

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

HELD AT

BRIGITTE MABANDLA JUSTICE COLLEGE

30 JANUARY 2026

DAY 50



PROCEEDINGS ON 30 JANUARY 2026

CHAIRPERSON: Mr Chaskalson. Good morning. And who is your colleague?

ADV CHASKALSON SC: It is Mr Ngoato.

CHAIRPERSON: Mr Ngoato. Good morning, Mr Ngoato.

MR NGOATO: Good morning ...[indistinct].

CHAIRPERSON: Your mic is off.

MR NGOATO: Oh, sorry, I did not realise. Good morning, Commissioners.

10 **CHAIRPERSON:** Thank you. Yes, Mr Chaskalson?

ADV CHASKALSON SC: Chair, there are two applications relating to today's evidence. The one is a postponement application. The second is an application for the evidence to be heard remotely and without disclosure of the identity of the witness, but nonetheless to be, you know, to be broadcast, but to be broadcast off camera.

20 I think that, I mean, logically, the postponement application ought to proceed first, because if the matter is going to be postponed, we do not need to deal with the secondary issue, but there may be complications in arguing the postponement application in open Commission without disclosing the sorts of details that if the remote hearing application is granted would have to be kept confidential. Maybe Mr Ngoato should actually express his views in that regard. We are on whether, on what the sequence should

be and on whether it is possible to argue the postponement application first.

CHAIRPERSON: Thank you, Mr Chaskalson. A housekeeping matter, we have appearing before us for the first time, Mr Mosikili, Mr Teboho Mosikili. Good morning and welcome to you.

ADV MOSIKILI: Morning, Chair.

CHAIRPERSON: Yes. Well, we have seen Ms Pooe countless times, but good morning to you too, Mr Ngoato, I
10 think the logical thing is for us to invite you to address us on the postponement application and perhaps let me upfront raise this with you. My understanding, if I did not misread the papers in the postponement application, is that the, what the evidence leaders suggest is to separate the matters insofar as they relate to the texts, the bulk of which you admittedly by the evidence leaders, or perhaps not so much you, but your client, received fairly recently.

So the evidence leaders are suggesting that they must deal with those in respect of which there is no
20 contention or issue around the timing of their delivery, and that the rest will be dealt with in due course. What would you say the problem is with that approach, if I am capturing what the papers say correctly?

MR NGOATO: Thanks, Commissioner. I think it is quite clear that the documents have been read and with that

being said, and with that summary, it is in a way towards what the matter is all about. The issue is twofold, Commissioner. Our client received documentation from the Commission as far early as November 2025, and he duly complied with all the requirements in terms of those documentation. And as at December 2025, he received a notification for his appearance on the 20th of January, which at the time there was no problem.

10 However, a day before the 20th, he now receives a notification that he is to appear on the 30th, but he must come back on the 22nd to receive the documentation. Now, on the 22nd, six days before the appearance, which is on the Thursday, he now receives a memory stick which contains, according to the evidence leaders, 4,800 pages of documentation that he needs to prepare and he need to answer to the Commission in six days' time.

20 Given the fact that was on a Thursday and I was not available, he only managed to consult with me on the 26th, four days before the Commission. At that time, we have not even yet opened the documentation, but in meeting with the evidence leader on the 26th on a Monday, It was then clearly indicated to us that more documentation or more files are still forthcoming by end of business and, but we still have to be ready by Friday.

Now, at that time, we raised the issue to say it is

not going to be possible. There is 4,800 pages that we have to go through. We still have to receive some documentation from you. We are ready. The documentation that he received in December and that he has already made statements to the Commission about, that part we are ready to proceed. But the one that we just received now, four days before, we cannot. We still have to peruse. We still have to consider. We still have to then consult, because it is not true that when a person has to
10 come and then appear before the Commission, evidence is only limited to what has been given to him. He may have his own independent evidence that we need to source. He may have to be able to consult and corroborate his versions and narrative.

We are not going to have time to be able to do that. We endeavoured at all cost to print the 4,800 pages. We only completed printing those documents by 2 o'clock the 27th. That will mean we now fully access the documents at 2 o'clock, the 27th, three days before, and we had to
20 prepare to appear. Now, my client is prepared to appear at all costs. It does not matter, it is about who or who, but he wants to, when he does that, he should be able to do that proper without prejudicing his own rights. He should be able to substantiate his narrative and his versions.

Now, unfortunately, Commissioners, we have since,

in the last three days, bogged down by having to make this application, an application for postponement, having to receive the answering, an application to be off-camera, having to receive the, and those type of things. Now, as a result, parallel to all this process, we also had to try to read the 4,800 pages. We are not nowhere anywhere near. Now, we also noted the version and the narrative or the kind of compromise that was made by the evidence leader to say maybe let us focus ...[intervenes].

10 **CHAIRPERSON**: May I just ask this, Mr Ngoato. You say that you are prepared for the Commission to proceed today in respect of some of the documents. I just want to get an idea of whether there is convergence between you and the evidence leaders on the documents that you are prepared to proceed with or on.

MR NGOATO: Ja.

CHAIRPERSON: Is there convergence there? If there is not, where is the divergence?

20 **MR NGOATO**: Commissioner, in our application, the purpose of application, we clearly state for the documentation and representation that we have already made, we are ready to proceed, which is very specific. It refers to the ...[intervenes].

CHAIRPERSON: Just refer to the convergence and divergence, please, because that still confuses me, because

I am not sure what is what.

MR NGOATO: So they do not seem to accept it, or they do not accept it. They want the whole full version, the past of last year, and the one that was given to us three days ago. They want the full-blown aspect. The only compromise they want to make is that on the three days, one, or the one that were given to us three days ago, can they only now focus on this particular person of interest.

And I am saying that is too dangerous for a client.
10 It is not just about that person. Out of the 4,800 pages, we may have corroborative matters that we need to refer to. And if you are now going to try to now put us only to this 100, as if it is only about this 100, it is also misleading, because this is a person of interest and this was not just an independent, isolated, just person. It is a whole concocted group of people that were involved in this. So therefore, it then means that we may have ...[intervenes].

CHAIRPERSON: Do you mean concocted or did you mean some other verb?

20 **MR NGOATO**: Commissioner, what I mean is that it is intertwined and interrelated. It is not just an isolated aspect. It is one person. You do not have just a relationship with just one person that is only concluded there. It is one person that you know through somebody and the other person and the other person. Therefore, it

might be that your corroborative information is not only found only in his file, but is found in somebody's file. So we then have to read everything and not just only that, because the narrative will be very wrong and very misleading and will be very limited.

But for our defence, it is important that our client is properly, properly consult, peruse the documentation, consider the documentation, and more importantly, the context in which whatever comments he made, they were
10 made under.

CHAIRPERSON: Yes.

MR NGOATO: So, unfortunately, the evidence leaders are of the view that we can deal with the first part, and then on the second part, only deal with this one and this is where we now, we say no. On the second part, on documents we received three days ago, we request to be given time to peruse, consider, and consult. We do not want to come before the Commission like what we have seen already on TV, on people coming and appearing before you
20 unprepared, and now even to answer to questions that they were never given an opportunity to.

