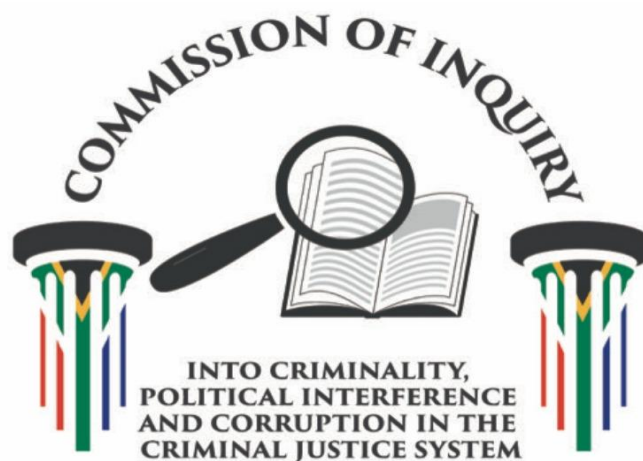


**JUDICIAL COMMISSION OF ENQUIRY INTO CRIMINALITY,
POLITICAL INTERFERENCE AND CORRUPTION IN THE
CRIMINAL JUSTICE SYSTEM**

HELD AT
BRIGITTE MABANDLA JUSTICE COLLEGE

3 FEBRUARY 2026

DAY 52



PROCEEDINGS ON 3 FEBRUARY 2026

CHAIRPERSON: Mr Chaskalson, Ms Poee.

ADV CHASKALSON SC: Morning.

CHAIRPERSON: I was expecting to see Mr Ngoato here.

ADV CHASKALSON SC: We were also expecting to see him. We just established he is not at the premises where the witness is, but we do not know where he is, and his postponement application that he wants to move.

CHAIRPERSON: It is strange then, because if he wants to
10 move an application for a postponement, he should be doing it here. It is strange that, so nobody knows his whereabouts?

ADV CHASKALSON SC: Well, we only established a couple of minutes ago that he is not at the premises with the witness. We actually are in the ...[indistinct] not to call you in.

CHAIRPERSON: I would have expected him not to be where the witness is, but rather to be here anyway.

ADV CHASKALSON SC: Can I suggest that we attempt to
20 contact him.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: And find out how long it will take to get him here.

CHAIRPERSON: Thank you. Let us adjourn. We will hear from you then.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: This meeting is being recorded. Mr Ngoato, now the time is 9:38. We were supposed to start at 9:30. We were all here at 9:30 except you. What went wrong or what happened?

MR NGOATO: Morning, Commissioners. Commissioner, I profusely apologise for the eight minutes delay time on our side. Unfortunately, I had to start at the High Court, but I
10 have communicated, I have communicated the fact that we are at the High Court so that we can have the necessary documentation being stamped and accepted by the High Court, and for that, with traffic and accreditation just to come in, that delayed us with that eight minutes. I profusely apologize. That is not in any way a manner to disrespect the Commission.

CHAIRPERSON: You said something about communicating. What did you say? I think you said communicated. Or did I mishear?

20 **MR NGOATO:** Sorry, Commissioner, I did not get that clear?

CHAIRPERSON: I thought somewhere in what you were saying, you said something about having communicated. Did I mishear?

MR NGOATO: Yes, since at about 7 o'clock this morning, I

have been in communication with the attorneys of the Commission, I mean, also in terms of exchange of documentation, where they were not having received the necessary documentation.

CHAIRPERSON: Did that have anything to do with the possibility of you being late?

MR NGOATO: Yes, my colleague did communicate. He is just outside, but I will give you that. I can be able to give the details in terms of who exactly she communicate that we
10 are running slightly late. Or we might ...[intervenes].

CHAIRPERSON: But in any event, Mr Ngoato, you knew that you had to be here at 9:30. I do not understand why you would have had to go to the High Court personally. Surely you have other people in your law firm who could do that. And that is a very simple attending to court and making sure that the matter is properly registered, assigned a case number and all that. That is a very minor, yes, important, but very minor administrative issue, which could be done by anybody. It could even be done by
20 administrative people who are not legally trained. Why it should take the owner of the firm, I assume you are the owner of your law firm, to go there and attend to this, it just does not make sense at all to me. For you to then make us wait for you for something that could be done by someone else. For example, last week you were there with Mr,

please remind me?

ADV BALOYI SC: Maleka.

CHAIRPERSON: Mr Maleka. You were there with Mr Maleka. Why could Mr Maleka not attend to that, or whoever else for that matter. This is totally unacceptable. Totally unacceptable. It is actually unprofessional conduct to make us wait. Why did you not communicate with Mr Chaskalson?

MR NGOATO: Mr Commissioner, like I indicated that I
10 have been in contact with the attorneys of ...[intervenes].

CHAIRPERSON: Why did you not communicate with Mr Chaskalson?

MR NGOATO: I do not have Mr Chaskalson's direct number.

CHAIRPERSON: You were communicating with, you were communicating with the Commission's attorneys. You could easily have gotten his number from them. That is not an excuse.

ADV BALOYI SC: Commissioner, maybe if I am given a
20 chance to respond, then the Commissioner will appreciate ...[intervenes].

CHAIRPERSON: Yes, go ahead, please. Go ahead.

MR NGOATO: Thank you. As of yesterday, Commissioner, I have six times called DM Attorneys and I spoke to Mr Mbau to give me the number of Geraldine Burger, who I

know and I have been introduced since the beginning of this proceedings to be the person, to be the contact person. For the entire day, I was not given those numbers. This morning I spoke to the main director of DM Attorneys himself, and I indicated my disappointment that their law firm since yesterday I have been communicating with one of the officials just to get through to Geraldine Burger, and I could not get those details. I was quite very happy when I now deal with the main director, and we started exchanging
10 since this morning.

We were travelling with one car. When we were at, just about to arrive, and I was requested to have a copy of the High Court, I indicated to Mr Mogashoa that for some reason, since this morning, my phone cannot send, cannot open PDF documents, so I am waiting for Mr Maleka to come outside court, I am standing outside court so that I can send the necessary documentation to him.

Unfortunately, in this particular instance, there was never any malice or any intention on our side to disrespect
20 the Commission. I have been up since 6 o'clock this morning dealing with this particular matter. We left our office at 2 o'clock this morning.

CHAIRPERSON: Mr Ngaoto, I will say this and I do not want us to engage any further on it. What you say from where I am sitting are excuses, excuses that are totally

unacceptable. I maintain what I said earlier, which is that knowing that you had to be here at 9:30, there was no reason for you to attend to a minor, yes, important administrative issue that could have been attended to by anybody. Totally unacceptable. The discussion is closed.

MR NGOATO: [Indistinct]... apologies for that, Commissioner.

CHAIRPERSON: Yes, Mr – sorry?

MR NGOATO: We apologize for that.

10 **CHAIRPERSON:** Thank you.

MR NGOATO: Thank you.

CHAIRPERSON: Yes, Mr Chaskalson?

ADV CHASKALSON SC: Chair, Mr Ngoato was going to move a postponement application.

CHAIRPERSON: Yes. Mr Ngoato, we have before us your postponement application. Can you proceed to move it, please?

MR NGOATO: Indeed. Commissioner, I must appreciate and thank the Commission for having granted us the
20 postponement last week and indeed, we definitely used of the time to the best of our ability, as was granted since last week. However, since we started finalizing the documentation, certain things really cropped up and showed and changed the direction that we were taking, which therefore since necessitated this application.

As it is commonly known, we are the creatures of instruction. It is our client's instruction then to then bring an urgent application in the High Court, purely and solely for two reasons. As the Commission is in possession of the papers, I take that the papers might have been read and I apologize that they have been submitted to the Commission almost on the 11th hour. The first reason, Commissioner, is the same reason, one of the reasons that we mentioned last week, that the applicant, before he could even make his
10 first written submission to the Commission on the 17th of December, an interim report was already been issued, which we fully understand and correctly so in terms of section 10.4 of the terms of reference, that the Commission is entitled to do so.

But two days before he could even make his first written submission, an interim report has already been issued, which had recommendations and, findings and recommendations against him. Unbeknown and obviously we do not have access to that particular interim report, but
20 just a day before our appearance on the 30th of January, which is last week Friday, the State President publicly announced that he accepted the same report and therefore the announcement was made that he needs to be charged. It is on the basis, that is the first reason. It is on the basis of that, that he is of the view that even though at the

Commission he is a witness, not an accused, but whatever he may be able to say as a witness at the Commission, may, he may incriminate himself, which will be a violation in terms of section 35(3) of the Constitution.

The second aspect that made us to then make the application to the High Court, Commissioner, is that in perusing the WhatsApp chats, the nature of the WhatsApp chats and the manner in which they have been extrapolated, it only shows outgoing and incoming. Even messages that
 10 were not originated by him, but he received them when they were forwarded to him, appears to be that he is the originator of the messages, which they are now distort, the narrative and the version and how things are in terms of those messages and as a result, that would then necessitate that he now gains access ...[cellphone ringing]. Oh, I apologize. That will now necessitate that we look into how the messages were extrapolated in terms of, from his phone in terms of from the time he ...[intervenes].

CHAIRPERSON: Feel free to either put it on silent or
 20 switch it off. Do not feel any pressure not to do this.

MR NGOATO: Mr Commissioner, it is not even my phone, it is Mr Maleka's phone and I do not know his password or his pattern how to close it off.

CHAIRPERSON: Okay. All right.

MR NGOATO: So, mine is here and this is Mr Maleka's

phone. It is Mr Maleka's phone ringing.

CHAIRPERSON: All right, thank you.

MR NGOATO: So, the manner in which how this, the chain of evidence or the chain from the time his phone was taken ...[intervenes].

CHAIRPERSON: Is that Mr Maleka? Please go across.

MR NGOATO: Sorry. Sorry, sorry, sorry.

CHAIRPERSON: Are you no longer comfortable to support your post the way you did last week, Mr Maleka? All right.

10 All right, please continue. I am sorry about the interruption, Mr Ngoato.

MR NGOATO: Thanks, Commissioner.

CHAIRPERSON: Yes.

MR NGOATO: So the manner in which the chats were downloaded or extrapolated from his phone, leaves much to be desired, which appears to be a valuation in terms of how the evidence is being presented, because it does not show the messages that are forwarded, it does not show that he received it as being forwarded to him, but it shows as if he
20 is now the originator. And some key people or chats that he had with other people are not included in that. And I quite understand that the evidence leader said there were certain messages that are not of interest, but for a consistency basis in particular, he has been much more in communication with one particular General and as opposed

to the other.

But, and the things that they were discussing with the other are not included. That then that shows a wrong narrative or misplaced the whole view of the situation and as a result, it was, my clients obtained a legal opinion from two SC's, senior counsels, who then are the one that are currently working on the application in the High Court with a junior counsel based in Durban. These had to have, took place as a matter of one day, having to go through this
10 thing and it is on that basis that if he is to come before this Commission, whatever he says may not change because of, before he could make the first statement, an interim report was made.

Before he could even appear, the President has already accepted that. So whatever he comes here and says may not change the narrative and more likely that he will incriminate himself in any answer that he gives. And it is on that basis that the applicant decided to launch an application in the High Court to restrict this Commission,
20 not to compel him to appear and not to compel him to answer any questions until pending the finalisation of that application in the High Court. Thank you, Mr Commissioner.

CHAIRPERSON: Thank you, Mr Ngoato. Mr Ngoato, I read, because I received the application only this morning,

I read it hurriedly and I may have either missed or misread what I am about to raise. I do not remember in the affidavit a point being made about WhatsApp chats that appear to have been initiated by the witness when in fact they were not. Did I miss that? Or is this something you are stating for the first time from the bar, as it were?

MR NGOATO: Commissioner, I was just trying to elaborate on the reasons that I ...[intervenes].

CHAIRPERSON: Then ...[intervenes].

10 **MR NGOATO**: The first round of him wanting the High Court ...[intervenes].

CHAIRPERSON: Yes.

MR NGOATO: To interdict is that his WhatsApp chat should not be displayed, because those WhatsApp chats are not correct. They are incorrect in the manner in which they have come from, because the entire bunch of documents, they only show ingoing, I mean, outgoing and ingoing. Even the WhatsApp's that somebody forwarded to him and he sent it to somebody, it only shows that he is the one
20 sending and making him the originator, while he is in actual fact not the originator of the message.

CHAIRPERSON: Okay. With the exception of what you are raising from the bar, my reading of the application is that the only new thing that is being raised in the application affidavit is the issue relating to section 35 of the

Constitution. The rest is something that the applicant ought to have raised in his postponement application moved last week. Do you agree with me?

MR NGOATO: May you please repeat?

CHAIRPERSON: I am saying I read the application, today's application, to raise only one new issue, leaving aside the point that you are making from the bar, and that one new issue is the issue relating to section 35 of the Constitution, the right to a fair trial in the context of a
10 criminal trial. That is the only new thing that I saw in my reading of the application, The rest are issues that the applicant ought to have raised in his postponement application that was moved last week. What is your comment on that?

MR NGOATO: If I understand you, Commissioner, is that the things that are mentioned in the current application, is the Commissioner saying most of them are the things that were raised in the previous application?

CHAIRPERSON: Are the sort of things that could and
20 ought to have been raised in last week's application. The exception is the section 35 issue. That on my reading is the only new issue.

MR NGOATO: I differ, Commissioner, and maybe let me explain myself, or maybe try to find common ground between the two. When we moved the application last

week, it was simply because that we had not had time to peruse. Now, the time to peruse obviously goes hand in hand in the manner in which we received the documentation. But on further perusal of the matter, these things now become very clear, that section 35(3) rights will be highly affected. But it all emanates also in terms of how he has been served right from the beginning. So there is a lot that starts and giving context from the beginning of how you received the notices and the ultimate aspect, if I am
10 making myself clear.

CHAIRPERSON: Yes, Mr Ngoato.

MR NGOATO: And maybe just to conclude, Commissioner, we obviously gave the client a legal advice in light of the Zuma case, and I am quite aware that the Commissioner is well vested with that case, if not participate in that case, and we had to distinguish between the rights of an accused as opposed to the rights of a witness, because he could not invoke the right to remain silent because he is not an accused in here, he is actually a witness.

20 But as a witness that is already being charged, he is more likely to incriminate himself, which now prejudice his rights and hence the focus in terms of that is the section 35(3) rights that could be violated.

CHAIRPERSON: Thank you, Mr Ngoato.

MR NGOATO: Thank you.

CHAIRPERSON: Thank you. Mr Chaskalson?

ADV CHASKALSON SC: Thank you, Chair. Chair, this application needs to be seen in the light of the chronology. The witness has known he has to give oral evidence at this Commission since sometime in November last year. He knew about the date of 30 January more than two weeks ago. He was provided with all of the WhatsApp's that have been made available to the Commission on 22 January. Now it is 12 days ago.

10 He has no basis from preventing the Commission from having regard to those chats and from confronting him with those chats. But if he wanted to do so, if he want to bring some application in that regard, the time to launch that application was 12 days ago. He chose not to. Instead, he delayed until 28 January, that was two days before his hearing date, and sought a postponement of hearing so that he and his attorney could work through the WhatsApp's.

 He brought his postponement application on 30
20 January. It was moved on 30 January. By that time, he knew about the recommendation in the interim report, but he elected not to address it in his postponement application. He successfully derailed the hearing set down for 30 January and was given a postponement to today. Then this morning he brought, he brings a new

postponement application and this one is linked to a High Court urgent interdict application that he has apparently now served and that in draft form was attached to the postponement application.

According to the draft Notice of Motion, the High Court application is to be heard on 10 February. That is in a week's time, so it would derail any prospect of him testifying this week. The relief sought in the High Court application is framed in a confusing fashion. Prayer 1 is
10 relatively simple, it is the urgency prayer. Prayer 2 is a prayer for an interim interdict restraining the Commission from compelling the applicant to appear before the Commission until "finalization of this matter". Prayer 3 is a prayer for an interim interdict restraining the Commission from exhibiting the applicant's WhatsApp's pending "finalization of this matter".

So 2 and 3 seem to be prayers for interim relief. And what are they contingent on? They are contingent on prayer 4, which is the prayer for final relief and that is a
20 prayer for an order reviewing and setting aside the notice in terms of regulation 10(6) and the summons directing the applicant to appear on 30 January. So they want those two documents or instruments set aside, and they want them set aside because they were issued "whilst having issued an interim report to the President with findings and

recommendations against the applicant on 15 December, and which the President implemented on 29 January, which is contrary to the rules of evidence and principles of fairness". So it seems to be this new fair trial complaint. And that is the final relief.

Now, the urgent is a complete abusive process. If it was going to be brought at all, it should have been brought long ago and certainly before last week's postponement application. But in particular, the prayer for
10 interim relief preventing the Commission from exhibiting the witness' WhatsApp's is utterly hopeless because it is completely unrelated to the prayer for final relief. Even if the witness were to obtain the final relief in prayer 4, there is nothing that would prevent the Commission from exhibiting his WhatsApp's.

The ordinary rules of evidence in courts do not apply to a Commission. Rule 6(1) expressly states:

20 "The Commission may receive any evidence that is relevant to its mandate, including evidence that might otherwise be inadmissible in a court of law."

These WhatsApp's are extremely relevant to the mandate of the Commission. In my view, they are more relevant than any evidence that has ever come before this

Commission thus far. So whether or not the witness ever gives oral evidence at the Commission, the Commission is entitled to have regard to the WhatsApp's and in view of their extraordinary relevance, it is not just a matter of being entitled to have regard to them. The Commission is obliged to have regard to them.

Having said all of that, oh sorry, there is another issue, which is the fair trial complaint that is advanced now is itself stillborn for two reasons. The first is the
10 regulations and the Commission's Act make clear that the witness has a right of privilege against self-incrimination in these proceedings. So the witness can refuse to answer any question that is potentially self-incriminatory. The second is that any evidence that the witness gives in these Commissions is inadmissible in a criminal trial.

So the fair trial complaint is a non-starter. But despite all of that, and despite the fact that this application and the postponement application are, in our view, abuses of process, we are willing to accommodate the applicant to
20 a limited degree. What we propose is that we will not ask the applicant to answer any questions until his High Court application is finalized. However, we will not refrain from exhibiting his WhatsApp's. Rather, we will use today and the remaining days that we would have used to hear the evidence of the witness, instead to display his WhatsApp's

and to explain their significance.

If at the end of that process, and after the High Court application, the applicant wants to give evidence to refute any of the inferences that we will in the course of the next few days ask the Commission to draw from the WhatsApp's, he is welcome to do so. We undertake that if he wants to come back and testify to clarify any wrong propositions that we have put to the Commission, wrong inferences that we draw, we will ensure that he has that
10 opportunity.

There is another issue that I should just mention, which is that he has never previously expressed any concern about not being told which of the chats are forwarded and which of them originate from him or from the counterparty. If he had, we would have given him a spreadsheet for each set of chats which says which are the forwarded chats, which are the originating chats. He now raises that complaint. If he wants that information, we are happy to give it to him before he decides whether or not to
20 come back to testify. But what we are not happy to do is to allow the process of this Commission to be derailed again. So our submission is that this postponement application should be dismissed, subject to the condition that we will not expect the applicant to answer any questions in respect of the WhatsApp's that we will be displaying today,

tomorrow, and possibly later this week. Those are our submissions, Chair.

CHAIRPERSON: Thank you, Mr Chaskalson.

ADV BALOYI SC: Mr Chaskalson, can I just, just to clarify. I mean, if a postponement is refused, the witness is not excused. He has to remain in attendance, otherwise, we are confusing, we refuse a postponement and then we excuse him. If it is refused, it seems to me that he would have to remain in attendance until he is excused by the
10 Chairperson. But if he remains in attendance, sitting, which I think he must, sitting in the witness box, it is entirely up to him how he wants to participate.

Yes, he will be sitting remotely as was permitted with the last application, but as long as he remains in attendance, you will do the exercise, you will do your presentation as you wish to do and it is really up to him how he chooses to participate because if he should decide as he is sitting there that he does want to engage with what you are presenting, we obviously cannot stop him.

