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

HELD AT

BRIGITTE MABANDLA JUSTICE COLLEGE

28 SEPTEMBER 2026

DAY 179

PROCEEDINGS ON 28 SEPTEMBER 2026

CHAIRPERSON: Good morning, Ms Hassim. Good morning, Mr Vally.

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

ADV HASSIM SC: Morning, Chair. Morning, Commissioners.

CHAIRPERSON: Thank you.

ADV HASSIM SC: Chair, the Chair would be aware that there is a subpoena in place for General Khan's evidence to begin today, and we have received a postponement application late last night from, I think it is Mr Khan now, Mr Khan's legal representatives. So I will hand over to Mr Vally to address the postponement application which we received late last night.

CHAIRPERSON: Mr Vally, I give you only 30 minutes to do that. We simply do not have time.

MR VALLY: Yes, indeed, Chair. I doubt I will consume the time.

CHAIRPERSON: And I am tempted to say 30 minutes inclusive of whatever questions we may put to you.

MR VALLY: Yes, that is fine, Chair. We actually have a very short postponement application. The application itself ...[intervenes].

CHAIRPERSON: 30 Pages of affidavit, is that short?

MR VALLY: No, I will take you to the crisp points, Chair.

CHAIRPERSON: All right. Okay, thank you.

MR VALLY: Chair, let me start by, and I am not sure if Chair and Commissioners have had regard to the application itself. I know it is sent late, and I will give you the reasons for that.

CHAIRPERSON: We have had a cursory look, so we, but we do have an idea of, yes.

MR VALLY: Thank you, Chair. Chair ...[intervenes].

CHAIRPERSON: Maybe upfront let me ask, this is the ground, more the fact that time, Mr Khan wants time, wants a month, to prepare, is that the reason?

MR VALLY: We do not say he wants a month, Chair. Look, we look to guidance from the Commission as to when it may be appropriate for Mr Khan to tender his evidence. We have structured a proposal that says we will provide answers to the Rule 10.6 notice in stages, simply because of what is said by the Commission's expert medical examiner.

CHAIRPERSON: But the total time required for all of that, what is the total time, is it not a month?

MR VALLY: We would say a month could be a budgeted amount. We cannot say for certainty that is the entirety of the evidence.

CHAIRPERSON: In all of that, do we disregard the fact

that Mr Khan has had a long time before now? Do we disregard all of that? I am, by, I am not referring to the time when he was hospitalised, consequent or rather pursuant to the shooting incident.

MR VALLY: Yes.

CHAIRPERSON: I am not referring to that, but post that, he has had a long, long period within which he should have, one, responded to the Rule 10.6 notice, two, done whatever other preparation he still needs to do or he still wants to do.

MR VALLY: Yes, of course. Chair, in answer to that, all that we can say is we refer to the expert report of Dr Naidoo, and as Chair might recall, that is the expert of the Commission, and Dr Naidoo's recommendations are quite illustrative. It tells us that he agrees with the findings by Dr Malapi. What Dr Naidoo then says is that he tries to fashion a midway point for Mr Khan to come and testify and the midway point that he suggests is that there has to be a virtual arrangement for Khan to testify within familiar environment so that there is no triggers that he is also identified that may cause Khan's testimony to be interrupted and he is pretty clear in what he says. Now, he gives us the mechanism, but he does not give us the timetable and that is where the later report of Dr Malapi comes in and we say that Dr Malapi says, having regard to

the totality of the evidence and the task that lays ahead of Khan, he feels that it would be appropriate for a month to enable Khan ...[intervenes].

CHAIRPERSON: You see, you see the problem with that, the problem with that is that it suggests that that is or should be the position from the time that Dr Malapi is writing that latest report.

MR VALLY: Yes.

CHAIRPERSON: My point is, Mr Khan has had a lot of time from donkeys ages ago. So we cannot talk as if he is only starting now. That is a serious problem. That is a serious difficulty.

MR VALLY: Well, Chair, I think that the answer to that is to have regard as to when Khan was released from hospital recently, and that occurred on the 22nd of September. That was barely six days ago, six calendar days.

CHAIRPERSON: There have been days before that. He has not been in hospital throughout. When was he released the first time?

MR VALLY: Yes, but then the debate is ...[intervenes].

MR VALLY: He has not been in hospital continuously from the time that he was shot.

MR VALLY: Yes, so if one ...[intervenes].

CHAIRPERSON: So, so, oh, sorry, sorry. So he could not just have sat idly by and done nothing. There has been a

lot of time. There has been a lot of time. Yes, Mr Vally?

MR VALLY: Chair, I think that we have traversed those issues previously and I am happy to readdress them if it is appropriate to do so, but one must have regard to what the Commission's expert has said, and the Commission's expert recognises that there was an incapacity by virtue of the diagnosis that he agrees that Dr Malapi had arrived at. Now, what he then says is that one must be sensitive to a clinical reality. Is Khan, is it clinically realistic to expect of Khan to attend to the evidence in such a short time?

In fact, he goes one step further and he says that it would serve matters tremendously if the evidence leaders were to identify a conspicuous set of evidence and put conspicuous questions to Khan to enable him to answer and we say we are happy to adopt that strategy which is basically what the Commission's expert says, because then it gives us bite-sized chunks to deal with and we can get through the evidence, albeit staggered, we will be able to ...[intervenes].

CHAIRPERSON: I am not sure that we have the luxury of time to do all that, but I am listening.

MR VALLY: Thank you. Chair, I think, let me take you to the report, the Commission's expert report.

CHAIRPERSON: Yes.

MR VALLY: In particular, I want to take you to the

recommendations, and that is paragraph 7, paginated page 57.

CHAIRPERSON: Sorry, please give that to me again.

MR VALLY: It is paginated page 57 of the postponement, the second postponement bundle, paragraph 7, which starts under the rubric recommendations. What Dr Naidoo says here is that, requiring Major General Khan, as he was then known, to testify in person before the Commission on 28 September, that is today, may be clinically counterproductive. The unfamiliar environment, formal nature of the proceedings and sustained interpersonal, there seems to be a bit of an issue with regard to the copy. But in essence what he says is that one must distinguish between functional recovery and that there is a temporal leg between functional recovery and the ability to testify.

He says that if he was subject to scrutiny, it is likely to constitute significant psychological stresses, which may exacerbate symptoms of anxiety and hyperarousal and a consequent adverse effect on his concentration. He continues the sentence to tell us why it would be counterproductive.

And in the next page, at page 58, he continues in his opinion that his participation be better facilitated by permitting him to testify remotely by a secure video link from an appropriately controlled and familiar environment.

Then he makes a further recommendation that the evidence be taken over shorter periods with predetermined breaks, rather than through prolonged periods or continuous questioning. Now, this is what the Commission's expert is saying. We are not yet relying on what Dr Malapi says. And we say we are happy to ...[intervenes].

CHAIRPERSON: What exactly does this mean? Or rather, what are the shorter periods and predetermined breaks? Is 9:30 to 11:00 with a 30-minute break the sort of thing that the doctor is talking about here? And then 11:30 to 1 o'clock with a break for an hour.

MR VALLY: Yes.

CHAIRPERSON: And then 2 p.m. up to some point. If we are not to adjourn at 4 p.m., which is the usual time for adjournments, we usually take another break at 4.00 p.m. Is that what the doctor is talking about?

MR VALLY: I understand that that would fall within the scope of his proposal. I cannot ...[intervenes].

CHAIRPERSON: So there is no problem there.

MR VALLY: Yes, I cannot speculate on exactly what the doctor means when he makes the proposal, but I understand that it must be staggered testimony and there must be allowance or tolerance for regular breaks so that the stresses that he has identified, that exist within Mr Khan, is not triggered and that would not stand as an

impediment to him completing his testimony.

CHAIRPERSON: All right. All right. As I say, it looks like there is no issue then there.

MR VALLY: Yes.

CHAIRPERSON: Also, and quite crucially, the doctor, and you do not seem to counter this, the doctor also says Mr Khan can testify, but just that the doctor, that is, the independent doctor, says that, or rather suggests that this should be done remotely.

MR VALLY: Yes.

CHAIRPERSON: So those are the two important take-homes. Now, this thing about a month, if we are not minded to grant that, we have an application for the hearing of Mr Khan's, part of Mr Khan's evidence in-camera, not all of it, just part of it. And is that, if we do grant that application, we are yet to hear it, if we do grant that application, it is scheduled for, is it what, 6 October? Do we have a date, a suggested date from the Evidence Leaders, Ms Hassim, or not, for the in-camera, for the in-camera.

ADV HASSIM SC: For the in-camera, and I have canvassed this with Mr Vally just before we started, the proposal is for 6 October.

CHAIRPERSON: 6 October. All right, thank you. Thank you, Ms Hassim. So, we have that, but as I say, we are

yet to hear that application and determine it. But if we are minded to grant that application, my understanding is that the issues to be dealt with are within a very narrow compass. So, whatever complaints Mr Khan may have about the volume of documentation should not or does not apply to that. What problems would you or Mr Khan have if we do grant that application and if that application is to, rather, no, no, the in-camera evidence is to be heard on the 6th of October, what problems would you have?

MR VALLY: Yes. Well, Chair, let me start by saying that I had a discussion with Advocate Hassim this morning, and it was by way of clarification because *ex-facie*, the application itself, we were uncertain as to whether or not the evidence that was intended to be led on that day would be confined to what was already traversed. Alternatively, if there was any new evidence that may have been led, and if that was so, when do we see that evidence? Advocate Hassim has confirmed now this morning that there is no intention to lead any new evidence. That record is confined to what was led.

Now I can take instructions from Mr Khan in relation to that particular aspect. Prior to that ...[intervenes].

CHAIRPERSON: But you, as his attorney who is aware of most of the detail, what problem do you see that

...[intervenes].

MR VALLY: We do not have a problem, because ...[intervenes].

CHAIRPERSON: [Indistinct]... [cross-talking] yes, yes.

MR VALLY: It then falls within the confines of what Dr Naidoo had suggested, that the evidence is certain and determined and it is not going to be the subject of any change. So at least we have got certainty there, and I would say, well, then let us deal with it. What we can do is we can prepare a brief 10.6 statement in relation to those issues, so that we are not confronting Advocate Hassim on the day with things that she would not be prepared on otherwise. And then I do not see any impediment to us continuing there, subject to the strictures of what Dr Naidoo had said.

CHAIRPERSON: Ja.

MR VALLY: So we can prepare a video link, the 10.6 statement can be prepared prior to that hearing, and we can proceed on that day ...[intervenes].

CHAIRPERSON: All right.

MR VALLY: With regular breaks, as Dr Naidoo had suggested.

CHAIRPERSON: With that attitude then I assume, because you said you are going to take instructions from Mr Khan, with that attitude, which I welcome, I assume that

when you seek those instructions you are basically also going to be advising Mr Khan that this is your attitude. Of course, we are still going to hear from Ms Hassim regarding the extent or quantity of what is going to be traversed on the 6th. That is, if we do grant the application for an in-camera hearing on the aspects that ...[intervenes].

MR VALLY: Yes.

CHAIRPERSON: That application is dealing with.

MR VALLY: Indeed, Chair.

CHAIRPERSON: Ja.

MR VALLY: And our attitude would then be to recommend to Mr Khan to allow the in-camera proceedings, which I doubt he will have any issue with ...[intervenes].

CHAIRPERSON: Yes.

MR VALLY: To at least come to completion, so we can put a tick next to that checkbox and deal with everything else that remains in the fullness of time.

CHAIRPERSON: Yes, yes. But again, for the benefit of the public, this by no means suggests that nothing will be heard in public concerning Mr Khan. It, if we grant the application for an in-camera hearing, it will only be relating to a certain aspect or certain aspects of his testimony. The rest remains to be heard in public.

MR VALLY: And we accept that, Chair.

CHAIRPERSON: Whether remotely or otherwise, but to be heard in public.

MR VALLY: Yes.

CHAIRPERSON: Ja. Any further submissions?

MR VALLY: All that remains is for us to agree on how we are going to tackle this beast, number one. Number two, we also require clarification. There is an issue that I raised regarding a witness that we have identified as Witness X, but I will take Chair through the identity of that witness. The witness' identity was inadvertently disclosed to us and on the face of it, we accept that it was a mistake. However, having regard to the evidence that is tied to that witness, and I dare not say anything about it further, it seems that the witness' testimony is relevant to the evidence we intend addressing when we get to that aspect of the 10.6 statements.

We require an indication from the Commission or from the Commissioners on whether or not we can disclose that evidence to Mr Khan. Let me give you the context and the background. There was a disclosure made to us. It was made via WeTransfer. I immediately accessed it because these things have a habit of expiring when you blink. I already traversed the subject matter and identified the subject matter as being relevant to Khan's testimony. I had not yet sent it to Khan because he was in hospital at

the time and I had no means of electronically communicating with him, so I did not give the evidence to Khan.

The very next day, Ms Wilsnach then contacted me and said, please do not give this evidence to Khan. I was not authorized to give it to you. But I already read the evidence. Now, having regard to issues which then arise for us to consider and to reply on or to prepare evidence on, this is relevant evidence and we simply seek directions on whether or not we should deal with it or we are able to, or be released from the undertaking that I have given to Ms Wilsnach that I will not show it to my client. It is very relevant, I think.

CHAIRPERSON: May I just, as an initial suggestion, request that you and Ms Hassim have a discussion about that and see if you are able to approach us with an agreed position. Ja, please continue.

MR VALLY: Indeed, thank you, Chair. Chair, then I do not think I should go through the correspondence because it is simply going to serve to delay. I think the points are crisp and clear and the Commissioners understand our position as at this morning, so I will leave my submissions there and if there is anything new that Ms Hassim may raise in answer, I will address in reply.

CHAIRPERSON: Thank you very much. I touched on the

fact that besides an in-camera hearing, if we do grant that, part Mr Khan's evidence will be heard publicly ...[intervenes].

MR VALLY: Yes.

CHAIRPERSON: Remotely or otherwise. Now, regarding when that will happen, a date for that would have to be determined and at this stage I am not necessarily saying a month which is what I understand you and or Mr Khan to be asking for, but that would have to be determined and thus far or as presently advised I am inclined not to grant an application for a postponement in the nature asked for and if we do grant the application for an in-camera hearing that will be heard on the 6th or as close as possible to the 6th of October. So that is already telling you that my inclination is not at all to grant a postponement of about a month.

MR VALLY: Yes. Well, Chair, the only thing that I can then do is ask that the committee look at Dr Malapi's report.

CHAIRPERSON: Yes.

MR VALLY: The report commences at paginated page 88. It is the annex marked MV9.

CHAIRPERSON: Yes.

MR VALLY: And I can do no better but to simply reflect to the Commission the views of Dr Malapi.

CHAIRPERSON: Yes.

MR VALLY: I am not a medical practitioner and I doubt anyone else in the room is.

CHAIRPERSON: Yes.

MR VALLY: The only evidence that we have is that of Dr Malapi. If there is anything that is medically sourced that counters what Dr Malapi says, then we can engage the issue.

CHAIRPERSON: Just for purposes of the record, just focus on one or two sentences on the point you want to make about what the doctor says in this regard.

MR VALLY: Well, in two sentences, the evidence is substantial. The doctor appreciates that and there is a recognition of a time that must be reasonable for Khan to ...[intervenes].

CHAIRPERSON: I thought we had, you see why I am asking you to tell us what the doctor says is because I thought we already traversed that ground and you even said you would recommend to Mr Khan that evidence on this one aspect or on these in-camera issues, if I may call them that, you will recommend to him that that be done.

MR VALLY: Yes.

CHAIRPERSON: So it would more be the timing but even as you agreed to recommend to him I think there was already mention of the date of the 6th. So, I understood your agreement to recommend to be accepting the

possibility of the 6th of October. Now what you are saying about what the doctor says to be, seems to be going back on that.

MR VALLY: No, perhaps let me clarify, Chair.

CHAIRPERSON: Yes.

MR VALLY: What I am suggesting is bite-sized chunks of evidence. So, the in-camera evidence we can take it out of contention, because it seems appropriate ...[intervenes].

CHAIRPERSON: I see.

MR VALLY: That we would deal with that in the manner suggested by Chair.

CHAIRPERSON: Okay. All right.

MR VALLY: It is the rest of this ....[intervenes].

CHAIRPERSON: I just wanted to be sure. I just wanted, I thought now you are throwing your agreement to recommend, I thought you are now throwing that out through the window.

MR VALLY: No, no, Chair.

CHAIRPERSON: So ...[intervenes].

MR VALLY: [Indistinct]... [cross-talking] like dancing, you take two steps forward and two steps back.

CHAIRPERSON: All right, all right. Anything else? Any further submissions?

