

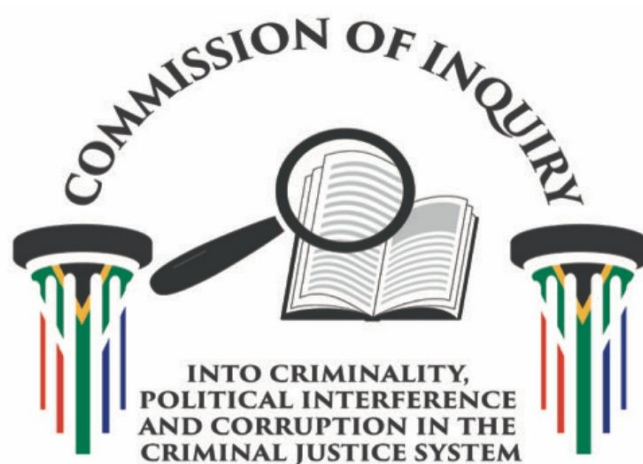
JUDICIAL COMMISSION OF INQUIRY INTO CRIMINALITY,
POLITICAL INTERFERENCE AND CORRUPTION IN THE
CRIMINAL JUSTICE SYSTEM

HELD AT

BRIGITTE MABANDLA JUSTICE COLLEGE

6 MARCH 2026

DAY 72



PROCEEDINGS HELD ON 6 MARCH 2026

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

ADV HASSIM SC: Morning, Chair.

ADV PREMhid: Morning, Chair.

CHAIRPERSON: Thank you. Thank you. We are all ears.

ADV HASSIM SC: Chair, before today's witness takes the stand, we have an interlocutory application that has been brought by Mr Suleiman Carrim, and it is for his evidence to
10 be provided in *camera*. And Mr Premhid will address the Commission on that application and I believe there is a preliminary-preliminary issue that Mr Premhid would also like to raise with the Commissioners. If we could begin there. Thank you.

CHAIRPERSON: I also have a preliminary issue I wish to raise with your preliminary issues, but perhaps let us hear your preliminary-preliminary.

ADV PREMhid: Thank you, Chair, and for the indulgence of going ahead of you. My learned friend is correct. This is
20 an application that my client's main evidence be given in *camera*. My concern at the moment is that even though the directive says that it will be given in an open session at the College, as we are here today, my concern is that if the in-*camera* application is argued in front of all and sundry, and I say that with all due respect, bearing in mind that there

are *cameras* here at the moment, and I do not know whether there is a live stream or a live broadcast, I have to raise the possibility that the very argument of the *in-camera* application would render the application itself and any subsequent determination nugatory because of the consideration of it being in *camera*.

And I must admit, when I read the original directive that said open session at the College, I assumed that that meant we would have an open session in the way that we
10 are physically here, but that it would still be determined in *camera*, pending whatever outcome is to be made, as opposed to how we had asked for the reasons canvassed in the *in-camera* application that it be done virtually or at a different venue and so on.

And so I just have to register my concern, with all due respect, that the very substance of the application we are going to debate which will determine how my client gives evidence is potentially going to be pointless by virtue of the fact that we may have a live proceeding or live
20 television proceeding that goes out.

And may I just say this? I can understand that if the Commission is ultimately against me on the *in-camera* application, that there can be publication of everything *ex post facto*, because in that instance there would have been a final substantive determination on whether it should be in-

camera or not be *in-camera*.

But if we argue the *in-camera* in open, as we are doing at the moment, and I repeat my concern about live television proceedings, then that creates the prejudice. And you would recall, Chair, that in the notice of motion filed by the applicant, if you have the paginated bundle in front of you, if you look at paginated Bundle 3, Prayer 2, the Prayer 2 notice of motion, with all due respect, I think covers a situation that we find ourselves in where the very request
10 for that proceeding itself is to be *in-camera*, otherwise it would be, the outcome would be rendered nugatory. And so those are my submissions as to my preliminary-preliminary concern. Thank you, Chair.

CHAIRPERSON: Thank you, thank you, Mr Premhid. Mr Premhid, I am not sure that I follow you with regard to the point that the outcome and what is basically sought will be rendered nugatory. I just do not get that, because what Mr Carrim seeks is that the hearing of his evidence should be *in-camera*.

20 **ADV PREMhid**: Yes.

CHAIRPERSON: If he succeeds, how will this open session have rendered that nugatory?

ADV PREMhid: Well, that is the exact dilemma, Chair, with all due respect ...[intervenes].

CHAIRPERSON: And also, perhaps, let me add this.

ADV PREMHID: Yes.

CHAIRPERSON: If I am not mistaken, my colleagues will correct me, and perhaps even the Evidence Leaders, all applications for *in-camera* hearings have always been heard here in open session. And a good few of those were found to have substance, and the actual hearing of the testimony was then *in-camera*.

ADV PREMHID: Yes.

CHAIRPERSON: So I do not know what makes this one
10 stand out, and for the argument that the whole thing will be rendered negatory, I just do not follow it, I just do not follow it.

ADV PREMHID: I follow the question, if I may respond, Chair. On the first issue about defeat the main hearing, what you will – and now I speak with some hesitation because I am now traversing potentially some of the merits of the *in-camera* application, and we are not yet at that stage. We are determining rules of engagement, if I can put it that way.

20 What you will know is one of the arguments that is made in the *in-camera* is that my client started receiving death threats, and that those death threats emanated even before he gave his actual evidence at the Commission itself. And so my client's position is that he is being subjected to those death threats regardless of the actual

evidence he is going to give.

Now the fact that we are having this debate about whether he should then still give that evidence *in-camera* or not *in-camera* now reveals to the public at large watching in that he is being the subject of those death threats, and that he might be made to give evidence, but it just will happen on a day or in a time or in a format that the public at large might not know about.

But the consequence of that does not detract from
10 the fact that my client, based on what he says in the affidavits, is that he is being surveilled [sic]. And the fact now that this has already happened on live television, with all due respect, does not, or rather does undermine the very purpose of the *in-camera*, which was to protect that disclosure when he comes back to the Commission to give his evidence-in-chief, if I can call it that.

And because of the particular situation that my client finds himself in, the fact that we are already publicising the fact that he is making the *in-camera*
20 application is the prejudice that we are talking about. So that is on the first point, if I may, Chair.

On the second point, I obviously cannot answer for what other applicants did in respect of their *in-camera* application or whatever the case might be. I am not privy to that. But on the facts of this case, and because of that

surveillance which I have just mentioned, that is why a particular prayer was included in the notice of motion, Prayer 2, that the actual argument of the *in-camera* be held *in-camera* itself.

And again, I say this without trying to traverse the merits of the *in-camera* application, but I am just registering the difficult position now that my client is in, because the surveillance which happened from the previous session is now going to continue, arguably, from this moment in time.

10 Because if my client does not appear to the public's knowledge on the 9th and 10th, the public will know that he is compelled to give evidence.

It is arguable that the *in-camera* was granted and that he is still giving the evidence, with the effect that the threats are going to materialise again, with all due respect, because it effectively now has given publication to the very concern that my client had, that he is under surveillance.

CHAIRPERSON: So Mr Carrim wants the public to be under the impression that he will not be testifying. What
20 exactly is the point?

ADV PREMHID: No, that is not the case.

CHAIRPERSON: What then is the point? Because if the public, or even those threatening him, are aware that he will testify at some point, what difference does any of this make?

ADV PREMHID: The difference is, Chairperson, in the two alternative factual scenarios, is let us assume when we came in here this morning, this session was being conducted *in-camera* in the way that I had understood it would be. What that would mean, with all due respect, is that there would be no insight given to the people outside of this room that the *in-camera* application was made, and if it was granted, then the public knows that Mr Carrim ought to have testified on the 9th and the 10th, that he might not have
10 materialised on the ...[intervenes].

CHAIRPERSON: Even those threatening him will be under that same impression.

ADV PREMHID: Agreed. Agreed.

CHAIRPERSON: So what is the difference?

ADV PREMHID: I was getting to that, if I can finish.

CHAIRPERSON: Yes.

ADV PREMHID: What I was saying is that in the scenario that I am talking about, that if these proceedings were *in-camera*, on the 9th and 10th, if the Commission is with me
20 and grants the *in-camera* in substance, then whoever is threatening Mr Carrim and the public at large would be left to speculate why did he not give the evidence, is he still giving evidence, or whatever the case might be, insofar as Mr Carrim's appearance at the Commission is concerned.

That would not release Mr Carrim from the

obligation to still give evidence, which he would give, but it is the details around that evidence and the session itself that would be protected and offer him an interim modicum of protection where he says, I am being surveilled and I am being threatened even before I give the evidence.

CHAIRPERSON: So I do not quite see the difference in substance to what I said earlier, which was that, so Mr Carrim does not want the public to know that he will testify at one stage or another. The various options or possibilities
10 or permutations you referred to boil down to, or at least part of it boils down to what I said, which is that he does not want the public to know that he will testify.

ADV PREMHID: Yes, but that is not because he has – the case he has pleaded in front of the Commission is not because he does not want the public to know, it is because of the threats that he has received.

CHAIRPERSON: But part of what you said, part of what you said says exactly what I say ...[intervenes].

ADV PREMHID: No, I ...[intervenes].

20 **CHAIRPERSON**: Of the various permutations you gave, part of it says exactly what I said.

ADV PREMHID: I accept that, but we also have to accept that there will be parts of your report, for example, that might be subject to certain confidentiality regimes. There might be evidence that is in your final report that is subject

to certain confidentiality regimes, which the public at large would not know about. So it is not as though Mr Carrim, with all due respect, is asking for something unique or specific to him that the Commission's rules itself does not contemplate.

It is to, the Commission is being asked to strike the appropriate balancing act between making the witness testify, which Mr Carrim accepts he has to testify, obviously, but at the same time protecting him or offering him a
10 measure of protection that neutralises or potentially neutralises some of the threats that he is receiving.

With all due respect, I have not taken an instruction from my attorney at the moment, but just speaking frankly, if this live television camera is on at the moment and it is being broadcast to the public, then actually my application for an *in-camera* hearing is potentially rendered moot because the same people who are threatening my client even before he comes and gives the substantive evidence now know what he is attempting to do.

20 And so with all due respect, I do not even know if there is any point in proceeding with the *in-camera* application, although my attorney might kick me if I say I am abandoning it, because of this exact prejudice which has now manifested. I have heard what you have said to me, Chair, but I must obviously put my client's position

regarding what is happening at the moment and how that potentially prejudices him in light of the relief that he sought under 4.2 of the Commission's rules.

CHAIRPERSON: You earlier said you may already be touching on the merits. Perhaps what I am going to raise also touches on the merits. So ...[intervenes].

ADV PREMHID: Is this a preliminary concern now, Chair?

CHAIRPERSON: No, but no, no, no ...[intervenes].

ADV PREMHID: Are we still on the preliminary?

10 **CHAIRPERSON**: I am still on your preliminary-preliminary.

ADV PREMHID: Okay. Got you, Chair. Got you, Chair.

CHAIRPERSON: Yes, yes. How exactly, you know, everything being conducted in the manner in which Mr Carrim suggests, how will the evidence then be dealt with in practical terms afterwards? For example, you even referred to the final report treating the evidence in a particular manner and perhaps even the public not having access and so on. So I am raising what I am raising in the context of that submission.

20 **ADV PREMHID**: I accept that, yes.

CHAIRPERSON: How will the Commission handle the evidence, assuming that the application is granted ...[intervenes].

ADV PREMHID: Yes, yes.

CHAIRPERSON: Yes, yes, yes, yes. I am thinking, maybe

let me just add, I am thinking, for example, the evidence may say something about people who may either themselves on their own want to respond or in respect of whom the Evidence Leaders may want to lead evidence that counters whatever Mr Carrim may have said. So how does all of this get handled?

ADV PREMHID: I accept.

CHAIRPERSON: Because those people will have to know ...[intervenes].

10 **ADV PREMHID:** No, of course, and I am not suggesting that a case be conducted against them in their absence or without their fair trial rights being protected. As you know, Chair, my client is particularly keen on his fair trial rights. It would be ironic if he is attempting to, the Minister of Finance is trying to phone me. That must wait until later. I apologise. I was, what I – sorry, Chair, go ahead.

CHAIRPERSON: Ja, sorry.

ADV PREMHID: Sorry. Chair, what I was going to say to you is that we obviously have no difficulty with whatever
20 accommodation has to be made to facilitate the fair trial rights of any other witness who may be impacted by my client. But what we know, and that is foreshadowed with all due respect in Rules 4.2 and 4.3 of the Commission's rules, but what we know in practice from cases like *Brydon* and *Helen Suzman Foundation* in particular, which in your

previous capacity, Chair, you would be very well familiar with, there are particular circumstances where the disclosure of evidence in a particular context is subjected to a confidentiality regime that appropriately balances the interests in the evidence coming to the court, or in this case the tribunal, the inquiry as the tribunal forum, so that it can apply its mind to all the evidence and do its job, but also that the court, and here I would say the Commission of Inquiry under those rules that I have quoted, has an equal
10 power to impose a degree of, and I am hesitant to use the word secrecy regime, I would rather use confidentiality regime, that protects interests that are implicated if it was just conducted in the ordinary manner, which is the open justice default position.

And with all due respect, Chair, in *Helen Suzman Foundation*, building off the commercial case of *Brydon*, you were at pains to explain that this is, that the kind of regime that Mr Carrim is asking for, including the kind of regime that you would be entitled to impose in terms of the rules
20 for what happens in future, is the appropriate balancing exercise where constitutional rights are implicated.

And because my client has claimed that there is a threat to his life, there is a threat to his family, there is a threat to his businesses, there is a threat to his employees, this is the appropriate instance that the Commission, and

through you, Chair, must consider its own rules which enable such a balancing exercise, and then your powers to give appropriate directives to achieve that balanced outcome, that is what we would say.

Of course, my attorney tells me that there are other witnesses who have been heard in *camera*, I believe it is Witness X, and that appropriate regimes must have been made for them as well. I do not know the exact facts of what happened with Witness X, but we are not in a situation
10 where the Commission is powerless with all due respect.

And may I just end by saying this, none of what we are asking for is a release of Mr Carrim's obligation to come here and to tell the Commission what the Commission wants to know, and be subjected to questioning by the Evidence Leaders and the Commissioners. It is about the threat that has been identified and what the Commission does in recognition of that threat, and to exercise its powers we would submit it should do to protect him in light of that threat. That is really where we are, Chair. Thank you. I
20 apologise if that was a very long answer.

CHAIRPERSON: No, no, understood.

ADV PREMHID: Thank you, Chair.

ADV BALOYI SC: Can I? Thank you. Maybe on just that last point, to start there, that other witnesses, including Mr X, have testified in *camera* and arrangements were made to

protect their evidence. That is not applicable here because all the decisions about witnesses testifying in *camera* is based on the testimony that they are going to give. You bring a completely different application at this stage.

ADV PREMHID: Yes.

ADV BALOYI SC: You say the application itself to be heard in *camera* should be in *camera*. So yours is not, I mean those other cases do not apply to you here, one. But you, in your engagement with the Chair, you speak to, you
10 want to be heard in *camera*. There is actually two legs to your application.

You want this very application to be in *camera* because you do not want it to be known why, the reasons that is seeking to be heard in *camera*. Well, they are out there now.

ADV PREMHID: It is too late now. Yes, absolutely.

ADV BALOYI SC: And as an aside, I would have thought ordinarily a person would want it to be publicised, that the concerns that your client has, that there are people who are
20 making threats against me, they would want the light to be shown on those who are making the threats on them so that they know the world is watching.

I would have thought that is what your client would want to happen. But more importantly for me, you have two parts to this. The second part is, you want the papers,

including this application, so we are not yet in the merits, this very application that you have before us about and that you are arguing about, you wanted the papers to be shared only amongst a defined number of people in the Commission.

You say the Chairperson and Commissioners, the Evidence Leader designated to lead Mr Carrim, the Commission's appointed legal team, the Secretary, Mr Carrim, Mr Carrim's appointed legal team, and the
10 Commission's official transcriber. You have not said why you want the Commission to restrict who has access to these papers.

I have tried to read your papers. I do not see a case made for it, including for this leg of the application. It seems like your client is wanting something that, certainly I have never encountered anything like this, and he does not lay a basis why only these seven, or people in these seven categories, should have access even to this, even before you get to his statement on the merits or the application to
20 be heard in *camera*, just even this preliminary-preliminary issue.

Can you just explain what is going on? I really do not understand this application, and on what legal basis does your client think he is entitled to prescribe, as he is doing, about who should have access to his papers, one?

Two, the legal basis for him to seek for, to be heard in *camera*, his application to be heard in *camera*. I have never, ever encountered that and I do not see a legal basis for it set out in your submissions, but also the factual allegations, if there are any factual allegations here. I do not understand this application, Mr Prehmid.

ADV PREMHID: May I respond? Thank you, Chair. Commissioner Baloyi, thank you. May I start with the first question about the prescribing of the access? That is
10 rooted in the understanding of the applicant of Rules 4.2 and 4.3, read with Rule 11, which on our reading 4.2 says:

“In an appropriate case, the Chairperson may make an order that a hearing be held in *camera* or via electronic means. In such a case, the Chairperson shall specify in the order those persons who shall be permitted to attend the hearing in *camera* or by some other means.”

Then with 4.3:

20 “At the request of the witness whose evidence is to be heard in *camera* or *mero motu*, the Chairperson must order that nobody may, directly or indirectly, disclose the identity of the witness who is to give the evidence in *camera*.”

And then read with Rule 11, which is the so-called catch-all rule, which gives the Chairperson the procedural right to determine issues not otherwise prescribed in the rules.

ADV BALOYI SC: Yes, but what I am trying to understand is this defined list. I understand the rule. I know what the rule says and the powers that it gives the Chairperson. What I want to understand is when your client says only the Evidence Leader dealing with the matter should have access to this application that we are concerned with right
10 now, on what basis does he accept that kind of request?

ADV PREMID: Yes, yes.

ADV BALOYI SC: We have a whole team of Evidence Leaders. We have investigators.

ADV PREMID: Yes.

ADV BALOYI SC: Right? You know that.

ADV PREMID: Yes.

ADV BALOYI SC: There is no explanation why those should not have access to this application.

ADV PREMID: Yes.

20 **ADV BALOYI SC:** I can put to you that, at least in my reading of your application, there is nothing confidential about it. Your client is not disclosing any confidential matter. The best he does is to suggest that the threats are confidential, because that is the only basis on which he is seeking for this first leg to be heard in *camera*. All he

speaks to is the threats. So he is asking for the threats to be kept confidential. Why can that not be shared with the rest of the staff of the Commission? Why should the staff not be aware that there are these threats that he is relying upon?

ADV PREMHID: Yes. Let me immediately accept that on the strength of the affidavits as prepared and submitted in front of the Commission, there is no direct engagement with why the list curtailed in Schedule A is presented in the way
10 it is presented. I accept that and I am not going to dispute that, because that would be a hopeless cause.

But I hope that Commissioner Baloyi, you can see that there is a relationship in the exercise that is being done in Schedule A with what is set out in the rules that I have just read to you, in the sense that where in an appropriate case there is an *in-camera* consideration, the Chairperson can make an appropriate directive to limit access as to who can or cannot have access to those proceedings and the papers. So ...[intervenes].

20 **ADV BALOYI SC:** Yes, I am not having that debate with you. I know that is what the rules say and we have used the rules.

ADV PREMHID: Exactly.

ADV BALOYI SC: What I am struggling with, what I do not see, is how that gets to be applied or how your client relies

on that given what he has set out.

ADV PREMID: Yes, and that is why I started by clarifying by saying if you want that direct explanation in the affidavit, I have to accept it is not there. But why the Schedule A is attached to the notice of motion is because it is one of the prayers that are sought from the Commissioner and the Chairperson applying his mind.

If on the basis of no pleading the Commissioner says, well, I cannot grant you that relief because you have
10 not made out a case for that, then I have to accept that. But the reasonable explanation as to why there is an attempt not only to keep this application *in-camera*, but limit who has access to the content of the application, is threefold.

Number one, Mr Carrim nor his legal team knows the internal processes of the Commission, and it might be the case that not everybody in the Commission needs to be involved in the Mr Carrim-specific matters. And so the Commission might in and of itself have its own Chinese
20 walls that it will sometimes enforce or not enforce in order to preserve the integrity of whatever is happening in front of the Commission, which I say applies here in an *in-camera* request.

Number two is that never mind whatever the Commission's own internal processes are, practically

speaking, in the light where the Commission, where the case made in front of the Commission is that I am being surveilled, I am under threat, I do not know who is watching me or who is not watching me, at its most generous interpretation from Mr Carrim's side, obviously there is a less generous interpretation from the case against me, but the most generous interpretation that can be afforded to Mr Carrim is that that Schedule A, which was subject to the control of the Chairperson of the commission at all times, 10 was an attempt to make sure that the net was not cast too widely so that all and sundry, and I am using that phrase again but I am using it with respect, get access to the very papers that may or may not result in the breach of Mr Carrim's rights in the way that he is saying in the papers. The third explanation, Commissioner Baloyi, correct ...[intervenes].

ADV BALOYI SC: The second explanation, put simply, is he does not trust the rest of the staff of the Commission that they may not distribute, in fact he does not trust the 20 Commission. He has to leave with a list in Schedule A, but he does not trust beyond that.

ADV PREMHID: I hope that the correspondence bundle has been placed in front of the Commission because what you will see from the correspondence bundle is that my client has consistently complained about inconsistent

treatment, about the Commission's inconsistent application of its own rules, and the prejudice that he has suffered as a result of the Commission's conduct towards him ...[intervenes].

ADV BALOYI SC: Is your answer to my question that, is it a yes, he does not trust that the Commission will not share his application outside of the Commission that with a consequence that those who are threatening him would become aware of it, is it a yes?

10 **ADV PREMHIID:** It is a yes, but I hope you will understand, Commissioner Baloyi, that it is not an out-and-out yes in the sense that, you know, my client is complaining about that this is just a false exercise or that he will not get a fair trial. It is based on his experience at the hands of the Commission that that lack of trust arises.

And I am being very guarded in my language in making that point because that implicates potentially not only my learned friend, the other Evidence Leaders, and the staff of the Commission, of which there are many and they
20 are unknown to me, and I do not want to trample upon the integrity of my colleagues whom I have known and have no difficulties or issues with.

It is just that obviously my client, given the treatment that he has been subjected to, has a legitimate concern which informs the application and the attempt to

limit the access as explained in Schedule A and ...[intervenes].