20 But I just want you to be, I want to be clear about that, that a refusal of a postponement, it does not follow that he gets excused, he is given leave to leave the Commission. It means he remains in the Commission until the Chairperson says otherwise. And you are not suggesting that if that happens, if he remains in attendance,

you will simply present, he should not participate in the process. You are not saying that.

ADV CHASKALSON SC: No, no, he is entitled to participate as much or as little as he wants to.

ADV BALOYI SC: All right, thank you.

CHAIRPERSON: Mr Ngoato, if you have any reply, but there are two specific issues that I would like you to respond to. First, the point made by Mr Chaskalson that the section 35 point is stillborn for the reasons that Mr
10 Chaskalson gave. I am sure you remember them. And then secondly, the exhibition of the chats and commentary on them, which is how Mr Chaskalson proposes to proceed today. So your comment on both those and whatever other reply you may wish to make, please.

MR NGOATO: Thanks, Commissioners. Commissioners, there were four aspects that I wanted to respond to based on the statement by Mr Chaskalson, and two of them actually emanate from the same aspect. The first one is that he says he has been aware of this when he was invited,
20 and if he wanted to bring about an urgent application, he could have done so, even including last week. And just to clarify that particular aspect, the applicant could not, in any event, in anyhow, could have been aware and could have therefore acted therefore.

When the interim report was issued on the 15th of

December, before he could even submit his first statement, he was not aware of the interim report and the interim report is a confidential document that goes to the President. Nobody has an access to it. So he could not in any way been aware of the recommendations and findings in the interim report. Second to that is that even last week itself, I indicated in the last postponing application that just in the midst of preparation on the 29th, a day before, that is when the President made an announcement and in that
10 announcement, his name for the first time appeared. It is the only first time ever that he became aware. That was the night before he could appear in the Commission.

And second to that, or to support that, when we appeared on the Commission on the 30th, we said we have received this 4,800, now reduced to 1,030 but we have not yet finalised studying the documentation. So he could not have at that time appreciated what his rights and, what his rights are because he had not even gone through the documentation. So it is incorrect to then suggest that he
20 had you wanted to bring this thing, the matter, he will have done so and therefore there is no urgency in the matter. And that is the part that will be argued in the High Court in terms of when did they, whether the matter is urgent or not. That is the first comment with regards to the comments about urgency and when he became aware of that.

The second aspect will also go together with the section 35(3) in terms of the right to a fair trial, is that now that he has now have gone through the WhatsApp chats and now appreciate the veracity and the implications brought by this WhatsApp or WhatsApp chats that he has now finalized yesterday, it became quite very clear that whatever answer, especially in light of this recommend has been accepted, whatever questions they pose or whatever WhatsApp they display will implicate him in the next criminal proceedings
10 that have already been approved by the State President, whether it is criminal proceedings or internal.

So it greatly then affects the right to a fair trial in terms of him being able to, him possibly implicating himself. But also, I indicated that these WhatsApp chats, in the manner in which the they have been extrapolated, which now the evidence leader says if there is a need for that, they could provide. They have been extrapolated or, in an incorrect manner and I gave an example of a WhatsApp that has been forwarded to him is now being portrayed as he is
20 the originator of that WhatsApp. So even if you display them here, it will be misleading the country because it is going to be seen as he was the originator of that WhatsApp, whilst in actual fact, he is not.

And as a result of that, it then brought about in terms of whether the authenticity of this WhatsApp

messages because when, how was the phone taken? What are the qualifications of the person who downloaded the WhatsApp's? How truthful are this WhatsApp chats? Because in so doing again would be a violation of his rights because you already identified quite a great number of them that they were not originating from him, but they are now being displayed as they originate from him.

Now, with that being said, is that this Commission will then be failing its own mandate, because the mandate
10 of the Commission is that in terms of the terms of reference to their allegations, assess the information, and then make a determination if there is a *prima facie* evidence against a particular person. In this particular instance, decisions have already been made, recommendations have been made, but more importantly and central to that is how this WhatsApp chats have been obtained from his phone.

It must also be remembered, Commissioner, when he received the first notice, it was not about WhatsApp chats from his phone. It was WhatsApp chats from
20 somebody's phone. That is when he received the first notice and the summons. The only time he now receives WhatsApp chats from his own phone and the evidence leaders testified about that, how they struggled to get the information from SAPS, they only got it last week, and therefore they were able to work it out, was just last week

and therefore he could not have appreciated the nature of the WhatsApp chats any time before. He could not have appreciated the fact that he could bring an urgent application any time before until the State President makes an announcement on Thursday last week, and he was to appear the next day.

And to respond to the two aspects that you said I must, and I maybe have a look at it, in terms of section 35, is the right to self-incrimination, is that those WhatsApp
10 chats are just the same as any oral evidence or any type of evidence. They are incriminating, especially if the source of how it has been extrapolated is highly questionable, which now portrays him to be the sender, whilst in actual fact he is not the sender. He is actually forwarding what was sent to him. He is not the originator of the message.

And in terms of the terms of reference of this Commission, one is that the Commission need to look in terms of how criminal, criminal, what is the word, or drug cartels have infiltrated SAPS. And if there is a message
20 coming from a person that perceived to be part of the cartel and sent to him or forwarded to him, and now he forwarded to somebody else, and now he now looks as if he is the originator of that, that makes him to be participating or having facilitated in the organized crime.

So, there are far much reaching implications, and

hence the application to the High Court is to forbid and restrain this Commission from using those WhatsApp chats pending the finalisation of the High Court application. Thank you, Commissioner.

ADV BALOYI SC: Mr Ngoato, you have had, and I assume that you know that to be a position of law, but you have heard Mr Chaskalson say that anything that this witness says in this Commission may not be used in criminal proceedings. So when you speak about self-incrimination, 10 that is handled by the Commission's Act, which says, and the established law, that any evidence he gives here may not be used against him except for perjury, if he purges himself. So I expect that, then that is not an issue. That is not a ground to avoid him testifying. That is one.

Two, you make an assumption without a basis of what will be required or required of the witness to answer in any processes that the President has announced must follow, arising from what we have referred to, that there is *prima facie* evidence. And in fact, there is no basis to say, 20 to refuse to testify when you do not know, when he does not know how that process is going to unfold and what he will be required and expected to answer and speak to.

So from where I am sitting, your concern about self-incrimination, whether in court or in SAPS processes, does not seem to be grounded in law or in any known facts.

And that, in my view, should dispense with any concerns about self-incrimination.

Two, you seem to, you are concerned, firstly, the witness seems to want to know in advance what he will be asked before it is put to him. That is how I understand the complaints, the grounds on which you are seeking this postponement from what has been said in the papers that you have filed with us here, that he wants to know what is going to be asked because the language he uses is, I am
10 going to be asked questions in an open-ended fashion, and I do not know where it will go.

And that is a repeat of a theme of last week when you applied for the postponement. It was pretty much the theme. He does not know what he is going to be asked, and it could go anywhere. But that is true for every witness. That could never be a ground, in my view, for any witness to be excused from testifying. So that is two. And you can say why you, I have not heard why you say that is a ground for a witness to refuse to testify.

20 And lastly, the issues you referred to about his WhatsApp messages from other people forwarded to him, he does not know who downloaded them, the integrity, and he does not know the integrity of that process. But that is matters that witnesses get to speak to when they are in the witness stand. And I want also to note that there are two,

from what you have said, there are two tranches of documents. There is the first batch of documents that he got previously, and my understanding on Friday of you was that he has no difficulty testifying to that. So it is not a blanket concern. Last week you said to us he has no difficulty. In fact, I remember saying to you, so we could proceed today on that first batch of documents and you would not have caused a postponement and you said yes. So your complaint does not relate to that, so you should be
10 perfectly able to speak to that first batch of documents.

The second batch is the 4,500 pages. Again, I am going to repeat myself that what you are raising as matters of concern are matters that many witnesses have to confront on the witness stand and they say, but this is not from me. You know, it was forwarded to me. It is not mine. Those are answers that your witness should be able to give and I do not see why that would preclude, why he would be precluded from saying that. It has not been suggested that he would not be entitled to do that. But importantly, it is
20 not grounds to refuse to testify. Thank you, Chair.

MR NGOATO: Thank you, Commissioner. I think, Madam Commissioner, you raised four points that I have to address and respond to, the first part being we are making an assumption without a base that he might incriminate himself. I wish to submit with the greatest respect that the

basis in which we are moving from, Madam Commissioner, and if I were to combine this aspect together with the last aspect that you mentioned in terms of the first part of the documentation, and when we approached the Commission the first time last week, Friday, we clearly stated that the first part of the WhatsApp chats he received, they were not WhatsApp chats from his phone, but he was asked to make comments about it. And he had no problem in doing so, and then he has since submitted to the Commission.

10 The challenge and the problem, to compound the problem was that when we now received the WhatsApp chats from him, we were given a short space of time. But secondly, on top of that was the pronouncement by the President. Now, when the Commission now states that there is no basis for him to incriminate himself is that the President has already made an announcement that he must be charged. It is a matter of administrative process that at any given time from now onwards he could be charged.

20 And it is true, he does not know what he is going to be asked about. And it is even worse with that, that he does not even know what he is going to be asked about, that he could be saying things in the hope of clarifying and assisting the Commission, whilst digging a grave for himself. And that becomes a dark room to walk into and navigate because you are now walking into this dark room

that you do not know. It even makes it even worse.

But when we approached the Commission last week, we never at any given point asked to be given questions. We stated that, yes, he was never given questions, but we never make any demand of being given questions. Now, that becomes a problem when you now finally receive the documents and you finally study the documents and you find that the documents that has been given to you, and I do not want to suggest that this
10 evidence that has now been given to you has been tempered to suit a particular narrative, but it then comes out clear that messages that were not sent by him are now being made to appear that they were sent by him, because the contents, if you are to be asked about the contents of that particular message, which now shows you are the originator of that message, whatever answer you give, you are acknowledging and accepting the contents thereof.

And that over and above the fact that the evidence from here may not be used against him at a particular
20 instance, but there is beyond the right to self-incrimination that the person is entitled to. There is a right to dignity. This particular person is not just him, there is his family involved and now a whole wrong, incorrect narrative will have been placed in the public domain, which not just affects him, affects him and his livelihood and his children

and his wife and hence he wants the court to interdict the use of this chats in the manner in which they have been presented to him, because in the manner in which they were presented to him is incorrect and he cannot answer any other thing in terms of those.

ADV BALOYI SC: Thank you, Mr Ngoato.

MR NGOATO: Thank you, Commissioner.

ADV KHUMALO SC: Can I just, good morning. Just clarify two things. I am looking at the President's statement here,
10 and I want you to tell me where the President says this witness must be charged, because you are attributing to the President and to this Commission things that are not said anywhere, and you are using them as a basis for a postponement application and a High Court application. I will read for you what the President said in his statement.

“The Commission has said there is
prima facie evidence of wrongdoing,
and referrals are made in respect of
these people.”

20 But you are making an application on the basis that there is a criminal case and somebody has been charged. But there is no basis for that, because wrongdoing could be HR related, could have nothing to do with criminal proceedings. So do not attribute to the President statements he did not make. That is the first point.

The second point is, if your entire argument is taken to its logical conclusion, especially in relation to the privilege or the right against self-incrimination, it means your client will never testify in this Commission, because even in six months' time, there will still be a concern about self-incrimination, which means he should never come here and he should never take part in this Commission, and we should just forget about it, because that is the logical conclusion. Thank you, Mr Ngoato.

10 **MR NGOATO**: Thank you.

ADV BALOYI SC: Perhaps, if I may just add to the first point that Commissioner Kumalo says, reading from the President's statement, the media statement. It actually also reads:

“A task team will be constituted. A task team will institute investigations against people identified by the Commission for Investigation.”

20 So nowhere does it say your client will be, is going to be charged and what you will be charged with. It just says a team is constituted to conduct investigations. So self-incrimination is not an issue that you can rely on at this point.

MR NGOATO: Thank you, Commissioners. I appreciate that. Let me start with the first one that Commissioner Khumalo indicated that the statement by the President does

not make any reference to any criminal case, it might as well be an HR case. But whilst you are quite very clear that in terms of the terms of reference of this Commission, the Commission is to make recommendations and findings for criminal charges and any other process, and that is in terms of the terms of reference of this Commission. So I do not think any terms of reference from this Commission can be taken less the criminal aspect as well. That is number one. Number 2, even if the process may ...[intervenes].

10 **ADV BALOYI SC:** Mr Ngoato, you are not answering me. You said in your submissions, the President said your client must be charged.

MR NGOATO: Commissioner, if I ...[intervenes].

ADV KHUMALO SC: Now, I was simply pointing out that nowhere in the President's statement does he say that, because the statement says the Commission has found *prima facie* evidence of wrongdoing and has made referrals for investigation, which is what Commissioner Baloyi is emphasizing. Let us not play around with words.

20 I mean, either you are answering what I am saying and you address it specifically or we do not deal with it at all. But to say you can imply other things that are not there, it is simply incorrect. You are making an application and you are saying one of the grounds upon which the application is brought is that the day he was supposed to

testify, he found out that the President said he must be charged. Either that is correct or that is incorrect. And then we can deal with the issue of self-incrimination, which, as I said, on your argument, that will always be there, which means on your argument, he should never come to this Commission and testify. So those are the two points. Please deal with them specifically, but let us not go around them.

MR NGOATO: Commissioner, unfortunately, sometimes
10 there is no just a simple way just to give you a yes or no to an answer. You have to give a context to it. And giving a context to it is not avoiding answering your question, but it is just trying to clarify the issue. But what I am trying to say to you, Commissioner, is no task team, no investigation will not lead to a person being charged. The task team, at the end of the day, the task team at the end of the day, the investigation at the end of the day, because there is a *prima facie* evidence of wrongdoing. Wrongdoing in this instance has not been explained whether it is wrongdoing only in
20 terms of HR related matters or criminal matters. So whatever way that he is going to answer, there is already a *prima facie* wrongdoing before you could make a written submission or could say anything and that in itself, honourable Commissioner, is a ground for what ...[intervenes].

ADV BALOYI SC: But, Mr Ngaoto, is that not the problem, you do not know what wrongdoing has been identified. You have absolutely no idea. Absolutely not. Maybe the wrongdoing is that he exceeded the speed limit on Rivonia Road. You have absolutely no facts to base yourself on to say whatever he is going to be saying about these WhatsApp messages in the 4,500 pages will be self-incriminating. You have absolutely no basis. You have not seen the report. You do not know what that report says
10 about your client or this witness.

You have absolutely no idea and so you have no basis whatsoever to say anything, anything at all that he is going to be saying here is self-incrimination. As I say, and I say it without meaning to be flippant, but to make the point, that it could be that the wrongdoing that causes the President to order an investigation against him is he exceeded the speed limit. You do not know. You have no basis.

This is really, honestly, a fact devoid application.
20 You may want to argue the legal points that you rely on, but where you want to say, well, he is going to incriminate himself, well, the WhatsApp messages, there are no facts. We do not know what those WhatsApp messages, what his explanations are for them. We do not know, and yet you want to rely on that to persuade us, the Commissioners, to

grant a postponement, when you are not saying to us, here are the facts about those WhatsApp messages. Here is what they speak to and so you, Commissioners, should not allow them to be showed. I mean, that is what you do with an application.

You are asking for indulgence from us. There is no order of court that says we cannot proceed. So as matters stand, we are entitled to proceed. You seek an indulgence. You have not, in this application, pleaded any facts on
10 which we would base our indulgence, at least according to me. And I do not know that there is any, and of course, subject to the Chairperson, I do not know whether ...[intervenes].

CHAIRPERSON: Facts or law.

ADV BALOYI SC: Facts or law.

CHAIRPERSON: Facts or law.

ADV BALOYI SC: Absolutely. I really do not know that there is any, we are serving any real purpose with this continued exchange. You have made your case on your
20 papers. You have been engaged by us. You are not saying anything new to us. You keep repeating what you have said. I am not sure where we are going with it.

MR NGOATO: Chair, with the permission of Chair.

CHAIRPERSON: Yes, Mr Ngoato.

MR NGOATO: Thank you. Thank you, Chair. Chair, I

really do not want to appear I am not listening and taking the cue from the Commission, but I really have a serious problem with the following issues that there is no basis. Chair, the Commission is based on the terms of reference. The terms of reference are quite very specific as to what the Commission need to inquire. It is not any other thing. And the specific issues that the Commission need to inquire is to establish the following issues. One, if there is any infiltration in ...[intervenes].

10 **CHAIRPERSON:** Can you please, we all know what the terms of reference provide.

MR NGOATO: Yes. So when we look in terms of the answers he has to give, it is not just any other thing, whether it is a speed limit or anything else. It is specifically in terms of the terms of reference of the Commission, which serve as the basis. If they say there is a *prima facie* evidence of wrongdoing, that is in terms of the terms of reference of the Commission, not nothing and anything else.

And it is that, Madam Commissioner, that we have
20 looked in terms of what the terms of reference of the Commission is. We have looked in terms of the WhatsApp's. We have looked in terms of the process. We have looked in terms of the answer that he has to be able to provide, is there any possibility of - definitely there is. Whatever he is going to come here and say, he will be

incriminating himself. He will be digging his own grave even deeper.

CHAIRPERSON: All of this arises from the point made by Commissioner Khumalo with regards to what you said about what the President said. Can you please wrap up your response to that simple issue, please. Let us not open up the debate because you have addressed the debate with regard to other issues.

MR NGOATO: Yes, finally and in short, Commissioner, is
10 that yes, the confirmation by the President, we tied the horse to, tied the horse that there is, he has accepted the recommendations and the findings of the Commission. A task team must be set in terms of to investigate which investigation will led to the charges because there is, a *prima facie* evidence has already been established and on that basis that serves as the ground for him to incriminate if he continues in that particular process.

Whether is he going to ever come before the Commission? Yes, after the finalisation of the High Court,
20 if the ruling of the High Court is that there is no merit, then he has to come and proceed. It is not like he is avoiding to come before the Commission. It is known in this country if you refuse to appear before the Commission, you will find yourself in contempt and the implications thereof. So he will come and appear if the ruling of the High Court is

otherwise. Thank you, Commissioner.

CHAIRPERSON: Thank you, Mr Ngoato. We have read the papers in the postponement application. We have heard submissions on the application. We noticed that today's application is replete with a rehash of the issues that were raised in last week's postponement application. The only new issue really is the section 35 point. The section 35 point is answered simply by the response given by Mr Chaskalson and amplified or added to by Commissioner
10 Baloyi.

For the reasons given by Mr Chaskalson, that point is stillborn and therefore can never be a basis for a postponement of today's proceedings. Mr Chaskalson suggested a practical way of dealing with this to the extent that the witness may not be prepared to participate in today's proceedings and that practical way is for the evidence leaders to exhibit the contested chess with what they see as necessary commentary on them. And Mr Chaskalson further says that if the witness is so minded, he
20 may at a later stage come back to the Commission and say, I now want to file an affidavit that responds to those issues. I now want to come to the Commission and testify on those issues. There is those issues being whatever arises from the chats that will have been exhibited and commented upon by the evidence leaders.

That to me sounds like a sensible, practical way of dealing with the matter. That is, of course, if the witness insists or persists in his stance of not testifying today. But if we reach that stage, that is of proceeding in the practical manner suggested by Mr Chaskalson, what we will not allow is for the witness to leave. We will not excuse the witness. The witness must remain in attendance, remotely, of course. We will not excuse him. That is, if that is the stage we reach.

10 Now, before we make a final pronouncement, Mr Ngoato, may I ask for a response from you? And indeed, at this stage, perhaps I might even have to engage the witness himself. Mr Ngoato, so is the position, because the inclination is that we should proceed along the lines suggested by Mr Chaskalson, so is the witness' position through you as his representative that he will not participate and that the evidence leaders should proceed with in the manner in which they are minded to proceed. What is your response to that?

