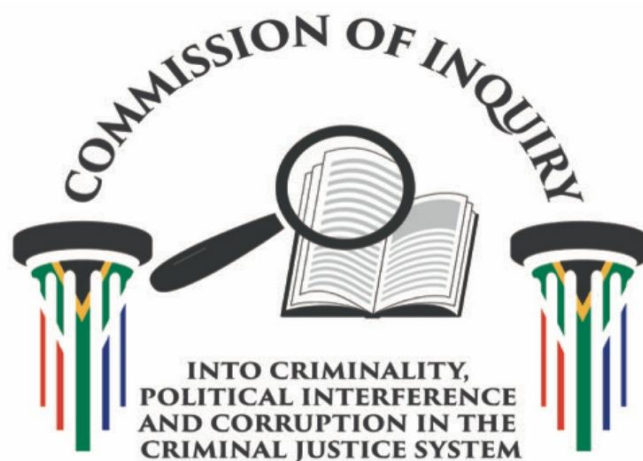


JUDICIAL COMMISSION OF INQUIRY INTO CRIMINALITY,
POLITICAL INTERFERENCE AND CORRUPTION IN THE
CRIMINAL JUSTICE SYSTEM

HELD AT
BRIGITTE MABANDLA JUSTICE COLLEGE

1 SEPTEMBER 2026

DAY 171



PROCEEDINGS ON 1 SEPTEMBER 2026

CHAIRPERSON: Good morning, Ms Hassim. Good morning, Ms Segeels-Ncube. Where is your witness?

ADV SEGEELS-NCUBE: Good morning, Chair. We have asked for the witness to be called now. Thank you, Chair.

CHAIRPERSON: Oh, all right. Ms Hassim?

ADV HASSIM SC: Good morning, Chair. Chair, I am here in order to deal with the postponement application that has been brought by General Khan. I am advised that his
10 attorney, Mr Vally, is running late and has asked for a late start to the hearing by 15 minutes. But his junior is present, so maybe he could address the Chair on this, and seeing as his junior is present, we may be able to begin without Mr Vally, but he is best placed to talk.

CHAIRPERSON: Maybe we should do so. Yes, Mr who?

MR GHIRAO: Good morning, Chair. Good morning, Commissioners.

CHAIRPERSON: Mr?

MR GHIRAO: Just for record purposes, initial K, surname
20 Ghirao. I am Mr Vally's junior. I understand he is 15 ...[intervenes].

CHAIRPERSON: Oh, I am sorry, I could not catch the surname.

MR GHIRAO: Ghirao, Chair.

CHAIRPERSON: G-E?

MR GHIRAO: G-H-I-R-A-O.

CHAIRPERSON: Ghirao.

MR GHIRAO: It is the most abused surname in court at the moment.

CHAIRPERSON: Ghirao. Ghirao. Thank you. Thank you, you were saying?

MR GHIRAO: Chair, just briefly, I have been advised that Mr Vally is running 15 minutes late. I do note there is an application before this Commission. He would be better
10 placed to deal with the application, as the affidavit is deposed to in his name, and he is more *au fait* with some of the nuances in the present application.

CHAIRPERSON: All right, thank you. Thank you, Mr Ghirao.

MR GHIRAO: Thank you, Chair.

CHAIRPERSON: Do we wait for Dr Lebeya to come in?

ADV SEGEELS-NCUBE: Chair ...[indistinct] [microphone off].

CHAIRPERSON: Or perhaps let us just adjourn. We will
20 come back when we are ready.

ADV SEGEELS-NCUBE: Thank you.

CHAIRPERSON: Let us adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Good morning, Mr Nwedo.

MR NWEDO: Good morning, Chairperson.

CHAIRPERSON: Thank you.

MR NWEDO: And your Commissioners.

CHAIRPERSON: Good morning, Doctor.

DOCTOR LEBEYA: Good morning, Commissioner and Chairperson.

CHAIRPERSON: Thank you, thank you. Ms Segeels-Ncube.

ADV SEGEELS-NCUBE: Thank you, Chair. Chair, today
10 we are continuing with the testimony of General Lebeya. And Chair, before we go into matters regarding cross-examination and testing General Lebeya's version, there is a matter that arose yesterday during, I think it is Colonel Govender's evidence about Mr Timmy Marimuthu and an allegation made by Colonel Govender that General Lebeya had instructed General Khana and Major General Govender to interview or go and see Mr Timmy Marimuthu and we wanted to give the General an opportunity to deal with that allegation given how Mr Marimuthu has been described, the
20 kind of conduct that he has been alleged to be involved in, including human trafficking, and just to give the General an opportunity, should he wish to answer that now about this allegation that he instructed the Generals to go and see Mr Marimuthu.

CHAIRPERSON: Was, maybe I missed it, did you say the

General was alerted beforehand that he would have to respond to this?

ADV SEGEELS-NCUBE: I discussed it with the General and his team this morning that it was a matter that arose yesterday and that the General would, that it would be addressed with the General and to give him an opportunity as to how he wants to deal with the allegation, Chair.

CHAIRPERSON: Thank you. Mr Nwedo.

MR NWEDO: If I may, Chairperson, thank you. Thank you
10 so much for the opportunity. Firstly, if I may be allowed to also introduce Mr Lucky Thekisho on my left. He is the director of the law firm that, who is the instructing attorney in this particular matter. He has been able to join us. He has been eluding us, Chairperson, and we managed to drag him from the offices today. He is here with us as part of the team and we are pleased to have him here.

CHAIRPERSON: Thank you.

MR NWEDO: Chairperson, if I may, Chairperson and the Commissioners, yes, indeed, I can confirm that my learned
20 colleague, Advocate Segeels-Ncube, raised the matter with us in a side meeting that we have just had with them in the holding room. What we, we understand that it is in the nature of these proceedings that things like that may occur. We do not necessarily read it as a situation where the General is being ambushed and he is keen and ready, you

know, to the extent that the questions that the Chairperson and the Commissioner may raise, Dr Lebeya will deal with it.

Ideally, Chairperson, I need to put it up front, ideally it would have been great for him to supplement his papers so that the issues can be dealt with perhaps in a thorough manner, but to the extent that you do have questions arising from that particular evidence of yesterday, which I did not watch myself, I was busy with another
10 matter. My instructing attorney did inform me later and then we had to take instructions on that.

So, Chairperson, I guess the bottom line that we are highlighting, this is in line with the attitude that Dr Lebeya has taken since day one that he has been subpoenaed, that he is willing to provide evidence the best way he can in order to assist the Commission to meet its objectives, of course, within the terms of reference that guides this particular Commission.

So, to that extent, Chairperson, we would like to
20 highlight that Dr Lebeya is keen and ready to do that, to answer whatever the questions. It may, and I think it is important, Chairperson, to underline that particular issue, in the shortness of time, we hope that the Commission would actually also be able to accept the generality perhaps of the answers, because there has not been enough time really to

delve deep into the issues. But we understand that that is, you know, the issues that you want to raise, so, there are no issues there.

Perhaps, Chairperson, while I am still on my feet, also just highlight that when we were here last week, Thursday, 27th of August, Chairperson and Commissioners would recall that there were WhatsApp messages that arose that, especially dealing with the stream that deals with the 6th of December 2024 takedown. We were requested and
10 my attorney has actually furnished those WhatsApp messages that occurred on that particular day.

They have been packaged in a form of a PowerPoint presentation. We have had a discussion with my learned colleague, Advocate Segeels-Ncube, on how that can be dealt with, because there is one WhatsApp which should not be flighted because it does have potential, it was not supposed to be there, it is a mistake, but we have reached an agreement how that will be dealt with. So, it will not be flighted because it does have potential to
20 compromise, you know, some of the details that the General was very clear in his main statement that some of the issues relating to one individual related to the 6th of December belongs *in-camera*.

So, there is an agreement that, you know, it will be dealt with that way. Same goes for the four top-secret, you

know, confidential documents that we highlighted on Thursday. We have agreed with my learned colleague that they will also be treated in that particular fashion. Chairperson, those are the things that we wanted to raise up front, but we want to reiterate, Chairperson, Dr Lebeya is here, he is willing to assist this Commission the best way he can.

CHAIRPERSON: Thank you. Thank you.

MR NWEDO: Yes. Let me just check with my instructing
10 attorney. That is all from us, Chairperson.

CHAIRPERSON: Thank you, Mr Nwedo.

MR NWEDO: Thank you.

CHAIRPERSON: Thank you. Ms Segeels-Ncube, do you want to ask specific questions or do you want Dr Lebeya to answer generally?

ADV SEGEELS-NCUBE: Yes, Chair, as ...[intervenes].

CHAIRPERSON: Perhaps the former is better.

ADV SEGEELS-NCUBE: Chair, as I understand it was just
an allegation by Colonel Govender that when he was
20 addressing the issue about Mr Marimuthu and whether or not there were Generals or other police officials who had a relationship or some association with Mr Marimuthu, one of the things that he said was that General Khana and Major General Govender informed him that they were instructed by General Lebeya to go and see Mr Marimuthu. And I

suppose the question is whether the General has a relationship or an association with Mr Marimuthu, and if so, the nature thereof, Chair.

CHAIRPERSON: Thank you. Dr Lebeya?

DOCTOR LEBEYA: Thank you very much, Commissioners and the Chairperson. I do not have a specific relationship with Mr Timmy Marimuthu. The name Marimuthu came to my attention on the 30th of December 2010. I was, I indicated that I was assigned to investigate the
10 appointments in Crime Intelligence where they advertised 250 posts and ended up appointing 290 individuals. I investigated that matter.

On the 30th of December 2010, four names were tabled before the decisionmakers in the SAPS to approve the appointments and I got information from individuals within the organization that there are these names, and when they approved, the appointment became effective on the 1st of January 2011. So it was just three days. So I managed to speak to the Deputy National Commissioner,
20 who was responsible for Support, who managed to stop those appointments.

And unfortunately, unbeknown to us and that Deputy National Commissioner, those names managed to find their way and on the 16th of January 2011 to the 23rd of January 2011, those names that were stopped were

appointed, and it is in those names that P Marimuthu featured. Among them was an individual who was a lawyer and after the monies of the clients disappeared, that individual was charged and convicted, was appointed in that. So that is how I knew ...[intervenes].

CHAIRPERSON: Sorry, sorry, so when you say it was in that context that Mr Marimuthu featured, how exactly did he feature?

DOCTOR LEBEYA: This individual appears to be the
10 spouse of Timmy Marimuthu and most of the time when I went to KwaZulu-Natal, I would get a call indicating that he would like to meet me. I have never met him with the understanding that these appointments that I investigated in Crime Intelligence, one was not happy. And I think that generally there are issues regarding whether they were performing the work that they were appointed to do. So that is how I knew Timmy Marimuthu. From time to time he will call, I would not refuse to answer a call. And it would appear that he may have provided information, wanted to
20 provide information about ...[intervenes].

CHAIRPERSON: So he will call saying what?

DOCTOR LEBEYA: Just a greeting and then maybe he have got information that he would like to provide. And so that is how he was doing whenever I wanted to go to KwaZulu-Natal.

CHAIRPERSON: And would he give you any information? If so, if so, would this be information that you would be willing to share or not?

DOCTOR LEBEYA: I sent the officers to go and meet him to get whatever information he want to provide. I have never met him or wanted to meet him. I really needed that distance.

CHAIRPERSON: And did the officers get the information and did they relay it back to you?

10 **DOCTOR LEBEYA:** Due to the time lapse, I do not know precisely how they shall have relayed that, but that investigation of the kidnapping that they were dealing with, they managed to go and find that individual in Mpumalanga, I think after 60 days of having been held in that province, Commissioners.

CHAIRPERSON: Did the information he wanted to give you and which was relayed back to you relate to the kidnapping or not?

DOCTOR LEBEYA: I understood that it related to the
20 kidnapping, Commissioner.

CHAIRPERSON: When you say you understood, does that mean the information was not relayed back to you, because if it was, you would be saying this is what the information was about, not that this is what I understood it to be about.

DOCTOR LEBEYA: I cannot say that the finding of that

victim was solely based on his information, because the investigation teams have got other methods of trying to identify the location where the victim was kept.

CHAIRPERSON: I was trying to focus on what was relayed back to you. My question was, did what was relayed back to you relate to the kidnapping or not? You have sent people to go see what he wants to talk to you about, what information he wants to give you. So the people do go there. Surely they would report to you. That is where my
10 focus is. Did they relay to you what information they got from him and if they did, did that information have anything to do with the kidnapping? I am not asking what the information was.

DOCTOR LEBEYA: They shall have relayed, but ...[intervenes].

CHAIRPERSON: Did they or did they not? Please speak directly. I am not sure what you mean, they shall have.

DOCTOR LEBEYA: They relayed, Commissioner.

CHAIRPERSON: All right. And did it have anything to do
20 with the kidnapping?

DOCTOR LEBEYA: That is correct, Commissioner.

CHAIRPERSON: All right, thank you.

ADV SEGEELS-NCUBE: Thank you, Chair. And insofar as the spouse of Mr Marimuthu is concerned, she was employed at Crime Intelligence.

DOCTOR LEBEYA: That is correct, Commissioners.

ADV SEGEELS-NCUBE: And are you aware that she was dismissed from Crime Intelligence under General Khumalo?

DOCTOR LEBEYA: I am not aware. I did not follow. My understanding was that time of appointment, thereafter, I did not get involved. I do not know.

ADV SEGEELS-NCUBE: And was Mr Marimuthu a subject that the DPCI considered to be somebody involved in organized crime?

10 **DOCTOR LEBEYA:** With the arrest that has taken place, it is possibly after I have left the DPCI. I was not aware at the time when I was still in the DPCI that there is such investigation.

ADV SEGEELS-NCUBE: So whilst you were in a leadership position, was the DPCI investigating Mr Marimuthu as being an individual involved in organized crime?

DOCTOR LEBEYA: Commissioners, it was not brought to my attention. I was overseeing more than 20,000 matters,
20 and we normally prioritize 100. So these others, that one of Marimuthu was not flagged, but I was not aware. If that name was brought to my attention, it would have triggered my thought regarding the background. So I was not aware of that investigation.

DOCTOR LEBEYA: Thank you. Maybe then, General, if I

could ask you, because you recall that when you were dealing with your background, one of the achievements, I think, that you have listed was your LLD, and you, I think your thesis there related to organized crime. Is that correct?

DOCTOR LEBEYA: That is correct, Commissioners.

ADV SEGEELS-NCUBE: And you were dealing with the nature of organized crime. I just want to understand from you, as the Head of the DPCI at the time, how involved
10 were you in identifying subjects that are involved in organized crime? Did the DPCI have some kind of project where you would identify these are people that are subjects of organized crime, because the evidence that is coming out from the Commission is that we hear that people are potentially involved in organized crime, but it seems that none of the officials that appear before the Commission actually knew that these people were subjects or involved in organized crime.

DOCTOR LEBEYA: Chairperson and Commissioners, I
20 have indicated that there was time when we knew about individuals that are involved in organized crime and towards the last month that I was in office, there were only 72 organized crime projects in the country. So my hinting was that this is not sufficient. It does not reflect the number of possible organized criminal groupings operating in the

country. So it would appear that we were somehow failing to identify organized criminal groupings in the country, Commissioners.

ADV SEGEELS-NCUBE: And I think in your statement you attributed that to the failings of Crime Intelligence.

DOCTOR LEBEYA: I have done so because of the system, the method in which you identify organized criminal groups. There is a crime threat analysis, organized crime threat analysis process, which I assist in identifying organized
10 criminal groupings. So that process starts with Crime Intelligence, Commissioners.

ADV SEGEELS-NCUBE: If it starts with Crime Intelligence, what role does DPCI play in identifying organized criminal groupings?

DOCTOR LEBEYA: The DPCI, whenever they have identified possible individuals that are involved, they will liaise with Crime Intelligence. There is what they call tasking. You have got to task Crime Intelligence to gather more information for the purpose of identifying possible
20 organized criminal groups. So they work closely with each other.

ADV SEGEELS-NCUBE: Of the 72 that you were referring to, was Mr Clive Naicker one of the subjects of Organized Crime that you were investigating?

DOCTOR LEBEYA: I would not, I do not know the names

of the individual. I do not know if that Naicker, the names do not click to my mind. There was a person who will chair the National Project Committee, which is where they will be dealing with these names. The names themselves, we do not always put them in different papers where they might fall into the wrong hands. So I do not know if that name was among the individuals that were investigated.

ADV SEGEELS-NCUBE: And who is the Chairperson of that committee, or who was it at the time when you were the
10 Head of DPCI?

DOCTOR LEBEYA: On my arrival in the DPCI, it was the Provincial Head of the Northern Cape who was chairing the project. It was supposed to be a Major General in Serious Organized Crime, and then towards my exit, I think that the Divisional Commissioner shall have been chairing that body. I was chairing the National Priority Crime Operational Committee at a higher level, where the person chairing the National Project Committee will bring in the project. But we do not deal with the names there, because it is a number of
20 people that participate. So I will be participating at a higher level where we are not dealing with the names.

ADV SEGEELS-NCUBE: And when you give the title of the person, could I ask you to give the name of the person as well. So you said the Divisional Commissioner when you had exited. Who was that at the time?

DOCTOR LEBEYA: Ja, when I was heading the DPCI, the Divisional Commissioner was Lieutenant General Msibi, and thereafter Lieutenant General Mboto.

ADV SEGEELS-NCUBE: And you indicated that it was, the previous Chair was the Provincial Head of the Northern Cape. Who was that?

DOCTOR LEBEYA: Ja, I will get the name.

ADV SEGEELS-NCUBE: Okay, that is fine.

DOCTOR LEBEYA: Those are the Provincial Heads that I
10 found appointed in the office. We had to correct their appointments so that it does not become permanent, because it was contrary to the Act. So afterwards they were given 7 years instead of permanent. I will recall the name.

ADV SEGEELS-NCUBE: Thank you, General. Can I then, unless the Commissioners have any questions for you on this general topic, go and deal with the specific topics that relate to your personal involvement in the matters that the Commission is tasked with considering, the first being the
20 Port Shepstone drug theft. Can we deal with that first. You recall that when you gave your evidence last week, one of the questions that I had asked you was when did you become aware that the drugs that were seized at Isipingo had been stored at the Port Shepstone DPCI offices, and you indicated that you only became aware of it at the time

of the theft. Do you recall that evidence?

DOCTOR LEBEYA: That is correct.

ADV SEGEELS-NCUBE: And if I could just then take you to one of General Senona's statements that he submitted to the Commission, which you should have the file in front of you. It is his initial statement by General Senona, and if I could ask you to go to page 25 of that statement. Page 25, and it is paragraph 87. Do you have it?

DOCTOR LEBEYA: That is correct, Commissioner.

10 **ADV SEGEELS-NCUBE**: So in paragraph 86, he refers to the discussion that he had with Brigadier Nyuswa about storing, that Brigadier Nyuswa advised him that the Port Shepstone DPCI offices has a storeroom, a strong room that he thought would be suitable, and he agreed with Brigadier Nyuswa's recommendation. And then at 87, he says:

20 “Due to the above, I agreed for the exhibits to be stored at the Port Shepstone offices. My supervisor, Lieutenant General Lebeya, was thereafter informed.”

And he repeats that allegation in his supplementary statement. So if you can get his supplementary statement, it should be another file there. You can close this file. I just wanted to draw your attention to that allegation. In his supplementary statement on page 16. Do you have it, page

16?

DOCTOR LEBEYA: Yes.

ADV SEGEELS-NCUBE: A question was posed to General Senona by the Commission, question 2.6:

“Which DPCI and/or SAPS offices did you inform about the storage of the seized drugs at the DPCI Port Shepstone offices before they were stolen on 8 November 2021?”

10 And his response:

“I informed my supervisor at the time, Lieutenant General Lebeya, regarding the storage of the exhibits at the Port Shepstone offices.”

And then he also quotes from the transcript of his evidence that he gave on the 27th of January 2026 and in the last sentence, he says again, he is repeating what he said in his statement.

20 “Due to the above, I agreed that the exhibits to be stored at the Port Shepstone offices and then I have informed my supervisor at that stage, Lieutenant General Lebeya, about the incident and the storage.”

Now, that is obviously inconsistent with your

evidence that you only became aware of it, that the drugs were being stored at the Port Shepstone DPCI offices when they were stolen. Do you want to comment on that, because it is either that General Senona is lying or you are lying or you are both mistaken about what transpired.

DOCTOR LEBEYA: Ja, I cannot say that he is lying. And then I cannot recall him informing me as to where he has stored the drugs. So that is the view that I had that he did not inform me.

10 **ADV SEGEELS-NCUBE:** Well, I think it is significant because it is a big bust. Do you agree that 541 kilograms of Cocaine is considered a big bust by the DPCI?

DOCTOR LEBEYA: I agree and I always expect that they will store them in the provinces where it is necessary for them to be stored. So it is not my responsibility at the head office for the storage.

ADV SEGEELS-NCUBE: No, I accept that it is not your responsibility. But if it is not stored where it is supposed to be stored, either at FSL or at a police station, until FSL
20 takes the drugs and processes them either for analysis and then for destruction, that if it is going to be kept at the DPCI offices, that it is a significant departure from the protocol and so therefore he would reasonably inform you that that is what, the decision that he had been taking, even if it was just to inform you, not to ask for your permission.

DOCTOR LEBEYA: It is possible that he may have informed me. As I say, it is the responsibility of the operational units to store the exhibits where they are supposed to be stored. And I think in that place where the, when after the theft, it was not the first time to store the exhibits there.

ADV SEGEELS-NCUBE: Okay, so are you saying you were aware that exhibits had been previously stored at the Port Shepstone DPCI offices?

10 **DOCTOR LEBEYA:** When I was reading now the reports, I came to understand that they stored, there were exhibits that were stored there.

ADV BALOYI SC: Dr Lebeya, does that mean that when the bust happened, you were not informed about it? It is a matter that you knew nothing about until there was a theft?

DOCTOR LEBEYA: I knew about the bust, Commissioner.

ADV BALOYI SC: And you knew how? How did you become aware of it?

DOCTOR LEBEYA: The Provincial Head shall have
20 informed me.

ADV BALOYI SC: Ja, but when he informs you, what does he say? Does he just say, we did a bust today? Surely he gives you detail about what happened on that day. What kind of detail does he give you?

DOCTOR LEBEYA: He will indicate the units that were

involved and the quantity, the approximate quantity of the drugs that have been seized, whether there is any arrest or not. That is the information that he will share.

ADV BALOYI SC: Does he not tell you, so let us assume that he did tell you on the day, so it is not, you do not hear for the first time about this when there is a break-in. You knew on the day itself that there was a bust. You knew who was involved with the bust. You knew the quantity. That is what you have said. Can we accept that as fact, that is
10 what happened on the day?

DOCTOR LEBEYA: That is correct, Commissioner.

ADV BALOYI SC: Yes, but then you are saying he would not tell you and he did not tell you that we actually have stored this at our DPCI offices. Are you saying he did not tell you that?

DOCTOR LEBEYA: That is where I cannot recollect properly, but I, because I cannot recollect, I take it that he did not tell me about the place where he is going, the drugs are being stored.

20 **ADV BALOYI SC:** Would you not have expected, considering that these are not kept at the station, at the police station, they are kept at your DPCI offices, would you not have expected him to tell you that, to mention that to you, that we did not find space, which I assume would have been what he reports to you, that we tried to store or to find

storage in the police station and other places and we did not, and we have kept them in our safe as a result. Are you saying he did not tell you that?