MR VALLY: Those are the submissions, Chair. We stand by the recommendations made by the expert of the

Commission, the independent doctor and also as amplified by Dr Malaki. That is our position this morning. I do not think I can take it any further than that.

CHAIRPERSON: Thank you.

MR VALLY: Thank you, Chair.

CHAIRPERSON: Ms Hassim?

MR VALLY: Thank you, Chair. Chair, I ...[intervenes].

CHAIRPERSON: Not more than 30 minutes, please.

ADV HASSIM SC: I will be less than 30 minutes, Chair, but I must address certain points to you because from where the Evidence Leaders sit, we, and I in particular, have a very, very grave concern with this application and the way it was brought. In fact, it is not an application. This is presented to the Commission as a *fait accompli*. Mr Khan is not present. He is not in attendance despite a subpoena that is operative requiring him to be in attendance today.

So, Chair, I am saying to the Commission that we have a very grave concern with this application. It conflates repeatedly two issues. The first is whether Mr Khan's medical condition is such that it requires reasonable accommodation from the Commission in the manner in which his evidence is tendered and the questioning. On that score, we have no issue. We are in agreement that there should be reasonable accommodation

made. We have said so to Mr Vally and to Mr Khan and we said so on the 15th of September, and I will take the Commission there in due course. We offered a course in which we would give effect to the independent doctor's recommendation, that is Dr Naidoo.

But the second issue, and they conflate this, is whether the medical evidence entitles Mr Khan to unilaterally ignore the summons, postpone his appearance for a month, because look at the Notice of Motion, it is much more than a postponement application for today, it is to postpone his appearance for at least a month and then to prescribe the terms on which the Commission may hear him.

And what I say is troubling, Chair, is that this is not an application at all, because before the Chair has even determined it, Mr Khan's, perhaps the legal team took the view that he will not attend today. So this proper sequence has been reversed. Mr Khan did not come and now he wants the sanction of the Commission for his non-attendance. It is not a postponement in the true sense which is to bring it timeously, it is an indulgence and you set out the factors justifying it. It does not even set out the factors justifying the non-attendance today and I will come to that in a moment as well.

And then in addition, as I say, to the non-

attendance today, the Notice of Motion has become now a vehicle for obtaining a procedural scheme, a procedural code for the way in which Mr Khan's own testimony will be, and participation in the Commission will be managed going forward. I do not raise this to be pedantic. We have gone through this a number of times now in this Commission and I thought that one would not have to refer to the case law on postponement and I am not going to do so in any detail, except to say that the requirements are clear.

It has been set in numerous judgments and in the National Police Service Union case of the Constitutional Court in particular. That is the first thing. The second thing is that the Secretary, the Constitutional Court also made it clear in the Zondo Commission, Zuma 1, the Jafta judgment which we have dealt with before, that the person on whom a summons is served is obliged to appear at the sitting of the Commission on the designated date. That is the first thing.

The second thing that that judgment said is that the refusal to attend, sorry, that the obligation is to appear on the designated date until excused and that the failure to appear would be an offence under the Commission's Act. My submission, Chair and Commissioners, is that the refusal to attend today is contemptuous of this Commission's ruling and which was on the 1st of September

and of the subpoena that was subsequently issued out of an abundance of caution because in fact, Mr Khan remained under the initial subpoena which required that he appear before the Commission and the ruling made it clear that that would be the 28th of September.

So, while we have statements from Mr Vally in his affidavit that he has deposed to in the postponement application, not Mr Khan, the affidavit is written by Mr Vally. There is not even a confirmatory affidavit supporting it, by Mr Khan. So while he says, and I think it is in paragraph 85 of the postponement application that the Commission, he tries to reassure the Commission that, maybe I can just go there. He says:

> "The Commission does not have before it a witness refusing to testify."

I do not see how that can count as any reassurance because the Commission does not have a witness before it today, full stop. And he has opted to refuse to be in attendance today before the Chair has decided this application and whether he would be excused on good cause. So this repeated claim by Mr Khan's legal representatives of cooperation with the Commission, including in the previous postponement the Commissioners will recall, rings hollow.

This application was served on us late last night.

The ...[intervenes].

CHAIRPERSON: Were arrangements made and was he directed where he should be for purposes of him attending remotely and was he sent a link for that purpose?

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

CHAIRPERSON: I can already see Mr Vally saying based on what the independent doctor said, he could not have been expected to be physically present before the Commission and that had he been directed, here is where the remote hearing is going to, or rather here is where you should be for purposes of the remote hearing and here is the link.

ADV HASSIM SC: So, Chair, so when I speak about attendance, I mean a remote and virtual attendance and the reason I say that is because we made that offer on the 15th of September.

CHAIRPERSON: Yes.

ADV HASSIM SC: And it is in the postponement application at page 60.

CHAIRPERSON: Yes.

ADV HASSIM SC: And if I could just go, it starts at page 60, but the relevant paragraph is at page 61, paragraph 5. It was what we, what the Commission's legal attorneys say in paragraph 5 is:

"We request that you advise on your

requirements."

Well, first it says we confirm his scheduled appearance on 28 September 2026 pursuant to Dr Naidoo's report.

> "We request that you advise on your requirements for facilitating the said virtual appearance."

We heard nothing from them on this.

> "In the light of Dr Naidoo's report we intend to accommodate Major General Khan's condition so that he has breaks between hearing days. We envisage the following hearing dates ..."

And then we set out the hearing dates, 28 September, 1 October, 5 October and 5 November, of course until excused, assuming it does not finish on 5 November.

> "We trust the above is in order and await your urgent reply."

This was rejected by Mr Khan's attorneys.

CHAIRPERSON: Rejected or not responded to?

ADV HASSIM SC: Well, the response was, that is where it gets complicated, Chair, because the response was not even to deal with this in substance, it was to say actually Mr Khan had a relapse. So, I think I must go to that part of

the correspondence as well, Chair. If you may indulge me, I am going to get there in a moment, because the response to this was not thank you for the offer, it was there has been a relapse, and I will come to that in a moment. But before I come to that I wanted to deal with the timing of this application.

ADV BALOYI SC: Ja, maybe you may then now or later deal with the complaint, there is a complaint from Mr Khan's legal representatives that you then issued a subpoena which requires him to attend personally and the suggestion is that created a confusion but also it is contra what Dr Naidoo has said.

ADV HASSIM SC: So, that is right, Commissioner Baloyi, there was a subpoena that was then issued and again it was my understanding out of an abundance of caution to ensure that there will not be any argument that there is not a subpoena operative requiring the attendance today, but that was not definitive. That was always subject to accommodations by the Chair as to how the hearing would take place.

ADV BALOYI SC: Was that clarified, because the complaint is the subpoena requires personal appearance and that creates a confusion, whether your offer for virtual still stands in the light of your subpoena which speaks of a personal attendance, was that clarified in discussions or

anywhere else?

ADV HASSIM SC: Well, we had no discussions about this. It is raised last night. Mr Vally, it was open to Mr Vally at any point to approach the Chair in fact directly to request, sorry, to request an accommodation to address reasonable accommodation as we had proffered. So, the effect of the subpoena was simply to ensure that the appearance today, in whatever form, was secured. It was not an intention to say it is now going to be, and I know that that subpoena has four consecutive days in the subpoena, but again that is merely a way of saying that the witness must be in attendance until excused. That is all it was.

If there was a genuine confusion and genuine concern and genuine intent to actually be present today virtually, then one would have expected Mr Vally to raise that with us and he did not. And I do think that the appropriate course in those circumstances would have been for Mr Vally to approach the Chair immediately after receiving that subpoena for a ruling on the mode of evidence and the duration and so on.

ADV KHUMALO SC: And on, sorry, on page 73 the Commission's letter makes the point that although he is required to attend on the 28th, that is subject to any directions the Chairperson may make regarding practical accommodations recommended.

ADV HASSIM SC: Correct.

ADV KHUMALO SC: And that is after the subpoena of the 17th, because it is in direct response to the complaint of the 17th by General Khan's lawyers, page 64. And then on page 73, paragraph 24.4, this is now after the deterioration issue is raised and the point is made that he remains required on the 28th, subject to any directions Chair may make regarding practical accommodations, recommended by the doctor, so not contradicting what the doctor has said.

ADV HASSIM SC: Not at all. Not at all, Chair. That is absolutely right and you will see, Commissioner Khumalo, that that letter that you are referring to is a very lengthy letter. It begins on page 68. The legal team took their time to respond fully to the new issues and the concerns that were being raised by Mr Vally and culminating in paragraph 24 that you have referred to. And that was on the 17th of September by the way, that letter.

So, this is a complaint that may sound, you know, on the face of it to have some merit but it really does not. So what I am submitting to the Commission is one, that this application is not an application at all. It was brought at the last minute, it was brought last night. Mr Vally addresses it in his affidavit. He says that the application became avoidable only on 25 September. Why? Because

on the 25 September he was again pressed for a response by the Commission's attorneys for what their intentions were regarding these proceedings today. He then makes, in fact, what I would say is a rather breathtaking statement, what he says at paragraph 68 of his affidavit, and I will just go there.

CHAIRPERSON: Page?

ADV HASSIM SC: Page 24. He says on 25 September, because he received an email from Ms Wilsnach, then he says:

> "I sought agreement to a postponement. I did so to avoid consuming Commission time with an application whose objective basis ought by then to have been apparent."

I do not know on what basis Mr Vally can think that the application for a postponement ought to have been apparent by that date, and again it conflates and it ignores settled law on postponement applications. So he says that and then he says, so 25 September, but in fact if you look at the correspondence, Commissioners, you will see that as far back as 17 September, Mr Vally indicated that they could not confirm that Mr Khan would be able to attend the hearing today and that is, if I can just go to that letter, it is in the correspondence bundle, the reason, and let me

clarify this also Chair the reason you have two bundles before you today, which is a correspondence bundle and a postponement bundle, is because at a certain point on the weekend when it became apparent to me that we were not receiving a postponement application and we were going to have an issue this morning, I asked that a correspondence bundle be prepared so at least I have something to take the Commissioners through. So it is 81 in the correspondence bundle, but let me take you to the page in the postponement application. It is page 64.

So, and page 64 is the letter where he says that in fact Dr Naidoo says something different from what we think he says. Sorry, Chair, because I am working off a different bundle I do not have the ...[intervenes].

CHAIRPERSON: You are left with 8 minutes.

ADV HASSIM SC: Thank you, Chair. Ja, so it is paragraph 2:

> "We are advised that there has been a further material development. Since Dr Naidoo's assessment of our client on Wednesday, our client's condition has further regressed. As a consequence his treating psychiatrist extended his in-patient admission ..."

Etcetera. He makes the same claim on the 18th of

September where he confirms, in the interest of time I am not going to go there, but it is the letter of the 18th of September where he confirms that there was a regression and that they cannot confirm with any certainty that Mr Khan would be able to be in attendance.

But first of all, it is clear from the face of Dr Naidoo's report that he did not say that Mr Khan was medically unfit to testify today. He said it can take place provided, and he recommended, he advised that it be done virtually, etcetera. I have dealt with that, you have seen our letter.

They say in the statement, in the affidavit, that there is no competing medical evidence to show that Mr Khan is fit to testify today, but that is to reverse the burden. It is not for the Commission to establish that Mr Khan is actually available to testify, fit to testify. It is for the applicants for a postponement to make out that case, and they do not do so, and they do not even do so with the report of Dr Malapi, because if the Commission has regarded Dr Malapi's report that is attached to the postponement application, nowhere does he say that Mr Khan cannot appear today.

He says other things but he says nothing about his appearance for today. And in fact, what is quite important about Dr Malapi's report is he does not even refer to this

regression that Mr Vally referred to and because of time I am not going to go to the correspondence. Our letter on the very same day on 17 September the attorneys pointed out to Mr Vally that if they are wanting to make that claim of the relapse, they need to furnish the Commission with a medical report. There was no medical report. That was 17th September. We have Dr Malapi's report, which has come now last night and says nothing about the regression.

Dr Malapi's recommendation says other things. It talks about this procedural way things can be managed but I think that here, Chair, I would like to submit that even that should be approached with caution because the question is what factual basis, what is the factual basis for Dr Malapi's recommendation. There is some obvious questions that arise here. Was Dr Malapi advised that the principal evidence against Mr Khan was provided to him as far back as June, all of the WhatsApp evidence.

ADV BALOYI SC: I will just ask a question related to that. We, the Commission appointed an independent medical doctor. On what basis would Dr Malapi's latest report of 25 September be the last word on it, because it seems to open up another line of discussion when in fact the ruling was that an independent medical examiner will finally resolve the question of his acceptance. What do we do,

what weight do we put to Dr Malapi's report? Problematic as it is, it does not say he cannot appear today and it does not say he cannot answer questions, so I accept that, but what really, what weight do we attach to it in the light of the purpose of the independent examination?

ADV HASSIM SC: Well, my submission to the Commission is to put very little weight on this, including what was, what information was put before Dr Malapi in order for him to make this report in which he says all of these things about the volume of evidence, which is a very distorted representation by the way of the evidence and when Mr Khan have the evidence. So I am saying very little weight can be attached to that report.

There is one report, there is a ruling of this Commission which says that Mr Khan has to appear today, unless excused by an independent medical assessment, by an independent doctor. That doctor has provided his report and he did not excuse him and that is where it ends, Commissioner Baloyi.

So, if I can just quickly touch on this, the disclosure history. They complain, well, it is a very distorted disclosure history. Again it is also dealt with in depth in the letter that Commissioner Khumalo went to on the 24th of September where we needed to set out the history of the disclosure of evidence. Remember, Chair,

the first 10.6 notice was sent on the 5th of June. If I had time I would take you to that notice but it is in the bundle, in the correspondence bundle. If you have a look at it, it is very detailed what the questions are. It is not broad open ended questions, very detailed questions as to what the Evidence Leaders are seeking from Mr Khan. That was on the 5th of June. By the 24th of June he had all of the evidence on the WhatsApp communications. They complained that they then received some further 11,000 pages. That 11,000 pages, I am not sure exactly what they are talking about. What we did do, is we provided them with the WhatsApp communications. They had difficulty with the format of those communications. We gave them another version on a USB stick and then we gave them a full, paginated, indexed bundle.

CHAIRPERSON: Another version of the same thing?

ADV HASSIM SC: Of the same material. Of the same material, and then Chair recall, we led evidence before the Commission which began on the 3rd of July with fully indexed files, three files, file 1, 2 and 3. 1 was the WhatsApp bundle, WhatsApp chats that ran to about 6,800 pages. We extracted a core bundle for the purposes of leading it, but that core bundle was extracted from the 6,800. There were, file 2 concerned other exhibits that had been put before the Commission.

CHAIRPERSON: Two minutes.

ADV HASSIM SC: Thank you, Chair. That had been put before the Commission that was important for us to disclose to Mr Khan. File 3 was the financial disclosure forms that I took the Commission through in July. All of that has also been led in detail and they have had it since then. So the complaint that there has not been enough time to absorb this volume of evidence is unfounded and I do not think that Dr Malapi is aware of the true picture regarding that, another reason why we cannot rely on Dr Malapi.

ADV KHUMALO SC: Do we have a statement responding to the first 10.6 as we are sitting here today?

ADV HASSIM SC: I am instructed that a statement came through late last night and the plan by Mr Khan's legal representatives is to file statements in instalments and I think that is also what this Notice of Motion was trying to address. Now again, Chair recall there was an 88 page statement already in preparation. We were told that in the last postponement application that it was very advanced. Why that statement could not have been provided to us immediately, we do not know, except that these complaints about continuous disclosures, etcetera, Chair, those really do not bear scrutiny if you look at it and I do not have time to go through it.

CHAIRPERSON: Your time is up.

ADV HASSIM SC: Thank you Chair. My final submission then is that the appropriate course now is for the Commission to report the non-attendance of Mr Khan and to refer the relevant record to the NPA for consideration under Section 6.1 of the Commission's Act for breaches of the, for an offence under the Commission's Act. Thank you, Chair.

ADV BALOYI SC: Can I just clarify, you are not, you are speaking about his non-attendance today but you are not excusing his attendance for the balance of the days.

ADV HASSIM SC: I am ...[intervenes].

ADV BALOYI SC: That is not what you are saying

ADV HASSIM SC: It is not excusing, it is a non-attendance for today.

ADV BALOYI SC: Yes.

ADV HASSIM SC: The in-camera application is limited to the in-camera evidence that is already been led in-camera, and we have proposed 6th of October. That must continue and whatever happens after that will be determined together with my colleagues and the Evidence Leader team.