ADV BALOYI SC: Just to be clear, that treatment that he is complaining about and on which he suggests he relies for seeking to limit who has access to his papers, does it include a disclosure of whatever he submitted to the Commission to the public?

CHAIRPERSON: Does it involve breaches of confidentiality?

10 **ADV PREMHD:** Well, it is difficult in the facts to answer that in circumstances where we only gave the statement yesterday. No, not yesterday, two days ago on the 4th at 09:00. The statement has not become public, which we are grateful for, but you will remember that the only time we received the direction from the Commission that that statement was going to be kept confidential was when we received the directive, I think it is paragraph 6 or 7, that unequivocally states that whilst the *in-camera* is being fought over, the main statement will be subject to the *in-*
20 *camera* treatment.

So obviously, as a result of that directive, that remedies the concern of my client to some extent as we sit here now, but it certainly animated my client's concerns prior to the handing down of that directive.

ADV BALOYI SC: I guess what I want to do, Mr Premhid,

what I want to get out of you is it has to be clear that whatever your client's complaint is about the treatment he has received from the Commission, it does not include a complaint that the Commission has disclosed what he asked to be confidential matter, it has been disclosed to the public. I think it is important for our processes that that is clarified.

ADV PREMID: Yes.

ADV BALOYI SC: That is not what you are complaining
10 about.

ADV PREMID: No, that is right, but if you have regard to the correspondence bundle, Commissioner Baloyi, you will recall that around the 28th of February, the Commission started making threats to my client that he was in breach of not filing the statement in terms of the 27th directive, but the Commission conveniently overlooked the fact that the disclosure of the submission of that statement was in terms of the application that served in front of the Commission to be appended until the *in camera* was decided and
20 ...[intervenes].

CHAIRPERSON: But Mr Carrim cannot make his own rules.

ADV PREMID: No, no ...[intervenes].

CHAIRPERSON: There was, from where the Commission was sitting, there was no change to the directive that he should file his statement ...[intervenes].

ADV PREMhid: No, I accept that ...[intervenes].

CHAIRPERSON: To characterise this as threats is actually totally unacceptable, Mr Premhid ...[intervenes].

ADV PREMhid: With all due respect ...[intervenes].

CHAIRPERSON: Mr Carrim cannot create his own rules. There was a directive that he should file his statement by a stated date. He could not, if there was no change to that direction of his own motion, choose not to file just because he has said, by the way, I am not going to file because
10 pending A, B, C, D is not appropriate for me to file ...[intervenes].

ADV PREMhid: No ...[intervenes].

CHAIRPERSON: He could not ...[intervenes].

ADV PREMhid: No, absolutely.

CHAIRPERSON: Despite him having said so, the Commission did not change the deadline. It was not for him to choose by when he filed and ...[intervenes].

ADV PREMhid: But with all due respect, Chair, on the 18th of February, which is the date that the application was
20 launched, the following was said in that covering letter. And this is why we are having a debate which is slightly removed from the facts, with all due respect. The request was made ...[intervenes].

CHAIRPERSON: I am very sorry, I intervened.

ADV PREMhid: Sorry, I apologised. May I ...[intervenes].

CHAIRPERSON: I intervened whilst my colleague was still asking you. Yes, please go on, Mr Premhid.

ADV PREMhid: Chair, may I respond to you and then, Commissioner Baloyi, subject to the Chair's authority, of course, if you can re-put your question to me because I am now dealing with what the Chair says.

CHAIRPERSON: Yes, yes.

ADV PREMhid: I apologise for that. But Chair, it is very important because when the application was launched, what
10 was explicitly raised with the Commission staff and the Evidence Leaders is a request that this entire application would be disposed of. This very *in-camera* application that we are asking for today would be disposed of by the 25th of February, which was before the statement was due, so that my client would know what his position was come the 27th regarding the filing of the statement and whether that was going to be *in-camera* and then the hearing was going to be *in-camera* or not *in-camera*.

Because obviously the determination of the *in-*
20 *camera* might have also triggered my client's request to file a confidential affidavit with the Commission. And so on the 18th of February, my client does not only say please bring this to the extremely urgent attention of the Chair so that a determination is made by the 25th before our statement is due. He says you can even dispose of this entire matter on

the papers. We do not need an oral hearing because this is an extremely urgent matter. The issues are fairly narrow and we want an expeditious outcome so that we know what our client's position is.

And with all due respect, what happens on the 18th of February from the Commission, we get a one-line email saying we confirm that same, same is in reference to the application, will be relayed to the Secretary and the Evidence Leader shortly and we will revert with formal
10 instructions in due course. Nothing is heard from the Commission from the 18th, 19th, 20th, 21st, 22nd, five days.

And now you must remember, of course, that the statement deadline is coming nearer and nearer. And what we then do on the 23rd is we write to the Commission on the 23rd to say, please can you advise us what the delay is because our statement deadline is approaching. We might be wrong in the way that the Chairperson puts it to me that it is not for Mr Carrim to determine, but we need some clarity from the Commission, the Chair in particular, as to
20 what the next steps are here.

And so with all due respect, Chair, when I talk about these threats emanating, it is not as though my client had, by the time his statement fallen due, not only launched an application where formal relief was sought in respect of the delivery of that statement, correspondence was

repeatedly sent to the Commission staff and the attorneys asking that this matter be dealt with extremely urgently and in an expedited fashion, and my client also waived with respect the very right to a hearing that we are having here because he wanted to know what his position was by the 25th so as to what to do on the 27th.

And where I say that those threats from the Commission are unconscionable, and with all due respect I speak subject to the Chair putting me back in order if I am
10 out of order, is that the Commission in its subsequent letters after the 27th do not even engage with the fact that it is due to them that the entire matter has not been disposed of on the timetable that might have been extremely urgent for understandable reasons, but where we had asked for a ruling.

So why I am saying that those threats are unreasonable in the circumstances is not because it was Mr Carrim acting of his own accord, it was Mr Carrim at every stage saying to the Commission, place this in front of the
20 Commissioners, get me a determination by the 25th so I know what to do by the 27th. And when the 27th came and went, we had not heard anything. We only received the answering affidavit on the 24th.

So, Chair, with all due respect, I hear what you say to me and I hear your admonition regarding what I said

about the Commission's threats, but there is a factual context that is important to bear in mind as well, and that is that Mr Carrim sought the assistance of the Commission to let him know what to do by the 27th.

CHAIRPERSON: You say you hear what I say about what you referred to as threats, and yet you proceeded to say what the Commission did is unconscionable. I take strong exception to that kind of language.

ADV PREMHID: I will withdraw that statement.

10 **CHAIRPERSON**: Thank you, thank you. What you have said raises two issues. What you have said, what you have submitted raises two issues. The first one is, you asked the Commission to keep all documents, affidavits and all relating to this matter confidential. The first issue is, I have no idea why Mr Carrim would not have wanted to file his statement if, in the face of his request and there being no basis for him to believe that the statement would not be kept confidential. That is the first problem I have.

20 And then secondly, my point about there having been no change with regard to the deadline, yes, I have heard what you say, but the bottom line is the deadline was never changed. The deadline stood. So, on those two points, I still have difficulties with your submissions.

ADV PREMHID: Chair, I do not know if you want me to respond.

CHAIRPERSON: Yes, you are free to, yes.

ADV PREMHID: Or ...[indistinct] ...[intervenes].

CHAIRPERSON: No, no, no, no, you are free to respond.

ADV PREMHID: No, thank you, Chair, I appreciate that.

CHAIRPERSON: Yes.

ADV PREMHID: On the first issue about not being kept confidential, I am not going to rehearse what I said. All I am going to point out, Chair, is the first time that that was given unequivocally, that the main statement would not be
10 disclosed prior to the determination of the *in-camera*, was only finally clarified on the 3rd when the directive came out. That was on the facts after the statement ...[intervenes].

CHAIRPERSON: Just on that, why right from the beginning, instead of tying the filing of that statement to the hearing of the interlocutory application, why did the applicant in the first place not make the simple request that that statement should be kept confidential?

ADV PREMHID: But with all due respect, we did, and that is addressed, that – I mean, that is in the founding affidavit
20 and the notice of motion and it is in the covering letter. And that is part of the difficulty we have here, is that we place all of this in front of the Commission, we ask for an expedited decision and an outcome, and instead of being told or being told by the Commission, yes, your concern about the main statement is taken care of, it will be held in

confidentiality until such time that the *in-camera* is determined, we do not hear anything.

The first time that the Commission puts up an answer is on the 24th, and incidentally, it does not deal with the request regarding the *in-camera*. If the Commission was able to give that undertaking by the 24th when it filed the answering affidavit, then we would not be having this debate because by the 27th my client would have filed the statement.

10 **CHAIRPERSON**: All 15 pages of it, yes.

ADV PREMHD: Yes, absolutely, whether it is 15 pages, three pages ...[intervenes].

CHAIRPERSON: I know, I know, I am just, ja.

ADV PREMHD: Whatever the case might be, he would have been able to file because the undertaking would have been given. The only time that my client then was given the assurance is when the third comes down, the third directive comes down, and look at what happens. When the directive comes on the 3rd and the directive says you must file your
20 statement by the 4th and you must file it by 9 o'clock, and it will be kept confidential, the statement is filed, no difficulty.

So with all due respect, it is a bit unfortunate that my client finds himself in this position in circumstances where he is not in control of these things, and a concern is raised for determination that affects the filing of the

statement but is being dealt with in the way that I have just explained. So that is on the first issue regarding the main statement.

The second issue, Chair, which I have now forgotten because I have written a note here that says deadline, but I have no idea why ...[intervenes].

CHAIRPERSON: I think I have forgotten also, but probably ...[intervenes].

ADV PREMHID: As long as you have forgotten, Chair, that
10 is fine.

CHAIRPERSON: Probably it was that, but the bottom line is that the deadline has never changed.

ADV PREMHID: That is, yes.

CHAIRPERSON: Whatever may have been going on in Mr Carrim's mind, the bottom line is that the deadline was never changed.

ADV PREMHID: But that is it, but you see, that is, with all due respect, it is that catch-22 dilemma that my client is caught in.

20 **CHAIRPERSON**: Do you know what judges usually say? They say that when counsel says with all due respect, deep down inside they are saying what the hell.

ADV PREMHID: Chair, I have never been accused of using such soft language in my entire life, so I will take that. I will take that.

ADV BALOYI SC: Mr Carrim, you wanted me to reformulate my question, rather to re-put it to you.

ADV PREMHIID: Yes.

ADV BALOYI SC: I thought you had answered my question, but then you went on to muddy it with the threats and the filing of the statement, and all of that was said about it. But the first part of your response was, you are not saying that there has been a disclosure of confidential information submitted to the Commission by Mr Carrim,
10 which he had marked to be confidential. You are not saying the Commission has landed that kind of material in the public domain.

ADV PREMHIID: Yes, we are not saying that.

ADV BALOYI SC: Ja, that is what I wanted to clarify with you. And then my next question, which I may well now ask, it is now out through you, right, in the engagement with the Chair, why you want this application to be in *camera*. We have had many slip-ups like that from legal representatives, where they do seek something and then the other ones that
20 actually disclose that which they are asking for, or that they are arguing.

So it is now in the public domain, the reason that you want this application to be in *camera*. Has the issue not become moot, at least this first part? Has the issue not become moot, and we should just go ahead and hear that

part of the application?

ADV PREMID: Chair, my attorney is whispering something to me. Chair, through you, may I just take the instruction? Thank you. Thank you. Commissioner Baloyi, before I forget your second question again, I will still go back to the Chair, but in response to you, Commissioner Baloy, yes, that is exactly why when I started I said I have to place my concern on record that if we have this debate in the manner that it is happening, the very purpose of the in-
10 *camera* would be rendered futile.

And so when I started my remarks, that is why I needed to record that because I was caught in a catch-22. Either I sit here silently and look at the three of you, and the three of you look at me, and I do not say anything, or I have to address what I need to address, but my claim for confidentiality and *in-camera* is then materially prejudiced by that.

And it is that very conduct with due respect that I am saying has caused the prejudice that my client
20 complains about in the affidavit itself. I mean, it is that famous Sutherland judgment, *BDFM v SAA*, that once confidentiality is lost, it is difficult to get it back, and that is the exact position my client finds himself in. So I accept that it might have been through my own doing, but it was under the cover of recording the concern I had regarding

the futility of us proceeding then in the way that we had.

ADV BALOYI SC: I guess it may become necessary for us to, for completeness, to pronounce on your argument for confidentiality. It may well be, without changing anything, because as you seem to agree, you know, the issue has become moot. We might as well go ahead with this application, but then we may have, the Chair may have to pronounce on this claim for confidentiality, whether there was a case for it in the first place.

10 **ADV PREMID:** Yes. May I say, Commissioner Baloyi, it is like one of those interlocutory disputes that arise in a main proceeding where the determination of the interlocutory then has the unforeseen consequences that it has. And given that as we walked in, we were then subject to live television cameras, that is the catch-22 that I was caught in, but also that my client was caught in.

So even though the application is theoretically still in front of you, because as the Chair reminds me, we are still only dealing with the preliminary point, I accept the
20 consequences of the arguments that we have just had and we have just made.

May I just go back, Chair, the second point that you had made, which we had both conveniently forgotten, but then unfortunately you remembered, about the deadline. I hear everything that the Chair says. I would only ask that

the Chair bear in mind that there was a request for a ruling before that deadline came and went, so that my client would know what to do in circumstances where he says I am asserting a right of confidentiality, if I give my statement, that will render my asserted right of confidentiality nugatory, and on the other hand, if I do not give the Commission what they want, I am then liable to coercive force by the Commission in the enforcement of its rules.

So yes, the deadline is what it was, but it is not
10 without the prior context of, please tell me what to do before that deadline comes so I know what my position is. Thank you, Chair. May I just check if there is – I apologise, Commissioner Khumalo.

ADV KHUMALO SC: You could have just said, here is my statement, it is ready, please treat it confidentially. There was no need for all that drama. You wanted to consult with your attorney and then we will ask our questions after, so ja.

ADV PREMHID: Thank you very much, Commissioner
20 Khumalo, for the indulgence.

ADV KHUMALO SC: I do not want us to debate the point I made because I think the preliminary point has become, I think you should just leave that prayer, Prayer 2 must just be abandoned. And when you deal with Prayer 3 and 4, I will tell you what my concern is.

CHAIRPERSON: Before the merits, may I? Did I get the impression that apart for our engagement, you were done with your submissions, Mr Premhid?

ADV PREMhid: On the preliminary, I think it is only fair that Ms Hassim ...[intervenes].

CHAIRPERSON: Yes, that is where I want to go to.

ADV KHUMALO SC: Are you accepting your abandoning 2, so that we do not need to debate?

ADV PREMhid: I would prefer the Commission make a
10 ruling against me rather than abandoning it, Chair.

ADV KHUMALO SC: Okay.

CHAIRPERSON: All right.

ADV HASSIM SC: Thank you, Chair.

CHAIRPERSON: Ms Hassim?

ADV HASSIM SC: Thank you, Chair. I mean, in the light
of the questions that came from the Commission, I can be
brief just on the preliminary-preliminary point. I think we
should probably just get straight to the merits because as
Commissioner Baloyi says, this matter, this issue of the
20 preliminary-preliminary point has become academic.

After the first, I think it was only after the first
minute or two of my learned friend's address, we strayed
right into the merits. And so, part of what has been
debated, in fact, concerns the merits of the application. But
even though, you know, that should be the end of it, I would

like to say one or two other things.

The first is that my learned friend says that he did not understand the session today to be a session in which it would be a public one. And I must say that is hard to understand in the light of the directive of this court on the 3rd of March.

CHAIRPERSON: The Commission.

ADV HASSIM SC: Pardon me. Of the Commission. I must wear my other hat. In the light of the directive of this
10 Commission on the 3rd of March, which stipulated that it would be heard in open session. Now, even if that were not a live broadcast, what it could not be understood as is to be a session that would be closed to the public.

So, even if it were not a television broadcast or live streaming on other platforms, this was going to be an open session, open to the public, and open to the media. So, any reporting or any coverage, photographs, anything would still be permitted in an open session. So, it does not aid my
20 learned friend to say that, you know, understanding of what an open session was, was that it would be somehow closed and that it would only be perhaps the legal representatives and the Commissioners.

On the statement, let me say, the statement, it has always been the practice of the Commission and there is never been a breach of confidentiality thus far. Not in

relation to this witness or in relation to any other witness on the side of the Commission staff or Evidence Leaders. So, that is not something that ought to have given rise to some suspicion.

CHAIRPERSON: But on that, I can imagine that Mr Premhid will probably say neither he, his instructing attorney, nor Mr Carrim knew that procedure.

ADV HASSIM SC: Well, that was, and let me say that there has been some clarification in that regard. That
10 statements that are given, the practice is witnesses provide statements to the Commission before they appear before the Commission to provide their oral evidence. It is only once the witness testifies that the statement becomes public.

So, it would only be on the determination of this application, which would then decide, would determine what kind of procedure follows next, that the statement would become public. That is the second thing.

The third thing I want to say is that in relation to
20 the perceived threats of the breach of the ruling of this Commission, it is important that witnesses understand and the legal representatives what the requirements are of the Commission and the status of rulings that are given by the Commission.

So, it was not in the nature of a threat. It was in

order to advise the witness that you now are in breach of the ruling of the Commission, and it is important and a duty, I would add, of the Evidence Leaders to protect the processes and the integrity of the processes of the Commission.

So, a ruling that says that the statement is to be provided on a certain date is that. It cannot be amended without the Chair's reconsideration of the ruling, which would require an application, and there was none such
10 application in that regard.

And finally, on the statement, it really was not tied to the determination. It was not conditional on the outcome of the *in-camera* application, right, because the statement is for the purposes of providing evidence to the Commission. So, I just wanted to make those remarks with regard to the statement to clarify that, but I have also said what I have had to say about the ruling on the 3rd of March, that this was to be an open session. For me, that is where this preliminary-preliminary debate would end. And so, given
20 that the ship has sailed, we should probably proceed into the merits of the application. Thank you, Chair.

CHAIRPERSON: Thank you, Ms Hassim. Mr Premhid, one last.

ADV PREMhid: Yes.

CHAIRPERSON: Any response, Mr Premhid?

ADV PREMHID: Yes, three very brief ones, if I may.

CHAIRPERSON: Yes.

ADV PREMHID: In respect of the first point made by my learned friend about her understanding of the directive, with all due respect, it is not her understanding that matters. It is what the Commission makes of the application and the request for the ruling beforehand. And that is why the ruling was made beforehand, the request for the ruling was made beforehand, so my client would not find himself in the
10 exact position he finds himself in at the moment.

On the second point, my learned friend, in fact, actually makes the case for us because her exact words were it is the determination of this application that would thereafter determine the disclosure of the main statement. And that is exactly why, not only in the correspondence and in the notice of motion, but in the founding affidavit, before that statement was due, the direct application was made at paginated page 12 of the pleadings bundle, paragraph 27:

20 “I humbly request that the Commission determine this matter as one of urgency. This is because my witness statement is due on Friday, the 27th of February 2026. If a determination is not made about my hearing evidence in *camera* and with that regarding the witness statement by the

state, then my witness statement will be made available to the general public, defeating the purpose of this application.”

If that was wrong, they filed the answering affidavit on the 24th of February. They could have made the undertaking or given the clarity on the 24th of February that the statement would not be disclosed ...[intervenes].

ADV BALOYI SC: But why would he have thought, and I
10 think that is a point that Ms Hassim was making, that his statement would be made public before he testified? On what basis does he have that concern to a point where he does not abide or comply with a clear directive?

ADV PREMHID: But that is because, as the Chairperson foreshadowed, is that my client does not have knowledge of the inner workings of the Commission ...[intervenes].

ADV BALOYI SC: It is not about the inner workings, it is about what – you see, he has done, and I have to deal with this by way of an example. He has made a claim, he is
20 making a claim for confidentiality and for in *camera* based on threats he has received but matters that he says are reported in the public domain. He has made references and he has annexed stuff that is in the media.

So he has relied on matter that is in the public domain. I am asking a question like that, that there is

nothing, he knows nothing about the processes of the Commission, as you rightly say. He does not know our internal workings, but again he has nothing from the public space that raises, that is a basis for that concern about his statement being made available to the public.

He makes it up, he makes it up and on the basis of that fear that he is making up, he then says I am not going to file my statement until you give a ruling because it might go into the public when there is absolutely no basis
10 whatsoever, no factual basis for him to raise that kind of concern, and therefore not to abide a ruling that says you must file by a certain date.

So it is not an answer to say – I guess what I am doing is I am saying how reasonable is this fear about my statement will go, you know, will be disclosed to the public when there is absolutely no factual basis for it.

ADV PREMID: I accept that, and you have already heard me in my opening remarks that, you know, to the extent that explanation is needed in the affidavit directly, it is not
20 there, and I am not going to push at that. Instead, what I will say, at the risk of repetition, is that that is the very reason why the ruling was asked for by the 25th, so that he would not be in the position of potential noncompliance, because that clarity, and on the basis that Commissioner Baloyi has accepted he would not know the internal working

processes, would be given to him.

And so when I was reading from the founding affidavit, and I mentioned the answering affidavit that came on the 24th, that was the day before the ruling was originally sought. And if the Commission in its answering affidavit simply said we will give you the confidentiality pending the determination of the *in camera*, then that would have cleared the path to file on the 27th.

And so those are the facts about what came before
10 the Commission and we cannot, with all due respect in
assessing reasonableness, determine the unreasonableness
or the alleged unreasonableness of my client's conduct
without those important factual features. Can I just say one
more thing, Commissioner Baloyi, and then I must make my
third concluding remark in response to my learned friend,
Ms Hassim?

On my client, my client does not rely on threats in
the public domain. My client relies, and that is what I
understood Commissioner Baloyi to have said about things
20 in the public domain. If I misunderstood that ...[intervenes].

ADV BALOYI SC: Ja, no, you misunderstood me.

ADV PREMHID: Okay.

ADV BALOYI SC: Yes. I was not saying he relies on
threats made to him in the public domain. I was saying
there is nothing in the public domain that finds, that founds

the absolute ...[intervenes].

ADV PREMID: Yes, yes. Then we are *ad idem*. Then I do not have to say anything further. I understand what you were saying, Commissioner Baloyi. Thank you. And then lastly in respect of the issue of the threats, I think it is also just important to say it out loud and on the record that two witnesses that have come before this Commission have been killed.

