



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

In the matter between:

OUPA BROWN MOGOTSI

Applicant

and

MATTHEW CHASKALSON

First Respondent

THE COMMISSION

Second Respondent

REASONS FOR THE ORDER DATED 15 MAY 2026

Introduction

[1] On 18, 19 and 20 November 2025 Mr Oupa Brown Mogotsi appeared before the Commission. His evidence was led by Chief Evidence Leader, Mr Matthew ChaskalsonSC. Mr Mogotsi's evidence was not completed and his testimony was adjourned to a date to be arranged between Mr Chaskalson and his legal representatives.¹

¹ Mr Mogotsi, transcript of oral evidence, 20 November 2025 at page 209.

[2] On or about January 2026 Mr Mogotsi's erstwhile legal representatives withdrew as his attorneys of record, leaving him unrepresented.² His testimony was subsequently scheduled for 2 March 2026. However, Mr Mogotsi did not appear on the day and he informed Mr Chaskalson via a text message that morning that he was ill and needed to see a doctor.³ The matter was stood down until 4 March 2026 for Mr Mogotsi to produce his medical certificate.⁴

[3] On 4 March 2026 and after considering the medical certificate produced by Mr Mogotsi, I issued a ruling in terms of which Mr Mogotsi's testimony was postponed to a date to be determined.⁵ That date was later determined to be 28 April 2026. On that day, again Mr Mogotsi did not testify. Through his newly appointed legal representatives, Mr Sekgatja and Ms Mohomane, he indicated that he intended to apply for the recusal of Mr Chaskalson.⁶

[4] Although an affidavit had been annexed to a letter giving notice of the contemplated application, no formal application had been lodged in accordance with the Commission's rules. I accordingly directed Mr Mogotsi's legal representatives to file a substantive application by close of business on 29 April 2026, with the answering affidavit to be delivered by 6 May 2026, and the replying affidavit by 11 May 2026. The application was set down for hearing on 15 May 2026 at 9:30, with Mr Mogotsi's testimony to follow thereafter, to be led by either Mr Chaskalson or another Evidence Leader, depending on the outcome of the recusal application.⁷

[5] The recusal application was heard on 15 May 2026. Having heard argument by Ms Mohomane on behalf of Mr Mogotsi and Ms Hassim SC on behalf of the

² Applicant's founding affidavit, para 5.2.

³ Mr Mogotsi, transcript of oral evidence, 2 March 2026 at pages 1 – 3.

⁴ Mr Mogotsi, transcript of oral evidence, 2 March 2026 at pages 1 – 3.

⁵ Mr Mogotsi, transcript of oral evidence, 4 March 2026 at page 6.

⁶ Mr Mogotsi, transcript of oral evidence, 28 April 2026 at pages 159 – 163.

⁷ Mr Mogotsi, transcript of oral evidence, 28 April 2026 at page 167.

Evidence Leaders, I ruled that the application is dismissed with reasons to follow, and ordered that the hearing of the testimony of Mr Mogotsi proceed forthwith, led by Mr Chaskalson. Ms Mohomane placed on record that Mr Mogotsi intended to apply to court for the review of the dismissal of his application. I commented that the hearing of the testimony would proceed in accordance with my order as there was no interdict.⁸

[6] These are the reasons for the ruling I made on 15 May 2026.

Mr Mogotsi's preliminary objections

[7] The Commission's Evidence Leaders filed an answering affidavit which was deposed to by Mr Madimpe Mogashoa of the Commission's attorneys, Diale Mogashoa Incorporated, opposing the recusal application. Mr Mogashoa's answering affidavit annexes a substantive answering affidavit of Mr Chaskalson in which Mr Chaskalson answers to the factual allegations in the founding affidavit of Mr Mogotsi. Mr Mogashoa stated in his affidavit that he relies on the contents of Mr Chaskalson's answering affidavit to respond to the factual averments made in Mr Mogotsi's founding affidavit.

[8] Mr Mogotsi advanced various preliminary objections in his replying affidavit and oral argument. The first objection concerns the *locus standi* (legal standing) of the Commission's attorney. He contended that Mr Mogashoa does not have authority or legal standing to depose to the affidavit dealing with matters relating to Mr Chaskalson's personal conduct, state of mind, and alleged private communications between himself and Mr Mogotsi.

