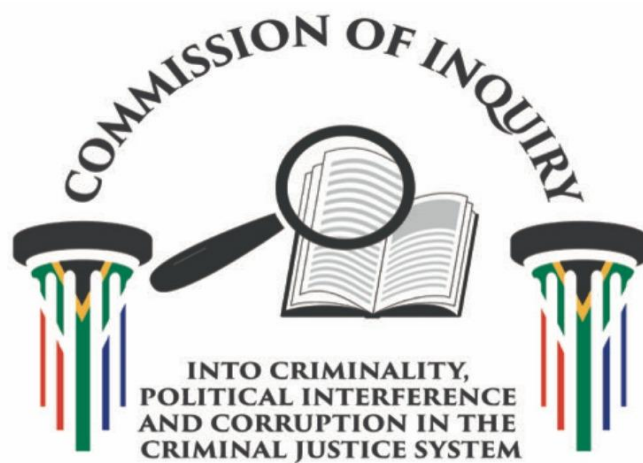


JUDICIAL COMMISSION OF INQUIRY INTO CRIMINALITY,
POLITICAL INTERFERENCE AND CORRUPTION IN THE
CRIMINAL JUSTICE SYSTEM

HELD AT
BRIGITTE MABANDLA JUSTICE COLLEGE

24 AUGUST 2026

DAY 165



PROCEEDINGS ON 24 AUGUST 2026

CHAIRPERSON: Good morning, Ms Sello. Good morning, Ms Hassim. Good, but, but good morning, good morning so long.

ADV MISSI: Good morning, Chair. I am I am Advocate Missi on behalf of Mr Matlala.

CHAIRPERSON: Sorry?

ADV MISSI: I am Advocate Missi on behalf of Mr Matlala.

CHAIRPERSON: How do you spell the surname?

10 **ADV MISSI:** Missi, M-I-S-S-I.

CHAIRPERSON: Oh. And good morning to you too, Mr Matlala.

MR MATLALA: Good morning, Chairperson.

CHAIRPERSON: Thank you. Who do I look to or at?

ADV MISSI: I will address the Commissioners, Chair. As scheduled, we continue today with the testimony of Mr Matlala. The Chair will recall at his last appearance, his legal representatives intended to move an application in terms of which they sought to assert certain of his
20 constitutional rights. It was agreed that that application will be in writing. That application and its argument will be dealt with by Ms Hassim, and at the conclusion of which I will then proceed with the testimony of Mr Matlala. Thank you, Chair.

CHAIRPERSON: Thank you.

ADV HASSIM SC: Thank you, Chair.

CHAIRPERSON: Yes, Ms Hassim.

ADV HASSIM SC: Chair, we are here to start the morning's proceedings at the behest of the legal representatives for Mr Matlala on the basis of an application that they brought on the 21st of August. As the Chair and the Commissioners will recall, there was a very strict timeframe that was issued for the delivery of pleadings in that application.

10 **CHAIRPERSON:** Was it in this matter that for the first time I even said there should be no slippages, or was it in another matter?

ADV HASSIM SC: It was in this very application, Chair.

CHAIRPERSON: Yes.

ADV HASSIM SC: In which you emphasised that there will be no slippage and you were precise about the time at which the various pleadings and heads of argument ought to be filed. So we have, as the Evidence Leaders, there was an affidavit filed, not on time, on Saturday. It was 45
20 minutes late. The Evidence Leaders responded to that by means of an answering affidavit that was filed according to the schedule.

CHAIRPERSON: Was there an explanation, even if informally, informally in the sense of a letter as opposed to perhaps an application for condonation? I have not seen an

application for condonation, but at least an informal explanation, say by letter, for example?

ADV HASSIM SC: Chair, I ...[intervenes].

CHAIRPERSON: For their lateness, for Mr Matlala's lateness.

ADV HASSIM SC: What I am advised is that there was a delay in obtaining the signature from Mr Matlala. We then requested the unsigned version. So what was 45 minutes late was the unsigned version. We do not know why that
10 could not have been provided on time, because it was the unsigned version with the later to follow. The later signed version came much later in the day. We do not have any further explanation for it, and my learned friend will no doubt have to address the Chair on that.

But just to put the order of events in context, this is in the context of the ruling. The Evidence Leaders then filed the answering affidavit, which was due at 10 o'clock on Saturday morning. That was duly filed. The second aspect that we were required to address was heads of argument
20 based on the application. Those heads were due at 6 p.m. on Saturday. They were duly filed at 6 p.m. on Saturday. What we did not receive ...[intervenes].

CHAIRPERSON: By ...[intervenes].

ADV HASSIM SC: By the Evidence Leaders. What we did not receive was the replying affidavit from the

representatives for Mr Matlala, which was also due at 6 p.m. on Saturday, nor did we receive heads of argument. We have not got an explanation other than a letter, and Chair, if I may take you to that letter. I am not sure if it is in your correspondence bundle or if it is provided to you separately. It is a letter that was provided on Saturday at 5.05 p.m.

CHAIRPERSON: But if it is the letter that, amongst others, says Ms Van den Heever could not attend the consultation,
10 she was not well, and also talking about the replying affidavit and written submissions which were not filed, we have had sight of it.

ADV HASSIM SC: That is the letter I am referring to.

CHAIRPERSON: Yes.

ADV HASSIM SC: What we understood from that was that there was still a consultation to take place with the client, and that we would receive the replying affidavit or the heads at some point on Sunday. It never arrived. I must also say that the heads of argument, of course, are not
20 dependent on the consultation with the client. The heads of argument could have been provided.

As we sit here, we do not know what the legal basis is for this application other than broad assertions of the privilege against self-incrimination and what we have seen from the affidavit, that they wish to rely on a challenge that

they intend to bring in the pending trial in relation to the chats and the recordings as being unconstitutionally obtained evidence. I am not going to stray into the merits of our opposition to the application at this point, Chair, because I am jumping the gun. My learned friend must address you first.

What I want to do to begin with is to place in context how we are sitting here before you today, which is we have filed our answering affidavit and heads of
 10 argument. We have received nothing from my learned friend, and we have not received a condonation application or a postponement application.

CHAIRPERSON: All right, all right.

ADV HASSIM SC: And I think once my learned friend addresses you on the merits, I can then turn to the merits.

CHAIRPERSON: Thank you. Thank you, Ms Hassim. Ms Missi, let me start by correcting myself before you address us. I gave instructions very early this morning that a directive be sent out that in the event that a postponement
 20 is not granted, I direct that only 30 minutes of argument will be allocated. I referred to a postponement because of an erroneous recollection of the contents of the letter that Ms Hassim has just referred to. My memory, which was a lapse, was of the view that that same letter also sought a postponement. My co-Commissioners this morning

corrected me and said the letter does not seek a postponement. So I thought I should, in case my directive created confusion, just correct myself up front. But I must say this. If we get to the point where the application has to be argued, my directive as to time allocation stands. Let us hear you.

ADV MISSI: Thank you, Chair. I considered how I would address the Commission with regards to this, and I deem it important to refer to a folktale that I have often heard in the
10 corporate world. And the story goes that a security guard was once informed that the boss or the CEO of the company has given instructions that at 6, before 6 a.m. no one ought to enter the building. And the said CEO, on another day, attempts to enter the building before 6 a.m. and what he is told by the security guard is that huh-huh boss ...[vernacular] you will not enter here. I was told that you do not enter before 6 a.m. It does not matter whether you are the CEO or you are the one that gave the rule, I will not open for you.

20 And I proceed with that because I want the Commission to get a proper understanding upon which the entire team of Mr Matlala labours under. One would note, as correctly put before the Commission by Ms Adila Hassim, that we did endeavour to provide them with an unsigned affidavit 45 minutes late. That is correct. It then took us

approximately three hours to file our subsequent signed affidavit. Logically, as an individual, a layperson sitting anywhere would wonder to themselves, but if you had an unsigned affidavit and you only needed for your client to consult, make whatever changes you needed to make, why would it possibly take you three hours for you to then get a signed affidavit that is commissioned and file it and serve it on the Evidence Leaders?

And that should give you a picture of how difficult it
10 is for you to get access onto the premises, to get driven from your entrance as a visitor all the way into C-Max. When you enter the entrance at C-Max, how long you have to wait to get searched, to complete the forms for you to then get taken from that point and walk into C-Max, where you also at that point have to wait for somebody to come and take you up to the boardroom that we have fortunately been allocated by management within C-Max.

You then are in there, you are not allowed to have your cellphone devices, which in this day and age, that is
20 what we primarily depend on to get access to the Internet. With that being said, we then have to go through the affidavit. You go through the affidavit, you make the changes. You now have to call said individual to come back and to take you guys downstairs for somebody to open the door for you to get out. You are not allowed, and I actually

have got a tongue lashing personally by the management of security at C-Max, informing me that I do not understand and cannot comprehend the level of security and risk that I am putting myself under by wanting to roam around the C-Max prison without somebody there to guard me and to accompany me. I then was taken to another office where I had to wait for somebody to come and take me to walk out and go to the security with my learned friend, my instructing attorney rather.

- 10 We then waited approximately 30 minutes to get a ride from C-Max all the way to the gate where we would be able to get access to our phones, get the Internet, and for him to then go and print the affidavit and then come back. That is a process on its own. We then have to start again, request for us to get a pickup to go back to C-Max, follow the whole process, somebody to pick us up as I had explained initially. And that on its own tells you the difficulty under which we have to labour to get an act that would ordinarily take plus minus 35 minutes to get done.
- 20 But it took us almost double the time.

Over and above that, we did indicate to the Evidence Leaders that we had an issue because our lead Counsel, Ms Van den Heever, was the one who was scheduled to go and consult with Mr Matlala. So on the way there when they had received the replying affidavit, she was

unable to consult. She turned back home. And by the time we were able to speak to her, I could not go back in. I am then further instructed by my , I am told by my instructing attorney that even when he arrived, he was not allowed to consult the way we were allocated to consult previously. He was treated as an ordinary visitor, so all he could do was hand over to Mr Matlala the answering affidavit rather and explain to him his understanding of the legal issues and the position that we would take going forward.

10 Mr Matlala then gave us instructions, gave him instructions that he would need to read the replying affidavit and he wants to consider the limited advice that he has received from the instructing attorney and that he also wants to hear the position that is being taken by us as Counsel. And again, you note, we do not have cellphone devices. He does not have access, rather, to a computer where we could possibly send him an email and maybe in the evening he could quickly just see what it is that we have said and maybe then, before we arrive, he would have a
20 position and we could proceed.

 On Sunday, Ms Van den Heever then gives me instructions to go with our instructing attorney to attend to this consultation with Mr Matlala. I personally attended to it. I had to grovel with the head of security and beg for him to at least give us five minutes to engage with Mr Matlala so

that we would be able to give him an idea of where we stand and then hopefully we can get some instructions. Over and above that, while we are at the prison, we then receive another affidavit from the Evidence Leaders which they intend on using. That same affidavit, I had to quickly give to Mr Matlala to glide to, glance to. He did not even get an opportunity to read it and to give us a position and we do believe that he has to address it in the replying affidavits at minimum.

10 **CHAIRPERSON:** Is that other affidavit the one deposed to by the senior investigator, Mr Dlamini?

ADV MISSI: That is correct, Chief. That is correct. And so, with that being said, the limited time that we had while trying to balance getting information from Mr Matlala and maintain relationships with the individuals that tomorrow we have to come back again and beg on a Sunday, if necessary, to give us access to him. We then had to respect the time that they had given us, quickly give him what we gave him, have him glance through the affidavit,
20 which myself, personally, I had not read through and I could not even give him an idea of exactly what is being said in the affidavit, except to say it was from the lead investigator and has to do with a consultation that they heard on an earlier encounter with the Evidence Leaders, I believe.

With that being said, we were unable to get

instruction from him. The little information that we got required us to then create a strategy of how we will move forward and still be efficient and our conclusion was that the best way to move forward would be for the instructing attorney to go through the docket again, go through the section 204 affidavit so that he can adequately provide evidence before, rather, depose to an affidavit that is correct and properly represents Mr Matlala.

We have not been able to conclude that process
10 and as a result, we were unable to file our replying affidavit as we had intended to on Sunday, Chair. With that being said, from Saturday, Ms Van den Heever has been sick and I do believe in her first appearance on behalf of Mr Matlala at some point she intimated that she suffers from rheumatoid arthritis. That has put her in a position where she is so ill, I was engaging with her this morning, she cannot use her hands or feet, she is with the doctor and the consultant to see a way forward.

But what she did guarantee me is that hopefully
20 with the medication that she is receiving, by the afternoon she will be in a proper position where she will be able to continue with us working and appear tomorrow to argue. So, my instructions right now, having considered the fact that we are constantly being hit with ...[vernacular] you cannot do this or that, and we have to try and navigate the

systems where ordinarily a layperson not sitting in this Commission would think, well these individuals are incompetent or maybe perhaps they are trying to not come before this Commission in good faith. That is not the position. You have to be in it to truly understand what it takes for you to properly represent Mr Matlala because he is not an ordinary witness that you have access to at 12 a.m. in the morning or at 3 a.m. in the morning. We do not have that liberty before us.

10 And I do know with regards to the additional bundles that we received later on, they make it even harder because he wants to read. He wants to know what is being said there so that he can give us proper instructions moving forward. He is not in a position where he feels comfortable that it would be smart and wise for him, given the status that he holds, outside of the Commission, to say to the Commission, well, I did say this, let us go ahead, without considering the implications that it would have on him.

20 And we beg this Commission, humbly so, Chair, to consider all the elements that we consistently have to deal with to try and ensure that we represent Mr Matlala and also stand before the Commission in good faith, that we are given an opportunity to file that replying affidavit, our heads of argument, and as well as a written condonation application for the late filing. Thank you, Chair.

CHAIRPERSON: Thank you. Thank you, Ms Missi. Yes ...[intervenes].

ADV HASSIM SC: Chair, just three points in response.

CHAIRPERSON: May I just raise an issue, Ms Missi. What the Evidence Leaders' answering affidavit raises is a legal question, or rather what it raises are legal questions, 100%. So I do not understand this issue of agonizing over how, when, to consult Mr Matlala with regard to a replying affidavit. Those are legal questions which would not
10 necessarily have required Mr Matlala. Those are legal questions that you, as lawyers, should have been able to respond to.

Truth be told, actually, there was not even a need for a replying affidavit. You could just have put together written submissions, and you would not have been out of time. So I have difficulty understanding the difficulties that you say you had.

ADV MISSI: Chair, yes to the fact that it is, it relates to legal issues, but there is also information during their
20 consultation, as limited as it was, where it became clear to us, having had sight of the replying affidavit, that there is factual elements that need to be addressed that relates to documentation which we did not, or rather they did not have at hand when they were consulting. To say to that, we received a further document this morning from Mr Matlala

that he was unable to go and obtain from his, the room at, or the prison cell that he is been kept in and it speaks directly to the issues that we would have to address in terms of the legal points.

CHAIRPERSON: That is very peripheral. Those issues about whether Mr Matlala received certain documents a day or two before the hearing of his testimony, those are very peripheral issues and they have nothing to do with the legal questions that Mr Matlala's application raises. So I think

10 my point stands.

ADV MISSI: Chair, I did not hear the last few words that you said.

CHAIRPERSON: I said I think my point stands.

ADV MISSI: Noted, Chair.

CHAIRPERSON: You are free to respond. I am not a dictator.

ADV MISSI: No, Chair, I believe what I have set down in terms of the entire process and how we found ourselves here today, I cannot explain it any further than what I already have, Chair. And as I stated earlier on, I can only
20 beg this Commission to take into consideration and to give us a chance up until tomorrow morning, Chair.

CHAIRPERSON: I am listening. You may continue.

ADV MISSI: Thank you, Chair.

CHAIRPERSON: Let me indicate what my inclination is,

which you would obviously have seen in the directive that I issued. In fact, I sent it out to the attorneys after 6 a.m. I do not know what time they, instructing them to write a letter to Mr Matlala's attorneys, I do not know what time that email was sent, but I gave the instruction after 6 a.m. My inclination is for Mr Matlala's application to be argued now, this morning. That is my inclination, and what is your response to that?

ADV MISSI: Chair, my, rather my application for a stand
 10 down until tomorrow still, that is the position that we are taking. If the Chairperson could grant us that opportunity to come before this Commission prepared, and at least for you to have sight on paper, at minimum, some of the case law, because we do believe that this is an issue that has never been dealt with by any Commission in South Africa, speaking to the position that we find Mr Matlala in and we do deem it imperative that you have sight, yes, of the legal argument, but also the case law that we rely on to make out this argument.

20 I do not know how efficient it will be, given that it is a constitutional issue and the position that we find ourselves in. And we have tried to look and research to see ...[indistinct] if we could find something that could give us guidance on this here, on the issue that we intend on arguing and we do believe that it would be of a benefit to

the Commission to have sight of the case law in our written submissions, Chair. I do not know how beneficial it would be if I only argue the same. You are unable to make reference to those cases and the paragraphs and see exactly, is she applying herself correctly, do you agree with me, yes or no, and what is the position. And I think perhaps that is the consideration you would have to make in finality, which is one, this is a position that we believe any Commission here in South Africa has never had to deal with
10 and answer and consider. And perhaps it would be beneficial to have consideration of the cases that we would like to refer to or refer the Commission to, Chair. Thank you.

CHAIRPERSON: Thank you. I will go back to the question that I asked about this being a legal question. This is something that Ms Van den Heever was quite passionate about from the day of the last appearance. She referred a number of times to an application where points *in limine* would be raised. From the moment that you start thinking
20 about bringing an application in which you are going to raise points *in limine*, you already know what the law that supports you, is.

So it should have been a matter of relative ease. In fact, even easier for you, Ms Van den Heever, as Mr Matlala's lawyers, to argue the law than it would be for the

Evidence Leaders on whom you are springing these points *in limine*. So I am not sure that I follow your response. Can you tell me why written submissions were not or could not be filed on legal issues that were the start of all this, legal issues that you thought of even before commencing this, the process that we have before us this morning. And underline, you were ready with the law right from the beginning, otherwise, you would not have even considered bringing an application in which points *in limine* were being
10 raised.

ADV MISSI: Chair, I can only take you back to the fact that from our consideration was that it was imperative for us to prepare the replying affidavit, my apologies. From our considerations, we found it or deemed it imperative for us to prepare the replying affidavit and to get further instructions from Mr Matlala with regards to the position that we are taking. And I do note the point that you are making that perhaps what we could have done in the interim was prepare the heads of arguments to assist the Commission
20 and have them filed on time. I take note of that, Chair.

But that was a delay that came as a result of the consultation, the considerations that we had to make, which is that given the answering affidavit, we deemed it important to get further instructions from client with regards to the replying affidavit before we proceed with penning

down the position that we have taken with regards to the application. That is as far as I can take it, Chair.

ADV KHUMALO SC: Morning, Ms Missi. The point is simply this, Mr Matlala would not have assisted with the law, because the law is for lawyers to research and to argue. He could only have assisted with the facts and the giving of instructions, as far as whether he wants to persist his application. But the law is for the lawyers, and the moment they advised him to bring this application, this was
10 the time to start considering. Especially being aware of the strict timelines under which this Commission operates, we simply cannot afford a wasted day, because our schedule is already very tight and that is the difficulty we find ourselves in.

ADV MISSI: Commissioner, it goes back to the considerations that we made. If I have to make further submissions, then I have to make up stories, and I am not prepared to do so. What I have explained to the Commission is the step-by-step process that we have gone
20 through, and I do take note of the points that both yourself and Chairperson are raising. Thank you.

CHAIRPERSON: Yes, Ms Hassim. Perhaps let me just ask this quick question of Ms Sello. How much longer do you think Mr Matlala's testimony will take? I know those estimates have regularly been overshoot.

ADV SELLO SC: I know, Chair, and in this case it shall be particularly so, because Mr Matlala's testimony in truth has not even begun. So all he has done is read his statement into the record, which he has sort of supplemented through this application. I guess he may want to place that also on record. We had anticipated a minimum of two days after he has placed his statement on record, Chair.

CHAIRPERSON: So today and tomorrow.

ADV SELLO SC: Today and tomorrow. A minimum of two
10 days, thank you, Chair.

CHAIRPERSON: All right, thank you, thank you, Ms Sello. Yes, Ms Hassim.

ADV HASSIM SC: Chair, just a few responses to what Ms Missi has submitted. The first is, and just to correct some of the facts, the first point relates to the filing of the founding affidavit. It was due at 10 a.m. on Friday. This was subsequent to the directive of the Chair that was made on Monday. So there was a long period between Monday and Friday for the purposes of consultation with their client
20 before the filing of the first affidavit. So the long explanation that was given about the difficulties with accessing the client in Correctional Services does not really assist in relation to the founding affidavit because there was sufficient time.

But it is not only sufficient time from the period

between Monday and Friday last week. Mr Matlala's legal representatives have been raising this issue for some time prior even to Monday. They are aware of the categories of evidence that the Evidence Leaders wish to canvass with him in questioning. They have known this since at least March of this year. So this application could have been brought much sooner and so all of the time, in fact, that was available to Mr Matlala's legal team extends over months, not over days. So that is just to address the founding
 10 affidavit and the explanation for the lateness which I say does not assist Mr Matlala's team.

The second point is about the heads, and I am not going to repeat it because, Chair, you have made the point and Commissioner Khumalo has made the point, those are legal, that is legal argument. There is a legal team that is assisting Mr Matlala. The heads of argument could have been submitted timeously, and they were not. There was no need for consultation in relation to the heads of argument.

Preliminary points are by their nature legal
 20 submissions. The second point ...[incomplete].

CHAIRPERSON: Please continue.

ADV HASSIM SC: On the point of the legal submissions, you would have seen from our answering affidavit that we set out the legal principles. It is not true that this is not circumstances that had arisen in the Commission before.

That is not correct. The authority that we have submitted to the Commission that we say is the controlling authority is the Secretary of the Judicial Commission v Zuma, the Constitutional Court judgment, and specifically the judgment by Justice Jafta, which was a unanimous judgment and we referred to paragraphs of that judgment which we say is the governing authority to be considered here.

So, the law on how one should deal with the assertion of the privilege against self-incrimination in a
 10 Commission ...[intervenes].

CHAIRPERSON: Just explain the point about the judgment having been unanimous.

ADV HASSIM SC: The judgment by Justice Jafta in, on the point of self-incrimination and the assertion of the privilege against self-incrimination in a Commission of inquiry. So that is the judgment on which we have relied. We set out the legal principles in the answering affidavit even before we filed our heads. That is just in relation to the point on the privilege, the section 3(4) point.

20 The second legal point was in relation to unconstitutionally obtained evidence and there too, we set out the legal principles in the answering affidavit even before we got to the heads of argument. And the point I am making is that these are legal submissions, that is why our affidavit looks, sets out the legal principles and there we

explained why the argument that Mr Matlala is entitled to blanket immunity from questioning in relation to broad categories of topics is not available. It is not a competent relief that they were seeking from this Commission. That was already set out in our answering affidavit. So it is not correct that there is no law on this and that they needed to have more time, quite apart from the important points that you and Commissioner Khumalo have already made that this is something that is been brewing for some time by Ms Van
10 den Heever.

The third point is just in relation to, I just want to correct the Dlamini affidavit. It is true that the Dlamini affidavit was filed with the Commission and submitted to Mr Matlala's legal team this weekend, but that is not part of the application that is before the Commission today. It is entirely separate and that should not hold up the argument on the application. Those actually are my submissions. Chair, I think that the Commission will decide on how much of time, if at all, any time, is to be granted to my learned
20 friends. But the argument is there from our side. We are ready to respond.

Our concern as Evidence Leaders, as we have contained, as we have set it out in the heads of argument, we wish to have the application dismissed and we want the questioning on Mr Matlala to proceed immediately because

time is short.

CHAIRPERSON: Thank you, Ms Hassim.

ADV HASSIM SC: Thank you, Chair. Sorry, Chair, there is one last point that I forgot ...[intervenes].

CHAIRPERSON: Yes, yes, yes.