One allegedly killed themselves by means of
10 suicide, but did so after there was an attempt on their lives, and the other was apparently killed potentially or allegedly in relation to what they may or may not have done here. And all I would say in conclusion, in reminding the Commission of that, is that your job and mandate is about serious issues that go to the heart of the criminal justice system and potential abuse of political connections, criminal connections, and political power, which threatens a huge many deal of interests of people.

And where witnesses are dying after coming to the
20 Commission and giving evidence, it is surely not unreasonable in those circumstances that my client uses whatever procedural remedies are available to him to try and get relief from this Commission to protect him in some way to make sure he is not subject to the same kind of treatment which is evidenced in his founding affidavit.

Thank you, Chair.

ADV KHUMALO SC: Mr Premhid, I do not want to leave it uncorrected that the person who committed suicide testified before this Commission. That person was never a witness before this Commission.

ADV PREMHIID: I apologise.

ADV KHUMALO SC: I do not want it to be left that way in the public eye.

ADV PREMHIID: I apologise. I spoke then subject to being
10 told the incorrect thing. I apologise then, and I withdraw that to the extent I need to.

CHAIRPERSON: That actually deals with part of my preliminary point.

ADV KHUMALO SC: Mr Premhid, you are going to go into the merits, and maybe just you will deal with this in the merits. I do not want you to deal with it now. So I can either, in advance of you arguing it, just tell you what my concern is, and then you will deal with it when you argue and then we can raise questions as you go along.

20 If you look at Prayer 3 and 4 of your notice of motion read with your Schedule A, the effect of it is that the Commission's investigation team must not have access to these documents. The Commission's head of security must not hear this evidence, must not have access to these documents. Now, that is problematic, because that is the

work of the Commission.

There is no way you can have a prayer, and our researchers, there is no way you can have a prayer that says the very evidence that is going to be led, your investigator must not hear or know about it, because their job is to investigate everything that is presented and provide the Commission with facts.

So the prayers are problematic, and I will just give you an example with Prayer 3. We have, for example, a Mr
10 Brown Mogotsi still coming to finish his evidence. If your client, either in his statement or in his evidence, says something that implicates Mr Mogotsi or that Mr Mogotsi would like to respond to, Mr Mogotsi and his representatives must have access to that in the same way that your client had access to the evidence of Mr Mogotsi.

And you would have said it is prejudicial to your client if they were not given the evidence and the statement. So it has to work both ways. If your client mentions any person and gives evidence against them, they
20 would be entitled to that. So you cannot have a situation where all papers exchanged in relation to your client's evidence are not disclosed. It cannot just be this open-ended.

And then you have heard me on the Commission staff, especially, I mean, on matters of security, for

example. The Commission's head of security, and I will not go into detail because those are sensitive matters ...[intervenes].

ADV PREMHIID: And internal processes which we are not aware of, absolutely.

ADV KHUMALO SC: To assess what security arrangements have to be made, he needs to have access to all of this. So you cannot say he must not have access because how else does he do his job? Do you follow me?

10 **ADV PREMHIID:** Ja, I do.

ADV KHUMALO SC: Ja.

ADV PREMHIID: Chair ...[intervenes].

CHAIRPERSON: I am sorry, Commissioner Khumalo said that that is for when you address the merits and that think about it and deal with it when you address the merits. I think we have reached that. Do you ...[intervenes].

ADV PREMHIID: That is why I was looking to you to give me direction whether it is now time to address the merits or not.

20 **CHAIRPERSON:** No, no, no. Let us adjourn for five or so minutes, give or take. We will indicate when we are ready. So we are not strictly saying five minutes. It may be more. Let us adjourn.

ADV PREMHIID: Thank you.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: My direction is to refuse that the application, main application, be heard in *camera*. That is my order. So it will be, the merits of that application will be heard here in open session. Reasons will be given on Monday, brief written reasons. Let us take the tea adjournment. we will resume at 11:05. Let us adjourn.

ADV HASSIM SC: Thank you, Chair.

INQUIRY ADJOURNS

10 **INQUIRY RESUMES**

CHAIRPERSON: Let us lay down some ground rules. We afford each side 30 minutes only to argue. Uninterrupted. We will ask our questions, if any, right at the end. 30 minutes, that is very fair. I am not even asking you whether it is fair or not. I know it is very fair. So now I see Mr Premhid is smiling, so I am sure he is happy. Now to my preliminary issue before Mr Premhid's argument starts.

20 I want to raise concerns about some of Mr Carrim's language in his affidavits. We do have thick skins, but if we must call something to order, I think we should. Subject to cogent explanations being given, I find some of the language gratuitous and at times both gratuitous and sensationalist. Let us look at paragraph 9.1 of the supplementary affidavit at page 54. There Mr Carrim says, I am reading the last four lines, part of the fourth.

Paragraph 9.1, I said, yes:

“It would be concerning in the extreme if it were willing, that is the Commission, to gamble with my life or my family's life to see whether the Commission's underlying kill rate would result in a underlying hat trick.”

I read this to mean that the Commission has killed, underlined the Commission, has killed two people and that
10 Mr Carrim will be the third person it kills if the Commission does not grant his application. That is how I read what I have just quoted. Now Mr Premhid, what evidence does Mr Carrim have that the Commission has killed two people?

ADV PREMhid ADDRESSES THE COMMISSIONERS:

Chair, may I say that that is - I hear what the Commission says and that is not how, with all due respect, I interpret that sentence. Because before Chair started reading, Chair started reading from, it would be concerning in the extreme, the sentence from about five lines from the bottom starts
20 with, the Commission has already experienced two such incidences. So, with all due respect, when it is spoken about the Commissions, and I say two such incidences, taking the correction that Commissioner Khumalo has made already, I am just reading out what is there.

So how I read it is not that the Commission killed

anybody, but that the Commission has experienced, in Mr Carrim's version, subject to the correction, that two witnesses that came before it were killed, and that he is saying that the Commission's kill rate, in the sense of the number of witnesses that they have experienced having been killed, would result in a hat trick and that he does not want to wait and see that happening. But that said, I take the admonition in the way that it is presented, and all I could do is apologise to the Commission if that indeed
10 caused the offence as both being gratuitous and sensationalist.

CHAIRPERSON: Thank you, thank you for the withdrawal and also the apology. Right at the end, in my notes on engaging with you, I was actually going to call for an apology for this. But let me conclude the debate on this aspect, subject to whatever response you may have by saying that. Yes, earlier as you indicate, there is reference to incidents.

But Commission's kill rate, that cannot mean
20 anything other than that is the rate at which the Commission is killing. The Commission's kill rate, you cannot - I just do not see how one can seek to change that. And that kill rate, or the rate at which the Commission is killing, is going to result in a hat trick. That is Mr Carrim being the third person the Commission kills. That is my reading of this,

and I found it quite offensive, but I do apologise. It is the Commission's kill rate, it is nobody else's kill rate, it is the Commission's kill rate.

ADV PREMHD: Chair, without repeating myself on the apology and the withdrawal, I would just say that I respectfully disagree with you, because I think that is a very narrow reading of that phrase in isolation. Not only from the rest of the sentence, but also the founding affidavit. So, if the Commission can look at paginated page 11 of that
10 same bundle, please. In the founding affidavit, at paragraph 18, at the top of the page.

CHAIRPERSON: Page 11.

ADV PREMHD: Paginated page 11, yes please. Chair, 11. On my side, it is paragraph 18 at the top in the founding affidavit. I do not know if it is the same on the Commission's side. I am getting indications it is. He explains what he talks about, where he says:

20 “One of the witnesses that appeared before the Commission was killed, and there was an attempted assassination on another witness who shortly took his own life.”

And he goes on to say:

“I am compelled to take these threats seriously.”

With all due respect, even if the Commission, and if the Chair interprets that phrase to mean what the Chair says it does, why I disagree is because at no stage has Mr Carrim ever used words to that effect, to say it is the Commission who is doing the killing. It is the Commission's kill rate in the way in which the Chair is putting it to me, as opposed to what we are saying, or what rather the witness is saying, regarding the experiences of what has happened. But I understand that the Chair has a different interpretation.

10 **CHAIRPERSON**: I just do not see how paragraph 18 assists you, because it just refers to killings. Those may well be the killings of the Commission, hence the Commission's kill rate. But anyway, I do not see how paragraph 18 assists you at all. Perhaps we should not waste any much more time.

ADV PREMID: I was going to say, I think that is where we part company, Chair, but I must reiterate for the record both my apology and the withdrawal on that interpretation that is put to me.

20 **CHAIRPERSON**: Thank you. Then let us go to the answering affidavit at page 45. Paragraph - reply, I am very sorry. Yes, the replying affidavit. Paragraph 66, it reads:

“Instead, it is clear that the Commission
or only Mr Pokkas[?] has opposed the

application for an ulterior purpose and
out of vindictiveness.”

I assume that the reference to an ulterior purpose is what?
Inferential reasoning, perhaps? I assume so.

ADV PREMhid: Well, I am in front of you, so I will bear
responsibility for this replying affidavit, and I will answer
you.

CHAIRPERSON: Actually, before you apologise, one of the
things I noted down here with regards to what we have dealt
10 with already was who settled this affidavit. Was it you, the
attorneys? Obviously, it could not have been Mr Premhid
himself, but I think you basically want to suggest that you
settled it or not.

ADV PREMhid: No, no, I am, regardless of who settled it
...[intervenes]

CHAIRPERSON: But we are past that you have retracted,
you have apologised.

ADV PREMhid: No, no, it is more than that. It is more
than that, and this is important for the public watching to
20 understand, is regardless of who said what and who settled
what, I am the advocate in front of you, I am the appointed
leader, and I take full responsibility for anything that causes
the Commission offence or upset. And as I have said, like I
apologised and withdrew in respect of the 9.1, I think it
was, if that is what the Commission wants of me in respect

of 6.6, I will do the same thing.

All I would point out is in that paragraph, the second sentence tries to lay out a justification for that particular reason. It cites paragraph 5.1 of the Commission's answering affidavit. Now, I accept in 6.6 there is not a detailed exposition to justify the first sentence, but at the very least the deponent is telling you what they are identifying as the basis for the first sentence. But as, again, I think with all due respect, I am not going to
10 defend the so-called indefensible. I will take responsibility for it, and I apologise to the Commission and the Commissioners, and I withdraw as is needed.

CHAIRPERSON: All right. Thank you. Perhaps let us leave it there. And why I introduce this by saying, is this reasoning by inference. I was then going to take you to what the test for inferential reasoning is, and then I would have also asked you, has that been satisfied for Mr Carrim to say that this is being done or averred for ulterior purposes?

20 **ADV PREMID**: Yes.

CHAIRPERSON: But perhaps let us leave it there.

ADV PREMID: May I just say on that particular averment in the paragraph, insofar as the determination of the issues in front of you is concerned, that is actually not a central issue, to the extent that it is been called out.

CHAIRPERSON: I would have thought so too.

ADV PREMHID: Yes, exactly.

CHAIRPERSON: That too, in a sense, is quite gratuitous.

ADV PREMHID: No, no.

CHAIRPERSON: Thank you.

ADV PREMHID: But that is why I am accepting your logic, and I am saying to you, I fully accept what you say to me, and I give the tenders as needed.

CHAIRPERSON: Thank you. Let us go to your 30 minutes
10 then.

ADV PREMHID: Yes, I am familiar with those 30 minutes of grace before the barrage of questioning starts. So is Mr Khumalo. He argued a few days before me when I was there for Phala-Phala. But, Chair, may I say this? I think perhaps ...[incomplete].

CHAIRPERSON: I will give you until 13 minutes to 12. You may start.

ADV PREMHID: Chair, I was going to say that in light of what has occurred for most of the morning, we had prepared
20 a note on argument which I was going to have regard to, but I think that has largely been overtaken. Instead, I intended to structure my submissions to you in the following ways, if I may. I am going to deal with four topics very briefly. Firstly, I am going to address why we are here.

Secondly, I am going to address the questions put

to me by Commissioner Khumalo. Thirdly, I am going to refer you to some cases on what I think are trite propositions in scenarios like this. And lastly, I am just going to make some comments about prejudice. So, at the outset, and we have already debated 4.2 and 4.3 in the morning, the simple proposition is this. It is not the evidence itself.

And Commissioner Baloyi actually identified that there is a distinguishing feature about this application and
10 how it was brought and when it was brought in respect of other applications, and I adopt that analysis because that is the very point that I want to start with. It is that it is not the actual evidence that my client gives which brings us here, but rather the fact that merely by appearing here on the 6th of February, as a confirmed witness who was then granted a postponement, and which gave rise to the four or five threats that we have attached to the two affidavits, which do not only threaten my client individually, but also threaten his family, that threaten the burning down of his
20 businesses, that threaten them if they even leave where they were originally located, it would not matter, because where they would potentially be moving to would also be known, and I am trying to use language so as to not give away geolocations.

So, those are the serious threats that bring us

here. So, the reason for the *in camera* then is, and I say this with all due respect, the reason for the *in camera* is the threat to the life of the witness, his family, his businesses, and his economic interests. And that is not contingent on our reading of the rules of the actual evidence to be given in chief by that witness themselves, because nothing in the rules makes the application for an *in-camera* hearing contingent on that evidence in and of itself.

I am willing to accept for the sake of debate that it
10 might be a factor that the Commission takes into consideration in deciding whether or not there should be an *in camera* hearing or there should not be an *in camera* hearing, but what I will say in that regard is that that factor is but one factor in the basket of factors, and what else is in those basket of factors, in other words, in addition to the evidence that he is going to give, is the existence of those threats, the way in which he has treated it seriously, and reported it to the police because of the seriousness involved.

20 And I must say this, the Commission in response, via the answering affidavit, starts out the answering affidavit with saying, I have some sympathy for Mr Carrim, but, and then goes on to say why the *in camera* should be refused. And with all due respect, those reasons as to why it should be refused are reasons that we in fact rely upon in

order to justify the *in camera*. So those reasons that are relied upon by the Commission are *inter alia* the following.

The first thing the Commission says is that:

10 “The applicant has already been the subject of national media coverage. That his identity, appearance, and scheduled testimony are already in the public domain, and therefore the consequence of that public knowledge is that, well, an *in-camera* hearing is going to be pointless because everybody knows.”

But the truth of the matter is that if the *in-camera* relief is granted, then everybody will not know. Yes, they would have known what the arrangement was for Mr Carrim to give testimony in an open session was, but they will not know what actually occurred thereafter if he does not give testimony in an alternative way if the *in-camera* application is granted.

20 So, with all due respect, the Commission's position that this has already been in the public eye is the very reason that we come to the Commission, because you will know we say that these threats have started emerging even before he is given the evidence. So it means that the people who are threatening my client do not know what he is going to say, but they are so aggrieved potentially by

whatever it is he is going to say that they are already making the initiative to threaten him, his family, his businesses, and his employees, as well as his economic interests in the way that it does.

The second thing that the Commission says is that, and it is a line of argument that is rooted in open justice principles, and indeed in the morning, I think it was potentially the Chair and Commissioner Baloyi who put it to me when they said I thought, or used words to the effect
10 that, I thought he would want to come and give this evidence in open so that everybody knows what is going on. But with all due respect, that argument again makes the case that we are applying for, and that is that this publicity, without the threateners even knowing what it is he has to say, are already threatening him.

If he comes here, it is almost like waving, and that is not made subject to an *in-camera* ruling, it would almost be like waving a red flag at a bull and waiting to see whether or not the bull charges and gores you, and
20 effectively to take your life into your own hands. And the reason I say that, and mindful of what the Chair has already said regarding those particular paragraphs in the replying and the supplementary affidavit, is that the Commission itself does not say, these are fictitious, these are non-credible, these are made up.

They seem to accept, at least at the surface level, that these threats are real. And so the question then becomes, for the Commission and the Commissioners, bearing in mind that you have an applicant in front of you who says, I am scared, I am fearful, does the Commission and the Commissioners turn a blind eye to that in circumstances where no one has suggested that those threats are not real, are not credible, are not serious, and do not deserve to be taken as seriously.

10 So that is point number 1 about why we are here. We are here because of the fact of the threat, and any opposition mounted on the content of the main witness statement I would submit is firstly misplaced, but secondly to the extent it is not misplaced, it is but one factor in the basket of factors under your consideration. The second topic I want to talk to is the question put to me by Commissioner Khumalo.

20 Commissioner Khumalo, you took me to the Schedule A, and you had indicated that the schedule was problematic because it excluded certain people and was perhaps too restrictive in terms of the people that it did include. And you mentioned particular individuals like the head of the security, the investigation team, the researchers, and all these categories of people.

I am willing to accept that this might be too

constrained, and the reason I can readily accept that is because we simply do not know who the relevant people are in the operation of the Commission behind the scenes. Likewise, for example, in trying to get the application in front of you, we do not know how long it took when the Commission's attorneys received it to put it in front of the Commissioners, whether it was placed in front of you before the 25th of February, whether the correspondence bundle like we asked to be placed in front of you was placed in front of you. We do not know all of these things, and the reason I highlight that ...[intervenes]

ADV KHUMALO SC: They are on the website, Mr Premhid.

ADV PREMhid: I beg your pardon?

ADV KHUMALO SC: They are in the Commission's website.

CHAIRPERSON: Please continue, Mr Premhid.

ADV PREMhid: No, be that as it may, it can be on the Commission's website, it can be stapled outside the Commission's premises. The point of the matter that I am making, Commissioner Khumalo, is that parties often ask Courts for relief all the time based on what they understand the position to be, and sometimes a Court will say to them, as you will well know, yes, you have made out a case, but this operative part of your relief is a bit too narrow or a bit too broad, and we need to include these people, and we do

not need to include those people, or whatever the case is.

So, with all due respect, if it is a question of the schedule, we can amend the schedule. Or if it is a question of the Commission making a directive regarding who should be included and who should not be included if the Commission is with me, then that satisfies the issue with all due respect, because like I said in the debate in the morning, and I think it was with the Chair, is that these requests have always been subject to the Chair making the
10 appropriate ruling, either accepting and granting the application, or dismissing the application, or granting it but subjecting it to different grounds in the relief, or anything of that kind.

So, I think with all due respect, it is a little bit difficult for me to answer the way in which the question was put at me in circumstances where it is being positioned potentially that Mr Carrim is dictating these things. It is Mr Carrim saying to the Commission, I am asking you for these things based on what I know at the time that I know it, and I
20 lay myself in the Commission's hands as to make the ultimate determination.

So, if the accuracy of the schedule is incorrect, we wear that. And we wear that not because we want to keep some people out or something. We simply do not know. And that is why we come to the Commission and ask for the

relief that we do. May I go on to my third topic? And I think, Chair, I will be done with my protected time relatively soon. May I just take an instruction?

Yes, and I am just being pointed out that the particular paragraphs that Commissioner Khumalo had difficulty with was 3 and 4. I think what I have just addressed is the difficulty with paragraph 4. Regarding the difficulty with paragraph 3, I just would point out that it is not the main statement that was subject to the *in camera*. It
10 is the in-connection therewith defined as being in the *in-camera* application.

And even if the drafting is not clear enough to make that clear, let me make this clear now on the record. That must obviously be the case because if the *in-camera* application that we are arguing now is unsuccessful, then the normal rules apply. But if the *in-camera* application that we are arguing now is successful, that would be subject to whatever the Commission and the Chair ultimately grant as the relief.

20 And again, I understand that the concern against me might be what it is. I do not think that the idea has ever been that the main statement must be kept away from the relevant Commission staff. It must be kept away from it being an open publication or as effective as an open publication. That is the contention in the *in camera*. And in

regard to the Brown Mogotsi example that Commissioner Khumalo raised, apart from saying that I do not know whether Mr Mogotsi applied for an *in-camera* hearing or an *in-camera* hearing and how that would impact fair trial rights.

Like I said in the morning, part of the Commission's imposition of an *in camera* regime would make accommodations, as it must, for these kinds of issues to be ironed out so that, like we know, for example, in High Court
10 proceedings and in all court proceedings where there is a confidential affidavit filed, sometimes what the Court says is it seals that part of the record and the parties are given a full opportunity to engage each other on the contents of that confidential affidavit.

It is just that those exchanges of affidavits are subject to a confidentiality regime. And we do not ask for anything more than that. And in fact, we ask the Commission if such an *in-camera* regime is going to be upheld in these circumstances, that that is the kind of
20 consideration that is applied. May I say then on the third topic that I had, which was about the cases that I wanted to deal with, I think these are fairly trite propositions that I am making from the cases that I have cited.

I have given my learned friend notice of those cases and the paragraphs that I am going to rely on. So, I

am not going to ambush her very deliberately. But my learned friend raises her eyebrows at me. But these cases, we say, put forward two propositions. The one proposition is that the state has a positive duty towards citizens to protect them where there is a concern about their rights. That is derived from cases like Carmichael. Carmichele, I apologise. I always say Carmichael.

Carmichele at paragraphs 44 and 45. And the Court will be familiar with Carmichele. And then the other
10 case that we rely upon is the SCA case of Van Duivenboden, which the Commissioners will also be familiar with. And the paragraphs there are 20, 21, and 22. Now, why that is relevant, of course, is because we say that on the facts of this case, there is a threat to the right to life, security, integrity, family, commercial interests of the witness.

This is a body that exercises public power in the name of the state. And so, this Commission is caught by the same obligations that the state has to make sure that
20 where issues of safety are raised, that it properly applies its mind and discharges its power in accordance with that. The other two cases - sorry, I said four cases. There are six in total, and I will come to the other two shortly.

The other two cases that I want to refer to is the Constitutional Court matter of Independent Newspapers,

otherwise I think commonly referred to as Masetlha. At least that is how I know it. And the paragraphs there, the relevant paragraphs there, are 42, 43, 44, 45, 58, 59, 60, and 61. And the other case that I would refer to whilst I am talking about Masetlha is the SABC v NDPP case that came before the Con Court.

And I think that was - I speak subject to correction, but I think that might have been in the context of *Van Breda* and whether or not his criminal trial could be subject to
10 publication. And the paragraphs we rely on there are 28, 29, 30, and 31. And what those cases make abundantly clear is that:

“Courts in those contexts, we say Courts, it applies as equally as against this enquiry as a tribunal, must engage in a balancing exercise where default positions of openness, which is what the default rules of this Commission envisage, conflict with competing and
20 contesting rights. And where those competing and contesting rights are put before the Court, and this relates to what I was saying earlier about one factor in the basket of factors, the Court will seriously apply its mind to circumstances

where it treats openness by default not as an absolute principle, that there are justifiable circumstances where it will derogate from openness as the default principle, and that those require then the application of this balancing act, and we say that some of those factors that need to be included in the balancing act are those cases...”