20 **MR NGOATO:** Honourable Commissioner, the witness has been made available. He has since been picked up at 6 o'clock this morning. He is available. He will sit in, but he will definitely not participate.

CHAIRPERSON: I am very, my sincere apologies, Mr Ngoato. Can you please start from the beginning? I am

sorry.

MR NGOATO: In short, honourable Commissioner, the witness will not participate.

CHAIRPERSON: Will not participate?

MR NGOATO: Will not participate.

CHAIRPERSON: Thank you.

MR NGOATO: Because for the reasons already given. If the Commission orders him just to sit in and be available, he will sit in and be available, but he will definitely not
10 participate and make no comment.

CHAIRPERSON: Thank you. As I said, I think we would like to hear the witness directly as well on this because it is a very crucial issue. Is the, I do see Witness F on screen. Witness F, have you been following, have you heard what I have just said?

WITNESS F: Good morning, Commissioner. I have been following you.

CHAIRPERSON: Good morning. Good morning, Witness F. Mr Ngoato has just said that you will not be participating,
20 but I want to hear it from you whether you also confirm that you will not participate.

WITNESS F: I confirm, Commissioner.

CHAIRPERSON: But as you probably also heard, we as the Commission are not excusing you. We are not releasing you. You should continue being part of the proceedings

remotely, even if you are not saying a word.

WITNESS F: I confirm, Commissioner.

CHAIRPERSON: Witness E, but I will ask both Mr Chaskalson and your attorney to respond, but what I must draw to your attention, we may have indicated an inclination as to the practical manner in which we want to deal with this, but we are just worried that what we are doing, which is informed by the practicalities arising from what was sprung on us this morning, may be seen to be creating a
10 precedent for other witnesses.

In terms of section 6 of the Commission's Act, it is an offense for a witness to refuse to answer questions. So to the extent that you say that you will not be participating, the entire context being that even if asked questions, you will not respond to them. That is an indication that you upfront are saying, I am going to commit an offense under the Commission's Act.

Mr Chaskalson, do you wish to address us on this? And Mr Ngoato, will you please respond? You have heard
20 that, Mr, or rather, Witness F, and I hope you understand this, its serious implications.

ADV CHASKALSON SC: Sorry, Chair, I just want to repeat on record that we will not ask any questions of Witness F. So, I mean, obviously we cannot speak for the Commissioners, but we will not be asking any questions.

So, flowing from us, that issue will not arise.

CHAIRPERSON: Thank you, Mr Chaskalson. Mr Ngoato?

MR NGOATO: Thanks, Commissioner. I think that is much a loaded statement. Then he has nothing to answer if there were no questions to ask to him.

ADV CHASKALSON SC: Although you can never, although you can never anticipate that we will not want to ask questions. Mr Chaskalson's attitude is not necessarily ours. So, the point about the potential commission of a
10 criminal offence still stands, and that is what I want you to respond to.

MR NGOATO: Commissioner, I do not think much, and this is me maybe subject to having to consult with the client and explain this clearly, I do not think he will be committing any of that offence in that one, he has presented himself, he is here. It is as a result of the discussions that, and the ruling that has been made by the Commission and the compromise has been made by the evidence leader that they have got nothing to ask him, that him being available and attending
20 and not answering questions because there are no questions, will be committing any particular offence.

And if the Commissioners may want to ask him a question, he may answer and say no comment. And still, that does not make him to not be responding to questions, because he can ask much simply to any other question, and

I am not trying to influence him not to answer any question, he may simply say, no comment, because I have not had a legal advisor or I am not happy with the manner in which things have been. He could simply say, no comment, and that in itself does not make him to be committing any crime in terms of that particular section. Thanks, Commissioner.

ADV BALOYI SC: Mr Ngoato, you and the witness may well be advised to look at section 6 of the Commission's Act. Nothing precludes us Commissioners or any one of us
10 to ask questions of this witness. Whatever Mr Chaskalson may have decided, whatever approach he may have decided to adopt, nothing precludes us from doing that because we are the investigative body, the Commissioners. And section 6 says:

“A witness who having been sworn fails
to answer fully and satisfactorily any
question lawfully put to him.”

I want you to be mindful of that, whatever you advise the witness, as you are entitled to do, that whatever
20 arrangement or whatever approach adopted by Mr Chaskalson does not insulate him from questions from the Commissioners, but it also does not insulate him from the legal obligation that arises from the act to answer fully and satisfactorily questions that we lawfully put to him. I just wanted to point that out to you.

MR NGOATO: I appreciate it, Commissioner. Any answer given by the witness does not have to satisfy the Commissioners. If no comment is equally what he wants to say, that is his answer and it will be ...[intervenes].

ADV BALOYI SC: I am not opening a debate. You said something that I thought you seem to be, to not be aware that his obligation is to answer fully and satisfactorily. Whether to say no comment is to answer fully and satisfactorily is a determination that we will have to make.

10 It is a simple point that I am making to you. So I am not asking you to comment and I am not inviting an engagement. I am just pointing out that as you advise him, including if you are going to say to him as you have suggested, he may choose to do, to say no comment, ultimately, it is for us, the Commissioners, to determine whether a no comment is to answer fully and satisfactorily questions that we have asked. That is a simple point I was making.

MR NGOATO: As the Commissioner pleases.

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

ADV CHASKALSON SC: Chair, can I just clarify. Is Mr Maleka or another member of Mr Ngoato's firm present with Witness F at the moment, because there are issues under section 3(4) of the Commission's Act, which gives Witness F a privilege against self-incrimination if he is asked

questions and I just want to clarify that there will be legal advice available to him where he is.

CHAIRPERSON: Mr Ngoato?

MR NGOATO: Thanks, Commissioner. Unfortunately not. We were all divided in terms of other team members have been at the high court this morning, as I indicated, and Mr Maleka is still with me. So the witness, unfortunately, is not with any legal representative from my law firm where he is right now. He is at the offices of the ...[intervenes].

10 **CHAIRPERSON:** [Indistinct]... Why can Mr Maleka not be with him?

MR NGOATO: Well, that will mean for us, for Mr Maleka to be with him we have to stand down, but I am the leading attorney on the matter, I will prefer that I am the one that is supposed to be with him than Mr Maleka and that would mean that I have to travel to wherever he is.

CHAIRPERSON: No, if need be, we would rather have to call him or something. I prefer, and I think this is shared by my co-Commissioners, I prefer that you should be here with
20 us in case there is a need for engagement and interaction. I prefer that you should be here, not somewhere remotely.

MR NGOATO: On that basis, Commissioner, may I ask that we stand down so that I can make the necessary arrangements.

CHAIRPERSON: We were going to. We were going to

anyway.

MR NGOATO: Okay, thank you so much.

CHAIRPERSON: So we will, we will not indicate for how long, we will just indicate when we are ready. Let us adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

O R D E R

CHAIRPERSON: The following order is made:

- 10 [1] The application for a postponement is refused.
- [2] The evidence leaders are granted leave to present as evidence the WhatsApp chats that relate to Witness F and, where necessary, to comment on them.
- [3] Witness F is ordered to remain at the remote location from which he is supposed to testify until he is excused by the Commission.

That is the order.

- - - - -

- 20 **CHAIRPERSON**: Having so ordered, we cannot allow Witness F to get a free ride in the face of the provisions of section 6 of the Commission's Act and Regulation 8(1), both of which create an offence for refusing to answer questions at the Commission. So, Mr Chaskalson, we direct you to put no less than four questions to Witness F, depending on

his answers, he may expose himself to a possible criminal charge under section 6 and Regulation 8(1). Also, my reference to at least four questions does not mean that if we, the Commissioners, or anybody participating in these proceedings, or in future for that matter, may not put questions to Witness F. There are questions additional to the four, the minimum of four, that I am directing you to put, Mr Chaskalson.

ADV CHASKALSON SC: Chair, can I choose when in the
10 sequence to put those four, or do you want me to start with four questions?

CHAIRPERSON: I prefer that they follow each other so that we know where we are with the Witness. I do not know whether you would be ready to do that or whether you would want to, or rather you would prefer that we take a two- or three-minute adjournment?

ADV CHASKALSON SC: No, no, I am ready to begin.

CHAIRPERSON: Before you continue, Mr Chaskalson, as we took a bit of time before, we took quite some time
20 considering the order and we debated it amongst ourselves, but it has just occurred to us now that the order does not cover everything it should cover. Paragraph 2 of the order should relate also to the evidence leaders being granted leave to lead whatever other evidence, even if that evidence is not WhatsApp texts or WhatsApp chats, because we

would imagine that there is the possibility that there is such evidence as well. So, we amend paragraph 2 accordingly.

ADV CHASKALSON SC: Thank you, Chair. I have been told that the witnesses' attorney has not yet arrived at the premises. Maybe if I can defer my questions until a later stage so that the witnesses' attorney is present.

CHAIRPERSON: That is in order. Let us start with what you are able to start with.

ADV CHASKALSON SC: Thank you, Chair. I would like to
10 start - well, let us first start with housekeeping. There should, in front of you, be three different bundles.

CHAIRPERSON: Just a very important procedural step, Mr Chaskalson. Witness F, are you there?

WITNESS F: Yes, Commissioner.

CHAIRPERSON: Yes, you have heard our order, have you?

WITNESS F: Definitely I have heard it from other Commissioners.

CHAIRPERSON: I am sorry, I cannot hear you.

20 **WITNESS F:** I heard it, Commissioner.

CHAIRPERSON: Thank you, thank you, thank you. Now, you have also heard that questions are going to be put to you, whatever your answer will be. So, we cannot expect you to answer questions. Of course, we do not know what your attitude to the questions will be, but we cannot expect

you to answer questions having not taken an oath. Will you swear or will you affirm? Because I want to administer the oath at this stage.

WITNESS F: I swear.

CHAIRPERSON: So, you will - all right. Do you swear that the evidence you are going to give is the truth, the whole truth, nothing but the truth? If so, please raise your right hand and say, so help me God.

WITNESS F: So, help me God.

10 **WITNESS F:** (duly sworn states)

CHAIRPERSON: Thank you. Thank you very much. And I do not remember if I greeted you. Good morning. Good morning, Witness F.

WITNESS F: Good morning. Good morning. Commissioners, I greeted you earlier. I assume maybe Commissioner forgot, maybe urging and whatsoever. Thank you, Commissioner.

CHAIRPERSON: Mr Nkoato, are you fine if we – that look, Mr Nkoato, seems to speak volumes. Perhaps I should not
20 even say it is a look. It is like you are glaring at me. Mr Nkoato, are you fine if we proceed, or would you rather we wait until your colleague has arrived at the location the witness is testifying from?

MR NKOATO: I am fine on the following basis, Commissioner, that there will be no questions for him to ask

until such time. It is just as the Commission ruled that they want to display messages.

CHAIRPERSON: All right.

MR NKOATO: And I suppose maybe by the time questions are raised, Mr Malika will have been there.

CHAIRPERSON: All right.

MR NKOATO: So on that basis, that is just going to be a watch and show.

CHAIRPERSON: All right, all right, thank you, Mr Nkoato.

10 Thank you. Please proceed, Mr Chaskalson.

EXAMINATION BY ADV CHASKALSON SC: Thank you, Chair. Can I just clarify that there should be at least three files in front of you, a statement bundle, or behind you, an exhibit bundle, and an annexure to exhibit bundle? And, Witness F, can I ask that on your site also you check that you have those?

ADV KHUMALO SC: Just a moment. The last one, it is two files. So, the one you say is annexures to exhibits bundle. It is two files, not one.

20 **ADV CHASKALSON SC**: So, then there should be four.

ADV KHUMALO SC: Yes, five.

ADV CHASKALSON SC: This is not an auspicious beginning.

CHAIRPERSON: Can you please assist me with the numbering? For example, I have here exhibits bundle file 1

of 4.

ADV KHUMALO SC: Yes.

CHAIRPERSON: So, okay.

ADV KHUMALO SC: Up to four.

CHAIRPERSON: Up to four. So, oh, I have one up to four.

Thank you. Exhibits bundle, okay.

ADV KHUMALO SC: Mr Chaskalson, can I repeat so that we are on the same page? We have the statement file.

ADV CHASKALSON SC: Indeed.

10 **ADV KHUMALO SC:** And then we have the exhibits bundle, which is file 1 of 4. And then we have exhibits bundle, which is file 2 of 4. And then we have annexures to exhibits bundle, which is 3 of 4. And then we have annexures to exhibits bundle, which is 4 of 4. So, it is five files in total.

CHAIRPERSON: Thank you.

ADV KHUMALO SC: Maybe yours are different, but the ...[intervenes]

ADV CHASKALSON SC: We have the same documents
20 organised differently.

CHAIRPERSON: Yes, Mr Chaskalson.

ADV CHASKALSON SC: And, Witness F, can I just clarify that you, too, have those five different files? One file called statement bundle, statement file. One file called exhibit bundle 1 of 4. Another file called exhibit bundle 2 of 4.

Another file called annexure to exhibit bundle 3 of 4. And the last file, annexure to exhibit bundle 4 of 4.

WITNESS F: Yes, I confirm.

ADV CHASKALSON SC: Thank you. Can I have that as one of my four questions? Can I then ask if we go to page 320?

CHAIRPERSON: I am sorry, Mr Chaskalson. I think Mr Nkoato has something to say.

MR NKOATO: Just on the bundles, maybe if Mr
10 Chaskalson could just assist. I do not have five bundles. I have got three bundles. But maybe just in terms of the index and pagination, what is the total number of pages? Then I will know where we are, because I have got three, not five. The index and annexure exhibits are until to page 538.

ADV CHASKALSON SC: That is correct. And so, I understand that the Commissioners and the witness will have those 538 pages split between two files. But the pagination is the same, 538.

20 **MR NKOATO:** I just wanted to confirm, because we were never given files. Files were never delivered to us. We were given a link. And from the link, we printed. So, we did not print in terms of five files. But in terms of the index, we will confirm whether we have the same thing. Because the second bundle will be 795 as the total number of pages

for index and exhibits.

ADV CHASKALSON SC: That is the same for me.

MR NKOATO: Okay, so that the witness does not get confused as to file 4 or file 3, and he does not have file 4 or file 5. He only has three files in front of him.

ADV CHASKALSON SC: Okay, but we will then, as between me and the witness, I will refer to the index to exhibits file, which is the 795-page file. And the exhibit file. Sorry, the, sorry, it is the – and then the annexures of
10 exhibits, which is the 538-page file.

MR NKOATO: Thank you. As long as we stick to page numbers, then he will be able to follow easily.

CHAIRPERSON: Thank you, Mr Nkoato. Yes, Mr Chaskalson.

ADV CHASKALSON SC: If we can start on page 320 of the exhibits file. And there at page 320, on the 5th of July 2023, at 18:43:47, General Sibiya sent you an address. I do not want anyone to mention that address, because it is a private address. And it is redacted here. But if you want to
20 confirm that is the private address of General Sibiya, if you do not want to confirm, I will not have that. I am happy to make that the second of my questions. But I will put – for now, I will put it that that is the private address of General Sibiya. And after some time, that private address was sent to you at 18:43. At 19:02, you responded:

“I am here at the gate.”

And just to clarify that it is indeed the private address of General Sibiya, I would like you to go to the annexure bundle. The annexure to exhibits bundle at page 145. And if you put that address into Google Maps, this is the image that is generated. And if you go to the preceding page, at annexure page 144, you will see a picture of the news coverage on the day that General Sibiya's house was raided. And if you compare 145 and 144, you will see that
10 they are the same property. I do not need you to answer anything in that regard.

ADV BALOYI SC: Mr Chaskalson, should we not just get him to confirm? Or you are concerned ...[intervenes]

ADV CHASKALSON SC: I am happy – he does not have an attorney present with him. I do not think this is a contentious question. But I do not - I said I would not argue.

WITNESS F: I confirm it is the address, Commissioners.

ADV CHASKALSON SC: Thank you.

20 **WITNESS F:** And I confirm also that my attorney is present with me now.

ADV CHASKALSON SC: Thank you. If we can then go back into the exhibits bundle. And to page 46 of the exhibits bundle. And I am interested in a chat or message that you sent to Cat Matlala on the 4th of March 2024, at

08:21. You sent a contact card. And at Annexure 9, annexure to exhibit bundle, page 9, that contact card is exhibited. And it is a contact card for General Sibiya with a phone number of General Sibiya. And the question I would ask you now, if you want to assert your right of privilege against self-incrimination, you must do so. Did you introduce Cat Matlala to General Sibiya?

WITNESS F: No.

ADV CHASKALSON SC: Thank you.

10 **ADV BALOYI SC:** Mr Chaskalson? We do not have a context of this. When I look at this page 46, it is not obvious to us as part of the record that there is anything here that comes from the witness.

ADV CHASKALSON SC: If I can just clarify ...[intervenes]

ADV BALOYI SC: If we just locate, what are we looking at?

ADV CHASKALSON SC: So, if one goes to 46 at 08:21:07, there is an icon that says VCF.

ADV BALOYI SC: Yes, I can see that.

20 **ADV CHASKALSON SC:** That is a contact card.

ADV BALOYI SC: Yes, now I am raising a different point. You have said to him this is what he sent from him, but it is not apparent that this is material from his phone. That is the point I am making for purposes of the record.

ADV CHASKALSON SC: Yes, ...[intervenes]

ADV BALOYI SC: Are we looking at ...[intervenes]

ADV CHASKALSON SC: What we are looking at is an extract of a series of all of the chats that were found on his phone between himself and one of the numbers used by Mr Matlala.

ADV BALOYI SC: Okay.

ADV CHASKALSON SC: In fact, the index to that bundle explains what each of these sequences of chats are. So, it may be useful to just quickly at the outset run through that
10 index.

CHAIRPERSON: And, Mr Chaskalson, seeing that Witness F was prepared to confirm something, who knows, maybe he might be prepared to confirm even this as well. But go ahead.

ADV CHASKALSON SC: Let me go to the ...[intervenes]

CHAIRPERSON: Yes.

ADV CHASKALSON SC: I would like to get to the index just so that we can clarify everything.

CHAIRPERSON: Yes.

20 **ADV CHASKALSON SC:** And I just want to be on the same page. At the front of the exhibits bundle, there is an index to the 795 pages of that bundle, which describes – well, the first 35 pages are correspondence. Thereafter, from page 36 onwards, there are indexed a whole series of chats extracted from the WhatsApp's on your phone between

yourself and various people. Can you confirm that what one sees on the index actually is what one sees on the bundle, that the index accurately reflects the bundle that it describes?

WITNESS F: I confirm.

ADV CHASKALSON SC: Then if we go back to the bundle, we have seen that on the 4th of March, you who always – and can you confirm also that in these chats, you always appear on the right-hand side of the page and the
10 counterparty always appears on the left-hand side of the page? Whether or not you are forwarding a chat or originating a chat, the counterparty is on the left and you sending or forwarding are on the right.

WITNESS F: I confirm.

ADV CHASKALSON SC: Thanks. Chair, I think I have got through my four questions, so I will - Witness F, unless you want to intervene going forward from here, I am just going to put things that if at any stage you want to intervene, please feel free.

20 **ADV KHUMALO SC:** Mr Chaskalson, for my benefit, reference to outgoing and incoming, I thought that is what the issue was. So, can you just clarify for us what outgoing means and what incoming means, so that when we look at all the WhatsApp's, at least we have an idea?

ADV CHASKALSON SC: Certainly. So, the chats that

appear on the right-hand side of the page are messages that are sent from the witness. They are outgoing from the witness's phone. The chats on the left-hand side of the page are messages sent by the counterparty. So, from the witness's perspective, they are incoming. Frequently, you will see empty bubbles. Those reflect voice calls. The outgoing and incoming remains the same. So, if the empty bubble is on the right-hand side of the page, it is a voice call initiated by the witness. If the empty bubble is on the
 10 left-hand side of the page, it is a voice call initiated by the counterparty.

CHAIRPERSON: You confirm that as well, Witness F?

WITNESS F: I confirm, Commissioner.