DOCTOR LEBEYA: That is what I cannot recollect that he told me, because I expect them then that they must store the drugs. It is either at the station or directly to the forensic science laboratory or wherever it is safe for the drugs to be stored.

ADV BALOYI SC: Yes, I accept and I take it as a given
10 that you expect that they would store them. I think all of us expect that they would have stored them somewhere. The question really is, these drugs are stored at your offices, at DPCI offices, which is not the usual, normal places where exhibits are put. At least that is the evidence we have had. Ordinarily, they should either have been at the police station, in the exhibit room, because you did not have an exhibit room, so they would have been in an exhibit room at a police station, alternatively, they should have been taken to the forensic lab. They did not land there on either of the
20 two because they were told there is no storage. That is how they end up at your DPCI offices. So my question to you is direct in that way, that would you not have expected that General Senona would tell you that we have had to keep them, or we are having to keep them in the DPCI offices because we could not find storage at the lab or the

police station? Is that not something that you would expect him to tell you?

DOCTOR LEBEYA: Ja, after the theft, now you become to think, maybe I should have expected that to be the case. But at the time when the things were happening, you just take it that it is happening in the normal course. They know how to handle the drugs after seizure.

ADV BALOYI SC: I am asking a different question. Would you, given where these drugs are stored now, where we now
10 know they were stored, which is not in an exhibit room, which is at the DPCI offices, my question is, would you not have expected at the time when he told you about the bust, would you not have expected him to tell you that, Chief, we are storing these drugs in our office because we do not have any other storage. Is that not something that you would expect him to do?

DOCTOR LEBEYA: I would have expected him to do, Commissioner.

ADV BALOYI SC: Yes. Now, you do not remember
20 whether he told you or not. He is quite firm, he has repeated it more than once, that he had the conversation with you, he told you. Is the probability not, especially because you would have expected him to tell you, is the probability not, or fair to put to you that the probability is he did tell you? You may not remember it, but probabilities are

he would have told you on the day, because this is an anomaly that is happening, he reports to you about the events of the day, and he insists twice in his statement and in his oral testimony that he did inform you. Is the probability not that he did, he did tell you on the day, or he may have told you?

DOCTOR LEBEYA: It is probable, Commissioners.

ADV BALOYI SC: Yes, thank you. Thanks, Ms Segeels.

ADV SEGEELS-NCUBE: Thank you, Commissioner Baloyi.

10 And assuming that he did tell you, you would have known that it was not being kept or stored in accordance with the National Instruction and the Protocol for handling and storing exhibits, correct?

DOCTOR LEBEYA: It shall have still been in line with the storage requirements.

ADV SEGEELS-NCUBE: Why would you, why do you say so?

DOCTOR LEBEYA: If the exhibits can be kept at a unit level.

20 **ADV SEGEELS-NCUBE**: A unit level is what, DPCI offices?

DOCTOR LEBEYA: Ja, like DPCI, Port Shepstone, Organised Crime offices in Port Shepstone is a unit.

ADV SEGEELS-NCUBE: Okay, but you were at that stage aware of the security breaches and the inadequate security

measures at the Port Shepstone DPCI offices.

DOCTOR LEBEYA: Not to the extent that the drugs can be stolen. The challenge of security in the DPCI offices was all over nationally. All the offices were the same.

ADV SEGEELS-NCUBE: Well, I just want to explore what you say about not to the level that drugs could be stolen. Of course, you only find that out after the drugs are stolen. But you were aware that there were major security inefficiencies at DPCI offices in general and specifically on
10 the Port Shepstone one.

DOCTOR LEBEYA: I was aware that there were breaches, but none of them were to the walk-in safe. I was not aware that there is any breach to the walk-in safe.

ADV SEGEELS-NCUBE: What were you aware of? Were you aware of, for example, that there was not a proper alarm system in place?

DOCTOR LEBEYA: That one I was not aware of. Those nitty-gritties were not reported, that the alarm system were not working.

20 **ADV SEGEELS-NCUBE:** Those would have been reported at what level, because I accept that you are the National Head, so at what level would that be reported?

DOCTOR LEBEYA: Because those will have to deal with supply chain processes, it means that it will be reported in the province and should it require head office, they will

escalate it to Supply Chain at the DPCI head office.

ADV SEGEELS-NCUBE: And are you saying that it was never escalated prior to the theft to the national office?

DOCTOR LEBEYA: I do not recollect that it was ever tabled before me. It is possible that it may have been channelled through to head office, the supply chain route. I do not recollect that there was anything tabled before me that there is this burglary at Port Shepstone.

ADV SEGEELS-NCUBE: When you say burglary, are you
10 referring to prior to the theft?

DOCTOR LEBEYA: Yes, the breaches that shall have occurred.

ADV SEGEELS-NCUBE: But you found out about that after the fact, after the theft?

DOCTOR LEBEYA: Ja, with the report coming from General Mosikili.

ADV SEGEELS-NCUBE: Okay. Now, if you have the discussion with General Senona at the time that the drugs are going to be stored at Port Shepstone, and you say that
20 you do not recall, at best you do not recall that he had had that discussion with you, but you would have assumed that he would have ensured that the premises are safe and secure in order for the drugs to be stored there, and you would have expected it to have been temporarily so, that it would be stored temporarily so.

DOCTOR LEBEYA: That is correct, Commissioners.

ADV SEGEELS-NCUBE: And at any point in time, did General Senona or anyone else from the provincial office request your intervention in order to fast-track the transfer of the drugs to FSL?

DOCTOR LEBEYA: No.

ADV SEGEELS-NCUBE: And if you did know that the drugs were being stored at Port Shepstone, which I think as Commissioner Baloyi says, it is probably, it is more
10 probable that you were aware of it, that General Senona did tell you, would it not have been reasonable in those circumstances for you to, as the Head of DPCI, make a special request that one of your biggest drug busts for FSL to fast-track or expedite their processes so that the drugs could go to FSL?

DOCTOR LEBEYA: If I was so requested.

ADV SEGEELS-NCUBE: No, but I think it is more than just so requested. It is that as the National Head, for you to have taken that decision, that proactive decision, to say this
20 is one of our biggest drug busts, the value of the Cocaine I think was at, street value was at 200 million, it is being kept at DPCI offices, which even if you are not aware of prior thefts, you are aware of the inadequate security and safety measures at DPCI offices generally, is for you to have then contacted, the Head of FSL, to say can you expedite the

transfer of these drugs? Because we understood that that is an avenue that could have been, that was available to you, even to General Senona as the Provincial Head, to make such a request to FSL.

DOCTOR LEBEYA: The fact that they were stored in a walk-in safe, one was, would believe that they are safe.

ADV SEGEELS-NCUBE: Yes, I accept that you would believe that they are safe, but they are not supposed to be kept there and you are aware of the safety issues and the
10 security shortcomings. My question is why did you not, as the Head of the National Head, make that request, because I think you do accept that it was a significant drug bust for the DPCI.

DOCTOR LEBEYA: As I indicated, it is one of the storage facilities, they can be stored there, exhibits can be stored there.

ADV SEGEELS-NCUBE: Okay. Now, can I then ask you, insofar as your involvement in the investigation of the theft, now we know that the theft has occurred sometime between
20 5 and 8 November 2021. The drugs were seized in June. So, when the drugs get stolen between 5 and 8 November 2021, what is your involvement from the time that you are informed of the theft?

DOCTOR LEBEYA: Immediately after I was informed of the theft, I directed two investigations. The first was a fact-

finding process by the Deputy National Head to go to the province and go and find the facts. On the other side, I appoint the Component Head, Major General Khana, of Serious Organized Crime, to investigate the theft, the disappearance. That is the criminal part of the disappearance. So, that is my involvement, assigning the responsible officials to look at the theft that has occurred.

ADV SEGEELS-NCUBE: Okay. So, the second investigation, which is the Component Head, General
10 Khana, that is CAS129/11/2021. That is the criminal investigation. I will take you to it later. And then the, can I ask you about the fact-finding investigation that you are referring to, that you mandated General Mosikili to undertake. What was the purpose behind the fact-finding, if there was going to be a criminal investigation as well?

DOCTOR LEBEYA: Ja, the fact-finding is whenever there is a serious crime that has been committed, you expect a senior officer to at least visit that scene and go and find the nitty-gritties of the facts, so that when that person come
20 and report back, at least you have got the background. So, that is the fact-finding assignment, is visiting the scene and finding the facts.

ADV SEGEELS-NCUBE: And this you do in November of 2021, immediately after the theft?

DOCTOR LEBEYA: Ja, on the day that we were informed

about the theft.

ADV SEGEELS-NCUBE: And General Senona informs you about the theft?

DOCTOR LEBEYA: That is correct, Commissioners.

ADV SEGEELS-NCUBE: And what does he tell you in that discussion about the theft? What are the details that he gives you at that stage?

DOCTOR LEBEYA: He informs me that there has been a burglary at the Port Shepstone office where the drugs were
10 stored and that the drugs were stolen.

ADV SEGEELS-NCUBE: And does he tell you that it was stolen from one of the strong rooms? Does he tell you about, describe the scene, tell you what his initial impression is of it?

DOCTOR LEBEYA: Yes, he indicate that from the strong room and that the strong room has been grinded open.

ADV SEGEELS-NCUBE: Okay, can I then ask you, because we are going to go through the chronology, just so that I can get an understanding of what you knew and at
20 what stage, is there is another file, it is a Port Shepstone exhibit file, CJC232. If somebody can just assist you with CJC232 from the Port Shepstone file, in file 1, and if I could ask you to go to page 91.

DOCTOR LEBEYA: Page?

ADV SEGEELS-NCUBE: 91. It is the information note

from General Mosikili to you.

DOCTOR LEBEYA: Yes, Commissioners.

ADV SEGEELS-NCUBE: You will recall that you dealt with this note, information note briefly during your evidence last week, and we will deal with it later. I just want you to go to page 98, which will give us an indication of when you would have received this note. It was January 2022.

DOCTOR LEBEYA: That is correct, January 2022, correct, Commissioners.

10 **ADV SEGEELS-NCUBE**: But your evidence is that General Mosikili was tasked with this almost immediately after the theft, so in November 2021.

DOCTOR LEBEYA: That is correct.

ADV SEGEELS-NCUBE: With the fact-finding.

DOCTOR LEBEYA: That is correct, Commissioner.

ADV SEGEELS-NCUBE: Okay. And do you know whether she had submitted any prior information notes giving you a progress report, or was this the first information note after you had tasked her with the fact-finding investigation?

20 **DOCTOR LEBEYA**: I do not have that recollection, but normally she will inform me verbally, briefly. So I expect that this will be the first report.

ADV SEGEELS-NCUBE: And prior to receiving her report, had you received any report from anyone and here, firstly anyone regarding this investigation, the incident itself?

DOCTOR LEBEYA: I have not compared the date of the first report from the criminal investigation team.

ADV SEGEELS-NCUBE: So they would have submitted a report to you as well?

DOCTOR LEBEYA: That is correct, Commissioners.

ADV SEGEELS-NCUBE: Okay. And under whose hand would that have been, General Khana?

DOCTOR LEBEYA: General Khana, Commissioners.

ADV SEGEELS-NCUBE: Okay, and you would not be able
10 to recall now whether it would have been before or after General Mosikili's?

DOCTOR LEBEYA: That is correct, Commissioner.

ADV SEGEELS-NCUBE: Okay. Can I then ask you to go to page 101? This is Annexure B to General Mosikili's information note. Do you have it?

DOCTOR LEBEYA: Yes, Commissioners.

ADV SEGEELS-NCUBE: It is a factual report by General Senona to General Mosikili where he sets out the facts regarding the seizure and then the theft incident. And if
20 you go to page 106, you will see that it is dated, or he dates it the 9th of November 2021, so a day after the theft was discovered. Do you see that?

DOCTOR LEBEYA: I see it, Commissioners.

ADV SEGEELS-NCUBE: Had you, prior to receiving General Mosikili's information note to which this report was

attached, had you received this report prior to that, any time prior to that?

DOCTOR LEBEYA: I did not receive this one. It was sent to the Deputy.

ADV SEGEELS-NCUBE: Yes. And General Senona had not sent you any reports directly regarding the Port Shepstone theft?

DOCTOR LEBEYA: I do not recall receiving any report directly from him because I sent the Deputy. I expected him
10 to deal with the Deputy.

ADV SEGEELS-NCUBE: Okay. Now, can we just deal with what General Senona says in his report to General Mosikili at the time, and if I could ask you to go to page 102 at paragraph 1.5.

DOCTOR LEBEYA: Yes, Commissioners.

ADV SEGEELS-NCUBE: He reports that arrangements were made to house these exhibits at the Port Shepstone office, and then he speaks about the tracking members who were seconded to the Durban SOCCI were requested to
20 provide an armed escort and assist in conveying the exhibits to Port Shepstone. The DPCI members, he references who were initially involved, and he says that Govender of the NPVC section supervised the tracking team as they assisted in conveying the exhibits to Port Shepstone under armed escort. Now, was this, did you

know about this prior to receiving General Mosikili's report?
In other words, did you know that these arrangements had been made where you had Colonel Govender's team escorting the drugs to Port Shepstone and the people that were involved in the storage of the exhibits at Port Shepstone?

ADV BALOYI SC: Sorry, Ms Segeels, you said Colonel Govender. Here it is Warrant Officer.

ADV SEGEELS-NCUBE: [Indistinct]... [microphone off].

10 **ADV BALOYI SC:** And we are told it is a different person.

ADV SEGEELS-NCUBE: It is not, is it not Deena Govender? I will establish that ...[intervenes].

ADV BALOYI SC: [Indistinct]... [cross-talking] recollection is that at this point he was a Captain or something.

ADV SEGEELS-NCUBE: Thank you, Commissioner Baloyi. So were you aware that there was this escort that was taking place that was taking the drugs to Port Shepstone prior to receiving General Mosikili's note? So had General Senona told you that?

20 **DOCTOR LEBEYA:** No, Commissioners.

ADV SEGEELS-NCUBE: Okay, so the first time you would have seen this is when you see General Mosikili's note in 2022.

DOCTOR LEBEYA: That is correct, Commissioners.

ADV SEGEELS-NCUBE: And you would have read this

note from, this factual report from General Senona when you read General Mosikili's report?

DOCTOR LEBEYA: That is correct, Commissioner.

ADV SEGEELS-NCUBE: Okay. Now go to page 103, paragraph 1.6.

DOCTOR LEBEYA: Yes, Commissioners.

ADV SEGEELS-NCUBE: At paragraph 1.6, General Senona says:

10 “The Unit Commander of Port Shepstone
DPCI, SOCI, Lieutenant Colonel Prinsloo
was informed of the arrangement and
allowed members to utilize the
strongroom to store the exhibits. Aside
from the Unit Commander, Captain Le
Roux, Warrant Officer Van den Bergh,
and Warrant Officer Pienaar from Port
Shepstone office were aware of the
nature of the exhibits being stored there.
The keys to the strongroom were handed
20 to Provincial Head for safekeeping.”

And that would have been General Senona. Prior to receiving General Mosikili's information note, did you know that General Senona had kept the keys to the strongroom where the drugs were being kept?

DOCTOR LEBEYA: I did not know at the time. I knew

after the report.

ADV SEGEELS-NCUBE: Okay, so when General Senona reports the theft to you on the 8th of November, does he tell you, he did not tell you that he had the keys to the safe with him?

DOCTOR LEBEYA: I cannot recollect as to whether he indicated whether he had the key or not.

ADV SEGEELS-NCUBE: Okay, so as far as you are concerned, the first time that you became aware that he had
10 the keys at the time of the theft, or was the custodian of the keys, was when you read General Mosikili's note in 2022.

DOCTOR LEBEYA: That is correct, Commissioners.

ADV SEGEELS-NCUBE: And then at page 104, paragraph 3.3.

DOCTOR LEBEYA: Yes, Commissioners.

ADV SEGEELS-NCUBE: General Senona says:

20 “All Durban DPCI and Tracking Team members involved in the day of the operation and the following day had knowledge of the exhibits being stored at the Port Shepstone office. However, they do not possess the knowledge of the layout and security measures in place.”

Again, this you would have only seen for the first time when you saw General Mosikili's note in 2022.

DOCTOR LEBEYA: That is correct, Commissioners.

ADV SEGEELS-NCUBE: That according to General Senona, that the DPCI, Durban DPCI and the Tracking Team that escorted the drugs, although they knew of the exhibits and the nature of the exhibits, according to him they would not have known the layout of the offices and the measures in place.

DOCTOR LEBEYA: That is correct, Commissioners.

ADV SEGEELS-NCUBE: Then if we can go to page 105,
10 paragraph 4.5.

DOCTOR LEBEYA: Yes, Commissioners.

ADV SEGEELS-NCUBE: General Senona says:

20 “On inspection by the Acting Unit Commander, Lieutenant Colonel Prinsloo, noticed that the closest walk-in safe/strong room from Warrant Officer Pienaar's office was grinded open. Both locking mechanisms were grinded open very professionally and all the exhibits stored in it was removed, 541 kilograms of Cocaine seized in Durban SOCI, CAS number. Lieutenant Colonel Prinsloo informed the provincial office of a break-in at the Port Shepstone office. The scene was visited by Provincial Head and

Provincial Commander of Serious Organized Crime Investigation. It is clear that someone with the knowledge of the layout of the office could have successfully assisted suspects to steal said exhibits.”

So this is General Senona's view that somebody from within DPCI would have assisted the criminals in stealing these exhibits. Do you see that?

10 **DOCTOR LEBEYA**: I see that, Commissioners.

ADV SEGEELS-NCUBE: When he informed you of the theft, did he tell you of his suspicion that he thought, because remember his report is the 9th of November, it is the day after the theft is discovered, so he has formed this view almost contemporaneously, did he inform you of his suspicions that somebody within DPCI who had knowledge of the layout of the offices must have been involved?

DOCTOR LEBEYA: He did not inform me about the suspects.

20 **ADV SEGEELS-NCUBE**: Not about the suspects, about his suspicion that somebody, he would not know who it is, but that DPCI officials must be involved because the criminals would have been to assist the suspects to steal the exhibits. So we are not talking about the suspects, I am talking about his suspicion that DPCI officials were

involved.

DOCTOR LEBEYA: He did not tell me, but I thought that when you say the DPCI members are involved, it means that they are part of suspects.

ADV SEGEELS-NCUBE: No, if you read how he says it, he says it is clear that someone with the knowledge of the layout of the office could have successfully assisted suspects to steal said exhibits. So someone with the knowledge is a DPCI officer. That is really what he is
10 saying, would have assisted the suspects being the thieves. Do you see that?

DOCTOR LEBEYA: I see that, Commissioners.

ADV SEGEELS-NCUBE: So my question is, when he tells you about the theft the day before he prepares this report, does he say to you that he suspects that somebody within DPCI who has knowledge of the layout must have assisted the thieves.

DOCTOR LEBEYA: He did not inform me about that, Commissioner.

20 **ADV SEGEELS-NCUBE:** Did you ask him whether he had any suspicions as to what could have happened?

DOCTOR LEBEYA: The briefing that he gave me was sufficient to know that a burglary have taken place by unknown suspects. So I cannot recollect the nitty-gritties as to whether I asked him who stole and the like.

ADV SEGEELS-NCUBE: Okay, and then at 4.6 he says:

“None of the firearm safes housed in the walk-in safes were tampered with, as well as the adjacent walk-in safe, which clearly indicates that the suspects were only after the drugs.”

He did not mention that to you when he reported the incident to you?

DOCTOR LEBEYA: I will not recall the exact words that he
10 shall have used, but he have indicated that the firearms have not been stolen, the firearms in that safe have not been stolen.

ADV SEGEELS-NCUBE: Okay. Now, you say he did not have that, he did not mention this to you on the 8th of November when he reports the crime to you. When does he tell you about his suspicions for the first time, do you recall?

DOCTOR LEBEYA: I do not recall if he ever reported directly to me, but I see it on the report to the Deputy. So
20 after reading this I see what his view is.

ADV SEGEELS-NCUBE: Okay, so he reported to the Deputy, but not, you do not recall having that discussion with him?

DOCTOR LEBEYA: That is correct, Commissioners.

ADV SEGEELS-NCUBE: Okay. Can I then ask you to go

to ...[intervenes].

ADV BALOYI SC: Before you move on, can I just correct myself. You are correct that Warrant Officer Deena Govender, he was a Warrant Officer at the time, he was tasked to escort the drugs to Port Shepstone, but there was also a Govender ...[indistinct]. So you are correct.

ADV SEGEELS-NCUBE: Thank you. Thank you, Commissioner Baloyi.

ADV KHUMALO SC: Before you leave this report, are you
10 leaving the report?

ADV SEGEELS-NCUBE: I am not leaving the report, Commissioner Khumalo. I just want to establish what General Lebeya knew and when he knew it. General, if you go to the supplementary statement of, I did refer you earlier to the supplementary statement of General Senona. You will recall that we dealt with paragraph, page 16.

DOCTOR LEBEYA: Yes, Commissioners.

ADV SEGEELS-NCUBE: Now, if you go to that same statement he mentions, in fact, I think it is best to go to the
20 annexure. It is called additional annexures. There is a file that should say additional annexures. They will just assist you.

ADV BALOYI SC: Your reference, Ms Ncube?

ADV SEGEELS-NCUBE: In the supplementary statement, I am on page 16 still, Commissioner Baloyi, but there I would

also like you to just get the annexures to that which says, it is a file that says additional annexures. It is also General Senona and it is page 36. It is item 1 in that file, but it is numbered page 36. It is flighted now, if that will assist in where you can find it. General, do you have it?

DOCTOR LEBEYA: I see it on the screen. I do not have the file, but I will see it on the screen.

ADV SEGEELS-NCUBE: Okay. I would prefer for you to have it. Let me then rather take you to General Senona's
10 statement first, and then we can sort out getting the file to you. If you go to General Senona's initial statement, the one that we dealt with earlier that I asked you to put away, page 29.

DOCTOR LEBEYA: Yes, Commissioners.

ADV SEGEELS-NCUBE: Page 29 should start at paragraph 107.

DOCTOR LEBEYA: That is correct, Commissioners.

ADV SEGEELS-NCUBE: At paragraph 111, General Senona says:

20 “On or about the 23rd of November 2021, I addressed a letter to our National Head requesting that all members of the Port Shepstone office and officers responsible for seizing the drugs be subjected to a polygraph test. The National Head approved same. The letter approving the polygraph test, and the list of officers

tested and attached hereto, attached as Annexure S9 and S10.”

Now, before we go to S9 and S10, under what investigation was this request being made? You told us about two requests, two investigations that you had mandated. The one was the fact finding by General Mosikili, and the other was the criminal investigation by General Khana. Now, here you have General Senona asking you to authorize polygraph examinations to be undertaken, and you approved it, and that is the document that I had wanted to take you to. What I want to first ask you is, when he asks for these polygraph examinations to be done, he is not seized with any of the investigations that you commissioned, correct?

DOCTOR LEBEYA: The two investigations, yes, that I commissioned, correct.

ADV SEGEELS-NCUBE: Okay. And if anyone was going to ask you to authorize, not that I understand that you would necessarily need to give such authorization, but if General Khana, for example, as part of his criminal investigation, wanted to conduct polygraph tests of the DPCI members, would he need to get your authorization for that, as part of the criminal investigation?

DOCTOR LEBEYA: He shall request that, correct.

ADV SEGEELS-NCUBE: Would he need to get your

approval for it, as part of his criminal investigation?