ADV HASSIM SC: And it is sitting here in front of me. I am sorry about this, Chair, but we also received communication yesterday, and this is something that perhaps my learned friend will want to consider and advise
10 on. It was not apparent to us yesterday whether, in fact, Mr Matlala's legal representatives were abandoning the application. And I say so because last night at 20:51, we received an email from his attorneys and the email says the following, if I may read it into the record, Chair. It says:

20 “Good evening, Evidence Leader. We respectfully request your urgent written clarification regarding the scope of permissible questions on record. As discussed yesterday, certain questions are excluded due to the pending criminal matter. We attempted to send an email to this effect, but it appears our system may be experiencing technical difficulties. To avoid any procedural uncertainty, kindly confirm in writing

which questions may be asked and which are excluded. This confirmation is necessary to ensure proper management of the record and safeguard procedural fairness. We would appreciate your written response.”

The response to this letter was as follows:

“Greetings and salutations.”

And then:

10 “Please note that until the Commissioners rule otherwise, there are no questions relevant to the terms of reference which we treat as being impermissible.”

So that was the correspondence between the two sides yesterday. It was quite confusing to us what the meaning of this was because what it suggests is a request for the questions, what questions we intend to pose. From that we thought that maybe the approach being taken is to
20 proceed on the basis of pose the question and then the privilege will be asserted once questions are posed and so I think that my learned friend may need to just also clarify that.

CHAIRPERSON: Ms Missi, does the letter mean that the application is abandoned or what does it mean?

ADV MISSI: Chair, no, the application is not abandoned. The reason for the email is to, we are trying to anticipate an instance where the ruling perhaps does not go in our way. And Chair, based on the ruling that you would make, then Mr Matlala would then have to apply the right against self-incrimination as and when the questions come. And I believe the thought process was that when it comes to those topics that he cannot claim privilege over, then what are those topics that we can anticipate engagement over so
10 we can prepare with regards to that. It was not to indicate in any shape or form to my learned friends that we are abandoning the application.

CHAIRPERSON: Yes, I must say that it was a very strange request. One cannot quite tell whether the request was for all the questions that are going to be asked to be itemized, which would be something that is unheard of and in fact quite bluntly very strange.

CHAIRPERSON: Chair, I do take note of the wording as well, the confusion that would have come from it, but my
20 understanding was that I think the attempt was to ask under which topics are you going to proceed on once the Commission has made a ruling with regards to whether we can proceed or the argument that we make brings the entire process to a halt. Thank you, Chair.

CHAIRPERSON: Thank you. May we see Counsel outside,

please?

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: The application for a postponement to tomorrow is refused. Mr Matlala's application must be argued at 12 midday today. Let us adjourn and resume at 12 midday.

INQUIRY ADJOURNS

INQUIRY RESUMES

10 **CHAIRPERSON:** Ms Missi, we were advised that we should come back earlier than midday and that this was at your instance. Yes?

ADV MISSI: Yes, that is correct Chair. When we were excused or stood down rather, we received further instructions from Mr Matlala having heard the engagement that we had prior to the stand down, and the position that is taken is that he feels that it is unfair that the Commission is putting him in a position where he has to proceed where his lead counsel, one, is not here, obviously not of her own
20 doing but because of an illness that became rather sudden in the manner that it has attacked her.

Two, because we have intimated that we have not prepared our heads in written submission, he is of the view that he is not comfortable to proceed because that implies that we are not properly, we are not fully prepared to

represent him and so his instructions are that if the Commission is not willing to at least grant us this afternoon, to ensure that we have those documents before you and that we have our heads put together properly, in the alternative he has no option but to instruct us to bring an application interdicting the proceedings of this hearing pending the review of the decision for us not to get a stand down until tomorrow.

CHAIRPERSON: You said something about this afternoon
10 and now at the tail end you say something about tomorrow, can you please clarify?

ADV MISSI: Chair, you recall when we began our discussion earlier on, we were requesting that the Commission stand us down until tomorrow morning, at which point we had made an undertaking that we would have served you with our replying affidavit and our heads of argument. And so what the instructions are is that our application on an urgent basis would interdict the proceedings of the hearing or him giving testimony, pending
20 the reviewing of the ruling that you would have made which is that we must proceed with arguing this matter.

Because he is of the view that it is unfair that he has been placed in this position where he has to proceed without Ms van den Heever who is his lead counsel and without heads of arguments before you which he believes

then implies that we are not properly prepared and we are being strong-armed into proceeding.

CHAIRPERSON: Now this time around you have not said anything about the afternoon, it is what you said about the afternoon that I want to understand.

ADV MISSI: Yes, Chair, what I meant is that if we stand down now it will imply that we only have this afternoon and evening I suppose to ensure that we get the documents before the Commission so that is what the afternoon
10 referred to that if you do change your ruling into us standing down or postponing until tomorrow it means that it is just this afternoon that we would have to ensure that we have bring the documents or serve them on the Commission and the evidence leaders. That is what the afternoon was.

CHAIRPERSON: You keep repeating that because you do not have your written submissions, you are not ready. Written submissions, yes they do assist legal representatives, but in the main written submissions are prepared for the assistance of the decision maker and not
20 so much the arguer. Do you want to address us on that on that distinction? So those would more have been of use to us, but seeing that the written submissions are not there we are prepared to forego the assistance we would have received from your written submissions, so as I say it is more for us than for you.

ADV MISSI: Chairperson, having engaged with client after we had stood down and obviously with what he had heard during our discussion, his instructions to us is that his observations and his views is that if Ms van den Heever is not here and we have not prepared our arguments for you, it implies that he is not going to be properly represented and he is not comfortable proceeding, which is why he is intimated that should the ruling not be changed to allow us to stand until tomorrow, it implies that, he is off the view
10 rather that he is being treated unfairly and he would rather approach a Court to have that addressed, Chair.

And I do note that you are distinguishing the difference between written submissions and who exactly they are meant to assist, but it is client's instructions that he is off the view of his lead counsel is not here, which together with us having not produced the heads before this Commission, that he is not properly represented and unfortunately I cannot comment any further than that, because as you do know myself and my junior, my
20 apologies, Chair I forgot, to put Ms Brighton onto record, she is the third junior on the matter, and consequently he is of the view that he is not willing to proceed and he would like an opportunity to have this addressed before Court, Chair.

CHAIRPERSON: May I ask an issue that we did not raise

before, it is this. Why is it that there is no substantive obligation for a postponement with sufficient clarity? Now it has just been emphasised to us that, as I understand it, the main reason is the fact that a lead counsel is not here, why is it that no substantive application for a postponement on affidavit was brought?

ADV MISSI: Chair, I think for one we did not anticipate that we would find ourselves in a position where we were not able to firstly consult with Mr Matlala yesterday to get
10 the additional information that we needed. Before we left I did intimate that there is a document that is important and it speaks to one of the bases upon which we bring this application, but it is obviously of a factual nature. He had to bring it here in the morning, so that is one element – the fact that we did not anticipate not being able to prepare the replying affidavit.

Number two, that then created circumstances that follow when we were not able to proceed and prepare the heads of argument on time to be before or to serve on the
20 evidence leaders and for the Commission to have sight off. And so those are the reasons why we are not able to prepare ourselves on time. Two, or rather finally, we had not anticipated that Ms Annalene would fall so ill to a point where she is unable to even be here in person. Because perhaps her being here in person as the lead counsel, we

would have had a better argument, so as to say, and maybe have created a way for us to proceed to argue on a legal basis.

But one thing I can say is that our instruction from client is that if his lead counsel is not here, he is not comfortable, and he does not feel properly represented.

CHAIRPERSON: But the main reason throughout for not proceeding today, is the fact that you did not have all the documents you think you require. And that was known for
10 quite a while back, and that had nothing to do with Ms van den Heever's being here or not being here. So at some point, at some point, especially because this morning a postponement is sought on the basis that these documents are not available. Your argument, that was the gravamen of your argument this morning.

A reference to Ms van den Heever not being well, was something that was said in passing in your argument. The main reason, the fact that no replying affidavit had been filed, and also the fact that written submissions had
20 not been filed. So the short point I am making is that that is something that was known for quite a while. At some point, a decision should have been made that seeing that we do not have those documents, and because we do not have them, we are going to seek a postponement, let us bring a substantive application for a postponement.

That is the point I am making. The issue about lead counsel not being here arises because I have now directed that I want to hear, that we as a Commission want to hear argument on the application on the points *in limine*. That is when now the issue of Ms van den Heever's absence takes centre stage, and that has nothing to do with why this morning you argued that there should be a postponement. I hope you do get the distinction. Can you address me on that on that distinction in particular with regard to

10 ...[intervenes]

ADV MISSI: Chair, I do...

CHAIRPERSON: Let me finish. With regard to why there is no substantive application.

ADV MISSI: Chair, firstly, I am just getting notes from my junior. Ms van den Heever here would have been prepared to argue the matter whether there were papers before us or not. That is the first point. Secondly, we do not anticipate an instance where she would be ill and not be in a position to appear before the Commission, which is why we are

20 unable to prepare a written postponement. Because in the morning when we engaged with her and she has been rushed to the hospital to go and have her ailment addressed, we had not anticipated that she would not be here in person in time for us to then prepare a written postponement application.

What I can assure you is that the letter that you sent indicating that you have not received a postponement application and will proceed absent of that application, we received it at around past seven in the parking lot of the venue where this Commission is being heard. And so, Chair, could we have prepared the postponement application if we were in this position that we found ourselves in the morning the night before, we would have endeavoured to prepare the postponement application.

10 That is with certainty.

But because this is something that happened to us in the morning and my instructions were to come before the Commission and to ask us to postpone only until tomorrow, that is the reason why you do not have a written postponement application.

CHAIRPERSON: Now, I just want to get an idea of how things are to unfold in the event that we, I am not saying we are adopting that stance, but in the event that we adopt the stance that we go ahead with a hearing of Mr Matlala's application, how will things unfold then? Will you walk out? Will you withdraw as Mr Matlala's legal representatives? I just want to get an idea of how things will unfold.

Going further and saying, if we get to a point, and underline if, if we get to a point where having heard Mr Matlala's application, we do not grant it and we go ahead

with a hearing of his evidence in the normal course, with him, of course, being entitled to raise whatever privilege he may want to raise. So I want you to address me with regard to how things unfold, even looking ahead up to and including that furthest or farthest point.

ADV MISSI: So Chair, as you rightly pointed out, it is either one of two options, which is the fact that we would be removed off the brief as his counsel and possibly even his attorneys. The alternative being that you would grant us
10 another ruling, which is perhaps to say within a certain period of time, please ensure that you have served and filed this urgent application which is your Part A and your Part B to review my ruling, and at which point we would get the opportunity to do so. I must say, I would not have ...[intervenes]

CHAIRPERSON: The application, the interdict, I assume that is a High Court interdict, so timeframes with regard to that would have nothing to do with us.

ADV MISSI: Mmm, mmm.

20 **CHAIRPERSON:** So...

ADV MISSI: Chair, I am not, when I refer to the timeframe, I would, I am referring to in terms of us ensuring that we have served you here and not what the High Court or the senior judge sitting would determine would be the ideal time for the urgent to be heard. That is just, again, ideas that I

am throwing out.

CHAIRPERSON: And may I, sorry, sorry to interrupt you, and as you are making your submissions, again, again, bear in mind I started with two big ifs. If we reach that point, you should be aware that there will be no interdict in existence at that point. Which would mean that nothing stops the Commission from going ahead and hearing Mr Matlala's testimony.

ADV MISSI: Chair, as I have said that we had not foreseen
10 an instance that the Commission would possibly consider not granting us an opportunity to approach the High Court and address the application that we seek to be heard on an urgent basis. And if that is the case, I do not want to pre-empt what we would do if you decide not to grant us that opportunity.

Because for me, it is a matter of you are either changing your ruling, allowing us to stand down till tomorrow, the alternative you say no, I am not granting it, at which point the question as to whether are you going to rule
20 to say, okay, since you have intimated that you want to have my ruling heard on an urgent basis and reviewed, then you are welcome to do so, I excuse you.

But if you choose to proceed without excusing us and thereby Mr Matlala, I would then ask for a stand down, because then there are implications on him that would

affect us, i.e. for one, walking out, and who gets to walk out, and if, for instance, counsel is removed off the brief, what are his options, and should he decide that he wants to walk out with us because he feels that he has been unfairly treated and has not been given an opportunity to be heard till tomorrow morning.

With our undertaking being that whether Ms van den Heever is here or not, we would have to ensure that I, being then the lead counsel, is prepared to continue and
10 present before the Commission, then again, as I stated, we had not taken instructions with them, I think it would give us, if you could, give us an opportunity to stand down further, depending on what your ruling is, to engage with him and consider what the implications would be, because there are different implications, should you decide to protest and want to walk away, and who gets to do the walking away, and what those implications are, would be, Chair.

I think it is wrong for me to pre-empt the instance
20 where we decide walking away seems to imply that we are protesting, because we would be walking away in protest, and if you walk away in protest, we have seen in previous instances what the implications are, and the client would have to consider that, and he would have to give us instructions, Chair. I cannot pre-empt, to answer your

question.

CHAIRPERSON: Thank you, thank you, Ms Missi. Ms Hassim?

ADV HASSIM SC: Chair, I have been listening closely to my learned friend, and it feels like the reasons keep shifting for how we have come about to be in this position, whether it is, because the last submission that Ms Missi made was that she would make an undertaking to proceed to deliver the argument in the absence of her leader, but if that is the
10 case, then what would be the need, then, for the postponement, so, and for the urgent interdict? It is not entirely clear to me.

It seems to me that, and I have some sympathy for Ms Missi and Ms Brighton, that juniors are placed in a difficult position where they have to step into the shoes of their leader. The leader has become unavailable for reasons not in her control. This is what happens in practice, and we are often called upon to step into the shoes of our leader on short notice and to be prepared to
20 do so. It is not an easy position, but it is one you assume when you take on a brief and you are junior counsel.

So, while I have sympathy for their position, it does not absolve them of their obligation to take the place of the leader. They were aware that Ms van den Heever would not be available today. This could have been brought to our

attention much sooner. One of the reasons that was advanced by Ms Missi for the delay was the inability to consult with the client.

That does not... that is not a ground, an adequate justification for a delay. That was in response to the chair's question about why did not you bring a postponement application? Because it is not a – the inability to consult on the law does not avail Ms Missi on this. This is a legal argument that is to be made. So, and I have been
10 instructed to put something on record. And I do so without having had the opportunity to alert my learned friend of this because it only came to my attention now while I am sitting here. And it goes to the point of the complaint by Ms Messi of the inability to consult.

CHAIRPERSON: Is it not Missi?

ADV HASSIM SC: Ms Missi. Apologies. Maybe I have got soccer on my brain. So... So, it is only come into my possession, I am instructed to put it on the record, and it is a message from the area Commissioner for DC, Department
20 of Correctional Services, Commissioner Khoza. And what he says, and this is received at 11.36 this morning, and as I said, I am instructed to put it on record. I am not going to read the entire thing into the record, just the factual part, not the comments, if I can put it that way. So the relevant part of the message is:

“Facts provided are not true. I am not even aware of the challenges advanced to the Commission.”

I think the challenges that were complained of. And then the next message:

10 “They consulted for three days and we are prepared to make concessions anytime because we understand the importance of the Commission. I checked with the head of the centre, Mr Qebengu, on all this challenges. He also denied to have created any disadvantage to them.”

So that is a message from the area Commissioner Khoza. And as I said, Chair, I am just putting that on record.

20 None of that actually changes the legal position that is before you. And the legal position is that a stated intention to launch an urgent application does not itself suspend this Commission's proceedings. Unless and until there is an order from a High Court that interdicts the Commission from proceeding, it can continue, subject of course to the Chair's discretion to adjourn.

And maybe what I should do on that score is just refer the Chair and the Commissioners to two authorities. And the first is the Constitutional Court judgment in city of *Tshwane Metropolitan Municipality v. AfriForum* and it is

2016 (6) SA 279 and as I said, Chair, the judgment of the Constitutional Court and the relevant paragraph is paragraph 74. And then as it happens, the other judgment I would like to refer the Commission to, is actually the Zuma judgment.

But not the one I made reference to this morning, which was Justice Jafta's judgment. It is the other judgment of Justice Khampepe. And the citation of that judgment is Secretary of the Judicial Commission of Enquiry
10 into Allegations of State Capture et cetera v. Zuma 2021 (5)
...[intervenes]

CHAIRPERSON: Sorry, there was a cough. Volume?

ADV HASSIM SC: Volume 5.

CHAIRPERSON: Thank you.

ADV HASSIM SC: SA, page 327 at paragraphs 94 to 95. So with those, that is also, yes, it is Acting Deputy Chief Justice Khampepe writing for the majority. So with those legal submissions, Chair, we request that ...[intervenes]

CHAIRPERSON: What do the cases say?

20 **ADV HASSIM SC:** Oh, let me take you to the City of Tshwane.

CHAIRPERSON: You do not need to quote verbatim, but you may just tell us the substance.

ADV HASSIM SC: Well, it supports a proposition, Chair, that proceedings are not halted, pending an intention to

bring legal proceedings. It is not halted even if you have brought the legal proceedings. And of course, we know here there has not yet been a filing of an urgent application. It is a stated intention to file an urgent application. So that is the proposition.

Well, let me just say, Chair, if I could just quote this one short aspect of the City of Tshwane judgment at paragraph 74. It reads as follows:

10 “It needs to be stated categorically that no
aspect of our law requires of any entity or
person to desist from implementing an
apparently lawful decision simply because
an application, that might even be
dismissed, has been launched to hopefully
stall that implementation. Any decision to
that effect lacks a sound jurisprudential
basis and is not part of our law. It is a
restraining order itself, as opposed to the
sheer hope or fear of one being granted
20 that can in law restrain. To suggest
otherwise reduces the actual grant of an
interdict to a superfluity.”

That is a paragraph to which I referred the Commission to, Chair. So with those submissions, we request that the application from the bar, as it were, for a postponement

should be dismissed and that we should be in a position now to proceed with the questioning of Mr Matlala as has been planned for some time.

CHAIRPERSON: I think the questioning would, if we do get there, the questioning would come after, depending on whether the legal representatives will indeed not be here, but the questioning would have to follow after Mr Matlala, if he all by himself, has been afforded an opportunity to move his application in person. So we will not, assuming that we
10 are with you, we will not straight away go to the hearing of mister, and again assuming. I was once misunderstood by counsel and we had an unfortunate heated altercation, he and I.

ADV HASSIM SC: We do not want to have a repeat of that. I understand the Chair clearly, of course, and I do not wish to pre-empt any deliberation and ruling by the Chair and co-Commissioners.

CHAIRPERSON: Yes, yes.

ADV HASSIM SC: My submission is merely putting forward
20 the position.

CHAIRPERSON: That actually takes us to a request that was made by Ms Missi, when I asked how things would unfold if or if, and Ms Missi requested a brief stand down for her to take instructions. I would assume you have no objection to that.

ADV HASSIM SC: I have no objection, Chair.

CHAIRPERSON: Yes. Ms Missi?

ADV MISSI: Chairperson, I did miss quite a bit of your interaction with Ms Hassim because I was trying to figure out how we are going to reply to the submission that she has made. Am I going to be given an opportunity to respond to the message that she received? I am going to ask that first.

CHAIRPERSON: Please do respond. Yes, yes, yes.

10 **ADV MISSI:** Firstly, Chair, the only thing that I will say is that those submissions were with regards to from Friday up until Sunday, the filing of our founding affidavit together with our consultation towards preparing a replying affidavit and the heads of arguments. It does not speak to any interaction prior to that.

Secondly, if I am being challenged on the submissions that I have made to this Commission with regards to that on a factual basis, I do believe the time stamps of when I went in and went out, because I was
20 present on Friday and I was also present on Sunday, can be looked at. That will show you how long I waited, where I waited, what happened, and ultimately, for example, at what time I got the opportunity together with my learned friend, Ms Brighton, to eventually sit down outside of the Correctional Service Centre and rather email the signed

affidavit.

So with that being said, Chair, I can only say that. If I am being questioned as to whether I am misleading the Commission or I am casting a particular view about the Correctional Service Centre, I am not. I was simply saying that the Commission is not aware, and any layperson out there is not aware, that they have rules and they keep to their rules and that has affected how we operated on Friday, Saturday, and Sunday.

10 But if I am being questioned, the time stamps, and I am sure they have recordings, the times you signed in, as well as cameras to indicate whether I am misleading the Commission or not. That is as far as I can take it.

CHAIRPERSON: Thank you. There is no way that based on what we are told from the bar, from both sides, there is no way, seeing how contradictory the two versions are, that we can take a decision on that. And in fact, I think for present purposes, it is not even necessary for us to take a decision or to go there at all. Do you wish to reply to the
20 rest of...

ADV MISSI: Chair, I... Sorry, that threw me off a bit. Oftentimes when you are on the legal representative side and you are being called to question about whether you are lying or not, it does throw you off because it speaks to your integrity as a legal representative.

CHAIRPERSON: Yes, yes.

ADV MISSI: I wanted to, because I believe in our earlier engagement, I wanted to distinguish between the position that has been taken by our client, Mr Matlala, by the client, Mr Matlala, as well as the arguments that I made earlier on. So the arguments that I made earlier on are in relation to us, whether we can proceed and why we say we should stand until tomorrow.

The second element of it, having come back and
10 taken instructions from client, those are his instructions about how he feels in terms of us having to proceed, should you insist that we proceed today and not wait till tomorrow? So there needs to be a distinction between the two. We are not shifting the goal posts from this is what we are saying earlier on in the morning, and now we are changing and we are saying this here.

What I spoke to mainly, now that we have come back after the stand-down, is with regards to the instructions and his observation, how he feels about it. The
20 earlier part still stands as it is, where you are asking us and me to address you as to whether we proceed or we do not proceed, and you made the ruling that you made, which is that we will proceed at half past twelve. So I just needed us to make that distinction.

CHAIRPERSON: And you do still need this stand-down

with regards to how things will unfold in the event that the decision is, we are going ahead.

ADV MISSI: Chair, we still do need this stand-down, but we had a discussion earlier and we are hoping that it does not come off as if we are being hostile as...

CHAIRPERSON: Not at all, not at all.

ADV MISSI: Because if someone has underlined for us that, oh, so now you need to go and pre-empt, are you going to walk away from us, it gave the impression, that if...

10 **CHAIRPERSON:** No, no, no, it is just wanting to know how things are going to unfold. There is nothing judgmental about it, and I have not observed any hostility, I just want to know how, if we do get there, again, underline, if we do get there, what is going to happen?

ADV MISSI: Chair, I would appreciate the stand-down.

CHAIRPERSON: [Indigenous language]

ADV MISSI: [Indigenous language]. Chair, I would appreciate the stand-down to just quickly take instructions from the client, and then I will come back with a response if
20 you do decide to...

CHAIRPERSON: Yes, thank you.

ADV MISSI: Noted, Chair.

CHAIRPERSON: Thank you. Ms Hassim?

ADV HASSIM SC: Chair, it is very important for me to make one remark, and it is in relation to the message that

was received by the Area Commissioner. My instructions were simply to put it on record.

CHAIRPERSON: No, no, no.

ADV HASSIM SC: My personal, I make no, I take no position on whether my learned friend, Ms Missi, is misleading this Commission or anything like that. That is not my intention, and I do not wish to be misunderstood at all to be suggesting that. It is simply an objective sort of message that was sent through that I put on record, and I
10 think perhaps what it is from the Commissioner's side to say, we are not being obstructive.

CHAIRPERSON: Yes, yes, yes.

ADV HASSIM SC: But the fact that it is difficult to consult with a client who is incarcerated, if any of us who know, who have gone through that, understand that it is a difficult process. And so I just wanted to make that clear.

CHAIRPERSON: An important takeaway actually from that text is this. As Ms Missi was arguing this morning, I actually did think of the possibility of the Commission
20 engaging with the prison authorities to ensure that the difficulties Ms Missi is telling us about, do not recur. Now, a good take home or takeaway from this text, is that such an engagement will actually, what, there will be no resistance to the request that I already had in mind.

ADV HASSIM SC: Quite so, thank you, Chair.

CHAIRPERSON: I will not indicate a time, yes, yes?