[9] Second, he submitted that to the extent that Mr Mogashoa purports to deal with such matters, his evidence would constitute inadmissible hearsay, as the allegations concern matters falling within the personal knowledge of Mr Chaskalson.

⁸ Mr Mogotsi, transcript of oral evidence, 15 May 2026 at pages 113 – 114.

[10] Third, Mr Mogotsi sought to make a distinction between affidavits and annexures. He argued that annexures do not constitute independent evidence unless properly confirmed under oath or incorporated into a sworn affidavit. On this basis, he submitted that the material relied upon does not meet the standard required in motion proceedings and does not constitute evidence. Linked to this is the contention that Mr Chaskalson has failed to place a proper answering affidavit before the Commission. Although an answering affidavit by Mr Chaskalson formed part of the answering papers by the Evidence Leaders in that it was annexed to Mr Mogashoa's answering affidavit, Mr Mogotsi contended that it was presented in a manner that does not constitute a full and independent response to the allegations.

[11] Upon being engaged during oral argument, counsel for Mr Mogotsi did not persist with the preliminary objections.⁹

[12] Mr Chaskalson's affidavit is an affidavit like any other. It bears all the hallmarks of admissible evidence in normal legal proceedings, and it responds to each material allegation raised in Mr Mogotsi's affidavit. Therefore, the contention that Mr Chaskalson's affidavit failed to place a full and independent version before this Commission is without merit.

[13] The fact that Mr Chaskalson's answering affidavit was annexed to the affidavit of Mr Mogashoa does not detract from its status as sworn evidence, nor does it render it inadmissible. The affidavit of Mr Mogashoa does no more than refer to, and incorporate, the sworn evidence of Mr Chaskalson.

[14] The *locus standi* contention is that Mr Mogashoa could not act beyond his role as a legal representative for the Commission, and that nothing suggests that he was authorised to act on behalf of Mr Chaskalson. This contention is misplaced. The Commission was cited as a second respondent in the application, and the affidavit of

⁹ Mr Mogotsi, transcript of oral testimony, 15 May 2026 at pages 57 – 61.

Mr Mogashoa was filed on behalf of the Commission's Evidence Leaders and not specifically Mr Chaskalson. Mr Chaskalson filed his own affidavit which was annexed to that of the Evidence Leaders and in which he responded to specific allegations made against him and in relation to him.

[15] It is well established that a deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose thereto; what must be authorised is the institution and prosecution of the proceedings. In *Ganes*¹⁰ the SCA held that—

“it is irrelevant whether [the deponent] had been authorised to depose to the founding affidavit. The deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to the affidavit. It is the institution of the proceedings and the prosecution thereof which must be authorised.”

[16] It bears reiteration that Mr Mogashoa's affidavit serves to place before the Commission submissions on the facts, with reference to Mr Chaskalson's affidavit, and on the applicable law. He is an attorney who acts for the Commission, cited as a party in the application. In these circumstances, the objection based on *locus standi* or lack of authority is without merit. In any event, even if Mr Mogashoa's affidavit were to be excluded, Mr Chaskalson's affidavit is, on its own, sufficient to sustain the defence.

[17] The objection that Mr Mogashoa's affidavit constitutes hearsay is equally misplaced. Largely, Mr Mogashoa's reliance on Mr Chaskalson's affidavit is for purposes of making submissions. The factual averments themselves are contained in Mr Chaskalson's affidavit. So, Mr Mogotsi's point is idle. To the extent that Mr Mogashoa may purport to, himself, make factual averments, those obviously come from Mr Chaskalson's affidavit. Under those circumstances, it is highly technical to insist that the factual averments are hearsay and should not be admitted. In any event, the Commission is at liberty to rely on the factual averments as stated by Mr Chaskalson. Thus the objection takes Mr Mogotsi to a dead end.

¹⁰ *Ganes v Telecom Namibia Ltd* [2003] ZASCA 123; 2004 (3) SA 615 (SCA) at para 19.

[18] For these reasons, all the preliminary objections raised by Mr Mogotsi are dismissed.