ADV BALOYI SC: Sorry, can I just clarify this, Chair. I am asking because the subpoena requires him to be here 28, 29 and 30th of September so a referral for prosecution

if that is done, you are not saying that he is not required to attend tomorrow because of this referral, that is not what you are saying. You are speaking about today, he is not here today.

ADV HASSIM SC: Yes, but I ...[intervenes].

ADV BALOYI SC: He is in defiance of a subpoena, he could be here tomorrow, because he is required to be here, he still has to be held accountable for non-appearance today. That is what I am trying to clarify with you so that we do not misunderstand you to say refer him for non-attendance now and then 29th, 30th if he does not appear because we are referring, but he will come back on the 6th of October. That is not what you are suggesting?

ADV HASSIM SC: Well, Commissioner Baloyi, practically things have moved on because of where we find ourselves now, so we may have practical problems with our schedule if we now were to sit tomorrow with this, because we have had to scramble to reconfigure things, so I am, and that is a practical issue. My submission is about today.

ADV BALOYI SC: Ja. Okay, we can leave it there. And maybe to ...[intervenes].

ADV KHUMALO SC: Ms Hassim, maybe that question, if you look at page 63, the subpoena starts on page 62, so General Khan would have been warned on the 17th of September that if he does not appear today that would

constitute an offence under 6.1 of the Commission's Act and there would be consequences attached to that and he is not here today. So what do we do with that?

ADV HASSIM SC: Well, that is the basis for my submission that the consequences of the Act must follow and that that should be referred. The non-attendance today, it does not matter what happens going forward, it does not even matter what arrangement we now put in place that is convenient, not just to Mr Khan but also to the Commission and the Evidence Leaders ...[intervenes].

ADV KHUMALO SC: So I am limiting my question to today, what do we do with the fact that he did not appear today ...[intervenes].

ADV HASSIM SC: It should be ...[intervenes].

ADV KHUMALO SC: And he did not take up the offer that he be accommodated ...[intervenes].

ADV HASSIM SC: In my view the non-attendance is in defiance of the subpoena and therefore is in breach of the Commission's Act and should be referred, and is an offence under 6.1 in my submission, but that is not for me to decide. It should be referred to the NPA for determination.

ADV KHUMALO SC: Because the subpoena is clear that he should be here until excused by the Chairperson.

ADV HASSIM SC: Together with the ruling, Commissioner Khumalo, which also made it clear that he would only be excused on the basis of an independent medical report and he has nothing like that to rely on.

CHAIRPERSON: Mr Vally ...[intervenes].

MR VALLY: Thank you, Chair.

CHAIRPERSON: Let me just, before you do whatever reply, just ask pointed questions. Where is Mr Khan today?

MR VALLY: Chair, he is not here today, he is at home.

CHAIRPERSON: Why is that so? Why is it, I do understand the fact that according to the independent specialist, medical specialist, he did not have to be here. Of course what the independent medical specialist says is not final.

MR VALLY: Yes.

CHAIRPERSON: We will have to decide on that but we do not really have a reason not to accept that. So, now in the face or in the light of the fact that there was a letter written to you which sought to facilitate the process of a remote appearance by Mr Khan, why is it that he is sitting at home and not at a place arranged for that remote hearing? Why is that so? There was a letter which sought to initiate that process, the process of a remote hearing.

MR VALLY: Well, Chair, I will answer to that and I must

just be mindful of the time. How much minutes do I have?

CHAIRPERSON: Ag, let us just do this and maybe I will decide after my questions and my co-Commissioners' questions what time, what more time I give you.

MR VALLY: Chair, at the time we were chasing the deadline for purposes of complying with the 10.6 notice. We needed to put in a statement. In as much as Ms Hassim says that ...[intervenes].

CHAIRPERSON: But responding ...[intervenes].

MR VALLY: Yes.

CHAIRPERSON: We want to kick start this process so that Mr Khan can appear remotely.

MR VALLY: Yes.

CHAIRPERSON: That was not going to take forever to respond to. However much you were concentrating on the statement, there is simply no way you did not have time to respond to that. So my question stands, why is it that Mr Khan is not where he should be, that he is ready and waiting remotely for him to appear before this Commission remotely. Why is that so?

MR VALLY: Well, Chair, there was no arrangements made and the reason why ...[intervenes].

CHAIRPERSON: Sorry, sorry?

MR VALLY: There were no arrangements made.

CHAIRPERSON: There were no arrangements made

exactly because you did not respond to the point of substance which was let us kick start the process of setting up this remote hearing.

MR VALLY: Yes. But now let me give you further information, and I think it is important that Chair is aware of this. We exchanged numerous correspondence. We were very active on this matter. In fact, we approached Ms Wilsnach to identify the expert the very next day after your ruling and there were delays on that side but I am not going to go into ...[intervenes].

CHAIRPERSON: No, let us ...[intervenes].

MR VALLY: I want to ...[intervenes].

CHAIRPERSON: Let us leave those. Let us focus on this specific matter.

MR VALLY: Let me draw your attention to this, Chair. If I may take you to paginated page 58, and this is where the wheels fell off, we believe, because it is about interpreting what Dr Naidoo, the Commission's expert, had to say about that ...[intervenes].

CHAIRPERSON: Which paragraph at 58?

MR VALLY: It is the second paragraph. In fact, one can have ...[intervenes].

CHAIRPERSON: I am further mindful, is that the one starting I am further mindful?

MR VALLY: Yes, indeed.

CHAIRPERSON: Yes.

MR VALLY: Chair must have regard to the preceding paragraph where, that is where Dr Naidoo introduces the facilitation via remote video link and Dr Naidoo says:

> "I am further mindful of the considerable volume of documentary material that Major General Khan has reportedly been required to consider in preparation for his testimony, including in excess of 11,000 pages of documentation."

I am happy to qualify and justify why we say it is in excess of 11,000 pages, but let us continue because there is a point that needs to be made here.

> "Given his current psychiatric symptoms the associated difficulties with concentration and cognitive endurance ..."

And that is the phrase that I want Chair and Commissioners to bear in mind. The potential ...[intervenes].

CHAIRPERSON: Mr Vally, let us not waste time, please. This has nothing with responding to the Commission's attorneys reaching out and saying let us kick start the process of setting up a remote hearing. This has nothing to do ...[intervenes].

MR VALLY: Well, Chair ...[intervenes].

CHAIRPERSON: Sorry, sorry, sorry. Here is the doctor, this is part of why the doctor says it would be overwhelming for Mr Khan to sit here in front of everybody ...[intervenes].

MR VALLY: Indeed so.

CHAIRPERSON: And responding to probing questions. So this is part of that background and so he says, the doctor, I am not sure what the pronoun should be, so they say rather let us have, the doctor is not saying let us not have a hearing, the doctor is not saying Mr Khan should not participate in a hearing, the doctor says Mr Khan must participate in a hearing but remotely. So my question stands.

My question says the Commission's attorneys wrote a letter in which they are kick-starting the process of that remote hearing. None of what you have referred me to thus far deals with that. So my question stands, why is it that Mr Khan is not on standby somewhere in the face of the Commission's attorneys having reached out and said let us kick-start this process where, how and so on should we go about having Mr Khan appear remotely.

MR VALLY: Chair, we read the letter differently. They were not saying here is the proposal, they were saying what do you require for a video link. Our answer was

before we get to a video link can we first determine is he available to testify, because our interpretation ...[intervenes].

CHAIRPERSON: The doctor had already said, the doctor, Dr Naidoo had already said he is so, how could you go back on that? How could you, how could you unilaterally go back on that, Mr Vally?

MR VALLY: I will tell you why, Chair. It is because he says he can testify, but the question is when and in what circumstances. He said he can only testify if it is clinically realistic to expect him to testify. So your order was always dependent on the possibility of that testimony as evidenced by the medical doctor. The doctor does not say, and we accept that he does not say that Khan cannot testify, what he does say is you as the Evidence Leader, in the next paragraph:

> "It is clinically preferable for the Commission's Evidence Leaders to identify in advance and with reasonable specificity the principle issues upon which Major General Khan is required to provide evidence together with relevant documents and page references pertaining to those issues."

He has given a recipe for ...[intervenes].

CHAIRPERSON: But, Mr Vally, Mr Valley ...[intervenes].

MR VALLY: Yes.

CHAIRPERSON: Mr Khan cannot in the face of a subpoena decide unilaterally that I am not going to appear. He cannot. All the issues that you are raising now are the sort of issues he can and should have raised sitting there remotely, whether you would be there with him, preferably you would have to be here actually. You, between you and him, you then address exactly the issues that you are addressing now with him sitting there. The effect or the upshot of what you and him have basically done, probably he acted on your advice, what you have done is basically to flout a subpoena from this Commission. That is the upshot of what you and him are doing.

MR VALLY: No, Chair, I beg to differ on that because we followed what the Commission's evidence, expert had told us.

CHAIRPERSON: But the subpoena, Mr Vally, come on. Are you saying the subpoena means nothing?

MR VALLY: Chair, that is not our position. We are not saying we ...[intervenes].

CHAIRPERSON: Does the subpoena mean anything at all?

MR VALLY: Of course it does, Chair. Of course it ...[intervenes].

CHAIRPERSON: And what does it mean? It requires appearance, does it not?

MR VALLY: But is there a reasonable ...[intervenes].

CHAIRPERSON: It requires appearance, does it not?

MR VALLY: And if the appearance is incapable of being done, then there has to be a petition to be excused. This is what we are here ...[intervenes].

CHAIRPERSON: No. No, no, no, do not conflate issues. Do not conflate issues, Mr Vally. Do not conflate issues. There is a difference, because that is what I hear you to be saying, is that he would not have been able to testify because there are all of these outstanding issues. That goes to him being able to testify. It has nothing to do with him appearing. Those are two different issues. You are conflating issues. So it goes back to what I am suggesting to you, which is basically between you and Mr Khan, you took the stance that without those outstanding issues having been resolved to your satisfaction, that subpoena meant nothing. That is the upshot of what is happening here or what happened here.

MR VALLY: I disagree, with respect, Chair. We took the view that if the doctor has made the recommendation that the only way to secure testimony is by video link ...[intervenes].

CHAIRPERSON: You see ...[intervenes].

MR VALLY: Then he cannot be here physically.

CHAIRPERSON: Of course, of course. Of course, that is why the Commission's attorneys are saying, let us kickstart this process of having that remote hearing. So you seem to be ...[intervenes].

MR VALLY: [Indistinct]... [cross-talking].

CHAIRPERSON: You seem to be conflating issues in a way that totally confuses me, Mr Vally.

MR VALLY: Well ...[intervenes].

CHAIRPERSON: So I agree with you. I agree with you, Dr Naidoo says he should not come here. The Commission's attorneys accepted that and they are saying, let us have a remote hearing, how do we go about doing that? And then you raise these issues about outstanding issues, and in the end he does not attend. That is flouting the subpoena, simple as all that.

MR VALLY: Chair, with respect, I do not think it is for us to make that video link available, because then we are open to questions ...[intervenes].

CHAIRPERSON: Nobody, nobody necessarily ...[intervenes].

MR VALLY: We can stand the matter down.

CHAIRPERSON: Let us have, you could have engaged, though, you could have engaged and you could have said, no, no, no, who provides the link, but made it clear that it

was not an issue for you, for Mr Khan, to attend remotely. Did you do that? You did not.

MR VALLY: No ...[intervenes].

CHAIRPERSON: Did you make an issue, did you make an issue of who was to provide the link? If you did, show me where?

MR VALLY: Chair, the video link ...[intervenes].

CHAIRPERSON: No, no, no, please answer me. Please answer me. Did you make an issue of who should provide the link, and if you did, where did you do that? Show me.

MR VALLY: We did not make the issue ...[intervenes].

CHAIRPERSON: So why do you make ...[intervenes].

MR VALLY: [Indistinct]... [cross-talking] get to that point.

CHAIRPERSON: If you did not, if you did not, why do you make this point now? Why do you make it an issue now?

MR VALLY: Because, Chair, we went on the advice of the clinical realism. Are we going to get to that point and simply come here and ask for a postponement? To me, it was artificial. We have to deal with the issues of substance before we get to issues of technical appearance.

CHAIRPERSON: I will tell you this. I mean, I do not even have to give you examples on something like this, Mr Vally. We have had other witnesses here about whom there were no issues of appearing remotely, witnesses who came here, quite a number actually, raised issues about the

volume of documentation that they had been served with, and also the difficulties they had testifying before they had gone through that documentation to their satisfaction. But those witnesses would be sitting there, and their legal representatives would be arguing that issue about the timing, the service, the volume or quantity of the material, arguing here or there, sitting here, and the witness would be sitting there.

I do not see the difference. I do not see. Mr Khan should right now be sitting at whatever spot would be agreed to remotely, and then you would be raising all of the points you are raising about whatever outstanding issues. He cannot, you cannot, the two of you, unilaterally decide that because there are outstanding issues, then Mr Khan is not attending. It cannot work that way, Mr Vally, it cannot.

MR VALLY: Well, Chair, my only answer to that is then, are we going to have reliance on Dr Naidoo's report, or are we going to ignore Dr Naidoo's report, because for Mr Khan to be here means that we must disregard what Dr Naidoo said.

CHAIRPERSON: I do not understand that. That is absolutely nonsensical, Mr Vally.

MR VALLY: [Indistinct]... [cross-talking] [intervenes].

CHAIRPERSON: No, no, no. No, no, no. That goes to

whether or not Mr Khan would be ready to testify. Do not conflate issues. But the question whether in the face of a subpoena he should not appear at all is something else. So you can raise all of the issues you are raising, including what that medical certificate says, sitting there at whatever arranged venue for purposes of the remote hearing. He should be sitting there and then raising all of the issues, including what is in this report that you are asking, must we now ignore it. I am not saying we should ignore it, but I am saying, raise those issues about that report with Mr Khan sitting at that remote venue. The two are not one and the same. It is on that basis that I have maybe for the fourth time now been saying you are conflating issues and that in fact your argument on this aspect, I will repeat, is actually nonsensical, Mr Vally.

MR VALLY: Well, Chair, I accept your view on the matter. We still disagree and we persist in our stance and we leave it in the Commission's hands. If the Commission wants to refer General, Mr Khan's conduct, we will deal with it at that forum. We do not believe that we have been unreasonable. We have followed the guidance of the Commission's expert, let alone our expert, and that is where we are. Our interpretation ...[intervenes].

ADV BALOYI SC: Mr Vally, can we just be clear about this. You have disregarded, you and Mr Khan have

disregarded the date prescribed in the subpoena. It is as simple as that. There is a date, before you get to a debate about what Dr Naidoo says and Dr Malapi says, the subpoena, he must appear the 28th. Between the two of you, you decided he will not appear for the justification that you are seeking to persuade us about. But there was never any confusion that he is required to be available today, and you disregarded that, you and him.

MR VALLY: I would not say that we disregarded it because when Commissioner Baloyi, you say disregarded, it means there was will-directed behaviour to breach the law, and we say there was no intention to breach the law, simply because there was an impossibility on our interpretation of Dr Naidoo, read with Dr Malapi. And the law does not expect that which is impossible of us, so ...[intervenes].

ADV BALOYI SC: There is no impossibility with General Khan appearing virtually today. It is not factually impossible. You chose to interpret Dr Naidoo in a certain way and then advised him you do not have to appear because I, Mr Vally, have this debate about Dr Naidoo. That is what it is. Impossibility means factually impossible. He could have appeared. He is not disabled. He is not unable to sit up and appear virtually. That is a factual inquiry. And what I am putting to you is your

affidavit and whatever else you have said now, you have not made a case for factual impossibility of him to sit through a virtual appearance. There is no such factual thing. You, it was factually competent. He was factually competent until you tell us otherwise, factually competent to sit through a virtual connection. You advised him, you have your own views about Dr Naidoo, what Dr Naidoo is saying, which seem to be, you seem to be the only one that is holding that view about what Dr Naidoo says. You advised him in the light of your view about Dr Naidoo's report, he does not have to appear. That is what it is. And Chair's engaging you about you conflating what he is saying. In fact, I do not believe you are conflating things for real. I think you do understand what the Chairperson is engaging you on, which is the difference between Mr Khan appearing virtually this morning to listen to this debate and you saying to him, well, you do not have to be there. I will go and cover the ground for you. You do not have to appear. That is a blatant disregard of a subpoena, which does have an effect, a force at law. The subpoena is a force at law, and you have chosen that it is okay to disregard it. That is what it is. If you want to comment, you can, but that is ...[intervenes].

MR VALLY: I would like to comment, Commissioner Baloyi.

ADV BALOYI SC: Ja, please go ahead and comment.

MR VALLY: Page 63 of the bundle requires, as Chair pointed out, personal attendance, not virtual attendance. The virtual attendance was by way of letter.

ADV BALOYI SC: This is 63 of?