We want to be clear and fair and assist the Commission in whatever way, and he is willing to do so, but only if he is just been given a fair chance. These documents specifically, are said to be have been

downloaded from his cellphones. His cellphones were taken from him in October last year by SAPS. Now they had four months with his cellphones to download the documentation, but they give him less than four days to prepare what they took, what took them four months. But it is not just about the four months. The relationship that he had with those people may go 40 years or four years down the line. How is he going to be able to deal with that in four days?

CHAIRPERSON: There were no cellphones, were there, 40
10 years. I am not sure maybe there were.

MR NGOATO: I am just giving you to say the relationship that he has with these people is long, is a long, is a long time relationship. It goes beyond decades. It is more than ten years that he probably have known these people. And whatever has been downloaded from his cellphone is not necessarily maybe only from last week. It may go back and he may have to then give you a context on that.

Now, they downloaded decades of WhatsApp from his phone. They took four months to download it or to deal
20 with it or to consider it or to analyse it, and they want to give him less than four days to answer about it. He is not even having these phones. The phones are with them. He does not have any other source to say, how can I refresh my mind. It is not like he has been having his phones all the time, and he has been going through these things all the

time. He does not have these phones anymore. They are with them. And it may be that some of the information we need may be still in those phones. What if we may need to say, no, let us call back the same phones because you have not downloaded all the information, we need to see some of this information.

We do not want to even begin to suggest that some of the information that has been printed, we may say, no, no, this is not how it is, it has been tampered with. It
10 leaves a lot for us to, it then suggests that we need a lot for us to then go through. And to have to be given three days, to say, this is three days, if you cannot deal with these three days, or consider going through them over the weekend, it cannot be.

I am in a private practice. I have other clients. I have commitments already and it cannot be presumed that I will automatically be available to assist this client over the weekend without even the decency of asking me my availability. We indicated on Monday, this 4,800, we will
20 require time to go through it, give us the time. They do not even ask us how much time we need. The answer is just no, upfront.

CHAIRPERSON: And how much time do you need?

MR NGOATO: We need six days.

CHAIRPERSON: Sorry?

MR NGOATO: Six days.

CHAIRPERSON: Six days. Yes, yes, Mr Ngoato?

MR NGOATO: So, and that shows an attitude of people who have already concluded, and by any other means, they want to continue with it. And it becomes, Commissioner, a very concerning issue as in the middle of consultation yesterday, the President made an announcement, media statement, where the same client that has not even testified, his name is there, that there is a *prima facie* evidence and therefore the SAPS must investigate him.

He has not given evidence. The fact that when General Khumalo presented his evidence showed him carrying a bag, that does not mean that he is transporting money. And this now already impacts ...[intervenes].

CHAIRPERSON: I am not sure what the relevance of that is now, Mr Ngoato, and effectively, you, I do not know to what extent you have engaged with the terms of reference of this Commission. I will tell you now that the Commission actually does have powers to do that. You are not criticizing the President. You are criticizing the Commission. Of course, I will be the first to admit and accept that we are not beyond reproach. If we must be criticized, I will welcome that.

Freedom of expression, the Constitution itself, I have been a justice of the Constitution, of the Constitutional

Court, I am sorry, so I understand you have the right to criticize whoever. But the point of substance is, on my reading of the terms of reference, we are perfectly entitled to do what we did. That referral was made by us, not by the President. So unless you first engage with the terms of reference and tell me why we are not entitled to do what we did in respect of that witness, I think you are going beyond the realms of what you are entitled to traverse.

MR NGOATO: Thank you, Commissioner. Let me clarify
10 what I mean by that. What I mean by that is that my client has not given any chance right of response.

CHAIRPERSON: That we have heard and I think please try to wrap up because I think now you are getting to the point where you are repeating yourself.

MR NGOATO: No, no, I ...[intervenes].

CHAIRPERSON: But I am not gagging you. I am not gagging you.

MR NGOATO: Yes, I was just saying, I mean, I said, honourable Commissioner, let me clarify what I meant by
20 that. What I meant by that was, and without sounding, having to repeat myself, is that he has not been given any right of response by anyone under any circumstances, whether in writing or oral, but such a submission has already been made to the public, and it is quite of great importance to this person because it affects his right.

And unfortunately, Commissioner, it may be unsettling and uncomfortable, but it is the truth of what actually happened. And now, when the evidence leaders approach us, in light of this circumstances where narratives and issues has already been said in the public domain, especially from the office of the President, coming from the high reputable Commission of this nature, it is our concern that I want to go and present, and I am not being given a chance to do so.

10 **CHAIRPERSON**: Just a minute. Please continue and please try to wrap up, Mr Ngoato.

MR NGOATO: Thank you.

CHAIRPERSON: And please try to focus on the application before us, the application for a postponement.

MR NGOATO: Just in short and in conclusion, Commissioners is that my client is prepared and ready to testify about the evidence and the request and the documentation he received in 2025, in which he has since made the written representation to the Commission. That
20 part is okay.

The second part of what is required of him to testify about, which is documentation that, and the bulk of documentation that he received on, three days before the Commission, he is not ready to do so because he has not had enough time to peruse. That is in a nutshell, that part.

We are not rejecting everything in totality. It is only the part on documents that he has received three days ago.

CHAIRPERSON: Thank you, Mr Ngoato.

MR NGOATO: Thank you, Commissioner.

CHAIRPERSON: Mr ...[intervenes].

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

ADV BALOYI SC: Can I – Mr Chaskalson, sorry, let me just clarify. Mr Ngoato, you in paragraph 3.1, you, of the application, you say this is an application wherein I request
10 order, which order directs the hearing scheduled 30 January with regards to 13 files. So it is the 13 files that you are concerned about ...[intervenes].

MR NGOATO: Indeed.

ADV BALOYI SC: That you are seeking to be heard later.

MR NGOATO: Yes, indeed. Those are the 13 files that we received three days ago.

ADV BALOYI SC: Okay.

MR NGOATO: Thank you.

ADV BALOYI SC: Thank you.

20 **ADV KHUMALO SC**: Can I just clarify something? I am looking at paragraph 4.4 of the founding affidavit, especially the first two sentences on page 7. What I understand the affidavit to be saying there is that your client is ready and prepared to testify on his witness statement that he provided on the 16th of December 2025

and he can do that today. But the 4,800 documents that he received a few days ago, he cannot testify on that because you have not had time to consult with him on those documents. So you need a further six days to go through those and to deal with those. But today he can give evidence-in-chief based on his statement of the 16th of December 2025. Am I understanding you correctly?

MR NGOATO: 100% correct.

CHAIRPERSON: Mr Chaskalson?

10 **ADV CHASKALSON SC**: Chair, there have been a range of factual assertions made here which are just simply wrong. The contention of three days, well, let us start at the beginning. It is not 4,800 pages. There is an evidence bundle in front of you which runs to 849 pages and there is an annexure bundle with 540 pages. That is a total of 1,389 pages.