Legal basis for Mr Mogotsi's application

[19] In his application Mr Mogotsi relied on an apprehension of bias for the recusal of Mr Chaskalson and to that end places reliance on *SARFU*,¹¹ *De Lacy*,¹² *S v Basson*,¹³ *Bernert*¹⁴ and *Mulaudzi*¹⁵ (the *SARFU* test). Apart from the fact that these authorities are not applicable, they were also not accurately cited.

[20] The paragraph cited by Mr Mogotsi in *De Lacy* does not exist, and *Mulaudzi* is cited as a Constitutional Court judgment when it is, in fact, a judgment of the Supreme Court of Appeal.

[21] The *SARFU* test is not applicable in the present context. What is applicable is the *Killian*¹⁶ test. During oral argument counsel for Mr Mogotsi accepted this. Despite this acceptance, she repeatedly reverted to the *SARFU* test. It is not necessary to restate that test here since it is inapplicable. Suffice it to say that it is concerned with apprehension of bias in relation to decision makers such as judicial officers. Evidence Leaders are not decision makers. They are there to assist the Commission in executing its mandate. In an application for the recusal of the Chief Evidence Leader Justice Khampepe, in the Judicial Commission Inquiry into the Allegations Regarding Efforts or Attempts ... Made to Stop the Investigation or Prosecution of Truth and

¹¹ *President of the Republic of South Africa and Others v South African Rugby Football Union* [1999] ZACC 11; 2000 (1) SA 1; 1999 (10) BCLR 1059 (CC).

¹² *Post Office v De Lacy* [2009] ZASCA 45; 2009 (5) SA 255 (SCA).

¹³ *S v Basson* [2005] ZACC 10; 2007 (3) SA 582 (CC); 2005 (12) BCLR 1192 (CC).

¹⁴ *Bernert v Absa Bank Ltd* [2010] ZACC 28; 2011 (3) SA 92 (CC).

¹⁵ *Mulaudzi v Old Mutual Life Insurance Company (South Africa) Limited, National Director of Public Prosecutions v Mulaudzi* [2017] ZASCA 88; 2017 (6) SA 90 (SCA).

¹⁶ *Director of Public Prosecution, Western Cape v Killian* [2007] ZASCA 169; [2008] 1 All SA 537 (SCA); 2008 (1) SACR 247 (SCA).

Reconciliation Commission Cases,¹⁷ ruled that the *SARFU* test is inapposite to the recusal of Evidence Leaders in commissions of inquiry.¹⁸ I agree. Justice Khampepe relied on *Killian* and *Porritt*.¹⁹

[22] In *Porritt*, the recusal of a prosecutor was sought on the basis of the *SARFU* test. On appeal, the Supreme Court of Appeal held that unlike judges and magistrates, prosecutors are not decision makers. Their function is to place before the court what they consider to be credible evidence relevant to the alleged offence. It held that—

“[p]rosecutors neither make the final decision on whether to acquit or convict, nor on whether evidence is admissible or not. Their function is to place before a court what the prosecution considers to be credible evidence relevant to what is alleged to be a crime.”²⁰

[23] *Killian* clearly illustrates the distinction between the roles of decision makers and prosecutors. In that case a prosecutor had interrogated a person in a statutory inquiry which did not afford the person the right to silence and the right against self-incrimination. In subsequent criminal proceedings where the person was the accused and the same prosecutor represented the State, the accused contended that, if the same prosecutor were to prosecute, the trial would be unfair. Let me immediately say that if it were the judicial officer in the criminal proceedings that had played a decision making role in an earlier inquiry, recusal would be warranted. What then is the position with regard to a prosecutor? The Supreme Court of Appeal held:

¹⁷ The ellipsis stands in the place of “Having Been”. Those two words make the name of the Commission to not read well.

¹⁸ Justice Khampepe’s ruling dated 4 December 2025 available at <https://www.trc-inquiry.org.za/wp-content/uploads/2025/12/RULING-ON-RECUSAL-APPLICATIONS-04-DECEMBER-2025-1.pdf> at page 10, para 23.

¹⁹ *Porritt and Another v National Director of Public Prosecutions* [2014] ZASCA 168; [2015] (1) SACR 533 (SCA); [2015] 1 All SA 169 (SCA).

²⁰ *Porritt* at para 11.