ADV MISSI: Chair, my learned friend just highlighted something. I did speak about how we often use our cell phones for internet. We use our cell phones to get Wi-Fi through them to connect to our phones. If that request could specifically include that we have our cell phones, because that would really make things easier for us, should we have to engage with him later on, to allow counsel at least one cell phone to come in with us.

10 We do not all have to have our cell phones, but just one cell phone so that we do not have this issue of internet not being present, et cetera. Because what would happen is that, for instance, if we need to have a document and he is happy with it and we have to file it, it is just a matter of him signing it, we can scan using our phones. So, and then we would be able to send it immediately and would not have all these issues of we do not have the internet, we need to leave, we need to come back, et cetera.

 So, a request that just specifically include that we
20 are allowed to carry in one cell phone for purposes of having access to the internet.

CHAIRPERSON: That will be considered.

ADV MISSI: Thank you, Chair.

CHAIRPERSON: I am saying considered. I will not indicate a time.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Ms Missi?

ADV MISSI: Chairperson, thank you for giving us the time to deliberate over the hypothetical questions. The first one being that in a perfect world, we would anticipate that you would say yes, I am giving you the additional hours and I want those documents and whether you are prepared or not, tomorrow we are proceeding. That is when were, then we
10 get our kitty and we walk away.

In the instance you rule that no, we are proceeding, our options would be to go off record as his counsel and he would be without representation, it implies. Given the fact that ...[intervenes]

CHAIRPERSON: Counsel only or counsel and attorneys?

ADV MISSI: Counsel and attorneys.

CHAIRPERSON: So you will no longer be representing him.

ADV MISSI: That is correct.

20 **CHAIRPERSON:** Yes, yes.

ADV MISSI: So that would be the hypothetical scenario that we find ourselves in, if you decide that you are not willing to give us the additional time to come through prepared tomorrow. Again, I do want to stress the undertaking that we are making, which is that should you

decide to rule to give us the additional time, whether Ms van den Heever is here or not, we will be proceeding to argue. Whether you have received the papers or not from us, we will proceed to argue orally with or without the papers.

CHAIRPERSON: You say when?

ADV MISSI: Tomorrow morning.

CHAIRPERSON: Tomorrow.

ADV MISSI: Should you decide to rule in our favour that
10 we should go home and come back tomorrow prepared. What I am intimating or suggesting is that the scenario you would have is that whether we file the documents or not, we will be proceeding to argue.

CHAIRPERSON: Thank you, thank you.

ADV BALOYI SC: Ms Missi, when you say off the record, you mean you withdraw as his legal team?

ADV MISSI: That is correct.

ADV BALOYI SC: Would that go for Ms van den Heever as well?

20 **ADV MISSI:** Those are the instructions that I received as well with regards to the entire team.

ADV BALOYI SC: When she placed you on record, Ms van den Heever last time, she said there was another firm of attorneys as well. Are they present here and do they also withdraw? Because it is not just the people that are sitting

behind you as we understood her.

ADV MISSI: Yes. I actually just realised right now that Mr Maluleke and his firm still is part of this team, so they would also withdraw from there. It is going to be the entire team, all attorneys and counsel.

ADV BALOYI SC: That is your instruction from Mr Matlala?

ADV MISSI: Those are instructions from Mr Matlala.

ADV BALOYI SC: Hypothetically.

ADV MISSI: That is correct, hypothetically speaking.

10 **ADV BALOYI SC**: Okay.

ADV MISSI: Yes. Mr Maluleke is not with you. Has there been a discussion with him? Because it is important that we do not end up with a situation where, if this eventuality that we are contemplating happens, that we do not end up with a situation where he comes to the Commission and said, I never put myself off record. The team that was here on Monday were not speaking for me and I had not spoken to Mr Matlala. So I think it is very important that we are clear about that.

20 **ADV MISSI**: I am glad that you raised it because that could potentially happen, hypothetically speaking. And with that being said, because these are instructions and engagements that we had with Mr Matlala and Mr Maluleke is not here in person, I suppose then, in fairness to him, he has not commented on that element. These are just

instructions that the entire team would be off record. But I suppose in that instance, we would have to engage with him and consider his stance should we find ourselves in that position. I suppose there will not be a need for us to stand up for it until we have had a ruling. It just gives an idea of where we potentially would be. And if that is the case, we will engage him and inform the Commission of his position.

ADV BALOYI SC: Yes, I think, Ms Missi, this eventuality that you are contemplating, I think it is very important that
 10 we all are clear what it is you are saying. You are using language of off the record. My experience is counsel say I am withdrawing. I am no longer on brief. I am not counsel on brief in this matter and I am withdrawing because for their personal reasons or because that is the instruction from the client. So just so that there is no confusion, can we clearly understand you?

You are saying in the event you do not get, I am going to say your way, because that is what it is. If you do not get your way or Mr Matlala's way, you are saying to us
 20 your instruction from Mr Matlala is that the entire legal team, and I am happy to leave aside Mr Maluleke for now, you are saying your instruction is that the entire legal team, counsel and attorneys, including Mrs van den Heever, you withdraw as counsel?

ADV MISSI: That is correct, Commissioner, that is correct.

CHAIRPERSON: Who is the senior attorney? This is something that is so crucial that I think we should hear from the attorneys directly. Who is the senior of the attorneys?

ADV MISSI: That would be Mr Baloyi.

CHAIRPERSON: Please come to the microphone. Please state your name for the record.

MR BALOYI: Thank you, Commissioner.

CHAIRPERSON: And your firm.

MR BALOYI: It is Mr Baloyi with initial N from Baloyi
10 Attorneys in Pretoria, yes.

CHAIRPERSON: Oh, I asked if you also confirm that if our decision is that we proceed with Mr Matlala's application, is your decision that you, as Mr Matlala's attorney of record, are withdrawing from representing him, if, if our decision is that we are proceeding, do you confirm what counsel said?

MR BALOYI: Yes, I do confirm the submission made by the counsel.

CHAIRPERSON: You will be withdrawing. Perhaps, thank you very much, Mr Baloyi. I think we have reached the
20 stage where we should... Ms Hassim, I am not sure that you would want to say something, but perhaps, because this is not really your decision, have we not reached a stage where we should just indicate what we think? Or what I think.

Because I think our regulations and rules really say

that process-related decisions are mine, and indeed all rulings that have gone out go out, even if signed by the Commission Secretary, they go out under my name. But, of course, for practical reasons, I am always assisted by my co-Commissioners. But, ultimately, it is my decision.

ADV HASSIM SC: Chair, there is nothing that I can usefully say in response to the last submissions that have been made about withdrawing, et cetera. So, it is in the Chair's hands.

10 **CHAIRPERSON:** Yes. Thank you. I will address Mr Matlala directly on this. Mr Matlala, I just want to get an idea whether you too confirm that after your counsel or legal representatives were afforded an opportunity to consult with you, what was agreed upon is that if my direction is that we go ahead with your application, they will then withdraw as your legal representatives.

MR MATLALA: Thank you, Chair.

CHAIRPERSON: Can you please switch on both microphones? Yes. Thank you.

20 **MR MATLALA:** Thank you, Chair. Chair, we had three scenarios. So, I am actually in the dark now, because while I was having lunch, I did not have enough time to conclude what we have been discussing. So, we just came right straight here. So, I do not know whether my legal counsel, what they are saying now, is what comes from Mrs van den

Heever as instruction or not. So, I am actually in the dark.
I do not know what to say.

CHAIRPERSON: So, basically, you are not really party to
what has been announced?

MR MATLALA: No, we have discussed the options, yes.
But I have not had the time to make up my own mind, so...

CHAIRPERSON: All right. Maybe the best is for me to
announce the decision.

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RULING

Having considered everything that has been presented to
the Commission, my decision is to go ahead to hear Mr
Matlala's application. That is the decision.

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CHAIRPERSON: Ms Missi?

ADV MISSI: Chairperson, given the fact that Mr Matlala,
being our client, has now confirmed that he had not settled
his mind, because we laboured under the impression that
this is where we are standing and these are our
20 instructions, given the fact that he is of the view that he
feels confused now, he is no longer with us, will you please
grant us an opportunity to finalise and get the instructions
so we do not have this situation again?

CHAIRPERSON: Ms Missi, Ms Missi, the withdrawal of
counsel and legal representations is not, strictly speaking,

a matter of instruction from client. It is ultimately a decision taken by the legal representatives. They choose on their own, for whatever reasons, that we have now reached a point where we can no longer represent our client, therefore, we are withdrawing as legal representatives. So, I do not know whether you are now suggesting that it was not a properly considered decision. I am not pushing you to withdraw if you have suddenly become ambivalent about it.

10 **ADV MISSI:** Chair, remember we were operating under hypothetical instances. Now that we know definitively what your position is, I do believe that we ought to be given an opportunity to finalise if really we are sticking to that position of walking away or not. As you have noted, perhaps we might feel a bit ambivalent and would feel we want to continue. That is what we are simply requesting, Chair.

ADV BALOYI SC: Ms Missi, what is happening now is deeply problematic. I asked you directly, is it your
20 instructions from Mr Matlala? You said yes. That is deeply problematic. Whatever stand down you get to go and consult with him, I would like you to end on that note from me. It is deeply problematic what just happened now, and I hope you find a way to address it. Because what it suggests and represents is what you said in response to my

direct questions, is that is not the true position, given what Mr Matlala is saying now.

If you come back to say it was a misunderstanding in whatever form, I am prepared to grant you that. But it is deeply problematic that you have put firmly those are your instructions from your client. And now you say, well, maybe we need to go and discuss. I want you to understand my concern about it?

ADV MISSI: If I may, Commissioner, I do understand your
10 concern about it and that is the reason why I specifically have asked if the Chairperson and the Commissioners could let us stand down. Because I was labouring under the fact that those are our instructions. Now that he has intimated that he does not feel that he is on the same page with us and he does not understand, that implies that there has been a misunderstanding and that is the reason why I would like for us to address this.

So that when we come back before the Commission, then we do not have this issue happening
20 again. And to add over that, if you recall, this is a hypothetical situation that we are talking about. Now that you have made your ruling, that implies that we need to come back to the Chairperson with a final decision of what are we going to do. Chairperson, I do not know if...

CHAIRPERSON: And as I said in my ruling, at this point,

this is only about hearing Mr Matlala's application. We have not reached the stage of the continuation of his testimony. That is where we are, just for clarity.

ADV MISSI: Thank you, Chair and Commissioners.

CHAIRPERSON: Mr Matlala, you are fortunate to have had lunch already. We are yet to have ours. No, I am mentioning that because you said when you were having lunch earlier, during the break that we had. Because it is, what, three minutes before the lunch adjournment, maybe
10 let us just take the lunch adjournment and resume it at 2 p.m. and let us hear from you, Ms Missi, at that point.

ADV MISSI: Thank you, Chair.

CHAIRPERSON: And I hope everything will have been clarified, and that one way or the other we will then hear Mr Matlala's application, whether you continue to represent him or whether he is moving it in person. Let us adjourn and resume at 2 p.m.

INQUIRY ADJOURNS

INQUIRY RESUMES

20 **CHAIRPERSON:** Ms Missi?

ADV MISSI: Chairperson, we have consulted with the client in regards to the misunderstanding. He would like to address the Commission about the misunderstanding relating to the issue of the hypothetical scenario and the instructions that he has given us. May he be granted the

opportunity to do so?

CHAIRPERSON: Thank you. Yes, Mr Matlala?

MR MATLALA: Yes, thank you, Chairperson. Chair, I was of the view that the question that you raised to me was a final question that I am terminating my mandate to my legal counsel and hence before that I explained that we explored three scenarios.

CHAIRPERSON: Please switch on your second mic.

MR MATLALA: I am sorry about that.

10 **CHAIRPERSON:** No problem.

MR MATLALA: Yes, I am saying it is a huge misunderstanding because my counsel was raising the scenario as hypothetical and then it was not a final thing. So I was of the view that your question was am I terminating my mandate to my legal counsel, and then hence I said I was in the dark. But obviously it was a very huge misunderstanding, so I wanted to clarify that.

CHAIRPERSON: Now that this is no longer hypothetical and I have made a ruling, what is the position now? Do I
20 hear you Ms Missi or do I hear Mr Matlala?

ADV MISSI: Chair, you can hear me on that. Chairperson, we have deliberated with Mr Matlala and he has requested that we remain on brief as his counsel and are the attorneys of record. The position that we found ourselves in with the legal advice, given the circumstances that we face which is

one that Ms Van Den Heever has correctly pointed out, has been preparing on these points for as long as she has appeared here, and we have come in at a later stage and I am not properly prepared to argue these points and he is not comfortable with it either.

His suggestion was that we could proceed with the hearing as is and then he reserves his right to claim privilege as and when the questions are posed to him, and if necessary, we would then advance arguments before the
10 Commission.

CHAIRPERSON: And what should we consider the status of the application to be? I am happy for us to go along those lines, but what is the status as a matter of law? What is the status of the application then? I am not pushing you to...

ADV MISSI: It sounds like it.

CHAIRPERSON: Yes. It is actually a practical – maybe let us just go ahead then with the evidence. That is what Ms Missi says.

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

CHAIRPERSON: And as the answering affidavit of the Evidence Leaders and written submissions say, it is still open to Mr Matlala to raise privilege. Nothing stops him from doing so. And I also understood you to be saying exactly that, Ms Missi.

ADV MISSI: Chair, those are instructions from him that he still reserves his right as and when you ask the questions that he raises.

CHAIRPERSON: Yes, yes.

ADV MISSI: I do have one point that I received, well, we received instructions about earlier this morning after considering the last affidavit that we received. I do not know if we could be granted an opportunity to address it before we proceed, because we do deem it pertinent that it
10 is addressed, and you can give us ...[intervenes].

CHAIRPERSON: What is that issue?

ADV MISSI: The issue regarding the affidavit that was opposed to by Mr Dlamini, the senior investigator.

CHAIRPERSON: Let us just proceed with the testimony, unless Ms Sello is proposing to start with that. Let us just proceed and avoid that affidavit because a lot of time has been wasted already.

ADV SELLO SC: It has, Chair, and I definitely am not starting with that affidavit.

20 **CHAIRPERSON:** Yes, yes.

ADV SELLO SC: And I think – I am looking at the time, chances are that we are likely to get to the affidavit today, just to put it out there, but I see Ms Hassim wants to say something.

CHAIRPERSON: Yes, yes, yes, yes, and I forgot to say,

and you are excused, but let me hear you.

ADV HASSIM SC: I am afraid I am not excused because I am responsible for this witness as well.

CHAIRPERSON: Yes.

ADV HASSIM SC: It really is to just close the loop, Chair, on the application that was brought.

CHAIRPERSON: Yes.

ADV HASSIM SC: To say that the Commissioners have the written submissions of the Evidence Leaders, and just for
10 the sake of the record and for everyone to understand what the meaning of it is, we obviously do not take issue with Mr Matlala's right to assert section 3 for privilege against self-incrimination.

CHAIRPERSON: Yes.

ADV HASSIM SC: What the problem was with the way in which they brought the application was asking for a blanket immunity from whole ...[indistinct] of parts of the evidence, which would have undermined this Commission significantly. So on that understanding, Mr Matlala is free to assert his
20 right himself.

CHAIRPERSON: Yes, yes.

ADV HASSIM SC: When and as he wishes, and the Chair will make a ruling on it.

CHAIRPERSON: Thank you.

ADV HASSIM SC: Thank you.

CHAIRPERSON: Thank you. If you are able to, Ms Sello, maybe just try to avoid the issue of that affidavit for the rest of the day, but only if it is practical for you ...[intervenes].

ADV SELLO SC: No, no, no ...[intervenes].

CHAIRPERSON: Please, please, ja.

ADV SELLO SC: I confirm it is, Chair.

CHAIRPERSON: Yes, yes.

ADV SELLO SC: I have a few issues to engage Mr Matlala on, without having to touch on that affidavit.

10 **CHAIRPERSON**: Thank you.

ADV SELLO SC: I just need to confirm, and good afternoon, Mr Matlala. Mr Matlala should have next to him at least three boxes of files. Is that the case?

MR MATLALA: Yes, I do.

ADV SELLO SC: You do. Chair, now, I have not had a two-minute stand down for my projector to come sit by me, but we shall make the best of a bad situation.

CHAIRPERSON: Let them just walk across, or not?

20 **ADV SELLO SC**: Okay, if she may. I would appreciate that.

CHAIRPERSON: The laptop is connected. I was trying to avoid another adjournment. I guess we are forced to. We will hear from you. Let us adjourn.

ADV SELLO SC: Two minutes. Thank you, Chair.

HEARING ADJOURNS

HEARING RESUMES

CHAIRPERSON: Yes, Ms Sello.

ADV SELLO SC: Thank you, Chair. Chair, just a reminder for the record. When we parted on the 21st, Mr Matlala had asserted his right to supplement, and in fact he had made certain undertakings to supplement his original statement. Mr Matlala, do you have before you File 1, which should read Regulation 10.6, Statement and Annexure? That is the original file with your statement.

10 **MR MATLALA:** Can I please check?

ADV SELLO SC: You will recall that in dealing with that statement, we first had regard to the Regulation 10.6 notice that had been issued, to which was annexed a schedule with a list of names of individuals, and you had been requested in the 10.6 to explain any relationship you have with any one of them. You recall that?

MR MATLALA: Yes, I do.

ADV SELLO SC: And in the course of considering the contents of your statement, it became apparent that you had
20 not addressed some of the persons listed in Schedule A, and you undertook to do so in your supplementary statement. Do you recall?

MR MATLALA: Yes, I recall.

ADV SELLO SC: And that is the basis on which we parted, Chair, on the 21st, that he will supplement and provide

detail on such individuals that he had not addressed in Schedule A. At the same time, that is when a decision was taken that they will institute this application to raise preliminary in *limine* points, which they did.

The challenge we have, as much as we expected Mr Matlala and his team to file two separate documents, one being a supplement to his original statement, and the other being the application raising the in limine points, they combined the two to create one document. We have
10 attempted to look at that affidavit that they have filed in support of the application to get a sense of what would constitute supplementation for the purposes that I have highlighted.

And with your leave then, Chair, I would invite perhaps Mr Matlala to address the relationships of the various individuals as reflected in this affidavit, but only those aspects of this affidavit and not read the entire affidavit as if it is a supplementary statement, if that is acceptable. Mr Matlala, that was communicated to you, I
20 think by your legal team, that that is how we propose to deal with this matter of supplementation.

MR MATLALA: Okay, it is fine.

ADV SELLO SC: Okay. Now, if you have your list, then Schedule A to the Regulation 10.6 at page 7, you recall we marked those that you had addressed. There is a list of

them that you did not address, items 13, I think, to 25, on the basis that – to 24, I think, on the basis that they are your co-accused in the Medicare matter.

MR MATLALA: Yes, that is correct.

ADV SELLO SC: So then, if you look at your affidavit in support of this application brought on your behalf, that would be in the second file, and that file would be marked application for immunity, supplementary affidavit. Do you have it close by?

10 **MR MATLALA**: Yes, I have it.

ADV SELLO SC: When I cast my eye on that, I see that up until page 10, you deal with – no, page 12, you deal generally with the basis on which you move this application and you assert you are setting off your constitutional rights. You address for the first time at page 13 the issue of EMPD, and you recall that if you look at the Schedule A at page 7, at item 28, you were requested to speak about Commissioner Julius Mkhwanazi. Yes, Commissioner Julius Mkhwanazi.

20 And you had been requested to provide an explanation of your interactions and business engagements with such entities as the EMPD, that is at item 2.1.6 of the 10.6 Regulation notice. You recall that?

MR MATLALA: Yes, I do.

ADV SELLO SC: Now, you respond to that then at page

13, starting at your paragraph 62. I would invite you then to read into the record, by way of supplementing your original statement, paragraph 62 to 65.

MR MATLALA:

10 “I have responded to this question in my previous affidavit. I have been advised to also place on record that I am a suspect in case involving the EMPD and I therefore do not wish to answer any question regarding my interaction with the EMPD. I attach hereto a copy of a statement deposed to by Nthabiseng Cordelia Kabeng, from which it is evident that I am a suspect in a case under investigation by members of the IPID under case number 262/2023, relating to the unlawful fitting and usage of blue lights. A copy of the statement is annexed hereto marked VMSA1. Other
20 companies. I have not done any business with the aforesaid entities through any of my other companies.”

ADV SELLO SC: Thank you. I will then propose we jump to page 14, from paragraph 71. Under 71 you say:

“In respect of the individuals I list

hereinunder, I wish to amplify my original affidavit.”

And then you detail the individuals. Could you read the headings and the relevant subparagraphs to the name into the record, starting with subparagraph 71.1?

MR MATLALA:

“I have answered this question when I gave evidence.”

CHAIRPERSON: Read the name as well.

10 **MR MATLALA:** Sorry.

CHAIRPERSON: Yes, please.

MR MATLALA:

20 “Minister Senzo Mchunu, I have answered this question when I gave evidence. Former Minister Bheki Cele, I have partly answered this question when I gave evidence. I do, however, wish to state that I am a suspect in a matter under investigation, which relates to my interaction with him as was made clear to me during my questioning by IDAC and as was later recorded in the statement I made in terms of the provisions of section 2 for the CPA. Former General Khomotso Phahlane, I have answered

this question when I gave evidence.
 Lieutenant General Nhlanhla Mkhwanazi,
 I have partly answered this question
 when I gave evidence. I do, however,
 wish to state that I am an accused in a
 matter on trial pending before the
 Johannesburg High Court under case
 number SS98/2025. I have also noted
 that Lieutenant General Nhlanhla
 10 Mkhwanazi has stated under oath that he
 recorded the conversation we had on the
 day I met him. I now invite him to
 disclose this recording to Commission so
 everyone can hear firsthand what
 happened on that day. I respectfully
 point out that I do not understand why
 such an important piece of evidence has
 not yet been subpoenaed or voluntarily
 handed over to the Commission.
 20 Lieutenant General Molefe Fani, I have
 dealt with this issue in my previous
 affidavit. Major General Feroz Khan, I
 have answered this question when I gave
 evidence.”

ADV SELLO SC: Thank you. On my reading, it would

appear that we should take it from paragraph 72 because you are responding directly to the paragraphs in the subpoena. You start with paragraph 2.3.2. Just to quickly remind you, that had required you to speak of your involvement in the incident of delivery of impalas to General Sibiya and any other forms of gratification given to General Sibiya. You deal with that at paragraph 72 and up to 74. Thank you.

MR MATLALA:

10 “I am a suspect in a matter under investigation which relates to my interaction with him as was made clear to me during my questioning by IDAC and as was later recorded in the statement I made in terms of the provisions of section 204 of the CPA. One of the matters related *inter alia* directly to the issue of the impalas. Another of the matters relates to payments of

20 gratification.”

ADV SELLO SC: And then that would take us then to your response to paragraph 2.3.3, and this concerns the circumstances in which Sergeant Nkosi came in possession of your Luxo Africa bank card. You deal with that at paragraph 75.

MR MATLALA:

“Luxo is a co-accused of mine in the Medicare matter and therefore I cannot comment and/or provide any evidence relating to that matter. I therefore exercise my constitutional right not to answer any questions regarding the said matter as same will violate my constitutional fair trial rights under
10 section 35, including my right to silence.”

ADV SELLO SC: And proceeding then to your paragraph 76 to 78 in response to paragraph 2.3.4 of the Regulation 10.6 notice, which required you to speak of your involvement in the loan or funding agreement into with Mr t Suleiman Carrim on or about June 2024.

MR MATLALA:

“I have given instructions to my legal team to endeavour to obtain relevant paperwork on the matter relating Mr
20 Carrim. At the time of signing this affidavit, they had not yet obtained anything and I thus observe my right to supplement this affidavit regarding this aspect. Notwithstanding a thorough search of the records in my possession, I

was unable to obtain any documents
relevant to the question under reply.”

ADV SELLO SC: Thank you for that. That will then bring
us to your response to paragraph 2.3.5 of the Regulation
10.6 notice which had asked you to comment on your
appearance at the Ad Hoc Committee and whether you were
ever induced, threatened or influenced to give false
evidence, including the details of who induced or threatened
you to give false testimony when, how and for what
10 purpose. You deal with that from paragraph 79 to 83 at
page 17, if you could read those into the record.