The memory stick containing, all of these documents come from the WhatsApp's of the witness. The witness' counsel or attorney complains that he does not
20 have his phones. But any of us who have a WhatsApp account know that when you get a new phone, you upload your old WhatsApp's if you want to. The fact that his phones were taken away sometime in October by the SAPS does not prevent him from accessing his historical WhatsApp's. He can access them. We always assumed he

would have accessed them.

The third factual error is that we have not had these files since October, whenever they were seized. They were seized by the SAPS. We obtained them from the SAPS only this month. So we have not had much time with them either, but yet we have managed to work out what we want to ask and answer and have answered in relation to them.

CHAIRPERSON: But does that mean the SAPS seized the
10 documents for their own purposes ...[intervenes].

ADV CHASKALSON SC: They seized ...[intervenes].

CHAIRPERSON: And then you requested the documents from the SAPS?

ADV CHASKALSON SC: We got access to them ...[intervenes].

CHAIRPERSON: Or rather the phones.

ADV CHASKALSON SC: Well, and a notice from the SAPS, under compulsion from the SAPS, but only this month. And there was a lengthy period beforehand over
20 whether, we could only ask for materials to be provided to us after they had been downloaded, and I do not know what the SAPS were doing between now and October, but we obtained those materials this month.

If I understand Mr Ngoato correctly, he needs another six days, but on his, but it is important to have

regard to the chronology here. Mr Nkosi, until earlier this month was due to appear on the 20th of January.

CHAIRPERSON: May we take a short adjournment and ...[intervenes].

ADV CHASKALSON SC: Sure.

CHAIRPERSON: May the evidence leaders and the legal representative please see us outside.

INQUIRY ADJOURNS

INQUIRY RESUMES

10 **CHAIRPERSON**: Please continue, Mr Chaskalson.

MR MALIKA: Mr Commissioner, sorry, excuse me.

CHAIRPERSON: Sorry, sorry, yes.

MR MALIKA: Apologize. I was not joined by my colleague earlier on, so I do not want you to be surprised that I am not being joined by my colleague.

CHAIRPERSON: All right.

MR MALIKA: I am Mr Malika from ...[intervenes].

CHAIRPERSON: Malika?

MR MALIKA: Malika.

20 **CHAIRPERSON**: Good morning, Mr Malika, and welcome. Thank you.

ADV CHASKALSON SC: Chair, Mr Ngoato appears to have been involved in this matter since December, or since before December. He was aware that his client was due to appear on the 5th of December. He was then aware that his

client was due to appear on the 20th of January when we could not accommodate the hearing of his client's evidence on the 5th of December.

When it became, when the Commission's resumption was delayed, his client was contacted because he, Mr Ngoato was not on record at that stage. Client was contacted and said, we are only starting evidence on the 26th of December, you were due to appear on the 20th, can we meet with you to discuss the appearance and to make
10 arrangements for documents on which you will be questioned. Client was called to a meeting on 20 January and attended the meeting on 20 January without an attorney. At that meeting, we impressed upon the client the importance of having an attorney present in future meetings.

But on the 20th, the client, it was explained to the client what he would be questioned on, that a memory stick containing the chats extracted from his phone and made available to the Commission would be given to him two days
20 later on the 22nd, and that on the 22nd he would be given an indication of which particular WhatsApp chats the evidence leaders would be focusing on when they questioned him at the hearing commencing on the 30th, today.

That duly happened, and if one goes to page 22, one sees that the memory stick was handed over on 22

January. So the client has had all of the documentation that the Commission intends to rely on in today's questioning for eight days, not for three days. Why it is three days is that ...[intervenes].

CHAIRPERSON: And that is the 1000 and something he said ...[intervenes].

ADV CHASKALSON SC: Well, no, no. He has had the whole memory stick ...[intervenes].

CHAIRPERSON: Yes.

10 **ADV CHASKALSON SC:** Which contains a whole lot more. But if you look at the letter on pages 22 and 23, it identifies particular chats. The most important chat files on which you will be questioned are the following, and then they are listed. Those are the chat files that broadly are included in the evidence bundle that is before you, and those are the ones that are, that run to slightly under 1300 pages. There is an additional ...[intervenes].

CHAIRPERSON: So that is, is that what is referred, to itemised rather, is that what is itemised at page 23, 3.1 to
20 3.13?

ADV CHASKALSON SC: That is correct, indeed.

CHAIRPERSON: Thank you. Yes.

ADV CHASKALSON SC: There are possibly an additional 40 pages.

CHAIRPERSON: I am sorry again. And what is itemized

there, 3.1 to 3.13, is that what, what is itemized there is that what you say totals 1000 and something?

ADV CHASKALSON SC: No, it total slightly less ...[intervenes].

CHAIRPERSON: Slightly less.

ADV CHASKALSON SC: Because there are approximately 40 pages. If you compare those 13 ...[intervenes].

CHAIRPERSON: Yes.

ADV CHASKALSON SC: With the index on the front of the
10 evidence bundle, you will see that there are two or three additional items, but the total of those additional items will not run to more than 50 pages.

CHAIRPERSON: Thank you.

ADV CHASKALSON SC: Mr Ngoato, for his own reasons, decided only to get going on assisting his client in this regard, not on the 22nd of January, or indeed on the 20th of January when the client was called to a meeting, but I think four days later. He now says he needs an extra six days to get on top of this information. Well, four of those six he is
20 chosen not to exercise himself.

We have, we want to get going on the questioning of this client. We do not want the client to, not client, witness, we do not want the witness to be compromised. We have put forward a proposal, which is that we will question him with regard to his chats with the three

individuals in respect of whom he gave, in respect of whom he addressed his relationship in his statement that he handed in, in December.

We will want him to answer those questions, but in respect of anything else, we will indicate what we infer from these chats, and if he wants to come back at a later stage to address that or to furnish a statement addressing that, he can. The real evidence is in the chats. The client's insights into the chats would be welcome for this
10 Commission. But if the client is not ready to address all of the chats, well then, and he needs more time, he can, we said to him, you can say, I am not in a position to answer this question now, apart from those three individuals' chats. Please come back to me, I will consider the issue once I have been thoroughly through all of my WhatsApp chats on the memory stick and I will furnish a supplementary statement later and come back and be questioned on it.

MR NGOATO: What is your response to Mr Ngoato's submission that what falls outside of what you referred to
20 in, is it what, 3.1 to 13, whatever the number is, but 1 to 13, the submission is that it may well be that what falls outside of that itemization may have an impact of, on rather, what is within the itemization and that they want to go through what falls outside so as to see whether there is indeed such impact. And that is necessary in their process of

precognizing the witness.

ADV CHASKALSON SC: My immediate response to that is that I know the questions that I intend to ask and in 90% of the case, that will not be, that will not, that problem will not arise, or I would be astonished if that problem genuinely arose. But I am willing to extend our offer to cover it. If there is a *bona fide* case of the witness needing more time to answer a specific question, from our side, we are quite happy to put the question out there. And if the witness
10 *bona fide* says, well, this is something that I cannot answer because I need to look at other chats, we will say, well, we will tell you what inference we want to draw from these chats and when you have looked at the other chats, you can furnish a statement and you can come back to be questioned on it. But it is an issue that I know the questions I want to ask, I know the chats. It is an issue that is not going to arise in the vast majority of cases.