“The question remains whether the prosecutor’s dual role in this case created a substantive unfairness per se. Neither precedent nor principle persuades me that it did. Whether fulfilment of that dual role does involve or bring about substantive unfairness in an ensuing criminal trial will be a matter to be decided on the facts of each case by the trial court. Unfairness does not flow axiomatically from a prosecutor’s having a dual role”²¹

[24] The same reasoning should apply to Evidence Leaders. This is not to suggest that the role of Evidence Leaders is the same as that of prosecutors. The role of Evidence Leaders takes a form that plainly shows that theirs is a role in inquisitorial proceedings, as opposed to adversarial proceedings.²² That said, there is an

²¹ *Killian* at para 28.

²² Justice Nugent, in his ruling of 2 July 2018 in the Commission of Inquiry into Tax Administration and Governance by the South African Revenue Service, said the following about the role of Evidence Leaders at paras 29 – 30 and 32:

“While often called evidence leaders, that is a misnomer. The process of a commission of inquiry is inquisitorial, unlike that of a court. That means it must make its own inquiries, seek out evidence itself, and interrogate the veracity of evidence where that is required. Counsel appointed by a commission facilitates the performance of all those functions under the direction of the commission.

When oral evidence is to be heard it will be presented to the commission by its counsel. Where counsel has no reason to suspect the veracity of the testimony, counsel play their part by guiding the witness through the testimony, so as to ensure that relevant testimony is extracted. Where there is reason to suspect testimony might not be true, they play their part by examining the witness, vigorously, if that is required, to test its veracity. Indeed, it might be that a witness is called solely for vigorous examination, so as to extract information that the commission requires. And if a witness has given testimony when there has been no reason to suspect it might be false, and it turns out later that that might not be the case, then the witness is liable to be recalled, and examined more thoroughly. In short, the approach counsel will take to oral evidence will be dictated by the exigencies of the case. Some cases will require the witness to be guided. Other cases will require the witness to be interrogated. And some cases might require a bit of both.

...

What is called for from counsel for a commission, and from the commission itself, is an open but inquiring mind, the meaning of which I had occasion to explain in the Supreme Court of Appeal. That case concerned the functions of the Public Protector but it applies as much to a commission of inquiry:

‘That state of mind is one that is open to all possibilities and reflects upon whether the truth has been told. It is not one that is unduly suspicious but it is also not one that is unduly believing. It asks whether the pieces that have been presented fit into place. If at first they do not then it asks questions and seeks out information until they do. It is also not a state of mind that remains static. If the pieces remain out of place after further enquiry then it might progress to being a suspicious mind. And if the pieces still do not fit then it might progress to conviction that there is deceit. How it progresses will vary

antecedent question before considering the question whether the continued participation of Mr Chaskalson in leading Mr Mogotsi's evidence will give rise to substantive unfairness to Mr Mogotsi in the Commission's proceedings. That antecedent question is whether Mr Mogotsi has established the facts on which he relies for contending that Mr Chaskalson ought not to continue leading Mr Mogotsi.

Pleaded factual basis

Mr Mogotsi's version

[25] In the main, Mr Mogotsi's application is based on telephone conversations and WhatsApp correspondence with Mr Chaskalson between 9 and 12 March 2026. According to Mr Mogotsi, these were private communications about evidence relating to and against Mr Suliman Carrim, which included the arranging of a meeting meant to occur outside formal proceedings.²³ What follows is the sum total of Mr Mogotsi's version of the WhatsApp record which formed the basis of his concern about Mr Chaskalson's impartiality.

[26] Mr Mogotsi alleges that on the evening of 9 March 2026, he and Mr Chaskalson engaged in a phone call which lasted approximately three minutes. During this call, Mr Chaskalson is alleged to have said (verbatim), "Get me anything against [Mr] Suliman and I will help you."²⁴ Mr Mogotsi paraphrased the rest of the conversation as follows:

with the exigencies of the particular case. One question might lead to another, and that question to yet another, and so it might go on."

Since commissions of inquiry are more investigative in nature than adversarial, Evidence Leaders do not act as prosecutors seeking convictions, but aid in ensuring that all relevant information is properly ventilated through marshalling the facts and, where necessary, vigorously examining witness testimonies to extract evidence that they believe may be elicited from the witnesses, seek elucidation of evidentiary matter and expose inconsistencies.

²³ Applicant's answering affidavit at page 267, paras 45.1 – 45.3.