DOCTOR LEBEYA: Ja, if it is done by him personally, he will request the higher authority. So if it is done on a lower level, they can even ask him to approve. So it has to be approved at a higher level.

ADV SEGEELS-NCUBE: I fail to understand on what basis he would need to ask for your approval as part of a criminal investigation. You are not in charge of that criminal investigation, right? He is tasked with the criminal
10 investigation, so if he needed to polygraph suspects, for example, would he not just simply need to get their approval or consent to conduct the polygraph, and if they refuse, then he cannot go ahead with it. That is under the criminal investigation, because they would have rights, if they are suspects in the criminal investigation, and he has been, they are being asked to subject themselves to polygraph tests, they would have rights under the criminal investigation, right?

DOCTOR LEBEYA: Which one are we referring to?

20 **ADV SEGEELS-NCUBE:** General Khana. I am saying if General Khana, who is tasked with the criminal investigation, the theft, you recall you said that he was tasked with the criminal investigation.

DOCTOR LEBEYA: That is correct.

ADV SEGEELS-NCUBE: If he wanted to subject anyone to

a polygraph test as part of the criminal investigation, he would approach the suspect and ask for consent to conduct the polygraph test, correct?

DOCTOR LEBEYA: You can also be correct.

ADV SEGEELS-NCUBE: Okay. And because that is part of a criminal investigation, it has nothing to do with the employment of the DPCI officers. It is a criminal investigation. If they are suspects, they have the rights that suspects have.

10 **DOCTOR LEBEYA:** That is correct.

ADV SEGEELS-NCUBE: Okay. Now, if it was General Mosikili's fact-finding investigation, how would that process work? If she had suggested to you or wanted these members to be subjected to a polygraph test, would she need your approval for that?

DOCTOR LEBEYA: That is correct, Commissioner.

ADV SEGEELS-NCUBE: And under what dispensation would those polygraph tests be conducted? Would it be as part of a DPCI officer's contract of employment that makes
20 it mandatory for them to undergo polygraph tests if they are instructed to undergo those tests?

DOCTOR LEBEYA: That is correct, Commissioner.

ADV SEGEELS-NCUBE: Okay. Now, here you have General Senona asking for these polygraph tests to be approved by you.

DOCTOR LEBEYA: That is correct, Commissioner.

ADV SEGEELS-NCUBE: Under what dispensation is he asking for that to be done? What authority do you have to authorize polygraph tests of DPCI officers at the request of General Senona?

DOCTOR LEBEYA: From time to time, the DPCI members can undergo a polygraph test. So that is accommodated in the directives of the members of the DPCI.

ADV SEGEELS-NCUBE: Yes, I understand that. So you
10 are saying he is asking this as the Provincial Head for them to be subjected to the polygraph tests?

DOCTOR LEBEYA: That is correct.

ADV SEGEELS-NCUBE: But you have already tasked two senior Generals to conduct two investigations into this matter, and now you have General Senona, who, by the way, is a person that had the keys to the safe of the strongroom where the drugs were stolen, requesting you to authorize polygraph tests for everyone within DPCI Durban and Port Shepstone except himself and Brigadier Nyuswa.

20 **DOCTOR LEBEYA:** That is correct, because he is the Supervisor, and he has to do human resource processes. And if disciplinary process must be done, he is the one who must do it on the personnel under his supervision.

ADV SEGEELS-NCUBE: Okay, but this request, I asked you earlier whether he had told you about his suspicions

that a DPCI officer would have been involved. You said, no, he did not. Then this request comes on the 23rd of November. There is no context to it. It says application for polygraph examination, and he sets out certain background in there. Are you having a prior discussion with him before he submits this request and are you trying to establish from him, why are you asking me for this request when I have already asked for General Mosikili and General Khana to conduct two separate investigations?

10 **DOCTOR LEBEYA:** We have not had a prior discussion. He shall submit an application.

ADV SEGEELS-NCUBE: Yes, but he is submitting the application. Why, is he telling you that he suspects that DPCI officers are involved, because, remember, prior to this, I had asked you whether he had expressed that suspicion, and you said no. So now he is making a request, essentially out of the blue, for the polygraph test to be conducted. You have not received such a request from General Mosikili, and there is no indication that General
20 Khana is conducting polygraph tests of the DPCI officers. But you have got General Senona, who is, in effect, also a person of interest in the theft, asking you for this investigation to be, for the polygraph test to be authorized.

DOCTOR LEBEYA: I was not considering him as the person of interest. He was the one who was complaining,

and those are the members under his command, supervision.

ADV SEGEELS-NCUBE: Okay. So at the time when he is complaining, that is why I took you through the chronology earlier, you do not know that he was the custodian of the keys to the safe that was breached?

DOCTOR LEBEYA: That is correct, Commissioners.

ADV SEGEELS-NCUBE: Okay. So you are blind to that fact, and when he makes this request, you think that he is
10 conducting his own investigation for purposes of disciplinary processes. What is it that he is asking? What do you think he is asking this for? Why is he asking this?

DOCTOR LEBEYA: I have not seen the report itself to refresh my memory.

ADV SEGEELS-NCUBE: Okay, can we maybe go to it now, then. I am not sure if they have sourced it for you. It is page 36 of the additional annexures, which was also part of the core bundle. Can I just find out if he has it?

DOCTOR LEBEYA: Which file number is that?

20 **ADV SEGEELS-NCUBE**: Yes, it would – okay, it seems that you do not have that file, so it is something that I will perhaps address after the tea adjournment with you. Chair, may I seek your indulgence for 3 minutes earlier.

CHAIRPERSON: Let us adjourn and resume at 11:30.

ADV SEGEELS-NCUBE: Thank you.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Good morning, Mr Vally.

ADV VALLY: Good morning, Chair. Good morning, Commissioners. Before we start, I just want to apologise for my tardiness.

CHAIRPERSON: Please do not say it was traffic. I have not heard what you are going to say. I am just saying, please do not say it was traffic.

10 **ADV VALLY:** I have got a picture as Exhibit 1, Commissioner. Just for evidence. But I thank you for accommodating me. I am indebted.

CHAIRPERSON: Ja. But for the future, please, please. If you must leave home one hour earlier than usual, please do. Thank you.

ADV VALLY: Thank you, Chair.

CHAIRPERSON: Ms Hassim? Or because the applicant is Mr Vally, do I call upon you to say something?

ADV VALLY: Yes, indeed. I am happy to start, Chair.
20 Chair, as you are aware ...[intervenes]

CHAIRPERSON: Did you not engage each other? Do you not have an agreement and therefore even a draft ruling?

ADV HASSIM SC: We received a draft, a proposed draft order from Mr Vally, but it really replicates what is in the notice of motion. I have not had... we received it, I

received it not long before coming in here. So we do not have an agreement as it stands.

CHAIRPERSON: Ja. Perhaps for the record and because this is a public hearing, if you could briefly state what the facts are and whatever else you may wish to say. But we do not want to take up a lot of time on this because we are in the middle of hearing the testimony of a witness who is in the witness stand.

ADV VALLY: Indeed, Chair. I will try to be economical
10 with my submissions. Chair, as you are well aware ...[intervenes]

CHAIRPERSON: Maybe let me ask this. Is General Khan opposed, or if he is, violently opposed to being subjected to medical examination by an independent medical practitioner?

ADV VALLY: Chair, I am glad you raised the issue. I intended addressing you on that issue first. The answer is twofold. There is two impediments to us answering that conclusively or simply. The first impediment is a medical
20 impediment and the second impediment is a legal impediment. Now we in principle do not object to having that solution imposed simply because we believe that it is a means to an end and it is the least restrictive means to that end.

The medical impediment that I would like to make

submissions on is the following, having regard to the expert report, and I must be careful on how I address, Chair, so that I do not disclose information that we contend is confidential. The medical issue is what I have now coined as a white coat effect. I have drawn it from medical literature, that the presence of a third party expert may induce a trigger which may then cause a further cascade of the current condition that is recorded in the latest report.

Now we do not want to make the submission
10 because we are not medically trained. So the proposition is if there is an expert that the Commission has in mind to have regard to the evidence that we have presented, we have got no issue. If the Commission wants to take it one step further and have that expert be in contact with the current treating doctor, to determine whether or not an independent medical examination may cause an ill-intended effect, then at least we can have certainty on that point once that discussion is to hand.

If there is no medical impediment, then we can
20 address you on the legal impediment if one exists. We would ...[intervenes]

CHAIRPERSON: A legal impediment would only arise if General Kahn's attitude, or indeed even his legal representatives, is that there is no legal basis for the Commission to force General Kahn to be examined by a an

independent medical practitioner. But if he is willing to subject himself to that voluntarily and his lawyers do not raise any legal issues, for example saying there are *vires* issues or lack of power issues, then there will be a legal impediment. So whether there is or there is not depends on his and indeed his attitude through his lawyers.

ADV VALLY: Yes, indeed.

CHAIRPERSON: So therein lies the answer. So the question is more whether you take the legalistic stance that
10 we will not agree to our client being subjected to independent examination by an independent medical practitioner. So that is what I think you would have to apply your mind to and indeed your client would have to apply his mind to.

ADV VALLY: Yes indeed Chair. I think we have looked at the issue a little bit differently because I would contend that that approach that Chair has just articulated, might be seen to be somewhat obstructive. Now we are not here to be obstructive, we are here to facilitate. And the view that I
20 would like to share in relation as to how we look at the legal impediment is that are there sufficient jurisdictional facts based on the reports that is currently before the Commission that justifies further questions? Meaning are there contradictions or is there anything *prima facie* that does not sit well?

Now if there are and if those jurisdictional facts are present, then we would say well then by all means let us engage further on the issue. But if there is no reason for us to go beyond the *prima facie* reports, then we would say well what is the use of it because ultimately that is going to result in a delay. And I will tell you why Chair. The nature of the let us call it the injury is such that one cannot simply inspect as a once-off, do a report and go away.

This is the type of injury that requires more than
10 one, in fact one can say up to three or four of these sessions, to determine what the extent of the injury is and more importantly for Commission purposes what the prognosis is. Because ultimately this Commission wants to know when does the impediment fall away so that we can get on with the matter?

CHAIRPERSON: Therein lies the problem. We happen to have practical experience of this. I will not mention names. We were first told it is X number of weeks and that would, I am not sure now, but that would probably have fallen within
20 our then existing timelines. And then, oh no, he is still not well now, here is our projected timeline and that projected timeline went beyond the Commission's life at that stage.

So it is on that basis that I say we have practical experience of this and I am not saying that is what is going to happen, but I would not be surprised if come the terminal

point of what we have been told at this stage, we are again told you will be well in April of 2027. I would not be surprised.

ADV VALLY: So that is the reason why we approach the problem with a two-faceted solution. I am confident the Chair has had regard to at least the founding papers in this matter.

CHAIRPERSON: Yes, not the reply. The founding, yes, not the reply.

10 **ADV VALLY:** I will confine to the founding and if there is a need to go into the reply I will determine what Chair's comfort is.

CHAIRPERSON: May I at this stage just, because I still think that if you sit down and apply your minds, you should be able to come up with something, whether perhaps the initial stage would be one of exploring what you said, which is, is it practical for medical practitioners, that is inclusive of an independent one engaged by the, initially perhaps by the two sides agreeing or the Chairperson of the relevant
20 expertise.

So that medical practitioner engaging the treating medical practitioner initially, so that is a possibility, if of course that independent medical practitioner is of the view that could lead us somewhere. All I am saying, I am not saying that is the route we should go, I am just saying there

is a lot between the two of you that you can engage each other on. But before I force you to sit down and see if you cannot find each other, can I just very briefly ask to hear Ms Hassim?

ADV VALLY: Indeed, Chair.

CHAIRPERSON: Yes.

ADV VALLY: Thank you.

ADV HASSIM SC: Thank you, Chair. I heard the very briefly preface to hearing me.

10 **CHAIRPERSON:** I must say, though, that people listening have no idea what is going on. So maybe there is a need for some introductory remarks as to why you and I, Mr Vally, are engaging each other in the manner in which we are. But perhaps you can briefly give the background and then make whatever remarks you may wish to, Ms Hassim.

ADV HASSIM SC: Thank you, Chair. I think it is important that the submissions that Mr Vally is making are put in a proper context. For example, Mr Vally began talking about and making comments about the nature of the injuries and
20 the difficulties of assessing it and so on. This comes in a vacuum. Nobody understands what is going on.

This is an application for a postponement of evidence for which General Khan has been subpoenaed to appear today. He is not present today and his advanced medical reasons for why he is not present. Now, Chair, we

have had occasion to deal with this scenario in the past. I wish to make three points to the Commissioners on this.

The first is quite important because this assumption of a blanket secrecy that is the position that is adopted by General Khan's legal representatives, in my view, is inappropriate in the circumstances. And we have begun the proceedings talking about the injury without specifics, as if there has been some sort of ruling that there is confidentiality properly asserted over the nature of the
10 illness that General Khan suffers from.

I want to first speak briefly to the issue of the confidentiality and then to separate what is before the Commission in relation to the statement that is overdue by General Khan and then his appearance. So those are the three points. On the first point, on the question of the confidentiality, the evidence leaders do not dispute that medical information ordinarily engages an important right to privacy.

But what we say is that it does not answer, that
20 that proposition does not answer the present application because Major General Khan has placed his medical condition before the Commission and relies upon it as a factual basis for which he seeks a postponement. And I have not seen anywhere in the papers before us any principle of law relied upon that entitles a person who seeks

a postponement of proceedings on medical grounds to have the postponement application adjudicated in secret merely because the application depends on medical information.

We have, again, been down this road before. The principles of open justice, the principles of the open hearings of Commissions are well known, not only to the Commissioners and all legal representatives who have been here, but I think even the public now understands those principles because we have dealt with it before. So there is
10 no need for me to go into *SABC v NDPP* and the independent newspapers judgments.

But what I would like to say to the Commission is that in addition to those principles on open justice and the rules of this Commission, which sets that the default rule, the default position is open hearings, I would like to point out that the right and reliance on the right to privacy is also not a right that one can claim in the absolute sense. There has to be a proportionate response, an assessment of what disclosure is appropriate and what disclosure is not.

20 So while medical details regarding General Khan's experience over the last few months and treatment protocols and that kind of thing may be appropriate not to be disclosed, the overall and broad condition from which he suffers from, in my view, should be disclosed. And for that, I rely on two judgments. Well, three. First is the judgment

of the Constitutional Court in *Bernstein v Bester*, which engaged the principle of the right to privacy, first sort of serious engagement with the right to privacy by the Constitutional Court.

Chair, the SAFLIII citation, if I may provide it, is *Bernstein v Bester* [1996] ZACC 2, and I would refer the Commissioners specifically to paragraph 67. Now, we have gone to *Bernstein v Bester* in other hearings before the Commissioner for other purposes. I am relying on it for this

10 paragraph, where Justice Ackermann said the following:

“Privacy is acknowledged in the truly personal realm, but as a person moves into communal relations and activities, such as business and social interaction, the scope of personal space shrinks accordingly.”

And the reason for which I rely on that passage is because unlike others who may have appeared or have failed to appear before this Commission, General Khan is a senior

20 member of the SAPS. He holds a high public office, and his right to privacy as a result is attenuated in the circumstances, in the same way as Justice Ackermann explained of this inner sanctum that becomes attenuated as you move out into societal relations and into public positions.

That principle was applied in the judgment of *Tshabalala-Msimang v Makhanya*. The Tshabalala-Msimang in that case was a former Minister of Health, Manto Tshabalala-Msimang and the citation of that judgment, Commissioners, is 2008 (6) SA 102 (W) in the law reports, the old W. And that case concerned ...[intervenes]

CHAIRPERSON: Paragraph?

ADV HASSIM SC: is paragraph 38 to 40, and then paragraph 45.

10 **CHAIRPERSON:** I am sorry, 38 to 40?

ADV HASSIM SC: To 40, and then 45 as well. It is pertinent in these circumstances, Commissioners, because it dealt with private medical records that were disclosed by and were in the possession of the Sunday Times and what the Court said in that case, and again it fully recognised the ordinary private and confidential nature of medical information, but it nevertheless held that the public interest could justify publication where the information bore, in that case, upon the Minister's witness to discharge her public
20 duties.

And so the Court there distinguished one between private and public individuals, and it also distinguished between just mere public curiosity and from information that concerns politicians or public officials, which bears on their public functions. And in this case matter now that we are

addressing with General Kahn, it goes directly to two aspects of public interest. This is a matter of high public interest.

And maybe before I get there, I just wish to say, Chair, that this judgment, *Tshabalala-Msimang v Makhanya*, was upheld by the Supreme Court of Appeal, and I would like to give you that citation.

It was upheld in 2017 in the judgment of *Maharaj v. Mandag Centre of Investigative Journalism and others*. The
10 SAFLII citation is 2017 ZASCA 138, and, Chair, we have provided the Commissioners with a hard copy of both the *Tshabalala-Msimang* judgment and the SCA judgment.

CHAIRPERSON: ZASCA, what number?

ADV HASSIM SC: 138.

CHAIRPERSON: Oh, thank you. Any specific paragraph?

ADV HASSIM SC: Yes, Chair, paragraph 28. And just for context, the matter concerned the disclosure of evidence relating to alleged payments to Mr Mac Maharaj, who was a spokesperson in the presidency at the time, and his wife
20 during the time of the arms deal and the secrecy was sought to be exercised over that information.

And what the Court said there, and I think it was a judgment of Justice Ponnann at paragraph 28, is firstly recognising that the matter was of intense public interest because it raised serious allegations of corruption and

mismanagement of public funds. And the Court referred in paragraph 28 to the Glenister judgment to underscore why the concern with corruption in the country and its consequent implication for rights, for the delivery of rights, particularly socioeconomic rights, is so important to the public.

That was the first point Justice Ponnan made in paragraph 28. The second is to recognise the difference when one is dealing with public figures. And there he said
10 as follows, and I am quoting now from Justice Ponnan's judgment, he says:

“And as the Court in Tshabalala-Msimang
and another v Makhanya pointed out...”

And then he quotes from that judgment;

“...in her capacity as a Minister of Health,
the first applicant cannot detract from the
fact that she is a public figure. In such a
case, her life and affairs have become
public knowledge, and the press in its turn
20 may inform the public of them.”

And then he continues to quote from that judgment about the importance of keeping the public informed and current news of events, particularly lives of public persons and public officials.

So the public interest in this, before the

Commission right now, is not an interest in General Khan's health as such. It is an interest in understanding why a senior public officer, who is under a compulsory process of this Commission for the second time to appear, should be excused from appearing, potentially for an indefinite period.

ADV BALOYI SC: Could you add about whom serious allegations have been publicly made of impropriety?

ADV HASSIM SC: Indeed so. Indeed so, Commissioner Baloyi. Because the importance here is that it is not just, it
10 is about accountability in the circumstances of these serious allegations. So we do oppose this blanket order that is being sought that renders the medical basis of the application confidential.

I am going to cut myself short, I have made my submissions on that, and I have qualified that it is not, what I am seeking is not that every detail contained in his clinical record should be publicly disclosed. What we are resisting is this blanket secrecy over the medical condition, and what it means for General Khan's functional impairment and
20 prognosis, and therefore his ability to comply with the notices of this Commission and the subpoena.

So those are my submissions on confidentiality, Commissioners. On the second point, the second point was the issue of the production of the statement, which I, as I said, I separate out from General Khan's appearance to

testify before the Commission. And it is important because this statement is long outstanding. The answering affidavit of the attorney for the Commission, and the Commission Ms Wilsenach, sets out a detailed chronology of the correspondence and exchanges between the legal team for the Commission and Mr Vally and others, the legal representatives of General Khan.

And what it shows is that firstly, the original Regulation 10.6 notice calling for a statement was issued
 10 on the 5th of June 2026. That notice required General Khan to submit his statement by the 22nd of June 2026. After that date, there was repeatedly attempts to pursue the statement from the side of the evidence leaders. On a conservative count, when one has regards to Ms Wilsenach's answering affidavit, the statement required from that 5 June notice was expressly requested or chased on at least six further occasions.

And I have the dates on which they were pursued, but let me ...[intervenes]

20 **ADV KHUMALO SC:** And that predates the date of the shooting?

ADV HASSIM SC: Some of it predates the date of the shooting. Some of those occasions post-date the date of the shooting. But there were at least six occasions on which we pursued the statement. But I would like to come

back to, Commissioner Khumalo, to the date before the shooting. But before I do so, I want to say that there were also at least three clear assurances and undertakings from Mr Vally that the statement would be provided, and none of these have been honoured and I would like to provide the dates on which those undertakings were made.

The first was on 22nd June, and you will find that in the answering affidavit at MW11, Annexure MW11. There, Mr Vally undertook to submit the statement by 24 June, and
10 the evidence leaders accommodated that request. So although it was out of time, it was accommodated. On 24 June, when the deadline arrived, he said that the statement could not be delivered that day, but it would be filed in due course, in his words, and certainly prior to 1 July 2026.

These were the words of the legal representatives for General Khan on 24 June, that it would be provided certainly prior to 1 July 2026. It was not. On 21 August, Mr Vally advised telephonically that the statement would be submitted during the following week. This is recorded in Ms
20 Wilsenach's affidavit. Again, it was not submitted.

ADV BALOYI SC: The following week would be from the 21st of August, you say?

ADV HASSIM SC: I think it was the week beginning 24 August. The Monday was the 24th of August. So we expected it then the following week, meaning the week of

the 24th of August.

ADV BALOYI SC: Thank you.

ADV HASSIM SC: So I am not comforted by Mr Vally's submissions to the Chair this morning about the spirit of cooperation, and wanting to be not obstructive. The same language has been used in the past in our engagements with General Khan's attorneys, and one such example is on 12 June, where there was a representation from General Khan's lawyers that he was presently preparing his affidavit, 10 and the words that were used were that he was doing so, General Khan, in the spirit of cooperation and that was when they first began asking for extensions for the statement.

So what is the significance of that chronology? That chronology was prior to the shooting of 28 June. By the time of the shooting, the statement was due on 22nd June and had already not been submitted. It had nothing to do with what happened subsequently, and as we see from this application, what General Khan relies on is not just the 20 fact of the shooting itself, but the consequences on his health resulting from the shooting.

So the extended deadline of 24 June had passed, and Mr Vally had at least twice represented that the statement was actively being prepared, close to completion, and the present explanation that we have does not explain

that default prior to the shooting. So those are my submissions on the statement, and it is why we wish to seek a ruling from the Chair that we set a date for the filing of that statement. But I will come to that at the end. The third and final point then concerns the independent medical evaluation.

This mechanism of the independent medical evaluation, again, has been debated in this forum before, and we have made legal submissions that underpin and
10 underscore why independent medical evaluation is warranted, particularly when it is this condition that is being relied upon. And we submit it continues to be relevant as it was with previous witnesses in this Commission.

In the replying affidavit, what General Khan's representatives say is that, in paragraph 57 of their reply, is that they are willing to explore the appropriateness of an independent medical assessment with the current treating doctor and obtain appropriate medical updates. But, Chair, as you will recall, that is not what is contemplated by an
20 independent medical evaluation. It is not a discussion with the patient's doctor.

It is an evaluation of the patient himself or herself and I hope that we do not fall back into a trap that ...[intervenes]

CHAIRPERSON: And also we do not have the luxury of

time for all these staggered processes.

ADV HASSIM SC: We certainly do not, and it is already the 1st of September, Chair. We have got weeks of hearing remaining.