CHAIRPERSON: Mr Chaskalson, you said that is your four questions, but that does not address the issue why we made reference to at least four questions. We made reference to that in the context of the witness having said, I am not going to answer any questions. So here he has actually answered the questions. So, we have not reached a point
 20 where he says, I am not answering that, I am not answering that, I am not answering that.

ADV CHASKALSON SC: I certainly accept that, Chair.

CHAIRPERSON: Yes, because he will only be within the section 6(N) Regulation 8(1) net once he has said, I will not answer that.

ADV CHASKALSON SC: Indeed, Chair, but I did make an undertaking to the witness, and I am not going to go beyond that undertaking. Witness F, if you want to jump in at any point, please feel free, but I will not ask you questions going forward. Further questions.

CHAIRPERSON: We directed in so many ways that you should, so it is a direction from the Commission, Mr Chaskalson. Because point is, yes, from where you are sitting, it is a practical way of just quickly, quickly having
10 the evidence before the Commission. But this Commission would create a bad and unfortunate precedent if we were to proceed along the lines of just letting a witness say, I will not be answering any questions, without anybody putting specific questions to him. If an attempt were to be made down the line to bring criminal proceedings against him, he will easily say, but who put what question to me? And to what question did I refuse to respond? And he will be found not guilty and discharged. That is a precedent we do not want to create.

20 **ADV CHASKALSON SC:** Chair, if you are instructing me, I will ask questions, but it is also a tricky situation, because if I am just going through the chats, I will do it in one way. If I am questioning the witness rigorously, I will do it in another way. In some respects, I will follow the procedure of just going through the chats, because I think that is the

easiest way of organising the material. There will be occasions when I will have to ask the witness, or I will ask the witness to clarify questions, but for the most part, I will be putting to you what the chats say.

CHAIRPERSON: Perhaps what I should do, I hope my co-Commissioners agree, is not to insist that you ask four consecutive questions. As you go along, we want to see you ask questions, and we want to see the witness's response. If his response is that I will not answer, then he
10 will be within the section 6 and Regulation 8(1) net. The simple point is, we do not, and colloquially, want to give him a free ride on this. Thank you, Mr Chaskalson.

ADV CHASKALSON SC: Thank you, Chair. Can we then go to page 48, and start at 06:47 in the morning? Unless I mention all of my page references are going to be to the Exhibit Bundle, where I am referring to specific annexures, I will mention them. At 06:47, there was a voice call from Cat Matlala to yourself. That was followed at 06:52 by a message from Mr Matlala saying:

20 "Call me."

You called back at 07:22. Mr Matlala then sent you a voice note, and I would like us to play that voice note. That voice note was sent at 07:24 in the morning. Chair, we have some technical difficulties here. I need the light for this. Sorry, can you help me?

CHAIRPERSON: Yes, Mr Chaskalson.

ADV CHASKALSON SC: Let us see if this works. If not, we might ask for a five-minute adjournment just to sort out our lighting.

CHAIRPERSON: All right.

[AUDIO CLIP PLAYED BACK]

“Sorry to bother you, so early. If you could just send me a pin drop where it must go to.”

10 **ADV CHASKALSON SC:** Can I play that again?

[AUDIO CLIP PLAYED BACK]

“Sorry to bother you, so early. Can you send me a pin drop where the Impala’s must go to, please, sir? If you could just send me a pin drop where it must go to.”

ADV CHASKALSON SC: I will play it a third time.

[AUDIO CLIP PLAYED BACK]

20 “Sorry to bother you, so early. Can you send me a pin drop where the bucks – the Impala’s must go to, please, sir? If you can just send me a pin drop where it must go to.

ADV CHASKALSON SC: Can you describe what that voice note was about?

CHAIRPERSON: First tell us, sorry witness, first tell us

who is speaking and then respond to Adv Chaskalson's question.

WITNESS F: Commissioners, the person who is speaking in that voicemail, I do not know him. It was the message that was sent to me, I cannot remember by who, for now I cannot answer that that who exactly was that in my WhatsApp.

CHAIRPERSON: Yes, Mr Chaskalson.

ADV CHASKALSON SC: Can I then ask you to go to page
10 214?

ADV BALOYI SC: Mr Chaskalson, can I just confirm with the witness what his answer means? Witness F, Mr Chaskalson put to you that this note was sent to you by Mr Matlala and I think you have said you cannot remember who sent it to you. Does that mean you do not confirm that it was sent to you by Mr Matlala?

WITNESS F: That is correct, Commissioner.

ADV BALOYI SC: Thank you.

ADV CHASKALSON SC: Well, Witness F, I have to put it
20 to you that it was extracted from the chats between yourself and Cat Matlala. What I played there was the voice note that one sees in the extracted chats at page 48 of the bundle where there is an icon that says Opus[?]F[. That is the file that is in the chats and that was played aloud.

CHAIRPERSON: And remember in that context, Witness F,

that you did confirm not so long ago that what appears on the right is from you and what appears on the left is from Mr Matlala. Or rather the counterparty. Who was the counterparty here? Was it not Mr Matlala?

WITNESS F: It was Mr Matlala. Commissioner, I do confirm. However, maybe it was a human error by saying I do not know where it came from. Actually, I stand by my words of saying I do not know who the person was talking is. But I do confirm it was sent to me by Mr Matlala.

10 **MR NKOATO:** Commissioner, just for housekeeping issues. Can Mr Chaskalson, when he says page 214, 214 of which bundle? Because I tend to be running behind and looking for where 214 is in which bundle.

ADV CHASKALSON SC: Mr Nkoato, unless I say otherwise, it will always be the exhibit bundle. Almost without exception, I will be referring to the exhibit bundle. Occasionally, I will refer to the annexure bundles. If I refer to the annexure bundles, I will say annexure bundle page.

MR NKOATO: Please, thank you.

20 **CHAIRPERSON:** On ours, Mr Nkoato, this is flagged as CJC64, am I?

ADV CHASKALSON SC: That is correct, Chair. But Mr Nkoato has the whole exhibit bundle in one file.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: But if we then go to page 214 of

the exhibit bundle, and you will recall that it was at 07:24 that that voice note arrived on the 21st of March. Well, at 07:24 and 55 seconds on page 214, you will see that you forwarded that voice note to General Sibiya. Let me play that file again.

CHAIRPERSON: Perhaps Mr Chaskalson, because we were dealing with Mr Matlala's chance earlier, if you could just draw the witness's attention to where exactly his and General Sibiya's chats begin so that we will know that the
10 counterpart he is corresponding with is indeed General Sibiya.

ADV CHASKALSON SC: Chair, the names are on the chats. So, on 214, you will see on the right is the witness's ...[intervenes]

CHAIRPERSON: Oh, yes, yes, yes. I see, I see.

ADV CHASKALSON SC: Sort of chat name.

CHAIRPERSON: The name is there throughout.

ADV CHASKALSON SC: And on the left, it says General Sibiya, Deputy National Commissioner.

20 **CHAIRPERSON**: Thank you. I see that.

ADV CHASKALSON SC: Chair, we are going to have one last try, a failing which we are going to have to ask for a five-minute adjournment to sort this out.

[AUDIO CLIP PLAYED BACK]

ADV CHASKALSON SC: So that is the same voice note. It

is the unknown man asking you to send a pin drop or asking someone to send a pin drop where the impalas must go to. And that voice note was forwarded to you by Mr Matlala and you have immediately forwarded it on to General Sibiya. Can we then go to the next chat on page 214, and it is a message from you to General Sibiya 29 seconds later at 07:25:24, and you say:

“Morning, it is from Cat.”

Then, the next chat is at 08:39, still on page 214, and it is a
10 call from General Sibiya to you, a voice call on WhatsApp. If we then go back to page 49, we see that there are a series of calls between yourself and Mr Matlala from 09:48:50 through to 09:53:24. So from 09:48:50, you call Mr Matlala. At 09:52, he calls you back, and at 09:53, you call him back.

And then, the important message is the message that comes from him at 10:36:40, and can we show that message, which is in the annexure bundle at page 12? And it is a message, it is a screenshot of a message from
20 someone called Rudy Farm Manager, and bear in mind that this screenshot is sent to you by Mr Matlala.

And so if it originates on Mr Matlala's phone, we can infer that just like in the chat streams that we see for you, on the right-hand side, the messages come from Mr Matlala, on the left-hand side, they come from Rudy Farm

Manager. At the top of the page, just underneath the name Rudy Farm Manager, is a document which we cannot see, it is a PDF file, it is half cut off, it was sent by Mr Matlala at 06:03. It is followed by a message from Mr Matlala that says:

“Please check your account again.”

Rudy Farm Manager then says:

“Thank you, sir, I got it, thank you very much, thanks sir, we will do that.”

10 That is at 06:06 and 06:12. There is then an image of a voice note that was sent at 06:24, to which we cannot access that voice note because what we have is a screenshot, not the original messages, to which Mr Matlala responds:

“Okay.”

And then Mr Matlala forwards a PIN to Rudy Farm Manager, and that PIN designates the home address of General Sibiya, does it not? Well, it is the same address that you confirmed earlier to be the home address of General Sibiya.

20 The response, ...[intervenes]

CHAIRPERSON: Witness F, do you wish to respond?

WITNESS F: Yes, Commissioner.

CHAIRPERSON: Do you confirm that the address is the address of General Sibiya?

WITNESS F: That is positive, I confirm, Commissioner.

ADV CHASKALSON SC: And then Rudy Farm Manager responds:

“Thanks sir, hi there sir, okay, everything has been arranged, he will catch the Impalas on Sunday and transport it Monday to that location. Is it good?”

And Mr Matlala responds:

“No problem.”

Mr Matlala's response is at 10:35 on this screenshot. If we
10 go back to page 49, we see that at 10:41 on the same day he called you. Now when we were dealing with the evidence of Mr Mogotsi some time ago in this Commission ...[intervenes]

ADV BALOYI SC: Mr Chaskalson, before you do that, I am getting lost here. You, at page 12, you say this is Mr Matlala and the witness. Where do we see that? There are no numbers and he has not confirmed that - he confirms the address, but he has not confirmed what you have put, that this is an exchange between him and Mr Matlala.

20 **ADV CHASKALSON SC:** Sorry, at page 12?

ADV BALOYI SC: Yes, the Rudy Farm Manager exchange. I think you said this is an exchange between the witness.

ADV CHASKALSON SC: Yes, what I put to the witness is that this was a screenshot that was sent from Mr Matlala to him and the screenshot as it emanates from Mr Matlala's

phone would have Mr Matlala's messages on the right hand side and the counterparty, who is Rudy Farm Manager, on the left hand side.

ADV BALOYI SC: Okay, am I at the right page 12?

ADV CHASKALSON SC: Yes, that is the annexure page 12 screenshot. So that is the screenshot that was sent at 10:36 on the 21st of March. That screenshot was sent from Cat Matlala to the witness.

ADV BALOYI SC: To the witness and this was extracted
10 from Mr Matlala's phone?

ADV CHASKALSON SC: No.

ADV BALOYI SC: It is page 12.

ADV CHASKALSON SC: Page 12 is the screenshot that is found on the witness's phone, that was sent to him by Mr Matlala on the 21st of March 2024, 10:36.

ADV BALOYI SC: I see, yes, and the witness confirms that.

ADV CHASKALSON SC: I did not understand the witness to object, but Witness F, do you confirm that that
20 screenshot was sent to you by Mr Matlala at 10:36 on the 21st of March?

WITNESS F: I cannot confirm as to who it was extracted from, either from me or from Mr Matlala, but I do confirm that I know the message.

ADV BALOYI SC: Okay, thank you.

ADV CHASKALSON SC: Now, just to contextualise what we are looking at here, when we heard the evidence of Mr Mogotsi, we looked at the chats between Mr Mogotsi and Mr Matlala, and in one of the chats, Mr Mogotsi was taking Mr Matlala to task, sorry, Mr Matlala was taking Mr Mogotsi to task, and accusing him of having leaked to other people that he had paid for impalas for Sibiya, that he had given impalas to Sibiya. Now, it seems to me that what we see in these chats actually confirms that indeed, Mr Matlala did
10 arrange for the delivery of impalas to Mr Sibiya, having paid the necessary price into the account of Rudi Farm Manager, who was the person who delivered those impalas. Do you have any comment on that?

WITNESS F: I can comment on that, because during my communication with Mr Matlala, he never indicated to me as in whether he is paying for the impalas or Mr Rudi Farm, so I cannot comment on that Commissioner, because I have no knowledge of that.

ADV CHASKALSON SC: Well, can I take you back to page
20 12 of the annexure bundle then?

WITNESS F: I am on page 12 now.

ADV CHASKALSON SC: If you see the top, there is a one-page PDF attached to the message, but we do not see that.

WITNESS F: Yes.

ADV CHASKALSON SC: Underneath it, Mr Matlala says:

“Please check your account again.”

And then Rudi Farm Manager says:

“Thank you, sir, I got it, thank you very much.”

That looks very much to me like Mr Matlala is paying money to Rudi Farm Manager. Can you comment on that?

WITNESS F: It looks like that to myself as well, but it was not a communication between myself and Mr Matlala. It was a communication between Mr Rudi Farm Manager and Mr
10 Matlala. Therefore, I cannot comment on that.

ADV CHASKALSON SC: You were the go-between for Mr Matlala and General Sibiya on this arrangement. You were the one who sent the voice note to General Sibiya, and who then received the instructions that Mr Matlala had given Rudi Farm Manager to deliver at General Sibiya's address. What did you understand was going on?

WITNESS F: To be honest with you, Commissioners, I did not ask what was going on then. I just received such message from Mr Matlala, and then I immediately forwarded
20 it to General Sibiya without even asking questions of what was it for.

ADV CHASKALSON SC: But why did you know that you had to forward it to General Sibiya? There is nothing in the texts that says, please forward to General Sibiya.

WITNESS F: Could you please repeat the Mr Chaskalson.

CHAIRPERSON: Mr Chaskalson, he asked you to repeat.

ADV CHASKALSON SC: I am sorry. How did you know that you had to forward this voice note to General Sibiya? There is nothing in the messages that says, please forward to General Sibiya. There is nothing visible in the messages.

WITNESS F: I think it came through the phone call.

ADV CHASKALSON SC: So, Mr Matlala essentially, according to your evidence, said, I am going to send you a
10 voice note, please will you send it on to General Sibiya?

CHAIRPERSON: A screenshot.

WITNESS F: I cannot comment on that.

CHAIRPERSON: I think you said voice note screenshot.

ADV CHASKALSON SC: No, no, I am talking first about the voice note.

CHAIRPERSON: Oh, sorry, sorry.

ADV CHASKALSON SC: The document, the message that is forwarded to General Sibiya is the voice note saying, where must I deliver the impalas?

20 **WITNESS F:** Yes.

ADV CHASKALSON SC: So, in the conversation between yourself and Mr Matlala, in anticipation, at 07:22, because there was a call at 07:22, before the voice note was sent to you at 07:24, and bear in mind, you forwarded it on at 07:24. In that conversation of 07:22, your recollection is Mr

Matlala would have said, I am sending you a voice note, please forward to General Sibiya.

WITNESS F: I assume he might have sent that. But I cannot really remember, but I can confirm, I have spoken to him prior before this message.

ADV CHASKALSON SC: And did you know that he was in the process of arranging for impalas to be delivered to General Sibiya?

WITNESS F: I do not know, Commissioner.

10 **ADV CHASKALSON SC:** But then you received this voice note that made it clear that he was arranging for impalas to be delivered to General Sibiya.

WITNESS F: I cannot really comment on that. He made it clear that he was arranging impalas for General Sibiya. But I can confirm that he made a call, and then he sent this voice note to me. But if there was any arrangement, I do not know of that.

ADV CHASKALSON SC: But why, if Mr Matlala is making an arrangement with General Sibiya, would he ask, do it
20 through you? Why would he send the voice note to you and ask you to forward it to General Sibiya, as opposed to sending it directly to General Sibiya?

WITNESS F: To answer that question, Commissioners, I think that call, one of the things, I am just assuming because it happened for quite some time, I think maybe one

of the reasons that he sent it to me, because he could not get hold of General Sibiya.

ADV CHASKALSON SC: But you ...[intervenes]

WITNESS F: Okay, carry on, I will answer for you.

ADV CHASKALSON SC: Sorry, but if you go back to the annexure bundle on page 9 read with page 46 of the exhibits bundle you have actually given him General Sibiya's number on the 4th of March which was more than two weeks previously. So, if he wanted to contact General
10 Sibiya directly, he knew how to do it. You would have given him General Sibiya's number.

WITNESS F: Can I comment on that?

CHAIRPERSON: Yes, please, Witness F.

WITNESS F: Okay, Commissioners, one of the reasons that I assume that Mr Matlala sent that thing to me, it was because maybe he did not get hold of General Sibiya. That is why he sent it to me.

ADV CHASKALSON SC: But could he not just have sent the voice note to General Sibiya in the same way that he
20 sent the voice note to you? He did not need anyone to pick up the phone. He just needed someone to receive a voice note.

WITNESS F: Thank you, Commissioners. If your phone is off, or you are offline, when you send something on WhatsApp, it will only take one line. So, I assume maybe

General Sibiya's phones were off.

ADV CHASKALSON SC: Can I put another possibility to you? Let us go back a day from the 21st of March. Let us look on the 20th of March on page 47. At 12:49:27, you will see that Mr Matlala sent you a case number. The case number has been redacted. I am not sure that it is necessary for the case number to be redacted. But you presumably can see what case number it was. And then if we go over the next page, at page 48, a few minutes later,
10 at 12:52, you sent a text back saying:

“Station.”

Which police station? Because as we know now, each police station has its own set of case numbers. And Mr Matlala came back saying:

“Mamelodi East.”

So, he had sent you a case station from Mamelodi East. We then go forward to the 21st of March again, after he sends you the voice note about the Impalas.

WITNESS F: Yes.

20 **ADV CHASKALSON SC:** At the foot of page 48, at 07:.44 in the morning, let us maybe go back one chapter. He sends you the voice note. At 07:37 there is a call from him to you. At 07:44, he sends up a message. You did not send anything here. In other words, he is following up saying:

“Why have you not sent me what you
should send me?”

You immediately respond over the page 49 at 07:44:23, so that is 9 seconds later, by sending an image of a screen. And that screen is at page 11 of the annexure bundle. And that is a SAPS screen of case number 157/03/2024 in Mamelodi East. It tells you who it was allocated to, when it passed hands to a different investigating officer, and who is responsible for that case. And it gives the name of the
10 detective who is responsible for that case. Is that correct?

WITNESS F: That is correct, Commissioner.

ADV CHASKALSON SC: What was Mr Matlala's interest in this case, and what was your reason to WhatsApp this screen to him?

WITNESS F: Thank you, thank you, Commissioner. The reason Mr Matlala sent this to me it was actually a complaint. According to him, when he phoned me, he said one of his employees, that was a female employee, has been abused by her husband and when she opened cases
20 there is no movement. Therefore, as a proxy of that female woman, he asked me to check the progress of that particular case. That is when and how I have sent in this screenshot.

ADV CHASKALSON SC: Witness F, I think you know that that answer is false. Do you want to reconsider it and tell

the Commission what case 157/03/2024 was really about?

WITNESS F: I still stand by my answer. That is what Mr Matlala told me, Commissioners.

ADV CHASKALSON SC: And you did not make any enquiries yourself?

WITNESS F: I did not, Commissioners.

ADV CHASKALSON SC: Well, what the evidence will be is that this case 157/03/2024 involved the murder of Kabelo Richard Mathe who was murdered outside a four-room
10 house in Mamelodi, Sector 1 and at a crime scene where 50 cartridges were found. There was no private complainant at all. The complainant was the constable to whom it was reported. And I put it to you that this looks very much like a case in which Mr Matlala's query would have been made on behalf of a perpetrator and not on behalf of the victim. What is your response to that?

WITNESS F: My response to that, Commissioner, I would have not known what you are putting to me now.

ADV CHASKALSON SC: And you did not bother to find out
20 what case 157/03/2024 Fort Mamelodi East involved?

WITNESS F: I did not know. I did not do that, Commissioners.