²⁴ Applicant's founding affidavit at page 12, para 6.3.

“He further stated that [Mr] Suliman had implicated me and that I should find a way to defend myself. He expressed his belief that [Mr] Suliman was lying, that [Mr] Suliman had ‘thrown me under the bus’, and that he wanted me to do the same to [Mr] Suliman. I asked Adv Chaskalson SC whether he would postpone [Mr] Suliman's testimony so that I could provide more information against him. He said he would try his best to postpone and agreed to talk again when I had more information.”²⁵

[27] Mr Mogotsi states that from this telephone call he formed the distinct impression that his protection from adverse findings by the Commission was contingent on his willingness to provide information and documentation adverse to Mr Carrim to assist Mr Chaskalson. He also states that Mr Chaskalson's tone and approach in the call concerned him, which led him to enquire from Mr Chaskalson how he intends on protecting him in the face of Mr Carrim taking Mr Mogotsi down to which he received no response.

[28] On 10 March 2026 at 08:20 Mr Mogotsi tried calling Mr Chaskalson twice with no success. Mr Mogotsi followed up on the missed calls by asking Mr Chaskalson on WhatsApp whether he would be proceeding with Mr Carrim's evidence or if he preferred first to be provided with the required information by Mr Mogotsi. When Mr Chaskalson did not respond, Mr Mogotsi made another two attempts to call him with no success. Mr Mogotsi then left Mr Chaskalson a message at 08:31 saying, “Thought u may need something before u proceed today.”²⁶

[29] At 09:03, still on 10 March 2026, Mr Chaskalson responded by calling Mr Mogotsi. During this call, which lasted six minutes, Mr Mogotsi suggested that Mr Chaskalson ask Mr Carrim about his meeting with Mr Mogotsi and Mr Morgan Maumela. Mr Mogotsi alleged that Mr Chaskalson then pressed him further for any evidence which could implicate Mr Carrim, to which Mr Mogotsi

²⁵ Applicant's founding affidavit at page 12, paras 6.3 – 6.4.

²⁶ Applicant's founding affidavit at pages 13 – 14, paras 6.8 – 6.9.

mentioned the litigation which arose from the North West Health Department tender, including the possible involvement of Mr Carrim and Mr Maumela in that litigation.

[30] During the hearing of Mr Carrim's testimony that day, Mr Chaskalson engaged him about the alleged meeting between Mr Carrim, Mr Maumela and Mr Mogotsi. According to Mr Mogotsi, Mr Chaskalson informed Mr Carrim that he gained knowledge of this meeting from Mr Mogotsi during a call which took place on the previous evening. Having heard this, it prompted Mr Mogotsi to reach out to Mr Chaskalson in a message sent at 13:50 stating "talk to me". Mr Chaskalson called and told Mr Mogotsi that he was busy. He invited him to a meeting at the Commission. Mr Chaskalson later sent a message at 17:43. He proposed that they meet at 10:00 the following day. Mr Mogotsi did not respond to the message.

[31] On 11 March 2026 Mr Chaskalson called Mr Mogotsi at 09:59 during which Mr Mogotsi expressed privacy concerns about meeting at the Commission due to the heavy media presence at the Commission. According to Mr Mogotsi, Mr Chaskalson insisted that the meeting proceed at the Commission at 14:00. As explained below, both the 10:00 and 14:00 meetings did not materialise.

[32] On 12 March 2026 at 11:27 Mr Chaskalson contacted Mr Mogotsi, following his non-attendance of the meeting. Mr Mogotsi and Mr Chaskalson engaged in a series of messages discussing the next potential date Mr Mogotsi would return to the Commission to complete his evidence.

[33] During this engagement on the logistics of the next appearance, Mr Mogotsi sent a message telling Mr Chaskalson "[I] believe [you] can help me", to which Mr Chaskalson responded at 11:49 "I think so too. But you can't mess me around." Mr Mogotsi alleged that it was this message from Mr Chaskalson which confirmed for him that Mr Chaskalson's willingness to help him was conditional on Mr Mogotsi providing information against Mr Carrim.

[34] Mr Mogotsi alleged that after an unsuccessful attempt to reach Mr Chaskalson on 26 March 2026, he did not hear from him until 31 March 2026 when Mr Chaskalson called him with a private number.