10 Are the instances where my client comes to the Commission and under oath tells you about the threats that he is facing to life, limb, property, and family. The other two cases, if I may, whilst I am machining through this list, is Midi Television - I apologise, I think Midi Television was Van Breda, I said SABC v NDPP was about Van Breda, but Midi Television, which the tribunal will be familiar with at paragraphs 19, 20, and 21, and the other older Constitutional Court case of Mamabolo, which if I am not mistaken was written by Justice Kriegler, and the relevant
20 paragraphs that we rely on there are 41, 42, and 43. And what we say those two cases give rise to, again in the context of discussing the openness by default principle, is that firstly, no single interest, this is from *Mamabolo*:

“No single interest overrides others.”

So yes, just because this Commission might have an

interest in an open justice style of argument that justice must be seen to be done does not mean that that is judged in isolation from competing interests where security of the person is concerned and so on. The second proposition that these cases give rise to, which is from the *Midi Television* case, is that:

10 “The restrictions on publication are permissible where it is demonstrable that there is substantial risk to justice or to other constitutional interests.”

And we say that we fall into that category. We fall into the category that there is substantial risk to constitutional interests and that is why the *in-camera* application in the way that it is brought before you is entirely justified. Chair, on the last topic if I may, the topic of prejudice, I did address some of this prejudice in the morning, the so-called prejudice being at the hands of the Commission, and I am not going to repeat myself there.

20 Instead, all I am going to say, Chair, and you will recognise this not only from having deposed to the answering affidavit in the unsuccessful urgent application, but also when we were in front of you in the postponement application, that my client's complaint throughout his involvement in this Commission's proceedings is one about consistency, fairness, and procedural and substantive

rights.

Rightfully or wrongfully, that is his view, that he is being treated in a way that is prejudicial by the Commission and in fact what is happening is rather than the Commission seeking to cooperate with him and his reasonable requests, like, for example, receiving the proper 10(6) notice. Like for example, receiving the bundle in good time. Like, for example, receiving an undertaking regarding the confidentiality of the statement in good time.

10 Like, for example, that an expedited application which is sought to be determined before a deadline is approaching is placed before the Commission does not seem to happen. Those are the head notes, if I can use that phrase, of what my client claims as his ongoing prejudice in these proceedings. And I mention that prejudice because it is regrettable that we find ourselves in this position.

20 Unfortunately, the way in which my client seems to be treated is in an adversarial manner rather than what we understand a role of a Commission of enquiry to be as being an inquisitorial manner. And unfortunately, the way in which things have unfolded in front of this Commission have meant that, I apologise, someone is trying to phone me again, the difficulty that my client has is that rather than reasonably being accommodated so that he can come to the

Commission and give the evidence and do his 'job' and get out of the Commission as soon as that job is done, instead we get tied up in these kinds of procedural skirmishes where at the end of the day, like for example on the issue of the bundle, which was the subject of the postponement application, the bundle eventually was given, a specific bundle was eventually given the night before we were expected to appear for the first time.

And why I highlight that prejudice in the context of
10 this ongoing dispute we have in front of you is that in the absence of any credible basis to say that these threats are not real and not serious, we would say, and I say this in a guarded manner, that it is heavy handed of the Commission with all due respect to oppose the application on the basis that it is already been publicised or whatever else it is they say.

Because at the end of the day, if the *in-camera* application is granted, this Commission will still be able to do its job. And it is important to say that because the *in-*
20 *camera* application at various times is treated as though it is an act of gamesmanship, which it is not. It is a legitimate request under the Commission's rules for protection from the Commission regarding the giving of that evidence so that my client can do what my client needs to do because this Commission has asked him to do it.

All we would say is that when this Commission brings my client in front of it to give such evidence, that it does so in a manner that is suitably sensitive to the threats that he faces and gives appropriate relief to protect him in light of those threats. Might I take an instruction? Just whilst, before I yield the floor, so to speak, just one thing that we are aware of.

Obviously, whilst we sit here, we expect the Commission's supplementary bundle, which we anticipate to
10 be given today because it is two business days later after the filing of the statement. We hope that that will be done because that will, help my client come and do his job rather than end up in another procedural skirmish about whether or not there has been adequate time or inadequate time. But Chair, those are my remarks in my predicted time and I yield. Thank you.

CHAIRPERSON: Thank you, Mr Premhid. Just on the last point, Ms Hassim, I assume that if that bundle is not ready, you will move mountains for it to be served today.

20 **ADV HASSIM SC**: The bundle will be provided today.

CHAIRPERSON: Thank you. Thank you. Mr Premhid, you, quite early on, you made a, maybe let me start right at the end. I am not sure that I follow your submission on the relevance of what you referred to as head notes on prejudice to the determination of the *in-camera* application.

I am not sure what the relevance of those head notes is exactly. You did explain it, but I still remain in the darkest to it, what you suggest the relevance is.

ADV PREMHID: May I respond? Thank you, Chair. No, I accept what you say to me. What I am using those particular examples of is, in each instance of those examples, my client has asked for a reasonable accommodation, which has been refused. The response to that has then been that my client has to, through its legal
10 representatives, litigate quite aggressively, whether in court or in front of the Commission, with interlocutory applications to have that reasonable request firstly reasonably considered and then decided.

And I was linking that pattern of conduct to the opposition that is being put up here, and I explicitly detailed those grounds of opposition, the publicity, the fact that it is already known. But importantly, there is no counterargument as to the credibility of the threats, that in those circumstances, the Commission insisting that my
20 client be made to give the evidence in an open session where those threats are highlighted for determination is a further instance of the prejudice that my client finds himself in. That is the extent I was using it.

CHAIRPERSON: I trust, though, that the suggestion is not that the *in-camera* application will not be decided on its

merits.

ADV PREMHID: No, no, no, not at all. I know for a fact it will be decided on its merits.

CHAIRPERSON: I just wanted to be sure in my mind what exactly you mean by that.

ADV PREMHID: In fact, Chair, if I may, I think the way you have put it to me crystallises the exact point. It is that, in each of those instances that I have spoken about, my client, to use your phrase, has had to move mountains to try and
10 clarify his position and get certainty and outcome. And this *in camera* application is yet another example of that in circumstances where my client not only said on the 18th, a week before, he asked for an outcome by the 25th, bearing in mind that the 27th was the due date.

He also said, just determine this on the papers, expeditiously, so we do not have to take up the Commission's time, and I know what I need to do. So, I fully agree with you, Chair. It must be decided on the merits. But the fact that we have had to repeatedly move
20 mountains to get that determination and even in circumstances when we asked for an earlier ruling is the exact prejudice that my client relies upon. Thank you, Chair. I am indebted.

CHAIRPERSON: Thank you. Now, let me take you to something you said quite early on, which is, and I hope I

will not mischaracterise what you said. You said that applications for *in camera* hearings or rather, this one, this application for an *in-camera* hearing does not hinge on the evidence Mr Carrim is going to give. Even though I cannot think of ready examples, I am willing to accept that that may be so in some applications.

But what exactly do you say is the basis for your submission in this particular application? I am asking that in this context. Not every and any witness that has testified
10 before us has received threats. And those that have either received threats or had a reasonable basis to believe that their lives were at risk even if they had not received threats gave us cogent reasons for us to understand why there would have been threats and why there would have been a reasonable belief that there was a risk of bodily harm or even a risk of them being killed.

Something cogent was placed before us. Please bear in mind that here I am not talking about just the fact of threats. I am talking about what underlies the threats that
20 we are told about. That is where my focus is. Now, on what basis would Mr Carrim I know the threats do not come from him and he says in so many words in his affidavit that he does not know where the threats come from but if he sits down and applies his mind in the light of the testimony that he is going to give, who does he think may possibly be

threatening him? He is best placed to think about that and possibly to even come up with answers to that. Bear in mind that I say in all without exception, all the other cases where applications for *in camera* hearings have been made, we were given something cogent which had a factual foundation.

ADV PREMHID: Thank you Chair, may I respond? Chair, on the first point where you said you put to me the not hinged proposition and you said it may be so, just to
10 emphasise that, our position is that based on the Commission's rules, that does not seem to be the case to us. But let us leave what the rules may say or not say to one side for the moment. The not hinged proposition comes from the fact like I just read back to you in Mamabolo, it is a weighing up exercise.

CHAIRPERSON: I am not there yet. I am not at Mamabolo in that weighing up exercise because you raised the weighing up exercise in the context of open justice. So, I am not there yet. I am just at the level of possible facts,
20 the possible basis for threats.

ADV PREMHID: I will come to that last.

CHAIRPERSON: That is where I am.

ADV PREMHID: I will come to that last.

CHAIRPERSON: I do not quite see how the Mamabolo balancing exercise, the open justice principle. I just do not

see how the relevance of that to what is I am raising.

ADV PREMHID: May I develop the submission, and I will come to those very points about the facts that you put to me.

CHAIRPERSON: Yes.

ADV PREMHID: I am sorry if I am taking the circuitous route. The reason that I started Mamabolo is because it speaks to the Court's discretion in weighing up issues in front of it when there is a counter consideration to the
10 default position of open justice. So insofar as where I anchor my submission, that it is not exclusively contingent on the content of the main witness statement, is derived from the Mamabolo principle, buttressed by the Midi Television principle that talks about we derogate or we depart from open justice when there are credible threats and so on. So, I am willing to accept ...[intervenes]

CHAIRPERSON: I am exactly at the credible threats.

ADV PREMHID: Yes, ...[intervenes]

CHAIRPERSON: I think that is where we should be before
20 we get to the balancing exercise. Show me the - I am just asking you a question and I am not suggesting that the threats are not credible.

ADV PREMHID: And Mamabolo ...[intervenes]

CHAIRPERSON: All I am saying is what is the possible grounding and that will then help us determine the question

of the credibility of the existence of the threats.

ADV PREMHID: Sure.

CHAIRPERSON: That is where I am.

ADV PREMHID: I accept that. I accept that.

CHAIRPERSON: Yes.

ADV PREMHID: But I think what is important is where I started out because that sets the ground rules with respect as to what discretion the Court is being asked - I apologise, I keep saying Court. I look at you, ADC Madlanga, and I go
10 back to a different time and different place. But, Chair, it is about what discretion this enquiry tribunal is being asked to exercise.

That is why I start with both Mamabolo and Midi Television because it says that, yes, you consider openness, but you consider all the things on the other side of the T account, if I can use that phrase. Then let us go to the examples that you gave me. This is now the facts and the credibility that you were talking about. Those examples, from my understanding of what you have said,
20 Chair, is that they were all anticipatory explanations for why *in camera* hearings should be justified.

If I get your words wrong, Chair, please correct me, but you said something to the effect that those witnesses who asked for *in camera* hearings gave cogent reasons for us to understand who would have threatened them or where

those threats could have come from in anticipation of asking for *in camera*.

CHAIRPERSON: Or even where they would come from in regard to those witnesses who did not say that they had in fact there had been threats.

ADV PREMHID: But you and I are *ad idem* on that, and I would say that my client is with all due respect in a stronger position than those people. Because what my client says or does is he does not come to the Commission on the basis of
10 reasonable speculation about what threats I might face or where those threats may come from or who may be giving those threats.

My client, by contrast, comes to the Commission with real threats annexed to the affidavits and says, look at what I am being subjected to. Now, yes, it might be that my client is being criticised for not doing a further exercise in the way the other witnesses did, in answering the five W's and the H, you know, where did it come from, when, who, and all those kinds of things.

20 But look at what my client does. Apart from coming to this Commission to ask for the *in-camera* relief, he goes to the Commission to legal complaint on the basis that he has received these threats. So, again, going back to the Mamabolo, Midi Television framework I was talking about, it might be that the failure to address those questions weighs

as a factor in the basket of factors against granting the *in camera* application, but I would say with all due respect, imposing that on my client, and doing so in an adverse way in the balancing exercise, is contradicted by the factual position that he is in.

CHAIRPERSON: I am still not at the balancing exercise. I am still at the level of the facts and what would - put it this way, who would these threats possibly come from? And I repeat that I am saying Mr Carrim is best placed to scratch
10 his head and come up with ideas as to who these threats might come from.

ADV PREMHID: Yes.

CHAIRPERSON: And I am raising this because this is going, on the 9th and 10th, this is going to be his testimony and his alone. He knows what he is going to say against whom and who therefore might possibly want to threaten him, not to say whatever it is he might be minded to say.

ADV PREMHID: Yes.

CHAIRPERSON: It is on that basis that I am raising this. I
20 am not saying I do not believe him. It is very difficult to say that I do not believe him when there is no affidavit that says Mr Carrim, you are lying.

ADV PREMHID: Yes.

CHAIRPERSON: But sitting here, looking at what he says, I want it to make sense to me.

ADV PREMHID: Yes.

CHAIRPERSON: And I am saying part of what would make it make sense to me is possibly who he thinks might threaten him.

ADV PREMHID: Yes.

CHAIRPERSON: Do you understand where I am coming from?

ADV PREMHID: Yes, we are *ad idem*.

CHAIRPERSON: And this has nothing to do with the
10 balancing exercise. I am purely at the factual level.

ADV PREMHID: Yes, I mean, I think it does come to the balancing exercise, which is why I started there. However, I understand what you are putting to me, Chair. What you are saying is the sufficiency of the explanation regarding the possible source of those threats is missing from the affidavit. And to the extent that that is missing from the affidavit, that may be something which if you had, would have made your decision may be easier, but now that you do not have it, makes it a complication for you in terms of
20 how you apply your mind to the relief sought and the outcome. I understand us as being engaging on that sufficiency explanation, not whether the threats are credible or not credible. I see your microphone is on, Chair.

CHAIRPERSON: I know you are good at reading gestures. You do that in the Constitutional Court all the time and even

address the gestures in your argument. I am not sure that I want to get there, that is, get there to the extent of saying.

ADV PREMID: Okay.

CHAIRPERSON: I am 100 percent saying there is no issue with the credibility. I am not there yet.

ADV PREMID: Yes.

CHAIRPERSON: I am actually testing the credibility in wanting to find out who could possibly have threatened Mr Cassim.

10 **ADV PREMID**: Yes.

CHAIRPERSON: I am quite mindful that we are dealing with an application that is on affidavit, and, you know, I do not even think we get to Plascon Evans here because there is nothing countering or seeking to counter.

ADV PREMID: Yes.

CHAIRPERSON: I realise all of that. But it does not mean that we cannot engage at the level of is this something credible, just on its face. That is where I am. And as part of that engagement, I want to know who Mr Carrim thinks
20 may possibly be threatening him.

ADV PREMID: Well, I cannot give evidence from the bar, and I am not going to give a version on behalf of my client, whatever he might have told me in consultation. So, I now, in front of you, I cannot give you that explanation. What I can accept is that that explanation in the way that the Chair

is putting it to me is something that should have been there or might have been preferable if it was there.

And I accept that it is not there. And what I am saying to you Chair is that even in the absence of those particular averments being made, that does not on its own undermine the credibility of the threats as they are evidenced on the papers. And as you yourself Chair have said to me, no one says in response to those threats, unexplained as they may be, Mr Carrim, you are a liar, Mr Carrim, these are invented, Mr Carrim, you are just wasting
10 our time because this is a gimmick from you.

So what I am saying is I am confronted with the position where the Chair says to me these questions might have been or these issues if they were addressed might have been preferable, they are not addressed in the papers and I am saying in that circumstance it is what it is and we can still seek the relief. But I do not know, and I am speaking without an instruction, but I do not know if these are the enquiries that the Commission is interested in,
20 which again, without rehearsing anything about prejudice, if we were not treated adversarially and if we were treated perhaps a bit more reasonably, we could have been advised about or told about.

Because remember we are also making the application on the strength of the Commission's rules where

these kinds of issues, yes, they might be raised by the Chair, they might be relevant, but they are not specified in the rules. So, my client is again caught between a rock and a hard place where he looks at the rule, he does what he thinks the ...[intervenes]

CHAIRPERSON: On that point about if perhaps an indication had been given, would a supplementary affidavit assist?

ADV PREMID: I was just going to come to that, and I was
10 going to say that is what I was going to say without an instruction.

CHAIRPERSON: Yes, Mr Premhid.

ADV PREMID: I was going to say, Chair, that that is what I was going to come to regarding and without instructions submission was that given that position and where we are, a supplementary affidavit dealing with these issues pertinently may be relevant for the Chair and the panel to consider, but of course that might have consequences in terms of my learned friend and obviously mindful of your
20 judicial role, you will say to me, but now you are supplementing after you file the application and you are trying to remedy after the fact. I am just tendering this as a practical or potential practical solution to the position we find ourselves in, which is, is if those are the kinds of questions that the Commissioners are interested in, then my

client should probably file a supplementary affidavit addressing those questions.

CHAIRPERSON: The fact that I raised it does not necessarily mean that that will be granted.

ADV PREMHID: Absolutely.

CHAIRPERSON: It is something that will be considered.

ADV PREMHID: Absolutely. But that is why I say you might punish me for not having that there at the beginning, so I am expecting it on both grounds.

10 **CHAIRPERSON**: I do not think we would be that strict. There is a whole lot of things that apply in court that do not apply here. For example, the nature of the evidence that we may admit here.

ADV PREMHID: Absolutely.

CHAIRPERSON: Let me go on. You see, my difficulty, and which is why I am engaging you on this, is this. The threats from where I am sitting appear to come out, you know, like a bolt of lightning, as it were. No factual foundation whatsoever. They just poof. They are threats.

20 **ADV PREMHID**: Yes.

CHAIRPERSON: And there is no explanation on their possible source.

ADV PREMHID: Yes.

CHAIRPERSON: We have engaged on that.

ADV PREMHID: Yes.

CHAIRPERSON: I am just explaining why I am engaging you to the extent I am engaging you.

ADV PREMID: Yes.

CHAIRPERSON: That is just to explain. They seem to just come out of the air, as it were.

ADV BALOYI SC: But Chair, that is the exact dilemma my client faces, that these threats do come out of the air, and that they are coming from numbers, and he says under oath ...[intervenes]

10 **CHAIRPERSON**: And something I forgot, something I forgot on the last point I made. There are witnesses who before us were under circumstances that are not comparable at all to the Mr Carrim's situation. Not comparable because they were in far more serious situations. Situations in terms of the testimony that they were to give, and ultimately gave, could possibly expose them to the risk of bodily harm and even death, by far.

20 So, on the face of it, simply no comparison from where I am sitting with Mr Carrim's situation, which makes it difficult from where I am sitting to understand where on earth these threats could possibly have come from. About two weeks or so, we had an IPID investigator who testified openly here. I know that the facts of one case cannot necessarily be used to determine another, but I am just showing you this to try to make you understand why I have

difficulties with threats that appear to come from nowhere, in the sense of a proper grounding.

That is where I am. That witness testified here and she told us in graphic terms the risk that she was and continues to be exposed to, and she was brave enough to sit there and testify openly before us. So, as I say, I know at the risk of repetition, I am saying for myself, I want to understand who could possibly be threatening Mr Carrim, who is at least at face value, unless there is some
10 explanation, does not appear to be in a risky situation at all. The risk that we see comes from the unexplained threats. Any further, any response to that?

ADV PREMID: Yes, thank you, Chair. May I just say that had my client, and I need to speak very carefully because I am - there are things that have been said to me which are not in front of the Commission and so, but you know, we are coming pretty close to discussing that, so I just need to give that caveat, if I may. Had my client known or reasonably known or suspected, one would have imagined him to say
20 these things, and he not only says to you about the unknown numbers and does not give an explanation who those potentially might be under oath to the Commission, he gives an equivalent statement to the criminal case where he is opened a criminal complaint and says, this is all the information I have, here is the threats, please investigate

because it is threatening me. Now, I do not want to be impertinent, but the police are hopefully not going to turn around to my client and say, no, no, no, sorry, we are not going to investigate these threats despite the objective evidence of these threats because you did not do your own forensic exercise as to who it may be or ...[intervenes]

CHAIRPERSON: I do not think the two are comparable, and please, yes, okay, let me not gag you.

ADV PREMID: The point I am making is that even an
10 imperfect complaint to the police can sustain a criminal investigation. Obviously, we are in a different scenario here, but the point that I am making is that it is the fact of those threats in the criminal scenario that would trigger a criminal investigation, it is the same facts of the existence of those threats that are placed before the Commission by the witness who gives the fullest explanation, and the Alice in Wonderland world we are potentially heading towards is that my client will be refused relief on an insufficiency ground potentially, but the same insufficient evidence when
20 placed in front of the criminal case or the police might result in an actual criminal investigation.

So the dilemma for my client is that through the engagement with the Chair, it is that lack of forensic exercise that he was supposed to do that is now coming back to potentially prejudice any relief that he could seek,

but surely the question should be if he knew who these people were, he would say it, because like the Commissioner is putting to me, those would be weighty factors as to whether or not to grant the application. But then how do you expect the witness to engage the hypothetical counterfactual of who it could be in circumstances where on the facts in front of you, they tell you they do not know who it is.

And I am not saying that the Commission is
10 expecting my client to go down the world of speculation, but what must my client speculate about where he says, I do not know these numbers, I do not know what their connection is. And must he invent a potential connection between - and I ask that rhetorically of course, I am not saying he must invent, I know that the Commission is not saying that. But I am putting the proposition, must he invent that connection in order to get relief in front of the Commission?

So that is the danger with where we are going down
20 with respect regarding the sufficiency explanation. May I just make two points in response to what the Chairs just put at me, and then I will yield again. The other - so that is why with all due respect, what other witnesses did or did not do, and whether they were brave enough to sit in an open session or not brave enough to sit in an open position

is actually immaterial. And it is immaterial because I do not understand the position to be that you need to show a quantifiable level of harm to try and trigger this kind of relief from the Commission.

It is rather whether if we use interdict language for example, there is a reasonable apprehension of that kind of harm. And in these circumstances on the facts, what we cannot run away from, even with the evidence being as insufficient as it might be, is that the existence of those
10 threats are on the table in front of you, and that grounds the reasonable apprehension, given that those are real threats, to seek the relief in front of you. So, I fully accept what the Chair says to me, but that is really the difficulty that I am in, and which is why I will gently mention the supplementary affidavit again if it should help.