ADV CHASKALSON SC: And before we leave this impala topic, I want to take you ...[intervenes]

ADV BALOYI SC: Mr Chaskalson, even before you move

further, can I just ask about this page here? Witness F, this is an SAPS record that you obviously had access to. What do you mean you did not know what it was about if you had access to the SAPS record? Because that is the only way you could have been able to forward this. It is part of the record.

WITNESS F: That is correct, Commissioners. The reason why I did not know, I forwarded it to someone else because at that particular time I did not have access to the SAPS
10 system. That is the reason I have forwarded it to somebody else.

ADV BALOYI SC: What do you mean that is the reason you forwarded it to somebody else? What did you forward to somebody else?

WITNESS F: I did forward that case number that Mr Martella forwarded to me.

ADV BALOYI SC: Yes, you forwarded it to somebody else and what happens?

WITNESS F: That is when they checked for me. As you
20 see there, on top it says warrant officer, so I did not check on this because at that particular time I had no access.

ADV BALOYI SC: Yes, and you say then you, if it is true, if we accept that this came to you from somebody else and because you did not have access to the record, when you send this to Mr Matlala, why are you sending this? He is

just given you a case number on what we see in the earlier page. He gave you the station. Why are you sending him the name of the person who is dealing with the matter? He is not the complainant in the matter. Why are you giving him the name of the detective who is dealing with this matter?

WITNESS F: As I have said earlier, Commissioner, according to him, it was a proxy of that particular person who has been abused, and little did I know that it was a
10 murder case. That is Mr Chaskalson is bringing me forward now. I just want it. According to him, it was a proxy of that person.

ADV BALOYI SC: What do you mean he was a proxy? Can I just go to a SAPS as a proxy to a SAPS station and say, give me the details of a case? I do not understand. Well, maybe firstly tell us about that SAPS process but also explain what you mean he was a proxy that entitled him to information about the person in charge of a matter.

WITNESS F: Thank you, Commissioner. I took it like this.
20 This is a woman. Maybe sometimes when she goes to the police station, they are taking advantage of her. They will not listen to her because she is a woman. And then she engages her boss. Now it is Mr Matlala. And then Mr Matlala engages me. This is how I took it. That is the reason I am saying a proxy. Maybe she was sharing on

behalf as she alleges to me that time.

ADV BALOYI SC: And you as a SAPS officer, you did not think to engage this detective to find out what is happening with the matter? Because I would have thought that is what you would do to find out from Mr Matlala what is happening with the matter instead of giving him the details of an investigating officer.

WITNESS F: At that time, Commissioner, I did not think of that.

10 **ADV BALOYI SC:** Thank you. Thank you, Mr Chaskalson.

ADV KHUMALO SC: Sorry, Mr Chaskalson. Unless you are going to deal with this at some point later, I need to know what this is. I do not know what this is. I see the information on the document, but I need to know what this is before we leave it. So maybe I should just ask the question. Witness F, what we are looking at on page 11, does that come from a SAPS IT system? And what is it exactly?

WITNESS F: It is a case number, Commissioner.

20 **ADV KHUMALO SC:** No, Witness F, it can be a case number. Some of the information on the document is a case number, but the entire screenshot appears to be information from an IT system. Can you just confirm for me that this is an internal SAPS IT system that stores information about the progress of a case?

WITNESS F: That is correct. I confirm that, Commissioner.

ADV KHUMALO SC: Please continue.

WITNESS F: Okay, it is a screen that shows when the letter was opened and who was it located to. Who is the investigating officer and ...[intervenes]

ADV KHUMALO SC: Witness F, just bear with me. Sorry, I cannot see your face, so I do not know when you are done with an answer or not. Would an ordinary citizen have
10 access to this SAPS system?

WITNESS F: No, Commissioner.

ADV KHUMALO SC: So only you as a policeman or your colleague would have had access to this system?

WITNESS F: That is correct, Commissioner.

ADV CHASKALSON SC: Witness F, before we leave the impala topic, can we go to page 307?

MR NKOATO: What page number?

ADV CHASKALSON SC: It is 307 of the exhibit bundle. Do you have it?

20 **WITNESS F:** Yes, I have it.

ADV CHASKALSON SC: If you go to 15:05:33, you will see that you sent a message to General Sibiya at 15:05:33.

WITNESS F: That is correct.

ADV CHASKALSON SC: And before we listen to that message, can you go to 194, which is a different, it is a set

of chats from a different number of General Sibiya. And at 194, also at 15:05:33, we see a message sent to General Sibiya. It is going to be a voice note. In fact, it is going to be the same voice note. Can I ask that we play that voice note?

[AUDIO CLIP PLAYED BACK]

“Can you send me a pin drop to where the bucks to where the impalas must go, please sir? If you can just send me a pin drop where it must go to.”

So, at 15:05, on the 6th of August 2025, you sent that voice note from Rudy Farm Manager to General Sibiya again. That was, gosh, almost 18 months later. And you sent it to him on both of his phones. Is that correct?

WITNESS F: That is correct, Commissioners.

ADV CHASKALSON SC: Can you explain why?

WITNESS F: You are saying now I have sent this voice note 18 months later?

ADV CHASKALSON SC: Well, to be exact, 14 and a half months later, 15 months later.

WITNESS F: On that one I cannot remember on how or why I sent it 18 months later. But I do confirm that I did send it immediately after Mr Matlala forwarded it to me.

ADV CHASKALSON SC: Well, I had a theory as to why you might have sent it, might have wanted to send it to him

more than a year after the event. And I am going to put it to you. And you must feel free to answer it as you see fit. It occurred to me that by August 2025, General Sibiya might have thought that it was convenient for him to try to make you a fall guy for some of the things that you had done for him previously. And that you were sending him this audio just to remind him that if you fell, he fell too. So, what is your comment on that?

WITNESS F: I cannot comment on that, Commissioners.

10 **ADV CHASKALSON SC:** But you cannot offer any reason why you would have sent this voice note in two separate messages to two different numbers of General Sibiya in August 2025, when it was originally sent in March 2024.

WITNESS F: To be honest with you, I cannot remember why I sent him, but I came to believe for only a version when you said, you are bringing to me that maybe General Sibiya was blackmailing me on saying something else. Then as a result, I have sent that note saying, if you fall, I fall. By the time that thing was sent to me, I did not know
20 what it was for. I did not expect it. They sent it to me by Mr Matlala, I sent it to General Sibiya.

ADV CHASKALSON SC: But presumably by August 2025, you would have realised that the fact that Mr Matlala had arranged for the delivery of some impalas to General Sibiya's private home was not going to be well received by

the public or by internal audit people at SAPS.

WITNESS F: I cannot comment on that, Commissioner, because I do not know.

ADV CHASKALSON SC: Well, let us move on then. Can we now go to page 701? And we are now in chats between yourself and the late Deputy President, Mr DD Mabuza. And on page 701, on the 15th of November 2024, at 11:33, the late Deputy President forwards you an image of a weapon. The weapon itself is to be seen on the annexure
10 bundle at page 231. Maybe if we can just display it.

CHAIRPERSON: Are you ready to display the correct object?

ADV CHASKALSON SC: We have got the correct object.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: So that is the image that was sent to you by the late Deputy President. He followed that up with what appeared to be videos demonstrating the use of this weapon. Both sent to you at 11:33:37 on the same day, like a second later after the image. Can we show
20 those videos? Witness F, I have read through loads and loads of your chats, and I have not seen you have taken aback or nonplussed often. But it seems that you were then, because at 11:35, if we go back to page 701.

CHAIRPERSON: Yes, perhaps before that, do you confirm, Witness F, that you did receive the image at 11:33:37 am on

the 15th of November 2024? Do you confirm that you did receive that?

WITNESS F: I confirm, Commissioners. I did receive it.

CHAIRPERSON: And do you also confirm that you received it from the late Deputy President DD Mabuza?

WITNESS F: I do not confirm that, Commissioners. It was his nephew.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: But he is listed in your phone as
10 Comrade DD Mabuza, Deputy President.

WITNESS F: I confirm that, Commissioners.

ADV CHASKALSON SC: And you are saying that his nephew used the Deputy President's phone to send you those images?

WITNESS F: I confirm.

ADV CHASKALSON SC: So, the late Deputy President's nephew had access to his phone to send you messages of this nature. Is that your evidence?

WITNESS F: It is not my evidence. My evidence is they
20 were planning to bring these guns from somewhere to South Africa. They wanted to bring it on the market. Actually, when you open the page 702, you will see the prices there. That is why I am showing you how they range from how much to how much. They can buy them in bulk and sell them to a gun shop in South Africa.

ADV CHASKALSON SC: Well, let us take these chats one at a time before we get to page 702. But before we start going through the chats one at a time, I just want to clarify what it is that you are saying. This message, as I understand it, was sent to you from the late Deputy President's phone. Is that correct?

WITNESS F: Can you repeat that again?

ADV CHASKALSON SC: The message was sent from the phone of the late Deputy President.

10 **WITNESS F:** From the nephew's phone.

ADV CHASKALSON SC: From the nephew's phone?

WITNESS F: That is correct.

ADV CHASKALSON SC: But you save the nephew on your phone as Comrade DD Mabuza, Deputy President.

WITNESS F: That is correct.

ADV CHASKALSON SC: Why do you save the nephew's phone under the name Comrade DD Mabuza, Deputy President?

WITNESS F: That is how I felt I should say it.

20 **ADV CHASKALSON SC:** Who is the nephew?

WITNESS F: I think I must protect his identity as well due to the fighting's among the family of DD Mabuza.

CHAIRPERSON: Witness F, remember that you have a legal obligation to answer questions satisfactorily. You remember section 6 it covers that as well. That is not

answering satisfactorily. It is not your business to protect that witness, or rather that person. What is the fight you are referring to about anyway?

WITNESS F: The inheritance or the will of the former Deputy President.

CHAIRPERSON: You see, from where I am sitting, that is none of your business, Witness F. And certainly, it is not a matter that should stop you from answering Mr Chaskalson's question. So please answer the question.

10 **WITNESS F:** It is Sipiwe.

ADV CHASKALSON SC: Sipiwe Mabuza?

WITNESS F: That is correct.

ADV CHASKALSON SC: And you are saying that all of these messages that say Comrade DD Mabuza, Deputy President are actually messages from Sipiwe?

WITNESS F: That is correct, Your Worship, Commissioners, sorry about that.

ADV CHASKALSON SC: Well, the person described as Comrade DD Mabuza, Deputy President, writes to you. You
20 first say at 11:35:

“What is happening here, my man?”

CHAIRPERSON: Perhaps before you move on, Mr Chaskalson. Witness F, remember that it is a matter of relative ease for it to be established as to who the phone belongs to or in whose name it is registered. So be careful

of the answer that you give us. Do you not want to revisit the answer that you have given us? Because it simply does not make sense that you would choose to save Mr Sphiwe Mabuza's number as the number of Comrade DD Mabuza, Deputy President. Do you want to revisit your answer in this regard?

WITNESS F: Commissioners, I stand by my answer of saying the person who is in the phone is Sphiwe Mabuza. As I am speaking with you now, that phone is still working
10 in position of the person that I am talking to or I am talking about now. Furthermore, a 205 can be made to confirm as to whether the phone or the number belong to the former President DD Mabuza or belong to Sphiwe Mabuza. So, by that being said, I stand by my answer of saying that number did not belong to the former President. Thank you, Commissioners.

ADV BALOYI SC: Witness F, why would you, I mean it is quite a deliberate decision to save somebody's name in general, to save a person's name under another person's
20 name. And worse, where you are using the name of a Deputy President. What is your, you must have had a reason why you did not want to save Mr Sphiwe Mabuza's name on your phone and you used the cover on your version, you used the cover of the Deputy President's name. Why did you not want to save Mr Sphiwe Mabuza in his

name? And please do not say you just felt like it because that is not the answer.

WITNESS F: Thank you, thank you Commissioner. I just felt like saving him like that because he was always talking about his Uncle DD Mabuza this, DD Mabuza that. Then when I saved his number, I saved him the way he portrayed his uncle or that DD Mabuza. But at that particular time, I saw it fit to save him like that. Not that maybe I was covering something, or no, no, no, no, no. It was not like
10 that. I was saving him because I felt that no, this is the right thing to do. This one is obsessed with DD Mabuza, let me save him like that.

ADV BALOYI SC: Thank you, Witness F.

ADV CHASKALSON SC: Let us go back to the chats. You say at 11:35:

“What is happening here my man?”

At 11:36 you get the response:

“Hey brother, do you have a market for a compact CQC, close quarter combat, 12-
20 gauge shotgun, manufactured in South Africa.”

So, when you earlier said it was imported, that was wrong:

“Pic attached. I have access to 750 units in knockdown component form, plus spares, ready to be ready for shipping

with matching flashbang ammo, see
videos, at family price.”

That was sent to you.

WITNESS F: That is correct, it was sent to me. As I said
to you, according to me, when he told me, they were to be
taken from somewhere to South Africa. That is the reason
now in your statement, the thing that you just read now
said, they were ready to be shipped here and to be sold on
a family price. So that is the reason now I am saying,
10 according to me, he said, they are not from here.

ADV CHASKALSON SC: It does actually say manufactured
in South Africa. Do you see that now?

WITNESS F: That is correct, I see that.

ADV CHASKALSON SC: Your response at the time was, I
need to see and test.

WITNESS F: That is correct.

ADV CHASKALSON SC: And then over the page, the
person trying to get you to take up this arms deal said:

“Just tell me when and I confirm.”

20 And then said below:

“They need to order on sliding scale
pricing on the Mag 7 unit first, one to five
units, 15 500 each, five to 10 units, 15
000 each, 10 to 20 units, 14 500, 20 to
50 units, 13 750 each, 50 to 100 units,

12 500 each, 100 to 200 units, 11 000
each, 200 to 500 units, 8 750 each, 500
to 750 units, 7 500 each. And we have a
percentage success fee built in on our
side.”

That was sent to you. Is that correct?

WITNESS F: That is correct.

ADV CHASKALSON SC: Had you previously engaged in
any arms deals with either the deputy president or his
10 nephew?

WITNESS F: No, I did not.

ADV CHASKALSON SC: And what came of this offer?

WITNESS F: I do not know.

ADV CHASKALSON SC: Well, you said, if we go back up
to page 701 at 11:37:41 at 15th, November 2024:

“I need to see and test.”

Did you make arrangements to see and test? Did you make
arrangements to see and test?

WITNESS F: That is correct.

20 **ADV CHASKALSON SC:** And what happened when you
saw and tested?

WITNESS F: Okay, maybe I can explain this. One of my
hobbies is a dedicated spot shooting. I am into firearms. I
like firearms. Now, when he sent me this, he sent me or he
sent to me, knowing that one of my hobbies is dedicated

spot shooting. That is the reason when you hear him say, can we find a market for a combat or complex.

CHAIRPERSON: Witness F, if I understood the question, I thought it was a simple one. Did you see and test?

WITNESS F: I did not.

ADV CHASKALSON SC: You did not?

WITNESS F: No, I did not.

CHAIRPERSON: At this point, Mr Chaskalson, I hope it is not that it is an appropriate point at which ...[intervenes]

10 **ADV CHASKALSON SC:** We can pick up after lunch.

CHAIRPERSON: Yes, let us resume at 2 pm. Let us adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Mr Chaskalson.

ADV CHASKALSON SC: Witness F, we were talking about the close quarter combat weapons deal that was being proposed to you when we left.

20 **CHAIRPERSON:** Mr Ngoato, I see that you have shed your jacket.

MR NGOATO: Commissioner, it is just – sorry.

CHAIRPERSON: At least you should have said something.

MR NGOATO: Commissioner?

CHAIRPERSON: I am saying at least you should have said something to us.

MR NGOATO: No, sorry, I apologise because I was outside and I just came and I sat and it just completely slipped my mind. I apologise.

CHAIRPERSON: So you are asking to?

MR NGOATO: May I, Commissioner, if you do not mind, it is extremely hot?

CHAIRPERSON: That is in order. Thank you.

MR NGOATO: I appreciate it.

CHAIRPERSON: Thank you.

10 **MR NGOATO**: Thank you.

ADV CHASKALSON SC: We were talking about the close quarter combat arms deal. You said at 11:37 that you need to see and test. What did you have in mind by that?

WITNESS F: I wanted to see the said firearms and test if they are worth of use for dedicated sports shooting.

ADV CHASKALSON SC: And did you ever get an opportunity to test them?

WITNESS F: No, I did not.

20 **ADV CHASKALSON SC**: Now, when you wanted to see and test them, what did you have in mind? That you would look for a buyer?

WITNESS F: I do not know how to answer that, but let me put it in this fashion. I wanted to see and test. It was a two-way thing. Even when I presented to people, I must have that knowledge on how does it work, how does it

perform. That is the reason I said I wanted to test and see.

ADV CHASKALSON SC: Now, what is the market for a close quarter combat 12-gauge modified shotgun? Who buys these types of weapons?

WITNESS F: I am not sure, Commissioner, if I understand that question.

ADV CHASKALSON SC: Well, if you wanted to see and test, that was presumably with a view to being able to tell a potential buyer what you thought of the weapons. I am
10 interested in knowing who potential buyers were.

WITNESS F: Myself, for one, as you see there in 702, he sent me the quotation. On each firearm is R15 500 if you buy 10. So, I was looking at it in that fashion. Not to say that I had a buyer or I was doing marketing for him.

ADV CHASKALSON SC: But the question that you were being asked was whether you had a market.

WITNESS F: I do not have a market.

ADV CHASKALSON SC: You do not have a market. That is not what you answered. Your answer was, I need to see
20 and test.

WITNESS F: That is correct.

ADV CHASKALSON SC: When you were being asked whether you had a market, why did you not just say, no, I do not have a market, but I may be interested in buying one of these weapons myself?

WITNESS F: When I was asked by who, Commissioner?

ADV CHASKALSON SC: By the person who saved in your phone as Comrade DD Mabuza, Deputy President. If you look at 11:36:39:

“Hey, brother. Do you have a market for a compact close quarter combat 12-gauge shotgun manufactured in South Africa?”

WITNESS F: So, at that time, I felt that to answer him the
10 way I did, Commissioner.

ADV CHASKALSON SC: And why would you be interested in a close quarter combat 12-gauge shotgun? Is this a sports weapon of the sort that you are familiar with?

WITNESS F: That is correct, Commissioner. Not that I was, per se, interested. He is the one who said it to me. Then I comment that, can I see and test? Because, obviously, when you see the gun, it looks very, very, very beautiful. So, I thought to myself if maybe I could have one like that. That was me telling myself. I did not even tell
20 that to him. So, that is my answer.

ADV CHASKALSON SC: So, you were not thinking of selling on in any large quantities to anybody else?

WITNESS F: Can you repeat that question?

ADV CHASKALSON SC: So, if I understand your most recent answer, it suggests that you were not interested in

selling these units on to a different buyer, or were you?

WITNESS F: I was never interested on selling these guns to any buyer as I am not qualified to sell quantity of guns to anyone. I was entertaining ...[intervenes].

ADV CHASKALSON SC: And ...[intervenes].

WITNESS F: Can I finish, Commissioner? I was entertaining this Mabuza guy because he sent that to me.

ADV CHASKALSON SC: All right. I am going to leave this weapons deal topic and move to a separate set of chats
10 with the Comrade DD Mabuza, Deputy President, WhatsApp person. And these, for this I would like you to go to ...[intervenes].

ADV BALOYI SC: Before you do that, Mr Chaskalson, if I may. Witness F, did I hear you correctly earlier before we broke for lunch to have said about these firearms, to have said they wanted to import the firearms to South Africa? Did I hear that part of your evidence correctly?

WITNESS F: That is correct.

ADV BALOYI SC: Okay. In that, who is they that you are
20 referring to? You are contacted by Mr Sipiwe Mabuza and then you say, your explanation is they wanted to import. Who are they?

WITNESS F: I was referring to Sipiwe Mabuza when I say they, because I know that he is a businessman. Obviously he is not alone. So that is why I was saying they.