[35] Mr Mogotsi further states that his doubts about Mr Chaskalson's impartiality were further amplified by the following:

- (a) Despite having called Mr Mogotsi a liar during his testimony in November 2026, Mr Chaskalson was willing to use information sourced from him as long as it was adverse to Mr Carrim, under the promise of protecting him.²⁷
- (b) Mr Chaskalson placed untruthful evidence before the Commission during Mr Carrim's hearing when he stated that during a call with Mr Mogotsi held on the previous night, he was told of a meeting between Mr Carrim, Mr Mogotsi and Mr Maumela. The true version, according to Mr Mogotsi, was that the call took place in the morning and not the night before.

Mr Chaskalson's version

[36] Mr Chaskalson denied Mr Mogotsi's allegations that he encouraged Mr Mogotsi to fabricate evidence, or that he offered protection in exchange for information implicating Mr Carrim.

[37] In so doing, he first asserted that Mr Mogotsi's version of the WhatsApp record was not the true account of their correspondence. He placed before the Commission his own record of their WhatsApp exchanges which demonstrated the following omissions in Mr Mogotsi's record:

- (a) three calls from Mr Mogotsi which Mr Chaskalson declined to answer on the night of 9 March 2026;

²⁷ Applicant's founding affidavit at page 16, para 6.18. The full record is attached at annexure OM 2.

- (b) another three calls from Mr Mogotsi during the lunch adjournment of Mr Carrim’s hearing on 10 March 2026;
- (c) a message on 10 March 2026 containing three “crying with laughter” emojis sent at 13:18; and
- (d) a message on 12 March 2026 at 11:29 stating “M worried about coming there, also mentioning that I called u at nyt, thought would be strategic also”.

[38] Mr Chaskalson then said that his interaction with Mr Mogotsi should be understood against the backdrop of Mr Carrim’s testimony on 9 March 2026. During the testimony, Mr Carrim repeatedly attributed responsibility to Mr Mogotsi for a range of issues, particularly in relation to WhatsApp communication involving Mr Vusimuzi “Cat” Matlala and the latter’s Medicare 24 Tshwane District contract with the South African Police Service (SAPS). Mr Carrim further suggested that his decision to advance R10 million for the project was prompted by Mr Mogotsi’s representations and actions. Mr Chaskalson understood the overall strategy of this evidence as an attempt by Mr Carrim to shift blame onto Mr Mogotsi.

[39] In that context, Mr Chaskalson’s overall recollection of the discussion during the calls on 9 and 10 March 2026 is as follows:²⁸

- (a) Mr Mogotsi expressed frustration and concern in the manner in which he was implicated by Mr Carrim. Mr Chaskalson admitted, in his response, to the possibility of having used the phrase that Mr Mogotsi had been “thrown under the bus”.
- (b) Mr Mogotsi indicated a clear intention to push back against Mr Carrim’s version of events and appeared to take some satisfaction in Mr Carrim’s discomfort while testifying. This is also reflected by the “laughing emojis” message sent to Mr Chaskalson by Mr Mogotsi during Mr Carrim’s testimony.

²⁸ First Respondent’s answering affidavit, at pages 82 – 83, paras 18.1 – 18.4.

- (c) Mr Mogotsi offered to provide the Commission with evidence against Mr Carrim, as well as additional information relating to the SAPS / Medicare 24 Tshwane District contract. The meeting that was subsequently scheduled for 11 March 2026 was precisely for the purpose of obtaining this information. Mr Chaskalson further inferred that this offer must have been made during their initial call on the night of 9 March 2026, based on Mr Mogotsi's first message to him on 10 March 2026 enquiring about the possibility of a postponement in order to first obtain the information.

[40] Mr Chaskalson did not discourage Mr Mogotsi from providing information. That is because he believed it could be relevant to the Commission's work. However, he emphasised that, as Mr Mogotsi had proven to be an unreliable witness, any such evidence would have to be independently verified or corroborated before it could be relied upon.²⁹

[41] While Mr Chaskalson did not recall the precise details of what he communicated regarding the possible postponement of Mr Carrim's testimony in order to accommodate a meeting with Mr Mogotsi, he denied that any agreement was reached in this regard. He emphasised that decisions regarding postponements rest solely with the Commissioners, and noted that he would, in any event, have had no proper basis to justify such an application on the grounds of an unspecified offer by Mr Mogotsi to provide evidence.³⁰

[42] That said, Mr Chaskalson explained that he did anticipate that Mr Carrim's evidence might not be completed on 10 March 2026. This expectation was based, in part, on his knowledge that Mr Carrim was scheduled to travel that evening, which created a practical likelihood that the proceedings would not be finalised in time.