MR VALLY: Of the bundle, of the postponement bundle. It says, appear before the Commission personally on 28, 29, 30 of September and 1st of October, gives a time, until excused. That is what the subpoena says.

ADV BALOYI SC: Yes.

MR VALLY: The letter that raises the issue of virtual appearance gave us different dates altogether. Let me take you there.

ADV KHUMALO SC: But, Mr Vally, you must read it with page 61 and 73. You cannot read it in isolation.

MR VALLY: Yes, indeed.

ADV KHUMALO SC: Two days before the subpoena, you received a letter that said it will be a virtual hearing, and the letter was very clear. And then in 73, after the subpoena, they said to you, give us the requirements for that purpose, page 61, paragraph 5.

CHAIRPERSON: It says, it says, Mr Vally, at the top of, or rather, paragraph 5, page 61:

"In the light of Dr Naidoo's report ..."

That is a letter from the Commission's attorneys.

> "In the light of Dr Naidoo's report, we intend to accommodate Major General Khan's condition."

In so many words, that is two days before the subpoena. And then, after the subpoena, go to page 73 there at paragraph 24.4.

> "Major General Khan remains required to give evidence on 28 September 2026, subject to any directions the Chairperson may make regarding ..."

Underline.

> "... the practical accommodations recommended by Dr Naidoo."

MR VALLY: And then the question is, Chair, what were those practical accommodations, because it was not only about the virtual testimony. It was also about the evidence that needed to be prepared.

CHAIRPERSON: And then you choose not to attend at all, because there is something else. You just choose not to, he, he, through you, it is quite obvious that it was through you, then he chooses, you advise him not to attend, basically. So you basically advise him to flout the subpoena. I am sorry, Commissioner Khumalo had a question. I was just basically adding to, to ...[incomplete].

MR VALLY: Of course, Chair, I will wait for Commissioner

Khumalo.

ADV KHUMALO SC: I think it is the same point. We do not need to debate this further. You are here to move a postponement. He should have been sitting somewhere, waiting for the Chair to excuse him, because there is a ruling that says he must be here until excused, and that ruling is followed by a subpoena. So you are ignoring both the prior ruling and the subpoena and those take precedence over the report of the doctor, not the other way around. The doctor's report does not mean the ruling falls away, and it does not mean that the subpoena falls away. The offer was that he will be accommodated in line with the doctor's report.

So nowhere in the letters do they say the doctor's report must be ignored, and he must be here notwithstanding the report. The two letters were clear that to accommodate the recommendations in the doctor's report, this is what must happen.

MR VALLY: Yes.

ADV KHUMALO SC: Now, even that was flouted, because there was no comeback to say, okay, we accept your proposal, he will appear virtually until excused by the Chair.

MR VALLY: Well, Commissioner Khumalo, we did not flout the law. We did not flout the subpoena.

CHAIRPERSON: You did, you did, you did ...[intervenes].

MR VALLY: Because your order, if I may complete, Chair, your order says:

> "Major General Khan ..."

Paragraph 3, page 33, paginated bundle:

> "... will be excused from appearing on Monday, 28 September only if, (1) he has voluntarily subjected himself to an independent evaluation by a medical specialist agreed ..."

And the specialist was not agreed, it was chosen by the Evidence Leaders.

> "... by no later than Tuesday, 8 September, between his representatives and the Commission's Evidence Leaders."

That evaluation occurred on the 9th of September. Now, that is the first condition that we say we meet, because we want to activate the will be excused part.

> "And such independent medical professional has provided a medical report to the Commission by no later than Tuesday, 15 September, confirming Major General Feroz Khan's inability to testify on Monday, 28 September 2026."

We say we meet all of them, because ...[intervenes].

ADV KHUMALO SC: No, the doctor does not say he is unable to testify ...[intervenes].

MR VALLY: If I may just complete the point, Commissioner Khumalo. We say our interpretation is there is accommodations that is required for purposes of appearance. If those accommodations are not there, then the appearance cannot proceed, and that is in keeping with paragraph 3 of this Commission's order. So we say it cannot be interpreted as an intentional flouting of the law, because we followed the guidance flowing from the order having regarded, distilled through the report by your expert, and we have come to this conclusion.

ADV KHUMALO SC: The expert ...[intervenes].

MR VALLY: It is not ...[intervenes].

ADV KHUMALO SC: The expert does not say General Khan cannot be here on the 28th of September 2026. The expert does not say that.

MR VALLY: Yes, the report says ...[indistinct] [cross-talking].

ADV KHUMALO SC: Look at the last paragraph. Look at the last paragraph on page 59, and please be mindful of time. I mean, nowhere in this report does the expert say on the 28th of September, General Khan cannot be here.

The report talks to accommodations that must take place.

MR VALLY: Yes.

ADV KHUMALO SC: Not his ability to be here or not, whether virtually or otherwise.

MR VALLY: Now, if we are looking for an explicit text to say he is excused ...[intervenes].

ADV KHUMALO SC: It is not there.

MR VALLY: It is not there.

ADV KHUMALO SC: It is not there.

MR VALLY: One has to apply one's mind to this report and interpret the report, because Dr Naidoo, inasmuch as he has written a very lengthy report, does not address everything as we have seen, because it does not define what the periods of break should be, etcetera. We say we must now apply a reasonable measure of interpretation on this report. If the accommodations are there, there is no impediment to appear. If the accommodations are not there, there is an impediment to appear. That is our interpretation. I understand the Commission does not agree with our interpretation and ...[intervenes].

CHAIRPERSON: That is only if you do not take a subpoena seriously, Mr Vally, and you appear not to.

MR VALLY: We have taken it very seriously, Chair, and that is the reason why we have put together the application that we have.

CHAIRPERSON: Which you put in at night on the day before Mr Khan is supposed to appear before this Commission.

MR VALLY: Because the report by Dr Malapi, which was outstanding, which was requested by Ms Wilsnach in her correspondence, only came on the evening of Saturday that just passed.

CHAIRPERSON: And before that, you did not know that you would want to apply for a postponement.

MR VALLY: No, we did not have the reason or the time period that we required guidance from, from Dr Malapi.

CHAIRPERSON: Now, another question. Does Dr Malapi's report say that Mr Khan has regressed or that his condition has deteriorated?

MR VALLY: Chair, I think he touches on it, but it is not explicit. He does talk about the initial regression, if I can take you to it.

ADV BALOYI SC: Maybe answer the question with this in mind. Your submission is that after he was seen by Dr Naidoo, he suffered a regress.

MR VALLY: Yes.

ADV BALOYI SC: Now, the question that the Chair is asking you is, were in Dr Malapi's report, do we see that after the 9th of September, because that is the date of Dr Naidoo's report ...[intervenes].

CHAIRPERSON: Yes.

ADV BALOYI SC: There was a regression.

MR VALLY: It is not in Dr Malapi's report. Remember, we only received this report on Saturday evening. There was no time to ask for ...[intervenes].

CHAIRPERSON: So it is not there.

MR VALLY: It is not there. But it is in our correspondence that predates this report, inviting Dr Naidoo in keeping with the statement that he has made at the foot of his report, that this report is subject to change.

CHAIRPERSON: Where then do you get it, because in your affidavit you say he has regressed or that his condition has deteriorated. Where do you get ...[intervenes].

MR VALLY: In the light of his ...[intervenes].

CHAIRPERSON: Sorry, sorry, where do you get it from if the doctor does not say so? You are not a clinical psychologist.

MR VALLY: No.

CHAIRPERSON: You are not a psychiatrist, rather.

MR VALLY: I am not a psychiatrist.

CHAIRPERSON: So where do you get this from?

MR VALLY: We were advised by Dr, sorry, by my client's family that he had regressed, and that is the reason why there was an extension ...[indistinct] [intervenes].

CHAIRPERSON: His family, Mr Khan's family, are not psychiatrists or even clinical psychologists for that matter, so how could you, how could you as a practicing lawyer, say in your affidavit Mr Khan has regressed or that his condition has deteriorated?

MR VALLY: Well, Chair, I cannot say based on my observations that there was a regression. I can only account to you what was told to me. Now, if this is a point ...[intervenes].

CHAIRPERSON: [Indistinct]... yes.

MR VALLY: ... what I then propose is that we can stand the matter down and we can ask ...[intervenes].

CHAIRPERSON: But you do know, but you know, you do know that you could only make that statement, because this is a specialized field, you cannot, on your own observations, and you did not even observe him, you cannot make these averments or allegations in an affidavit, not being a specialist in the field. How could you say he has regressed?

MR VALLY: Chair, I think one must distinguish between evidence that is being tended by me in observation of conduct by Dr Khan as against evidence of me recounting what was told to me. I am not making the submission ...[intervenes].

CHAIRPERSON: It makes it worse. It makes it worse.

That makes it worse. If it is second-hand, it makes it worse coming from you in an affidavit.

MR VALLY: Well, Chair, I tell you how we go past this little impasse because I can understand why Chair takes the view that Chair does. If we stand the matter down and we get Dr Malapi to confirm by way of his clinical records that there was a regression, it overcomes the issue.

CHAIRPERSON: We are not going to do that.

MR VALLY: Well, there was little time for me to correct Dr Malapi's report simply because of its late arrival.

CHAIRPERSON: Because you moved at the last minute. You served the Commission with a postponement application at night on the day before the hearing of his testimony, of Mr Khan's testimony. You served us with a postponement application at night.

MR VALLY: And then the answer to that, Chair, is when were we able to move that application or serve the application? It was not until we received Dr Malapi's report, which came on Saturday. It is dated Saturday. That left us with Sunday to prepare what is clearly a substantive application, a lengthy application. And we have placed that application before the Evidence Leaders and the Commission as soon as we were reasonably able to do so. It is not a case ...[intervenes].

CHAIRPERSON: All right.

MR VALLY: ... of orchestrated ...[indistinct] [cross-talking].

CHAIRPERSON: All right, I give you three more minutes to wrap up your reply.

MR VALLY: I will wrap up by saying this, Chair, we cannot take this matter any further than what we can, and if the Commission is minded that Mr Khan's conduct must be referred, then it must be referred. I cannot sway the Commission any differently except to say we have based our position on the Commission's expert on an interpretation, a reasonable interpretation of the report, which justifies an absence here. There is a justifiable absence in our view, which then entitles the Commission to excuse Mr Khan from his attendance today and, in fact, from the next three days, which appears in the subpoena. On that basis, Commissioners, I leave it in your hands.

CHAIRPERSON: Thank you. Thank you.

RULING

The postponement application is refused, but Mr Khan's testimony will not be heard today because he happens not to be physically present for that purpose and by present I include his appearance remotely, which is what the independent psychiatrist proposed and which the Commission accepts. So it is physically not practical then to go ahead with his testimony. We are not going ahead

not because the postponement is being granted. As I say, the postponement application itself is refused. And, in fact, the nature of that application was that Mr Khan's testimony should be heard, was it, what, in about a month's time or something. That is what is being refused.

We have an application for the hearing of Mr Khan's testimony, part of it rather, in-camera. We have not heard argument on that, so that is yet to be determined, but an indication has been given that if successful, the evidence would want the Commission to hear that evidence on the 6th of October. If, one, that application is granted for the hearing of part of Mr Khan's testimony in-camera, and, two, the Commission is happy with the 6th of October, that is what will happen. So that further reinforces my point that the postponement sought for a longer period is not granted.

As a Commission, it is accepted that Mr Khan has had the documentation on the basis of which he ought to have prepared for the hearing for quite some time now, and the suggestion that he was given further documentation at a later stage is untrue. The Evidence Leaders clarify that it was basically the same set of documentation, but that the second set was a more user-friendly version of the same documentation, and that this documentation was initially availed to Mr Khan as far back as June. Any

attempts at explaining why Mr Khan is not ready are mere excuses, and I will not accept them.

Now, moving on to the effect of Mr Khan's non-attendance, I take a very dim view of that, and I am very disappointed that his legal representatives seem to associate themselves with Mr Khan's non-attendance. In argument, Mr Vally conflates issues that are, in fact, different. He says the independent psychiatrist has indicated what needs to be in place, I am paraphrasing, of course, for Mr Khan to be ready to testify, and he then makes the point that that is not in place, and therefore Mr Khan is not ready to testify.

Now, here is the conflation. Even accepting for purposes of this ruling, but I am not necessarily accepting the situation to be the true position, but even accepting for purposes of this ruling that those issues are indeed outstanding, the subpoena and my ruling stand on a different footing. They require Mr Khan's attendance. If indeed there are outstanding issues, those are issues that could be argued or raised before this Commission with Mr Khan in attendance. They can never excuse Mr Khan's attendance.

So his non-appearance today is a flagrant disregard of a subpoena by this Commission. And I repeat that it is unfortunate that his attorney is identifying himself

with that flagrant disregard of the subpoena. I repeat, I find that very, very unfortunate. This has happened quite a few times before this Commission. There have been a few witnesses who have also adopted the stance that for whatever reasons they are not in a position to testify and the reasons they would give would be to complain, amongst others, about the late service of bulky documentation. But without fail, all those witnesses would be sitting in the witness box, and their lawyers would raise the issue or the complaints about the late service of documentation, but those witnesses would have honoured the subpoena and would be sitting in the witness stand.

Why Mr Khan, and indeed his lawyers for that matter, saw it differently completely escapes me. The Commission's secretary, Dr Vukuza, is going to be approached for her to lay criminal charges against Mr Khan for his failure to attend, remotely, of course. As I said, the Commission accepts what the psychiatrist, Dr Naidoo, says, which is that Mr Khan should appear remotely. So Dr Vukuza will be approached to take the necessary steps to lay criminal charges against General Khan.

Let us adjourn and resume at 11:30.

ADV HASSIM SC: Thank you, Chair.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Mr Chaskalson.

ADV CHASKALSON SC: Good morning Chair, I am not sure how much of this has been placed on record. So today's witness is supposed to be Mr Sindane. Mr Sindane brought an urgent application last week which was set down for the 6th of October essentially to immunise himself from the process of this Commission. After the Commission dismissed his postponement application on Friday morning, he brought another urgent application to review and set aside the decision dismissing the postponement application and to stop the Commission proceeding.

CHAIRPERSON: And he brought that one on Saturday, or am I missing it? Was it Friday or on Saturday? On Saturday?

ADV CHASKALSON SC: I think it was on Saturday.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: I can get the exact time. It was either late Friday night or early Saturday morning. That second urgent application was dismissed with a punitive costs order this morning by the Johannesburg High Court. After the application was dismissed by the Johannesburg High Court, the Commission's attorneys were contacted by Mr Sindane's attorney saying they wanted to move a postponement application for today's proceedings in front of the Commission.

It was conveyed to them that the attitude of the evidence leaders was that they would begin flighting evidence concerning Mr Sindane if Mr Sindane was not here. The evidence leaders would begin flighting evidence relating to Mr Sindane at 11.30 and that if they wanted to bring their postponement application, they should be here at 11.30 with the postponement application to do so. They said that they could not get here by 11.30 because they were in Johannesburg.

Shortly before 11.30, it was brought to my attention that at 11.29, a postponement application arrived under cover of a letter from the attorneys saying that they are on their way, they will be here by 12.00 to argue it and that needs to be brought to the attention of the Commission. The attitude of the evidence leaders is that we have danced around Mr Sindane far too long already.

It was not something unanticipatable that his urgent application would fail this morning and if he wanted to move a postponement application in relation to today's proceedings that he has had since Friday morning to bring that postponement application unless it relates to an alleged deterioration in his health, in which case the point at which his health deteriorated after Friday would have been the time to bring this application.

From our side, we would like to proceed. They say

they will be here at 12.00 to argue if the Commission is willing to indulge them. We leave it in the hands of the Commissioners.

CHAIRPERSON: Let us proceed, Mr Chaskalson, and we will see at midday when they get here whatever it is they will want to place before us. Let us proceed.

ADV CHASKALSON SC: Thank you Chair. The evidence that we will be addressing today is drawn broadly from two separate sources. The one is the allegations in the docket against Mr Sindane and Mr Sibanyoni, which includes sworn statements of the complainant in the docket and the corroborating evidence in the chats on Mr Sindane's phone as well as a wide range of related evidence in the chats on Mr Sindane's phone.

So if I might start with the evidence in the complainant's statement of Dr Ntuli in the docket, it is to be found at page 477 of file 1. Essentially, what one sees in that statement is an allegation of an extortion racket enforced with threats of violence.

ADV BALOYI SC: You are using Mr Sibanyoni's files?

ADV CHASKALSON SC: It is the same bundle for Mr Sibanyoni and Mr Sindane.

ADV KHUMALO SC: 475.

ADV CHASKALSON SC: 475 is the start of the affidavit.

ADV KHUMALO SC: Yes.