ADV KHUMALO SC: Can I say this to both of you? Whether you call it independent or whatever, what it really is, is it is a second opinion to assist the Commissioners. These are not adversarial proceedings where a plaintiff is fighting with a defendant. You have a witness who is under
10 subpoena, who says to the Commissioners, my doctor says I am not well enough to appear. And because that doctor is chosen by the witness, the Commissioners are sitting with a report of a doctor chosen by a witness who is seeking an indulgence because that is what a postponement is.

And I would think that that witness would be doing all in his power to persuade the Commissioners that indeed I am unwell and I am willing to go so far as to get a second opinion of somebody who was not chosen by me to show you that I am unwell. Matters of an expert nature is not
20 unusual for a second opinion to be obtained. It happens all the time because the Commissioners are not experts. And what they need is somebody not chosen by the witness to say, I have evaluated the witness, certainly not to the extent that the treating doctor has, but based on what I have seen, I can assure you that this person is not able to

appear.

How that interferes with the health of a witness, that escapes me. Because in ordinary circumstances, if this was litigation, a defendant would be demanding that as of right. The Commission is not even demanding that. The Commission is saying, sitting where we are sitting, that is not sufficient. And if we are persuaded by somebody not chosen by the witness that the person is unwell, then it will assist us to make the decision we need to make.

10 **CHAIRPERSON:** Also, from where we are sitting, it seems that the Commission is being held to ransom to say, once you interpose someone other than the treating doctor, then that is going to aggravate the condition of General Khan. So it basically says there is nothing you can do. Just stay the hell out of it and if we say April 2027, that is it. As I say, that is holding the Commission to ransom. But I am going to engage Mr Vally on that.

ADV HASSIM SC: Chair, if I just may make a last point on this before Mr Vally is able to respond, and that is, and
20 perhaps it is, Commissioner Khumalo, a little bit more of an aggressive approach from my side, than you have adopted in your query as to why this would be so unreasonable in the circumstances.

So the reason why it is a bit more aggressive is because, as we pointed out in the papers, there is already

an incident of concern that we brought to the Commissioner's attention in the answering affidavit, because it concerned an incident of backdating and amending a medical certificate by a treating doctor, by General Khan's treating doctor.

And that is why I am particularly concerned to ensure that there is an interposition of an independent evaluation. And just to refer the Commissioners to page 160 of the answering papers in this application, because
10 that is where the incident is set out. And it emerges from an affidavit that was prepared by Lieutenant General Khumalo, the Divisional Commissioner of Crime and Intelligence and the affidavit was submitted in other proceedings, in Labour Court proceedings, in which General Khan was a party.

And you will see at that page, at paragraph 9, where General Khumalo explains that Major General Khan applied for incapacity leave and attached a medical certificate dated 22 May 2026 from Dr Fine. And out of
20 absolute courtesy, I do not believe I should be constrained in this way, but out of absolute courtesy, I will not read the next two words of the sentence. The medical certificate then stated that, and he quotes from the statement:

“General F Khan is currently medically unfit and booked off until 30 June 2026.”

If we turn over the page to page 160 ...[intervenes]

CHAIRPERSON: But are these not Labour Court papers or not?

ADV HASSIM SC: They are Labour Court papers.

CHAIRPERSON: And those are public documents. So I think it is a fuss for us to avoid referring to those. In one sentence, or is it not so, Mr Vally? Just in one sentence.

ADV VALLY: Chair, whatever is in the public domain...

CHAIRPERSON: Sorry, sorry. Why should we tiptoe
10 around this if these are already public documents? And nothing stops any member of the public to go to the Labour Court, obtain these papers, and see what the condition of General Khan is. And if the people doing so are people from the media, they will be perfectly entitled to report on this because it is in public documents. Unless there is an order by the Labour Court that this should not be divulged. Is that not so?

ADV VALLY: Actually, no, Chair. What is before you is more than what is before the Labour Court. So there is far
20 more sensitive documents that is before you.

CHAIRPERSON: But I guess what I am saying is farcical, is us keeping words here. For example, the doctor and the description of the doctor's nature of practice, and that sort of thing. What I am saying is farcical, is tiptoeing around all that.

ADV VALLY: Fair enough, Chair, but that occurred prior to the shooting. There is a historical medical record. We are talking about the current impediment.

CHAIRPERSON: Okay. All right, thank you, thank you.

ADV BALOYI SC: More the reason why it should be mentioned if it is historical.

CHAIRPERSON: Yes.

ADV HASSIM SC: And just to say, Chair, the authority in *SANRAL v the City of Johannesburg* makes it very clear that
10 pleadings in a court record is in the public domain. So, and I understand then that Mr Vally is not asserting any confidentiality over this. So I will say then it was a medical certificate from Dr Fine, who is a psychiatrist. So the certificate that was provided on the 22nd of May, as we see from paragraph 9, booked General Kahn off until 30 June 2026.

Then if you turn over to the page, page 161, and you go to paragraph 11, what had happened in the interim was that the SAPS required more detail of the diagnosis.
20 And then what General Khumalo says at paragraph 11 is that on 20 August 2026, another medical certificate was provided by Dr Fine. And you will see it quoted there from the medical certificate the following:

“General F Kahn is still currently medically
unfit and is booked off until 27 of June

2026. The diagnosis remains the same,
extreme stress, depression, and anxiety.”

So what we see here is a change in the date, 27 June, whereas the earlier certificate said 30 June. And we do have the affidavit of the doctor.

ADV BALOYI SC: You should also mention that that medical certificate at paragraph 11, General Khumalo says it is dated the 22nd of May.

ADV HASSIM SC: Yes, yes, Commissioner Baloyi, and I
10 am coming to that because it was in both respects. It was, let me address it properly when I get there. So it is the same certificate date, the 22nd May, but the date of incapacity is changed from 30 June to 27 June and the diagnosis is now added. We do have the full affidavit of this doctor attached to the answering affidavit. And I must say, to his credit, he volunteered the affidavit to the SAPS.

I mean, it was subsequent to an investigation, it did not come out of nowhere, but the doctor expressly, you know, volunteered the affidavit to correct the matter. So
20 that was the second statement. So what General Khumalo says on page 162, paragraph 14, okay, he points out, sorry, that is just where he points out that it was the change of dates. Where I really want to go is page 163, paragraphs 18 and 19, where General Khumalo says the following, and I am just going to read that out for the record:

“It is the respondent's contention that the change appears to have been necessitated by the fact that the original sick note indicated that Major General Khan was booked off sick until 30 June 2026. However, Major General Khan was shot on 28 June 2026, which fell within the period covered by the original sick note.

10 This could potentially have resulted in questions being raised regarding the approval of his temporary incapacity leave, particularly as questions could have been asked as to why he was on the street late at night while officially booked off sick.”

And then finally, Chair, if I can take you to page 172, and that is the affidavit of Dr Fine, where he explains the circumstances, how this happened, and I think it is fair to the doctor to put his explanation on record too. He explains
20 his original, at paragraph 4 on page 172, he explains his original consultation on 22 May. In paragraph 5, he says the following, and I will read it into the record.

“On Thursday 20 August 2026, an appointment had been made telephonically ...[intervenes]”

ADV KHUMALO SC: Sorry, is it the same affidavit appears twice? I was reading at 169, but I see that you are on 172, but it looks like the same.

ADV HASSIM SC: Yes, sorry, Commissioner Khumalo. That is because one is an annexure to General Khumalo's affidavit, and one is our own ...[intervenes]

ADV KHUMALO SC: That is the same document.

ADV HASSIM SC: It is the same document.

CHAIRPERSON: And you are at paragraph?

10 **ADV HASSIM SC:** I am at paragraph 5. It begins:

“On Thursday 20 August 2026, an appointment had been made telephonically with my receptionist for a man who said he was General Khan's son and that the medical certificates needed adjustment. General Khan's son came, and I saw him. After discussing the situation with him, I had been asked to rewrite two certificates as it had not included the diagnosis as required. He had also said that some minor adjustments were required on the dates of the sick note.

20

I had not asked the reason for this and assumed that it was for some minor bureaucratic difficulties. I had seen no

harm in doing this as he was undoubtedly medically unfit to return to work at that time. I had asked from the son before doing the adjustments if any of the notes had been submitted to work, and I said to him that if they had been submitted to work, it might constitute fraud, changing them now.

10 General Khan's son left my room to phone his father and on his return to my room, he informed me that no sick notes had been submitted, as his father had told him. I then completed the notes, backdating them and including the diagnosis, and I stated that he was unfit until the 27th of June 2026, as requested.

On the medical certificate dated 18 May 2026, I made adjustments by adding the diagnosis stating he is being treated for
20 extreme stress with symptoms of depression and anxiety. At that stage, I did not know the implications of that date.”

My understanding of that last sentence of that date is the date of the 28th of June. And then, just for the sake of completeness, Commissioners, you will see at page 175 the

original medical certificate and at page 174 the amended certificate, the backdated and revised certificate.

CHAIRPERSON: What is that date at 176? I do see the 2. Was that between the 2 and the ND? 20, is that 22nd? Okay.

ADV HASSIM SC: Is it at page 176?

CHAIRPERSON: Yes, yes.

ADV HASSIM SC: It is 22nd May.

CHAIRPERSON: Okay, fine.

10 **ADV BALOYI SC**: So, the 174 and 175, the amendment in 174 is a rewrite. It is not as if the original certificate was altered on its face. I am looking at the spaces at page 175 between the very last line and the signature. There is not sufficient space to have added the diagnosis as it now appears in 174.

ADV HASSIM SC: Commissioner Baloyi, it appears to be a reproduced certificate. It was not written into. It is a new sheet.

ADV BALOYI SC: Thank you.

20 **CHAIRPERSON**: Oh, I see I skipped a page. The relevant ones are 174 and 175. Ja, ja, ja. I am sorry.

ADV HASSIM SC: And let me say this, because I have seen some response to this from Mr Vally, but it is no answer to say that it was backdated. It is no answer to say that these sick notes were revised because the SAPS had

requested further information, and so that is why they went back to the doctor to get that information and that is merely all that was taking place here.

Because there is nothing in the request from the SAPS where the SAPS asked for further information regarding the diagnosis that had anything to do with the dates on the certificate. So, why then backdate? Sorry, why then change the dates on the certificate? And the second point to be made on that score is, even if, as it was,
10 that the SAPS human resources component, whoever was the responsible person, required more information about the diagnosis, the appropriate course would be to go back to the doctor and say, the medical certificate has been submitted.

Not that it has not been submitted, because it had been, so that was a lie. Has been submitted to the employer. The employer has said that they need further information and details about the diagnosis, please can you provide me with a letter that sets out that information? And
20 that letter could have then been provided to the employer. That is not what took place here.

So, this Chair, the reason, as I said, that I felt it necessary to say so is because to emphasise the importance of the independent medical evaluation of the patient himself and not to have an intermediate position

where there are engagements with the treating doctor, et cetera. And there is no basis in law why that should not happen.

I understand that there may be issues of consent, but that we can deal with and we should have a ruling essentially similar to the terms in which we had a ruling for Mr Carrim and we can nominate an independent practitioner. If there is not an agreement from the other side as to that practitioner, the professional association will
10 nominate and I suggest we have time frame for that. So that if General Khan is to be excused from these proceedings, it is on the basis of an independent assessment. Those are my submissions.

CHAIRPERSON: Thank you. Can you perhaps avail a copy of that ruling, the Carrim ruling to Mr Vally for him to engage with it?

ADV HASSIM SC: Yes.

CHAIRPERSON: Are those your submissions?

ADV HASSIM SC: Those are my submissions, yes. Thank
20 you.

CHAIRPERSON: Yes, Mr Vally.

ADV VALLY: We were sensitive to the prior ruling of Mr Carrim and the draft that we had earlier circulated to Advocate Hassim took account of the structure in large part. The invitation was give us your views and we can have a

discussion. So it was not as if we simply took our notice of motion, stuck it in, accepted that it should be accepted.

But, Chair, I am a little bit blindsided, I must say. I thought that we were going to discuss the possibility of standing down and discussing whether or not we can meet halfway. But I see Advocate Hassim has gone into some detail and I am obliged to respond because a number of issues ...[intervenes]

CHAIRPERSON: Certainly, certainly.

10 **ADV VALLY:** Thank you, Chair. Chair, in relation to the blanket confidentiality, let me start by that and I am going to try and make it punchy because I know that the Commission is under some pressure. If Chair has regard and Commissioners have regard to our notice of motion on the paginated bundle would be paginated page 1, there is an alternative prayer 2.

20 So, yes, inasmuch as we say give us a blanket confidentiality and let me explain to you the reason why we have done so, Chair. It is to permit me an opportunity to speak freely to the Commissioners, to be able to open a page and say have a look at this. See what the doctor says here. Look at the cascading history of his medical condition without being bothered by what I may say inadvertently.

You know, I sit in a public forum. I am dealing with what we deem to be sensitive information and I may blurt

out something. That is the reason for prayer 1. But being realistic, prayer 2 says if this is to be conducted before the public, give us an opportunity to redact the sensitive bits of the record so that we then can refer to documents and we can even flight it to the extent that it may be required.

So it is not as if we came in a draconian fashion and said that we wanted our way and nothing more. We were alive to different alternatives on how this particular issue could be tackled. Now, as regards the authorities that
10 Ms Hassim had mentioned I am aware of them. And I am not certain because I have not read the facts of those matters on whether or not they are on all fours with the facts of this matter.

Inasmuch as Major General Khan is a public figure and there may be a high public interest element at play there is one fact that distinguishes this matter and the need for confidentiality from any other matter that I am aware of, and that is the fact that he was shot by assailants unknown and to date there has been no progress in relation to the
20 criminal proceedings that was instituted as a result of the shooting. Now ...[intervenes]

ADV BALOYI SC: Why does that evoke confidentiality?

ADV VALLY: Well, firstly, the nature of the injury, the trajectory of the bullet, any other medical evidence that may speak to the evidence that may ultimately feature in a future

criminal trial. We do not want to allow the information that would otherwise be protected under state privilege to come to the fore.

CHAIRPERSON: But from our reading of the application, the affidavit in support of the application, why General Khan is not before us now is a development subsequent to the shooting that you refer to and it is that later development that is at issue here.

ADV VALLY: Correct, Chair.

10 **CHAIRPERSON:** The medical condition of which he has now been diagnosed, that is the issue and that is what Ms Hassim is saying. Should, in accordance with those authorities, be divulged, because the General is a public figure. So that, fine, even if it springs from or is related to the shooting, but the focus is on that later development. So can you please direct your mind to that or address that directly?

ADV VALLY: Well, Chair, if the assailants are still at large, it may have an effect, it may be a trigger in relation
20 to his existing condition that is preventing him from being here.

CHAIRPERSON: But what has got mention or disclosure of that got to do with whether or not the assailants get apprehended? I do not follow the reasoning.

ADV VALLY: Because it has a direct bearing on his ability

to feature before this Commission. We are, in a sense, trying to cocoon him so that he can heal. If that cocoon is pierced and he cascades further, then I cannot stand by the statement made by the last three ...[intervenes]

CHAIRPERSON: You see, I would understand you if whatever reasons you give, you say those reasons have to do with the condition itself.

ADV VALLY: Yes.

CHAIRPERSON: Why the question of the arrest of those
10 people bears relevance to that? For the life of me, I just do not understand you. And the more you try to explain, the more you confuse me.

ADV VALLY: Well, then let us categorise the injuries, Chair. There is a physical injury, and then there are different categories of injuries. And each of these injuries, as we understand human bodies to be, are interrelated. One can affect the other. And I am going to take you to the report.

CHAIRPERSON: I will still... okay, continue, yes.

20 **ADV VALLY:** I will take you to the report and I will show you why we contend that there is an intersection, why there is this dynamic at play. Now, before I continue off that path, just to complete the point in relation to the confidentiality, I can refer the Commission to a recent Constitutional Court case, the SAFLII citation are more

recent than the ones that I thought I had written down, mentioned by Ms Hassim. It is *NM and others v Smith and others*. The neutral citation is 2007 ZACC, so it is a Constitutional Court case, at 6.

CHAIRPERSON: 6?

ADV VALLY: 6, indeed. That is the page number. There are other citations. I can give Chair the Butterworth's Constitutional Law Report citation, if you want.

CHAIRPERSON: What paragraph of NM?

10 **ADV VALLY:** It is paragraph 40, 41 and 42. And I can do no better but to try to ...[intervenes]

ADV BALOYI SC: You said BCLR? Give us the full citation.

ADV VALLY: Apologies, Commissioner. It is 2007 (7) Butterworth's Constitutional Law Reports 751. It is a judgment dated 4 April in the Constitutional Court.

CHAIRPERSON: Please repeat the page. I am sorry, very sorry.

ADV VALLY: Happy to do so, Chair. 751.

20 **CHAIRPERSON:** 751.

ADV VALLY: The paragraphs that I want to draw attention to are paragraphs 40, 41, 42.

CHAIRPERSON: Okay. And I missed the volume number as well 2007, before BCL, volume?

ADV VALLY: Volume 7.

CHAIRPERSON: Volume 7, thank you.

ADV VALLY: Yes, indeed. Now, this case involved the disclosure of medical information, particularly the HIV status of some well-known individuals. And what the Court said here is that:

10 “Private and confidential medical information contains highly sensitive and personal information about individuals. The personal and intimate nature of an individual's health information, unlike other forms of documentation, reflects delicate decisions and choices relating to issues pertaining to bodily and psychological integrity and personal autonomy.”

The Court goes on further at paragraph 41 to say that:

20 “Individuals value the privacy of confidential medical information because of the vast number of people who could have access to the information and the potential harmful effects that may result from disclosure. The lack of respect for private medical information and its subsequent disclosure may result in fear jeopardising an individual's right to make

certain fundamental choices that he or she has a right to make. There is therefore a strong privacy interest in maintaining confidentiality.”

They then go on to apply those principles to the particular facts of this case relating to HIV status. But at paragraph 43, what the Court concludes there is that:

10 “As a result, it is imperative and necessary that all private and confidential medical information should receive protection against unauthorised disclosure. The involved parties should weigh the need for access against the privacy interest in every instance and not only when there is an implication of another fundamental right, in this case, the right to freedom of expression.”

By parity of reason, Chair and Commissioners ...[intervenes]

20 **CHAIRPERSON**: Ja, just before the parity of reasoning, was there a similar public interest element as was the case in the case of Minister Tshabalala-Msimang and also of Mr Mac Maharaj?

ADV VALLY: I believe there was, Chair, but I would be, I do not want to mislead you. The opening paragraph of this

case makes reference to Patricia de Lille, so she was quite a public figure. I believe that she was part of the subjects whose information may have been disclosed.

ADV KHUMALO SC: But was not the issue here that in a book, Names of Three Women, private individuals and their status was disclosed and published in a book and this is what the issue was about?

ACCUSED 2: Yes, you are correct. My apologies, Chair.

CHAIRPERSON: So the case is totally different or not?

10 **ADV VALLY:** Not entirely, Chair, because the paragraphs that I have made reference to does not make a distinction between public and private interest in relation to medical information.

CHAIRPERSON: But you do know, though, that when you read cases, you look at the context and you look at the statement of law that comes out of a judgment is based on the context.

ADV VALLY: Yes.

20 **CHAIRPERSON:** So the context in Makhanya and Maharaj was that these are public figures and the basis, therefore, for the ultimate decision was that context, the context of public figures. So the people whose medical records or condition were at issue were private people, nothing about a public interest element. So how can you compare those and on what basis can you say that that case should apply?

Or, maybe let us start here. Do you accept that General Khan is, one, a public figure and, two, his appearance at this Commission and also the allegations that have been made against him are matters of public interest, which would make his situation comparable to those of Minister Tshabalala-Msimang and also Mr Mac Maharaj?

ADV VALLY: Yes.

CHAIRPERSON: Would you accept that?

10 **ADV VALLY:** I accept that he is a public figure. In fact, I say that these proceedings has catapulted his reputation as opposed to hidden. Now I am prepared to accept and concede that a public figure may necessarily be the subject of greater scrutiny and that is the reason why we propose the alternative, because as Ms Hassim rightly says ...[intervenes]

CHAIRPERSON: No, no, before you move to the alternative, do you accept that the NM case you have just referred us to is distinguishable? Do you accept that as a
20 legal proposition?

ADV VALLY: If I can come back to the point, Chair, I want to have a little bit of a thought about it, if you would permit me to.

CHAIRPERSON: After how much are you going to? Because this is actually the, this is a very crucial point.

ACCUSED 2: Yes. Well, Chair, for purposes of the debate, let me say this. We have asked for A, we will be satisfied with B. And B is the simple reduction of sensitive information that I understand Ms Hassim to say we recognise that requires protection. But let me come to the point while my thoughts recollect themselves.

CHAIRPERSON: Okay, it depends on where you are moving to. Let me not push you to give me an answer immediately, then, if you want to think about this. Okay, we
10 will move on to whatever other point you want to address.

ADV VALLY: Right. Now, Chair, I understood that the second point that Ms Hassim made was regarding the failure to produce a statement.

CHAIRPERSON: No, the most important one is the interpose, that is whether an independent doctor should be interposed. That is the most important one, and I am not aware that you have addressed that.

ADV VALLY: If I may come back to that after I deal quickly with the next point, because the next point is actually quite
20 simplistic to deal with.

CHAIRPERSON: No, no, no, let us deal with this, please, that is the most important.

ADV VALLY: All right. Chair, you would recall that my submission in relation to the examination was it depends. And the reason why we say it depends is the treating doctor

may turn around and say, but the presence of another person may well worsen a condition. I want to take Chair and Commissioners now to the founding papers. It is the report that, in fact, brings us here to the Commission today asking for the relief that we do. It is on paginated page 71.

CHAIRPERSON: You said 71?

ADV VALLY: 71, Chair.

CHAIRPERSON: Thank you.

ADV VALLY: Now, I am not going to identify the name of
10 the doctor, I am sure Chair would agree, and I am going to try very much to not disclose the nature of the practice or the conclusions that were derived or the observations. I will try and refer to them in very general, generic terms. Chair would notice that the date of the report is 27 August 2026. So this is long after the intervention of Dr Fine that we referred to earlier.

The identity of ...[intervenes]

ADV BALOYI SC: So this is, and maybe you will address us on that. This is after you undertook on the 21st of
20 August that you'd file a statement the following week.

ADV VALLY: I will get to that, Commissioner. We made no such undertaking.

ADV BALOYI SC: Okay.

ADV BALOYI SC: You may proceed.

ADV VALLY: Thank you, Commissioner. Chair, I want to

go through the report because the content is quite important. What the expert says here is the expert that has been treating Mr Feroz Khan since the 5th of August 2026, and in an outpatient capacity, meaning that he comes and he goes, okay? He then provides a history, and he discloses what that history is. In order to treat, you need to know where your patient comes from and what he is suffering.

He then goes through the symptoms that is told to
10 him by the patient, and he also then records the signs. So he gives a history. Now what is important to note here, there is no mention made of any other practitioner, whether it is Dr Fine or another doctor that I will refer to, but he gives a description of the injuries that were sustained, and he also accounts for what we shall call the second injury.

Now all of these signs and symptoms that he is recounting here in his report makes one concerned. I will tell you what makes one more concerned. It is at the end of that paragraph, it is the last line, that is where the serious
20 concern arises.

CHAIRPERSON: At which page are you now?

ADV VALLY: It is still on page 71, paginated page 71, Annexure PA12.

CHAIRPERSON: Paragraph starting?