²⁹ First Respondent's answering affidavit, at page 84, para 22.

³⁰ First Respondent's answering affidavit, at page 85, para 27.

[43] In addition, by the morning of 10 March 2026, Mr Chaskalson foresaw potential delays arising during the hearing itself. He anticipated that Mr Carrim would request time to consider his response to two previously undisclosed payments made from his company, Tasmica Construction, to Medicare 24 Tshwane District. These payments had only come to Mr Chaskalson's attention shortly before 06:00 that morning, and the Commission had only alerted Mr Carrim to them on the day. In these circumstances, Mr Chaskalson expected that the proceedings would be stood down to allow Mr Carrim to formulate an explanation, which would further reduce available hearing time.³¹

[44] Mr Chaskalson stated that he and Mr Mogotsi arranged a meeting for 10:00 on 11 March 2026 at the Commission's offices. He requested two of the Commission's investigators, Mr Bongani Dlamini and Mr Tshepo Modimogale, to attend the meeting. At 09:59 on 11 March 2026 Mr Chaskalson called to enquire about Mr Mogotsi's whereabouts as he had arranged with a member of the Commission staff to be on standby to receive and provide Mr Mogotsi with an entry card, in anticipation of the meeting. Mr Mogotsi explained that he was delayed and undertook to arrive at the Commission by 14:00. At 13:59 Mr Chaskalson called Mr Mogotsi yet again to enquire on his whereabouts. Mr Mogotsi did not answer the call, nor did he show up for the meeting.

[45] Turning to the messages, Mr Chaskalson disputed Mr Mogotsi's version of their communications following the missed meeting. He rejected the claim that he sent a "string" of messages, stating that he sent only a single message on 12 March 2026 at 11:28, the one that enquired as to what had happened to Mr Mogotsi. He further averred that Mr Mogotsi deleted a key response from the record, namely a message sent at 11:29 in which Mr Mogotsi again expressed concern about coming to the Commission's

³¹ First Respondent's answering affidavit, at page 86, paras 28 – 29.

offices and indicated that he had attempted to call earlier.³² The first such expression of concern was at 09:59 the previous day.

[46] According to Mr Chaskalson, he responded at 11:31 by informing Mr Mogotsi that, in light of his failure to attend the scheduled consultation, his appearance before the Commission on 13 March 2026 would be postponed until after a proper consultation had taken place.³³

[47] Addressing additional exchanges referenced in Mr Mogotsi's affidavit, Mr Chaskalson acknowledged that certain messages were sent, but clarifies the context in which that occurred. In particular, his reference to Mr Mogotsi "messaging around" was directed at what he described as a pattern of conduct on the previous day, during which Mr Mogotsi failed to attend both the 10:00 and 14:00 consultations, failed to alert Mr Chaskalson that he would not attend on either occasion, and failed to respond to calls or otherwise make contact after not arriving.³⁴

[48] Mr Chaskalson also explained that he understood Mr Mogotsi's references to seeking "help" as requests for protection against what he perceived to be false or unfair blame directed at him by Mr Carrim. He had already observed Mr Carrim attempting to shift blame to Mr Mogotsi and he suspected that others, including individuals within Crime Intelligence linked to Mr Mogotsi's assignments, might do the same. Mr Chaskalson explained that the only "help" he could offer Mr Mogotsi was ensuring that he was not unfairly scapegoated by other witnesses. Accordingly, he denied any suggestion that he offered improper assistance to Mr Mogotsi in exchange for information implicating Mr Carrim.³⁵

³² First Respondent's answering affidavit, at page 89, paras 46 – 48.

³³ First Respondent's answering affidavit, at page 89, para 49.

³⁴ First Respondent's answering affidavit, at pages 89 - 90, paras 50 – 51.5.

³⁵ First Respondent's answering affidavit, at page 90, paras 52 – 53.