ADV CHASKALSON SC: Now, the Commissioners are obviously by now aware of some of this evidence because it has been ventilated in the urgent application. But if I can put it on record in the Commission, the starting point is at 475, in paragraph 1, Dr Ntuli explains that he is the director of a mining company called Tengane Mining. Paragraph 2, he says that that mining applied for a mining rights permit in respect of a farm in the magisterial district of Nkobolo.

That permit was issued on the 15th of December 2022 and he explains further that the purpose of his mining operations under the permit, which relate to an area in Kwaggafontein, were to provide aggregate stone to a company called King Civil, who had been appointed by SANRAL as the main contractor for the construction of a section of the Moloto Road near to this Kwaggafontein property.

Dr Ntuli said he approached King Civil, the contractor, and was informed that he should engage with a Mr Msiza, who was the community liaison officer. Mr Msiza, in due course, referred him to a Mr Maselela, who was chairperson of the Local Business Forum. Mr Maselela will feature quite prominently in this story. Mr Maselela then referred him to Mr Sibanyoni, who was described as the president. And that is all in paragraphs 3 and 4.

Dr Ntuli then met, at the Waterkloof Golf Estate in

Pretoria, with Mr Sibanyoni, who he was told was the president, Mr Msiza and Mr Maselela, and a person whom he describes as Mr Bafana Kabini in his affidavit, and that is actually Mr Sindane, and he says that he was told that Mr Kabini, who is Mr Sindane ...[intervenes]

ADV KHUMALO SC: And how have you established that?

ADV CHASKALSON SC: We have seen his chats in the docket with Mr Kabini, and they are to a number which is the same number as Mr Sindane.

ADV KHUMALO SC: Is that the phone number we are looking at in bullet 3?**ADV CHASKALSON SC**:

ADV CHASKALSON SC: Indeed, indeed. And Mr Sindane was introduced to him as the deputy president. Now at this first meeting with Mr Sibanyoni, Mr Sindane, Mr Msiza and Mr Maselela, Dr Ntuli says that Mr Sibanyoni said that Dr Ntuli had to pay him R100,000 in cash before Mr Sibanyoni would be prepared to open, in his words, open a channel of communication. Dr Ntuli paid the money to Mr Sibanyoni in cash the following day. I am now at paragraph 7 and 8 of the statement. Sorry, paragraph 5.

Paragraph 6 and 7, Dr Ntuli goes on to explain that Mr Sibanyoni and Mr Sindane initially demanded from him 40 percent of what he was making on his contract in respect to the aggregate that was being supplied for the Moloto Road. Dr Ntuli then complained at a meeting on 4

November 2022 that this was not affordable and he was then instructed to pay R100,000 a month, sorry, to pay a R100,000 which he paid into the account of MJ & Sons Transport, which is a company of Mr Sibanyoni. He was later told that he must continue to pay this R100,000, which he describes as a protection fee, every month.

ADV KHUMALO SC: This one would be the second. I am assuming the first one would have been paid in July.

ADV CHASKALSON SC: Indeed, and that was paid in cash.

ADV KHUMALO SC: Yes.

ADV CHASKALSON SC: The second was paid into the account of MJ & Sons Transport. If we then go to page 477 of the bundle, we see a table of payments that Dr Ntuli made into the account of MJ & Sons Transport, or on certain occasions cash payments and those payments total to over R2.29 million. We see that at the foot of, I think it is 479. On various occasions, and I am now still just talking from the statement of Dr Ntuli, when the protection fee was not promptly paid, Dr Ntuli would receive messages from Mr Sindane's number complaining about non-payment.

And although the messages came from Mr Sindane, they were signed, and I quote:

"The Landlord, Growthpoint."

And Dr Ntuli says that this was done to disguise their true

purpose. That he explains in paragraphs 8-10. At a later stage, Edwin Construction took over the Moloto Road contract, and then Mr Sibanyoni and Mr Sindane, according to Dr Ntuli, demanded R120,000 a month. And Mr Masilela and Mr Msiza and Mr Ngoma separately demanded R15 for every tonne of material delivered. They sent an invoice to Dr Ntuli for R286,000.

He refused to pay that invoice and reported the matter to the police. This is from paragraphs 13-16 that I am summarising.

ADV KHUMALO SC: Did you place on record who owns MJ & Sons Transport?

ADV CHASKALSON SC: We have said that it is a company of Mr Sibanyoni. If we go to a separate statement that we see at page 327 that Dr Ntuli made ...[intervenes]

ADV BALOYI SC: Advocate Chaskalson, before you do that, and do forgive me if you had already explained this and I missed it, you refer on this affidavit to communication being from Mr Sindane, and yet there is these repeated references to Mr Kabini as the one that is there.

ADV CHASKALSON SC: Yes, when we look at the WhatsApps in the chats, we see that they go to the number that is the same number of the phone that has been imaged of Mr Sindane. So Mr Sindane and Mr Kabini are the same person. And there are in fact in the WhatsApps, there are a

lot of people who refer to Mr Sindane both as Bafana and as Kabini.

ADV BALOYI SC: Thank you.

ADV KHUMALO SC: But because it was a physical meeting according to paragraph 5, I am sure if somebody's shown a photo of Mr Sindane they can confirm that this is one of the people I met on the day.

ADV CHASKALSON SC: Indeed. If we go to page 327, which is a separate affidavit of Dr Ntuli...

ADV BALOYI SC: You said page?

ADV CHASKALSON SC: 327. We see that, and I will just read, paragraph 3 on Friday 14 November 2025, Mr Mvimbi Masilela and his team, which include both Messrs Msiza and Mr Msiza, went to Edwin Construction, as represented by Mr Steve Munthali, and held a meeting that if they do not get their payment from Tengane Mining (Pty) Ltd, they are going to stop the operation, and he refers to a WhatsApp conversation.

On the same date, 14 November 2025, Mr Mvimbi Masilela called me with his phone number 076, sorry the number's given, and told me that on 17 November 2025 they are going to stop all the trucks on site from operating. And he points out in paragraph 5 that he told Mr Masilela that what he was doing was unlawful and a criminal offence, and he should proceed with his action of interference, Dr Ntuli

was not going to capitulate.

There is another affidavit of Dr Ntuli which explains that at the start of his engagement with King Civil in relation to supplying the aggregate for the road construction, a security company was imposed on him by Mr Sibanyoni, and he says, he explains in paragraph 2:

> "The security company was imposed to me by Joe Sibanyoni since the inception of the project after my own security were beaten on site, and one of the security guards was tied by cable, and my weighbridge cable were cut off. This was a process of putting pressure to me to hire the security company of his nephew."

Now, thus far I have referred only to chats, not to chats, to documents that appear in the statements of Dr Ntuli in the criminal docket, but if we go to the chats we see a large degree of corroboration of these statements. And if we start at page 345, this is an extract from a cell phone, from Dr Ntuli's cell phone, and of his communications with Mr Sindane, who he saves under the name Bafanas.

And we see that on 28 February, Dr Ntuli and Mr Sindane exchanged WhatsApps relating to a meeting at the Centurion Golf Estate, where we have discovered in our Commission proceedings that Mr Sibanyoni resides, and Dr

Ntuli referred to procedures which had been agreed between him, Mr Sindane, and Mr Sibanyoni. And the procedures chat is the chat at 2317, towards the foot of this extract:

> "Hi Bananas..."

It should be Bafanas I imagine;

> "I wanted to remind you that in our last meeting discussion we had between yourself and Mr Sibanyoni, it was agreed that the analysis of procedures and way forward should be done between ourselves. I confirm that I will be coming, but let us keep to that procedures, thanks."

If we go down to page 350, we see that on 26 February 2024, we see a message from Mr Sindane signed as The Landlord, Growthpoint, expressing dissatisfaction that certain amounts have not been paid. Sorry, I have jumped ahead of myself. I will just finish this message, but then I need to go back.

> "Good evening bab' Ntuli, I hope you are well. I would like to record my disappointment and frustration about the fact that you have skipped a month, without neither honouring your

> commitment, nor having the courtesy to at least inform me if there is a problem. I am particularly concerned because we are now approaching the end of yet another month. I need to know what is going on. Please, this is not gentlemanly behaviour, and I find it unacceptable. Looking forward to your urgent response. Regards. The Landlord, Growthpoint."

I wanted to get to that message in sequence. To do that, I need to go back to page 346. Apologies for jumping ahead. And there we see that on 30th of March, Mr Sindane, this is earlier, 30th of March 2023, Mr Sindane sends a message to Dr Ntuli, in which he signs himself as The Landlord Growthpoint, and says:

> "Good evening bab'Ntuli, I hope you are well. As we approach the end of the month, I thought I should give you a Courtesy reminder about our discussion from last month. Looking forward to receiving positive feedback. Regards. The Landlord Growthpoint."

And then on the bottom of that page, and over leaf, we see on the 4th and the 19th of April, Mr Sindane calls Dr Ntuli to meetings at Mr Sibanyoni's residence. Starting at the

bottom:

> "Good day bab' Ntuli, can we do our meeting..."

4th of April;

> "...can we do our meeting tomorrow, which is Wednesday night if possible. Regards. Growthpoint Landlords. Mean during the day, not night, I am sorry."

Over the page:

> "Good baba u Kabini, let us make it 14.30 if accepted, please confirm the venue.
>
> Yes, I confirm 14.30 tomorrow afternoon, venue, Waterkloof, Sibanyoni's residence.
>
> Okay."

And on the 19th, again from Mr Sindane:

> "Good evening bab' Ntuli, I hope you are well. As per our telephonic conversation, I wish to confirm our meeting on Monday, 24 April at 11.00 a.m. The meeting will be held at Centurion Golf Estate. Looking forward to progressive and fruitful discussions. Regards. The Landlord, Growthpoint."

This is all in April 2023. If we go down to 350, we have the February message, February 2024 message that we have

already discussed, where Mr Sindane is complaining about non-payment and commenting on the fact that this is not gentlemanly behaviour and that he finds it unacceptable. And we see a similar message on the 2nd of July. That message is at page 352. Mr Sindane writes:

> "Good day bab' Ntuli. I am sad and disappointed to have to write another message to you to chase for payment. You will remember that we have been very lenient towards you regarding the deal that you have and our share in it. We had initially agreed on a 60-40 split between you and the President. This was later reviewed and reduced to a more manageable amount for you. You used to pay us 100,000, but I am now left confused as to why you have reduced the payment yet again. This is not fair at all. Your operation continues to run, yet we are not taken care of in an equitable way. It is as if you are not recognising our contribution to the project. I demand a response within 48 hours detailing why the operation should not be stopped so that you can come and account."

So he is threatening to stop the operation if the payments do not continue. And what is significant about this message is that it is now in a period where we have access to Mr Sindane's chats from his own phone. Previously the chats were from a period earlier than where the chats on Mr Sindane's phone start. They were taken from Mr Ntuli's phone.

And if we go to Mr Sindane's own phone, we see that the text of this message, and if we go to page 2294, which is in file 5, 2294 in fact, not 2295, 2294. If we look at chat number 1 on that page, we see that the text of the message that we see on Dr Ntuli's phone on the 2nd of July was actually forwarded to Mr Sindane from a person on the phone who is saved by Mr Sindane as Taxi Choice Thulani. And that is a Mr Qwabe, Q-W-A-B-E, who is the Chief Operating Officer of Taxi Choice, a company associated with Mr Sibanyoni.

ADV KHUMALO SC: In Mr Sindane's phone, if we go back to 2293, is that him identifying himself as DP?

ADV CHASKALSON SC: Bafanas DP, indeed.

ADV KHUMALO SC: So in line with the affidavit we looked at the first time, Ntuli's affidavit.

ADV CHASKALSON SC: The Bafanas reference, yes.

ADV KHUMALO SC: And the phone number.

ADV CHASKALSON SC: And the phone number, indeed.

ADV KHUMALO SC: Yes.

ADV CHASKALSON SC: And there we see the same message, but when we saw it on Dr Ntuli's phone, we only saw it said more dot-dot-dot at the end, because we could not see the whole message. We see the whole message here. And just to repeat it:

> "Good day, bab' Ntuli. I am sad and disappointed to have to write another message to you to chase for payment. You will remember that we have been very lenient towards you regarding the deal that you have and our share in it. We'd initially agreed on a 60-40 split between you and the President. This was later reviewed and reduced to a more manageable amount for you. You used to pay us 100,000, but I am now left confused as to why you have reduced the payment yet again. This is not fair at all. Your operation continues to run, and yet we are not taken care of in an equitable way. It is as if you are not recognising our contribution to the project. I demand a response within 48 hours, detailing why the operation should not be stopped, so

that you can come and account on what is going on. I hope to hear from you in due course with. Regards. The Landlord, Growthpoint."

What we then see, and now we are going to have to jump backwards and forwards between file 1 and file 5, is that in response to the WhatsApp that we have just read, Dr Ntuli promised to make the R100,000 payment. That appears on page 354 in the chats on his phone. Sorry, it is page 353, not 354. So later on, at the top of the page:

"Good evening, Bananas. In response to WhatsApp regarding the arrangements is noted, however, the reduction was due to the slow performance of King Civil, which resulted on the income received. During the poor performance of King Civil, I have tried by all means to pay from the little money that I was getting to pay some money to you, which is fair, and the full report and explanation was given. For the payment of June will be full, 100,000, because the operations for June have been run smoothly, and I am also expecting July onwards to run smoothly. The slowness of productions was caused

> by testing of G5, which takes some time to be approved by SANRAL inspectors, which resulted to the slow movement of the product to the site. This information can be confirmed."

Again, the message is cut off on that screenshot. But if we go to page 705, we see first that this message ...[intervenes]

ADV KHUMALO SC: File 2?

ADV CHASKALSON SC: File 2, sorry.

ADV KHUMALO SC: Advocate Chaskalson, is it not the same as the one in 2295?

ADV CHASKALSON SC: It is, but this time it is sent to Mr Sibanyoni, it is not sent to Mr Qwabe. So we see that this message from Dr Ntuli is forwarded by Mr Sindane to Mr Sibanyoni. That we see on page 705, in chap number 1. It is the same message, but it is now in full. Just to pick up:

> "...for the payment of June will be full, R100,000, because of the exceptions."

Where we stopped on the cut-off amount was:

> "This information can be confirmed with King Civil if a need may be."

The message continued:

> "The payment of the amount as agreed is an obligation. I should not worry about

> that. I promised that it would be transferred to the account of the President. Rest assured that I am not here to spoil our relationship, but rather than to improve it. I hope you will find this in order, and for transparency, I will copy our conversation to the President. We have not yet invoiced King Civil for July, it will be done on 31st July. If there is any unclear aspect regarding the above, please do not hesitate to contact me. Thanks."

We then, if we go to file 5, at 2295, see the same message forwarded by Mr Sindane to Mr Qwabe, and his response is in chat 2:

> "Noted with thanks, It is not clear to me when he will pay the 100,000 for June."

That is in chat 2. In chat 3, Mr Qwabe actually drafts a message to be sent back to Mr Ntuli:

> "Good morning, Mr Ntuli. Feedback is noted. I am hoping you will stick to your promise. Please clarify on when we can expect the 100,000 payment for June."

If we go to 353, we see that this message was in due course sent by Mr Sindane to Dr Ntuli. You see that at the

foot of the page, 3 July.

> "Good morning, Mr Ntuli. Feedback is noted. I am hoping that you will stick to your promise. Please clarify on when we can expect the 100,000 payment for June."

So it is the identical message that Mr Qwabe drafted for him. The response is from Dr Ntuli's message:

> "Noted. June payment next week, Thursday."

If we go back to page 2295, we see that the response of Dr Ntuli is forwarded by Mr Sindane to Mr Qwabe.

> "Message noted, June payment next week, Thursday."

And that elicits a thumbs up response at the top of page 2296. So if we step back from this exchange, what we see in the affidavits of Dr Ntuli and the chats, is essentially an extortion record enforced by threats of violence. That Dr Ntuli says that he was told that if he wanted his contract to run free from interference, he had to make these payments to Mr Sibanyoni and that he had to make additional payments to Mr Masilela. That we see in the chats that when he defaults on payments, that he gets messages from Mr Sindane complaining about his default and threatening to stop the operation.

Now we will hear hopefully from Mr Sindane about

what his explanation for these chats are and hopefully tomorrow Mr Sibanyoni will tell us what the relationship between him and Dr Ntuli is. But what is a cause of considerable concern for me is that there is a threat to stop the operation. And even if there is some *bona fide* commercial basis to the relationship between Mr Sindane and Mr Sibanyoni on one side and Dr Ntuli on the other, one does not enforce *bona fide* commercial relationships by apparently threats of violence to stop an ongoing operation.