CHAIRPERSON: May I just quickly raise something, Mr
Matlala? It relates to paragraph 77, saying that you thus
observe your right to supplement this affidavit regarding the
aspect you are dealing with there. I am not altogether sure
that it is a matter of right for you to supplement. Perhaps
this is a legal question which maybe Ms Missi should
respond to.

I have seen this point being made a good few times
20 in this affidavit. It was already an indulgence for you to
supplement and something that I granted or allowed without
any reservations. I just want to avoid a situation where it is
suggested that it is something that should happen as of
right. Ms Missi?

ADV MISSI: Chairperson, this directly relates to him

claiming the rights of privilege in terms of section 3(4). We would be required to show or give factual basis why it is that he wants to claim it. But in order for him to do so, he needed us to find that piece of information that he wanted us to research and provide to him so that we can confirm in order to allow him, or rather enable him, to claim his right before this Commission when it relates to issues that have to do with Mr Carrim.

CHAIRPERSON: I read this differently, Ms Missi. I read
 10 this to be saying Mr Matlala is asserting a right to supplement the content of his affidavit with regard to the issue being raised about Mr Carrim. I did not understand that to relate to the privilege that Mr Matlala is claiming, or am I misreading this?

ADV MISSI: Chairperson, you are correct insofar as that, that he is asserting a right to supplement the affidavit in order for him to be able to claim the right of privilege. Because as it stands, he has informed us with regards to why he would want to claim the right to privilege, but in
 20 order for us to do so, we would have to lay facts to it as previously argued rather on last week Monday, but we were not able yet to obtain the information that he needs.

And so it puts us in a position where we had to answer how would we then later deal with it, if and when we do obtain that information that would put the Commission

into light that, indeed, he is either suspect or an accused, and therefore he would be in a position to claim the right to privilege.

CHAIRPERSON: Can you please take me through paragraphs 76 to 78 and show me where it is intimated that with regards to Mr Carrim, Mr Matlala wants to raise the issue of privilege?

ADV MISSI: Chairperson ...[intervenes].

CHAIRPERSON: Again I repeat I am probably misreading
10 or misunderstanding.

ADV MISSI: No, Chairperson, I agree with you that it does not categorically say so. I am simply explaining why it is that he was asserting that right with regards to claiming ...[intervenes].

CHAIRPERSON: I guess my point is where do you get that? Where do you get what you are saying? Because I do not see it in paragraphs 76 to 78.

ADV MISSI: Chairperson, in that instance, the only
20 submission that I can make is that should we have come across or should we obtain that piece of information, then the supplementary affidavit, he would then refer to it to say the reason why I had asserted such a right was because of this fact that I am now being overt in this affidavit and/or statement.

CHAIRPERSON: Let us leave it there. I do not understand

you. Let us leave it there.

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

CHAIRPERSON: Mr Matlala, do you want Ms Sello to repeat her question, or are you in a position to go ahead and respond?

MR MATLALA: It is okay, I can go ahead.

CHAIRPERSON: Thank you.

ADV SELLO SC: Chair, before we do, I think perhaps in fairness to Mr Matlala, we should consider the contents of
10 his paragraph 17 in the original statement regarding this loan and the loan agreement, and in that paragraph he states:

“I am of the view that I may incriminate myself by answering questions related to this loan agreement as I believe it forms part of the Medicare criminal matter which is pending before Court.”

It is just that my reading of paragraphs 76 and 78 do not tie back to the answer given in there, and instead, they speak
20 mainly of the right to supplement.

CHAIRPERSON: Yes, yes.

ADV SELLO SC: Which does not answer the Chair's question by ...[intervenes].

CHAIRPERSON: Which is what caused me to raise the question.

ADV SELLO SC: To bring to your attention.

CHAIRPERSON: But thank you for that, Ms Sello.

ADV SELLO SC: Thank you.

CHAIRPERSON: Yes, Mr Matlala.

ADV SELLO SC: So then, you have read your paragraph 76 to 78 of your affidavit into the record to supplement your original response to paragraph 2.3.4. That then would take us to 2.3.5. And at the time, 2.3.5 called on you to speak to your appearance at the Ad Hoc Committee and enquired
10 whether or not you had ever been induced, threatened or influenced to give false evidence. And if so, that you provide the details of who induced or threatened you to give false testimony, when, how and for what purpose. You respond to that specific question in the affidavit at page 16, starting from paragraph 79 to 83.

MR MATLALA:

20 "I am not responding to this question for the following reasons. When I attended the Ad Hoc Committee, I was not yet arrested and charged as an accused on the Medicare matter. I was also unaware of the fact that I was a suspect on some of the issues I was questioned on. It has now emerged that I am a suspect in a matter I was then questioned on and the

same are under investigation, as was made clear to me during my questioning by IDAC and as was later recorded in the statement I made in terms of the provisions of the section 2 of the CPA. I therefore state categorically that I am not prepared to answer any question I have previously answered on which I have now been charged or in which I am a suspect.

10 Answering such questions now will violate my rights to a fair trial and my right to silence and my right not to incriminate myself. I have also been made aware of the fact that I stand to be accused of having made previous inconsistent statements and, more importantly, that I can be charged with perjury if I deal with any of the Ad Hoc issues.”

20 **ADV SELLO SC**: If I can just, by way of seeking clarity, you do note that if one has regard to the question posed to you at paragraph 2.3.5, you have not answered the key question there, whether or not you were induced, threatened or influenced by anyone. Should I understand you correctly that your position is you cannot answer

definitively to that question because any response you give thereto, you run the risk of incriminating yourself?

MR MATLALA: Yes, Commissioner, you are right.

ADV SELLO SC: Including an answer that says no, I was not induced.

MR MATLALA: My worry is if I say no or yes, then the next question, let us hypothetically say I am saying yes, the next question will be by who and then why. Part of who and why might somehow end up incriminating myself.

10 **ADV SELLO SC:** Okay, we will come back to the issue in the fullness of time. I just wanted to get some clarity. If you recall, then moving on, at paragraph 2.3.6 you were asked to comment on the recording of your interrogation on December 2024 and May 2025 by Witness C or any other police officers who interrogated you after the arrest. You deal with that at page 17 at paragraphs 84 to 86.

MR MATLALA:

20 “I have been provided with copies of any of the recordings of my interrogations, whether the same were in December 2024, May 2025, or thereafter. I have dealt with this issue above. The legal argument will be made on this issue as to why I should not answer any questions relating to these recordings.”

ADV SELLO SC: When you say this issue has been dealt with above, you mean in the body of this affidavit where it is suggested, as the affidavit does from paragraph 41, that you intend to launch a challenge to the seizure of your cell phones, as well as your challenge to – no, I just see the cell phones. Where you say above, where do you deal with the issue of the recordings? You do at – please refer to page 9, paragraph 35. You state at paragraph 35:

10 “I have learned as a result of information
 obtained from the Commission that the
 SAPS have obtained a number of
 statements from me in violation of my
 constitutional rights contained in section
 35.”

And then you reference certain recordings. Is that what you mean?

MR MATLALA: Yes.

ADV SELLO SC: So, if then I re-read your paragraphs 84 to 85 ...[intervenes].

20 **ADV BALOYI SC:** Ms Sello?

ADV SELLO SC: Yes?

ADV BALOYI SC: The paragraph 35 is about statements, but if you go back to paragraph 32 and 33, that is where it speaks of recordings. So, it distinguishes, Mr Matlala distinguishes recordings and statements.

ADV SELLO SC: Yes, at 32 he says here:

“I only learnt later that the interrogation
of me and my responses were
electronically recorded at the time.”

ADV BALOYI SC: Yes.

ADV SELLO SC: Do you see where Commissioner Baloyi
is directing you to?

MR MATLALA: Paragraph 32?

ADV SELLO SC: Paragraph 32 of the same document we
10 are looking at, at page 8.

MR MATLALA: Yes, yes, yes.

ADV SELLO SC: And you say:

“This recording and a transcript thereof
was made available to my legal team
after it was requested from the
Commission.”

So, I am saying, regard being had to what you state at
paragraph 32 to 36, that is the basis on which you say you
have dealt with the issue above at paragraph 85, and that
20 legal argument will be made on the issue as to why I should
not answer any questions relating to these recordings. You
state that at your paragraph 86.

MR MATLALA: Yes.

ADV SELLO SC: So, your response to paragraph 2.3.6,
then to clarify, is dependent on the determination by the

Commissioners and the Chair as regards your claim, your suggestion that your rights were violated as set out in paragraphs 32 to 38, you will not answer until the question of your – the suggested violation of your constitutional rights is determined by the Commissioners.

MR MATLALA: Yes, but not only that, Commissioner. Also, because those recordings, it has been made clear in court that they are currently under investigation. So, we do not know which part of the recordings are under
10 investigation. So, I cannot recklessly just answer a specific question not knowing whether it is the one that is under investigation or not.

ADV SELLO SC: Perhaps, if you could say slightly more, under investigation by who?

MR MATLALA: This was said in court, so I will assume that it is the same investigating officers that are investigating my current case that I am attending in the Johannesburg High Court.

ADV SELLO SC: So, they are also investigating these
20 recordings?

MR MATLALA: Yes.

ADV SELLO SC: Could we request, perhaps, to your legal representatives to obtain that portion of the transcript?

MR MATLALA: Of course, yes.

ADV SELLO SC: In court, because I am not sure I

understand what you mean by the claim that the recordings are under investigation. So, perhaps, if we get the transcripts, I might gain a better understanding.

MR MATLALA: It is okay, we will get the transcripts, but also during the disclosure, it was during the pre-trial, actually. So, it was during the disclosure of the docket, and then we noticed that there were no recordings there, and then my counsel requested for those recordings, and then the state advocate said, no, we cannot issue those
10 recordings because they are a separate matter. They are under investigation. But, as you said, we will get the transcripts, and then it will explain everything.

ADV SELLO SC: And I think just so we do not talk past one another, we would appreciate those transcripts by tomorrow, so that when we resume tomorrow, we know what the actual position is and how we engage with you on this matter.

MR MATLALA: That would be very hard for me to promise that I can be in possession of those things by tomorrow,
20 because as you know, I do not have access to any – when I leave here, I am going straight to C-Max, so I will not be able to make any telephone calls, but I will ask that after we are adjourned here, then I at least consult with my legal counsel, and then I will ask them to get that on my behalf.

ADV SELLO SC: Hence, I specified that I think the request

is more to your legal team through you, because I appreciate your position, but I would like to believe that your legal representatives are in a position to obtain the relevant transcripts that assist you in this regard, and assist the Commission to understand how to deal with the matter of the recordings.

MR MATLALA: Yes, but also I would suggest, please, let it not be something that will be required the first thing in the morning because, obviously, if you look at time now, they
10 are going to request them tomorrow morning, maybe around 11:00, 12:00, then we will be in possession of those transcripts.

CHAIRPERSON: Let me quickly raise a matter of clarity, Ms Sello.

ADV SELLO SC: Yes.

CHAIRPERSON: If I did not misunderstand you, I thought you said something about the Commission making a decision on the question of the lawfulness or otherwise of the manner in which the contested evidence was postponed
20 – was obtained, I am sorry. Did I misunderstand you?

ADV SELLO SC: No, I do not say that. I say in his affidavit, he suggests that that is an issue he is going to raise before yourselves.

CHAIRPERSON: Okay. Let me tell you my understanding. You will correct me if I am wrong. My understanding was

that the decision that he says he is seeking is a decision that will be made by the Court on the lawfulness or otherwise of the manner in which the evidence was obtained. And with us, he is then saying, until that has happened, the Commission should be barred altogether to traverse that terrain. So a decision on the lawfulness or otherwise is not one that should be made by the Commission.

ADV SELLO SC: Indeed, Chair, I agree with you.

10 **CHAIRPERSON:** Okay.

ADV SELLO SC: I was reading from his affidavit, which is what I had understood him to suggest in the affidavit, but I will hasten to add that this is part of the legal argument and the points raised in *limine* that I understand perhaps are still to be argued before yourselves. So I would park that issue.

CHAIRPERSON: Okay, okay.

ADV SELLO SC: But the affidavit seems to suggest that it is a legal argument to be made to yourselves.

20 **CHAIRPERSON:** All right, all right.

ADV SELLO SC: And there, Chair, you will see at paragraph 40, it says:

“Full legal argument will be made to the
Commission on this issue...”
...[intervenes].

CHAIRPERSON: Maybe we should not open that door.

ADV SELLO SC: Yes.

CHAIRPERSON: We should wait to hear if anybody will still raise that issue because we are hearing the evidence now.

ADV SELLO SC: Indeed, Chair.

CHAIRPERSON: So maybe who knows, maybe nobody will go back to that now that we are hearing the evidence. And as Ms Missi said what will be raised will be the question of
10 the privilege.

ADV SELLO SC: And what I sought to establish here is the basis, because it is not articulated in the papers.

CHAIRPERSON: Yes.

ADV SELLO SC: And that is when Mr Matlala raises the question of the recordings being under investigation.

CHAIRPERSON: Yes.

ADV SELLO SC: So that is what I was trying to tease out, to understand who is investigating and where he learned that from.

20 **CHAIRPERSON:** All right. Yes, Ms Missi?

ADV MISSI: If I may, Chairperson, we wanted to address the issue with regards to the practicality of getting those transcripts. Because what would happen is that the attorneys would have to put in a request from the transcribers, as I am instructed, to obtain that recording

from the courts. I forgot what the title is to the individual who does the recordings.

And then obtain it, at which point would then get access to it. So to say that we would have it by 12 o'clock tomorrow, perhaps it would be overambitious of us to assume that it is even practically possible. And if we make that undertaking, then it comes back and it may seem as if we are trying to frustrate the process. But practically, it does not seem possible that we would have it tomorrow.

10 They are obtainable. It is just a matter of the timeline.

CHAIRPERSON: The time, yes. Unless things have improved significantly from the time it was last in practice, I think I agree with Ms Missi on the practicalities.

ADV SELLO SC: I am willing to accept that. I am not going to challenge her on that. Except then there is a gap in the logic that is set out in the affidavit. So perhaps in the course of argument, we might be assisted with more facts to support what is set out in these paragraphs 84 to 86.

20 **CHAIRPERSON**: Thank you, Ms Sello.

ADV SELLO SC: Thank you, Chair.

ADV MISSI: Chairperson, if I might make a suggestion that would try and aid and assist the Commission in moving forward whilst we wait for that recording? Because there is an attorney of record who was present at those

proceedings, would it be of any use for him to address that particular point? Because he has heard what was said in the ruling, or rather judgment made with regards to that. If it would be of any use, we perhaps could assist.

CHAIRPERSON: I do not think so, because this is a matter of evidence, and Ms Sello is engaging Mr Matlala at the level of testimony by Mr Matlala.

ADV SELLO SC: The only issue I seek to establish, and I think it was triggered by Mr Matlala's response, that the
10 recordings are a subject of an investigation. So that is the only clarity I seek. Who is investigating? What does that mean that they are a subject of investigating? And who is investigating? And that is because when I engage Mr Matlala on these issues, I will seek to persuade the Commission that to the extent that they may be under investigation, that does not preclude Mr Matlala from speaking on these matters because it is their recordings, according to him, that are under investigation. It is not him per se who is under investigation. So I will leave it there
20 for the moment, Chair. When we come back, we perhaps will get better insight.

ADV BALOYI SC: Ms Sello, maybe before you then move on, now that we seem to be agreed that we will not have the transcript any time soon, then maybe let me ask my clarification question. Mr Matlala, the investigation that you

speaking of into these recordings, is it by the State or by your legal representatives?

MR MATLALA: The investigation?

ADV BALOYI SC: Ja. You said that there is an investigation about these tapes, these records of you.

MR MATLALA: Ja.

ADV BALOYI SC: Is it an investigation by the State or by your legal team?

MR MATLALA: By the State.

10 **ADV BALOYI SC**: Is it by the State?

MR MATLALA: Yes.

ADV BALOYI SC: And what in particular is being investigated about them? What was said is going to be investigated?

MR MATLALA: That is something that I do not know, but what I know is they just said that whatever I have mentioned in those recordings, for those things I am being investigated. So I cannot tell what is it exactly what they are investigating.

20 **ADV BALOYI SC**: Okay. All right. Thank you, and then lastly at that paragraph 84, Ms Sello, it is either a word is missing or a word that is there should not be there. 84 reads:

“I have been provided with copies of any recordings of my interrogation, whether

same in December, May...”

...[intervenes].

ADV SELLO SC: I think of any other words that should not...

ADV BALOYI SC: Have you been provided with recordings?

MR MATLALA: Yes.

ADV BALOYI SC: You have. Okay. So we must take out, I have been provided with copies of the recordings. That is
10 how it should read. Thank you.

ADV SELLO SC: Thank you, Commissioner. That then will take us to your paragraphs 87 and 88. You are responding to paragraph 2.4 of the Regulation 10.6 notice, which required you to speak to the nature and extent of your relationship with the EMPD, including individuals employed therein, including agreements actual or negotiated with individuals within the EMPD, donation of vehicles and installation of use of vehicles fitted with blue lights, in particular who was involved, what the plan was, what
20 became of the plan, and ultimately the use of vehicles fitted with blue lights and the use of peace officer cards. That is what was asked of you. You deal with that at page 17, paragraphs 87 and 88, if you could read those.

MR MATLALA:

“I have indicated above that I do not wish

to deal with or answer any questions on this issue of EMPD. I refer to what I have stated above in the statement attached hereto deposed to by Nthabiseng Cordelia Kabeng.”

ADV SELLO SC: And for the record, that affidavit of Nthabiseng Cordelia appears at page 20 of that same file, your VMSA1, correct?

MR MATLALA: Yes, that is correct.

10 **ADV SELLO SC:** And just to confirm, again for the record, this affidavit of Nthabiseng Cordelia speaks to the issue of use of blue lights only?

MR MATLALA: Yes.

ADV SELLO SC: Now the question posed to you at paragraph 2.4 was actually a compound question. There were other issues that are unrelated to the issue of the blue lights that you were required to speak to, but once again you have failed to.

MR MATLALA: Can I comment on that?

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

MR MATLALA: It is not only the fitting of blue lights, it is any involvement with the EMPD, because I said before, I think last week Monday, maybe that is why it is not on this affidavit, that there are people who are currently facing criminal charges for not only the blue lights. It is peace

officer cars and blue lights, and I think the donation. And as a result, also my name has been mentioned there. I heard the spokesperson of SAPS mentioning my name there.

ADV SELLO SC: So in regard to these other matters, are you suggesting you are an accused or a suspect because you had your name mentioned? Are you able to clarify ...[intervenes].

MR MATLALA: I am not an accused. I am not an accused.
10 I would say a suspect or a person of interest.

ADV SELLO SC: And as a matter of interest, in all these other cases besides the blue lights, which you have explained why you cannot address, why do you consider yourself a suspect?

MR MATLALA: Like I said, there are people already who have been charged with those issues that you just mentioned.

ADV SELLO SC: And those people do not include you. So why do you suspect you are a suspect?

20 **MR MATLALA:** The investigation is mentioning my name.

ADV SELLO SC: Okay. We shall revert in time ...[intervenes].

ADV BALOYI SC: Maybe just to get confirmation, Ms Kabeng says the investigation is by IPID. You confirm that?

MR MATLALA: Yes.

ADV BALOYI SC: She was interviewed by IPID and they told her they are investigating.

MR MATLALA: Yes, I confirm that.

ADV BALOYI SC: Thank you.

ADV SELLO SC: We then go to your paragraph 88, still at paragraph 89, still at your affidavit starting at page 17 and there you are dealing with the contents of paragraph 2.5. And from paragraph 88, you then deal with your relationship with four other people. So if you could read the name of
10 the person whose relationship you speak of, and then you deal with the contents of the paragraph immediately following the person's name.

MR MATLALA: I will start with Jothan Msibi.

ADV SELLO SC: Yes.

MR MATLALA:

“I knew Jothan Msibi purely as a person to whom I rendered security services. I never had business with him. I know Ignatius Mthakathi, Andrew Boy
20 Mthethwa, and Katiso Molefe purely by virtue of the fact that I came across them and was introduced to them on occasions by Jothan Msibi to whom I rendered security services. I never had any business dealings with them. I never sat

around talking to them. I do not know
any about their personal life or the
business they are involved in.”

ADV SELLO SC: Now, before you deal with the next person, at 89 you say you knew Mr Msibi purely as a person to whom you rendered security services. I never had business with him. What do you mean by that last line, that you never had any business with him or businesses?

MR MATLALA: I would say I never had a – I attempted,
10 yes, to do business with him, but it never materialised. So I never had any business without rendering security services with him.

ADV SELLO SC: And then while you are on that, what businesses did you attempt to have with him that did not materialise?

MR MATLALA: To purchase a private jet.

ADV SELLO SC: Yes. Any other?

MR MATLALA: No, it is only that.

ADV SELLO SC: Only that one?

20 **MR MATLALA:** Yes.

ADV SELLO SC: Were you then ever involved in any of his business dealings?

MR MATLALA: No.

ADV SELLO SC: Okay, thank you. You then from paragraph 91, at paragraph 91 deal with your relationship

with the next person. If you could identify them and then read your paragraph 91 into the record?

MR MATLALA:

“Mike Van Wyk. He was my business partner and is a witness in the Medicare matter. I am therefore exercising my constitutional right as an accused not to respond to or answer any questions pertaining to him or our relationship.”

10 **ADV SELLO SC:** Now, he was your partner in the Medicare matter, and you say you are exercising your constitutional rights. I just want to understand, is this an exercise of constitutional rights in respect of any and all affairs of Medicare, or is it only in respect of the SAPS contract for which you are currently facing charges?

MR MATLALA: Yes, only the SAPS contract.

ADV SELLO SC: Only the SAPS contract, thank you. You proceed then to deal with the next person, and you identify them and deal with their relationship at paragraph 92, or
20 your relationship with them.

MR MATLALA:

“Brown Mogotsi. I have answered this aspect when I gave evidence.”

ADV SELLO SC: So, in effect, you say you have got nothing further to add to what you have already stated.

MR MATLALA: Yes.

ADV SELLO SC: Then, lastly, I think, at paragraphs 93 and 94, it is the last person.

MR MATLALA:

10 “Hangwani Morgan Maumela and
 Suleiman Carrim. My legal team is in the
 process of collating evidence in respect
 of the said persons which will enable me
 to move fully with awareness of and
 explanation of my rights and answer
 questions about them. I thus reserve my
 right to supplement this affidavit. I
 reserve my right to provide the
 Commission with any further and
 supplementary sworn statements
 necessary in these proceedings.”

ADV SELLO SC: Can I just clarify paragraph 93? You say your legal team:

20 “...is in the process of collating evidence
 in respect of these persons.”

Being Mr Hangwani Morgan Maumela and Mr Suleiman Carrim:

 “...which will enable you to move fully
 with awareness of and an explanation of
 your rights, answer questions about

them.”

Can you say that in simpler English? What do you mean? I understand that they are in the process of collating evidence in respect of these persons, but I am not sure I understand the remainder of that sentence. Are you able to assist? What do you mean that the evidence that they are collating will enable you to move fully with awareness of and an explanation of your rights, answer questions about them?

10 **MR MATLALA**: I think this is a typing error.

ADV SELLO SC: Okay, so I am not that bad. Let us try and correct it. What did you wish to express?

MR MATLALA: Documents that will support that I do not wish to answer these questions because of self-incrimination. This morning I have managed to get a document that I already supplied to my legal counsel.

ADV SELLO SC: I am not sure I understand. It is a very cryptic answer you have just given, so I am not sure I understand.

20 **MR MATLALA**: What I am trying to explain to you is like the first sentence saying that I am in the process of collating evidence.

ADV SELLO SC: Yes.

MR MATLALA: So, maybe I was supposed to say documents that will prove that I am a suspect and I am

being under investigation together with Mr Maumela and also with Suleiman Carrim.

ADV SELLO SC: Okay, I think I understand. So then you say your legal team is in the process actually of collecting documents that will demonstrate and prove that you are a suspect. I take it in some alleged criminal wrongdoing together with – not together – with Mr Maumela and/or Mr Carrim. Is my understanding correct?