ADV VALLY: It is the end of the first unnumbered

paragraph, none of the paragraphs are numbered. Lawyers ever have it, doctors do not.

ADV BALOYI SC: Is it the sentence that is ‘in addition’?

ADV VALLY: No, it is the sentence that says, ‘I assessed him’, and it continues. But what he does is, he appears to identify symptoms and signs that were previously independently identified. So we say, we went to a first doctor, we got an opinion, and I will deal with it shortly. We now go to a second doctor who has got no relation with the
10 first doctor, and he is what we submit as an independent practitioner. Let us continue with what he says.

He says that Major General Khan then receives an intervention for the treatment of whatever conclusions he derived. And he then says:

“I had follow-up sessions on the 18th of
August, and again on the 24th of August.”

Now it is important to mention, Chair, this particular expert met with Major General Feroz Khan on three occasions, not just one, before he was able to now tell you what he had
20 observed subsequently. So what the expert then says, there was a need to adjust medication. In other words, an adjustment to the treatment was required.

However, on the last day, 24 August, he noticed a deterioration, and then he explains the reason why that deterioration occurred. I will leave it for the Commissioners

to read. And then troublingly, if one has regard to what he then says as regards his assessment following from that particular observation, it is 1, 2, 3, the fourth line from the bottom of the second paragraph on page 71. One then reads, ‘result, comma, my assessment was’, and then you continue.

What this tells you, Chair, is that the condition is now cascading, because the doctor's identifying that whatever intervention was previously employed is no longer
10 working. In fact, the condition is becoming deleterious.

“Thus, I requested that this treatment
change from outpatient to inpatient.”

This is where the doctor says, well, I am not going to let him go home. I see a sufficient need to admit him so that I can now stabilise his condition. That is what the expert is saying. And he was accordingly admitted on 25 August 2026.

Now I will take you back to where we had identified that there was already an earlier need for intervention.
20 Chair, Commissioners, if you do not mind turning to, it is paginated page 53, Annexure PA8 to the founding affidavit. This is an email that I had sent to the investigating officer in the ORT case where Major General Khan is a co-accused.

CHAIRPERSON: Please just as a reminder to me, take me

where the treating doctor says interposing another specialist will have a negative impact on General Khan.

ADV VALLY: No, he does not say that. He does not say that. We make the submission, and I will tell you why.

CHAIRPERSON: Oh, so he does not say so.

ADV VALLY: He does not say so. Before I get to...

CHAIRPERSON: Before, when you addressed us, I think before Ms Hassim came in, I thought you suggested that.

ADV VALLY: I did suggest it as a submission.

10 **CHAIRPERSON:** Oh, as a submission, not that it is something said by the experts.

ADV VALLY: No, indeed not.

CHAIRPERSON: On what basis would you have made that submission?

ADV VALLY: It is on the basis of what we observe and interpret on what is remaining in the expert report. Let me take you through that before I get to the email that I had sent.

20 **CHAIRPERSON:** That submission made me believe that actually an expert opinion has been expressed by the doctor. I did not know that it was an opinion, a lawyer's opinion. Please take us where you were. You said 50 what?

ADV VALLY: Let me take you first to 72 so I can complete that picture for you, Chair. If one has regard to 72, the

expert now gives a clinical opinion, and his opinion answers a question that we asked him to answer, and we asked him to answer this question, because that was posed when I get to the correspondence by the attorneys for the Commission, that if there is to be any postponement attempt, it must be accompanied by a detailed medical report, which is what we contend this is, specifically indicating the incapacity to be here or to participate meaningfully in these proceedings. And this is what the doctor says:

10 “He is currently not fit to undertake activities that require him to be in public spaces for a prolonged period, including appearing before the inquiry.”

The inquiry that he is referring to there is this inquiry. He then goes on to measure what he has seen as signs and symptoms, and he then says that there is a response. You know, in science, for every act there is a reaction. He responds negatively, and he goes on to complete that description, and he elaborates on those responses in what
20 follows, and this then gives you an indication, Chair, of what we are to expect here if Major General Khan were to be forced to appear.

Now ...[intervenes]

ADV BALOYI SC: Sorry, allow me to interrupt. Can we agree to discount this medical report for the proposition that

you may be seeking to make, that interposing an independent examiner would lead to deleterious or would have deleterious consequences on him? That does not arise from this report. It is your opinion.

ADV VALLY: It is my opinion.

ADV BALOYI SC: It is your opinion. So we are not looking for that in this report, whatever else you say about it.

ADV VALLY: But what we are saying ...[intervenes]

ADV BALOYI SC: But you still have to answer the
10 Chairperson's question.

ADV VALLY: Yes.

ADV BALOYI SC: Why do you make the submission, or why do you hold the view, which is not backed up by a medical expert, why must we accept a submission from you that requiring him to participate in an independent assessment would have negative consequences on him? Because that is what the Chairperson has said. That is the most important question, even before we get to the statement. Can we just answer that?

20 **ADV VALLY:** Yes, very simple, Commissioner. There is a trigger and there is a response. And the trigger is allied to including participation in this Commission or this inquiry.

ADV BALOYI SC: We are not talking participation in the inquiry. We are talking participation in an independent assessment. Do not take us to a discussion that is not on

the table. We are not now debating whether, at least for purposes of this discussion now, it is not about whether he should be here tomorrow or the day after tomorrow. It is why should he not be required to participate in an independent assessment. That is what you have been asked to answer to, because you have offered that he should not be required to do that because it would be adverse to him. That is what we want to hear from you, not him sitting there. That is a question for another time.

10 **ADV VALLY**: Actually, Commissioner, I think maybe you misunderstood me. I made the submission and I said I do not know the answer. We have to have input from the treating doctor on whether or not it might be permissible or wise to do so.

CHAIRPERSON: No, no, we are not going to allow that. An application for a postponement has been made based on General Khan's medical condition.

ADV VALLY: Yes.

CHAIRPERSON: And it is not as if this is an issue that you
20 would not have considered and I think you did say earlier that you are aware of what was going on with Mr Carrim. So, in fact, you even said, if I am not mistaken, you will correct me if I am wrong, you even said that you are aware even of the ruling, which would mean that you are aware that there was an issue around interposing an independent

medical practitioner.

So the application for a postponement should have covered that as a possibility. And if, as appears from your submissions, there is opposition to that, that should have been covered in the doctor's affidavit or in the doctor's report. So we cannot take it from you. You cannot make submissions in that regard. And you cannot now want us to wait for the doctor to supplement what they have said. We are going to make a ruling after these submissions, and if
10 that ruling says something similar to what we decided in Mr Carrim's case, so be it.

I am not saying that is what we are going to do, but all I am saying is, if this debate leads us to that kind of ruling, we will make that ruling without affording General Khan another opportunity to supplement his papers. He made his application with his eyes wide open, and we are going to decide it based on what we have now.

ADV VALLY: Chair, just by way of correction, he did not make the application. I deposed to the affidavit.

20 **CHAIRPERSON:** Well, you are representing him, and it is his application, and it is not Mr Vally v whoever. It is General Khan. Or am I mistaken?

ADV VALLY: No, I accept it.

CHAIRPERSON: Let us look at the process heading. It is General Khan, so that is why I am talking about General

Khan applying, and you not.

ADV VALLY: Now, if I may just take a step back, Chair, so that I can understand where we are heading with this point. I understand that there is no opposition to the postponement. In fact, Ms Wilsenach says in her affidavit, paragraph 7, and that is paginated page 75:

10 “The legal team has considered the
 postponement application and does not
 oppose the postponement *sine die* as
 contended for ...[intervenes]”

CHAIRPERSON: I do not think we should waste time on that. That is a given, that is a given. We are not going to proceed, General Khan is not here. The issue is we postpone attaching what conditions to the postponement, and the issue on which we want answers from you now is must we, like we did in Mr Carrim's matter, interpose or seek to interpose an independent medical practitioner. And thus far, the doctor's report we have does not address that, does not make this point about any negative effects or
20 consequences that might arise from such interpositioning. And all we have are submissions made by you from the bar.

ADV VALLY: Actually not, Chair. I do not agree with respect.

CHAIRPERSON: Yes?

ADV VALLY: And I will tell you why. On page 72, if one

has a look at the first paragraph ...[intervenes]

CHAIRPERSON: I asked you earlier, and you said there was none, and you said it was you making legal or other submissions. So if you take me there now, fine. But I am basing what I am saying on what you yourself said, Mr Vally. If you are correcting yourself, you are not correcting me, you are correcting yourself, fine. Please take me there.

ADV VALLY: Well, Chair, there is two submissions, but it will become clear once we have regard to what sits in the
10 report. The third line ...[intervenes]

CHAIRPERSON: Where are you taking that? Sorry.

ADV VALLY: It is paginated page 72 of the founding paper.

CHAIRPERSON: 72, yes. Is it the paragraph at the top?

ADV VALLY: Paragraph at the top.

CHAIRPERSON: Which line?

ADV VALLY: Third line from the top.

CHAIRPERSON: Third line? Okay.

ADV VALLY: Thank you, Chair.

20 **CHAIRPERSON**: Yes?

ADV VALLY: The sentence starts with, 'he responds'. And it is on this basis that I made the submission, because if one concludes what is in that line, one understands that there are triggers, and the triggers permit the cascading. Now, we are concerned, Chair, not to keep General Kahn

away, and I must make that point, I must emphasise it. We are not here to keep General Kahn away from the Commission. We want to preserve an opportunity that he may have the best opportunity to come here.

CHAIRPERSON: I do not see how, I do not see how the sentence you have just referred us to makes the very direct point about interposing another doctor. No, it simply does not. It simply does not.

ADV VALLY: Well, Chair, I cannot take it any further
10 except to say that if there is a reminder of trauma that may be embodied by the person who is coming to see him because there is a name attached to that person's presence or his purpose, that could be a trigger. But what I said, and I said it at the start, Chair, it is what the doctor has to advise us. And it does not have to be a lengthy delay. The doctor can tell us whether or not that would be advisable at this stage.

CHAIRPERSON: You see, my concern with that is quite easily, because if the doctor is then asked that direct
20 question quite easily, and unfortunately it may sound like I am impugning the integrity of the doctor, but I would be very surprised if we would not get an answer that says, oh, actually, yes, yes, yes, interposing another doctor will have that effect.

The short point I am making is, an application was

made with General Khan's eyes, or yours, because you are saying you brought the application, with General Khan's eyes wide open, and with you as his representative, aware of the ruling that was made in Mr Carrim's matter, and this point was not addressed. Why should we waste time, which we do not have, to afford General Khan, and indeed you, an opportunity to approach the doctor and ask him, will interposing another doctor have a deleterious effect on General Khan's condition?

10 I am not going to allow that. Whatever we do, I am not going to allow that. An application has been brought. We are going to have to decide that application. Whichever way we go in deciding it, we are going to decide it based on the papers that we have. And I am saying, and I want you to address me how, I am saying the sentence you just referred us to does not make the point you sought to make, which is that it does tell us that interposing another doctor will have deleterious effects on General. It does not say that. It simply does not make that point.

20 **ADV VALLY**: Well, we submit that it says in general terms, in broader terms, that a trigger will lead to a negative reaction. And we are asking whether or not that might not be a trigger. But, Chair, so as not to detain this point any longer, we leave it in the hands of the Commission to decide whatever conditions may attach to the postponement

insofar as the interposition is concerned.

CHAIRPERSON: Yes.

ADV VALLY: I think I pronounced the word correct. Thank you, Chair. I would just ask that Chair has regard to the last paragraph...

CHAIRPERSON: Of the notice of motion? Oh, there is that 72.

ADV VALLY: Yes. So what the doctor then says is that he requires more time. This is in relation to the subject,
10 General Khan. And he says, a very nice word that he uses:

“I cannot predict the speed of recovery
with accuracy. I prognosticate that Mr
Khan will be able to participate in the
inquiry on or around 1 October 2026.”

So the concern that I understood that Advocate Hassim might have had, that there might be an open-ended ...[intervenes]

CHAIRPERSON: What I will say is this. I will not hold my breath.

20 **ADV VALLY**: No, I understand that, Chair. But what we come to the Commission with is a reliance on this report, which gives a date that we can now at least work towards. We have got a budget. It is not an endless timeline that nobody knows with any measure of certainty what is going to happen. We can say there is a demarcation in the future,

and we can work towards that.

CHAIRPERSON: If we get to that demarcation, and we only start moving in very practical terms, we will be left with no time whatsoever. So if we are to go the route of a Carrim-type ruling, that must be done now. But underline if, if we are going that route, it must be done now.

ADV VALLY: I understand, Chair. If I may just confer briefly. Chair, Mr Girall [?] mentions that it might assist our cause today to have regard to the draft order that we had
10 proposed. Because I think we are in the neck of the woods that the Commissioners are looking towards. But perhaps we can do it over lunch.

CHAIRPERSON: I am not sure that I saw, I did see the notice of motion, I am not sure that I saw your draft order. But if it approximates the content of the notice of motion, that is long and cumbersome. I am not sure that I want to go that route.

ADV VALLY: We have removed some skeletons, I can assure you that. There has been an exorcism of note.
20 What we have now proposed is that there is going to be a structured postponement. The structure trying to give rise to certainty, as opposed to the uncertainty that I understood Ms Hassim to be wary of. But I will try to discuss that with Ms Hassim over lunch, if she has time. Because I see we are approaching the hour.

CHAIRPERSON: I wanted to avoid a situation where we come back to this matter after lunch. A lot of time has been taken up already in respect of the testimony of the witness who was in the witness stand. Are those your submissions, or do you have anything else?

ADV VALLY: No, Chair, I have still got two more themes.

CHAIRPERSON: Oh, there is the issue of the statement. Do you want to address us on that? What is the second issue?

10 **ADV VALLY:** Chair, I will confer with my note shortly, but let me tell you about the statements. Now, what Ms Hassim said, and I hope that my battery outlasts my submissions, is that there is reference to an email from Ms Wilsenach in response to which I had given an undertaking. Now, those letters do not form part of the bundle. But I would like to read it on record, and I do not think Ms Wilsenach, who is sitting here, would object, because I am going to read the content as it stands, to demonstrate there was no undertaking. There was reassurances that we are trying,
20 but there was no firm undertaking saying we are going to.

And I will give you a context where that appears to be the case. So on the 21st of July 2026:

“Dear Mohammed, I hope you are well.

We confirm that your client has since been discharged from hospital. Our evidence

leaders request that you indicate by means of a medical practitioner's report what your client's medical prognosis is.”

That is where the request emanates from originally. It is repeated later.

“In addition, we request that you provide an indication of when your client would be in a position to testify at the Commission. May we kindly have a response before
10 Friday the 24th?”

Next day, the 22nd, Chair, I write back and I say:

“Dear Ms Wilsenach, we refer to your email below and to the writer's WhatsApp message to you dated 17 June 2026, wherein we alerted you to the discharge of our client from Mill Park Hospital. We note the request for a medical practitioner's report. We will make inquiries accordingly.

20 At this stage, absent any report, it would be irresponsible for our office to venture a guess as to when our client may be positioned to testify. As indicated to the Commissioners at the last hearing, at a minimum, we will provide an affidavit. We

will also propose to stay the answer to appearance until such time as we receive the medical report. Our client's rights are reserved.”

Now, what we are saying is we recounted what we told this Commission at our last appearance. If I remember correctly, we gave three scenarios. There will be no appearance, regrettably. There will be an appearance through an affidavit, or there will be *viva voce* testimony.

10 And that is what we intended to bring to Ms Wilsenach's attention. It was not an undertaking, as Ms Wilsenach had represented through Advocate Hassim's submission.

CHAIRPERSON: And what about the fact that there was a, or rather the statement was sought even before General Khan was shot?

ADV VALLY: Yes. Now, I recall that I had addressed that very point with this Commission when I proposed with my colleague Advocate Khan. We had said that we were in the process of completing a very hefty affidavit. I seem to
20 recall I mentioned the tally of pages of 88 typed pages.

CHAIRPERSON: All right.

ADV VALLY: But we were not able to complete it because there were incremental disclosures being received by us constantly.

CHAIRPERSON: Okay. All right, all right, let us move on

then.

ADV VALLY: Thank you, Chair. Now, if you want, I can demonstrate in other correspondence that was mentioned by Ms Hassim where so-called undertaking was given, but I contend that there was no undertaking.

CHAIRPERSON: I think in the interest of time, perhaps, let us proceed on to your second outstanding point.

ADV VALLY: Thank you, Chair. I must just mention that I am not going to be finished within minutes because I now
10 want to go and tackle the issue regarding Dr Fine and demonstrate why there is an incorrect submission that was made to the Commission regarding what appears to be an attempt at fraud.

Now, let me take the Commission very quickly to the replying affidavit because we have dealt with it in the Labour Court. General Khumalo had access to the ...[intervenes]

CHAIRPERSON: Was the replying affidavit paginated?

ADV VALLY: Yes, indeed. It appears at Record 180.
20 Now, that is the replying affidavit.

CHAIRPERSON: Yes. Which paragraph or paragraphs do you want to take us to?

ADV VALLY: Paragraph 35. It is paginated page 202. Now, this is where we deal with the allegations in Major General Khumalo's supplementary affidavit where he raises

this issue and he seems to suggest that there is the
perpetration of fraud. This is where we deal with it before
the Labour Court. We say:

“By 13 July, Ms Matlala...”

Who is Major General Khan’s PA, professional assistant;

10 “...had already advised me that the sick
notes required end dates corresponding to
the SAPS 26 documentation and a
diagnosis. On 24 July 2026, SAPS
formally identified deficiencies in the
leave documentation, including
specifically the SAPS26 relating to 28
June that was unsigned and contained no
end date. On 27 July, Ms Matlala
expressly advised me that the sick notes
had to be redone pursuant to the
Divisional Commissioner's letter.”

Now, what we then do, Chair, is we attach that
correspondence and Chair will find that correspondence in
20 the same bundle at paginated page 217. This is a letter,
and I apologise for the quality of the reproduction. I think it
is a fourth generation photostat copy, but the important bits
are still there, and that appears under paragraph 4.

This is a list of outstanding requirements,
administrative requirements, that were sent by the

Divisional Commissioner to Ms Matlala, who then sent it to me because she had no contact with Major General Khan. I then enlisted the assistance of his son. What they are saying here is that there needs to be changes made to forms and to sick notes because sick notes contain no end dates and it contains no diagnosis. That is how I understood it.

What is more important, Chair, is ...[intervenes]

ADV BALOYI SC: Where do you see that?

10 **ADV VALLY:** If one works through the sub-paragraphs of paragraph 4, Commissioner Baloyi, you will see that there is a list that is requested that needs to be done, and this is by General Khumalo, or Major General Khumalo.

20 “A medical certificate that covers a specific time period of four days. The second entry, a period of that 33 days, will be captured as temporary incapacity leave. However, this office requests a medical certificate with a specific diagnosis as stipulated in National Instruction 9 of 2019, paragraph 9 sub 7. SAPS26 for the period that is not signed and does not have an end date, the office requests a complete temporary incapacity leave application form.”

And it gives the form identity for that particular period. And if one then turns over, because the list continues, there is a request that Ms Matlala interprets as a need to change dates. Now, where does that come from?

ADV BALOYI SC: My question is, where is that in the letter? Because you have referred us to a letter, and I am following you to see where it says that.

ADV VALLY: Sure. If we have regard to paragraph 4.4, but it has to be read in conjunction with a WhatsApp
10 message that came from Ms Matlala, this is the instruction to complete temporary incapacity leave application form. Now, Chair, if I can ask you and Commissioners to please turn to paginated page 215, you will see this is a WhatsApp conversation between myself and Ms Matlala, whose nickname is Aniki. You will see that her name is saved as Aniki Gen SAP. That is the shorthand for General's Secretary.

It is 1-2-3-4-5-6-7-8-9-10. It is the entry marked 13
July 2026 at 16 minutes and 6 seconds past 3 in the
20 afternoon, where Aniki says:

“This this one is perfect, but the sick
notes need to have the end dates as per
the SAP26 and als...”

That should be also the diagnosis and then she attaches a photograph. And that is the letter that I had just taken you

to. Now, the important part comes ...[intervenes]

ADV BALOYI SC: That is exactly what is in the letter.

ADV VALLY: Correct.

ADV BALOYI SC: So you are not referring us to anything different. Let me tell you what my difficulty is. You represent to us that that certificate, the alterations that are made to the certificate, the date in particular, is because that is what was requested by the SAPS. That is what you represent to us. And all I am saying to you is page 217, the
10 list in paragraph 4, does not support that representation. Your WhatsApp reference at does not support that representation. That is the issue I am taking up with you.

ADV VALLY: It comes later.

ADV BALOYI SC: Okay, so you are referring us to something else now.

ADV VALLY: I am giving you the context. I want you to have the overall picture.

ADV BALOYI SC: Okay, you can do that.

ADV VALLY: So if one has regard to the entry 27 July
20 2026, the timestamp is 11.33.16. Aniki says:

“Morning, just received Gen's documents for the incapacity application. He needs to complete SAP 26, and also his sick note needs to be redone as per the letter signed by DivCom.”

CHAIRPERSON: What about is this? I am sorry.

ADV VALLY: It is a little below halfway down.

CHAIRPERSON: Just count the lines from the one where we were. Start one, the line starting 'the end dates', say one there and then go down.

ADV VALLY: Shucks, now I lost you, Chair.

CHAIRPERSON: No, where we were.

ADV VALLY: Let me start from the top.

CHAIRPERSON: Sorry?

10 **ADV VALLY**: Let me start from the bottom. It is quicker to go from the bottom.

CHAIRPERSON: Okay, okay.

ADV VALLY: It is the fifteenth line from the top. That is where the message starts.

CHAIRPERSON: Sorry, I have been shown. Is that the one that says he needs to complete SAP 26?

ADV VALLY: Yes, he needs to complete SAP 26, and also his sick notes, and this is the emphasis, needs to be redone as per the letter signed by DivCom.

20 **ADV KHUMALO SC**: But where does it say they must be backdated? That is the question by Commissioner Baloyi.

ADV VALLY: The sick notes need to be redone.

ADV KHUMALO SC: Where does it say in July you must backdate a sick note and put a date of May on it? That is really the question.

ADV VALLY: It is not going to have that precision, but I am telling you where the entry is made that refers to the need to amend the sick notes.

ADV KHUMALO SC: Can we agree that it does not say the sick notes must be backdated?

ADV VALLY: We can agree that it does not have the precision that you are putting to me.

ADV KHUMALO SC: No, no, it does not say they must be backdated. I am asking a clear question. Does it say they
10 must be backdated, or does it not say that?

ADV VALLY: It does not use those words.

ADV KHUMALO SC: It does not say that?

ADV VALLY: It does not say that.

ADV KHUMALO SC: Because you could do it in August and still contain the same information. You could say the date of the report is August 31st. I saw the patient in May, and I did not have this detail, I am now adding it. But once you backdate an August report and you put a date of May, that is the problem.

20 **ADV VALLY:** Now, Commissioner, I did not understand it that way. I understood that the date differential was 2 days, from the 29th or the 30th to the 27th, right?

ADV KHUMALO SC: Look at the letter you are relying on. Look at the letter you are relying on. It is dated the 27th of July 2026, on 218. The letter you are relying on that you

say is from Lieutenant General Kumano is dated 24 July 2026.

ADV VALLY: Yes.

ADV KHUMALO SC: It is on 218.

ADV VALLY: Yes.

ADV KHUMALO SC: And you say it is the requirement in 4.4 of that letter.