CHAIRPERSON: And I will also say this, and I will afford Mr Ngoato an opportunity to respond, but I may also say
20 that to the extent that when Mr Ngoato and the witness go through the rest of the material and a view is taken that something within or in that information bears reference, relevance rather, to what is in 1 to 13, they may always come back and say, we want to testify and show that.

ADV CHASKALSON SC: Of course. There is nothing that

they ...[intervenes].

CHAIRPERSON: Yes, there is any number, there is any number of ways to address that.

ADV CHASKALSON SC: We would welcome a supplementary statement from this witness, but we do not want the process of the Commission to be derailed over the next three days. The evidence on the chats is very important for the way in which this Commission proceeds.

CHAIRPERSON: Ja , perhaps I should correct myself if the
10 impression, ja, I gave is that the only possibility to address it would be for the witness to come back and give oral testimony. It could be by way of a statement. It could be by way of any other means that we as the Commissioners may think of. And as I said, Mr Ngoato, you will respond to what I have just put to Mr Chaskalson.

ADV BALOYI SC: Mr Chaskalson, if the witness is, if the witness is entitled or will be allowed to say I am not going to answer, I am not going to answer because I have not considered all the documents and I will come back, what is
20 the harm in granting the request that you penned any discussion relating to all of these documents? I guess another way of asking my question is what is the benefit or urgency to put to him your questions about the balance of the documents to do that today and in the rest of the allocated dates *viz-a-viz* allowing, leaving out that part

completely for when he does return.

And I ask the question because it is not obvious to me that because you have identified specific documents that you are going to look at and you have an idea of the questions you are going to ask of him, it is not obvious to me that it is fair to proceed on the basis that all we will be doing is putting to him what we are making of these documents and the inferences that we will draw and then he can say, I will come back another time. I am not sure, it is
10 not so obvious to me, and I am not saying it is unfair yet, I am just saying it is not clear to me that it is not, ja, that it is not, that it is fair to proceed that way.

But also the urgency of let us do it that way today, there is a need to do it today and put all of these questions that are going to be, you know, put to him and they will be out there playing out and he will get a chance another day to answer. I know I have spoken long. I do not know if you have captured the essence of my, of what I am asking of you.

20 **ADV CHASKALSON SC:** There are several points in response, Commissioner Baloyi. First, I expect the witness to approach this process in good faith and most of the questions that I want to ask are questions which, as I see it, will not give rise to a problem of a need for more time. So there will be a great deal that can be achieved if the

witness does answer in good faith, and I have no reason to believe that the witness will not.

Second, a lot of the chats that I want to put to this witness are chats that in due course we will want to put to other witnesses as well, witnesses on the other side of the conversation, and it makes sense for this witness to be questioned on these chats before the other witnesses because in many cases he is the fulcrum for a series of chats and you do not understand the chat with witness B unless, or with witness B unless you have also seen the chat with witness C. Putting that evidence out at this stage makes a lot more sense than delaying the process of this witness and the process of witness B and the process of witness C to a later stage, always assuming that this witness will approach the process in good faith.

And then finally in relation to fairness, we have been, in my submission, excessively fair to this witness. What we are saying is we will tell you all of our concerns. We will put out there everything that worries us. You will have time to reflect on that with your attorney. This is not the ordinary process of questioning where you are, as it were taken by surprise by a question. You will see the questions all in front and if you want to answer them, you can decide to do that at a later stage.

I do not think there is a fairness concern. The

witness will be treated with a great deal more fairness than any other witness. He will know, he will see our entire hand, not just the documents, but also how we put the documents together, the questions that we want to ask on the documents and then he will decide does he want to try to address them in response or not. If he does, he will have the opportunity of doing that and he will have a much better opportunity of doing that than most other witnesses.

ADV BALOYI SC: The second of the three that you have
10 listed, it seems to me though that the second concern that your discussion of these WhatsApp's is matter that you will need to cover or that you are going to cover with other witnesses that are still to come. That to me is more a scheduling issue, at least on the face of it, it is a scheduling issue. If you do not cover those WhatsApp's now with a witness, then you have to change your schedule. But if that is as central as to that as that, then you would have to reschedule your other witnesses so that this witness comes back before those other witnesses.

20 **ADV CHASKALSON SC:** That is correct. It is essentially a scheduling issue, but it would mean disrupting the entire schedule as it is currently being planned. But there is finally a much more fundamental objection that I have to this postponement application, which is that the witness has had enough time to prepare for the hearing on all of our

questions. The witness, the position of the witness has chopped and changed. The witness seems to be conflating the request under Regulation 10(6) notice to furnish a statement on certain issues, which will serve as the statement-in-chief of the witness, with our right to question the witness on his relationship with certain parties.

The summonses that have been served on the witness since December have made clear which relationships we are interested in. None of that has
10 changed. That is what my questioning is going to go to today. And the witness has had ample time to identify what he wants to say in relation to that. His complaint is that in December when we asked that question, he did not know that we had or we were going to get his WhatsApp's. That is his complaint. That with respect is not an issue of fairness. He has had potential access to all of those WhatsApp's at every single stage. If he wanted, in discussing his relationships with the four people identified in the summonses he has had for two months, to do that
20 thoroughly and exhaustively. He was always in a position to do that.

And even after we told him what WhatsApp's we had obtained and we made them available to him, he has had eight days. It is not, these were not sprung on him yesterday. They were sprung, the full set of WhatsApp's

was given to him eight days with a list saying we are going to focus on these ones.

CHAIRPERSON: Please give me the total of what you refer to as these ones. You gave it when you started. You said it is now one thousand and what?

MS THOMAS: The total pages in the evidence bundle that we have prepared and the annexure bundle is 1,389 pages.

CHAIRPERSON: 1389. Please continue.

ADV CHASKALSON SC: Sorry, they also, and I think I
10 can, that includes, I am not sure how many pages, but it includes some correspondence as well, which is independent of the WhatsApp's and has been correspondence exchanged between the Commission and the, and the attorneys and the witness.

ADV KHUMALO SC: Sorry, Mr Chaskalson, when you say it is 1,389 pages, are you saying in your questioning you are going to focus on all 1,389 or are you saying you gave him 1,389, but in those 1,389, you have identified the ones that you are going to be focusing on?

20 **ADV CHASKALSON SC:** Well, the bundle, which I am going to be focusing on and I am going to be addressing questions to him on, runs to 1,389 as I see it at the moment. The memory stick that we gave him on the 20th of January, runs to more. I have not ever looked at the total number there. But we then identified 13 chat streams. That

is slightly less than 1,389.

CHAIRPERSON: What was the purpose of giving him the four thousand plus if the focus is only going to be on 1,389?