CHAIRPERSON: One last point from me. I hope I am not articulating this out of context. You said something like, the people threatening Mr Carrim do not know what he is going to say. Was that not part of the submissions you
20 made? I do not follow the basis of this submission. Is it not more likely that people that would threaten Mr Carrim would be people who have somewhat of an idea of what he may say, and therefore would threaten him exactly because of their belief as to what he may say? So, I do not quite follow the submission.

ADV PREMHID: Yes, what I was pointing out was just the factual timetable in which it arose. So, it is obvious, it is obvious - well, let me not say it is obvious because stranger things have happened. We assume that Mr Carrim is not just going to be subjected to threats by anybody, right. We can assume for the sake of our engagement that Mr Carrim is going to be subjected to threats by people who potentially know what they think Mr Carrim is going to say or not say, and how that might implicate or impact them.

10 All I was saying in respect of what you put to me, Chair, is that before he then even comes and says whatever he might say, he is the subject of the threat. So why I mentioned that is because it demonstrates with all due respect that whoever these people are, and whoever they may be, and whatever the connection they have to Mr Carrim, direct or indirect as it is, are taking this kind of hostile attitude towards him, this kind of threatening posture towards him, which is a generic threat that is not premised on what you are going to say, it is your participation in the
20 Commission at all is going to result in us coming after you in the way that we are threatening you to do so.

So, all I am saying is that let us imagine a world where Mr Carrim comes in front of you, and there is someone out there who thinks that he is going to say something about him, but then he comes in front of you,

does not say anything about them, right. That person then does not have, they do not know what he is going to say, but they might be the one who is threatening him even before he says it, before he comes here.

So that is the dilemma that my client is faced in, and that is why, Chair, I can adopt what you say to me regarding who these people potentially are, but I am just emphasising that the way in which these threats come about in terms of the timing shows how serious they are, that they
10 are making these threats even before he comes here and says anything. So, I understand what you say, it is just that I have a slightly different view on that exact same proposition.

CHAIRPERSON: Thank you, Mr Premhid.

ADV PREMHIID: Thank you, Chair.

CHAIRPERSON: Thank you.

ADV BALOYI SC: Mr Premhid, I think the first two things that your client relies on in an affidavit, in the affidavit, need to be straightened out. You have withdrawn in your
20 earlier engagement with the Chair the references to the death by suicide of Mr Pretorius, so there is no reliance on that anymore. Am I correct to understand that?

ADV PREMHIID: Well, that is the consequence of being corrected and me accepting the correction, yes.

ADV BALOYI SC: That is not one of the facts he relies on.

ADV PREMHID: Yes.

ADV BALOYI SC: The second is the killing of Mr Van Der Merwe, Witness D, that he relies on in his affidavit, and he annexes, if you want me to refer you to, to remind you ...[intervenes]

ADV PREMHID: Yes, Commissioner Baloyi.

ADV BALOYI SC: If you look at your, the main affidavit, and you go to page 15 of that, yes, it is, yes, 15 in the main affidavit, but it is - so it is obviously mentioned in the
10 affidavit itself, and then he annexes this, and this is one of the factors that he raises with us as part of his concerns that he may be killed. Can we just perhaps clarify with you that there is nothing, there is no evidence or information in the public domain or before this Commission that supports a statement that the witness was killed because he testified here. There is no such evidence. This is still very much a matter of police investigation. You are not stating it as a fact.

ADV PREMHID: Yes, and I would do no more than look at
20 the headline of page 15 where it says:

“In an apparent hit of the witness.”

ADV BALOYI SC: Yes.

ADV PREMHID: So, my client's position has been that these things are happening.

ADV BALOYI SC: What things are happening?

ADV PREMHID: Well, the apparent hit is happening, and he relies on that article to say so. He is not attaching evidence that has come in front of you.

ADV BALOYI SC: He is not saying he was killed because he testified.

ADV PREMHID: Yes.

ADV BALOYI SC: That is not what you are trying to say.

ADV PREMHID: The position taken by my client is that, and I will direct you, if I may, Commissioner Baloyi, back to
10 that paragraph 18, which did not help me earlier, but I am hoping is going to help me now, is where he is giving an explanation of what he understands to be happening regarding witnesses, and he is contextualising that to say, I am just not willing to take a risk. He is not being definitive. He cannot be definitive.

ADV BALOYI SC: Well, in paragraph 10, he says:

20 “It is well established that there has been assassinations and attempted assassinations of witnesses who have appeared before the Commission or were scheduled to appear before the Commission to testify.”

Right, and then he attaches those articles. What I am putting to you is he makes that statement, but in fact, as a matter of fact, there is nothing that says the witness died

because he testified.

ADV PREMHID: Yes, I have no difficulty in accepting that.

ADV BALOYI SC: Yes.

ADV PREMHID: I have no difficulty in accepting that.

ADV BALOYI SC: Okay, all right, now having done that, can we, and in light of your discussion with the Chairperson, can we have a look at the documents that you have attached as threats?

ADV PREMHID: Yes.

10 **ADV BALOYI SC:** Because I would like to, firstly, maybe, let me foreground it this way. Your client is a businessman, right. That is what he tells us in his affidavit.

ADV PREMHID: Yes.

ADV BALOYI SC: He is a businessman. Your client tells us in his affidavit, at least in the annexures that we have here, he is a member of the ANC.

ADV PREMHID: Yes.

ADV BALOYI SC: Okay.

ADV PREMHID: That is not in doubt.

20 **ADV BALOYI SC:** We have got those facts, right. Now, I look when, and please assist me to the extent that I may be misreading these annexures. Now, my reading of these annexures, except the last one that we will get to, none of them, none of these annexures, the first is at page 14.

ADV PREMHID: I am there.

ADV BALOYI SC: There is absolutely no reference to his appearance before the Commission.

ADV PREMHIID: Yes.

ADV BALOYI SC: Previous appearance and anticipated appearance, right. Nothing. Nothing about it makes that connection. Do you accept that?

ADV PREMHIID: Subject to the caveat that the - I mean, factually, yes, I accept it. But my submission in respect of this annexure is that the timing of it is suspicious, 10 alternatively convenient, given when it comes. So, factually, does it mention the Commission? No, it does not. But in context, the submission is that it is related, inextricably related, to his appearance here and the evidence here.

ADV BALOYI SC: When he first appeared.

ADV PREMHIID: Yes, that is right.

ADV BALOYI SC: And this would have been, he would have received it, if he did, he would have received it after the court application.

20 **ADV PREMHIID:** No, because if you look at the page 14, it says Sunday. And I think the Sunday that that is referring to is Sunday, the 8th of February.

ADV BALOYI SC: And the application was issued when?

ADV PREMHIID: The application was heard that Tuesday, I think, that was the 3rd, and then we were in front of you by,

and the order came out on the 5th, and then we were in front of you on the 6th.

ADV BALOYI SC: Okay, so, the application was in the preceding week before he appeared before us.

ADV PREMHID: It was in the same week. It was heard and determined in the same week.

ADV BALOYI SC: The chronology I am trying to clarify is an application was issued.

ADV PREMHID: Yes.

10 **ADV BALOYI SC**: The urgent application was issued.

ADV PREMHID: Yes, yes, yes.

ADV BALOYI SC: And you were heard.

ADV PREMHID: Yes.

ADV BALOYI SC: Before he came before us.

ADV PREMHID: Yes, three days before.

ADV BALOYI SC: Okay, and so, this is issued only after he is appeared before us.

ADV PREMHID: Yes.

20 **ADV BALOYI SC**: And in the court application, he does mention that he is going to be appearing before us, but he does not get a threat. In the period between the court application and his appearance before us, there is no threat received.

ADV PREMHID: No, no, there are none.

ADV BALOYI SC: Okay, so, we have cleared that page 14

does not make any reference to his appearance before us, right?

ADV PREMHID: But may I say something in response to that?

ADV BALOYI SC: Yes.

ADV PREMHID: Is that not ironic? Because when he is in the urgent application, and the possible outcome of the urgent application is maybe he does not have to testify, given what the skirmish was at that moment in time, there is
10 no issue. There is no threat issued. But just thinking about what the Commissioner has put to me in the timeline, after he comes here on the 6th, and one of the outcomes from the 6th is the Chair's order directing you will appear on 9th and 10th, not even two days later than on the Sunday, the threat is issued.

ADV BALOYI SC: Yes.

ADV PREMHID: And the threat is then about whatever is happening here about your life and your house. And even though it does not mention the Commission, I would just
20 point to the timing using the exact facts that you have put to me, Commissioner Baloyi, is, as I said, either ironic or convenient.

ADV BALOYI SC: Yes, maybe it is convenient. I think the point that I am making to you is, well, the first time anyone knows that your client is coming to the Commission is not

when he appears here. That is the simple point I am making, that the first time it is public knowledge that your client is going to appear before the Commission is with a court application. That is the simple point I am making.

ADV PREMHIID: Yes.

ADV BALOYI SC: That is the simple point I am making, as a matter of fact.

ADV PREMHIID: Yes.

ADV BALOYI SC: Yes, that is all I wanted to say.

10 **ADV PREMHIID:** I can - I mean, I can give that fact, because those are the facts. I can give the answer. I am just, what I am trying to resist is the path we seem to be going down regarding the timing of the threat *vis-a-vis* the appearance here in front of the Commission and the absence of a threat *vis-a-vis* the application and the inference to be drawn.

ADV BALOYI SC: No, I am not at inference stage yet.

ADV PREMHIID: Okay, well, then I have no concern.

ADV BALOYI SC: I am not there yet.

20 **ADV PREMHIID:** Then I have no concern.

ADV BALOYI SC: I am at fact establishing stage.

ADV PREMHIID: Before we go there, potentially, yes.

ADV BALOYI SC: Potentially. So, we have established page 14 does not make any reference whatsoever. So, this threat could, on this page alone, the source, the reason for

the threat could be anything. Could be his membership of the ANC, could be his business associations, any of that. Maybe even the Commission.

ADV PREMHIID: Yes.

ADV BALOYI SC: But we have no basis on page 14 to link it to the Commission.

ADV PREMHIID: Yes, well, no explicit basis to do so.

ADV BALOYI SC: No basis at all. What I am suggesting is there is no basis at all.

10 **ADV PREMHIID:** No, but that is where I need to resist that conclusion, with all due respect, because by the same token that you put up two other possible explanations, his membership of the ANC and/or his business interest, why is the Commission and the timing of the Commission seemingly discarded by the two alternatives?

ADV BALOYI SC: I have included the Commission. I have said to you it may be the Commission, but I have no basis to say it is one or the other. There are three possible bases from what I have put to you I have proposed to you.

20 There are three possible bases.

ADV PREMHIID: Or more. We do not know.

ADV BALOYI SC: Absolutely.

ADV PREMHIID: Yes, then we *ad idem*. Thank you.

ADV BALOYI SC: And then A2, we have agreed it says nothing about, it does not help anything.

ADV PREMHIID: That was the attempted assassination.

ADV BALOYI SC: No, this is the death, in fact, of Witness D, him being shot.

ADV PREMHIID: The one at page 15?

ADV BALOYI SC: 15, yes.

ADV PREMHIID: Yes, yes, the apparent hit, sorry.

ADV BALOYI SC: This has nothing to do with being a reason, providing a reason for your client to fear appearing before us.

10 **ADV PREMHIID:** Well, you have heard me on that already, and I have tried to read that in context for you, having regard to the other paragraphs in the affidavit where he gives an explanation regarding how he sees these things happening, which animate his fears. So, factually, I accept your correction of the record like I did earlier with Commissioner Khumalo, but with all due respect, I do not think that that detracts from the underlying point, which is that even if he is misunderstood the correct facts regarding what happened in respect of this witness, that is
20 nonetheless something that animates the fear, which triggers the *in camera*, and that takes us to a reasonableness assessment. So, I think we are happy then.

ADV BALOYI SC: Of course, it is up to us to look at this that he is referring to, finally, to determine whether that fear is reasonable or not.

ADV PREMHID: Yes.

ADV BALOYI SC: So, it is not for him to simply say, I am animated, I am concerned because of this, and then we must make a decision that favours him.

ADV PREMHID: No, of course.

ADV BALOYI SC: We have to assess the reasonableness of his fear, and we can only assess it on the basis of what he is relying on, right?

ADV PREMHID: Yes, I accept that, but may I just say that,
10 and I speak subject to correction, but the answering affidavit does not make these points about what could have animated my client's fears and says, oh, well, you know, you talked about two witnesses, but actually this is the correct factual position. And so, inasmuch as, obviously, the Commission needs to correct the record where there are mistakes and apply its mind to the issues as they are, the point that I would make is that the Commission fails to correct that animation regarding the fear.

ADV BALOYI SC: Yes, but what are you saying, okay, now
20 that you are saying this, what are you saying we should do with that? Just because the Commission does not deal with it in the way that you say they have not, are you saying it is not within our powers to determine on the basis of what he has placed before us? Because, let me suggest this to you, as I see it, is even if they had chosen, the evidence leaders

had chosen not to answer, we still have to determine your application on the basis of the case you made.

ADV PREMHIID: Absolutely.

ADV BALOYI SC: Yes, so it is irrelevant. It must be relevant for purposes of my engagement with you. It is relevant for purposes of you replying to Ms Hassim, but for purposes of my engagement with you, it is irrelevant that they did not say what you are raising now. What is relevant is your answer to what I am raising with you.

10 **ADV PREMHIID:** Yes, and may I just say that I have no difficulty regarding the proposition you put to me regarding what you need to do. Absolutely, I am not disagreeing with that. All I am highlighting is that even his mistaken approach regarding what animates his fear is not rebutted by the Commission as a mistaken basis to animate the fear.

ADV BALOYI SC: Mr Premhid, we have a few times said the evidence leaders are wrong in what they have said, so it does not take them a tiny feather for you to say, well, they are not saying it. As I say, you will reply to her if she tries
20 to make them forward.

ADV PREMHIID: I am sorry, I think we are speaking slightly past each other, Commissioner, with all due respect.

ADV BALOYI SC: Yes.

ADV PREMHIID: I am not taking a pleading point in the sense that, oh, the answering affidavit does not put up a

rebutting version. Therefore, on Plascon Evans, as the Chair rightfully said, there are rules that apply in a court proceeding which do not apply in these proceedings.

ADV BALOYI SC: Yes.

ADV PREMHID: All I am saying, insofar as your assessment of reasonableness is concerned and what animates the fear, is that even if he was mistaken at the outset when the application was launched, the Commission, who is in possession of the true facts and the full facts in a way that we are not necessarily in possession of, could
10 have said, under oath, here is some facts that you need to think about regarding animating your fear. And I am not making the pleading point. What I am saying is that that may have reasonably or not reasonably adjusted my client's position regarding the *in camera*. And so, all I am saying is that where the Commission itself does not put up a version to disabuse my client ...[intervenes]

ADV BALOYI SC: But what version could they possibly put up, Mr Premhid?

20 **ADV PREMHID:** Exactly the version you put to me now, Commissioner Baloyi.

ADV BALOYI SC: I am not putting – what version have I put to you?

ADV PREMHID: You put to me, sorry, maybe I should not call it version, maybe I should say you put two facts to me.

It is even stronger than a version. One was about the witness D or F or X or ...[intervenes]

ADV BALOYI SC: Mr Pretorius, that he died of suicide.

ADV PREMID: Yes, and then he ...[intervenes]

ADV BALOYI SC: He was not a witness before us.

ADV PREMID: And then there was the other ...[intervenes]

ADV BALOYI SC: And you are saying the Commission should have said that in their answering affidavit.

10 **ADV PREMID:** Well, if they did say that in the answering affidavit, that would have given us a base - that would have given us basis for cause. And it would have invited my client to respond to that and maybe then explain why he is nonetheless afraid to come and give open evidence.

ADV BALOYI SC: No, no, no.

ADV PREMID: Evidence in an open session.

ADV BALOYI SC: When your client or when a deponent makes allegation in an affidavit and they say, these are factual allegations on which I rely, such as Mr Pretorius, he
20 died, he was a witness and he came to testify and subsequently he was killed. Where does he get it from? It is for him to justify that, that statement. It did not have to take - there is no requirement that the opponent should have said, but that is not what happened, so that he can formulate his next response or next position. Your client

assets, the deponent assets as a fact and the Chair sought to engage you, where do these facts, the stuff that he is alleging, where does he get it from?

ADV PREMHIID: Yes.

ADV BALOYI SC: It is not open to you, at least from where I sit, it is not open to you to say, well, the evidence leaders should have told us that he was never a witness, when it is your client who says he was a witness and he was killed because he was a witness.

10 **ADV PREMHIID:** Yes, I think where there is a potential - where we are potentially speaking past each other, is that I accept what you say regarding the affidavit, the contents, the accuracy and whatever the case may be. I am saying - all I am saying is that in response to that and putting the facts to me in the way that you have, should nonetheless not result in my client not enjoying a consideration of all the other factors that he puts up.

ADV BALOYI SC: Oh, that is a fair ...[intervenes]

ADV PREMHIID: Yes.

20 **ADV BALOYI SC:** If that is what you are saying, you do not even need to say it, of course, his application will be considered on the merits.

ADV PREMHIID: Then we are *ad idem*.

ADV BALOYI SC: Okay, all right, let me continue the exercise that I was doing with you. The next annexure is

A3. A3 is a continuation of that Witness D, Mr Van Der Merwe's killing.

ADV PREMHIID: Are you at page 20?

ADV BALOYI SC: Yes.

ADV PREMHIID: Oh, sorry, 22, I see 22.

ADV BALOYI SC: It is at 22, I just want confirmation it is a continuation.

ADV PREMHIID: Yes, it is another article regarding ...[intervenes]

10 **ADV BALOYI SC:** Of that same story that we have now discussed.

ADV PREMHIID: Yes.

ADV BALOYI SC: Okay, and then the next one is at page 24, okay?

ADV PREMHIID: I apologise, yes, Commissioner.

ADV BALOYI SC: All right, it is at page 24.

ADV PREMHIID: I am with you.

ADV BALOYI SC: All right, it starts off with:

“Tell your every driver it.”

20 Okay, and then it says:

“Tell your every driver it, that fight has started. And we will make sure that everywhere, where there is that company, we take them out.”

So, there is a reference to his business there, which, and

you can correct me, which on the face of it seems to be threats related to his business or emanating in respect of his business. And then the next one says:

“Before you appear, the Commission will show you and your ice boy. Go to the Commission, we will stay behind and take care of your stuff.”

Now, for the first time there is mention of the Commission, but in context of the earlier messages, it seems to me that, 10 in fact, the threat relates to his business affairs. Because it mentions his business.

ADV PREMHID: Yes, but I would, I mean, with all due respect, we know what Endumeni tells us about how we are supposed to interpret a document as a whole and all those kinds of things. And with all due respect, we cannot interpret this document in isolation from two critical messages that come after the business being mentioned, which, what we say, gives colour and context to the entirety of the application. And may I just finish by saying this, is 20 even if we assume in, if I assume in your construction of the message that the first two messages are aimed at businesses, what does it matter in circumstances where the subsequent two messages, which do not mention the business as sure, are saying, go to Madlanga and see what happens to you?

ADV BALOYI SC: Yes.

ADV PREMHID: So, so I do not know whether, and I ...[intervenes]

ADV BALOYI SC: So, they will go to Madlanga and we will show you and your ice boy. So, so the eyes boy surely has nothing to do with coming to the Commission, because we are not calling anyone that is referred to as ice boy.

ADV PREMHID: Well, that depends on, well, that depends whether someone you have called is or is not an ice boy, 10 depending on what your final report says. I mean, I do not know. I am not, I am not going to speculate, but I think with all due respect, this is the difficulty I am having with the interpretive exercise, is that we are picking out parts of the message ...[intervenes]

ADV BALOYI SC: No, I am not. I am actually saying in context.

ADV PREMHID: Yes.

ADV BALOYI SC: I do exactly what you say.

ADV PREMHID: Ah, then I apologise, it might be me you 20 are speaking about ...[intervenes]

ADV BALOYI SC: And I am saying in context, I am unable to say, in context, where his business is mentioned, somebody else is mentioned, and it says:

“Go to the Commission and we will deal,
we will take care of you while, we will

stay behind and take care of you while
you are at the Commission.”

I am saying in context of, in the context of all those
messages, in the context of all those messages, it is not
clear to me that, in fact, this is a threat that says to him, do
not go to the Commission. That is, that is what I am putting
to you.

ADV PREMHID: Well, no, I must respectfully disagree.

ADV BALOYI SC: And that we will punish you for going to
10 the Commission.

ADV PREMHID: I must respectfully disagree. The last
message reads, and I quote:

“Before you appear at the Commission,
which is this Commission, we will show
you and your ice boy.”

So, they are saying, actually, we are not going to wait for
you to doner and skit after you go to Madlanga, we are
going to do it beforehand. And then in the next message, it
goes on to say:

20 “Go to Madlanga, we will stay behind and
take care of your stuff.”

So it is, we are threatening you before you go there, and
then when you go there, we are going to do more to you.
So, so with all due respect, if, if, and that is the difficulty
that I was having as to the construction of the context. I

think it is, and I say this respectfully, a little bit artificial to identify those two messages, take them out and say they have nothing to do with the Commission, but then ignore potentially the most direct threats which follow immediately thereafter.

And I would say respectfully, give context to what those two other messages are about. The targeting of the business is, is that might be how the threat manifests, is that we are not, we might not necessarily going to come and
10 shoot you, but we are going to go to your offices and shoot your employees or burn your offices down. That is the context that we are talking about. And that is how the deponent tells you under oath, he understands the threat.

ADV BALOYI SC: All right, let us, I do need to move it along. Then let us go to the supplementary affidavit, page 60. And then why do you say that has to do with the Commission? We have got a picture of three people who say, I think in the affidavit you say, I cannot quite see, and it is really more my eyesight than anything. But I think the,
20 the witness says the T-shirts say he must fall, Carrim must fall. Why do you say that has to do with him appearing before the Commission?

ADV PREMHID: Sorry, I am apologising, Commissioner Baloyi ...[intervenes]

ADV BALOYI SC: Page 60.

ADV PREMHID: Would you give me a moment?

ADV BALOYI SC: Yes, page 60, supplementary. And then their allegation is at page 53, paragraph 5.

ADV PREMHID: Yes, thank you, Commissioner.

ADV BALOYI SC: And again, it is a message sent to his business manager. On your paragraph 5, it says:

“On 22, my operations manager received these pictures.”

So, they were not sent to him, they were sent to his
10 business manager and, but that is all he says:

“Individuals wearing T-shirts with slogans, Suleiman must fall and his business must close.”