That is an issue on which I hope to get some sort of answer from Mr Sibanyoni tomorrow. And if Mr Sindane ever deigns to come to the Commission, we would want him to give us an answer too. This is one example. It is ventilated in some detail by Dr Tengane. But it is not the only example. If one looks through the chats on Mr Sindane's phone, one sees several other examples. And let me take us first to one. It starts at page 978 of the chats. 978 file 2. We are looking...

ADV BALOYI SC: [indistinct]...

ADV CHASKALSON SC: 978, 978. We are looking at chats between Mr Sibanyoni, who is saved in Mr Sindane's phone as MJ Sibber. MJ stands for Madoda Johannes, which are the first names of Mr Sibanyoni. We are looking at chats between Mr Sibanyoni and Mr Sindane, and this is Mr Sibanyoni sending a chat. Chat number 7.

"LOL, I need a meeting. I have a 500 million deal for Moloto Road."

Underneath:

"The director who got the contract wants to meet up with you."

And then the critical message over the page on 979.

"He used to report at the farm."

And we know what the farm is, according to Mr Sibanyoni. It is Mr Msibi's property.

"He used to report at the farm for all his Soshanguve projects, but he now knows there is a new sheriff in town."

So what we infer from this, and hopefully Mr Sibanyoni can set us straight tomorrow, is that there is a contractor who used to pay protection monies to Mr Msibi, but he is now heard that there is a new sheriff in town, and he now approaches Mr Sibanyoni. This chat gets sent from Mr Sibanyoni to Mr Sindane on the 9th of January at 12.02, 12.02.01.

ADV BALOYI SC: 2025.

ADV CHASKALSON SC: 2025. And if we go down or go up to page 503, we see that three minutes later, Mr Sindane forwards that whole sequence of chats, the three chats ending with the new sheriff in town. He forwards them to Mr Masilela.

"LOL…"

Bottom page 503;

"LOL, I need a meeting. I have a 500 million deal for the Moloto Road. The director who got the contract wants to meet up with you. He used to report at the farm for all his Soshanguve projects, but he now knows there is a new sheriff in town."

ADV BALOYI SC: By this date, Mr Chaskalson, Mr Msibi has passed away.

ADV CHASKALSON SC: Indeed.

ADV BALOYI SC: In 2025.

ADV CHASKALSON SC: Indeed.

ADV KHUMALO SC: It is not a month late, or am I missing something?

ADV CHASKALSON SC: No, it is the 9th of January, so if you go back to 978, it is the 9th of January at 12.02.

ADV KHUMALO SC: I was mixing up the date and the month, I have got you.

ADV CHASKALSON SC: It is those American dates with the month first. Now, there are a series of other examples in these chats, but, in this context, we interpret to refer to relationships with other construction companies that are being required to pay protection into Mr Sibanyoni, Mr

Sindane, and their associates. I am not going to canvas them now because I would want to canvas them with Mr Sindane, and I have not given up hope of Mr Sindane coming to testify.

At the very least, I can canvas them with Mr Sibanyoni tomorrow, so I do not propose to ventilate them all now. But what I do want to move to now is the inference that I draw in relation to these payments, is that there is an extortion racket ...[intervenes]

ADV BALOYI SC: Mr Chaskalson, again, we may have missed this. Masilela SANRAL, have you established who that is?

ADV CHASKALSON SC: That is the same Mr Mvimbi Masilela who is referred to by Dr Ntuli.

ADV BALOYI SC: Is he associated with SANRAL?

ADV CHASKALSON SC: No, no, no.

ADV BALOYI SC: Have you been able to establish that?

ADV CHASKALSON SC: He is the Head of the Business Forum in the Kwaggafontein area.

ADV BALOYI SC: Thank you.

ADV CHASKALSON SC: But the SANRAL Road, the Moloto Road that runs through there is being improved by SANRAL, and a lot of these contracts that we see, relate to the upgrading of the Moloto Road by SANRAL. The inference that we would draw in relation to these, what we

described as apparent extortion rackets, is that the payments are being extracted on threat of violence.

And we say that, firstly from the direct evidence of Dr Ntuli, he says that the security company that was imposed on him, the security company, he was forced to engage with Mr Sibanyoni's nephew for security because his own security company were beaten up and tied up with cable ties and his weighbridge was damaged. We say that also because the threat of stopping the operation if the payment is not forthcoming, that is made by Mr Sindane in a letter drafted by Mr Qwabe.

But we say it also because the chats show, in our submission, that there is a relationship between Mr Sindane and Mr Sibanyoni and violent criminals. *Isinkabi* and other people deploying violence for criminal purposes. And I want to start this section by looking at a series of chats that are exchanged by Mr Sibanyoni and Mr Sindane on the morning of 2 September 2024. So if we can go to page 819. And there at the foot of page 819, at chat number 7, we see that Mr Sibanyoni sends to Mr Sindane a message with five names in it at 7.54.39 a.m. His message says:

> "Mandla, Norman, Mshinga, Trinity and Surprise."

Over the page, there is a second message, page 820:

> "Mandla got a shot, esangleni, entameni

and enhloko..."

In his hand, neck and head;

"...but none near the bones, so he is okay.

Surprise ushonile..."

And ten crying emojis. Surprise is dead. So Mr Sibanyoni forwards this message to Mr Sindane or these messages to Mr Sindane about Mandla, Norman, Mshinga, Trinity and Surprise. We will get back, in a minute we will get to explain what these messages relate to. But for now, I want to point out that if we go to file 4 at page 1611, we see that as soon as he receives the messages, Mr Sindane forwards them on to someone who is saved in his phone as Timmy Team Roger, who is a Mr Timothy Moyana. We see those three messages:

"Mandla, Norman, Mshinga, Trinity and Surprise. Mandla got a shot, esangleni, entameni and enhloko, but none near the bones, so he is okay. Surprise, ushonile."

On pages 1611 to 1612. From another chat, we then ...[intervenes]

ADV BALOYI SC: And we see this is from Mr Sindane because?

ADV CHASKALSON SC: These are the chats on Mr Sindane's phone where any of the chats in this format, the green bubbles on the right are from Mr Sindane, the sort of

grey bubbles on the left are the counterparty to the chat. It is from his phone. If we go to page 144, sorry not 144, file 3, 1444, we find out what those chats are referring to, because what we see on page 1444 is a message that – it is a long message, it is a forwarded message. We have to go to 1445 to see that it comes from a Mr Nkambule Themba, and it is sent to Mr Sindane, and it is sent on the 6th of September, 2024.

Remember that the original message was on the 2nd of September, 2024. This is sent on the 6th of September, 2024, at 10.21.32. And what it is, is an internal SAPS success report, which Mr Nkambule Themba has somehow got hold of and is forwarding to Mr Sindane and it reads as follows:

> "Nkangala District, Kwamhlanga Crime Intelligence, CI. Success Report. On Monday, 2 September, 2024, at about 04h00, an intelligence-led operation was conducted at Kwaggafontein area on group known as Kwagga 20."

I just want to pause at that stage. This reflects that an intelligence-led operation was run at 04h00 on the 2nd of September. The chat that got sent that Mr Sibanyoni forwarded to Mr Sindane was forwarded at 07.54 in the morning on 2 September 2024. That is page 819. So less

than four hours after the intelligence-led operation by the SAPS was mounted, Mr Sibanyoni was forwarding a message to Mr Sindane about what we will see was the outcome of that operation.

> "Monday, 2 September, 2024, at about 04h00, an intelligence-led operation was conducted at Kwaggafontein area on group known as Kwagga 20, involved in extortion, serial killings, contraction mafias..."

I think that should be construction mafias;

> "...illegal firearms and taxi-related killings around Kwamhlanga, former cluster Limpopo and Gauteng provinces. The said group was shooting randomly at an event at Kwaggafontein C. Crime intelligence identified the members and their vehicles of the group involved while attempt chasing the identified vehicles of suspects and suspects shot at the police driving a red Audi A3, white Polo, grey VW Polo and black hatchback BMW between. Two suspects managed to run away and two whom were injured were arrested. One found shot dead inside the identified

vehicle. Two firearms were found inside the vehicle. LCRC and IPID were also informed. Deceased suspects. Surprise Ngodela."

And you will recall that the message at 7.54 a.m. on 2 September said, Surprise ushonile.

"Arrested suspects: Ben Mabuza Tweefontein, George Besi Skosana of Thembalethu.

Escaped suspects: Mandla Mtsweni"

Go back to that message at 2 September 2024. The first name that Mr Sibanyoni forwards to Mr Sindane is Mandla. Names are Mandla, Norman, Mshinga, Trinity and Surprise. And in Mr Sibanyoni's statement he identifies Mandla Mtsweni as his nephew.

"Escaped statements. Mandla Mtsweni, Norman Skosana."

Norman is also mentioned in the statement, in the message forwarded by Mr Sibanyoni to Mr Sindane.

"...Bongani Oros Simon Nguni/Mthimunye."

Mr Sibanyoni said he did not know who Bongani Oros Simon Nguni/Mthimunye was in his statement.

"Firearms recovered. 2x9mm pistols not yet booked. One Audi A3, registration number given, recovered not yet booked.

Case not yet registered. Suspects committed the following crimes."

And let us go slowly through them.

"Tweefontein SAPS 07/03/3024, 3x murder

Bronkhorstspruit SAPS 280/07/2024, 5x murder

Verena SAPS CAS 41/03/2024, murder

Tweefontein SAPS CAS 41/08/2024, attempted murder

Tweefontein SAPS 68/08/2024, murder

Tweefontein SAPS 71/08/2024, murder

Moletlane SAPS CAS 122/08/2024, 2x murder

Moletlane SAPS CAS 153/01/2024..."

And no crime is specified there.

"Tweefontein SAPS CAS 112/09/2024, 2x murder

Kwamhlanga SAPS 294/08/2024, 3x murder

Tweefontein SAPS 40/08/2024, murder

Moletlane SAPS 202/03/2024, 4x murder

Kwaggafontein SAPS 26/08/2023, drop safe bombing business robbery

Kwaggafontein CAS 29/03/2024, drop safe bombing, business robbery"

So we see that this group of suspects are alleged to have committed more than 20 murders and to have bombed 2 SAPS. This is the group that includes Mr Sibanyoni's nephew Mandla Mtsweni and in respect of which Mr Sibanyoni was forwarding a report to Mr Sindane less than 4 hours after the confrontation between the police and this group.

Before we move off, there is of course a question as to how Mr Nkambule Themba, who does not according to our investigations appear to be employed by the SAPS, comes into possession of an SAPS internal success report which he forwards to Mr Sindane about a police operation involving people with whom Mr Sindane appears to have a relationship.

CHAIRPERSON: Mr Sibanyoni or Mr Sindane?

ADV CHASKALSON SC: This message is first forwarded to Mr Sindane by Mr Themba.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: Mr Sindane will in due course forward it to Mr Sibanyoni and in fact we see that on page 825. So if we go to page 825 at file 2, we see that Mr Sindane immediately on receipt of that message with the police success report, when he receives it from Mr Nkambule Themba he forwards it to Mr Sibanyoni.

ADV KHUMALO SC: And, Mr Chaskalson, we have

established that these sorts of messages are not shared within what you call those volunteer groups, those local volunteers who are part of the SAPS.

ADV CHASKALSON SC: The Community Policing Forums?

ADV KHUMALO SC: Yes, the Community Policing Forums.

ADV CHASKALSON SC: We have not established what the practice is in Kwaggafontein and Tweefontein.

ADV KHUMALO SC: Because you are asking us to draw an inference or at least have a question mark in relation to how Mr Nkambule would have obtained the report. So I am raising that.

ADV CHASKALSON SC: We can, we will pursue with the Kwaggafontein and Tweefontein police to establish whether the practice is to share this. Also whether Mr Nkambule Themba is a member of a Community Policing Forum in those areas. The message we see is immediately forwarded by Mr Sindane to Mr Sibanyoni. And the interest in this case continues in the chats. So we see at page 826, we see Mr Sindane sending Mr Sibanyoni a link to an article that says:

> "Three Mpumalanga men in Court for demanding a share of two million from an NPO"

And below that link he says:

> "Kwagga 20 arrested in Middleburg"

And you will recall Commissioners that the group that was responsible for that over 20, for more than 20 murders and the two drop safe bombings was called Kwagga 20.

Mr Sindane does not just share that message with Mr Sibanyoni, he shares it also with Mr Nkambule Themba which we see on 1445 in file 3. So chat number 1 on 1445 is Mr Sindane sharing that press report and the response from Mr Nkambule Themba in chat number 2 is to share with Mr Sindane a report about the arrest of one of the alleged Kwagga 20 members who fled the scene of the confrontation with the police.

> "MEC Jackie Macie appreciated SAPS members after the arrest of a suspect who fled after a shootout with police. The MEC is excited to hear about the arrest of a 33-year-old suspect who reportedly fled in Kwaggafontein following a shootout with SAPS members from Crime Intelligence last week. This arrest has been praised by the MEC who immediately commended..."

And on it goes. Now this sort of a press statement is obviously a public press statement, we do not ask the Commission to draw any inferences as to how Mr Themba obtained that press statement. But the fact that he is

sharing it with Mr Sindane indicates an ongoing interest in the matter of the Kwagga 20 or the Kwagga 20 violent conflict or violent shootout with the SAPS.

What we see also on page 2363 of file 5 is that Mr Sindane shares the same press report and if we go down to page 2362, chat 1, we see that Mr Sindane shares this report with someone who is saved in his phone under the number that we see there. And the name given to that person in Mr Sindane's phone is the name Botsotso Police Middleburg. Now the most prominent Botsotso Police Middleburg is General Botsotso, I have not forgotten General Botsotso's surname, I will get it to you now.

Mr Sibanyoni in his statement explains that that number is not the General's number, it is the number of someone called Mr Mthimunye. We have traced that number of Mr Mthimunye and Mr Mthimunye was in fact a sergeant in the SAPS, Sergeant MT Mthimunye. So this message is being shared by Mr Sindane with Sergeant MT Mthimunye reporting on the Kwagga 20 arrest.

If we go over the page to 2363, we see that the same article about the appearance in the Middleburg Court of the Kwagga 20 suspects is also shared with Sergeant MT Mthimunye. The General is Major General Botsotso Moukangwe, M-O-U-K-A-N-G-W-E. But I do want to emphasise that although this number is saved in Mr

Sindane's phone as Botsotso Police Middleburg, it is not Major General Botsotso's Moukangwe's cell phone. That cell phone is saved elsewhere on Mr Sindane's phone, and we will get to the messages between Mr Sindane and Major General Moukangwe at a later stage.

Now, in the context of these exchanges between Mr Sindane and Mr Sibanyoni and a range of other people in relation to the Kwagga 20 case, we would like to revisit another exchange between Mr Sindane and Mr Sibanyoni which Mr Sibanyoni has addressed, and that is the exchange in relation to the two *isinkabi*. That is on page 1269, file 3. And there, it is a chat which Mr Sibanyoni has addressed in his statement.

We see that on the 11th of August 2025, Mr Sibanyoni sends two names to Mr Sindane at 12.40 p.m.. The names are in chats 4 and chats 5, and says:

> "Do you perhaps know the above *isinkabi*?"

Now, Mr Sibanyoni referred to these chats in his statement. He denied ever engaging the services of any *isinkabi*, and he said that nothing came of this chat with Mr Sindane. We will probe further in that regard with Mr Sibanyoni tomorrow, and hopefully with Mr Sindane if he appears before this Commission.

There are other suggestions that Mr Sindane and

Mr Sibanyoni are involved with the employment of *isinkabi*, or at least with the employment of people using threats of extreme violence for criminal purposes. If we go to page 1259, file 3, the foot of the page, we see that on the 23rd of July 2025, sorry 1249, 1249, my apologies.

CHAIRPERSON: Chat number?

ADV CHASKALSON SC: The last chat on the page, chat number 4. We see a picture of a man lying on a bed of sorts, under a blanket. The full picture appears at page 2375. It looks like a hospital bed. Then over the page on 1250, there are pictures of two firearms. The first is an automatic weapon, which we see at 2376. There is an automatic weapon on the seat of a car, and the next chat is a picture of a pistol on the floor of a car.

Then if we go back to 1250, we see a series of one-word messages from Mr Sindane to Mr Sibanyoni. The first is:

"Malume."

The second is:

"Arrested?"

The third is:

"Yes."

The fourth is:

"Where?"

And the fifth is:

"Not yet sure."

The same messages are forwarded to Mr Nkambule Themba at page 1490 on file 3, maybe we start at 1489 and they are also forwarded to Mr Moyana at page 1900. The messages forwarded to Mr Moyana, who is saved as Timmy Team Roger, are significant because there is an additional photograph that is forwarded to him, that is in chat number 5.