MR MATLALA: With Mr Maumela, Chairperson. Sorry,
10 Commissioner. If you can remember last week I already touched on the Suleiman matter and then you asked that I should bring an unsigned – what is that? An unsigned ...[intervenes].

ADV SELLO SC: Loan agreement.

MR MATLALA: Loan agreement.

ADV SELLO SC: Yes.

MR MATLALA: So this is what I could not – I had that loan agreement, but I could not just find it. So what I had is only the document in relation with Mr Maumela.

20 **ADV SELLO SC:** Okay. Now, so you say that those documents will prove you are a suspect. A suspect in what or which cases?

MR MATLALA: A suspect in, I think it is money laundering, I think.

ADV SELLO SC: And that is in relation to both the persons

identified there?

MR MATLALA: Only with Maumela.

ADV SELLO SC: With Mr Maumela. And when can we expect these documents to be submitted? Because you say that your legal team is in the process of collating them.

MR MATLALA: They are already in possession of those documents.

ADV SELLO SC: Okay. I take it that they are in possession of the documents with a view to share with the
10 Commission.

MR MATLALA: They will advise on that because they are under investigation. I do not know.

ADV SELLO SC: You just gave their documents to your...

ADV MISSI: Chairperson, if I may be allowed to address the Commission in relation to that?

CHAIRPERSON: Yes.

ADV MISSI: We could not just take it off words that he says that he is a suspect and we needed to confirm before he would be able to make such an allegation or averment
20 before the Commission. And so he had to look for the document, which unfortunately, as I stated, he was unable to give it to me – to us, rather, the team yesterday. This morning he did give us the document and it places us in a position where we can give – or rather he can make that statement on affidavit that he is a suspect and would be

claiming his rights to privilege in terms of section 3(4).
Sorry.

ADV SELLO SC: Now, is it ...[intervenes].

ADV MISSI: We need to supplement, if I may. We need to supplement his affidavit so that he is able to make those averments and give you the correct facts.

ADV SELLO SC: So is it the intention of Mr Matlala and/or his legal representatives to share the actual document that demonstrates he is a suspect?

10 **CHAIRPERSON:** Ms Missi?

ADV MISSI: Chairperson, the issue that we are having is that we have not properly looked at the document to determine whether, to what extent he can claim his right to privilege. So provisionally, I would say yes, provided that we get a timeline wherein which we are informed that the supplementary affidavit needs to be in at a particular time and then it gives us, it allows us to look into the document and determine there is not everything that is privileged that disallows us to hand it over to the Commission.

20 **CHAIRPERSON:** Is there any problem sharing it with the Evidence Leaders right away?

ADV MISSI: Chairperson, I really, I have not looked at it in detail. It is a document that immediately after we had engaged, we came down, he handed it over to me, I quickly glanced over it. So I cannot answer that question

...[intervenes].

CHAIRPERSON: Is it a privileged document? Because if it is not, I would not understand why it cannot be shared immediately.

ADV SELLO SC: Chairperson, I suppose if you have to ask if it is a privileged document, I do not believe so because the investigators would have a copy of it as well ...[intervenes].

CHAIRPERSON: Then it should just be shared with the
10 Evidence Leaders. So as you look whether there is a basis for claiming privilege, the Evidence Leaders will be looking at the document for themselves as well.

ADV MISSI: Noted, Chair. Then on those basis, we should be able to share it.

CHAIRPERSON: It will be shared this afternoon still?

ADV MISSI: That is correct.

CHAIRPERSON: Thank you.

ADV SELLO SC: Thank you, Chair. Thank you, Advocate Missi. I think it should because as things happen in the
20 Commission, documents become available and they are added to the exhibit bundle. So regardless of their source, so too shall this one. And this document is important. As a result, I will have to park the issue I intended to raise in respect of 93. It is important because it would appear, Mr Matlala, that you have adopted this posture regarding

almost all the issues or the persons you have been asked about. Before I forget, that is the conclusion of the supplementation of your statement. You confirm that paragraph 94 is the end of your affidavit?

MR MATLALA: Yes, I confirm.

ADV SELLO SC: So then you have given your supplementation. So then ...[intervenes].

ADV KHUMALO SC: Ms Sello, I do not want to get ahead of you because it may be that you are still coming there.

10 When I looked at 2.2 of the 10.6 notice read with Schedule 1, according to my reading, item 5, the person who appears as number 5, there is still no answer to the question in 2.2 because 2.2 said:

“Explain your history and/or relationship,
direct or indirect, with the listed law
enforcement officials in Schedule A.”

And then when you go to Schedule A, it lists 28 people.

ADV SELLO SC: Yes.

20 **ADV KHUMALO SC:** But on my reading of both affidavits, I thought it was an omission in the first one, and the second one was supposed to supplement, but I do not see in the second one where it deals with the name in item 5, unless I have missed it.

ADV SELLO SC: No, Commissioner, you have not. Mr Matlala, you understand we referred to Schedule 1 in the

Regulation 10.6 notice. Correct?

MR MATLALA: Okay.

ADV SELLO SC: We discussed the people listed in that document at page 7.

MR MATLALA: Okay.

ADV SELLO SC: And you will recall that in your original statement from page 12, you then dealt with, at paragraph 14 you dealt with a cluster of persons, 13 of them, from General Masemola to Major General Temba, about whom
10 you said you will not be able to say anything regarding your relationship with them because they are your co-accused in the Medicare matter.

MR MATLALA: Okay.

ADV SELLO SC: And from paragraph 15, you then dealt with some of the remaining persons on that list. You see that?

MR MATLALA: Ja.

ADV SELLO SC: And there you dealt with Minister Mchunu, General Phahlane, General Mkhwanazi, General
20 Fani, and General Khan. You see that?

MR MATLALA: Yes, I do.

ADV SELLO SC: Now, in your supplementary statement you then deal, or you purported to deal with the remainder of the persons you had not spoken of. And in this regard, as we looked at your statement at paragraph 71, page 14,

you once again deal with Minister Mchunu. You deal with former Minister Bheki Cele. You deal with, once again, with General Phahlane. At 15, you once again deal with General Mkhwanazi. And you deal, followed by General Fani and General Khoza.

This is the affidavit we have just looked at. General Khan. It did sound... There has to be an explanation, Chair. Somewhere on my papers, there must be a Khoza. I apologise for that, General Khan. So you
10 deal with those at your paragraph 71, starting at page 14 of the affidavit. You see that?

MR MATLALA: Yes, I do.

ADV SELLO SC: Then we went further in your affidavit at page 17. From paragraph 89, you deal with Mr Msibi, the late. You deal with Mr Van Wyk. Once again, Mr Mogotsi, and then you deal with Ms Hangwani Maumela and Mr Suleiman Carrim.

MR MATLALA: Yes, I see that.

ADV SELLO SC: Now you confirm, if you go back to your
20 annexure Schedule A, that item 5 required you to speak about your relationship with Lieutenant General Shadrack Sibiya, and the question posed by Commissioner Khumalo is that even in your supplementary statement, you have failed once again to deal with your relationship with General Sibiya. You note that?

MR MATLALA: Yes, I do.

ADV SELLO SC: I think then perhaps this might be your opportunity to explain to the Commissioners why you elected, notwithstanding that you were given a further opportunity to deal with that relationship in the terms as requested of you.

MR MATLALA: Firstly, if we can remember, Commissioner, you asked me about – this goes to General Sibiya, but I need to take you back. You asked me about my interactions
10 with General Mkhwanazi. What was it that was discussed during the meeting? And I only told you about the Medicare tender and the warrant.

So when I said some of the things, I could not talk about them because I would not want to prematurely disclose my defence strategy. Because if you go back, and now I mention about General Sibiya and the very same recordings that I was talking about, his name has been mentioned there, and I said those recordings are under investigation, and I do not know what actually are they
20 investigating me about in those recordings. So I did not say anything about him because I do not want to somehow end up incriminating myself.

ADV KHUMALO SC: I think, Mr Matlala, the question is, what is your relationship with this person? So it has nothing to do with offences that are under investigation and

the possibility of self-incrimination. You are being asked to explain your history and/or relationship. Take Mr Van Wyk, for example. You have set out what your history and relationship is with him.

Then you say, because he is a witness in the Medicare matter, you will not say anything further. But in relation to General Sibiya, you do not even say you know him. You do not even say you have a history with him.

MR MATLALA: Okay.

10 **ADV KHUMALO SC:** And that is separate from whatever issues are being investigated and may be the subject of criminal proceedings. So I would expect you to please answer the question, what is your history and relationship with General Sibiya? And then, at a stage where you need to assert your privilege, you may do so, but I cannot accept that you are not even able to say I know the person.

MR MATLALA: I understand, Commissioner. So, I would say I know him because at some point I went to his office to make a complaint about the occupation of the lease
20 agreement that I had with Public Works. So that is the first time that I got to know of him.

CHAIRPERSON: The what of the lease?

MR MATLALA: The lease agreement, I had a lease with Public Works for the hospital that is situated inside SAPS College which is in Pretoria West. So then I could not

occupy that hospital. So that was my first time that I went to him to complain about that.

ADV SELLO SC: Perhaps to assist you, please let go to the Regulation 10.6 itself, because specific questions are posted there in respect of each individual that is listed in Schedule A. So if you could consider all the questions set out in subparagraphs 2.2.1 to 2.2.7, can we invite you to answer each one in relation specifically to General Sibiya? That that might help ...[intervenes].

10 **MR MATLALA:** Sorry, Commissioner, can you please clarify that again?

ADV SELLO SC: Please, let us go to the Regulation 10.6 in the same file that contains your statement. The first document should be the Regulation 10.6 notice.

MR MATLALA: Yes.

ADV SELLO SC: And if we go to page 3 of that file, at sub 2.2, it reads:

20 “Explain your history and/or relationship,
 direct or indirect, with the listed law
 enforcement officials in Schedule A
 attached hereto.”

In your response, you are required to provide the following information, and then it is set out in further subs 1 to 7 at page 4.

CHAIRPERSON: May I make this request, Ms Sello? Can

you please read all those subparagraphs? But instead of individuals or officials, specifically referring each instance to General Sibiya.

ADV SELLO SC: I shall do so, Chair.

CHAIRPERSON: And then so you refer to 2.2.1. We will wait for an answer.

ADV SELLO SC: I shall do so.

CHAIRPERSON: All the way down. Thank you.

ADV SELLO SC: Thank you. So, but you have
10 reacquainted yourself with paragraph 2.2. You understand what it requires of you.

MR MATLALA: Of course.

ADV SELLO SC: Yes. So then back to Commissioner Khumalo's question. We are talking about your relationship now specifically with General Sibiya, and we are going to consider each question in turn and have you speak and respond thereto, but confining your response only to your relationship with General Sibiya. You understand?

MR MATLALA: I do.

20 **ADV SELLO SC:** Then the first question would be at paragraph 2.2.1, and then in this context would read:

“When and how did you meet General Sibiya? If introduction was a third party, please provide the details of such a party.”

MR MATLALA: When I – 2023 or – we still on General Sibiya, right?

ADV SELLO SC: Yes, only.

MR MATLALA: Yes. It was in January 2023 or 2024. I do not remember well.

ADV SELLO SC: Okay.

MR MATLALA: And then by how, I already explained how.

ADV SELLO SC: No, you have not explained. You say you met him when you went to raise the issue of the lease
10 agreement ...[intervenes].

MR MATLALA: Yes.

ADV SELLO SC: Regarding the hospital at the SAPS College. That does not speak to the how. So I am sure if I tried to go to that office, they will not grant me access. How did you gain access there? How did you how did you secure that meeting to get the opportunity to put your gripe to him? Why did he did he entertain your visit? That is the kind of detail required. So if you could help us with that?

MR MATLALA: Yes, it is because I sent him an email.

20 **ADV SELLO SC:** Okay?

MR MATLALA: And then requested for a meeting, and his email address was given to me by Sergeant Nkosi.

ADV SELLO SC: Yes?

MR MATLALA: Thus, I think that will answer by who. By a third party who made the introduction.

ADV SELLO SC: So it was Sergeant Nkosi who made the introductions?

MR MATLALA: Yes.

ADV SELLO SC: Okay. The second then is at 2.2.2, the nature or description of your relationship with General Sibiya.

MR MATLALA: I do not have a relationship with him.

ADV KHUMALO SC: Maybe not now, but let us say from the date you met him until the date of your arrest, what was
10 the nature of your relationship with him, the description?
Nature or description of your relationship?

MR MATLALA: I do not know how to answer this question, Commissioner. You say nature ...[intervenes].

ADV KHUMALO SC: Were you friends?

MR MATLALA: No.

ADV KHUMALO SC: So your engagements with him, what were they? Were you engaging with him as a policeman? As what?

MR MATLALA: The engagement, as I said, is something
20 which is under investigation, which I cannot. Yes, there are engagements, but it is something that is under investigation and partly some charges that I am currently facing. So for me to explain that to you, I have to go deep in and then explain the nature of the charges that I am currently facing that involves him.

ADV KHUMALO SC: Let me ask you this. Are you not able to say these are the examples of the engagements I had with him? With these ones, there are no issues, but this one I know that there is an investigation, so I assert my privilege? I would have a difficulty if you said, even when you met him at his office to lay charges or to complain about service delivery, you are not going to tell us about it.

MR MATLALA: But that, I have already done it.

ADV KHUMALO SC: No, you mentioned one incident when
10 you met with him to discuss the Public Works.

MR MATLALA: Yes, yes.

ADV KHUMALO SC: So that was one.

MR MATLALA: Of course.

ADV KHUMALO SC: And the question I asked you was from that moment until the date of your arrest, what was the nature and description of your relationship?

MR MATLALA: That is something that I cannot go into because it is under investigation. I cannot go into that.

CHAIRPERSON: Did you, after you had met him for the
20 first time, did the two of you socialise? Maybe meet at ceremonies, functions?

MR MATLALA: You mean the first time?

CHAIRPERSON: After you had met him for the first time?
After?

MR MATLALA: Yes, I met him.

CHAIRPERSON: Did you socialise?

MR MATLALA: Socialise means social gathering ...[intervenes].

CHAIRPERSON: Meet at ceremonies, functions?

MR MATLALA: Yes, yes.

CHAIRPERSON: Okay, and what sort of gathering or ceremonies?

MR MATLALA: It was an engagement party, I think.

CHAIRPERSON: Whose engagement?

10 **MR MATLALA:** I do not know whether it is his daughter or his son. I am not sure about that, but it is between the two. I am not sure whether it was the daughter or the son.

CHAIRPERSON: All right.

ADV SELLO SC: Thank you, Commissioners. You say, I will say it is under investigation and of course I speak subject to your correction. You cannot talk about your relationship with General Sibiya, because what is under investigation exactly? Is it your relationship with General Sibiya that is under investigation?

20 **MR MATLALA:** It is the contents of what is in the recordings regarding General Sibiya and also it is in relation with the Medicare tender.

ADV SELLO SC: So what is under investigation insofar as your relationship with General Sibiya is concerned is regarding the Medicare tender?

MR MATLALA: Yes, that is correct.

ADV SELLO SC: And anything else?

MR MATLALA: Like the contents that are in the recordings.

ADV SELLO SC: What does that mean, Mr Matlala?

MR MATLALA: Chairperson, for me to explain that I have to obviously now speak about what is in the content of those recordings.

ADV SELLO SC: No, you see, what I am trying to
10 understand is you are asserting a right, right? And the right you seek to assert is the right not to self-incriminate. Now logic dictates that you can only self-incriminate in a specific offence. Do you understand what I am saying at least?

MR MATLALA: I hear you.

ADV SELLO SC: Okay. Now what you seek to do, you say you cannot talk of a relationship generally with this particular person because there is a risk you will incriminate yourself. That then raises the next question incriminate yourself in what? You must be able to articulate
20 that for the Commissioners to accept that yes, indeed you do face such a risk. So you are going to have to articulate there in order to have to explain exactly what the offence is.

MR MATLALA: The offence is ...[intervenes].

CHAIRPERSON: Perhaps let me just explain where Ms Sello is coming from. There is a decision by the

Constitutional Court, and sitting here in a legal context, we are bound by those decisions. There is a decision by the Constitutional Court that says if someone is asserting the privilege that you are asserting, what they say must be within clearly defined contours or parameters, they cannot just in general say I am asserting my privilege against self-incrimination.

So it is on that basis or at that level that Ms Sello is engaging you. Do you follow that? So you cannot just
 10 say because issues relating to Mr or General Sibiya somehow relates to the Medicare24 contract, I am not willing to answer any question relating to that because I might incriminate myself. That may not fall within what the Constitutional Court prescribed. So it is on that basis that Ms Sello is engaging you. Are you in a position to respond or do you want Ms Sello to repeat the question?

MR MATLALA: So saying that it is because of the Medicare tender it does not justify why I cannot comment on that. So I should explain it is fraud, it is money laundering,
 20 so I do not know how I should explain that. I do not know.

ADV SELLO SC: Okay, let us try it this way. You are facing a criminal charge in respect of Medicare24 tender.

MR MATLALA: Yes.

ADV SELLO SC: General Sibiya is not.

MR MATLALA: Yes.

ADV SELLO SC: What bearing does your relationship with General Sibiya have on that charge you are facing when he is not your co-accused?

MR MATLALA: Yes, he is not my co-accused, but he has been investigated.

ADV SELLO SC: By who?

MR MATLALA: By IDAC.

ADV SELLO SC: In what case for what crime, what offence?

10 **MR MATLALA:** The Medicare tender.

ADV SELLO SC: And what is the proof of that when he is already not part of the litany of accused who are now being charged for the Medicare tender? So you have about these 14, 15 people who are already facing criminal charges. Now you say by IDAC, initiated by IDAC, and you say he is still under investigation. On what basis do you so say? Because one would have expected that he formed part of this cohort of accused persons, which he does not.

MR MATLALA: Yes, I do not know why he is not part of it.

20 **ADV SELLO SC:** Then how do you know he is under investigation?

MR MATLALA: Because I have been questioned about him and also I have made a statement under section 204 when I was being questioned about him.

ADV SELLO SC: You were questioned about him in

respect of Medicare²⁴?

MR MATLALA: Yes.

ADV SELLO SC: Okay, I will accept that, but what does that have to do with the fact that he is your friend? I am sure you were questioned, and I suggest to you, about certain conduct. His conduct. Was that not the extent of the questioning?

MR MATLALA: Of course.

ADV SELLO SC: So that conduct, you do not need to be
10 friends for that conduct to raise questions and be subjected to investigation. We are not discussing his conduct. We are discussing your relationship with him. Why can you not comment on that without necessarily saying anything about his conduct, which you suggest IDAC is investigating?

MR MATLALA: Chair, Commissioner, I have already commented on that. I do not know whether you want me to say. I told you he was not my friend. He is not my friend, but there is an investigation that is going on. So I do not know what is it that you say I cannot comment on, unless
20 now if you want me to explain what is it exactly that IDAC is investigating him for.

ADV SELLO SC: No, that is not my question because you want that to be my question. I am staying away from that question. I do not accept just for the record that he is under investigation because you have not even proven that

he is under investigation. Your say-so is not enough. It is not your get-out-of-jail card to refuse to answer a question simply because you suggest somebody else or you suggest that there is an investigation and there is not a morsel of proof before us that there is such an investigation.

It is no answer, but that is not what I am asking you. I am asking you about your relationship with the man and that you describe the relationship. Is it a long-term relationship initiated on that particular date when you went
 10 to complain about the hospital, the SAPS hospital? Does it sustain? Has it broken down? Was it very close? Was it a business relationship? I am giving you – and you see so far, I have not even gotten anywhere close to what IDAC is investigating him for and I am demonstrating that you can answer that question without reference to what you claim IDAC is investigating him for.

MR MATLALA: Okay, then which question do you want me to answer?

ADV SELLO SC: Please describe in your own words the
 20 relationship you have with General Sibiya, you had, and if it has since changed, when it changed, and the one you currently maintain with him.

MR MATLALA: The relationship that I had with him, it was not like a friendship relationship.

ADV SELLO SC: Okay. Well, if it was not like something,

it has to be like another. What was it like?

MR MATLALA: Now you are pushing me to say something that I do not know what I will say because he was not a friend, and for me to go further, the only way to do that is to go now into the contents of the investigation, which I do not want to tap into that territory.

ADV SELLO SC: Okay, let us ...[intervenes].

CHAIRPERSON: Was he an acquaintance?

MR MATLALA: He is someone that I knew.

10 **ADV SELLO SC**: Thank you, Chair. Perhaps then let us continue, it might become clearer in time for the Commissioners, the nature of the relationship. Staying then with the Regulation 10.6 at 2.2.3, page 3, that is where I am reading, the 10.6 required in respect of General Sibiya to explain the nature, extent, and frequency of your communications with him.

MR MATLALA: Communications, it was maybe once when I went to his office.

ADV SELLO SC: Okay, and by communications direct or
20 otherwise?

MR MATLALA: Ja ...[intervenes].

ADV SELLO SC: Have you communicated with him directly, and have you communicated with him indirectly? When we talk about indirectly, please explain the method of communication you conducted then.

MR MATLALA: Directly, yes, through – I sent him an email.

ADV SELLO SC: Yes.

MR MATLALA: That was the first time. I have never called him directly. So I only spoke with him, I think, I would say three or four months. I am just saying on top of my head, I cannot remember well, maybe I will say three or four months after I first met him. And then the communication then was through a third party, the very same Sergeant
10 Nkosi.

ADV SELLO SC: And how frequent was that communication?

MR MATLALA: Frequent, plus minus three or four times.

ADV SELLO SC: And what was the communication about?

MR MATLALA: Let us leave it there because that is part of the investigation.

ADV SELLO SC: Is the engagement party you attended of his daughter or son, are you seriously suggesting it is part of IDAC's investigation?

20 **MR MATLALA:** Yes, it is.

ADV SELLO SC: In what manner? As to who engaged who and why or why?

MR MATLALA: I think I will have to discuss with my legal counsel because I am in possession of my 204 statement. The only way for you to understand that is for you to see

the statement, but it is.

ADV SELLO SC: I think then it would help for the Commissioners to understand the basis on which you seek to assert this right, right? Because the attitude you are adopting is you cannot ask me about General Sibiya because IDAC is investigating something somewhere.

MR MATLALA: But Commissioner, fairly speaking, I have to go to court and account on this. So I cannot now ventilate anything that is to do with him, especially
10 something that is already being under investigation. I do not know even whether he will be charged or not. So chances are he might not even be charged. I do not know that.

But currently myself, I am charged and I have to go to court and account for these things. So I do not think it is fair for me now to speak about something which I am not sure at the end of the day whether I will have to account for that or not.

ADV SELLO SC: You see, the challenge I have, Mr
20 Matlala, is I think you conflate yourself with General Sibiya. You are not General Sibiya. You are facing charges for your conduct, and we have not done anything to even stray into that discussion. We are talking about something separate, which is your relationship with yet a third party who is not charged with you. So I do not understand, in the current

criminal case that you are facing, how you will be called to account for your relationships with including General Sibiya. How does that come into play?

MR MATLALA: It actually does.

ADV SELLO SC: How?

MR MATLALA: I do not know how because I am not an investigator.

ADV SELLO SC: Okay. Then I will tell you that it does not. You cannot even, I will not even say prove, it is too
10 high a threshold. You cannot even persuade the Commissioners that it is relevant for purposes of the current criminal case you are facing. You are not able to. You accept that?

MR MATLALA: I do not accept that.

ADV SELLO SC: Okay, then if you do not accept that, then demonstrate to these Commissioners that that relationship is relevant to the charges you currently are facing.

MR MATLALA: I think I have just said that the only way for me to demonstrate that is for me to now to get right inside
20 the crux of the matter, which is something that I cannot do.

ADV SELLO SC: Then I will put this proposition to you, that you do not want to talk about the nature, extent, frequency of your communications with General Sibiya because if you do, you are at risk of incriminating yourself in some offence because by their very nature, they would be

breaching the law. That is my proposition to you. What is your response?

MR MATLALA: I cannot argue with you on that.

ADV SELLO SC: Okay.

MR MATLALA: That is how you see it.