ADV VALLY: Yes.

ADV KHUMALO SC: That triggers the need to change the
10 notes.

ADV VALLY: Yes.

ADV KHUMALO SC: Now, if you go back to those notes on page 177, you will see that there is original and fraudulent and original and fraudulent. If you use 176 and 175, you see that the date on top of that, it says 18/05/2026.

ADV VALLY: Now, Commissioner, I can only put to you what was put to me.

ADV KHUMALO SC: No, no, I am explaining to you that if you look at the dates, that because this was done to correct
20 what you say that letter says must be corrected...

ADV VALLY: Yes.

ADV KHUMALO SC: ...then it must follow that the sick note will have the date of July or August, it cannot have the date of May.

ADV VALLY: Yes. Now, what I am showing you,

Commissioner, is the start of a correction of an administrative error.

ADV KHUMALO SC: I accept that, I accept that ...[intervenes]

ADV VALLY: If you accept that, Commissioner...

ADV KHUMALO SC: ...if you are relying on the July letter, then the WhatsApps...

ADV VALLY: Yes.

ADV KHUMALO SC: ...to support what you are saying,
10 which is the notes needed to be corrected to reflect the correct end date.

ADV VALLY: Yes.

ADV KHUMALO SC: Then, the sick note must have the date after the July letter.

ADV VALLY: No, so it is a correction of what already existed. Now, that was requested from the doctor, and we say it was a request by SAPS, because the records were not matching.

ADV KHUMALO SC: But a correction does not have to be
20 backdated, because what you are correcting are facts, not the date of the sick note.

ADV VALLY: Commissioner, I cannot take the argument any further except to then point out that there was a second letter, which I would like to take you to, and that is on paginated page 219.

CHAIRPERSON: Does that... Does that say there must be backdating? Because if it does not, that is not going to assist us.

ADV VALLY: Chair, it does not use the word backdating. And the reason why it does not use the word backdating ...[intervenes]

CHAIRPERSON: You see, how I understand 4.1 and 4.2 at 217 of the letter is cover those periods.

ADV VALLY: Yes.

10 **CHAIRPERSON**: The medical certificate must cover these periods. Nothing about backdating ...[intervenes].

ADV VALLY: And now there is a second...

CHAIRPERSON: ...so even when we go to 215, there is nothing about backdating there as well. Please take us to that letter. Let us see.

ADV VALLY: The next letter. It is at paginated page 219. Essentially, it is the same or similar instruction. And again, I apologise for the quality of the reproduction. If one has regard to... Well, you must have regard to the entire list,
20 obviously, for context to see that there was a lot of problems with the administrative process. But let me take you pointedly to 3.4. They require:

“SAPS26 for the period 2026-05-18 to
2026-06-26. 29 days will be captured as
temporary incapacity leave. However, this

office requests a medical certificate with a diagnosis as stipulated in terms of the national instruction as the one that was submitted does not disclose the nature of the sickness.”

So now we know that the doctor's note is still incomplete.

Let us continue.

“SAPS26 for the period to 2026-06-28 is not signed and does not have an end
10 date.”

If the submission is that we are going to go and amend it, is it fraud? It is the correction of a clerical or administrative error. That is our submission.

CHAIRPERSON: That says it is not signed and does not have a date.

ADV VALLY: Yes.

CHAIRPERSON: But that does not speak to when you say, you as a doctor say, he is not fit for duty, I am paraphrasing, I am not sure of the language used, he is not
20 fit for duty from that date to that date.

ADV VALLY: Yes.

CHAIRPERSON: So when SAPS says this is not signed and this is not dated, that has nothing to do with a doctor then changing the content that says he is not fit for duty from X date to Y date. It has nothing to do with that.

ADV VALLY: Now let us see where the dates are requested to be changed. Paragraph 3.6.

CHAIRPERSON: Okay.

ADV VALLY:

“This office requests completed temporary incapacity leave application forms for period 20-26-05-18 to 20-26-06-26, 29 days, and the period 20-26-06-29 to 20-26-08-31, 45 days.”

- 10 So for whatever reason, and that is not explained by Major General Khumalo, there seems to be a juggling of the leave dates that are allocated to specific periods. In other words, here is an instruction. We need you to correct it to this. Go and do so. And that is exactly what the son did.

ADV BALOYI SC: No, that is an unreasonable reading of this letter. What this letter deals with is your client is away from work. You have given us some certificates. That is incomplete information. Account for these periods. You cannot read this letter to be an instruction to go to the
20 doctor and get the doctor to give you this certificate. It would be nonsensical of SAPS to do that. SAPS does not know. All it knows is General Khan is not at work for a period. General Khan has delivered certain documents. That is what these letters are about, the two letters that you refer us to.

They are about what he has submitted and what he has not submitted. And all SAPS has done is to say these periods are unaccounted for. Because he is away on the basis that he is sick, he must get medical certificates for those periods. That is a proper way to read this. You cannot read it to be an instruction. I would be shocked that the SAPS would instruct an employee to go to their doctor and ask him to give you a certificate so that our records can reflect what is favourable to you.

10 No, you are reading it wrong, Mr Vally. Maybe you completely misunderstand, or it is worse. I want to go with you misunderstand these letters. They do not contain instructions. You have done your best to show us its instructions, and those instructions justify Dr Fine's conduct. They do not. We have an affidavit from Dr Fine who says, I thought they were just fixing up some administrative issue. I did not know the purpose of it.

 The purpose of these letters was not an instruction. You cannot say more that changes that. These letters do
20 not contain instructions. Simple.

CHAIRPERSON: And you say your answer lies in 3.6. All that 3.6 does is to ask for leave forms. It wants leave forms. It says nothing about a doctor changing the content of medical certificates. Look at that.

“This office requests completed...”

Open quote and emphasis;

“...temporary incapacity leave application
forms.”

That is what that is about. And how you see this as magical and making your point is strange because when you look at the dates referred to here, they are exactly the same dates referred to in, for example, 3.4. Why it becomes magical when you come to 3.6 escapes me.

ADV VALLY: Well, Chair, all I am trying to demonstrate is
10 that there was a disconnect between what SAPS appeared to capture as information and the source documents on which that capturing was done. I am saying it cannot be elevated to the level of fraud or misrepresentation. It seems to be, and I accept it if Commissioner Baloyi allows me, that it is an administrative error.

CHAIRPERSON: It does not arise from the content of the three documents you have referred us to. That does not arise from those. Whatever error there may have been on the side of General Khan and his doctor, and General
20 Khan's son, for that matter, because he is the one that approached the doctor, that has nothing to do with the documents that you have referred us to.

ADV VALLY: Well, what I am demonstrating, Chair, is that there is a disconnect. If Chair is prepared to accept that, then that shows the reason why these documents are not

marrying each other. And that is explained by virtue of the fact that there is an administrative issue. I am trying to argue away in a positive way from the conclusion that this was fraud because that is the justification that is being used to say, well, now we need the independent. We say we will concede to the independent, but not for these reasons. Not for these reasons.

CHAIRPERSON: Any other submissions?

ADV VALLY: If I may just consult my notes, Chair, I beg
10 an indulgence of a minute or two.

CHAIRPERSON: Whilst you are looking, what I will say is that what is staring us in the face is that there is a change after the point made by Ms Hassim, after General Khan is shot during a period when he was supposedly unwell.

ADV VALLY: Well, Chair...

CHAIRPERSON: That is staring us in the face, and we then have this change of facts by the doctor in the medical certificate. That is staring us frontally in the face.

ADV VALLY: I deal with it in the affidavit. If I can just put
20 my finger on it.

CHAIRPERSON: And you say the answer lies in the three documents that you have referred us to. It simply does not. But, ja, that is that. And I think it has been debated sufficiently, unless you have a new point to make in that regard.

ADV VALLY: Chair, just on that point that you now raise, I would like to point you to the affidavit, or the part in the affidavit where I address the issue. If Mr Girall could assist me. Oh, here it is. If Chair has regards to paginated page 206, paragraph 54. This explains the reason why Major General Khan was out late at night on the evening of 28 June, Sunday, and I mentioned that was the date that Bafana got kicked out of the World Cup. Why was not he at home? Why was he out and about? He was at my office, as

10 I said.

“Major General Khan's appearance before the Commission was scheduled to commence on 1 July 2026. On Saturday, 27 June 2026, and on Sunday, 28 June 2026, the Commission made available a total of approximately 11,343 pages of material requiring urgent attention. In those exceptional circumstances, and with his appearance imminent, I required Major

20 General Khan's attendance at my office, notwithstanding his then-prevailing condition.”

Now, that was in order to meet the expectation that he appears at the Commission.

CHAIRPERSON: That actually makes it worse. I am not

questioning the veracity of what you say in your affidavit, but I am saying it makes it worse as to just why would the doctor have changed the dates in a manner that seems to suggest he would not have been – he would have been well now by the time he was shot and therefore found in the streets late at night. It makes the change worse in those circumstances.

ADV VALLY: I note your observation, Chair, and with respect, I disagree. There is nothing to say that Major
10 General Khan was in fact well. And there is a continuity shown after he was shot that - well, you can read the report yourself.

CHAIRPERSON: I am talking about before.

ADV VALLY: Well, of course, Chair. So there was an underlying medical issue, and the underlying medical issue was interrupted by the shooting. And then what then happens afterwards is what I had taken you through earlier.

CHAIRPERSON: Thank you. Any other submissions?

ADV VALLY: Chair, I believe those are my submissions for
20 the time being. I may just beg a two-minute indulgence.

ADV BALOYI SC: Can I just ask this one question that bothers me? Why was his application anyway only filed yesterday? He has been admitted, according to the doctor, well before yesterday. You would have known that he is not going to be appearing, looking at that certificate. Why was

his application only filed yesterday?

ADV VALLY: So, Commissioner, if I can, and if you need me, I will take you to the particular part of the record. The expectation by the Commission's attorneys was that they will not simply accept a sick note for purposes of a postponement. A detailed medical report is required. And that is what we had awaited. Now, if one has regard to the latest expert's timing of his processes, you will see he met with Major General Kahn on the 5th, again at the later date,
10 and again on the 25th, and then he was admitted. So there was a time period that was required for him to arrive at the conclusions that he did.

ADV BALOYI SC: Is the short answer that until yesterday you did not know that you had to bring a substantive application for a postponement?

ADV VALLY: No, we knew we had to bring a substantive application, but we did not have the detailed report that was mentioned as the requirement justifying the postponement up until Saturday this weekend. The reason why it was
20 Saturday, if I may complete, is that there is a strict regime, time regime. You can only go a certain day during certain hours to go and visit Major General Kahn. So we were only able to retrieve that report on Saturday. The drafting commenced on Sunday, and then I can tell you about the delays on Monday.

ADV BALOYI SC: No, that is okay. It is fine. It is sufficient. Thank you.

ADV VALLY: Thank you.

ADV HASSIM SC: Chair?

CHAIRPERSON: Very briefly, please. Let me outright say I am close to a point of deciding that we – or rather, of ruling. I am close to a point of ruling that we proceed along similar lines as we did in the Carrim matter, that is, the substance of which is to interpose an independent doctor.

10 That is the way I want to go. Yes?

ADV HASSIM SC: I have three points. I will make them very concisely, and I will go in reverse order of the submissions that were made by my learned friend on this point of Dr Fine and taking us to all of these various documents. The documents really do not come to his assistance at all. They do not speak – in fact, they are put up to try to justify something which cannot be justified. They do not refer to backdating in any way on the face of them as we have gone through it.

20 But the second thing is that when you look at what those documents talk about, they talk about an SAPS26 or SAP26. Those are not medical certificates that are provided by a doctor. Those are internal leave forms that are completed by the employee, by the applicant for leave, and then they are used by the – I am using terms loosely

here – the Human Resource Department to capture that information into the system. Now you will have an HR manager who says, but your forms are not completed properly. Please complete your forms.

That is a far cry from saying, please go and backdate your medical certificates and get your doctor to do so. That is not at all what they asked for, but it is what happened. And the third point is that in all of my learned friend's submissions, he does not address Dr Fine's own
10 description of what took place that day in his office, including the fact that it was General Khan, via his son, who informed him that the sick notes had not been submitted to their employer at that point in time and that was clearly false.

So none of what Mr Vally has tried to submit with reference to these documents changes the position as I set it out when I first addressed the Commissioner. That is as far as Dr Fine goes. On the independent medical evaluation, all of the debates regarding the need to see
20 whether the treating doctor is amenable and if it is feasible and whether there will be a cascade effect is just a red herring. We have gone through this before.

We have professional guidelines from this association that have been put up to the Commission that say that in circumstances such as this, an independent

evaluation is warranted and that it does not have therapeutic harm as a result of interposing a medical doctor. So it is the professional guidelines that give support for the kind of ruling that was made in the case of Mr Carrim and those are objective guidelines.

Those are not opinions offered with due respect to Mr Vally, but offered by somebody who is not trained, unless I am wrong. Maybe he is a trained medical doctor. So that is what we rely on. And we say that ruling should
10 apply similarly here. And then finally, on the point of the confidentiality and Mr Vally taking the Commission to the case of NM and others v Smith as a countervailing position to the cases I cited, that too does not avail Mr Vally at all.

I know that case very well. I was involved in that case. It is the exact opposite. That was the case, the three individuals, N and others, were three vulnerable women living in depressed economic circumstances, at least one of whom was a subject of domestic violence, living with HIV, who had, and at the time when, as we know, there was
20 extreme danger associated with disclosure in certain circumstances and stigmatisation, their medical diagnosis was disclosed by a person in power, Ms de Lille.

That is what that case was about. It was a different orbit to what we are dealing with here, and it has no application. That is all I wish to say, Chair. Thank you.

CHAIRPERSON: Thank you.

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RULING

So that I do not owe any reasons, having gone through the application, I am not satisfied that enough has been placed before the Commission for an order in the terms proposed by General Khan through Mr Vally to be made. In particular, there is the question of the, or rather the question of interposing an independent doctor to examine
10 General Khan. That issue has not been addressed whatsoever in the affidavit filed in support of the application.

I will not say that the Commission is going to force General Khan to subject himself to being examined by an independent doctor, but rather a ruling similar to that that was made in respect of Mr Carrim, is what must issue here as well. But a qualification that I am going to make and which must be captured in the draft ruling is that Dr Carrim's, or rather, I am sorry, General Khan's condition
20 must be disclosed. But what must not be disclosed are the details concerning that condition. Those are the reasons. I am not going to give any additional reasons.

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CHAIRPERSON: And may I leave it to counsel to craft a ruling along the lines of the one granted in the Carrim

matter, subject to the point I have just made about disclosure.

ADV HASSIM SC: Noted so, Chair.

CHAIRPERSON: And the ruling, we do not have to come back here. If I am happy with the draft that I am given, the ruling will then just be uploaded onto the Commission's website and publicised to, or rather publicised through the media as well, which will be served by our spokesperson, Mr Jeremy Michaels. Also, there is the question of the
10 outstanding statement. May I request you to discuss that and have a date in that regard as well?

And I will not accept the situation that we cannot have that statement because General Khan is not well. We must have a deadline for the filing of that statement, even if one hour or two hours is taken per day towards finalising it. And as I understand it, Mr Vally said they were at quite an advanced stage in preparing that statement when General Khan was shot. So I would imagine that not much is left to finalise that statement.

20 So in the draft ruling that you prepare for me, I want a deadline to be included in the statement.

ADV VALLY: Thank you, Chair. Just to clarify, the qualification of the completeness of the draft statement was as at the date of shooting, and that is in relation to the initial 10.6 notice. The subsequent 10.6 notice, that

contains a number of issues we have no instructions on. So I just wanted to bring that to your attention.

CHAIRPERSON: With those additions, then please work on a deadline with those additions in mind.

ADV VALLY: Thank you, Chair.

CHAIRPERSON: Let us adjourn and resume at half past two.

INQUIRY ADJOURNS

INQUIRY RESUMES

10 **CHAIRPERSON:** Yes, Ms Segeels-Ncube.

ADV SEGEELS-NCUBE: Thank you, Chair. General, before the tea adjournment, we were on page 36, which is the supplementary annexures of General Senona. So it is in a file that has a supplementary statement. Then there is a file divider and there are annexures there that start on page 36. The attorneys had kept it open for you at the relevant page. If they could maybe just assist you again to get this document? It is an application for polygraph examination from General Senona to you.

20 **DOCTOR LEBEYA:** Yes, Commissioners.

ADV SEGEELS-NCUBE: Okay. So if we go to the last page of that document on page 38, you will see that General Senona, it is dated the 23rd of November 2021, where he makes the request, the application for polygraph examinations to be conducted. And on the same page, you

can see there is a date stamp by you, 2021-11-23 and it bears your signature and you have approved it.

DOCTOR LEBEYA: Correct, Commissioners.

ADV SEGEELS-NCUBE: Okay, so I just want us to bear the date in mind. This is now the 23rd of November 2021. It is two and a half weeks after the discovery of the theft of the drugs. If we can go to page 36, which is the first page of the request or the application, you will see that he is asking you for application for polygraph examination
10 physical security breach, Port Shepstone Serious Organised Crime Investigation, DPCI KZN. At paragraph 1, he says on 27 June, we know that date is incorrect, was seized and stored at Port Shepstone Serious Organised Crime, which situated at number 2 Elizabeth Drive. At paragraph 2 he says that it was broken into between 5 and 8 November, and the abovementioned exhibits were stolen. Now he asks for authorisation of polygraph examination on the following members.

Port Shepstone Serious Organised Crime
20 Investigation, and he lists members from Port Shepstone SOCI. Some of the members would have knowledge of what transpired, so insofar as that the exhibits were stored at Port Shepstone. You will see Lieutenant Colonel Prinsloo. You will see Warrant Officer van den Berg, but there are some names there that just by virtue of them being from

Port Shepstone SOCI, their names have been included as being members that must be subjected to a polygraph examination. Do you see that?

DOCTOR LEBEYA: I see the names, correct, Commissioners.

ADV SEGEELS-NCUBE: Yes, and it follows on to the next page. At 3.2, he also says all members of Durban SOCI attached to SANAB from June 2021. The polygraph examination and drug testing must also be conducted on the
10 following members. So now it is Durban SOCI as well, which is separate from Port Shepstone SOCI. Correct?

DOCTOR LEBEYA: Correct, Commissioner.

ADV SEGEELS-NCUBE: And you will see there, there are members that were involved in the seizure and in the storage of the exhibit. So 3.2.3, Captain KG Sibiya. Do you see that? You know that he was involved in the seizure, right?

DOCTOR LEBEYA: Correct, Commissioner.

ADV SEGEELS-NCUBE: And then 3.2.6, Warrant Officer
20 Mpangase as well.

DOCTOR LEBEYA: Correct, Commissioners.

ADV SEGEELS-NCUBE: But there are other names mentioned on there where they had no involvement in the seizure or the storage of the exhibits. One such person, 3.2.7, Warrant Officer Sander. Do you see that?

DOCTOR LEBEYA: Correct, Commissioner.

ADV SEGEELS-NCUBE: So these are members that just by virtue of them being members of Durban SOCI are being subjected to a polygraph examination at the request of General Senona. You are with me, right?

DOCTOR LEBEYA: Correct, Commissioners.

ADV SEGEELS-NCUBE: Okay. Then at 3.3, members of Provincial Tracing Team who escorted exhibits from Isipingo to Port Shepstone, and he lists those names as well. And
10 you can see the first one, 3.2.16, Warrant Officer D Govender.

DOCTOR LEBEYA: Correct, Commissioners.

ADV SEGEELS-NCUBE: And 3.4, he just notes that Mpangase has submitted his resignation letter effective from 1 December 2021, and he then asks your assistance will be highly appreciated, and you approve these polygraph examinations to be performed on these members.

DOCTOR LEBEYA: Correct, Commissioners.

ADV SEGEELS-NCUBE: Now, I can accept for present
20 purposes that at 23 November, if your version is correct, that you would not have known that General Senona was in possession of the safe, the keys to the safe, which is the strong room where the exhibits were held. That is your version. Correct?

DOCTOR LEBEYA: Correct, Commissioners.

ADV SEGEELS-NCUBE: Okay. So when he makes this request, you consider this to be a request being made by a senior in conducting, I think you said he was looking to conduct disciplinaries or I am not sure what you understood the reason for his request to be. I was not clear on how you understood the request to be, but at this stage you have no reason to suspect that General Senona as a person of interest is your version.

DOCTOR LEBEYA: That is correct, Commissioner.

10 **ADV SEGEELS-NCUBE**: Okay, and that is on the 23rd of November 2021.

DOCTOR LEBEYA: Correct, Commissioner.

ADV SEGEELS-NCUBE: Okay. Now, then on the 30th of November 2021, there is another document that I want to refer you to, and that is is SS11. It is an annexure to General Senona's main statement. So if you can close that file for now and get out S11, which is page 124 of the annexures? It is in the file of General Senona's main statement. You should have it because we were dealing
20 with his statement earlier on and it is all in the same file.

ADV BALOYI SC: My file does not have annexures.

ADV SEGEELS-NCUBE: Of General Senona's statement?

ADV BALOYI SC: Statement.

ADV SEGEELS-NCUBE: Can I just establish from the attorneys whether S11 has been provided? It is page 124,

starts on page 124. Okay. General, we had included it as part of the core bundle. So you would have had a look at it when you were preparing, but in fairness to you, I think the document must be placed before you. Perhaps we can move on to something else in the meantime, unless you do have it.

So this is a call up instruction. You will see that it is call up instruction Special Duties Port Shepstone, and it has got a CAS 129/11/2021, business burglary, Organised
10 Crime offences, theft of drugs. And if you go to the last page, it is a short document, page 126, you will see that it was signed by you, General Lebeya on the 30th of November 2021. Do the Commissioners not have the document?

CHAIRPERSON: Please, please flight it. Please project it.

ADV SEGEELS-NCUBE: My apologies, Chair. Maybe I can deal with another document in the meantime, because the Commissioners would need to see it and I believe the flighted, the electronic version is corrupted. So can I just go to CJC232, which is the information note of General
20 Mosikili.

DOCTOR LEBEYA: May you repeat that?

ADV SEGEELS-NCUBE: 232. Do you have it?

DOCTOR LEBEYA: I do have it, Commissioners.

ADV SEGEELS-NCUBE: Okay. So, this is the information note that I had introduced earlier, but we had dealt with the

factual report that was annexed to it, which was Annexure B. This is now the actual report, information note that General Mosikili submits to you in January 2022. You recall?

DOCTOR LEBEYA: Correct, Commissioners.

ADV SEGEELS-NCUBE: Okay. At paragraph 1.1, she says:

10 “The purpose of this information note is to appraise the National Head on the feedback regarding the housebreaking and theft of 541kg cocaine from SOCI unit offices in Port Shepstone.”

DOCTOR LEBEYA: Correct.

ADV SEGEELS-NCUBE: Now, if I understood you, this was the first report that you had received from General Mosikili.

DOCTOR LEBEYA: That is correct, Commissioners.

ADV SEGEELS-NCUBE: Okay. At page 93, at page 2.2.8, she records what General Senona, she summarises General Senona's factual report, and at 2.2.8 she says:

20 “The following day, 2021-06-23, Captain Sibiya KG, Captain Vries, Captain Ntanzu, together with Warrant Officer Mpangase, proceeded to the Port Shepstone office to retrieve samples from the exhibits and forward to FSL for analysis. The keys to

the strong room are kept at Provincial Head offices, and prior arrangements were made for the keys to be available for the members.”

So Provincial Head offices would be General Senona's offices. Correct?