ADV BALOYI SC: So he is a businessman in the business of selling guns?

WITNESS F: No, Commissioner.

ADV BALOYI SC: Why do you say you know he is a businessman and obviously you knew he was not alone? Who is he in business with that you would ask ...[intervenes].

WITNESS F: I do not know. I do not know ...[intervenes].

10 **ADV BALOYI SC:** No, let me finish. Let me finish, Witness F. You say they, and you have explained that they is Mr Mabuza in business because you know he is a business person. You know him to be in business with whom that you would have thought they were seeking to import these guns?

WITNESS F: I do not know.

ADV BALOYI SC: Sorry, what do you not know?

WITNESS F: I do not know of whom is he with in the said business, but I know that he is in business of supplying, not
20 guns to my knowledge, but other things.

ADV BALOYI SC: Okay. When you – you are a police officer. Is Mr Mabuza in the business, and I think I have asked you this, maybe answer so that I can follow up with my next question. Do you know him to be in the business of selling guns?

WITNESS F: No, I do not know him like that.

ADV BALOYI SC: So you are approached by a civilian who wants to sell up to 750 units of guns and he speaks to you, somehow he has got the confidence to speak to a police officer about selling guns when he is not in the registered business of selling guns and you just want to test, you did not do anything about it. You did not say, but this is breaking the law. Why is that, that you do not see this as someone who is breaking the law and then you need to act
10 about it?

WITNESS F: According to me and my understanding, in terms of the illegal firearms, there is no way that if those guns were illegal, he could sell each gun by R15 500. Because if it is in the shop, it is R15 000 or R13 000. It differs on the brand of a particular firearm. I came to the conclusion that he might have got them somewhere or bought them somewhere in bulk. He wants to sell them or to venture into the business of some sort. But I did not verify with him because I did not see a point to verify with
20 him. I assumed at that particular time that he was trying to venture into another business.

ADV BALOYI SC: The business of selling 750 guns and you, a police officer, did not see a problem with that. All you wanted to do was let me test them.

WITNESS F: That is correct, Commissioner.

ADV BALOYI SC: And that... Yes, carry on.

WITNESS F: Can I?

ADV BALOYI SC: Yes, carry on.

WITNESS F: Okay. Not that I did not care or try to enquire further. As someone who is in business, at his calibre and level, I just assumed that he is venturing into that. I did not ignore that because I am a police officer or I did not ignore that at all. I just assumed that because he is a businessman, he is venturing into something.

10 **ADV BALOYI SC:** Did you report this to the police afterwards so that there could be a proper investigation whether he is breaking the law or not?

WITNESS F: I did not, Commissioner.

ADV BALOYI SC: Okay. Did you maybe not report it or did you maybe respond the way you do, that I need to see because you knew exactly what was happening, that this is just a gun-selling, unlawful gun-selling venture and you were comfortable with being part of it? All you needed to do was test them.

20 **WITNESS F:** I disagree with your version, Commissioner. I did not know that it was illegal gun-selling ...[intervenes].

ADV BALOYI SC: You did not ...[intervenes].

WITNESS F: The person is ...[indistinct]. He can be called and come testify on whether these guns were illegal or legal.

ADV BALOYI SC: Okay.

WITNESS F: But to best of my ability, it looked legit ...[intervenes].

ADV BALOYI SC: What about it looked legit ...[intervenes].

WITNESS F: The prices thereof.

ADV BALOYI SC: Yes. Witness F, what is it about these WhatsApp messages? You have got a message that says:

10 “Hey brother. Do you have a market for
a compact CQC, close-quarter combat,
12-gauge shotgun manufactured in South
Africa, pic attached? I have access to
750 units in knock-down component form
plus spares ready for shipping with
matching flashbang ammo. See video at
family price.”

That is the first message you have.

WITNESS F: Yes.

20 **ADV BALOYI SC:** Now, you say to us you thought maybe
he wants to venture into something different. So, you know
he is not in the gun-selling business. What did you
consider to be lawful about this? As a police officer, I do
not ask you as a civilian. I ask you as a police officer who
does have a legal duty to act when a crime is committed, an
offence is committed in their presence. That is the premise

of my question. You have that responsibility. Someone is asking you to find buyers for 750 firearms.

I think guns. I do not know the difference between firearms and guns, whether it has anything to do with calibre. But someone is asking you, you know them not to be in the business of gun-selling, because I have asked you that question. And you firmly answer that no, he is not in the business of gun-selling and you thought maybe he is venturing out.

10 Now, you have no reason to think and believe that he has got a licence to sell this, because you are not telling us that. You have no reason for that. As a police officer, how is it responsible and lawful that you do not act against what is *prima facie* an offence being committed by asking you to find buyers for guns?

WITNESS F: To me, maybe I have applied my mind as a police officer, not knowing that the split value of a particular similar firearm, they go around 2.5, 3 000. So if this one is R15 000, to me it came as a legit deal. And this guy,
20 knowing very well that I am a law enforcer, he would not have sent me stolen firearms, or firearms to be used to commit some sort of crime, knowing that I am a police officer.

ADV BALOYI SC: All right. Thank you, Witness F. Thank you. You have answered me. Thank you.

WITNESS F: Thank you.

ADV CHASKALSON SC: Can we go to page 696 of the same bundle? And there at 02:06 on 16 January 2024, it is a bit earlier, Comrade DD Mabuza sends you a message saying:

“Buti, please do not forgive about me.”

And I think it is forget about me. Am I correct that it was forget about me?

WITNESS F: I am still checking.

10 **ADV CHASKALSON SC:** 696.

WITNESS F: Yes, I see that.

ADV CHASKALSON SC: And is that, was it really meant to read, please do not forget about me?

WITNESS F: Can you repeat that question, Commissioner?

ADV CHASKALSON SC: It says:

“Buti, please do not forgive about me.”

Reading it, I think that what he probably meant to say was, please do not forget about me. Or did he mean, I mean, did you read that message as meaning, please do not forgive
20 about me?

WITNESS F: I cannot comment on that message because even myself, I do not understand what he meant by please do not forgive me, or please do not forget me. I did not know what he wanted to say.

ADV CHASKALSON SC: Okay, well, let us go to the next

text, which is sent the following day at 17:36 PM. And it sends a screenshot, and the screenshot is in the annexure bundle at page 299.

WITNESS F: Yes, I see.

ADV CHASKALSON SC: And the screenshot seems to be a screenshot of a message sent by Comrade DD Mabuza, Deputy President, to Jerry Kazi. And because it is sent ...[intervenes].

ADV KHUMALO SC: Sorry, Advocate, we lost you, so give
10 us the page number.

ADV CHASKALSON SC: At 229 of the annexure bundle. The annexure bundle, not the exhibit bundle. At page 229.

WITNESS F: Okay, I confirm.

CHAIRPERSON: I am sorry.

ADV CHASKALSON SC: It is being flighted, Commissioner, so what you are looking for is a document like that. And so this is a document, this is a screenshot that was sent to you by the person described as Comrade DD Mabuza, Deputy President. And it is a screenshot of his
20 conversation with someone who is saved on his phone as Jerry Kazi. Do you know who Jerry Kazi is?

WITNESS F: I do not know him.

ADV CHASKALSON SC: You do not know him?

WITNESS F: Yes.

ADV CHASKALSON SC: It says, firstly, the time on the

screenshot is 17:36, which is the same time it was sent to you. That is reflected on page 696. It says:

“Okay, Kazi, this is Jerry Kazi speaking.

I have got an issue.”

There is then a voice note and a voice call. He then shows – Jerry Kazi then shows a Teams meeting calendar entry and says:

“I have an urgent special ExCo now at six.”

10 And the person described as Comrade DD Mabuza says:

“You will indicate.”

Then Jerry Kazi says:

“Let us meet 007 tonight after my meeting. It is urgent.”

And the person described as Comrade DD Mabuza gives a clenched fist emoji. Now, who is 007?

WITNESS F: I do not know him, Commissioners.

ADV CHASKALSON SC: I think you do know, Witness F, I think you know that it is you.

20 **WITNESS F:** Commissioners, my name is that one of that one. Not 007. Maybe themselves together, when they are together, they are referring to me as 007. But that is not my name.

ADV CHASKALSON SC: I know it is not your name, but why would they refer to you as 007, do you think?

WITNESS F: I do not know. I would not know. You know, when two people are friends there, they call each other, they give people's names. I cannot get into that and say, it is because of this. I am like that. Maybe PKS, maybe they call me PKS, then I would not entertain that. That is ...[indistinct] that my name. But I can confirm 00 or 00 is not my name.

ADV CHASKALSON SC: What did Mr Matlala call you on his chats? Do you remember?

10 **WITNESS F:** He called me what, Commissioners?

ADV CHASKALSON SC: What did Mr Matlala call you on his chats? Do you remember? I mean, if you do not, you just say no.

WITNESS F: I do not remember.

ADV CHASKALSON SC: What you will see when, if you look at the chats that were attached to your notices, is that he referred to you as Colonel and then your name brackets 00. Does that ring a bell?

WITNESS F: I do not know how to answer that.

20 **ADV CHASKALSON SC:** Do you know what 00 signifies in the James Bond movies?

WITNESS F: James Bond, I do not know him. No, I cannot comment on that.

ADV CHASKALSON SC: You do not know who 007 is?

WITNESS F: No, I do not know, Commissioner.

ADV CHASKALSON SC: Well, James Bond was 007. But the 00 agents were the agents who had a licence to kill.

WITNESS F: Okay. Now I know, Commissioners.

ADV CHASKALSON SC: All right. Let us see what proceeds from this 007 chat. If we go back to page 229 of the annexure bundle, you will see that the last text from Jerry Kazi was, it is urgent. Can you recall what was so urgent that people wanted to see you that night?

WITNESS F: Firstly, I would not say they wanted to see
10 me because at that time my name was not 007. It is that and that. That is my name. So I cannot now say when they were referring to 007, they were referring to me. So, therefore, I cannot know what was that urgent in that particular time.

ADV CHASKALSON SC: Okay. Well, let us look at the second screenshot. You will see that it was sent to you at 05:57. That appears at page 696 of the main charts. And it appears in the annexure bundle at page 230 and it is essentially the same image, except now there are three
20 more messages. After the clenched fist, the person described as Comrade DD Mabuza says:

“Sorted and confirmed.”

And Jerry Kazi says:

“Thanks Kazi, seven-ish, right.”

WITNESS F: I see that.

ADV CHASKALSON SC: Let us go back to your text. It is page 696. And after sending you that second screenshot, the sender described as Comrade DD Mabuza, Deputy President, says:

“The pivot, please, next to Palazzo.”

And if you go over the page, and then there is a thumbs-up. Why was he giving you these screenshots and these address details for the meeting? What was he expecting of you?

10 **WITNESS F:** I would not know, Commissioners.

ADV CHASKALSON SC: Was he not expecting you to come to the meeting?

WITNESS F: I do not know, Commissioners.

ADV CHASKALSON SC: Did you go to the meeting?

WITNESS F: I cannot remember, Commissioners.

ADV CHASKALSON SC: Well, maybe let me jog your memory. If you go to 533 of the evidence bundle, you will see that at 17:39, you forwarded that screenshot to someone who is described in your chats as Bra Steve
20 Mswazi, and who we understand to be Mr Steven Motsumi. So let me ask you two questions. First, is Bra Steve Mswazi Steven Motsumi? Can you answer that?

WITNESS F: Can you repeat that question?

WITNESS F: Is the person saved in your phone as Bra Steve Mswazi Mr Steven Motsumi?

WITNESS F: That is correct.

ADV CHASKALSON SC: And then why did you forward that screenshot from the person described as Comrade DD Mabuza, Deputy President, to Mr Motsumi on the 17th of January 2024 at 17:39?

WITNESS F: I cannot remember. To be honest with you, Commissioners, I cannot remember why did I exactly send it.

ADV CHASKALSON SC: Well, can I ask you some
10 questions? What is the relationship between the person who is described in your phone as Comrade DD Mabuza, Deputy President, and Mr Motsumi?

WITNESS F: They do not have a relationship.

ADV CHASKALSON SC: Then why would you be forwarding an invitation to a meeting sent by Comrade DD Mabuza, Deputy President, to Mr Motsumi? Why would you forward the screenshot to him?

WITNESS F: I really, really do not know. That is the reason, if you see here, Commissioners, Steven Motsumi or
20 Bra Motsumi never responded.

ADV CHASKALSON SC: I see he did not respond, but my question is really, why did you send it to him?

WITNESS F: I do not know. I really cannot remember. Maybe, I do not know. I do not know.

ADV CHASKALSON SC: Let me move to another issue

that is related possibly.

ADV BALOYI SC: Can I perhaps suggest to you, because you do not remember, so we are going to have to make what we do of this evidence that is contained in these chats. Can I propose to you for your comment that you probably sent it to him because you knew he had an interest in this meeting that was being arranged? Otherwise, it does not make sense that you would forward an invitation to a meeting. Any comment?

10 **WITNESS F:** I do not think it would be a good thing to say he had an interest because, even myself, I cannot even remember why exactly did I send this to him.

ADV BALOYI SC: Yes.

WITNESS F: So, I cannot tell now to him he had an interest.

ADV BALOYI SC: The reason I am saying probably, it is because it is otherwise a random discussion about a meeting and a meeting place to meet 007 at that seven-ish, right? So it is a message like that. You then forward it to a
20 specific person, Mr Matsumi, in this case. What I am putting to you is you did not do so randomly. There has to be a reason.

You may not remember it, but there was a reason when you forwarded this message to him. You did not send it to just anybody. You did not send it to General Sibiya, at

least not what we have in front of us here. You picked a specific person. It has to be that it is because you knew he would have an interest, or he has an interest in that meeting. That is what it looks like if I am to offer an explanation because you do not remember. Do you have any comment?

WITNESS F: I still maintain that I do not remember, Commissioners. With due respect, I so wish that I could scratch my head till I remember, but I cannot remember.

10 **ADV BALOYI SC:** Okay. Thank you, Witness F.

ADV CHASKALSON SC: Witness F, I am going to go to a different topic. In your application for a postponement that we heard last week, you said you could only sign the application on 28 January because you were not available on 27 January as you had to collect a suspect in Vanda for Musina case 210/09/2022. The charge was cash-in-transit. Do you recall that?

WITNESS F: That is correct.

ADV CHASKALSON SC: Can you describe to the
20 Commission what this case is about and who the suspects are?

WITNESS F: Commissioner, the case is about cash-in-transit, possession of hijacked motor vehicle, possession of unlicensed firearms and ammunition.

ADV CHASKALSON SC: And so, am I to understand that

this relates to a cash-in-transit robbery with stolen vehicles and unlicensed firearms?

WITNESS F: That is correct.

ADV CHASKALSON SC: And do you know who the suspects are? Can you recall their names?

WITNESS F: Tobihle Natoshi, Eric ...[indistinct] Musa and Bongani Khumalo.

ADV CHASKALSON SC: And you have been working on this case for three and a half years now? Is that correct?

10 **WITNESS F:** That is correct.

ADV CHASKALSON SC: I want to take you to page 184 of the annexure bundle.

WITNESS F: That is correct.

ADV CHASKALSON SC: And what we see in page 184 of the annexure bundle is a document that you have prepared called application for fingerprints identification as per Musina CAS 210/09/2022:

20 I hereby apply for investigation of
fingerprint comparison investigation as
per following bag number..."

And you give the bag number, PW4000841044:

"Therefore, I request LCRC to investigate
further the matters due to appear in the
Polokwane High Court on 20 June 2024.
I further request that this matter be

investigated by Warrant Officer S
Motau...”

And you give his PERSAL number:

“...as he has previously investigated our
cases positively.”

You make the specific request for Warrant Officer Motau.
What previous cases have you worked on with him and what
positive results have he produced?

WITNESS F: We worked with Warrant Officer Motau on
10 British-American Tobacco cases where robberies were made
in those years of British-American Tobacco and
housebreaking, even though I cannot quite remember the
case numbers. So we worked with him most on our cases.

ADV CHASKALSON SC: And he has given you good
results before?

WITNESS F: That is correct, Commissioners.

ADV CHASKALSON SC: Can we go to the following page
in the annexure bundle, page 185, and this, as I
understand, is a photograph of that evidence bag that was
20 referred to in your request, and it is actually the fingerprint
set for the Musina case.

WITNESS F: That is correct.

ADV CHASKALSON SC: Can you now go to page 556 of
the evidence bundle?

CHAIRPERSON: 500?

ADV CHASKALSON SC: 56. And you will recall that that application that you made was on the 7th of June. What we see at page 556 is that on the 14th of June, at 09:43, you forwarded two photographs to Mr Motsumi.

WITNESS F: That is correct.

ADV CHASKALSON SC: One was the application for the fingerprint identification to be assigned to Warrant Officer Motau, and the second was a picture of the fingerprint set itself. Is that correct?

10 **WITNESS F:** That is correct.

ADV CHASKALSON SC: Why did you forward these police documents to Mr Motsumi?

WITNESS F: Okay, thank you, Commissioners. On that particular day or on that week, let me bring this to the attention of the Commissioners. I am a biker, a motorcycle rider. Mr Motsumi is a motorcycle rider. I am his mentor. He is my mentee. As a result, Mr Motsumi, I was supposed to ride with him to a breakfast ride that weekend to ...[indistinct].

20 So he kept on phoning and pestering me. Then I had to tell him that I am under pressure, I am working on this matter. This is how I sent him the photos. According to me, he did not believe me that I was working on a serious matter. So therefore, I could not come to him. So I had to send the proof to him that I was busy with something.

ADV CHASKALSON SC: So you are saying that you showed Mr Motsumi the identity of the police officer who was going to do the fingerprint comparison and the fingerprint set itself just to persuade him that you could not go on a breakfast ride on the weekend?

WITNESS F: That is correct, Commissioner.

ADV CHASKALSON SC: Witness F, I am having difficulty believing that answer, but let me take you to the next question. What did Warrant Officer Sydney Motau
10 ultimately report?

WITNESS F: I think the results were negative, but the report is inside the docket. The docket is in High Court Polokwane as we speak. The accused persons are still in custody. But the report of Mr Motau is inside the said docket. I can refer to it if maybe given a chance. Currently, the docket is in High Court in Limpopo.

ADV CHASKALSON SC: You see, Witness F, what we have seen is a draft of a statement from Mr Motau, Sergeant, sorry, Warrant Officer Motau, that says, and I will
20 quote:

“The scotch tape and black folium were scanned on AFIS and no identifications were made. The black and white folium were sealed and taken to Brits is LCRC Fingerprints Lab for processing, but no

fingerprints were found from the exhibits.

The exhibits were sealed in bag number
PW3000...”

It gives the number:

“...and handed back to yourself for
safekeeping on the 8th of July.”

So what this draft statement that we have seen on your
phone says is that on the 16th of July, you forward the
details of the fingerprint examiner and the fingerprint bag to
10 Mr Motsumi, and this is in respect of a cash-in-transit case.
And on the 8th of July, the person whose details you had
forwarded to Mr Motsumi reports that there are no
fingerprints. Do you want to comment on that?

WITNESS F: I do not know, or I do not understand exactly
your question in that matter.

CHAIRPERSON: Mr Chaskalson, can you please show us
the final report by...

ADV CHASKALSON SC: I have not seen the final report.
What I have seen is a draft report.

20 **CHAIRPERSON:** No, the draft you are referring to.

ADV CHASKALSON SC: I can, it is not in the bundle, but I
can show it. It may be that the witness wants time to
consider it.

CHAIRPERSON: Please talk to your leader. It is being
flighted now.

CHAIRPERSON: Thank you, thank you.

MR NGOATO: Commissioner?

CHAIRPERSON: Yes, Mr Motau.

MR NGOATO: Is the witness going to be asked about a document he has never seen before?

ADV CHASKALSON SC: Well, it is not that he is never seen it before, it is that it was not in the bundle. But he does not need to answer questions on it now. We would just like to display it now.

10 **CHAIRPERSON**: If he cannot answer, you can address it later, but I do not think anything stops us from having a look at it.