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

ADV BALOYI SC: Before you move on, Ms Sello.

ADV SELLO SC: Yes.

ADV BALOYI SC: Mr Matlala, in describing the nature of
10 the of the communications with General Sibiya, you have a
number of options and without getting into the detail of it,
and I do not intend to repeat what Ms Sello has said to you
because ultimately the Commission must be satisfied that
you have correctly asserted the privilege against self-
incrimination. And for us to do that, we need to know what
it is that you avoided talking to, not in general terms,
general broad terms, but specifically.

Having said that, when I say you have a number of
options, I can put this to you as an example. You have had
20 interactions with General Sibiya. We know you sent an
email, you went to the office, and you do say it had to do
with the lease. I think it is competent to ask you, have you
had any interactions with him about the Medicare contract
still at general terms? And if you are asked what exactly,
you can say, I wanted help to resolve the lease issue.

You testified in the Ad Hoc Committee, for example. You said you interacted with him about the kidnappings of, I think, Mr Boshoga and Mr Dikgale. That has nothing to do with your Medicare contract, and if you do not speak to that, then you are not being frank with us if you do not say, well, other things that have nothing to do with the Medicare contract I have dealt with him, then you are not being frank with us.

The Chairperson said to you, asked you, have you
10 socialised with him? And it had to be put, it had to be directed to you, in my opinion, for you to say, ja, we had an engagement. So there are topics that demonstrate or would explain and say something about your interactions with General Sibiya, and they have nothing to do with Medicare, and there is no basis or valid basis for you not to speak to those when you are asked to explain your interactions with General Sibiya.

CHAIRPERSON: I think also what Commissioner Baloyi is referring to, I think we have had sight of the Ad Hoc
20 Committee transcript. If I am not mistaken, I think it is in that transcript where you say, in fact, you contradict what General Sibiya said before us here. You say you attended the engagement function, and that you did not go there just to pick up your wife, which is what General Sibiya told us.

You say you attended that, and as I understand it,

you attended as an invitee, and you were there for a period much longer than just going there to pick up your wife. So I am raising that in support of what Commissioner Baloyi is saying, which is there is a lot you can talk about, and I do not see how it is incriminating for you to tell us that you went to the engagement party and also to contradict General Sibiya on what he himself said about your attendance there.

MR MATLALA: Thank you, Chairperson. Chairperson, it is
10 not only the Medicare tender. Like I said before, it is also the contents of the recordings, which are also putting me at risk of self-incrimination. So I do not know how the approach of – I cannot tell now, as I sit here, what is the approach of the investigation. I do not know that. So when I testified in the Ad Hoc Committee by then, I was not yet charged or even being under investigation. So now it is a different thing now. I am charged, and I am also under investigation.

ADV BALOYI SC: You have only two bases on which you
20 are set that privilege. You are either an accused or you are a suspect. There is no encompassing protection or umbrella that you say, well, I know it has been investigated, and I do not know which way it will go. That is not what that protection that is given to you is all about.

That protection applies if you show that I am an

accused on this issue, this very issue, and so I should not be required to speak to it because I will self-incriminate. That is the easier part. The other is I am a suspect. But even there, you have to provide details because, as Ms Sello says, it is not just say so. You do not just say I am a suspect and that is the end of it.

We are entitled to engage you to establish that indeed you are a suspect because if you are a suspect, of course, we have to be careful what we ask you if you are
10 asserting that privilege and how we engage with you. So those are the two topics.

That something is in the recordings is not sufficient to invoke that protection for you. You cannot simply say, well, it is in the recordings, and those recordings are being challenged, and I do not know how they are going to use those recordings. Therefore, I should not be required to answer those questions.

I think you can accept that if the privilege is properly invoked, if you rely on it properly on the correct
20 facts, the Commissioners will give it proper regard because we would not want to impinge on your fair trial rights. You can accept that, but the burden is on you to show us that in answer to a particular question will tread into your fair trial rights, and we must respect that.

So far, you are dealing with matters in very broad

and general terms, and that does not avail you. It is not available to you, but more importantly, you are either a suspect, and you have to show why you say you are a suspect in a particular matter, or you are an accused. Those are the only two circumstances. I do not know if you want to comment.

MR MATLALA: Yes, I wish to, Commissioner. As I said, I will make sure that I get the transcript from the pre-trial to prove that I am actually a suspect in those recordings. And
10 I will say again that in those recordings, I do not know to which extent they are going to investigate. So I do not want to be careless by saying something that will later incriminate me. But that is a fact that I am under investigation for those recordings, and then I will prove it by getting those transcripts so that you will know that actually I am a suspect.

ADV BALOYI SC: Do you accept that we have to have those transcripts presented to us? They must be engaged upon with you. They must be before us. You must look at
20 them. We must engage with them in order for us to agree with you on any item. It is not everything that is in the recording, I take it, that you say is untouchable. But even if that is what you are saying, that everything in that recording is untouchable, you do accept, at least I think I understand you to accept that those recordings would have

to be before us and then to engage with you when you say, you know, that part, if I deal with it, I am self-incriminating. You accept that?

MR MATLALA: The recordings, I do not want to deal with them because they are under investigation. What I wanted to do is bring the transcript to show that those recordings are being investigated.

ADV BALOYI SC: Transcript of the recordings?

MR MATLALA: I am sorry, I meant to say the contents of
10 the recordings, yes.

ADV BALOYI SC: That is what you mean when you say transcript, you mean the contents?

MR MATLALA: I said I will bring the transcripts to prove that what is in the recordings, I am actually being investigated for that. So for me to prove that is to bring the transcripts.

ADV BALOYI SC: Ja, I am just trying to clarify, the transcript of what?

MR MATLALA: Of the recordings. No, I am sorry, the
20 transcript of the pre-trial where the state advocate mentioned that I am under investigation in regards to those recordings.

ADV BALOYI SC: Okay, but you have heard me, what I said earlier.

MR MATLALA: Yes, I did.

ADV BALOYI SC: We would have to hear as per question or topic, we need to see that indeed, if we are required, if you are required to answer a question, a specific question relating to that topic, then it does raise, validly raise the self-incrimination defence.

MR MATLALA: I take that, yes.

ADV BALOYI SC: Thank you.

ADV SELLO SC: Thank you, Chair. Perhaps if we could see if we can quickly work through this list. We now get to
10 sub 2.2.4, which required you to comment on the nature, extent and frequency of physical meetings and/or gatherings with General Sibiya, including when, where and how these meetings were organised. Provide details of the persons in attendance and as well as the purpose for each such meeting. So if we look at 2.2.4, can you tell the Commissioners how frequently you met with General Sibiya and under what circumstances?

MR MATLALA: I would say maybe three or four times.

ADV SELLO SC: Can you deal with each incident as to the
20 purpose of that meeting and how it came about?

MR MATLALA: The first time I have already mentioned it. And the second time is when I was going to get a feedback of what I was complaining about.

ADV SELLO SC: And how did you get that feedback? Where and?

MR MATLALA: I went to his office also.

ADV SELLO SC: Once again?

MR MATLALA: Yes.

ADV SELLO SC: And this was to get feedback on?

MR MATLALA: The Public Works lease agreement.

ADV SELLO SC: Okay. And who arranged that particular meeting for you?

MR MATLALA: Sergeant, I think it was Sergeant Nkosi.

ADV SELLO SC: Sergeant Nkosi. Do you know, how did
10 Sergeant Nkosi communicate with you that the meeting, he
has succeeded in arranging this meeting?

MR MATLALA: He had my telephone number.

ADV SELLO SC: Say that?

MR MATLALA: He had my phone number.

ADV SELLO SC: You still do not tell me how he
communicated with you.

MR MATLALA: I am saying he called me.

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

ADV BALOYI SC: And when he called you, did he call to
20 say General Sibiba wants to meet with you to give you
feedback? Because it is Nkosi that calls you.

MR MATLALA: Yes.

ADV BALOYI SC: Is that how it happened? Thank you.
You said yes, Mr Matlala?

MR MATLALA: Yes, yes.

ADV SELLO SC: I too had missed the answer, sorry. So that is the second time. Now, the next time?

MR MATLALA: I think I will confuse the timelines because it is a long time ago, but ...[intervenes].

ADV SELLO SC: Okay.

MR MATLALA: There was an occasion where he asked me about the Jerry Boshoga, so I do not know whether it was the third or the fourth time. I do not know that.

ADV SELLO SC: Now, can you tell us more about that
10 engagement? How it came about and who initiated it?

MR MATLALA: He initiated it, yes.

ADV SELLO SC: Directly with you or through Sergeant Nkosi again?

MR MATLALA: Like I said before, he never called me at even once.

ADV SELLO SC: Okay, through who did he do this?

MR MATLALA: With, yes, with Sergeant Nkosi.

ADV SELLO SC: And what about Jerry Boshoga did he want to engage you on?

20 **MR MATLALA:** I think it was after the raid from my house because the police came to my house and then they said that they were looking for a kidnapped victim.

ADV SELLO SC: Okay.

MR MATLALA: And then later he, I just do not know, I cannot remember when, but at some point I went to him and

that is when he asked me what do I know about that.

ADV SELLO SC: You went to him?

MR MATLALA: Yes.

ADV SELLO SC: Is he back at the office now?

MR MATLALA: Yes.

ADV SELLO SC: And who helped you to set up that meeting?

MR MATLALA: I said it was Sergeant Nkosi.

ADV SELLO SC: No, no, Sergeant Nkosi, remember we
10 stopped counting and I do accept that it is a long time so
you will not exactly know whether it is the second or third.
Sergeant Nkosi organised for you to get the feedback on the
disagreement. That much you said. So now this is yet
another meeting and you did not want to commit as to
whether it is the third or the fourth. This is regarding Mr
Boshoga. You said he initiated it. You said General Sibiya
initiated it and you said he did so through Sergeant Nkosi.

MR MATLALA: Yes, I said.

ADV SELLO SC: And you said you went to him.

20 **MR MATLALA:** Yes.

ADV SELLO SC: At his offices?

MR MATLALA: Yes.

ADV SELLO SC: And so he requested to meet you?

MR MATLALA: Yes.

ADV SELLO SC: What about? Did he explain?

MR MATLALA: Are we still on?

ADV SELLO SC: On Mr Boshoga.

MR MATLALA: Yes.

ADV SELLO SC: Yes.

MR MATLALA: Yes, it was about that. He asked me what I know about that.

ADV SELLO SC: So then if I understand your communication channel, he would ask Sergeant Nkosi what you know about that. Sergeant Nkosi would ask you in turn
10 what you know, that General Sibiya wants to know what you know about that. Your response would be no, I do not know much or I know whatever and then he come. Is that how the communication works?

MR MATLALA: No, no, no.

ADV SELLO SC: Please enlighten me.

MR MATLALA: He asked him to arrange a meeting, then I went to him.

ADV SELLO SC: Okay.

MR MATLALA: Then that is when he told me.

20 **ADV SELLO SC:** So he initiated this engagement with you?

MR MATLALA: Yes.

ADV SELLO SC: Do you know in what capacity he did so? Was he investigating this kidnapping or was it as an interested person, as a relative? Do you have a sense of

why he reached out to you on this matter?

MR MATLALA: Ja, I think he was because what he said to me, but I do not know what to make out of that, but he said if he can correct that case, it will help him a lot. So I do not think it was because he was a relative or something.

ADV SELLO SC: Okay. So he initiated this contact for purposes of investigation?

MR MATLALA: I think so, yes.

ADV SELLO SC: Now, that would be in his official
10 capacity, I take it, as a police officer, I think a senior ranking member of the service?

MR MATLALA: Yes, he was.

ADV SELLO SC: Was he an official?

MR MATLALA: I do not know how to justify it to be official, but he just called me as a police officer, so I do not know.

ADV SELLO SC: And that is precisely what I am trying to determine. It is a police officer.

MR MATLALA: Yes.

ADV SELLO SC: You have been questioned about the
20 kidnapping of Mr Boshoga. I take it, it was not by him the first time when you say they came to your residence?

MR MATLALA: Yes.

ADV SELLO SC: So now we know that he subsequently becomes involved in it by requesting a meeting with you, correct?

MR MATLALA: Yes, that is correct.

ADV SELLO SC: Hence my question, did you understand him to be investigating that disappearance of Mr Boshoga? What was your understanding? What process were you engaging in, seeing as so far you had just met him twice about the lease agreement?

MR MATLALA: But as a senior police official, maybe he would refer the investigation to someone else. I do not know how it works, but what I know is that he called me and
10 then he asked me questions in relation to Mr Boshoga.

ADV SELLO SC: So you do not know whether he was doing that as an investigator into the kidnapping?

MR MATLALA: I cannot tell that. I do not know.

ADV SELLO SC: Okay, and were you able to respond to his questions, to satisfy his curiosity?

MR MATLALA: I think so, yes.

ADV SELLO SC: Okay. Now, you would have said that is your third meeting, but you did say that it was some time ago, so now you are no longer so sure. I will just talk about
20 the next contact you had with him. When was the next, and who initiated it, and where, and what about?

MR MATLALA: Okay, let me say this because all of his requests to meet him was through Sergeant Nkosi. So from now on, whenever he calls me, it is through Sergeant Nkosi.

ADV SELLO SC: Okay.

MR MATLALA: Yes.

ADV SELLO SC: So then, before you get to my question, if he was an investigator in Mr Boshoga's disappearance, should he not have contacted you directly? Is that not what investigators do? Could he not have obtained your number from Mr Nkosi and say, I, as a General in the police service, I need to talk with Mr Matlala for whatever reason, because I am investigating a kidnapping? Why could he not contact you directly?

10 **MR MATLALA:** That I cannot answer. I do not know that.

ADV SELLO SC: So you did make the point that all future and past contact with him was initiated through Mr Nkosi. As a matter of interest, did you ever enquire why or who made Mr Nkosi the intermediary between the two of you?

MR MATLALA: There is. I think it is Mr Nkosi himself who started this thing.

ADV SELLO SC: How does he do that?

MR MATLALA: Because he is the one who gave me his email address.

20 **ADV SELLO SC:** Yes, the first time I can understand. But why could you not then have your direct contact with General Sibiya after the initial contact? Why did you always need to work through Sergeant Nkosi?

MR MATLALA: I do not know that, but that is what was happening. I do not know that.

ADV SELLO SC: It never crossed your mind that by now you are on your fourth contact, the one we are going to discuss next, that perhaps your relationship has developed to a point where you can contact each other directly?

MR MATLALA: Commissioner, when that thing was happening, obviously I would not know by then, but now I would understand why that was happening. But unfortunately, what was happening is something that I cannot speak about. I think I even requested that some
10 part of my evidence I would request because I am under investigation. I am really under investigation. I am not making this up. So I ask that maybe if it is possible that some of my testimony can be in private, because I cannot risk incriminating myself. That I cannot do.

ADV SELLO SC: Does Mr Boshoga's kidnapping have anything to do with Medicare24, which we know is the case you are currently facing?

MR MATLALA: Medicare24?

ADV SELLO SC: Ja. You have always invoked
20 Medicare24, and I am interested to find out now whether Medicare24 is relevant to the issue of the kidnapping of Mr Boshoga?

MR MATLALA: No, it is not. No, it is not.

ADV SELLO SC: Okay, so Medicare24 is out of the way. So what is the basis on which you cannot speak? You say

you are under investigation by who and for what?

MR MATLALA: I am saying – we are speaking about General Sibiya now. I think your question is related to General Sibiya.

ADV SELLO SC: Yes.

MR MATLALA: I am saying I am being investigated, and then I am also charged in relation to the Medicare tender, and also the recordings that I mentioned ...[intervenes].

ADV SELLO SC: Sorry, you hit your mic, thank you.

10 **MR MATLALA**: The recordings that I mentioned earlier, that also his name has been mentioned there. So I am saying this because I know for sure that there is an investigation going on in relation with those recordings, and also I have been questioned about him by IDAC.

ADV SELLO SC: IDAC?

MR MATLALA: Yes.

ADV SELLO SC: Okay, perhaps if we look at it this way, to your understanding, what is General Sibiya being investigated for? And by whom?

20 **MR MATLALA**: Now for me to do that, obviously I need to disclose the nature of the investigation in my case.

ADV SELLO SC: No, no, that is not. What is he being investigated for?

MR MATLALA: Yes.

ADV SELLO SC: Offence.

MR MATLALA: Yes, that offence. For me to mention that offence, I am saying now I have to speak about what I am trying to avoid.

ADV SELLO SC: No, that is very cryptic.

ADV BALOYI SC: Can I just try?

ADV SELLO SC: Ja.

ADV BALOYI SC: Mr Matlala, your reference to IDAC investigating General Sibiya, is it about, does it relate to Mr Boshoga? That you can answer.

10 **MR MATLALA**: No, I said it does not relate to that.

ADV BALOYI SC: It does not relate to him?

MR MATLALA: Yes.

ADV BALOYI SC: And does it relate to the Medicare contract?

MR MATLALA: Yes, it does.

ADV BALOYI SC: Okay, thank you.

ADV SELLO SC: Thank you, Commissioner. That is a point I made. I said we will stay off Medicare24, but you can talk about the kidnapping of Mr Boshoga that General
20 Sibiya investigated, and in the course of investigation, he engaged you. What has that got to do with Medicare24? Nothing, right?

MR MATLALA: No, we are not speaking about – it is two things here. So Medicare24 is a separate thing. So when he called me about Mr Boshoga, it has nothing to do with

Medicare²⁴. It is something different.

ADV SELLO SC: So which means then we can talk about what your engagement regarding the kidnapping of Mr Boshoga.

MR MATLALA: Yes, of course we can.

ADV SELLO SC: Yes, so let us continue talking about it then. Chair, I am looking at the time, perhaps a comfort break, I do not know. I appreciate we started late. So I do not think it is appropriate to stop at this juncture, otherwise
10 we will run into trouble timewise.

CHAIRPERSON: Let us take, what? Let us adjourn and come back at 16:10.

ADV SELLO SC: Thank you.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Ms Sello?

ADV SELLO SC: Thank you, Chair. Chair, before we get lost in the questioning of Mr Matlala, I just need to clarify something. The Chair ruled that the document that Mr
20 Matlala refers to, being as was described regarding I think Mr Maumela and Mr Carrim, or one of them, which is part of the documents currently being collated by his legal representatives, which we have established is an SIU document and is available.

The Chair ruled that it be made available to

Evidence Leaders. I understood that there might be some challenges. I was hoping to have a quick chat with Ms Missi before I address you to find out if there are challenges in regard to providing the Evidence Leaders with that document.

ADV MISSI: Chairperson, I did indicate I do have the document. It is in my file. Had you requested it before I had run out, Mr Sello, I would have given it to you. But now that we are here, is it okay for us to give it to you once we
10 have stopped, or do you need it right now?

ADV SELLO SC: I would prefer before we rise today that we have copies in preparation for tomorrow.

ADV MISSI: Okay.

ADV SELLO SC: Okay, thank you.

CHAIRPERSON: Thank you.

ADV SELLO SC: Then continuing, Mr Matlala, we are still looking at the instances you met with General Sibiya. Do you know what investigations, if any, he did in regard to Mr Boshoga's kidnapping and my second question is whether
20 he reported back to you about that.

MR MATLALA: No, he never reported back to me.

ADV SELLO SC: Never reported back?

MR MATLALA: Yes.

ADV SELLO SC: Did you have any dealings with General Sibiya after that engagement regarding Mr Boshoga's

kidnapping? If so, can you just quickly articulate the nature of the dealings?

MR MATLALA: Dealings, meaning?

ADV SELLO SC: Any engagements with him, further discussions?

MR MATLALA: I think the engagements that I spoke about is the one that I said I cannot go into the details of that engagement.

ADV SELLO SC: Now you cannot – okay, you cannot go
10 into the detail as regards those engagements and please say it again, because? What is your reason again? Which right are you asserting this time?

MR MATLALA: It is both because I have been questioned about him and there is a statement that is made, a 204 statement, and also it is because there is an investigation that is currently ongoing.

ADV SELLO SC: Okay. Then let us take it one at a time. The section 204 statement is made by who?

MR MATLALA: By myself.

20 **ADV SELLO SC**: In which matter, or regarding which investigation?

MR MATLALA: The Medicare matter.

ADV SELLO SC: Medicare matter?

MR MATLALA: Yes.

ADV SELLO SC: And I take it that a section 204 statement

is one that would effectively render you a state witness?

MR MATLALA: No, I am not a state witness.

ADV SELLO SC: Okay, so what section 204 statement are you talking about, unless I have got my CPA all mixed up?

MR MATLALA: I do not know how, I am sorry.

ADV SELLO SC: Yes, I think Ms Misi, Advocate Misi might help.

ADV MISSI: Chairperson, if I may interject at this point? Chairperson, you would have noted earlier on we made
10 reference to the fact that some of the claims to privileges that he wants to lay are in relation to the questions that were asked to him during the interview for this, and may be found in the section 204 affidavit, which is a privileged document, and which is why we were of the view that the attorney on record would be another individual who is also an officer of the court who can confirm that he really is a suspect with regards to these interactions with said individuals, and therefore would be in a position to claim privilege, which is the reason why Mr Matlala keeps making
20 the submission that I cannot speak to this here because I am being investigated, I have addressed it in the section 204.

And you would note that when you are being investigated as a suspect, as far as I understand, it is not specified to you that your charge is A, B, C, D, E, F, G, and

therefore it makes it even harder for him to pinpoint exactly why said information was required for me to give to the individuals during my section 204, and therefore I need to claim privilege over this particular point, Chairperson.

CHAIRPERSON: Ms Sello will respond, but may I say this so long? My understanding of how section 204 works is that somebody who may be charged of an offence or who has even already been charged of an offence may then be engaged by the prosecution to be used as a state witness,
 10 and then in terms of section 204, that person may then be discharged in the sense that they will no longer be charged with that offence, but if they answer all questions truthfully and satisfactorily, and they are even called a section 204 witness.

So just before your, or what you called an interjection, Ms Sello wanted to understand if Mr – by his repeated references to his section 204 statement, he is suggesting that he was or was to be a section 204 witness. Yes, Ms Sello.

20 **ADV SELLO SC:** Indeed, Chair, that is what I am trying to understand. Because if it is in respect of Medicare24, what we know right now is Mr Matlala is an accused person. If he has signed a 204 affidavit, which as the Chair points out, he could be discharged from the charges that he is currently facing, and I need to test whether or not he is an accused

or he has become a state witness in the Medicare matter, which as I understand it is the matter in which he deposed to a section 204 affidavit.

CHAIRPERSON: Or if none of those, how then does a section 204 statement feature?

ADV MISSI: Chairperson, my apologies. The plea agreement fell through at that point, so it did not become a section 204, to my understanding. And so with that being said, that information then made him understand that with
10 regards to point A, B, and C, D, I am a suspect and I am being investigated. And that is how we have come to the conclusion that he may be in a position to claim his right to privilege.

ADV BALOYI SC: How do we, without sight of the 204, how do we as Commissioners determine whether the reliance on section 204 is properly raised? And that properly as in it is validly raised and should be upheld?

ADV MISSI: Chairperson, in that instance, we tried to aid the situation or the dilemma that we also had come to, as
20 per your question. The only solution that we could come to is that the attorney, being an officer of the court, would be in a position to confirm that indeed to the extent of A, B, C, D, having read this affidavit, we can confirm.

And I believe from that point, then it would put the Commission in a better position to say, well, Mr Matlala and

through his legal team are actually correct when it comes to A, B, C, D. But as it stands right now, it would be impossible for him to engage you with regards to those points.

And again, as we apologise with regards to not being able to deliver the replying affidavit timeously for the Commission to have sight of it, because that is the main reason why we needed the instructing attorney to both have a look at the docket and the section 204 and give the
10 Commission an insight into it.

ADV SELLO SC: If I may, I think there is a third option that perhaps Advocate Missi is not alive to, which is providing this Commission with that section 204 affidavit, even if it is on a confidential basis, for the Commissioners and the Evidence Leaders to consider the contents thereof, to appreciate the rights that Mr Matlala seeks to assert at every turn as a result of that section 204 affidavit having been deposed to him.