And that photograph, if we go to page 2378, is a photograph of a suspect, or apparently of a suspect with his hands tied behind his back or handcuffed in what looks like a police vehicle. I am inferring that it is a police vehicle, I cannot... We do not have a redacted picture of that, a redacted copy of that, so we are not going to flight it. But it is a picture of someone with his hands tied behind his back in a vehicle that looks like a police vehicle. At any rate, it is a security vehicle with barred windows.

ADV KHUMALO SC: You have been inside one, Mr Chaskalson? [Laughter]

ADV CHASKALSON SC: Not for the last 45 years, well, not for the last 40 years. If one goes through the chats between Mr Sibanyoni and Mr Sindane, one sees random references to *nkabi* at various points in the chats. So, for instance, at page 805, one sees Mr Sindane sending a one-word message to Mr Sibanyoni at the top of 805 saying:

"*Nkabi*."

At almost the same time, he sends the same one-word message on the 20th of August to Mr Moyana, who he saved as Timmy Team Roger. Now, before we move to the next topic, I should point out that the picture of a suspect inside a police vehicle is not something that one would ordinarily expect a member of the public to have access to. The only people who can take pictures of suspects apparently inside a police vehicle are police officers and I think that until someone has appeared in Court, one cannot even publish their faces when they have been arrested.

So the fact that that is circulating is also an issue of some concern which we would like to take up with Mr Sindane and Mr Sibanyoni. There is a separate suggestion of the involvement of Mr Sindane and Mr Sibanyoni in the engagement, or at any rate the support, of *isinkabi*. That starts with or discussion of that starts with a press report that is at page 1383 of the bundle, file 3. It describes the sentencing to life imprisonment of a Mr Gwabo Mahlangu, G-W-A-B-U. It is a report on the 28th of January 2025 and it is a sentence of life imprisonment for murders relating to taxi violence at the Maliva taxi rank and Kwamhlanga taxi rank and it was the murder of a Mr Manamela.

Now, Mr Sibanyoni thought that we may have confused Mr Gwabo Mahlangu with Mr Calvin Mahlangu,

who is the Head of Gubi Solutions. We did not confuse Mr Gwabo Mahlangu with Mr Calvin Mahlangu, and we are not suggesting for a minute that Mr Calvin Mahlangu is the person who was convicted of murder. But there are chats which raise interesting questions in relation to the relationship of Mr Sindane and Mr Sibanyoni with Mr Gwabo Mahlangu.

And the first of these appears at page 1094. And if you will recall, Mr Gwabo Mahlangu was sentenced to life imprisonment on the 28th of January 2025. And on the 5th of February, approximately a week later, Mr Sibanyoni forwards to Mr Sindane a message that appears on page 1094 at file 3. And that file comes from Mr Ngoato, who was the attorney for Sergeant Nkosi, who appeared on behalf of Sergeant Nkosi earlier in this Commission. It says the following:

> "My broe, good morning. Unfortunately, due to non-payment, I am unable to proceed with the matter of Gwabo. Since our last meeting in December last year, it was agreed that the money paid for Morwa..."

We will get to who Morwa is;

> "...must be used to cover for Gwabo. Mr Mthimunye has since changed and told me

that he is not bound by such arrangements. He has also stopped paying for Morwa. Which therefore means, ever since we met, no cent has been paid for Gwabo. Mr Mthimunye has also threatened me that if I do not proceed with Morwa, he needs all his money back or else. Last month, when he stopped a payment, I asked him why. He said he will only pay once a date for Morwa is out. I sent him proof of date allocated for Morwa, and he promised to pay for this month. This month, he has now flatly refused. I brought the matter to Solly's attention last month. He requested proof of documents. I sent him, but still nothing was done. I brought this to Solly again this month, but nothing is done. So honestly, I cannot run after a client to pay his bill. If he does not, I stop doing the job. I am now asking for your intervention again, so that you know why I cannot do work you had originally allocated to me."

I think that is the crucial passage we would place emphasis on.

"I have always done your work to my best,
but I cannot without payment. Regards,
Ngoato"

What this message suggests is that Mr Ngoato was asked by Mr Sibanyoni to represent Mr Gwabo, Mr Gwabo Mahlangu, and Mr Morwa. We will get to who Mr Morwa is. He is now not being paid, so he is not going to do the work.

Now the question of who Mr Morwa is, is answered, and I appear to have lost my reference. Mr Morwa is Mr Tshegofatso Richmond Makofane, who was sentenced to life imprisonment for murder in relation to a taxi killing. But I have lost my reference to the press report. I will have to give it after lunch. But for now, if we can just take through these chats.

This message is sent on 2 May 2025 at 8.25 from Mr Sibanyoni to Mr Sindane. 8.25 he sent it. If we go to file 4, page 1819, at 1819 in chat number 1, we see that shortly after receiving the message from Mr Sibanyoni, Mr Sindane forwards it to Mr Moyana, Timmy Team Roger. We then see, at page 2021, a series of exchanges between Mr Ngoato and Mr Sindane. On the 19th of May, chat number 3 on page 2021, Mr Ngoato writes to Mr Sindane:

"My broe, I have just spoken to Solly now
and he told me that you guys are meeting
today. I still have not received money as

> promised more than a week ago. This impacts heavily on my operations. I normally do not deal with fee collection from my office, I have a team that handles that, but I have taken this account out due to our relationship and our confidentiality. I cannot be following up for so long, guys. Please, can I have the 250k as promised? I have given a huge discount on the understanding that I will be paid immediately, but to date still no cent had been paid. Please, Morena, can I have payment?"

The response of Mr Sindane in chat number 5 is a fairly petulant response saying:

> "Why did not you greet me? Greetings is the first key."

Over the page:

> "Good afternoon, Mr N."

And Mr Ngoato apologises and says:

> "Sorry, we sometimes ignore basic rules. Apologies. Good afternoon."

There are then some voice calls and we pick up the exchange on the 20th of May at page 2023. That is the next day. Chat number 1.

"Good afternoon, Morena. Proof of set down, even though you guys have not paid a cent."

That is Mr Ngoato saying the matter's been set down, although he still has not received payment. Chat number 5.

"Requisition for Morwa to be in Court."

Mr Ngoato is saying we have arranged for Mr Morwa to be brought from the prison to the Court. That is on the 21st of May, the next day. And then, remembering that he should greet Mr Sindane because Mr Sindane takes offence when he is not greeted, he adds:

"Good afternoon"

On the 23rd of May, Mr Ngoato says:

"Morning, due to non-payment, I have decided not to go to Court. I have no money."

That is page 2024, chat 1. And chat 3.

"Good day."

Again, Mr Ngoato;

"Due to non-payment, I could not join the advocate and candidate in Court on Friday. However, they have reported to me that the Court refused to grant the state postponement and insisted on the matter being argued. The matter was

> argued for the entire day and judgment has been reserved. Due to your non-payment, I am unable to proceed with a Gwabo appeal and the family is outrageous as they want answers. I will inform the family to stop calling me but to refer all their enquiries to you."

So what these chats cumulatively suggest, is that Mr Sibanyoni and Mr Sindane were involved in paying the legal expenses of Mr Gwabo Mahlangu who was convicted of a taxi related murder and Mr Morwa, Mr Tshegofatso Richmond Makofane, who was also convicted of a taxi related murder and I will find that press report after lunch, and that they were essentially supporting the legal defences of these two apparent *isinkabi* involved in taxi killings. We would like to find out from them why.

There is one last issue that seems to be related to this funding of the legal defences of Mr Mahlangu and Mr Morwa. That is a chat from Mr Sibanyoni to Mr Sindane on page 1320. And if we go to 1320 we see at chat number 5 a letter with the heading:

> "Final Demand and Notice of Intended Complaint at the LPC"

That Mr Sibanyoni is forwarding to Mr Sindane. That letter of demand is at 1376 of the bundle and it is a letter of

demand sent by Chris Coetzee Attorneys of Middleburg to Mr Ngoato's firm, Ngoato Attorneys, on 17 September 2025 complaining that he, Chris Coetzee, has not been paid by Mr Ngoato for correspondent services that he has provided to Mr Ngoato at the Middleburg High Court.

Now, in the context of the chats that we have seen, it would seem that these correspondent services may well have related to the prosecutions of Mr Gwabo Mahlangu and/or Mr Makofane. But they are the only matters involving Mr Ngoato that Mr Sibanyoni appeared to discuss with Mr Sindane over this period. Mr Sibanyoni feigned innocence or ignorance of this demand letter. In his statement he says:

> "It is a demand letter from Chris Coetzee Incorporated addressed to an unidentified party."

It is not addressed to an unidentified party, it is addressed to Ngoato Attorneys.

> "I am not a party to that letter and the letter does not on its face implicate me in any unlawful conduct. Its inclusion in the additional bundle is noted. I make no substantive response to this item. There is no adverse inference capable of sustaining a finding against me, it can be

> derived from a demand letter to which I am not a party."

That is Mr Sibanyoni's response to that letter. We may ask some further questions when he comes tomorrow.

Chair, we have gone past 1 o'clock. If I might ask that we take the lunch adjournment now and I will come back with the details of Morwa showing that he is Mr Makofane, after lunch.

CHAIRPERSON: Thank you. Let us adjourn and resume at five past two.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Mr Chaskalson.

ADV CHASKALSON SC: Thank you, Chair. I undertook to come back to you with a bundle reference in relation to Morwa. It is right at the end of the bundle, page, so Volume 5, page 2392. And there, Chair, you will see an article on the sentencing of Mr Makofane at the Trial Court. The article is dated 29 September 2023. If one goes over the page to 2393, or even at the foot of 2392:

> "The Provincial Commissioner of the SAPS in Mpumalanga, Lieutenant General Semakaleng Daphney Manamela has welcomed a hefty sentence imposed by the Mpumalanga Division of the High

> Court, which was sitting in Middelburg, Tshegofatso Richmond Makofane, 36, a murderer who targeted victims in the taxi industry. Makofane was sentenced on Wednesday, 27 September 2023, following a series of shooting incidents organised against people in the taxi industry. The court was notified about the evening of 11 March 2021, at about 19:00 hours, his first victim was a taxi owner who was driving in a Toyota Quantum transporting staff from Pretoria. It is said that, starting from Eastland in Pretoria, his minibus was followed by another minibus, of which he managed to recognise the accused, known to him as Morwa, as the driver of the minibus at the time."

Chair, the next topic that I wanted to turn to was the relationship between Mr Sindane and Mr Sibanyoni, on the one hand, and Mr Matlala on the other. You will recall that Mr Matlala is standing trial for the attempted murder of Mr Sibanyoni.

What one sees in the chats is a series of exchanges in which Mr Sindane, Mr Sibanyoni, and people

around them are following with some enthusiasm the trials and tribulations of Mr Matlala. But then there are other chats which suggest, or certainly create an inference, that they know more about Mr Matlala's criminal doings than is learned from the media, and that they may conceivably be interested in taking over some of those criminal dealings. So, if I can take you through the first set of chats?

ADV KHUMALO SC: Mr Chaskalson, you are going to have to help us put some files away and tell us which ones we need for the purposes of the next topic.

ADV CHASKALSON SC: Unfortunately, it jumps around a bit. The bulk of them will be in File 3. The bulk will be in File. We will probably need File 4 as well. Then there is some important material in File 5. Files 3 to 5 should do it.

CHAIRPERSON: Will you come later to 5?

ADV CHASKALSON SC: Yes, 5 will be most important at the end.

CHAIRPERSON: Thank you.

ADV CHASKALSON SC: So, I will try to stay between 3 and 4 to begin with.

CHAIRPERSON: Yes, Mr Chaskalson.

ADV CHASKALSON SC: So, to begin with, the exchange of information about Mr Matlala's difficulties. There are a range of chats that are relevant in this regard. I will just illustrate with a few. File 3, page 1066, at the foot of the

page, and there we see Mr Sindane forwarding to Mr Sibanyoni a News24 article about the problems Mr Matlala is facing with his police contract, and the article is part of the nine live series that News24 were publishing. And under the headline, tender tycoon Cat Matlala faces liquidation as 360-million police contract hits the skids.

You do not need to go there, but if you just take the reference, or maybe even write it in at that point, you will see that Mr Sindane on the same day forwards the same article to Mr Moyana, to Timmy Team Roger, aAnd that is in File 4, page 1786, chat 3.

Then the next in the series of the nine live articles that Mr Sindane forwards to Mr Sibanyoni is at page 1105, File 3. This is the article about Mr Matlala's arrest for the attempted murder of his former lover. It says:

> "Tender king Cat Matlala arrested for botched hit on socialite ex-lover."

That is page 1105, 15th of May 2025, chat number 2. And like the previous nine lives article, Mr Sindane forwarded this article not only to Mr Sibanyoni, but also to Mr Moyana. This is on Mr Moyana's other number, which is saved as Timmy T, Mkomzi Timmy T. If one goes to...

ADV BALOYI SC: You have missed 1104 at the bottom.

ADV CHASKALSON SC: I have left 1104, the reference to the same article going to Mr Moyana, is at File 3, page

1399, chat 2. And then, Mr Moyana, on his Timmy T Roger phone, forwards a similar article back to Mr Sindane. That is File 4, page 1832. It is a Sunday World article of Vusimuzi Cat Matlala nabbed for attempted hit on Tebogo Thobejane.

Then on page 1116, Mr Sindane forwards to – sorry, Mr Sibanyoni forwards to Mr Sindane a lengthy article about Mr Matlala's history. It is an article that we have seen in Mr Nkosi's chats before, talking about his alleged role in Mamelodi Hospital, Tembisa Hospital. His alleged role in relation to Boko Haram, and his alleged role in relation to Tembisa and the alleged role in relation to the attempted murder of Mr Sibanyoni and the murder of DJ Sumbody. That piece is forwarded by Mr Sindane through to Mr Moyana. One sees that at File 3, page 1406. And for what it is worth, it also goes to Mr Masilela, who we have seen in relation to Doctor Ntuli, at page 592.

There are numerous other articles relating to the difficulties of Mr Matlala. It is to be expected that people associated with Mr Sibanyoni, who was the allegedly the victim, or who was the victim of an assassination attempt for which Mr Matlala was allegedly responsible, would follow the trials and tribulations of Mr Matlala quite enthusiastically, but then there are chats which are slightly different.

And for these, we need to go to File 4 and File 5. Starting on File 4, page 1889, one sees Mr Moyana on his Timmy Team Roger number, sending a series of chats to Mr Sindane. At the foot of that page, we see photographs of two men. The full photographs appear at 2371 and 2372 at File 5. We will not flag them because the faces of the men have not been redacted, but he then gives the names of the men.

The names of at least one of the men, which we see at page 1890, and he says under the name that is given, drug cartel running for Cat, distribution for Atteridgeville and Pretoria West. So he is identifying at least one of these two men as responsible for distributing Cat's drugs in Atteridgeville and Pretoria West.

Then lower down, on the immediate next chat, chat number 3 on the 21st of July 2025, there is a photograph of another two men. And it may be that the name that is in chat number 2 relates to this photograph as opposed to the photograph above it, but if one goes to page 2373, and again, we should not display, one sees the photographs of two men on a document that has across it writing saying this report, this report obtained, and we have seen similar documents as intelligence reports from the SAPS. It is certainly an intelligence report from somewhere. We have seen documents in this form from the SAPS.

We have not been able to identify the specific document, but what is interesting is if we go to the, what is underneath it is what looks like a leave form. And again, we are trying to establish where that leave form is. If one looks at the top right-hand corner of that photograph on page 2373, which has, it is, it seems, somebody's leave form.

But if one goes back then to the chat, one sees underneath that picture a name and an identity number and then there is a contact card. And the contact card, again, which we will not display because it has not been redacted, is on page 2374. I can mention the surname because it seems to relate to a place rather than – well, not the surname, but the second name because it means, it seems to relate to a place rather than a name. It says Shosha, which I assume is a link to Soshanguve. Because if we go back to the main chat, we see underneath that contact card, Mr Moyana has said drug cartel running for Cat distribution for Mabopane, Soshanguve, Winterveld and Pretoria North.

Then there is another picture that one sees at the top of page 1891. And that picture, the actual picture, the actual picture has not been reproduced in the bundle. Apologies for that, but there is then a name and an identity number and some cell phone numbers.

Now, one of the questions we would like to ask Mr

Sindane is why details of these names and faces, one, where they came from, two, why he was receiving them from Mr Moyana. Because it seems to us that we can think of two non-innocent explanations and we cannot think of any innocent explanations. The two non-innocent explanations are this.