ADV CHASKALSON SC: We were giving him everything that we had so that he knew everything that we had if he wanted to use something that we had, or if he wanted to see what we had. We do not fully appreciate the relevance of all of what we see on the memory stick and we had called him to testify in relation to four discrete, well, series of
10 topics, including his relationship with four people. We could see that some of these WhatsApp's were clearly relevant to that. We gave him everything so that he knew what we had.

CHAIRPERSON: If we were to postpone, but because now we are no longer talking four thousand and something, but substantially less, if we were to postpone, but instead of the six days postponed for a shorter period, would that work? If not, why not?

ADV CHASKALSON SC: It would probably mean that the
20 Commission would have no one to testify on Monday and Tuesday. It would certainly mean that there would be no one to testify today. It would be, it would create very serious scheduling problems for the Commission in this respect, in that I do not know what a shorter postponement would look like, but the, we would not be able to run this

evidence next week. We, the following week there is an entirely different, it, my own sense is that if this evidence were to be postponed, looking at a schedule, it could probably only be accommodated from the week of, I think it is the 16th of February again, which would then knock on, which would mean that other witnesses would then have to be pushed further.

At the moment, this Commission wraps up on the 26th of March. It may be given, sorry, the 16th of March, not
10 the 26th of March. It would create very serious scheduling problems. Certainly without an extension beyond the 16th of March, it would be impossible to accommodate.

CHAIRPERSON: Just throwing ideas around at this stage, and by no means indicating an inclination, we will probably, after all the submissions, have to adjourn and discuss our minds, but I just want to throw in all the ideas at this stage so that when we adjourn, we have everything before us. If, for example, we were not to sit today, give Mr Ngoato and the witness, I know he complained that suggestions are
20 made on matters that impact on his time without us knowing what, how he stands with regard to his time or timing, but we do not sit today, and we give him and his client today and the weekend, and then we start on Monday. I know the scheduling is only, that is next week, will only be or is only for Monday and Tuesday, how would that be for you? I

know you wanted three days, so you will be having two days, but ...[intervenes].

ADV CHASKALSON SC: We will not finish, but we will certainly make some progress.

CHAIRPERSON: And Wednesday's witness is totally out of the question to do something there?

ADV CHASKALSON SC: It may be possible to, I have an availability problem for one day next week, which I, and I do not yet know which day it is, because it is an urgent
10 application, I will find out when it is. It may be possible to switch a witness around and to try to finish this witness in the course of next week.

CHAIRPERSON: As I said, none of this is indicating any inclinations. It is just testing everything. Yes, Mr Chaskalson, any further submissions?

ADV CHASKALSON SC: None from me. Thank you.

CHAIRPERSON: Thank you very much. Any reply, Mr Ngoato, and you may also reply to the issue on which I said you would have to, or you may, if so, minded, also reply to.
20 And then also bear in mind that Mr Chaskalson says that It is only 1,389 pages that the evidence leaders want to deal with and not 4,000 and that I think as a matter of professional courtesy, they gave you everything which is the 4,000 plus.

MR NGOATO: Thank you, Commissioner. Maybe let me

start at the low hanging fruit, the last aspect is to 4,800 pages as opposed to 1,300 pages. If you get given 4,800 pages and you do not know which one is 1,389 out of the 4,800, it is a difficult process. You are given 4,800 pages ...[intervenes].

CHAIRPERSON: But from eight days back, according to Mr Chaskalson, you have now since known that it is the 1,389 that is going to be focused on.

MR NGOATO: Very much incorrect, Commissioner, and I
10 am going to come and address the aspect that he mentioned that our client had access to this documentation more than eight days back, and those type of things, because it is very wrong. Even the suggestion that the client has had this thing since more than eight weeks is also very wrong and I did not address this issue at the beginning because I felt that we have surpassed this.

CHAIRPERSON: Days, not weeks.

MR NGOATO: Weeks.

CHAIRPERSON: Eight days. I thought, I thought Mr Chair
20 was saying ...[intervenes].

MR NGOATO: No, Commissioner, in their replying ...[intervenes].

CHAIRPERSON: Days, days, not weeks. Eight days, not eight weeks.

MR NGOATO: Correct, Commissioner. Now he says eight

days. In their replying, they are saying eight weeks and I was going to be able to clarify these two aspects as to eight days versus the eight weeks that they are also suggesting in their answering affidavit. But what I was simply saying to you, Commissioner, is once you get given 4,800 pages, you are dutybound to then go through them and understand what all of them are, because if you do not and you appear and they say, no, but this was part of the documents we gave you to you, you cannot say, but I never looked at it because
10 it was given to you. You are duty bound to still go through the 4,800, even if they are going to focus on the 1,003. They did not just take the 4,800 for nothing. It simply means there is of some relevance, hence, they put out of the memory stick, they put all those 4,800.

And Commissioner, the 4,800 pages was not my counting. It was his counting. He is the one that told us when we met with him on the 26th that it is actually 4,800 pages. I endeavoured when we printed this documentation to verify his 4,800. Now he says, no, it was not the 4,800,
20 it is actually far less, because of the documentation. We received the bundle of documentation, the bundle of documents, which is the index that is now before you, or the index and the paginated bundle that is before you, the night before, a day before. And then when we looked at that, now it now comes to 1,800. The rest of the other things have

been excluded.

But as from Monday to up until yesterday, we are still under the impression, based on what he informed us, that he is going to receive ...[intervenes].

CHAIRPERSON: Please repeat, when do you say you became aware that the relevant pages were 1,389?

MR NGOATO: Not the relevant pages, Commissioner, for correction. When we looked at the index and paginated documents that we were sent a link to yesterday, we then
10 realized that from the link, the documents that they have included on the index and printed documents amounts to 1,300, plus an additional bundle of about four hundred something documents, right. But as from Monday, when we printed, when we dealt and interacted with the Commission, we interacted on the base of 4,800 pages. And in the letter that, maybe I should refer you to the same document that he had referred to the Commission to, where they say these are the bundles or files that the Commission will focus on.

They even state further that they will, on the next
20 date, they will then indicate which one to focus on. So at no stage before did they say to us, we have given you the 4,800, the rest of the matters are irrelevant, just focus on the 1,003. The 1,003 became quite very clear to us when we received the paginated documents. But even if that being the case, Commissioner, as an attorney when you

receive the 4,800, you are in no way in a position to upfront to say, ignore the rest and only focus on, unless you have been told upfront which one of those. You have, you are duty bound to then go through the 4,800 and then from there make an informed decision which one are relevant and which one are not relevant and which one you need to focus on.

But preparation cannot be piecemeal. You have to prepare in full. And that is the challenge that we had on
10 our side, because we have a duty ...[incomplete].

CHAIRPERSON: Please continue, Mr Ngoato.

MR NGOATO: Thank you, Commissioner. We had a duty to advise our client properly, and our advice will be based on having had access or having analysed the matters fully, not piecemeal. Now, if the documents now that he is going to focus on we should ignore the 4,800 and now focus on the 1,300 is something that we could look into going forward to say all other materials will now be irrelevant and now the now relevant material is, will be as stated in the bundle of
20 document that has been before the Commission. That is something else we could look into.