MR NGOATO: Ja, but it is not in the bundle.

CHAIRPERSON: Ja, but if he is in a position to answer, he may. If he says he cannot, then that may be dealt with at a later stage.

MR NGOATO: Accepted, Commissioner. I am just saying that if it is not in the bundle, it is simply to confirm that he has never seen it, because he does not have it.

20 **CHAIRPERSON**: We cannot be sure about never having seen it, but not having seen it recently in preparation for the proceedings, that is something else. But whether he never, ever saw it at any stage before, we do not know. I do not know, and possibly you do not know either.

ADV BALOYI SC: Mr Chaskalson, where do we see that

what is on the screen is related to your page 184 and 185? Because it is redacted to what is on the screen, so there are no obvious identifiers that link the three documents.

ADV CHASKALSON SC: Chair, sorry, Commissioner, what I can confirm to you is that the – let me check this. Let us come back to this. Let us return these documents, let us make these documents available, and we will come back. But what you do recall, Witness F, is that the finding that was ultimately made was negative.

10 **WITNESS F:** I am not sure, but I think it was negative. I am subjected to be corrected if that one too can be made present in my disposal.

ADV CHASKALSON SC: Okay. We will take this forward at a later stage.

ADV BALOYI SC: Mr Chaskalson, I would have asked a question relating to the same topic at 556, but if you are coming back to it ...[intervenes].

ADV CHASKALSON SC: Sorry, the?

ADV BALOYI SC: I am saying this page, these documents,
20 this letter and evidence bag, I was going to ask questions about them, but if you are coming back to the topic, I am happy ...[intervenes].

ADV CHASKALSON SC: Commissioner Baloyi, I am happy for you to ask your questions now.

ADV BALOYI SC: Okay.

ADV CHASKALSON SC: It is not going to interfere with me when I come back.

ADV BALOYI SC: All right. Witness F, this Bra Steve Mswazi, is he a member of the SAPS?

WITNESS F: He is not, Commissioner.

ADV BALOYI SC: Okay. Now, if he is not a member of the SAPS, why do you share with him SAPS property, the letter that you wrote requesting that Warrant Officer Motau be the one responsible for the matter?

10 **WITNESS F:** Thank you, Commissioner. The reason that I have shared with Bra Steve, I might have stored him as Bra, as in he is, you know, early 40s, early 50s. To me, he is like a father. So, I did not see him as a threat or a problem when I sent him a proof, because he was just telling me ...[vernacular]. That is when I said, Baba, relax. This is what I am busy with now. So that he must be at ease to see that I am not avoiding him. It is the matter of urgency at word.

20 Secondly, Baba or Bra Steve has no interest in these matters. He does not even know the people who are arrested there. It was just me sending him to leave and say, Baba, relax. I am coming, I am still under pressure ...[vernacular]. Thank you, Commissioner.

ADV BALOYI SC: But you see, your answer does not square up. Your letter is on the 7th of June and all it says

to somebody on the 7th of June is that you want the fingerprints to be taken, I think that is what it is, and then you state who is supposed to do that. And that is on the 7th of June. And then you forward this letter to Bra Steve on the 14th of June. So, you forward it seven days later. It does not tell anyone that you are busy with this matter. You have written the letter, you have finished. What is he supposed to make of it?

WITNESS F: It is supposed to make Bra Steve to relax. I
10 was, in a way, assuring him that I can never avoid to come and ride with him, even though I send it 14 days or seven days after. It was in that fashion that Baba relax. I am busy with my work.

ADV BALOYI SC: No, you are not busy writing the letter on the 14th, Witness F. Please try and think harder about the kind of answer you want to give us. It is false that you sent him a letter dated the 7th on the 14th so that you can show him that you are busy with this matter. That is false. That is not the only matter on your desk, for sure. I can
20 suggest that.

So, it is false, the answer that you are giving us. You have two options. You can rethink your answer or say to me, well, you stand by your answer even though I say it is false. Please do not repeat it. Do you want to say anything?

WITNESS F: Commissioner, I am afraid to say anything because, according to me, I am answering to the best of my ability. Now, I am kind of sceptical to answer to suit a certain narrative or certain direction not on what really transpired on that particular day.

ADV BALOYI SC: Okay.

WITNESS F: I took an oath to tell nothing, nothing but the truth.

ADV BALOYI SC: Yes.

10 **WITNESS F:** So, that is why I am trying my level best to tell as it is. Thank you.

ADV BALOYI SC: All right, I really would like you to tell nothing but the truth. So far, you are not doing that, but let me ask you my next question. The evidence, I think it is the evidence bag, the one that says, Musina case number, two times fingerprint set. It has no date, so it does not say anything about you are busy. We know you are not the one that is going to be checking these fingerprints. Why do you send it? You have sent him the letter which tells him you
20 are busy. You have written a letter on the 7th, so you are busy. Why do you send him this bag that gives the Musina case number and it says two times fingerprint set and that is all that bag says? Why do you send that?

WITNESS F: Commissioners, the bag goes hand-in-glove down with ...[indistinct]. I have just sent them two sets.

ADV BALOYI SC: Yes, I am asking you, I am asking you why do you send him the bag? Do not answer and say they go together. Whether or not they go together, you have sent the letter, you have given us your explanation. You wanted to show him that you are busy writing a letter that is dated the 7th. You are busy with a matter. Why do you send the bag which says nothing? On the face of it, it just gives the case number and what is in there. Why do you send this evidence bag to Bra Steve?

10 **WITNESS F:** [No answer].

ADV BALOYI SC: Witness F, do you have an answer or not to my question?

WITNESS F: I am afraid I would say, Commissioners, I have sent the bag with the letter and it will not sit well with my Honourable Commissioner that it will look as if now I am not telling the truth, but I just sent it like that. And now, the evidence bag usually, there are no dates. Once you put the date on the letter, and you just staple your so-called letter on top of this evidence bag when you submit to Local
20 Criminal Centre. So, at that particular time they were stapled together. I have sent both of them at a time.

ADV BALOYI SC: Okay. Lastly, are you able to tell us whether or not it is lawful that you share this kind of information with a civilian?

WITNESS F: I think the lawful, according to my little

knowledge that I have, not that I am making an excuse, it becomes unlawful when you share an information with a civilian who is compromised or who got interest in that particular matter. So, to me, at that time, I was just sending this letter this way. I did not see it like that.

ADV BALOYI SC: Okay.

WITNESS F: So, my answer to the Commission, by the time I sent it, there was not any unlawfulness.

ADV BALOYI SC: Okay. Maybe let me say lastly, I know,
10 speaking for myself, but I suspect many South Africans will not sleep easy knowing that police officers share documents that are in dockets. They share them with civilians who have absolutely no interest, according to you, in matters that are under investigation. I just want to make that comment to you, that it is a matter of concern. And I put it to you, it is irregular and unlawful that you would have shared the contents of a police file with a civilian who has, according to you, no interest in the matter. Thank you, Witness F.

20 **WITNESS F:** Noted. And thank you, Commissioner.

ADV CHASKALSON SC: And now I want to go onto a different topic involving Mr Motsumi and it is going to involve flipping between a series of chats between yourself and Mr Motsumi that start at page 554 and some parallel chats between yourself and General Sibiya that start at

page 224. So can I ask you to start at 554, but if you have got a post-it stamp or something that you can just mark that page when I ask you to go back, you keep it marked because we are going to be moving backwards and forwards between these pages.

ADV KHUMALO SC: Our desks are a bit cluttered, so do we need to put some of the files away and focus on one for a moment?

ADV CHASKALSON SC: I think for now, it will be both
10 exhibit files are the ones that we will be going through.

CHAIRPERSON: And you referred us to 554 and 22 something?

ADV CHASKALSON SC: 224 and 554.

CHAIRPERSON: Thank you.

ADV CHASKALSON SC: And in fact, it is 553 where it starts, not 554. And there you will see that at page 553 Mr Motsumi called you at 13:51, so nine minutes to two in the afternoon. If you jump now, I am sorry, we are talking about the 5th of June 2024. If you jump now to 224, you will
20 see that two minutes after you got the call from Mr Motsumi, you sent a message to General Sibiya saying:

“Time for meeting??”

General Sibiya replied to you at 15:26, saying:

“18:00 to 19:00. I have a meeting at
19:30.”

You responded at 15:27, saying:

“Let me...” ...[intervenes].

ADV KHUMALO SC: Mr Chaskalson, just bear with us, please.

ADV BALOYI SC: We are lost, Mr Chaskalson. 224 is what?

ADV CHASKALSON SC: The same, 224 in the exhibit bundle, not the annexure bundle.

ADV BALOYI SC: 224 and 553, you say?

10 **ADV CHASKALSON SC:** And 553 is where we start. So if we can start again at 553, and it may actually be easier just to take out 553 and 554 and to have them in one hand while one looks at 224 and 225 in the file. So 553, and all of this is happening on the 5th of June 2024. At 13:51, Mr Motsumi calls you. 13:51:45, that is the sort of open chat bubble on the bottom left of 553. Now if we go to 224, we see that at 13:53:26, which is two minutes later, you send a text to General Sibiya saying:

“Time for meeting??”

20 Staying on 224, at 15:26, General Sibiya responds to you and says:

“18:00 to 19:00. I have a meeting at 19:30.”

You say, immediately:

“Let me forward to them.”

Now who is them who you are going to forward to?

WITNESS F: Thank you, Commissioners. Can I not answer that for now? Because I have got an issue here. I can see where it says outgoing and ingoing, I am making an example. Outgoing, it is me, there in 554. The message reads as follows:

“Still with the National Commissioner.

Let us see how it goes.”

So on the chat it shows it is me sending that message to
10 Bra Mswazi. And at no cost, I was with the National Commissioner. So I am putting this submission that I cannot comment further on this WhatsApp up until the High Court letter is finalised because I cannot answer because I am not sure that this message were forwarded to me or I am the author of such. Like this other message saying:

“Yes, let us see. Senthumule is still representing.”

I have never been on a meeting with Senthumule. But on the chat, it states that I am the one who sent such
20 message. So I am making this submission to the Commission that I cannot answer on this one because I am not clear about them, especially this chat.

ADV CHASKALSON SC: Well, I will take you through the chats. I do not expect you to answer yet. I think the concern that you just expressing is one that will go away

when we go through the chats slowly because we will realise that what you are doing is you are forwarding to Mr Mutsumi messages that you receive from General Sibiya, but we may need to go slowly to show that to you. You say at 15:27:

“Let me forward to them.”

If you go to 553, you see that at 15:42 you forward to Mr Motsumi the message from General Sibiya:

“18:00 to 19:00. I have a meeting at
10 19:30.”

That is the message that General Sibiya sent to you that you are now forwarding to Mr Motsumi. There are then conversations between yourself ...[intervenes].

CHAIRPERSON: Sorry, Mr Chaskalson. Witness F, just to be sure that you are still with us, do you accept that you wrote the text that says, let me forward to them at page 224? You sent that. There is no question of it having been forwarded or anything like that. It appears to be a text that was written by you. Do you accept that?

20 **WITNESS F:** Commissioners, my problem is, if I accept this was written by me, then I must also accept that still with the National Commissioner, let us see how it goes. So I am just humbly asking the Commission, the Honourable Commission, that can I not answer that?

CHAIRPERSON: No, respond to this individually. I do not

understand when you say if I accept this one, then I will have to accept another one. Let us focus on this, and you will deal with the other one you are referring to at the stage at which you may have to. Did you or did you not write the one that says, let me forward to them? Earlier, I never understood you not to be accepting that. And by all appearances, you appear to have written this. Nothing seems as if this was forwarded or that you forwarded it. You wrote this, not so?

10 **WITNESS F:** Commissioners, I am trying to recall.

CHAIRPERSON: What are you trying to recall? Just look at the flow. Nothing appears to have been forwarded. This appears to have been a chat written by you. There is nothing to recall.

WITNESS F: No, Commissioner, if you could check there by 553, it also appears as if it is written by me. So that is the reason I am saying here in 224, I cannot quite remember. You see there, Commissioner, in 554?

CHAIRPERSON: What are we talking about there?

20 **ADV CHASKALSON SC:** If we take this sequentially, what we will see is that at 554 what is being forwarded to Mr Motsumi is three texts that General Sibiya has sent to the witness, but we do need to take it sequentially. Maybe the witness should be excused from answering questions until we have seen the whole picture.

CHAIRPERSON: Yes, thank you, thank you.

ADV CHASKALSON SC: So the picture continues. You said:

“Let me forward to them.”

At page 224 at 15:27. And that is exactly what you did. At 553, 15:42, you forward to Mr Motsumi the message that General Sibiya has just sent you:

“18:00 to 19:00. I have a meeting at 19:30.”

10 Then at 15:48, this is a few minutes after you have told Mr Motsumi what General Sibiya's availability is, you have a call with him. If we go back to 224, at 15:49, which is one minute later, you tell General Sibiya:

“18:00, it is confirmed.”

So if we can just rerun this exchange? You have spoken to Mr Motsumi. You have then asked General Sibiya for a time for a meeting. He said, 18:00 to 19:00, I have a meeting at 1930. You have said, let me forward to them. You have forwarded it to Mr Motsumi. You have spoken to Mr
20 Motsumi. And you have now responded to General Sibiya to say, confirmed for 18:00.

What then happens is you have two calls on page 224 with General Sibiya. One at 16:25 and one at 16:41. At 16:41:33, General Sibiya sends you a message:

“Still with the National Commissioner, let

us see how it goes.”

Over the page, on 225, at 16:42, in other words, a minute later, you say:

“Should I let them know?”

General Sibiya responds at 17:24:

“Yes, but let us see. Senthumule is still presenting.”

That is 17:24 when he sends you that message saying:

10 “Let them know that I must see how
things are going. I am still with the
National Commissioner. General
Senthumule is still presenting.”

So now we have got to go to 554. And what we see at 554 is at 17:40, you forward to Mr Motsumi your exchange with General Sibiya. So the message from General Sibiya which said, still with the National Commissioner, let us see how it goes. Your response which says, should I let them know? And his response which says, yes, but let us see. Senthumule is still presenting.

20 So you have taken those three messages that you exchanged with General Sibiya at 16:41, 16:42, and 17:24. And you forwarded them to Mr Motsumi at 17:40. At 18:27, you get another message from General Sibiya saying:

“Still here with the National
Commissioner.”

You speak at 18:57. At 18:58, you get another message:

“Still here with General Senthumule and
the National Commissioner.”

At 19:37, you say to General Sibiya:

“Are you winning?”

He responds:

“We just finished now, are they still
there?”

You say at 19:45, yes. And you say to General Sibiya:

10 “How far?”

He responds immediately:

“Give me 30 minutes, I am on my way.”

Now, what were you organising a meeting between General Sibiya and Mr Motsumi about? What were they meeting about?

WITNESS F: Now, as you explain like this, I tend to understand it better, Commissioners. I was not arranging the meeting for Mr Motsumi and General Sibiya. I was passing a message from General Sibiya to Mr Motsumi,
20 where General Sibiya wanted to meet Mr Motsumi. When I am referring to them, it is not them as in them, it is them as an African culture, ...[vernacular] that in English because ...[indistinct] then maybe I just say them because I refer him as Abubaba. So that is the reason I was referring to that as them. But I confirm that there was a meeting that was

scheduled by General Sibiya to Mr Motsumi.

ADV KHUMALO SC: Can I just ask a question, Witness F? You say you were being respectful by referring to one person as them. On page 225, chat number 8, do you know why General Sibiya would refer to them in plural as in are they still there if it was just one person that you were talking about?

WITNESS F: I assume maybe, I do not want to comment, Commissioners on his behalf. But I think maybe he took it
10 from me when I say them, then say are they there, but I do not want to comment on his behalf.

ADV KHUMALO SC: You see, Witness F, these answers have to make sense. That is why you have to read the chats in sequence. And when you read them in sequence, it is quite clear that both of you are referring to multiple people, not a single person. Do you want to comment?

WITNESS F: That is correct, that is correct, Commissioners. But on a lighter note, the intention there from my side, if then I was referring to Motsumi, maybe it
20 was an error on my side. But I thought at that particular time, it was a matter of respect. This is why I think it came from that direction, Commissioner. I do not know if maybe my answer...

ADV CHASKALSON SC: So, Witness F, who in addition to Mr Motsumi was General Sibiya going to meet there?

WITNESS F: Can you repeat that question, Commissioner?

ADV CHASKALSON SC: Who other than Mr Motsumi, who in addition to Mr Motsumi was General Sibiya going to meet at this gathering?

WITNESS F: To be honest with you, Commissioners, I do not know, but I can confirm that he was going to meet Mr Motsumi.

ADV CHASKALSON SC: Were you not present with Mr Motsumi where General Sibiya was going to come meet?

10 **WITNESS F:** No, I was never present with Mr Motsumi.

ADV CHASKALSON SC: You see, at 19:39 General Sibiya says:

“We just finished now, are they still there?”

And you say yes. How did you know they were still there?

WITNESS F: Because I was communicating with Mr Motsumi.

ADV CHASKALSON SC: If we go to your communications with Mr Motsumi, remember the question is asked by
20 General Sibiya at 19:39 and you answer at 19:45. So it is 19:39, 19:45. We do not see any communications between yourself and Mr Motsumi between 19:39 and 19:45. Look at page 554.

WITNESS F: The reason I am still eager that I was not there is because of earlier when I communicated with Mr

Motsumi, I knew that there was no way that he could have moved away from wherever he was before seeing General Sibiya. So I took it from that angle that they are still here, or he is still here. But in my statement, I wrote, or in my sentence, I wrote they are, but he was.

ADV CHASKALSON SC: So you are now saying it is only one person who General Sibiya was going to meet?

WITNESS F: Commissioners, according to me at that time, the person that General Sibiya was supposed to meet, it
10 was no one else other than Mr Motsumi. So now that I am taking my statement that there were other people, as it is written there on my chat, the person that I knew, it was only Mr Motsumi.

ADV CHASKALSON SC: So the only person you knew in that gathering was Mr Motsumi, but there would have been other people too?

WITNESS F: That one, honestly, I cannot say if there were other people too.

ADV CHASKALSON SC: I want to come back to my earlier
20 question. How did you know that they were still there if you were not with them?

WITNESS F: My answer is to that one, that there was no way that maybe they could have, or he could have moved away from where he was.

ADV CHASKALSON SC: Why? Where was he?

WITNESS F: He was in Bryanston.

ADV CHASKALSON SC: At a home? At a restaurant?

WITNESS F: I do not know.

ADV CHASKALSON SC: How did you know he was in Bryanston?

WITNESS F: He told me earlier that he would be in Bryanston.

ADV CHASKALSON SC: And why would being in Bryanston mean that he could not have moved away?

10 **WITNESS F:** This is what he told me, that he would not move the whole day.

ADV CHASKALSON SC: But we are now past the day. We are at quarter to eight at night. How did you know he would not have moved from Bryanston?

WITNESS F: My answer is to that Honourable Commissioner, instead, he is going to be there for the most of the time, or the whole thing. That is the reason I came to the conclusion that he was there.

ADV CHASKALSON SC: You see, Witness F, I find that a
20 difficult question to accept, because your boss, the Deputy National Commissioner of Police, has said to you, essentially, I am 30 minutes away, I am about to drive there, are they still there? And you, on an assumption that someone who told you he was going to be in Bryanston would not leave Bryanston because you do not leave

Bryanston, would be there, and so your boss should now drive 30 minutes out of his way on the off chance that he will find Mr Motsumi still in Bryanston. What is your comment to that?

WITNESS F: This is what he said. I cannot comment on that.

ADV CHASKALSON SC: But you, on your hunch that when Mr Motsumi is in Bryanston, he does not leave Bryanston, were happy to send your boss off on a 30-minute drive to
10 Bryanston. Is that what you are saying?

WITNESS F: I think it will depend on where my boss was at the time. That will allow him to drive 30 minutes to where Mr Motsumi was.

ADV CHASKALSON SC: You did not know where your boss was. You asked him how far. He said give me 30 minutes.

WITNESS F: Can you repeat that question?