My question is, why do you say this has to do with him appearing before the Commission?

ADV PREMHID: Well, I mean, you have heard me already about the timing of these threats and when they arise. And you have heard me already about the logic of the absence of the threat before the urgent application is what I would
20 rely on to say about the presence of the threats after the first appearance on the 6th of February. And the particular slogan which we looked over is not just any slogan, it is a slogan that is said to say, Suleiman must fall. And if you have page 60 in front of you, which is the picture of the three balaclava individuals.

ADV BALOYI SC: Yes.

ADV PREMHID: I do not know, I can make out the individual on the far left-hand side who is got his head bowed down, if you look at the square on his T-shirt and towards the bottom right-hand corner of the square, I can read that that says, Suleiman must fall.

ADV BALOYI SC: Yes, now I am not quarrelling with that.

ADV PREMHID: No, no, I know. All I am pointing out is that for the purposes of context as regards to timing, that is
10 the basis upon which the link is made to the Commission. The shirt does not obviously say, go to the Commission and then you will fall or anything of that kind, but I am answering your question in the context of what is this link or how does he understand this link, and that is the version that he is putting, is that all of these things emanate after the 6th of February, and that is why he, reasonably in his view, understands that to be the basis of the threats. It is the appearance at the Commission.

ADV BALOYI SC: Yes, but can we also agree that, I mean,
20 he says these individuals are making gestures of a threatening nature, what do you consider there in that picture as a one, because that is where he is making reference? What do you see as gestures of a threatening nature there, whatever the threat is about?

ADV PREMHID: I mean, I am not going to give evidence.

ADV BALOYI SC: I am not being facetious.

ADV PREMHID: I am not suggesting that either.

ADV BALOYI SC: You do accept that we have to make a decision based on the facts and evidence that have been placed before us.

ADV PREMHID: Yes, absolutely.

ADV BALOYI SC: So, I would not want him to say the Commission disregarded evidence that showed threatening gestures.

10 **ADV PREMHID:** No, but that is why I am saying what he should have probably done is he should have said, like the sufficiency discussion I was having earlier with the Chair about identifying potential sources of threats, is maybe he should have said, in picture 1, this person has got a fist raised, and that means X, or in picture 2, and so on and so forth.

That explanation is not there, and that is what it is on the papers. I am not going to give an assessment of what is threatening or what is not threatening. That is not
20 my role to play here in front of you. So, I can accept that there is an absence, perhaps, or a disconnect between what is stated in the affidavit and what you have got in the pictures and what the Commissioner is reasonably putting to me.

ADV BALOYI SC: Yes.

ADV PREMHID: I cannot take it further than that.

ADV BALOYI SC: All right, I understand. And then lastly, the last annexure is at page 63.

ADV PREMHID: I am with you.

ADV BALOYI SC: He says:

10 “You are taking chances. We are after you. We are going to burn your place. You can run, but cannot hide, bro. We will make sure we deal heavily with your family.”

On the face of it, again, on the face of it, there is no link to the Commission on the face of it.

ADV PREMHID: You have heard me already. Subject to that same caveat.

ADV BALOYI SC: Yes, I know.

ADV PREMHID: Then, of course, I must accept that.

ADV BALOYI SC: Okay, all right.

CHAIRPERSON: I noticed that Commissioner Baloyi did not read the middle text.

20 **ADV BALOYI SC:** I am a lady.

CHAIRPERSON: Exactly as it is.

ADV BALOYI SC: I am a lady.

ADV PREMHID: I hope that is not an invitation from Commissioner Baloyi for me to read it out and not be a lady. But let us just say that the threats, such as they are, use

rather colourful and robust language that we, as members of the noble profession, might not be used to saying in open court, but potentially about each other, behind each other's backs. I am not certain. But yes.

But I would say that the use of these words is indicative of a context. The use of the language and the threats as they are being made are indicative of a context. Admittedly, Commissioner Baloyi, your position is that absent the direct link to the Commission, you are in doubt
10 about that context. And my response to you is to say, well, read it chronologically, what happens from the 6th. And that is how you understand the context. That is how I would put it.

ADV BALOYI SC: Maybe lastly from me, then. We have seen his statement to the Commission. Is it irrelevant to our determination of this application that if we form the view - let me formulate it differently, as an if question. If our view of the statement is that it does not implicate anyone, if that is our view of that statement, and so we have no
20 expectation that when he comes to testify, he will implicate anybody, we do not have that expectation. If we did not have that expectation because his statement, we form a particular view about it, is that irrelevant to our consideration of this application?

ADV PREMHID: No, it is relevant. Like I was debating

with the Chair earlier, it is relevant in the basket of factors, what weight you attribute to that might sway it one way, or you might say it is insufficient weight and it sways it the other way. So, it is not irrelevant. It is relevant, but it is not the sole determiner of the application for in camera on the merits. So, I accept that.

ADV BALOYI SC: Thank you. Thank you, Mr Premhid.

ADV PREMhid: Thank you, Commissioner Baloyi.

ADV KHUMALO SC: Mr Premhid, I am going to be brief. I
10 think you have accepted that prayer 3 and 4 have to be modified. In their current form, there is a problem.

ADV PREMhid: Absolutely.

ADV KHUMALO SC: Yes, and in prayer 3, you accept that your client is coming to testify next week?

ADV PREMhid: Yes, absolutely. Unless you decide otherwise, he is going to be here.

ADV KHUMALO SC: No, no, not here. We are not there yet. He is coming to testify, not here yet.

ADV PREMhid: You know, ...[intervenes]

20 **ADV KHUMALO SC:** You know in principle, then I find that he is going to be giving evidence next week. Unless you abandon your application.

ADV PREMhid: No, I accept that. I accept that.

ADV KHUMALO SC: So, whoever is threatening him then knows that he is coming to testify because your application

says he is going to the Commission.

ADV PREMHID: No, sure. And I mean, they would have known that from the very least on the 6th of February when the order was read out on the record and the dates were specified. So, yes.

ADV KHUMALO SC: And all the WhatsApp texts that Commissioner Baloyi has taken you to relate to him, or at least some of them, to him coming to testify at the Commission, correct?

10 **ADV PREMHID:** Yes, yes. I mean, Commissioner Baloyi and I disagree about, and seemingly disagree about whether the ones that do not are linked to the Commission or not. But in my construction of those messages, in his version, that is exactly the point.

ADV KHUMALO SC: And his identity is already known. I mean, his face is all over the media.

ADV PREMHID: Yes, yes.

ADV KHUMALO SC: He was here the other day, I think it was the 6th, so everybody saw him.

20 **ADV PREMHID:** Yes.

ADV KHUMALO SC: Now, here is my problem. Accepting that those are the facts, what then justifies his evidence being *in camera*?

ADV PREMHID: Well, I mean, I think that is a – if you approach it from the perspective of the horse has bolted,

then there is no answer to that.

ADV KHUMALO SC: Because here is the threat. The threat is they do not want him to go to the Commission.

ADV PREMHID: Yes.

ADV KHUMALO SC: But he is coming to the Commission.

ADV PREMHID: Yes.

ADV KHUMALO SC: So that threat becomes irrelevant because he is coming anyway.

ADV PREMHID: I am not sure you can say that it becomes
10 irrelevant because if they make good on the threat when he
comes here to the Commission, then that is indeed very
relevant. What I am trying to engage you on,
Commissioner, with all due respect, is that it might all be
known, and the date was already known, might render the
application from a strict legal sense moot if we were in front
of the High Court.

But we also know that the High Court has interests
of justice jurisdiction to nonetheless grant relief, even
potentially impractical relief, but nonetheless grant the
20 relief where the interests of justice are satisfied. So, it is
not irrelevant with all due respect. It is still relevant for
determination because even though on the facts it might be
quote unquote moot, you are still, I would argue, you sitting
as the Commission, are still clothed with your interests of
justice jurisdiction that might result in you giving some or

other order that my client may or may not benefit from on the facts. That is the difficulty we are in.

ADV KHUMALO SC: What does it achieve, him giving evidence *in camera*? I mean, you must look at this thing the other way. If people are threatening him because they are scared that when he comes to the Commission, he is going to say things that may cause difficulties for them, it is even worse if he is giving evidence *in camera* because now it means they know he is going to the Commission. They
10 know he is going to give evidence, but because they do not hear that, then he might have said something which actually causes them difficulty.

ADV PREMHID: With all due respect, I think that is being a bit glib and that is actually expecting my witness to take his life into his own hands and to come and defy the people who are threatening him to defy the Commission by hurting him either before or after that evidence. I think it is perhaps too strong a stance to take to say to a witness who comes to you and says, I am concerned about my safety.

20 I am concerned that I and my family and my businesses are going to be prejudiced and damaged and destroyed or killed in the way that these messages reference, and then for the response to be, well, come and say it all in the open light, in the, what is that famous phrase that sunshine will disinfect all, you know,

malfeasance or whatever the case is, where his doing so is the very thing that may cause the harm to befall him. That is the point.

ADV KHUMALO SC: Mr Premhid, I said you must accept as a fact that the threats are there and take it from there. So let us accept as a fact that the threats are there and accept as a fact that he is coming to testify anyway.

ADV PREMhid: Yes.

ADV KHUMALO SC: It may or may not be here, but he will
10 be testifying anyway.

ADV PREMhid: Yes.

ADV KHUMALO SC: My simple point is, why does it have to be *in camera* if he is coming to testify? I would understand if you said there are things that he is going to say that cannot be heard in public because if they were heard in public, he would be in danger. But you are not saying that. So, I am still at a loss as regards why his evidence needs to be *in camera*.

Well, I have accepted that there are threats, but
20 because he is going to give evidence anyway, and he is not going to tailor his evidence depending on whether it is *in camera* or not *in camera*, you did not make that case. That is why I am still at a loss as regards why the evidence must be *in camera*. Because I have accepted that there are threats. Nobody disputes that. Nobody says they are not

credible. But because he is coming to testify anyway, I do not understand why evidence must be *in camera* and I do not see it in the papers.

ADV PREMHIID: I think, with all due respect, Commissioner Khumalo, I think I have given that response already and I am at risk of potentially repeating myself. But the top-level notes that I am going to give to you, so as to not be accused of failing to answer your question, is number 1, it is the fact of the threats, which we say is a
10 stronger factor that weighs more than what the Commissioner has put to me.

ADV KHUMALO SC: Can I just stop you. They do not go away whether or not he testifies *in camera* or in person.

ADV PREMHIID: Yes.

ADV KHUMALO SC: And that was my point. Because the threats are already there.

ADV PREMHIID: Yes.

ADV KHUMALO SC: Whether he testifies *in camera* or in person, they do not go away.

20 **ADV PREMHIID:** Yes.

ADV KHUMALO SC: So, my simple question is, why then must the evidence be *in camera*?

ADV PREMHIID: But that leads me to the second point, which is what I was going to say, is that that then takes the attitude from the Commission that he must come here and

take his chances. And with all due respect, I think that is a pretty difficult position for my client to be in, in circumstances where he says to the Commission, I am coming to you to prevent the possible threat from materialising. The threats are there, and the Commission's response then is to say, well, everybody knows as it is, come and give the evidence and see what happens.

And that is really, it is an, actually it boils down to an equity and value judgement to be made by the
10 Commission as to whether or not in light of those threats that you yourself, Commissioner Khumalo, say to me you accept as factually existing, should be decreased in their purchase because of all these issues that we have been debating today. And our respectful submission is that that should not be the case, because in exercising your discretion, that the factual existence of those threats is something that should weigh heavily on you in making your decision.

ADV KHUMALO SC: I will accept that as your best answer.

20 **ADV PREMID:** That is the third time's the charm.

CHAIRPERSON: May counsel please just give us a moment. Yes, Ms Hassim, do you want to start now, or is it not best perhaps to start when we come back after lunch at 2 pm?

ADV HASSIM SC: Chair, may I just consult with my,

because there is another ...[incomplete]. Chair that would be preferable, because it is also time for Friday prayers.

CHAIRPERSON: All right.

ADV HASSIM SC: Thank you.

CHAIRPERSON: Let us adjourn and resume at 2 pm. Thank you.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Ms Hassim.

10 **ADV HASSIM SC**: Thank you, Chair. The engagement with my learned friend from the panel has rendered most of my task here redundant, I think, but I will do my best to cover what I wanted to cover and not dwell on some aspects that have been already fully canvassed with my learned friend.

So, Chair, what I propose to do is to address the following in my submissions to the Commission. The first is the legal framework. The second is the reason why granting the application in the particular circumstances of this case is not justified, and in short, what I submit to the
20 Commission is that an in-camera hearing will not offer the protection or remove the threat that Mr Carrim seeks from having this application granted. And the third is to propose an alternative course that may have better protection, perhaps, for Mr Carrim than an in-camera application.

So, Chair, let me first say that although my learned

friend was a bit dismissive about the attitude of the evidence leaders to this application, we, in fact, take quite seriously requests for in-camera evidence. We have moved applications before you in the past in circumstances where the facts were more cogent than in this case. And even there, the Commission has not granted our application in the terms that we sought. So even though there were in-camera witnesses, they were partially in-camera, which was not the initial request that was sought for those witnesses.

10 And I will come back to that, but we moved those applications because we take seriously threats to witnesses.

So the starting point is the legal framework and Section 4 of the Commission's Act, which governs these proceedings. And what Section 4 makes very clear is that all the evidence and addresses heard by the Commission shall be heard in public. That is the first thing to say about the Commission's Act.

20 That statutory requirement is given effect in the rules of the Commission, which states that hearings of the Commission will be held in public. Rule 4 also expressly recognizes that there may be circumstances in which it is appropriate for hearings to be conducted in camera. The question is whether these are the appropriate circumstances, and according to Rule 9.2 of the rules of

this Commission, that determination lies in the discretion of the Chair.

My learned friend refers to a series of judgments, including what we call the Masetlha judgment, SABC versus NDPP and others, and the propositions there for when restrictions on openness is appropriate are well established. But they do not do the work for Mr Carrim in this application. The proceedings, and for several reasons, and it is important to say that the proceedings here do not
10 concern the same kind of litigation, inter-party litigation, in which there is a *lis*. It is a public Commission of Inquiry, and that is relevant when taking into account the weighing up and the balancing exercise that comes once a threat is established, because the purpose of a Commission of Inquiry is not only to investigate and to fact find. It serves an important additional purpose, and that is of public accountability in a matter of high public interest.

And for that proposition, Commissioners, I will cite two authorities. The first is the Minister of Police versus
20 the Premier of the Western Cape, and that is to be found at 2014(1) SA, 1 (CC) and the specific paragraph that establishes this is paragraph 45. It developed the SAFU Judgment, and it emphasized that a Commission's role is not exhausted by merely advising the executive or the President in this case, but that in addition to doing that, a

Commission may serve, and in the language of that judgment, a deeper public purpose, especially in times of widespread public disquiet.

The second authority is the case of Secretary of the Judicial Commission of Inquiry into Allegations of State Capture versus Zuma and that is to be found in the South African Law Reports, 2021(5) 1 (CC) at paragraph 5 in particular, where there, what the court said, again, is that in addition to the advisory and recommendation and policy
10 advising function of a Commission, it also serves a purpose of having a public inquiry in respect of matters of high public concern. And the court said the purpose of a public hearing there is to restore public confidence in the institution in which the matter that caused concern arose, which is very similar to what this Commission is dealing with. The objective, said the court, is to reveal the truth to the public pertaining to the matter that gives rise to the public concern.

So that context in which this Commission sits is
20 important in assessing whether appropriate circumstances prevail for, that justify the granting of the application that is brought today. Against that backdrop, that legal backdrop of that legal framework, let me say then that the facts here do not warrant an in-camera application.

The applicant brings the application on the basis

that he fears for his safety. In fact, he goes further than that. He talks about the safety of more than 1,500 employees. He says, if he testifies in public, that is the risk. He has also referred, apart from the threats that he is received, he refers to the backdrop of two witnesses, but we have now covered that extensively this morning and it was one witness that was killed. The second, Mr Pretorius, was not a witness before this Commission. And of course, the investigation is still ongoing as to the circumstances of the
10 assassination of Witness D and so that is been covered again extensively.

I am not going to get into detail about that, but it is important, again, in weighing up what this application rests, the grounds upon which this application rests. Mr Carrim attaches text messages that he has received from unknown numbers, which appear to be threatening. We do not know the context, further context of those text messages. We do not know what the potential sources are of those text messages. We do not know whether there is anything that
20 is, you know, whether there is any hostility or dispute or that is happening within Mr Carrim's workplace that may give rise to this. We do not know what the source of the threats are.

But that there are threats on the face of it appear to be clear. They are attached to his application. So we are

not dismissive of that and my submissions to the Commission should not be misunderstood as being a dismissive of the concerns raised by Mr Carrim. But the reality is that the relief that Mr Carrim seeks is not going to assist him.

The reality is that Mr Carrim is known to the public. His application in the High Court to delay his appearance before this Commission was widely broadcast. He then appeared before this Commission in order to secure a
10 postponement by agreement. Those proceedings were widely broadcast. In those open proceedings, the Commission issued a ruling that Mr Carrim is to be present on the 9th and 10th of March for the purposes of leading his evidence, providing his version that he wishes to place before the Commission, and to be questioned in relation to his evidence, particularly on allegations that have been made by other witnesses that have come to the Commission.

Now, and let me say this, in the answering affidavit
20 at paragraph 5.1, it sets out a sample of national media coverage in which Mr Carrim's name and pictures are displayed and that is in relation to the High Court application.

In paragraph 5.2 of the answering affidavit, there are examples of widespread coverage that Mr Carrim will be

testifying on 9 and 10 March, and those examples include visual images of Mr Carrim's face. So there is no secrecy at all that it will be Mr Carrim who will be testifying in the Commission on 9 and 10 March.

What Mr Carrim says in his supplementary affidavit, though, is the following. He says:

10 “If my in-camera relief is granted, at best, the makers of these threats will simply not know when, if, or how I give evidence, as the very fact of my doing so will be sealed.”

And, Chair, that is to be found at page 55 of the paginated pleadings bundle, paragraph 9.2 of the supplementary affidavit, roughly halfway down that paragraph.

20 And I want to emphasize this. What he says is that the makers of the threats will not know when, if, or how I gave evidence, as the very fact of my doing so will be sealed. But that is not correct. First of all, it is known. It is known when he will be testifying, and it is known widely, as we have set out in the answering affidavit.

Second, Mr Carrim accepts in his notice of motion that he will testify, and as my learned friend has said earlier this morning, it is accepted that he will testify 9 and 10 March, and so in the notice of motion, the paragraph 3,

what paragraph 3 requires is just that the hearing is held in camera on those days.

Third, it is not at all a given that that in-camera hearing or that closed session will protect the witness. In fact, it may make him more vulnerable, since those who are threatening him may assume that he has implicated them or given evidence problematic to them when he has not. So secrecy can actually amplify a witness's vulnerability by signalling that the witness is exceptional or hidden, and it
10 may just fuel speculation and targeting rather than quell speculation or threats.

My learned friend said just testifying at all is a risk, something to that effect, and I am not sure that I understood it fully, but again, that does not assist, because what we do know is that Mr Carrim is not saying that he will not come to testify. He will come to testify. All he asks is that it should be made in camera, but not disclosing his face or his voice is a practically futile measure because his voice and his face is so well disclosed.

20 And I must say that Mr Carrim has not raised confidentiality or tried to assert confidentiality over his intended evidence as a ground upon which an in-camera hearing is warranted, so we are only dealing with the question of the threats. And I say that he has not raised that because it is not raised on the papers, but also

because when one has regard to the statement, and although Mr Carrim repeatedly refused to comply with this Commission's ruling on 6 Feb that a written statement be provided by 27 February, he has now filed it, and nothing in that statement appears to place the witness at risk through exposure of third parties in any wrongdoing.

The contents of the statement do not disclose any information that was not already disclosed in a public setting before the High Court, so there really will be no
10 practical purpose served by an in-camera hearing, and the threat will not be removed by an in-camera hearing, the threat, such as it is that we have been, that has been put up in the text messages, and we assume, I am assuming for the purposes of my argument that those are credible threats.

Now, with regard to the other in-camera applications, there have been eight witnesses who have applied to give evidence in camera before this Commission. All but one of these witnesses were required to testify only
20 partially in camera. That is, in public session, with only their faces concealed. The grounds advanced by those witnesses in their applications were either that disclosing, testifying in open session would risk compromising ongoing criminal investigations, or serious risks to their physical safety.

The reason for concealing the faces of those witnesses was because they were also in witness protection, and their facial identification would have rendered the witness protection measures ineffective and would have materially jeopardized their safety. Their faces were not known to the public, those witnesses, unlike Mr Carrim.

Here, his identity and appearance are already in the public domain, as is apparent from the extensive media
10 coverage annexed to the answering affidavit. Masking the witness's face would therefore serve no practical protective purpose.

So in those circumstances, even a partial in-camera hearing would be devoid of a rational foundation and cannot be justified on the facts before the Commission. So in these circumstances, Chair, in the circumstances of the already public litigation that took place before coming to the Commission, and then the public appearance before this Commission on the 6th of February, one is hard-pressed to
20 understand how another two days of public process will increase the risk to the witness.

It is true that there is public attention on the proceedings of this Commission. By their nature, all Commissions established under the Act are required to be public as a default position. All the witnesses who have

testified in open session in this Commission have had to deal with this at great personal discomfort. Having regard to what I have said about the public knowledge of the witness's identity and the dates for his evidence there is no reason to privilege this witness by shielding him from public view, and there is been no argument that can be sustained on the founding affidavit or the supplementary affidavit before the Commission that the in-camera hearing would provide protection. As I said, I think it may have the counter, might be counterproductive as far as safety goes.

I noted my learned friend, because this point was raised by Commissioner Khumalo about whether it would not be counterproductive, and my learned friend said that might be a glib answer. And I, first of all, it is not, it is just a practical reality and it is a practical reality that Mr Carrim has difficulty overcoming. But to assure the Commission and Mr Carrim and his team that from our perspective as evidence leaders, it is not a glib response.

What I submit to the Commission is that there are measures of protection that may be provided to the witness. And I must say that in the supplementary affidavit, the witness says the following, and that is at 9.3.4, paragraph 9.3.4 of the supplementary affidavit. What the witness says is, I quote:

“Unlike the Commission and some of its

staff that have the benefit of security details paid for by the state from taxpayer funding, I have had to undertake at huge expense and prejudice funding security for my family and me.”