DOCTOR LEBEYA: That is correct, Chair.

ADV SEGEELS-NCUBE: So when you receive this report, and remember annexed to it is General Senona's factual
10 report, you are now aware in January 2022 that General Senona, that the keys to the strong room were kept at the Provincial Head office?

DOCTOR LEBEYA: Correct, Commissioners.

ADV SEGEELS-NCUBE: Okay. And then if we go to page 97, at paragraph 4.4, General Mosikili states the following:

“Based on this glaring security breaches,
she highlights the security breaches
earlier on, it is not clear what motivated
the provincial management to consider
20 the Port Shepstone as a safe place to
store drugs of such high value.”

Do you see that?

DOCTOR LEBEYA: I see that, Commissioners.

ADV SEGEELS-NCUBE: Okay. Then before I address you on what you did having received this, if you look at

paragraph 5.1, she says:

10 “It is the view of the Deputy National
 Head that theft of exhibits within the
 DPCI offices embarrassed the Directorate
 and the country in general and left a
 huge blow on the trust and the public
 have towards this elite crime fighting
 unit. Communities expect accountability
 and where there is wrongdoing, there
 should be corrective measures. Precise
 and appropriate action in this regard is
 critical as it impacts directly on the
 department's constitutional obligations.”

I assume that you agree with that view of hers?

DOCTOR LEBEYA: That is correct, Commissioner.

ADV SEGEELS-NCUBE: And then at 6, she makes certain
recommendations, 6.1 being that:

20 “The National Head appoint a senior
 functionary at the level of Major General
 to lead an investigation in terms of SAPS
 Disciplinary Regulations 2016 to
 establish whether misconduct was
 committed in the handling and storage of
 the exhibits.”

And then she sets out at 6.2 that:

“The functionary provides the outcome in terms of Regulation 8.”

And at page 98, she speaks about the audit that was supposed to be done on all DPCI offices that this must now be complied with. And at 6.4, that:

“The Provincial Head provides a progress report on the site inspection recommendations by Crime Intelligence during January 2020.”

10 And she signs it 24 January 2022. You have a note that says:

“Discuss paragraph 6. Thank you.”

And it is signed by you on the 28th of January 2022. Right?

DOCTOR LEBEYA: That is correct, Commissioners.

ADV SEGEELS-NCUBE: Now, at this stage, you have authorised polygraph examinations at the request of General Senona. By January 2022, you now know that General Senona, based on his own version in his factual report, was the custodian of the keys to the strong room.

20 Correct?

DOCTOR LEBEYA: Correct, Commissioners.

ADV SEGEELS-NCUBE: Okay. What steps did you take to ensure that General Senona was also subjected to a polygraph examination as a person of interest?

DOCTOR LEBEYA: I have not subjected him to polygraph

test because at the time, I was considering him to be the complainant.

ADV SEGEELS-NCUBE: No, that is the criminal investigation, right?

DOCTOR LEBEYA: In ...[intervenes].

ADV SEGEELS-NCUBE: He would be the complainant in the criminal investigation.

DOCTOR LEBEYA: Inclusive of any departmental human resource issues.

10 **ADV SEGEELS-NCUBE**: You considered that if the complainant is considered a person of interest, they cannot be subjected to an investigation, and at the very least, a polygraph examination.

DOCTOR LEBEYA: No, where there is direct evidence which shows that the individual is involved, I will take an action.

ADV SEGEELS-NCUBE: Okay, what kind of direct evidence are you expecting to get from these set of facts?

DOCTOR LEBEYA: When it is alleged that the Provincial
20 Head have done A, B, C.

CHAIRPERSON: Were there such allegations in respect of any of the other people? Because if that is your response, then it means from where you are sitting, there ought not to have been an investigation at all. All you knew was the walk-in safe had been broken into. That is all you knew.

So basically, as was the case with General Senona, there were no allegations against any other person as well at that stage.

DOCTOR LEBEYA: I have not, Commissioner, interrogated the issue of evidence against the members. It is the supervisor who may have had that information. I did not have that one, Commissioner.

ADV SEGEELS-NCUBE: But you are his supervisor. You are General Senona's supervisor, and you have a report
10 from your deputy head who says I do not understand why the provincial management chose that premises because of the safety issues. That is the first thing that she says.

Secondly, General Senona himself says that whoever was involved in the theft must have been assisted by DPCI officers. So surely you can put on your detective cap and think to yourself that the custodian of the keys must be a person of interest now that you know that he was the custodian of the keys.

DOCTOR LEBEYA: I understood, Commissioner, your
20 view, the view of the Commission, but the theft did not happen by way of a key. It would appear that it is not a key that was used to access the drugs.

ADV SEGEELS-NCUBE: General, how do you know that? How do you know that the scene was not staged, that the key was used and the scene staged to make it look like a

break-in? Surely in your illustrious career, you have come across circumstances where scenes have been staged in order to hide the true identity or the true nature of how the crime was committed.

DOCTOR LEBEYA: Indeed, you always think that any other thing can help, but here the evidence that is on the scene suggests that it is not a key that was used to open.

ADV BALOYI SC: Are you saying because the key was at DPCI, none of the people at DPCI could be accused of this?

10 I mean, how do you decide not Senona but Mpangase?

DOCTOR LEBEYA: I have not decided, Commissioner, that it is Mpangase. It is the supervisor who is suspecting that the members may be involved. Those resort under the Provincial Head. In terms of the regulation, it is the supervisor who must take those steps.

ADV BALOYI SC: Why would, on what basis, and I am not saying that is what happened, on what basis do you exclude General Senona? He himself says he suspects that some DPCI members may have assisted or have something to do

20 with his break-in. How do you exclude him?

DOCTOR LEBEYA: Commissioners, I did not have sufficient evidence to point out that Senona is involved. He is the one that I am his supervisor. So if I had that, I was to deal with him, and he deals with those that he is a supervisor to.

ADV BALOYI SC: But, General, in his report to you where he lists all of those people that must go for polygraph from different sections, he does not say any one of them was involved. And he could never, he could never elevate it to that. So what he does is everyone who belongs to these sections should be subject to a polygraph test. He does not say to you I suspect all of them.

You approve it, and presumably because you have determined that that is a proper way to proceed, otherwise
10 you are participating in a waste of resources if you wanted him to identify only a few people. How you exclude him, or you do not consider that one person is missing from this list, and it is the one who I supervise, he should also go to this. How do you exclude him? I mean, I do not understand.

DOCTOR LEBEYA: If it was to deal with him, it means that I should have been drafting that, or maybe my deputy should have been drafting that and say the deputy must be taken through the polygraph process. It is not himself to
20 apply for that.

ADV BALOYI SC: Indeed, that is what he said in his testimony, because he was asked, why did you not undergo a polygraph? And he said I do not know, I do not take myself to a polygraph. My boss, my supervisor, is the one that was supposed to make the decision. In fact, as he

testified, he said even now, years later, I am available to undergo a polygraph. So it is on you. You did not require him to undergo a polygraph, and the question is, why? Why was he immunised from any enquiry from you, his supervisor, about what happened there?

DOCTOR LEBEYA: At that stage, I did not have evidence to suggest that he should be taken through the polygraph. I did not have that, and the deputy also did not ask that, can we deal with the Provincial Head?

10 **ADV BALOYI SC**: Well, let me point you to paragraph 6.1 of General Mosikili's report. She says you appoint a senior, she recommends you appoint a senior functionary to conduct an investigation to establish, and here is the emphasis, whether misconduct was committed in the handling and storage of exhibits.

Now, you know from this report that General Senona was involved in the decision about the storage of the exhibits. You still do nothing, even though General Mosikili says he and others who were involved in that
20 decision, should be subjected to disciplinary hearing. What is your explanation for that, to disciplinary investigation?

DOCTOR LEBEYA: The General Mosikili being my deputy, if there was sufficient information or evidence to suggest that I should take disciplinary action against the Provincial Head, it should have come in the form of Regulation 8.1.

As the Commissioner shall have seen similar, a notification that has happened when we appointed General Gerber.

ADV BALOYI SC: Did you not say to her, prepare? You know that, at least you tell us, you cannot act on the basis of 6.1, and you say, well, there is another regulation that applies. Why did you not say to her, if I am going to implement that against General Senona and anybody else, prepare a notice, a regulation, you say a regulation something, notice, so that I can act on it? Why did you not
10 do that?

DOCTOR LEBEYA: Ja, it is the intention of directing her, instructing her that let us discuss this recommendation. I thought that when we discuss, she would indicate who is to be investigated.

ADV BALOYI SC: The report tells you who must be investigated under 6.1. The report lists who was involved, who conducted the bust, how they travelled to Isipingo Police Station, how they moved from Isipingo Police Station, how they end up in Port Shepstone, how the drugs
20 end up in the safe. The report gives you that detail. General Senona's own report that was attached that we discussed earlier, not to you directly, but it is attached to General Mosikili's report. It tells you who was involved with this.

Then General Mosikili says, having discussed that

entire process up to the decision to store these drugs in the safe, says in 6.1 an investigation is to establish whether misconduct was committed in the handling and storage of the exhibits. You cannot, if you read this report, General, you cannot say I did not know who handled these drugs. You cannot say I do not know who was involved in the decision to store them.

You cannot say that. You know from this report. Why do you not say, as you say to General Mosikili, as you
10 say to us now, why do you not say, well, this is the wrong process to institute disciplinary proceedings? You know we do it in terms of the regulation that you refer to. Prepare that and give it to me. As I would expect, if you were serious about acting on this as head of institution, I would expect you to do that. Not to say let us discuss and then the topic dies. Can you just explain your conduct, how you responded to this?

DOCTOR LEBEYA: I have given her a directive that let us discuss so that we can point out all of those
20 recommendations that she has made. And in terms of 6.1, as I indicate, if the Commissioners have looked at the recommendation from the IPID, it actually indicate who, when you establish, when you appoint an investigator. At the same time, you must also inform the person to be investigated. And on the recommendation, it does not show,

it does not list those. From IPID, it was listing, I think, five people. One from intelligence, one from us. So I expected that when we discuss, we will unpack all of these recommendations and that is where a decision will be taken.

ADV BALOYI SC: Did you discuss with General Mosikili?

DOCTOR LEBEYA: As I have indicated to the Commissioners, I have given an instruction to discuss. I do not recall that she came to discuss.

ADV BALOYI SC: So you said let us discuss and then you
10 waited for her. It was not important enough for you to follow up on her and say, I said let us discuss. This matter is very important. Come, let us sit down and then tell her what you need to tell her. Because she is given you a report. When you say let us discuss, she has no idea what you want to discuss. So you are the one that should follow up. Are we to understand you to be saying, well, I said let us discuss and I sat back and I waited for her to come back to me?

DOCTOR LEBEYA: It was my expectation that she will
20 comply with the instruction. Commissioners, I have been dealing with more than 22 000 of these matters. So I also rely on the brought-forward system and those that received this instruction to remind that this one has not yet been settled. So in the period of, I think it is six months that she was in the Hawks after this, it is possible that we shall not

have discussed this.

ADV BALOYI SC: General, you did not discuss it. This is not one of those where you are unsure. You did not. If you did, you would remember it. And we know you did not discuss it because there was no consequence whatsoever. These drugs got lost and that was the end of the story. Nobody faced any consequence as a result of this. And yet, there is a report.

One, you mandate an investigation. One must ask
10 the question, what was the point of it then? Is it just to look like I have done something about it so that I can say, ja, I did instruct an investigation but you really never had an intention to do anything about it? Sitting here, it is incomprehensible to me that so much exhibits get lost in a situation where the crime scene was horribly mishandled. This report tells you that.

It was horribly mishandled. That is one. Even the people that have come to testify here have admitted that it was badly managed, this scene. But General Mosikili tells
20 you that. Two, the drugs are stored in an inappropriate place which has zero security. Three, these drugs are signed in and out. There is movement to take samples. They are signed out and ultimately, nobody knows on record where they are.

So everything about this went horribly wrong but

you, head of institution, you authorise an investigation, good for you, but you do zero about the outcome of that investigation and it is, I am sorry, it is simply not good enough for you to say I said to General Mosikili, come, let us talk and when she did not come back to me, well, I am busy. I have many other matters.

Yes, we know that, that you are busy, but it cannot be an excuse for doing nothing in this case. For simply saying, do an investigation and that is the end of the
10 matter. It is not a good enough explanation. You can comment if you have anything more to say.

DOCTOR LEBEYA: Commissioner, I have assigned a team to conduct criminal investigation on the disappearance of the drugs and I think that they have recently arrested the thief. They will be continuing with ...[intervenes].

ADV BALOYI SC: I am talking about disciplinary action. I have stayed, you would have noticed I have stayed away from the criminal investigation. I am speaking about the mishandling of exhibits and storage which got lost. No
20 consequence to any of your employees. None at all. And you say you are busy to action this report because I have said to her, come, let us discuss and you did not follow up on that. That is a problem I have about your role in how you handled the internal process.

DOCTOR LEBEYA: Part of a criminal investigation is a

precursor to departmental. If during criminal investigation, you ascertain that the official shall have violated departmental code, you deal with that. I think that some of the reports I have seen in the bundle speaks to that one. Criminally, there was that investigation. Departmentally, I have assigned the deputy to go on fact-finding process with the information that is available.

If we start departmental investigation, the starting point is in terms of Regulation 8.1. You do not start
10 investigation before you notify the employee concerned. So what General Mosikili have done is a fact-finding process and we were going to start the departmental investigation, Commissioners.

ADV KHUMALO SC: Did it happen in the four years since she left? Because you say General Mosikili left six months later. So you were there on your own for approximately three and a half years after she was gone. Did that internal departmental process commence?

DOCTOR LEBEYA: With regard to the Provincial Head
20 ...[intervenes].

ADV KHUMALO SC: General, did it commence, yes or no? Did that internal disciplinary process commence? It is either it did or it did not.

DOCTOR LEBEYA: I will say no.

ADV KHUMALO SC: It is a no, thank you.

DOCTOR LEBEYA: In regard to the Provincial Head, I do not know with regard to the others.

ADV KHUMALO SC: If you look at 4.4, 4.4 is clear on page 97 that it implies wrongdoing on the part of General Senona because it lists various security issues and the break-ins and then it says:

10 “In light of this glaring security breaches,
 it is not clear what motivated the
 provincial management to consider the
 DPCI offices to be a safe place to store
 drugs of such a high value.”

They are speaking there about the conduct of General Senona. Did you investigate that fact which is set out in 4.4 to establish what motivated them to store the drugs there and if that did not amount to misconduct?

DOCTOR LEBEYA: Commissioner, as I indicated, I have not instituted departmental investigation against the Provincial Head excluding his part of provincial management and ...[intervenes].

20 **ADV KHUMALO SC:** And let me show you what else happened in this case ...[intervenes].

CHAIRPERSON: Maybe – and you said the reason you did not do so was because there were no allegations against him. Do you remember you said so this afternoon?

DOCTOR LEBEYA: That is correct, Commissioner.

CHAIRPERSON: What do you make of 4.4 at page 97? Is that not a suggestion of wrongdoing on his part?

DOCTOR LEBEYA: Possibly it so suggests that provincial management...

CHAIRPERSON: He heads the provincial management, so that is referring to him. There may be Brigadier Nyuswa and others at the level of management, but he heads management, provincial management, so that refers to him, not so?

10 **DOCTOR LEBEYA**: That is correct, Commissioners.

CHAIRPERSON: Did you not consider that to be suggesting wrongdoing on his part, yes or no?

DOCTOR LEBEYA: I would say no, Commissioner.

CHAIRPERSON: Why?

DOCTOR LEBEYA: I expected that a report would be clear as to who is alleged to have done what.

CHAIRPERSON: Is that all?

DOCTOR LEBEYA: Ja, without identifying who is alleged to have done anything wrong, it becomes difficult. That is
20 why I needed an indication.

CHAIRPERSON: So what you have just said now actually explains why you never did anything by way of a disciplinary process. You saw nothing wrong at all, and you saw no need at all for an investigation with a view to instituting a disciplinary process. That was your attitude,

and that is why nothing ever happened on that front. Is that so? Your attitude was there are no clear allegations against anybody whatsoever, and therefore I am going to fold my arms and do nothing. From what you have just said now, that is what your attitude was. Hence, nothing was done.

DOCTOR LEBEYA: I did not fold the arms, Commissioners.

CHAIRPERSON: You did. What did you do in the context of a disciplinary process?

DOCTOR LEBEYA: In the context of disciplinary process, I
10 expected that the individuals should be identified
...[intervenes].

CHAIRPERSON: Those would have been identified when the recommended investigation took place, possibly. What you say seems to be putting the cart before the horse.

DOCTOR LEBEYA: Commissioners ...[intervenes].

CHAIRPERSON: At least in respect of one person, I do not know, maybe there is more if one goes through the entire report, but at least in respect of one, 4.4, the provincial management, and that is basically the head. At least in
20 respect of somebody wrongdoing is suggested, so you cannot keep saying nothing was said about anybody. There it is, 4.4.

DOCTOR LEBEYA: Ja, I hear what the Chairperson is saying, but in my view, I would have expected to know who is that individual.

CHAIRPERSON: Before the investigation?

DOCTOR LEBEYA: You cannot investigate before you know who to investigate, because you shall ...[intervenes].

CHAIRPERSON: You do know.

DOCTOR LEBEYA: You shall notify that person to be investigated ...[intervenes].

CHAIRPERSON: General, you know that there is theft of drugs, and I would imagine you know that those drugs were stored there improperly. From 2017 or 2018, that place had
10 been stripped of its power to store exhibits, and yet exhibits were stored there. So you do know, and drugs valued at more than R200 000 000 are then stolen.

This report says, and it details what happened, it then says an investigation must be conducted. Wrongdoers, if any, will only be identified pursuant to the completion of that investigative process. Why can that not be so? Why do you want – I mean, if wrongdoers had already been identified, there would have been no need for an investigation. Why should that not have been the position?
20 Have an investigation, and from that, identify who should be disciplined.

DOCTOR LEBEYA: Ja, so I hear what the Commissioner is pointing out, but in the application of this disciplinary process, before you start the investigation, you must identify the person to be investigated. Like I point out the

example in the appointment of Gerber, it is clearly pointed out to Gerber, who are you going to be investigating?

CHAIRPERSON: Does investigation in 6.1 mean the same thing as charging someone in a disciplinary process? Are those one and the same?

DOCTOR LEBEYA: It is not the same, Commissioner.

CHAIRPERSON: What is an investigation as envisaged in 6.1? Investigation as opposed to commencing a disciplinary process? How do the two differ?

10 **DOCTOR LEBEYA**: My understanding of the investigation is in Regulation 8.1.

CHAIRPERSON: Yes?

DOCTOR LEBEYA: And it is after that investigation when they shall submit a recommendation as to whether you want to institute disciplinary proceedings or you decline.

CHAIRPERSON: Exactly, exactly my point, exactly my point. 6.1 says investigate. So it is that investigation that would have established whether there was any wrongdoing on the part of someone, and at that point, it would then be
20 decided whether to charge someone in a disciplinary process.

So you have been moving around in circles. So I will leave it at that, because basically from your last answer and the manner in which you distinguish between an investigation and a disciplinary process, you have no basis

for saying you could not institute an investigation because no wrongdoers had been identified. The investigation would have established or failed to establish who wrongdoers were, and indeed even not be able to establish that there was any wrongdoing at all.

Now you say I could not do anything because wrongdoers had not been identified. Identifying them or failing to do so would have been the very point of an investigation, General. So I go back to what I said earlier,
10 which is that you just threw up your hands and chose to do nothing. You may comment.

DOCTOR LEBEYA: Yes, I hear what the Chairperson is saying, but my view, my understanding and interpretation of the discipline regulations of the SAPS is that you identify the person to be investigated, you give that person notice of the investigation, and that investigation must be completed in 30 days' time, or if it is not completed on such period that it shall have been extended.

When that is completed, they bring back the report
20 on the outcome of the investigation. Then you make a decision as to whether you are going to institute disciplinary proceedings or otherwise. So that is my understanding ...[intervenes].

CHAIRPERSON: That does not make sense to me. Take this example. Let us say there are DPCI members who, for

whatever purposes, are housed within a very secure, impregnable place for whatever purposes of DPCI processes, and something gets stolen within that enclosed centre, but there is no breach of the very secure surroundings, no breach whatsoever, which would mean that the theft was committed by DPCI members who are within, but nobody is identified as a wrongdoer.

From what you have said, if no wrongdoer has been identified, there can be no investigation. That is what you
 10 are saying, basically. For purposes of a disciplinary process, I am separating that, as Commissioner Baloyi did, from a criminal process. From what you are saying, for purposes of a disciplinary process, there can never, ever be an investigation. And that simply does not make sense, General. And I am sure now you are going to try to distinguish that from what we have here.

DOCTOR LEBEYA: Ja, I think that I hear what the Chairperson is saying, but my interpretation of the application ...[intervenes].

20 **CHAIRPERSON**: Apply that interpretation to the example I have just given now. You have no wrongdoers that have been identified. So based on your interpretation, there can be no investigation under those circumstances. Is that what you are telling us?

DOCTOR LEBEYA: In the example that the Commissioner

has given, firstly, a criminal case has been ...[intervenes].

CHAIRPERSON: No, I have said let us leave out a criminal case. Let us look at a DC process.

DOCTOR LEBEYA: And the DC process would ...[intervenes].

CHAIRPERSON: There can never be one, because ...[intervenes].

DOCTOR LEBEYA: Will speak to a criminal case because violation of the disciplinary code will speak to a crime that
10 causes this disciplinary code to exist. Contravention of a specific code. If theft has taken place, my view is that that theft is the one that informs disciplinary investigation.

CHAIRPERSON: That does not answer my question, but I will leave it there. Commissioner Khumalo, you ...[intervenes].

ADV KHUMALO SC: Just to follow up on that, what if there is negligence but not theft? Then what do you do? Because that is not criminal conduct. It is just pure misconduct. If your officers were negligent, but there was
20 no criminal act.

DOCTOR LEBEYA: If an officer is known, a specific officer is known to have been negligent, they can institute disciplinary investigation. They can initiate.

ADV KHUMALO SC: Let me take you to page 95 of the same report, and this the Commission was able to establish

after hearing evidence and reading some of the documents. If you look at paragraph 3.1, it deals with National Instruction 8 of 2017. On page 95, are you there?

DOCTOR LEBEYA: Correct, yes.

ADV KHUMALO SC: Now, what it says is that all property and exhibits seized must be stored or entered in the SAP13 property register of the relevant police station and then it can be transferred to the relevant unit. So in this case, a relevant unit would be the DPCI. Correct?

10 **DOCTOR LEBEYA**: Correct, Commissioner.

ADV KHUMALO SC: Yes, and then it says, and entered into an SAP13 of that relevant unit. Were you aware that the DPCI offices in Port Shepstone did not have an SAP13 register?

DOCTOR LEBEYA: I was not aware, Commissioner.

ADV KHUMALO SC: You see, that is the sort of thing you would have established if there was an investigation. Now, the second thing is, do you know that these exhibits were taken to the – or rather, they were booked in the SAP13
20 register of the Port Shepstone Police Station? Are you aware of that?

DOCTOR LEBEYA: I am aware after reading all the reports, Commissioner.

ADV KHUMALO SC: Yes. Are you aware that they were immediately booked out of that register?

DOCTOR LEBEYA: That is correct, Commissioner.

