereof. Do you appreciate what I am saying, and what is your response to the opportunity to challenge any of the
20 evidence of the three witnesses I have named?

ADV JOHNSON: Thank you, Chair, and I must at the outset indicate that this is not a decision I make lightly, nor do I make this decision to frustrate the Commission. I have come to the Commission, as I have over several days, and have answered as best I could on all matters.

This matter, however, affects me directly. I am aware then that should I choose not to answer any of the questions, they remain unchallenged. I elect not to answer questions, so as not to incriminate myself.

ADV SELLO SC: Sorry, and that will be in relation to all aspects of each individual witness's testimony?

ADV JOHNSON: That is correct, Chair.

ADV SELLO SC: Yes?

ADV BALOYI SC: Can I just check, does that include the
10 testimony about your interaction with Mr Bateman, and there is two parts to it? There is the first, which results in the docket coming to you, and then there is the second part where he says you have called him, he has filed an affidavit, he spoke to you, I mean rather you spoke to him after all of this had come out, when you became aware of the investigation. Is that part of what you say you accept that, firstly you take a view, you are not going to speak to it, but you accept that it will stand as testified to by the other witnesses?

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

ADV BALOYI SC: You accept that? Okay. And one last question about that for me. At the time, and this does not raise a self-incrimination kind of answer, at the time that you are communicating with Mr Bateman, was he a journalist? I think he has moved on now to, he will forgive

me if he is not at AfriForum, not that there is anything wrong with that, but ...[intervenes].

ADV JOHNSON: He is at AfriForum, yes.

ADV BALOYI SC: But I think that is where he is now, yes. But at the time of your communication with him, he was a journalist at the time?

ADV JOHNSON: That is correct, Chair.

ADV BALOYI SC: All right, thank you.

CHAIRPERSON: There is the part where you spoke whilst
10 Commissioner Baloyi was speaking, but I just want to place it on record. You said Mr Bateman is with AfriForum?

ADV JOHNSON: Currently, yes.

CHAIRPERSON: Right now. Thank you.

ADV SELLO SC: Thank you, Chair. Chair and Commissioners, I guess that takes care of that issue and matters arising from the testimonies of Mr Matlin, Mr Roelofse and Witness O, and based on the position that Advocate Johnson has assumed, notwithstanding a formal invitation to her before the Commission to persuade the
20 Commissioners otherwise as to the correctness of that evidence, then there is no point in going through the evidence because I think she has given a total answer to those, and I guess the cards shall lie where they fall. I do not need to take that topic further.

ADV BALOYI SC: That means you, should we take it, you

will then make submissions to us that the evidence of those witnesses should be accepted as true?

ADV SELLO SC: I make the submission now and point out to the Commissioners that that evidence stands wholly uncontroverted. The singular witness who could have challenged that evidence has elected not to. The reasons thereof become irrelevant. What is relevant is the weight of that evidence before the Commissioners, and I argue that it has to be accepted because there is no other basis, in fact
10 or in law, to question the accuracy and correctness of that evidence.

ADV BALOYI SC: Thank you, Ms Sello.

ADV SELLO SC: Thank you, Commissioner.

CHAIRPERSON: We will see what to do with it when we prepare our next report. That is your last issue.

ADV SELLO SC: No, that is my last word on that topic. I just have one small question. And this one ...[intervenes].

ADV JOHNSON: [Indistinct]... is small.

ADV SELLO SC: Minute, minute. This one, I have to go
20 into the chats and flight it because unlike the position I previously assumed, it really does not, it is not necessary to – well, it does speak to the close relationship you have. But my interest in it is slightly different, and it is of your testimony, but I think it needs to go on record. It is a matter that will become relevant to the Commission going

forward.

And for that purpose, I would like to refer you to page 3222 of File 8. This is a message sent to you by General Khan on 07-09-2021, and that is on the 9th of July. We know the date is the American version. Now, my interest in this particular message is General Khan is sharing with you details about a bust he was involved in at a business premises in Aeroton. Here is the date of the 9th of July.

10 Second paragraph, we have dealt, we have had testimony regarding that bust. It involved, on record, the seizure of 541 kilograms of Cocaine. You might have heard about it, or perhaps not, but what I state to you is factually correct. I am interested in what General Khan says to you at midway the second paragraph, and he states that:

“552 blocks of pure Cocaine were seized
with a street value of approximately R200
000 000.”

Why it strikes me is we have always known that Aeroton
20 bust to involve 541 kilograms, and that General Khan was a part of that eventual seizure. I find it interesting that in a message to you, he has got a slightly different weight of 552 blocks. So just to confirm that you got this message, not suggesting that you know anything about that.

ADV JOHNSON: And just to confirm that the reason this

message would have come is at the time in 2021, we were dealing with organised crime matters. And very often, even General Kadwa, for example, would activate us to say at the DPP Office there is such a matter, so that we looked out for the matter and we were able to allocate resources to them, but this is the message I received.

ADV SELLO SC: Yes.

ADV JOHNSON: And so your conundrum is real about why in this message you have 552, which must be the correct
10 number.

ADV SELLO SC: Which must be the correct number because one would think this message was created contemporaneously with the seizure.

ADV JOHNSON: And probably on the scene at the time.

ADV SELLO SC: Exactly. And five years later, we sit here and we are talking about a different tonnage. But like I said, this is not a matter that you can shed light on. I guess the Commission will have to pick it up with General Khan at the right time. Thank you. Chair, with a response
20 to that question, that brings to a close my leading of the testimony of Advocate Johnson, unless the Commissioners have further questions. Thank you.

CHAIRPERSON: Thank you, Ms Sello, so much for promising us that we would be done by tea.

ADV SELLO SC: If I may, Chair, with your leave, that

promise more or less stood. It might have pushed to lunch, except I actually commenced with my engagement with the witness after tea. The first part of the day having been taken over by the Commissioners.

CHAIRPERSON: Thank you, Ms Sello. Advocate Johnson, thank you very, very much for staying with us for as long as you did. Most appreciated.

ADV JOHNSON: Thank you, sir. It was my duty.

CHAIRPERSON: Yes.

10 **ADV JOHNSON**: I am no longer the head of IDAC.

CHAIRPERSON: Yes.

ADV JOHNSON: But what I would like to ask is, given that we are two years old, I think sometimes people lose sight of certain things. I do appreciate, as a result of the engagements, what has become apparent is that there needs to be a few more checks and balances than there currently are. And I am hoping, Chair and Commissioners, that that would be at least a part of those recommendations so that we are able to take them on board, or IDAC and the
20 NPA can take them on board.

We have a duty to the country. And so, because we have a duty to the country, we have to rely on sound minds as yourself to, where we have erred, at least point out our errors and hope that we find our space. It was created for a specific reason, and I would like to think that that reason

fulfils itself even in my absence. And thank you, Commissioners, for the opportunity. And I would like to thank Advocate Sello for being as kind and patient as she has been. We have had long days. So thank you, and to my counsels as well. Thank you.

CHAIRPERSON: Thank you. And perhaps something I should say is that despite what may have been a gruelling engagement, you still found time to put in a few words of humour. Thank you very much.

10 **ADV JOHNSON:** Thank you.

CHAIRPERSON: You are excused, Advocate Johnson.

ADV JOHNSON: Thank you, Commissioners.

NO FURTHER QUESTIONS

CHAIRPERSON: Thank you very much. Let us adjourn and resume at 09:30 tomorrow.

ADV SELLO SC: Thank you, Chair.

INQUIRY POSTPONED TO 30 JULY 2026

INQUIRY ADJOURNS

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