But with that being said, Commissioner, understanding the importance of this Commission, we started looking at that 1,300 last night already, plus the additional 500 and we are nowhere close to finish to say he

can start testifying on that because we just received the link yesterday or last night. So we are already starting ...[intervenes].

CHAIRPERSON: Would Monday be in order? Would starting on Monday be in order then?

MR NGOATO: As I ...[intervenes].

CHAIRPERSON: You say you started going through those.

MR NGOATO: Yes.

CHAIRPERSON: So assuming that we postpone until
10 Monday, so you would have today, and the weekend, and then we start on Monday, will that be in order? But as I said with Mr Chaskalson, that is not necessarily an inclination. I am just raising that to you or with you to hear your submissions.

MR NGOATO: That situation was ventilated already when we met on Monday with the evidence leaders that I am unfortunately not available on weekends. So they knew already, as from Monday, that I will not be available on this weekend to be able to then ...[intervenes].

20 **CHAIRPERSON**: Mr Ngoato, Mr Ngoato, you are a practitioner. I am sitting with practitioners. I was a practitioner for many, many years. We always try, if something comes up and something that is quite urgent, we always try to make time. Are you telling me as you are sitting there that you simply cannot make time to attend to

this very important national matter, or rather matter of national importance?

MR NGOATO: Commissioner, I fully understand what you are saying. In urgency there is no convenience. I am 100% with you there, but I had pre-warned them and had it been that we ...[intervenes].

CHAIRPERSON: That was a discussion with the evidence leaders ...[intervenes].

MR NGOATO: Yes.

10 **CHAIRPERSON**: You are discussing with me now, and I am raising a matter of national importance, and I am asking you whether you are telling me that you simply cannot make time.

MR NGOATO: Commissioner, yes, I understand that that is the issue that we ...[intervenes].

CHAIRPERSON: If, for example, you will tell me that you are attending a wedding, it is not your daughter's, it is not your son's, I doubt that I would necessarily be satisfied with that, but if you are attending a funeral and it is not a funeral
20 of a close relative, I am not sure that I would understand that. I am just giving two examples. There is any number of examples.

MR NGOATO: Commissioner, it is a medical issue and that is why I clearly indicated to them my non-availability, because it is a medical issue, and I cannot postpone it.

CHAIRPERSON: Is that a matter - oh, I was about to say, is that a matter in respect of which you have an appointment? I am not getting into the content of the medical, which is something personal. I am not getting into that. I am just asking, is this a matter in respect of which you had to make an appointment?

MR NGOATO: Without divulging the medical issues, Commissioner, it is a matter that unfortunately I cannot postpone and is medical issues related to me in person. If
10 it is something that I could easily move away and hence I brought it to their attention and discussed it with them in time, whether to find an alternative means, I would have done so. But because of we could not find each other, and today is the 11th, I was going to be even much more costly and impractical for me to then try to postpone and make myself available for this weekend.

CHAIRPERSON: Just repeat that. I am not sure I follow. So are you saying it is something that you could have postponed, but it is just that you and the evidence leaders
20 could not find each other? Is that the point you are making?

MR NGOATO: I am saying if at the time on Monday, there was not such an arrangement, and I should, and then I should be given an opportunity to try to postpone that or deal with that matter ...[intervenes].

CHAIRPERSON: So the sense ...[intervenes].

MR NGOATO: Or attend to that ...[intervenes].

CHAIRPERSON: The sense I get from what you are saying then is that a postponement is a possibility. Am I correct?

MR NGOATO: No.

CHAIRPERSON: Are you not saying that had you and the evidence leaders found each other much, much earlier, you could have attended to a possible postponement? Did you not say that?

10 **MR NGOATO**: No, Commissioner.

CHAIRPERSON: Please make me understand then.

MR NGOATO: If I may be given an opportunity to then clarify that.

CHAIRPERSON: Not giving you an opportunity is the last thing I would ever want to do, Mr Ngoato. Please, you have the time.

MR NGOATO: What I am saying to you, honourable Commissioner, is that one, it is, the reason of my non-availability as the attorney of record is a medical issue and
20 unfortunately, I cannot move it. Because I have been aware of the impending medical issue for this weekend or appointment, I brought it to the attention as early as Monday. And unfortunately, no, we could not reach an agreement on that particular aspect or on the postponement. Again, at the time when ...[intervenes].

CHAIRPERSON: So when is your appointment for? Is it for tomorrow?

MR NGOATO: I am leaving tonight.

CHAIRPERSON: Sorry?

MR NGOATO: I am leaving tonight.

CHAIRPERSON: Oh, it involves travelling. Okay, all right. Coming back when?

MR NGOATO: Sunday.

CHAIRPERSON: Or what time on Sunday?

10 **MR NGOATO**: Midday Sunday. It could not be ...[intervenes].

CHAIRPERSON: All right. Okay, okay.

ADV KHUMALO SC: Mr Ngoato, Annexure E to the application, page 22.

MR NGOATO: Annexure E?

ADV KHUMALO SC: Yes.

MR NGOATO: Yes, Commissioner.

ADV KHUMALO SC: And we must try to work together here because the Commission does not have a lot of time.
20 It is a letter dated 22 January, so that is eight days ago. And in manuscript it says there that the witness collected the USB on the 22nd of January, so that is eight days ago. But paragraph 3 makes it clear that the chats that will be the focus of the questioning are the chats between him and the 13 people identified on page 23.

So why can we not use the rest of the day for you and your client to go through the chats that relate to him and the 13 people so that today is not wasted. It is used productively. And because we were going to sit on Monday and Tuesday anyway, we continue with the evidence on Monday and Tuesday, accepting for a moment that you have a difficulty on Saturday.

If the chats are identified, you do not have to go through 4,800 pages. You go through the chats that are
10 identified and your client was told eight days ago already that he is going to be asked questions on the chats with this, it is not even eight people, because some of the people there, it is not 13, some of them are duplicated. Sandile Khumalo could be using three numbers, for example, as you can see from items 3.1 to 3.13.

So because today was a sitting day for the Commission and you said your client is available to give his evidence in chief today for the rest of the day, why can this day not be used to go through the chats with those 13
20 people so that come Monday we are ready to continue with the work of the Commission?

MR NGOATO: Okay ...[intervenes].

ADV BALOYI SC: Sorry. Mr Ngoato, maybe before you answer, also deal with this, and I am just trying to see if we are not speaking at cross-purposes. I seem to have, I have

understood you to say you are ready to, or the witness, is ready to testify on certain topics, and these are the topics about which he was informed last year, and that exclude these chats.

MR NGOATO: That ...[intervenes].

ADV BALOYI SC: Am I correct in the that ...[intervenes].

MR NGOATO: That includes these chats?

ADV BALOYI SC: No, that exclude these chats.

MR NGOATO: Okay.

10 **ADV BALOYI SC**: So, if these chats are excluded from discussion between Mr Chaskalson and the witness, if the final position today were to be that these chats may not be raised, your, the witness is available and ready to testify today. So we will not have a wasted day. Am I correct in ...[intervenes].