ADV KHUMALO SC: But they were not booked in any other register, which means SAP or DPCI did not know where these exhibits were for a period of four months until they were stolen. Were you aware of that?

DOCTOR LEBEYA: That the SAP has been ...[intervenes].

ADV KHUMALO SC: So let me put it this way. In October of 2021, there was no SAP13 register that records where these exhibits were stored. Are you aware of that?

10 **DOCTOR LEBEYA**: I am not aware of that, Commissioner.

ADV KHUMALO SC: Now, you see, these are the sorts of things you should have investigated, because what they point to is misconduct of the people who were involved in the storage of these exhibits. And your expectation seems to have been that General Senona will investigate those below him, but if nobody reports General Senona to you, then you will not investigate him, and the matter will die.

And that is actually what happened because you did not authorise any investigation into exactly what happened,
20 number one, but secondly, whether the provincial leadership of the DPCI was in any way negligent. And that is a problem because after General Mosikili left, there was nobody to discuss the report with, but you were sitting with the report, and for a period of over three years, you did not do anything about the report.

You did not go back to the report and say I should have discussed it with General Mosikili, she has now left, but there were recommendations in the report, how do I take them forward? None of that happened. And what we are left with as a Commission is that we are now in August 2026, and the people who were responsible for the negligence, not the criminal part, the negligence in the storage, nothing has happened to them for a period of more than five years. The buck stops with the leadership of the
10 DPCI, which at all material times was you.

DOCTOR LEBEYA: I hear what the Commissioners are saying, and then indeed departmentally, I can say that we have not started that one, but criminally, investigation must take place ...[intervenes].

ADV KHUMALO SC: General, forget about the criminal. The criminal part is about who stole the drugs. For present purposes, I am not concerned about who stole the drugs. I am concerned about whether the prescripts, national instruction, there was violation of it in the storage of the
20 drugs at the DPCI offices, and keeping them there without a proper SAP13 register, and keeping them there when the instruction is clear that after a certain period, they must be taken to the laboratory. That talks to misconduct, not the criminal part of the case, and that is the part that you did not investigate. Are you with me?

DOCTOR LEBEYA: I am with the Commissioner.

ADV KHUMALO SC: Thank you.

ADV SEGEELS-NCUBE: Thank you, Commissioner Khumalo. General, where was this restraint when General Senona asked your approval to conduct polygraph examinations on 42 employees? Where was the restraint that there has to be identifiable people that we must know who we are targeting in the investigation? Where was that restraint when he asked you, give me permission to
10 polygraph 42 people, including a cleaner at the DPCI offices?

DOCTOR LEBEYA: That was not an investigation in terms of Regulation 8, Commissioner.

ADV SEGEELS-NCUBE: What was he asking, and I asked you, under what dispensation was he making this request for the application for polygraph examinations?

DOCTOR LEBEYA: From time to time, the members of the DPCI can be taken through the polygraph test, which can be approved by the National Head on application. So it include
20 the test of drugs and the like as they indicated in the report.

ADV SEGEELS-NCUBE: Yes, so he is doing ...[intervenes].

ADV BALOYI SC: But this one was for the drugs, for the burglary. This had nothing to do with other circumstances when these polygraphs can be requested ...[intervenes].

ADV SEGEELS-NCUBE: If you go to ...[intervenes].

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

ADV SEGEELS-NCUBE: The document is on page, it is that supplementary annexures, page 36. The request is on the 23rd of November 2021. We had dealt with it. It is on the screen. You do have the document in front of you. That says specifically:

10 “Application for polygraph examination,
 physical security breach, Port Shepstone
 Serious Organised Crime investigation.”

And he asks you to authorise polygraph examinations of 42 people. And if you look at page 37, the person identified at 3.1.18 is the cleaner. Do you see that?

DOCTOR LEBEYA: That is correct.

ADV SEGEELS-NCUBE: And I had ask you under what dispensation was he making this request to you?

DOCTOR LEBEYA: Ja, as I have indicated that from time to time, the members of the DPCI can be tested. Paragraph 3.2 also bring in that drug testing.

20 **ADV SEGEELS-NCUBE**: Yes, the polygraph examination and drug testing. I hear what you are saying.

DOCTOR LEBEYA: Correct.

ADV SEGEELS-NCUBE: But that is precisely my point. By January 2022 you now know that General Senona actually falls into these categories that he himself has created.

Somebody that knows the layout of the premises where the drugs were stolen, somebody who is in possession of the keys to the strong room, and you could have called for him to be polygraphed, not under an investigation, not under disciplinary dispensation, on the same basis that he asked for your approval for this application. Because you are not suggesting that 42 people were facing disciplinary proceedings at the time when he made this request, are you?

- 10 **DOCTOR LEBEYA**: Yes, so that is a discretion to be exercised by a supervisor who should be having some information that suggests that such polygraph need to be conducted.

ADV SEGEELS-NCUBE: That is precisely the point, General. That is precisely the point. I said to you I can give you the benefit of the doubt until the 24th of January 2022, when you get General Mosikili's information note that you did not know the extent of General Senona's knowledge of the storage of the drugs, that he had the keys as well.

- 20 But surely, by the 22nd of January, General Mosikili is not only telling you that provincial management must be asked as to why did you choose those premises, but you also know from General Senona himself that he was in possession of the keys to the strong room. He knew the layout. The same basis on which he was asking for people

to be subjected to a polygraph examination within his department, he met those same requirements.

And I cannot understand why you, as his supervisor, would not exercise the same discretion that he exercised here in respect of people like cleaners, people from another SOCI, which had nothing to do with Port Shepstone. He does that for those people, but you cannot do that in respect of him. Not a disciplinary, a polygraph examination, which was within your discretion, whether
10 there was an investigation or not.

DOCTOR LEBEYA: Yes, I did not have the grounds to put him through that process. So he had the grounds himself on those that resort under him. So this is a discretion that I should have taken, but I did not have the grounds to do that.

ADV SEGEELS-NCUBE: Okay. General, let me remind you who you said you are when you read your statement to us. If you go to your statement at page 28 of your main statement. In fact, if I could start on page 26? You will let
20 me know when you are on page 26.

DOCTOR LEBEYA: Yes, Commissioner.

ADV SEGEELS-NCUBE: Towards the middle of that long paragraph, you state the following:

“I received a certificate from the SAPS
Training Division. I am the one who

compiled guidelines for investigation of Organised Crime nationally in 2004 and coined some terminology such as Regional Organised Crime Secretariat, Provincial Organised Crime Secretariat, National Organised Crime Secretariat, Organised Crime Project Investigations, which are still being used in the SAPS today.”

10 If you go to page 28, paragraph 31:

“I have at some stage commanded all Commercial Crime Units in Mpumalanga, commanded all Specialised Investigation Units in Gauteng, all Detectives in Gauteng, all Organised Crime Units in the country, all Detectives, Forensics, and Intelligence personnel in the country, all operational divisions in the country, and all DPCI personnel in the country.”

20 And then you want to say to us that this person that you have described could not and did not suspect that General Senona could have been a person of interest in a matter where it did not take much of a detective to appreciate those nuances.

He had the keys in his possession. He had called

for polygraph examinations for less, for people who were just from the Durban SOCI. Warrant Officer Sander, who is known for doing seizures, he is not even at Port Shepstone. Those are the kind of people that he subjected to a polygraph examination.

And yet you are telling us that this person that you described in this statement could not and did not suspect that General Senona could, I am not saying that he was involved, but that he was a person of interest and you could
10 have exercised your discretion to subject him to the same polygraph examination that he subjected his officers for less. Do you want to comment?

DOCTOR LEBEYA: I think that the experienced person who have got all of those that you have read, when seeing somebody in possession of a key and the burglary that has taken place will not necessarily conclude that because you have got a key, you know the environment, you need to go through the polygraph. So it is a discretion that you apply your mind. I was not convinced that there are grounds that
20 I should take him through the polygraph test.

ADV BALOYI SC: Just ask, when you approved the long list of people that he asked for your permission, authorisation rather, to be subjected to a polygraph test, that long list, does it mean you were convinced that he has got a reason to suspect all of them for involvement in the

burglary? Because that letter that we were looking at, at paragraph two, does make it clear, and the subject line does make it clear that the list relates to the break-in.

DOCTOR LEBEYA: I must admit that I did not interrogate it deeper to say that could all of them be involved because some of them is for drug testing.

ADV BALOYI SC: No, you read it wrong, General. The subject line tells you what this letter is about. The subject line speaks to physical security breach. That is what the
10 subject, the all-encompassing subject line. And then he gives you lists of people in different units, and then there is that category in 3.3 where he says these ones must do a polygraph and a drug test, and that is in 3.3. But the letter is about, relates to a breach.

It comes about, it makes it very clear in the subject, it comes about because of a security breach. You approve, it is nearly 40 people, you approve all 40. Should we, given how you justify not taking any steps as relayed to General Senona, should we take it that you therefore considered
20 everyone, you were satisfied that everyone on this list is nominated by General Senona, that in fact is a person of interest in the breach, in the security breach? Otherwise, you must justify why you approved that 40 people should be subjected to a polygraph test.

DOCTOR LEBEYA: I did not interrogate it deeper that, is

any of this possibly involved? That I believe to the Provincial Head who is requesting this have considered that he is asking for authority to test them.

ADV BALOYI SC: Thank you.

ADV SEGEELS-NCUBE: General, if that is the case, and that you say that you did not apply your mind to the people that he was, that General Senona was asking you to approve those polygraphs, and even if I were to accept for present purposes that it did not cross your mind that
10 General Senona may be a person of interest that should be subjected to a polygraph examination at your discretion, which discretion you accept now you could have exercised.

It seems to me that it can only be one of two things, given your level of experience and expertise, is that you were either covering up or defending General Senona, or there was just a complete dereliction of your duties as the head of DPCI. There can be no other explanation.

DOCTOR LEBEYA: It is neither of the two, Commissioner.

ADV SEGEELS-NCUBE: And then which is it? Because if
20 it is not a dereliction of your duties, and it is not that it crossed your, and it is not that you were trying to protect General Senona, because he was running this process as the Provincial Head, exercising whatever discretion was available to him to investigate this matter and to subject his members to this investigation and to these investigation

means that he had adopted. You did not do that. So what is it if it was not one of the two?

DOCTOR LEBEYA: The evidence at my disposal did not convince me that I should take the Provincial Head for polygraph test.

ADV SEGEELS-NCUBE: Okay, we will leave it there then. So if I can then take you to the criminal investigation, the document that was not available to you earlier has now been made available to you, and that is the call-up
10 instruction, which is S11.

DOCTOR LEBEYA: Yes.

ADV SEGEELS-NCUBE: This is a document, if you go to page 126, is dated 13 November 2021, and it is signed by you. Do you see that?

DOCTOR LEBEYA: That is correct, Commissioner.

ADV SEGEELS-NCUBE: And the first page, if we can go back to 124.

DOCTOR LEBEYA: Yes, Commissioners.

ADV SEGEELS-NCUBE: It is a call-up instruction, special
20 duty sport Shepstone. There is a CAS number, business burglary Organised Crime offices, theft, or drugs. And you set out the background on 22 June. There was drugs that were seized. And at paragraph 2:

“The drugs were contained, 27 canvas bags. During the seizure, the drugs were

then transported to DPCI Port Shepstone for safekeeping, where they were locked up in a safe. On the 8th of November, they discovered the theft.”

At paragraph 3, on page 125:

10 “The preliminary enquiry into the circumstances of the theft was commenced, and the recommendation was made to the National Head of the DPCI to appoint a dedicated team of investigators to urgently conduct the investigation on the housebreaking cases.”

What preliminary enquiry is being spoken about here? Because remember, this is 13 November 2021. Were you doing the call-up instruction? General Mosikili's information note is only sent to you in January 2022. So it cannot be anything that she had submitted to you, because as I understood it when I asked you, you said that would have
20 been the first report that you had received from her. So what preliminary enquiry is being referred to in your letter?

DOCTOR LEBEYA: When I sent her to the KwaZulu-Natal, when she came back, she must give verbal report. So she has given a verbal report.

ADV SEGEELS-NCUBE: Okay, so when it says preliminary

enquiry and the recommendation was made to appoint a dedicated team of investigators, that was a recommendation that came from General Mosikili?

DOCTOR LEBEYA: That is correct.

ADV SEGEELS-NCUBE: Okay. At paragraph 4, it says:

10 “The team of the investigators should have at least the background knowledge of drug-related investigations. The majority of the members to be nominated will be from Serious Organised Crime investigation environment outside KwaZulu-Natal Province, since drug-related cases falls within their mandate. There will be one member nominated from the KwaZulu-Natal DPCI to assist the identified team when conducting the investigation.”

Now, you will see there is Warrant Officer D Govender DPCI KwaZulu-Natal. Who recommended Warrant Officer
20 Govender to be the DPCI KZN member that would form part of the investigation?

DOCTOR LEBEYA: I did not ask who recommended these individuals, including Govender, Commissioner.

ADV SEGEELS-NCUBE: Yes, but it is in your call-up instructions. So somebody recommended it. Who would it

have been that recommended Deena Govender?

DOCTOR LEBEYA: There will be somebody else who recommended to the Deputy National Head who drafted this document, as you shall have seen in page 124. There is enquiry at the top. That is, it is the person who compiled this note who nominated these individuals. Myself, I did not know who nominated these individuals.

ADV SEGEELS-NCUBE: But you signed the document.

DOCTOR LEBEYA: That is correct.

10 **ADV SEGEELS-NCUBE**: It is a call-up instruction from you.

DOCTOR LEBEYA: That is correct, Commissioner.

ADV SEGEELS-NCUBE: Okay, so you do not know who would have recommended Deena Govender?

DOCTOR LEBEYA: No, I do not know who shall have recommended Deena Govender.

ADV SEGEELS-NCUBE: And then the second name, Captain Mashau from SOCI Head Office?

20 **DOCTOR LEBEYA**: I do not know who nominated any of these members, Commissioner.

ADV SEGEELS-NCUBE: Is it possible that General Senona could have recommended these members?

DOCTOR LEBEYA: It is possible, Commissioner.

ADV SEGEELS-NCUBE: And you say you would have received these names from General Mosikili?

DOCTOR LEBEYA: That is correct, Commissioner.

ADV SEGEELS-NCUBE: Okay. Now, were you aware at the time that you signed this call-up instruction that General Mashau from the SOCI Head Office was also somebody that was working with General Senona when he was at the Head Office?

DOCTOR LEBEYA: No, I did not know.

ADV SEGEELS-NCUBE: Okay. And you were aware that Deena Govender was somebody that was reporting not
10 directly to General Senona, but was part of his line of reporting was General Senona?

DOCTOR LEBEYA: I did not know, Commissioner.

ADV SEGEELS-NCUBE: And we have heard evidence that there have been instances where this has come from Brigadier Nyuswa, where Warrant Officer Govender would report directly to General Senona on matters and bypass his direct reporting senior, Brigadier Nyuswa. You were not aware of any of that?

DOCTOR LEBEYA: I was not aware. Nobody brought that
20 to my attention, Commissioner.

ADV SEGEELS-NCUBE: Because it would then seem that the team that is assembled to conduct the investigation, the criminal investigation as well, has people that are known to General Senona, and you would accept that these are juniors to General Senona?

DOCTOR LEBEYA: I accept that they are juniors to General Senona, Commissioner.

ADV SEGEELS-NCUBE: And so if you are assembling this team, in your mind when you signed this call-up instruction, again, I accept for present purposes that you did not know about General Senona's association or that he may be a person of interest at this time. Did you have any discussions with General Senona regarding the makeup of this team?

10 **DOCTOR LEBEYA:** I have never discussed with him regarding the makeup of the team, Commissioner.

ADV SEGEELS-NCUBE: And at the time that you had left DPCI as the head, had there been any progress made on the investigation to uncover who had stolen the drugs?

DOCTOR LEBEYA: That is correct, Commissioner.

ADV SEGEELS-NCUBE: What is correct? I asked was there any progress? Were you aware of any progress that had been made in identifying the thieves?

DOCTOR LEBEYA: They have been providing progress
20 reports which will be filed in the relevant file at head office, Commissioner.

ADV SEGEELS-NCUBE: And who was providing those progress reports?

DOCTOR LEBEYA: The Component Head will provide the reports which will come via the Divisional Commissioner.

ADV SEGEELS-NCUBE: And the Component Head was?

DOCTOR LEBEYA: The Component Head was Major General Khana.

ADV SEGEELS-NCUBE: And when you say Component Head, are you referring to head office, not KZN? Component Head head office, or what?

DOCTOR LEBEYA: No, there is no component at the provincial level. The components are only at head office. So it is a Component Head of a Serious Organised Crime
10 who reports to the Divisional Commissioner and the Divisional Commissioner will process that report to me.

ADV SEGEELS-NCUBE: Okay, but when you had left, the identity of the thieves had not yet been identified. You were not aware of them yet.

DOCTOR LEBEYA: Just repeat the question, Commissioner.

ADV SEGEELS-NCUBE: You said earlier, sorry, let me just preface it. You said earlier that you understood that one of the suspects has been arrested regarding the theft or
20 identified.

DOCTOR LEBEYA: That is correct, Commissioner, has been arrested.

ADV SEGEELS-NCUBE: That happened after your retirement.

DOCTOR LEBEYA: That is correct, Commissioner.

ADV SEGEELS-NCUBE: Okay, thank you. Unless there are any other questions regarding the Port Shepstone matter, I would just like to move on to one small topic still regarding DPCI KZN and then we can move on to something else.

ADV BALOYI SC: Ja. Can I just ask the, I think it is General Khana. He submitted reports to you on the investigation.

DOCTOR LEBEYA: Correct, Commissioners.

10 **ADV BALOYI SC:** And that included the comments about mishandling of the exhibits and the scene itself. Do you recall that?

DOCTOR LEBEYA: I am not recalling the nitty-gritties of the contents of the reports, Commissioner.

ADV BALOYI SC: Yes, but do you recall that his report would have included concerns or observations about the handling of the exhibits and of the crime scene? You do not have a recollection?

DOCTOR LEBEYA: I do not have recollection,
20 Commissioner.

ADV BALOYI SC: Okay, I try not to refer you to the file, but if you trust me, you do not have to go to the file. It is File 6, and there is a report from him at page 705. File 6. It is an annexures file. Do you have it? File 6, page 705.

DOCTOR LEBEYA: I have 705, Commissioner.

ADV BALOYI SC: Yes, if you turn to page 706, you will see it is dated the 9th of November 2023, and that is Major General Khana to you. You see where I am referring?

DOCTOR LEBEYA: That is correct, Commissioner.

ADV SEGEELS-NCUBE: And at 705, the report is directed at you, information note. Now, at that 706, paragraph 4, that is where he comments. Firstly, he says, the team, his team:

10 “...previously suggested that all members
who were involved in the recovery of the
drugs be dealt with according to the
internal disciplinary regulations.”

That is his team, so there must be a report that he gave you before this. And then he says:

 “Due to the following reasons, they failed
to handle the crime scene at CHC
Container Depot in line with prescripts of
crime scene management, Instruction 1
of 2015.”

20 So he is not talking about criminal investigation. And then
412, he says:

 “They mishandled the crime scene as
none of the investigation aides were
called to attend to the crime scene, even
the LCRC did not attend.”

This is two years after the General Mosikili report. You did not do anything about this. This report which is given to you, which tells you about non-compliance with the national instruction. You did not, I take it you did not do anything about it.

DOCTOR LEBEYA: I did not follow it up to check who did he send this report to?

ADV BALOYI SC: No, it is addressed to you. If you look at 705, it says to the National Head DPCI. It is not
10 addressed to anyone else. You would have been responsible to distribute it to other people because it is directed at you. And if it went to anybody else, you were responsible for that. If you wanted General Senona to do anything about it, you were responsible to do that about it. And in fact, you signed this report, so we know you received it.

DOCTOR LEBEYA: That is correct, I received it.

ADV BALOYI SC: So you did nothing about it.

DOCTOR LEBEYA: I noted it. What I did not do was to
20 check with which commander, which supervisor did you submit the recommendations to. When you conduct investigation, criminal investigation, you come across the facts that require disciplinary attention.

ADV BALOYI SC: Yes.

DOCTOR LEBEYA: You report to the supervisor of those

that you have picked it up that were involved in contravention of the disciplinary code.

ADV BALOYI SC: So are you saying even though you are the one that instructs an investigation, and the report comes to you because you are the owner of that investigation because you mandated that investigation, are you saying it is General Khana's fault that he did not send the report to other people?

DOCTOR LEBEYA: It will be his fault, but I also agree that
10 I should have followed it up ...[intervenes].

ADV BALOYI SC: Yes.

DOCTOR LEBEYA: Commissioner.

ADV BALOYI SC: Well, I want to suggest, unless you gave him an instruction to give it to other people, I want to suggest it is not his fault. It is entirely your fault if this report did not go to anyone else. If it came into your office and you simply shelved it and did not give it to anyone else to action, then the fault is yours. It is not his. Can you at least accept that? There cannot be debate unless you say
20 to us, you did tell him to give it to other people, and that is not what you are saying. And if you did not tell him that he should share it with other people, you must accept it is entirely your fault that this report did not reach other people who could have actioned it.

DOCTOR LEBEYA: I hear what the Commissioner is

saying, but we are dealing with a very senior manager who knows the practice or when do you inform the supervisor of a member that you suspect to have contravened the regulations.

ADV BALOYI SC: Ja. You see, General, I mean, I do not know how you do things at DPCI, but to me the sensible thing is you mandate a report. It comes to you. You decide how it is to be actioned. Just like you did with General Mosikili's report. You sat on it because you said to her
10 come, let us talk. And then when she did not come to talk to you, nothing happened of it and that was the end of it. She had no obligation to give it to anybody else.

If in this case, you did not tell Major General Khana that this report that you sent to me, you must also share it with other people, the supervisors, and so on, if you did not say to him to do that, then the fault is yours. The dereliction of duty or the failure to execute on the outcome of an investigation that you mandated falls squarely on you and nobody else. That is my view about this.

20 **DOCTOR LEBEYA:** I hear the Commissioner's view, but I also provide the practice that every commander knows that when you are conducting an investigation and you come across that members or a member belonging to a particular unit seems to be involved, you have got an obligation to inform that supervisor.

ADV BALOYI SC: Ja, well, that is your answer, I suppose.

Thank you.

DOCTOR LEBEYA: Thank you, Commissioners.

ADV SEGEELS-NCUBE: Thank you, Commissioner Baloyi.

Chair, I wanted to start one small topic, and then there is the 6 December takedown, and that is the last of it, but we want to propose that we continue tomorrow with General Lebeya. His legal team have indicated that they have some difficulties, but just to place on record that General Lebeya

10 is subpoenaed to be in attendance until released, summoned to be in attendance until released, Chair, and we will be done by 11:30 tomorrow by tea time with him. That is the undertaking that I have given. It is just one topic left, really, Chair.

CHAIRPERSON: That is a dangerous undertaking to make because my experience is that those have never been met. May we see counsel outside quickly, please? Thank you.

ADV SEGEELS-NCUBE: Thank you, Chair.

HEARING ADJOURNS

20 **HEARING RESUMES**

CHAIRPERSON: In the light of the agreement that was reached and of which we were informed outside, we continue tomorrow at 09:30. Let us adjourn until then. Thank you very much to both counsel. Thank you.

ADV SEGEELS-NCUBE: Thank you, Chair.

CHAIRPERSON: And to you, General, thanks.

HEARING POSTPONED TO 2 SEPTEMBER 2026

HEARING ADJOURNS

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