ADV CHASKALSON SC: When you said yes, they are still there, you did not know where your boss was. You did not
20 know how long it would take him to get there because you asked him straight after that, how far, and he said, give me 30 minutes on my way.

WITNESS F: That is correct.

ADV CHASKALSON SC: So, you were telling your boss, at least after he told you give me 30 minutes, that drive 30

minutes out of your way, I have not spoken to them, I am not with them, but I have a hunch that they will still be there in 30 minutes. Is that what you are saying?

WITNESS F: I did not know at that time where my boss was. I just received that message from him about 30 minutes.

ADV CHASKALSON SC: But you did know by 19:46 because he said give me 30 minutes, I am on my way. So you knew he was 30 minutes away.

10 **WITNESS F:** Because he told me that.

ADV CHASKALSON SC: Yes, but you were happy to let him drive for 30 minutes to Bryanston on your version because you know that Mr Motsumi does not leave Bryanston when he is there for the day. It just seems strange to me, Witness F. It seems to me that if you were not with Mr Motsumi at the time, you would have called him and you would have said, my boss is 30 minutes away. Should I tell him to come or have you had enough of waiting now? But we do not see anything like that. So we are
20 driven to infer that you were with Mr Motsumi.

WITNESS F: Commissioners, I will never deny Mr Motsumi nor lie about him, nor his meetings or meeting with Lt-Gen Sibiya. I have got no reason to do that. If I was with Mr Motsumi, I would have said it, I was with him on that day. So I am still repeating, I was not with him that particular

time. But Mr Motsumi is someone that I often talk to, bike with him, travel with him with a bike. So there is no reason for me to lie that I was with him that particular day. I am not hiding it. But on that particular night or day when he was to meet with General Sibiya, I was not there.

ADV CHASKALSON SC: You said meetings with Mr Motsumi. Then you corrected yourself, meeting.

WITNESS F: No, no, no, no. I am just saying why. Meeting or meetings. Not that is there any meeting or that I
10 am hiding it all. I am still saying meeting or meetings. I was never part and there is no way that I can say on that day I was not with Mr Motsumi while I was with him. So I was never with him on that day.

ADV CHASKALSON SC: How many meetings are you aware of that have taken place between Mr Motsumi and General Sibiya?

WITNESS F: I cannot remember. But as maybe it goes or it comes to that point, I will be able to remember. But for now, I cannot say exactly because this is what I remember
20 now. Not that maybe I am shying away from anything, but as we go on, maybe I will remember.

ADV CHASKALSON SC: You say you cannot say exactly. Are we talking about five meetings, 10 meetings, 20 meetings? What is your estimate?

WITNESS F: I cannot remember. I only remember this

one, for now.

ADV CHASKALSON SC: For now, you only remember this one?

WITNESS F: Yes.

ADV CHASKALSON SC: Maybe we will refresh your memory a bit later. I want now to move to a meeting ...[intervenes].

ADV BALOYI SC: Before you do that, Mr Chaskalson. Witness F, you say the meeting was in Bryanston. How did
10 you come to know that they were going to meet in Bryanston? Who told you that?

WITNESS F: Mr Motsumi.

ADV BALOYI SC: Yes. Why would he tell you where they are meeting if you are not part of the meeting? If all you are doing is passing messages between him and General Sibiya and you are not part of the meeting, why would he tell you the meeting is in Bryanston?

WITNESS F: Thank you, Commissioner. I think the reason that Mr Motsumi told me is to when General Sibiya comes
20 out from his meeting, I must tell him he must come to Bryanston ...[intervenes].

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

WITNESS F: I said...

ADV BALOYI SC: Sorry, carry on.

WITNESS F: Commissioners, I want to bring this to your

attention. I have never ever attended any meeting ...[intervenes].

ADV BALOYI SC: No, no, no, no, Witness F. Do not pose your own question and then answer it. I have asked you a specific question. If you are not going to attend this meeting in Bryanston, why would Mr Motsumi tell you that the meeting is in Bryanston? Answer my question, please.

WITNESS F: To tell General Sibiya to come there. I was never part of the meeting.

10 **ADV BALOYI SC:** All right. So he must have given you the address, unless you are telling us that General Sibiya knows the address in Bryanston, knew it already. Which one is it?

WITNESS F: I think so, Commissioners.

ADV BALOYI SC: Okay, so you never had to give General Sibiya the Bryanston address. He knew it already.

WITNESS F: I assume, Commissioners.

ADV BALOYI SC: That must be so. It is not a question of assumption and it is really simple, Witness F. You do not
20 have to be evasive about it. If you did not tell General Sibiya the address in Bryanston and yet he knew that the meeting is in Bryanston and he went there without you giving him the address, he must have already known the address. It is a yes or no answer.

WITNESS F: Commissioner, I feel like you are putting me

in the corner to answer on behalf of Mr Sibiya and Mr Motsumi now.

ADV BALOYI SC: No.

WITNESS F: I am trying my best to answer to the best of my ability. I cannot hide myself ...[intervenes].

ADV BALOYI SC: No, Witness F. No, Witness F. You do not get to avoid answering this question. Here are the facts. Let us build it up. You are the go-between Mr Motsumi and General Sibiya about this meeting. You are
10 passing on messages. You are checking your General, where are you, how long are you going to be. You are doing that. You tell us that you were not at that meeting, but you also tell us that the meeting was in Bryanston. So someone told General Sibiya where to go in Bryanston. Firstly, that the meeting is in Bryanston, and where to go. Was it you that told him ...[intervenes].

WITNESS F: All right ...[intervenes].

ADV BALOYI SC: Let me finish. Let me finish. Was it you that gave General Sibiya the address of where the meeting
20 in Bryanston is going to be, if it was in Bryanston?

WITNESS F: No, it was not me, but I assume General Sibiya ...[intervenes].

ADV BALOYI SC: No, it was not you. My question is, was it you? You say it was not you. Now, to go back, and I take that for what it is worth, to go back to what you said a few

steps back. You said in answer to Mr Chaskalson, you said that you would not deny that you meet with Mr Motsumi because you do, but you were not at this meeting. You have no reason not to admit if you were at the meeting. I want to propose to you and put to you why you would want to deny or to avoid us knowing that you were in that meeting, which is what Mr Chaskalson suggests.

You would not want us to know you were in that meeting because you do not want to be asked questions
10 about who else was in the meeting and, importantly, what was discussed in the meeting. That is your motive for not wanting to admit that you were in that meeting when Mr Chaskalson suggests that you were in the meeting. Do you have any comment to that?

WITNESS F: Yes, Commissioner, thank you. The level of respect between myself and Mr Motsumi and the level of respect between myself and General Sibiya is something else. Under no circumstances, I would sit in the meeting with them both in that particular meeting. There is no way.

20 **ADV BALOYI SC:** Thank you, Witness F.

WITNESS F: I did not sit in the meeting together with them and I am not avoiding the question of who else was in that particular meeting, what else was discussed in the meeting. But then, because General Sibiya is to appear, HE will have to answer that, that what ...[intervenes].

ADV BALOYI SC: Yes, you have answered me, thank you.

ADV KHUMALO SC: Can I just clarify one issue, Witness F? It appears from this chat that General Sibiya, although he was in a meeting, he was available because he was able to chat with you and you were able to forward some of the chats. Do you know why Bra Steve was not communicating directly with General Sibiya? Why were they communicating through you, unless you were the meeting organiser and you were part of the meeting?

10 **WITNESS F:** Thank you, Commissioner. Commissioners, I can never, never be the meeting organiser between General Sibiya and Mr Motsumi and I can never also be part of that particular meeting. And according to me, maybe General Sibiya is used to send me messages to forward them. Sometimes maybe he would say he is in the meeting, not specifically with Mr Motsumi. Hey man, validate it, I am in the meeting, I have given people your numbers, for in case they are looking for me, please write that message because of you are the person that I often communicate with. Not
20 that he was communicating with me specifically because of Motsumi. He has communicated with me about other Generals that I must convey messages to. So basically, this is what I was at that particular time. Not that I was part of that meeting.

ADV KHUMALO SC: Yes, but why are they doing it

through you? I mean, he was clearly available, he could receive texts from Mr Motsumi. Why were they doing it through you? Why was it for you, for example, to find out how far he is, how long it will take for him to get to the meeting, and to obviously convey that message to Mr Motsumi? Because it looks here like even after General Sibiya had left his meeting, you were still the go-between. I mean, he was not communicating with the person or the people he was meant to meet with. Why were they doing it
10 through you?

WITNESS F: I do not know.

ADV KHUMALO SC: It can only mean you were part of the meeting, Witness F.

WITNESS F: No, no, no, no, no, no, Commissioner. I was never part of that meeting. I was never. Even General Sibiya will come and explain. I was never even once part of his meetings. Never.

ADV BALOYI SC: Well, you have said to Commissioner Khumalo that you could never be part of a meeting between
20 Mr Motsumi and General Sibiya. Why is that? I mean, assuming they are talking about General Sibiya's work-related matters, why could you never, ever, to use your language, be part of a meeting between the two? What do you know about what they discuss in those meetings that you could never, ever be part of meetings with them?

WITNESS F: Okay, maybe it came out of context. I did not mean like that. Never, ever, now it seems I am shying away from something. I am talking in level of respect. When your parents talk as a child, you cannot sit in and watch them in their eyes. You must give them space. So, as a result, I was not part and parcel of that meeting. And to come to the point of the Commissioner where she says Sibiya and Motsumi were discussing his work, I do not even know what we are discussing.

10 So, I am staying in that point. Not that I am shying away from anything. It was just a matter of level of respect. It has got nothing to do with me. Because if they wanted me in, they could have come and joined me. Thank you, Commissioners.

ADV BALOYI SC: Thank you, Mr Chaskalson.

ADV CHASKALSON SC: Witness F, if we go now to exhibit bundle page 202, do you have page 202?

WITNESS F: Yes.

ADV CHASKALSON SC: You see at 7 October 2023 at
20 04:30 in the morning ...[intervenes].

WITNESS F: Come again?

ADV CHASKALSON SC: 04:30 in the morning.

WITNESS F: Yes.

ADV CHASKALSON SC: General Sibiya sends you a message:

“The National Commissioner of Eswatini
just died here at OR Tambo. I am going
there now.”

You see that?

WITNESS F: That is correct.

ADV CHASKALSON SC: Now, if you go to page 673, and
this is a record of your chats with Mr Msibi, who is also
known as Mswazi.

WITNESS F: That is correct.

10 **ADV CHASKALSON SC:** Now, at the top of page 673, you
see that at 05:00 in the morning, you forward General
Sibiya's message to Mr Msibi:

“The National Commissioner of Eswatini
just died here at OR Tambo. I am going
there now.”

And then a little later, you send a message to Mr Msibi

“Morning Baba, it was SMS from number
one this morning.”

So my question to you is why did you refer to General
20 Sibiya as number one when you communicated with Mr
Msibi?

WITNESS F: I referred him like that as number one.

ADV CHASKALSON SC: Sorry, I am not sure I heard that
answer correctly. You referred to him?

WITNESS F: As number one.

ADV CHASKALSON SC: But why? Why was he number one to you and Mr Msibi?

WITNESS F: I do not know. This is how I referred to him as number one.

ADV CHASKALSON SC: And Mr Msibi knew who you were referring to when you said it is from number one?

WITNESS F: I do not think so, because he never responded.

ADV CHASKALSON SC: But why would you refer to
10 General Sibiya as number one in a text to Mr Msibi if you did not know that Mr Msibi would know who you were talking about?

WITNESS F: I just referred to him like that when I forwarded the message to Mr Msibi.

ADV BALOYI SC: No, Witness F, you knew that Mr Msibi will understand who you are referring to. You knew that. Let us not reformulate or deny the obvious. You knew that he would understand who you are talking about. Otherwise, we are now in the realm of beyond irrationality but madness
20 now if you are just sending text without any reason to think that the person you are sending it to will know and understand who you are talking about.

So you knew that Mr Msibi, I think it is Mr Msibi, you knew that he would know who you are referring to when you say number one. And that is it. It is improbable. It is

false, in fact, if you say you do not know if he would have known, you are being dishonest in your evidence. And I think it is fair to put that to you, that you are being dishonest when you say you do not know if – you did not know if Mr Msibi would know that you are referring to General Sibiya. That is one. And then I have a question. Why would you tell Mr Msibi where General Sibiya is going, General Sibiya's movements?

WITNESS F: Thank you, Commissioners. I was not
 10 specifically telling Mr Msibi about Mr Sibiya's movement. I was informing him about someone that died at Eswatini because he has got a relationship with the Kingdom of Eswatini. And I was telling him on those basis, this is what happened in Eswatini. Not that I was giving General Sibiya's information to Mr Msibi. And then I further elaborated to him that I got that from number one.

ADV BALOYI SC: And why did you think Mr Msibi would be interested in this information that your superior, General Sibiya, shares with you his subordinate in a work context?
 20 He shares with you this information, because he is going there not because he is a friend of the National Commissioner of Eswatini. He goes there because he is the Deputy National Commissioner.

So he goes to the airport and then he tells you, not because you are his friend, he tells you because you are his

subordinate. Why would you share that information with a civilian? And why would you believe that the civilian has an interest in this topic?

WITNESS F: I think, Commissioners, knowing that Mr Msibi is the person that frequents mostly in Eswatini, and he has got businesses at Eswatini, and he has got a relationship with the Kingdom, I was just informing him, knowing that even though this is from my boss. So I just said it like that.

10 **ADV BALOYI SC:** This is another instance where you share with a civilian SAPS information. Because this is SAPS information from your DNC to you, the subordinate. So this is yet another case where you are sharing with a civilian SAPS information.

WITNESS F: I think by the time, Commissioners, General Sibiya sent this to me, it was already on the public.

ADV BALOYI SC: Yes, it may have been in the public. We do not know. I have asked you a simple question. In fact, I am making a statement, which is this is another case where
20 information that was shared with you by your superior to a subordinate, that subordinate being you, information that was shared in that relationship, you go and share it. You forward it to a civilian.

That is simply it. And the answer is yes. There is no being clever about it, Witness F. The answer is yes, you

shared SAPS information that was communicated to you by your superior with a civilian. You may comment if you want to.

WITNESS F: No comment on that, Commissioner.

ADV BALOYI SC: Thank you.

ADV KHUMALO SC: Witness F, your relationship with Mswazi Taxi Boss, that is how he is described in your chats, what was your relationship with him?

WITNESS F: Thank you, Commissioner. I was raised by
10 Mswazi when I was still in primary, up until I have matriculated, I was staying with him, Commissioner, up until grade 11. That is my relationship. I was looking up to him as a father. He looked up to me as a son. That is basically our relationship.

ADV KHUMALO SC: Just tell me, is this how you saved him on your phone, Mswazi Taxi Boss? Is that how you saved him on your phone?

WITNESS F: This is how he preferred to be called Big Boss or Taxi Boss. This is how I saved him.

20 **ADV KHUMALO SC:** Ja. I just find it strange that somebody who basically brought you up and whom you respected so much, you would not refer to him as Ubaba or something more respectful, but you would instead refer to him as a Taxi Boss. I just find that unusual. Do you want to comment or do you want to just leave it there?

WITNESS F: I want to comment on that. When I was addressing him, I was addressing him as Ubaba. Even on my phone, before, I used to talk to him as Ubaba. Then he himself said, no, I am not your father. I am your Big Boss. Then I changed the way I saved him there and there, Mswazi Taxi Boss. I showed him to him. Then he laughed. That is how and when I left it like that.

ADV KHUMALO SC: Was he your boss?

WITNESS F: No, he was my father, not my boss.

10 **ADV KHUMALO SC:** You have just said now he said you must stop referring to him as father because he is your Big Boss.

WITNESS F: No, no. He said when I addressed him, even though he is our father, he is the Big Boss. So this is how I saved him the way he preferred. That was 10 years back.

ADV KHUMALO SC: Thank you.

ADV CHASKALSON SC: If we can go to a different meeting? It is a meeting that took place on the 14th of September 2024 and it starts at page 51 of the exhibit
20 bundle. And there, on the morning of 14 September, you will see that at 07:25 you receive a call from CAT Security. That is Mr Matlala.

WITNESS F: That is correct.

ADV CHASKALSON SC: And then there is no contact between you until 11 minutes past seven in the evening.

But what happens before then, we have to go to page 245 to work out. Because at 245, at 10 past seven in the evening on the same day, General Sibiya sends you a text:

“Ask Cat to make a turn.”

And you respond at 11 minutes past seven in the evening:

“I spoke to him earlier. He promised to come around 20:00.”

Do you recall those texts?

WITNESS F: Yes, I do, Commissioners.

10 **ADV CHASKALSON SC:** How frequent was it for Mr Matlala and General Sibiya to meet?

WITNESS F: I would not know exactly, but I would know that Mr Matlala would send me messages, vis-à-vis, General Sibiya would send messages that tell Cat or Cat, tell General Sibiya.

ADV CHASKALSON SC: So when they wanted to meet, they would arrange the meeting through you? That is a question.

WITNESS F: I cannot say that if they wanted to meet, they
20 would meet through me.

ADV CHASKALSON SC: But you said earlier that sometimes you got messages from Mr Matlala, sometimes you got messages from General Sibiya, and I presume that you were referring to arranging meetings between the two of them.

WITNESS F: I am not sure if some communication was arranging meetings. I am not sure about that.

ADV CHASKALSON SC: But it is a relatively simple question, which is, did you or did you not arrange meetings for General Sibiya and Mr Matlala?

WITNESS F: No, no, no, no, I did not.

ADV CHASKALSON SC: But on this occasion, you did. You spoke to Cat earlier and he promised to come around at 8 o'clock.

10 **WITNESS F:** I am not arranging, I am just passing a message. You know, when you arrange, according to my understandings, General Sibiya is going to meet at, let us say Mamelodi at 7 o'clock, Cat meets General Sibiya. So in this matter, it is when I just pass the message from this one to this one.

ADV CHASKALSON SC: So, maybe I was not clear with my question. So, did you frequently pass messages between Cat, Mr Matlala and General Sibiya, so that they could communicate with one another when they wanted to
20 meet each other?

WITNESS F: Not exactly, no, no, no, not exactly. Commissioners, maybe before you go any further, I am asking for just a restroom. I am so pressed.

CHAIRPERSON: The witness is asking for a rest break.

ADV CHASKALSON SC: He is asking for a comfort break

as I understand.

CHAIRPERSON: Yes. Let us adjourn and resume at 16:15. Let us adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Ngoato, you indicated that you wanted to say something before we resume.

MR NGOATO: Thanks, Commissioner. Now, this morning I indicated that I left my house at six and I left my office
10 around 2 o'clock also this morning. So the last time I had something to eat was yesterday. And since being here since this morning, though I am tired, I have not had anything to eat. I tried to drink a bottle of water. I could feel the water as it runs through my body and I was now feeling dizzy because I have not had anything to eat since yesterday. I tried to soldier on, but at this level, at this stage, I am losing concentration as well because I have not had anything to eat since midday yesterday. Because when I get home at 14:00, I cannot eat at that time. Really not
20 long time to eat. Cannot get my body through to that. And I had to leave in a hurry this morning. And for my unfortunate situation, I was late by eight minutes and got chastised. So I was afraid to be late on any of that. So I have not even left the yard since this morning.

CHAIRPERSON: Do you wish to respond, Mr Chaskalson?

ADV CHASKALSON SC: No, Chair. I mean, Mr Ngoato needs an early adjournment, I think, from our side we would want the Commission to accommodate him. Maybe we can make up the time tomorrow.

CHAIRPERSON: Mr Ngoato, we had intended to sit until 18:00. I know we did not communicate that to you, not to Advocate Chaskalson, but in the light of your request, we will have to adjourn now. We will resume at 09:30 as usual, but we will not adjourn before 18:00 tomorrow. I choose to
10 put it that way just in case we go beyond 18:00. Let us adjourn until 09:30 tomorrow.

INQUIRY POSTPONED UNTIL 4 FEBRUARY 2026

INQUIRY ADJOURNS