ADV BALOYI SC: If I may just add to that, because I was
20 going to say something along those lines, that if he is attorney and underline this, which you said is an officer of the court and therefore we must take his word for it, why does that not apply to the Evidence Leaders who are also officers of the court and officers of the Commission and the Commissioners as well, as a quasi-judicial body made up of

lawyers?

Why does that not apply to them? And that is aside from the question of, surely you could not be saying that the word of the attorney must be taken to be the word of Mr Matlala, and if the attorney says that is what that affidavit says, we must blind to the document, and without it coming from Mr Matlala's mouth, we must accept that what the attorney says, we have to make a decision on that basis. On what authority, on something so important and with far-
 10 reaching consequences, on what authority would you say we must proceed in that way?

Because it is not just a matter of preference. You obviously prefer that, so put preference aside, it does not work on preference. It works on what is the authority for denying the Commission the access to that section 204 affidavit, especially when Mr Matlala has repeatedly invoked it and offered it, he has referred to it? It does not come out of a vacuum. We are having this conversation because the witness in the box keeps saying it is in that affidavit. Why
 20 are we not entitled to look at it, and the answer to the why must be, on this authority, you are not allowed to look at that section 204 affidavit.

ADV MISSI: Chairperson, if I might be given a moment to just confirm with my learned friends? Chairperson, if I may? Commissioner? In terms of section 105(10), when

you are no longer a state witness, the ...[intervenes].

ADV BALOYI SC: Of the Criminal Procedure Act?

ADV MISSI: Yes, of the Criminal Procedure Act. You are then given a right of privilege over any information that you would have deposed to in the initial affidavit. And the moment you expose that affidavit, any and all issues that are addressed in that affidavit are now in the fray, and you waive your right to not be – you waive your rights that is given to you in terms of section 105(10).

10 Consequence to that, what we consider is that if there is even any other issue that he has addressed in that affidavit that he is given privilege over, even if you had not considered it, if we expose it to the Commissioners and not through his attorney who has legal privilege, it then implies that you would have seen all the information that he is given protection over, which you would not ordinarily be entitled to, which is protected, not to disclose to anybody else, as we have now established that he is not a state witness, Chairperson.

20 **ADV SELLO SC:** Thank you, Commissioner. Perhaps we might benefit from taking a step back, and I do so by posing a question to Mr Matlala. Mr Matlala, you concluded what we call a section 105A plea and sentence agreement with IDAC, did you not, in this Medicare matter?

MR MATLALA: Yes, that is correct.

ADV SELLO SC: And that agreement was presented to the Court as it ought to be and was considered by the Court, and the sentence was rejected by the Court, and the Court counter-offered with a higher sentence.

MR MATLALA: That is correct.

ADV SELLO SC: Which in terms of the law you have a right to consider, accept or reject, and you elected to reject it on the 13th of July 2026 at your appearance in court.

MR MATLALA: Yes, that is correct.

10 **ADV SELLO SC:** And you accept that once you rejected it, the entire section 105A plea and sentence agreement fell by the wayside. It became null and void.

MR MATLALA: Yes, that is true.

ADV SELLO SC: Now, the affidavit that we are discussing now you deposed to in the process of negotiating that section 105A plea and sentence agreement, am I right?

MR MATLALA: Yes, that is correct.

ADV SELLO SC: Now, both of them have since become null and void. You accept that?

20 **MR MATLALA:** Yes, I accept that.

ADV SELLO SC: Okay, this perhaps now to address myself to Advocate Missi, the subsection (10) of 105A simply says that the trial starts *de novo*, and the contents of those documents are not applicable as against the accused person in that particular trial. That is what the subsection

provides.

Now, Advocate Missi seems to extend that to suggest that both documents cannot be considered even if – it is not to determine the guilt or otherwise of the witness before us, but because they have become null and void for purposes of that criminal trial, therefore some privilege extends to them. I am still unclear, Commissioners, what privilege exactly Advocate Missi is extending. Thank you.

ADV MISSI: If I may, Chairperson? I have here before me
 10 the actual provision, and at subsection (10) from letter number B, subpoena (b) – no, my apologies, sub (a):

“Unless the accused consents to the recordings of all or certain admissions made by him or her in the agreement or during any proceedings relating thereto, any admission or record shall stand as proof of the admission if it does not fall
de novo.”

So our understanding interpretation is that the fact that he
 20 does not consent to waiving his right with regards to the information that he had given willingly in lieu of the fact that he would stand as a state witness, it then implies that he is covered not to disclose any such information that he had given willingly in lieu of the fact that he would be a state witness.

The problem then becomes in the instance where this document is regarded as a privileged document, and by my understanding it is our argument of submissions, right, that if we then say outside of his attorney and legal representatives who have privilege over this information, we hand it over to the Commission, it then implies that not only are you going to be able to look at those particular statements that you are asking questions about, any and all information that is disclosed in there that you possibly have
10 not even considered asking questions about, it puts us in a position where you have sight of it and you very well might say, well, but we think and we consider this not to be something that is privileged.

And so I do not understand how is it possible that the Commission would be able to close its eyes to any other point that is made there and only look at those particular averments that he makes that relates to the questions that you are asking. Because in our understanding, the moment he says you very well might look at that affidavit, he loses
20 his privilege not to have that information that is given during those proceedings exposed.

ADV SELLO SC: Chair, if I may, and perhaps it is time to turn to section 105A. The rights that are protected in that section, particularly paragraph sub (10), which Advocate Missi refers to, are intended to protect the accused against

any prejudice as a result of the agreement concluded or the plea and sentence agreement in that particular trial. That is all.

Advocate Missi suggests that the privilege extends to the world at large, whereas the privilege in terms of the section itself protects the accused person in that particular trial, where he deposed to both the plea and sentence agreement and the section 204 affidavit. So, Commissioners, I suggest there is no legal basis to refuse
 10 to provide both the sentence and plea agreement, which has since become null and void because Mr Matlala rejected the proposed sentence on the 13th of July.

It is literally *pro non scripto*. It cannot be used against him in that court. Similarly, the section 204 affidavit that he deposed to. Both documents can never be used against him in the trial that he is currently facing. Section 105A guarantees him that. So if they are going to argue for non-disclosure, I submit that they have to advance a different legal basis for the non-disclosure, not reliance
 20 on section 105A. This is not a court, a criminal court, sitting in the Medicare contract criminal case. Thank you, Commissioners.

ADV BALOYI SC: Ms Missi, first, to make the obvious point, Mr Matlala is not in a criminal court before us. He is not an accused before us. That is the one point that Ms

Sello is making, and it is my point too. But two, it seems obvious to me that Mr Matlala cannot have his cake and eat it. He cannot invoke the section 204 affidavit when he is required to answer questions. He cannot say it is in the section 204 affidavit, and so I do not want to deal with it and then at the same time say you cannot look at the section 204.

Then if that were to hold and I have said to you on what authority would that ever hold, if that were to hold, it
10 would mean that in fact he just needs to assert it. He just needs to say that if I answer that question, or if I speak to that, whatever you are asking me, if I give you an answer, I am self-incriminating, and if your proposition of submission is correct, it would mean that is the end of that enquiry. It would mean that.

And I want to suggest to you that the correct position has to be that what he asserts when he invokes that privilege against self-incrimination, it requires that we must assess and evaluate whether that defence or that
20 protection is being properly invoked, and the only way we can determine that is by looking at what it is that he is refusing to answer.

I am still to hear you say that we are wrong in that position, that in fact his say-so is sufficient. And if you are correct in that proposition, then we could never, ever, ever

make any inroad with any witness, because all witnesses can come and sit here and say, well, you know what, there is a recording, and in that recording I say things that are being investigated. That is the end of the matter.

Similarly, for section 204, all he needs to say is there is a 204 affidavit. If I speak to it in any way, then I am incriminating myself, and that would be the end of the enquiry. We would never have a witness that answers questions. Ja, you may, if you have an answer, you may
10 respond to me and to Ms Sello.

ADV MISSI: Chairperson, it is not an answer, but my question then would be, are we to say that the rest of the provision that refers to during or any proceeding relating thereto, that in these proceedings in the Commission, we are excluding the Commission to include any proceedings relating thereto?

ADV BALOYI SC: What is the relating thereto? What is the thereto that is referred to?

ADV MISSI: The agreement, to be precise.

20 **ADV BALOYI SC:** These are not proceedings about the agreement. We are not having a trial that relates to anything that that affidavit may be covering. We are not having a hearing about that agreement, if the thereto is the agreement. We are not doing that. We are engaging, and I want you to remember how we get to this point of

discussing section 204, is because Mr Matlala repeatedly makes reference to the section 204.

He says I am not answering that, it is in the 204, and all of that is being investigated, is under investigation. That is how we get there. And for me, the fundamental question is, is a witness entitled to say that which you are asking me is in a document, but you cannot see that document, and that is a complete answer? It cannot be.

ADV MISSI: Commissioner, we are not saying that it is just
10 in any document. We are saying that it is in a document that is privileged, and in terms of which that agreement, the moment you do not become a state witness, it falls away, and nobody has to have sight of it because it then goes to the fact that he willingly brought himself and has made admissions, all types of admissions, to which, as the Commission, because we are investigating some of these occurrences, these events, and perhaps even the evidence that he makes reference to, it then implies that any witness that comes forward and says to the State I am willing to be
20 a state witness, let us negotiate.

If that negotiation falls through, any Commission at that point will not respect the fact that your admissions and the privileged document that you had entered into an agreement about is no longer privileged simply because you are called before a Commission.

CHAIRPERSON: You see, we did not have – I hope you are listening to me. I hope you are listening to me. We did not have to get to this point, and I am addressing you as well, Mr Matlala, on this. We did not have to get to this point about whether or not this section 204 statement or affidavit or the contents of it should be divulged.

Mr Matlala could and should actually have responded to the question directly. If Mr Matlala said your question relates to A, B, C, D point, which is about one of
10 the crimes of which I have been charged, therefore I risk incriminating myself, that we would understand.

There is no need for him to refer to the section 204 statement as some umbrella cover for his protection. As I said earlier, there is authority from the Constitutional Court that says you must clearly identify the crime to which you are referring in asserting your privilege, and then that should take you to whether, in the face of that, the question put to you is a question that you should or you should not answer, based on whether the privilege under those
20 circumstances can be asserted.

You do not have to refer to section 204 or the statement that you made under section 204, and to then use that as some overarching protection. Once it is in the statement, therefore I cannot answer questions relating to it. It should not – I see your junior next to you is shaking

her head. Maybe she is going to give you some brilliant point on why I am talking nonsense.

So, we do not have to, we do not have to go there. We are not asking for the contents of the section 204 statement. All that we want is, because Mr Matlala is asserting the privilege, Mr Matlala should say this is the crime, and this is how your question impeaches on my privilege. That has nothing to do, and it should not have anything to do, with reference to the section 204 statement.

10 It does not have to, and I repeat what I said right at the beginning, which is that, without this umbrella coverall that Mr Matlala uses, we should not have been in this position whatsoever. So much that I will perhaps, I will let you respond, depending on your response, after the advice from your junior. I will then ask Ms Sello to repeat her question, and I hope Mr Matlala has heard me when I say we do not have to just broadly, and in general terms, refer to a section 204 statement and then say, every and anything that relates to the questions you are asking me is contained
20 in that section 204. That is not the test.

The test is, is there a crime? What is that crime? How does the question being put to you relate to that crime? And are you therefore entitled to assert the privilege? The test is not, this has somehow been touched on in my section 204 statement. That is not the test. That

is simply not the test. Yes?

ADV MISSI: Chairperson, if I might just get a moment to just convey because I can hear as well that my junior does have a few points that she perhaps wants to relate to me?

CHAIRPERSON: Yes.

ADV MISSI: Thank you.

CHAIRPERSON: Should we take an adjournment and then indicate when we should come back? No, no, no, please feel comfortable. Do not rush yourself because you want to
10 make sure that you will convey what is being said to you, but of course we had indicated that we would be taking the adjournment at five. Let us adjourn, rather than us just sitting and watching. You will indicate when you are ready.

ADV MISSI: Thank you, Chair. Yes.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Ms Missi.

ADV MISSI: Thank you, Chairperson. We have deliberated about it and I believe we are *ad idem* with the last
20 submission that you have made that relates to him having to specify what it is, what the charge is in particular. And therefore, we should allow Ms Sello to proceed and ask him the question and allow him to address it as per.

CHAIRPERSON: Yes, and I want you to, even if overnight now, but I am sure your junior can assist even as we are

sitting here. I want you to have a look at paragraph 109 of, I think it was the first of the two judgments you referred to, Ms Hassim.

ADV HASSIM SC: Yes, Chair, it is the Secretary of the Judicial Commission and Zuma.

CHAIRPERSON: Yes.

ADV HASSIM SC: And it is a judgment of Justice Jafta, which was, it is just because there are a few judgments in that case.

10 **CHAIRPERSON:** Yes, yes.

ADV HASSIM SC: It is the one that was decided on 28 January 2021.

CHAIRPERSON: Yes.

ADV HASSIM SC: And the operative paragraph for our proceedings is paragraph 109.

CHAIRPERSON: The neutral citation is [2021] ZACC2. That is the neutral citation. Please look at paragraph 109 and you will get the point I was making, and I hope your junior will now understand and not shake her head. Thank
20 you very much.

ADV MISSI: Thank you, Chairperson.

ADV SELLO SC: Thank you, Chair. While on that point, perhaps it is necessary that we play a clip. This is an interview of Mr Kganyago, the spokesperson of the NPA. And in the course of that interview, he commented about the

legal status of the two documents that we are currently debating. with your leave, Chair. Mr Matlala, if you could listen carefully to Mr Kganyago's comments there?

[AUDIO PLAYED BACK]

10 “MR KGANYAGO: First, obviously, there is a ruling now that the plea agreement is null and void and we really have to accept what the Court has indicated. Obviously, it was not within our control as we had agreed and then there was a change of sentence, and they had the right, obviously, in terms of the law to either agree or not agree, which they did not do.

20 FEMALE SPEAKER: This essentially means, Mr Kganyago, that you have to go back to the drawing board. Anything that was reached in that plea agreement, including what we understood from this Court, was an affidavit which contained the names of very senior police officers who are alleged to have also been involved in this rogue tender. You cannot use that anymore. You go back to the drawing board. He then also has to join

the other accused now who have been appearing in this matter. Clarification there.

MR KGANYAGO: Thank you very much. Yes, definitely, Because now the plea has been deemed to be null and void. Nothing that was in that plea can be used. Therefore, we have got to continue with our own investigations from IDAC's side. And then, obviously, the matter will come back here on the 11th of September. What will then happen is we will then ask for the Court to then rejoin him as accused number 1 in the other case so that he can now be tried. Because by not accepting the plea, he is basically saying I will run to go full force into the trial. Therefore, that is what is going to happen.”

10
20 ADV SELLO SC: Thank you, Chair. Mr Matlala, I hope you heard that. That is Mr Kganyago, the spokesperson of the NPA, expressing the legal position as a consequence of your rejecting the sentence proposed by the Court in the plea and sentence agreement. And the point he makes, which is what we have been trying to persuade you of, is

both that plea and sentence agreement as well as the affidavit you deposed to in the process of negotiation of that agreement, which you refer to as section 204 affidavit, have become null and void.

So they will not be used in that trial. They cannot prejudice you in that trial. And as the Chair has pointed out, or Commissioner Baloyi, we are not part, this Commission is not part of that trial. On that basis, Chair, I would seek to refer Advocate Missi in particular to

10 Regulation 10.6, which provides that:

“For the purposes of conducting an investigation, the Chairperson may direct any person to submit an affidavit or affirm declaration or to appear before the Commission to give evidence or to produce any document in his or her possession or under his or her control, which has a bearing on the matter being investigated, and such person may be

20 examined by the Chairperson or an Evidence Leader.”

That is Regulation 10.6. I will take it further and reference the rules, which at Rule 10 call for documents. At 10.3, the rule provides that:

“Should a person claim that a document

referred to in the summons, which is a document required, is subject to legal professional privilege, they must:

1. identify the document in respect of which privilege is claimed, and;
2. explain the basis for the claim of privilege in relation to each document.”

The remainder of that rule then deals with the questions of confidentiality and, of course, confirm the Chairperson's
10 discretion to determine that certain portions of such document or the document in its entirety is subject to a claim of confidentiality, which claim will be upheld by the Chairperson. That is at the Chairperson's discretion.

Based, therefore, Chair, on Regulation 10.6, we would request that the Commissioners rule, the Chair rule that Mr Matlala and, by extension, of course, his legal team, make available to the Evidence Leaders and the Commission, purely because Mr Matlala at every turn and in response to every question invokes the section 204
20 statement or affidavit, to make available both those documents for consideration by this Commission to determine the extent to which the contents thereof are relevant to the matters before the Commission. Thank you, Chair.

CHAIRPERSON: Ms Sello, I am loath to make such a

ruling without a full written argument on the point. I am not sitting here. I am not altogether sure how section 105A(10)(a) should be interpreted for purposes of whether this Commission can, regardless of the nullity, have access to and use the affidavit that was produced in the context of the plea bargain proceedings.

Sitting here now, I am loath to right away make that kind of ruling. I would have to be addressed fully and with written submissions on the point. I was making a slightly
10 different point when I engaged Ms Missi right at the end before the adjournment. I was saying we got to the point that raised the question of whether this Commission should have access to that 204 statement.

We got to that because Mr Matlala chose blanketly to rely on that statement to assert the privilege. The point I was making was the proper approach for Mr Matlala is, in accordance with paragraph 109 of the Constitutional Court judgment, to refer to a specific crime, the paragraph says so, and say because of that specific crime, this is how that
20 question impinges on my privilege and therefore I assert the privilege.

For that purpose, he ought not to rely on the fact that he has made a 204 statement because that does not specify the crime on the basis of which he is asserting the privilege. So that is why I say we ought not and we should

not have reached the stage which we reached. We reached it because of the blanket manner in which Mr Matlala kept referring to the 204 statement.

We should not get there. I would suggest that between now and the time that we adjourn, you put your questions again and Mr Matlala, I repeat, and this was the purpose of the adjournment, I repeat that I will not accept blanket references to your 204 statement because the 204 statement is not in and of itself a specified or specific
10 crime, a specific crime for purposes of the judgment that I have referred to and which is authority on how and under what circumstances you can assert the privilege.

So do not again blanketly refer us to your 204 statement. Tell us the crime and then claim your privilege. So for now, let us just proceed with your questions on the basis that I will hear nothing of this blanket reliance on the section 204 statement. And if you insist that we should have sight of that statement or affidavit, I will insist on being furnished with written submissions by both sides on
20 that issue.

ADV SELLO SC: I accept that, Chair, if I may, with your leave extended. Much as you say Mr Matlala in refusing to answer a specific question posed to him must specify the offence, which is what paragraph 109 of the *Zuma* judgment tells us. Equally so, the point I sought to make and the

purpose for which we played that clip is that very document is null and void in the very criminal trial that he is currently facing. So he cannot invoke it for purposes of a fear that it will prejudice him in those proceedings. So he cannot raise that as well.

CHAIRPERSON: Ja, ja, ja. I hear you.

ADV SELLO SC: Thank you, Chair.

CHAIRPERSON: I think that is a valid point.

ADV SELLO SC: Thank you.

10 **CHAIRPERSON:** I hear you. Thank you.

ADV SELLO SC: So then, Mr Matlala ...[intervenes].

CHAIRPERSON: I hope because when we took the break, Ms Missi, that was the point on which I was engaging you. That is, I will have none of this thing of this blanket reliance on the section 204 statement. That is when you and your junior engaged each other and when I said let us rather take an adjournment rather than watch you engaging with each other. So I hope you did engage Mr Matlala on the point, which is the point I raised with you specifically and
20 that Mr Matlala now understands that he cannot in a blanket fashion just say because this was in my statement. But in any event, Ms Sello makes a valid point, which is that the fact that it is in that statement, that statement cannot be used against him in the criminal proceedings anyway.

ADV MISSI: Chairperson ...[intervenes].

CHAIRPERSON: I am just expressing a hope that this was discussed fully. I hope I am not inviting a debate.

ADV MISSI: No, Chairperson, you are not inviting a debate. I can confirm that we did impress on him and explain to him why you are taking issue with it with regards to the blanket statement. And so I do hope that moving forward, he will be able to answer you as per the issue.

CHAIRPERSON: Thank you. Mr Matlala, the point I am making applies across the board, actually. It is not just
10 about the section 204 statement. It applies to any and every issue that may arise upon or rather based on the questions that you are going to face from Ms Sello. So you cannot in very broad and generalised terms say that is going to incriminate you. We should know what the crime is and then based on that and looking at the questions, see whether indeed your asserting the privilege is warranted under those circumstances.

ADV SELLO SC: Thank you, Chair.

CHAIRPERSON: Yes, Ms Sello.

20 **ADV SELLO SC:** I take it, Mr Matlala, did you want to say something, Mr Matlala? You looked at the Chair like...

CHAIRPERSON: Yes, yes. If you want to respond, you may, Mr Matlala.

MR MATLALA: No, I actually acknowledge what you are saying. There is nothing more.

ADV SELLO SC: Okay, okay. Then how we got here, Mr Matlala, was we were engaged on your third, fourth, whatever, incident where you met with General Sibiya and you said that he had invited you to discuss the kidnapping of Mr Boshoga. You then suggested that you cannot go in any further detail as to that engagement and for that purpose you relied on section 204 statement.

So now it says you cannot, not in the manner that you choose to, because in any event that statement itself
10 has become null and void. So then I repose my question. Can you briefly state to the Commissioners the nature of the engagement you had with Advocate Sibiya, General Sibiya, about the kidnapping of Mr Boshoga? My apologies, General Sibiya.

MR MATLALA: I think on that issue I already said that he asked me what do I know about it. Do you want me to explain what did I say to him? After he asked me what do I know about this kidnapping, do you want me to explain what did I say to him?

20 **ADV SELLO SC:** Yes.

MR MATLALA: Okay. Yes, he started by asking me that why are they accusing me, actually, of that crime? And I took him back and I explained to him that as soon as Jerry was kidnapped I suspected two things. The first one was I went to Jerry's house together with Jerry's brother and then

Jerry's brother said to me I must ask Jerry's wife to give me Jerry's cell phone because should she find out that there is Jerry's side chick's number in that phone, she will go crazy. Then she said I must lie to her and say this phone is going for investigation, and I did that.

That is the first point. So the second one is I told Jerry's wife and Jerry's brother that, why do we not tell the police exactly what was Jerry doing so that at least when they are looking for him, they will know which direction to
10 look for? And then I think those two things might have triggered what Jerry's wife did to end up saying I kept Jerry at my house, which is not true anyway, but those are the things that I discussed with General Sibiya.

ADV SELLO SC: And are you able to say what was the outcome of that engagement? Because it is not clear whether he was talking to you or with you in his capacity as an investigator having taken over the investigation or purely as a senior police officer, where others are investigating that kidnapping.

20 **MR MATLALA:** What he said to me is he said to me that if he can crack that case, it will help him a lot. So I will assume that he was doing that as a police officer, obviously, because if he wanted to be the one maybe to crack that case, then he wanted to know what we know about it since Jerry was my friend.

ADV SELLO SC: And I think earlier I asked whether after that engagement you had any further interaction with him about this matter.

MR MATLALA: This, the kidnapping matter?

ADV SELLO SC: Yes.

MR MATLALA: No, he never, it was only that time.

ADV SELLO SC: Okay. Now, you recall that we are dealing with these issues because paragraph 2.3 and 2.4 had enquired of you the nature, extent and frequency of
10 communications and physical meetings with General Sibiya. We had said this perhaps is about your third encounter with him. When next did you meet with him and for what purpose?

MR MATLALA: The other encounter I said is the one that I do not want to talk about it because I am being charged with corruption. I am not talking about 24. I have been charged with corruption and then they are also investigating him on that matter.

ADV SELLO SC: Please say the last bit again, and also?

20 **MR MATLALA:** The investigators, they are also investigating him. Firstly, I am describing the crime.

ADV SELLO SC: Yes.

MR MATLALA: So I said I am being charged with corruption.

ADV BALOYI SC: Is this in the Pretoria case?

MR MATLALA: Medicare, yes.