MR NGOATO: You are correct, Commissioner.

ADV BALOYI SC: I have understood, is that the position?

MR NGOATO: Ja, you are correct. And maybe let me just clarify to honourable Commissioner. The first
20 documentation that our client received in last year refers to a different set of chats outside ...[indistinct], which he has since submitted a written statement towards that. That we have always been ready since last year, and he is ready to proceed with that today.

With regards to the 16, to the 13 files, these files

that you referred me to, page 22, which is Annexure E, which was received on the 22nd, here he received the USB, right. It is not the documentation, he received the USB. From the USB, he still has to go and print. The 22nd was Thursday last week, right. From once he has received this on Thursday last week, he then contacted my office to make an appointment and unfortunate, again, due to my non-availability, I can only meet with him Monday morning before we meet with the evidence leader, so, which is the
10 26th.

Now, we met with the evidence leader on the 26th, and again, on the 26th, we said, yes, we have received the memory stick and as yet at that time, the client has not been able to print because he does not have a facility at his house to print a voluminous 4,800 pages at that time. And like in this letter, it is clearly crafted, it says and it reads:

“The Commission will be referring only to this chat files when you appear to testify on Friday the 30th. By close of
20 business tomorrow ...”

Which is now the 23rd.

“We will provide you with a full list ...”

Which is to date still not been given.

“We will provide you the full list of the relevant chat files to which you may be

referred when you come to give
evidence.”

Now you refer to me to paragraph 3. That part is still outstanding. They have still not been provided that. We can inform you now that the most important chat files are the 13. Now, on this 13, I see, and it is quite becoming clear to me, that Mr Chaskalson says, no, no, it is no longer 4,800, it is actually 1,300, and on the 1,300, we will only focus on this particular part, right. The request is the
10 1,300, whether it is the 4,800, the, we request time to then peruse them so that we understand the full context, we understand the full narrative of the 4,800 pages so that we can now testify.

But however, the one that we have already submitted written response on, we are ready to proceed on this one. This 1,800, we do not even know what the questions are going to be about them and without even being given the questions, we just need to then be ready that at any given point we might be referred to page 920,
20 you may be referred to page 20. This is not a person who is as legally trained like me who can be easily juggle around the document. This is a layman who for the first time might be testifying in his life. He needs to be properly guided in terms of how to respond to those issues.

ADV KHUMALO SC: You are not entitled to questions in

advance. As long as you have the documents and you understand what the document is, you can be asked a question about it. And my point was that because the files are ready, you do not even have to go and print 4,000 pages because they have been printed. I have got a bundle that is going to be used in relation to this witness.

My simple question is, I do not want the situation where we say, today we are ready to proceed on the evidence-in-chief, but we are going to waste Monday and
10 Tuesday, and he will come back in February. I was hoping that if you use today, because the bundles are ready, and you go through the chats with him so that he knows which chats they are, and he is ready to answer questions when he is asked questions, then we use Monday and Tuesday productively, because I do not think it helps to say, let us start his statement today, but let us not sit on Monday and Tuesday, because then we are wasting time and we may never recover it. That is really my issue.

MR NGOATO: Commissioner, I do not want to sound being
20 difficult or not appreciative of the urgency and the importance of the matter at hand, but the reality of the matter is, Commissioner, even if there may be 1,300, as I indicated earlier on, we are not bound to only rely on that in our responses. We have to also be able to find any other information that may help us in responding to any other

questions or that assist us in responding to the matters at hand.

CHAIRPERSON: Any further submissions, Mr Ngoato?

MR NGOATO: Yes, Commissioner. In fact, I was to respond to the submissions made by Mr Chaskalson, but immediately thereafter questions start coming in, and we have not yet even yet responded to that aspect. But I do not want to then deal with matters that will no longer be of importance, but there is some specific issues that are of
10 importance, Commissioner.

CHAIRPERSON: Yes.

MR NGOATO: And I will summarise them maybe into three or four aspects. One, the evidence leaders are indicating that our client needs to approach the Commission with good faith and answer questions in good faith. That being said, is that good faith is also required from the evidence leaders in giving him the proper time to be able to analyse and respond adequately to the questions. And what we are saying is simply because of the bundle of documents that
20 were now submitted to him in less than three days ago, and I was trying to explain to the honourable Commissioner that even though he collected on the 22nd, then counting from the 22nd will make eight days, he never had access to them for eight days. He only had access to them only as from the 27th.

And the evidence leaders are aware, fully aware of that particular scenario. That is point number one. And therefore, good faith will dictate if a person only receives a document four days before the commission, voluminous as they are for more than thousand pages, he need to be given a chance to be able to peruse them. That is number one.

Number two, he then referred to the emails. Commissioner, there is an issue here and we need to accept this and maybe the evidence leaders need to
10 approach the Commission with honesty and integrity. The first correspondence that were sent to the client were sent to a wrong person. He never knew of the number of people that were involved in the first bunch of documents. These number of people that were referred to in the first correspondence to him were sent to an incorrect person.

He only first time received the correct names of people that he needed to answer to on the 2nd of December, and he responded to that. This person that they are now focusing on is the same person that they included,
20 excluded, included, and excluded in their own previous correspondence, which they were sending to a wrong person and now they want to say for eight weeks, which is what they stated in their answering affidavit, for eight weeks you have been aware of these documents. But they did not want to accept the fact that the email they used in

that eight weeks they are referring to, was an incorrect email, which is what we stated in our replying affidavit, and he never had access to that.

So it is only now this witness received the documents on the 2nd and duly complied with all the requirements that were of him and submitted. And now on the 19th of December, of January, when he is supposed to come, they say come back on the 22nd, there is a memory stick you are to receive. So they now want to try to portray
10 our client as an uncooperative person, This is the, and without admitting on their side that there was an error on their side, they have been sending correspondence to a wrong person. He has never been receiving this information. He only received the information and now because of a scheduling issue, which has nothing to do with him, now he needs to compromise his rights and to accommodate scheduling.

Scheduling cannot be as important as the constitutional rights of a person, the right to prepare and
20 the right to a fair trial. Scheduling can never be such, of such importance. If there is an issue of scheduling, they must find a way how they rearrange things on his side, but not his prejudice because of scheduling aspect. And that is the last, that is another comment that I wanted to be able to make.

With regards to the chats, Commissioner, like I said, I have already had access to the chats and I have already started studying the chats. It is not just the chats. It is the chats, it is the videos, it is the outgoing calls, it is the incoming calls, it is the documentation. It is not as simple as it has been portrayed to be that now it is just mere chats and it is the chats that he made. But these chats or these documentation involves other people, like he said.

10 He says it could be coming from this person and going to this particular person. And we are not, our client cannot come here and just give blanket statements without corroboration, because it would just be hearsay. He needs to then say, I am saying the following issues and this is my bundle of evidence that I want to submit to the Commission so that I can clear my name. Otherwise, the narrative will be, this is what it is.