So the witness has complained that while there is protection provided to the Commission and its staff, he has had to foot the bill for his own protection. I want to clarify
10 and place on record that I have been advised by the Commission's Head of Security that the Commission has previously offered the witness protection services. I understand that he declined the offer as they already had arrangements in place.

The offer, however, remains and I would go so far as to propose, Chair, that in light of the threats received, the Commission could better protect the Commission, the witness in other ways, not through an in-camera application, but by renewing its offer of protection services that was
20 made earlier, and to consider the contours of the offer of the protection services, whether it is transit protection or static or both, and to do so on the basis of a threat and risk assessment, which I think, in fact, first of all, a threat and risk assessment with the assistance of the State Security or Crime Intelligence or both would actually be important

because a properly resourced TRA is likely to identify the source and nature of the threat more expeditiously than a report made at the local police station.

So it goes to the point, Chair, that you raised at the outset about the credibility of the threat, the source of the threat, what actually lies behind it and having a resourced, well-resourced threat and risk assessment made available to the witness will provide a more meaningful measure of protection for the witness and I would propose that those
10 measures be considered and if the threat and risk assessment shows that there is a basis and for providing, you know whatever range of services are necessary, then that can be considered by the Commission, and if necessary, it may even be in place for the duration of the work of the Commission.

And again, I say so on the advice of the Head of Security for the Commission. But that is a meaningful way to address what the witness has brought to this Commission, the risk that he says he faces and the threats
20 that he has received. It is not the first time that the Commission would be offering services. It is done so for other witnesses who have come, and those witnesses have testified in open session. So those are my submissions on the application itself.

There are a few other issues I just would like to

touch on very quickly. The first is the issue of the bundle that is to be provided to the witness. And I would like to, again, clarify that that bundle is not the, there was a bundle that was provided to the witness some time ago and what is to be provided today are additional documents that will be used for the purposes of examination of the witness on the 9th and 10th of March. So it is the original bundle plus some additional documents.

So the delay is not for the provision of an entire set
10 of documents, it is for the additional documents. The reason it could not be provided earlier was because the evidence leaders were awaiting the statement which only arrived on the 4th of March, the statement that was due on the 27th of February. And the reason for that has got nothing to do with ambushing.

The witness seems to be paranoid about the posture of the Commission and there is really no basis to be concerned about that. The purpose of the statement is something that is common practice by all Commissions, in
20 fact, not just this Commission. A witness comes, a witness provides a statement. It is for the benefit of the witness. The witness gets to provide his or her version unfiltered by the evidence leaders.

That was why it was important to get the statement. And of course, if the witness were to say he did not wish

not to provide a statement in the end, well, there is nothing much that the Commission could do about that. But the cross-examination would continue in the absence then of a version in writing by the witness.

So the second thing is what it does is it allows the issues to crystallize, to understand what is actually in dispute and not in dispute, what are the things we need to cover with the witness. It is only upon receiving ...[intervenes].

10 **CHAIRPERSON**: You are left with five minutes.

ADV HASSIM SC: Thank you, Chair. I will be done in four. And so it was necessary to receive that so that we could crystallize the issues and know what documents needed to be added to this bundle. It will be provided today.

The second is the answering affidavit. The purpose of the answering affidavit was to put up those media reports so that the Commission, so that it was properly placed before the Commission so you could have regard to it in determining this and considering the argument of the
20 evidence leaders and where we are coming from when we say practically there is no, it would be futile to have an in-camera hearing. We needed to set that up. That was the purpose of the answering affidavit, not to respond *ad seriatim* to the applicant's affidavit.

So to the extent that there were issues like the

witness, the two witness issues that were not addressed, that was the only reason why it was not addressed. Again, we were not in adversarial mode here with the witness. We just wanted to make the evidence of the extensive media coverage available to the Commission properly.

So I am going to resist the provocation by Mr Carrim, I will not say by his, my learned friend, in his affidavits and his remarks about the Commission and the Commission staff and the evidence leaders. I could say
10 more, but maybe I will just leave it at what Justice Fisher said in her judgment when she was determining the urgent application that was before her and about what she thought was unreasonable conduct of the witness in paragraph 19 of her judgment. I will not say anything further on that score. I will leave it at that, Chair.

So that really is our response. I am here addressing the Commission on behalf of the evidence leaders to this in-camera application, Chair.

CHAIRPERSON: Thank you, Ms Hassim. I have just one
20 issue. You emphasized, of course you have raised a whole lot of other issues, but you have emphasized the question of the High Court application and therefore the fact that Mr Carrim was brought into the public domain, pictures and all, on that occasion, and also that this happened as well when he appeared here.

If I understood Mr Premhid, his argument correctly, he is saying none of that changes the situation, which is that after the High Court application, after that appearance, it is only then, thereafter, that there were threats and that the application relates to the threats and not so much what had happened historically, even if that was recent history, of course. So why the emphasis on the High Court application and also the appearance here?

The emphasis is important and it is not historical,
10 Chair, and it is not about the High Court application and what it was about or anything like that. It was, what is important is that as a result of the application and the public appearances that the witness has already been involved in, whether the High Court or here, his identity is known. So it is, and that cannot be changed. It is because of the High Court application and his appearance here that his identity is known.

And that is the only point of, that is the relevance of the High Court proceedings and the 6 February
20 appearance. It is in that context that there were images of his face, that there was video coverage of his appearance before this Commission, and therefore, he is known. So the relevance of it is what does in-camera hearing, how does it serve the witness in protecting him?

By my learned friend's argument, the only way in

which the threat would be removed is if he did not testify at all before the Commission. That is the only way the threat would be removed. But as it stands now, he is publicly known. His face is known. It is known that he is going to be here on Monday and Tuesday. To just pull a curtain over it and have the hearing ...[intervenes].

CHAIRPERSON: Not necessarily here, because at this stage, you do not know what our, what my ...[intervenes].

ADV HASSIM SC: If I were to succeed.

10 **CHAIRPERSON**: What my order or direction will be.

ADV HASSIM SC: Fair enough, fair enough. Fair enough. I am saying if it were to be an open session, if it were to be an open session, it would be the dates are known. And so the identity and the revelation of the identity of the witness around that time, the High Court application and appearing here, has made the in-camera application redundant. That is really the only point of referring to those.

CHAIRPERSON: Thank you, Ms Hassim.

20 **ADV BALOYI SC**: Is it the, I mean, a further factor that it is known that he is going to testify already from the date that he filed his application in High Court. And when he appeared here and the date was given. So the world, whoever is making those threats, knows that he has been ordered to come and testify on Monday and Tuesday, the 9th and the 10th. And the application, as it stands now, does

not ask that he does not testify on the 9th and the 10th, it does not.

So the assumption has to be, or the position, the prevailing position, as matters stand, is that he will testify on the 9th and the 10th. So whoever he is afraid of knows that he is testifying. He is not being excused. You want to say something about that?

ADV HASSIM SC: Commissioner Bloy, that really is it. It is a practical point, really. And it is why I referred to that
10 paragraph 9.2 of the supplementary affidavit, because what the witness says is that the makers of the threats will not know when, if, or how I give evidence. That is just not true. The makers of the threats will know when, if, and how Mr Carrim will be giving evidence.

ADV BALOYI SC: Thank you. We will hear what Mr Premhid says about that.

ADV KHUMALO SC: Just one, maybe one and a half points from me. For the purposes of this application, we should accept that the threats are credible, because there
20 is no suggestion that they are not. You agree?

ADV HASSIM SC: All my submissions are on the basis of accepting that the threats are credible.

ADV KHUMALO SC: So we must start from the premise that there are threats. Now, accepting that as a fact, do you think an in-camera hearing of the evidence would

eliminate those threats, I mean based on what we have heard? I am not asking for your opinion, but based on the evidence that is before us.

ADV HASSIM SC: Well, okay, so let me explain what I say when I say the threats are credible. What I mean is I think it would be, it would indeed be glib to not take threats seriously. However, there is an issue of insufficiency of the evidence. Some of it was already, and I did not go there because it was covered already by Commissioner Baloyi,
10 about whether the messages that are attached to the affidavits actually show that it is a threat that is emanating from this Commission, or whether it has to do with something else. And I have heard my learned friends say, well, you have got to see it in the context of when the threats were made. I accept that, but it is not a full answer.

The evidence is insufficient. So I just want to be understood properly when I say it is credible. I just mean that I think it would, from my perspective, I take it seriously, but it is not, the application, the sufficiency of the evidence
20 for the purpose of the application does not satisfy, I think, what this Commission needs to determine. So ...[intervenes].

ADV KHUMALO SC: I understood Mr Premhid to be saying, because we do not know where it is coming from, we must err on the side of caution. Just because we are

not certain that it is related to the Commission does not mean it is not.

ADV HASSIM SC: So, sorry, Commissioner Khumalo. So the first is the issue of the sufficiency of the evidence, but it is also not knowing, it is precisely not knowing that, which is why at the tail end of my submissions, I propose that, well, let us get to the bottom of it. Where is the threat coming from and how can the Commission assist the witness in that regard? And that would be, as I said, more
10 meaningful protection than an in-camera application, because everybody will know that the person behind the curtain is not, is the Wizard of Oz.

CHAIRPERSON: Thank you, Ms Hassim. Mr Premhid?

ADV PREMhid: Yes, thank you, Chair.

CHAIRPERSON: Just a minute, just a minute.

ADV PREMhid: Oh, apologies.

CHAIRPERSON: Only 10 minutes, Mr Premhid. Is that protected time, or in toto?

CHAIRPERSON: In toto.

20 **ADV PREMhid:** I have 14 points to make very briefly in reply.

ADV HASSIM SC: Sorry, was that 14?

ADV PREMhid: 14, yes. I will do it in 10 minutes, but I will, I have 14 points to ...[intervenes].

CHAIRPERSON: All right, 10 protected.

ADV PREMhid: Okay, I take that. I take that, thank you, Chair. Let us start at the end. My learned friend says that Mr Carrim will come here on the 9th and 10th if the in-camera application is granted, and all that will be done is his voice is going to be blurred, or they are going to distort his voice so that he is not known. That is a, my learned friend is interrupting, I apologize. I do not know if this is going to cut into my protected time. That is how I understood the submission, but Ms Hassim, yes?

10 **ADV HASSIM SC:** Chair, can I just correct it, because you may go down a path, then, Mr Premhid, that it is not warranted. What I am, not distorted voice or that kind of thing. It would be in-camera, that is what is requested. It would be a closed, sealed session.

ADV PREMhid: Yes, but the specifics of that request are set out at pages 11 and 12 of the founding affidavit, where at paragraph 23, the witness says:

20 “It appears that the individuals are tracking my movements and will be monitoring whether I attend at the Commission's current premises. In this regard, I request that my evidence be led in camera and virtually, alternatively, at an undisclosed location.”

And then at paragraph 25, it goes on to talk about the purpose of moving the application in the context of being monitored. So actually, the presentation that the in-camera relief is simply to come here in secret on the 9th and the 10th, properly construed is not that at all. It is about getting appropriate directions from the Commission for alternative accommodations that will give the protection of an in-camera session in the way that my learned friend has said, if we come here on the 9th and the 10th, it will not
10 be. So I agree with my learned friend's submission in that regard.

May I just also say regarding this sudden offer that is being made about security and whatever else might be the case. I heard my learned friend to say that the Head of Security made a direct offer to this witness, i.e. my client, and I am instructed by my instructing attorney that no such offer has ever been made and therefore, the further submission that that offer was rejected also falls to the wayside because you cannot reject something that you have
20 not actually received.

But let us just assume it was made, why did we have to bring an application and have to come to fight a full in-camera hearing when that is a practical offer that the Commission could have made earlier? And so my learned friend says, rather conveniently, we are not here in

adversarial proceedings, we are here in an inquisitorial context, but she then tenders at the last moment, literally in her answer in the in-camera application, something that could have remedied my client's prejudice which has never been tended before and has never meaningfully been engaged. Why is it that we are subject to this kind of treatment in this particular context?

Regarding the other points that I need to make, that is 2 of the 14, by the way, yes, the bundle is coming. The
10 bundle was meant to be served two business days after the witness statement was filed. That was filed on the 4th of March at 9 o'clock. I am instructed that it is almost 20 to 3, two business days later, and we still you are received the bundle. So I must raise that in the context of the ongoing prejudice that my client faces at the hands of the Commission's, and I say this in a slightly guarded manner, heavy-handedness in how they have treated my client.

So regarding also the throwaway remark that my client is seeking to be privileged as a witness is utterly
20 unacceptable with all due respect. He is not asking for any privilege. He is asking for a procedural determination by the Commission of the rights that the Commission's own rules give him, and to present it as being a privilege actually suggests that the Commission characterizes my client's application as seeking something to which he is not

entitled, and that is not correct, because what he is asking from the Commission is something that the Commission's own rules entitle him to.

Regarding some of the authorities that my learned friend cited, may I just make three brief points about that? The first one is that I sent my learned friend my list of authorities earlier. I asked her to do the same. She did not, but it is fine.

Point number two is that those authorities, with all
10 due respect, are irrelevant to the issue at hand. Those speak about the important public function that a Commission is supposed to play. That is trite. It is common cause between the parties. The question we have to ask ourselves is whether or not that as the default principle and the baseline can be derogated from having regard to the six authorities that I cited, which said that openness is not by default, it is not absolute, and that it can be derogated from in circumstances where, for example, there is a serious threat to security.

20 And whilst I am just complaining about this, let me also say that this was not the case put up in the answering affidavit, so this is the first time that we are hearing about that. But be that as it may, we are not in a strict court proceeding where affidavits need to be dealt with in that way, I suppose.

Let me just also say that you know, we have things that are thrown at us that we learned about for the first time regarding, apparently it was 12 witnesses or 8 other witnesses and all these other kinds of things and what they did or did not do or whatever the case might be. This is knowledge that is squarely within the Commission's, and when I say the Commission, I mean the evidence leaders, the staff, and the attorneys, within their knowledge. And instead of them drawing us into a proceeding of this kind, 10 this information could have been tended to us well in advance and we could have had a reasonable engagement with each other. The only reason that we are here at the moment in front of the Commission is precisely because we are treated in the manner in which we are treated.

Chair, I see I have four more minutes which I will try to use to the best of my ability.

And also, with all due respect, the fact that we are here now in the circumstances in which we are here now demonstrates not only the abusiveness that my client has 20 been subjected to with respect, it is also that this whole exercise by the time we are here has been rendered futile because of the manner in which the proceeding has unfolded in front of the Commission. So even if the Commission was still minded to give my client some form of meaningful relief, regrettably, most of the relief that he

could otherwise, or most of the relief that he could otherwise have been entitled to is now lost because of the way in which this in-camera application has unfolded in front of the Commission.

And the point that needs to be repeated is that it is not the public nature of my client's exposure to public knowledge that gives rise to the in-camera, it is the existence, the factual existence of the threats and the timing of those threats in the way that they have arisen.

10 And so in those circumstances, we would say that, in those circumstances, we would say that the appropriate thing to do here is to grant my client in-camera relief.

If it has to change Schedule A, who is included and who is not included, that is something that the Commission will determine and we will respect. And the Commission will also apply its mind to what is said at pages 11 and 12, paragraphs 23 onwards of the founding affidavit regarding the modality of that evidence.

20 And may I just conclude then on this point in two minutes to spare, is that one of the letters that were placed in front of the Commission was an explicit request for confirmation that all of the correspondence in this matter, as well as all of the pleadings, had been promptly placed in front of the Commissioners because of the fact that we required a ruling before the 25th and that was never

responded to despite the request being made.

And the reason I raise that is because that concretizes the prejudice that my client faces in circumstances where he engages the Commission, evidence leaders and staff on one hand, and things do not necessarily go through to the Commissioners in the way that we do not know whether it does or it does not, and then he is caught with the consequences arising from the way in which the Commission's evidence leaders and staff choose
10 to handle requests made of them, including requests where matters are asked to be raised with the Commissioners on an expedited and time-sensitive timeline.

And so quite frankly, having regard to all of that, and the fact that factually at the end of the day, everyone accepts that these are credible threats and that they do exist as a matter of fact and as a matter of the record, we would pray for the relief sought in the notice of motion, subject to those amendments that I have suggested are possible amendments like the one I discussed with
20 Commissioner Khumalo. May I please take an instruction? Thank you, Chair.

ADV BALOYI SC: Mr Premhid, I am concerned that with the posture, and I am concerned because I am not aware of the facts, I do not see the facts, maybe, let me say it, I do not see the facts on which you base the kind of contentions

or statements that you are making. You have this consistent complaint that your client is being treated exceptionally badly, is being victimized, high-handedness.

In fact, if one went through your client's affidavit, there is really quite a number of concerning statements. You know, in your supplementary affidavit, 932, you speak about brinksmanship. In 934, you speak about a fishing expedition, that the Commission wanted a statement as part of a fishing expedition. But over and above that, there is
10 this hyped-up criticism of how he is being dealt with. You have not placed to us, before us, facts that support those kind of strong statements. And I think there is a responsibility, especially for, at least as far as I am concerned, there is a responsibility for legal practitioners to advise their clients. When a statement is required by the Commission, because the rules say so, because the Chairperson directs statements must be filed, I think you will agree with me that legal representatives have a responsibility to say to the client, you cannot call it a
20 fishing expedition. Statements must be filed, right. We do have that responsibility.

ADV PREMHID: Absolutely.

ADV BALOYI SC: And here, there is this gratuitous statements about how badly he is been treated, including on something like this. It is not backed up by anything in the

conduct of the Commission. You know, the Chair earlier dealt with you, spoke to you about some of the language and gratuitous statements that are made, but in fact, there is quite a number of them here.

I am concerned that your client is on a path that seeks to publicly create, that seeks to publicly create the impression that this Commission has got something against him. And there is no basis, absolutely no basis. And I wanted to deal with just one example. You, your attorneys
10 wrote a letter requiring a response and rulings by a certain date, unilaterally fixed dates, and there was no justification in that letter why the Commission must make rulings by a certain date. We were just told, just give us rulings by this date.

You are complaining about the response that you got, we did not give you the ruling on the date that your attorney demanded it, because that is what it was. You are complaining about that as if it was there for your client to take. It was for the attorney to write and the Commission
20 must give a ruling on the 25th and if we do not give a ruling on the date that has been dictated by your attorney, we are treating your client unfairly.

Something that I can answer directly to without having to file an affidavit is the demand to place it before the Commission, that letter that said, please place this

before the Commission, Commissioners, in fact, it happened and your attorney got a response saying we acknowledge receipt. It will be placed before the Commissioners and they will deal with it in due course. There is that kind of response that was sent, and I say that because I know it happened.

But that is not even the nub or the essence of what I am speaking to. I am speaking to this tone, this consistent tone since morning that your client is being
10 treated unfairly. You have not suggested or he has not suggested why we would do that to him. He has not. He is just been happy to say I am being treated unfairly. There is this high-handedness. There is not. He appeared here. He was told to file a statement by a certain date. He did not file by that date. Instead, he wrote a letter to say, well, give me directives. He does not file on that day. He is told you have to file.

So I do not see any facts here. And it is important what you are saying because it carries. And it carries. And
20 this is a very public process, and it carries, and I think it should be called out. If your client has got facts, he must list them and let the reasonable person judge on that.

ADV PREMID: Yes.

ADV BALOYI SC: But as matter stand, there is nothing of sorts. It is just gratuitous statements. What fishing

expedition? What interest would the Commission have and why him when all other witnesses, we have had many witnesses appearing. This is the first time that we have a witness who says, well, you want my statement as part of your fishing expedition. We have had, in camera, people applying. They have happily filed statements that set out why they should be heard in camera. This is the first time that we get a complaint that this is a fishing expedition.

I am really, and you can comment as you wish, but
10 I am really expressing a displeasure with the conduct of Mr Carrim, but also because it is not substantiated by anything that he has put before us. You may comment if you want to.

ADV PREMHID: Thank you, Chair. Commissioner Baloyi, I am now going to read from the correspondence because I do not know if the correspondence bundle has been placed in front of you in the way that we asked. But on the day that the application was launched, on the 18th of February, this is what the attorneys say on the record with prejudice.

ADV BALOYI SC: The postponement? What application?

20 **ADV PREMHID**: No, no, no, this is on the 18th of February when this application for in-camera is launched, Commissioner Baloyi. The attorneys say:

“As you would appreciate, due to the sensitivity and urgency of the matter, bearing in mind the date for the

submission of our client's statement in respect of his evidence, we request the aforementioned application to be urgently considered by the Chairperson and such ruling is issued by or before the 25th.”

In that same letter, it says:

10 “In our respectful view, it can be decided without oral submissions on the basis of the application. Should the Chairperson require submissions, we are amenable to do so at a time that is mutually suitable, taking into consideration the need for a ruling by or before the 25th.”

20 And we will remember that is coupled with an application that seeks condemnation for non-compliance, both in terms of the rules as it applies to the timing of the in-camera, but also explicitly says, I need a direction in respect of the filing of the statement so I know what my position is come the filing deadline.

On that day, Commissioner Baloyi, the response from Mr Popkas says, it is not that it is being placed in front of the Commissioners, it says instead:

“We confirm that same will be relayed

to the secretary and evidence leader
shortly and we will revert with formal
instructions in due course.”

And then five days lapse, and on the 23d of
February, a letter is written, and it is a two-page letter and I
am not going to read all of it, but what the attorneys say is:

10 “Kindly advise whether the application
has been served and further, when we
can expect a response. In the event
the application has not been served,
what are the reasons? We remind you
of the urgency in response to our
client's application premised on the
order of the Commission. And we refer
you to what we set out in paragraph 7
...”

Which is what I read out about that 25th deadline.

“We reiterate that request.”

20 And then the day, and then on that same day, we
get a response that says:

“We acknowledge receipt of your
correspondence and confirm that same
will be directed to the relevant
functionaries for consideration.”

ADV BALOYI SC: My point, Mr Premhid, is why does that

all, how does it all justify this is victimization? That is my point. My point is, you, remember where I started. I said there is this consistent theme that your, that Mr Carrim is being treated exceptionally badly, victimized, and you have said, I think we have been adversarial, the Commission has been adversarial towards him. All the strongest words that he could think of are in his affidavit about how badly he is being treated. But not just badly, but like he is being targeted, he is being victimized.

10 And that is my issue, that that sequence of correspondence happened as it did, right. How does it translate? When do we get to the point where you say, this is my client being particularly victimized? That is why I referred, and for me, that is an easy example about the statement.