ADV BALOYI SC: The Medicare case?

MR MATLALA: Yes.

ADV SELLO SC: This is corruption in the Medicare contract?

MR MATLALA: Yes.

ADV SELLO SC: Is it part of the ongoing criminal case or would that be an extra charge?

MR MATLALA: Ongoing criminal case.

10 **ADV SELLO SC:** So you then, this corruption that you fear you may face a charge for arises from your physical meetings and gatherings and communication with General Sibiya?

MR MATLALA: That is correct.

ADV SELLO SC: And would both of you be charged with corruption or just you?

MR MATLALA: I am already charged. So I am saying I do not want to say things that are making my trial difficult for me. Basically what I am saying is it will infringe my fair
20 trial rights.

ADV SELLO SC: Okay. So that will infringe your rights in the ongoing corruption charge in what we call the Medicare?

MR MATLALA: Yes.

ADV SELLO SC: Because corruption is one of the offences you are charged with?

MR MATLALA: Yes.

ADV BALOYI SC: Is this the IDAC investigation?

MR MATLALA: Yes, that is correct.

ADV SELLO SC: And this would relate to your interaction with General Sibiya? You may disclose something, you say, that would compromise your defence against the corruption charge if you were to speak about this false interaction with General Sibiya?

MR MATLALA: That is correct.

10 **ADV SELLO SC:** And thereafter any other?

MR MATLALA: There are two occasions, but both are the same corruption charges. I am not mentioning when I went to see him in his office for the Jerry Boshoga issue and also for the Public Works hospital lease.

ADV SELLO SC: So, if I understand you correctly, after your engagement regarding the kidnapping of Mr Boshoga, you met with General Sibiya three more times?

MR MATLALA: Commissioner, I am just saying I cannot guarantee that it is two or three. I am just saying from the
20 top of my head, I am not sure about that.

ADV SELLO SC: But ...[indistinct] three, you had said, I had said, when was the next time you met and then you brought up the corruption case in Medicare. And I say beyond that interaction, any other, you say two other occasions. That is how I land on my three.

MR MATLALA: No, I said except the two other occasions when we met in his office.

ADV SELLO SC: Okay.

MR MATLALA: Three occasions, actually.

ADV SELLO SC: So, now you had this interaction that could potentially undermine your defence in the ongoing corruption case. I want us to get past that interaction. The next time you met with him.

MR MATLALA: There is no next time.

10 **ADV SELLO SC:** Was that the last interaction you had with him?

MR MATLALA: Yes, the last interaction is, I think, that engagement party. I do not think there was after that, I do not recall.

ADV SELLO SC: So, the next time you met with him thereafter, to your recollection, was perhaps the engagement party you referenced earlier? You have to verbalise your answer.

MR MATLALA: Yes, I said that, Commissioner.

20 **CHAIRPERSON:** Do not nod, Mr Matlala.

MR MATLALA: I am sorry, I am sorry.

CHAIRPERSON: Thank you.

ADV SELLO SC: The recording does not see a nod.

CHAIRPERSON: Thank you.

ADV SELLO SC: And since the engagement party, the

interaction at the engagement party, have you had any meetings, physical or otherwise, communications with General Sibiya?

MR MATLALA: No, I have never.

ADV SELLO SC: When was this engagement party, to your recollection?

MR MATLALA: Sometime in 2024.

ADV SELLO SC: So, you said. Okay, you can use the season, winter, summer? I am trying to...

10 **MR MATLALA**: I think it was towards the end of winter, if I am not wrong.

ADV SELLO SC: So, I can say mid-year 2024?

MR MATLALA: July, maybe July, somewhere there.

ADV SELLO SC: Okay.

ADV KHUMALO SC: Did the other witnesses not say it was 14 September?

MR MATLALA: No, I am not sure, Commissioner. I am not saying that. I am just ...[intervenes].

20 **ADV SELLO SC**: There is confirmation that the other witnesses said it.

MR MATLALA: He might be right, I am not saying that is the truth.

ADV SELLO SC: So, then I will accept that. The last engagement you had with him, or interaction you had with him, was at the engagement party in 2024, whatever the

actual date was.

MR MATLALA: Not the last. The timelines, I am a bit confused with them.

ADV SELLO SC: Yes.

MR MATLALA: But it is one of the interactions, yes.

ADV SELLO SC: Okay, then let us get past the engagement party. When did you next engage and interact? After, now, we have the engagement party in our minds. I trust fun was had by all. So, after that, when did you next

10 engage?

MR MATLALA: What I can remember is ...[intervenes].

ADV KHUMALO SC: Sorry to do this.

ADV SELLO SC: Yes, Commissioner.

ADV KHUMALO SC: There is confusion about the third and fourth occasion. If the engagement party was in September and the raid was on the 6th of December, then it must mean the engagement party is the third occasion, and the raid is the fourth occasion because December comes after September.

20 **ADV SELLO SC**: Indeed. Do you understand?

MR MATLALA: No, I understand, yes.

ADV SELLO SC: Yes. Remember we discussed the kidnapping of Mr Boshoga?

MR MATLALA: Yes, yes.

ADV SELLO SC: And you said it was after the raid.

MR MATLALA: Yes.

ADV SELLO SC: So, the Commissioners point out to us that the order of things is not right. The engagement must have come before your engagement with him regarding Mr Boshoga because that was only after the 6th of December.

MR MATLALA: Of course, yes, I agree.

ADV SELLO SC: So, we should swap the dates around.

MR MATLALA: Yes.

ADV SELLO SC: You said yes?

10 **MR MATLALA:** Yes.

ADV SELLO SC: Or you are still thinking? I do not know ...[intervenes].

MR MATLALA: I am thinking ...[intervenes].

ADV SELLO SC: I do not want to rush you ...[intervenes].

MR MATLALA: I am trying to remember. I think, if I am not wrong, I also met him in 2025. So, I am trying to remember while you are speaking. I am sorry. So, I was trying to get the exact date.

ADV SELLO SC: Then perhaps if we say, while we correct
20 that you then met him next in 2025, perhaps if we discuss the circumstances of that meeting and what was discussed, that would help us sort out the order of things, hopefully. So, what did you – in 2025, when you met, what was it about and where, and how did it come about?

MR MATLALA: Commissioner, I am saying I think I met

him in 2025. I am not certain, but judging by the timelines, because after the raid, I remember I did not have – there was no way after the raid. First, I would say maybe 15 days. There was no way that I could have seen him because I was busy with police and then I was busy with – it must be maybe January, I think.

ADV SELLO SC: Okay. I think I get you now.

MR MATLALA: I am trying to have a proper recollection.

ADV SELLO SC: And is that in relation to the discussion
10 around the kidnapping of Mr Boshoga? That is the one you
are putting it around January 2025. Am I understanding you
correctly?

MR MATLALA: Yes.

ADV SELLO SC: Okay. So, then after the Mr Boshoga
discussion with him, when would then you would have met
again?

MR MATLALA: I do not think I have met him again after.

ADV SELLO SC: Since?

MR MATLALA: Yes.

20 **ADV SELLO SC:** Have you ever communicated with him
directly or via Sergeant Nkosi?

MR MATLALA: Communication, ja, I think there was a
communication via Sergeant Nkosi, yes.

ADV SELLO SC: Are you able to just highlight what the
communications was about and who had initiated such

communication? And if they are different, then you can enumerate each and talk about who had initiated and what each communication was about.

MR MATLALA: The communication was through, all the time was through Sergeant Nkosi.

ADV SELLO SC: But at whose instance?

MR MATLALA: If I remember well, the communication was regarding my – after the raid, why did I tell the police that I know him. So, I think it should be in December. After the
10 raid, maybe before January, I think there was a communication.

ADV SELLO SC: Okay.

MR MATLALA: I am just confused. I am sorry. I am not ...[intervenes].

ADV KHUMALO SC: Are you now referring – remember there were two raids in December. There was a raid at your house.

MR MATLALA: Yes.

ADV KHUMALO SC: Where the police were looking for Mr
20 Boshoga. Then there was a raid at CAT VIP Services where there was the issue with the key and the fact that it is not in the right safe and firearms were taken. Which raid are you referring to?

MR MATLALA: After the first raid, I think 10 days after the first raid, that is when I made that High Court urgent

application.

ADV KHUMALO SC: Yes.

MR MATLALA: And in that High Court application, that is when I mentioned that I know General Sibiya.

ADV KHUMALO SC: Yes.

MR MATLALA: So, that is when I get a message from Sergeant Nkosi that why did I mention that I know him? Because it was in the media, I think. So, that is what I am saying I think in December there was communication.

10 **ADV KHUMALO SC:** So, after the 20th of December?

MR MATLALA: Yes, somewhere there, yes.

ADV SELLO SC: Thank you. So, do you recall having a discussion with General Sibiya about an application that was necessary to launch for the return of the guns and, I think, jewellery you said had been seized during the raid of your house or office, one of them?

MR MATLALA: Yes, but that is part of the case that I am attending in the Johannesburg High Court.

ADV SELLO SC: Medicare?

20 **MR MATLALA:** No, not Medicare, the other one in Johannesburg High Court.

ADV SELLO SC: The one concerning the conspiracy to commit attempted murder and unlawful possession of a firearm and ammunition, money laundering?

MR MATLALA: Yes.

ADV SELLO SC: What relevance does General Sibiya have?

MR MATLALA: They still have relevance because I have – my defence, I need to establish how did I end up being arrested. So, because in my phone records they are relying that I am part of, me and General Sibiya and Minister Mchunu, we are part of people who plan to dismantle this PKTT unit. So, that is something that I am going to argue in trial, how did I end up getting arrested.

10 **ADV SELLO SC:** What is the crime in dismantling the PKTT?

MR MATLALA: The crime?

ADV SELLO SC: You said, perhaps I misheard you, my apologies, you said there is an accusation that yourself, General Sibiya and Minister Mchunu are what about the PKTT?

MR MATLALA: Commissioner, when they did my cell phone downloads, there was communication which I do not want to, but it is part of evidence in my criminal court in the
20 Johannesburg matter, but there is those engagements where also General Sibiya has been involved there.

ADV SELLO SC: You said something about the PKTT, can you say that again?

MR MATLALA: The dismantle, yes, of the ...[intervenes].

ADV SELLO SC: Okay.

MR MATLALA: Yes.

ADV SELLO SC: So, that is why I say, what is the crime in disbanding the PKTT? What is your understanding arising from that case?

MR MATLALA: Not the Crime, Commissioner. I am saying part of my defence, I am going to establish in court how did I end up getting arrested. The only way for me to explain this to you now, I have to go deep and which I do not want to do that, and now disclose my defence strategy, so I do
10 not want to do that.

ADV SELLO SC: No, no, no. I am not inviting you to. I was talking about an application you initiated or instituted in December for the return of your guns and jewellery, which had been seized during one of the raids.

MR MATLALA: Yes.

ADV SELLO SC: And I asked the question whether you had not engaged with General Sibiya around that application for the return of your property. So, your response then speaks to the criminal case of murder and
20 attempted murder and the disbandment of PKTT, and I am not sure I understand.

MR MATLALA: Because your question, what you are asking me now, is also part of evidence. What you just asked me now is part of evidence, which is in my cell phone downloads.

ADV BALOYI SC: Is that not perhaps, Mr Matlala, the best way to proceed is the direct question that is asked is you had such an application before Court, where you went to court to seek a return of your firearms. That is what Ms Sello has asked at this point. So, it seems to me that your answer would be yes, I did, or no, I did not. And then we pass that, and let us hear what is the next question before you get to a point where you say, but that case has to do with the matter that I am presently facing and the defence.

10 So, maybe take it step by step.

At this point, all she asks is you had such an application, where you went to court, you wanted a return of your guns and jewellery. And answering that question at this point does not require you to get into the detail of that application, and I do not know if she intends to ask you that further question, but at least as a starting point, your answer does not require you to speak about what was in that application.

MR MATLALA: Commissioner, I already conceded that
20 yes, I made that High Court application, but the next question was, did I ever discuss that with General Sibiya? That was her question.

ADV BALOYI SC: And your answer could be yes or no, and if she says, what did you discuss, it seems to me that at that point you may well attempt to raise your defence,

your privilege.

MR MATLALA: Commissioner, I do not think this is fair because now I am disclosing part of my defence strategy now. I do not think that is a fair move. I do not think so.

ADV BALOYI SC: You are not, at least as I understand, you are not saying I do not want to answer that question because it will incriminate me. You are saying I do not want to answer the question because I do not want to disclose my defence strategy.

10 **MR MATLALA**: That is correct.

ADV BALOYI SC: So it is the second one?

MR MATLALA: Yes, that is correct.

ADV BALOYI SC: And Ms Sello will decide whether that is good enough for purposes of further discussion.

ADV SELLO SC: Well, I would think that perhaps it is a tad unfair to Mr Matlala because the answer really lies in section 3(4) of the Act, which means he must invoke some legal privilege, and in Regulation, I think, 6.10, it tells you that the only basis to refuse to answer a question is if you
20 establish a privilege contemplated in section 3(4), which is a privilege as recognised in law, and fear to disclose your defence is not one such privilege.

So if that is the only basis, then you do not bring yourself within the ambit of the protection because that does not constitute privilege, and you will be compelled to

answer. You are raising a wrong basis to refuse to answer. It is not an acceptable basis, as determined by the law, not by us around here.

MR MATLALA: Maybe, Commissioner, it is because you are speaking to – I am just a mere layman. I do not understand law, and I do not know which case law I should invoke. I think maybe my legal counsel will help me with that. I do not know how to invoke which section for that.

ADV SELLO SC: I think that is fair. That is fair. So
10 maybe to address myself to the Commissioners and ask the Commissioners to enquire from Advocate Missi whether she would like to engage with that point on your behalf.

MR MATLALA: Thank you.

ADV SELLO SC: Thank you.

CHAIRPERSON: Ms Missi, what are your submissions in response?

ADV MISSI: Yes, Chairperson.

CHAIRPERSON: Does the privilege extend to not, or
rather a witness saying I will not answer because I do not
20 want to divulge or reveal my defence strategy?

ADV MISSI: Chairperson, at some point you raised the question as to what exactly is this charge that you are facing that speaks to that particular piece of evidence and defence that you would not like to disclose before the Commission. One, because we were only briefed with

regards to the proceedings before the Commission, we are not fully aware as to what are the charges that he faces in that matter that speak particularly to that piece of evidence for us to then say to Mr Matlala, we do understand you and from this perspective here you would be able to claim your right to the privilege in terms of section 3(4).

And so, Chairperson, the only thing that I could do at this moment is if the Commission could allow us a stand-down so that we can consult with regards to this issue
10 bearing in mind that we are also in the backfooting with regards to the charges that relate to that case before the Johannesburg High Court, I believe.

CHAIRPERSON: Just repeat the underlying facts that give rise to this issue so that when instructions are taken, they are taken in the context of your other point from which you moved for us to get to where we are now.

ADV SELLO SC: The Chair will recall that Mr Matlala and I were recounting the incidents he met with General Sibiya and they discussed, and the idea was to understand the
20 content of such discussions on each incident. And I had posed a question to him whether he had met with General Sibiya regarding an application he instituted for the return of his firearms and jewellery, which he stated at the time had been seized during one of the raid incidents, either at the home or subsequently at his office.

And he confirms, yes, he did initiate, he did institute those proceedings. So the question was whether or not he met with General Sibiya and discussed that with him, to which then he claimed he invokes a privilege, not in the Medicare matter that we have been dealing with, but the other matter in Pretoria, I think, about conspiracy to commit murder, attempted murder, unlawful possession of a firearm and ammunition, as well as money laundering.

So it is in the context of understanding the charges
10 that he is facing there, I am trying to appreciate what his engagements with General Sibiya regarding, I would term it the lawful return of his property, what bearing it would have on that case, and that is where I think we failed to find one.

CHAIRPERSON: Thank you.

ADV SELLO SC: Or I failed to understand. Let me lay it on my doorstep.

CHAIRPERSON: Thank you, thank you. Ja, maybe for a fuller background, during the raids, some of Mr Matlala's company's properties and indeed even his personal items
20 were allegedly with regard to the personal. And I think it is common cause with regard to the property belonging to the company were taken by the police during the raid.

And the alleged relates to, I think, Mr Matlala in a court application in which he was seeking a mandamus, in terms of which he said his, amongst others, his Rolex

watch, or was it a Cartier? Ja. Cartier and Rolex watches and maybe some other personal item had been taken by the police. So in terms of the mandamus, he wanted the Court to direct that those items be returned.

But if my memory is correct, I think in the end, he either withdrew or did not pursue those applications any further. So that is the full context and so Ms Sello is engaging Mr Matlala on that. Sitting here, I have no idea how that has anything to do with Mr Matlala's defence
10 strategy.

But in any event, there is a point that Ms Sello makes, which is, what is Mr Matlala's defence strategy got to do with the privilege he is claiming, which is the privilege against self-incrimination? So that is the full context. Would you still say you want to take instructions or would you accept that there is no basis for asserting the privilege in this context?

Or perhaps it is not even the privilege, it is some other animal, an animal that I will not answer the question
20 because it discloses my defence strategy. But in any event, I just do not see how an application for the return of Mr Matlala's personal items, I do not see how that relates to any possible defence to whatever charge he is facing in this regard. But in any event, there is the antecedent question. Can he refuse to answer the question on that basis in any

event?

ADV MISSI: Chairperson, while Mr Matlala was giving his submissions, there was a point at which it seems to me that he makes reference to the issue of a charge and/or within the case that he is referring to. I am wondering to myself, without having full knowledge, is there a misunderstanding on his part that we would need to consult with him about so that we are able to correct him and give legal advice as to whether he is approaching it incorrectly, this is the manner
10 in which he would have to make the application or claim the right to privilege?

Because I do specifically recall him making reference to a charge that relates to the matter and that is why I am saying I do not know what the charges are, I do not know how it relates to this particular piece of evidence or rather the issue with regards to the application not proceeding, how those two interlink. Because now suddenly, or rather later on he makes reference to it being part of his defence strategy. And as he noted, because he
20 is a lay person, he perhaps might not be viewing this correctly, but he actually knows what he is trying to ...[intervenes].

CHAIRPERSON: Is that a point he can raise as a matter of law anyway? That is, I will not answer that question because it discloses, or rather my response will disclose my

defence strategy. Is that a legal basis for refusing to answer a question?

ADV MISSI: Chairperson, now that we have taken the instruction and we have decided to proceed based on where we are, having not heard the application or proceeded with the application at the point, I believe during our consultations and as part of the application, it called into question as to whether, as a suspect or as an accused, does he have a right in terms of section 35 and would go
10 towards the issue of a fair trial, which there is a confusion with regards to that.

I am just off the top of my head on his part and that is why I deem it important, before we proceed, for him to answer. It can be an opportunity to understand exactly what is this point that he is raising that has to do with the charge and the evidence as well as the defence that he wants to raise in the trial, Chairperson.

I do believe, as he noted, that he is a lay person and lacks a proper understanding how. It is also to avoid
20 an instance where, again, it is just regarded as a blanket approach of because I am going to use this as a defence in my trial, therefore I do not want to address it. I do believe it is important that we get the opportunity to get an understanding exactly from why is he referring to this? Why did he mention the issue of a charge? How does this all

interlink? And then we can give him proper advice that in terms of claiming privilege, you have to make reference to the specific charge, et cetera, et cetera ...[intervenes].

CHAIRPERSON: I have bent over backwards and allowed you an adjournment each time you ask for one, but we will never finish Mr Matlala's testimony if at every turn we have to do this. We have to adjourn for you to take instructions. I thought this is just a legal question. Sitting here, I just do not see the connection whatsoever with regard to an
10 application, a civil application for the return of Mr Matlala's goods, an application which he did not pursue. He either withdrew it or did not pursue it to finality, so it died a natural death.

I just do not see sitting here, unless we get clarity, I just do not see how that has anything to do with his defence. But as I said, the antecedent question is, can that even be raised as a basis for not answering the question?

ADV MISSI: My question to that would be no, given where we are in terms of the proceedings. However, I still stand
20 by the fact that he very well, just on that particular point that he tried to explain or go further on with regards to the charges, he very well would be able to explain to us at least so that we can give him proper legal advice as to whether he can claim a right based on that or not.

Because Chairperson, like he said, he is a

layperson. He is probably trying to approach it from this angle, but in reality, this is exactly what he is meant to be claiming based on A, B, C, D. I do not know what the facts are as much as I also do not know what the charge is that he was trying to make reference to.

I think I am grappling with the fact that he did try and address the issue that has to do with charges and it relates to the defence that he wants to raise. I also do not understand to what extent it would affect his ability to raise
10 the privilege to not self-incriminate. However, I do agree with you that he cannot raise the issue of fair trial, i.e., with regards to disclosing his defence, Chairperson, and that is the reason why I have asked for a stand-down so that we can at least give him that legal advice so that he understands where we are right now.

CHAIRPERSON: You see, the difficulty with that approach is that it would be a matter of relative ease for every and any witness to say I will not answer that question because it discloses my defence strategy in circumstances where,
20 when you look at the facts, it does not immediately spring out, you know, the circumstances do not spring out and tell you in and of themselves that this has something to do with a possible defence.

Civil case, civil application withdrawn, and apparently, at least from the evidence that we have heard,

on the basis that no Cartier or Rolex watches had actually been taken from Mr Matlala, how that should then lead to the disclosure of his defence in the criminal case, for the life of me, that escapes me altogether.

So the short point I am making is it would be a matter of relative ease for anybody to say I will not talk about that, that discloses my defence, and if there is no cogent explanation, we cannot accept that. We simply cannot accept that.

10 **MR MATLALA**: Sorry, Chairperson. I think maybe I can assist if you allow me.

CHAIRPERSON: Yes, please.

MR MATLALA: Because I have to agree with you, I agree with one thing when you say you do not understand how this civil matter has to do with my criminal matter. Even myself, I did not see the necessity of why the State will bring that up. But as you say, anybody can come up here and say this will infringe my fair trial rights. So I think what is best that I can do to prove that this thing is part of my trial, and then
20 is part of the case that the prosecutor has been relying on, maybe if I can bring maybe a copy that is signed by the investigating officer to show that indeed this is part of my case, tomorrow morning. I have the document on me. I can bring it tomorrow morning.

CHAIRPERSON: I see that it is 17:58. Perhaps we should

adjourn at this stage, and then that should afford you sufficient time, Ms Missi. And, ja.

ADV MISSI: Chairperson, before we do adjourn, I would like to understand the position with regards to the suggestion that Mr Matlala has made, which is to provide ...[intervenes].

CHAIRPERSON: Can you please ...[intervenes].

ADV MISSI: My apologies. I would like to understand the position with regards to the suggestion that has been made
10 by Mr Matlala, which is that perhaps he ought to provide us with a copy. Because as I stated, I have not seen it as well. I do not know what these charges are. So it is so difficult for me to answer you and address you with regards to that. Maybe he does have a good point to make there. So what is the position to that?

CHAIRPERSON: No, no, no, no. That is acceptable. That is acceptable. Yes, you may bring the document you want to bring, Mr Matlala.

MR MATLALA: Thank you, Chairperson.

20 **CHAIRPERSON**: Yes.

ADV SELLO SC: And, Chair, before we adjourn, perhaps then to facilitate our engagement, it might assist if we were provided with both the charge sheets in the, you call it the Pretoria matter, the attempted murder case, and the Medicare. I am not asking for your dockets. I am asking

just for the charge sheet because that would give us a sense of what the offences Mr Matlala is charged with.

MR MATLALA: I think I have my charge sheet. The charge sheet, I do not know. I will ask. It is fine. We will make a plan.

ADV SELLO SC: Thank you.

ADV MISSI: Chairperson, because, if I may, I believe Mr Maluleke is the attorney on record in those matters.

MR MATLALA: Of course, yes.

10 **ADV MISSI**: And he is still on record here. Surely, that would be relatively easy for us to provide same.

CHAIRPERSON: Thank you.

ADV SELLO SC: Thank you, Chair.

CHAIRPERSON: Let us adjourn and resume at 09:30 tomorrow.

HEARING POSTPONED TO 25 AUGUST 2026

HEARING ADJOURNS

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