And it cannot be that our response or defence solely relies on the bundle given by the evidence leaders.
20 So we have a duty if we have any other counter evidence that we have to produce that. And for us to then produce that documentation or evidence, over the weekend, we may not be able to have access to those documentation because they are state information or the information that has been held through his employer. We may not be able to do that,

hence, again, the aspect of a weekend is not attractive to me over and above the challenge that I personally have.

So the request, therefore, is, and I was looking with my colleague here in terms of how quick we can accommodate the Commission, given the fact that I may not be available, I initially said six days, but if we were to start on Wednesday so that I can have the two days, Monday and Tuesday, to thoroughly go through the documentation with this client to then finalize, because you do not just read it
10 once and then you are okay. You read it once and at the end you realize, but I read something on this file that is important to this particular file, let us go. You have to clearly bring him to understand the implications of what he says.

And I humbly request, this is not a process you can push over. This is not a process that you can rush over because you are speaking about somebody's life, you are speaking about somebody's dignity. These matters for generations to come will be referred to his dignity. And it
20 cannot just be rushed because of the scheduling aspect. That is my submissions, Commissioner.

CHAIRPERSON: Thank you, Mr Ngoato. Oh, I see your microphone is on, Mr Chaskalson.

ADV CHASKALSON SC: Chair, I just wanted to correct another factual inaccuracy in one of Mr Ngoato's

submissions. If you go to the replying affidavit, I mean, Mr Ngoato seemed to suggest the client first knew what he would be questioned on sometime in late January. If you go to page 66 of the reply, he admits, as he has to, 816:

10 “On the same day, 2 December 2025, I received the summons in terms of section 3(2), which confirmed that my appearance date is 20 January 26, which included the name of Mr Motsumi.”

This was sent to the correct e-mail address, Detective FE, well, there it is. If one goes to page 49, one sees that summons, delivery by hand and email, and that sets out the relationships and the topics that I want to question him on today. He has known these topics for almost two full months.

20 **CHAIRPERSON:** Thank you, Mr Chaskalson. We will adjourn, but we ask the evidence leaders and the witness’ legal representatives, to see us outside just now. Thank you. Let us adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: After careful consideration, we have taken a decision and the decision is to postpone, but it will not be for as long as Mr Ngoato asked for. The matter is

postponed to Tuesday next week. The main reason for that is that we, to an extent, do understand the plea that time is required to go through the documentation and we feel that in fairness, we should not be too nitpicking about when exactly the documents were received or when they were not. We just decide that in the circumstances of it all, fairness dictates that we grant the postponement and that will be to Tuesday, 3 February 2026. We make the order.

ADV CHASKALSON SC: Thank you, Chair.

10 **CHAIRPERSON**: As to what happens from Tuesday, we will see from there. Thank you. Thank you, Mr Chaskalson.

ADV CHASKALSON SC: Chair, can I make one submission? In order to save further time, can we address the issue of the remote hearing application today?

CHAIRPERSON: Yes, yes, yes, that was our idea. That was our idea. Mr Ngoato, do you want to address us on that and ...[incomplete].

ADV CHASKALSON SC: Chair, Can I ask that this hearing is addressed in private and possibly not in this auditorium
20 but somewhere else, because I think both parties might want to refer to matters or facts that would defeat the purpose of a closed application or a remote hearing application if they were ventilated publicly?

CHAIRPERSON: Even the very reason that has been given by the applicant, which in the main focus is just on one

aspect really, so not even that in open session.

ADV CHASKALSON SC: I certainly, I mean, the evidence leaders certainly have their own concerns, which, and, but maybe we can proceed as ...[intervenes].

CHAIRPERSON: Let us - we have seen that the evidence leaders go beyond just what is been stated in the application itself. The evidence leaders, they are, quote, unquote, at this stage, informal support for the application. Formally, we are yet to be addressed. So my issue was
10 simply whether even the reason, the main reason that has been stated, whether that cannot be stated in open session.

ADV CHASKALSON SC: I do not see a problem with investigating that in open session. I am not sure what Mr Ngoato's attitude is. Certainly our responses may need to be ventilated privately.

CHAIRPERSON: Yes. Ja.

ADV CHASKALSON SC: What I do want to say, and just to put this clearly on the record publicly, because I do not want to give the wrong impression and expose the witness
20 to harm that way, is that, as of this stage the witness has implicated no people in his communications to us, in his communications to us.

CHAIRPERSON: Yes, I ...[indistinct] [intervenes].

ADV CHASKALSON SC: And I do not want it to be thought that why I want this to be held in private is anything along

those lines. The witness absolutely has not implicated a single person. Part of my complaints about the witness' statement and the issues I want to take up with him in questioning with him ...[intervenes].

CHAIRPERSON: Yes, yes.

ADV CHASKALSON SC: Is that he has implicated nobody.

CHAIRPERSON: Nobody. Indeed, the statement that we have been furnished with goes to quite some length, not implicating any people and any of the people mentioned,
10 there are explanations by the witness, all of which do not implicate the people concerned. Mr Ngoato, would you have any problems if at least the main reason, I do not know whether your idea of the main reason and my idea of the main reason I would say, but would you have any problem with at least the main reason for the application were to be stated in open session?

MR NGOATO: Thanks, Commissioner. Indeed, yes, we will have a problem with the main reason being done on an open session. We share the sentiments with Counsel, the
20 evidence leader. We have attended and addressed this particular aspect and we definitely know the type of evidence that is going to be required. Yes, he has not implicated anyone, but whatever evidence he is going to lead or may lead potentially may end up bringing some people to light and that goes to what is the main reason.

And for that, we would like to maybe approach.

CHAIRPERSON: But perhaps what I should place on record, and you will correct me, my understanding is that the application is not for the evidence not to be heard publicly, or is it? I thought it is more off-camera, but not that it should not be heard.

ADV CHASKALSON SC: That was certainly my understanding of it too.

CHAIRPERSON: Yes.

10 **ADV CHASKALSON SC:** That it will be broadcast, but that the witness' face will not ...[intervenes].

CHAIRPERSON: Face and name.

ADV CHASKALSON SC: Face and name will not be disclosed.

CHAIRPERSON: Yes.

MR NGOATO: Correct, yes.

CHAIRPERSON: Yes, yes, yes. Let us adjourn then to hear the application in camera. Let us adjourn.

INQUIRY ADJOURNS

20 **INQUIRY RESUMES**

CHAIRPERSON: The witness subpoenaed to appear on 30 January 2026 has applied for his testimony to be presented partially in camera, that is, his image and name not appear publicly. The application is supported by the evidence leaders. Having heard the nature of the evidence involved

and the persons to whom this evidence relates, the Commission is satisfied that the physical safety of the witness may be put at risk if his image and name are placed in the public domain during his testimony.

The Commission accordingly orders that the testimony of the witness will be presented without mention of his name and publication of his image. We so order. Let us adjourn until 9:30 on Monday. Let us adjourn. Thank you.

10 **INQUIRY ADJOURNS TO 3 FEBRUARY 2026**