ADV PREMHID: Ja.

ADV BALOYI SC: You know, all witnesses have to submit statements. You have a witness say, oh, this is a fishing expedition. I have asked to be heard in camera, now you
20 want my statement, and you want my statement because you want a peek, to have a peek into what I am going to say. What I am saying is, surely, what interest do we have, right? Why would we want to fish when we are going to have a witness here? He will come and testify, we will ask him all the questions we want to ask.

ADV PREMHID: Absolutely.

ADV BALOYI SC: Yes, so there is no, basically the point I am making is, there is no basis for this strenuous complaint that is being put out there, that this particular witness, and just him, because we have never had this complaint, just him, why would we treat him badly? Why? The one witness who ...[indistinct] who came here, applied for a postponement, on the basis that I do not have documents, I have people who are, you know, my lawyers are not going
10 to be available, actually got a very generous postponement, right, to go get ready, have your lawyers available. That you do not, as you say, context, that context you do not speak to, but you nitpicking on matters of engagement with the evidence leaders, with the attorneys, and you elevate it, or he, I accept you are a creature of instructions, and so it is not your personal positions that you are putting forward, but why he would be targeted by the Commission, what is there to gain for the Commission? And I think those are critical questions that should be asked before he put stuff
20 like this, you know, in the public domain.

ADV PREMHID: Thank you, Chair. Through you, Chair, when I was engaging with the Chair in the morning about the other instances of prejudice claimed by my client, that was a cumulative assessment of not only this chain of correspondence, but other instances where the Commission

has conducted itself in a way that reasonably leads my client to believe that he is being treated in the way that he is. I understand what Commissioner Baloyi is saying to me, that in Commissioner Baloyi's view, there is no basis upon which to make such a statement, and that the stridency of the statements is a concern for Commissioner Baloyi, but more broadly than that, that it is a concern insofar as the integrity of this Commission as it may be viewed in the public.

10 And Commissioner Baloyi, I would entirely agree with you, the consistent complaint about, and from my client has been that the Commission has a set of rules. There are instances where not the Commission is sitting on bank in front of me, but through the evidence leaders or the attorneys or the staff or whatever the case might be, there are instances where non-compliance with those rules are identified.

 That may or may not turn out on legal interpretation and whether that view is right or wrong, but what it
20 implicates is that my client is the subject of coercive force by this Commission. And unless my client is represented by a legal ...[intervenes].

ADV BALOYI SC: Coercive force having manifested where? Just tell us when ...[intervenes].

ADV PREMHID: It is the threat of the coercive force. I am

not saying that there has been coercive force. I am saying at each one of these instances that you have put to me, where the stridency emerges from Mr Carrim and his legal team, I am saying that in each one of those instances, the threat of coercive force hangs over my client, that if he is found to be in breach of the Commission's rules, or even where the, to be found in breach of those Commission's rules is subject to a legal debate where his legal representatives say, actually, the Commission is not following its rules in the first place. So why I am ...[intervenes].

ADV BALOYI SC: No, can we just clarify this. You say he is the subject of a threat, I understand you to be saying threat of coercive force, but that is true for everyone who appears before us. If they you are complied with a directive in the way that your client did not, right, there was an order by the Chair, you must find a statement by a certain date.

ADV PREMID: Yes.

ADV BALOYI SC: Now there is nothing exceptional about your client on that kind of order and when he does not comply with it, to say that you will be subjected to the powers that we have, that you will be held in contempt of the Commission because you have not complied with a ruling, a lawful ruling of the Chairperson. There is absolutely nothing wrong with that and there is nothing to

complain about. He ...[intervenes].

ADV PREMHID: No, but ...[intervenes].

ADV BALOYI SC: He may have just, he may justify himself and say I did not comply because I was waiting, I was hoping you will give me a directive just like I asked for, right, he could give that as an excuse for non-compliance but as a matter of law before us here, right, if you do not comply with the directive of the Chairperson, you are in contempt. Whether we act or we postpone acting is a
10 different matter, so it is an inaccurate reflection of the position to say that well, you know, he is been unfairly subjected to coercive force because he has been told he is in contempt and therefore he will be, you know, measures will be taken against him. Sorry, I do not understand that complaint.

ADV PREMHID: No, that is not the complaint because it is, we are not complaining about the trite proposition that the Commission has the power to use coercive force in instances of non-compliance. What we are overlooking,
20 with all due respect Commissioner Baloyi, in the way in which you have put that limited factual scenario to me, is that there was an application as an intervening fact to say please define ...[intervenes].

ADV BALOYI SC: But that application did not displace, there was never a suggestion from the Commission, Mr

Premhid, that because there is a pending application you do not have to file and the Commission does not get dictated upon by a witness who decides, I do have a ruling, I have a clear ruling to file by a certain date but you know what, I am not going to file. I am writing a letter to say give me directives, I have a pending application therefore I am not filing. There is a binding on the Commission. He was given a clear directive and he was in contempt of the directive, it is simple. He was.

10 **ADV PREMHIID:** But with all due respect, Commissioner Baloyi, the ruling was asked for before the statement was due and that is why we cannot simply ignore the factual intervention of the application. If the application was dismissed by the 25th, then he would have had to file on the 27th. It, we cannot deal with the hypothetical of non-compliance without factoring in the fact that the witness himself came to the Commission and said I know what my obligation is but here is a related issue, I need you to decide upon before my statement is due to help me clarify
20 what my obligations are.

ADV BALOYI SC: The problem is not that before, that he determined, he determined for us before I file my statement, give me a directive and then when he does not get that directive he chooses not to file his statement. That is where the problem is and I am not sure why we are having

this argument when in fact the reality, the factual reality is there was a directive. There was a directive. It had a fixed date for compliance. He did not comply.

He has an explanation, and that is, my complaint, if it is a complaint at all, for lack of a better word, is that he superimposed between the, before the statement was due, between the date of the directive and before the statement was due, he then superimposes something. He says give me a directive and then he goes and makes a decision I am
10 not filing because they did not give me the directive on that day and the simple point I am making to you and that I did not expect would be such an issue of contention is that he was not entitled to do that. He did it anyway but he was not entitled to sit back because he does not have the directive that he is asked for and that he has put us on terms by the way.

He puts us on terms to give him a directive by a certain date. When we do not give him that directive by that date, the simple point I am making is he was not
20 entitled to not to file his statement in accordance with the directive and when he is told that you did wrong by not filing by that date it is not open to him to say I am being victimized. That is the simple point I am making. It is not open to him to say that.

CHAIRPERSON: Unless perhaps I am wrong on some legal

basis, it seems to me like somebody that were to act as if there is an interdict in place when in fact there is none.

ADV HASSIM SC: Mr Chair, can I, may I say something on this?

CHAIRPERSON: Not in the middle of Mr Premhid's argument.

ADV HASSIM SC: I am sorry, I thought you were ...[incomplete].

CHAIRPERSON: Yes, Mr Prehmid.

10 **ADV PREMHIID:** The Commissioners are very active on a Friday afternoon.

CHAIRPERSON: Please respond to Commissioner Baloyi's question.

ADV PREMHIID: I hear exactly what Commissioner Baloyi says. I think where Commissioner Baloyi and I depart company is let us use a High Court type of scenario. A High Court gives an order that is going to compliance with which is going to have to occur by the 27th of February. Let us use our exact dates. And before the 27th of February an
20 application is placed before the High Court that says I need you to determine an issue, whether rightfully or wrongfully, whether imposed unilaterally, whether placed on terms, the fact of the matter is an application is launched before the compliance date to say in the High Court determine the terms of my compliance because I am concerned if I comply

in the way I am currently expected to comply, that that is going to cause me some or other prejudice or harm or whatever the case might be.

I think where Commissioner Baloyi and I part ways is that on my understanding, given that it was not just a letter, it was also an application for formal relief under the Commission's rules with a prayer for condemnation with the associated timeline, that that demonstrates an absence of wilfulness for the purposes of the so-called non-compliance because there is a legal issue that is sought to be 10 determined before that compliance and/or non-compliance can arise. But I have heard what Commissioner Baloyi has said and Commissioner Baloyi's view is that that is not correct and that notwithstanding your application, and please correct me if I am wrong, you actually should have complied and that your failure to comply is what has caused the concern for the Commission.

I hear that and I accept the remarks made by Commissioner Baloyi, obviously I do, but I would say that 20 the fullness of the answer that I can give is that he did not sit back and simply not comply. He came to the very body that will determine the state, the consequences of his compliance or noncompliance on the 27th and said, please give me a directive on this particular issue that is materially connected to that compliance which I know I have to comply

with.

If that was the wrong approach, that is the wrong approach and we have to take the proverbial beating that we receive for that. But as long as it is on record that my client did not just simply write a letter or sit back or sat on his hands, but that he engaged a formal procedural process to help him clarify the terms of his compliance in respect of that particular date, then that is as far as I can take it. But I take that, Commissioner Baloyi, and may I also say on the
10 record that this is now the third instance that the Commission has raised languaging and stridency in the conduct of the legal team, in the conduct of Mr Carrim's legal team.

As Mr Carrim's leading counsel, I will take responsibility for that and I again apologize to the Commission for those terms. But I hope the Commission will understand that the obligation on us as Mr Carrim's legal representatives in circumstances where he could be the subject of coercive force is to represent him to the best
20 of our ability with no regard to personal consequence, fear, or favour.

And so I take the admonition in the way that it is delivered and just to assure the Commission that that was never meant as a sign of disrespect or wilful non-compliance, but it was in the, what we see as the legitimate

pursuit of our responsibilities to our client as his legal representatives. Thank you, Chair. Thank you, Commissioner Baloyi.

ADV BALOYI SC: I accept that, Mr Premhid.

ADV KHUMALO SC: Mr Premhid, this is directed to your client and other witnesses that are still to come and this is very important because officers of this Commission do not get to speak for themselves and allegations are made in the papers that affect the officers of this Commission. I just
10 want to place it on record that the rules of this Commission require that they take the oath of secrecy to preserve confidentiality of any document that comes to this Commission and Regulation 12 says if they breach some of those regulations it is an offence. So all of them take that obligation very seriously and we as Commissioners we administer that oath and we make it clear to them that you know these are your obligations, everything that comes here is to be treated as confidential.

I just needed you to know that and any other
20 witness that comes after your client they know that so that allegations should not be made that if officers of this Commission come across statements or documents they will not treat them with confidentiality. I think it is very important that that is made clear because that was the fear as I understood it and it is put on affidavit they do not get to

speak for themselves but we know the regulations as I said, some of these documents are on the website, so can we just understand that so that going forward you know that that is the position. It is not directed just to your client but anybody that comes after your client.

ADV PREMHID: Of which I assume there is going to be many.

ADV BALOYI SC: I hope they do not repeat what was said this morning.

10 **ADV PREMHID:** Commissioner Khumalo, may I say I accept that and indeed had the confirmatory statement of what you just put to me which we received in the directive on the 3rd of March in paragraph 7 be said on the 18th of February then that might have changed our position being in front of you. But I have heard what you have said and I am sure all the television cameras have flighted that as well. Thank you, Commissioner Khumalo.

ADV KHUMALO SC: If they repeat it I am going to blame you.

20 **ADV PREMHID:** It would not be the first time, Commissioner Khumalo.

CHAIRPERSON: You wanted to say, or should I quickly raise my issues and then you come thereafter, or you want to come in now?

ADV HASSIM SC: Chair, I am in your – it is related to the

issue of ...[intervenes].

CHAIRPERSON: I just hope it will not result in an unending ping-pong.

ADV HASSIM SC: No Chair I am sure you will ensure that it does not.

CHAIRPERSON: Yes.

ADV HASSIM SC: It really is to say two things. The first is that the effect of bringing the application on the 18th of February was not to suspend the ruling of the 27th of Feb
10 and so I hear my learned friend saying ...[intervenes].

CHAIRPERSON: I think we have, that was the first, or after my preliminary point I think that was one of the very first issues I raised. I think Commissioner Baloyi as well as touched on it. I think the point has been made in that regard.

ADV HASSIM SC: I will not say anything further on it ...[intervenes].

CHAIRPERSON: Yes, yes.

ADV HASSIM SC: Except it was important from our
20 perspective as the evidence leaders because there are allegations that have been made about the evidence leaders in this.

CHAIRPERSON: Yes, okay.

ADV HASSIM SC: And so it does not suspend the ruling.

CHAIRPERSON: Yes.

ADV HASSIM SC: It was important from the point of view of the evidence leaders in the way in which they handled that application going forward.

CHAIRPERSON: Yes.

ADV HASSIM SC: But the second thing was that my learned friend said that the statement was materially connected to the application and that was not at all apparent and until this moment it is still not apparent to me how it is materially connected to the application. If Mr Carrim had said my statement will contain information that cannot be disclosed and that it is part of my application for the in-camera hearing, part of why I need this is because I am going to say something that has to be kept confidential, that I understand.

10

But that is not the ground that was advanced in the application and what is in the statement is not anything that has not already been said in public in the High Court by the witness.

CHAIRPERSON: Thank you Ms Hassim. A quick response to the second point only please Mr Premhid, if you have, if you have it.

20

ADV PREMHD: All I will say is that I do not know what more my client can be expected to do in the circumstances where he comes to the Commission, places the application and the correspondence where the exact justification sought

by my learned friend is placed.

But, and that is not to do what my learned friend has I think suggested which is that it is about the content of the statement. It is about the status of disclosure of the, it is the status of the hearing prior to the disclosure of the statement, not the content of the statement itself. So that is the consistent line we have taken in these proceedings.

CHAIRPERSON: Thank you Mr Premhid. I have two very brief points to raise. There is the issue of the offer of
10 protection. There is a dispute as to whether the offer was made previously. I will leave that and proceed to what the attitude is now because Ms Hassim has said the offer is being extended even as we speak. Is there a response? If not, will a response be given to the evidence leaders as soon as possible in this regard?

ADV PREMHID: Chair, may I say that we have to take an instruction and we will give a response.

CHAIRPERSON: All right.

ADV PREMHID: But I must just say this.

20 **CHAIRPERSON:** Yes.

ADV PREMHID: My client is scheduled to come before this Commission within 48 hours.

CHAIRPERSON: Yes, yes.

ADV PREMHID: My learned friend was talking about things like threats assessments and all these other kinds of

investigations that need to happen. So I, I mean practically speaking, even if he wants to accept that, I do not know to what extent all of the necessary processes are completed within the 48 hours that he has available. But we will take an instruction and we will come back to you on that. Thank you, Chair.

CHAIRPERSON: Thank you. Thank you. Then there is also the issue of the supplementary bundle. This morning I understood you to accept that that is due today and that you
10 will accept it when it is furnished today. But when you were arguing this afternoon, I understood you to be saying it was due at a specific time this morning and that by now it is late already.

I just want to understand what exactly you are saying in this regard. What was the point of substance being made in this regard? Are you saying it is late and therefore your client will be prejudiced if your client gets it later than whatever the morning time was?

ADV PREMID: Yes, and the reason for that is that we
20 were under a time pressure to file by a particular time. That was specified in the directive handed down as 9 o'clock. Two days later, business days later, 9 o'clock, the statement, the supplementary bundle has not been given. We are now here on the Friday afternoon at a quarter past 3. I am instructed it is still not being given.

CHAIRPERSON: What were the exact terms for the filing of that?

ADV PREMHID: You will remember that comes from the original order you gave ...[intervenes].

CHAIRPERSON: Yes, but what were ...[intervenes].

ADV PREMHID: In the context of ...[intervenes].

CHAIRPERSON: What were the exact terms?

ADV PREMHID: Within 48 hours of the receipt of the statement. And so now I am saying 48 hours has actually
10 lapsed. And I am not just complaining that 48 hours has lapsed. What that has an impact on is from Friday 9 o'clock until my client has to appear in front of you on Monday at 9 o'clock or whatever the actual time is, the absence of the bundle since this morning is now eating into our ...[intervenes].

CHAIRPERSON: What time was it this morning?

ADV PREMHID: 9.

CHAIRPERSON: 9.

ADV PREMHID: That we had to deliver the statement here.
20 We had to ...[intervenes].

CHAIRPERSON: No, no, no, the bundle, the supplementary bundle.

ADV PREMHID: We would have anticipated it two days later, meaning 9 o'clock today, in the morning.

CHAIRPERSON: Today, 9 today.

ADV PREMhid: Ja.

CHAIRPERSON: And at 9:30 you were here.

ADV PREMhid: And it has not come.

CHAIRPERSON: And would you have used it meaningfully or is this a technical point to say ...[intervenes].

ADV PREMhid: No, we would have. As you might notice, one of my team is not here today because he is off sick, but he would have been the one to take up, he was off sick and not present because he has a contagious illness,
10 which means he should be isolating. But he would have been in the position to already start looking at that bundle, engaging our client and so on. And so that is just the reality of where we are placed.

CHAIRPERSON: But Mr Premhid, Mr Premhid, this point about the exact hour was not made this morning. This morning you seem to accept that this bundle is to be given to us today. And it was already past 9 o'clock and you did not suggest that you are late because you did not give this to me at 9 o'clock. It seems to me that this is an about turn
20 and I am not taking kindly to that at all.

ADV PREMhid: No, I accept what you say to me, Chair, and I will say that it is not an about turn because when we were given the short ...[intervenes].

CHAIRPERSON: It is. It is. If after 9:30 when argument commenced, if after 9:30 you said the supplementary bundle

is due today, and you said it in a context that was receptive to the idea of that being given to you, later than the start time of the argument, all of a sudden now you are insisting on 9 and you were already past 9 when you made this point. That is why I am saying this is an about turn. If you want to, if you want to we can actually listen exactly to what you said and I think I am correct on this.

ADV PREMhid: No, I do not think that is necessary and I hear what you say to me, Chair. But all I will say is that
10 even if 9 o'clock was not the fixed time and my, or alternatively my failure to mention the 9 o'clock issue when I addressed you earlier, now causes the effect that it did not have to be given at 9 o'clock. The point that I would make simply is that it is now Friday afternoon, almost 4 o'clock and the bundle is not ...[intervenes].

CHAIRPERSON: Do you remember, do you remember as you were arguing, and I think I even asked Ms Hassim, Ms Hassim will the supplementary bundle be served today and you said yes. And Mr Premhid, you never said but that will
20 be late already. You never said so.

ADV HASSIM SC: Chair, may I? May I?

CHAIRPERSON: Yes.

ADV HASSIM SC: Because what is happening here is important. It is again the applicant creating rules and demands.

CHAIRPERSON: No, please respond when Mr Premhid is done. Let us just continue with the debate with Mr Premhid.

ADV HASSIM SC: Oh. It is on the same point, Chair, but okay.

CHAIRPERSON: No, no, no, so that you do not, it does not become a dialogue between you.

ADV HASSIM SC: I never know when Mr Premhid is done or not.

CHAIRPERSON: No, no, no, he is still arguing. I hope you
10 follow what I am saying, Mr Premhid. After 9:30, during your argument, you, in a manner that is receptive to the idea, accept that the bundle is going to be served. You do not appear to be opposing that on the basis that it was supposed to have been served at 9 o'clock and therefore it is late already.

You did none of that. If anything, as I have said I think two times already, you were receptive to the idea that the supplementary bundle was going to be served after 9 a.m. in the morning. It is on that basis that I say I see this
20 as nothing but an about-turn. It is on that basis that I say so, and I added that I do not take kindly to it.

ADV PREMHIID: Chairperson, I am instructed that the bundle has now been emailed to us whilst we have been having this engagement. So my prejudice is cured.

CHAIRPERSON: Thank you very much. Thank you very

much. Those are the only two issues I wished to raise with you, Mr Premhid. I do not want you to get to the ping-pong that I said I do not want it to become.

ADV HASSIM SC: No.

CHAIRPERSON: This issue has been resolved now, Ms Hassim.

ADV HASSIM SC: Chair, can I just put one point of clarity. There was never any agreement that it would be filed by 9 o'clock this morning.

10 **CHAIRPERSON:** No, no, no, I understand that perfectly, but I understand the point to arise from a mathematical calculation of 48 hours, not that there was any agreement. But I am saying what I said despite the mathematical calculation because I just find it very strange.

ADV HASSIM SC: I appreciate that, Chair. My point is not about yours, if it is about ...[intervenes].

CHAIRPERSON: No, no, no, as I ...[intervenes].

ADV HASSIM SC: Even the 48 hours was never ...[intervenes].

20 **CHAIRPERSON:** I guess I am addressing Mr Carrim through you. Yes.

ADV HASSIM SC: It is merely to say that the 48 hours was never an agreement.

CHAIRPERSON: No, no.

ADV HASSIM SC: The 48 hours comes from your ruling on

the 6th of February relating to a different set of documents.

CHAIRPERSON: Yes. All right, all right. No, thank you.

ADV HASSIM SC: Thank you, Chair.

CHAIRPERSON: Thank you. Thank you, Counsel. Thank you all, to all of you. I will make my ruling on this at 9:30 on Monday and I hope that it will be a written ruling which will cover both the reasons for this morning's ruling and also then the ruling on the aspect that is been argued now plus the reasons for it. We earlier touched on the
10 possibility of the filing of a supplementary affidavit on the issues that I engaged Mr Premhid on. I do not even trust my memory to be able to articulate those. I trust your memory more than mine, Mr Premhid, on that.

ADV PREMhid: Sorry to interrupt you whilst you are talking, but my learned friend indicated she also does not remember. I remember that this possible supplementary statement is to deal with issues such as who could potentially be the source of those ...[intervenes].

CHAIRPERSON: Yes, that was the thrust of it. It was the
20 main ...[intervenes].

ADV PREMhid: Yes, the circumstances and the reasonable version of ...[intervenes].

CHAIRPERSON: Yes, yes. Yes, yes, that was the thrust of it.

ADV PREMhid: Yes, yes.

CHAIRPERSON: Thank you. I direct that a supplementary affidavit, if any, underline “if any”, must be filed by midday tomorrow and a response to it, if any, by 7 p.m. tomorrow. That is the direction. But I may just add that by making the direction we are not necessarily saying that anything will turn on that. But when you write your reasons, you never know where the pen might lead you, so I want to avoid a situation where we just might say, oh, gosh, if we had directed that, there would be such a supplementary
10 affidavit. So it is on that basis that I am giving that direction.

Let us adjourn and resume at 9:30 on Monday, and we will resume here. Perhaps let us see Counsel outside regarding the practicalities and so on. Let us adjourn.

INQUIRY ADJOURNS TO 9 MARCH 2026

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