The one is that because of the antipathy between Mr Sibanyoni and Mr Matlala, people associated with Mr Sibanyoni were looking for Mr Matlala's associates, possibly with a view to taking revenge for the attempted murder of Mr Sibanyoni. That is the one non-innocent possibility.

The other possibility is that with the trials and tribulations of Mr Matlala, his drug distribution business was now vulnerable because its leader was in prison and was facing financial difficulties from the cancellation of his contract and people with an interest in that drug distribution business would want to know who the key points in that business are.

We cannot see an innocent explanation. Why would you want names and identity numbers of people ostensibly involved in running distribution for Mr Matlala in Atteridgeville, Pretoria West, Soshanguve, Winterveld, Pretoria North? Why would you have intelligence reports on these people? Why would you have their ID numbers? But perhaps if Mr Sindane comes, he can disabuse us of our

suspicions.

There is a further topic I would like to address now, which is Mr Sindane's access to police information and to police officers. We have already looked at the Kwagga 20 success report. Over the course of the lunch break, we have been told informally by a SAPS officer that this material is not material of this nature. These sorts of internal SAPS messages are not shared with community policing forums, but we will get that officially on the record elsewhere, from the top of SAPS.

There are a series of other reports of this nature that Mr Sindane has access to. So if we go to page 1756, File 4, one sees Mr Sindane sharing with Mr Moyana on the Timmy Team Roger number a SAPS shooting incident report relating to a shooting at a Sandton restaurant that certainly received fairly widespread coverage in the press, but the internal SAPS shooting report was not part of that coverage. So it was a shooting at Solo restaurant on Fredman Drive in Sandton. A very detailed internal SAPS report as to the shooting runs through the whole of page 1756 and over to 1757.

Then another report, a report on File 4, page 1894, a report of an investigation into the murder of a police officer. That is a report into the murder of Sergeant MM Lekalakala who was murdered in Mabopane near the Putco

bus depot. Full detailed internal police report identifying who the role players on the scene are or were up to the level of Major General, what was detected.

And over the page a reference to the fact that this is the Organised Crime Investigation Unit under General Lekalakala. So it seems that someone inside SAPS is feeding to Mr Sindane an internal report. Not just the internal report, but also details of who is in charge of the investigation into this murder, because the fact that Major General Lekalakala is in charge of the investigation unit does not appear in the report itself.

ADV KHUMALO SC: Where do we see that these are police reports other than the content in 1756 and 1894?

ADV CHASKALSON SC: They are in the format of these internal police reports that we have seen. So they start with: Good afternoon, General. If one looks at these reports generally, they follow the same format. Charge of murder, police officer, case to follow. So there is not a case number that has yet been allocated, but the person writing the report is wanting to give a case number, which suggests that that is something internal to the police.

But these, they do look like this. We could speak to General Lekalakala, or not even General Lekalakala, the Loate Station in Tshwane which is the station responsible to get confirmation that this was an internal SAPS report.

ADV KHUMALO SC: And they seem to be addressed to a General. Do we have an idea? I am assuming that General – no, no, it cannot be Tshwane District. So I am trying to establish who maybe the General is.

ADV CHASKALSON SC: My guess is it would be General Lekalakala because lower down Mr Sindane says it is his Organised Crime Investigation Unit that is responsible, but again, we can pursue that. If we compare the two, if we go back to File 4, 1756, we see the same structure: Good morning General, shooting incident report, the date, district Johannesburg, the case number, but we can pursue this further and just close that loop.

Then there are other documents suggesting that Mr Sindane and Mr Sibanyoni have access to internal SAPS communications. So if we go to page 1230, one sees, File 3, File 3. One sees in chat number 3 that Mr Sibanyoni reports to Mr Sindane that General Sibiya has been suspended now. Sorry, chat number 2. Then in chat number 4, he sends to Mr Sindane a document. That document is at File 5, page 2369.

ADV KHUMALO SC: Before we go there, is it also not the one on 1378? One looks the same to me.

ADV CHASKALSON SC: 1378?

ADV KHUMALO SC: Ja.

ADV CHASKALSON SC: It is indeed.

ADV KHUMALO SC: Okay.

ADV CHASKALSON SC: It is indeed. And, in fact, the 1378, it is the same document in both places. But File 3, 1378, is good enough for our purposes. The 2369 is when it gets forwarded to Mr Moyana. So if we go to 1378 in File 3, what we see is that someone has given to Mr Sibanyoni a copy of the letter signed by General Masemola recording that Major General Makgato has been appointed as Acting Divisional Commissioner of Crime Intelligence with immediate effect.

That would follow – sorry, I now realise that I have actually misunderstood the significance of the second letter because this would relate to the suspension of presumably of General Khumalo, not General Sibiya, because the Acting Divisional Commissioner of Crime Intelligence was a position occupied by General Khumalo.

So either way, what Mr Sibanyoni has is an internal letter of General Masemola directed to all Divisional Commissioners and Provincial Commissioners appointing the Acting Divisional Commissioner of Crime Intelligence. Whether that was public information or not, that General Makgato had been appointed as Acting Divisional Commissioner, the letter doing it would not have been public. What then happens is that...

ADV KHUMALO SC: My recollection is that Divisional

Commissioner of Crime Intelligence was not suspended because remember when we were dealing with bail conditions, that was one of the issues that the Magistrate cannot impose that condition because he has not been suspended. So is it not possible that maybe this is a misdirected letter, in fact, they thought it related to General Sibiya, that is why they were sharing it? Because remember when we were dealing with the issue of bail conditions, one of the grounds of appeal was that how can a Magistrate stop them from going to work when they have not been suspended?

ADV CHASKALSON SC: Yes, yes.

ADV BALOYI SC: The other possible explanation is that those WhatsApp messages are unrelated. There is one ...[intervenes].

ADV CHASKALSON SC: Talking about General Sibiya.

ADV BALOYI SC: And this one is ...[indistinct].

ADV CHASKALSON SC: We will get to the bottom of what this letter related to and whether in fact it was even a genuine letter. But for present purposes, the point that we are trying to make does not relate so much to the content, to the specific details in the letter as to the fact that Mr Sibanyoni has access to a document which purports to be an instruction or a letter from General Masemola to all Divisional and Provincial Commissioners.

And certainly both he – or certainly Mr Sindane understood the letter to refer to General Sibiya's suspension because in File 3 at 1407, he immediately forwarded it to Mr Moyana on Mr Moyana's second cell phone, the Mkomazi Timmy T cell phone. And at chat 2, Mr Sindane says General Sibiya has been suspended now, then forwards the letter and then says I told you, my brother.

But again I emphasise it is not about – the letter may or may not correctly have referred to Divisional Commissioner Crime Intelligence, but either way, both Mr Sindane and Mr Sibanyoni assumed it was a legitimate internal SAPS communication to which they had acquired access and to which they should not have acquired access.

The access to internal criminal justice documents goes even further because if we go to File 4, page 1985, we see that Mr Moyana – it is 1955. Did I say 1985? Apologies, 55. One sees that Mr Moyana in chat number 1 sends to Mr Sindane a document. That document is at File 5, page 2385, and it is an affidavit.

It is sort of an affidavit. It is not drawn as an affidavit, but it has a Commissioner of Oaths stamp on it certifying that it is sworn. It is drawn as a memorandum and it is a document in the name of Mr Chris Steyn, who we know about from the EMPD investigation. And Mr Steyn says that he states under oath that on 22 September three

SAPS members came to his office and asked him if they had fitted blue lights to a series of vehicles, and these are vehicles with registration numbers that relate to CAT Security and the controversy about CAT Security having blue lights:

> "I indicated to them that we, at fleet management, never fitted blue lights to these vehicles."

And on it goes. So this is an internal Ekurhuleni Metropolitan Police affidavit relating to the investigation into the CAT Security blue lights matter. And the affidavit is signed on the 25th of September. Within two days, Mr Moyana has a copy of it and he is forwarding it to Mr Sindane at page 1955.

Now, the links between Mr Sindane and the SAPS do not just have to be, you know, one can infer the links between Mr Sindane and the SAPS from the sort of information that Mr Sindane is exchanging in his chats, but one sees also direct links as well.

So if we can start with the real General Botsotso Moukangwe? He is involved in chats with Mr Sindane. They start at File 5, page 2329, and one sees at 2329 that the chats at File 5, that begin there at 2329, are between Mr Sindane and a phone number which is given. I mean, it is redacted on screen, but you will be able to see the phone

number on the last two lines of text on 2329.

If one goes to page 176 in File 1, one sees the SAP96 form of General Moukangwe. 176. And at the time that this form was issued, or maybe his last position, one sees under job description Deputy Provincial Commissioner Crime Detection, and he is under the Provincial Commissioner for Mpumalanga.

Now, if one goes down to page 178, the last line of the first box reflects his private cell number and that private cell number is the same number that we see in the chats that commence on File 5, 2329. So the cell number with which these chats are exchanged is the private cell number of General Moukangwe, General Botsotso.

ADV KHUMALO SC: I bet in this context means it is not state issued.

ADV CHASKALSON SC: It is not state issued, I would imagine, but it is a contact detail that the SAPS have for him if they need to get him in the course of his employment. Now, the chats themselves are interesting. If one looks, for instance, at page 2331, File 5, and there in chat 1, which is repeated also in chat 2, the General writes to Mr Sindane:

> "Good evening, sir. My office is organising my farewell on 28 March 2025, and they requested me to assist them in requesting donations from people

> I know and I know you. Would you please assist?"

So the relationship between Mr Sindane and General Moukangwe is of sufficient closeness for the General to feel at liberty to ask him to pay for his farewell function, and then he forwards to Mr Sindane an account number into which he would like Mr Sindane, presumably, to make his donation.

If we go down later, even after the General has retired, they seem still to be in touch, apparently, in relation to police matters. If one looks at page 2333, chat number 2, on the 11th of March Mr Sindane writes to the General saying:

> "Fumbi, can you please call me if you have got a chance?"

There is no immediate response, but two days later, on the 13th of September, the General says:

> "Morning, Fumbi. I have arranged with Brigadier Dlamini and Flying Squad will be busy with the game today, but will try to send out some."

And there is a contact card and chat 5:

> "Good morning, Fumbi."

Chat 6:

> "The above is received and noted. The

leadership is ready to welcome them tomorrow."

So General Moukangwe and Mr Sindane are continuing to be in touch. General Moukangwe is apparently arranging with Brigadier Dlamini for people to go out and meet the leadership, at the instance of Mr Sindane.

We have already referred to the chats between Mr Sindane and the person whom we said, although he is listed as Botsotso Middleburg SAPS, he is actually not General Moukangwe, but Sergeant Mthimunye. If one goes to File 5, page 2302, one sees that the, again, the SAP96 form of Sergeant Mthimunye, and again, if one goes to the private phone entry, private cell number, which is on page 2303 at the bottom of the first box, one sees the cell phone number of the person who is saved in the cell phone of Mr Sindane as Botsotso Middleburg SAPS.

I am just trying to find the reference to those chats with Sergeant Mthimunye, and I have lost that reference. I will try to find it. I will come back to you with that reference. There are other SAPS members who seem to be at the disposal of Mr Sindane. So if we go to page 2337 of File 5, one sees his chats with someone whom he has saved as Lepara SAPS Highway.

And if one runs through these chats, it seems that Lepara SAPS Highway is essentially at the disposal of Mr

Sindane to offer him escorts. So if one looks at 2388, chat 1:

> "Morning, my brother. We are on duty in case you need us."

That is from the 17th of July. 2nd of August:

> "My brother, we are here on the street. Let us know if you need anything."

Page 2399, chat number 2:

> "My brother, hope you are good. We are on the street. Let us know when you need an escort."

And on and on it goes and every now and then ...[intervenes].

ADV KHUMALO SC: Mr Chaskalson, I think you said 99. It is 39.

ADV CHASKALSON SC: 39, sorry, I am just running sequentially. Apologies. One sees on the 19th of September, at the foot of page 2340, Mr Sindane sends an entry code to Centurion Residential Estate to Lepara SAPS Highway, Centurion Estate being the residence of Mr Sibanyoni. 2343, Mr Sindane says:

> "We are here in Bronkhorstspruit."

Lepara-SAPS Highway says:

> "Around Pretoria Central."

Mr Sindane says:

"Come at 11:00."

All of this is happening on the 9th of November 2024. Lepara SAPS Highway says:

"What time to pick up?"

But in fact that is already been answered, so on page 2345 he says:

"Noted."

And then at 10:45 he says:

"We are here, my brother."

And Mr Sindane responds with a thumbs up image. So the Lepara SAPS Highway chats suggest that Mr Sindane is able to call on SAPS members to provide escorts. One sees the same thing in his chats with someone whom he saves under the name SAPS Thapelo Eeemah. That is in File 4, page 1574.

ADV BALOYI SC: [Indistinct – microphone not switched on].

ADV CHASKALSON SC: 1577 is good enough, none of the content starts before 1577. So if one looks at, for instance, the footer page 1579, Mr Sindane tells SAPS Thapelo Eeemah:

"You must lead."

And at 1580 Thapelo Eeemah responds:

"Arrived safely."

The message saying he must lead is at 02:21 and the safe

arrival is at 02:33, and Mr Sindane says sure in response to arrived safely. But what is interesting about these chats is that SAPS Thapelo Eeemah is essentially soliciting payment for his services. So, for instance, if one goes to page 1578, chat number 2, he says to Mr Sindane:

> "Just do pay and clear."

Mr Sindane responds in chat 5:

> "Done, Baholo."

And in chat 7, Mr SAPS Thapelo Eeemah says:

> "Thanks, Baruti."

And one sees similar exchanges. For instance, 1580 SAPS Thapelo Eeemah at chat number 5:

> "Good day, Baruti. I am still stuck, but I have managed to organise 1500. I am short with 1500. I am very sorry for yesterday's conversation. Just did not want to put pressure on you guys."

There is also a set of conversations between Mr Sindane and someone whom he has saved in his phone as SAPS, Mashego SAPS Midrand. Those chats start on File 2, page 685. And again, there is an ongoing relationship between SAPS Mashego Midrand and Mr Sindane that seems to be about providing escorts. So, page 687, File 2, we have chat number 5. Sergeant Mashego says:

> "We have arrived here by Tasha's."

And says hi. This is on the 28th of April. That was at 16:28 in the afternoon. If we go over the page, it is page 688, chat number 5, Mr Sindane is asking:

"Where are you guys?"

That is at 05:42. Sergeant Mashego says:

"We are on the N1."

And then on the 12th of July, Sergeant Mashego is being sent entry codes for Mr Sibanyoni's estate. Same again on the 17th of July, page 790. Mr Sibanyoni sends an entry code on the 17th of July. On the 1st of August, he is saying:

"Can we meet at 15:00?"

And at page 691, Sergeant Mashego says:

"We are in Waterfal, Grootman."

Mr Sindane says:

"I am also here. I do not see you."

And he gets the response:

"Where are you? Mall of Africa. Coming that side."

And Sergeant Mashego says:

"At the Codfather."

And they then are able to meet. But there is an ongoing relationship involving, at the very least, regular meetings and access to Mr Sibanyoni's residence between Mr Sindane and Sergeant Mashego.

Chair, there are other issues that I do want to

canvas, but we have Mr Sibanyoni here tomorrow, and most of them are probably better canvassed through Mr Sibanyoni, even if Mr Sibanyoni says, well, these are chats that I cannot speak to. Because although one of them relates to me, I cannot tell you about what Mr Sindane was saying behind these chats. I am reluctant to go through the other topics in advance of Mr Sibanyoni.

If Mr Sindane ever comes back, we will be able to canvass the materials with him, but I think I have reached the end of what I can helpfully canvass in the absence of Mr Sindane, which will not be capable of being canvassed when Mr Sibanyoni comes. So, I would ask if we could stand down until tomorrow when Mr Sibanyoni comes.

ADV KHUMALO SC: Mr Chaskalson, have we been able to identify some of the SAPS people? Lepara SAPS Highway, for example, have we been able to identify?

ADV CHASKALSON SC: We have a series of – we have been able to identify most, most. And let me – if one goes to ...[intervenes].

ADV KHUMALO SC: Would it work if you just gave us a list of the people you mentioned whose full names are not here?

ADV CHASKALSON SC: Yes, we can do that because what we have is we have SAP96s which match the phone numbers.

ADV KHUMALO SC: So maybe just give us a reference to the relevant pages where we can find ...[intervenes].

ADV CHASKALSON SC: Can I do that and can I just prepare a list and then, or can I actually ask somebody else to prepare that list and then send it through? But we have SAP96, I think, for everybody who is mentioned.

CHAIRPERSON: Let us adjourn and resume at 09:30 tomorrow.

HEARING POSTPONED TO 29 SEPTEMBER 2026

HEARING ADJOURNS

- - - - - - - - - - - - - -