True factual position

[49] Mr Mogotsi admitted that he had deleted the message sent on 12 March 2026. He explained that his intention was to protect that conversation from third persons. This does not make sense. He also admitted deleting the record of multiple unanswered calls he had made to Mr Chaskalson. On this, his explanation was that the calls were irrelevant. He offered no explanation for the omission of the “crying with laughter” emojis.

[50] Against this factual backdrop, Mr Mogotsi’s version is so patently untrue that it must be rejected out of hand. A stage of weighing up probabilities is not reached. Here is what emerges from the pleaded facts. First, the initiative to provide information to the Commission originated with Mr Mogotsi. This is borne out not only by his role in initiating contact on 9 March 2026, but more significantly by his subsequent conduct, which reflects a consistent willingness to furnish information, to seek engagement on that basis, and to enquire whether proceedings should be delayed to enable him to do so.

[51] Secondly, there is no basis for the contention that Mr Chaskalson placed untruthful evidence before the Commission in his questioning of Mr Carrim. A proper reading of the transcript³⁶ makes clear that the reference to “yesterday” was directed at Mr Carrim’s evidence, and not to the timing of any communication with Mr Mogotsi.

[52] Thirdly and critically, there is no support in the WhatsApp record for the existence of any quid pro quo. At no stage does Mr Chaskalson offer protection, indemnity, or any form of favourable treatment in exchange for information implicating Mr Carrim.³⁷ In fact, Ms Mohomane correctly conceded that on the facts and annexures relied upon by Mr Mogotsi, there is no evidence of a promise from Mr Chaskalson to Mr Mogotsi.

³⁶ Mr Carrim, transcript of oral evidence, 10 March 2026, at page 54.

³⁷ Mr Mogotsi, transcript of oral evidence, 15 May 2026 at pages 41 – 45.

[53] The remaining issue concerns the proper interpretation of the WhatsApp exchange of 12 March 2026 in which Mr Chaskalson said to Mr Mogotsi, “I think so too, but you can’t mess me around.” This, in response to a text from Mogotsi that said, “I believe you can help me.” Mr Mogotsi contends that this message confirmed his belief that any assistance from Mr Chaskalson was conditional upon his provision of incriminating information. That interpretation is not supported when the message is read in its proper context. In context, Mr Chaskalson’s explanation that the only “help” he could offer Mr Mogotsi was ensuring that he was not unfairly scapegoated by other witnesses makes sense.

[54] This exchange followed Mr Mogotsi’s failure to attend consultations of 10:00 and 14:00 of 11 March 2026. In saying Mr Mogotsi “can’t mess [him] around”, Mr Chaskalson was clearly expressing annoyance at the failure to attend scheduled consultations. The annoyance was understandable because Mr Mogotsi’s non-attendance of the consultations resulted in the loss of a significant portion of the day by Mr Chaskalson and the team of investigators. And it necessitated the postponement of Mr Mogotsi’s scheduled appearance before the Commission.

[55] The deletions of chats by Mr Mogotsi are material. The omitted calls and messages are not peripheral. They form part of the broader factual matrix against which the parties’ interactions must be understood. In particular, the call records demonstrate repeated, unanswered attempts by Mr Mogotsi to contact Mr Chaskalson. This pattern is palpably inconsistent with the contention that Mr Mogotsi was subjected to pressure or solicitation. On the contrary, it supports the inference that it is he who was actively seeking out Mr Chaskalson. Similarly, Mr Mogotsi did not give a cogent explanation for the selective deletion of his text of 12 March 2026. All this points to a deliberate presentation of a misleading record. On the contrary, Mr Chaskalson’s version is both internally coherent and consistent with the objective record.

[56] On a full and contextual reading of the WhatsApp exchanges, Mr Mogotsi has failed to prove the factual basis of his complaint. That being so, there is no need to proceed to the second stage, which is whether Mr Chaskalson's continued questioning of Mr Mogotsi will give rise to substantive unfairness. On the hopeless case advanced by Mr Mogotsi, that question simply does not arise

Conclusion

[57] Mr Mogotsi's application for the recusal of Mr Chaskalson was dismissed for these reasons.

JUSTICE MBUYISELI MADLANGA

COMMISSION CHAIRPERSON

13 JUNE 2026

(THE ORIGINAL WHICH IS ON FILE IS SIGNED)